

CANADA / JUDGMENT

Eftekhari v. Eftekhari

2025 BCSC 942

COURT

Supreme Court of British Columbia

DECIDED

21 May 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 942 Eftekhari v. Eftekhari

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Eftekhari v. Eftekhari,

2025 BCSC 942

Date: 20250521

Docket: S234168

Registry: Vancouver

Between:

Maryam Eftekhari also known as Maryam Mills

Plaintiff

And

Alireza Eftekhari, Alireza Eftekhari in his Capacity as Executor of the Estate of Malakeh Ghafarian Ansaf, Deceased, Maryam Nayernama, Nina Eftekhari also known as Nina Dlask, and Mohammad Reza Eftekhari

Defendants

Before: The Honourable Justice Majawa

Reasons for Judgment

Counsel for the Plaintiff:

A. Mortimore, KC

Counsel for the Defendants Alireza Eftekhari in his personal and executor capacities, Maryam Nayernama, and Nina Eftekhari also known as Nina Dlask (the "Represented Defendants"):

R.D. Lee

No other appearances

Place and Dates of Hearing:

Vancouver, B.C.

January 22-24, 2025

Written Submissions of the Represented Defendants:

January 31, 2025

Written Submissions of the Plaintiffs:

February 7, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 21, 2025

Table of Contents

INTRODUCTION / OVERVIEW.. 3

BACKGROUND FACTS. 3

SHOULD ALI AND MS. NAYERNAMA BE REMOVED AND PASSED OVER AS EXECUTORS?. 10

The Applicable Law.. 10

Ali and Ms. Nayernama are in a Real or Perceived Conflict of Interest 11

The Executors' Animus towards Maryam.. 14

The Appointment of Heritage Trust as Executor 18

SHOULD THE CPLS REGISTERED AGAINST TITLE BE CANCELLED?. 20

The Applicable Law.. 22

The CPLs Should not be Cancelled on the Grounds of Hardship and Inconvenience. 23

The Redonda Property. 24

The Agassiz Property. 25

Ali and Ms. Nayernama's Overall Financial Situation. 27

Conclusion. 29

SHOULD ALI AND MS. NAYERNAMA RECEIVE AN INTERIM DISTRIBUTION FROM THE ESTATE?. 29

The Applicable Law.. 29

An Interim Distribution Should not be Made to Ali and Ms. Nayernama. 30

DISPOSITION AND COSTS. 32

INTRODUCTION / OVERVIEW

- [1] There are two applications before the Court involving the estate of Malakeh Ghafarian Ansaf (the "Deceased") and two of her children. The first application is made by Maryam Eftekhari, also known as Maryam Mills ("Maryam") to remove the named executor and pass over the alternate executor of the Deceased's estate and appoint a professional trust company, Heritage Trust, as administrator in their place. The named executor is the Deceased's son, Alireza Eftekhari ("Ali"). Ali's wife, Maryam Nayernama ("Ms. Nayernama") is named as the alternate executor. In the alternative to removal and passing over, Maryam seeks leave pursuant to s. 151 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], for Heritage Trust to pursue claims in the within action on behalf of the estate.
- [2] The second application is made by Ali and Ms. Nayernama for orders under ss. 256 and 257 of the Land Title Act, RSBC 1996, c 250 [LTA], cancelling the certificates of pending litigation ("CPLs") registered against two properties held in their names. In the alternative, they seek an undertaking by Maryam with respect to damages, the posting of security, and an interim distribution of \$200,000 from the Deceased's estate.
- [3] For the reasons that follow, I have determined that Ali and Ms. Nayernama should be removed and passed over as executors and that Heritage Trust will be appointed as administrator of the Deceased's estate. It will be up to Heritage Trust to determine whether or not to pursue an action on behalf of the estate. I have also determined that the CPLs should not be cancelled and that Ali and Ms. Nayernama are not entitled to an interim distribution from the estate.
- [4] To avoid confusion, I will refer to the parties who share the same last name by their first names, meaning no disrespect in doing so.

BACKGROUND FACTS

- [5] I have not attempted to resolve conflicts in the affidavit evidence and I will not comment on the evidence more than is necessary to explain my decisions on the two applications before me. My findings should not be seen to bind any future presiders or to influence the exercise of Heritage Trust's discretion in determining whether to pursue an action on behalf of the estate.
- [6] The Deceased died on January 31, 2020. She is survived by her spouse, Mohammad Reza Eftekhari ("Mohammad"); her daughter Maryam, her son Ali, and her daughter Nina Eftekhari ("Nina"). Maryam is the plaintiff in this action and Mohammed, Ali, and Nina are defendants. Ali's wife, Ms. Nayernama, is also a defendant.
- [7] The Eftekhari family emigrated to Vancouver from Iran in the mid-1990s. Beginning in about 1999, the family went into the restaurant and bar business. In about 1999, the Deceased and Mohammad purchased an all-you-can-eat salad bar concept restaurant on Granville Street called Prime Steakhouse/Mr. Mike's (the "Restaurant"). Maryam worked at the Restaurant from the time they purchased it. After approximately one year, the Restaurant was reconceived as a sports bar/restaurant and was named Speakeasy ("Speakeasy Granville"). Maryam was the manager of Speakeasy Granville until 2011. While there is dispute as to the extent of her involvement, it is clear that Maryam was significantly involved in Speakeasy Granville's operations and dedicated significant time and effort to it.
- [8] In the early years, Maryam was not paid for the time she put into the business. She expected that she would be remunerated by sharing in the growth of the business and the family's overall wealth. In prior-litigation involving the Eftekhari family, Mohammad deposed that it was always his and the Deceased's intention to treat and benefit Maryam, Ali, and Nina equally (this litigation will later be defined as the "Prior Eftekhari Litigation"). Whether this is the case, and whether Maryam's expectation regarding her share of the family business was well-founded, is and has been the subject of much dispute within the Eftekhari family. I need not resolve that particular dispute in this application.
- [9] In October 2004, the Deceased and Mohammad incorporated Speakeasy Enterprises Ltd. ("Speakeasy Enterprises"). It was Maryam's understanding that her parents were the owners of Speakeasy Enterprises. As I understand it, Speakeasy Granville (and later Speakeasy Davie and Speakeasy Broadway) were operated and legally owned by Speakeasy Enterprises.
- [10] Also in 2004, the Deceased and Mohammad purchased a commercial property in Burnaby on Edmonds Avenue (the "Edmonds Property"). The Edmonds Property included a Tireland location (the "Tireland Business"). Maryam and Ali do not agree on the roles they each played in respect of the Tireland Business. Ali says he ran the Tireland Business while Maryam says that she played a significant role in its management at the same time she managed Speakeasy Granville. The Tireland Business does not appear to have been successful and it ceased operations in 2007. Following its closure, Ali assumed a role at Speakeasy Granville. There too, Ali's and Maryam's respective contributions are hotly

disputed.

