



Civil Resolution Tribunal

Date Issued: October 1, 2020

File: SC-2020-003634

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Anwar v. Hung*, 2020 BCCRT 1113

B E T W E E N :

SEAR ANWAR

APPLICANT

A N D :

JULIA HUNG aka JULIA MANN-CHYAU HUNG

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about legal representation. The applicant, Sear Anwar, says the respondent, Julia Hung aka Julia Mann-Chyau Hung, did not provide adequate legal representation in his criminal case. Mr. Anwar says Ms. Hung failed to file a *Canadian Charter of Rights and Freedoms (Charter)* application to stay the

proceedings. Mr. Anwar also says Ms. Hung discriminated against him, delayed his case and colluded with the Crown counsel and police. Mr. Anwar says he paid Ms. Hung \$2,240 but she refused to complete the agreed services. Mr. Anwar says he needed to pay another law firm \$3,808 to finish the case. Mr. Anwar claims damages of \$5,000.

2. Ms. Hung denies Mr. Anwar's claims. She says she provided competent legal representation and she completed the agreed legal services. Ms. Hung says that she did not file a *Charter* application because she did not believe the application would succeed.
3. Both parties are 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, 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.

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.

ISSUES

8. The issues in this dispute are:
 - a. Did Ms. Hung discriminate against Mr. Anwar? If so, what is the remedy?
 - b. Did Ms. Hung breach her retainer agreement with Mr. Anwar? If so, what is the remedy?
 - c. Was Ms. Hung negligent in her legal representation of Mr. Anwar? If so, what is the remedy?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, Mr. Anwar must prove his case on the balance of probabilities. 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.

Discrimination

10. Mr. Anwar claims Ms. Hung discriminated against him. Under section 3.8(2) of the CRTA, the CRT has jurisdiction to apply the BC *Human Rights Code* (HRC) in a dispute (see *The Owners, Strata Plan LMS 2900 v. Mathew Hardy*, 2016 BCCRT 1). While the BC Human Rights Tribunal has jurisdiction to adjudicate allegations of HRC violations, the CRT has jurisdiction to resolve claims for damages arising from violations of the HRC under section 118 of the CRTA.

11. Section 8 of the HRC says a person must not, without a bona fide and reasonable justification, discriminate against a person because of their race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person.
12. Mr. Anwar says Ms. Hung discriminated against him by refusing to provide a copy of the retainer agreement and refusing to get his consent for legal decisions. Mr. Anwar claims that Ms. Hung said that she did so because of his age, ancestry, colour, race, place of origin, religion, sex and gender. However, Mr. Anwar did not provide any evidence to support this claim.
13. I find it unlikely that Ms. Hung said she would not provide services to Mr. Anwar because of his "...age, ancestry, colour, race, place of origin, religion, sex and gender." I find that the email messages exchanged between Mr. Anwar and Ms. Hung show that Ms. Hung communicated with Mr. Anwar in a professional and courteous manner. I find that Mr. Anwar's accusation that Ms. Hung refused to provide legal services for discriminatory reasons is not consistent with the lawyer-client relationship shown in her emails. As such, I find that Mr. Anwar's accusations of discrimination do not have a ring of truth and, in the absence of corroborating evidence, I find that these allegations are unlikely to be true.
14. For the above reasons, I find that Mr. Anwar has failed to provide sufficient evidence to prove that Ms. Hung discriminated against him and I dismiss this claim.

Breach of Contract

15. Mr. Anwar also says Ms. Hung breached their retainer agreement. The parties did not submit a signed contract. Mr. Anwar says he does not have a copy of the written retainer agreement. Ms. Hung provided an unsigned June 4, 2018 letter which includes a retainer agreement. Mr. Anwar says this document is not the retainer agreement he agreed to. He says that he has not seen this document before receiving Ms. Hung's evidence in this dispute.

16. I note that a contract does not need to be signed, but when a contract is signed, it creates certainty about its terms and the parties' intentions. When there is no signed contract, the party trying to prove that a contract exists must prove that the parties agreed on the essential terms of the agreement.
17. The June 4, 2018 letter was issued by the law firm of Sicotte and Associates and it was addressed to Mr. Anwar. I infer that Ms. Hung was associated with Sicotte and Associates because she is identified as a lawyer on the firm's letterhead. Although the letter in evidence does not have signatures, I infer that the letter was from Ms. Hung.
18. The letter says that Ms. Hung will provide pretrial legal services including the following:
 - Ms. Hung will represent Mr. Anwar in alternate resolution or plea bargain negotiation.
 - Ms. Hung will communicate with police officers, Crown counsel and witnesses.
 - Ms. Hung will provide legal advice.
 - Ms. Hung will attend remand hearings.
 - Ms. Hung will obtain particulars if possible.
19. Ms. Hung's June 4, 2018 letter says she will provide these pretrial services for a fee of \$2,000, plus tax. The letter also says that an additional fee is required for trial preparation and representation at trial.
20. Ms. Hung's time sheet says she met with Mr. Anwar on June 4, 2018, the same date as the retainer letter. Ms. Hung sent Mr. Anwar an email the same day quoting a fee of \$2,000, plus tax, for "all inclusive for resolution" or an additional \$1,500 for a 1 day trial. I find that the terms stated in Ms. Hung's June 4, 2018 letter are consistent with Ms. Hung's June 4 email. Based on Ms. Hung's time sheet and June

4, 2018 email, I infer that she delivered the June 4, 2018 retainer letter to Mr. Anwar.

21. Further, I find that Mr. Anwar agreed to the terms stated in the June 4, 2018 letter by paying the \$2,240 retainer. A credit card receipt shows that Mr. Anwar paid Sicotte and Associates \$2,240 on June 4, 2018. Based on the surrounding circumstances, I am satisfied that Ms. Hung's June 4, 2018 letter is an accurate copy of the parties' agreement. On October 22, 2018, Mr. Anwar asked Sicotte and Associates to transfer his retainer to Ms. Hung's trust account. Based on this email, I infer that Ms. Hung left Sicotte and Associates and Ms. Hung continued representing Mr. Anwar in place of Sicotte and Associates.
22. Based on the above, Ms. Hung was contractually obligated to provide Mr. Anwar with pretrial services including participating in alternative dispute resolution, negotiating with Crown counsel, providing legal advice, attending remand hearings, and obtaining particulars. I find that this means that Ms. Hung agreed to perform the pretrial services an ordinary, reasonable, and prudent lawyer would provide in the same circumstances.
23. So, did Ms. Hung breach the contract?
24. Mr. Anwar says that Ms. Hung breached the retainer agreement by failing to file an application for a judicial stay of proceedings based on allegations of *Charter* violations and abuse of process. Mr. Anwar also alleges Ms. Hung also breached the contract by improperly delaying his case and colluding with Crown counsel and the police. Mr. Anwar also says Ms. Hung withdrew without completing her contractual obligations.
25. Mr. Anwar says that Ms. Hung failed to file a request for a stay of proceedings. It is undisputed that Mr. Anwar wanted Ms. Hung to make a *Charter* application for a stay based on the circumstances of his arrest and detention. Ms. Hung said she evaluated this issue and determined that a *Charter* application would not help the case. In her opinion, she says a *Charter* application was unlikely to succeed

because the arresting police officer's statement countered Mr. Anwar's contentions. Instead, Ms. Hung said she orally discussed a potential stay with the Crown counsel which they eventually refused. Ms. Hung later sent a written request for a stay on March 29, 2019.

26. I find that Mr. Anwar has not provided sufficient to show that Ms. Hung's *Charter* analysis was improper. Further, I find that Mr. Anwar has not provided sufficient evidence to show that Ms. Hung breached the contract by declining to file an application that she did not believe would succeed. As stated above, I find that the contract requires Ms. Hung to perform the pretrial services a reasonable and prudent lawyer would provide in the circumstances. I find that Mr. Anwar has not proved that a reasonable and prudent lawyer would pursue a court application that they believed lacked merit.
27. I have also considered the Law Society of BC's *Code of Professional Conduct for BC* (CPC) which regulates lawyers' conduct. I find that it is an implied term of the retainer agreement that Ms. Hung will comply with her ethical duties under the CPC. Section 2.1-3 says a lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence that is authorized by law. In this matter, I find that Mr. Anwar asked Ms. Hung to file a *Charter* application even though Ms. Hung advised him that this would not succeed. While Ms. Hung did not file the requested *Charter* application, section 3.7-2 of the CPC says a lawyer can withdraw from representation if there has been a serious of confidence between the lawyer and the client. Based on the emails exchanged between the Mr. Anwar and Ms. Hung, I find that a breach of confidence did arise in this lawyer-client relationship over a fundamental disagreement about the defence strategy. I find that Ms. Hung did not breach her retainer agreement by seeking withdrawal rather than performing legal services she believed lacked merit.
28. So, I find that Mr. Anwar has not provided sufficient evidence to prove that Ms. Hung breached the agreement by not filing the *Charter* application.

