

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Richard Fayerman Law Corporation v. Lin*,
2025 BCSC 165

Date: 20250131
Docket: S249222
Registry: New Westminster

Between:

Richard Fayerman Law Corporation

Plaintiff

And

George Lin and Isabella Fang

Defendants

Before: Registrar Gaily

Reasons for Decision

Counsel for the Plaintiff:

R.A. Fayerman

The Defendant, appearing in person:
Agent for the Defendant, Isabella Fang:

G. Lin
G. Lin

Place and Dates of Hearing:

New Westminster, B.C.
July 11 and November 22, 2024

Place and Date of Decision:

New Westminster, B.C.
January 31, 2025

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Introduction

[1] This is a review under the *Legal Profession Act*, SBC 1998, c 9 [*LPA*], which Richard Fayerman Law Corporation (the “Law Firm” or Mr. Fayerman), initiated by filing an appointment on April 25, 2023 (the “Appointment”), to review the bill Mr. Fayerman issued to his former clients, George Lin and Isabella Fang (the “Clients”), dated March 8, 2023 (the “Bill”). The parties were erroneously named on the Appointment as plaintiff and defendants in the style of cause. For the purposes of this decision and the certificate of fees, the parties shall be referred to as the Law Firm and the Clients.

[2] The total of the Bill is \$61,689.54 (including legal fees, disbursements and applicable taxes), but the Law Firm applied the funds in its trust account under the Clients’ retainer, leaving a balance owing of \$10,550.56. In the hearing record filed on July 5, 2024, the Law Firm included a bill for \$1,411.20 dated July 18, 2023 (the “July Bill”), which had been delivered to the Clients after the Appointment was filed. The July Bill has not been paid. The Law Firm sought to review the July Bill, in addition to the Bill attached to the Appointment.

[3] The Clients are married and both are named on the Appointment, however, Ms. Fang did not attend or provide any evidence and Mr. Lin represented both of them through the *LPA* review. The Clients retained Mr. Fayerman in June 2019 to represent them in an action for breach of contract commenced against them, which proceeded to a trial before Justice Brongers over ten days in September and November 2022. The Clients say that the solicitor-client relationship ended in mid-March 2023, approximately one week after Brongers J. released his reasons for judgment in *Bob Landscaping Corp. v. Fang*, 2023 BCSC 318 (the “Reasons”), when Mr. Fayerman advised the Clients he would not represent them on a subsequent application for costs. Mr. Fayerman says that the Clients formally discharged him on May 1, 2023, and the July Bill is for work performed from March 7 through May 1, 2023.

[4] The Law Firm, which bears the onus in this *LPA* review to establish that its fees, charges and disbursements were reasonably necessary and proper to conduct the proceedings, maintains that the fees it charged the Clients were reasonable, and necessary and proper in the circumstances. Mr. Fayerman submits that the Clients were disappointed with the results of the trial and blame him for it, and this is the reason they do not want to pay the outstanding fees he says they owe him. The Clients raised several objections, in particular, that Mr. Fayerman did not properly notify the Clients that he had increased his hourly rate a few weeks before the trial commenced, and they submit they should not have to pay his fees at the higher rate. They also submit that Mr. Fayerman double-billed by charging fees for preparing closing written submissions, which work he delegated to a contract lawyer (billed as a disbursement), and that they never approved the disbursement for Mr. Fayerman's accommodation at a hotel in New Westminster during the first week of the trial (the Law Firm is located in Richmond, B.C.). Mr. Lin said that after he refused to pay the Bill in March 2023, Mr. Fayerman sent him emails requesting payment to which he replied, which he says make up the entries on the July Bill, and he should not have to pay for this. Mr. Fayerman denies this.

[5] Given the initial submissions made by Mr. Fayerman and Mr. Lin, and the fact that the amount owing to Mr. Fayerman is approximately \$12,000, I strongly encouraged the Clients and Mr. Fayerman to settle, explaining the purpose of the *LPA* review and how costs are awarded under s. 72 of the *LPA*. Court stood down so they could discuss settlement, but they advised they could not reach agreement and wanted the review to proceed. The hearing did not conclude by the end of the court day and it had to be continued for a further half day, the afternoon of Friday, November 22, 2024. Submissions did not end until 4:00 p.m. and the decision was reserved. In my view, the amount of money at issue in this *LPA* review is disproportionate to the court resources that were devoted to it and it is unfortunate that the parties were unable to settle this out of court.

[6] For the reasons detailed below, in the circumstances of this case and considering the factors set out under s. 71(4) of the *LPA*, I find that the fees the Law

Firm charged the Client in the Bill and the July Bill (the bills under review) are excessive and should be reduced to \$50,950.57, inclusive of taxes and disbursements. As a result, the Law Firm is required to reimburse the Clients for the difference owing, and, as set out in the *LPA*, to pay the Clients' costs of this *LPA* review, as I set out in the concluding paragraphs of this decision.

The *LPA* Review and the Evidence Presented

[7] When it filed the Appointment, the Law Firm set the hearing on May 17, 2023 for two hours, but then re-set it to December 28, 2023 for a full day. Although a pre-hearing conference (“PHC”) is required for all registrar’s hearings set for one day or more under Administrative Notice #8, issued on March 1, 2011, the parties did not schedule a PHC. The Law Firm again reset the hearing to April 12, 2024, but it was rescheduled by direction of the court to July 11, 2024.

