

CANADA / JUDGMENT

Holmes v. Modry

2025 BCSC 430

COURT

Supreme Court of British Columbia

DECIDED

12 March 2025

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

2025 BCSC 430 Holmes v. Modry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Holmes v. Modry,

2025 BCSC 430

Date: 20250312

Docket: S218148

Registry: Vancouver

Between:

Verna Arlene Holmes,

Administrator of the Estate of Mary Laurette Bodnar, Deceased

Plaintiff

And

Dennis Leonard Modry

Defendant

Before: The Honourable Justice Hoffman

Reasons for Judgment

Counsel for the Plaintiff:

J. Park

B. Rowland

Counsel for the Defendant:

J. Sawani

A. Chadi

Place and Date of Hearing:

Vancouver, B.C.

February 18-19, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 12, 2025

Table of Contents

Overview.. 3

Issues. 3

Background Facts. 4

Execution of the Powers of Attorney. 4

The Bank Accounts. 5

Fred and Laurette's Circumstances. 5

The Respondent's Real Estate Development 7

Cryptocurrency Investment 8

Wills of Fred and Laurette. 9

Request for the Respondent to Account and Produce Financial Records. 9

Calculation of Unaccounted for Funds from the Joint Accounts. 10

Legal Framwork.. 12

Suitability for Summary Trial 12

Duties of an Attorney. 13

Elements of Unjust enrichment 16

Elements of Conversion. 16

Findings on Suitability. 17

Findings on the Merits. 18

Declarations and Orders. 22

Costs. 23

Overview

- [1] In this summary trial application, the applicant, Verna Arlene Holmes, seeks the return of funds which she alleges the respondent wrongfully removed from the deceased's accounts. The accounts in issue were jointly held by the deceased, Mary Laurette Bodnar, and her late husband, Fred Bodnar.
- [2] For readability and clarity, I will refer to the Bodnars by their given names: Laurette and Fred. In so doing, I mean no disrespect.
- [3] The applicant is Laurette's adult niece. The respondent is Fred's nephew. Since October 7, 2014, the respondent has acted pursuant to a power of attorney to make various financial transactions using funds contained in various joint bank accounts held by Fred and Laurette. The applicant alleges that many of these transactions amount to a breach of the respondent's fiduciary duties to Fred and Laurette. Specifically, she says that he converted over \$1.2 million from their jointly held bank accounts for his own personal use. The applicant says that, in misappropriating these funds, the respondent exploited the vulnerability of Fred and Laurette who, in the later years of their lives, respectively suffered from dementia and Alzheimer's.
- [4] Fred died on October 2, 2018. Laurette died just over a year later, on December 25, 2019. Laurette died leaving no valid will. The applicant was granted administration of her estate on August 19, 2021.

Issues

- [5] The applicant takes the position that it is appropriate to determine the following issues on this summary trial:
 - a) Did the respondent breach his fiduciary duties as an attorney for Fred and Laurette by co-mingling funds from their account with his own, failing to keep records of the transactions and misappropriating their funds to his own use?
 - b) Did the respondent wrongfully convert \$1,285,183.07 of Fred and Laurette's funds for his own personal use such that he was unjustly enriched?
- [6] The respondent takes the position this matter is not suitable for summary determination on the basis that there are significant factual disputes that cannot be resolved on the evidentiary record before the court. Alternatively, if the court finds that a summary trial is appropriate, the respondent says that the evidence is insufficient to establish that he breached his fiduciary duties or was unjustly enriched by investing Fred and Laurette's money pursuant to the authority granted to him as power of attorney. The respondent says that the tort of conversion is not available to the plaintiffs on the facts of this case because it

only applies to the conversion of chattels and not a chose in action, such as funds in a bank account.

Background Facts

Execution of the Powers of Attorney

- [7] On October 7, 2014, Laurette and Fred each executed a power of attorney appointing the respondent as their attorney. Although the applicant submits that there is sufficient evidence to determine that neither Laurette nor Fred had the capacity to execute this power of attorney at the time, for the purposes of having this matter summarily determined, the applicant is willing to assume that the powers of attorney were validly executed. As such, the validity of the powers of attorney is not a matter of dispute between the parties in this application.
- [8] Upon being appointed attorney, the respondent took over Fred and Laurette's finances and exercised control over their joint bank accounts ("the Bank Accounts"). It was not disputed before me that the respondent exercised control by making both withdrawals and deposits, as well as writing cheques to make payments from the Bank Accounts. Nor was it disputed that the respondent co-mingled funds from the Bank Accounts with his own personal funds. What is disputed is whether Fred and Laurette had the requisite capacity to authorize the respondent to take and retain their money for his own personal benefit, or to make risky investments.

