



# Civil Resolution Tribunal

Date Issued: July 31, 2018

File: SC-2017-003986

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *David M. Simon Law Corporation v. Dong*, 2018 BCCRT 404

**B E T W E E N :**

David M. Simon Law Corporation

**APPLICANT**

**A N D :**

Stephen Dong

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about whether the respondent Stephen Dong owes the applicant, David M. Simon Law Corporation, for legal fees.

2. The applicant wanted to examine a third party, MH, as part of a separate court action. The applicant says that in exchange for MH's testimony without the necessity of a court application, the respondent agreed to pay the applicant's legal fees associated with its representation of MH at the examination. The applicant told the respondent its rate was \$250 per hour, plus taxes. Thus, in this dispute the applicant claims \$840 in legal fees, for its 3 hours of time spent at the June 22, 2017 examination for discovery. The parties are self-represented.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. 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. Neither party requested an oral hearing.
5. 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.
6. Under the Act and tribunal rule 126, 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.

## ISSUE

7. The issue in this dispute is to what extent, if any, the respondent owes the applicant for the claimed legal fees.

## EVIDENCE AND ANALYSIS

8. 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.
9. On May 19, 2017, the respondent told the applicant that he would not accept written answers to questions. This was in response to the applicant's email that MH could answer questions to the best of her recollection, where she has knowledge of the facts. The applicant explained that this meant there may be some questions she cannot answer because she cannot recall what was said or happened at the time. However, the applicant said MH would not provide written answers and would only testify at trial. The respondent pressed for an examination for discovery of MH. The applicant told the respondent that MH had very little recollection of "what went on at the time". The respondent replied (my bold emphasis added),

If your client agrees to an examination for discovery without a court order then I **will agree to pay your hourly cost for the time she is in examination.**

10. The applicant notes BC Supreme Court Rule 7-5, which provides that a court could order that the examining party pay "reasonable lawyer's costs" of the person relating to the examination. That rule also states that the person can be examined about "material evidence relating to the matter in question in the action". The underlying action was a defamation claim brought by the respondent, and MH was a witness in that action. The applicant says the respondent attempted to ask MH a number of questions that were not relevant to that defamation claim, which I find is essentially undisputed. In other words, this rule was the basis for the applicant's objections to questions as well as the basis for its agreement that the respondent

would pay the applicant's legal fees for representing MH at the examination for discovery.

11. The respondent submits he should not have to pay the full amount claimed, and alleges the applicant acted in bad faith. I find there is no basis for this allegation in the evidence before me. The respondent says his understanding with the applicant was that if MH consented to an examination for discovery, the respondent would pay the applicant's legal fees, as set out in the parties' emails. However, at the June 22, 2017 examination for discovery the respondent says the applicant prevented him from asking all of the relevant questions he had prepared that could be used to impeach the defendant in the related court action. As noted above, it was not inappropriate for the applicant to restrict the questions to those relevant to the court action. The respondent says the applicant was "very obstructive" during the examination and insulted him. I do not agree that it was "obstructive" to refuse to provide written answers. The applicant's duty was to his client, not to the respondent.
12. The respondent's agreement to pay the applicant's legal fees for "the time [MH] is in examination" is clear. I find there is no valid basis to refuse to pay those fees because the applicant made certain objections during the examination for discovery, as his role as MH's counsel. In particular, there is no evidence before me that the applicant frustrated the respondent's proper examination of MH under Rule 7-5. While the respondent says the applicant insulted him and consumed unnecessary time, there is no transcript from the examination for discovery before me. In any event, again, the respondent agreed to pay for the applicant's time spent representing MH during the discovery. I find there is no valid reason to warrant any adjustment of the applicant's bill, as requested by the respondent.

13. It is undisputed that the applicant spent 3 hours at the examination for discovery. The applicant clearly told the respondent his hourly rate of \$250, plus tax. I find the applicant is entitled to an order for \$840, including \$90 in taxes. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on that amount, from July 3, 2017, the date of the applicant's invoice.
14. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute I find it is entitled to reimbursement of \$125 in tribunal fees paid. I make no order for dispute-related expenses, as there was no amount specified and no supporting evidence provided.

## **ORDERS**

15. I order the respondent to immediately pay the applicant a total of \$973.79, broken down as follows:
  - a. \$840 as payment of the applicant's invoice #17-163,
  - b. \$8.79 in pre-judgment interest under the COIA, and
  - c. \$125 in tribunal fees.
16. The applicant is also entitled to post-judgment interest under the COIA.
17. 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.
18. 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.

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Shelley Lopez, Vice Chair