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Action No. 0901-16220
IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DONALD BRODER
Plaintiff

- and -

CLERK OF THE COURT
JUN - 7 2010
CALGARY, ALBERTA

GUY LACOURCIERE, BRIAN KICKHAM,
and MARVIN BLOOS
Defendants

CROSS-EXAMINATION OF GUY LACOURCIERE
BY MR. CRAIG BRODER
HELD THE 26TH DAY OF MAY, A.D. 2010

On his Affidavit sworn the 15th day of January,
A.D. 2010, taken before Carol Bourgeois, CSR(A),
Examiner, pursuant to Rules 203(3), 728, 204(1) of
the Court of Queen's Bench of Alberta, held at the
offices of Field LLP, 400, 604 - 1st Street, S.W.,
Calgary, Alberta.

APPEARANCES:

(Craig and Donald Broder Self-represented
(57 West Edge Road, Cochrane, Alberta T4C 1M7
(403) 932-9992)

(R. Wong, Esq. For the Defendant
(Lacourciere)
(Field LLP, 400, 604 - 1st Street, S.W.,
Calgary, Alberta T2P 1M7 (403) 260-8500)

(Carol A. Bourgeois, CSR(A) Court Reporter
Precision Reporting
(403) 686-2707)

1 (UPON COMMENCING AT 1:55 P.M.)

2 GUY LACOURCIERE, having been duly
3 affirmed, testified as follows:

4 Q MR. BRODER: I refer you to within your
5 affidavit, Guy Lacourciere, paragraph 4.

6 A Yes.

7 Q You refer to initially being retained to appeal an
8 order of Justice Clark on November the 2nd, 2001; is
9 that correct?

10 A That's what it says, yes.

11 Q Did you, Mr. Lacourciere, file a notice to change
12 solicitor within action 970372949 at that time? Did
13 you go on the record formally at the courthouse at
14 that time?

15 A You know, I really can't remember.

16 Q Okay. Can you refer to tab A, page 1 of the appeal
17 book digest?

18 A Yes.

19 Q Now, you identified for the record that this document
20 is a copy of the appeal book digest of the Clark
21 appeal?

22 A Yes.

23 Q Can you refer to tab A, page 2 of the appeal book
24 digest?

25 A Yes.

26 Q Are all the pleadings filed with the clerk of the
27 court prior to the Clark appeal listed within this

1 description?

2 A I'm going to have to say in respect to this appeal,
3 yes.

4 Q But my question was, are all the pleadings that were
5 filed at that time with the clerk of the court prior
6 to the Clark appeal listed within this description?

7 A I would have no idea about that.

8 Q Could there be some that are not listed in there?

9 A I don't believe there is, no.

10 Q Under the final document section, are all the final
11 documents prior to Clark appeal listed within this
12 description?

13 A Yes.

14 Q Can you refer to tab A, pages 3, 4 and 5?

15 A Yes.

16 Q And can you identify for the record that this is the
17 original statement of claim within action 9703914929?

18 A No.

19 Q Can you identify for the record that this is the
20 original statement of claim within your affidavit for
21 the action that you represented Don and Craig Broder
22 for?

23 A Yes, it is. The problem is, for some reason the
24 backer page is off of it.

25 Q Correct. Can you confirm by way of undertaking to
26 find the backer page and provide us --

27 A No, I'm not going to give you any undertakings.

1 MR. WONG: No, I'm not going to provide any
2 undertakings at cross-examination on affidavit.

3 UNDERTAKING NO. 1:

4 TO PROVIDE THE BACKER PAGE FOR THE ORIGINAL
5 STATEMENT OF CLAIM WITHIN MR. LACOURCIERE'S
6 AFFIDAVIT FOR THE ACTION THAT HE
7 REPRESENTED DON AND CRAIG BRODER FOR
8 (OBJECTED TO)

9 Q MR. BRODER: But are you saying that this
10 appears to be the original statement of claim?

11 A From what I can tell, this definitely is. The only
12 problem is, you asked if this was the original one
13 and, no, because of the missing backer page. The
14 rest of it is fine.

15 Q So without the backer page it's still the statement
16 of claim?

17 A Sure.

18 Q Do you have the knowledge of when this original
19 statement of claim was filed?

20 A Yes.

21 Q Can you confirm the date, please?

22 A According to the document that I have and, again,
23 it's the best I can do, it says, the 8th day of July,
24 1997. I'm sorry, I didn't file this, so I --

25 Q That's fine. That's the date that's within the
26 statement of claim; correct?

27 A That's correct.

1 Q Can you go back to page 1. Were the personal
2 representatives named as plaintiffs in this statement
3 of claim?

4 A No.

5 Q Who was named as plaintiffs?

6 MR. WONG: The document speaks for itself.

7 The document speaks for itself.

8 Q MR. BRODER: I refer you to tab 8, pages 6, 7
9 and 8.

10 A Yes.

11 Q Can you identify for the record this is the original
12 statement of defence?

13 A Again, to the best of my ability, this is the
14 original statement of defence. I can't be 100
15 percent sure. I have never seen the original
16 statement of defence. And again, the backer page was
17 left out.

18 Q Can you confirm for the record when it was filed, or
19 the date it was signed?

20 A No, I cannot.

21 Q Can you refer to line seven of the statement of
22 defence?

23 A Line seven?

24 Q Yes. Paragraph 7. Sorry.

25 A Yes.

26 Q Does the defence pleading within paragraph 7 refer to
27 the Alberta rules of court; specifically rule 159?

1 A I'm sorry?

2 Q Does paragraph 7 refer to rule 159 of the Alberta
3 rules of court?

4 A No.

5 Q What does it refer to?

6 MR. WONG: Well, the document speaks for
7 itself, Mr. Broder. He's not here to interpret the
8 document.

9 Q MR. BRODER: Does line (sic) 8 refer to rule
10 129?

11 A No. I'm assuming you mean paragraph 8?

12 Q Paragraph 8, correct.

13 A I said no.

14 Q Could you refer to tab A, page 9, 10, 11 and 12, and
15 identify for the record this is the amended statement
16 of claim?

17 A Yes, it is.

18 Q Was the date for which the amended statement of claim
19 filed with the clerk of the courts before March 15th,
20 2001?

