



# Civil Resolution Tribunal

Date Issued: October 8, 2019

File: SC-2019-003449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cote & Evans Trial Lawyers v. Akuoc*, 2019 BCCRT 1174

B E T W E E N :

COTE & EVANS TRIAL LAWYERS

**APPLICANT**

A N D :

RING AJANG RING AKUOC

**RESPONDENT**

A N D :

COTE & EVANS TRIAL LAWYERS

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. The applicant, Cote & Evans Trial Lawyers, (the law firm) claims \$1,229.31 for unpaid legal services from the respondent, Ring Ajang Ring Akuoc. By counterclaim, Mr. Akuoc seeks \$3,770.00 in damages for alleged negligent representation.
2. The law firm is represented by its associate lawyer Shreya Bose. 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* (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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I decided I can fairly 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, 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.

## **ISSUES**

7. The issues in this dispute are:
  - a. To what extent if any, the law firm is entitled to payment of \$1,229.31 for legal services.
  - b. To what extent if any, Mr. Akuoc is entitled to \$3,700.00 in damages.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the law firm bears the burden of proving its claims on a balance of probabilities. On the counterclaim, Mr. Akuoc has the same burden of proof. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. There is no dispute that in 2016, Mr. Akuoc retained the law firm's lawyer Shabana Ali, he paid a retainer, and she represented him on a family law matter. This dispute is over payment for services and the quality of the services provided. Neither party provided a copy of their agreement.
10. Mr. Akuoc says he received notice of a Judicial Case Conference (JCC) when he was out of the country and told Ms. Ali he could not attend. Mr. Akuoc says Ms. Ali

assured him she would represent him at the JCC, which the law firm denies. Mr. Akuoc says that when he returned to Canada, he learned that an articulated student attended in Ms. Ali's place, the JCC Master fined him \$1,000 for non-attendance, and Ms. Ali had withdrawn as counsel.

11. As for the counterclaim, which I discuss first below, Mr. Akuoc argues that the articulated student failed to properly represent him at the JCC and failed to explain his absence. Mr. Akuoc says he is entitled to reimbursement of his \$2,500 retainer, the \$1,000 fine that he paid, and some unspecified fees.
12. The law firm's evidence shows that on January 4, 2017, it sent Mr. Akuoc a Notice of Intention to Withdraw as Lawyer under to Supreme Court Family Rule 21-4. It also notified Mr. Akuoc that the JCC was scheduled for January 11, 2017 and it was "imperative" that he attend. The letter says the law firm was unable to continue to represent Mr. Akuoc in the family law matter because it was unable to obtain his instructions despite its phone messages and emails on November 22, December 5 and 20, 2016.
13. The evidence shows that Ms. Ali was able to speak with Mr. Akuoc prior to the JCC and I infer she sought his instructions, though the specifics are not in evidence. The law firm sent an articulated student to the JCC because it says Ms. Ali was withdrawing as counsel and it wanted to ensure Mr. Akuoc had representation. Ms. Ali withdrew as Mr. Akuoc's legal counsel on January 29, 2017.
14. I find there is insufficient evidence to conclude Mr. Ali agreed to represent him at the JCC, which would be inconsistent with her intention to withdraw as counsel at the time. Based on the detailed billing notes, I find that the articulated student did inform the JCC Master of Mr. Akuoc's non-attendance. I find no evidence the articulated student failed to represent Mr. Akuoc's case at the JCC. I also find based on the billing notes and correspondence with opposing counsel, that Ms. Ali performed legal work on behalf of Mr. Akuoc that arose from the JCC.

15. Mr. Akuoc says he left Canada sometime in November 2016 and came back to Canada on February 8, 2017. There is evidence that in leaving Canada, Mr. Akuoc breached an earlier court order requiring him to deposit his passport at the court registry. There is no suggestion that he informed the law firm that he would be out of the country. I find the law firm did not schedule the JCC. The JCC was scheduled by someone else and the law firm was notified of the date. I find based on the law firm's contact attempts in November and December 2016, that Mr. Akuoc had notice of the JCC and it was his decision not to attend that caused his \$1,000 loss.
16. I find there is no evidence that the articulated student's or Ms. Ali's legal work was incompetently done. Overall, I find no evidence that the law firm, its articulated student, or Ms. Ali did anything wrong in its legal representation of Mr. Akuoc. Therefore, I find Mr. Akuoc has not established on a balance of probabilities that the law firm is responsible for his alleged loss and I dismiss his counterclaim.
17. As for the law firm's claim for payment, the law firm provided copies of all the invoices it sent to Mr. Akuoc. I find the invoices are well detailed. They describe the legal services by date, billing rate, hours billed and amount. They also explain the disbursements. Each invoice includes a full summary of Mr. Akuoc's payments and adjustments, and his trust ledger.
18. The law firm also provided its time logs that detail all the legal work done for Mr. Akuoc on the family law matter since 2016. The work included, communicating and seeking instructions, preparing and reviewing pleadings and applications, preparing financial disclosures, attending the JCC, and other legal work.
19. I have no copy of Mr. Akuoc's client file. Therefore, I did not review all the underlying work performed on the family law matter. In any event, Mr. Akuoc does not dispute any specific charges in the law firm's bills. I find the tribunal's mandate of proportionality does not require the underlying documents as evidence in this particular case (see *Lorne N. MacLean Law Corporation v. Kapoor*, 2019 BCCRT 1063, a non-binding decision which I find helpful). I find the law firm's charges for

legal work described in the invoices are well detailed, consistent with the nature of family law work and show reasonable time spend on that work.

20. When I compare the time logs and invoices, I find as of June 19, 2017 Mr. Akuoc's outstanding balance was \$1,229.31, (\$1,065.04 in legal services and \$164.27 in disbursements and taxes). I find the \$1,229.31 balance remains unpaid as claimed.
21. Although this is not a review of a lawyer's bill, I have concluded, on the same factors set out in section 71(4) of the *Legal Profession Act*, that the law firm's charges were reasonable in the circumstances. I find the disbursements for photocopies and postage were also reasonably incurred. Therefore, I find the law firm is entitled to payment of its outstanding charges for legal services, disbursements and taxes. I find Mr. Akuoc must pay the law firm \$1,229.31.
22. The law firm is entitled to pre-judgement interest under the *Court Order Interest Act* (COIA) on the \$1,229.31 in legal fees from the June 19, 2017 invoice date to the date of this decision. This equals \$39.38.
23. 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 the successful law firm is entitled to reimbursement of \$125 in tribunal fees. As the unsuccessful party on the counterclaim, I find Mr. Akuoc is not entitled to reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

24. Within 30 days of the date of this decision, I order Mr. Akuoc to pay the law firm a total of \$1,393.69, broken down as follows:
  - a. \$1,229.31 in legal fees,
  - b. \$39.38 in pre-judgment interest under the COIA, and
  - c. \$125.00 in tribunal fees.

25. The law firm is entitled to post-judgment interest, as applicable.
26. Mr. Akuoc's counterclaims are dismissed.
27. 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.
28. 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.

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Trisha Apland, Tribunal Member