

CANADA / JUDGMENT

Narayan v. Slater Law Corporation

2023 BCSC 2073

COURT

Supreme Court of British Columbia

DECIDED

27 November 2023

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2023 BCSC 2073 Narayan v. Slater Law Corporation

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Narayan v. Slater Law Corporation,

2023 BCSC 2073

Date: 20231127

Docket: S197173

Registry: Vancouver

Between:

Robert Narayan

Client

And

Slater Law Corporation

Law Firm

Before: Registrar Gaily

Reasons for Decision

Client, Robert Narayan, in person:

R. Narayan

Counsel for the Law Firm:

W.G. Slater

Place and Dates of Hearing:

New Westminster, B.C.

October 23-24, 2023

Place and Date of Judgment:

Vancouver, B.C.

November 27, 2023

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Introduction

[1] In June 2019, Robert Narayan (the "Client") commenced this proceeding under the Legal Profession Act, S.B.C. 1998, c. 9 [LPA], seeking to review the bill dated April 10, 2019 (the "Bill"), issued to him by his former lawyer, William G. Slater (the "Lawyer" or "Mr. Slater"), who operates as Slater Law Corporation (the "Law Firm"). The Law Firm charged the Client \$38,459.56 (including applicable taxes and disbursements) for assisting him over the course of one year with his real property matter. The Bill was paid in full from the proceeds of the sale of the Client's house, which were held in the Law Firm's trust account.

- [2] The Client admits that the Law Firm performed work for him under the retainer agreement he signed on April 20, 2018 (the "Retainer"), but asserts that the Law Firm provided him with an estimate of fees at \$12,500, which is less than one-third of the Bill, and he seeks reimbursement. The Law Firm denies that it provided the Client a fee estimate or that it confirmed during the retainer that its fees would not exceed \$12,500. It maintains that the fees it charged the Client for the work performed were reasonably necessary and proper.
- [3] For the reasons discussed below, I find that the Law Firm did not provide the Client with an estimate of its fees, nor did it confirm during the retainer that its fees would not exceed \$12,500. However, I find that the fees charged by the Law Firm were excessive in the circumstances of this case, and I have reduced the Bill to \$30,000, inclusive of taxes and disbursements.
- [4] The LPA provides that where a lawyer's bill is reduced by more than 1/6, the lawyer must pay the former client's costs of the LPA review hearing (s. 72(1)(a)). The Client represents himself and an assessment of his costs of the two-day LPA hearing would add additional time and expense to this proceeding. Exercising my discretion under s. 73(2)(b) of the LPA, I have summarily determined the costs to which the Client is entitled to be \$2,340.80, based on Items 24, 25 and 41 of the tariff under Appendix B of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR] (the "Tariff") governing party-and-party costs.

Background and Procedural History

- [5] The Client filed the appointment on June 25, 2019, setting a pre-hearing conference ("PHC") for November 26, 2019. The Client had retained counsel to assist him with the LPA review, but represented himself at the hearing. The PHC did not go ahead and it was not rescheduled until May 18, 2021 when the parties appeared before Registrar Nielsen (as he then was). At the PHC, Registrar Nielsen ordered the Law Firm to deliver its entire file to the Client's counsel by May 21, 2021. He ordered the Client to provide the Law Firm a written statement of his objections to the Bill by June 21, 2021, and he ordered that no later than 60 days prior to the LPA review hearing, Mr. Slater was to serve the Client his affidavit of justification. Registrar Nielsen also directed the parties to set the LPA review hearing for two days. After being rescheduled, the hearing took place on October 23 and 24, 2023 in New Westminster.
- [6] At the hearing, Mr. Slater spoke to the affidavit of justification he made on December 30, 2022 (the "Lawyer's Affidavit"), which was filed on January 9, 2023. The Client cross-examined Mr. Slater on the Lawyer's Affidavit. The Law Firm's paralegal, Sandeep Brar, and the Client both gave viva voce evidence, and were cross-examined by the Client and Mr. Slater, respectively.
- [7] On March 22, 2018, the Client entered into an agreement of purchase and sale with a numbered company, 1052960 B.C. Ltd. ("105"), to sell his home to 105 for \$1,300,000 (the "PS Agreement"). The Client had signed an exclusive listing agreement with a realtor, Randir

Dhillon, as well as a dual agency agreement consenting to Mr. Dhillon acting as the realtor for both the Client (vendor) and 105 (purchaser), a practice which is now generally prohibited under the relevant legislation. The Client wanted an earlier completion date and an increased purchase price, asserting that Mr. Dhillon and 105 had agreed to increase the purchase price to \$1,450,000. On March 26, 2018, the Client met with Mr. Dhillon and 105's representative to discuss changes to the PS Agreement. The Client testified that Mr. Dhillon prepared an addendum to the PS Agreement, changing the completion dates from 2019 to November 2018 (the "Addendum"), but did not increase the purchase price. The Client signed the Addendum on March 26, 2018. The Client remained unhappy about the PS Agreement and he asked Mr. Dhillon to cancel it in a series of texts, but Mr. Dhillon did not cancel the PS Agreement.

