# SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-041830-087

DATE: October 10, 2013

---

**IN THE PRESENCE OF THE HONOURABLE WILLIAM FRAIBERG, J.S.C.**

---

**ROBERT JUSTER**
**-and-**
**98503 CANADA LTÉE**
Plaintiffs
v.
**ABE SALZBERG**
**-and-**
**ABRAMOVITCH & ASSOCIÉS**
**-and-**
**ABRAMOVITCH, RAPPAPORT & ASSOCIÉS**
Defendants

---

**JUDGMENT**

---

## FACTS

[1] The Plaintiffs present a claim in damages against the Defendant chartered accountants on the ground of their alleged negligence in doing the preparatory work for a division of property in settlement of a divorce case.

[2] Plaintiff, the late Robert Juster (“Mr. Juster”) and his former wife Marie-Josée Dominique Carignan (“Mrs. Juster”), were in bitter litigation before the Family Division of the Superior Court in Lamoille County, Vermont (the “Vermont court”) that began in July 1999 and culminated with a consent to judgment which they signed on April 22, 2005 and which the Vermont court ratified on May 13, 2005.

[3] The consent to judgment was the eventual outgrowth of a Stipulated Final Order (the “Stipulated Final Order ”, Exhibit P-7) signed by the parties, their attorneys and the presiding judge on February 6, 2003.

[4] The Stipulated Final Order was preceded by an earlier settlement initiative, the Temporary Agreement and Order (Exhibit P-4) approved by the presiding judge on February 23, 2001.

[5] The Defendant Abe Salzberg (“Mr. Salzberg”) was the long-time accountant of Mr. Juster who assisted the Justers and their attorneys in valuing and dividing their marital and personal assets.

[6] The two other Defendants are the accounting firm of which Mr. Salzberg was a partner and its successor firm.

[7] Referring to him, paragraph 6 of the Temporary Agreement and Order states:

> *6. Within the next 30 days, the parties and their lawyers shall meet with Abe Salzberg, the family accountant, to value all marital assets and other assets owned and/or controlled by either party within the month preceding this process. Mr. Salzberg shall not be served with process of any kind, or harassed.*

[8] On December 18, 2002 the presiding judge, after ascertaining that the Justers had failed to reach a settlement pursuant to the Temporary Agreement and Order, denied judgment and set a merits hearing for February 6, 2003, at which the Stipulated Final Order was signed.

[9] Since Mr. Juster’s complaint is that Mr. Salzberg failed to correctly apply the Stipulated Final Order, it is worth citing the latter’s more pertinent provisions:

> *7. All assets of 98503 Canada Ltd. shall be valued as expeditiously as possible but no later then (sic) May 30, 2003. Upon ascertainment of assets value, the value of 98503 Canada Ltd. shall be apportioned between the parties such that the plaintiff shall have conveyed to her by way of transfer to a Canadian Spousal Trust, cash, or cash equivalent property in the sum equivalent to one-third of the total asset value of 98503 Canada Ltd [...]. In effectuating the valuation contemplated herein, the parties agree that all information about the accounts titled in 98503 Canada Ltd., or subsidiaries of 98503 Canada Ltd. shall be shared with the parties and evaluators.*

> *9. The 98503 Canada Ltd. Assets and the martial (sic) assets to be valued shall be valued by qualified appraisers or evaluators mutually selected by the parties. The appraisers or evaluators shall be mutually selected by the parties no later then (sic) February 21, 2003. The parties shall be bound by the appraised values and evaluations determined by the mutually selected appraisers or evaluators.*
>
> *15. The parties hereby agree that all disbursements from accounts of 98503 Canada Ltd. occurring during the period from February 28, 2002 to the date that the (sic) distribution of assets and interests contemplated in paragraph 7, above, shall be accounted for and adjusted so as to equalize distributions between the respective parties.*

[10] Mr. Juster's more important assets were held through his company 98503 Canada Ltd. ("98503").

[11] Among them were Lot 404 in Sainte-Thérèse ("Lot 404"), sold on September 26, 2002 for an amount of $603,875 Can., and a timeshare in a condo at the Bethel Beach Resort in Bal Harbor, Florida ("the Bethel Beach condo"), sold on July 29, 2002 for an amount of $192,875 US.

[12] Mr. Salzberg testified on the second day of trial that the Justers' Vermont attorneys instructed him to change the balances of 98503's U.S. and Canadian dollar brokerage accounts with RBC Dominion Securities Ltd. from as of March 31, 2002 to as of February 29, 2004, as he indicated on the lower left side of page 2 of his summary spreadsheet (Exhibit D-9) entitled "Summary to February 29, 2004" (the "February 29 summary").

[13] In the February 29 summary, he accounted for and equalized funds distributed to the Justers from 98503's accounts between February 28, 2002 and February 29, 2004, applying paragraph 15 of the Stipulated Final Order in that regard.

