



Civil Resolution Tribunal

Date Issued: August 5, 2020

File: SC-2019-009407

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Darren Hart Law Corporation Dba Hart Legal v. Greenan*, 2020 BCCRT 868

BETWEEN:

DARREN HART LAW CORPORATION DBA HART LEGAL

APPLICANT

AND:

BARBARA GREENAN

RESPONDENT

AND:

DARREN HART LAW CORPORATION DBA HART LEGAL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. The respondent, Barbara Greenan, is a lawyer who worked for the applicant, Darren Hart Law Corporation Dba Hart Legal (HL). HL says Ms. Greenan took some client files with her when she transferred to a new law firm. It says accounts receivable for legal services were owed on those files and it is entitled to recover the amounts from Ms. Greenan. HL seeks \$4,965.80 from Ms. Greenan after setting off the amount HL owes her for her last paycheque.
2. Ms. Greenan denies any amount is owing to HL for the transferred files. She also says HL withheld approximately \$14,000 owed to her under the terms of their employment agreement. Ms. Greenan says HL breached their agreement and intentionally interfered with her economic relations. In her counterclaim, she seeks \$5,000 in damages. I infer Ms. Greenan is abandoning the portion of her claim that is over the CRT's small claims limit of \$5,000.
3. HL is represented by its associate, Millad Ossudallah. Ms. Greenan is self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

6. 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.
7. 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.
8. Under section 31(c) of the *Employment Standards Act* (ESA) Regulation, the ESA does not apply to Ms. Greenan because she is a member of the Law Society of BC. So, this dispute is within the CRT's small claims jurisdiction over debt and damages, as set out in section 118 of the CRTA.

ISSUES

9. The issues in this dispute are:
 - a. Can HL deduct accounts receivable for transferred client files from Ms. Greenan's final paycheque?
 - b. Can HL deduct expenses from Ms. Greenan's final paycheque?
 - c. Did HL breach the parties' agreement, and if so, what remedy is appropriate?
 - d. Did HL intentionally interfere with Ms. Greenan's economic relations, and if so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, HL must prove its claim on a balance of probabilities, and Ms. Greenan must prove her counterclaim to the same standard.

11. I have read and considered all the submitted evidence. I will refer only to the evidence and submissions that are relevant to my determination, or to the extent necessary to give context to these reasons.

12. Ms. Greenan was HL's associate for approximately two years, from April 24, 2017 to March 2019. The parties signed a fee split agreement before Ms. Greenan started. The relevant terms were:
 - a. The agreement commenced on April 24, 2017.
 - b. Ms. Greenan was entitled to receive 35% to 50% of the billings on the files she worked on, depending on whether she worked on HL's client files or her own client files.
 - c. The billing cycle was between the 16th and the 15th of the following month. Ms. Greenan would be paid on the last day of the following month for the previous month's billings.
 - d. HL would pay 50% of Ms. Greenan's LSBC practice fee and liability insurance, Bar Association membership fees, business license fee, and excess liability insurance premiums. After 3 months of consecutive employment, HL would reimburse Ms. Greenan for ½ of the prorated amount of these fees.
 - e. Ms. Greenan agreed to join the extended health benefits plan and pay monthly premiums.
 - f. Ms. Greenan was responsible for the cost of her continuing legal education, unless the managing partner agreed otherwise.
 - g. All work product was HL's intellectual property including any electronic information retained on HL's system. Ms. Greenan could not remove any of HL's intellectual property.

- h. Ms. Greenan had to give 4 weeks' notice when she left. Ms. Greenan would have 30 days from her last day to collect her accounts receivable, after which HL would keep 100% of the outstanding accounts receivable.
- 13. HL says Ms. Greenan took 7 client files with her to another firm when she left (transferred files). It says the outstanding amounts owed on the transferred files totalled \$19,952.19. HL says Ms. Greenan is entitled to the following:
 - a. \$7,816.35 for her fee split for the transferred files,
 - b. \$3,928.05 for her fee split on another file Ms. Greenan worked on before she left, and
 - c. \$3,192.41 for her March 1, 2019 to March 31, 2019 fee split after deducting expenses.
- 14. After setting off the amount owed to Ms. Greenan from \$19,952.19, HL says Ms. Greenan owes it \$5,015.38. HL deducted a further \$50 so its claim would come under the CRT's \$5,000 small claims monetary limit and so HL claims Ms. Greenan owes it \$4,965.80. HL did not claim Ms. Greenan breached the work product term of the agreement by taking the files.

