



Civil Resolution Tribunal

Date Issued: May 6, 2022

File: SC-2021-004049

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Brown v. BPM Indoor Cycling Inc.*, 2022 BCCRT 541

B E T W E E N :

JAMES BROWN (Doing Business As JAMES BROWN
PHOTOGRAPHICS)

APPLICANT

A N D :

BPM INDOOR CYCLING INC. dba BPM FITNESS CENTRE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about video production and spin bicycle services. The applicant, James Brown dba James Brown Photographics, says the respondent, BPM Indoor Cycling Inc. dba BPM Fitness Centre (BPM), hired him to produce spin bicycle

training videos and to service and transport exercise equipment. Mr. Brown claims \$4,908.75 for alleged unpaid video work and \$91.25 for alleged unpaid spin bicycle work. Mr. Brown has abandoned his alleged spin bicycle work fees in excess of \$91.25 to remain within the \$5,000 small claims monetary jurisdiction of the Civil Resolution Tribunal (CRT).

2. BPM denies Mr. Brown's claims. BPM says it did not authorize Mr. Brown's alleged work. Further, BPM says that any work performed by Mr. Brown was not performed on BPM's behalf. Rather, BPM says that Mr. Brown performed such work personally for his spouse, SLB, who formerly owned 50% of BPM.
3. Mr. Brown is self-represented. BPM is represented by its owner, Keelan Clemens.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

6. 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.
7. 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.

ISSUES

8. The issues in this dispute are:
 - a. Does BPM owe Mr. Brown a debt for unpaid video production work? If so, how much?
 - b. Does BPM owe Mr. Brown a debt for unpaid spin bicycle servicing and transportation work? If so, how much?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mr. Brown, as the applicant, must prove his claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
10. Mr. Brown sent the following 3 invoices to BPM on December 10, 2020:
 - An \$4,908.75 invoice for video filming and production services relating to 35 videos. The invoice says that the videos were licensed for BPM's use until November 13, 2020. The invoice says BPM ordered the work on March 24, 2020.

- A \$609 invoice for spin bike servicing and transportation between March 25, 2020 to August 22, 2020.
- An \$84 invoice for spin bike transportation between September 12, 2020 to October 22, 2020.

11. It is undisputed that BPM has not paid any of these invoices.

Video production invoice

12. BPM operates a spin bicycle exercise business. Until November 2020, Keelan Clemens and SLB, Mr. Brown's spouse, each owned 50% of BPM. SLB sold her ownership interest in BPM to Mr. Clemens in November 2020.
13. Mr. Brown says he is an experienced professional photographer, who operates an independent photography business. Since BPM does not dispute this, I accept this as accurate. It is undisputed that Mr. Brown provided a variety of both paid and unpaid services for BPM from 2016 to 2019, though Mr. Brown was never a BPM employee.
14. On December 18, 2019, Mr. Clemens emailed SLB telling her that Mr. Brown could not perform further work for BPM without his approval. Mr. Brown met with Mr. Clemens at BPM on December 19, 2019. Mr. Brown provided 3 very short audio clips of portions of this conversation, ranging from 9 to 13 seconds per clip. In these audio clips, Mr. Clemens appears to compliment Mr. Brown's work and Mr. Clemens says that Mr. Brown will be paid for his photography work. However, BPM says the audio clips are taken out of context and are misleading without hearing the entire conversation. I find it difficult to interpret the significance of these very short audio clips without additional audio context. So, I give Mr. Brown's audio clips very little weight.
15. BPM says that Mr. Brown agreed to sign a contract with BPM that would require both of BPM's owners' approval for future work by Mr. Brown. DB, a BPM employee, gave a March 9, 2021 statement saying that they also heard this December 19, 2019 conversation. Based on BPM's submission and DB's statement, I find that Mr.

Clemens told Mr. Brown that future contract work would need to be approved by both Mr. Clemens and SLB.

16. BPM sent Mr. Brown a proposed contractor's agreement in January 2020. The proposed agreement says that all future photography work by Mr. Brown must be negotiated with BPM, with a prior estimate and that the work must be approved by all of BPM's owners. It is undisputed that Mr. Brown refused to sign the agreement. Mr. Brown says that refused to sign it because he disagreed with some of the terms.
17. In March 2020, provincial health orders relating to the COVID-19 pandemic forced BPM to temporarily close its business location. To generate revenue while its exercise studio was closed, BPM rented out its spin bicycle equipment. BPM also decided to produce and distribute spin bicycle training videos to its rental customers.
18. SLB wrote a September 21, 2021 statement saying that she authorized Mr. Brown to produce spin class videos on BPM's behalf. SLB says that she had the authority to hire Mr. Brown based on her position as BPM's director, an owner of 50% of BPM's shares and as BPM's manager responsible for its business operations. SLB says that Mr. Brown produced 35 videos of various lengths which BPM used with its bicycle rental program from March 22, 2020 to May 25, 2020. SLB says that Mr. Clemens was aware of that the videos were being produced but he did not ask her who was producing them or the production cost.
19. BPM does not deny that the videos were produced and distributed to its customers, but says that it was not aware of Mr. Brown's alleged involvement. BPM says that it did not authorize Mr. Brown to produce the videos. BPM says that Mr. Clemens discussed creating spin exercise videos with SLB in early April 2020, but it did not discuss hiring Mr. Brown to do so. BPM says that, as a result of the financial strain relating to the COVID-19 pandemic, it had decided that all work, including video production, needed to be performed solely by the owners.