29. Mr. Anwar also claims that Ms. Hung breached the contract by delaying his case. Ms. Hung's time sheet logs show that she appeared in court on Mr. Anwar's behalf on 9 occasions in 2018: July 5, July 26, August 19, September 6, September 20, October 4, October 18, November 8, and November 21. Based on these records, I infer that Mr. Anwar's case was adjourned multiple times. However, there is no evidence before me showing that these adjournments were the result of a breach of the contract by Ms. Hung. Further, Mr. Anwar has not proved that Ms. Hung requested the adjournments or that Mr. Anwar was opposed to the adjournments. I find that Mr. Anwar has failed to prove that Ms. Hung breached the contract by delaying the case.
30. I find that Mr. Anwar has not provided any evidence to support his claim that Ms. Hung colluded with Crown counsel and the police. Mr. Anwar does not explain the manner in which he claims Ms. Hung colluded or any evidence to corroborate this claim. I find that Mr. Anwar has failed to prove this claim.
31. Mr. Anwar also claims that Ms. Hung breached the retainer agreement by not completing his case. It is undisputed that Ms. Hung withdrew as Mr. Anwar's lawyer on May 30, 2019 and that Mr. Anwar retained another law firm to represent him. Mr. Anwar says he paid his new lawyers \$3,808 to finish the case. However, the new law firm's April 30, 2020 invoice says it charged Mr. Anwar \$3,076.53. Based on the invoice, I find that Mr. Anwar paid his new law firm \$3,076.53 for continued legal representation.
32. As stated above, I find that Ms. Hung was only retained to provide pretrial legal representation. I find that Ms. Hung was not retained to represent Mr. Anwar at trial. The invoice from his new lawyers say they reviewed disclosure, prepared for trial, represented Mr. Anwar at trial on March 16 and 17, 2020, negotiated with Crown counsel and performed legal research. Based on the invoice from his new lawyers, I find that his new lawyers generally provided trial services. I find that Mr. Anwar has not provided sufficient evidence to prove that any of the services provided by his new law firm were within the scope of his retainer agreement with Ms. Hung.

33. Ms. Hung says she completed her agreed legal services and she was not retained to represent Mr. Anwar at trial. Ms. Hung described her legal services saying she negotiated with the Crown counsel for a stay of proceedings which the Crown counsel denied. Ms. Hung says she advised Mr. Anwar that he could accept a peace bond or go to trial. Ms. Hung says that Mr. Anwar declined a peace bond so a trial was set. Ms. Hung also provided a copy of a written request for a stay of proceedings which was also denied. Based on Ms. Hung's undisputed description of her services, I am satisfied that Ms. Hung performed her agreed pretrial services before withdrawing.
34. Based on the above reasons, I find that Mr. Anwar has not proved that Ms. Hung breached their retainer agreement. So, I dismiss this claim.

Negligence

35. Although Mr. Anwar did not use this word, I find that his claims are also about negligence. In particular, I find that the same allegations Mr. Anwar made about a breach of contract also amount to allegations of professional negligence.
36. To prove negligence, Mr. Anwar must show that Ms. Hung owed a duty of care, she breached the standard of care, Mr. Anwar sustained damage, and the damage was caused by Ms. Hung's breach (*Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at par 33)
37. I am satisfied that Ms. Hung owed Mr. Anwar a duty of care as his lawyer. The standard of care does not require perfection. Rather, the standard is what would be expected of an ordinary, reasonable, and prudent lawyer in the same circumstances. One must look at the particular facts of the case to determine whether Ms. Hung acted reasonably.
38. Generally, in claims of professional negligence, it is necessary for the applicant to show a breach of the standard of care through expert opinion evidence. An expert can explain the standards of the profession and the care and skill a reasonably competent lawyer would be expected to provide in these circumstances. Without

expert evidence, I find that I am unable to assess whether Ms. Hung breached the standard of care required of a competent criminal defense lawyer. So, I find that Mr. Anwar has failed to prove that Ms. Hung was negligent and I dismiss this claim.

39. For the above reasons, I find that Mr. Anwar has failed to prove his claims and this dispute.

40. 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. Mr. Anwar was the unsuccessful party and so, I dismiss his claim for CRT fees. Neither party claimed dispute-related expenses, so none are ordered.

ORDER

41. I dismiss Mr. Anwar's claims and this dispute.

Richard McAndrew, Tribunal Member