

CANADA / JUDGMENT

Arletto v. Simpson Thomas & Associates

2016 BCCA 470

COURT

British Columbia Court of Appeal

DECIDED

21 November 2016

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2016 BCCA 470 Arletto v. Simpson Thomas & Associates COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Arletto v. Simpson Thomas & Associates, 2016 BCCA 470 Date: 20161121 Docket: CA43441 Between: Pino Arletto Appellant (Petitioner) And Simpson Thomas & Associates Respondent (Respondent) Before: The Honourable Mr. Justice Donald The Honourable Madam Justice Saunders The Honourable Madam Justice Bennett On appeal from: an order of the Supreme Court of British Columbia, dated January 12, 2016 (Arletto v. Simpson Thomas & Associates, 2016 BCSC 136, Vancouver Registry No. S159201) Oral Reasons for Judgment Counsel for the Appellant: D.S. Gray Counsel for the Respondent: E.A. Thomas T. McLelan Place and Date of Hearing: Vancouver, British Columbia November 21, 2016 Place and Date of Judgment: Vancouver, British Columbia November 21, 2016 Summary: The lawyer acting for the appellant moved to a new firm. The new firm assumed the same fee contingency fee arrangement. The petition was for an order requiring the former firm to send a bill for fees based on hours of work. Held: appeal dismissed. The amount of the appellant's fee, based on the contingency fee contract, is both limited and determined by the contract. The appellant therefore has no interest in the outcome of this appeal, which is really a dispute between the firms on the undertaking provided on transfer of the file. The appellant is not interested in the remedy sought.

- [1] SAUNDERS J.A.: Mr. Arletto appeals from the dismissal of his petition in which he sought an order that the respondent law firm, Simpson Thomas & Associates, which acted for him for a time on his personal injury claim, deliver a lawyer's bill to him itemizing the hours it expended on his case. He asserts that he is entitled to such an order and that his account with the respondent is to be resolved on an hourly basis because the contingency fee agreement between himself and the respondent was terminated as part of the changes that took place when the lawyer acting for him moved to the law firm Whitelaw Twining and completed the case for him at his new firm.
- [2] We know from the record that Whitelaw Twining took over the file on the same fee arrangement; in the event of a trial and a monetary judgment, a fee in the amount of 24% would be paid. That means that whatever is the outcome of Mr. Arletto's claim that Simpson Thomas may be paid only on an hourly fee basis, Mr. Arletto's fee is both capped and determined, on the 24% contingency fee agreed. That is, Mr. Arletto has no interest to pursue in this litigation. The issue is really a dispute between law firms on the meaning of

the undertaking given by Mr. Arletto's new firm to his former firm. The correct parties are not before us. The appeal, in my view, must be dismissed on the basis that Mr. Arletto is not entitled to a remedy in these circumstances.

[3] DONALD J.A.: I agree.

[4] BENNETT J.A.: I agree.

[5] DONALD J.A.: The appeal is dismissed. "The Honourable Madam Justice Saunders"

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