



Civil Resolution Tribunal

Date Issued: August 27, 2020

File: SC-2020-001838

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cripps v. Randles*, 2020 BCCRT 960

BETWEEN:

DAVID CRIPPS and IRINA CHISCA

APPLICANTS

AND:

TIMOTHY RANGLES and PIERRE BENOIT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about an agreement to sell goods on consignment. The applicants, David Cripps and Irina Chisca, say that the respondents, Timothy Randles and

Pierre Benoit, represented themselves as partners and directors of Best Auctions Corp. (Best Auctions) and agreed to sell the applicants' items on consignment. The applicants say that Mr. Randles signed the agreement in his capacity as partner or director of Best Auctions. Best Auctions is not named as a respondent. The applicants claim \$3,000 as the value of the consigned goods. The applicants are represented by Mr. Cripps.

2. Mr. Randles says that he should not be named in the dispute as he is not an owner or director of Best Auctions. He says he did not sign the agreement in his personal capacity and that he is not liable for the money owed to the applicants for their consigned goods. Mr. Randles represents himself.
3. Mr. Benoit did not provide a Dispute Response.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 "they said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the CRT'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 therefore decided to hear this dispute through written submissions.

6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether the respondents must pay the applicants the value of their consigned goods.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicants must prove their case on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. The applicants say that in November 2017 they saw Best Auctions' advertisement on Craigslist offering to sell items on a consignment basis, in regularly occurring warehouse sales. The applicants say that they met with Best Auctions on November 16, 2017 and Mr. Benoit and Mr. Randles introduced themselves as partners and directors of Best Auctions.
11. The applicants say that Best Auctions' premises seemed legitimate with offices, a first floor furniture showroom area, a reception area and a large almost empty warehouse at the back. The applicants decided to sign a consignment agreement

with the applicants as consignors and Best Auctions as the consignee. The applicants say that Mr. Randles signed the agreement in his capacity as “partner/director.” Mr. Benoit did not sign the agreement.

12. The applicants have provided a copy of the consignment agreement. The agreement was filled out incorrectly. Mr. Randles inserted his name and signature where the consignor is supposed to put their name. Therefore, the agreement states that the agreement is between the consignor, Mr. Randles, and Best Auctions as consignee. Mr. Randles says that this was an error and I accept this explanation. The bottom of the contract does properly show Ms. Chisca’s signature as well as Mr. Randles where the consignee and consignor are supposed to sign. The applicants do not deny that they entered into the consignment contract.
13. Mr. Randles says that he did not enter into the agreement in his personal capacity. He says that the contract shows that the consignee is Best Auctions and that he signed the contract as a witness, but he was not signing as an officer or employee of the company. Mr. Randles says that he was just helping out with Mr. Benoit’s upstart business, so he agreed to sign the contract as a witness.
14. The applicants say that Mr. Randles held himself out as a partner or director of the company and he was the one who twice came to their location to collect goods and that he was also present to receive the goods dropped off at the warehouse. The applicants also say that Mr. Randles presented them with a business card which led them to believe Mr. Randles was a company representative.
15. Mr. Randles says that Mr. Benoit had the business cards made for anyone who was helping with the business to make the company seem more professional. Mr. Randles also submits that “Benoit” is not the legal name of the director of Best Auctions. Mr. Randles provided a Certificate of Incorporation showing that the company name is actually Best Auction Corp. and not Best Auctions Corp. The director’s name is Pierre but the last name is not Benoit. I note that the Dispute Notice sent to Pierre Benoit was not delivered either to Best Auction Corp.’s registered office or to the actual director’s mailing address. Because the person

identified by Mr. Randles as Best Auctions' director has apparently not received notice of this dispute, and may not have had an opportunity to respond, I will anonymize his name and refer to him as Pierre BL.

16. When the applicants became aware that they might have the name of the company and Mr. Benoit wrong, they still chose to proceed against only Mr. Randles and Mr. Benoit in their personal capacities. The applicants submit that they are formally requesting a statement from Mr. Randles that Pierre BL is the Pierre that they were dealing with the whole time and that Pierre BL goes by the name Benoit. I note that it is not Mr. Randles' responsibility to ensure that the applicants have named the correct parties, although Mr. Randles did ultimately provide this information.
17. If Mr. Benoit existed as the party the applicants dealt with under the agreement, he would be in default for failing to file a Dispute Response as required and normally liability would be assumed against him. However, as noted, the applicants did not request to amend their claim to name Best Auction Corp. or Pierre BL, although it is clear they suspect that he is the correct person to be named and Mr. Randles says that Mr. Benoit is not Pierre's correct legal name. Based on this, I find that the applicants have not proved that Pierre Benoit was a party to the consignment agreement or that this is the legal name of the person they were dealing with. Therefore, I find nothing turns on Mr. Benoit's default status as the evidence indicates that he is not the correct named party. So, I dismiss the claims against Mr. Benoit. This does not prevent the applicants from starting a dispute against Pierre BL or Best Auction Corp., subject to the relevant limitation period.
18. Having decided that the applicants did not prove that their claim is against Mr. Benoit, this leaves only the applicants' claim against Mr. Randles. I note that the applicants themselves admit in their submissions that Mr. Randles was signing the contract on behalf of the company and not in his personal capacity. Further, there is no suggestion that Mr. Randles made any promises in his personal capacity about paying the applicants for their goods. The applicants point to Mr. Randles' business card as verification that Mr. Randles indicated he was connected with the company

in such a manner that he was personally liable for their goods. However, the business card shows 3 organizations with Mr. Randles' name attached, none of them are Best Auctions or Best Auction Corp.

19. I also note that on April 15, 2018 when the applicants became concerned that they were not going to receive payment for their goods or get their goods back, Mr. Randles discussed with them trying to sell the goods through a different auction site. Soon after this Mr. Randles stopped communicating with the applicants and as of September 2018 the applicants began to communicate with "Pierre" who they thought was Pierre Benoit. From this date until October 2019 Pierre promised payment and even arranged places to meet and then did not follow through. There is one reference on June 3, 2019 to Pierre claiming he thought that Mr. Randles had paid the applicants but the rest of the communications show Pierre accepting responsibility for owing the applicants the money for the consigned goods.
20. As noted, Mr. Randles says that he was just helping Pierre out and was not an employee, director, or principal of the company. The consignment agreement identifies Best Auctions as the consignee. I find that the applicants have not established what role Mr. Randles played within the company. I also note that even if the applicants had proved that Mr. Randles was an employee, director or principal of Best Auctions, at law, officers, directors and employees of corporations are not personally liable unless they committed a wrongful act independent from that of the corporation (*Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121).
21. Based on the evidence, I find that the applicants have not proved that Mr. Randles was a party to the consignment agreement in his personal capacity. I also find that the applicants have not proved that Mr. Randles committed a wrongful act independent from that of the corporation, Best Auctions. Therefore, I dismiss the applicants' claims against Mr. Randles.
22. Under section 49 of the CRTA and the CRT's rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. The applicants were unsuccessful and therefore they are not entitled to reimbursement of their CRT fees. Neither party made a claim for expenses.

ORDERS

23. I dismiss the applicants' claims and this dispute.

Kathleen Mell, Tribunal Member