

Action No. 0601-14380
Deponent Robert J. Sawers
Date Sworn May 7th, 2009

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DONALD BRODER and CRAIG BRODER

Plaintiffs

- and -

This is Exhibit 12
Sworn before me this 21 day
of Sept A.D. 2009
Lisa Marie Paul
Commissioner for Oaths

ROBERT J. SAWERS

Defendant

LISA MARIE PAUL
Commissioner for Oaths
in and for the Province
of Alberta expires June 15, 2010
AFFIDAVIT

I, Robert J. Sawers, of the City of Calgary, in the Province of Alberta, MAKE OATH
AND SAY AS FOLLOWS:

1. I am a barrister and solicitor, a member of the Law Society of Alberta, carrying on business in Calgary, Alberta. I am the Defendant named in the within action, and as such, I have personal knowledge of the matters and facts deposed to in this my Affidavit, except where said to be based upon information and belief and where so stated, I do verily believe the same to be true.
2. I was retained by the Plaintiffs, Donald Broder and Craig Broder, in July 1999, to represent them in Alberta Court of Queen's Bench Action No. 9703-12949 (the "Queen's Bench Action"), in which they were named as defendants. I filed a Notice of Change of Solicitor in the Queen's Bench Action on September 30, 1999. A copy of the procedure record for the Queen's Bench Action, which my counsel advises and I verily believe is a true copy of the procedure record received from the court, is attached hereto and marked as Exhibit 1.
3. Donald Broder is the son of Edmund Broder, who died intestate on December 26, 1968. Craig Broder is Donald Broder's son. The Queen's Bench Action was brought by Donald

Broder's siblings, as an action in replevin to recover from Donald Broder and Craig Broder a mulc deer head trophy, which was the primary asset of Edmund Broder's estate, and which had been in the possession of Donald Broder for many years.

4. On February 1, 2001, I filed an application, on behalf of Donald Broder and Craig Broder, to have the Court of Queen's Bench Action struck, pursuant to Rule 129, on the basis that the plaintiffs in that action had no standing to bring the action, because they were not the administrators of the estate of Edmund Broder (none having been appointed). That application was heard by Master Quinn, on March 22, 2001. By Order dated April 27, 2001, Master Quinn adjourned the application and made various other orders regarding the conduct of that action. A copy of Master Quinn's April 27, 2001 Order ("Master Quinn's Order") is attached hereto and marked as **Exhibit 2**.

5. Master Quinn's Order provides, in part, as follows:

1. IT IS HEREBY ORDERED that the Defendants' application to strike the Statement of Claim is adjourned sine die.
2. The present Plaintiffs are expected to make an application to appoint an Administrator of the Ed Broder Estate without delay and the Defendants are expected not to interfere with such an application.

Master Quinn's Order stated that the defendants, Donald Broder and Craig Broder, were expected not to interfere with the application to appoint an administrator. I was therefore not able to file a caveat against the Estate of Edmund Broder on behalf of Donald Broder.

6. On the instructions of Donald Broder, I filed a Notice of Appeal of Master Quinn's Order, on June 4, 2001. I did not take steps to appeal Master Quinn's Order on an earlier date because there was some dispute with opposing counsel as to the wording of that order. Attached hereto and marked as **Exhibit 3** is a copy of a fax letter from Donald Broder, dated May 6, 2001, in which he instructed me to appeal Master Quinn's Order. Attached hereto and marked as **Exhibit 4** is a copy of the Notice of Appeal filed on June 4, 2001.

7. On or about May 10, 2001, counsel for the plaintiffs in the Queen's Bench Action, Elizabeth MacInnis of Weir Bowen LLP ("MacInnis"), filed an application with the Surrogate Court of Alberta, being Court File No. SES113567, for a Grant of Administration of the Estate of Edmund Broder (the "Surrogate Court Action"). A copy of the procedure record for the

Surrogate Court Action, which my counsel advises and I verily believe is a true copy of the procedure record received from the court, is attached hereto and marked as Exhibit 5.

8. MacInnis served Donald Broder with a copy of the required Notice to Beneficiary and of the Application for Grant of Administration, via registered mail, but Donald Broder did not receive these documents until on or about May 28, 2001. A copy of an affidavit sworn by Donald Broder on October 16, 2001, and subsequently filed in the Surrogate Court Action, in which he deposes to his receipt of the Notice, is attached hereto and marked as Exhibit 6.

9. MacInnis provided me with a copy of the letter and documents served on Donald Broder, which I received on or about May 15, 2001. However, at that time I was not counsel for Donald Broder in the Surrogate Court Action, and did not believe that service would be effective on Donald Broder until he himself received the documents. A copy of MacInnis' May 10, 2001 letter, providing me with a copy of the Notice to Beneficiary and Application for Grant of Administration being served on Donald Broder, is attached hereto and marked as Exhibit 7.

10. By Order dated May 24, 2001, Justice Belzil granted administration of the Estate of Edmund Broder to Doris Bibaud and George Broder, who were two of the plaintiffs in the Queen's Bench Action. A copy of Justice Belzil's May 24, 2001 Order is attached hereto and marked as Exhibit 8.

11. I represented Don Broder in the Surrogate Court Action beginning at some point in time on or after May 28, 2001.

12. None of the documents provided to me, or served on Donald Broder, by MacInnis, specified a time or date for a hearing of the Application for Grant of Administration. It is my understanding that no hearing in fact took place, and that, because no caveat had been filed against the Estate of Edmund Broder, the matter was simply placed before Justice Belzil as a non-contentious desk application.

13. Attached hereto and marked as Exhibit 9 are copies of my letter of June 1, 2001 to MacInnis, regarding my receipt of Justice Belzil's May 24, 2001 Order, and of MacInnis' letter of June 4, 2001 to me, in which she advised me that at no time had she appeared before Justice Belzil on the Application for Grant of Administration.

14. It is my belief that there was no hearing regarding the Application for Grant of Administration at which I could have appeared on Donald Broder's behalf, or of which I could have given Donald Broder notice.

15. Following my receipt of Justice Belzil's May 24, 2001 Order, I wrote to Justice Belzil, by letter dated June 7, 2001, a copy of which is attached hereto and marked as **Exhibit 10**, requesting a date on which I and MacInnis could appear before Justice Belzil, regarding the grant of administration.

16. Also on June 7, 2004, I obtained an interim stay of Master Quinn's Order, by Order of Justice Lewis. A copy of Justice Lewis' June 7, 2004 Order is attached hereto and marked as **Exhibit 11**.

17. MacInnis and I appeared before Justice Belzil on June 20, 2001, at which time Justice Belzil issue an Order which provided, in part, that the administration of the Estate of Edmund Broder was stayed, pending the appeal of Master Quinn's Order. A copy of Justice Belzil's June 20, 2001 Order is attached hereto and marked as **Exhibit 12**.

18. The appeal of Master Quinn's Order was heard by Justice Clarke, on September 18, 2001, and the appeal was dismissed. A copy of Justice Clarke's September 18, 2001 Order ("Justice Clarke's Order") is attached hereto and marked as **Exhibit 13**.

19. On the instructions of Donald Broder, I filed an application in the Surrogate Court Action, on October 17, 2001, seeking the removal of the administrators of the Estate of Edmund Broder. The application was returnable January 9, 2002. A copy of the Notice of Motion filed for that application is attached hereto and marked as **Exhibit 14**. A copy of the October 16, 2001 Affidavit of Donald Broder, filed in support of the application, is attached hereto as Exhibit F.

20. On the instructions of Donald Broder, I filed an appeal of Justice Clarke's Order, on November 16, 2001. A copy of my letter to Donald Broder, dated November 7, 2001, and signed by Donald Broder, confirming his instructions, is attached hereto and marked as **Exhibit 15**. A copy of the Notice of Appeal of Justice Clarke's Order is attached hereto and marked as **Exhibit 16**.

21. The Notice of Appeal commenced Court of Appeal of Alberta Appeal No. 0103-0410AC (the "Appeal"). A copy of the procedure record for the Appeal, which my counsel advises and I

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verily believe is a true copy of the procedure record received from the court, is attached hereto and marked as **Exhibit 17**.

22. On January 2, 2002, I received a direction, signed by Donald Broder, to turn over my file in the Queen's Bench Action to the law firm of Lacourciere Cervini. A copy of Donald Broder's January 2, 2002 direction, which was written on the letterhead of Lacourciere Cervini, is attached hereto and marked as **Exhibit 18**.

23. I filed a Notice of Intention to Cease to Act in both the Queen's Bench Action and in the Surrogate Court Action, on January 8, 2002. I also filed a Notice of Intention to Cease to Act in the Appeal. Copies of my Notices of Intention to Cease to Act are attached hereto and marked respectively as **Exhibits 19, 20, and 21**.

24. The procedure records for each of the Queen's Bench Action, the Surrogate Court Action, and the Appeal, attached hereto as Exhibits 1, 5, and 17, respectively, record the dates on which my respective Notice of Intention to Cease to Act, and Affidavits of Service of such Notices of Intention to Cease to Act, were filed in each of those actions.

25. I represented Donald Broder and Craig Broder in the Queen's Bench Action and in the Appeal, and Donald Broder in the Surrogate Court Action, until January, 2002.

26. I did not represent either Donald Broder or Craig Broder in the Queen's Bench Action, the Appeal, the Surrogate Court Action, or in any other capacity, following the filing, on January 8, 2002, of the Notices of Intention to Cease to Act attached hereto.

27. Based on a review of the court procedure cards attached hereto, and of the judgment of Justice Bielby, issued March 9, 2004, I understand that the trial of the Queen's Bench Action took place on January 19, 2004, and that Donald Broder represented himself at that trial, with the assistance of Craig Broder. A copy of Justice Bielby's March 9, 2004 judgment, which my counsel advises and I believe was obtained from the Quicklaw online database, is attached hereto as **Exhibit 22**.

28. I did not represent Donald Broder or Craig Broder in the trial of either the Queen's Bench Action or the Surrogate Court Action, nor did I represent Donald Broder or Craig Broder in any appeals of either action.

29. At the time Donald Broder and Craig Broder retained Guy Lacourciere, of Lacourciere Cervini ("Lacourciere"), as counsel, there were outstanding fees and disbursements owing on my account. By letter dated January 25, 2002, a copy of which is attached hereto and marked as **Exhibit 23**, I advised Lacourciere that my file was copied and ready for transfer, but that I was asserting a lien over the file for outstanding fees and disbursements.

30. In letters dated February 6, 2002, March 1, 2002, and December 19, 2002, Lacourciere alleged a number of failings in my representation of Donald Broder and Craig Broder. Copies of Lacourciere's February 6, 2002, March 1, 2002, and December 19, 2002 letters are attached hereto and respectively marked as **Exhibits 24, 25, and 26**. In both the March 1, 2002 and December 19, 2002 letters, Lacourciere stated that his instructions were to commence legal action against me.

31. No legal action was filed by or on behalf of Donald Broder or Craig Broder against me, until the Plaintiffs filed the within action against me, on December 19, 2006, alleging that I had been negligent in my representation of them in the Queen's Bench Action and in the Surrogate Court Action.

32. Despite my January 25, 2002 letter to Lacourciere, a dispute continued regarding my outstanding fees and disbursements, and involved communications with both Lacourciere and with Craig Broder and Donald Broder directly.

33. By letter dated February 7, 2002, a copy of which is attached hereto and marked as **Exhibit 27**, I advised Craig Broder that he should seek the taxation of my accounts. By letter dated February 8, 2002, a copy of which is attached hereto and marked as **Exhibit 28**, Craig Broder advised that he had tentatively booked a taxation appointment for May 9, 2002.

34. At some point in 2002, I entered into an agreement with Donald Broder and Craig Broder to resolve the issues of my unpaid fees and consequent assertion of lien over my file. Attached hereto and marked as **Exhibit 29** is a copy of my letter of December 19, 2002, to Lacourciere, advising him that I had an agreement with Donald Broder and Craig Broder, and that as soon as they complied with that agreement, my file would be available to be picked up.


35. Donald Broder and Craig Broder did not fulfill the agreement, and I therefore did not hand over my file.

36. I retained my file until the within action was commenced against me, at which time I gave my file to my counsel.

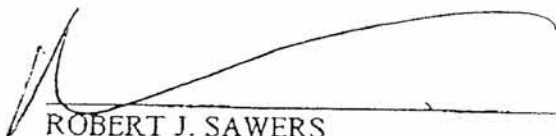
37. It is my belief that there is no merit to the whole or any part of the Plaintiffs' claims against me as set out in the Statement of Claim, and I am not aware of any facts that would substantiate the Plaintiffs' claims against me.

38. I make this Affidavit in support of an Order dismissing the Plaintiffs' claims against me.

SWORN BEFORE ME at the City of Calgary,
in the Province of Alberta, this 7th day of May,
2009.



A Commissioner for Oaths in
and for the Province of Alberta



ROBERT J. SAWERS

JILL K. CROCKETT
Barrister & Solicitor