



Civil Resolution Tribunal

Date Issued: November 23, 2022

File: SC-2022-003148

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kassam v. Mercado*, 2022 BCCRT 1262

BETWEEN:

KHALIL KASSAM

APPLICANT

AND:

CALVIN MERCADO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is about an alleged breach of contract.
2. The applicant, Khalil Kassam, says they paid the respondent, Calvin Mercado, to print and put up missing person posters for them, but the respondent did not complete the job. The applicant seeks \$350 for “fees paid, damages, and interest”.

3. The respondent denies she failed to fulfil the contract. She says the applicant hired the business she owns, Vancity Postering, to print and distribute posters, which she says it did. The respondent says Vancity Postering was unable to put up all the posters due to circumstances discussed below. I infer the respondent asks that I dismiss the applicant's claims.
4. The parties are each self-represented.

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 the respondent breached the postering services contract with the applicant, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument I find relevant to provide context for my decision.
11. The evidence shows in late April 2022, the applicant emailed the respondent at Vancity Postering about a postering job. Over a few days in early May 2022, the parties exchanged emails and text messages about the job, including pricing and payment, poster lettering, and the respondent's employee's timing and availability for postering. It is undisputed the parties then signed a contract under which the applicant paid \$190 for the printing and distribution of 190 posters. More on the contract below.

Who were the parties to the postering services contract?

12. The contract named Vancity Postering throughout. However, the applicant named Calvin Mercado as the respondent in this dispute, not Vancity Postering. During the CRT facilitation process, staff discussed with the applicant that they had named an individual rather than a company. The respondent wrote "Vancity Postering is not a real company, so it is a personal dispute."
13. Although the respondent did not argue she was improperly named in this dispute, she referred to her business, Vancity Postering, in her submissions and her evidence. She did not provide evidence Vancity Postering is an "Inc." or a corporate entity and not her name as a sole proprietor, such as by submitting a company search or any agreement, invoice, text, or email showing the applicant contracted with a corporation. A sole proprietorship's owner does not have separate legal status from the business and assumes all its risks.

14. In *Out West Windows v. Tilley*, 2014 BCPC 296, the court noted section 27 of the *Business Corporations Act* says a corporation must display its name on all its contracts. The court found the absence of any explicit mention of the existence of a corporation meant a reasonable person would understand the contractor was operating as a sole proprietorship: see also *Lockwood v. Kopec*, 2022 BCCRT 572.
15. I reach the same conclusion here. I find the respondent did not communicate to the applicant that Vancity Postering is a corporation, and so it was reasonable of him to understand the respondent was operating as a sole proprietorship. I also find on the evidence before me Vancity Postering is a sole proprietorship. So, I find the respondent is a party to the contract in her personal capacity and is properly named in this dispute.

Did the respondent breach the postering services contract with the applicant, and if so, what is the appropriate remedy?

16. The contract did not specify a poster distribution delivery schedule. Based on text messages between the parties, I find they agreed the respondent's employee would distribute the posters on May 6 or 7, 2022 and the employee began distributing the posters on May 6th.
17. The applicant alleges the respondent's employee did not put up all the posters. The respondent says while their employee was distributing the posters, a person who was ripping the posters down approached them, told them to take down the posters and said "the police were involved." The respondent says the police then told her to stop postering and remove the posters already distributed.
18. The evidence shows the applicant asked the respondent if she would try to re-distribute the posters the next day. The applicant replied "Unfortunately we can't do anything going forward. The police are investigating and my recommendation is that you stop with the posters". The applicant then requested a refund and the respondent repeated "there is nothing we can do." The evidence also shows the respondent texted a third party "we did our job and printed the poster and schedule our rep and

posted most of the posters but in this situation we can refuse service if the poster rep is getting harassed and doesn't feel comfortable continuing with this poster” (reproduced as written).

19. Although she did not use these words, I find the respondent alleges that harassment of her employee and the police investigation frustrated the contract, entitling her to end it. A contract is frustrated when an unforeseeable event occurs for which the parties made no provision, where the contract becomes a thing radically different from that which was originally agreed: see *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58 at paragraph 53. As the party alleging contract frustration, I find the respondent bears the burden of proving it.
20. The respondent submitted no evidence the contract was impossible to perform because of the alleged harassment or police investigation. For example, she did not provide a witness statement, emails or text messages from the employee indicating the employee was being harassed and could not complete the postering. Nor did the respondent submit evidence of a police investigation, or any communication from the police prohibiting her from putting up the posters. In these circumstances, I find the respondent has not proven the contract was frustrated. So, I turn to the question of whether the respondent breached the parties' contract.
21. I find by refusing to complete the postering and telling the applicant there was “nothing we can do”, the respondent repudiated the contract. Repudiation is when one party indicates to the other party they no longer intend to complete the contract's terms: see *Kuo v. Kuo*, 2017 BCCA 245. When a party repudiates a contract, the other party may accept the repudiation and terminate the contract. I find this is what the applicant did when they requested a refund.
22. The appropriate remedy for repudiation of a contract is damages: see *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361. Damages for breach of contract are generally intended to put the innocent party in the position they would have been in if the contract had been performed: see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 31. However, in the case of a repudiatory

breach, the innocent party may claim damages based on their out-of-pocket losses, rather than the ordinary measure of expected performance: see *Bhullar v. Dhanani*, 2008 BCSC 1202 at paragraphs 42 to 45 and *Karimi v. Gu*, 2016 BCSC 1060 at paragraphs 206 to 211). In other words, “put me in the position I was in before the contract was made.”

23. Here, I find the applicant’s out-of-pocket loss is the amount they paid for the posting services. In the Dispute Notice the applicant claimed \$350 for “reimbursement of fees paid, damages and interest” without further explanation of the breakdown. So, I find they are entitled to the \$190 they paid for the posting services. I address their claims for fees and interest below.
24. The *Court Order Interest Act* applies to the CRT. The applicant is entitled to pre-judgment interest on the \$190 from May 6, 2022, the date of the respondent’s repudiation, to the date of this decision. This equals \$1.42.
25. 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. However, the applicant did not pay any CRT fees and did not claim any dispute-related expenses, so I make no order for them.

ORDERS

26. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$191.42, broken down as follows:
 - a. \$190 in damages, and
 - b. \$1.42 in pre-judgment interest under the *Court Order Interest Act*.
27. The applicant is entitled to post-judgment interest, as applicable.

28. 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.

Megan Stewart, Tribunal Member