



# Civil Resolution Tribunal

Date Issued: May 26, 2022

File: SC-2021-005292

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ross v. Eat The Dishes Ltd.*, 2022 BCCRT 623

BETWEEN:

JORDAN ROSS

**APPLICANT**

AND:

EAT THE DISHES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about videography and photography fees. The respondent, Eat The Dishes Ltd. (Eat), hired the applicant, Jordan Ross, to produce and edit videos and photographs. Mr. Ross claims \$1,420 in unpaid fees and expenses.

2. Eat denies Mr. Ross's claim. Eat says that Mr. Ross is not entitled to any further payment because he allegedly breached the contract by failing to timely complete the project.
3. Mr. Ross is self-represented. Eat is represented by an owner, Madison Bergeron.

## **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). 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. 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. 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 in the interests of justice.
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.

### ***Additional arguments***

7. Eat sent an additional argument after the expiration of its submission deadline. Eat said that Mr. Ross allegedly made unspecified, inaccurate statements in his reply arguments and Eat requested an opportunity to address them. Eat was given an opportunity to provide additional submissions relating to Mr. Ross's reply arguments

but it did not do so. In the absence of further submissions from Eat, I have considered Mr. Ross's reply arguments in my decision below.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did Mr. Ross fundamentally breach the contract by failing to timely complete the videography and photography work?
  - b. If not, does Eat owes Mr. Ross \$1,420 for unpaid fees and expenses?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Mr. Ross, as the applicant, must prove his claim on a balance of probabilities. I have read all the parties' evidence and argument but refer only to what I find relevant to provide context for my decision.

### ***Videography and photography contract***

10. Mr. Ross emailed Eat an April 12, 2021 quote. Though the document was called an invoice, I find that the document was actually a quote since it is undisputed that Mr. Ross sent the document before Eat hired him.
11. Mr. Ross's quote included the following terms:
  - Mr. Ross would charge \$2,000 for videography and photography work.
  - The work included 1 day of production work for \$500 and 5 days of post-production work, charged at \$300 per day.
  - Mr. Ross would provide a full resolution video, a social media post version video, a social media story version video, 5-10 edited photograph and approximately 5 social media story or video updates.

- The media story or video update products would be prepared for EO, another entity. (Neither party explained the relationship, if any, between Eat and EO. EO is not a party in this dispute.)
- Eat would pay Mr. Ross a \$1,000 deposit with the balance due after Eat's approval of the final products.
- The quoted fees did not include space rental expenses.
- The quote did not state a completion deadline.

12. Eat emailed Mr. Ross the same day agreeing to the quote. In doing so, I find that the parties entered a binding contract on the terms stated in the April 12, 2021 quote.

13. Mr. Ross emailed Eat on April 23, 2021 saying he would pay the studio expenses which Eat would reimburse. Eat sent a reply email the same day agreeing to this. Based on the parties' April 23, 2021 emails, I find that Eat agreed to pay the studio expenses. Mr. Ross provided a paid \$420 April 23, 2021 studio invoice. Since Eat does not dispute the studio invoice, I am satisfied that Mr. Ross paid \$420 for studio expenses for Eat's project.

14. It is undisputed and evidenced by an electronic money transfer record, that Eat paid Mr. Ross a \$1,000 deposit on April 26, 2021. It is also undisputed that Mr. Ross videoed and photographed the project at the studio on April 28, 2021. Mr. Ross sent Eat a rough version of the full length video on May 11, 2021. On June 2, 2021, Mr. Ross sent Eat 43 rough edited photographs and asked Eat to select its preferred photographs for final editing.

15. On June 24, 2021, Mr. Ross emailed Eat asking whether it had reviewed the photographs and whether it had a timeline yet for EO's work. Eat replied on June 25, 2021 notifying Mr. Ross that it was terminating the parties' agreement. Eat wrote that EO's deadline had expired and Eat no longer needed Mr. Ross's services.

