File No. CA43539

COURT OF APPEAL

ON APPEAL FROM: Mr. Justice Saunders, Supreme Court of BC February 19th , 2016

BETWEEN:

Robert Semenoff, Executor Estate of Bill Semenoff

Appellant(Plaintiff)

AND:

Marion Demosky, Mike Semenoff

Respondents (Defendants)

APPEAL RECORD

Robert Semenoff

609 Helmcken
Vancouver V6B 5R1
billsemenoff@gmail.com

Mike Semenoff, Marion Demosky
Timothy W Pearkes
Pearkes & Fernandez
266 Baker Street,Ste 8, Nelson,
BC V1L 4H3

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AMENDED 24/December/2012 WITHOUT LEAVE
PURSUANT TO RULE 6-1(1)(a) OF THE SUPREME COURT CIVIL RULES

No. 121760
Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN:

Robert Semenoff, Executor, Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

AMENDED Notice of Civil Claim
Original filed on 8/March/2012

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must
1) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
2) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGEMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

1. if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

2. if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

3. if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

4. if the time for response to civil claim has been set by order of the court, within that

time.

CLAIM OF THE PLAINTIFF

Part 1 : Statement of Facts

1) The Plaintiff Robert Semenoff (‘Robert”) is the executor of the last Will and Testament (“the Will”) dated February 13 1990 of Bill Semenoff (“Bill”), deceased who died on September 15, 2006.
2) Probate of the Will was duly granted to the Plaintiff Robert Semenoff (“executor”) out of the Chilliwack Registry on May 14 2008, now filed in the Rossland Registry.
3) The defendant Mike Semenoff (“Mike”) resides at 2433 9th Avenue in Castlegar BC.
4) The defendant Marion Demosky (“Marion”) resides at 4790 Centre Road in Grand Forks, BC.
5) The Defendants are the siblings of the deceased, and are retired.
6) About 1994 the deceased, due to age-related health problems, entrusted the care of his personal assets to the defendants.
7) The defendants undertook the care of the deceased's assets ostensibly for the exclusive benefit of the deceased, since about 1994, and for his Estate after his death, to the present.
8) In about 1996, the defendant Marion Demosky was granted power of attorney for the deceased.
9) The defendants dishonestly took advantage for their own benefit : (Further particulars are within the peculiar knowledge of the defendants)
   a) Marion Demosky gave to Mike Semenoff pre-signed cheques on Bill's credit union account;
   b) which Mike used to diminish Bill's funds contrary to Bill's interests.
   c) Mike misdescribed the purpose in the the memo field of the cheque, to mislead or frustrate accounting.
   d) Marion shuttled Bill's funds among a number of accounts in order to frustrate accounting.
   e) Rent from Andy was not collected, since about 1998.
   f) Property tax credits or exemptions on Bill's house were claimed, but not for Bill.
   g) <u>The defendants knew they had wrongly taken advantage of Bill and then used that money of Bill's to pay for professional advice and services to coverup and otherwise evade liability for their wrongs, particulars as follows :</u>
      i) <u>Geoff Yule was paid around 2006 and 2007</u>
         (1) <u>to do a misleading accounting of Bill's assets to show that Bill actually owed them money.</u>
         (2) <u>Alternatively, the fees were intended to buy Mr. Yules loyalty and intentionally to persuade him from testifying or disclosing inculpatory facts he knew about the handling of Bill's assets by the siblings.</u>
      ii) <u>Gibson</u>
         (1) <u>for advice to avoid Bill's 1987 contractual rights against the siblings, or for advice as to how Marion might avoid liability for such exercise of authority which she knew she did not have, advice which was</u>

obtained using a falsified Will or other documents concealed, falsified, or otherwise presented misleadingly.

iii) Deirdre Herbert
   (1) was paid in 2007 with Bill's money in order to threaten Bill's sons with trespass, and then to sue (by counterclaim) the estate for compensation for provision of services to Bill.
   (2) The siblings knew at all times the allegations were without any merit, but were advanced to pressure the sons into accepting a settlement on different matters.

h) Alternatively, the siblings obtained from these professionals other valuable information or advice which the siblings are liable to disgorge in substitution for Bill's money which went to pay for that information or advice.

10) Which caused as follows;
11) The plaintiff lost, and the defendants gained, wrongfully, cash and other property of the plaintiff.
12) The defendants have failed to account for the benefits and property they have taken, or to account sufficiently or adequately at all. In particular as follows with further particulars to be discovered :
   a) ON September 14 2006 defendant Marion Demosky withdrew $3500 in case from Hertitage Credit Union account 145466 (“145466”)
   b) On Oct 18 2006 defendant Marion Demosky transferred another $3475 from 145466.
   c) Jan 17 2004 transferred $3000 out of 145466.
   d) February 11,2005 transferred $5000 out of #145466
   e) On December 23 2000, cheques #282,283,284 in the amount of $1000 each drawn
   f) May 10 2005 cheques #52,#53,#54, $500 each from HCU acct#145466.
   g) Jan 16 2003, cheques #297,#298,#299, in the amount of $500 each from HCU acct#145466

Part 2: RELIEF SOUGHT

1.Declaration that the defendants are constructive trustees for the benefit of the Estate.

2.General damages.

3.Alternatively, disgorgement of profits.

4.Directions and orders ancillary to tracing and accounting.

5.Punitive damages.

6.Orders be drawn by the registrar.

7.Other relief

Part 3: LEGAL BASIS

1.The defendants are accountable as agents of the plaintiff.

2.The plaintiffs were in violation of the Criminal Code of Canada pertaining to section 380, Other Fraudulent Means.

Plaintiff's address for service: 3305 Sion Frontage Road Grand Forks, BC V0H 1H2
Fax number address for service (if any):
E-mail address for service (if any): **billsemenoff@gmail.com**

Place of trial: Vancouver, British Columbia
The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E

Date: 5/March/2012

Signature of [x] Plaintiff [] Lawyer for Plaintiff Robert Semenoff

Rule 7-1 (1) of the Supreme Court Civil Rules states:
(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
(a) prepare a list of documents in Form 22 that lists
(b) (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial or prove or disprove a material fact, and
(ii) all other documents to which the party intends to refer at trial, and
(b) serve the list on all parties of record.
APPENDIX
Part 1: CONCISE SUMMARY NATURE OF CLAIM:
1. Solicitor's negligence in drafting real estate purchase agreement.
Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:
[ ] a motor vehicle accident
[ ] personal injury, other than one arising from a motor vehicle accident
[X] a dispute about real property (real estate)
[ ] a dispute about personal property
[ ] the lending of money
[ ] the provision of goods or services or other general commercial matters
[ ] an employment relationship
[ ] a dispute about a will or other issues concerning the probate of an estate
[ ] a matter not listed here

Amended on January 16, 2013 pursuant SCCR 6-1(5)(a) in response to the primary pleading being amended. Original Response filed April 2, 2012. Further amended on January 21, 2013 as of right pursuant to SCCR 6-1(1)(a).

No. S121760
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

Plaintiff

and

Mike Semenoff and Marion Demosky

Defendants

FURTHER AMENDED RESPONSE TO CIVIL CLAIM

Filed by: Mike Semenoff and Marion Demosky (the "defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Response to Facts

1. The facts alleged in paragraph(s) 1 to 5 and 8 of Part 1 of the Notice of Civil Claim are admitted.

2. The facts alleged in paragraph(s) 6, 7, 9 to 12, of Part 1 of the Notice of Civil Claim are denied.

3. The facts alleged in Part 1 of the Notice of Civil Claim are beyond the knowledge of the defendant: not applicable

Division 2 – Defendants' Version of Facts

1. The Defendants say that in 1992 Bill Semenoff (Bill) injured his arm and shoulder in a work related accident which was the subject of a dispute with the Worker's Compensation Board. He did not return to work. In 1994 Bill had a car accident in Calgary, Alberta and arrived at the RCMP station in Lake Louise, not knowing how he had gotten there or how he had damaged his car. Bill was admitted to Foothills Hospital in Calgary. The Defendants were advised of this by the RCMP and the Defendant Marion contacted the Plaintiff's brother Howard Semenoff (Howard) and asked him if he would be bringing his father home. When there was no response from Howard, the defendants brother Steve Semenoff (Steve) drove to Calgary and brought Bill home and the Defendant Mike Semenoff (Mike) paid for Steve's expenses to do so.

2. In or about 1995, Bill's health began to decline. He was diagnosed with an Alzheimer's type dementia for which he required home support that the Defendant Marion Demosky (Marion) arranged. A counsellor advised Marion that Bill should execute a power of attorney. Marion contacted both the Plaintiff (Robert) and Howard asking if either of them would undertake this role. Howard and Robert refused or neglected to do so.

3. ~~The~~ Bill's children, namely the Robert and Howard were asked by the Defendants' and Steve to assist with Bill's care. Robert and Howard refused.

4. On January 18, 1996 Bill granted an enduring Power of Attorney to Marion. Marion saw to Bill's needs regarding his care, clothing and medical appointments. Bill had a brief stay in a senior's villa in Castlegar but it was not adequate for his needs. After a brief period for respite care in an extended care facility, Marion took Bill into her own home for four months prior to his permanent placement in a long-term care facility. Subsequently, Bill lived for 6 years in a facility in Trail and for 2 years in a facility in Castlegar. Marion travelled every two weeks from Grand Forks to see Bill in these facilities and to look after his needs.

5. Steve maintained the home and yard where Bill was previously residing. Mike assisted Bill as did Marion.

6. The defendants are not aware of Robert visiting his father during this 9 year span regularly or at all.

7. Robert did not attend his father's funeral. Steve and the defendants looked after funeral arrangements.

8. The defendants say that payments made from Bill's bank account were for his personal care, his residency, insurance, property taxes, utilities and other appropriate items.

9. The defendants deny the allegations of misconduct in paragraph 9 of the Notice of Civil Claim and put the plaintiff to strict proof.

10. Bill had no assets to speak of other than the registered interest in joint tenancy he held with the defendants and Steve to their parents' family homestead in Ooteschenia, B.C. near Castlegar.

11. Bill's sole sources of income were Canada Pension Plan and Old Age Security benefits. During the time frame Marion was Bill's attorney his income ranged between approximately $13,000 and $15,000 dollars. He spent his income meeting his needs. There were no funds to misuse or otherwise divert to other purposes.

12. Each year Bill's income tax returns were prepared by his accountant.

13. In response to paragraphs 9 (g) and (h) of Part 1 of the Amended Notice of Civil Claim filed by the plaintiff on December 24, 2012, the defendants deny the allegations of wrongdoing and other assertions therein, and put the plaintiff to strict proof thereof.

14. With respect to the particulars alleged in paragraph 9 (g) (i) of Part 1 of the Amended Notice of Civil Claim, Mr. Yule is an accountant who provided professional services in the nature of preparing Bill's tax returns prior to his death, and assisting the parties in attempting to settle their dispute in and around 2007.

15. In response to paragraph 9 (g)(ii) and (iii) of Part 1 of the Amended Notice of Civil Claim, Mr. Gibson and Ms. Herbert are solicitors who provided professional services regarding certain legal issues including the plaintiff's occupation of Bill's house in 2006 and legal proceedings commenced by the plaintiff and others (Action No. 8993, Rossland Registry) which were dismissed in 2009.

16. In response to paragraph 12 (a) to (g) of Part 1 of the Amended Notice of Civil Claim, these payments were for legitimate purposes as canvassed in paragraph 8 of this Response, and in addition, Bill's funeral and related expenses and maintenance of the property.

DIVISION 3 – Additional Facts

1. None.

PART 2: Response to Relief Sought

1. The defendants oppose the granting of the relief sought in paragraphs 13-19 of the Notice of Civil Claim.

2. The defendants ask that this action be dismissed with costs.

Part 3: Legal Basis

3. The defendants deny that they procured any improper advantages for their own benefit. The defendants say that they have provided information to Robert and disclosed the primary documents to him. The defendants do not have particulars or knowledge of what specific misuse of funds or which transactions are objected to by the plaintiff.

4. In the alternative, if some amount of money cannot be properly accounted for due to the passage of time or for any other reason, then the defendants say that the amount in issue is within the jurisdiction of the Provincial

Court and this matter should not have been brought in Supreme Court.

5. The defendants' seek dismissal of this claim and an award of special costs given the nature of the allegations in this proceeding. In the alternative, if some amount of money cannot be accounted for and falls within the jurisdiction of the Provincial Court, the defendants seek an order that the plaintiff be denied costs other than his reasonable and necessary disbursements.

6. The defendants plead and rely on section 3 of the *Power of Attorney Act*, R.S.B.C. 1996, c. 370, as it stood at the material times. Specifically, the defendants say that:

a) The alleged acts were within the scope of their authority.

b) The defendants had no knowledge of the termination.

Defendants' address for service:

Pearkes & Fernandez
Attention: Timothy Pearkes
#8 – 266 Baker Street, Nelson, BC, V1L 4H3

Fax number address for service (if any): 250.352.2849

E-mail address for service (if any): reception@pearkesfernandez.com

Date: "April 2, 2012"

"T. W. Pearkes"
Signature of Timothy W. Pearkes
Lawyer for the Defendants
Mike Semenoff
Marion Demosky

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

No. 121760
Vancouver Registry

In the Supreme Court of British Columbia

Robert Semenoff, Executor, Estate of Bill Semenoff,deceased

,Plaintiff

AND

Mike Semenoff, Marion Demosky

,Defendants

NOTICE OF APPLICATION

Name(s) of applicant(s): Robert Semenoff, Executor, Estate of Bill Semenoff, and in his own right

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street Vancouver, B.C. on 26/APRIL/2013 at ~~9:30~~ 9:45 AM for the order(s) set out in Part 1 below.

Part 1 : Orders Sought

1) Defendants to produce accounts of by way of affidavit :
   a) Joint ownership of Ootischenia house property
   b) The disputed money transfers from the Heritage Credit Union account 145466, including all vouchers, invoices, correspondences pertaining to subsequent use of the funds.
   c) Proceeds of 2010 sale of Ootischenia house.
2) Such further inquiries as the court may require.

Part 2 : Factual Basis

1) The deceased plaintiff Bill Semenoff was not competent to deal with his assets after around June of 1998.
2) The defendants dealt with Bill's assets for him after that date.
3) One of those assets included jointly held property located in Ootischenia.
4) Other assets included documentation which the defendants have taken custody.
5) The defendants have disclosed some documentation of their dealings with Bill's assets, but have resisted the plaintiffs efforts to obtain complete disclosure through litigation discovery process.

Part 3: Legal Basis

1) Supreme Court Civil Rules, Part 18-1 Inquiries, Assessments and Accounts

Part 4: Material to be relied on :

1. Affidavit of Robert Semenoff #1 and #2

The applicant(s) estimate(s) that the application will take .....30 minutes..... .

[*Check the correct box.*]

[] This matter is within the jurisdiction of a master.

[X] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date:

16/April/2013

_____

Signature of [X] applicant [ ] lawyer for applicant(s)

Robert Semenoff

To be completed by the court only:

Order made
[ ]in the terms requested in paragraphs ..... of Part 1 of this notice of application
[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....

.....

Signature of [ ] Judge [ ] Master

Appendix

[*The following information is provided for data collection purposes only and is of no legal effect.*]

THIS APPLICATION INVOLVES THE FOLLOWING:

[*Check the box(es) below for the application type(s) included in this application.*]

[ ] discovery: comply with demand for documents
[ ] discovery: production of additional documents
[X] other matters concerning document discovery
[ ] extend oral discovery
[ ] other matter concerning oral discovery
[ ] amend pleadings
[ ] add/change parties
[ ] summary judgment
[ ] summary trial
[ ] Service
[ ] Mediation
[ ] Adjournments
[ ] proceedings at trial
[ ] case plan orders: amend
[ ] case plan orders: other
[ ] Experts

Action No.: S121760
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

NOTICE OF APPLICATION

Name of applicant(s): the defendants Mike Semenoff and Marion Demosky

To: The plaintiff

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 9:45 am on Tuesday, April 30, 2013 for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. This proceeding be transferred from the Vancouver Registry of the Supreme Court of British Columbia to the Nelson Registry of the Supreme Court of British Columbia for all purposes.

2. The plaintiff shall pay costs of this application to the applicant as costs in the cause.

Part 2: FACTUAL BASIS

1. The executor Mr. Robert Semenoff previously applied for and obtained on July 30, 2012 an Order for Indigent Status in Supreme Court of British Columbia, action number 125341, Vancouver Registry.

2. The plaintiff estate is insolvent according to Mr. Robert Semenoff.

3. Mr. Robert Semenoff owes costs in Supreme Court of British Columbia, action number 8993, Rossland Registry and has owed costs since April 2009. This was the first of three proceedings commenced by Mr. Robert Semenoff on behalf of his father's estate.

4. Mr. Robert Semenoff commenced Supreme Court of British Columbia, action number 9044, Rossland Registry on October 30, 2007. This was the second of three proceedings commenced by Mr. Robert Semenoff on behalf of his father's estate.

5. The proceeding herein is the third of the three proceedings commenced by Mr. Semenoff on behalf of his father's estate.

6. Of the three proceedings relating to his father's estate, Mr. Robert Semenoff has commenced two out of the Rossland registry and this one out of the Vancouver Registry.

7. Initially, Mr. Robert Semenoff's address for service in this proceeding was 3305 Sion Frontage Road, Grand Forks, British Columbia. Mr. Robert Semenoff filed a Notice of Change of Address for Service on August 9, 2012, to change the address to a Vancouver location.

8. The trial in action 9044 proceeded in Nelson, BC for approximately eight days commencing February 12, 2013. Mr. Justice McKinnon has reserved judgment on Mr. Mike Semenoff and Ms. Marion Demosky's, the third parties, application for dismissal of the plaintiff's case due to insufficient evidence.

