



Civil Resolution Tribunal

Date Issued: April 13, 2023

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arkitek Creative Inc. v. Leila Khorvash Personal Real Estate Corporation*,
2023 BCCRT 301

B E T W E E N :

ARKITEK CREATIVE INC.

APPLICANT

A N D :

LEILA KHORVASH PERSONAL REAL ESTATE CORPORATION

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. The respondent, Leila Khorvash Personal Real Estate Corporation (LKPREC), hired the applicant, Arkitek Creative Inc. (Arkitek), to create marketing material for LKPREC's real estate listing. Arkitek says it delivered the services and final products to LKPREC, but LKPREC has refused to pay it for the work. Arkitek seeks \$2,662 as

payment for the unpaid work, including 10% contractual interest, compounded monthly for May, June and July 2022. Arkitek also seeks contractual interest from August 2022 onwards.

2. LKPREC says the final video it received from Arkitek was nothing like the samples it viewed before hiring Arkitek and it could not use it for its real estate listing. LKPREC admits it used 4 photographs and the write-up Arkitek provided and says it is willing to pay for these items but not the video.
3. Arkitek is represented by AC, its principal or employee. LKPREC is represented by its owner, Leila Khorvash.

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. 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 appropriate.

ISSUE

8. The issue in this dispute is whether LKPREC owes Arkitek \$2,662, or some other amount, plus contractual interest, for the services and products Arkitek provided.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Arkitek as the applicant must prove its claims on a balance of probabilities (meaning “more likely than not”). I have considered all the parties’ submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Arkitek did not provide any reply submissions, despite having the opportunity to do so.
10. It is undisputed that LKPREC contacted Arkitek sometime in late March or early April 2022 to make a marketing video for LKPREC’s real estate listing. On April 7, 2022, Arkitek sent LKPREC an email attaching a project invoice that set out the proposed scope of work and video notes for the project. LKPREC then undisputedly signed the invoice, which I find is also the parties’ contract, agreeing to the scope of work and other terms.
11. The invoice included the following terms:
 - a. Arkitek would provide LKPREC 1 video that was 15 to 30 seconds long,
 - b. Arkitek would provide 5 to 8 aerial coloured photographs of the property,
 - c. The video would contain 3 to 5 “GFX pins on live-action aerial footage (destination wayfinding)”, and
 - d. Final delivery would be before April 15.

12. The invoice also included a website link as a “style reference” which I infer is a sample video of the kind LKPREC was asking for. The invoice stated the total cost would be \$2,100, made up of \$2,000 for the video production and 5% GST. No additional cost was listed for the photographs Arkitek would provide. Finally, the invoice noted that payment would be due on final delivery of the video and photographs.
13. In an April 7 email from LKPREC attaching the signed contract, Ms. Khorvash asked Arkitek to provide as many drone photographs as possible, up to 15. She also stated that 15 seconds would be too short for the video and suggested 30 to 45 seconds. The next day, AC responded saying “no problem” to Ms. Khorvash’s April 7 email and provided the “video creative and script” for Ms. Khorvash’s review, feedback and approval. AC also set out details for the video shoot scheduled for the next day. Ms. Khorvash responded saying “sounds good” and that she would see AC the following day. The video shoot undisputedly took place on April 9.
14. On April 16, KC, Arkitek’s creative director, sent Ms. Khorvash a link to the final video and asked her to let Arkitek know if she had any notes. Later the same day, AC sent a follow-up email, saying that Arkitek still needed to address a sound effect fade out. AC said they would address that and re-send the video that night.
15. Ms. Khorvash responded the same day and noted that she wanted the property address watermarked in the corner throughout the video and also noted a shot at the 15 second mark that she preferred to exclude. AC responded and said they would see if they could swap out the scene at the 15 second mark and that they would send the final videos for both “web and social” that night.
16. AC then sent an updated video later on April 16. On April 17, Ms. Khorvash said she was copying an email she had previously sent to KC when Arkitek first sent her the video and noted that she did not see any of those changes incorporated. In particular, she asked that Arkitek only include footage of her in her red jacket. She also asked that the property outline be shown in one scene as well as a map “from near to far” where the video pointed out certain locations. Further, Ms. Khorvash asked that the

following locations be included: Downtown Vancouver, Park Royal Shopping Mall, Horseshoe Bay Village, and Glen Eagle Golf Course.

