



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jas Arora Notary Corporation v. Phul*, 2022 BCCRT 1174

B E T W E E N :

JAS ARORA NOTARY CORPORATION

APPLICANT

A N D :

SUKHSIMRAT PAL PHUL and ARMINDER KAUR PHUL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondents, Sukhsimrat Pal Phul and Arminder Kaur Phul, hired the applicant Jas Arora Notary Corporation (JANC) to represent them in a home purchase. After the purchase completed, JANC realized that the respondents owed \$997.39 in municipal property taxes. JANC paid the outstanding property taxes on the respondents' behalf. In this dispute, JANC asks for an order that the respondents

reimburse this property tax payment. JANC is represented by its owner, Jaswant Kaur Arora, who is a notary.

2. The respondents say that they were unaware of any outstanding property taxes. They question why JANC failed to include this charge on the documents prepared as part of the sale process. They argue that they should not have to pay for JANC's mistake. They ask me to dismiss JANC's claims. They are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.
5. 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.
6. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondents must reimburse JANC for the property tax payment.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, JANC as the applicant must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
9. The facts are generally undisputed. The respondents retained JANC in the summer of 2021 to complete the sale of their home. The sale completed on July 7, 2021. There is no written retainer agreement in evidence.
10. On July 5, 2021, the buyers' lawyer wrote JANC about the sale's details. The letter included the standard undertakings that lawyers and notaries typically agree to as part of a residential real estate transaction. Undertakings are professional promises between lawyers and notaries. Among other things, JANC undertook to "attend to payment of the outstanding property taxes" and provide proof of payment. The buyers' lawyer included a copy of the municipal tax search for the property, which showed a \$997.39 balance owing as of July 5, 2021.
11. On July 7, 2021, the respondents signed an order to pay, which was a set of written instructions about how JANC was to deal with the net sale proceeds. The order to pay did not include a debit for paying the outstanding property tax bill. JANC says that this was due to a clerical error by its staff.
12. JANC says that it found out about the error when the buyers' lawyer contacted it looking for the required proof that the property taxes had been paid. JANC says that Sukhsimrat Pal Phul agreed in a phone call to pay the outstanding property taxes, but never did. The respondents deny that this phone call happened. Ultimately, I find that nothing turns on this detail, for reasons that will become clear.

13. On February 9, 2022, JANC paid the outstanding \$997.39.
14. JANC says that the undertaking gave them no choice but to pay the outstanding property taxes, but the respondents are still ultimately responsible for them. The respondents say that it was JANC's error that the property taxes were not included in the order to pay, so JANC should have to bear the cost.
15. I agree with JANC that the respondents must pay the property taxes. I find that this is clear from the terms of the signed order to pay. First, the respondents agreed that JANC would be "authorized to incur further reasonable and necessary fees and disbursements not appearing herein in order to effect completion of this transaction". I find that this is broad enough language to include the payment of property taxes. Second, the document is marked "E. & O.E.", which stands for "errors and omissions excepted". This is a common notation that generally precludes liability for incorrect or incomplete information in a document. Together, I find that these terms in the order to pay mean that the respondents were responsible for any necessary disbursements even if the order to pay was incorrect.
16. I agree with JANC that its undertaking to the buyers' lawyer required it to pay the property taxes on the respondents' behalf. In other words, I find that it was a necessary disbursement.
17. In conclusion, I order the respondents to repay JANC for the \$997.39 property tax payment.
18. The *Court Order Interest Act* (COIA) applies to the CRT. JANC is entitled to pre-judgment interest from February 9, 2022, to the date of this decision. This equals \$7.22.
19. 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 that JANC is entitled to reimbursement of \$125 in CRT fees. JANC did not claim any dispute-related expenses.

ORDERS

20. Within 30 days of the date of this order, I order the respondents to pay JANC a total of \$1,129.61, broken down as follows:
- a. \$997.39 in debt,
 - b. \$7.22 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
21. JANC is entitled to post-judgment interest, as applicable.
22. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Eric Regehr, Tribunal Member