



Civil Resolution Tribunal

Date Issued: August 2, 2018

File: SC-2017-002514

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maidenheart Productions v. Kelowna Canadian-Italian Club*,
2018 BCCRT 416

B E T W E E N :

Maidenheart Productions

APPLICANT

A N D :

Kelowna Canadian-Italian Club

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for videographer services provided by the applicant, Maidenheart Productions, to the respondent, Kelowna Canadian Italian Club. The

applicant says it was hired as a videographer to film and produce a video for the respondent's 50th anniversary.

2. The applicant says the respondent approved the \$1,500 quote, but as the respondent did not arrange for interviews the applicant could not complete the video as originally planned. The applicant invoiced \$1,200, and taking into account a \$200 deposit that was paid, claims payment of the \$1,000 invoice balance. The applicant also claims \$300, for its work on the original video that it was not permitted to complete. The applicant is represented by its principal, Adam Ritz. At the time of the parties' submissions for this decision, the respondent club is represented by its secretary, Janet Gagnon, and a club member, Rosy Agostino, in place of Joe lafrancesco, the respondent club's president.

JURISDICTION AND PROCEDURE

3. These are the tribunal's formal written reasons. 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. Neither party requested 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 the Act and 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.

ISSUE

7. The issue in this dispute is to what extent, if any, the respondent must pay the applicant for videographer services.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicants bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The applicant says the original 50th anniversary video was to be a mix of the event footage and interviews of the respondent's club members. It is undisputed that the applicant filmed 4 separate events, and at the time of doing so the parties' relationship was positive. Those events were: a March 17, 2016 St. Patrick's Day club dinner, an August 14, 2016 annual club picnic, a September 24, 2016 choir performance, and a September 25, 2016 "grape stomp". The evidence is clear that the respondent agreed to the applicant sending another videographer K to the August 14, 2016 picnic, in place of Mr. Ritz. Based on the evidence before me, I agree that the applicant regularly asked about when the respondent would have the interviews arranged, and despite assurances, the respondent never did it.
10. On February 22, 2016 Ms. Agostino emailed the applicant to say she had spoken with Mr. lafrancesco who thought the video was a "great idea". The respondent says there was no written contract at the outset, which is true, and Ms. Gagnon says that a \$1,200 total price was discussed. Ms. Agostino however does not deny that \$1,500 was the agreed upon price, as alleged by the applicant. The parties agree the respondent paid a \$200 deposit.

11. On October 9, 2016, Mr. Ritz texted Ms. Agostino and asked “So the 50th Anniversary is coming up isn’t it?” Ms. Agostino did not respond. On October 14, 2016, Ms. Agostino texted Mr. Ritz, “Are you coming tonight?” and Mr. Ritz said he was in Toronto and was not aware of anything that night. Ms. Agostino replied, “That’s ok” and after Mr. Ritz asked “What’s tonight?” she said it was the 50th anniversary party. Mr. Ritz and Ms. Agostino then had the following text exchange on October 15, 2016:

Mr. Ritz: That’s why I asked when it was happening before. Are we still interviewing members for the video or is the one I made sufficient? I don’t mind either way but I’m getting really busy and I’d like to finish up soon!

Ms. Agostino: Club was very busy once is all done we’ll set up times.

[reproduced as written]

12. The applicant says the respondent later asked it to produce a separate video with the event footage, relating to the grape stomping contest, which the applicant did as a free or included item in the original \$1,500 quote. At the time of the 50th anniversary, the respondent had still not organized the interviews, so the applicant could not complete the original video, but as noted above had filmed 4 events and edited a video. I agree, as this is supported by the text and email evidence before me.
13. Given the above circumstances, on February 10, 2017 the applicant therefore charged \$1,200 for work done to date, less the respondent’s \$200 paid deposit, leaving a \$1,000 balance. The applicant offered to complete the original video (with interviews) for \$300, whenever the respondent arranged those interviews. Ms. Agostino’s response was that she would speak to Mr. lafrancesco.
14. On February 17, 2017, Ms. Agostino acknowledged that the club “said we needed this video”, but that the applicant had no film on the 50th anniversary, which was the most important event of all. Ms. Agostino further stated that the applicant had not spent enough quality time at the events that he filmed. She wrote that Mr.

lafrancesco did not want to proceed with the applicant's video, but was willing to give "some money" for the video the applicant did on "the grape stomping" event.

15. On March 23, 2017, at the respondent's request, the applicant sent a written contract outlining the agreed upon videographer services. I have only the applicant's email in evidence however, not the contract itself. I find nothing turns on this 'after the fact' contract, given neither party signed it.
16. Based on the respondent's submission, it appears one central objection was that the applicant sent the video footage it did complete to Mr. lafrancesco in digital form, rather than in a hard copy. I reject this argument. There is nothing in the correspondence to indicate that a hard copy was promised and there is no indication that the respondent ever required one. I cannot agree that a videographer sending its footage digitally was improper, as I agree with the applicant that it gives the recipient various options for storing and reproducing the content.
17. I also do not agree with the respondent's submission that the applicant failed to attend enough events or spend enough time at the events he did attend. This is simply not consistent with Mr. Ritz' and Ms. Agostino's text messages about appropriate events to attend. While I accept that the 50th anniversary party itself was a key event, I cannot fault Mr. Ritz for not attending it. He asked Ms. Agostino about the date of it and she did not respond until it was too late. I find Mr. Ritz reasonably understood Ms. Agostino was authorized to represent the club in this matter.
18. The respondent also submits that the applicant's video was of an inferior quality, that it was "hastily assembled" and not in sequence, with no credits, and only one (erroneous) date on the opening page. I agree the September 10 date used at the beginning of the video is unexplained, but that detail alone could have been addressed and is not a reason to not pay the applicant's invoice. Otherwise, I have reviewed the video and cannot agree with the respondent. While I accept it may not be what the club members may have specifically wanted, I find the applicant

was not given specific instructions. The video shows the various events and is woven together in an artistic way, together with Italian music.

19. I find the parties agreed to \$1,200 for the video that the applicant ultimately produced, and the respondent has paid \$200 as a deposit towards that amount. I find the applicant is entitled to payment of the \$1,000 claimed for his outstanding invoice.
20. I do not allow the applicant's claim for \$300, which related to a separate music video project that the applicant says he had to cancel because he did not receive the respondent's payment. I accept that the applicant did pay a third party \$300 for that project and then later decided not to proceed with it. However, I find the applicant has not proven he was unable to proceed due to not receiving the respondent's \$1,000 payment. I dismiss the \$300 claim.
21. In accordance with the Act and the tribunal's rules, as the applicant was substantially successful in this dispute I find it is entitled to reimbursement of its \$125 in tribunal fees and \$31.90 in dispute-related expenses for serving the respondent. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$1,000, from February 10, 2017.

ORDERS

22. I order the respondent to immediately pay the applicant a total of \$1,170.17, broken down as follows:
 - a. \$1,000 in payment of the applicant's invoice,
 - b. \$13.27 in pre-judgment interest under the COIA, and
 - c. \$125 in tribunal fees and \$31.90 in dispute-related expenses.
23. The applicant's remaining claim is dismissed. The applicants are entitled to post-judgment interest under COIA, as applicable.

24. 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 decision.

25. 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.

Shelley Lopez, Vice Chair