

CANADA / JUDGMENT

Cramer v. Danroth

2007 BCSC 1053

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1053 Cramer v. Danroth

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cramer v. Danroth,

2007 BCSC 1053

Date: 20070713

Docket: 10289

Registry: Duncan

Between:

Lori Jean Cramer

Petitioner

And:

Allan Robert Danroth

Respondent

Before: District Registrar Bouck

Reasons for Decision

Counsel for the Petitioner

W. R. Younie

Counsel for the Respondent, executor to the estate of Robert James Young

G. T. Rhone

Counsel for the infant beneficiaries

D. Pommer

Date and Place of Hearing:

May 29 and 30 ,2007

Victoria, B.C.

INTRODUCTION

- [1] This is a passing of the executor's accounts in the estate of Robert James Young (the "Deceased"). It is the first accounting since the executor obtained probate on June 5, 2003. The executor and beneficiaries are at odds over whether additional accountings will be required.
- [2] The petitioner is the sister of the Deceased and a beneficiary to the estate. Dissatisfied with information coming from the executor, the petitioner compelled this accounting pursuant to s. 99(3) of the Trustee Act, R.S.B.C. 1996, c. 464
- [3] On November 3, 2005, the court ordered that:
1. the accounts of ALLAN ROBERT DANROTH, the Executor and Trustee of the last Will of ROBERT JAMES YOUNG (the "Deceased") in respect to his administration of the estate of the Deceased from December 29, 2002 to September 30, 2005 (the "Accounts"), be audited, taken, and passed before a registrar or deputy registrar of this Honourable Court on a date and at a place as may be fixed by the registrar as agreed to by the Petitioner and Respondent, or in the absence of such agreement as may be fixed by this Honourable Court upon further application by either party;
 2. the Accounts must disclose the following particulars:
 - (a) the real and personal property of the estate coming into the hands of ALLAN ROBERT DANROTH during the period from December 29, 2002 to September 30, 2005 (the "Period");
 - (b) all income received during the Period;
 - (c) all disbursements made during the Period;
 - (d) the disposition of funds with respect to the debts and liabilities of the Deceased;
 - (e) any and all distributions out of the estate of the Deceased to the beneficiaries of the estate;
 - (f) the original unrealized assets of the estate on hand at the end of the Period; and
 - (g) the present assets of the estate;(the "Order")
- [4] Counsel was appointed to represent two infant beneficiaries.

- [5] The court further ordered that the results of this accounting are to be certified.
- [6] The Order does not call for a determination of the executor's remuneration. Mr. Danroth has withdrawn any claim for remuneration from his accounts but reserves the right to make the claim at a later date. The sum of \$19,077.43 was taken as remuneration in February, 2005. However, the executor acknowledges that these monies should be returned with interest.

BACKGROUND FACTS

- [7] Robert Young died unexpectedly on December 29, 2002, just short of his 41st birthday. He is survived by his parents, the petitioner and Ms. Cramer's three children (the "Cramer Children").
- [8] Mr. Danroth is named executor and trustee in the Deceased's last will and testament made October 27, 2002 (the "Will"). He was a friend and former business partner of the Deceased.
- [9] The petitioner and her three children are the beneficiaries under the Will. The four are to share equally in the residue of the estate. However, each of the children's shares is to be held in trust until the particular child reaches 25 years of age. Two of the Cramer Children are now over 19 years of age.
- [10] Mr. Young might be described as a businessman. His professional qualifications included certification as a diver and expertise as a technician testing pressure valves. Although not specifically stated in the evidence, I assume that Mr. Young's work was connected to the oil and gas industry in northern British Columbia and Alberta. If I am wrong in that assumption, nothing turns on the error.
- [11] Mr. Young employed his valve testing expertise through Eagle Inspections Services Ltd. ("Eagle"). His diving business was operated through Polar Sub Sea Services Ltd. ("Polar Sub Sea").
- [12] In 1998, Mr. Young began focussing his energies on valve testing. Mr. Danroth was a partner of Mr. Young in that operation, providing some business acumen.
- [13] In a corporate structure recommended by either accountants, lawyers or both, Polar Sub Sea became the parent company to Eagle. Polar Sub Sea's principal asset is all of the shares in Eagle.
- [14] Pursuant to a shareholders agreement made July 5, 2002 ("The Agreement"), Mr. Danroth was allotted 12/60 (20%) Class A shares in Polar Sub Sea; Mr. Young 48/60 (80%) of those shares.
- [15] Mr. Young and Mr. Danroth intended that each would receive the other's shares upon death.

- [16] Under The Agreement, the estate of the deceased shareholder may require Polar Sub Sea to purchase the deceased's shares. And, Polar Sub Sea has the right to acquire the deceased's shares from the estate. The option existed for a period of one calendar year from the date of death of the shareholder.
- [17] Mr. Danroth and Mr Young intended Polar Sub Sea to maintain life insurance policies with respect to each of the shareholders. The proceeds of the policy would be used to purchase the deceased's shares from the estate. The shareholders neglected to put the life insurance in place.
- [18] The Agreement provides that valuation of the Polar Sub Sea shares should be determined by the company's accountants. The company is liable for any fees and expenses incurred in determining that value.
- [19] Although business partners, Mr Young and Mr. Danroth did not live in the same town. At the time of his death, Robert Young was a resident of Fort St. John. Mr. Danroth and his wife were then living in Prince George.
- [20] By the end of 2003, the executor had sold Robert Young's Fort St. John home, distributed various personal items of the Deceased and wound up Eagle's operations.
- [21] However, Mr. Danroth maintains a claim for a management fee from Polar Sub Sea. In addition, the executor's wife, Leanne Danroth, claims for administrative fees to be paid by Polar Sub Sea. It is suggested that the estate's administration will not be completed until these claims are resolved.
- [22] Mr. Danroth remains the trustee for the Cramer Children's respective shares.

THE ACCOUNTS

- [23] The accounts of the executor were prepared by Praveen Vohora, a chartered accountant. Mr. Vohora is the long time accountant for both Eagle and Polar Sub Sea.
- [24] Mr. Danroth provided some of the necessary information for the accounts.
- [25] The accounts initially delivered to the petitioner contained errors. Those errors were noted and corrected at the commencement of the hearing.
- [26] Mr. Danroth no longer asserts a claim for an executor's fee. Fees taken in 2005 are to be returned to the estate.
- [27] The accounts as corrected disclose the following assets of the Deceased at the date of his death:
- Fort St. John residence \$172,700.00
 - Monies on deposit in two accounts \$ 2,342.86
 - Securities:

- (a) 272 Shares of SunLife Financial Inc. \$ 6,800.00
- (b) 48 Class "A" Shares of Polar Sub Sea \$119,853.00
- (c) Shareholder's loans owing by Polar Sub Sea \$ 70,355.23
- (d) Loan Receivable from Eagle \$ 25,687.95
- Motor Vehicles \$ 4,000.00
- Household furniture and personal effects \$ 2,000.00
- CPP Death Benefits \$ 2, 500.00

GROSS VALUE OF THE ESTATE \$406,239.04

[28] The liabilities of the estate as of December 29, 2002 were \$31,690.54.

[29] The executor distributed \$12,000 to each of the beneficiaries in February 2004.

[30] The accounts show that as of September 30, 2005, the value of the estate assets is \$202,218.98 which is comprised of \$1,411.06 in a trust account and \$200,807.92 in the Polar Sub Sea account.

[31] The executor estimates future expenses of \$33,453.13 including \$14,203.13 to be paid to Mr. Danroth as a dividend from Polar Sub Sea, less his shareholder's loan. It is estimated that \$12,500 in legal fees will be incurred to complete the administration.

[32] Thus, the residue of the estate as of September 30, 2005 is reported at \$168,765.85. That figure does not account for the \$19,077.43 in executor's fees to be returned to the estate.

THE ISSUES

[33] The petitioner's objective in this accounting is to ensure that Mr. Danroth does not benefit, nor the estate suffer, in the valuation of the Polar Sub Sea shares. To a more limited degree, the accounting served as a forum for the beneficiaries to express their grievances about the administration of the estate. Questions about that administration were, however, limited by my directions and rulings. That is because the issue of maladministration goes to executor's remuneration, a matter not before me in this accounting.

