

Claim No: 442003

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Burchell MacDougall v. Coffey, 2015 NSSM 58

BETWEEN:

BURCHELL MacDOUGALL

Claimant

- and -

DENNIS JOHN COFFEY

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 21, 2015

Decision rendered on September 22, 2015

**APPEARANCES**

For the Claimant

Michael Maddalena

For the Defendant

Self-represented

**BY THE COURT:**

[1] The Claimant law firm sues to recover \$713.00 for legal services rendered to the Defendant over the space of about three months from November 2010 to January 2011. The actual account for these services is dated March 3, 2011, and includes HST.

[2] The work involved preparing an Agreement of Purchase and Sale, and related activities, in connection with the Defendant's proposed purchase of a business.

[3] The Defendant takes issue on several grounds:

- a. He says that the deal was always contingent on financing, and that financing never came through.
- b. He says legal fees were never discussed.
- c. He says he never got the bill, but only later reminder notices.
- d. He says he should not have been personally liable for the bill, as he had instructed the proposed purchaser to be his company Denic Holdings Inc.
- e. He is concerned about why this case is being brought more than four years after the bill was rendered.

[4] The evidence was clear that Mr. Coffey personally asked that a draft agreement be prepared, and that there was no mention of his company's possible involvement until much later. The fact that the transaction was conditional on financing is irrelevant, as the documentation still had to be prepared in order for the transaction to occur, even conditionally.

[5] There is no doubt in my mind that the work was done in good faith, and at reasonable rates considering the experience of the lawyer (Mr. Maddalena) doing the work. The Claimant was entitled to charge the party that originally commissioned the work, namely Mr. Coffey personally.

[6] I can accept that there may have been no discussion about legal fees, but in such situations the implied understanding is that reasonable rates may be charged. Anyone retaining a lawyer would expect that the work will be charged for, unless there is a clear understanding otherwise.

[7] Even if the Defendant never received the actual bill, that does not affect his liability to pay for the work. It might affect the Claimant's right to charge interest, but no interest is claimed here.

[8] This brings us to the issue of delay. There was no explanation for why it took the Claimant approximately four and a half years to bring the claim.

[9] I raised at the hearing a possible concern about the application of the *Limitation of Actions Act*. Under the law that existed before the major revisions in 2015, the limitation period for actions based on contract was six years. Under the new Act, that limitation is now two years. That represented a major change in the law, and it is not surprising that there would be transitional provisions to make sure that people with existing potential causes of action were not unduly prejudiced by the sudden shortening of the limitation.

[10] The transitional provisions found in section 23 of the new Act provides as follows:

- 23 (1) In this Section,
- (a) "effective date" means the day on which this Act comes into force;
  - (b) "former limitation period" means, in respect of a claim, the limitation period that applied to the claim before the effective date.
- (2) This Section applies to claims that are based on acts or omissions that took place before the effective date and in respect of which no proceeding has been commenced before the effective date.
- (3) Where a claim was discovered before the effective date, the claim may not be brought after the earlier of
- (a) two years from the effective date; and
  - (b) the day on which the former limitation period expired or would have expired.

[11] What this means is that the claim here would become statute barred on the earlier of two dates, namely six years from March 3, 2011 or two years from September 1, 2015 when the new Act came into force. The earlier of those two dates is March 3, 2017.

[12] This Claim was commenced in July 2015, which is well within the applicable limitation period. As such, it is not time barred.

[13] The Claimant is entitled to judgment for \$713.00 plus costs of \$185.95, for a total of \$898.95.

**Eric K. Slone, Adjudicator**