

CANADA / JUDGMENT

Sledin Estate v. Rusin

2011 BCSC 1207

COURT

Supreme Court of British Columbia

DECIDED

6 September 2011

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2011 BCSC 1207 Sledin Estate v. Rusin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sledin Estate v. Rusin,

2011 BCSC 1207

Date: 20110906

Docket: S74923

Registry: New Westminster

Between:

Gordon Drewitz, Executor of the Estate of

Jenny Sledin, also known as Johanna Nathalia Sledin, Deceased

Plaintiff

And:

John Rusin, also known as John (J.R.) Rusin, John Rusin Jr.,

Silverado Holdings Ltd. and Northridge Investments Ltd.

Defendants

Before: The Honourable Mr. Justice G.R.J. Gaul

Reasons for Judgment

Counsel for the Plaintiff:

E. A. Burgess

Appearing as pro-bono agent for the Defendant John Rusin, also known as John (J.R.) Rusin:

M. E. Grimwood

Place and Date of Trial:

Supplementary written submissions received:

New Westminster, B.C.

October 20 - 24, 2008

January 20, 2009

April 28-30, May 11, 12 and 21,

July 23, 2010

August 6, 2010

Place and Date of Judgment:

New Westminster, B.C.

September 6, 2011

1. Introduction

- [1] The plaintiff, Gordon Drewitz, is the executor of the estate of his late aunt, Mrs. Johanna (Jenny) Sledin.
- [2] The defendant, Mr. John Rusin, also known as John (J.R.) Rusin, is a businessman and the sole remaining defendant in this action. The plaintiff's claims against the other defendants have been discontinued.
- [3] Mr. Rusin was a long-time friend of Mrs. Sledin and her husband. After Mr. Sledin died, Mr. Rusin maintained his friendship with Mrs. Sledin and for an extended period of time he was closely involved in her personal and financial affairs.
- [4] During the last few years of her life, Mrs. Sledin became increasingly anxious about her financial situation. She was living in a seniors' home and her health was deteriorating. Mrs. Sledin was distressed by the fact that she appeared to be on the verge of impecuniosity notwithstanding the fact that she had lived a very frugal life and had accumulated what should have been sufficient financial assets for her to maintain a reasonable standard of living for the balance of her life.
- [5] The question asked by Mrs. Sledin prior to her death, and the one now asked by her executor in this litigation, is: what happened to her financial assets? No matter how one approaches this question, the answer inevitably leads to the same person: Mr. Rusin.

2. Background

- [6] Jenny Sledin was born in Poland in 1902. She immigrated to Canada and eventually met her husband-to-be, Fred Sledin. The Sledins were married in 1932 in Toronto, Ontario. The couple never had children.
- [7] The Sledins moved homes often, as their income was principally derived from buying, renovating and reselling houses.
- [8] Eventually the Sledins relocated to British Columbia where they lived in a number of houses in the Metro Vancouver area. In or around 1966 they purchased and moved into their last home at 1875 East 40th Avenue in Vancouver (the "East 40th Avenue Property").
- [9] Mr. Sledin was the sole income earner. He was responsible for managing all of the couple's financial affairs, including their investments. It was Mr. Sledin who arranged for and handled the buying and selling of the various houses they had owned over the years.
- [10] Mrs. Sledin was a home-maker her entire married life. She was never gainfully employed outside of the home and relied upon her husband to manage their financial affairs.
- [11] John Rusin was born in 1939. In or around the mid 1960s, he and his brother Andy began their careers together in real estate development.
- [12] Mr. Rusin's brother knew the Sledins and was on friendly terms with them, as he had done business with Mr. Sledin on a number of occasions in the past.
- [13] In 1971, when Mr. Rusin was 32 years old, his brother introduced him to the Sledins. At that time, Mr. Sledin was 71 years old and Mrs. Sledin was 69 years old. Notwithstanding their differences in age, it was not long before Mr. Rusin had developed a close friendship with the Sledins.
- [14] After Mr. Rusin's brother died in 1974, Mr. Rusin continued to work in real estate and property development, using various companies he owned and controlled. A few of those companies included:

Montroyal Estates Ltd. ("Montroyal"): Incorporated in 1965, Montroyal's president, secretary and only director was Mr. Rusin. The company's last annual report was filed in 1998. As a result of its failure to file any further annual reports, the company was dissolved and struck from the British Columbia Corporate Registry (the "Corporate Registry") in 2002.

Northridge Investments Ltd. ("Northridge"): Northridge was incorporated in 1977. The company's president, secretary and only director was Mr. Rusin. Northridge was dissolved and struck from the Corporate Registry in June 2001 for failing to file annual reports; however it was later restored in October of 2001.

Sheraton Inter-Continental Development Inc. ("Sheraton"): Sheraton was incorporated in 1984. Mr. Rusin was the company's president and one of its directors. Evelyn Irene Rusin (née Searle), Mr. Rusin's wife, was the company's secretary and only other director. The company's last annual report was filed in 1998. Sheraton Inter-Continental was dissolved and struck from the Corporate Registry for failing to file any further annual reports.

Capistrano Developments Ltd. ("Capistrano"): Capistrano was incorporated in 1986. Evelyn Rusin was Capistrano's president and only director and Mr. Rusin was the company's secretary. Capistrano's last financial report was filed in 1993. The company was dissolved and struck from the Corporate Registry in 1997 for failing to file any further annual reports.

- [15] In early 1975, Fred Sledin was hospitalized on account of his failing health. During this period, Mr. Rusin regularly accompanied Mrs. Sledin to the hospital so they could both visit with her husband.
- [16] Fred Sledin died in July 1975.
- [17] Jenny Sledin continued to live on her own at the East 40th Avenue Property after her husband's death. As she did not have a driver's licence, Mrs. Sledin was heavily reliant on a very small circle of friends to assist her with her day-to-day tasks that required her to leave her home. Mr. Rusin was one of those friends and he remained in regular contact with Mrs. Sledin and continued to be involved in her financial affairs.
- [18] In 1994, Jenny Sledin was 92-years old. Mr. Rusin was 58 years old. Mrs. Sledin had been living alone at the East 40th Avenue Property for approximately 18 years. Given her advanced age and the condition of her health, she was beginning to have difficulty caring for herself and maintaining her home and property.
- [19] In April 1944, Mr. Rusin purchased the East 40th Avenue Property for \$270,000. In doing so, he also assisted Mrs. Sledin's move to the Salvation Army's Southview Lodge Seniors' Home in Vancouver ("Southview Lodge").
- [20] In June 1994, two months after purchasing Mrs. Sledin's home, Mr. Rusin sold the property for \$311,000.
- [21] In 1996, following his retirement, Mr. Drewitz began visiting more frequently his aunt at the Southview Lodge. He also took on a more active interest and role in her financial affairs.
- [22] In March 1996, Mrs. Sledin suffered a stroke, which according to her treating physician at Southview Lodge, left her with:
- ... residual deficits of an expressive aphasia (partial), some difficulty in coordinating movement, and a further decline in her cognitive function. Fortunately, her motor deficits improved over subsequent weeks, though she was left with a reduction in her overall cognitive capacity.
- [23] Mr. Drewitz knew that Mr. Rusin had been managing his aunt's finances for many years and had been arranging the payment of her rent at Southview Lodge.

- [24] At some point in 1996, Mr. Drewitz became aware that the payment of Mrs. Sledin's rent at Southview Lodge had ceased. Questions also began surfacing with respect to outstanding investments Mrs. Sledin had with Mr. Rusin, unexplained withdrawals from her bank account and the whereabouts of a number of Canada Savings Bonds she owned.
- [25] Attempts by Mr. Drewitz to contact Mr. Rusin to discuss Mrs. Sledin's financial situation proved fruitless. In an effort to correct the situation and regain control of Mrs. Sledin's finances, Mrs. Sledin granted a Power of Attorney to Joyce Drewitz, Mr. Drewitz' wife. Using that Power of Attorney, steps were taken to prevent any further withdrawals from Mrs. Sledin's bank account.
- [26] In late 1996, Mr. Drewitz contacted Mr. Rusin to discuss his involvement in his aunt's finances and to obtain an accounting of them. Mr. Rusin refused to provide any such accounting.
- [27] In December 1996, Mr. Drewitz petitioned the court for an order appointing him Committee over Mrs. Sledin's estate. Two medical doctors, who had recently examined Mrs. Sledin, provided evidence in support of Mr. Drewitz' petition. The first opined that "... Jenny Sledin is not of sound mind and is not capable of managing her affairs by reason of a dementing illness". The second doctor concluded that "... Jenny Sledin is not of sound mind and is not capable of managing her affairs by reason of moderate to severe dementia".
- [28] On 2 January 1997, Mr. Drewitz' petition was granted and he was appointed Committee over his aunt's estate.
- [29] Notwithstanding Mr. Drewitz' appointment as Committee, Mr. Rusin continued to refuse to provide any accounting of the investments Mrs. Sledin had with him.
- [30] In or around 1997, two financial institutions that Mr. Rusin had relied on for the financing of his various real estate projects failed. The consequences of these failures were dramatic for Mr. Rusin and resulted in the failure of his companies.
- [31] By this time, the interest payments Mr. Rusin had been making to Mrs. Sledin on some of her investments became sporadic and on more than one occasion cheques he provided to her were dishonoured by her bank on account of insufficient funds in Mr. Rusin's bank account.
- [32] Mrs. Sledin's health deteriorated significantly. Her condition compelled her to leave Southview Lodge and move into St. Vincent's Hospital. She was later transferred to the Hawthorn Extended Care facility.
- [33] Mrs. Sledin died on 11 September 2000.
- [34] At the time of her death, Mrs. Sledin's estate consisted of \$31,000 cash, a Guaranteed Investment Certificate for \$12,400 and a Term Investment worth \$10,300, all of which were held in her account with the Bank of Montreal.

