



# Civil Resolution Tribunal

Date Issued: July 12, 2021

File: SC-2021-001484

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0813856 B.C. Ltd. v. PeeverConn Properties Inc.*, 2021 BCCRT 759

B E T W E E N :

0813856 B.C. LTD., PHIL SHEARCROFT, and LISA SHEARCROFT

**APPLICANTS**

A N D :

PEEVERCONN PROPERTIES INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about repayment of a loan.

2. The applicants, 0813856 B.C. Ltd. (081), Phil Shearcroft, and Lisa Shearcroft, together with the respondent, PeeverConn Properties Inc. (PeeverConn), collaborated on a joint venture to develop a rental property. Under the parties' joint venture agreement, PeeverConn was advanced a \$5,000 management loan out of the initial capital the applicants contributed to the joint venture. The agreement's terms provided that PeeverConn would repay the loan out of its portion of the capital appreciation surplus received when the rental property sold.
3. The applicants claim that only half of the management loan was repaid when the property sold, and \$2,500 remains outstanding. In their submissions, the applicants say that according to PeeverConn's 25% ownership percentage in the joint venture, it is entitled to keep \$625 of the outstanding loan. So, the applicants say that PeeverConn owes them \$1,875.
4. PeeverConn says the joint venture's accountant calculated the allocation of funds to be disbursed to the parties when the property sold. PeeverConn says the accountant's allocation was correct, and that it does not owe the applicants or the joint venture anything.
5. 081 is represented by its principal, Mark Murphy. Mr. and Ms. Shearcroft are each self-represented. PeeverConn is represented by its owner, Derek Peever.

## **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). 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.

7. 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.
8. 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.
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 CRT considers appropriate.

## **ISSUE**

10. The issue in this dispute is whether PeeverConn owes the applicants \$2,500 for allegedly failing to repay the management loan.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. The background facts are undisputed. The applicants together purchased a property on February 18, 2018, with PeeverConn's assistance as a negotiator. The parties then entered a joint venture agreement (agreement) on April 12, 2018, with the stated purpose of acquiring, holding and renting, and selling the property. Under the agreement, PeeverConn was retained as the joint venture's financial manager.

13. The parties' ownership percentages in the joint venture were 37.5% to 081, 18.75% to each of the Shearcrofts, and 25% to PeeverConn.
14. The agreement provided that the applicants would each make an initial financial contribution to the joint venture, out of which PeeverConn would be advanced a \$5,000 management loan. The applicants say that the management loan recipients were Mr. Peever (\$2,500) and Mr. Murphy (\$2,500), who in addition to being 081's principal was also PeeverConn's employee. The disbursement of the management loan equally to Mr. Peever and Mr. Murphy is supported by the joint venture's general ledger in evidence, and PeeverConn does not dispute this. While the parties did not explain why half the management loan was paid out to Mr. Murphy, I find nothing turns on this because it is undisputed that Mr. Murphy ultimately repaid his half.
15. Paragraph 8.5(a)(B) of the agreement provided that cash distributions of capital appreciation surpluses realized through the sale of the property would be distributed in the following order:
  - a. Initial financial contributions repaid to the parties based on contribution of cash, pro-rata between reserves, down payment and closing costs,
  - b. Additional financial contributions repaid to the parties based on cash contributions, pro-rata between negative cash flow, repairs and reserve top up, and
  - c. The balance distributed based on the venture percentage interest of each party.
16. Paragraph 8.5(c) of the agreement said that upon any cash distributions under paragraph 8.5, PeeverConn must repay the management loan to the joint venture. The parties' percentage ownership distribution set out above, also applied to the parties' venture percentage interest in paragraph 8.5 of the agreement.
17. The applicants sold the property sometime in 2020. While the precise date of the sale is not before me, I infer from the financial evidence before me that it was sometime in or around November 2020. At the time of the sale, it is undisputed that the joint

venture owed PeeverConn \$2,269.50 for funds it loaned to the joint venture to fund operations, as well as \$1,650 for an equalization payment of amounts paid to each of the joint venture partners during the course of the joint venture. This totaled \$3,919.50 owing to PeeverConn.