The Bank Accounts

- [9] When the powers of attorney were executed, Fred and Laurette jointly held one chequing and one savings account in the United States with JP Morgan Chase Bank (the "Chase Accounts"). Together, the Chase Accounts had a total balance of \$717,186.31 USD. Fred and Laurette were each receiving monthly pension benefits and US Social Security, both of which were automatically deposited into the Chase Accounts.
- [10] On November 24, 2014, \$548,080.94 USD was transferred from the savings account to the chequing account. Ten weeks later, on February 4, 2015, the respondent transferred \$730,000 USD to himself from the chequing account using the powers of attorney, leaving only \$1,528.32 USD total in the Chase Accounts.
- [11] Fred and Laurette also jointly held a CIBC mutual fund account with a balance of \$37,646.64. On October 27, 2014, all of the units in the account were redeemed and \$36,170.76 was deposited into Fred and Laurette's jointly held CIBC bank account. Two days later, on October 30, 2014, the respondent issued a cheque to himself for \$22,049.25. On November 11, 2014, the respondent wrote another cheque to himself for \$6,590.34.

- [12] While the respondent was acting as attorney, Fred and Laurette's house in Parksville, which they owned as joint tenants, as well as one of their cars, were sold. The respective proceeds of \$691,601.27 and \$18,000 were deposited into Fred and Laurette's bank account.
- [13] On October 6, 2015, two weeks after the car proceeds were deposited, the respondent wrote a cheque to himself for \$15,000. Similarly, on September 28, 2017, a short time after the house proceeds were deposited, the respondent withdrew \$650,000 from the CIBC account.

Fred and Laurette's Circumstances

- [14] The evidence before me is that in July of 2014, prior to the execution of the powers of attorney, Laurette was hospitalized for a broken hip. The hospital records show that Fred was also admitted to hospital at that time because he relied on Laurette for his daily care and there was no respite care available in the community. The medical records in relation to this admission state that Fred had a medical history of dementia and observations were made by the admitting physician that he was not oriented to date or time. Upon his discharge on October 27, 2014, Fred was diagnosed with dementia with moderate cognitive impairment. The records also show that he was seen by Dr. Myronuk, a geriatric psychiatrist, who deemed him to be lacking capacity in terms of person and finances.
- [15] Following their discharge from hospital, Fred and Laurette returned to live in their home in Parksville. At this time, the respondent lived in Edmonton and was working as a cardiovascular surgeon.
- [16] On January 13, 2015, Fred purportedly assaulted a home support worker with a kitchen knife while the worker was providing caregiver services to Laurette. Consequently, Fred was admitted to the hospital on the same day and his diagnosis of dementia was again documented.
- [17] According to the medical records, on February 24, 2015, Fred was discharged into the care of the respondent who was going to take him home. Laurette was placed separately into a long-term care home. Following the assault, the respondent asked Fred's niece, Shannon Beston, if she would become Fred's caregiver. According to Ms. Beston's affidavit, she moved in with Fred upon his discharge from hospital. She continued to provide these services until June of 2017 when Fred was hospitalized again due to a fall. According to Ms. Beston, after that hospitalization, the respondent decided to place Fred into a long-term care facility.
- [18] On December 23, 2016, the home care worker who was injured in the incident, along with her co-worker who witnessed the assault, commenced a tort action against Fred and Laurette for personal injury damages (the "2016 Action"). The respondent defended the 2016 Action as Fred's litigation guardian. The response to civil claim filed by the respondent plead that, at all material times, Fred was "88 years old and suffering from dementia and another disease, mental illness or medical condition such that his acts and omissions were involuntary and he was incapable of appreciating the nature and quality of his acts". A similar pleading was made with respect to Laurette, although she was alleged to have been

suffering from Alzheimer's.

