CITATION: Wendy Sokoloff Professional Corporation et al. v. Chorney et al., 2021 ONSC Number
COURT FILE NO.: CV-21-00671885
DATE: 20211126

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: **WENDY SOKOLOFF PROFESSIONAL CORPORATION, WENDY H. SOKOLOFF PROFESSIONAL CORPORATION c.o.b. as SOKOLOFF LAWYERS**

Plaintiffs

AND:

SAVANNAH CHORNEY, CHORNEY LEGAL PROFESSIONAL CORPORATION c.o.b. CHORNEY INJURY LAWYERS, NICOLE CHORNEY, MELISSA MACLEOD a.k.a. MELISSA SIDHU, JHADE-ANN HUE, SUSAN MURRAY, HARBHAJAN GILL a.k.a. MALKA GILL

Defendants

BEFORE: Mr. Justice Chalmers

COUNSEL: *J. Lisus, R. Agarwal, V. Calina and X. Lu,* for the Plaintiffs

K. Borg-Oliver, L. Rothstein and G. Hawe, for the Defendants

HEARD: November 19, 2021, by videoconference

ENDORSEMENT

OVERVIEW

[1] The Plaintiff, Sokoloff Lawyers is a well-known Toronto-area personal injury law firm. The Defendants, Savannah Chorney, Nicole Chorney, Melissa Macleod, Jhade-Anne Hue, Susan Murray, and Malka Gill worked for Sokoloff Lawyers in its Brampton office.

[2] On Thanksgiving weekend, the Defendants took steps to take over the Brampton office. Savannah Chorney was an associate with Sokoloff Lawyers and the lead lawyer at the Brampton office. She closed the office at 1 p.m. on Friday, October 8, 2021. She instructed the employees to leave their computers on without password protection. She arranged for the locks to be changed and for the Sokoloff Lawyers sign to be removed.

[3] On Monday, October 11, 2021 at 7:29 p.m., Ms. Chorney sent an e-mail to Wendy Sokoloff and advised her that she was resigning her employment with Sokoloff Lawyers to start her own firm. She also advised that lawyer, Melissa Macleod and four clerks, Jhade-Anne Hue, Susan Murray, Malka Gill and Suzette Lewis-Baxter would be joining her. She stated that she intended to operate her new firm (Chorney Injury Lawyers) out of the same premises. She stated that she "will be contacting my clients to advise them of my departure, and I will present them with their three options as required by the Law Society".

[4] On the morning of Tuesday, October 12, 2021, Sokoloff Lawyers began receiving client file transfer authorizations. The Plaintiffs argue that the timing of the transfer authorizations suggests that Ms. Chorney began contacting clients before she resigned from the firm. Since then over 200 clients have transferred their files to Chorney Injury Lawyers.

[5] On November 5, 2021, Sokoloff Lawyers commenced an application and subsequently commenced this proceeding. Ms. Chorney commenced a separate action against Sokoloff Lawyers for money she states is owed to her in employee compensation. Sokoloff Lawyers brought this motion for injunctive relief. The parties attended before Myers, J. in Civil Practice Court on November 10, 2021. Following a lengthy case conference, Myers, J. scheduled the motion for November 19, 2021.

[6] After the date for the motion was scheduled, the parties exchanged "with prejudice" settlement proposals. There is an agreement as between the parties with respect to many of the proposed terms. Two main areas of dispute are the upfront payment of disbursements on the transferred files, and the arrangements for how Sokoloff Lawyers will be compensated for legal work performed before the files were transferred.

[7] For the reasons set out below, I find that the Plaintiffs are entitled to equitable relief. In addition to the terms agreed to by the parties, I order that within five months of the date of this endorsement, the Defendants shall pay to Sokoloff Lawyers the amount of the disbursements on the transferred files. I also order that when each transferred file settles, the fees are to be paid 25% to Sokoloff Lawyers and 25% to Chorney Injury Lawyers with the balance paid in trust until the amount of Sokoloff Lawyers' fees, is determined, at which time the amounts held in trust may be disbursed.

BACKGROUND FACTS

The Brampton Office

[8] By 2013, Sokoloff Lawyers had established itself as a successful personal injury law firm in the Greater Toronto area. Ms. Sokoloff identified Brampton as a good opportunity to expand. In October 2013, Ms. Chorney approached Ms. Sokoloff about joining Sokoloff Lawyers. They discussed the potential of Ms. Chorney helping open a new Brampton office.

[9] Sokoloff Lawyers hired Ms. Chorney in 2014. Sokoloff Lawyers opened the Brampton office. Sokoloff Lawyers identified the new office space and negotiated the lease. Ms. Chorney's professional corporation, Chorney Professional Corporation was a party to the lease. Ms. Sokoloff and Ms. Chorney agreed that Sokoloff Lawyers would compensate Ms. Chorney with 35% of the profits from the Brampton Office. Sokoloff Lawyers carried all expenses and received the other

65% of the profits. Sokoloff Lawyers paid the rent for the office space along with the cost of the computers and other equipment. Sokoloff Lawyers paid all disbursements on the client files. The firm expanded its marketing efforts to support the Brampton office.

[10] The Brampton office was very successful. In the first year, it generated $2.5M in revenue. By 2020, that had grown to $5.5M. In 2017, Sokoloff Lawyers increased the compensation to Ms. Chorney from 35% of the profits to 40%. In 2020, Ms. Chorney was paid $2.17M in compensation.

Contingency Fee Agreements

[11] Sokoloff Lawyers billed its clients on the basis of Contingency Fee Agreements (CFA). Three different standard CFAs were used at the Brampton office. The agreements provide that Sokoloff Lawyers will cover all disbursements and not charge any fees unless successful.

[12] The CFA used between 2015-2018 provides that if a client terminates the retainer or changes lawyers, the client will be obligated to pay fees based on hourly rates for lawyers and staff. It does not specifically state the amount of disbursements that is to be paid. It is silent with respect to when the fees are to be paid.

[13] The 2018-2021 and the 2021 CFAs provide as follows:

[2018-2021]

> […] If you terminate this agreement before the Claim is concluded, you agree to pay our reasonable charge for the work accomplished to that date as explained below, and you or any new firm that subsequently takes over your case must reimburse all of our disbursements, as well as undertake to protect all service providers accounts incurred when you were a client at Sokoloff Lawyers within 30 days of leaving the firm.
>
> […]
>
> The factors that will determine our reasonable charges where this agreement ends prior to resolution of the Claim, include the time and effort required and spent by us, the usual hourly rates charged by us for non-contingency work, the complexity of the case and the responsibility and risk we assumed by representing you in the case, the difficulty and importance of your case, the expertise, experience, degree of skill and competency demonstrated by is in representing you, whether special skill of service was required and provided, the amount involved and/or value of the Claim, results obtained by us and other relevant considerations.
>
> […]
>
> If you terminate this agreement and continue with the Claim, but are unable to pay our account at the time of termination and we make arrangements to permit our reasonable charges to be paid, you agree that our reasonable changes will be a first charge on any money paid for the Claim. You also agree to sign a document at that time confirming this.

> ***[2021 – present]***
>
> You are free to end our agreement at any time … If our agreement ends before your case concludes, you may still owe us for:
>
> - Disbursements that you are responsible for, plus taxes;
> - Our legal services, paid as hourly fees, up to the time the agreement ends, and for fees from your settlement or award when your case concludes.
>
> We would collect the money for disbursements from you or your subsequent counsel, and for fees from your settlement or award when your case concludes.

[14] There is no evidence before the court with respect to which CFA applies to each of the transferred files.

Post February 2021 Negotiations Between Ms. Sokoloff and Ms. Chorney

[15] There had previously been discussions about Ms. Chorney becoming a partner of Sokoloff Lawyers. The parties were unable to agree on the terms of the partnership. There is a dispute as to when Ms. Chorney's compensation arrangement with Sokoloff Lawyers came to an end. Ms. Sokoloff takes the position that the compensation arrangement came to an end in February 2021. Ms. Chorney takes the position that the agreement continued until she left the firm on Monday, October 11, 2021.

[16] In 2021, Ms. Chorney and Ms. Sokoloff began negotiating a new compensation arrangement. The initial discussions involved an equal sharing of the expenses of the Brampton office and splitting the profits 50-50. Over the next several months, they continued to discuss the terms of the new arrangement, however no agreement was reached. During the course of the negotiations, Ms. Sokoloff withheld compensation payments to Ms. Chorney. A separate action was commenced by Ms. Chorney for payment of the compensation she states is owing to her.

[17] In the course of negotiations, Ms. Sokoloff sent to Ms. Chorney an e-mail on May 27, 2021. Ms. Sokoloff addressed the possibility of Ms. Chorney leaving the firm. Ms. Chorney had proposed that Ms. Sokoloff receive 27.5% of the fees on any files transferred from the firm. Ms. Sokoloff stated that she would not accept that percentage after she had funded the complete operation and 90% of the files were referred by her. Ms. Sokoloff suggested that a reasonable split of the fees would be 60-40 in her favour. She also proposed that any files opened after February 2021 would remain at Sokoloff Lawyers. As a term of the proposal, she stated that she would not expect reimbursement of the disbursements incurred up to the date of the termination of the agreement and would not expect them paid until the case settles, but that Ms. Chorney would be responsible for all disbursements going forward. The parties were unable to agree on the split in profits and payment of disbursements in the event Ms. Chorney left the firm.

