
CANADA / JUDGMENT

Huang v. Ross Chocolates Ltd.

2010 BCSC 1005

COURT

Supreme Court of British Columbia

DECIDED

19 July 2010

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2010 BCSC 1005 Huang v. Ross Chocolates Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huang v. Ross Chocolates Ltd.,

2010 BCSC 1005

Date: 20100719

Docket: S076121

Registry: Vancouver

Between:

D. D. Huang & Associates

Solicitor

And

Ross Chocolates Ltd.

Client

Before: Registrar Blok

Reasons for Decision

Counsel for the Solicitors:

B. E. McLeod

(March 12 & 13, 2009 only)

Counsel for Client:

D. A. McMillan

(March 12 & 13, 2009 only)

Appearing on his own behalf:

D. D. Huang

March 22, 2010

Appearing on behalf of the client:

R. Ross

March 22, 2010

Place and Dates of Hearing:

Vancouver, B.C.

March 12 and 13, 2009

and March 22, 2010

Place and Date of Judgment:

Vancouver, B.C.

July 19, 2010

I. Introduction

- [1] This is a review conducted pursuant to the provisions of the Legal Profession Act of five accounts rendered by the solicitor to the client in 2006 and 2007. The total of the accounts is \$112,484.06, of which \$98,905 is for fees, as shown in a table that is found later in these reasons.
- [2] The client objects to the amount of the fees, and certain of the disbursements, on the basis that they are excessive given what he maintains were the straightforward services at issue, services which were not completed because of alleged "bungling" on the part of the solicitor, and because they exceed by a considerable amount an estimate given early on in the proceedings.
- [3] The solicitor takes the position that the amounts charged are reasonable in all the circumstances.

II. Evidence

- (a) Dongdong Huang

- [4] Mr. Huang is the principal of D. D. Huang & Associates and is also the principal of its Beijing arm, Sinicana International Consulting (Beijing) Inc. Mr. Huang has law degrees from universities in both China and Canada, as well as a master's degree and Ph.D. in law from the University of Ottawa. He has worked for two major law firms in Vancouver and he practiced on his own from 1994 to 1998 and again since 2002. He is qualified to practice law in both British Columbia and China. Most of his practice concerns Canada-China trade and investment matters and related corporate law for both private and public companies.
- [5] Mr. Huang said he first met Bob Ross, the principal of Ross Chocolates Ltd., in the spring of 2006. Mr. Ross had an idea to set up a business in China for the manufacture and distribution of his company's lactose-free and sugar-free chocolate products, products that are suitable for those on restricted diets.
- [6] According to Mr. Huang, Mr. Ross had three principal goals:
- (a) he wanted to invest \$1 million to set up a factory in China with a Mr. Liang, who would be an active partner in the Chinese operation;
 - (b) he wanted to export chocolate products to China in volume and;
 - (c) he wanted to secure his trademarks in China.
- [7] Mr. Huang said he discussed with Mr. Ross two ways to implement the business arrangement, which would either be through a joint venture with a Chinese enterprise or through a wholly-owned foreign enterprise company ("WOFE") in China.
- [8] Mr. Ross told him that Mr. Liang would supply \$100,000 in cash and in return Mr. Liang would get 5% of the shares of the Chinese operation. After that, on the understanding that Mr. Liang would supply the necessary building for the operation, his share would increase to 15%.
- [9] Mr. Huang said that Mr. Ross's vision for the Chinese operation was an ambitious one. He spoke of sales in the range of the equivalent of Cdn \$60 million, which he hoped to achieve in a year. He also said that there would be two wholesalers and a staff of 20 people.
- [10] A written retainer agreement was entered into, which is dated March 20, 2006 and was signed on behalf of the client that same day. The retainer letter describes the work to be done as follows:

As instructed we will initially undertake to:

- (a) draft the shareholder's agreement among yourself and Mr. Liang that complies and is enforceable under both Chinese and Canadian law;
- (b) design and establish a suitable corporate structure in China for the intended investment and;
- (c) registration of Ross Chocolates and its logo with the Chinese Trade-mark office.

[11] After describing other issues that the client might wish to consider, the retainer letter continues as follows:

Normally, our work will include participation in the business strategic planning from a unique legal and policy perspective; undertaking various registrations and incorporations; drafting various contracts and agreements; participating in the negotiation with the various Chinese parties; assisting in obtaining the approvals from the Chinese government departments; providing legal advice and legal opinions on various aspects of the transaction, and acting as legal counsel for your company in China to protect your interests.

[12] Under the heading "Estimated Legal Fees", the agreement states "our fees are usually based on the amount of time involved in a transaction". Mr. Huang's hourly rate is stated to be \$500, with his assistant's rate at \$180 per hour.

[13] The client paid a retainer of \$5,000.