- [35] Mrs. Sledin's Last Will and Testament dated 17 January 1996 appointed both Mr. Drewitz and Mr. Rusin as the executors of her estate (the "Will"). The Will named Mr. Drewitz as one of the beneficiaries of the estate. The Will also left a number of legacies including one of \$5,000 to Mrs. Rusin, although for reasons unexplained, the Will refers to her as "Mrs. Lynn Searle".
- [36] Tension existed between Mr. Drewitz and Mr. Rusin on account of Mr. Rusin's refusal to account for any of the monies Mrs. Sledin had invested with him. Consequently, Mr. Drewitz requested that Mr. Rusin renounce his appointment. Mr. Rusin did so, leaving Mr. Drewitz as the sole executor of Mrs. Sledin's estate.
- [37] As a concerned relative, then as Committee and then as executor of Jenny Sledin's estate, Mr. Drewitz has continually sought an accounting from Mr. Rusin of all of the monies he received from his late aunt. Mr. Rusin has either ignored those requests or refused to comply with them. As no such accounting has ever been produced by Mr. Rusin.
- [38] As a last resort, Mr. Drewitz has commenced this lawsuit.

3. Issues

- [39] The issues in this litigation can be posed as the following questions:
- Did a fiduciary relationship exist between Mr. Rusin and Mrs. Sledin?
 - If such a relationship existed, did Mr. Rusin breach the fiduciary duty he owed to Mrs. Sledin?
 - Did Mr. Rusin wrongfully convert any of Mrs. Sledin's assets?
 - If there has been a breach of a fiduciary duty and or wrongful conversion of any of Mrs. Sledin's assets, what is the remedy?
- [40] There is one additional issue, raised by the defence, that needs to be addressed. Beyond denying the plaintiff's claims, the defence has also raised a statutory defence based upon the Limitations Act, R.S.B.C., c. 266 (the "Act").

4. Assets in Question

- [41] The financial assets of Mrs. Sledin that form the basis of this litigation can be divided into four distinct categories:
- Mr. Sledin's financial investments with Mr. Rusin;
 - Mrs. Sledin's East 40th Avenue Property;
 - The funds in Mrs. Sledin's Bank of Montreal account; and
 - Mrs. Sledin's Canada Savings Bonds.

Mrs. Sledin's Investments with Mr. Rusin

- [42] After the death of her husband, Jenny Sledin invested vast sums of money with Mr. Rusin. Mr. Rusin's financial records relating to Mrs. Sledin's investments end in 1997. That was the year Mr. Rusin could no longer pay for the services of his accountant, Mr. Rodney Patterson.
- [43] Mr. Rodney Patterson was Mr. Rusin's personal accountant as well as the accountant for Mr. Rusin's companies from 1986 to 1997. In 1997, Mr. Rusin could no longer afford Mr. Patterson's services. Consequently, Mr. Patterson ceased working for Mr. Rusin and his companies. For reasons that are not relevant to this litigation, Mr. Patterson left British Columbia and relocated elsewhere in Canada. He returned to British Columbia in or around 2004. Upon his return to Vancouver Mr. Patterson contacted Mr. Rusin and shortly thereafter he began doing work again for Mr. Rusin.
- [44] Mr. Patterson testified, and I accept as a fact, that Mr. Rusin's record keeping fell into disarray in 1997 and there are few if any documents relating to Mrs. Sledin's investments after that date.
- [45] Although I have been given a reasonably good idea of the magnitude of Mrs. Sledin's investments with Mr. Rusin, I accept that it is not a complete picture and that it is quite likely that she advanced additional sums to him that are unrecorded and therefore unknown to anyone but Mr. Rusin.
- [46] Practically all of the information relating to Mrs. Sledin's investments and financial dealings with Mr. Rusin came from Mr. Patterson. The investigative efforts of Mr. Drewitz, who located and retrieved a number of banking documents and records relating to his aunt's finances, also assisted me in understanding the extent and nature of Mr. Rusin's involvement in Mrs. Sledin's affairs. In my opinion, it is safe to say Mr. Rusin's forte is not paperwork or record keeping.
- [47] Mr. Patterson prepared a schedule that lists the various funds Mrs. Sledin advanced to Mr. Rusin from 1986 to 1994, and the promissory notes and debentures issued to her in return by Montroyal, Northridge, Sheraton or Capistrano. This schedule was admitted at trial and forms part of the documentary evidence before me.
- [48] Mr. Patterson kept ledgers for only the investments Mr. Rusin informed him of. These ledgers were filed and form part of the evidence at trial as well.
- [49] The evidence before me confirms that:
- a) Between 1 February 1987 and 1 October 1993, Mrs. Sledin invested \$425,500 with Mr. Rusin. In return she received 14 promissory notes in varying amounts totalling \$425,500 from either Montroyal or Northridge. Mr. Patterson was unfamiliar with one of the notes for \$33,200 as it was not recorded in any of the ledgers he kept at Mr. Rusin's direction.

- b) Mrs. Sledin provided another \$102,200 in approximately six instalments to Montroyal, Northridge or Capistrano between 22 April 1992 and 30 June 1994. There is no evidence of any corresponding security instruments from any of these companies to any of these investments.
- [50] Mr. Rusin did not dispute the figures contained in either Mr. Patterson's schedule or ledgers and he agreed that they accurately recorded the investments Mrs. Sledin had made with him and his companies.

Mrs. Sledin's East 40th Avenue Property

- [51] In early April 1994, Mr. Rusin commissioned and paid for a professional market appraisal of Mrs. Sledin's East 40th Avenue Property. The appraisal report, dated 6 April 1994, concluded that the market value of Mrs. Sledin's home was \$270,000.
- [52] The British Columbia Assessment Authority's 1994 Property Assessment for the East 40th Avenue property was \$272,600.
- [53] By way of a contract of purchase and sale dated 11 April 1994, Mr. Rusin, using Capistrano as the named purchaser, bought Mrs. Sledin's home for \$260,000. For some unexplained reasons, a second contract of purchase and sale was executed 2 days later listing a purchase price of \$270,000. Both contracts were prepared and signed by Mr. Rusin. Mrs. Sledin signed both documents and the signatures on them were witnessed by Mr. Rusin's business assistant, Mr. Paul Frkovich. No realtors were involved in the transaction.
- [54] As consideration for the purchase, Capistrano gave Mrs. Sledin a debenture dated 19 April 1994 in the amount of \$260,000 (the "Capistrano Debenture"). Although he was not Capistrano's president, Mr. Rusin held himself out as such and signed the debenture in that capacity. There is no documentary evidence that the Capistrano Debenture was ever amended to reflect the actual sale price of \$270,000.

Mrs. Sledin's Bank of Montreal Account

- [55] Mr. Rusin knew Mrs. Sledin's banking practices and was aware of where she did her banking.
- [56] On or about 24 May 1994, Mr. Rusin assisted Mrs. Sledin to close her bank accounts with VanCity and the Canadian Imperial Bank of Commerce ("CIBC"). Later the same day, Mr. Rusin took Mrs. Sledin to the Bank of Montreal branch that was located close to Southview Lodge and helped her open a new account there.
- [57] There is no evidence of what the closing balances were for Mrs. Sledin's VanCity and CIBC accounts. The initial deposit into Mrs. Sledin's new Bank of Montreal account was \$1,000.

- [58] After May 1994, all of Mrs. Sledin's banking was done through her Bank of Montreal account. Any monies she received from Mr. Rusin were deposited into this account and any expenses she paid came paid from it.
- [59] The documentary evidence at trial confirms that the following withdrawals were made from Mrs. Sledin's account:
- a) On 29 March 1995, a certified cheque payable to Sheraton in the amount of \$9,072;
 - b) On 4 October 1995, a cheque payable to Northridge in the amount of \$4,500;
 - c) On 2 November 1995, a cheque payable to John Rusin in the amount of \$5,775;
 - d) On 20 November 1995, a cheque payable to John Rusin in the amount of \$2,700;
 - e) On 6 May 1996, a cheque payable to John Rusin in the amount of \$500
- [60] In total, \$22,547 was withdrawn from Mrs. Sledin's bank account and provided to Mr. Rusin. No security documents from any of Mr. Rusin's companies correspond with any of these payments Mrs. Sledin made to Mr. Rusin.

Canada Savings Bonds

- [61] At one point in time, Mrs. Sledin owned three Canada Savings Bonds: two valued at \$10,000 each and one valued at \$3,000. She had them with her in her home on East 40th Avenue and brought them with her when she moved to Southview Lodge in May 1994.
- [62] On or about 2 November 1995, one of the \$10,000 Savings Bonds was cashed and deposited into Mr. Rusin's bank account.
- [63] The remaining two Savings Bonds have gone missing and have never been located.

5. Jurisprudence

Fiduciary Relationships

- [64] Certain relationships on account of their very nature result in fiduciary obligations for one of the parties. For example, a lawyer has a fiduciary obligation to his or her client and a trustee has a similar duty to his or her beneficiary. These types of relationships are generally referred to as per se fiduciary relationships.
- [65] An ad hoc fiduciary relationship is one that does not fall within the traditional categories of fiduciary relationships. Instead, it is one that arises out of the specific circumstances and dynamics of the particular relationship.
- [66] In dissenting reasons in *Frame v. Smith*, [1987] 2 S.C.R. 99 at para. 60, Wilson J. described what she considered to be the general characteristics of a fiduciary obligation as follows:
1. The fiduciary has scope for the exercise of some discretion or power.

2. The fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
3. The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

[67] These observations of Madam Justice Wilson were later endorsed in *Lac Minerals v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574.

[68] The Supreme Court of Canada revisited the issue of fiduciary obligations and the constituent elements of such relationships in *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, and *Galambos v. Perez*, 2009 SCC 48.

[69] While the characteristics of a fiduciary relationship articulated in *Frame* continue to be relevant in determining whether such a relationship exists, the more recent case authorities have recast those characteristics and added to them.

[70] It is now clear that for an ad hoc fiduciary relationship to exist, the court must be satisfied that one party undertook, either expressly or by implication, to act for the benefit and best interest of another party: *Galambos*, at para. 66.

[71] Moreover, a relationship whose distinguishing feature is only the vulnerability or power imbalance of one party vis à vis another will not, without any additional features, meet the threshold of a fiduciary relationship: *Galambos*, at paras. 67 and 74.

Conversion

[72] The tort of conversion entails the wrongful interference by one party with the property or goods of another party.

[73] In *373409 Alberta Ltd. (Receiver of) v. Bank of Montreal*, 2002 SCC 81 at para. 8, Major J. described the tort of conversion as follows

The tort of conversion "involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession": *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727, per Iacobucci J., at para. 31. It has long been recognized that an action in conversion may be brought by the rightful holder of a cheque against a wrongful dispossessor: *Crawford and Falconbridge: Banking and Bills of Exchange* (8th ed. 1986), vol. 2, at p. 1386 ("*Crawford and Falconbridge*"). The tort is one of strict liability, and although the dispossession must arise as a result of the defendant's intentional act, "it is no defence that the wrongful act was committed in all innocence": *Boma*, supra, at para. 31.

[74] Mr. Justice Cullen neatly summarized the necessary elements of conversion in *Ast v. Mikolas*, 2010 BCSC 127 at para. 126:

1. a wrongful act by the defendant involving the goods or the plaintiff;

2. the act must consist of handling, disposing, or destroying the goods; and
3. the defendant's actions must have either the effect or intention of interfering with (or denying) the plaintiff's right or title to the goods.

7. Discussion

- [75] The plaintiff argues that Mr. Rusin had the fiduciary responsibility to handle and manage Mrs. Sledin's investments and funds in such a way so as to ensure her financial wellbeing. According to the plaintiff, Mr. Rusin used his close personal friendship and the trust relationship he had fostered with Mrs. Sledin over many years to swindle her out of her home and most of her life savings. The plaintiff asserts that Mr. Rusin established what amounted to a "limited investor Ponzi scheme" where Mrs. Sledin was both the initial and subsequent investor.
- [76] The plaintiff argues that Mr. Rusin knew Mrs. Sledin lived a solitary and frugal life and this allowed him to take advantage of his aged friend without anyone noticing anything was untoward. Mr. Rusin had been managing Mrs. Sledin's finances for many years and was trusted by everyone, so there was no need or reason to ask any questions. According to the plaintiff, these circumstances permitted Mr. Rusin to abuse his position and power and convert many of Mrs. Sledin's assets, including funds in her bank account and one of her Canada Savings Bonds, with a very limited risk of being noticed or caught.
- [77] The defence contends that Mr. Rusin owed no fiduciary duty to Mrs. Sledin as he was not her financial advisor or the manager of her financial affairs. According to Mr. Rusin, his fiduciary duty was to his companies and not to any of his individual investors like Mrs. Sledin.
- [78] Mr. Rusin asserts that his companies failed, not on account of anything he did, but because of prevailing market conditions at the time and the collapse of two financial institutions that were vital to his companies' operations.
- [79] Mr. Rusin claims that Mrs. Sledin was a capable "lender by choice" who knew what she was doing and who managed her own finances and investments, including all of her "loans" to Montroyal, Northridge, Sheraton, and Capistrano, based on "decades of observation, review and experience".
- [80] Mr. Rusin insists that vast sums of money were paid to Mrs. Sledin over the years of their relationship, both as interest payments and payments on the principal amounts. He also contends that no debts remain outstanding to Mrs. Sledin's estate because they were either paid-off prior to her death or were, by agreement, forgiven upon her death.

- [81] Finally, Mr. Rusin maintains that the cheques drawn on Mrs. Sledin's Bank of Montreal account and made payable to him or one of his companies and the redemption of one of Mrs. Sledin's Canada Savings Bonds and resulting deposit of \$10,000 into one of his bank accounts were either for cash donations Mrs. Sledin wish to make to friends, charitable donations she wished to make or reimbursements to him for repairs he had paid for at the East 40th Avenue Property.
- [82] The plaintiff took issue with the credibility and reliability of Mr. Rusin's testimony and urged me to reject his evidence. In doing so, counsel for the plaintiff argued that Mr. Rusin was an "unreliable historian" who made "sweeping, self-serving statements unsupported by any documentation". Counsel also pointed out how Mr. Rusin often was an evasive and non-responsive witness, how his evidence changed during the course of his testimony and how, in general, he did not present as a trustworthy witness.
- [83] In assessing Mr. Rusin's credibility as a witnesses, I have kept in mind the following observations of O'Hallaran J.A. in *Faryna v. Chrony*, [1952] 2 D.L.R. 354 (B.C.C.A.) 354 at pp. 356 - 357:

On reflection it becomes almost axiomatic that the appearance of telling the truth is but one of the elements that enter into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors, combine to produce what is called credibility...

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the trust of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [84] Although Mr. Grimwood, the pro bono agent who assisted Mr. Rusin at trial, made a valiant attempt in his final submissions to portray Mr. Rusin as a sympathetic and credible witness, I was not persuaded in the least.
- [85] In my opinion, Mr. Rusin's testimony was unconvincing and his evidence was generally void of any credibility. I found Mr. Rusin to be a patently unreliable historian, whose memory was conveniently sharp when it came to the details of events or conversations that assisted his case but curiously vague or evasive whenever he was pressed to answer questions relating to issues of a damaging nature. He consistently made self-serving statements in what I could only conclude was an attempt to portray himself in the best possible light.
- [86] Most of Mr. Rusin's assertions relating to his dealings with Mrs. Sledin were unsupported by any documentation or corroborative evidence and some were simply unbelievable. I will list a few examples.

Purchase and Sale of 1875 East 40th Avenue Property

- [87] Mr. Rusin's evidence about the purchase and sale of Mrs. Sledin's East 40th Avenue Property is, in my view, simply incredible. He maintains that Mrs. Sledin wanted to give him her house but that he refused to take it. She then approached him with the idea of transferring title to him in return for a life estate and a debenture from one of his companies. This is supposedly from a 92-year-old person who had relied on her husband for all things financial during their marriage and who had little to no experience in real estate transactions herself.
- [88] Mr. Rusin insists that Mrs. Sledin obtained advice from a legal counsel in Vancouver prior to the sale of her house and that a realtor and family friend of hers, Mr. Gary Nahke, was involved in the transaction, as well.
- [89] There is no independent evidence that supports any facet of Mr. Rusin's story regarding the purchase of Mrs. Sledin's home.
- [90] On the contrary, all of the evidence points to a sale that was closely managed by Mr. Rusin, without the assistance or advice of any independent third parties. Mr. Rusin took Mrs. Sledin to a Notary Public who was previously unknown to her and this person simply executed the land transfer documents without giving her any legal advice. Mr. Rusin was unable to name the counsel Mrs. Sledin allegedly consulted or even identify which law firm he or she was with. I have no reason to believe Mrs. Sledin obtained any legal advice prior to selling her home to Capistrano.
- [91] Mr. Nahke testified that he was not involved in the sale of Mrs. Sledin's home to Capistrano and in particular he gave Mrs. Sledin no advice with respect to the sale. He further explained that he was only involved in the subsequent re-sale of the property after Capistrano had acquired it and Mr. Rusin had approached him. I have accepted Mr. Nahke's evidence and find that Mrs. Sledin received no advice from any independent third party prior to concluding the sale of her home to Mr. Rusin and Capistrano.
- [92] Until he was cross-examined on the second contract for purchase and sale that listed the sale price as \$270,000, Mr. Rusin had maintained with conviction that the sale price was \$260,000. When shown the second contract, Mr. Rusin agreed that \$270,000 was the actual sale price. When asked if the Capistrano Debenture for \$260,000 had been revised to reflect the increase in price, Mr. Rusin insisted that it had, but produced no documentation or other evidence supporting this position. Later in his cross-examination, Mr. Rusin provided an alternate explanation, suggesting that he may have given Mrs. Sledin \$10,000 instead of amending the Capistrano Debenture. No documentary evidence was produced to support Mr. Rusin in this regard either.
- [93] All of the documents relating to the sale and transfer of the East 40th Avenue Property were prepared in Mr. Rusin's office by Mr. Rusin or Mr. Frkovich.

- [94] It was Mr. Rusin who chose Capistrano as the company in whose name the property would be transferred and it was Mr. Rusin who decided the debenture allegedly securing the proceeds of sale would be issued by Capistrano. At the time, Capistrano had no assets except for the East 40th Avenue Property.
- [95] Mr. Patterson testified that he was unaware that the Capistrano Debenture had anything to do with the purchase of Mrs. Sledin's home. He thought it was a renewal of some other debenture that had previously been given to Mrs. Sledin. He also had no knowledge of any amended debenture reflecting a new amount of \$270,000 or of any \$10,000 cash payment to Mrs. Sledin.
- [96] Mr. Patterson testified that Mr. Rusin failed to direct him to create a ledger or any accounting document for the Capistrano Debenture. Consequently, there was no means of recording any payments, either of interest or principal, made to Mrs. Sledin on account of the debenture.
- [97] The closed and near secret manner in which the sale of the East 40th Avenue Property took place and the stark contradictions between Mr. Rusin's testimony and that of the other witnesses, including his own witness Mr. Patterson, leads me to doubt the veracity of Mr. Rusin's version of events.
- [98] Finally, I found Mr. Rusin's testimony about the Form A Transfer document revealed much with respect to his credibility. The document in question was prepared by Mr. Frkovich on Mr. Rusin's instruction and it clearly misrepresented the selling price as being lower than the one listed on either of the contracts of purchase and sale. Mr. Rusin's evidence changed during his testimony and he eventually agreed that the arrangement between Mrs. Sledin and himself was that Capistrano would pay her \$270,000 for her house. Notwithstanding this agreed upon price and the fact that a debenture had apparently been issued securing at least \$260,000 of the purchase price, the Form A Transfer that was filed with the Land Title Office indicated a purchase price of only \$175,000.
- [99] Mr. Rusin went to great lengths during his cross-examination to avoid acknowledging that the Form A Transfer was intentionally misleading. Persistent questioning from counsel for the plaintiff, resulted in the following enlightening evidence relating to the preparation and filing of the Form A Transfer and Mr. Rusin's approach and opinion of the entire process:

Q: Do you have any recollection of who prepared it?

A: That would -- it looks like it may have been Mr. Frkovich

Q: Your employee?

A: Yes.

Q: So he would have done that in-house?

A: Probably, yes.

Q: On your instructions?

A: I think we had -- I think Jenny and I had agreed to reduce the price and he typed up the saving on the one or two percent.

Q: Which field are you referring to?

A: Well, this 175, we actually paid her 260.

...

Q: There are numbered paragraphs on this transfer. Are you referring to paragraph 2(b) "market value: \$175,000"?

A: Yes.

Q: Are you saying that Paul Frkovich retyped this document to show a lesser purchase price.

A: Yes, he probably did.

Q: He did that on your instructions?

A: Well yes. I had discussed it with Jenny that we would bring the price down and we would not pay so much on the tax and she agreed.

Q: Who pays the tax, the purchaser or the vendor?

A: The purchaser.

Q: And what tax are you talking about?

A: The one and two percent on real estate.

Q: Would that be the Property Transfer Tax?

A: Yes.

Q: So by reducing the price, or at least showing a reduced price on the transfer form, you paid less Property Transfer Tax.

A: That is correct.

Q: When I say "you" I mean Capistrano

A: Capistrano Development Inc.

Q: In effect you cheated the government out of some of its Property Transfer Tax.

A: Well it wasn't -- it was agreed by Jenny and myself, and at that time we didn't see any harm in it.

Q: You can't be serious Mr. Rusin. Is that your evidence today, you didn't see any harm in it?

A: Well I don't see any harm in it.

Q: Cheating the government out of taxes?

A: Well, actually I think we overpaid when it came down to it, for all of the effort we put into it.

Q: Your evidence is that you reached an agreement with a 92-year old lady to cheat the government out of some Property Transfer Tax so that you could save a bit of money. Is that the evidence?

A: No, we didn't cheat the government. It was agreed by Jenny and myself that we would reduce the price so that there would be savings on the tax.

Q: So you would use the word "savings", I use the word "cheat"?

A: Well it was done and I can't lie about it.

Q: Done by Mr. Frkovich?

A: Yes.

Q: The same one who ran the Christian ministry?

A: Right.

[100] In my view, the palpable disbelief that was evident in the tone of counsel's questioning was well placed.

[101] By all accounts, Mrs. Sledin was a pious Christian woman who studied the Bible and supported various religious charities with modest financial donations. She was an uncomplicated, simple person who lived a very humble lifestyle. Mr. Rusin asks too much of this court when he says I should believe that Mrs. Sledin understood and agreed to a scheme that entailed intentionally misrepresenting the sale price of her home on a legal document so as to deceive the government and save Mr. Rusin from paying additional Property Transfer Tax.

Canada Savings Bonds

[102] Mr. Rusin's evidence relating to the whereabouts of Mrs. Sledin's Canada Savings Bonds also gives me cause to question his truthfulness as a witness.

[103] Mr. Drewitz testified that on one occasion when he was visiting Mrs. Sledin at Southview Lodge, she expressed concern about the whereabouts of her Canada Savings Bonds. Mr. Drewitz knew nothing about these bonds and told Mrs. Sledin that he would speak with Mr. Rusin to determine if he knew where they were.

[104] Mr. Drewitz testified that he called and spoke with Mr. Rusin that evening and asked him if he knew the location of his aunt's savings bonds. According to Mr. Drewitz, Mr. Rusin said the bonds were in a tin box in the bottom drawer of a chest of drawers in Mrs. Sledin's room. Mr. Drewitz returned to Southview Lodge the next day and with Mrs. Sledin's permission he searched the only chest of drawers that was in her room. There was no tin box and no

Canada Savings Bonds. Mr. Drewitz said he contacted Mr. Rusin a second time about the savings bonds and on this occasion Mr. Rusin replied "somebody must have stolen them".

[105] Mr. Drewitz examined all of Mrs. Sledin's banking records and could find no indication that any of the three Canada Savings Bonds had been redeemed and deposited into her bank account.

[106] Mr. Rusin's version of events relating to these Canada Savings Bonds is dramatically different from Mr. Drewitz'.

[107] At his examination for discovery, Mr. Rusin gave the following evidence:

746 Q: What happened to her Canada Savings Bonds?

A: I don't know. I had nothing to do with that.

[108] At trial, in examination-in-chief, Mr. Rusin was shown a copy of a \$10,000 Canada Savings Bond in Mrs. Sledin's name that Mr. Drewitz had been able to retrieve and disclose to the defence. The endorsement on the back of the bond shows a date of 2 November 1995, Mrs. Sledin's signature, and Mr. Rusin's business address. The document also shows that on 6 November 1995, the bond was deposited into one of Mr. Rusin's bank accounts.

[109] When asked about this document, Mr. Rusin confirmed that he had seen the bond before. He explained:

Jenny Sledin phoned me up and she wanted to donate \$10,000 to Mr. Frkovich for his gospel preaching and for feeding the poor ... We deposited it in my bank and then gave it to Paul.

[110] In cross-examination, Mr. Rusin denied that when Mrs. Sledin moved into Southview Lodge in 1994, he knew she owned or had owned a number of Canada Savings Bonds. Moreover, he denied having any of the conversations Mr. Drewitz' claimed they had had in 1996 about the whereabouts of the bonds.

[111] I find Mr. Rusin attempted to reshape his evidence once he became aware the plaintiff had obtained a copy of the savings bond in question. For a number of reasons, I find Mr. Rusin's story about this bond to be unworthy of belief.

[112] In my opinion, Mr. Rusin must have known that Mrs. Sledin had, at one time, owned at least one Canada Savings Bond. Mr. Rusin was the person who assembled all of Mrs. Sledin's income tax documents and it was Mr. Rusin who directed Mr. Patterson to prepare her income tax returns. It was also Mr. Rusin who usually arranged for the payment of any income tax owing by Mrs. Sledin. In other words, Mr. Rusin was intimately involved with the preparation of Mrs. Sledin's income tax returns.

- [113] Mrs. Sledin's 1992 income tax documents include a T5 receipt indicating she earned \$975 in interest income that year from Canada Savings Bonds she owned. Mrs. Sledin's tax return for 1992, prepared by Mr. Patterson on Mr. Rusin's instructions, referenced this Canada Savings Bond interest income.
- [114] Mr. Patterson testified that he knew Mrs. Sledin had Canada Savings Bonds, however he could not explain why reference to them was deleted in subsequent tax returns. He confirmed that he never spoke with or met with Mrs. Sledin during the course of preparing her tax returns and that all of the information he required to complete the returns came from Mr. Rusin. In my view, the documentary evidence as well as the testimony of Mr. Patterson convincingly contradicts Mr. Rusin's version of events and his assertion that he knew nothing of the bonds until Mrs. Sledin telephone him.
- [115] Mr. Rusin's explanation why the funds were deposited into his bank account is nonsensical. He claimed Mrs. Sledin wanted to make a charitable contribution to Mr. Frkovich's Christian ministry. However, according to Mr. Rusin, Mr. Frkovich had recently declared bankruptcy and had some sort of court judgment against him and therefore he did not have the ability to cash cheques. Mr. Rusin therefore agreed to act as the "go between" and allow the funds to be deposited into his account and then paid out to Mr. Frkovich in draws.
- [116] Aside from the fact that there is no documentary evidence, such as bank records, supporting the assertion that any of the \$10,000 went to Mr. Frkovich, there is no evidence at all relating to Mr. Frkovich or his Christian ministry. Explaining why Mr. Frkovich had not been called as a witness for the defence, Mr. Rusin testified that he thought Mr. Frkovich had died. No corroborative evidence was presented to support this contention either.
- [117] Finally, while I accept as a fact that Mrs. Sledin made donations to Christian charities, those donations were always in very small amounts (e.g. \$10 or \$25). This alleged \$10,000 contribution to Mr. Frkovich's ministry would have been by far the largest charitable donation Mrs. Sledin had ever made. If such a charitable contribution had been made, then one would have expected it to be recorded somehow. There is no evidence of that. Moreover, if this donation had been made, then Mrs. Sledin would have received a receipt for income tax purposes. There is no evidence of that either. Finally, this donation, if it was made, would have been included on her 1995 income tax return that was prepared by Mr. Patterson. It was not.
- [118] On my assessment of all of the evidence the only reasonable conclusion I can reach is that Mr. Rusin was not being truthful when he testified about what happened to Mrs. Sledin's \$10,000 Canada Savings Bond.

Forgiveness of debts / Credit for all of the interest payments

- [119] Near the very end of his examination-in-chief, Mr. Rusin testified that Mrs. Sledin had suggested and agreed to an arrangement whereby upon her death all of the interest payments she had received from Mr. Rusin's companies would be credited against any outstanding principals owing at the time, with any residual balances being forgiven.
- [120] Although the statement of defence filed on behalf of Mr. Rusin is limited to a bald denial of the entirety of the plaintiff's claim, it was nevertheless prepared by legal counsel who at the time was representing Mr. Rusin. An alleged agreement of this nature is not an insignificant matter and it would most assuredly form an integral and essential part of Mr. Rusin's defence. If such an agreement existed, then one would have expected it to have been pleaded in the statement of defence and not left to be raised only at the close of the defendant's evidence.
- [121] At no time did Mr. Rusin assert such an agreement when Mr. Drewitz was pursuing him for an accounting of his aunt's finances. Again, a reasonable person would expect that, if there was such an agreement between Mr. Rusin and Mrs. Sledin, then Mr. Rusin would have told Mr. Drewitz of it. The fact that he did not make any mention of it until his testimony before me lends credence to the suggestion that Mr. Rusin is fabricating this aspect of his evidence.
- [122] Another fact that does not bode well for Mr. Rusin's story is that there is no reference to such an agreement in Mrs. Sledin's Will. Although this testamentary document was prepared in 1996, in Mr. Rusin's office by Mr. Rusin's assistant Mr. Frkovich, no mention is made of the alleged agreement to forgive Mr. Rusin's debts. If such an important agreement was reached between Mrs. Sledin and Mr. Rusin, then common sense would dictate that it be recorded somehow, somewhere. It was not.
- [123] Finally, Mr. Drewitz testified that his aunt was upset and agitated by the fact that she was not receiving payments from Mr. Rusin for the sale of her home. I accept this evidence and conclude that no agreement to forgive Mr. Rusin's debts was ever made with Mrs. Sledin.
- [124] Based on the evidence before me, I am persuaded that Mr. Rusin's testimony of a debt forgiveness agreement between himself and Mrs. Sledin is not to be believed and should be rejected.
- [125] With respect to the general credibility and reliability of Mr. Rusin as a witness, on the whole I agree with the submission of the plaintiff. Mr. Rusin was not only an unreliable historian; he was someone who, in my view, was prone to fabricating stories and stretching the truth if it suited his purposes. In my opinion, Mr. Rusin's general credibility and truthfulness as a witness are severely lacking and I have therefore placed little weight on his testimony and evidence.

The Nature of the relationship between Mrs. Sledin and Mr. Rusin

- [126] Mrs. Sledin was an elderly woman who, following the death of her husband, lived alone at the East 40th Avenue Property. She had a few friends and relatives and lived a very modest and thrifty lifestyle.
- [127] Mrs. Joyce Drewitz testified how she visited Mrs. Sledin weekly at her home on East 40th Avenue and how Mrs. Sledin lived a very frugal life. Mrs. Drewitz explained how Mrs. Sledin always shopped at liquidation stores and how she regularly bought day-old bread to save money.
- [128] Mr. Nahke is a realtor who sells property in the area of East 40th Avenue and was a life-long friend of the Sledin's and in particular Mrs. Sledin. Mr. Nahke described Mrs. Sledin as always being very thrifty with her money and not prone to extravagance. He also explained that he did not try to get a listing for Mrs. Sledin's East 40th Avenue Property because he knew it was a "dead issue" and that Mr. Rusin would be handling anything and everything relating to the property. Mr. Nahke confirmed that Mrs. Sledin sought no advice from him relating to the sale of her home.
- [129] Mr. and Mrs. Drewitz, as well as Mr. Nahke, all testified that it was a well known and accepted fact that Mr. Rusin was handling and managing all of Mrs. Sledin's finances for her.
- [130] The evidence presented by the plaintiff satisfies me that Mrs. Sledin was a humble and modest woman with a reasonably strong will who placed unwavering trust and reliance in Mr. Rusin and his abilities to manage her finances.
- [131] After the death of Fred Sledin, Mr. Rusin continued to visit Mrs. Sledin at her home on a regular basis, even when she moved to the Southview Lodge. He would occasionally take her to lunch, drive her to appointments and take her to her bank. He would personally pick up investment cheques from her and deliver interest payments to her. Annually, Mr. Rusin would meet with Mrs. Sledin, collect and arrange her income tax documents, and then pay Mr. Patterson to prepare her income taxes returns. On occasion if there was any income tax owing, Mr. Rusin paid it.
- [132] Mr. Rusin arranged to have his then legal counsel, Mr. John Motiuk, prepare a Last Will and Testament for Mrs. Sledin in 1989. A new testamentary document for Mrs. Sledin was prepared in Mr. Rusin's office by Mr. Frkovich in 1996.
- [133] Mr. Rusin helped Mrs. Sledin sell a coin collection she owned.

