IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1011173 B.C. Ltd. v. Hakemi & Ridgedale LLP,* 2023 BCSC 913

Date: 20230531
Docket: S214353
Registry: Vancouver

Between:

1011173 B.C. Ltd.,
Stephen Grudenic and
Moushir Sadek

Clients
(Respondents)

And:

Hakemi & Ridgedale LLP

Lawyer
(Appellant)

Before: The Honourable Madam Justice Forth

On appeal from: An order of a Registrar of the Supreme Court of British Columbia, dated December 22, 2021 (*1011173 B.C. Ltd. v. Hakemi & Ridgedale LLP*, 2021 BCSC 2485)

Reasons for Judgment

Counsel for the Clients (Respondents):	S. Kruse
Counsel for the Law Firm (Appellant):	W.B. Smart, K.C. O. Regev
Place and Date of Hearing:	Vancouver, B.C. March 20, 2023
Place and Date of Judgment:	Vancouver, B.C. May 31, 2023

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Introduction

[1] The appellant, Hakemi & Ridgedale LLP (the "Law Firm"), appeals the decision of Master Bilawich, sitting as a Registrar of the Court (the "Registrar"), on December 22, 2021, in a bill review pursuant to s. 70 of the *Legal Profession Act*, S.B.C. 1998, c. 9 [*LPA*], the Registrar found that 1011173 B.C. Ltd., Stephen Grudenic, and Moushir Sadek (collectively, the "Clients"), were entitled to have reviewed all 31 legal accounts issued to them by the Law Firm.

[2] The Registrar found that the Clients did not give informed consent to the periodic final billing provision in the retainer agreement, as such, the Law Firm could not invoke this provision to limit the scope of the fee review: *1011173 B.C. Ltd. v. Hakemi & Ridgedale LLP*, 2021 BCSC 2485 at para. 53 (the "Reasons").

Relevant Facts

[3] The Clients retained the Law Firm in September 2018 to assist the Clients with litigation arising from a failed sale of 1011173 B.C. Ltd. The litigation expanded to include litigation relating to a second failed sale of the same assets to a different prospective purchaser and aspects of a successful sale of another asset to a third purchasers: Reasons at para. 1.

[4] On September 17, 2018, Tom Hakemi, a lawyer at the law firm, sent an email to one of the Clients, Moushir Sadek, advising that a retainer letter would be sent out. The retainer letter was sent on September 20, 2018, and signed by the Clients the same day (the "Retainer Agreement"). The relevant provisions of the Retainer Agreement state:

> […]
>
> Please review this letter carefully, and initial where indicated in the lower right after reading each page. If you have questions with respect to any aspect of this letter, or would like me to explain any part of it to you further, please let me know. Unless we agree in writing otherwise, the terms of this Agreement will not be amended, and will also apply to any other matters on which we agree to act on your behalf.
>
> […]

> This Agreement is not an "entire contract" and we are **not** agreeing to act for you in this matter until there is a settlement or final judgment, including in any trial. Instead, we will act for you on a month-by-month basis, and will provide you with periodic bills that are due upon receipt by you. These bills will be "final bills" for the applicable period, and are not in any way interim. You have a right to have each such final bill reviewed under the Legal Profession Act, but only within the time limits that begin running once a bill has been delivered to or paid by you. […]

(the "Final Billing Provision")

History of the Fee Review

[5] According to the Reasons, the Clients filed an appointment on April 30, 2021, seeking to review the bills issued by the Law Firm. Attached to the appointment were 31 accounts dated between November 1, 2018 and April 7, 2021. The total amount that the Law Firm billed to the Clients was $468,587.50. The Clients paid $409,982.34. The unpaid balance was $59,603.95, which does not include interest. The unpaid balance relates to the final five accounts, dated between September 22, 2020 and April 7, 2021.

[6] The Law Firm raised a preliminary issue with the Registrar, being whether the Law Firm's 31 periodic accounts were final or interim. This distinction was important and would determine whether 25 of the 31 periodic accounts were time barred from review. Under s. 70(1) of the *LPA,* a bill may be reviewed before 12 months after the bill was delivered or three months after the bill was paid, which ever occurs first. Section 70(11) of the *LPA* states that absent a finding of "special circumstances" by the Court, the Registrar "must not" review a lawyer's bill if the "application for the review was not made within the time allowed in subsection (1)".

[7] There was no application made to the Court seeking a finding of "special circumstances".