18. The applicants say they instructed the notary arranging the property's closing to first repay the parties' loans, including the \$3,919.50 owed to PeeverConn, then repay the parties' initial capital contributions, and then split the profits according to the parties' ownership percentages set out above. Once the notary determined the remaining balance owing to close, the applicants say Mr. Shearcroft instructed the notary to reduce the payouts to Mr. Murphy and PeeverConn by \$2,500 each, to account for repayment of the management loan. This resulted in a total payout to PeeverConn of \$1,419.50, which is reflected in the notary's statement of disbursements of the property's sale proceeds in evidence.
19. It is undisputed that on January 4, 2021, after the property's sale had closed, Mr. Peever withdrew \$2,500 from the joint venture bank account to pay PeeverConn back for the amount deducted from PeeverConn's payout. PeeverConn says that the joint venture's accountant determined the proper allocation of funds upon the property's sale. PeeverConn says the parties all agreed on the payout according to the accountant's instructions, but then the applicants changed the instructions to the notary to "shortchange" PeeverConn by \$2,500.
20. PeeverConn relies on a summary prepared by the accountant, a copy of which is in evidence. The summary explains the calculations made to determine the undisputed \$3,919.50 owed to PeeverConn to repay funds loaned to the joint venture and to equalize payments between the joint venture partners. However, the summary does not mention the management loan.
21. On balance, I find that the accountant's calculations of what the joint venture owed to PeeverConn did not consider repayment of the management loan. Rather, I find the accountant's summary only addressed the amount owing to the parties under paragraphs 8.5(a)(B)(i) and (ii) of the agreement. Under the agreement, PeeverConn

was to repay the management loan from the balance it received from that distribution. Therefore, I find that the applicants properly instructed the notary to reduce PeeverConn's payout by \$2,500 for its outstanding half of the management loan.

22. PeeverConn does not dispute that Mr. Peever withdrew \$2,500 from the joint venture bank account on January 4, 2021 to reverse the management loan deduction on PeeverConn's payout of the property's sale proceeds. I find that withdrawal was unwarranted, and the result is that PeeverConn has not repaid its portion of the management loan, as required under the agreement.
23. The applicants say that had Mr. Peever not improperly withdrawn the \$2,500 from the joint venture bank account, the \$2,500 would have been distributed to the parties according to their respective ownership percentage in the joint venture, which I find is supported by the terms of the parties' agreement.
24. So, I find each party is entitled to a pro-rata portion of the \$2,500 management loan that remains unpaid by PeeverConn, in accordance with their ownership percentage in the joint venture. This means 081 is entitled to 37.5% (\$937.50), the Shearcrofts are each entitled to 18.75% (\$468.75 each), and PeeverConn is entitled to 25% (\$625).
25. I order PeeverConn to pay \$937.50 to 081 and \$468.75 to each of the Shearcrofts.
26. The *Court Order Interest Act* (COIA) applies to the CRT. The applicants are entitled to pre-judgement interest on their respective awards from February 26, 2021, the date the Dispute Notice was issued, to the date of this decision. This equals \$1.58 in pre-judgement interest on the \$937.50 to 081, and \$0.79 in pre-judgement interest on the \$468.75 to each of the Shearcrofts.
27. 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 find 081 paid the applicants' CRT fees, so it is entitled to reimbursement of \$125 in paid CRT fees. The applicants did not claim any dispute-related expenses. Given PeeverConn was unsuccessful, I find it is not entitled to

reimbursement of the \$255 it claimed for bookkeeping review as a dispute-related expense.

## **ORDERS**

28. Within 14 days of the date of this decision, I order PeeverConn to pay 081 a total of \$1,064.08, broken down as follows:
  - a. \$937.50 in debt for repayment of the management loan,
  - b. \$1.58 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
29. Within 14 days of the date of this decision, I order PeeverConn to pay Mr. Shearcroft a total of \$469.54, broken down as:
  - a. \$468.75 in debt for repayment of the management loan, and
  - b. \$0.79 in pre-judgment interest under the COIA.
30. Within 14 days of the date of this decision, I order PeeverConn to pay Ms. Shearcroft a total of \$469.54, broken down as:
  - a. \$468.75 in debt for repayment of the management loan, and
  - b. \$0.79 in pre-judgment interest under the COIA.
31. The applicants are entitled to post-judgment interest, as applicable.
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.

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Kristin Gardner, Tribunal Member