



Civil Resolution Tribunal

Date Issued: June 2, 2021

File: SC-2020-008752

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lovebug Enterprises Inc. v. Capital Marketing Ltd.*, 2021 BCCRT 601

B E T W E E N :

LOVEBUG ENTERPRISES INC.

APPLICANT

A N D :

CAPITAL MARKETING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for advertising services.
2. The applicant, Lovebug Enterprises Inc. (Lovebug), was a franchisee publisher of Coffee News, which advertises local businesses. Lovebug says it provided advertising according to an agreement with the respondent, Capital Marketing Ltd.

(Capital), but that Capital has failed to pay its invoices. Lovebug claims \$1,189.80 for unpaid invoices.

3. Capital says that its agreement with Lovebug included a term that invoices must be submitted within 30 days of Lovebug receiving a purchase order, which Lovebug failed to do. Capital says Lovebug breached the agreement, so it does not have to pay Lovebug's invoices.
4. Lovebug is represented by its owner, SD. Capital is represented by its general manager, WH.

JURISDICTION AND PROCEDURE

5. 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). 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.
6. 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.
7. 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.

8. 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

9. The issue in this dispute is whether Capital owes Lovebug for advertising services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Lovebug must prove its claims on a balance of probabilities. I have read all the parties' evidence and submissions, but I refer only to the evidence and arguments that I find relevant to provide context for my decision.
11. As noted, Lovebug was a franchisee of Coffee News, a weekly publication that advertised and promoted businesses. Lovebug had rights to distribute Coffee News for a particular area. From the evidence, I infer that Coffee News was wholly owned by Capital.
12. The evidence shows that Capital had a national advertising campaign, where Capital negotiated advertising agreements with clients and sent purchase orders to relevant Coffee News franchisees to place the advertisements in their publications. Lovebug says Capital's purchase orders included the business, advertising term, and rate per week, with a deadline to reply if interested in accepting the advertisement.
13. Lovebug says that it accepted several of Capital's purchase orders and completed the requested advertising, but Capital failed to pay Lovebug's invoices. Capital argues that Lovebug did not comply with the terms of service set out on the purchase orders, and that Lovebug has not provided sufficient evidence that it completed the advertising.

14. Lovebug submitted 6 invoices (invoice # 111 to 116) in support of its claim, each dated November 30, 2018. Lovebug says it was preparing to sell its Coffee News franchise, so it was clearing up its books and paperwork, and it submitted these 6 outstanding invoices to Capital. Lovebug admits that it did not submit its invoices on time.
15. Lovebug did not provide any other evidence, such as its franchise agreement with Capital, the Capital purchase orders that correspond with its invoices, or copies of its Coffee News publications showing the advertisements it invoiced Capital for.
16. Lovebug's invoices #111 and #112 stated they were for Capital's national sales program. Invoice #111 stated it was for purchase order no. 209 (PO #209), and invoice #112 stated it was for purchase order no. 40 (PO #40). However, the remaining 4 invoices stated they were "inter franchise sales orders", and there were no corresponding purchase order numbers. Neither party explained what an inter franchise sales order was, the agreed terms of such orders, or how they were billed. In the absence of this evidence, I find Lovebug has not proven its claims for invoices #113 through #116.
17. Capital provided a copy of its PO #40, which was dated January 6, 2018. I find that it corresponds with the information and totals on Lovebug's invoice #112. Capital did not similarly provide a copy of its PO #209 and did not explain why it failed to do so. While Lovebug must have received PO #209 at one time, it says its desktop "crashed". Lovebug did not say when the crash happened or what steps it took to recover relevant emails from Capital, such as the one attaching PO #209. In the absence of PO #209, I find Lovebug has failed to prove its claim for invoice #111.
18. This leaves Lovebug's invoice #112. PO #40 set out a list of Capital's national sales program terms and conditions. The first term was that the franchisee must submit an invoice within 30 days of accepting the order verbally or by email. Given that Lovebug's invoice for PO #40 is dated November 30, 2018, I find Lovebug submitted its invoice #112 well outside the required 30 days.

19. Nevertheless, I find it is unnecessary to make a finding about whether the 30-day window to provide an invoice was a fundamental term of the parties' contract. I say this because I find Lovebug has not proven that it performed the advertising services set out in any of its claimed invoices. I note that Lovebug argues Capital did the printing for its Coffee News publications, so Capital should have copies of the published advertisements, with the dates of each publication to reconcile Lovebug's invoices. However, none of Lovebug's invoices included the dates that the advertisements were published. I find it was Lovebug's obligation to prove it provided the claimed services. I find it has failed to do so. I dismiss Lovebug's claims.
20. 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. Lovebug was unsuccessful and so I dismiss its claim for CRT fees and dispute-related expenses. Capital did not pay any fees or claim any expenses, so I make no order.

ORDER

21. I dismiss Lovebug's claims and this dispute.

Kristin Gardner, Tribunal Member