



Civil Resolution Tribunal

Date Issued: August 17, 2021

File: SC-2021-001184

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Shergill Law Corporation v. Whistler 99 Courier and Freightways Corporation*, 2021 BCCRT 898

B E T W E E N :

SHERGILL LAW CORPORATION

APPLICANT

A N D :

WHISTLER 99 COURIER AND FREIGHTWAYS CORPORATION and
RAVINDRA DAYAL

RESPONDENT

A N D :

SHERGILL LAW CORPORATION

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about lawyer's fees. The applicant and respondent by counterclaim, Shergill Law Corporation (Shergill), says the respondents, Whistler 99 Courier and Freightways Corporation (Whistler 99) and Ravindra Dayal, hired it for legal work. It claims \$3,294.16 for the balance owing under an invoice for legal fees, disbursements, and taxes.
2. The respondents disagree. They say Shergill overcharged them and did negligent work. Whistler 99 also counterclaims for the return of a \$2,000 retainer it paid to Shergill. Shergill disagrees with the counterclaim. It says it was authorized to apply the retainer to the outstanding legal fees.
3. Mandy Shergill represents Shergill. Mr. Dayal represents the respondents.
4. For the reasons that follow, I find Shergill has proven its claims. I order the respondents to pay the amounts set out below.

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. 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. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an 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.

Late Evidence

9. Shergill submitted late evidence about the work done, including filed court documents, correspondence, and disbursement receipts. The respondents did not object and had the opportunity to review the late evidence and provide submissions and evidence in response. I find the evidence relevant to this dispute. Consistent with the CRT's mandate that includes flexibility, I find there is no actual prejudice to the respondents in allowing the late evidence and do so.

ISSUES

10. The issues in this dispute are as follows:
 - a. To what extent, if any, do the respondents owe Shergill for unpaid legal work?
 - b. Should Shergill return any of the \$2,000 retainer to Whistler 99?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Shergill and Whistler 99 must prove their claims and counterclaims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
12. I begin with the undisputed facts. In March 2018, Mr. Dayal consulted Shergill about an employment matter. He gave her a \$2,000 retainer (retainer). The parties did not document their agreement. Shergill does not claim for any work done on the employment matter. The respondents say that Mr. Dayal agreed the retainer could be applied to other legal work, and I discuss this below.
13. In August 2018 Mr. Dayal spoke to Ms. Shergill and hired Shergill on behalf of Whistler 99 to act on another matter. Correspondence between the parties indicates Mr. Dayal is Whistler 99's principal. The parties did not document their agreement. Whistler 99 wanted Shergill to help collect a debt owed by SB, a customer. Shergill worked on the matter and invoiced Mr. Dayal on August 7, 2020 for \$5,294.16. The invoice shows Shergill applied the retainer to this debt. It claims for the balance of \$3,294.16 in this dispute.

To what extent, if any, do the respondents owe Shergill for unpaid legal work?

14. Shergill alleges that on August 20, 2018, Shergill and the respondents entered into a verbal agreement with the following terms. Shergill would work on the SB matter for both respondents. The respondents would pay an hourly rate of \$275 plus taxes and disbursements. It was not a fixed fee. The respondents also agreed that Shergill would apply the retainer towards this work.
15. In contrast, the respondents say the agreement had the following terms. Shergill agreed to do the work for a fixed price of \$2,000. Shergill also agreed to collect "at least \$10,000" from SB. Finally, Shergill's fee was contingent upon successfully collecting the promised amount.

