



Civil Resolution Tribunal

Date Issued: August 25, 2020

File: SC-2020-001047

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Simon Kent Law Corporation v. Engineer*, 2020 BCCRT 950

B E T W E E N :

SIMON KENT LAW CORPORATION

APPLICANT

A N D :

MUKESH ENGINEER and SHASHIKANT ENGINEER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about legal fees. The respondents, Mukesh Engineer and Shashikant Engineer, retained the applicant law firm, Simon Kent Law Corporation (SK), to provide legal advice and representation for multiple disputes. SK says the Engineers have failed to pay for all the legal services it provided, and that they owe \$2,285.43.

2. The Engineers say SK provided poor service, including issuing inadequate invoices, delaying certain tasks, and failing to provide necessary advice. So, the Engineers say they owe nothing.
3. SK is represented by an employee who is not a lawyer. Shashikant Engineer represents both respondents. Because they share a last name, and intending no disrespect, I will refer to the individual respondents by their first names, Mukesh and Shashikant.

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. This dispute involves an "it said, they said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or CRT proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the CRT's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to hear this dispute through written submissions.
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.

ISSUE

8. The issue in this dispute is whether the Engineers owe \$2,285.43 or another amount for SK's legal services.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant, SK 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.
10. The Engineers retained SK to represent them in at least 2 legal disputes from July 2018 to July 2019. The Engineers say that they were each separate clients of SK, and that SK should have charged each of them only for the work performed on their individual disputes. The Engineers say that they could not determine what each of them owed from SK's invoices. There is no written retainer agreement in evidence, so I considered other evidence of the parties' relationship, as follows.
11. The Engineers say that SK represented only Mukesh in a dispute I will refer to as RT, and only Shashikant in a dispute I will call BL. But I find demand letters and other BL dispute documents show that both Mukesh and Shashikant were claimants in the BL dispute. I find correspondence in evidence shows that Shashikant provided nearly all of the instructions to, and communications with, SK for all of the disputes on behalf of himself and Mukesh, including the RT dispute. I find SK's invoices show that SK received payments from each of the Engineers under one RT-named account for all their disputes, including advance deposits into SK's trust

account. SK says, and the Engineers do not deny, that Shashikant was the primary payer of SK's invoices for all the disputes. The evidence also shows that the various legal matters involving each of the Engineers were regularly discussed in correspondence with both Engineers. Further, I find SK's invoices show that SK performed tasks for each of Shashikant and Mukesh for "various claims," despite the invoices being addressed to Mukesh.

12. Although only Mukesh was a respondent in the RT dispute, I find, contrary to Shashikant's arguments, that Shashikant was more than simply a witness or source of background information in that dispute, and that he was more than Mukesh's agent or go-between in dealing with SK. Overall, I find each Engineer was equally SK's client for all the disputes.
13. The Engineers say they asked SK on many occasions to separate the invoiced amounts for the work SK performed on different disputes, so that they could determine which of Mukesh and Shashikant should pay for the work. The Engineers say SK did not provide detailed invoices until the CRT facilitation process began. In contrast, SK says it provided detailed invoices to the Engineers as it performed the services, and that it provided the same invoices during facilitation. I find that the evidence does not support the Engineers' invoice argument, and that the parties' correspondence shows no significant complaints about SK's invoicing or performance before SK ceased representing the Engineers in July 2019. On the evidence before me, I find SK provided detailed invoices to the Engineers on a reasonably timely basis while SK was the Engineers' lawyer. I find that the invoices were detailed enough that the Engineers could determine among themselves which portions of the invoices each would pay. I also find the evidence does not show that the Engineers approached SK individually about the disputes, or provided any directions to open separate legal files with separate billing and different client information for each dispute, if that is what they wanted.
14. Having considered the evidence before me, I find that the Engineers jointly retained SK to be their legal representative for all the matters described in the invoices in

evidence. This means, at law, that both Mukesh and Shashikant are responsible for the entire amount still owing for legal services provided by SK, if any.

15. Importantly, the Engineers do not directly take issue with any particular item of work invoiced by SK, and they do not deny that SK performed the invoiced work and correctly calculated the invoices and statements of account in evidence. Rather, the Engineers say SK's work was substandard, so they do not owe anything more. I find that the first evidence showing the Engineers were significantly dissatisfied with SK's performance was a July 2, 2019 email from Shashikant to SK. That was nearly 1 year after the Engineers first retained SK, and was around the time SK ceased to represent the Engineers.
16. I find it is an implied term of the parties' retainer agreement that SK's services must be of reasonable quality (see *Lund v. Appleford Building Company Ltd. et al*, 2017 BCPC 91 at paragraph 124). As the Engineers are alleging that SK's work was of poor quality, they bear the burden of proving that on a balance of probabilities.
17. The Engineers say that SK did not respond to their requests in a timely fashion, and that Mukesh was unable to reach SK about the RT dispute. SK says that it tried contacting Mukesh several times over a long period of time, without success. Shashikant says that Mukesh needed to give certain instructions to SK but was out of the country. However, the Engineers do not explain why being out of the country meant that Mukesh could not respond to emails or other methods of communication. SK says Mukesh finally tried to contact SK on one occasion when their SK lawyer was in court and unavailable, but Mukesh did not provide sufficient contact information for SK to reach Mukesh afterward. I find the written correspondence in evidence supports SK's version of events. Having reviewed the evidence, I find SK diligently responded to the Engineers' communications, including their numerous requests for changes to demand letters and other work. I find that SK did not unreasonably delay its communications with, or services for, the Engineers.