- [19] There is also uncontradicted evidence from Ms. Beston that between February and September 2015, she drove Fred to visit Laurette in her long-term care home every day. She stopped taking Fred in September 2015, partly because Fred was getting increasingly upset that they could not bring Laurette home with them. Ms. Beston's evidence is that by November of 2015, Laurette was no longer capable of recognizing Fred and she refused to engage with him.
- [20] The respondent did not take any steps to cross-examine Ms. Beston on her evidence regarding her observations of Fred and Laurette's capacity while she was taking care of Fred. In any event, the respondent conceded on this application that Fred suffered from dementia but took the position that capacity can come and go with such a condition. The respondent maintained that Fred was sufficiently lucid with respect to financial matters and capable of giving him instructions as to investments, which the respondent says that he made on Fred and Laurette's behalf pursuant to the power of attorney.

The Respondent's Real Estate Development

- [21] The respondent's affidavit indicates that after his retirement from his medical career in 2016, he devoted his full-time efforts to a \$144 million real estate project called the Privada project. A newspaper article attached to the respondent's affidavit, describes that he owned a home valued at \$6.6 million on a large piece of land overlooking the North Saskatchewan River in Edmonton. He planned to tear down the house to develop a luxury condominium complex containing 45 four-storey units, each of which was expected to sell for between \$2.5 to \$5 million. The article, published on November 27, 2016, indicated that 17 units had been sold and that construction was expected to begin in the spring of 2017.
- [22] The respondent explains in his affidavit that millions were spent during the design phase of the project and that he personally borrowed \$7 million to fund the substantial work that went into the project.
- [23] In his affidavit, the respondent states that between 2016-2019, he acted upon what he believed to be sound business advice to invest the majority of his own assets and the assets he held on behalf of Fred and Laurette in the Privada project.
- [24] The respondent also provides evidence about a trip that Fred made to Edmonton in the company of Ms. Beston in April of 2015. According to the respondent, both Fred and Shannon were present when he showed Fred the details about the Privada project. He says that Fred expressed his desire and intention to invest in the Privada project and to design a unit himself so he could live close to the respondent and his wife. This occurred less than four months after the incident in which Fred seriously assaulted a homecare worker. In submissions, counsel for the respondent pointed to this trip as an example of when Fred's dementia was not causing him to have capacity issues.

- [25] The Privada project did not go as planned. Foreclosure proceedings were commenced in June of 2017. The respondent deposed in his affidavit that, "I lost my home, my project, my equity and my financial retirement nest egg, along with the funds that I had invested in the project on Fred and Laurette's behalf."
- [26] The applicant submits that the respondent has failed to produce records that document the investments in the Privada project that the respondent says he made on Fred and Laurette's behalf.

Cryptocurrency Investment

- [27] It is also not in dispute that the respondent invested a total of \$9,074 from the Bank Accounts in cryptocurrency. There are bank records documenting these transactions. These investments occurred in 2018 and 2019.
- [28] In his affidavit, the respondent states that he invested approximately \$9,000 on Fred's behalf into Bitcoin along with approximately \$250,000 of his own funds. The respondent explains that "unfortunately, I became the victim of cybercrime on January 20, 2019, when said Bitcoin was fraudulently transferred out of my Binance account to an unknown third-party wallet." The respondent's evidence is that he made a police report and that an investigation was launched but the funds were never recovered.

Wills of Fred and Laurette

- [29] Although Fred pre-deceased Laurette, in Fred's will dated February 24, 2015 he named the respondent as his executor and trustee of his estate. The respondent submits that the will stipulated that, if Fred pre-deceased Laurette, the entirety of Fred's estate was to be held as a fund in trust to support Laurette and then, upon her death, Fred's estate would pass to the respondent for his own use absolutely. Accordingly, if Laurette had died before Fred, the respondent was the sole beneficiary of Fred's estate. However, I was advised by counsel during submissions that because there were no assets left in Fred's estate when he died, his will was never probated.
- [30] After Laurette's death on December 25, 2019, only a copy of her will could be found. As an original will was not located, it was presumed that Laurette revoked the will and died intestate. At the time of her death, Laurette was survived by four intestate successors: her sister Myrtle, two nieces and a nephew. Myrtle, who was the applicant's mother, passed away on December 21, 2020 leaving two adult children, the applicant and the applicant's sister.

