



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Encore Exhibitions Inc. dba West Coast Women's Show et al v. Laura Ballance Media Group Inc.*, 2019 BCCRT 108

B E T W E E N :

Encore Exhibitions Inc. dba West Coast Women's Show and West Coast Women's Show

APPLICANTS

A N D :

Laura Ballance Media Group Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about marketing services. The applicants, Encore Exhibitions Inc. dba West Coast Women's Show and West Coast Women's Show (collectively, Encore), hired the respondent, Laura Ballance Media Group Inc. (LBMG), to provide certain publicity and promotional work for the October 20-22, 2017 West Coast Women's Show in Abbotsford (Show).
2. Encore says LBMG failed to provide 3 specific services that it says were expressly part of the contract. LBMG says it did provide the services and all of its targets were exceeded. LBMG denies liability.
3. Encore is represented by Murat Olcay, who I infer is an employee or principal. LBMG is represented by Laura Ballance.
4. For the reasons that follow, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v.*

Pope, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. 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.

ISSUE

9. The issue in this dispute is to what extent, if any, the applicant is entitled to a \$3,000 refund for marketing services on the basis that the respondent failed to fulfill the parties' contract.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
11. The parties' June 27, 2017 3-page contract sets out a 13-item list of services, under the heading "overview of services". The 3 specific services allegedly not provided are among that list, as discussed below. The contract sets out "key dates and opportunities": the "start" as August 1, 2017 and the Show dates as October 20 to 22, 2017. Elsewhere, the contract says it ends on January 1, 2018.
12. The contract expressly states LBMG believes in fair billing practices and "only bills clients for services provided". Under the heading "pricing and fees", the contract's "flat fee" price was \$9,000 plus GST, for "traditional media and

bloggers/influencers”. Payments were to be made in \$3,000 installments (presumably, plus GST), on August 1, September 1, and October 1, 2017.

13. The contract does not provide a pricing breakdown for the items listed in the “overview of services”. The contract also states that it constitutes the parties’ entire agreement, and no modification, extension or change is effective unless agreed to in writing by both parties.
14. Encore says its Show features about 350 exhibitor companies plus about 60 speakers. I accept this undisputed evidence. Encore emphasizes there is a distinction between the two, in that the speakers typically are celebrities, fitness experts, and chefs, and they are completely separate from the exhibitors. Encore also says there is a clear distinction between a generalized email to a media outlet and a customized story pitch. Encore submits the latter involves researching and interviewing the subject to “unearth the human-interest angle” and pitching that story to the outlet that is most likely to cover it. As discussed further below, I find the parties’ contract does not make this distinction.
15. Generally, LBMG says it went well above the contract’s scope, and that it put in over \$15,000 of time, for the \$9,000 contract. I find this is irrelevant, given the fixed price contract.
16. LBMG says it exceeded the comparative year metrics given by Encore, noting the Show was “up” in media coverage and up in attendance over the previous year. In particular, LBMG says it surpassed “key metrics”, increased media awareness and coverage and increased attendance, and did an exceptional job of promoting the Show. LBMG says Encore is unfairly trying to achieve a discount after the fact.
17. I agree with Encore that the Show’s overall performance is not relevant to this decision. This dispute is about the parties’ contract and whether LBMG performed all of the promised services, which were all included in the \$9,000 flat rate fee.

18. As referenced above, Encore's claim is that LBMG failed to provide 3 specific services that were part of the contract. Those 3 services, which I have highlighted in bold below, were as noted part the following "overview of services" 13-item list:

- a. Inform long lead media / web sites / magazines
- b. Event listings – add to all radio, print, online, TV community and event calendars
- c. Plan and arrange blogger partnerships (WCWS has a budget for bloggers but also trade booth space and promotion)
- d. Prepare and distribute media kit
- e. Media releases / advisories
- f. Distribute media tickets (1,000 printed)
- g. Prepare a media kit for onsite media (fact sheet, show highlights, etc.)
- h. **Pre-show pitch individualized story ideas to media and bloggers (exhibitors, celebrities, speakers, etc.),**
- i. Pitch celebrity speakers and talent for media interview (Note: Interview to be coordinated with talent agents)
- j. Escort interview subjects to media outlets
- k. **Coordinate any on-site media and blogger requirements,** and
- l. **Meet and coordinate media contest winners (Green Room meet & greet winners, reserved seating Main Stage, reserved table at Main Stage Lounge.**
- m. Present generated editorial / interviews wrap report

19. One of LBMG's central arguments is that the "overview of services" list was only a "general summary", based on the definition of overview in the dictionary. LBMG

argues that it had discretion to use their expertise to provide the most appropriate services.

20. I do not agree the overview was just a general summary, in the circumstances before me. I find the overview set out specific things the parties agreed that LBMG would do. In other words, it was not open to LBMG to entirely or substantially ignore a task item because LBMG decided it was not worthwhile. I find the specificity in the descriptions in the contract's overview of services makes it clear that LBMG was to get those jobs done. This conclusion is supported by the parties' communications prior to the Show.
21. However, I find the overview allowed some latitude for LBMG to work out the details of how each item would be accomplished. For instance, the overview list does not prescribe the length of a customized story pitch or how much detail must be provided nor does it specify the number of story ideas to be pitched. The overview list also does not detail what is entailed by "coordinate" the on-site media and blogger requirements. I find this latitude allowed for some exercise of judgment by LBMG.
22. I will address in turn the 3 alleged incomplete tasks below.