- [11] In 2008, a second Speakeasy location was opened, this time on Davie Street ("Speakeasy Davie"). Maryam worked at both locations. Maryam's husband, Joel Mills, says that they invested a considerable amount of time and effort in opening Speakeasy Davie, including incurring personal debt. At one point, Mr. Mills left his job to focus on Speakeasy Davie. Mr. Mills says it was his understanding that Speakeasy Davie was intended to be a joint venture between Mohammad and Maryam.
- [12] In 2011, a third Speakeasy location was opened, this time on Broadway ("Speakeasy Broadway"). Once again, Maryam appears to have played a significant role in its operation. She says that from 2011 to 2016, she stepped back from the day-to-day operations of Speakeasy Granville and managed those operations for Speakeasy Davie and Speakeasy Broadway. While Ali's role at Speakeasy Granville leading up to 2011 is disputed, it appears that the parties agree he took on a larger role there in 2011 and beyond.
- [13] Although Maryam believed that Speakeasy Enterprises was owned by both the Deceased and Mohammad, only Mohammad was registered on the company's central securities register. In October 2012, Mohammad transferred ownership of Speakeasy Enterprises' shares to another entity: Speakeasy Grill Ltd. ("Speakeasy Grill"). As I understand it, the various Speakeasy locations continued to be operated under the Speakeasy Enterprises despite the change of ownership from Mohammad to Speakeasy Grill.
- [14] In 2014, the Deceased was added as a director of Speakeasy Enterprises; Mohammad was already a director, and as I understand it, he had been since Speakeasy Enterprises was established in 2004. In August 2015, Ali became a director of Speakeasy Enterprises, replacing both the Deceased and Mohammad.
- [15] Later in 2015, ownership of Speakeasy Enterprises was transferred from Speakeasy Grill to Ali. Maryam was unaware of this change in ownership. She says that Ali paid nothing for this transfer; Ali disputes this. Maryam says that after the transfer of ownership to Ali, her parents continued to refer to the Speakeasy businesses as if they owned it. There are disputes and allegations about the nature of this transfer; in the Prior Eftekhari Litigation, Mohammad deposed that he had no firsthand knowledge of the transfer to Ali. Mohammad has not provided evidence in this application.
- [16] The Deceased became ill with cancer in 2013 and underwent extensive treatment until 2014. At that time, Mohammad stepped away from running the Speakeasy businesses to care for his wife. The Deceased's health improved somewhat until approximately 2017 when it was discovered that her cancer had returned and spread. She underwent more extensive treatment. She never fully recovered and her health continued to decline until her death in 2020.

- [17] In 2016, Maryam stopped performing work for Speakeasy Granville. Speakeasy Davie was not profitable and in 2016, it closed. Maryam and Mr. Mills say that they personally funded Speakeasy Davie's losses for some time. Speakeasy Broadway closed in 2017. Speakeasy Davie's landlord issued a notice of default to Maryam and Mohammad on March 10, 2017, and on May 2, 2017, filed a claim against Maryam, the Deceased, and Mohammad. Maryam says that she was unable to defend the claim due to the financial strain resulting from her involvement in Speakeasy Davie. On November 10, 2017, the landlord obtained default judgment against Maryam.
- [18] On March 23, 2017, after the landlord issued its notice of termination to Maryam and Mohammad, but before it commenced its action against Maryam, Mohammad, and the Deceased, the Deceased and Mohammad transferred ownership of their home at 2295 Westhill Drive, West Vancouver, British Columbia (the "Westhill Property") from joint names into the names of the Deceased as to 99/100 and 1/100 to Mohammad. When the Deceased died, title to the Westhill Property was registered 99/100 to the Deceased and 1/100 to Mohammad.
- [19] The Westhill Property was eventually sold pursuant to a court order, and in January 2023, \$500,000 of the sale proceeds was paid to the landlord's solicitors, in trust, to satisfy its claim with respect to Speakeasy Davie. The remainder of the proceeds of the Westhill Property (approximately \$900,000) remain in the solicitor of the defendants' of the within application's trust account.
- [20] Speakeasy Granville continues to operate under Ali's management.
- [21] There has been much conflict in the Eftekhari family. By 2015, the tension and conflict had escalated. Although the evidence conflicts, as will be discussed later, it is clear that the relationship between Ali and Maryam has been fraught with conflict and allegations for some time. For present purposes, it is sufficient to say that by 2017, there was significant tension between Maryam on the one hand, and Ali and Ms. Nayernama on the other. Maryam alleges that her brother and his wife intentionally tried to cause an estrangement between her and the Deceased. She also alleges that they tried to pit the Deceased and Mohammad against each other.
- [22] The relationship between Ali and his parents and the relationship between Maryam and her parents is in dispute. Maryam says that she was close with Deceased throughout her life. Ali says that Maryam had a strained relationship with the Deceased and was not very present in her life after 2017. Maryam strongly contests this and says she has always had a good relationship with her mother, including during the time after the Deceased was diagnosed with cancer. Maryam alleges that Ali and Ms. Nayernama have exerted improper influence over the Deceased, mainly beginning after the time the Deceased was diagnosed with cancer. Ali and Ms. Nayernama deny this allegation.

- [23] The Deceased's will is dated July 29, 2019, (the "Will"), approximately six months before her death. Pursuant to the Will, Ali was named as executor and Ms. Nayernama was named as alternate executor. The residue of the Deceased's estate was divided between Ali, Nina, and Maryam in unequal shares (Mohammad was not provided for in the Deceased's latest Will). 52% was provided to Ali and 24% to Nina. Maryam was also to receive 24%, subject to her being responsible for the removal of the landlord's CPL held against the Westhill Property that was in respect of the lease dispute regarding the property that Speakeasy Davie operated at. As mentioned earlier, that claim was eventually settled by way of a \$500,000 payment from the proceeds of the sale of the Westhill Property in 2023. Thus, Maryam's 24% share of the estate is now essentially first subject to a deduction of \$500,000 before any distribution of the residue would be made to her. In the within action, Maryam claims that the Will does not make adequate provision for her.
- [24] In his capacity as executor, Ali takes the position that the gross value of the Deceased's estate is \$1,840,778, which is the sale proceeds from the Deceased's interest in the Westhill Property and a Model X Tesla. After payment of the \$500,000 to settle the lease dispute, and after payment of \$300,000 to settle the Prior Eftekhari Litigation (as will be discussed later), Ali deposes that the amount remaining in trust is approximately \$900,000. In the within action, Maryam claims that the assets of the estate are much larger. She alleges that Ali and Ms. Nayernama personally hold significant assets of the estate, in trust. Those assets include a property located at 5070 Redonda Drive, North Vancouver, British Columbia ("The Redonda Property"), a property located at 6989 Rockwell Drive, Agassiz, British Columbia ("The Agassiz Property"); and shares of Speakeasy Enterprises (the "Speakeasy Shares", together the Redonda Property, the Agassiz Property and the Speakeasy Shares are the "Disputed Estate Assets").
- [25] The Redonda Property was purchased in 2015 for approximately \$1.5 million and was ultimately registered in the joint names of the Deceased and Mohammad. Ali deposes that the Redonda Property was held in trust for him since the time it was purchased. Maryam disputes this. In June 2017, around the time of the lease dispute, by way of a contract of purchase and sale, the Deceased and Mohammad sold the Redonda Property to Ali and Ms. Nayernama for \$2.2 million. A gift letter was provided to a financial institution indicating that the Deceased and Mohammad had gifted \$1 million to Ali. Maryam alleges that no consideration was provided by Ali or Ms. Nayernama for the acquisition of the Redonda Property. The Redonda Property is registered in Ali and Ms. Nayernama's names as joint tenants and they currently reside there. As of 2023, it had an assessed value of \$2.252 million.
- [26] The Deceased purchased the Agassiz Property in 2015 for \$1.1 million. As with the Redonda Property, Ali deposes that the Agassiz Property was held in trust for him since the time it was purchased. On May 31, 2018, the Deceased transferred the Agassiz Property to Ali for \$1.00, although it had a market value of \$1,068,000.00. Ali alleges the Agassiz Property was a gift to him. Title to the Agassiz Property is currently registered in the names of Ali (as to an

