

CANADA / JUDGMENT

John M. Richter Law Corporation v. Goritsas

2024 BCSC 2222

COURT

Supreme Court of British Columbia

DECIDED

9 December 2024

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2024 BCSC 2222 John M. Richter Law Corporation v. Goritsas

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

John M. Richter Law Corporation v. Goritsas,

2024 BCSC 2222

Date: 20241209

Docket: S237928

Registry: Vancouver

Between:

John M. Richter Law Corporation dba Richter Trial Lawyers

Law Firm

And

Georgia Goritsas in her capacity as Executrix of the Estate of Anna Goritsas, deceased, Georgia Pappas, in her capacity as Executrix of the Estate of Anna Goritsas, deceased, and the Estate of Anna Goritsas, deceased

Client

Before: Associate Judge Robinson

(As Registrar)

Reasons for Judgment

Counsel for the Law Firm:

J.M. Richter

Counsel for the Client:

K. Vimalasan

Place and Date of Hearing:

Vancouver, B.C.

November 4-6 2024

Place and Date of Judgment:

Vancouver, B.C.

December 9, 2024

INTRODUCTION

- [1] By an Appointment filed May 8, 2024, the John M. Richter Law Corporation, doing business as Richter Trial Lawyers (the "Firm") initiated a review of its bill, pursuant to section 70(3) of the Legal Profession Act, SBC 1998 c. 9 [the "LPA"].
- [2] The bill which is subject to review is dated September 29, 2023 and is in the amount of \$156,857.25 (the "Bill"). The Firm has derived that amount as a percentage of the value ascribed to the settlement ultimately realized by the Client, albeit a settlement realized following the termination of the Firm's retainer.
- [3] In this respect, the Firm contends that the Client realized a net settlement which has a "probable actual value" of between \$720,000 and \$960,000. The Firm further contends that pursuant to its retainer agreement, it is entitled to fees equal to 35% of that "probable value" (i.e. \$252,000 - \$336,000). Nonetheless, the Firm discounted its claimed entitlement to fees in the amount of \$140,000 to reflect the fact that its retainer was terminated prior to the completion of settlement. As a result, the Firm seeks payment of \$156,857.25, calculated as follows:

Fees: \$140,000

GST (5%): \$7,000

PST (7%): \$9,800

Disbursements: \$57.25

- [4] The hearing of this review occurred over three days. Much of the evidence was received by way of affidavits. In particular, the evidence consisted of three separate affidavits sworn Kristina Ohrn, who is employed by the Firm as a designated paralegal; an affidavit sworn by Amanda James, a former partner of the Firm, and an affidavit sworn by Georgia Goritsas ("Georgia"). John Richter, the Firm's principal, gave oral evidence. Both Mr. Richter and Georgia were cross examined.

BACKGROUND

- [5] To place this matter into context, it is necessary to briefly describe the background facts and circumstances.
- [6] The parties' relationship began on August 28, 2020 when Anna Goritsas ("Anna") met with Ms. James and retained the Firm in respect of the estate of her father who had died earlier that year on January 31, 2020.
- [7] Anna's father had left a will, dated 1997, which divided his estate between her, her sister, Georgia and her brother, Ioannis Goritsas, also known as Johnny Goritsas ("Johnny"). However, whereas the shares of Johnny and Georgia were left to them absolutely, Anna's share of the estate was subject to a discretionary trust to be administered by Georgia as trustee (the "BC Will"). The BC Will provided that upon Anna's death, the balance of the trust (if any) was to go to Anna's children, and failing that, to Georgia and Johnny in equal shares. Anna did not have any children.
- [8] A complicating factor concerned Johnny. He had been estranged from members of his family since 1997. His whereabouts were unknown. Moreover, it was not known if he was alive. If he was deceased, it was not known if his death preceded that of his father. Johnny's status would have implications for the distribution of the estate.
- [9] Initially, the value of the estate (and by extension, Anna's share of the estate) was uncertain. She understood that her father owned real property in Vancouver (the "Vancouver Property"), but was unsure of the current state of title.
- [10] The BC Will named Georgia as executrix, and during her initial meeting with the Firm, Anna indicated to Ms. James that Georgia had not been forthcoming with information in respect of the estate.
- [11] The foregoing resulted in Anna entering into an express retainer agreement which described the purpose of the retainer as being "preliminary research to obtain information about estate assets". It set the hourly rates for Ms. James at \$275 and \$400 for Mr. Richter. In total, the Firm billed Anna \$428.04 (inclusive of taxes and disbursements). That amount was paid by Anna, in full, and is not at issue.