21 A I'm sorry?

22 Q Was the date for which the amended statement of claim
23 filed with the clerk of the courts before March 15th
24 of 2001?

25 A I'm not 100 percent sure. Again, in the affidavit
26 there's no backer page, and amended this 12th day of
27 something, 2001. I can't read it.

1 Q Okay. Was the amended statement of claim filed by
2 way of an order before the pleadings were closed?

3 A Was the --

4 Q Amended statement of claim filed by way of an order
5 before the pleadings were closed?

6 A I'm having a little problem with that.

7 Q I'll rephrase the question. Was the amended
8 statement of claim filed by way of an order before
9 the certificate of readiness was filed?

10 A You know what? I didn't file the certificate of
11 readiness, and I'm not 100 percent sure when it was
12 filed, so I can't answer that.

13 Q Can you refer to tab A, page 13 and 14.

14 A The notice of motion?

15 Q Correct.

16 A Yes.

17 Q Can you identify for the record that this document is
18 a notice of motion raising Alberta rule of court rule
19 129?

20 MR. WONG: Again, the document speaks for
21 itself, Mr. Broder.

22 Q MR. BRODER: What is the date that this motion
23 was brought before the Master in the Edmonton law
24 courts?

25 A The 1st day of February, 2001. It was scheduled for
26 the 6th day of February, 2001.

27 Q Okay. Is this the procedure under the Alberta rules

1 of court to address that the plaintiffs have no
2 standings to commence an action against the
3 defendants?

4 MR. WONG: Well, are you asking for opinion?

5 MR. BRODER: Well, no. I'm asking Mr.

6 Lacourciere, is this the procedure.

7 A Is this the procedure to follow --

8 Q The notice of motion.

9 A Yeah, sure.

10 Q Was this application made prior to the certificate of
11 readiness being filed?

12 A Again, I'm not sure. Do you have the date that it
13 was filed?

14 Q I'll be getting to that shortly and we can come back
15 to those questions.

16 In this action, was the issue raised by way of a
17 129 application because the plaintiffs had brought on
18 an action in their personal capacity and lack
19 standing because no personal representatives had been
20 appointed?

21 MR. WONG: Well, again, that's for a court
22 of law to determine.

23 MR. BRODER: And that's the question that I'm
24 asking.

25 MR. WONG: And that's already been termed by
26 Justice Clark in the court of appeal.

27 Q MR. BRODER: Was the first time lack of

1 standing rule 129, "the action is frivolous,
2 vexatious and an abusive process of the court" raised
3 in the original statement of defence?

4 If you would like to refer back to the original
5 statement of defence, you can.

6 A I believe so. Oh, yes, it is. Yes. "The defendants
7 claim that the claim against them by the plaintiffs
8 is frivolous, vexatious and an abusive process."

9 Q Can you refer to tab A, page 17, 18, 19 and 20.

10 A 17?

11 Q Seventeen.

12 A Eighteen.

13 Q Nineteen and 20.

14 A Sure.

15 Q Again, it's the amended amended statement of claim;
16 correct?

17 A Yes.

18 Q Was the amended amended statement of claim filed on
19 November the 5th, 2001?

20 A I'm going to have to apologize. There was no --

21 Q Were you the solicitor on the record for Donald
22 Broder and Craig Broder when the amended amended
23 statement of claim was filed?

24 A I'm not 100 percent sure, but I believe I was.

25 Q If you can refer to page 1 of the amended amended
26 statement of claim.

27 Was this the first time the personal

1 representatives were named as plaintiffs?

2 A Yes, it is.

3 Q Were the personal representatives added as plaintiffs
4 after the deadline set out by way of an order that
5 the certificate of readiness was to be filed?

6 A Yes.

7 Q Was Elizabeth MacInnis solicitor for the plaintiffs
8 at the time of filing the amended amended statement
9 of claim?

10 A Yes.

11 Q Was it necessary to file a statement of defence to
12 the amended amended statement of claim?

13 A Not necessarily.

14 Q Was there a fiat provided for the amended amended
15 statement of claim?

16 A I'm sorry?

17 Q Was there a fiat provided for the amended amended
18 statement of claim?

19 A No.

20 Q Can you refer to tab A, page 21.

21 A Yes.

22 Q Identifying for the record that this is the granting
23 of administration of Edmund Broder?

24 A Yes.

25 Q Yes. Was Edmund Broder's date of death December the
26 26th, 1968?

27 A According to this document, that's the date of his

1 death.

2 Q Is it correct the date the granted administration was
3 issued at the surrogate courts, being May 24th, 2001?

4 A That is correct.

5 Q Was it in excess of 30 years from Edmund Broder's
6 death until the grant was issued?

7 A Yes.

8 Q Was the grant of administration issued after the
9 certificate of readiness was to be filed?

10 A Do you have the date that it was to be filed, just to
11 be sure? Because I'm not sure when it was supposed
12 to be filed.

13 Q The order to file the certificate of readiness date
14 was March 15th of 2001.

15 MR. WONG: Can you show us that order?

16 MR. BRODER: No, I can't show it. I can show
17 it, yes, but I can't show it in your affidavit. I do
18 have a copy of it.

19 A Can I see? Yes.

20 Q Okay.

21 A For the record, the date for the certificate of
22 readiness is supposed to be February 15th, 2001.

23 Q Go to the next order in there. I believe it was --
24 it was granted for an extra month.

25 A Defendant's application shall be -- that's your
26 application. To dismiss under rule 29 (sic) should
27 be made on or before March the 15th, 2001, and the

1 certificate of readiness set for trial shall be filed
2 on or before March 15, 2001.

3 Q So, again, if I say, was the grant of administration
4 issued after the certificate of readiness was ordered
5 to be closed?

6 A Yes, it was.

7 Q Thank you. Can you refer to tab C, pages 1 through
8 5.

9 A Yes.

10 Q And for the record, this is a copy of Justice
11 Marceau's case management meeting minutes of February
12 the 5th, 2003 and May the 7th, 2003.

13 A Okay. Yep.

14 Q Did you personally represent Donald Broder and Craig
15 Broder at the case management meeting by way of
16 conference call?

