



Civil Resolution Tribunal

Date Issued: June 11, 2021

File: SC-2020-009767

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Pacifica Immigration Consulting Inc. v. Liu*, 2021 BCCRT 650

BETWEEN:

PACIFICA IMMIGRATION CONSULTING INC.

APPLICANT

AND:

KUN LIU also known as WEIQUING LIU; LORI LIU; AMY LIU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about immigration services. The applicant, Pacifica Immigration Consulting Inc. (Pacifica), says it had a verbal agreement to provide immigration

consulting services to the named respondent, Kun Liu also known as Weiqing Liu, Lori Liu, and Amy Liu, for a flat fee of \$2,100. Pacifica claims \$2,100 for unpaid consulting services.

2. The respondent says that although she discussed obtaining immigration consulting services from Pacifica's representative Amir Shirazi, she ultimately decided not to pursue those services. She says she never had an agreement with Pacifica, and she does not owe it anything.
3. Mr. Shirazi represents Pacifica as its principal and the respondent is self-represented.
4. The respondent says Kun is her legal name, though she does not specify if this is her first name or surname. She asks the CRT to refer to her by Ms. Kun. She says Pacifica's use of other names for her is an attempt to question her character. While I have referred to the respondent as Ms. Kun in this decision, there is no indication that Pacifica agreed to change the respondent's name in the style of cause. So, without intending any disrespect, the respondent's name in the style of cause reflects their name as stated in Pacifica's Dispute Notice.

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. Some of the evidence in this dispute amounts to a "she said, he said"

scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. 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. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

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.

PRELIMINARY ISSUES

Requests for Additional Evidence

9. After the parties submitted their evidence, Pacifica asked Ms. Kun through a CRT case manager to provide 3 additional documents, all related to her husband RN's immigration history and status. In response, Ms. Kun submitted 1 of the requested documents and 2 related documents. However, I find none of these documents are relevant to determining whether Pacifica and Ms. Kun had a verbal agreement or whether Ms. Kun owes Pacifica anything for its services. So, I have not considered this evidence in my decision. I say the same about the 2 remaining documents

Pacifica says Ms. Kun has not produced, since they relate to RN's immigration status and not to whether Ms. Kun owes Pacifica anything.

10. In its reply submissions Pacifica asks the CRT to order Ms. Kun to provide both her and RN's phone records from October 22, 2020 to October 29, 2020 showing any calls they received from or made to Pacifica during that time. Pacifica says these records are required to establish the amount of time it spent providing requested immigration services to them. However, Pacifica has already submitted its own phone records for the relevant dates. Pacifica's phone records should show any incoming or outgoing calls with either Ms. Kun or RN, so I find the requested phone records would be redundant. I decline to order Ms. Kun to provide the requested phone records.
11. After receiving Pacifica's request for additional evidence, Ms. Kun asked a CRT case manager to request additional evidence from Pacifica. She asked Pacifica to submit the parties' retainer agreement, evidence that she requested immigration services from Pacifica, evidence Pacifica notified her that it would charge her and RN an hourly rate for all phone calls and meetings, and any notes Pacifica made during phone calls or meetings with her and RN. The case manager did not forward this request to Pacifica but notified the parties that it would refer the request to the CRT member deciding this dispute. I find all the evidence Ms. Kun requested is relevant to this dispute, but it is Pacifica that has the burden of proving its claims, not Ms. Kun. The parties agree there is no written retainer agreement and that they mostly communicated verbally, so it is unlikely that most of the requested evidence exists. Aside from the requested notes, if the remainder of the requested evidence does exist, presumably Ms. Kun would also have it. For all of these reasons, I decline to order Pacifica to provide any of the documents Ms. Kun requests.

Late Evidence

12. Both parties submitted documents after the evidence deadline. Pacifica submitted a printout from the Immigration, Refugees and Citizenship Canada (IRCC) website and an excerpt of Pacifica's phone records. Ms. Kun submitted a letter from her

church. I find the IRCC printout and the church letter are not relevant to the issues I must decide in this dispute, so I have not admitted them or considered them in my decision. I find Pacifica's phone records are relevant to this dispute and find Ms. Kun is not prejudiced by their late admission as she responded to them. Given the CRT's mandate to be flexible, I accept the late phone records and have considered them in my decision.