- [12] The bill arose from steps taken by Ms. James who had been able to determine that although Anna's father had owned the Vancouver Property, Georgia had been added to title as a joint tenant in 2015. Accordingly, she became the sole owner of the Vancouver Property upon the death of Anna's father, and it did not comprise a part of the estate.
- [13] In addition, Ms. James sent a reporting letter to Anna, dated August 31, 2020. Therein, Ms. James discussed the issues that would need to be addressed as part of any legal claim. Specifically, she raised the prospect of seeking a resulting trust in respect of the Vancouver Property; the possibility of a wills variation claim to collapse the discretionary trust to which Anna's entitlement was subject; and the implications associated with Johnny being "missing" for more than two decades.
- [14] In that same letter, Ms. James discussed the prospect of a continued retainer on a contingent fee basis, as follows:

we would be prepared to apply for leave and commence the claim as noted above on a contingency fee basis such that our legal fees will only be collectible at the end. Our fee would be 35% of your share of the assets we recover for your father's estate. As an example, if we were successful in recovering \$2,000,000 that would flow through your father's estate and you received half of this, our fees would be 30% of \$1,000,000. (sic)

- [15] The foregoing proposal was made at a time when the value of Anna's entitlement was uncertain given the issues described above. However, Ms. James had taken steps to address that uncertainty while still retained on an hourly rate basis. She had drafted a letter to Georgia wherein she asserted that Georgia held the Vancouver Property in trust for her father's estate and was subject to distribution among the estate's beneficiaries. That letter, although drafted on August 31, 2020, was not sent until September 11, 2020 when Anna provided instructions.
- [16] In the meantime, the parties entered into an express Contingency Fee Retainer dated September 2, 2020 (the "CFA"), the salient provisions of which state:

1. Nature of Work: Resulting Trust claim to recover estate assets and wills variation claim
2. Fees: The client agrees that the fees will be a contingency fee. The taxes and disbursements are payable in any event. The client has the option pay the disbursement accounts when rendered or alternately the law firm will carry the disbursements to the completion of the claim at 12% simple interest per annum (1% per month) on accounts from when they are rendered to date of payment.

The following percentages of the total settlement reached or judgement obtained are,

- 35% of the total of any settlement if obtained prior to the first scheduled discovery;
- 35% of the total of any settlement amount obtained thereafter until one month before the first scheduled trial; or

· 35% of the total of any settlement or judgement obtained thereafter.

[]

6. Termination by the Client before Resolution: if this agreement is terminated by the client before this matter is resolved, the client agrees to pay the lawyer's fees calculated as the greater of: the applicable percentages of the sum of any offers plus advances made by on behalf of the defendant; and a fair fee based on services provided, time involved, nature of the claim, skill and experience of the lawyer and probable actual value of the claim. The lawyers' current billing rates are \$400 per hour for John Richter, \$275 for Amanda James and \$200 for Dana Rogers, plus taxes and disbursements. (sic)
- [17] Relatively quickly after entering into the CFA, a significant issue was resolved. On September 29, 2020, counsel for Georgia advised Ms. James via telephone that Georgia did not dispute that the Vancouver Property was an asset of the estate. She explained that the transfer to Georgia was done for "estate planning purposes". That position was subsequently confirmed by letter dated October 2, 2020.
- [18] From that date onwards, it was clear that there was no need to pursue a resulting trust claim nor was there significant doubt as to the value of Anna's entitlement since it was expected that the Vancouver Property had a market value of not less than \$2 million.
- [19] However, a subsequent issue arose when counsel for Georgia delivered a letter to Ms. James dated December 9, 2020 wherein details concerning the estate were shared. In particular, it was noted that: the Vancouver Property had an assessed value of \$2,171,800; at the date of death, Anna's father was the owner of two pieces of bare land, located in Greece; Georgia had incurred significant expenses following her father's death for which she was seeking reimbursement from the estate; and most notably, that Anna's father had prepared another will, in Greece, in 2010 (the "Greek Will").
- [20] The revelation concerning the Greek Will added further uncertainty to the matter. Its contents - and its effect on Anna's rights as a beneficiary - were unknown. Accordingly, very little tangible work was done over the ensuing months while the Firm awaited the opening of the Greek Will.
- [21] In this regard, despite having expended time drafting a notice of civil claim, no action was ever commenced by the Firm on behalf of Anna. Despite not having had any success in locating Johnny (or determining whether he was alive), the Firm did not bring any application for a declaration under the Presumption of Death Act, R.S.B.C. 1996, c. 444. Moreover, despite the fact that the Vancouver Property was generally understood to comprise the estate's most valuable asset, and despite the fact that Georgia was registered as its sole owner, no steps were taken to preserve or protect Anna's beneficial interest by registering a certificate of pending litigation against title to the Vancouver Property.

- [22] Instead, the matter was generally held in abeyance and the Firm recommended that Anna remain patient pending the opening of the Greek Will. This approach was consistent after December 31, 2021 when Ms. James left the Firm and primary conduct of the matter was assumed by Mr. Richter.
- [23] Regrettably, the opening of the Greek Will was delayed. It was agreed that the ongoing Covid-19 pandemic played a factor in this regard.
- [24] In February, 2023, Anna was hospitalized due to an unspecified psychological condition. Mr. Richter spoke with her via telephone on March 22, 2023 while she was in the hospital. His notes of that call disclose that he was aware that she was in the psychiatric ward at Vancouver General Hospital.
- [25] Thereafter, following a delay of more than two years, the Greek Will was opened and made accessible in early 2023. A copy of the Greek Will, along with a certified translation into English was sent to Mr. Richter by letter dated April 5, 2023. The Greek Will proposed leaving the entirety of Anna's father's estate to Georgia. Neither Anna nor Johnny were named as beneficiaries in the Greek Will.
- [26] Concurrent with sending Mr. Richter a copy of the Greek Will, the solicitors for Georgia also confirmed that a contract of purchase had been entered in respect of the Vancouver Property whereby it was agreed to be sold for \$2,744,700.
- [27] It was also on April 5, 2023 that the solicitors for Georgia sent a letter, setting out a without prejudice settlement proposal. In this regard, the proposal proposed to "set aside" one-third of the net proceeds arising from the sale of the Vancouver property and:
- a) From that amount, make a one-time lump sum payment to Anna in an amount to be agreed; and
 - b) Remit the balance of that amount into a trust for Anna's benefit with Georgia or another mutually agreeable person acting as trustee. Anna would be entitled to decide whether the trust was completely discretionary or whether she would receive a guaranteed, monthly payment. Moreover, Anna would be entitled to appoint by will any unused portion of the trust on her death, but if she failed to do so, any unused portion of the trust funds would be distributed equally between Georgia and Johnny.
- [28] Despite the letter being dated April 5, 2023, Mr. Richter does not acknowledge receiving the settlement proposal until later that month. He reviewed it on or about April 26, 2023, and proceeded to arrange a meeting with Anna and her doctor since Anna remained in hospital.
- [29] On the advice of Anna's doctors, and based on his own concerns about Anna's capacity to provide instructions, Mr. Richter avoided significant discussions concerning the estate or the settlement proposal that had been received. Mr. Richter understood that Anna had been involuntarily admitted under the provisions of the Mental Health Act, R.S.B.C. 1996, c. 288. He further believes that she remained subject to the Mental Health Act until sometime in

July 2023. During that time, Mr. Richter was concerned about her capacity to provide instructions.

- [30] On July 12, 2023, Mr. Richter received a message asking him to contact Anna. There is no evidence that she was subject to any certification at that time. However, Mr. Richter did not immediately return her call as he was leaving Vancouver to attend a conference in Philadelphia.
- [31] On July 17, 2023, Anna met with a different lawyer. At that time, she executed a power of attorney appointing her sister Georgia, as well as her cousin, Georgia Pappas, her attorneys.
- [32] Acting in her capacity as Anna's attorney, Ms. Pappas wrote to Mr. Richter on July 26, 2024 and terminated the Firm's retainer.
- [33] Despite the termination of the Firm's retainer, Mr. Richter continued to pursue matters. He engaged to Public Guardian and Trustee and raised concerns about steps being taken contrary to Anna's best interests. He sought input and advice from the Law Society of British Columbia to determine the extent and nature of his professional obligations. He attempted to arrange meetings with Anna, and he maintained a dialogue with Anna's husband.
- [34] On September 26, 2023, Mr. Richter wrote to Anna explaining his positions and, for the first time, raised the without prejudice settlement proposal dated April 5, 2023 for her consideration. He pointed out that the sale of the Vancouver property generated net sale proceeds of \$2,395,387.92 and then set out an equivocal opinion, as follows:

in terms of whether one third of the approximately \$2.4 million is a reasonable settlement, it is a reasonable settlement. If you remained our litigation client, I do not have sufficient information to recommend or not recommend accepting it. Given my understanding of your medical issues, your care needs being taken care of by the government, the involvement of your sister and the seeming separation from your husband, it may be a reasonable settlement. [emphasis added]

- [35] With the same letter, Mr. Richter enclosed a bill in the amount of \$156,857.25 (inclusive of taxes and disbursements) which he explains in the letter, as follows:

For the purposes of the below calculation, I have used one third of \$2.4 million or \$800,000. The calculation of the legal fees under our retainer agreement is as follows:

(35%) (\$800,000) = \$280,000 plus taxes and disbursements

I have discounted the legal fees by 50% to \$140,000.

- [36] The foregoing calculations constitute the basis for the Bill, no portion of which has been paid.
- [37] After the Firm's retainer was terminated, Anna entered into a settlement concerning her interest in her father's estate. The terms of the settlement provided that, inter alia:

Anna would receive one-third of the net sale proceeds of the Property, less estate expenses, payable as follows:

- \$25,000 will be paid to Anna outright;
- the remainder will be settled into a Qualified Disability Trust for the benefit of Anna;
- Georgia is the trustee but there are protections built in for Anna; and
- Georgia will indemnify Anna and Anna's estate against any claims by Johnny.

[37] Anna died in November, 2023. At no time prior to her death or since, has any portion of the Bill been paid.

POSITION OF THE PARTIES

- [38] Mr. Richter maintains that fees in the amount of \$140,000 are reasonable and justifiable in the circumstances. He contends that the work undertaken by himself and other persons at the Firm were reasonable and necessary to protect and advance Anna's interests. Notwithstanding that, in the course of the hearing of this matter, Mr. Richter disclosed a willingness to further reduce the Bill and seeks payment of \$70,000, which he says constitutes a 75% reduction of the amount to which the Firm is entitled. In arriving at this amount, the Firm relies on paragraph 6 of the CFA. Mr. Richter submits that provisions gives rise to an entitlement to 35% of the value of the settlement ultimately obtained by Anna.
- [39] The Client advances alternative positions. In the first place, it was submitted that paragraph 6 of the CFA is ambiguous and cannot constitute a basis on which to assess fees in the amount claimed. Alternatively, the Client argues that if it is appropriate to assess fees as a percentage of the settlement ultimately obtained, the appropriate amount on which to base that percentage is \$25,000 - being the amount ultimately paid to Anna unconditionally. This would result in fees being allowed in the amount of \$8,750. Finally, the Client contends that fees should be allowed in the amount of \$13,554, which reflects the hourly rates of the lawyers who provided services to Anna, multiplied by the time each lawyer spent prior to July 26, 2023, the date on which the Client says the retainer ended.

DISCUSSION AND LEGAL PRINCIPLES

- [40] On a review under the LPA, the burden of proving the retainer, and the terms of the retainer, rests upon the lawyer: *Mackoff & Company v. Grewal*, 2015 BCSC 1726 at para. 27.
- [41] 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.

- [42] Where the fee dispute arises from a written retainer agreement, that agreement ought to be the starting point of any analysis: *Mide-Wilson v. Hungerford Tomyon Lawrenson and Nichols*, 2013 BCCA 559 at para 72.
- [43] Indeed, in certain cases, the express retainer agreement may also constitute the end of the analysis. It has been held that once it is determined that a contract has been fairly entered into, a registrar should be reluctant, other than in an obvious case, to find that contract unreasonable: *Lauk & Associates v. Farschian*, 2002 BCSC 768.
- [44] With the foregoing in mind, I turn to consider the termination provision at paragraph 6 of the CFA. As indicated, it expressly contemplates a situation in which Anna could terminate the Firm's retainer at any time, and purported to address her obligation to pay fees in that eventuality.
- [45] Paragraph 6 sets out two alternative bases for determining fees, and stipulates that in the event of termination, Anna, as the client, would be required to pay the "greater of":
- a) the applicable percentages of the sum of any offers, plus advances made by on behalf of the defendant (the "Contingent Fee"); and
 - b) a fair fee based on actual services provided, time involved, nature of the claim, skill and experience of the lawyer and probable actual value of the claim (the "Fair Fee").
- [46] It is necessary at the outset to interpret the foregoing. A cursory review of the provision as it relates to the Contingent Fee reveals several problems. It is at best, ambiguous.
- [47] The reference to "applicable percentages" is vague. While it is presumably intended to reference and incorporate the various percentages outlined in paragraph 2 of the CFA (all of which are the same percentage), that is not clear and requires the court to effectively "read in" language to salvage a contractual document for the benefit of the party responsible for its creation.
- [48] Moreover, the Contingent Fee refers to the "sum of any offers made by the defendant". Read literally, this would lead to a decidedly absurd and unfair result. One can easily conceive of a situation in which multiple offers are exchanged in a dispute such as that to which this review pertains. If I accede to the Firm's interpretation, it would be necessary to add up the value of all offers to arrive at the requisite "sum" and then assess fees as a percentage of that sum. Such an interpretation could easily result in fees which exceed the total amount of the claim with the exchange of only a few offers.
- [49] It is not uncommon to encounter similar termination provisions in contingency fee agreements. Indeed, similar provisions serve a useful purpose in ensuring that lawyers are compensated for work performed: see *Boe v Waters*, [1998] BCJ No. 1793, 81 A.C.W.S. (3d) 543. However, those provisions generally entitle lawyers to a fee based on offers for which acceptance is recommended. In those cases, the lawyer should not be prejudiced by a client taking an unreasonable position or refusing to follow the considered advice of her solicitors.

