



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *E T Marketing Solutions Ltd v. Yuanheng Project Management Ltd. et al*,
2019 BCCRT 964

B E T W E E N :

E T MARKETING SOLUTIONS LTD

APPLICANT

A N D :

YUANHENG PROJECT MANAGEMENT LTD. and POLLY HU

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for brochure design, and whether certain revisions were “extra” or part of the contract price. The applicant, E T Marketing Solutions Ltd

(ET), says the respondent, Yuanheng Project Management Ltd. (Yuanheng), has failed to pay an outstanding balance of \$3,685.50 under its April 9, 2018 invoice.

2. Yuanheng says the brochure's total contract price was \$23,400, which it paid plus \$1,701 in agreed extras. Yuanheng says the original brochure design was not professionally done and it required revisions that Yuanheng says fell within the original scope of work. Yuanheng says ET's \$3,685.50 claim relates to necessary revisions that Yuanheng says it never agreed to pay for as an extra.
3. The respondent Polly Hu is employed by Yuanheng as an accounts payable clerk. She says she is not a proper party to this dispute.
4. ET is represented by Eric Yeh, its general manager. Yuanheng is represented by Ronald Leung, an employee or principal. Ms. Hu is self-represented.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. 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.

7. 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.
8. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may do one or more of the following where permitted under section 118 of the CRTA: 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

9. The issue in this dispute is to what extent, if any, the respondents owe the applicant \$3,685.50 for 'extra' brochure design services.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant ET to prove its 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.
11. First, I will deal with Ms. Hu's liability. From the outset of this proceeding, she has said she is merely Yuanheng's accounts payable clerk, and as its employee she has no personal involvement with the applicant nor any legal liability. ET did not dispute this and in its arguments did not address Ms. Hu's liability, despite her raising the issue expressly. I see no basis on the evidence before me to hold Ms. Hu personally liable for ET's claims. I dismiss ET's claims against Ms. Hu.
12. I turn to the merits of ET's claim against Yuanheng. It is undisputed that on March 13, 2018 ET and Yuanheng agreed ET would design a brochure, as set out in ET's

“quotation” from that date. That quotation became the contract and was signed by ET on March 15, 2018. The evidence shows the planned brochure was a glossy and polished brochure for a real estate development.

13. The contract included a “Revisions” sub-heading, and that “one set of design revisions”, “one set of minor design amendments”, and “two sets of image/copy adjustments after mock-up presentation” were included in the fixed-price fee of \$23,400 plus tax (Fee). The contract further stated that “additional revisions” outside the scope would be billable at \$180 per hour. For ease of reference, I will refer to the ‘additional revisions’ falling outside the Fee’s scope as ‘extras’.
14. The April 9, 2018 invoice #15011-A1 at issue for \$3,685.50 sets out the extras as follows:
 - a. Design of additional brochure layouts to replace previously approved design (draft v.2), requested by Yuanheng on March 28, 2018. \$3,510, for 19.5 hours at \$180 per hour. The extra work was identified as:
 - i. Creative and design development
 - ii. Additional image sourcing
 - iii. Draft layout presentation (2 versions)
 - iv. Selected layout improvement
15. The crux of this dispute is that Yuanheng says the contract had an implied term that the extras would be provided and billed only if ET clearly indicated that the extras were outside the Fee. Yuanheng argues that it would not make sense that it agreed to billable extras without knowing when they would be charged. In support, Yuanheng points to the \$1,701 extras invoice and says the fact that it approved and paid that invoice shows approval was required.
16. ET provided a chronology of the project, including meetings, consultations, photo shoots, and presentations to Yuanheng. The chronology shows that on March 27,

2017, ET emailed its cover draft v.1 and v.2 and v.3, and that Yuanheng approved v.3 by phone. The chronology states that in the email ET also presented sample interior pages, which Yuanheng approved by phone. Similarly, ET presented “content draft v.2” and that it reminded Yuanheng about the revision instruction and that there was an additional revision fee. In the March 27, 2018 email in evidence, ET referred to the meeting set for the next day on March 28 and that ET required “exact instruction”, and that **“we will have to spend additional time to modify the previously approved cover. Depends on the time use, we may need to charge by hour according to the terms listed in quotation”** (my bold emphasis added).

