



Civil Resolution Tribunal

Date Issued: March 26, 2020

File: SC-2019-005219

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Acumen Law Corporation v. Bull*, 2020 BCCRT 340

BETWEEN:

ACUMEN LAW CORPORATION

APPLICANT

AND:

RANDALL BULL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. The applicant, Acumen Law Corporation, says it provided legal services to the respondent, Randall Bull, and he failed to pay its fees in full. The applicant claims a total of \$2,797.60 in unpaid legal fees.

2. The respondent agrees that he hired the applicant to file a petition for judicial review but says that the applicant did not complete the legal work. He says he paid the applicant an agreed fee of \$1,500 and owes nothing more.
3. The applicant is represented by one of its employees, who I understand is not a lawyer. The respondent is represented by his father.
4. I dismiss the applicant's claim for the following reasons.

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. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did the applicant complete the legal work as agreed?
 - b. Is the applicant entitled to the claimed \$2,797.60 in legal fees?

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. The parties agree that the respondent hired the applicant to file a petition for judicial review. There is no dispute that the respondent paid the applicant \$1,500 as a retainer for the petition. The parties dispute whether the respondent owes the applicant the outstanding balance of \$2,872.60 as shown on the applicant's July 23, 2019 invoice in evidence.
12. There is no written retainer agreement in evidence. However, there is a June 22, 2018 "case memo" that includes the parties' names and shows "Fee: \$1500 retainer" for "Judicial Review".
13. The applicant argues that its lawyer, Kyla Lee "would have" quoted the respondent \$3,000 plus taxes, filing fees and services fees for one Judicial Review petition based on its standard "price list". The applicant further argues that Ms. Lee is "very familiar with the fee situation" and provides "accurate quotes". However, there is no statement from the applicant's lawyer, Ms. Lee who discussed the legal services and fees with the respondent or his father when entering into the agreement.

14. The respondent says Ms. Lee told him that one petition would cost \$1,500. The respondent says he had 2 petitions and Ms. Lee completed only the first one. He says Ms. Lee refused to do the second petition unless he paid her more money, which he refused to pay until she completed the legal work in full. The respondent says he owes the applicant nothing more because he paid the \$1,500 for the first petition and the applicant's lawyer did not complete the second petition.
15. Considering the main issues are whether the work was performed and its agreed price, I would have expected a statement from the applicant's lawyer, Ms. Lee together with the underlying work product to support its position. I note the applicant holds the burden of proof. Without explanation, the applicant failed to provide such a statement or evidence of its work. Parties are told to provide all relevant evidence, and given the applicant is a law firm I find it would have been particularly aware of this requirement.
16. An adverse inference can be drawn against a party where, without sufficient explanation, they fail to produce evidence or call a witness expected to provide supporting evidence (see a discussion in *Port Coquitlam Building Supplies Ltd. v. 494743 B.C. Ltd.*, 2018 BCSC 2146 at paragraph 67.) I find it appropriate to draw an adverse inference against the applicant for its failure to provide evidence from its lawyer and its underlying records as I discuss more below.
17. As for the agreed price, I find the standard fee list in evidence favours the applicant's position. I accept as shown on the fee list that \$3,000 plus tax and fees is the applicant's normal price for this type of petition. However, I find the fact that it is the normal price does not necessarily mean the parties agreed to it. I find the applicant's representative's assertion on what its lawyer "would have" quoted is insufficient to prove it was the price the parties agreed on for the petition. I draw an adverse inference against the applicant for failing to provide a statement from its lawyer on the agreed price. Based on the evidence before me, I find it is more likely than not that the parties discussed only \$1,500 as the respondent submits. I find the respondent's version reasonably consistent with the parties' case memo mentioned

above, which is initialed beside the \$1,500 fee amount. The case memo does not say the fees will be more than the retainer or based on the applicant's "price list". As it is also the only written record specific to the parties' agreement on fees, I put more weight on it than the price list. On balance, I find the applicant has not established that the respondent agreed to pay \$3,000 plus tax and fees for one petition.

18. The applicant says that it completed the legal services by obtaining a court order in the respondent's favour. I accept on the December 2018 court order in evidence that the applicant completed this work, which I find the respondent already paid for with the \$1,500 retainer.
19. While the applicant says nothing about there being 2 petitions, it seems its July 23, 2019 invoice might be for work on a second petition. However, the applicant 'block billed' its legal services for "the Petition" on the July 23, 2019 invoice so I cannot tell what dates it actually performed the work. At any rate, the applicant did not argue that it had completed a second petition and there is no court order for a second petition.
20. Even if I was to find the applicant performed some additional work on a second petition, I find the applicant has not established that the parties agreed the respondent had to pay for partial work. The applicant 'blocked billed' for the work with no description of its hours or hourly rate. Also, the applicant does not say the parties agreed to payment terms for partial work and there is nothing in writing showing that they did.
21. Overall, I find the applicant has not established on a balance of probabilities that the respondent owes it any more than the \$1,500 already paid for the December petition. I dismiss the applicant's claim for the additional \$2,872.60. Since the applicant was unsuccessful, I also dismiss its claim for tribunal fees.

ORDER

22. I dismiss the applicant's claims and this dispute.

Trisha Apland, Tribunal Member