



# Civil Resolution Tribunal

Date Issued: May 29, 2019

File: SC-2019-000787

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mindchop Productions Inc. v. Lisa McGuire dba L.I.T.L. Bookkeeping Services*, 2019 BCCRT 648

B E T W E E N :

MINDCHOP PRODUCTIONS INC.

**APPLICANT**

A N D :

LISA MCGUIRE (Doing Business As L.I.T.L. BOOKKEEPING SERVICES)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. This is a dispute over a deposit for accounting services. The applicant, MINDCHOP PRODUCTIONS INC., seeks a refund of the \$1,000.00 deposit it paid to the respondent, LISA MCGUIRE (Doing Business As L.I.T.L. BOOKKEEPING

SERVICES) for bookkeeping services. The respondent agrees to refund \$859.82 but says it is entitled to keep \$140.18 for the initial setup and consultation. I have inferred that the applicant's submissions and evidence were provided by Jens Frederiksen, father of the applicant's owner Christian Frederiksen. The respondent is self-represented.

## **JURISDICTION AND PROCEDURE**

2. 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*. 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.
3. 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, and I note that neither party requested an oral hearing.
4. 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.
5. 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**

6. The issue in this dispute is to what extent the applicant is entitled to a refund of the \$1,000.00 deposit it paid for bookkeeping services.

## **EVIDENCE AND ANALYSIS**

7. This is a dispute with very little evidence. It appears that on February 20, 2018, Jens Frederiksen and Christian Frederiksen met with the respondent at her home office. On that date, the applicant paid the respondent a deposit of \$1,000.00 for bookkeeping services. The applicant says the respondent performed no work other than that brief initial conversation.
8. The respondent says the applicant “never brought any work over to be done.” She agrees to refund \$859.82 but says there was a \$140.18 charge on invoice #1005 dated February 20, 2018 for the initial consultation and file set up.
9. On February 16, 2019 the respondent emailed Jens Frederiksen and told him that his son could pick up the refund cheque anytime, and noted that the cheque had been ready for pickup since November 8, 2018. The respondent said she spent 1.5 hours talking with Chris Frederiksen and setting up his file and his QuickBooks file. Jens Frederiksen said the respondent spent “maybe 3 mins talking to my son” and did not do any work. He also said they agreed on a rate of \$45.00 per hour, so charging \$140.18 for “5 mins of work” was unacceptable. He submits that if the respondent did any work it would be expected to have some information about the business, such as Chris Frederiksen’s phone number, address, email, and the names of his contractors.
10. Jens Frederiksen also submits that in November 2018 his business, Viking Screen Print, cancelled his contract with the respondent and she retaliated by refusing to give the applicant a full refund despite previously agreeing to do so.
11. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. However, in this case it is the respondent who had access to

documents that would verify the work she performed. The first mention in the evidence of the \$140.18 charge is on February 16, 2019. The respondent referred to an invoice dated February 20, 2018, but did not provide a copy of the invoice. The applicant says it never received the invoice. Earlier, in November 2018, the respondent confirmed she would “release [the applicant’s] refund,” and did not indicate there would be any amount withheld. That November email and the failure to produce a copy of the invoice undermine the respondent’s credibility with respect to the invoice.

12. The respondent did not provide a breakdown of the \$140.18 charge or indicate how much time she spent working on the applicant’s file after their initial meeting. She said she performed 1.5 hours of work, which included meeting the applicant and file set-up. She did not dispute the hourly rate of \$45.00, and I note that 1.5 hours at \$45 per hour amounts to less than half of the \$140.18 charge.
13. I must determine a reasonable offset of the refund based on the evidence of work performed. In law, this is known as *quantum meruit*, or value for the work performed. The respondent provided no supporting evidence showing any work performed (for example, a screenshot of the applicant’s QuickBooks file). The only undisputed evidence is that she performed at least five minutes of work, as stated by Jens Frederiksen, who was at the meeting on February 20, 2018. It is unfortunate that Christian Frederiksen did not provide a statement about the meeting. However, given that the respondent did not dispute Jens Frederiksen’s evidence about the length of the initial meeting, I accept it as accurate.
14. I find that the respondent performed five minutes of work for the applicant at an hourly rate of \$45.00. Accordingly, the refund is set off by \$3.75. I order the respondent to refund the applicant \$996.25.
15. The respondent says she should not have to pay tribunal fees because it was the applicant’s choice to waste everyone’s time in the tribunal process rather than simply picking up the cheque for \$859.82. She also says she should not have to pay interest because the cheque was available since November 8, 2018. The

respondent did not provide a copy of the cheque and did not explain why she did not simply mail the cheque to the applicant. I note the applicant's evidence that it tried several times to pick up the cheque, which the respondent did not address.

16. 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. The applicant was substantially successful in this dispute. I find the applicant is entitled to reimbursement of its tribunal fees of \$125.00,. The applicant did not claim any dispute-related expenses.

17. I find that the applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. I find that the applicant became aware of the debt when it requested the refund on November 9, 2018, and I have used that date to calculate interest.

## **ORDERS**

18. Within 14 days of this decision I order the respondent to pay the applicant a total of \$1,131.19, broken down as follows:

- a. \$996.25 in debt,
- b. \$9.94 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125.00 in tribunal fees.

19. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

20. 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.

21. 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.

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Micah Carmody, Tribunal Member