- [134] Mr. Rusin arranged for the transfer of the title to Mrs. Sledin's home to Capistrano. This was something Mr. Patterson, as Mr. Rusin's accountant, had never seen before with any other investor. Mr. Motiuk acted as counsel for Mr. Rusin and Capistrano for this property transfer. He did not provide any legal advice to Mrs. Sledin. Notwithstanding the involvement of Mr. Motiuk, there is no evidence of a Statement of Adjustments being prepared in relation to the sale of Mrs. Sledin's property.
- [135] In conjunction with the purchase of Mrs. Sledin's home, Mr. Rusin arranged to take her to her new accommodations at Southview Lodge, and for a period of time he paid her rent.
- [136] It was Mr. Rusin who in the spring of 1995 directed Mr. Patterson to correspond with Southview Lodge and provide them with particulars of Mrs. Sledin's investments and income. The management of the lodge required this information to assess how much rent Mrs. Sledin should pay. The only person who had all of this information was Mr. Rusin. Mr. Patterson was unaware at the time of the Capistrano Debenture and consequently he made no mention of it in his letter to Southview Lodge.
- [137] I accept the evidence of Mrs. Drewitz who testified that Mrs. Sledin always referred to the defendant as "Mr. Rusin" and never as "John", and that she "thought the world" of him.
- [138] I am satisfied, based upon the evidence of Mr. Drewitz, Mrs. Drewitz, Mr. Nahke and Mr. Patterson, that Mr. Rusin was Mrs. Sledin's sole financial advisor and manager and that he regularly took care of Mrs. Sledin's needs.
- [139] As Mrs. Sledin advanced in age, she became more forgetful and her health deteriorated. In or around 1995 and 1996, she suffered two minor strokes and had to be hospitalized on at least one occasion. On account of all of this, it became clear that Mrs. Sledin was having difficulty managing her personal affairs. Initially, her predicament did not cause significant concern to those around her, as they knew Mr. Rusin was an influential figure in her life and was always ready and willing to assist her and to attend to her financial needs.
- [140] While in general I did not trust or accept Mr. Rusin's evidence, I did find one portion of his testimony revealing and credible. Mr. Rusin testified that in 1975 when Fred Sledin was in the hospital, he would take Mrs. Sledin to visit her husband. In his examination-in-chief, Mr. Rusin described what was said during one of these visits as follows:
- Fred said well, "seeing that I was dealing with Andy we can deal with you in the same factor" and I said fine. Jenny was there. He told her to keep on working with me until the end. We did. We became business people together and done business together through my corporations.
- [141] Mr. Rusin asserts that Mrs. Sledin was a financial advisor to others, such as the Drewitz' and the Nahkes, and that she was a savvy investor who understood what she was doing whenever she invested in one of his companies. I do not accept Mr. Rusin's assertion. While it is true that Mrs. Sledin introduced the Nahkes and the Drewitz' to Mr. Rusin and she sang his praises to them, this is not surprising given the high regard she had for Mr. Rusin and the complete faith she had that he would continue to manage her financial affairs in a

manner that was beneficial to her. The preponderance of evidence at trial points to the fact that Mrs. Sledin was far from a sophisticated investor. In my view the evidence indicates she was someone who deferred to her husband on questions of finance when he was alive, and following his death she followed his direction and allowed Mr. Rusin to become her financial manager.

[142] I have no difficulty in concluding that Mr. Rusin fostered and nurtured a special relationship and friendship with Mrs. Sledin that resulted in her unreservedly trusting him and relying on him to protect her financial wellbeing.

[143] Moreover, in addition to trusting and relying on Mr. Rusin, I find Mrs. Sledin soon became dependent upon him for the management of her finances.

7. Decision

Did a fiduciary relationship exist between Mr. Rusin and Mrs. Sledin?

[144] Employing the guidelines and factors set out in the jurisprudence, including Frame, Hodgkinson and Galambos, I find an ad hoc fiduciary relationship existed between Mr. Rusin and Mrs. Sledin.

[145] First, I am satisfied that Mr. Rusin, expressly or by implication, undertook to look after Mrs. Sledin's financial wellbeing and to act in her best interest. In my opinion, no reasonable person looking at the nature, dynamic and duration of the relationship could reach any conclusion other than Mrs. Sledin was entirely dependent on Mr. Rusin for the management of her finances, and that by his actions Mr. Rusin accepted and fostered his role as her financial advisor and manager.

[146] At his examination-for-discovery, Mr. Rusin explained why he was present when Mrs. Sledin executed the Form A transferring title to the East 40th Avenue Property to Capistrano:

660 Q: Can you tell me why you would have been there?

A: Well, I had to drive her down there. Jenny and I go back 32 years, and whenever she needed any - - to go anywhere I always picked her up, drove her - - drove her to wherever she had to go.

[147] In cross-examination, Mr. Rusin confirmed that this portion of his evidence at his examination-for-discovery was accurate and true.

[148] Mr. Rusin also testified in cross-examination about his relationship with Mrs. Sledin and the role he played with respect to her accommodations at Southview Lodge. The following portion of that evidence is illuminating:

Q: Did you make any arrangement yourself to pay her rent when she was there?

A: I believe I made some payments directly and I think she made payments as well.

Q: So, why would you make the payment?

A: Well, I was paying her interest payments on her money and therefore at times, I, when I was down there she would say, well, do you want to make the payment and I made the payment in lieu of the interest payment.

Q: Sorry, run that by me again.

A: I made the interest payment in lieu of her payment to the lodge. Debit, credit. In other words, she had an interest coming monthly from us and then I sometimes made the payments at the lodge.

Q: Okay, why would you do that?

A: Well, it was a debit-credit between ourselves and what I owed her.

Court: I don't understand what is meant by "debit-credit" between you.

A: We had an ongoing relationship with Mrs. Sledin and therefore sometimes I'd pay the lodge or pay her but it was a credit on the books what I paid to Southview, or should have been, and I wasn't paying it for nothing. It was re the monies owed.

Q: So sometimes you would make the rent payment and then that would be charged against what you owed her in interest?

A: That's correct.

Q: And you did that to help her out?

A: Yes.

Q: Because you were helping her with her financial management?

A: Well yes, we, she needed money monthly and we paid her.

Q: She was quite dependent on you?

A: On our -- yes.

[Emphasis added.]

[149] In my view, Mrs. Sledin's circumstances are quite different from those of Mrs. Perez in Galambos. Mrs. Perez was found to be a skilled, educated and experienced individual, not one who was vulnerable to Mr. Galambos' control. The same cannot be said of Mrs. Sledin. She had limited skills and education, no employment history and very little experience in the world of finance. Moreover, as I have previously observed, I find Mrs. Sledin was exceptionally vulnerable to Mr. Rusin's control over her finances to the point where she was clearly dependent upon him.

[150] Second, I am of the opinion that Mr. Rusin had a clear and overwhelming discretion or power over Mrs. Sledin's finances and he unilaterally exercised that power in a manner that directly affected Mrs. Sledin's interests. Mr. Rusin chose which of his companies would receive Mrs. Sledin's investments. Mr. Rusin decided what type of security instrument, if any, would be given to Mrs. Sledin and from which company it would originate. Mrs. Sledin left all of the decision making to Mr. Rusin, because he had led her to believe her faith and trust in him was well placed and that he would always act in her best interest. It stretches the boundaries of credulity beyond their limits to suggest that Mrs. Sledin had the capacity or ability to choose or dictate whether her funds were invested, for example, in Montroyal as opposed to Sheraton or that her security should be a debenture from Capistrano as opposed to a promissory note from Northridge.

[151] Finally, I have no hesitancy in concluding that Mrs. Sledin was in a vulnerable position vis à vis Mr. Rusin, in that she was completely dependent and beholden to him for a significant portion of her annual income as well as her general financial wellbeing. Her primary source of income was Mr. Rusin and the investments she had with him. Without those investments, Mrs. Sledin was left to survive on her senior's pension from the government and two modest term deposits with her bank.

Did Mr. Rusin breach his fiduciary relationship he had with Mrs. Sledin?

[152] In my opinion, in more than one way and on more than one occasion Mr. Rusin breached his fiduciary obligation to Mrs. Sledin.

[153] Notwithstanding the fact that Mr. Rusin's property development projects were on the verge of failing by the mid 1990s, he continued to engage in real estate speculation. To maintain his collapsing businesses, Mr. Rusin needed investment funds and Mrs. Sledin was a perfect source. She had funds available to her, including the equity in her home, and she lived a lifestyle that did not call for significant personal expenditures. Moreover, Mrs. Sledin trusted him implicitly.

