

Claim No: 430065

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Ranjibar v. Gholami, 2014 NSSM 57

BETWEEN:

MOHAMMAD RANJIBAR

Claimant

- and -

EBRAHIM GHOLAMI

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 16, 2014

Decision rendered on September 18, 2014

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant does graphic design and printing.

[2] The Defendant operates a restaurant.

[3] This dispute concerns how much, if anything, is properly owing on an invoice for design and printing services in connection with business cards, menu brochures, and a banner to promote the restaurant during the recent FIFA World Cup.

[4] The Claimant says that he billed \$902.75, and was paid \$276.50, for a net owing of \$626.25. Although he did not explicitly press this claim at the trial, he also sought \$100.00 in general damages.

[5] The Defendant claims that the work of the Claimant was of little to no value, because the cards and menus were riddled with errors and, in the case of the banner, delivered too late to be of much value. He says that he made the payments that he did in an amount he thought was fair.

[6] A central issue in this case is the status of an individual, Shahryar Sharyfy, who goes by the name of Sean, and who, like both parties, is of Iranian descent. Sean was a young man who was hanging around the restaurant, doing an occasional serving shift and helping the Defendant with his online presence and use of social media to promote his business. Sean also knew the Claimant and made the introduction.

[7] The Defendant needed new business cards because he had run out. He also wanted a new flyer to hand out, promoting his food pick up, delivery and catering services. Lastly, he had the idea to hang a banner inviting people to come into the restaurant during the World Cup.

[8] The Claimant is a fairly young man. He did not testify to the extent of his experience as a graphic designer. I got the distinct impression that he is relatively new to this business, though not necessarily without some experience.

[9] It appears that most of the communication with the Claimant came through Sean. Although the Defendant sought to distance himself from Sean, it is clear to me that Sean had ostensible authority and the Claimant had reason to rely on instructions that came from Sean. It is probably true that the Claimant should have sought closer communication with the Defendant directly, but he cannot be faulted for believing that the Defendant was behind Sean's instructions.

[10] I will approach each element of the job in turn.

Business cards

[11] The Claimant designed and had printed a business card, for which he was charging a total of \$80.00 - \$35.00 for the design and \$50.00 for printing. When he presented the cards to the Defendant, it was noted that there was a mistake that would have required it to be reprinted. The Claimant offered to have them reprinted with the error corrected. The Defendant instructed the Claimant not to reprint the cards. He was already somewhat unhappy with the Claimant's work.

[12] The Claimant decided to have the cards reprinted anyway. The Defendant does not want them.

[13] At the hearing, I noted two (further) glaring spelling mistakes on the card. The word “dining” is spelled “dinning.” And the word “through” is spelled “trough.”

[14] The Claimant was very defensive about this. He said that if the client approves a design with spelling errors, then he will give him what he wants.

[15] In my view, if the Claimant purports to do graphic design in the English language, he has an obligation to take responsibility for proper spelling. Of course, if someone wants a deliberate error, that is different. But the Defendant’s native tongue is not English, and the Claimant knew that.

[16] The business card is of no value. Had the Defendant used it, it would have brought discredit to his reputation because of these glaring errors. The Claimant is not entitled to be paid for this.

The brochure/menus

[17] The brochure/menus are also useless, because the Claimant made an error. He was supplied with all of the necessary information, which includes the name of dishes and a description of same. Unfortunately, he took the description for “Veggie Combo” and used it also for “Garden Seafood Special.” Thus, someone looking at the description of the Garden Seafood Special would

conclude that it consisted of “grilled eggplant, falafels, grape leaves and lentil rice ... etc.”

[18] The Defendant was furious when he noticed this. The Claimant suggested that they find a way to scratch it out, or make a sticker to put over this item, or even just to use it the way it was. The Defendant was unwilling to do any of these things, as it would be unprofessional, and would create extra work having to explain to customers what was in the Seafood Special.

[19] Unfortunately, the printing charge alone for these 5,000 brochures was \$395.00. The design charge was \$195.00.

[20] The Claimant relies on the fact that he had a go ahead from Sean. Indeed, it appears that Sean emailed that the brochure was “a go.” The Defendant agreed that he approved the design and layout, but not the text, which he assumed was as he had conveyed it.

[21] There is no indication that Sean, or the Defendant himself, did any type of rigorous proofreading of this brochure. Nor is there any indication that the Claimant even encouraged careful review. He did not produce a printed “proof” copy for the Defendant to review. He sent a PDF file via email. There is no evidence of how it was viewed; for example, whether it could properly be proof read on the Defendant’s computer screen.

[22] I find that the Defendant (through Sean) was relying on the Claimant to take the written instructions and faithfully follow them. They did not know, and were not instructed, that they had to comb through it to discover errors that the

Claimant might make. However, it does appear that they did not take sufficient care.

[23] It would be unconscionable to stick the Defendant with the entire cost of these useless boxes of brochures, bearing in mind that this retail cost in all likelihood exceeded the Claimant's out of pocket, wholesale cost.

[24] The Claimant argued that the brochures had, in fact, been used, thereby demonstrating their value. The fact is that an employee of the Defendant handed out a small number, without the knowledge of the Defendant. That employee did not know there was an error. The Defendant put a stop to this as he did not want wrong brochures in circulation.

[25] There is some blame on both sides, and I believe the loss should be shared in some fashion. I find that the Claimant is entitled to his design fee of \$195.00, and that he may recover one third of the printing charge, which I round up to \$132.00. I note that since the design will have been paid for, it belongs to the Defendant, who may use it as he chooses.

The banner

[26] The Claimant was instructed to create this banner sometime in early June, but no earlier than June 8. The actual dates of the World Cup were June 12 to July 13, 2014. The Defendant complains that the banner was not delivered until halfway through the tournament, thereby reducing its value.

[27] This was a last minute idea. The banner had to be designed, approved, and printed. I do not regard it as a reasonable criticism to fault the Claimant for

taking perhaps two weeks to produce this item. I accept that he is entitled to his \$110.00 for this work.

Conclusion

[28] The Claimant has established entitlement to \$437.00. He has been paid \$276.50. He is accordingly owed \$160.50.

[29] There was no evidence of general damages, which are normally not appropriate simply because one is unhappy with the way a commercial transaction has gone. In light of the mixed result, he is not entitled to interest, in the exercise of my discretion, which amount would be trivial, in any event.

[30] The Claimant is also entitled to his filing fee of \$96.80, for a total of \$257.30.

Eric K. Slone, Adjudicator