

CANADA / JUDGMENT

Al-Sabah Estate

2015 BCSC 1781

COURT

Supreme Court of British Columbia

DECIDED

11 September 2015

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2015 BCSC 1781 Al-Sabah Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Al-Sabah Estate,

2015 BCSC 1781

Date: 20150911

Docket: P142883

Registry: Vancouver

In the Matter of the Estate of Salem Hamoud Al-Jaber Al-Sabah, deceased

Before: The Honourable Mr. Justice Weatherill

Oral Reasons for Judgment Re

Revocation of Letters of Administration

In Chambers

Counsel for the Applicants, Hind Salem Homoud Al-Jaber Al-Sabah, Aneesa Homoud Al-Jaber Al-Sabah, Mai Salim Hamoud Al-Jaber Al-Sabah, Shama Baraka Obald Aba Al-Hawaya, Abdullah Salem Homoud Al-Jaber Al-Sabah, Homoud Sabah Salem Al-Homoud Al-Jaber Al-Sabah, Mashael Al-Ahmad Al-Jaber Al-Sabah, Roqaya Sabah Salem Al-Homoud Al-Jaber Al-Sabah, Faisal Sabah Salem Al-Homoud Al-Jaber Al-Sabah, and Salem Sabah Salem Al-Homoud Al-Jaber Al-Sabah

N.T. Mitha

Agent for the Administrator of the Estate of Salem Hamoud Al-Jaber Al-Sabah, deceased, Andrew Pinnell:

D.R. North

Counsel for the Defendants in B.C. Supreme Court, Vancouver Registry Action S098507:

F.M. Manolis

Place and Date of Hearing:

Vancouver, B.C.

September 11, 2015

Place and Date of Judgment:

Vancouver, B.C.

September 11, 2015

- [1] THE COURT: The applicants are a group comprising 79 percent of the beneficiaries of the estate (the "estate") of Sheikh Salem Hamoud Al-Jaber Al-Sabah (the "deceased").
- [2] The applicants seek an order that the grant of letters of administration of the deceased's estate to Sheikha Salem Homood Al-Jaber Al-Sabah, the daughter of the deceased ("Sheikha Salem") dated November 12, 2014 be revoked.

background

- [3] The deceased was a resident of Kuwait. He passed away intestate on June 10, 2003. The Ministry of Justice of Kuwait divided his estate into 219,648 shares among 15 beneficiaries, who are comprised of the deceased's two wives, who received 6 percent each; two sons, who receive 14 percent each; seven daughters, including Sheikha Salem, who received 7 percent each; and four grandchildren, who received 3 percent each. The applicants are 10 of those 15 beneficiaries.
- [4] At the time of his death, the deceased held properties and assets in Kuwait, Gibraltar, London, England, and here in British Columbia. In March 2008, a number of the beneficiaries of the estate, with the exception of two of the daughters, Hozama Salem Hamoud Al-Jaber Al-Sabah and Modhi Salem Hamoud Al-Jaber Al Sabah, granted power of attorney to Andrew Pinnell, an attorney in London, England, to act on behalf of the beneficiaries in relation to the estate's assets outside of Kuwait. They did so on the recommendation of Sheikha Salem, who is a practising lawyer in Kuwait, fluent in the English language.
- [5] On November 18, 2009, Mr. Pinnell commenced Vancouver Registry Action S098507 in the Supreme Court of British Columbia (the "B.C. action"), with Mr. Pinnell acting on behalf of the estate as well as a numbered company owned by the estate, 492022 B.C. Ltd. Mr. Pinnell did not inform the applicants of his intention to commence the action.

- [6] It appears from the Affidavit No. 1 of Sheikha Salem, sworn in the B.C. action, that it was she who instructed Mr. Pinnell to commence the B.C. action. She did not discuss the allegations raised in it with any of the applicants. Had she done so, the applicants depose that they would have advised her of the inaccuracies in those allegations.
- [7] On October 27, 2010, a number of the applicants cancelled all authorizations given by them to Mr. Pinnell and others to act on their behalf outside of Kuwait, including in Canada.
- [8] On March 25, 2010, one of the applicants, Sheika Hind Salem Hamoud Al-Jaber Al-Sabah ("Sheika Hind"), who is Sheikha Salem's sister, commenced an action in the High Court of Justice in London, England against, among others, Mr. Pinnell and Sheikha Salem. That action alleged breach of fiduciary duty in the defendant's dealing with two properties in London, England belonging to the deceased. That action was hotly contested and was acrimonious.
- [9] On March 9, 2012, Sheikha Salem obtained an order to administer the estate in London, England. That grant of administration was later revoked by the High Court of Justice in that country. There is a dispute among the beneficiaries as to why the revocation took place. Each has his or her own version.
- [10] Between 2012 and 2014, Sheikha Salem commenced at least four actions in Kuwait against other beneficiaries of the estate, including an action in which she sought appointment as the representative of the estate in Canada and another related to the B.C. action. Sheikha Salem was unsuccessful in all four actions.
- [11] On December 16, 2013, four of the beneficiaries of the estate, holding approximately 13.6 percent of the estate shares, wrote to Mr. Pinnell advising him that they did not want him to represent them in relation to the estate anywhere in the world.
- [12] On December 17, 2013, eight of the beneficiaries of the estate, holding approximately 78.426 percent of the estate shares, revoked Mr. Pinnell's authority to act on behalf of the estate.
- [13] As a result of the revocation of the powers of attorney by the majority of the shareholders of the estate, Mr. Pinnell ceased to act as a representative in the B.C. action; however, he continued to be named as plaintiff in that action.
- [14] In September 2014, and notwithstanding that she had been unsuccessful in her efforts to obtain authority in Kuwait to act as a representative of the estate in Canada, Sheikha Salem applied for a grant of administration of the estate in British Columbia. She did not advise the Court of any of the previous issues she had had with the other beneficiaries, or of her unsuccessful attempts in the courts of Kuwait to obtain the very authority she was seeking in British Columbia, or of the fact that her attempts in Kuwait in that regard had been violently opposed by the other beneficiaries.

- [15] Sheikha Salem advised the B.C. court that the applicants had all been served with a notice of her intention to apply for administration of the estate in B.C. Each of the applicants has deposed that he or she did not receive any such notice and that, had they done so, they would have objected to Sheikha Salem's appointment.
- [16] On November 6, 2014, Sheikha Salem was granted administration of the estate. The grant was sealed by the court on November 12, 2014.
- [17] The applicants seek the removal of Sheikha Salem as administrator of the estate on the grounds that they did not receive the required notice and they do not believe that she is acting in the best interests of the estate.
- [18] Sheikha Salem contends that she has complied with the notice requirements of the applicable legislation because the notice was mailed by ordinary mail to each of the applicants' mailing address as she determined the addresses to be.
- [19] Sheikha Salem deposed that she ascertained the applicants' respective mailing addresses from the "official records of the State of Kuwait Public Authority for Civil Information Licensing Department" ("PACI").
- [20] She deposed further that the government of Kuwait maintains a record of contact information or individual data summaries reported on civil identification cards issued to each citizen and that the government requires each of its citizens to promptly notify PACI of any change of address. She says that she verified the list of addresses compiled from the individual data summaries for each of the applicants before instructing her solicitors in British Columbia to mail the prescribed notices to them by ordinary mail. The notices were mailed to these addresses by ordinary mail on August 27, 2015. The 21 day notice set out in the notices that were mailed expired on September 18, 2015.
- [21] Sheikha Salem deposes further that the pleadings in the B.C. action are based upon the documents and information that she and Mr. Pinnell had obtained at the time and were in accord with the results of investigations that had been performed in 2008 and 2009 to ascertain the deceased's interest in the property and investments in British Columbia that are the subject of the B.C. action.
- [22] Sheikha Salem deposes further that she has, at all material times, acted solely in the interests and for the benefits of the estate. As I said previously, she is a practising lawyer in Kuwait and is fluent in English and is knowledgeable about the estate's affairs.
- [23] At the opening of the hearing this morning, Ms. North, a lawyer in British Columbia who appeared as agent for Mr. Pinnell sought an adjournment of this application for three months. That application was denied for the reasons I expressed after hearing submissions from Ms. North, Mr. Mitha, counsel for the applicants, and Mr. Manolis, counsel for the defendants in the B.C. action.

- [24] My reasons included the fact that Mr. Pinnell is not a party to this proceeding, and, although he deposed in an affidavit filed yesterday that he has Sheikha Salem's authorization to make submissions on her behalf, he is not a qualified lawyer in British Columbia and is not qualified to make those submissions.
- [25] Most importantly, however, I was not satisfied that Sheikha Salem or Mr. Pinnell had acted reasonably and with the required diligence to obtain new counsel after previous counsel, Messrs. Bull, Housser & Tupper, withdrew as counsel in this proceeding and as well as the B.C. action on July 17, 2015.
- [26] The evidence before me from Mr. Pinnell was extremely vague regarding the efforts that he had made to obtain new counsel and was, in my view, nothing more than a smokescreen effort to delay the hearing.
- [27] Accordingly, I denied the adjournment application. It proceeded in the absence of Sheikha Salem or any representative on her behalf. However, I did have the benefit of comprehensive response materials that had been prepared by Messrs. Bull, Housser & Tupper prior to their withdrawal as counsel. Moreover, with his usual candor and helpful assistance, Mr. Mitha took me through all of the material arguments being made by Sheikha Salem in opposition to this application.

analysis

- [28] Sheikha Salem submits in her response materials, p. 11 at para. 7, as follows:

The applicants seek the removal of the respondent as administratrix on procedural grounds, asserting that they did not receive notice of the respondent's application for a grant of administration and substantive grounds alleging that she has not acted in the best interests of the estate insofar as she did not disclose proceedings involving the estate in other jurisdictions, is looking to advance the litigation for her sole benefit, and did not consult with them prior to advancing the litigation. Each of these grounds is disputed by the respondent, but more importantly, none of these grounds, even if established on a balance of probabilities, is sufficient for the court to exercise its discretion to remove the respondent as administratrix of the Sheikh's estate in British Columbia.

- [29] Section 158(2) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 (the "Act"), provides:

158 (2) A person having an interest in an estate may apply to the court to remove or pass over a person otherwise entitled to be or to become a personal representative.

- [30] Section 121(1) of the Act, together with Rule 25-2 of the Supreme Court Civil Rules, B.C. Reg. 168/2009, provide that an applicant for grant of probate or administration must give notice of the proposed application to each successor of the deceased at least 21 days before the application materials are filed.

- [31] The evidence before me discloses that when seeking to obtain the grant of administration, Sheikha Salem sent the notices of her application to the addresses which she describes as being "substantially similar" to the actual addresses of her brothers, sisters and mother. However, it is clear on even a cursory examination of the addresses to which she sent the notices, or at least she caused the notices to be sent, that almost all of them were incorrect. The applicants do not live at the addresses where Sheikha Salem sent the notices.
- [32] The most troubling fact is that the applicants are close relatives of Sheikha Salem. They are her immediate brothers and sisters, her nieces and nephews and her mother. All of the applicants live in Kuwait, as does Sheikha Salem. It would have been very easy for Sheikha Salem to have ensured the addresses to which the notices were sent matched the actual addresses where her immediate relatives resided.
- [33] Instead of ensuring that she had the correct addresses to send the notices to, Sheikha Salem deposed in her affidavit, sworn April 22, 2015, that she provided her counsel with copies of data summaries for each of the addressees which she obtained from PACI.
- [34] If Sheikha Salem had a bona fide interest in ensuring that the notices were received by the applicants, she would have used the applicants' actual addresses.
- [35] No other efforts were made by Sheikha Salem to ensure that the addresses to which the notices were sent were correct. Again, all of this is in the context of her plainly having been aware that the notices were being sent to her immediate relatives and in the context of those immediate relatives having been engaged with her in hotly contested litigation in Kuwait.
- [36] She must be taken to have known the actual addresses where the applicants resided, and yet she chose instead to use what were obviously inaccurate addresses obtained from the government.
- [37] All of the applicants depose that they did not receive the notices in question. They also depose that, had they received the notice, they would have objected to Sheikha Salem's application for the grant of administration.
- [38] When Sheikha Salem applied for the grant of administration in this matter, she did not disclose to the court the issue she had had with the other beneficiaries or that the very authority she sought from this court had previously been rejected by the court in Kuwait. She did not refer to the very significant litigation regarding the estate and its representation in Kuwait and in England.
- [39] I am satisfied on the evidence before me that none of the applicants received the required notice because it was sent to the incorrect address for them. I am also satisfied that Sheikha Salem could easily, with a modicum of diligence, have ensured that the notices were received by the intended recipients.

- [40] Moreover, I am satisfied that, at the time she applied for the grant of letters of administration of the estate, Sheikha Salem failed to disclose to the court pertinent information that ought to have been disclosed.
- [41] Where the evidence discloses that the person who is obliged to give notice failed to exercise sufficient diligence to ascertain the correct address to which the notice was to be mailed, the notice requirements of the Act are not complied with, and the court has a general discretion to revoke a grant of letters of administration: *Desbiens v. Smith Estate*, 2010 BCCA 394 at paras. 21 to 35 inclusive. I do note that that decision dealt with the Act's predecessor, the now-repealed Estate Administration Act, which was replaced by the Act. However, the general principles of law remain applicable.
- [42] When it is alleged that an administrator should be removed because he or she is not acting in the best interests of the estate, the main factor to be considered is the welfare of the beneficiaries: *Veitch v. Veitch Estate*, 2007 BCSC 952 at para. 22.
- [43] Here, the failure of Sheikha Salem to disclose to the court the history of the heated disputes between her and the other beneficiaries, and in particular those relating to her representation of the estate in British Columbia, is such that the equities favour the revocation of the grant of letters of administration.
- [44] For all of the foregoing reasons, I am granting the applicants' application. The grant of letters of administration of the estate dated November 12, 2014, is revoked.
- [45] Section 159(1) of the Act provides:
- 159 (1) If the court discharges or removes a personal representative, the court
- (a) must appoint another person who consents to act as the substitute personal representative, unless
 - (i) the administration of the estate is complete, or
 - (ii) the court does not consider a new appointment necessary, and ...
- That section goes on to stipulate that the court may require the substitute personal representative to provide security if the court deems security to be necessary. I do not deem it necessary in this case.
- [46] Two of the deceased's sons and two of his daughters who collectively are entitled to 42 percent of the shares of the estate have each deposed as follows:

The various beneficiaries who have opposed Sheikha Salem's appointment as administrator have got together and decided that, should the court be agreeable to removing Sheikha Salem as administrator of the estate, that they will form a committee of four persons who are prepared to step in to replace Sheikha Salem as administrator of the estate and to represent the interests of all beneficiaries.

- [47] All the applicants have agreed to these four beneficiaries forming a committee to replace Sheikha Salem. They are the deceased's sons, Abdullah Salem Hamoud Al-Jaber Al-Sabah, Hamad Salem Hamoud Al-Jaber Al-Sabah, and his daughters, Hind Salem Hamoud Al-Jaber Al-Sabah and Mai Salem Hamoud Al-Jaber Al-Sabah.
- [48] I note that s. 59(1) of the Act contemplates that the substitute representative is a person. However, s. 28(3) of the Interpretation Act, R.S.C. 1985, c. I-21 provides that if in an enactment a singular is used, it includes the plural. Accordingly, I read s. 159(1) of the Act as contemplating more than one person being substituted as representative.
- [49] I am satisfied that each of the four beneficiaries who have agreed to form a committee to administer the estate should collectively be substituted as representatives of the estate in place of Sheikha Salem.
- [50] So the application is granted, as I have set out. Is there anything else?
- [51] MR. MITHA: My Lord, one thing is, is it possible to also get an order dispensing with the signature for the form of order?
- [52] THE COURT: Yes, given that there was no one here on behalf of Sheikha Salem, that is appropriate, although a copy of the entered order will obviously have to be sent to her at her address for service.
- [53] MR. MITHA: Yes, My Lord.
- [54] THE COURT: Now, do you have any submissions to make as to costs?
- [55] MR. MITHA: I was just contemplating that, My Lord. My concern is that the costs not be paid from the estate in the sense that this was an application involving Sheikha Salem personally, and I think the usual order should go that costs should be granted to the party that was successful in this application.
- [56] THE COURT: Well, I am reluctant to do that because there has been no finding, nor could there be, that Sheikha Salem has not been acting in the best interests of the estate. It is an estate matter. Costs appear to be a rather small drop in the bucket in the scheme of things.
- [57] MR. MITHA: Yes, My Lord. I'm not going to press on that submission.
- [58] THE COURT: Well, I am happy to order that costs be payable by the estate, if that is of any assistance. You are representing 79 percent of the estate, so essentially your clients are paying 79 percent of the costs in any event.
- [59] MR. MITHA: It may be useful in any event because some accounting of funds have to be dealt with in any event, costs of the application and costs of counsel, et cetera, and it would be useful, I think, to have that order.
- [60] THE COURT: In the circumstances, I think it is appropriate that costs of this application be payable by the estate.

[61] MR. MITHA: Thank you.

[62] THE COURT: Thank you, Mr. Mitha, for your very helpful submissions. Very much appreciated.

"G.C. Weatherill J."

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