



# Civil Resolution Tribunal

Date Issued: June 3, 2019

File: SC-2019-000443

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amazing Graphic & Print Ltd v. Pipes & Plumbers Installations Ltd.*

2019 BCCRT 673

BETWEEN:

AMAZING GRAPHIC & PRINT LTD.

**APPLICANT**

AND:

PIPES & PLUMBERS INSTALLATIONS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. The applicant, Amazing Graphic & Print Ltd., alleges that the respondent, Pipes & Plumbers Installations Ltd., contracted with it to design and run an advertisement in the applicant's yearly calendar. The applicant claims that the respondent has not

paid it for the advertisement. The applicant requests \$672.00 for the cost of the calendar plus interest.

2. The respondent says it never agreed to run an advertisement in the applicant's calendar.
3. The applicant is represented by Gurdeep Ranu. The respondent is represented by Daljeet Ghatora.

## **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*. 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 some respects, this dispute amounts to a "he said, he said" scenario with both sides calling into question the credibility of the other. Credibility of 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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 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.

## **ISSUE**

8. The issue in this dispute is whether the respondent contracted with the applicant to run an advertisement in the applicant's calendar, and if so what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

9. The applicant submits that in October 2018 the respondent approved the design and agreed to run an advertisement for its business in the applicant's calendar. The applicant printed the calendars and called the respondent to arrange payment and to provide it with a box of the calendars. The applicant states that the respondent did not accept delivery of the calendars and that it kept promising to pay and then did not.
10. The applicant submits that in November 2018 the respondent started to question whether it actually ran its advertisement and indicated that it would not pay.

11. The respondent submits that it was reluctant to place the advertisement in the applicant's calendar but it told the applicant to make a preview of what the advertisement would look like and it would base its decision on that.
12. The respondent notes that the applicant never told it the cost of the advertisement and without its agreement the applicant put it in the calendar. The respondent points out that it never signed a contract and that it never consented to the advertisement being run. The respondent states that it did offer the applicant \$100.00 after it had already put the advertisement in the calendar. However, the respondent reiterates it never had a contract with the applicant. I find that the \$100.00 offer was a gesture to offset the applicant's expended costs and not a confirmation of a contract.
13. After the offer of the \$100.00, the respondent stated that the applicant told it that it owed \$600.00, saying that it printed 5,000 calendars and then later saying that it printed 10,000.00.
14. The applicant has provided very little evidence to support its claim that it had a valid contract with the respondent. There is a screenshot in which the respondent asks the applicant to change colouring in a mock-up advertisement. I do not find this conclusive that a contract was formed as the respondent acknowledges that it asked the applicant to provide a preview of the advertisement to help it decide whether it wanted to place the advertisement.
15. The applicant has provided two brief audio files which are in Punjabi. Because the audio is not in English, and has not been translated, I cannot understand it and place no weight on this evidence. The applicant also provided a copy of its phone bill, which it states shows that it spoke to the respondent for two minutes on October 22, 2018. Because this does not establish what was said in the conversation, I also do not place any weight on this evidence.
16. The applicant further provided evidence that it did actually print the calendar with the respondent's advertisement in it. I accept this evidence. However, this does not establish that the respondent contracted with the applicant to do so.

17. I note that a contract does not need to be written or signed, but when a contract is written and signed, it creates certainty about its terms and the parties' intentions. When there is no written contract, the party trying to prove that a verbal contract exists must prove that the parties agreed on the essential terms of the agreement.
18. Based on a review of all the evidence, I find that the applicant has not proven that the respondent contracted to place an advertisement in its calendar. The evidence does not establish that the essential terms of the agreement were agreed upon. The applicant has not proven that the respondent intended to run the advertisement, but only that it agreed to look at a preview. Further, the evidence does not establish that the applicant and respondent agreed to the number of calendars to be printed or the cost. Therefore, I dismiss the applicant's claim that it had a contract with the respondent. Given this conclusion, I dismiss the applicant's claim for payment for the calendar advertisement.
19. 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. As the applicant was unsuccessful in its claim it is not entitled to have its tribunal fees reimbursed.

## **ORDERS**

20. I dismiss the applicant's claim and its dispute.

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Kathleen Mell, Tribunal Member