
CANADA / JUDGMENT

Giga v. Bethell

2013 BCSC 924

COURT

Supreme Court of British Columbia

DECIDED

30 May 2013

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2013 BCSC 924 Giga v. Bethell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Giga v. Bethell,

2013 BCSC 924

Date: 20130530

Docket: S132359

Registry: Vancouver

Between:

Nadir Giga

Client

And:

John Bethell

Solicitor

Before: Master McCallum

(Sitting as Registrar)

Reasons for Decision

The Client appearing in person:

N. Giga

The Solicitor appearing in person:

J. Bethell

Place and Date of Hearing:

Vancouver, B.C.

April 8, 2013

Place and Date of Judgment:

Vancouver, B.C.

May 30, 2013

INTRODUCTION

- [1] Nadir Giga ("Giga") was charged with a variety of serious criminal offences and was facing the possibility of jail time if convicted. He hired lawyer John Bethell ("Bethell") to act for him in respect of those charges. Some months later, prior to resolution of the charges and before any account had been rendered by Bethell, Giga terminated the retainer.
- [2] Bethell rendered an account dated March 12, 2013, and paid the account from funds he held in trust. Giga is unhappy with the amount of the account and brought on this review of the fees pursuant to the provisions of the Legal Profession Act.
- [3] For the reasons that follow, I have concluded that the account should be allowed at the sum of \$7,500 inclusive of disbursements but net of appropriate taxes.

BACKGROUND

- [4] Giga was charged with six counts of robbery, threatening, use of a weapon and motor vehicle offences. The offences apparently occurred while he was using illegal drugs. Following his arrest, Giga gave a statement to police that may have incriminated him. He was released pending sentencing after pleading guilty to a reduced number of charges.
- [5] At some point not made clear in the evidence, Giga hired a lawyer to represent him with respect to the charges. He discharged that lawyer and hired Bethell in September 2012. Although neither Bethell nor Giga had a clear recollection of the first meeting, they do agree that Giga's mother was present at that meeting.
- [6] Bethell took notes at the meeting and had them signed by Giga and Giga's mother (Exhibit 1). The notes (dated September 11, 2012) are, to say the least, cryptic. Bethell testified that they represented the essence of his retainer with Giga: a flat fee of \$25,000 plus taxes and disbursements. Bethell testified that the notes confirmed his agreement that the fee could be paid over time prior to the date then sent for sentencing.

- [7] For his part, Giga testified that he and his mother had been present and signed the notes but that the fee was meant to be an outside estimate for a trial if one occurred. At the time the notes were created Giga had entered a guilty plea and was awaiting sentencing. Those arrangements were made by Giga's previous counsel.
- [8] Bethell testified that after Giga's mother spoke to him on March 7, 2013, he agreed that the balance of the \$25,000 fee then unpaid (\$15,000) could be paid in monthly instalments of \$1,000 commencing March 20, 2013 (Exhibit 2).
- [9] At a date not clear in the evidence (but apparently between March 7 and March 12, 2013) Giga told Bethell he was terminating Bethell's retainer. Bethell prepared the account that was the subject of this review on March 12, 2013. The account is for \$10,080.40 in fees plus taxes. Giga had paid \$10,000 into trust, leaving an unpaid balance of \$1,290.05.
- [10] Bethell testified that following the initial meeting with Giga and Ms. Giga and his absence from his office, he sent Giga correspondence outlining the agreement they had made and setting out the terms of the retainer (Exhibit 3). Giga testified that he had not received that correspondence and saw it for the first time on the day of the hearing.
- [11] Exhibit 3 is dated March 12, 2013, and addressed to Giga at 4888 Brentwood Drive. Giga testified that the address is correct for the apartment building in which he lives but lacks the number of his particular apartment. Bethell had no recollection of the letter being returned to him.
- [12] Exhibit 3 refers to the fee of \$25,000 "which will take this matter through to trial if necessary." The letter appears to be a form letter adapted to particular circumstances as required. It refers to the fee quoted but otherwise is generic in form. The document contemplates interim accounts rendered on a monthly basis and the payment of the whole amount of the fee prior to the scheduled court appearance. No interim accounts were rendered in this case.
- [13] The document refers to the possibility that the retainer might be terminated prior to completion of the work, in which case the client would be required to pay the amount due before the file would be transferred. The document confirms that the amount charged to the client would not exceed \$25,000 regardless of the amount of work done.
- [14] When Giga terminated the retainer, Bethell prepared the account in question. It is based upon an hourly rate of \$300, although there was no mention of that rate to Giga and it does not appear in Exhibit 3. Coincidentally or otherwise, the calculated fee based upon services rendered at \$300 per hour amounted to just over \$10,000 which was the amount that Giga had paid on account of the original quote of \$25,000.
- [15] Bethell testified about the work he had performed on behalf of Giga following the retainer in September 2012. That work is detailed in the account dated March 12, 2013. Bethell said he believed the Crown had a strong case against Giga on the original charges and that Giga would be best served by the right representations at sentencing. Bethell testified that he

arranged for Giga to see a psychologist for preparation of a report to be used at sentencing. Bethell believed that the best possible result for Giga would be a sentence of less than two years in jail, given his view of the situation in federal prisons.

