



Civil Resolution Tribunal

Date of Original Decision: April 26, 2023

Date of Amended Decision: May 3, 2023

File: SC-2022-005431

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Robertson v. Stefan Erbers Personal Real Estate Corporation*,
2023 BCCRT 341

B E T W E E N :

LISA DEE ROBERTSON

APPLICANT

A N D :

STEFAN ERBERS PERSONAL REAL ESTATE CORPORATION and
SANDY GIBSON PERSONAL REAL ESTATE CORPORATION

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. The applicant, Lisa Dee Robertson, says she was hired by the respondents, Stefan Erbers Personal Real Estate Corporation (Erbers PREC) and Sandy Gibson Personal

Real Estate Corporation (Gibson PREC), to provide unlicensed assistant real estate service support. Ms. Robertson says contrary to the parties' contract, Erbers PREC and Gibson PREC have failed to pay her for her services, expenses, and "deal fees" between June 16 and July 8, 2022. Ms. Robertson claims a total of \$4,918.79 for her services, expenses and deal fees.

2. Ms. Robertson also asks for an order that Erbers PREC and Gibson PREC stop accusing her of blackmail, and apologize in writing for "this libelous assertion", and lists \$81.21 as the monetary amount for this requested remedy.
3. Erbers PREC and Gibson PREC deny having any written agreement with Ms. Robertson. However, they do not dispute that they hired Ms. Robertson to provide services and agree that Ms. Robertson is entitled to payment from some claimed services, expenses and deal fees. They say the CRT does not have jurisdiction over Ms. Robertson's libel claim.
4. Ms. Robertson is self-represented. Erbers PREC is represented by its principal, Stefan Erbers. Gibson PREC is represented its principal, Sandy Gibson.

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.

Libel

9. As noted, Ms. Robertson asks for an order that Erbers PREC and Gibson PREC stop accusing her of blackmail and apologize for “this libelous assertion”. For the following reasons, I decline to grant these requested remedies.
10. First, CRTA section 119 expressly states that the CRT has no jurisdiction over libel and slander, which includes defamation. Further, ordering someone to do something, or to stop doing something, is known as “injunctive relief”. This includes Ms. Robertson’s requested order for Erbers PREC and Gibson PREC to stop accusing her of blackmail. The CRT has no jurisdiction to grant injunctive relief under its small claims jurisdiction under CRTA section 118, with certain exceptions which I find do not apply here.
11. I also note that although Ms. Robertson listed \$81.21 in the “amount” field for this requested resolution in her application for dispute resolution, I find she is not claiming a monetary remedy of \$81.21 for the alleged libel. Further, I would not be able to grant such a remedy in any event given that the CRT does not have jurisdiction over libel. I decline to grant this requested remedy.

12. As for Ms. Robertson's request for an apology, even if the CRT had jurisdiction over libel, the CRT does not generally order apologies because they are unlikely to serve any useful purpose, and I decline to do so.

ISSUES

13. The issues in this dispute are:

- a. What was the parties' agreement?
- b. To what extent are Erbers PREC and Gibson PREC responsible to pay Ms. Robertson the claimed \$4,918.79 for her services, expenses and deal fees?

EVIDENCE AND ANALYSIS

14. In a civil proceeding like this one, as the applicant Ms. Robertson must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.

What was the parties' agreement?

15. Ms. Robertson entered into a written agreement with Stefan Erbers and Sandy Gibson in their personal capacities in 2017 to provide services in exchange for payment. The 2017 agreement specified an hourly rate of \$25, plus a \$400 bonus "for each successful accepted offer with subject removal", among other terms. Neither Stefan Erbers nor Sandy Gibson are personally named as respondents in this dispute.

16. Ms. Robertson also provided an unsigned 2021 agreement between herself, Stefan Erbers, and Gibson PREC. The 2021 agreement also specified an hourly rate of \$25, and \$400 deal pay "for each successful accepted offer with subject removal, to be

paid with the invoice pay schedule that the completion date falls”, among other terms. It is undisputed that none of the parties signed the 2021 agreement.

17. Erbers PREC and Gibson PREC say they did not have a written contract with Ms. Robertson. I agree. The evidence shows that Gibson PREC was not incorporated until December 2018 and Erbers PREC was not incorporated until March 2022, both after the 2017 contract was signed. As noted, the 2021 contract was unsigned. So, I find the 2017 contract and the 2021 contract do not apply to Erbers PREC and Gibson PREC.
18. However, Erbers PREC and Gibson PREC do not dispute that Ms. Robertson provided services to them after incorporation, and in particular, between June 16 and July 8, 2022. So, the question is what were the terms of the subsequent oral agreement between Ms. Robertson, Erbers PREC, and Gibson PREC.
19. Erbers PREC and Gibson PREC do not dispute that they agreed to pay Ms. Robertson \$25 per hour for her services, and a \$400 bonus on each deal. However, the parties dispute when the \$400 bonus for each deal was earned and payable. Ms. Robertson says Erbers PREC and Gibson PREC agreed to pay her a \$400 bonus for each successful accepted offer with subjects removed, and she was entitled to payment of the \$400 bonus as of the date subjects were removed, if any, from an accepted offer to purchase.
20. In contrast, Erbers PREC and Gibson PREC say Ms. Robertson was not entitled to the \$400 bonus until each deal’s completion date. They say this was discussed and agreed on between the parties in 2021, and has been their practice over the past 2 years. They also provided previous paid invoices in evidence that show Ms. Robertson was paid her \$400 bonus during the same 2 week pay period as the deal’s completion date. They further argue that some deals did not have subjects, and so it does not make sense to have agreed to pay Ms. Robertson a bonus based on the date subjects were removed. Based on the above, Erbers PREC and Gibson PREC argue they are not responsible to pay Ms. Robertson a \$400 bonus for any deals that

