



Civil Resolution Tribunal

Date Issued: February 14, 2019

File: SC-2018-001461

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reimer et al v. Durkin et al*, 2019 BCCRT 185

B E T W E E N :

Christine Reimer and Bruce Heayn

APPLICANTS

A N D :

Tim Durkin, SHH Holdings Limited, SHH Management Limited, and
Robin Parker

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Morgan L. Camley

INTRODUCTION

1. The applicant Christine Reimer is an artist on Vancouver Island.
2. The applicant Bruce Heayn is Ms. Reimer's husband and agent.

3. The applicants seek an order for payment of \$2,132.55 plus the CRT fees, for 6 pieces of art Ms. Reimer consigned to the Sooke Harbour House gallery sales program, but for which she has not received payment.
4. The applicants have named four respondents: Tim Durkin, SHH Holdings Limited (SHH Holdings), SHH Management Limited (SHH Management), and Robin Parker. SHH Management, by court order, assumed management of the Sooke Harbour House in October 2015. SHH Holdings is a holding company with a British Columbia Supreme Court matter related to the Sooke Harbour House. Robin Parker and Tim Durkin are employees of either the Sooke Harbour House or SHH Management.
5. For the reasons set out below, I find that the respondent SHH Management must pay Ms. Reimer \$2,132.55, for the 6 pieces of art consigned and sold through the Sooke Harbour House gallery sales program.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (Act)*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a

court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under the *Act* and Rule 12 of the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, and order any other terms or conditions the tribunal considers appropriate.
10. The applicable tribunal rules are those in place at the time this dispute was commenced.

ISSUES

11. The issues in this dispute are:

- a. who are the proper parties to this dispute?
- b. are one or both applicants owed any money by one or more of the named respondents and if so, what is the amount of money owed?

12. The parties positions are as follows:

- a. The applicants seek an order for \$2,132.55 in respect of 6 pieces of art consigned by Ms. Reimer to the Sooke Harbour House plus their CRT fees.
- b. The personal respondents Robin Parker and Tim Durkin seek to have the claim dismissed against them on the basis that they are not proper parties because they are employees and not parties to any agreement.
- c. SHH Holdings seeks to have the claim dismissed against it on the basis that it is not a proper party because it is not involved in the management of the Sooke Harbour House.
- d. SHH Management seeks to have the claim dismissed against it on the basis that it is not a proper party because it has no legal or beneficial ownership in the Sooke Harbour House art gallery sales.

EVIDENCE AND ANALYSIS

13. I have read all of the evidence provided, but refer only to evidence I find relevant to my decision.
14. First, it must be determined which parties are the appropriate parties to this dispute.
15. I can find no evidence that Mr. Heayn is a proper party to this action as there is no evidence of a contractual relationship between Mr. Heayn and any of the named respondents. I dismiss Mr. Heayn's claims.
16. I have also reviewed the evidence provided by the parties and I find that there is no contractual connection between the personally named respondents—Robin Parker and Tim Durkin and Ms. Reimer. In other words, there is no evidence which allows me to impose any liability on the personal respondents simply because they are employees of either the Sooke Harbour House or SHH Holdings and SHH Management. As such, I find that Robin Parker and Tim Durkin are not proper parties to this action. I dismiss Ms. Reimer's claims against Robin Parker and Tim Durkin.
17. I find that SHH Holdings is not a proper party to this action as SHH Holdings does not engage in the management of the Sooke Harbour House. I dismiss Ms. Reimer's claims against SHH Holdings.
18. I find that SHH Management is the correct respondent in this action on the basis that the SHH Management is operating the Sooke Harbour House under an order of the British Columbia Supreme Court. Further, I am satisfied that there is evidence before me that SHH Management has made previous payments to Ms. Reimer under the consignment contract (defined below). SHH Management acknowledges a debt owing to Ms. Reimer, but takes issue with the amount and mechanics of payment (i.e. the requirement that the applicants sign a release).
19. The next issue to be determined is if SHH Management owes Ms. Reimer any money under the consignment contract.

20. Ms. Reimer has been selling her art through a consignment relationship with an entity known as the Sooke Harbour House for some years prior to this dispute.
21. In evidence is an unsigned example of an “Artist Consignment Agreement Contract”. No party has disputed that this is the form of contract between Ms. Reimer and the Sooke Harbour House, which as noted is run by SHH Management.
22. Between December 2017 and early February 2018, Mr. Heayn and staff at the Sooke Harbour House exchanged numerous emails in an attempt to reconcile Ms. Reimer’s consignment inventory with the payments made by the Sooke Harbour House under the consignment contract.
23. Under the consignment contract the relevant terms are that 60% of the selling price of each item must be paid to Ms. Reimer as the consignor, excluding sales tax. Further, it is the consignor’s responsibility to maintain all record of consignments with the consignee issuing payment within the first 2 weeks of the following month of the sale.