17 A I certainly did.

18 Q Were the case management meetings being held after
19 the certificate of readiness was to be filed?

20 A As a matter of fact, they were. And after, the court
21 of appeal said that they could do it.

22 Q Were the case management meetings being held prior to
23 the second certificate of readiness?

24 A Yes, they were.

25 Q If you could go to tab C, page 4.

26 A Yes.

27 Q Steps in the litigation, I'll quote, "Ms. MacInnes

1 confirmed that the conditional certificate of
2 readiness had been filed with the court on April
3 17th, 2003."

4 Did you inform Justice Marceau that the
5 certificate of readiness within the said action had
6 been ordered to be filed on or before March 15th,
7 2001, and prior to the certain court application to
8 appoint personal representatives?

9 A Well, first of all, no, because the court of appeal
10 had already made a ruling in respect to this matter.

11 Q Was Justice Marceau being mislead by both solicitors
12 on the record within the action?

13 MR. WONG: Well, you can't ask a question
14 about whether or not a party is being misled. Ask
15 the party yourself.

16 (OBJECTION TO QUESTION)

17 Q MR. BRODER: Did you inform Justice Marceau
18 that Ms. MacInnes was not involved in the previous
19 court order that she obtained to a successful motion
20 in January of 2001, to file the certificate of
21 readiness?

22 A As I indicated to you, the court of appeal had given
23 them leave to proceed, and as such, we have to go by
24 what the court of appeal says. Whether or not she
25 filed something at one point in time is absolutely
26 irrelevant in this matter.

27 Q So how many certificates of readiness are allowed to

1 be filed in this Queen's Bench action?

2 A As many as the court allows. It should be remembered
3 that the court's intent is to try to get this matter
4 heard on its merits. And where you have little
5 niceties and you're saying whether a person missed
6 the deadline and they miss a deadline because you
7 brought on a motion -- that is, the other side
8 brought on a motion -- then the courts are going to
9 say, excuse me, but you can't file the certificate of
10 readiness because you have another motion on that
11 raised an issue as to whether or not you could stand
12 -- or that was standing.

13 Master Quigley, I believe it was at that time,
14 said that they had the right to do certain things,
15 and at that point in time, to add.

16 So you have a court order that says that they're
17 allowed to do certain things, and everybody proceeded
18 on that basis.

19 Q So when you have a court order to do certain things,
20 do you proceed on that basis?

21 A Yeah.

22 Q So can you continue to add that the certificate of
23 readiness has been filed?

24 A Within the court, yes.

25 Q Did they have a leave of the court?

26 A Yes, they most certainly did.

27 Q Did they have a fiat?

1 A You don't need a fiat. The court of appeal said they
2 could do it.

3 Q Did you ever clarify with Donald Broder that a
4 certificate of readiness means the closing of the
5 pleadings in the legal definition?

6 A I'm sorry, I don't understand that.

7 Q I'm just asking, have you ever clarified with Donald
8 Broder what the meaning of the certificate of
9 readiness is?

10 A Do you understand what a certificate of readiness is?

11 Q Maybe I don't. I'm just asking you, did you ever
12 clarify with Donald Broder so he would understand
13 what the certificate of readiness is?

14 A Well, a certificate of readiness is a document that
15 you prepare to set down for trial. It may very well
16 be that at a certain point in time there were certain
17 things that had to be changed with regards to that
18 certificate of readiness.

19 A number of examples. There's a court
20 application that comes about as in this case here,
21 the first time. And then you brought on the motion
22 and Quigley said they were allowed to add if they did
23 the application.

24 Now, it was your lawyer before who went to court
25 and obtained the court order. Now, as a result of
26 that, then obviously the certificate of readiness had
27 to be changed. Then more applications were made, and

1 as things came about, the certificate of readiness
2 changes.

3 It's not a document that's set in stone. All a
4 certificate of readiness does is it sets out for the
5 court what the parties believe who the parties are,
6 what the causes of actions are, what the issues are
7 going to be, how many days are going to be estimated
8 to take, how many witnesses you're going to produce,
9 whether you're going to produce expert witnesses and
10 in an estimated time for trial. That's all it does.

11 It can be changed at any point in time. So for
12 example, in any case you may say to the court, well,
13 it's going to take three days, but your -- and you
14 put that in your certificate of readiness and your
15 trial goes for seven days. So do you have to file a
16 certificate of readiness? No.

17 Q I refer to you tab D, pages 1 through 3.

18 A Yes.

19 Q Identifying for the record that this document is an
20 order from a case management meeting held with
21 Justice Marceau on the 10th day of September, 2003?

22 A That is correct.

23 Q Who prepared this order?

24 A Weir Bowen, W-E-I-R B-O-W-E-N. And it was Elizabeth
25 MacInnis at that law firm who prepared this order.

26 Q I refer to page 2, line 1. Am I correct in saying
27 that it states that Donald Broder is to place the

1 trophy in your office for safekeeping on or before
2 October 10th, 2003?

3 A That is correct.

4 Q The order that's within your affidavit, was it signed
5 by Justice Marceau?

6 A No. This is the order that was in my file.

7 Q So I'm correct in saying that this is --

8 A And I would have to say that the order that was
9 signed by Justice Marceau was passed onto your other
10 counsel that was never returned to my office. The
11 whole file was with you guys.

12 Q So there is an order that has been signed by Justice
13 Marceau?

14 A Of course.

15 Q I refer back to tab C, page 5.

16 A Yes.

17 Q Under the heading "Next Case Management Meetings."

18 A Yes.

19 Q Is it correct in saying that upon conclusion of the
20 May 7th, 2003 case management meeting, confirmation
21 was provided that the next case management meeting
22 was scheduled for Thursday, October 16th, 2003, and
23 not the 10th day of September 2003?

24 A Yes.

25 Q I refer you to paragraph A of your affidavit of this
26 proceeding.

27 A Paragraph A.

1 Q You refer to, "I could not represent him since he was
2 not prepared to abide by Justice Marceau's order."

3 "Him" meaning Donald Broder?

4 A That is correct.

5 Q Did you ever inform Donald Broder that this was the
6 second round of case management meetings being held
7 after the certificate of readiness was to be filed?

