



Civil Resolution Tribunal

Date Issued: August 30, 2022

File: SC-2021-009588

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Slykhuis v. Scope Creative*, 2022 BCCRT 967

B E T W E E N :

DAWN SLYKHUIS (Doing Business As RVN WELLNESS)

APPLICANT

A N D :

SCOPE CREATIVE and CAROL MAIRIN DEERY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about website design and development services. The applicant, Dawn Slykhuis (doing business as RVN Wellness), says she hired the respondents, Scope Creative and Carol Mairin Deery, to redesign her website. She says the respondents

breached their contract by terminating it without insufficient notice. She claims for the return of her deposit of \$3,911.25.

2. The respondents disagree. They say they justifiably terminated the contract because Ms. Slykhuis involved them in a fraudulent government grant application. They also say they are entitled to the deposit amount to pay their final invoice for work done.
3. Ms. Slykhuis represents herself. Scope Creative's owner, Rebecca Parmiter, represents both respondents. As noted below, I find that Scope Creative is not a legal entity.
4. For the reasons that follow, I dismiss Ms. Slykhuis' claims.

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. Some of the evidence in this dispute amounts to a "she said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

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. 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

9. The issue in this dispute is whether Ms. Deery breached the contract with Ms. Slykhuis for website services, and if so, what remedies are appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Slykhuis as applicant must prove her claims on a balance of probabilities. This means more likely than not. 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.
11. I begin with the largely undisputed background. Ms. Slykhuis hired Ms. Deery to redesign and develop her website. They signed a written contract on September 3, 2021.
12. Scope Creative is not a named party to the contract. Ms. Deery refers to it as a subcontractor. I find from the contract and Ms. Deery's submission that Ms. Slykhuis did not directly contract with Scope Creative, though its members worked with Ms. Deery to fulfill the contract. I also find it unproven on the evidence before me that

Scope Creative is a distinct legal entity. Given this, I dismiss Ms. Slykhuis' claims against it.

13. Ms. Deery agreed to create a website that would comply with the grant specifications of "Launch Online". The correspondence indicates that Launch Online is a BC government program to provide grant funding for businesses that wish to create or enhance online shops. Under the contract, Ms. Slykhuis agreed to pay Ms. Deery a fixed price of \$7,822.50. She also agreed to pay an upfront \$3,911.25 deposit to start the work. Documents show Ms. Slykhuis paid the deposit on September 7, 2021.
14. Of note, section 6 of the contract said that either party could end the contract for any reason. To do so, that party had to send an email or letter to the other party, informing the recipient that the sender was ending the contract and that the contract would end in 7 days. Regardless of which party sent the notice, Ms. Slykhuis was obligated to pay for any work done up to the end of the contract.
15. Ms. Deery and her team worked on the website. On October 29, 2021, a Scope Creative employee or representative, BP, sent Ms. Slykhuis a series of emails. BP said the project was half done and asked for payment of the remainder of the funds. I note that, contrary to this request, section 1.5 of the contract says that Ms. Deery agreed to invoice Ms. Slykhuis at the end of the project and payment would be due within 7 days of that time.
16. Ms. Slykhuis expressed dissatisfaction with the work done. She said Scope Creative could either bill her for the work done, minus her time for checking at errors at \$150 per hour, or complete the project.
17. BP replied that day their team no longer wished to work for her. BP said it had been difficult to communicate with Ms. Slykhuis from the project's start. BP alleged that Ms. Slykhuis was now 1) bullying Scope Creative's team, 2) refusing to pay for the project's second half, and 3) committing fraud to obtain Launch Online's grant. Ms. Deery was copied on the email. BP also wrote that Scope Creative had fulfilled its contractual obligations and fulfilled the grant requirements.

18. Ms. Slykhuis replied that same day in several emails. She denied the allegations of bullying and fraud. She pointed out that payment was due at the project's end. She also said that Scope Creative breached the contract by failing to provide 7 days of notice before ending work. She said that Scope Creative had to continue work, otherwise it should return her deposit.
19. The respondents did not continue work and Ms. Deery sent Ms. Slykhuis a "final invoice" on November 1, 2021. The invoice says Scope Creative completed all web development services, including the online shopping cart, and 70% of the design work for the ecommerce platform. BP invoiced Ms. Deery \$3,911.25 for this work and marked it as paid, based on the deposit.

Did the respondents breach the contract with Ms. Slykhuis for website services?

20. I next consider whether Ms. Deery provided Ms. Slykhuis the required notice to terminate the contract. Section 11.4 says notice under section 6 could be provided by email, and was considered received upon acknowledging receipt. I find that Ms. Deery provided notice in the October 29, 2021 email, in which BP advised that Scope Creative would cease work. I find BP sent it on Ms. Deery's behalf as she was copied on it. I find that Ms. Slykhuis acknowledged receipt that same date in a reply email. I find it clear from the emails that the respondents advised Ms. Slykhuis that they would stop work immediately. I find that Ms. Deery therefore breached section 6 by failing to provide 7 days' notice.
21. The respondents submit that, as a matter of law, deposits are nonrefundable. I disagree that this is always the case. Whether a deposit is refundable depends on the facts of a dispute, including the parties' contract terms.
22. Ms. Slykhuis says Ms. Deery caused significant damage to her business by 1) delaying necessary upgrades to the website, 2) deleting content from her website, 3) billing for incomplete work, and 4) using a significant amount of time to correct their many errors.

23. The difficulty with Ms. Slykhuis' claim is determining what loss she suffered. It is undisputed that Ms. Deery obtained the Launch Online grant in August 2021. Ms. Slykhuis submits that she paid for the work through the grant. So, there is no indication that she personally paid for the deposit.
24. I also find it unproven that Ms. Slykhuis suffered any loss from delay, website deletions, or error correction. This is because she did not provide evidence of any business loss or out of pocket expenses she had to pay because of the breach.
25. This leaves her claim for incomplete work, which I again note Ms. Slykhuis did not directly pay for. Ms. Slykhuis says the respondents only delivered a partial setup of the ecommerce platform and partial transfer over of products from another ecommerce platform referred to as the Square Store. She says the ecommerce platform did not include all previous products or basics such as charging taxes or allowing for coupon codes.
26. As noted above, the respondents charged for completing "70%" of the ecommerce work. Overall, they only charged for half of the project. So, I find the fact that ecommerce platform still lacked such features is not determinative. In addition to that, the respondents provided a copy of the work in this dispute. This consisted of the sitemap and website template, or wireframe, that Ms. Slykhuis could insert text, pricing information, and pictures into. I find it unproven that the work had little or no value, or that it was likely worth less than the deposit that Ms. Deery kept.
27. Given the above, I find it unnecessary to address the respondents' allegations of fraud. I dismiss Ms. Slykhuis' claim.
28. 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. I dismiss Ms. Slykhuis' claim for reimbursement of CRT fees. The respondents did not pay CRT fees and the parties did not claim for any specific dispute-related expenses.

ORDER

29. I dismiss Ms. Slykhuis' claim and this dispute.

David Jiang, Tribunal Member