



Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2017-003860

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LMP Publication Limited Partnership v. Liza D Pattern, Design and Sourcing Lab Inc.*, 2018 BCCRT 768

B E T W E E N :

LMP Publication Limited Partnership

APPLICANT

A N D :

Liza D Pattern, Design and Sourcing Lab Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rose Keith

INTRODUCTION

1. This dispute concerns a claim for unpaid services for online marketing and search engine optimization. The parties disagree on what the terms of the agreement were

as well as the amount owing for the work that was performed. The applicant claims \$2,940.

2. The applicant, LMP Publication Limited Partnership, provides digital marketing services including website development, search engine optimization (SEO) and social medial account management. The respondent, Liza D Pattern, Design and Sourcing Lab Inc., is a fashion design and merchandising academy which provides a variety of fashion design courses. The respondent retained the applicant to provide search engine optimization (SEO) as well as social media marketing. The respondent cancelled the agreement 11 days after the work began.
3. The applicant is represented by Lisa Allen, an employee or principal. The respondent is represented by Liza Deyrmenjian, a principal.

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 through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.

7. 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

8. The issue[s] in this dispute are:
 - a. What amount, if any, is the applicant entitled to be paid for the services that they provided to the respondent?
 - b. Is the applicant entitled to reimbursement of CRT fees in the amount of \$125?
 - c. Is the respondent entitled to reimbursement of CRT expenses?

EVIDENCE AND ANALYSIS

9. On June 5, 2017, representatives of the parties met to discuss provision of digital marketing services. Following that meeting, the applicant emailed the respondent outlining its services and the costs associated with them.
10. The applicant's email had the subject line "campaign breakdown" and was noted to be sent following the discussion earlier that day. The email lists a variety of services, totaling \$6,000 per month. The detailed services included \$2,000 for services for the Vancouver area and \$4,000 for services for Mexico. The Vancouver services included \$1,250 for SEO for 10 key works primarily targeting Vancouver

and \$750 for programmatic display targeting the Vancouver market. The \$4,000 monthly Mexico services was noted to include \$2,000 towards google. This was comprised of a \$500 management fee and \$1,500 directly to google. There was also \$1,000 towards Facebook and Instagram including a \$300 management fee and \$700 direct ad spend to social channels. The remaining \$1,000 was a programmatic fee noted to again be targeting the Vancouver market. The concluding note in the email confirms an earlier discussion that the applicant had already begun implementing the SEO and will continue to set up the rest of the campaign first thing tomorrow morning.

11. The respondent emailed back that “this all looks good”.
12. On the morning of June 12, 2017 the applicant emailed the respondent attaching artwork for approval. This artwork was for programmatic ads. By return email the respondent approved the artwork. Later that afternoon the applicant emailed the respondent with a briefing of the campaign’s progress to date. In that email the applicant stated that the following has been done:
 - a. SEO is already in progress;
 - b. that the social media ads have been approved and have been launched;
 - c. programmatic ads are approved and are being served by today;
 - d. google ads would be running within the next couple of days and ads would be sent to the respondent for her approval once they were ready.
13. On June 13, 2017 the respondent provided her approval of keywords and also provided credit card information to complete the requirements for the google ad words campaign. The applicant’s June 13, 2017 invoice is for \$840. The invoice is for two services, a social management fee of \$300 and an adwords management fee of \$500. There is no evidence that this invoice was ever paid and there is no evidence that the respondent disputed this invoice.

14. On the morning of June 16, 2017 the applicant emailed an interim report to the respondent on the progress of her social media campaign. The report included a summary on the progress of the Facebook and Instagram ad campaigns. The Facebook ad campaign was noted to be geared towards people in Mexico City and Monterrey, while the Instagram campaign targeted Vancouver.
15. Later in the afternoon on June 16 the applicant sent an email to the respondent, providing details on the steps that had been completed for the campaign. The email indicated that two campaigns were created, one for a full time program and the other for continuing education. The email details the number of ads, keywords, ad extension, bid adjustments and maximum bids. The respondent replied to this email thanking the applicant for their time and advising that she has decided to move her SEO and ad campaign in-house. The respondent instructed the applicant to end their work as that day. The respondent concluded her email with a request to be provided with an invoice for work concluded. The applicant responded that it required 30 days' notice of any cancellation.
16. In a June 19, 2017 invoice, the applicant invoiced the respondent for \$2,940.00. This invoice was comprised of 4 services reflecting "costs of digital products completed and provided to client to date. The services invoiced included the following:
 - a. \$1,250.00 for SEO set up and running,
 - b. \$300 for social media set up, with the notation that client is using all social media, ads already created in English and Spanish,
 - c. \$500 SEM set up and completed strategy to go live,
 - d. \$750 programmatic created 15 ads up and running for one week.
17. The subtotal for the services invoiced on June 19, 2017 was \$2,800.00. After addition of \$140 for GST the total due on this invoice was \$2,940.00. This invoice was sent to the respondent on June 20, 2017. Within minutes of receiving the