- [8] The Lawyer and Mr. Brar had previously worked at Merchant Law Group LLP ("MLG") at its Surrey office. Together with a staff person, they left MLG in early 2018 and set up the Law Firm. The Client had retained MLG to represent him in his family matter and he testified that he knew Mr. Brar socially and through MLG. The Client contacted Mr. Brar to ask for assistance "cancelling" the PS Agreement. There is no dispute that on March 28, 2018, the Client retained the Law Firm for the limited purpose of issuing what was referred to as a "demand notice". The Law Firm prepared and sent a letter dated March 29, 2018 to Mr. Dhillon and 105, notifying them that the Client was rescinding the PS Agreement effective immediately on the basis that Mr. Dhillon had not properly represented the Client's interests in the sale, breaching his duties to the Client (the "Rescind Notice") (Ex. 1).
- [9] On April 6, 2018, in a letter to Mr. Slater from 105's counsel, 105 affirmed the PS Agreement, seeking confirmation that the Client would comply with the terms of the PS Agreement (Ex. 2). On April 11, Mr. Slater advised 105 that the Client would not provide 105 access to the property because he had rescinded the PS Agreement. On April 12, 105's counsel advised that 105 was ready willing and able to perform the PS Agreement and that 105 did not accept the Client's repudiation of the PS Agreement.
- [10] 105 commenced an action against the Client on April 17, 2018, seeking specific performance of the PS Agreement, as well as damages (the "105 Claim") (Lawyer's Affidavit, Ex. C). 105's counsel served the Claim on Mr. Slater on April 19, 2018 (Ex. 3). 105 also registered a certificate of pending litigation ("CPL") at the Land Title Office on the Client's property and on April 20, 2018, 105 obtained short leave to hear its application on April 27, 2018 seeking orders enforcing the Client's compliance with the subjects of the PS Agreement regarding access to the property (Lawyer's Affidavit, Ex. G). The application did not proceed as the parties were able to agree on the orders 105 sought.
- [11] The Client signed the Retainer on April 20, 2018 (Lawyer's Affidavit, Ex. B) for the purposes of defending the 105 Claim and pursuing a third-party claim against Mr. Dhillon and his real estate corporation, Coldwell Banker Universe Realty ("Coldwell") (the "Dhillon Claim"). The Law Firm filed both the Client's response to the 105 Claim (the "105 Response") and the Dhillon Claim on April 25, 2018 (Lawyer's Affidavit, Ex. D and E). Given the allegations in the

Dhillon Claim, counsel from the Real Estate Errors & Omissions Insurance Corporation (the "E&O Counsel") represented Mr. Dhillon and Coldwell and on May 15, 2018, filed their response to the Dhillon Claim (Lawyer's Affidavit, Ex. F).

- [12] The parties prepared for litigation in the summer and early fall of 2018, as discussed further below. On November 23, 2018, 105's counsel and the E&O Counsel conducted an examination for discovery ("EFD") of the Client, with nine outstanding requests. Mr. Slater testified that after the Client's EFD, he knew that the chances of successfully defending the 105 Claim were very low and advised the Client to settle with 105. In the mutual release dated February 28, 2019, among other things, the Client agreed to convey his property to 105 for \$1.3M (the purchase price in the PS Agreement) and the parties agreed to a consent dismissal order on a without costs basis (Lawyer Affidavit, Ex. M) (the "105 Settlement").
- [13] Mr. Slater testified that the Client instructed him to continue to pursue the Dhillon Claim, but the E&O Counsel pressed for a summary trial of it and refused to agree to a further EFD of Mr. Dhillon (Mr. Slater had conducted a full-day EFD of the realtor in October 2018). On April 5, 2019, the Client executed a release, settling the Dhillon Claim (Lawyer Affidavit, Ex. P) (the "Dhillon Settlement"). Under the Dhillon Settlement, Mr. Dhillon agreed to waive his costs incurred in defending the Dhillon Claim, and agreed to reduce the commission payable to him by the Client under the listing agreement to \$30,000 (a reduction of \$5,700). In late August 2019, consent dismissal orders were filed in both claims.

