Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

RODNEY GENE SOLOSHY

APPLICANT

A N D :

HILLSIDE LAW INC.

RESPONDENT

A N D :

RODNEY GENE SOLOSHY

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Micah Carmody

INTRODUCTION

1. This decision relates to 2 linked disputes between the same parties that I find consist of a claim and counterclaim, so I have issued a single decision for both disputes.

2. The applicant, Rodney Gene Soloshy, hired the respondent, Hillside Law Inc., to obtain a divorce and transfer a mobile home into the applicant's name. The applicant paid a $3,500 retainer. When the respondent completed the work, it invoiced the applicant $899.15 for disbursements and taxes. The applicant refused to pay. The parties disagree about whether the $3,500 retainer included disbursements and taxes.

3. In the counterclaim, the respondent seeks the $889.15 it invoiced plus contractual interest. The applicant claims $998, an amount they do not explain. I find they actually seek an order that they do not owe the respondent anything. This is a form of declaratory relief, which is outside my authority to order. However, dismissing the respondent's counterclaim would achieve the same result. So, I find that I have the authority to decide the claims before me on their merits.

4. The applicant is self-represented. An employee, MB, represents the respondent.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority 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.

6. 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 court.

Oral hearing request

7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. In their submissions, the applicant says they initially understood that they would be able to appear in person to express their case, although they do not explain where this understanding came from. I considered this an oral hearing request. I deny the request for the following reasons. First, the applicant says they are mostly "computer illiterate", but they do not explain what barriers existed that hindered or could hinder their participation in the dispute. The applicant made written submissions in both the claim and the counterclaim, and they provided documentary evidence. They appear to have fully articulated their position.

8. Although credibility is at issue in this dispute, the credibility of witnesses cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and prompt resolution of disputes, and given the relatively small amount at stake here, I decided to hear this dispute through written submissions.

ISSUE

9. The issue in this dispute is what the parties agreed on about disbursements and taxes, and what, if anything, the applicant owes for disbursements, taxes, and interest.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities, meaning more likely than not. The respondent must prove its

counterclaim to the same standard. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

11. The evidence includes 2 similar versions of a 3-page retainer agreement dated October 4, 2022. Both described the work as preparing manufactured home registry transfer documents and obtaining a desk order divorce. Page 1 of the respondent's version says the cost will be $3,500 "*plus* disbursements and taxes." Page 1 of the applicant's version says the cost will be $3,500 "*including* disbursements and taxes" (emphasis mine in both). There is a separate heading for disbursements on page 1 of the agreement that describes what typical disbursements are. The respondent's version says the applicant is responsible for them. The applicant's version says they are included. Pages 2 and 3 of the agreements have the same content, and both have original signatures of the applicant and a representative of the respondent. I return to these versions of the retainer agreement below.

12. Neither party provides much in the way of context, but some of the relevant context is set out in a January 12, 2023 email from the respondent's paralegal, JA, to the applicant. In that email, JA explained that the respondent initially quoted $3,500 including disbursements and taxes, but later determined that the disbursements could be significant, so it prepared a new retainer agreement for $3,500 plus disbursements and taxes and emailed that new agreement to the applicant on July 27, 2022. There is no copy of that July 27 email in evidence, but the applicant does not deny receiving it, so I find on balance that they did.

13. According to that January 12, 2023 email, the respondent reviewed the file on September 26, 2022 and discovered that nobody had signed the retainer agreement. JA then sent an "incorrect" retainer agreement by email to the applicant, which I find stated that disbursements and taxes were included. JA wrote that they believed this is where the misunderstanding came from. There is no copy of this email in evidence, but the applicant does not deny receiving it.

14. JA went on to say that on October 4, 2022, when the applicant attended the respondent's office, MB went over the "correct" version of the agreement, which JA

said was the same as the July 27 version. It is undisputed that on October 4, 2022, both parties signed 2 copies of a retainer agreement, creating 2 originals bearing slightly different signatures.

