Civil Resolution Tribunal

Date Issued: September 18, 2019

File: SC-2019-000665

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Huang dba D.D. Huang & Associates v. D&S Maple Ridge Enterprises Ltd.*, 2019 BCCRT 1102

B E T W E E N :

DONGDONG HUANG, Doing Business As D.D. HUANG & ASSOCIATES

APPLICANT

A N D :

D&S MAPLE RIDGE ENTERPRISES LTD.

RESPONDENT

A N D :

DONGDONG HUANG, Doing Business As D.D. HUANG & ASSOCIATES

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Julie K. Gibson

INTRODUCTION

1. This dispute is about legal services provided in early 2017 for a litigation matter.

2. The applicant lawyer Dongdong Huang, doing business as D.D. Huang & Associates (Dr. Huang), says he provided legal services to the respondent D&S Maple Ridge Enterprises Ltd. (D & S) but was not paid. Dr. Huang claims $3,585.31 that he says D & S owes, plus contractual interest at 24% per year. Dr. Huang has abandoned the portion of his contractual interest claim that puts the total over the $5,000 monetary jurisdiction limit of the Civil Resolution Tribunal (tribunal).

3. D & S says it should not have to pay the $3,585.31. D & S says that Dr. Huang was negligent in providing the legal services and that the fees charged were "unconscionable". D & S says that Dr. Huang charged $8,535.31, of which D & S paid $5,000. In its counterclaim, D & S asks that the legal services account be "settled" without it paying anything more to Dr. Huang.

4. Dr. Huang represents himself. D & S is represented by articled student Dana Cross.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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 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.

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 make one or more of the following orders, where permitted under section 118 of the CRTA:

    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.

9. Under section 11 of the CRTA, the tribunal may refuse to resolve a dispute where it would be more appropriate for another legally binding process or dispute resolution process.

10. D & S submits that the tribunal does not have jurisdiction over Dr. Huang's claim to be paid for legal services. D & S asks that I refuse to resolve the dispute because it could be reviewed before a Registrar, under the *Legal Professions Act* (LPA). D & S says that Dr. Huang did not respond "to dates to set a hearing before the Registrar" for a review of the legal bill. However, D & S did not provide evidence that it took steps to have this bill reviewed before the Registrar. I find that the tribunal has jurisdiction over this debt claim and that a registrar's review is not a more appropriate legally binding process for resolving this dispute.

11. While the LPA provides a means for a client to review a lawyer's bill, the process is not mandatory. I find that the LPA does not restrict a lawyer or law firm's ability to bring a claim in debt for legal fees. It also does not restrict a client from claiming negligence or breach of contract in the provision of legal services. D & S frames its counterclaim in negligence. I therefore find that the tribunal has jurisdiction to hear Dr. Huang's debt dispute, and D & S's counterclaim (see also *Airborne Assets Inc.*

v*. MANI SANDHU & ASSOCIATES LAW COPORATION et al*, 2019 BCCRT 764 at paragraph 18which is non-binding but persuasive).

ISSUE

12. The issue in this dispute is to what extent D & S must pay Dr. Huang the claimed $3,585.31 for legal services provided.

EVIDENCE AND ANALYSIS

13. In this civil claim, Dr. Huang bears the burden of proof on a balance of probabilities. D & S bears that same burden in its counterclaim. I only refer to the evidence and submissions as I find necessary to provide context for my decision.

14. On January 10, 2017, D & S hired Dr. Huang in a real estate litigation matter.

15. The retainer agreement said that while Dr. Huang's billable hourly rate is $750, the parties agreed that the "total fees" to start the Notice of Civil Claim (NOCC) and file the Certificate of Pending Litigation (CPL), would be $7,000 plus taxes and disbursements. While the retainer agreement referred to CPL singular, I find that both parties understood that Dr. Huang was instructed to file CPLs on multiple properties.

16. The retainer agreement stated 24% annual interest applied to overdue accounts. It also set out grounds for termination such as failing to reasonably cooperate and failing to pay accounts within 30 days. D & S' president, TG, signed the retainer agreement and paid a $5,000 retainer.