undivided 99/100 interest) and Ms. Nayernama (as to an undivided 1/100 interest). As of 2023, the Agassiz Property has an assessed value of \$1.789 million.

- [27] As mentioned earlier, ownership of Speakeasy Enterprises was transferred to Ali in 2015. Maryam asserts that the Deceased has a beneficial interest in Speakeasy Enterprises and that its shares are held in trust for the estate.
- [28] After her death, the Deceased's husband, Mohammad, commenced the Prior Eftekhari Litigation. In that action, Mohammad sought relief against Ali both personally and as executor of the Deceased's estate. Ms. Nayernama was also named as a defendant. Counterclaims were filed. A trial was set to commence in April 2023. On December 16, 2022, the Court ordered that Maryam be added as a defendant to the Prior Eftekhari Litigation. Before an amended claim was served on Maryam, the named parties (Mohammad, Ms. Nayernama, and Ali) resolved the claim. Maryam was not part of that resolution; although, she was aware of its existence and was represented by counsel. \$300,000 was paid to Mohammad to settle the Prior Eftekhari Litigation. Those funds came from the proceeds of the Westhill Property, of which 99/100 was registered in the name of Deceased at the time of her death. Maryam says that after she was to be added as a party, she would have filed a counterclaim in the Prior Eftekhari Litigation had the matter not been discontinued following the settlement.
- [29] Maryam commenced the within action on June 7, 2023. Her application to replace and pass-over the named executors or for leave pursuant to s. 151 of WESA was filed on April 2, 2024. Ali and Ms. Nayernama filed their application for removal of the CPLs or for an interim advance from the Deceased's estate on June 24, 2024. Both matters were originally scheduled to be heard the week of July 8, 2024. At the fault of neither party, the applications were unfortunately not heard until they came before me on January 22, 2025.

SHOULD ALI AND MS. NAYERNAMA BE REMOVED AND PASSED OVER AS EXECUTORS?

- [30] In her application, Maryam seeks to remove Ali as executor of their mother's estate and pass over Ms. Nayernama as alternate executor, principally on the basis of the existence of a conflict of interest and the executors having acted in a hostile manner towards a beneficiary of the estate. Maryam does not seek to personally replace her brother and sister-in-law as executor. Rather, she seeks a neutral, professional third-party - Heritage Trust - to be appointed. Ali and Nayernama oppose Maryam's application.

The Applicable Law

- [31] The Court has the authority to remove and replace an executor and trustee, both pursuant to statute and pursuant to its inherent jurisdiction: WESA, ss. 158 and 159; Trustees Act, R.S.B.C. 1996 c. 464, ss. 30 and 31; and Seaton Estate, Re, 2003 BCCA 555 at para. 17. In exercising this authority, the Court's principal consideration is the collective welfare of the beneficiaries: Miles v. Vince, 2014 BCCA 289 at para. 84; Chesko v. Chesko Estate, 2024 BCSC 394 at para. 53. The analysis is contextual and each case turns on its own facts: Burke v.

Burke, 2019 BCSC 383 at para. 43.

- [32] As Justice McNaughton (as she then was) summarized in Chesko at paras. 54-55, 57, and 60, removing an executor is a high threshold. The court will not lightly interfere with a testator's choice of trustee, and not every actual or perceived conflict should lead to disqualification of a trustee or an executor. Mere friction between the trustee and one or more of the beneficiaries is usually insufficient to justify removal of the trustee. Perfection is not expected of an executor or trustee. The question is whether the trustee's acts or omissions endangered the administration of the trust. Deciding whether to remove an executor or trustee involves considering all the facts, and the context, and out of respect for a will-maker's choice of executor, the court should not interfere except for good reason or where doing so is "clearly necessary".
- [33] Real or perceived conflicts of interest may disqualify an executor from acting in that capacity. An executor's claim against the estate, or an estate's claim against an executor, may give rise to such a conflict: *Weisstock v. Weisstock*, 2019 BCSC 517 at para. 43, and the cases cited therein. However, not every actual or perceived conflict of interest should give rise to disqualification: Burke at para. 43.
- [34] Evidence of animus toward a beneficiary may support a finding that an executor is unable, unwilling, or reasonably unlikely to put the estate's best interests first: *Rawji Estate (Re)*, 2023 BCSC 1652 at para. 45. However, it takes more than just disagreement or arguably bad behaviour on the part of an executor. Rather, removal requires that the friction to be of a nature or degree that prevents, or is likely to prevent, the proper administration of the estate: *Sheppe v. Harlinton*, 2018 BCSC 1460 at para. 40.

Ali and Ms. Nayernama are in a Real or Perceived Conflict of Interest

- [35] I agree with Maryam that Ali and Ms. Nayernama are in a conflict of interest that should result in their disqualification as executors of the estate.
- [36] In coming to this conclusion, I do not find that the mere existence of the within action places Ali and Ms. Nayernama in a disqualifying conflict of interest. While Maryam seeks to commence an action against them on behalf of the estate in respect of the Disputed Estate Assets, that, in and of itself, is not sufficient to disqualify the executors in the circumstances. That is because Maryam has essentially created that particular conflict by commencing the within action against the executors, but leave has not been granted to pursue such an action on behalf of the estate under s. 151 of WESA. If such a proposed claim automatically led to disqualification, any beneficiary could manufacture a conflict and have the executors disqualified simply by filing a lawsuit in which the estates assets are disputed. In my view, this would not be consistent with the high-bar applicable to the removal of executors. Standing alone, Maryam's claim over assets held by Ali in his personal name would be better resolved by an action under s. 151, should an executor pursue such an action, or should the Court grant leave for another to do so, rather than by the removal of the executor.

