



Civil Resolution Tribunal

Date Issued: September 10, 2020

File: SC-2020-002807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lost Cairn Ventures Ltd. v. Mehrabi*, 2020 BCCRT 1013

B E T W E E N :

LOST CAIRN VENTURES LTD.

APPLICANT

A N D :

MILAD MEHRABI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a contractual dispute. The applicant, Lost Cairn Ventures Ltd. (Lost Cairn), had an agreement with the respondent, Milad Mehrabi, to provide product development services. Lost Cairn says it performed the required services, but Mr. Mehrabi refused to pay it in full. Lost Cairn asks for an order for payment of \$2,394, plus contractual interest.

2. Mr. Mehrabi says that Lost Cairn did not meet its contractual obligations and that he does not owe it any money.
3. Lost Cairn is represented by its principal. Mr. Mehrabi is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT 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.
6. 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.
7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Whether Lost Cairn performed the work required by the parties' agreement, and
 - b. Whether Mr. Mehrabi owes Lost Cairn \$2,394 plus contractual interest.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this, an applicant bears the burden of proof on a balance of probabilities. Each party provided evidence and submissions in support of their position. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision.
10. Mr. Mehrabi was referred to Lost Cairn by a third party for assistance with developing a protein bar for his business. On April 30, 2019, Mr. Mehrabi and Lost Cairn entered into a Product Development Agreement. The agreement stated that Lost Cairn would produce a finalized recipe (with 2 revisions), do research for product development, create instructions for making the product in a commercial kitchen, and provide 10 hours of consultation services to be used on items including sourcing and packaging. The agreement contemplated a total fee of \$4,500 plus taxes, with certain amounts attributed to particular tasks within the scope of work.
11. Lost Cairn says that it performed its obligations under the agreement. Although Mr. Mehrabi made some payments, Lost Cairn says he has refused to pay \$2,394.
12. Mr. Mehrabi says that Lost Cairn's work was sub-standard and incomplete, and that he did not pay Lost Cairn as it provided him with false information. According to Mr. Mehrabi, Lost Cairn jeopardized his reputation as a vegan company as it created a recipe with honey (a non-vegan ingredient) as its sweetener. Mr. Mehrabi also says that he expected Lost Cairn to "show [him] the steps and help [him] along the way" but it did not do so.

13. Lost Cairn says that Mr. Mehrabi did not express any concern with its work or the recipe until it asked Mr. Mehrabi to pay the invoice. Lost Cairn says that the idea of the protein bar being vegan was a suggestion it made during the development phase, and noted that it is possible to find alternative sweeteners with honey flavouring if that is what Mr. Mehrabi wanted.
14. Based on the evidence before me, I accept that honey is considered an animal product and is therefore not compatible with a vegan protein bar. However, the available evidence does not establish that the parties specifically contemplated that the protein bar would be vegan. The emails from the third party who connected Mr. Mehrabi with Lost Cairn and emails between Mr. Mehrabi and Lost Cairn do not state that his company (or his desired protein bar) is vegan. Most significantly, the parties' agreement did not state that the protein bar must be vegan.
15. The first indication in the parties' correspondence that the product was to be vegan was in July of 2019, when Lost Cairn's introductory emails to an insurance broker and a commissary describe Mr. Mehrabi's product as vegan. I also note that there is no indication that Mr. Mehrabi expressed concern with the ingredient lists in June 14 and June 16, 2019 email messages. Further, in a July 19, 2019 email message, Lost Cairn suggested alternate sweeteners of stevia and monk fruit syrup. I find that this is consistent with Lost Cairn's submission that the vegan concept developed during the parties' work.
16. So, I find that the fact that the recipe contained a non-vegan ingredient does not, by itself, establish that Lost Cairn failed to perform the work required by the agreement.
17. The evidence shows that Lost Cairn researched and sourced various ingredients and packaging, and communicated with suppliers, packers, insurance brokers and commissaries. It also created various samples for Mr. Mehrabi's consideration, and delivered a final recipe with nutritional information. Based on the evidence before me, I find that Lost Cairn performed its obligations under the agreement, although not all of the hours of consulting work have been used.

18. While Mr. Mehrabi may have changed his mind about whether the work he received was worth the amount he agreed to pay, this does not alter the binding nature of the parties' agreement. I find that he is responsible for paying Lost Cairn for the services he has received.
19. According to the parties' agreement, Lost Cairn has provided services valued at \$3,420. Lost Cairn's July 16, 2019 invoice documents those charges, and acknowledges a \$1,200 payment. The remaining \$2,220 plus late fees and GST leave an outstanding balance on that invoice of \$3,015.75. I will discuss the late fees in more detail below.
20. According to evidence provided by Mr. Mehrabi, he paid Lost Cairn a total of \$1,700 before this invoice was produced, rather than the \$1,200 shown. This would leave a total of \$2,515.75. It is not entirely clear how Lost Cairn calculated its claim of \$2,394, but it appears that the parties did have some negotiations about the outstanding amount. In any event, under the terms of the agreement, I find that Lost Cairn is entitled to payment of the lower \$2,394 figure that it claims.
21. Lost Cairn claims contractual interest at a rate of 8%, and says that the interest started applying to the \$2,304 on August 13, 2019. The parties' agreement allows for an 8% "late fee" on late payments but does not mention interest. In their submissions, the parties refer to the 8% amount as interest rather than a late fee.
22. The courts have determined that late fees may be interest if they are paid for the advancing of credit (see, for example, *Kilroy v. A OK Payday Loans Inc.*, 2007 BCCA 231). In *Smart Technologies Consultants Ltd. v. Dysys Media Solutions Inc.*, 2019 BCCRT 1181, another CRT member discussed the distinction between the cost of extending credit to a customer (which amounts to interest) and the administrative cost of dealing with an overdue payment (which does not). Although not binding upon me, I find this discussion to be persuasive.
23. I am satisfied that the "late fee" in the parties' agreement was not an administrative charge but rather a fee for extending credit. I find that this amounts to an agreement

for contractual interest, and that Lost Cairn is entitled to the stated 8% annual rate. Calculated from August 13, 2019, this amounts to \$198.96.

24. 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. I see no reason in this case not to follow that general rule. I find Lost Cairn is entitled to reimbursement of \$125 in CRT fees. It did not make a claim for dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order Mr. Mehrabi to pay Lost Cairn a total of \$2,717.96, broken down as follows:
 - a. \$2,394 under the parties' agreement,
 - b. \$198.96 in contractual interest, and
 - c. \$125 in CRT fees.
26. Lost Cairn is entitled to post-judgment interest, as applicable.
27. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Lynn Scrivener, Tribunal Member