17. On April 18, AC emailed Ms. Khorvash asking her to take a look at some notes at a link in the email and asked Ms. Khorvash to confirm that these were the final notes. AC said they would wait to hear back from Ms. Khorvash before moving ahead. On April 19, Ms. Khorvash responded, “confirmed” and thanked AC.
18. Arkitek’s final video is not in evidence. It appears AC’s April 18 email to Ms. Khorvash may have included a link to the video, though it is unclear if this was the final video with no further edits made after this date. In any event, I cannot rely on live links in evidence because they are not reliable as the content may have changed. So, I have not viewed anything from the live links included in any emails in evidence.
19. LKPREC’s only documentary evidence in this dispute is a Word document with website links to 3 real estate listing videos. LKPREC says the first link is to a video by Arkitek that LKPREC initially viewed when deciding to hire it. LKPREC says the second link is to a video it had made by another company for a different property. LKPREC says the final link is to a “random” real estate video it found online. As with the links in Arkitek’s emails, I cannot rely on the live links in this Word document as the websites’ content may have changed. So, I have not viewed these links. Based on LKPREC’s descriptions of the videos, I find they are likely minimally relevant in any event.

Is Arkitek entitled to payment for the services and products it provided to LKPREC?

20. LKPREC does not deny receiving the final video, photographs and a write-up from Arkitek for the real estate listing. However, as noted above, LKPREC argues it should not have to pay Arkitek for the video because it was allegedly not “usable” as a real estate listing video. LKPREC further says the final video did not properly highlight the property’s location, which LKPREC says it emphasized was key for this listing. Arkitek

says it delivered its services and products in accordance with the terms the parties agreed to and so should be paid for its work.

21. Based on the evidence before me, I am unable to find that Arkitek failed to properly highlight the property's location or that the video was not usable as a real estate listing video as LKPREC alleges. The only evidence before me that shows LKPREC raised any issues with Arkitek properly highlighting the property's location, or other locations, in the video is Ms. Khorvash's April 17 email mentioned above. However, based on the later emails in evidence, I find it likely that Arkitek implemented Ms. Khorvash's requested changes. In particular, I say this based on Ms. Khorvash's April 19 email where she confirmed to AC that the notes at the link AC sent were the "final notes". I also note there is no email or other documentary evidence before me that shows LKPREC continued to be unsatisfied with the video's content. Further, while LKPREC says Arkitek refused to fix the video in a way so that LKPREC could use it, other than LKPREC's assertions, there is no evidence before me of this alleged refusal. Instead, I find the evidence shows Arkitek made various revisions to the video at Ms. Khorvash's request.
22. While I accept LKPREC did not end up using Arkitek's video for the listing, on balance I find Arkitek's final video likely contained everything it was required to under the parties' contract. I note it appears Arkitek delivered the final video after the April 15 deadline stated in the contract. However, LKPREC does not argue that it should not have to pay Arkitek because it failed to deliver the video by the stated deadline. So, I find LKPREC owes Arkitek \$2,100 for the video and photographs.
23. As noted, Arkitek claims contractual interest. The contract said that Arkitek may charge interest on late payments at an amount "equal to the current prime rate +10% (as charged by Studio's bank from time to time) on unpaid amounts until paid, compounded monthly".
24. In the Dispute Notice, Arkitek claims 10% yearly interest. In its submissions, on the other hand, Arkitek's claims 10% "monthly compounded interest" and calculates the total amount owed up until December 2022 to be \$4,287.18. From this I infer Arkitek

claims in its submissions that it is entitled to 10% monthly interest. However, because the contract says interest would be payable on unpaid amounts at a rate of prime plus 10%, compounded monthly, I cannot allow the 10% annual interest rate Arkitek claims in the Dispute Notice or the 10% monthly rate it claims in its submissions because these are not the interest rates the parties contractually agreed to.

25. While the contract said interest would compound monthly, it did not specify whether the interest rate was monthly, yearly, or otherwise. However, LKPREC does not dispute that the interest rate stated in the contract was a monthly rate. So, I find the parties agreed interest would be payable on unpaid amounts at a monthly rate of prime plus 10%, compounded monthly.
26. Section 4 of the federal *Interest Act* limits the amount of annual interest chargeable to 5% when an interest rate in a contract is expressed as a rate or percentage for any period less than 1 year unless the equivalent yearly rate is also listed. Here, since it is undisputed that the contractual interest rate was a monthly rate, and since no equivalent yearly rate is listed in the contract, I find Arkitek is limited to claiming 5% yearly interest under section 4 of the *Interest Act*. I find the 5% yearly interest is reasonably calculated on the \$2,100 from April 20, 2022, the date I find the invoice amount was overdue, until the date of this decision. This totals \$103.27.
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. I see no reason in this case not to follow that general rule. Since Arkitek was generally successful, I find it is entitled to \$200 for its paid CRT fees. Neither party claims any dispute-related expenses, so I order none.

ORDERS

28. Within 30 days of the date of this decision, I order LKPREC to pay Arkitek a total of \$2,403.27, broken down as follows:
 - a. \$2,100 in debt,

- b. \$103.27 in contractual interest at a yearly rate of 5%, and
- c. \$200 in CRT fees.

29. Arkitek is entitled to post-judgment 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.

Nav Shukla, Tribunal Member