ISSUES

13. The issues in this dispute are:

- a. Did the parties have a verbal agreement?
- b. Is Pacifica entitled to \$2,100 for unpaid consulting services?

EVIDENCE AND ANALYSIS

14. In a civil claim like this one, the applicant Pacifica must prove its claims on a balance of probabilities. Aside from the evidence I have not admitted, as explained above, I have considered all of the parties' evidence and submissions but refer only to what I find necessary to explain my decision. For the following reasons, I dismiss Pacifica's claims.
15. It is undisputed that until February 2021, Ms. Kun was living in the Vancouver area while her husband, RN, was living in Washington state. RN is not a party to this dispute. After the Canada-US border closed because of the COVID-19 pandemic, Ms. Kun and RN regularly met at Peace Arch Park. The park is located at the Canada-US border near Vancouver and has generally allowed families separated by the COVID-19 border closure to meet on its grounds.
16. On September 6, 2020, Ms. Kun was visiting with RN at the park when they met Mr. Shirazi. It is undisputed that during their conversation Mr. Shirazi made some general comments about immigration matters which led Ms. Kun and RN to believe he had immigration expertise. It is undisputed that Mr. Shirazi was not a practicing

lawyer at the relevant time, but when Ms. Kun and RN asked him if he was a lawyer, he responded that he “practiced in both the US and Canada.” RN asked for Mr. Shirazi’s phone number in case he or Ms. Kun had any future questions about immigration matters, which Mr. Shirazi provided.

17. It is undisputed that on October 19, 2020, RN texted Mr. Shirazi asking for his help “to have Kun’s visa reissued to come to the US.” The following day RN and Mr. Shirazi spoke on the phone about the requested services. On October 22, 2020 Ms. Kun spoke with Mr. Shirazi on the phone. She met with Mr. Shirazi on October 28, 2020 and had several phone calls with him on October 28 and 29, 2020. The parties disagree about the exact nature of the meeting and phone calls.

Did the parties have a verbal agreement?

18. Pacifica says that in October 2020 Ms. Kun and RN hired it to assess Ms. Kun’s eligibility for a new US visitor visa, and to assist RN in travelling to Canada in December 2020 while pandemic-related travel restrictions were in force. Pacifica says it also provided Ms. Kun information about changing her immigration status in Canada to avoid paying tuition for her daughter to attend public school. It says the parties agreed to a \$2,100 flat fee for its services.
19. Ms. Kun says her only interest in Mr. Shirazi’s services was to help her apply for a US visitor visa which she ultimately decided not to pursue. She denies that she or RN asked Pacifica to assist RN with visiting Canada or to provide any other services. She says she never agreed to pay Pacifica for its services, and she did not learn that Mr. Shirazi was not a lawyer until October 31, 2020.
20. A binding contract requires a “meeting of the minds” between the parties on all of the essential terms of their agreement. The existence of a binding contract is determined by an objective test of the parties’ outward expressions of intent. It is not enough for one party to believe there is a contract. (see *Hodder Construction (1993) Ltd. v. Topolnisky*, 2021 BCSC 666, at paragraph 114). For the following reasons, I

find Pacifica has not established that there was a binding contract between the parties.

