# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Law Society of B.C. v. Robbins,* 2011 BCSC 1310

Date: 20111003
Docket: S111171
Registry: Vancouver

Between:

**The Law Society of British Columbia**

Petitioner

And

**Glen P. Robbins**

Respondent

Before: The Honourable Mr. Justice Grauer

## Reasons for Judgment

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| Counsel for the Petitioner: | E. B. Lyall<br>M. J. Kleisinger |
| Appearing on his own behalf: | G. P. Robbins |
| Place and Date of Hearing: | Vancouver, B.C.<br>September 8, 2011 |
| Place and Date of Judgment: | Vancouver, B.C.<br>October 3, 2011 |

## INTRODUCTION

[1] On January 8, 2009, the Bank of Montreal commenced foreclosure proceedings against Ita Robbins and Fran Matich, who were the registered owners of the mortgaged property, a residence on Honeysuckle Lane in Coquitlam.

[2] Ms. Robbins is the wife, and Ms. Matich the mother-in-law, of the respondent in this proceeding, Glen P. Robbins. Honeysuckle Lane was his residence too.

[3] The Bank's foreclosure petition proved to be a snowball that grew into an avalanche of litigation in which Mr. Robbins has purported to act as solicitor and counsel for his wife and mother-in-law. He has done so, of course, without charging a fee of any kind.

[4] The Law Society then brought this petition seeking, first, an order permanently prohibiting and enjoining Mr. Robbins from representing himself as a lawyer until such time as he becomes a member in good standing of the Law Society, and second, an order permanently prohibiting and enjoining Mr. Robbins from commencing, prosecuting or defending a proceeding in any court, in his own name or in the name of another person, except as permitted by section 15(1) of the *Legal Profession Act*, S.B.C. 1998, c. 9 (the Act).

[5] At the hearing before me, Mr. Robbins did not seriously contest the Law Society's entitlement to the first order it sought, and abandoned the insupportable positions he had earlier taken in an attempt to justify describing himself as "solicitor", "counsel" and "legal representative". He promised that he would not so describe himself again. I pronounced the order in the terms requested, but reserved my judgment concerning the second order for which the Law Society applied. This is my judgment on that second part of the application.

## DISCUSSION

[6] Mr. Robbins maintains, in essence, that he is simply assisting his mother-in-law, who speaks little English, and his wife, who is ill, neither of whom can afford

legal counsel, to defend themselves against the predations of the Bank of Montreal and other moneylenders. Apart from his misrepresenting himself as a lawyer, which he now regrets, he has not been practising law because he has not been charging a fee, and simply stands in the shoes of his family members. Accordingly, the Law Society should leave him alone. It is for the court to decide in its discretion whether it will grant him an audience.

[7] That the court has such discretion, quite apart from anything in the *Legal Profession Act,* is not in doubt. But the Law Society argues that it has a mandate under section 3 of the Act to uphold and protect the public interest in the administration of justice, and that it is obliged by that mandate to intervene in this case. The Act*,* it asserts, prohibits Mr. Robbins from acting for his wife and mother-in-law in the manner he did, and intervention is justified by the fact that his actions have interfered with the proper administration of justice because of his scorched-earth approach, his personal attacks, and the manner in which he has expanded the litigation far beyond what is reasonable.

[8] I propose to review first what Mr. Robbins has been doing that has led the Law Society to intervene. I will then consider the applicable legislation and how it applies in this case.

## 1. The Litigation

[9] As noted, the Bank of Montreal commenced foreclosure proceedings against Ms. Robbins and Ms. Matich in January of 2009, and obtained an order *nisi* of foreclosure and a certificate of costs. The amount due and owing was $198,449.33.

[10] The Bank of Montreal also issued a notice of claim in the Provincial Court of British Columbia against Ms. Robbins and Ms. Matich, claiming the sum of $10,125.15 pursuant to a personal line of credit. The Bank obtained judgment.

[11] On May 21, 2010, Capital One Bank commenced an action against Ms. Robbins and Ms. Matich for money owing on a credit card.

