Civil Resolution Tribunal

Date Issued: December 24, 2019

File: SC-2019-005871

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meloche v. WK Group LLP*, 2019 BCCRT 1437

BETWEEN:

MICHAEL MELOCHE

APPLICANT

AND:

WK GROUP LLP

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about accounting services.

2. The applicant, Michael Meloche, says he hired the respondent accounting firm, WK Group LLP, to complete non-resident tax forms for him. He says the respondent negligently failed to complete and file the forms on time, resulting in a penalty being

assessed against him. The applicant seeks $4,065.18, the amount he says the Canada Revenue Agency (CRA) charged him. The respondent admits it did not complete and file the forms by CRA's June 30, 2018 deadline. However, the respondent says it required further information from the applicant which he did not provide by the deadline. It denies any negligence.

3. The applicant is self-represented. The respondent is represented by one of its partners, Aaron Dodsworth.

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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.

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 make one or more of the following orders, where permitted by 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

8. The issue in this dispute is whether the respondent must pay the applicant $4,065.18 for allegedly negligent accounting services.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

10. The parties have had a business relationship for approximately 10 years. It is undisputed that on May 14, 2018, the applicant phoned Mr. Dodsworth and asked him to prepare his 2017 NR6 tax filing, a filing required for non-residents with rental property income. The deadline for the form to be filed was June 30, 2018.

11. DB, one of the respondent's senior accountants, was assisting Mr. Dodsworth with the applicant's NR6 filing. On May 30, 2018, DB emailed the applicant requesting further information required to prepare the filing. No response was received, and DB followed up by email again June 5, 2018. Again, the applicant did not respond.

12. The applicant said when he received the May 30, 2018 email, he contacted his property manager, DD, and asked him to forward the additional information to the respondent. There is no evidence before me indicating DD ever provided the additional information to the respondent. The applicant does not say DD sent the

requested information, and the respondent submits it did not receive such information. There is no statement from DD and DD is not a party to this dispute. On the evidence before me, I find DD did not send the respondent the required information.

13. The applicant says he did not receive DB's June 5, 2018 email, but I am satisfied from the respondent's emails that it was sent to the same email address as the May 30, 2018 email, which was admittedly received. In any event, on June 18, 2018, the applicant emailed AD, the respondent's receptionist, asking about the status of his filing. Unfortunately, the applicant emailed AD at an email address that had not been in service since January 31, 2018.

14. On July 25, 2018, after the filing deadline, the applicant phoned Mr. Dodsworth and asked about his filing. Mr. Dodsworth says he advised the applicant they were unable to complete the filing because they still needed information from the applicant, which he had not yet provided. As a result of the July 25, 2018 phone call, Mr. Dodsworth again forwarded DB's May 30 and June 5, 2018 emails to the applicant, requesting the additional information. There is no indication the applicant ever responded to that email.

15. The respondent says on August 22, 2018 it found out another accounting firm was preparing the applicant's filing, and so instructed DB to stop working on the file. It is undisputed that the respondent never sent the applicant an invoice for work done on the 2017 NR6 filing. The applicant says he paid another accounting firm to complete and file the forms. However, he says that as a result of filing after the June 30, 2018 deadline, CRA assessed him $4,065.18 in penalties.

16. The applicant says the respondent is responsible for the penalties due to its negligence in failing to complete and file the forms on time. He says if the respondent did not have enough information, it should have sourced the information itself from his property manager, DD, or from some other source, or completed the form using estimated amounts. He says if the respondent had done this, the forms would have been filed on time, and he would not have been assessed the penalty.

The applicant did not give any reason why he did not respond to the respondent's emails requesting the additional information.

17. In response, the respondent says it is not allowed to "estimate" numbers on the NR6 forms. It says these documents require actual amounts earned or paid, which the respondent asked the applicant for, but did not receive. The respondent says it made reasonable efforts to contact the applicant for the missing information with no response, and that it was not able to complete the filing without that information.

18. I find the applicant's claim is one of professional negligence. He says that the respondent failed to adequately perform its duties as a professional accounting firm. In particular, he says the respondent should have used an estimated figure, and the respondent denies that this was permitted. Proving negligence requires the applicant to show that: (a) the respondent owed him a duty of care, (b) a reasonable standard of care was not met, (c) it was reasonably foreseeable that failing to meet the standard of care would cause damages, and (d) the failure did cause the applicant's damages.

19. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. An expert can explain the relevant standard of care and demonstrate how the conduct in the dispute fell below that standard. Here, I find that expert evidence would be necessary for the applicant to prove his claims. Such evidence is required to determine whether the respondent failed to exercise the care and skill of a reasonably prudent accounting firm in accordance with the standards of the profession.

20. Given the absence of the necessary expert evidence, I find the applicant has not proven the respondent was negligent in failing to complete and file his NR6 tax forms. I dismiss the applicant's claims.

21. Even if I had found the respondent negligent in the circumstances, I would not have awarded the applicant's claimed damages in any event. Although he submitted a

May 10, 2019 letter from the CRA stating he would be assessed a penalty due to the late filing of the NR6 forms, there is no indication as to the amount of the penalty that was assessed, if any.

22. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. Neither party claimed dispute-related expenses.

ORDER

23. I order the applicant's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair