

The Lost Contract and the Burst Pipe

Introductions

Lawyer: Hello Mr. Smart. Dan, you're a student.

Dan: I am, yeah.

Lawyer: What do you study?

Dan: Media relations.

Lawyer: Media relations. Well, that's interesting. My name is Carole Chouinard and I am a corporate commercial lawyer. I've been practicing for approximately 20 years and I'm really interested in hearing why you are here today but, before we get into that, I really want to deal with a few matters and explain a few things to you.

First of all, I'd like to explain to you about client solicitor privilege and also the importance of having an open and honest discussion today so that I can properly advise you and I'll also touch on the billing practices of this firm.

In terms of solicitor-client privilege, what that means is anything that you say in the confines of this office today remains confidential. As well, as I indicated, it's very important that you be open and honest with me today so that we can advise you properly. And finally, with respect to billing, I had indicated to you previously that this first hour of consultation with me would be free of charge and that will be the case but, if we have to take this matter further, either through correspondence, representation and court or simply further meetings then you will be billed at our regular hourly rate. Is that clear?

Dan: Yep.

Lawyer: Do you have any questions or anything you want to discuss at this point?

Dan: Ah...no, well just my story.

Lawyer: O.K. Well, we'll get started then.

Dan: O.K.

Lawyer: So what brings you here today?

Dan: Well, I had this fantastic job at Harry Grand and it's this web publishing firm, but I got fired because I couldn't do the job in time and now I am completely swamped, completely sunk.

Lawyer: So it appears that you were fired for cause. How long did you work for Mr. Grand?

Dan: About 4 months.

Lawyer: Did he give you any reasons for letting you go, for firing you?

Dan: Well, you see, I wasn't able to hand in the work on time, but that was all because of specific circumstances. But you have no idea how important this job is to me. I really, really need this job.

Lawyer: So let me understand this correctly. You worked for him for 4 months and then you were fired because you didn't do something you were supposed to do or you didn't do something on time. Are you currently collecting employment insurance?

Dan: I didn't know that I could qualify for employment insurance.

Lawyer: O.K. So you think that because you were fired, you are not eligible for employment insurance. We should try to get your record of employment and see what Mr. Grand put down on that record of employment.

Client Narrative

Lawyer: What was your salary when you were working with Mr. Grand?

Dan: It wasn't really a salary per se. It was more so payment per job.

Lawyer: Can you explain further how you were paid per job?

Dan: Well...Harry Grand is a firm that specializes in web publishing and so last summer they were looking for somebody to step in and do some work; who is good with computers and who is an extremely fast typer which represents me perfectly so I got the job. Essentially Harry Grand subcontracts a lot of his work and pays their subcontractors per page.

Lawyer: OK. Can you tell me a bit more about that?

Dan: So I worked all summer. I was able to make a lot of money and wipe out a lot of my student debt which is great, which is really important for me to graduate without or with very little debt. I think they were very impressed with my work because about a month ago, they called me and asked me if I was interested for more work and I said "Absolutely, I'm interested. That's fantastic news. I need the money." But, as soon as he learned that I was a full time student, he was hesitant to give me the job because he didn't think I could handle a full-time workload as well as a full-time student status or full-time student course load. So...I was able to convince him. I did a bit of a sales job on him and was able to get three projects, to kind of prove myself. So one large project and two smaller projects, which he gave to me. And if I did perform, I had to deliver, he would...there would be more work to follow.

Lawyer: So what happened?

Dan: Well, first of all, I subcontracted a portion of the work to my brother. But I was really good at managing it and making sure that the quality of the work that he delivered was high. So the quality assurance piece was taken care of but, what happened one day was that I got home and there was just a perfect stream of water coming down directly onto my computer flooding everything in my apartment, everything was covered with 6 inches of water. It was just an incredible scene that I had never seen before, but my computer was just completely fried. There was nothing on it and it wouldn't even turn on anymore so I lost...needless to say, I lost all of my work. Everything that...everything that I had worked on for Harry Grand was...was...was done, it was out, it was... it was... it was lost. So...needless to say, I couldn't meet that deadline. I couldn't... I couldn't hand in the work on time. I...I didn't get paid by Harry Grand. They pulled the other two projects. They left me in a situation where I couldn't pay for a new computer and they said that before they gave me new work I'm gonna have to have a new computer. I don't even know how I am going to get through the next term of school without a computer. So, essentially what I want, and I don't think that's unreasonable, is what I want my landlord to pay a new computer, and to pay me for my lost wages.

Lawyer: O.K. So...you're not really here because you were fired and my understanding now is that you're a contract worker and not an employee. Is that correct?

Dan: Ah, yes that's right. That's...that's why I didn't think I qualified for employment insurance at first. Umm...so...it was because there was nothing that was getting deducted from my paycheque.