[12] On July 15, 2010, the Bank of Montreal filed a further petition seeking an order permitting it to sell the property on Honeysuckle Lane in order to recover the amount owing under the judgment it obtained in Provincial Court on the line of credit, which judgment it had registered in the land title office.

[13] Mr. Robbins took issue with much of what had transpired in these actions, particularly with what he maintains was a lack of proper service of the process. On September 24, 2010, he filed Notice of Civil Claim commencing action in the name of Ita Robbins and Frana Matich against: "BMO Bank of Montreal, Ellis Roadburg Attorneys [Robert J. Ellis, Barrister & Solicitor, was the solicitor of record for the Bank of Montreal], Her Majesty the Queen in Right of Canada [who had claimed against Mr. Robbins for taxes allegedly owing], Her Majesty the Queen in Right of British Columbia, Shelley Johal [Legal Assistant to Mr. Ellis], Burke Tomchenko Morrison [solicitors who transferred to the Bank funds obtained by Ms. Robbins through refinancing], MIC Investments Inc. [the re-financier], Rosborough and Company [solicitors who acted for MIC], The City of Coquitlam [which demanded the payment of property taxes], Dawn Penner [an employee of the Canada Revenue Agency], David A. Galloway, Chairman of the Board of Bank of Montreal".

[14] Mr. Robbins signed this Notice of Civil Claim as "Lawyer for Plaintiffs". It was filed in the Vancouver Registry of the Supreme Court as Action No. S-106413. It is this action that is primarily responsible for the Law Society's intervention.

[15] Predictably, a number of applications ensued. An application for dismissal brought by the Bank of Montreal on behalf of itself and its chairman, Mr. Galloway, came on for hearing before Madam Justice Adair on January 19, 2011. At that time, as I understand it, Adair J. refused Mr. Robbins a right of audience, finding that his pleadings and application response were "rambling, incoherent, and almost incomprehensible". In the circumstances, Adair J. adjourned the hearing so that the plaintiffs could attend in person or retain counsel.

[16] The matter came back before Adair J. on February 24, 2011, but again Mr. Robbins appeared instead of the plaintiffs. Madam Justice Adair was unwilling

to grant a further adjournment in the absence of any affidavits from the plaintiffs or other reliable evidence to support the request, and so the application proceeded. Mr. Robbins was not permitted to make submissions on the merits of the application. The application was granted, and the action dismissed as against BMO Bank of Montreal and David A. Galloway.

[17] Mr. Robbins was permitted to make submissions in relation to costs. Adair J. awarded one set of costs to the Bank of Montreal and Mr. Galloway to be assessed at Scale B, with double costs of the hearing of February 24, 2011, including preparation. These costs, of course, were awarded against Ms. Robbins and Ms. Matich as plaintiffs, not against Mr. Robbins as their representative.

[18] Whatever issues the plaintiffs might reasonably have raised in defence of the foreclosure claim became lost in this litigation. Not only did the claim attempt to employ as a sword defences that should properly have been raised as a shield in the earlier proceedings, but it was also unhelpfully and unnecessarily complicated by the addition of improper parties, the use of prolix and incoherent pleadings, and the inclusion of irrelevant claims and allegations that were nothing more than an abuse of process. None of this assisted the positions of Ms. Robbins and Ms. Matich, who were left with a substantial bill of costs.

[19] Although Mr. Robbins also represented his wife and mother-in-law in other proceedings connected with the foreclosure of their property, including a petition brought by MIC Investments, Action No. S-106413 is the only one he commenced on their behalf.

## 2. The Legislation

[20] The Law Society brings this application pursuant to sections 15 and 85 of the Act, relying in particular on subsections 15(1) and (5). It maintains that Mr. Robbins is guilty of commencing, prosecuting or defending proceedings in the name of another person, contrary to those subsections. Section 85(5) permits the Law Society to apply for an injunction to restrain a person from contravening the Act,

while section 85(6) authorizes the granting of such an injunction where there is reason to believe that there has been or will be a contravention of the Act.

