

But for the Plan

Know when to hold 'em. Know when to fold 'em. Trust your lawyer through the Settlement Process

M. was a hard worker who considered himself a general handyman. Whenever he could, he would complete his own repairs and make sure his home equipment was running smoothly. But when it came time to replace an old water heater and furnace, M. realized that no amount of duct tape could do the job, so he bought new equipment through a large, local supplier.

M. made his monthly payments on time, via automatic bank transfers, and saw out the term of the purchase, but after a few years, when M. and his spouse noticed that monthly amounts were still being processed, they stopped the transfers and called our Oakville office for help.

Not only did the equipment supplier refuse to admit fault for overcharging, it demanded that payments continue, stating that what M. signed (and was now in breach of) was a long-term rental agreement, not a purchase contract. Despite multiple demands to produce this agreement the company could not provide any documentation signed by M. And despite a lawyer's letter stating that no money was owed, the company, over the course of approximately two years, used collection agencies that constantly contacted M., demanding payments and threatening legal action, which would include a lien on M.'s property.

M. took these claims seriously. He contemplated continuing payments, to stop the harassment and avoid a lawsuit. But before doing anything he might regret, M. returned to our office, for additional help. Two curt "cease and desist" letters stopped the majority of the phone calls.

But a year or so later the saga continued when M. received a knock on his door and an envelope on his doorstep with a claim from the company, suing M. for breach of contract in the amount of approximately \$8,800 plus legal fees and prejudgment interest.

M. again contacted us, asking if he should just pay the company, to make the whole thing go away. The Oakville legal team reassured M., and quickly filed a defence, citing a lack of evidence regarding the "rental" and a lapsed limitation period for all or part of the claim. In addition, an offer to settle the matter out of court was served on the company, as a strategy to save M. future legal fees and to argue for additional "costs" (i.e., M.'s legal fees) if the matter went to Court and the Judge's decision was less than the settlement offer.

M. began to lose patience within a few months of sending the offer, wondering whether he should increase his offer to avoid the time and stress of dealing with the matter in Court. Luckily his legal team helped him stay the course and attend the settlement conference.

Within minutes of the Settlement Conference commencing and before opening statements were completed, the company's legal representative capitulated that the case was over and above what should have been brought against M. and advised they would accept M.'s settlement offer. M.'s lawyer, with the assistance of the Conference Judge, quickly convinced the company's representative and lawyer that their delays and inability to respond sooner to the year-old offer was unacceptable.

The case closed shortly thereafter, with M. paying little more than a nuisance fee of \$750., and the company confirmed that no liens would be attached to M.'s property. M.'s legal fees were just under \$2,400., thanks to a portion of the fees being paid by the Plan.

M.'s faith in the legal direction and advice of the Oakville office was rewarded. While it is sometimes tempting to pay for a problem to go away as quickly as possible, you should always seek the advice of a lawyer to see if there are better alternatives. And sometimes it pays to hold your ground until the right settlement can be reached.

But for the Plan, M. may not have been able to hold 'em for quite so long !