

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Green v. John M. Richter Law Corp. & Others*,
2018 BCSC 1449

Date: 20180828
Docket: S183600
Registry: Vancouver

Between:

Chris Green

Plaintiff

And

**John M. Richter Law Corporation, doing business as Richter
Trial Lawyers, Taylor & Blair, and Roger Dawson**

Defendants

Before: Master Vos

Reasons for Judgment

In Chambers

Plaintiff appearing in person:

C. Green

Counsel for the defendant, John M. Richter
Law Corporation, dba Richter Trial Lawyers

A. James, with A. Chekh A/S

Counsel for the defendant, Taylor & Blair:

B. Jacobson

No one appearing for the defendant, Roger
Dawson

Place and Date of Hearing:

Vancouver, B.C.
August 22 and 23, 2018

Place and Date of Ruling:

Vancouver, B.C.
August 28, 2018

[1] The plaintiff, Chris Green, scheduled this hearing to review bills the defendants provided to him. The bills are for legal services in relation to Mr. Green's claims for damages for personal injuries and consequent losses he sustained as a result of a motor vehicle accident that occurred on July 20, 2010.

Background

[2] Mr. Green retained Taylor & Blair on September 16, 2010. They entered into a contingency fee agreement whereby Mr. Green was to pay Taylor & Blair 30% of the first \$100,000 of the total settlement or judgment obtained for his case, 25% of the next \$400,000 and 20% of any amount in excess of \$500,000. In addition, Mr. Green would ultimately be responsible to pay disbursements incurred for the case. Brian Jacobson handled the file on behalf of Taylor & Blair.

[3] Mr. Green's solicitor-client relationship with Taylor & Blair ended as a result of a meeting that took place on May 5, 2014. Mr. Green filed a notice of intention to act in person on May 6, 2014.

[4] Mr. Green then retained Dawson & Associates. Mr. Green's materials include a letter from Dawson & Associates dated May 16, 2014, indicating that they had received his file materials. Dawson & Associates filed a notice of appointment of lawyer on June 10, 2014. Roger Dawson handled the file. He conducted the case pursuant to a contingency fee agreement.

[5] Mr. Green's solicitor-client relationship with Dawson & Associates ended in early 2017. On February 2, 2017, Mr. Green filed a notice of his intention to act in person, in the place of Mr. Dawson.

[6] Mr. Green retained Richter Trial Lawyers on June 23, 2017. They entered into a contingency fee agreement whereby Mr. Green agreed to pay to Richter Trial Lawyers 33 $\frac{1}{3}$ % of the total settlement or judgment obtained for the case. Mr. Green was also responsible for disbursements incurred to advance his claim. Amanda James had day-to-day conduct of the file for Richter Trial Lawyers.

[7] Ms. James sent a letter to Mr. Green dated November 6, 2018, which enclosed a notice of her intention to withdraw as Mr. Green's counsel, pursuant to *Supreme Court Civil Rule (SCCR) 22-6(4)*. Mr. Green did not file an objection to that notice, as he could have done pursuant to *SCCR 22-6(5)*. On November 21, 2017, Ms. James filed a notice of withdrawal of lawyer, indicating that she ceased to be the lawyer acting for Mr. Green.

[8] Mr. Green acted on his own behalf after November 21, 2017.

[9] Mr. Green settled his claim directly with the ICBC representatives for the defendant for \$132,050 plus his party/party costs of the action. On January 3, 2018 he sent an email to Mr. Jacobson to advise him of the settlement.

[10] The three law firms have provided final bills. Taylor & Blair's bill is dated July 11, 2018, charging fees, disbursements and taxes totalling \$23,037.79. Dawson & Associates' bill is dated December 31, 2017, charging fees, disbursements and taxes totalling \$69,790.87. Richter Trial Lawyers' bill is dated November 10, 2017, charging fees, disbursements and taxes totalling \$60,505.04.

[11] Mr. Green advised that he has reached an agreement with Mr. Dawson concerning his claims for fees and disbursements. The terms of the agreement are that Mr. Dawson will recover no fees but Mr. Green is to pay \$5,520.07 to Mr. Dawson for disbursements and taxes on disbursements.

[12] The two remaining law firms concede that the law firms' claims should be limited to sharing the fee that would be payable under the contingency fee agreement Mr. Green entered into with Richter Trial Lawyers (i.e. 33 $\frac{1}{3}$ % of the \$132,050 settlement). That amount is less than the amounts they originally claimed, which were presented on a *quantum meruit* basis. Now that it is known that Mr. Dawson will not recover any fees, counsel for the two claiming firms have agreed if a contingency fee is awarded, 80% of the contingency fee would be paid to Richter Trial Lawyers and the remaining 20% to Taylor & Blair.

[13] The law firms also seek to recover the disbursements they incurred for this litigation. The disbursements and taxes on disbursements claimed by Richter Trial Lawyers total \$10,058.91. The disbursements and taxes on disbursements claimed by Taylor & Blair total \$11,837.79.

Analysis

[14] Mr. Green submits that the two law firms should not recover any legal fees from him. He alleges that both law firms terminated the legal relationship they had with him and argues that neither are entitled to recover fees pursuant to the contingency fee contracts they had with him. He acknowledges his liability for disbursements properly incurred and disputes only one of the disbursements claimed; a cancellation fee paid by Richter Trial Lawyers. The cancellation fee was for an appointment Richter Trial Lawyers arranged with Dr. Axler, a psychiatrist, and is in the amount of \$2,520.

[15] Mr. Jacobson says that it was Mr. Green who ended the solicitor-client relationship he had with Taylor & Blair. Ms. James submits that she was justified to withdraw as counsel for Mr. Green because there was a breakdown in their solicitor-client relationship. Both claim fees pursuant to clauses in the contingency fee agreements they entered into with Mr. Green.

[16] Taylor & Blair acted on behalf of Mr. Green from September 16, 2010 to May 5, 2014, a period of more than 3.5 years. Brian Jacobson acted on behalf of Mr. Green for all of that time.

[17] A lot was done while Mr. Jacobson handled Mr. Green's file. Clinical records and other documents were obtained. Mr. Jacobson drafted, filed and served a notice of civil claim and an amended notice of civil claim. He set the case for trial. He attended with Mr. Green at his examination for discovery.

[18] Mr. Jacobson and Mr. Green participated in a mediation on April 29, 2014. There was a large gap between the last offers presented at the mediation. Mr. Green and Mr. Jacobson met at Mr. Jacobson's office soon after the mediation, on May 5,

2014. At para. 24 of his affidavit sworn July 13, 2018 Mr. Jacobson states that as a result of their discussions during the May 5 meeting, "...Mr. Green decided to seek a new lawyer." Mr. Green filed a notice of intention to act in person the next day.

[19] Mr. Jacobson sent a letter to Mr. Green dated May 7, 2014. It said: "We confirm that at our meeting of May 5, 2014 at our office, you terminated your Retainer Agreement with Taylor & Blair and stated that you wish to seek alternate counsel." Mr. Jacobson indicated that the letter would have been sent by email, and by regular mail, and would have been included in the file materials later provided to Mr. Green. During this hearing, Mr. Green said he did not recall receiving this letter. It could be that he simply had not taken notice of it earlier. Nevertheless, the date he received the letter does not bear on the issue of who terminated the solicitor-client relationship.

[20] Mr. Green acknowledges that he and Mr. Jacobson met on May 5, 2014 and discussed the case during that meeting. In notes Mr. Jacobson prepared soon after the May 5 meeting, he states that he told Mr. Green that he was happy to represent him, but could not operate effectively if Mr. Green did not trust his advice. The notes indicate that matters relating to the conduct of the file were discussed. Mr. Jacobson advised Mr. Green that he was "free to consider seeking alternate counsel" if he did not trust Mr. Jacobson's advice. Mr. Jacobson told Mr. Green that he could sign a notice of intention to act in person to terminate his retainer with Taylor & Blair. Mr. Green decided to do so and filed the notice of intention to act in person at the court registry the next day.

[21] Mr. Jacobson's affidavit and his May 7, 2014 letter to Mr. Green clearly indicate that Mr. Green terminated their solicitor-client relationship. Mr. Green's conduct in filing a notice of intention to act in person on May 6, 2014 supports this view of the events. Indeed, there is no evidence before this court to support a finding that Mr. Jacobson terminated his solicitor-client relationship with Mr. Green.

[22] I find that Mr. Green terminated his solicitor-client relationship with Mr. Jacobson.

[23] The contingency fee agreement Mr. Green entered into with Taylor & Blair on September 16, 2010, included the following clause:

5. If this agreement is terminated by the client for any reason or by the lawyers for cause before the claim is resolved, the client agrees to pay the lawyers a fair fee based on the services provided, time involved, nature of the claim, skill and experience of the lawyers and probable or actual value of the claim.

[24] Mr. Jacobson was called to the British Columbia Bar in 2005 and has worked at Taylor & Blair since May, 2009. During the time he acted for Mr. Green, Mr. Jacobson only handled plaintiff personal injury cases. He did not bill on an hourly fee for services basis. All of the cases he worked on were conducted pursuant to contingency fee contracts.