[154] Mr. Rusin failed to inform Mrs. Sledin of the financial difficulties his companies were having, failed to advise her that some of the companies had been struck from the Corporate Registry or were on the verge of that occurring and in general kept her in the dark with respect to the increasing weakness and risk of her investments.

[155] Mrs. Sledin's continued investments with Mr. Rusin also served another purpose. Mr. Rusin was the only equity shareholder in his companies and each year, in varying amounts, he drew his annual income by way of a salary, bonus or dividend from them. Mrs. Sledin's continued investments ensured at least some funds were available for this purpose.

[156] I accept the submission of the plaintiff that Mr. Rusin also breached his fiduciary duty when he took advantage of his trusting 92-year-old friend and arranged for the sale of her East 40th Avenue Property to Capistrano. Mrs. Sledin received no independent advice with respect to the sale of her home and relied completely on Mr. Rusin to look after her

interests. I reject Mr. Rusin's claim that Mr. Nahke was involved in the sale and had provided advice or assistance to Mrs. Sledin. The Form A Transfer document was prepared under the direction of Mr. Rusin and it intentionally misrepresented the sale price. There is no convincing evidence that Mrs. Sledin received any of the proceeds from the sale of her East 40th Avenue Property to Capistrano. Mr. Rusin's testimony that he paid down the principal amount owing on the Capistrano Debenture with unrecorded cashier's cheques and other means was uncorroborated by any accounting records from Capistrano or any other of his companies. I disbelieve Mr. Rusin's evidence on this point. I should note that counsel for the plaintiff fairly pointed out during his final argument that Mrs. Sledin apparently received from Mr. Rusin a money order dated 25 June 1999 in the amount of \$20,000 that included the notation "house payment B/O John Rusin". It is unclear what the purpose of the payment was and Mr. Rusin presented no convincing evidence in that regard. Not wanting to overstate the plaintiff's case, Mr. Burgess quite fairly acknowledged that perhaps these funds represented a partial payment by Mr. Rusin towards the outstanding principal on the Capistrano Debenture, as opposed to an interest payment. In my opinion, Mr. Rusin has failed to persuade me the payment question was in fact a payment on the principal amount and not an interest payment.

- [157] Mr. Rusin re-sold the East 40th Avenue Property for \$311,000, two months after acquiring it from Mrs. Sledin. Mr. Rusin benefited from the increase in the value of the property and there is no evidence to suggest anything was done to the property over the two months to increase its value. Nor is there any evidence that he shared any of the profits of this sale with Mrs. Sledin. I am of the view that Mr. Rusin saw an opportunity to obtain a property from an elderly friend who trusted him, knowing he could resell the property shortly thereafter at a profit to himself.
- [158] When, in the spring of 1994, Mrs. Sledin moved from her home on East 40th Avenue to the Southview Lodge, she only deposited \$1,000 in her new Bank of Montreal account. Mrs. Sledin had had two other bank accounts prior to her move to Southview Lodge and they were closed on or around the day she opened her account with the Bank of Montreal. Mrs. Sledin's expenses were modest, she was not a "big spender" and she had just sold her home. Where did all of her money go? While the documentary evidence suggests Mrs. Sledin received approximately \$200,000 in interest payments from Mr. Rusin's companies between 1990 and 1994, the fact of the matter is Mrs. Sledin received or used very little of this money for it was, for the most part, reinvested with Mr. Rusin.
- [159] After Mrs. Sledin had moved from her East 40th Avenue home into Southview Lodge, Mr. Rusin made her rental payments but they stopped within a few months. With his aunt in a state of high anxiety regarding her financial situation, it was Mr. Drewitz who intervened to rectify the situation.

[160] The amount and number of interest payments Mr. Rusin made to Mrs. Sledin began to decrease after her relocation to Southview Lodge. According to the T5 tax receipts that were issued to her by Montroyal, her interest income for 1993 to 1997 was as follows:

1993: \$47,148.64

1994: \$27,400.88

1995: \$25,240.00

1996: \$17,500.00

1997: \$27,500.00

[161] No further T5 tax receipts were issued to Mrs. Sledin by any of Mr. Rusin's companies after 1997.

[162] The fact that her interest income from Mr. Rusin decreased dramatically after she moved into Southview Lodge upset Mrs. Sledin and caused her significant stress and anxiety.

[163] Even though his companies were on the verge of failure and his ability to make interest payments to Mrs. Sledin was dwindling, Mr. Rusin continued to accept cheques from Mrs. Sledin and on one occasion he accepted a Canada Savings Bond. Mr. Rusin explained that all of these payments were unrelated to any of his companies and were not monies used for investment or business purposes. According to Mr. Rusin, two of the cheques were to reimburse him for the costs he had incurred repairing the East 40th Avenue Property the previous year. Mr. Rusin had no evidence to support the claim that he had paid for any repairs to the property. Mr. Rusin claimed another cheque, made payable to Northridge, was actually for a close friend of Mrs. Sledin's who operated a pet store. There is no evidence of such a friend, nor is there any documentary evidence supporting Mr. Rusin's story that the cheque was cashed and the money delivered to the friend. I find it incomprehensible why Mrs. Sledin would write a cheque to Northridge when the funds were actually destined for one of her personal friends. I do not believe Mr. Rusin's explanations with respect to these funds from Mrs. Sledin's bank account, nor do I believe his story about the money from the Canada Savings Bond going to Mr. Frkovich. I find it is more likely that all of these funds went into one or a number of Mr. Rusin's accounts and that he used the money to keep his businesses operating. In doing so, he clearly breached his fiduciary duty to ensure that Mrs. Sledin's best interests were respected and protected.

[164] In my opinion, counsel for the plaintiff is correct when he argues Mr. Rusin's dealings with Mrs. Sledin amounted to a "variation of an unsophisticated, limited investor 'Ponzi scheme', an investment operation that pays returns to investors out of the money paid by subsequent investors rather than from profit. Mrs. Sledin was both the initial and the subsequent investor". For example, while the interest payments paid to Mrs. Sledin by Mr. Rusin's companies in 1992 and 1993 amounted to approximately \$91,000, she invested approximately \$110,000 with Mr. Rusin during this same time period. Clearly, as quickly as

the money was paid to Mrs. Sledin, most if not all of it went right back to Mr. Rusin.

[165] In summary, amongst all of Mr. Rusin's misconduct and misdeeds, I have found four principal breaches of the fiduciary duty he owed to Mrs. Sledin:

- a) Failing to properly record and account for the monies Mrs. Sledin advanced to him. For some of the investments made by Mrs. Sledin, no records were kept and no arrangements were made for the payment of any interest or repayment of the principal;
- b) Providing inadequate or worthless security for the funds advanced by Mrs. Sledin. No promissory note or debenture given to Mrs. Sledin by Mr. Rusin was registered, nor was any thought given to securing any of those investments by means of property mortgages. Some of Mrs. Sledin's investments had no correlating security instrument at all;
- c) Allowing some of the companies that had provided security instruments to Mrs. Sledin to be struck from the Corporate Registry and failing to advise Mrs. Sledin of this situation. The most egregious failure in this regard was allowing Capistrano to be struck from the Corporate Registry notwithstanding the fact that it had issued a \$260,000 debenture to Mrs. Sledin as payment for her East 40th Avenue Property;
- d) Failing to repay any of the principal amounts Mrs. Sledin invested with him. Mr. Rusin insisted that he had paid Mrs. Sledin most of the principal amounts he owed her; however, he had no documentary evidence or any other corroborative evidence to support that assertion. I reject Mr. Rusin's evidence and find he made no repayments towards any of the principal amounts. I find Mr. Rusin made interest payments on some of the investments but those interest payments or large portions of them were regularly reinvested with Mr. Rusin.

Conversion

[166] I accept the plaintiff's alternative argument and find that Mr. Rusin wrongfully converted certain of Mrs. Sledin's financial assets.

[167] More particularly I am satisfied, applying the three criteria referenced by Cullen J. in *Ast*, that Mr. Rusin wrongfully converted:

- a) The \$270,000 in proceeds from the sale of Mrs. Sledin's East 40th Avenue Property;
- b) The \$22,547 from Mrs. Sledin's Bank of Montreal account; and
- c) Mrs. Sledin's \$10,000 Canada Savings Bond.

Limitations Act Defence

[168] The final issue to address is the defence's claim that the plaintiff's action is statute barred on account of the passage of time.

[169] The defence relies on section 3(5) of the Act to argue that the plaintiff's claims against Mr. Rusin have been brought out of time. Section 3(5) of the Act reads:

Any other action not specifically provided for in this Act or any other Act may not be brought after the expiration of 6 years after the date on which the right to do so arose.

