



Civil Resolution Tribunal

Date Issued: September 9, 2019

File: SC-2019-000246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Lorne N. MacLean Law Corporation v. Kapoor*, 2019 BCCRT 1063

BETWEEN:

LORNE N. MACLEAN LAW CORPORATION

APPLICANT

AND:

SAPNA KAPOOR

RESPONDENT

AND:

LORNE N. MACLEAN LAW CORPORATION

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about legal services provided in early 2018 for a litigation matter.
2. The applicant law firm and respondent by counterclaim, Lorne N. MacLean Law Corporation (MacLean), says its client, the respondent and applicant by counterclaim, Sapna Kapoor, has failed to pay for its legal services. MacLean claims \$2,933.71 plus contractual interest at 18% per year.
3. Ms. Kapoor says her lawyer Hannah DeJong, who MacLean employed, was incompetent and caused her to lose a job because of a retained passport. Ms. Kapoor claims \$5,000 in damages. Ms. DeJong is not a party to this dispute, although she did provide a statement.
4. MacLean is represented by an employee, who appears to be a non-lawyer. Ms. Kapoor represents herself.

JURISDICTION AND PROCEDURE

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and written submissions provided.
7. 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.

8. 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.

ISSUES

9. The issues in this dispute are: a) whether Ms. Kapoor must pay MacLean's outstanding \$2,933.71 account for legal fees, and b) whether MacLean must pay Ms. Kapoor \$5,000 in damages, for alleged incompetent legal services and a lost job due to a retained passport.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the burden of proof is on the applicant MacLean to prove its claims on a balance of probabilities. Ms. Kapoor bears this burden on 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.
11. On January 19, 2018, Ms. Kapoor hired MacLean in a family law matter and that day paid a \$5,000 retainer. Ms. DeJong was the appointed lawyer and as set out in the written retainer agreement the agreed billable rate was \$250 per hour. The agreement stated 18% annual interest applied to overdue accounts. It also set out the grounds for termination, such as failing to reasonably cooperate and failing to pay accounts within 30 days. This retainer was for an urgent matter, as there was a court hearing that same day.

12. On February 5, 2018, there was a second court appearance at a Judicial Case Conference (JCC), which led to a JCC order that I accept Ms. DeJong, as counsel of record, had to consider and approve.
13. On February 14, 2018, Ms. DeJong wrote Ms. Kapoor terminating the client relationship as of February 15, 2018. This followed a February 8, 2018 notice of intention to withdraw. In her letter, Ms. DeJong set out her reasons for withdrawing, including: refusing to accept advice, providing instructions to seek orders the court would not grant, failing to provide Ms. DeJong with requested documentation, and appearing in court without Ms. DeJong's knowledge.
14. In her February 14, 2018 letter, Ms. DeJong also set out certain outstanding matters: she would still need to approve the court's draft order made on January 19, 2018, approve the draft JCC order made February 5, 2018, and seek clarification on the January 19 order that required Ms. DeJong to hold Ms. Kapoor's passport in her office. As for the passport issue, Ms. DeJong acknowledged Ms. Kapoor wanted the passport released, and Ms. DeJong explained she felt the order was not clear about the conditions that would permit Ms. DeJong to release it. Contrary to Ms. Kapoor's assertion I find Ms. DeJong reasonably sought clarification of what "appropriate care" meant in the passport order. I find it unnecessary to repeat the details of the order here, and I am satisfied that Ms. DeJong was being appropriately mindful of her professional obligation to the court to follow its order. I find all of Ms. DeJong's time related to that clarification was reasonably charged to Ms. Kapoor. There is no evidence that Ms. DeJong was at fault for any ambiguity in the order.

MacLean's claim for legal fees

15. MacLean claims a total of \$2,933.71 for its legal services in Ms. Kapoor's litigation matter, plus contractual interest at 18% per year. The bulk of the substantive work was done in January and early February 2018. As set out below, MacLean's charges after its February 14, 2018 withdrawal as counsel relate to Ms. DeJong's review of court orders and correspondence with opposing counsel. MacLean noted

its time responding to its then former client Ms. Kapoor, but expressly did not charge for it.

