Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Norup-Boyer v. Kefalas et al,* 2019 BCCRT 865

B E T W E E N :

LAURA NORUP-BOYER

APPLICANT

A N D :

THEO KEFALAS and Greenday Cannabis Market Corp.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for graphic design services. The applicant, Laura Norup-Boyer, claims the respondents, Theo Kefalas and Greenday Cannabis

Market Corp. (Greenday), owe her $630 plus interest, as the balance owing on her $1,200 invoice.

2. Mr. Kefalas says he was not a party to the contract with Ms. Norup-Boyer and that Greenday was. Greenday says it never hired BlackBean Creative, the unincorporated business name used by Ms. Norup-Boyer for her design agency that offered branding, marketing, and web design services. Greenday also says it never hired Mr. Kefalas as an employee or manager and that he made negotiations unknown to Greenday. Both respondents deny that Ms. Norup-Boyer provided reasonable services for the $630 claimed. Greenday says it understood the $600 it had paid was a refundable deposit.

3. Ms. Norup-Boyer and Mr. Kefalas are each self-represented. Greenday is represented by its operations manager, Nicko Kemeridis.

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 respondents owe the applicant $630 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. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

10. There are 2 issues in this dispute. First, whether the work at issue in the outstanding invoice was reasonably completed and billed under the contract. Second, whether Mr. Kefalas or Greenday, or both, are responsible to pay any outstanding invoice. This turns on whether Mr. Kefalas acted in his own capacity, or on Greenday's behalf (or was reasonably understood by the applicant to be doing so).

11. On June 17, 2018, Mr. Kefalas emailed Ms. Norup-Boyer asking her to provide a quote for Greenday's design logos. At that point, Greenday was not yet incorporated. It was registered as an Alberta company on July 16, 2018. Ms. Norup-

Boyer notes Mr. Kefalas and Joanna Kemeridis are registered directors of Greenday, which is undisputed.

12. On August 2, 2018, Mr. Kefalas emailed Ms. Norup-Boyer to say that "we were able to secure the name federally" for Greenday, and that he wanted to meet to discuss both a logo and branding.

13. Ms. Norup-Boyer and Mr. Kefalas met on August 7, 2018, and it is undisputed Mr. Kefalas said Greenday was interested in a logo design, business cards, and promotional material (trifold brochures). Ms. Norup-Boyer then prepared a quote for those services, which she emailed to Mr. Kefalas on August 10. Given the parties' communications overall, I find the quote was intended for Greenday, although this is not expressly stated on the quote's face.

14. The quote included an option for a "branding" package, for $1,200. This included 1) logo design and a brand guide, 2) 3 logo design submissions and 2 design revisions, and 3) business cards design. This was payable in 2 installments – a 50% non-refundable deposit before work started, and the remainder due within 10 business days of final delivery. A 10% service charge applied on overdue balances after 30 days. The client was to pay for disbursements or out-of-pocket expenses. The price did not include applicable GST. All additional work was billed at $125 per hour, with any 'extra' design revisions at $125 each. Based on the evidence before me, I find the quote became the substance of the contract at issue.

15. On August 15, 2018, Mr. Kefalas emailed Ms. Norup-Boyer back that he wanted to "start the logo, cards, and brand guide", which I agree with the applicant meant he chose the "branding" package. Mr. Kefalas acknowledged the 2 included design revisions. Ms. Norup-Boyer responded that "I've been known to be quite lenient with logo revisions", but I accept that her comment would not reasonably mean there was an unlimited number of revisions or that she would not be able to rely on the quote's terms.

