



# Civil Resolution Tribunal

Date Issued: June 28, 2021

File: SC-2020-006113

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alley Berry Enterprises Inc. v. Martens dba JLM Books*, 2021 BCCRT 713

B E T W E E N :

ALLEY BERRY ENTERPRISES INC. and JBERRY HOLDINGS INC.

**APPLICANTS**

A N D :

JANET MARTENS (Doing Business As JLM BOOKS)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about bookkeeping services. The applicants, Alley Berry Enterprises Inc. (Alley Berry) and JBerry Holdings Inc. (JBerry), say they hired the respondent, Janet Martens (doing business as JLM Books), to complete bookkeeping and paid

her a \$1,000 deposit. Alley Berry and JBerry say that Ms. Martens charged \$4,591.25 for the work, instead of the quoted \$1,500, and refused to return their source documents until paid. They also say their building went into foreclosure because they could not use Ms. Martens' financial statements. Alley Berry and JBerry say they "conceded to paying" \$2,500 to obtain their source documents. Alley Berry and JBerry seek the return of the \$1,000 deposit and the \$2,500 payment. They also claim \$1,500 in damages for the costs associated with the alleged foreclosure.

2. Ms. Martens says she was entitled to hold the source documents until her invoices were paid. She says she accepted the reduced payment of \$2,500 from Alley Berry and JBerry in full settlement of the disputed invoices. Ms. Martens also says she provided the financial records to Alley Berry and JBerry's accountant to prepare the financial statements and was not involved with the foreclosure.
3. Ms. Martens is self-represented. Alley Berry and JBerry are both represented by their shared employee, EF.

## **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). 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.
5. 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.

6. 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.
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.
8. Ms. Martens was the original applicant and filed a claim against Alley Berry, JBerry and Jasmine Marjanovic dba Cranberries Naturally (Marjanovic). Ms. Martens withdrew her claim during the facilitation stage. So, the only dispute before me is the claim filed by the respondents Alley Berry and JBerry against Ms. Martens. Marjanovic is not a party to JBerry's and Allen Berry's claim.

### ***Late Evidence***

9. All of Alley Berry and JBerry's evidence in this dispute was provided late, during their submissions. Ms. Martens did not object and had the opportunity to review the evidence prior to providing her submissions. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the parties in allowing this late evidence. I allow the late evidence as I find it relevant.

### **ISSUES**

10. The issues in this dispute are:
  - a. To what extent, if any, are Alley Berry and JBerry entitled to a refund of the \$1,000 retainer and \$2,500 payment?
  - b. Whether Ms. Martens is responsible for Alley Berry and JBerry's foreclosure, and if so, what is the appropriate remedy?

## EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants, Alley Berry and JBerry, must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. It is undisputed that Alley Berry and JBerry hired Ms. Martens in March 2020 to provide bookkeeping services and paid her a \$1,000 retainer, which was applied to a subsequent invoice. It is also undisputed that in April 2020, Ms. Martens presented Alley Berry and JBerry with her final invoices collectively totaling \$3,591.25.
13. In August 2020, Ms. Martens filed a CRT claim seeking payment of \$3,591.25 for the final invoices. On October 6, 2020, a default decision and order was issued against the three named respondents, including Alley Berry and JBerry.
14. On November 6, 2020, Alley Berry and JBerry paid Ms. Martens \$2,500 and she returned their source documents. One day prior, on November 5, 2020, Alley Berry and JBerry applied to the CRT to cancel the October 6, 2020 default decision and order made against them in Ms. Martens' claim, saying that they had paid Ms. Martens' final invoices and they had a claim against her for withholding company documents and incorrect accounting work. Ms. Martens acknowledged receiving partial payment for the invoices. On December 18, 2020, Alley Berry and JBerry's cancellation request was allowed and the default decision and order was cancelled.
15. On January 11, 2021, Alley Berry and JBerry filed their CRT claim against Ms. Martens. In her Dispute Response, Ms. Martens said she "settled on amount of \$2,500 to close this and cancelled the dispute with the CRT on 11/13/20" (reproduced as written). There is no evidence to indicate that Ms. Martens "cancelled" her CRT claim in November 2020. However, I find Ms. Martens was under the mistaken belief that her CRT claim was cancelled when Alley Berry and JBerry applied to cancel the default decision and paid Ms. Martens \$2,500 in November 2020. Ms. Martens withdrew her CRT claim during facilitation on March 8, 2021.

### ***Are Alley Berry and JBerry entitled to a refund?***

16. The nature of the \$2,500 payment is disputed. As noted above, Ms. Martens says she agreed to settle and accepted the \$2,500 as full payment for the final invoices and “cancelled” her CRT dispute, as discussed above. Alley Berry and JBerry say they only paid to ensure their source documents were returned. They say the payment was made under duress and the “matter was not resolved”. They also say they advised Ms. Martens of this when making the payment.
17. So, the question then is whether the payment formed part of an agreement to settle the disputed final invoices. To determine if the parties agreed to settle for \$2,500, I must consider the parties' objective intent at the time the agreement was made (see *Sattva Capital Corp. v Creston Moly Corp.* 2014 SCC 53).
18. In evidence are emails between Jasmine Marjanovic, the undisputed principal of Alley Berry and JBerry, and Ms. Martens, sent after the October 6, 2020 default decision and order was granted. An October 25, 2020 email from Ms. Marjanovic to Ms. Martens says “I am reaching out to ask that we meet in the middle so we can move on. You told me the work was going to be \$1,500 and you billed me \$4,000. My proposal is that we saw it off at \$3,000...”. Ms. Marjanovic and Ms. Martens then negotiated back and forth on the final payment amount, with Ms. Martens offering to settle for \$2,700, and Ms. Marjanovic offering to settle for \$2,300. On October 28, 2020, Ms. Martens emailed Ms. Marjanovic stating, “I will settle for \$2,500”. Ms. Marjanovic agreed, and confirmed they would have a bank draft ready the following week. It is undisputed that Alley Berry and JBerry paid Ms. Martens \$2,500 in November 2020, and Ms. Martens returned the source documents.
19. Also in evidence is a November 7, 2020 email signed by “Jasmine” which states the money was not paid as a settlement, but rather “only to get my property back so that I can correct the serious accounting errors in the statements you provided”. This email was sent after the parties' agreement to settle was made, and after the \$2,500 was paid and the source documents were returned. It was also sent after Alley Berry and JBerry applied for cancellation of the default decision and order. So, I find it did not

