



Civil Resolution Tribunal

Date Issued: August 19, 2019

File: SC-2019-001754

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cowan v. Dela Rosa*, 2019 BCCRT 986

BETWEEN:

RON COWAN

APPLICANT

AND:

IMELDA DELA ROSA

RESPONDENT

AND:

RON COWAN

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about legal services provided by the applicant (and respondent by counterclaim), Ron Cowan, who is not a lawyer. Mr. Cowan says he is a retired business consultant and was hired by the respondent (and applicant by counterclaim), Imelda Dela Rosa, to “advocate for her” in her court proceeding. Mr. Cowan claims \$1,600, which he says Ms. Dela Rosa has failed to pay as agreed. He also seeks an order that Ms. Dela Rosa stop making defamatory comments about him.
2. Ms. Dela Rosa counterclaims for an order that Mr. Cowan end his dispute and “stop bothering” her. She seeks an unspecified amount for her time spent on the dispute and “any medical conditions” she “will have concerning this dispute”.
3. The parties are 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* (CRTA). 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. 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.

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 do one or more of the following where permitted under section 118 of the CRTA: 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.
8. The tribunal has no jurisdiction over defamation, as stated in section 119 of the CRTA. I refuse to resolve Mr. Cowan's claim related to alleged defamation, about which I make no findings.

ISSUES

9. The issues in this dispute are to what extent, if any:
 - a. Ms. Dela Rosa owes Mr. Cowan \$1,600 for legal services, and
 - b. Ms. Dela Rosa is entitled to orders related to her time spent on this dispute.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on each party to prove their claims on a balance of probabilities. Mr. Cowan must prove his claims, and Ms. Dela Rosa must prove her counterclaim. Although I have reviewed all of the parties' evidence and submissions, I have only referenced what I find necessary to give context to my decision.

Mr. Cowan's claim for \$1,600 for legal services

11. Mr. Cowan describes himself as a retired business consultant. The parties agree that he never told Ms. Dela Rosa he was a lawyer. It is also undisputed that Mr.

Cowan charged Ms. Dela Rosa for his services, which is evident from his \$1,600 claim. He says this represents 40 hours of work, which he says she must pay for.

12. As discussed below, I find Mr. Cowan improperly charged Ms. Dela Rosa for legal services, as he was not authorized to do so under the *Legal Profession Act* (LPA). As such, I find Mr. Cowan cannot recover any monies allegedly owing under the illegal contract. On that basis, I dismiss Mr. Cowan's \$1,600 claim, and I do not need to address whether under the parties' agreement Ms. Dela Rosa might otherwise owe any money. My reasons follow.
13. As set out in the Dispute Notice issued for his claim, Mr. Cowan described the relevant and undisputed background as follows. In September 2018, Ms. Dela Rosa sought his services as a retired business consultant to "advocate for her" in relation to her acquiring a portion of a family member's business, under the *Family Law Act*. Mr. Cowan acknowledged Ms. Dela Rosa paid him \$200 to "evaluate her situation" and a further \$500 to "complete a 2nd Affidavit and a Notification of Application which was filed on [date in October 2018] and to appear in court with her on [date in November 2018] which I did".
14. Section 1(1) of the LPA defines the "practice of law" as including: drawing, revising or settling a document for use in a proceeding and giving legal advice. Based on Mr. Cowan's own description of his 'services', I find they fall within the definition of the 'practice of law'. Section 15 of the LPA says that no person, other than a practicing lawyer, can engage in the practice of law, except for a variety of circumstances that do not apply here. As noted, Mr. Cowan admits he is not a lawyer.
15. Having concluded Mr. Cowan violated the LPA, the question then is whether the parties' agreement is enforceable.
16. I sought the parties' submissions about the application of the LPA and the enforceability of the parties' agreement. Both parties reiterated and expanded on their earlier description of the facts about how they came to their arrangement, which I find is not relevant to the LPA issue. Mr. Cowan emphasized he never

represented himself as a lawyer to Ms. Dela Rosa or to the court, which I accept. I do not have a court transcript before me, but even if the judge did not object to Mr. Cowan's assistance that is not determinative of whether I ought to enforce the illegal agreement.

