IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Robinson Estate v. Wolsey,*
2025 BCSC 529

Date: 20250324
Docket: S171808
Registry: New Westminster

Between:

The Estate of James Douglas Robinson represented by Yvonne Marian Robinson as Executrix and Yvonne Marian Robinson

Plaintiffs

And

Viola Helen Wolsey, George Thomas Wolsey and Ian Colin Sands

Defendants

Before: The Honourable Justice Caldwell

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	W.R. Neufeld
Counsel for the Defendants Viola Helen Wolsey and George Thomas Wolsey:	A.A. Macdonald
Counsel for the Defendant Ian Colin Sands, appearing via videoconference:	O.J. Kowarsky
Place and Date of Hearing:	Abbotsford, B.C. September 26, 2024
Place and Date of Judgment:	New Westminster, B.C. March 24, 2025

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[1] The plaintiffs sue for judgment against the defendants in regard to a judgment obtained by the British Columbia government in October 2011 and paid by the plaintiff Yvonne Marian Robinson (“Yvonne”) in April 2015. The claim seeks contribution from the defendants towards the monies paid out by Yvonne to satisfy the judgment.

BACKGROUND

[2] On March 7, 2011, the Crown filed a notice of civil claim against 0766986 B.C. Ltd. doing business as Delta Pharmacy (the “Company”); George Wolsey; Ian Sands; Robert Seymour; James Douglas Robinson (“Douglas”); and Mohammed Meralli. The claim involved alleged overpayments made by the PharmaCare program in connection with bills rendered in the operation of the Company.

[3] On October 5, 2011, the Crown was granted Default Judgment against the Company, George Wolsey, Ian Sands, and Douglas Robinson.

[4] The Crown immediately registered its judgment against the title to property owned jointly by Douglas and Yvonne.

[5] The judgment remained unpaid. The registration of the judgment on the property expired and was not renewed. In spite of such expiry, the judgment was not removed from title and remained noted on the title to the property owned by Douglas and Yvonne.

[6] In April 2014, Douglas and Yvonne entered into a contract of purchase and sale to sell the property and learned that the Crown judgment was still registered on their title.

[7] Thereafter, they retained Gerhard Pyper to provide them with legal advice regarding the situation and the removal of the Crown judgment. Throughout the time period in question, Mr. Pyper was suspended by the Law Society of BC or had not renewed his membership and thus was not authorized to practice law.

[8] Another lawyer, Sumandip Singh, facilitated Mr. Pyper's unauthorized practice in a variety of ways and was subsequently disciplined by the Law Society by way of a two-year suspension from practice and payment of $41,000 in costs.

[9] On April 27, 2015, Douglas died. All his assets, including the property, were held jointly with Yvonne and thus never passed to his estate and no steps were ever taken to probate or administer his estate.

[10] Yvonne was advised by Mr. Pyper that the judgment registration was effective and that in order to complete the sale of the property, she was required to pay out the judgment with accumulated interest.

[11] Based on that advice, Yvonne withdrew $107,582.00 of her own personal funds (from an account held jointly with her daughter) and paid the Crown judgment in full.

[12] Despite having no authorization to practice law, Mr. Pyper continued to advise Yvonne. He advised her to commence this continuing action in June 2015 and remained her legal advisor until at least November 2015. When the action was commenced, Mr. Singh signed the pleading indicating his office as the plaintiffs' address for delivery and service. Mr. Pyper was operating his "practice" out of Mr. Singh's office premises.

LAW

[13] The registration of the Crown judgment clearly expired and was not renewed before the sale of the property or Douglas's death.

[14] Section 83 of the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78 [*COEA*] provides that a judgment, once expired and if not renewed, ceases to form a lien or charge on the land of the judgment debtor:

> 83 (1) A judgment, except a nonexpiring judgment including a renewal of it under subsection (3), registered under this Part, at the expiration of 2 years after the registration or last renewal of registration of it, ceases to form a lien or charge on the land of the judgment debtor, or anyone claiming under the

> judgment debtor, unless before the expiration of 2 years the registration of the judgment is renewed.
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> (2) A nonexpiring judgment registered before October 31, 1979 expires at the end of 2 years after the *Land Title Act* came into force, unless renewed under subsection (3).
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> (3) A judgment creditor, in respect of a nonexpiring judgment, may, at any time within the 2 year period referred to in subsection (2), apply to register a renewal of the judgment.
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> (4) Sections 86 (4) and (5) and 89 apply to an application under subsection (3).

