



Civil Resolution Tribunal

Date Issued: February 3, 2023

File: SC-2022-003239

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Endymion Holdings Ltd. v. Strange Cloudz Vape Kamloops Corp.*,

2023 BCCRT 98

BETWEEN:

ENDYMION HOLDINGS LTD.

APPLICANT

AND:

STRANGE CLOUDZ KAMLOOPS VAPE CORP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Christopher C. Rivers

INTRODUCTION

1. This is a dispute about a website services contract. The respondent, Strange Cloudz Kamloops Vape Corp. (Strange Cloudz) hired the applicant, Endymion Holdings Ltd.

(Endymion), to build Strange Cloudz' website. Endymion does business as Infotel Multimedia (Infotel). Endymion claims \$2,849.70 for its work.

2. Strange Cloudz says Endymion's website work was of poor quality, and Endymion promised that Strange Cloudz could end the contract and be "left alone" if they were not satisfied with the website.
3. Endymion is represented by an employee or principal. Strange Cloudz is represented by its owner and director, Kaila Hay.

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.
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. 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.

ISSUE

8. The issue in this dispute is whether Strange Cloudz owes Endymion \$2,849.70 for website services.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Endymion must prove its 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. I note Strange Cloudz did not provide any documentary evidence or written argument, despite having the opportunity to do so.
10. I find that Endymion has proved they are entitled to their claim of \$2,849.70 for website services. My reasons follow.
11. I find that on November 15, 2021, the parties entered into a signed, written contract for Endymion to build and maintain an e-commerce website for Strange Cloudz. Endymion provided 2 documents I find make up the parties' contract: a receipt that shows a monthly payment amount, and a set of Terms and Conditions. None of this is disputed.
12. The contract says, in part, that:
 - a. Strange Cloudz must pay Endymion \$115 per month, plus 5% tax
 - b. Strange Cloudz must make payments for a minimum of 24 consecutive months
 - c. Endymion is entitled to increase their fees by 5% every year, after an initial period of 12 months. Endymion must give Strange Cloudz notice of the increase.
 - d. If Strange Cloudz defaults in making a payment when due, Endymion may declare all outstanding charges due and payable

13. Endymion explains that the contract is designed to spread out the cost of developing the website over time so the customer does not have to pay a large, upfront bill.
14. It is undisputed that on November 22, 2021, Strange Cloudz paid \$120.75 toward the contract. It is also undisputed that the next payment was due on December 22, 2021. Strange Cloudz did not make that payment, and made no further payments.
15. As a result of the December 22, 2021 payment default, Endymion was entitled under the contract to demand payment for the entire balance owing. In this case, that included all payments provided for under the parties' contract.
16. In its Dispute Response, Strange Cloudz argued that the website was of poor quality, and that Endymion promised Strange Cloudz could "walk away" if it was not satisfied with the website. In effect, Strange Cloudz asks to be released from the contract without having to make any further payments.
17. Strange Cloudz has the burden to prove the website was poorly done. Yet, it did not provide any evidence to support their argument about the website's quality, such as a copy of the website or evidence about their specific concerns. So, I find the allegation unproven.
18. I also do not accept Strange Cloudz' submission that Endymion made a verbal promise they could abandon the contract if they were not satisfied. There is a strong common law presumption that signed written contracts reflect the parties' true agreement. The parole evidence rule says that where there is a written agreement, outside evidence cannot be admitted to vary, modify, add, or contradict the written agreement's terms, unless the written agreement is unclear or ambiguous: see *Athwal v. BlackTop Cabs Ltd.*, 2012 BCCA 107, at paragraphs 42 to 44.
19. Here, the contract contains clear terms about how each party is able to cancel the contract. So, I cannot depend upon Strange Cloudz' submission about the conversation they had to modify the written agreement.

20. I find Strange Cloudz is bound to the contract they signed. So, I must determine how much Strange Cloudz owes Endymion under the contract.
21. I find the contract provides that Strange Cloudz must pay Endymion \$115 per month for the first 12 months, for a total of \$1,380.
22. Under the terms of the contract, Endymion increased fees by 5% after the initial 12 month period. However, to be entitled to be paid the increase, Endymion must give notice to Strange Cloudz. Has Endymion given notice?
23. The Dispute Notice does not make a clear claim for a 5% increase after 12 months. Endymion did not provide any evidence it gave notice to Strange Cloudz of the increase in fees. While Endymion's claim of \$2,849.70 mathematically includes the 5% increase, I do not find that constitutes notice to Strange Cloudz as contemplated in the contract. I find Endymion has not proved they gave notice to Strange Cloudz.
24. So, Strange Cloudz must pay the original rate of \$115 per month for the final 12 months, for a further total of \$1,380.
25. All together, the contract requires Strange Cloudz to pay Endymion \$2,760, plus \$138 in tax, for a total of \$2,898. As noted above, Strange Cloudz has paid \$120.75 towards the contract. Therefore, the total owing under the contract is the claimed \$2,777.25.
26. Endymion expressly says it does not claim pre-judgement interest, and so I do not award any.
27. 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. Endymion was mostly successful in its claim, so I see no reason in this case not to follow that general rule. I find Endymion is entitled to reimbursement of \$175 in CRT fees. Endymion did not claim any dispute-related expenses.

ORDERS

28. Within 30 days of the date of this order, I order Strange Cloudz to pay Endymion a total of \$2,952.25, broken down as follows:
- a. \$2,777.25 in debt for unpaid website services, and
 - b. \$175.00 in CRT fees.
29. Endymion is entitled to post-judgement interest, as applicable.
30. 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.

Christopher C. Rivers, Tribunal Member