



# Civil Resolution Tribunal

Date Issued: April 21, 2022

File: SC-2021-006890

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Plendl v. Red Fox Creative Inc.*, 2022 BCCRT 464

BETWEEN:

BETTINA PLENDL

**APPLICANT**

AND:

RED FOX CREATIVE INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about website and rebranding services. The applicant, Bettina Plendl, says she hired the respondent, Red Fox Creative Inc. (Red Fox), to build a new website and marketing materials for her small business. Ms. Plendl says Red Fox did a poor job and so she seeks a partial refund of \$2,500. Red Fox says it completed all

deliverables to a professional standard, plus some “extras” for free, and says Ms. Plendl is not entitled to any refund.

2. Ms. Plendl is self-represented. Red Fox is represented by its principal, Kelly Landry.

## **JURISDICTION AND PROCEDURE**

3. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
4. Section 39 of the CRTA says that 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.
5. Section 42 of the CRTA says that 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.
6. 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**

7. The issue in this dispute is whether Red Fox's website and branding work for Ms. Plendl was substandard, such that Ms. Plendl is entitled to a \$2,500 refund.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, as the applicant, Ms. Plendl must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. It is undisputed that Ms. Plendl contacted Miss Landry in June 2020 requesting work on Ms. Plendl's existing website. Miss Landry provided Ms. Plendl with two options: \$2,500 for a new website and mobile site, including all copy-writing, stock photography, design elements, booking/appointment platform and Search Engine Optimization. For \$4,800, Miss Landry offered the above website services, as well as new branding, including logos, updated visual branding and brand development, business cards and letterhead design, marketing and communication collateral, and social media design.
10. Ms. Plendl selected the \$4,800 "complete rebrand" option, and the parties signed a Professional Services Agreement effective July 13, 2020. That agreement stated it was in place until September 13, 2020, unless extended by mutual written agreement between the parties.
11. The agreement required Ms. Plendl to pay 50% of the contract's price (\$2,520 including GST) up front, which she did on July 14, 2020. The remaining 50% was due on delivery of the finished product.
12. There is no written agreement about the extension of the parties' contract, but it is undisputed the parties agreed to continue working together when it was determined more work was necessary for the website.

13. Emails in evidence show that over the next 10 months, Ms. Plendl and Miss Landry worked together often to complete the work. Although Ms. Plendl says Miss Landry was difficult to get a hold of, both parties' evidence is that most of their business was conducted through Zoom meetings that lasted several hours at a time. In any event, it is undisputed most of the branding and the website work was complete by June 8, 2021, when the website went live. Miss Landry emailed Ms. Plendl on June 8, 2021, which outlined everything that had been completed based on the parties' agreement, as well as provided a short list of items to be completed for no additional charge. Notably, the remaining items on the "to be completed" list were not included in Red Fox's initial estimate or services agreement with Miss Landry.
14. Red Fox says Miss Landry met with Ms. Plendl and her partner on June 15, 2021 via Zoom for several hours to provide a tutorial of the website and to review "every page of the website in detail", which I accept because Ms. Plendl does not deny it. Red Fox says Ms. Plendl did not have any complaints about the website at that time, which I also accept because Ms. Plendl does not deny it. Ms. Plendl paid the remaining \$2,520 balance on June 29, 2021.
15. It is undisputed that Red Fox maintained control and ownership of the website until September 2021, as Miss Landry was waiting for additional items from Ms. Plendl to be added to the website for the free of charge items still to be completed, including adding a video bio and some additional content pages. Ms. Plendl does not deny these items required additional work from her, but says that Red Fox should have followed up with her more rigorously to get the items completed. In any event, the website was "handed over" to Ms. Plendl on September 27, 2021. I find the delay was reasonable, given Red Fox was still waiting for further content from Ms. Plendl during that time. But in any event, I find nothing turns on the delayed "hand over" of the website, given the website was undisputedly operational on June 8, 2021.
16. Ms. Plendl now says the website was substandard and requires additional work from someone else to fix the errors. In support of her claim, Ms. Plendl provided a report from Eli Neuhoff Vida, a "Marketing Specialist; Digital Agency Owner". Mr. Vida states

he holds a 2016 “BS in Marketing”, owns his own digital marketing agency, and has been building websites for professional clients since 2014. I accept Mr. Vida is qualified under the CRT’s rules to give expert evidence on the question of whether Red Fox’s website work fell below a professional standard.

