

Date of Release: January 21, 1993

A922111

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TOTAL ENVIRONMENTS LTD.,

BUDGET VENTURES LTD.,

ACTION VENTURES LTD.,

BUENA VISTA BUILDERS LTD.,

TALERO DEVELOPMENTS LTD. and

BUENA VISTA CONSTRUCTION LTD.

all doing business as

TOTAL ENVIRONMENTS (1991) LTD.,

ABLE VENTURES LTD. and

GRAHAM EVANS

PETITIONERS

AND:

CAMPNEY & MURPHY

Barristers and Solicitors

RESPONDENT

Frank G. Potts

T. Delaney

Gordon Turiff

Date and place of Hearing

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE MACZKO

Counsel for the Petitioners

Counsel for the Respondent

January 4, 1993

at Vancouver, B.C.

This is an application pursuant to the **Legal Profession Act**, S.B.C. 1987, c.25 to extend the time for the taxation of a solicitor's account. Mr. Graham Evans, one of the petitioners, claims that he was not aware of the three month limitation. The respondent seeks to call evidence on the application which would require Mr. Evans' former solicitor to give evidence of Mr. Evans' state of knowledge in respect to the limitation.

The issue is whether solicitor/client privilege has been waived by virtue of Mr. Evans having put his state of knowledge in issue.

Mr. Moseley, a solicitor, acted for Mr. Evans and a number of companies with which he was associated. It was agreed between Mr. Moseley and Mr. Evans that additional counsel should be retained in dealing with some matters. Mr. Evans retained the respondent, Campney & Murphy, which took over conduct of the file. However, Mr. Moseley remained involved by aiding Mr. Evans in the management and direction of the file and acting as the liaison between Mr. Evans and the respondent. At some point, Mr. Evans discharged Campney & Murphy as solicitors for himself and his companies and there was a dispute over the account.

Section 71(5) of the the **Legal Profession Act** provides that where an account has been paid and the client wishes to tax it, he must do so within three months of presentation of the bill. The three months expired and Mr. Evans did not tax the account. Mr. Evans now makes an application to the Court to extend the time for taxation. As part of his material, Mr. Evans states:

"I have reviewed the Affidavit of Nevin Fishman dated September 11, 1992. Although he outlined the limitation periods with respect to taxing accounts in his letter of March 30, 1989, attached as Exhibit "C" to his Affidavit, I did not recall, nor did I make the connection, between his advice with respect to the Milne Selkirk legal bills with my rights with respect to Campney & Murphy's accounts when I paid them in April of 1991, some two years later." Mr. Fishman is a solicitor at the firm of Campney & Murphy.

The essence of Mr. Evans' position is that he did not know that he was required to tax the account within a limitation period. Mr. Evans has put the state of his legal knowledge in issue and Campney & Murphy seeks to prove that Mr. Evans knew about the limitation period. In pursuit of that proof, Campney & Murphy seeks to call Mr. Moseley to give evidence of the advice he gave to Mr. Evans with regard to limitations periods. Mr. Evans takes the position that the advice given to him by Mr. Moseley is privileged and that there was no waiver of privilege.

I have concluded that because Mr. Evans has put the state of his legal knowledge in issue, his right to solicitor/client privilege respecting the advice he received from Mr. Moseley concerning limitation periods has been waived. In **Rogers, Rogers and Cornwall v. Bank of Montreal et. al.** (1985), 62 B.C.L.R. 387 (B.C.C.A.), the plaintiffs claimed damages for wrongful appointment of a receiver. The Bank alleged that it had relied on the professional advice from the receiver respecting the lawfulness of the appointment and the timing of the demand for payment. The receiver attempted to obtain disclosure of the advice that the Bank received from its solicitors. Hutcheon J.A. held that by raising the defence of reliance upon the legal opinion of the receiver, respecting its appointment and the timing of the demand for payment, the Bank made its knowledge of the law relevant to the proceedings. Hence the Bank lost its right to solicitor/client privilege respecting the advice it received from its solicitors on those issues.

In my view this statement of law governs the facts before me. I conclude that Mr. Evans waived solicitor/client privilege respecting the advice he

received from Mr. Moseley on the limitation period for taxation of accounts when he put the state of his legal knowledge in issue. Mr. Moseley may therefore give evidence on the advice he gave Mr. Evans regarding that matter.

"F. Maczko J."

January 21, 1993

Vancouver, British Columbia