[25] On the basis of what occurred while Mr. Jacobson handled the file, it is clear that he took steps reasonably intended to advance Mr. Green's interests. Although Mr. Jacobson does not have any time records for the work he did on this file, the \$10,000 fee he has claimed is appropriate. Even if he was assigned an hourly rate of \$200 to \$250 per hour, the fee would be the equivalent of only 40 to 50 hours of work, which very likely is less than the time he productively worked on the file.

[26] The \$10,000 fee claimed by Mr. Jacobson on behalf of Taylor & Blair is a fair fee based on his skill level, the services the firm provided to Mr. Green, and the time the firm would have spent on the case. The fee therefore is within the terms of clause 5 of the contingency fee agreement between Mr. Green and Taylor & Blair.

[27] Mr. Green filed a notice of intention to act in person on May 6, 2014, but then promptly retained another lawyer for his case. A letter from Dawson & Associates dated May 16, 2014, indicates that they had received Mr. Green's file materials. Dawson & Associates assumed conduct of Mr. Green's case soon thereafter.

[28] Mr. Green's solicitor-client relationship with Dawson & Associates continued until early 2017. As mentioned earlier, Mr. Green advised the court that he had reached an agreement with Mr. Dawson whereby his firm would recover no fees for the work he did while he was counsel for Mr. Green.

[29] On February 2, 2017 Mr. Green filed a notice of intention to act in person, indicating that he was acting in the place of Mr. Dawson.

[30] The materials include a copy of the contingency fee agreement Mr. Green entered into with Ms. James, on behalf of Richter Trial Lawyers, on June 23, 2017.

[31] Ms. James sent an email to Mr. Green dated June 23, 2017. It confirmed that Mr. Green had provided instructions to Ms. James to set a trial date, to review medical and clinical records to determine if additional medical reports were needed and to take steps to prepare a settlement offer. Ms. James promptly took steps to set a trial date and worked on potential expert evidence.

[32] It is clear that the solicitor-client relationship between Mr. Green and Ms. James broke down during the course of their dealings. The emails in evidence show that Mr. Green was seriously questioning the propriety of Ms. James' conduct of the case. They had a confrontational meeting on October 26, 2017. Ms. James' affidavit made July 13, 2018 attaches notes she recorded after that meeting. The notes say "...Chris became combative with me through the entire 1 hour meeting"... "Chris accused me of not doing my 'fiduciary duty' and not 'honouring our agreement' and 'not being willing to help him'..." The notes indicate that Mr. Green continued to argue with Ms. James about a transportation cost claim he wanted to advance, despite Ms. James having sent legal research on the topic and further explaining the issue. Ms. James recorded the following in the notes:

At one point in the meeting Chris began to raise his voice at me when I was disagreeing with him. I had to tell him to not raise his voice at me. I became upset and found it difficult to maintain my composure when he became upset and argumentative. After the meeting, I was very concerned about my ability to continue working with him. I was very shaken.

[33] There are other indications of a breakdown in the solicitor-client relationship. Ms. James sent an email to Mr. Green dated November 6, 2017 indicating that she needed to meet with him to discuss the case. In an argumentative and rather confrontational responding email Mr. Green sent on November 8, 2017, he advised Ms. James "...Whatever it is you are currently wanting to speak to me about, I want

to have it communicated in writing...” [Underlining as in the original]. This was a sure sign that the solicitor-client relationship had broken down. Mr. Green then refused to attend at his appointment with Dr. Axler, an expert evaluation Ms. James arranged in order to develop the claim.

[34] During the hearing, Mr. Green tried to characterize his questioning of Ms. James’ conduct of the case, his confrontational emails, and his demand that matters to be discussed be communicated by email as disputes that could be expected between a lawyer and a client. They most certainly were not. They clearly went to the core of the solicitor-client relationship.

[35] A functioning solicitor-client relationship is a cornerstone of our legal system. For a solicitor-client relationship to be productive, it is crucial that the client should be confident that the lawyer is conducting the case in the best interests of the client. In practical terms, lawyers need to have a good working relationship with their clients in order to properly conduct the case. If the solicitor-client relationship breaks down, either party can and should bring the relationship to an end.

[36] The difficulties in the solicitor-client relationship between Ms. James and Mr. Green were as bad as, or worse than, those considered in *Bukova v. Gertsoyg & Company*, 2016 BCSC 2207. In that case, a lawyer was acting on a personal injury case pursuant to a contingency fee agreement. The court decided that the breakdown in the solicitor-client relationship justified the lawyer withdrawing his representation of the client. In the present case, Ms. James determined that the solicitor-client relationship between her and Mr. Green had broken down. She decided to terminate her professional relationship with Mr. Green. Her decision to end the solicitor-client relationship was justified.

[37] Although Ms. James acted on behalf of Mr. Green for only about five months, she obviously advanced the case. It is significant that during the time she handled the file an offer was presented on behalf of the defendants that was very close to the final settlement amount. In October 2017 the ICBC contacted Richter Trial Lawyers and offered to settle Mr. Green’s case for \$131,200 plus outstanding special

damages plus assessable costs and disbursements. The settlement Mr. Green agreed to in January 2018 was \$132,050 plus assessable costs and disbursements.

[38] The materials Ms. James has placed before the court include her account dated November 10, 2017, which sets out a detailed record of the time she worked on this file. She clearly dug in and worked diligently on a challenging file. Her time is well accounted for and was oriented to advancing the case. Her billing rate was \$200 per hour. Some time is billed by John Richter, the senior lawyer at the firm. The total fees for the hours recorded would be \$45,041.19. This is a fair fee based on the skill level and services Ms. James and her firm provided to Mr. Green.

[39] The contingency fee agreement Mr. Green entered into with Richter Trial Lawyers contained the following clause concerning termination of the solicitor-client relationship prior to resolution of the case:

5. Termination before Resolution.

If this agreement is terminated by the client or the Lawyer before this matter is resolved, the client agrees to pay the Lawyer's fees calculated as the greater of:

- a. the applicable percentages of the sum of any offers plus advances made on behalf of the defendant(s), OR
- b. a fair fee based on the services provided, time involved, nature of the claim, skill and experience of the Lawyer and probable actual value of the claim. The lawyers' current billing rates are \$400 per hour for John Richter and \$200 per hour for Amanda James, plus taxes and disbursements.

[40] The clause contemplates that the agreement could be terminated by the lawyer, but the contingency fee agreement does not otherwise specify grounds for such termination.

[41] Ms. James submits that a lawyer can terminate a retainer pursuant to a contingency fee agreement if there is a breakdown in the solicitor-client relationship. She argues that such a termination would trigger the fees set out in clause 5 of the contingency fee agreement.

[42] Mr. Green submits that a lawyer cannot withdraw from representation pursuant to a contingency fee contract unless the contract specifically states that the lawyer has the right to do so and sets out the circumstances under which it may occur. He relies on the Law Society of British Columbia's commentary on Rule 3.6-2 of the *Code of Professional Conduct for British Columbia*.

[43] A lawyer cannot terminate a contingency fee agreement with his or her client without cause and a lawyer cannot recover a fee based on *quantum meruit* if the termination is without cause; *Maillot v. Murray Lott Law Corporation* (2002), 99 B.C.L.R. (3d) 170; *Klein Lyons v. Walia*, 2006 BCSC 396, at para. 35.

[44] A breakdown in the solicitor-client relationship is cause to terminate a legal retainer, whether pursuant to a contingency fee agreement or another payment arrangement. To hold otherwise would not be in the interests of justice.

[45] Ms. James has satisfied the court that she ceased acting for Mr. Green because their solicitor-client relationship had broken down. The evidence does not support a finding that she ended the retainer for any improper reason.

[46] If the solicitor-client relationship under a contingency fee contract has broken down, the lawyer is permitted to withdraw as counsel for the client and is entitled to fees calculated on a *quantum meruit* basis; *Klein Lyons*, at paras. 42, 43 and 45.

[47] The fees claimed by Taylor & Blair and Richter Trial Lawyer on a *quantum meruit* basis total \$55,041.19 ($\$10,000 + \$45,041.19 = \$55,041.19$).

[48] Mr. Green questioned matters relating to Mr. Jacobson's and Ms. James' handling of the file. Some of his complaints second guess decisions made, based on hindsight. The lawyers are not to be held to a standard of perfection. They are allowed to charge fees for services reasonably intended by the lawyer to advance the interests of the client. Both Mr. Jacobson and Ms. James have satisfied the court that the fees they are seeking are properly claimed for such services.

[49] In *Holness Law Group Professional Law Corporation v. Mann*, 2015 BCSC 2380, the court held that contingency fees should not be stacked where more than one firm acts for a client (para. 34). The same reasoning should apply when *quantum meruit* claims would total more than the contingency fee agreed to.

