Civil Resolution Tribunal

Date Issued: May 20, 2021

File: SC-2020-009692

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *1204282 B.C. Ltd. v. Plati,* 2021 BCCRT 549

B E T W E E N :

1204282 B.C. LTD.

APPLICANT

A N D :

MELISSA PLATI

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a website development agreement. The respondent Melissa Plati hired the applicant, 1204282 B.C. Ltd., which does business as Rad Websites

(Rad), to build her a new website for her business. Rad claims $4,625.25 for its work. It is undisputed Miss Plati has not paid anything for Rad's work.

2. Miss Plati says Rad failed to complete the website as agreed. She also says the agreement was that Rad would be paid through a percentage of her website sales over time. The parties agree they had no written contract, and that Rad built the website between around March 2020 and October or November 2020.

3. Rad is represented by its owner, Nicole Wilks. Miss Plati is self-represented.

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). 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. 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.

6. Under section 42 of the CRTA, 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

8. The issue in this dispute is to what extent Miss Plati owes Rad for the website development work.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant Rad bears the burden of proving its claims, on a balance of probabilities. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.

10. As noted above, the parties agree Rad developed Miss Plati's website between around March and October or November 2020. Nothing turns on the exact dates. The parties also agree there was no written contract.

11. Based on the parties' September 2020 email exchanges, it is undisputed and I find the parties had not agreed on a price when Miss Plati hired Rad. The emails also show Rad had agreed to "defer the charges" for its work when it agreed to rebuild Miss Plati's website, but that it also explained to Miss Plati that it would not normally give a client access to the website it built until the work was paid for. Rad acknowledged in one email that the parties had "talked about" Miss Plati paying for the website work "based on a portion of revenue" but noted that Miss Plati had never offered any payment. I find this passing email discussion about payment based on revenue is not binding, particularly since Miss Plati had in November 2020 emails admitted to Rad she had made sales and promised to pay, but never did.

12. Price is a fundamental term of a contract. Given the absence of an agreement about cost, I find there was no 'meeting of the minds' before Rad started work. Where

there is no agreement at all on cost but the parties have entered into an agreement for the provision of goods and services, the applicant (Rad) is entitled to the reasonable value of the goods and services it provided. This legal concept, which I find applies here, is known as "contractual *quantum meruit*", (see *Hodder Construction (1993) Ltd. v Topolnisky*, 2021 BCSC 666 at paragraphs 118, 148, and 177 to 179). My analysis below also incorporates Miss Plati's later agreements to pay.

13. I find the evidence shows the parties' relationship began to deteriorate in mid-September 2020, after Miss Plati had received Rad's August 2020 invoice for $3,485. Miss Plati wanted to defer payment while pressing Rad to give her access to her website (not yet completed) and to change a phone number for her. Rad expressed concern about these requests, given Miss Plati had not yet paid Rad anything for its work. However, the parties fairly quickly resolved their differences with Miss Plati expressing complete appreciation for Rad's efforts and Rad agreeing to continue deferring payment for a few months.

14. I pause to note there is no evidence before me showing the content of the website development work and Miss Plati does not allege any deficiencies in the development work. I discuss Rad's suspension of the website separately below.

15. I find Miss Plati agreed to pay Rad but never did. In particular, in Ms. Wilks' September 11, 2020 email to Miss Plati, Ms. Wilks said if she guessed, Rad was "$3,000 in to your site" and that it needed another $2,000 of work done to make it functional. The evidence shows Ms. Wilks' colleague AF was doing the work, rather than Ms. Wilks personally. Miss Plati responded, and in part, wrote that she was "appreciative of the work done" and suggested the parties "figure out a plan for payment" and Miss Plati would figure out a "new situation for the website".

16. On September 14, 2020, AF wrote, in part, that Miss Plati's account to date was $3,485, based on 36 development hours plus 5 hours of "optimization from marketing". AF asked for payment. Miss Plati responded a couple hours later and reiterated that she was "beyond grateful" for the work done, but expressed concern

about paying Rad $850 for a shipping issue on the website that Miss Plati wanted fixed and could have done by a different developer friend for free. Miss Plati wrote she felt "blindsided" by the $3,485 figure and that she could not afford to immediately pay that sum, but would get back to AF with a plan for payment. She wrote the site was functional apart from the shipping issue, and added "I want to pay and your team for the time you have put it, even if I don't use it" (reproduced as written). AF responded that he was still "happy to defer payment", but that he wanted Miss Plati to revisit her ability to "make some kind of payments" in the new year and that Rad would give her "another few months to exhale".

17. On October 1, 2020, Miss Plati promised to pay $1,000 by the end of November, and guessed she would pay about $500 per month starting February 2021.

18. On November 4, 2020, Miss Plati emailed AF that she should have a payment in a week or so and thanked him for sending her a breakdown. On November 16, 2020, Miss Plati responded to AF's follow-up inquiry and said she "finally got some payments" and would send AF a payment for Rad's work after those other cheques cleared.

