

COURT OF APPEAL FOR ONTARIO

CITATION: Hanson Crossborder Tax Inc. v. Bazar McBean LLP, 2024 ONCA
423

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Trotter, Thorburn and Dawe JJ.A.

BETWEEN

Hanson Crossborder Tax Inc. and Elena Hanson

Plaintiffs (Respondents)

and

Bazar McBean LLP and S. David Bazar and S.D. Bazar Professional Corporation

Defendants (Appellants)

Michael E. Girard, for the appellants

Orie Niedzviecki, for the respondents

Heard: March 25, 2024

On appeal from the judgment of Justice James A. Ramsay of the Superior Court of Justice, dated November 5, 2021, with reasons reported at 2021 ONSC 7340.

REASONS FOR DECISION

[1] This appeal arises from a dispute between Ms. Hanson and Bazar McBean LLP (“Bazar McBean”), a small accounting firm in Oakville, Ontario.

[2] Ms. Hanson is a certified public accountant in the state of Illinois. Mr. Bazar is a certified public accountant in Ontario and in Ohio. Each of them provides

accounting services through their related corporate entities, Hanson Crossborder Tax Inc. and S.D. Bazar Professional Corporation, respectively.¹

[3] In 2012, Ms. Hanson left her position as a manager at KPMG to join Bazar McBean. She parted ways with Bazar McBean in late 2014. This litigation is about how much is owed to Ms. Hanson for the work she performed in 2014.

[4] The respondents on appeal, Ms. Hanson and her professional corporation, sued the appellants, Bazar McBean and Mr. Bazar, personally and also through his professional corporation. The respondents made claims for breach of contract and other causes of action; the appellants counterclaimed, seeking various forms of relief, including damages for defamation.

[5] The trial judge ordered that Bazar McBean pay the respondents \$71,223 in damages for breach of contract for Ms. Hanson's work in 2014.² He further ordered that two sums of money be returned to Ms. Hanson: \$40,000, which had been paid into court, relating to Ms. Hanson's apparent capital contribution to Bazar McBean; and \$12,980.50, which was held in trust, reflecting Ms. Hanson's work in progress ("WIP"). Lastly, the trial judge ordered that Ms. Hanson pay \$30,000 in damages for making defamatory statements to clients about Bazar McBean when their business relationship ended.

¹ For reasons that are not germane to this appeal, the trial judge dismissed the action against S. David Bazar and SD Bazar Professional Corporation.

² This was after subtracting the monthly draws in 2014 in the amount of \$130,000.

[6] The appellants appeal this decision. With the exception of the capital contribution funds, they dispute the amounts that the trial judge ordered Bazar McBean to pay to Ms. Hanson. As explained below, the appeal is allowed with respect to the amounts owed for breach of contract and Ms. Hanson's WIP.

Background and the Trial Judge's Findings

[7] The parties ended up in this dispute, and in this litigation, because they never entered into a written agreement about Ms. Hanson's role at Bazar McBean.

[8] As the trial judge found, Ms. Hanson is highly qualified to give advice on cross-border tax matters. She came to Bazar McBean with her own book of business. However, Ms. Hanson did not hold the credentials of a Chartered Accountant or a Certified Public Accountant in Ontario. She did not need these credentials to provide tax advice; however, she would need them if she were to become a partner in Bazar McBean, which she never did.

[9] In terms of the relationship between the parties, the trial judge framed the conflicting accounts as follows, at para. 6:

According to Ms Hanson, she agreed to a resource-sharing arrangement in which she would work out of Bazar McBean's office and grow her own book of business. She would be paid 100% of her own clients' billings and 50% of billings by the firm to its clients for work done by her less a contribution by her to the firm's expenses. She did not intend to become a partner because it would have been impractical to obtain Ontario credentials. According to Mr Bazar, a partnership agreement was envisaged in which Ms Hanson would

become accredited in Ontario, make a capital contribution to the partnership, and then become a partner. According to Mr Bazar, the clients for whom Ms Hanson performed services were clients of Bazar McBean. They signed letters of retainer in which they retained Bazar McBain. Ms Hanson says that this was done essentially for convenience in managing the accounts. I believe her on that point. [Emphasis added.]

