



Civil Resolution Tribunal

Date Issued: September 29, 2022

File: SC-2022-001313

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Matthews v. Mercier*, 2022 BCCRT 1071

BETWEEN:

MURIELLE ANNE MATTHEWS

APPLICANT

AND:

MONTANA RAE MERCIER

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant, Murielle Anne Matthews, is a lawyer. She says she provided legal services to the respondent, Montana Rae Mercier, but Ms. Mercier has not paid. Ms. Matthews seeks \$4,423.95 for her unpaid invoice, plus contractual interest.

3. Ms. Mercier does not dispute that she retained Ms. Matthews to provide legal services, or the amount claimed in this dispute. Ms. Mercier says she was deeply dissatisfied with Ms. Matthews' legal representation, and Ms. Matthews' negligence left her in a position of financial hardship. She says she does not have currently have the financial means to pay Ms. Matthews.
4. The parties are each self-represented.

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. 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.
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.

ISSUE

9. The issue in this dispute is how much, if anything, Ms. Mercier owes Ms. Matthews for legal services.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Ms. Matthews must prove her claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to what I find relevant to provide context for my decision.
11. It is undisputed that the parties agreed Ms. Matthews would provide legal services to Ms. Mercier in exchange for payment. Ms. Mercier also undisputedly paid a \$3,000 retainer, and says she retained Ms. Matthews in September 2019. Ms. Matthews says she performed legal services under the terms of a written retainer letter. An unsigned August 27, 2019 retainer letter from Ms. Matthews to Ms. Mercier is in evidence. Ms. Mercier does not dispute receiving the retainer letter. Rather, she says she did not sign it because she was deeply dissatisfied with Ms. Matthews' legal representation after some legal services were provided, including various correspondence, appointments, and other legal services. It is unclear when Ms. Mercier formed that negative view of Ms. Matthews' services.
12. Parties can form a contract through their correspondence and their conduct if they show that they agreed to the contract's terms. (See *Crosse Estate (Re)*, 2012 BCSC 26, at paragraph 30). I find Ms. Mercier's conduct in paying a retainer and receiving legal services from Ms. Matthews after she undisputedly received the retainer letter shows that she agreed to its terms. The fact that Ms. Mercier was later unhappy with the legal services provided does not mean that she did not agree to the legal services at the outset.
13. Ms. Matthews says Ms. Mercier owes \$4,423.95 on an outstanding invoice. Ms. Matthews says she provided a \$7,923.95 invoice to Ms. Mercier on January 8, 2020.

Ms. Mercier does not dispute this. Ms. Matthews says Ms. Mercier made her last payment on the invoice on June 14, 2021. Ms. Mercier also does not dispute this. Again, Ms. Mercier's defence is based on alleged incompetence and lack of value.

14. Ms. Matthews submitted an accounts receivable record for Ms. Mercier's account, which noted a \$3,000 payment on Ms. Mercier's account on January 28, 2020. Ms. Mercier's account totaled \$7,923.95 before this \$3,000 payment, consistent with the alleged invoice amount. Three further payments were noted between July 2020 and June 2021, and the outstanding account balance was noted as \$4,423.95, consistent with the amount Ms. Matthews' claims in this CRT dispute.
15. Notably, Ms. Matthews did not submit the invoice in evidence. That invoice is clearly relevant, and ordinarily failure to provide an invoice would be fatal to a claim. However, in this dispute, as noted Ms. Mercier does not dispute that Ms. Matthews provided the legal services she claims payment for, or the amounts charged. Ms. Mercier also does not dispute that she made payments towards the invoice. Rather, as also noted above, Ms. Mercier's only defences to Ms. Matthews' claim are that she cannot afford to pay, and that Ms. Matthews was negligent in conducting the legal services agreed to, causing damages, including financial hardship to Ms. Mercier. Inability to pay is not a valid defence to a claimed debt, so I place no weight on this submission. With respect to Ms. Mercier's negligence allegations, Ms. Mercier did not file a counterclaim. So, I find she claims that the amount owing under the invoice should be set-off against the alleged financial hardship Ms. Mercier says arose from Ms. Matthews' alleged negligence. Given that the invoiced amount is undisputed, I find Ms. Matthews is entitled to payment of \$4,423.95 for the unpaid portion of her invoice, subject to any proven set-off.
16. Because Ms. Mercier is the party alleging the set-off, the burden to prove the set-off shifts to her. To prove negligence against a lawyer, Ms. Mercier must prove that the Ms. Matthews's legal services fell below the standard of a reasonably competent lawyer and that Ms. Mercier suffered damages as a result.