8 A I'm sorry, certificates of readiness had to be filed
9 on a number of occasions. So if you want to say that
10 the first certificate of readiness or the second
11 certificate of readiness or the third certificate of
12 readiness, that would be fine, but I have to --
13 please advise me as to which certificate of readiness
14 we are talking about here.

15 Q Did you provide Donald Broder with a signed copy of
16 Justice Marceau's order?

17 A As a matter of fact, I did.

18 Q I refer to line (sic) 9 of the affidavit.

19 A You mean paragraph 9?

20 Q Sorry, paragraph 9.

21 A Yes.

22 Q You say, "I filed a notice of intention to cease to
23 act on October the 30th, 2003, as I was required to
24 withdraw in the circumstances pursuant to the Law
25 Society of Alberta, Code of Professional Conduct."

26 A That is correct.

27 Q Were the circumstances only because Donald Broder

1 would not place the trophy in your office as per the
2 Marceau order?

3 A There were two. The first one, of course, is that
4 Donald Broder would not follow the order and;
5 secondly, is that there was a conflict as between
6 what Craig Broder said. And then, you had said
7 specifically to me, is that you had no control over
8 your dad and that the deer head should be produced.

9 So I have now had that -- for two individuals
10 who had different instructions. I have Donald Broder
11 who is telling me, I'm not going to produce it, and I
12 have Craig Broder who is telling me that he wants to
13 produce it. So I'm in a conflict position. I cannot
14 act for either party.

15 Q Did you say that I told you I wanted to produce it or
16 did I say to you that I could not produce it because
17 I did not have it in my power or custody?

18 A That's exactly right.

19 Q Can you refer to paragraph 12 of your affidavit.

20 A Yes.

21 Q I'll just quote it. "On January the 22nd, 2004,
22 Craig Broder called and asked if I could review the
23 submissions he intended to make to the court. I
24 provided about four and-a-half hours of legal
25 services."

26 "I" meaning you, Mr. Lacourciere?

27 A That is correct.

1 Q Is this a true statement?

2 A I believe it is, yes.

3 Q Paragraph 13. I'll just quote it. "I provided
4 advice totalling approximately five hours to Craig
5 Broder during the trial in the 1997 Queen's Bench
6 action. The advice was with respect to providing
7 case law in reviewing Craig Broder's submissions to
8 the court."

9 Was Craig Broder preparing for the trial in
10 Edmonton while he received your legal advice?

11 A I --

12 Q Let me clarify it. It seems a little bit not clear.

13 Craig Broder was representing or speaking on
14 behalf of his father at the trial, and you provided
15 advice during the course of the trial in Edmonton?

16 A I don't recall giving advice during the course of the
17 trial. I do recall speaking to you on the phone.
18 And at first I wasn't keeping a record of my time,
19 and then after awhile I kept a record of my time.

20 It came to somewhere between around four
21 and-a-half, five hours. I do recall you mentioning
22 to me that the court had asked you guys to try to
23 negotiate a settlement. That, I do remember.
24 Outside of that, you know, we basically talked about
25 your cases and I told you that they were pretty much
26 bang on and just to carry on. I looked up some more
27 cases, and that's it.

1 Q The cases that you looked up, did you fax them to me
2 in Edmonton so I would have them available for the
3 arguments?

4 A I believe I did. I believe I did.

5 Q Were any of the submissions that I was using faxed to
6 you for review and editing?

7 A You know, I believe -- I've searched my records and,
8 unfortunately, the file was taken -- I gave you the
9 whole file, and that was taken to Marvin Bloos. So I
10 remember seeing the file --

11 Q Can you recall if submissions were faxed to your
12 office for review and editing?

13 A I cannot recall, no.

14 Q Did you review and edit the closing statements?

15 A Again, I can't recall. I do recall talking to you
16 about it.

17 Q Did you review any of the opening statements?

18 A No. That, I didn't do.

19 Q Were you paying for the five hours of legal services
20 by Donald Broder? Were you paid?

21 A At that time, yes, I was paid for that.

22 Q Paragraph 14. "I'm providing advice to Craig Broder
23 and I provided to inform independent and competent
24 advice to the best of my ability."

25 I'm just quoting paragraph 14. During your
26 review and editing of the submissions, did you inform
27 Craig Broder that the conditional certificate of

1 readiness filed on April 17th, 2002, as per the
2 Marceau case management meetings, was the second at a
3 later filed date in the previous order to file a
4 certificate of readiness?

5 A Well, as a matter of fact, no.

6 Q Had the information about the April 17th, 2003 second
7 certificate of readiness been provided in a timely
8 manner, being competent advice to provide to Craig
9 Broder?

10 MR. WONG: Well, again, you're asking for an
11 opinion. That's not what he is here for.

12 Q MR. BRODER: When you mentioned competent
13 advice, did you mean acting in Donald Broder's best
14 interest as his paid solicitor?

15 A Yeah.

16 Q Of the abilities you refer to in providing legal
17 counselling advice by ensuring that the rules of
18 court, specifically rule 102, 103, 104, 129 and 239
19 are adhered to by opposing counsel --

20 MR. WONG: Well, again, refer to the rule
21 and then he'll answer the question.

22 Q MR. BRODER: Of the abilities you referred to,
23 understanding deadlines, set out by way of orders to
24 file certificates of readiness?

25 A You know -- can you ask that question again, please?

26 Q You refer to the best of your ability. I'm asking
27 you if your abilities that you referred to would be

1 partly in understanding deadlines set out by way of
2 orders?

3 A Again, if there were deadlines that were relevant,
4 yes, but in this case here, again, the court of
5 appeal had set down the parameters as to what had to
6 be done, and it was done according to what the court
7 of appeal said.

8 Q And you did the court of appeal?

9 A Yes, I did.

10 Q Paragraph 19 of Guy Lacourciere's affidavit.

11 A Yes.

12 Q And I quote, "Sometime in April of 2003, Craig Broder
13 listed the trophy on eBay to find out what it's
14 worth."

15 A Yes.

16 Q Were you present to witness Craig Broder listing the
17 trophy on eBay?

18 A No. I have to say that Craig Broder told me he
19 listed it on eBay, and he provided some information
20 in respect to how he had listed it and so on and so
21 forth.

22 Q Was it your request to Craig Broder to speak with
23 Donald Broder about listing the trophy on eBay to get
24 it valued?

