



# Civil Resolution Tribunal

Date Issued: April 16, 2021

File: SC-2020-007449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *FH & P Lawyers LLP v. Ma*, 2021 BCCRT 396

**B E T W E E N :**

FH&P LAWYERS LLP

**APPLICANT**

**A N D :**

DING BOR MA aka BOB MA

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sherelle Goodwin

## **INTRODUCTION**

1. This dispute is about payment for legal services.

2. The applicant, FH&P Lawyers LLP (FH&P), provided legal services to the respondent, Ding Bor Ma (also known as Bob Ma), between September 2016 and April 2018. FH&P says Mr. Ma has refused or failed to pay FH&P's April 3, 2018 invoice. FH&P claims \$3,236.66 which it says is the outstanding balance owed.
3. Mr. Ma agrees he hired FH&P to provide legal services. However, he says that he did not authorize any legal work beyond the \$2,000 retainer he paid FH&P. Mr. Ma also says FH&P's claim is out of time under the *Limitation Act*.
4. FH&P is represented by Shane Gardner, a lawyer. Mr. Ma represents himself.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issues in this dispute are:
  - a. Is FH&P's claim out of time under the *Limitation Act*?
  - b. If not, must Mr. Ma pay FH&P for the April 3, 2018 invoice and, if so, in what amount?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding such as this one FH&P, as the applicant, bears the burden of proving its claim on a balance of probabilities. In other words, it must show its position is more likely than not correct. I have reviewed the submissions and weighed the evidence provided by both parties. I refer only to that necessary to explain and provide context for my decision.
11. Mr. Ma retained FH&P on May 12, 2016. At some point shortly after May 12, 2016, Mr. Ma paid FH&P \$2,000 as a retainer, to be applied against any future invoice. None of this is disputed.
12. In its April 3, 2018 invoice, FH&P charged Mr. Ma \$5,236.36 for legal services. After applying Mr. Ma's \$2,000 retainer, a \$3,236.36 balance remained owing, the amount claimed in this dispute. FH&P sent the invoice to Mr. Ma on April 12, 2018. None of this is disputed.

## ***Limitation Act***

13. Section 6 of the *Limitation Act* says that a claim for debt, such as this one, must be started within 2 years of when it was “discovered”. Section 8 says a claim is discovered on the first day when a person knew, or reasonably ought to have known, that a loss occurred, that it was caused or contributed to by an act or omission of the person against whom a claim could be made, and that a court or tribunal proceeding would be an appropriate way to remedy the loss.
14. FH&P applied to the CRT on September 25, 2020, and so if its claim arose before September 25, 2018, the claim is out of time.
15. Mr. Ma says FH&P should have filed its claim by April 2, 2020. I infer he argues that the claim was discovered, or discoverable, on April 3, 2018, the date the invoice was issued.
16. FH&P says the claim was not discoverable until Mr. Ma terminated his relationship with FH&P in November 2019. FH&P says that the April 3, 2018 was only an interim account and that payment could be delayed due to the parties’ ongoing relationship. However, once Mr. Ma retained a new lawyer, the April 3, 2018 invoice became due and owing as a final account. For the following reasons I disagree with FH&P.
17. The April 3, 2018 invoice says “Bill # 6335” and says \$3,236.36 is the “net amount owing on this bill”. A note at the bottom thanks Mr. Ma for keeping his account current which, I infer, means paid. The invoice says that interest will be charged on any outstanding balance over 30 days. Further, the invoice includes a form to “pay this account” by credit card. I find all these things indicate that the April 3, 2018 invoice is, essentially, a bill requesting payment. Given this, I find it is irrelevant whether the invoice is an interim bill, or a final bill.
18. Section 14 of the *Limitation Act* says that a claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand is made. I find the April 3, 2018 bill was a demand for payment. I find FH&P

demanded payment when it sent the bill to Mr. Ma on April 12, 2018. In other words, I find FH&P's claim for \$3,236.36 was likely discoverable on April 12, 2018.

