IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Liu v. Borden Ladner Gervais LLP,* 2025 BCSC 2004

Date: 20251003
Docket: S175046
Registry: Vancouver

Between:

Jiukang Liu and Tony Liu Notary Corporation

Plaintiffs

And

Borden Ladner Gervais LLP, CE International Resources Holdings LLC, Steven Ping Li, Royal Pacific Realty Corp., and Soon Sit Yeap also known as Sit Siripatcharapol

Defendants

Before: The Honourable Justice Doyle

On appeal from: An order of a Supreme Court Associate Judge, dated May 14, 2024 (*Liu v. Borden Ladner Gervais LLP*, 2024 BCSC 816, Docket No. S175046.

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	R.S. Fleming
Counsel for the Defendant Borden Ladner Gervais LLP:	J.G. Dives, KC
Place and Date of Hearing:	Victoria, B.C. January 15, 2025
Place and Date of Judgment:	Vancouver, B.C. October 3, 2025

[1] **THE COURT:** These are oral reasons for judgment. I reserve the right to edit them for clarity and grammar, but the reasoning and the result will not change.

INTRODUCTION

[2] This is an appeal from an order of Associate Judge Bouck made May 14, 2024, cited as 2024 BCSC 816. That order dismissed the appellant's application dated December 20, 2023, for production of documents and answers to questions on discovery for which objection was taken by the respondent.

[3] The appellants are notaries [“Notaries”] and are the plaintiffs in the underlying action. The respondent law firm [“BLG”] is one of the defendants.

[4] I provide further background below, but shortly stated the plaintiffs were notaries who acted for purchasers of residential real property in Vancouver. The purchase took place further to November 5, 2014 order of Madam Justice Fisher, now Fisher J.A. [the “Fisher Order”]. BLG acted for the defendant CE International Resources Holdings LLC [“CEIR”], which was a creditor. Among other things, the Fisher Order granted CEIR conduct of the sale.

Notice of Appeal

[5] The notice of appeal asserts that Bouck A.J. erred in principle, erred in law and was clearly wrong when she determined that BLG "as trustee by order of the court for the stakeholders, including the plaintiffs and the purchasers, of the proceeds of the court-ordered sale," did not have to produce documents or answer questions on discovery related to their interpretation of the Fisher Order "notwithstanding that any such documents and questions might also reveal their advice to their client, another of the stakeholders."

[6] The notice of appeal asserts that the associate judge erred or was clearly wrong by permitting general principles of solicitor/client privilege to "trump the specific rule of law relating to the right of beneficiaries to access legal advice given or obtained in the administration of their trust."

[7] The appellants' statement of argument para. 2 asserts that Fisher J. ordered BLG "to hold the proceeds of sale in trust and to distribute them:

> first in payment of taxes, arrears of taxes, interest, and penalties on arrears of taxes in respect of the Real Property…."

[8] The statement of argument goes on to assert that "'taxes' must mean 'all taxes' and as such BLG was obliged to remit $695,000 that the non-resident vendor was obliged to pay on the sale, under *Income Tax Act* s. 116."

[9] The appellants' statement of argument focuses on the issue of beneficiaries of a trust being entitled to legal opinions obtained or given in the administration of the trust commencing at para. 14 and citing various cases for that proposition.

[10] The focus of the associate judge's alleged error of law is that "without saying so expressly she seems to have accepted" BLG's argument that these principles had been overruled by *Canada (Attorney General) v. Chambre des Notaires du Québec*, 2016 SCC 20 (CanLII), [2016] 1 SCR 336 (statement of argument, para. 18).

[11] BLG responds that here, the appellants limit their appeal to whether an allegation of a breach of trust acts to set aside any claim of privilege of the alleged trustee.