[8] The Law Firm took the position that each account issued to the Clients was a "final" bill and thus subject to the limitation period in the *LPA*. The Clients submit that all 31 accounts should be reviewed.

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[9] This matter proceeded before the Registrar on September 20, 21, and November 15, 2021. In the course of the preliminary hearing, there was oral testimony by Mr. Hakemi for the Law Firm, and Mr. Grudenic for the Clients.

[10] A portion of the transcripts were provided to me. The following is of significance.

[11] Mr. Hakemi testified:

- that he does not recall any conversation with the Clients that the Final Billing Provision treated each account as a stand-alone final account;
- that the Clients did not raise any questions or complaints about the terms of the Retainer Agreement;
- there was no conversations or advice given on the time limit the Clients had to review the bills;
- the Clients had a lawyer, Mr. Chu of Remedios & Company, who had been advising them and could have provided advice on the Retainer Agreement;

[12] Mr. Grudenic testified:

- that he had read the Retainer Agreement, initialled each page, and was given the opportunity to ask questions about it; and
- that there were no discussions about the issue of the final billing and it was not something he asked questions about since he was not aware.

Position of the Parties

Position of the Law Firm

[13] The Law Firm submits that the Registrar erred in applying the wrong legal test. It argues that the Registrar should have applied the test articulated in *Robertson, Ward, Suderman & Bowes v. B.C. Transit*, 19 B.C.L.R. (2d) 1 at 10, 1987 CanLII 2463 (C.A.) [*Robertson*]. Instead, the Registrar wrongly applied the test in *Parmjit S. Virk Law Corporation v. Chahal*, 2019 BCSC 745 [*Chahal*], and held that "[…] when contracting with their own client, lawyers have the onus of rebutting the

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presumption of undue influence by showing the client received honest and competent legal advice".: Reasons at para. 41.

[14] The Law Firm further argues that the Registrar erred by conflating "giving advice" to a client about the terms of a retainer agreement with "fully and fairly" informing them of the terms. The Law Firm submits that a lawyer is not required to provide legal advice to a prospective client about the terms of a retainer agreement. The law only requires the lawyer ensure the prospective client is fairly and fully informed as to the term of the agreement and the consequences of those terms. The Law Firm submit that Retainer Agreement did exactly that.

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Position of the Clients

[15] The Clients submit that the Registrar did not err "by applying the wrong legal test" in determining the issue of whether the lawyers accounts are properly considered interim or final. The Registrar applied the test developed by the Court of Appeal in *Robertson* at 10, being "whether, having regard to the dealings of the parties and the circumstances, it can be concluded that the parties intended the accounts in question to be the law firm's final account for the work they represented".

[16] The Clients argue that the discussion by the Registrar of *Chahal* was in the context of considering whether the Clients' consent to the Retainer Agreement was fully and fairly informed. However, the Registrar did not apply a legal test from *Chahal* to the case at bar or rely on *Chahal* in determining that the accounts were interim and not final.

Legal Principles

Standard of Review

[17] The parties agree that the appellate principles from *Housen v. Nikolaisen*, 2002 SCC 33 apply to appeals from a registrar. If the appeal involves a question of jurisdiction or a decision on a point of law, the standard of review is correctness. If the review involves findings of facts or mixed facts and law, the standard of review is

one of palpable and overriding error: *Waters v. Michie*, 2018 BCSC 1206 at paras. 5–6, aff'd 2019 BCCA 218; *Jiwan v. Davis & Company, A Partnership*, 2008 BCCA 494 at paras. 14–17, leave to appeal to SCC ref'd, 32995 (23 April 2009).

Statutory provisions

[18] The relevant sections of the *LPA* provide:

> **Review of a lawyer's bill**
>
> **70 (1)** Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before
>
> (a) 12 months after the bill was delivered under section 69, or
>
> (b) 3 months after the bill was paid,
>
> whichever occurs first.
>
> […]
>
> **(11)** In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:
>
> (a) the lawyer has sued and obtained judgment for the amount of the bill;
>
> (b) application for the review was not made within the time allowed in subsection (1).

Legal Accounts

[19] In *Grewal v. Singleton Urquhart LLP*, 2016 BCCA 289 at paras. 23–30 [*Grewal*], Justice Bennett set out the considerations when determining whether an account is interim or final. The test is whether "having regard to the dealings of the parties and the circumstances, it can be concluded that the parties intended the accounts in question to be the law firm's final account for the work they represented": *Grewal* at para. 23; quoting from *Robertson* at 10.