The Takeover of the Brampton Office – Thanksgiving Weekend 2021

[18] Ms. Chorney decided to leave Sokoloff Lawyers and start her own firm. On September 11, 2021, Ms. Chorney registered a domain name; "chorneylawyers.com". On the same day she opened a Microsoft 365 account in the name of her professional corporation.

[19] On Friday, October 8, 2021, Ms. Chorney sent all Brampton staff home at 1 p.m. She told them to leave their computers on and to not password protect them. Over the Thanksgiving long weekend, Ms. Chorney changed the locks and took down the Sokoloff Lawyers sign. She recruited one lawyer and four law clerks who were employed with Sokoloff Lawyers. She asked them to resign and join her new law firm. Over the weekend, Ms. Chorney and her team downloaded client files and precedents from the computers.

[20] On Monday, October 11, 2021 at 7:29 p.m., Ms. Chorney sent an e-mail to Ms. Sokoloff advising her that she was resigning from the firm to start her new firm. In the e-mail, she stated that she will contact clients and present the three options available to them; to stay with Sokoloff Lawyers, move to the new firm of Chorney Injury Lawyers or retain new counsel. On Tuesday morning, Sokoloff Lawyers began receiving authorizations signed by clients to transfer their files to Chorney Injury Lawyers.

[21] Ms. Chorney states in her affidavit that she complied with the Law Society of Ontario (LSO)'s commentary for departing lawyers, with one exception. She provided the clients with the three options however she did not approach Sokoloff Lawyers about sending a joint letter to the clients. It is her position that a joint letter would not be possible because of the devolution of her relationship with Ms. Sokoloff. Ms. Chorney does not state in her affidavit when the letters to the clients were sent.

[22] To date, approximately 220 clients have provided authorizations to transfer their files from Sokoloff Lawyers to Chorney Injury Lawyers. The outstanding disbursements on the transferred files is approximately $1,447,000.

With Prejudice Settlement Proposals

[23] On November 14, 2021, the Defendants delivered a "with prejudice" proposal to resolve the dispute. The Plaintiffs responded in Ms. Sokoloff's supplementary affidavit sworn November 15, 2021. There is a general agreement between the parties with respect to most of the outstanding issues.

[24] The following matters continue to be in dispute:

i) The Plaintiffs take the position that the Defendants' proposal that the Plaintiffs are not to approach clients that Ms. Chorney "anticipates" will provide a direction, is not fair or reasonable. The Plaintiffs argue that it is not clear how Ms. Chorney could anticipate a direction if she has had no communication with the clients.

ii) The Defendants propose that the Plaintiffs provide an accounting of the disbursements but does not state when the disbursements are to be paid. The Plaintiffs propose that the disbursements are paid forthwith.

iii) Other than the distribution of the fees with respect to the three files referred to in the with prejudice proposal, the Defendants make no proposal with respect to the payment or protection of the fees owing to Sokoloff Lawyers on the transferred files. The Defendants propose that the legal fees earned in connection with

transferred client files be distributed 25% to Sokoloff Lawyers, 25% to the Defendants, and 50% to a segregated trust account.

ANALYSIS

Test for Injunctive Relief

[25] Section 101 of the *Courts of Justice Act*, R.S.O. c. C.43, provides that an interlocutory injunction may be granted where it appears to the judge to be just or convenient to do so. The test for granting an injunction is not in dispute. The test consists of three parts:

a. There is a serious issue to be tried;

b. The moving party will suffer irreparable harm if the relief is not granted; and

c. The balance of convenience favours granting the injunction: *RJR MacDonald Inc. v. Canada (Attorney General)* [1994] 1 SCR 311 at p. 335-337.

[26] The test is not to be rigidly applied. It is to be considered as a whole. Strength in one part of the test can make up for a weakness in another. The court is to consider, in light of the three parts of the test, whether injunctive relief is appropriate: *Brown v. First Contact Software Consultants Incorporated,* 2009 CanLII 48504 (ONSC), at paras. 21-22.

Serious Issue to be Tried/Strong Prima Facie Case

[27] The first branch of the test requires the Court to make a preliminary assessment of the merits of the underlying claim. The motions judge need only be satisfied that the underlying claims are neither vexatious nor frivolous: *RJR MacDonald Inc. v. Canada (Attorney General)*, at paras. 54-55.