17. On January 16, 2017, Dr. Huang filed the NOCC and submitted 4 CPLs to the Land Title Office (LTO) for registration.

18. On January 23, 2017, Huang issued an invoice to D & S describing meeting with D & S representatives, drafting and filing the NOCC and filing 4 CPLs with the court and the LTO. The invoice also refers to communications with D & S by email, phone

and text. These services are charged at $7,000, the agreed flat rate in the retainer agreement. Disbursements and tax are added, to give a total of $8,585.31. After deducting the $5,000 retainer, Dr. Huang requested payment of $3,585.31. The invoice requested payment within 5 days and notes that 24% annual interest will be charged on overdue accounts.

19. The parties agree that D & S has not paid Dr. Huang the outstanding $3,585.31.

20. TG says Dr. Huang did not advise her to, nor did she take, independent legal advice about the retainer agreement. However, TG did not contest, and I accept, that she is the president of an experienced residential developer. I find D & S is a sophisticated party that knew that it could obtain independent legal advice.

21. D & S referred to the decision in *Huang* v*. Ross Chocolates Ltd.,* 2010 BCSC 1005 at paragraph 90 for the proposition that Dr. Huang's hourly rate in this dispute was unacceptably high, even given Dr. Huang's dual qualifications.

22. I disagree with that interpretation of *Ross Chocolates*. The situation there was quite different and involved a dispute about a $100,000 bill charged in 2006. In that case, Dr. Huang charged an agreed hourly rate of $500, which the Registrar found to be "reasonable in the circumstances".

23. Given that the parties here agreed on a flat rate, I also find that the argument about Dr. Huang's hourly rate is not determinative.

24. I find that TG signed the retainer agreement, understanding that a flat rate of $7,000 would be charged, plus disbursements and taxes, for the work described. There is no claim that there was fraud, duress, mistake or illegality involved in TG's decision to sign the retainer agreement. The agreement is also not unjust in such a way that I would find it unconscionable. So, I find that it is binding on both parties.

25. The question then becomes whether Dr. Huang completed the tasks outlined in the retainer agreement to a satisfactory standard. For the reasons given below, I find that he did.

26. D & S argued that Dr. Huang was instructed to file CPLs on 5 properties but filed them on only 4.

27. The underlying legal work involved advising D & S on a situation where it had purchased 5 properties for $6.4 million and entered a subsequent contract to sell them for $11 million. A problem arose when the purchase of 1 of the 5 properties (property 1) did not complete. D & S started a legal action against the owner of property 1. That action was eventually resolved.

28. In the fall of 2016, D & S discovered that the 5 properties may not be approved to develop 19 residential units as it originally understood. Rather, the properties could only be developed for 17 residential units.

29. When D & S retained Dr. Huang, it was to file a lawsuit against the owner of the properties, except property 1. Dr. Huang was to place a CPL on the remaining 4 properties in respect of that lawsuit. One goal of the lawsuit was to achieve completion of the purchase of the 5 properties by D & S.

30. Dr. Huang says that D & S instructed him not to place a CPL on property 1 because there had been a CPL filed on it earlier. The hearing for cancellation of that CPL was adjourned to February 2017 while the new lawsuit was prepared. The emails filed in evidence are consistent with this account and I find that D & S instructed Dr. Huang as he describes.

31. I find that Dr. Huang completed the work as instructed by D & S. I turn to the counterclaim, to address the question of whether Dr. Huang was negligent in the provision of the legal services. To succeed in a claim in negligence, D & S must prove that Dr. Huang fell below the standard of care for a reasonable lawyer in the circumstances, and that the failure caused its loss.

32. The only evidence about the quality of Dr. Huang's work came from MG, new counsel for D & S in the underlying matter.

