
CANADA / JUDGMENT

Hutchison v. Ridyard

2016 BCSC 1

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Supreme Court of British Columbia

DECIDED

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2016 BCSC 1 Hutchison v. Ridyard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hutchison v. Ridyard,

2016 BCSC 1

Date: 20160105

Docket: 15-1779

Registry: Victoria

Between:

John Michael Hutchison

Appellant

And

Brian James Ridyard and Pennie June Ridyard

Respondents

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Self-represented Appellant:

J.M. Hutchison, Q.C.

Counsel for the Respondents:

J. Aiyadurai

Place and Dates of Trial:

Victoria, B.C.

September 22 and 25, 2015

Place and Date of Judgment:

Victoria, B.C.

January 5, 2016

I. introduction

- [1] This is an appeal under s. 5 of the Small Claims Act, R.S.B.C. 1996 c. 430, of an order awarding damages of \$13,310.74 (plus pre-judgment interest and filing fees) as a result of the appellant's professional negligence in connection with a residential real estate conveyance.
- [2] The appellant argued at trial and on appeal that his retainer was very limited; he was a scrivener. He says his duty was limited only to explaining to the respondents the documents they were to sign and to complete the conveyance with the proper registration of title and related financial charges.
- [3] The trial judge found that the appellant owed the respondents a broader duty.
- [4] For the reasons that follow, the Court will dismiss the appeal.

II. standard of review

- [5] Justice MacKenzie (then sitting in this Court) described the standard of review in *Smithers Parts Ltd. v. Hudson*, 2009 BCSC 1645:
- [26] The standard of review on pure questions of law is one of correctness, but the standard of review for findings of fact is they cannot be reversed unless the trial judge has made a palpable and overriding error. A palpable error is one that is plainly seen: *Housen v. Nikolaisen*, 2002 SCC 33. An appeal court should only intervene when there is a material error, a serious misapprehension of the evidence, or an error in law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at paras. 11-12; *R. v. Clark*, 2005 SCC 2. This court will only intervene in an appeal from Small Claims Court where the trial judge was clearly wrong in his apprehension of the law or the facts: *Priority Buildings Services Ltd. v. Ali*, [1999] B.C.J. No. 2820 at para. 10, and *Stewart v. Strutt*, [1998] B.C.J. No. 636 at para. 10, both being Provincial Court decisions.
- [27] Apart from the ground that the judge based his error on an issue not before the court, I must find palpable and overriding error in order to reverse findings of fact or that the trial judge was clearly wrong in his apprehension of the facts; thus, the rules are the same as in the British Columbia Court of Appeal on a review from a judgment of this court.

III. grounds of appeal

[6] The appellant's grounds of appeal as set forth in his Notice of Appeal are:

1. The trial judge erred in determining that the appellant had a duty to take reasonable steps to ensure the respondents understood what they were purchasing and to explain the legal effect of the purchase in the circumstances of the case; or, alternatively, if he had such a duty, the trial judge erred in concluding that he had not met that duty;
2. The trial judge erred in determining that he could evaluate the standard of care, in the particular circumstances of the case, without expert testimony;
3. The trial judge erred in concluding that "it was clear" that the respondents were relying upon the appellant to advise them and protect their interests, beyond the preparation of the documents required by the instructions he received;
4. The trial judge erred in concluding that the homeowner grant for 2008 was part of the damages suffered by the respondent as a result of the asserted negligence of the appellant;
5. The trial judge erred in concluding that the respondents were entitled to the return, as damages, of the legal fees when they had not paid legal fees in respect of the additional transfer alleged to have been required as a result of the alleged negligence of the appellant; and
6. The trial judge erred in determining that pre-judgment interest should be paid by the appellant throughout the period determined by him in light of the record of the proceedings before him including significant delay in the prosecution of the case caused by the respondents, without giving the parties an opportunity to be heard on that matter.