Further Background of the Underlying Action

[12] The underlying action was the subject of a decision of the Court of Appeal dismissing the defendants' application to strike the plaintiffs' claim, 2020 BCCA 50. A portion of that background is concisely set out at paras. 1 and 2 of the reasons of Mr. Justice Butler, with whom Mr. Justice Abrioux concurred (Mr. Justice Willcock dissenting). Those paragraphs read as follows:

> [1] Borden Ladner Gervais LLP ("BLG") appeals the dismissal of its application to strike the Notice of Civil Claim (the "NCC") brought against it by Juikang Liu and the Tony Liu Notary Corporation (the "Notaries"). In 2014, Jun Mao and Jing Li (the "Purchasers") bought a $5.56 million property in Vancouver. In that transaction, the Notaries acted for the Purchasers and BLG acted for CE International Resources Holdings LLC ("CEIR"). CEIR was a creditor of the registered owners of the property and had conduct of sale pursuant to an order of the British Columbia Supreme Court made on

> November 5, 2014 (the "Fisher Order"). One of the registered owners of the property was not a Canadian resident at the time of the transaction, so a certificate of compliance with s. 116 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), was required. However, no such certificate was obtained. Canada Revenue levied a $695,000 withholding tax on the Purchasers.
>
> [2] In Vancouver Registry action No. S160498, the Purchasers sued the Notaries for not obtaining the certificate of compliance. In *Mao v. Liu*, 2017 BCSC 226, Justice Affleck (the "trial judge") found the Notaries liable. The Notaries appealed to this Court but arrived at a settlement with the Purchasers prior to the hearing of the appeal. Counsel for the parties spoke to a consent order before the division of this Court scheduled to hear the appeal (the "Consent Order").

[13] As did the Court of Appeal, and for clarity I will refer to the purchasers' action against the notaries as "*Mao*.

[14] As part of determining the issues on appeal, the majority distinguished the circumstances from *Saskatoon Credit Union Ltd. v. Central Park Enterprises Ltd.*, 1988 CanLII 2941 (BC SC). In so doing, and for further background, I will further note the Court of Appeal's reasons at paras. 29 to 31:

> [29] The circumstances that led to the decision in *Saskatoon Credit* are distinguishable from those in the present case such that the decision does not assist BLG. In *Saskatoon Credit*, the court struck the defendants' allegations in their statement of defence denying that the transfers between them were fraudulent. This was the very issue decided in the first action. Here, the Notaries are not attempting to relitigate the issues decided in *Mao*. There is no allegation in the NCC that the Notaries did not breach their duty of care to the Purchasers. Rather, the Notaries allege that they and the Purchasers reasonably relied on the skill and judgment of BLG to pay all taxes required to be paid by the Fisher Order. They further allege that BLG breached the terms of the Fisher Order and their alleged duties to the Notaries and Purchasers by failing to pay taxes before distributing funds to CEIR. These allegations were not decided in *Mao*. The NCC raises claims for contribution and indemnity, the very claims that the trial judge recognized could be brought by the Notaries in a separate proceeding.
>
> [30] I should note that I agree with my colleague, Justice Willcock, that the NCC is problematic as it has not been amended to reflect the Consent Order and that the terms used ("Underlying Action" and "Judgment") are less than clear. However, I have understood the "Underlying Action" to refer to action No. S160498 and "Judgment" to refer to whatever amount is owed by the Notaries to the Purchasers.
>
> [31] If the Notaries were attempting, in the current action, to relitigate the finding that they breached their duty of care to the Purchasers, BLG's argument that the Consent Order was administrative in nature would have to be considered. In such circumstances, the fact that the Consent Order was

> made without consideration of the merits of the case would be relevant. However, the NCC raises allegations of breaches of duty alleged to be owed by BLG to the Notaries and the Purchasers and advances claims for contribution and indemnity. The NCC does not raise the issues decided in *Mao* and this Court need not consider this issue.

[15] The majority was clear that *Mao* "did not decide if the Fisher Order required BLG to pay the withholding tax" (para. 41) and that comments of the summary trial judge in *Mao* at para. 29 were *obiter dicta*.

[16] Paragraphs 8 to 19 of the reasons for judgment of Bouck A.J. concisely summarize the underlying facts, which is consistent with a review of the materials and the facts asserted in the appellants' statement of argument. These include the background of the Fisher Order, the November 10 and 14, 2014 correspondence, and the completion of the sale on November 17, 2014.

[17] In the course of her reasons, Bouck A.J. made particular reference to *Chambre des Notaires du Québec* and *Ontario (Attorney-General) v. Ballard Estate*, 1994 CanLII 7513 (ON SC) (para. 34).

Issues

1. Standard of review

2. The appeal.

[18] A subsidiary issue is whether I should consider sealed materials that the parties, by consent, placed before Bouck A.J. Subsequent to the oral hearing of this matter, I received supplemental written submissions from both parties in that regard.

Standard of review

[19] The appellants submit that the associate judge erred in law, that the standard of review is correctness, and this is a hearing *de novo*. Alternatively, they seek a hearing *de novo* since the issue of whether they will get “meaningful discovery of BLG is vital to the final determination of the case”. As a further alternative, if there is no error of law, they submit that the standard of review is whether the associate

judge was clearly wrong and as such submit that the “palpable and overriding error standard applies”.

[20] The respondents submit that there was no error of law and that the issue is not of significance to the litigation. The respondents submit that a determination by the associate judge on document production and discovery questions are interlocutory matters and raise a question of mixed fact and law, and that accordingly the standard on appeal is whether the associate judge was clearly wrong.

[21] Various cases have discussed the standard of review on an appeal from an associate judge, and in so doing reference the *Abermin* test from *Abermin Corp. v. Granges Exploration Ltd.*, 1990 CanLII 1352 (BCSC), as summarized in *Ralph’s Auto Supply (BC) Ltd. v. Ken Ransford Holding Ltd.*, 2011 BCSC 999,, at para., 7, citing *Abermin*:

> 1) Review of a purely interlocutory decision of a master is a true appeal and the master’s decision is not to be interfered with unless it is clearly wrong.
>
> 2) A question of law, a final order or a ruling that raises questions vital to the final issue in the case are reviewed by way of a rehearing on the merits based on the record before the master; even where an exercise of discretion is involved, the judge appealed to may quite properly substitute his or her own view for that of the master.

[22] On the appeal of *Ralph’s Auto Supply (BC) Ltd. v. Ken Ransford Holding Ltd.*, 2011 BCCA 390,, the Court of Appeal found that in the circumstances of that case, the question of the appropriate standard of review was "essentially rendered moot."

[23] As noted recently by Justice Morley in *Ningbo Zhelun Overseas Immigration Service Co. Ltd. v. USA-Canada International Investment Inc.*, 2024 BCSC 682, "whatever the merits of criticisms of *Abermin*," it remains the test (para. 41).

[24] The appellants frame their appeal on the basis that the associate judge erred in law by not applying the principles expressed in various cases, including *Froese v. Montreal Trust Co. of Canada*, (1993) 41 ACWS (3d) 481 (BCSC), leave refused (1993) 42 ACWS (3d) 541 (BCCA), *Ballard*, *Cooke v. The Canada Trust Company*,

2005 BCCA 112, and *Chang v. Lai Estate*, 2014 BCSC 128*,* , and in so doing submit that the associate judge "without expressly saying so", seems to have accepted the respondent BLG's argument that these principles have been overruled by *Chambre des Notaires du Québec* (statement of argument, paragraph 18)

[25] The appellants' assertion that that the associate judge "did not explain in her reasons how she applied the law" to the facts (statement of argument paragraph 11). As noted above, the relevant facts are not in dispute.

[26] I characterize the issue the appellants raise as being the associate judge not applying the law to the underlying facts. As such, in my view this raises a question of law. I will address the key issue on this appeal as a hearing *de novo*.

Discussion

[27] The plaintiffs rely on the principle that beneficiaries of a trust are entitled to any legal opinions obtained or given in the administration of the trust, aside from legal advice sought by a trustee for its protection against beneficiaries (, statement of argument paragraph 14), citing paragraph 18 of *D.M.M. v. R.J.M.*, 2005 BCSC 207, as well as *Froese*; *Cooke*; and *Chang*.

[28] Trustee/beneficiary issues in those cases arose in the context of claims related to division of a spouse's pension (*D.M.M. v. R.J.M)*; a trustee's management of an employee pension plan, (*Froese)*; an *inter vivos* revocable trust (*Cooke)*; and wills variation *(Chang)*. *Ballard,* noted above, arose in the context of the breadth of the term "beneficiaries" in the context of a will and trust.

