

CANADA / JUDGMENT

Jahanbani v. Mohseni

2020 BCSC 2140

COURT

Supreme Court of British Columbia

DECIDED

17 December 2020

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2020 BCSC 2140 Jahanbani v. Mohseni

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jahanbani v. Mohseni,

2020 BCSC 2140

Date: 20201217

Docket: S193778

Registry: Vancouver

Between:

John Jahanbani, as personal representative of the ESTATE OF

AMINEH POURMOHSEN, DECEASED

Plaintiff

And:

Mohammad Hossein Mohseni, as the Executor of the ESTATE OF NAHID ENAYAT ARAGHI also known as NAHID ARAGHI also known as NAHID ENAYAT, DECEASED and the said Mohammed Hossein, as Executor of the ESTATE OF SEYFFEDIN PURMOHSEN ARAGHI, also known as SEYFFEDIN POURMOHSEN ARAGHI, also known as SEYFFEDIN ARAGHI, DECEASED, Ali Enayat, Hadi Enayat, Ameneh Enayat, and Maryam Enayat

Defendants

Before: Master Vos

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D.A. Frenette

Counsel for the Defendant, Mohammad Hossain Mohseni, in his capacity as executor of the estate of Nahid Enayat:

K. Vimalasan

Counsel for the Defendants, Ali Enayat, Hadi Enayat, Ameneh Enayat and Maryam Enayat:

S.J. Andrea

Place and Date of Hearing:

Vancouver, B.C.

December 8-9, 2020

Place and Date of Judgment (via teleconference):

Vancouver, B.C.

December 17, 2020

- [1] THE COURT: The plaintiff applies for various orders in relation to this estate litigation. The defendants oppose some, but not all, of the applications. The most contentious matter in issue is the plaintiff's application to appoint an administrator for an estate involved in this action.
- [2] This decision is being delivered as oral reasons. If the reasons are transcribed, I may edit them to include references to background information and to clarify the judgment in written form. The result and the core analysis will not change.

Background

- [3] These reasons refer to a number of individuals by their first names. This is done to lessen confusion, as some of the people involved in matters discussed have the same surname. No disrespect is intended by the use of first names.
- [4] The Pourmohsen family was a wealthy and prominent family in Iran. This litigation concerns assets of two members of the family, Seyffedin Pourmohsen Araghi ("Seyffedin") and his sister, Amineh Pourmohsen ("Amineh"). Both were born in Iran and eventually moved to North America.
- [5] Amineh spent time in both Iran and the United States from the 1960s to about 1990, when she permanently settled in the United States. She resided there until her death on February 25, 2017. Her son, John Jahanbani ("John"), is the plaintiff in this action, as personal representative of her estate.

- [6] Seyffedin and his wife, Nahid Araghi, also known as Nahid Enayat ("Nahid"), left Iran in or about 1979 and immigrated to Canada.
- [7] Seyffedin and Nahid did not have any children.
- [8] Seyffedin died on August 20, 2014, leaving a Will dated February 24, 2014. Seyffedin's Will named Nahid as executor and provided that his entire estate would pass to Nahid. Nahid obtained a grant of probate for Seyffedin's Will on June 12, 2015. All of Seyffedin's property passed to Nahid, either pursuant to the terms of Seyffedin's Will or outside his estate, via beneficiary designation or joint tenancy.
- [9] Nahid died on October 4, 2017. Mohammad Hossain Mohseni ("Mohammad") was named the executor of Nahid's estate. Mohammad is a businessman who resides in British Columbia. Nahid's Will provides that her entire estate passes to Ali Enayat, Hadi Enayat, Ameneh Enayat and Maryam Enayat (collectively, the "Enayat Beneficiaries"), her nieces and nephews (her brother's children). Mohammad obtained a grant of probate for Nahid's estate on April 11, 2018.
- [10] Mohammed filed an Affidavit of Assets and Liabilities in support of an estate grant, sworn on February 22, 2018. In that affidavit, Mohammad deposes the value of Nahid's estate at \$4,860,809.04, plus coins and jewelry stored in a safety deposit box.
- [11] Neither Amineh, Amineh's Estate, nor John received any amounts under Seyffedin's Will, Nahid's Will or from either of their estates.
- [12] In this action, John, as personal representative of Amineh's estate, alleges that Amineh contributed money and assets to Seyffedin throughout her lifetime, for Seyffedin to hold and invest on her behalf. John also alleges that Seyffedin received property and collected monies from the estate of Seyffedin and Amineh's mother, Esmat Samsami, which were the property of Amineh.
- [13] This action is against Mohammad as executor of Seyffedin's estate. Mohammad became the executor of Seyffedin's estate on Nahid's death by operation of the chain of executorship, pursuant to s. 145 of the Wills, Estates, and Succession Act, SBC 2009, c. 13 (WESA).
- [14] This litigation therefore pits a nephew from one side of the Seyffedin/Nahid spousal relationship (John; Seyffedin's sister's son) against nieces and nephews on the other side of the Seyffedin/Nahid spousal relationship (the Enayat beneficiaries; Nahid's brother's children) for portions of approximately \$5 million in estate assets. John claims for money and assets he alleges his uncle, Seyffedin, held in a constructive trust for his mother, Amineh. The Enayat Beneficiaries claim the full beneficial interest in the estate of their aunt, Nahid.
- [15] This action is at an early stage. A trial date has not been set.

