



Civil Resolution Tribunal

Date Issued: August 14, 2023

File: SC-2022-007998

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Haddock v. Felker*, 2023 BCCRT 680

BETWEEN:

COURTNEY GRANT HADDOCK

APPLICANT

AND:

REGINAL HARRY FELKER and JACQUELINE FRANCES MARIE
FELKER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about payment for legal services.
2. The applicant lawyer, Grant Haddock, who does business as Haddock & Company, Lawyers, says his law firm provided legal services to the respondents, Reginal Harry Felker and Jacqueline Frances Marie Felker, for which they have not paid in full. I will

refer to Mr. Haddock and his law firm's lawyers together as "Haddock" in this decision. The Felkers undisputedly paid Haddock a \$1,500 retainer. After accounting for the retainer, Mr. Haddock seeks \$1,855.55 in unpaid legal fees, plus 24% annual contractual interest.

3. The Felkers say that Haddock initially provided a \$1,200 estimate and at no time indicated that the legal services provided would exceed the initial estimate. The Felkers say Mr. Haddock should be bound by the estimate, and that they are not responsible for any amount over their paid \$1,500 retainer.
4. Mr. Haddock represents himself. The Felkers are also 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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must act fairly and follow the law.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 28, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
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.
9. The Felkers provided one item of evidence after the CRT's deadline, which consisted of an August 2021 email string. Mr. Haddock objects to the email string because it includes an August 26, 2021 email marked "without prejudice". He also objects to another email exchange the Felkers previously submitted as evidence, which includes the same "without prejudice" email.
10. Generally, when communications are marked "without prejudice" in a settlement negotiation, they are protected from being disclosed as evidence in a dispute or court action by settlement privilege. Settlement privilege exists to encourage settlement by allowing parties to make admissions without fear that those admissions will end up as evidence in a later hearing. See *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37.
11. Here, while the August 26, 2021 email contained a settlement offer, I find it did not contain any admissions or other information that would prejudice Mr. Haddock's claim. So, I have decided to admit the 2 email strings, though I have not considered any settlement offers the parties made to each other about the matters in this dispute.

ISSUE

12. The issue in this dispute is to what extent, if any, the Felkers owe Mr. Haddock \$1,855.55 for legal services.

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Mr. Haddock must prove his 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 is necessary to explain my decision.

14. It is undisputed that on about April 9, 2021, Mrs. Felker phoned Tara Cox, one of the lawyers working for Mr. Haddock at the time, about a legal issue. The Felkers say they spoke with Ms. Cox for 30 to 45 minutes, during which they say Ms. Cox provided a cost estimate for her involvement and discussed how to keep costs lower by doing much of the preparation themselves. Ms. Cox's alleged statements during this conversation are at the heart of this dispute, as discussed below.
15. The Felkers did not retain Haddock to represent them right away. In an April 13, 2021 email, Ms. Cox asked the Felkers to keep her updated about the situation, and said she would send them a retainer agreement if they chose to retain her. The Felkers responded that they would retain her if a hearing went ahead.
16. On May 20, 2021, the Felkers emailed Ms. Cox that a hearing was scheduled for June 10, 2021 and asked if Ms. Cox could attend on their behalf. Ms. Cox emailed a retainer agreement to the Felkers on May 24, 2021, and indicated that once she had the signed agreement and a \$1,500 retainer, Haddock could get started. Ms. Cox also requested the Felkers send her all relevant documents. The Felkers responded that they would send the signed retainer agreement in a separate email and would provide the documents the following day. The Felkers also stated that they understood the dispute would likely cost approximately 2 to 3 hours of time. There is no evidence Ms. Cox responded to that statement.
17. The Felkers signed and returned the retainer agreement on May 24, 2021. The agreement stated that Ms. Cox's hourly rate was \$280. It also specifically stated that the amount of legal fees and disbursements that may be incurred were not capable of precise prediction, and that Haddock had made no guarantees or promises and had set no limits as to the cost.
18. It is undisputed that the Felkers paid the required \$1,500 retainer and provided Ms. Cox with numerous documents, including relevant written agreements, various email

and text message chains, and a document the Felkers prepared setting out the history of the dispute. On May 28, 2021, Ms. Cox emailed the Felkers with several questions and noted that it would take her “roughly 3 hours” to complete written submissions. It is also undisputed that Ms. Cox attended the June 10, 2021 hearing, and that the decision ultimately fell in the Felkers’ favour.