IV. facts

[7] In the main, the trial judge describes the evidence and findings of fact at paras. 1, 2, 5 and 6 of his Reasons:

- [1] Dr. Brian Ridyard and his wife Pennie Ridyard purchased a condominium in Victoria in May 2005. The Ridyards retained Michael Hutchison to prepare the mortgage and conveyancing documents. Hutchison met with the Ridyards on May 18, 2005 at his law office. He reviewed the documents with the Ridyards and had Dr. Ridyard sign them. On May 20, 2005 the documents were registered.
- [2] In 2006 the Ridyards looked at the property assessment notice and saw that the registered owner was Dr. Brian Ridyard Ltd., which was his professional medical corporation. The Ridyards contacted Hutchison explaining this was a mistake, that the property should have been registered in their personal names. Hutchison told them his instructions from Coast Capital Savings were to convey the property to Dr. Ridyard's medical corporation. Hutchison offered to assist the Ridyards to have the property re-conveyed into their personal names without having to pay a second property transfer tax. Those efforts were unsuccessful. In June 2010 the condominium was transferred to the Ridyards personally after they paid a second property transfer tax of \$9,440.00. Additionally, the Ridyards had to repay

homeowner grants of \$4,976.95.

- [5] The Court heard evidence from the Ridyards, Hutchison, Debra Wright, who was a mortgage broker at Coast Capital Savings and Judy Bujdoso, Mr. Hutchison's legal assistant who prepared the documents.
- [6] The facts established by the evidence are as follows:
1. The Ridyards purchased the condominium intending to live there after they retired from his medical practice. Pennie Ridyard was the office manager.
 2. The Claimants and Michael Hutchison had been friends for twenty-five years and he provided legal services to them and to the medical corporation. I accept Hutchison did not know the precise date Dr. Ridyard would retire but he knew his friend was planning to wind up his medical practice, sell the family home and live in the retirement condominium.
 3. The Defendant had Dr. Ridyard sign an Acknowledgment of Legal Representation document confirming he was acting for Dr. Ridyard and Coast Capital Savings.
 4. Debra Wright testified regarding the discussions she and the Ridyards had about the condominium purchase. She had a good recollection of the discussions, gave credible and reliable evidence and I accept her evidence that Dr. Ridyard wanted his professional medical corporation to make the mortgage payments. She recalled these arrangements required her to get special approval because it was rare a company would own residential property.
 5. Coast Capital Savings first set of instructions to the Defendant had the medical corporation making the mortgage payments but the registered owners were the Ridyards. Another lawyer at the Defendant's office questioned these instructions and Ms. Wright sent a second set of instructions later that day identifying the medical corporation as the registered owner. The evidence establishes Hutchison's office was aware of the confusing instructions and he took steps to clarify the instructions with his client Coast Capital Savings. He did not contact the Ridyards to clarify their wishes and intentions.
 6. The documents were prepared by Ms. Bujdoso prior to the Claimants and the Defendant meeting on May 18, 2005. Dr. Ridyard had no clear or reliable recollection of the meeting or the discussions. His focus appears to have been on the medical corporation making the mortgage payments. Mrs. Ridyard maintained she and her husband told the Defendant they were to be the registered owners of the condominium. I don't accept her evidence on this point. She did however ask the Defendant why she wasn't signing the documents. Mr. Hutchison testified he followed his practice of explaining each document before Dr. Ridyard signed as the authorized signatory of the medical corporation. I prefer his evidence regarding the meeting and execution of the documents. He told Mrs. Ridyard she was not signing because the corporation would be the owner and would make the mortgage payments.