[34] In a letter from her counsel dated May 18, 2007, the petitioner outlined the following areas of issue and concern in the accounts:

- The Vohora & Company accounts for \$3,511.83, \$651.23, \$500.23 and \$2,304.71;
- A duplication of the SunLife shares valuation (now corrected);
- The failure to "write off" a Time Share interest held by the Deceased. Instead, the interest was attributed a value of \$2,000;

- Failure to seek the return of that part of the probate fees attributable to the double counting of the SunLife shares and the value placed on the Time Share interest;
- Late reimbursement to the Deceased's father of funeral expenses;
- Legal Fees related to Polar Sub Sea;
- The failure to account for income accruing to the benefit of the estate;
- Post-death payment of expenses related to Eagle, including cheques to Mr. Danroth personally;
- Trust accounts set up for the Cramer Children.

[35] The petitioner's primary concern appears to be that Mr. Danroth has used estate funds to benefit himself as the surviving shareholder in Polar Sub Sea. It is suggested that these are not proper expenditures by the executor and as such, should be repaid to the estate.

THE EVIDENCE

A. Praveen Vohora

- [36] Mr. Vohora is a chartered accountant of some 32 years experience. His firm, Vohora & Company, has been the accountant for both Polar Sub Sea and Eagle since these companies' inceptions. Vohora & Company has offices in Prince Rupert and South Surrey. Most, if not all, of the work relating to Polar Sub Sea and Eagle was conducted out of the Prince Rupert office.
- [37] Mr. Vohora first met the Deceased in 1990. Vohora & Company was retained in 1998 to act as the accountants for Polar Sub Sea and Eagle. Mr. Vohora met the executor at or about this time. Vohora & Company prepared financial statements and tax returns for the companies.
- [38] Mr. Vohora consulted with the Prince George law firm of Hope Heinrich in the preparation of The Agreement.
- [39] Upon Robert Young's death, Mr. Vohora was asked by the executor to provide a valuation of Polar Sub Sea.
- [40] On the executor's instructions, Vohora & Company prepared the year end financial statements for both Polar Sub Sea and Eagle up to and including 2004. In The 2003 statement for Polar Sub Sea shows a management fee of \$15,000 allocated to the executor.
- [41] Throughout 2004 and into 2005, Mr. Vohora answered queries from Owen Jackson, an accountant retained by the Deceased's family.
- [42] By early 2005, Mr. Vohora understood that the beneficiaries' concerns or questions regarding Polar Sub Sea and Eagle had been addressed. In a letter from Owen Jackson dated January 24, 2005, Mr. Vohora is advised that the beneficiaries are agreeable to Mr. Danroth taking an executor's fee so long as:

- a) Mr. Danroth would stand aside as the Cramer Children's trustee; and
- b) It is confirmed that neither Mr. Danroth, nor his wife, received any fees, salaries or benefits from either Polar Sub Sea or Eagle since Mr. Young's death. The exception would be the repayment of shareholders' loans but only if no fees or benefits are credited to the loan amount.
- [43] Aside from Mr. Danroth's removal as trustee, Mr. Vohora believed that the necessary assurances could be given. He is surprised that the administration of the estate has become so contentious.
- [44] Mr. Vohora acknowledges that there are errors in the accounts he prepared. Those errors are:
- The SunLife insurance policy was duplicated in the list of assets. This was noticed when it came time to file the Deceased's tax return. The duplication did not have any impact on the taxes.
 - A Hope Heinrich account should not be included as estate liabilities as this relates to work done for the companies' annual reports.
 - The Deceased's time share interest had no value as it was not marketable. Nonetheless, it is listed as an asset in the accounts with a value of \$2,000. That value came from the executor.
- [45] Much of the cross examination of Mr. Vohora concerned the delineation of his work on behalf of the executor for the estate and as accountant for Polar Sub Sea and Eagle.
- [46] While Mr. Vohora attempted to make that distinction, he acknowledges that some work may have benefited both the estate and the companies. After all, the principal asset of the estate is the Polar Sub Sea shares and the valuation of those shares necessarily involved the valuation of Eagle.
- [47] Some of the Polar Sub Sea transactions carried out after Mr. Young's death relate solely to Mr. Danroth's work as executor. For example, Mr. Danroth was paid by Polar Sub Sea for his travel from Prince George to Fort St. John to carry out the executor's work and wind down the business.
- [48] After Mr. Young's death, Mr. Danroth claimed wages of \$15,000 related to his work for Polar Sub Sea. He had apparently not received any remuneration from Polar Sub Sea prior to Mr. Young's death.
- [49] That transaction was subsequently reversed and the monies instead charged to Mr. Danroth's shareholder's loan as management fees effective December 31, 2003. Mr. Vohora acknowledges that it is unusual to "back-date" such fees. At this point in time, the fees have not actually been received by Mr. Danroth as the monies merely reduce his shareholder's loan with Polar Sub Sea.