9. Mr. Mike Semenoff is retired and resides in Castlegar. Ms. Marion Demosky is retired and resides in Grand Forks.

10. Other likely witnesses, including the solicitor who drew the power of attorney and the accountant who prepared the accounting both work in Castlegar, B.C.

11. Mr. Robert Semenoff's affidavit #1 in this proceeding was sworn August 7, 2012 in Grand Forks.

Part 3: LEGAL BASIS

1. The applicant relies on SCCR 23-1(13).

2. The test to be applied to an application to transfer a file for all purposes under SCCR 23-1(13) (formerly Rule 64(13)) is the same as the test that governs an application to change the place of trial (see *Nicholls v. McLean*, [1996] B.C.J. No. 1160 (S.C.) and *Roberston v. Zimmer*, 2001 BCSC 1067, 12 C.P.C. (5th) 131 (B.C. Master)). An early and often cited expression of the test is found in *Armstrong v. Revelstoke (City)* (1927), 38 B.C.R. 253, [1927] 2 W.W.R. 245 (C.A.). In Armstrong, the chambers judge dismissed an application to move the place of trial. The Court of Appeal dismissed an appeal from that decision. McDonald C.J.A. wrote at p. 256:

> "There is a preponderance of convenience in favour of a change of venue, but nothing short of a great or considerable preponderance of convenience and expense would justify the taking from a respondent the right which the law has given him to select his own place of trial."

3. While the test is the same whether considering moving the place of trial or changing the registry out of which proceedings are taken, the application of the test in these two contexts will not always yield the same result: see *Cooper v. Lynch*, 2009 BCSC 1317.

4. The applicant herein says the great preponderance of convenience and expense, which is unlikely to be reimbursed if the claim fails, favours a change from Vancouver to Nelson for all purposes.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of T. Pearkes sworn April __, 2013.

2. Such other material as counsel may advise.

The applicant(s) estimate(s) that the application will take 15 minutes.

[X] This matter is within the jurisdiction of a master

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,
(b) file the original of every affidavit, and of every other document, that
(i) you intend to refer to at the hearing of this application, and
(ii) has not already been filed in the proceeding, and
(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
(i) a copy of the filed application response;
(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: April 26, 2013

Signature of Ahna Fernandez
Lawyer for the Applicants

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this notice of application

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....

.....

Signature of [ ] Judge [ ] Master

Action No.: S121760
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

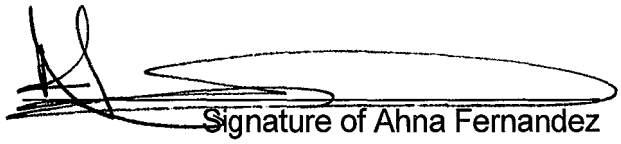
Defendants

REQUISITION

Filed by: the Defendants

Required:

[X} An order pursuant to Rule 8-5(1) that the main application be brought on short notice and returnable at 9:45 a.m. on Tuesday, April 30, 2013, the same time at which the plaintiff's application was made returnable by the plaintiff without consultation with the defendants' counsel.



Signature of Ahna Fernandez
Lawyer for the filing parties

ORDER BY ENDORSEMENT (to be completed by a judge, master or registrar)

[ ] Date set for hearing of main application:

_____

Conditions for Service:

Service by applicant of Notice of Application and applicant's affidavits with this order on the respondent(s)

[ ] before _____ a.m./p.m. on

_____

Service by respondent(s)'s Application Response & affidavits to applicant:

[ ] before _____ a.m./p.m. on

_____

Other Conditions:

[ ]

_____

Endorsed:

Judge/Master/Registrar_____

Date _____

Estate of William Semenoff
Year End: December 31
Trial Balance

Account	1994-1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1994 - 2007 Cumulative
100 Credit Union acct 145466	1,054.75	565.52	3,609.94	3,134.75	3,408.16	5,929.56	4,492.82	6,482.59	8,641.94	4,844.30	2,550.56	-	-
101 Plan 24 account	1,141.07	543.78	545.16	546.54	547.93	599.39	600.90	602.41	603.92	605.43	-	-	-
102 Membership shares	42.86	46.28	49.05	51.99	55.12	55.12	55.12	55.12	55.12	55.12	55.12	-	-
103 Equity shares B	-	-	-	-	3.44	5.37	5.85	9.77	13.90	17.64	-	-	-
104 Equity shares C	-	-	-	-	-	2.88	6.07	6.07	6.07	6.07	-	-	-
105 RRSP Equity shares	-	-	-	-	11.72	18.14	-	-	-	-	-	-	-
106 RRSP Variable Savings	2,965.11	-	-	-	-	-	-	-	-	-	-	-	-
107 RRSP Term #2	3,062.40	3,308.06	3,432.11	-	-	-	-	-	-	-	-	-	-
108 RRSP Term #3	-	2,973.21	3,129.30	3,293.59	3,466.51	3,669.85	-	-	-	-	-	-	-
109 RRSP Term #4	-	-	-	3,560.81	-	-	-	-	-	-	-	-	-
110 RRSP Term #6	-	-	-	-	3,708.58	3,903.82	-	-	-	-	-	-	-
115 CU Account #26815-1	-	-	-	-	-	-	-	-	-	-	3,500.00	3,500.00	3,500.00
116 Term deposits	2,014.01	2,045.69	2,075.81	2,155.73	-	-	-	-	-	-	-	-	-
117 214403 Term 7	-	-	-	3,025.00	3,025.00	3,025.00	6,025.00	6,025.00	6,025.00	11,025.00	8,025.00	8,025.00	8,025.00
131 RRIF #214288	-	-	-	-	-	-	8,032.32	7,814.47	7,624.83	-	-	-	-
132 RRIF shares	-	-	-	-	-	-	-	-	8.55	17.28	-	-	-
133 RRIF Variable Savings	-	-	-	-	-	-	-	-	-	7,351.33	-	-	-
300 Cash to Howard Semenoff	420.00	420.00	520.00	520.00	520.00	520.00	520.00	520.00	520.00	520.00	4,030.98	5,332.35	5,332.35
301 Cash to Robert Semenoff	200.00	200.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	300.00	3,810.98	5,112.35	5,112.35
303 Cash to Mike Semenoff	-	-	-	-	1,000.00	1,000.00	1,000.00	1,500.00	1,500.00	2,000.00	2,000.00	2,000.00	2,000.00
304 Cash to Bill Semenoff	-	32.02	32.02	32.02	32.02	32.02	32.02	32.02	32.02	32.02	32.02	32.02	32.02
305 Cash to Steve Semenoff	-	-	-	-	1,000.00	1,000.00	1,000.00	1,500.00	1,500.00	2,000.00	2,000.00	2,000.00	2,000.00
306 Cash to Marion Demosky	150.00	150.00	150.00	150.00	1,150.00	1,150.00	1,150.00	1,650.00	1,650.00	2,150.00	2,150.00	2,150.00	2,150.00
307 Cash withdrawals	2,320.00	6,925.00	7,425.00	7,525.00	7,625.00	7,725.00	7,925.00	8,125.00	8,225.00	8,325.00	8,525.00	8,525.00	8,525.00
350 Equity	252.85	(13,370.20)	(17,209.56)	(21,268.39)	(24,295.43)	(25,853.48)	(28,936.15)	(31,145.10)	(34,622.45)	(36,706.35)	(39,249.19)	(36,679.66)	252.85
400 CWPP Ret Pay - pension	(2,973.90)	(5,628.84)	(2,943.88)	(1,601.40)	(1,601.40)	(1,601.40)	(1,601.40)	(1,267.26)	(933.12)	(933.12)	(699.84)	-	(21,785.56)
401 Canada - OAS	-	-	(4,026.89)	(7,373.52)	(7,600.23)	(7,886.55)	(8,077.32)	(8,377.29)	(8,507.67)	(8,756.91)	(6,918.81)	-	(67,525.19)
402 Canada - CPP	(1,294.17)	(5,254.32)	(5,354.16)	(5,402.40)	(5,488.80)	(5,626.08)	(5,794.92)	(5,887.68)	(6,076.08)	(6,179.40)	(7,241.11)	-	(59,599.12)
403 Canada - GST credit	(76.00)	(304.00)	(302.02)	(302.02)	(308.00)	(314.00)	(320.50)	(327.50)	(336.00)	(344.50)	(262.00)	-	(3,196.54)
404 Canada - other	-	(401.03)	(1,499.46)	(258.48)	(50.00)	(50.00)	(47.71)	(65.53)	(56.58)	(56.68)	(171.02)	-	(2,656.49)
410 Bank account interest	(5.99)	(8.25)	(8.86)	(8.87)	(17.63)	(16.72)	(13.36)	(15.68)	(22.49)	(14.63)	(11.67)	(3.05)	(147.20)
411 RRSP/RRIF Interest	(35.19)	(253.76)	(280.14)	(292.99)	(332.41)	(405.00)	(440.51)	(171.09)	(217.90)	(314.84)	(204.52)	-	(2,948.35)
413 Term deposit interest	(9.49)	(31.68)	(30.12)	(79.82)	(85.38)	-	-	-	-	-	-	-	(236.59)
415 Unknown deposits	(3,697.02)	-	(23.27)	(290.00)	-	(175.00)	-	-	(98.00)	(4,000.00)	(2,790.00)	-	(11,073.29)
500 Accounting fees	-	69.55	-	-	-	-	-	-	-	-	-	-	69.55
505 Legal	205.01	-	-	-	-	-	-	-	-	-	-	-	205.01
510 Bank charges	158.39	36.86	26.75	26.75	6.67	-	-	-	-	-	-	5.99	261.41
515 Advertising	5.36	-	-	-	-	-	-	-	-	-	-	-	5.36
517 Donations	105.00	342.00	-	-	-	-	-	-	-	-	-	-	447.00
520 Clothing	-	79.78	145.59	126.14	48.48	-	79.79	-	-	-	-	-	479.78
525 Grocery / Meals	137.46	525.65	86.38	-	-	-	-	-	-	-	-	-	749.49
526 Miscellaneous	69.55	71.75	-	-	15.09	-	-	-	17.51	-	-	-	173.90
528 Membership and union dues	131.00	-	-	25.00	25.00	25.00	-	50.00	25.00	25.00	25.00	-	331.00
530 Medical - Dental	406.80	228.42	387.54	493.30	92.50	-	-	-	-	-	-	-	1,608.56
531 Medical - Home support & respite care	250.00	682.60	624.59	-	-	-	-	-	-	-	-	-	1,557.19
532 Medical - Other	-	205.92	89.00	-	216.00	-	-	-	-	-	-	-	510.92
540 House insurance	706.00	420.00	470.00	1,249.00	442.00	1,002.00	1,775.00	472.00	990.00	614.00	631.00	-	8,773.00
543 Car insurance	796.00	-	-	-	-	-	-	-	-	-	-	-	796.00
545 Life & medical insurance	30.00	131.77	120.00	120.00	120.00	120.00	120.00	120.00	120.00	120.00	90.00	-	1,211.77
550 Rent	1,380.00	2,640.00	7,154.70	9,354.30	9,489.90	9,800.10	9,970.30	9,941.56	10,228.66	10,256.50	7,415.20	-	87,631.22
555 Repairs & maintenance	774.10	183.08	66.34	44.94	-	-	-	-	226.90	-	168.56	-	1,463.92
560 Property taxes	1,871.78	728.31	519.59	549.00	573.30	1,323.70	1,336.89	1,239.09	1,275.34	1,260.67	1,301.91	-	11,979.58
565 Water tolls	215.19	216.70	218.57	222.00	222.00	246.00	272.00	286.00	386.00	586.00	586.00	-	3,456.46
570 Utilities - heat & power	1,016.07	637.12	485.92	372.13	433.75	475.28	532.79	526.03	584.53	745.04	606.17	-	6,414.83
575 Telephone	317.84	255.41	-	-	-	-	-	-	-	-	-	-	573.25
580 Travel	-	-	15.00	-	-	-	-	-	-	-	-	-	15.00
585 Subdivision costs	-	-	-	-	-	-	-	-	310.00	4,450.03	3,000.00	-	7,760.03
590 Funeral expenses	-	-	-	-	-	-	-	-	-	-	3,544.66	-	3,544.66
599 Suspense	(14,108.84)	587.60	-	-	2,241.11	-	-	-	-	-	3,500.00	-	(7,780.13)
	-	-	0.00	(0.00)	-	0.00	(0.00)	(0.00)	(0.00)	(0.00)	-	(0.00)	-
Net Income (Loss)	**13,623.05**	**3,839.36**	**4,058.83**	**3,027.04**	**1,558.05**	**3,082.67**	**2,208.95**	**3,477.35**	**2,083.90**	**2,542.84**	**(2,569.53)**	**(2.94)**	**36,929.57**

Notice to Reader

On the basis of information provided by Mike Semenoff and Marion Demosky, we have compiled this statement. We have not performed an audit or a review engagement in respect of this statement and, accordingly, we express no assurance thereon. Readers are cautioned that this statement may not be appropriate for their purposes.

Yule Anderson, Chartered Accountants
March 13, 2013

Action No.: S121760
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

APPLICATION RESPONSE

Application response of: Mike Semenoff and Marion Demosky (the "defendants")

THIS IS A RESPONSE TO the notice of application of the plaintiff filed April 17, 2013 .

Part 1: ORDERS CONSENTED TO

The defendants consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: none.

Part 2: ORDERS OPPOSED

The defendants oppose the granting of the orders set out in paragraphs 1 and 2 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Not applicable.

Part 4: FACTUAL BASIS

1. The Ootischenia property is not a subject of this litigation.

2. With this application response, the defendants are providing an accounting, together with the corresponding back up from the general ledger, as prepared by Yule Anderson, Chartered Accountants.

3. The Ootischenia property, including the state of ownership and its disposition, is the subject of another proceeding, namely Supreme Court of British Columbia, Rossland Registry, No. 9044. Following approximately eight days of the trial in Nelson, BC in the matter of Action No. 9044 in February 2013, the plaintiff closed its case and Mr. Justice McKinnon reserved judgment on Mike Semenoff and Marion Demosky's, the third parties, application for dismissal of the plaintiff's case due to insufficient evidence.

Part 5: LEGAL BASIS

1. The accounting provided by the defendants is self-explanatory and simple to follow: see *Re Lotzkar Estate*, [1971] 2 WWR 234.

2. The plaintiff is entitled to information and an accounting related to the issues framed by his pleadings only.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of M. Demosky sworn April 24, 2013.

2. Such other material as counsel may advise.

The defendants' estimate that the application will take 25 minutes.

[x] The defendants have filed in this proceeding a document that contains the defendants' address for service.

Date: April 24, 2013.

"A. Fernandez"

Signature of Ahna Fernandez
[x] lawyer for the defendants

No S121760
Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN

Robert Semenoff, Executor, Estate of Bill Semenoff,deceased

,Plaintiff

AND

Mike Semenoff, Marion Demosky

,Defendants

CASE PLAN PROPOSAL

Party submitting this case plan proposal: Plaintiff Robert Semenoff

Indicate the party's proposal with respect to the following steps:

Item	Step	If parties agree, step agreed to and its timing	If parties disagree, party's proposal respecting step and its timing
1	Discovery of documents		Updated LoD ASAP, including Gibson letter, 8993 LoD can be used here.
2	Examinations for discovery		7 days after defendants list of documents delivered -AND must bring all docs listed in 8993 and 9044
3	Dispute resolution procedures under Part 9 of the Supreme Court Civil Rules		
4	Expert witnesses		No experts required to prove whether proper accounting rendered, and summary trial may proceed based on pleadings with onus of proof on defendants as to sufficient of accounting.
5	List of witnesses		
6	Proposed mode of trial		Summary Trial of cash accounting, written submissions and telephone

			attendance
7	Estimated trial length		
8	Preferred period(s) for trial date		
9	Other		
	Early assignment of trial judge		Yes because of SRL
	(d) requiring amendment of a pleading to provide details of(i) the facts...(iii) the legal basis on which relief is sought or opposed set out in that pleading;		
	(e) respecting the length and content of pleadings;		1987 agreement?
	(h) respecting interrogatories;		
	(n) respecting the conduct of any application, including, without limitation, that an application may be made by written submissions under Rule 8-6;		Summary trial for account of Marion exercise of PoA, and real property joint tenancy, and use of her affidavit; written submissions
	(p) authorizing or directing the parties of record to try one or more issues in the action independently of others;		That marion accountable;
	a) setting a timetable for the steps to be taken; Delivery of accounts per rule ...		

Date: .....17/*April*/*2014*.....

Signature of
[X] filing party [ ] lawyer for filing party

Robert Semenoff

1804
Action No.: ~~S121760~~
~~Vancouver~~ Registry
NELSON

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

CASE PLAN PROPOSAL

Party submitting this case plan proposal: the Defendants, Mike Semenoff & Marion Demosky

Item	Step	If parties agree, step agreed to and it's timing	If parties disagree, party's proposal respecting step and its timing
1	Discovery of documents	Disagree	The Defendants oppose the various document and other demands of the Plaintiff The legal advice provided by Mr. Gibson to the Defendants is the subject of solicitor/client privilege and will not be produced. We have yet to receive a List of Documents from the Plaintiff. The

			Plaintiff shall provide a list of documents by June 30, 2014.
2	Examinations for discovery	Disagree	XFD of the Plaintiff was conducted August 14, 2012. XFD of the Defendants may take place after a list of documents has been provided by the Plaintiff. The XFD's of the Defendant shall take place in Nelson in accordance with SCCR 7-2(11). This action has been transferred to the Nelson court registry and each of the Defendants live in Castlegar. The Plaintiff to show he has arranged and paid for the court reporter (in advance) of his discovery of the Defendants to avoid the cost of counsel and client's attendance being a waste. The Plaintiff must provide conduct money to the Defendants in accordance with

			Appendix C, Schedule 3 of the SCCR
3	Dispute resolution procedures under Part 9 of the Supreme Court Civil Rules		
4	Expert witnesses	Disagree	Geoff Yule. Mr. Yule prepared the accounting of the Estate from 1994 – 2007 which was provided to the Plaintiff on April 24, 2013 as part of Affidavit #1 of Marion Demosky sworn April 24, 2013.
5	List of witnesses		
6	Proposed mode of trial	Disagree	Summary Trial, no telephone attendance
7	Estimated trial length		
8	Preferred period(s) for trial date		TBA upon completion of pre-trial discovery process
9	Other		Change of venue application, Order pronounced April 30, 2013. Requisition to transfer the file filed April 22, 2014.

