



Civil Resolution Tribunal

Date Issued: March 30, 2021

File: SC-2020-002687

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pratt (dba Fat Cactus Online Marketing v. Reclaim Personal Development Inc., 2021 BCCRT 349*

B E T W E E N :

AMY PRATT (Doing Business As FAT CACTUS ONLINE MARKETING)

APPLICANT

A N D :

RECLAIM PERSONAL DEVELOPMENT INC.

RESPONDENT

A N D :

AMY PRATT (Doing Business As FAT CACTUS ONLINE MARKETING)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

INTRODUCTION

1. This dispute is about marketing services. The applicant and respondent by counterclaim, Amy Pratt (doing business as Fat Cactus Online Marketing), says she worked remotely as an assistant for the respondent and applicant by counterclaim, Reclaim Personal Development Inc. (Reclaim), and is still owed \$4,637.50. Reclaim says it did not pay Ms. Pratt because she did not submit a proper invoice that details the work she did or the dates she worked. It also says Ms. Pratt's work quality was poor.
2. Reclaim also says Ms. Pratt misrepresented herself as having marketing skills and caused it to lose \$100,000 in revenue from a potential business opportunity. However, Reclaim reduced its counterclaim to \$5,000, the maximum monetary limit for small claims disputes at the Civil Resolution Tribunal (CRT).
3. Ms. Pratt is self-represented. Reclaim is represented by its owner/operator, Sheila Gruenwald.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination

of these. Here, I find that I am properly able to assess and weigh the documentary 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 in the interests of justice.

6. Section 42 of the CRTA says 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 Reclaim owes Ms. Pratt \$4,637.50, and
 - b. Whether Reclaim is entitled to \$5,000 in damages for lost revenue.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this one, Ms. Pratt as the applicant must prove her claim on a balance of probabilities. Reclaim must also prove its counterclaim on the same balance. I have read and considered all evidence and submissions provided but only refer to that needed to explain my decision.
10. The parties agree Ms. Pratt worked for Reclaim from October 2018 until September 2019. Ms. Pratt says that although she is an online marketer, Reclaim hired her as an assistant. She says when she started, she worked on 2 projects in October 2018 and November 2018 and that Reclaim agreed to pay her a total of \$1,000. Ms. Pratt

says starting in December 2018, Reclaim agreed to pay her \$25 per hour up to 10 hours per week and with a maximum of \$1,000 per month.

11. Reclaim says it hired Ms. Pratt as a marketer but transitioned her to an assistant role because she lacked marketing skills. It does not dispute that it agreed to pay her \$1,000 for the 2 projects and then at a \$25 hourly rate for up to 10 hours per week.
12. Ms. Pratt waited until July 2019 to send her first invoice to Reclaim. She says she did not invoice Reclaim earlier because Reclaim had cash flow issues and she did not want to overburden Ms. Gruenwald. Reclaim says it asked Ms. Pratt to submit her invoices earlier but she failed to do so.
13. From July to September 2019, Ms. Pratt sent Reclaim 1 invoice for \$1,000 for the 2 projects, and 7 invoices for the work done at an hourly rate from December 2018 to September 2019. These 7 invoices were very brief. They only listed the months the invoice covered, the total number of hours worked each month, and a description of whether the work done that month was “admin assist” or “editing/online assistance”.
14. The total amount of the 8 invoices is \$7,137.50. Reclaim paid Ms. Pratt \$1,000 on August 20, 2019 and an additional \$1,500 on October 4, 2019. Ms. Pratt says Reclaim still owes her \$4,637.50.
15. Reclaim says Ms. Pratt failed to keep records about the work she did, even though she was instructed to do so when she was hired. It says it is prepared to pay Ms. Pratt after she provides details about when she worked on specific tasks. I infer Reclaim meant it was prepared to pay Ms. Pratt provided she has records of when she worked.
16. Ms. Pratt denies she was asked to keep records about the dates she worked or the tasks she performed. Ms. Pratt says that due to the 10 hour weekly limit, she typically worked a total of 2 hours throughout the day, and sometimes worked the full week’s hours in 1 day. She also says that it was unrealistic, unreasonable, and time consuming to log the time she spent on each task since she often multitasked.

