
CANADA / JUDGMENT

Darnell & Company Law Office v. Shawe

2010 BCSC 1341

COURT

Supreme Court of British Columbia

DECIDED

23 September 2010

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2010 BCSC 1341 Darnell & Company Law Office v. Shawe

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Darnell & Company Law Office v. Shawe,

2010 BCSC 1341

Date: 20100923

Docket: S124846

Registry: New Westminster

Between:

Darnell & Company Law Office

Solicitors

And

Ghislaine Lorna Shawe

Client

Before: Registrar Sainty

Reasons for Decision

Counsel for the Solicitors:

R.L. Darnell

Appearing in Person

G.L. Shawe

Place and Date of Hearing:

New Westminster, B.C.

September 13, 2010

Place and Date of Judgment:

Vancouver, B.C.

September 23, 2010

- [1] Ghislaine Shawe (the "client" or "Ms Shawe") filed this review of her lawyer's bill under the Legal Profession Act, S.B.C. 1998, c. 9 (the "Act").
- [2] The client retained Darnell & Company Lawyers (the "solicitors" or the "law firm") to act on her behalf in connection with the breakdown of her marriage. The client signed a retainer letter with the law firm on or about January 17, 2008. Ms Metzner, who was the lawyer at the law firm responsible for handling the client's matters, signed that retainer letter on the law firm's behalf.
- [3] The retainer letter is a standard form. It describes the services that may be undertaken by the solicitors as part of their retainer. It sets a retainer amount to be paid by the client (\$7,500) (which amount Ms Shawe paid on January 17 or shortly thereafter). As for billing, the retainer letter provides for monthly accounts; it sets hourly rates for the various members of the law firm; confirms that disbursements will be billed; and sets the billable rates for some of those disbursements.
- [4] Under the section of the retainer letter specifically dealing with fees, it says:

I will be sending you accounts on a regular basis and accounts are due and payable upon receipt. Accounts that are overdue for 30 days will be charged interest at the rate of 2% per month, 24% per year, calculated from the date the account is rendered unless paid within 30 days. If you have any questions about an account, please contact this office.

- [5] The law firm sent the client a number of accounts between the date of its initial retainer (January 17, 2008) and June 24, 2009. The \$7,500 retainer was exhausted by January 27, 2009. Thereafter the client made no payments on the accounts and, over time, the amount unpaid in respect of the accounts rendered by the law firm to the client from time to time grew to \$21,130.47 (as at June 24, 2009). On each account rendered to the client by the law firm after the retainer was exhausted, a total (inclusive of fees, disbursements and taxes) was expressed and there was included a statement: "Plus: Prior Accounts Outstanding" with an amount expressed as the total "Balance Due". On the account dated June 24, 2009, the "Balance Due" was noted to be \$21,130.47.

- [6] During the course of the law firm's retainer, Ms Shawe's matrimonial home was sold and the balance of the sale proceeds (\$1,285,431.45) was placed in an interest bearing trust account at the law firm. Those sale proceeds earned interest and, by agreement of Ms Shawe and her spouse, that interest was paid to Ms Shawe monthly, partly in lieu of spousal support payments.
- [7] Ms Metzner left the law firm to start her own practice in June 2009. Although Ms Shawe chose to continue with Ms Metzner as her counsel and to move her litigation file from the law firm to Ms Metzner's new firm, it was agreed that the solicitors would continue to hold the sale proceeds in trust (as Ms Metzner could not secure an equivalent rate of deposit interest).
- [8] By letter dated June 29, 2009 Ms Darnell wrote to Ms Metzner regarding the matter of Ms Shawe's account receivable. Specifically she writes:

This letter is to advise you that the following files, which were transferred to your firm, have an accounts receivable balance at our office:

1. [The name of the client is blacked out on the document before me];
2. Shawe \$21,130.47.

I confirm your undertaking that you are obligated to pursue collection of these outstanding accounts receivable and that our accounts will be paid in full in priority to any account owed by the client to you or your firm.

- [9] On June 24, 2009, the law firm directed the following letter to the client:

I enclose herewith your account for services rendered up to and including June 23, 2009. Please note that your account has been paid in full from funds held in trust.

I confirm that your file is being transferred to Martha D. Metzner Law Corporation...

- [10] While Ms Shawe seemed to argue at the hearing that the law firm should perhaps be bound by that letter there is no doubt that it was sent in error. In fact, the account enclosed with that letter indicated (as I noted earlier) that the "Balance Due" to the law firm as of the date of the account was \$21,130.47. The law firm sent a letter to the client confirming its error on January 7, 2010. That letter says:

Further to your recent request, please find enclosed copies of all accounts rendered with respect to this matter together with copies of all letters enclosing the accounts.

