Citation: *MBDC Communications Inc. v. Fetal Alcohol Syndrome Society of Yukon*, 2026 YKSM 7

Date: 20260618
Docket: 26-S0023
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Judge Gagnon

MBDC COMMUNICATIONS INC.

Plaintiff

v.

FETAL ALCOHOL SYNDROME
SOCIETY OF YUKON

Defendant

Appearances:
Bianca Jorgenson — Appearing on behalf of the Plaintiff
Neena McKinnon — Appearing on behalf of the Defendant

REASONS FOR JUDGMENT

A note on Procedure: The style of cause in the Claim identifies the Defendant as "Fetal Alcohol Spectrum Society Yukon"; its legal name is "Fetal Alcohol Syndrome Society of Yukon". The style of cause in my Reasons for Judgment reflects the Defendant's legal name.

Introduction

[1] The Plaintiff is a marketing agency based in Whitehorse that is co-owned by Bianca Jorgenson and Mikaela Ericsson. The Defendant is a not-for-profit organization delivering services and education programs related to the Fetal Alcohol Syndrome. Neena McKinnon is its executive director.

[2] MBDC Communications Inc. (“MBDC”) and Fetal Alcohol Syndrome Society of Yukon (“FASSY”) collaborated on a project called Housing Transition Project whereupon MBDC provided services to FASSY to help them take over the management of two independent supportive residences previously managed by an organization called Options for Independence Society (“OFI”).

[3] MBDC provided FASSY with an estimate of the work they offered to perform for FASSY, along with a projected timeline and costs (Exhibit P-1). The total estimated cost was $97,760.00. MBDC billed FASSY for services rendered up to August 1, 2025, in the amount of $73,357.75 (Exhibit P-2).

[4] MBDC is seeking payment of an invoice in the amount of $24,402.25, which was sent on November 1, 2025. FASSY does not want to pay this amount.

The Plaintiff’s Allegations

[5] MBDC says that they invoiced FASSY for work that was done to FASSY’s benefit. MBDC says that they believed that as they did not exceed the budget submitted on Exhibit P-1, they were entitled to be paid in full for the work done.

[6] MBDC says that they adopted a result-oriented approach to this project, as they wanted FASSY to successfully operate their transition in taking over the management of the independent supportive residences. Accordingly, they did not adhere to strict timekeeping, they were available to react to any needs expressed by FASSY, and they tried to support FASSY in the best way that was possible.

The Defendant's Allegations

[7] FASSY says that their unwillingness to pay the last invoice is because they felt it was for additional Financial Project Management beyond the cost identified for this item in Exhibit P-1. They also allege that some of the items in Exhibit P-1 were not delivered at all, more specifically, marketing and communication. They expressed dissatisfaction with the service they received regarding financial management. They also questioned why they were receiving this invoice from MBDC after they had sent a document called "Final Report" (Exhibit P-5) along with an invoice (Exhibit P-3). FASSY says that she never asked MBDC to prepare this report. Ultimately, the Defendant wanted to know what they were paying for, because of the lack of details.

The Plaintiff's Reply

[8] While MBDC acknowledges that they provided no marketing and communications services and that they did not incur any expenses for printing and advertising, they argue that they prioritized other items, and that they did so to FASSY's benefit. They say that they deserve to be paid.

The Evidence

[9] The witnesses were candid in their testimonies, and I find that the following facts have been established on a balance of probabilities. The relationship between MBDC and FASSY was based on trust and goodwill. Both parties wanted the project to be successful. MBDC prioritized results over accounting and rigorous timekeeping, and FASSY accepted in good faith the invoices that she received, without asking for details,

explaining that she felt overwhelmed by the task that she had undertaken. Both parties recognized that they did not enter into a written agreement, but that they somewhat relied on Exhibit P-1.

[10] MBDC says that Exhibit P-1 was an estimate only, and that changes and adjustments should have been expected regarding the deliverables, as their project was fluid.