17. Since Ms. Pratt worked remotely and primarily was paid on an hourly basis, I find it was reasonable for Reclaim to expect her to provide records about the dates she worked, number of hours she worked, and a brief description of the task she did on those dates. I find that since some of the invoices Ms. Pratt sent were prepared as late as 7 months after the month ended, Ms. Pratt more likely than not kept records about the hours she worked each day and the type of work she did.
18. Ms. Pratt did not submit the records she used to prepare her invoices. While parties are under no obligation to provide evidence or submissions, failing to do so can lead to the CRT making an adverse inference. In particular, courts have said that an adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see: *Port Coquitlam Building Supplies Ltd. v. 494743 BC Ltd.*, 2018 BCSC 2146).
19. I would have expected Ms. Pratt to provide the records she used to prepare her invoices as evidence, but she failed to do so. In the circumstances, I find it is appropriate to draw an adverse inference against Ms. Pratt for failing to submit these records. While I accept that Ms. Pratt did provide services to Reclaim, without these records, there is insufficient evidence to support the amount of hours Ms. Pratt billed in her invoices. Therefore, I find Ms. Pratt did not prove that she worked the number of hours she stated in her invoices.
20. Ms. Pratt says Reclaim did not question her previous invoices and did not complain about the lack of detail until November 2019. I find that Reclaim's delay in asking for details was reasonable since Ms. Pratt's last invoice was sent in late September 2019.
21. Since Reclaim paid Ms. Pratt \$2,500, I find she was adequately compensated for the 2 projects she worked on in 2018, and for the work she did that was in the emails and other documents she submitted as evidence in this dispute.

22. However, I find Ms. Pratt has not met her burden of proving she is owed an additional \$4,637.50. For this reason, I dismiss her claim. Since I have dismissed this claim, I do not need to address Reclaim's allegation about the quality of Ms. Pratt's work.

Reclaim's counterclaim

23. Reclaim says in early 2019 it was trying to work with another company, SC, to set up an online course registration system. Reclaim says the business opportunity would have generated \$100,000 annually. Reclaim says Ms. Pratt falsely stated to it that she was a marketer. Reclaim says that due to her lack of knowledge and professionalism, SC no longer wanted to work with Reclaim.

24. I find Reclaim's claim is, in law, an allegation of misrepresentation. A "misrepresentation" is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract. There are 2 main types of misrepresentation, "fraudulent misrepresentation" and "negligent misrepresentation". Fraudulent misrepresentation is when a person makes a false representation of fact and the person either knew it was false, or recklessly made it without knowing whether it was true or false. Negligent misrepresentation is when a person does not exercise reasonable care to ensure representations are accurate and not misleading. The misrepresentation must reasonably induce the other person to enter into the contract (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308). The case law is clear that due to the associated stigma, an allegation of fraud requires "clear and convincing proof", although the standard of proof remains the civil standard of a balance of probabilities (see *Nagy v. BCAA Insurance Corporation*, 2020 BCCA 270).

25. Even though Ms. Pratt denies that she was hired as a marketer, I find she was. Ms. Pratt stated she was a social media manager/online marketer in her signatory line below her name in emails she sent from October 2018 to June 2019. These included emails she sent to SC in April 2019. Under these circumstances, I find that recipients would reasonably assume Ms. Pratt worked as a marketer.

26. However, I find that I do not need to determine whether Ms. Pratt misrepresented her skills since Reclaim failed to prove that Ms. Pratt's actions caused SC to lose interest in working together. Reclaim says it has had a relationship with SC's owner, TB, for the past 10 years. Given its history, I would have expected Reclaim to provide a statement from TB about why he decided not to do business with Reclaim, but it failed to do so. Also, Reclaim did not provide any evidence that the alleged business opportunity would have generated \$5,000 in revenue, much less \$100,000.

27. For these reasons, I dismiss Reclaim's counterclaim.

28. 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. Since both parties were unsuccessful in their respective claims, I dismiss each parties' claims for CRT fees. Neither party claimed dispute-related expenses.

ORDERS

29. I dismiss Ms. Pratt's claims.

30. I also dismiss Reclaim's counterclaim.

Rama Sood, Tribunal Member