33. On January 23, 2019, MG wrote to Dr. Huang saying the account for legal services was excessive particularly "…in consideration of the amount of work that was done and the quality of the work completed." MG goes on to write that "Immediately after receiving the file I had to take steps to file amendments to the Notices of Civil Claim and expend significant resources defending the CPL's." (quote reproduced as written)

34. I find that D & S has not proven Dr. Huang was negligent. First, there is no expert opinion from an independent lawyer explaining that Dr. Huang's work was of an unreasonable quality, with specific reference to how it failed to meet this standard. Instead, there are some general remarks from MG, in an informal email where she was attempting to negotiate a lower payment for the bill on behalf of D & S, saying that she had to amend the NOCC.

35. While I acknowledge that MG amended the NOCC, amendments in themselves do not prove that legal work was below a reasonable standard. A client may approve a form of NOCC, and later request amendments by giving new information to legal counsel. Making such amendments does not in itself constitute negligence.

36. I have reviewed the original NOCC and the amended NOCC. No substantive amendments were made to the Statement of Facts portion of the NOCC. The amendments appear to be made chiefly to flesh out the Legal Basis section, by providing case law about negligent misrepresentation, damages for return of deposit, specific performance and other damages. The amendments also include adding return of the deposit as alternative relief and specifics about abatement of the purchase price to reflect the 17 residential lot value of the properties. The original NOCC contained the allegations of negligent misrepresentation, specific performance, and factual details of the deposit paid, and sought damages, among other forms of relief.

37. D & S also argued that the NOCC was deficient because it was missing "arguments". The NOCC is a pleading. Pleadings should outline material facts and conclusions of law but need not be exhaustive record of the arguments to be made in litigation.

38. I was not provided with evidence sufficient to find how and why D & S instructed MG to amend the NOCC. Without that evidence or an expert opinion, I cannot find the original NOCC to have fallen below a reasonable standard.

39. D & S also argued that the legal bill was "unconscionable" or otherwise unreasonable. While this is not an LPA review of a lawyer's bill, I have considered the factors laid out in section 71(4) of the LPA. I find that the matter was of importance to D & S and involved a significant monetary amount, in terms of the properties being purchased.

40. D & S also argued it incurred significant legal costs to revise mistakes made by Dr. Huang. However, it did not prove specifics of any mistakes, nor the legal costs it incurred later.

41. Though not binding on me, I find the Vice Chair's analysis about assessing legal services accounts, in *Lorne N. MacLean Law Corporation* v*. Kapoor*, 2019 BCCRT 1063 at paragraph 25, helpful. While neither party provided me with the entire client file, bearing in mind that the tribunal's mandate includes proportionality, I find this was unnecessary in this case. I reviewed the CPLs and some communication between Dr. Huang and D & S. As well, the retainer agreement was in writing and contained clear agreement to the flat rate.

42. Given the retainer agreement, the invoice's description of the nature of the legal work, and my finding that D & S did not prove the work was unreasonably or incompetently done, I find that D & S owes Dr. Huang the $3,585.31. This amount reflects legal fees, disbursements and taxes, as laid out in Dr. Huang's invoice.

43. I dismiss D & S's counterclaim that the fees were "unconscionable and negligent."

44. Dr. Huang claims 24% annual interest, calculated from January 23, 2017 to January 22, 2019 when the Dispute Notice issued. I calculate this to be $1,718.59. Because this would bring the total substantive award to over $5,000, I order that D & S pay Dr. Huang $1,414.69 in interest.

45. Under section 49 of the CRTA 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 see no reason in this case not to follow that general rule. I find Dr. Huang is entitled to reimbursement of $175 in tribunal fees and $27 in dispute-related expenses for photocopying and a corporate search, which I find to be reasonable.

ORDERS

46. Within 30 days of the date of this order, I order D & S to pay Dr. Huang a total of $5,202.00, broken down as follows:

    a. $3,585.31 as outstanding payment of the January 23, 2017 invoice,

    b. $1,414.69 in pre-judgment interest at the 24% annual contractual rate, and

    c. $202, for $175 in tribunal fees and $27 for dispute-related expenses.

47. 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.

48. 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.

Julie K. Gibson, Tribunal Member