[8] The evidence before me included the affidavit of Mr. Fayerman (“Fayerman Affidavit”), as well as the first affidavit of Natasha Minhas, the legal assistant at the Law Firm (“Minhas Affidavit #1”), both of which were filed on May 10, 2023 with the Appointment (as well as the affidavit of service). The hearing record filed by the Law Firm on July 5, 2024, included Ms. Minhas’s second affidavit, filed on June 11, 2024 (“Minhas Affidavit #2”). Although Mr. Lin said that he was uncomfortable with his command of written and spoken English, I found him articulate and able to communicate his objections and his evidence without any difficulty.

[9] The hearing did not start until after the morning break. Mr. Fayerman spoke to his affidavit until the afternoon break, when Mr. Lin began his cross-examination. Mr. Lin had set out his objections to the Bill in an unsworn affidavit, which he passed up at the beginning of the hearing (“Unsworn Lin Affidavit”), and Mr. Fayerman addressed the objections, but the Clients did not have time to present their evidence or submissions challenging the fees before the end of the court day.

[10] I ordered the hearing to be continued for a further half day and I granted Mr. Lin leave to file an affidavit exhibiting the evidence he intended to rely on at least 14 days prior to the continuation, and I granted Mr. Fayerman leave to file a reply

affidavit if necessary. When the hearing continued on November 22, Mr. Fayerman had not filed a supplemental hearing record, but Mr. Lin had filed an affidavit on October 16, 2024, pursuant to my order (“Lin Affidavit”). As well, on November 21, the day before the continuation, Mr. Fayerman had filed a fourth affidavit of Ms. Minhas made that day (“Minhas Affidavit #4”). Court was stood down so that copies could be provided to court. Mr. Lin spoke to his affidavit and was cross-examined by Mr. Fayerman and the parties finished their closing submissions at the end of the day.

Overview of the Retainer and Work Performed

[11] I have summarized the history of the retainer for context. The Clients retained Mr. Fayerman in June 2019 to represent them as defendants in an action for breach of contract (the “Action”) relating to work on a vacant property Ms. Fang owned in Surrey, B.C., which she intended to be leased for the storage of commercial vehicles. On June 13, 2019, Bob Landscaping Corp. (“Bob”), represented by its owner, Bozidar Vujicic, had commenced the Action against the Clients in the New Westminster registry. Mr. Fayerman testified that English was not Mr. Vujicic’s first language and that Mr. Vujicic had drafted the notice of claim himself. Among other things, Bob sought half ownership of the property, or alternatively, \$88,557.84 plus interest as damages for breach of contract.

[12] The Clients are subscribers to LegalShield of Canada (“LegalShield”), a service that connects prospective clients, who pay LegalShield a monthly fee for the service, with participating lawyers at reduced rates. The retainer agreement dated July 8, 2019 (the “Retainer”), is exhibited to the Minhas Affidavit #1 (Ex. A). Under the heading “Fees and Billing”, the Retainer provides that Mr. Fayerman’s “current rate is \$400 per hour” and that his “fee rate may be changed from time to time on reasonable notice.” The next paragraph provides the following:

As a subscriber to LegalShield of Canada you will be entitled to a 25% discount from my full hourly rate for all work done within my office. For services conducted outside of my office, for example, Court appearances, you will be entitled to a 33.3% discount from my full hourly rate.

[13] Under the heading “disbursements”, the Retainer provides that the Clients will be responsible for paying the disbursements on their file, and examples of disbursements include “travel expenses, transcripts, court filing fees ... and generally any other payments I made to third parties on your behalf.” The Retainer provides that overdue accounts will be charged at 12% per annum after 30 days. The Clients provided Mr. Fayerman \$5,000 as an initial retainer fee. There is no dispute that the Clients instructed Mr. Fayerman to vigorously defend the Action.

[14] Mr. Fayerman filed the Clients’ response on July 12, 2019, admitting that they had contracted with Bob to level the property for \$10,000, and that they had paid him \$4,720 before they terminated the agreement because of Bob’s negligence. He also filed the Clients’ counterclaim the same day, naming both Bob and Mr. Vujicic as defendants. In the counterclaim, the Clients sought a declaration that both Bob and Mr. Vujicic had breached the contract and had trespassed on the property causing damage (by leaving vehicles and equipment on it without their permission), seeking damages and injunctive relief. On August 14, 2019, Mr. Vujicic on his own and Bob’s behalf, filed a response to the counterclaim.

[15] In late August 2019, Mr. Fayerman filed a notice of application for the Clients, returnable September 10, 2019, seeking (among other things) an interim injunction restraining Bob and Mr. Vujicic from placing vehicles or equipment on the property and a mandatory injunction against them requiring them to remove any vehicles or equipment on the property. The application also sought security for costs be posted by Bob, as well as an order that Bob provide an address for delivery. On September 9 (the day before the application was to be heard), Mr. Vujicic on his own and Bob’s behalf filed a response to the application.

[16] At the hearing before Justice Shergill on September 10, 2019, Mr. Fayerman represented the Clients and a new counsel appeared for Bob and Mr. Vujicic. Shergill J. adjourned the application to the October 2, 2019, but she ordered Bob to file responsive materials by September 24, 2019, and that the Clients could serve Bob at his new counsel’s address.