[14] In response to the client's request for an estimate, Mr. Huang sent an email dated March 21, 2006 in which he said the following:

My best estimate for the three matters that I will do for Ross Chocolates, namely, shareholders' contract, establishment of a JV or a WOFE, and registration of trade-marks would be around Can \$18,000. Of course, this depends on the complexity of the deal and other unforeseeable factors.

[15] On the matter of the trademarks, Mr. Huang was informed by the client that some work on this was already being done by a professional in Hong Kong but that the client did not know the status. Mr. Huang contacted that Hong Kong office and reported back to Mr. Ross. Mr. Huang was told that there was no further work to be done by him on that issue, at that stage. As it turned out, nothing further was required of Mr. Huang on the matter of trademark registration.

[16] As for the shareholder's agreement, Mr. Huang made contact with Mr. Liang who declined to deal with something so "serious" over the phone, stating that he would need a face-to-face meeting. Mr. Huang, in any event, drafted a shareholders' agreement based on the client's instructions and later amended it following receipt of comments from the client. Mr. Huang then prepared articles of incorporation for the Chinese company.

[17] The structure contemplated by Mr. Huang was for the individuals to have shares in a British Columbia holding company which, in turn, would own a new Chinese company.

[18] In late April Mr. Huang was told by the client that he wanted the work hurried up so that he could begin exporting products to China. In an email, Mr. Huang responded as follows:

If you need things be done fast, I would suggest that a trip to Ningbo will accelerate things. Please consult with Bob to see if he is okay with the idea. The best time slot available would be around May 7 after the May Holiday in China.

[19] The client's assistant asked for clarification who would have to make the trip and Mr. Huang responded as follows:

I would think that Bob and I could be dispatched to Ningbo or alternatively I could go first for a few days and Bob and Linda [Ross] should definitely follow.

The budget will be airfare for economic class and travel and hotel expenses in China.

[20] The client then responded, through his assistant, as follows:

Is there any other way this will be very costly?

[21] Mr. Huang responded as follows:

I am afraid that other ways are not as convenient and may cause delay. I could offer that I pay half of the disbursements myself.

[22] After another email on the same subject Mr. Huang wrote as follows:

Registration of a WOFE in China takes two or three week's time. There will be more paper and other documents prepared for this than we understand in Canada, say incorporation of a B.C. company. If Bob does not need me to go that is fine with me but I am afraid that the result will not be the same. The other ways are using my Beijing Jusers Law Firm people. They do not understand the file first and second their English is not as good. Third they do not have the sufficient international experience to give the suitable legal advice. Delays are from two sources: ourselves and the government. The registration process is a planning process with consultation with the government in Ningbo. For ourselves I do not know how much progress have been made in settling the terms with Mr. Liang.

Of course the decision is entirely yours.

[23] Mr. Huang explained that a WOFE is a discretionary process with the local government authorities. Mr. Huang said that to rush things you have to be there "on the ground". In his evidence he emphasized that ownership, investment and other arrangements still had to be finalized with Mr. Liang.

[24] The client agreed that Mr. Huang should go to China, and so Mr. Huang travelled to Ningbo (which is in the same general area as Shanghai) and met with Mr. Liang in the second week of May. Mr. Liang's position on the shareholders' agreement was wholly unexpected: he said that he had already provided initial marketing services for Ross Chocolates and so felt he was already entitled to 5% of the Chinese operation. Mr. Liang also said that although he was capable of contributing \$100,000 there had never been any thought, discussion or understanding that he would have to pay that sum as his contribution to capital.

[25] Although Mr. Liang seemed willing to continue business discussions, he indicated to Mr. Huang that he now had doubts about the soundness of Mr. Ross's business practices.