The Retainer and Work Performed

- [14] The parties agree that when the Client initially came to the Law Firm, he did not sign an agreement or provide a retainer because he was concerned about money and he wanted them to send the Rescind Notice on an urgent basis. Both the Client and Mr. Brar testified that Mr. Brar told the Client it would cost him "around \$500" for the Rescind Notice, but all parties agreed the Client did not provide the Law Firm with any funds for the Rescind Notice work.
- [15] The Client admits that he signed the Retainer after the 105 Claim was commenced. Although the Client was the defendant, the Retainer provides that the Client "retains and instructs the Firm to advise the Client and to act on the Client's behalf with respect to the Client's civil action against [105] filed in the British Columbia Supreme Court" with the following in handwriting, "(Action No: S-184750) on April 17, 2018."
- [16] Mr. Slater testified that he explained the terms of the Retainer to the Client, including that he billed his time on an hourly basis and that he would delegate work to Mr. Brar and a junior lawyer to help reduce the fees. The Retainer sets out that Mr. Slater's hourly rate was \$290 and Mr. Brar's hourly rate was \$90 (para. 2(a)). Mr. Slater testified that an associate at the Law Firm, Shelton Stuart, who was called in 2017, also performed some work on the Client's file, at an hourly rate of \$220. (Although the Client asserted at the hearing that Mr. Stuart was a "volunteer student" whose hours should not have been billed, there was no

evidence to support that allegation). The rates did not change during the retainer; on the Bill, the initials "WGS" are for Mr. Slater, "SB" is for Mr. Brar, and "SS" is for Mr. Stuart.

- [17] Mr. Slater testified that because the Client had no money to provide a retainer, and the Client's only asset was his house which had a substantial mortgage of approximately \$450,000, they agreed to perform work for the Client without funds up front or regular payments. He wrote "nil" in para. 4(a) of the Retainer as the amount provided for the initial retainer to reflect this agreement. The Retainer provides that the Law Firm would send the Client interim and final accounts (para. 2(a)), but the Bill was the only account sent to the Client. The Client admits that he agreed to pay for the Law Firm's services after the matter was resolved.
- [18] The Retainer provides that the Client will pay interest at 1.5% per month (18% per annum) on outstanding accounts, starting 30 days after the billing date (para. 3). Mr. Slater testified that because the Law Firm did not bill the Client on a regular basis, the Client did not incur any interest on outstanding accounts. Mr. Slater testified that by his calculation, this resulted in the Client saving \$6,922.27.
- [19] In the Lawyer's Affidavit, Mr. Slater attests that the Client was "made aware of the legal fees at regular intervals throughout our carriage of the file and during our meetings and/or telephone communication", listing several dates on the Bill which indicate the Client attended at the Law Firm (para. 4). However, at the hearing, Mr. Slater could not recall ever personally discussing or emailing the Client about the ongoing fees and testified that it was Mr. Brar who would have told the Client how much was owing in their telephone conversations and at meetings. Mr. Brar testified that he told the Client how much the litigation was costing in conversations, and that he told the Client that it was \$500 for the Rescind Notice, but it "could cost him more depending on what happens". The parties agree that the Law Firm did not send any emails or correspondence to the Client setting out the amount owing on his account as the litigation progressed. The Client denied that Mr. Brar told him the amount of fees accruing during the retainer, other than the estimate, discussed below.
- [20] Mr. Brar testified that he was a practising lawyer in India, and he works at the Law Firm as a paralegal and case manager for Mr. Slater, but he is not a designated paralegal, as that term is defined by the Law Society of B.C. Mr. Slater and Mr. Brar testified that Mr. Brar's regular work includes meeting with clients, gathering information from clients, as well as drafting correspondence and court documents for Mr. Slater's review. The Client testified that he communicated about his file most frequently with Mr. Brar, through telephone calls and when the Client would stop by the Law Firm, and that he only had a few meetings with Mr. Slater.

- [21] Mr. Brar billed under three hours on March 28 and 29, 2018, for his time meeting with the Client and drafting the Rescind Notice for Mr. Slater's review, but Mr. Slater did not record any time on the Client's file until April 11, 2018. Other than the Rescind Notice, and the letter from 105's counsel affirming the PS Agreement, the correspondence from Mr. Slater to 105's counsel prior to the filing of the 105 Claim was not in evidence at the hearing.
- [22] The Law Firm filed the 105 Response and the Dhillon Claim on April 25, 2018, and Mr. Brar billed time on April 23 and 24 conducting legal research and drafting the 105 Response and the Dhillon Claim, totalling 3.30 hours. Mr. Slater recorded 2 hours on April 24, 2018 to "draft, edit and revise" these court documents.
- [23] The 105 Response is 10 pages, primarily the Client's version of facts and additional facts (25 paragraphs), in which the Client asserted that 105's representatives colluded with Mr. Dhillon, and that Mr. Dhillon made misrepresentations and breached his fiduciary duties. Part 3 of the 105 Response consists of three paragraphs, reproducing excerpts from cases involving an alleged misrepresentation by a realtor and two cases on specific performance. The 10-page Dhillon Claim restates most of the facts set out in the 105 Response; Part 3 consists of five paragraphs, reproducing excerpts from cases and texts on the fiduciary duties of realtors.
- [24] 105's counsel sought the registration of an option to purchase agreement in 105's favour (the "Option") on title to the Client's property and drafted the Option. Mr. Slater recorded time communicating with 105's counsel and drafting revisions to the draft Option. The Option was registered on the title to the Client's property on May 15, 2018 (Lawyer's Affidavit, Ex. B).
- [25] The fully executed PS Agreement and the Addendum, as well as the signed dual agency and exclusive listing agreements, are exhibited to the Lawyer's Affidavit, but Mr. Brar and Mr. Slater testified that the Client did not provide these documents to them before the Rescind Notice was sent, given it was an urgent matter. The Client could not remember when he provided the documents to the Law Firm.
- [26] The Client's short list of documents was prepared in August 2018; it lists 11 documents in Part 1 and "all correspondence between the counsel and [the Client]" in Part 4, with no other documents listed. The lists of documents provided by 105 and Mr. Dhillon are similarly short (both 105 and Mr. Dhillon listed 13 documents in Part 1 of their respective lists, with no other documents listed). 105 and Mr. Dhillon amended their lists of documents in October 2018; both amended lists have 17 documents in Part 1, and Mr. Dhillon's amended list includes one document in Part 3, and five items in Part 4 (Lawyer's Affidavit, Ex. J).
- [27] On October 12, 2018, Mr. Slater conducted the EFD of Mr. Dhesa, 105's representative. Both Mr. Slater and Mr. Brar prepared for and attended the EFD of Mr. Dhesa, and they each billed 7.0 hours, which included their respective travel time to and from the reporter's office. The EFD of Mr. Dhillon took place on October 22, 2018 and Mr. Slater and Mr. Brar each billed time to attend the EFD and to travel to and from the reporter's office. The EFD of the Client by 105's counsel and E&O Counsel took place for a half-day on November 23, 2018. Mr.