Request for the Respondent to Account and Produce Financial Records

- [31] Further to her duties as administrator of the estate, on May 6, 2020, applicant's counsel wrote to the respondent's previous counsel advising that she would be seeking an accounting of Fred and Laurette's estates for the period in which the respondent acted as their attorney.
- [32] While the respondent did ultimately produce some records, the applicant takes the position that neither an accounting nor records showing how Fred and Laurette's money was spent have ever been provided. The response to this application referred to Schedule A, which was described as a "comprehensive summary" of Fred and Laurette's finances between 2014 and 2020. Regrettably, Schedule A was not actually attached to the response when it was filed on November 29, 2024. This omission was not discovered until the hearing before me. As a result, applicant's counsel first saw the schedule during the hearing.
- [33] I also note that the summary was not attached to the respondent's affidavit although it appears to have been prepared by him. The document lists expenses and revenue for 2014 to 2020. At the end of the document, there is a notation that on February 4, 2015, "\$730,000 USD was transferred from Fred's Chase account" and that "these funds were initially invested in the stock market, then for the Privada project." There is also a note that on September 18, 2017, proceeds from the sale of Fred and Laurette house in the amount of \$691,601.27 were also used for the Privada project. This document is not in evidence. However, the notes are consistent with the respondent's affidavit evidence that he invested Fred and Laurette's funds into his real estate development project.

Calculation of Unaccounted for Funds from the Joint Accounts

- [34] Using records from the Bank Accounts together with records of expenses disclosed by the respondent in evidence on this application, the applicant created a detailed account history for 2014-2020, the years when the respondent was acting as attorney. The account history totaled all deposits, including deposits from unknown sources, and all withdrawals. In addition, it took into account expenses for Fred and Laurette that were paid personally by the respondent, and not from the Bank Accounts.
- [35] Many withdrawals were clearly related to Fred and Laurette's care, such as groceries and medical expenses. However, many withdrawals were made that could not be readily attributed to such expenses. For each year, the summary sets out the difference between the unexplained withdrawals and the legitimate expenses personally paid by the respondent. In preparing the account history, the applicant assumed that all of the deposits from unidentified sources were deposits that the respondent made to the Bank Accounts.
- [36] In the summary, the applicant takes the position that between the time the powers of attorney were executed and Laurette's death, the respondent withdrew a total of \$1,655,747.69 from the Bank Accounts without providing proper explanation or accounting.

- [37] The applicant has deducted from this amount the sum of all the expenses the respondent alleges he personally incurred for Fred and Laurette's benefit, which is \$370,564.62, with two exceptions. The applicant did not deduct an expense for 24 bottles of wine and the cost of renting a condo in Scottsdale for six months from February to July 2015 on the basis that these expenses could not be connected to Fred and Laurette's care.
- [38] The invoice for the wine says that it was purchased from a Napa Valley Winery by Dennis Modry and the address given is for a business called Tour East Holidays with an address in Toronto. In respect of the Scottsdale rental, no evidence of payment of the lease amount was provided by the respondent.
- [39] The respondent has not explained or accounted for the remaining amount of \$1,285,183.07. Based on this account history, the applicant argues that the respondent abused his position as both an attorney and a fiduciary, by misappropriating a total of \$1,294,257.07, inclusive of the \$9,074 spent on cryptocurrency.
- [40] The only item in the account summary the respondent made any submissions on during the hearing was the omission of the Scottsdale rental in the amount of \$9,000 USD. The respondent takes the position that this was a proper expense that he incurred in order to repatriate the funds in the Chase Accounts back to Canada. In his affidavit, he gives evidence that he was required to establish a residence in the US before the bank would allow him to act pursuant to the powers of attorney to gain access to the funds.

Legal Framework

Suitability for Summary Trial

- [41] Under Rule 9-7(15) the Supreme Court Civil Rules, B.C. Reg. 168/2009, judgment may be granted in favour of any party at a summary trial application, unless the judge is unable to find the necessary facts or is of the opinion that it would be unjust to do so.
- [42] In *Cepuran v. Carlton*, 2022 BCCA 76 at para. 149, the Court of Appeal cited its well-known decision in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.) at para. 53 and reiterated the factors relevant to deciding whether to allow a matter to be determined by summary trial. These include:
- a) the amount involved;
 - b) the complexity of the matter;
 - c) any urgency;
 - d) any prejudice likely to arise from further delay;
 - e) proportionality, meaning the cost of taking the matter to a conventional trial in relation to the amount involved;

- f) the course of the proceedings; and
- g) whether the evidence is sufficient to decide the dispute.

[43] A summary trial is a trial in which evidence can be weighed and, where appropriate, conflicts in the evidence can be resolved. Both parties have an obligation to put their best foot forward with respect to the evidence required to resolve the issues. This includes making use of the pre-trial procedures necessary to secure the required evidentiary record: *Arbutus Investment Management Ltd. v. Russell*, 2022 BCSC 72 at paras. 48-49, *aff'd* 2023 BCCA 9.