25 A As I recall, there was a discussion about what the
26 value of it was. We had made repeated attempts to
27 get a valuation for the trophy. You had given me the

1 names of several different individuals.

2 I believe you told me one individual would say
3 it was worth about \$50,000. The other side was
4 claiming it was worth a million dollars. And you
5 didn't -- I said, well, we need to get some
6 evaluations. You didn't know who.

7 So you then said, well, what if we put it on
8 eBay and we can see what the open market would bear.
9 I said, well, as long as you list it for at least the
10 amount that it's -- that the other side claims it's
11 worth, there should be no problem whatsoever with it.

12 Q So whose idea was it to put it on eBay?

13 A It was your idea to put it on eBay, and that is Mr.
14 Craig Broder.

15 Q Am I correct in saying that you also completed the
16 posting on eBay by entering the reserve bid of the \$1
17 million and to finalize the posting?

18 A No.

19 Q So you did not assist with the posting on eBay?

20 A No.

21 Q Line 20 -- paragraph 20. I quote, "After the
22 plaintiff was sentenced to gaol, he told me that he
23 had received and accepted the high bid on eBay of
24 170,000 U.S.D. from Don Schaffer of Montana, USA,
25 and asked me to make arrangements to get the trophy
26 back, which I did." "I" meaning you, Guy
27 Lacourciere?

1 A That is correct.

2 Q Did you, Guy Lacourciere, ever speak to Donald Broder
3 or attend the Edmonton remand centre where he was
4 being held during the 11 days he was in custody?

5 A I talked to yourself. I talked to Don Broder. He
6 gave me some advice, I believe -- or he wasn't
7 feeling well and needed some medication. And then,
8 Mr. Craig Broder advised me very clearly that Joyce
9 was going to take care of everything, that he had
10 talked to his dad, and that I was to contact Joyce.
11 So I did.

12 Q So did you ever speak to Donald Broder or attend
13 Edmonton remand centre where he was being held?

14 A Yeah, I talked to him, but I did not attend the
15 remand centre until I went to get him out.

16 Q Did you, Guy Lacourciere, get signed back on by
17 Donald Broder to represent him and deal with Don
18 Schauffer's solicitor in Montana to get the trophy
19 back?

20 A I'm missing something here. "Signed on", what do you
21 mean by that?

22 Q Well, you filed to cease to act. So I'm just asking
23 you to clarify if you had ever signed back on to be
24 representative with that action?

25 A I can't remember if I signed a new change of
26 solicitor. All I know is I received phone calls from
27 you -- and actually, as a matter of fact, I also

1 received phone calls from Jeff, asking me to take
2 this matter on. I took this matter on. Not only did
3 I take this matter on, I appeared in court. At that
4 time Mr. Broder was present in court. You were
5 present in court and Jeff was present in court.

6 So I would have to say that I represented to the
7 court that I was acting for Donald Broder. You were
8 there. Obviously I was signed on.

9 Q Line 28 -- paragraph 28. "I acted for Donald Broder
10 with respect to the appeals."

11 Isn't it the fact that during the submissions at
12 the Alberta court of appeal that you raised the
13 issues of the conditional certificate of readiness
14 filed on April 17th, 2003, was preceded by an earlier
15 certificate of readiness?

16 A How is that relevant to anything?

17 Q Maybe it's not. I'm just asking you the question.

18 A It's not relevant. It's not relevant. And I didn't
19 provide any advice to the court of appeal in respect
20 to that, because the court of appeal had already
21 ruled in respect to this matter.

22 Q Did you raise the issues in your submissions that the
23 first time lack of personal representatives was
24 raised was not in early 2001, which is under tab A,
25 page 13, the Sawyer motion, that was pleaded within
26 the original statement of defence?

27 A Say that again.

1 Q Did you raise in your submissions -- did you raise
2 the issue that the first time lack of personal
3 representatives was raised was not early 2001, which
4 is tab A, page 13, Sawyer's motion, but was pleaded
5 within the original statement of defence?

6 A As a matter of fact, it was told to the court of
7 appeal. The comment was made by the court of appeal
8 -- well, you ambushed Ms. MacInnes and we said, no,
9 nobody was ambushed in respect to this. That matter
10 was raised at the beginning in the statement of
11 defence.

12 Q What you mean by "ambushed Ms. MacInnes?"

13 A The court had asked the question.

14 Q If we ambushed Elizabeth MacInnes?

15 A It appears to us that Ms. MacInnes may have been
16 ambushed by the motion, by Sawyer, in respect to --
17 in respect to the motion that had been filed in 2001.
18 And at that point in time what I had told the court
19 of appeal is that the matter had originally been set
20 out in the statement of defence.

21 Q I need some clarification that we ambushed Elizabeth
22 MacInnis.

23 MR. WONG: That's what the court of appeal
24 said.

25 Q MR. BRODER: We ambushed her? Is that not
26 when you raised issues, is that not considered a
27 lawyer of competence to know when and wait until the

1 issue being raised might be to your advantage -- or
2 to our advantage?

3 MR. WONG: Do you understand that?

4 A THE WITNESS: No.

5 MR. WONG: No. Can you repeat?

6 Q MR. BRODER: All I'm saying, if you're going
7 to wait to file motion 129, would it not be to our
8 advantage if our solicitor waited for a timely
9 application?

10 A Let's be clear. You filed a statement of defence.
11 In the statement of defence it raised the issue of
12 standing, okay? Later on a comment was made, first
13 of all, by Ms. MacInnes, that she had been ambushed.
14 At which point in time the court asked me about being
15 ambushed. And I said to the court, I said, no, that
16 the -- that Ms. MacInnes was not ambushed, that the
17 matter has been raised originally in the statement of
18 defence that had been filed by Mr. Sawyer.

19 Q Did you ever communicate with Robert Sawyer with
20 respect to bringing on a notice of motion pursuant to
21 the Alberta rules of court 129?

22 A No.

23 Q Did you ever tell Donald or Craig Broder that you
24 called Robert Sawyer to discuss bringing on an
25 application, that there was lack of personal
26 representatives or outstanding?