invoice by email the respondent replied that there is no contract and that the applicant can go to collections. By email the respondent complained that the final invoice was not fair and that it was not made clear to her what the cost was. She states that she was under the clear understanding that the cost was \$1,250.00 and that the applicant had only worked for one week.

18. On June 20, 2017 the applicant invoiced the respondent \$2,100. The invoice states that this is for “costs of digital products completed and provided to the client and not yet invoiced”. The details in the invoice include a charge of \$1,250.00 for SEO set up and running and \$750.00 for programmatic including the creation of 15 ads which ran for one week, plus GST of \$100 in these fees. From the evidence submitted, it does not appear that this invoice was ever sent to the respondent.
19. The evidence relied on by the applicant included screen shots of ads that they had created for Instagram and Facebook, noting that the ads had received over 1800 likes in the 11 days that the applicant had the respondent’s account.
20. The applicant submits that under the parties’ June 5, 2017 agreement, it provided advertising services to the respondent. of the applicant issued a \$2,940 invoice that remains unpaid. The applicant seeks an order that the respondent pay the \$2,940 outstanding on the invoice, plus their dispute-related expenses totaling \$70.35 and an order that the respondent reimburse it for \$125 in tribunal fees.
21. The respondent submits that there was no agreement and no signed contract and disputes payment of the invoice because of this. She says that she agreed to a fee of \$800 per month for management and has offered to pay \$400 towards this because of the two weeks that she worked with the applicant.
22. A contract for services does not have to be in writing and signed to be enforceable. What is required for a contract to be enforceable is an offer, acceptance and consideration. I find that the applicant made an offer to contract in the July 5, 2017 meeting. The terms of that offer were communicated in writing later that evening by email. The respondent communicated her acceptance of the terms in her

responding email. I find that the terms agreed to between the parties did not include a provision that the contract was subject to a 30 day notice for cancellation.

23. I find that in reliance on the respondent's acceptance of the terms the applicant conducted the work that was contemplated in the agreement. I find that the work conducted by the applicant included setting up and running SEO, preparation of social media ads, preparation of programmatic ads, preparation of a google ad words campaign and preparation and launching of a social media advertising campaign on both Instagram and Facebook platforms.
24. I find that the terms for provision of services agreed to by the respondent included payment for the services that the applicant provided between July 5, 2017 and July 16, 2017 when the respondent terminated the contract.
25. I conclude that the applicant's \$2,940 invoice is reasonable in the circumstances. Specifically, I find as follows:
 - a. the July 5 email specified a cost of \$1,250 for SEO set up and running. I find that the applicant performed these services. The invoice included a charge of \$1,250 for SEO set up and running;
 - b. The July 5 email specified a cost of \$300 for set up of social media (Facebook and Instagram). I find that the applicant performed this service. The invoice included a charge of \$300 for social media set up;
 - c. The July 5 email specified a fee of \$500 for SEM management (Google adwords). I find that the applicant performed this service prior to termination of the contract by the respondent. The invoice included a charge of \$500 for SEM management;
 - d. The July 5 email specified a fee of \$750 for programmatic. I find that the applicant performed this service prior to the termination of the contract by the respondent. The invoice included a charge of \$750 for programmatic.

26. I find that the fees specified in the July 5 email and referenced above related to services that would be provided by the applicant. They did not, as suggested by the respondent, relate to costs that would be paid to third parties for advertising.
27. 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 find the applicant is entitled to reimbursement of \$125 in tribunal fees. I make no finding with respect to the applicant's claim for \$70.35 in dispute-related expenses as no evidence was presented with respect to the nature of those expenses or how they related to this dispute.

ORDERS

28. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$3,110.61, broken down as follows:
 - a. \$2,940.00 as payment for services provided under the contract;
 - b. \$45.85 in pre-judgment interest under the *Court Order Interest Act*, calculated from June 27, 2017 until the date of this order; and
 - c. \$125 for tribunal fees.
29. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

Rose Keith