



# Civil Resolution Tribunal

Date Issued: December 12, 2018

File: SC-2018-002236

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Wisto Inc. v. Orianna Lacey (Doing Business As TheMarketingsmith)*,  
2018 BCCRT 839

B E T W E E N :

Wisto Inc.

**APPLICANT**

A N D :

Orianna Lacey (Doing Business As TheMarketingsmith)

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Lynn Scrivener

## INTRODUCTION

1. This dispute is about the return of a deposit paid on a contract. The applicant, Wisto Inc., entered into an agreement with the respondent, Orianna Lacey (Doing Business As TheMarketingsmith), to create a website. The applicant asks that a

portion of the deposit be returned as the respondent did not complete the website. The applicant also asks for an order that the respondent acknowledge the damage and delay it experienced. The respondent disagrees with the applicant's position.

2. The applicant is represented by Roeheny Alexandre. The respondent is self-represented.

## **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 issues in this dispute are:
  - a. whether the applicant is entitled to an order that the respondent return \$2,550 of the fees paid under the contract; and
  - b. whether the applicant is entitled to an order that the respondent acknowledge the damage the delay related to the cancellation of the contract caused the applicant.

## **EVIDENCE AND ANALYSIS**

8. The applicant entered into a web design contract with the respondent. The contract is not dated, but the applicant says, and the respondent does not dispute, that it was signed in November of 2017. The contract contemplated the creation of a temporary landing page for the website by December 5, 2017 at a cost of \$150.00. The second phase involved the creation of the website and marketing strategy for a fee of \$7,800, with a completion date of February 15, 2018. The contract required an immediate payment of \$3,000, and four subsequent payments of \$1,200 each, to be paid on specified dates in January through April of 2018.
9. The contract did not contemplate cancellation or non-completion. The contract stated that once the website was started, “all parties must fulfill their agreed duties”, with the applicant paying the full \$7,800 plus taxes, and the respondent completing the website.
10. The applicant made two payments of \$3,000 and \$150 to the respondent on December 1, 2017 and January 19, 2018, respectively. It does not appear that the applicant made the \$1,200 payments required on January 5 or February 5, 2018. The parties did not explain this departure from the payment structure set out in the contract.

11. The respondent created the landing page, and began work on other aspects of the project. The applicant says there were communication difficulties between the parties, and the draft work product contained errors.
12. The applicant says the respondent did not complete the work as contemplated by the contract, which delayed the website launch and associated business. The applicant cancelled the contract and, in a February 20, 2018 email message, asked the respondent to return \$2,550 of the funds it had advanced, which the applicant described as a deposit. The respondent did not return any funds to the applicant.
13. The applicant says that the respondent should return \$2,550 of the total amount of \$3,150 it paid under the contract. It did not explain how this amount was calculated. The applicant's position is that it paid thousands of dollars for a worthless service, as without a website it did not have a business. The applicant asks that the respondent acknowledge the damage associated with the delay in launching the business, which it valued at \$1,000. The applicant also seeks reimbursement of tribunal fees of \$125.
14. The respondent disagrees with the applicant's position, and submits that the deposit of \$3,000 was depleted by the groundwork required to create a website. The respondent describes having spent many hours engaged in creating a logo, the initial setup and of the website, the landing page design, and marketing strategy sessions. The respondent says she created the landing page, the actual website, a marketing strategy, and graphic design. The respondent submitted documents and images showing work done on the website.
15. The respondent says that the timelines in the contract are dependent upon the client providing materials and edits in an efficient manner. She suggests that the applicant created delays in the process, and points to undated text messages in which a principal of the applicant says "no need to put the website online now" and "we know we delay the work" in support of this position. The respondent says that she should not have to return any funds to the applicant or be responsible for any other amounts. The respondent requested reimbursement of her tribunal fees of

\$25. The respondent did not bring a counterclaim against the applicant for cancelling the contract.

***Issue One: Return of the Deposit***

16. In a claim such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their positions. Although I have read these submissions in their entirety, I will refer only to the evidence necessary to provide context to my decision.
17. As noted above, the contract between the parties did not address the possibility of the termination of the contract prior to its completion. I note that the completion dates in the contract are followed by asterisks; it is not clear what these symbols indicate. It would appear that the target completion dates, as well as the payment due dates, were not adhered to strictly by the parties before the applicant cancelled the contract. In any event, the terms of the contract do not contemplate the return of all or part of the funds paid from the applicant to the respondent upon cancellation. This is not a situation where a deposit was paid, nothing was done, and the respondent says the deposit was non-refundable. In this case, work was done under the contract.
18. The landing page appears to be complete and the applicant does not take issue with this aspect of the agreement. Instead, the applicant focused on the fact that the website was not completed in order to enable it to launch its business. The contract document contemplates the creation of a website that “enables [the applicant] to test WISTO in Montreal” by February 15, 2018. It is not clear whether the testing phase is distinct from the launching of the business.
19. I note that the contract did contemplate the completion of other work, such as a marketing strategy. The agreement did not provide an itemized breakdown of the various amounts attributable to each facet of the project, but rather identified a single amount for the website and marketing strategy. The timeline document

provided by the respondent indicates that the bulk of this work was intended to be performed at the beginning of the project.

20. The available evidence does not indicate that the parties could or would not have completed their obligations under the contract had it not been cancelled. Although there were communication issues and alleged errors in the draft work product, I am not satisfied that the respondent breached the contract. This is so despite the failure to meet the anticipated February 15, 2018 completion date, as the applicant indicated that it took responsibility for at least some of the delays.
21. I find that the applicant has not established that the respondent's work had no value. Although incomplete, the website features images and content including sample blog entries. Further, the respondent produced work product in the areas of graphic design and marketing information (including a script for attracting businesses). The applicant has not shown that this work cannot be used in a future launch or, in the case of a website, completed by an alternate service provider.
22. The respondent relied upon the agreement and invested time in the project before the applicant's decision to cancel the contract. As discussed, I am satisfied that the applicant received a benefit from the respondent's work. The applicant paid just under 40% of the sum payable for the website portion of the project. I find the respondent completed about half of the work contemplated by the agreement. I am satisfied that the amount paid is reasonable compensation for the work performed. I find that the respondent is entitled to retain the funds paid to her by the applicant.
23. I find that the applicant has not met its burden of proof, and that it is not entitled to the return of any portion of the money paid to the respondent.

***Issue Two: Acknowledgment of Damages***

24. The applicant also requests an order that the respondent acknowledge the damages associated with the failure to complete the website on time. The applicant mentioned the amount of \$1,000 in damages, but no evidence was provided to

support this claim. Further, the evidence does not establish what steps, if any, the applicant undertook in order to minimize its losses. I find that the evidence does not support the alleged damages. As the claim is not proven, I decline to make the order sought.

25. It is not clear to me whether the applicant also seeks an apology from the respondent. The tribunal generally does not order apologies because forced apologies are not productive or helpful. I see no reason to deviate from that practice here. If the applicant seeks this form of acknowledgement, I would decline to make such an order.
26. 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. The applicant's claim for reimbursement of tribunal fees is dismissed. I find the respondent is entitled to reimbursement of \$25 in tribunal fees that she paid.

## **ORDERS**

27. I dismiss the applicant's claims.
28. Within 30 days of the date of this order, I order the applicant to pay the respondent a total of \$25 for tribunal fees. The respondent is entitled to post-judgment interest on this amount, as applicable.
29. 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.
30. 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.

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Lynn Scrivener, Tribunal Member