CLAIM NO.183667
DATE:20021230

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Boyne Clarke v. MacLean, 2002 NSSM 6

BETWEEN:

Name	Boyne Clarke	Claimant
Name	Brian MacLean	Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 7, 2007. This decision replaces the previously distributed decision.

D E C I S I O N

Appearances:

Alexander Kooiman, Article Clerk, on behalf of the Claimant law firm;
No one appearing on behalf of the Defendant.

[1] This matter came on before me on December 3, 2002. It is a claim for an outstanding account of a law firm, and accordingly must be taxed.

[2] Mr. Kooiman was not the solicitor who did the work in this matter. The lead solicitor was Mr. Michael LeBlanc, but it appears that at least one if not two or three juniors and article clerks worked on the file.

[3] As appears from the detailed listing of services that appears in the Claimant's account of February 6, 2002, the Defendant first met with a lawyer (who I assume was Mr. LeBlanc) on December 18, 2001. It appears that he was the Defendant in a foreclosure action, and that default had been entered against him. It would appear that the Defendant took the position that he had not been properly served.

[4] Accordingly, the Claimant law firm was retained to make an application to set aside the default judgment.

[5] As appears from the detailed listing, a Notice of Application and Affidavit in support were prepared, and a brief was submitted. The application to set aside the default judgment was heard in Chambers on May 16, 2001. It was dismissed.

[6] An appeal was then launched in the Court of Appeal. The appeal was heard on November 30, 2001. It was dismissed.

[7] By January 30, 2002 the file had accumulated over $17,000 in legal fees in respect of a judgment on a foreclosure matter that appears to have been $15,414.

[8] In my opinion, it is clear that this file was over-lawyered with juniors, and was not properly managed. Setting aside a default is a reasonably simple application. The law is clear, requires little research, and really depends more on the facts necessary to give rise to a defence. In this regard, I note that defences in foreclosure matters are often difficult to establish, given the nature of a foreclosure action. Given that the judgment in issue was in the range of $15,500, it does not strike me that fees in excess of $17,000 would in any case be "reasonable," in the absence of clear evidence that the client had specifically instructed the lawyer to "spare no expense" in setting aside such a judgment. Even then such fees might not be justified given the fact that the law is clear and would ordinarily require little detailed research.

[9] In light of the above it is not surprising, in my view, that Mr. LeBlanc decided to reduce the bill to $3,000: see his letter of January 30, 2002 to the Defendant.

[10] His account of February 6, 2002 (on which this claim is grounded) was for $3,000, plus HST of $450, plus disbursements of $29.77 and HST thereon.

[11] Given the fact that the setting aside of a default judgment is an important matter, and given that it involved both a Chambers application and an appeal to the Court of Appeal, I am prepared to accept that a reasonable fee for such services is $3,000, plus HST of $450.

[12] I am not prepared to find that the disbursements claimed are appropriate in this case, given the absence of any evidence as to when or why those disbursements were incurred.

[13] It also appears that the Defendant client had paid a total of $970 to the Claimant in the period of June 2001 to February 2002. Mr. Kooiman submitted that these payments should not be credited against the current claim, because most of them were made "when the bill was $17,000."

[14] I disagree. An unwilling client is liable to pay only what is "reasonable and lawful:" s. 41, *Barristers' Act,* R.S.N.S. 1989, c. 30 as amended; such a client is not liable to pay whatever the traffic will bear: *Lindsay v. Stewart McKeen Covert* [1988] N.S.J. No. 9 (C.A.).

[15] I have found that the “reasonable” amount of fees for the services rendered in this case is $3,000 plus HST. Accordingly, the $970 already paid is to be taken as a credit against that amount. The fact that the Defendant made those payments earlier, or prior to this assessment, does not prevent a taxation officer from taking them into account: *Lindsay v. Stewart McKeen Covert supra*.

[16] I accordingly find that the Defendant is liable to pay $3,000 minus $970, resulting in a balance of $2,030, plus HST of $304.50, for a total of $2,334.50, plus $75 in Court costs.

DATED at Halifax, Nova Scotia, this)
day of December 2002.)
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ADJUDICATOR
W. Augustus Richardson

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)