21. Pacifica says that during its phone call with RN on October 20, 2020, RN agreed to pay Pacifica a flat fee of \$1,000 to \$1,500 US dollars “depending on the extent and scope of professional services involved.” Pacifica says that during a phone call with RN on October 30, 2020 it asked for payment for its services. It says RN said he would ask Ms. Kun to pay the total fee of \$1,500 US dollars, which at the time converted to approximately \$2,100 Canadian dollars including 5% GST.
22. In its reply submissions, Pacifica says that during the October 30, 2020 call RN said that Mr. Shirazi had already provided him and Ms. Kun with all the information requested without receiving any payment as a retainer. Mr. Shirazi says he asked RN if he should be concerned, and RN responded, “no you can trust us, as you know we are good Christians.” However, since Pacifica raised this allegation in its reply submissions Ms. Kun did not have the opportunity to respond to it. So, I give it no weight in determining whether Pacifica and Ms. Kun had an agreement.
23. Ms. Kun says Mr. Shirazi quoted RN \$1,000 to \$1,500 in Canadian dollars to apply for reinstatement of her US visitor visa, but she and RN decided not to pursue the application. She says she never personally discussed payment or scope of work with Mr. Shirazi, and she never agreed to a flat fee of \$2,100 or any hourly rate. She says all discussions about payment were between Mr. Shirazi and RN.
24. There is no statement from RN in evidence, but I find several emails in evidence from RN to Mr. Shirazi clearly state RN’s perspective on the parties’ arrangement. In a November 1, 2020 email RN said to Mr. Shirazi, “I know we haven’t come to a delineation of your services, and we should rectify that... I respectfully request that you cease any activity towards our interests without a proper contractual agreement in place...” In a November 6, 2020 email RN said to Mr. Shirazi, “Our only discussion was of a price range with no mention of the scope of your work. There was no written agreement providing terms at any time...”

25. On balance, I prefer Ms. Kun's version of events. I find there is no evidence she and Mr. Shirazi directly discussed or agreed upon any payment arrangement or the scope of Mr. Shirazi's work. While Mr. Shirazi and RN undisputedly discussed payment for Mr. Shirazi's services, on the evidence before me I am not satisfied that they agreed on the currency of the payment, the exact amount, or the scope of work. I find Pacifica has failed to establish that it had a "meeting of the minds" with Ms. Kun on any essential terms of the alleged agreement. So, I find the parties did not have a binding contract, and Ms. Kun is not contractually obligated to pay Pacifica anything.
26. Having found there was no binding agreement between the parties, and since Ms. Kun did not file a counterclaim, I find it is unnecessary to determine whether any agreement between the parties would be invalidated based on Mr. Shirazi's representation that he was a practicing lawyer at the relevant time. For the same reasons I find it is unnecessary to address Ms. Kun's arguments that Mr. Shirazi illegally solicited immigration services in Peace Arch Park or that he failed to comply with the Immigration Consultants of Canada Regulatory Council's regulations about retainer agreements.

Is Pacifica entitled to \$2,100 for unpaid consulting services?

27. Having found there was no binding contract between the parties, I find Pacifica is not entitled to payment on a contractual basis. Although Pacifica did not specifically argue it, I considered whether it is entitled to payment based on the legal concept of *quantum meruit*. This is when a party is entitled to compensation based on the other party's unjust enrichment (see *Hodder* at paragraph 179). However, to be entitled to such a remedy, a party must have "clean hands" or in other words, act in good faith (see *Chudy v. Merchant Law Group*, 2008 BCCA 484).
28. In *Chudy*, the BC Court of Appeal found a lawyer who became ineligible to practice law but continued to represent his client without informing him of his status was not entitled to recover legal fees on a *quantum meruit* basis. *Chudy* is binding on me,

and while the facts are not identical to this dispute, I find the underlying principle applies.

29. It is undisputed that Mr. Shirazi told Ms. Kun and RN that he “practiced in the US and Canada” when they asked him if he was a lawyer, even though he was not a practicing lawyer at the time. I find this was intentionally misleading. Ms. Kun says she and RN did not know Mr. Shirazi was not a lawyer until receiving the email from his Pacifica email address on October 31, 2020, and I find this is supported by the evidence. So, I find that on October 28 and 29, 2020, when Mr. Shirazi allegedly provided immigration services to Ms. Kun, she reasonably believed he was a lawyer. In these circumstances, I find Mr. Shirazi was not acting in good faith. So, I find he is not entitled to any payment on a *quantum meruit* basis. I dismiss Pacifica’s claim.
30. 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. Since Pacifica was unsuccessful, I find it is not entitled to reimbursement of its CRT fees. It did not claim any dispute-related expenses.

ORDER

31. I dismiss Pacifica’s claims and this dispute.

Sarah Orr, Tribunal Member