

SCCH 440993

SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Egg Films Inc. v. Dalhousie University, 2015 NSSM 50

BETWEEN

Egg Films Inc.

CLAIMANT

-and-

Dalhousie University

DEFENDANT

Adjudicator: David TR Parker QC

Heard: October 21, 2015

Decision: December 15, 2015

**Counsel: Kelly Purdy of credit consultants represented the
Claimant**

Michelle L Chai represented the Defendant

Decision and Order

1. This matter came before the Small Claims Court in Halifax Nova Scotia on October 21, 2015. The parties were asked if there were any preliminary matters or motions they wish to raise before proceeding with the court action, and there were none. The parties were also asked if they wish to amend any of their pleadings and neither side requested an amendment of their pleadings.
2. This matter involved a dispute over video production resulting in two invoices and which were produced by the claimant for the defendant and for which payment has not been made.
3. The claimant has requested payment pursuant to two invoices #14034-1 in the amount of \$6496.63 inclusive of HST and # 14034-2 in the amount of \$8931.19.

Pleadings:

4. The claimant claimed \$15,429.82 in its stated reasons for the claim was: “the claimant provided a video production on behalf of the defendants and has not been paid in full.”
5. The defendant in addition to a general denial of the allegations said there were insufficient facts alleged to constitute a cause of action. In the alternative the defendant put the claimant to the strict proof of the existence and enforceability of a contract between the parties and the claim amount. In the further alternative it was a condition of any contract between the parties that the claimant must submit its invoices by no later than March 31, 2014, failing which the claimant would not be entitled to any payment upon same.

Having submitted invoices after this March 31, 2014 deadline, the claimant is contractually dis-entitled to any payment upon same. Dalhousie has paid any and all invoices the claimant that were properly submitted before the March 31, 2014 deadline and denies that it owes any outstanding amounts to the claimant.

Facts and Analysis:

6. Kristen Allison is the producer and project manager for the claimant and was involved in the production of videos for the Defendant Dalhousie University and used for the benefit of the IWK Health Authority.
7. The claimant has requested payment pursuant to two invoices #14034-1 dated March 27, 2014 dated March 27, 2014, in the amount of \$6496.63 inclusive of HST and # 14034-2 in the amount of \$8931.19 for total amount of \$15,429.82.
8. There were a number of projects going forward by the claimant for the defendant and the claimant and defendant worked back and forth ensuring that the claimant's work was in line with the budgetary requirements. The claimant would submit invoices by e-mail and the defendant would make the necessary steps to ensure they were paid.
9. The claimant was made aware that the invoices had to be submitted before March 28, 2014 in order that they could be submitted on time to the government so the invoices could be paid.
10. Kristen Allison instructed the account's person to prepare two invoices for the defendant.

11. The video productions, which resulted in the invoices, were used by the defendant or their nominees however the invoices were never paid.
12. The defendant was contacted some several months after the end of March deadline and the claimant requested payment of the invoices. The defendant never received the invoices and therefore they were never sent off to the government for funding and the deadline for funding had run out.
13. The accounts receivable person who was instructed by Kristen Allison to send out the invoices no longer is employed by the claimant and did not appear as a witness and provide evidence to the court to confirm that he sent the invoices as per the instructions of Kristen Allison. There was no evidence of any "sent" e-mail invoices provided to the court by the Claimant
14. The defendant's people in charge of accounts payable went through all e-mails and confirmed that no invoices were received.
15. The issue is should the defendant have to pay for the videos which they used and which were produced by the claimant for the defendant.
16. The claimant's position is summarized by Sarah Thomas in her email of October 2, 2014 when she said that the defendant was aware on March 12, 2014 of the potential costs of the videos and the defendant should have contacted the claimant before the funds were returned to the government. "Your accounting staff could have contacted us before the funds were returned."
17. The same email went on to say "I cannot say what happened to the invoices as a person who generated them no longer works here. The invoices in question [14034 – 1/14034 – 2] were created and present in our system on March 27, 2014. When I reviewed the list A/R, which I do monthly, it simply

looks like a late payment -a familiar scene for us with many of our clients. Once the invoice was over 90 days past due I had my temporary accountant contact you.”

18. The defendant’s lead person, Dr. Joanne MacDonald email of November 19, 2014 outlines the defendant’s position which was that there were estimates provided by the claimant. Dr. MacDonald said “again, it would seem that Sarah Thomas is indirectly suggesting that it was Dalhousie’s responsibility to reconcile the estimates to the invoices to her accounts received. My assumption was that that was EGG’s own business management responsibility and that they would not passively wait for months without communication that they had not received payment. Sara’s partner Mike Hatch was aware from the outset that this was a grant funded, time-limited project and I reminded Kristen at several points that the submission deadline was March 28, 2014”. “So again Carolyn we come back to never having received the egg invoices #s 14034 –1 or 14034 –2 dated March 27, 2014. Have they produced evidence that they sent these invoices to anyone associated with the project prior to mid-August?”

19. This is a commercial contract between the parties and one of the terms of the contract was that invoices for videos produced had to be submitted before a date certain in order to get paid. Unfortunately this did not happen. This is not a situation of unjust enrichment. There was clearly a contract between the parties they both were well aware of the terms of the contract but a mistake was made by the claimant in not sending the invoices pursuant to the terms of the contract. This is indeed unfortunate but in a commercial contractual agreement between the parties the terms must be adhered to or it would lead to uncertainty. It is the responsibility of each party to ensure that their terms are adhered to and in this case this did not happen.

20. As a result there was a breach of an essential term of the contract resulting in a voidable agreement between the parties which cannot be enforced and as a consequence the video production related to the two invoices should be returned to the claimant.

It Is Therefore Ordered That the claim against the defendant be dismissed with no order as to costs and the video production and all materials related to invoices 14034–1 and invoice 14034–2 provided to the defendant by the claimant shall be returned to the claimant.

Dated at Halifax this 15th day of December 2015