17. Based on the evidence before me, I find as of March 27, 2018, ET had done 2 versions of the brochure. Based on the contract, any further versions were billable extras, although ET’s March 27 email indicated it might be lenient if the time involved was minimal. I find that Yuanheng requested additional revisions on March 28 (and again, later in April). For the reasons that follow, I find Yuanheng must pay for those additional revisions as billable extras.
18. ET’s chronology then shows that ET and Yuanheng met on March 28, 2018, which is not disputed. I accept ET’s chronology which shows they discussed: a) “new cover /requested to adapt reference brochure cover design”, b) “new layout /requested to change design and layout”, and c) suggested additional time and cost to change design and layout, which ET noted was approved verbally. On April 9, 2018, ET sent the invoice 15011-A1 at issue “for additional brochure layout as requested”.
19. Later on April 9, 2018, ET sent a separate email summarizing Yuanheng’s request for a further revision of the layout again with the “new size”. ET estimated this would take about 16 additional hours of work. ET did not expressly ask for approval in the email to proceed with the revisions. I find the most likely reason is because the contract stated the basis for billing extras and that ET had already reminded Yuanheng about the added cost for extras.

20. On April 11, 2018, ET issued its invoice 15011-A2 for \$1,701, for extras related to “resize of previously approved brochure layout”, as requested by Yuanheng on April 7, 2018. This invoice was for 9 hours of work. As noted above, Yuanheng paid this invoice.
21. I reject Yuanheng’s argument that 15011-A2 was only payable because ET gave them an estimate of hours and because it had approved the work. They made this argument in support of their position that because they did not expressly approve 15011-A1 they do not have to pay it as an extra. I disagree. There is no dispute that Yuanheng had requested the additional revisions. Yuanheng’s position is only that it was a particular revision that was not a billable extra. I find the weight of the emails and the chronology leads to the conclusion that ET had explained on March 27, 2018 that more work could be billed as extras under the contract. Yuanheng also made no objection to 15011-A1 when they requested further work that led to 15011-A2, which they paid. Most importantly, the contract is clear about the number of drafts included in the Fee (two) and how revisions or extras would be billed.
22. On May 14, 2018, ET emailed Yuanheng about specific outstanding invoices, including 15011-A1 at issue in this dispute. While in its email response Yuanheng appeared to address a separate invoice that was more overdue than 15011-A1, Yuanheng also did not object to 15011-A1. On June 7, 2018, ET sent another reminder email about outstanding invoices, including 15011-A1. At no point did Yuanheng express concern about paying for 15011-A1. I find this supports my conclusion that the work was billable as claimed by ET.
23. Next, for the purposes of this dispute, I find nothing turns on the fact Yuanheng provided some of the photography images. I say this because while the invoice 15011-A1 at issue billed for additional image sourcing, this does not mean that ET was exclusively providing images. There are a variety of photos in the brochures and Yuanheng’s invoice from a third party photographer does not indicate they provided all of the brochure’s images.

24. Finally, I also reject Yuanheng's more general argument that ET's brochure design fell below the required standard of care. Yuanheng provided no evidence in support of that argument, such as from another design agency. I have reviewed the various brochure drafts in evidence and the changes in design from draft to draft appear well done and reflect a change in layout. This is consistent with Yuanheng changing its mind about how it wanted the brochure to be laid out. Brochure design, like any sort of graphic design, is to a large extent subjective in nature. Based on the evidence before me, I am not prepared to conclude that ET's work was substandard. In support of my conclusion is the fact that there is no evidence before me that Yuanheng was ever critical of ET's work, even when it asked for subsequent revisions that it did ultimately pay for.
25. On balance, I find ET is entitled to payment of the outstanding invoice 15011-A1, for \$3,685.50. Given the nature of the brochure design as it evolved, and the original contract price that reflected a high-end brochure design, I find the amount claimed is reasonable.
26. ET claims \$737.10 in contractual interest. The April 9, 2018 invoice states 2% interest is charged on overdue balances every month. However, section 4 of the federal *Interest Act* states that unless a specified interest rate includes the annual equivalent, a maximum of 5% per year can be charged. So, I apply 5% annual contractual interest to the \$3,685.50, from May 9, 2018, the date the invoice was due. This equals \$232.74.
27. In accordance with the CRTA and the tribunal's rules, I find the successful applicant ET is entitled to reimbursement of \$175 in paid tribunal fees. ET is also entitled to reimbursement of \$26.92 in courier charges to serve the Dispute Notice, a dispute-related expense I find reasonable. I find Yuanheng must pay ET these amounts.

ORDERS

28. Within 14 days of this decision, I order Yuanheng to pay ET a total of \$4,120.16, broken down as follows:

- a. \$3,685.50 in debt,
 - b. \$232.74 in contractual interest at 5% annually, and
 - c. \$201.92, as \$175 for tribunal fees and \$26.92 for dispute-related expenses.
29. ET is entitled to post-judgment interest as applicable. ET's claims against the respondent Polly Hu are dismissed.
30. Under section 48 of the CRTA, 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.
31. Under section 58.1 of the CRTA, 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