Can HL deduct accounts receivable for transferred files from Ms. Greenan's paycheque?

- 15. HL says it withheld Ms. Greenan's final pay because the transferred files had accounts receivables owing to the firm. It says according to the agreement, Ms. Greenan had 30 days from her last day to collect her accounts receivable from these files.
- 16. Ms. Greenan says HL does not have a contractual basis to withhold her final paycheque. She also says HL did not assert a solicitor's lien over the transferred files.

17. As noted above, the agreement stated that if Ms. Greenan had any accounts receivable at the time she gave notice, she had 30 days from her last day to collect her accounts receivable, after which HL would receive 100% of the outstanding accounts receivable.
18. I find the agreement does not require Ms. Greenan to pay the outstanding accounts receivable to HL regardless of whether she collected any money from the clients. Since HL did not produce any evidence that the clients had paid Ms. Greenan, I find HL is not entitled to recover the transferred files' accounts receivable from Ms. Greenan.

Did HL breach the agreement?

19. Ms. Greenan says she is entitled to receive approximately \$14,000 for her March 2019 fee split. Although Ms. Greenan did not explain how she arrived at this amount, I infer she based it on HL's March 1, 2019 to March 31, 2019 reconciliation. I find Ms. Greenan is incorrect. The \$14,212.47 in the reconciliation refers to the amount Ms. Greenan billed in March 2019. According to the reconciliation, I find Ms. Greenan's March 2019 fee split was \$7,942.00.
20. From this amount, HL deducted \$4,750.49 for various expenses, including LSBC insurance, LSBC practice fees, CLEBC mediation course, office movers, travel expense for CLE course, couriers, and a portrait photo. HL did not provide any invoices or receipts for these expenses. In addition, HL also deducted a \$182.59 insurance premium.
21. Ms. Greenan says HL is not entitled to deduct these expenses from her paycheque. I agree. The agreement does not state that Ms. Greenan would have to refund any expenses HL paid on her behalf or reimbursed her for if she left the firm before the year end. However, I find HL was entitled to deduct the Group Insurance Premium of \$182.59 under the agreement terms.
22. I find HL breached the agreement by withholding Ms. Greenan's March 2019 paycheque. I find that her remedy for the breach of the contract is damages.

Damages for breach of contract are intended to place a party in the position they would have been in if the contract had been carried out as agreed: *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39. After adjusting for the insurance premium, I find HL should have paid Ms. Greenan \$7,760.31 for her March 2019 paycheque. Since Ms. Greenan limited her counterclaim to \$5,000, I find she is entitled to receive \$5,000.

Did HL intentionally interfere with Ms. Greenan's economic relations?

23. Ms. Greenan says HL refused to remove its profile from Ms. Greenan's Google Map location and defamed her to clients by stating that she stole HL's fees. She also says HL disabled her ongoing contact with her clients and her assistant's cloud access before Ms. Greenan left.
24. According to section 119 of the CRTA, the CRT does not have small claims jurisdiction over defamation. Therefore, I refuse to resolve the defamation claim under section 10 of the CRTA.
25. As mentioned above, Ms. Greenan has the burden of proving her counterclaim. Ms. Greenan did not provide any evidence to support her allegation such as copies of the Google Map page. For this reason, I find Ms. Greenan has not met her burden and I dismiss the interference with economic relations claim.

INTEREST, CRT FEES, AND DISPUTE RELATED EXPENSES

26. The *Court Order Interest Act* applies to the CRT. Ms. Greenan is entitled to pre-judgement interest on \$5,000 for her unpaid earnings from May 31, 2019, the date it was owed, to the date of this decision. This equals \$108.27.
27. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find HL was unsuccessful and is not entitled to reimbursement for CRT fees. Since Ms. Greenan was only partially successful, I find she is entitled to

reimbursement of \$62.50 in CRT fees. Neither party sought dispute related expenses.

ORDERS

28. Within 14 days of the date of this order, I order Darren Hart Law Corporation Dba Hart Legal to pay Barbara Greenan a total of \$5,170.77, broken down as follows:
 - a. \$5,000 in damages,
 - b. \$108.27 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$62.50, for CRT fees.
29. Ms. Greenan is entitled to post-judgment interest, as applicable.
30. The claims of Darren Hart Law Corporation Dba Hart Legal are dismissed.
31. 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.
32. 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.

33. 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.

Rama Sood, Tribunal Member