Date: May 14/14

Signature of lawyer for filing party
Ahna Fernandez

Action No.: 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

APPLICATION RECORD

Robert Semenoff
609 Helmcken Street
Vancouver, BC V6B 5R1
Phone: 250.442.8453

Michael Semenoff &
Marion Demosky
Pearkes & Fernandez
#8 – 266 Baker Street
Nelson, BC V1L 4H3
Phone: 250.352.2883
Fax: 250.352.2849

Date, Time & Place of Summary Trial:
Monday, July, 20, 2015, 10:00 a.m.
Nelson, British Columbia

PEARKES & FERNANDEZ
Litigators – Mediators

INDEX

Tab No.	Document Description	Filed/Sworn Date
1.	Amended Notice of Civil Claim	December 24, 2012
2.	Further Amended Response to Civil Claim	January 24, 2013
3.	Notice of Application	July 2, 2015
4.	Application Response	July 15, 2015
5.	Affidavit #1 of Marion Demosky	April 24, 2013
6.	Affidavit #2 of Marion Demosky	July 2, 2015
7.	Affidavit #1 of Erin Peitzsche	July 2, 2015
8.	Affidavit #1 of Mike Semenoff	July 2, 2015
9.	Affidavit #1 of Robert Semenoff	August 7, 2012
10.	Affidavit #2 of Robert Semenoff	April 16, 2013
11.	Affidavit #3 of Robert Semenoff	July 15, 2015
12.	Case Plan Proposal – Plaintiff	May 5, 2014
13.	Case Plan Proposal – Defendant	May 15, 2014
14.	Order made after Application	April 30, 2014

Action No.: 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

NOTICE OF APPLICATION

Names of applicants: the defendants, Mike Semenoff, Marion Demosky (hereinafter referred to as "the applicants")

To: the plaintiff, Robert Semenoff, Executor, Estate of Bill Semenoff, Deceased (hereinafter referred to as "the respondent")

TAKE NOTICE that an application for summary judgment / trial will be made by the applicants to the presiding judge at the courthouse at 320 Ward Street Nelson, British Columbia on July 20, 2015 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

The applicants seek an order against the respondent with the following provisions:

1. This action is dismissed.

2. Robert Semenoff and the Estate of Bill Semenoff are declared to be vexatious litigants and no action may be commenced by Robert Semenoff, the Estate of Bill Semenoff, or anyone else on their behalf in this court against the defendants or the Estate of Steve Semenoff without obtaining leave of the court.

3. Special costs are awarded to the applicants.

Part 2: FACTUAL BASIS

1. The applicants Mike Semenoff and Marion Demosky are two of the three siblings of the late Bill Semenoff ("Bill"). The third sibling of Bill was Steve Semenoff; he passed away in 2010 and is not a party to these proceedings.

2. The respondent is one of Bill's two children, both sons. The respondent's brother Howard Semenoff ("Howard") is not a party to these proceedings.

3. The applicant Mike Semenoff is 79 years old. The applicant Marion Demosky is 86 years old. Both applicants are retired persons. Mr. Semenoff lives in Castlegar, British Columbia and Mrs. Demosky also lives in Castlegar, British Columbia.

4. In or about 1996, Bill began to suffer from a decline in health in his senior years such that he required the more active involvement of his family in his care. The applicants and Steve Semenoff provided that care to Bill in the years that followed.

5. Bill lived with the applicant Marion Demosky in her then home in Grand Forks for four months in 1998 before he transitioned into full time residency in extended care facilities; first in Trail, British Columbia for six years, and then in Castlegar, British Columbia for his final two years. The applicants and Steve Semenoff continued to provide Bill with the support that he required from family after Bill moved into extended care.

6. The applicant Marion Demosky drove on average every two weeks to visit with Bill in Trail and later in Castlegar. She often brought a picnic basket and on occasion she took Bill back to the family acreage in Ootischenia, BC (near Castlegar), for a reprieve from his full time residency in extended care. That property was formerly owned by the parents of the applicants, Bill and Steve Semenoff, and prior to Bill's death was owned by the four of the siblings in joint tenancy ("the Ootischenia property"). Prior to his decline in health, Bill's residence was his parent's former home situate on the Ootischenia property.

7. The respondent did not participate in the initiatives of Bill's siblings to support Bill from 1996 up until Bill passed away on September 15, 2006. From time to time, the applicants asked the respondent through his brother Howard to help with the care of his father, and he failed to do so. The applicants are not aware of the respondent visiting his father through this time period, frequently or at all. The respondent said on discovery that he visited his father once in this entire time. It was a five-minute visit in 1998. The respondent did not attend his father's funeral.

8. The applicant Marion Demosky contacted the respondent's brother Howard to ask whether either he or the respondent would take on the role of acting as the attorney for their father; Howard and the respondent failed to do so. With the assistance of the solicitor, Lewis J. Bridgeman, Bill prepared and executed a power of attorney in favor of the applicant Marion Demosky dated January 18, 1996 ("the POA"). The applicants are not aware of Bill or anyone on his behalf terminating or purporting to terminate the POA.

9. Pursuant to that legal authority, the applicant Marion Demosky acted as Bill's attorney to manage his financial affairs. The applicant Mike Semenoff assisted her in fulfilling those duties. Both of the applicants acted honestly, diligently and in the best interests of Bill and his future estate to see to the payment of legitimate expenses attributable to Bill. The applicants did not take advantage of Bill or misuse his savings or property for their own benefit. The payments made from Bill's bank account(s) were for his personal care, his residency, insurance, property taxes, utilities and other appropriate items. These included Bill's funeral and related expenses and the maintenance of Bill's interest in the Ootischenia property and his residence on that property.

Prior to going into extended care, Bill resided on the Ootischenia property in the former home of the parents of the applicants, Steve Semenoff and Bill.

10. Bill had no assets to speak of other than the registered interest in joint tenancy he held with the applicants and Steve Semenoff in respect of the Ootischenia property. Bill's sole sources of income were Canada Pension Plan and Old Age Security benefits. During the timeframe when the applicant Marion Demosky was Bill's attorney, Bill's income ranged between approximately $13,000 and $15,000 dollars. Bill spent his income meeting his needs. There were no funds to misuse or otherwise divert to other purposes.

11. By virtue of his position as executor of Bill's estate and the Affidavit of Executor sworn to by the respondent on April 25, 2008, the respondent was aware of the nature of Bill's financial circumstances long before starting this action. In that Affidavit, the gross value of the estate of Bill Semenoff is $10,297.79.

12. Over the years as his attorney, the applicant Marion Demosky's usual practice was to see to the payment of Bill's expenses as and when they arose from her own resources, and then withdraw or transfer lump sum amounts from Bill's account at Heritage Credit Union (account 14546) from time to time to reimburse herself. If the applicant Mike Semenoff or Steve Semenoff paid an expense of Bill's, Mrs. Demosky would see that they too were reimbursed. Until mental frailty precluded it, Mrs. Demosky made every effort to speak to Bill so that he knew the expense would be paid by her from his account.

13. The applicant Marion Demosky's usual practice over the years as Bill's attorney was conservative in that she did not seek reimbursement for such items as mileage for her travel from Grand Forks to visit Bill when he was in extended care in Trail and Castlegar. She never charged a fee for acting as Bill's attorney.

14. The transfers or withdrawals are accurately recorded in the accounting that was prepared by Yule Anderson, Chartered Accountants. That accounting was served on the respondent on April 24, 2013. Copies of statements of accounts, receipts, journal vouchers, deposit slips and other back up

pertaining to the transactions were included in the defendant's list of documents, which was served on the respondent on July 19, 2012.

15. Since his father's passing, the respondent has brought multiple proceedings and appeals against and involving the applicants, as well as the professional who provided legal services to Bill in relation to his joint tenancy interest in the Ootischenia property.

16. The first proceeding (action number 8993) was commenced by the respondent and his brother Howard Semenoff in July of 2007 and was dismissed with costs in April of 2009.

17. The second proceeding (action number 9044) was commenced by the respondent in October of 2007 against the lawyer Mr. Lewis J. Bridgeman. The defendant third partied the applicants in November of 2011. These proceedings resulted in a 9-day trial and in June of 2013 the trial judge, with extensive written Reasons for Judgment, granted the applicant's motion to dismiss the respondent's case based on insufficient evidence. While not binding on this court, Mr. Justice McKinnon made the following observations in respect of the allegations of the respondent against the applicants in this action:

> *[37] The plaintiff is preoccupied with conspiracy theories which include claims that Mrs. Demosky abused her position of trust as Bill's power of attorney, took advantage of Bill's advancing disability for her own (and her siblings) advantage and generally acted to deprive the plaintiff and his brother of an inheritance. Indeed, the plaintiff has commenced other actions against Mrs. Demosky that make these allegations.*
>
> *[38] While it remains to be determined whether he can prove any of these claims, my assessment of Mrs. Demosky on this trial was that she is a genuinely caring person who dearly loved her brother Bill. She consistently stepped up to the plate by sacrificing her own time and money over many years, to ensure that Bill received the best of care. For a time she not only had to look after Bill but also her husband who suffered from Alzheimer's disease, which eventually caused his death. I had nothing but admiration for her efforts.*

18. In July of 2013, the respondent filed a notice of appeal seeking that a new trial be ordered with "leave to amend the pleadings and to resume the pre-trial phase of the action". In February of 2013, the court (again, with extensive written Reasons for Judgment) awarded double costs in favor of the defendant, payable by the respondent personally. The applicants' costs were ordered payable by the defendant.

19. Due to the passage of time, the respondent's appeal was retired to the inactive list. In November of 2014, the respondent brought an application to remove his appeal from the inactive list and to extend the time for perfecting the appeal. In December of 2014, Mr. Justice Frankel denied that application with Oral Reasons for Judgment. The respondent sought a review of that order before a panel of three appellate court justices; the reviewing court dismissed the respondent's application for review in March of 2015. The respondent has now filed an application for leave to appeal to the Supreme Court of Canada.

20. This third set of proceedings was brought by the respondent against the applicants in March of 2012. Counsel for the applicants attended in Vancouver to conduct the examination for discovery of the respondent Robert Semenoff in August of 2012. The applicants rely on the excerpts to be read-in from the transcript of that discovery as identified in Exhibit 3 to Affidavit #1 of Erin Peitzsche sworn July 2, 2015 as evidence in support of this application.

21. In May of 2014, the applicants' counsel attended a case management conference, which was set down unilaterally by the respondent (just prior to one year having passed with the respondent failing to take any steps), Mr. Justice McEwan presiding. No orders resulted from these proceedings. The proceedings were adjourned *sine die* subject to the respondent taking the necessary steps to progress his claim.

22. The respondent has never provided a list of documents in these proceedings.

23. The respondent has never served appointments for the applicants, or either of them, to attend for examinations for discovery.

24. For the purpose of bringing this application, the applicants filed a notice of intention to proceed on June 15, 2015 which was duly served on the respondent.

Part 3: LEGAL BASIS

1. The applicants make application for judgment on summary trial pursuant to Rule 9-7; in the alternative, for judgment dismissing the claim of the respondent pursuant to Rule 9-6; and in the further alternative, for judgment dismissing the claim based on want of prosecution.

2. Dismissal of the claim of the respondent as a result of summary trial, based on the evidence before the court on this application, would best achieve the object of the *Rules*; that being, to secure the just, speedy and inexpensive determination of every proceeding on its merits: see Rule 1-3(1)(a).

3. That object takes into account, insofar as is practicable, the court's mandate to conduct the proceeding in ways that are proportionate to the amount involved, the importance of the issues and the complexity of the proceeding: see Rule 1-3(1)(b).

4. The respondent is litigious. The issues as defined by the pleadings are straightforward, and the allegations made the respondent as regards the applicants and by extension, the various professionals, are extreme. The respondent makes these allegations based on suspicion rather than any personal knowledge of the facts. The applicants have provided an answer to the allegations. Furthermore, the respondent has failed to advance this action diligently, despite the prior proceedings.

5. The respondent was provided with an accounting prepared by a chartered accountant. The respondent has not taken any issue with the accounting or sought clarification, particulars or any additional detail with respect to any items or transactions in the accounting. The underlying documents have been listed and the list of documents served. Our office does not believe that Mr. Semenoff has attended to review and obtain copies of those documents. He

has certainly reviewed documents in our offices, but our recollection is that he did so in the other litigation.

Summary Trial

6. The court is able, based on the evidence on affidavits and discovery transcript, to find the facts necessary to decide the issues of fact and law in this case, and it would not be unjust to do so in this case given the inexcusable delay of the respondent. A dismissal of these proceedings on the merits by way of summary trial would be a fair and final way in which to bring this action to a conclusion. See: *Gichuru v. Pallai*, 2013 BCCA 60 at para. 28-35 for the endorsement of these principles by Madam Justice D. Smith, concurred in by Mr. Justice Hall and Mr. Justice Tysoe.

7. As a first proposition, the applicants apply for judgment on summary trial pursuant to Rule 9-7. Rule 9-7(2), (5) (11) and (15) provide:

Application

(2)A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following:

(a) an action in which a response to civil claim has been filed;

(b) a proceeding that has been transferred to the trial list under Rule 22-1 (7) (d);

(c) a third party proceeding in which a response to third party notice has been filed;

(d) an action by way of counterclaim in which a response to counterclaim has been filed.

Evidence on application

(5)Unless the court otherwise orders, on a summary trial application, the applicant and each other party of record may tender evidence by any or all of the following:

(a) affidavit;

(b) an answer, or part of an answer, to interrogatories;

(c) any part of the evidence taken on an examination for discovery;
(d) an admission under Rule 7-7;
(e) a report setting out the opinion of an expert, if
(i) the report conforms with Rule 11-6 (1), or
(ii) the court orders that the report is admissible even though it does not conform with Rule 11-6 (1).

Adjournment or dismissal

(11)On an application heard before or at the same time as the hearing of a summary trial application, the court may
(a) adjourn the summary trial application, or
(b) dismiss the summary trial application on the ground that
(i) the issues raised by the summary trial application are not suitable for disposition under this rule, or
(ii) the summary trial application will not assist the efficient resolution of the proceeding.

Judgment

(15)On the hearing of a summary trial application, the court may
(a) grant judgment in favour of any party, either on an issue or generally, unless
(i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
(ii) the court is of the opinion that it would be unjust to decide the issues on the application,
(b) impose terms respecting enforcement of the judgment, including a stay of execution, and
(c) award costs.

8. It is trite law that where an application for summary determination under (the former) Rule 18A is set down, the parties are obliged to take every

reasonable step to put themselves in the best position possible. A party cannot, by failing to take such steps, frustrate the benefits of the summary trial process. Where the application is brought by a plaintiff, the defendant may not simply insist on a full trial in hopes that with the benefit of *viva voce* evidence, "something might turn up". The same is true of a plaintiff where the defence has brought a motion for summary dismissal. See: *Everest Canadian Properties. Ltd. v. Mallmann*, 2008 BCCA 2275 at para. 34 as per Madam Justice Newbury, as cited in *Gichuru v. Pallai, supara*, at para. 32.

9. In the seminal decision of the British Columbia Court of Appeal in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) the Chief Justice identified a number of relevant factors to consider (at p. 215):

> In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, inter alia, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

10. To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: Dahl v. Royal Bank of Canada et al., 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.

11. In *Lougheed v. Wilson*, 2014 BCSC 2073 at para. 83, Madam Justice Dardi was mindful of the recent decision of the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7. Here, the Court endorsed the notion that, in the Canadian legal landscape, summary disposition mechanisms are an integral and necessary element of ensuring access to justice. Notably, the decision addressed the summary judgment rules of Ontario, which are differently worded than the rules in British Columbia. Mr. Justice Ehrcke, in *N.J. v. Aitken Estate*, 2014 BCSC 419, concluded that *Hryniak* does not

change the approach to the suitability analysis in British Columbia and that trial judges should continue to be guided by the jurisprudence from our Court of Appeal but with the following consideration of the balance between proportionality and efficiency with the necessity of ensuring a fair and just process (*Aitken*, at para. 33).

> [84] Nevertheless, it is important to recognize that the Court in *Hryniak* affirmed that the trial judge, in undertaking the suitability determination, must always balance proportionality and efficiency with the necessity of ensuring a fair and just process. The *Hryniak* decision recognized that a summary process which does not lend a trial judge confidence in his or her conclusions can never be viewed as proportionate. Moreover, the Court cautioned that the adjudication of complex claims may not be amenable to summary procedures:
>
> > [32] This culture shift requires judges to actively manage the legal process in line with the principle of proportionality. While summary judgment motions can save time and resources, like most pre-trial procedures, they can also slow down the proceedings if used inappropriately...
> >
> > [33] A complex claim may involve an extensive record and a significant commitment of time and expense. However, proportionality is inevitably comparative; even slow and expensive procedures can be proportionate when they are the fastest and most efficient alternative. **The question is whether the added expense and delay of fact finding at trial is necessary to a fair process and just adjudication. [Emphasis added.]**

12. The chambers judge is not obliged to remit a case to the trial list just because there are conflicting affidavits. While he or she should not decide an issue of fact or law solely on the basis of conflicting affidavits, it may be the case that, notwithstanding sworn affidavit evidence to the contrary, other admissible evidence will make it possible to find the facts necessary for judgment to be given.