[28] The Plaintiffs argue that the actions of the Defendants give rise to a number of different causes of action, including frustration of solicitor's lien rights, inducing breach of contract, unjust enrichment and breach of good faith and fiduciary duties. The Plaintiffs argue that each cause of action is a serious issue to be tried.

[29] The Plaintiffs rely on *Grillo v. D'Angela*, [2009] O.J. No. 7 (ON SC). In *Grillo*, the defendants (three associates and a paralegal) took 250 physical client files on Christmas Eve and resigned from the law firm to start their own firm. The Court found the plaintiffs had made out a strong *prima facie* case. Justice Strathy (as he then was) stated:

> Mr. Capern concedes in his factum that the "circumstances surrounding the individual Defendants' departure were less than ideal." This is a substantial understatement. The plaintiffs have made out a strong *prima facie* case that the defendants breached their duties of loyalty and good faith to Mr. Grillo and Grillo & Associates, by (a) contacting clients for their own purposes to induce them to leave the firm while they were still employed by the firm; (b) quitting without notice; (c) taking client files without the firm's knowledge and permission; (d) using the client files after their departure for the purpose of contacting clients of the firm

> with a view to inducing them to switch to the new firm; and (e) depriving the firm of the opportunity to inform its clients of the defendants' departure and of the options available to the clients and of the consequences of the various options: at para. 20.

[30] The Defendants argue that the *Grillo* case is distinguishable because it involved the removal of physical files. Here, the files are electronic and there is no issue with respect to the return of the physical files. I am not satisfied that whether the files are electronic or physical is a distinguishing factor. Both here and in *Grillo* the defendants accessed the information contained in the files for their own purposes.

[31] The Defendants also argue that a further distinguishing feature is that Ms. Chorney complied with the LSO rules with respect to the transfer of files. She wrote to the clients and provided the three options, moving the file to Chorney Injury Lawyers, staying with Sokoloff Lawyers or retaining a new firm. The Defendants concede that Ms. Chorney did not follow the LSO rules with respect to the firm and departing lawyer sending a joint notice to the client. Ms. Chorney states that it was unlikely Sokoloff Lawyers would agree to a joint letter.

[32] It is the Defendants' position that the facts of this case are similar to those in *Loreto v. Little et al.,* 2010 ONSC 755. In that case, Frank Loreto sued four of his former associates for leaving his law firm and setting up a new firm. He alleged breaches of contract, fiduciary obligations and duties of confidentiality. Following a trial, Belobaba, J. found that two of the associates had been fired and the other two constructively dismissed. He held that in the case of professionals, the general rules of fiduciary duty do not apply. The clients have a right to choose their lawyer. He noted that in an ideal world the firm and departing lawyer would co-operate in contacting the affected clients, however that ideal is rarely achieved. The judge stated that the lawyers' use of the firm's client list to contact the clients to provide them with the required options for the transfer of the file is not a breach of any duty of confidentiality: at para. 40.

[33] It is my view that the Defendants' compliance with their obligation to advise the clients of their options with respect to the transfer of the files is not a complete answer to the Plaintiff's position that there is a serious issue to be tried.

[34] Ms. Chorney, in her affidavit, does not state when the clients were contacted about the transfer of the files. She did not provide copies of any of the letters or e-mails to the clients setting out when the correspondence was sent. Although she resigned on Monday, October 11, 2021 at 7:29 pm, authorizations to transfer the files were received in the Sokoloff office on Tuesday morning. Counsel for the Plaintiffs argue that it is reasonable to infer that the clients were contacted before Ms. Chorney resigned. I agree. I draw an adverse inference from Ms. Chorney's failure to state in her affidavit when the correspondence was sent or to provide copies of the correspondence.

[35] The Plaintiffs claim that there was a loss of the Plaintiffs' solicitor lien rights. The Defendants accessed the electronic files and as a result, the information in the electronic file is no longer in the exclusive control of Sokoloff Lawyers. The Plaintiffs have no practical ability to enforce its lien rights against the individual clients. The Defendants argue that the Plaintiffs' claim for payment of the disbursements should be brought against the individual clients and not the

Defendants. However, because of the Defendants' actions, the Plaintiffs cannot require the clients to pay the disbursements before the file is transferred. I am satisfied that this is a serious issue to be tried.