- [50] Wages paid to Leanne Danroth in the sum of \$26,005.05 are also accounted for in the Shareholders Loan Transaction Detail for Alan Danroth. The wages are shown to have been paid on December 31, 2003. However, the notation is that the amount was treated as management fees paid by Eagle.

B. Allan Danroth

- [51] Mr Danroth now lives in New Brunswick. His current occupation was not in evidence. He describes himself as having a business related background, but was working as a power engineer at the time of Mr. Young's death.
- [52] Mr. Young and Mr. Danroth met at a social event. In 1998, the two decided to pursue a business venture to exploit Mr. Young's expertise in valve testing.
- [53] While Mr. Young and employees performed the physical aspect of the business, Mr. Danroth's role was to work with the accountants and banks, prepare the company payroll and engage in marketing.
- [54] Eagle proved to be profitable. At the time of Mr. Young's death, it employed 10 people and enjoyed revenues at or near \$1,000,000. Eagle also owned some commercial real estate in Fort St. John.
- [55] Mr. Danroth was aware that he was named executor in the Will. He and Mr. Young had engaged in much "estate planning" in the latter part of 2002.
- [56] As executor, Mr. Danroth travelled to Fort St. John to dispose of Mr. Young's home and personal belongings.
- [57] Around this time, Mr. Danroth created a four page memorandum (the "Memorandum") addressing his perceived responsibilities as executor as well as issues that might arise with the beneficiaries.
- [58] In the first three paragraphs of the Memorandum, Mr. Danroth confirms that both Mr. Vohora and Hope Heinrich will be retained to help "settle the estate" and that a distinction must be drawn between the Deceased's "personal estate" and "the company".
- [59] The Memorandum also confirms that under The Agreement, the surviving shareholder (Mr. Danroth) will receive all shares in Polar Sub Sea and that the value of those shares will be the value of the assets sold, less any money owing to the bank or other parties.
- [60] After consulting with lawyers and Mr. Vohora, the executor decided that he had two options with respect to Eagle: either sell the shares (or the assets) or continue to operate the business. In reality, the business could not continue without Mr. Young's expertise. Accordingly, Mr. Danroth chose to liquidate Eagle's assets.
- [61] Three pieces of commercial property owned by Eagle were sold over a fifteen month period. A third party purchased all of the other assets.

