



Civil Resolution Tribunal

Date Issued: August 3, 2018

File: SC-2017-005960

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *SMART & ASSOCIATES CPA CORP. v. NORTHERN SPRUCE LOG HOMES AND LANDSCAPING LTD.*, 2018 BCCRT 418

B E T W E E N :

SMART & ASSOCIATES CPA CORP.

APPLICANT

A N D :

NORTHERN SPRUCE LOG HOMES AND LANDSCAPING LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about payment for accounting services that the applicant, Smart & Associates CPA Corp., provided to the respondent, Northern Spruce Log Homes

and Landscaping Ltd.¹ The applicant is represented by its principal, Charlene Smart, a chartered professional accountant. The respondent is represented by its principal, Siegfried Reuter.

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 I can fairly resolve the dispute based on the documentary evidence before me. This conclusion is consistent with the court's observations of the tribunal's processes in the recent decision in *Yas v. Pope*, 2018 BCSC 282.
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 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.

¹ The parties' names are capitalized in the style of cause as this is how they were set out in the Amended Dispute Notice filed by the applicant.

ISSUE

6. The issue in this dispute is to what extent, if any, the applicant is entitled to payment of its account balance of \$2,078.56 for accounting and bookkeeping work.

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 referenced the evidence and submissions as necessary to give context to my decision. I note that while the respondent provided submissions, as discussed below, it did not provide any supporting evidence despite being given the opportunity to do so.
8. The parties' principals met in early 2017. In May 2017, the respondent sent the respondent a \$500 retainer. It is undisputed that the applicant sent its engagement letter to the respondent on May 17, 2017, which I agree allowed the respondent's principal to review it and ask for any clarifications if necessary. The respondent did not ask any questions about it, and signed the engagement letter on June 5, 2017.
9. The signed 5-page engagement letter was for the May 31, 2016 year-end preparation of financial statements and corporate tax returns, and bookkeeping as necessary in the preparation of the financial statements. Additional relevant terms in the agreement included:
 - a. Subject to management review and approval, the applicant would carry out such bookkeeping as it found necessary.
 - b. The agreement's terms continue in force from year to year unless the parties agree otherwise in writing.
 - c. Ms. Smart's professional fees will be based on her "regular billing rates", plus direct out-of-pocket expenses and applicable GST. Fees are due when rendered. The dollar value of the billing rate was not specified.

- d. The \$500 retainer will be applied against the applicant's final invoice.
 - e. Bills will be issued monthly and are payable upon receipt. Invoices unpaid 30 days past the billing date are subject to a 12% annual interest rate.
10. I find this dispute largely turns on the amount of the applicant's billable rate. The respondent submits that he never knew Ms. Smart's professional billable rate was \$150 per hour, and that he expected it was \$45 per hour. I accept that Ms. Smart's support staff billed out at \$45 per hour, not Ms. Smart. I find it would be unlikely that a CPA would charge as little as \$45 per hour. I find the respondent could not have reasonably expected that fee for Ms. Smart's services. The fact that the respondent said he recalled a discussion of a \$45 rate supports the conclusion the parties discussed the applicable billing rates. There is no evidence that the respondent ever made any inquiry about the applicant's "regular billable rate" as set out in the engagement letter. I find the respondent did accept Ms. Smart's \$150 rate based on a combination of the parties' contract, their emails as discussed below, and the fact that I find \$150 per hour is a reasonable rate for CPA services. I turn to the relevant chronology.
11. On June 2, 2017, before the respondent signed the engagement letter on June 5, 2017, the applicant wrote the respondent requesting various paperwork and statements covering a 12-month period, in an effort to reconcile the records. The applicant wrote,
- Due to the volume of work that will need to be done to get your May 31, 2016; May 31, 2017 year ends done and also the June 2017 forward monthly bookkeeping, you will be billed on a monthly basis.
12. Given the above email and other evidence before me, I find the parties agreed to expand the applicant's attention beyond just the May 2016 year end.
13. The parties exchanged several emails through mid-June 2017, with the applicant requesting and the respondent providing various records and information, so that the applicant could work on the respondent's financial statements and tax returns.

Based on the evidence before me, I accept that the records reviewed by the applicant were disorganized and their volume was significant. I have reviewed the applicant's May 19, 2018 "invoice reconciliation" that shows a breakdown of time spent by Ms. Smart (at \$150 per hour) and by her support staff (at \$45 per hour). Based on the evidence before me, I find the time spent was reasonable given the volume and state of the respondent's records.

