Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as*: 2909731 Canada Inc. v. KRZYSZTOF ZMUDA (dba TASTE OF EUROPE DELI),* 2019 BCCRT 643

B E T W E E N :

2909731 Canada Inc.

APPLICANT

A N D :

KRZYSZTOF ZMUDA (Doing Business As TASTE OF EUROPE DELI)

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant, 2909731 Canada Inc., operates as Pewter Graphics (Pewter). Pewter says the respondent, KRZYSZTOF ZMUDA (Doing Business As TASTE OF EUROPE DELI), ordered custom designed goods, 60 t-shirts and 50 aprons,

approved the artwork, and yet has failed to pay for them after delivery. The applicant claims $1,678.94, for a transaction fee and $1,476.73 for its invoice.

2. The respondent denies liability, and says the applicant used a defective design that the applicant did not approve.

3. The applicant is represented by Yves Duquesne, who I infer is an employee or principal. The respondent is self-represented. For the reasons that follow, I allow the applicant's claims in part.

JURISDICTION AND PROCEDURE

4. These are the tribunal's formal written reasons. 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 9.3(2), 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 whether the applicant fulfilled the parties' contract for custom t-shirts and aprons, and if so, whether the respondent owes the applicant $1,678.94 for those goods and a 'transaction fee'.

EVIDENCE AND ANALYSIS

9. Generally speaking, in a civil claim such as this, the burden of proof is on the applicant to prove its claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. I place no weight on the reviews of the applicant's reputation, as I find those are not relevant to my assessment of the parties' transaction.

10. The parties first met in December 2017. The applicant proceeded to do the design work requested, it says based on only "one old apron", rather than the typical JPEG image. The respondent says he gave one apron and one t-shirt. The respondent says these "prototypes" were the basis for his engagement and cannot be replaced by "superficial, small-scale artwork". For the reasons that follow, I disagree with the respondent.

11. It is uncontested that in December 2017 the applicant gave the respondent the artwork it designed. It is also uncontested that the respondent did not respond until June 5, 2018, at which time the respondent said he wanted to proceed with the order. The evidence shows the respondent never mentioned any desired changes to the artwork. However, the respondent says during the period before June 2018, he was waiting for the applicant to contact him to start the project and that he went to the applicant's office several times but found Mr. Duquesne out or unavailable.

12. I find it unlikely the respondent would repeatedly just show up at the applicant's offices without an appointment and without making any effort to call or email. I find it more likely that the respondent simply did not pursue the project until he contacted the applicant in June 2018.

13. The applicant says that on June 5, 2018 the respondent signed off his approval. The respondent says the signature in evidence is false and not his, that his own signature has discernible alphabet letters whereas the one in evidence is essentially a scribble. I cannot agree with the respondent, as upon my review the signature on the respondent's correspondence appears very similar to that on the "artwork approved' document provided by the applicant. The burden of proof is on the person making an allegation of fraud, here the respondent. I find he has not met that burden.

14. I return to the relevant chronology. At the June 5, 2018 meeting, the respondent gave his credit card to the applicant, but then the respondent later successfully had the $1,476.73 credit card charge reversed. For the purposes of this dispute, nothing turns on the bank's decision to reverse the charges. The respondent says his intention was to give his credit card as a deposit to start the work, to secure a sample, rather than make full payment. However, there is nothing in the documentary evidence before me that indicates the parties agreed the applicant would provide a sample first. It is undisputed that when he gave his credit card the respondent did not mention any concerns about the artwork design the applicant had provided.

15. The central dispute here is whether the respondent approved the artwork that ultimately appeared on the t-shirts and aprons. The related issue is whether the applicant was obliged to produce a single sample first for his inspection, which the applicant says it never agreed to provide and would not have been possible as it prepares the printing plates and produces an entire order at once.

16. If the respondent did not approve the artwork and/or the applicant failed to provide a required sample first, then the applicant's claim must fail. If the respondent did

approve the artwork and no sample was required, then I find the applicant's claim will succeed. I say this because there is no dispute about the amount of the invoice or the $1,678.94 claimed.

17. Apart from not receiving a sample first, the respondent's primary objection is about the position and font size of the artwork's text. He says the wording should have been in bold and printed higher up towards the neck. The respondent says the final goods in these ways did not conform to the "prototypes" that he says he gave the applicant, meaning the t-shirt and an apron. The respondent denies receiving anything other than an old apron that was mostly faded.

18. In his argument, the respondent says "although I attempted to make a 'firm order'", the applicant "systematically misused and distorted my intentions to produce inferior merchandise". I find this supports the conclusion that the respondent did authorize the applicant to proceed based on the artwork the applicant provided the respondent in December 2017. I find it also supports the applicant's position that there was no agreement for a sample first.

19. Attached to the applicant's December 12, 2017 email to the respondent, the applicant's design was simple. It was black text "I [heart shape in red] PEROGIES" (capitals in original). The applicant's t-shirt design showed this slogan across the chest of a white t-shirt, and across the chest of a red apron. I do not agree with the respondent's characterization of the applicant's design as a "small scale diagram" or that it was only "conceptual" because it was "too small". I find the applicant's design sample clearly showed the respondent what the applicant proposed for the final product. Contrary to the respondent's assertion, I therefore do not agree the applicant failed to give him an opportunity to inspect the final art design. I further find that the applicant's final product reasonably conformed to the applicant's December 2017 design.

20. The respondent provided an August 10, 2018 statement from Style'N'Print Graphic Services. I place no weight on this letter, as it simply reiterates the respondent's position, which is that the final product did not conform to his prototypes. However, I

have agreed with the applicant that the respondent did approve the artwork, by admittedly saying nothing about the design it had in hand since December 2017 and because I find there was no agreement to provide a sample. This is quite apart from the signature on the 'approved artwork'. Notably, there is nothing in this letter from Style'N'Print Graphic Services that says a sample t-shirt or apron should have been provided, only that the respondent should have been given an opportunity to approve the artwork. As set out above, I find the applicant did so.

21. Given my conclusions above, I find the applicant is entitled to payment of its $1,476.73 invoice, which was dated June 19, 2018. It is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) from that date.

22. The applicant also claims a "transaction fee", which I infer relates to the reversal of the respondent's Visa credit card charge. Based on the total claimed by the applicant, it appears the transaction fee totals $202.21. However, the applicant provided no supporting documentation for this claim, such as a statement or charge from the bank. I therefore dismiss the applicant's claim for the transaction fee.

23. In accordance with the Act and the tribunal's rules, I find the successful applicant is entitled to reimbursement of $125 in tribunal fees. As the respondent was unsuccessful, I dismiss its application for reimbursement of $25 in tribunal fees.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of $1,624.70, broken down as follows:

    a. $1,476.73 in debt,

    b. $22.97 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

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

26. 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.

27. 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