- [26] Mr. Huang reported this to Mr. Ross and Mr. Ross responded that Mr. Huang should "canvass all the possibilities", as well as do some work towards setting up the WOFE and that he would join Mr. Huang in China later that month. Mr. Huang said that, in accordance with these instructions, he continued discussions with Mr. Liang, including discussions on alternative relationships such as acting as sales agent or distributor, the supply of buildings and other business matters.
- [27] Mr. Huang left Ningbo and went to Beijing where he worked on matters unrelated to this file. Mr. Ross changed his schedule so that he did not arrive in China until early June. Mr. Ross then telephoned Mr. Huang and asked him to join him in Ningbo. Mr. Huang flew from Beijing to Ningbo on June 4. This was Mr. Huang's second trip to Ningbo on the client's behalf.
- [28] The most pressing issue at this point was obtaining an agreement with, or cooperation from, Mr. Liang. Mr. Ross did not agree with Mr. Liang's assertion that the latter had already earned 5% for prior work done although he acknowledged that Mr. Liang had done some prior work. A number of meetings with Mr. Liang took place over the next few days.
- [29] In the meantime, Mr. Huang was taking steps to set up a WOFE without Liang's participation, but Mr. Liang learned of this and on June 7, 2006 Mr. Liang sent an email indicating that he felt that Mr. Ross was going back on his word and that, together with the unexpected request for \$100,000, he felt that Mr. Ross was not being honest in his dealings with him.
- [30] Mr. Ross instructed Mr. Huang to write a reply which was sent on or around June 9, 2006. This seems to have brought an end to Mr. Liang's potential involvement.
- [31] The client's proposed Chinese operations were now without an experienced local businessman. Mr. Huang said there were a lot of discussions with Mr. Ross about what to do next. Mr. Ross proposed using a young woman named Jenny Jin, who was Mr. Liang's former assistant, but Mr. Huang noted that Ms. Jin was very inexperienced and was not a well-established business person. Mr. Huang also felt that granting a Chinese business partner a 5% interest in the operation would cause the client problems, for various reasons. Ultimately, Mr. Ross instructed Mr. Huang to set up a WOFE without the involvement of any local Chinese persons or enterprises.
- [32] Mr. Huang said that establishing a WOFE without the involvement and assistance of a local Chinese business or business person was much more difficult. He also explained the process of creating a WOFE according to Chinese law. Mr. Huang said that the nature of the industry in question has to be examined because some enterprises are encouraged and some are restricted. Selection of the appropriate corporate entity was also important, whether a joint venture with an existing Chinese entity or person, a co-operative enterprise or a WOFE. Mr. Huang said that a WOFE was not favoured as much by the Chinese government because the government's aim was to encourage local participation. Finally, the establishment of a foreign enterprise requires that the local rules be examined to see whether this type of

business will be allowed. Mr. Huang said he did all of these things and made all of these enquiries to see if they could achieve a viable WOFE business.

- [33] To this end, he also obtained various licences and regulatory approvals, which included an application for approval of articles of incorporation, an approval from the Ningbo City Department of Foreign Trade, a food hygiene permit, a certificate of approval for the WOFE, a health supervision opinion from the local health district, a business licence, a foreign exchange registration certificate, tax registration certificates, a foreign trade registration, a customs registration certificate, a bank account opening permit, and so on. He also prepared a lease agreement, and in coming to this agreement Mr. Huang said he participated in the negotiations with the landlord.
- [34] Mr. Huang returned to Vancouver following his trip to Ningbo in June 2006. At that point he sorted out what documents he needed from Canadian sources, which included passport details for Mr. Ross, a food business licence from Health Canada, a British Columbia certificate of incorporation and references from the client's bank. These documents were then authenticated, which required some involvement by the local Chinese consulate, and were then sent to China.
- [35] In late June, Mr. Huang assisted on another problem arising out of a lease that Ross Chocolates had taken out on a building in Ningbo. In order to deal with this problem Mr. Huang had his assistant, Mr. Liu, fly to Ningbo from Beijing on June 26th to help solve the problems with that lease and to assist with other documents. Mr. Liu was in Ningbo from June 26 to June 29 or 30. His role was to get all of the documents arranged and submitted to the appropriate authorities. Mr. Liu's time was only billed out at \$100 per hour which was less than \$180 per hour the rate set out in the retainer agreement. Mr. Huang informed the client of Mr. Liu's proposed activities, including his travel from Beijing to Ningbo, by email sent several days prior to Mr. Liu's departure.
- [36] Mr. Huang again travelled to Ningbo in mid-July 2006, this being the third trip he made to Ningbo on the client's behalf. While the required documents had been submitted to the various authorities, the principal government office had responded that it had "major concerns" about this WOFE. Most of the concerns surrounded the question of "registered capital" or paid-up capital, which was a major issue with the authorities, who thought that the proposed registered capital was too low. A flurry of correspondence ensued. The authorities told Mr. Huang that the application was "on hold".
- [37] Mr. Huang told Mr. Ross that the only way to get things moving again was for him to make another trip from Vancouver to Ningbo. Mr. Ross agreed.