Here, the interpretation advanced by the Firm would require the court to overlook the merits of an offer and to assess fees based on an offer (or several offers if there were more than one) which may be contrary to the client's interests.

- [50] It is notable that in the present case, the Firm did not recommend acceptance of the proposal as conveyed. Mr. Richter's explanation of the proposal as part of his final correspondence to Anna is that if she had not terminated the retainer, he did not have "sufficient information to recommend or not recommend accepting it".
- [51] If Mr. Richter may or would have recommended rejection of the proposal, he cannot plausibly assert an entitlement to a percentage of that same proposal since the settlement may or would not have materialized had the retainer continued.
- [52] Finally, consideration needs to be given to the proposal on which the Firm relies in this context. While it was undoubtedly presented to the Firm as a "settlement offer", even if Anna had purported to accept it, it was insufficiently certain to constitute a final, binding settlement between the parties. The so-called "offer" was more in the nature of an invitation to treat. It invited Anna to engage in negotiation which may have eventually led to a settlement.
- [53] In this regard, although the "offer" proposes to "make a one-time lump sum payment" to Anna, the amount of that payment (which is arguably the most important and potentially contentious term) was subject to further agreement. Likewise, although it contemplated someone other than Georgia acting as trustee, this too was subject to the parties reaching a further, mutual agreement as to the appropriate person to serve in that capacity. Finally, the "offer" afforded Anna the right to determine whether the resulting trust was completely discretionary or whether she would receive a guaranteed, monthly payment. However, there were implicit limits on Anna's discretion which presumably would not have permitted her to require 50% of the trust funds paid out over two months, for example. In short, the "offer" was not something that could have been accepted to bring about finality to the dispute. At best, the proposal constituted a framework which, if acceptable, might lead to an eventual resolution. It bore all of the hallmarks of an invitation to treat.
- [54] For the foregoing reasons, I am unable and unwilling to accede to the interpretation advocated by the Firm.
- [55] The most reasonable interpretation is that of Ms. James. Notably, it was Ms. James who drafted the CFA, and she did so with full authority as a partner of the Firm. In her affidavit, she deposes that she did not recall the exact details of her conversation with Anna when the CFA was being discussed. However, her general practice is that contingency fees are only applied against "any improvement" realized by the client when measured against their "starting position".
- [56] She further deposes:

I would have advised (Anna) that the 35% contingency would only be charged on the amount that ultimately came into her hands through settlement or judgement. That is, I believed and the Client would have understood that the 35% contingency fee would only be chargeable on any amount she personally received.

[57] The interpretation of Ms. James accords with reason. From the outset, Anna had an entitlement to one-third of the estate of her deceased father. That entitlement was subject to a discretionary trust. Accordingly, the Firm's entitlement to a percentage, would be limited to a percentage of monies made available to Anna outside of the trust. That amount would constitute an "improvement" over her "starting position".

[58] Moreover, Ms. James' interpretation accords with legal principles which require any ambiguity in a retainer agreement to be resolved in a manner most favorable to the client, on the basis of the contra proferentum rule: Michael Blaxland Personal Law Corp. v. Clendenning, 2000 BCCA 252 at para. 7.

[59] With that in mind, the Firm's entitlement to the Contingent Fee would be zero. This is because, despite any contention to the contrary, there had been no improvement in Anna's position during the Firm's retainer. Certainly, she did not "personally receive" any amount while the Firm was retained. Moreover, as outlined in the foregoing, during the Firm's retainer, there were no "offers" - as that term is legally understood - exchanged.

