

CANADA / JUDGMENT

KMH Lawyers v. Kasanda

2025 ONCA 694

COURT

Court of Appeal for Ontario

DECIDED

10 October 2025

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KMH Lawyers v. Kasanda Collection Decisions of the Court of Appeal Date 2025-10-10 Neutral citation 2025 ONCA 694 Docket numbers COA-24-CV-0963 Judges Hourigan, C. William; Sossin, Lorne; Pomerance, Renee M. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: KMH Lawyers v. Kasanda, 2025 ONCA 694 DATE: 20251010 DOCKET: COA-24-CV-0963 Hourigan, Sossin and Pomerance JJ.A. BETWEEN KMH Lawyers and Miriam Vale Peters Applicants/Responding Parties (Respondents) and Paul Kasanda, Elke Kasanda and L3 Prime Inc. Respondents/Moving Parties (Appellants) Félix P. Boutin, for the appellants Miriam Vale Peters, for the respondents Heard: October 9, 2025 On appeal from the order of Justice Heather J. Williams of the Superior Court of Justice dated July 29, 2024, with reasons reported at 2024 ONSC 4068. REASONS FOR DECISION

- [1] The respondents, KMH Lawyers (“KMH”) and Miriam Vale Peters (“Miriam”), obtained an order for assessment for unpaid accounts under s. 3 of the Solicitors Act, R.S.O. 1990, c. S.15, against the appellants, Paul Kasanda (“Paul”), Elke Kasanda (“Elke”) and L3 Prime Inc (“L3”). The appellants brought a motion in the court below seeking an order to remove Paul as a party to the assessment.
- [2] The respondents represented Elke, who was a party to actions relating to a dispute over her father’s estate. L3 and Paul were not parties to the estate matter, however, there were other facts to indicate that they may also have been the respondents’ clients. Only L3 appears on the respondents’ written retainer, although the retainer refers to “general legal services”, not the estate matter. Paul claimed that Miriam agreed to accept cheques from his company, L3, to pay for her fees, but only if the company signed her firm’s retainer agreement.
- [3] The motion judge found that the respondents were acting for Paul in the estate matter and dismissed the motion. Paul now appeals. He argues it was an error for the motion judge to find a solicitor-client relationship between him and the respondents. Paul asserts, as he did in the court below, that he was not advised by the respondents that he would be expected to pay for the legal fees related to the actions in the estate matter, nor did he agree to be liable for those fees, nor were legal services provided by the respondents to Paul.
- [4] At the hearing, we dismissed the appeal for reasons to follow. These are our reasons.

Analysis

- [5] The motion judge summarized the proper test for whether there is a solicitor-client relationship: it is a question of fact, considering whether a reasonable person in the position of a party would reasonably believe the lawyer was acting for a particular party: *Trillium Motor World Ltd. v. General Motors of Canada Limited*, 2015 ONSC 3824, 48 B.L.R. (5th) 142, at para. 461, rev'd in part on other grounds, 2017 ONCA 544, 72 B.L.R. (5th) 177, leave to appeal refused, [2017] S.C.C.A. no. 366.
- [6] *Drawing on Capital Sports Management Inc. v. Trinity Development Group Inc.*, 2022 ONSC 2657, 161 O.R. (3d) 120, at para. 34, the motion judge also canvassed 14 indicia of such a relationship, including a contract or retainer, an open file, meetings, correspondence, bills rendered and/or paid, instructions given and/or acted on, statements made to others, and legal advice given.
- [7] The motion judge emphasized that where a lawyer fails to reduce the terms of the retainer to writing, there is a heavy onus on the lawyer to establish the retainer: citing *Rye and Partners v. 1041977 Ontario Inc.*, 188 O.A.C. 158.
- [8] The motion judge found several facts which supported her finding that this “heavy onus” was met in this case and that a solicitor-client relationship existed between Paul and the respondents, including:
- In a referral email from another lawyer to Miriam, the other lawyer refers to Paul personally.
 - Paul, or Paul and Elke, put Paul’s name on KMH’s litigation intake form as well as Elke’s.
 - There was an initial retainer agreement prepared in Paul’s name which was later updated to be in L3’s name. The retainer was for general legal services, not the estate matter. A legal assistant (who worked for KMH) swore in her affidavit that Paul asked KMH to put the retainer in L3’s name and not to send him detailed invoices. The motion judge found that Paul wanted his company to pay the legal fees for this estate dispute but did not want it to be obvious on paper that the legal fees related to an estate dispute.
 - Based on the firm’s dockets, there were communications containing both: (a) instructions from Paul to the respondents; and (b) advice from the respondents to Paul.
 - KMH also prepared an affidavit for Paul which he swore in the estate proceedings, and the motion judge found that Paul, although not a party, had an interest in the estate proceedings.
 - There was an email exchange in which Paul agreed to pay \$30,000 for legal fees without reference to L3.

- [9] The motion judge concluded, at para. 21: I find there are sufficient indicia of a lawyer-client relationship present in this case to allow me to conclude that a reasonable person in the position of a party with knowledge of all the facts would reasonably conclude that the lawyers were acting for Paul.
- [10] Paul argues that the motion judge applied the wrong test, and that a contractual analysis was more appropriate in this case than an analysis to determine if there was a solicitor-client relationship. We do not see this distinction as giving rise to an error, as Paul's argument to the motion judge was that he was not a client of the respondents. The motion judge engaged directly with that question and applied the proper criteria in reaching her findings, which were open to her on the record.
- [11] Similarly, contrary to the appellants' submission, the motion judge was alive to the heavy onus resting upon the respondents, given their failure to reduce the terms of the retainer to writing. She found that the onus had been met in this case, and we see no basis to interfere with that conclusion.

Disposition

- [12] Therefore, we dismissed the appeal.
- [13] The respondents are entitled to costs, fixed in the agreed upon all-inclusive amount of \$10,000. "C.W. Hourigan J.A." "L. Sossin J.A." "R. Pomerance J.A."

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Prepared on 26 October 2026 · Esheria