[17] On September 24, 2019, counsel for Bob and Mr. Vujicic filed an amended notice of civil claim, as well as an amended response to the counterclaim and an amended response to the application for injunctive relief and security for costs. Mr. Fayerman and Bob’s counsel appeared before Justice Harvey on October 2, who reserved his decision to the next day. On October 3, 2019, Harvey J. granted the Clients injunctive relief and ordered Bob to post \$10,000 in security for costs. He also awarded the Clients their costs “for the full day appearance on September 10, 2019 and for the application heard October 2, 2019 payable at Scale B in any event of the cause.”

[18] In December 2019, Mr. Fayerman filed a notice of trial on the Clients’ behalf, setting the trial for five days commencing October 26, 2020, and he filed the Clients’ first trial brief on August 18, 2020. Bob and Mr. Vujicic switched counsel and the parties agreed to reschedule the trial for five days starting April 19, 2021. The parties conducted examinations for discovery on February 23 and 24, 2021.

[19] A trial management conference (“TMC”) was scheduled for March 11, 2021, and Mr. Fayerman filed the Clients’ second trial brief on February 17, 2021. At the TMC, Justice Caldwell ordered the trial date struck and directed counsel to set a new trial for seven to ten days, as well as another TMC in advance of the longer trial. On March 18, Mr. Fayerman filed a notice of trial, setting the trial for ten days starting February 22, 2022.

[20] Before me, the parties discussed how a tenant on a neighbouring property, Mr. Mann, became involved with Mr. Vujicic and left garbage on the property. Mr. Lin pursued a claim against Mr. Mann and others in the Civil Resolution Tribunal (“CRT”). The CRT issued a decision on June 4, 2021, making orders against Mr. Mann and the owner of the neighbouring property. Mr. Mann was a witness at the trial.

[21] On October 7, 2021, Mr. Vujicic filed a notice of intention to act in person and as the representative of Bob. Mr. Fayerman and Mr. Vujicic appeared before Justice Norell for a TMC on January 19, 2022, at which she encouraged Mr. Vujicic to obtain

legal counsel for the trial. On January 26, 2022, Mr. Fayerman filed an application for a hearing scheduled on February 11, 2022, seeking an order that Bob post increased security for costs. The next day, Mr. Fayerman filed a trial certificate, indicating that they were ready to proceed with the trial on February 22.

[22] Justice E. McDonald heard the Clients' application to increase the security for costs on February 11, but it had to be continued before her on February 18. She dismissed the Clients' application and granted Bob costs of the application in any event of the cause. The trial did not proceed on February 22, 2022 because no justices were available. On March 28, Bob retained a new counsel and on March 30, 2022, Mr. Fayerman filed a notice of trial, setting the ten-day trial for September 12, 2022. However, Bob was no longer represented by counsel at the August 5, 2022 TMC held before Caldwell J., who made a series of orders regarding the procedure and evidence at the upcoming trial.

[23] As noted, the Bill encompasses Mr. Fayerman's time from August 6, 2022 (the day after the second TMC before Caldwell J.) through March 3, 2023, the day the Reasons were released.

[24] Mr. Fayerman spent time after the TMC in August and early September preparing a formal offer to settle the counterclaim, communicating with the Clients, and communicating with counsel representing Bob and Mr. Vujicic on the counterclaim about the release form and consent dismissal order. The Bill includes Mr. Fayerman's entry of 0.5 hours on August 17, 2022, for meeting with the Clients to sign the release form, which settled the counterclaim for \$20,000. The consent order was filed on September 21, 2022, after the trial had commenced. The trial proceeded only on Bob's claim against the Clients.

[25] On August 23, Mr. Fayerman billed 0.3 hours to prepare a letter to Mark Gingerich, a contract research lawyer, "outlining legal issues to be researched by Mark for trial" with the note "actual time reduced as a courtesy". Mr. Fayerman's evidence was that he told the Clients he would retain Mr. Gingerich to help him with legal research and writing, and that Mr. Gingerich billed a lower rate than

Mr. Fayerman. Mr. Fayerman said that Mr. Gingerich was called to the bar in 2019 and charged \$150 per hour for his services (as evidenced by Mr. Gingerich's invoices), but there was no evidence before me from Mr. Gingerich himself.

[26] The Retainer is silent about Mr. Fayerman delegating work to others or hiring contract lawyers to assist him and the Clients maintained that they did not consent to Mr. Gingerich's involvement with their file and that Mr. Fayerman violated his professional responsibility and the Retainer by hiring Mr. Gingerich without their consent. I explained that the registrar cannot determine that Mr. Fayerman breached his professional responsibility on an *LPA* review.

[27] I find that it was reasonable for Mr. Fayerman to retain Mr. Gingerich's services in the circumstances of this case and I find that Mr. Fayerman's failure to obtain the Clients' express written consent to retain Mr. Gingerich in advance is not a basis on which to reduce or disallow Mr. Gingerich's fees entirely, which fees I find to be reasonable in the circumstances. However, in my view, Mr. Fayerman should have clearly communicated to the Clients that he was seeking Mr. Gingerich's assistance and the reason for it, given that the Retainer does not expressly contemplate Mr. Fayerman will delegate work to others.

[28] The letter Mr. Fayerman sent to Mr. Gingerich on August 23 setting out the research he wanted by September 5 is exhibited to Minhas Affidavit #2 (Ex. I). Mr. Fayerman agreed he did not copy this letter to the Clients. Mr. Gingerich's September 5, 2022 memorandum is exhibited to Minhas Affidavit #1 (Ex. HH), together with Mr. Gingerich's invoice dated September 5, 2022 (Ex. H).

Mr. Gingerich charged Mr. Fayerman for 6.73 hours at \$150 per hour, for a total of \$1,010.00, plus GST and PST, less a discount of \$150. The total amount charged for this work is \$963.20.

