



Court File No. **VLC-S-S-246762**

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHRISTOPHER DEVOCHT and 1267912 B.C. LTD.

PLAINTIFFS

AND:

**RBC DOMINION SECURITIES INC., RBC WEALTH MANAGEMENT
FINANCIAL SERVICES INC. and GRANT THORNTON LLP**

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff.

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Parties

1. The individual plaintiff, Christopher DeVocht, is a resident of Sooke, British Columbia.
2. The corporate plaintiff, 1267912 B.C. Ltd., is a British Columbia company of which Mr. DeVocht is the sole shareholder and director.
3. The first named defendant, RBC Dominion Securities Inc., is a federally incorporated company extra-provincially registered in British Columbia with a registered office at 1055 West Georgia Street, Suite 3200, Vancouver, BC V6E 3P3.
4. The second named defendant, RBC Wealth Management Financial Services Inc., is a federally incorporated company extra-provincially registered in British Columbia with an attorney's mailing address at 3100 - 666 Burrard Street, Vancouver, BC V6C 3B1.
5. The third named defendant, Grant Thornton LLP, is a limited liability partnership with a registered office at 1600 - 333 Seymour Street, Vancouver, BC, V6B 0A4.

Background

6. Mr. DeVocht is a carpenter. In his early 20s, he began investing through an RBC Direct Investing account in an attempt to supplement his income. For the most part, he lost money but continued to invest much of his spare time and most of his money in trading stocks and derivatives, largely in Tesla Inc. (“**Tesla**”). In the fall of 2019, Mr. DeVocht began to experience significant respiratory and other health issues. He returned to Vancouver Island several months of working in Kitimat and, while continuing to struggle with his health issues, helped his parents build a duplex. He also continued direct investing after work hours and learning about investing in Tesla from online materials and forums.
7. By December 31, 2019, Tesla shares began to grow in value and the indicated value of Mr. DeVocht's securities portfolio according to the RBC Direct Investing account service was approximately \$88,000 CAD. As the values of Tesla stock grew rapidly during that period,

Mr. DeVocht continued investing all of his money and the investment gains in put and call options for Tesla stock. By the end of February 2020, the indicated value of his securities portfolio was approximately \$5.5 million CAD. By the end of June 2020, when he was 30 years old, the indicated value of Mr. DeVocht's securities portfolio, which almost entirely consisted of Tesla shares and options, was approximately \$26 million CAD, and rising rapidly.

8. On July 2, 2020, Mr. DeVocht wished to move out of his rental apartment and purchase a residence of his own. With that objective in mind, he contacted Luke Sprungmann at RBC Private Banking to inquire whether he might be able to obtain a loan from RBC against the equity he had built up in his trading account.
9. After some initial discussions about how Mr. DeVocht might use his investment earnings in a tax efficient manner to purchase a residence, on July 27, 2020, Mr. DeVocht was approved to become an RBC Private Banking client. By this time, the indicated value of his securities portfolio was almost \$50 million CAD.
10. On August 2, 2020, Mr. DeVocht was introduced by Mr. Sprungmann to Chris Delorme, an RBC Financial Management Advisor who appears to have been primarily associated with RBC Dominion Securities Inc. Mr. Delorme presented his services to Mr. DeVocht to be that of a coach and coordinator of financial planning and investment management, but advised that his specific role could be tailored to assisting at whatever level Mr. DeVocht wanted. Mr. DeVocht began working with Mr. Delorme. In short order, Mr. Delorme positioned and promoted himself as the primary professional who engaged with Mr. DeVocht and the point person of a team of professionals that he recommended to assist Mr. DeVocht.
11. It was not made clear to the plaintiffs which of the advisors within the group of companies marketed as "RBC Wealth Management" were acting on behalf of RBC Dominion Securities Inc. or RBC Wealth Management Financial Services Inc., or both. Those particulars are presumably known to those defendants. Accordingly, going forward this pleading will refer to those affiliated entities, or either of them, as "**RBC**".

