



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Eagle Vision Video Productions Ltd. v. Jean E. Us Fire Inc.*, 2020 BCCRT
903

B E T W E E N :

EAGLE VISION VIDEO PRODUCTIONS LTD.

APPLICANT

A N D :

JEAN E. US FIRE INC. and DONALD HALLETT

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a contract for a video production. The applicant, Eagle Vision Video Productions Ltd. (Eagle Vision), says that the respondents, Jean E. Us Fire Inc. (Fire Inc.) and Donald Hallett, hired it to produce a video promoting their company. Eagle Vision says that the respondents were unhappy with the video and then refused to pay for it. He asks that the respondents pay \$4,165.35 for the video. Eagle Vision is represented by an organizational contact.
2. The respondents say that they did ask Eagle Vision to produce the video but that this was tied to Eagle Vision's promise to invest in Fire Inc. Fire Inc. says that the agreement was that after investment, the respondents would then pay for the video with extra shares in the company. The respondents say that Eagle Vision never invested in the company. The respondents also say that Eagle Vision did produce the video, but it was not satisfactory so they should not have to pay for it. The respondents are represented by Mr. Hallett.

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. In some respects, this dispute amounts to a "it said, they 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 CRT'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 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 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.

ISSUES

7. The issues in this dispute are:
 - a. Whether compensation for the video was tied to Eagle Vision only receiving additional shares in Fire Inc. as payment after investing in Fire Inc., and
 - b. Whether Eagle Vision's work was defective and, if not, do the respondents owe Eagle Vision \$4,165.35 for the video it produced.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant Eagle Vision must prove its case on a balance of probabilities. However, the respondents say that Eagle Vision provided a defective video. Where a party alleges defective work, they bear the burden of proving the defect, see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124.

9. 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.

Was the compensation for the video tied to Eagle Vision only receiving additional shares in Fire Inc. as payment after investing in Fire Inc.?

10. The parties disagree about who how they first met to discuss the video production. The respondents say that Eagle Vision reached out to them to discuss investment in Fire Inc., while Eagle Vision says that Mr. Hallett contacted it on November 1, 2017 because it wanted to use its drones. I prefer Eagle Vision's evidence on this point because it provided an email dated November 1, 2017 which stated that the respondents were interested in Eagle Vision's drones and video services. In the email, Mr. Hallett stated that he would need to speak with Eagle Vision to discuss its technical capabilities because this would likely be an ongoing contract.
11. Eagle Vision also provided a November 3, 2017 text where Mr. Hallett stated that he wanted to get a quote on video production including filming in the spring of 2018. Based on this, I find that the initial contact had nothing to do with Eagle Vision investing in Fire Inc., and the email also suggested to Eagle Vision that it was discussing offering an ongoing contract.
12. I note here that Fire Inc. submits that Eagle Vision has not adequately indicated the timing of events, including this initial contact. However, the email clearly states that it is from November 1, 2017 and the text is from November 3, 2017. This sets the stage for the beginning of the interaction between the parties. The remaining evidence, which will be discussed in more detail below, is also clear as to when events occurred based on its context. I do not accept Fire Inc.'s argument that Eagle Vision's submissions and evidence should be given less weight because they did not always note the exact date or time.
13. Eagle Vision sent an email dated November 27, 2017 quoting \$4,294 for the requested video. Eagle Vision then sent another email dated November 28, 2017

saying that the proposal was attached and noted that the cost would be cut in half if only one drone was needed. At this point it is unclear if the \$4,294.00 is the cost with one or two drones as the November 2017 proposal attached to the email has not been provided.

14. Mr. Hallett sent one line of a November 27, 2017 email with the rest cut off where Mr. Hallett stated “count me in for exchanging video/investing.” Eagle Vision stated that it did not have the cash yet, but it would let Fire Inc. know. Eagle Vision says that it was interested in investing but then when it found out the state of Fire Inc. it was not willing to take the risk.
15. Eagle Vision also provided texts from the same period. In a November 27, 2017 text, Eagle Vision indicated that it sent the full cost breakdown for the video to the respondents. Eagle Vision also stated that it looked at the other investor information and although it was interested in investing, it would take time to liquidate holdings into liquid cash. Eagle Vision stated that it would not be able to meet a November 29, 2017 deadline for Fire Inc.’s application. I infer the deadline is because Fire Inc. was applying for a funding grant.
16. In his reply email, Mr. Hallett responded by providing information about when they could begin filming. Notably, Mr. Hallett did not state that Eagle Vision was not to proceed with the video without the discussed investment. The evidence shows that things stalled at this point as Fire Inc. was trying to obtain equipment and there were issues with the weather.
17. Later, in April 2018, Fire Inc. again asked Eagle Vision to send the video production proposal because it was applying to the national research council. Eagle Vision provided a copy of the proposal which indicated that the video cost was \$11,803.44 if two drones were used and half that if only one drone was required. There was no suggestion that the agreement was not continuing because Eagle Vision had not invested.

18. Based on the evidence, I find that the original proposal was for a cost of \$4,294.00 and the second sent in April 2018 was for up to \$11,803.44 depending on how many drones were used. There is no discussion in either proposal about the video being traded off for shares after Eagle Vision invested in Fire Inc. There is also no suggestion that Fire Inc. disputed that this was the binding agreement. I also note that Fire Inc. presented it as an agreement because it was submitting it to be relied upon in consideration of other funding.
19. I also note that there is an absence of detail about how many shares Eagle Vision would receive as compared to the proposal which itemizes how much things will cost. Therefore, I find that the balance of the evidence shows that Fire Inc. agreed to pay Eagle Vision for the video and not with shares in the company. The payment was also not dependent on Eagle Vision investing in Fire Inc.

