



Civil Resolution Tribunal

Date Issued: December 18, 2020

File: SC-2020-003539

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pawluck v. Segnitz*, 2020 BCCRT 1435

BETWEEN:

SUSAN PAWLUCK

APPLICANT

AND:

DENNIE SEGNITZ (Doing Business As WHITE ROCK GALLERY)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a deposit for a custom painting. In 2013, the applicant, Susan Pawluck, purchased the painting from the respondent, Dennie Segnitz (doing business as White Rock Gallery). Ms. Pawluck says Ms. Segnitz must return a deposit Ms. Segnitz holds as partial payment for the painting. She says Ms. Segnitz agreed in January 2020 to do so. She seeks an order for payment of \$1,960, which I

note is less than the \$2,200 originally claimed in the Dispute Notice that started this proceeding. Ms. Segnitz still has the painting, but Ms. Pawluck has not asked for it in this dispute.

2. Ms. Segnitz denies Ms. Pawluck's claim. She says she held the painting awaiting full payment. Ms. Segnitz says Ms. Pawluck later regretted buying the painting, so the parties agreed in January 2020 that Ms. Segnitz would sell it on Ms. Pawluck's behalf. Ms. Segnitz says that at that point, she will return Ms. Pawluck's deposit.
3. The parties are self-represented.
4. As discussed below, I find that Ms. Pawluck's claim for the return of the 2013 deposit is out of time. However, Ms. Pawluck has a separate standalone claim against Ms. Segnitz for breach of a January 2020 contract. I find Ms. Pawluck's claim for breach of contract is premature. I therefore dismiss Ms. Pawluck's claim for the return of the 2013 deposit and refuse to resolve Ms. Pawluck's claims for breach of the January 2020 contract. My reasons follow.

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 the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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 in the interests of justice.

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.

The July 6, 2020 Preliminary Decision

9. In my July 6, 2020 preliminary decision, I decided that Ms. Pawluck's claim was not out of time. I found that a central issue was whether Ms. Segnitz breached the alleged January 2020 agreement that she would resell the painting for Ms. Pawluck. I found that Ms. Pawluck filed her application for dispute resolution within the applicable limitation period. However, I made it clear that it remained open to a CRT member making a final decision (in this case, me) to reconsider the limitation defence with the benefit of evidence from the parties.
10. I will discuss the January 2020 agreement below. However, in order to assess this claim, I find it necessary to discuss Ms. Pawluck's claim for the 2013 deposit first, and separately.

Return to Facilitation

11. On December 11, 2020, the parties requested that I return this dispute to facilitation. Rule 7.4(1) says the CRT may refer a dispute back to facilitation if it decides that further facilitation is required. Under that rule, the CRT decision process is then suspended until a case manager refers the dispute back to the CRT decision process.
12. As the parties requested it, I referred the dispute back for further facilitation under rule 7.4(1). Subsequently the case manager advised that the parties wished to refer

this dispute back to the CRT decision process. I am therefore issuing this decision based solely on the evidence and submissions previously provided. I have not considered or placed any significance on the request for facilitation in reaching my decision.

ISSUES

13. The issues in this dispute are as follows:

- a. Is Ms. Pawluck entitled to the return of the 2013 deposit?
- b. Did Ms. Segnitz breach the parties' January 2020 contract, and if so, what is the appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant Ms. Pawluck must prove her claims on a balance of probabilities. Although I have reviewed all the evidence and submissions, I only refer to them as necessary to explain my decision.
15. The facts are largely undisputed and extensively documented in emails between the parties. In 2013, Ms. Pawluck commissioned an artist, NB, to paint 2 paintings that cost \$2,240 and \$6,160 (for \$8,400 in total). Ms. Segnitz assisted with the transaction. She paid NB fully for the paintings in advance, held them, and attempted to collect payment from Ms. Pawluck. The relevant chronology follows.
16. On September 14, 2013, Ms. Pawluck came to Ms. Segnitz's art gallery and paid \$4,200 to Ms. Segnitz. The parties agreed to use this money to fully pay for the smaller, less expensive painting. Ms. Pawluck took it home. The parties treated the remaining \$1,960 as a partial payment for the larger painting, with \$4,200 still owing. They referred to it as a deposit in their emails and in a September 14, 2013 invoice.