16. Eat says that it does not owe Mr. Ross further payment because he did not finish his work on time. In essence, Eat argues that Mr. Ross fundamentally breached the contract. A fundamental breach is a breach that destroys the whole purpose of the contract and makes further performance of the contract impossible (See *Bhullar v. Dhanani*, 2008 BCSC 1202).
17. Whether a breach of contract is a fundamental breach matters because there are different remedies available to the wronged party. For most contract breaches, the wronged party can claim damages against the other party for a breach of contract. For a fundamental breach, the wronged party can end the contract immediately. (See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA).) Applied to this case, if Mr. Ross fundamentally breached the contract, Eat could end the contract without further responsibility to him.
18. Mr. Ross argues that the parties did not agree to a completion deadline. As noted above, there was no required completion date stated in the April 12, 2021 quote or in the parties' emails that they exchanged when they entered the contract. So, I find that the contract did not have an agreed completion date.
19. However, Eat argues that the parties later agreed to a deadline during an email exchange on May 19, 2021. Specifically, Mr. Ross wrote that he could complete the project by May 26, 2021 and Eat responded saying that this timing would work. Based on these emails, Eat argues that May 26, 2021 became Mr. Ross's deadline. However, I find that Mr. Ross's statement that he could finish by May 26, 2021 was not an amendment of the original contract. I reach this conclusion because, although Eat said that completion by May 26, 2021 was acceptable, Eat did not tell Mr. Ross that completion was required by that date.
20. Based on the above, I find that the contract did not have an agreed completion date. In the absence of an agreement, I find that it is an implied term that Mr. Ross would complete his work in a reasonable time.

21. So did Mr. Ross fundamentally breach the contract by failing to complete his work in a reasonable time?
22. I am satisfied that Mr. Ross promptly completed his production work by videoing and photographing the project on April 28, 2021, just 2 days after receiving Eat's deposit on April 26, 2021. Further, I find that Mr. Ross did not fail to complete his post-production work in a reasonable time for the following reasons.
23. After recording the videography and photography on April 28, 2021, the post-production work was still unfinished when Eat terminated the contract on June 25, 2021, almost 2 months later. However, based on the parties' emails, I find that Mr. Ross was waiting for a response from Eat about the photograph selections from June 2, 2021 until the contract was terminated.
24. Also, Mr. Ross argues that Eat did not tell him that it had any specific completion deadline requirements. In the parties' May 19, 2021 emails, Mr. Ross asked Eat about EO's timing and Eat responded saying that EO has been "really vague." Further, Mr. Ross asked about Eat about EO's timing requirements again June 24, 2021. The evidence does not show any further discussions between the parties about Eat's or EO's deadlines before Eat terminated the contract on June 25, 2021. Based on the parties' emails and submissions, I find that Eat did not notify Mr. Ross of any completion deadline requirements before it ended the contract.
25. In considering the above, on balance I find that Mr. Ross did not fundamentally breach the contract by failing to complete his work within approximately 2 months.
26. Eat also argues that Mr. Ross is not entitled to payment because it never approved the final work as the contract requires. However, since it is undisputed that Eat had terminated the contract on June 25, 2021, I find that Eat's approval of the final work was no longer necessary.
27. For the above reasons, I find that Eat owes Mr. Ross \$1,000 for unpaid videography and photography work and \$420 for studio expenses. So, I find that Eat owes Mr. Ross \$1,420.

### ***Interest, CRT fees, dispute-related expenses***

28. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Ross is entitled to pre-judgment interest on the \$1,420 in unpaid work and expenses. Since Mr. Ross did not provide evidence showing the delivery of an invoice after completing the work, I find that the pre-judgment interest started on July 6, 2021, the date that Mr. Ross applied for dispute resolution. Further, I find that the pre-judgment continues to the date of this decision. This equals \$5.67.
29. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. Since Mr. Ross was successful, I find that his entitled to reimbursement of his CRT fees of \$125. Mr. Ross does not claim dispute-related expenses.

### **ORDERS**

30. Within 30 days of the date of this order, I order Eat to pay Mr. Ross a total of \$1,550.67, broken down as follows:
  - a. \$1,420 in unpaid work and expenses,
  - b. \$5.67 in pre-judgment COIA interest, and
  - c. \$125 in CRT fees.
31. Mr. Ross is entitled to post-judgment interest, as applicable.
32. 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.
33. 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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Richard McAndrew, Tribunal Member