



Civil Resolution Tribunal

Date Issued: December 7, 2021

File: SC-2021-003983

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *BKS Law Corporation v. Woodferg James Group Holdings Ltd.*,
2021 BCCRT 1284

B E T W E E N :

BKS LAW CORPORATION

APPLICANT

A N D :

WOODFERG JAMES GROUP HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for legal services. The applicant law firm, BKS Law Corporation (BKS), claims \$3,073.74 as payment for the legal services it provided to the respondent, Woodferg James Group Holdings Ltd. (Woodferg).
2. Woodferg says BKS' legal work was unhelpful and that BKS failed to adequately advise it about the litigation costs. Woodferg says had BKS properly advised it, Woodferg would have acted on its own behalf for the matters at issue. I infer Woodferg asks that I dismiss BKS' claim.
3. BKS is represented by one of its lawyers, Peter Sorensen. Woodferg is represented by its director and general manager, Joshua Woodward.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.
6. Under CRTA section 42, 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 CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. BKS submitted 2 evidence items late, which Woodferg had the opportunity to respond to according to CRT staff. One of them, an April 10, 2019 letter from BKS to Woodferg. I do not accept this late evidence in those circumstances, simply because it was a duplicate of an evidence item BKS had earlier submitted on time. The other late evidence item was a more complete set of the pleadings in a BC Provincial Court (BCPC) matter in which Woodferg was a defendant. The late pleadings included a Schedule detailing the claim against Woodferg that was not included in the original BCPC pleadings BKS submitted on time. I admit this latter late evidence item because it is marginally relevant, although I note nothing turns on it in my analysis below.

ISSUES

9. The issues are:
 - a. Did BKS provide substandard or inadequate legal services, and did it fail to properly advise Woodferg of litigation costs?
 - b. To what extent, if any, is BKS entitled to the claimed \$3,073.74 for legal services?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant BKS has the burden of proving its claims, on a balance of probabilities (meaning “more likely than not”). I have only referenced below what I find is necessary to give context to my decision. Apart from its arguments, I note Woodferg did not submit any evidence despite having the opportunity to do so.

11. There are 3 invoices at issue, for legal services provided to Woodferg by BKS' lawyer Betony Rowland. The invoices relate to 2 different matters. It is undisputed Ms. Rowland's billable rate was \$300 per hour and that Woodferg had agreed to this.
12. The 3 invoices are as follows (for ease of reference I have numbered the invoices as BKS did in submitting its evidence):
 - a. *Invoice #1*: dated June 19, 2019 for \$758.28. This related to an employment matter with the Employment Standards Branch (ESB). Ms. Rowland billed 2.2 hours for work done on June 10 and 14, 2019, plus minor disbursements and taxes. The work involved telephone calls, review of pleadings, and correspondence.
 - b. *Invoice #2*: dated September 24, 2019 for \$1,743.35. This related to the above BCPC dispute. Ms. Rowland billed 4.5 hours between April 12 and 18, 2019, plus disbursements including a court filing fee, and taxes. The work included attending a settlement conference in court, a meeting, and drafting pleadings.
 - c. *Invoice #3*: dated September 24, 2019 for \$572.11. This related to the same ESB matter described in invoice #1. Ms. Rowland billed 1.7 hours for work done on June 6 and 13, 2019 plus minor disbursements and taxes. The work involved a telephone conference with Mr. Woodward, reviewing minutes of settlement, emails with Mr. Woodward, and correspondence with the ESB. Given the dates of the work done, it is unclear why this invoice was not included in invoice #1, but Woodferg does not dispute the work was done and so I find nothing turns on this.
13. As noted, Woodferg argues that the work was unhelpful and that it would have chosen to act on its own had it known the litigation costs, given the relatively small value of the underlying disputes. Yet, Woodferg undisputedly agreed to Ms. Rowland's hourly rate. The amount of time spent is not excessive on its face. I find nothing obvious in the invoices to show the work done was unnecessary.

14. Further, Ms. Rowland emailed Mr. Woodward on January 3, 2020 to resign from the record given Woodferg's outstanding account and its expressed dissatisfaction with BKS' services. In her email, Ms. Rowland explained that the settlement conference in the BCPC matter had been rescheduled to January 17, 2020, 2 weeks later. Mr. Woodward responded, "sounds good" and "just to clarify [it] wasn't being unhappy with your services [it] was just unclear in the process and the cost related. I did enjoy you on my side." So, I do not accept Mr. Woodward's assertion that BKS' work was unhelpful or that BKS acted improperly in resigning as counsel.
15. This leaves Woodferg's essential allegation that the amount involved in the 2 matters was so low that BKS should have told it to act on its own behalf. The burden is on Woodferg to prove BKS' work was deficient, which I find includes whether BKS should have advised Woodferg to act on its own behalf. For the BCPC matter, I note the evidence shows BKS received notice of the litigation against Woodferg in April 2019 because BKS was Woodferg's registered and records office. In its April 2019 letter to Woodferg, BKS suggested Woodferg contact its insurer and said that unless BKS received specific instructions it would not act. The undisputed evidence is that Woodferg instructed BKS to defend it in the BCPC action, which involved a claim for just over \$35,000. While there is less information before me about the ESB matter, I find no evidence to support a conclusion that either matter was obviously one that BKS should have recommended Woodferg act on its own behalf.
16. In summary, I find there is nothing obvious in the evidence before me that would support a conclusion BKS ought to have declined to represent Woodferg or advised it to act on its own behalf. So, I find expert evidence would be required to prove what the standard of care of a reasonable lawyer in the same circumstances would be (see *Bergen v. Guliker*, 2015 BCCA 283). Yet here there is none. As noted, Woodferg submitted no evidence.
17. Given my conclusion above, I find BKS is entitled to the claimed \$3,073.74.

18. BKS claims 18% annual interest, relying on its invoices that say such interest is payable on overdue accounts. BKS did not submit the parties' retainer agreement and there is no evidence before me that Woodferg agreed to contractual interest. A party cannot unilaterally impose contractual interest in an invoice (see *N.B.C Mechanical Inc. v. A.H. Lundberg Equipment Ltd.*, 1999 BCCA 775). So, I do not allow contractual interest.
19. In the absence of an agreement about interest, the *Court Order Interest Act* (COIA) applies to the CRT. I find BKS is entitled to pre-judgment COIA interest on the \$3,073.74, calculated from 30 days after the invoice dates to the date of this decision. This interest equals \$64.99 (\$18.99 for invoice #1 and \$46 for invoices #2 and #3).
20. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. BKS was substantially successful and so I find it is entitled to reimbursement of the \$175 it paid in CRT fees. No dispute-related expenses were claimed.

ORDERS

21. Within 30 days of this decision, I order Woodferg to pay BKS a total of \$3,313.73, broken down as follows:
 - a. \$3,073.74 in debt,
 - b. \$64.99 in pre-judgment interest under the COIA, and
 - c. \$175 in CRT fees.
22. BKS is entitled to post-judgment interest, as applicable.
23. 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.

24. 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 BC.

Shelley Lopez, Vice Chair