- [62] Diving equipment owned by Polar Sub Sea was also sold.
- [63] By January or February of 2004, all taxes had been paid in relation to Eagle.
- [64] It was about this time that the executor's actions came under increased scrutiny by Mr. Young's family. Mr. Danroth received communications from Owen Jackson, an accounting firm acting on behalf of the Young family.
- [65] Mr. Danroth asked Mr. Vohora to address the questions and concerns raised by Owen Jackson. Mr. Danroth believed that the beneficiaries' concerns were satisfactorily addressed by the end of 2004. On February 3, 2005, at the suggestion of Mr. Vohora, Mr. Danroth took an executor's fee of \$19,077.43 representing 5% on the estate's alleged capital. I note that Mr. Vohora was not asked whether in fact he made this suggestion.
- [66] Apparently, the beneficiaries were not satisfied with the information provided. More questions arose around the time that Mr. Danroth took his executor's fee. In an electronic message to Vohora & Company dated February 4, 2005, Mr. Danroth relayed some answers to the questions raised by the Deceased's family. Mr. Danroth also expressed frustration with the fact that Robert Young, Sr. was questioning the business activities of Polar Sub Sea and Eagle. In closing, Mr. Danroth instructed Vohora & Company not to respond to any further questions "from their camp" and that neither the estate, nor "the companies", would pay Vohora & Company for time spent in future discussions.
- [67] Despite this instruction, questions about Polar Sub Sea, Eagle or accounting issues in general were deferred to Mr. Vohora for his response. Thus, other than responding to this petition, Mr. Danroth has had little involvement in the estate since early 2005.
- [68] The executor's accounts were prepared by Mr. Vohora but on the instructions of the executor. Mr. Danroth acknowledges the errors identified in Mr. Vohora's evidence.

POSITION OF THE BENEFICIARIES

- [69] The beneficiaries submit that the accounts should be passed with the following amendments:
- The capital transactions should be adjusted by removing the executor's fee pre-taken in 2005 and two accounts of Hope Heinrich which allegedly relate solely to the companies,
 - The monies held in the Polar Account to the benefit of the estate as of September 30, 2005 should be shown as \$186,604.79. This figure takes into account monies held in the Polar Account less Mr. Danroth's share of \$14,203.31 in those monies.
 - The total assets of the estate as of September 30, 2005 should be \$209,426.87.
 - The executor is to reimburse the estate the sum of \$19,077.43 plus interest of \$283.20 as calculated from February 3, 2005 to September 30, 2005.

· The executor is also to reimburse the estate for \$123.20 representing the overpayment of probate fees resulting from the duplication of the SunLife shares in the list of estate assets.

[70] These figures do not take into account any reduction in the Vohora & Company fees charged to the estate.

[71] It is submitted, however, that there should be such a reduction. The beneficiaries suggest that the executor has failed to demonstrate on a balance of probabilities that all of the fees relate to estate work.

[72] Furthermore, it is suggested that the fees are not reasonable.

[73] The beneficiaries assert that Mr. Vohora may have acted merely as a conduit of information rather than in a professional capacity. The estate should not be required to pay professional fees simply because Mr. Danroth delegated to Mr. Vohora the task of addressing the beneficiaries' questions and concerns.

[74] It is suggested that the executor should reimburse the estate for fees paid to Vohora & Company with interest at the registrar's rate.

[75] Alternatively, the beneficiaries submit that the executor reimburse the estate for 20% of these fees to reflect the benefit he received as a shareholder in Polar Sub Sea.

THE EXECUTORS POSITION

[76] I did not understand the executor to take issue with the adjusted figure for the capital transactions. The errors resulting in an overstatement of the assets has been accounted for in the list of those transactions.

[77] However, Mr. Danroth suggests that the value of Polar Sub Sea, and thus the value of the estate's shares, is still to be determined. That determination will take place when the issue of management fees to be paid to Leanne and Allan Danroth is resolved. No time frame is suggested for the resolution of this issue.

[78] Mr. Danroth also submits the reserves for accounting and legal work are appropriate as obtaining the final valuation of Polar Sub Sea is part of the executor's duties.

[79] Finally, the executor submits that while there may have some benefit to Mr. Danroth as a shareholder in Polar Sub Sea, all of the work done by Vohora & Company was necessary for the administration of the estate. While the beneficiaries attack the reasonableness of the accounts, they do not offer any evidence of an appropriate value for the work performed.

[80] The executor asks that the accounts be certified, subject to:

- a) the return of the \$19,077.43 (plus court order interest); and
- b) a future determination of both the management fees due to Mr. Danroth from Polar Sub Sea and executor's remuneration.

DISCUSSION

[81] As observed in *Re Cleverley Estate* 35 E.T.R. (2d) 10 (B.C.S.C.): at para. 15

On a passing of accounts, the function of the court is to determine whether the executor has exercised his duties under the will properly and in accordance with the law

[82] The accounting is a determination of the monies taken in and expended by the estate. If the executor wrongly took or misspent estate funds, then he should be compelled to re-pay the estate with interest at the registrar's rate.

[83] What then were Mr. Danroth's duties for the period in question?

[84] Under the Will, Mr. Danroth has absolute discretion to sell, call in and convert into money all of the Deceased's estate not consisting of money within a time frame chosen by the executor. Mr. Danroth is not to be held responsible for any loss resulting from a delay in this conversion. The principal assets to be converted were the shares in Polar Sub Sea.

[85] Once the estate is converted, and after payment of just debts and taxes, the residue is held in trust for the four beneficiaries. Each of the Cramer Children is to receive his or her $\frac{1}{4}$ share upon reaching age 25. The ages of the Cramer Children were not in evidence. The petitioner at least is entitled to her $\frac{1}{4}$ share once the residue is determined.

[86] Mr. Danroth is also given the power to determine the value of his estate, or any portion thereof, as he sees fit.

[87] Mr. Danroth was acting within his duties in liquidating Eagle and obtaining a value for Polar Sub Sea. Under The Agreement, the valuation of Polar Sub Sea shares is to be determined by Vohora & Company.

[88] Despite the apparent discretion given to Mr. Danroth under the Will, valuation of Polar Sub Sea should not be impacted by, nor include, the claims for management fees by either Allan or Leanne Danroth. Those claims only arose after Mr. Young's death. Despite Mr. Danroth's suggestion that he was "owed back wages" by Polar Sub Sea, there is no objective evidence to show that these fees were a debt owed by Polar Sub Sea at the time of Mr. Young's death.

[89] There is then the question of the Vohora & Company fees.

[90] Executors are entitled to be indemnified for all costs, including for professional fees, reasonably incurred. That is so even if the executor might benefit from the professional advice and services: *Geffen v. Goodman Estate* [1991] 2 S.C.R. 353.

[91] With respect to the Vohora & Company accounts, for example, there is an obvious overlapping benefit to the estate and Mr. Danroth. However, having heard the evidence of Mr. Vohora, I am satisfied that the work billed to the estate was not intended to solely to benefit Mr. Danroth. Nor could, or should, Vohora & Company be expected to precisely delineate the work done solely for the benefit of the estate.

- [92] The financial statements and tax returns were prepared for the benefit of the estate. To the extent that the beneficiaries' questions concerned those documents, then those questions were properly deferred to Vohora & Company. Charges incurred for answering those questions are properly charged to the estate.
- [93] The estate should not, however, be responsible for the charges related to the Danroths' claim for management fees. I do not fault Vohora & Company for billing the estate for the charges. However, those charges are solely to the benefit the Danroths.
- [94] It is impossible for me to determine what charges are specifically related to the management fee issue. Mr. Vohora is the best person to answer the question. I have no power to direct Mr. Vohora to make that determination. However, I am confident that he can and will provide that information to the parties. Thus, the final accounting is subject to the amount of those charges being repaid to the estate by the executor.
- [95] Apart from this adjustment, I find that the accounts of Vohora & Company are reasonable and form a proper expense to the estate.
- [96] With this finding, the parties appear to be in agreement as to the other adjustments to the capital transactions. The executor should repay the remuneration taken on February 3, 2005 with the interest claimed of \$283.20. As well, the executor should repay the estate \$123.20 for the overpayment of probate fees resulting from his errors in the disclosure statement.
- [97] That leaves the question of what monies should be held in reserve.
- [98] This will not be the final passing of accounts. The executor may apply for his remuneration at a later date. There will be additional legal fees incurred with respect to this and future accountings as well as any hearing relating to the remuneration.
- [99] There will also be additional accounting fees, including those resulting from this decision. I assume that with the resolution of the management fee issue, Vohora & Company may provide a final valuation of Polar Sub Sea shares.
- [100] In the result, the sum of \$19,250 should be retained to deal with the accounting and legal fees as well as Mr. Danroth's claim for remuneration.
- [101] Once the management fee charges are determined, any of the parties may submit a certificate reflecting the above findings for my endorsement.

"C.P. Bouck"

D/Registrar C.P. Bouck

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