



# Civil Resolution Tribunal

Date Issued: May 4, 2021

File: SC-2020-009065

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Silversides v. L.C. Equipment Ltd.*, 2021 BCCRT 473

B E T W E E N :

DONALD ARTHUR SILVERSIDES, SILVERSIDES LAW CORPORATION, SAMUEL JACK GEORGE MCLEAN, and S. MCLEAN LAW CORPORATION

**APPLICANTS**

A N D :

L.C. EQUIPMENT LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This dispute is about a legal bill. The applicants, Donald Arthur Silversides and Samuel Jack George McLean, are lawyers. They each practice law through their respective law corporations, the applicants Silversides Law Corporation and S. McLean Law Corporation (together, the law corporations). The law corporations operate as the law firm Silversides, Merrick & McLean Barristers & Solicitors, which is a partnership. For clarity, I will refer to the applicants together as SMM.
2. The respondent, L.C. Equipment Ltd. (LCE), was SMM's client. SMM claims that LCE owes it \$2,547.14 in legal fees and other charges. LCE says that SMM has overcharged it and did not diligently follow its instructions. I infer that LCE asks me to dismiss SMM's claims.
3. SMM is represented by an articulated student. LCE is represented by its owner, Vladi Cargo.

## **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 pay money or to do or stop doing something. The tribunal's order may include any terms or conditions the CRT considers appropriate.
8. SMM argues that the CRT does not have jurisdiction to consider LCE's arguments about the reasonableness of the invoice. SMM says that only the BC Supreme Court can review a lawyer's bill. It is true that section 70 of the *Legal Profession Act* (LPA) sets out a process for the court to review a lawyer's bill. However, I find that this process is optional. I find that the CRT's jurisdiction over SMM's debt claim includes jurisdiction to consider LCE's arguments about the reasonableness of the invoice, as discussed in more detail below.
9. SMM objects to LCE describing conversations from the CRT's facilitation process in LCE's submissions. CRT Rule 1.11 says that communications "made attempting to settle claims" cannot be disclosed during the adjudication process. LCE technically breached this rule. However, I find that the purpose of this rule is to encourage settlement by preventing parties from disclosing admissions made during facilitation. All of the communications from facilitation that LCE describes in its submissions are statements that Mr. Cargo made to the facilitator that were unrelated to potential settlement. They also did not impact the outcome of this decision. So, I find that there is no prejudice to SMM. I find that LCE's rule breach did not impact the fairness of this hearing.

## ISSUES

10. The issues in this dispute are:
  - a. How much, if any, of the claimed \$2,547.14 does LCE owe?

- b. If LCE must pay some or all of the claimed amount, which applicants are entitled to be paid?

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, SMM must prove its case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. This dispute is about SMM's \$2,547.14 invoice to LCE dated March 7, 2019. The invoice describes the following work:
  - Giving advice about a commercial lease (\$520),
  - Transferring shares in LCE to Mr. Cargo from his mother (\$1,180), and
  - Transferring LCE's records to another law firm (\$430).
13. The remaining amount was for maintaining LCE's corporate records, photocopying, postage, courier charges, and taxes.
14. The invoice included 3 schedules that describe the work SMM did for each of the 3 matters. These schedules included date entries but did not say how much time the lawyers spent on each task or in total for each matter. There is no evidence about the lawyers' hourly rates. There is no written retainer agreement in evidence.
15. LCE makes several arguments about why it should not have to pay the invoice.
16. First, LCE argues that it has paid SMM more than enough for the services SMM has provided over the years. LCE argues that SMM overcharged for legal work in 2015 and 2016, which LCE paid without complaint. So, LCE says that it should not have to pay the current invoice. LCE says that it felt it had no choice but to pay the previous invoices. I disagree. LCE could have disputed the invoices or asked the court to review the bills under the LPA. I find that the amount SMM charged for past work is not relevant to the invoice in dispute here.

17. Second, LCE argues that SMM did not diligently carry out its instructions about the share transfer. LCE says that in 2017, Mr. Cargo's mother decided to transfer her shares to him. LCE says that despite its instructions and repeated follow up over several months, SMM did not complete the share transfer. LCE says that it ended up switching law firms to get this work done by a November 2018 deadline.
18. LCE provided a May 18, 2018 email from Mr. Cargo to Mr. Silversides. Mr. Cargo advised that his mother would soon be moving to another community. Mr. Cargo asked Mr. Silversides to get her signatures for the share transfer before her scheduled departure of May 30, 2018. There is no evidence of a response.
19. According to SMM's records, LCE contacted Mr. Silversides about the share transfer in late 2017. SMM talked to LCE's accountant in January 2018, and "prepared documents" in March 2018. After this, there are no further time entries about the share transfer until October 2018, when LCE decided to switch firms.
20. LCE says that this delay was stressful because Mr. Cargo worried that his mother might lose capacity or pass away before completing the share transfer. However, it is undisputed that Mr. Cargo's mother signed the required documents in time. There is no suggestion of any loss because of the delay in completing this task. So, I find that this delay does not justify any deduction from the invoice.
21. Finally, LCE argues that the invoice is excessive and unreasonable. LCE says that it requested very few services from SMM and does not understand why the charges are so high. In a December 30, 2019 letter to SMM, Mr. Cargo asked SMM to explain the charges related to the lease review, the share transfer, and the file transfer to the new law firm. There is no evidence of a response.
22. While LCE does not put it this way, I find that it argues that SMM breached the parties' contract by charging an unreasonably high fee. As mentioned above, there is no written retainer agreement before me and neither party gave any evidence about the terms of their contract, such as hourly rates. In any event, I find that it was an express or implied term of their contract that SMM would not charge an

