Claim no. 293725

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Singleton & Associates v. Godard, 2008 NSSM 34

BETWEEN:

SINGLETON & ASSOCIATES

Claimant

- and -

LISA MARIE GODARD

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 20, 2008

Decision rendered on May 26, 2008, amended to correct clerical error June 9, 2008

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant is the law practice of Thomas Singleton, a practising lawyer in Halifax, who is suing for the $1,746.18 balance claimed to be owing on an account for legal services.

[2] The Defendant contests the amount owing principally on the basis that she asked on several occasions for the Defendant to issue an account, so she could know where she stood and whether she could continue to afford his services. She says that her requests were ignored and that by the time the account was issued, it was higher than she had expected.

[3] Although the matter was commenced as a Claim, it is appropriate that I treat it as a taxation and determine the reasonableness of the account, in light of all of the surrounding circumstances.

Factual background

[4] The solicitor client matter involved matrimonial issues. The Defendant was at a critical and painful stage in her separation. There were looming issues of exclusive possession of the matrimonial home and child custody and access. There were incidents of violence and alcohol abuse that made the situation incendiary.

[5] Not having any existing relationship with a lawyer, the Defendant appealed to the Employment Assistance Program through her employment and was referred to the Claimant for legal advice and representation. The first

contact was by telephone, and a meeting was arranged for August 1, 2007.

[6] At that meeting, after hearing what was required, the Claimant provided the Defendant with a written fee quotation, which estimated fees, disbursements and HST totalling $2,000.00 for an application for interim exclusive possession of the matrimonial home, child support and primary care of the child. The quote went on to say that the *"total legal fees could increase if more than one hearing is involved, or if other unforeseen circumstances arise."*

[7] On that basis the Claimant was retained. Within a few days a $2,000.00 retainer was provided by the Defendant.

[8] Over the next number of weeks the Defendant provided the Claimant with documents and information to be used in connection with the proposed application. The Claimant and his assistant prepared the necessary documents for the court. A hearing date was arranged for the 30th of August 2007 before Associate Chief Justice Ferguson of the Supreme Court of Nova Scotia (Family Division). The Defendant was served with the documents. The Claimant and Defendant headed to court without any knowledge of whether the Defendant's husband would show up and/or whether he would be legally represented.

[9] At the actual hearing the husband showed up but was unrepresented. As sometimes happens in such cases, in order to compensate for the fact that one party is unrepresented, the presiding judge took on a more inquisitorial style and, indeed, he apparently conducted what amounted to a cross-

examination of the Defendant. In the course of his questioning he obtained an admission by the Defendant to the effect that her husband's problem behaviour only manifested when he was drinking, and the judge accordingly refused to grant interim exclusive possession to the Defendant, although he did place restrictions on the Defendant drinking while in the home, or within five hours of entering the home.

[10] I think it is fair to say that this was not the result that either the Defendant nor her lawyer wanted. The Claimant blamed the Defendant for not being more careful in her answers to the judge. The Defendant blamed the Claimant for not forewarning her that she might be cross-examined, and for not preparing her for it.

[11] Following the hearing, as is customary, the Claimant was asked to draft up the order and send it for signature. In this particular case, although the order was drafted and sent, it did not get signed by the judge until approximately three weeks later. The Claimant explained that this was apparently because of the judge's illness, and that there was nothing more that he could have done to expedite the paperwork.

[12] By then a further hearing was contemplated. The judge had adjourned the matter to October 1 when further representations could be made and a further or different order might result. This is significant here because the Defendant was aware that the original fee estimate was for one hearing only.

[13] Sadly, the order of Justice Ferguson did not have the hoped-for effect and an incident occurred on September 16, 2007, which resulted in the

Defendant leaving the matrimonial home with her child and seeking refuge with a friend. One of the problems she faced was that there was still no written order from the hearing in Family Division, and without that the RCMP had little assistance to offer.

[14] The Defendant left the home, then on her own pursued an Emergency Protection Order under the provisions of the *Domestic Violence Intervention Act.* This resulted in the Defendant's husband being temporarily ousted from the home and the Defendant and her child reinstated. The Justice of the Peace who issued the Emergency Protection Order set it to expire on the 1st of October - the day of the next hearing in Family Division.

[15] The Claimant was unaware of all of these fast-moving developments, as he was not reachable until later on the day after all of this had happened.

[16] It was on that day, September 17, 2007, that the Claimant returned the Defendant's phone call and had a conversation with her that is central to the Defendant's position. The Defendant was still at her friend Dawn Bell's home and took the Claimant's call on her cell phone. The Defendant testified that during that conversation, she asked the Claimant for a statement of where she stood with respect to legal fees, because if they were too high she was not sure she would be able to afford his continued representation. She testified that she added the words, "unless you are willing to do this *pro bono*."

[17] The Claimant testified that he did not hear the Defendant make such a request. He was particularly definite that he never undertook to work *pro bono* on the Defendant's file.

[18] The Defendant called her friend Dawn Bell to testify. It was at this woman's home that the conversation took place. She testified that she was actually trying not to overhear the conversation, but she nonetheless heard snippets of the Defendant's side of the conversation. She testified that she heard the words "*pro bono"* used. She testified also that she spoke to the Defendant after the conversation and the Defendant told her what she and the Claimant had talked about. This is of very limited assistance because it is essentially hearsay, and reflects only what the Defendant recalled of the conversation, without a complete context.

[19] I believe on all of the evidence that this September 17 call was probably a very fraught conversation, on both sides. The Defendant had within the past day been through some very trying events. The Claimant was being told of all these events and would have been trying to absorb it all. He almost certainly would have been doing a mental calculus of all of the implications including what needed to happen next.

[20] Did the Defendant raise the issue of legal fees? Most probably. Did she use the term "*pro bono*?" Perhaps. Was this within a much larger context of a conversation dealing with many pertinent matters. Obviously. Did the Claimant understand that anything he did from that point forward might be at no charge to the Defendant, unless her bill had not passed some unspecified dollar threshold? Almost certainly not. It would take a very strong statement, clearly spoken and understood, to displace the

presumption that a professional person already fully engaged in a matter is entitled to be paid for his services.

[21] The Defendant stated that she continued to ask for a statement of account, not necessarily a formal one, so she could decide on representation. The Claimant recollects that there was a request for an account which came within days of the October 1 hearing date, and that he explained that he was too busy to prepare a formal account at that stage. In a letter dated September 26, 2007 he estimated that there were perhaps two or three hours of work to be done to get her through the October 1 hearing.

[22] It is obvious to me that the solicitor client relationship was breaking down by this point. The Defendant did not appear to have full confidence in the Claimant, and there were several things that the Defendant was doing that rubbed the Claimant the wrong way. These included:

A. The Defendant's two brothers were in communication with the Claimant, and he felt uncomfortable dealing with them in highly confidential matters. The Defendant for her part believed she had made it clear that her brothers had her full authority.

B. The Defendant took it upon herself to issue subpoenas for several witnesses, including someone from the Department of Children and Family Services. This prompted an unwelcome and time-consuming objection from the Justice Department which was opposing the subpoena. The Claimant was upset because he believed it should have been clear to the Defendant that he, and not she, was responsible for all matters involving the court and outside parties.

The Defendant insisted that she had never been so informed and did not think there was anything wrong with what she had done.

C. The Claimant had written to the Defendant about a week prior to the October 1 hearing date, to the effect that he did not think he could continue to act for her, and asking to be relieved. The Defendant took exception to the ethics of possibly being dropped at short notice, although it is not lost on me that there is a contradiction of sorts between her belief that the Claimant had a continuing duty to represent her, and her unwillingness to pay for services beyond the point where she believed she was entitled to an accounting.

[23] I do not intend to lose sight of the fact that this must have been an exceptionally difficult time in the Defendant's life. Marital conflict is difficult enough, but coupled with financial worries it is all the more difficult. At such times it is some help to have a smooth lawyer-client relationship. This was not something that the Defendant had in this case.

[24] I do not blame either party for the poor lawyer-client relationship that developed. Sometimes it is just the events that interfere, while other times it can be personality conflicts. I believe that these were both factors here.

[25] What clearly was not a factor, and I emphasize this point, was the quality of the work done or the competency of the Claimant. I have had the occasion to review the entire file and find that everything done was of a high, professional calibre. I accept that toward the end the Claimant was probably not communicating well and as a result the Defendant came to believe that he was not doing everything that he could to secure the order

arising out of the October 1 hearing, but the objective fact is that he was totally diligent in all respects. Whatever misunderstandings there may have been, her rights were never jeopardized by the Claimant.

[26] The Defendant must understand that when she placed her legal problem in the hands of the Claimant, she placed a responsibility on him to do what was reasonably necessary to protect her interests. And she assumed a responsibility to pay a reasonable amount for his services. It places a lawyer in a very difficult situation to be entrusted with a difficult, challenging case, with the pressure to see it through to completion, while at the same time having to take full cognizance of the client's limited ability to pay. I believe that what the Claimant did in this case was the appropriate response. When he totalled up his actual hours docketed, they came to 24.2, yet he only charged for 16.0.

[27] No matter how one looks at it, the Defendant received a fair deal. Admittedly the Claimant's hours included an initial meeting of .8 hours that he had promised would not be charged, but even so he wrote off another 7.4 hours of his time, without any obligation on his part to do so.

[28] On the 26th of September the Claimant had estimated another two to three hours would be necessary, and the Defendant conceded at the trial that she would owe for this additional time. If one looks at the hours that were docketed before September 26, they total 15.1. Take away the .8 initial meeting and the hours equal 14.3. Although another 9.1 hours were docketed after September 26, 2007, the amount actually billed still was only 16.0. By so reducing his account, I believe the Claimant was being fair and taking account of the financial difficulty that the Defendant was in.

[29] I cannot find on the evidence that the Defendant was overcharged in any sense of the word. There is no basis in fact or law to reduce the account any further.

[30] In the result, the Claimant will have a judgment for $1,746.18.

Prejudgment interest and costs

[31] The Claimant asks for prejudgment interest and costs.

[32] The account on its face purports to entitle the Claimant to interest at the rate of 24% per annum. However, there is nothing in the August 1 letter outlining fees that would have alerted the Defendant to the fact that interest at that rate would be charged. Merely putting such a notice on a first account, at a time when the bill was already controversial, would not lay a foundation for a high rate of interest. I would allow interest only at the rate of 4% pursuant to the *Small Claims Court Act.*

[33] The Defendant received the account on about October 4, 2007. By my calculations that would amount to 7 months and 16 days to the date of this judgment, or 265 days. Interest at 4% for that period of time adds up to $50.71.

[34] The Claimant is entitled to his filing fee of $85.44 and account from process server of $68.37.

[35] In the result the Claimant is entitled to judgment for:

Claim	$1,746.18
Interest	$50.71
Costs	$153.81
Total	$1,950.70

Eric K. Slone, Adjudicator