[11] FASSY says that they were entitled to expect that MBDC would deliver what they had outlined in their estimate. They said that Bianca Jorgenson for MBDC was invited to present their estimate to their Board of Directors on March 5, 2025. No questions were asked about the estimate, but Ms. Jorgenson informed the Board about the types of services that they could provide. Ms. McKinnon says that she knew she had to have a certain flexibility regarding the timeline for the deliverables because their funding partner was late in signing the agreement, and their ability to take over the project from the organization previously running it was incumbent on that organization releasing information to them. At the conclusion of the Board meeting no formal endorsement had been given regarding Exhibit P-1, but the minutes reflected the desire to “moving forward with working with MBDC, Bianca and Sandy, as their expertise is invaluable for this big project change. They will be flexible on their budget with us however the cost is a necessity to ensure a smooth transition of operations so will move forward”. (Defendants’ Exhibit B). FASSY did not rely on Exhibit P-1 to obtain funding for their project.

[12] MBDC was asked to submit invoices before the end of the financial year, and they obliged. They submitted invoices CM-SI-1408, CM-SI-1409, CM-SI-1410, all dated March 31, 2025, and they submitted invoice CM-SI-1417, dated March 1, 2025. All these invoices were generic, in that they showed, for example, “Consulting Services - Project Management”, and a total fee, or a number of hours multiplied by a rate, for a global amount. No breakdown of the work was shown on the invoices. None of the specific deliverables were identified.

[13] Ms. McKinnon took a six-week leave of absence in June and July 2025, and upon her return in early August, she saw that MBDC had forwarded Exhibit P-5 on July 30, and that they had forwarded another generic invoice for Project Management and Finance Project Management on August 1, 2025. Ms. McKinnon testified that she did not question the invoice, nor the document labelled as “Final Report” and because of this caption, she assumed that MBDC had completed their mandate. She assumed that this invoice was a final invoice.

[14] Ms. Jorgenson says about this that she and her associates worked on the project throughout the summer and had not heard from Ms. McKinnon all of June and July and that she thought that the silence meant that Ms. McKinnon wished to terminate their collaboration. So, she prepared Exhibit P-5, with the perspective that Ms. McKinnon could use its conclusions and recommendations to seek further funding and sent invoice CM-SI-1434. This invoice was paid without question. Ms. Jorgenson recognized that she did not prepare a report which detailed the work her firm had done nor did she provide an update to FASSY as to what work had not been performed. She

acknowledged that she never notified Ms. McKinnon that they needed to adjust the deliverables schedule or to change the allocation of budget for certain items.

[15] Ms. Jorgenson asked Ms. McKinnon for a meeting, which happened in September. The purpose was to obtain some feedback regarding P Exhibit -5. Ms. McKinnon was uncomfortable during the meeting, feeling that Ms. Jorgenson wanted to generate further business for her company. While she did not communicate this during the meeting, she decided that their collaboration was over.

[16] Ms. Jorgenson felt the change in attitude, and she assumed that FASSY was no longer interested in pursuing their collaboration. She considered that she and her associates had done much more work than what they had billed for, and she prepared a final invoice (Exhibit P-3) to “reconcile the remaining work” with what they believed to be their budget for the project. The invoice again was generic, and the amount billed corresponded to the exact difference between what has been paid to them so far and the amount of $97,760.00 that they had submitted as part of their estimate (Exhibit P-1).

[17] For the first time since they began working on this project, Ms. McKinnon questioned their invoice. Both expressed surprise, Ms. McKinnon for receiving this invoice, and Ms. Jorgenson for being questioned about this invoice because Ms. McKinnon had never expressed any concern regarding their work and had never inquired about deliverable items that had not been actioned. They exchanged many e-mails about it, but FASSY did not pay the invoice. Eventually, in March 2026, Ms. Jorgenson sent an e-mail to Ms. McKinnon in which she explained the challenges they faced in the transition of the Housing Plan from being managed OFI to FASSY. She

provided a list of all the tasks that they had performed from the moment they began the collaboration with FASSY (Exhibit P-12). Despite the fact that the list is exhaustive, it only contains tasks, without any apportioning of time or personnel, and there is no mention of the date at which any of the services would have been rendered.