[29] Mr. Fayerman testified that he told the Clients he required an increased trial retainer before the trial started, and that the clients could pay it in two installments (one before the trial commenced and the other after the fifth day of trial). There are entries on the Bill of 0.1 hours for emails to the Clients regarding a trial retainer on

August 19 and 26. Mr. Fayerman's evidence is that the Clients refused to pay him the full trial retainer he sought because they maintained that the trial would only take five days, even though Caldwell J. had ordered it set for ten days. The Clients do not dispute that Mr. Fayerman requested an increased retainer from them for the trial and on September 7 and 19, 2022, the Clients provided Mr. Fayerman with retainers of \$13,000 and \$11,000 respectively, but Mr. Fayerman's evidence was that he had requested a total of \$40,000 as the trial retainer.

[30] However, the biggest issue for the Clients is the hourly rate Mr. Fayerman charged on the Bill. Mr. Lin was adamant throughout the *LPA* review that the Clients did not approve an increase in Mr. Fayerman's hourly rate and that Mr. Fayerman did not provide reasonable notice to them that his rates had increased. Mr. Lin's evidence was that the first notice they received that Mr. Fayerman's hourly rate had increased was on the Bill itself (see also Lin Affidavit, paras. 3 and 4). As noted, the Retainer provides that Mr. Fayerman's hourly rate for LegalShield clients is \$400, less 25% for in office time (which is \$300 per hour), and less 33 1/3% for out of office (court) time (which is approximately \$275 per hour). The Retainer also provides that Mr. Fayerman's "fee rate may be changed from time to time on reasonable notice."

[31] Mr. Fayerman testified that he advised the Clients of his rate increase before the trial in an email dated August 13, 2022. Mr. Lin acknowledged that in the email Mr. Fayerman sent him on August 18, 2022, under the subject line "CRT", Mr. Fayerman wrote the following:

I want to confirm that I will require a further \$13,000.00 retainer from you by no later than September 2/22 so that I am retained for 5-6 days of trial. I expect to receive the \$20,000.00 settlement money from [Bob's counsel's office] in the next week or so which will be paid to my office in trust. You have authorized me to use and apply towards my fees, which along with the funds currently held in my trust account (\$7,138.98) will provide a total retainer of approx. \$40,000.00 prior to trial on September 12/22. I will charge you a discounted rate of \$300 per hour (net of discount) for my attendance at trial (which is a 33 1/3% discount off my current hourly charge out rate).
[Emphasis added]

[32] Mr. Lin testified that when he received this email, which was less than one month prior to the start of the trial, he did not realize that by charging \$300 per hour for his trial time, Mr. Fayerman had increased his hourly rate. Mr. Fayerman conceded that this was the first communication with the Clients that his hourly rate had increased and during his testimony, he agreed he could have communicated more clearly to the Clients that his rates had increased.

[33] On August 24, Mr. Fayerman filed the trial certificate. For the most part, Mr. Fayerman's entries on the Bill until September 11, 2022, are for short periods of time (most are under 0.5 hours). However, the entry after September 11 indicates that Mr. Fayerman billed 18.0 hours for the period "Aug 6 – Sept 11" for his trial preparation, which is described in the Bill as "all necessary preparation for the trial of the matter including all necessary file and document review, research relevant case and statute law, prepare Document Book and Book of Authorities, prepare Bob's cross-examination, and so on". Mr. Fayerman testified that his "rule of thumb" is to bill two days of preparation for every day of trial, but he said that he did not charge the Clients for the time he spent "re-preparing" when the trial did not go ahead in April 2021 or February 2022. He testified that he had, in fact, reduced his actual time charges for preparation as a courtesy to the Clients (Fayerman Affidavit, para. 27).

[34] The trial commenced on September 12, but Brongers J. adjourned it so that Mr. Fayerman could help Mr. Vujicic prepare a book of documents. The court summary sheet for September 12 reflects that the parties were before Brongers J. for one hour. Mr. Fayerman billed a total of 8.5 hours on September 12, which included 2.5 hours of trial preparation in the evening, as well as meeting with the Clients at the Old Spaghetti Factory restaurant in New Westminster "to discuss case (until 3:30 p.m.)". The Clients objected to Mr. Fayerman billing them for three hours of time for what they described as lunch on the first day of the trial, which Mr. Lin testified they paid for. Mr. Lin disputed that they spent the entire time discussing the case, or preparing for the trial, which was Mr. Fayerman's evidence.

[35] Mr. Fayerman testified that he stayed at a hotel in New Westminster for the first week of the trial and the Bill includes a disbursement of \$933.72 for “accommodations during trial”. The invoice from the Inn at the Quay for the period from September 12 to 16 (four nights), at the corporate rate of \$189.00 per night, plus parking of \$11.00 per night (plus applicable taxes) is exhibited to the Minhas Affidavit #1 (Ex. L). Mr. Fayerman said that the Clients approved this disbursement and that this saved the Clients the fees he would have charged commuting from his office in Richmond to the New Westminster courthouse and back. Mr. Fayerman testified that he estimated it would cost the Clients \$1800 if he commuted, charging his hourly rate. The Clients dispute that they approved this disbursement before it was incurred.