unreasonable fee, which is consistent with lawyers' professional obligations under the Code of Professional Conduct.

23. When a party alleges a contract breach, they must prove the breach. This means that LCE must prove that the fees charged were unreasonable. The difficulty in this dispute is that only SMM could explain how much time they spent on each task, what they accomplished, and why the time spent was reasonable or necessary. They did not do so, despite LCE clearly raising the issue before and during this dispute. SMM simply asserts that the bill was reasonable with no supporting evidence. Mr. Silversides, who appears to have been the lawyer responsible for most of the billings, did not provide a statement.
24. CRT Rule 8.1 says that a party must provide all relevant evidence. I find that SMM failed to provide relevant evidence, discussed above, which was within its control to provide. When parties fail to provide relevant evidence with no explanation, the CRT may draw an adverse inference against them. I find that an adverse inference against SMM is appropriate in this dispute. This means that where the evidence before me does not establish whether SMM's charges were reasonable, I will assume that the charges were unreasonable.
25. While this dispute is not a review under the LPA, I have considered the factors in section 71 of the LPA in assessing the reasonableness of the invoice. This is consistent with previous CRT decisions, such as *Huang dba D.D. Huang & Associates v. North America Commerce Valley Development Ltd.*, 2020 BCCRT 671. The primary factors I have considered are the complexity of the issues involved and the level of skill or specialized knowledge required of the lawyer.
26. LCE did not dispute the reasonableness of the \$66 charge for maintaining LCE's corporate records or any of the claimed disbursements, which total \$87.42. So, I find that LCE must pay these amounts.
27. With respect to the commercial lease, there are 5 date entries in the invoice for a total fee of \$520. Based on these entries, I find that LCE actively sought out Mr.

Silversides' advice about different aspects of the lease, including an in-person meeting. On balance, I find that the date entries are detailed enough to support the fees claimed. I find that LCE must pay \$520 in fees for advice related to its commercial lease.

28. With respect to the share transfer, there are 8 date entries for a total fee of \$1,180. The difficulty is that SMM did not complete the share transfer. That said, I find that SMM gave some legal advice about the share transfer that would have provided value to LCE even though a different law firm completed the transfer. However, I find that most of the date entries provided no benefit given that LCE ended up switching law firms. On a judgment basis, and bearing in mind that I have drawn an adverse inference against SMM, I find that \$500 is a reasonable sum for this work.
29. Finally, with respect to the transfer of LCE's corporate records, there are 6 date entries for a total fee of \$430. Most of the time entries appear to be administrative in nature, such as reviewing the letter requesting the record book and writing the cover letter sending it to the new law firm. I find that transferring a corporate record book to a new lawyer is a routine matter that takes little substantive legal work. On a judgment basis, and again bearing in mind that I have drawn an adverse inference against SMM, I find that \$200 is a reasonable sum for this work.
30. This leaves the question of which applicants are entitled to be paid. SMM provided no explanation about why the individual lawyers are applicants when they practice through their law corporations. In the absence of an explanation, I find that they are not entitled to personally collect the corporation's revenues. I find that only the law corporations are entitled to do so. I dismiss the lawyers' personal claims.
31. I find that as partners of SMM, the law corporations are jointly entitled to the amount LCE owes SMM. Therefore, I order LCE to pay the law corporations \$1,286 in legal fees plus \$87.42 in disbursements and \$159.14 in taxes, for a total of \$1,532.56.

32. The *Court Order Interest Act* (COIA) applies to the CRT. The law corporations are entitled to pre-judgment interest on the invoice from March 7, 2019, the date of the invoice, to the date of this decision. This equals \$45.18.
33. 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. The law corporations were partially successful, so I find they are entitled to reimbursement of half of their \$125 in CRT fees, which is \$67.50. SMM did not claim any dispute-related expenses. LCE did not claim any dispute-related expenses or pay any CRT fees.

## **ORDERS**

34. Within 30 days of the date of this order, I order LCE to pay the law corporations a total of \$1,645.24, broken down as follows:
  - a. \$1,532.56 in debt,
  - b. \$45.18 in pre-judgment interest under the COIA, and
  - c. \$67.50 for CRT fees.
35. The law corporations are entitled to post-judgment interest, as applicable.
36. I dismiss Mr. Silversides's and Mr. McLean's claims.
37. 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.

38. 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.

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Eric Regehr, Tribunal Member