Slater and Mr. Brar each billed time meeting with and preparing the Client for the EFD on November 22; on November 23, Mr. Brar and Mr. Slater each recorded time to attend the Client's EFD, and for their respective travel to and from the reporter's offices.

- [28] In the Lawyer's Affidavit, Mr. Slater attests, "after attending discoveries of all the parties, and after assessing all the sworn testimony and associated document disclosure, we were then in a better position to discuss with [the Client] the merits of his case to date, attendant risks if litigation was further pursued against [105] and similarly as against [Mr. Dhillon and Coldwell]. Our firm's position was to try and settle" (para. 15). He further attests, "I submit that [the Client], based on his discovery performance, was a poor witness, both in terms of his credibility and as a reliable historian which obviously negatively impacts the client's success ultimately" (para. 24). At the hearing, Mr. Slater testified that it was after the Client's EFD that he knew that the chances of successfully defending the 105 Claim were very low and he advised the Client to settle with 105.
- [29] By late November and into December 2018, Mr. Slater was engaged in drafting settlement proposals and communicating with 105's counsel about settlement. As noted, in the 105 Settlement, the Client agreed to convey his property to 105 for \$1.3M, the purchase price in the PS Agreement. Mr. Slater submitted that because the parties agreed to bear their own costs, the 105 Settlement was a positive outcome for the Client.
- [30] Mr. Slater testified that although he urged the Client to settle, the Client wanted to pursue the Dhillon Claim because he did not want Mr. Dhillon to receive any commission on the sale. Mr. Slater testified that as part of pursuing the Dhillon Claim, further EFD of Mr. Dhillon was necessary (whether as a "continuation" or as a second EFD). The E&O Counsel would not consent to further EFD of Mr. Dhillon and Mr. Slater testified that in late February and early March 2019, the Law Firm prepared an application seeking an order for the continuation of the EFD, although it was never filed (Lawyer's Affidavit, para. 20 and Ex. O).
- [31] Mr. Stuart started working on the file on December 10, 2018, recording 2.40 hours to "review file in preparation for legal research". Mr. Stuart recorded time researching issues related to the Dhillon Claim (such as breach of fiduciary duty, torts of deceit and misrepresentation, and how a third-party claim could survive a settlement of the main action). In February 2019, Mr. Stuart recorded time researching the procedure for an application to continue a discovery and drafting an application for an order setting a further discovery. He also recorded time drafting the Client's affidavit in support of the application, compiling and preparing the exhibits to the affidavit and meeting with the Client about it. The unfiled affidavit was tendered at the hearing as Ex. 4; the attestation is 16 paragraphs and eight documents are exhibited to it.
- [32] Mr. Slater testified that E&O Counsel pressed for a summary trial of the Dhillon Claim and that he spent "a lot of time" communicating with the E&O Counsel and at the same time, continued to encourage the Client to settle the Dhillon Claim because E&O Counsel would seek "substantial costs". With the Client's eventual consent, Mr. Slater engaged in settlement

negotiations and by late March 2019, E&O Counsel offered to settle the Dhillon Claim for a reduction in Mr. Dhillon's commission (originally of \$5,000, later \$5,700) and to waive his costs, which she estimated to be at least \$10,500 (Ex. 6).

- [33] In an email dated March 27, 2019, Mr. Brar advised the Client that E&O Counsel had provided a "formal offer" (i.e., pursuant to R. 9-1 of the SCCR) to settle the Dhillon Claim for \$30,000 including GST, representing Mr. Dhillon's commission on the sale of the Client's house (Ex. 7). In the email, Mr. Brar explained what a "formal offer" meant with respect to the costs that could be incurred, estimating that "these costs can be in the neighbourhood of \$10-15k." Mr. Brar also notes that the commission owing to Mr. Dhillon was \$35,700.00 including GST "so they have agreed to come down by \$5,700.00." At the hearing, Mr. Brar denied that in referring to costs "in the neighbourhood of \$10-\$15k" in this email, he meant the Client's legal fees, but that he meant the costs of Mr. Dhillon and Coldwell for which the Client would be liable if the Client did not succeed on the Dhillon Claim.
- [34] On April 5, 2019, the Client executed the Dhillon Settlement. Mr. Slater testified that although Mr. Dhillon received commission on the sale of the Client's property, the amount of commission was reduced and the Client did not have to pay any legal costs to Mr. Dhillon and Coldwell, and submitted that this was a successful outcome. The last entries on the Bill are all for Mr. Slater's time on April 1, 4 and 5, 2019, in which he recorded time to finalize the Dhillon Settlement and meet with the Client to execute the Dhillon Settlement.
- [35] The Law Firm discounted its time by \$5,700.00, as evidenced by the notation on the Bill, "discount applied - Realtor's \$5,700.00". The Client was upset when he received the Bill and communicated to Mr. Brar his frustration with the fees the Law Firm charged. The Law Firm tendered a copy of the email Mr. Brar sent to the Client on April 15, 2019, in response (Ex. 6). In the email, Mr. Brar writes that he told the Client he was "saving \$5,700 (reduction in commission agreed to by the realtors) and another \$5,700 that [Mr. Slater] has agreed to waive off to match the commission reduction. The total savings are \$11,400." At the hearing, Mr. Slater submitted that the \$5,700 reduction amounted to most of the time Mr. Brar had billed on the Client's file.

Position of the Parties

- [36] The Law Firm maintains that the fees it charged the Client were reasonably necessary and proper to defend the 105 Claim to its settlement, as well as to pursue the Dhillon Claim to its settlement. In particular, Mr. Slater submits that the Client had unrealistic expectations of success, but did not provide them with the necessary information to assess the merits of his claims because he needed the Rescind Notice sent on an urgent basis. Mr. Slater maintained that it was not until document disclosure and the EFD of the Client (some eight months after the Client initially retained them) that the Law Firm could make an appropriate assessment of the merits of the Claims.

- [37] The Client does not dispute that he retained the Law Firm to assist him to rescind the PS Agreement, or that he signed the Retainer after the 105 Claim had been commenced, or that he instructed the Law Firm to pursue the Dhillon Claim. However, the Client maintains that he was told that the Law Firm's fees would total \$12,500, based on a conversation with Mr. Brar, which was witnessed by a third party, Mr. Bhattia (although the spelling of his surname was not confirmed). I will address the parties' evidence and submissions in the discussion of the alleged estimate further below.
- [38] The Client's former counsel prepared the written list of objections ordered at the PHC (the "Written Objections"). At the hearing, the Client admitted that he had not reviewed the Bill since he provided it to his former counsel in 2019; it was only during his evidence in chief that the Client reviewed the Bill in detail, after he had concluded his cross-examination of Mr. Slater and Mr. Brar. The Client asserted that he never would have defended the 105 Claim or pursued the Dhillon Claim if he knew it would cost him close to \$40,000 in legal fees.

Discussion

- [39] Pursuant to s. 71(2) of the LPA, the registrar must allow fees, charges and disbursements reasonably necessary and proper to the conduct of the proceeding, or those authorized by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.
- [40] In the course of this analysis, the registrar must consider all the circumstances, including those enumerated in s. 71(4) of the LPA, which provides:
- 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.
- [41] On a review under the LPA, the authorities are clear that the lawyer bears the onus to prove that the work done and the accounts issued for the work done were necessary and reasonable (see *Purcell v. McLean*, 2023 BCSC 365, para. 22).