[36] The Plaintiffs also argue that Ms. Chorney induced breach of contract. The retainer agreement for the period from 2018-2021 provides that if the client changes firms, the client is responsible for the payment of disbursements. The Defendants produced a sample letter to a client advising that Ms. Chorney is leaving Sokoloff Lawyers and is opening her new firm. The letter is undated. The letter is on Chroney Injury Lawyers letterhead. The letter does not state that if the client changes firms, the client is immediately responsible for payment of the disbursements or that if the file is ultimately unsuccessful, the client will be personally responsible for payment of the Sokoloff Lawyers' fees incurred before the transfer of the files. Instead in the letter, Ms. Chorney states that there will be no increase in the fees to be paid by the client if the client moves to Chorney Injury Lawyers. The letter sent by Ms. Chorney suggests that the clients will not be required to make the payments set out in the retainer agreement. I am of the view that whether Ms. Chorney induced breach of contract is a serious issue to be tried.

[37] The Plaintiffs claim that the Defendants' conduct gives rise to an action in unjust enrichment. The Defendants propose that they keep the transfer files but that the Plaintiffs carry the cost of the disbursements. As a result, the Defendants would get the benefit of Sokoloff Lawyers financing the firm without having to pay interest or incur the risk or expense of carrying the disbursements. The Plaintiffs argue there is no juridic reason to allow this arrangement. I am satisfied this is a serious issue to be tried.

[38] Finally, the Plaintiffs argue that the Defendants' conduct is in breach of the duties of good faith and fiduciary duties as set out in the *Grillo* case. The Defendants' conduct over the Thanksgiving long weekend is not disputed. Instead the Defendants take the position that because the partnership issues were not resolved and there was unpaid compensation, Ms. Chorney "had no choice" but to leave the Sokoloff Lawyers. The Defendants take the position that Ms. Chorney "conducted herself appropriately in her departure from the Sokoloff firm".

[39] As noted by Strathy, J. in *Grillo*, it is my view that the characterization of Ms. Chorney's conduct over the Thanksgiving weekend as "appropriate" is a "substantial understatement". Ms. Chorney conducted a planned and deliberate operation to take over the Brampton office. Without providing notice to her employer, Ms. Chorney closed the office at 1 p.m. on October 8, 2021 and asked the employees to leave the computers on and not password protected. She downloaded client files. She arranged for the locks in the office to be changed and the Sokoloff Lawyers sign to be removed. She had previously secured a domain name and prepared letterhead for her new firm. I find that she contacted clients about the transfer of files before she resigned from the firm.

[40] As in *Grillo,* I am satisfied that the Plaintiffs have made out a strong *prima facie* case that the Defendants breached their good faith and fiduciary duties to the Plaintiffs.

Irreparable Harm

[41] The moving party must establish that if the injunction is not granted, it will suffer harm that cannot be quantified in monetary terms or cannot be cured. The court must consider the nature of the harm rather than the magnitude: *RJR MacDonald Inc. v. Canada (Attorney General)*, at para. 64. I am of the view that in light of the strength of the Plaintiffs' case, the factor of irreparable harm is somewhat less important in this motion: *Canadian Hedge Watch Inc. v. Street*, 2015 ONSC 454, at para. 43.

[42] The Plaintiffs argue that if the injunction is not granted, they will suffer irreparable harm through a loss of market share and unfair competition. Cases of unfair competition are often recognized as cases in which damages may be difficult to calculate and may not adequately compensate the plaintiff: *Precision Fine Papers Inc. v. Durkin*, 2008 CanLII 6871 at para. 25.

[43] The primary dispute in this case is when the Defendants ought to pay the disbursements on the transfer files. The Plaintiffs argue that the payment ought to be made at the time of the transfer. The Defendants argue that the payment ought to be made when the files ultimately settle.

[44] Chorney Injury Lawyers is now competing directly with Sokoloff Lawyers in the Brampton market. However, the two firms are not on an equal playing field. Sokoloff Lawyers is required to carry the cost of the disbursements, not only for the files it will be responsible for going forward, but also for the Chorney Injury Lawyers' files. Instead of the Defendants obtaining bank financing to pay for the upfront cost of disbursements, the Defendants seek to have Sokoloff Lawyers take on the role of a bank to finance the new firm. There is no evidence on the motion that Ms. Chorney took any steps to obtain financing for the disbursements, or that she would be unable to obtain financing.

[45] The Defendants argue that the Plaintiffs' losses are quantifiable monetary damages and therefore an injunction is not appropriate. The Defendants rely on *Grillo* in which the court found that although the plaintiffs had established a strong *prima facie* case, the court found there was no irreparable harm.

> I am satisfied that the plaintiffs' legitimate and entirely appropriate financial concerns can be addressed without the return of the files. Mr. Grillo can be given access to the files in the defendants' possession for the purpose of quantifying the work done on the files. The defendants can be compelled to return any documents that are the property of the plaintiff firm as distinct from the property of the clients. The plaintiffs' accounts are partly protected by the defendants' undertaking to pay all proper disbursements within five months (an undertaking that was given at the hearing and will be reflected in my order). The plaintiffs' fees can be protected by an order that the defendants retain a sufficient amount of any settlement or judgment in a client matter, pending resolution of those fees: *Grillo*, at para. 32.

