Civil Resolution Tribunal

Date Issued: February 8, 2019

File: SC-2018-004769

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *GAMEPLAN FINANCIAL GROUP INC. v. STANFORD*, 2019 BCCRT 160

B E T W E E N :

GAMEPLAN FINANCIAL GROUP INC.

APPLICANT

A N D :

MICHAEL STANFORD

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, GAMEPLAN FINANCIAL GROUP INC., says the respondent, MICHAEL STANFORD, agreed to purchase an automated client acquisition system (ACA system) from it, but failed to make the scheduled monthly payments. The applicant seeks payment of the outstanding balance of $1,476.30.

2. The respondent says the applicant's webinar led him to believe he could cancel at any time without penalty. The respondent says the applicant misled him, and the ACA system is ineffective.

3. The applicant is represented by Tyler Hoffman, whom I infer is its principal. The respondent is self-represented.

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 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.

5. 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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: 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.

ISSUES

8. The issue in this dispute is whether the respondent owes the applicant $1,476.30 under the parties' contract.

EVIDENCE AND ANALYSIS

9. 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.

10. Printouts of the applicant's website provided in evidence indicate that the purpose of the ACA system is to generate client leads from LinkedIn and Facebook. Purchasers of the ACA system were promised access to an online portal, a "prospecting toolkit", 20 learning modules, instructions for implementing the ACA system, and templates for sales emails and social media marketing.

11. A printout from the applicant's website provided by the respondent shows that there were 2 payment options for purchasing the ACA system. Option A was $1,997 plus GST "paid in full". Option B was $197 plus GST per month, for 12 months.

12. The parties agree that the respondent purchased the ACA system on February 28, 2018, as an online purchase through the applicant's website. The respondent's credit card record shows that he was charged $206.85 ($197 plus GST) by the applicant on February 28, March 28, and April 28.

13. The applicant's records show that the respondent deleted his credit card from the applicant's website on May 3, 2018. His "subscription to 12 monthly payments" was cancelled by the applicant on May 28, 2018.

14. The respondent agrees that he cancelled his subscription in May 2018 by cancelling his credit card. He says he cancelled after receiving some marketing messages from Mr. Hoffman, which he describes as “spam”. The respondent says those messages made him critical of using such automated messages as a marketing tool, and led him to cancel his subscription.

15. The parties agree that the respondent’s access to the ACA system website was immediately cancelled when he deleted his credit card.

16. The respondent says that when he purchased the ACA system, he believed he was buying it on a “month to month” basis, and that he could cancel without penalty at any time. He says he believed this due to Mr. Hoffman’s statements in a webinar that is not in evidence. The respondent also says he emailed Mr. Hoffman asking where to find the “month to month” option, and Mr. Hoffman replied with a website link. The respondent did not provide copies of these emails, the website, or the website link.

17. Mr. Hoffman says that under the terms of the contract between the parties, the respondent owes the remaining balance of the “paid in full” price for the ACA system, which equals $1,476.30 including GST. Mr. Hoffman says this amount is owed under the following term, as set out on the applicant’s “terms of use” website:

> Should you default on a monthly payment, we will provide you 5 days to make up the payment before your site access is revoked. If after 30 days of non-payment, the “paid-in-full” price of your product, less any monthly payments paid, plus any applicable taxes will be due in full.

18. Mr. Hoffman says the respondent had to click on an “I agree to the terms” button on the website before completing his purchase. He said the button was linked to a webpage that included the above term, as well as other information. The respondent admits he did not read the terms of service before he purchased the ACS system.

19. I accept Mr. Hoffman's assertion, which the respondent does not deny, that the respondent had to check a website box indicating agreement with its terms before completing his purchase on February 28, 2018. Mr. Hoffman relies on a copy of those terms printed on October 11, 2018, which contains the payment default clause set out above. Mr. Hoffman has not proved that the "terms of use" webpage was the same on October 11 as it was when the respondent accepted those terms on February 28, 2018. However, based on Mr. Hoffman's statement, and the other evidence before me, there is no reason to think the payment default clause was not present on the "terms of use" website in February 2018. Again, I note that the respondent never read the terms of use, so he can provide no contrary evidence on this point.

20. Based on the evidence before me, I find it was more likely than not that the default term was in place, and therefore formed part of the contract between the parties. I do not agree with the respondent's submission that the "terms" link on the website was difficult due it its colour or placement.

21. I also find that the copy of the applicant's "pricing options" webpage provided by the respondent supports the conclusion that the respondent reasonably ought to have understood he was required to pay for the entire program, rather than a month-to-month package that he could cancel without penalty. That page says that option B, at $197 per month, was "12 months + GST". It also says that option B was "Financed over 12 months, not a subscription". I find that the use of the expression "financed over 12 months" clearly indicates that all 12 payments were required rather than optional.

22. While the respondent says this website may have been changed, he provided no proof. He also provided no evidence to support his assertion that Mr. Hoffman misrepresented the payment requirements in a webinar, or in emails.

23. For these reasons, I find the respondent must pay the applicant $1,476.30. The applicant is also entitled to post-judgment interest on this amount, under the *Court* Order *Interest Act* (COIA), from June 1, 2018. Since the respondent breached

the contract between the parties, I find the applicant is not required to provide further access to its website or other ACA system materials.

24. 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, and I find the applicant is entitled to reimbursement of $125 in tribunal fees.

ORDERS

25. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of $1,616,44, broken down as follows:

    a. $1,476.30 for breach of contract,

    b. $15.14 in pre-judgment interest under the COIA, and

    c. $125 for tribunal fees and dispute-related expenses.

26. The applicant is entitled to post-judgment interest, as applicable.

27. 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.

    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.

Kate Campbell, Tribunal Member