Civil Resolution Tribunal

Date Issued: February 19, 2018

File: SC-2017-003468

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lorne N. Maclean Law Corporation v. Wernicke,* 2018 BCCRT 45

B E T W E E N :

Lorne N. Maclean Law Corporation

APPLICANT

A N D :

Tracie Wernicke

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrew D. Gay, Q.C.

INTRODUCTION

1. The applicant alleges that the respondent failed to pay a series of its accounts. The respondent agrees that she has not paid some of the applicant's accounts, but says the parties agreed that the amount owing is less than what is claimed. She

also alleges that the applicant charged her for work performed after she instructed the applicant to cease work. Both 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.

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. In its Dispute Notice the applicant named itself "Maclean Law" but described itself as a law corporation. The tribunal wrote to the parties asking for the full legal name of the law corporation. The applicant responded and stated that the law corporation is named Lorne N. Maclean Law Corporation. The documentary evidence shows that it is the Lorne N. Maclean Law Corporation which issued the accounts to the respondent. The respondent did not take issue with the applicant's statement as to its full legal name. Accordingly, pursuant to tribunal rule 119, I order that the style of proceeding in this dispute reflect that Lorne N. Maclean Law Corporation is the applicant.

6. Under tribunal rule 121, in resolving this dispute the tribunal may make one or more of the following orders:

   a. order a party to do or stop doing something;

   b. order a party to pay money;

   c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:

   a. What is the amount of the unpaid accounts?

   b. Should the amount owing be reduced on the basis that the applicant charged for work performed after the respondent instructed the applicant to cease work on her case?

   c. Was there an agreement between the parties to reduce the amount of legal fees owing?

EVIDENCE AND ANALYSIS

The Retainer Agreement and the Amount Claimed by the Applicant

8. The applicant provided legal services to the respondent. The relationship between the parties is governed by a June 17, 2015 retainer letter (the "Retainer Agreement").

9. The respondent does not dispute the validity of the Retainer Agreement.

10. The Retainer Agreement provides that the respondent had the right to terminate her relationship with the applicant by giving written notice and by paying the balance due to the applicant for legal services rendered.

11. The Retainer Agreement provides that interest at the rate of 18% per annum will be charged on any account not paid within 30 days of its date.

12. The parties agree that the applicant provided legal services to the respondent.

13. The parties further agree that the respondent did not pay the full amount of the applicant's accounts.

14. The applicant produced a spreadsheet which itemizes the amounts charged by the applicant for its services, including taxes, disbursements and interest charged on overdue accounts. The spreadsheet shows that the total outstanding amount as of is $3,405.10. At my request, the applicant provided its actual accounts to the tribunal, which corroborate the spreadsheet figures. The most recent of those accounts is dated March 1, 2017 and it shows a balance owing of $3405.10. Accordingly, subject to the defences raised by the applicant which are discussed below, I find that the amount owing under the Retainer Agreement is $3405.10.

The Respondent's Allegation that she was Over-charged

15. The respondent says that she instructed the applicant to cease work on her file, but that the applicant continued to bill her for time spent on the file after this instruction was given. The applicant denies doing so.

16. Through the facilitator, I invited the parties to provide further evidence relating to this allegation as neither party had provided any. The respondent did not provide further evidence on this point. The applicant provided some email exchanges between the parties but I find these are inconclusive.

17. As indicated above, the Retainer Agreement provides that the respondent had the right to terminate her relationship with the applicant by giving written notice. There is no evidence the respondent gave written notice. There is also no evidence before me of the date on which the respondent alleges she gave the cease-work instruction or how the alleged cease-work instruction was given. Further, there is

no evidence before me that the applicant continued to bill for work given after such an instruction, and if so how much was billed.

18. In the circumstances, I find that the respondent has not established that she was over-charged by the applicant for work performed following an instruction to cease work.

Did the Parties Agree to a Reduction in the Amount Owing?

19. The respondent claims that the parties reached an agreement that the amount owing would be $2,500. She says that she thereafter requested that she be allowed to pay the $2,500 in instalments over time. The applicant denied this request, and stated that any agreement to reduce the amount owing was based on immediate payment of the full amount.

20. The respondent produced a series of email exchanges between the parties which show that during 2017 the parties were attempting to negotiate a resolution to the fee dispute. The applicant's offer to accept $2500 was conditional on immediate lump sum payment. The respondent did not accept that condition, stating that she could not afford a lump sum.

21. There is no evidence before me that the parties reached an agreement to resolve their dispute. In the circumstances I reject the respondent's assertion that the parties settled on the amount of $2,500. I find the applicant remains entitled to the $3,405.10 sum identified above.

Installment Payments and Interest

22. The tribunal has the jurisdiction to order that amounts owing be paid in instalments. The respondent has repeatedly claimed that she is not able to pay a lump sum. While there is no supporting evidence such as tax returns or financial records, the applicant has not contested the respondent's assertion that she lacks the financial resources to pay. The respondent sought to pay the amount owing at the rate of $100 per month. At that rate, it will be over three years until the

outstanding amount is repaid with interest. In my opinion, it is not reasonable for the applicant to have to wait that long. In my opinion, in this case a reasonable time for payment of the amount outstanding is one year. This is reflected in the order I have made below.

23. The applicant is entitled to pre-judgment interest at the contractual rate of interest: see section 48 of the *Civil Resolution Tribunal Act* and subsection 2(b) of the *Court Order Interest Act* (the "COIA"). However, the applicant is not entitled to interest on interest (s. 2(c) of the COIA). The amount of pre-judgment interest owing at the contractual rate of 18% is $514.46.

24. The contractual rate of interest ceases to apply post-judgment: *Gough Electric, Division of Guillevin International Inc. v. Labyrinth Lumber Ltd.,* 2001 BCSC 535 at para. 35. The applicant will be entitled to post-judgment interest in accordance with the *Court Order Interest Act* (the "COIA").

25. Under section 49 of the Act, and section 129 of the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I therefore find that the respondent must reimburse the applicant for tribunal fees of $125.

26. For the purposes of calculating the amount of the monthly instalments, I have added the $125 plus the $514.46 of pre-judgment interest to the $3405.10 for which the respondent is liable.

ORDERS

27. I order that Tracie Wernicke pay to the Lorne N. Maclean Law Corporation the sum of $4044.56 in twelve consecutive monthly instalments in the amount of $337.05 each, commencing on April 1, 2018 and on the first day of each month thereafter.

28. The applicant is entitled to post-judgment interest under the COIA.

29. 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 party receives notice of the tribunal's final decision.

30. 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.

Andrew D. Gay, Tribunal Member