- [37] However, there are two other conflicts that lead me to conclude that Ali and Ms. Nayernama should be removed and passed over as executor; and Maryam has not created these conflicts.
- [38] The first conflict arises from the position Ali and Ms. Nayernama have taken about ownership of the Westhill Property proceeds in response to Maryam's action. Even though Ali, as executor, has included the proceeds from the Westhill Property as assets of the estate in his probate application, Ali and Ms. Nayernama plead beneficial ownership by way of an unjust enrichment or estoppel claim. I agree with Maryam that, as executor, neither Ali nor Ms. Nayernama can adjudicate these conflicting positions. As executor they must claim the proceeds from the Westhill Property for the estate consistent with the probate application; yet in their personal capacity they assert they are the beneficial owners of those same funds.
- [39] At the hearing of this application, Ali and Ms. Nayernama's counsel advised the Court that despite taking this position in their responsive pleading, they will not be advancing a claim over the proceeds from the Westhill Property should the litigation proceed. While I entirely accept counsel's statement and commitment in this respect, the very fact that Ali and Ms. Nayernama took this position in the first place gives rise to a very serious perceived conflict of interest, even if they ultimately do not advance that position at trial. Moreover, without a formal amendment to their pleadings, it is possible for them to maintain this position should they have a change in counsel. In the circumstances, I find that there is a perceived conflict that could result in Ali and Ms. Nayernama acting in a manner that endangers the estate's property.
- [40] The second conflict is in respect of the use of funds belonging to the estate to benefit Ali and Ms. Nayernama personally, without obtaining the consent of all the beneficiaries. This is in reference to the settlement of the Prior Eftekhari Litigation.
- [41] Mohammad was not a beneficiary under the Deceased's Will. The Prior Eftekhari Litigation was commenced by Mohammad in August 2020, after the Deceased's death in January that same year. Ali and Ms. Nayernama were defendants in that litigation in their personal capacities. In his claim in the Prior Eftekhari Litigation, Mohammad sought to challenge the transfers of the Speakeasy Shares to Ali and also challenged Ali and Ms. Nayernama's ownership of the Redonda Property and the Agassiz Property.
- [42] Maryam was aware of the Prior Eftekhari Litigation and was represented by counsel. However, she was not initially named in the claim. As mentioned earlier, she was added as a defendant in December 2022, but before she was served with an amended claim, the litigation was settled. Pursuant to the settlement, Ali paid Mohammad \$300,000 from the proceeds of the Westhill Property. Notice of discontinuance were filed with respect the claim and counterclaims. When the Deceased died, she had a 99/100 interest in the Westhill Property and the proceeds of the sale are assets of the estate (as later confirmed by Ali in his application for probate). Given that Ali and Ms. Nayernama were named as defendants in their personal capacities, they received a personal benefit from the use of estate funds to

resolve the Prior Eftekhari Litigation. Ms. Nayernama participated in the resolution of the litigation, and therefore, participated in the conflict.

- [43] Ali and Ms. Nayernama argue that the use of the estate's funds to settle the lawsuit should not disqualify them as executors. This is because they say that the \$300,000 was paid to Mohammad to ensure that the Deceased's estate retained value. I disagree. While the estate may have benefited from the settlement, there is no explanation as to why the Deceased's estate paid the entire amount of the settlement and the personal defendants did not pay anything to keep the other Disputed Estate Assets in their names. In essence, Ali and Ms. Nayernama were gratuitously released from any potential personal liability they were exposed to under the Prior Eftekhari Litigation.
- [44] Ali and Ms. Nayernama also argue that whether or not settling the Prior Eftekhari Litigation was a prudent decision is a matter that can better be dealt with upon a passing of accounts in the usual course of administering the estate. While there is some truth to this, one would expect that Ali and Ms. Nayernama would explain the prudence of the settlement in response to the present application that directly impugns their conduct. However, no detailed explanation has been provided.
- [45] When the settlement of the lawsuit is considered in the context of the entirety of the circumstances of this case, including the conflicting positions taken in the within litigation described above, and the hostile behaviour that will be described below, I find that the personal benefit achieved by settling the lawsuit without the beneficiaries' consent reflects a lack of honesty, a lack of proper capacity to execute the trust duties, and a lack of reasonable fidelity on the part of Ali. Ms. Nayernama participated in the settlement, and so the same concerns arise with regards to her suitability to act as executor. By doing so, they have engaged in self-dealing. This conduct rises to the level requiring disqualification.

The Executors' Animus Towards Maryam

- [46] In my view, Ali and Ms. Nayernama have behaved with a level of hostility and animus towards Maryam that requires they be removed and passed over as executors. The conflict is such that it is likely that they would be unable to act with impartiality and would likely prevent the proper administration of the estate.
- [47] While many families have conflict and the relations are less than optimal, in my view, the friction and conflict between Maryam and Ali and his wife go beyond what would be considered a typical level of conflict. Some of the alleged behaviour is denied by Ali and Ms. Nayernama. However, some of this conflict is incontrovertible on the record before me.

[48] For example, in October 2019, a short time before the Deceased's death, Ms. Nayernama sent text messages to Maryam which can be characterized as threatening and abusive.

Allegations are made about Maryam's fidelity to her husband. Vulgar language is used. For illustrative purposes, I have included some of the statement's made by Ms. Nayernama from those text messages as referenced by Maryam in her written submissions:

"Maryam you are extremely sick. I do not know why they did not lock you up";

"You are the most fucked up person that can not do any thing good in life at all";

"If you had any goodness in you at least you would not sleep around with that Persian guy same age as your dad, just for receiving expensive gifts";

"I truly make sure the system knows how mental you are so you can not interfere with anybody's life";

"I will forward all the documents to Lawyer for the Davie case and I will inform the government who are looking for you";

"Multi personality sick bitch, figure out what is your name first!";

"Fuck off, [derogatory name in Farsi]"; and

"I will make sure bring you down so hard".

[49] Ms. Nayernama's explanation for the contents of her text messages does not provide a cogent explanation for the vitriol and the words used. I fail to see how Ms. Nayernama's receipt of correspondence from the Canada Revenue Agency (some four months before the text messages were sent) and that was addressed to Maryam relating to Speakeasy Davie, could explain or excuse the language used.

[50] On the same day that the above-noted text messages were sent by Ms. Nayernama, Ali sent a text message to Maryam that I would also characterize as vulgar, demeaning, and threatening to both her and Mr. Mills. I have reproduced the entirety of Ali's text message below:

You are dirty pic [sic] of shit Just watch me send the people that are looking for you to [child's] school Joel's work place and your home and your work No more hiding fucking bitch You fucking sicko Leave us the fuck alone You are burning and this is just the beginning You are not part of our family any more you are fucking dead Just fuck off I will find out where you work and I promise that I make it hell for you I promise

[51] Likewise, Ali was unable to provide an acceptable explanation for what are, by all accounts, vulgar, threatening and extreme communications. One can scarcely imagine a situation where this language would be acceptable or even explainable; it is certainly inappropriate and raises significant concerns when it was directed against the beneficiary by someone who would, a short while later, become the trustee.

- [52] Two days before the Deceased died, Ali can apparently be heard on an audio recording telling Maryam that she was fake and disgusting, that he would cut her head open, and that he was waiting for the Deceased to die and he will destroy Maryam's life.
- [53] After the Deceased's death, it appears that Ms. Nayernama contacted Maryam's employer's wife by multiple means and alleged that her husband and Maryam were having an extra-marital affair. Maryam denies this allegation. Whether true or not, this behaviour is demonstrative of an animus that goes well beyond the friction found in most families.
- [54] Maryam makes many other allegations of similar behaviour and threats directed towards her from Ali and Ms. Nayernama. Although they have tried to explain some of the behaviour, it does not appear that they deny engaging in much of this conduct. During oral submissions, their counsel described the level of animosity as "regrettable" and acknowledged that his clients' behaviour is inexcusable.
- [55] However, they argue that friction between Maryam and Ali is not a reason to remove Ali from his role as executor and that Maryam's allegations do not indicate that Ali's conduct has endangered trust property or that it reflects a lack of honesty or a lack of proper capacity to execute the trust duties, reflects a lack of reasonable fidelity, or that he has engaged in self-dealing. He points out that the Deceased chose Ali as her executor and that courts are hesitant to interfere with the discretion of a testator to name an executor or a trustee and that the bar for doing so is set at a high level.
- [56] Ali and Ms. Nayernama have engaged in aggressive and intimidating behaviour that does not bode well where, in circumstances as an executor, they have power over Maryam as a beneficiary. The relationship between Maryam and her brother and sister-in-law is clearly broken. I acknowledge that since the litigation began, there have not been incidents between them of the same magnitude as described above. However, given what has occurred, and what is at stake, I question whether Ali and Ms. Nayernama's behaviour will return to its previous nature as the litigation advances, despite the valiant efforts of their counsel to maintain civility.
- [57] I have already discussed my conclusions with respect to the self-dealing that Ali and Ms. Nayernama engaged in with respect to the Westhill Property proceeds which occurred well after the text-messages discussed above. This may or may not be a result of the demonstrated animus, but either way, it is evidence of a lack of proper capacity to execute their duties as trustees.
- [58] While I agree the bar is high to interfere with the testator's choice of executor, I find that the bar had been reached in this case. I agree with counsel for Maryam that Ali and Ms. Nayernama have demonstrated such a level of hostility, including threats of violence, to Maryam that neither can be expected to act with reasonable fidelity as it concerns Maryam as a beneficiary of the estate. In my view, the behaviour in this case has exceeded that of the executors' disqualifying behaviour in *Dirinberger, Re*, 2016 BCSC 439, and *Sheppe v. Harlinton*, 2018 BCSC 1460 in terms of severity and frequency. In *Sheppe*, a single email

sent by the executor to the beneficiaries containing vulgar language and impugning their characters was found to have damaged the relationship beyond repair and thereby to likely interfere with the proper administration of the estate: Sheppe at paras. 16, and 40-41.

- [59] While I accept that there does not appear to be evidence of animus involving the other beneficiary, Nina, the fact that this friction and animus exists with two of the three beneficiaries, one of whom is the executor, is significant. While there may be little left to administer in the estate, as it currently stands, there are actions that remain to be taken that still require Ali or Ms. Nayernama to act in the estate's interest over their own animosity towards Maryam. Remaining tasks include the passing of accounts, the filing of tax returns, and the distribution of the Deceased's intangible personal items, for which Ali has interestingly listed as consisting of none in the estate's statement of assets and liabilities. The executor will also be required to respond to Maryam's wills variation claim in a neutral manner. In my view, the demonstrated animus is of such a magnitude that it is likely that Ali and Ms. Nayernama will be unable or unwilling to put the estate's best interest first: Woodward v. Weinstein, 2020 BCSC 1667 at para. 92.

The Appointment of Heritage Trust as Executor

- [60] Given the level of animosity between Ali and his wife and Maryam, Maryam was well advised to not seek to personally replace them as executor. Rather, she seeks the appointment of Heritage Trust, as a neutral, third-party executor.
- [61] Heritage Trust has been made aware of the nature of the proceedings and is willing to act in the capacity of administrator. If appointed as administrator, its fees are \$75,000 plus an additional 1% of the value of the estate, per annum.
- [62] In my view, the appointment of Heritage Trust is appropriate and will permit the administration of the estate to move forward without the influence of any of the beneficiaries. While there is a cost to Heritage Trust acting as administrator, I do not find that the cost weighs against its appointment. At the current value of the estate, pursuant to Ali's application for probate, the cost of Heritage Trust would be its flat fee of \$75,000 plus approximately \$9,000 per year. If he was to continue as executor, Ali would be entitled to a capital fee of between 2-5% (between \$18,000 and \$45,000), a care and management fee of approximately \$3,600, and an income fee. While the cost of Heritage Trust is considerably more expensive on a dollar to dollar basis, this expense must be considered in light of the circumstances of the case as a whole, including the level of conflict that exists between the parties. It seems likely to me that if Ali continues as executor, there will be disputes about executor remuneration and the passing of accounts which will add to the costs and reduce the disparity referenced above.

- [63] Furthermore, I agree with Maryam that it is in the best interests of the estate to be represented by a neutral party in the wills variation proceedings. Given my findings with respect to Ali and Ms. Nayernama's conduct, I do not think it is likely that either of them could discharge their duties with fidelity to the estate in the circumstances.
- [64] For the foregoing reasons, Ali is removed as executor and trustee and Ms. Nayernama is passed over. Heritage Trust is appointed in their place as administrator of the estate, with will annexed. All assets, real and personal, of the estate are vested in Heritage Trust. Within 14 days of the date of these Reasons, Ali is to deliver to Heritage Trust all property of the estate in his possession or control. This includes the funds held in trust by his counsel arising from the sale of the Westhill Property. Ali is to deliver, also within 14 days of these Reasons, all documents and records in his possession or control relating to the estate and its administration, including his solicitor's file regarding the solicitor's representation of Ali in his capacity as executor. Within 30 days of these Reasons, Ali is to provide an account for his administration of the estate to date. Heritage Trust may use the estate's funds to conduct the within proceeding, pay its fees and expenses, and otherwise carry out the administration of the estate.
- [65] Given that Heritage Trust is appointed as administrator, it will be its decision whether to pursue a claim for some, or all of the Disputed Estate Assets, or to pursue some other action on behalf of the estate, or to pursue none at all. A neutral professional, with no personal interest in the assets or debts of the estate will be in the best position to address the competing claims of the beneficiaries. Consequently, I need not consider Maryam's alternative argument that she be given leave to proceed with an action on behalf of the estate for the return of the Disputed Estate Assets under s. 151 of WESA.

SHOULD THE CPLS REGISTERED AGAINST TITLE BE CANCELLED?

