Civil Resolution Tribunal

Date Issued: July 16, 2019

File: SC-2018-008863

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kwasnicki Law Corporation v. Sabry*, 2019 BCCRT 852

B E T W E E N :

Kwasnicki Law Corporation

APPLICANT

A N D :

Alexander Sabry

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This is a dispute over a bill for legal services. The applicant, Kwasnicki Law Corporation, seeks $4,237.07 for legal services, disbursements and taxes. It also seeks contractual interest of $754. The respondent agrees that he did not pay the

account but raises various reasons he should not have to pay. The applicant is represented by Jennifer Kwasnicki, who is the applicant's office manager. The respondent is self-represented.

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 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.

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 that there are no significant issues of credibility or other reasons that might require an oral hearing.

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 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

6. The issue in this dispute is whether the respondent must pay the applicant's account for legal services rendered.

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.

8. The respondent retained the applicant law firm to advise him and act on his behalf with respect to a realtor negligence claim. The parties' relationship was governed by a May 20, 2014 retainer agreement.

9. The respondent does not dispute the validity of the retainer agreement. The retainer agreement said fees were based on lawyer Robert Kwasnicki's hourly rate. It provided that the respondent would be responsible for disbursements and other charges, including charges for paralegals, secretaries, and support staff.

10. The retainer agreement also said that interest at the rate of 18% per year would be charged on any balance unpaid over 30 days.

11. The applicant issued its first account on July 23, 2014. The invoice total was $4,508.22, and the covering letter offered to reduce the fees by $500 for prompt payment. The respondent paid the requested amount of $3,948.22. The work included correspondence and consultation with the respondent, legal research, drafting an opinion letter, and drafting a Notice of Civil Claim. All the work was performed by Mr. Kwasnicki.

12. On December 20, 2016, the applicant issued its second account, totaling $4,237.07, the principal amount claimed in this dispute.

13. I turn now to the reasons the respondent says he should not have to pay the second account.

14. The respondent says the applicant did not outline the actual costs of its services. I infer that he means it failed to inform him of the total costs of litigation. The retainer agreement specified Mr. Kwasnicki's hourly rate and said the respondent would be responsible for disbursements and other charges, including for paralegals and support staff. It explained fees, disbursements and taxes. I am not aware of any obligation on lawyers to specify the exact cost of seeing a claim through to trial or settlement. It would not be possible to do so with an hourly rate agreement, given the unpredictable nature of litigation. I find no issue with the retainer agreement's explanation of costs.

15. The respondent says the applicant attracts clients by claiming, "no settlement, no fees" on its website. The respondent submitted a link to the current version of the website, and when one clicks on the "no settlement, no fees" link, it takes the viewer to a webpage discussing motor vehicle injuries. The respondent's issue was not a motor vehicle injury, so any representation of no fees without a settlement did not apply to his situation. Regardless, the retainer agreement he signed made clear that it was not a "no settlement, no fees" contract. It was an hourly rate agreement.

16. The respondent says Mr. Kwasnicki made his own decision about "which option to follow." I infer that the respondent means the option to proceed in the Provincial (Small Claims) Court or BC Supreme Court. It is true that Mr. Kwasnicki drafted the Notice of Civil Claim for BC Supreme Court and recommended that option. However, he explained the risks and rewards presented by Supreme Court and Small Claims court. Mr. Kwasnicki also wrote, "I am happy to pursue any option that you would prefer, and it is always your choice." I find that the respondent had the opportunity to make an informed choice and chose to bring his claim in Supreme Court.

17. The respondent says there were three lawyers involved in his case, and such a small case did not warrant multiple lawyers being involved. He also says that another lawyer, Jennifer Kwasnicki, "started the same process again for this civil claim". Ms. Kwasnicki says she is not a lawyer and her first interaction with the respondent was emailing him about his overdue account. I accept that Ms. Kwasnicki is not a lawyer. In her September 8, 2017 email to the respondent, her email signature identifies her as the office manager. I note that she did not provide any services that were charged to the respondent.

