



Civil Resolution Tribunal

Date Issued: June 23, 2023

Files: SC-2022-006542
and SC-2022-009176

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Chow v. Li*, 2023 BCCRT 528

BETWEEN:

RUSSELL CHOW

APPLICANT

AND:

MICHAEL LI and GLADYS LI

RESPONDENTS

AND:

RUSSELL CHOW

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about marketing services. This decision relates to 2 linked disputes that I find collectively consist of a claim and counterclaim. So, I have issued 1 decision for both disputes.
2. The applicant and respondent by counterclaim, Russell Chow, provided marketing services to the respondents, Michael Li and Gladys Li, for a real estate development project. Mr. Chow says the Lis failed to pay for the remainder of his services and claims a total of \$4,110.34.
3. The Lis says the marketing services Mr. Chow supplied were inadequate and slow and had to be redone. Mr. Li's counterclaim is for \$4,500, the amount he paid another marketing company to redo the project on a "rush" basis.
4. The parties are all 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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 that 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.

Evidence

9. Mr. Chow submitted various “working files” which I infer are the supporting documents for the digital brochure he submitted. These files were submitted in a format I was unable to open. However, given the brochure is in evidence and my conclusions below, I did not ask Mr. Chow to resubmit the “working file” documents.

ISSUES

10. The issues in this dispute are:
 - a. Whether Mr. Chow is entitled to the outstanding \$4,110.34 for unpaid marketing services, and
 - b. Whether Mr. Li is entitled to \$4,500 as compensation for allegedly inadequate marketing services.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, Mr. Chow must prove his claim on a balance of probabilities (meaning “more likely than not”). In his counterclaim, Mr. Li has this same burden. While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note Mr. Li did not provide any final reply submissions in his counterclaim, despite the opportunity to do so.

12. The Lis undisputedly hired Mr. Chow to produce marketing materials for their real estate development project. On September 16, 2020, Mr. Li signed a marketing proposal where Mr. Chow would provide various marketing services, including creating a logo, site signage, a teaser website, full website, neighbourhood and lifestyle photos, a digital brochure, and stationary, among other things. The total cost was \$20,000, plus tax. There was no indication of a timeline for the project in the proposal.
13. Mr. Li undisputedly paid Mr. Chow \$10,000 towards this total as a deposit.
14. Over the next several months, Mr. Li created the logo, teaser website, outdoor signage, digital and print brochures, floor plan “sanitization”, neighbourhood photoshoot and editing, copywriting for the brochure, teaser, and developer story, purchased a website template, and created a neighbourhood map.
15. On May 11, 2021, Mr. Chow advised the Lis that, after deducting the \$10,000 already paid, \$4,110.78 remained outstanding for the work done to date. On May 20, 2021, Mr. Chow provided Mr. Li with a formal invoice for \$4,110.34, the amount claimed in this dispute. I infer the initial \$4,110.78 Mr. Chow referenced in his May 11, 2021 email was a mathematical error. In any event, in a May 20, 2021 text message, Mr. Li apologized for the delay and asked Mr. Chow for his GST number for the account, which Mr. Chow provided. Mr. Li undisputedly never paid the outstanding \$4,110.34.
16. There is no dispute Mr. Chow performed the work he invoiced. However, the Lis argue the quality was substandard and Mr. Chow was too slow to deliver the finished product. I find Mr. Chow is entitled to the \$4,110.34 balance for the work he completed, subject to deductions for any proven deficiencies for substandard work or unreasonable delay.
17. Generally, when a customer alleges a professional’s work fell below a reasonably competent standard, the customer must prove the deficiencies (see: *Absolute Industries Ltd. v. Harris*, 2015 BCSC 287 at paragraph 61). Generally, expert evidence is required to prove a professional’s work was below a reasonable standard

(see: *Bergen v. Guliker*, 2015 BCSC 283). The 2 exceptions to this are when the deficiency is not technical in nature or when the work is obviously substandard (see: *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

18. Here, the Lis do not specifically say what was allegedly substandard about Mr. Chow's work, despite complaining about the timeline in which it was received. I also note none of the correspondence between the parties ever indicates anything other than satisfaction with Mr. Chow's work.
19. The Lis argue the second marketing company they hired had to redo the work, but do not explain why it had to be redone. Although they argue "the style and workmanship is different" from what Mr. Chow created, there is no argument Mr. Chow's work was somehow substandard. The second marketing company provided an invoice for its services, however that invoice is not critical of Mr. Chow's work. There is also no expert evidence before me indicating that anything Mr. Chow completed was not up to industry standards. Further, I find nothing obviously substandard about the marketing materials shown in the evidence. On balance, I find the Lis have not proven Mr. Chow's was work deficient.
20. What about the alleged delay? The Lis argue the length of time it took Mr. Chow to produce the project's deliverables fell beyond an acceptable time frame. They say Mr. Chow was hired in September 2020 and finished his work in May 2021. Mr. Li says, based on his 30 years' experience in the real estate development industry, that most marketing companies would take 3 to 4 months for similar work, when it took Mr. Chow 8 months.
21. There are several problems with Mr. Li's argument. First, there was no timeline discussed in any of the parties' correspondence. To the extent Mr. Li argues Mr. Chow's delay caused delays to his real estate project, I disagree. Correspondence in evidence shows that the Lis' architect was revising floor plans to be included in the digital brochure and other marketing materials into April 2021. There is no indication in the evidence that Mr. Chow was the cause of these delays, rather he had to revise

his work based on the architect's changes. There is also no mention in any of the parties' correspondence that the Lis were unhappy with Mr. Chow's delivery timelines, and Mr. Chow says the Lis did not allege any issues until he started his CRT claim.

22. Further, despite Mr. Li's assertions that in his experience Mr. Chow's delivery timelines were unreasonable, he provided no expert evidence in support. I find Mr. Li's own assertions are insufficient to establish Mr. Chow breached a marketing industry standard in his delivery of completed work.
23. In summary, I find the Lis have not proven Mr. Chow's work was deficient or unreasonably delayed. I dismiss Mr. Li's counterclaim.
24. As it was Mr. Li who signed the marketing proposal, I find Mr. Chow's contract was with him, though it was Ms. Li who requested the proposal. I find Mr. Li is responsible for paying Mr. Chow the outstanding \$4,110.34. I dismiss Mr. Chow's claims against Ms. Li.
25. Mr. Chow is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from May 20, 2021, the date Mr. Chow officially invoiced Mr. Li for the work, this amounts to \$143.05.
26. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. Mr. Chow was successful, so I find Mr. Li must reimburse him \$175 in paid tribunal fees. As Mr. Li was unsuccessful in his counterclaim, I dismiss his claim for reimbursement of tribunal fees. No dispute-related expenses were claimed.

ORDERS

27. Within 21 days of the date of this decision, I order Mr. Li to pay Mr. Chow a total of \$4,428.39, broken down as follows:
 - a. \$4,110.34 in debt,
 - b. \$143.05 in pre-judgment interest under the *Court Order Interest Act*,

c. \$175 in tribunal fees.

28. Mr. Chow's claim against Ms. Li is dismissed.

29. Mr. Li's counterclaim is dismissed.

30. Mr. Chow is also entitled to post-judgment interest, as applicable.

31. 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.

Andrea Ritchie, Vice Chair