



Civil Resolution Tribunal

Date Issued: July 22, 2019

File: SC-2019-000847

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dumoulin Boskovich LLP v. Seifi*, 2019 BCCRT 890

B E T W E E N :

DUMOULIN BOSKOVICH LLP

APPLICANT

A N D :

HOSSEIN SEIFI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kathleen Mell

INTRODUCTION

1. This dispute is about a payment of \$1,904.00 in legal fees. The applicant, Dumoulin Boskovich LLP, says it provided legal services to the respondent, Hossein Seifi, and he did not pay for those services. The applicant is represented by Alexander Bayley, a lawyer of the firm.

2. The respondent says he never retained the applicant and therefore is not responsible for paying the legal fees. The respondent also argues that the applicant's claim is barred by the *Limitation Act* (LA). The respondent is self-represented.

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. In some respects, this dispute amounts to a "it said, he said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the 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 decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.
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. Is this dispute barred by the LA?
 - b. Did the respondent hire the applicant to provide legal services and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, the applicant must prove its claim. It bears the burden of proof on a balance of probabilities.
9. I will not refer to all of the evidence or deal with each point raised in the parties' submissions. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.
10. This dispute involves payment for two separate legal matters. One about a possible appeal of a case involving the respondent's family member (the family case). The second involves a dispute over a construction contract the respondent was involved in.
11. The applicant researched the law about limitation periods which was one possible avenue of appeal in the family member's case. The applicant also provided legal services, including a writing a demand letter about the respondent's construction case. The applicant sent the respondent a January 31, 2017 invoice for time spent on both files but discounted the work done on the family case as the family member decided not to retain it.

The LA

12. In British Columbia, the current LA came into effect on June 1, 2013. A debt claim must be started within 2 years of the day it was discovered, which is the first day a person had knowledge of the matters in the claim or reasonably ought to have known about the claim. The applicant's application was submitted on January 29, 2019 and the tribunal issued the Dispute Notice the same day.
13. The respondent suggests that the legal work was done in December 2016, although he acknowledges he received the invoice in January 2017. The invoice is dated January 31, 2017 and says that accounts outstanding after thirty days are subject to an interest charge. The invoice indicates that the legal work was performed in January 2017. Also, after that date the applicant continued to perform legal services for the respondent, including forwarding him correspondence about the construction file throughout March 2017.
14. Therefore, I accept that as of January 29, 2017 the applicant did not know the respondent was not going to pay as the invoice was not issued until January 31, 2017.
15. The January 29, 2019 application and Dispute Notice is within two years of when the invoice was first issued and within the time limit of when the applicant became aware of the claim. I find on a balance of probabilities that this dispute is not barred by the LA.

The Family Case

16. On January 3, 2017, the applicant received a call from the respondent's family member A, who was a high school classmate of Mr. Bayley. A wanted to discuss the family case as a judgement was issued against a family member in December 2016. A wanted the applicant to review the judgement to see if there were grounds for a possible appeal.

17. That same day A sent the applicant an email that contained the reasons for judgement. A asked if Mr. Bayley could meet him tomorrow. In the email A said there was another case the respondent “wanted to run by as well so we’ll come together.”
18. The meeting with the applicant and the respondent and A took place on January 5, 2017. The applicant has provided notes from that meeting. The issue regarding the family case is summed up in one line. The rest of the notes deal with the respondent’s construction dispute.
19. The applicant says that during this meeting the respondent asked it to research the issue about the family case and provide him with some advice. The notes do not reflect this. The applicant says that it obtained two pieces of identification from the respondent and that this is proof it was retained for the family case. I find the notes from that day show, as A suggested, that the respondent wished to obtain legal advice about the construction dispute. I find that the applicant obtaining two pieces of identification does not establish he was hired by the respondent for the family case.
20. The applicant sent A an email on January 9, 2017 summarizing its opinion that there was no limitation defence available in the family case. At the end of the email the applicant stated please share with your family members, including, but not only, with the respondent.
21. Therefore, there were emails between Mr. Bayley and A in early and mid-January 2017, about the potential appeal of the family case. There is insufficient evidence the respondent provided instructions to the applicant to do this work, given most of the communications were only with A and because the applicant’s file notes do not support a conclusion the respondent retained the applicant on this matter.
22. The applicant sent an email to A on January 19, 2017 and said that he had not heard back from the respondent and that it was assuming that another lawyer had been hired to handle the family case. It said that it would be sending out a small

invoice for the review of the case and summary advice. It told A to let it know if the respondent was still interested in having it deal with the construction dispute

23. The respondent then did follow-up and the applicant performed legal services about the construction dispute, which I will discuss below. When the applicant sent the respondent the January 31, 2019 invoice it included the costs of the advice about the family case. It said in the email attaching the invoice that it applied a discount on the fees because the family member did not end up retaining it on appeal.
24. A provided a letter in this dispute and said that when he ran into the associate of the applicant he told him that he might want to retain him for his family member, but he says ultimately the applicant was not retained for the case.
25. Based on all the evidence, I find that the applicant has not proved on a balance of probabilities that the respondent retained it for the purpose of providing legal advice on the family member's appeal case. Although it is shown that the respondent was present when the family case was discussed, the email from A suggests that the respondent came along because he had another case he wanted to talk about. All other communications about the family case were between A and the applicant, which supports A's claim that it was he who was considering retaining the applicant and not the respondent.
26. The applicant states that A's suggestion that it was him who was going to retain him is absurd as it would have to be A's family member who retained him to run the appeal. The same logic would apply to the respondent's retainer of the applicant. The applicant argues the respondent retained him to do preliminary research and provide an opinion. I find that A is the one who discussed hiring the applicant and it is irrelevant if A did not know he could not retain the applicant to perform the entire appeal.
27. The applicant provided its legal opinion to A and invited him to share it with his family members. The applicant says it did this because it did not have the respondent's email address. I note that it did not say this in the email or indicate in