had completion dates after July 8, 2022, when Ms. Robertson stopped providing services to them.

21. Ms. Robertson does not dispute that her bonus payments over the last 18 months that she provided services were paid in the same pay period as the deal's completion date, but says this was done during the COVID-19 pandemic to align Ms. Robertson's bonus payments with Erbers PREC and Gibson PREC own payment schedule, because they received commissions on the completion date for each deal. Ms. Robertson says the delayed payment date does not change when she became entitled to, or earned, the bonus payment in the first place, and says it just adjusted the timing of the payment itself.
22. I agree. I find the verbal agreement between Erbers PREC, Gibson PREC and Ms. Robertson was likely just a continuation of the personal written agreements that Erbers PREC and Gibson PREC's respective principals had with Ms. Robertson. Both the 2017 agreement and the unsigned 2021 agreement specify that Ms. Robertson was entitled to a \$400 bonus for each accepted offer with subject removal. I find this is the best evidence of the parties' verbal agreement on Ms. Robertson's bonus entitlement. So, on that basis, I find Erbers PREC and Gibson PREC likely agreed to pay Ms. Robertson a \$400 bonus for each accepted offer with subjects removed.
23. Therefore, I find Ms. Robertson's right to payment of her \$400 bonus crystallized on the date that subjects were removed from each accepted offer to purchase. The fact that her bonus was often paid at the time of completion does not mean that Ms. Robertson is not entitled to payment of her outstanding bonuses earned at the time she ceased providing services to Erbers PREC and Gibson PREC. I now turn to address Ms. Robertson's claimed invoices.

To what extent are Erbers PREC and Gibson PREC responsible to pay Ms. Robertson the claimed \$4,918.79 for her services, expenses and deal fees?

24. It is undisputed that Ms. Robertson provided notice that she no longer intended to provide services to Erbers PREC and Gibson PREC. In a June 27, 2022 email, Ms.

Robertson said the email was her official notice that she was terminating the parties' contract and said she "planned to have everything wrapped up by July 8, 2022". Ms. Robertson claims payment of 3 invoices issued between June 30 and July 7, 2022.

June 30, 2022 invoice to Erbers PREC

25. First, a June 30, 2022 invoice to Erbers PREC totaling \$1,197.85. Although only addressed to Erbers PREC, Erbers PREC and Gibson PREC say they agree to pay the entirety of this invoice. However, I find the evidence shows Gibson PREC already paid its own separate June 30, 2022 invoice from Ms. Robertson for the same amount. So, I find only Erbers PREC is responsible to pay Ms. Robertson \$1,197.85 for this invoice.

July 7, 2022 invoice to Erbers PREC and July 7, 2022 invoice to Gibson PREC

26. Ms. Robertson submitted two July 7, 2022 invoices, which were both revised to include hours on July 7 and July 8, 2022. The first invoice is to Erbers PREC and totals \$1,860.47. The second invoice is to Gibson PREC and also totals \$1,860.47.

27. Both Erbers PREC and Gibson PREC only refer to one of these invoices, addressed to Erbers PREC. They say they assume Ms. Robertson combined both Erbers PREC and Gibson PREC's payments onto one invoice. One invoice in evidence appears to be a combined invoice directed solely to Gibson PREC. However, I find the evidence also shows Ms. Robertson prepared and sent two separate revised July 7, 2022 invoices to Erbers PREC and Gibson PREC on July 8, 2022. A July 8, 2022 email from Ms. Robertson clearly states that she is providing 2 invoices, one to Erbers PREC and one to Gibson PREC, and notes the revisions to both invoices to include hours on July 7 and 8, 2022. Both invoices are attached to the email. Ms. Robertson says she divided her hourly work and deal fees equally between the two invoices. Based on my review of the invoices and the other documentary evidence, I find Ms. Robertson did so.

28. Erbers PREC and Gibson PREC say they agree to pay \$570.93 including GST for Ms. Robertson's billable hours portion of her "combined invoice" to Erbers PREC and

Gibson PREC for July 1 to July 8, 2022. Although there is no combined invoice, I find they agree to pay Ms. Robertson a total of \$570.93 for her two July 7, 2022 invoices, while is equivalent to \$285.47 per invoice. So, the question is whether Ms. Robertson has proved she is entitled to any further payment for these invoices.