17. In his submissions in response to the LPA issue, Mr. Cowan also denied that he practiced law by drawing, revising, or settling a document for use in a proceeding. He also denied giving Ms. Dela Rosa legal advice. I reject this submission, as it is wholly inconsistent with Mr. Cowan's admission that for a fee he drafted at least 2 affidavits and a "Notice of Application" for Ms. Dela Rosa, which again I find falls within the definition of 'practice of law'. I find Mr. Cowan also gave Ms. Dela Rosa legal advice about how to best advance her position in her court proceeding.
18. That an illegal contract is not enforceable is what is known in law as "*ex turpi causa non oritur actio*". In plain language, this means no court or tribunal should enforce an illegal contract, where the person asking for the contract's enforcement is implicated in its illegality (see *Top Line Industries Ltd. V. International Paper Industries Ltd.*, 2000 BCCA 23, *Cement LaFarge v. B.C. Lightweight Aggregate*, [1983] 1 S.C.R. 452). That is exactly the situation here: Mr. Cowan is looking to enforce the contract whose subject matter is his providing unauthorized legal services.
19. I considered the decision in *Lotusland Estates Ltd. v. Ali*, 2002 BCSC 131, which discusses factors to consider when deciding whether to enforce an illegal contract, including the purpose of the statute in question, here the LPA. The LPA exists to regulate the legal profession in BC, primarily to protect the public. I find the unauthorized practice of law is significant and warrants voiding the parties' agreement. While the LPA does not specifically state that a contract for unauthorized legal services is void, I find that must be the effect, at least in the circumstances before me in this dispute. It is not a question of a legal contract and that Mr. Cowan simply sought to fulfill it in an illegal way. Rather, I find the parties' agreement was inherently illegal, because it was for Mr. Cowan to provide

unauthorized legal services. My conclusion that I will not enforce this contract in this dispute is consistent with the similar facts and conclusion in the BC Provincial Court's decision in *Constantini Ent. Ltd. v. Newway Forming Ltd.*, 1991 BCPC 1.

20. The later decision in *Bagry v. Vaishnav*, 2016 BCSC 1172 sets out 3 exceptions to the above "*ex turpi*" maxim. The first is where the parties are not on even footing. Based on the evidence before me, if anything Ms. Dela Rosa was the more vulnerable party, which supports a conclusion that the contract should not be enforced against her. The second exception is where the applicant (here, Mr. Cowan) repents before the contract has been performed, which is not the case here. The third is where the applicant has an independent right to recovery, which is also not the case here.
21. In summary, I dismiss Mr. Cowan's \$1,600 claim on the basis that it is an illegal contract under the LPA, and unenforceable against Ms. Dela Rosa.

Ms. Dela Rosa's claims for time spent on this dispute

22. Ms. Dela Rosa claims no specific monetary award in her counterclaim. Instead, she asks for an order that Mr. Cowan end the dispute and "stop bothering me". As for the "stop bothering me", I do not have jurisdiction to order injunctive relief as sought by Ms. Dela Rosa. That said, as discussed above I have dismissed Mr. Cowan's claims.
23. While Ms. Dela Rosa also argues that "he will pay all my expenses concerning this dispute, any medical conditions I will have". I find this is vague, and there is no evidence in support. I dismiss this claim. I note there is no claim for any refund of money already paid to Mr. Cowan. I find Ms. Dela Rosa's counterclaim is essentially a repeat of her defence to Mr. Cowan's claim, which again I have addressed above.
24. Ms. Dela Rosa also claims she wants Mr. Cowan to pay her all the hours and days she spent on this dispute, but did not provide any supporting documentation related to lost wages such as timesheets for hours missed or proof of lost earnings. It is not

entirely clear if Ms. Dela Rosa's claim relates to time she spent with Mr. Cowan during her court proceeding, or whether it relates to her time spent in responding to this dispute. It appears to be a blend of both. Either way, Ms. Dela Rosa has not proved she is entitled to compensation for her time spent. Without addressing whether Ms. Dela Rosa is entitled to lost wages for her time spent meeting with Mr. Cowan for her court proceeding, there is simply insufficient evidence to support any such claim, such as time records and proof wages were lost. I dismiss that claim.

25. Further, as for this tribunal proceeding, the tribunal generally does not award a party for "time spent" on a dispute, which is consistent with its rules in not awarding reimbursement of legal fees except in extraordinary cases. This is not an extraordinary case. I dismiss Ms. Dela Rosa's unquantified claim related to "time spent" on this dispute.

26. Ms. Dela Rosa did provide various receipts dated in late April and May 2019, a month or two after Mr. Cowan filed his claim on March 1, 2019: a \$13.81 receipt for Canada Post, \$40 for "Wide Angle Software", and \$70.55 from Best Buy for printer toner. However, Ms. Dela Rosa did not provide any explanation of why these expenses were necessary for this dispute. On balance, I exercise my discretion and decline to order reimbursement for any of these expenses.

Tribunal fees

27. In accordance with the CRTA and the tribunal's rules, the successful party is generally entitled to reimbursement of tribunal fees and reasonable dispute-related expenses. Both parties were unsuccessful and so I dismiss their respective claims for reimbursement of tribunal fees. I have addressed Ms. Dela Rosa's expenses claim above, which is dismissed.

ORDERS

28. I refuse to resolve Mr. Cowan's claims related to defamation, as those are outside the tribunal's jurisdiction. I refuse to resolve Ms. Dela Rosa's request for an order

that Mr. Cowan “stop bothering” her, as that is an order for injunctive relief outside the tribunal’s jurisdiction.

29. Otherwise, I dismiss Mr. Cowan’s claims, Ms. Dela Rosa’s counterclaims, and this dispute.

Shelley Lopez, Vice Chair