Civil Resolution Tribunal

Date Issued: June 15, 2018

File: SC-2017-003781

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Evolved Software Inc. v. R&B Plumbing & Heating Ltd.,* 2018 BCCRT 259

BETWEEN:

Evolved Software Inc.

APPLICANT

AND:

R&B Plumbing & Heating Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: R. Hoops Harrison

INTRODUCTION

1. The applicant, Evolved Software Inc., entered into an agreement with the respondent, R&B Plumbing & Heating Ltd., to provide the respondent various digital platform marketing related services.

2. The applicant claims $1,084.12, being the outstanding balance of an April 16th, 2017 invoice (inclusive of applicable taxes). The respondent says that the applicant is not entitled to payment because the original agreement was modified, then terminated, and a new arrangement was entered into which the applicant failed to perform satisfactorily.

3. The parties are self-represented.

JURISDICTION AND PROCEDURE

4. 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.

5. 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 with further submissions or proceedings because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. No party requested an oral hearing.

6. Some of the evidence in this dispute amounts to a "he said, he said" scenario with each party characterizing certain alleged facts. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. As noted in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (BCCA), the assessment of what is the most likely account depends on its harmony with the rest of the evidence. In considering what is most likely to be the truth, I consider what "a practical and informed person would readily recognize

as reasonable in that place and in those conditions". In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I note the recent decisions in *Yas v. Pope*, 2018 BCSC 282 and *Dill v. GVG Inc*., 2018 BCCRT 58 (CanLII), where the tribunal's process was recognized (and that oral hearings are not necessarily required where credibility is in issue.) Accordingly, and bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.

7. 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.

8. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The substantive issue is whether or not the respondent owes the applicant for services rendered and if so how much.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. There was a considerable amount of materials provided and I have only addressed the evidence and arguments to the extent necessary to explain my decision.

11. Both parties agree that they entered into a contractual agreement effective on or about June 14th, 2016 and that the terms of the agreement included:

a. the applicant to provide marketing related services as well as “All other related tasks as directed”;

b. the applicant would provide 16-24 hours of work over three days per week at a rate of $35.00 per hour; and

c. either party may terminate the agreement on 14 days notice.

Applicant’s submissions

12. The applicant says that:

a. on or about January 13, 2017, the respondent gave email notice of a reduced work schedule of 1 - 1.5 days, effective January 30, 2017, in lead up to an intention to transfer the applicant’s responsibilities to an in-house R&B Plumbing & Heating staff member at a future date;

b. the applicant responded by email, also on January 13, 2017, confirming the reduced hours arrangement of 1 - 1.5 days per week;

c. the parties continued to work together under the reduced hour arrangement until April 4, 2017; and

d. after April 4, 2017 the applicant supplied invoices to the respondent wherein the respondent, in turn, expressed concerns and dissatisfaction about the quality of the work and amounts charged.

13. Ultimately, the applicant says that the respondent paid for only 3.5 hours out of 33 hours invoiced in the final April 16, 2017 invoice. Accordingly, the applicant claims for 29.5 hours at $35.00 per hour, plus applicable taxes totaling $1,084.12.

Respondent’s submissions

14. The respondent says that the original agreement was terminated, with notice, on or about January 13, 2017 and a new arrangement entered into effective January 30, 2017:

a. limiting the applicant's work to 8 hours per week; and

b. requiring the applicant to quote work estimates in advance.

15. The respondent also says that the applicant did not deliver the quality of the work requested and that the invoiced billing was not substantiated.

Analysis

16. The respondent stated the following in a January 13, 2017 email:

> …
>
> So, with the idea in mind, I think we should cut back on the posting to social media accounts to once per week. For your time, I think we will need to reduce it down to 1-1.5 days per week. In accordance with our agreement to give 14 days of notice (well it's for termination, but I think it's nice to give you notice of reduction of hours as well) the effective date of this change will be the week starting January 30. …

17. These changes to the original agreement were confirmed by the applicant, by email, on the same day.

18. The respondent submits that the January 13, 2017 email actually terminated the original agreement with notice with a new arrangement being created. However, on April 20, 2017, the respondent sent an email to the applicant stating, in part:

> …, I terminated that working agreement with notice in February. Any other work was intended to be freelance and therefore would be subjected to different terms and conditions that we should have discussed at the time. It is unfortunate that we did not, I expected that standard industry practice for graphic design would be observed. Remember, I did not engage your services in content creation. I asked for a graphic design. [Emphasis added]

19. In *681288 BC LTD v. Hankin*, 2017 BCCRT 140 this tribunal cited *Babich v. Babich,* 2015 BCPC 0175, *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd*., 2015 BCCA 332 and provided a useful overview of the basic elements of a contact, at para. 19:

> …For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must

> agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value … One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter.

20. First, I find that on a balance of probabilities that original agreement (for 16-24 hours of estimated service over 3 days per week) was amended by the parties and reduced to 1-1.5 days (8-12 hours) per week as outlined in the January 13, 2017 emails. That was the 'meeting of the minds' reinforced by the parties' conduct between January 13 and April 20, 2017. Other than its 'belief' in a new agreement on new terms, I find that the respondent has failed to evidence such an agreement and, importantly, acceptance by the applicant.

21. With respect to the respondent's second concern about the quality of work produced and the billing, the respondent relies on a series of emails between the parties including a chain of emails on April 20, 2017. In those emails, the respondent says that it was surprised to receive a bill for the design work because it was industry standard for design work only to be billed if the work was accepted by the end user. Furthermore, the respondent felt the amounts billed were 'excessive' in any event.

22. The applicant also relies on the same April 20, 2017 email chain. The applicant submits that it acknowledged that the respondent had the discretion of whether or not to use the applicant's content. However, the applicant's entitlement to payment was determined, not by satisfaction of the respondent, but by hours spent, as set out in the agreement. I agree with the applicant.

23. I find that the applicant performed in good faith, and the respondent received, substantially what was contracted for under the agreement. I prefer the applicant's evidence which is internally consistent with the parties' conduct.

24. However, the applicant has the burden to prove its damages under the agreement. I decline to award the full 29.5 hours claimed, as:

a. the applicant did not substantiate why it is contractually entitled to be paid for 16.5 hours during the week ending March 31, 2017 when the reduced agreement limited work to 12 hours per each week, and

b. the applicant did not substantiate why it is entitled to a stand-alone 1 hour of work for a "Facebook ad" not falling within a weekly schedule.

25. Accordingly, under the agreement, I find the applicant is entitled to 24.0 hours at $35.00 per hour, for a total of $840.00.

26. As set out in my order below, the applicant is entitled to prejudgment interest under the *Court Order Interest Act* (COIA) from June 28, 2017, the date of the applicant's first written demand for payment.

27. Finally, 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. I therefore find that the respondent must reimburse the applicant for tribunal fees of $125.00. There were no dispute-related expenses claimed.

28. In all, I find the respondent must pay the applicant $882.00, which includes applicable taxes, plus interest under the COIA, plus $125.00 in tribunal fees.

ORDERS

29. I order the respondent immediately pay to the applicant the sum of $1,014.58 which is comprised of:

a. $882.00 for the 24 hours of work and applicable taxes,

b. $125.00 in tribunal fees, and

c. $7.58 in pre-judgment interest under the COIA.

30. The applicant is entitled to post-judgment interest, as applicable.

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.

R. Hoops Harrison, Tribunal Member