[14] On May 4, 2006, Mr. Juster presented a Motion for Relief from Judgment in the Vermont court (Exhibits D-4 and D-28) in which he alleged that he signed his consent to the terms of settlement after the Vermont court denied his request for additional delay to have an audit performed of Mr. Salzberg's spreadsheets and in particular the April 21, 2005 summary spreadsheet on which the Vermont judgment was based.

[15] He claimed he had Pierre Bérard, C.A. perform such an audit in January 2006 and it showed that rather than his owing money to Mrs. Juster, she owed a substantial amount to him.

[16] He further alleged that while he would have an unnamed local forensic accountant review Mr. Bérard's findings for accuracy, an initial review of Mr. Salzberg's spreadsheets showed that at least two significant errors appeared to have been made.

[17] These were the double counting of the proceeds of sale of Lot 404 and of the Bethel Beach condo in the division of the Justers' assets.

[18] The double counting would have consisted of including the sales proceeds as the values of the two properties, then also including any unspent balances thereof in bank or brokerage accounts as of the valuation date.

[19] On October 18, 2006, the Vermont court dismissed the Motion for Relief (Exhibit D-2) without bothering to analyse Mr. Salzberg's alleged mistakes, concluding that if there were mistakes in the April 21, 2005 summary and backup spreadsheets, Mr. Juster had ample opportunity to discover them before signing the consent to final judgment.

[20] The Vermont court held at page 2:

> *Here, Defendant has not made the required showing that the mistakes he asserts could not have been discovered prior to entering into the stipulation that formed the Order [...].*
>
> *The records used by the accountant to create the now disputed spreadsheet came from Defendant and were at all times under his control. Indeed, in the Order, Defendant expressly acknowledged that he had had an adequate opportunity to review the accountant's work and represented that he accepted the work.*

[21] Mr. Juster's appeal of the judgment was dismissed by the Supreme Court of Vermont, on October 10, 2007 (Exhibit D-3). It held:

> *First, there is no mistake for which Defendant is not solely responsible.*
>
> *By his own admission, Defendant had the figures available to him but did not exercise the opportunity to avoid the error.*

*The present proceedings*

[22] Mr. Juster was undeterred by his failure to overturn the Vermont judgment, which had been exemplified in Quebec on November 22, 2005.

[23] Though barred by *res judicata* from recovering his alleged loss in the property division from Mrs. Juster by having the Vermont judgment annulled, he claimed the loss in damages from the Defendants instead, on the ground that it resulted from Mr. Salzberg's dishonest conduct and professional errors.

[24] In his Introductory Motion served on March 20, 2008, Mr. Juster claimed $1,456,521, which he reduced to $1,271,939 in his Amended Introductory Motion served on April 27, 2009.

[25] The Introductory Motion, despite its reference to Pierre Bérard, C.A., contained no mention of any report by him or anyone else to back up the amounts arising from Mr. Salzberg's alleged errors, detailed in paragraph 24.

[26] The Amended Introductory Motion referred to a spreadsheet prepared by Mr. Bérard filed as Exhibit P-11 and in paragraph 24 a) to Exhibit P-12, showing the detail of an aggregate loss of $636,958 allegedly arising from the incorrect valuation and division of the assets by Mr. Salzberg.

[27] The latter exhibit was a first report dated April 24, 2009 prepared by Mr. Juster's accounting expert, Daniel Potvin, C.A.

[28] In his Re-amended Introductory Motion served on November 2, 2012 (17 days before the trial began), Mr. Juster claimed $963,988.05, of which $535,588.05 were compensatory damages, $228,390 were professional fees[1] and $200,000 were moral and punitive damages.

[29] The basis for the claim of compensatory damages was a massive report[2] of Mr. Potvin dated March 10, 2010 that was commissioned by Mr. Juster and his attorney, Me. Robert Teitelbaum.

[30] The report was filed on the first day of trial as Exhibit P-20.

[31] There is no allegation anywhere in the Re-amended Motion of the specific nature of Mr. Salzberg's fault.

[32] All it does is in effect incorporate Mr. Potvin's report by reference, stating that Mr. Salzberg's errors are those identified at pages 14 to 16 of the report.

[33] There is no articulation of any underlying premises or findings that could lead a reader to conclude that the differences between Mr. Potvin's calculations and those that gave rise to the final division of marital property resulted from any errors of Mr. Salzberg.

[34] On November 8, 2012 the law firm of Sternthal Katznelson Montigny s.e.n.c.r.l. filed a "Contextualized" Appearance (*Comparution Contextualisée)* as the co-attorneys of the Defendants to represent them in contesting those of the Plaintiffs' claims susceptible of not being covered under the former's professional liability insurance, namely the claims for reimbursement of professional fees and for punitive damages.

---

[1] This is the Court's conclusion, arrived at by subtracting the other compensatory damages and the moral and punitive damages from the aggregate claimed, since the amount of professional fees claimed was left blank in paragraph 25.

