

CANADA / JUDGMENT

Watson v. O'Young

2000 BCSC 1450

COURT

Supreme Court of British Columbia

DECIDED

2 October 2000

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2000 BCSC 1450

Citation: Watson v. O'Young **Date:**

20001002

2000 BCSC 1450 Docket:

L001063

Registry: Vancouver**IN THE SUPREME COURT OF BRITISH COLUMBIA****BETWEEN:**ELIZABETH E. WATSON
SOLICITOR**AND:**SIMON CHAO-NIEN O'YOUNG
CLIENT
AND
Docket: L001059
Registry: Vancouver**BETWEEN:**ELIZABETH E. WATSON
SOLICITOR**AND:**SIMON CHAO-NIEN O'YOUNG
CLIENT**REASONS FOR DECISION****OF****MASTER DONALDSON****(AS REGISTRAR)****Counsel appearing on her own behalf:** Elizabeth E. Watson**Appearing on his own behalf:** Simon Chao-Nien O'Young

Dates and Place of Hearing: May 6, August 15, and
August 18, 2000

Vancouver, BC

- [1] This hearing involved two applications set for review of legal accounts; the first was filed by the solicitor on the 18th of April under file L001059 that to assess the account dated the 7th of March 2000; and the second being filed by the client the same day under file L001063 seeking an assessment of the accounts of the 29th of March 1999, the 7th of March 2000, the 15th of March 2000, and a review of the retainer agreement.
- [2] The matter was heard over three days the 6th of May, the 15th of August and the 18th of August, 2000. In addition, there was a short hearing before Master Doolan on the 25th of April 2000.
- [3] I will give a brief review of all the accounts which have been referred to in relation to the two taxations.

ACCOUNT - 29TH March, 1999

- [4] This covers the period December 1998 through March 1999. It includes receiving instructions, numerous telephone conversations from Mr. O'Young's spouse, an attendance in court stated as being three hours on the 15th of March 1999, a lengthy conference with both the client and his spouse, and it includes the retainer agreement dated the 7th of December 1998. Legal charges were \$4,824 and the total account with taxes and disbursements was \$5,812.45. \$5,336.48 was paid from trust and there remained, therefore, a balance owing of \$475.97.
- [5] It is my understanding that following the meeting which took place on or about the 15th of March 1999, Ms. Watson reasonably concluded that matters had been resolved and, in essence, the 29th of March 1999 account is a final account.
- [6] Nothing further was heard on the matter until it was re-activated by Mr. O'Young by his telephone call to Ms. Watson the 12th of November 1999.

ACCOUNT 16TH of DECEMBER, 1999

- [7] This covers the period the 12th of November through the 15th of November 1999. It involves discussions with Mr. Katz, now counsel for Mrs. O'Young, efforts made to arrange discovery and a spring trial, a review of documents, preparation of a property and financial statement, and preparation of a list of documents. Steps were also taken to obtain a trial date. Legal fees charged were \$3,620, and the total including taxes and disbursements is \$4,146.60.

ACCOUNT MARCH 7TH, 2000

- [8] This covers the period the 6th of December to the 6th of March. It includes several efforts to obtain documents, discussions with Mr. Katz as to the setting of discovery dates, receipt of documents on the 25th of February 2000, several days of preparation for discovery of Mr. O'Young's spouse, and her discovery which took place in early March. This account totals \$8587 in legal fees, and totals \$9,857.66, including disbursements and taxes.

ACCOUNT 15TH of MARCH, 2000

- [9] This includes drafting and/or discussing an offer to settle and the legal fees involved are \$475. The total, including an estimate for court reporter fees of \$250, is \$909.69.
- [10] There are a number of issues between the parties, including time spent on issues of credibility, at least one of which involve Ms. Watson taking positions which turned out to be incorrect upon her reflecting and/or reviewing documentation. The relevant issues include whether or not there were two retainers, whether or not a quote had been given by Ms. Watson of \$8,000 from time required in organizing documents and dealing with matters through to the end of discoveries, whether or not time was wasted or ineffectually spent in obtaining documents, whether or not Ms. Watson was appropriately prepared for discovery, and whether or not the discovery undertaken by her was inadequate, whether or not Ms. Watson failed to properly set the matter for trial, and whether the time spent was disproportionate to the result obtained, and whether or not the time spent was appropriate, having regard to the high degree of involvement Mr. O'Young required of Ms. Watson at all steps.
- [11] Ms. Watson accomplished preparing property and financial statements, obviously with the active assistance of Mr. O'Young, she prepared a list of documents and she set a trial date which was all but lost by reason of failure to provide proper confirming documentation. Additionally she spent significant time attempting to obtain documents from Mrs. O'Young, largely without success, and when the documents finally were obtained, they were obtained so closely to the discovery which had been set that there then became a significant rush to prepare for the discovery and, indeed, further documents which Mr. O'Young thought would be necessary were not obtained.
- [12] I am satisfied that Mr. O'Young was a very involved client and it is appropriate for him to be referred to by Ms. Watson as a "difficult" client. There is dispute as to why an application for maintenance was not brought on his behalf. Ms. Watson's explanation that Mr. O'Young did not want a court application is not supportable.
- [13] The efforts undertaken by Ms. Watson in obtaining suitable discovery dates and obtaining list and production of documents from Mrs. O'Young sufficiently in advance of those discovery dates, for the discoveries to be properly effective, were not satisfactory. Although demand for production was made, efforts to obtain documents were inadequate and no motion was brought to compel delivery. Considering the delay which was occasioned in

obtaining production and lists of documents, notwithstanding the time that Mr. Katz was to be away on holiday and the time that Mrs. O'Young was spending in Hong Kong, I am satisfied that the steps taken by Ms. Watson were not adequate in the circumstances.

- [14] I am satisfied that Mr. O'Young's recollection of the events that took place in mid-November of 1999, having regard to an estimate of fees to take matters through to the end of discovery at a cost of approximately \$8,000 is accurate. That, however, is not in and of itself determinate of the issue of what is an appropriate fee. I am satisfied that a quote or estimate was given and, so considering that fact and having regard to what was accomplished by the lawyer and to the results obtained, I am satisfied that the total for fees, disbursements and taxes should be fixed at \$10,500. I note that the 15th of March 2000 account estimates \$250 for court reporter expenses. If the court reporter expense exceeds \$250 the amount allowed of \$10,500 should be increased by the equivalent amount. If the court reporter expenses are less than \$250 the total should be appropriately reduced.
- [15] There is frequently misunderstanding as between lawyers and their clients as to what a quote or estimate involves. Quite frequently lawyers conclude that the amount discussed is to cover legal fees only and not taxes and disbursements. It is certainly even more understandable for a client to assume that when a figure is discussed that will be the figure the client is required to pay rather than merely the legal fee portion of that amount. In this instance, the total of the bills presented, inclusive of fees, disbursements and taxes, is \$14,913.95; the amount of the fees charged is \$9,682.
- [16] As the accounts have been reduced by more than one-sixth, Mr. O'Young will be entitled to his costs. I fix those costs at \$1,000, plus disbursements of \$52.

"Master Donaldson"

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Prepared on 27 October 2026 · Esheria