



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Friedmann v. Fishman*, 2024 BCCRT 215

BETWEEN:

JANE ADELE FRIEDMANN

APPLICANT

AND:

ADAM FISHMAN

RESPONDENT

AND:

JANE ADELE FRIEDMANN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about payment for website design.
2. Jane Adele Friedmann says Adam Fishman hired her to design a new a website for his business, Head Restraint Measuring Device (HRMD). Ms. Friedmann says Mr. Fishman did not pay as agreed. Ms. Friedmann claims payment of \$2,625.
3. Mr. Fishman says Ms. Friedmann did not perform the work he hired her to do. Specifically, he says she was supposed to modify HRMD's existing website so customers could book and pay for equipment calibrations online. Mr. Fishman says Ms. Friedmann did not do this work.
4. In his counterclaim, Mr. Fishman says that in retaliation over the HRMD's website work disagreement, Ms. Friedmann removed access to the website of his other business, Vancouver Audio Speaker Clinic (VASC). Mr. Fishman says this meant no one could update VASC's website to inform customers that the business had moved. Mr. Fishman claims \$5,000 for lost revenue and the costs of recovering the website.
5. Ms. Friedmann denies removing access to VASC's website, and says Mr. Fishman never contacted her about it. She also says she owes Mr. Fishman no contractual or other duty in relation to the VASC website.
6. The parties are each self-represented in this dispute.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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.
8. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.

Some of the evidence in this dispute amounts to a “he said, she said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, no party requested an oral hearing. Also, in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT’s process and found that oral hearings are not necessarily required where credibility is an issue. I find that I can properly assess and weigh the documentary evidence and submissions before me. 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.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

ISSUES

10. The issues in this dispute are:
 - a. Is Ms. Friedmann entitled to \$2,625 payment of for website work?
 - b. Is Mr. Fishman entitled to \$5,000 in damages for lost revenue and website recovery costs?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Ms. Friedmann, as applicant, must prove her claims on a balance of probabilities. Mr. Fishman must prove his counterclaim to the same standard. I have read the parties’ submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.

Is Ms. Friedmann entitled to \$2,625 for website work?

12. I infer HRMD is a sole proprietorship, rather than a corporation, since the parties did not say otherwise.
13. The parties agree that in early July 2022, Mr. Fishman hired Ms. Friedmann to do some website work for HRMD. This is confirmed by text messages in evidence. But, the parties disagree about what work they agreed to. As explained above, Ms. Friedmann says Mr. Fishman hired her to create an entirely new website for HRMD. Mr. Fishman says he only hired Ms. Friedmann to modify an existing website.
14. The parties had no written agreement. Verbal agreements are enforceable, but it can be more difficult to prove what terms the parties agreed to.
15. Text messages from July 7 and 8, 2022, show that before Ms. Friedmann started her website work, she and Mr. Fishman specifically discussed whether it was better to build a new website, or merely modify the existing one. I summarize the relevant parts of their text exchange as follows:
 - Mr. Fishman texted Ms. Friedmann, stating that he was thinking of hiring her to “look after my other business’s website etc.” They agreed to discuss it the next morning.
 - Mr. Fishman texted a link to HRMD’s existing website. Ms. Friedmann asked, “So you just want to fix the typos colour and contrast?” Mr. Fishman replied, “That plus whatever else you think should be done...”
 - Ms. Friedmann said the website also needed to be “fixed for mobile”, and Mr. Fishman replied, “You’re the boss” and also said the testimonials also needed to be fixed.
 - Ms. Friedmann replied, “I mean I would just start from scratch. But can tidy this up too.”

- Mr. Fishman said, “The whole thing looks amateurish.” He asked for the approximate cost if she “started from scratch”. Ms. Friedmann replied that the “mate’s rate” would be \$2,500 plus GST. She said she could edit the website photos to “fix them up”, or they could take new ones. She also asked if he had a logo, and said she wanted to change the website colours, as it was too difficult to read.
 - Mr. Fishman replied that he would see Ms. Friedmann the following afternoon, and would bring his laptop to show her pictures. She agreed to meet, and there are no further texts in evidence.
16. Mr. Fishman provided a chronology of what he says occurred in the subsequent in-person meetings he had with Ms. Friedmann. He says he primarily asked her to add a credit card payment processing function to the website. I find this is not consistent with the text messages in evidence, which show he contemplated Ms. Friedmann’s suggestion of creating a whole new website. Mr. Fishman does not explain or provide evidence about when, or if, he made the decision to modify the existing website rather than create a new one. It is also unclear if he ever communicated this decision to Ms. Friedmann.
17. The evidence shows that around July 19, 2022, the parties communicated about what colours to use on the website. Then, on July 31, 2022, Ms. Friedmann emailed Mr. Fishman her invoice for \$2,625 (\$2,500 plus GST). In the covering email, she said she could still add any testimonials and photos he sent. She also provided a link where he could pay for the website hosting through Squarespace.
18. Mr. Fishman says he immediately informed Ms. Friedmann that he would not pay for web hosting through Squarespace, so that would have to be changed. He also says he was suspicious that Ms. Friedmann had not completed the work. I find this unpersuasive, since Mr. Fishman did not mention any of this in his subsequent emails. Instead, on August 2, 2022, Ms. Friedmann emailed again, stating that the website was done and requesting payment. Mr. Fishman replied on the same day, stating that he had been too busy to look at Ms. Friedmann’s work. He also apologized

because he could not yet afford to pay her, and said he would pay “in another week or so”.