27 A No. I told you guys and you -- in fact, when you

1 came in to see me in respect to that and you asked me
2 to act for that, and I said, look, it appears Mr.
3 Sawyer appears to be doing a reasonable job for you.
4 Bring this to him and he could bring on the
5 application, which is what he did.

6 Q Paragraph 46.

7 A Yes.

8 Q Special chambers application was heard on May 19th,
9 2009? And Master Mason held that the plaintiff's
10 action be dismissed as against me pursuant to the
11 expiration of the limitation period. Master Mason
12 also ordered that the plaintiff pay taxable costs and
13 disbursements to our office in the amount of
14 \$9,489.54. A copy of his order is attached as
15 Exhibit Q.

16 Can you turn to Exhibit Q. Is it correct that
17 this is the order of Master Mason?

18 A Yes.

19 Q The order of Master Mason in the Queen's Bench action
20 does not refer to the expiration of a limitation
21 period; correct?

22 A I believe it says that in her reasons for judgment.
23 And I'm not sure which -- what tab.

24 Q That's fine. I don't need to see the reasons for
25 judgment. I'm just asking to clarify if the order
26 itself says that?

27 A No. It's a part of the transcript. And the

1 transcripts have been filed in respect to the special
2 application. And for the record, they were filed on
3 May 21st, 2010, and they are set out at tab 5.

4 Q Tab which?

5 A Five.

6 MR. WONG: I can advise you, Mr. Broder,
7 that is on page No. 17 is her reasons for judgment.

8 Q MR. BRODER: Paragraph 21.

9 A Yes.

10 Q "The plaintiff told me that he instructed his wife,
11 Joyce Broder, to deposit 170,000 U.S.D. into my trust
12 account on May the 3rd, 2005, pursuant to Justice
13 Bielby's orders of --"

14 A Yes.

15 Q Attached as Exhibit G is a copy of the order of
16 Justice Bielby dated May 3rd, 2004.

17 A Yep.

18 Q I refer you to tab G. I'm testifying for the record
19 that this document is a copy of Justice Bielby's
20 order?

21 A Yes.

22 Q He ordered that on May 3rd, 2004?

23 A That is correct.

24 Q Looking at the first paragraph of the order,
25 reference is made to Mr. Lacourciere's civil counsel
26 for the defendant, Don Broder. Is this not a date
27 after which you had ceased to act?

1 A No.

2 Q Mr. Lacourciere says he filed a cease to act when Mr.
3 Broder wouldn't put the deer head in your office.

4 A But if you recall, I was asked on several occasions
5 afterwards to act. So obviously I had a retainer.

6 And if you read the order, I would point out it
7 says, "Upon counsel for the defendant, Don Broder
8 appearing before the court, and upon hearing the
9 submissions of Mr. Bloos and Mr. Lacourciere via
10 teleconference."

11 Mr. Don Broder was there. And if I wasn't
12 acting for him, he would have just said to the court,
13 oh, Mr. Lacourciere is not acting for me. That never
14 happened.

15 Q Can you refer to paragraph 9 of your affidavit.

16 A Yes.

17 Q "Filed a notice of intention to cease to act on
18 October 30th, 2003, as I was required to withdraw in
19 the circumstances pursuant to the Law Society of
20 Alberta's Code of Professional Conduct."

21 A That is correct.

22 Q Had you filed an intention to act after --

23 A Probably not.

24 Q Can you confirm if you were retained by Donald Broder
25 in 2004, when Justice Bielby was dealing with this
26 contempt charge?

27 A Yes, I was. And I would point out as well that in

1 respect to the amount of money I was paid for the
2 deer head, not only did I receive instructions from
3 Don Broder and money sent from his wife, but I also
4 received money from you in respect to that deer head.
5 And by "you", I mean Craig Broder.

6 And we had long discussions about this, and we
7 had long discussions about my acting for your dad in
8 respect to this and what was necessary. And both you
9 and your dad agreed to what we were doing.

10 Q And what was it that we agreed to?

11 A You agreed to get the deer head back and return the
12 money to Schauffer who -- and get the deer head back.

13 Q So you were assisting us with purchasing the deer
14 head back from the U.S.?

15 A That's correct.

16 Q Was that all you were to assist us with?

17 A Yeah. To make the representations to the court that
18 that's what we were doing.

19 Q No. Were you --

20 A Yes. To make the representations -- I was asked to
21 get your dad out of gaol.

22 Q Mr. Lacourciere, you just said that we asked you to
23 handle the trust money to deal with the U.S.

24 \ counterpart to purchase the deer head back; is that
25 correct?

26 A I didn't say "just." There were many things that you
27 \ asked me to do. Many things.

1 } Q So you were given 170,000 by Joyce Broder?

2 A I was given \$170,000 U.S., I believe, by Joyce
3 Broder. And there was not enough money, so we had to
4 get some additional funds, and you provided those
5 additional funds.

6 Q From Craig Broder?

7 A That is correct.

8 Q And the purpose of those funds were for?

9 } A To get the deer head back.

10 Q So you were asked to assist in trust monies being
11 provided to you to deal with the solicitor in Montana
12 to purchase the deer head back?

13 A Well, as a matter of fact, I was also asked to deal
14 with Marvin Bloos and I was asked to deal with your
15 dad and I was -- you wanted to know the extent of my
16 retainer; right? So my retainer was not just to talk
17 to Mr. Schauffer and his counsel in Montana. My
18 retainer included dealing with your lawyer in
19 Edmonton, Mr. Marvin Bloos. My retainer included
20 making representations to the court. My retainer
21 included making contact with your dad. My retainer
22 included appearing in court.

23 All that I did, and I did every one of those
24 things, and I did those with your full knowledge and
25 the full knowledge of your father and the full
26 knowledge of your brother, Jeff Broder. My retainer,
27 as I have indicated, was not a simple send the money

1 to the one lawyer in Montana.

2 Q I'll repeat my question. When you were provided with
3 the funds, 170,000 U.S. from Joyce Broder and a small
4 amount of additional money from Craig Broder to make
5 up for some difference in possibly purchasing the
6 deer head back, was that all we were asking you to do
7 at that time?

8 A No, it was not.

9 Q Paragraph 21. In paragraph 21 you make reference to,
10 "Justice Bielby's orders of April 29th, 2004 and May
11 3rd, 2004."