[18] Ms. McKinnon responded that she and FASSY's Board of Directors were dissatisfied with the lack of deliverables completed from the proposal, and that she was not comfortable paying over $24,000 when she believed the work was not completed, and that she was not satisfied that MBDC had provided details which would have confirmed that the services billed had indeed been rendered.

The Legal Issues

Issue 1: Was there a binding contract between the parties?

[19] There was no written contract drafted between the parties. They both said that they relied upon Exhibit P-1, while saying that flexibility was necessary. When I asked them to define flexibility, they gave different versions of what they understood this term to mean at the time. I find that Exhibit P-1 cannot be considered as a binding agreement between the parties because they each had a different understanding of the obligations arising from Exhibit P-1[1], and also because there is no evidence that they intended Exhibit P-1 to be considered as a formal contract.

[20] I find that Exhibit P-1 did not create an obligation for FASSY to pay $97,760.00 to MBDC, or to pay their invoices up to this amount. This leaves the remaining issue of

[1] *Jenni v. Stockley*, 2017 YKSM 9, at para. 33 to 37

whether, in the circumstances, MBDC is entitled to receive anything more from FASSY over and above what has already been paid to them, on a *quantum meruit* basis.

Issue 2: What is a fair compensation for the work done by MBDC?

[21] The principle of *quantum meruit* is that, in the absence of a contract, a party may seek a declaration to prevent another party's unjust enrichment.[2] The expression *quantum meruit* means "the amount it deserves" or "what the job is worth".[3]

[22] Ms. Jorgenson and Ms. Ericsson testified that they worked many hours on this project and that they were focused on providing the support that FASSY needed, even if it meant that they did not deliver on certain items like marketing. They recognized that they were too busy to keep track of their time to explain the generic invoices. They felt that the last payment for $24,402.25 was deserved and fair because they did not claim an amount that exceeded the total budget pledged in Exhibit P-1.

[23] Since the parties recognized that Exhibit P-1 was only an estimate, and this estimate did not become a binding agreement, it is inappropriate to then justify a claim for payment simply because it comes within the overall budget.

[24] Ms. McKinnon felt that the last invoice for $24,402.25 was unreasonable, because MBDC had offered no information to describe what additional work had been done while they had not delivered on certain items that mattered to FASSY. While I find that Ms. McKinnon's failure to signal that she had concerns about which deliverables

[2] *Ibid,* at para. 39
[3] *Ketza Construction Corp. v. Mickey,* 2000 YTCA 4, paras. 12 and 13; cited in *Skky Hotel Inc. v. Yukon Gardens Ltd*., 2017 YKSM 4, at para. 32.

MBDC were focusing on may have created an impression that she tacitly agreed with their approach, there remains the fact that MBDC provided only generic invoices and no real accounting for their work.

[25] In March 2026, when MBDC provided FASSY with the list of all the things that they had done for the project (Exhibit P-12), they did not provide metrics such as how many days or hours this work represented in total, nor details as to when the work was performed and by how many people, or whether they had worked more hours than the total number of hours budgeted in Exhibit P-1. I find that Exhibit P-12, while descriptive, is not helpful.

[26] The absence of objective measures does not allow me to determine whether or not the money MBDC claimed as their final payment in November 2025 was a reasonable compensation for their work, over and above what they had already been paid. The testimonies provided at the trial did not shed more light on this issue. As a result, I find that the Plaintiff has not discharged its burden to establish its claim on a balance of probabilities.

Conclusion

[27] I dismiss the Plaintiff’s claim.

GAGNON T.C.J.