16. On balance, I find Shergill's version of the agreement is accurate. The August 2020 invoice does not specify an hourly rate. However, it says Shergill charged \$4,295 for 16 units of work, which I infer means hours. This amount did not include taxes or disbursements. I find this equivalent to an hourly rate of \$268.44, which is close to Shergill's alleged hourly rate of \$275. When Shergill first emailed its invoice to Whistler 99 in January 2020, it noted Ms. Shergill charged an hourly rate of \$300 at the time. In a reply email, Whistler 99's representative expressed displeasure at the amount Shergill had collected from SB. However, they did not say that Shergill had agreed to work on a contingency fee basis or for a fixed fee. They did not say Shergill had guaranteed a particular outcome.
17. While the above evidence shows some inconsistencies, I find it largely supports Shergill's submissions about the agreement terms. I am also satisfied the Shergill did the work it contracted to do, which was to collect money from SB without guaranteeing any outcome. The August 2020 invoice describes such tasks and is supported by several filed court documents. These include the following: a notice of claim, a certificate of service, an application for default order, an affidavit attaching Whistler 99's unpaid invoices, a summons to a payment hearing, and an application to amend the notice of claim to include claims against SB's director. There is also correspondence between Shergill and SB's lawyer and a copy of a cheque for some settlement funds made payable to Whistler 99.
18. I also find Shergill is entitled to reimbursement for the disbursements in the invoice. It shows Shergill paid for postage, courier and filing fees, mileage, parking, and photocopies totaling \$455.40 before tax. Shergill supported the claimed disbursements with receipts for registered mail, filing fees, and parking. The mileage and photocopy fees were not supported by any specific receipts, but I find it likely Shergill incurred these expenses. This is because documents show Shergill attended court on 3 separate occasions for the SB matter. I also find photocopying would likely be necessary to work on this file.

19. The respondents allege that Shergill was negligent. Generally, in claims of professional negligence, expert evidence is required to prove the professional's standard of care and that the professional's conduct fell below that standard. The party alleging the negligence has the burden to prove it. See, for example, the non-binding decision of *Centra Lawyers LLP v. Boorman*, 2020 BCCRT 910 at paragraph 24. That decision also involved an unpaid lawyer's invoice.
20. I find the respondents have the burden to prove their allegations of professional negligence. I do not find it obvious that Shergill was negligent. The correspondence indicates that Shergill and SB's counsel arranged for their clients to enter into a settlement agreement. Shergill submits it advised the respondents throughout and some documents support this. For example, Shergill provided the respondents a reporting letter dated August 13, 2020 that referred to other discussions.
21. Given this, I find that expert evidence is required to determine whether Shergill breached the standard of care. As no such evidence is before me, I find the respondents have not proven that Shergill breached the standard of care or was negligent.
22. In summary, I find that Shergill has proven the terms of the parties' agreement and that it did the agreed-upon work and charged appropriate amounts, including disbursements and taxes. I find the respondents' allegations of professional negligence to be unproven. I next consider Whistler 99's counterclaims.

Issue #2. Should Shergill return any of the \$2,000 retainer to Whistler 99?

23. As noted above, the parties agree that Mr. Dayal paid the retainer. The respondents submit that they allowed Shergill to keep it "for any future case". Given this, I find Shergill was entitled to apply the retainer to the balance owing under the August 2020 invoice. For that reason, I dismiss Whistler 99's counterclaims.
24. In summary, I find the respondents must pay the balance owing of \$3,294.16 for the August 2020 invoice. The *Court Order Interest Act* (COIA) applies to the CRT. Shergill is entitled to pre-judgment interest on the damages award from the invoice date of

August 7, 2020 to the date of this decision. This equals \$15.23. I find both respondents are jointly and severally liable to pay the amounts set out in my orders.

25. 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. I find Shergill is entitled to reimbursement of \$175 in CRT fees. Shergill did not claim for any dispute-related expenses. I dismiss Whistler 99's counterclaims for reimbursement.

ORDERS

26. Within 14 days of the date of this order, I order the respondents to pay Shergill a total of \$3,484.39, broken down as follows:

- a. \$3,294.16 in debt,
- b. \$15.23 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

27. Shergill is entitled to post-judgment interest, as applicable.

28. I dismiss Whistler 99's counterclaims.

29. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.

30. 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.

David Jiang, Tribunal Member