[46] I am of the view that the *Grillo* case is distinguishable with respect to the issue of irreparable harm. In that case there was no issue of unfair competition as a result of the Grillo firm financing the new firm by carrying the cost of the disbursements on the transferred files. In *Grillo,* the defendants had agreed to pay the full amount of all proper disbursements on the transferred

files within five months of the date of the endorsement. In addition, the defendants agreed to protect the plaintiff's lawful fees and to hold in trust a sufficient amount of any settlement or judgment until the plaintiff's claim for fees and disbursements is determined. Here, the Defendants have not agreed to pay the disbursements until when the files are resolved.

[47] There is no valid reason for the Defendants to ask that Sokoloff Lawyers finance their new firm instead of obtaining their own financing. The Defendants' proposal that the disbursements will not be paid until the conclusion of the file has the effect of Sokoloff Lawyers financing its competitor. This results in unfair competition because Sokoloff Lawyers will be required to carry the cost of the disbursements and Chorney Injury Lawyers will not be required to incur this expense or risk. The money Chorney Injury Lawyers does not have to spend to finance the disbursements is available to spend on marketing. The damages that result from the unfair competition will be difficult to calculate and may not adequately compensate the Plaintiffs.

[48] I am of the view that it would not be fair or reasonable that the Plaintiffs finance its competitor by carrying the disbursements on the transferred files. I do not consider it to be reasonable that the Defendants could obtain control of the files through its self-help and retain the value in those files without assuming any of the cost or risk in carrying the disbursements. I adopt the dicta of Myers, J. in *Canadian Hedgecase*:

> What then is an adequate remedy? Realistically, virtually any claim can be valued. Appellate courts have made it clear that, at trial, judges are to value damages as best they can. The valuation may not be scientific or precise, but a fair and just assessment of money damages is likely possible for almost any cause of action. Why then do some cases say that there should be an interlocutory injunction because loss of goodwill is irreparable harm but other cases say that damage to goodwill is readily calculable? Why do some cases say that loss of market share is irreparable harm and others say that loss of profit consequent upon a loss of market share is readily calculable? The answer, it seems to me, is in the equitable nature of the relief being sought. There are three factors in the *RJR* and *American Cyanamid* tests for interlocutory injunctions not just one. The court looks at the strength of the case, the risk of irreparable harm, and the balance of convenience to determine if it is just and equitable to confine the plaintiff to a remedy in damages in the circumstances of each case. In most cases, it may well be adequate for the plaintiff to be compensated in damages for monetary loss especially in a business context. But each case is decided on its own facts and circumstances.
>
> In this case, to confine the plaintiff to a remedy in damages would be most unjust and inadequate. The defendants cannot pay. The calculation is ephemeral and uncertain being bound up in the value of reputation and goodwill that is at the very core of why conferences exist as a marketing tool. The potential spillover effect from the loss of clients and sponsors from the premier NID Conference into other aspects of the plaintiff's business will be very difficult and expensive to prove. Moreover, allowing the defendants to succeed in their unlawful design is contrary to any conception of fairness. It is not clear that the NID Conference can recover from the harm inflicted upon it already. However, saying to the plaintiff "Too bad;

so sad; see you at trial" is unacceptable. Doing so would vindicate the defendants' surreptitious breaches of duty and intentional torts: at paras. 46 and 47.

Balance of Convenience

[49] In considering the balance of convenience, the court must determine which of the two parties will suffer the greater harm from either granting, or refusing to grant the injunction pending a determination on the merits: *RJR MacDonald Inc. v. Canada (Attorney General),* at paras. 62-63, and *Gunning and Associates Marketing Inc. v. Kesler*, 2005 CanLII 7662 (ON SC), at para. 35.

[50] The Plaintiffs argue that the balance of convenience favours granting the relief sought. The Defendants created an unfair situation through their own self-help. As a result, Chorney Injury Lawyers obtained the benefit of the files, at no cost. The Plaintiffs argue that by requiring the Defendants to pay the cost of disbursements at the time of the transfer of the files, the playing field will be reset. Sokoloff Lawyers will not be required to carry the cost of the disbursements for both its files and the files being handled by its competitor, Chorney Injury Lawyers.