Was Eagle Vision's work defective and, if not, what is the appropriate remedy?

20. The evidence indicates that for various reasons the parties agreed that the video would use animation. Eagle Vision produced the first draft of the video and sent it to Fire Inc. in May 2018. Mr. Hallett sent Eagle Vision an email on May 3, 2018 stating that he was happy with the video but wanted to change some wording around and add a couple of different views with illustrations. Eagle Vision then made changes and provided the new video to Fire Inc. on June 29, 2018. Eagle Vision stated that the only change it had not made was in relation to one specific item but could add it to the video the following week. On the same day Mr. Hallett responded saying that he liked the video. Mr. Hallett then sent it to Fire Inc's acting CEO, C.
21. On July 1, 2018, C replied, copying Eagle Vision, that she did not "mind the copy" but the video was not the caliber she wanted to see. She said it was a good first draft but needed to be polished.
22. Mr. Hallett had a conversation with C on July 2, 2018. The respondents provided an audiotape of the call which shows that C is highly critical of the video. She did not

indicate that it just needed to be polished but suggested it was amateurish. She did not only criticize the quality but had issues with aspects of the concept and the content. She suggested colour changes, adding material and taking material out. C also suggested that Fire Inc. could go in another direction and obtain a better quality video from another company for cheaper. The audiotape indicates that Mr. Hallett agreed with C's criticism and he did not tell C that he had told Eagle Vision that he was happy with the video.

23. After receiving C's email saying the video needed polishing Eagle Vision then sent Mr. Hallett an email on July 20, 2018 asking where they should go from here. Mr. Hallett responded that Fire Inc. had freelance individuals looking into getting an original name and logo and asked Eagle Vision for an update on whether it was going to invest. There is no evidence that Fire Inc. suggested specific changes that had to be made after this point. In its addendum to submissions the respondents say that one aspect of the video misrepresents Fire Inc.'s equipment's capacity. There is no evidence showing that the respondents asked Eagle Vision to change this after July 1, 2018.
24. Mr. Hallett says that it started communicating with Eagle Vision by phone on November 5, 2018 and Eagle Vision told Fire Inc. that it had to pay the outstanding invoices or it would escalate things. Mr. Hallett says that he responded that the video was unusable because requests and statistics were missing from it and the infographics were poor and hard to distinguish. Fire Inc. does not argue that it gave Eagle Vision a chance to submit another video at this point.
25. The evidence indicates that there was a gap in communication after this until May 2019 when Eagle Vision sent an email to the respondents stating that Mr. Hallett had approved the video and then wanted to go in a completely different direction after C's feedback. Eagle Vision also pointed out that if there had been a change of scope it could have done that, but it was never offered that option. Fire Inc. submits that it was still waiting for Eagle Vision to provide all the missed aspects of the video it stated it wanted in November 2017.

26. I do not accept Fire Inc.'s submission on this point. The evidence shows that Eagle Vision provided what Fire Inc. stated it wanted but Fire Inc. decided it wanted different things after talking to C. The evidence also indicates that Mr. Hallett changed his mind about being happy with the video after talking to C. After this conversation, it was not minor changes contemplated, but a different video based on what C suggested. I agree that Eagle Vision was not given the chance to produce the different video and I find that it did complete the scope of the original video discussed.
27. Having decided that the Eagle Vision video was within the scope of what was requested I still need to consider the quality of the video. The respondents claim that Eagle Vision's video was not the "caliber" it expected. I infer this to mean that the respondents argue that Eagle Vision's work was below the industry standard. As noted, since the respondents are alleging defective work, they must establish this on a balance of probabilities.
28. The respondents provided a submission saying that C is Fire Inc.'s CEO and notes her qualifications as author, speaker, and business consultant. I note that C is not an expert on videography. Therefore, I do not accept her opinion expressed in the audio recording as expert evidence. The respondents did not provide any expert opinion critical of Eagle Vision's video.
29. I have reviewed the video. Although Fire Inc. says it is substandard, I find it does not appear substandard on its face. I also note that Mr. Hallett indicated it needed tweaking but was originally happy with it. Even C said it was fine but needed polishing. The respondents did not file evidence from another videographer to prove that Eagle Vision's work was deficient. To find that Eagle Vision's work was negligent, I would need evidence from someone qualified to complete such work indicating that the work was substandard. The respondents did not submit such evidence. I find that the respondents have failed to meet the burden upon it to prove that Eagle Vision's work was defective.

30. Therefore, I find that Eagle Vision is entitled to the \$4,165.35 requested for the video because it is lower than the cost set out in the proposal approved and relied upon by the respondents when seeking funding. Eagle Vision is also entitled to interest under the *Court Order Interest Act (COIA)* from the November 5, 2018 date when the respondents indicated that they would not pay the invoices until the date of this decision. This amounts to \$133.47.
31. Mr. Hallett argues that he should not be held liable in his personal capacity as at all times he was representing his company. I accept that the agreement was between Eagle Vision and Fire Inc. Therefore, Mr. Hallett is not liable in his personal capacity.
32. Under section 49 of the CRTA and the CRT's rules, the CRT 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. Eagle Vision was successful, so it is entitled to reimbursement of its \$175 tribunal fees. Neither party made a claim for expenses.

ORDERS

33. I find that within 30 days Fire Inc. must pay Eagle Vision a total of \$4,473.82 broken down as follows:
 - a. \$4,165.35 in debt for the video,
 - b. \$133.47 in pre-judgment interest under the *COIA*, and
 - c. \$175.00 in tribunal fees.
34. Eagle Vision is also entitled to post-judgement interest as applicable.
35. 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.

36. 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.

Kathleen Mell, Tribunal Member