

Date Issued: March 25, 2022

File: SC-2021-005894

Type: Small Claims

Civil Resolution Tribunal

Indexed as: XPS Group Inc. v. Cote, 2022 BCCRT 337

BETWEEN:

XPS GROUP INC.

APPLICANT

AND:

RICHARD COTE and DANCIA MOTORS LTD.

RESPONDENTS

AND:

XPS GROUP INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

- 1. This dispute is about payment for business valuation services.
- The applicant in the main claim, XPS Group Inc. (XPS), says the respondent Richard Coté and his former spouse hired it to perform a share valuation for the other respondent, Dancia Motors Ltd. (Dancia). XPS says Mr. Coté owes an outstanding balance of \$3,175.87 for its valuation services, plus contractual interest.
- 3. Mr. Coté says he owes nothing because XPS did not complete its valuation report in a timely manner. Mr. Coté filed a counterclaim seeking \$3,287.23 as a refund of the retainer he paid XPS, plus other expenses and interest.
- 4. An authorized employee represents XPS. Mr. Coté represents himself and Dancia.
- 5. As explained below, I allow XPS' claim and dismiss Mr. Coté's counterclaim.

JURISDICTION AND PROCEDURE

- 6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims 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 the parties that will likely continue after the CRT process has ended.
- 7. The CRT has the discretion to decide how to hold the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I am able to assess and weigh the documentary evidence and submissions before me without resort to an oral hearing.
- 8. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way.

- 9. Where permitted under CRTA section 118, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also make an order that includes any other appropriate terms or conditions.
- 10. I note that the signed contract for share valuation says the parties "submit to the exclusive jurisdiction of the Courts of the Province of British Columbia." The CRT is not a court. However, no one argued that the CRT does not have jurisdiction here. Instead, all parties fully participated in the CRT process. So, I conclude the parties want the CRT to resolve this dispute. Additionally, I find that this dispute fits squarely within the CRT's jurisdiction over debt or damages, and neither the claim nor counterclaim exceeds the CRT's \$5,000 monetary limit. So, I will decide this dispute.

ISSUES

- 11. The issues in this dispute are:
 - a. Is XPS entitled to payment for its services?
 - b. If not, is Mr. Coté entitled to \$3,287.23 (or some other amount) as a refund of his paid retainer because XPS allegedly was untimely in providing its report?

EVIDENCE AND ANALYSIS

- 12. As the applicant in this civil proceeding, XPS must prove its claims on a balance of probabilities (meaning "more likely than not"). Mr. Coté bears the same burden to prove his counterclaims. I reviewed all the parties' evidence and argument but refer only to what I find necessary to explain my decision.
- I begin with the undisputed facts. Mr. Coté and his former spouse (SB) hired XPS to provide a valuation report on the fair market value of Dancia's shares as at February 28, 2019. Mr. Coté and SB agreed to split the costs of the report equally. In May 2019, Mr. Coté paid XPS \$2,250 as a retainer fee. In June 2019, Mr. Coté signed an engagement letter (contract) with XPS.

- 14. The contract at issue is undisputedly between XPS, Mr. Coté and SB. I find that Mr. Coté signed the contract in his personal capacity, not as Dancia's director. I say this because the signature line for Mr. Coté simply says "Richard Coté" without any reference to Dancia. The fact that the contract says fees will be split 50% between Mr. Coté and SB supports my conclusion. So, I find that Dancia is not a signatory to the contract, but Mr. Coté is.
- 15. At law, a corporation is legally distinct from its owners, directors and officers. This means that Dancia is not responsible for Mr. Coté's personal contractual obligations. I recognize that the contract was about Dancia's share value but find that irrelevant when it comes to the signatories' contractual obligations. XPS did not explain why Dancia should be held liable for Mr. Coté's personal contractual obligations. I find that XPS has not shown why Dancia should pay for the services Mr. Coté and SB hired XPS to perform. Given this, I dismiss XPS' claims against Dancia.
- 16. In the signed contract, Mr. Coté agreed to pay 50% of XPS' fees when he received XPS' invoice and 18% annual interest on overdue accounts. XPS completed the valuation of Dancia's shares and issued an invoice to Mr. Coté and SB on June 9, 2020. SB paid her half of XPS' total fees soon after. None of this is disputed.
- 17. XPS now claims for the remaining balance Mr. Coté owes under the contract's terms, plus 18% annual contractual interest. Mr. Coté refuses to pay the balance because he says XPS did not complete the valuation in a timely manner, which he says violated the contract. For this same reason, he counterclaims for the return of the retainer fee he paid XPS. I disagree with Mr. Coté. As explained below, I find that XPS did not delay Dancia's valuation or violate the contract.
- 18. Significantly, the contract does not set any timelines or due dates. Instead, the contract says XPS' approach will "likely include" presentation of a draft report following completion of the valuation work and an explanation of XPS' approach and the reasons for its conclusions. The contract goes on to say that XPS will prepare and deliver a final report "shortly thereafter" (i.e., shortly after presenting and explaining the draft report). In other words, XPS promised it would likely prepare a

draft report, explain it to Mr. Coté and SB, then finalize the report soon after. I find that this is precisely what XPS did. More on this below.