[29] In particular, the appellants' statement of argument highlights (para. 16) *Froese* (BCSC at paras. 8, 12, and 14; BCCA at para. 5) and *D.M.M. v. R.J.M.(*paragraph 18) for the proposition that:

> For the purposes of an interlocutory application arising from a trust claim, the plaintiffs need only establish a *prima facie* claim of trust.

[30] In *Froese*, the plaintiff had not just alleged in the pleadings that he was the beneficiary of the Johnston Trust and that the defendant was the trustee. In addition,

Master Joyce, as he then was, determined on evidence on the application that the plaintiff had met the burden of making a *prima facie* case in that regard. That evidence was described as the Johnston Pension Plan, the agreement between the plaintiff and the defendant, and a June 30, 1986 letter from the plaintiff to the defendant. The court also noted the contents of the defendants' January 27th, 1992 letter to the plaintiff advising that it had retained a law firm to act on its behalf regarding the plan.

[31] Master Joyce found that the plaintiff was entitled to production of communications between the defendant and its solicitors prior to the issuance of the writ which connected to administration of the plan, including documents described in the reasons. The reasons clarified that the plaintiff was not entitled to any communications relating to any action threatened by the plaintiff or advice as to how the defendant stood in relation to that threat or the defence of any such action.

[32] Mr. Justice Gibbs denied leave, noting at paragraph 5 that it was sufficient that Master Joyce found a *prima facie* case of a trustee/beneficiary relationship. In *D.M.M. v. R.J.M.*, a consent order declared that the husband's pension contributions up to a date certain were a family asset and that his wife was entitled to half of the relevant amount. The consent order also declared the husband was a trustee for his wife.

[33] Paragraph 18, upon which the appellants rely, states:

> [18] Both sides cited cases which stand for the same basic proposition: A beneficiary has a proprietary interest in and is entitled to production of documents relating to advice sought and obtained by a trustee in connection with the administration or management of, for instance, a pension plan, or an estate (see *Froese v. Montreal Trust Co. of Canada* [1993] B.C.J. No. 1529 (S.C.), aff'd [1993] B.C.J. No. 1847 (C.A.); *Re Ballard Estate* 1994 CanLII 7513 (ON SC), [1994] O.J. No. 2281 (Gen. Div.); *Cooke v. Canada Trust* (Van. Reg. No. S011763, October 22, 2004; leave to appeal granted); *Merritt v. Imasco Enterprise Inc.* [1992] B.C.J. No. 2011; *Thomas v. Secretary of State for India in Council* (1870) 18 W.R. 312 (Ch.)), but not to documents that arise in the course of an adversarial relationship between the trustee and beneficiary. Recently, the Privy Council addressed the issue in *Schmidt v. Rosewood Trust Ltd.* [2003] J.C.J. No. 26 (P.C.), holding that a beneficiary, simply by asserting a claim, does not have an entitlement as of right to

> disclosure; the strength of the claim must be assessed and balanced against competing interests such as personal or commercial confidentiality.

[34] None of the above cases cited by the appellants is founded upon a trustee/beneficiary relationship allegedly arising from a creditor obtaining conduct of sale for real estate pursuant to an order of this court.

[35] In *Chambre des Notaires du Quebec*, at para. 28, the Supreme Court of Canada stated:

> [28] On the first question, it should be remembered that professional secrecy, which started out as a mere rule of evidence, became a substantive rule over time (*Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821, at p. 837; *Descôteaux v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 S.C.R. 860, at pp. 875-76; *Smith v. Jones*, 1999 CanLII 674 (SCC), [1999] 1 S.C.R. 455, at paras. 48 - 49; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44, [2008] 2 S.C.R. 574, at para. 10). The Court now recognizes that this rule has deep significance and a unique status in our legal system (*R. v. McClure*, 2001 SCC 14, [2001] 1 S.C.R. 445, at paras. 28 and 31 - 33; *Smith*, at paras. 46 - 47). In *Lavallee*, the Court reaffirmed that the right to professional secrecy has become an important civil and legal right and that the professional secrecy of lawyers or notaries is a principle of fundamental justice within the meaning of s. 7 of the *Charter* (para. 49). Moreover, professional secrecy is generally seen as a "fundamental and substantive" rule of law (*R. v. National Post*, 2010 SCC 16, [2010] 1 S.C.R. 477, at para. 39). Because of its importance, the Court has often stated that professional secrecy should not be interfered with unless absolutely necessary given that it must remain as close to absolute as possible (Lavallee, at paras. 36-37; *McClure*, at para. 35; *R. v. Brown*, 2002 SCC 32, [2002] 2 S.C.R. 185, at para. 27; *Goodis v. Ontario (Ministry of Correctional Services)*, 2006 SCC 31, [2006] 2 S.C.R. 32, at para. 15).