[2] The Court would estimate of approximately 500 pages.

[35] On the first day of trial, November 19, 2012, Mr. Juster's attorneys filed a Re-re-amended Introductory Motion, which claimed the same amount as the Re-amended version and repeated all the allegations of the latter, save for three new paragraphs (29a, 29b and 29c).

[36] These alleged that Mr. Salzberg had surreptitiously conferred a benefit on himself by valuing a balance of loan aggregating $80,000 in principal and interest that he owed to Mr. Juster at only $25,000; then in the division of assets allocating it to Mrs. Juster, who by omission or design never claimed it from Mr. Salzberg.

[37] The three paragraphs are the only allegations that specify any particular fault of Mr. Salzberg, even though there is no claim for $80,000 or any lesser amount of the loan in the proceedings, nor could there be.

[38] That is because Mr. Juster had already sued for that amount before this Court on June 16, 2004, but his action was dismissed by Monast J. on May 29, 2007 (Exhibit D-6) on the ground that since the loan had been assigned to Mrs. Juster in the final division of property to which he consented, he lacked any subsisting legal interest to claim it from Mr. Salzberg.

[39] Mr. Juster's appeal from Monast J.'s judgment was dismissed on motion by Chamberland J. of the Court of Appeal on November 19, 2007 (Exhibit D-7).

[40] Furthermore, Mr. Juster could not claim the amount he was deprived of because of the transfer to Mrs. Juster as damages from Mr. Salzberg in lieu of the latter's repayment of the loan, since the proof showed he was well aware of the transfer before he agreed to the settlement, Mr. Salzberg having informed him of it in his letter of April 16, 2004 (Exhibit D-9).

[41] In fact, he was so incensed at the knowledge that he tried to prevent Mr. Salzberg from doing any further accounting work for the division of property pursuant to the Stipulated Final Order.

[42] Moreover, he admitted that he was aware of the transfer of the loan in his testimony before Monast J., testifying that he protested to Me Francine Wiseman, a Montreal tax attorney acting for both parties in implementing the division of property, that he would not sign settlement documents reflecting the assignment of the $25,000 loan balance, even though that is exactly what he ultimately did.

[43] The late and inadmissible reference to the loan aside, beginning with the Introductory Motion, Mr. Juster's complaints against Mr. Salzberg were sweeping and general.

[44] They are contained in paragraphs 7 and 8, which in both the Re-amended and the Re-re-amended Introductory Motions read as follows:

*7. En septembre 2005, à la fin des procédures de divorce et suite à une consultation auprès d'un autre comptable en la personne de Pierre Bérard CA, le requérant a réalisé que le défendeur Abe Salzberg,CA, avait violé sa confiance, l'avait trompé et avait entraîné des pertes […] importantes […] ce qui s'avère être une faute professionnelle lourde […] de la part du défendeur monsieur Salzberg tel qu'il sera plus amplement démontré ci-après.*

*8. En somme, le demande réclame […] 763 988,05 $ aux parties défenderesses à titre de dommages intérêts pour les fautes professionnelles graves et lourdes qu'ils ont commises à son détriment […] qui ultimement a eu des pertes qui se détaillent comme suit dans le présent tableau en date du 31 mars 2003 :*

| | Référence | $CA | $US |
|---|---|---|---|
| Excédent versé à Marie-Josée relatif au partage des actifs nets totaux-Scénario 1/Mars 2003 | (Section 7.1) | 177 133 | 247 343 |
| Excédent versé à Marie-Josée À partir des comptes en fidéicommis | (Section 7.3) | 5 657 | 42 583 |
| Intérêts courus | (Section 7.4) | 45 600 | 74 600 |
| TOTAL | | 228 390 | 364 526 (= 535,998.05 $ CA)* |

[45] The section references contained in this table forming part of paragraph 8 are to be found in Mr. Potvin's report (Exhibit P-20) even though the report is not alleged until paragraph 24.

[46] The latter paragraph simply incorporates the report by reference:

> *24. (…) En remplacement de l'expertise du juri-comptable agrée, Daniel Potvin explique dans son rapport du 12 mars 2010 aux pages 14 à 16 les erreurs et les écarts importants commis par le défendeur Abe Salzberg, le tout tel qu'il appert de son rapport produit au dossier de la Cour.*

[47] Thus the alleged damages are summarized by simply incorporating the conclusions of the Potvin report as to "Scenario 1", which purports to show the excess assets that Mrs. Juster received in the final division that she and Mr. Juster agreed to, compared with what she would have received had they all been valued as of March 31, 2003.

[48] In short, Mr. Juster's complaint was that Mr. Salzberg chose the wrong valuation date, although the allegation never appeared in the four versions of the Introductory Motion.

[49] Mr. Potvin so qualifies his report that it has no value as a possible indicator of the Defendants' professional liability.

[50] What it does, in exquisite detail, is reconstitute the list of corporate and personal assets and recalculate the division as of the two dates specified in the mandate by Mr. Juster's attorney, Me. Robert Teitelbaum, namely March 31, 2003 (Scenario 1) or March 31, 2002 (Scenario 2).

[51] Mr. Potvin describes his mandate as one of examining Mr. Salzberg's calculations to determine if the division of marital property had been carried out *de façon équitable et conformément aux dispositions du Final judgment Order and Decree of Divorce.*

[52] The reference to the Vermont judgment is circular since the latter merely ratified the division of property first proposed and agreed to by the parties themselves.

[53] The question probably intended was whether the division conformed to the Stipulated Final Order made two years earlier.

[54] Nothing in the report indicates that Mr. Salzberg induced the parties into error.

[55] Mr. Potvin is express in this regard. He writes that his work should in no way be interpreted as an opinion as to the fault of any party to the present proceedings, (leading one to wonder why it was commissioned in the first place.)

[56] Moreover, he says this right after saying that the results of his work are based on two hypotheses: (i) that Mr. Salzberg was the only person mandated and responsible for allocating the fair market value in conformity with the provisions of the Stipulated Final Order, working in concert with other professionals for that purpose if necessary; and (ii) that the calculations and spreadsheets presented in Annex 2 of his report (P-20) had been prepared by Mr. Salzberg or others under his responsibility and were the last version thereof.

[57] The Court's impression is that that Mr. Juster and his attorney wanted Mr. Potvin to generate a store of data and calculations they could draw upon in these proceedings in order to accommodate whatever theory of the case they happened to have. It was not Mr. Potvin who provided that theory but them.

[58] The exercise was not a matter of accounting expertise but one of interpreting the Stipulated Final Order on the express assumption that Mr. Salzberg alone implemented it other than as its terms dictated.

[59] The problem with such an approach is that it is not tethered to any reality, starting with the fact that the parties and their attorneys took more than two years after the Stipulated Final Order was signed to inform Mr. Salzberg of assets and their values

so as to permit him to calculate the division when it was intended to be done in four months.

[60] Looking at the Vermont court docket (Exhibit D-28) between February 6, 2003, when the Stipulated Final Order was signed, and April 22, 2005 reveals a hornet's nest of motions and counter-motions by Mr. and Mrs. Juster, the former seeking to have the Stipulated Final Order vacated and the latter seeking to have it enforced, inclusive of moving to have Mr. Juster cited for contempt for failing to provide key documents and information necessary to implement it.

[61] The valuation and allocation of assets was a lurching work in progress, with Mr. Salzberg being pushed and pulled every step of the way.

[62] In fact, Mr. and Mrs. Juster agreed provisionally on the value of most of the assets at a long meeting held on June 19, 2003 in Mr. Salzberg's office.

[63] Many of the values seem to have been stipulated by Mr. and Mrs. Juster on an *ad hoc* basis.

[64] After submitting the February 29 summary and backup spreadsheets on April 16, 2004, Mr. Salzberg's only input to the implementation of the division of assets was to adjust the values of two condominiums on Bernard Avenue in Outremont and of four lots in Boisbriand, as ordered by the Vermont court, and to inform Me. Francine Wiseman of the U.S. dollar amounts that had already been distributed to Mrs. Juster preliminary to the final division.

[65] It was Me. Wiseman, not Mr. Salzberg, who in a long and detailed letter dated April 21, 2005, proposed the terms of a settlement to Mr. Juster's Vermont attorney, Peter Anderson.

[66] She emphasized that her letter was not to be presented as evidence in any court proceeding, was for discussion purposes only and was not to be construed as an admission by either party.

[67] She acknowledged the persisting discord between the Justers on page 5 of the letter, strongly suggesting that they signify their agreement with the calculations she presented and Mr. Salzberg's spreadsheets backed up and that they give each other releases "so that we can finally end this matter."

[68] Me. Wiseman was keenly aware of the depth of the Justers' conflict. In her testimony she claimed that she was caught in the middle, barraged by letters and phone calls from both parties and their attorneys. She estimated that toward the end of April 2005 there must have been about 30 items over which they disagreed, including a cut-off date for the valuation of assets.

[69] She spent hours on the telephone with them or their attorneys reviewing the spreadsheets that Mr. Salzberg had prepared and she was very concerned about the enormous professional fees being incurred.

[70] It was in this context that she proposed her terms of settlement on April 21, 2005 and she was surprised to learn the next day that the parties had signed off on them.

[71] Moreover, their attorneys signed off on the Vermont judgment, based on the same terms, on May 4 and May 6, 2005.

[72] Paragraph 23 of the Vermont judgment stipulated that by signing the attachments setting forth the terms of settlement and asking the Vermont court to accept them, the parties represented to the latter that they had done so, freely, willingly and in full understanding.

[73] Almost immediately afterwards, Mr. Juster suffered from settler's remorse that continued until his death, which occurred on June 11, 2013, the day before trial of this case ended, but after proof was closed.

[74] Both in his brief testimony in November 2012 and in his deathbed affidavit of early June 2013, he insisted that he never understood Mr. Salzberg's spreadsheets and that he believed the ultimate division of assets should have been made as of February 6, 2003 (although it may be inferred that he would not have objected to March 31, 2003, the date used in Mr. Potvin's Scenario 1).

[75] He blamed the wrong choices of dates, March 31, 2002 and February 29, 2004, on Mr. Salzberg.

[76] Throughout the trial the Court felt considerable frustration at not being able to discern either in the four versions of the Introductory Motion or in the voluminous detail of Mr. Potvin's report any coherent statement of any specific professional error or omission of Mr. Salzberg that caused Mr. Juster to suffer damages, at one point describing the experience as akin to trying to nail Jello to a wall.

[77] At the start of the third to last day of trial, one of Mr. Juster's attorneys announced that the Court would have to decide only two questions: whether Mr. Salzberg had double counted the proceeds of sale of Lot 404, resulting in a loss of $168,874 Can. to Mr. Juster, and those of the Bethel Beach condo resulting in a loss to him of $186,540 US.

[78] No calculation of these alleged losses was offered.

[79] The Court asked Mr. Juster's attorneys to amend their Re-re-amended Introductory Motion to reduce the claim accordingly and to refer it to the specific exhibits showing how the two amounts had been calculated.

[80] The following day, they filed a partial Desistment from the Plaintiffs' claims for professional fees and moral and punitive damages, and Defendants' co-attorneys, Sternthal Katznelson Montigny s.e.n.c.r.l., immediately inscribed for judgment for the costs on the claims for professional fees and punitive damages in the respective amounts of $137,999.90 and $100,000.[3]

[81] Instead of a complete amended motion alleging and explaining the two amounts resulting from double counting that remained, the Plaintiffs filed a document entitled *Conclusions Re-re-re-amendée* (*sic)* in which the two amounts demanded were now $145,727.50 Can. and $57,661 US converted at an exchange rate of 1.587025, or $91,509.45 Can.

[82] The Court then told counsel that it still expected an explanation of how the amounts had been calculated, accompanied by reference to the exhibits supporting the calculation.

[83] On the last day of trial, one of Mr. Juster's attorneys produced the following document:

**QUANTIFICATION OF CLAIM**

**2003 SCENARIO:**

| | |
|---|---|
| 1. RBC Account: | $104 394.00 (CDN) (P-20 11 c) |
| 2. LOT 404: | $ 41 333.50 (CDN) P-20 11 B) 11 J), 23 a) + b) |
| TOTAL: | $145 727.50 (CDN) |
| 3. Betherl Beach Resort: | $ 57 666.50. (USD) or ($91 518 .77 CDN) P-20 11 d) + 23 c) |

[84] The case therefore finally boiled down to whether any of the three amounts referred to arose from Mr. Salzberg's negligence.

## DISCUSSION

*Did Mr. Salzberg use the wrong cut-off date for bank and brokerage account balances?*

[85] The first claim, for $104,394, had nothing at all to do with double counting.

[3] The $100,000 was for punitive and exemplary damages claims of $50,000 each, which the Court refers to in the aggregate as punitive.

[86] It was instead for one third of the difference between the balance in the RBC Canadian dollar brokerage account as of February 29, 2004 ($1,196,348) and the balance in the same account as of March 31, 2003 ($883,166)[4], representing the amount by which Mr. Juster claimed Mrs Juster had been overpaid because Mr. Salzberg had, wrongly, chosen the former date instead of the latter date as the cut-off for the account.

[87] There was no valuation date expressed in the Stipulated Final Order, although its section 15 might suggest that the valuation date was supposed to be February 28, 2002 since, beginning on that date, all disbursements from 98503's accounts were to be accounted for and adjusted until the date of division so as to equalize distributions to the parties.

[88] Yet, there was a clear indication in the February 29 summary and its backup schedules that Mr. Salzberg sent to the Justers and their attorneys on April 16, 2004 (Exhibit D-9) that all assets were valued as at March 31, 2002 and that all funds disbursed and all brokers' accounts of 98503 were adjusted as at February 29, 2004.

[89] Mr. Salzberg's uncontradicted testimony was that he was instructed to use the latter date by the Justers' respective attorneys during meetings in Vermont also attended by the Justers that took place on February 17 and 18, 2004, as confirmed by the bill for services he sent on April 16, 2004 (Exhibit P-17).

[90] The February 29, 2004 summary reflecting the brokerage account balances as of that date, without the equalization of funds distributed by 98503 until that date, but with adjustments of some of its real estate added, served as Schedule 1 to Attachment A of the Vermont judgment.

