



Civil Resolution Tribunal

Date Issued: August 24, 2020

File: SC-2020-002959

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *DS Lawyers Canada LLP v. Dai*, 2020 BCCRT 946

BETWEEN:

DS LAWYERS CANADA LLP

APPLICANT

AND:

TAO DAI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about legal fees. The respondent, Tao Dai, retained the applicant law firm, DS Lawyers Canada LLP (DS), to provide legal services. DS says Mr. Dai failed to pay for all the legal services it provided, and owes \$3,644.35. Mr. Dai says that he did not authorize DS to perform the services it charged him for, so he owes nothing.
2. In this dispute, DS is represented by an employee who is not a lawyer. Mr. Dai is self-represented.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
5. 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.
6. 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

7. The issue in this dispute is whether Mr. Dai owes DS for legal services, and if so, how much?

EVIDENCE AND ANALYSIS

8. In this civil proceeding, as the applicant, DS must prove its claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the relevant evidence needed to provide context for my decision.
9. It is undisputed that the parties signed a retainer agreement dated November 20, 2018. The agreement said Mr. Dai retained DS to act on its behalf in matters involving issues with a third party, CSG. The agreement said that Mr. Dai would be billed for services on an hourly basis, charged in 15-minute increments. It set out the hourly rate charged by Mr. Dai's primary lawyer contact at the firm, and said the rates charged by other DS lawyers were available upon request. The agreement also said disbursements were charged at a flat rate of 5% of legal fees, and that Mr. Dai needed to provide a \$1,000 retainer. Appendix A to the agreement said interest on overdue accounts would be charged at the annual rate set out in the account, which I infer means the interest rate shown on each invoice. The retainer agreement did not specify the invoices' payment terms, when each invoice was considered overdue, or the interest rate or maximum interest rate on overdue invoices.
10. There are 4 DS invoices addressed to Mr. Dai in evidence, dated January 31, 2019, February 28, 2019, March 31, 2019, and April 30, 2019. The invoices total \$4,121.42 for legal services, disbursements, and sales tax. Each invoice said that after 30 days, 18% annual interest (1.5% per month) would be applied to any outstanding balance.
11. DS says that it applied Mr. Dai's \$1,000 retainer against the January 31, 2019 invoice, but that Mr. Dai made no other payments. DS submits that prior to filing the

CRT dispute, the amount owing on the January 31, 2019 invoice was \$204.54, after deducting the \$1,000 retainer and adjusting the accumulated interest. DS says Mr. Dai owes a total of \$3,644.35 plus \$621.53 in contractual interest. However, DS did not adequately explain how it calculated these amounts, which I find are not consistent with the evidence before me. Subtracting the \$1,000 retainer from the \$4,121.42 total, I find the unpaid amount is \$3,121.42, before interest.

12. Mr. Dai submitted a Dispute Response, in which he denied authorizing DS to provide the services it charged him for. Mr. Dai submitted no evidence and provided no other arguments. The CRT extended the deadline for submissions, and made several attempts to contact Mr. Dai by email and telephone about providing submissions, without success. I find Mr. Dai had sufficient opportunity to provide evidence and to respond to DS's submissions, but he chose not to. Regardless, I find I can fairly decide the dispute on the submissions before me, including Mr. Dai's Dispute Response.
13. DS says it charged Mr. Dai for work on CSG issues, as agreed. Mr. Dai says he did not instruct DS to perform this work, but he does not say what his instructions were, if any. Mr. Dai does not say whether he asked DS to cease its work after receiving the first invoice, dated January 31, 2019, and DS does not say it was instructed to stop working. I find that the work shown on DS's invoices all relates to CSG issues, and that Mr. Dai retained DS specifically to perform work on those issues. On balance, I find that DS acted in accordance with Mr. Dai's wishes or instructions in performing the invoiced work. On the evidence before me, I find that DS provided legal services consistent with, and reasonably expected under, the retainer agreement.
14. Mr. Dai does not suggest that DS's invoices were calculated incorrectly, or that DS did not perform the invoiced work to a reasonable standard of quality. So, I find Mr. Dai owes DS \$3,121.42 for the unpaid invoices.

CRT FEES, EXPENSES, AND INTEREST

15. DS claims contractual interest of 18% per year as described in the invoices. Although Mr. Dai signed the retainer agreement acknowledging that interest would be charged on overdue invoices, the agreement did not describe when an invoice would become overdue, or what the interest rate might be. I find Mr. Dai did not have an opportunity to agree to an interest rate, or a range of possible interest rates, until he received the invoices. The evidence does not show that Mr. Dai ever agreed to pay an annual interest rate of 18% on overdue invoices, or that he reasonably should have expected the interest rate could be 18%. On balance, I find DS has not met its burden of showing that Mr. Dai agreed to pay 18% annual interest on overdue invoices. So, I find DS is not entitled to contractual interest.
16. However, DS is entitled to pre-judgment interest under the *Court Order Interest Act*. After subtracting the \$1,000 retainer from the January 31, 2019 invoice, I find that interest on each invoice is calculated from 30 days after the date of each invoice until the date of this decision. This equals \$111.26.
17. 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 find DS was successful in its claim, so it is entitled to reimbursement of the \$175 it paid in CRT fees. Neither party claimed any CRT dispute-related expenses.

ORDERS

18. Within 30 days of the date of this decision, I order Mr. Dai to pay DS a total of \$3,407.68, broken down as follows:
 - a. \$3,121.42 in debt for unpaid legal services,
 - b. \$111.26 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.

19. DS is entitled to post-judgment interest, as applicable.
20. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

21. 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.

Chad McCarthy, Tribunal Member