- [42] The authorities on LPA reviews hold that at the end of the day, the registrar "should allow a fair fee commensurate with the work performed in the retainer and taking into account all of the circumstances": *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals dismissed 2022 BCSC 329 and 2023 BCCA 123).
- [43] With respect to the costs of the LPA review, s. 72(1) of the LPA provides that the costs of an LPA review must be paid by the lawyer whose bill is reviewed "if 1/6th or more of the total amount of the bill is subtracted from it", or by the client "if less than 1/6th of the total amount of the bill is subtracted from it". Section 72(2) provides the registrar the discretion "in special circumstances" to order the payment of costs other than as provided in subs. 72(1) and s. 73 provides that the registrar may summarily determine the amount of the costs of the review and add it to the amount shown on the certificate.
- [44] As the circumstances set out in s. 71(4) of the LPA must be considered on this review, I will address each of them, together with the Client's objections.
- (a) The Complexity, Difficulty or Novelty of the Issues Involved
- [45] At the hearing, Mr. Slater admitted that the Client's matter was not complex or novel, but submitted that issues around the dual agency agreement and breach of the realtor's fiduciary duties increased the difficulty of the file. He also submitted that the Client's failure to comply with the Law Firm's requests that he provide them with all of the relevant documents and information early in the retainer increased the difficulty in defending the 105 Claim and pursuing the Dhillon Claim.
- [46] I find that the issues involved in the Client's proceedings were not particularly difficult, complex or novel. Based on the evidence before me at the LPA hearing, it is clear that the Client's claim was always about money: the Client wanted more money for his property than he had agreed to in the PS Agreement and did not want to pay any commission to the realtor he had signed a dual agency agreement with.
- (b) The Skill, Specialized Knowledge and Responsibility Required of the Lawyer
- [47] In my view, this was not a file that required specialized skill or knowledge or responsibility on Mr. Slater's part and I consider this factor to be neutral.
- (c) The Lawyer's Character and Standing in the Profession
- [48] In the circumstances of this case, I find this factor is neutral and that the Client's submission under this heading in the Written Objections is related to the factor of time reasonably spent, discussed below.
- (d) The Amount Involved
- [49] At the conclusion of the retainer, the Client had sold his property for \$1.3 million, the purchase price under the PS Agreement, and had paid Mr. Dhillon commission of \$30,000 (\$5,700 less than in the listing agreement). The Client received approximately \$725,000 as

the proceeds of the sale, after adjustments. However, the Client claims that the Law Firm was responsible for the \$15,000.00 penalty imposed by the lender when the mortgage was paid out because the Law Firm delayed in settling the 105 Claim. The issue of whether the Law Firm caused the delay as alleged was not properly before me at the LPA review hearing and I have not considered it.

- [50] In the Written Objections, the Client submits that the Law Firm's fees "were out of proportion to the small amount at stake in the matter." While I agree that the amount involved in this matter was not high, I will address the proportionality of the fees charged in the discussion of the results obtained below.
- (e) The Time Reasonably Spent
- [51] The total hours spent on the Client's file from March 28, 2018 to April 5, 2019, as reflected on the Bill, amount to 179.50.
- [52] In the Written Objections, the Client objected to the time spent and charged on the following bases:
- a. Duplication of Effort: There appear to be a number of entries on the bill where the Client was charged for multiple members of the Solicitors' firm having the same conversation or meeting (e.g. providing and receiving instructions, etc.)
 - b. Purely Administrative Time: There appear to be several charges for tasks of a secretarial or purely administrative nature that are properly overhead of a law firm and not value-added legal services for which fees might be properly chargeable.
 - c. Total Time: the total time spent was out of proportion to the time that ought to have been required to complete the work in question.
- [53] Mr. Slater's submissions regarding the time reasonably spent were improperly set out in the Lawyer's Affidavit. An affidavit should not contain the phrase "I submit" in the attestations; the Court has stressed that "submitting argument in the guise of an affidavit is improper": *Jones v. Industrial Wood and Allied Workers of Canada (Local 1-3567)*, 2011 BCSC 926 at para. 17, citing *Chamberlain v. Surrey School District No. 36*, 1998 CanLII 6723 (BCSC) at para 28.
- [54] Mr. Slater's submissions were as follows:
- [22] The entries for the time billed in our invoice I submit are sufficient indication and representation of the amount and the nature of the work done. None of the entries indicate or relates to tasks of an administrative or secretarial nature I further submit. Our legal assistant who [is] responsible for administrative tasks on any given file, has not billed for her time.

- [23] Additionally, a review of our invoice indicates that there is no duplication of any of the work done on this file. It is important to note as well that this matter involved extensive back and forth discussions as well as weighing of evidence with the other counsels as well as with [the Client]. The subject matter of said discussions was never duplicative nor repetitive in nature or substance, at least not without reason or purpose as would be expected in any legal negotiation regarding fixing damages.
- [55] In reviewing the Bill, there are entries for what I find to be improper billing for tasks of a purely administrative nature, examples of which include, but are not limited to, the following:
- On April 26, 2018, Mr. Slater billed 0.10 hours (\$29.50) for "cheque to Golden West Investigative Group. Re process server";
 - On July 30, 2018, Mr. Brar billed 0.10 hours (\$9.50) for "received registered option to purchase. Filed copy";
 - On October 15, 2018, both Mr. Slater and Mr. Brar recorded time paying the invoice for the EFD. Mr. Slater recorded 0.10 hours (\$29.50) for "received and paid invoice re examination for discovery", while Mr. Brar recorded 0.10 hours (\$9.50) for "printed invoice from EFD reporting service for [Mr. Slater] to pay";
 - On January 9, 2019, Mr. Brar billed 0.10 hours (\$9.50), "filed correspondence regarding EFD of Third Party response from Insurance counsel"; and
 - On March 1, 2019, Mr. Brar recorded 0.20 hours (\$19) for "forwarded email from mortgage advisor to [the Firm's assistant]. Also received realtor's commission statement from Third Party defendant. Filed copy."
- [56] In my view, such tasks are purely of an administrative nature and should not have been charged to the Client. Mr. Slater testified that he does not bill his clients for the administrative tasks performed by his assistant, but he did not explain why these charges were included on the Client's bill.
- [57] The Bill reflects that on April 25, 2018, Mr. Slater billed the Client 1.80 hours (\$531) to travel to the Vancouver court registry and file the 105 Response and Dhillon Claim and then to travel to the Law Firm's office in Surrey. He also charged \$3.75 to park at the courthouse. On May 1, 2018, Mr. Slater charged the Client the same amount (1.80 hours at \$531) to travel to and from the Vancouver court registry to file an affidavit of service and the Bill includes a disbursement of "travel - to file affidavit of service" of \$25.07.
- [58] Mr. Slater testified that he or Mr. Brar would file documents and serve them on the other parties and that he did not retain an agent for these tasks. He explained that it is convenient for him to stop in Vancouver on his way from his home on the North Shore to his office in Surrey and that he will bill for this time and his parking. Neither Mr. Slater nor Mr. Brar testified as to any cost savings their personal filing of documents afforded the Client. In my