Please note that the letter of June 24, 2009 states that "your account has been paid in full from funds held in trust". This, of course, was in error and the account of June 24, 2009 clearly indicates that the balance owing is \$21,130.47.

- [11] Ms Metzner settled Ms Shawe's matter in full sometime in late 2009. On November 19, 2009 Ms Metzner wrote to the law firm saying:

Further to our recent telephone discussions, kindly redeem the GIC on the above file when it comes due on December 5th, 2009. From the total amount, please issue a cheque of the monthly interest to Ghislaine Shawe, deduct your outstanding fees, and provide this office with an accounting and the balance.

[12] On December 8, 2009 the solicitors sent \$1,263,636.27 to Martha D. Metzner Law Corporation in trust. The covering letter sent with such funds states (among other things):

I confirm we have deducted our account in the amount of \$23,921.80 together with our account for maintaining the GIC in the amount of \$252.00.

The amount deducted was made up of \$21,130.47 (the outstanding balance of the solicitors' accounts to the client) plus interest in the amount of \$2,791.33 being interest accrued on the outstanding balance pursuant to the terms of the retainer letter.

[13] Neither Ms Shawe (nor Ms Metzner) expected that the outstanding accounts would accrue interest. Letters were exchanged between the law firm and Ms Metzner and the law firm and Ms Shawe about the matter but no resolution was reached. The client then filed this appointment to review the solicitors' accounts. All of the accounts rendered by the law firm to the client were attached to the appointment but, at the commencement of the hearing, I was advised that the sole issue before me was the right of the law firm to accrue and be paid interest on the balance of the accounts outstanding on the date the trust monies were forwarded to Ms Metzner. Specifically, Ms Shawe told me that she had no quarrel whatsoever with any of the work done for her by the law firm or Ms Metzner (after she went out to practice on her own).

[14] Ms Darnell testified. She said that the retainer agreement provides for interest to be paid on outstanding accounts. She told me that she never waived the law firm's right to claim interest (and it was conceded at the hearing that she was the only one at the firm who could do so) and therefore, the law firm was entitled to charge and collect interest from the client on the outstanding accounts.

[15] Ms Metzner was called as a witness by the client. She testified that there were no discussions between herself and Ms Darnell when she left the firm confirming that interest would be charged. She said that she believed that the GIC stood as security for the law firm's outstanding accounts and that interest would therefore not be charged. She also said that, although she likely reviewed the retainer letter with the client, she had no specific recollection of any discussions with Ms Shawe relating to interest on outstanding accounts. She also agreed that Ms Darnell never told her that interest would be waived.

- [16] Ms Shawe also testified. She did not dispute signing the retainer letter and entraining into a retainer "contract" with the law firm. She told me that, after signing the retainer letter, never once did anyone remind her of the interest provisions set out in the letter. Nor did anyone ever tell her how much interest was accruing on the unpaid accounts from time to time. Ms Shawe told me that, had she known that the outstanding accounts were accruing interest, she would have found some way to pay them.
- [17] In general terms, a solicitor may claim interest on her outstanding accounts if there is an express agreement to pay such interest or an agreement can be implied from the course of conduct of the parties (see *Hutchison v. Victoria Golf Club*, 2008 BCSC 55, paras. 106-108, quoting from *Gregory & Gregory v. Chen*, 2005 BCSC 1505, both decisions of Registrar Blok).
- [18] Here, there is a written contract that provides for the payment of interest. Therefore, at first blush, the law firm has a contractual right to interest and was within its rights to collect it from the funds held by it in trust for the client before sending the balance of these funds to Ms Metzner. There are, however, several pieces of correspondence between the law firm and the client subsequent to that written contract dealing with the issue of the client's outstanding accounts with the law firm, including the actual accounts themselves, all noting an amount due and owing from the client to the law firm. Not one of those subsequent pieces of correspondence confirms that the law firm intended to add to such outstanding amounts interest calculated in accordance with the retainer letter (or otherwise).
- [19] Although not expressed in these specific terms, Ms Shawe submits that the law firm, by its failure to confirm its intention to charge interest on outstanding accounts in its several correspondences to her about them, is "estopped" from charging such interest.
- [20] It is trite law that law firms owe a duty of utmost good faith to their clients to ensure that such clients understand all of the terms of the retainer arrangements between them (see: *Nathanson, Schachter & Thompson v. Inmet Mining Corp.* 2009 BCCA 385 at para. 48 ("Inmet")).
- [21] In certain circumstances, a solicitor may be estopped from enforcing the terms of a retainer contract with her client where that client detrimentally relies on a representation made to her by her solicitors. In dealing with an estoppel argument, the Court of Appeal in *Inmet* says:
- [58] The essence of estoppel in this context is a representation by words or conduct that induces detrimental reliance. However, the representation need not be a positive one. As the Supreme Court of Canada said in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53, 254 D.L.R. (4th) 1:

Silence or inaction will be considered a representation if a legal duty is owed by the representor to the representee to make a disclosure, or take steps, the omission of which is relied upon as creating an estoppels. [At para. 76.]

