



Civil Resolution Tribunal

Date Issued: December 17, 2020

File: SC-2020-006271

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cook v. Lanyon*, 2020 BCCRT 1423

BETWEEN:

JO ANN ELISABETH COOK

APPLICANT

AND:

BRENT LANYON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Jo Ann Elisabeth Cook, says she was in a business partnership called “29Takes Productions” (29Takes) with the respondent, Brent Lanyon. 29Takes creates local small budget films.

2. Ms. Cook says the partnership broke down and Mr. Lanyon owes her a portion of the alleged partnership assets. In her submissions, Ms. Cook claims \$1,973.81 for ½ the value of its equipment and \$890 for ½ the funds Mr. Lanyon admittedly withdrew from the 29Takes account. Ms. Cook says Mr. Lanyon also owes her an additional \$1,780, which I discuss further in my decision below.
3. Mr. Lanyon disputes Ms. Cook's claims. He says that 29Takes is a group of volunteers and not a partnership as defined by the *Partnership Act (PA)*. Mr. Lanyon says Ms. Cook left the group and she is not entitled to any part of its assets. Further, Mr. Lanyon says she is claiming reimbursement for some of his personal film equipment. He says Ms. Cook has no right to that equipment.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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)*. Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says that the CRT 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 "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. Here, I find that I am properly able to assess and weigh the documentary 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

7. Section 42 of the CRTA says 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.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Was 29Takes a partnership under the PA?
 - b. If so, is Ms. Cook entitled to a portion of its assets when she withdrew from 29Takes?
 - c. To what extent if any, must Mr. Lanyon pay Ms. Cook the claimed \$4,643.81?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Cook must prove her claims on a balance of probabilities.
11. The parties provided quite extensive arguments and evidence. I have read and considered it all. However, I have only commented on the arguments and evidence that I find both relevant and necessary to provide context for my decision.

12. Ms. Cook says that she, Mr. Lanyon, and 2 others (LM and JT), started 29Takes as a business partnership in 2017 to create small local films. LM withdrew from 29Takes in 2018 and JT withdrew in 2019. Ms. Cook then withdrew from 29Takes in about July 2020. Ms. Cook's claim here is for a portion of its alleged assets.
13. Mr. Lanyon says 29Takes is not a business partnership and again, that Ms. Cook is not entitled to any of its assets. He describes 29Takes as a "rag-tag team of people who enjoy making films" as a hobby with no view to profit. Mr. Lanyon says the group has grown to 60+ people who volunteer in various capacities to learn together and make films.
14. A partnership is defined under section 2 of the PA as a relationship subsisting between persons carrying on business in common with a view of profit. There are 3 essential prerequisites for a partnership: 1) a business, 2) carried on in common, 3) with a view of profit. The courts have held that there must be "cogent evidence that establishes the prerequisites of partnership" to find a partnership exists under the PA (*Linnebank v. 0786763 B.C. Ltd.*, 2016 BCSC 2020 at paras 26-27).
15. In support of her position, Ms. Cook primarily relies on media interviews and correspondence where the parties referred to each other as "partners" or their "partnership". However, I find the fact that people refer to a relationship as a partnership does not make it a legal partnership as defined under the PA. It is still necessary that the relationship have the 3 essential prerequisites above (*Linnebank*).
16. As I explain next, I find the evidence favours a conclusion that 29Takes is a group of volunteers who collaborate to make films and not a for-profit partnership under the PA.
17. First, there is no written contract, income tax, or other financial records to suggest 29Takes was set up as a for-profit business. Second, 29Takes was undisputedly run almost entirely by volunteers. Third, there is no evidence that 29Takes attempted to generate income (or profit) by making or showing its films. Instead, the evidence shows 29Takes screened its films by donations to third party charities. Also, 29Takes'

only revenue in evidence is a 2017 \$10,000 Telus Storyhive grant for “financing and production” of a web series pilot.

18. As the grant applicant, Telus had sent Ms. Cook the \$10,000, which she deposited into a credit union account used solely for the grant. Ms. Cook seems to argue that 29Takes intended to make a profit because there were residual grant funds after the pilot was finished. However, on Ms. Cook’s own evidence the residual grant funds were dedicated funds and not “money in everybody’s pocket”. Also, Ms. Cook stated that, everyone, including the actors and crew worked for little or no money. I find the residual grant funds were not an actual “profit” considering the level of donated labour and the funds’ dedicated purpose to create the pilot.
19. Overall, I find no cogent evidence that 29Takes is a business with a view to make a profit. I find, on balance, that 29Takes is a volunteer group and not a partnership as defined under the PA.
20. Next, Ms. Cook says 29Takes paid LM a sum of money when LM left 29Takes in 2018. It seems Ms. Cook is arguing the same should apply to her. On the evidence, I find 29Takes had only reimbursed LM for some equipment LM purchased and that the 29Takes group kept. As Ms. Cook has not shown that she also purchased equipment for 29Takes with her own funds, I find she is not entitled to any similar reimbursement.
21. While I appreciate Ms. Cook donated her time and resources to 29Takes, I find that was the nature of this volunteer group. I find Ms. Cook has not proven that she is entitled to any of the residual grant funds or a portion of 29Takes’s equipment. I also find no basis on which Mr. Lanyon personally would owe her any money because she left the group.
22. I turn now to the second aspect of Ms. Cook’s claims. Mr. Lanyon undisputedly withdrew \$1,780 from the grant credit union account. Ms. Cook and Mr. Lanyon’s joint signatures were required for withdrawals but the credit union mistakenly allowed Mr. Lanyon to unilaterally withdraw the money. After Ms. Cook complained, the credit

union acknowledged its error. The credit union then reimbursed the account in full. I find on the bank statements that the account is fully replenished.

23. Ms. Cook claims ½ the funds Mr. Lanyon withdrew from the account (\$890), plus all the funds the credit union reimbursed back into the account (\$1,780). Ms. Cook argues that Mr. Lanyon should pay her this money because Mr. Lanyon acted improperly and she was allegedly deprived. Ms. Cook argues that Mr. Lanyon was enriched without justification by the withdrawn funds.
24. However, I find no reason why Mr. Lanyon would owe Ms. Cook any of this money regardless of why he withdrew it. Ms. Cook has not shown that Mr. Lanyon caused her to suffer any loss and the money he withdrew was granted for the pilot, and does not belong to her. Further, it was the credit union and not Ms. Cook who replenished the account in full.
25. Based on all the above, I find Ms. Cook has not established on a balance of probabilities that Mr. Lanyon owes her any money. I dismiss Ms. Cook's claims against Mr. Lanyon.
26. 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. I see no reason in this case not to follow that general rule. As the unsuccessful party, I dismiss Ms. Cook's claims for CRT fees and dispute-related expenses. Mr. Lanyon claims reimbursement of his CRT fees. Since Mr. Lanyon was the successful party, I find Ms. Cook must reimburse Mr. Lanyon \$25 for his paid CRT fees. Mr. Lanyon claimed no dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order Ms. Cook to pay Mr. Lanyon a total of \$25, as reimbursement for CRT fees.
28. Mr. Lanyon is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

29. I dismiss Ms. Cook's claims.
30. 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.
31. 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.

Trisha Apland, Tribunal Member