- 19. The contract also says XPS promises to "use all reasonable efforts to complete within any agreed upon time-frame the performance of the services" described in the contract. However, there is no evidence before me to show that the contracting parties agreed upon any specific timeframe(s). As noted, the contract did not set a timeframe for its performance, and I find that nothing else in the evidence suggests the contracting parties agreed to any timeframes.
- 20. Mr. Coté argues that he did not hear for XPS for 2.5 months over the summer of 2019. He says that when he contacted XPS to check-in, the XPS valuator used "an excuse of summer holiday time preventing XPS Group from working on the valuation" (reproduced as written). I am not persuaded that XPS used vacation time as an excuse, or that there were any unexpected delays based on XPS vacation time.
- 21. Instead, based on the emails in evidence, I find that the valuator informed Mr. Coté of his 3-week pre-planned vacation on 2 separate occasions prior to taking vacation. The valuator explicitly asked if there were "any timing concerns you may have so we can address as necessary" and also asked if there were "any upcoming dates set for mediation that we should be aware of?" Nothing in the evidence indicates that Mr. Coté (or SB) raised any timing concerns in response or answered the question about mediation dates. I also note that in September, when Mr. Coté emailed the valuator to check-in about progress, he said "No panic or dates yet. Just curious." Given this, I find that Mr. Coté expressed no concerns whatsoever about XPS' progress prior to receiving its invoice and then refusing to pay.
- 22. As noted, Mr. Coté and SB signed the contract in June 2019. The emails and valuation report in evidence show that XPS then gathered information, asking Mr. Coté (and his accountant) many detailed questions about Dancia, and engaging in market research. After receiving all the necessary information from Mr. Coté (some of which Mr. Coté took over 1 month to provide), I find that XPS delivered its draft report to Mr. Coté and SB on November 18, 2019 by email. Nothing in the evidence

suggests that this was not a reasonable period in which to complete a professional share valuation. Again, the contract does not set a deadline and there is no evidence to show that Mr. Coté or SB told XPS about any time constraints or due dates or expressed any concerns about its progress.

- 23. XPS sent Mr. Coté and SB representation letters (letters) along with the draft report in November 2019. XPS asked Mr. Coté and SB to review the draft and sign and return the letters. Notably, the contract explicitly says that before XPS would render a final report, it required written confirmation from the persons who provided it with information (i.e. Mr. Coté and SB) that the information provided was fair, accurate and complete, and that they had no other information that could affect the report's conclusions. Given this, I find that Mr. Coté and SB knew (or should have known) that XPS would not complete the finalized valuation report until they signed the letters.
- 24. The email evidence shows that when XPS sent the draft report in November, it also offered Mr. Coté and SB the option of including Dancia's most recent financial information to provide the most up-to-date share valuation. The contract specified that XPS' valuation would only capture Dancia's share value as at February 28, 2019. XPS noted that Dancia's year-end was September 30, 2019, so XPS could "quickly update our valuation to incorporate the Company's year-end if so desired." XPS then asked Mr. Coté and SB how they wanted to proceed.
- 25. Mr. Coté and SB did not agree about how to proceed and did not send signed letters, so XPS did not finalize the report. I see no fault on XPS' part in this. Significantly, the emails show that in November 2019, XPS told Mr. Coté and SB that it would wait for their decision about updating the valuation prior to finalizing the report. Additionally, the email evidence shows that in February 2020, SB's lawyer told XPS to "hold off until we have sorted this issue out." Given the circumstances, I find it reasonable that XPS did not finalize the report.
- 26. Based on the email evidence, I find that XPS did not hear back from Mr. Coté and SB for months. XPS then followed-up in June 2020, sending the draft report and letters again, and asking Mr. Coté and SB to sign and return the letters.

- 27. Taking all this into account, I find that Mr. Coté and SB caused the delay in the report's finalization, not XPS. Given the evidence, I am not persuaded by Mr. Coté's argument that XPS did not complete the report in a timely manner. Instead, I am satisfied that XPS fulfilled its contractual obligations and is entitled to payment as promised. So, I allow XPS' claim and dismiss Mr. Coté's counterclaims.
- As described above, the contract provides for 18% annual interest. Calculated from the invoice date, June 9, 2020, to this decision's date, the contractual interest equals \$1,024.28.
- 29. As the successful party, I find that XPS is entitled to reimbursement of the \$175 it paid in CRT fees. Conversely, I find that Mr. Coté is not entitled to CRT fee reimbursement because he was unsuccessful in his counterclaim. Neither party claims any dispute-related expenses.

ORDERS

- 30. Within 30 days of this decision's date, I order Mr. Coté to pay XPS a total of \$4,375.15, broken down as follows:
 - a. \$3,175.87 in debt for business valuation services,
 - b. \$1,024.28 in contractual interest, and
 - c. \$175 in CRT fee reimbursement.
- 31. XPS is entitled to post-judgment interest, as applicable.
- 32. I dismiss XPS' claims against Dancia.
- 33. I dismiss Mr. Coté's counterclaims.
- 34. Under CRTA section 48, 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 CRTA section 58.1, the Provincial Court of BC can enforce a validated copy of the CRT's order. 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 a Provincial Court of BC order.

Laylí Antinuk, Tribunal Member