Civil Resolution Tribunal

Date Issued: December 21, 2022

File: SC-2022-001222

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Doak Shirreff Lawyers LLP v. Verbeek Holdings 2000 Ltd.*, 2022 BCCRT 1360

B E T W E E N :

DOAK SHIRREFF LAWYERS LLP

APPLICANT

A N D :

VERBEEK HOLDINGS 2000 LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Chad McCarthy

INTRODUCTION

1. This dispute is about payment for legal services. The respondent, Verbeek Holdings 2000 Ltd. (VH), retained the applicant, Doak Shirreff Lawyers LLP (DS), to represent VH in a legal dispute. VH did not pay DS's $6,620.52 invoice. DS claims $5,000, the maximum Civil Resolution Tribunal (CRT) small claim amount, and abandons any

claim to the excess. VH says DS did not complete certain tasks when promised and that VH did not pre-approve some of the work tasks DS performed. So, VH says it owes nothing.

2. In this dispute, DS is represented by a partner, Scott Chambers. VH is represented by an authorized employee or principal.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. 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.

4. 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

5. 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.

6. 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

7. The issue in this dispute is whether DS completed the work as agreed, and if so, whether VH owes DS $5,000.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, as the applicant VH must prove its claims on a balance of probabilities, meaning "more likely than not." 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. DS did not provide any submissions in reply to VH's submissions, although it had an opportunity to do so.

9. The undisputed evidence is that VH owned 3 houseboats. VH leased the houseboats to certain persons and wanted to repossess them. VH signed a retainer agreement with DS on July 6, 2021, primarily to pursue the houseboat repossession and related matters. DS lawyers and employees worked on the matter from July 2021 until October 4, 2021, when DS terminated the parties' relationship and stopped providing legal services. VH did not pay DS's final invoice for $6,620.52, dated September 28, 2021.

10. The submitted retainer agreement contained the following key provisions:

    - DS would charge VH based on the time DS spent on VH's affairs and acted on VH's behalf.
    - The hourly rate of the primary lawyer assigned to the file was specified. Other DS personnel could also work on the file at their applicable hourly rates, which were available on request.
    - VH was also responsible for all other charges allocated to its file. After 30 days, unpaid accounts would be charged yearly interest of 18%.
    - DS could terminate its services on written notice to VH's representative, for reasons that included a serious loss of confidence between VH and DS. Upon

termination, DS would cease working and VH would be charged for work done up to that time.

- DS had recommended that VH consider whether to have the retainer agreement reviewed by another lawyer.

11. VH does not directly deny agreeing to the retainer agreement's terms.

12. I find the unpaid September 28, 2021 invoice provided a detailed account of which tasks were performed by which DS partner or employee, when, and how long each took, as well as disbursements and other charges, and the total amount owing. VH does not directly deny that DS performed each of the listed tasks and incurred each of the listed charges. VH also does not say that DS's work was substandard, except for the timeliness and pre-approval issues discussed below. So, I find that absent proof that VH is entitled to a set-off because DS did not perform some of the work when and as agreed by the parties, VH was responsible for paying the entire amount of the invoice.

13. Turning VH's specific allegations, VH says that the houseboat matter was urgent. VH says DS promised, both in discussions before signing the retainer agreement and "in the spirit and content" of the contract, that DS would have the houseboat repossession matter heard by a court within about 3 weeks, which would be a "slam dunk" for a judge or master. DS acknowledges that VH said the matter was urgent, but denies agreeing to have the matter heard by a court within 3 weeks.

14. I find submitted correspondence shows that after VH retained DS and the parties commenced the court proceeding, DS told VH the earliest court date that worked for both DS and opposing counsel was in November 2021, approximately 4 months after VH first retained DS. VH says this was a breach of the parties' alleged oral agreement.

15. In submitted correspondence, DS reminded VH that the court did not consider commercial matters like this one to be emergencies, and that scheduling delays were common and not within 1 party's control. VH says multiple VH representatives heard DS commit to a quick court date on the parties' initial call, but VH provided no witness

statements from those representatives. I find none of the evidence before me shows that DS promised to have the houseboat repossession matter heard by a court within any particular timeframe or by a specific date, either verbally or in the retainer agreement.

16. Next, VH says the parties agreed that VH needed to pre-approve DS's proposed work tasks, and VH did not pre-approve at least some of DS's work. However, I find there is no documentary evidence supporting that assertion. Further, that alleged pre-approval requirement is contrary to the retainer agreement, which said DS would advise VH and act on its behalf on the houseboat matter, without any explicit pre-approval required for any particular step. I find the evidence does not show that the parties agreed DS would obtain VH's approval before doing every, or any, particular task.

17. VH also does not say, and provided no evidence showing, which specific DS tasks it allegedly pre-approved and which it did not in the 3 months that DS acted on its behalf. I find none of the submitted evidence shows that VH objected to DS performing any tasks before DS terminated its legal services on October 4, 2021. Further, I find submitted emails show that a VH representative, LS, urged DS to reconsider the termination and continue its work. So, even if DS had needed additional work pre-approval, I find the evidence shows that VH implicitly approved of the work DS undertook up to the October 4, 2021 termination date.

18. Finally, VH says that DS did not communicate with VH often enough about the houseboat matter. I find the parties did not agree to communicate on a particular schedule, and the evidence does not show that DS was ever out of contact with VH for an unreasonable period of time.

19. Overall, I find that DS performed the invoiced legal services as the parties agreed. So, VH is not entitled to any set-off or deduction. I allow DS's claim for $5,000.

CRT Fees, Expenses, and Interest

20. Under the parties' retainer agreement, I find VH agreed to pay 18% annual interest on any amounts owing for more than 30 days. However, both a debt award and contractual interest on it are subject to the CRT's $5,000 maximum small claim amount. So, I find DS is only entitled to $5,000, without any additional award for contractual interest.

21. The *Court Order Interest Act* (COIA) applies to the CRT, and pre-judgment interest under the COIA is exclusive of the $5,000 monetary limit. However, section 2(b) of the COIA says pre-judgment interest does not apply where there is an agreement about interest between the parties, like there is here. So, I find DS is not entitled to pre-judgment interest under the COIA.

22. Under section 49 of the CRTA, and the 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. DS was successful in this dispute, so I find it is entitled to reimbursement of its $175 in paid CRT fees, which are also exclusive of the CRT's monetary limit. Neither party claimed CRT dispute-related expenses.

ORDERS

23. I order that, within 30 days of the date of this order, VH pay DS a total of $5,175, broken down as follows:

    a. $5,000 in debt, and

    b. $175 in CRT fees.

24. DS is also entitled to post-judgment interest under the COIA, as applicable.

25. 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.

Chad McCarthy, Tribunal Member