Civil Resolution Tribunal

Date Issued: May 6, 2019

File: SC-2018-009375

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Slater Law Corporation v. Chawla*, 2019 BCCRT 535

BETWEEN:

Slater Law Corporation

APPLICANT

AND:

Somchai Chawla

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie

INTRODUCTION

1. This dispute is about payment for legal services.

2. The applicant, Slater Law Corporation, says it provided legal services to the respondent, Somchai Chawla, and that the respondent has not paid. It seeks

$2,736.10 in unpaid legal fees plus contractual interest. The respondent refuses to pay and says he did not hire the applicant, and that the applicant did not follow his instructions.

3. The applicant is represented by one of its lawyers, Shelton Stuart. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal ("tribunal"). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.

5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. The 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. 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

6. 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.

7. Under tribunal rule 9.3(2), 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.

ISSUE

8. 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

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

10. It is undisputed that on June 14, 2017 the respondent hired lawyer William Slater at Merchant Law Group for a legal matter. In March 2018, Mr. Slater left Merchant Law Group and formed his own law corporation, the applicant, which is discussed in more detail below.

11. The signed June 14, 2017 retainer agreement between the parties was for legal services including: commencing and defending proceedings, making applications to court, obtaining and conducting discovery, and several other related services. The agreed-upon hourly rate was $350 for Mr. Slater, and $95 for the work of any paralegals. The respondent paid a $1,000 retainer.

12. Under the retainer agreement's terms, the respondent incurred contractual interest (18% per year) on any bill not paid after 30 days.

13. The retainer agreement also stated that the respondent was entitled to terminate Mr. Slater's legal services at any point, in writing, at which time the respondent would be responsible to pay any fees and disbursements incurred on his file up to that point.

14. Over the next several months while at Merchant Law Group, Mr. Slater performed legal services for the respondent, including attending a hearing at the Registrar to argue for a reduction in costs awarded against the respondent. Mr. Slater was successful at that hearing.

15. On March 1, 2018, Mr. Slater left Merchant Law Group and formed his own law firm, Slater Law Corporation, the applicant in this dispute. Mr. Slater advised he sent letters to all of his clients, including the respondent, advising about his departure from Merchant Law Group, and asked whether they would like to stay with Merchant Law Group, follow Mr. Slater to his new law firm, or retain separate counsel.

16. In a signed statement provided in evidence, Mr. Slater advised he did not recall receiving a response to his letter from the respondent. Mr. Slater stated that as he remained counsel of record, he took the respondent's file with him to the applicant law firm.

17. A meeting with the respondent at the applicant's new office was scheduled for March 7, 2018, which the applicant submits was scheduled for the respondent to provide additional documents to the applicant, and also to have the respondent sign a formal file transfer form. The respondent was ultimately unable to attend the March 7, 2018 meeting due to work commitments and instead instructed the applicant to obtain the requested documents directly from his accountant. I find this reasonably confirmed to the applicant that the respondent wanted Mr. Slater to continue to represent him at his new law firm.

18. During March, the applicant obtained documents from the respondent's accountant and continued to provide disclosure to opposing counsel in relation to the respondent's legal matter. In April and May 2018, opposing counsel requested availability for an application in court and a hearing was set for June 5, 2018. Mr. Slater advised the deadline to respond to the application materials was May 18, 2018.

19. In preparing a response to the upcoming application, the applicant sought additional information from the respondent and suggested filing a counter-application. Draft versions of these documents were prepared. The respondent and a paralegal at the applicant law firm had a telephone conversation on May 11, 2018 about the upcoming application and in preparation for a meeting with the respondent the following week.

20. On May 14, 2018, the respondent contacted the applicant by telephone and advised he was unhappy with the applicant's services and that he wanted to change lawyers.

21. On July 6, 2018, the applicant sent the respondent an invoice for the legal services to date of both Merchant Law Group and Slater Law Corporation, totaling $13,119.83.

22. The July 6, 2018 invoice was subsequently revised as the applicant discovered an error, and a new bill was sent to the respondent on August 8, 2018, which totaled $12,079.73; $9,343.63 for the services of Merchant Law Group, and $2,736.10 for those of the applicant. The respondent's retainer was applied against Merchant Law Group's invoice, and the parties have since agreed that Merchant Law Group has been paid in full. The applicant's portion of the invoice remains outstanding.