[15] In addition, s. 91 of the *COEA* provides:

> 91 (1) Except for a nonexpiring judgment, registration of a judgment ceases, at the expiration of 2 years after the date of the application for registration or the date of the last application to renew registration, to form a lien and charge on the land affected by the registration unless, before the expiration of the 2 years, application is made to renew the registration of the judgment.
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> (2) The registration of a judgment may be renewed at any time before the end of 2 years after the registration or last renewal of registration of the judgment.
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> (3) An application for the renewal of a judgment must comply with the requirements of the *Land Title Act*.
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> (4) On receiving an application for the renewal of a judgment, the registrar must comply with section 89 if notice in the prescribed form has not been previously sent in respect of the same judgment and the same land.
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> (5) If a renewal of registration is effected under this section and an endorsement is made in the register, and there is a subsisting entry of the judgment in the register of judgments, the entry is deemed to be cancelled as to the interest of the judgment debtor in the land described in the register.
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> (6) Section 86 (5) applies to renewals registered under this section.

[16] Further, when a joint tenant judgment debtor dies, the surviving joint tenant takes the property free from judgments duly registered against the debtor's interest in the property. This was confirmed by the majority of the Court of Appeal in *Re Young* (1968), 70 D.L.R. (2d) 594 at 601–603, 1968 CanLII 574 (B.C.C.A.):

> I have reached the conclusion that despite the decision of the Supreme Court of British Columbia in *Re Application of Penn*, 4 W.W.R. (N.S.) 452, to the contrary, the registration of a judgment under s. 35 of the *Execution Act*, R.S.B.C. 1960, c. 135, does not sever a joint tenancy.
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> …
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> In my view the registration of a judgment under s. 35 of our *Execution Act* does not sever a joint tenancy and I revert to the words of the trial Judge in

> the *Power v. Grace* case (approved by the Court of Appeal) [[1932] 1 D.L.R. at p. 892]:
>
> > The trend of the authorities is that a mere lien or charge on the land, either by a co-tenant or by operation of law, is not sufficient to sever the joint tenancy; there must be something that amounts to an alienation of title.
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> I prefer the reasoning in the *Brooklands* case to that appearing in the *Penn* case decided in our own Supreme Court.
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> ….
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> Immediately following the death of the debtor it seems to be beyond question that his interest in the joint tenancy existing prior to his death was extinguished. There still remained entered in the register of judgments an entry made under s. 35 of the *Execution Act* indicating the indebtedness of the deceased debtor. As at that moment the legal representative of the judgment debtor had no interest in the lands in question because of the operation of the *jus accrescendi*. The question then is whether the registration of the judgment, a first step in an uncompleted execution, constituted an encroachment upon the surviving joint tenant's rights acquired under the *jus accrescendi*.

[17] The principle that a joint tenancy is not severed by the registration of a judgment was more recently affirmed in *R. v. Ford*, 2010 BCCA 105 at para. 31; see also *C.I.B.C. v. Muntain*, [1985] 4 W.W.R. 90, 1985 CanLII 716 (B.C.S.C.).

[18] Mr. Pyper's so-called "legal advice" that the Crown judgment had to be paid off in order to complete the property sale was quite simply wrong. As noted above, the judgment registered against the property had expired and it was not renewed, therefore the charge on the land was extinguished. Moreover, as Yvonne was not herself a judgment debtor but was a surviving joint tenant, she assumed the property free of the judgments registered against it. Therefore, Yvonne was not legally required to personally pay the judgment debt.

[19] Given the state of Douglas's assets, particularly the fact that they were all jointly held with her, she never assumed the role of Executrix or Administratrix.

[20] It is also common ground that none of the other defendants/judgment debtors were consulted about or made aware of the payment of the judgment by Yvonne.

[21] Liability for the judgment in favour of the Crown was held jointly and severally by the Company, George Wolsey, Ian Sands, and Douglas Robinson. Yvonne is now seeking contribution from the defendants named in this action for the payment she made to satisfy the Crown's judgment.

[22] Section 4(2)(b) of the *Negligence Act*, R.S.B.C. 1996, c. 333 provides:

> 4 (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.
>
> (2) Except as provided in section 5 if 2 or more persons are found at fault
>
> (a) they are jointly and severally liable to the person suffering the damage or loss, and
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> (b) as between themselves, in the absence of a contract express or implied, they are liable to contribute to and indemnify each other in the degree to which they are respectively found to have been at fault.
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> [Emphasis added.]

[23] Similar sentiment is expressed in s. 53(3) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 [*LEA*] provides as follows:

> 53 (1) If a party has a demand recoverable against 2 or more persons jointly liable, it is sufficient if any of those persons is served with process, and an order may be obtained and execution issued against the person served even if others jointly liable may not have been served or sued or may not be within the jurisdiction of the court.
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> (2) The obtaining of an order against any one person jointly liable does not release any others jointly liable who have been sued in the proceeding, whether the others have been served with process or not.
>
> (3) Every person against whom an order has been obtained who has satisfied the order is entitled to demand and recover in the court contribution from any other person jointly liable with the person.
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> [Emphasis added.]

[24] In assessing Yvonne's payment and the plaintiffs' claim for contribution, I have considered the foregoing sections and the academic and common law authorities provided to me by counsel. The academic authorities include Kevin McGuinness, *The Law of Guarantee*, 2d ed. (Toronto: Carswell, 1996), at 638–639; and, G.H.L. Fridman, *Restitution*, 2d ed. (Toronto: Carswell, 1992), at 251–254.

[25] I have also considered judicial commentary on gratuitous or officious payments. In *J.B.C. Consulting Inc. v. Gray*, [2000] O.J. No. 337, 2000 CanLII 22331 (Ont. S.C.), Stinson J. of the Ontario Superior Court of Justice held, at paras.14–16:

> [14] I therefore conclude that Mr. Gray was aware that his liability under the judgment was going to be extinguished, that he was going to receive a benefit as a result, that the funds were being provided by J.B.C. and that J.B.C. was not doing so gratuitously. It is clear on the evidence that, although he was aware of these facts, Mr. Gray did not object; he did not take the position at the time that he would have no responsibility to pay his part of the liability. To the contrary, he said that he would like to, but that he just did not have the money, adding "If I come into money – yes."
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> [15] For its part, J.B.C. was not acting ex gratia or officiously when it paid the money to settle the judgment. Mrs. Copeland responded to her husband's request to assist in settling the outstanding judgment on the understanding that she would be repaid. In part, these funds were to come from her husband, one of the two jointly liable judgment debtors. The remainder was to come from Mr. Gray: that was the whole purpose of the preparation of the form of promissory note that she typed on her letterhead for Mr. Gray to sign.
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> [16] The law relating to recovery by a party who has discharged the legal obligation of another is discussed in J.D. McCamus and P.D. Maddaugh, *The Law of Restitution* (Aurora, Ont.: Canada Law Book, 1990). Beginning at p. 715, the learned authors note a general principle from the oft-cited case of *Moule v. Garrett* (1872), L.R. 7 Exch. 101 at p. 104, [1861-73] All E.R. Rep. 135:
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> > … where the plaintiff has been compelled by law to pay, or, being compellable by law, has paid money which the defendant was ultimately liable to pay, so that the latter obtains the benefit of the payment by the discharge of his liability; under such circumstances the defendant is held indebted to the plaintiff in the amount.
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> The more modern approach appears to be reflected in the case of *Owen v. Tate*, [1976] 1 Q.B. 402, [1975] 2 All E.R. 129 (C.A.), a case from which the authors include a quote from the judgment of Scarman L.J. [at pp. 409-10]:
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> > … a broad approach is needed to the question whether … a right of indemnity arises, and that broad approach requires the court to look at all the circumstances of the case. It follows that the way in which the obligation came to be assumed is a relevant circumstance. If, for instance, the plaintiff has conferred a benefit upon the defendant behind his back in circumstances in which the beneficiary has no option but to accept the benefit, it is highly likely that the courts will say that there is no right of indemnity or reimbursement. But (to take the other extreme) if the plaintiff has made a payment in a situation not of his own choosing, but where the law imposes an obligation upon him to make the payment on behalf of the principal debtor, then clearly the right of indemnity does arise. Not every case will be so clear-cut: the fundamental question is whether in the circumstances it was reasonably necessary in the interests of the volunteer or the

> person for whom the payment was made, or both , that the payment should be made – whether in the circumstances it was "just and reasonable" that a right of reimbursement should arise. …

[26] The reasoning in *J.B.C. Consulting Inc.* was cited with approval by Justice Gray of this Court in *Kessel v. Rikxoort*, 2012 BCSC 1270 at paras. 262–266.

DECISION

[27] Yvonne was not legally compelled to pay and was under no legal obligation to pay the judgment. She did so on the basis of inaccurate advice obtained from a lawyer who was not authorized to practice law at the time the advice was given. None of the other judgment debtors were made aware of Yvonne's intention to make the payment, nor of the payment after it was made. The payment was therefore gratuitous or "officious" as that word is used in the authorities. She has no recourse for contribution from the other defendants.

[28] The Estate of James Douglas Robinson made no payment and therefore has no recourse for contribution from the other defendants.

[29] While it may have been possible for Yvonne to have sought relief from Mr. Pyper, Mr. Singh, or possibly from the Crown, none of those options were pursued.

[30] The plaintiffs' application is dismissed and their claim as against Viola Helen Wolsey and George Thomas Wolsey is dismissed.

[31] In the circumstances of this particular case, each party shall bear their own costs.

"Caldwell J."