

CANADA / JUDGMENT

Kuo v. Waldmann

2020 BCSC 952

COURT

Supreme Court of British Columbia

DECIDED

25 June 2020

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2020 BCSC 952 Kuo v. Waldmann IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kuo v. Waldmann, 2020 BCSC 952 Date: 20200625 Docket: S181880 Registry: Victoria Between: Peter I. Waldmann Law Firm And: Hunter Kuo Client Before: Master Bouck (as Registrar) Reasons for Decision on Taxes, Interest and Costs Counsel for Law Firm Peter Waldmann Appearing on his own behalf/the Law Firm (as of June 11, 2020) Counsel for Client: Peter Harrison Place and Date of Written Submissions: Victoria, B.C. June 15, 2020 Place and Date of Decision: Victoria, B.C. June 25, 2020

- [1] On April 1, 2020, reasons for decision were issued in this Legal Profession Act (LPA) proceeding that addressed the amount to be awarded to the Law Firm for fees and disbursements incurred for the Client's benefit: 2020 BCSC 495.
- [2] The Law Firm issued a bill to the Client on January 2, 2018, pursuant to a contingency fee agreement. The total amount charged to the Client in that bill was \$291,627.58. In my reasons, the contingency fee agreement made between the parties was set aside. The Law Firm was instead awarded fees of \$175,000 and a further sum of \$7,424.55 as reimbursement for disbursements incurred on the Client's behalf.
- [3] The parties were invited to provide written submissions on three remaining items in dispute: the Law Firm's entitlement to interest on the allowed fees and disbursements; the applicable taxes to be awarded on those fees and disbursements; and the appropriate costs award.
- [4] The tax issue arose because the Law Firm charged Harmonized Sales Tax (HST) on its fees, presumably because Mr. Waldmann issued the bill from his Ontario offices. The Law Firm now concedes that HST is not properly claimed. Instead, the Law Firm claims Goods and Services Tax (GST) and Provincial Sales Tax (PST) on the fees in the combined sum of \$21,000.
- [5] The parties also agree that interest ought to be added to the amounts allowed to the Law Firm pursuant to the Court Order Interest Act: LPA, s.73(3)(c). Again, the Law Firm provides a determination of that pre-judgment interest as \$7,719.67, with no contrary amount asserted by the Client.

- [6] Thus, excluding costs, the total sum to be paid by the Client to the Law Firm is \$211,144.12.
- [7] Not surprisingly, the main contest between the parties is over costs. The registrar's discretion with respect to a costs award is governed by section 72 of the LPA: 72 (1) Costs of a review of a lawyer's bill must be paid by the following:
- (a) the lawyer whose bill is reviewed, if 1/6 or more of the total amount of the bill is subtracted from it;
 - (b) the person charged, if less than 1/6 of the total amount of the bill is subtracted from it;
 - (c) a person who applies for a review of a bill and then withdraws the application for a review.
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.
- [8] Section 72 is considered a complete code and the costs entitlement provisions in the SCCR that are within the purview of the court (i.e. Rules 9-1, 14-1 (15)) are not available to these parties: *Label v. Albanese* 2008 BCSC 1679 at para. 6. More specifically, the registrar has no jurisdiction to award double, increased or special costs: *Aydin & Co. v. Schaber*, 2000 BCSC 925. Nonetheless, the registrar may consider the content of offers to settle delivered in advance of the LPA hearing when deciding whether "special circumstances" exist: *Long, Miller and Mullins v. Sawchuk*, 2002 BCSC 542 at para. 99.
- [9] Here, the bill was reduced by more than 1/6th with the result that the Client should receive his costs of the proceeding unless the Law Firm can prove, on a balance of probabilities, that special circumstances exist and some other award is justified. The special circumstances exception is designed to ameliorate the arbitrary nature of the one-sixth rule in circumstances when to apply it would be manifestly unfair or unjust: *Berge Horn v Hewson*, 2012 BCSC 2028. For example, the parties may be ordered to bear their own costs if the otherwise successful party made unfounded allegations of fraud, lying and deception against the unsuccessful party: *Richards Buell Sutton v. Gerbrandt*, 2005 BCSC 439 at paras. 65 and 66.
- [10] On August 13, 2019, the Law Firm delivered to the Client a written offer to settle the proceeding for the all inclusive sum of \$199,789.00. Later in that same month, the Client responded that he was only willing to pay the Law Firm \$100,000. Obviously, the actual award to the Law Firm exceeds the August 13, 2019, offer to settle and is more than double the figure proposed by the Client. Had the Law Firm's offer been accepted, the parties could have avoided significant expenses including travel to Victoria, lawyer's fees and the cost of transcripts necessitated by this lengthy and discontinuous hearing.
- [11] In the April 1, 2020, reasons, I was critical of the Law Firm's conduct in the retainer. Those criticisms are reflected in the substantive result of this proceeding. However, I also found that Mr. Waldmann's evidence on contentious facts ought to be preferred over that of Mr. Kuo, especially on the extent of verbal and written communications exchanged between the

parties during the long retainer. In cross-examination, Mr. Kuo admitted that he made "minimal" efforts to prepare for his testimony at the LPA hearing--and exonerated his counsel in that regard. Mr. Kuo also failed to disclose all potentially relevant documents that were within his control, despite a pre-hearing order requiring the exchange of lists of documents 90 days in advance of the hearing. It is impossible to say whether those missing documents would have assisted the Law Firm or the Client in their respective cases, but an adverse inference on that question could be drawn against the Client. Furthermore, the trier of fact is disadvantaged in not having access to all available evidence.

- [12] In his oral evidence, Mr. Kuo described Mr. Waldmann as "untrustworthy," "self-serving" and even accused him of deliberately "sabotaging" the presentation of the Client's case in the court of the appeal. None of these statements were proven to be true and all impugned Mr. Waldmann's character.
- [13] Taking all of these circumstances into account, I find that special circumstances exist such that an award of costs in the Client's favour is manifestly unfair. The parties shall bear their own costs of the proceeding.
- [14] The certificate of fees provided by the Law Firm has been endorsed in the total sum of \$ 211,144.12 and provided to the registry for entry. "Master C.P. Bouck"

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