



Civil Resolution Tribunal

Date Issued: December 19, 2022

File: SC-2022-002782

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Acumen Law Corporation v. Friesen*, 2022 BCCRT 1351

B E T W E E N :

ACUMEN LAW CORPORATION

APPLICANT

A N D :

TABITHA FRIESEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant, Acumen Law Corporation (Acumen), says it provided legal services to the respondent, Tabitha Friesen, and Ms. Friesen has not paid in full. Acumen seeks \$2,888 in unpaid legal fees and disbursements.

3. Ms. Friesen says Acumen's billed fees are not reasonable for the legal services it provided to her. Ms. Friesen further says that Acumen continued to work on her legal matters even after she informed Acumen that she could no longer afford its services. So, Ms. Friesen says she owes Acumen no more than the \$1,992 retainer she has undisputedly already paid.
4. Acumen is represented by an authorized representative. Ms. Friesen is 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, does Ms. Friesen owe Acumen for legal services?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant, Acumen must prove its claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties’ submitted evidence and argument but refer only to what I find relevant to provide context for my decision. Ms. Friesen did not provide any evidence and Acumen did not provide final reply submissions, despite both having the opportunity to do so.
11. The following facts are undisputed. Ms. Friesen retained Acumen on September 20, 2019. It is unclear if Ms. Friesen retained Acumen for 1 or 2 legal matters on this day. However, the parties agree Ms. Friesen ultimately retained Acumen for assistance with 2 legal matters.
12. Ms. Friesen undisputedly paid Acumen a total retainer of \$1,992 in September and October 2019. More on the retainer payments below.
13. The evidence shows that starting on September 23, 2019, Acumen did various work on Ms. Friesen’s 2 legal matters. On May 25, 2020, Acumen informed Ms. Friesen that it had scheduled a 3-day trial in 1 of her legal matters and that legal fees for the trial would be \$12,500 plus tax. Acumen also provided a Statement of Account for a \$200 filing fee. The Statement of Account noted \$1,792 remained in trust from Ms. Friesen’s retainer payments after deducting the \$200 filing fee payment.

14. On June 8, 2020, Ms. Friesen thanked Acumen for its help with her legal matters but said that she would not be able to pay an additional \$12,000 for Acumen to represent her at trial. Ms. Friesen asked whether the trial would be cancelled if Acumen no longer represented her. Kyla Lee, the lawyer at Acumen who assisted Ms. Friesen in her legal matters, responded the next day and said the trial date would proceed either way. Kyla Lee further said that the trial dates were far enough in the future that Ms. Friesen would have sufficient time to figure out what she wanted to do. Kyla Lee said that most cases are resolved without a trial and that the fees would be “substantially less” if a settlement was made.
15. On June 11, 2020, Ms. Friesen asked what the estimated cost would be if she were to settle outside of court. Ms. Friesen also advised Kyla Lee about some personal matters and Kyla Lee responded, “that does change things significantly”. Kyla Lee then informed Ms. Friesen that E, who I infer is Kyla Lee’s legal assistant, would do a detailed interview with Ms. Friesen about her circumstances. Kyla Lee further said that the fee is typically between \$5,000 and \$6,000 if the matter is resolved without a trial. There is no evidence of any response from Ms. Friesen to this email.
16. On July 10, 2020, Ms. Friesen emailed Kyla Lee and said that she had obtained another lawyer through legal aid to assist her. Kyla Lee responded that they wished Ms. Friesen had told them this prior to Acumen doing the detailed interview and Kyla Lee writing a 14-page letter to the other side in an attempt to resolve Ms. Friesen’s case. Kyla Lee said that Ms. Friesen would have saved herself “a lot of legal fees for that work”.
17. Ms. Friesen responded that Kyla Lee should have let her know that Acumen was working on a settlement offer and that she “had no idea what was going on”. Acumen then sent Ms. Friesen a Statement of Account for \$2,888 on August 21, 2020 which Ms. Friesen undisputedly has not paid.

How much, if anything, does Ms. Friesen owe Acumen for the legal services?

18. Acumen says it quoted Ms. Friesen a minimum starting retainer of \$4,000 plus taxes as a flat fee for both legal matters. Ms. Friesen denies she was ever told about or agreed to a \$4,000 minimum flat fee for the legal services. It is undisputed the parties had no written contract.
19. In a sworn affidavit, Kyla Lee says when Ms. Friesen contacted Acumen on September 20, 2019, Kyla Lee quoted her specific fees. Kyla Lee says that their practice was to make note of what fees they quoted a client for in-person consultations. However, Kyla Lee says they do not recall if they had an in-person consultation with Ms. Friesen.
20. Kyla Lee says they know they quoted Ms. Friesen specific fees because they gave the same fee schedule for every client who contacted them for assistance with similar legal matters in September 2019. Specifically, Kyla Lee says they told Ms. Friesen on September 20, 2019 that if her matter was resolved before a certain step, Ms. Friesen would be charged a \$4,000 flat fee plus tax. Kyla Lee says they further told Ms. Friesen that if the matter resolved after that step, the fee would be between \$5,000 to \$6,000 plus tax. If the matter proceeded to trial, Kyla Lee says they quoted Ms. Friesen \$7,500 plus tax for a 1 day trial and \$2,500 plus tax for reach additional day.
21. Ms. Friesen denies this conversation took place. She says she has never spoken to Kyla Lee other than by email and the only conversation she had on September 20, 2019 was with RS, a legal assistant with Acumen. Ms. Friesen says RS did not discuss any fees with her other than the retainer fee. Ms. Friesen says, in essence, that the retainer fee she paid was for Acumen to assist her with her first legal matter and that no fee arrangement was discussed with respect to her second legal matter.