[36] After the first day, the trial proceeded before Brongers J. over the next eight days (September 13–16, and 20–23). For the first four days of trial, Mr. Fayerman billed approximately 7.0 hours for his attendance in court, as well as a further 2.5 hours for preparation in the evening. Mr. Fayerman testified that a few legal issues arose early in the trial and he retained Mr. Gingerich to research these issues. A copy of the legal research memorandum Mr. Gingerich provided on September 19, 2022 is exhibited to Minhas Affidavit #1 (Ex. II), and the invoice Mr. Gingerich issued for his services on September 26, 2022 is Ex. W. On this second invoice, Mr. Gingerich recorded 6.80 hours for a total of \$1,020 in fees, plus taxes, for a total amount of \$1,142.40.

[37] On the weekend between the first and second weeks of trial, Mr. Fayerman recorded 4.5 hours on “Sept 17/18” for “email exchange with Mark Gingerich re: his legal research memorandum, review extensive text messages attached to [Mr. Mann’s] affidavit, email exchange with [Mr. Lin] re: the events involving Mann, prepare Mann’s cross-examination (actual time reduced as a courtesy)”. Mr. Fayerman also recorded 4.0 hours on September 19 (the Sunday) preparing Mr. Mann’s cross-examination.

[38] On September 20 (the Monday of the second week of trial), Mr. Fayerman recorded 2.5 hours for the following: “Attend day 6 of trial in New Westminster Supreme Court including travel (examination in chief of [Mr. Mann] in morning, court adjourned)”. The court summary sheet indicates that the parties were before Brongers J. for a half day (2 hours and 32 minutes). Mr. Fayerman recorded 3.0 hours to meet with the Clients at the Old Spaghetti Factory restaurant to prepare Mr. Lin for his examination in chief (scheduled the next day) and a further 2.5 hours for “trial preparation in evening for [Mr. Lin’s] examination in chief”.

[39] On September 21, 22 and 23, Mr. Fayerman billed 8.0 hours to attend the trial “including travel”, and he billed an additional 1.5 hours on September 22 for preparing Mr. Mann’s cross-examination. On September 23, Brongers J. gave the parties directions regarding their closing submissions, setting deadlines for their submission and exchange, and adjourned the trial to November 7, 2022. The Brongers J. memorandum to the parties is exhibited to Minhas Affidavit #1 (Ex. D)

[40] Mr. Fayerman testified that he again retained Mr. Gingerich to help him research and prepare the closing submissions, and he provided a copy of the 33-page submissions dated October 31, 2022 during his testimony (they were also exhibited to Minhas Affidavit #1, Ex. KK). Mr. Fayerman said that Mr. Gingerich wrote the submissions, that he revised them and reviewed them. As noted, I have no evidence from Mr. Gingerich so I cannot determine how much the submissions before me were Mr. Gingerich’s work versus Mr. Fayerman’s. On March 3, 2023, Mr. Gingerich invoiced Mr. Fayerman for 24 hours of work preparing the final submissions from September 20 through October 29, 2022, with taxes, the total cost was \$3,612.00 (Minhas Affidavit #1, Ex. DD).

[41] The Bill includes several entries by Mr. Fayerman regarding the preparation of the closing submissions, as follows:

Sept 26–Oct 31 – 7.5 hours - various attendances related to drafting the Defendants’ final written argument as directed by the trial judge including emails sent to Mark Gingerich on September 19, 2022, September 21, 2022, September 25, 2022, October 18, 2022 and October 19, 2022 with an outline of the evidence at trial, receive and review Mark’s draft submissions on the

Plaintiff's Book of Authorities on September 20, 2022, discuss case law with Mark on October 13, 2022, receive and review various emails from Mark in relation to supporting case authority to be used as part of your final written submission (actual time reduced as a courtesy);

Oct 20 – 31 – 2.5 hours – various attendances upon Mark Gingerich in relation to responding to Bob's filed written submission including receipt and review of Mark's revised draft final submissions on October 25, 2022;

Oct 27 – 4.0 hours – revise your draft final submissions (1/2 a day);

Oct 27 – 30 4.0 hours – attendances to finalize draft final submissions including sending you draft final submissions for your review, telephone attendances upon Mark Gingerich to discuss edits on October 28, receive and review edited draft final submission on October 30, finalize draft written submission (actual time reduced as a courtesy).

[42] The Clients object to these entries, which total nearly 18 hours (17.9), submitting that this is improper double-billing because they also paid for Mr. Gingerich's time preparing the written submissions. Mr. Fayerman said that he had to review and revise what Mr. Gingerich had written.

[43] On October 31, Mr. Fayerman billed 1.5 hours to personally file the Clients' written submissions, together with a USB drive, at the New Westminster courthouse, "including various attendances upon Trial Scheduling Manager" with the notation "actual time reduced as a courtesy". Mr. Fayerman testified that he is a sole practitioner with only one assistant and he did not hire an agent to file the submissions.

[44] The Bill includes Mr. Fayerman's entry of 4.0 hours for "Oct. 31 – Nov 5" for "attendances in relation to finalizing and binding your case authorities to be presented at oral final submissions hearing on November 7, 2022." The Clients object to Mr. Fayerman billing them for four hours of his time to finalize the case authorities, submitting that he should have used an agent or support staff to do this task for less money. On November 7, Mr. Fayerman recorded 8.0 hours to attend the final day of court for final argument, including his travel time.