- [38] When in Ningbo this third time Mr. Huang spoke to government officials and managed to get the application moving again. They were comforted by Mr. Huang's assurances that Ross Chocolates was a viable business and so they issued approval for the WOFE with its registered capital of just \$100,000 (and for which time to pay was given), which was much lower than the \$1 million the authorities had initially required.
- [39] Mr. Huang returned to Ningbo area a fourth time at the end of July 2006. At that time Mr. Huang was in Beijing on other business, and Mr. Ross asked him to come to Ningbo to help negotiate and draft other agreements. Mr. Huang therefore travelled again to Ningbo and while there he drafted various agreements, including ready-to-use distributorship agreements in both English and Chinese, an employment agreement with Ms. Jin and a commercial sale contract for a deal that had been made with a Shanghai company. As to the latter, Mr. Ross had identified a potential substantial sale and he asked Mr. Huang to do both some due diligence on the purchaser and to prepare a commercial sale contract. Mr. Ross told Mr. Huang that this might only be a one-time purchase but that it also could be a long-term distributorship arrangement, and so Mr. Huang prepared two contract versions that were suitable for each scenario. Mr. Huang said that he and Mr. Ross had meetings with the Shanghai company representatives for an entire morning and Mr. Huang thereafter did some due diligence on that company.
- [40] Mr. Huang said that he and Mr. Ross had various discussions about the magnitude of Mr. Huang's legal bills. In particular, they had a discussion at the time of the second trip to Ningbo, which was in early June 2006, because it was apparent by that point that the bill or bills would be significant. Mr. Ross suggested that this prospective larger bill be rendered in Chinese currency and paid out of the China operations of Ross Chocolates, and Mr. Huang agreed to do so, so long as he was paid. The discussion about this bill was that it might be paid some time later, "maybe a year from now". Mr. Huang therefore issued the bill to the client in the name of his Beijing office, Sinicana International Consulting (Beijing) Inc.
- [41] The Sinicana bill was not paid and so Mr. Huang reissued it in 2009 in the name of D. D. Huang & Associates.
- [42] Mr. Huang heard no objection to any of his bills until May 30, 2007 (by which time all the bills had been rendered), when Mr. Ross sent him an email objecting to the magnitude of the charges. By that point, however, Mr. Ross had made a number of promises of payment, which began in the fall of 2006, where he explained that they were experiencing some financial difficulties. It was not until May 2007 that he started to question the bills themselves. Even as late as January 2, 2007 the client was telling Mr. Huang, by email, that he would try very hard to get some money to him.
- [43] In April 2007 there was a snag on the matter of the capital contribution. According to Mr. Huang, a value-added tax (VAT) number is necessary to make any sales in China and before a VAT number can be obtained the registered capital has to be paid up. The client paid the \$100,000 directly and did not ask for Mr. Huang's input or advice beforehand. Unfortunately,

the party who is shown in the formal documents as the shareholder (so, in this case, the holding company) has to be the party shown as contributing the money, and the Chinese authorities are very particular about this. Accordingly, the authorities would not issue a VAT.

- [44] The client asked Mr. Huang to help solve the problem. Mr. Huang made some enquiries with the local authorities and on April 24, 2007 wrote to the client, reporting on the situation and making recommendations about how to resolve the problem. Ultimately, the money was returned to the Canadian company and re-sent in the proper corporate name. For these services Mr. Huang rendered a further bill.
- [45] The client subsequently blamed Mr. Huang for this problem, but Mr. Huang said that he never knew that the client was sending the money and it did not occur to Mr. Huang that Mr. Ross would not transmit the money through the proper corporate entity.
- [46] Mr. Huang subsequently had a telephone call with Mr. Ross and raised the matter of his earlier unpaid accounts. Mr. Ross acknowledged that Mr. Huang had been very patient about the payment of his unpaid bills and he asked Mr. Huang to continue to be patient and he said Mr. Huang would be paid. This was confirmed in an email of May 25, 2007 from Mr. Ross in which he discussed certain financial difficulties being endured by the client and said "please be co-operative as we are doing the best to clear our account". Only later, on May 30, 2007, did Mr. Ross object to the bills based on the early \$18,000 estimate.
- [47] In summary, Mr. Huang said that he accomplished the following for the client:
- (a) he ensured that the trademark had "cleared";
 - (b) he drafted a shareholder's agreement and, subsequently, he attempted to negotiate an agreement on its terms with Mr. Liang. The negotiations were terminated without any resulting legal problems;
 - (c) a WOFE was established and a health certificate and other approvals were obtained;
 - (d) he prepared several commercial agreements;
 - (e) he negotiated with the Shanghai buyer and prepared an agreement;
 - (f) he negotiated and drafted an employment contract for the first employee of the company.
- [48] Mr. Huang said that, for the most part, he did not bill any of his travel time. So for the first account, which involved a return trip from Vancouver to Beijing (22 hours of travel) and from Beijing to Ningbo (7 hours return), no travel time was billed. Nor was any time billed for the second or third trips (in both cases, Beijing to Ningbo). For the fourth trip, 18 hours of travel time from Vancouver to Ningbo were billed at just six hours.
- (b) Robert (Bob) Ross

