

CANADA / JUDGMENT

Davidson and Company v. Hamerston

2001 BCSC 1374

COURT

Supreme Court of British Columbia

DECIDED

3 October 2001

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2001BCSC1374

Citation: Davidson and Company v. Hamerston Date: 20011003

2001 BCSC 1374 Docket:

27628

Registry: Vernon

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DAVIDSON AND COMPANY
PLAINTIFF

AND:

THERESA LENORA HAMERSTON
DEFENDANT

REASONS FOR JUDGMENT

OF

MASTER BISHOP

(AS REGISTRAR)

Counsel for the Plaintiff: T.D.A. Fletcher

Appearing on her own behalf: T.L. Hamerston

Date and Place of Hearing: July 5, 2001

Vernon, BC

- [1] By appointment dated April 24, 2001, the plaintiff applied for a review of their accounts dated September 14, 2000, in the amount of \$3,433.03 less \$500, equaling \$2,933.03; and March 13, 2001, in the amount of \$1,639.45.

- [2] Mr. Fletcher, of the plaintiff law firm, was retained by the defendant on or about October 3, 2000, to provide legal services to her in relation to disputes that had risen between herself and her common-law husband after separation.
- [3] The relationship between the parties is set out in a retainer letter dated October 5, 2000, which was executed by the defendant on October 12, 2000. That agreement provides, in part, as follows:

Thank you for selecting me to provide legal services to you with respect to obtaining a Separation Agreement. I confirm that I have agreed to provide these legal services on the terms and conditions set out in this letter. I have not agreed to represent you with respect to any other matter at this time. You understand that I cannot guarantee success or that I will be able to reach a negotiated settlement on your behalf.

The legal services which may be required, if you so instruct, are as follows:

1. Arranging suitable mediation of your issues.
2. Attempting to negotiate a settlement.
3. Completing a Separation Agreement.
4. Pursuing a claim for child support.

...

To commence my services, I will schedule a Mediation, assist you with drafting a Separation Agreement and on your instructions will pursue a claim for child maintenance for your 3 infant children.

- [4] One of the major complaints of the defendant was that Mr. Fletcher did not act expeditiously to attempt to remove a certificate of pending litigation that her former common-law husband had placed on her residence. She indicated during the hearing that that was the most important aspect of the retainer.
- [5] I do not accept her evidence in that regard.
- [6] A summary of the events that transpired on this file and the services rendered by Mr. Fletcher are set out in paragraph 7 of his affidavit filed on April 24, 2001. That paragraph is as follows:
7. A summary of these services is as follows:-
- (a) With the common-law husband's lawyer, it was agreed that the parties should attempt a Mediation and no steps would be taken in any lawsuit until that Mediation had run its course.
 - (b) On October 17th, 2000 Ms. Hamerston attended my offices and instructed me to prepare and file a Statement of Defence to the lawsuit that had been served on her that same day.

- (c) I was also instructed to contact the mediator to determine whether there was any merit in continuing the mediation process and instructed to request the removal of the Certificate of Pending Litigation on her property in exchange for Ms. Hamerston provide security.
 - (d) On October 24th, 2000 a without prejudice Offer to Settle was forwarded to my office which I arranged to forward to Ms. Hamerston, requesting her to respond to me by on or about November 1st, 2000.
 - (e) On November 8th, 2000 I had the opportunity to discuss the Offer to Settle and the Plaintiff's Statement of Claim with Ms. Hamerston and was instructed to request further particulars of the Statement of Claim.
 - (f) On November 29th, 2000, I filed a Statement of Defence and Counter-Claim.
 - (g) Being unable to reach any agreement to have the Certificate of Pending Litigation removed from Ms. Hamerston's property I was instructed to deal with that issue in Chambers and filed a Notice of Motion in the Vernon Registry on December 19th, 2000, returnable January 2nd, 2001.
 - (h) On December 21st, 2000 I received a letter from the other party's lawyer requesting that the January 2nd, 2001 application be adjourned to at least January 9th, 2001. Ms. Hamerston instructed me to agree to that adjournment.
 - (i) On January 5th, 2001 Ms. Hamerston instructed me to adjourn the application of January 9th, 2001, sine die by consent. It was arranged that a meeting would take place with the other party's lawyer at my boardroom on January 18th, 2001 to exchange all of the documentation between the respective clients, discuss the strengths and weaknesses of the parties' positions and return to our clients with our recommendations to conclude the matter.
- [7] The Chambers hearing did not occur on January 2nd as the defendant herein agreed to an adjournment of that hearing to January 9, 2001, which was subsequently adjourned sine die by consent.
- [8] The difficulties in accepting the defendant's contention with respect to the Certificate of Pending Litigation include:
1. Nothing in the retainer agreement indicates that that was a pressing issue when Mr. Fletcher was first retained.
 2. The defendant instructed Mr. Fletcher to agree to adjourn the hearing scheduled for January.
 3. At the time of the hearing of this matter, that is the review, the Certificate of Pending Litigation had still not been removed from the plaintiff's property.

- [9] While I accept the defendant's contention that Mr. Fletcher had indicated to her that he thought he could solve matters on her behalf within a month of the commencement of his retainer, I believe this to have been an optimistic and perhaps unrealistic estimate of the time necessary to resolve matters. That is so as the defendant and her former common-law husband had been unable to resolve matters themselves and further the day-to-day workload in Mr. Fletcher's law practice.
- [10] I have reviewed the accounts and the services provided as set out in those accounts and Exhibit 1 and find them to be reasonable and necessary in the conduct of this file. I will allow the accounts for fees and disbursements as submitted, with the singular exception that the account of December 14, 2000, will be reduced by the sum of \$25, being the file administration disbursement, plus G.S.T. thereon, for a reduction of \$26.75. The account dated December 14th is allowed at \$2,906.28. The account dated March 13, 2001, will be allowed as presented in the total amount of \$1,639.45. The total allowed is \$4,545.73.
- [11] The plaintiff is also entitled, should it choose, pursuant to the terms of the retainer agreement, to charge interest on those sums. The calculation of that interest will be left to the parties, with liberty to apply if agreement cannot be reached.
- [12] The plaintiff is also entitled to its costs and disbursements of this proceeding. Those costs I fix at \$500.
- [13] I have signed a Certificate of Fees representing the allowable fees, disbursements, and costs.
- "Master M.R. Bishop as Registrar"

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