16. MacLean's invoices are summarized as follows, without reference to prior balances or contractual interest that I will address further below:

- a. *February 1, 2018 invoice 13925, \$1,674.28*, which MacLean paid from the \$5,000 retainer, leaving a \$3,325.72 retainer balance in trust. This invoice covered work done between January 19 and 30, 2018. Unlike later invoices there was no time breakdown per item, but the invoice reflects about 5.5 hours of work. The work included drafting letters and emails to opposing counsel and Ms. Kapoor, attending in court on January 19, 2018, and meeting with Ms. Kapoor.
- b. *March 1, 2018 invoice 14563, \$4,582.79*, for work done between February 1 and 22, 2018. The work included drafting letters, emails to and from Ms. Kapoor and staff, reviewing affidavits and court documents, drafting a JCC brief, and attending the JCC. After Ms. DeJong withdrew on February 14, about \$350 of the \$4,582.79 was billed for reviewing the court's order and communicating with the opposing party, the court, and Ms. Kapoor about it. There was a \$3,325.72 retainer balance left in trust, which Ms. DeJong applied to the invoice, leaving a \$1,257.07 balance owing.
- c. *June 1, 2018 invoice 16027, \$560*, for work on May 15 and 16, 2018 for review of the court's draft order, an email about changes to it, and drafting a letter to new counsel SB (2 hours).
- d. *August 9, 2018 invoice 17200, for \$24.64*, for the January 18, 2018 chambers transcript disbursement. I infer this disbursement was necessary for Ms. DeJong's review of the order dealing with the passport release.

17. Based on the invoices summarized above, I find the outstanding invoices total \$1,841.71, exclusive of the 18% annual interest applicable on overdue accounts. The invoices were payable on receipt.

18. MacLean and Ms. DeJong say that Ms. Kapoor provided contradictory instructions or no instructions at all, and that she wanted steps taken that were impossible due to court orders or were professionally unethical. MacLean says Ms. DeJong worked hard for Ms. Kapoor and MacLean is entitled to payment for its work.
19. Ms. Kapoor does not specifically address MacLean's submissions about her inappropriate and inconsistent instructions. On balance, I accept MacLean's position, which I find reasonably addresses Ms. Kapoor's complaint that her litigation did not adequately progress.
20. Ms. Kapoor submits that MacLean provided no services after February 8, 2018, when Ms. DeJong filed her notice of intention to withdraw. However, Ms. Kapoor does not expressly deny the billed time was spent. Rather, Ms. Kapoor says that all of MacLean's charges for its email and telephone calls related to Ms. Kapoor's effort to obtain a refund of her retainer balance and to have her passport released to her new lawyer. The inference is that Ms. DeJong should have not billed anything for that time. Ms. Kapoor says that the only services were those provided on January 19, 2018 (a 60 minute hearing to obtain Reasons for Judgment in court) and on February 4, 2018 (for a Judicial Case Conference or JCC hearing, also 60 minutes).
21. I disagree with Ms. Kapoor. Most of the time, Ms. DeJong expressly charged Ms. Kapoor \$0.00 for her time communicating with Ms. Kapoor after February 8, 2018. I find the invoice descriptions show Ms. DeJong did legal work, which contrary to Ms. Kapoor's assertion necessarily goes beyond the time spent attending in court. Apart from her submission, Ms. Kapoor has not provided any evidence to show the time charged was unreasonably spent. In concluding MacLean's charges are reasonable, I acknowledge the urgent nature of the retainer on January 19 and time required to prepare for 2 court appearances in this family law matter. I am also mindful of Ms. DeJong's reasonable time spent clarifying the order dealing with the passport's release to Ms. Kapoor, which I have addressed above.
22. Contrary to Ms. Kapoor's submission, the parties' retainer agreement did not require MacLean or Ms. DeJong to obtain Ms. Kapoor's permission before taking each step.

