



Civil Resolution Tribunal

Date Issued: September 27, 2018

File: SC-2017-006991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *TYLERT WEB SERVICES INC. v. 1081124 B.C. LTD.*, 2018 BCCRT 582

B E T W E E N :

TYLERT WEB SERVICES INC.

APPLICANT

A N D :

1081124 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Salima Samnani

INTRODUCTION

1. This is a dispute about whether a service-provider is entitled to be paid for the full amount of a contract for services, when the client terminates the contract before the work is completed.

2. The applicant Tylert Web Services Inc. was hired by the respondent 1081124 B.C. Ltd. to primarily develop a website. Prior to the work being completed the respondent fired the applicant. The applicant is represented by Tyler Trowbridge and the respondent is represented by Robert (Bob) Rogers.

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 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 issue in this dispute is whether the applicant is entitled to be paid the full amount that the respondent contracted to pay him.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears 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 parties' arguments were relatively brief.
10. On July 17th, 2017 the parties first made contact with each other and began negotiating a contract for services. On August 15th, 2017 the parties signed a contract that outlined the deliverables by the applicant and compensation. In the contract, the respondent agrees to pay the applicant \$3,000 a month for three months. The second month of the contract includes 3,000 shares in the company, and the third includes 6,000 shares.
11. The applicant billed the respondent for three months but was only paid for the first two months. The applicant claims that it is owed a payment of \$1,500 plus GST for the last month of work and 3,000 shares. The applicant has not claimed the 6,000 shares for the last month of work.
12. The main mode of communication between the parties is through text messages. In reading the text messages it is clear that the parties failed to communicate clearly. It is difficult to piece together a narrative from over 100 text messages spanning four months. However, I find that the respondent seemed unclear on the exact services that the applicant could provide, despite the applicant's continual explanations. The parties were in a cycle that saw the applicant pushing the respondent to get the project moving, and vice versa. Both parties missed meetings, were often too busy to talk about crucial matters, and had numerous personal matters that interrupted the flow of work. On October 25th, 2017 the

parties exchanged text message where the applicant asked if it should continue working on the website and the respondent asked it to continue. There is no evidence that the website was completed in good working order. The respondent says that the website was not completed.

13. The applicant has also provided dozens of emails, which show the parties communicating until late October. From the emails and text messages it seems that the respondent did not stop asking for work from the applicant until the third week of October. It is not clear when and how the respondent fired the applicant.
14. From the communications between the parties, it is clear that the respondent was not pleased with the applicant's work. It also clear that the work done by the applicant did not function, was incomplete, and deadlines were missed.
15. The contract does not say that an essential term of the contract is that the applicant will travel to India and deliver a fully functioning website. However, through the text messages and emails, both parties clearly agree that the website and travel are an essential deliverable by the applicant – neither was delivered.
16. Despite the applicant not being able to travel to India, being pre-occupied with personal matters and not providing adequate work, the respondent did not fire the applicant until mid-October.
17. Based on the evidence before me, I find that the applicant only partially provided the services it was required to provide and was paid partially for two of the three months it worked for the respondent.
18. On balance, I find the applicant has not met the burden of proof of showing that it delivered the agreed upon services and thus has not proved it is entitled to be paid for the last month of the contract.
19. The applicant also claims costs for legal services but has not provided any evidence regarding the legal fees. I cannot make any findings regarding this claim.

In any event, the tribunal's rules provide that legal expenses would be ordered in only extraordinary cases, and this is not an extraordinary case.

20. For the reasons stated above I dismiss the applicant's claims. As the applicant was unsuccessful, I find it is not entitled to reimbursement of tribunal fees.

ORDERS

21. I order that the applicant's claims, and therefore this dispute, are dismissed.

Salima Samnani, Tribunal Member