[45] The Reasons were released on March 3, 2023 and Mr. Fayerman recorded 0.5 hours to review them and send a copy to the Clients. This is the last entry on the Bill. Brongers J. allowed Bob's claim for breach of contract, awarding judgment

against the Clients jointly and severally for \$5,280 (the amount Brongers J. found they owed Bob under the landscaping contract), plus interest. At the conclusion of the Reasons, Brongers J. noted that both parties sought costs, but in his preliminary view, success was divided and they should each bear their own costs (para. 107). However, he indicated that if there were circumstances of which he was unaware (such as a settlement offer), the parties could schedule a hearing to address costs within 30 days of the release of the Reasons.

[46] The total number of hours recorded on the Bill is 148.2 and the fee is described as follows:

My Fee (net of LegalShield Discounts):

68.0 hours (Court Time) X \$300 per hour (33 1/3% discount) - \$20,400.00

80.2 hours X \$350 per hour (25% discount) - \$28,070.00

Mark Gingerich Legal Research Fee - \$5,105

[47] Mr. Fayerman's evidence is that the Law Firm withdrew as the Clients' counsel shortly after the Reasons were released (on or about March 15, 2023), and that the Clients formally discharged him on May 1, 2023 (Fayerman Affidavit, paras. 3 and 4). However, Mr. Fayerman testified that Mr. Lin continued to email him and ask him for legal advice regarding the next steps in the file, such as responding to the application for costs filed by Mr. Vujicic and pursuing an appeal of the judgment. Mr. Lin does not dispute that he emailed Mr. Fayerman, but asserted that Mr. Fayerman did not have to respond to his emails. Minhas Affidavit #2 and Minhas Affidavit #4 exhibit email exchanges between Mr. Lin and Mr. Fayerman, and both of them relied on these emails to refute each other's evidence as to who said what when.

[48] The July Bill includes entries from March 7 through May1, 2023 for a total of 3.6 hours at Mr. Fayerman's hourly rate of \$350 (there is no notation of a LegalShield discount, but this would be his "in office" rate under LegalShield, albeit at his increased hourly rate). These entries relate to reviewing emails from Mr. Lin regarding the Reasons, an appeal, and security for costs. On April 12, 2023,

Mr. Fayerman billed 1.0 hours to prepare the trial order and a letter to the Clients enclosing a draft of the order and the payment of the security for costs out of court.

[49] I am satisfied on the evidence before me in the email exchanges that Mr. Lin continued to seek Mr. Fayerman’s legal advice after mid-March 2023 and I do not accept his submission that the solicitor-client relationship had ended by that point and he should not have to pay these charges because Mr. Fayerman could simply have refused to answer his emails.

Discussion and Legal Principles

[50] On a review of a lawyer’s bills under the *LPA*, the lawyer bears the onus to prove that the work done, and the accounts issued for the work done, were reasonably necessary and proper. In *Cao v. Tsui & Cao Law Corporation*, 2015 BCSC 2072 at para. 24 [*Cao v. Tsui*], District Registrar Nielsen (as he then was) reiterated that the lawyer “has the burden of proving what was done, why it was done, the time it took, and why it took the amount of time billed.”

[51] Section 71(2) of the *LPA* provides that the registrar must allow fees, charges and disbursements reasonably necessary and proper to the conduct of the proceeding, or those authorized by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

[52] In the course of this analysis, the registrar must consider all the circumstances, including those enumerated in s. 71(4) of the *LPA*, which provides:

71 (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including

- (a) the complexity, difficulty or novelty of the issues involved,
- (b) the skill, specialized knowledge and responsibility required of the lawyer,
- (c) the lawyer's character and standing in the profession,
- (d) the amount involved,
- (e) the time reasonably spent,

- (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
- (g) the importance of the matter to the client whose bill is being reviewed, and
- (h) the result obtained.

[53] The authorities on *LPA* reviews hold that at the end of the day, the registrar “should allow a fair fee commensurate with the work performed in the retainer and taking into account all of the circumstances”: *Kuo v. Waldmann*, 2020 BCSC 495, para. 57 (appeals dismissed 2022 BCSC 329 and 2023 BCCA 123).

[54] As the circumstances set out in s. 71(4) of the *LPA* must be considered on a review, I will address each of them.

a) The Complexity, Difficulty or Novelty of the Issues Involved

[55] Mr. Fayerman testified that he thought the Clients’ breach of contract case was of “above average difficulty” (he noted that issues such as mistake and fundamental breach were raised, pointing to Mr. Gingerich’s memos). I find that Mr. Fayerman attributed the complexity of the matter more to the difficulties presented by Mr. Vujicic, a self-represented plaintiff whose first language was not English, than to the legal issues. Mr. Fayerman also said that the difficulty of the case was increased by the fact that the Clients had negotiated with Mr. Vujicic throughout the landscaping contract (so the evidence was challenging to marshal), and by Mr. Vujicic’s trespassing by parking vehicles on the property to impede the Clients’ access to the property.

[56] Based on my review of the pleadings and closing submissions, in my view, although dealing with a self-represented party presents communication challenges and frequently lengthens the hearing time, the issues involved in the Clients’ matter for which Mr. Fayerman was retained were not particularly complex, difficult or novel.

b) The Skill, Specialized Knowledge and Responsibility Required of the Lawyer

[57] Mr. Fayerman testified that he was called to the Alberta bar in 1983 and to the British Columbia bar in 1987 and that he has maintained a general litigation practice since his call, focusing on family and civil litigation.

