

CITATION: Blaney McMurtry LLP v Zawadzinski 2025 ONSC 6176
COURT FILE NO.: CV-23-00692944
MOTION HEARD: 20251031

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Blaney McMurtry LLP, Applicant moving party

AND:

Yolanta Zawadzinski, Responding respondent

BEFORE: Associate Justice Jolley

COUNSEL: Alexandra Churchill and Aly Virani, counsel for the moving party applicant

Yolanta Zawadzinski, self represented responding party respondent

HEARD: 31 October 2025

REASONS FOR DECISION

- [1] On 9 January 2023, the applicant commenced an assessment proceeding against the respondent to resolve a dispute concerning the respondent's unpaid legal fees.
- [2] The assessment could not proceed as scheduled because the respondent advised that she was challenging the retainer. Assessment Officer Glozic made an endorsement on 22 March 2023 that adjourned the assessment hearing until 27 September 2023 and ordered that the respondent serve and file any motion she intended to bring to challenge the retainer by 23 May 2023.
- [3] On 23 May 2023 the respondent served a notice of motion without supporting affidavit and without a return date. At the applicant's prompting, she served an affidavit in support of her motion on 30 May 2023 but she did not file the motion with the court or book a date for it and has not done so to date, despite repeated follow ups by the applicant. Instead of accepting the applicant's follow up emails as the assistance they were, the respondent characterized them as harassment.
- [4] When the matter came back before the Assessment Office on 27 September 2023, the officer adjourned the hearing *sine die* pending the court dealing with the retainer agreement dispute. As a result of this decision and the respondent's failure to take any steps to have her motion heard, the applicant has been unable to move forward with its assessment for more than two years.

- [5] At the hearing of this motion, the respondent advised that she believed the date for her motion would be set before me in the course of the applicant's motion to have her motion declared abandoned. She offered no basis for this belief.
- [6] By July 2023, the respondent was aware that the applicant would take the position that she had abandoned her motion if she did not book a motion date. As the respondent did not take any steps to book the motion, the applicant now seeks an order that the respondent has abandoned her motion and that the assessment should be scheduled before the Toronto Assessment office forthwith.
- [7] The respondent offers three reasons for not setting a date for her motion over the last 2.5 years: (1) she was not required to do so; (2) she was occupied with personal matters; and (3) she thought she had done whatever she needed to do to book the motion.
- [8] The respondent's first position that the assessment officer did not provide a deadline for her to file the motion with a return date is clearly incorrect. The endorsement required her to serve her motion within 60 days of 22 March 2023. The second endorsement of 27 September 2023 did not deviate from this requirement. All it did was adjourn the September hearing *sine die* because the respondent had not scheduled her motion and the retainer agreement dispute had therefore not been determined.
- [9] While the respondent was occupied with personal matters, including the care of her elderly aunt and mother, she bore the onus of booking her motion. Given she had drafted the materials, it is unclear why she could not have found thirty minutes in the last two years to obtain a court date and file her motion with the court.
- [10] Her position that she believed she had done all she needed to do to have her motion heard is undermined by her affidavit on this motion that indicates she believed she did not actually have to book the motion. She argued that she understood when the assessment officer adjourned the assessment *sine die* in September 2023, he also adjourned her motion *sine die*.
- [11] Rule 37.09(2) provides that: "A party who serves a notice of motion and does not file it or appear at the hearing shall be deemed to have abandoned the motion unless the court orders otherwise." The court is given discretion as a result to reach a fair result.
- [12] Despite the respondent's deleterious behaviour, I am not satisfied that she intended not to have her motion heard. She may have taken aggressive and incorrect positions with the applicant on the motion and her obligation to book and file it, but I cannot find any intention or statement that she did not wish to proceed. She advised me on this motion that she would file her motion materials immediately. I am giving her the benefit of the doubt, as a self-represented litigant, but on terms.
- [13] The respondent has until 21 November 2025 to obtain a date for her motion before a judge and serve the applicant with her motion record, including a date. She is to rely on the motion record she prepared in 2023 and is precluded from amending or augmenting it. If she does not serve and file her record with a return date by 21 November 2025, the motion

will be deemed abandoned and I will deal with the applicant's costs. Otherwise, the costs will be left to the motions judge.

- [14] I find the respondent liable to the applicant for the costs of this motion, which was only necessary because of her failure to book and file her motion, her position that she did not have to book the motion at all and her refusal to take the advice the applicant was offering concerning her need to book the motion.
- [15] The applicant seeks substantial indemnity costs in the amount of \$36,866.47. While I understand the applicant was required to take this matter seriously, given the respondent's allegations of "civil fraud" and breach of the applicant lawyers' professional obligations, I find 109.3 hours was not an amount of time that the respondent might reasonably have expected for this motion or \$36,886.47 an amount that she might reasonably have expected to have to pay for a 60 minute motion.
- [16] In all the circumstances, I fix the costs of the motion at \$12,000 all inclusive payable by the respondent to the applicant within 30 days of the date of these reasons.

Associate Justice Jolley

Date: 4 November 2025