any way the research was done on behalf of the respondent. In fact, the email says that A should share the information with his family members, and not just specifically the respondent, which I believe he would have done if it was the respondent who retained him. I find that the applicant was doing research that A had asked him to carry out and not the respondent. Therefore, the respondent is not responsible for the portion of the invoice that deals with the respondent's family member's appeal case.

28. I dismiss the applicant's claim for payment of the invoice which deals with the family case. Based on the invoice and the analysis set out below, I calculate the portion of the invoice dealing with the family case to be \$1,732.50. The applicant discounted this amount by \$1,105.00. Therefore, I find the applicant is not entitled to the \$627.50 charged for the family case.

The Construction File

29. The respondent submits that he never signed an agreement for legal services and did not provide a retainer. Therefore, he argues he is not responsible for paying the invoice, including the legal services performed for the construction file.
30. I note that although having a signed agreement and a retainer is the best practice, not having this does not mean that the respondent did not hire the applicant to provide legal services.
31. The respondent says he agreed to sign the contract, but it was subject to him sending written confirmation that the applicant was hired with a payment to retain him in the form of a cheque to the applicant's trust account. He says he never sent the cheque and did not inform the applicant that he wanted it to represent him. The respondent did not provide evidence of this.
32. As noted above, the respondent attended the January 5, 2017 meeting and discussed the construction case. As of January 19, 2017, the applicant expressed in the email that it was unsure whether the respondent was going to have it "handle

the construction case.” The respondent then called the applicant and set up a meeting for January 26, 2017.

33. The applicant’s invoice indicates that he performed title searches and personal property registry searches regarding the construction dispute on January 25, 2017. The respondent then met the applicant on January 26, 2017. The notes from that day deal with the facts of the construction dispute.
34. On January 27, 2017, the applicant drafted a letter to the party involved in the construction dispute with the respondent. At the beginning of the letter the applicant identifies itself as counsel for the respondent. The applicant sent a copy of the letter to the respondent and on January 28, 2017 the respondent approved the letter. He told the applicant to courier it to the other party and to send him a copy. The respondent also asked the applicant to send along a copy of his invoice.
35. The respondent and A said that the applicant told them he was providing his legal services for free but did not provide any evidence of this. The applicant told A that he would be sending an invoice and A did not respond by indicating that he did not think they were going to be billed. Additionally, the respondent specifically requested an invoice. I find on a balance of probabilities that the respondent did not reasonably believe the applicant’s legal services were going to be free.
36. Therefore, I find that the respondent hired the applicant and he is responsible for paying for the legal services for the construction file. The applicant says he discussed its hourly rate with the respondent at their first meeting.
37. The respondent argues that the amount charged is too high. Because I have found that the respondent is not responsible for the family case costs, I am only considering the amount charged for the construction file. The applicant notes that the respondent should have been charged for services after February 2017, but he was not. I accept this point, but it does not affect my calculation of which portion of the January 2017 invoice the respondent must pay.

38. The applicant provided a discount on the invoice but because the evidence established this was for the family case, I find the discount does not apply to the costs of the construction file which are \$935.00. A portion of the January 5, 2017 meeting also dealt with the construction file. It is unclear how long this meeting was because the invoice lumps the time and cost in with reviewing the reasons for judgement on the family case. 1.90 hours are billed. Because part of the 1.90 hours were for the reviewing of the judgement that has nothing to do with the construction case, I find it reasonable, given the notes from the meeting, that half an hour (or .50) would have been devoted to the construction file. The invoice indicates that the applicant was billing \$275.00 an hour so this adds \$137.50 to the cost of the legal services for the construction file for a total of \$1,072.50.
39. While this is not a review of the applicant's bill under the *Legal Profession Act* (LPA), I have considered the factors set out in section 71(4) of the LPA in determining whether the charges were reasonable. Based on the work done and proved in the evidence, including drafting the demand letter, I find that applicant's charges were reasonable.
40. In summary, the applicant has proved that it was hired to provide legal services on the construction file and the cost of those legal services amount to \$1,072.50. The applicant's invoice states that the interest on overdue accounts is calculated at a rate of 12% after 30 days of the statement date which would be March 2, 2017. The respondent did not dispute the invoice when he received it and did not pay it in time. Therefore, I find that the applicant is entitled to interest calculated at 12% from March 2, 2017 until the date of this Order.
41. 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. As the applicant was partially successful I find that it is entitled to reimbursement of \$125.00 that it paid in tribunal fees.

ORDERS

42. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$1,505.32, broken down as follows:
- a. \$1,072.50 for legal services involving the construction file,
 - b. \$307.82 in contractual pre-judgement interest, and
 - c. \$125.00 as reimbursement for tribunal fees.
43. The applicant is also entitled to post-judgement interest under the *Court Order Interest Act*. The applicant's claim about legal services for the family case is dismissed.
44. 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.
45. 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 passes. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia

Kathleen Mell, Tribunal Member