



# Civil Resolution Tribunal

Date Issued: June 29, 2022

File: SC-2020-009418

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Durlen v. Sewak*, 2022 BCCRT 750

**B E T W E E N :**

KRESIMIR DURLEN also known as KRIS DURLEN

**APPLICANT**

**A N D :**

HARBINDER SINGH SEWAK aka HARBINDER SINGH and  
MADHAWA BANDARA aka MADHAWA DHASANAYAKA  
MUDIYANSELAGE and ALOOATTA MANAGEMENT  
INCORPORATED and ALOOATTA TECHNOLOGIES INC.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Nav Shukla

## INTRODUCTION

1. This dispute is about unpaid photography services. The applicant, Kresimir Durlen also known as Kris Durlen, says the respondents, Harbinder Singh Sewak aka Harbinder Singh, Madhawa Bandara aka Madhawa Dhasanayaka Mudiyanseleage,

Alooatta Management Incorporated (AMI), and Alooatta Technologies Inc. (ATI), hired him to photograph natural wellness products for the respondents' new business, British Columbia Naturals. Mr. Durlen says that he completed the work but has not been paid. He claims \$2,380 for the unpaid photography work.

2. Mr. Sewak and Mr. Bandara say that Mr. Durlen never finished the work. Mr. Bandara further says that he is not liable for the amounts claimed by Mr. Durlen because he was not the one who hired him. He asks for the claim against him to be dismissed.
3. The respondents AMI and ATI did not file Dispute Responses and are technically in default. However, for the reasons set out below, I dismiss the claims against AMI and ATI.
4. Mr. Durlen, Mr. Sewak, and Mr. Bandara are all self-represented.

## **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 what amount, if any, is Mr. Durlen entitled to for the unpaid photography work?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant, Mr. Durlen must prove his claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
11. As mentioned above, AMI and ATI are in default under the CRT’s rules for each failing to file a Dispute Response. However, despite this default status, I find they are not responsible for the amounts claimed by Mr. Durlen. The evidence, discussed further below, does not show that AMI and ATI were party to any agreement with Mr. Durlen for the photography work. So, I dismiss the claims against AMI and ATI.
12. Similarly, I also find that Mr. Durlen has not proven his claim against Mr. Bandara. As mentioned, Mr. Bandara says that he is not liable for the amounts claimed by Mr. Durlen because there was no contract between the two of them. Mr. Bandara says he was Mr. Sewak’s employee. Based on the evidence discussed in more detail below, I find that it was Mr. Sewak who hired and contracted with Mr. Durlen for the photography work. This is apparent from Mr. Sewak’s own admissions and the text messages in evidence between Mr. Durlen and Mr. Sewak and between Mr. Durlen and Mr. Bandara. So, I dismiss Mr. Durlen’s claims against Mr. Bandara.

## ***The Agreement***

13. The undisputed evidence is as follows. Mr. Durlen performed photography services in September 2020 in order to create images for British Columbia Naturals' website. Mr. Durlen's tasks included taking photographs of various natural wellness products on a white background (first set of images) as well as on a green, natural background (second set of images). There was no written contract setting out the terms of the agreement. However, Mr. Durlen and Mr. Sewak had worked on similar projects together in the past.
14. Mr. Sewak says that the terms of his past agreements with Mr. Durlen were usually verbal and involved Mr. Durlen taking photographs, colour correcting them, and presenting professional images to Mr. Sewak. Mr. Sewak would then select the images he needed for the particular project and pay Mr. Durlen once he delivered the final images. Mr. Sewak says that Mr. Durlen's work for this project was deficient and that he failed to deliver the final images by the stated deadline. Mr. Durlen says that he was never given a deadline but that he nonetheless completed the work by the end of September 2020. I find that the parties' verbal agreement had an implied term that Mr. Durlen would complete the work in a reasonable time and in a professional manner. To succeed in this dispute, Mr. Durlen must prove not only that he spent the time claimed, but also that the time was reasonably spent in accordance with the parties' agreement.
15. It is clear from the evidence before me that Mr. Durlen and Mr. Sewak did not discuss compensation before Mr. Durlen began the photography work. Mr. Durlen claims \$2,380 based on 68 hours of work at a rate of \$35 an hour. The evidence before me includes a September 29, 2020 invoice for \$1,225 (for 35 hours of work at \$35 an hour) for the first set of images, and an October 2, 2020 invoice for \$1,155 (for 33 hours of work at \$35 an hour) for the second set of images.
16. On September 17, 2020, Mr. Durlen asked Mr. Sewak what his budget was for the photography work. Mr. Durlen told Mr. Sewak that he had already worked 35 hours as of that date and that his hourly rate was \$35. On September 19, 2020, Mr. Durlen

