

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Ezurike v. Blackburn English, 2008 NSSC 133

Date: 20080401
Docket: S.H. 289774
Registry: Halifax

Between:

Levi Chucks Ezurike

Appellant

and

Blackburn English

Respondent

Judge: Justice Allan P. Boudreau

Heard: April 1, 2008, in Halifax, Nova Scotia

Written Decision: May 5, 2008

Counsel: Levi Chucks Ezurike, personally for the Appellant
Joseph M. J. Cooper, for the Respondent

By the Court:

[1] This is an appeal by Mr. Ezurike of the decision of the Small Claims Court Adjudicator taxing the account of Blackburn English which resulted in the adjudicated decision of November 20, 2007. That is the decision and order which Mr. Ezurike now appeals. The primary ground of appeal is that the adjudicator made significant errors of fact which, if that happens, can be cited as errors of law. In this case there is no indication that the Adjudicator exceeded his jurisdiction or that there was any form of denial of natural justice; that the parties were not able to present fully their case.

[2] The argument is that the Adjudicator came to wrong conclusions of fact based on the evidence presented before him. I have looked over the record and the Adjudicator's decision, the factum of Mr. Ezurike and that of Blackburn English. In my view, it is clear from the Adjudicator's reading that he considered the accounts very carefully; that he looked at Mr. Cooper's records, and he said,

I am satisfied that Mr. Cooper kept good records and his bill is accurately calculated on the basis of the time spent. I am further satisfied that Mr. Cooper's accounts and financial records are well kept and accurate. I am satisfied that the issues presented in the litigation were complex..."

and he cites some of the issues. He then reviewed the applicable law on a taxation of costs, which is Rule 63.16, and he goes on to cite how the separation and divorce were bitterly contested. He then commented that there were not a lot of assets to fight over. Nevertheless, they were being fought over and fought over, as he said, “bitterly”.

[3] We reviewed the total bills of Mr. Cooper on this hearing, and I have found that the work that was done was reasonable and we then made the calculations.

[4] I can find no error of law in the Adjudicator’s findings of fact relative to the evidence presented. He carefully considered all of the relevant criteria, the taxing of the solicitor’s account and he did grant Mr. Ezurike one concession; he reduced Mr. Cooper’s hourly rate from \$250.00 to \$175.00. There are many lawyers in this city who charge \$250.00 and more on an hourly basis. Nevertheless, the Adjudicator did reduce that on the basis of his assessment.

[5] The Adjudicator, as I said, looked at the reasonableness of the services provided and, based on what I can see on the record and from what I have heard today, it is apparent to me that Mr. Ezurike got effective and competent legal

representation by Blackburn English and in particular Mr. Cooper. It may be that Mr. Ezurike believes the claims made by his wife were not well founded, but nevertheless, they had to be defended. It looks like Mr. Cooper defended him quite capably. Mr. Ezurike takes issues with the fact that under the division of matrimonial property, he kept the matrimonial home and had to pay some sort of an equalization payment. There were serious arguments about what comprised the matrimonial home in view of the fire and then monies raised in the community. All those issues had to be dealt with and had to be faced and in fact they had to be litigated.

[6] Therefore, I find no reason whatsoever to overturn the Adjudicator's findings of fact on the legal representation and the amount of the bill presented and the number of hours worked. However, as we have all come to realize, the Adjudicator made some mathematical errors in his calculations after having made his findings of fact; 121.8 hours at \$175.00 is \$21,315.00 which is just about what the Adjudicator had. Plus \$150.00 for the other solicitor for a total of \$21,465.00. There is no error in the finding of the Adjudicator allowing \$468.67 in disbursements. So the total bill will be \$21,933.67. The Adjudicator did make an error in his calculation of HST because he did not calculate it on the bill, but on the

bill after payment on the account by Mr. Ezurike, which is an error. HST on the amount that I just mentioned, \$21,933.67 at 14%, should be \$3,070.71 for a total bill owing by Mr. Ezurike of \$25,004.38.

[7] The Adjudicator did make an error in saying that Mr. Ezurike had only paid \$8,300.00. In fact, the accounting presented and attached as part of the record is that Mr. Ezurike paid \$11,000.55 on the account, which is as Mr. Ezurike was saying. There was an error there and it is an error of \$2,700.00. Therefore, Mr. Ezurike owes Blackburn English \$14,003.83. I am correcting the mathematical calculations and except for amending the order of the Adjudicator to that extent, the other grounds of the appeal are being dismissed.

[8] So an order will be issued requiring Mr. Ezurike to pay \$14,003.83 to Blackburn English.

[9] On the question of costs, since there were variations, and since costs are very minimal in any event in the Small Claims Court, I am not awarding any costs on this matter.

J.