

CANADA / JUDGMENT

Iaci Estate v. Iaci

2014 BCSC 672

COURT

Supreme Court of British Columbia

DECIDED

11 April 2014

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2014 BCSC 672 Iaci Estate v. Iaci IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Iaci Estate v. Iaci, 2014 BCSC 672 Date: 20140411 Docket: S140631 Registry: Vancouver Between: Tana Broste, in her capacity as Executrix of the Will of Frieda Martha Iaci, Deceased Petitioner And Kenneth Luigi Iaci and Alfred Olson, in their capacities as co-executors of the Will of Peter Iaci, Deceased Respondents Before: The Honourable Mr. Justice Savage Oral Reasons for Judgment Counsel for the Petitioner: I. Giroday Counsel for the Respondent: R. Henderson Place and Date of Hearing: Vancouver, B.C. April 11, 2014 Place and Date of Judgment: Vancouver, B.C. April 11, 2014

- [1] This is an application for an interim injunction and a disclosure order with respect to the estate of the Will of Peter Iaci, the deceased. The application is made on behalf of Tana Broste, who is a beneficiary under the estate, both personally, and as executrix of the will of Frieda Martha Iaci. She makes this application in the latter capacity. The respondents are Kenneth Luigi Iaci and Alfred Olson, co-executors of the Will of Peter Iaci, although I was advised that only Kenneth Luigi Iaci was active as an executor.
- [2] Although a grant of probate of the Will was obtained on November 8, 2011, the executors have not passed their accounts. The estate does not appear to be complicated, being comprised almost entirely of financial assets. The gross value of the estate appears to be \$1,933,533 with less than \$200 in liabilities based on the probate application, although there were funeral expense and taxes. There has been an interim distribution however matters have not passed expeditiously. Since September 2013, the respondents have been asked to provide information and pass their accounts. They have yet to do so, although now say that the matter is in the hands of accountants and is imminent.
- [3] The petitioner points to a number of matters in support of this application. Those matters are fully explained in the affidavits of the petitioner, and the affidavit of Nicole Cutler, which sets out the correspondence between the petitioner's solicitor, and the previous and past solicitor of the respondents.

- [4] Those affidavits, together with that of the respondent Kenneth Luigi Iaci, establish to my satisfaction that (1) the said respondent improperly took a pre-advance on executor's fees without the consent of the beneficiaries within weeks of obtaining probate; (2) the amount of the pre-advance taken was \$49,409.90; (3) in response to this application the respondent Kenneth Luigi Iaci now says that the pre-advances total \$87,008.00 (although his lawyer says this may be an error on his part); (4) there has been co-mingling of the estate funds with those of this executor; (5) despite repeated requests, the said executor has failed to produce information on the payees of cheques totalling approximately \$250,000; (6) apart from the interim distribution referenced above, the executor has made a further distribution of funds to his son and daughter, but not the other beneficiaries, and did not advise the other beneficiaries at the time he made these advances; and (7) the respondent in response to the matters raised in this proceeding, is paying or has paid moneys from his personal accounts into estate accounts.
- [5] In general, the response to this is that this is a lay executor who was not fully aware of his responsibilities during the administration. He is now aware of those responsibilities and is in the process of making things right, by reimbursing the estate for various withdrawals that were co-mingled with his own accounts for a matter of convenience. The convenience claimed is for the payment of expense and the earning of higher interest rates. The executor says that the extra advances made to his son and daughter was for emergencies and that he would have made advances to the other beneficiaries in similar circumstances. The executor also says that he is making up for the co-mingling of estate assets and his own accounts by repayment. He says the order is unnecessary as he expects to pass accounts in a couple of weeks. Although he has erred in the past there is no evidence that he will err in the future.
- [6] I note that the estate expenses have been few. There is no evidence that the executor made others aware of the preferential advances. The executor has been slow to respond to the reasonable requests of the petitioner, who started asking for an accounting six months ago. During the course of that six month period, there are also representations made by the executor that things were being done that were not actually being done.
- [7] The petitioner is not, at this stage, asking for the removal of the executor. The petitioner is asking for relief as set out in a draft order, that would prevent removal of or disposal of the assets of the estate, and require disclosure of specified information, and ancillary orders. In asking for injunctive relief, the petitioner relies on the well-known decision in *CBC v. CKPG Television* (1992), 64 B.C.L.R. (2d) 96. The granting of an interim injunction may be made where it is just or convenient, applying the two pronged test that there be a fair question to be tried of the existence of a right and a breach of that right, and that the balance of convenience favours the granting of the injunction. The second branch is to be approached on the factors listed by the court.

- [8] In my view the petitioner has established entitlement by satisfying both branches of the test. The admissions of the executor establish that he has breached common law and statutory duties. I am also satisfied that the balance of convenience, which in this case means preserving the status quo and requiring the respondent to produce information related to the various accounts specified, favours the granting of the injunction.
- [9] The respondent presented various cases related to the removal of executors. The petitioner is not at this stage asking for the removal of the executor. That said, I do not find those cases otherwise helpful. *Le Roux v. Shannon*, 2009 BCSC 331, concerned delay in the administration of an estate where the major asset was a yarn shop which for various reasons, unrelated to the behaviour of the executors, had a limited market and could not be sold. In *Radford v. Radford Estate* (2008), 43 E.T.R. (3d) 74, 2008 CanLII 45548 (Ont. S.C.J.), there was delay that was reasonably explained by the executors, who were fending off an attack on the validity of a will and the authority of the trustee to act, and the behaviour of the petitioners was described as "meritless meddling".
- [10] The petitioner shall have the orders sought in Schedule "A" to the petition. "The Honourable Mr. Justice Savage"

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