Civil Resolution Tribunal

Date Issued: April 23, 2020

File: SC-2019-010626

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Karmas v. Bosco,* 2020 BCCRT 443

B E T W E E N :

NADIA KARMAS

APPLICANT

A N D :

JEAN JACQUES BOSCO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a digital marketing contract. The applicant, Nadia Karmas, a freelance digital marketer, says the respondent, Jean Jacques Bosco, has failed to

pay her for the agreed 10-hour job related to marketing his book. The applicant seeks payment of her $909.50 invoice, which remains entirely unpaid.

2. The respondent says the applicant is only entitled to $260 for her work, because he alleges for the agreed scope she worked at most 2 to 4 hours, not 10 hours. The respondent also disputes the applicant's description of the scope of the project.

3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

6. 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.

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

ISSUE

8. The issue in this dispute is to what extent, if any, is the respondent obligated to pay the applicant for her $909.50 invoice for 10 hours of digital marketing services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant must prove her claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. The applicant's November 9, 2019 "Digital Marketing Consulting Proposal" described the respondent's project, which was about his book launch. The proposal described the applicant's scope of work as:

    a. "create a document with recommendations and how to post on social media", with reference to 4 social media platforms, and

    b. create a PowerPoint presentation based on information the respondent was to provide.

11. The proposal set out the applicant's $85 hourly rate and that the project would take 10 hours, for a total of $909.50, which is the amount claimed in this dispute.

12. Neither party signed the November 9, 2019 proposal. I accept the applicant's submission that she did not insist on it being signed (although she sent it to the respondent), since the parties knew each other in the community already. On balance, I accept that this November 9 proposal became the parties' agreement, which I find is supported by the screenshots of the parties' text messages in evidence. This includes the respondent's message that "PowerPoint" (which I infer refers to the PowerPoint presentation) and an introduction to posting on various social media platforms "would be enough for 10 hours". In his submissions, the respondent admits he asked the applicant for a 10-hour package.

13. However, the respondent submits that he hired the applicant to create 4 social media accounts and teach him "how to use them by posting messages or blogging to potential book buyers. Later on, I added a Power Point presentation". To the extent the respondent argues it and as discussed further below, I do not agree that the parties' November 9, 2019 agreement included the applicant making social media posts herself. That was the subject of a later November 21, 2019 quote, discussed below. Also, the evidence shows the PowerPoint presentation was part of the original agreement, not added later.

14. The respondent also alleges the parties made a verbal agreement that they would meet "each time at least between 60 to 90 minutes or more" to teach him how to use social media. I disagree, and based on the parties' messages in evidence I find the written proposal was the extent of the parties' contract, at least until November 21, 2019. The evidence also does not support the respondent's assertion that the applicant's written work was expected to be done in 2 to 4 hours. I say this because, as set out above, the respondent himself texted that he agreed her proposal would take 10 hours, and his message did not reference in-person meetings. The proposal does not mention in-person meetings.

15. The applicant says she delivered the PowerPoint presentation and social media recommendations on time. The respondent does not say they were delivered late, and so I accept the applicant's evidence. The evidence shows the applicant emailed a draft PowerPoint to the respondent on November 12, 2019, with the parties going back and forth about it over the following few days. She sent a "social media recommendations" document on November 17, 2019, as she had agreed to do.

16. The respondent argues that he never contracted for the applicant to make social media "recommendations" and says what he hired her to do was "provide an introduction or courses" on how to use the 4 social media platforms. The respondent does not say the "recommendations" document did not provide an introduction. As noted above, I also find there was no agreement the applicant would spend hours with the respondent teaching him how to use social media.

17. Further, the respondent argues that the applicant knew that "any marketing recommendations" were going to be provided by his book's publisher. The applicant denies knowing this, and I find the respondent's submission unsupported by the evidence, including their contemporaneous text messages and emails.

18. In short, I do not accept the respondent's assertions that the applicant's communications to him were largely an "offer to treat" such that she was soliciting work from him that he did not agree to. As set out above, I find it more likely than not that the parties agreed to the work described in the November 9, 2019 proposal.

