



Civil Resolution Tribunal

Date Issued: October 10, 2023

File: SC-2022-008349

SC-CC-2023-002347

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Creative Research Ltd. v. 360hometours.ca Inc.*, 2023 BCCRT 859

B E T W E E N :

CREATIVE RESEARCH LTD.

APPLICANT

A N D :

360HOMETOURS.CA INC.

RESPONDENT

A N D :

CREATIVE RESEARCH LTD.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about video production services. This decision relates to 2 linked disputes that I find are a primary claim and counterclaim involving the same parties and related issues, so I have issued one decision for both disputes.
2. The applicant and respondent by counterclaim, Creative Research Ltd. (Creative), had a written contract with the respondent and applicant by counterclaim, 360hometours.ca Inc. (360), to provide video production services. On September 9, 2022, Creative sent 360 a \$1,085.18 invoice for services it provided in August 2022, which 360 has not paid. Creative claims \$1,085.18 for its unpaid invoice.
3. 360 says Creative failed to complete the services as required in the contract, deleted important files, and defamed it, so it is not required to pay the invoice. In its counterclaim, 360 says Creative's late delivery of video projects, delayed communication, and deletion of files damaged 360's reputation and goodwill and caused it financial losses exceeding \$5,000. 360 limits its counterclaim to \$5,000, which is the small claims monetary limit of the Civil Resolution Tribunal (CRT).
4. Creative says there is no validity to 360's counterclaim, and it does not owe 360 anything.
5. Both parties are represented by their respective owners.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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.

7. 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.
8. 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.
9. 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.
10. In both its defense of the primary claim and its counterclaim, 360 says Creative damaged its reputation and defamed it by breaching the contract and by writing a negative online review. However, section 119 of the CRTA expressly excludes defamation claims from the CRT's small claims jurisdiction. So, in the primary claim, I decline to address 360's allegations in this regard. To the extent 360's counterclaim is a defamation claim, I refuse to resolve it.

ISSUES

11. The issues in this dispute are:
 - a. Is Creative entitled to \$1,085.18 for its invoice?
 - b. Is 360 entitled to damages for Creative's alleged breaches of contract?

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, as the applicant Creative must prove its claims on a balance of probabilities, which means more likely than not. Likewise, 360 must prove its counterclaim to the same standard. Creative was given the opportunity to provide reply submissions in the primary claim but chose not to do so. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
13. On February 23, 2021, the parties signed a written contract for Creative to provide video production services to 360. In early September 2022, Creative terminated the contract. On September 9, 2022, Creative sent 360 its final \$1,085.18 invoice which was due September 15, 2022. This is the invoice at issue in this dispute. 360 has not paid the invoice. None of this is disputed.

Is Creative entitled to \$1,085.18 for its invoice?

14. Creative's September 9, 2022 invoice shows 5 separate charges for standard videos for 5 different individuals between August 2 and 16, 2022, with charges ranging from \$180 to \$226.75 per video. 360 does not dispute the quality of the videos included in the invoice but says Creative did not deliver the videos in the format it required and ignored correspondence from 360.
15. The contract required Creative to deliver its videos to 360 "through such system or delivery method as 360 may advise from time to time". I find the evidence clearly shows that 360 required Creative to deliver videos through its Dropbox platform, and that Creative generally did so. However, when Creative terminated its contract with 360 in September 2022, it undisputedly cancelled its Dropbox subscription to make room for personal files. This undisputedly caused 360 to lose Dropbox access to the videos Creative had produced for it. 360 says Creative could have unsubscribed from the 360 Dropbox folder which would have left its Dropbox files intact, and so there was no valid reason for Creative to delete 360's Dropbox files.

16. Creative does not dispute this but says 360 has access to all the videos it produced for 360 through Vimeo. Creative submitted a document showing that 360 had 2,167 videos in its Vimeo account. It also submitted invoices from its work for 360 between April 5 and June 14, 2022, showing that 10 of the more than 32 videos included in these invoices were in 360's Vimeo account. Creative did not explain what happened
17. to the remaining videos included in the invoices. More importantly, Creative did not explain what happened to the 5 videos included in its September 9, 2022 invoice. 360 says that only some of 360's videos are on Vimeo, but many are missing, particularly the short form videos it uses for Instagram.
18. Emails in evidence show that on August 18, 2022, Creative delivered the last videos included in the September 9, 2022 invoice to 360 through Dropbox. Minutes later, 360 responded that it did not see the files in Dropbox and asked Creative to update the folder. On August 22, 2022, 360 emailed Creative again to say that it did not see the files in Dropbox. On August 23, 2022, after another follow-up email from 360, Creative responded that it had received all of 360's correspondence but had not yet had an opportunity to respond. On September 15, 2022, 360 asked Creative to restore all deleted Dropbox files before 360 paid the invoice. Creative undisputedly did not do so.
19. Creative is responsible for proving it is entitled to payment of its invoice. I find it has failed to show that it delivered the videos in the September 9, 2022 invoice to 360 through Dropbox, as required by the contract. I find Creative breached the contract, and so I find 360 is not required to pay the invoice. I dismiss Creative's claim.

Is 360 entitled to damages for Creative's breach of contract?

20. 360 says Creative regularly delivered its videos late, failed to communicate with 360 in a timely manner, and deleted video files, all in breach of the contract. 360 says this caused it significant financial losses far exceeding \$5,000, but it has reduced its claim to \$5,000 to remain within the CRT's small claims monetary limit.

21. With respect to the allegedly late videos, 360 submitted an email string which I find shows that in October 2021 and May 2022 Creative delivered some videos late. I find it also shows that earlier in 2021, 360 emailed Creative about its late video delivery. Creative does not dispute this. So, I find Creative breached the contract by delivering some videos late. 360 says this caused it to lose clients, forced it to discount its clients' prices to keep them happy, and diminished 360's reputation. Damages for
22. reputational loss are part of a defamation claim for which, as explained above, the CRT does not have jurisdiction. 360 says losing a single client can result in a loss of many thousands of dollars, but it provided no evidence to show that it lost any clients or reduced any of its clients' bills because Creative delivered videos late. Without more, I find 360 has failed to prove that Creative's late delivery of videos caused it financial losses.
23. With respect to Creative's allegedly delayed communications, 360 submitted some emails which I find show Creative sometimes took up to 5 days to respond to 360's requests. However, 360 does not quantify the losses it says it incurred because of Creative's delayed communications. 360 says only that it spent "unnecessary" time following up, and that Creative's delayed communication damaged 360's relationships with its clients. Again, 360 provided no evidence that it suffered any loss from Creative's delayed communication, so I find this allegation unproven.
24. Finally, I turn to the deleted Dropbox files. As noted above, I find Creative breached the contract by removing 360's access to its videos through Dropbox. However, again I find 360 has failed to prove it incurred any losses from these file deletions. I find this claim is unproven, and I dismiss 360's damages claim for breach of contract.
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. Since both parties were unsuccessful, I find they must each bear their own CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

26. I dismiss Creative's claim.

27. To the extent 360's counterclaim is a defamation claim, I refuse to resolve it.

28. I dismiss the remainder of 360's counterclaim.

Sarah Orr, Tribunal Member