20. Further, BPM says that it was no longer working with Mr. Brown when the videos were produced. BPM provided a March 24, 2020 video file which appears to show SLB and Mr. Brown saying expletives about Mr. Clemens. BPM says that it no longer wanted to work with Mr. Brown after this and that it removed all Mr. Brown's content from its website, business location and social media accounts. BPM says that it told SLB that it no longer wanted Mr. Brown at the business or performing any work for it. Since Mr. Brown does not dispute this, I accept this as accurate.
21. Based on the evidence discussed above, I am satisfied that Mr. Clemens told Mr. Brown that both owners needed to approve future work. Further, based on BPM's submissions, I am satisfied that Mr. Clemens did not approve Mr. Brown's video production work. However, there is no evidence before me showing that SLB, as a BPM director, lacked the authority to hire Mr. Brown, regardless of Mr. Clemens' instructions. *Business Corporation Act* (BCA) section 136(1) says that a company's directors are responsible for managing its business and affairs. BPM has not provided its memorandum, articles or other evidence showing that Mr. Clemens' corporate authority removed SLB's authority as its director. In the absence of evidence showing that her corporate powers were limited, I am satisfied that SLB had sufficient authority as BPM's director to unilaterally hire Mr. Brown under BCA section 136(1).
22. So, I must determine whether SLB authorized Mr. Brown's video production work on BPM's behalf or whether Mr. Brown performed the work personally for SLB to help her complete her business responsibilities. For the reasons discussed below, I find that Mr. Brown has not proved that SLB authorized the work on BPM's behalf.
23. First, the only evidence Mr. Brown provided supporting SLB's authorization is her statement prepared approximately 10 months after she sold her interest in the business. Mr. Brown did not provide any contemporaneous evidence showing that BPM hired him such as emails or text messages. Further, in weighing SLB's statement, I have considered that she is likely interested in the result of this dispute based on her spousal relationship to Mr. Brown.

24. I have also considered the timing of Mr. Brown's invoice. Despite allegedly being hired on March 24, 2020, Mr. Brown did not submit his invoice until December 10, 2020. Mr. Brown did not explain why he waited approximately 8 months to submit his invoice and then did so shortly after SLB sold her BPM shares on November 13, 2020. In the absence of an explanation, I find that Mr. Brown would have likely submitted his invoice earlier if BPM had hired him to produce the video as he claims.
25. Further, I find that SLB's September 21, 2021 statement is not credible because it is inconsistent with her lawyer's August 21, 2020 email to Mr. Clemens' lawyer. In the email, SLB's lawyer wrote that Mr. Brown had not performed any further work for BPM and Mr. Brown would not be submitting any further invoices. Neither Mr. Brown nor SLB explains the discrepancy between SLB's lawyer's statement that there was no unpaid work from Mr. Brown and SLB's September 21, 2021 statement that there was. In the absence of an explanation, I find it likely that SLB's September 21, 2021 statement was not accurate.
26. Further, Mr. Clemens, SLB and BPM signed a November 3, 2021 business purchase and sale agreement (sale contract) transferring SLB's BPM shares to Mr. Clemens on November 13, 2020. Though the sale contract provides detailed descriptions of BPM's assets and liabilities that were transferred, the sale contract does not discuss the video files or Mr. Brown's alleged unpaid work. In relation to the sale contract's \$12,000 purchase price, I find that Mr. Brown's claim for \$4,908.75 for unpaid video production work is substantial. I find that the sale contract would have likely discussed the allocation of such a large unpaid invoice, and the ownership of the video files, if BPM had hired Mr. Brown in March 2020 as he claims.
27. Also, Mr. Brown's invoice says that he licensed the videos for BPM's use until November 13, 2020, which is also the completion date in the sale contract. In the absence of explanation, I find it unlikely that BPM agreed in March 2020 to license the videos until November 13, 2020.

28. For the above reasons, I find that Mr. Brown has not proved that SLB hired him on BPM's behalf in March 2020 to perform video production work. Further, I find that BPM is not required to pay Mr. Brown for unrequested work. So, I dismiss this claim.

Spin bicycle servicing and transportation work

29. Mr. Brown also claims \$91.25 for alleged unpaid spin bicycle servicing and transportation between March 25, 2020 to October 22, 2020.

30. Mr. Brown says SLB hired him on BPM's behalf to deliver spin bicycle equipment to rental customers in March 2020. Mr. Brown says that each spin bicycle weighs 42 kilograms and SLB was unable to transport them herself. In contrast, BPM says that it did not hire Mr. Brown to transport the spin bicycle. Further, as discussed above, BPM says that it refused to work with Mr. Brown after March 24, 2020.

31. I find that Mr. Brown has not proved that BPM hired him to perform the alleged spin bicycle servicing and transportation work. As discussed above, SLB's September 21, 2021 statement says that she hired Mr. Brown on BPM's behalf for video production. However, her statement does not say that she hired Mr. Brown to service or transport the spin bicycles. Further, Mr. Brown did not provide any supporting documents, such as emails or text messages showing that BPM hired him to perform this work.

32. For the above reasons, I find that Mr. Brown has not proved that BPM hired him to perform the alleged spin bicycle servicing and transportation work. So, I dismiss this claim.

CRT fees and dispute-related expenses

33. 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. Since Mr. Brown was not successful, I dismiss his claim for CRT fees. BPM is not claiming reimbursement of dispute-related expenses.

ORDER

34. I dismiss Mr. Brown's claims and this dispute.

Richard McAndrew, Tribunal Member