



# Civil Resolution Tribunal

Date Issued: May 23, 2019

File: SC-2018-007205

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Duprey et al v. Sandra Gibbs et al*, 2019 BCCRT 622

**B E T W E E N :**

David Duprey, Another Enterprise Inc., Vegas Enterprises Inc, and  
Junebug Enterprises Inc

**APPLICANTS**

**A N D :**

Sandra Gibbs and DUALITY PROJECTS INC.

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicants David Duprey, Another Enterprise Inc., Vegas Enterprises Inc, and Junebug Enterprises Inc, say the respondent Sandra Gibbs worked as their bookkeeper in 2017 and failed to file taxes correctly or on time for the corporate applicants.

2. The applicants claim a total of \$3,384.85 for Ms. Gibbs' errors, which they break down as follows:
  - a. a penalty of \$433.87 for missing the payroll tax deadline for Another Enterprise Inc in September 2017,
  - b. a \$1,016.98 "processing fee" for failing to digitally file year end taxes for Vegas Enterprises Inc rather than sending a hard copy by mail, and
  - c. penalties and interest of \$1,934.00 for incorrectly completed and late filed tax returns for Junebug Enterprises Inc and Another Enterprise Inc.
3. Ms. Gibbs says that she no longer worked as the applicants' bookkeeper after August 3, 2017, so the September 2017 remittance was not her responsibility. With respect to the \$1,106.98 processing fees, Ms. Gibbs says she offered to respond and attempt to get the fees waived, but that the applicants refused her offer. As far as the incomplete and late filed tax returns, Ms. Gibbs says she offered to amend the returns, but the applicants declined her offer.
4. Ms. Gibbs and her employer the respondent Duality Projects Inc. (Duality) say this dispute should be dismissed because a final settlement was reached resolving the issues. Ms. Gibbs refers to prior Civil Resolution Tribunal (tribunal) proceedings in SC-2017-004704, SC-2017-004707, SC-2017-004701 and SC-2017-004706. She says these disputes were settled, meaning that this dispute is *res judicata*, a Latin term meaning it has already been decided. On this basis, the respondents ask that the dispute be dismissed.
5. The applicant David Duprey represents himself as well as the applicants Another Enterprise Inc., Vegas Enterprises Inc and Junebug Enterprises Inc, where he is a principal. The respondent Sandra Gibbs represents herself and the respondent Duality.

## JURISDICTION AND PROCEDURE

6. These are the tribunal's formal written reasons. The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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. In some respects, this dispute amounts to a "he said, she said" scenario with both sides calling into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
8. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
9. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

## ISSUE

11. The issue in this dispute is whether the respondents owe the applicants the claimed amounts. A sub-issue is the question of whether the claims in this dispute were already resolved by a prior settlement between the parties.

## EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof, on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain my decision.

13. *Res judicata* refers to a matter that has already been determined or decided. Here, the issue is whether the settlement reached between the parties in 2017 applies so as to preclude the applicants from bringing the claims in this dispute.

14. In *Cliffs Over Maple Bay (Re)*, 2011 BCCA 180, the BC Court of Appeal explained that *res judicata* applies to protect a party from repeated suits in the same case, also described as being “twice vexed.” At the same time, decision makers must not deprive parties of the right to have a dispute decided on its merits.

15. A party is required to bring their whole case forward at once. Unless special circumstances are demonstrated, a party is prevented from raising the same matter again in a second action, when it has already been decided or resolved, see *Grandview v. Doering* 1975 CanLII 16 (SCC).

16. The applicants say that the November 13, 2017 settlement agreement between them and Ms. Gibbs covered only “her outstanding fees” for accounting work.

17. For the reasons given below, I find that the parties to this dispute reached an earlier settlement, the effect of which was to render all related claims, and therefore this dispute, *res judicata*.
18. On September 20, 2017, Mr. Duprey emailed Ms. Gibbs saying that he had received a call from the Canada Revenue Agency (CRA) that she had not paid “payroll Tax for another enterprise for April 2017.” Mr. Duprey indicated that he had now paid it but that there would be additional interest and penalties due to be billed for it.
19. The applicants’ documents show that the accountant who later addressed the late filing in December 2017 quantified the penalty for missing the tax deadline for Another Enterprise Inc at \$728.98. In the Dispute Notice, the applicants claimed only \$433.87 for this missed payroll tax deadline. The applicants filed a CRA Business Remittance Voucher showing an amount of \$433.87 owing, dated October 31, 2017.
20. On October 3, 2017, Mr. Duprey emailed Ms. Gibbs saying the CRA had contacted him to say there was \$1,000 plus interest and a \$10.46 filing fee owing because of a failure to file a tax return online, rather than sending a hard copy by mail. He suggests that this penalty might be owing for all four of his companies.
21. On October 3, 2017, Ms. Gibbs emailed Mr. Duprey saying she had filed a Form RC4288 regarding the penalty for failing to file a return online. Ms. Gibbs explained that she contacted the CRA prior to filing and was told to file on paper because the web access form was not working. However, the CRA advised her that the penalty reassessment would take over 8 months to be processed, due to the volume of applications it had received. Ms. Gibbs explained that the CRA had indicated that the company may wish to pay the charge in the meantime to avoid the accrual of interest expenses.
22. Mr. Duprey did not address or provide any evidence about whether Ms. Gibbs’ request to remove the penalty for filing the return on paper was granted by the CRA.