7. The documents were registered on May 20, 2005. The Defendant's office reported to the Ridyards details of the registration and provided them with the documents showing the medical corporation was the registered owner and mortgagor. Apparently the Claimants did not receive the documents or, if they did, they didn't pay attention to them because it wasn't until early in 2006, after looking at the property tax notice, that they realized the condominium was owned by Dr. Ridyard's medical corporation. They contacted Mr. Hutchison, pointed out the mistake and requested he have the property registered in their names. The Defendant explained he had prepared the documents pursuant to the instructions of Coast Capital Savings and that Dr. Ridyard had signed the documents on behalf of his medical corporation. Hutchison said there was no mistake but he offered to help the Claimants if he could. The Ridyards wanted to avoid paying a second property transfer tax.
8. In November 2007, the Ridyards sold their family home and moved into the retirement condominium. In April 2008 Dr. Ridyard retired and closed the medical practice.
9. From 2006 to 2010 the Defendant made several unsuccessful attempts to have the "mistake or error" regarding the original registration corrected so his clients would not have to pay a second property transfer tax. The Claimants maintain the correspondence and documents prepared by the Defendant to correct the registration amount to admissions of negligence. I don't accept their contention. I am satisfied the Defendant tried to help them have the property registered in their personal names but he was not making any admissions he was negligent. In June 2010 the condominium was transferred to the Claimants after they paid another \$9,440.00.
10. From 2005 to 2008 the Claimants applied for and received home owner grants on the condominium. They were not entitled to receive the grant money because Dr. Ridyard's corporation did not meet the requirements of the Home Owner Grant Act. (See Exhibit 2 Tab 36). The Claimants were obliged to repay the Minister of Finance \$4,976.95.
- [8] Further evidence and facts arise in the trial judge's review of counsel's submissions and the trial judge's basis for his decision at paras. 10, 14, 16 and 17 of his Reasons:
- [10] Pennie Rudyard testified the Defendant never told them the medical corporation was going to own the condominium. The Court is satisfied Hutchison went over the documents with the Claimant and explained to them the medical corporation would be the owner and would be granting a mortgage to Coast Capital Savings. She asked him why she wasn't signing the documents and I accept the Defendant told her she wasn't because Dr. Ridyard had to sign on behalf of the medical corporation. The Defendant submits Mrs. Ridyard is not a credible witness. While I agree with him that she is "confusing her later position with the true facts" regarding what was said at this meeting, the issue of the Defendant's liability remains to be determined.

[14] Michael Hutchison is an experienced solicitor. He was called in 1971 and has practiced law for forty four years. He was the Ridyard's lawyer and friend for twenty five years prior to them purchasing the retirement condominium in 2005. The court is satisfied he knew when he agreed to act for the Ridyards that they would be retiring in a few years and closing their medical practice.

[16] With respect, I don't agree the Defendant's duty of care to the Ridyards was confined to simply preparing the mortgage documents. While the evidence proves they did not contact or consult the Defendant prior to purchasing the condominium and arranging a mortgage, it is clear they were relying on their friend to advise them and protect their interests. He had been doing this for many years and this situation was no different.

[17] The Defendant's duty of care in this case extended beyond preparing the documents and required him to advise the claimants regarding the purchase of their condominium. He acted for the mortgage company and the Ridyards and had a duty to raise and explain the legal effect of issues relevant to the transaction that were of importance to each party. He clarified the confusing instructions from the mortgage company but he didn't clarify with the Ridyards if their intentions were to have the medical corporation make the payments while having the condominium registered in their names. He was obliged to protect their interests and to consult on questions of doubt. The evidence proves Mrs. Ridyard was confused and in doubt regarding why she wasn't signing the documents and the Court is satisfied Mr. Hutchison had a duty to take reasonable steps to ensure the Ridyards understood what they were purchasing and explain the legal effects of the purchase. He knew Dr. Ridyard was retiring and would close his medical practice yet he did not ask whether the medical corporation would have funds to continue making the mortgage payments after retirement. He did not ask whether his clients wanted the medical corporation to continue owning the condominium after retirement or whether they would want to re-convey ownership to themselves which would require a second property transfer tax. He did not advise them that if the medical corporation was the registered owner they were not eligible to claim any applicable home owner grants. This duty was a positive one and was not triggered only by a request from the Ridyards. I accept their evidence that had the Defendant explained the legal issues relevant to the transaction they would have registered ownership in their names and personally granted the mortgage.

[9] The Acknowledgement of Legal Representation to which reference is made at para. 6(3) of the trial judge's Reasons reads:

I, the undersigned, hereby confirm and acknowledge that you have advised me and I understand, that you act on my behalf in the above captioned conveyance and that you are also acting on behalf of Coast Capital Savings Credit Union, (the "Mortgage") with respect to the mortgage.

