



Civil Resolution Tribunal

Date Issued: January 31, 2022

File: SC-2021-003768

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Buckley Hogan Professional Services Ltd. v. PMKC Transport Inc.*,
2022 BCCRT 112

B E T W E E N :

BUCKLEY HOGAN PROFESSIONAL SERVICES LTD.

APPLICANT

A N D :

PMKC TRANSPORT INC. and SUKHPREET SINGH DHILLON

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about payment for legal services. The applicant, Buckley Hogan Professional Services Ltd. (Buckley), says the respondents, PMKC Transport Inc.

(PMKC) and Sukhpreet Singh Dhillon, failed to pay its final \$3,293.75 invoice for legal services.

2. The respondents say Buckley assured them their legal issue would be resolved for no more than \$1,500. The respondents undisputedly paid \$1,547.90, so they say they owe nothing more. They also say Buckley overcharged them in various ways.
3. Buckley is represented by one of its lawyers, Amarit Bains. The respondents are represented by Mr. Dhillon, one of PMKC's directors.

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. 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.
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.
8. PMKC did not file a Dispute Response and is technically in default. However, Mr. Dhillon is one of PMKC's directors and filed a Dispute Response. Although Mr. Dhillon does not say so, I find it is implicit in his submissions that he intended them to apply to him and PMKC. So, I accept Mr. Dhillon's submissions on behalf of PMKC and I exercise my discretion not to assume liability against PMKC.

ISSUES

9. The issues in this dispute are:
 - a. Which respondent retained Buckley, and what were the terms of the contract?
 - b. How much, if anything, do the respondents owe Buckley under the contract?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Buckley must prove its claim on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision. PMKC made submissions but did not provide documentary evidence, despite having the opportunity.
11. PMKC sought Buckley's assistance in responding to a January 2020 Notice of Claim filed in the BC Provincial Court against PMKC (small claims dispute).
12. At the outset, I note Buckley says PMKC "and/or" Mr. Dhillon engaged Buckley to provide legal services. None of the parties' submissions directly address whether Buckley was retained by PMKC, Mr. Dhillon, or both. Around the time Buckley was engaged, it prepared a "Terms of Engagement" (ToE). The ToE said it was between Buckley and PMKC. It had space for Mr. Dhillon's signature but only as an

“authorized representative” of PMKC. Although the ToE was undisputedly never signed, I find it reflected the parties’ mutual understanding that only PMKC retained Buckley. Following the reasoning in *Xerox Canada Ltd. v. Vandesign Graphix Ltd.*, 2010 BCSC 1039, I would find even if Mr. Dhillon had signed the ToE that he was not a party to it in his personal capacity. As such, I find Mr. Dhillon is not liable to Buckley and I dismiss the claim against him.

13. PMKC undisputedly instructed Buckley on the small claims dispute over the next year. PMKC never paid the \$1,500 retainer or provided a signed ToE, despite numerous requests from Buckley. I find that PMKC retained Buckley despite not signing the ToE. Lawyers are not required to obtain written retainers from their clients: see *Casey v. Penty*, 2000 BCSC 1733. However, without a valid written retainer, the terms of the agreement can be more difficult to prove.
14. Buckley billed PMKC the following amounts:
 - a. \$1,228.70 on March 25, 2020,
 - b. \$319.20 on September 30, 2020, and
 - c. \$3,293.75 on March 26, 2021.
15. PMKC paid Buckley \$1,547.90, the sum of the first 2 invoices, on January 19, 2021. So, I find the only invoice in dispute is the \$3,293.75 invoice, which is what Buckley claims.
16. The parties’ working relationship broke down in late March 2021. On March 30, 2021, Buckley advised PMKC and opposing counsel that it was no longer representing PMKC, and asked PMKC to pay its account.

17. I note PMKC asserted in a March 26, 2021 email that it had already paid Buckley over \$3,000 and “nothing was done and still nothing being done.” I find the reference to paying over \$3,000 was either a mistake or an exaggeration because PMKC now says it paid \$1,500. I infer this is a reference to the \$1,547.90 it paid on January 19, 2021. There is no evidence PMKC paid anything else, so I find it did not.

How much, if anything, does PMKC owe Buckley?

18. It is undisputed that Buckley did the work outlined in the third invoice. The work included document requests, preparation for and attendance at a settlement conference, and settlement negotiations. As a result, PMKC must show why Buckley is not entitled to payment of its third invoice.

