



Civil Resolution Tribunal

Date Issued: August 5, 2020

File: SC-2020-001012

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhillon and Company Law Corporation v. Frederickson Graphics Inc.*,
2020 BCCRT 867

B E T W E E N :

DHILLON AND COMPANY LAW CORPORATION

APPLICANT

A N D :

FREDERICKSON GRAPHICS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about printing services. The applicant, Dhillon and Company Law Corporation (DLC), says custom folders it purchased from the respondent, Frederickson Graphics Inc. (Frederickson), also operating as Minuteman Press Surrey, were defective. DLC returned the folders to Frederickson and claims a

refund of the \$3,307.36 purchase price. Frederickson says although any defects were insignificant or not its fault, it offered to redesign and reprint the folders for free, and so it owes DLC nothing.

2. DLC is represented by its principal, Tejinder Dhillon, who was a lawyer at the time the folders were designed and printed in late 2017 and 2018, and is now a former lawyer. Frederickson is represented by its principal, Doug Frederickson.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. This dispute involves an "it said, it said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or CRT proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.
5. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
7. CRT rule 8.1 says that a party must include all evidence in their possession that may prove or disprove an issue in the dispute. In its submissions, DLC requested confirmation that Frederickson submitted all evidence in its possession. DLC also requested a copy of all Frederickson internal communication related to this dispute, as well as names and titles of all Frederickson employees, without identifying specific missing communications or unidentified employees, or why this information may prove or disprove an issue. Based on the parties' submissions, the evidence before me does not show Frederickson failed to produce relevant evidence. Further, the evidence does not show DLC followed the CRT rule 8.2 procedure for requesting evidence, which includes requesting it in writing before completing a Summons Form in consultation with a case manager and following the required directions. Keeping in mind the CRT's goals of speed, economy, proportionality, and fairness, I find DLC is not now entitled to seek further non-specific evidence from Frederickson at this late stage, and I am not persuaded that such evidence, where it exists, may prove or disprove an issue. So, I decline DLC's request.

ISSUE

8. The issue in this dispute is whether Frederickson's folders were defective, and if so, whether DLC is entitled to a \$3,307.36 refund or another remedy.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant, DLC, must prove its claims on a balance of probabilities. I have read and weighed all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

10. The undisputed evidence is that DLC agreed to purchase 3,000 custom-printed document folders from Frederickson for \$3,307.36. DLC provided graphic elements and an example design to Frederickson. In November and December of 2017, Frederickson provided many electronic folder design “proofs” for DLC’s approval, each in response to DLC’s requests for design changes. DLC says that it ultimately agreed to a final version of the folder design on December 22, 2017. DLC paid Frederickson in full before it received the printed folders in early February 2018.
11. DLC was dissatisfied with the printed folders, and says they are defective. DLC has three complaints about the folders. First, that the folder flaps were glued improperly, and were unfit for their purpose of holding client documents. Second, that the folders omitted information that DLC asked to be included. Third, that a low-resolution graphic was used on the front cover that looked unprofessional.
12. Frederickson says any deficiencies are insignificant or are not its fault, and that it never admitted the folders were not of reasonable quality. However, Frederickson says that it offered to redesign and reprint the folders anyway. Given the evidence before me, I find that Frederickson never admitted that the folders were significantly defective, although it acknowledged, and attempted to address, DLC’s concerns.
13. The parties disagree about the terms of their contract, which was not written down apart from a Frederickson quotation and invoice. DLC says it discussed its folder needs with a Frederickson salesperson, SJ, before approving the folders for printing. DLC says these needs were that the folders hold a lot of paperwork on both sides, that DLC’s business card be reproduced in full on the left flap, and that the appearance of the folders be professional. However, there is no evidence that the parties agreed Frederickson would ensure the folders met these needs, let alone that DLC communicated these requirements to Frederickson. There are no emails, or notes of phone calls, or other records, from before the date of printing, recording DLC’s communication of these requirements to Frederickson. The October 26, 2017 quotation and January 23, 2018 invoice for the folders did not indicate that any of these alleged needs would be met. I find that these alleged

needs did not form part of the parties' contract. I find the parties only agreed that Frederickson would produce 3,000 folders dual-flap folders with custom graphics.

14. I note that DLC indicates it felt pressured into ordering the folders, and that the Frederickson salesperson, SJ, pursued the sale because she wanted to "make her numbers" before the end of the year. Overall, even if SJ urgently pursued the folder transaction, I do not find DLC's argument persuasive, because there is no evidence that DLC was prevented from declining the order at any time, or from ordering folders from a different print company.
15. DLC also says Frederickson said there might be an additional charge for a redesign and reprint, which is why it declined that offer. However, Frederickson says that upon checking with its folder manufacturer, Frederickson confirmed to DLC that a redesign and reprint would be free. An April 24, 2020 letter from Frederickson's folder manufacturer said that the manufacturer agreed to redesign and reprint DLC's folders at no cost, and that the offer still stands. DLC says that no one told it about this free offer for an extended period, despite multiple inquiries, but provided no evidence of any specific inquiries. Given the several emails Frederickson sent to DLC in the summer of 2018 about redesigning and reprinting DLC's folders, on balance I find that Frederickson offered DLC a free redesign and reprint by the spring of 2018.
16. DLC says Frederickson repudiated their contract because Frederickson did not contact DLC about redoing the folders. So, DLC says it considered the folder contract terminated, and it left most of the folders at Frederickson's office with an unidentified person in April 2018. The parties disagree about whether Frederickson "accepted" the folders' return as termination of their contract. DLC submitted caselaw about contract repudiation, but I do not find it directly applicable here. Given my finding above, that Frederickson attempted to work with DLC on a folder redesign and reprint in the spring of 2018, I find the evidence shows Frederickson did not repudiate the contract or accept its termination. Further, I find the evidence

does not show that Frederickson would have been unable to redesign and reprint DLC's folders to address DLC's expressed concerns.

