



Civil Resolution Tribunal

Date Issued: November 28, 2018

File: SC-2018-001070

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lacopia v. Lucion*, 2018 BCCRT 771

B E T W E E N :

Carmelo Lacopia

APPLICANT

A N D :

Liza Lucion

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The respondent, Liza Lucion, is a registered immigration consultant. The applicant, Carmelo Lacopia, says he hired the respondent to assist in applying for permanent resident status for his son, John Carlo Lacopia, as well as to assist in bringing his brother and nephew to Canada and securing employment for them.

2. The applicant says the respondent gave incorrect advice, charged for services she did not provide, and charged some illegal fees. The applicant seeks a refund of \$4,150 in fees paid to the respondent, plus reimbursement of \$350 in additional costs for his son's permanent resident application.
3. The respondent denies the applicant's claims. She says the applicant did not follow her advice, and breached their retainer agreement, so he is not entitled to any refund. She also says the respondent was not a party to the retainer agreement for services provided to his brother and nephew, so he is not entitled to a refund for those services.
4. The applicant is represented, by a non-legal representative, Karen Bation. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence based on the written submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. 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.

ISSUES

9. The issue[s] in this dispute are:
 - a. Is the applicant entitled to a refund of fees paid to the respondent regarding his son, John Carlo Lacopia, or a refund of associated permanent resident application costs?
 - b. Is the applicant entitled to a refund of fees paid to the respondent regarding his brother, Allan Lacopia, or his nephew, Wilfredo Lacopia?

EVIDENCE AND ANALYSIS

10. 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.

John Carlo Lacopia

11. On April 26, 2016, the applicant and his wife signed a retainer agreement with the respondent. This contract identifies the applicant and his wife as “the client”, and says the respondent would assist them in preparing an “Application for Family Member Outside Canada Sponsorship Program towards Permanent Resident” for their son, John Carlo Lacopia.

12. The evidence indicates that at the time the contract was signed, the applicant was a permanent resident of Canada, and John Carlo lived in another country. The applicant wished to sponsor his son to become a permanent resident of Canada.
13. The contract says, in part, that the respondent would assist in preparing and submitting the client's applications, including gathering relevant supporting documents. The contract says the respondent would be paid \$1,000 when the contract was signed, and another \$1,000 upon initial approval from Immigration, Refugees and Citizenship Canada (IRCC). The contract sets out various other fees and costs payable by the client such as government application fees and clearance certificates.
14. The applicant says that when contract was signed John Carlo was 21 years old, and was therefore not eligible for family class sponsorship. The applicant says the respondent was negligent, as she ought to have known about the age limit, and should have told the applicant he was not able to sponsor his son, rather than taking the \$1,000 fee and proceeding with the application. The applicant also says the respondent violated the retainer agreement by not keeping him informed of the status of the application.
15. The respondent has provided somewhat contradictory statements regarding these allegations by the applicant. She wrote on her Dispute Response Form that when the applicant first saw her about John Carlo in April 2016, she told the applicant that the dependent child rules would change sometime after January 2017, increasing the age limit to 22, but she was not sure exactly what month the change would take effect. The respondent says the applicant "agreed to that", and signed the retainer agreement. The respondent says she explained that there was a high chance that John Carlo could come to Canada as he was under age 22, and if his application was refused they could apply for Humanitarian and Compassionate Grounds.
16. In her subsequent submissions to the tribunal, the respondent said she filed John Carlo's application even though he did not meet the age requirement in 2016 due to the persistent requests of the applicant, who really wanted his son in Canada. She

said she instructed the applicant to wait until the date officially changed, and told him the application would likely be returned, but he persistently said it was better to try by filing the application.