- [49] Mr. Ross testified that during their entire relationship he asked Mr. Huang to do just three things: (1) establish a company in China; (2) send a letter to Mr. Liang, who was causing Mr. Ross problems; and (3) prepare an employment agreement for Ms. Jin. He said that only the latter two tasks were completed satisfactorily, and these tasks would have taken only a few hours to accomplish.
- [50] Mr. Ross said that the establishing of a company in China was not at all complicated; in fact, he had been told by the Canadian trade commissioner that a lawyer was not even needed to do so.
- [51] Mr. Ross said that for several reasons Mr. Huang did not get the new company registered. Mr. Huang was continually irritating the government officials, or so he was told by Ms. Jin (thus, of course, making this hearsay and therefore inadmissible), although Mr. Ross did not know why. In the final stages of registration Mr. Ross was told by the Chinese officials that he had to withdraw the \$100,000 capital amount and start that process over again, and so due to what Mr. Ross saw as Mr. Huang's incompetence the company did not get "registered" in the first attempt.
- [52] Because of these problems Mr. Ross took on the task himself, with the help of Ms. Jin, he found that it was not complicated and he accomplished the task without legal help in about 30 days.
- [53] Mr. Ross said that he was very mindful of the high potential costs and therefore knew it was important to get a "quote" from Mr. Huang -- which was the \$18,000 figure previously referred to. He said he was never warned that the fees would be more than was quoted.
- [54] The attempt to establish a presence in the Chinese market turned out to be very expensive for Ross Chocolates and, ultimately, it was not successful as the chocolate bars had to be priced at a level above what most Chinese citizens could presently afford.
- [55] Mr. Ross acknowledged that Mr. Huang spent many hours with him in Ningbo, but he said that a lot of the time was spent "hanging out", in casual conversations and in such social events as lunch with the landlord. Mr. Huang seemed to want to help in non-legal areas, including marketing, and he even discussed an interest in Mr. Huang himself distributing products for Ross Chocolates. Mr. Huang indicated an interest in being the lawyer for the Chinese corporate version of Ross Chocolates, but Mr. Ross said that the company would have to be established first and Mr. Huang could then do any work required, but that work would have to be paid out of any profits of the Chinese operation. He conceded however, that nothing was finalized in this regard and that the arrangement being discussed was for future work only.

[56] In cross-examination, Mr. Ross said that he did not recall that Mr. Huang went to China in early May 2006 to negotiate with Mr. Liang in Mr. Ross's absence, although he acknowledged that there was an email from Mr. Huang informing him that this was to happen. He did recall being with Mr. Huang in China, which was when the dispute with Mr. Liang was taking place.

III. The Bills

[57] The following table shows the billings in this matter:

Date

Fees

Total

June 16, 2006

\$13,400.00

\$18,333.18

June 30, 2006

25,900.00

29,989.15

October 1, 2006

54,100.00

57,762.49

September 1, 2006

2,700.00

3,153.44

May 1, 2007

2,805.00

3,245.80

Total

\$98,905.00

\$112,484.06

- [58] As noted earlier, the client paid a retainer of \$5,000. The client later sent, by wire transfer, the sum of \$6,500, which was sent on or around August 9, 2006. Applying those sums to the billing total brings about a balance of \$100,984.06.
- [59] For reasons unknown, both the billing total shown above (\$112,484.06) and the balance owing (\$100,984.06) differ from those in the solicitor's summary, as do the individual account totals listed in the table above. While the figures match for the fees billed, the disbursements do not, possibly because the summary reflects a different currency exchange rate for disbursements that were incurred in China, and in Chinese currency, when converting into Canadian currency. The figures listed in the above table are taken from the actual accounts.
- [60] There is another billing anomaly in that the third bill is dated after the fourth bill. The billing detail indicates that the third bill covers services rendered in late June and all of July 2006, while the fourth bill covers services rendered in August 2006. The discrepancy in dates was not explained. Although the third bill is the reissued bill the original bill also bears the October 1, 2006 date.
- [61] In his opening at the outset of this hearing, counsel for the client indicated that the reissued bill (that is, the third bill) would be challenged because it had not been properly delivered to the client, but when the hearing resumed a year later that objection was not advanced.
- [62] A brief description of the services rendered for each bill is as follows:
- First Bill (June 15, 2006; fees: \$13,400): Initial meeting and instructions, drafting the shareholders' agreement, drafting the articles of incorporation for the WOFE, amendments to the shareholders' agreement, early discussions with Mr. Liang, travel from Vancouver to Ningbo to negotiate with Mr. Liang directly and the ensuing negotiations.
- Second Bill (June 30, 2006; fees: \$25,900): Further trip to Ningbo (from Beijing) to meet with Mr. Ross, employment interview of Ms. Jin for Mr. Ross, considering alternatives for company without Mr. Liang's involvement, obtaining various approvals and licences, meetings with government officials, drafting articles of incorporation, meeting with landlords (both residential and commercial), preparation of documents for approval by Chinese consulate, instructing Mr. Liu to attend in Ningbo, meeting with Mr. Ross in Coquitlam and assisting with customs issues.
- Third Bill (October 1, 2006; fees: \$54,100): Mr. Liu's time for travel to Ningbo and his follow-up work there, preparing a distributorship agreement, meetings with Mr. Ross, being notified by government officials of problems with WOFE approval, travelling to Ningbo in mid-July to deal with government officials directly, negotiations with government officials, attending to various registrations, negotiations with Ms. Jin on employment terms, drafting employment contract for Ms. Jin, travelling to Ningbo at the end of July to meet with Mr. Ross and his customer/potential distributor and drafting various commercial agreements.
- Fourth Bill (September 1, 2006; fees: \$2,700): revising and finalizing agreements.

