



Civil Resolution Tribunal

Date Issued: July 16, 2020

File: SC-2020-000474

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Freer v. Baldwin*, 2020 BCCRT 797

BETWEEN:

DAVID FREER

APPLICANT

AND:

FRED BALDWIN

RESPONDENT

AND:

DAVID FREER

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This is a dispute about tax preparation services. The applicant, David Freer, says the respondent, Fred Baldwin, negligently prepared his 2015 and 2016 tax returns. Mr. Freer says Mr. Baldwin failed to submit a tax form resulting in Canada Revenue Agency (CRA) penalties. Mr. Freer requests \$4,935.55 as compensation for these CRA penalties.
2. Mr. Baldwin denies these claims. Mr. Baldwin says he is not responsible for the CRA penalties because he does not have a contract with Mr. Freer. Mr. Baldwin also says the principle of caveat emptor, or buyer beware, applies.
3. Mr. Baldwin has a counterclaim for unpaid tax services. Mr. Baldwin says Mr. Freer owes \$175 for the preparation of Mr. Freer's 2018 income tax return and he owes \$2,312.50 for services to contest Mr. Freer's CRA penalties.
4. Mr. Freer agrees that he owes \$175 for the preparation of his 2018 income taxes. Mr. Freer denies any responsibility to pay for Mr. Baldwin's services contesting the penalties. Mr. Freer says that he did not agree to pay for these services and Mr. Baldwin said that he would not charge him for those services.
5. Both parties are self-represented.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the Civil Resolution Tribunal Act (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.

7. The CRT 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 CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
8. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. I note that Mr. Baldwin says he may not have received all Mr. Freer's evidence. I have confirmed that all of the evidence submitted to the CRT was distributed to both parties.
10. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Did Mr. Baldwin negligently fail to submit a 2015 T1135 tax form? If so, what is the appropriate remedy?
 - b. Did Mr. Baldwin negligently fail to submit a 2016 T1135 tax? If so, what is the appropriate remedy?

- c. Does Mr. Freer owe Mr. Baldwin a debt for unpaid tax services? If so, how much?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, Mr. Freer must prove his case on the balance of probabilities. Mr. Baldwin bears this same burden on his counterclaim. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
13. Both parties agree that Mr. Freer prepared and filed Mr. Baldwin's 2015 and 2016 tax returns. It is undisputed that Mr. Freer incurred CRA penalties for both the 2015 and 2016 tax returns because T1135 tax forms were not submitted. I will examine each of these tax filings separately.

Did Mr. Baldwin negligently fail to submit the T1135 tax form with Mr. Freer's 2015 tax return?

14. Based on the evidence before me, I find that Mr. Freer's claim relating to his 2015 tax return raises an issue about the application of the *Limitation Act*, which sets a two-year deadline to start a claim. A limitation period is a specific time within which a person may pursue a claim. If that time period expires, the claim may not be brought even if it may have been successful.
15. Since the application of the *Limitation Act* was not raised by the parties, I gave both parties an opportunity to provide further submissions regarding this issue. Both parties provided further submissions which I have considered in making this decision.
16. Mr. Freer submitted his CRT dispute application on January 20, 2020. A limitation period begins to run the day after a claim is discovered. Accordingly, Mr. Freer must have discovered his claim on or after January 20, 2018, or else it is barred by the *Limitation Act*.

17. Mr. Freer says the CRA sent a November 16, 2016 notice of assessment of \$2,028.59 for not submitting the T1135 form with his 2015 tax return. Mr. Freer provided a copy of the assessment. It is undisputed that Mr. Baldwin filed two appeals against the penalty to the CRA on Mr. Freer's behalf. Mr. Baldwin sent Mr. Freer an email on January 21, 2019 telling him that the CRA denied the second appeal.
18. In *The Owners, Strata Plan VIS 4686 v. Craig*, 2019 BCSC 2228, the BC Supreme Court held that, if a party attempts to resolve a dispute through an administrative process before starting a legal action, the limitation period does not start until that administrative process ends. So, I find that the limitation period for Mr. Freer's claim relating to the 2015 tax return did not start until Mr. Baldwin told Mr. Freer that his CRA appeals had been denied on January 21, 2019.
19. For the above reasons, I find that Mr. Freer's claims relating to his 2015 tax return are not barred by the *Limitation Act*.
20. So, was Mr. Baldwin negligent by not submitting the 2015 T1135 form?
21. To prove negligence, Mr. Freer must show that Mr. Baldwin owed him a duty of care, Mr. Baldwin breached the standard of care, Mr. Freer sustained damage, and the damage was caused by Mr. Baldwin's breach. *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
22. In *Mustapha*, the Supreme Court of Canada said a respondent owes a duty to take care not to injure the applicant when the parties have a close relationship. Mr. Baldwin argues that he did not owe a duty to Mr. Freer because they did not have a written contract. Mr. Baldwin also argues that he does not owe a duty because he is a retired senior only providing tax services for close family and friends. As such, Mr. Baldwin argues that the principle of 'caveat emptor', or buyer beware, applied and he did not have a duty to Mr. Freer. For the reasons that follow, I disagree.
23. Although Mr. Baldwin says he only provides limited services, I am satisfied that Mr. Baldwin performed professional tax preparation service for Mr. Freer. Based on this

relationship, I am satisfied that Mr. Baldwin owed Mr. Freer a duty of care. Further, I do not find it relevant whether the parties had a written contract. Mr. Baldwin has a duty of care based on his professional relationship with Mr. Freer regardless of the existence of a contract.

