



# Civil Resolution Tribunal

Date Issued: December 24, 2019

File: SC-2019-006104

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Fleming & Associates v. Boneham*, 2019 BCCRT 1436

**B E T W E E N :**

**FLEMING & ASSOCIATES**

**APPLICANT**

**A N D :**

**STEVEN BRENT BONEHAM and FRANCIS DUANE BONEHAM**

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This is a dispute over payment for legal fees.

2. The applicant law firm Fleming & Associates, says the respondents, Steven Brent Boneham ("SB"), and Francis Duane Boneham ("FB"), failed to pay their legal bill to register a lease in the Land Title Office (LTO). The law firm claims \$1,969.32 in unpaid legal fees and 24% annual interest.
3. The respondents deny the claim. SB says he already paid the applicant's bill in full and FB says he was not involved, apart from being on the property title.
4. The respondents are represented by SB and the law firm is represented by its associate, Brandon Henderson.

## **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 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.
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.

## **ISSUE**

9. The issue in this dispute is to what extent, if any, the respondents owe the law firm the claimed outstanding legal fees and interest.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant bears the burden of proving its claims on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. In 2017, SB hired the law firm to do a 99-year lease on a property registered in the names of both respondents. The evidence shows the law firm filed the lease in the LTO on April 23, 2018.
12. On April 25, 2018, the law firm provided the respondents with a copy its filed land title certificate and its April 23, 2018 statement of account for \$1,969.32, including taxes and disbursements. The law firm also included an itemized list of the work it did on the file. There is a note at the bottom of the statement that 24% per year will be charged on accounts more than 30 days overdue.
13. The parties had no written retainer agreement. SB said in the Dispute Response that LB quoted him less than \$800 to register the lease. The affidavit of the lawyer

who performed the work ("LB") says she provided the respondents with an estimate for the work, but it was not a fixed price. Since LB does not say the amount of her estimate, I accept the original estimate was around \$800. However, I find it was only an estimate and not the fixed price. I find it more likely than not that the parties entered into a contract to register the lease and had no agreement on the total cost for the work.

14. LB states that shortly after she began to work on the file, she realized the respondents had not given her all the facts and there was significantly more work involved. She says the full scope of the work included registering a subdivision plan, drafting and registering the lease, arranging the land surveyor to file the reference plan, and corresponding and receiving consent from charge holders, other lease holders, and their lawyers. LB and the law firm say the legal costs were also increased because the respondents were hard to contact, and the lawyers had to travel to meet the respondents to sign documents.
15. The respondents provided no response to LB's affidavit explaining the reasons or scope of the extra work, even though I find they had the opportunity. Therefore, I accept LB's undisputed evidence about the work scope increase.
16. It is undisputed that it was SB who engaged the law firm. I find he did so on behalf of himself and, his father, FB. Since they are both on title, I find both respondents received the benefit of the law firm's services in filing the lease and as such, both are responsible to pay the legal bill. So, how much do they owe?
17. SB says he paid a \$800 retainer and the remainder of his bill for a total of \$1,784.30. The law firm agrees that SB paid \$1,784.30 but says this was for legal work and disbursements up to July 6, 2017. The law firm says the amount billed in the April 23, 2018 statement of account is in addition to these payments. I find the law firm's transaction listings and statement of account show the \$1,969.32 is for additional legal services and disbursements that were incurred after July 6, 2017.

18. The law firm refers to the British Columbia Court of Appeal decision *Roberts & Muir v. Price*, 1987 CanLII 2505 (BCCA) at 13, where the court said, that depending on the circumstances, “a lawyer may not be bound by an estimate...if unforeseen circumstances add a new and unexpected dimension to the work. Such work would not fall within the estimate”.
19. I find this is what happened here. I find the law firm is not bound by the \$800 estimate. I find the unforeseen circumstances that added an unexpected dimension to the work were the extra work and travel.
20. When an estimate is not contractually binding, as I have found here, I must determine what amount is owing to the party who performed the services, based on a reasonable price upon a *quantum meruit* basis, or value for services rendered, (see for example, *Golder Associates Ltd. v. Mill Creek Developments Ltd. et al.*, 2004 BCSC 665 (CanLII)).
21. In their submissions, the respondents do not dispute that the legal work was done or necessary. The respondents did not seek an examination of their statement of account for legal services under the *Legal Profession Act*.
22. Although this is not a review of a lawyer’s bill, I find the same type of factors set out in section 71(4) of the *Legal Profession Act* apply to considering whether the fees were reasonable. When I considered these factors on review of the statement of account and list of work, I found the law firm’s charges, the disbursements for LTSA related filing fees, and the trust fee were reasonably incurred in the circumstances.
23. I find the law firm’s April 23, 2018 statement of account for legal services, disbursements and taxes of \$1,969.32 is reasonable value for services rendered.
24. I find it more likely than not that the full amount of \$1,969.32 is unpaid and outstanding. There is no objective evidence, such as bank statements, that the respondents paid it. Overall, I am satisfied that the law firm is entitled to payment on their April 23, 2018 statement of account.

25. However, I decline to award the claimed 24% in contractual annual interest. I find there was no agreement on interest. As stated in *N.B.C. Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775, “a right to charge interest cannot be based simply on a unilateral assertion in an invoice”. I find the law firm is instead entitled to pre-judgment interest under the *Court Order Interest Act*. I find the respondents owe \$54.59 in pre-judgment interest from the due date on the statement of account, May 23, 2018, to the date of this decision.
26. 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. I see no reason in this case not to follow that general rule. I find the law firm is entitled to reimbursement of the \$125 it paid in tribunal fees.

## **ORDERS**

27. Within 30 days of the date of this order, I order the respondents to pay the law firm a total of \$2,148.91, broken down as follows:
- a. \$1,969.32 for legal services,
  - b. \$54.59 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 in tribunal fees.
28. The applicant is entitled to post-judgment interest, as applicable.
29. 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.
30. 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