



# Civil Resolution Tribunal

Date Issued: June 25, 2019

File: SC-2018-008585

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Airborne Assets Inc. v. MANI SANDHU & ASSOCIATES LAW CORPORATION et al*, 2019 BCCRT 764

B E T W E E N :

Airborne Assets Inc.

**APPLICANT**

A N D :

MANI SANDHU & ASSOCIATES LAW CORPORATION and  
Suneil Sangha

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This is a dispute between a lawyer and a client. The applicant, Airborne Assets Inc., hired the respondent, Suneil Sangha, to represent it in a real estate transaction. The applicant claims that Mr. Sangha agreed to an undertaking with the opposing lawyer

to keep \$4,550 in trust without its instructions. The applicant seeks an order that the funds in trust be returned to it. The applicant also seeks a refund of its legal fees of \$1,250. The applicant has agreed to abandon the amount of its claim over \$5,000, which is the monetary limit of the Civil Resolution Tribunal (tribunal).

2. The respondent, Mani Sandhu & Associates Law Corporation (law corporation), did not file a Dispute Response. It is unclear what role the applicant says the law corporation played in this dispute.
3. The applicant is represented by an employee. Mr. Sangha is self-represented.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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.
5. 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.
6. 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.
7. 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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Does the tribunal have jurisdiction over all of the claims in this dispute? If not, should the tribunal refuse to resolve this dispute or any part of it?
  - b. Did Mr. Sandhu agree to an undertaking with another lawyer without the applicant's instructions? If so, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. In April 2018, the applicant hired Mr. Sangha to represent it in the purchase of real property. The contract of purchase and sale between the applicant and the seller included provisions for a holdback if there were any deficiencies in the property, which was newly built. The contract did not include a dispute resolution provision if the applicant and the seller disagreed about any deficiencies.
11. The applicant and the seller signed an addendum to the contract that set out multiple deficiencies, many of which the seller fixed before the purchase completed. However, the parties disputed some of the deficiencies, which had a value of \$4,550.

12. Mr. Sangha agreed to an undertaking with the seller's lawyer to keep the remaining \$4,550 holdback in his trust account pending an agreement between the applicant and the seller or a court order.
13. Notwithstanding the dispute over the deficiencies and holdback between the applicant, the purchase completed. Mr. Sangha charged the applicant \$1,250.00 in legal fees, taxes and disbursements.
14. This dispute is about whether the applicant gave instructions to Mr. Sangha to agree to the undertaking with the seller's lawyer. The applicant says that it did not give those instructions and that the contract expressly gives it the right to keep the holdback funds. The applicant says that the undertaking has therefore prevented it from receiving money that it rightfully owns. For his part, Mr. Sangha says that he would never agree to an undertaking without the client's instructions.
15. Section 77(2) of the *Legal Profession Act* (LPA) says that a client may apply to the court for an order that the client's lawyer deliver the client's property to the client. Section 77(3) of the LPA says that in making such an order, the court may order the review of the lawyer's bill and relieve the lawyer of any undertakings in relation to the property. Section 64(1) of the LPA specifies that the court is the British Columbia Supreme Court.
16. I find that "property" includes funds that are held in trust on behalf of a client. Therefore, I find that because of section 77 of the LPA, the tribunal does not have jurisdiction to make an order that Mr. Sangha deliver the trust funds to the applicant. Furthermore, an order that Mr. Sangha deliver the funds to the applicant would require an order relieving Mr. Sangha of his undertaking to the seller's lawyer. Again, because of section 77 of the LPA, the tribunal does not have jurisdiction to make such an order.
17. Section 10 of the Act says that the tribunal must refuse to resolve disputes that are outside of its jurisdiction. Accordingly, I refuse to resolve the applicant's claim for an order that Mr. Sangha deliver the trust funds to the applicant.

18. The applicant also seeks a refund of its legal bill, based on the same arguments about Mr. Sangha's failure to follow its instructions. Mr. Sangha submits that the tribunal does not have jurisdiction over the applicant's claim for a refund of its legal fees. While the LPA provides an alternative means for a client to review a lawyer's bill, it is not a mandatory process. The LPA does not restrict a client's right to bring a claim to a court or tribunal for breach of contract or negligence, which is how the applicant frames its claim for a refund. I therefore find that the tribunal has jurisdiction to hear this aspect of the applicant's dispute.
19. However, section 11(1)(a)(i) of the Act says that the tribunal has discretion to refuse to resolve a claim if the claim would be more appropriate for another legally binding process. As mentioned above, the applicant will need to bring an application to the court for an order to release the trust funds. Section 77 of the LPA says that the court may order a review of a lawyer's bill as part of that process.
20. The applicant's arguments about why it is entitled to the trust funds are essentially the same as its arguments about why it should receive a refund of its legal fees. As such, if I choose to resolve this dispute, the tribunal and the court will both be considering the same evidence to make findings of fact about the same issues. I find that one reason why the tribunal may find that another legally binding process is more appropriate is to avoid having multiple proceedings about the same issues. Avoiding duplication of legal processes saves the parties and the justice system from needless expense and reduces the risk of inconsistent findings of fact. Because the LPA allows for the review of Mr. Sangha's bill as part of an application for the return of trust funds, the court can address the issues between the parties without duplicate proceedings.
21. For these reasons, I find that the court provides a more appropriate process for the applicant to seek a refund of its legal fees. Accordingly, I refuse to resolve the applicant's claim for a refund of its legal fees.

## **DECISION AND ORDERS**

22. I refuse to resolve the applicant's claim for a return of the trust funds under section 10 of the Act.
23. I refuse to resolve the applicant's claim for a refund of its legal fees under section 11(1)(a)(i) of the Act.
24. In the circumstances, I direct the tribunal to refund the applicant's tribunal fees.

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Eric Regehr, Tribunal Member