



Civil Resolution Tribunal

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File: SC-2017-002904

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ABC Home Support Inc. v. Estate of Pamela Casson*, 2018 BCCRT 13

B E T W E E N :

ABC Home Support Inc.

APPLICANT

A N D :

Estate of Pamela Casson

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about payment for home care services provided by the applicant ABC Home Support Inc. (ABC) to the deceased Pamela Casson and to her late husband who predeceased her on January 30, 2016. The respondent, Estate of Pamela Casson (Estate), is represented by the Estate's co-executor, Barbara

Casson, who is Pamela Casson's daughter. Pamela Casson died on October 28, 2016, before this tribunal proceeding began in July 2017.

2. For clarity and ease of reference and without any disrespect, I will refer to Pamela Casson as "Pamela" and to Barbara Casson as "Barbara". Barbara's sister and co-executor Beverly Matishak has consented to Barbara acting on behalf of the Estate in this dispute.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Neither party requested an oral hearing.
5. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
6. Under tribunal rule 121, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Whether the parties agreed that ABC's caregivers would take 4-hour unpaid breaks after Pamela's husband died?
 - b. To what extent does the respondent Estate owe ABC for outstanding caregiving invoices and related interest, and is there any appropriate set-off, due to an alleged \$254.50 overcharge?
 - c. Should the respondent pay the applicant its \$175 in tribunal fees and \$10.50 in a dispute-related expense for registered mail correspondence?

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The applicant ABC claims payment of \$3,465, which it says the Estate owes for the care ABC's caregiver or aide employees provided to Pamela. As detailed below, this amount primarily relates to "respite care" provided to Pamela, which the respondent says was unnecessary because the aide workers should have taken breaks. The relevant time period is February to June 2016, save for a later interest charge on the outstanding amount that I have addressed separately below.
10. The invoices varied somewhat in their description of the daily rate and the respite care, with the latter referred to as "hours", "home support services", and "respite care". It is not entirely clear what number of respite hours were billed for any given day, presumably because the schedule changed from time to time. That said, it overall appears that during the February to June 2016 period, 4 hours per day of respite care was usually charged, which is the issue in this dispute.

11. ABC says when it first met with Barbara, the terms discussed were for a live-in caregiver 3 days and 6 hours one week, and 4 days and 8 hours the following week. This is not disputed, but the variance likely explains the different billings in the invoices, which made it somewhat difficult to assess the number of respite hours worked. I find that nothing turns on this, because the parties' submissions were about the need for respite care at all, and not whether the hours were accurately recorded.
12. ABC submits its caregivers were invited to accompany Pamela to family events and they were not informed by Pamela or her family that they would not be paid for their time. Therefore, the caregivers submitted their timesheets to ABC and ABC paid them accordingly. ABC submits that all payments on account are applied directly to the account, rather than to specific invoices.
13. The respondent submits that it does not dispute the \$3,465 balance on the basis that Pamela's daughters "treated the caregivers as family", as alleged by the applicant. The respondent acknowledges the family was respectful and inclusive with the caregivers. However, Barbara submits that after her father died on January 30, 2016, it was agreed with ABC that the caregivers were to take daily, 4-hour, unpaid breaks. This is the crux of the issue in this dispute, and here I note that Barbara asserts the alleged agreement about 4-hour breaks was verbal. Barbara submits that she and other family members encouraged the caregivers to take their breaks.
14. In particular, after Barbara's father's passing on January 30, 2016, she submits the caregiving needs dropped as her mother Pamela was more capable. Barbara submits that during an informal telephone discussion ABC said the daily rate would decrease from \$230 to \$205 per day, and, the breaks would be unpaid as Pamela did not need the additional respite care. Certainly, the February to June 2016 invoices reflected a \$205 daily rate, for the most part described there as "nights". However, the invoices are silent about breaks and instead bill for "hours", which I infer refer to respite care. As further discussed below, overall I cannot accept that

the parties' agreement was amended based on the alleged informal telephone discussion.

15. ABC submits that because payments are applied on account rather than to specific invoices, it did not immediately realize the February to June 2016 respite care was not being paid. While not an ideal accounting method given the issues arising here, I accept ABC's explanation of their delay in pursuing the outstanding amount. ABC's statement of account is not particularly useful given ABC's accounting method. Nothing turns on the delay or the statement of account, but I mention it given the parties' focus in their submissions.
16. The Estate submits that it became apparent in the March 2016 invoice that they were still being charged for respite care, and so the respondent stopped paying the extra charges during the spring of 2016. The respondent says this was discussed with ABC a number of times on the phone and in emails, which ABC does not acknowledge. Certainly, later 2016 emails between the parties raise the issue of the breaks, but they do not acknowledge any agreement that the aides were not to take breaks rather than bill for respite care. There is no email evidence before me between February and June 2016 that raises the issue of breaks. That the respondent did not squarely raise the issue of the respite care billings before July 2016 is support for my conclusion that there was no clear agreement that the breaks were to be for 4 hours unpaid per day.
17. The respondent submits that the caregivers' timesheets are only signed by the caregiver, not the client, and so the respondent questions their relevance. However, at least one June 2016 timesheet was signed by Pamela, which noted "7 nights, 14 extra hours" for the June 1 to 15, 2016 period. I infer the "extra hours" refer to respite care. I find this June 2016 timesheet is further support for the applicant's position.
18. ABC further submits that after her husband's death, Pamela wanted the caregivers to accompany her to all events as she felt dependent on them and as such they were her companions even during downtime, such as watching TV. ABC submits

