Civil Resolution Tribunal

Date Issued: June 15, 2021

File: SC-2021-001149

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Arora Zbar LLP v. Sanderson*, 2021 BCCRT 656

B E T W E E N :

ARORA ZBAR LLP

APPLICANT

A N D :

ASHLEY SANDERSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Lynn Scrivener

INTRODUCTION

1. This dispute is about fees for legal services. The applicant, Arora Zbar LLP (Arora Zbar) says that it provided legal services to the respondent, Ashley Sanderson, for which it has not been paid. Arora Zbar asks for an order that Ms. Sanderson pay it

the outstanding $415.54. Ms. Sanderson denies that she owes Arora Zbar any money.

2. Arora Zbar is represented by a partner. Ms. Sanderson is self-represented.

JURISDICTION AND PROCEDURE

3. 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.

4. 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.

5. 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.

6. 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

7. The issues in this dispute are:

    a. Whether the parties had an agreement that Ms. Sanderson would not be charged for certain items and that the total charges would not exceed the amount of the retainer, and

    b. Whether Ms. Sanderson owes Arora Zbar $415.54.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant and necessary to provide context for my decision.

9. Arora Zbar is a limited liability partnership that was formerly known as Zbar Law Corporation. One of Arora Zbar's lawyers, Eli Zbar, provided legal services to Ms. Sanderson under a January 24, 2020 retainer agreement.

10. The retainer agreement said that Ms. Sanderson would provide a $1,000 retainer and pay Mr. Zbar's fees charged at an hourly rate of $175, plus disbursements and taxes. The agreement stated that Ms. Sanderson may be asked to replenish the retainer, and that any unused portion would be returned to her upon the completion or termination of services. The agreement specifically stated that it was not possible to estimate the cost of legal services or guarantee a particular outcome.

11. Although Ms. Sanderson now suggests that she could have performed some of the tasks herself, there is no dispute that Mr. Zbar performed work as contemplated by the parties' agreement. Mr. Zbar's time records show that he worked on the matter between late January and late March of 2020. There were no time entries between March 30 and May 15, after which more work was performed until June 12, 2020. Mr. Zbar billed a total of 7.04 hours and wrote off 5.38 hours of his time, meaning that he performed work for which he did not charge Ms. Sanderson.

12. Mr. Zbar generated an invoice on November 11, 2020 for $1,232.00 in legal services, $34 in disbursements, and $149.54 in taxes. After deducting the $1,000 retainer, the balance owing was $415.54. Ms. Sanderson has not paid this invoice.

13. Ms. Sanderson says that she was surprised by the request for payment as, after having not heard from him for several months she thought she was "no longer in partnership" with Mr. Zbar and was representing herself. Ms. Sanderson admits that she signed the retainer agreement, but says that she did so only because of a prior verbal agreement with Mr. Zbar that he would not exceed the $1,000 retainer and would not charge her for certain items. She provided a statement from a witness who overheard the conversation about the retainer and confirmed that it occurred. Ms. Sanderson says that Mr. Zbar "did not follow through on his word" and therefore did not provide her with "proper service" such that she should not have to pay the outstanding invoice.

14. Arora Zbar admits that Mr. Zbar agreed to make reasonable efforts to keep Ms. Sanderson's costs close to $1,000 as he was aware that she was "cost conscious". It says that any "hard cap" on fees would have been documented in the agreement.

15. The parties agree that they have a written agreement. Arora Zbar says that this written agreement is the entire agreement, while Ms. Sanderson argues that Mr. Zbar's verbal representations are included in the agreement. I find that the parol evidence rule applies here. This rule says that, where there is a written agreement, outside evidence cannot be admitted to vary, modify, add or contradict the terms of the written agreement, unless the written agreement is unclear or ambiguous (see *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 at paragraphs 42 to 44). This includes circumstances where a party argues that a prior oral undertaking constitutes part of the agreement (see *Frolick v. Frolick*, 2007 BCSC 84 at paragraphs 38 – 39).

16. British Columbia courts have held that the parol evidence rule creates a presumption in favour of the written agreement (see *Gallen v. Butterley*, 1984 CanLII 752 (BCCA) at paragraph 56). The presumption is strongest when a prior oral representation is

contrary to the written terms and weaker when the prior oral representation adds to the written terms (see *Frolick* at paragraph 40).

17. Here, I find that the retainer agreement did not limit Mr. Zbar's billings or the total amount including taxes and disbursements to $1,000, and it did not state that certain items would be provided without charge. Instead, it clearly set out that Mr. Zbar's time would be billed at his hourly rate, and that disbursements and taxes would also apply. I find that the parties' agreement is clear and unambiguous. Therefore, under the parol evidence rule, any evidence of verbal representations cannot add terms to the parties' written agreement. I find that the written agreement is binding on the parties.

18. Ms. Sanderson also submits that the fact that Mr. Zbar did not bill her monthly amounted to a breach of their agreement. The parties' written agreement stated that, generally, statements of account would be prepared monthly. I find that monthly billing was permitted but not required. Therefore, the lack of monthly billing did not amount to a breach of the agreement.

19. Ms. Sanderson says that she thought the working relationship had come to an end due to the lapse in contact. However, she did not terminate the agreement with written notice as required. Had she done so, the terms of the agreement provided that she would be responsible for all "fees, disbursements, other charges, and the applicable taxes incurred up until the time we stopped acting for you". I also find that the lapse in contact for several months did not breach the agreement or relieve Ms. Sanderson from her obligation to pay Arora Zbar.

20. I acknowledge that Ms. Sanderson did not receive the results from Mr. Zbar's work that she had hoped for, but their binding agreement did not guarantee a particular outcome. I find that she is responsible for the fees, disbursements and taxes as invoiced, and order Ms. Sanderson to pay Arora Zbar $415.54. Arora Zbar is also entitled to contractual interest at an annual rate of 15%. Calculated from December 15, 2020 (being the date Arora Zbar says that interest began to apply), this equals $93.58.

21. Under section 49 of the CRTA and CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I find Arora Zbar is entitled to reimbursement of $125 in CRT fees. Arora Zbar did not claim any dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order Ms. Sanderson to pay Arora Zbar a total of $634.12, broken down as follows:

    a. $415.54 in debt under the parties' agreement,

    b. $93.58 in contractual interest, and

    c. $125 for CRT fees.

23. Arora Zbar 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.

Lynn Scrivener, Tribunal Member