- [66] The second application before me is Ali and Ms. Nayernama's applications under ss. 256 and 257 of the LTA, to cancel the CPLs registered against the titles to the Redonda Property and the Agassiz Property.
- [67] On June 7, 2023, Maryam commenced the within proceedings against Ali (in his personal capacity and in his capacity as executor of the estate of the Deceased), Ms. Nayernama, Nina, and Mohammad. As alluded to earlier, the claim seeks, among other relief, a variation of the Deceased's Will, and seeks to invalidate Ali and Ms. Nayernama's ownership of the Redonda Property and Agassiz Property in favour of the estate. On June 9, 2023, Maryam filed the CPLs against those properties.
- [68] In respect of the Redonda Property, which was registered in Ali and Ms. Nayernama's joint names on or about July 31, 2017, pursuant to a transfer made from the Deceased and Mohammad, Maryam alleges, among other things, that:
- a) Ali and Ms. Nayernama provided no, or alternatively insufficient, consideration, for the property which Maryam says had a fair market value of \$2.2 million;

- b) a gift letter dated July 12, 2017, in respect of the transfer was signed by the Deceased and/or Mohammad under duress and without receiving proper legal advice;
- c) the transfer occurred at a time when the Deceased was suffering from, and receiving treatment for, terminal cancer, and was dependent upon Ali and/or Ms. Nayernama for personal and financial matters;
- d) the transfer of the Redonda Property to Ali and Ms. Nayernama was the result of undue influence exerted upon the Deceased and Mohammad by Ali; and
- e) Ali and Ms. Nayernama hold the Redonda Property in trust for the benefit of the Deceased's estate.

[69] The Agassiz Property was registered in Ali's name on or about May 31, 2018, pursuant to a transfer made from the Deceased, Maryam alleges, among other things, that:

- a) the Agassiz Property was transferred to Ali gratuitously and for no consideration at a time when it had a fair market value of \$1.068 million;
- b) like with the transfer of the Redonda Property:
 - i. the transfer of the Agassiz Property occurred at a time when the Deceased was suffering from, and receiving treatment for, terminal cancer, and was dependent upon Ali and/or Ms. Nayernama for personal and financial matters;
 - ii. the transfer of the Agassiz Property to Ali was the result of undue influence exerted upon the Deceased by Ali; and
 - iii. the Deceased did not receive proper legal advice with respect to the transfer of the Agassiz Property.

[70] On or about July 2, 2019, Ali transferred the Agassiz Property from himself to himself as to 99/100 and Ms. Nayernama as to 1/100. Maryam alleges that the Agassiz Property is held in trust for the benefit of the estate.

The Applicable Law

[71] Ali and Ms. Nayernama rely on ss. 256 and 257 of the LTA to cancel and discharge the CPLs on the grounds of hardship and inconvenience. Pursuant to those provisions, the court may cancel a CPL where the applicant is the registered owner of land against which a CPL is registered, and where the applicant is experiencing, or is likely to experience, hardship and inconvenience due to the registration of the CPL.

- [72] Both hardship and inconvenience must be present. Absent evidence of actual or likely hardship and inconvenience caused by the CPL, there can be no remedy under s. 257(a) and the application must be dismissed. Even where the requirements of an application under s. 256(1) are met, the court retains the discretion to refuse either of the remedial orders and may dismiss the application: *Drucker, Inc. v. Hong*, 2011 BCSC 905 at para. 56; and *Liquor Barn Income Fund v. Becker*, 2011 BCCA 141 at para. 26.
- [73] The degree of hardship required by s. 256(1) is more than "trifling", but a court should not be exacting in its analysis of hardship and inconvenience: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388 at para 28 [Youyi Group]. In *Youyi Group* at para. 28, Justice Newury, for the Court, explained the evidentiary threshold that must be met by the applicant on this type of an application and the degree of hardship:

As a preliminary matter the applicant must show that it is experiencing or likely to experience "hardship and inconvenience" as a result of the registration of the CPL. It appears that the degree of hardship required is the subject of disagreement in the Supreme Court of British Columbia. While some judges have proceeded on the basis that the hardship need not be "significant" (see, e.g., *Enigma Investments Corp. v. Henderson Land Holdings (Canada) Ltd.*, 2007 BCSC 1379 (B.C. S.C.), and *0966349 B.C. Ltd v. Shell Canada Ltd* [(February 28, 2014), Doc. New Westminster S151234 (B.C. S.C.)], Reasons dated February 28, 2014, New Westminster Docket S151234), others have required "severe suffering" (see, e.g., the lower court decision in *Liquor Barn Income Fund v. Mather*, 2009 BCSC 1092 (B.C. S.C. [In Chambers]), at para. 7.) The Shorter Oxford Dictionary (6th ed., 2007) defines "hardship" to mean "the quality of being hard to bear" or "severe suffering or privation"; "significant" to mean "important, notable; consequential"; and "insignificant" to mean "of no importance; trivial, trifling" or "meaningless". To the extent that these or other decisions of the trial court suggest that "hardship" in s. 256(1) may be met by proof of hardship that is "insignificant" or "not significant", I would disagree. I doubt that the Legislature intended the threshold under s. 256 to be surmounted by proof of hardship that is only "trifling". On the other hand, I agree that a court should not be "exacting" in its analysis of hardship and inconvenience.

- [74] The evidence of hardship and inconvenience must be particular: unsupported generalizations, conclusory statements and speculation will not be sufficient: *Porter v. Porter*, 2023 BCSC 2181 at para. 83. Moreover, the hardship and inconvenience must be causally connected to the registration of the CPL: *Liquor Barn Income Fund* at para. 37.
- [75] Circumstances where hardship or inconvenience have been found by the Court include where a defendant needed to sell the property in order to finance other development ventures and where a defendant sought to pay off credit card debts by refinancing the property subject to a CPL: *0861695 B.C. Ltd. v. Meola*, 2013 BCSC 121 at paras 13-15; and *Tiwana v. Rai*, 2018 BCSC 1893 at paras 34-35.

The CPLs Should not be Cancelled on the Grounds of Hardship and Inconvenience

[76] Ali and Ms. Nayernama submit that the CPLs are causing hardship and inconvenience for three reasons. First, they claim that the CPL on the Redonda Property has impacted their efforts to refinance the mortgage on that property and has resulted in an increased interest rate above market rate. Second, they claim that the CPLs have precluded them from obtaining additional financing against the Agassiz Property. Finally, they claim that they are suffering significant financial hardship and are currently unable to meet their, and their business', Granville Speakeasy's, financial burdens, and will continue to be unable to do so if the CPLs are not cancelled. I will address each of these claims in turn.

The Redonda Property

[77] I am not persuaded that the CPL registered against the Redonda Property has impacted their mortgage rates or has hindered their ability to refinance the property. There are two registered mortgages on the Redonda Property. The first is a mortgage with Scotiabank which was renewed in January 2022 in the principal amount of \$1,109,455.46 with a variable interest rate of 1.42% compounded semi-annually, for a term of 5 years maturing on January 27, 2027 (the "Scotiabank Mortgage"). Ali and Ms. Nayernama do not allege hardship and inconvenience with respect to the Scotiabank Mortgage.

[78] The second mortgage registered against the Redonda Property is a private mortgage which was renewed in January 2024 in the principal amount of \$300,000, with an interest rate of 12% compounded monthly, for a term of one year, maturing on February 1, 2025 (the "Private Mortgage"). Before the current Private Mortgage was renewed, in or around January 27, 2023, Ali and Ms. Nayernama obtained the original mortgage for \$300,000 from the same private lender, with an interest rate of 11% compounding monthly, for a term of 1 year, with a maturity date of January 20, 2024.

