

*Jeanne MORRISON v. NORTHERN ABORIGINAL BUSINESS ASSOCIATION*  
2012 NWTTTC 14

Date: 2012 09 05  
File: T1-CV-2012 000026  
T1-CV-2012 000003

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**JEANNE MORRISON**  
(carrying on business as MORRISON MANAGEMENT SERVICES)

**Plaintiff**

**- and -**

**NORTHERN ABORIGINAL BUSINESS ASSOCIATION**

**Defendant**

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**REASONS FOR JUDGMENT**

**of the**

**HONOURABLE JUDGE B. E. SCHMALTZ**

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Heard at: Yellowknife, Northwest Territories  
July 11, 2012 and August 9, 2012

Judgment Filed: September 5, 2012

For the Plaintiff: Jeanne Morrison

For the Defendant: Darrell Beaulieu

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**I. INTRODUCTION**

[1] The Plaintiff, Jean Morrison carrying on business as Morrison Management Services, and the Defendant, Northern Aboriginal Business Association, entered into a contract (hereinafter referred to as the Contract) whereby the Plaintiff would provide management and administrative services to the Defendant, and the Defendant would pay a management administration and conference coordination fee to the Plaintiff of \$80,325.00; the Contract was for the period of March 1, 2011 to November 30, 2011. The Contract between the Plaintiff and the Defendant is in evidence (Exhibit 1). The Defendant has paid the Plaintiff \$72,000.00, and the Plaintiff brings this action for the balance of \$8,325.00.

[2] Section 2 of the Contract addresses the services to be provided by the Plaintiff and the fee to be paid by the Defendant. Section 5 of the Contract addresses the term of the Contract, and termination of the Contract. Clause 5.1 of the Contract states:

This Agreement shall commence on March 1, 2011 to November 30, 2011 unless it is renewed or amended by the written consent of both Parties.

There is no evidence that the Contract was amended, and therefore I find that the terms and conditions set out in the Contract were in effect and govern the outcome of this action.

[3] Clause 5.2 sets out the circumstances in which the Defendant could terminate the Contract, and Clause 5.3 sets out the effects of termination. There is no evidence that the Contract was terminated before the term of the Contract.

[4] Schedule "A" to the Contract sets out "Detailed Services to be Provided" by the Plaintiff to the Defendant. Notably Schedule "A" states:

In terms of specific deliverables regarding the conference, the following is to be provided:

1. Development of the Northern Aboriginal Business Conference Execution Plan (for approval by NABA Board) by May 1<sup>st</sup>, 2011
2. Sourcing of key sponsors of the Northern Aboriginal Business Conference by August 15<sup>th</sup>, 2011
3. Provision of a financial plan/budget for the Conference by September 15<sup>th</sup>, 2011
4. Development of a final report on the Northern Aboriginal Business Conference, including financial information on expenses incurred and outstanding liabilities (if any) by November 15<sup>th</sup>, 2011

## **II. POSITIONS OF THE PARTIES**

[5] The Plaintiff says she has provided all the services required of her by the Contract, and any services that were not provided were not provided because of the actions or lack thereof of the Defendant; the Defendant says the Plaintiff did not fulfill

her obligations under the Contract, and as such the Defendant is not obliged to pay the full amount of the Contract. The Plaintiff testified on her own behalf, and called Candace Browne as a witness. The testimony of Candace Browne does not assist in determining any of the issues in this case. Darrell Beaulieu, a member of the Defendant's Board of Directors testified on behalf of the Defendant.

### III. THE EVIDENCE

[6] The Plaintiff and the Defendant had been in a business relationship for some time; the Plaintiff testified that this was the third consecutive contract for management services between the Plaintiff and the Defendant.

[7] On or about October 18, 2011, the Plaintiff submitted her final invoice under the Contract to Darrell Beaulieu and Christy Sinclair<sup>1</sup>. The Defendant paid the Plaintiff \$9,525.00 holding back \$8,325.00. The Plaintiff says she did not agree to the holdback; the Defendant says there was agreement to the holdback, and the reason for the holdback was that the Plaintiff had not fulfilled all of the requirements of the Contract, and the balance would be paid upon the Plaintiff fulfilling the tasks required of her by November 30, 2011 (the day the Contract was to be concluded).

[8] Shortly after this meeting the Plaintiff went on vacation, and returned on November 18, 2011. The Plaintiff says she had agreed to complete what needed to be completed under the Contract upon her return.

[9] The Plaintiff says she was not required to be "on site" under the terms of the Contract, and that is in fact the case, i.e. there is no specific clause or condition requiring the Plaintiff to be in any certain place during the term of the Contract. However in Schedule "A" under *Detailed Services to be Provided*, 1(n) states: "Provide administrative services such as *photocopying*, typing, mail, and *faxing*" (my emphasis). It is difficult for me to understand how these services could be provided if there was no one in the Defendant's office. Be that as it may, I find nothing of consequence in this action arises from the Plaintiff's absence from the Defendant's office.