19. As referenced above, the applicant sent a 2nd quote on November 21, 2019, for a separate job. The evidence shows this followed the respondent's request for the applicant to make the social media posts, which I accept was outside the parties' initial November 9 agreement. This 2nd quote was for "Social Media Management", to write and create posts based on content provided by the respondent, and to post 3 times a week on social media. This 2nd quote was for 5 hours per month at $85 per hour, for a monthly payment of $454.75. Neither party signed this quote. However, I accept this was the parties' agreement, based on the parties' November 20, 2019 text message exchange. That said, nothing turns on it as the applicant does not claim for any work done under this 2nd quote.

20. The respondent submits that the applicant failed to post a particular message to social media after his November 16, 2019 book launch. The timing of the parties' texts shows the respondent asked the applicant to make a social media post on November 20, 2019. I find that at that point, only the November 9, 2019 contract was in effect and as noted it did not contain any agreement for the applicant to do the respondent's social media posts herself.

21. I note the respondent says the initial contract was for 10 hours to teach him how to post messages "as well as for the Client to post once the 10 hours were still available". As for "Client', I infer the respondent refers to the applicant even though he was the client. Again, I do not accept the respondent's submission in this respect, because it is not consistent with the parties' messages exchanged at the

time. I find that the respondent's own submissions about what the original contract included are inconsistent. First he says the 10 hours were for the introduction to the social media posts and a PowerPoint presentation, and yet later he says the 10 hours also included the applicant making social media posts for him.

22. The applicant's November 21, 2019 invoice for $909.50 describes the parties' project as "Social Media Accounts and Power Point". It also details the activity as: a) social media account creations (4 accounts), b) social media recommendations "doc", and c) PowerPoint presentation. The invoice indicates the work was done in November 2019. I find the invoice is consistent with the parties' agreed scope of work.

23. As for the PowerPoint presentation, the respondent's submitted copy in evidence is 12 slides, with a colour scheme, a "box" theme throughout, and body text about the respondent and the background for his book. Marketing and design work is by nature largely subjective. Some people may like the final product and find it visually appealing, while others may find it less attractive. To the extent the respondent argues the PowerPoint presentation was not appropriate, I find the applicant's work fulfilled the parties' contract for the presentation. I do not agree with the respondent that the applicant's work on the PowerPoint presentation was worth only $50, less than an hour of the applicant's time.

24. The respondent argues the parties' contract was frustrated. He says that as the contracting parties, he and the applicant "are facing normal consequences of our imprudent bargains". I do not agree the parties' contract was frustrated. If the respondent has realized he made an "imprudent bargain", that does not mean the respondent does not have to pay the applicant for her time reasonably spent on the contracted work. I note that in the written communications in evidence, the respondent does not criticize the applicant's work. I find this supports my conclusion the applicant did the job properly and as agreed.

25. Finally, the respondent estimates the amount of time the applicant spent, and I note in his evidence and submissions the applicant's estimates vary from 2 to 4 hours.

While I acknowledge the applicant did not provide a breakdown of her hours spent on each item of the contract, on balance I find this is unnecessary in the circumstances here. The amount of time, 10 hours, is relatively short and based on the evidence before me I find the applicant completed the work she agreed to do. I find the applicant is entitled to the full $909.50 she claims.

26. The *Court Order Interest Act* (COIA) applies to the tribunal. This equals $7.53, calculated from November 21, 2019, the applicant's invoice date.

27. Under section 49 of the CRTA and tribunal rules, as the applicant was successful I find she is entitled to be reimbursed for $125 in paid tribunal fees. The applicant advised the tribunal that she wanted to claim translation fees as a dispute-related expense but she did not have an amount available. The applicant was provided a reasonable amount of time to submit her dispute-related expenses and has not submitted any. So, I make no order for dispute-related expenses. I say the same about the respondent, who also advised he wanted to claim dispute-related expenses but did not submit any. I would have dismissed the respondent's expenses claim in any event, since he was unsuccessful in this dispute.

ORDERS

28. Within 21 days of this decision, I order the respondent to pay the applicant a total of $1,042.03, broken down as follows:

    a. $909.50 in debt,

    b. $7.53 in pre-judgment interest under the COIA, and

    c. $125 in tribunal fees.

29. The applicant is entitled to post-judgment interest as applicable.

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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

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