16. On August 17, 2018, Ms. Norup-Boyer sent invoice #1067 to Mr. Kefalas' email. The invoice is made out to both Mr. Kefalas and Greenday. The invoice indicated that 50% of the $1,200 billed was payable as a deposit. The invoice balance was $645.12, but Ms. Norup-Boyer reduced this amount to $630, to remove the "credit card processing fee" charge. The invoice terms are "net 30". It is undisputed that Ms. Kemeridis called her about making a payment by credit card, and Ms. Norup-Boyer received $600 shortly after from Greenday. Nothing turns on the applicant's deposit invoice that incorrectly showed "$0" as the balance owing, as I find the evidence shows all parties understood the $600 paid was only a deposit.

17. Mr. Kefalas' argument is limited to saying the contract was with Greenday, not him, and, that Ms. Norup-Boyer's work was allegedly poorly done, never approved, and that she over-billed. I have addressed the quality of work allegations below.

18. Greenday submits that Mr. Kefalas said the money already paid to the applicant was a refundable deposit if Mr. Kefalas did not accept the initial designs. Greenday says Ms. Kemeridis had no initial contact nor did she hire the applicant or her business. I disagree, as the emails show Ms. Kemeridis was copied on most emails from the outset, and there was a large number of them, many discussing requests for design changes. Greenday says Ms. Kemeridis was asked to pay a deposit and did only that. Again, I disagree, as the emails show she was copied on the correspondence. Greenday says all decisions about the design and hiring of BlackBean Designs was done by Mr. Kefalas. Even if true, this does not mean he was not acting on Greenday's behalf and does not mean Greenday is not responsible.

19. Ms. Norup-Boyer says at all times Mr. Kefalas claimed to be representing Greenday. I agree, given the substance of the written communications in evidence. This is also supported by the fact Greenday paid the $600 deposit, not Mr. Kefalas.

20. Based on the evidence before me, I find Ms. Kemeridis knew what Greenday was asking Ms. Norup-Boyer to do and Ms. Kemeridis never corrected or contradicted anything Mr. Kefalas said. Further, I find that Ms. Norup-Boyer reasonably believed,

as directors, that each of Mr. Kefalas and Ms. Kemeridis had authority to enter the contract with her. While the discussions started when Greenday was not yet incorporated, the contract was formed after its incorporation. While Greenday alleges Mr. Kefalas misled other Greenday principals, which Mr. Kefalas denies, that is not an issue before me. I note there is no counterclaim or third party claim filed.

21. On the whole, I find Ms. Norup-Boyer's contract was with Greenday, as reasonably instructed by Mr. Kefalas and Ms. Kemeridis. I find the evidence does not support a conclusion Mr. Kefalas is personally liable, as I have found he was not a party to the contract. I also note Mr. Kefalas' statement that Ms. Kemeridis had added him as a director to Greenday without his written approval and consent, and I make no finding about that. I dismiss Ms. Norup-Boyer's claims against Mr. Kefalas.

22. I turn then to the $630 amount claimed and to what extent, if any, the applicant is entitled to payment under the contract from Greenday.

23. The emails in evidence show Ms. Norup-Boyer submitted a large amount of logo designs and concepts, as requested. In the emails, Mr. Kefalas spoke as "we" and referred to his "partners". On September 5, 2018, Mr. Kefalas said they had decided to hold a design contest and would get back to Ms. Norup-Boyer with a final logo. Later in September, Mr. Kefalas said the contest had not been successful but he and his partners had come up with a logo on a free design platform, which he asked Ms. Norup-Boyer to revise. Based on the emails in evidence, Mr. Kefalas requested many revisions on 3 different versions of the logo, which resulted in the applicant preparing in excess of 25 logo designs, which is not particularly disputed. I agree with Ms. Norup-Boyer that this far exceeded the contract's scope.

24. The evidence shows Ms. Norup-Boyer continued to work on the requested revisions until October 16, 2018. After Mr. Kefalas asked for further font recommendations, I find Ms. Norup-Boyer reasonably concluded she could never satisfy him. She had provided dozens of font pairings. At that point, because she believed she had exceeded the project's scope of work and was doing a lot of extra unpaid work, on

October 18, 2018 she emailed Mr. Kefalas and Ms. Kemeridis that she was terminating the relationship. Ms. Norup-Boyer provided the name of another graphic designer as a referral. In all the circumstances, I find this was reasonable.

