



Civil Resolution Tribunal

Date Issued: September 29, 2020

File: SC-2020-003815

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Silhouette Spa and Laser Inc. v. Ambience Salon at Garrison Ltd.*,
2020 BCCRT 1098

B E T W E E N :

SILHOUETTE SPA AND LASER INC.

APPLICANT

A N D :

AMBIENCE SALON AT GARRISON LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This is a sales contract dispute.
2. The applicant spa, Silhouette Spa and Laser Inc. (Silhouette), purchased the respondent hair salon, Ambience Salon at Garrison Ltd. (Ambience), in February

2020. Silhouette says Ambience breached the sales contract by failing to release its phone number to Silhouette. Silhouette claims \$5,000 in lost revenue and asks the CRT to order Ambience to release phone number.

3. Ambience says Silhouette declared the contract “null and void” in March 2020, so Ambience no longer has to release its phone number to Silhouette. Ambience also says that, if Silhouette lost any hair salon revenue, it was due to closing the salon for the COVID-19 pandemic and dismissing its hairstylists.
4. Silhouette is represented by M, an officer or director. Ambience is represented by S, an officer or director.
5. I have anonymized the specific phone number at issue in this dispute, as noted below.

JURISDICTION AND PROCEDURE

6. 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.
7. The CRT 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.
8. 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.

9. 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 tribunal considers appropriate.

ISSUE

10. The issue in this dispute is whether Ambience breached the contract by failing to release its phone number and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this one the applicant, Silhouette, must prove its claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains my decision.
12. The parties agree that Silhouette purchased Ambience's business assets for \$30,000. Silhouette took possession of Ambience on March 1, 2020, renovated the salon, and opened for business on March 9, 2020. The parties verbally agreed that S and the other hairstylists from Ambience would operate as independent hair stylists and rent chairs from Silhouette. However, when Silhouette reopened, M told S and the other stylists that they could no longer rent chairs as hairstylists after the end of March 2020. On March 21, 2020, Silhouette closed the spa and the hair salon due to COVID-19 and reopened on May 27, 2020. None of this is disputed.
13. The sales agreement terms are set out in the February 1, 2020 contract of sale. Based on clauses 4.3 and 12J of the contract, I find Ambience agreed to sell Silhouette its business assets, including its business phone number. Ambience agreed to provide Silhouette with a list of assets, including the phone number, by February 8, 2020. Silhouette agreed to take possession of Ambience's identified assets, including the phone number, on March 1, 2020. Based on the contract, I find Ambience agreed to give Silhouette possession of its phone number by March 1, 2020.

14. The contract does not identify the specific phone number at issue. However, Silhouette lists a specific phone number in its Dispute Notice and, as Ambience does not dispute the number, I accept that was Ambience's business phone number at the time of the February 1, 2020 sales contract. Although I have not identified that phone number in this decision, I will include it in my final order for clarity.
15. It is undisputed that Ambience did not take steps to transfer its phone number. Ambience says it is no longer bound by the sales contract, as Silhouette said the contract was "null and void".
16. Ambience provided an undated text from M stating the hair stylists would only be able to rent chairs until month end. M wrote "any contracts saying that you can't work elsewhere will be cancelled". Based on the parties' submissions I find M sent this text between the March 9, 2020 salon reopening and the March 21, 2020 salon and spa closing.
17. The contract contains a non-competition clause which states that Ambience, and its principal, agree not to operate a hair salon within a certain distance of Silhouette's hair salon, for 5 years. There are no provisions in the contract for Ambience employees.
18. Ambience says M said "the contract" was null and void in front of the other stylists and told them they could work wherever they wanted to. Ambience provided statements of 3 stylists but none of them described M saying the contract was "null and void". M acknowledges saying the contract's non-competition clause was null and void but denies cancelling the entire sales contract.
19. Termination by repudiation occurs when a party shows an intention not to be bound by the agreement and the other party accepts the repudiation (see *Kuo v. Kuo*, 2017 BCCA 245). I disagree with Ambience that M's text is an indication that Silhouette did not intend to be bound by the contract. M sent the text after the completion and possession dates set out in the contract, and after the majority of the contract had completed. Silhouette took possession of Ambience's salon space,

renovated it, and took possession of the hair salon's assets, with the exception of the telephone number, prior to the text. So, I find it unlikely M intended to repudiate the full sales contract with her text.