[51] The Defendants argue that in considering the balance of convenience, the *status quo* ought to be maintained. Before the events of the Thanksgiving weekend, Ms. Sokoloff had entrusted the files to Ms. Chorney. It was expected that Ms. Chorney would manage the files and when the files were resolved, Ms. Sokoloff would be reimbursed for the disbursements and would receive her share of the profits. The Defendants state that if the injunction is not granted, Ms. Sokoloff will be in the same position. In oral argument, the Defendants' counsel stated that if the files were going to a different firm the circumstances with respect to the payment of disbursements may be different. He argues that because the files are remaining with Ms. Chorney there is no reason to change the arrangement.

[52] I do not accept the Defendants' argument that the *status quo* would be maintained if the injunction is not granted. I also do not understand the distinction suggested by counsel for the Defendants that if the files were transferred to a firm other than Chorney Injury Lawyers, the circumstances regarding the payment of disbursements may be different. Before the Defendants' self-help, Sokoloff Lawyers was not competing with Chorney Injury Lawyers in the Brampton market. Sokoloff Lawyers was financing files over which it had control and was not financing a competitor firm by carrying the other firm's disbursements.

[53] In my view it is not an unfair or onerous burden to expect Chorney Injury Lawyers to obtain financing to carry the disbursements. If Chorney Injury Lawyers was starting a new firm, it would be required to obtain a bank loan or other financing to cover the disbursements and its fees before the files are settled and billed. As noted above, there is no evidence before the court that Ms. Chorney made any attempts to obtain financing, or that she was denied financing.

[54] I conclude that the balance of convenience favours the granting of equitable relief.

Conclusion

[55] I am satisfied that all three aspects of the test for granting an injunction are met.

[56] Based on the "with prejudice" proposals of the parties, there are three main issues in dispute; (i) whether the Plaintiffs may approach clients who have not yet transferred their files to Chorney Injury Lawyers, but who Ms. Chorney anticipates will transfer their files, (ii) when disbursements on the transferred files are to be paid and (iii) the arrangements to be made to protect the Plaintiffs' fee account on the transfer files.

[57] I am of the view that the Defendants' proposal that the Plaintiffs are not permitted to approach clients who Ms. Chorney "anticipates" will authorize a transfer is unfair. It is not clear how Ms. Chorney may anticipate a client will deliver an authorization to transfer the file. Until an authorization to transfer the file is delivered, the client remains a client of Sokoloff Lawyers. Ms. Chorney delivered the letter to the clients with the three options identified, six weeks ago. The client has had sufficient time to deliver an authorization to transfer the file to Chorney Injury Lawyers. It is not appropriate that Ms. Chorney contact the clients of Sokoloff Lawyers just as Ms. Sokoloff should not contact clients of Chorney Injury Lawyers. However, this does not prevent either Chorney Injury Lawyers or Sokoloff Lawyers from communicating with any client who chooses to contact them of their own volition, or as a result of the "options" letter sent by Ms. Chorney.

[58] The Plaintiffs propose that the Defendants pay the disbursements at this time. The Defendants propose that the disbursements be paid when the file resolves. I am of the view that it is unfair for the Plaintiffs to be responsible for the cost and risk of carrying the disbursements on the transferred files until the file resolves. In *Grillo*, the defendant agreed to pay the disbursements within five months of the date of the endorsement. I consider five months to be a reasonable time frame. This will provide sufficient time for the Defendants to make arrangements for financing. Of course, if any of the transferred files are settled within the next five months, the Defendants are required to reimburse Sokoloff Lawyers for the disbursements at the time of settlement.

[59] The Plaintiffs are entitled to be paid for the work performed on the transferred files before the date of transfer. There is an issue as to whether the fee on the files will be based strictly on an "hourly rates times hours" basis, or on a *quantum meruit* basis. In all likelihood, the fee will not be determined until after the file is resolved and possibly after an assessment.

[60] In *Grillo,* the court held that a "sufficient amount" is to be held in trust when the file settles to protect the former lawyer's account. The Plaintiffs propose that when each transferred file settles, 25% of the fee portion be provided to the Sokoloff Lawyers, 25% be provided to Chorney Injury Lawyers and 50% be placed in trust pending determination of the fee. The Defendants do not make a proposal with respect to the portion of the fee to be paid into trust, and instead argue that there is sufficient value in the transferred files to pay the Plaintiffs' account when the files settle.

[61] It is my view that the Plaintiffs' proposal is reasonable and results in a "sufficient amount" being held in trust pending the determination of the Plaintiffs' fee account.

DISPOSITION

[62] I allow the Plaintiffs' motion for an interlocutory injunction. I make the following order:

(a) The Defendants shall immediately refrain from initiating communication with or soliciting any current Sokoloff Lawyers' clients.