I further confirm and acknowledge that you have advised me that no information received in connection with the mortgage in favor of Coast Capital Savings Credit Union can be treated as confidential so far as either party is concerned and, should a conflict arise which cannot be resolved, you have advised me that you cannot act for either party.

I hereby consent to you acting on behalf of the Mortgagee.

Dated at Victoria, British Columbia, this 18th day of May, 2005

Dr. Brian J. Ridyard Ltd.

[My emphasis.]

[10] I note that the Acknowledgment is executed by Dr. Ridyard as the authorized signatory of Dr. Brian J. Ridyard Ltd. and that Mr. Hutchison does not dispute that Dr. Ridyard and Ms. Ridyard were also his clients. Dr. Ridyard and Ms. Ridyard signed a similar acknowledgment regarding the granting of a second mortgage on their then home, which helped to finance the purchase of the residential condominium.

V. inconsistent findings of fact

[11] At para. 6(7) of the Reasons, the trial judge states (in part):

it wasn't until early in 2006, after looking at the property tax notice, that they realized the condominium was owned by Dr. Ridyard's medical corporation.

[12] At para. 10 of the Reasons, the trial judge states (in part):

The Court is satisfied Hutchison went over the documents with the Claimant and explained to them the medical corporation would be the owner and would be granting a mortgage to Coast Capital Savings.

[13] The foregoing inconsistency is an error. Accepting that the error is palpable, it is not an overriding error because the error does not change the outcome: *Fuller v. Harper*, 2010 BCCA 421 at para. 34. The case turns on the scope of the retainer: Was Mr. Hutchison only a scrivener with no duty to explain the various legal consequences associated with the corporate ownership of a residential condominium that he knew Dr. Ridyard and Ms. Ridyard would wish to occupy as their personal residence in the future?

[14] Accepting that Dr. Ridyard and Ms. Ridyard were told at the time of execution that the medical corporation would be the owner, Mr. Hutchison did not explain the associated legal consequences. As a scrivener, he would have no duty to do so. If acting in the more conventional role of a solicitor, such a duty would exist.

VI. The trial judge's summary of The law

[15] The trial judge summarized the applicable law:

[13] The Court has considered the case law and materials provided and is satisfied the following principles apply to this case:

1. To succeed in their claim the Ridyards must prove on a balance of probabilities that the Defendant owed them a duty of care, that Mr. Hutchison's actions fell below the standard of care expected of him, that they sustained damages and those damages are causally linked to his failure.
2. A solicitor is required to bring reasonable care, skill and knowledge to the performance of the professional service which he has undertaken. The requisite standard of care is that of the reasonably competent solicitor, the ordinary competent solicitor and the ordinary prudent solicitor. *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147.
3. The obligations of an ordinary competent solicitor are:
 - a) To be skilled and careful;
 - b) To advise his client on all matters relevant to his retainer, so far as may be reasonably necessary;
 - c) To protect the interests of his client;
 - d) To carry out his instructions by all proper means;
 - e) To consult with his clients on all questions of doubt which do not fall within the express or implied discretion left to him;
 - f) To keep his client informed to such an extent as may be reasonably necessary according to the same criteria. *Duckworth v. McKinnon*, 2012 BCSC 2147.
4. In this real property transaction, Mr. Hutchison acted for more than one party and was obliged to, as soon as practicable, raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party. *Law Society of British Columbia Professional Conduct Handbook*, Appendix 3, section 6(c).
5. The Defendant had a duty to take reasonable steps to ensure the Ridyards understood what they were purchasing and explain the legal effects of the purchase. This duty is a positive one arising from the nature of the solicitor-client relationship and is not triggered only by a request from the clients. *Anakotta v. Perusini*, 2004 BCSC 168.
6. Any implied duty of care must be related to what Mr. Hutchison was instructed to do. The standard of care expected of him is not to be judged with the benefit of hindsight, but is to be judged in light of the knowledge that he possessed or reasonably ought to have possessed, at the time of the negligence alleged. *Lau v. Ogilvie*, [2010] B.C.J. No. 2192.

7. The Court should not determine what is the standard of care in a solicitor negligence action in the absence of expert evidence where the issues involve specialty or technical legal matters such as abstruse questions of conveyancing practice. *Roberge v. Huberman*, 1999 BCCA 196.
8. A judge may evaluate the standard or care of a lawyer without the benefit of expert evidence provided the subject of the alleged negligence is within the knowledge of the judiciary. *Malton v. Attia*, 2013 ABQB 642, *Roberge v. Huberman*, 1999 BCCA 196.

VII. The strother case

- [16] I would add to the summary of the law the Supreme Court of Canada's decision in *Strother v. 3464920 Canada Inc.*, 2007 SCC 24. In *Strother*, Justice Binnie, writing for the majority states at para. 40 (in part):

Where a retainer has not been reduced to writing (as was the case with the 1998 retainer here) and no exclusions are agreed upon, as here, the scope of the retainer may be unclear. The court should not in such a case strain to resolve the ambiguities in favour of the lawyer over the client.

- [17] In the appeal at bar, there was the Acknowledgment of Legal Representation which provides that Mr. Hutchison is "act[ing]" on behalf of Coast Capital and Dr. Brian J. Ridyard Ltd. with respect to the conveyance. As noted, Mr. Hutchison does not dispute Dr. Ridyard and Ms. Ridyard were also his clients.
- [18] The record does not show any further evidence of a written retainer. In my review, I have followed the rule in *Strother* that a court, in resolving ambiguities with respect to a retainer, should not strive to resolve ambiguities in favour of the lawyer.

VIII. Mr. hutchison's argument

- [19] As reflected in his third ground of appeal, that Mr. Hutchison's retainer did not extend beyond the preparation of documents, Mr. Hutchison argued that the trial judge erred in his findings of fact that "it is clear they [the respondents] were relying on their friend to advise them and protect their interests" (at para. 16). I will address this ground of appeal first because it involves findings of fact and the scope of the retainer.

- [20] In his written submissions, at para. 19, Mr. Hutchison states:

This conclusion by the learned trial judge is frankly wrong. There was no evidence before him to justify this conclusion.

- [21] With respect, there was considerable evidence to support the trial judge's finding of fact, including:

- (a) A long history of Mr. Hutchison acting for Dr. Ridyard and Ms. Ridyard;
- (b) They were friends; and

- (c) The Acknowledgment of Legal Representation does not restrict Mr. Hutchison's scope of retainer from that of a conventional lawyer-client relationship.
- [22] I do not find a "palpable and overriding error". Applying the rule in *Housen v. Nikolaisen*, 2002 SCC 33, I will not interfere with the trial judge's findings of fact. It is not my role sitting on appeal "to second-guess the weight to be assigned to the various items of evidence": *Housen* at para. 23.
- [23] With respect to Mr. Hutchison's first ground of appeal, that the trial judge erred in determining that Mr. Hutchison had a duty to explain the legal effects, Mr. Hutchison relies primarily on the decision of our Court of Appeal in *Oh v. Usher*, 2010 BCCA 429.
- [24] In *Oh*, the plaintiff (appellant) was not successful in suing her lawyer in negligence for advice relating to the inspection and valuation of deficiencies involving the purchase of a new townhouse. The trial judge found, in dismissing the plaintiff's claim, that the plaintiff had waived her right to inspection and a claim for deficiencies with the vendor (builder) of the townhouse before the defendant lawyer had been retained. The Court of Appeal accepted this finding of fact and dismissed the appeal against the lawyer on the basis that if there were any damage, it was not caused in fact or in law by the lawyer. Causation is an essential element of the tort of negligence.
- [25] Mr. Hutchison argues at para. 9 of his written argument that *Oh* "dealt with virtually identical circumstances" to those of the appeal at bar. Essentially, Mr. Hutchison says that prior to his involvement, Dr. Ridyard had signed a legally binding interim agreement for the purchase of the residential condominium unit. Further, Mr. Hutchison says that he was told by Ms. Ridyard that he would receive his instructions through Coast Capital Savings.
- [26] At least two aspects make the appeal at bar distinguishable from *Oh*.
- [27] First, the interim agreement, while binding, had "Brian J. Ridyard or Assigns" as the purchaser. With the possibility that the purchaser would be other than Dr. Ridyard when Mr. Hutchison became involved, there was a live legal issue that warranted legal advice. In the result, Dr. Brian J. Ridyard Ltd. became the purchaser and the owner.
- [28] Second, as the trial judge found, Mr. Hutchison's office was aware of "confusing instructions and [Mr. Hutchison] took steps to clarify the instructions with his client, Coast Capital Savings. He did not contact the Ridyards to clarify their wishes and intentions" (at para. 6 (5)). From my review of the record, there is no basis to interfere with these findings of fact.
- [29] Unlike *Oh*, when Mr. Hutchison became involved, the key issue involving whether the residential condominium unit should be owned by Dr. Ridyard, the medical corporation or by Dr. Ridyard and Ms. Ridyard was a matter warranting legal advice.