Agreements with RBC and Grant Thornton

12. The agreement between Mr. DeVocht and RBC (through Mr. Delorme) for financial planning advice was partly oral, partly written and partly established by conduct. The terms of the agreement were that RBC would be paid various fees and commissions from the products and services provided to the plaintiffs as arranged by Mr. Delorme on behalf of RBC. In return, Mr. Delorme would provide Mr. DeVocht with financial planning advice, and in doing so would exercise the care, skill and diligence reasonably expected from a professional advisor in that capacity. In particular, RBC, through Mr. Delorme and his colleagues, would:
 - (a) be in full and continuing compliance with the "know your client" obligation ("**KYC**"), which required the advisor to make diligent inquiries to determine the essential information regarding a client, including the client's needs, financial

objectives, risk tolerance; trading experience and practices; financial sophistication more generally, and health, including mental health;

- (b) advise Mr. DeVocht carefully and skillfully in accordance with his risk tolerance and financial objectives;
 - (c) explain to Mr. DeVocht the risks and consequences of any financial planning strategies;
 - (d) recommend only investments and financial planning strategies to Mr. DeVocht that were suitable, having regard to his particular circumstances, investment knowledge, financial objectives and risk tolerance;
 - (e) advise about and recommend strategies to minimize risks and preserve wealth;
 - (f) provide advice that did not elevate tax avoidance above overall financial planning and business objectives;
 - (g) monitor the ongoing accuracy of the KYC information and assessment, and the ongoing suitability of financial planning strategies to ensure that they continued to remain suitable when there were changes in RBC's understanding of Mr. DeVocht's circumstances;
 - (h) warn Mr. DeVocht with regard to vulnerability to significant losses through market declines or fluctuations; and
 - (i) not place itself or its personnel in conflicting responsibilities or in situations where conflicting interests could interfere with RBC's performance of the above duties.
13. Acting in the role of point person of a team of professionals being assembled to assist Mr. DeVocht, in early August 2020 Mr. Delorme strongly encouraged Mr. DeVocht to retain accountant Michael Stubbing of Grant Thornton LLP to assist with tax planning. Mr. Stubbing was away on vacation at the time, but Mr. Delorme recommended Mr. DeVocht await Mr. Stubbing's return later in August.
14. Meanwhile, Mr. Delorme arranged for RBC to prepare a Financial Plan for Mr. DeVocht, and in parallel provided Mr. DeVocht with advice of his own.
15. When Mr. Stubbing returned from holidays, he provided Mr. DeVocht with tax planning advice. The agreement between Mr. DeVocht and Grant Thornton for tax planning advice was partly oral, partly written and partly established by conduct, whereby, on behalf of Grant Thornton, Mr. Stubbing would provide tax planning advice and exercise the care, skill and diligence reasonably expected from a professional advisor in that capacity. In return, Grant Thornton gained the opportunity to be engaged in various capacities to implement the advice and provide Mr. DeVocht and his future business entities with accounting and tax services. In particular, Grant Thornton was required to:

- (a) make diligent inquiries to determine the essential information regarding Mr. DeVocht relevant to tax planning advice and monitor the ongoing accuracy of the same;
- (b) advise Mr. DeVocht carefully and skillfully in accordance with his financial objectives;
- (c) recommend tax planning strategies that were suitable, having regard to the particular circumstances;
- (d) explain to Mr. DeVocht the risks and consequences of any tax planning strategies;
- (e) provide advice that did not elevate tax avoidance above overall financial planning and business objectives;
- (f) caution Mr. DeVocht if it appeared that RBC's advice or that of any other professional was at odds with prudent tax planning; and
- (g) not place itself or its personnel in conflicting responsibilities or in situations where conflicting interests could interfere with Grant Thornton's performance of the above duties.

