



Civil Resolution Tribunal

Date Issued: August 17, 2020

File: SC-2020-003520

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Centra Lawyers LLP v. Boorman*, 2020 BCCRT 910

B E T W E E N :

CENTRA LAWYERS LLP

APPLICANT

A N D :

NICHOLAS BOORMAN and STREAMLINE FIRE SERVICES INC.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant, Centra Lawyers LLP (Centra), says it provided legal services to one respondent, Streamline Fire Services Inc. (Streamline), and Streamline has not

paid. Centra seeks \$1,538.99 in unpaid legal fees and disbursements, plus contractual interest.

3. The other respondent, Nicholas Boorman, is Streamline's principal and instructed Centra on Streamline's behalf. Centra says its service terms and conditions provide that an individual who represents a company is personally liable for any outstanding debts to Centra.
4. Streamline says that Centra's services were unsatisfactory and Centra acted without instructions, so Streamline should not have to pay the outstanding bills. The respondents also say that because Centra's agreement was with Streamline, and Streamline is a corporation, Mr. Boorman is not a properly named party and the claim against him should be dismissed.
5. Centra is represented by its articulated law student, Leah Vidovich. The respondents are both represented by Mr. Boorman's father who is Streamline's corporate secretary.

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, 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.

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. 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.

ISSUE

10. The issue in this dispute is to what extent, if any, Streamline or Mr. Boorman owes Centra for unpaid legal services.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant, Centra, 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.
12. It is undisputed that Streamline retained Centra to advise and act on Streamline's behalf with respect to a builder's lien claim. Centra submits that it is its standard practice to have an executed copy of a retainer agreement before working on a file. However, both parties say they could not locate a signed retainer agreement pertaining to this matter.
13. As noted above, Centra submits that Mr. Boorman is liable for Streamline's debt to it under its service terms and conditions. As an incorporated company, Streamline is a separate legal entity from Mr. Boorman. Centra provided no evidence of its terms and conditions or that Mr. Boorman agreed he would be personally liable for Streamline's debts. Therefore, I find Centra has not proven that Mr. Boorman was a

party to Streamline's contract with Centra, or that he is personally liable for Streamline's debts, and I dismiss Centra's claims against Mr. Boorman.

14. The evidence submitted in this dispute consists of various email threads between the parties, and the alleged outstanding invoices. From the email threads, I find that Mr. Boorman first contacted Centra and met with its lawyer, Eric Mollema, in early December 2017 to discuss Streamline's potential claim for wrongful dismissal from a construction project and unpaid services it rendered. Streamline says that Mr. Mollema advised Mr. Boorman at this meeting to place a builder's lien on the property.
15. Centra followed up with Mr. Boorman twice in December 2017 about whether he wished to proceed with filing a lien. In early January 2018, Mr. Boorman provided Centra with documentation and instructions about the amount of the proposed lien. There is no evidence before me about the date or the amount of the filed lien. However, it is undisputed that Centra did file a builder's lien on behalf of Streamline, on Mr. Bollman's instructions.
16. It is also undisputed that Centra continued to represent Streamline and filed a notice of civil claim in February 2018 about the lien. The parties agree that Streamline paid Centra's invoices for services up to March 2018.
17. Centra says it then issued the following 3 bills that Streamline did not pay:
 - a. Invoice #6357 dated May 3, 2018 for \$898.25,
 - b. Invoice #7122 dated July 30, 2018 for \$448.00, and
 - c. Invoice #7704 dated September 25, 2018 for \$156.93.
18. These 3 invoices total \$1,503.18. Centra provided no explanation for the difference between invoiced amounts and the \$1,538.99 it claimed in its Dispute Notice. I find that the unpaid amount for legal services Centra billed to Streamline is \$1,503.18.

