

CANADA / JUDGMENT

Cepuran v. Carlton

2021 BCSC 1239

COURT

Supreme Court of British Columbia

DECIDED

24 June 2021

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2021 BCSC 1239 Cepuran v. Carlton IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Cepuran v. Carlton, 2021 BCSC 1239 Date: 20210624 Docket: S2012184 Registry: Vancouver In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349 and amendments thereto And In the Matter of Anna Cepuran, also known as Ana Cepuran

- and - Docket: S199918 Registry: Vancouver Re: The Anna Cepuran Alter Ego Trust
- and - Docket: S1912126 Registry: Vancouver Between: Ana Cepuran also known as Anna Cepuran Petitioner And Harold Brian Carlton, Sheri Colleen Cepuran and Urban Properties Limited Respondents Before: The Honourable Mr. Justice Veenstra Reasons for Judgment re Costs Notices of Application by Harold Brian Carlton, Sheri Colleen Cepuran and Urban Properties Limited received: Vancouver, B.C. April 16, 2021 Application Responses by Ana Cepuran received: Vancouver, B.C. May 7, 2021 Place and Date of Judgment: Vancouver, B.C. June 24, 2021

- [1] This is an application for costs arising from petitions and related applications that I heard in February, 2021 in three related proceedings. I gave reasons for judgment on March 5, 2021 [2021 BCSC 542], and will use in these reasons the terminology adopted in my "March 5 judgment".
- [2] In accordance with directions given at the conclusion of my March 5 judgment, applications seeking costs were filed on April 16, 2021 by Sheri, Mr. Carlton and Urban Properties Limited. Ana filed her responses on May 7, 2021. The notices of application and application responses were detailed and I conclude that I can decide these applications on the basis of the material filed without an oral hearing.
- [3] Although my March 5 judgment was lengthy, the orders actually made were limited:
- a) With respect to the Trustee Petition and the Nullification Petition, I ordered that they be consolidated and referred to the trial list, and gave directions with respect to the filing of pleadings and production of documents.

- b) With respect to the Committeeship Petition, I ordered that an issue be tried as to the capability of Ana, and that for purposes thereof there be examinations by two geriatric psychiatrists.
- [4] All of the orders made were interlocutory. I decided only that there are issues appropriate to be tried. I made no decisions on the merits of any of the proceedings.
- [5] Each of Sheri, Mr. Carlton and Urban Properties Limited now seek special costs. Sheri relies on the "usual practice" in committeeship matters, which she says mandates that she be awarded special costs from the estate. With respect to the Nullification Petition, she relies on a provision for indemnification in the PoA. Mr. Carlton relies on the usual rule that a trustee is indemnified for all reasonable costs incurred in connection with the trust. Urban Properties Limited relies on a provision for indemnity in its Management Agreement.
- [6] In my view, all of these assertions are premature. The only decisions that have been made are interlocutory findings that there are issues to be tried. Sheri may or may not ultimately be successful in the Committeeship Petition. The validity of Sheri's actions pursuant to the PoA will be a live issue at trial. Mr. Carlton may or may not be successful in establishing the ongoing validity of the AET Trust. And there is an issue as to whether the Management Agreement with Urban Properties Limited was validly terminated.
- [7] Sheri referred me to the judgment in *Vieira (Re)*, 2013 BCCA 420, which was a battle between the wife and daughter of a person who was incapable as to who should act as committee. The trial judge ordered a trial of that issue, but on an interim basis directed that the Public Guardian and Trustee act as committee. He ordered that neither the wife nor the daughter receive costs. On appeal, Groberman J.A. described the applicable law as follows:
- [14] Section 27 of the Patients Property Act governs the awarding of costs on applications for the appointment of committees. It provides little concrete guidance on this issue, however:
27. The costs of all proceedings under this Act are in the discretion of the court.
- [15] In my view, this provision should be read in a manner consistent with provisions dealing with costs in other civil proceedings. It should, in other words, be interpreted as giving the court very broad discretion to make costs awards.
- [17] In applications for committeeship, it appears that the usual practice of the Supreme Court is to award the successful applicant costs from the estate. This is a sensible position where the application is brought in good faith and where the applicant receives no obvious benefit from the appointment of a committee. Where a committee is appointed, it is because the court has concluded that it is in the best interests of the patient. A party who has brought an application that is found to be in the best interests of the patient, and with no ulterior motive, should be reimbursed for their costs in doing so.

- [18] While it appears to be the usual practice for a successful applicant on a committeeship application to be granted an order for special costs to be paid from the patient's estate, there is wide discretion to depart from this practice. If, for example, there are concerns about the motives of the applicant, the applicant's conduct of the application, or the ability of the estate to bear an order for costs, a different order might be called for. I do not suggest in any way that this is an exhaustive list of considerations.
- [8] In *Vieira*, Groberman J.A. concluded that the judge had failed to exercise his discretion in accordance with proper considerations. He commented that, if there were any likelihood that further proceedings in the trial court would take place, he would be inclined to leave the issue of costs to the discretion of the trial judge. In the particular circumstances of the case before him, it appeared that the litigation was effectively at an end and so he made an award of special costs to be paid from the plaintiff's estate.
- [9] *Vieira* was recently applied by Grauer J. (as he then was) in *Cameron (Re)*, 2020 BCSC 580. Grauer J had similarly ordered a trial of an issue as between two sisters as to who should be committee of their mother, and directed that the Public Guardian and Trustee act as committee in the interim. He initially directed that the costs be borne by the estate, but heard further submissions from the parties after the Registrar referred the matter back to him for clarification. He confirmed that, in light of the broad discretion provided to him, and having concluded that both sisters were acting in good faith, it was open to him and appropriate to make an award of special costs to both.
- [10] In my view, there remain too many matters in issue in the Committeeship Proceeding to make a determination at this point as to entitlement to and scale of costs. Many of the factors summarized at paras. 17-18 of *Vieira* remain undecided. These factors will be best assessed once it has been determined whether Ana is in fact capable. In the circumstances, I would adopt the approach suggested by Groberman J.A. in *Vieira* and order that the costs of the hearing before me be left in the discretion of the trial judge.
- [11] The applicants also rely on conduct of Ana in the Trustee and Nullification proceedings. With respect to the applications to refer matters to trial, they argue that it was unreasonable for Ana to have contested those applications. They also bring forward a number of past actions of Ana and her counsel in the period since the commencement of these proceedings in the fall of 2019, and argue that that conduct in and of itself justifies an order for special costs.
- [12] Ana argues that special costs are generally awarded for and relate to the entirety of the proceeding, although she acknowledges that in exceptional cases they can be awarded at an interlocutory stage. She relies for this proposition on *Commonwealth Trust Company (In Liquidation) (Re)*, 2012 BCCA 138 at para. 44.

- [13] In the circumstances, I conclude that a determination of whether special costs are appropriate - either on the contractual bases alleged by Sheri, Mr. Carlton and Urban Properties Limited, or as a result of Ana's litigation conduct - is best made once the proceeding has been decided on its merits.
- [14] Rule 14-1(12) provides that:
- (12) Unless the court hearing an application otherwise orders,
- (a) if the application is granted, the party who brought the application is entitled to costs of the application if that party is awarded costs at trial or at the hearing of the petition, but the party opposing the application, if any, is not entitled to costs even though that party is awarded costs at trial or at the hearing of the petition,
- [15] I see no reason to depart from the usual rule (i.e., costs to the successful party in the cause) in respect of the orders I have made in the Trustee Petition and the Nullification Petition.
- [16] I note that one of the applications before me - described in my March 5 judgment as the Waiver Application - was adjourned generally. Neither party can be said to be successful on that application. However, it required only minimal time at the hearing and in the interests of simplicity and clarity I would not carve it out for any different treatment.
- [17] For the reasons set out above, I order that in respect of my March 5 judgment:
- a) In the Committeeship Petition, the costs are in the discretion of the trial judge; and
- b) In the Trustee Petition and the Nullification Petition, Sheri, Mr. Carlton and Urban Properties Limited shall have their costs in the cause.
- [18] I make no determination as to the appropriate scale of costs in any of the proceedings. That is a matter best left to the trial judge in each proceeding. "Veenstra J."

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Prepared on 27 October 2026 · Esheria