Inadequate Knowledge of the Client and his Objectives

16. From the outset, RBC failed to properly understand and verify Mr. DeVocht's level of sophistication in financial matters. In particular, RBC considered Mr. DeVocht to be a sophisticated investor. While this was true in respect of his strategies for put and call options in the trading of Tesla shares, RBC failed to appreciate that Mr. DeVocht's knowledge of investing more generally, of financial planning, and of tax was in fact limited.
17. From the outset, RBC also failed to properly understand and verify Mr. DeVocht's objectives for his finances, and failed to update the assessments its personnel made as new information was received. Although RBC was told by Mr. DeVocht at first instance that he simply wanted to use some of his accumulated wealth to obtain a loan and purchase a residence, they soon formed the view that he wished to liquidate all of his Tesla options, retire from active trading and receive a passive income from investments managed by RBC advisors. Mr. Delorme's advice, however, did not reflect that understanding,
18. Meanwhile, it became clear over time that Mr. DeVocht was very private about his trading activities and success such that he was receiving advice from the defendants and making financial decisions in isolation from family or friends. It also became clear over time that Mr. DeVocht was deeply personally entrenched in the highs and lows of trading and he was having significant difficulty withdrawing or de-risking in light of his extraordinary success.

Advice Provided

19. Pursuant to the above-noted agreements, RBC and Grant Thornton provided Mr. DeVocht with advice to restructure his securities holdings and to conduct his trading activity differently, primarily to reduce his exposure to taxes.
20. The advice given to Mr. DeVocht was to incorporate a company, roll all of his securities into it under section 85 of the *Income Tax Act*, and then conduct trades within the company with a strategy of accumulating as many Tesla shares as possible and holding them for as long as possible. This, it was hoped, would cause CRA to view the company's activities as an investment holding company and not an active trading business. The former would attract taxation on a capital gains basis at 27% whereas if the new company engaged in numerous shorter-term transactions as Mr. DeVocht had been doing in his own name, CRA would likely rule the gains were income and tax them at 53.5%. In communications between Mr. Delorme, Mr. DeVocht and Mr. Stubbing, the effort to attract and maintain capital gains treatment was characterized as the tax narrative ("**Tax Narrative**").
21. In addition, as early as August 2, 2020, Mr. Delorme introduced a proposal for Mr. DeVocht to make an in-kind donation of securities to the RBC Charitable Gift Fund to create a tax credit without triggering a capital gain. This donation was in fact to a federal non-profit company named Charitable Gift Funds Canada Foundation and was irrevocable. From that point forward, the proposed donations to the gift fund (in relation to which Mr. Delorme received some remuneration) remained a central feature of Mr. Delorme's planning advice, even when it became clear that such gifts were wholly unsuited to the plaintiffs' circumstances, conduct and financial objectives. Grant Thornton was aware of this advice by late August and supported it.
22. Pursuant to the financial planning recommended by RBC and Grant Thornton:
 - (a) on September 30, 2020, the plaintiff 1267912 B.C. Ltd. ("**DeVocht Corp.**") was incorporated;
 - (b) on October 2, 2020, a section 85 rollover was completed, transferring all of Mr. DeVocht's securities into DeVocht Corp.;
 - (c) thereafter, Mr. DeVocht provided instructions to RBC's trading manager to cause DeVocht Corp. to make purchases and sell options and other securities; and
 - (d) on December 14, 2020, DeVocht Corp. donated approximately \$8.5 million to the RBC Charitable Gift Fund to obtain a charitable tax credit.
23. The agreement between Mr. DeVocht and RBC outlined above at paragraph 12 was extended to include DeVocht Corp.
24. The agreement between Mr. DeVocht and Grant Thornton outlined above at paragraph 15 was extended to include DeVocht Corp.
25. Meanwhile, in December 2020, Mr. Delorme proposed that he take over the role of receiving trading instructions from the plaintiffs and would place the trading orders

himself, instead of through others at RBC. After some discussions regarding fees and commissions, the plaintiffs accepted Mr. Delorme's proposal. From that point forward, except for periods when Mr. DeVocht's health problems were debilitating, Mr. DeVocht and Mr. Delorme communicated regularly. Mr. Delorme earned significant commissions from the plaintiffs' trading activities while being responsible for the financial planning advice RBC had provided and was continuing to provide.

26. In addition, DeVocht Corp. was provided with an RBC margin account for substantial loans to engage in securities trading. The margin account increased DeVocht Corp.'s purchasing power and the speed at which it could purchase securities and derivatives. It also amplified its risk, as it was then exposed to margin calls by RBC when the value of Tesla shares dropped.