29. Ms. Robertson billed 29.75 hours on each invoice, totaling \$371.88 plus GST per invoice. Ms. Robertson says the hours billed on her July 7, 2022 invoices was for her work to reconcile and transfer files and remove herself as administrator, among other tasks. I note that Ms. Robertson's total hours for July 1 to 8, 2022 on both invoices is almost 60 hours. However, I find this is not obviously unreasonable on the evidence before me. Erbers PREC and Gibson PREC make some allegations about Ms. Robertson preventing access to their files in her final week provided services to them, however, they did not raise any specific issues with the hours billed by Ms. Robertson on either July 7, 2022 invoice and did not allege that she overcharged. Therefore, on balance, I find Ms. Robertson has proved she is entitled to full payment of \$371.88 plus GST for her billed hours on each invoice.
30. Next, Ms. Robertson claims a \$400 bonus on 7 deals. Ms. Robertson billed for 3.5 deals on each invoice, totaling \$1,400 plus GST per invoice, or \$1,470 including GST. So, I find she split her claimed bonus equally between the two invoices.
31. Both invoices indicate that the subject removal dates for the 7 deals occurred before July 8, 2022. However, Erbers PREC and Gibson PREC say two of the deals did not remove subjects until after July 8, 2022.
32. In submissions, Ms. Robertson acknowledges that the evidence shows a 58th Avenue deal collapsed before subject removal, and says she no longer wishes to pursue her \$400 bonus plus \$20 GST on the 58th Avenue deal. This results in a reduction of \$210 per invoice.
33. Ms. Robertson also acknowledges that a 72nd Avenue deal had its subject removal extended from before July 8, 2022 to July 11, 2022. She says she is still entitled to the bonus for this deal because she was available to provide services until July 28,

2022 and so the subjects were removed on the 72nd Avenue deal before the contract was terminated. I find this is directly contradicted by her June 27, 2022 email, and a later July 8, 2022 email where she said she was “wrapping everything up today”. I find Ms. Robertson did not provide any indication that she would be available to provide any further services after July 8, 2022. I find Ms. Robertson’s last day providing services, and being available to provide services, to Erbers PREC and Gibson PREC was July 8, 2022. So, I find she is not entitled to her claimed \$400 bonus plus \$20 for GST for the 72nd Avenue deal that did not remove subjects until July 11, 2022. This results in a reduction of \$210 per invoice.

34. Finally, Erbers PREC and Gibson PREC say there was outstanding work required on the remaining 5 deals when Ms. Robertson stopped providing services, and after the subjects were removed. However, I have already found that the parties agreed to pay Ms. Robertson a \$400 bonus on each accepted offer when subjects were removed. So, even if there was work outstanding, it does not mean Ms. Robertson was not entitled to her bonus payment as of the date that subjects were removed. I find Ms. Robertson has proved she is entitled to her \$400 bonus plus \$20 GST for each of the 5 remaining deals, which totals \$1,050 per invoice, including GST.
35. With the above reductions, I find Erbers PREC and Gibson PREC each owe Ms. Robertson \$1,440.47 for their respective July 7, 2022 invoices.
36. In summary, I find Erbers PREC must pay Ms. Robertson \$2,638.32 (\$1,197.85 + \$1,440.47) and Gibson PREC must pay Ms. Robertson \$1,440.47 for her unpaid invoices.

Interest, CRT fees and expenses

37. The *Court Order Interest Act* applies to the CRT. Ms. Robertson is entitled to pre-judgment interest on the \$2,638.32 owing by Erbers PREC from July 8, 2022 to the date of this decision. This equals \$59.06.
38. Ms. Robertson is entitled to pre-judgment interest on the \$1,440.47 owing by Gibson PREC from July 8, 2022 to the date of this decision. This equals \$32.25.

39. 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. As Ms. Robertson was substantially successful in her claims, I find she is entitled to reimbursement of \$175 in CRT fees from Erbers PREC and Gibson PREC, jointly and severally.

ORDERS

40. Within 30 days of the date of this order, I order Erbers PREC to pay Ms. Robertson a total of \$2,697.38, broken down as follows:

- a. \$2,638.32 in debt, and
- b. \$59.06 in pre-judgment interest under the *Court Order Interest Act*.

41. Within 30 days of the date of this order, I order Gibson PREC to pay Ms. Robertson a total of \$1,472.72, broken down as follows:

- a. \$1,440.47 in debt, and
- b. \$32.25 in pre-judgment interest under the *Court Order Interest Act*.

42. Within 30 days of this order, I order Gibson PREC and Erbers PREC, jointly and severally, to pay Ms. Robertson \$175 in CRT fees.

43. Ms. Robertson is entitled to post-judgment interest, as applicable.

44. 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.

Leah Volkers, Tribunal Member

ⁱ Amendment Notes: Paragraphs 28 and 34 of the decision were amended under the authority of section 64 of the CRTA to correct inadvertent errors with the applicant's name.