19. However, Miss Plati never paid anything. I find Miss Plati breached her agreement with Rad when she failed to provide payment.

20. I turn then to the value of Rad's work.

21. I find the above shows Miss Plati agreed $3,485 was reasonable for Rad's work up to August 31, 2020. It is undisputed Rad's usual hourly rate was $150, as charged, plus GST. I note the August 31, 2020 invoice for $3,874.50 reflects a 40% discount, which was undisputedly given to Miss Plati on a "friends and family" basis. Rad does not explain the discrepancy between the $3,485 and $3,874.50 figures, but the invoice reflects the $150 hourly rate and the same number of development hours AF described. On balance, I find the $3,874.50 invoice is reasonable.

22. On October 1, 2020, Miss Plati emailed AF and asked him to ensure a "branding charge" was added to her account, which was for sub-contracted work. The

evidence shows this charge was $420, as set out in Rad's September 30, 2020 invoice. I find this $420 invoice reasonable.

23. On October 31, 2020 Rad issued its third and final invoice for $330.75. Miss Plati does not dispute these hours were spent. Noting this invoice reflected a 40% discount, I find the $330.75 amount reasonable.

24. In total, I find Rad has proven it is entitled to the claimed $4,625.25 for its website development work, subject to any set-off related to the website's account suspension discussed below.

25. On November 20, 2020, Ms. Wilks emailed Miss Plati advising the site was down and required maintenance, and that it looked like it had been hacked. Ms. Wilks offered a maintenance plan and requested payment. Miss Plati did not respond and Ms. Wilks emailed in follow-up on December 8, 2020. Ms. Wilks emailed again on December 10, 2020, asking for payment and noting Miss Plati's failure to respond and that Rad may have to proceed to court to enforce payment.

26. On November 30, 2020, AF emailed Miss Plati that her website had been hacked and that he suspended the account so Google did not mark the website. AF asked for payment to get her account caught up and suggested a maintenance package that would cover hacks.

27. In her Dispute Response, Miss Plati said that to "mitigate the damage" from the "account suspended" statement AF placed on her website, she made a Shopify website and redirected her domains. I infer Miss Plati argues that she should not have to pay Rad anything as a result. I disagree.

28. First, Rad's website development work was already completed and admittedly functional when AF suspended the account in late November 2020 (apart from perhaps the shipping issue discussed above). Second, Miss Plati does not suggest the website was not hacked and there is no evidence before me that Rad was responsible for the hack occurring. There is also no evidence before me that AF's decision to mark the account 'suspended' was inappropriate in the circumstances. I

note Miss Plati never responded to AF's November 30, 2020 email. While I acknowledge Miss Plati had personal matters to attend to around this time, that does not relieve her from her obligation to pay Rad for its services. Further, while Miss Plati says she cannot afford it, that does not relieve her from her obligation to pay. So, I find Miss Plati is not entitled to any set-off against the $4,625.25 and I find she owes Rad that amount for the website development work.

29. I turn now to the website itself. It is undisputed Miss Plati does not currently have access to it. Rad agrees to deliver its "website files" to Miss Plati on receipt of payment. While Miss Plati says she developed another website, she also submits she had not received Rad's completed website. Although I find Miss Plati must pay Rad for the website development work, I also find Miss Plati is entitled to those website files under the parties' agreement. CRTA section 118(1)(c) allows me to order specific performance of an agreement relating to services. I find this appropriate here, as it is fair and consistent with the CRT's mandate. So, given I find Miss Plati must pay Rad, I find Rad must deliver the website files to her.

30. The *Court Order Interest Act* (COIA) applies to the CRT. I find Rad is entitled to pre-judgment interest under the COIA on the $4,625.25, calculated from November 30, 2020 to the date of this decision. I find November 30, 2020 reasonable given the parties' discussions about payment, summarized above. This interest equals $9.78.

31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. I find Rad is entitled to reimbursement of $175 in paid CRT fees. Rad also claims $150 in dispute-related expenses, related to its service of the Dispute Notice on Miss Plati. I find this expense reasonable and I allow it.

ORDERS

32. Within 30 days of this decision, I order Miss Plati to pay Rad a total of $4,960.03, broken down as follows:

    a. $4,625.25 in debt,

    b. $9.78 in pre-judgment interest under the COIA, and

    c. $325, for $175 in CRT fees and $150 in dispute-related expenses.

33. Rad is entitled to post-judgment interest, as applicable.

34. Within 40 days of this decision, I order Rad to deliver Miss Plati, at Rad's expense, the website files that are the subject of Rad's invoices in this dispute. Rad may deliver the files by registered mail, courier, or electronically through Miss Plati's email address used in this proceeding, unless the parties agree otherwise in writing.

35. 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.

36. 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.

Shelley Lopez, Vice Chair