19. PMKC’s brief submissions raise a number of reasons it thinks it should not have to pay the invoice. First, PMKC says it ended up settling the claim on its own, which I interpret as challenging the quality of Buckley’s services. Even if PMKC settled the claim on its own – and it provided no supporting evidence – I find PMKC’s assertion disregards the substantial work Buckley provided in the previous 14 months to move the dispute toward settlement. I find PMKC has not proven Buckley’s work fell below a professional standard.

20. Second, PMKC asserts that the first Buckley lawyer on its file, Jaskiran Sandhu, promised she would “get it done” for \$1,500. Buckley disputes that Ms. Sandhu said this. Buckley did not provide a statement from Ms. Sandhu. Where a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference, which means assuming that the missing evidence would not have supported that party’s case. However, I find it would be inappropriate to draw an adverse inference here because Buckley undisputedly no longer employs Ms. Sandhu. Given the CRT’s mandate that includes proportionality, I find it would not be reasonable to expect Buckley to obtain a statement from a former employee.

21. On balance, I do not accept PMKC's assertion that Ms. Sandhu agreed to a \$1,500 flat rate. I say this because a flat rate is entirely inconsistent with the ToE and with PMKC's conduct. The ToE specifically contemplated a \$1,500 retainer that would be replenished as invoices came due. Although the ToE was never signed, its authenticity is undisputed. As well, PMKC was also asked numerous times to pay the retainer, before and after he paid the \$1,547.90 for the first 2 invoices. I find if Ms. Sandhu agreed to a \$1,500 flat rate, PMKC likely would have raised this in response to those requests. For these reasons, I find PMKC has not established that Buckley agreed to provide its services for a \$1,500 flat rate.
22. Third, PMKC asserts that each time its file was transferred to another lawyer PMKC had to go over the small claims dispute and bring the new lawyer up to speed. The evidence shows PMKC's file was transferred to a second lawyer and later to Mr. Bains over the course of 14 months. However, the invoices do not show that PMKC was billed for any time these new lawyers spent familiarizing themselves with the file. So, I find no evidence PMKC was overcharged as a result of Buckley's internal file transfers.
23. Finally, PMKC says Mr. Bains had a different rate that it never agreed to. I agree with PMKC here. As noted, PMKC did not sign the retainer. However, I find that by paying Buckley's previous invoices, PMKC agreed to the hourly rates in those invoices, which were \$220 and \$150. This is because the terms of a contract can be implied by the parties' past conduct: see *Dale E. Perry Law Corporation et al v. Atlin Heli Sports Ltd.*, 2019 BCCRT 590, which is not binding on me but persuasive. Mr. Bains had not done any billable work in those previous invoices, so I find PMKC did not agree to pay Mr. Bains' higher rate of \$250 per hour. With that, I find Buckley is only entitled to \$220 per hour for Mr. Bains' work. I therefore reduce Buckley's final invoice by \$312.48, which is the \$30 hourly difference multiplied by Mr. Bains' 9.3 hours, plus GST and PST. This leaves \$2,981.27 owing on the invoice. PMKC does not challenge the 90 cents in photocopying charges on the final invoice, which I find reasonable.

24. In summary, I find Buckley has proven it is entitled to \$2,981.27, and I order PMKC to pay this amount.
25. The *Court Order Interest Act* (COIA) applies to the CRT. It says pre-judgment interest is applicable where the parties had no agreement about interest. I find that is the case here because although the ToE set out 18% contractual interest, PMKC did not sign it and was never charged contractual interest in the past. So, Buckley is entitled to pre-judgment interest under the COIA on the \$2,981.27 from the date of the March 26, 2021, invoice to the date of this decision. This equals \$11.47.
26. 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. However, without providing reasons, Buckley says in submissions that it seeks permission to withdraw its claim for dispute-related expenses. I see no reason not to allow that withdrawal under CRT rule 6.1, so I make no order for reimbursement of CRT fees and dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order PMKC to pay Buckley a total of \$2,992.74, broken down as follows:
 - a. \$2,981.27 in debt, and
 - b. \$11.47 in pre-judgment interest under the *Court Order Interest Act*.
28. Buckley is entitled to post-judgment interest, as applicable.
29. I dismiss the claims against Mr. Dhillon.
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.

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.

Micah Carmody, Tribunal Member