



Civil Resolution Tribunal

Date Issued: February 19, 2018

File: SC-2017-004122

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Caroline + Gislason Lawyers LLP v. Chisholm*, 2018 BCCRT 43

B E T W E E N :

Caroline + Gislason Lawyers LLP

APPLICANT

A N D :

Andrew Chisholm

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Caroline + Gislason Lawyers LLP (Lawyers) provided legal services to the respondent Andrew Chisholm between September 2015 and June 2016.

The Lawyers claim \$4,364.36, for 2 outstanding invoices totaling \$3,484.41 plus \$515.20 in interest. The parties are self-represented.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. None of the parties requested an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are:
 - a. To what extent, if any, does the respondent owe the applicant law firm its claimed outstanding invoices and interest?

- b. To the extent, if any, is the applicant entitled to reimbursement of tribunal fees and dispute-related expenses?

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
8. Mr. Chisholm hired the Lawyers in September 2015. The Lawyers performed work under a retainer agreement between September 2015 and June 2016, and in doing so spent money on expenses on Mr. Chisholm's behalf.
9. In particular, on June 10, 2016, the Lawyers gave Mr. Chisholm, in person, their first invoice, #4173, dated May 1, 2016. This invoice, generally described the legal work the Lawyers performed and expenses they paid between September 29, 2015 and January 13, 2016, although the specific work description was redacted in the document the applicant provided to the tribunal. The invoice totals \$2,340.17, including taxes and disbursements. There is a clear note at the bottom of the 2-page invoice that states 15% interest will be charged on accounts more than 45 days overdue.
10. On August 4, 2016, the Lawyers e-mailed Mr. Chisholm its second and last invoice, #4268, dated August 1, 2016. As above, this invoice provided a description (the specific description redacted in the copy provided in evidence) for work they performed between June 6, 2016 and June 29, 2016. The invoice's total of \$1,144.24, includes taxes and disbursements.
11. On January 5, 2017, the Lawyers sent Mr. Chisholm a "Reminder Notice" that he had \$3,733.27 outstanding for invoices 4173 and 4268, both of which remained entirely unpaid. In its cover email, the Lawyers wrote that they were checking in about the overdue account and were happy to arrange installment payments if necessary.

12. On July 10, 2017, the Lawyers' Ms. Watson wrote Mr. Chisholm about the outstanding account, which by then had risen to \$3,999.61 including \$515.20 in interest, which is the total amount claimed in this dispute. This letter followed a July 5, 2017 telephone conversation in which Mr. Chisholm told the Lawyers, for the first time, that he refused to pay the account. The letter notes Mr. Chisholm disagreed with the bills because he had to hire another lawyer as the Lawyers' lawyer was unable to speak with him before an employer-imposed deadline of July 4, 2016. Mr. Chisholm claimed that all of the work the Lawyers did was unusable and had to be duplicated by his new lawyer.
13. In its July 10, 2017 letter, the Lawyers wrote that Mr. Chisholm's characterization was inaccurate. I agree, given the timeline set out above and discussed further below. In particular, all of the work performed for 3 discrete matters was concluded before the July 4, 2017 deadline arose, and so there would have been no need for duplication. Mr. Chisholm does not expressly dispute this timeline in his submissions, and I accept the Lawyers' evidence about it.
14. As for the July 4, 2017 deadline issue, the Lawyers explained that the July 4th deadline arose on June 28th. Further, while Ms. Watson was unavailable on June 29 and 30, 2017, she called Mr. Chisholm on July 1, 2017 and left a message that he never responded to. Mr. Chisholm did not expressly dispute this in his submissions.
15. I pause to note that on the evidence before me, Mr. Chisholm has not sought an examination of his legal services agreement or a review of the Lawyers' invoices under the *Legal Profession Act*. The time to do so is now expired.
16. The respondent's submission is that the Lawyers provided satisfactory representation until his lawyer had a death in her family. He also submits that before and after the death he found a drastic drop in services and the death aligned with a critical date in his case. There is no documentation of Mr. Chisholm ever expressing any concern to the Lawyers, before their July 10, 2017 letter. Mr.

Chisholm has provided no specific evidence to explain why duplication would be required given the timeline above.

17. On balance, I agree with the applicant Lawyers that the services billed for were completed before the invoices were issued. Further, based on the evidence before me, there was no need for duplication.
18. Mr. Chisholm further submits that the Lawyers “invoiced very sporadically” and he “figured they wrote off the bill” after he told them he had secured another law firm. I am not prepared to accept this as a defence for why Mr. Chisholm ignored the Lawyers’ invoices and reminders for about a year and until they threatened litigation. I find his lack of communication about any concerns suggests that he did not have any until he was pressed to pay the invoices. On balance, I cannot accept that the Lawyers failed to provide adequate and appropriate services in relation to the invoices.
19. Overall, I am satisfied the Lawyers are entitled to payment of their invoices, including the \$515.20 contractual interest claimed. As the applicant specifically claims \$515.20 interest, I will not address any other pre-judgment interest. The applicant is entitled to post-judgment interest under the *Court Order Interest Act* (COIA).
20. In accordance with the tribunal’s rules, as the applicant was successful in its claim I find it is entitled to reimbursement of \$175 in tribunal fees. The applicant also claims \$187.95 in dispute-related expenses, for a process server’s invoice because it was not otherwise able to successfully serve Mr. Chisholm. I find this expense reasonable.

ORDER

21. Within 30 days of this dispute, I order the respondent to pay the applicant a total of \$4,364.36, broken down as follows:
 - a. \$3,484.41 for invoices 4173 and 4268,

- b. \$515.20 in outstanding claimed pre-judgment interest on invoices 4173 and 4268,
 - c. \$175 in tribunal fees, and
 - d. \$189.75 in dispute-related expenses.
22. The applicant is also entitled to post-judgment interest under the COIA.
23. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the unsuccessful party receives notice of the tribunal's final decision.
24. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair