



Civil Resolution Tribunal

Date Issued: December 21, 2021

File: SC-2021-003246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Moxon (dba GDM & Associates) v. Amis (dba North Shore Web)*, 2021
BCCRT 1331

B E T W E E N :

GRAHAM MOXON (Doing Business As GDM & ASSOCIATES)

APPLICANT

A N D :

BEN AMIS (Doing Business As NORTH SHORE WEB)

RESPONDENT

A N D :

GRAHAM MOXON (Doing Business As GDM & ASSOCIATES)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a web site services contract.
2. The applicant and respondent by counterclaim, Graham Moxon (dba GDM & Associates), contracted with the respondent and applicant by counterclaim, Ben Amis (dba North Shore Web), to build a website. The agreed price was \$1,500.
3. Mr. Moxon paid a \$500 deposit but refused to pay the \$1,000 contract balance after the website was built. Mr. Moxon claims Mr. Amis breached the contract by divulging or potentially divulging his confidential business information. He seeks \$500 for a deposit refund, plus \$1 for the alleged confidentiality breach. He also seeks \$71 for a business name search, which is a dispute-related expense.
4. Mr. Amis says he built the e-commerce website with Search Engine Optimization (SEO) as agreed and by the contract due date. He denies divulging Mr. Moxon's confidential business information or otherwise breaching the parties' contract. In the counterclaim, Mr. Amis seeks payment of the outstanding \$1,000 contract balance.
5. The parties are each self-represented.

JURISDICTION AND PROCEDURE

6. 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.
7. 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 some respects, both parties of this dispute call into question the credibility,

or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me and the parties did not request an oral hearing. 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 decided to hear this dispute through written submissions.

8. 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.
9. 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.
10. As a preliminary issue, Mr. Moxon submitted part of the parties' written contract as evidence after the CRT's deadline to submit evidence. Mr. Amis had the opportunity to make submissions on it and did not object to the late evidence. Considering the CRT's mandate for a flexible process, I accepted Mr. Moxon's late evidence as I find it is relevant. I find no prejudice to Mr. Amis in accepting it.

ISSUES

11. The issues in this dispute are:

- a. Did Mr. Amis breach the parties' contract by divulging confidential business information?
- b. Did Mr. Moxon build a website as required under the contract's terms?
- c. To what extent, if any, is Mr. Moxon entitled to the claimed deposit refund and damages?

- d. Alternatively, must Mr. Moxon pay Mr. Amis the \$1,000 invoice balance?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant Mr. Moxon must prove his claims on a balance of probabilities (which means “more likely than not”). Mr. Amis has the same burden to prove the counterclaim. I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
13. On March 6, 2021, the parties entered into a signed written contract for Mr. Amis to build an e-commerce website for Mr. Moxon’s business selling used books and art prints. The stated website build price was \$1,000, plus an e-commerce package for \$500. These prices included some free training for Mr. Moxon to manage parts of the website himself. I discuss the other relevant contract terms below.
14. The parties agree that Mr. Moxon paid a \$500 deposit when he signed the contract and \$1,000 remains outstanding for the website build.

Did Mr. Amis breach the parties’ contract by divulging confidential business information?

15. As noted, Mr. Moxon seeks a deposit refund plus damages on the basis that Mr. Amis allegedly breached the contract’s confidentiality clause. As it is central to Mr. Moxon’s claim, I reproduce the clause in full and as written:

Your secrets are safe with Us. This includes your proprietary information (things like trade secrets, know-how, or any other confidential information that is not publicly available). We promise We won’t sell your proprietary information to a third-party, no matter how much they offer us.

16. Mr. Moxon says there were 3 “red flags” that made him “concerned” that his confidential business information was not safe with Mr. Amis. I note he does not say nor provide evidence that Mr. Amis actually shared or sold his proprietary information

contrary to the confidentiality clause. I find this enough to dismiss Mr. Moxon's claim but I will address the parties' submissions on each "red flag" as they were raised.