15. The question is why the parties' versions of this retainer agreement have different first pages. The applicant says when they signed the agreements on October 4, 2022, the agreements were positioned one atop the other and opened to the signature page (page 3). They say they quickly scanned the top one, which they say was the version that they kept, and then signed them both without reading the other. They say they assumed they were the same. So, the applicant suggests the respondent provided 2 different versions of the contract to sign, intentionally or unintentionally. The applicant says they understood they were signing an agreement that said the cost was $3,500 "including disbursements and taxes".

16. The respondent says MB, JA, and lawyer David Brooke were all present on October 4, 2022, and explained the agreement to the applicant. MB says the applicant read it and indicated that he had already paid the requested retainer of $3,500, contrary to the agreement which asked him to provide it, because it was drafted before he paid it. This explanation is consistent with both versions of the agreement, which on page 2 were amended to strike out "Please provide a retainer of" and replace it with "We have received", which MB initialed.

17. On balance, I accept MB's version of events and the respondent's version of the retainer agreement. I find that the amendment on page 2 indicates that the applicant carefully read the retainer agreement. In order to hand-write the amendment on page 2 of both originals, both agreements would have had their pages turned in the applicants' presence. So, I reject the applicant's evidence that they never looked at the second agreement and assumed they were the same.

18. The other reason I reject the applicant's version of the retainer agreement is an inconsistency between the first and second pages of the applicant's version. As noted, the "disbursements" section on page 1 of the applicant's version says all disbursements are included. However, the "taxes" section on page 2 says the

applicant will pay taxes on all legal fees and applicable disbursements. This is inconsistent with the first page of the applicant's version of the agreement, which says taxes are included. This leads me to conclude that the applicant has either inadvertently or intentionally replaced the first page of the retainer agreement they signed with the first page of the retainer agreement that the respondent mistakenly emailed them on July 27, 2022.

19. I find the applicant understood they were agreeing to pay disbursements and taxes when they signed the respondent's version of the retainer agreement on October 4, 2022.

20. If this agreement was a change to the contract, as opposed to the parties' making formal what they had previously agreed to, I find it is enforceable without fresh consideration, meaning something of value paid by each party. Where parties have an ongoing contract or "going transaction" like this one, they can agree to changes without the need for fresh consideration. As long as the change is not unconscionable or the result of one party's duress, which is not the case here, the change is generally enforceable. (see *Rosas v. Toca*, 2018 BCCA 191).

21. I turn to the applicant's other argument. They say they never received the paperwork documenting the mobile home ownership transfer. They say the respondent therefore did not fulfill its contractual obligations. However, the applicant does not say the respondent did not complete the transfer, and I find on balance that it did. I also find the agreement did not explicitly require the respondent to provide any documentation, so there was no contract breach. Even if there was a breach, the applicant does not say what their damages were or provide evidence of damages.

22. I find nothing unreasonable about the disbursement charges, which were mostly court filing fees. I order the applicant to pay the claimed $899.15 for disbursements and taxes. I acknowledge that the respondent offered in its January 12, 2023 email to reduce the debt to acknowledge the confusion it caused. However, the applicant did not accept this offer and refused to pay anything. So, I find there was no agreement, and the respondent is not bound by the offer.

23. The retainer agreement said the respondent would charge interest on unpaid accounts at 18% annually after 30 days. I find the respondent is entitled to contractual interest from January 13, 2023, to the date of this decision. This equals $163.12.

24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. The applicant's claim was unsuccessful, so I order no reimbursement of their CRT fees. I order the applicant to reimburse the respondent $125 in CRT fees for its successful counterclaim. Neither party claims dispute-related expenses.

ORDERS

25. Within 21 days of the date of this order, I order the applicant to pay the respondent a total of $1,187.27, broken down as follows:

    a. $899.15 in debt,

    b. $163.12 in contractual interest, and

    c. $125.00 in CRT fees.

26. The respondent is entitled to post-judgment interest, as applicable.

27. I dismiss the applicant's claims.

28. 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.

Micah Carmody, Tribunal Member