



Civil Resolution Tribunal

Date Issued: December 16, 2019

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cole v. Gordon Paterson dba Cadence Creative Studio*, 2019 BCCRT 1412

B E T W E E N :

SHANE COLE

APPLICANT

A N D :

GORDON PATERSON (Doing Business As CADENCE CREATIVE
STUDIO)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. This dispute is about a refund for website development services.
2. The applicant Shane Cole says he hired the respondent Gordon Paterson, doing business as Cadence Creative Studio, to build a custom website for a marijuana

edibles venture. The parties agree that the applicant paid \$4,201.31 up front. The applicant says the respondent failed to provide a fully-functional website, substantive website design or development service as agreed.

3. The applicant also says the respondent failed to back up its work product, and to follow his instructions to renew a third-party website hosting plan.
4. The applicant claims a full refund of \$4,201.31.
5. The respondent says the website never went live because the applicant stalled the process pending marijuana legalization. The respondent says it did not agree to provide web hosting for the applicant. The respondent also says it is not responsible for the third-party software used to host the website. The respondent says it warned the applicant to keep his third-party account current, but that the applicant failed to do so. The respondent asks that the dispute be dismissed.
6. The applicant is self-represented. The respondent is represented by business owner Gordon Paterson.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.

9. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

11. The issue in this dispute is whether the respondent failed to deliver the web design and development services as agreed, and if so whether it must refund the \$4,201.31 paid by the applicant.

EVIDENCE AND ANALYSIS

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
13. For the reasons given below, I allow the applicant's claim in part.
14. On September 13, 2017, the applicant entered into a contract with the respondent. I find that the contract is the itemized invoice and the estimate document, taken together, that the respondent provided to the applicant that day. Under the contract, the respondent agreed to provide web design and development services for the applicant.
15. The contract described the web design and development services specifically as:

- a. An initial discovery meeting,
- b. Site map development,
- c. Design composites for home and single inside page style,
- d. Edits to design composite,
- e. Responsive framework build based on the design composite,
- f. Advanced page layout editor,
- g. Image gallery plugin,
- h. Video library player,
- i. Contact form,
- j. Google map integration,
- k. Content layout for up to 10 pages,
- l. Two rounds of revisions,
- m. Installation and configuration of SEO plugin,
- n. Google Analytics integration,
- o. Social Media links to your network,
- p. Social sharing buttons,
- q. Blog setup with up to 1 category,
- r. Two hours of personal training,
- s. Website launch on a suitable hosting platform,
- t. I-Themes Security, and
- u. Back-Up Buddy site backup.

16. The applicant admits that an initial discovery meeting was provided. The detailed invoice shows a \$400 price for this aspect of the service.
17. The contract specified that it did not include website hosting or domain registration. These costs would be incurred by the applicant separately through third-party providers.
18. The contract included a term that the respondent would provide “secure back-up functionality”. I find it was a term of the contract that the respondent provide back-up functionality for the live website. In order to fulfil that term of the contract, I infer that it was necessary for the respondent to back up the work in progress.
19. The parties agreed to a price of \$4,201.31, which the applicant paid in full on September 13, 2017.
20. The contract also specified that it remained in effect for 1 year. The respondent communicated with the applicant about the project after the one-year mark, without raising the contract’s expiry. For this reason, I find that the parties agreed to extend the contract when the applicant paused the project pending certainty about marijuana legalization.
21. I also find that the contract provided that the applicant would respond to the respondent’s communications within 24 hours, and to provide accurate content.
22. For the reasons given below, I find that the respondent provided only some of the web design and development services it promised.
23. LJ, a WordPress developer and Graphic designer, provided a written statement to say that she worked on the applicant’s e-commerce project as a contractor for the respondent on and off for over a year. LJ says she installed, configured and customized a WordPress Theme for the website, and installed and configured plugins including BackupBuddy and iThemes security. LJ writes that she also created and built pages titled Start, About, Purchase, Testimonials, Facts and Company for the applicant’s site. LJ says she completed all work as instructed by

the respondent and that the respondent paid in full for her work. LJ does not say how much she was paid.