12 The previous order that you make reference to in
13 paragraph 21 of your affidavit dated April 29th,
14 2004, and you clarify that order made reference to
15 depositing the sale proceeds into Marvin Bloos's
16 trust account.

17 MR. WONG: Mr. Broder, do you have a copy of
18 the April 29th, 2004 -- my understanding, that was
19 the order that incarcerated your father for refusing
20 to deliver the deer head.

21 So could you provide a copy of the order, if you
22 have it? So that way my client can take a look at
23 it. Do you have copy of it now?

24 MR. BRODER: I'm not sure if I can find it
25 right now. It would take me a few minutes to find
26 that.

27 MR. WONG: Well, let's take a few minute

1 break.

2 (BRIEF ADJOURNMENT)

3 Q MR. BRODER: I'm going to present a copy of
4 the order of Thursday, the 29th day of April, 2004,
5 of Justice Bielby. It's on page 2. The previous
6 order -- I'll repeat the question.

7 The previous order you make reference to in
8 paragraph 21 of your affidavit dated April 29th,
9 2004, which is the date of the order.

10 MR. WONG: If you don't mind, Mr. Broder.
11 He would like to read it first.

12 MR. BRODER: Sure.

13 MR. WONG: Let the record show that this
14 order was signed by Mr. Bloos at that time, the
15 representative of the defendant Don Broder.

16 A THE WITNESS: Yes. I've read it.

17 Q MR. BRODER: From that order issued on the
18 29th day of April, 2004, it clearly states that the
19 proceeds are to be deposited in the trust account of
20 his solicitors Beresh Depoe Cunningham; correct?

21 A Yes, absolutely.

22 Q What was the date that it was filed?

23 MR. WONG: April the 29th.

24 A THE WITNESS: No. Filed.

25 Q MR. BRODER: It was entered "this 24th day of
26 June."

27 MR. WONG: Off the record.

1 (DISCUSSION OFF THE RECORD)

2 Q MR. BRODER: Here it is. Sorry. Filed date,
3 yeah, it's filed June 24, 2004. Is that what you're
4 asking?

5 A Yes. So let me see. So there was a court order that
6 you asked me to look at that was dated June 24, 2004.

7 MR. WONG: Exhibit 1 will be the order of
8 April 29th, 2004.

9 EXHIBIT NO. 1:

10 ORDER OF APRIL 29TH, 2004

11 Q MR. BRODER: I'm going to have you refer
12 to tab E, reasons for judgment of Justice Bielby.

13 A Yes.

14 MR. BRODER: Identified for the record that
15 these are the reasons for decision of Justice Bielby.

16 Q Turn to page 14 of paragraph 72. Within that
17 paragraph Justice Bielby refers to, "Those personal
18 representatives were added to the action on September
19 the 18th of 2001."

20 The addition of the personal representatives in
21 the said action prior to the date the second
22 certificate of readiness was confirmed as being filed
23 April 17th, 2003, during the case management meeting
24 with Justice Marceau on May the 7th, 2003?

25 A Repeat that.

26 Q The addition of the personal representatives to the
27 said action, was the addition of the personal

1 representatives in the said action prior to the date
2 the second certificate of readiness was confirmed as
3 being filed April 17th, 2003?

4 A Was the --

5 Q Were the personal representatives added prior to the
6 second certificate of readiness filed during the case
7 management meeting with Justice Marceau?

8 A According to Justice Bielby, she found that the
9 personal representatives were added to the action on
10 September 18th, 2001. That's what she held.

11 Q Was Justice Marceau ever informed when he was
12 accepting the conditional certificate of readiness,
13 that there was an order -- previous order to file a
14 certificate of readiness?

15 A No.

16 Q I refer to page 17, paragraph 82. I quote, "The
17 defendant led evidence from his then counsel, Joseph
18 Keuber to the effect that Mr. Keuber wrote to the
19 plaintiff's counsel in April 1997, advising that he
20 would advance a limitation defence, that neither of
21 his letters expressly raised the issue of the
22 plaintiff's standing to sue at that time, which, in
23 any case, was before the original statement of claim
24 was filed; therefore, those letters created no
25 estoppel which would prevent the application of the
26 principle of relation back."

27 Was this action unsuccessful for Donald Broder

1 because MacInnes relied on the principle of relation
2 back?

3 MR. WONG: Well, you're asking for an
4 opinion of the court.

5 A THE WITNESS: Do you mind? I believe the
6 reasons for judgment provided by the Honorable Madam
7 Justice Bielby are very clear and are very, very
8 straightforward.

9 So if you want to know the reasons why she did
10 this, they are set out in her reasons.

11 Q MR. BRODER: I refer back to tab A, page 13.
12 Just identify for the record that this document is
13 the notice of motion raising the issue of the
14 plaintiff's stand to rule 129.

15 Is it correct in saying that the grounds upon
16 which this application is brought are as follows.
17 That the plaintiffs have no standing to commence an
18 action against the defendants and as such, the
19 statement of claim discloses no cause of action, and
20 the action is frivolous and vexatious and is an abuse
21 of the process of court; is that correct?

22 A That's what the document says.

23 Q Is that correct?

24 A That's what the document says.

25 Q I refer you to tab A, page 6, 7 and 8. I'll turn
26 you, actually, to the page which is page 12 of that
27 document, but it's page 7 at tab A. Was there

1 anything said in that motion that is similar to that
2 in paragraph 8?

3 A Just so we're on the same page, tab A --

4 Q Tab A, page 7 -- well, it's page 7 in the tab. It's
5 the one before that. It's that one. It will have a
6 "2" at the top of the page. The second page at the
7 top.

8 A Hmm hmm. I've got it.

9 Q Was there anything that was said in that motion that
10 is similar to paragraph 8?

11 A The documents are very clear.

12 Q So they're similar?

13 A Absolutely.

14 Q Can you refer to your affidavit, paragraph 12, 13 and
15 14.

16 A Twelve, 13 and 14?

17 Q Yes. Well, start with 12, Guy, and I'll go to the
18 next one, if necessary.

19 A Yes.

20 Q So you confirm within your affidavit, paragraphs 12,
21 13 and 14, that you assisted with the trial?

22 A Yeah. I assisted you with the submissions that you
23 were going to make and to give you -- go over the
24 cases.

25 Q Did you ever inform us during that assistance to
26 ensure that Alberta rule of court 239 that the trial
27 judge be provided with all of the pleadings to ensure

1 that that was being followed?