[58] At the time of the Retainer and through the trial, Mr. Fayerman had been practising for over 35 years and I am satisfied that he had the requisite skill and knowledge to represent the Clients at the trial.

c) The Lawyer's Character and Standing in the Profession

[59] Mr. Fayerman has no record of discipline proceedings and I find this factor to be neutral in this case.

d) The Amount Involved

[60] Based on the evidence before me, the Clients are clearly frustrated that Brongers J. awarded judgment to Bob. Mr. Lin asserted that they had paid Mr. Fayerman a lot of money to defend them and pursue their counterclaim (his evidence is that it was over \$100,000), but all of the money they received on the settlement of the counterclaim (\$20,000) went to paying Mr. Fayerman's fees, and they are of the view he did not do a good job for them.

[61] This factor relates to the amount involved in the matter for which the Law Firm was retained, not the amount of the lawyer's accounts: *Morrie Sacks v. Korbin*, 2005 BCSC 396, para. 34 (Registrar) [*Morrie Sacks*]. In the Action, Mr. Vujicic sought nearly \$90,000 in damages, whereas the Clients maintained that the contract with him was for a maximum of \$10,000 (as reflected in the Reasons, Brongers J. agreed that the contract value was \$10,000). Mr. Fayerman also noted that the Clients successfully settled the counterclaim for \$20,000, which was more than Bob was awarded in the Reasons. I find that the amount involved in this matter is relatively low when compared with other commercial cases before the Supreme Court.

e) The Time Reasonably Spent

[62] It has been stated many times that a review under the *LPA* is not an accounting-like audit (see, for example, *Johns, Southward, Glazier, Walton & Margetts LLP v. Massel*, 2017 BCSC 174, at paras. 20 and 27 [*Johns, Southward*]).

[63] I have described above in more detail than I might otherwise, the time Mr. Fayerman recorded on the Bill from early August 2022 to mid-March 2023, as well as the time entries on the July Bill. The Clients specifically objected to the time Mr. Fayerman spent reviewing the closing written submissions as excessive. I agree. In my view, the time Mr. Fayerman recorded to review the written closing submissions (nearly 18 hours in total), coupled with his evidence that Mr. Gingerich prepared the submissions (as evidenced on the Bill and in Mr. Gingerich's invoices) is excessive and should be reduced by half to nine hours.

[64] The Clients also objected to the time Mr. Fayerman spent filing the submissions and preparing books of authorities as something that should have been done by an agent or support staff. I also agree and find that the 5.5 hours Mr. Fayerman billed for what I find to be purely administrative tasks, that is, personally filing the closing submissions at the New Westminster courthouse and preparing books of authorities, is excessive and should be reduced by 50%.

e) Whether the Hourly Rate was Reasonable

[65] In the Retainer, Mr. Fayerman's hourly rate was listed as \$400, which I find to be at the low range for a lawyer of his experience (although not outside the range for a sole practitioner). Mr. Fayerman does not dispute that the Clients retained him through LegalShield and that, because of their participation in LegalShield, his services to the Clients were offered at the reduced rates, as set out in the Retainer. Mr. Fayerman's evidence is that the Clients got a deal for his services.

[66] I noted the objections of the Clients to Mr. Fayerman's increased hourly rate and their submission that he did not provide them with reasonable notice, as agreed under the Retainer. Based on the evidence I set out above, I am not satisfied that the email Mr. Fayerman sent to Mr. Lin on August 18, 2022, less than one month

before the trial, provided the Clients with reasonable notice that his rates had increased. The wording of the August 18 email does not clearly indicate to the Clients what Mr. Fayerman's increased hourly rates are (it only states a discounted rate). In the circumstances where the trial was less than one month away, particularly where Mr. Fayerman acknowledged that the Clients did not speak and read English as their first language, in my view, Mr. Fayerman should have stated clearly that his hourly rates had increased and the date at which they increased, so that the Clients could make an informed decision whether to continue to retain him.

[67] I find that in the circumstances of this case, Mr. Fayerman is not entitled to charge the Clients a higher hourly rate than the one set out in the Retainer (\$400) because he did not provide them with adequate notice that his rates had increased or what the actual increased hourly rate was.

f) The Importance of the Matter to the Client

[68] Mr. Fayerman testified that the trial was important to the Clients, pointing to the comments of Brongers J. in the Reasons, where he noted that both Mr. Vujicic and Mr. Lin "were emotionally invested in what began as a seemingly straightforward and simple landscaping contract, but soon spiraled into acrimonious litigation" (Fayerman Affidavit, para. 21, citing Reasons, para. 81).

[69] The Clients did not dispute that the matter was very important to them and I am satisfied that it was.

g) The Result Obtained

[70] Mr. Fayerman's position is that although Bronger J. awarded judgment to Bob, the Clients were successful because the amount the Clients were ordered to pay Bob was the difference between what they had already paid and \$10,000, albeit plus interest, and nowhere close to what Mr. Vujicic was seeking. Mr. Fayerman also submits that the Clients successfully settled their counterclaim for more than Brongers J. awarded in the Reasons.

[71] The Clients maintain that Mr. Fayerman did not do a good job for them, that the reason they did not prevail was because of Mr. Fayerman and that they should have had a shorter trial with a better result.

[72] As I noted above, I find that this matter was very important to the Clients and that the Action was hard fought on both sides and although Brongers J. did not dismiss Bob's claim, the judgment favoured the Clients' version of the events.

h) Disbursements

[73] On a review under the *LPA*, the lawyer must establish that the disbursements were also reasonably incurred.