[44] A party may not frustrate an application for a summary trial by failing to adduce evidence and then arguing that the facts cannot be found: *Gichuru v. Pallai*, 2012 BCSC 693 at para. 24, *aff'd* 2013 BCCA 60.

[45] Whether this matter is suitable for determination on summary trial is a live issue in this application. To assist my assessment, I turn now to the legal framework which sets out the nature of both the fiduciary duties owed by the respondent and the statutory requirements he was subject to as an attorney.

Duties of an Attorney

[46] The execution of a power of attorney imposes a fiduciary duty on the attorney: *Wang v. Wang*, 2020 BCCA 15 at para. 32.

[47] The obligations of an attorney are described by Justice Harris in *Meng Estate v. Liem*, 2019 BCCA 127 as follows:

[31] It is common ground on appeal that a person acting under a power of attorney is an agent held to the standard of conduct to which equity holds a fiduciary. Those obligations involve, at least, that even where the attorney acts gratuitously, he or she has a duty to account, to exercise reasonable care as would a typically prudent person managing his or her own affairs, and not to act contrary to the interests of the donor: see e.g., *McMullen v. Webber et al.*, 2006 BCSC 1656 at para. 52...

[Emphasis added.]

[48] The duties of an attorney are codified in s. 19 of the Power of Attorney Act, R.S.B.C. 1996, c. 370 [PAA]:

Duties of an attorney

19 (1) An attorney must

- (a) act honestly and in good faith,
- (b) exercise the care, diligence and skill of a reasonably prudent person,

- (c) act within the authority given in the enduring power of attorney and under any enactment, and
 - (d) keep prescribed records and produce the prescribed records for inspection and copying at the request of the adult.
- (2) When managing and making decisions about the adult's financial affairs, an attorney must act in the adult's best interests, taking into account the adult's current wishes, known beliefs and values, and any directions to the attorney set out in the enduring power of attorney.
- (4) An attorney must keep the adult's property separate from the attorney's own property.
- [49] The records required under s. 19(1)(d) are prescribed in s. 2 of the Power of Attorney Regulation, B.C. Reg. 20/2011:

Records of attorneys

2 (1) An attorney acting under an enduring power of attorney must make a reasonable effort to determine the adult's property and liabilities as of the date on which the attorney first exercises authority on the adult's behalf, and maintain a list of that property and those liabilities.

- (2) An attorney acting under an enduring power of attorney must keep the following records in relation to the period for which the attorney is acting:
- (a) a current list of the adult's property and liabilities, including an estimate of their value if it is reasonable to do so;
 - (b) accounts and other records respecting the exercise of the attorney's authority under the enduring power of attorney;
 - (c) all invoices, bank statements and other records necessary to create full accounts respecting the receipt or disbursement, on behalf of the adult, of capital or income.

[50] In *Sull v. Pengelly*, 2019 BCSC 575, after considering these statutory duties, Justice Voith described the fiduciary duty of an attorney as follows:

[129] A fiduciary is subject to a broad duty to act in good faith and in the best interests of the person over whom he or she exercises discretion or control. She must fully disclose all information relevant to the trust and confidence placed in her and that she must not reap a personal benefit or use the property or goods that she has discretion or power over.

[130] An attorney can only use the power of attorney for his or her own benefit when it is done with the full knowledge and consent of the donor.

[Citations omitted.]

- [51] In the course of litigation, where an attorney has failed to disclose the relevant records that they were obligated to keep, the court may draw an adverse inference that the records would be inconsistent with the attorney's evidence tendered in the matter: *Sarzynick v. Skwarchuk*, 2021 BCSC 443 at para. 190.
- [52] When an attorney has transferred funds for his own benefit without the full knowledge and consent of the donor/deceased, the court may order that the funds be returned to the estate and that a full accounting be provided by the attorney: *Sull* at paras. 130-131.
- [53] As set out in s. 19(1)(b) of the PAA, an attorney "must exercise the care, diligence and skill of a reasonably prudent person" in carrying out their duties. Further, pursuant to s. 15.2 of the Trustee Act, R.S.B.C. 1996, c. 464 [Trustee Act], when investing trust property, a trustee must exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments. Section 15.2 of the Trustee Act applied to the respondent because s. 19 of the PAA requires an attorney to invest the adult's property only in accordance with the Trustee Act unless the enduring power of attorney states otherwise.
- [54] The Court of Appeal has held that while the Trustee Act does not explicitly impose a duty on trustees to diversify investments in accordance with the modern portfolio theory, this theory is subsumed within the "prudent investor" standard. As such, a trustee must consider what the appropriate level of risk and whether the circumstances demand diversification: *Miles v. Vince*, 2014 BCCA 289 at paras. 64-65.
- [55] The Ontario Superior Court has held that a trust instrument authorizing a trustee to make investments not otherwise authorized by law does not override the trustee's duty to exercise the care, skill and judgment that a prudent investor would exercise in making investments, or the duty to diversify the investments: *Mowry v. Groome*, 2016 ONSC 7850 at para. 17.