19. Each of the 3 relevant invoices contains a date and description of the work performed and the disbursements charged. However, the invoices do not show the amount of time spent or the hourly rate charged, just a total fee for the services rendered. I note that a “courtesy discount” was applied to the fees on each of the invoices, at various rates, with no further explanation.
20. I turn now to the reasons Streamline says it should not have to pay Centra.
21. Streamline says that Centra’s advice to file a builder’s lien in the first place was not in Streamline’s best interests. Streamline says that Mr. Mollema incorrectly advised Mr. Bollman that Streamline’s right to file a lien expired in January 2018. Streamline says that the construction project was not close to being substantially complete, so there was more time before the right to file a lien expired. Further, Streamline says that Mr. Mollema failed to request a payment certifier determination about whether Streamline’s subcontract was completed and to issue a certificate of completion. Streamline says this should have been done before Mr. Mollema filed the lien and his failure to do so has jeopardized Streamline’s negotiation position.
22. I find that Streamline’s allegations that Mr. Mollema should not have filed a builder’s lien, was wrong about the lien expiry date, and wrongly failed to request a payment certifier determination, amount to allegations of professional negligence.
23. Centra argues that Streamline had the opportunity to dispute any charges on Centra’s bill under section 70 of the *Legal Professions Act* (LPA), but that the time to do so has expired. However, I find that the expiry of time to review a lawyer’s bill under the LPA does not extinguish Streamline’s right to bring a claim in negligence or breach of contract in the provision of legal services: see *Huang dba D.D. Huang & Associates v. D&S Maple Ridge Enterprises Ltd.*, 2019 BCCRT 1102, which though not binding, I find persuasive and agree with the reasoning on this issue. While Streamline did not bring a counterclaim against Centra, I find I can consider the allegations in determining whether Streamline must pay Centra for its services.

24. Generally, in cases involving a claim of professional negligence, expert evidence is required to prove the professional's standard of care and that the professional's conduct fell below that standard. In this case, I find expert evidence is required to determine whether Mr. Mollema exercised the care and skill of a reasonably competent lawyer in accordance with the standards of the profession. Streamline has the burden of proving that Mr. Mollema was negligent. In the absence of expert evidence, I find Streamline has not proven Mr. Mollema failed to meet the required standard of care and was negligent.
25. This brings me to the question of whether Centra has proven Streamline owes the claimed amount for legal services rendered.
26. As noted, there is no written agreement between the parties in evidence. There is also no evidence, such as a statement from Mr. Mollema, about his hourly rate, and the invoices do not include his rate or the time spent on the legal services claimed. Further, Centra has not provided a copy of all the work set out in the 3 relevant invoices. Ordinarily, the absence of such critical evidence would likely lead to a dismissal of the claim on the grounds it was not proved.
27. However, there is no dispute that the parties agreed Centra would perform legal services for Streamline. On the evidence before me, I find that Mr. Mollema provided Mr. Bollman with some general cost estimates for steps taken in the litigation process and obtained Streamline's instructions before embarking on a certain work, contrary to what Streamline submits. Further, and significantly, Streamline does not dispute that the work outlined on the 3 invoices was performed or that the amount charged is unreasonable.
28. Therefore, even in the absence of specific evidence about the hourly rate and the amount of time spent, I find Streamline must pay Centra for its unpaid invoices. As noted above, I find that amounts to \$1,503.18.
29. Centra claims 36% contractual interest on the outstanding amount. However, the invoices in evidence do not include any interest or indicate what rate will apply to

overdue accounts. Further, Centra has not produced an agreement for legal services or any other evidence that Streamline agreed to pay contractual interest, and I note contractual interest cannot be unilaterally implied in a later invoice. It must be agreed to. Therefore, I deny Centra's claim for contractual interest.

30. Nevertheless, the *Court Order Interest Act* applies to the CRT. Centra is entitled to pre-judgement interest on the \$1,503.18 from October 25, 2018, 30 days after the date of the last invoice, to the date of this decision. This equals \$48.88.
31. 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 Centra is entitled to reimbursement of \$150 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order Streamline to pay Centra a total of \$1,702.06, broken down as follows:
 - a. \$1,503.18 for unpaid legal fees,
 - b. \$48.88 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$150 in CRT fees.
33. The applicant is entitled to post-judgment interest, as applicable.
34. 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.

35. 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.

Kristin Gardner, Tribunal Member