Civil Resolution Tribunal

Date Issued: August 30, 2019

File: SC-2019-000039

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sukkau v. Dangelo,* 2019 BCCRT 1033

B E T W E E N :

SHILOH SUKKAU

APPLICANT

A N D :

SYLVANA DANGELO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a refund for website development services.

2. In October 2017, the applicant, Shiloh Sukkau, hired the respondent, Sylvana Dangelo, to build a custom website. The applicant says the respondent's work was

unprofessional and incomplete, and by October 2018 the website had deteriorated to the point of not functioning. The applicant claims a refund of the $4,755 she paid the respondent.

3. The respondent says she fulfilled the parties' hourly rate contract based on approved designs. The respondent says the website never launched because the applicant kept changing her mind. The respondent says she reasonably refused to continue to work without payment.

4. The parties are each 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.

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 respondent must refund the applicant $4,755 for website design payments.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant to prove their 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. It is undisputed that on October 20, 2017, the applicant hired the respondent to build her website, with an initial budget of $2,850. The actual contract is not before me, but I find the evidence shows at some point the parties agreed to expand the project and the parties agreed the respondent would work on an hourly rate basis.

12. In particular, in the Dispute Notice that started this proceeding, the applicant acknowledged that over time it became clear that the timeline and budget was insufficient to complete the project, "which I agreed to". However, the applicant further said that in the "fall of 2018" there were serious problems with the unfinished website and she concluded she could not continue to pay the respondent, particularly as some components already paid for needed to be re-done.

13. The respondent says she completed the website for the initial $2,850 agreed price but that the applicant kept asking for more expensive work that she did not want to fully pay for.

14. In her later submissions, the applicant gave different evidence and said that the respondent "regularly assured" her that she was able to complete the website within the applicant's budget and timeline.

15. The applicant's evidence is inconsistent and on balance I find the applicant's earlier evidence more likely. In other words, the applicant realized that her initial budget and timeline was inadequate given what she wanted for the website. This conclusion is supported by the emails filed in evidence by the respondent.

16. The applicant argues that she did everything the respondent asked, including agreeing to additional hours, extending deadlines, changing the sizes of files, providing feedback, and attending regular meetings. The applicant says despite all this, the website was "always defective" and was never completed. Yet, she also said that by June 1, 2018 the website "looks good and is almost complete but having some issues".

17. The crux of the applicant's argument is that by October 2018 the website was having "major ongoing issues" which were never resolved.

18. The respondent submitted that the applicant routinely changed her mind on a wide range of items including function, design, fonts, colours, image backgrounds and content – both during and after the programming process. I have no evidence to the contrary and I note the applicant chose not to provide a reply submission. I accept the respondent's evidence, which is also consistent with her earlier Dispute Response and with the parties' emails in evidence. The applicant provided a "timeline" that included her descriptions of "examples of defective products and services", such as that the image gallery and fonts were "ongoing" issues. However, the applicant provided no supporting evidence, such as screenshots from the website or an opinion from another web developer critical of the applicant's work in these respects. In particular, the applicant submitted in her "timeline" document that the respondent's failure to meet deadlines is documented in emails and screenshots, yet the applicant chose not to provide them. The emails I do have

show that the applicant was changing her mind, which supports a conclusion that any missed deadlines were not the respondent's responsibility.

19. In December 2018, the applicant removed her site from the respondent's server at which point the applicant says her website stopped working completely and that the respondent refused to assist. The respondent says the applicant had chosen not to continue paying for services at the agreed hourly rate and the respondent was not prepared work for free. The emails in evidence support the respondent's position. The respondent submits it is standard practice to ask a client to move web hosting from a personal host to something they will pay for after the termination of the web design contract. Again, the applicant chose not to provide a reply submission and on balance I find the applicant has not proved the respondent breached the parties' contract with respect to the web hosting issue.

20. The applicant submitted an August 10, 2018 email from her photographer VM, who wrote that the website "looks good!", but noted some slide images were not functioning well. The respondent's evidence indicates this was a work in progress, in part because the applicant had provided wrong-sized images, contrary to instructions.

21. The applicant also provided a December 23, 2018 email from RG, who the applicant says is another website developer. In his email, RG says he had a long call with the webhosting company GoDaddy and that RG also got an opinion from his "good friend" who is a "full-stack developer". RG wrote that the website has 'some major problems that none of us can seem to even fully pin down. No specifics were mentioned in RG's email. The "big question" RG noted was whether the applicant had access to a particular host server, and that the site was "riddled with redirect instances". RG said he could not get the "works page to index as the homepage".

22. The difficulty with RG's email is that he does not set out his own expertise or background as a website developer. He provides a hearsay opinion from an unidentified "good friend". It is not clear from RG's email whether the criticisms of the website are his own opinions or merely a restatement of what his good friend

said. There is no indication RG was aware of the respondent's instructions to the applicant. Based on this, I place little weight on RG's evidence.

23. The applicant provided no reason why she did not provide a direct statement from another web developer about the respondent's work with a reference to the agreed terms. The respondent's explanation, shown in the parties' emails at the time, is that she gave instructions to the applicant about the shift in the host server, and the applicant did not understand what to do. For all these reasons, I find the applicant has not proved the respondent breached the parties' contract with respect to the web design, the web hosting, or at all.

24. In summary, I find the weight of the evidence shows the respondent provided the paid work as requested but that the applicant kept changing her mind, wanting custom work that was more expensive than she could reasonably afford to take it to completion. I find the respondent did not breach the parties' contract. I dismiss the applicant's claims.

25. Under the CRTA and the tribunal's rules, a successful party is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. As the applicant was unsuccessful, I dismiss her claims for fees and expenses. The respondent did not claim any fees or expenses.

ORDER

26. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair