

Lawyer did not breach standard of care by following instructions of client's agent (Shortreed Joint Venture Ltd. v Guvi)

Breach | Litigation | Litigation & Dispute Resolution | Standard of Care

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During the course of a retainer, lawyers may communicate with an agent acting on behalf of their client for the purposes of receiving and acting upon instructions. In some cases, there may be a written agreement which outlines the scope and limits of an agent's authority. Often, however, the agent's involvement will have developed informally during the course of dealings between the lawyer and the client. If a dispute over the agent's authority subsequently arises, the courts will assess the overall circumstances to determine whether it was reasonable for the lawyer to have acted upon the agent's instructions at issue.

In *Shortreed Joint Venture Ltd. v. Guvi*, 2025 BCSC 1003 (CanLII), the plaintiff sued its former lawyer after he delivered a cheque to the plaintiff's realtor which was subsequently misappropriated. At issue was whether the lawyer was entitled to follow instructions from the realtor without communicating with the plaintiff.

The events dated back to February 2005, when the plaintiff purchased a commercial development property with the assistance of the realtor. Litigation ensued between the plaintiff and seller over a mortgage provided by the seller. Eventually, the plaintiff paid \$400,000 into court as security to obtain a discharge of the seller's mortgage and sell the property while it continued to dispute its obligations under the mortgage.

The realtor assisted the plaintiff with attempting to settle the mortgage dispute. When a settlement was imminent, the lawyer was retained to obtain the release of the funds from court. The lawyer's firm had prior dealings with the realtor and was familiar with him. The lawyer prepared materials to obtain a consent order and a cheque for \$422,923.30 was issued by the court, payable to the plaintiff, and sent to the law firm.

A legal assistant in the firm then sent the cheque to the realtor's brokerage, together with the firm's account to the agent for its services. Even though the cheque was payable to the plaintiff and not the realtor, the realtor deposited the cheque into the brokerage's account. The funds were never deposited into the trust account of the law firm.

Thereafter, approximately \$100,000 of the funds were released by the brokerage at the seller's direction pursuant to the settlement and \$110,000 was delivered to the plaintiff. However, the balance of the funds were never accounted for by the realtor.

The plaintiff then sued the lawyer for negligence, seeking recovery of the funds that had been apparently misappropriated by the realtor.

The plaintiff argued the lawyer was negligent in failing to protect its interests. The plaintiff's position was that the lawyer had a duty of care to safeguard the cheque and not deliver it to the realtor without specific instructions. As a result, the plaintiff argued, the lawyer allowed the agent to use the firm as a vehicle to commit fraud, embezzlement, misappropriation and/or defalcation.

The trial judge noted that it was unclear why the bank permitted the realtor to deposit a cheque that was payable to the plaintiff into the brokerage's account, without evidence of an express authority from the plaintiff to do so. Nevertheless, the plaintiff's claim against the bank was not the issue before the court.

There was no question that the lawyer owed a duty of care to the plaintiff. Even though the realtor had been the primary point of contact, the firm had been retained to act for the plaintiff in obtaining a release of the funds from court. The lawyer knew or ought to have known that the realtor was acting on the plaintiff's behalf. The loss of funds was a potentially foreseeable consequence of delivering a cheque to an agent without the principal's instructions.

However, this did not mean that the lawyer had breached the standard of care applicable in the circumstances. In that regard, the court noted that "the standard is that of a reasonably competent and diligent solicitor, not a first-rate lawyer" (citing *Fong v. Lew*, 2015 BCSC 436, at paragraph 116, aff'd 2016 BCCA 67).

Based on the facts of the case, the trial judge found that the standard of care was not breached for several reasons.

First, there was no evidence that the lawyer or his staff knowingly allowed or assisted the realtor to misappropriate the funds.

Second, it was reasonable for the lawyer and his staff to conduct themselves on the basis that the cheque could only be deposited into the plaintiff's account or another account expressly authorized by it. Unlike cash or other valuable property, the cheque could only have had value to the plaintiff, as payee, or anyone authorized by it, except in the hands of a forger and thief. The trial judge did not accept that the lawyer lacked care or failed to safeguard the plaintiff's interest in allowing the delivery of the cheque to the realtor.

Third, it was reasonable for the lawyer to conclude that the realtor was acting as the plaintiff's agent and had the authority to accept and deliver the cheque on its behalf. The realtor retained the firm, the firm acquired the information from him, and he operated as the sole point of contact between the law firm and the plaintiff. It was therefore reasonable for the lawyer and his staff to conclude that the realtor had authority to communicate the plaintiff's instructions and requirements, and to collect the cheque on its behalf.

There was no expert opinion evidence adduced by the plaintiff to the contrary. Prior to trial, the court had ruled that an expert opinion obtained by the plaintiff was inadmissible on the grounds that it made findings of fact and conclusions of law, presented in an argumentative manner that came close to usurping the function of the court, and was neither helpful nor necessary: *Shortreed Joint Venture Ltd. v. Guvi*, 2024 BCSC 1610 (CanLII), at paragraph 166.

In the trial judge's view, referring to authorities dating back to the Supreme Court of Canada in 1901, the lawyer's duty to the plaintiff cannot have extended to taking precautions to prevent losses caused by the criminal acts of third parties: *Tiffin Holdings Ltd. v. Millican*, 1965 CanLII 549 (Alta. C.A.) at 220; citing *Imperial Bank of Canada v. Bank of Hamilton*, 1901 CanLII 9 (S.C.C.).

Although this was sufficient to resolve the matter, the trial judge also found that the plaintiff failed to establish that the lawyer's alleged breach of duty was the legal cause of any damages. In that regard, the plaintiff claimed that it would have refused to allow the realtor to accept delivery of the cheque or that it would have insisted on picking up the cheque itself. However, the trial judge did not accept this assertion since the realtor was deeply trusted by the plaintiff at the time.

In cases of professional negligence, bare assertions that a client would have behaved differently if he or she had received proper advice are generally viewed with some scepticism by a court. The trial judge found that plaintiff failed to prove that the result would have been different if the lawyer or his staff had sought specific instructions from the plaintiff on the delivery of the cheque.

The claim was therefore dismissed.

The case illustrates some of the issues that may arise when communications with a client's agent do not involve the principal client. In many cases, a written agreement concerning the scope and limitations on the authority of an agent would be helpful, but it can be difficult to predict all the issues that may arise. In the case at hand, the agent's apparent deposit of a cheque without authorization and misappropriation of funds were found to be unforeseeable consequences. A PDF version is available for download [here](#).

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