17. The parties were vague on the issue of who currently owns the painting. I find that the artist NB agreed to sell Ms. Pawluck the 2 paintings and assigned his contract to Ms. Segnitz.
18. In law, an assignment in its simplest form substitutes one person for another. See, for example, *Fonent Properties Ltd. v. Vancouver (City of)*, 1990 CanLII 601 (BCSC). Although there is no direct evidence from NB in this dispute, I find it clear that NB assigned their rights under the contract with Ms. Pawluck to Ms. Segnitz. The evidence and submissions before me support this. Ms. Segnitz says she acted as NB's representative in the sale of the 2 paintings. NB provided the paintings to Ms. Segnitz, and Ms. Segnitz paid NB for them in full. Ms. Segnitz then invoiced Ms. Pawluck for the amount owing.
19. There is no indication that NB wishes the paintings returned. I find that, as part of the assignment, Ms. Segnitz took ownership over the 2 paintings. Her ownership was subject only to Ms. Pawluck's right as the purchaser to take the paintings once she fully paid for them.
20. Ms. Segnitz held onto the larger painting and put it in storage. Over the years, Ms. Segnitz sent several phone and email reminders for Ms. Pawluck to pick up the larger painting and pay the balance owing. These include a voicemail message in August 2014, a May 2, 2015 email, a February 27, 2017 phone message, and an April 26, 2018 email. I find that Ms. Pawluck received these reminders and ignored them.
21. Ultimately, Ms. Pawluck never paid the balance owing for the larger painting. On November 21, 2019, Ms. Pawluck emailed Ms. Segnitz and said she no longer wanted the painting. On January 31, 2020, the parties met in person at Ms. Segnitz's art gallery and came to an informal, unwritten agreement on how to handle the painting. I refer to this as the January 2020 contract or agreement.
22. I find Ms. Pawluck described the January 2020 agreement in a generally accurate manner in her April 3, 2020 email to Ms. Segnitz. Ms. Segnitz had suggested the following. She would ask NB (the original artist) to alter the painting to make it appear

more unique. Ms. Segnitz would then sell the painting to the public. Once the painting sold, Ms. Segnitz would then provide Ms. Pawluck a credit or refund for the sum of \$1,960. Ms. Pawluck agreed.

23. In the April 3, 2020 email, Ms. Pawluck asked Ms. Segnitz if NB had altered the painting yet and if it was being sold. By April 15, 2020, Ms. Pawluck was displeased with the lack of updates and demanded repayment of the deposit. Ms. Pawluck filed her application for dispute resolution with the CRT soon thereafter.

24. Ms. Segnitz submits, and I accept, that NB has since altered the painting as contemplated by the parties.

Issue #1. Is Ms. Pawluck entitled to the return of the 2013 deposit?

25. Ms. Pawluck seeks a return of the \$1,960 deposit paid in 2013. I must therefore decide if Ms. Pawluck's claim for a return of the 2013 deposit is out of time. I find that it is.

26. The *Limitation Act* applies to disputes before the CRT. A limitation period is a period within which a person may bring a claim. The basic limitation period under section 6 of the *Limitation Act* is 2 years from the date a claim is discovered. If that period expires, the right to bring the claim ends, even if the claim would have otherwise been successful.

27. Section 8 of the *Limitation Act* provides that a claim is discovered by a person when they knew, or reasonably knew, they had a claim against the respondent and that a court or tribunal proceeding was an appropriate remedy.

28. The current version of the *Limitation Act* came into force on June 1, 2013. I find the current version applies to this dispute. This is because Ms. Pawluck paid the deposit in September 2013. The dispute over the deposit therefore arose after the current version of the *Limitation Act* came into force.

29. I find that Ms. Pawluck discovered her claim when she knew or ought to have known she no longer wanted the painting. I therefore find she discovered her claim on

September 14, 2013. By that time, Ms. Pawluck had already paid the deposit and knew \$4,200 was still owing. She had also viewed the painting in person, or had the opportunity to do so, as she was at Ms. Segnitz's gallery at the time. Both paintings were stored there.