13. This matter is suitable for summary trial at this stage of the action. Based on the affidavits and discovery transcripts, the court can find the facts necessary to determine the legal issues in this case. The applicant Marion Demosky was granted a POA by Bill and was thereby authorized to participate in the financial affairs of Bill pursuant to that authority. All transactions involving Bill's bank accounts for the relevant time period have been fully accounted for with the assistance of the chartered accountant.

14. The evidence is that the applicants only ever acted in a diligent and honest manner to pay for legitimate expenses of Bill's after his decline in health. There is no basis for the allegations of conspiracy and cover up involving professionals who were hired by the applicants with Bill's money to mislead the respondent.

15. Further, given the size of the estate, the delay on the part of the respondent, and the age and limited means of the applicants, it is just and appropriate to proceed by way of summary trial rather than a conventional trial.

Summary Judgment

16. As a secondary proposition, the summary judgment procedure is also available to the court in order to dismiss this claim. As it has been pleaded, there is no genuine issue of material fact requiring trial. This claim has no real prospect of success and should not proceed to trial. As stated in *Canada (Attorney General) v. Lameman*, 2008 SCC 14 (CanLII), [2008] 1 S.C.R. 372 at para. 10, it is essential to justice that claims disclosing real issues proceed to trial - however:

> The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. Trying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system. It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage.

17. The Court also noted at para. 11:

> [T]he bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial" ... If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal ... The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts ....

18. The applicants apply for a summary judgment for dismissal of the claim of the respondent, which is an application provided for under Rule 9-6; specifically, Rules 9-6(4) and (5):

> *Application by answering party*
>
> (4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.
>
> *Power of court*
>
> (5) On hearing an application under subrule (2) or (4), the court,
>
> (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
>
> (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference to an accounting to determine the amount,
>
> c) If satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
>
> d) May make any other order it considers will further the object of these Supreme Court Civil Rules.

19. Rule 9-6 requires a court to grant judgment when it is satisfied there is no genuine issue for trial with respect to the plaintiff's claims. Mr. Justice Pearlman in *Leger v. Metro Vancouver YWCA*, 2013 BCSC 2021 recently

summarized the principles to apply on a summary judgment application at para. 16:

> ...An application under Rule 9-6 asserts that the claim or defence is factually without merit. It differs from Rule 9-5, where the pleadings are attacked on the basis that the action or the defence, as the case may be, cannot succeed as a matter of law: *Drummond v. Moore*, 2012 BCSC 496 (CanLII). The test for summary judgment is whether there is a *bona fide* triable issue to be determined: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 (CanLII). The court must be satisfied that it is plain and obvious or beyond doubt that the action will not succeed. If the court is left in doubt about whether there is a triable issue, the application should be dismissed: *Progressive Construction Ltd. v. Newton* (1980), 1980 CanLII 493 (BC SC), 25 B.C.L.R. 330 (S.C.).

20. In *Skybridge,* at para. 10, our Court of Appeal held that a judge hearing an application under the summary judgment rule must "examine the pleaded facts to determine which causes of action they may support; identify the essential elements required to be proved at trial in order to succeed on each cause of action; and determine if sufficient material facts have been pleaded to support each element of a given cause of action."

21. The facts as pleaded are with respect to transactions involving the deceased's accounts and payment to third party professionals. (See the amended notice of civil claim filed December 24, 2012, Part 1: Statement of Facts).

22. The respondent asserts that "the defendants dishonestly took advantage for their own benefit" (see the amended notice of civil claim, Part 1: Statement of Facts, para. 9). He also asserts that the applicants used money of the deceased to pay for professional services "to coverup and otherwise evade liability for their wrongs" (see Part 1: Statement of Facts: para. 9(g)).

23. There is no genuine issue for trial related to the allegation of "dishonestly taking advantage of" or the allegation of "coverup" involving third party

professionals. There is no basis for an allegation of dishonesty of any sort against Marion Demosky and Mike Semenoff.

24. There is also no basis for the allegations that the applicant hired:
    a) the accountant Mr. Yule "to do a misleading accounting";
    b) the lawyer Mr. Gibson "for advice to avoid Bill's 1987 contractual rights against the siblings or for advice as to how Marion might avoid liability for such exercise of authority..."; or
    c) the lawyer Ms. Herbert "to threaten Bill's sons with trespass and then to sue (by counterclaim) the estate for compensation for provision of services to Bill".

25. The respondent alleges fraud with reference to the Criminal Code (see Part 3: Legal Basis, para. 2) and some sort of accountability on the part of the applicants based on the law of agency (see Part 3, Legal Basis, para. 1). There is no basis for the allegation of fraud or the unknown cause of action the respondent purports is based on agency (which is not particularized).

26. This claim is factually without merit and there is no *bona fide* triable issue with respect to this claim, such that this action should be dismissed pursuant to Rule 9-6.

Dismissal for Want of Prosecution

27. Pursuant to Rule 22-7 (7) there has been a want of prosecution in this proceeding on the part of the plaintiff to warrant that the proceeding be dismissed.

28. The respondent has failed to advance his claim in a diligent and timely fashion. The respondent lay dormant in these proceedings for a year and then filed a notice of intention to proceed immediately before bringing the application for the case management conference.

29. During that hearing, the respondent received direction from the court regarding complying with the *Rules*, the detailed accounting that had been

provided to him a year earlier with respect to the subject matter of his claim, and his obligation to advance his claim in a timely manner.

30. The respondent has not served a list of documents. He has not served appointments for examination for discovery of the applicants. His extreme allegations of fraud and dishonesty, and cover up involving professionals remain untested, after having initiated these proceedings in March of 2012. The history of these proceedings warrants dismissal of this action based on want of prosecution.

31. In *Gemex Developments Corp v. Sekora*, 2011 BCSC 318, Madam Justice Smith set out the principles governing the exercise of the court's discretion to dismiss proceedings for want of prosecution. She observed, at para. 16, that the "overriding principle is that the dismissal of an action without permitting it to be heard on its merits is a drastic measure, to be taken only when it is clearly required in the interests of justice."

32. She noted that there are four questions to be addressed in an application to dismiss for want of prosecution:
    1. Has there been inordinate delay on the part of the plaintiff in pursuing its claim?
    2. Has the delay been inexcusable?
    3. Has the delay caused serious prejudice, or is it likely to cause serious prejudice to the defendants?
    4. Does the balance of justice require an order dismissing the plaintiff's claim?

33. Where the allegations go a defendant's character and credit, there is a particular onus on the plaintiff to proceed with appropriate expedition and diligence: *Vic Van Isle Construction Ltd. v. Lomenda*, [1999] B.C.J. No. 3032 (S.C.).

34. In describing what will constitute inordinate delay, Madam Justice Smith, in *Gemex*, referred to *Osolin v. Aquila Holdings Ltd.*, [1982] B.C.J. No. 1225 (S.C.), in which Justice Tyrwhitt-Drake held that inordinate delay means

more than simple delay: "an inordinate delay must be one which strikes at the root of justice and makes a fair trial a virtual impossibility".

35. In assessing whether or not the delay is excusable, one must look at the reasons for it in all of the circumstances. Until a credible excuse is made by the plaintiffs, the natural inference to be drawn from an ordinate delay is that the delay is inexcusable: *Irving v. Irving*, (1982), 38 B.C.L.R. 318 (C.A.).

36. Once an inexcusable delay has been established, a presumption of prejudice arises. The burden shifts to the claimant who must then show on a balance of probabilities that the respondent has not suffered prejudice or that it would be unjust to terminate the action, *Busse v. Robinson Morelli Chertkow* (1999), 63 B.C.L.R. (3d) 174 (C.A.), *Tundra Helicopters et al. v. Allison Gas Turbine et al.*, 2002 BCCA 145.

37. A defendant must establish that it is likely to be seriously prejudiced: *Fraser Cedar Products Ltd. v. Oceanic Underwriters Ltd.*, [1997] B.C.J. No. 837. The prejudice must be such that the defendant's ability to have a fair trial is imperiled: *Gemex*.

38. None of the above noted factors are to be considered in isolation and, in the end, the overriding consideration is whether on balance justice demands that the action be dismissed: *Irving*.

Non-compliance

39. The applicant also relies on the following:

a) Rule 22-7(2) - Effect of Non-compliance - Powers of court: The plaintiff has failed to comply with the Supreme Court Civil Rules to proceed with this action such that the court should wholly set aside this proceeding under subrule (a) or dismiss the proceeding under subrule (d).

b) Rule 22-7(5) - Consequences of certain non-compliance: The plaintiff, without lawful excuse, has refused or neglected to make discovery of

documents such that the court should dismiss this proceeding under subrule (5)(f).

c) Rule 22-7(6) – Failure to comply with direction of court: The plaintiff, without lawful excuse, has refused or neglected to comply with the direction of the court at the case management conference in this action, such that the court should dismiss the proceeding under subrule (5)(f).

Vexatious Litigant

40. The requirements for finding a person to be a vexatious litigant are set out in section 18 of the *Supreme Court Act*:

Vexatious proceedings

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

41. The respondent is a vexatious litigant, and any future proceedings should only be instituted by him or the Estate of Bill Semenoff upon application for leave of this court to do so, and only in the event the court grants that leave.

42. The respondent will not be prohibited from filing legal proceedings. However, he will need to secure the leave of a Justice of this Court in order to do so. This requirement will ensure that before he involves others in litigation, he convinces a Justice of the Court that it is appropriate to do so.

43. The series of actions and attempts to appeal on the part of the respondent have been found repeatedly to lack merit. He cannot reasonably expect to obtain relief, given that each assertion of his rights has been rejected.

44. In July of 2007 he started litigation against the applicants (along with their brother, Steve) who were, along with the deceased, joint owners of their

parents' family homestead in Ootischenia; this action was dismissed with costs by order of the court in April of 2009.

45. One month later, in August of 2007, the respondent started litigation against Mr. Lewis J. Bridgeman, the solicitor who assisted the deceased to drawing up an agreement amongst the four owners in joint tenancy in respect of the Ootischenia property. The applicants were third partied by the defendant. In February of 2013, after nine days of trial time (on an estimated four days), the respondent's case was dismissed based on insufficient evidence. The respondent appealed to a Justice of the Court of Appeal, and then applied for a review of that order of the appellate court, unsuccessfully. He has now sought leave to appeal to the Supreme Court of Canada.

46. The subject action was started in December of 2012 - prior to the 9-day trial of the action in which the applicants were third partied that took place in February of 2013, and also prior to the Reasons for Judgment of Mr. Justice McKinnon in that action which were released in June of 2013. And while the subject matter related to the transactions on Bill's account were not the subject of that action and that trial, there is some degree of overlap. The respondent again alleges the wrongdoing of various professionals that have been involved with the same subject matter: the property in Ootischenia, the deceased, and his estate - again, without foundation.

Special Costs

47. The court should order that costs of the proceeding be assessed as special costs: Rule 14-1(1)(b).

48. Special costs are in the discretion of the court and are awarded in cases where the conduct of one of the parties is "reprehensible". Mr. Semenoff has put a number of litigants to considerable expense in defending the carious actions that he has brought and in responding to his appeals.

49. The applicants have been prejudiced under the weight of the respondent's use of the judicial system and abuse of court process for the past 8 years. The expense of defending in the face of this litigation has been onerous and

deserves some measure of recovery that is more effective than the normal party and part costs in accordance with *Appendix B*.

50. Mr. Semenoff's pursuit of unmeritorious claims and his accusations of foul play, conspiracy and unethical dealings involving accountants and lawyers who dealt with the deceased and his affairs, as well as the assertion of fraud and criminal conduct on the part of the applicants, are without foundation. They are similar, and dealing with related subject matter, as the other litigation for which the respondent is responsible, and in respect of which he has failed. This history of this litigant is sufficient to justify an award of special costs.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit # 1 of M. Demosky sworn April 24, 2013;

2. Affidavit #2 of M. Demosky sworn July 2, 2015;

3. Affidavit #1 of M. Semenoff sworn July 2, 2015; and

4. Affidavit #1 of E. Peitzsche sworn July 2, 2015.

The applicants estimate that the application will take 2 hours.

[X] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: July 2, 2015

Signature of Tim Pearkes
Lawyer for the Applicants

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this notice of application

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....

.....
Signature of [ ] Judge [ ] Master

Appendix

[*The following information is provided for data collection purposes only and is of no legal effect.*]

THIS APPLICATION INVOLVES THE FOLLOWING:

[ ] discovery: comply with demand for documents

[ ] discovery: production of additional documents

[ ] other matters concerning document discovery

[ ] extend oral discovery

[ ] other matter concerning oral discovery

[ ] amend pleadings

[ ] add/change parties

[ ] summary judgment

[X] summary trial

[ ] service

[ ] mediation

[ ] adjournments

[ ] proceedings at trial

[ ] case plan orders: amend

[ ] case plan orders: other

[ ] experts

File No. 18204
Nelson Registry

In the Supreme Court of British Columbia

BETWEEN

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

APPLICATION RESPONSE

Application response of: Robert Semenoff, Plaintiff, (the "application respondent(s)")

THIS IS A RESPONSE TO the notice of application of Defendants filed 02/jul/2015.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

1. That Robert Semenoff will obtain leave of an honourable Court before commencing any proceedings against the Estate of Steve Semenoff, in order to determine the proper litigation representative, but not any imposition of vexatious litigant status.

Part 2: ORDERS OPPOSED

The application respondent(s) oppose(s) the granting of the orders set out in paragraphs 1,2,3 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent(s) take(s) no position on the granting of the orders set out in paragraphs : None.

Part 4: FACTUAL BASIS

Summary proceeding

2. Affidavit #2 of M Demosky show that funds were paid out to professionals as alleged.

3. No supporting documents have been provided (see affidavit 3 para 18). Marion has admitted to mixing funds : Affidavit of Marion Demosky #2 para 15,21,27.

4. The Ootischenia house has not had much care for many years. See affidavit 3 of RWS paras 20-29. Any work that was required was either delegated to unqualified people who did the work improperly causing damage to the house, or the work was not performed or not verified.

5. There is no evidence that Steve is an electrician or plumber or is qualified at all to do building maintenance.

6. New causes of action have arisen (maintenance/champerty, good faith contractual performance -The Supreme Court of Canada's recent guidance on the good faith doctrine). The plaintiff notified counsel of these changes and of further particulars of the assets to be accounted for. (see affidavit 1 of E Peitzsche page 142)

7. The defendants have been well aware that the 1987 agreement was considered an asset : Affidavit of Marion Demosky #2 para 19; Affidavit 3 of RWS page 15

8. Even though the specific legal effect of the agreement letter was not pleaded in the original 2007 action, in applying to dismiss that action, counsel indicated in 2009 that the agreement was aguably unenforceable (affidavit 3 para __). Over the years, the plaintiff has been able to learn the legal technicalities without the help of a lawyer (despite reasonable attempts). The plaintiff now has delivered the particulars of that asset (i.e. Bill bought lot 20 not just a future lot) see Affidavit 1 of Erin Peitzsche para ?, but the defendant refused to respond to the allegation by stating what aspect of the 1987 agreement makes it unenforceable. The amount in issue is on the order of $600,000 i.e. the value of the 4 lots created out of the lot 20 to which Bill was entitled to the whole of by the defendants failure to exercize the subdivision option, or $260,000 if the subdivision was validly exercised.

9. The defendants have taken various different positions over the years concerning the existence and validity of the 1987 agreement (see affidavit 3 para 36for a summary).

vexatious litigant?

10. The plaintiff has commenced 4 actions in his entire life, all as a result of becoming an estate executor.

11. Of the 4, the plaintiff obtained leave to commence 2 or them. Only Rossland 8993 and 9044 were commenced without leave.

12. However, In both cases, the plaintiff made extensive effortsto find facts and resolve matters out of court. In 8993, it was Mike that told Robert he should start an action. In 9044 it was the law society who suggested an action against the deceased's lawyer. (see affidavit 3 paras 30-34)

13. The plaintiff is unaware of the particulars of vexatious which are made against him.

14. Rossland 8993 was dismissed because the defendants mislead the Court (and the plaintiff) that the CPL was preventing them from exercising their subdivision option(see affidavit 3 of RWS para 41.), when in fact, they had obtained opproval (within the meaning of the 1987 agreement) in December 2005 and were simply delaying for their own advantage.

15. In response to legal basis para 33, the defendants have left the plaintiff little choice but to rely on criminal causes of action. They have changed their position numerous times and given various inconsistent evidence over the years. Their pleadings are repleat with evidence of how disgruntled they are at Bill and his sons, and which abundantly support a criminal motive. The plaintiff is prepared to exchange will-say statements and amend the pleadings.

Want of prosecution

16. The conduct of the defendants in the Bridgeman appeal (CA041029) has led the plaintiff to believe that they wanted to have their accounts passed, to give testimony in this action, and to have the plaintiff participate in this action, and to have this matter determined on it's merits after the Bridgeman appeal was dealt with, and that conduct materially contributed to the termination of the Bridgeman appeal. (affidavit 3 paras 7-10). See affidavit 1 of E Peitzsche page 142.

17. The defendant transferred this file from Vancouver to Nelson specifically because they reside closer to Nelson.

18. The plaintiff has expended much personal resources and incurred subtantial cash outlays (relative to his income) in preparation for this summary trial motion.The plaintiff is a self-represented litigant earning about $531/month (affidavit #3 para 6).