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<sup>1</sup> At that time Christy Sinclair had recently been appointed as chair of the Defendant's Board of Directors, taking over from Darrell Beaulieu, who remained a member of the Board of Directors.

[10] The Plaintiff says she was not able to file certain documents that needed to be filed under the *Societies Act*, as per 1(a) of Schedule “A”, as signatures were required or a meeting of the Board of Directors had to be held, or perhaps both. The Plaintiff says further that with respect to a report that had to be prepared for a major fundraiser, as per 2(i) of Schedule “A”, she required a transcript from the conference in order to prepare final reports. The Plaintiff says that this transcript was necessary to prepare this report, and was never received. On the other hand, the Plaintiff says that she provided the Defendant with a report on the conference at the December 7, 2011 meeting between the Plaintiff and Darrell Beaulieu and Christy Sinclair.

[11] During her testimony, the Plaintiff referred to an e-mail dated January 10, 2012 from Christy Sinclair which states, *inter alia*, “As it stands, Jeanne’s [referring to the Plaintiff] contract is complete and a decision during this meeting is required to address the Executive Director position.” I find this e-mail ambiguous as it could either mean that all of the Plaintiff’s obligations under the Contract had been completed or that the term of the Contract had ended. Without more, I do not find this statement assists in resolving any issues in this action.

[12] The Plaintiff says that at a meeting she agreed was held on December 7, 2011, she gave Darrell Beaulieu the Defendant’s financial statements, and report on the conference referenced in the Contract, along with the Defendant’s bank deposit book and cheque book. The Plaintiff says at no time did she receive any direction from the Defendant with respect to the financial statements.

[13] The Plaintiff says she turned over the keys and other assets of the Defendant sometime after January 17, 2012.

[14] The Plaintiff says that Christy Sinclair was appointed as the new chair of the Defendant on October 4, 2011. I find the Plaintiff knew this. The Plaintiff says she was never given any written notice or written instruction/authority from the Defendant’s Board of Directors to provide or return anything to Christy Sinclair. The Plaintiff says the reason she could not return keys or assets to Christy Sinclair is because of Clause 3.2 of the Contract, which says:

3.2 CONTRACTOR [the Plaintiff] shall protect, indemnify, defend and hold harmless NABA [the Defendant] and its respective partners, managers, employees and affiliates from any and all threatened or actual claims, demands, causes of action, suits, proceedings (formal or informal), losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs, sustained or incurred by or asserted against CONTRACTOR or its affiliates by any person, firm, corporation, governmental authority, partnership or other entity by reason of or arising out of: (i) the conduct of CONTRACTOR or (ii) the conduct of CONTRACTOR business or provision of services by CONTRACTOR pursuant to this agreement, except to the extent specifically limited by 3.1.

[15] Section 5.3(b) of the Contract states:

(b) In the event this Agreement is terminated by NABA for any reason, CONTRACTOR shall immediately deliver possession to the President<sup>2</sup> of NABA of all assets, books and records of NABA in its possession;

I recognize that the Contract was not terminated by NABA, but I reference that clause for the illustration as to what one would reasonably expect be done with the assets of the Defendant in the possession of the Plaintiff on termination of the Contract. I find the Plaintiff's explanation for why she would not return certain assets to Christy Sinclair, i.e. the Plaintiff's reliance on the indemnification clause in the Contract both unreasonable and insincere. There was some conflict between the Plaintiff and Christy Sinclair.

[16] The Plaintiff met with Darrell Beaulieu on January 23, 2012, and gave material in the Plaintiff's possession that belonged to the Defendant to Darrell Beaulieu. When Darrell Beaulieu met with the Plaintiff and received this material he testified that this was the first time he was aware of or saw the following documents:

- Management Service Contract Summary Report
- Summary Financial Report for the 2011 NWT Business Conference – October 11, 12 & 13, 2011
- Northern Aboriginal Business Association Payables and Outstanding Cheques as of December 6, 2011

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<sup>2</sup> Darrell Beaulieu executed the contract on behalf of the Defendant as "President and Chair"; I infer that the terms President and Chair are interchangeable.