Elements of Unjust enrichment

- [56] The test for unjust enrichment is set out in *Kerr v. Baranow*, 2011 SCC 10 at para. 32. The plaintiff must establish three elements: (1) the defendant was enriched; (2) the plaintiff suffered a corresponding deprivation; and (3) the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason.
- [57] The third step proceeds in two phases. First, the plaintiff must demonstrate that the absence of any of the recognized categories of juristic reason that would justify the enrichment does not apply. The recognized categories include a contract, a disposition of law, a donative intent or other valid common law, equitable or statutory obligations.
- [58] The burden of proof then shifts to the defendant to rebut the prima facie case by demonstrating that there is another reason to deny recovery. At this stage, the court may consider the legitimate expectations of the parties as well as moral and public policy considerations: *Kerr* at para. 43.

Elements of Conversion

- [59] The tort of conversion involves the wrongful interference with another person's chattels or goods. The plaintiff must prove:
- a) a wrongful act by the defendant involving the plaintiff's goods;
 - b) the act consisted of handling, disposing or destroying the goods; and
 - c) the defendant's actions, either in intention or effect, interfered with or denied the plaintiff's right to title to the goods.

See *Ast v. Mikolas*, 2010 BCSC 127 at paras. 125-126.

- [60] The respondent relied on *Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 S.C.R. 805, 1997 CanLII 334 at para. 29 and *Bergen v. Bergen*, 2013 BCCA 492 at para. 39 for the proposition that bank accounts are not goods and thus cannot be subject to conversion. However, there are conflicting decisions this point. In *Ast* at para. 128, the court held that funds can be the subject of conversion. In *Sarzynick* at paras. 256-263, after reviewing several authorities, Justice Morellato expressed doubt that a bank account could be subject to conversion but declined to decide the point.

Findings on Suitability

- [61] Having considered the nature of the issues and the evidence before me, I am satisfied that this matter is suitable for resolution by summary trial.
- [62] The factual and legal issues are relatively straightforward. While there are some issues in dispute, much of the factual basis for this application is either not contested, plainly evident on the materials before me, or sought to be established through an absence of evidence. It is clear on the documents that the respondent co-mingled his funds with those of Fred and Laurette. There is also no dispute that he used funds from the Bank Accounts to purchase cryptocurrency which he claims was subsequently stolen. The respondent admits that he used funds from the Bank Accounts, including the proceeds from the sale of Fred and Laurette's house, to make an investment in the Privada project, but has failed to produce documentation in relation to these transactions.
- [63] While the respondent disputes the characterization of the investments he made on Fred and Laurette's behalf as "risky" and takes the position that they consented to these investments, I am satisfied that there is sufficient evidence before me to resolve these conflicts in the evidence. Again, the respondent does not dispute that Fred suffered from dementia. There is objective medical evidence of this diagnosis, as well as records documenting that it raised questions as to Fred's capacity for financial matters in the minds of disinterested medical professionals. Further, there is the unchallenged evidence of Ms. Beston as to her observations of Fred's mental state.

- [64] The respondent had an obligation in this application to put his best foot forward by tendering the best evidence he could regarding the conversations he had with Fred and Laurette about their financial investments. The only evidence tendered is the respondent's evidence regarding Fred's trip to Edmonton in April 2015 in which he says that Fred was apprised of the Privada project and agreed to invest in it.
- [65] Despite the respondent's argument at the hearing that Fred's dementia symptoms were intermittent, the respondent failed to provide affidavit evidence of his observations of Fred's mental capacity during this alleged conversation or any efforts he made to ensure that Fred had a sufficient capacity to understand and consent to the respondent's proposal. The respondent also tendered no evidence of any discussion that he had with Laurette about the investment.
- [66] While the amount in dispute is significant, I am satisfied that it would not be proportionate to force the parties to incur the cost of a conventional trial. Moreover, as the applicant has been making efforts since 2020 to have the respondent account for the funds from the Bank Accounts, there is some urgency to the resolution of this matter. Given the delays that have already occurred as a result of the respondent's failure to provide complete records, I am satisfied that further delay would prejudice the applicant.

