Civil Resolution Tribunal

Date Issued: June 2, 2020

File: SC-2019-008485

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gavin Henderson-Peal dba GR Marketing Group v. Agrimation Inc*, 2020 BCCRT 603

B E T W E E N :

GAVIN HENDERSON-PEAL (Doing Business As GR MARKETING GROUP)

APPLICANT

A N D :

AGRIMATION INC and RYAN ELSON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This small claims dispute is about a contract for marketing services. The applicant, Gavin Henderson-Peal (Doing Business As GR Marketing Group) says that he had agreed to provide marketing services to the respondents, Ryan Elson and

Agrimation Inc. The applicant says he has not been paid in full for the services he provided. The applicant asks for an order that the respondents pay him the outstanding amount of $712.08. The respondents admit that they had an agreement with the applicant, but say that the applicant did not provide the services as agreed and attempted to overbill them. The respondents' position is that they do not owe the applicant any money.

2. The applicant is self-represented. Mr. Elson represents both respondents.

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.

6. 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

7. The issue in this dispute is whether the respondents owe the applicant $712.08 under their agreement.

EVIDENCE AND ANALYSIS

8. In a civil dispute like this one, an applicant bears the burden of proof on a balance of probabilities. The parties provided evidence and submissions in support of their positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.

9. The parties entered into a Business Services Agreement on February 20, 2019. This agreement said that the applicant would provide the respondents with services including web development, social media management, copywriting, logo design and traditional marketing material development. The agreement provided for a scope of services for a "onetime fee" of $2,433.75 plus GST, and set out that other services could be provided for costs set out in appendices to the agreement.

10. The applicant performed work including logo design, arranging business cards and door hangers, and establishing a website. The applicant issued several invoices for services under the agreement and "onetime fee", and the respondents made various payments by cash and e-transfer. A billing error and some misunderstandings about the scope of the agreement led to a deterioration in the parties' relationship. The respondents refused to pay the remainder of the fee until certain things were done, but the applicant took the position that those things would not be done without full payment.

11. Despite the challenges in the relationship, neither party appears to have provided the required 60 days of notice for termination of their agreement. In these circumstances, I find that the agreement remained in force and was binding on the parties. I also find that, as both respondents are named parties to the agreement, they are both responsible for the "onetime fee" for work performed by the applicant.

12. The parties disagree about whether the respondents owe the applicant any money. The applicant says the respondents owe $679.19 for door hangers and $32.89 for email hosting. The respondents say the applicant did not perform work to their satisfaction as required by the agreement, attempted to extort them and charged unauthorized fees. The respondents say the applicant has damaged their business, and that their losses are in excess of the tribunal's monetary limit for small claims matters. The respondents did not bring a counterclaim, but suggest that they may pursue damages in court.

13. The parties' agreement contemplated that the applicant would receive 1,000 door hangers for advertising purposes. The $679.19 (inclusive of tax) is the amount owing on the May 16, 2019 invoice #152 for "Flat Rate Services". I find that the door hangers formed part of the services that would be provided under the "onetime fee" in the parties' agreement.

14. There is not dispute that the respondents received the doorhangers. I acknowledge the respondents' submission that the door hangers do not feature the right version of the logo. However, the respondents attribute this error to an unidentified graphic artist rather than the applicant. Further, the evidence before me does not establish that the doorhangers were not what the respondents approved. Under the terms of the parties' agreement, I find that the respondents are responsible for this amount.

15. The next consideration is the applicant's claim for costs associated with email hosting. The applicant's invoice #205 dated July 26, 2019 listed a charge of $32.89 (inclusive of tax) for "Email Hosting one email address".

16. The parties' agreement stated that the first year's "web hosting" fee was waived, but it was silent about email hosting. The respondents submit that email hosting is included in web hosting packages. While this may be the case for some service providers, I do not find this to be determinative.

17. Email correspondence in evidence shows that the parties discussed the possibility of the applicant hosting the respondents' email services. However, the evidence

does not show the parties agreed about it. I find that the charge for email hosting was not included in the parties' agreement, and the respondents did not otherwise agree to pay for this service. Therefore, the respondents are not responsible for the $32.89 charge claimed by the applicant.

18. The *Court Order Interest Act* applies to the tribunal. The applicant is entitled to pre-judgment interest on the $679.19 from May 16, 2019 (being the invoice date) to the date of this decision. This equals $13.90.

19. 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 is largely successful, I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $125 in tribunal fees.

20. Mr. Elson asks for compensation for the time he spent dealing with this dispute. Rule 9.4(3) states that, except in extraordinary cases, the tribunal will not order one party to pay to another party fees charged by a lawyer or other representative. Consistent with this rule, the tribunal generally does not award parties expenses for their time spent on a dispute. Therefore, even if the respondents had been successful, I would not have made an order for these expenses.

ORDERS

21. Within 30 days of the date of this order, I order the respondents to pay the applicant a total of $818.09, broken down as follows:

    a. $679.19 under the parties' agreement,

    b. $13.90 in pre-judgment interest under the *Court Order Interest Act*, and

    c. $125 in tribunal fees.

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

23. 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 a Ministerial Order 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.

24. 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