



Civil Resolution Tribunal

Date Issued: May 15, 2019

File: SC-2018-008833

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dale E. Perry Law Corporation et al v. Atlin Heli Sports Ltd.*,
2019 BCCRT 590

B E T W E E N :

Dale E. Perry Law Corporation, Sean E Rowell Law Corporation and
John L Perry Law Corporation

APPLICANTS

A N D :

Atlin Heli Sports Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Dale E. Perry Law Corporation, Sean E Rowell Law Corporation and John L Perry Law Corporation, are law corporations that operate in partnership

as a law firm in Smithers called Perry & Company (law firm). The law firm claims \$1,025.33 for legal services from the respondent, Atlin Heli Sports Ltd.

2. The law firm is represented by Sean E. Rowell, who is the principal of Sean E Rowell Law Corporation. He is also the lawyer who dealt with the respondent. The respondent is represented by its president, Andre Gutenberg.

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 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.
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.
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 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.

ISSUES

7. The issues in this dispute are:
 - a. Did the respondent retain the law firm? If so, what were the terms of their contract?
 - b. If the respondent retained the law firm, did the law firm charge according to the parties' contract?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the law firm must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
9. The respondent has been a client of the law firm for several years. Other than a registered and records office agreement, they do not have a written retainer agreement.
10. Mr. Gutenberg emailed Mr. Rowell on May 24, 2018. In the underlying legal matter, the BC Provincial Court had granted default judgment against the respondent, and Mr. Gutenberg wanted to know the respondent's options. He said that it should only take 10 minutes.
11. Mr. Gutenberg forwarded Mr. Rowell 76 pages of emails and other background documents about the case. He also provided a 3 page summary for Mr. Rowell.
12. Between May 24 and June 8, 2019, Mr. Rowell says that he performed legal services for the respondent, including reviewing court documents and other documents related to the default judgment and researching the applicable law. According to the law firm's time records, Mr. Rowell sent Mr. Gutenberg emails on May 24, 25 and 28, June 1, 8 and 9. Mr. Gutenberg sent Mr. Rowell emails on May 24, June 7 and June 8. Mr. Gutenberg does not dispute that the parties exchanged these emails as alleged.

13. On June 8, 2018, the respondent decided to deal with the default judgment on its own.
14. The law firm says that Mr. Rowell spent a total of 4.7 hours on the respondent's matter. The law firm billed for only 2.95 hours because it acknowledged that some of the research that Mr. Rowell did was refreshing and updating his knowledge of the applicable law, which the law firm did not consider appropriate to bill the client. The law firm charged an hourly rate of \$300.
15. On June 12, 2018, the law firm sent the respondent an invoice for \$1,025.33, which included \$885 in legal fees, plus disbursements and tax.
16. The respondent has refused to pay. The respondent says it never retained the law firm to do any paid work. The respondent says that all he wanted the law firm to do was quickly review its case and provide a quote so that it could decide whether to retain the law firm to try to get the default judgment set aside.
17. While there was no written contract between the parties, the law firm relies on the parties' past relationship as evidence of the terms of a contract. The law firm argues that by asking for advice and corresponding with the law firm, the respondent knew that it was retaining the law firm on the same terms as it had in the past.
18. The law firm relies on *Henry Kendall & Sons v. William Lililco & Sons Ltd.*, [1969] 2 A.C. 31 (H.L.), which is an English case that says that when 2 parties have had many dealings with each other with consistent contractual terms, those terms can be implied into future contracts. *Henry Kendall & Sons* has been applied in British Columbia: see, for example, *Hardwoods Specialty Products LP Inc. v. Rite Style Manufacturing Ltd. et al*, 2005 BCSC 1100.
19. The law firm provided records for the legal work it has done for the respondent since 2013. Some of that legal work was done on a flat fee basis, but the law firm sent invoices on December 17, 2013, November 2, 2015, July 8, 2016, and April 18, 2017, for legal services charged at an hourly rate. Mr. Rowell appears to have been the responsible lawyer on each of these matters. In each of those invoices, the law

firm charged an hourly rate of \$250. The respondent does not dispute that it received and paid these invoices.

20. Applying the principles from *Henry Kendall & Sons*, I agree with the law firm's general point that the respondent knew and accepted that the law firm would charge him for Mr. Rowell's time. I find that the respondent's explanation that he only wanted a quote is inconsistent with the fact that he had continuous dealings with Mr. Rowell between May 24 and June 8, 2018. It is also inconsistent with the email he initially sent Mr. Rowell asking for assistance and the volume of material he sent for Mr. Rowell to review.
21. However, there is no evidence that the law firm ever informed the respondent that Mr. Rowell's hourly rate had increased from \$250 to \$300. One of the key aspects of the principle from *Henry Kendall & Sons* is that the parties' past dealings inform the terms of their new contract. Accordingly, I find that the law firm cannot rely on *Henry Kendall & Sons* and unilaterally increase its hourly rate. I find that the parties' contract for legal services provided for an hourly rate of \$250.
22. The respondent also says that the law firm spent too much time on its matter. As discussed above, the law firm voluntarily wrote down its time prior to invoicing the respondent to account for background research. Based on the issues that the respondent faced, the volume of documents that the respondent provided and the amount of communication between the parties, I find that the law firm's charges were reasonable. While this is not a review of a lawyer's bill under the *Legal Profession Act*, I have considered the factors set out in section 71(4) of the *Legal Profession Act* in determining that the charges were reasonable.
23. The respondent also says that one of the disbursements was unnecessary. I have reviewed the BC Registry searches that the law firm conducted. I find that they were reasonable and appropriate.

24. Finally, the respondent also says that the law firm's time records and bill are confusing. I disagree. I find that the law firm's invoices are clear about the amount of time Mr. Rowell spent on the respondent's matter and for the cost of his time.
25. The law firm also referred to the legal concepts of estoppel and quantum meruit in support of its claims. Because of my findings, I need not address these issues.
26. In summary, I find that the law firm is entitled to be paid for 2.95 hours of Mr. Rowell's time at \$250 per hour, plus disbursements and tax, for a total of \$860.14, plus prejudgment interest under the *Court Order Interest Act* from the date of the invoice.
27. 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 find that the law firm is entitled to reimbursement of \$125 in tribunal fees. The law firm did not claim any dispute-related expenses.

ORDERS

28. Within 14 days of the date of this order, I order the respondent to pay the law firm a total of \$998.06, broken down as follows:
 - a. \$860.14 as payment for legal services
 - b. \$12.92 in pre-judgment interest, and
 - c. \$125 in tribunal fees.
29. The law firm is entitled to post-judgment interest, as applicable.
30. 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.

31. 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.

Eric Regehr, Tribunal Member