- Northern Aboriginal Business Association Receivables as of December 6, 2011
- Northern Aboriginal Business Association Anticipated Cash Flow – Winter 2011/2012
- 2011 NWT Business Conference Registration Listing

[17] The Plaintiff says she gave the documents referred to in Paragraph 16 to Darrell Beaulieu at the meeting between herself, Christy Sinclair and Darrell Beaulieu on December 7, 2011. The Plaintiff says these documents were part of a bundle of material given to Darrell Beaulieu which included the bank deposit book and the cheque book as referred to in paragraph 12 above. Darrell Beaulieu had notes he had taken at that meeting in which he noted that Ms. Morrison did not think her contract [with the Defendant] was over, and that she wanted to finish summary of conference reports as part of the deliverables under the Contract. In any event these documents and reports were not provided by the Plaintiff to the Defendant by November 15, 2011, as required by the Contract, or by November 30, 2011, as may have been agreed to by the parties at the meeting October 18, 2011.

[18] The Plaintiff submits that the Contract was “ninety nine percent” complete and she should therefore be paid in full.

[19] The Defendant submits it was “hamstrung” until January 23, 2012, when the Plaintiff returned certain property or assets and provided certain information or reports to the Defendant; the Defendant submits that the Contract with the Plaintiff ended on November 30, 2011, and the Plaintiff having not fulfilled her obligations under the Contract, is not entitled to any further payment from the Defendant.

#### **IV. FINDINGS and CONCLUSION**

[20] I find the Plaintiff did not prepare final reports to all conference funders and the NABA Board as required under 2(i) of Schedule “A” of the Contract; the Plaintiff did not provide sourcing of key sponsors for the Northern Aboriginal Business Conference *by*

*August 15<sup>th</sup>, 2011*; the Plaintiff did not provide the development of a final report on the Northern Aboriginal Business Conference including financial information on expenses incurred and outstanding liabilities (if any) *by November 15<sup>th</sup>, 2011*.

[21] The Plaintiff submits that the Contract does not provide for the Defendant to hold back any part of the fee owed to her under the Contract. Relying on the strict wording of the Contract, that is correct. But at the same time the Defendant then too is entitled to rely on the strict wording of the Contract, and say that it did not receive all the services that were to be provided by the Plaintiff under the Contract by the times set out in the Contract. It would appear that neither side has fulfilled its obligations under the Contract.

[22] The Plaintiff says she fulfilled “ninety nine percent” of her obligations. The fact remains, she did not fulfill her obligations under the Contract. The Defendant says due to the Plaintiff not providing the information, reports, and services, it was left “hamstrung” until such time as these were provided on January 23, 2012.

[23] If, on finding that neither party has fulfilled its obligations under the Contract, and consequently not being able to rely on the strict wording of the Contract to determine what each party is entitled to, I am not able to say that the Defendant’s position in refusing to pay the final \$8,325.00 under the Contract is unreasonable. The burden is on the Plaintiff to prove that the Defendant owes her \$8,325.00 under the Contract, or under some other tenet or principle of contract law. The Defendant’s position that the Defendant was “hamstrung” because the Plaintiff did not provide the documents required or return the Defendant’s assets when requested was not challenged or even questioned. I cannot find that the Plaintiff has fulfilled ninety-nine percent of her obligations, and even if she had, she has not provided any evidence at all that the obligations she had under the Contract that she did not fulfill were inconsequential or of no value to the Defendant. On the contrary, the Defendant says that the Plaintiff not fulfilling her obligations under the Contract left the Defendant “hamstrung”, and I infer from that those reports or documents were necessary to the Defendant.



[24] The Plaintiff and the Defendant entered into a contract. Parties enter into a contract to provide certainty to the relationship between them and the obligations of each of them. What may be of value to one party may be seen as inconsequential to the other, but it is not up to the party who has an obligation, an obligation that has been clearly set out in detail in a contract, to say that obligation was minimal. It may well be minimal to her, but she has not contracted for it – she has contracted to be *obligated to fulfill* it.

[25] The Plaintiff has not satisfied me that she fulfilled her obligations under the Contract, and cannot in this situation say the Defendant is obligated to fulfill its obligations. The Plaintiff's claim against the Defendant is dismissed. The Defendant has not filed a counterclaim so, even finding that the Plaintiff did not meet her obligations under the Contract, there is no further finding for the Defendant.

[26] File T1-CV-2012 000003, Morrison Management Services v. Northern Aboriginal Business Association, which is in reality the exact same claim as this action, though filed such that the Plaintiff in that action is not a legal entity, is also dismissed.

[27] The Defendant having a representative appear three times<sup>3</sup> on this matter, the Plaintiff is ordered to pay costs to the Defendant in the amount of \$400.00.

Bernadette E. Schmaltz  
Territorial Court Judge

Dated at Yellowknife, Northwest Territories  
this 5<sup>th</sup> day of September, 2012

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<sup>3</sup> Initially both Parties appeared in Court on May 28, 2012, on File T1-CV-2012 000003, however the Statement of Claim on that file was defective, and the Plaintiff was given the opportunity to correct her Statement of Claim, requiring an adjournment of the trial.

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