19. The defendants are advancing substantially the same case as their counterclaim (see Affidavit 3, paragraph 2) in Rossland 8993, where they were seeking an offset or quantum meruit for all their efforts and expenditures for Bill during the last stages of his life. See affidavit of Marion #2 para 5-8, 10-14.

timing

20. At the 2014 case planning conference, not only was no case planning order made, the Defendants did not submit any case plan proposal - they sent a substitute counsel (the law partner) who argued for basically a stay of proceedings pending the outcome of the Bridgeman appeal. Counsel of record, Mr. T. Pearkes, stated in email that he was busy with other cases until the fall (some 4 to 7 months away) of 2014. The defendants then opposed the continuation of the Bridgeman appeal because it would delay the prosecution of this action, and they have reiterated their desire to defend this action as recently as June 19, 2015 in their response the plaintiffs application for leave to appeal to the SCC. See Affidavit 3 para 3

21. The plaintiff has recently had his home files (where the Bill Semenoff documents were kept) involuntarily moved into a storage locker by his brother (the executor of his deceased mother) in order for the house to be sold. The plaintiffs car broke down in Nelson after serving Counsel with the notice of application for leave to appeal to the SCC and the car had to be scrapped. The plaintiff is on social assistance and finds it practially impossible to find appropriate accomodations with the $375/month maximum housing allowance.(See affidavit #3 para12)

22. The plaintiff is caught by surprise by Demosky affidavit #2 para 20 (assuming responsibility for future estate) considering previous position taken (See affidavit #3 para 33).

23. On June 19, 2015 the defendants submitted a copy of the 2014 Mike affidavit opposing the application for leave to appeal, on the basis of prejudice to this action, apparently that the appeal will distract from my prosecution of this action. See affidavit 3 para 7. In that letter, the defendants assert that the allegations here are “diverse and wide-ranging”, contrary to their assertion here.

24. The plaintiff emailed counsel in order to negotiate a mutually convenient time to apply for Counsel agreed to schedule an application to amend the pleadings at a mutually convenient time. (see affidavit 1 of E Peitzsche page 142) In preparing the application, the plaintiff found that the rules had been amended and it is now required to issue a notice of trial first.

25. The plaintiff has produces copies of all of the documents available to him, and made the originals available for inspection at his discovery in 2012.

26. The defendants have not produced all their documents for inspections, contrary to their assertion. (see affidavit 3 para 15)

Part 5: LEGAL BASIS

Summary trial & accounting

27. The plaintiff is entitled to an accounting as by defendants as attorneys, and as between vendor and purchaser (1987 agreement see affidavit 3 page 36, and proof of invalid subdivision option exercise page 51), and as between joint tenants, as from the defendants as fiduciary agents or executors de son tort.

28. InBareham v. Petersen, 1999 CanLII 1612 (BC SC) , an estate beneficiary may compell the former attorney of a deceased to account by way of an action to compell a reference to a registrar.

29. Adult Guardianship Act provides as follows:

> Transfer of property by incapable adult
>
> 60.2 (1) If an adult transfers an interest in the adult’s property while the adult is incapable, the transfer is voidable against the adult unless
>
> (a) the interest was transferred for full and valuable consideration, and that consideration was actually paid or secured to the adult, or
>
> (b) at the time of the transfer, a reasonable person would not have known that the adult was incapable.
>
> (2) In a proceeding in respect of a transfer described in subsection (1), the onus of proving a matter described in subsection (1) (b) is on the person to whom the interest was transferred.

30. Property was transfered from Bill : See para 2 herein. Affidavit of Marion Demosky #2 at para 10 identifies 1998 as the date that Bill would have been considered incapable. There is no evidence (as required by Power of Attorney Act below) to show that there was consideration, that it was valuable in the sense of being capable of attaching a dollar value to, nor that it was equal in value to the funds removed from his account.

31. Marion had power of attorney : Affidavit of Marion Demosky #2 at para 10.

32. The relevant sections of the POWER OF ATTORNEY ACT [RSBC 1996] are as follows :

> 2(2) For the purposes of this Act, if a person has knowledge of the occurrence of an event that has the effect of terminating the authority of an agent, that person is deemed to have knowledge of the termination of the authority.
>
> 10 ..."financial affairs" includes an adult's business and property, and the conduct of the adult's legal affairs;
>
> 19 (1) An attorney must ...
>
> (b) exercise the care, diligence and skill of a reasonably prudent person,
>
> (d) keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult.
>
> (4) An attorney must keep the adult's property separate from his or her own property.
>
> 42 (1) An enduring power of attorney that was validly made under section 8, before the repeal, on September 1, 2011, of that section by the Adult Guardianship and Planning Statutes Amendment Act, 2007, is deemed to be an enduring power of attorney made under Part 2.
>
> (Before 2011 repeal) 8 (1) The authority of an attorney given by a written power of attorney that (a) provides that the authority is to continue despite any mental infirmity of the donor, and (b) is signed by the donor and by a witness to the signature of the donor, other than the attorney or the spouse of the attorney, is not terminated only because of subsequent mental infirmity that would but for this Act terminate the authority. (2) The authority of an attorney given by a power of attorney referred to in subsection (1) terminates (a) on the making of an order under section 3 of the Patients Property Act, (b) on the appointment of a committee under section 6 (1) of that Act, or (c) as provided in section 19 (a) or 19.1 (3) (a) of that Act.

33. Power of Attorney Regulation

> 2 (1) An attorney acting under an enduring power of attorney must make a reasonable effort to determine the adult's property and liabilities as of the date on which the attorney first exercises authority on the adult's behalf, and maintain a list of that property and those liabilities.
>
> (2) An attorney acting under an enduring power of attorney must keep the following records in relation to the period for which the attorney is acting:
>
> > (a) a current list of the adult's property and liabilities, including an estimate of their value if it is reasonable to do so;
> >
> > (b) accounts and other records respecting the exercise of the attorney's authority under the enduring power of attorney;
> >
> > (c) all invoices, bank statements and other records necessary to create full accounts respecting the receipt or disbursement, on behalf of the adult, of capital or income.

34. Marion did not make any documentation of her expenditures on Bill's behalf :Affidavit of Marion Demosky #2 at para 15.

35. The defendant has admitted mixing funds, contrary to Trusteee Act (Affidavit of M Demosky #2 para 20,27).

36. If a fiduciary chooses to mix the accounts of the estate with his own accounts, he cannot thereby protect himself from accounting : Widdifield on Executors and Trustees, 6th ed. (Scarborough : Thomson Carswell, 2003) at 13-2.

37. A claimant is entitled to trace the wrongfully acquired assets before electing between a compensatory or proprietary remedy : Tracy v Instaloans 2011 BCCA 357.

38. Here, the Gibson opinion was paid for out of account 268151 (Affidavit 2 of M Demosky para 27), which was created and funded by a $3500 transfer from Bill's account 145466 (see affidavit 3 of RWS para 40 and page 15). The estate is entitled to the opinion (as a document, not as a professional service), or to avoid the transaction and receive compensation, and should be given (privileged or without prejudice) inspection of the document.

39. In Talbot v Marshfield (1865), 2 Dr. & Sm. 549 (Eng. Ch.) Trustees obtained legal advice to help them decide how to exercise a power given to them by the trusts under the will; this advice was for the benefit of all the cestuis que trust under the will; this advice was for the benefit of all the cestuis que trust as they all had an interest in the due administration of the trust; accordingly, the trustees were obliged to produce this opinion to the cestuis que trust; on the other hand, an opinion, obtained from a solicitor advising the trustees as to their position and how they should defend themselves in the lawsuit which followed did not have to be produced to the cestuis ques trust unless they could show that the trustee were able to charge the estate for such opinion.

40. The Supreme Court of Canada dea)t with the refusal by a trustee to provide documents on the basis of privilege in Goodman Estate v. Geffen, [1991] 2 S.C.R. 353 (S.C.C.), and concluded that solicitor/client privilege does not apply where the interests of the parties seeking the information are the same as the interests of the party who first obtained the information.

41. Here, the Gibson invoice reveals that the services pertained to the administration of the Estate of Bill Semenoff.

42. A trustee de son tort is one who intermeddles in a trust and perpetrates or participates in a breach of trust and is thereby liable as if she or he were a trustee for the breach. Knowledge of the situation is crucial in making such a person a trustee de son tort : Waters, Law of Trusts in Canada, 2nd ed. (1984), pp. 992-93.

43. Here the defendants knew that Bill died, and by operation of the Act is deemed to know that her authority terminated

44. As well as requiring a tracing of the funds in order to elect whether to avoid the transactions or affirm them (damages/disgorgement), the plaintiff will not be able to prove liability as executor de son tort without the tracing information from Affidavit of M Demosky #2 para 27. Therefore the remainder of the allegations of wrongdoing should be decided separately (assuming they are not abandoned after the tracing). The 1987 agreement should be determined after better pleadings are exchanged and in light of the tracing of Bill's funds if they were spent pursuant to the 1987 agreement.

45. As to determination of whether a person is a constructive trustee or trustee de son tort, see MacDonald v. Hauer (Sask. C.A.).

46. In this case, the plaintiff has done most of this work and narrowed the transactions to a small handfull and identified them with utmost specificity. That the defendant cannot even think of a single example of what a typical expense might have been, and considering the plaintiffs first-hand evidence of the state of the house in 2007 (affidavit 3 or RWS paras 20-29), the only inference available is that the funds were

part-performance of the 1987 agreement. By the doctrine of Affirmation, the defendants are estopped from denying the efficacy of the 1987 agreement.

47. The onus is the fiduciary agents to produce the actual receipts and vouchers in evidence, see generally Widdifield, supra. See also Snell v Farrel 1990 SCC as to adverse inference.

1987 agreement

48. It is trite law that fiduciaries are bound to avoid and to disclose conflicts of interest. They are the counterparties to the 1987 agreement and withheld supporting evidence in favour of the Estate. Alternatively :

49. The 1987 agreement sets out a mechanism to determine the price. It is not a condition of the agreement but sets out how it is to be carried out. Bill paid more than the BC Assessment value (see affidavt 3 paras 29,39 shows that the parties did not bother with the expense of an additional appraiser, and that Bill reasonably expected the other parties to initiate another appraisal , since that could only be for their benefit. A court may operate the price determination mechanism if some of the parties refuse to co-operate. A party may not rely on their own lack of performance to avoid a contract. Any ambiguities resolve against the defendants since the 1987 agreement was Mike's idea to terminate Bill's investment in Taghum (affidavt 3 of RWS para 15.

50. Rossland 8993 was dismissed because the defendants mislead the Court (and the plaintiff) that the CPL was preventing them from exercising their subdivision option(see affidavit 3 of RWS para 41.), when in fact, they had obtained opproval (within the meaning of the 1987 agreement) in December 2005 and were simply delaying for their own advantage.

51. In paragraph 13, if it is true she did not charge a fee and did charge Bill for the land taxes, it means the transfers to 214403 (affidavit 3 page 16and other moneytary reliance by Bill were part performance of the 1987 agreement, or, evidences an affirmation, or estops the defendants from deny the efficacy of the 1987 agreement.

52. Alternative, this issue be decided later and that the parties meantime exchange particulars of the legal basis pertaining to the 1987 agreement.

Pleadings -1987 Agreement, particulars, Maintenance etc

1. The CJRWG has identified the narrowing of issues as a key component of keeping litigation costs down.

2. The SCCR specificallly provide that a bare denial of a contract is insufficient (Superme Court Civil Rule 3-7(16)) . Although there may be circumstances where more general pleading can be effective in arriving at the real truth, this is not one of those circumstances. The 1987 is fraught with difficulty and the plaintiff cannot anticipate every argument that might be raised against it.

3. The SCCR now require the issuance of a notice of trial before amendment.

1. The proper interpretation of the recent rules amendment is that summary trials are not available where amendments to the pleadings are required. The plaintiffs pleading does not particularize the 1987

agreement but it is a mere irregularity and the defendants are well aware of the issue. The plaintiff, being self-represented needs to gather the argument and must know specifically what legal point are going to be disputed

2. Although the Hryniak decision was a decision arising from summary trials in Ontario, the binding principle now is that the most torturous proceedure is not the most favoured. Here, the least expensive course is to blend the accounting and discovery steps as was done in *Instaloans*. Requiring the plaintiff to make separate applications for disclosure would be torturous within the meaning of Hryniak. and that parties would have to make unreasonable sacrifices (see for example affidavit 3 of RWS para 12. Here, the plaintiff recieved $521/month income(affidavit 3 of RWS para 6). It is not reasonable to expect a self-represented estate executor to conduct 2 appeals, and learn the law in order to administer a complex estate involving staunchly uncooperative parties, and to do so with the same level of despatch as an experienced lawyer or a well-heeled party.

3. In response to legal basis para 11 :

4. A trial can nonetheless be even more efficient than an summary trial because directions can be given at a trial management conference that evidence be in the form of agreed documents and by way of admissions.

5. Efficiency is subject to the needs of self-represented litigants : (citation : justice transparency act 2013 s...)The determination of a remedy cannot be severed if the issue of the 1987 agreement turns on Bill "maintenance expenses" and other evidence of detrimental reliance or part-performance reliance on the 1987 agreement.

6. It is unclear how much evidence and argument is required in order to prove the 1987 agreement. If the defendants dispute the enforceability of the agreement it will require much more argument which is required before any time estimates to schedule the summary trial.

7. In response to para 13 : the chartered accountant evidence is inadmissible, an an expert report, or as irrelevant, or as hearsay. The content of a attorneys account should be analogous to that of an estate executor, as described in Widdifield, supra.

8. The BC Evidence Act precludes any finding on the basis of self-serving evidence, against a person of unsound mind which is broadly defined (mental health act? s__) as a person who is unable to communicate and logically includes a deceased person. This is consistent with the codes In many other Canadian jurisdictions, which expressly require corroboration of evidence against the interests of a deceased.

9. In response to para 14: There is no allegation of conspiracy, nor is it necessary to impute any wrongdoing to the professionals. The professionals are named as a matter of clarity and particularity of pleading.

10. In response to para 21 : The executor contacted Mike and Marion and Steve in 2009 by phone after leave was given to commence a new action, in order to find out what their position would be in regards to fiduciary claims against them. Marion in particular, strongly denied any fiduciary undertaking and asserted unequivocally that she only undertook Bills personal care. It would have resulted in unnecessary complexity and delay pursuing fiduciary obligations. Marion affidavit evidence date June 2 2015 is entirely unexpected and the summary should postponed pending amendments to the pleadings.

11. In response to para 23: Dishonesty means asserting something you know is untrue. The defendants have disclosed a invoice from lawyer Gibson showing payment from Billès account, yet the opinion letter mentioned in the invoice has been claimed privileged. Marion surely knows that the opinion belongs to Bill and yet is claims it for herself. Marion terminated her authority at the Heritage Credit Union by delivering a copy of Bills death certification (see Affidavit of RWS #2 April 16 2013 para 7)

12. In the alternative to the claim that the 1987 agreement cannot be decided in a summary way at this hearing, it is submitted that the adverse inference to be taken from the nondisclosure of the Gibson opinion is that is reveals that the payments from Bills account into the joint account 214403 (affidavit 3 of RWS para 18) was part performance of the 1987 agreement estopping the defendants from avoiding honouring the agreement due to any alleged gaps in the written instrument :Sunshine Ridge Properties Ltd. v. Nanaimo (City) (1994), 1994 CarswellBC 422 (B.C. C.A.) (defendant, by continued affirmation of land use contract for several years, unable to rely on right to cancel on basis that time of essence; conduct also precluding reliance on failure to develop land in accordance with contract);

vexatious litigant

13. A vexatious litigant order is premature. If the appeals succeed, there is no procedural facility to reverse the order.

14. An application to appoint a representative for the Estate of Steve Semenoff would be required in any event, therefore the vexatious litigant order being sought is completely redundant.

15. The Act requires more than simply lack of success in litigation.

16. The requirements of vexatiousness can only apply to 2 actions commenced. This is not enough ligitation activity to satisfy the requirement of repeatededness. The requirement of “habitual” vexatious litigation cannot be satisfied where there is the absence of evidence of knee-jerk recourse to the legal system, of which there is no evidence. Alternatively, the “habitual” element is shown to be absent where the litigation was only taken as a last resort, for which the plaintiff has provided evidence.

17. The 2012 action is under appeal (CA040330). The plaintiff was ready to proceed with the Appeal in 2013 however the defendant there did not not want to go ahead with it, no doubt because there is no defence possible. To this day, the Registrar has not set the appeal down for hearing despite several requests, and the respondent has not filed a factum. The outcome of that appeal will affect the evidence here.

18. The plaintiff, despite being self-represented and having been thrust into litigation by the deceased’s estate plan, has done not much worse than many lawyers, and demonstrated much improvement in skillfullness and efficiency.It would not be just to punish someone for a mere lack of pleading skills demonstrated nearly 8 years ago. The Limitation Act applies here.

19. In response to legal basis para 4, the applicants own evidence is to the contrary. The affidavit #2 filed in 2013 shows the history of informal demands going back to 2006, all of which have gone unanswered, leaving the plaintiff with no recourse.

20. In response to legal basis para 5, the plaintiff did attend at Counsel Nelson office to inspect documents. Erin Petsche (legal assistant) advise that certain documents were not available at the office because they had been taken away by Ahna Fernandez (law partner) to Vancouver and the the plaintiff would have to request when being examined by Ms. Fernandez. However, at the examination, Ms. Fernandez did not have the documents.

want of prosecution

21. Here the plaintiff, an estate executor and beneficiary received no case planning directions from the Court in 2014. He had a reasonable expectation for the Court the assist, or alternatively had a legitimate expectation that this case should be put off for the time being.

22. In Re MF Global UK Ltd (in special administration) [2013] EWHC 1655 (Ch) : Court's have inherent equitable jurisdiction, in relation to dealing with beneficiaries rights, and the court will provide effective assistance, by arriving at a practical and fair outcome, while ensuring that delay and costs are kept to a minimum :

23. Alternatively, the lack of case plan order postpones the running of time, being a stay of proceedings in effect. Or, it is the excuse for the delay.

