Civil Resolution Tribunal

Date Issued: October 30, 2023

File: SC-2022-009803

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Alexander Investigations Inc. v. Velasco*, 2023 BCCRT 930

B E T W E E N :

ALEXANDER INVESTIGATIONS INC.

APPLICANT

A N D :

MEDIN VELASCO

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This dispute is about a contract for private investigation services.

2. The applicant, Alexander Investigations Inc., says the respondent, Medin Velasco, hired it to try and locate 2 people. The applicant says the respondent has paid for some of its services, but refuses to pay the balance of its invoice. It claims $2,960.40

for the outstanding amount of the invoice. The applicant is represented by its owner, Glen Alexander Morrison.

3. The respondent says the applicant agreed to cap the investigation cost at $1,500, which is the amount of the retainer the respondent paid. The respondent says they are not liable to pay any more than what they have already paid, unless the applicant can prove the respondent agreed to a contractual amendment to pay something more. The respondent is self-represented.

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.

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.

Preliminary matters

8. First, the applicant asks that several of the respondent's documents in evidence not be considered in this dispute because 1) Mr. Morrison was unable to find and submit some of those documents themself, and so the applicant could not make initial arguments about them, and 2) Mr. Morrison did not submit others in support of the applicant's claim because they were irrelevant.

9. Whether or not evidence is relevant to a dispute is a matter for the CRT to decide. The fact that Mr. Morrison chose not to submit certain evidence in support of the applicant's claim because they believed it was irrelevant does not preclude the CRT from considering that same evidence submitted by the respondent, and determining its importance. In addition, even if Mr. Morrison was unable to find some of the respondent's documents and make initial arguments about them, the applicant had a chance to comment on them in its reply submission. So, I find there is no prejudice to the applicant in allowing the disputed evidence, and I decline its request that I not consider that evidence.

10. Next, in submissions, the applicant seeks $3,470.40, which it says is the full outstanding amount of its invoice before applying a $510 discount for hours not charged, as reflected in its November 11, 2022 invoice to the respondent. While the CRT rules permit an applicant to amend a Dispute Notice to add claims and remedies, the applicant did not do that here. So, I find it is limited to the lower amount claimed in the Dispute Notice.

ISSUE

11. The issue in this dispute is whether the respondent must pay the applicant $2,960.40, or another amount, for the unpaid part of the applicant's invoice.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, the applicant must prove its claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' submissions and evidence but refer only to the evidence and argument I consider necessary to explain my decision.

13. The following background is undisputed. Around September 13, 2022, the respondent emailed the applicant to ask about its private investigation services. The applicant responded the same day with some questions, and the parties exchanged further emails over the next few days. On September 19, the parties met in person for a consultation, and the respondent then e-transferred the applicant a $1,500 retainer. On November 11, the applicant sent the respondent an invoice for $2,960.40 as the amount owing for its investigative services, after having applied the retainer. The respondent refused the applicant's requests for payment, saying the applicant had breached the parties' agreement by not capping the services at $1,500.

14. In particular, the respondent says the applicant emailed them on September 15, explaining how the applicant operates and referring to capping costs at the retainer amount. So, the respondent says the applicant was not authorized to spend more than that amount without first discussing it with them, which they say it did not do.

15. The applicant disagrees. It says the September 15 email described a hypothetical capped costs situation and did not form part of the parties' agreement. Further, the applicant says due to the respondent's hospitalization shortly after the applicant began its investigation, the respondent authorized it to proceed with research the parties initially agreed the respondent would do to save on costs. It is this research that the applicant says caused the respondent to incur $2,960.40 for services over the $1,500 retainer.

16. I turn to the parties' agreement. For a valid contract to exist, the parties must have a "meeting of the minds". This means both parties must agree on all essential terms,

and those terms must be clear enough to give a reasonable degree of certainty (see *Berthin v. Berthin*, 2016 BCCA 104 at paragraphs 46 and 47).

17. The September 15 email included the applicant's hourly rate of $85, plus 65 cents per kilometer and "expenses", such as data searches and costs. It also explained the steps the applicant would take when it had been hired to locate a person. Specifically, it said that after meeting with a potential client, it would request a retainer of "(hypothetically) $1,500.00", and provide an engagement letter describing the agreement and the retainer amount that would be capped at "($1,500.00 – hypothetically)". The email went on to say that after the retainer had been exhausted, there would be a conversation about whether to continue with the investigation. If the client decided to continue, another capped retainer would be requested, "(hypothetically $500.00)". The email concluded by saying the applicant would probably ask the respondent for a $1,500 retainer, but it could go up to $2,000. As noted above, the respondent paid the applicant a $1,500 retainer.

18. Following the parties' in-person meeting on September 19, the applicant emailed the respondent an "investigation road map" that included the parts of the investigation the applicant would complete and the parts the respondent would complete (including the research that ultimately gave rise to the applicant's claim).

19. I note that contrary to the September 15 email, the applicant did not provide the respondent with an engagement letter. In the absence of such a letter, I find the emails of September 15 and 19, and the conversation in which the parties undisputedly agreed to a $1,500 retainer, formed the basis of their contract. I find the emails and the conversation included the contract's essential terms, including the retainer amount, the applicant's hourly rate and other charges, and the work each party was responsible for. Based on the wording of the September 15 email, I also find the parties agreed the applicant would cap its services at $1,500. I find the word "hypothetically" in that email only refers to the sample retainer amount, and an objective reasonable bystander would have understood that the parties intended to cap services at the amount of an agreed retainer.

20. However, I find the $1,500 capped retainer was dependent on the division of work described in the applicant's September 19 email. That is, had the applicant known it would end up doing much of the work the parties agreed the respondent would do to save money, I find it likely would have required a larger retainer.

21. On October 4, after finding out the respondent had been hospitalized, the applicant emailed the respondent asking if they wanted the applicant to start doing some of the research the respondent was meant to do. The respondent replied "just go ahead and please do not wait for me. Our main objective for now is to find where the 2 are? So please go ahead with the library research" (reproduced as written). I find that with this exchange, the parties agreed to amend the contract so that the applicant would proceed with work the respondent had originally agreed to do, and charge them for it. Given the applicant's increased scope of work, I find it was not limited to spending only as much time performing that work as the $1,500 retainer would allow. I find in the circumstances, it was unreasonable of the respondent to assume the applicant would stop at $1,500. Rather I find the applicant was entitled to charge the respondent for the extra research work in line with its hourly rate, rate for kilometers, and for related expenses, as described in the September 15 email.

22. Although the applicant was unable to locate the people the respondent wanted to find, the respondent does not argue the applicant's services were substandard. Nor does the respondent dispute the number of hours, number of kilometers, or expenses the applicant recorded and charged in its November 11 invoice. Based on the applicant's description of the work performed, I see nothing obviously unreasonable about the applicant's charges. However, I note the applicant made what I find is a mathematical error in calculating the invoice's total amount. I find the total should be $2,958.40, not $2,960.40. I order the respondent to pay the applicant $2,958.40.

CRT FEES, EXPENSES, AND INTEREST

23. The *Court Order Interest Act* (COIA) applies to the CRT. The applicant is entitled to pre-judgment interest on the $2,958.40 debt award from November 11, 2022, the invoice's date, to the date of this decision. This equals $121.26.

24. 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 find the applicant is entitled to reimbursement of $125 in CRT fees. The applicant did not claim dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $3,204.66, broken down as follows:

    a. $2,958.40 in debt,

    b. $121.26 in pre-judgment interest under the COIA, and

    c. $125 in CRT fees.

26. The applicant is entitled to post-judgment interest, as applicable.

27. 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