(b) The Plaintiffs shall immediately refrain from initiating communication or soliciting clients who have delivered file transfer directions/authorizations.

(c) Either Sokoloff Lawyers or Chorney Injury Lawyers shall retain the right to communicate with any individual who chooses to contact them of their own volition, or as a result of the "options" letter sent by Ms. Chorney.

(d) Ms. Chorney and Ms. Sokoloff shall not disparage the other, either explicitly or implicitly, in their communications with clients.

(e) If Ms. Sokoloff has specific, file-related questions regarding clients that remain with Sokoloff Lawyers, such questions shall be communicated to Ms. Chorney or her colleagues by e-mail. Ms. Chorney or her colleagues shall provide answers to the best of their ability as soon as possible. To the extent that Ms. Chorney or her colleagues have any knowledge about imminent appearance dates, limitation periods, or other deadlines in any of the files that remain with the Sokoloff Lawyers, they shall promptly provide that information to Ms. Sokoloff.

(f) For the files in the Brampton office that are provisionally closed or settled, including cases requiring court approval, passing of accounts, the appointment of guardians for property, and/or confirming accounts of third party providers, the Defendants will assume responsibility for the remaining steps in the case, subject to client consent.

(g) The Defendants will advise Sokoloff Lawyers of any settlement or judgment for any transferred files, including the amount of the settlement, and to provide Sokoloff Lawyers with a copy of the Statement of Account and Trust Statement issued by the Defendants to the clients.

(h) Sokoloff Lawyers is permitted to advise any third party service providers that Sokoloff Lawyers will not be paying for or protecting their accounts with respect to any transferred files; the Defendants will assume all financial obligations to third party service providers who have provided services in respect of transferred clients' files.

(i) With respect to the Dhillon, Patrizi, Kenn and Carriere Family files, Sokoloff Lawyers will retain all legal fees but agree to hold 50% of the legal fees in trust pending agreement of the parties, or further order of the court. With respect to the Khushpal Dhillon file, Ms. Sokoloff shall make the required payout to the client from the funds held in trust. With respect to the Patrizi file, Ms. Sokoloff shall make the required payout to the client once funds are received. With respect to the

Dale Kenn and Carriere Family files, Ms. Sokoloff shall make the required payment to the client from the funds held in trust by the firm. When further settlement payment is received from Honda, Ms. Sokoloff will pay the Littlejohn firm $10,000 from those funds.

(j) The Defendants shall provide to the Plaintiffs a list of all files that have been transferred to Chorney Injury Lawyers within 10 days of the date of this endorsement. Within 10 days of receiving the list of transferred files, the Plaintiffs shall deliver a full accounting of the disbursements it claims are payable with respect to each file. The Defendants shall reimburse Sokoloff Lawyers all outstanding disbursements on transferred files within five months of the date of this endorsement.

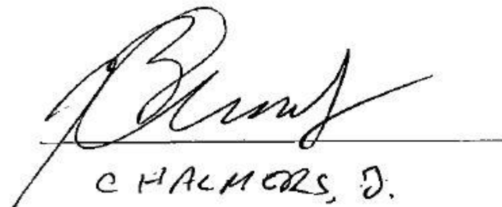
(k) At the time the transferred files settle, the legal fees earned on the files will be distributed 25% to Sokoloff Lawyers, 25% to the Chorney Injury Lawyers, and 50% to a segregated trust account, with the entitlements of Sokoloff Lawyers and Chorney Injury Lawyers to the fees in trust, determined on consent of the parties or by further order of the Court.

[63] The Plaintiffs are successful on the motion and are presumptively entitled to their costs. After argument and before this endorsement was released, I asked both parties to provide their Bill of Costs. The Plaintiffs' Bill of Costs is in the amount of $72,113.24 on a partial indemnity basis inclusive of counsel fee, disbursements and HST. The Defendants' Bill of Costs is in the amount of $49,907.56 on a partial indemnity basis inclusive of counsel fee, disbursements and HST.

[64] In exercising my discretion with respect to assessing costs, I considered the factors identified in Rule 57.01 of the *Rules of Civil Procedure*. I also considered the overall objective of any costs award; that it be fair and reasonable and within the reasonable expectation of the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 26, 38.

[65] This motion was argued over a half day. The oral submissions of counsel for both parties were particularly skillful. Counsel were well-prepared for the oral hearing. I am satisfied that the injunction was of importance to the parties and was moderately complex.

[66] I award costs of the motion to the Plaintiffs fixed in the amount of $50,000.00 inclusive of counsel fee, disbursements and HST. The costs are payable within 30 days of the date of this endorsement.



DATE: November 26, 2021