30. Given the above, Ms. Pawluck had to bring a claim by September 14, 2015 at the latest. As Ms. Pawluck filed her application for dispute resolution on May 1, 2020, the 2013 deposit claim is out of time.

31. I note that under section 24 of the *Limitation Act*, the limitation period is extended if liability is acknowledged in writing or by partial payment. There is no indication Ms. Segnitz ever acknowledged in writing before the limitation period expired in 2015, that she had return the deposit. Ms. Segnitz only sent the occasional reminders for Ms. Pawluck to pay the balance owing on her invoice, detailed above.

32. I dismiss Ms. Pawluck's claim for the return of the 2013 deposit as out of time.

Issue #2. Did Ms. Segnitz breach the parties' January 2020 contract, and if so, what is the appropriate remedy?

33. Although I have found Ms. Pawluck was out of time to claim for her deposit, I find the parties entered into a new standalone agreement in January 2020. As noted above, Ms. Segnitz agreed to have NB alter the painting, then sell it. She then agreed to provide Ms. Pawluck a credit or the return of the \$1,960 deposit.

34. It is not entirely clear why Ms. Segnitz entered into the January 2020 agreement. However, I am satisfied on the evidence and submissions before me that the January 2020 agreement is binding. Both parties do not dispute its validity, and Ms. Segnitz took steps to perform the agreement. These steps included having NB alter the painting. I also accept Ms. Segnitz's submission that she has tried to sell it.

35. I find that Ms. Pawluck's claim for breach of contract is still in time. The parties entered into their agreement in January 2020. Even if Ms. Pawluck instantly discovered her claim after this, her time to file a claim would expire in January 2022.

36. I find that Ms. Pawluck's claim for breach of contract is essentially that Ms. Segnitz should have sold the larger painting by April 15, 2020. This was when she demanded payment from Ms. Segnitz by email.
37. The parties' obligations are governed by the law of contracts. The basic principles of the formation and interpretation of contracts are laid out in *Shaw Production Way Holdings Inc. v. Sunvault Energy, Inc.*, 2018 BCSC 926 at paragraphs 138 to 152. That case says that the individual understandings or beliefs of the parties about the terms of a contract are irrelevant. Instead, what matters is whether a reasonable person in any of the parties' situation would have believed and understood that the other party was consenting to identical terms.
38. I find a reasonable person would conclude that the parties did not agree upon any specific date for Ms. Segnitz to sell the painting. The correspondence does not refer to any particular date and the parties did not say they agreed upon one.
39. Given the lack of specifics, I find a reasonable person in the circumstances would conclude, at most, that Ms. Segnitz agreed to sell the painting within a reasonable period of time. As Ms. Pawluck is the applicant, she has the burden to prove a breach of contract. This would include showing what would be a reasonable period of time to sell the painting. Ms. Pawluck did not explain what this would be in the circumstances. I have no evidence as to when custom art in this price range normally sells.
40. Ms. Segnitz also attributed some delay to changes in her business due to the global pandemic caused by COVID-19. As the Province is currently in a state of emergency because of the pandemic, I accept Ms. Segnitz's submission. I find that the pandemic impacted her ability to sell the painting. Ms. Segnitz submits, and I accept, that she is still trying to sell the painting and will pay Ms. Pawluck the claimed amount when she does.
41. Given the above, I am not satisfied that Ms. Segnitz breached the parties' contract. I find Ms. Pawluck's claim for breach of contract is premature.

42. CRTA section 11(1)(c) says the CRT may refuse to resolve a claim that is impractical for the CRT to case manage or resolve. In these circumstances, I find it appropriate to refuse to resolve Ms. Pawluck's claim for breach of contract under that section.
43. 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.
44. I find Ms. Segnitz is the successful party. Ms. Segnitz' submission was essentially that Ms. Pawluck began her claim prematurely, before she had enough time to sell the painting. In refusing to resolve this dispute, I have reached the same conclusion. Ms. Segnitz paid no CRT fees and claims no dispute-related expenses. As such, I do not order any for either party.

ORDER

45. Under CRTA section 11(1)(c), I refuse to resolve Ms. Pawluck's claim for breach of the January 2020 contract.
46. I dismiss Ms. Pawluck's remaining claims.

David Jiang, Tribunal Member