



# Civil Resolution Tribunal

Date Issued: June 24, 2019

File: SC-2019-000817

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LAU v. 1028475 B.C. LTD.*, 2019 BCCRT 763

**BETWEEN:**

VIVIAN LAU

**APPLICANT**

**AND:**

1028475 B.C. LTD.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about payment for graphic design services, which the respondent, 1028475 B.C. Ltd., hired the applicant, Vivian Lau, to complete for its restaurant

Sopra Sotto in Vancouver. The applicant claims \$4,760, for her December 2018 invoice related to services delivered between November 2017 and June 2018.

2. The respondent denies liability. The respondent says the applicant's services were incomplete and that it had to have the work re-done due to the applicant's lack of response in providing a final invoice and the files containing the source photos.
3. The applicant is self-represented. The respondent is represented by Marco Mirisklavos, who I infer is a principal or employee. For the reasons that follow, I dismiss the applicant's claims.

## **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 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 in this dispute is to what extent, if any, the respondent owes the applicant \$4,760 for graphic design services.

## **EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, the burden of proof is on the applicant to prove her claims on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
10. There is no written agreement between the parties. However, it is undisputed that in February 2017 the parties verbally agreed that the applicant would charge \$40 per hour for her graphic design, photography and marketing services.
11. As noted above, this dispute is about the applicant's invoice for work done after November 2017, which she originally billed in a "simple" invoice in June 2018 for \$4,760 and then later in a more detailed December 2018 version of the invoice. Before the June 2018 invoice, the applicant's completed work was covered in her September 2017 invoice, discussed below, which addressed work done between February and September 2017. Based on the applicant's time tracker sheet, there was no work done between September and November 2017.
12. I find that an implied term of the parties' verbal agreement was that the applicant would complete the work in a professional manner. In order to succeed in this dispute, I find the applicant must prove not only that she spent the time claimed, but also that the time was reasonably spent in accordance with the parties' agreement.

13. As discussed further below, while the applicant agreed in July 2018 to send a detailed invoice, she failed to do so until the end of December 2018. Meanwhile, without payment of the June 2018 invoice at issue the applicant had refused to provide the source files and all of the photos (except for about 27 sent in April 2018, based on the evidence before me). The respondent's first Sopra Sotto restaurant opened at the end of March 2018 and it was opening another in October 2018, which I accept led to some urgency in their having the graphic design work completed.
14. The respondent did not file a counterclaim, but I infer they request a set-off of what they paid to complete or fix the applicant's work, from anything I might order in favour of the applicant for her outstanding invoice. In this respect, the respondent says it paid others \$5,110: \$1,800 to re-do the website, \$2,960 for graphic design and photography, and \$350 to re-do the business cards, because the applicant failed to complete the work and give them the photos and source files. The respondent provided a total of \$3,132.50 in invoices for the others' work, exclusive of the business cards.
15. I turn to the relevant chronology.
16. On September 6, 2017, the applicant sent her first invoice for \$3,000, which the respondent paid in December 2017. The body of this invoice described only "design work" to date. The applicant submits this first bill covered only her work for the restaurant's branding and the initial set-up of social media and email accounts.
17. The applicant's online shared time tracker for the September 2017 bill for \$3,000 described the work as: logo ideation (8 hours), logo pro-typing and digitizing (32 hours), "pre-press" or preparing files for printing (5 hours), online marketing setup, "setting up website and all social media" (12 hours), print materials, "menu, business cards, etc." (15 hours), and meetings/travel (14 hours). I find the time tracker described work beyond just branding and initial set-up of social media and email accounts.

18. The applicant included in her note attached to the September 6, 2017 invoice, which she expressly acknowledged was over the agreed \$2,000 budget, “Please let me know what I can work on next regarding the website and menu!” Given the time tracker details and this note, and the fact that the applicant had gone over budget, I accept that the respondent and its designer JS reasonably understood the applicant was waiting on content to insert into the templates that she had *already* designed and which the respondent paid for in December 2017.
19. In contrast, the applicant says the bulk of the work she did for the respondent was done during the November 2017 to June 2018 period at issue. It may be that the applicant did spend a large number of hours from November 2017 onwards, but I find the respondent never agreed to it, as discussed below.
20. On December 11, 2017, the applicant emailed the respondent a “predicted budget” that totaled \$3,880, for further work. This budget breakdown was: 11 hours for taking and editing photos, 4 hours for preparing business cards, 20 hours for “website”, 15 hours for writing and revising copy and “scheduling posts”, 8 hours for “Instagram outreach”, 15 hours for “soft opening planning”, and 10 hours for “contacting food bloggers”. As set out in JS’ statement in evidence, which I accept, the respondent opted to do \$1,880 of this work itself, to save money. The applicant does not particularly dispute this. This reduction left \$2,000 for the applicant to do: photos, business cards, meetings, website, and scheduling posts and Instagram outreach.
21. On March 20, 2018, the applicant texted Sopra Sotto that the \$3,880 budget was close to being reached, as she was at \$3,720. JS texted back that she would let JM know as he was in charge of accounting. In her statement in evidence, JS says at that point the restaurant’s opening was only a few days away and that she “hadn’t really processed that we had somehow reached that budget when I had taken on all of the previously stated work myself”. In April, JS and JM reviewed the applicant’s time tracker and were surprised to see several items including the website and