[20] *Grewal* at para. 24 goes on to summarize principles concerning the nature of contracts for retainers, as set out in *Ladner Downs v. Crowley*, 41 D.L.R. (4th) 403 at 420–423, 1987 CanLII 161 (B.C.S.C.):

> (a) a lawyer's contract of retainer for a single matter, such as a common law action, is an entire contract to see the matter through to completion;

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(b) the lawyer is not entitled to be paid fees before he or she fully performs what is required under the contract, e.g., in a common law action by going to judgment;

(c) there is nothing preventing a lawyer from asking the client for money on account of fees during the course of the entire contract; and

(d) periodic statements of account will only be considered enforceable final bills if there is an agreement to render final bills over the course of the retainer and the client is fully and fairly informed of the terms agreed upon and their effect on his or her legal rights, i.e., the effect on limitation periods.

[21] Justice Bennet elaborates further:

> [27] However, the crux of the principle is that lawyers may not invoke terms of retainer agreements they draft to detrimentally affect their clients' rights unless the client is fully and fairly informed of those rights at the outset of the agreement. The "entire contract" principle and the obligation of lawyers to fully and fairly inform their clients are just as applicable today. *Nathanson*, [*Schachter & Thompson v. Inmet Mining Corp*., 2009 BCCA 385], reiterated the applicable principles at paras. 47–51:
>
> > […]
> >
> > [49] The obligation of candour requires the solicitor to be candid with the client on all matters concerning the retainer, including ensuring that in any transaction between the two from which the solicitor receives a benefit, the client has been fully informed of the relevant facts and properly advised upon them: *R. v. Neil, supra*, at para. 19; *London Loan & Savings Co. of Canada v. Brickenden* [1933] S.C.R. 257 at 261-62, [1933] 3 D.L.R. 161. As seen above, this duty was cogently expressed in the reasons of Madam Justice Southin in *Ladner Downs v. Crowley, supra*, and is reflected in the Law Society of British Columbia's *Professional Conduct Handbook*, Chapter 9, Rule 7, which states:
> >
> > > A lawyer must fully disclose, to the client or to any other person who is paying part or all of the lawyer's fee, any fee that is being charged or accepted
> >
> > As well, chapter 11 of the Canadian Bar Association's *Code of Professional Conduct* (Ottawa: Canadian Bar Association, 2006), provides that a lawyer shall not "stipulate for, charge or accept any fee that is not fully disclosed, fair and reasonable."
> >
> > […]
> >
> > [51] […]
> >
> > > In *Ladner Downs v. Crowley* ... Southin J. (as she then was) […]
> > >
> > > […] noted that <u>agreements to render final bills during the course of a retainer are enforceable only if the lawyers have</u>

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> advised their clients fully and fairly about the terms to be agreed upon *and the effect the agreement will have on the operation of limitation periods*. [At paras. 19-21; italicized emphasis in original; underlined emphasis added by Bennett J.A.]

[22] Justice Bennett then sets out the relevant circumstances which may suggest a mutual and informed intention that periodic accounts are final bills, as summarized in *Robertson* at 8–11:

> [29] […]
>
> (a) the client is fairly and fully aware of his or her rights to review accounts and the operation of the agreement's terms on those rights;
>
> (b) the accounts are detailed in describing the work done and hours spent;
>
> (c) time is billed at predetermined fixed hourly rates;
>
> (d) the accounts are not subject to future adjustment; and
>
> (e) the client raised no complaint with respect to the accounts.
>
> [30] In short, these circumstances look at two questions that must be answered before a court will treat periodic accounts as final bills. First, did the client give informed consent to periodic final billing at the outset? Second, did the rendered accounts take the form of final bills?

Analysis

[23] The appropriate test to be applied is the one set out in *Robertson,* and that ultimately is the test that the Registrar applied. The Registrar set out the two issues he must address at para. 40 of the Reasons as: "(a) Did the clients give informed consent to periodic final billing when the retainer agreement was made on September 20, 2018? […] and (b) Did the rendered accounts take the form of final bills?

[24] I note that these are the same questions that Bennett J.A. summarizes from the factors in *Robertson* that used to determine whether there exists a mutual and informed intention for the bills to be final: *Grewal* at paras. 29–30.

