



Civil Resolution Tribunal

Date Issued: June 26, 2019

File: SC-2018-009274

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Misty Fiorentino dba Wheels of Media v. Kyle Hood dba Rooftop Industries*,
2019 BCCRT 780

BETWEEN:

Misty Fiorentino (Doing Business As Wheels of Media)

APPLICANT

AND:

Kyle Hood (Doing Business As Rooftop Industries)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about web design and site hosting services. The respondent, Kyle Hood (Doing Business As Rooftop Industries), hired the applicant, Misty Fiorentino (Doing Business As Wheels of Media), to perform web design and site hosting services.

2. The applicant says the respondent failed to pay, and seeks payment of \$939.75, the total amount invoiced for her services. The respondent says his financial circumstances changed and he was unable to pay the applicant.
3. Both parties are 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*. 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. 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 British Columbia Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is an 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 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 to what extent, if any, the respondent owes the applicant for the outstanding invoice for web design services.

EVIDENCE AND ANALYSIS

- 9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 10. On September 10, 2018, the respondent contacted the applicant about web design and site hosting services. The parties entered into a signed written agreement on September 13, 2018, but dated September 25, 2018. The written agreement stated the work was set to commence on September 25, 2018 and full payment was due on that date.
- 11. Article 4.2 of the terms of service for the contract stated that the total sum of \$939.75 was due upon signing of the service agreement. Article 8.1 stated that the contract could be cancelled by either party at any time, with 30 days written notice, and providing an additional 30 days for either party to remedy the issues. Article 8.1 further stated that upon termination or cancellation, the client agreed to pay 100% of any outstanding work orders. The work order in this case is the invoice for \$939.75. Each page of the terms of service was initialed by the respondent.
- 12. It is undisputed that the respondent failed to pay the applicant's invoice by September 25, 2018. On September 28, 2018, the respondent advised the applicant that he would not be able to make a payment until October 15, 2018. The applicant requested confirmation the respondent would pay on that date, as she wanted to

start working on the website project. The respondent assured the applicant he would have full payment for her on October 15, 2018.

13. The evidence before me is that the applicant started working on the website by at least early October 2018 and continued until on or about October 18, 2018. The applicant produced copies of various website pages she created for the respondent, as well as sign in / out documentation, which she says shows the days she worked on the project. Within the text message communications in evidence, I also note the applicant sought instructions from the respondent about aspects of the website during this time.
14. On October 18, 2018, the applicant again requested payment of the outstanding invoice, having been due on October 15, 2018. The respondent replied stating "I'll try and figure something out".
15. On October 24, 2018, the applicant sent a text message to the respondent cancelling the contract for non-payment. The applicant advised that further to their written agreement, the respondent must pay 100% of the outstanding invoice. The respondent did not respond.
16. In his Dispute Response, the respondent advised that he did agree to pay the applicant, but that due to personal circumstances he could no longer afford to. The respondent did not note any complaints with the applicant's work.
17. The respondent now submits that no work was done under the contract and that the applicant was not mindful of his personal circumstances when she cancelled the contract. Therefore, the respondent submits, the applicant is not entitled to payment of the invoice. On balance, I find that the respondent's evidence regarding work done is not credible. I am satisfied that the applicant commenced work under the contract on the assurances of the respondent that he would pay by October 15, 2018. Based on the evidence above and the applicant's submissions, I am satisfied that the applicant performed research, prepared website pages, and communicated

with the respondent about the website due to the respondent's assurances about payment.

18. In addition, I am satisfied that the applicant was entitled to cancel the contract due to the respondent's non-payment based on the terms of the parties' contract. Therefore, I am satisfied the applicant has met the burden of proving her claim and I order the respondent to pay the applicant \$939.75. I find the applicant is also entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA), from September 25, 2018, the date the payment was originally due.
19. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I find the applicant is entitled to reimbursement of \$125 in tribunal fees.
20. The applicant claimed \$198.97 in dispute-related expenses, including \$11.50 for a corporate record search, \$26.45 and \$37.60 in registered mail charges, \$13.42 in further mail charges, and \$110.00 for a process server fee. The applicant has not provided any receipts in support of these expenses, as such I am unable to determine whether most of the amounts are properly dispute-related expenses. However, I do find the \$11.50 expense for a corporate search is properly a dispute-related expenses and I order the respondent to reimburse the applicant for that amount. I dismiss the applicant's remaining expense claims, as she provided no evidence or particulars to support them.

ORDERS

21. Within 28 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,088.80, broken down as follows:
 - a. \$939.75 for unpaid web design services,
 - b. \$12.55 in pre-judgment interest under the COIA,

- c. \$125.00 in tribunal fees; and
 - d. \$11.50 in dispute-related expenses.
22. The applicant is also entitled to post-judgment interest under the COIA.
23. 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.
24. 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.

Andrea Ritchie, Vice Chair