[91] On April 22, 2005, at the outset of the hearing of a motion to the Vermont court by Mrs. Juster to compel Mr. Juster's compliance with the Stipulated Final Order, both signified their agreement with Attachment A, the letter composed by their Montreal tax attorney, Francine Wiseman, on April 21, 2005 by endorsing "So agreed" at the end of the letter with their respective signatures and by initialing every one of its pages and of the attached schedules.

[92] Assuming that the choice of dates was indeed an error committed by Mr. Salzberg, though the proof indicates otherwise, Mr. Juster was manifestly aware of it at the time he settled, as evidenced for example by his letter of complaint to Me. Wiseman of March 23, 2005 (Exhibit P-28).

---

[4] The reference should have been to Exhibit P-20, Annex 11-B.

[93] At the trial of his action against Mr. Salzberg before Monast J. in May 2007 referred to above, Mr. Juster admitted agreeing to the terms of settlement contained in the Vermont judgment, but insisted that he had done so without fully understanding them and under pressure from his attorney and the presiding judge - the former admonishing him to "sign the fucking thing" and the latter angrily threatening to award Mrs. Juster's her legal costs if he did not.[5]

[94] Furthermore, the fact that the settlement was accepted without the adjustment to equalize distributions from 98503 between February 28, 2002 and February 29, 2004 provided for in section 15 of the Stipulated Final Order, which Mr. Salzberg had included in the February 29 summary, was to Mr. Juster's evident benefit, since he had received substantially more than Mrs. Juster from 98503 during that period.

[95] In Mr. Salzberg's adjustment, Mr. Juster would have had to make an equalizing payment of $87,590 to Mrs. Juster.

[96] The Court concludes that Mr. Salzberg was simply following instructions by using the February 29, 2004 adjustment date for the brokers' accounts, that Mr. Juster was aware of that choice of date, never signified his objection to it and ultimately agreed to it by signing off on the terms of property division incorporated into the Vermont judgment, notwithstanding his subsequent regret that he had done so.

[97] If there were discrepancies between the February 29 summary and the summary spreadsheet of April 21, 2005 incorporated in the Vermont judgment, the proof establishes that they occurred with the knowledge and consent of the Justers and their advisers and that they were not the result of any professional error by Mr. Salzberg.

[98] The balance of $1,196,348 in the RBC Canadian dollar brokerage account[6] was therefore correctly used in the division of 98503's assets rather than the balance of $883,166 as of March 31, 2003[7] and Mrs. Juster was not overpaid by $104,394.

[99] The Court also notes that if the March 31, 2003 date had been chosen as the valuation date for all assets, Mr. Juster would not have been able to advance his other claim that there was double counting of the proceeds of sale of the two properties sold in 2002 since they no longer belonged to 98503 on March 31, 2003.

[100] Indeed, in his report Mr. Potvin noted that he had eliminated the valuation of the Bethel Beach condo (shown as the proceeds from its sale in the final division) from his Scenario 1 model and just included the balance in the RBC US dollar brokerage account on that date.

---

[5] Transcript, Exhibit D-16 at pages 41 and 42.
[6] Exhibit P-20, Tab 11B, p.1.
[7] *Ibid*, p. 2.

[101] He explained that he had done so because he was waiting for Mr. Salzberg to establish that no portion of the sales proceeds was to be found in that account.

[102] As for Lot 404, Mr. Potvin took the position that as of March 31, 2003, the proceeds of sale of $603,875 on September 26, 2002 should not be included in the division; only the balance of the sale price of $355,875, plus a loan receivable of $48,000 from Mr. Juster that he (Potvin) understood arose from the sale since the cash paid at closing was $248,000.

[103] This was a misperception, since the proof established that the balance due from Mr. Juster to 98503 was actually $45,445 and was unrelated to the sale of the property.

[104] On the other hand, in his model valuation as at March 31, 2002 described as Scenario 2, Mr. Potvin included the entire proceeds of sale of $603,875, just as Mr. Salzberg had done, but not the $45,455 balance owed by Mr. Juster, since in his understanding it arose from those proceeds.

*Did Mr. Salzberg double count the proceeds of sale of Lot 404 and the Bethel Beach condo?*

[105] The next two claims, for $41,333.50 Can. and $57,666.50 US, are allegedly the result of double counting by Mr. Salzberg.

[106] These claims could not even be entertained in the face of Mr. Juster's insistence on a February 6 (or March 31), 2003 valuation date for assets other than the bank and brokerage accounts because the Bethel Beach condo and Lot 404 had both been disposed of before that date.

[107] The complaint could only be made if Mr. Salzberg's cut-off date of March 31, 2002 for all the assets other than bank and brokerage accounts were accepted, but then Mr. Juster could not claim the $104,394 of Scenario 1 (March 31, 2003), as his lawyers did in the Re-re-re-amended Conclusions.