17. Mr. Vida reviewed Ms. Plendl’s desktop and mobile websites and performed a detailed audit. His opinion is that the site, as of June 8, 2021 when it was operational, did not pass a quality assurance check. Mr. Vida found instances where there were button link errors (clicking the button went to a different page than intended), some colours were not “on brand”, and that Google Analytics needed to be synced and the domain needed to be verified via Google Search Console. Notably, I find most of Mr. Vida’s opinion about Red Fox’s website work is based on personal style preferences. For example, Mr. Vida says that different capitalization should be used, some text should be reformatted for better readability, he recommends different positioning of the header, and some text paragraphs “could be more concise”. I find these comments do not show that Red Fox’s work was substandard, but rather that some of the work is not the same style as Mr. Vida would use.
18. In any event, Red Fox says that Mr. Vida’s opinion is based on a current version of the website, which Ms. Plendl has allowed other people to work on. Red Fox says all buttons and links were working when the website went live, which was confirmed in the tutorial and review Miss Landry and Ms. Plendl had on June 15, 2021. In response to the Google Analytics and Google Search Console comments, Red Fox says those needed to be re-synced with Ms. Plendl’s own account after ownership of the website passed from Red Fox to Ms. Plendl.
19. Although I accept Ms. Plendl has made some changes to the website since it was handed over on September 27, 2021, Mr. Vida’s evidence is that he viewed the site as it was on June 8, 2021, the day it went live, which I accept. Therefore, based on the evidence before me, I find there were likely at least some errors in Red Fox’s website as of June 8, 2021, mainly the button link errors. However, it appears these errors were not noticed by either Miss Landry or Ms. Plendl during their review of the

live site on June 15, 2021. I do not find Mr. Vida's comments on personal style differences are relevant to whether Red Fox's work fell below a professional standard. I find the button link errors were minor in nature, and although they do need correction, I do not find they result in Red Fox's work falling below a professional standard. I do not find Ms. Plendl is entitled to a \$2,500 refund based on the deficiencies found, but is entitled to something to have the website's errors corrected.

20. In an email on August 25, 2021, Ms. Plendl advised Miss Landry she would need to hire a new designer at a rate of \$150 per hour to fix the deficiencies. Ms. Plendl has not provided any estimate for how long it would take to fix the minor deficiencies noted above. On a judgment basis, I find 2 hours would be reasonable.
21. So, I find Ms. Plendl is entitled to a refund of \$300 for the minor deficiencies in Red Fox's work.
22. There is no indication Ms. Plendl has yet paid anyone to correct this work, so I find pre-judgment interest is not applicable.
23. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As Ms. Plendl was mostly unsuccessful on her \$2,500 claim, I find only a partial reimbursement of the \$175 she paid in CRT fees is appropriate. I allow Ms. Plendl reimbursement of \$25 in tribunal fees. Ms. Plendl also claimed \$434 USD for Mr. Vida's expert report, but provided no invoice or receipt. Therefore, I make no award for dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this decision, I order the respondent, Red Fox Creative Inc., to pay the applicant, Bettina Plendl, a total of \$325, broken down as follows:
  - a. \$300 in debt, and
  - b. \$25 in tribunal fees.

25. Ms. Plendl is also entitled to post-judgment interest, as applicable.
26. 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.
27. 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.

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Andrea Ritchie, Vice Chair