- [22] Here, the law firm set out in several communications with the client (and with Ms Metzner) that the outstanding balance of her accounts was \$21,130.47. Each of the accounts sent to Ms Shawe after the retainer ran out sets out the "Balance Due" which balance consists, simply, of the cumulative total of the unpaid fees, disbursements and taxes accrued in respect of the client's matter. Never once in any of its communications to her did the law firm remind the client of the provisions of the retainer letter regarding interest or advise her of the amount of interest accruing in respect of those outstanding accounts. In that sense, the law firm was "silent" on the issue. When the solicitors sent these communications to the client, the client relied on them (to her detriment in that she failed to seek alternative financing for the outstanding legal fees) as notice of the full amount that would be due and payable to the law firm on settlement of her matter by Ms Metzner.
- [23] In my view, the law firm had a duty to disclose to the client its intention to collect interest and to advise, from time to time, of the amount of the interest accruing. In omitting to do so (while at the same time acknowledging a specific amount outstanding), the law firm breached its duty of utmost good faith to the client to ensure that she understand fully all of the terms of the retainer arrangements between them and that the law firm intended to enforce those arrangements.
- [24] As a result of the law firm's silence, Ms Shawe was ignorant of the consequences of the retainer agreement, particularly once the client left the law firm and the law firm encapsulated the amount due to it in writing on more than one occasion. The client was, in my opinion, entitled to expect that the solicitors would inform her fully and frankly of the amount it expected to be paid on conclusion of the matter, inclusive of any interest.
- [25] Because the client misunderstood the amount due and owing by her to the law firm (based on materials sent to her and her counsel, Ms Metzner, by them), she lost the opportunity to negotiate other terms of payment, or to secure alternative financing for her legal accounts. Therefore, the solicitors should be estopped from now relying on the retainer letter in support of their claim for interest.
- [26] I am bolstered in this decision in my view by chapter 11 of the Canadian Bar Association's Code of Professional Conduct (Ottawa: Canadian Bar Association, 2006), which provides that a lawyer shall not "stipulate for, charge or accept any fee that is not fully disclosed, fair and reasonable." Firstly, the law firm did not fully disclose the amount it intended to collect from the client at the end of the day. Secondly, in my view, interest at a rate of 24% per annum is bordering on being unfair and unreasonable. Section 73(3) of the Legal Profession Act provides:

If a registrar gives a certificate under subsection (2), the registrar must add to the amount certified an amount of interest calculated

- (a) on the amount the registrar has allowed the lawyer for fees, charges and disbursements, exclusive of the costs of the review,

- (b) from the date the lawyer delivered the bill to the date on which the certificate is given, and
- (c) at the rate agreed to by the parties at the time the lawyer was retained or, if there was no agreement, at the same rate the registrar would allow under the Court Order Interest Act on an order obtained by default.
- [27] The Court Order Interest Act[1] rate of interest applicable to the outstanding balance of these accounts is between 1.5 percent (from January 1 to June 30, 2009) and 0.25 percent (from July 1, 2009 to the date of payment (December 4, 2009)). The amount collected is significantly more than would have been allowed had the parties, for example, entered into a consent to judgment or signed a consent certificate of fees, options which were open to them but were not put forward to the client as options.
- [28] In my opinion, the law firm, by its conduct, is estopped from claiming interest on its outstanding accounts and must, therefore, refund to the client the interest collected, together with interest on such amount at pre-judgment interest rates pursuant to the Court Order Interest Act, supra, in accordance with section 73(4) of the Legal Profession Act.
- [29] Since the client has been successful on this review, it follows that she is also entitled to her costs of the hearing before me (pursuant to s. 72(1) of the Act). In order to assist the parties in concluding this matter in a timely fashion, I will summarily assess those costs (per s. 73(2) (b) of the Act) in the amount of \$650, inclusive of costs, disbursements and taxes. That amount (of costs) will be added to any certificate prepared setting out the results of this review.

"Registrar K. Sainty"

[1] RSBC 1996, c. 79.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/10/13/2010BCSC1341.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/darnell-and-company-law-office-v-shawe-2010>

Prepared on 26 October 2026 · Esheria