[108] To dispose of these two claims, the Court will therefore conclude that the March 31, 2002 date applied.

[109] It will also recognize that while in settling with Mrs. Juster Mr. Juster renounced his recourses against her for any errors committed by Mr. Salzberg or his representatives, he did not do so against them if those errors induced him to enter into the settlement at a loss.

[110] The Court would have been prepared to entertain an argument that Mr. Juster should not have been expected to audit the work of his own accountant before he accepted the settlement if he could not ascertain an error of computation by simply reading the spreadsheets without also analyzing the brokerage and bank accounts.

[111] Thus, the Court might have accepted that if Mr. Salzberg had included both the proceeds of sale and account balances containing all or part of them in the proposed division, it would have been in breach of his obligation of means and Mr. Juster could not reasonably be expected to be aware of the error when he settled.

[112] So, was there a double counting of the proceeds of sale of the two properties or had they been entirely spent by the cut-off date for the bank and brokerage accounts?

*Was there a double counting of the Lot 404 selling price?*

[113] At the sale on September 26, 2002, $248,000 was paid in cash.

[114] Of that sum, $48,000 is unaccounted for and was presumably spent, but $199,888.78 was deposited in 98503's account 2302217 with CIBC on October 9, 2002, forming part of an aggregate deposit of $203,698.97. [8]

[115] On December 23, 2002 a cheque of $100,000 was drawn on CIBC account 2302217[9] and deposited into 98503's Canadian dollar brokerage account with RBC Dominion Securities. [10]

[116] The remaining $99,888.78 included in the original deposit of $199,888.78 cannot have been double counted since as of March 31, 2003 the balance in CIBC account 2302217 was just $6,768.99.[11]

[117] In fact, the $99,888.78 had been spent by December 23, 2002 when the $100,000 was withdrawn, since the balance remaining in account 2302217 on that date was $8,563.10, but there was a balance forward of $10,805.14 before the deposit of $199,888.78 and the total additional deposits in the account made in December 2002 before the 23rd were $13,371.64.

[118] Furthermore, the aggregate debits on the account by December 23, 2002 other than the $100,000 withdrawal were $115,502.66, more than enough to show that the $99,888.78 was spent by that date, so no part of it was double counted.

[119] As for the $100,000 transferred to the RBC Canadian dollar brokerage account on December 23, 2002, [12] the following table shows the evolution of the balances in that account before and after the deposit:

---

[8] Exhibit P-20, Annex 11J, p.20.
[9] Exhibit P-23A.
[10] Exhibit P-23B.
[11] Exhibit P-20, Annex 11A, p. 9.
[12] Exhibit P-23B.

*Flow of funds in RBC Can dollar brokerage account, Exhibit P23-B, Nov.29 02 to Feb. 17 02*

| Date | debit/credit | Balance | |
|---|---|---|---|
| 29-nov | | 17813,76 | |
| 13-déc | -28798,34 | -10984,58 | |
| 13-déc | -29061,62 | -40046,2 | |
| 13-déc | 143 | -39903,2 | |
| 16-déc | 1170 | -38733,2 | |
| 16-déc | 65 | -38668,2 | |
| 16-déc | 400 | -38268,2 | |
| | 200 | -38068,2 | |
| 16-déc | 1400 | -36668,2 | |
| 23-déc | 100000 | 63331,8 | |
| | | | **Post deposit Debits** |
| 23-déc | -60,5 | 63271,3 | -60,5 |
| 30-déc | 120 | 63391,3 | -3147,6 |
| 31-déc | -3147,6 | 60243,7 | -6295,2 |
| 31-déc | -6295,2 | 53948,5 | -6,54 |
| 15-janv | 1170 | 55118,5 | -15830,47 |
| 15-janv | 300 | 55418,5 | -15201,16 |
| 15-janv | 65 | 55483,5 | -8389,63 |
| 15-janv | 500 | 55983,5 | -4000 |
| 15-janv | 1400 | 57383,5 | -3049 |
| 15-janv | 143 | 57526,5 | -6098 |
| 22-janv | -6,54 | 53941,96 | -17016,52 |
| 24-janv | -15830,47 | 38111,49 | -79094,62 |
| 24-janv | -15201,16 | 22910,33 | |
| 28-janv | -8389,63 | 14520,7 | |
| 29-janv | 400 | 14920,7 | |
| 30-janv | 315 | 15235,7 | |
| 31-janv | -4000 | 11235,7 | |
| 31-janv | -3049 | 8186,7 | |
| 31-janv | -6098 | 2088,7 | |
| 31-janv | 181,6 | 2270,3 | |
| 31-janv | 443,75 | 2714,05 | |
| 31-janv | 375 | 3089,05 | |
| 31-janv | 4000 | 7089,05 | |
| 14-févr | 400 | 7489,05 | |
| 14-févr | 160 | 7649,05 | |
| 17-févr | 1350 | 8999,05 | |
| 17-févr | 1600 | 10599,05 | |
| 17-févr | -17016,52 | -6417,47 | |

[120] Once the $100,000 was deposited on December 23, because Mr. Juster's margin account was minus $36,668.20 as of December 17, only $63,331.80 was left to spend, net of any subsequent funds deposited.