24. Based on LJ's statement, I find that the respondent provided some website development, and attended to building five pages, as well as installing I-Themes Security, Back-up Buddy plugins. However, as discussed further below, because the respondent failed to back up this work, only some of it became work product that the applicant could access.
25. On September 20, 2018, Bluehost, a third-party hosting site, emailed the respondent saying that the webhosting account for medicinalmade.com had expired. Bluehost's email said that if the account was not renewed within 21 days, all data associated with the account would be permanently removed from Bluehost's servers. Mr. Paterson forwarded the email to the applicant.
26. That evening, the applicant responded asking if he should renew with Bluehost himself or pay the respondent to do so on his behalf. He also asked when it needed to be done.
27. Mr. Paterson replied, offering to put Mr. Cole's credit card number on the account and set it to automatically renew annually.
28. On September 20, 2018, Mr. Cole replied with the following message:

With this so uncertain after this coming October it might be better to make 1 more one time payment please then next year if things are more solid set up recurring payments. (quote reproduced as written)
29. Mr. Paterson replied saying that Mr. Cole could "wait until October" was over and then decide whether he wanted to continue with a live website.
30. I find that Mr. Paterson's advice to wait until October was over was incorrect. The Bluehost email said that the hosting must be renewed within 21 days of September

20. If Bluehost services were not renewed, their system would delete “all data associated with the account.”
31. That evening, Mr. Cole replied saying “Ok, I’ll let you know tomorrow.”
32. The parties disagree about what happened next.
33. Mr. Cole says he phoned Mr. Paterson the next day, instructing him to renew the Bluehost services on his behalf. Mr. Paterson denies receiving this phone call.
34. Mr. Paterson says that Mr. Cole only replied on December 22, 2018 writing, because the laws changed October 17, he was now ready to go ahead despite “dragging my (his) feet the last year”. Mr. Cole then asked what he needed to do to keep medicinalmade reserved and ready to go live in “a couple months.”
35. I find that the applicant’s December 22, 2018 message is more consistent with him having delayed renewal of the Bluehost account than with having handed that obligation on to the respondent. The third-party hosting was the applicant’s obligation, falling outside the contract. I find that the applicant failed to provide an instruction to the respondent to renew the Bluehost hosting service, until after it was too late to renew.
36. At that point, the respondent discovered that Bluehost had deleted all content from the hosting site for medicinalmade.
37. However, the evidence also shows that the respondent also did not otherwise backup its work product to that date. The homepage screenshot filed in evidence by the applicant shows a home page, but with text that is only partially customized. As well, I find that LJ’s work product was not preserved or “backed up” and provided to the applicant.
38. Given my finding that the contract obliged the respondent to back up the work product, I find that the respondent failed to fulfil a contractual term.

39. However, the email messages also prove that the applicant stalled the website development process for the large part of a year because he was busy with personal matters and concerned about the impact of marijuana legalization on the business. I find that the legalization dilemma does not amount to frustration of the contract, because the applicant was aware of that unsettled question before he entered into the contract. Therefore, I find that the applicant failed to fulfil his contractual obligations to provide content and instruction to the respondent in a timely way.
40. I find that the respondent failed to meet its contractual obligation to back up its work product for the applicant's site. Due to this failure, the applicant did not receive the limited website development product that the respondent produced.
41. The applicant received some value for the work done, including the discovery meeting, website domain registration, purchase of a WordPress theme, and some hard copy content development that could be used to shorten eventual development of a live site. Looking at the respondent's itemized invoice, on a judgment basis I find the value of the work product that the respondent provided to the applicant to be \$1,300.
42. I order the respondent to pay the applicant \$2,901.31, which is the difference between the price the applicant paid and the value of the work product the applicant received.
43. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgement interest on the \$2,901.31 from December 22, 2018, which I find is the date by which the limited website content had been provided, to the date of this decision. This equals \$55.40.
44. 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 in tribunal fees. The applicant did not claim dispute-related expenses.

ORDERS

45. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,131.71, broken down as follows:
 - a. \$2,901.31 as a refund for services that were not provided under the contract,
 - b. \$55.40 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 tribunal fees.
46. The applicant is entitled to post-judgment interest, as applicable.
47. 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.
48. 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.

Julie K. Gibson, Tribunal Member