experience, the fees an agent charges to file court documents are less than Mr. Slater's hourly rates and I find it would have been more cost-effective for the Law Firm to retain an agent to perform these tasks and the Bill should be reduced to eliminate these charges.

- [59] There are entries on the Bill of both Mr. Brar and Mr. Slater, or both Mr. Slater and Mr. Stuart, recording time for the meeting to discuss strategy and the preparation for EFDs, which I do not find to be an improper duplication or excessive time. However, I find that it was improper duplication for both Mr. Brar and Mr. Slater to bill for the time they attended each of the EFDs. On October 12, 2018, the total time recorded for both is 14 hours (7 hours each); on October 22, 2018, the total time recorded for both is 14.3 hours; and on November 23, 2018, the total time recorded for both is 8.50 hours. In my view, the Bill should be reduced to eliminate these duplicate charges.
- [60] When cross-examining the Client, Mr. Slater put to him that the reduction in the Law Firm's fees of \$5,700 eliminated almost all of the time billed by Mr. Brar, which amounted to \$5,767.50, addressing the duplicate charges. However, when speaking to the Lawyer's Affidavit, Mr. Slater did not testify that the reduction in the Law Firm's fees was to eliminate Mr. Brar's time.
- [61] Given the specific amount of the reduction, \$5,700, which is equivalent to the reduction in Mr. Dhillon's commission, as well as the notation on the Bill ("Discount applied - Realtor's"), I find that it is more likely than not that this discount was to "match" the reduction in Mr. Dhillon's commission, and was not done to eliminate the duplicate billing of Mr. Brar's time.
- (f) Whether the Hourly Rate was Reasonable
- [62] The Client did not object to the hourly rates charged by Mr. Slater or Mr. Brar, and I have addressed his submission that Mr. Stuart was a "volunteer student".
- [63] Mr. Slater was called to the bar of Saskatchewan in 2001 and to the bar of B.C. in 2006 and charged an hourly rate of \$295. Mr. Stuart, who was a one-year call at the time he worked at the Law Firm, billed at \$220 per hour. Mr. Brar's hourly rate as a paralegal was \$90. I find these rates to be reasonable in the circumstances.
- (g) The Importance of the Matter to the Client
- [64] The Client maintained that if Mr. Slater had told him that his case was bound to fail, he never would have pursued it, and that he would not have continued the litigation if he had known it was going to cost him approximately \$40,000 in legal fees. However, the Client admitted that he instructed the Law Firm to defend the 105 Claim and to pursue the Dhillon Claim as reflected in the Retainer and he admitted that he was in regular contact with Mr. Brar about his case and the progress of it. I find it was clearly important to the Client to try to get out of the PS Agreement and obtain a higher price for the purchase of his property, but that this likely coloured his appreciation of the merits of his claim.