Fifth Bill (May 1, 2007; fees: \$2,805): assisting client in solving the problem with the payment of the registered capital.

IV. Positions of the Parties

- [63] Mr. Huang emphasized that the process of setting up a company in China is different from that in Canada and there is a very different culture involved. The government authorities have considerable discretion and often negotiation with officials is required. In this case, for example, Mr. Huang successfully negotiated with government officials a reduction in required capital from \$1 million to \$100,000, and the client was allowed six months to pay those funds.
- [64] Although a fee estimate of \$18,000 was given early on, this was only for preparing the shareholders' agreement, establishing the company and ensuring the trademarks were secured. The estimate did not take into account the dispute with Mr. Liang, the ensuing and ultimately unsuccessful negotiations with Mr. Liang, the problems and negotiations with the commercial landlord or the negotiation and preparation of various other agreements.
- [65] Mr. Huang said that by the end of June 2006 Mr. Ross would have been well aware that the fee estimate had been greatly exceeded and that the required services were going to be very costly.
- [66] The matter was very important to the client, it involved a potentially very large enterprise and the result was a favourable one in that a WOFE was established and a business licence obtained by July 2006.
- [67] In his submissions Mr. Huang conceded that the disbursements claimed for travel to China could be reduced by half, presumably because Mr. Huang was able to attend to some other business while on these trips.
- [68] In his brief submissions Mr. Ross said that he hired Mr. Huang for his expertise, he was quoted \$18,000 for the work and ultimately the job was not done in that he did not get a company that was registered to do business in China. Mr. Ross maintained that Mr. Huang should not be paid for work he did not accomplish.
- [69] Mr. Ross said that there was never a hint that the work would cost more than the \$18,000 estimate. He also said that he did not authorize Mr. Huang to make any special trips to China, that is, trips that were apart from Mr. Huang's regular trips.

V. Discussion

- [70] A central issue in this case is whether work was done that was not contemplated by the \$18,000 estimate and whether the client authorized that work. I conclude that substantial additional work was done that was authorized by the client.

- [71] It is important to observe that the fee estimate was just that -- an estimate. Although estimates can be very important factors for consideration in fee review cases, the client's evidence and submissions seemed to suggest that the \$18,000 figure was more akin to a fixed fee quote than to a true estimate. However, as was explicitly stated by the solicitor in his email of March 26, 2006, the estimate depended "on the complexity of the deal and other unforeseeable factors".
- [72] I am satisfied that the deal became much more complex than originally contemplated and that several "unforeseeable factors" arose.
- [73] It is clear that the estimate was based on the assumption that Mr. Ross already had an agreement with his prospective Chinese business partner, Mr. Liang, and that Mr. Huang needed only to document an existing understanding by way of a shareholders' agreement. But this was not the case, and the absence of an agreement between Mr. Ross and Mr. Liang had substantial and potentially very expensive consequences. Not only did it result in Mr. Huang having to engage in significant negotiations with Mr. Liang in an ultimately failing effort to come to terms, it also made it more difficult to get government approvals. On Mr. Huang's evidence, which I accept, the absence of a local Chinese partner made for a WOFE application that was far less attractive to the Chinese authorities and it also meant that there was no local partner to assist with local government dealings and the obtaining of some of the approvals.
- [74] The April 2006 email exchange between Mr. Huang and the client, detailed in paragraphs 18 to 22 above, shows that the client asked Mr. Huang to accelerate his work, that Mr. Huang told him that this would best be done if Mr. Huang were to be sent to Ningbo, and that the client knew that such a trip would be "very costly". I accept Mr. Huang's evidence that Mr. Ross authorized this trip to Ningbo; Mr. Huang's evidence in this regard was consistent with the evidence generally and the emails in particular. For his part, Mr. Ross testified that he did not even remember this first trip. Despite this lack of recollection Mr. Ross maintained in his submissions that he authorized no special trips to China whatsoever.
- [75] This event alone, which the client expected would be "very costly", should have made Mr. Ross aware that the \$18,000 estimate would almost certainly be exceeded. In any event, he would have known this with absolute certainty at the end of June 2006 upon the receipt of the second of Mr. Huang's bills, as the total of the first two bills was \$48,322.33, of which \$39,300 was for fees.
- [76] Mr. Ross's insistence that he had no idea that the estimate was being exceeded rings rather hollow in light of this evidence.
- [77] This may be a convenient point to discuss the credibility of the parties. Although I found that Mr. Huang jumped about chronologically such that his evidence was at times difficult to put into proper context, I found that his evidence was essentially honest and credible, and, importantly, it was consistent with the documentary evidence. Mr. Ross, on the other hand, gave evidence inconsistent with the documents, had no apparent grasp of details (when

