



Civil Resolution Tribunal

Date Issued: September 18, 2019

File: SC-2019-001134

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lee v. Eitel*, 2019 BCCRT 1099

BETWEEN:

JESSICA LEE

APPLICANT

AND:

DANE EITEL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about payment for services. The applicant, JESSICA LEE, says that she entered into a consulting services agreement with the respondent, DANE EITEL. According to the applicant, she provided the services but the respondent

has not paid her invoices. The applicant seeks an order for the outstanding amount, which she says is \$4,949.44 plus contractual interest. The respondent does not deny that he had an agreement with the applicant, but denies that he owes her the amount she claims.

2. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. 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.

ISSUE

6. The issue in this dispute is whether the respondent owes the applicant \$4,949.44 plus contractual interest, for consulting services.

EVIDENCE AND ANALYSIS

7. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
8. On August 31, 2018, the parties made an agreement that the applicant would provide the respondent with her business consulting services. According to the agreement, the applicant would assist the respondent with developing business operations, providing recommendations for business strategy, and developing a strategy for establishing the feasibility of the respondent's business in particular geographic areas. The parties agreed that the applicant would charge the respondent \$100 per hour, to be billed on about the 25th of each month and payable on the last day of each month. There would be a 10% late fee applied to outstanding amounts. The agreement also contemplated an advance payment of \$500, and stated that either party could terminate the agreement at any time.
9. The respondent provided the applicant with the \$500 advance payment and she started work under the agreement. The applicant sent the respondent an invoice on September 26, 2018 for \$2,887.50, which included credits for the \$500 advance payment and a \$100 discount for unspecified reasons. She also sent him an October 26, 2018 invoice in the amount of \$4,949.44, which included charges for new work, the previous outstanding \$2,887.50 balance, and a late fee of \$288.75.
10. The evidence before me suggests that the invoices were higher than the respondent expected and he did not have the funds to pay them. The parties continued to work together but over time the relationship became strained, and the applicant decided to stop performing work until the outstanding balance was addressed. Based on the evidence before me, it is not clear whether the agreement was terminated formally, but I find that nothing turns on this.

11. The applicant says that, aside from the \$500 advance payment, she has received nothing from the respondent. She seeks an order that the respondent pay her the outstanding amount of \$4,949.44 plus contractual interest, which she says is 0.008%.
12. The respondent admits that he entered into an agreement with the applicant, but suggests that she did not hold up her end of the bargain. The respondent says that the applicant pressured him to agree to payment terms he did not want and to hire her friend. According to the respondent, the applicant did not provide much in the way of tangible work and her advice was “not worth a penny”. He questions whether the applicant worked all the hours she billed, and suspects that she billed him for conversations about personal matters. The respondent also says that the applicant behaved in a rude and unprofessional manner, including referring to him as a “monkey”.
13. Whether or not the respondent may have preferred a different payment structure, he agreed to the \$100 hourly rate for the applicant’s work. The applicant appears to have charged her time in quarter hour increments, but the method of timekeeping is not specified in the agreement. In addition, there is no maximum billing amount specified.
14. I find that the scope of the parties’ agreement was very broad and the wording makes it difficult to ascertain exactly what tasks the applicant would be performing. The time summary on the invoices details project-related tasks that are equivalent to the amount billed. I find that the weight of the evidence before me does not show that the applicant failed to reasonably perform the work she invoiced or that it was not work contemplated by the agreement.
15. Further, the agreement made no promises as to the utility or quality of the applicant’s work. It states that the applicant would “work in good faith to provide all quality project deliverables”. However, the agreement goes on to say that the applicant “makes no warranties, expressed or implied, as to the condition, accuracy, originality, merchantability, or fitness for any particular purpose of any work

performed, advice given or intellectual property developed”. The agreement specifically stated that the applicant would “provide the work performed on an as-is basis”, and I find that the respondent specifically agreed to accept her work product on that basis.

16. Although the respondent may have found that the applicant’s work did not have the value that he had expected, this does not amount to a breach of their agreement. I am satisfied that the applicant performed work as contemplated by the agreement, and that the respondent is responsible to pay for it. I order the respondent to pay the applicant \$4,949.44 in satisfaction of the outstanding invoices.
17. The applicant also seeks interest at what she says is the contractual rate of 0.008%. The parties’ agreement does not contain a specific term for contractual interest. The agreement does contemplate a 10% late fee, but this is not equivalent to the interest rate claimed by the applicant. While I find that the applicant has not established her claim for contractual interest, I find that she is entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from November 15, 2018, I find that the applicant is entitled to interest of \$78.26.
18. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175.00 in tribunal fees.
19. The applicant also claimed dispute-related expenses of \$145.95 for post office box rental for 6 months and \$170.00 to repair a broken device. As neither of these expenses were substantiated with receipts, and it is not clear how these are dispute-related expenses, I decline to grant reimbursement for them. I grant the applicant’s request for reimbursement of \$11.31 in registered mail fees.

ORDERS

20. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$5,214.01, broken down as follows:
 - a. \$4,949.44 in payment of the outstanding invoices,
 - b. \$78.26 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$186.31 for \$175.00 in tribunal fees and \$11.31 for dispute-related expenses.
21. The applicant is entitled to post-judgment interest, as applicable.
22. 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.
23. 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.

Lynn Scrivener, Tribunal Member