



Civil Resolution Tribunal

Date Issued: July 26, 2018

File: SC-2017-007615

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *VTB Vancouver Television Broadcasting Corporation v. Open Road Auto Group*, 2018 BCCRT 379

B E T W E E N :

VTB Vancouver Television Broadcasting Corporation

APPLICANT

A N D :

Open Road Auto Group

RESPONDENT

A N D :

VTB Vancouver Television Broadcasting Corporation

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, VTB Vancouver Television Broadcasting Corporation (VTB), claims \$5,000 for advertising and promotions it provided for the respondent, Open Road Auto Group (Open Road), which Open Road has failed to pay.
2. In its counterclaim, Open Road claims \$5,000 for VTB's use of their MINI Yaletown's vehicles for a 3-year period. VTB is represented by an employee, Harmon Bal. Open Road is also represented by an employee, Aly Jiwani.

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 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.

7. The tribunal's monetary jurisdiction in small claims disputes is \$5,000, exclusive of tribunal fees, applicable interest, and dispute-related expenses. To the extent the parties' claims exceed that amount, they have each abandoned the excess so that the claim could proceed in the tribunal.

ISSUES

8. The issues in this dispute are a) does Open Road owe the VTB money for advertising and promotions, and b) does VTB owe Open Road for use of their vehicles?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. This means VTB must prove its claim for the unpaid advertising and promotions, and Open Road must prove its claim for VTB's use of their vehicles. I have only referenced the evidence and submissions as necessary to give context to my decision.

VTB's claim – payment for advertising and promotion

10. VTB says Open Road hired it to create promotional videos, do onsite promotions at events, and advertise Open Road on television and online. At issue in this dispute are services VTB provided throughout 2017 which Open Road did not pay for. There is no written contract. The fact that there is no written signed agreement does not mean the parties did not have an enforceable agreement, although the absence of a contract makes an agreement harder to prove.
11. It is undisputed that Open Road provided VTB with different MINI vehicles which VTB used as community cruisers. VTB says this benefitted Open Road because it has a VTB "street team" representing their vehicle. Open Road says the evidence shows their vehicles were being used at no-cost in return for VTB's services that were provided during the vehicle's usage. VTB says the exchange was that its staff would get the benefit of driving the car in exchange for Open Road getting the

promotional benefit. VTB says “all the other promotional material” was to be paid by Open Road.

12. On October 28, 2015, Open Road’s General Sales Manager, Gerry Allin, wrote VTB’s executive producer Mr. Bal:

Yes, just to confirm there is no monetary value being attached to the vehicles. BMW has a CEP program and **the more kms. Driven the more benefit Mini Yaletown receives. Vancouver Television will not be billed for vehicle usage.**

[reproduced as written, bold emphasis added]

13. As proof that it did advertising and promotional work for Open Road in expectation of payment, VTB relies on a series of text messages and emails between various representatives of the parties, including the following:

- a. *April 3 – May 13, 2017*: Mr. Bal and Open Road’s General Manager Matt Lay exchanged texts about 2 separate videos VTB did for Open Road, which Mr. Lay said he was pleased with. Emails also exchanged about promo videos VTB did for Open Road.
- b. *July 1, 2017*: Mr. Lay texted Mr. Bal “If Aly will pay you on it all”, which is a reference to Mr. Jiwani. VTB responded “If aly will pay us? I didn’t get it?” and Mr. Lay stated he sent the text to the wrong person. VTB says this shows Mr. Jiwani has a problem paying people, but that VTB reasonably expected payment because the message “if aly will pay” was not meant for VTB.
- c. *August 2017*: The date on the text is not shown, but it is sometime before August 26, 2017, The photo of an invoice is too grainy, but it is undisputed that Mr. Lay sent Mr. Bal that invoice photo stating “I just did another request”. VTB says this shows Mr. Lay has issues getting paid.

- d. *September 16, 2017*: Mr. Lay asked Mr. Bal to “push” one of its MINI vehicles, which VTB says was a request for promotion and advertising for Open Road’s “Over the Top” sale.
 - e. *November 2017*: The date on the text is not shown, but it is sometime before November 10, 2017. Mr. Lay states that he wants to “put you” in a 2018 model car. There is no discussion of money, which VTB says shows that the vehicles were being driven to events by the “Vancouver TV Street Team” and that was advertising for Open Road.
 - f. *November 17, 2017*: VTB posted on Facebook about Open Road’s vehicles and texted Open Road that it had done so.
 - g. *November 20, 2017*: Mr. Bal sent Mr. Lay a photo of one of Open Road’s vehicles “wrapped” in VTB’s logo.
 - h. *December 20, 2017*: Mr. Bal wrote Mr. Lay to say “I really need to get this invoice approved”, and that it was “a small amount of money for the amount of work we’ve done”. Mr. Bal stated, “As you know we even took the car right into the centre of the biggest festival in Richmond”. Mr. Lay responded that he was not in the office that day, “but I’ll see what I can do remotely”. Mr. Bal responded that he is “being ripped apart on this because the car is gone and the videos and events cost us way more”. Mr. Lay replied “I’m guessing Aly didn’t respond to the invoice request”, and Mr. Lay said he would make contact. After Mr. Lay asked Mr. Bal to give him a day, Mr. Bal stated, “I should have just charged you guys for the videos and the events. I got screwed basically!”. Mr. Lay said he wanted to come get the car as if “Aly thinks it’s being held ransom we’ll all be in for it”. Sometime later, Mr. Lay offered to come work for VTB to pay off the debt.
14. On December 20, 2017, VTB wrote Open Road demanding payment of \$5,670 “according to our agreement”. VTB’s December 19, 2017 invoice described “various promotions” for \$5,400, plus \$270 GST, for a total of \$5,670.

15. I am satisfied based on the evidence before me that Open Road hired VTB to do various advertising and promotional work from time to time, as claimed by VTB. There is no suggestion in the evidence or submissions before me that the quality of the work was substandard or not in line with the parties' agreement. In any event, the text messages summarized above show that Open Road was pleased with VTB's work.
16. None of the parties' texts suggest Open Road expected to not have to pay for VTB's work, either because of VTB's promotional use of Open Road's vehicles or otherwise. I find that the evidence does not support a conclusion that VTB was providing advertising and promotion free, in exchange for using Open Road's vehicles.
17. I note the December 20, 2017 exchange summarized above. In all of the circumstances, I find Mr. Bal's "the car is gone" comment simply means not only has VTB not been paid but the staff's benefit of having the free use of the respondent's car is gone, a 'double blow', so to speak. Further, I find the context of all of the parties' texts and emails is that VTB did not formally set a price and charge Open Road in advance for its services, likely due to the good relationship between Mr. Lay and Mr. Bal. I find this explains Mr. Bal's statement, "I should have just charged you guys ...".
18. I find it simply does not make sense that VTB would engage in a significant amount of advertising and promotion for Open Road and not expect payment. There was no significant benefit to VTB to have the use of Open Road's vehicles, apart their staff having a vehicle to drive around the community, which I acknowledge was at times done with a VTB logo. Mr. Allin's October 2015 email confirms the benefit was Open Road's.
19. Open Road submits that the invoice figure of \$5,670 is "out of thin air", given there are no services described. I agree the invoice lacks reasonable detail. I find it is clear from Mr. Bal's and Mr. Lay's text exchanges that there was no price agreed upon in advance and there was no indication VTB was tracking the work it did for

Open Road. This conclusion is supported by the fact that Mr. Bal asked Mr. Lay to provide a list of work VTB had done.

20. The challenge for VTB is that for there to be a valid contract, there must be an agreed upon price or at least a formula to calculate the price. As noted above, I find for the 2017 promotional and advertising services, there was no agreed upon price. Thus, it cannot be said Open Road breached a contract. However, that is not the end of the matter. I find VTB has what is known in law as a claim for unjust enrichment. This means that if Open Road did not pay VTB for VTB's services, Open Road would be unjustly or unfairly enriched, at VTB's expense. The legal test for unjust enrichment is that VTB must show: a) Open Road was enriched, b) VTB suffered a corresponding deprivation or loss, and c) there was no "juristic reason" or valid basis for the enrichment (see *Murray Market Development Inc. v. Casa Cubana*, 2018 BCSC 568). Here, as in *Murray*, the breach of contract claim failed (due to lack of an agreed price), but VTB still has a claim that Open Road was unjustly enriched by its receipt of marketing services. I find that Open Road was unjustly enriched when it received VTB's advertising and promotional services without paying for them, and there was no valid reason for that enrichment, given VTB's use of the vehicles was primarily for Open Road's benefit, not VTB's.
21. I therefore find VTB is entitled to payment for its services. The question then becomes – how much? Unjust enrichment damages are generally speaking based on "quantum meruit", meaning payment for the work that was done, as opposed to an agreed upon price (see *Noh v. Plaza 88 Developments Ltd.*, 2011 BCCA 461).
22. While there was no agreed upon price in advance, there is no suggestion from Open Road that Mr. Lay was not authorized to contract with VTB on Open Road's behalf. Thus, while the evidence before me supporting the amount of the \$5,670 claim is somewhat lacking, the fact that Mr. Lay agreed to pay VTB's invoice leads me to conclude that figure is likely justified for the advertising and promotional work VTB provided throughout 2017.

23. On a balance of probabilities, I therefore find VTB is entitled to payment of \$5,000 for the advertising and promotional work it did for Open Road in 2017. As noted above, this is the tribunal's monetary limit.
24. As VTB was successful, I find it is entitled to reimbursement of \$175 in tribunal fees and, on a judgment basis, \$21 as reimbursement for claimed dispute-related expenses. VTB is also entitled to pre-judgment interest on the \$5,000 under the *Court Order Interest Act (COIA)*, from December 20, 2017.

Open Road's claim – compensation for VTB's use of their vehicles

25. I find it is essentially undisputed that Open Road's counterclaim was made only as a response to VTB's claim. Open Road acknowledges that there was no written agreement that VTB would pay for the vehicles' use, either outright or in exchange for advertising services. Open Road provided no evidence in support of its claim, apart from its admitted 'after-the-fact' January 5, 2018 invoice for \$10,420.87, listing 11 vehicles' serial numbers and mileage for each at \$.55 per kilometer.
26. As referenced above, VTB produced the October 2015 email Mr. Allin, who confirmed that the vehicle was provided at no cost for promotional purposes and the more it is driven for promotion the more it benefits Open Road. This explanation is consistent with VTB's position that it used Open Road's vehicles from time to time for promotional purposes, at no charge. I agree with VTB that the fact that Open Road never asked for payment for VTB's use of the vehicles during the 3-year period Open Road's invoice covers is evidence in support of VTB's position that there was never any expectation of payment.
27. On balance, I find Open Road has not proved its claim that VTB was required to pay for its use of Open Road's vehicles or that such use was in exchange for VTB's advertising and promotional services. I dismiss Open Road's claims. Given it was unsuccessful, I find Open Road is not entitled to reimbursement of tribunal fees.

ORDERS

28. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$5,231.18, broken down as follows:
 - a. \$5,000 as payment of VTB's invoice #10067 for 2017 advertising and promotional services,
 - b. \$35.18 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees and \$21.00 for dispute-related expenses.
29. VTB is entitled to post-judgment interest under the COIA, as applicable.
30. Open Road's counterclaim is dismissed.
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 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.

Shelley Lopez, Vice Chair