[60] Even if I were to accept Mr. Richter's submissions and to find that the Firm is entitled to the Contingent Fee based on the settlement ultimately realized following the termination of the Firm's retainer, the assessment would entail a percentage of the \$25,000 lump sum ultimately paid to Anna, outside of the discretionary trust.

[61] This would result in fees in the amount of \$8,750.

[62] However, for the reasons stated, I am neither willing nor able to accede to the Firm's proposed interpretation as propounded by Mr. Richter. The Firm's entitlement using the Contingent Fee approach is nil.

[63] With respect to the Fair Fee, the factors set out in paragraph 6 of the CFA generally accord with the factors that are set out 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.

[64] I turn now to the application of each of these factors.

a) Complexity, Difficulty or Novelty of the Issues

[65] Here, the Firm was initially faced with the prospect of having to initiate two separate claims - involving a resulting trust and seeking a variation of the will to collapse the discretionary trust. While it would be inaccurate to characterize either claim as straightforward, both are based on well established and well known principles. Moreover, the resulting trust claim was addressed almost immediately, in response to Ms. James' first letter. I am satisfied that this matter concerned some unusual issues that can be fairly regarded as complex and difficult. In this regard, the dispute of a foreign will under which Anna was disinherited; the application and potential implications of foreign laws; and a missing residual beneficiary with a potential significant impact on the Client's entitlement.

[66] However, notwithstanding the relative complexity of those issues, very little was done by Ms. James, Mr. Richter or anyone else at the firm to address or resolve them. As indicated, the Firm's general approach, once it became aware of the existence of the Greek Will was to hold matters in abeyance pending its opening. The Firm's retainer ended soon after the Greek Will was opened, and when the retainer ended, after nearly three years, Mr. Richter was only able to offer a highly equivocal letter as his final correspondence.

[67] Accordingly, this factor is neutral in my analysis.

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

[68] The Firm has specialized in estate litigation since 2009 and has experience with matters such as those which were involved in this case. Both Mr. Richter and Ms. James are undoubtedly competent and experienced counsel and offered a level of expertise appropriate for the needs of the Client. I am also satisfied that this file required experience and specialized knowledge that may not be generally available among lawyers who do not specialize in estate disputes.

[69] This factor favors the Firm.

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

[70] Both Ms. James and Mr. Richter were partners at the Firm and both had experience as counsel in estate litigation trials. Mr. Richter has been a practicing lawyer since 1991 and has personally specialized in estate disputes for the past 15 years. There is no basis on which to question the character of either Mr. Richter nor Ms. James.

[71] This factor favors the Firm.

d) The Amount Involved

[72] The gross value of the estate in issue was relatively significant at approximately \$2.4 million. Anna stood to potentially recover one-half of that amount and her entitlement to one-third of that amount was not in serious dispute within one month of the Firm being retained. The issue was whether or not that amount would be made available to Anna unconditionally or whether it would remain impressed with a trust, and meted out at the discretion of Georgia.

[73] The Firm recognized and identified that it would face difficulties in seeking to collapse the discretionary trust. In February, 2021 less than five months after being retained, Ms. James wrote to Anna and advised her that an application to collapse the trust would not have a strong chance of success.

[74] Ultimately, although Anna had the potential of obtaining an award of approximately \$1.2 million, the Firm recognized that a judgement for that amount was unlikely. Moreover, a settlement which resulted in Anna receiving a lump sum of more than \$100,000 would likely not have been recommended because such a settlement would have jeopardized her ongoing receipt benefits under the Employment Assistance for Persons with Disabilities Regulation, BC Reg. 161/2023 at s. 10(2)(a).

[75] This factor is neutral in my analysis.

e) The Time Reasonably Spent

[76] Over the period beginning on September 1, 2020 and ending July 27, 2023, members of the Firm expended 42.56 hours on this file - approximately 0.3 hours per week. This time included 6.16 hours by Ms. James and 25.9 hours for Mr. Richter (the balance of the time was expended by an articulated student).

[77] For the period beginning August 8, 2023 and continuing to September 29, 2023, Mr. Richter expended 9.8 hours on the file.

[78] On this assessment, the Client accepts and agrees that the time spent up to and including July 26, 2023 was reasonable and necessary. However, it was argued that the time spent thereafter was neither authorized by the Client nor reasonably necessary to advance the Client's interests. On July 26, 2023, Mr. Richter received written correspondence advising that the retainer had been terminated. By that date, Anna had entered into a valid power of attorney. She had done so with the benefit of independent legal advice who would have had an opportunity to assess and be satisfied of her capacity to grant the power of attorney. Moreover, although Mr. Richter may have had misgivings about Georgia acting as Anna's attorney, he had no reason to doubt that Ms. Pappas would act in good faith.