[50] In the present case, Mr. Jacobson and Ms. James have quite rightly conceded that their claims should total no more than the contingency fee that would have applied. In January 2018 Mr. Green settled his case for \$132,050 plus assessable costs and disbursements. This amount was very close to, if not essentially the same as, the \$131,200 plus outstanding special damages plus assessable costs and disbursements offer presented in October 2017, while Ms. James was acting for Mr. Green. The fee that would have applied if Mr. Green had accepted the offer presented in October 2017 is 33 $\frac{1}{3}$ % of the settlement, the fee recoverable under the contingency fee he entered into with Richter Trial Lawyers. Justice and fairness require that the fee to be apportioned between the two law firms will be 33 $\frac{1}{3}$ % of the \$132,050 settlement, which is \$44,017 ($\frac{1}{3}$ of the settlement; $\$132,050 \div 3 = \$44,017$).

[51] The fee Mr. Jacobson is now claiming on behalf of Taylor & Blair is \$8,803.40 (20% of \$44,017). The fee Ms. James is now claiming on behalf of Richter Trial Lawyers is \$35,213.60 (80% of \$44,017). Both are appropriate fees for the legal services their firms provided to Mr. Green.

[52] Mr. Green does not contest the disbursements and taxes on disbursements claimed by Taylor & Blair. They total \$11,837.79.

[53] Mr. Green disputes only one of the disbursements claimed by Richter Trial Lawyers; the cancellation fee the firm paid as a result of Mr. Green not attending for an appointment with Dr. Axler on November 9, 2017. The fee was \$2,520.

[54] Ms. James advised Mr. Green of the Dr. Axler appointment by way of an email dated October 31, 2017. This email therefore was sent five days after the quarrelsome meeting she had with Mr. Green on October 26. The materials include

copies of emails Mr. Green sent to Ms. James after her October 31, 2017 email, which demonstrate that Mr. Green was still questioning her handling of the file. Mr. Green sent an email to Ms. James dated November 8, 2017 which warned her that he would cancel the Dr. Axler appointment if she did not respond to him by email that morning. The emails concerning the Dr. Axler appointment were sent while Mr. Green and Ms. James were having difficulties with each other, problems that contributed to the breakdown of their solicitor-client relationship. The materials before the court do not show that Mr. Green was ever warned that a cancellation fee would be charged if he did not attend for the appointment with Dr. Axler. A detail like a possible cancellation fee may have simply been overlooked. Nevertheless, it would not be fair to make Mr. Green pay the cancellation fee when he had no warning that it would be charged if he failed to attend at the appointment with Dr. Axler. The \$2,520 cancellation fee for Mr. Green not attending for an appointment with Dr. Axler on November 9, 2017 will therefore not be charged back to Mr. Green.

Result

[55] Mr. Jacobson, on behalf of the firm Taylor & Blair, is to recover fees of \$8,803.40 plus applicable taxes (5% GST + 7% PST) totalling \$1,056.41 from the plaintiff [total of \$9,859.81].

[56] Ms. James, on behalf of John M. Richter Law Corporation, dba Richter Trial Lawyers, is to recover fees of \$35,213.60 plus applicable taxes (5% GST + 7% PST) totalling \$4,225.63 from the plaintiff [total of \$39,439.23].

[57] The firm Taylor & Blair is to recover from the plaintiff \$11,837.79 for disbursements and taxes on disbursements.

[58] John M. Richter Law Corporation, dba Richter Trial Lawyers, is to recover from the plaintiff \$7,538.91 ($\$10,058.91 - \$2,520 = \$7,538.91$) for disbursements and taxes on disbursements.

[59] The parties have indicated that \$100,000 of the plaintiff's settlement funds are currently held in trust by Richter Trial Lawyers. The plaintiff alluded to some sort of

agreement he has with the Insurance Corporation of B.C. concerning his claims for assessable disbursements. That agreement is, of course, between Mr. Green and the ICBC. There is no evidence that it creates any right of direct payment to the two law firms. The law firms will therefore be entitled to recover their fees, disbursements and applicable taxes from the funds held in trust. The amount to be paid from the trust funds to Taylor & Blair is \$21,697.60 (\$9,859.81 + \$11,837.79). The amount to be paid from the trust funds to John M. Richter Law Corporation, dba Richter Trial Lawyers, is \$46,978.14 (\$39,439.23 + \$7,538.91). The remainder of the trust funds are to be paid to Mr. Green.

[60] The parties indicated that they would like to make submissions on costs for this hearing. They may do so in written submissions. The defendant law firms will have fourteen days from the date of these reasons to provide their submissions, which should not exceed five pages, plus any needed case law. The plaintiff, Mr. Green, will have fourteen days to reply, in a written submission of the same length. The parties are to file their written submissions at the Vancouver Supreme Court Registry, with an indication that the submissions are for my attention in relation to these reasons for judgment, and are to promptly provide a copy of their filed submission to each other.

“Master Vos”