business cards, which JS says she thought had been at least partly paid for under the September 2017 invoice.

22. On balance, given the restaurant's opening timing and the fact that JM was the accountant, I accept JS' explanation about why she did not immediately text back on March 20, 2018 that the respondent had wanted to limit the further budget to \$2,000. The applicant has not provided any texts or emails that show the respondent ever agreed to the \$3,880 budget.
23. The applicant's "simple" invoice dated June 1, 2018 is for \$4,760, the amount claimed in this dispute. It has the following line items, at \$40 per hour:
  - a. Business cards – 8 hours, \$320
  - b. Photography – 23 hours, \$920
  - c. Menu – 13 hours, \$520
  - d. Social media – 40 hours, \$1,600
  - e. Website – 25 hours, \$1,000
  - f. "Miscellaneous" – 10 hours, \$400.
24. As noted above, I find the respondent reasonably expected that the bulk of this was covered and paid for under the September 2017 invoice, given the time tracker entries that the applicant elsewhere acknowledges reflect her time spent. The undisputed fact that the respondent had a \$2,000 budget at the outset, with another \$2,000 in December 2017, is support for this conclusion.
25. The parties agree that they met at the restaurant on June 1, 2018, because the respondent was concerned about the amount of the applicant's invoice. It is undisputed the meeting did not go well, and the applicant admits she became "inconsolable" and essentially abandoned the meeting. While I find it unnecessary to dwell on the details of the applicant's behaviour that was of concern to the respondent, I do accept that she improperly billed at least \$320 for photography and

associated editing time on February 18, 19 and 25, 2018, as I find there was no agreement about it and because I find she at least partly treated her attendance on those dates as being for personal use.

26. On July 5, 2018, the applicant refused the respondent's request for a meeting, stating that her lawyer advised her not to meet with Sopra Sotto for further discussions. In her email that date the applicant stated that she would email a complete breakdown "next week" in a "more official invoice". She wrote that upon payment, she would send all edited and unedited photos as well as source files for signage etc.
27. The significant difficulty for the applicant in this dispute is that she did not send her final/detailed invoice until December 27, 2018, at which time the applicant apologized and said she was "inundated" with work and wanted to make the invoice as clear as possible. In submissions, the applicant says the delay in providing the final invoice was due to "the sheer amount of work to sift through for a comprehensive invoice" and "the undue amount of stress caused by the entire situation".
28. I prefer the applicant's contemporaneous explanation of her delay: that she was otherwise too busy. I also find that if sorting through her records to come up with a detailed invoice was such an onerous task, that raises a question as to whether the applicant's time records are reliable. In any event, I find the applicant's delay until December 2018 was entirely her fault, in breach of her July 5, 2018 agreement to provide the detailed invoice, and unreasonably left the respondent without its source files and photos.
29. Given my conclusion above, I find the respondent reasonably had to re-do a significant portion of the applicant's work. While the end product may be similar (though I do not agree with the applicant that the website necessarily was), that is not the point. The point is that in September and October 2018, the respondent did not have a live website it could use, and it did not have final photographs or source

files. This was months after the applicant had said she would send a bill and yet was withholding the source files and the bulk of the photos until payment of that bill.

30. I note the applicant provided a screenshot showing she took 6,120 photos for the respondent. I find this fact supports the respondent's position that it needed to have work re-done, given the evidence before me is that the applicant had only given the respondent 27 photos in April 2018.

31. As noted above, the respondent provided invoices totaling \$3,132.50 for the work it reasonably had re-done. I have also found the applicant billed at least \$320 improperly for photography and editing work in late February 2018. Finally, I find the applicant went significantly over-budget, without any reasonable agreement from the respondent about the additional work, bearing in mind my conclusion that the respondent reasonably understood the bulk of the work had been done under the September 2017 invoice. Given all of this, I find the applicant has not proved she is entitled to any further payment.

32. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find she is not entitled to reimbursement of tribunal fees.

## **ORDER**

33. I order that the applicant's claims and this dispute are dismissed.

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Shelley Lopez, Vice Chair