[121] Subsequent debits until January 31, 2003 aggregated $62,078, leaving only $1,253.80 of the deposit left to spend by that date.

[122] With the debit of $17,016.52 on February 17, 2003, the original deposit of $100,000 was entirely spent.

[123] Moreover, that would have been the case even allowing for the additional deposits made after December 23, 2002.

[124] By February 17, 2003 the account would have had a negative balance of $6,417.47 in any case, since the aggregate debits after December 23, 2002 were $79,094.62, more than enough to eliminate the $63,331.80 left to spend after the deposit of $100,000 on that date.

[125] By February 17, 2003 the entire cash proceeds from the sale of lot 404 had therefore been spent. There was no double counting.

*Was there a double counting of the Bethel Beach condo selling price?*

[126] The condo was held in the name of Kardy Investments Ltd., a Juster family holding company.

[127] The sale took place on July 29, 2002 and the proceeds of sale paid out on August 2, 2002 in the amount of $192,875.26 US[13] were deposited to Kardy's USD account at the CIBC in Montreal on August 16, 2002, when the balance in the account was nil. [14]

[128] On the same day, sums in the respective amounts of $15,000 and $5,198.18 were taken out of the account, leaving a balance of $172,677.08.

[129] On August 22, 2002, a cheque in that amount was drawn on the account and deposited into 98503's RBC US dollar brokerage account.[15] The cheque was debited on August 23, 2002.

[130] Mr. Juster's margin balance in the brokerage account as of July 31, 2002 was minus $233,498.14, so the entire proceeds of the cheque were immediately applied in reduction of that balance, which remained negative - minus $65,957.81 at month end.

---

[13] Exhibit P-20, Annex 11D, p.1.
[14] *Ibid.,* p. 5.
[15] *Ibid.,* pp. 5 and 8.

[131] Thus by August 23, 2002, all cash proceeds from the sale of the condo had been spent. There was no double counting.

*Defendants' expert's fees*

[132] The Defendants' insurers were obliged to defend them against a claim of $1,271,939 which was based almost entirely on Mr. Potvin's giant report. The latter did nothing less than redo the entire division of assets.

[133] Considering the size and nature of the claim, it was reasonable for them to hire reputable - and expensive – experts, RSM Richter Inc. ("Richter"), to unravel the report and counter it with one of their own.

[134] Furthermore, the author of the rebuttal report, Pascale Gaudreault, had to be present in Court for eight days of hearing, just as Mr. Potvin was.

[135] The Court found her testimony helpful, particularly with respect to the double counting claim, and her report clear.

[136] Richter billed an aggregate of $70,100.68 for its services consisting almost exclusively of Madame Gaudreault's work at her hourly rate of $300 to $340 between March 30, 2010 and June 11, 2013.

[137] In contrast, Mr. Potvin, a sole practitioner, billed the Plaintiffs $49,793.85 for his services at rates of between $80 and $200 an hour.

[138] The Plaintiffs cannot now expect the Court to award no more to the Defendants. They should have anticipated that the insurers would marshal the resources they could afford and that they would be responsible for their cost, which in this case is not disproportionate to their claim, even if beneath the verbiage it turned out to be entirely without merit.

**WHEREFORE FOR ALL THE FOREGOING REASONS THE COURT:**

[139] **DISMISSES** the Plaintiffs' Re-re-re-amended Introductory Motion, with costs, including the Defendants' expert's fees and disbursements in the amount of $70,100.68;

[140] **GIVES ACTE** to the Plaintiffs' attorneys' production on June 11, 2013 of a Partial Desistment dated June 10, 2013;

[141] **ORDERS** that judicial costs be taxed against the Plaintiffs in favour of the co-attorneys of the Defendants, Sternthal Katznelson Montigny s.e.n.c.r.l., based on an action for $237,999.90 on which judgment is rendered at the conclusion of a trial on the merits, inclusive of the additional fee allowed by article 42 of the Tariff of Judicial Fees of Advocates.

_____
WILLIAM FRAIBERG, J.S.C.

Me Robert Teitelbaum and Me Muriel Librati
TEITELBAUM LIBRATI
Attorneys for Plaintiffs

Me Jean-Pierre Baldassare
BÉLANGER SAUVÉ s.e.n.c.r.l.
Attorneys for defendants

Me Sylvie Grenier
STERNTHAL, KATZNELSON, MONTIGNY s.e.n.c.r.l.
Co-Attorneys for Defendants

Dates of hearing: November 19, 20, 21, 22, 23 and 26, 2012
and June 10, 11 and 12, 2013