[79] There is no evidence that Anna was even aware of Mr. Richter's efforts taken after July 26, 2023 or that she had reason to be aware.

[80] The law is clear in this regard. If I am satisfied that the work performed was of no value to the Client, because the lawyer acted without instructions, I may properly disallow some or all of the claimed fees and disbursements: *Davies v. Hunter*, 1995 CanLII 1028 (BC SC) at para. 22.

[81] Moreover, to the extent that Mr. Richter engaged with persons from the Law Society of British Columbia to assess and determine his ethical and professional obligations following termination of the retainer, those are not expenses which can properly be visited upon the Client. These are professional obligations for which lawyers cannot and should not expect remuneration. They are effectively a cost of being a lawyer.

[82] This factor favors the Client.

f) The Result Obtained

[83] In assessing the result obtained, it bears reiteration that during the nearly three years in which the Firm was retained, the most significant result obtained was receiving confirmation that Georgia considered the Vancouver Property to be an estate asset. This result was obtained following the issuance of a single letter (for which Anna was billed as part of the hourly rate retainer). The only other significant result was the so-called "offer" received in April 2023 which, as discussed, is more accurately characterized as an invitation to treat.

[84] When settlement was finally realized, following the termination of the Firm's retainer, the settlement terms were at best a modest improvement on the terms set out in the BC Will. It is difficult to characterize the result as anything other than disappointing.

[85] This factor favors the client.

g) Whether the Hourly Rate was Reasonable

[86] Little needs to be said about this factor. The hourly rates charged by Mr. Richter, Ms. James and the Firm's articulated student were clearly reasonable and the Client does not suggest otherwise.

[87] This factor favors the Firm.

h) The Importance of the Matter to the Client

[88] This matter was of obvious and understandable importance to Anna. Seven months after her father's passing, she had no real information as to her rights under the BC Will or the value of her entitlement. Moreover, the evidence discloses that she was of limited means, with ongoing health issues such that she would have benefited from any payment received. Despite this importance, there was minimal progress for nearly three years. I raise this not as a criticism of the Firm nor of Mr. Richter. The combined effect of a global pandemic and reliance on a foreign and unfamiliar legal system undoubtedly contributed to the delays. However, the obvious importance to Anna did not compel or cause the Firm to take any

steps on an urgent basis or to proceed aggressively. To the contrary, the Firm adopted an approach which can fairly be described as passive while awaiting clarity as it pertained to the Greek Will.

[89] This factor favors the Client.

i) Other Factors

[90] The factors enumerated in s. 71(4) are not, and are not expected to be, exhaustive. The provision expressly requires a consideration of all of the circumstances. The Firm contends that salient circumstances for consideration here include the fact that:

- a) This was a file with significant risk of collecting nothing: while there is no doubt that this was an issue at the outset of the Firm's retainer, the risk was significantly mitigated one month into the relationship when Georgia confirmed that the Vancouver Property was being held in trust for the benefit of the estate. Moreover, it was a risk knowingly assumed by the Firm which presumably informed the express contingency fee (35% irrespective of when settlement occurred);
- b) Anna lacked the resources to continue the Firm's retainer on an hourly fee basis: It is not clear how this factor applies to the present circumstances. On the one hand, it likely compelled the Firm to enter into an alternative fee arrangement to obviate the need for Anna to pay out-of-pocket. At the same time, Anna's lack of resources made her vulnerable to exploitation and may have been why she agreed to a contingent fee arrangement. This is not to say or suggest that Anna was exploited by the Firm, but to point out that her apparent lack of resources should not justify higher fees that would be imposed in circumstances where a client has the wherewithal to fund litigation;
- c) Georgia conceded, almost immediately, that the Vancouver Property was held in trust for the estate and this concession likely arose from the Firm's reputation: There is no evidence to support this conclusion and it is entirely speculative on the part of the Firm. While it is possible that Georgia was compelled to compromise on the basis of the Firm's reputation, it is equally plausible explanation is that Georgia's concession arose from a concern for Anna and wanting to ensure that her sister was not deprived of a portion of their father's estate;
- d) The settlement to which Anna ultimately agreed (following the termination of the Firm's retainer) was unfair and was less advantageous than the outcome the Firm was pursuing on her behalf: There is no merit to this position. Over the course of nearly three years, the Firm had not elicited any better offers than the settlement ultimately reached. In addition, no better offers were imminent when the retainer ended. Indeed, with the benefit of hindsight it is now known Anna died in 2023 and if the retainer had not been terminated, she may have received nothing;