[79] Ali and Ms. Nayernama claim that when they renewed the Private Mortgage in January 2024, the CPL directly impacted their ability to refinance that mortgage and led to "an increased interest rate on the mortgage beyond market rate". I disagree. The evidence led in support of this claim is a comparison between the 12% interest rate applicable to the Private Mortgage with the then posted mortgage rate of 6.79% from Vancity for a one-year fixed term. While this contrast appears stark, it is not a comparison of similar products: private mortgages are very different than mortgages offered by traditional lending institutions. Private lenders typically charge a higher rate of interest and the terms of such loans depends on the financial circumstances of the borrower, other available security, and other factors: there is no "market rate" with such lenders as there is with traditional lenders.

[80] Moreover, the Private Mortgage is the second mortgage that is secured behind the Scotiabank Mortgage. Typically, rates on second mortgages are higher than those with first priority because the lower equity in the property results in an increased risk for the lender. The only evidence tendered in support of the rate offered by Vancity is a print-out from

Vancity's website that appears to list mortgage rates generally available to the public at that time. There is no indication that the quoted rate would be the applicable rate for a second mortgage against the Redonda Property. And there is no evidence that Ali and Ms. Nayernama would qualify for Vancity's advertised rate, or any similar rate, in January 2024 with respect to the second mortgage.

- [81] I agree with counsel for Maryam that a more appropriate comparable interest rate to the 12% rate of the Private Mortgage that was renewed in 2024, is the interest rate they negotiated on the Private Mortgage in January 2023, with the same lender, on the same lands. That interest rate was 11%. The 1% increase in the Private Mortgage rate may be largely attributable to the fact that the prime interest rate increased 0.75% between January 2023 and January 2024. It is noteworthy that the 11% rate mortgage was entered into before Maryam had filed her CPL against the Redonda Property. Thus, it seems reasonable to infer that there was some reason other than the CPL that caused Ali and Ms. Nayernama to enter into a mortgage at such a high rate in January 2023.
- [82] The evidence falls short of the standard required to prove that any hardship was caused by the registration of the CPL against the Redonda Property. Rather, on the record before me, it is equally possible that the lender requested an increased interest rate as a result of Ali and Ms. Nayernama's general financial situation, the market conditions, or another factor independent of the CPL.

The Agassiz Property

- [83] Ali and Ms. Nayernama claim that the CPL registered against the Agassiz Property has prevented them from obtaining additional financing against the Agassiz Property. On or about July 4, 2022, Ali and Ms. Nayernama obtained a mortgage loan renewal from TD Canada Trust for the Agassiz Property for a term of five years, at an annual interest rate of TD Mortgage Prime Rate - 0.75% (the "Agassiz Property Mortgage"). The outstanding principal amount on the mortgage at the time of renewal was \$482,203.26. The mortgage does not mature until July 1, 2027.
- [84] In an affidavit affirmed a few days before this application was originally set to be heard, Ms. Nayernama claims that her mortgage broker confirmed that she and Ali were unable to obtain any more financing for the Agassiz Property due to the CPL, and that but for the CPL, they would have been able to obtain between \$500,000 to \$600,000 in additional financing. I agree that this evidence is technically inadmissible hearsay. That is because it is based upon a statement of another and Ms. Nayernama does not depose that she believes it to be true.
- [85] Even if the mortgage broker's evidence is admissible, I do not find that it is sufficient to support a finding of hardship and inconvenience in the circumstances. First, in the email from the mortgage broker that is appended to Ms. Nayernama's affidavit, the mortgage broker does not provide any information as how he concluded that he could obtain anywhere between \$500,000 and \$600,000 of additional financing; the mortgage broker does

not reference that he spoke to any lenders and nor does he mention who these potential lenders may be. Furthermore, the mortgage broker's email makes no reference to the instructions he received from Ms. Nayernama about her and Ali's financial situation, and thus, I do not know if his statement about the availability of further financing was made with accurate knowledge of the borrowers' financial circumstances. With these deficiencies in mind, I find that the mortgage broker's statement amounts to little more than a bald assertion.

- [86] Even if the CPL was preventing them from obtaining additional financing against the Agassiz Property, that would not, in and of itself, equate to hardship or inconvenience. As I understand their argument, Ali and Ms. Nayernama's hardship claim with respect to the Agassiz Property is related to their overall financial situation, which will be discussed next.

Ali and Ms. Nayernama's Overall Financial Situation

- [87] Ali and Ms. Nayernama claim that they wish to arrange for additional financing over the Agassiz Property as they do not have enough income to meet their personal financial obligations, and the obligations of Speakeasy Granville. In essence, they say that they are suffering financial hardship because the CPL registered against the Agassiz Property is preventing them from accessing the funds that would alleviate their hardship.
- [88] First, as discussed above, I am not persuaded that the evidence is sufficient to show that any financial hardship they may be suffering results from the CPLs' registration: the evidence of causality is a little more than a conclusory statement.
- [89] In any event, although I am not to be exacting in my analysis of hardship and inconvenience, I nonetheless find that the evidence put forward by Ali and Ms. Nayernama is insufficient to find that they are suffering financial hardship or inconvenience.
- [90] Ali and Ms. Nayernama depose that since December 2022 until February 2024, Speakeasy Granville was their only source of income. They say that as of June 2024, Granville Speakeasy does not make enough income to meet its liabilities and it owed \$255,801.43 in rent arrears and \$34,082.43 in Goods and Services Tax arrears. Beginning in 2024, Ms. Nayernama started selling real estate and as of June 2024, she had received commissions totalling approximately \$42,000 from two properties she sold. Ali and Ms. Nayernama claim to have personal savings of approximately \$25,000. They depose to having no other access to credit. They say that they do not have enough income to meet their personal financial obligations, such that they require additional financing from the Agassiz Property, and are having difficulties paying the interest rate on the Private Mortgage over the Redonda Property.

- [91] Ali and Ms. Nayernama's evidence of hardship amounts to little more than bald assertions. They have not provided any bank statements in support of their assertions or that would show their current savings and cash reserves. They have not provided any evidence of attempts to obtain loans or credit from other sources in support of their assertion that they have no other access to credit. They have provided no documentary evidence in support of Ms. Nayernama's income as a realtor or evidence of her current prospects in that regard.
- [92] Although Speakeasy Granville may be their primary source of income, it is a separate legal entity and it does not own an interest in either the Redonda Property or the Agassiz Property. In any event, the only evidence provided in support of Speakeasy Granville's financial difficulties is a notice of assessment from the Canada Revenue Agency regarding the GST debt and a letter from the property managers of the building from which Speakeasy Granville operates regarding the rent arrears. That letter is dated May 30, 2024. There is no evidence that the landlord has taken any steps to collect on that debt or to terminate Speakeasy Granville's tenancy since that time.
- [93] Moreover, Speakeasy Granville's financial statements have not been produced. Without supporting documentation that would demonstrate its ability to pay its expenses in comparison with its revenue, Ali and Ms. Nayernama's claim regarding the company's financial health, and its ability to pay its outstanding debts, is impossible to assess.
- [94] Finally, when they affirmed their affidavits in the summer of 2024, Ali and Ms. Nayernama deposed that they expected their financial circumstances to improve as a result of the busier and more profitable summer season for the Speakeasy Granville and her then new job as a realtor. No further update to the applicants' financial situation has been provided since July 2024. I agree with counsel for Maryam that in these circumstances, it is reasonable to infer that Ali and Ms. Nayernama's financial situation may have improved in the more than six months that elapsed between then and when this application was heard. It is not at all clear to me that they remain in the same financial situation they were in at the time they affirmed their affidavits.

