

IN THE SUPREME COURT OF BRITISH COLUMBIA

NEW WESTMINSTER

Date: 20050608
Docket: L090042
Registry: New Westminister

AUG 05 2005

Between REGISTRY

R. Trevor Todd Law Corporation

Solicitor

And:

Marcelle Ryan

Client

Before: Master Caldwell

Oral Reasons for Judgment

In Chambers
June 8, 2005

Appearing for R. Trevor Todd Law Corporation

R.T. Todd

Appearing on her own behalf

M. Ryan

Place of Hearing:

New Westminister, B.C.

[1] **THE COURT:** I have before me, basically, a review of an agreement which is entered into at the end of March, 2003, between a lawyer, Mr. Todd, and the applicant here, Marcelle Ryan.

[2] By way of background the case arose as a wills variation action. I understand that there were two children. The original will, I am advised, provided 20 percent recovery to Ms. Ryan and 80 percent to her brother, the only other child. The action

had been commenced when Ms. Ryan came in to Mr. Todd at the end of March 2003. I note that of some interest is the fact that there were discoveries already scheduled and upcoming in the days shortly following the end of March, I believe, and the middle of April. There was also a scheduled three-day Supreme Court trial which was to be heard in June, only a matter of essentially three months hence. That being the case, a great deal of work would have been necessary in a reasonably short period of time and there would have been time pressures on that work.

[3] I look first at the contingency agreement, and I refer, as well, to tab 4 of Exhibit 1, which has been filed for these proceedings. There are extensive notes taken of the first interview. Tab 1, is the contingency fee agreement. It is not an extensive and detailed agreement as one sometimes sees in these types of situations. However, although it is reasonably simple, it is somewhat elegant in that it, in my view, covers off most, and I believe all, of the items which must be covered in such an agreement, including reference to the *Legal Profession Act*.

[4] The agreement provides not for a recovery on a percentage basis of all monies recovered. Mr. Todd's agreement exempts the first 20 percent being the amount that Ms. Ryan was entitled to receive in any event of his action on the file. The recovery by way of contingency only relates to the amount of recovery above what would have been her normal bequest of 20 percent. The percentage of recovery on that is at 35 percent, which, in my recollection, is not at the top end of possible recoveries.

[5] There is a provision in the agreement for payment at \$300 per hour. However, that relates to additional work should it become necessary, and it also deals with a situation in the event that Ms. Ryan were to elect to change solicitors.

[6] The agreement is signed and dated by Ms. Ryan, and, as I have said before, it is worded in very simple fashion and what has become known as plain language.

[7] I refer to tab 9, as well, of Exhibit 1, which lays out certain of Mr. Todd's numerous qualifications. He is clearly a very senior practitioner, having 31 years of experience, and has handled many of these types of cases. He is well known not only at the bar for his practice there, but as an author and a contributor to numerous legal publications.

[8] The trial, I am advised, went ahead as scheduled in June of 2003. There were no adjournments. There was no further delay encountered with respect to Mr. Todd's involvement and he was able to proceed with the trial.

[9] I have been directed to the reasons for judgment of Madam Justice Smith following the trial, at which time it appears Ms. Ryan was awarded 50 percent of the estate.

[10] I do find that there had been some discussions during the early meetings as to the possibilities of recovery, but in all of the circumstances a recovery of 50 percent is an extremely positive result for Ms. Ryan. The fact of that -- or the extent of that success is evidenced by the fact that the outcome in this case has been referred to not only in the national press, but in legal circles, and has become the

subject of discussion at wills and estates subsection meetings and the like. I read from a paper recently delivered at such a meeting where, at page 11 -- of a Canadian Bar Association Subsection Meeting Paper as delivered. I read from page 11 of that paper where it says:

Ryan v. Delahaye Estate, [2003] B.C.J. No. 1670, may be the high water mark in favour of under-inherited children. Here, there was no question of the existence of a moral duty, but the decision to differentiate was subjected to the same valid and rational analysis. There was a clear and continuing relationship with both children and the testator saw fit to leave a 20 percent share to her daughter as opposed to 80 percent to the son.

As I say, that decision of 2003 appears to still be referred to as the high water mark and, accordingly, the success was notable.