19. I find this email does not support the conclusion that Mr. Fishman asked Ms. Friedmann to change the web hosting service, or that he had problems with the quality or scope of her work. If he had been concerned about that on July 31, 2022, as he says, he likely would have prioritized time to check the work, and mentioned any problems with it. Instead, he promised to pay her.
20. On August 17, 2022, Mr. Fishman emailed Ms. Friedmann again. He stated that his friend RR was looking for a social media manager, and he said he would tell Ms. Friedmann to contact RR. He included RR’s contact information. Mr. Fishman also said he still could not pay her bill, but was hoping to have money soon. He discussed some cash flow problems, and said he would pay the bill as soon as his customers paid him.
21. Again, I find this email does not support Mr. Fishman’s submission that Ms. Friedmann did not do the work he requested. By August 17, 2022, he had ample time to check the website, and did not mention any problems with it. The fact that he referred Ms. Friedmann for work with his friend, and promised to pay her full invoice, suggests he was satisfied with the scope and quality of the work.
22. Finally, the only evidence about a price negotiation for the website work was Ms. Friedmann’s text about \$2,500 plus GST, which is what she billed. Mr. Fishman alleges they had a different agreement about the scope of work, but he does not say what price they agreed to, if any. I am not persuaded that Ms. Friedmann would have agreed to perform website modification work without any agreement on the price of that work, either hourly or as a flat rate.
23. Based on the evidence before me, I find Mr. Fishman agreed to pay \$2,500 plus GST to redo the HRMD website. As the party alleging deficient or incomplete work, Mr. Fishman has the burden of proving that Ms. Friedmann failed to fulfill the contract: *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61. I find he has not

done so. Mr. Fishman says Ms. Friedmann did not do specific agreed-upon tasks, but he has not provided evidence of that.

24. For these reasons, I find Ms. Friedmann is entitled to payment of \$2,625.
25. The *Court Order Interest Act* (COIA) applies to the CRT. I find Ms. Friedmann is entitled to pre-judgment interest from July 31, 2022 (the date of her invoice). This equals \$166.19.

Is Mr. Fishman entitled to \$5,000 in damages for lost revenue and website recovery costs?

26. As explained above, Mr. Fishman says that Ms. Friedmann changed the login information required to access VASC's website, as retaliation for the payment disagreement about HRMD's website. Mr. Fishman says it took "numerous individuals" and "countless hours" to recover access to VASC's website. He also says VASC lost business because customers could not find VASC's new physical location. Mr. Fishman says the lost revenue and costs of recovering the website totalled \$11,318.05. He agreed to abandon his claim above \$5,000, to fit within the CRT's monetary limit for small claims disputes.
27. Ms. Friedmann denies Mr. Fishman's counterclaim. She admits she previously worked on the VASC website for VASC's previous owners, TL and PL. However, she says she had no contract with Mr. Friedmann, and owed him no contractual or other duty. She also says Mr. Fishman never contacted her about the VASC website.
28. I find Mr. Fishman has not proved his counterclaim. First, he provided no invoices, receipts, time sheets, or other evidence to prove how much time or expense, if any, he incurred in gaining access to the VASC website. He also provided no evidence that VASC lost revenue due to the website's content.
29. Second, VASC is not a party to this dispute, and it is unclear from the evidence why Mr. Fishman would be entitled to damages related to VASC's website. According to Mr. Fishman and a text message in evidence from PL, Mr. Fishman did not buy VASC,

which I infer is a corporation. Rather, Mr. Fishman bought some of VASC's assets after TL, its founder, died. According to PL's text, Mr. Fishman then started his own company.

30. There is no evidence before me about what assets Mr. Fishman bought. So, I cannot determine if Mr. Fishman or his company owns the website, which Ms. Friedmann disputes.
31. In his CRT submissions, Mr. Fishman specifically says that Ms. Friedmann's alleged failure to provide the VASC website access information "caused harm to VASC", in the form of lost revenue and the costs of restoring access. So, any damages would be owed to VASC, not to Mr. Fishman personally.
32. For these reasons, I find Mr. Fishman has not proved he is entitled to receive damages on behalf of VASC, even if the amounts were proved.
33. I dismiss Mr. Fishman's counterclaim.
34. As Ms. Friedmann was successful in this dispute, under CRTA section 49 and the CRT's rules I find she is entitled to reimbursement of \$125 in CRT fees. Neither party claimed dispute-related expenses, so I order none.

ORDERS

35. I order that within 30 days of this decision, Mr. Fishman must pay Ms. Friedmann a total of \$2,916.19, broken down as follows:
 - a. \$2,625 in debt,
 - b. \$166.19 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
36. Ms. Friedmann is entitled to post-judgment interest under the COIA, as applicable.
37. I dismiss Mr. Fishman's counterclaims.

38. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the BC Provincial Court. Once filed, a CRT order has the same force and effect as an order of the BC Provincial Court.

Kate Campbell, Tribunal Member