23. In an email dated August 9, 2018, the respondent advised the applicant he did not owe the applicant any money as Mr. Slater had not completed his work representing him and none of his applications had been successful in court. Mr. Slater responded that the pending counter-application had not been filed pursuant to the respondent's

instructions, and that the respondent's obligation to pay under the retainer agreement was not based on litigation success, but on the legal services provided for the respondent.

24. The respondent emailed back stating he should not have chosen the applicant law firm and would not be paying the bill.

25. The respondent now argues that he never hired the applicant law firm, and that he was not informed about the creation of the new law firm. The applicant, however, says a formal letter was sent to the respondent about Mr. Slater's law firm change, and that no response was received. The applicant further states that after March 1, 2018, correspondence was emailed to the respondent detailing the applicant's new office location and that all correspondence to the respondent after March 1, 2018 was sent on the applicant's letterhead.

26. On the evidence, I find that while the respondent did not expressly communicate his intention to move from Merchant Law Group to the applicant law firm, his subsequent actions indicated his intention to continue to receive legal services from Mr. Slater and the applicant. He continued to communicate with Mr. Slater and the applicant as his lawyers, and even when initially billed for their services, he did not raise any issue about the retention of the applicant. In fact, the evidence shows the respondent did not raise an issue with his representation by the applicant specifically until his response in this dispute. Therefore, I find the parties intended for the June 2017 retainer agreement to remain binding on them after Mr. Slater moved from Merchant Law Group to the applicant law firm.

27. I turn then to whether the applicant is entitled to payment of $2,736.10 for legal services provided to the respondent, further to the August 8, 2018 invoice.

28. In his response to the August 8, 2018 invoice, the respondent stated that the applicant did not follow his instructions, attended court without his authorization, and was not successful in court. I note that the specific court attendance the respondent

is referring to occurred in December 2017, before the formation of the applicant law firm, and is therefore not relevant to this dispute.

29. On the evidence, I do not find that the applicant acted against the instructions of the respondent. The applicant requested information from the respondent and provided disclosure of documents to opposing counsel. The applicant further provided copies and requested information from the respondent to prepare a response to opposing counsel's application and a counter-application in a timely manner. Although the respondent took issue with the fact the application was never brought, I am satisfied it was due to the respondent terminating the contract before the response and counter-application were filed. There is no indication that the respondent ever objected to the quality of services provided by the applicant before the respondent requested termination of the retainer agreement. I find the evidence does not show any improper conduct on the part of the applicant.

30. The applicant's invoices itemize in detail the legal services provided, including drafting and reviewing correspondence to and from opposing counsel and the respondent's accountant, corresponding with the respondent, reviewing documents, and reviewing and drafting court pleadings. The invoice provides a line item breakdown of the service and disbursements.

31. Overall, I am satisfied that the applicant is entitled to payment of the invoice generally, including contractual interest. I find that the applicant's time was reasonably spent and authorized for the types of activities described. This is similar to the approach used by the British Columbia Supreme Court Registrar, as set out in section 71(2) and (4) of the *Legal Profession Act*.

32. However, I note the August 8, 2018 invoice includes time spent on the file after May 14, 2018, when the respondent terminated the agreement, including communications with Merchant Law Group about invoices and correspondence with the respondent about the invoices. I find these time entries are administrative in nature, and not billable to the respondent client. Additionally, the retainer agreement states that once notice is given of termination of the agreement, legal services

performed up to that date will be payable. I am satisfied the respondent gave notice of his wish to change lawyers on May 14, 2018, and as such any legal services performed after that date are not properly charged to the respondent. Therefore, I have deducted the time entries and disbursements recorded after May 14, 2018, which total $378.34 including tax.

33. In summary, I find the applicant is entitled to the payment of $2,357.10 ($2,736.10 - $378.34), plus $282.85 in 18% contractual interest calculated 30 days after the August 8, 2018 bill to the date of this decision.

34. Under section 49 of the *Act*, and 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 to not follow that general rule. I find the applicant is entitled to reimbursement of $125 in tribunal fees and $10.50 in dispute-related expenses related to serving the Dispute Notice on the respondent.

ORDER

35. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $2,775.45, broken down as follows:
    a. $2,357.10 for legal services and disbursements,
    b. $282.85 for contractual interest,
    c. $125.00 in tribunal fees; and
    d. $10.50 in dispute-related expenses.

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

37. 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.

38. 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.

Andrea Ritchie, Vice Chair