

Citation: *Halen v. Schmidt*, 2016 YKSM 2

Date: 20160218
Docket: 15-S0048
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before Her Honour Chief Judge Ruddy

DANIEL ROBERT HELEN

Plaintiff

v.

YULE SCHMIDT

Defendant

Appearances:

Daniel Robert Halen

Yule Schmidt

Appearing on own behalf

Appearing on own behalf

REASONS FOR JUDGMENT

Introduction:

[1] The Plaintiff, Daniel Halen, operates a small recording studio called FACE the Music Productions as a side business. The Defendant, Yule Schmidt, is an aspiring singer/songwriter. The two met through Ms. Schmidt's mother, a colleague at Mr. Halen's "day job". Between April 2012 and February 2015, Mr. Halen and Ms. Schmidt collaborated both as performers and in the studio. Mr. Halen encouraged Ms. Schmidt to apply for a grant through the Yukon Film and Sound Commission for funding under the Yukon Sound Recording Program to produce professional demo recordings of two songs (the "Grant"). Ms. Schmidt's second Grant application was approved in November of 2013, and substantial work was conducted with a view to meeting the Grant obligations.

[2] The relationship between the parties broke down in early 2015 for reasons that are not entirely clear, although there appears to have been a combination of creative differences and a lack of communication. Following the breakdown, Ms. Schmidt withdrew her application for the Grant and returned the funds advanced by the Yukon Sound Recording Program.

[3] There is no issue that, prior to the breakdown in the relationship, services were provided by Mr. Halen to Ms. Schmidt with respect to a number of recordings, at least one of which was a song named in Ms. Schmidt's grant application. Two songs, "I Just Want to Go Home" and "Me Sientes" were in a format which would satisfy the Yukon Sound Recording Program requirements from a production quality standpoint; although Ms. Schmidt does not view them as complete from an artistic standpoint.

Issue:

[4] At issue is Mr. Halen's entitlement to compensation for his production and recording services with respect to the two songs. It is agreed that Ms. Schmidt has paid \$400 to Mr. Halen for his services in this regard. Mr. Halen argues that he is entitled to compensation per the budget set out in the Yukon sound Recording Program grant application, in the amount of \$2,000, leaving \$1,600 owing to him. Ms. Schmidt argues that Mr. Halen committed to provide his

services at a “friend of the family rate” of \$200 per song, and has, therefore, been paid in full for his services.

Facts:

[5] The evidence at trial consisted of the oral testimony of each of the parties along with a number of documents filed as exhibits, including numerous emails which provide some insight into the relationship between the parties. It is important to note that both Mr. Halen and Ms. Schmidt testified in a straightforward and credible manner. There was no indication that either party was being deliberately untruthful or attempting to mislead the Court. Indeed, the parties were, by and large, consistent in their recitation of the chronology of events.

[6] The dispute, rather, is rooted in the failure of the parties to adequately articulate their respective expectations in a clearly defined agreement; a failure that is all too common in cases where individuals assume that a friendly relationship alone is sufficient to ensure a meeting of the minds with respect to contractual obligations. As a result, the parties, while largely agreeing on the facts, disagree in their perceptions of the agreement with respect to compensation for Mr. Halen’s services.

[7] Having considered both the oral testimony and documentary evidence provided, I find the following facts pertinent to the resolution of this dispute:

- In the spring of 2012, Mr. Halen and Ms. Schmidt begin working together. This includes recording, rehearsing and performing.

- Mr. Halen encourages Ms. Schmidt to apply for the Grant.
- On September 17, 2012, Ms. Schmidt sends an email to Mr. Halen with the following request: “Out of curiosity, if I did want to record another song or two over the next couple of months and just pay you upfront for it, is there a dollar amount per song that would make it worth your while?”
- On October 12, 2012, Mr. Halen replies, “I generally charge \$200 for a complete song which is a friend of the family price and I’d be happy to work something out with you if you can help me with my songs as well”.
- On October 14, 2012, Ms. Schmidt asked Mr. Halen, via email, for “numbers in terms of studio prices” for her Grant application. The application is completed using a budget template provided by Mr. Halen. The application is unsuccessful.
- Ms. Schmidt successfully reapplies for the Grant in October 2013, again using the numbers provided by Mr. Halen, but with some arbitrary changes. The Grant application specifies two songs: “I Just Want to Go Home” and “Martinis and Cigars”.
- Ms. Schmidt communicates her receipt of the Grant to Mr. Halen by email on January 2, 2014.
- As the emails and Mr. Halen’s summary of time spent, filed as Exhibit 2, indicate, work is completed for the recording and engineering of “I Just Want to Go Home” and “Me Sientes”.
- On April 17, 2014, Ms. Schmidt sends an email to Mr. Halen noting, “I also might need a hand with the paperwork for the demo grant (to get the next disbursement) because my unemployed bum is ineligible for EI so starting to hurt a little in the bank. I’ll still of course pay you the \$200/song though, don’t worry! I owe you for Me Sientes and then in May we can maybe try to finish off another one or two. I extended the grant until next May so we don’t have to “complete” the two recorded songs until then (although in reality we just need one more so could be done in a week, easy peesie).”
- Payment of \$200 is acknowledged by Mr. Halen for Me Sientes.
- There is no communication between the parties between February 2015 and May 2015. When email contact resumes, it is clear the relationship has broken down and the parties disagree as to appropriate compensation.

- By email dated May 11, 2015, Ms. Schmidt writes, “Let’s just keep things simple. If you can email me an MP3 of the Remembrance Day song and two invoices, one for recording studio at \$500 and one for mixing/mastering at \$250 (or even just one invoice delineating those as line items) I’ll mail you a check for \$750, if you just send me your address. That’s the amounts I have in my budget, and I think fair.”
- Mr. Halen replies sending the invoices filed as Exhibit 6, denoting \$750 in donated services and seeking payment in the amount of \$2350.
- Ms. Schmidt pays Mr. Halen \$200 on May 22, 2015.

Positions of the Parties:

The Plaintiff:

[8] Mr. Halen filed his claim seeking the amount set out in his invoice, filed as Exhibit 6, in the amount of \$2350. In support of his claim, he provided information from his website, filed as Exhibit 5, setting out his rates at \$50/hour or \$400/day, and provided a breakdown of time spent on the two songs, filed as Exhibit 2.

[9] It should be noted that there was no evidence that Ms. Schmidt had ever seen or been referred to Mr. Halen’s website; nor was there evidence of any discussion between the parties with respect to an hourly rate. Furthermore, on cross-examination, Mr. Halen conceded that the hourly rates reflected in the invoice differed from the rates on his website. At the conclusion of the trial, Mr. Halen indicated that he was seeking compensation at the Grant rate of \$2,000 less the \$400 already paid by Ms. Schmidt.

[10] While Mr. Halen acknowledges that he was not a party to the Grant agreement between Ms. Schmidt and the Government of Yukon, he argues that compensation for his services should be based on the budget amounts set out in the Grant application (Exhibit 1) and in the Grant agreement (Exhibit 9), noting that the budget in the Grant application was based on figures that he provided, and it was his expectation that he would be compensated at that rate.

[11] When asked about the \$200 “friend of the family rate”, Mr. Halen indicated that that is the rate for recording only, without post-production or engineering. He argues that the Grant requires a much higher level of production, which should be reflected in the compensation he receives for the finished product. Mr. Halen concedes, though, that there were no discussions with Ms. Schmidt distinguishing between straight recording at the “friend of the family rate” and a fully produced track that would meet the Grant requirements.

[12] It should be noted that there is a disagreement between the parties with respect to whether both of the songs were completed to Ms. Schmidt’s artistic satisfaction. I am satisfied, however, that the two songs are technically complete, in a format that would have satisfied the Grant requirements, and that it is appropriate to treat them as fully completed for the purposes of this decision.

The Defendant:

[13] Ms. Schmidt argues that the only exchange the parties had at any time with respect to compensation for Mr. Halen’s services was the email exchange with respect to the “friends of the family rate”. She further notes that she paid Mr.

Halen for a number of songs at this rate without incident. Accordingly, her expectation with respect to cost continued to be at the rate of \$200/song, and, notwithstanding the budget she provided in her Grant application, her obligation to Mr. Halen for his services has been fulfilled by way of her payment of \$200 for each of the songs. Furthermore, she notes that Mr. Halen was not a party to the Grant agreement, nor was she bound by the agreement to pay him the amounts set out in the budget contained Schedule A to the agreement.

Analysis:

[14] Having considered the evidence and the positions of the parties, I have concluded that compensation for Mr. Halen's services for the two songs is best dealt with by addressing each song separately, primarily because one song is listed in Ms. Schmidt's Grant application, while the other is not.

"Me Sientes"

[15] Notwithstanding the fact that Ms. Schmidt may well have persuaded the Yukon Sound Recording Program to accept "Me Sientes" in place of the second song listed in her Grant application, it was not, in fact, part of her application; nor does the evidence satisfy me that it was Ms. Schmidt's intention to submit "Me Sientes" as part of her Grant obligations. As a result, I conclude that it was not reasonable for Mr. Halen to expect to be compensated at the Grant rate for "Me Sientes", absent a specific agreement to that effect.

[16] Furthermore, and perhaps more importantly, Mr. Halen made no reply to Ms. Schmidt's email dated April 17, 2014, in which she acknowledged owing Mr. Halen \$200 for "Me Sientes", to indicate that he disagreed with the stated rate of \$200. Indeed, Mr. Halen made no mention of the fact he expected to be compensated for "Me Sientes" at a higher rate until the invoice sent to Ms. Schmidt in May of 2015.

[17] Finally, it must be noted that Mr. Halen accepted payment in the amount of \$200 for work on "Me Sientes". This, in my view, amounts to acceptance by conduct. In *Terrien Bros. Construction Ltd. v. Delaurier*, 2006 BCSC 1645, aff'd 2007 BCCA 623, Russell, J. outlined the legal concept of "acceptance by conduct" as follows:

[36] ... [A] party can accept a contract by conduct even without delivery of an acceptance. As reviewed by Cohen J. in *Cranewood Financial Corp. v. Norisawa* (2001), 107 A.C.W.S. (3d) 405, 2001 BCSC 1126 at paras. 339-340:

In discussing what constitutes acceptance, Fridman [G.H.L. Fridman, *The Law of Contract*, 4th ed. (Toronto: Carswell, 1999)] said, as follows, at pp. 56-57:

It is clear that, as Wilson J. stated in *Sloan v. Union Oil Co.*, [1955] 4 D.L.R. 664, "an offer may be accepted by conduct as well as words." As is the case where acceptance is intended to be, or is appropriately indicated by some statement by the offeree, whether oral or in writing, the nature of acceptance by conduct depends upon the requirements, if any, stipulated by the offeror. In the absence of any special act or conduct prescribed by the offeror, acceptance may be inferred from the offeror's conduct. Yet such conduct must indicate: (a) that the act in question was performed with a view to acceptance of the offer, and not from some other motive or some other reason; and (b) that it was intended to be acceptance of the offer in question. In such cases the question is whether a reasonable man would

interpret the offeree's conduct as an acceptance of the offer.
[Footnotes omitted]

[37] Thus, the question which arises is how a reasonable person, in the position of an objective bystander, would describe the effect of what he had seen or heard in the circumstances of this case.

[18] Given the passage of time between acceptance of the payment and the invoice sent, along with the failure to raise any objection at the time of payment, I am satisfied that a reasonable person would conclude that Mr. Halen has, by his conduct, agreed to accept \$200 as payment for his services. Accordingly, having accepted the payment, I conclude that Mr. Halen is not now entitled to additional compensation for the work he performed on “Me Sientes”.

“I Just Want to Go Home”

[19] With respect to “I Just Want to Go Home”, there were no discussions between the parties with respect to the rate of compensation for Mr. Halen’s services; however, the song is specifically named in the Grant application, and was clearly intended by Ms. Schmidt to be completed in compliance with her obligations under the Grant agreement.

[20] It is clear that Mr. Halen was not a party to the Grant agreement, nor was Ms. Schmidt bound by the Grant agreement to pay Mr. Halen anything. However, consideration of the goals of the Yukon Sound Recording Program and

Ms. Schmidt's obligations under the Grant agreement are instructive in determining the reasonable expectations of the parties with respect to the rate of compensation for Mr. Halen's services.

[21] Notwithstanding Ms. Schmidt's concerns with respect to her own financial circumstances, as expressed in the email dated April 17, 2014, the information with respect to the Yukon Sound Recording Program, filed as Exhibit 4, makes it clear that the goals of the Program are to "encourage sustainable growth in the Yukon film and sound recording production sector". It is a Program intended to stimulate growth in the sound recording industry, not to support recording artists. In addition, both the Grant application and the Grant agreement which make it clear that the Program intends for the Grant funds to be paid into the sound recording industry and not to the artist.

[22] When asked about her intentions with respect to the Grant, Ms. Schmidt testified that she always intended to put the full Grant amount towards music, but not that it would be paid per the budget in her Grant application or necessarily to Mr. Halen. She also indicated that Mr. Halen led her to believe that she could potentially record enough songs for an album with the Grant.

[23] I have difficulty with Ms. Schmidt's position in this regard. Firstly, Ms. Schmidt specifically names Mr. Halen as the intended producer and sound engineer in her Grant application, and bases her budget on figures provided by Mr. Halen. Secondly, there is no evidence before me to suggest that Ms. Schmidt ever considered working with a producer other than Mr. Halen, and,

noting the impending Grant deadline, I find it highly unlikely that there would have been sufficient time to begin again with a different producer and still meet her obligations under the Grant agreement.

[24] Furthermore, the terms of the Grant agreement stipulated that Ms. Schmidt was to allocate the Grant funds in accordance with the Grant agreement which required her to use the funding in accordance with the description of the project and approved budget set out in Schedule A of the agreement. Failure to do so could result in the funds being reduced or required to be paid back. Ms. Schmidt was also expected to report back on how the funds were used, demonstrating that they were disbursed in accordance with the terms of the Grant agreement. It was not open to Ms. Schmidt to disburse the funds in a manner inconsistent with the approved budget.

[25] Notwithstanding her comments at trial, I conclude that Ms. Schmidt was fully aware of the requirement to allocate funds per the approved budget. This is evident in her email dated May 11, 2015 in which she offers to pay Mr. Halen \$750 based on the figures in her budget.

[26] In all of the circumstances, I conclude that it was reasonable for Mr. Halen to expect to be compensated for his services at the Grant rate for production work in relation to songs named in the Grant application, and that it was unreasonable for Ms. Schmidt to expect that she would be compensating Mr. Halen for his services at rates other than those set out in her Grant application and Grant agreement.

[27] I am satisfied that Mr. Halen is entitled to be compensated for his work on “I Just Want to Go Home” at the Grant rate of \$1,000 per song, less the \$200 already paid by Ms. Schmidt.

Order:

[28] Accordingly, Ms. Schmidt shall pay to Mr. Halen the sum of \$800. This amount will be subject to post-judgment interest per the provisions of the *Judicature Act*, RSY 2002, c. 128. Each party shall bear his/her own costs.

RUDDY C.J.T.C.