form part of the parties' agreement to settle. I also I find I cannot rely on this email because there is no evidence that Ms. Martens received the email. The email is addressed to Jasmine Markanovic rather than to Ms. Martens, and the sender is not listed. On balance, and considering all the available evidence, I find the parties' emails show that Alley Berry and JBerry agreed to pay Ms. Martens the reduced amount of \$2,500 to settle the disputed final invoices.

20. An agreement is generally enforceable so long as there is no duress, unconscionability or some other legal reason not to enforce it. Here, I infer Alley Berry and JBerry seek to set aside the parties' agreement to settle the disputed final invoices on the basis of duress or unconscionability.
21. To establish duress, Alley Berry and JBerry must prove that Ms. Martens put them in a position where they had no realistic alternative but to accept the agreement (see *Byrd et al v. Harris*, 2019 BCCRT 448, which is persuasive though not binding on me). To set aside an agreement for unconscionability, Alley Berry and JBerry must prove that they were in a lesser position due to ignorance, need or distress. They must also prove the bargain was substantially unfair (see *Loychuk v. Cougar Mountain Adventures Ltd.*, 2012 BCCA 122 at paragraphs 29-31). I find Alley Berry and JBerry have not met these tests, as I discuss next.
22. I also find the tone of the parties' emails do not show that Ms. Martens engaged in bullying tactics to reach their agreement. Despite Alley Berry and JBerry's suggestion that they could not use Ms. Martens's financial statements, the evidence shows that Ms. Martens emailed financial statement packages to Alley Berry and JBerry's accountant in April 2020, at the same time she issued the final invoices. There is no objective evidence that the financial information provided by Ms. Martens to the accountant was insufficient. Since I find Ms. Martens performed the bookkeeping work as agreed, I find she was entitled to demand payment and withhold the source documents when Alley Berry and JBerry refused to pay. I find no evidence of duress or unconscionability here that would require me to set aside the parties' agreement to settle the invoice.

23. Where there is a settlement agreement, the bargain, assessed objectively, must be fair, just and reasonable and also, not so divergent from community standards of commercial morality that it should be rescinded (*McIssac v. McIssac*, 2010 BCSC 691).
24. Here, the \$2,500 settlement payment was higher than Ms. Martens' original \$1,500 quote for the bookkeeping work. While I find that Ms. Martens provided an inaccurate estimate, lower than what her bookkeeping would cost, Ms. Martens also provided a reasonable explanation for why her bookkeeping costs were higher than the estimate. Namely, because the estimate she originally provided was for one corporation with records and appropriate documentation. Here, she provided bookkeeping services for two corporations. She says the volume of documents and work required to reconcile the data was significant and she spent 77 hours doing so. Alley Berry and JBerry do not dispute the time Ms. Martens spent completing the bookkeeping work and I find the available evidence supports this. In particular, an April 16, 2020 email from Ms. Marjanovic to Ms. Martens in response to a request for additional statements and invoices states "2019 was a mess and you will have to do the best with what you have as I need this to be done no later than next week and sent to [the accountant] to be finalized".
25. I find Alley Berry and JBerry agreed to pay \$2,500 to settle the disputed invoices because they believed this was a fair price. I find this price is consistent with the work performed. So, I find the parties' bargain was fair and met community standards.
26. I find that Alley Berry and JBerry have not proven on balance that they are entitled to a refund. I dismiss Alley Berry and JBerry's refund claim.

### ***Foreclosure***

27. Given that I have found Ms. Martens was entitled to withhold the source documents, I find Ms. Martens is not liable for the alleged foreclosure. In any event, Alley Berry and JBerry did not provide any evidence of the foreclosure or any evidence to show that Ms. Martens withholding their source documents caused or contributed to the

alleged foreclosure. Finally, Alley Berry and JBerry did not provide evidence of the foreclosure itself. While they say they are now paying “3 points over market for a bridge mortgage”, they did not provide any evidence to prove the damages they allegedly suffered as a result of the foreclosure. So, I find Alley Berry and JBerry have not met their burden of proving that there was a foreclosure, that Ms. Martens is responsible for the alleged foreclosure, or that they suffered any damage as a result. I dismiss their claim for \$1,500 in damages.

## **CRT FEES AND EXPENSES**

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. I see no reason in this case not to follow that general rule. Here, Alley Berry and JBerry were unsuccessful and so I dismiss their claim for CRT fees. Ms. Martens did not pay any CRT fees for Alley Berry’s and JBerry’s claim and did not claim any dispute-related expenses, and so I award none.

## **ORDER**

29. I dismiss Alley Berry and JBerry’s claims and this dispute.

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Leah Volkens, Tribunal Member