Lawyer: Tell me a bit more about the situation in your apartment and with the computer.

Dan: When I called my landlord and demanded a new computer, we had a bit of a shouting match. We tend to butt heads like that, but he told me explicitly that I have three days to pay the rent and he started quoting pieces of the lease agreement saying that the apartment was to be rented as is and that he wasn't responsible for any economic loss, and he started... he started saying that he could evict me at any time because there was a no pets clause in my lease agreement and I have a cat, which is absolutely ludicrous. I don't understand where that came from.

Lawyer: I see. Can you tell me a bit more about the rent?

Dan: Well...I've been withholding for two months so I've been withholding the two months' rent. But...but I can just see the look on your face. I can't...you have to understand... you have to understand that this place is a complete rat hole. It's... it's... it's cockroach infested. I can't...I'm embarrassed to bring people over to the apartment because they don't, they don't clean up the halls. It's grimy. It's gross. It's dirty. I mean, there's...I found a banana peel from three weeks ago in the halls just rotting there. I mean...the heating is atrocious. It's steam

heating and I'm telling you that the landlord probably doesn't even... the landlord probably doesn't even... doesn't even bleed the pipes he's so cheap. And...and the shadiest of... the shadiest of parts of the entire project, the entire operation is of the superintendent. I think sells drugs from his apartment. So, I've withheld for 2 months and I got this idea from other tenants who have made a formal complaint or a formal... have been withholding formally the rent for six months.

Lawyer: O.K. Tell me a bit more about the flood.

Dan: Well...it came from the radiator pipe upstairs.

Lawyer: Have you spoken with the neighbor upstairs?

Dan: Funnily enough, I was... I was there the morning that it happened. There was a... there was a valve that was sealed shut - naturally and ...and I went up there to try to... to try to pry it open and try to get it opened for her because I'm a chivalrous kind of guy and...and...and just... was just putting all of my elbow grease in there, putting some muscle into it but couldn't get it loose so I took out a wrench and just started banging at it, and banging at it, and banging at it, and finally I got it loose! Yeah, 'cause I'm manual like that. And...and then...and then... and then I went on my way and that was that. Actually now that I think about it, I guess it's a funny coincidence that the pipe burst that same day.

Lawyer: And how much rent have you withheld to date?

Dan: \$1,600.00 to date, but in a couple of days, it'll be...in three days, it'll be \$2,400.00 because the next rent is due. Actually, I don't have the money to pay the rent, because I didn't get paid by Harry Grand, I had to use the rent money for tuition so I don't have that money right now. Also, I mean it's not just me here; it's not just my interests that are at play here. I promised my mother that I would get my brother this job and that I would get him some revenue, because he's under a tremendous amount of pressure. He's...right now he has just crippling gambling debts that are just stressing out the entire family and my mother just doesn't know what to do about it or what else to do about it.

Client Question

Lawyer: What can you tell me about the other tenants, the ones that have withheld rent?

Dan: Well, they were withholding it because of the shoddy service that they were receiving so I just thought it was a great idea. Actually, I want to speak...I think it's really important to mention...that I stood to earn a lot of money with Harry Grand. The initial project, the big project was going to earn me \$3000.00, the one that I lost, that's sitting in the drenched computer

at home. The other two projects that were a little bit smaller in size would've earn me \$2000.00 each and in total I was estimating...I estimated to earn \$20,000.00 with Harry Grand which is astronomical for a student and would have helped me graduate with absolutely no debts or little to no debts which is... which is unheard of. Not to mention the value of them not being able to trust me and the soiled relationship that now lies between us. Actually can I ask you a question?

Lawyer: Absolutely!

Dan: About the rent withholding piece... You see, my superintendent he's a bit of a head in the cloud kind of guy. He doesn't know anything from one day to the other. He's a bit of a drug addict in that sense. I don't even think he would know his postal code if you asked him. So do you think it would help my case if I were say that I verbally told him that I would withhold rent until the services were improved?

Conclusions

Lawyer: It's really important that you tell me exactly what happened as you remember it and as it happened. Otherwise, I really can't advise you properly.

Dan: O.K. Well...you know what? I've told you everything..I've told you everything honestly. I've just given you nothing but the facts up until then so I'll leave it at that but actually I have to run to class. I'm late for class and I have to do well for this. Actually, I brought the eviction notice as well that says that I owe \$2400, which is absolutely false because that's not even until a couple of days. Actually, I wanted to ask...I mean, I need a new computer and I want to be paid this economic loss. Do you think I have a case? Do you think I could win? I mean, I can't be evicted right? The services are atrocious. I told you... I told you how terrible the apartment was and I can't be evicted. Do you think I have a good case?