19. Haddock’s July 11, 2021 invoice billed the Felkers for 10.7 hours, totaling \$3,355.52. After deducting the paid \$1,500 retainer, the balance owing was the claimed \$1,855.52.
20. The Felkers’ main argument for not paying Haddock’s invoice is that they say Ms. Cox told them in their initial call that handling their dispute would likely take 2 to 3 hours of work. The Felkers say that after Ms. Cox’s May 28, 2021 email about preparing submissions, they anticipated an increase to about 4.5 hours of work and a total bill of about \$1,200. However, the Felkers say they always expected to receive some refund of their retainer at the conclusion of their file.
21. Mr. Haddock denies that Ms. Cox provided any cost estimate to the Felkers. The evidence shows Ms. Cox left Mr. Haddock’s firm in approximately July 2021. In a May 3, 2023 email to Mr. Haddock, Ms. Cox stated she did not have any agreement with the Felkers about fees, and that she recorded her hours and billed hourly to ensure she could bill for all her work, including any unforeseen issues or increased complexity that arose.
22. I find it unproven that Ms. Cox provided the Felkers with an estimate of legal fees during their initial April 9, 2021 call. Even if Ms. Cox stated that some part of handling the Felkers’ file would take approximately 2 to 3 hours, the context and what was included in that estimate is unclear. That is, I find it could have referred only to the estimated time to prepare submissions, or it might have been contingent on some unspecified factors. Overall, I find it very unlikely that Ms. Cox would estimate a total of only 2 to 3 hours of work for handling the file, when it was clear she would have to review documents, prepare submissions, and attend a hearing.

23. Further, I find that the retainer agreement the Felkers later signed clearly stated that Haddock's time would be billed hourly and that no guarantees or promises had been given about costs. Therefore, I find that Haddock did not provide the Felkers with any contractually binding estimate before the parties signed the retainer agreement.
24. The Felkers also submit that it would not have made sense for them to hire Haddock if it was going to cost over \$1,500, as the amount at stake for them at the hearing was only about \$1,500. Mr. Haddock argues that the amount at stake was significantly higher, as the Felkers were seeking \$2,850 and the opposing party had claimed \$4,275 against them. While the Felkers say the other party's claim was meritless and not a concern, Ms. Cox's submissions in the underlying dispute stated that the Felkers hired a lawyer specifically to respond to the opposing party's claims against them. Further, the Felkers admit that Ms. Cox cautioned them that no case was a "slam dunk" and that she could not guarantee the hearing's outcome.
25. I find there is insufficient evidence before me to determine the merits of either party's claims. However, it appears that there was potentially more than \$1,500 at stake for the Felkers, and Ms. Cox did not promise they would be successful. Overall, I find the Felkers' submission that they would not have hired Haddock if it was going to cost more than \$1,500 is unproven.
26. The Felkers also raise for the first time in their submissions that Ms. Cox likely "padded" her bill, as the amount of time she billed for was unreasonable. Mr. Haddock objects to this defence on the basis that the Felkers did not raise it in their Dispute Response. Nevertheless, I find that Mr. Haddock had an opportunity to respond to the allegation in his final reply and he did not make a request to submit additional evidence in response. So, I find it is appropriate to consider the Felkers' argument. As the Felkers are the party alleging the bill was inflated, I find they have the burden to prove it.
27. The Felkers specifically dispute the more than 3 hours Ms. Cox recorded for preparing submissions for the hearing. They allege that Ms. Cox essentially cut and pasted most of the submissions from their own document they had provided to her. From my

review of Ms. Cox's submissions, I disagree that she cut and pasted them. While Ms. Cox clearly and appropriately relied on the factual history the Felkers provided, I find that her submissions were re-worded and edited from the Felkers' document, and that she added legal arguments.