24. Furthermore, I find that caveat emptor does not apply to this matter. Caveat emptor is a legal principle that means a buyer bears the risk of defects in product or property quality in some circumstances. See, *Nixon v. MacIver*, 2016 BCCA 8 (CanLII). I find that this principle does not apply to a claim of negligence such as this.
25. Mr. Baldwin also argues that he is not responsible because the CRA sent multiple letters saying taxpayers are responsible for errors made by tax preparation providers acting on their behalf. I do not find this relieves Mr. Baldwin of responsibility. Rather, I find that these CRA statements only relate to Mr. Freer's responsibilities to the CRA. These statements do not prevent Mr. Freer from seeking reimbursement from Mr. Baldwin.
26. For the above reasons, I am satisfied that Mr. Baldwin owed a duty of care to Mr. Freer.
27. The standard of care expected of Mr. Baldwin is not perfection. Rather, the standard is what would be expected of a competent tax preparer in the same circumstances. One must look at the particular facts of the case to determine whether the Mr. Baldwin acted reasonably.
28. In this matter, it is undisputed that Mr. Freer owned foreign rental property. Mr. Freer told Mr. Baldwin about this property and Mr. Baldwin included this property income in Mr. Freer's 2015 income tax return. It is further undisputed that Mr. Baldwin did not prepare a CRA T1135 tax form. This is a CRA form that details foreign property income. The issue is whether the standard of care required Mr. Freer to submit the T1135 form.

29. Mr. Freer's allegations concern professional negligence because he is claiming that Mr. Baldwin's services fell below the standard of a reasonably competent tax preparer. In claims of professional negligence such as this, it is often necessary for an applicant to prove a breach of the applicable standard of care with expert evidence. However, expert evidence is not needed in disputes which do not involve difficult questions related to professional services (*Ter Neuzen v. Korn*, 1995 CanLII 72 (SCC)). For the reasons stated below, I find that this is such a case.
30. I find that expert evidence is not required here because Mr. Baldwin admitted that he made a mistake by not submitting the 2015 T1135 tax form. Mr. Baldwin sent a July 20, 2016 email saying this was his mistake and he should have noticed this form was missing when he prepared Mr. Freer's tax return. Mr. Baldwin says that, when he prepared Mr. Freer's tax return in April 2016, he was not aware that a T1135 had to be filed. I do not find this explanation helpful. I find that Mr. Baldwin admitted that he breached the standard of care in his July 20, 2016 email.
31. Based on Mr. Baldwin's admission, I find that expert evidence is not required and I am satisfied that Mr. Baldwin breached the standard of care.
32. I find that Mr. Baldwin's breach of the standard of care caused Mr. Freer's loss. Specifically, I find that Mr. Baldwin's failure to submit the 2015 T1135 caused Mr. Freer to incur a \$2,028.59 CRA assessment. I find that Mr. Baldwin is responsible for this amount.
33. The *Court Order Interest Act* applies to the CRT. Mr. Freer is entitled to pre-judgment interest on the \$2,028.59 from November 16, 2016, the date of the CRA assessment, to the date of this decision. Although Mr. Freer's evidence shows that CRA interest charges continued while his tax appeals were processed, I am not satisfied that the CRA assessment could not have been paid on November 16, 2016, while the appeals proceeded at the same time. This pre-judgment interest equals \$102.57.
34. I turn now to Mr. Freer's 2016 tax return.

Did Mr. Baldwin negligently fail to submit the T1135 tax form with Mr. Freer's 2016 tax return?

35. Mr. Freer claims that Mr. Baldwin is also responsible for CRA penalties for failing to submit a T1135 tax form with Mr. Freer's 2016 tax return. It is undisputed that the CRA issued a \$2,772.69 assessment against Mr. Freer on March 20, 2019 for failing to submit the 2016 T1135 tax form.

36. I have considered whether the *Limitation Act* applies to this claim as well. It is undisputed that Mr. Baldwin electronically filed Mr. Freer's 2016 tax return on April 26, 2017. It is also undisputed that the CRA rejected Mr. Freer's 2016 T1135 tax form because CRA requires this form to be filed separately from the tax returns.