The Plaintiffs' Investments

27. The plaintiffs engaged in securities transactions through DeVocht Corp. conforming to the Tax Narrative of accruing as much Tesla stock as possible through options trading and other transactions and holding it for as long as possible. The result was that the plaintiffs increased their extreme concentration in Tesla with the corresponding risks while trying to avoid the risks of a tax assessment or reassessment that would cause the gains to be taxable as income.
28. The value of Tesla stock continued to grow, however, and DeVocht Corp. accrued greater and greater Tesla shares and overall value.
29. By April 2021, the plaintiffs' net worth was calculated by RBC to be over \$186 million CAD.
30. By November 30, 2021, the plaintiffs' securities portfolios were indicated by RBC's statements to be worth approximately \$415 million CAD.
31. Despite this extraordinary wealth and concentration of Tesla shares and the extreme risks of such concentration, and notwithstanding that it was clear that RBC's initial understanding that Mr. DeVocht wished to liquidate his concentrated position and effectively retire was either mistaken or profoundly off-track, RBC's planning advice, which encouraged and rewarded such concentration, was not updated or amended.
32. On December 17, 2021, based on RBC's financial planning advice and Grant Thornton's tax advice, DeVocht Corp. donated approximately \$17 million worth of additional securities to the RBC Charitable Gift Fund in order to obtain charitable tax credits. Despite the loss of the value of those securities for the purposes of paying capital gains taxes that could have been used to offset capital losses in later years, Mr. Delorme encouraged the donation without qualification, and congratulated Mr. DeVocht on his philanthropy. Mr. Stubbing was also aware of the donation and offered no caution or advice in relation to it.
33. Through 2022, Tesla shares suffered a series of declines in value but periodically rallied.

34. In order to avoid disturbing the Tax Narrative but try to recoup the losses, Mr. DeVocht borrowed \$20 million from DeVocht Corp. and used it to make shorter term trades in his personal RBC Direct Trading account. This was unsuccessful and the funds were lost.
35. In October 2022, sharper declines in the value of Tesla shares were experienced. DeVocht Corp. was forced to sell its holdings in Tesla shares to repay the loans from its margin account with RBC, and then suffered further devaluations of the securities it was holding. The plaintiffs attempted to mitigate these losses in a variety of ways, but understood themselves to be constrained to maintain the Tax Narrative.
36. In time, the plaintiffs' securities holdings were worth nothing.
37. But for the defendants' inadequate advice, as detailed below, the plaintiffs would have preserved a substantial portion of their wealth and implemented financial planning that would not have resulted in the loss of their entire net worth.

Part 2: RELIEF SOUGHT

1. General damages for breach of contract;
2. Alternatively, general damages for negligence;
3. Disgorgement of fees and commissions for breach of fiduciary duty;
4. Special damages;
5. Pre-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79;
6. Costs of this action; and
7. Such further and other relief as counsel may advise and this Honourable Court may permit.

Part 3: LEGAL BASIS

1. The plaintiffs claim against the defendant RBC for breach of contract and negligence. RBC, in its capacity as the plaintiffs' financial planning advisor, had a contractual duty and common law duty of care to the plaintiffs to provide financial planning advice with the care, skill and diligence reasonably expected from a professional advisor in that capacity. RBC failed to meet that standard and in particular, RBC:
 - (a) failed to properly identify the plaintiffs' needs, objectives and plans;
 - (b) failed to properly assess the plaintiffs' knowledge and sophistication regarding financial planning;
 - (c) failed to make reasonable inquiries into Mr. DeVocht's health challenges and factor that into its financial planning advice;
 - (d) failed to make inquiries as to whether Mr. DeVocht was receiving any financial advice or grounding from other people in his life, including his parents;

