SCCH 329065

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Oler v. Sherman Hines Photographic Ltd., 2010 NSSM 78

Between:

LEZLIE OLER and PAMELA PIERS

CLAIMANT

-and-

SHERMAN HINES PHOTOGRAPHIC LTD.

DEFENDANT

AMENDED DECISION AND ORDER

Adjudicator:David T.R. Parker

Heard: September 16, 2010 and November 8, 2010

Decision: December 15, 2010 Amended January 31, him 2011

Counsel: the claimants were self represented
The defendant was self represented

This decision and order was amended only to the extent that the Heading reflect the correct name of the defendant in this action being Sherman Hines Photographic Ltd. Parker:-the claimant originally sued and took action against Sherman Hines however the contract they relied on and the agreement they ultimately sought to have the court uphold was with Sherman Hines Photographic Ltd. following the hearing it was determined that

the correct name of the defendant would be the corporate name and not the personal name of Sherman Hines. The heading of this action reflects the correct parties.

Facts:

The facts as I determine them following the hearing of the evidence were as follows:

The claimants ran a store and the business was located in Halifax and called" In a Box" and the defendant was a company owned by Sherman Hines and Mr. Hines is a well-known Nova Scotia photographer. Both parties decided to get into a business arrangement with each other whereby Sherman Hines was required to do certain things and the claimants were required to do certain things.

Following discussions and many draft proposals between the parties Sherman Hines reduce their agreement to writing and sent it over to the claimants for their signature. The claimants executed the agreement and send it back to Mr. Hines for his signature. The agreement was never signed by Sherman Hines or the defendant company. The agreement was never returned to the claimants by Mr. Hines.

The majority of the enumerated requirements in the agreement pertaining to what the claimant were to do were in fact completed by the claimants commencing in March of 2009. The claimants also did outside marketing for the benefit of the defendant which was not required pursuant to the terms of the agreement. Anything they did not do or were required to do pursuant to the agreement was a result of a lack of sales and the product being dealt with by the parties.

At or near the end of May, Sherman Hines advised the claimants that things were not working out and he did not want them to work for him anymore. Both parties effectively ended their relationship. Mr. Hines did pay the claimants $3600.00.

Analysis:

Both parties wanted this agreement between them to succeed. The defendant was hoping to make money in the sale of his products and the claimants were hoping to recover their costs and also make money.

Both parties put forward to the court two different positions with respect to what their agreement was between them. Mr. Hines' view was that the claimants were to do what they were contracted to do and they will be reimbursed up to $3600.00 for their expenses and if revenues in the sale of portraits paintings and books were successful the claimants would receive 20% of all sales as defined in the agreement.

The claimant's point of view was that from March 1, 2009 until the first day of July 2009 they would receive $3600.00 per month or 20% of all revenue from all sales which ever amount is the greater. All expenses incurred by the claimants would be out of their own pocket.

The written contract which was never signed supports the claimants' contention. I also accept the fact that the parties were working on the basis as outlined in the contract even though it may not have been signed there was still an agreement and a legally binding agreement between the parties. I do not accept Sherman Hines' interpretation of what the contract was meant to say based on his own testimony. Mr. Hines said he "knew that in paying this much money that is $3600.00 per month was too much money and they [the claimants] have no incentive, as a result, to do anything. I made a mistake." Mr. Hines complained that they didn't do anything, then he made reference to the fact that he would play employees and also designers and in the case of a employees he would pay them for three months and if they didn't produce he would let them go and with designers after one month he would let them go. This was the same approach taken in the agreement between the parties. The written agreement specifically states that it is an agreement for four months and it will be reviewed after that time. However it also states in the agreement that for each of those four months the claimants will receive the greater of $3600.00 per month or 20% of revenues for all sales of products as defined in the agreement. There is no hedging here on what the claimants were to receive. Mr. Hines'

point is well taken, that is, he did not receive any revenue from what the claimants were doing during those four months and that it would be unfair to pay them for those months. I understand that thinking but that was not the agreement.

Both sides however understood that the agreement ended at the end of May or at the latest the end of June. However I am going to accept Ms. Piers statement that it was over at the end of May. Therefore the defendant owes $3600.00 for March, April and May. To date the defendant has paid $3600.00 therefore the amount of standing to the claimants the $7200.00 representing their work for April and May pursuant to their agreement.

It Is Therefore Ordered That the defendant pay the claimants the following sums:

$7200.00
$ 179.36Court costs
$7379.36

Dated at Halifax This 15th day of December 2010 and amended January 31, 2011