



Civil Resolution Tribunal

Date Issued: October 30, 2020

File: SC-2020-003110

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hirakimoto v. Horizontal Sleep Ltd.*, 2020 BCCRT 1233

BETWEEN:

TAKASHI HIRAKIMOTO

APPLICANT

AND:

HORIZONTAL SLEEP LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about payment for website design services. The applicant, Takashi Hirakimoto, says he designed web pages for the respondent, Horizontal Sleep Ltd. (Horizontal), but was not paid for the work that he did. Mr. Hirakimoto seeks \$2,183.13 for unpaid services and for out-of-pocket expenses.

2. Horizontal says Mr. Hirakimoto was hired to complete its website by approximately January 31, 2020. It says the quality of Mr. Hirakimoto's work was poor, he took too long to do the work, and he did not complete it. It also says that it did not agree to pay Mr. Hirakimoto for partially completed work.
3. Mr. Hirakimoto is self-represented. Horizontal is represented by its employee, LL.

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.

ISSUE

8. The issue in this dispute is how much, if anything, Horizontal must pay Mr. Hirakimoto for the work that he did.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant, Mr. Hirakimoto, bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

Background

10. The parties agree that Horizontal hired Mr. Hirakimoto on December 31, 2019 as a graphic designer to complete its website and that the work was to take approximately 1 month. Mr. Hirakimoto says although he initially quoted \$3,500 to Horizontal for the project, he agreed to \$2,000 plus \$100 tax, which I infer is for GST, but cautioned Horizontal that this price did not include a programmer's services. Mr. Hirakimoto did not explain how a programmer's involvement would have affected the services he agreed to provide to Horizontal. Horizontal says it agreed to pay Mr. Hirakimoto \$2,000 for the work done. I find GST was payable on the amount charged by Mr. Hirakimoto.
11. Mr. Hirakimoto says the price the parties agreed to did not include costs and seeks an additional \$83.13 for the cost of Wordpress. Mr. Hirakimoto did not submit any evidence to show that Horizontal agreed to pay this expense and so I find he has not met his burden to prove this claim. I dismiss Mr. Hirakimoto's claim for \$83.13.
12. Mr. Hirakimoto says he completed 90% the project and was delayed because Horizontal kept adding to the work it wanted him to do and requesting changes to the work that he had done. I infer he meant 90% of the work assigned from December 31, 2019 to March 5, 2020. Mr. Hirakimoto says on March 5, 2020, Horizontal blocked access to its website by changing the website's password. He says he tried to follow up with Horizontal but did not receive a reply. He says he sent an invoice to Horizontal

on April 8, 2020. Although Mr. Hirakimoto did not provide a copy of the invoice, I infer it was for \$2,183.13.

13. Horizontal denies blocking Mr. Hirakimoto's access to the website and says it changed the password for security reasons. It says Mr. Hirakimoto's interest began to wane in February 2020 until he finally refused to make some further changes that were requested in late February 2020. It says Mr. Hirakimoto lost interest in the project and "ghosted" it in March 2020 by ignoring its attempts to contact him.
14. The parties did not have a written contract. Verbal contracts can be binding, but they must be proven. Although I am not bound by it, I note that a prior CRT decision, 681288 BC LTD v. Hankin, 2017 BCCRT 140, sets out a useful summary of the basic elements of a contract, at paragraph 19:

"For a contract to exist, there must be an offer by one party that is accepted by the other. There must be contractual intention, which means the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. There must also be valuable consideration, which refers to payment of money or something else of value (for a discussion of the basic elements of a contract, see *Babich v. Babich*, 2015 BCPC 0175, and *0930032 B.C. Ltd. v. 3 Oaks Dairy Farms Ltd.*, 2015 BCCA 332). One party's belief that there is a contract is not in itself sufficient. There must be what is known in law as a 'meeting of the minds' about the contract's subject matter."

15. In applying these principles to this case, I find that the evidence before me does not establish contractual intention or a 'meeting of the minds' between Mr. Hirakimoto and Horizontal. I find that although the parties agreed on the price and how long the project would take, there was no certainty in terms, specifically about the amount of work Mr. Hirakimoto was hired to do. I find that hiring Mr. Hirakimoto to "complete" the website is vague and did not define the scope of the work involved. I say this because, as discussed below, Horizontal's requests for changes extended well past January 31, 2020.

16. The parties differ on the work Mr. Hirakimoto was hired to do. Mr. Hirakimoto says he designed web pages “from scratch”. He says that although Horizontal already had webpages, taking over incomplete work took more time than re-doing them. Mr. Hirakimoto provided photographs of 31 web pages that he says he designed.
17. Horizontal denies Mr. Hirakimoto designed the web pages from scratch. It says the website was already substantively done and Mr. Hirakimoto was hired to “deliver a completed website” by the end of January 31, 2020. Horizontal says Mr. Hirakimoto did not provide graphics, photographs, retouches, logos, typeface, colors, text, copy, video, audio, programming, page layouts, coding, or transactional elements. It also says Mr. Hirakimoto did not provide any evidence, such as work in progress to show that he designed any of the web pages.
18. As stated above, the onus is on Mr. Hirakimoto to prove his claim. I find Mr. Hirakimoto has not proved that he designed 31 web pages “from scratch”. Although Mr. Hirakimoto submitted copies of the 31 web pages he alleges he designed, he did not explain the work that he did on any of them and so I give them no weight. Also, there is no evidence that the parties discussed design layouts and contents for 31 separate web pages. Mr. Hirakimoto also did not provide any evidence that Horizontal provided him with graphics, text, or instructions about the content it wanted on each of the 31 web pages.
19. I also find that Horizontal did not hire Mr. Hirakimoto to design 31 web pages. Based on the emails exchanged between the parties, I find Mr. Hirakimoto was hired to make alterations and corrections to Horizontal’s existing website and that the parties estimated the work would take approximately 1 month to complete.
20. So, what work did Mr. Hirakimoto do on the website? Horizontal submitted images of 4 web pages and indicated the work that Mr. Hirakimoto did on each page. It says the only work Mr. Hirakimoto did was to shade and install a pre-existing blue photograph of a bed, place pre-existing symbols in rows, align a photograph of a bed with a headline above it, add 1 footer to a web page, install a 4 quadrant layout, re-position a video, and revise the web page layout.

21. I find emails exchanged between the parties show that Mr. Hirakimoto worked on more than 4 web pages and that Horizontal continued to request additional changes to the appearance or content of the website well after the 1 month had expired. Several examples of these changes follow:

- a. On February 9, LL asked Mr. Hirakimoto how to edit changes that one of the other employees was currently making to the website. On February 10, LL thanked Mr. Hirakimoto for his help and asked him to make further changes to product information that Horizontal had recently added.
- b. On February 13, LL emailed Mr. Hirakimoto some adjustments to the work that he had already done.
- c. On February 18, LL sent a list of further changes he wanted to the website. He also asked Mr. Hirakimoto to add 2 features he recently saw on other websites.
- d. On February 20, LL asked Mr. Hirakimoto to add images to its web pages and to compare different colour schemes. He also instructed Mr. Hirakimoto to revise the columns on a web page after Horizontal's employee recently made changes.
- e. On February 24, LL emailed that he would provide a "short list of website 'loose ends'" for Mr. Hirakimoto to attend to. I infer this meant the website was almost completed.
- f. On February 25, LL emailed a list of 6 alterations, including to a photograph that a Horizontal employee had recently added to the website.
- g. On February 27, LL emailed a list of further revisions.
- h. On February 28, LL emailed Mr. Hirakimoto that after recently receiving input from others, he wanted Mr. Hirakimoto to change the background and text colours for a footnote Mr. Hirakimoto had already revised.

22. Horizontal says that time was of the essence because it wanted a functional website as soon as possible. I find the fact that Horizontal requested new alterations to the web pages after January 31, 2020 showed that time was not of the essence.

Unjust enrichment and quantum meruit

23. Although it was not specifically argued, I also considered whether Horizontal was unjustly enriched by Mr. Hirakimoto's services. The legal test for unjust enrichment is that the applicant must show: a) that the respondent was enriched, b) that the applicant suffered a corresponding deprivation or loss, and c) there is no valid basis for the enrichment (see *Kosaka v. Chan*, 2009 BCCA 467).

24. I find that Horizontal was enriched by Mr. Hirakimoto's labours and that Mr. Hirakimoto put time and effort into enhancing Horizontal's website. Since there was no agreement between the parties, I find there was no valid basis for the enrichment. And so, I find Mr. Hirakimoto is entitled to be compensated for the work he did.

25. Horizontal says that it hired Mr. Hirakimoto for a fixed price to complete the website by January 31, 2020 and there was no agreement for partial or incomplete work. The court in *Johnson v. North Shore Yacht Works Corp.*, 2014 BCSC 2057 stated in paragraph 100 that when there is no *consensus ad idem* (or meeting of the minds) as to agreement terms, a party is entitled to an award on a *quantum meruit* basis. *Quantum meruit* is a legal term meaning a reasonable sum of money to pay for work done.

26. Horizontal did not state that it was dissatisfied with Mr. Hirakimoto's progress or that Mr. Hirakimoto did not complete the work assigned to him before January 31, 2020. Emails and text messages provided by the parties show Horizontal was satisfied with Mr. Hirakimoto's work in January 2020. For example, in a January 22, 2020 text to Mr. Hirakimoto, LL stated that the "top page" was looking better and better with 3 "thumbs up" emojis and an emoji of 2 hands pressed together, which I infer means LL was pleased with Mr. Hirakimoto's work.

27. Horizontal did not state which work it assigned to Mr. Hirakimoto before January 31, 2020 remained incomplete. Based on the February 2020 emails, I find that Mr. Hirakimoto completed all of the work Horizontal assigned before January 31, 2020 and so I find he is entitled to \$2,000, plus \$100 for GST for the work that he did.
28. The *Court Order Interest Act* applies to the CRT. Mr. Hirakimoto is entitled to pre-judgment interest on the \$2,100 from April 8, 2020, to the date of this decision. This equals \$12.55.
29. 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 Mr. Hirakimoto is entitled to reimbursement of \$125 in CRT fees. He did not claim any dispute-related expenses.

ORDERS

30. Within 14 days of the date of this order, I order Horizontal to pay Mr. Hirakimoto a total of \$2,237.55, broken down as follows:
 - a. \$2,100 in debt,
 - b. \$12.55 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in CRT fees.
31. Mr. Hirakimoto is entitled to post-judgment interest, as applicable.
32. 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.

33. 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.

Rama Sood, Tribunal Member