



# Civil Resolution Tribunal

Date Issued: February 28, 2022

File: SC-2021-006640

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Diamond v. Karki (dba Customize Press)*, 2022 BCCRT 218

**B E T W E E N :**

ALEISHA DIAMOND

**APPLICANT**

**A N D :**

GAURAV KARKI (Doing Business As CUSTOMIZE PRESS)

**RESPONDENT**

**A N D :**

ALEISHA DIAMOND

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This small claims dispute is about website design. In the primary claim, Aleisha Diamond<sup>i</sup> asks for a full \$1,228.14 refund from Gaurav Karki (doing business as Customize Press), who Ms. Diamond hired to design and post a website. Ms. Diamond argues that Mr. Karki failed to complete the website that the parties had agreed to.
2. In his counterclaim, Mr. Karki argues that he worked extra hours on Ms. Diamond's website that were not included in the initial price. He counterclaims for \$1,785 for these extra hours.
3. This dispute is before me for a determination about whether both parties' claims are out of time under the *Limitation Act*. I have not considered the merits of the parties' claims.
4. The parties are each self-represented.

## 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to hear this dispute through written submissions.

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. A CRT case manager referred the issue of whether the parties' claims were potentially out of time to me. The CRT asked for submissions from the parties on this issue. Mr. Karki went first but did not submit any evidence with his submissions. Ms. Diamond then provided evidence and submissions. In his reply, Mr. Karki submitted evidence. Even though he should have provided this evidence in his initial submissions, I admitted the late evidence and gave the parties each a further opportunity to comment on the late evidence, which they both did.

## **ISSUE**

9. The only issue before me is whether the parties' respective claims are out of time.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, each party must prove their claims on a balance of probabilities, which means "more likely than not". I note that despite the fact that the case manager's request for submissions was specific to the limitation period issue, both parties focused on the merits of their respective claims. Only Mr. Karki mentioned the issue at all, saying that Ms. Diamond's claim is out of time but his counterclaim is not. He did not explain either point. However, I find that the parties together provided enough evidence about their dealings with each other for me to conclude that both of their claims are out of time. My reasons follow.
11. A limitation period is a specific period of time within which a person must pursue a legal claim, such as a CRT claim. If the limitation period expires, the right to bring the claim disappears, so the claim is dismissed even if it would have otherwise been successful. Under section 13 of the CRTA, the *Limitation Act* applies to the CRT. The

*Limitation Act* provides for a 2-year limitation period for most claims, which I find includes both parties' breach of contract claims.

12. Under section 8 of the *Limitation Act*, the 2-year limitation period starts running when the party "discovers" their claim. The *Limitation Act* says that a party discovers their claim when they know or reasonable should know that another person has caused them a loss and that a legal proceeding would be an appropriate way to remedy the loss.
13. Ms. Diamond filed an application to the CRT on August 25, 2021. Mr. Karki filed his CRT application on October 9, 2021. Under section 22 of the *Limitation Act*, if a legal proceeding has been started within the limitation period, the respondent in that legal proceeding may bring a related counterclaim even after the limitation period has expired. I find that this provision applies to Mr. Karki's counterclaim. I find that both parties' claims must have been discovered on or after August 15, 2019. Otherwise, they are out of time and must be dismissed.
14. The parties signed a written contract on October 29, 2018, for Mr. Karki to design and launch a website for Ms. Diamond. The completion date was supposed to be November 21, 2018, but it was not done by then. The parties' relationship deteriorated throughout the first half of 2019 although they continued to try to work together.
15. I find that the key evidence is from July and August 2019. The following facts from that time are undisputed. On July 17, 2019, Mr. Karki emailed Ms. Diamond to say that he had "restarted" the project and that he would tell Ms. Diamond when it was complete. On August 2, 2019, Ms. Diamond requested a full refund. On August 8, 2019, Mr. Karki informed Ms. Diamond that he was "ready for a 3<sup>rd</sup> party to arbitrate our situation" if Ms. Diamond insisted on a full refund. He also said he would "counterclaim the extra hours" he had spent on Ms. Diamond's project. On August 14, 2019, Ms. Diamond reiterated the demand for a full refund.
16. I find that the latest possible discovery date for both parties' claims was August 8, 2019. By this time, Ms. Diamond had demanded a full refund and Mr. Karki had

threatened a counterclaim for his extra hours. So, I find that they both knew or should have known by August 8, 2019, that they had suffered a loss and that legal proceedings would be an appropriate way to remedy the loss.

17. I also note that in the CRT's Dispute Notices, there is a field where the party enters when they first became aware of the claim. Both parties wrote "July 2019" in this field, although neither explained why. I find that this July 2019 reference supports my conclusion because it shows the parties' relationship had already broken down by August 2019.

18. For these reasons, I find that Ms. Diamond's claim and Mr. Karki's claims are out of time under the *Limitation Act*, and I dismiss them on that basis.

19. 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. Both parties were unsuccessful, so I make no order for CRT fees or dispute-related expenses.

## **ORDERS**

20. I dismiss Ms. Diamond's claims, Mr. Karki's claims, and this dispute.

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Eric Regehr, Tribunal Member

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<sup>i</sup> The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks all parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout its process. Ms. Diamond asked to be referred to as Ms. Diamond, and specifically asked that the CRT not use any pronouns. I have respected that request.