
CANADA / JUDGMENT

Lunny Atmore LLP v. Ting

2017 BCSC 2005

COURT

Supreme Court of British Columbia

DECIDED

13 October 2017

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2017 BCSC 2005 Lunny Atmore LLP v. Ting

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lunny Atmore LLP v. Ting,

2017 BCSC 2005

Date: 20171013

Docket: S1510425

Registry: Vancouver

Between:

Lunny Atmore LLP

Solicitor

And

Peter Ting

Client

Before: Registrar Nielsen

Oral Reasons for Decision

In Chambers

Counsel for the Solicitor:

J.A. Dawson

Appearing on his own behalf:

P. Ting

Place and Date of Hearing:

Vancouver, B.C.

October 13, 2017

Place and Date of Decision:

Vancouver, B.C.

October 13, 2017

- [1] THE COURT: This is an application by the client pursuant to s. 73(1)(a) and (b) of the Legal Profession Act, SBC 1998, c. 9 (the LPA). The client is seeking to stay the effect of a certificate for fees obtained by the law firm and to pay the balance he owes over a period of 16 months. The law firm is opposed to the application. The law firm's objections are based upon:
1. the submissions of the client which suggests he is near bankruptcy, and therefore, the law firm is at risk of not being paid;
 2. the client has provided limited financial disclosure;
 3. the client has shown a preference by paying a subsequent law firm hired by him in full;
 4. the law firm is suffering prejudice by non-payment, specifically, they are, in fact, acting in the capacity of a bank for the benefit of the client; and finally;
 5. the client has the ability to pay the judgment.
- [2] The background facts are summarized in *Lunny Atmore v. Ting*, 2017 BCSC 830. The law firm was successful in its review under the LPA and obtained a certificate in the amount of \$46,345.63 including costs and interest. The certificate was entered May 30, 2017. Pursuant to s. 76(3) of the LPA, the certificate is deemed to be a judgment of the court.
- [3] The client sought a stay of the certificate, and leave to make payments on terms. It was his submission that his financial circumstances were dire and he could not make full payment. The client sought terms of repayment essentially on the basis of an alleged undue hardship. However, the client has not made full financial disclosure.
- [4] On June 14, 2017, a prior stay of the certificate was granted on terms that the client provide full financial disclosure, and pay \$1,500 a month to the law firm on the 31st of each month. The terms of payment and the stay were to be reviewed following August 31, 2017.
- [5] Following the client's application of August 28, 2017, the stay was continued until October 31, 2017. The order specifically provided that:

2. The Client shall direct his accountant (the "Accountant") to directly provide the Law Firm with all of the Client's files relating to his personal tax returns for the years 2015, 2016 and 2017 (the "Files") and the Client shall not review the Files or interfere with the Accountant's disclosure of the Files to the Law Firm in any way;
 3. The Stay Period is extended to October 31, 2017, on which date the stay of execution is lifted, on the condition that:
 - a. by August 31, 2017, the Client pays the sum of \$1,500 to the Law Firm;
 - b. by September 30, 2017, the Client pays the sum of \$1,500 to the Law Firm; and
 - c. by October 30, 2017, the Clients pays the sum of \$1,500 to the Law Firm;
 4. The Law Firm is prohibited from taking steps to collect money on the Certificate during the Stay Period, except if those steps are taken pursuant to Rule 13-3 of the BC Supreme Court Rules, BC REG 3/2016;
 5. The Client has liberty to apply to extend the Stay Period after its expiry, but must do so by properly bringing an application on for hearing in accordance with the BC Supreme Court Rules, BC REG 3/2016; and
 6. The Client's signature on this Order is dispensed with.
- [6] Oral reasons were given in relation to the order in *Lunny Atmore v. Ting*, dated 2017/08/28, Docket Number S1510425, in the Vancouver Registry.
- [7] The registrar has jurisdiction to stay a certificate of fees, or stay the effect of a certificate of fees. Section 73(1)(a) and (b) provides:
- 73(1) On the application of a party to a review under this Part, the registrar may order that a party
- (a) be permitted to pay money in instalments on the terms the registrar considers appropriate, or
 - (b) not be permitted to collect money on the certificate for a period the registrar specifies.
- [8] The granting of a stay, or payments on terms, is discretionary. In making orders of this nature, it must be remembered that the law firm has provided a service for which they have not been paid, and they have obtained a court order for payment related to the service. In the present case, it was found by the registrar during the course of the review that the law firm had provided exceptional service. At paras. 37 to 39 the registrar states:

- [37] The legal dispute was of the utmost importance to the client. He faced the possibility of having his registration with the College cancelled. This would have had the effect of preventing the client from practicing his profession and earning a living. The lawyer, by the time of her dismissal, had moved the College substantially towards a consent resolution of the complaint which would ultimately prevent the matter from going to a formal hearing. This is precisely what the client sought to achieve from the outset. . .
- [38] The lawyer was able to negotiate a four month suspension and \$10,000 in costs prior to her dismissal. It is possible that the lawyer may have been able to improve upon this result if she had the continuing confidence of the client, and been given the opportunity.
- [39] I consider the result obtained by the lawyer to have been exceptional given the circumstances and the fact that the client had a prior disciplinary history with the College.
- [9] The law firm is entitled to realize on their judgment subject only to the provisions of s. 73(1) (a) and (b). Orders of this nature should be made only when the allegations of undue hardship on the part of the client can be proven, and the law firm will not be correspondingly prejudiced. The circumstances of the client cannot be looked at in isolation.
- [10] As stated in *Sokolowski v. Lorne N. MacLean Law Corp.*, 2016 BCSC 1035, at paras. 48 and 49:
- [48] Law firms are not banks, and for the most part, do not want to be treated like a bank. The smaller the firm, the more difficult it is to carry a client's unpaid fees, particularly if the firm is faced with a number of clients who are not paying their bills in a timely fashion. This can put a strain on the firm's line of credit.
- [49] An interest rate on unpaid accounts in excess of the rate provided by a bank is meant, in part, to encourage the client to borrow from a financial institution to cover the cost of fees, rather than relying on the law firm to carry the unpaid account. A financial institution is in a better position to underwrite debt, assess and assume financial risk, or absorb a loss occasioned by a bankruptcy.
- [11] I would add to those reasons that law firms which represent clients who are in financial distress, or have limited means, ought to be lauded and paid in a timely fashion, unless justice dictates otherwise.
- [12] In the present case, the client faced the potential of termination of his licence to practice chiropractic medicine. The law firm took on his case knowing his ability to earn income in the future was at risk. The law firm took on a difficult client, with a difficult case. Their fees were reviewed, a certificate was granted, and no appeal was taken.

- [13] The law firm in question is not large. I would characterize it as a smaller boutique law firm. The client's debt to the law firm is not insignificant. The client has produced personal income tax records showing he, essentially, does not have any income. However, that is inconsistent with the fact that he carries on the practice of chiropractic medicine. I have financial records that demonstrate the client has been drawing significant amounts from his personal services corporation by way of repayment of shareholders loans throughout 2017.
- [14] The client owns a condominium in North Vancouver in which he has equity. According to the B.C. Assessment value, it would appear he has roughly \$300,000 in equity in the property. The client did not dispute this fact when it was put to him.
- [15] On this application, the client provided an excerpt from his RBC Direct Investing Account showing an 87.71 percent loss in an investment in Valeant Pharmaceuticals. I do not have any evidence regarding the balance of his stock portfolio. Until today's application, I was unaware that the client had a stock portfolio.
- [16] The client has had the benefit of a limited stay since May 2017. I find the client's circumstances do not justify a further stay of the law firm's certificate on the terms of minimal monthly payments, or at all.
- [17] The overall submission of the client is that he has difficulty paying his bills. While the client's financial circumstances are by no means rosy, the client is employed as a chiropractor, during 2017 he has made significant draws on his shareholders loans, he owns a condominium in which he has substantial equity, he has paid other lawyers in full who acted for him subsequent to the law firm herein, and he owns a stock portfolio. In addition, I have heard no evidence that he has any dependents.
- [18] When making a claim for relief pursuant to s. 73(1) of the LPA, the claiming party must make full financial disclosure so that all the circumstances can be weighed. I am not satisfied this has occurred. The client was asked to produce his shareholders loan ledger, and his brokerage statements regarding his stock portfolio. He refused to do either. I find there is no principled basis in all the circumstances which justifies an order pursuant to s. 73(1) of the LPA.
- [19] It is time for the client to pay for the service he has received, services which made it possible for him to continue in his profession and earn a living. The stay in relation to the certificate is lifted and no conditions are imposed.
- [20] The law firm has been successful and I will hear submissions related to costs.

[SUBMISSIONS RE COSTS]

- [21] THE COURT: I am not satisfied that the registrar can make an award of special costs. However, I am satisfied that I can take into account the conduct of the client in making an award of costs. I find that the client's conduct has unnecessarily prolonged the time taken by these proceedings. I further find that these proceedings were completely unnecessary in the circumstances. The further costs incurred should not be laid at the law firm's feet.
- [22] Taking all the circumstances into account, I allow a total of \$1,500 in costs. That is inclusive of taxes and disbursements.
- [23] MR. DAWSON: Thank you, Your Honour, and an order dispensing with Dr. Ting's signature on the order?
- [24] THE COURT: Yes, there will be an order also dispensing with Dr. Ting's approval as to form.
- "District Registrar Nielsen"
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