



Civil Resolution Tribunal

Date Issued: December 11, 2018

File: SC-2018-001605

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *LINLEY WELWOOD LLP v. Jeffrey*, 2018 BCCRT 831

B E T W E E N :

LINLEY WELWOOD LLP

APPLICANT

A N D :

Jason Jeffrey

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. The applicant law firm, Linley Welwood LLP, claims the respondent, Jason Jeffrey, owes outstanding legal fees of \$3,156.13, plus contractual interest. The respondent refuses to pay and says the law firm did not follow his instructions and took advantage of him.

2. An employee or principal other than the lawyer who acted for the respondent represents the applicant. The respondent represents himself.

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 relationships between parties that may continue after the dispute resolution process has ended.
4. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario as to how the collision occurred. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
5. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether 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 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

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

EVIDENCE AND ANALYSIS

8. The applicant bears the burden of proof on a balance of probabilities. I have commented upon the relevant evidence and submissions only to the extent necessary to give context to these reasons.
9. It is undisputed that on June 22, 2017 the respondent hired the applicant law firm about an employment law matter. The retainer agreement signed between the parties was for limited legal services identified as: document collection and review, legal research, evaluating settlement, and procedural guidance including drafting a demand letter and serving court documents. The agreed-upon hourly rate set out in the retainer agreement was \$175.
10. The applicant billed the respondent for legal services in September, October, and November 2017, and January 2018. Each bill included a detailed description of the service completed and a courtesy discount. Under the parties' retainer agreement, the respondent gave a \$750 retainer, which was held in trust and used to partially pay the first bill. The parties agreed that the respondent would replenish the retainer from time to time as needed.
11. Under the retainer's terms and reiterated on the bottom of each bill, the respondent incurred contractual interest (28.66% per year) on any bill not paid after 30 days. On January 9, 2017 the respondent refused to pay the bills until he received his expected severance from the employment law dispute.

12. On January 31, 2018 the respondent ended the agreement for legal services advising the applicant that he had hired a new law firm. At that point, the applicant had billed a total of \$3,906.13. After applying the \$750 retainer, this left \$3,156.13, the amount claimed in this dispute.
13. The respondent says that the applicant did not follow his instructions. The parties agree that the respondent asked the applicant to begin a legal action a few times. The applicant says that the respondent changed his instructions following advice from the applicant to attempt settlement. I agree. The communication between the parties supports the applicant's position.
14. On the evidence, I find that while the respondent asked to start litigation he later accepted the applicant's advice to pursue settlement so as not to exhaust his potential damages award on litigation costs. I find the parties took this approach until settlement efforts were exhausted at which time the applicant wrote confirming instructions to file a claim.
15. The respondent does not challenge the quality of the applicant's work except to say that the applicant "stretched" the legal services to bill more and to take advantage of the respondent. The respondent's allegation is extremely serious. It calls into question the lawyer's moral character and alleges breach of a fiduciary relationship. The respondent provided no evidence to support his allegation except to state that his new lawyer charged less and they "claimed a win." I find that that evidence does not show any improper conduct on the part of the applicant.
16. The applicant's invoices itemize in detail the service provided. Including, reviewing correspondence from the respondent and from opposing counsel, meeting with the respondent, telephone calls with the respondent and with opposing counsel, legal research, gathering and reviewing documents, recalculating assessments based on new information from the respondent, and, drafting correspondence to the respondent and to opposing counsel. The invoices provide a line item breakdown of the service and disbursements.

17. Overall, I am satisfied that the applicant is entitled to payment of the invoices, including contractual interest. I find that the applicant's time was reasonably spent and authorized for the types of activities described.
18. There is no evidence that the respondent disagreed with the bills when provided until December 4, 2017 when the applicant asked for payment of the amount owing. In a few communications the respondent expressed gratitude for the work done. I find the respondent's failure to communicate concerns about the bills suggests he had none until he was pressed to pay the amount owing.
19. The respondent said he wanted to "counter sue" for costs paid to the applicant and for stress. The respondent did not file a counterclaim and as such I have not considered these claims. In any event, the respondent gave no evidence supporting the allegation of stress.
20. In summary, I find the applicant is entitled to payment of the outstanding \$3,156.13, plus \$945.28 ($\$316.32 + \$336.20 + \$208.65 + \84.11) in 28.66% contractual interest calculated 30 days after each bill to the date of this decision.
21. Under section 49 of the Act, and 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 and award reimbursement of \$175.00 in tribunal fees and \$10.79 in dispute-related expenses, as claimed.

ORDER

22. Within 14 days of this dispute, I order the respondent to pay the applicant a total of \$4,287.20, broken down as follows:
 - a. \$3,156.13 for legal services and disbursements,
 - b. \$945.28 for contractual interest,
 - c. \$175 in tribunal fees, and

d. \$10.79 in dispute related expenses.

23. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.

24. 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.

25. 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.

Megan Volk, Tribunal Member