

- [7] I was not satisfied in the circumstances that Ms. Chiasson's request for an adjournment was appropriate, and I proceeded with the taxation.
- [8] The real issue in this matter is retainer: did Ms. Chiasson actually retain the Claimant law firm to do any legal work.
- [9] Ms. Chiasson in her Defence disputes the existence of a retainer.
- [10] At the taxation I requested from Mr. Moir, and received, the actual solicitor and client file. From reviewing the file I note as follows:
- (a) the first time entry in the computer printout is April 26, 2001;
 - (b) that time entry respected a meeting between Mr. Moir and the "responsible lawyer" who was, apparently, Mr. Thomas J. McInnis, a partner in the Claimant;
 - (c) from those computer time records it appears that Mr. Moir then did some research, and sent a letter to one Mr. Purcell who, apparently, was a lawyer acting for a person who had some dealings with Ms. Chiasson;
 - (d) on June 4, 2001 Mr. Moir again met with Mr. McInnis, and drafted another letter to Mr. Purcell;
 - (e) the computer records record two conversations with the client on June 4, 2001, after which Mr. Moir drafted another letter;
 - (f) in essence, there was a total of \$492.00 in fees between April 26 and July 11, 2001, most of which was incurred by Mr. Moir.
- [11] I note from my review of the solicitor and client file, as well as the time records, that there is no correspondence of any kind between Mr. Moir and the putative client. There is no letter confirming any retainer; no letter confirming the terms of any retainer; nor is there any letter even reporting what was done.
- [12] In addition, there is no evidence at all before me from Mr. McInnis, who would appear to have been the "responsible lawyer," which I understand to mean the lawyer who had first contact with a person who may or may not be a client.
- [13] While Ms. Chiasson acknowledges that she had some phone calls with Mr. Moir (the acknowledgement is contained in her handwritten Defence), she says that she had little money at the time, and that she did not hire Mr. Moir. She had thought that he was simply providing her with some advice as a form of "loss leader."

- [14] Mr. Moir made the submission that a lawyer does not need a written retainer in order to establish a retainer. I agree. However, the onus lies on a lawyer to prove the existence of a retainer, on a balance of probabilities, where its existence is put in doubt by the client. A written retainer, or even correspondence of some kind, would certainly go some way toward meeting the evidentiary burden that is on the lawyer. The absence of such written documentation, while not necessarily fatal to a submission that a retainer exists, does not assist a lawyer who seeks to establish the existence of a retainer.
- [15] Having reviewed all of the evidence, and having heard Mr. Moir's submissions, and having reviewed the handwritten Defence filed by the Defendant, I have concluded that there was no actual retainer. I reached this conclusion for a number of reasons.
- [16] First, Mr. McInnis was the one who apparently had the first contact with Ms. Chiasson. He is the one who is most likely to have had evidence concerning the existence of a retainer (if one did exist). Since Mr. Moir does not know what transpired between Mr. McInnis and the client, and since I have no evidence from Mr. McInnis, I am left in some doubt as to whether or not a retainer existed.
- [17] Second, as already noted, there is no correspondence of any kind between Mr. Moir and Ms. Chiasson.
- [18] Third, Mr. Moir wrote a memo to file on May 6, 2002. In that memo he notes as follows:
- "I received a telephone call from Lori Chiasson. She says that she did not receive our bill last December, and that she was surprised to receive a billing at all last week. She says that she understood she had never retained us. I explained to her that I understood from my notes that she had clearly retained us in respect to the lease. I told her that I would speak with Tom and I would get back to her."
- [19] This memo does not strike me as being a record of a memory that a retainer, in fact, existed. Rather, it strikes me as the record of an inference based on a review of notes.
- [20] I have looked at the notes of Mr. Moir that are contained in the solicitor and client file, and I must confess that I cannot see anything in the notes that suggests the existence of an actual retainer.
- [21] Finally, I also note that there is handwriting on the aforementioned memo from, I presume, Mr. McInnis, as follows:

"Matt: I am drawing a blank on this one. Could we discuss."

[22] While I do not have any evidence from Mr. McInnis, the note does suggest that Mr. McInnis himself had some question as to the nature of the relationship between Ms. Chiasson and the firm.

[23] Based on all of the above I conclude that there was no retainer, and I accordingly dismiss both the taxation and the claim, on the ground that there never was any retainer.

Dated at Halifax, Nova Scotia)
this day of March 2003)
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ADJUDICATOR
W. Augustus Richardson

Original Court File
Copy Claimant
Copy Defendant