[74] The Clients objected to the disbursement of \$933.72 for the hotel at which Mr. Fayerman stayed for four nights the first week of trial and submit that they did not consent to this expense. Mr. Fayerman's explanation was that by staying at a hotel in New Westminster, he saved the Clients money because the nightly rate was less than his hourly rate, which he would have charged for his travel time, and he was able to spend time preparing for the first few days of the trial when Mr. Vujicic was presenting Bob's case.

[75] Mr. Fayerman's office is located in Richmond B.C., less than 25 kilometres from the New Westminster courthouse, an estimated driving time of 30 minutes (in good traffic). I accept the Clients' evidence that they did not consent to this disbursement. While it may have been convenient for Mr. Fayerman to stay in New Westminster, I find that it was neither necessary nor proper for him to do so in the circumstances and that this is an unreasonable disbursement. I also note that it is standard practice for counsel to charge 50% of their hourly rates for commuting time, and that his entries for the trial days he did not stay in a hotel include his travel time for the day of approximately one hour (the hours he billed for court days on the days he was not staying at the hotel were generally eight hours, as opposed to seven hours when he stayed at the hotel).

[76] Mr. Fayerman also charged as a disbursement \$76.16 for Ubers, which he testified he used to get to and from the hotel to the courthouse during the first four days of the trial. He said that he was carrying boxes and materials for the trial and could not walk to the courthouse. I accept that if Mr. Fayerman had been driving to and from his office, he would have paid for parking and I find this disbursement to be reasonable.

Disposition

[77] In the circumstances of this case and considering the factors under s. 71(4) of the *LPA* detailed above, I find that the fees charged by the Law Firm on the Bill should be reduced, but I would not reduce the July Bill.

[78] On the Bill, Mr. Fayerman has applied the increased hourly rate to all of charges listed, then applied the LegalShield discount. In the Lin Affidavit at para. 3 (as well as in the Unsworn Lin Affidavit at para. 1(b)), Mr. Lin estimated that Mr. Fayerman had billed the Clients “an additional legal fee of \$6,268”, based on the following calculations:

Original Charge rate	Increased Charge
68h x \$400 x (1-33.3%) = \$18,142	68h X \$300 = \$20,400
80.2h X \$400 X (1-25%) = \$24,060	80.2h X \$350 = \$28,070

[79] I find that Mr. Lin’s calculation accurately reflects an overcharge by Mr. Fayerman and that the fees on the Bill should be reduced by \$6,268. I also find that further discounts of \$2,700 (nine hours at \$300 per hour for the time Mr. Fayerman billed for reviewing and working on the closing submissions) and \$825 (2.75 hours at \$300 per hour for the time Mr. Fayerman spent on purely administrative tasks) should be applied to the fees under the Bill.

[80] On the July Bill, Mr. Fayerman applied the in-office hourly rate of \$350, which is the increased hourly rate I have found he is not entitled to charge because he did not provide notice. Accordingly, I find a further reduction of \$180 should be applied to the July Bill (the claimed \$1,260 minus \$1,080 (3.6 hours at \$300 per hour)).

[81] The total amount of the Bill and the July Bill is \$63,100.74 (legal fees, disbursements and applicable taxes). I find that the legal fees claimed on the Bill and July Bill should be reduced by \$9,973, plus taxes of \$1,196.76 (GST and PST), totalling \$11,169.76. I also find that the disbursement of \$933.72 for the hotel accommodation was not necessary or proper and should be discounted (together with the GST claimed on the Bill for it, which I calculate to be \$46.69), totalling \$980.41.

[82] Accordingly, as detailed above, based on the factors under s. 71(4) of the *LPA*, in the circumstances of this case, the total amount under the Bill and July Bill together should be \$50,950.57, inclusive of taxes and disbursements. I note that the Bill reflects that Mr. Fayerman transferred the remaining funds in his trust account of \$51,138.98 in partial payment of the Bill. As I have found that Mr. Fayerman is entitled to less than this amount, I order Mr. Fayerman to reimburse the Clients the difference of \$188.41 and note that the Clients will not owe him anything for the July Bill.

Costs

[83] With respect to the costs of the *LPA* review, s. 72(1) of the *LPA* provides that the costs of an *LPA* review must be paid by the lawyer whose bill is reviewed “if 1/6th or more of the total amount of the bill is subtracted from it”, or by the client “if less than 1/6th of the total amount of the bill is subtracted from it”.

[84] The amount by which I have reduced the Bill and July Bill under review is just over 1/6th of the total amount and the Clients are entitled to their costs of the *LPA* review pursuant to s. 72(1) of the *LPA*. Costs of the *LPA* review are normally based on Items 1, 2, 24, 25 and 41 of the Tariff in Appendix B of the *Supreme Court Civil Rules*.

[85] The *LPA* review hearing occupied one and a half days. Given that the Clients represent themselves, coupled with the court time that would be required to assess the costs in this matter as I am not optimistic the parties could settle the appropriate

costs, I find that it is appropriate to exercise my discretion under the *LPA* and award the Clients their costs of this *LPA* review in the amount of \$1,500.00.

[86] The Law Firm is directed to prepare a certificate of fees in Form 65, showing that the Law Firm's fees and disbursements (together with applicable taxes) under the Bill and July Bill reviewed at the *LPA* hearing has been reduced to \$50,950.57, minus \$51,138.98, representing the amount the Law Firm withdrew from its trust account, together with \$1,500.00 the Law Firm is to pay the Clients for their costs of the *LPA* review hearing.

[87] The Law Firm is to submit the certificate of fees through the registry for my signature.

"Registrar Gaily"