



Civil Resolution Tribunal

Date Issued: September 27, 2022

File: SC-2022-000164

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Payne v. Pebble Kids Limited*, 2022 BCCRT 1061

BETWEEN:

EMILY PAYNE

APPLICANT

AND:

PEBBLE KIDS LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for marketing services.
2. The applicant, Emily Payne, says she agreed to work as an independent marketing contractor for the respondent, Pebble Kids Limited (Pebble Kids). Ms. Payne says

she has not been paid anything for the one month of services she says she provided. Ms. Payne seeks \$2,500.

3. Pebble Kids says Ms. Payne completed less than 10% of the services agreed to, and that most of her work was late. So, Pebble Kids says it owes Ms. Payne nothing.
4. Ms. Payne is self-represented. Pebble Kids is represented by an employee or principal.

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. 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.
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 Pebble Kids owes Ms. Payne \$2,500 under their marketing agreement.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. Payne must prove her claims on a balance of probabilities (meaning “more likely than not”). I have read all of the parties’ evidence and submissions, but I refer only to what I find is necessary to explain my decision.
11. It is undisputed that in November 2021, Ms. Payne gave Pebble Kids a proposal to work as its marketing consultant, and that following its review of her proposal, Pebble Kids hired Ms. Payne as an independent contractor. The parties each provided a different copy of a contractor agreement in evidence. Ms. Payne’s copy was dated November 12, 2021 and was signed by her. Pebble Kids’ copy was dated November 23, 2021 and was not signed by either party. The 2 copies are otherwise identical.
12. While neither of the agreement copies are signed by both parties, I find the parties agreed to the terms since they both rely on them in this dispute and neither party suggested otherwise. The agreement provided that Pebble Kids would pay Ms. Payne \$2,500 per month for digital marketing and communications support. The contract set out examples of services Ms. Payne would provide such as: creating, posting and managing social media content, blog posts, and newsletters, managing paid advertising platforms, creating ads, and performing monthly reporting and tracking of social and web analytics.
13. The agreement did not specify the number of hours Ms. Payne was expected to work. Rather, it stated the price (\$2,500) was based on the time investment Ms. Payne estimated was needed to accomplish everything Pebble Kids wanted to achieve with its digital marketing and communications. However, Ms. Payne says the parties agreed the price was based on her working approximately 20 hours per month, which Pebble Kids does not dispute and is consistent with Ms. Payne’s initial proposal. So,

I find the parties agreed Ms. Payne would be paid \$2,500 per month for about 20 hours of work.

14. It is undisputed that the parties' agreement was effective on November 25, 2021, and the parties had their first virtual meeting that day. Each party has a different account of what they discussed at this meeting. Ms. Payne says it was essentially an introductory meeting. She says Pebble Kids made only general comments about what the business was looking for and asked her to write some "content" to promote and introduce the business for recruitment purposes, without any specifics or deadlines provided.
15. In contrast, Pebble Kids says it communicated the following specific expectations for Ms. Payne's first month:
 - a. 3 or more postings on Instagram and Facebook every week.
 - b. Set up LinkedIn page including introduction passage, blog set up, and 1 posting every 2 weeks.
 - c. Prepare promotional article for use in chat forums promotion and the company's website for admissions, with a December 10, 2021 deadline.
 - d. Review existing promotional platforms and advise on other marketing alternatives, with a December 1, 2021 deadline.
 - e. Follow up on charity events.
16. I do not wholly accept either parties' version of the November 25, 2021 meeting. In a December 1, 2021 email to Ms. Payne, Pebble Kids provided log-in information for the company's social media accounts and current advertising platforms. The email also set out the following first-month goals as discussed in their "previous conversation", which I infer was their November 25 meeting: 1) get some enrollment for the December and January assessment class, 2) add in "registration/admission" tab for the webpage, 3) terminate services on the non-useful platforms, and 4) "follow

up on charity events management (TBD)”. The email did not mention any specific due dates for these tasks.

17. On the evidence before me, I am satisfied that the parties likely generally discussed and agreed that Ms. Payne would review Pebble Kids’ social media platforms to provide advice on next steps and to start drafting content for future posts, and she would create some type of content passage or statement to promote registration and enrollment for the upcoming term. However, I do not accept that Pebble Kids provided detailed instructions or hard deadlines for these tasks during the November 23 meeting, other than completion within the first month.
18. I note that the evidence shows Pebble Kids created an email address for Ms. Payne around December 1 to use for her assignments, and that she did not initially receive the log-in information for that account. Pebble Kids argues that Ms. Payne delayed until December 15 before first logging into her email account. However, I find there is no evidence she received the log-in instructions before that date. Further, while it is undisputed that Ms. Payne did not receive Pebble Kids’ December 1 email referenced above until 2 weeks after it was sent, I find nothing turns on the delay given my finding that none of Ms. Payne’s assignments had a due date before December 15.
19. The evidence shows Pebble Kids emailed Ms. Payne again on December 15 to follow up on the written “content” she was preparing. The email stated the content would be translated, so it had to be received before Christmas for promotional use during the winter break. The parties’ WhatsApp text messages show Ms. Payne requested clarification about how the content was going to be sent out, but there is no evidence of any response.
20. On December 17, Ms. Payne emailed Pebble Kids a draft marketing email. I find this was the content passage or statement the parties agreed Ms. Payne would create to promote registration and enrollment. Ms. Payne says that given the lack of direction she had received, she included multiple options and notes for discussion and further collaboration, which Pebble Kids does not specifically dispute.

