



Civil Resolution Tribunal

Date Issued: August 18, 2023

File: SC-2022-008350

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Leisher v. Don't Look Down Tattoo & Apparel Ltd.*, 2023 BCCRT 700

BETWEEN:

NICOLE JEAN LEISHER

APPLICANT

AND:

DON'T LOOK DOWN TATTOO & APPAREL LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about tattooing equipment. The applicant, Nicole Jean Leisher, previously worked for the respondent, Don't Look Down Tattoo & Apparel Ltd. (DLD). Ms. Leisher says that after she notified DLD of her resignation, DLD withheld her final pay and kept her tattooing equipment. She initially claimed \$1,800 for her final pay, and \$3,100 for the cost of her tattooing equipment, for a total of \$4,900. In her

submissions, Ms. Leisher acknowledges that DLD has paid her final pay, so I find her claim is reduced to \$3,100 for the tattooing equipment.

2. DLD says Ms. Leisher's ownership of the tattooing equipment was contingent on her working for DLD for 3 years after completing her apprenticeship, which she did not do. DLD also says Ms. Leisher breached her employment contract in various ways, including by leaving DLD to work for a competitor. DLD says that for these reasons, the tattooing equipment belongs to DLD, not Ms. Leisher, and DLD does not owe her anything.
3. Ms. Leisher is self-represented and DLD is represented by its owner.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.

7. 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.
8. In her submissions Ms. Leisher says DLD wrongfully dismissed her, and that as a result she lost income for the month of November 2022. However, this claim is not included in her Dispute Notice, and she does not claim a specific amount related to the alleged wrongful dismissal or wage loss. I find Ms. Leisher's wrongful dismissal claim is not properly before me, and I decline to address it in this decision.
9. In her reply submissions, Ms. Leisher also says she was an independent contractor for DLD, not an employee. However, since DLD did not have an opportunity to respond to this allegation, I find it would be procedurally unfair to address it in this decision. In any event, given my findings below, for the purposes of determining whether Ms. Leisher is entitled to payment for the tattooing equipment, I find nothing turns on whether she was an employee or an independent contractor for DLD. For these reasons, I do not address this allegation further in this decision.

ISSUE

10. The issue in this dispute is whether DLD owes Ms. Leisher \$3,100 for the tattooing equipment.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant, Ms. Leisher must prove her claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision. For the following reasons, I dismiss Ms. Leisher's claims.
12. On July 21, 2021, Ms. Leisher signed an employment contract with DLD. Under the terms of the contract, Ms. Leisher started full-time employment with DLD as an apprentice on July 21, 2021. The contract required Ms. Leisher to pay DLD a \$10,000

tuition fee for her apprenticeship education, which she did between October 2021 and February 2022. Under the contract Ms. Leisher agreed to commit to working for DLD for 3 years after completing her apprenticeship. However, the contract also allowed Ms. Leisher to terminate her employment by giving DLD the greater of 2 weeks' notice or "the minimum required by law". Ms. Leisher completed her apprenticeship by the summer of 2022 and continued working for DLD until the fall of 2022. None of this is disputed.

13. On either October 31 or November 1, 2022, Ms. Leisher verbally gave DLD one month's notice of her resignation. The parties gave conflicting information about the date Ms. Leisher resigned, but for the purposes of determining Ms. Leisher's entitlement to compensation for the tattooing equipment, I find nothing turns on the exact date. It is undisputed that Ms. Leisher did not work for DLD again after that time, and that DLD kept the tattooing equipment.
14. Ms. Leisher says the tattooing equipment belongs to her and she claims \$3,100 for its replacement cost. She says that when she started her apprenticeship with DLD, in addition to the written employment contract, she also had several verbal agreements with DLD. She says one of these verbal agreements was that the \$10,000 tuition fee included the cost of her tattooing equipment and initial supplies.
15. DLD says that immediately before Ms. Leisher signed the employment contract, its owner verbally agreed to credit \$2,500 of Ms. Leisher's \$10,000 tuition fee towards purchasing tattooing tools and equipment for her. However, DLD says the \$2,500 equipment credit was contingent on Ms. Leisher working for DLD for 3 years after completing her apprenticeship, which Ms. Leisher denies.
16. Though Ms. Leisher does not use these exact words, I find the alleged verbal agreement about the tattooing equipment is a collateral contract, because it is not contained in the written employment contract. A collateral contract, whether oral or written, is valid and enforceable if its terms are clear and do not contradict the main contract (see *River Wind Ventures Ltd. v. British Columbia*, 2011 BCCA 79, at

paragraph 14). For the following reasons, I find the terms of the alleged collateral contract are unclear, so it is invalid and unenforceable.

