



Civil Resolution Tribunal

Date Issued: September 30, 2019

File: SC-2019-002712

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Furlan v. Gowling WLG (Canada) LLP.*, 2019 BCCRT 1147

B E T W E E N :

PRIMO FURLAN

APPLICANT

A N D :

Gowling WLG (Canada) LLP.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant, Primo Furlan, says the respondent, Gowling WLG (Canada) LLP., overcharged him \$2,968.29 for legal services. He wants the respondent to refund him the overpayment.

2. At all relevant times the respondent has represented CIBC Mortgages Inc. (CIBC). The respondent says that under the terms of the applicant's mortgage with CIBC and a September 2018 settlement agreement with CIBC, the applicant was required to pay all CIBC's legal fees. The respondent denies that it overcharged the applicant.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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.
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 9.3 (2), in resolving this dispute the tribunal may make one or more of the following orders, where permitted under section 118 of the CRTA:
 - a. order a party to do or stop doing something:
 - b. order a party to pay money:
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent must refund the applicant \$2,968.29 for overcharging him for legal fees.

EVIDENCE AND ANALYSIS

8. In a civil claim like this one, the applicant must prove his claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claim.
10. The applicant provided very little background information or evidence to support his claim. The respondent provided a detailed explanation of the background of the applicant's mortgage with CIBC, default, and subsequent foreclosure proceedings. With the exception of the amount of the legal fees, the applicant does not dispute the facts as described by the respondent. I briefly summarize those facts below.
11. The applicant has a mortgage registered on his property with CIBC. At some point the applicant defaulted on his mortgage payments. The respondent says that under the terms of the mortgage, the applicant was required to pay all of CIBC's legal expenses arising from enforcing the mortgage. The mortgage is not in evidence.
12. On June 29, 2018, the respondent notified the applicant by letter that its client, CIBC, had exercised its option under the mortgage for all money owing to be due and payable in full, including CIBC's legal expenses. The letter indicated that CIBC's legal expenses to date were \$875. The letter stated that if all money owing under the mortgage was not paid by July 9, 2018 at 5:00 p.m., CIBC would start foreclosure proceedings to enforce the mortgage.

13. The applicant did not pay the money owing under the mortgage by the July 9, 2018 deadline, and on August 23, 2018 the respondent commenced foreclosure proceedings on behalf of CIBC against the applicant.
14. The parties entered into a settlement agreement in September 2018 under which CIBC waived its acceleration of the mortgage, allowed the mortgage to be reinstated, and ended the foreclosure proceedings. Throughout this process the applicant was represented by legal counsel.
15. The respondent says it was a term of the settlement agreement that the applicant would pay CIBC's legal expenses to date. The applicant does not dispute this. The respondent says at that time CIBC's legal expenses, including disbursements, GST and PST, were \$3,843.29. The respondent says the applicant paid these legal fees at the time without protest.
16. The applicant says he received an invoice from the respondent for \$3,843.29 in legal fees which did not account for his previous \$875 payment. However, he provided no evidence to show he paid the respondent \$875 before receiving the invoice. The only evidence the applicant submitted is the second page of the 3-page November 5, 2018 invoice from the respondent. That page shows the respondent charged \$2,420.45 for professional services, \$719.60 for taxable disbursements, and \$365.61 for non-taxable disbursements. It does not show the total amount of the invoice.
17. On the evidence before me, I am not satisfied the respondent overcharged the applicant for legal fees. The undisputed evidence is that the mortgage and settlement agreement both contain terms requiring the applicant to pay for CIBC's legal fees, and the applicant agreed to those terms. I find the respondent has provided a reasonable explanation for the amount of its legal fees, and the applicant has provided insufficient evidence to establish that he overpaid the respondent. The applicant is responsible for proving his claim. I find he has not done so, and I dismiss it.

18. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees, and he has not claimed any dispute-related expenses.

ORDER

19. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member