That would be impractical and I find the retainer agreement was broad enough to give the law firm authority to take reasonable steps on Ms. Kapoor's behalf, in accordance with her general instructions. Ms. Kapoor has not provided any evidence that she gave MacLean or Ms. DeJong instructions that they could have followed but did not.

23. Further, Ms. DeJong has a professional obligation and duty to the court to ensure the order drafted reasonably reflects the court's reasons. Contrary to Ms. Kapoor's submission, it would not be appropriate for Ms. DeJong to have taken Ms. Kapoor's instructions as to how to draft the order.
24. Next, while Ms. Kapoor alleges that Ms. DeJong was negligent in signing the JCC order and that she had to spend another \$3,500 to have it clarified, Ms. Kapoor provided no supporting evidence. Ms. DeJong says she signed the order because it matched the clerk's notes and the transcript. In the circumstances, I find this was reasonable.
25. Neither party provided me with the entire client file, and so I did not review every letter and email nor did I look at the court documents. Bearing in mind the tribunal's mandate that includes proportionality I find this was unnecessary in this case. I say this given the invoices' description of the time spent, the nature of the legal work and the court appearances, and the fact that there is no evidence that the work was unreasonably or incompetently done.
26. With one exception, I find MacLean's invoices summarized above were reasonable, based on the nature of the family law file and the time that was spent. The exception is a February 10, 2018 entry for .70 hours at \$575 per hour, noted as "on weekend". There is nothing in the parties' retainer agreement or in the other evidence before me that shows the parties agreed to anything other than \$250 per hour, with 30 days' notice of increases. So, I reduce the \$402.50 charge (\$450.80 with tax) to \$175 (\$196 with tax), and this results in a net deduction of \$254.80.

27. It is not clear how MacLean arrived at its claim of \$2,933.71 plus interest. Based on the invoices in evidence that I have summarized above, I find Ms. Kapoor must pay MacLean a total of \$1,586.91 (\$1,841.71 - \$254.80), plus 18% annual contractual interest on overdue accounts. To the date of the January 9, 2019 Dispute Notice, this contractual interest equals \$218.37, plus \$190.17 to the date of this decision, for a total of \$408.54.

Ms. Kapoor's counterclaim

28. I have largely addressed Ms. Kapoor's counterclaim in my conclusions above on MacLean's claim.

29. Ms. Kapoor also complains that because Ms. DeJong refused to allow Ms. Kapoor's new lawyer to hold her passport, Ms. Kapoor lost a job in another province. She provided no evidence to support this assertion, and no explanation of how the job would have been saved if another lawyer held the passport. In any event, I have addressed the passport issue in my analysis above. Further, Ms. Kapoor's claim for \$5,000 is expressed as a refund of a \$4,500 "retainer balance" or "alternatively a fine of \$5,000 for all the increased cost to me". I dismiss the counterclaim, as I have found MacLean's charges were reasonable.

30. Under the CRTA and the tribunal's rules, the successful applicant is generally entitled to reimbursement of their tribunal fees and reasonable dispute-related expenses. MacLean was substantially successful. I find Ms. Kapoor must reimburse MacLean's \$125 in tribunal fees. I dismiss Ms. Kapoor's claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

31. Within 14 days of this decision, I order Ms. Kapoor to pay MacLean a total of \$2,120.45, broken down as follows:

- a. \$1,586.91 in debt,

- b. \$408.54 in pre-judgment interest at 18% annually, and
- c. \$125 in tribunal fees.

32. MacLean is entitled to post-judgment interest, as applicable. Ms. Kapoor's counterclaim is dismissed.
33. Under section 48 of the CRTA, 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.
34. Under section 58.1 of the CRTA, 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.

Shelley Lopez, Vice Chair