19. I find FH&P's claim was clearly discoverable prior to September 25, 2018 and so FH&P has filed its CRT claim out of time. However, that does not end the matter.
20. On March 18, 2020 the British Columbia provincial government declared a state of emergency. On March 26, 2020, the Minister of Public Safety and Solicitor General issued Ministerial Order 86/2020 (MO86) under the *Emergency Program Act*, which suspended mandatory limitation periods for court actions. The order also said that a tribunal, such as the CRT, may waive, extend, or suspend a mandatory time period.
21. MO86 was repealed on July 10, 2020 when the *COVID-19 Related Measures Act* (CRMA) came into force. Section 3(5) and item 7 of Schedule 2 of the CRMA, confirm that the CRT's ability to waive, extend, or suspend mandatory time periods continues during the state of emergency. For clarity, under the CRMA, the CRT's authority to extend timelines is discretionary, not mandatory.
22. FH&P asks that the CRT extend the 2-year limitation period for this claim. It says it suffered substantial delays moving forward with business operations generally, and this claim specifically, due to the COVID-19 pandemic. I find that the CRT should only exercise its discretion to extend the limitation period where there is evidence that the COVID-19 pandemic caused or contributed to FH&P's inability to file its claim on time.
23. FH&P says it tried to file this claim in Small Claims Court on April 3, 2020 but the court would not accept any non-urgent new filings because the limitation periods were suspended. FH&P says that the Small Claims Court did not direct it to file this claim with the CRT until the court began accepting new filings again. FH&P did not provide any supporting evidence or explain when the court told it to file its claim with the CRT. On balance, I find the pandemic did not contribute in any way to FH&P's failure to file this claim with the CRT by April 12, 2020.
24. First, the invoice was issued and sent to Mr. Ma in April 2018. Based on FH&P's correspondence, I find it again asked for Mr. Ma to pay the outstanding invoice on

February 8, 2019 and April 12, 2019. There is no indication whether FH&P took any further steps to collect its payment between April 12, 2019 and March 18, 2020, when the government declared a pandemic. FH&P's failure to start a claim before March 18, 2020 cannot be related to the pandemic.

25. Second, I find FH&P's ability to attempt filing a Small Claims court action on April 3, 2020 shows that it was equally capable of filing a CRT claim. In fact, given the CRT's online portal, which remained open and accessible during the pandemic, I find it likely would have been easier for FH&P to file a CRT claim than a Small Claims court claim, between March 18, 2020 and April 12, 2020.
26. Third, I find it unreasonable for FH&P to have relied on the Small Claims court's alleged April 3, 2020 advice that non-urgent matters, such as FH&P's claim, would not be accepted because the limitation period was suspended. Section 118 of the CRTA and section 3 of the *Tribunal Small Claims Regulation* clearly set out the CRT's jurisdiction over debt claims up to \$5,000. Even if the Small Claims court did not warn FH&P of this, I find a law firm ought to have known the proper jurisdiction for their debt claim. So, I find FH&P's failure to recognize the CRT as the correct jurisdiction to file its claim is not related to the COVID-19 pandemic.
27. On balance, I find FH&P has failed to show how the COVID-19 pandemic prevented it from filing this claim within the 2-year limitation period, or by April 2, 2020. I decline to exercise my discretion to extend the limitation period under the CRMA. I find FH&P's claim is out of time under the *Limitation Act* and so I need not consider the remainder of the claim. I dismiss FH&P's claim for \$3,236.36.
28. Under the CRTA and CRT rules, a successful party is generally entitled to reimbursement of CRT fees and dispute-related expenses. As FH&P was unsuccessful, I dismiss its claim for CRT fees. As the successful party, Mr. Ma paid no fees and claimed no dispute-related expenses, so I find he is not entitled to any reimbursement.

## **ORDER**

29. I dismiss FH&P's claims and this dispute.

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Sherelle Goodwin, Tribunal Member