17. In addition, DLC took issue with a redesigned print proof it received from Frederickson in 2018, which DLC had not approved and found to be lacking, and which DLC said was an example of Frederickson's poor services. I find the evidence shows this was a preliminary new folder design, proactively created in an attempt to move along the folder redesign in the absence of responsive communication from DLC. I find this preliminary redesign was reasonable in the circumstances, and does not show a Frederickson failure to respond to DLC's input or produce adequate folder designs.
18. While the original folder graphics and text were being designed in late 2017, I find DLC requested several changes to the folder proofs over a period of several weeks, and finally approved one of the proofs for printing. I find DLC had sufficient opportunity to identify any design deficiencies at that time. DLC also admits that it did not review all of its requested changes in the proofs provided by Frederickson. I find such a review would not have taken long, because I find the folders are about the size of two sheets of office paper and feature a simple design and limited text. On balance, I find DLC did not reasonably rely on Frederickson's advice or expertise in the design and content of the folders. I find DLC approved, and is responsible for, the content and design of the printed folders.
19. DLC says the alleged folder defects are breaches of implied warranties in its agreement with Frederickson. I find DLC is referring to implied warranties under the *Sale Of Goods Act (SGA)*, although it did not cite the SGA in its submissions. I find the SGA section 18(a) implied warranty of fitness for a particular purpose does not apply here, because I found above that DLC did not reasonably rely on Frederickson's skill or judgment in the design or content of the folders. I find the SGA section 18(b) implied warranty that the folders be of merchantable quality applies here, as does the section 17 condition that the folders correspond with their description, which I find is the final print proof approved by DLC. I also find the

parties' agreement contains an implied term that Frederickson's work must be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124).

20. As discussed below, I find DLC has not met its burden of proving that the folders were defective, were not of merchantable quality, were not consistent with their description, or were otherwise not of reasonable quality. I reviewed DLC's submitted caselaw references regarding services that fail to perform a required function, but I find that is not the case here.
21. Regarding the flap glue, DLC says the folder flaps were stuck closed, it was difficult to open them, and the flaps were at risk of ripping when opened. DLC expected to be able to open the flaps instantly, without spending time trying to "finesse" them open. DLC does not say how long it took to open the folder flaps without damage. I note DLC provided no photo or video evidence of stuck flaps, ripped folders, or the necessary opening procedure. Frederickson provided photos of the folders showing both a closed flap and a flap that had been opened by hand without damage, and without obvious difficulty. Further, DLC admits that it gave several folders (less than 20) to its customers, and did not say that the glue prevented their use. On balance, I find the folder flaps were functional, not defective, and of reasonable, if not perfect, quality.
22. Turning to the information that DLC says was omitted from the folders, as noted above I find DLC was not entitled to rely on Frederickson for the content and design of the folders in these circumstances. DLC had the opportunity to review and make changes to the folder design and content many times, and ultimately approved the design and content prior to printing. DLC does not alleged that the design and content of the printed folders does not match the approved proof, or fails to meet a particular industry standard. So, I find Frederickson is not responsible for any "missing" or incorrect information on the folders.
23. Finally, DLC says the folders' front cover graphic was low resolution and looked unprofessional. DLC obtained this graphic, which it says looked fine on its

computer, and gave it to Frederickson for printing. DLC says the same graphic printed on the folder looked to be of poor quality. There are copies of the front cover graphic and the electronic folder proofs in evidence, along with photos of the printed folders. On the evidence before me, I do not see a notable difference between the quality of the provided graphic and folder proofs, and the printed folders. If the printed folder graphics were of poor resolution, I would expect the photographic evidence to sufficiently demonstrate this, but it does not. Further, I find the evidence does not show that the allegedly poor print quality was due to a significant printing error, as opposed to another reason such as a low-resolution graphic provided by DLC. Given the filed evidence, I find the folders are of reasonable quality, conform to the description provided by the approved folder proof, and are of merchantable quality.

24. Overall, I find the evidence fails to show the folders were significantly defective or failed to meet the specifications demonstrated by the folder proofs. I find Frederickson did not breach the parties' folder printing agreement, including any implied terms or warranties, and it did not repudiate or accept any termination of the contract. As a result, I find Frederickson does not owe DLC a refund. I dismiss DLC's claims.

25. As DLC did not make a claim for the return of the folders it left with Frederickson, I make no finding about that issue.

CRT FEES AND EXPENSES

26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Frederickson was successful here, and paid no CRT fees, so I order no fee reimbursement. The parties claimed no CRT-related expenses.

ORDER

27. I dismiss DLC's claims, and this dispute.

Chad McCarthy, Tribunal Member