its employees were never told this was unpaid and so this time should have been paid, because unpaid breaks are where a worker is relieved of all duties and can leave the premises, something Pamela was not comfortable with. For one event, a shower celebration, Pamela either told the caregiver she was required to attend (as submitted by ABC), or, the caregiver was invited (as submitted by the Estate). Either way, I agree with ABC that the employee should have been paid, unless there was an express agreement that the caregiver would not be paid. I say this in part due to the nature of caregiving for the elderly and that it could typically be considered part of the caregiver's job to attend an event with their client. ABC's submission is to that effect with respect to Pamela specifically.

19. I also agree with the applicant that unless the aides were free to leave and do as they chose, they should be paid for their time.
20. As noted above, there is no written contract. There is also no documentation pre-dating July 2016 on the question of the aides' breaks. However, in addition to the parties' submissions, as referenced above I have before me two July 2016 emails from Barbara that I find helpful in coming to my decision. I find the tone of these emails indicate a lack of clarity in her mind about the caregivers' breaks, which supports the conclusion that Barbara and Pamela never obtained an amendment to the original agreement, which had included 4 hours of respite care. I place less weight on Barbara's later September and December 2016 emails and the 2017 correspondence. Instead, I prefer those July 2016 emails that are closer in time to the invoices at issue. That said, I note Barbara's September 28, 2016 email noted she had "told [the caregiver] she would accompany Mom but she could bring her books to study upstairs". This is in reference to the shower celebration, and as noted above, if the caregiver was being asked to attend, I find she should be paid regardless of whether she was given the opportunity to study.
21. Overall, based on the evidence and submissions before me, I find that Barbara and her family had not made it clear that they wanted to revise the agreement to have the aides take unpaid breaks or that ABC had agreed to such an

amendment. I find that ABC has proven on a balance of probabilities that the Estate is liable to pay for the respite care that was provided.

22. I turn then to the amount of the invoices owing. The respondent does not particularly challenge the number of respite hours provided, and instead as discussed above challenges that it was needed at all.
23. In a letter dated February 16, 2017, ABC wrote Barbara that “as to clients being made aware of the hours worked, the client signs timesheets for the hours that will be charged and retains a copy of the same”. I infer here that the care aide is supposed to ask the client to sign the timesheet but this may not always happen, and that in any event a copy of the time sheet is left with the client. As noted above, Pamela signed the June 2016 timesheet, and so it may be that Barbara was unaware of Pamela’s involvement in this respect. I cannot fault ABC for doing so, given the respondent’s position that Pamela was functioning relatively well and gave no indication Pamela could not be left to handle such matters.
24. The respite hours claimed between February and June 2016 total \$3,150.00. Given my conclusions above, I find the respondent owes the applicant that amount.
25. However, the respondent alleges it overpaid the applicant by \$254.50. The alleged \$245.50 overpayment plus \$60.50 totals \$315, the amount the applicant charged in interest. That interest charge relates directly to the invoices that are the subject of this claim, and therefore I consider it appropriate to consider the Estate’s claim for \$254.50 as a set-off and part of this dispute. Put another way, this \$245.50 does not need to be set out in a counterclaim by the respondent, because it amounts to a defence against part of the applicant’s request for payment of all of its outstanding bills.
26. None of the invoices in evidence reference an interest rate charged on late payments nor do they spell out when the invoice is due.

27. However, on May 16, 2017, ABC issued a \$315 invoice to charge interest on the claimed overdue balances between January and May 2016, at \$63 of interest for each month. The applicant's statement of account reflects this \$315 charge as part of the \$3,465 total. I find the applicant is not entitled to any contractual interest, as interest was not something agreed upon by the parties at the outset nor was it charged on any of the substantive invoices in January to June 2016. I therefore find the applicant is not entitled to the \$315 interest charge. In the result, I find the applicant is not entitled to the \$60.50 included in this dispute and further find the Estate is entitled to the \$245.50 set-off.
28. In summary, the applicant is entitled to a net award of \$3,150.00, plus pre-judgment interest under the *Court Order Interest Act* (COIA). In addition, the respondent must pay the applicant's reasonable \$10.50 in dispute-related expenses for registered mail and \$175 in tribunal fees paid.

ORDER

29. Within 30 days of the date of this decision, I order the respondent Estate to pay the applicant ABC a total of \$3,370.64, comprised of:
- a. \$3,150.00 for the outstanding respite care hours,
 - b. \$175 in tribunal fees,
 - c. \$10.50 in dispute-related expenses, and
 - d. \$35.14 in pre-judgment interest under the COIA.
30. The applicant is also entitled to post-judgment interest under the COIA.

Shelley Lopez, Vice Chair