24. On February 3, 2018, in compliance with the consignment contract, Mr. Heayn provided an invoice to the Sooke Harbour House which set out the following:

- a. Original Painting, "Shoreline at Low Tide on Pender Island", 20 x 40 inches, price \$3,025 before taxes. **Amount owed to Christine including artist's portion of GST is \$1,905.75.**
- b. Two larger sized reproductions on paper, each at \$120 before taxes. (Both were identified in Andrea's EXCEL spreadsheet Dec 10 2017. These were apparently sold after the spreadsheet was created.) The **amount owed to Christine for these two, including the artist's portion of GST, is \$151.20.**
- c. Three smallest sized reproductions on paper, each at \$40 before taxes. (On July 16th, the gallery held 9 of the smallest reproductions in the racks. On Dec 20, 2017 none were present. The December 10, 2017 spreadsheet identifies 6 reported sales of this smallest size.) **Three more small ones have been sold between July and Dec and Christine is owed \$75.60 for these three, including artist's portion of GST.**

\$1,905.75
151.20
75.60

**Total payable,
original)**

—————
Past Due\$2,132.55

(emphasis in

25. On February 7, 2018, Mr. Heayn again attached the February 3, 2018 invoice to a lengthy email with the subject "Evading Payment" in which he recounted the parties' history of the non-payment under the consignment contract and provided some commentary on his understanding behind the motives for the non-payment. The "evading payment" email was sent to the SHH Management email address of SHHML@outlook.com.

26. Following receipt of the February 3, 2018 invoice and subsequent emails, SHH Management did not reply until a February 14, 2018 email in which they did not challenge the February 3, 2018 invoice amount. In fact, SHH Management confirms the amount owing when it stated that “your payment is ready to be e-transferred to Ms. Christine Reimer”. I find this is evidence that as of February 14, 2018, the parties agreed that \$2,132.55 was owing.
27. However, rather than the e-transfer to Ms. Reimer, SHH Management escalated the dispute by making a new demand that both applicants enter into a “legal release” before payment was transferred, “You will have to sign the release and disclosures for us to pay you.” Again, there was no dispute raised about the amount claimed by Ms. Reimer.
28. On February 15, 2018, SHH Management provided a release between the applicants and the Sooke Harbour House which (for the first time) included an alternative amount owing of \$1,832.97 (the release).
29. On February 16, 2018, SHH Management confirmed its position that if the applicants “do not execute the payout agreement sent to you yesterday you will not be paid.”
30. Afterward, each party continued to send the other various emails escalating and entrenching their positions until this matter was brought before the tribunal.
31. I find there is no legal basis upon which SHH Management may demand a signed release from the applicants before payment is made. There is no term in the consignment contract requiring a release before payment and there is no legal basis outside of the consignment contract which would impose such an obligation.
32. I find that SHH Management has admitted it owes Ms. Reimer an amount under the consignment contract. As such, the only remaining issue to determine is the amount owing.

33. SHH Management's later challenge to the applicants' claimed amount is only that "they have examined" their files. On the evidence before me, SHH Management has not provided its own reconciliation of the amounts it says are owing to Ms. Reimer or any proof of payment to Ms. Reimer for the missing consignment items. On balance, I find that SHH Management owes Ms. Reimer \$2,132.55, which is consistent with what SHH Management agreed was owing in its earlier correspondence.
34. As noted above, I find no basis to require the applicants to sign a release before the \$2,132.55 payment is made.
35. Ms. Reimer is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$2,132.55, from February 26, 2018 to the date of this decision. This equals \$2,162.02.
36. I also find that the applicant is entitled to reimbursement of \$125 in tribunal fees.

ORDERS

37. Within 15 days of the date of this order, I order SHH Management to pay Ms. Reimer as follows:
 - a. \$2,132.55 in debt,
 - b. \$29.47 in pre-judgment interest under the *COIA*, and
 - c. \$125 in tribunal fees.
38. Ms. Reimer is entitled to post-judgment interest, as applicable.
39. Mr. Heayn's claims are dismissed. Ms. Reimer's claims against the remaining respondents are dismissed.
40. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection

under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

41. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Morgan L. Camley, Tribunal Member