Civil Resolution Tribunal

Date Issued: June 7, 2021

File: SC-2020-008219

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Vigier v. Read*, 2021 BCCRT 624

B E T W E E N :

ALISTAIR VIGIER

APPLICANT

A N D :

BARBARA READ

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about alleged legal representation. The applicant, Alistair Vigier, says that he hired the respondent, Barbara Read, in April 2019 to represent him in a civil litigation matter. Mr. Vigier says that he paid Ms. Read a $5,000 retainer. Mr. Vigier

claims that Ms. Read did not do any work on his matter, and she terminated her representation in July 2019. He says Ms. Read refused to return his documents or the $5,000 retainer. Mr. Vigier seeks reimbursement of the unused $5,000 retainer.

2. Ms. Read says Mr. Vigier has never been her client and he did not provide her with any trust money. Ms. Read does not deny that Mr. Vigier paid her $5,000, but she says it was a gift, which she is entitled to keep.

3. The parties are each self-represented. I note that Ms. Read is a lawyer, authorized to practice in British Columbia.

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. In some respects, each party to this dispute call into question the credibility, or truthfulness, of the other. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

Late evidence

8. Ms. Read provided late evidence, consisting of Law Society of British Columbia (LSBC) letters from a complaint Mr. Vigier made against Ms. Read about some of the circumstances at issue in this dispute. Mr. Vigier objects to the late evidence because he says Ms. Read has already requested several extensions during this dispute. He says the late evidence has caused further delay, which has caused him prejudice. He also says the letters are irrelevant.

9. Ms. Read submits that the LSBC has already determined Mr. Vigier was not her client and that his allegations in this dispute are untrue, which I infer is the basis for her position that the letters are relevant. However, I find that I am not bound by any findings made by the LSBC. I agree with Mr. Vigier's submission that the LSBC investigates alleged disciplinary matters under the *Legal Profession Act*, the Law Society Rules, and the Code of Professional Conduct for British Columbia. The LSBC does not determine liability in a civil dispute such as this one. Therefore, I find the letters are not relevant.

10. Further, each of the LSBC letters states that it is not admissible as evidence in any proceedings without the consent of the LSBC's Executive Director or the letter's author, as set out in section 87 of the *Legal Profession Act*. Ms. Read has provided

no evidence that she received the required consent to submit the letters as evidence in this dispute. For all these reasons, I decline to admit the late evidence and have not considered it in coming to my decision.

ISSUES

11. The issues in this dispute are:

    a. Whether Mr. Vigier was Ms. Read's client, and

    b. Whether Mr. Vigier's $5,000 payment to Ms. Read was a retainer for legal services, or a gift.

EVIDENCE AND ANALYSIS

12. In a civil proceeding like this one, generally the applicant (here, Mr. Vigier) must prove their claims on a balance of probabilities. This general burden is subject to the law of gifts, which I discuss below. I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to provide context for my decision.

13. Mr. Vigier says that he approached Ms. Read in April 2019 to represent him and several other plaintiffs in an existing lawsuit against Ms. Read's former employer. Mr. Vigier provided a Facebook message chain between himself and Ms. Read from March and April 2019. From this message chain, I find that Ms. Read agreed to provide a witness statement for Mr. Vigier's use in his litigation. I also find that Ms. Read told Mr. Vigier on April 11, 2019 that she was "not able to take conduct". I infer that Ms. Read was referring to taking conduct of Mr. Vigier's lawsuit. The message chain also shows that the parties arranged to speak on the phone on April 16, 2019, which is when the message chain ends.

14. Mr. Vigier says that on April 18, 2019, he and Ms. Read reached an oral agreement that Ms. Read would represent him in his lawsuit. He claims the terms of their agreement were that he would provide Ms. Read with $5,000, and she would represent Mr. Vigier and the other plaintiffs in the litigation up to, but not including, a

trial. He says that Ms. Read agreed to file a notice of change of solicitor, secure trial dates, complete the discovery process, and attend settlement discussions.

15. It is undisputed that there was no written retainer agreement between the parties.

16. Mr. Vigier says he sent Ms. Read a $3,000 e-transfer on April 18, 2019 and a further $2,000 e-transfer on April 23, 2019. While Mr. Vigier did not provide any documentary evidence of these payments, Ms. Read does not dispute she received these funds from Mr. Vigier. So, I find that Mr. Vigier transferred the claimed $5,000 to Ms. Read.