20. I also disagree that Silhouette terminated the sales contract through its actions and how it dealt with the hairstylists. I find the non-competition clause and the other written terms of the sales contract apply only to Ambience's principal, and not to the other hairstylists, as they were not parties to the contract. Any agreement Silhouette had with the hairstylists about renting chairs at the new salon is between Silhouette and the stylists and is separate from the sales contract. There are no terms in the sales contract which tie it to any chair rental agreement between Silhouette and the Ambience stylists, including S. So, I find Silhouette's termination of that chair rental agreement is not relevant to the sales contract.
21. On balance, I find Silhouette did not repudiate the contract. I find M offered to amend the contract to remove the non-competition clause, which I find relates only to the principal of Ambience and not the other hairstylists. So, I find Ambience is still bound by the contract terms and must transfer the business phone number as agreed.
22. As noted above, this dispute is about the salon phone number. Silhouette asks for an order that Ambience 'release' its phone number to Silhouette. The CRT has jurisdiction to order specific performance of a contract under section 118 of the CRTA but can only make orders directed at parties to the dispute. The phone number is in the control of a third-party telephone company who is not a party to this dispute and so I do not have the authority to order the phone company to transfer the phone number. So, I order Ambience to take all reasonable available steps to arrange the transfer of Ambience's phone number that was the subject of the February 1, 2020 sales contract to Silhouette.
23. As I have found that Silhouette did not repudiate or terminate the sales contract, I find Ambience breached the contract by not taking steps to give Silhouette

Ambience's phone number. I now turn to consider how much, if any, Ambience must pay Silhouette for that breach.

24. Silhouette provided copies of Ambience's March to June 2019 financial statements. They show Ambience earned approximately \$33,000 of revenue per month and an average income of \$5,096.37 per month, after expenses. Ambience provided copies of its January and February 2020 financial statements. They show Ambience earned approximately \$7,500 of revenue per month and an average income of negative \$4,123.65 per month, after expenses. Neither party provided an explanation for the \$11,000 difference in Ambience's net monthly income between 2019 and 2020. Nor did either party provide any information showing Ambience's revenue from hair products, as opposed to hairstyle services.
25. Silhouette says it has lost \$5,000 in revenue because it was not able to receive any client calls. The parties agree that Ambience's phone number is the main way Ambience clients contact the hair salon. However, Silhouette did not provide any evidence showing how many hair appointments it lost because it did not have the phone number or showing Ambience's revenue and net income after the March 1, 2020 possession date.
26. Silhouette says it would have continued to sell hair product and gift certificates through Ambience, even during its March to May COVID closure. However, there is no evidence showing Ambience's average revenue from product sales, or any indication that such sales would continue when customers were not in the salon. I find Silhouette's March to May 2020 financial statements do not assist as those relate only to spa products and not hair salon products.
27. I also consider that Silhouette asked the hairstylists to leave Ambience at the end of March 2020. The parties agree that, at least some of Ambience's customers would leave the salon with their preferred hairstylist. There is no evidence about how many customers stayed at Ambience after the stylists left. In other words, I find there is not enough information to show that Silhouette lost any revenue because it

did not have Ambience's phone number. On balance, I find Silhouette has failed to prove its damages and I dismiss its claim for \$5,000.

28. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Silhouette was partly successful, I find it is entitled to reimbursement of half its CRT fees, which is \$87.50. I further find Silhouette is entitled to reimbursement of \$6.15 as approximately half its claimed dispute-related expenses for registered mail.

ORDERS

29. Within 30 days of the date of this order, I order Ambience to:

- a. take all reasonable available steps to facilitate the transfer of Ambience's phone number that was the subject of the February 1, 2020 sales contract to Silhouette, and
- b. pay Silhouette a total of \$93.65, for \$87.50 in CRT fees and \$6.15 in dispute-related expenses.

30. Silhouette is entitled to post-judgment interest, as applicable.

31. I dismiss the remainder of Silhouette's claims.

32. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-

day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

33. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Sherelle Goodwin, Tribunal Member