Civil Resolution Tribunal

Date Issued: January 21, 2022

File: SC-2021-006030

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *VTB Vancouver Television Broadcasting Corporation v. Central City Brewers & Distillers Ltd.*, 2022 BCCRT 84

B E T W E E N :

VTB VANCOUVER TELEVISION BROADCASTING CORPORATION

APPLICANT

A N D :

CENTRAL CITY BREWERS & DISTILLERS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about termination of a marketing agreement. The applicant marketer, VTB Vancouver Television Broadcasting Corporation (VTB), says the respondent, Central City Brewers & Distillers Ltd. (CCBD), breached the parties' 3-month trial agreement by failing to give 30 days' notice of terminating the contract. VTB claims $3,675 as damages for giving no notice.

2. CCBD says it never agreed to give 30 days' notice and that the parties had only a 3-month trial agreement. So, CCBD says it owes nothing.

3. VTB is represented by Harmon Bal, a partner. CCBD is represented by an employee or principal, DF.

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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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 CRTA section 118, 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 CRT considers appropriate.

ISSUE

8. The issue is whether the parties' agreement required 30 days' notice, and if so, whether VTB is entitled to the claimed $3,675 as damages.

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, as the applicant VTB has the burden of proving its claim, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.

10. In an agreed Statement of Facts, the parties agree:

    a. VTB's April 7, 2021 email to CCBD outlined the rate of pay and scope of work.

    b. VTB's April 7, 2021 email to CCBD included a 30-day termination clause.

    c. CCBD did not provide 30 days' notice.

11. The central issue in this dispute is whether CCBD agreed to a 30 days' notice of termination clause. A related issue is whether VTB's April 7, 2021 email comprised the parties' contract, as VTB asserts and CCBS denies.

12. VTB's April 7, 2021 email set out VTB's offer to market CCBD's product. Mr. Bal wrote, "Here is what I propose", followed by the scope of work, pricing, and the following statement (reproduced as written):

> Along with that we generally have a 6-month contract however, we are so positive about our ability to perform that we are willing to waive that to have

> no contract but rather just a 30-day termination clause if it is not working out. …
>
> I hope this sounds good to you and I look forward to working with you.

13. On April 13, 2021, DF emailed back in response, saying he would ask its new social media person to be the conduit between the parties. DF then wrote:

> I want to start with a three month deal, if we work well together we will extend. Are you aligned to this?

14. Later on April 13, Mr. Bal replied to DF's email quoted above and wrote "Yes, we are good with that" and then set out what VTB needed to begin work.

15. CCBD says that its April 13 email quoted above was a request for a 3-month trial "instead of" a 30-day termination clause. I agree. I say this because VTB's April 7 email did not mention a 3-month trial. Rather, it only only mentioned "no contract" with a 30-day termination clause. Further, VTB's April 7 email was a proposal, which I find showed the parties were still negotiating terms. I find CCBD's April 13 reply email was a counterproposal (without any 30-day termination clause) and VTB accepted that counterproposal in its later April 13 email.

16. So, I find the parties' agreement, based on a reading of the above emails taken together, was that they had a 3-month fixed agreement, subject to extension, with no notice-of-termination clause. I find the contract began on April 13, and 3 months from that date was July 13.

17. On July 13, 2021, Mr. Bal emailed CCBD saying he wanted to "see your thoughts on moving forward" and that July 13 was VTB's last scheduled post. Later on July 13 CCBD emailed back that it had decided to move all social media design and content in-house, and that "at this point our partnership will cease." I find July 13 was the last day of the parties 3-month fixed term agreement, and CCBD was not required to give notice.

18. Notably, on July 13, 2021 Mr. Bal emailed CCBD and thanked them for the opportunity and noted CCBD was not authorized to further utilize VTB's imaging content. I find this email does not support VTB's position that it and CCBD reasonably understood the April 7 email amounted to an agreement to a 30 day' notice clause. If they had believed that at the time, I find VTB likely would have said so in its July 13 email.

19. At the same time, if the parties had intended there to have been a 30-day clause based on VTB's April 7 email, I find it likely VTB would have framed its July 13 enquiry about future work differently. In other words, I find VTB wrote its July 13 email knowing that the parties' 3-month contract was at an end and was hoping for future work. If there had been a 30-day notice clause in effect, VTB likely would not have treated the parties' relationship as at an end at that point. I say the same about VTB's follow-up email to CCBD later in the evening of July 13, 2021. Further, I find a 3-month trial is inconsistent with having to give 30 days' notice of termination. So, I do not accept VTB's assertion that CCBD knew this was a "standard" term and that it was included in the parties' agreement.

20. I note Mr. Bal points to CCBD's Dispute Response filed at the outset of this proceeding, in which CCBD said it gave notice of termination of the contract, "just not the full 30 days the client has requested under this agreed upon 3 month trial". I find this was not an admission by CCBD that it ever agreed to 30 days' notice. Rather, I find the most reasonable explanation is that CCBD said it gave notice in its July 13 email but admitted it did not give the 30 days' notice VTB had proposed in its April 7 email. As noted above, I have found the parties' ultimate agreement did not include a 30-day notice clause.

21. Next, while VTB submits CCBD was unjustly enriched by requesting work "knowing they were going to cancel our agreement", I find this unproven. The legal test of unjust enrichment is that the applicant must show 1) that the respondent was enriched, 2) that the applicant suffered a corresponding deprivation or loss, and 3) there is no valid basis for the enrichment. See *Kosaka v. Chan*, 2009 BCCA 467.

22. First, there is no evidence that CCBD knew it was going to cancel the agreement at the time the work was requested. Second, there is no evidence CCBD was enriched in that there is no evidence it received the benefit of VTB's work that it did not pay for. Third, there is no evidence that VTB suffered any loss in that it has not proved it did work for which it did not get paid. Finally, again, the parties had only a 3-month trial agreement, without any notice of termination clause.

23. For all the above reasons, I find VTB's claim must be dismissed. So, I do not need to discuss VTB's claimed damages in any detail, other than to note it did not explain how it arrived at the $3,675 figure. I would have found those damages unproven in any event.

24. 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. As VTB was unsuccessful, I dismiss its claim for reimbursement of paid CRT fees. CCBD did not pay fees and no dispute-related expenses were claimed.

ORDER

25. I dismiss VTB's claim and this dispute.

Shelley Lopez, Vice Chair