told Mr. Sewak that he was done with the first set of images and asked to be paid for the 35 hours he had already spent before he did further work. Mr. Durlen said that as a token of good will, he would do some additional work on the first set of images including reshooting any missing items, resizing the images, and doing final image adjustments for the website at no extra charge. The same day, Mr. Sewak told Mr. Durlen to start sending the images over so that he could start looking at them. He also asked Mr. Durlen to email him the invoice. Based on these text messages, I find that Mr. Sewak agreed to pay Mr. Durlen \$35 an hour for his photography work.

***What amount, if any, is Mr. Durlen entitled to for the photography work?***

17. It is undisputed that Mr. Durlen sent Mr. Sewak and Mr. Bandara a link to view the first set of images on September 21, 2020. In his submissions, Mr. Durlen says that when he sent the first set of images to Mr. Sewak and Mr. Bandara, neither of them raised any issues about the quality of his work. However, Mr. Bandara says that after receiving the images, he met with Mr. Durlen to relay some deficiencies in his work and Mr. Durlen agreed to fix the issues. The evidence shows that the parties had an in-person meeting on September 22, 2020 to talk about the images. I find that the text messages following the September 22, 2020 meeting show that Mr. Bandara and Mr. Sewak did raise issues about the first set of images and that Mr. Durlen worked to try and fix those issues.
18. It is undisputed that Mr. Durlen did not send any further final images to Mr. Sewak or Mr. Bandara. On September 29, 2020, Mr. Durlen sent Mr. Sewak the first invoice, followed by the second invoice on October 2, 2020. On October 2, 2020, Mr. Durlen told Mr. Sewak that he would send him the remaining images once he received payment.
19. I find that Mr. Durlen has failed to prove that he completed the work in accordance with the terms of the parties' agreement. The evidence shows that he continued to work on the first set of images as well as the second set of images after the September 22, 2020 meeting. However, despite Mr. Durlen's submissions to the contrary, the evidence does not establish that Mr. Durlen had final professional

images completed for Mr. Sewak for either set of images. Further, Mr. Durlen has not provided any breakdown for the amounts set out in the 2 invoices or otherwise shown that he spent 68 hours doing the work. So, I find that Mr. Durlen is not entitled to the \$2,380 he claims.

20. However, I do find that Mr. Durlen is entitled to the \$1,225 he claims for the September 29, 2020 invoice. As mentioned, the evidence shows that he had completed some work and provided the first set of images to Mr. Sewak and Mr. Bandara on September 21, 2020. Regardless of whether these were final images or not, I find that in his September 19, 2020 text messages, Mr. Sewak agreed to pay Mr. Durlen for the 35 hours he had spent at that point in time. So, I order Mr. Sewak to pay Mr. Durlen \$1,225 for the September 29, 2020 invoice.
21. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Durlen is entitled to pre-judgment interest on the \$1,225 from September 29, 2020, the date of the invoice, to the date of this decision. This equals \$9.62.
22. 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. I find Mr. Durlen is entitled to reimbursement of \$125 in CRT fees. Mr. Durlen did not claim any dispute-related expenses.

## **ORDERS**

23. Within 14 days of the date of this decision, I order Mr. Sewak to pay Mr. Durlen a total of \$1,234.62, broken down as follows:
  - a. \$1,225 in debt,
  - b. \$9.62 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
24. Mr. Durlen is entitled to post-judgment interest, as applicable.

25. I dismiss the remainder of Mr. Durlen's claims.
26. 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.
27. 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.
28. Parties in default (here, AMI and ATI) have no right to make a Notice of Objection, as set out in section 56.1(2.1) of the CRTA.

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Nav Shukla, Tribunal Member