2 MR. WONG: Do you want to look at 239?

3 Okay. I'll get you rule 239.

4 (BRIEF ADJOURNMENT)

5 Q MR. BRODER: So my question to you, Mr.

6 Lacourciere, was, if you were helping us do the
7 trial, or assisting us, why would you not bring me up
8 to speed or talk to me about confirming or ensuring
9 certain rules were being followed?

10 A I have no idea what rules -- first of all, you're
11 conducting the trial; correct?

12 Q Right.

13 A And I'm going to assume that you have followed all
14 the rules and procedures and are familiar with all of
15 the rules and procedures. My concern was to find out
16 whether your submissions were proper.

17 Whether or not you filed -- whether or not Ms.
18 MacInnes filed all the pleadings, that's not for me
19 to do. In fact, you should have looked at the
20 certificate of readiness and the trial book to see
21 whether or not they had been filed. I would point
22 out that you don't file a statement of claim where an
23 amended statement of claim has been filed, because
24 the court wants to see the amended statement of claim
25 and the amended statement of defence, if there is
26 any. That's how that works.

27 Q But do they want to see the original statement of

1 J defence?

2 J A No, they do not.

3 Q So the one that's filed later, the amended one
4 J becomes precedent?

5 J A That's correct.

6 Q All right. Well, I could have produced it during the
7 --

8 A I know you've been making a lot of this, and it could
9 be for one really good reason that I don't
10 particularly understand, but first of all, again, I'm
11 going to -- you're asking me to give you some advice
12 in respect to your --

13 Q No, I'm not asking you to give advice. We asked you
14 J to give advice at trial.

15 J A In January of 2000- whatever it was, you asked for
16 J advice with respect to submissions before the court.
17 J Before that you had hired another lawyer and you had
18 ample opportunity to review everything.

19 Now you're asking me a question as to whether or
20 not I should have told you that you had the right to
21 J produce the amended -- or the statement of claim, the
22 original statement of claim. No, you didn't have
23 J that right.

24 Q I didn't have that right?

25 A No.

26 J Q So the amended one takes precedence?

27 J A That's correct.

1 J Q Total precedence?

2 J A Absolutely.

3 J Q You cannot bring in a previously filed statement of
4 J claim into the trial?

5 J A That is correct. The advice that I would have given
6 J you is that a statement of claim, or any pleading,
7 J for that matter, is not evidence. All it is is
8 J matters that have been raised.

9 Q Correct.

10 A When you proceed to trial, you proceed to trial on
11 the final pleadings. And the reason for that is that
12 those are the issues that the court looks at on the
13 filed pleadings. That's the advice that I would have
14 given you if you would have requested it. I had no
15 idea what you had. And as far as I'm concerned
16 relying on Ms. MacInnes as being a reputable counsel,
17 that she had included the current amended amended
18 statement of claim and the amended -- or the defence
19 to the amended amended statement of claim.

20 Q And you said previously that you -- there was no need
21 to file an amended -- or a statement of defence to
22 the amended amended statement of claim. There was
23 not necessarily a need to file that?

24 A Yeah, it's not necessary to file it.

25 Q Why would you file it?

26 A Why would you file it?

27 Q Yes.

1 A Well, you would file it if there were things that you
2 wanted to -- for example, my original defence might
3 already address the issues that had been raised in
4 the amended statement of claim. In that -- in which
5 case -- a good example -- that's speculation.

6 The idea is that it's not necessary if your
7 defence deals with the issues that are raised in the
8 amended statement of claim or the amended third party
9 notice or any amended pleading.

10 Q Did you file an amended statement of -- a statement
11 of defence to the amended amended statement of claim?

12 A Oh, I wish I could remember that.

13 Q Actually --

14 A Have you got a copy of one?

15 Q I do.

16 A Well, obviously I did.

17 Q Here it is.

18 MR. WONG: This is an exhibit.

19 A THE WITNESS: Is it part of the affidavit?

20 MR. BRODER: It's a part of the fax.

21 MR. WONG: You can't rely on that.

22 A THE WITNESS: No. Whether there is some stuff
23 here.

24 Q MR. BRODER: You have a copy of that, Guy.

25 MR. WONG: We might as well mark it as an
26 exhibit if you're referring to it.

27 MR. BRODER: Mr. Wong, I'm finished and we can

1 close it off. So I have no further questions.

2 MR. WONG: For the record, the statement of
3 defence to the amended amended statement of claim was
4 filed, as well as a counterclaim by Mr. Guy
5 Lacourciere on October 21st, 2002.

6 A THE WITNESS: And the document that's here
7 has some handwriting on it that -- in particular, at
8 counterclaim in -- there is some handwritten
9 documents at P11, D3, 4, 5, 6, 7, 8, 9, 10, 11, 12
10 that are not mine. And then there are some documents
11 on the page marked 10 that are not mine. And it was
12 filed -- it was -- yes, apparently I filed it, and it
13 looks to me I filed it on October 21st, 2002.

14 EXHIBIT NO. 2:
15 STATEMENT OF DEFENCE TO THE AMENDED AMENDED
16 STATEMENT OF CLAIM, AS WELL AS A
17 COUNTERCLAIM FILE BY MR. GUY LACOURCIERE ON
18 OCTOBER 21ST, 2002

19 MR. BRODER: So no further questions.

20 A Thank you.

21 MR. WONG: Thank you.

22

23 (PROCEEDINGS ADJOURNED AT 3:22 P.M.)

24

25

26

27

1 CERTIFICATE OF TRANSCRIPT
2

3 I, Carol A. Bourgeois, hereby certify that the
4 foregoing pages 1 to 45 are a true and faithful
5 transcript of the proceedings taken down by me in
6 shorthand and transcribed from my shorthand notes to
7 the best of my skill and ability.

8 Dated at the City of Calgary, Province of
9 Alberta, this 28th day of May, A.D. 2010.

10 
11
12 Carol A. Bourgeois, CSR(A)
13 Court Reporter.

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