25. On November 2, 2018, Ms. Norup-Boyer sent Mr. Kefalas and Ms. Kemeridis her invoice #1092 for $430.25. I accept this reflects the dozens of logos and design revisions she had completed but did not charge for separately. In other words, this bill was the amount owing under the contract less a $200 discount because the formal brand guide had not been completed.

26. Through a November 22, 2018 letter Ms. Norup-Boyer's lawyer sent to the respondents, Ms. Norup-Boyer says she spent 27 hours of work on extra services, which are chargeable at $125 per hour under the contract. However, Ms. Norup-Boyer never charged for 27 extra hours. In this dispute she claims the $630 balance owing under the original contract, without the $200 discount she offered in her earlier invoice.

27. Mr. Kefalas refused to pay the invoice, stating "nothing that you created, we were able to use". I find the applicant is entitled to payment for the work she performed. My reasons follow.

28. I find that the agreement did not require use of the applicant's designs in order for her to be paid. Based on the weight of the evidence before me, including emails, I accept Ms. Norup-Boyer did the work she was contracted to do, and there is insufficient evidence that it was not to a professional standard. While Mr. Kefalas submitted the work was poor quality, he provided no specifics. I also note Mr. Kefalas' August 28, 2018 email which indicated approval of the applicant's work. The fact Greenday hired a different designer later does not necessarily mean the applicant's work was sub-standard.

29. There is an inherent subjectivity to graphic design, and what appeals visually to one person may not to another. The fact that the respondents went through so many revisions, undecided, supports this conclusion. I reject any suggestion the

applicant's work was sub-standard or not deserving of payment. Next, contrary to Greenday's position, the contract clearly stated the $600 deposit paid was non-refundable.

30. Given the amount of work that was done, I find the $630 claimed amount is reasonable, bearing in mind also that it is the amount specifically owing under the contract. I find the applicant reasonably terminated her services given the respondents' ongoing requests for further work. Even on a "*quantum meruit"* basis (meaning value for the work done), I find the applicant would be entitled to the $630 claimed.

31. I have considered whether I should reduce the $630 claimed to $430.25, the amount the applicant originally sought in her November 2018 invoice. I have concluded it would not be reasonable to do so. I accept the $200 discount was reasonable at the time to resolve the matter, and because the branding guide was ultimately not completed by the applicant. However, I also accept the applicant did at least $200 worth of extra work for Greenday that in November 2018 she had not billed for but was clearly entitled to bill under the contract's terms.

32. On balance, given my conclusion above, I find that Greenday is responsible to pay the applicant's $630 claim, which as noted I find is reasonable.

33. The applicant is entitled to pre-judgment interest on the $630 under the *Court Order Interest Act* (COIA), from December 2, 2018 which is 30 days after her November 2, 2018 invoice. This equals $7.45. While the contract contemplates a 10% "service fee" on re-issued invoices, there is insufficient evidence before me that the applicant re-issued her invoices and, in any event, she does not claim that service fee in this dispute.

34. In accordance with the Act and the tribunal's rules, as the applicant was successful, I find she is entitled to reimbursement of $125 in tribunal fees. The applicant also claims $20.75 for a corporate records search, which I allow as I find that amount is reasonable.

ORDERS

35. Within 14 days of this decision, I order the respondent Greenday to pay the applicant a total of $783.20, broken down as follows:

    a. $630.00 in debt,

    b. $7.45 in pre-judgment interest under the COIA, and

    c. $145.75, for $125 in tribunal fees and $20.75 in dispute-related expenses.

36. The applicant is entitled to post-judgment interest, as applicable. The applicant's claims against Theo Kefalas are dismissed.

37. 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.

38. 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