



# Civil Resolution Tribunal

Date Issued: February 26, 2018

File: SC-2017-003745

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Mclvor Communications Inc. v. Silver Barrel Solutions*, 2018 BCCRT 53

**B E T W E E N :**

Mclvor Communications Inc.

**APPLICANT**

**A N D :**

Silver Barrel Solutions

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Maureen Abraham

## **INTRODUCTION**

1. This is a dispute about whether a service-provider's client is entitled to reimbursement of her deposit when the service-provider cancelled their contract before the work was completed.

2. The applicant Mclvor Communications Inc. is self-represented by its principal Jane Mclvor. The respondent is an individual doing business as Silver Barrel Solutions and is self-represented by its principal, Scott Morrish.

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are:
  - a. Did Silver Barrel Solutions breach its contract with the applicant?
  - b. Is the applicant entitled to return of all or some of the deposit paid?

## **EVIDENCE AND ANALYSIS**

8. In December 2016, the applicant's principal decided to hire the respondent to make a new website for her business. The respondent website developer submitted a proposal. The applicant gave the respondent specifications, mock layouts and design notes (collectively, the "instructions") for the website design.
9. The proposal was to redevelop the applicant's website to a modern, functional and responsive one. It specified that search engine optimization would be done. It specified the platform the respondent would use, and that the site's interface would be based on the applicant's creative direction.
10. The proposal estimated that the website design would take 70 – 100 hours and require a budget between \$6,205 and \$8,980. The proposal says that the fully functioning website will be provided when payment in full is made, that the budget is an estimate of costs and fees and not an invoice, and that a deposit in an amount to be determined is required before work will start. The proposal did not set out a completion deadline for the work.
11. The proposal was acceptable to the applicant, and the parties agreed to go ahead and have the respondent build the new website based on the proposal and instructions ("contract"). The applicant paid a deposit of \$4,200.
12. There were then a series of delays, with the applicant expressing concern until finally on July 20, 2017, the respondent said he could not continue with the project and gave the applicant the name of another website developer to contact about potentially finishing the project. The parties disagree about whether they agreed

along the way to modify the terms of the proposal, with the applicant saying she insisted the respondent follow her instructions. The applicant says the draft website is unsuitable and the respondent's proposed replacement contractor not acceptable. The applicant asked the respondent to repay the deposit.

13. The respondent did not repay the deposit to the applicant.
14. I turn then to my findings. The applicant and the respondent's agreement, based on the proposal, is a contract. The applicant must prove she is entitled to return of her deposit. If a contract does not include a term that one of the parties says they agreed to, then the person making that allegation must prove that it is more likely than not that the additional term was agreed to between them.
15. The applicant says that it was a term of their contract that the website would be done according to her instructions and within six weeks. She is arguing she is entitled to return of her deposit because the contract was breached when her instructions were not followed and when there were delays, and because the completed website was not provided.
16. The respondent essentially argues that there was no breach of their contract as the applicant consented to the delays, that the instructions could not be followed and so a completed website according to the instructions would have been impossible to provide.
17. The parties' emails indicate that the applicant was initially okay with the delays, but that she became concerned when the website was not complete by June 2017 and would not accept any further delays. This shows that she put him on notice that if the respondent delayed doing the work going forward, he would be breaching the contract.
18. The parties' documents do not support the respondent's argument that the instructions could not be followed and that he had told the applicant this. Other than saying now that the instructions were impossible to follow, the respondent has not set out in any detail what parts of the instructions were a problem, or why.

19. It would not make sense for the applicant to continue making references to her instructions if she had already been told they could not be followed. Further, the respondent does not mention any problems with the instructions in his emails to the applicant until July 13, 2017. I do not accept that the applicant's instructions could not be followed.
20. The applicant's July 14, 2017 email shows that she was prepared for the respondent to finish the work if he strictly followed her instructions to make revisions to his draft. This shows that she put him on notice that if he did not follow her instructions going forward, he would be breaching the contract.
21. Before the project could move forward in a timely way according to the instructions, the respondent told the applicant he had to cancel doing any more work on the website. The respondent says that this was for health reasons, and out of his control. The contract was to provide a completed website. When the respondent said he would not be doing any more work to complete the draft website, this was a breach of the contract.
22. The applicant is asking for her deposit to be returned, and is not asking for damages for any additional cost, delay or inconvenience of starting the project over with a new developer. If she were, she would have to show that it was not unreasonable to simply start over with a new developer. The respondent's argument that she was obligated to pay for and use his existing work product and hire his colleague is questionable, and not relevant to whether the applicant is entitled to return of her deposit.
23. Cancelling the contract was not a mutual decision. The applicant accepted the termination, but made it clear that she was not giving up her right to return of the deposit and any damages.
24. The fact that a project might get interrupted or terminated by one person or the other partway through is a foreseeable risk. To be able to keep the deposit, the respondent must prove either that there was a term in their contract that the

deposit was not refundable or must be applied to any work in progress even if the project was cancelled by him, or that the applicant received a benefit from his work and so it would be unfair if the respondent was not paid for the work.

25. The parties did not discuss and agree that the deposit was non-refundable, and the written proposal does not say that the deposit is non-refundable. Where the language in a contract is neutral, the general rule is that the person who paid the deposit has a right to its return if the contract is terminated by the other party, as well as to claim damages for losses they suffer as a result of the contract ending.
26. The project was only partly done when the contract was terminated, and the work that had been done was unacceptable to the applicant and not used by the new website developer hired by the applicant. The respondent is not entitled to payment from the applicant for work done as the applicant did not receive a benefit from the work.
27. It is very unfortunate that the respondent had to cancel the contract for personal reasons outside his control, but what counts is that the respondent is a party to a contract who was not able to meet his obligations under that contract and so he will bear the cost of terminating it. I find the applicant is entitled to return of her deposit.

## **ORDERS**

28. I order that, within 30 days:
  - a. The respondent, Scott Morrish doing business as Silver Barrel Solutions, must pay the applicant Mclvor Communications Inc. the total amount of \$4,324.80, as follows:
    - i. \$4,200 for reimbursement of the deposit;
    - ii. \$17.80 for pre-judgment interest on the deposit amount from July 20, 2017, to February 26, 2018; and,

iii. \$125.00 for tribunal fees.

29. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
30. The applicant is entitled to post-judgment interest pursuant to the *Court Order Interest Act*.
31. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
32. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Maureen Abraham, Tribunal Member