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Claim No. 286768

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bureau v. Credit Control Central, 2008 NSSM 54

Between:

MORRIS BUREAU

APPLICANT

- and -

CREDIT CONTROL CENTRAL

RESPONDENT

DECISION

Adjudicator: David T.R. Parker

Heard: February 7, 2008

Decision: March 14, 2008

Counsel: Richard A. Bureau for the Applicant
Alex Embree for the Respondent

This matter came before the Small Claims Court on February 7, 2008. A Notice of Taxation had been filed by the Applicant Law Firm on December 5, 2007. Previous to the filing of the Notice of Taxation a Claim in the Small Claims Court had been commenced on October 16, 2007.

The Respondent provided argument in the Taxation in line with its Defence of the Small Claims Court claim. The Defence in that claim stated:

“The Claimant’s bill is neither fair nor reasonable. The Claimant misplaced the file and was negligent in its handling of the file through delay, lack of communication and failure to properly advise the Defendant, such that the Defendant’s instructions were made without property knowledge. The effect of the Claimant’s negligence was that the proceedings for which it was retained were rendered useless.

Particulars were enumerated in Schedule A

The Respondent appeared by way of Counsel and provided no evidence to support its allegations that the Applicant was negligent in the handling of the action. There was no evidence that files had been misplaced or that witnesses required were no longer available to advance the claim that the Applicant was dealing with as a result of being retained by Credit Control Central. The evidence supplied by the Applicant gave no indication of negligence on the Applicant’s part in processing the matter.

The evidence before this Court was that the Applicant requested instructions and upon receiving same commenced legal proceedings. The Originating Notice was filed and issued on February 3, 2003, and a Defence was issued on March 3, 2003. Discoveries did not proceed until 2006. There was no evidence before this Court that the Respondent’s action was prejudiced by commencing discoveries several years after the action was initiated. The evidence from the Applicant that the main person to provide information to support the Claim was available; however, there was difficulty having the Applicant’s witness being discovered. At any rate, the Applicant’s Counsel was instructed to make an offer of settlement, which occurred and was rejected. No other offers of settlement were made and the Plaintiff decided to discontinue its action. The Plaintiff e-mailed the Applicant and said, “We thank you for the representations that you made on our behalf and for the accomplished work.”

I have reviewed the Statements of Account and listened to the testimony of Amanda M. Carew, Counsel who dealt with the account and the file in this matter. I have also considered those elements necessary in determining if the Applicant’s account is fair and reasonable and I referenced case law provided to the Court by the Respondent’s Counsel: **TMC Law v Hirschbach**, 2006 NSSM 16, and the case referred to therein,

as well as the following case: **Osif M.D. Inc. v. McDougall** [2004] N.S.J. No. 531. I have also considered **Rule 63** of the **Civil Procedures Rules** and the Guidelines contained in **Rule 12** of the **Nova Scotia Legal Ethics and Professional Conduct Handbook**. I appreciate Counsel for the Respondent's comment that the fees charged are, in his view, fair and reasonable. However, it is incumbent upon this Court, once solicitor's negligence is ruled out, to consider all the factors referenced in the case law, Rules of Court and the Handbook, as well as the testimony that is provided to this Court, to make such a determination.

As a result of the above findings and analysis, I certify that I have taxed the Bill of Costs dated December 12, 2006, File No. RC02-171, and dated March 30, 2007, File No. RC02-171, between Morris Bureau and Credit Control Central and I allow the following to the Applicant Morris Bureau.

December 12, 2006	
Legal Fees	\$ 1,548.00
Disbursements	187.00
HST on Legal Fees	<u>216.72</u>
Total Allowed	\$ 1,951.72

March 30, 2007	
Legal Fees	\$ 324.00
Disbursements	9.00
HST on Legal Fees	<u>45.36</u>
Total Allowed	\$ 378.36

I also allow service costs and court costs of \$297.24.

I therefore allow a total of \$2,627.32.

Issued on March 14, 2008.

David T.R. Parker
Adjudicator of the Small Claims

Court of Nova Scotia