



Civil Resolution Tribunal

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File: SC-2019-004936

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alejandro Graham (dba 3D Immersive Tours) v. Van Hoepen*, 2019 BCCRT
1397

B E T W E E N :

ALEJANDRO GRAHAM (Doing Business As 3D IMMERSIVE TOURS)

APPLICANT

A N D :

WILLIAM VAN HOEPEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This is a dispute over business assets. The applicant, Alejandro Graham (dba 3D Immersive Tours) is a real estate marketing business. The applicant says the respondent, William Van Hoepen, worked with 3D Immersive Tours for a time and kept its “iMac” computer and “DJI Osmo Pocket” camera after the respondent quit working for him. The applicant asks for an order that the respondent return the iMac, Osmo, and accessories, at a total value of \$2,429.55 (the claimed equipment).
2. The respondent does not deny that he possesses the claimed equipment. However, the respondent says he suffered “loss of realized and future profits” because he was “choked out of the business” and says as well, that the applicant holds both his laser measuring system and Instagram account. I infer the respondent seeks to retain the claimed equipment as a set-off from monies and items allegedly owed to him on dissolution of their business relationship, though he does not explicitly argue it in this way. The respondent did not file a counterclaim.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties’ submissions called each other’s credibility into question, I

find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

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. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
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 issue in this dispute is whether the applicant is entitled to the return of the claimed business equipment, or, whether the respondent is entitled to keep it as a set-off for money and items the applicant allegedly owes the respondent.

EVIDENCE AND ANALYSIS

10. To support his ownership claim, the applicant submitted photographs of the iMac in his office and the receipt for the Osmo. The respondent does not dispute that the

claimed equipment is owned by the applicant. I accept that the applicant owns the claimed equipment.

11. The parties describe the nature of their business relationship somewhat differently. The applicant describes the respondent as a former contract worker. The respondent says that he was more than that. The respondent says he and the applicant had agreed to enter into a partnership and that he would receive a portion of profits and bonuses in exchange for his marketing and business development services. However, the respondent says he was unable to “solidify” the terms of the partnership agreement. It is undisputed that the parties’ business relationship dissolved, though the specific details are not in evidence.
12. Even though they had not solidified their agreement, the respondent says he was the applicant’s business partner. The respondent provided a copy of his 3D Immersive Tours business card with the title “partner”. The parties’ text messages show they discussed potential terms of a partnership but did not reach an agreement on terms, including for profit sharing and bonuses. It is undisputed that the parties never executed a written partnership agreement. I find it more likely than not that the parties’ business relationship broke down before they agreed to and finalized the terms of their partnership agreement. Therefore, I find the respondent was not more than a contract worker.
13. As noted above, the respondent did not file a counterclaim. The respondent has the burden to prove that he is entitled to retain the claimed equipment as an equitable set-off. For a set-off to apply, there must be a relationship between the cross-obligations such that it would be unfair or inequitable to permit one to proceed without taking the opposing claim into account (see *Wilson v. Fotsch*, 2010 BCCA 226 at 70-73).
14. The respondent alleges generally that he is entitled to a portion of 3D Immersive Tours’ business for “loss of realized and future profits”. He says he has “no other choice but to recover the lost value, assets, as well as future profits of contracts that [he] solely created and had signed”. I have no information about the value of the

business contracts that the respondent says he procured, or the business's lost value or profits allegedly owed to him. Arguably, the applicant controls the business records. However, the respondent did not provide any particulars of his allegations of lost value, assets, profits for the applicant to respond to. The respondent also did not establish that the parties agreed the respondent would take a share of the business profits or bonuses. Again, there is no written partnership agreement and the texts suggest the parties had not agreed to split profits. Therefore, I have made no adverse inference against the applicant.

15. The respondent says generally, that he "invested" into the business, but again gave no particulars of his contributions and no evidence that he contributed any money. I find the respondent has not proven the applicant owes him any money to entitle him to retain the claimed equipment as an equitable set-off.
16. In the Dispute Response, the respondent said the applicant holds his laser measuring system and a "valuable" Instagram account, which the applicant denies. Despite mentioning these items in the Dispute Response, the respondent provided no additional information or argument in his submissions that he owns the items or that the applicant possesses the items. The respondent also provided no evidence to establish the items' market value. Therefore, I find the respondent has also not proven that he is entitled to retain the claimed equipment as a set-off against the laser or Instagram account.
17. On the other hand, I find the applicant has established that he is the rightful owner of the claimed equipment that he wants returned. He says the equipment stores valuable undelivered client projects and data that he needs to continue to operate his business. In these circumstances, I find it appropriate to order the respondent to return the claimed equipment under section 118(1)(b) of the CRTA for recovery of personal property. I find the respondent must return to the applicant the following equipment, in the same condition and settings as at the time the respondent took possession of them:
 - a. 21.5-inch iMac computer, including wireless mouse and wireless keyboard.

- b. DJI Osmo Pocket camera, carrying case, charging block, charging cable, and SD Card with data.

18. 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. I find the applicant is entitled to reimbursement of \$125.00 in tribunal fees. The applicant claimed no dispute-related expenses and so I award none.

ORDERS

19. I order the respondent to immediately return to the applicant at the respondent's cost and to the applicant's address in the Dispute Notice, or to a mutually agreed location, in the same condition and settings as at the time the respondent took possession of them:

- a. the applicant's 21.5-inch iMac, including wireless mouse and wireless keyboard, and
- b. the applicant's DJI Osmo Pocket, carrying case, charging block, charging cable, and SD Card with data.

20. Within 15 days of the date of this order, I order the respondent to pay the applicant \$125.00 in tribunal fees.

21. The applicant is entitled to post-judgment interest, as applicable.

22. Under section 48 of the CRTA, 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.

23. Under section 58.1 of the CRTA, 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.

Trisha Apland, Tribunal Member