17. The respondent submitted John Carlo's application on October 24, 2016. She resubmitted it on April 5, 2017, as the initial application was not acknowledged by IRCC.
18. I agree that at the time both applications were submitted, John Carlo did not meet the definition of dependent child, as he was 21 years old. A historical search of the *Immigration and Refugee Protection Regulations* show that the age limit for a dependent child was not increased to age 22 until October 24, 2017. However, the respondent's handwritten notes from the April 8, 2016 meeting with the applicant show that she was aware of this issue, and based on those notes I accept her evidence that she informed the applicant of the pending rule change.
19. Based on the facts before me, I find the respondent was not negligent. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure caused the claimed damages.
20. I find that the respondent owed the applicant a duty of care, as she was paid to act on his behalf as a professional immigration consultant. However, I find that even if the respondent acted wrongly by submitting John Carlo's application before the age limit changed, the applicant has not proved all the necessary elements of negligence. Specifically, the respondent's actions did not cause John Carlo's application to be rejected. Rather, the documents show that on May 11, 2017, IRCC returned John Carlo's application with a request for more information. IRCC's letter says the application could be resubmitted with the following documents:
 - Receipt for application fees

- Application form
 - Birth or baptismal certificate for the applicant and all family members
 - 2 recent photos of the applicant
21. The respondent's notes show that on May 16, 2017, she called the applicant about the returned application, and asked him to come to her office to provide the updated information. The respondent emailed the applicant and John Carlo on July 7, 2017, asking for a list of specific documents for resubmission. A July 7, 2017 note says the applicant would provide the documents on July 17, 2017. A July 17, 2017 note says the applicant came to the respondent's office, but did not provide the documents.
22. The respondent says the applicant and John Carlo never provided the requested documents, so the application did not proceed. Thus, the respondent did not cause John Carlo's application to be rejected, and the age limit issue was never adjudicated by IRCC. For that reason, I find the applicant has not proved the respondent is liable for negligence.
23. The applicant also says the respondent breached the terms of the retainer agreement because she failed to communicate with them about the status of the application. I find the applicant has not proven this claim. While the contact between the parties was infrequent, the respondent provided handwritten notes showing that there were periodic telephone calls and in-person meetings regarding John Carlo's application. There were also a few text messages, and at least 1 email.
24. For these reasons, I dismiss the applicant's claims regarding John Carlo's sponsorship application.

Allan Rae Lacopia and Wilfredo Lacopia

25. The documents show that the applicant's brother, Allan Rae Lacopia, and the applicant's nephew, Wilfredo Lacopia, each signed separate retainer agreements

with the respondent on May 20, 2016. These contracts state that the respondent would assist Allan Rae and Wilfredo to prepare applications for the express entry/labour market impact assessment (LMIA) program, towards permanent residency. The contracts set out the obligations of the parties, and the fees to be paid to the respondent.

26. The applicant is not a party to either contract, and is not mentioned in those contracts. However, receipts provided in evidence show that on July 2, 2016 he paid the respondent \$3,000 on behalf of Allan Rae and Wilfredo, as partial payment for the respondent's services under the contracts. The documents also indicate that the applicant received \$1,000 from the respondent as a commission for referring Allan Rae and Wilfredo to her.
27. The applicant seeks a refund of the \$3,000 paid to the respondent under the contracts with Allan Rae and Wilfredo. He says that under the *BC Employment Standards Act* the respondent was not entitled to charge fees for LMIA's. He also says the respondent failed to perform the contracted services.
28. I find the applicant is not entitled to any remedy regarding the contracts signed by Allan Rae or Wilfredo. The applicant was not a party to either of those contracts, so he cannot receive a remedy for any breach of those contracts. While I accept that the applicant paid the respondent the initial fees owed under the contracts, the receipts show that he made these payments on behalf of Allan Rae and Wilfredo.
29. Similarly, the respondent owed no duty of care to the applicant regarding the retainer agreements signed by Allan Rae and Wilfredo. Any duty of care was owed to Allan Rae and Wilfredo, and only they can seek a remedy for its breach.
30. While the applicant provided copies of power of attorney documents authorizing him to act on behalf of Allan Rae and Wilfredo with regard to the "Petition for Withdrawal of Application for Temporary Work Permit", this document does not entitle the applicant to litigate in his own name in the place of Allan Rae or Wilfredo. They are both adults, and must be named as parties to the dispute in order to receive a

remedy. Carmelo Lacopia cannot be awarded a remedy on their behalf. I therefore dismiss the applicant's claims.

31. Nothing in this decision prevents Allan Rae or Wilfredo from filing a dispute against the respondent.
32. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and expenses. The applicant was unsuccessful and so I dismiss his claim for reimbursement of tribunal fees. The respondent did not pay any fees and there were no dispute-related expenses claimed by either party.

ORDER

33. I dismiss the applicant's claims and this dispute.

Kate Campbell, Tribunal Member