[10] Mr. Bazar testified that Ms. Hanson told him that she would obtain these credentials. Ms. Hanson denied this assertion. She never intended to seek these qualifications. Again, the trial judge accepted Ms. Hanson's version of events.

[11] In August 2014, Mr. Bazar sent Ms. Hanson a draft agreement, which she declined to sign. The draft agreement included a three-year non-compete condition, which the trial judge found "would make no sense" for Ms. Hanson, given that she did not get her clients from Bazar McBean. He said, at para. 14, that "she had already established her reputation through 20 years of work at an advanced level." As noted, Ms. Hanson came with her own clients. The trial judge found, at para. 12:

...I do not think that the parties ever got past the stage of negotiations, either on a partnership or a resource sharing arrangement such as that proposed by Ms Hanson. I am satisfied by their conduct, however, that for the time being they agreed that Ms Hanson would work at the firm's office and bill her clients through the firm. They agreed that she would take monthly draws. In February of 2014 they agreed on Ms Hanson's total compensation for work done in 2013 and, I infer, on a way to compensate her for 2014.

[12] Ms. Hanson ended her relationship with Bazar McBean in October 2014. Mr. Bazar wrote to all clients to advise them that Ms. Hanson had left and offered to provide her contact information and help them with an orderly transition. He did not follow through on this offer. He refused a client's request to transfer a file to Ms. Hanson. This led to a series of emails between Ms. Hanson and Mr. Bazar, in which, according to the trial judge, Mr. Bazar used "increasingly unprofessional and threatening language", something that detracted from his credibility.

[13] In terms of the Ms. Hanson's entitlement to damages for 2014, the trial judge said, at para. 19 of his reasons:

I infer from the parties' conduct that they agreed that pending a final agreement, Ms Hanson would be compensated for 2014 as she had been in 2013. In the nine months that she worked with Bazar McBean in 2014 her billable hours were worth \$359,345..., about 2% more than in the 12 months of 2013. I fix her compensation for 2014 at \$201,223, or 2% more than her compensation for 2013. Subtracting the monthly draws she took in 2014 of \$130,000, I arrive at compensation owing for 2014 in the amount of \$71,223. [Emphasis added.]

[14] This amount was awarded as damages for breach of contract or, alternatively, on a *quantum meruit* basis.

[15] The trial judge determined that Ms. Hanson was entitled to the \$12,980.50 held in trust for her WIP at the time of separation. The trial judge said, at para. 22: "I find that they were her clients and she [was] not required to reimburse Bazar McBean for these amounts". The trial judge also ordered the return of

Ms. Hanson's \$40,000 capital contribution. As already noted, this aspect of the trial judgment is not appealed.

[16] Finally, the trial judge found that Ms. Hanson defamed Bazar McBean by advising a client that they were "crooks", and advising an undetermined number of other clients not to pay invoices that Bazar McBean had "fraudulently" rendered. It was not clear whether these were clients that Ms. Hanson brought with her in 2012. The trial judge awarded Bazar McBean \$30,000 in defamation damages.

Issues on Appeal

[17] The appellants submit that the trial judge erred: (1) in finding that the clients Ms. Hanson provided services to were her own clients, and not clients of Bazar McBean; (2) in his determination of Ms. Hanson's income for 2014; and (3) in concluding that Ms. Hanson was entitled to be compensated for her WIP.

Analysis

(1) The Client Issue

[18] We do not accept the appellants' submission that the trial judge erred in finding that the clients that Ms. Hanson provided services to were her clients, and not the clients of Bazar McBean. The appellants rely upon a document referred to in these proceedings as "an engagement letter." It was sent to the clients that Ms. Hanson brought with her when she began her association with Bazar McBean. The clients signed these letters that indicated that they had retained the services

of Bazar McBean. As the trial judge found, at para. 6: “Ms. Hanson says that this was done essentially for convenience in managing the accounts. I believe her on that point” (emphasis added).

[19] The appellants submit that the trial judge erred in law in failing to give effect to an “entire agreement” clause in the engagement letters. This clause provides: “The arrangements outlined in this letter will continue in effect from year to year unless changed by mutual agreement and this contract forms the entirety of our agreement” (emphasis added).

[20] We see no error. At trial, only fleeting reference was made to this clause, which is buried near the end of a two-page document that is rendered in extremely small print. It was not a matter that was seriously advanced by the appellants’ counsel at trial.

[21] More importantly, the engagement letter does not purport to define the relationship between Ms. Hanson and Bazar McBean. Based on the evidence that the trial judge found to be credible, which was Ms. Hanson’s, it cannot be said that the trial judge erred in his characterization of the parties *de facto* business relationship, as captured in para. 6 of his reasons (reproduced in para. 9, above).

[22] The appellants submit that this is an important issue because, if it were determined that the individuals who signed the engagement letters were clients of Bazar McBean, it would impact on the amount of the defamation damages

awarded by the trial judge. However, the appellants have not appealed the quantum of the defamation award.

[23] Moreover, irrespective of whether Ms. Hanson brought her own clients with her or not, she was entitled to be compensated for the work that she performed. Her compensation was defined and paid for 2013. The question for the trial judge, and on this appeal, is how she should be compensated for her work in the first nine months of 2014.

[24] We reject this ground of appeal.

(2) Compensation for 2014

[25] We agree with the appellants that the trial judge erred in his determination of Ms. Hanson's compensation for 2014.

[26] As noted in para. 19 of the trial judge's reasons (reproduced in para. 13, above), he concluded that Ms. Hanson's billable hours in 2014 were worth \$359,345. However, there was no evidence to support this finding. The trial judge's conclusion seems to be predicated on a document that was prepared by Ms. Hanson for her testimony. It was only admitted as an exhibit as an *aide memoir*. On appeal, Ms. Hanson's counsel was unable to point to anywhere in the transcript in which Ms. Hanson confirmed that this was the amount that she was entitled to for her work in 2014. At one point during her testimony, Ms. Hanson also seemed to acknowledge that she worked 919 hours.

[27] We agree with the appellants that the evidence demonstrated that Ms. Hanson docketed 919.04 hours from January to October 2014. At her hourly rate, this would have generated \$298,688. Using the formula set out in para. 19 of the trial judge's reasons, her compensation for 2014 should have been \$157,822, or 20% less than her compensation for 2013. Subtracting the total of her monthly draws taken in 2014 of \$130,000, the total compensation should be reduced from \$71,223 to \$27,822.

(3) Work in Progress

[28] We also agree that the trial judge erred in awarding Ms. Hanson her WIP in the amount of \$12,980.50. In cross-examination, Ms. Hanson admitted that she billed some of her WIP to her clients after leaving Bazar McBean. On discovery, she refused to identify the amounts she billed, or to whom.

[29] Ms. Hanson's entire compensation for 2014 was based on the formula discussed above. To permit her to keep the monies based on her WIP would amount to double-counting. She was not entitled to this additional \$12,980.50. This should be paid to Bazar McBean.

Disposition

[30] The appeal is allowed.

[31] The appellants are entitled to their costs of the appeal in the amount of \$17,000 (inclusive of disbursements and HST).

[32] The parties agreed that, if the appellants succeeded on either basis on appeal, this would impact on the costs award of the trial. Based on the appellants' offer to settle at trial, Ms. Hanson received less than the appellants' offer. The parties may make written submissions, not to exceed 3 pages, on this issue. They shall be exchanged by the parties and filed with the court within 14 days of the release of these reasons.

"Gary Trotter J.A."

"Thorburn J.A."

"J. Dawe J.A."