[36] Further, at para. 32, the court stated in part:

> We are therefore of the opinion that, with certain rare exceptions, the general rule is that information protected by professional secrecy that is in the possession of a legal adviser is immune from disclosure.

[37] Solicitor/client privilege is a class privilege, not a case-by-case privilege.

[38] It is clear that one exception developed as what was referred to as the "wills exception", and was extended to include disputes involving trusts. The rationale was summarized by Wilson J., as noted in *Ballard*at page 7, where she states:

> In my view, the considerations which support the admissibility of communications between solicitor and client in the wills context apply with equal force to the present case. The general policy which supports privileging such communications is not violated. The interests of the now deceased client are furthered in the sense that the purpose of allowing the evidence to be admitted is precisely to ascertain what her true intentions were.

[39] I do not interpret *Chambre des Notaires du Quebec*to have eliminated this exception, which continues to apply in the context of wills and trusts. I also do not consider that it has overtaken the test applied in *Froese,* namely the burden being on the notaries, in this case, .as set out by Gibbs J.A. in denying leave to appeal in *Froese, supra*, stated at para. 5:

> In my view, it was sufficient for the master, at this stage of the litigation, to order production on a finding that a *prima facie* case of a trustee/beneficiary relationship had been made out notwithstanding denials by Montreal Trust in its statement of defence.

[40] And further at that paragraph:

> I am of the opinion that in the context of litigation in which the plaintiff alleges breach of duty in the administration of a trust and the documents which are sought to be examined are relevant to that issue the plaintiff may succeed on the basis of proprietary right if he makes out a prima facie case that he is a beneficiary of the trust and establishes that the documents are documents obtained or prepared by the trustee in the administration of the trust and in the course of the trustee carrying out his duties as trustee.

[41] In this case, the Fisher Order provided at paragraph 5 that the proceeds were to be "disbursed through the trust account of the firm Borden Ladner Gervais LLP, solicitors for CEIR." The order then set out the priorities, the interpretation of the breadth of para. 5(a) being a critical issue at the trial of this matter.

[42] It appears that none of the parties availed themselves of para. 7 of the Fisher Order:

> The parties hereto and the Purchasers be at liberty to apply for such further and other directions as may be necessary to carry out the full purport and effect of this Order.

[43] The context of this case is not the context referred by Gibbs J.A. in *Froese* in relation to a pension plan for which Montreal Trust was the trustee and the plaintiff a beneficiary.

[44] The Fisher Order was an order for sale. The funds ended up in the BLG trust account in accordance with that order, and it is on that basis that the appellants assert a trust.

[45] The funds were paid out in accordance with that order, with no one having applied to the court for any further or other directions "to carry out the full purport and effect" of the Fisher Order.

[46] On the circumstances in this case, in my view, the appellants have not established a *prima facie* case that they (or the purchasers) were the beneficiaries of a trust, nor have they established that any documents or communications between BLG and CEIR relate to the alleged trustee carrying out duties as trustee of the appellants as beneficiaries. The circumstances here are not within the context of those in *Froese* or *D.M.M. v. R.J.M.*

[47] The associate judge, by consent of counsel for both parts, reviewed the sealed material. The parties differ on appeal about whether I should review that material and consider it in this matter. Given my finding, I need not consider the sealed materials.

[48] I find that the conclusion of Bouck A.J. at para. 37 was correct, and the appeal is dismissed.

[49] Absent any application to the contrary within 30 days, the respondent is entitled to its costs in any event of the cause.

[50] Those are my reasons. Thank you both.

“Doyle, J.”