17. Mr. Vigier claims that Ms. Read terminated her representation on about July 15, 2019, without having done anything to advance the litigation. So, he seeks return of the $5,000 he paid to Ms. Read.

18. In contrast, Ms. Read says that Mr. Vigier was never her client and that he did not provide her with trust funds. However, Ms. Read also says Mr. Vigier asked her to assist in brokering a settlement in his litigation against her former employer, which she says she tried to do. Ms. Read did not explain this apparent discrepancy in her position that she represented Mr. Vigier in settlement discussions, but he was not her client.

19. I find the evidence shows Ms. Read took steps to prepare a notice of change of solicitor and a notice of trial in Mr. Vigier's litigation, although it is unclear whether either was successfully filed. I find the evidence also shows that Ms. Read asked the plaintiffs in the litigation to authorize a disbursement for her to attend a seminar she felt would be helpful to the lawsuit. Overall, I find the weight of the evidence demonstrates that Ms. Read represented Mr. Vigier and the other plaintiffs in the litigation against her former employer, between approximately May and July 2019.

20. So, where does the $5,000 payment from Mr. Vigier fit in? As noted, Mr. Vigier says it was a retainer. Mr. Vigier also describes it in his submissions as a "flat fee", and says the parties never had any discussions about an hourly rate for Ms. Read's work. In contrast, Ms. Read claims the $5,000 payment was a gift, but provides no explanation or context for such a gift.

21. Under the law of gifts, once an applicant has proved a transfer, the burden shifts to the person receiving the transfer to establish it was a gift: *Pecore v. Pecore*, 2007 SCC 17. A key component of a gift is the transferor's intention to donate: *Bergen v. Bergen*, 2013 BCCA 492. The evidence should also show that the intention of a gift was inconsistent with any other intention or purpose: *Lundy v. Lundy*, 2010 BCSC 1004. So, I find Ms. Read bears the burden of proving Mr. Vigier intended to gift her the $5,000.

22. As noted, Ms. Read did not provide any submissions or evidence about why Mr. Vigier would gift her $5,000. In the absence of any logical explanation for such a significant gift, I find Ms. Read has failed to meet her burden to prove Mr. Vigier clearly intended to donate $5,000 to her. Further, I find she has not established that a gift is the only consistent explanation for Mr. Vigier paying her the money.

23. On balance, I find Mr. Vigier paid Ms. Read the $5,000 in exchange for Ms. Read agreeing to represent him and the other plaintiffs and take meaningful steps to advance their litigation. I find it is unnecessary to determine the details of the parties' agreement about the $5,000 payment, such as whether it was meant as a traditional legal retainer, a flat fee, or some other financial arrangement for representing the plaintiffs in the litigation. I say this because Ms. Read does not argue that she is entitled to keep the $5,000 under the terms of her legal representation agreement with Mr. Vigier or because she earned it for work that she performed. In any event, I find the evidence shows Ms. Read did not take any meaningful steps to advance the litigation over the approximately 2 months that she represented the plaintiffs.

24. Given that Ms. Read has not proven the $5,000 payment was a gift, or that there is any other basis on which she is entitled to keep the money, I find Ms. Read must reimburse Mr. Vigier the $5,000.

25. I note that Mr. Vigier also claimed Ms. Read failed to return his documents. However, he provided no evidence or submissions about that claim, and the only requested remedy was for reimbursement of the $5,000. Therefore, I make no order about the return of documents.

INTEREST, CRT FEES AND EXPENSES

26. The *Court Order Interest Act* applies to the CRT. I find the evidence shows the parties' relationship broke down and Mr. Vigier requested reimbursement of the $5,000 sometime in mid-July 2019. Allowing a reasonable time for repayment after his demand, I find Mr. Vigier is entitled to pre-judgement interest on the $5,000 from July 31, 2019, to the date of this decision. This equals $110.78.

27. 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. Vigier is the successful party, but he did not pay any CRT fees and claimed no dispute-related expenses, so I make no order.

ORDERS

28. Within 30 days of the date of this decision, I order Ms. Read to pay Mr. Vigier a total of $5,110.78, broken down as follows:

    a. $5,000 in debt, and

    b. $110.78 in pre-judgment interest under the *Court Order Interest Act*.

29. Mr. Vigier is entitled to post-judgment interest, as applicable.

30. 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.

31. 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.

Kristin Gardner, Tribunal Member