Findings on the Merits

- [67] The law is clear that the respondent, as a "true and lawful attorney", was in a fiduciary relationship with both Fred and Laurette: Sarzynick at para. 178. He was required to act in their best interest when managing and making decisions about their finances.
- [68] On the basis of the evidence before me, I find that the respondent breached his duties by failing to account and fully disclose all information relevant to the exercise of the powers entrusted to him. While the respondent says that he invested the bulk of the \$1,285,183.07 in the Privada project, he has deprived both the applicant and the court of any means of confirming this claim. During the period in which he had power of attorney, the respondent had serious financial difficulties. In June 2016, foreclosure proceedings were commenced in respect of his substantial \$7 million Privada project related loan. These difficulties, coupled with the co-mingling of his personal funds with those in the Bank Accounts, raise serious questions about how the unaccounted funds were actually spent.
- [69] Consistent with Sarzynick at para. 190, in light of the respondent's failure to disclose financial records explaining the \$1.2 million in unaccounted transactions, I infer that the respondent misappropriated these funds from Fred and Laurette for his own personal use.
- [70] Even if it could be established that the Privada project investment was made as the respondent contends, there remains the concern that this investment benefitted him personally. While there were other investors in the real estate development, the respondent had a significant personal stake in its success. In 2015, when the respondent discussed the Privada project with Fred, it was in the design phase and would have been in need of

substantial funds to cover cost outlays. The respondent's evidence is that he was covering many of these costs personally. Accordingly, to the extent that Fred and Laurette's funds were put into the Privada project, I find that this was of personal benefit to the respondent triggering his obligation to ensure that he had Fred and Laurette's full knowledge and consent.

- [71] I reject the respondent's argument that the assets belonging to Fred at the time of his death did not pass by right of survivorship to Laurette. This argument fails to appreciate that Fred and Laurette had a joint interest in the Bank Accounts. It is well-established that on the death of one joint account holder, the interest passes to the other through the right of survivorship: *Pecore v. Pecore*, 2007 SCC 17 at para. 48.
- [72] Since these funds were jointly held while Fred and Laurette were still alive, the respondent was required to ensure that any investment of those funds for his personal benefit was undertaken with Fred and Laurette's full knowledge and consent: *Sull* at para. 130. It is apparent from the respondent's evidence that he did not appreciate the joint nature of the funds in the Bank Accounts. The respondent states that "the vast majority of funds invested on their behalf belonged properly to Fred and I understood that said investments would ultimately come to my possession by operation of Fred's last will and testament."
- [73] Given the observations relating to Fred's memory and mental state made by medical professionals and Ms. Beston, together with the assault incident in January 2015, I am satisfied on a balance of probabilities that Fred did not have the legal capacity to consent to having a significant portion of his savings invested in the Privada project or otherwise used for the respondent's personal benefit.
- [74] There is no evidence that the respondent discussed the investment in the Privada project or any other proposed use of the funds with Laurette. In his affidavit, the respondent states that "Fred had [sic] much better understanding and ability to converse and participate in decisions regarding his care and financial matters when I was acting as his Attorney, when compared to Laurette." This may account for the absence of any evidence of Laurette's consent, but it does not relieve the respondent of his fiduciary duty of obtaining that consent or refraining from using the funds in the absence of such consent.
- [75] The powers of attorney authorized the respondent to "make investments not otherwise permitted by the Trustee Act (including investments in mutual funds, common trust funds or similar investments)." Nonetheless, in whatever investments that were made, the respondent was required by s. 19(1)(b) of the PAA to exercise the care, skill, diligence and judgment that a prudent investor would exercise in making investments.
- [76] I find that any investment of Fred and Laurette's funds in the Privada project or otherwise for the respondent's personal benefit, does not satisfy the standard of a prudent investor. The respondent was required to assess the level of risk associated with this investment and consider whether it was prudent to place a substantial portion of Fred and Laurette's life savings into one real estate project in which the respondent had a personal stake. The

respondent's evidence that the entire investment was lost as a result of the foreclosure is plainly indicative of its significant inherent risk. Further, there is no evidence before me that the respondent considered whether diversification was required to maintain the value of their assets. As such, I find that the respondent breached his duty to act as a prudent investor.