17. Ms. Mercier alleges that Ms. Matthews had no knowledge of the details of her case, treated her unprofessionally, provided no legal guidance and no revisions to her affidavit, and refused to advocate for Ms. Mercier's basic rights, which she says left her in a severely compromised financial position. Ms. Matthews denies that she was negligent. She also says Ms. Mercier had no complaints about the legal services provided until she received the invoice.
18. Ms. Mercier did not provide any evidence in support of her allegations. The only evidence Ms. Mercier provided were screenshots of Ms. Matthews' reviews from a lawyer rating website, which I find are irrelevant, and one email from Ms. Mercier to Ms. Matthews where Ms. Mercier said she could not afford to pay the invoice and expressed her dissatisfaction with Ms. Matthews' legal services. I find this does not prove that Ms. Matthews provided negligent legal services.
19. Further, in cases involving a claim of professional negligence, expert evidence is generally required to prove the professional's standard of care and that the professional's conduct fell below that standard. In this dispute, I find expert evidence is required to determine whether Ms. Matthews exercised the care and skill of a reasonably competent lawyer in accordance with the standards of the profession. Ms. Mercier did not provide any expert evidence. In the absence of expert evidence, I find Ms. Mercier has not proven Ms. Matthews failed to meet the required standard of care or was negligent. Finally, even if Ms. Mercier had proved Ms. Matthews was negligent, Ms. Mercier did not explain or provide any evidence to prove she suffered any damage in any event. Therefore, I find Ms. Mercier has not proved she is entitled to any set-off.
20. Given all the above, I find that Ms. Matthews is entitled to payment of \$4,423.95 for the unpaid portion of her invoice.

Interest, CRT fees, and dispute-related expenses

21. Ms. Matthews claims 10% annual contractual interest. She says this was agreed to in the retainer letter. However, the retainer letter says only that a "10% interest rate"

will be imposed on accounts not paid in full within 30 days. It does not expressly state whether the 10% interest listed in the letter is an annual interest rate, or otherwise.

22. Section 4 of the federal *Interest Act* limits the amount of annual interest chargeable to 5% when an interest rate in a contract is expressed as a rate or percentage for any period less than 1 year unless the equivalent yearly rate is also listed. However, section 4 of the *Interest Act* does not apply when a written contract contains no provision for payment of interest at a rate for a period less than a year. See *Bank of Nova Scotia v. Dunphy Leasing Enterprises Ltd.*, 1991 ABCA 351 (CanLII) at paragraph 140 (aff'd 1994 CanLII 124 (SCC)). Here, the interest rate was not expressed as a rate or percentage for any period less than 1 year. Rather, it was silent on the rate's period. So, I find section 4 does not apply. Further, Ms. Mercier does not dispute that the interest set out in the retainer letter means 10% per year, as claimed by Ms. Matthews. Therefore, I find Ms. Matthews is entitled to 10% interest per year on the unpaid portion of her invoice.
23. Ms. Matthews is entitled to 10% contractual interest per year on the \$4,423.95 from February 8, 2020, 30 days after the date Ms. Matthews gave Ms. Mercier the invoice, to the date of this decision. This contractual interest equals \$1,169.62. The CRT's monetary limit under its small claims jurisdiction is \$5,000. Both the principal and contractual interest must fall under that \$5,000 limit. So, I allow \$576.05 for contractual interest, which together with the \$4,423.95 principal equals the maximum \$5,000.
24. The CRT's small claims \$5,000 monetary limit is exclusive of CRT fees, and dispute related expenses. 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 Ms. Matthews is entitled to reimbursement of \$175 in CRT fees. Neither party claimed any dispute-related expenses, so I award none.

ORDERS

25. Within 30 days of the date of this order, I order Ms. Mercier to pay Ms. Matthews a total of \$5,175, broken down as follows:
- a. \$4,423.95 in debt,
 - b. \$576.05 in contractual interest, and
 - c. \$175 in CRT fees.
26. Ms. Matthews is entitled to post-judgment interest, as applicable.
27. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Leah Volkers, Tribunal Member