17. First, Mr. Moxon says Mr. Amis spent hours in conversations with Google about an issue linking the business's email address. The parties' emails show that Mr. Moxon had chosen "Google Suites" as his host. Mr. Amis says his conversations with Google were to resolve an email connection issue. Mr. Moxon "questions" what else Mr. Amis might have discussed with Google, a potential competitor in used books sales. I find Mr. Moxon is purely speculating. Since he did not provide any evidence that Mr. Amis actually shared confidential or proprietary information with Google, I find there was no contractual breach.
18. Next, Mr. Moxon says Mr. Amis told him he would share his confidential business information with Mr. Amis's networking group. Mr. Moxon says he "caught him before he did this and asked him not to do it". Mr. Amis says there was nothing to "catch" and he only offered to share the public website with some people to promote it. Considering Mr. Moxon himself says Mr. Amis never actually shared Mr. Moxon's information, confidential or otherwise, I find there was no breach of the confidentiality agreement.
19. Mr. Moxon's third "red flag" is that Mr. Amis would not sign a March 31, 2021 letter that Mr. Moxon unilaterally drafted himself. The letter required Mr. Amis to guarantee the website's security and accept liability for any website security breaches. He presented the letter to Mr. Amis after he completed the website. Mr. Amis declined to sign because he could not guarantee the website would be immune to "external attacks".
20. I find Mr. Amis's refusal to sign the letter is irrelevant and does not amount to a breach of the confidentiality clause. I also find Mr. Amis had no obligation to sign a guarantee accepting liability over the website's future security.
21. For the above reasons, I find Mr. Moxon has not proven that Mr. Amis breached the confidentiality clause and I dismiss Mr. Moxon's claims totaling \$501.

Did Mr. Moxon build a website as required under the contract's terms?

22. The contract required Mr. Amis to complete the website by the end of March 2021, with a 2-month window to correct potential errors or deficiencies. After that a maintenance services contract at \$89 per month would automatically “kick in” unless Mr. Moxon cancelled the contract. The contract’s termination clause permitted Mr. Moxon to cancel at any time with 10 days’ notice and on paying for the completed services.
23. Mr. Amis says he completed Mr. Moxon’s e-commerce website with SEO that was implemented across the website by March 29, 2021. Mr. Moxon disagrees and says the website was not complete by the end of March.
24. Based on Mr. Moxon’s March 29, 2021 email thanking Mr. Amis for “delivering” the website in March, I find Mr. Amis must have built the website by that date. The parties’ emails show that Mr. Amis addressed a couple of minor issues at Mr. Moxon’s request after the website went live, which he resolved by March 31, 2021.
25. Mr. Moxon alleges the website did not display properly on his father’s PC or the library’s public computer and Mr. Amis refused to fix this. Mr. Amis denies this allegation. Mr. Moxon did not identify the precise display issues or provide any evidence of a display issue. He also did not raise it in his March 2021 emails to Mr. Amis after the site went live. Considering this, I find there was likely no ongoing display issue.
26. As for the website itself, the contract required the website to have search engine optimization, e-commerce capabilities, plus certain pages. Mr. Amis submitted screen shots of the website pages. I find the screen shots include all the required pages identified in the contract and Mr. Moxon does not argue that anything was missing. Mr. Amis also submitted a Google search screen shot that I find shows the website was searchable with key search terms. Further, Mr. Amis provided a SEO report from “SEOptimer” that states the website “on-page SEO is good”. Based on this evidence,

I am satisfied Mr. Amis built an e-commerce website that met the contract's requirements by the end of March 2021.

Must Mr. Moxon pay Mr. Amis the \$1,000 contract balance?

27. Mr. Moxon raises a lack of training as an alternative reason not to pay. The parties agree Mr. Moxon did not take the free training. The emails show Mr. Amis scheduled training but Mr. Moxon cancelled it and subsequently terminated the parties' contract after Mr. Amis refused to sign the guarantee. In the circumstances, I find Mr. Moxon gave up his opportunity for free training and this does not negate his obligation to pay in full for the built website.
28. Based on the contract's fees and termination clause, I find Mr. Moxon was required to pay Mr. Amis \$1,500 in total for the completed website and SEO. As mentioned, Mr. Moxon paid \$500 when he signed the contract. So, I find Mr. Moxon must pay Mr. Amis the outstanding \$1,000 balance.
29. Since the parties had no agreement on interest, the *Court Order Interest Act* applies. Mr. Amis is entitled to pre-judgment interest on the \$1,000 debt from the invoice due date of April 12, 2021 to the date of this decision. The interest equals \$3.13.
30. 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. As Mr. Moxon was the unsuccessful party, I find he is not entitled to any reimbursement of his paid CRT fees or the \$71 business search expense. I find Mr. Amis was the successful party on the counterclaim and is entitled to reimbursement of his paid \$125 in CRT fees. Mr. Amis did not claim any specific dispute-related expenses.

ORDERS

31. Within 30 days of the date of this order, I order Mr. Moxon to pay Mr. Amis a total of \$1,128.13, broken down as follows:

- a. \$1,000 in debt,
- b. \$3.13 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

32. Mr. Amis is entitled to post-judgment interest, as applicable.

33. I dismiss Mr. Moxon's claims.

34. 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.

35. 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.

Trisha Apland, Tribunal Member