14. On June 28, 2017, the applicant sent the respondent her invoice #1518 for June's services, for \$2,353.05 including GST. In her email, Ms. Smart noted that having Mr. Reuter's family member organize the receipts to each statement will save the respondent a lot of billable hours. Ms. Smart wrote that it would be a lot of work to get the respondent's historic bookkeeping and year end completed but that it would be a good investment to implement good bookkeeping processes going forward.
15. The applicant's June 28, 2017 invoice did not break out the amount of time that was spent nor did it set out the billable rate. Instead, Ms. Smart listed various tasks, including 2 client meetings on June 2 and 23, 2017. The applicant explained in her cover email that the \$500 retainer would be applied to a final invoice later.
16. On June 29, 2017, for the first time the respondent questioned the applicant's accounting charges and asked what the applicant might estimate it might cost to get the year end done and then moving forward. On June 30, 2017, the applicant responded with an estimated fee of \$1,800 to \$2,000 plus bookkeeping rates at \$45 per hour, to which the respondent replied "ok" in the following comment:

So that is ok then I guess it's just a matter of getting things cleaned up. So would you say once cleaned up and on track and with [Mr. Reuter's family member] getting proficient with a lot of the organization we could be around 3-4 thousand.

17. The applicant says with the respondent's positive response, she continued to work on the respondent's file. I find her doing so was reasonable. Given the above-

quoted email, I find the respondent understood the amount of money it would cost to get his records in order. The applicant's bill was in that \$2,000 range and I have found above the time was reasonably spent.

18. On August 22, 2017, the applicant says the respondent wanted to talk again about invoice #1518, which remained unpaid. The applicant says they met and discussed the challenges in the file, which the applicant says the respondent acknowledged at the time. When the respondent later asked for his trial balance paperwork, the applicant asked to be paid first, which the respondent refused.
19. At this point, I note the respondent's objection to the applicant providing the respondent's financial information. Given the applicant provided accounting services, the applicant's disclosure of its difficulties arising from the respondent's documentation is not inappropriate. I also do not agree with the respondent that the applicant should not have had to get "accounting answers" from him. Based on the evidence before me, the applicant was trying to get the respondent to provide adequate source documentation and to provide an explanation for certain entries and some discrepancies.
20. According to a September 22, 2017 statement, the applicant later billed the respondent \$315 on August 31, 2017 (invoice #1555) and \$340.21 on September 22, 2017 (final invoice #1565). These invoices #1555 and #1565 are not before me, but the surrounding evidence supports the conclusion the applicant continued to do work for the respondent after the June invoice. The amounts are relatively low and I find reflect the work contemplated in the parties' June 29 and 30, 2017 email exchange, which included "keying the data and reconciling the accounts", along with other work described in later emails. After deducting the \$500 retainer, this left a balance owing of \$2,008.27. The applicant has not explained the difference between the \$2,008.27 statement and the \$2,078.56 figure it claims plus interest. I also note that in her September 22, 2017 email, Ms. Smart stated she would waive the contractual interest on late payments for the months of August to October, 2017.

21. Ordinarily, a contract should specify the price, as price is a fundamental term. Here, the price was referenced as Ms. Smart's "regular billable rate". The engagement letter invited the respondent to ask any questions it may have, and Mr. Reuter did not ask any. I find Ms. Smart's failure to stipulate her billable rate is not fatal to her claim because I have found above the respondent did agree to the \$150 rate by signing the engagement letter that he agreed to Ms. Smart's regular billable rates. I also rely upon the respondent's June 30, 2017 email, which demonstrated his agreement with Ms. Smart's fee structure.
22. I find the applicant is entitled to payment of its \$2,008.27 statement balance. As per the parties' contract, I find the applicant is entitled to 12% annual interest, from November 1, 2017, a date I consider appropriate given the above timeline.
23. In accordance with section 49 of the Act and the tribunal's rules, as the applicant was successful, I find it is entitled to reimbursement of the \$125 paid in tribunal fees. The applicant claims \$171.60 in dispute-related expenses but has provided no explanation of what those expenses were or any supporting evidence. I dismiss the expense claim.

ORDERS

24. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$2,314.84, comprised of:
 - a. \$2,008.27 as final payment of the applicant's statement of account,
 - b. \$181.57 in pre-judgment contractual interest at a 12% annual rate, and
 - c. \$125 in tribunal fees.
25. The applicant's remaining claims are dismissed. The applicant is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
26. 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.

27. 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