Claim No: 424713

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Saltzman v. Low, 2014 NSSM 27

BETWEEN:

JAMES SALTZMAN

Claimant

- and -

PAUL LOW

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 22, 2014

Decision rendered on April 23, 2014

APPEARANCES

For the Claimant	self-represented
For the Defendant	Tim Stephenson (family friend)

BY THE COURT:

[1] This is a matter between family members. The amount of money involved is small, but it has sadly damaged the relationship between the Claimant, on the one hand, and his sister and her son and boyfriend, on the other hand. Hopefully, they can get over this with lessons learned.

[2] The Defendant is the boyfriend of Terralyn Stephenson, the sister of the Claimant. Her son, Tim Stephenson, acted as the advocate at the hearing for the Defendant who, it appears, is a man of very few words.

[3] The Defendant had a slip and fall accident in October of 2013. He suffered an injury and lost some time at work. It was suggested to the Defendant by the Claimant that he pursue an insurance claim against the owner of the building, Killam Properties. The Defendant was reluctant to do so, because he did not feel capable of doing this himself, and also because he was reluctant to get involved with hiring a lawyer and incurring that expense.

[4] The Claimant suggested that he could act as the Defendant's representative and look after processing the claim. The Defendant agreed. He had nothing to lose. It was understood from the outset that the Claimant would be paid for his efforts, but no amount or percentage was agreed to.

[5] Over the course of a few months, the Claimant assisted the Defendant with the claim. He took photographs of the accident scene, handled all communications with the insurance company, and did some negotiation.

Eventually, the insurance company offered to settle for $7,600.00 which was an amount acceptable to the Defendant.

[6] The Claimant looked after getting the Defendant to sign the release that the insurer required. He also took the opportunity to try and solidify his own share by altering one copy of the release to show a 10% share payable to himself. While he was having the Defendant sign the original copy for the insurer, he put the altered version in front of the Defendant and asked him to initial the part that showed 10% payable to him. The Defendant initialled it. He now says that he did not read it, and that he thought the Claimant was just joking. He denies that he is responsible to pay the 10%.

[7] The Defendant later gave the Claimant $300.00 in cash and said that this was all he was prepared to pay. This claim seeks $460.00 plus costs.

[8] The Claimant's sister and her son support the Defendant in his refusal to pay any more. They see the Claimant as trying to take advantage of the Defendant. Relations between the two sides of the family are now estranged.

[9] The issues for the court are:

a. Is the written agreement for 10% enforceable?

b. If not, what is reasonable? Is $300.00 sufficient or should more be paid? Is 10% reasonable?

The written document

[10] The Defendant appears not to have believed by initialling the release document, that he was actually agreeing to pay 10% to the Claimant. There is sufficient doubt in my mind about the level of the Defendant's understanding that I am ruling that this document is not legally binding. The Defendant appears to me to be someone of limited intellectual ability.

What is reasonable?

[11] This leaves us with the question of what is reasonable. The law - in an area known to lawyers and courts as *quantum meruit* - states that when parties agree that services will be provided on a paid basis, if there is no agreement as to the amount, the court will impose an amount that it regards as reasonable.

[12] I am satisfied that the Defendant probably would not have proceeded with the insurance claim, despite his entitlement, without the aid of the Claimant. The Claimant is an outgoing, assertive individual who understood in general terms what needed to be done and was prepared to do it.

[13] It is well known in legal circles that lawyers doing personal injury work are often reluctant to take on slip and fall cases, because they are difficult to prove. Minor cases are problematic because the money involved barely makes it worth the lawyer's while. Had any lawyer taken this on, he or she probably would have charged the Defendant 30% to 35% plus HST, which means that the Defendant would have given up between 35% and 40% in total of whatever he recovered.

[14] This would have been payable even if the lawyer only had to write a couple of letters to get the settlement.

[15] The Claimant appears to have taken on this task with diligence. He was not acting as a lawyer, obviously, but as someone prepared to do all of the organization and communication tasks for the Defendant. He appears to have done them well. In processing a claim such as this, the administration and communication tasks are often the bulk of what needs to be done.

[16] The notion that this work would have been worth only $300.00 is frankly a bit absurd, given the $7,600.00 recovered.

[17] I find that the Claimant's request for 10% was more than reasonable. Indeed, had he never tried to put it in writing and come to court simply asking for a reasonable amount, I might have been inclined to award him more than 10%. But given that all he asked for in his claim was $460.00, this is the amount that I am prepared to award.

[18] Unfortunately for the Claimant, his efforts to collect more than the $300.00 which he already received, were overly aggressive and ultimately destructive to the relationships involved. In his communication with his sister, he appears to have contradicted himself on a few occasions, suggesting at times that he was content with what he had received. Obviously he was not content.

[19] In the end, it is a question of contract between the Defendant and the Claimant. The Defendant (and his supporters) did not appear to appreciate the

full value of the what the Claimant did on his behalf. He must now pay the balance of what is reasonable.

[20] there will be an order for $460.00 plus $96.80 in costs, for a total of $556.80.

Eric K. Slone, Adjudicator