



Civil Resolution Tribunal

Date Issued: October 29, 2021

File: SC-2021-002884

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Love v. BCSI Investigations Inc.* 2021 BCCRT 1152

BETWEEN:

SHANA LOVE

APPLICANT

AND:

BCSI INVESTIGATIONS INC. and DENIS GAGNON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about the refund of a retainer paid for private investigation services.
2. The applicant, Shana Love, hired the respondent, BCSI Investigations Inc. (BCSI), to provide private investigation services. The respondent Denis Gagnon is a BCSI director. Ms. Love claims a refund of the \$1,500 retainer she paid BCSI. She says

the respondents did not follow her instructions or provide the specific covert operation she requested.

3. The respondents say BCSI has full authority to conduct its covert operations and investigations how it sees fit, according to the agreement signed by Ms. Love. They also say the \$1,500 retainer is non-refundable under the agreement.
4. Ms. Love is self-represented. Mr. Gagnon represents himself and BCSI.

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. The issue in this dispute is whether the respondents failed to provide the agreed upon services and, if so, whether they must refund Ms. Love's \$1,500.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one Ms. Love, as the applicant, must prove her claim on a balance of probabilities. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.

Claim Against Mr. Gagnon

11. On a preliminary basis, I address Mr. Gagnon's role in this dispute. Although he signed the parties' November 27, 2020 letter of engagement (agreement), the document shows that he did so on behalf of BCSI, and not in his personal capacity. I find Ms. Love entered into a contractual agreement with BCSI, and not Mr. Gagnon. An officer or a director is generally not personally liable for a corporations' debts, even if they are the sold company shareholder (see *Kosmopoulos v. Constitution Insurance Co.*, [1987] 1 SCR 2 (CanLII) at paragraph 13). Neither are officers, directors or employees personally liable when acting on a company's behalf, unless they committed a wrongful act independent of the company (see *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121).
12. Ms. Love does not argue, and the evidence does not show, that Mr. Gagnon committed any wrongful act. Rather, Ms. Love argues that the respondents did not provide her with the specific services she says they agreed to provide. As Mr. Gagnon is not party to the contract, I find he cannot be held personally responsible for any alleged breach of that contract. I dismiss Ms. Love's claim against Mr. Gagnon.

Claim Against BCSI

13. Ms. Love says she spoke with Mr. Gagnon in August 2020 about setting up a covert “sting” operation to have a third-party (X), arrested on an outstanding warrant, which I accept as Mr. Gagnon does not dispute it.
14. Ms. Love also says she specifically instructed Mr. Gagnon how to set up the operation. In a November 26, 2020 email, Ms. Love provided X’s name, phone number, description and approximate geographic location. She explained that, if Mr. Gagnon chose to use her ruse, he could pose as a potential customer who had obtained X’s name and number from a mutual friend, who Ms. Love named.
15. Based on emails between the parties, I find Mr. Gagnon attempted to set up a covert meeting with X, although it is unclear whether he used the name or exact scenario provided by Ms. Love to persuade X to meet. BCSI’s invoices and investigation report show that it conducted further surveillance and attempted to locate X, but ultimately failed.
16. Ms. Love says BCSI did not provide the covert operation she asked it to. She also says she should not have to pay for surveillance and other services she did not agree to. It is undisputed that BCSI has invoiced Ms. Love over \$3,500 for its work on this matter and that Ms. Love has not paid the invoices, other than the \$1,500 retainer discussed below.
17. As noted above Ms. Love and Mr. Gagnon, on behalf of BCSI, signed a November 27, 2020 engagement letter. I find the relevant terms are as follows:
 - a. BCSI agreed to provide a “covert operation to help enforce arrest warrant against [X]”, for \$2,500 to \$3,500 plus GST.
 - b. Ms. Love agreed to pay a \$1,500 (plus GST) retainer and provided her credit card information.
 - c. The retainer is non-refundable, even if the engagement is cancelled.

- d. BCSI retains sole control of the manner and means of performing the investigation.
 - e. BCSI does not guarantee that its investigation would provide the information required to solve the case.
 - f. The engagement letter is the entire agreement between the parties.
18. Ms. Love acknowledges that the engagement letter did not include her specific instructions but says that BCSI should have provided the specific type of operation she described in her email. However, she provided no response email from BCSI where it agrees to provide the exact covert set up she described. While Ms. Love says Mr. Gagnon verbally agreed that Ms. Love's ruse "could work" during their August 2020 phone call, I find that is not an agreement to provide that exact covert operation. Further, I find the later written engagement letter would override any verbal or email agreement Ms. Love and BCSI may have had because it specifically says the written agreement is the parties' entire agreement.
19. Based on the engagement letter I find Ms. Love agreed that BCSI had the authority to engage in the covert operation as it saw fit. In other words, I find BCSI did not agree to set up Ms. Love's specific suggested covert operation. So, I find it did not breach the parties' agreement in failing to use Ms. Love's suggested ruse in attempting to catch X.
20. It is undisputed that BCSI's investigation did not result in X being arrested. However, I find BCSI did not agree to provide that end result, because the engagement letter specifically says BCSI does not guarantee success.
21. In any event, I find the parties agreed that the \$1,500 retainer is non-refundable. Further, as noted, BCSI's report and invoices show BCSI continued to provide investigatory services in the way of surveillance and searches, at a cost beyond the \$1,500 retainer. Although Ms. Love says BCSI "padded" their bills, it is undisputed it invoiced Ms. Love over \$3,500 so I find BCSI provided at least \$1,500 worth of

investigation services as agreed to in the engagement letter. So, I find Ms. Love would not be entitled to a refund of the retainer even if it were refundable.

22. I dismiss Ms. Love's claim against BCSI. I make no findings about BCSI's entitlement to further payment because it did not file a counterclaim.

23. As Ms. Love was unsuccessful in her claims, I find she is not entitled to reimbursement of CRT fees or dispute-related expenses under the CRTA and CRT rules.

ORDER

24. I dismiss Ms. Love's claims and this dispute.

Sherelle Goodwin, Tribunal Member