[25] In his analysis, at para. 41 of the Reasons, the Registrar cites the *Chahal* decision for the proposition that when contracting with their own client, lawyers have

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the onus of rebutting the presumption of undue influence by showing their clients received honest and competent legal advice. I am not persuaded that the Registrar placed this onus on the Law Firm, nor did the Registrar conflate fully and fairly informing the Clients of the terms of the Retainer Agreement with giving legal advice. The Registrar relied on the need for the Law Firm to fairly and fully inform their prospective Clients, so that they "make an informed decision regarding periodic final billing": Reasons at para. 43. The analysis dealing with the wording of the Retainer Agreement, and specifically the Final Billing Provision, addresses the test of whether there was fair and full information provided by the Law Firm.

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[26] I agree that *Chahal* dealt with a different scenario, since it involved a lawyer seeking to have a client sign a consent certificate of fees ten days before the trial was to resume. It is clear that in those circumstances there was an existing solicitor-client relationship and the onus was on the solicitor to rebut the presumption of undue influence: *Chahal* at para. 40.

[27] The Registrar further considers the *Robertson* decision, but distinguishes it on the facts because the client in that case was a "large and highly sophisticated organization which had considerable institutional experience working with lawyers." The Registrar contrasted that with the evidence before him of the Clients' level of sophistication and prior litigation experience. There was no error made in this analysis.

[28] The fundamental difference between the *Robertson* case and the case before the Registrar is that the client in *Robertson* was represented by counsel who negotiated the terms of the retainer with the solicitors. As our Court of Appeal pointed out, the knowledge of the negotiating solicitor was the knowledge of the client: *Robertson* at 7. I note that in conclusion our Court of Appeal in *Robertson* at 9 stated:

> […], I would again stress that the client in this case knew or ought to have known of its taxation rights and that they could be waived by payment. The knowledge of the client, when taken together with the other special circumstances, makes this case entirely different from [*Ladner Down v. Crowley*., [1987] 5 W.W.R. 322].

[29] I agree with the decision of the Registrar that the legal significance of the periodic bills being “final”, rather than “interim”, is not explained in the Retainer Agreement. The import of the periodic Final Billing Provision was not brought to the Clients’ attention, nor was it explained to them. It is clear to me that the Law Firm failed to “fairly and fully” inform the Clients, either within the Retainer Agreement or in addition to it, of the consequences of the bills being described as final.

[30] A mutual and informed intention that periodic accounts are final bills cannot be formed if a client lacks fair and full awareness of their rights to review accounts and the operation of the agreement’s terms on those rights: *Grewal* at para. 29; *Nathanson, Schachter & Thompson v. Inmet Mining Corp*., 2009 BCCA 385 at paras. 3, 44, 49 [*Nathanson*]. The Final Billing Provision contains a reference to the *LPA,* but does not contain full information on the consequences imposed by the *LPA* by defining the legal bills as final. To ensure that the Clients were fully and fairly aware of those rights, the Law Firm ought to have explained the effect the Retainer Agreement would have on the operation of limitation periods: *Grewal* at para. 27. They failed to do so.

[31] An explanation of this is not difficult nor complicated. It would have required one line in the Retainer Agreement that fully informed the Clients that if they paid the bill there was a limitation period of three months to seek a review, and, if they did not pay the account, the limitation period was 12 months. In the alternative, they could have inserted the wording of s. 70 of the *LPA*. This would have satisfied the requirement of fair and full information about the consequences of the Final Billing Provision. It is clear that the Law Firm inserted the Final Billing Provision into the Retainer Agreement for their benefit, with the intent to restrict the scope of a fee review initiated by the Clients. I am of the view that this is not a fair approach to take with prospective clients and breaches the obligation of candour that is required of a solicitor on all matters concerning the retainer: *Nathanson* at para. 49.

[32] The concerns expressed in *Robertson* and in *Grewal* on considering periodic accounts as final bills remain true today: *Robertson* at 8–9; *Grewal* at para. 28. The

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Final Billing Provision forced the Clients to bring a review within three months of the bills being paid, or not at all. It is not clear to me how this would have worked in light of the need for the ongoing solicitor-client relationship in the midst of ongoing litigation. While there may be points during the solicitor-client relationship where it makes sense to issue a final bill, it makes no sense to have a review filed for each periodic bill rendered during the course of ongoing litigation. This is true not only for clients, but also the judicial system, which is already under severe pressure due to a lack of resources. The system of bill reviews should not be overly encumbered as a result of lawyers hoping to avoid having their legal bills assessed for reasonableness by requiring fee reviews for each bill.

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Conclusion

[33] I conclude that the Registrar made no error of law. I am not persuaded than any palpable and overriding error was made in the application of the legal standard to the facts.

Costs

[34] The appeal is dismissed with the Law Firm paying the costs of the appeal.

"Forth J."