[170] In short, I find no merit to the defence position.

[171] To begin with, the statement of defence filed 4 October 2002 makes no reference to the Act or any statutory bar to the plaintiff's case. In what can only be described as bare denial, the one paragraph statement of defence reads:

The defendants deny each and every allegation of fact contained in the Statement of Claim and put the plaintiff to the strict proof thereof.

[172] The fact that the defence failed to plead a limitation defence and thereby put the plaintiff on notice of this fact is, in my opinion, determinative of the issue.

[173] During his brief introductory comments at the outset of the trial, Mr. Grimwood, speaking on behalf of Mr. Rusin, made a vague reference to a limitation defence. It was only after repeated questioning from the court that he confirmed the defence would be arguing the plaintiff's case was statute barred. No additional particulars of the defence were provided, nor were any provisions of any statute mentioned. This was the first time the plaintiff had heard of such a potential defence.

[174] When the defence formally opened its case, Mr. Grimwood made no mention of the plaintiff's case being statute barred. It was not until final submissions that Mr. Grimwood articulated how and why the Act applied to the facts of this case.

[175] I find the superficial and summary manner in which this defence was disclosed to the plaintiff along with the lack of any particulars until the very end of the trial not only surprised the plaintiff, but more importantly allowed the plaintiff no reasonable opportunity to consider and formulate his position on whether he needed to call additional evidence to address the issue.

[176] In my opinion it would be patently unfair to allow a defendant to rely on this defence given the circumstances of its disclosure to the plaintiff.

[177] I will also add that I accept the plaintiff's argument that in any event, the limitation period for the plaintiff's cause of action was postponed because of Mr. Rusin's refusal to provide an accounting of the funds he received from Mrs. Sledin. This, in my view, amounted to a wilful concealment on Mr. Rusin's part of material facts relating to the plaintiff's cause of action (Act, subs. 6(3)(e)).

8. Remedies

[178] In my opinion, Mr. Rusin is liable to make full restitution to the plaintiff on account of his breach of his fiduciary duty to Mrs. Sledin and his wrongful conversion of certain of her assets. The plaintiff is therefore entitled to an award of damages of \$830,247.00. I have reached this figure in the following way:

- a) \$527,700 for Mr. Rusin's breach of fiduciary duty in relation to the funds Mrs. Sledin advanced to him;
- b) \$270,000 for Mr. Rusin's breach of fiduciary duty and conversion in relation the acquisition of Mrs. Sledin's East 40th Avenue Property by Capistrano;
- c) \$22,547 for Mr. Rusin's breach of fiduciary duty and conversion in relation to the funds withdrawn from Mrs. Sledin's Bank of Montreal account; and
- d) \$10,000 for Mr. Rusin's breach of fiduciary duty and conversion in relation to the redemption of Mrs. Sledin's Canada Savings Bond.

[179] The plaintiff has also sought a number of ancillary orders. I will deal with them individually.

Tracing order / Order for an accounting

[180] The plaintiff argues that Mr. Rusin may well have profited from his improper acquisition and use of Mrs. Sledin's funds and financial assets. Consequently the plaintiff seeks a tracing order and an accounting.

[181] The principals relating to orders for tracing and accounting were articulated by Pitfield J. in *Ruwenzori Enterprises Ltd. v. Walji*, 2004 BCSC 741 at paras. 240-242 and 245, aff'd 2006 BCCA 448:

[240] Neither tracing nor an accounting is a remedy. Each is a process designed to assist in the perfection of a remedy...

[241] It follows that tracing is the process employed to identify and particularize the manner in which funds have been applied. The results of the tracing permit a claimant to determine whether it will opt for a proprietary remedy in respect of funds derived from it, or a monetary judgment in respect thereof.

[242] An accounting is directed at the determination of profit, gain or loss derived from assets in respect of which tracing has identified a right to, and the claimant has opted to assert, a proprietary interest.

...

- [245] Upon termination of any part of the tracing process at their option or otherwise, [the plaintiffs] will be entitled to elect to apply to confirm a proprietary interest in respect of assets other than those in respect of which the election to do so has already been made and by virtue of my reasons granted, or to enter judgment for the amounts I have enumerated and to apply for judgment in respect of any additional funds identified by the tracing process.
- [182] While it is unclear whether Mr. Rusin or any of his companies acquired assets for themselves using Mrs. Sledin's wrongfully obtained funds, what is very clear is that Mr. Rusin has ignored or refused repeated requests for an accounting of the monies Mrs. Sledin provided to him. In my view Mr. Rusin's failure to provide this accounting makes an order for tracing and an order for an accounting not only appropriate but essential in this case. The results of these procedures will allow the plaintiff to decide whether he wishes to pursue any other remedies available to him, including damages for unjust enrichment or profits derived from the improper use of Mrs. Sledin's funds.

Constructive Trust

- [183] The plaintiff also seeks a declaration that Mr. Rusin is a constructive trustee of the funds Mrs. Sledin provided to him or his various companies and any assets procured using those funds.
- [184] As Cullen J. found in *Ast*, and Punnett J. found in *Egger v Dessureault*, 2010 BCSC 880, I find the tracing and accounting procedures should be completed prior to addressing any question of a constructive trust. Consequently, this aspect of the plaintiff's claim is adjourned generally.

Restraining Order

- [185] The plaintiff seeks an interlocutory injunction restraining Mr. Rusin from dealing with his assets, including disposing or transferring any of real property until such time as the plaintiff has had an opportunity to conduct and conclude a tracing and accounting.
- [186] Mr. Rusin testified that his financial situation borders on impecuniosity and that he has limited personal assets. I do not accept that evidence. Although Mr. Rusin has threatened in the past to declare bankruptcy, he has not followed through with that threat and has as a matter of fact continued to be involved real estate transactions, including one project where he offered to personally guarantee along with another corporate investor an interim bridge loan of \$9 million for a 97-unit condominium project in Washington State.
- [187] In my opinion, it is appropriate to grant the injunction sought by the plaintiff.

9. Costs

- [188] The Plaintiff seeks an order for special costs.

- [189] Generally, special costs will only be ordered where there is some form of "reprehensible conduct" that is "deserving of reproof or rebuke": *Garcia v Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.).
- [190] In my opinion, Mr. Rusin's conduct towards Mrs. Sledin falls within the definition and concept of "reprehensible conduct". He took advantage of an unsuspecting and unsophisticated elderly friend who trusted him implicitly. She gave him carte blanche with respect to most of the funds she wished to invest and depended on him to keep her best interests at heart. Instead, he used this elderly lady's money for his own purposes and to keep his charade of a viable investment scheme afloat.
- [191] Moreover, I find Mr. Rusin engaged in obstructionist conduct during the course of this litigation that resulted in a number of unnecessary and lengthy delays in the trial. Allegations of serious health problems were unsatisfactorily explained and I find Mr. Rusin was simply trying to drag this case out in the hope that the plaintiff would eventually capitulate and discontinue the action.
- [192] In my opinion, Mr. Rusin's reprehensible and obstructionist conduct warrants rebuke, and I will therefore order him to pay special costs to the plaintiff.

9. Orders

[193] The plaintiff shall be entitled to judgment against the defendant as follows:

- a) damages of \$527,700 for breach of fiduciary duty in relation to the funds Mrs. Sledin invested with the defendant;
- b) damages of \$270,000 for the defendant's breach of his fiduciary duty to Mrs. Sledin and conversion in relation to the sale of her East 40th Avenue Property;
- c) damages of \$22,547 for the defendant's breach of his fiduciary duty to Mrs. Sledin and conversion in relation to the funds he received from her Bank of Montreal account; and
- d) damages of \$10,000 for the defendant's breach of his fiduciary duty to Mrs. Sledin and conversion in relation to one of her Canada Savings Bonds

[194] I also make the following additional orders:

- e) a tracing order and order for accounting by the defendant;
- f) an interlocutory injunction restraining the defendant from dealing with any of his assets, including selling, disposing, transferring any of his assets or real property or any interest or equity held in trust for him, until a tracing and accounting has been concluded or further order of the court;

- g) the plaintiff's application for a declaration that the defendant is a constructive trustee of the funds or assets he obtained from Mrs. Sledin or any profits or other benefits resulting from his use of those funds or assets is adjourned generally, with leave to apply for such a declaration once the tracing and accounting has been completed;
- h) the defendant will pay special costs to the plaintiff; and
- i) the defendant's approval of the orders I have made is dispensed with.

"G.R.J. Gaul, J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/11/12/2011BCSC1207.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sledin-estate-v-rusin-2011>

Prepared on 27 October 2026 · Esheria