Civil Resolution Tribunal

Date Issued: March 6, 2020

File: SC-2019-007688

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *C. Ralph & Associates Inc. v. Western Educational Adventures Inc.*, 2020 BCCRT 269

B E T W E E N :

C. RALPH & ASSOCIATES INC.

APPLICANT

A N D :

WESTERN EDUCATIONAL ADVENTURES INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This dispute is about payment for accounting services. The applicant, C. Ralph & Associates Inc., says the respondent, Western Educational Adventures Inc., hired it to provide accounting services and then did not pay in full for the 2017 and 2018 tax

returns. The applicant requests $2,261.38, which includes GST and $461.01 in contractual interest. The applicant is represented by its principal.

2. The respondent says that it hired the applicant to provide its GST and corporate tax return for 2017 and 2018 for $1,750 (GST included). The respondent says that this was the total for both years and then the applicant charged it $1,750 plus GST for each year. It says that these were not the terms of the agreement. The respondent also says that the applicant has not calculated the contractual interest correctly. The respondent is represented by its principal.

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. In some respects, this dispute amounts to a "it said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

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.

6. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

7. The respondent argued that there was no relationship between the applicant and the respondent because the applicant did not use "Incorporated" when dealing with the respondent. Another tribunal member allowed the applicant to use its legal name in this dispute. I agree with this finding as there is no prejudice to the respondent in allowing the applicant to use its proper legal name.

ISSUE

8. The issue in this dispute is whether the agreed price was for one tax year or two tax years combined.

EVIDENCE AND ANALYSIS

9. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

10. It is undisputed that the parties entered into an agreement in December 2018 for the applicant to complete the respondent's GST and corporate tax returns for 2017 and 2018. The centre of this dispute is about how much the respondent agreed to pay, specifically was the price quoted for one year or two years combined.

11. Neither party suggests that an hourly rate was agreed upon. The respondent says that it incorporated in June 2017, so its tax return for 2017 was only from July to October. The 2018 tax return was for a whole year. The respondent says that the

applicant told it because there were few transactions in 2017 it would do both the 2017 and 2018 taxes for a combined total of $1,750 (GST included). The respondent also says that the applicant promised to have the returns done by the second week of January 2019. None of this was put in writing.

12. On December 11, 2018, the applicant sent the respondent letters of engagement for 2017 and 2018 confirming its appointment as the respondent's accountants. The letters stated that the applicant would complete financial statements. It also noted that it would compile the balance sheets and the statements of income and the retained earnings for the tax years. The letters of engagement also said that before completing the financial statements the applicant would perform bookkeeping services, which included the preparation of journal entries and a trial balance. The letter specifically said that the applicant would perform bookkeeping that it found necessary for the compilation of its services. The respondent says that the applicant included extra provisions in case the respondent needed these services, but that it did not agree to pay for them.

13. The letters of engagement said that the fees for services were based on the complexity of the work, the degree of responsibility involved, and the experience and skill required. It also said that interest on past due accounts would be charged at 1.5% per month, 19.74% on an annual basis. The letters did not set out a fixed price or an hourly rate.

14. The respondent signed the letters of engagement. The applicant says that it still had to complete the same steps regardless of how many months were involved in a tax return and that it never told the respondent that it would charge $1,750.00 for both years combined. The respondent says that these letters did not set out the cost and assumed it could trust the applicant.

15. The respondent says that it did not need the applicant to prepare financial statements or provide bookkeeping services. The respondent states it did its own bookkeeping but also acknowledged in its submissions that its bookkeeping was off for 2018, which was discovered by the applicant. The respondent says that it did not

actually have to provide financial statements but has provided no evidence to explain why this is so. Also, when it signed the letters of engagement it did not indicate that it did not want the applicant to perform any of the services outlined.

16. The applicant finished the returns in January 2019 and arranged to meet with the respondent on February 4, 2020. At that meeting the respondent reviewed the returns and in its submissions it says it agreed that "all looked well."

17. Not only did the respondent indicate that the returns were satisfactory, but the applicant also points out that the cost of the accounting for both years were shown in the tax returns prepared so the respondent could deduct them. The applicant submits that it went over the tax forms with the respondent who reviewed them and then signed them so they could be sent to the Canada Revenue Agency (CRA). The applicant provided the respondent with a balance sheet showing that the company owed $1,750 in professional fees each for both 2017 and 2018. The respondent signed the form which took this outstanding debt into account when it filed with the CRA. The respondent did not respond to the evidence that the tax forms show the $1,750 yearly cost for the accounting services.