- e) The settlement involved the person directly adverse in interest of the claim: This factor is a reference to Georgia. It is not clear why or to what extent this should influence the Firm's entitlement to fees. Every settlement involves a person directly adverse in interest;
 - f) Following the termination of the retainer, the Firm was required to make inquiries and engage with representatives of the Law Society of British Columbia to determine professional and ethical obligations: The fact that the Firm, and Mr. Richter in particular, was required or compelled to take steps to determine and uphold professional and ethical obligations is not a basis for increasing fees. These steps are required of lawyers as a term of being entitled to practice law. The fulfillment of these obligations will not necessarily give rise to a right of payment. The reward to the lawyer involved constitutes upholding the integrity of the legal profession; and
 - g) The Firm continues to have involvement in this dispute and may need to participate in at least one further hearing to address the net proceeds arising from the sale of the Vancouver Property which remain in trust: This factor is of no consequence on this review. In accepting and agreeing to a retainer, the Firm assumed certain obligations, not all of which are compensable. Moreover, the time and effort associated with future hearings are entirely speculative and it would be improper to ascribe a value to such work where that work has not yet occurred.
- [91] In the circumstances, I find that the Firm's retainer ended on July 26, 2023. Notwithstanding that, for the purposes of this review, it is my view that the Fair Fee should be assessed in respect of services rendered up to and including July 27, 2023. On that date, Mr. Richter reviewed and responded to the correspondence from Ms. Pappas advising him of the termination of the retainer. He spoke with Anna's doctor and left messages for Anna's social worker. His work on that date can fairly be regarded as "tying up loose ends" which was both necessary and reasonable.
- [92] Up to that date, members of the Firm expended 42.56 hours on this file. This time included: 6.16 hours by Ms. James - at \$275 per hour; 25.9 hours by Mr. Richter - at \$400 per hour; and 10.5 hours by an articulated student - at \$200 per hour.
- [93] On applying the factors enumerated in the LPA, there is no basis to either increase or to discount the time spent by members of the Firm nor their express hourly rates.
- [94] The Fair Fee, in this context, is a fee which aligns with the time spent and the hourly rates charged.
- [95] Considering the circumstances of this case, as well as all of the factors outlined above, I find that a fair fee is \$14,154. That amount is obviously greater than zero (the amount to which the firm is entitled as the Contingent Fee) and indeed, greater than \$8,750 which would be the applicable Contingent Fee if assessed as a percentage of the settlement ultimately obtained.

[96] As such, the Bill is allowed, as follows:

Gross Fees: \$14,154

GST (5%): \$707.70

PST (7%): \$990.78

Net Fees: \$15,852.48

Disbursements: \$57.25

Total: \$15,909.73

COSTS

[97] With respect to the costs, s. 72(1) of the LPA provides that the costs of a 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".

[98] In this regard, the Bill sought payment of fees in the amount of \$140,000 (exclusive of taxes). However, in the course of the hearing, Mr. Richter disclosed that the Firm was not seeking more than \$70,000. The parties disagreed as to which of those amounts was subject to analysis for the purposes of an award of costs. Ultimately, this disagreement was rendered moot since the discrepancy between the amount awarded was less than 5/6th of both \$140,000 and of \$70,000.

[99] Nonetheless, had it been necessary to do so, I would have found that a determination in respect of costs must be made with reference to the \$140,000 initially claimed s. 72(1)(a) of the LPA must be read in conjunction with s. 64(1) which defines a "bill" as "a lawyer's written statement of fees, charges and disbursements". In determining an entitlement to costs, it would be improper to consider oral representations to the court which disclose a willingness to accept an amount that differs from that stated in the Bill.

[100] Accordingly, the Client has a prima facie right to costs pursuant to s. 72(1)(a) of the LPA. Absent further submissions from the parties, the Client's costs are to be assessed on the basis of the Tariff in Appendix B of the Supreme Court Civil Rules, B.C. Reg. 168/2009 governing party-and-party costs.

[101] If the parties are unable to agree on costs, they may set an appointment to appear before me to assess the costs.

CONCLUSION

[102] If they are able to agree on costs, I direct Mr. Vimalasan, counsel for the Client, to prepare a certificate of fees in Form 65, showing that the total amount owing to the Firm is \$15,909.73, less whatever the parties agree are the Client's costs, and submit it to the registry for my signature.

"Associate Judge Robinson"

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Prepared on 27 October 2026 · Esheria