



Civil Resolution Tribunal

Date Issued: March 10, 2021

File: SC-2020-005107

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McConnan Bion O'Connor & Peterson Law Corporation v. McKay*,
2021 BCCRT 269

B E T W E E N :

MCCONNAN BION O'CONNOR & PETERSON LAW CORPORATION

APPLICANT

A N D :

TALBY MCKAY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about unpaid invoices for legal services.

2. The applicant, McConnan Bion O'Connor & Peterson Law Corporation, says it was retained by the respondent, Talby McKay. It seeks \$2,067.46 for its unpaid invoices, plus contractual interest at 18% annually. The applicant is represented by its articulated law student, Stephan Sader.
3. The respondent is self-represented. They say they did not receive a breakdown of the work performed. I infer that they ask me to dismiss the dispute.

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). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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 are:
 - a. Did the respondent sign the retainer letter in their personal capacity?
 - b. If so, did the applicant charge the respondent according to the parties' contract?
 - c. What, if anything, does the respondent owe, including interest?

EVIDENCE AND ANALYSIS

9. As the applicant in this civil dispute, the applicant must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
10. The respondent made only a brief submission and did not provide any evidence despite having the opportunity to do so. The respondent says they are "not part of this hearing!!!!" I interpret this statement, as the applicant does, to mean the respondent argues they were not a party to the contract with the applicant.
11. The applicant provided an October 12, 2018 retainer letter addressed to Northern Bio-Carbon Processing Nanaimo Ltd. (Northern Bio-Carbon) and the respondent. I infer that the respondent is or was a principal of Northern Bio-Carbon at the time the retainer letter was signed. The applicant says Northern Bio no longer exists. For the reasons that follow, I find nothing turns Northern Bio's present status.
12. The retainer letter outlines the terms of the parties' contract. One of the applicant's lawyers signed for the applicant. There is a space for a signature for Northern Bio-Carbon, but it is blank. There is a space for a signature for the respondent and it is signed. The respondent does not dispute that the signature is theirs.
13. Considering the court decisions on personal liability, including *Xerox Canada Ltd. v. Vandesign Graphix Ltd.*, 2010 BCSC 1039, I find the respondent signed the retainer letter in their personal capacity and was a party to the contract. I rely on the fact that

the letter was addressed to them personally as well as Northern Bio-Carbon, and that the respondent signed the space above their own name. So, I find the respondent is responsible for any debt accrued under the retainer letter.

14. The respondent's other argument, stated in the Dispute Response, is that they "never got full break downs of work just invoices." Having reviewed the invoices, I find they provide a sufficient breakdown of the work performed. Each invoice provides a detailed account of the time spent on each task to the tenth of an hour, a description of the work for each task, and the identity of the person doing the task.
15. The retainer letter sets out the hourly rates applicable to the lawyer's work and work done by others. The applicant billed the rates as agreed in the retainer letter.
16. The retainer letter says the respondent was entitled to a 25% discount on the rates, which is shown on the invoices.
17. The retainer letter says the client agrees to be responsible for disbursements and explains what disbursements are. It does not provide rates, so I find the respondent is only responsible for reasonable disbursements at reasonable rates. That said, there is no evidence that the disbursements were unreasonable.
18. In summary, the respondent does not allege the work was unsatisfactory or the charges were unreasonable, and there is no evidence before me to that effect. As a result, I find the respondent must pay the outstanding invoiced amounts.
19. There were 3 invoices that totaled \$4,567.46. The respondent or Northern Bio-Carbon paid a \$2,500 retainer fee. The outstanding balance is \$2,067.46, which corresponds to the amount the applicant claims. I order the respondent to pay \$2,067.46. I make no findings about Northern Bio-Carbon's liability because it is not a party to this dispute.
20. In the retainer letter, the respondent agreed to pay 18% annual interest from the invoice date on outstanding accounts not paid within 30 days. For the 3 invoices together, I find the contractual interest to the date of this decision equals \$791.85.

21. 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 the applicant is entitled to reimbursement of \$125 in CRT fees and \$18.64 in dispute-related expenses for a corporate search and registered mail, which I find reasonable.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$3,002.95, broken down as follows:

- a. \$2,067.46 in debt,
- b. \$791.85 in contractual interest, and
- c. \$143.64, for \$125.00 in CRT fees and \$18.64 for dispute-related expenses.

23. The applicant is entitled to post-judgment interest, as applicable.

24. 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.

25. 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.

Micah Carmody, Tribunal Member