18. The second account does show that in addition to Mr. Kwasnicki, two other "lawyers," MF and RB, worked on the respondent's case. Based on email correspondence it is evident that RB was initially an articled student and was called to the bar while working on the respondent's case. MF was an assistant. I find that the retainer agreement explicitly allowed for other staff to work on Mr. Kwasnicki's case. Although the other staff rates were not specified in the account, their hourly rates were clearly lower than Mr. Kwasnicki's rate. The account shows the last work billed by Mr. Kwasnicki occurred on October 22, 2015. The respondent communicated with RB from July 2016 onward and did not raise any concerns about RB's involvement with his case. There is no evidence that any other lawyers handled the respondent's case. Because having RB work on his case rather Mr. Kwasnicki reduced the hourly rate the respondent paid, and because he did not raise any concerns about working with RB at the time, I find there is no merit to the respondent's complaint that too many lawyers worked on his case.

19. The respondent says he continued to receive unnecessary emails from the applicant. This is not a case where the client terminates an agreement with a law firm and the firm continues to charge for services after termination. The evidence shows that the respondent did not terminate his agreement. He attended RB's examination for discovery of a witness on December 14, 2016. On December 23, 2016, RB wrote to the respondent, summarizing the information obtained at the discovery, highlighting the weaknesses of his case, attaching an offer of settlement from the opposing party, and attaching the second account. It was at this point that

the respondent admits he “decided not to co-operate” with the applicant and “stopped [his] communication,” as he perceived that the applicant was not acting in his best interests. The applicant did not charge the respondent for anything after December 14, 2016.

20. The remainder of the respondent’s arguments relate to the quality of service provided and the failure to achieve results. Having reviewed the respondent’s account and the correspondence between the parties, I cannot find any evidence to substantiate these concerns.

21. Although this is not a review of a lawyer’s bill under the *Legal Profession Act* (LPA), I have considered the matters that are set out in section 71 of the LPA. I find that the applicant’s fees (16.7 hours) and disbursements ($493.70) were reasonably necessary for the activities described. The fees included correspondence with the respondent and opposing counsel over two years, as well as preparation for and conduct of an examination for discovery. I also find that the fees were authorized by the respondent, who was informed and involved at every step until he decided not to co-operate.

22. In summary, the respondent has not raised any valid reason he should not have to pay his account. Being unhappy with the outcome of steps taken in litigation is not enough to avoid paying a bill, particularly given the respondent was warned at the outset and throughout that he had the burden of proof and that there were no guarantees in litigation.

23. I find in favour of the applicant and order the respondent to pay the outstanding account of $4,237.07.

24. In his submissions, the respondent asked the tribunal to award him the amount already paid to the applicant, so he can “use this fund in a small claim court expenses by myself.” I find that there is no basis to award the respondent amounts already paid or to offset the order that he pay the outstanding account.

25. The applicant has claimed contractual interest of $754, based on when it stopped invoicing the respondent in December 2017. Based on the retainer agreement, interest was payable at 18%, so the applicant's entitlement to contractual interest to date would be around $1,900. The applicant has also claimed pre-judgment interest under the *Court Order Interest Act* [COIA]. I find the applicant is not entitled to COIA interest on top of or after ceasing to charge contractual interest, particularly given section 2(b) of the COIA which prohibits an award of interest if there is an agreement about interest between the parties. I find the respondent is entitled to contractual interest of $754, as this is what it claimed even though it is less than what it appears entitled to receive under the agreement.

26. Under section 49 of the Act and tribunal rules, as the applicant was successful in this dispute it is entitled to reimbursement of $175 in tribunal fees. It did not claim any dispute-related expenses.

ORDERS

27. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of $5,166.07, broken down as follows:

    a. $4,237.07 for legal services, disbursements and taxes,

    b. $754 for contractual interest, and

    c. $175.00 in tribunal fees

28. The applicant is also entitled to post-judgment interest, as applicable.

29. 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.

30. 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.

Micah Carmody, Tribunal Member