- [16] The sentencing was delayed to permit the preparation of the report. In the interim Bethell spoke to Crown counsel and the psychologist about the report following its preparation in late January 2013.
- [17] Bethell met with or spoke to Giga's mother on many occasions during his retainer. There was no evidence as to the purpose of those discussions but it is clear that Giga's mother was concerned about the resolution of the charges and wanted information from Bethell. Giga was strongly opposed to the billing by Bethell for attendances on his mother.

DISCUSSION

- [18] Although Bethell and his client made an arrangement for a flat fee for specific services, the retainer was terminated prior to completion and the account must be reviewed in the context of the factors set out in s. 71(4) of the Legal Profession Act, S.B.C. 1998, c. 9:

71(4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

- (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.
- [19] This matter could not be said to be unusual, complex or novel. Giga had pled guilty to certain charges and was anxious to minimize the time he might spent in jail. There was little in the circumstances to take it out of fairly ordinary circumstances.
- [20] The matter required a reasonable level of skill and responsibility given the consequences for Giga. That said, Giga had apparently entered a guilty plea to charges involving mandatory jail time and it was only a question of how much jail time would be imposed. There was no extraordinary level of skill or specialized knowledge required.

- [21] There was no issue taken with Bethell's character or standing in the profession. He testified to his long career at the bar with a very extensive involvement in criminal law both as Crown counsel and a member of the defence bar.
- [22] There was no amount involved in this matter.
- [23] Bethell testified that the bill was based on a charge-out rate of \$300 per hour. There was no evidence of contemporaneous timekeeping but the fee amounts are detailed in the account for each item of service. On that analysis, Bethell must have spent 33.6 hours working on Giga's behalf. As for time reasonably spent, many of the entries relate to attendances on Giga's mother either on the telephone or in person. Bethell said Giga had authorized him to speak to Giga's mother but there was nothing in the evidence to indicate the purpose of those discussions.
- [24] Bethell spent 12 hours on November 27, 2012, reviewing the file and meeting with Crown counsel. On December 30, he spent four hours preparing for and meeting with Crown counsel. On January 19, he spent four hours preparing his submissions for the original sentencing date. That date was adjourned. Bethell apparently attended in court on January 23, 2013, to fix a new date for the sentencing and spent two hours on that task. In February 2013, Bethell spent 5.5 hours speaking to Giga's mother and reviewing the file, preparing for meetings with her. There was nothing in the evidence to persuade me that this matter required over 25 hours of so called preparation or review time, given the pre-existing guilty plea.
- [25] The rest of the time spent was involved in dealing with the preparation of the sentencing report and directly with Giga. There was nothing in the evidence to support the notion that all of that time was reasonably spent advancing the matter for Giga. Even assuming Giga had authorized Bethell to speak to his mother, it was incumbent on Bethell to bill Giga fairly for time reasonably spent in dealing with the case. I accept that Giga's mother and possibly Giga to some extent were demanding at times, but that could not have been either a surprise or a new event for Bethell, given his experience. He had made no mention of hourly rates and sent no interim accounts. Giga and his mother could not have expected Giga would be billed on the basis of time Bethell spent responding to their inquiries.
- [26] There was no agreement here that fixed a fee rate based on an amount per unit of time. Accepting that Bethell's letter of October 31 came to Giga's attention prior to the hearing, it did not constitute an agreement by Giga to pay fees at an hourly rate. Nonetheless, it appears to me that the rate Bethell applied to services rendered to Giga was reasonable given Bethell's experience and years at the bar.
- [27] This matter was extremely important to Giga, given the fact that he was almost inevitably facing a period of incarceration. He was understandably anxious to minimize that period. Bethell clearly understood the importance of the matter to Giga.

- [28] There was no result obtained during Bethell's retainer. Giga discharged him prior to the sentencing and before Bethell could demonstrate his abilities on behalf of his client. That cannot be laid at the feet of Bethell unless one concludes that some failing on his part led to the discharge. The evidence does not permit that finding in this case.
- [29] In the result, the account has to be assessed taking into account all the factors set out in the Legal Profession Act. In many instances, where lawyers are discharged prior to completion of the retainer, it is appropriate to bill based primarily on the basis of time spent. This is not such an instance.
- [30] There was no agreement concerning early termination of the retainer and no agreement to bill based upon an hourly rate. Time spent, as has often been said, is only one factor. In this case, what was actually accomplished is more important.
- [31] Bethell arranged for and obtained a sentencing report that will apparently be of some utility to Giga. The sentencing was adjourned to Giga's benefit as he was on judicial interim release and conducting himself appropriately, according to Bethell. Those factors will be to Giga's credit when he is finally sentenced.
- [32] This was a relatively straightforward matter for counsel of Bethell's standing and experience. Giga and his mother were anxious about the proceedings but that could not have been a surprise to Bethell. The fees charged were excessive in the circumstances of the case.

CONCLUSION

- [33] The account is allowed at \$7,500 plus appropriate taxes. As the account has been reduced by more than 1/6th, Giga is entitled to his costs of the review which I fix summarily at \$990 in accordance with Schedule 3 of Appendix B of the Supreme Court Civil Rules.

"W. McCallum"

Master W. McCallum

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Prepared on 27 October 2026 · Esheria