24. Much of the following comes from McLachlin BM, Taylor JP, "Civil Rules 22-7(7) General Principles" in British Columbia Practice, Vancouver: Butterworths; 1979

25. The lack of prosecution of the defendants counterclaim excuses the plaintiff's delay : Murrin Construction Ltd. v. All-Span Engineering and Construction Ltd., [2012] B.C.J. No. 1376, 2012 BCCA 251 .The defendants have an outstanding counterclaim in which the have taken no steps since 2006. (see facts, para 19 herein)

26. If after the plaintiff has been guilty of unreasonable delay the defendant so conducts himself as to induce the plaintiff to incur further costs in the reasonable belief that the defendant intends to exercise his right to proceed to trial notwithstanding the plaintiff's delay, he cannot obtain dismissal of the action unless the plaintiff has thereafter been guilty of further unreasonable delay : Pacific Hunter Resources Inc. v. Moss Management Inc., [2004] B.C.J. No. 111, 23 B.C.L.R. (4th) 154 (C.A.)

27. The Court of Appeal in CA041029 refused to allow the plaintiffs appeal to continue predominantly because of the defendant Mike Semenoff expression of desire to go on with this litigation. If Mike had deposed that he intended to simply apply to have this action dismissed for want of prosecution, then his argument of prejudice in the Court of Appeal would have had much less force. By Mike's course of action he has effectively elected to defend this litigation and he is estopped from claiming otherwise. See factual basis herein paras 16-19

28. If the plaintiff was mistaken in his interpretation of why Mike wanted the Bridgeman appeal to go away, then Mike surely knew of that mistake and said nothing. As a litigant he is under a duty to submit relevant evidence and cogent arguments.

29. In this case, the plaintiff reasonably assumed that the defendants wanted the CA041029 appeal dismissed so that the plaintiff would have time to pay attention to this litigation, and that they transferred the file to Nelson because they wanted to participate personally in the Court process. The plaintiff has incurred costs in reliance on the reasonable belief that there would be a trial on the merits involving the Defendants answering further questions put to them by the plaintiff.

30. In PMC Builders & Developers Ltd. v. Country West Construction Ltd., 2009 BCCA 535, at para. 27 the court stated that the leading cases on dismissal for want of prosecution suggest that

> "a chambers judge charged with the hearing of an application for dismissal for want of prosecution is bound to consider the following: (1) the length of the delay and whether it was inordinate; (2) any reasons for the delay either offered in evidence or inferred from the evidence, including whether the delay was intentional and tactical or whether it was the product of dilatoriness, negligence, impecuniosity, illness or some other relevant cause, the ultimate consideration being whether the delay is excusable in the circumstances; (3) whether the delay has caused serious prejudice to the defendant in presenting a defence and, if there is such prejudice, whether it creates a substantial risk that a fair trial is not possible at the earliest date by which the action could be readied for trial after its reactivation by the plaintiff; and (4) whether, on balance, justice requires dismissal of the action".

The court stated that the fourth question encompasses the other three and is the most important and decisive question. See too; Murrin Construction Ltd. v. All-Span Engineering and Construction Ltd., [2012] B.C.J. No. 1376, 2012 BCCA 251, at para. 6, where it is stated that "[t]he proper approach to an application to dismiss for want of prosecution is set out" in PMC Builders & Developers Ltd. v. Country West Construction Ltd., supra, and the four there said required considerations are set out :

31. The matters are complex because the money transactions are tied to the house, which is the subject of a written purchase contract. All of these matters span over 20 years, and the defendants have taken different positions depending on what is being alleged and which party they are defending. The matter is further complicated by recent Supreme Court decision concerning good faith contractual performance, which may provide a separate right of action.

32. The defendants give no evidence of serious prejudice to the defense of their case. Whatever memory that is now unavailable, has been lost many years before this litigation commenced. Although memories may have faded the Power of Attorney Act requires proof by specific kinds of documentation. There is no suggestion that these documents are lost or any excuse for losing them.

33. Any prejudice will only be material to the extent that it was caused by the plaintiff's inordinate delay, not by other events: PMC Builders & Developers Ltd. v. Country West Construction Ltd., [2009] B.C.J. No. 2350, 100 B.C.L.R. (4th) 252, 2009 BCCA 535, at para. 19.

34. In Hanna 's Construction Services Ltd. v. Blue River, Inc., [2006] B.C.J. No. 607, 31 C.P.C. (6th) 231, at para. 22 (C.A.) the defendant delayed filing a defence and the court found that "the ball was in the defendant's court until a statement of defence was filed". Here the defendant knows that the plaintiff considers the 1987 agreement as part of the asset, yet refused to plead the legal basis to the enforceability

35. Similarly here, the defendants could simply have applied to pass their accounts. Even if that were not the case, the justice reforms place a greater emphasis on voluntary disclosure. The defendants can not relying on their own unco-operativeness. The defendant pleading that Bill's interest in the house was merely as a joint tenant amounts to a bare denial of a contract. This pleading does not comply with the rules of court nor with the principle set out in Rick v Brandsema to the effect that parties should plead their version of events. The ball has been in the defendants courts concerning disclosure of evidence and pleading with particularity.

36. In response to paragraph 33, the responsibility for the delay belongs to the defendants. The defendants onus of disclosing documents under Part 7 is phrased in mandatory language, and is not subject to the plaintiff giving a demand (as in the pre-2008 court rules) or bringing an application as these provisions use permissive language. The 1987 documents pertaining to the Taghum development which was the apparent genesis of the 1987 agreement is important to the plaintiff's case. The defendants cannot rely on their own tactical nondisclosure and impute their own delay to the plaintiff.

37. The only admissible evidence before the court as to what transpired at the 2014 case planning conference is that of the plaintiff, which is that this action was effectively stayed pending the outcome of the Bridgeman appeal. An application to dismiss for want of prosecution seeks a final order may not rely on any affidavit hearsay evidence by the applicant, although the respondend may do so : Northland Road Services (Quesnel) Ltd. v. British Columbia (Minister of Transportation & Highways), [2001] B.C.J. No. 1435, 2001 BCSC 937

Part 6: MATERIAL TO BE RELIED ON

1. Affidavt #2 of Robert Semenoff made on April 16, 2013

2. Affidavit #1 of Robert Semenoff made August 7, 2013
3. Affidavit #2 of Marion Demosky #2 made July 2 2015
4. Affidavit #1 of E Peitzsche made July 2 2015
5. Affidavit #3 of Robert Semenoff, made July 15 2015
6. Case Plan Proposal filed 2014.

The application respondent(s) estimate(s) that the application will take 2 hours.

[X] The application respondent has filed in this proceeding a document that contains the application respondent's address for service.

[ ] The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is: .....

Date: .....15/jul/2015....

Signature of application respondent
Robert Semenoff

3305 Sion Frontage Road,
Grand Forks, B.C. V0H 1H2

September 25, 2015

Supreme Court Civil Registry,
Nelson, B.C.

Dear Registrar,

1. Please accept this correspondence, including the following pages, pursuant to SCCR 5-4(1)(ii) .
2. I am the applicant for an amendment to case plan order.
3. I have served the following pages by way of email to the defendants counsel.
4. I have not recieved a response to those documents within 7 days after the date of service.

Sincerely,

Robert Semenoff,
Executor of Bill Semenoff (Estate)

File No. 18204
Nelson Registry

In the Supreme Court of British Columbia

BETWEEN

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

REQUISITION- GENERAL

Filed by: Robert Semenoff, Executor, Estate of Bill Semenoff

Required: Amendment to case plan order

This requisition is supported by the following:

1. Pursuant to SCCR 5-4(1)(b)(i)(A) a letter directed to the registry, identifying the judge or master who made the case plan order and setting out the requested amendment and the basis for the request; see page 2

2. Draft proposed amended pleading, page 4

3. Amended case plan order, page 10

Date:14/SEP/2015

Signature of filing party
Robert Semenoff

3305 Sion Frontage Road,
Grand Forks, B.C. V0H 1H2

September 15, 2015

Supreme Court Civil Registry,
Nelson, B.C.

Dear Registrar,

1. In May of 2014 Mr. Justice McEwan presided at a case planning conference in this action, and allowed applications to be made in writing pursuant to SCCR 8-6 but did not provide directions as required by SCCR 8-6(1)(a)(i) "...respecting the application, including directions respecting (i) the documents to be filed in support of the application...".
2. I am seeking an amendment to the case plan order to provide those directions, including the issues to be addressed in the supporting affidavit if any is required.
3. The application will be to amend the pleadings (see proposed amendment attached herein) to include particulars of the 1987 agreement (concerning ownership of the deceased's house).
4. The defendants previously wanted this issue postponed pending a related action against the deceased's lawyer.
5. The application for leave to appeal to the Supreme Court of Canada in the related appeal has now been dismissed.
6. I am the executor of the Estate of my deceased father Bill Semenoff, and am also relying on the Trustee Act s80.
7. I have numerous litigation tasks (including possibly re-opening the solicitor negligence claim) and very limited resources. I need directions as to prioritizing steps to be taken.
8. A summary trial application was heard on July 20 2015 in Semenoff v Demosky et al. The judge reserved his decision.
9. I am uncertain as to should I wait for the summary trial decision, file a new action regarding the 1987 agreement, or apply in writing to amend the pleadings ?
10. If I should amend, what evidence should go into the supporting affidavit ?
11. I believe the limitation period has been postponed due to wilful concealment. I also believe that if I am required to address too much of the evidence concerning the concealment it may prejudice my ability to obtain truthful discovery.
12. Alternatively, if this action cannot be amended, then directions as to material to be provided in support of application for leave to commence new action to bring my father's house or it's value into the estate.

Sincerely,

Robert Semenoff,
Executor of Bill Semenoff (Estate)

AMENDED __/__/__ WITH LEAVE
PURSUANT TO RULE 22-7(2)(c) OF THE SUPREME COURT CIVIL RULES- and section 4(4) of the LIMITATION ACT RSBC 1996

No. 121760
Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN:

Robert Semenoff, Executor, Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

AMENDED Notice of Civil Claim Original filed on 8/March/2012

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

1) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

2) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGEMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

1. if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
2. if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
3. if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
4. if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1 : Statement of Facts

1. The Plaintiff Robert Semenoff ('Robert") is the executor of the last Will and Testament ("the Will") dated February 13 1990 of Bill Semenoff ("Bill"), deceased who died on September 15, 2006.
2. Probate of the Will was duly granted to the Plaintiff Robert Semenoff ("executor") out of the Chilliwack Registry on May 14 2008, now filed in the Rossland Registry.
3. The defendant Mike Semenoff ("Mike") resides at 2433 9th Avenue in Castlegar BC.
4. The defendant Marion Demosky ("Marion") resides at 4790 Centre Road in Grand Forks, BC.
5. The Defendants are the siblings of the deceased, and are retired.
6. About 1994 the deceased, due to age-related health problems, entrusted the care of his personal assets to the defendants.

7. The defendants undertook the care of the deceased's assets ostensibly for the exclusive benefit of the deceased, since about 1994, and for his Estate after his death, to the present.

   (a) Mike, in particular,

      i. in 1998 sought legal advice from Lewis Bridgeman for Bill ;
      ii. In 1987 as investment advisor in connection with house purchase;
      iii. In 1994 brokering bank loans, negotiating ICBC issues
      iv. from 1998 to 2007 retained bank records and safekeeping of documents from safety deposit box

8. In about 1996, the defendant Marion Demosky was granted power of attorney for the deceased.

   (a) Marion used the power to obtain legal advice on behalf of Bill in 1996
   (b) Marion knew in 1998 that Bill wanted his sons to inherent everything of his, and that that included the house by way of the 1987 agreement and his retainer of the Lawyer.

9. The defendants dishonestly took advantage for their own benefit : (Further particulars are within the peculiar knowledge of the defendants)

   (a) Marion Demosky gave to Mike Semenoff pre-signed cheques on Bill's credit union account;
   (b) which Mike used to diminish Bill's funds contrary to Bill's interests.
   (c) Mike misdescribed the purpose in the the memo field of the cheque, to mislead or frustrate accounting.
   (d) Marion shuttled Bill's funds among a number of accounts in order to frustrate accounting.
   (e) Rent from Andy was not collected, since about 1998. Andy parked a mobile home in back of Bill's home property from around 1995 and the defendants knew about and undertook to continue the arrangement whereby Bill and Andy were splitting the property taxes.
   (f) Property tax credits or exemptions on Bill's house were claimed, but not for Bill.
   (g) The defendants knew they had wrongly taken advantage of Bill and then used that money of Bill's to pay for professional advice and services to coverup and otherwise evade liability for their wrongs, particulars as follows :

      i. Geoff Yule was paid around 2006 and 2007
         A. to do a misleading accounting of Bill's assets to show that Bill actually owed them money.
         B. Alternatively, the fees were intended to buy Mr. Yules loyalty and intentionally to persuade him from testifying or disclosing inculpatory facts he knew about the handling of Bill's assets by the siblings.
      ii. Gibson
         A. for advice to avoid Bill's 1987 contractual rights against the siblings, or for advice as to how Marion might avoid liability for such exercise of authority which she knew she did not have, advice which was obtained using a falsified Will or other documents concealed, falsified, or otherwise presented misleadingly.
      iii. Deirdre Herbert
         A. was paid in 2007 with Bill's money in order to threaten Bill's sons with trespass, and then to sue (by counterclaim) the estate for compensation for provision of services to Bill.
         B. The siblings knew at all times the allegations were without any merit, but were advanced to pressure the sons into accepting a settlement on different matters.

   (h) Alternatively, the siblings obtained from these professionals other valuable information or advice which the siblings are liable to disgorge in substitution for Bill's money which went to pay for that information or advice.
   (i) Marion or Mike wilfully defaulted in failing to obtain for Bill legal advice from Lawyer Lewis Bridgeman in connection with the subdivision and the 1987 agreement.

10. Which caused as follows;

11. The plaintiff lost, and the defendants gained, wrongfully, cash and property of the plaintiff.

(a) The estate agreed to generously compensate one executor to take on the risks of the litigation, which it would not have otherwise done but for the conversion, bad faith and other wrongs of the defendants.

12. The defendants have failed to account for the benefits and property they have taken, or to account sufficiently or adequately at all. In particular as follows with further particulars to be discovered :

(b) ON September 14 2006 defendant Marion Demosky withdrew $3500 in case from Hertitage Credit Union account 145466 (“145466”)

(c) On Oct 18 2006 defendant Marion Demosky transferred another $3475 from 145466.

(d) Jan 17 2004 transferred $3000 out of 145466.

(e) February 11,2005 transferred $5000 out of #145466

(f) On December 23 2000, cheques #282,283,284 in the amount of $1000 each drawn

(g) May 10 2005 cheques #52,#53,#54, $500 each from HCU acct#145466.

(h) Jan 16 2003, cheques #297,#298,#299, in the amount of $500 each from HCU acct#145466

1987 House purchase

13. Around April 1987 the defendants agreed in writing to sell Bill the house legally described as Lot 20, district lot 4598, kootenay district ("the house"), with option-back to the defendants to subdivide Lot 20 and take bare lots for themselves.

14. Alternatively, the defendants agreed to sell Bill the house after the land was subdivided.

15. The option or requirement to subdivide was conditional on the obtaining of whatever water supply was satisfactory to the relevant authorities.

16. Mike or the defendants undertook, and succeeded in solving the water supply sometime between 1987 and 2007, within the peculiar knowledge of the defendants.

17. The defendants failed to disclose to Bill or his representative the relevant facts.

18. It was implied that the option to subdivide included the duty to obtain such restrictive covenants as might be required, which the defendants failed to obtain.

19. The defendants did not exercise their option to subdivide within a legally reasonable time or in accordance with the agreed manner of subdivision, and failed to deliver Lot 20 or any part of it to the plaintiff..

Performance in bad faith

20. The defendants did not disclose to Bill that they had decided early on that they would not perform the agreement. Mike secretly intended to treat the agreement as unenforceable.

21. Mike was a construction contractor and subdivision developer and marketer and with extensive experience and connections in the industry. Ms. Demosky and Steve Semenoff adopted Mikes position with respect to the 1987 agreement at all relevant times

22. Mike and Marion obtained information at various times from 1987 and 2009 about the availability of subdivision but failed to communicate the information to Bill, in order to postpone the subdivision, and without due regard for the deceaseds reasonable expectation of resolving the title

(a) in a reasonable time

(b) so that Bills sons would not have to deal with it.

23. From 1987 through 2009 the defendants purported to be acting pursuant to Bill’s interest via the 1987 agreement, to take steps to effect a subdivision pursuant to the 1987 agreement, but some of them secretly intended to give Bill neither lot 20 nor any piece of that land or it’s value at all.

(c) In 1998, after Bill had succumbed to dementia, Mike acting as Bills agent, obtained legal advice concerning subdivision from the Lawer Lewis Bridgeman who had drafted the 1987 agreement. Mike knew that Bill had willed the house (via the 1987 agreement) to his sons, but Mike had no intention of performing the 1987 agreement; By not disclosing this, Mike prevented Bills lawyer from protecting Bill's legitimate expectations in Lot 20.

(d) In 2009 Mike assured the plaintiff executor that the subdivision would be kept in the defendants names and the property would not be sold until a CPL could be registered..

(e) Mike also undertook to look into minimizing capital gains tax arising from Lot 20.

(f) Instead, the defendants sold and otherwise transfered all of the properties, in order to defeat the Estate's claims.

24. The deceased plaintiff was a joint tenant of lot 20 along with the defendants, has paid more than his share, and is owed an accounting.

25. The defendants officiously intermeddled in the plaintiffs litigations by

(g) by defending in RL9044 in february 2013, and

(h) opposing the reactivation of Appeal file CA041029 in around December 2014, and in supporting the respondents position in around July 2013 regarding security for cost and indigent status, causing the loss of the plaintiffs right of compensation in that matter.

26. The defendants officiously intermeddled with Bills affairs in order to justify the non-performance of the 1987 agreement as being a charge for services. They offered their help to Bill without disclosing their real intentions or belief that Bill should be relying on his sons in legal and financial matters.

27. The defendants knew that their services came nowhere near the value of Bills house when they claimed a constructive trust over the house in 2007.