- (e) failed to reassess the plaintiffs' needs, objectives and plans over time, and in particular, when it should have been clear that there had been a misunderstanding, misapprehension or change of course in relation thereto;
 - (f) failed to recognize Mr. DeVocht's personal entrenchment and potential addiction to the highs and lows of RBC's Direct Investing platform, such that he was having significant difficulty withdrawing or de-risking in light of his extraordinary success;
 - (g) recommended a charitable gift giving plan that was inappropriate to the plaintiffs' high risk investment profile and removed \$25.5 million from being taxed and later available to offset capital losses;
 - (h) recommended and supported a Tax Narrative that compelled the plaintiffs to maintain their concentration in Tesla securities, increasing and perpetuating their exposure to market downturns;
 - (i) recommended, facilitated and supported DeVocht Corp. trading on margin, amplifying risk and making a transition to a lower risk portfolio more difficult;
 - (j) failed to advise the plaintiffs that avoiding taxes should not drive high risk investment decision making or be a primary objective;
 - (k) failed to recognize at the outset and over time that the Tax Narrative was misaligned with the plaintiffs' actual needs, objectives and plans and to advise the plaintiffs accordingly;
 - (l) failed to advise the plaintiffs in clear and unequivocal terms to preserve a portion of their wealth in the event markets turned against their investment position;
 - (m) placed its advisor in a conflict of interest by having the same individual receiving significant commissions from the plaintiffs' trading activity while being responsible for advising the plaintiffs about an appropriately conservative financial plan; and
 - (n) such further and other particulars as the plaintiffs may advise.
2. As a result of RBC's breach of contract and negligent breach of the applicable standard of care, the plaintiffs have suffered damages as outlined below.
 3. In addition, the defendant RBC's relationship with the plaintiffs, through Mr. Delorme, was that of a fiduciary, and it breached its duties in that regard. In particular, RBC failed to provide advice in the plaintiffs' best interests, failed to provide ongoing advice and monitoring over the course of the relationship, and failed to prevent conflicting interests from affecting its advisor's advice on RBC's behalf.
 4. The plaintiffs claim against the defendant Grant Thornton for breach of contract and negligence. Grant Thornton, in its capacity as the plaintiffs' tax planning advisor, had a

contractual duty and common law duty of care to the plaintiffs to provide tax planning advice with the care, skill and diligence reasonably expected from a professional advisor in that capacity. Grant Thornton failed to meet that standard and, in particular, Grant Thornton:

- (a) failed to properly identify the plaintiffs' needs, objectives and plans;
 - (b) failed to properly assess the plaintiffs' knowledge and sophistication regarding tax considerations within financial planning;
 - (c) failed to make inquiries as to whether Mr. DeVocht was receiving any financial or tax advice from other people in his life, including his parents;
 - (d) relied upon RBC's assessment of the plaintiffs' needs, objectives and plans rather than make its own assessment;
 - (e) advised the plaintiffs from a premise that reducing and avoiding taxes was properly a central objective rather than only one component of financial planning;
 - (f) recommended and supported a Tax Narrative that compelled the plaintiffs to maintain their concentration in Tesla securities, increasing and perpetuating their exposure to market downturns;
 - (g) failed to recognize at the outset and over time that the Tax Narrative was misaligned with the plaintiffs' actual needs, objectives and plans and to advise the plaintiffs accordingly; and
 - (h) such further and other particulars as the plaintiffs may advise.
5. As a result of Grant Thornton's breach of contract and negligent breach of the applicable standard of care, the plaintiffs have suffered damages as outlined below.
6. The general damages suffered by the plaintiffs as a result of the defendants' breaches of contract and negligence include:
 - (a) losses equivalent to the value of the plaintiffs' securities portfolios that the plaintiffs would have otherwise converted to secure assets or investments;
 - (b) the loss of DeVocht Corp.'s ability to offset its capital losses with taxes paid on capital gains as a result of having made irrevocable donations to the RBC Charitable Gift Fund; and
 - (c) such further and other particulars as the plaintiffs will advise.
7. In addition, the plaintiffs claim disgorgement of the fees and commissions paid to RBC as a result of its breaches of fiduciary duty.

Plaintiffs' address for service: 1200-1111 Melville Street, Vancouver BC, V6E 3V6

Fax number address for service (if any): 778-508-3516

E-mail address for service (if any): sean@seanhernlaw.com

Dated: October 1, 2024



Signature of Sean Hern, K.C.

Lawyer for the plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for breach of contract and negligence in relation to financial planning and tax advice.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

N/A