Customized story pitches

23. On September 19, 2017, Encore sent LBMG a list of "interesting exhibitors", and stressed the importance of the human interest /local business success story angle. In other words, Encore highlighted the importance of a customized story pitch. Encore asked for updates on September 28 and October 3, 2017. Encore says that after receiving an email from LBMG that one recommended individual was unsuitable, Encore called LBMG and stressed the importance of pitching customized stories, in order to achieve its mandate of getting editorial in Black Press community newspapers.
24. Encore says LBMG's only evidence of its communications with the media about interesting exhibitors was in the form of a generic outline, not a customized story

pitch. I do not agree, based on LBMG's "samples" in evidence before me. It is true that these pitches are a few short sentences long at most, and do not appear to be particularly in-depth. However, nothing in the parties' contract spells out the length or "depth" of a customized story pitch. The samples provided are individualized in that they address the background of each exhibitor, albeit somewhat briefly.

25. LMBG says they made dozens of custom pitches in advance of the Show. LMBG also says the email evidence is only a portion, as they did some pitches by telephone. Nothing in the parties' contract precluded telephone pitches.
26. LBMG's professional view was that focusing on celebrities and speakers, rather than exhibitors, was the best approach for promoting the Show. There is some evidence of LBMG pitching exhibitors and more evidence of their pitching stories about speakers. I find the overview task description allowed LBMG that degree of latitude. On balance, I find that Encore has not proved LBMG failed to make a reasonable number of customized pitches, as required by the parties' contract.
27. I also find the parties' contract did not require LBMG to pitch every single exhibitor or speaker. Rather, the contract implicitly required LBMG to pitch a reasonable and substantial number of customized stories, and LBMG had the discretion as to whether to focus on speakers over exhibitors. I find the brackets in the task description indicate a suggestion for focus, not a requirement. The contract also does not require LBMG to have documentary proof of all of their pitches, though LBMG did provide a list of the pitches it made.
28. Encore submits that not a single piece of earned media was centered on an interesting exhibitor. That may be true, but the parties' contract did not require editorial outcome and, as noted, I find it did not require a focus on exhibitors specifically. I agree with LBMG that media coverage is not guaranteed, and can be influenced by a number of items outside LBMG's control, such as normal news cycles or world events. The fact that in 2018 Encore's new publicist achieved certain editorial outcomes with publication of individualized stories is not determinative.

29. On balance, I find Encore has not proved that LBMG failed to make customized story pitches as required by the parties' contract. I dismiss this particular claim.

Coordinate any on-site media and blogger requirements & meet and coordinate media contest winners

30. Encore says that LBMG has not shown it did any "at-show" duties. However, as noted above, in this dispute Encore bears the burden of proving LBMG failed to meet this contractual requirement. Further, the contract set out very limited at-show duties: 1) coordinate any on-site media and blogger requirements, and 2) meet and coordinate media contest winners.

31. On September 15, 2017, Encore emailed LBMG with what Encore says was a list of at-show duties. Generally speaking, this list detailed various sponsors and prizes, and for 2 of the 7 prizes LBMG was asked to meet the winners at the Show and award their prize. In addition, LBMG was to have a representative meet winners of 2 Facebook contests: a "Meet & Greet with Colin & Justin" at noon on October 21 and winners of "Y & R contest" at noon October 22. Based on the evidence before me, Encore has not proved LBMG failed to do these things.

32. On September 18, 2017, Encore agreed to reserve seats for the meet and greet winners. However, Encore says that reserving seats was a "very minor element" of their at-show duties. With the exception of meeting contest winners, I find Encore has not shown what the agreed at-show duties actually otherwise were, under the terms of the parties' contract. The evidence Encore says shows it handled the at-show duties was largely pre-show arrangements for set-up. In any event, as noted above, LBMG's duties were at most limited to media and blogger requirements, and coordinating the media contest winners.

33. I accept LBMG's evidence that its time records reflect its staff time both at the Show site but also working on the project. LBMG's staff have provided statements that they were at the Show, and on balance I accept this evidence.

34. Encore says it handled the on-site media requirements for certain radio stations, and that this was LBMG's job. LBMG disagrees and says that was all part of the "paid media buy", which was Encore's responsibility. In support, LBMG relies on Encore's June 17, 2017 email that said Encore's show team was handling the "media buy" along with coordination of the media contests and other matters, "so that our PR team can focus on generating editorial and pre-show interviews".
35. On balance, I find Encore has failed to prove LBMG failed to "coordinate any on-site media and blogger requirements", given the totality of the evidence before me. While in its reply submission Encore says media booths, furnishings, electrical, and so on are plainly an on-site media requirement. Yet, Encore has not shown LBMG failed to do those things. The fact that Encore exchanged a few emails before or during the Show does not prove LBMG failed to honour its contractual duties. Moreover, those emails from Encore do not read as though Encore was jumping in to do work LBMG was expected to do. There is also no evidence before me that Encore raised concerns at the time about having to do LBMG's work. I find this supports a conclusion that at the time there were no such concerns.
36. On balance, I find Encore has not proved LBMG failed to coordinate on-site media and blogger requirements. I say the same about the meet and coordinate media contest winners. I dismiss these claims.
37. Further, even if I had found LBMG had not met one or more of its contractual obligations as alleged, the applicant has not provided any explanation of how it arrived at \$3,000 as the value of its claim. I would not have awarded \$3,000 in any event.
38. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful in this dispute I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

39. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair