

CANADA / JUDGMENT

Boast v. Schram

2025 BCSC 1709

COURT

Supreme Court of British Columbia

DECIDED

16 May 2025

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2025 BCSC 1709 Boast v. Schram

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Boast v. Schram,

2025 BCSC 1709

Date: 20250516

Docket: S115700

Registry: Kelowna

Between:

Nigel Boast

Petitioner

And

Julia Schram

Respondent

Before: The Honourable Mr. Justice J. Doyle

Oral Reasons for Judgment

In Chambers

The Petitioner appearing in person:

N. Boast

Counsel for the Respondent:

J. Metherell

Place and Date of Trial/Hearing:

Kelowna B.C.

May 8 and 9, 2025

Place and Date of Judgment:

Kelowna, B.C.

May 16, 2025

- [1] THE COURT: These are oral reasons. If they are transcribed, I reserve the right to edit them for clarity and grammar, but the reasoning and the result will not change.
- [2] First, there is an application by Nigel, and I am going to refer to the parties, respectfully, by their first names just for clarity and I do not mean any disrespect by that.
- [3] NIGEL BOAST: Yeah, thank you, Your Honour.
- [4] THE COURT: On the second day of this hearing, Nigel brought an application with respect to an issue that was raised regarding property in Zimbabwe and suggested that his application may need to be adjourned so that the court could look further into that (the italicized portion reflects that the recording is somewhat indiscernible).
- [5] I had expressed my view that, in any event of this application, the parties could work together to address the issues in Zimbabwe and the determination of whether there is any property there for which the reparations are payable and, if so, to benefit whom. The actions of Julia in relation to the estate are not raised as an issue by Nigel with respect to the Zimbabwe matter because that matter only arose in late 2024. So, in my view, there is no issue on Zimbabwe that requires adjournment of the application brought by Nigel by way of amended petition.
- [6] So these are my reasons with respect to the amended petition.
- [7] Nigel Boast, by an amended petition filed September 10, 2024, seeks to remove his sister, Julia Schram, as the executor of the estate of their late mother, Rosalie Ellen Boast, and further that Nigel be granted administration of Rosalie's estate. He also seeks the costs of this application.
- [8] Julia opposes the relief sought by Nigel.
- [9] By application filed November 25, 2024, Nigel sought that the hearing of the amended petition take place before the hearing of Julia's notice of application filed October 1, 2024, in File Number 116606. Julia opposed that application. After a hearing, I granted the application and the hearing of the amended petition proceeded.

[10] Before the commencement of this hearing of the amended petition, Nigel sought to use his Affidavit #2 sworn November 25, 2024, in the other proceeding. That order was made by consent. I note that these two proceedings, though sporting different court file numbers, are very much intertwined. In addition, Nigel sought to amend his amended petition by seeking to change the phrase "pass over Julia" in paragraph 1 of Part 1 to "removing Julia". By consent, I made that order.

[11] On December 22, 2005, Rosalie executed a will. Nigel does not dispute the will. The will appointed Julia as trustee. The will made various provisions for Nigel, Julia, and their brother, Clive Boast. Among other things, the will granted the residue of the estate as follows:

- (1) 59 percent to Clive;
- (2) 39 percent to Nigel; and
- (3) two percent to Julia.

[12] In a section headed, "Miscellaneous", the will states:

14. I have made a smaller provision for Julia, in this my will, as I have left her my condominium by way of right of survivorship or transferred legal title to her during my lifetime.
15. I have provided Clive with a larger portion of the residue of my estate than for Nigel because, Clive may have to leave Zimbabwe and I would like to assist him in that transition. Furthermore, Nigel borrowed a considerable sum of money two years ago from my late husband and myself and he has never repaid that debt. I have left a letter with my Will explaining my ongoing relationship with Nigel which I would like the court to review and take into consideration in conjunction with any litigation that might arise regarding my estate.

[13] Paragraph 13 of the will states:

My Trustees may claim remuneration of 3% of the total of my estate for acting as a trustee in addition to any gift or benefit I give to my Trustees in this Will or any Codicil to it.

Under "Gift of Articles", sub (b) states:

to make the following gifts if the possessions in question are within the jurisdiction of this will

The fourth of those, or (iv), is:

to give my property in Zimbabwe to Clive.

[14] On March 20, 2015, Mr. Justice Rogers made two orders/declarations.

[15] The first was that:

1. Rosalie Boast is by reason of mental infirmity arising from disease, age, or otherwise, incapable of managing her own affairs.
2. Community Western Trust Corporation is appointed as Committee of the estate of Rosalie Boast.

Community Western Trust Corporation is now called Truvera Trust Corporation.

[16] The second one included :

1. Rosalie Boast is by reason of mental infirmity arising from disease, age, or otherwise, incapable of managing herself.

[17] The second order included paragraph 3:

3. Julia Schram is appointed as Committee of person of Rosalie Boast.

[18] Rosalie passed away on March 25, 2017.

[19] The original petition, amended as noted above, was filed June 14, 2017.

[20] The original petition came on for hearing before Mr. Justice Cole on August 10, 2017. He adjourned the matter for a two-hour hearing to be set and ordered Julia to provide "full disclosure under the Wills, Estates and Succession Act, S.B.C. 2009, forthwith."

[21] The matter again came on for hearing before Cole J. on September 1, 2017. He made the following orders (not initially read in on May 16, 2025, but now transcribed):

THIS COURT ORDERS that:

1. Royal Bank will produce forthwith to the Petitioner and the Respondent at their own request and their expense, all bank statements and other accounting information and supporting documentation relating to the bank accounts in the name of the Late Rosalie Boast's bank account numbered 02450-5000203, 02450-4502241, investment account 00960094645 TFSA account 569578131 from January 2008, to September 1, 2017.
2. Full disclosure to the Petitioner forthwith by the Committee of Estate, Truvera Trust Corporation, of 408-1708 Dolphin Avenue, Kelowna, BC, Canada, V1Y 9S3, of all financial records of the Late Rosalie Boast pursuant to its appointment as Committee of Estate of Rosalie Boast including committee accounts passed by the Committee of Estate.
3. Each of the Royal Bank Corporation and Truvera Trust Corporation, are at liberty to set aside this Order on two (2) day's clear notice to the Petitioner and Respondent.
4. Application for probate of the Will of Rosalie Boast to proceed, but no further steps to proceed beyond gathering the Estate Assets. Respondent may gather in the Estate Assets and deposit the Estate assets in the trust account of Pushor Mitchell Lawyers LLP. There will be no distribution of any assets, or payment of any disbursements of any kind from the Estate Assets without leave of the Court or agreement by the Parties.

5 Form of Orders are to be prepared by Respondent's counsel and if the Petitioner refuses to agree to sign the Order as to form, the Petitioner to settle above orders before Justice Cole.

6. Form of Order spoken to by Mr. Justice Cole on August 10, 2017 for full disclosure by the Respondent in terms of the Wills and Estates and Succession Act is to be prepared by the Petitioner, if Respondent agent Mr. Eric Ledding refuses to sign the Order, the Petitioner to settle the Order before Mr. Justice Cole.

[22] These were the orders that we dealt with in court. The order of September 1, 2017, has six paragraphs . The August 10, 2017 order has two.

[23] Paragraph 4 of the September 1, 2017 order remains in effect. Variation of that Paragraph 4 is one subject of an application filed by Julia, October 1, 2024, in the other file. On May 9, 2025, at the hearing of this amended petition, I adjourned that application generally.

[24] On November 8, 2017, this Court granted Julia administration of the estate.

[25] On January 2, 2018, Nigel filed an application in this matter seeking, in general terms, that Julia disclose the various items set out therein including:

- (1) all payments made to Julia or her family by Rosalie between December 31, 2008, and October 1, 2010;
- (2) all rental income paid to Julia with respect a property jointly owned by Rosalie and Julia;
- (3) all accounting or other records regarding payments from Rosalie to Julia of:
 - (a) \$10,739 on June 20, 2014;
 - (b) \$5,271 on December 2, 2013; and
 - (c) \$4,698 on August 23, 2012.

[26] The factual basis for Nigel's January 2, 2018, application includes the assertion at paragraph 3 of Part 2 that there is a \$140,000 discrepancy between the capital amount of the investments in December 2008, and the amount the committee of the estate recovered in 2015 prior to Rosalie's death.

[27] Julia filed an affidavit on January 9, 2018 (#2), in opposition to that application. Her affidavit includes her response to issues raised in Nigel's January 2, 2018, application.

[28] Nigel filed further affidavits addressing similar issues. These include:

- (1) Nigel's Affidavit #5 in this matter filed April 6, 2018; it responds in part to Julia's Affidavit #2 noted above; and
- (2) Nigel's Affidavit #6 in this matter filed June 20, 2018; it also responds to Julia's Affidavit #2.

Nigel's January 2, 2018, application has never been heard. It remains adjourned. He confirmed to me that he intends to pursue it.

[29] On September 5, 2018, an order was made by then Master Wilson, now Wilson J., for an interim distribution of estate funds as follows:

THE COURT ORDERS that:

1. An amount of \$20,000 be released from the accounts of the Estate of the Deceased Rosalie Boast with \$15,000 of that amount payable to the Trust Account of Porter Ramsay, the solicitors representing Clive Boast, as an advance on his inheritance and \$5,000 to be remitted to Canada Revenue Agency by the Respondent Julia Schram, as personal representative pursuant to section 116 of the Income Tax Act.
2. An amount of \$8000 to be released from the accounts of the Estate of the Deceased Rosalie Boast to Pushor Mitchell LLP, in payment towards invoice #325890 dated July 26, 2018, without prejudice to the parties' rights to seek full reimbursement or dispute the amount of this account on the passing of accounts of the Estate.

[30] This arose due to Clive's precipitous medical condition. Sadly, Clive passed away in early 2019.

[31] Clive had three children. Nigel was appointed administrator of Clive's estate, although he is not a beneficiary. The current beneficiaries of Clive are Roxanne (Clive's daughter); Kyle (Clive's son); and Ashlin (the mother of Clive's son, Bradley, who tragically passed away in 2020).

[32] On the evidence and submissions before me, in or around 2002, the Government of Zimbabwe seized properties allegedly including those of Esperanza. Nigel submits that Esperanza's interests are his family's properties. I have no evidence to the contrary.

[33] In late 2024, Nigel became aware of a submission on behalf of Clive (who by then had passed away such that it is not clear who made that submission) for entitlement to reparation for improvements on lands seized in 2002.

[34] Nigel submits the reparations are in the range of 725,000 U.S. dollars and that they may be the property of Rosalie's estate. Another interpretation of Rosalie's will is that, having gifted all Zimbabwe property to Clive, any such reparations are the property of Clive's estate. If the former, Nigel may have a 39-percent interest in the reparations. If the latter, Nigel has no interest, but Clive's heirs do.

[35] Determination of that issue is well beyond the relief Nigel seeks by the amended petition. Quite properly, Nigel does not suggest otherwise. Also properly, Nigel in no way criticizes Julia for not taking steps to ascertain, prior to late 2024, whether Rosalie's estate may have some proprietary interest in the reparations fund.

[36] Returning to the issue that is before me, the amended petition, aside from incidental relief and costs, Nigel primarily seeks that I remove Julia as executor and grant him administration of Rosalie's estate.

- [37] Nigel sets out details in his January 2, 2018, application in the factual portion of the amended petition. This includes matters between the parties in the summer of 2018 which ultimately led to the order of then Master Wilson.
- [38] Nigel sets out the legal basis for this relief in Part 3 of the amended petition including:
- (1) Julia failed to account for \$145,000 paid to her and missing from the estate (paragraph 6);
 - (2) Julia has not communicated in a timely and accurate manner (paragraphs 7 and 8) and;
 - (3) Julia has unreasonably delayed passing accounts (paragraphs 9 and 10).
- [39] Julia's material in response sets out the interim distributions made as of that date. Those include the amounts arising from then Master Wilson's order of September 5, 2018, and a further distribution of \$5,000 to Clive for medical expenses on October 12, 2018. Those funds were paid to the law firm, Porter Ramsay, in trust. At the time, Porter Ramsay was assisting Nigel and Clive in this matter.
- [40] Further funds were sent in trust to Porter Ramsay (\$15,000) in October 2018, but were returned over a conflict regarding indemnity to Julia in the event the CRA sought further taxes from Rosalie's estate.
- [41] Nigel's Affidavit #10 in this matter states that there was no communication between him or his solicitor with Julia or her counsel from late 2018 until September 19, 2022, when Julia's counsel wrote to Nigel and Roxanne (Clive's daughter) that Julia was preparing to pass her accounts for the period, March 25, 2017, to August 1, 2022. Exhibit G to that affidavit contains that letter. The letter attached the materials set out therein. The letter explains the delay from Julia's perspective.
- [42] A further letter, Exhibit H to Nigel's Affidavit #10, was written by Julia's counsel to Roxanne on December 21, 2023. That exhibit includes a letter written by Nigel to Julia's counsel on February 16, 2024, stating that the December 21, 2023, letter is "riddled with false and misleading statements and in some cases blatant falsehoods". These include:
- (1) the delay is due to inability to file its accounts; and
 - (2) there was no agreement, "to informally pass her statement of account".
- [43] In his Affidavit #10, Nigel raises the issue of the legal fees of Julia amounting to 30 percent of the remaining estate funds (paragraph 22), to which he objected by letter dated January 6, 2023 (Exhibit H). That letter also objected to other payments, including to accountants and the committee of the estate of Rosalie prior to her death.
- [44] As noted in the amended petition and materials, further correspondence directed at settlement took place in 2023 and 2024.

- [45] The law in relation to this application for removal and replacement is longstanding and well summarized by Mr. Justice Butler, now Butler J.A., in *Levi-Bandel v. McKeen*, 2011 BCSC 247, at paragraphs 19 to 21:
- [19] The test for removal of an executrix or trustee is not contentious. The leading authority in British Columbia remains the decision in *Conroy v. Stokes*, 1952 CanLII 227 (BC CA), [1952] 4 D.L.R. 124 (B.C.C.A.). In *Conroy*, the Court of Appeal considered whether it was expedient to remove one trustee and appoint a replacement when some of the beneficiaries were dissatisfied with the way the trustee was handling the estate. The court confirmed at 126-127 that the main test for removal of a trustee is the welfare of the beneficiaries:
- In *Letterstedt v. Broers* (1884), 9 App. Cas. 371, their Lordships of the Judicial Committee held that the main principle upon which the jurisdiction of Courts of Equity has been exercised to remove old trustees and substitute new ones in cases requiring such a remedy, is the welfare of the beneficiaries of the trust estate.
- [20] In *Letterstedt*, the court noted that it is not every act of misconduct that should result in removal of a trustee, only acts or omissions which endanger the trust property or show "a want of honesty or a want of proper capacity to execute the duties, or a want of reasonable fidelity."
- [21] However, it is not only an act of misconduct that can be grounds for removal of a trustee. A failure to act can amount to grounds for removal.
- [46] In his submissions, Nigel spent some substantial time on matters related to his application of January 2, 2018. It appears to me that the matters raised in that application create much of the impetus for seeking Julia's removal, including Nigel's contention of missing funds in an amount that ranges in the materials from \$140,000 to \$160,000.
- [47] There has been delay and it is clear there has been conflict between the parties that remains unresolved.
- [48] The September 1, 2017 order limited Julia's ability to act without a court order or consent. That order included provision that either party could obtain records from RBC and the issue of "missing funds" related to RBC remains contentious.
- [49] Yet despite Nigel's concern about the missing funds and the delay in Julia attending to her duties as the executor chosen by Rosalie, Nigel's own application of January 2, 2018, directed at many of his concerns about Julia, remains outstanding.
- [50] Julia's materials indicate the hope the matter would be settled informally, particularly given the size of the estate, the Zimbabwe issues arising in late 2024 notwithstanding.
- [51] Indeed, Nigel indicated during submissions that, until he received the October 1, 2024, application from Julia, he was hopeful of a negotiated settlement. This is consistent with the discussions in that regard in 2023 and 2024.

- [52] I find that Julia should remain the executor.
- [53] Criticism could be directed at both parties for either resolving the matter or getting into the court to get it resolved sooner. Ultimately, Julia took a step forward toward that by her application filed October 1, 2024.
- [54] I also note that any criticism of either party must be tempered by the outstanding matters.
- [55] Most importantly, that includes determination of Nigel's January 2, 2018, application that has made resolving the estate a challenge. In particular, the contention that, for an estate for which Julia estimates total assets at death of approximately \$160,000, the missing funds in an amount in that same range is a significant issue.
- [56] To the extent that, as of late 2024, there is some prospect of property in Zimbabwe, I would hope the parties could work together to determine that. This will include who the property belongs to, dependant perhaps on the interpretation of Rosalie's will. If any property is Clive's, his heirs would benefit. If it is Rosalie's, Clive's heirs would get 59 percent with Nigel getting 39 percent and Julia two percent.
- [57] That concludes my ruling on this application.
- [58] CNSL J. METHERELL: Mr. Justice -- oh.
- [59] THE COURT: Yes.
- [60] CNSL J. METHERELL: Mr. Justice, is there any order with respect to costs on the application --
- [61] THE COURT: I have thought about that --
- [62] CNSL J. METHERELL: -- in the hearing of the petition?
- [63] THE COURT: -- and I have thought about that as far as the petition goes. It seems to me that costs should be in the cause of the other action. If that matter is going to proceed and does proceed, the issue of costs can be determined at that time. I think what --
- [64] CNSL J. METHERELL: And that is in -- in the --
- [65] THE COURT: I think what needs to happen -- I am sorry, go ahead.
- [66] CNSL J. METHERELL: I was just going to clarify that that's the costs in the P116.
- [67] THE COURT: Yes --
- [68] CNSL J. METHERELL: Yeah, okay.
- [69] THE COURT: -- and that is the matter that is going to court to solve -- to potentially end this issue.
- [70] CNSL J. METHERELL: Mm-hmm.

[71] THE COURT: I expect that that will not happen until these other matters are dealt with or there is an another resolution of the matter by the parties.

"Doyle J."

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