[30] In cross-examination, Mr. Hutchison was asked questions about an October 29, 2009 letter he wrote to the Property Transfer Tax Branch in support of an unsuccessful application to exempt a transfer of the condominium from Dr. Brian J. Ridyard Ltd. to Dr. Ridyard and Ms. Ridyard from property transfer tax. Mr. Hutchison testified:

Q. If you can start towards the end, where it says, "I have acted for Dr. and Mrs. Ridyard", can you read that paragraph.

A. [As read in]:

I have acted for Dr. and Mrs. Ridyard and for Dr. Ridyard's professional corporation for a number of years, and they are close friends of mine. As a consequence, we simply waited for the instructions from the Credit Union and did not take detailed instructions from Mrs. Ridyard when she called.

Q. And that's accurate?

A. I think it's accurate.

[31] As can be seen from the Acknowledgment of Legal Representation, there is no reference, including any clarification or confirmation that Mr. Hutchison was to receive his instructions on behalf of Dr. Ridyard and Ms. Ridyard solely through Coast Capital Savings.

[32] In oral argument before me, referring to para. 17 of the trial judge's Reasons, with regard to the first set of instructions, with the medical corporation making the mortgage payments but with Dr. Ridyard and Ms. Ridyard as the registered owners, Mr. Hutchison stated "with all due respect, that would not have been possible".

[33] For a lawyer, such an arrangement would not make sense, at least since the rule in *Salomon and Co. (Salomon v. Salomon & Co., [1897] A.C. 22)* was settled (reversing the Court of Appeal in *Broderip v. Salomon [1895] 2 Ch. 323*). For a lay person, the rule in *Salomon v. Salomon & Co.* may not be intuitive or apparent, as it was not to many lawyers, until that great case, now so fundamental to corporate law.

[34] In brief, Mr. Hutchison also fails on his first ground of appeal. There is not a proper basis to interfere with the trial judge's relevant findings of fact. The trial judge's application of the law is correct. Mr. Hutchison had a broader duty than that of a scrivener. He should have provided the advice that a real estate solicitor would have provided to a lay client who had signed a binding interim agreement (after reviewing it to confirm that it was binding) with the possibility of the assignment of the agreement left open. For example, he did not advise with respect to the homeowner grant, the need to maintain the medical corporation to hold title of the condominium, or further property transfer tax if the condominium were to be transferred from the medical corporation.