28. To the extent that the Felkers are arguing Ms. Cox spent more time on the submissions than she should have, I agree with Mr. Haddock that expert evidence is required to prove the time Ms. Cox spent was unreasonable. The Felkers did not provide any such expert evidence. In the absence of a lawyer's opinion to the contrary, I find the amount billed for preparing the submissions was reasonable in the circumstances.
29. The Felkers also dispute the 2 hours Ms. Cox recorded to attend the hearing and the 0.5 hours she recorded for a June 15, 2021 call to discuss the decision with the Felkers. The Felkers say the hearing took approximately 45 minutes, and the phone call was about 10 minutes.
30. I note that the Felkers admit Ms. Cox arrived approximately 30 minutes before the hearing started. I also find that Ms. Cox was entitled to bill for her travel time to and from the hearing. While Mr. Haddock did not specifically address Ms. Cox's travel time, I find that billing 2 hours for a 45-minute in-person hearing was likely reasonable.
31. As for the phone call, I note the invoice stated Ms. Cox recorded 0.5 hours not only for calling the Felkers, but also for reviewing the decision. The decision is not before me, and so I find the Felkers have not shown Ms. Cox over-billed them for June 15, 2021, as alleged.
32. The Felkers also say they did not have any calls with Ms. Cox that lasted longer than 10 minutes after they signed the retainer agreement. I infer that this submission is in reference to the 0.5 hours Haddock billed for a May 31, 2021 phone call with the Felkers. However, the Felkers did not set out their specific recollection of that phone call. I find their general statement that no phone call was ever more than 10 minutes is insufficient to prove Ms. Cox overbilled for the call on May 31. I also note the

evidence shows the Felkers sent Ms. Cox a May 31, 2021 email, which was not noted on the invoice. So, I find the 0.5 hours billed was likely reasonable, as I find the invoice's description of all the work done that day was incomplete.

33. While the Felkers do not specifically take issue with any other time billed on the invoice, including time for sending and receiving emails, reviewing documents, and reviewing evidence for the hearing, I note that I find nothing obviously unreasonable about the recorded time spent on those tasks. I also note the Felkers do not suggest Haddock's work was incomplete or substandard in any way.
34. For all these reasons, I find the Felkers have not established that Haddock's invoice was inflated.
35. In summary, I find that Mr. Haddock is not bound by any estimate about the likely cost of legal services for the Felkers' legal matter. I find the Felkers agreed to pay Haddock on an hourly basis, and the Felkers have not proven the July 11, 2021 invoice was unreasonable. Therefore, I find the Felkers owe Mr. Haddock the claimed \$1,855.55.

Interest, CRT fees, and dispute-related expenses

36. Mr. Haddock also claims 24% annual contractual interest, which is set out in the signed retainer agreement and in the July 11, 2021 invoice. The agreement and invoice also state that interest will be charged for accounts not paid within 30 days. So, I find contractual interest started to accrue as of August 10, 2021, which is 30 days after the invoice's date. This interest totals \$933.37.
37. The Felkers argue they should not have to pay the claimed interest because Mr. Haddock could have started this dispute sooner. I find Mr. Haddock filed this dispute within the applicable limitation period, and nothing required him to start it sooner. Interest is payable because the Felkers failed to pay Haddock's invoice for services rendered, not because Mr. Haddock delayed filing this dispute.
38. 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. As Mr. Haddock was the successful party, I find he is entitled to reimbursement of \$125 in paid CRT fees. Neither party claims dispute-related expenses.

ORDERS

39. Within 21 days of the date of this decision, I order the Felkers to pay Mr. Haddock a total of \$2,913.92, broken down as follows:
- a. \$1,855.55 in debt,
 - b. \$933.37 in contractual interest at 24%, and
 - c. \$125 in CRT fees.
40. Mr. Haddock is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
41. 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.

Kristin Gardner, Tribunal Member