22. Though Ms. Friesen did not provide evidence in this dispute, she did copy and paste into her written submissions emails she exchanged with RS on September 20 and 21, 2019. Since Acumen does not dispute them, I accept these are accurate copies of these emails. There is no reference in either of these copy and pasted emails to any flat fee arrangement.
23. In their affidavit, Kyla Lee says that Ms. Friesen originally retained Acumen for assistance with 1 legal matter. Kyla Lee says that when Ms. Friesen decided to retain Acumen with respect to the second legal matter, Acumen converted Ms. Friesen's payments for the first legal matter into a retainer for the second legal matter. Kyla Lee says their fees for representing Ms. Friesen in the first legal matter were ultimately included in the fee for the second legal matter.
24. As mentioned above, Acumen has the burden of proving its claims on a balance of probabilities. I accept Kyla Lee's general practice was to quote a \$4,000 flat fee minimum for Ms. Friesen's type of legal matter. However, I find Kyla Lee's evidence does not prove that Ms. Friesen agreed to this price. Given that Ms. Friesen specifically denies she was quoted this flat fee and Acumen's failure to provide any reply submissions responding to this allegation, I find Acumen has failed to establish that Ms. Friesen agreed to a \$4,000 minimum flat fee.
25. However, since it is undisputed that Ms. Friesen retained Acumen to assist her with her 2 legal matters, I find Acumen is entitled to some payment on a quantum meruit basis. Quantum meruit means a reasonable value for the services rendered. Here, Ms. Friesen says she should not be charged for the work Kyla Lee did in drafting the 14-page settlement offer letter because she had no idea this work was being done. Acumen says that it was able to settle Ms. Friesen's case and should be compensated for doing so. Ms. Friesen denies Acumen obtained a settlement for her and says it was her legal aid lawyer that helped resolve the case.

26. While the evidence shows the opposing party in Ms. Friesen's second legal matter contacted Kyla Lee on July 20, 2020 to talk about a potential settlement, Kyla Lee responded that Ms. Friesen no longer wished to use Acumen's services. So, I find it unproven based on the evidence before me that Acumen resolved Ms. Friesen's case.
27. Further, there is no evidence before me that Acumen obtained instructions from Ms. Friesen to try and settle her case after Ms. Friesen informed Kyla Lee on June 8, 2020 that she could not afford Acumen's services. So, I find Acumen is not entitled to compensation for Kyla Lee's work relating to the 14-page settlement offer as the evidence fails to establish that Ms. Friesen agreed for Acumen to do this work.
28. What amount is Acumen entitled to for the work Ms. Friesen agreed for it to do? As mentioned above, in Kyla Lee's July 10, 2020 email to Ms. Friesen, they stated that Ms. Friesen would have saved herself "a lot of legal fees for that work", referring to the 14-page settlement offer letter and the detailed interview. Ms. Friesen says the detailed interview was only 10 minutes long, which I accept is accurate as Acumen does not dispute it. Based on the evidence before me, I find Acumen was entitled to charge a reasonable fee for the work it did up to and including the 10 minute detailed interview. The evidence shows that this work included reviewing certain reports, scheduling a hearing, attending in court to adjourn a hearing, reviewing evidence, drafting written submissions, conducting a hearing and scheduling a trial date.
29. Acumen's August 21, 2020 Statement of Account does not list the amount of time Kyla Lee and others spent on each task they completed for Ms. Friesen or their hourly rates. However, I have reviewed the itemized list of tasks in the August 21, 2020 Statement of Account, the work product and other parts of Ms. Friesen's client file provided by Acumen, and some communication between the parties.
30. Having reviewed this evidence, I find that I can assess the reasonableness of the \$4,000 invoice based on the surrounding circumstances. On balance, I find \$4,000 was a reasonable fee for the work that Acumen did, including the 14-page settlement offer letter which I have found Acumen is not entitled to charge for. I find Kyla Lee's

July 10, 2020 email to Ms. Friesen where they said she would have saved herself “a lot of legal fees for that work” implies that a large amount of the \$4,000 legal fees Acumen charged was for Kyla Lee’s work relating to the 14-page settlement offer letter. So, based on the evidence before me, I find \$2,500 plus taxes to be a reasonable amount for the legal services Acumen provided to Ms. Friesen up to and including the detailed interview, in addition to the \$200 filing fee mentioned above. This totals \$3,000. Deducting Ms. Friesen’s \$1,992 retainer from this amount, I find Ms. Friesen still owes Acumen \$1,008 and I order her to pay Acumen this amount.

31. The *Court Order Interest Act* (COIA) applies to the CRT. Acumen is entitled to pre-judgment interest on the \$1,008 from August 21, 2020, the date of Acumen’s final invoice, to the date of this decision. This equals \$16.42.
32. 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. Since Acumen was partially successful, I find it is entitled to reimbursement of half its paid CRT fees. This equals \$62.50. Neither party claims any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this decision, I order Ms. Friesen to pay Acumen a total of \$1,086.92, broken down as follows:
 - a. \$1,008 in debt,
 - b. \$16.42 in pre-judgment interest under the COIA, and
 - c. \$62.50 for CRT fees.
34. Acumen is entitled to post-judgment interest under the COIA, as applicable.

35. 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.

Nav Shukla, Tribunal Member