[11] I turn to the provisions of the *Legal Profession Act*, and, in particular, s. 71(4) of that Act, which indicates that on "a review of a lawyer's bill, the registrar must consider all of the circumstances" of that bill, including and not necessarily limited to - I add that phrase of my own:

(a) the complexity, difficulty or novelty of the issues involved.

[12] With respect to this case, I refer particularly to the difficulty imposed by the time constraints that Mr. Todd operated under in that there were discoveries upcoming and a trial for some three days scheduled only a matter of approximately three months hence. The complexity and novelty also appear to be of note in that this was what became, as I have referred to before, a high water mark and has

appeared to set the standard for *Wills Variation Act* claims of this type in British Columbia.

[13] The second consideration is:

- (b) the skill, specialized knowledge and responsibility required of the lawyer.

In my view, the argument and presentation required in a case of this nature in order to result in as favourable an outcome as was obtained in this case was considerable.

[14] The third consideration is:

- (c) the lawyer's character and standing in the profession.

I have already referred to the fact that Mr. Todd is -- there is considerable evidence before me today that Mr. Todd is a member of very high standing, not only in the profession in general, but in the area of wills and estates in particular, and he brings to that practice considerable experience and intellect.

[15] The amount involved here was considerable. I round the figures to approximately \$700,000. It was by my recollection \$697,000 and change, I will say, essentially, a \$700,000 estate. It was, therefore, a matter of some import to anyone, and in particular of import to Ms. Ryan whose financial circumstances were such that income or availability of money in anything like 20, 30 or 40 percent of that type of figure would have been significant.

[16] "The time reasonably spent," is the next consideration. It appears from a review of tab 4, although time is not disclosed, that there was considerable work performed with respect to this file, and I say again, work performed in a timely fashion in order to meet the deadlines that were imposed by the upcoming trial date.

[17] The next consideration is:

- (f) if there is an agreement that sets a fee rate based on ... a per unit of time ...

That is not applicable here in that the \$300 per hour rate, in my view, was related only to situations in which there was additional work required to be done on the file or where the solicitor was changed before the termination.

[18] The next matter is:

- (g) the importance of the matter to the client whose bill is being reviewed.

Clearly, this was a matter of very significant importance to Ms. Ryan. It involved a great deal of money. The significance to her is somewhat evidenced by the fact that, even without the assistance of counsel, she had previously of her own accord filed the action. It is obvious from that that she felt this was a matter of significance in that she had not received an appropriate amount out of this estate.

[19] The final consideration is "the result obtained," and I have already referred to that. In my view, having reviewed the nature of this case, -- the summary of the judgment and the academic writing such as has been presented following this, I am

of the view that the result obtained was extremely good and better than could normally have been considered in all of the circumstances. It is, in fact, the level of that success that renders the bill at the level that it is presented.

[20] Ms. Ryan has gone to lengths to indicate that the bill translates into something in the nature of \$600 per hour. I say that that, while it may be true if considered in that fashion, only arises because of the rather extraordinary results obtained by Mr. Todd. I say also that as is proper practice, the costs recovered following the decision of Madam Justice Smith were paid to Ms. Ryan without deduction of any of the 35 percent contingency. That was appropriate under the legislation.

[21] I recognize, as well, that in addition to working on the file up to and including the conclusion of the trial, the entry of the order and the resulting accountings, Mr. Todd also provided services with respect to an appeal that was filed by the estate or by the executor on behalf of the estate. I am told that that appeal, while it was ultimately abandoned, did loom large in terms of a very realistic risk and that Mr. Todd applied himself to various dealings with that appeal over the course of several months. It was the result, at least in part of those actions, that the appeal was abandoned. The ultimate result was that Ms. Ryan has been able to enjoy the recovery that was obtained by Mr. Todd.

[22] In all of the circumstances, I find that the agreement is clear and unambiguous and is fair in all of the circumstances. I find that it was in plain

[23] I find that on the basis of all of the considerations that I have outlined above, the agreement and the bill based on the agreement are fair in all the circumstances, -- I make no adjustment to the bill.

[24] Now, no adjustment. The issue of costs?

[25] MR. TODD: I don't -- I may well be entitled to costs, but I'm not going to seek them.

[26] THE COURT: Mr. Todd has addressed the issue of costs of this application. In that there was no reduction in the account as presented, there would normally be an entitlement to costs. He has advised that he will not be pursuing that.

[27] Accordingly, I make no order with respect to the costs of this process.



Master Caldwell