37. It is undisputed that the CRA issued an assessment against Mr. Freer on March 20, 2019 for failing to submit the 2016 T1135 tax form. I find that Mr. Freer discovered his claim relating to the 2016 tax return at that time, which is within two years of the date this dispute was started on January 20, 2020. Accordingly, I find that the claim relating to Mr. Freer's 2016 T1135 tax form is not barred by the *Limitations Act*.

38. So, was Mr. Baldwin negligent by not submitting the 2016 T1135 form?

39. For the reasons stated above, I am satisfied that Mr. Baldwin owed Mr. Freer a duty of care as Mr. Freer's tax preparer. Further, based on Mr. Baldwin's admission, I find that the standard of care required Mr. Baldwin to submit a T1135 form with Mr. Freer's tax returns.

40. It is undisputed that Mr. Baldwin attempted to file Mr. Freer's 2016 T1135 form but the CRA rejected the form because it was not filed properly. Neither party was aware that Mr. Freer's 2016 T1135 form was not filed until after the CRA assessed another penalty. I find that Mr. Baldwin breached the standard of care by failing to file Mr. Freer's 2016 T1135 form.

41. I find that Mr. Baldwin's breach of the standard of care caused Mr. Freer's loss. Specifically, I find that Mr. Baldwin's failure to properly submit the 2016 T1135

caused Mr. Freer to incur a \$2,772.69 CRA assessment. I find that Mr. Baldwin is responsible for this amount.

42. According to the *Court Order Interest Act*, Mr. Freer is entitled to pre-judgment interest on the \$2,772.69 from March 20, 2019, the date the CRA assessed the penalty, to the date of this decision. This equals \$70.02.
43. Since Mr. Freer has been successful in his claims, I find that he is entitled to a reimbursement of his CRT fee under section 49 of the CRTA and CRT rules. This amount is \$175.

Does Mr. Freer owe Mr. Baldwin fees?

44. Mr. Baldwin argues that Mr. Freer owes \$2,312.50 for accounting services. Mr. Baldwin provided an April 23, 2019 invoice for \$175 for preparation of Mr. Freer's 2018 tax return and an October 10, 2019 invoice for accounting services contesting Mr. Freer's CRA penalties.
45. Mr. Freer agrees that he owes Mr. Baldwin the \$175 for the preparation of his 2018 tax return. So, Mr. Freer is ordered pay this amount. According to the *Court Order Interest Act*, Mr. Baldwin is entitled to pre-judgment interest on the \$175 from April 23, 2019, the date of the invoice, to the date of this decision. This equals \$4.10.
46. Mr. Freer denies Mr. Baldwin's claim that he owes a debt for Mr. Baldwin's services to contest the CRA penalties.
47. Based on the evidence before me, I find that Mr. Baldwin's counterclaim also raises an issue about the application of the *Limitation Act*. Mr. Baldwin's claim for unpaid services to contest the CRA penalty relate to services from November 2016 to August 2019. As such, some of the services that Mr. Baldwin is seeking compensation for arose more than 2 years before the dispute notice was issued on January 20, 2020. However, since I am dismissing this claim on the merits for the reasons set out below, I do not need to decide which of Mr. Baldwin's services are barred by the *Limitation Act*.

48. To hold Mr. Freer responsible for his services, Mr. Baldwin must prove that he had a contract with Mr. Freer. For a valid contract to exist, the parties must have a meeting of the minds. This means that the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer by one party that is accepted by the other and payment of money or something else of value. See *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.
49. It is undisputed that Mr. Baldwin did not have a written contract with Mr. Freer. Mr. Baldwin says a contract was formed by performing services and issuing invoices. A contract does not need to be written to be enforceable, but it can be harder to prove.
50. In this matter, I am not satisfied that the parties had an intention to form a contract. Mr. Baldwin has not provided any evidence supporting his assertion that Mr. Freer agreed to pay for his CRA appeal services. Further, Mr. Baldwin sent Mr. Freer an email on November 30, 2016 saying there would not be any charges for his services contesting the CRA penalties. Also, Mr. Freer says that Mr. Baldwin never requested any fees for these services until he received Mr. Baldwin's invoice on January 24, 2020. Mr. Baldwin did not dispute this.
51. For the above reasons, I am not satisfied that the parties had an intention to enter a contract where Mr. Freer would pay for Mr. Baldwin's services to appeal the CRA fines. So, I dismiss Mr. Baldwin's claim for unpaid services to challenge the CRA penalties.
52. Since Mr. Baldwin was substantially unsuccessful, I find that he is not entitled to reimbursement of his CRT fees.

ORDERS

53. Within 30 days of the date of this order, I order the Mr. Baldwin to pay Mr. Freer a total of \$4,969.77, broken down as follows:
- a. \$4,626.28 as net damages for negligence,
 - b. \$168.49 as net pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
54. Mr. Freer is entitled to post-judgment interest, as applicable.
55. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
56. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Richard McAndrew, Tribunal Member