(h) The Result Obtained

- [65] In the Written Objections, the Client submits that "the Solicitors did not obtain anything more than a neutral result at best. Furthermore, while the Client's matter was eventually settled, the Solicitors failed to implement the Client's settlement instructions in a timely way and within the time specifically advised by the Client, necessitating the Client having to renew his mortgage and eventually requiring him to incur a prepayment penalty in order to obtain a discharge of that mortgage at the time of its pay-out."
- [66] As I noted above, Mr. Slater asserted that because the parties agreed they would not seek their costs under the 105 Settlement and the Dhillon Settlement, the Client achieved some success. Mr. Slater's written submissions with respect to the factor of the result obtained were (again, improperly) set out in the Lawyer's Affidavit as follows:
- [25] Lastly, and as far as the nature of "results achieved" is concerned, it is our position that the value of the work done on this file cannot and should not correspond solely to the success of the outcome, the final dollar amount in other words, of this particular claim. In the end (and in the beginning), [the Client] sought our legal assistance and representation based on both limited information as well as his own view of certain events that transpired - however, the ability to discern and establish proper and necessary fact evidence can only be exercised through the due diligence of legal counsel in the systematic, progressive and necessary collection of records and information including the admissions and testimony of various parties, witnesses and third parties as required. I submit that this office has done the [sic] all the necessary work in the conduct of this file given both the facts and circumstances of this case as well as the instructions of the client and advisement to same, and that the services we have provided for which we have charged are both fair, necessary and reasonable.
- [67] As I noted above, in my view, this was a money claim at its heart. The results obtained by the Law Firm for the Client were not the same as if he had never retained the Law Firm, but were, in fact, worse because although Mr. Dhillon agreed to reduce his commission by \$5,700, the Client paid \$38,459.56 in legal fees and disbursements from the proceeds of the sale. I consider this to be a contributing factor justifying a reduction in the legal fees.

The Estimate

- [68] In the Written Objections, the Client submits that he was provided "an estimate by the Solicitors that the cost to conduct the matter would be \$12,500." The Law Firm denies that this ever happened.
- [69] The Client submits that Mr. Brar, representing the Law Firm, advised him that the legal fees he would pay would be \$12,500.00. The Client testified that in January 2019, when he knew the 105 Claim was settling and he was looking for a new place to live, he met with Mr. Brar and Mr. Bhattia, a realtor. At that meeting, the Client said that he asked Mr. Brar how much money he would have after the sale of his house, including how much he would owe the Law Firm, and that Mr. Brar wrote on a piece of paper that he owed \$12,500 in legal fees. The Bill reflects that on January 22, 2019, Mr. Brar recorded 0.40 hours for, "meeting with client and

realtor for buying another residential property. Provided previous sale contract and completion dates."

- [70] Mr. Brar flatly denied that he ever told the Client that the Law Firm's fees amounted to \$12,500 and challenged the Client to produce the piece of paper on which this was written. The Client accused Mr. Brar of lying and only saying what Mr. Slater wanted him to say. Mr. Slater testified that he never spoke with the Client about legal fees, other than when they met to execute the Retainer, and had no idea where the amount of \$12,500 came from (he also attested to this in the Lawyer's Affidavit, para. 24).
- [71] I find that the testimony of both Mr. Brar and the Client regarding the January 2019 meeting lacked credibility. There was no evidence before me that as at January 2019, its fees amounted to \$12,500. The Client maintained that Mr. Bhattia confirmed that Mr. Brar said the fees would be \$12,500, but admitted that Mr. Bhattia refused to swear an affidavit or testify at the LPA hearing because it was in "a conflict of interest" (Mr. Bhattia apparently works on referral from the Law Firm when they have clients seeking a realtor).
- [72] I find that in the circumstances of this case, based on the evidence before me, the Law Firm did not provide the Client with what could be considered a binding fee estimate of \$12,500, as that has been determined in the case authorities.

Disposition

- [73] Although I have rejected the Client's assertion that he was told the Law Firm's fees would not exceed \$12,500, in my view, the circumstances of this case require a reduction in the legal fees.
- [74] This case was always about money - the parties do not dispute that - and while Mr. Slater submits that the Client received a good result because he did not have to pay the other parties' legal costs, the fact remains that the Client was out of pocket when the legal fees are factored in. It would obviously have provided the Client with a reality check if the Law Firm had advised him regularly and in writing of the legal fees he was incurring.
- [75] Further, I find that the Law Firm billed the Client for purely administrative tasks or for tasks that it would have been more economical to pay an agent to do and, as noted above, that the reduction on the Bill of \$5,700.00 was not made to eliminate the duplicative time of Mr. Brar, but to reflect the same reduction as in Mr. Dhillon's commission.
- [76] I find that in the circumstances of this case, a fair fee is \$30,000, inclusive of applicable taxes and disbursements. The Law Firm is directed to reimburse the Client the \$8,459.56 by which I have reduced their fees, together with applicable interest.
- [77] As the Bill has been reduced by more than 1/6th (which I calculate to be \$6,409.93), the Client is entitled to the costs of the review hearing under s. 72(1)(a) of the LPA.

- [78] Costs in LPA review hearings are normally awarded on a party and party basis, and can include units under Items 1, 2, 24, 25 and 41 of the Tariff. In these circumstances, where the Client represents himself, but had retained counsel to prepare the Written Objections, I find it appropriate to summarily determine the appropriate costs to avoid the parties returning for a further assessment of costs. I award the Client a total of 19 units (for Items 24, 25 and 41) at \$110 per unit, for a total of \$2,090. With applicable taxes (GST and PST), I determine the total costs payable by the Law Firm to the Client for the LPA hearing are \$2,340.80.
- [79] I direct the Law Firm to prepare a Form 65 Certificate of Fees reflecting the above and submit it to the registry for my signature.

"Registrar Gaily"

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