[21] Just how these provisions apply to a person like Mr. Robbins, a non-lawyer who is acting for free as the representative of litigants to whom he is related in matters in which he has an interest, is not entirely clear. Previous decisions of this Court are not consistent, and the Court of Appeal has yet to resolve the inconsistency. The problem arises from what I consider to be rather clumsy legislative drafting. Given that the legislation in question is the *Legal Profession Act*, this observation is not without irony.

[22] Section 1 of the Act defines the "practice of law". The definition is non-exhaustive. It includes such matters as "appearing as counsel or advocate", "drawing, revising or settling...a document for use in a proceeding, judicial or extrajudicial", and "doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages". It specifically does not include, however, "any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed". So by definition, the "practice of law" does not include, for instance, appearing as counsel or advocate if one does not charge a fee for doing so.

[23] Given that such acts as appearing as counsel, drawing documents for use in a judicial proceeding and negotiating a settlement do not constitute the practice of law if done for free, one might reasonably assume, as does Mr. Robbins, that the Law Society would have no interest in such conduct. It is concerned, after all, only with the practice of law, authorized or not.

[24] Section 15 specifically deals with the authority to practice law, the relevant portions of which state the following:

> **15** (1) No person, other than a practicing lawyer, is permitted to engage in the practice of law, except
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> (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,
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> (b) as permitted by the *Court Agent Act*,

> (c) an articled student, to the extent permitted by the benchers,
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> (d) an individual or articled student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,
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> (e) a lawyer of another jurisdiction permitted to practice law in British Columbia under section 16(2)(a), to the extent permitted under that section, and
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> (f) a practitioner of foreign law holding a permit under section 17(1)(a), to the extent permitted under that section.
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> ...
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> (5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court, in the person's own name or in the name of another person.

[25] It is not immediately obvious why subsection 15(1)(a) permits a person who is an "individual party" (whatever that means) to a proceeding who is acting without counsel on his or her own behalf to engage in the practice of law, when by definition, the practice of law would appear not to include such activity. One must assume, I suppose, that since the definition is not exhaustive, the practice of law may be taken to include other activities not covered by the definition, even when no fee is charged.

[26] It is also unclear why subsection 15(5) includes the redundant words "in the person's own name". Given the provisions of subsection 15(1), and the definition of the "practice of law", those words would appear to be superfluous, and detract from the clarity of the subsection.

[27] Given these peculiarities, it is not surprising that judges have not always agreed on how these provisions should be applied in given circumstances. The divergence in judicial opinion was described by Mr. Justice Groberman, then of this Court, in *Law Society of B.C. v. Bryfogle*, 2006 BCSC 1092:

> [42] In granting this order, I recognize that there is, apparently, some debate as to whether s. 15(5) of the *Legal Profession Act* prohibits a person from commencing, prosecuting or defending a proceeding as an agent for another person if the person acting is not being paid for that service.
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> [43] In *Yal v. Minister of Forests*, 2004 BCSC 1253, Halfyard J. appears to have assumed that s. 15(5) does extend that far. More recently, in *Law Society of B.C. v. Dempsey*, 2005 BCSC 1277, Williams J. appears to suggest that it does not.

[28] Mr. Justice Groberman preferred Halfyard J.'s interpretation of the section. An appeal from his decision was dismissed. In its reasons, the Court of Appeal found it unnecessary to resolve the issue of the proper interpretation of section 15(5) and preferred not to do so given that it did not have before it the relevant legislative history: *Law Society of B.C. v. Bryfogle*, 2007 BCCA 511 at para. 41. Since then, Mr. Justice Groberman's approach has been followed by Dardi J. in *Law Society of B.C. v. Targosz*, 2010 BCSC 969, and by Silverman J. in *Woolsey v. Dawson Creek (City)*, 2011 BCSC 986.

[29] In *Woolsey,* the issue came up in a different context. There, the plaintiff, who claimed for loss arising from undue delay in the issuance of a building permit, chose to have her son represent her in every way, including speaking on her behalf in court. Her son was not legally trained and assisted his mother without the expectation of a fee, gain or reward. The defendant sought to have the plaintiff's pleadings struck out, and the action dismissed.