Conclusion

- [95] Ali and Ms. Nayernama have essentially put forward bald assertions and conclusory statements with respect to their financial situation. This is not the required level of particularity to support a claim of hardship and inconvenience on an application made under ss. 256 and 257 of the LTA: Porter at para. 83. In the absence of the requisite particularity, I do not infer that Ali and Ms. Nayernama are currently suffering hardship and inconvenience that would warrant cancellation of the CPLs. And for the reasons given above, even if they had provided sufficient evidence of hardship, I would not be in a position to conclude that the financial hardship was caused by the registration of the CPLs.

[96] Consequently, Ali and Ms. Nayernama's application to cancel the CPLs is dismissed, without prejudice to make a further application for such relief should circumstances change. Maryam is to provide a written undertaking to pay damages to Ali and Ms. Nayernama that are proven and ordered to be paid as a result of the CPLs being registered on title to the Redonda Property and the Agassiz Property.

SHOULD ALI AND MS. NAYERNAMA RECEIVE AN INTERIM DISTRIBUTION FROM THE ESTATE?

The Applicable Law

[97] Ali and Ms. Nayernama rely on s. 155 of WESA for their claim for an interim distribution in the amount of \$200,000 from the Deceased's estate.

[98] The parties agree that the Court's discretion to allow an interim distribution in circumstances where a wills variation claim exists is guided by the four considerations enumerated in *Hecht v Hecht Estate* (1991), 1991 CanLII 963 (B.C.C.A.) [Hecht] and *David v. Burns Estate*, 2016 BCSC 1982 at para. 31:

- a) the amount of the benefits sought to be distributed as compared to the value of the estate;
- b) the claim of the beneficiaries on the will-maker;
- c) the need of the beneficiaries for money; and
- d) the consent of the residuary beneficiaries to the payment.

[99] An interim distribution is unlikely to be granted unless the risk that the variation order will encroach upon the funds needed to satisfy the bequest is remote: *Hecht*; *Holmes v. Holmes*, 2024 BCSC 737.

An Interim Distribution Should not be Made to Ali and Ms. Nayernama

[100] In my view, it is not a remote possibility that payment of the interim distribution sought by Ali and Ms. Nayernama will encroach upon the funds required to satisfy the bequests. Given my conclusion with respect to the appointment of Heritage Trust as administrator of the estate, and its responsibility for determining whether to proceed with an action on behalf of the estate in respect of the Disputed Estate Assets, the only proceeding that is relevant for my consideration of this possibility is Maryam's wills variation claim in the within proceeding under s. 60 of WESA.

[101] According to Ali, the value of the estate is the amount held in trust from the proceeds of the sale of the Westhill Property (approximately \$900,000). On first blush, it appears that an interim distribution of \$200,000 to Ali would not encroach upon the ability of the Deceased's estate to satisfy the bequests set out in the Will given that the Will provides that Ali is to receive 52% of the value of the residue. However, that calculation fails to properly consider the nature of the wills variation claim made by Maryam in light of the position that Ali and Ms. Nayernama take in respect of the Disputed Estate Assets: Ali and Nayernama assert that

all of the Disputed Estate Assets are beneficially owned by them.

- [102] If Ali and Ms. Nayernama are correct that the Disputed Estate Assets passed to them outside of the Will, then Ali will have received a very significant amount of assets that belonged to the Deceased outside of the estate. Assets that pass to a child outside of the estate (whether it be by pre-death gift or some other manner, other than for valuable consideration), will likely be considered in the analysis of Maryam's wills variation claim when the Court analyzes what is adequate, just and equitable in the circumstances. Such circumstances may give rise to an increased moral duty owed to the party seeking to vary the will: *McBride v. Voth*, 2010 BCSC 443 at para. 133. Of course, Ali and Ms. Nayernama will have the opportunity to argue that the Disputed Estate Assets should not be considered, or should not serve to reduce Ali's share of the residue. However, I cannot assess the likelihood that such an argument would succeed at this time. In the circumstances of this case, in determining whether to vary the Will in Maryam's favour, and to what extent, the Court may be required to consider whether an imbalance was created by Ali's receipt of significant assets outside of the estate in light of Maryam's allegations with respect to her level of involvement in the family businesses. If Maryam is successful, then the amount of the residue gifted to Ali under the Will (i.e. the Westhill proceeds remaining in trust) may be reduced. In the present circumstances, it would be unfair in my view, to allow a distribution to Ali of \$200,000 from the Westhill Property proceeds now, before any determinations on the size of the estate or on Maryam's right to a variation have been made.
- [103] Moreover, consideration of the remaining Hecht factors does not favour an interim distribution. First, the amount of the benefits sought compared to the value of the estate is significant, particularly considering future estate liabilities such as administrator remuneration that Heritage Trust will now be entitled to, legal and accounting fees, and taxes. My discussion and conclusion above regarding Maryam's wills variation claim does not weigh in favour of an interim distribution. My conclusions with respect to Ali and Ms. Nayernama's application to cancel the CPLs on the grounds of financial hardship are applicable to my consideration of their need for money in the interim distribution analysis. As with their hardship application, their evidence does not adequately establish a need for an interim distribution in the amount sought. And finally, one third of the beneficiaries (i.e. Maryam) have not consented to the interim advance.
- [104] For these reasons, Ali and Ms. Nayernama's claim for an interim distribution from the Deceased's estate is dismissed.

DISPOSITION AND COSTS

- [105] Maryam's application to remove Ali as executor of the Deceased's estate, and to pass-over Ms. Nayernama as alternate executor, is granted. Heritage Trust is appointed in their place as administrator of the estate, with will annexed, and with the consequential orders made at para. 64 above.
- [106] Ali and Ms. Nayernama's application to cancel the CPLs registered against the Redonda Property and the Agassiz Property are dismissed, without prejudice to bring on a subsequent application for the same relief in the future. Maryam is to provide a written undertaking to pay damages to Ali and Ms. Nayernama that are proven and ordered to be paid as a result of the CPLs being registered on title to the Redonda Property and the Agassiz Property.
- [107] Ali's application for an interim distribution from the Deceased's estate in the amount of \$200,000 is dismissed.
- [108] Counsel for Maryam requested that the parties be given the opportunity to make submissions on costs after the judgment was rendered. Consequently, should the parties be unable to come to an agreement on costs, they may arrange with Supreme Court Scheduling to speak to the matter before me.
- [109] I thank all counsel for their thorough and helpful submissions.

"Majawa J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/09/2025BCSC0942.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/eftekhari-v-eftekhari-2025>

Prepared on 29 October 2026 · Esheria