- [77] I make the same findings with respect to the investment in cryptocurrency which the respondent says was stolen by cyber criminals. A prudent investor would take steps to make a secure investment with financial institutions and exchanges that are far less susceptible to the risks of cyber-crime.
- [78] The respondent also breached his duties under s. 19(4) of the PAA by failing to keep Fred and Laurette's funds separate from his own.
- [79] With respect to unjust enrichment, I find that the respondent was personally enriched by the funds he used for his own personal benefit. Fred, Laurette and ultimately Laurette's estate were correspondingly deprived of the funds.
- [80] With respect to the third step, the onus is on the applicant to show an absence of a juristic reason for the enrichment. The powers of attorney authorized the respondent to manage and make decisions regarding Fred and Laurette's financial affairs and to invest their assets in a reasonable and prudent manner on their behalf. They did not authorize the respondent to misappropriate the funds to his own use without their full and informed consent. Further, I accept the applicant's argument that there are no documents or other evidence before me that suggest that Fred and Laurette intended to gift the funds to the respondent during their lifetimes. Nor is there any contract or disposition of law that justifies the respondent's retention of the funds for his own benefit. As such, there was no established juristic reason for the enrichment.
- [81] I further find that the respondent has not discharged his onus to identify a novel juristic reason justifying his retention of the funds. Although the respondent pointed to Fred's desire, as expressed in his will, that he would have inherited the funds had Laurette predeceased Fred, this cannot constitute a legitimate expectation to justify an enrichment which largely took place while both Fred and Laurette were alive. Further, I can see no public policy reason that would justify the respondent's retention of the funds.
- [82] Turning to conversion, as noted above, there is some dispute in the authorities as to whether conversion may apply to bank accounts: see Sarzynick at paras. 256-263. Despite the existence of this divergence being apparent on the authorities relied upon by the applicant, submissions were not made as to how this debate in the law should be resolved. In the absence of full argument, the question of how to resolve this conflicting line of authorities is best left for another day.

[83] In any event, with one exception, the damages sought for breach of fiduciary overlap with those sought for conversion. The applicant seeks consequential losses for the conversion, namely, the interest that would have been earned on the funds had they not been removed from the Bank Accounts and converted by the respondent. However, the applicant tendered no evidence in this regard and rightly conceded during submissions that such interest could not be determined without expert evidence. The applicant took the position that this loss could be compensated by an order for interest pursuant to the Court Ordered Interest Act, R.S.B.C. 1996, c. 79.

Declarations and Orders

- [84] Accordingly, I declare that the respondent, Dennis Leonard Modry, breached his fiduciary duties as attorney to Mary Laurette Bodnar and Fred Bodnar.
- [85] I further declare that Dennis Leonard Modry misappropriated the sum of \$1,283,441.31 from Mary Laurette Bodnar and Fred Bodnar for his own personal use and was unjustly enriched by that amount.
- [86] Flowing from these declarations, I order that:
- a) Dennis Leonard Modry shall pay \$1,283,441.31 to the estate of Mary Laurette Bodnar (the "Estate");
 - b) Dennis Leonard Modry shall return to the Estate the cryptocurrency purchased with the assets jointly held by Mary Laurette Bodnar and Fred Bodnar and, if any or all of the cryptocurrency has already been sold or otherwise disposed of, he shall return the cash equivalent;
 - c) Interest be paid on the total amount of the judgment pursuant to the Court Order Interest Act. R.S.B.C. 1996, c. 79.

Costs

- [87] The applicant seeks to make submissions on costs following the disposition of the merits of the application. The parties shall make submissions in writing and may, if necessary, address the need for an oral costs hearing. I reserve the right to determine whether such a request is warranted.
- [88] If the parties cannot agree on costs, within 30 days of these reasons, the applicant shall deliver to the respondent her submissions on costs. The respondent shall then deliver his submissions within 15 days. Thereafter, both sets of submissions should be filed through Supreme Court scheduling.

"Hoffman 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/25/04/2025BCSC0430.htm>

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

Prepared on 26 October 2026 · Esheria