17. Ms. Leisher submitted text messages between her and DLD's owner which she says support her position that the equipment credit was not contingent on her working for DLD for 3 years. In an undated text message to Ms. Leisher, DLD's owner said, "...once you've paid the full 10. I gift you back 2500 for equip." In another undated text to Ms. Leisher, DLD's owner said, "Weve spent 2500 so far.. so we'll be a bit over budget, but once you get the other half of the apprenticeship fees to me f*** it. I don't mind using a bit of it to get you what you deserve, high quality gear that will last a lifetime" (all text reproduced as written). Although these texts do not refer to a 3-year commitment to work for DLD, I find their timing is relevant to determining the terms of the alleged collateral contract.
18. Although the quoted texts above are undated, based on other texts in evidence, I find they are part of a text conversation in mid-October 2021 at the time DLD purchased the tattooing equipment. The evidence shows that by October 7, 2021, Ms. Leisher had paid DLD \$5,000 in tuition fees, so I find this is consistent with the undated texts being sent in mid-October. I find the timing is relevant because both parties' evidence is that they entered into the verbal agreement about the tattooing equipment in July 2021 when Ms. Leisher started her apprenticeship. So, while I find the text messages are evidence of an agreement between the parties, since I have found they were sent 3 months after the agreement was made, I would not expect them to set out the entirety of the agreement. The evidence before me is that the parties had a good working relationship in October 2021, and DLD would not have had any reason at that time to doubt Ms. Leisher's 3-year commitment to working at DLD.
19. I also note that Ms. Leisher's 3-year commitment to DLD in the written employment contract is in the same section as the clause about Ms. Leisher's tuition fees. So, I find it is reasonable that the parties may have discussed a 3-year commitment when making their verbal agreement about the tattooing equipment.

20. Ms. Leisher is responsible for proving the clear terms of the collateral contract. On balance, I am not persuaded that the parties agreed on an equipment credit without a 3-year commitment. I find the terms of the collateral contract are unclear, so it is not enforceable.
21. Though neither of the parties raised this, the employment contract says, “This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or written.” This is what is known as an “entire agreement” clause. Generally, an “entire agreement” clause in a contract is intended to exclude evidence of the parties’ prior negotiations or representations, so that the signed contract is the only relevant agreement between the parties. The effect of such a clause is a question of contractual interpretation (see *Firestar Custom Home Builders Inc. v. 1099000 B.C. Ltd.*, 2022 BCCA 324 at paragraphs 35 to 43). However, having found that the collateral contract is unproven, I find it is unnecessary to address the entire agreement clause here.
22. Since one of DLD’s texts to Ms. Leisher says, “I gift you back 2500 for equip.”, I considered whether DLD’s purchase of the tattooing equipment was a gift to Ms. Leisher, although neither party raised this. However, to prove a legally effective gift, Ms. Leisher must establish an intention to donate, and that intention must be inconsistent with any other intention (see *Lundy v Lundy*, 2010 BCSC 1004). DLD’s evidence is that its owner subjectively intended the \$2,500 equipment credit to be contingent on Ms. Leisher fulfilling her 3-year commitment to DLD, so I find a donative intent is unproven.
23. Given my findings, I find it is unnecessary to address DLD’s allegations about Ms. Leisher’s breaches of the written employment contract.
24. In summary, I find Ms. Leisher has failed to prove a valid and enforceable verbal agreement for her to keep the tattooing equipment. So, I find she is not entitled to compensation for the tattooing equipment, and I dismiss her claim.

25. 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. Since Ms. Leisher was unsuccessful, I find she is not entitled to reimbursement of CRT fees. DLD did not pay any CRT fees, and neither party claimed any dispute-related expenses.

ORDER

26. I dismiss Ms. Leisher's claims and this dispute.

Sarah Orr, Tribunal Member