21. It is undisputed that the parties then had a virtual meeting on December 19. Ms. Payne says Pebble Kids advised her at that meeting that what she had provided was not what it was looking for, but she says Pebble Kids gave her no further guidance or feedback about what it expected. Pebble Kids did not specifically respond to this submission. However, there is no documentary evidence such as an email or other text communication from Pebble Kids to suggest it provided any clarification following the December 19 meeting about what it expected Ms. Payne to provide.
22. Over the following days, the evidence shows Ms. Payne sent multiple emails to Pebble Kids, requesting full access to its social media, advertising platforms, website backend, and Google drive with stock photos, as well as specific information about the company for draft social media posts. I accept Ms. Payne's evidence that she reasonably needed this access for analytics information, so that she could create targeted content for social media postings on each platform and advise Pebble Kids on its next steps for digital marketing. There is no evidence that Pebble Kids responded to Ms. Payne's emails, other than to confirm it would not provide her with the various requested log-in information. It is undisputed that Pebble Kids also told Ms. Payne that she was not to post anything on its social media accounts without prior approval.
23. Ms. Payne also emailed Pebble Kids several documents she completed after the December 19 meeting, including: a branding guideline document, a marketing strategy and timeline for 2022, a "content calendar" that included graphics and draft text for 3 social media posts per week throughout January 2022, a content pillars document setting out a framework for digital content subjects, and a spreadsheet for new advertising partner prospects.
24. On December 22, Ms. Payne emailed Pebble Kids a \$2,500 invoice for the period ending December 24. Pebble Kids responded that Ms. Payne had not written the requested introduction to its programs to post for enrollment purposes and weekly social media posts had not been published as anticipated. Pebble Kids also stated that while her work on graphics and "other things" was appreciated, it was not in the

desired “style”. Pebble Kids concluded that given the lack of “final product” produced, it suggested Ms. Payne “postpone” all her December assignments and include them in her January invoice, along with her January tasks.

25. On December 23, the parties had another virtual meeting, an audio recording of which Ms. Payne provided in evidence. Based on my review of the recording, I find that Ms. Payne reasonably explained how the work she had produced so far achieved Pebble Kids’ objectives and completed her agreed tasks for the month. Pebble Kids repeated that her work was not in the style it wanted to publish. I find Ms. Payne also explained how the requested access to social media platforms would help her produce more targeted digital content in the future. Pebble Kids said it wanted Ms. Payne to focus on more basic tasks, like drafting an introductory statement for its website. Essentially, I find the parties were simply on different pages about what Ms. Payne’s marketing work would look like to achieve Pebble Kids’ main December goal of promoting enrollment, and they were ultimately unable to resolve their differences.
26. Immediately after the meeting, Pebble Kids texted Ms. Payne that if she produced the “passages” they wanted by the next day, it would pay her for 2 hours (\$250) for December. Pebble Kids advised that the other items she had provided would be moved to the January billing, and it expected she would produce “double volume” of social media posts in January as well. Ms. Payne responded that she was willing to provide the requested “passages”, but she expected her invoice to be paid in full.
27. The evidence shows Ms. Payne emailed Pebble Kids an 8-page document on December 24, setting out suggested text and notes for each digital platform used by Pebble Kids. In a December 30, 2021 email, Pebble Kids advised Ms. Payne it was willing to pay her \$250 for December and requested an amended invoice to reflect that “agreement”. Ms. Payne responded that she had not agreed to be paid a lower amount, and she provided her final invoice with a breakdown of her work totalling 25 hours. She also provided the required 15 days’ notice to terminate the parties’ agreement. It is undisputed that Pebble Kids has not paid Ms. Payne anything for the work she provided.

28. Pebble Kids submits that it had to “decline” Ms. Payne’s invoice because none of the requested work was delivered on time. In its Dispute Response, Pebble Kids stated Ms. Payne only completed 10% of the assigned work. However, it did not specifically say what Ms. Payne failed to deliver. On the evidence before me, I find that in the first month Ms. Payne reviewed Pebble Kids’ social media accounts, created content for future posts, and drafted a promotional statement, as the parties agreed in their November 25 meeting. I find Ms. Payne also provided Pebble Kids with additional digital marketing content and consultation services as set out in her initial proposal and the examples in the parties’ agreement.
29. As noted, I find Pebble Kids did not clearly communicate any instructions or deadlines to Ms. Payne at the outset. I find the only deadline Pebble Kids later provided was for Ms. Payne to produce written “content” for promotion before Christmas. I find she provided the requested content on December 17, which I find was not late. While the content might not have been in the style or format Pebble Kids was expecting, I find Pebble Kids did not explain the intended audience or platform for the content, despite several requests by Ms. Payne, and so she was left to make an educated professional judgement to frame it as an email. I find Pebble Kids then failed to provide Ms. Payne with any meaningful feedback to allow her to revise her work to align with Pebble Kids’ expectations.
30. Overall, I find that Ms. Payne complied with her obligations under the parties’ agreement. I also find Ms. Payne worked more than the required 20 hours for the month of December. The parties’ agreement did not specify when Ms. Payne had to work the 20 hours during the month. So, I find nothing turns on the fact that she worked most of her hours in the last week of the billing cycle.
31. For all these reasons, I find Ms. Payne is entitled to be paid the claimed \$2,500 according to the parties’ agreement, and I order Pebble Kids to do so.
32. The *Court Order Interest Act* applies to the CRT. Ms. Payne is entitled to pre-judgment interest on the \$2,500 from January 7, 2022, the date of the invoice was payable under the parties’ agreement, to the date of this decision. This equals \$15.76.

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. So, I find Ms. Payne is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

34. Within 21 days of the date of this decision, I order Pebble Kids to pay Ms. Payne a total of \$2,640.76, broken down as follows:

- a. \$2,500 in debt,
- b. \$15.76 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

35. Ms. Payne is entitled to post-judgment interest, as applicable.

36. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Kristin Gardner, Tribunal Member