asked if the WOFE, as a food company, had needed health approvals to operate, stated "I wouldn't know"), showed at times a very limited recollection of events and was prone to obvious exaggeration. As to the latter point, his assertion that he did not know the estimate was being, or would be, exceeded is one example; perhaps a more extreme example was his assertion that when he took charge of things he was able to register the company in just one month (or as he also put it, it only took 30 days to "form" a company), yet it was obvious that his own efforts were directed only to correcting the registered capital remittance so as to get a VAT number and had little or nothing to do with the registration or formation of the company.

[78] For these reasons I have found it difficult to rely on Mr. Ross's evidence except where it is confirmed by other evidence.

[79] On the matter of the trips to Ningbo, I have come to the following conclusions:

- (a) as stated earlier, Mr. Ross authorized Mr. Huang to travel from Vancouver to Ningbo in May 2006 to finalize with Mr. Liang what was then thought to be a settled arrangement;
- (b) Mr. Ross asked Mr. Huang to join him in Ningbo (when Mr. Huang was in Beijing) in early June 2006 to try to salvage an agreement with Mr. Liang and to help develop and carry out an alternative corporate plan when it became apparent that Mr. Liang and Mr. Ross could not come to terms;
- (c) Mr. Ross again authorized Mr. Huang to travel from Vancouver to Ningbo in July 2006 to salvage the WOFE application when government officials showed a reluctance to approve it: and
- (d) in late July 2006 Mr. Ross asked Mr. Huang to travel to Ningbo (from Beijing) to assist with a deal Mr. Ross had made with a Shanghai company, to prepare a contract for that deal, and to prepare several other agreements.

[80] None of these trips was contemplated by either lawyer or client at the time the estimate was given. Each of these trips involved substantial additional work and time on the part of Mr. Huang. The magnitude of this additional authorized work compared to the magnitude of the work comprised in the estimate makes the estimate virtually irrelevant.

[81] There was one further trip, the trip to Ningbo by Mr. Huang's associate, Mr. Liu, in late June 2006, in order to deal with a problem with a commercial landlord and to deal with certain government approvals. Although Mr. Huang's evidence was that Mr. Ross was informed of this trip in advance (though there was no evidence of express approval by Mr. Ross), in contrast to the trips undertaken by Mr. Huang the evidence concerning Mr. Liu's trip falls short of showing that Mr. Ross would necessarily have known that this would involve an additional cost to him. For this reason I conclude that there must be an abatement of fees related to this activity, although not a complete disallowance as there was obvious value in his work. there must also be a reduction to reflect Mr. Liu's travel disbursements.

[82] This addresses the main points argued by the client. Although I have now dealt with client's principal arguments, I must nonetheless review the bills in accordance with the usual factors and the circumstances of the case generally.

[83] Section 71(4) of the Legal Profession Act requires that on a review of a solicitor's bill or bills 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;
- (c) the lawyer's character and standing in the profession;
- (d) the amount involved;
- (e) the time reasonably spent;
- (f) whether the agreed hourly rate was reasonable;
- (g) the importance of the matter to the client; and
- (h) the result obtained.

[84] I do not propose to analyse each of these factors, but I will refer to a few of the more significant ones, and suffice it to say that I have considered them all, as well as all the circumstances of the case generally, in coming to my decision.

(a) Difficulty & Complexity/ Skill Required

[85] This matter required very specialized skill insofar as it was necessary that Mr. Huang have a good working knowledge of Chinese corporate and commercial law, and of the ways of Chinese government, and knowledge of corresponding Canadian law. The revelation that Mr. Liang was not actually in agreement with Mr. Ross, which resulted in the departure of Mr. Liang from the corporate picture, made for more work (including failed negotiations with Mr. Liang), caused the Chinese authorities to doubt the merits of the WOFE application and made the matter much more difficult than it otherwise would have been.

(b) Amount Involved/Importance to the Client

[86] Mr. Ross had high hopes for the Chinese operation; on the evidence, he projected sales of as much as \$60 million in the first year. While this might merely have been a rosy projection it does signify that the amount involved, in terms of the operation being established, was potentially very large. The matter was obviously of very high importance to Mr. Ross.

(c) Time Spent

- [87] Mr. Ross questioned how efficient Mr. Huang was with some of his time in Ningbo, asserting that much of his time was spent "hanging out" in informal social situations. The evidence on this point was not very satisfactory as Mr. Ross simply made the blanket statement and Mr. Huang did not call reply evidence to counter it, although he had previously given evidence of the various activities he had undertaken during his trips to Ningbo.
- [88] I have examined with some care the time charged by Mr. Huang on his four trips. For May 11 to 13, June 5 to 7, July 17 to 20 and July 26 to 30, Mr. Huang recorded against this file full working days of between six and eight and a half hours each day (the only exception being May 11, when 2.5 hours were recorded), with something in the range of eight hours being the typical figure. It is indeed difficult to accept that Mr. Huang was fully engaged on legal matters for the client, full-time, for more or less the entirety of each of these days. On the evidence it seems likely that there were lunches, some socializing, and other times when Mr. Huang's legal expertise was not being called upon. I conclude that a fee reduction is warranted to reflect this.
- [89] On the matter of time billed, however, it should also be noted that for the most part Mr. Huang did not charge travel time, which reflects a conservative billing approach on this aspect.
- (d) Fee Rate
- [90] The agreed fee rate was \$500 per hour. While this is at the upper end of the range, Mr. Huang's dual qualifications in Canada and China are unusual and for that reason I conclude that his hourly rate was reasonable in the circumstances.
- (e) Result Obtained
- [91] Mr. Huang successfully established the WOFE even without having a local businessman involved, he obtained a host of necessary licences and approvals necessary for the operation of the company and he prepared a number of commercial agreements. He also participated in a number of negotiations, one unsuccessful (Mr. Liang) and several successful (the commercial agreement with the Shanghai company, the negotiations with the government officials regarding the establishment of the WOFE, and the employment agreement with Ms. Jin), and he ironed out a problem with a commercial landlord. He achieved reasonable overall success.
- [92] There was a problem with the obtaining of a VAT number, and each party blamed the other for it. I conclude that this glitch was, in the vernacular, just one of those things. The WOFE had been established and the government authorities had given it a considerable time to pay its registered capital. Lawyer and client fell out of communication during that time. The client arguably should have been alert enough to remit the funds so that the source of the funds was as shown in the corporate documents that were in the hands of the government officials, but in any event he should have first checked with Mr. Huang to make sure payment was properly effected. Mr. Huang arguably should have warned the client of the

need to remit the funds in particular fashion. For these reasons I conclude that neither party is really at fault for the problem, though both could have done better. I do conclude, however, that the fees charged by Mr. Huang to fix the problem were excessive and that, given the circumstances, these services ought to have been minimally billed.

[93] Having given careful consideration to all of the circumstances I conclude that an overall fee of \$85,000 would be reasonable in this case.

[94] The fee reduction is \$13,905. The taxes associated with that figure must also be taken into account, which is no simple matter given that the GST and PST rates both changed during this period. Apportioning the reductions as best I can to the various tax periods, I calculate the associated taxes at \$1,925. The fee reduction with taxes therefore totals \$15,830.

[95] There are further reductions to reflect Mr. Huang's concession that the disbursements for his China trips could be reduced by half, and to take into account the trip to Ningbo by Mr. Liu, the expenses for which have been disallowed for the reasons previously given. For Mr. Huang, two airfares to China are involved (I have assumed that the concession does not relate to the internal trips from Beijing to Ningbo, as these were done only for the client), charged at \$940 each, so the reduction is equal to one of those airfares. With taxis and some incidentals in Beijing I would round this to \$1,100.

[96] I have assumed that Mr. Huang did not charge the client for hotel expenses in Beijing given that Mr. Huang has an office there, and have therefore not reduced hotel disbursements by half. If this assumption is incorrect, and the parties wish to make submissions on the issue, then they should forward those submissions through the registry, to be filed no later than August 6, 2010.

[97] As for Mr. Liu, doing the best I can on the basis of the available information I would assess his travel costs at \$1,800.

[98] The total of the reductions is therefore \$18,730 (\$15,830 + \$1,100 + \$1,800).

[99] The final calculation is therefore as follows:

Amount Billed

\$112,484.06

Total Reductions

18,730.00

Subtotal

\$93,754.06

Amount paid

(11,500.00)

Amount Allowed

\$82,254.06

VI. Interest and Costs

[100] The solicitor is entitled to interest on the unpaid accounts at 24%, compounded annually, as set out in the retainer agreement signed by the client.

[101] On the matter of costs, as it happens the reduction in the total amount billed is almost exactly one-sixth, the benchmark figure for costs that is set out in the Legal Profession Act. In the circumstances I am inclined to order that there be no costs to either party. However, if either party wishes to make submissions on costs they may do so in writing, with submissions to be filed on or before August, 6, 2010.

"Registrar M.B. Blok"

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