[30] Mr. Justice Silverman found it unnecessary to express any opinion on the merits of the issue of whether the son was practising law in those circumstances. He was content, instead, to abide by the principle of judicial comity set out by Wilson J., as he then was, in *Re Hansard Spruce Mills Ltd*., [1954] 4 D.L.R. 590 (B.C.S.C.).

[31] I have had the advantage of the legislative history of the relevant provisions being put before me in the form of the *Legal Professions Act, 1895* (S.B.C. 1895, c. 29), and the *Legal Professions Act, 1955* (S.B.C. 1955, c. 40).

[32] The progenitor of the present subsections 15(1) and (5) would appear to be sections 67 and 74 of the 1895 Act, which statute did not define the “practice of law”:

> **67.** Save as provided by the Inferior Courts Practitioners' Act and amendments thereto, no person shall carry on the practice or profession of a Barrister or Solicitor unless he has been duly called or admitted under the provisions of this or some former Act of the Province of British Columbia, and save as aforesaid no persons, unless themselves plaintiffs or defendants in a proceeding, except Barristers and Solicitors or their students-at-law and articled clerks, when permitted by the present practice in that behalf, shall

> appear in any cause or matter in Chambers or before any master, referee, registrar or examiner.
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> ...
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> **74.** In case any person, unless himself the plaintiff or defendant in a proceeding, commences, prosecutes or defends in his own name or in that of any other person, any action or proceeding without being admitted or enrolled as a Solicitor as aforesaid, he shall be incapable of recovering any fee, reward or disbursement on account thereof, and such offence shall moreover, except in cases provided by the "Inferior Courts Practitioners' Act," be deemed guilty of a contempt of the Court in which such proceeding has been commenced, carried on or defended, and shall on the application of any person complaining thereof be punishable accordingly.

[33] I observe that the 1895 Act distinguished between the practice of a barrister and that of a solicitor; commencing, prosecuting or defending a proceeding was linked in section 74 with the practice of a solicitor.

[34] By 1955, the distinction between the practice of a barrister and that of a solicitor was no longer maintained, and the legislation included a definition of "practice of law". That definition included the same matters I quoted from the current definition, and ended similarly with the proviso that the practice of law does not include "any such act if not done for or in expectation of any fee, gain or reward, direct or indirect, from any other person…". This appears to have replaced the fee aspect of the former section 74.

[35] The general restriction on the practice of law, formerly set out in section 67 was contained in section 72 of the 1955 Act, in a form quite similar to that in the present section 15(1). The balance of the former section 74, precursor to the current section 15(5), was set out in the 1955 Act in section 75 as follows:

> **75.** In case any person, unless himself a party to an action or proceeding, commences, prosecutes or defends in his own name or in that of any other person any action or proceeding without being a member of the Society, he shall, except in cases provided for by the "Inferior Courts Practitioners Act," be deemed guilty of a contempt of the Court in which the action or proceeding has been commenced, carried on, or defended, and shall, on the application of any person complaining thereof, be punishable accordingly.

[36] As was the case in 1895, and as remains the case now, the prohibition against non-lawyers commencing, prosecuting or defending a proceeding was set

out in a section separate from the general prohibition against persons other than members of the Law Society practising law. The reference to solicitors, however, had disappeared, presumably due to the evolution of the structure of the profession.

[37] In my view, that historical distinction is important to the interpretation of these provisions and helps clarify the confusion to which the inelegance of the drafting has given rise. It provides the key to understanding the difference between "appearing as counsel or advocate" and other actions included in the definition of "practice of law" if done for a fee, on the one hand, and the reference in section 15(5) to commencing, prosecuting or defending a proceeding, on the other. The former, particularly including the barrister's work of appearing at a hearing as advocate for a party, do not constitute the practice of law if done for free. The latter, incorporating the litigation solicitor's practice of commencing, prosecuting and defending a proceeding, does, whether done for a fee or not. This distinction survives today in the use of the terms "solicitor" or "solicitor of record" to designate the lawyer or firm responsible for the conduct of the litigation on behalf of the party in question, and the term "counsel" to designate the lawyer who will actually appear in court on behalf of that party. The two may but need not be the same individual.

[38] It follows that if a person in the position of Mr. Robbins does nothing more than assist a party by appearing to speak on his or her behalf at a hearing for free, then he is not practising law and the Law Society is in no position to intervene. That person will be subject only to the court's overriding discretion, in the case of persons who are neither litigants nor lawyers, to grant or withhold a right of audience. Where, however, a person takes in hand not only advocacy or assisting in the drawing of a document, but also the overall prosecution or defence of a proceeding, as a solicitor was wont to do, then he is practising law, or at least contravening section 15(5), and the Law Society may intervene.

[39] The result of this interpretation is the same as was reached by a somewhat different route in *Yal*, *Bryfogle*, *Targosz* and *Woolsey*. It would have led to a different result in *Dempsey*.

**3. Application**

[40] Given the history of the litigation involving the Bank of Montreal and Ms. Robbins and Ms. Matich, in particular B.C. Supreme Court Action No. S-106413 commenced by Mr. Robbins in the name of Ms. Robbins and Ms. Matich, I have no difficulty in concluding that Mr. Robbins has 'commenced and prosecuted a proceeding in the name of another person', contrary to section 15(5) of the Act.

[41] While it would be open for Ms. Robbins and Ms. Matich to apply for leave for Mr. Robbins to speak on their behalf in court without contravening section 15(5), that is not what happened. Mr. Robbins has clearly been the originator and driving force of the litigation. The result has been chaos. Persons were made parties to the litigation who had no business being brought into it. Positions were taken, and pleadings were drafted, that were "incoherent and almost incomprehensible". Innocent parties were put to unjustified expense, and a proceeding that ought to have been simple and straightforward was made byzantine in its complexity. Through all of this, the interests of Ms. Robbins and Ms. Matich were not well served. In my view, this is precisely the sort of conduct that section 15(5) was designed to prevent.

[42] But we are not finished yet. Mr. Robbins points out that he holds from his wife and his mother-in-law Powers of Attorney by which he was appointed to be their attorney and to do on their behalf anything that they could lawfully do by an attorney, "specifically any and all matters relating to B.C. Supreme Court Action No. S-106413".

[43] Mr. Robbins does not make the mistake made by Mr. Bryfogle and others of arguing that he is therefore entitled to act as an "attorney" in the American sense, using the word as a synonym for "lawyer" (see *Bryfogle*, BCSC, at paragraphs 32 and 33). Mr. Robbins' argument is more ingenious. He points metaphorically to the Christian sacrament of the Eucharist. As the bread through the process of transubstantiation becomes the body, asserts Mr. Robbins, so does he, via his Powers of Attorney, become his wife and his mother-in-law in Action No. S-106413.

On this analysis, he is in effect his wife and mother-in-law acting in person as permitted by s. 15(1)(a), not Glen P. Robbins acting in the name of another as prohibited by s. 15(5). It is a nice point.

[44] In addressing it, I find I do not need to reconsider the conclusion of the 13th session of the Council of Trent held in October of 1551. It is sufficient to note that the theological concept of transubstantiation is best left to the realm of religion and has no application to the *Power of Attorney Act,* R.S.B.C. 1996, c. 370. That Act equates the relationship between a donor and her attorney to that between a principal and her agent. It does not convert the agent into the principal. They remain distinct both empirically and substantially. The Powers of Attorney, at best, authorize Mr. Robbins to do what his wife and his mother-in-law can lawfully do by an attorney/agent (in the sense of the word "attorney" discussed by Groberman J. in *Bryfogle*). Among the things that Ms. Robbins and Ms. Matich cannot lawfully do by an attorney/agent is commence, prosecute or defend a proceeding in any court, unless that attorney/agent happens to be a practising lawyer.

[45] The solution is to enjoin Mr. Robbins from continuing to do what section 15(5) prohibits. Given the historical concern of the legislation, which was not with prohibiting the action, but rather prohibiting the actor from charging fees for it, and deeming him guilty of a contempt of the court, I do not see it as invalidating the steps taken by the actor to that point on behalf of the litigants. Rather, it becomes up to the litigants to decide what they next wish to do with their action, what amendments may be appropriate, and what steps need to be taken.

[46] I am sensitive of the burden that this decision may seem to cast upon those who cannot afford legal counsel. I do not say, however, that such litigants may not obtain the assistance of non-lawyers who provide such assistance for free. In this case, Mr. Robbins went much further. He commenced and prosecuted a proceeding in the name of his wife and mother-in-law, and conducted it in a manner that ended up only adding to the financial burden for all concerned. In such cases, the Law Society is right to intervene.

[47] I should also note that if a person in the position of Mr. Robbins considers that he has a personal interest at stake in the litigation, it is always open to him to apply under Rule 6-2(7) of the *Supreme Court Civil Rules* to be added as a party. He can then advance his position on his own behalf without transgressing section 15(5) of the Act. This is because he would fall within the exception permitted by section 15(1)(a).

**CONCLUSION**

[48] The Law Society is entitled to the injunction it seeks. Mr. Robbins is hereby permanently prohibited and enjoined from commencing, prosecuting or defending a proceeding in any court, in his own name or in the name of another person, except as permitted by section 15(1) of the *Legal Profession Act*.

[49] The Law Society seeks its costs. In the circumstances it has submitted a draft bill of costs, and asks for a lump sum award. Mr. Robbins opposes an award of costs, relying on an "Offer to Settle" he made by letter dated September 7, 2011. In this letter, he proposes the following resolution to the Law Society's petition:

> Glen P. Robbins will not represent himself as a lawyer or legal representative or employ other words of similar description unless or until such time he has become a member of the Law Society of British Columbia, or unless he is lawmaker or holds a position such as Attorney General of British Columbia or is a Lay Bencher of the Law Society of British Columbia -- in which case he will describe himself as such "lawmaker", "Attorney General of British Columbia" or "Lay Bencher of the Law Society of British Columbia".
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> Glen P. Robbins will never appear as counsel or advocate with the expectation of a fee, gain or reward, direct or indirect, from the persons for whom the acts are performed, except in those circumstances where the person for whom the acts are provided has provided Glen P. Robbins with a Power of Attorney pursuant to the prevailing provincial statute or unless or until he becomes a member of The Law Society of British Columbia.

[50] The reference to lay benchers arises from Mr. Robbins' misapprehension that because lay benchers participate in quasi-judicial proceedings as members of disciplinary panels of the Law Society, it follows that he, as a lay representative, ought to be permitted to participate in judicial proceedings. He fails to understand that lay benchers are specifically authorized by statute to act as they do within the

narrow confines of the processes of the Law Society. By contrast, Mr. Robbins and others who are not practising lawyers (including lay benchers) are specifically prohibited by statute from commencing, prosecuting or defending proceedings in any court in the name of another person. The concepts are rather different.

[51] Turning to the costs considerations set out in Rule 9-1(6), I note that the terms offered by Mr. Robbins would not in fact have given the Law Society what it has obtained through this judgment. Those terms maintained the confusion between acting as counsel or advocate for free, and commencing, prosecuting or defending a proceeding, which confusion I have endeavoured to clarify. Accordingly, it is not an offer that I consider ought reasonably to have been accepted. The Law Society, on the other hand, gave Mr. Robbins every opportunity to give undertakings or consent to the orders it has now obtained and thereby avoid costs. He chose not to do so.

[52] In these circumstances, I conclude that the Law Society is entitled to its ordinary costs at Scale B. Because of Mr. Robbins' history of being less than cooperative in litigation, I consider this to be an appropriate case in which to award the Law Society its costs as a lump sum. Having regard to the Law Society's draft bill of costs, I award costs of $3,740 based on 34 units instead of the 39 units claimed, with tax at $448.80, and disbursements at $1,726.61 with tax at $207.19, for a total of $6,122.60.

"GRAUER, J."