18. Ordinarily, a contract should specify the price, as price is a fundamental term. I find the applicant's failure to stipulate the cost is not fatal to its claim because I have found above the respondent did agree to the $1,750 cost per year by signing off on the tax forms. Based on the above, I find that the respondent knew it was paying $1,750 per year for the applicant's tax services.

19. The respondent also says that after it disputed the amount owing it provided a cheque for $1,837.50 ($1,750.00 plus the GST) with the invoice number and "paid in full as per email" written on the cheque. It says that the applicant cashed it and therefore agreed that it accepted the "payment in full" terms. The respondent also says that this was in keeping with an email it sent laying out these terms.

20. There is no email in evidence from the applicant agreeing that if it cashed the cheque it agreed to the respondent's terms. I find that the respondent owed the

applicant money for the accounting services and it had the right to recover some of that money by cashing the cheque. This does not mean that it agreed it would not try to also get payment for the rest of the money outstanding. Caselaw indicates that the onus is on the debtor to show that the creditor expressly accepted the partial payment as a final settlement. (*IBI Group v. LeFevre & Company Agents Ltd.,* 2004 BCSC 298). The respondent has not proved that here. I find that cashing the cheque did not mean the applicant was agreeing it was a full settlement of the debt outstanding.

21. The respondent also provided quotes which he says show that he was overcharged and the work should not have cost $3,500.00. Accounting firm MA indicated that the average corporate filing typically cost $3,000 annually, although it did agree to charge the respondent less. I find that this is in line with the applicant's cost. The other quotes provided had a large range.

22. I am not persuaded that these quotes indicate that the applicant overcharged the respondent. They are also vague and do not represent the work that the applicant actually performed. There is nothing in the quotes that lead me to the conclusion that the applicant's fee was unreasonable. Therefore, I find the evidence does not show that the applicant overcharged the respondent.

23. The respondent also says that the applicant said it would not charge GST. Contrary to the respondent's assertion, the fact that the applicant did not "mention GST' does not mean the applicant said GST would not be charged or that it is not payable.

24. The respondent also says that it was dissatisfied that it did not get its returns in January 2019. The evidence does not show that the applicant said it would have the tax returns done by this date. Also, I note that there is a January 29, 2019 email where the respondent cancelled the meeting with the applicant because its representative had a cold. I find that the evidence does not show that the respondent was promised its tax returns by mid-January. Further, the evidence shows that the returns were ready in January, but the respondent cancelled the meeting to obtain them.

25. Based on the evidence, I find that the respondent agreed to pay the applicant $1,750.00 each for its 2017 and 2018 tax returns. These amounts are subject to GST. The respondent paid the applicant $1,837.50 ($1,750.00 plus $87.50 GST) for one year. Therefore, the respondent owes the applicant an additional $1,837.50 for the second year's tax returns.

26. The applicant is also entitled to contractual interest. The respondent questions when the interest became payable on the amount owing. The evidence shows that the applicant first sent the respondent a bill for $3,675.00 on January 17, 2019. However, the evidence indicates that the applicant did not file the respondent's returns by this date. The respondent provided a second invoice dated February 5, 2019 for $3,675.00. The evidence shows that this was after the returns were filed. The invoice says that invoices are due upon presentation and that interest will be charged.

27. Therefore, I find that the respondent owed the applicant $3,675.00 as of February 6, 2019. The respondent then paid the applicant $1,837.50 on July 4, 2019. The annual contractual interest of 19.74% on $3,675.00 from February 6, 2019 until July 4, 2019 is $296.14. The interest on the $1,837.50 outstanding from July 5, 2019 until the date of this decision is $244.47. This amounts to $540.61 in interest owing to the date of this decision.

TRIBUNAL FEES AND EXPENSES

28. 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. As the applicant was successful in its claim, it is entitled to have its $125.00 tribunal fees reimbursed.

29. The respondent submits it had expenses of $5,010.00 for time spent on the dispute. The respondent was unsuccessful, so it is not entitled to compensation for his time spent. Further, I note that the tribunal does not normally reimburse parties for time spent on the dispute. Because this is not an extraordinary dispute, I see no reason

not to follow this approach. Therefore, the respondent is not entitled compensation for time it spent on this dispute.

ORDER

30. Within 30 days of this decision, I order the respondent to pay the applicant a total of $2,503.11 broken down as follows:

    a. $1,837.50 in debt,

    b. $540.61 in pre-judgement contractual interest at 19.74% annually, and

    c. $125.00 in tribunal fees

31. The applicant is also entitled to post-judgement interest.

32. 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.

33. 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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kathleen Mell, Tribunal Member