18. The Engineers say that SK failed to commence a lawsuit for another potential dispute before the limitation period for it expired. However, emails dated July 31, 2018, August 13, 2018, and August 15, 2018 show that SK warned the Engineers multiple times that they would be unable to file a lawsuit after the limitation period expired on August 19, 2019, and asked whether SK should file the lawsuit. SK received no instructions before the limitation period expired, and in the following months the Engineers did not complain about any failure to file a lawsuit. I find SK acted reasonably in the circumstances.
19. The Engineers say that SK failed to provide them with basic legal advice, such as whether it was worth pursuing certain disputes in court. However, I find the Engineers do not sufficiently identify any particular item of missing legal advice, or explain why SK was required to provide it, so I do not find this allegation persuasive.
20. The Engineers say SK delayed 3.5 months providing work on the BL dispute, which was eventually filed with the CRT. However, they do not say whether this delay was unexpected, why it was SK's fault, or if it affected their ability to pursue their claim. SK says it sent a demand letter as requested by the Engineers, and when the respondent failed to respond, it recommended that the Engineers file a CRT dispute because the claimed amount was less than \$5,000. SK says it assisted the Engineers with filing the CRT claim. On balance, I find the evidence fails to show SK omitted or unreasonably delayed any requested services, or that the Engineers suffered any loss as a result.
21. The Engineers say they were not successful in the disputes handled by SK, but I find there is no evidence that SK promised a particular outcome in any dispute. The Engineers also say SK failed to have a car returned to them, as required by an RT settlement agreement. SK says the other party to that agreement needed proof that the Engineers owned the car before releasing it to them, but the Engineers failed to provide adequate proof of ownership. The Engineers say they provided sufficient proof of ownership. I find the correspondence in evidence shows that the Engineers were unable to obtain evidence demonstrating that the car purchase money came

from either of them, or otherwise proving its ownership. I find SK is not responsible for the lack of evidence proving that the Engineers owned the car, and is not responsible for the negative outcomes of any of the Engineers' disputes.

22. The Engineers also asked that the CRT consider their financial circumstances, including that they have lost their jobs, and that the Covid-19 pandemic has made things "worse," although they do not say how. I find that the Engineers' ability to pay does not affect their liability for an unpaid debt. While nothing turns on it, I note that there is no evidence before me supporting the Engineers' suggestion that they are unable to pay the amount claimed by SK, although SK expressed a willingness to develop a payment plan that worked for all parties. Further, I find the Covid-19 pandemic did not prevent the Engineers from paying their debt to SK, which became due long before the pandemic began.
23. Overall, I find the Engineers have not met their burden of showing that SK's work was not of reasonable quality. I find SK adequately performed the work described in its invoices in a reasonable amount of time, the Engineers authorized that work, and the invoices were correctly calculated. I note this is a similar approach to the one used by the British Columbia Supreme Court Registrar, as described in section 71(2) and 71(4) of the *Legal Profession Act*. So, I find the Engineers owe SK the outstanding balance.
24. A September 10, 2019 SK account summary shows the Engineers had been billed \$3,225.70 for the outstanding invoices, and \$860.42 had been paid, leaving a principal amount of \$2,365.28 owing, plus interest to that date. However, SK only claims \$2,285.43 in this CRT dispute, so I find that is the amount the Engineers must pay.

CRT FEES, EXPENSES, AND INTEREST

25. SK does not claim contractual interest, but is entitled to interest under the *Court Order Interest Act*. I find that interest on the \$2,285.43 owing is calculated from September 10, 2019, the date of SK's last account statement summarizing the

overdue invoice amounts and demanding payment, until the date of this decision. This equals \$37.60.

26. 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 SK was successful in its claim, so is entitled to reimbursement of the \$125 it paid in CRT fees. I also find SK provided proof that it paid \$51.02 for registered mail and courier fees to serve the CRT Dispute Notice on the Engineers, so I find SK is entitled to that expense.

ORDERS

27. Within 30 days of the date of this order, I order Mukesh Engineer and Shashikant Engineer to pay SK a total of \$2,499.05, broken down as follows:

- a. \$2,285.43 in debt for unpaid legal services,
- b. \$37.60 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$125 in CRT fees, and
- d. \$51.02 in CRT dispute-related expenses.

28. SK is entitled to post-judgment interest, as applicable.

29. 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.

30. 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