



Civil Resolution Tribunal

Date Issued: March 31, 2021

File: SC-2020-003376

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Martz-Oberlander v. The Only Animal Theatre Society*, 2021 BCCRT 353

B E T W E E N :

ARIEL MARTZ-OBERLANDER

APPLICANT

A N D :

THE ONLY ANIMAL THEATRE SOCIETY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about payment under an agreement.
2. The respondent, The Only Animal Theatre Society (TOA), hired the applicant, Ariel Martz-Oberlander, as a project coordinator for a 4-month youth workshop program. Ms. Martz-Oberlander says TOA terminated their agreement without notice, allegedly

contrary to the agreement. She claims \$2,500 as payment of her fees under the contract.

3. TOA says Ms. Martz-Oberlander terminated the contract by refusing to complete administrative tasks required under the agreement. TOA denies it owes Ms. Martz-Oberlander any payments because it says she did not meet the milestones for payment in the contract. I infer it asks that this dispute be dismissed.
4. Ms. Maritz-Oberlander represents herself. TOA is represented by an employee.

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.

ISSUE

9. Must TOA pay Ms. Martz-Oberlander any fees under their agreement and, if so, how much?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this one the applicant, Ms. Martz-Oberlander, must prove her claim on a balance of probabilities. I have reviewed all evidence and submissions provided but only refer to that necessary to explain, and provide context to, my decision.
11. Ms. Martz-Oberlander signed a contract to create and run a youth program workshop with TOA, between January 13 and April 29, 2020. Clause 1 of the parties' written agreement required Ms. Martz-Oberlander to:
 - Recruit, and communicate with, participants, mentors, and any additional support staff,
 - Supervise the creation of any printed materials,
 - Social media creation, subject to TOA approval,
 - Co-ordinate all sessions including scheduling, booking rooms and organizing catering,
 - Participate in all sessions,
 - Mentor and be available to all participants and mentors,

- Co-ordinate ongoing mentor and participant needs including any required materials, and
 - Report to the program director, who was a TOA employee.
12. Clause 4 of the agreement requires TOA to pay Ms. Maritz-Oberlander a total of \$4,500 in 3 payments:
- \$2,000 on signing, which the parties agree has been paid,
 - \$1,000 on April 2, 2020, and
 - \$1,500 when the final, post-event report was completed (April 29, 2020).
13. TOA says Ms. Martz-Oberlander terminated the agreement by refusing to complete certain administrative tasks she agreed to. Based on her March 23, 2020 emails to the workshop director, I find Ms. Martz-Oberlander refused to continue any administrative tasks, including scheduling, online meetings, emails to the group, social media, facilitation, performance logistics and reimbursements. Ms. Martz-Oberlander says she would carry on in a mentor capacity only and would agree to a different fee than that in the contract. I further find TOA, through its director, declined to renegotiate the contract. TOA then emailed the workshop participants to advise that Ms. Martz-Oberlander had ‘quit’.
14. I disagree with TOA that Ms. Martz-Oberlander terminated the agreement by refusing to fulfill her administrative duties. Rather, I find TOA terminated the agreement because Ms. Martz-Oberlander refused to do those duties. In her March 23, 2020 email to Ms. Martz-Oberlander, the workshop director said that if Ms. Martz-Oberlander did not “resume her duties”, TOA would terminate the contract “in full”.
15. The next question is whether TOA was entitled to end the agreement because of Ms. Martz-Oberlander’s refusal to complete administrative tasks going forward.
16. Clause 8 of the agreement says either party may terminate the agreement (reproduced as written):

- a. For inadequate or non-performance
 - b. For breach of any term of this Agreement
 - c. Upon thirty days' notice.
17. Ms. Martz-Oberlander says TOA failed to give 30 days' notice of termination, as required under the agreement. As explained below, I find 30 days' notice is not required, if one of the other 2 reasons for termination exist.
18. In interpreting a contract, the plain and ordinary meaning of the words used should be considered, in light of the contract as a whole (see *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489). Although the termination clause contains no punctuation, I find nothing turns on that as there is punctuation missing between other portions of clauses within the agreement. Further, I find the only reasonable way to interpret the termination clause is to mean that only 1 of the 3 listed events need occur before either party can end the agreement. To find otherwise would unnecessarily duplicate "non-performance" and a term breach which, I find, are the same thing.
19. I find TOA was entitled to end the agreement without 30 days' notice because I find Ms. Martz-Oberlander breached clause 1 of the agreement. I find that, by refusing to perform any of the administrative tasks, Ms. Martz-Oberlander breached the terms of the agreement that required her to co-ordinate the workshop sessions and needs of the mentors and participants, create social media postings, and communicate with the mentors and participants. In other words, Ms. Martz-Oberlander refused to perform some of the contract's terms. I find this breach falls within clause 8(b) of the agreement, which entitles TOA to end the contract as of March 23, 2020.
20. In her March 23, 2020 emails, Ms. Martz-Oberlander expresses her disagreement with the director's management style and says the director's behaviour was unacceptable. However, she does not argue that the director's behaviour breached the parties' agreement and, given the lack of evidence on the issue, I have not considered it.

21. As TOA was entitled to terminate the agreement, I find it is not required to pay Ms. Martz-Oberlander for work she did not perform under the contract. However, I find Ms. Martz-Oberlander is entitled to payment for the work she did up to the end of the agreement. While I find the final \$1,500 payment is dependent on receipt of a final report, I find the \$1,000 middle payment is not “milestone based” as argued by TOA. Rather, I find it is date based. So, while TOA ended the agreement prior to reaching the April 1, 2020 payment date, I find it still must pay Ms. Martz-Oberlander for work she did prior to that payment date.
22. I find \$900 is a reasonable estimate of the value of Ms. Martz-Oberlander’s work up to March 23, 2020. This is because March 23, 2020 is 9 weeks after the first payment date, and 1 week prior to the second payment date. Without any other information in the agreement about expected hours of work, I find payment based on weeks is the best way to estimate the value of Ms. Martz-Oberlander’s work. So, I find TOA must pay Ms. Martz-Oberlander \$900.
23. The *Court Order Interest Act* applies to the CRT. Ms. Martz-Oberlander is entitled to pre-judgment interest on the \$900 from the March 23, 2020 termination date to the date of this decision. This equals \$7.85.
24. 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 both parties were partially successful in this case, I find they are both entitled to partial reimbursement of their CRT fees. As Ms. Martz-Oberlander paid higher fees than TOA, I find she is entitled to an overall reimbursement of \$75. Neither party requested reimbursement of any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order TOA to pay Ms. Martz-Oberlander a total of \$982.85, broken down as follows:

- a. \$900 as payment under the agreement,
- b. \$7.85 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$75 in CRT fees.

26. Ms. Martz-Oberlander is entitled to post-judgment interest, as applicable.

27. 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.

28. 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