- [35] With respect to Mr. Hutchison's second ground of appeal, that expert testimony is required to evaluate the standard of care, he argued that real estate practice is a specialized area of legal practice requiring the assistance of a qualified expert for a court to consider a matter properly. He argued that the trial judge's reliance on *Roberge v. Huberman*, 1999 BCCA 196 was misplaced.
- [36] Although not binding on the Court, I note that the Law Society of British Columbia Professional Conduct Handbook, Appendix 3 (replaced January 1, 2013 by the Code of Professional Conduct for British Columbia), states that a lawyer should not act for more than one party in a real estate transaction (except where the parties are effectively controlled by the same person(s)) or unless the transaction is a "simple conveyance" (sections 2(b) and 4). By implication, this must have been a "simple conveyance" or else Mr. Hutchison could not have acted as he did. As noted by the trial judge, and emphasized by respondent's counsel, there is also an obligation noted in Appendix 3 of section 6 of the Handbook under the heading Advice and Consent to "raise and explain the legal effect of issues relevant to the transaction that may be of importance to each party".
- [37] The trial judge was also correct in determining that the retainer did not involve "abstruse questions of conveyancing practice" (*Roberge* at para. 56). The transaction involved the purchase of a residential condominium unit with mortgage financing.
- [38] Mr. Hutchison argued on appeal that the circumstances give rise to abstruseness as to whether a lawyer in his circumstances would be viewed as a scrivener without a duty of care at large, and accordingly the Court should have had the benefit of expert evidence. As I follow Mr. Hutchison's argument, he was saying that the onus was on the respondents, as plaintiffs at trial, to have tendered expert evidence to show that he had a duty of care at large.
- [39] I reject Mr. Hutchinson's argument that in the circumstances he was only a scrivener and that expert evidence was needed regarding the requisite standard of care.
- [40] More fundamentally, Mr. Hutchison did not make clear his view of the scope of his retainer. In addition to Coast Capital Savings, he was "acting" for Dr. Ridyard, Ms. Ridyard, and the medical corporation. As Strother makes clear, ambiguities, if any, should be resolved in favour of the client. The definition of one's retainer by a lawyer is a matter separate from the area of practice to which the retainer pertains.
- [41] Although not necessary for a determination of this ground of appeal, I note the recent decision of Chief Justice Hinkson in *Henry v. HMTQ*, 2015 BCSC 1848. In *Henry*, Hinkson C.J. stated that in our Province there is an "exclusionary rule respecting the receipt of evidence from a lawyer on matters of law" (at para. 24).
- [42] With respect to Mr. Hutchison's fourth ground of appeal, that the 2008 homeowner grant should not be part of the damages, Mr. Hutchison argued in his written submissions:

23. The evidence of Mrs. Ridyard is clear and unequivocal that for most of the year of 2008, she and her husband did not reside in the residence, but were overseas. They were thus ineligible for the homeowners grant in any event.
- [43] With respect to the fact that for many months Dr. Ridyard and Ms. Ridyard were overseas, the Home Owner Grant Act, R.S.B.C. 1996, c. 194 (the "Act"), allows the grant to be claimed if the condominium was an "eligible residence" and the "principal residence" of Dr. Ridyard and Ms. Ridyard within the meaning of s. 1 of the Act. The Act defines principal residence as "the usual place where an individual makes his or her home". Dr. Ridyard and Ms. Ridyard lived in the condominium at the beginning of 2008. The fact that Dr. Ridyard and Ms. Ridyard were overseas most of the year does not necessarily mean the condominium ceased to be the usual place where they made their home. There is not sufficient evidence to find that the residential condominium was not their principal residence.
- [44] With respect to the fifth ground of appeal, legal fees as a component of damages, Mr. Hutchison says that the fees charged for the initial conveyance should not be considered as damages, because he did not charge legal fees for the subsequent transfer of the property from the medical corporation to Dr. Ridyard and Ms. Ridyard.
- [45] Respondents' counsel argues that the matter is a new issue and, in any event, Mr. Hutchison had confirmed that the second transfer would not be without charge for legal fees (excluding disbursements), as set forth in a June 2, 2010 letter from Mr. Hutchison to Dr. Ridyard, Ms. Ridyard, and the medical corporation.
- [46] The gift of legal services cannot be used to offset the legal fees incurred or with respect to the initial conveyance. The fifth ground of appeal fails.
- [47] With respect to the final ground of appeal, pre-judgment interest, respondents' counsel notes that at trial, the respondents' in their written submissions sought pre-judgment interest. Mr. Hutchison chose not to challenge a possible award of pre-judgment interest at trial. A reviewable basis to challenge the award of pre-judgment interest does not exist.

IX. conclusion

- [48] The appeal is dismissed.
- [49] The parties asked that the opportunity to argue costs be given. I ask that the parties arrange through Supreme Court Scheduling a one-hour, 9:00 a.m. hearing within 90 days of these Reasons.

"Funt J."

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