



Civil Resolution Tribunal

Date Issued: September 6, 2019

File: SC-2019-002499

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Horseshoe Bay Hair Design Ltd. et al v. Bad Angels Productions Ltd.*,
2019 BCCRT 1059

B E T W E E N :

HORSESHOE BAY HAIR DESIGN LTD., BRETT GROVUM, and
SUSAN FARZANEH

APPLICANTS

A N D :

BAD ANGELS PRODUCTIONS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant Horseshoe Bay Hair Design Ltd. (HBHD) operates a hair salon in Horseshoe Bay. The applicant Susan Farzaneh is the director of HBHD. The applicant Brett Grovum is a silent partner of HBHD. The respondent, Bad Angels

Productions Ltd., is a production company that has filmed in Horseshoe Bay on at least 2 occasions.

2. The applicants say that on March 1, 2019 the respondent filmed in front of their business and blocked access to their parking lot causing them to incur a \$600 business income loss. The applicants want the respondent to pay them \$600 and the tribunal to order the respondent to stop blocking the area around their business when filming.
3. The respondent says that at all times it had all required filming permits and that it never blocked HBHD's business or caused it to lose income.
4. Ms. Farzaneh and Mr. Grovum are self-represented. HBHD and the respondent are each represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the

documentary evidence and submissions before me. 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 the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

9. The issues in this dispute are:
 - a. Is the respondent required to pay the applicants \$600 for loss of business income?
 - b. Is the respondent required to stop blocking the area around the applicants' business when filming?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicants must prove their claims on a balance of probabilities. This means I must find it is more likely than not that the applicants' position is correct.

11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

Is the respondent required to pay the applicants \$600 for loss of business income?

12. In October 2018 the respondent filmed in the area of the Horseshoe Bay Motel. On February 19, 2019 the respondent notified the neighbours of the Horseshoe Bay Motel by letter that it would be returning to film in the area on March 1, 2019.

13. On March 1, 2019 the respondent returned to the area to film at the Horseshoe Bay Motel. The respondent says that at all relevant times it had the required filming permits, and the applicants do not dispute this. As set out below, the issue is whether the respondent unreasonably blocked access to HBHD.

14. The respondent submitted an aerial map of the area which shows that HBHD is located in a shopping plaza bordered by Bruce Street to the south, a laneway to the west, a laneway to the north, and a treed property line to the west. The map indicates that the shopping plaza has a small parking lot on the north side of the building accessible from Bruce Street on the south through the laneway on the west, and also accessible directly from the laneway on the north. There is also street parking directly in front of the shopping plaza on the north side of Bruce Street. The Horseshoe Bay Motel is one block southwest of the shopping plaza on the corner of Bruce Street and Royal Avenue.

15. On February 22, 2019 the respondent had notified the Horseshoe Bay community by letter of its schedule on March 1, 2019. The letter said that between 7:00 a.m. and 5:00 p.m. a "small preparation crew" would arrive at the motel and nearby block. The letter also said the District of West Vancouver would post "temporary no parking" signs between 7:00 a.m. on March 1, 2019 and 3:00 a.m. on March 2, 2019 on both sides of Bruce Street on the block bordering the shopping plaza in which HBHD is located.

16. The applicants say that on March 1, 2019 the respondent blocked its entire parking lot and Bruce Street for the entire business day. They say Bruce Street is very narrow and only 1 car can pass through at a time. They submitted photos taken on March 1, 2019 showing the respondent blocking part of the parking lot on the north side of HBHD's shopping plaza. However, I find these photos do not clearly show whether the respondent blocked either of the entrances to the parking lot. The respondent says it parked its trucks on or near the street on which HBHD is located, but did not block HBHD's parking lot, which is accessible from a separate road on the other side of the building.
17. On the evidence before me I am not satisfied that the respondent blocked access to HBHD's parking lot on March 1, 2019. While it is undisputed that the respondent's production did disrupt some of the regular traffic flow and parking spaces in the area that day, the evidence before me is that those actions were permitted by the city.
18. Even if I had found the respondent had unreasonably blocked access to HBHD, I find HBHD has not proved its losses. The applicants say they usually have a lot of walk-in clients on Fridays because of ferry traffic but on March 1, 2019 they had no walk-ins. They also say that their clients who had appointments on March 1, 2019 did not show up because there was no vehicle access to the building. However, the applicants provided no evidence of any appointments it had scheduled for March 1, 2019, that any of those appointments were cancelled, or any other evidence to show the usual amount of walk-in traffic on Fridays.
19. The applicants sent the respondent a Creative BC Loss of Business form which clearly states that it is for use between a business owner and production for the purpose of negotiation and is not meant to be adjudicated by anyone other than the parties involved. The form sets out a formula for determining proof of business loss. The applicants indicated on the form that on the day of filming HBHD's actual revenue was \$67, but there is no other evidence before me to support this claim. The applicants indicated on the form that on the previous 3 Fridays before filming, HBHD's revenues were between \$476 and \$566.76 per day, and they submitted

handwritten ledgers to support these amounts. However, they did not submit HBHD's ledger for March 1, 2019, even though I presume it exists.

20. The applicants submitted HBHD's bank account statement from February 1, 2019 to March 1, 2019, but the amounts do not match the amounts on the ledgers in evidence. The applicants provided no explanation as to HBHD's regular banking or depositing practices, so I find this bank account evidence is unhelpful in determining whether HBHD incurred any losses on March 1, 2019.
21. The applicants are responsible for proving their claims. On the evidence before me I am not satisfied that HBHD incurred any losses as a result of the respondent's filming activities on March 1, 2019. I dismiss this claim.

Is the respondent required to stop blocking the area around the applicants' business when filming?

22. As explained above, I find the applicants have not established that the respondent blocked access to HBHD's parking lot on March 1, 2019. The evidence indicates that the respondent had all required permits for filming that day, and there is no indication it did not follow the permits' requirements. There is also no evidence to indicate that the respondent has plans to return to the area for future filming.
23. Regardless, I find the applicants' request for an order that the respondent stop blocking the area around HBHD when filming is a claim for injunctive relief which is outside the tribunal's jurisdiction. I therefore refuse to resolve this claim under section 10 (1) of the CRTA.
24. Under section 49 of the CRTA 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. Since the applicants were unsuccessful I find they are not entitled to reimbursement of their tribunal fees and they have not claimed any dispute-related expenses.

ORDER

25. I dismiss the applicants' claim for loss of business income.

26. Under section 10 (1) of the CRTA, I refuse to resolve the applicants' request for an order preventing the respondent from blocking the area around the applicants' business when filming.

Sarah Orr, Tribunal Member