Conversion of documents

28. Between 1987 and 2007 the defendant obtain Bills documentation from his house without his knowledge or consent, and removed documents from his safety deposit box., so that Bills sons would lack sufficient evidence to understand the 1987 agreement, obtain legal advice, and to enforce the 1987 agreement.

Accounts on the footing of wilful default

29. Marion knew that Bill wanted his sons to inherit the property. The defendants failed to bring the house into the estate, and are accountable on the footing of wilful default.

Part 2: RELIEF SOUGHT

1. Declaration that the defendants Mike and Marion are constructive trustees for the benefit of the Estate.
2. General damages.
3. Alternatively, disgorgement of profits.
4. Directions and orders ancillary to tracing and accounting.
5. Punitive damages.
6. Orders be drawn by the registrar.
7. Other relief

Part 3: LEGAL BASIS

1. The defendants Mike and Marion are accountable as agents of the plaintiff.
2. The plaintiffs were in violation of the Criminal Code of Canada pertaining to section 380, Other Fraudulent Means.
   (a) This provision is used to prevent elder abuse, to fill a legal gap between the difficult of proof of deceit and the absence of fiduciary relationships, has no specific elements in recognition of the infinite varieties of fraud.
   (b) R. v. Long (1990), 61 C.C.C. (3d) 156 (B.C. C.A.) (dishonesty being conduct reasonable people considering at variance with straightforward or honourable dealings; conduct need not also amount to deceit or falsehood);
   (c) R. v. Champion (2008), 2008 CarswellOnt 952 (Ont. S.C.J.) ("other fraudulent means" including non-disclosure of important facts and exploiting weakness of others).
3. Canadian Encyclopedic Digest, Actions (Western), IX — Maintenance and Champerty

Fraud on a power

4. The defendants had certain power granted to them in the 1987 agreement regarding the subdivision of Bill's house, and in 1996 both Mike and Marion were given power either expressly or impliedly. In TLC The Land Conservancy of British Columbia v. The University of British Columbia, 2014 BCCA 473, the exercise of a power for an ulterior purpose renders the exercise void.

Good faith

1. The defendants are liable put the plaintiff to the same position had they acted honestly in good faith " Bhasin v Hrynew 2014 SCC 71.
2. The 1987 agreement called for co-operation at a number of different timesover a long period of time in regards to
   (a) taking steps to effect a subdivision.
   (b) applying for a subdivsion
3. Bill or his estate would have retained legal services and preserved evidence in order to bring Lot 20 into the Estate efficiently and expeditiously.
   (a) In particular the estate would not have agreed to compensate the one executor so generously in order to administer the chose in action.
4. Marion and Mike breached their fiduciary obligation to the Estate and it's beneficiary by self-dealing, by pre-paying themselves without property authority.
5. Mike knowingly assisted in the self-dealing; Air Canada v M&L travel;
6. Criminal code violations are remediable by either of damages or disgorgement, and tracing is available in aid of the plaintiffs election: Tracy v Instaloans 2011 BCCA
7. The statutory framework includes the Family relations act (concerning duty to support children); Wills act; Power of Attorney Act; Patient's Property Act;

Plaintiff's address for service: 3305 Sion Frontage Road Grand Forks, BC V0H 1H2
Fax number address for service (if any):
E-mail address for service (if any): **billsemenoff@gmail.com**

Place of trial: Vancouver, British Columbia
The address of the registry is:
800 Smithe Street

Vancouver, BC
V6Z 2E

Date: 5/March/2012

Signature of [x] Plaintiff [] Lawyer for Plaintiff Robert Semenoff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(b) (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial or prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY NATURE OF CLAIM:

1. Solicitor's negligence in drafting real estate purchase agreement.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[ ] a motor vehicle accident
[ ] personal injury, other than one arising from a motor vehicle accident
[X] a dispute about real property (real estate)
[ ] a dispute about personal property
[ ] the lending of money
[ ] the provision of goods or services or other general commercial matters
[ ] an employment relationship
[ ] a dispute about a will or other issues concerning the probate of an estate
[ ] a matter not listed here

No. 18204

Nelson Registry

In the Supreme Court of British Columbia

BETWEEN:

Robert Semenoff, Executor, Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

BEFORE } A JUDGE OF THE COURT or A MASTER OF THE COURT } [26/*MAY/2014*]

CASE PLAN ORDER

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

AT A CASE PLANNING CONFERENCE conducted on 26/MAY/2014 by McEwan J in the presence of Robert Semenoff and Ahna Fernandez ;

THIS COURT ORDERS that the parties comply with the attached case plan.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of [X] party [ ] lawyer for .....

Robert Semenoff

.....

Signature of

[ ] party [ ] lawyer for .....

.....[.....

By the Court.

.....

Registrar

Case Plan

1 Dispute resolution procedures

The parties have discussed resolution options including those under Part 9 of the Supreme Court Civil Rules and have agreed to the following:

	Step	Date by which step to be completed [*dd/mmm/yyyy*]
	Offer to settle	
	Mediation	
	Special Case	
	Proceeding on point of law	
	Summary trial	
	Summary judgment application	
	Other [*identify*]	

A party may undertake any of the steps provided for in Part 9 of the Supreme Court Civil Rules whether or not the step is noted above.

2 Document production (Rule 7-1 of the Supreme Court Civil Rules)

The following steps will be completed by the date set out next to each step:

Step	Date by which step to be completed [*if dates differ by party, indicate a date for each party*] [*dd/mmm/yyyy*]
Delivery of the lists of documents required under Rule 7-1	
Completion of an electronic document protocol	
Other [*identify*]	

3 Examinations for discovery (Rule 7-2 of the Supreme Court Civil Rules)

The following examinations for discovery will be conducted, not exceed the time limits indicated and be completed by the date indicated:

Examination by (party name)	Examination of (party and person	Time Limit	Date by which step to be completed

	name)		[*dd/mmm/yyyy*]

4 Applications

The following applications are anticipated:

Application	Date by which application anticipated to be brought [*dd/mmm/yyyy*]
Amended Notice of Civil Claim	01/NOV/2015 subject to directions

A party may bring any other application whether or not that application is noted above.

5 Expert witnesses (Part 11 of the Supreme Court Civil Rules)

Part 1

Each party may tender the report of, or call to give oral opinion evidence, an expert with the following expertise:

Name of party who intends to call the expert [*if expert is being called jointly, specify "Joint"*]	Area of Expertise

Part 2

The following steps will be taken by the date set out next to each step:

Step	Date by which step to be completed [*if dates differ by party, indicate a date for each party*] [*dd/mmm/yyyy*]
Joint expert's report served	
Expert reports served	
Responding expert reports served	
Notices of objection to expert evidence served (Rule 11-6 (10))	
Experts confer and serve report summarizing points of difference	

Other [*identify*]	
Other [*identify*]	

Part 3

If the information set out in the foregoing Part 1 or 2 is incomplete, the parties will apply to amend this order to complete that information by .....[dd/mmm/yyyy]..... .

6 Witnesses (Rule 7-4 of the Supreme Court Civil Rules)

The following steps will be completed by the date set out next to each step:

Step	Date by which step to be completed [*if dates differ by party, indicate a date for each party*] [*dd/mmm/yyyy*]
Serve lists of witnesses to be called at trial	
Other [*identify*]	
Other [*identify*]	

7 Trial (Part 12 of the Supreme Court Civil Rules)

(a) Estimated length of the trial: .....[days].....;
(b) .....[party(ies)]....., will file a Notice of Trial in Form 40 to secure the trial date by .....[dd/mmm/yyyy]..... .

8 Other

Applications to be in writing pursuant to Rule 8-6

Form 49 (Rules 13-1 (12), 14-1 (21), (24) and (25) and 18-1 (6))

No. 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

Plaintiffs

and

Mike Semenoff and Marion Demosky

Defendants

APPOINTMENT

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

I appoint:

Time: [*10:00 a.m.*]
Date: 06/April/2016
Place: Nelson, British Columbia

as the time and place for the: [*Check the correct box(es) and complete any required information.*]

[X] assessment of the bill of costs of the Defendants, Mike Semenoff and Marion Demosky.

[ ] review of the bill of .....[*name of lawyer or law firm*].....

[ ] examination of the agreement between .....[*lawyer*]..... and .....[*client*].....

[ ] settlement of the terms of the order of .....[*Mr. Justice, Madam Justice or Master*]..... made .....[*dd/mmm/yyyy*].....

[ ] passing of accounts of .....[*executor, administrator, receiver or other*].....

[ ] reference under the *Court Order Enforcement Act*

[ ] reference ordered by.....[*Mr. Justice, Madam Justice or Master*].....

[ ] assessment of sheriff's fee

[ ] other

Attached to this Appointment .....[*is/are*]..... the [X] bill(s) of costs [ ] lawyer's bill(s) [ ] sheriff's bill(s) [ ] agreement(s) [ ] order(s) that .....[*is/are*]..... the subject of this Appointment.

Date: "K. Varney", Deputy

.....

~~Master~~, Registrar ~~or Special Referee~~

To:

TAKE NOTICE of the above appointment.

The person seeking appointment believes the matter for which this appointment was sought:

[*Check all of the following boxes that are correct and complete the required information.*]

[ ] is [X] is not of a time consuming or contentious nature

[X] will require approximately ~~ten (10)~~ thirty (30) minutes to complete

Date: 1/April/2016

.....

Signature of Ahna Fernandez, lawyer for person seeking appointment

Pearkes & Fernandez, Suite #8, 266 Baker Street, Nelson, British Columbia, V1L 4H3
Telephone: (250) 352-2883

No. 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

Plaintiff

and

Mike Semenoff and Marion Demosky

Defendants

BILL OF COSTS OF THE DEFENDANTS

This is the bill of costs of: Mike Semenoff and Marion Demosky, Defendants

Tariff scale: None – special costs

Unit value: n/a

Particulars re fees and disbursements are set out in the statements of account of the lawyers for the defendants attached as Exhibits 1 to 14 to the Affidavit # 1 of Brenda L. Bartuccio filed in support of the Appointment for the assessment of this bill of costs.

Fees:	$30,909.50
Disbursements:	$2,933.89
Taxes:	$3,899.47
Total:	**$37,742.87**

TOTAL FEES ALLOWED: _____

TOTAL DISBURSEMENTS ALLOWED: _____

18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

Plaintiff

and

Mike Semenoff and Marion Demosky

Defendants

CERTIFICATE OF COSTS

I certify

[ ] by consent of the parties

[ ] following assessment

that on April ____, 2016, the costs of the Defendants, Mike Semenoff and Marion Demosky have been allowed against the Plaintiff, Robert Semenoff in the amount of $_____.

Consented to:

_____	_____
Signature of _____	Signature of Tim Pearkes
[X] the Plaintiff, Robert Semenoff	[X] lawyer for the Defendants, Mike Semenoff and Marion Demosky
Date: _____	_____
	Registrar

THIS CERTIFICATE OF COSTS is filed by Tim Pearkes, Pearkes & Fernandez, counsel for the Defendants, whose place of business and address for delivery is Suite #8, 266 Baker Street, Nelson, B.C. V1L 4H3; Tel: (250) 352-2883; Fax: (250) 352-2849.

CHAMBERS RECORD

INDEX

Tab No.	Document Description	Filed/Sworn Date
1.	Appointment for Assessment of Special Costs	April 1, 2016
2.	Affidavit #1 of Brenda L. Bartuccio	April 1, 2016
3.	Affidavit #1 of Erin Peitzsche	July 2, 2015
4.	Affidavit #1 of Robert Semenoff	April 17, 2013
5.	Order Made After Application	April 5, 2016
6.	Reasons for Judgment	February 19, 2016

No. S-12 1760

Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN:

Robert Semenoff, Executor, Estate of Bill Semenoff, Deceased

Plaintiff

AND:

Mike Semenoff, Marion Demosky

Defendants

ORDER FOR INDIGENT STATUS

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

BEFORE ~~THE HONOURABLE JUSTICE~~ / or / MASTER SCARTH Thursday March 8, ...[__/ /2012].....

ON THE APPLICATION of .....Robert Semenoff.....

THIS COURT ORDERS that no fee is payable by .....Robert Semenoff....to the government under Schedule 1 of Appendix C in relation to this proceeding subject to the following: .....

[OR]

THIS COURT ORDERS that no fee is payable by..... to the government under Schedule 1 of Appendix C in relation to

[✓] this proceeding

[ ] the following part(s) of this proceeding: .....

[ ] this proceeding during the following period(s): .....

[✓] the following steps in this proceeding: .....

subject to the following: .....payment of fees from any judgment or settlement in favour of Mr. Semenoff. ~~as beneficiary~~.

BY THE COURT

M. Gardner

REGISTRAR

Action No.: S121760
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiffs

and

Mike Semenoff, Marion Demosky

Defendants

ORDER MADE AFTER APPLICATION

BEFORE	MASTER McCALLUM	Tuesday, the 30th day of April, 2013.

ON THE APPLICATION of the plaintiff and the cross application of the defendants, both coming on for hearing before me at Vancouver, B.C. on this day, and on hearing the plaintiff Mr. Robert Semenoff, appearing in person, and Ms. Ahna Fernandez, lawyer for the defendants, appearing by telephone:

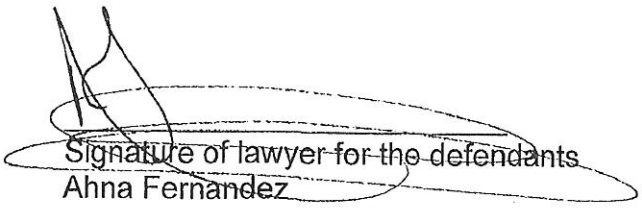
THIS COURT ORDERS that:

1. This proceeding be transferred from the Vancouver Registry of the Supreme Court of British Columbia to the Nelson Registry of the Supreme Court of British Columbia for all purposes.

2. Each party shall bear their own costs of these applications.

3. The plaintiff's endorsement on this order is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the defendants
Ahna Fernandez

By the Court.

Digitally signed by
Berg, Mellani

Registrar

THE SUPREME COURT OF BRITISH COLUMBIA

THE LAW COURTS

MEMORANDUM TO THE PARTIES

TO: Barbara Turik
Manager, Supreme Court Scheduling

FROM: The Honourable Mr. Justice A. Saunders

DATE: December 10, 2015

RE: ***Semenoff v. Semenoff***, Docket No. 18204, Nelson Registry

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By forwarding a copy of this memorandum to the parties, please advise the parties of the following:

Kelowna Supreme Court Scheduling has directed to me copies of email correspondence received from Mr. Robert Semenoff, making a request to appear in connection with the hearing that took place before me on July 21, 2015.

My judgment in that matter is under reserve. Following release of my decision, any party may make a request to appear before me for the purpose of asking for a reconsideration of whatever decision I make. If such a hearing is to take place, the party applying should bring a formal application before the court, seeking reconsideration.

The parties should expect my decision on the July 21st hearing to be released early in the New Year.

PLEASE DO NOT REPLY TO THIS EMAIL, instead reply to Supreme Court Scheduling at sc.scheduling_ok@courts.gov.bc.ca if you have a response or any questions/concerns.

AJS

cc: Robert Semenoff – via email
Timothy W. Perkes – via email

Action No.: 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased

Plaintiff

and

Mike Semenoff, Marion Demosky

Defendants

ORDER MADE AFTER APPLICATION

BEFORE) MR. JUSTICE A. SAUNDERS) Friday, the 19th day of February, 2016.

ON THE APPLICATIONS of the defendants, coming on for hearing before me at Nelson, B.C. on Tuesday, July 21st, 2015, and on hearing Tim Pearkes and Ahna Fernandez, lawyers for the defendants, and Robert Semenoff, appearing for the plaintiff; on reading the materials filed; and on judgment being reserved to this day:

THIS COURT ORDERS that:

1. Judgment pursuant to Rule 9-7 is granted in favor of the defendants and this action is dismissed.

2. Robert Semenoff is declared to be a vexatious litigant and must not, without leave of the court, either in his own capacity or in his capacity as executor of the estate of Bill Semenoff, institute a legal proceeding in any court against the defendants or the estate of Steve Semenoff.

3. Costs of this action, to be assessed as special costs, are awarded to the defendants.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the defendants
Tim Pearkes

Signature of the plaintiff
Robert Semenoff

By the Court.

Registrar

THE SUPREME COURT OF BRITISH COLUMBIA

THE LAW COURTS

MEMORANDUM TO THE PARTIES

TO: Barbara Turik
Manager, Supreme Court Scheduling

FROM: The Honourable Mr. Justice A. Saunders

DATE: March 9, 2016

RE: ***Semenoff Estate v. Semenoff*, Action No. 18204, Nelson Registry**

By forwarding a copy of this memorandum to the parties, please advise the parties of the following:

This memorandum addresses two subjects: entry of the order of February 19, 2016; and the plaintiff's Request to Appear dated March 7, 2016.

To recap, the defendants' application to have the plaintiff's claim dismissed was heard before me in Nelson on July 21, 2015. Judgment was reserved.

On November 5, 2015, the plaintiff addressed a Request to Appear to SC Scheduling – Kelowna, seeking scheduling of a 45 minute application to be heard before me in chambers. The nature of the application was stated as, "Application to amend NoCC Application for case plan conference audio".

By way of enquiries made through SC Scheduling – Kelowna, I sought clarification of the nature of the plaintiff's proposed application. The plaintiff replied in an email to SC Scheduling dated November 6, 2015 in which he indicated, *inter alia*, that he had been trying to request a case plan order to provide him with directions about supporting material required for written applications. The plaintiff asked if I could "provide a direction of what further supporting evidence he would require if I did need leave".

By way of a memorandum to the parties dated December 10, 2015, I advised the parties as follows:

> My judgment in that matter is under reserve. Following release of my decision, any party may make a request to appear before me for the purpose of asking for a reconsideration of whatever decision I make. If such a hearing is to take place, the party applying should bring a formal application before the court, seeking reconsideration.

My reasons for judgment dismissing the plaintiff's claim were released on February 19, 2016.

On March 7, 2016, the plaintiff sent a further Request to Appear to SC Scheduling – Kelowna, seeking scheduling of a 15-minute chambers application before me. The nature of the application was stated to be, "Order for recordings of case planning conference to be made available". The plaintiff also indicated that I had given "permission to apply for leave to apply for reconsideration of his February 2016 decision".

That same day, March 7, 2016, I received from the Nelson Registry a form of order respecting my judgment of February 19, 2016, bearing the signature of the plaintiff and of counsel for the defendants, by which judgment was granted in favour of the defendants and the action was dismissed with costs, and by which the plaintiff was declared to be a vexatious litigant.

I am not aware of the plaintiff having taken any steps to schedule an application for reconsideration of the February 19, 2016 decision. Ordinarily, a party's endorsement of a draft form of order would be taken as an indication that the party was content with the order being formally entered with the court in that form. If I were to proceed to sign the form of order that the parties have endorsed, and submitted to the Nelson Registry for filing, I would become *functus*, and would have no jurisdiction to entertain an application for reconsideration.

I infer from the plaintiff's March 7, 2016 Request to Appear that he has some intention of, or is at least considering making an application for reconsideration. I am therefore hesitant to sign the endorsed Order.

I am therefore giving the following directions:

1. With respect to the plaintiff's Request to Appear of March 7, 2016, I will instruct SC Scheduling – Kelowna to make me available for a 15 minute telephone application, at 9:00 a.m. on a mutually convenient date. This application will be subject to the vexatious litigant order that has been made; before addressing the application on the merits, the plaintiff will have the onus of demonstrating why leave to bring his application before the court should be granted. The defendants will have the right to respond to the plaintiff's submissions on that point. If leave is then granted, we will move immediately to deal with the plaintiff's application on its merits.

   In order that the hearing may be dealt with effectively by telephone, the parties must arrange to have copies of all material to be presented to the court, including a complete copy of the Application Record and including copies of any case authorities relied upon, as well as any written submissions, provided to SC Scheduling – Kelowna, not less than two days prior to the telephone hearing. The parties are to agree on a schedule for exchange and delivery of the Notice of Application, the Application Response, and all supporting material, to facilitate this early electronic filing of material with the court.

2. If the plaintiff intends to proceed with an application for reconsideration of my decision of February 19, 2016, he must take steps to schedule a hearing of his application by way of filing a Request to Appear with SC Scheduling – Kelowna, within 14 days of the date of this memorandum. If the plaintiff fails to do so, I will sign the endorsed form of Order, and no application for reconsideration will be heard.

   To be clear, my decision of February 19, 2016 declaring the plaintiff to be a vexatious litigant supersedes my memorandum of December 10, 2015. Specifically, the plaintiff will be required to obtain leave of the court to bring forward his application for reconsideration before that application is heard on its merits.

PLEASE DO NOT REPLY TO THIS EMAIL, instead reply to Supreme Court Scheduling at sc.scheduling_ok@courts.gov.bc.ca if you have a response or any questions/concerns.

"A. Saunders J."

cc: Robert Semenoff - Via Email
Timothy W. Pearkes - Via Email

18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

Plaintiff

and

Mike Semenoff and Marion Demosky

Defendants

CERTIFICATE OF COSTS

I certify

[ ] by consent of the parties

[ ] following assessment

that on April 6, 2016, the costs of the Defendants, Mike Semenoff and Marion Demosky have been allowed against the Plaintiff, Robert Semenoff in the amount of $37,712.87

Consented to:

Signature of _____
[X] the Plaintiff, Robert Semenoff

Date: April 6, 2016

Signature of Tim Pearkes
[X] lawyer for the Defendants, Mike Semenoff and Marion Demosky

Registrar

THIS CERTIFICATE OF COSTS is filed by Tim Pearkes, Pearkes & Fernandez, counsel for the Defendants, whose place of business and address for delivery is Suite #8, 266 Baker Street, Nelson, B.C. V1L 4H3; Tel: (250) 352-2883; Fax: (250) 352-2849.

No. 18204
Nelson Registry

In the Supreme Court of British Columbia

Between:

Robert Semenoff
Executor of the Estate of Bill Semenoff, deceased

and

Plaintiff

Mike Semenoff and Marion Demosky

Defendants

BILL OF COSTS OF THE DEFENDANTS

This is the bill of costs of: Mike Semenoff and Marion Demosky, Defendants

Tariff scale: None – special costs

Unit value: n/a

Particulars re fees and disbursements are set out in the statements of account of the lawyers for the defendants attached as Exhibits 1 to 14 to the Affidavit # 1 of Brenda L. Bartuccio filed in support of the Appointment for the assessment of this bill of costs.

Fees:	$30,909.50
Disbursements:	$2,933.89
Taxes:	$3,899.47
Total:	**$37,742.87**

TOTAL FEES ALLOWED: 30,909.50

TOTAL DISBURSEMENTS ALLOWED: 2,933.89

TAXES 3,899.47

TOTAL 37,742.87

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Semenoff Estate v. Semenoff,*
2016 BCSC 267

Date: 20160219
Docket: 18204
Registry: Nelson

Between:

Robert Semenoff, Executor of the Estate of Bill Semenoff, Deceased
Plaintiff

And

Mike Semenoff and Marion Demosky
Defendants

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

Appearing on his own behalf:	The Plaintiff, Robert Semenoff
Counsel for the Defendants:	T. Pearkes A. Fernandez
Place and Date of Trial:	Nelson, B.C. July 21, 2015
Place and Date of Judgment:	Nelson, B.C. February 19, 2016

[1] The defendants seek dismissal of this action by way of the summary trial rule, Rule 9-7, or alternatively by means of summary judgment, under Rule 9-6, or by reason of want of prosecution. The defendants further seek an order that both the plaintiff Robert Semenoff ("Robert") as executor of the Estate of Bill Semenoff, and the Estate be declared vexatious litigants.

[2] Robert's father, the late Bill Semenoff ("Bill"), was a brother of the defendants Mike Semenoff ("Mike") and Marion Demosky ("Marion"). Bill was father to the plaintiff Robert.

[3] It is common ground that the defendants, together with their late brother Steve, began to care for their brother Bill following his being involved in a motor vehicle accident in 1994. In or about 1995, Bill was diagnosed with dementia and required home support. Marion was advised to have Bill appoint an attorney. According to Marion – and this is not denied by the plaintiff Robert – Bill's other son Howard was not responsive to this suggestion, and she had no means of contacting Robert. Bill executed a general power of attorney, appointing Marion under the *Power of Attorney Act*, R.S.B.C. 1996, c. 370 on January 18, 1996.

[4] Bill died on September 15, 2006.

[5] In the Notice of Civil Claim, filed March 8, 2012 and amended December 24, 2012, Robert alleges that between 1996 and Bill's death, and continuing thereafter, the defendants dishonestly took advantage of Bill for their own personal benefit, enriched themselves at the expense of the estate, and failed to provide an accounting of benefits they received and property they took. It is alleged that the defendants committed criminal fraud. Remedies sought against the defendants include general and punitive damages, disgorgement of profits, and tracing.

[6] Robert has been examined for discovery by counsel for the defendants. He has not examined the defendants for discovery, and has produced no list of documents.

[7] As the respondent to an application for summary trial, the onus is on the plaintiff to prove his claims: *Gichuru v. Pallai*, 2013 BCCA 60, at para. 35.

[8] Robert has failed to adduce any evidence in support of these grave allegations. It is clear that this action is founded on nothing more than suspicion, conjecture and speculation. He conceded during the hearing of this application that evidence is lacking; nevertheless, he says he remains convinced that, to borrow a phrase, “the truth is out there”.

[9] In respect of the application to have Robert declared a vexatious litigant, the defendants point to two related actions in which they have been directly involved. In a Supreme Court action commenced in the Rossland Registry under Docket No. 8993, Robert and his brother Howard, as executors of Bill’s estate, sued the present defendants and their brother Steve, apparently in respect of ownership of the family acreage, located in Ootischenia, B.C. That action was dismissed with costs on the defendants’ application, and a Certificate of Pending Litigation (“CPL”) as against the whole of the property was cancelled. The defendants were given liberty to apply for subdivision of the property upon cancellation of the CPL, and the plaintiffs were given leave to commence a fresh action as against the newly-divided sub-parcel on which Bill’s former residence was situated. It appears that no further steps were taken by the plaintiffs in this regard. The defendants did not pursue assessment of their costs as the plaintiffs were destitute.

[10] The second such action the defendants point to is an action brought by Robert as against his late father’s solicitor, a Mr. Bridgeman, claiming professional negligence in respect of registration of Bill and his three siblings – the present defendants, and Steve – as joint tenants of the aforementioned acreage. Mr. Bridgeman third-partied the present defendants. The case proceeded to trial over nine days in February 2013 before Mr. Justice Mackinnon, and, following a no-evidence motion brought by the third parties (the present defendants), the claim against Mr. Bridgeman was dismissed by way of reasons for judgment issued June

7, 2013 (indexed as 2013 BCSC 1022). Bridgeman was eventually awarded double costs (indexed as 2014 BCSC 174).

[11] The following excerpts from the trial reasons of Mackinnon J. are illustrative of the plaintiff's approach to that litigation:

> [25] The plaintiff's pleadings go on for pages making all sorts of claims, including claims in contract. The trial management judge described them as "prolix". I agree and go further to label them, for the most part, incomprehensible, vexatious and frivolous.
>
> …
>
> [41] [The plaintiff] spent hours describing his recollection of his father's life and proffered opinions in respect to his father's competence. He also attempted, through obtuse documentation and inadmissible opinion evidence, to show the defendant was historically negligent and must therefore be assumed negligent at bar.
>
> [42] The plaintiff proffered absolutely no evidence to support any of these claims. Indeed, he wasn't a witness to any of the activities that he is now bringing to the Court's scrutiny.
>
> …
>
> [60] The plaintiff has utterly failed to establish any of the many claims he has made. He failed to establish the nature and extent of the retainer between Bill and the defendant Bridgeman. He led no expert evidence as t the duty that might be owed in these circumstances.

[12] Justice Mackinnon's reasons on costs are similarly revealing:

> [8] The plaintiff's submissions on costs were consistent with his conduct at trial: rambling, unfocused, irrelevant and in many cases plain wrong.
>
> …
>
> [10] I do not propose to dignify his claims by repeating them. They are complete and utter nonsense. Counsel for both the defendant and third parties acted properly, honourably and expediently in what must have been the most trying of circumstances.

[13] The orders of Mackinnon J. in respect of the merits and in respect of costs were appealed by Robert. The appeal was eventually moved to the inactive list. In December 2014, Robert applied unsuccessfully before Frankel J.A. to have the appeal removed from the inactive list (unreported Oral Reasons for Judgment dated December 8, 2014). Robert's application to a panel of three appellate justices for a review of the order of Frankel J.A. was dismissed on March 31, 2015 (indexed as

2015 BCCA 139). I am advised that Robert has sought leave to appeal the dismissal of his application for review, to the Supreme Court of Canada.

[14] The defendants also, during the hearing of the present application, referred me to a fraudulent conveyance action brought by Robert against Bridgeman and his wife, in which it was alleged that Bridgeman conveyed to his wife his interest in their matrimonial home, for the purpose of defeating execution of any judgment he might obtain in the professional negligence action. Mr. Justice McEwen dismissed that action on October 11, 2012, finding it to be an abuse of process, and made a vexatious litigant order against Robert in respect of any further actions in Supreme Court related to, connected with or arising out of the facts and matters alleged in the professional negligence action or the wrongful conveyance action. The circumstances are discussed in the aforementioned decision of Frankel J.A., at paras. 6-8.

[15] In respect of the conduct of the present defendant Marion in acting in her capacity as attorney, Mackinnon J. made the following remarks in his trial decision in the professional negligence claim:

> [37] The plaintiff is preoccupied with conspiracy theories which include claims that Mrs. Demosky abused her position of trust as Bill's power of attorney, took advantage of Bill's advancing disability for her own (and her siblings) advantage and generally acted to deprive the plaintiff and his brother of an inheritance. Indeed, the plaintiff has commenced other actions against Mrs. Demosky that make these allegations.
>
> [38] While it remains to be determined whether he can prove any of these claims, my assessment of Mrs. Demosky on this trial was that she is a genuinely caring person who dearly loved her brother Bill. She consistently stepped up to the plate by sacrificing her own time and money over many years, to ensure that Bill received the best of care. For a time she not only had to look after Bill but also her husband who suffered from Alzheimer's disease, which eventually caused his death. I had nothing but admiration for her efforts.

[16] Nothing in the evidence presented to me would lead to the conclusion that Mackinnon J.'s assessment of Marion's conduct was incorrect. To the contrary, I am entirely satisfied, on the basis of the evidence of the defendants, that there is no substance whatsoever to the plaintiff's claim. Bill was, throughout, entirely

dependent upon his Canada Pension Plan and Old Age Security benefits, and had no assets to speak of other than a registered interest in joint tenancy in the aforementioned family acreage. The defendants accessed Bill's accounts to make payments on his behalf in respect of his personal care expenses, his residency, and associated expenses such as insurance, taxes and utilities. Marion incurred expenses personally in acting under her power of attorney, but was exceedingly conservative in claiming those expenses against Bill or his estate. She did make some minor expenditures after Bill's death, purportedly under the power of attorney, although she did not appreciate that the power of attorney expired upon Bill's death. I am satisfied such expenditures were made in good faith, and without the defendants being thereby enriched or advantaged.

[17] The payments have been fully accounted for in an analysis prepared by Yule Anderson, Chartered Accountants, served on Robert in April, 2013. Despite the accounting having been provided, Robert has persisted in maintaining the present action.

[18] It is apparent to me that throughout the latter years of Bill's life the defendants acted towards him with charity, kindness and decency. It is shameful that their generosity has been met with such hostility on the part of their nephew, and that they have had to undergo the emotional and financial burden of litigation.

[19] The action is dismissed.

[20] The plaintiff's conduct in making allegations against the defendants of dishonest and criminal conduct without any justification is reprehensible. The defendants shall have their costs of this action, assessed as special costs.

[21] Robert Semenoff has demonstrated a propensity to abuse the civil justice system through making grave allegations without any foundation in reality. He might have drawn the appropriate lesson from the judgment given by Mackinnon J., but he did not do so; instead he persisted in maintaining the claim at bar, without any proof of wrongdoing on the part of the defendants. He has instituted and maintained

vexatious legal proceedings, in the words of s.18 of the *Supreme Court Act*, R.S.B.C. 1996 c. 443, habitually, persistently and without reasonable grounds. I therefore order that Robert Semenoff must not, without leave of the court, either in his own capacity or in his capacity as executor of the estate of Bill Semenoff, institute a legal proceeding in any court.

"A. Saunders J."

CA 43539

Court of Appeal File No. . .....
Supreme Court File No. 18204. .....
Supreme Court Registry Nelson.....

COURT OF APPEAL

BETWEEN:

Robert Semenoff, Executor Estate of Bill Semenoff

Appellant/Plaintiff

AND:

Marion Demosky, Mike Semenoff

Respondents/Defendants

NOTICE OF APPEAL

Take notice that Robert Semenoff hereby appeals to the Court of Appeal for British Columbia from the order of Justice Saunders of the Supreme Court of B.C. pronounced the 19th day of february, 2016 , at Nelson , British Columbia.

1. The appeal is from a:

   [ ] Trial Judgment [X] Summary Trial Judgment

   [ ] Order of a Statutory Body [ ] Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order:

3. Please identify which of the following is involved in the appeal:

   [ ] Constitutional/Administrative [X] Civil Procedure [ ] Commercial

   Family – [ ] Divorce [ ] *Family Law Act* [ ] Corollary Relief in a Divorce Proceeding [ ] Other Family

   [ ] Motor Vehicle Accidents [ ] Municipal Law [ ] Real Property

   [ ] Torts [ ] Equity [X] Wills and Estates

(The Divorce Registry will, as applicable, be notified by the Court of Appeal Registry on filing if the appeal involves divorce, corollary relief in divorce proceeding or matters under the *Family Law Act*)

And further take notice that the Court of Appeal will be moved at the hearing of this appeal for an order

1. Setting aside the trial judgement.
2. Awarding judgement in favour of the plaintiff;
3. Awarding costs to the plaintiff;
4. That costs be assessed as special costs

The trial/hearing of this proceeding occupied 4 hours.

Dated at Vancouver , British Columbia, this 18th day of March , 2016 .

.....

Appellant/~~Solicitor for the Appellant~~

To the respondents:Mike Semenoff, Marion Demosky .....
And to its solicitor: T W Pearkes.....
This Notice of Appeal is given by Robert Semenoff..... ,
whose address for service is billsemenoff@gmail.com ; 609 Helmcken Vancouver V6B 5R1
.....

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this appeal, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

(a) you are deemed to take no position on the appeal, and

(b) the parties are not obliged to serve any further documents on you.

The filing registries for the British Columbia Court of Appeal are as follows:

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby Street
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248 STN PROV GOVT
850 Burdett Ave Victoria
BC V8W 1B4

B.C. Court of Appeal
223 – 455 Columbia Street
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468
Fax filings: (604) 660-1951

VANCOUVER SUPREME COURT
PROVINCE OF BRITISH COLUMBIA
LAW COURTS, 800 SMITHE STREET
VANCOUVER V6Z2E1

OPER : FLEE UNIT : 06 2 2

18MAR16 Receipt No: 1604803

RIA Revenue Initiation Appe		
PAYMENT CA43539		200.00
TOT. AMOUNT DUE		200.00
AMOUNT TENDERED		-200.00
CASH	200.00	
CHEQUE	.00	
CHANGE		.00