Civil Resolution Tribunal

Date Issued: April 17, 2019

File: SC-2018-008223

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sandman Media Inc. v. Pan Global Resources Inc.*,
2019 BCCRT 474

B E T W E E N :

Sandman Media Inc.

APPLICANT

A N D :

Pan Global Resources Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for web hosting services. The applicant, Sandman Media Inc., says the respondent Pan Global Resources Inc. was its longtime client

who failed to pay for its outstanding balance when the parties' business relationship ended. The applicant claims $3,999.50 plus interest.

2. In June 2017, the respondent paid the applicant $2,500. After that, the applicant sent monthly hosting charges for $262.50 which the respondent paid. The respondent says the $2,500 payment was an unconditional full and final settlement of all outstanding past invoices.

3. The applicant is represented by Sandeep Sull, an employee or principal. The respondent is represented by Max Pinsky, an employee or 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 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. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.

ISSUE

8. The issue is to what extent, if any, the respondent owes the applicant $3,999.50 plus interest for web hosting services.

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 referenced the evidence and submissions as necessary to give context to my decision.

10. The applicant began providing web hosting services for the respondent in 2013. The respondent became an inactive corporation in February 2015 and thereafter asked the applicant to manage its website in "care and maintenance" (CM) mode. In May 2017, the respondent asked the applicant to re-activate its status. The respondent terminated the applicant's services in May 2018. None of this is disputed.

11. The monthly hosting rate between September 2013 and March 2015 was $275 plus GST, as set out in the parties' September 25, 2013 contract (in addition to a $1,000 fee for "development" at the outset). The contract includes a term that interest on outstanding accounts is "5%", and as discussed below the applicant claims 5%

annual interest, which is all it would be entitled to given the federal *Interest Act* that states interest is a maximum of 5% per year unless its frequency is specified.

12. The CM mode hosting rate was reduced to $150 per month plus GST, for $157.50. When the respondent's status was reactivated in May 2017, the charges were raised to $250 per month, plus GST, for $262.50.

13. The respondent agrees that in May 2017 when it resumed active status, its account was "in arrears". The respondent does not challenge the quality of the applicant's services. While the respondent says it never received the applicant's invoices, I do not accept that was the case and note the respondent acknowledges they may have been sent to an employee who left the company. In any event, there is no suggestion the respondent did not receive the services as billed.

14. I find the applicant's calculation of $3,999.50 as the outstanding balance is supported by its detailed aging report of overdue balances that show the monthly charges of $157.50 from May 31, 2016 through April 30, 2017, a single $456.75 charge on May 31, 2017 which I infer reflects the resumption of full service, and then $262.50 monthly charges from June 30, 2017 through April 30, 2018. The respondent did not dispute the validity of the $456.75 charge.

15. The applicant's aging report shows the respondent had not paid many of its invoices since June 30, 2016 and only partially paid the May 31, 2016 invoice. The report indicates that as of February 6, 2019, the respondent owed $3,999.50, which reconciles with the applicant's "account summary" spreadsheet that shows payments including the respondent's $2,500 cheque processed on June 22, 2017.

16. While the respondent filed copies of invoices and cheques dating back to 2013, only 5 of the payments were after April 2016. One was the $2,500 June 2017 payment, and the other 4 are shown in the applicant's records as paid and do not form part of the applicant's claim.

17. Subject to my findings below about the $2,500 payment, I find the applicant has proved the respondent owes $3,999.50 plus 5% annual contractual interest.

18. The respondent's argument is that the June 2017 payment of $2,500 was unconditional and a "full and final settlement" of all past balances. I disagree, for the reasons that follow.

19. On April 25, 2017, the respondent's representative M emailed the applicant and asked if it would be willing "to take $2500 to square things up". Later on April 25, 2017, the applicant emailed the respondent that "with prism and the 15-month term on a higher package we can eat up the $1,500 cost". I find the $1,500 refers to the difference between the $2,500 offered and the roughly $4,000 owed. I find this, and the parties' earlier email threads about "prism", supports the applicant's claim that a reduced payment of $2,500 was conditional on the respondent upgrading and agreeing to give the applicant the "prism" account.

20. On April 26, 2017 another of the respondent's representatives emailed the applicant (all quotes reproduced as written):

> I have been trying to resolve your outstanding and give you go forward business
>
> I heard you wont take $2k to settle the old account with a guarantee of at least one company to go forward. We will try to bring you the others as well. …

21. Later on April 26, 2017, the applicant replied:

> [Respondent's representative M] contacted us asking if we would take less ($2500) and what the cost to do the updates she needs and so forth. I responded back letting her know that most likely there wouldn't be a charge for the updates needed and agreed to your proposed $2,500.

22. I find that taken together and in context, the April 25 and 26, 2017 email threads indicate the $2,500 reduction was in exchange for additional business. In particular, I find the reference in the respondent's April 26, 2017 email to "a guarantee of at least one company" likely refers to the "prism" account. It is undisputed that the additional business, the prism account or any other account, was never given to the applicant.

23. On June 2, 2017, the respondent sent the applicant a $2,500 cheque (which as noted above the applicant shows as processed on June 22, 2017). On June 5, 2017, the applicant emailed the respondent that it had discussed a reduced payment on the outstanding balance “on the back of another site or an upgraded package” and that neither had materialized. The applicant thus asked for the basis of reducing the outstanding amount. There is no evidence before me that the respondent replied. I find the contemporaneous June 2, 2017 email supports the applicant’s position.

24. While the parties did not argue it, I also note the applicant’s claim is not out of time under the *Limitation Act*, given the written promise to pay and the $2,500 partial payment.

25. The respondent provided a statement from its current Chief Financial Officer that she understood the $2,500 payment was a final settlement. However, nothing in that statement addresses the emails between the parties in April 2017 that the $2,500 reduction was in exchange for “prism” and a “higher package”. I find that while the parties discussed settling the respondent’s outstanding account for $2,500 plus additional business, that discussion did not result in a completed agreement because the respondent did not ultimately sign up for the additional business. There was no agreement to settle for $2,500 with no additional business, which is what occurred.

26. For these reasons, I find the applicant is entitled to payment of its outstanding accounts, totaling $3,999.50.

27. As noted above, the applicant also claims 5% interest, and submits this totals $501.77. Based on the applicant’s accounts receivable aging report and the dates of each outstanding invoice, I calculate the 5% annual interest to be $379.80.

28. As the applicant was successful in this dispute, in accordance with the Act and the tribunal’s rules I find it is entitled to reimbursement of $175 in tribunal fees and $40 for a company search, an amount I find reasonable.

29. I dismiss the applicant's further claim for $150 for its time spent in obtaining a copy of the contract for the respondent, which I also note was raised for the first time in reply and the respondent had no opportunity to address it. In any event, I see no reason to deviate from the tribunal's general practice of not compensating a party for their time spent on a dispute, consistent with section 20 of the Act and the tribunal's rules that say parties' legal fees are reimbursable only in extraordinary cases. This is not an extraordinary case.

ORDERS

30. Within 14 days of this decision, I order the respondent to pay the applicant a total of $4,594.30, broken down as follows:

    a. $3,999.50 in debt,

    b. $379.80 in pre-judgment interest at 5% per year, and

    c. $215, for $175 in tribunal fees and $40 in dispute-related expenses.

31. The applicant is entitled to post-judgment interest, as applicable. The applicant's remaining claim is dismissed.

32. 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.

33. 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.

Shelley Lopez, Vice Chair