23. On October 3, 2017, Mr. Duprey emailed Ms. Gibbs instructing her not to represent him or his companies to the CRA any further.
24. On October 3, 2017, Mr. Duprey emailed Ms. Gibbs explaining that he was aware that she had filed in “small claims” for her unpaid invoices. He then wrote “I am sorry that you feel you are owed money by us but I hope that you can appreciate with the amount of work, penalties and fines that we are dealing with to correct your mistakes there is no money to pay.”
25. On November 9, 2017, Mr. Duprey emailed Ms. Gibbs laying out, with the quotes reproduced here as written, “where we stand right now”. He then listed \$4,41.84 in penalties from the CRA for “miss filing”, \$2420 for “clean up and completion of your work from Jan to July”, \$1,000 to refile another and Junebug”, “\$137.65 in interest on the years end for another and Junebug”, \$877.92 on penalties on the year ends for another and Junbug”, \$431.50 penalties for remitting April payroll late”. He then summarized that he was out of pocket \$8,908.91 to “fix the issues that you left us with and to get us up to date and back on track.” Comparing this email to his Dispute Notice, I find that Mr. Duprey’s November 9, 2017 email references all of tax filing issues and amounts he now claims in this dispute.
26. In the same email, he wrote “before we go any further I wanted to offer to settle this.” Mr. Duprey then offers to pay \$2,222.00, basing his offer on the average monthly billing for Ms. Gibbs’ bookkeeping services, over the contested period, for each of the corporate respondents.
27. In the email negotiation that followed, I find that Mr. Duprey repeatedly used the \$8,908.91 figure to influence the settlement amounts being discussed. That is, he warned Ms. Gibbs about the penalties he had allegedly incurred due to her unsatisfactory work, using that figure and explanation to gain footing in the settlement discussions.
28. Specifically, on November 13, 2017, he emailed Ms. Gibbs saying “Again we have spent \$8,908.91 to date on correcting the mistakes you made on both the

bookkeeping and the year ends. It is difficult enough to offer you a settlement with this in mind.”

29. Later that same day, Mr. Duprey wrote describing another settlement offer as being “...more than fair compensation taking into account the mess you left our books in and the additional cost as listed in my last email that we paid to fix your mistakes.”
30. The parties then reached a monetary settlement. I examined their communications to determine their intentions as to the scope of the settlement. As to the finality and effect of the settlement, the parties traded emails with Mr. Duprey writing on November 14, 2017, “Once we have a settlement then the case and **everything around it** is closed and settled. That’s what a settlement is.” (emphasis added)
31. For her part, Ms. Gibbs expressed her view that all parties, corporate and individual, agreed that the matter was a final settlement and that no further claims would be brought.
32. The settlement was then formalized as “final”, with a condition that it would not be discussed with any third parties. As well, the parties agreed that “no further claims or invoices” would be brought against Another Enterprise Inc, Junebug Enterprise Inc, Vegas Enterprises Inc, Disco Enterprises Inc, or David Duprey or his corporate partner RZ “for this matter”.
33. Although there was no reciprocal clause in the documentary evidence formalizing an agreement that no claims would be brought against Ms. Gibbs and Duality, I find that Mr. Duprey’s settlement communications show his intention that the settlement would resolve “everything around it”. I find that Ms. Gibbs agreed. I find that the parties reached a consensus, or meeting of the minds, that the settlement would conclude any possible claims and counterclaim the applicants or the respondents may have had to the fees and penalties Mr. Duprey referred to in their settlement negotiation emails.
34. Based on the evidence before me, I find that the applicants could have included all of their current claims in a counterclaim to Ms. Gibbs’ previous tribunal disputes,

where she claimed for non-payment of her bookkeeping invoices, and the respondents contested whether that work had been completed satisfactorily. I also find that Mr. Duprey raised the facts underlying a potential counterclaim repeatedly in his negotiations with Ms. Gibbs to settle the earlier disputes. The settlement communications clearly refer to all three claims made in this dispute.

35. Returning to my consideration of *res judicata*, and applying the cause of action estoppel analysis laid out by the Supreme Court of Canada in *Grandview v. Doering*, 1975 CanLii 16 (SCC), I find that
  - a. the parties to the settlement were effectively the same as those in this dispute,
  - b. the settlement was, expressly, a “final” resolution of all related issues,
  - c. the current dispute is not a separate and distinct matter but arises from precisely the same facts underlying the settled disputes, and
  - d. the applicants could, with reasonable diligence, have made the arguments they have made here in the previous disputes. Even more than that, I have found that the applicant Mr. Duprey did refer to those very arguments to gain traction in the settlement negotiations.
36. Further on the issue of whether the parties to the November 2017 settlement were the same as those in this dispute, the settlement was negotiated between Ms. Gibbs and Mr. Duprey. I find that the intention was for each of them to bind their respective companies who were involved in the claim. The fact that Mr. Duprey’s partner RZ was not personally named in bringing this dispute does not change the fact that the settlement encompassed the issues between these parties relating to the accounting work completed by Ms. Gibbs.
37. As such, I find the applicants are now estopped, meaning prevented, from bringing these claims.



38. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I make no order for tribunal fees or dispute-related expenses, since the successful respondent did not incur either.

## **ORDER**

39. For these reasons, I dismiss the applicants' claims.

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Julie K. Gibson, Tribunal Member