Discussion

[16] A letter from John and two other family members addressed to Mohammad describes Seyffedin's role in family finances (letter dated June 12, 2019, page 169 of Exhibit "J" to John's first affidavit, made October 3, 2019):

Our Uncle Seyffe was the patriarch of our family. As the patriarch of the family, he was the trusted caretaker of his and his siblings' deceased parents' assets (including real estate and other personal properties). He was also trusted with financial matters of his siblings' assets. His siblings being John's mother, Amineh Pourmohsen, and Amin and Mohsen's father, Yahya Pourmohsen, who both kept assets including money and property (real estate and other personal properties) in his care for as long as we can remember.

[17] John's first affidavit provides information concerning his allegation that his mother, Amineh, provided money and assets to her brother, Seyffedin. He deposed:

19. I was a child through much of the time that my mother made the Contributions to Seyffedin, and when Seyffedin received the Estate Contributions [i.e. from Seyffedin and Amineh's mother's estate] on my mother's behalf. I do not have personal knowledge of the amounts Seyffedin held for my mother. However, my mother indicated to me that it was a substantial amount, and included the following:
 - (a) funds my mother gave to Seyffedin from her earnings before she departed Iran to immigrate to the United States;
 - (b) proceeds of sale of my mother gave to Seyffedin from the sale of valuable personal possessions, including a ring with precious gemstones and a valuable Persian rug;
 - (c) proceeds from the sale of my mother's home in Tehran, in which Seyffedin and Nahid lived for some time after my mother had left for the United States, before Seyffedin sold the home and received the proceeds of sale on my mother's behalf;
 - (d) money and property received from my grandmother's estate, including the proceeds of sale from her real estate, and items (or proceeds from their sale) that my grandmother left specifically to my mother (her only daughter) including jewelry; and
 - (e) funds my mother and grandmother contributed to the purchase of a home in the Los Angeles area for me and my wife, which were not a gift. My mother was on title as to a 20% share of this property, which was later sold, and the contribution made by my mother and grandmother was paid from proceeds of sale to Seyffedin, who held them for my mother.
20. I have been able to discover certain other details about the property which passed to Seyffedin from my mother as part of the Contributions and the Estate Contributions through a series of letters I discovered in my mother's possessions after her death.

...

22. In many of the letters, Seyffedin reacts to my mother pressing for information and the return of her property, acknowledges the Contributions and Estate Contributions, and makes certain promises regarding my mother's property. I do not have copies of my mother's letters to Seyffedin; I only have the responses of Seyffedin.

...

24. I imagine my mother's letters to Seyffedin, and likely much more information which would assist in determining how much Seyffedin held for my mother, are to be found in Seyffedin and Nahid's effects. Thus far, we have had no success in obtaining Mr. Mohseni's cooperation in searching Seyffedin and Nahid's effects for such letters, and any other documents which might assist.

[18] John's first affidavit attaches, at Exhibit "J", copies of correspondence his mother received from Seyffedin. The letters are written primarily in Farsi. John had them translated into English. In a letter dated April 19, 2010 (Exhibit "J", pages 148-149), Seyffedin seems to assure Amineh that he would provide funds to her for her housing needs. The letter states: ". . . Whatever you have given me is available and has also gained interest." Later in the same letter, Seyffedin references the Will he had prepared and says: ". . . The will that is prepared here is for out of Iran assets. In Iran assets will be taken care of based on Iran's law and after my death almost all my assets will be yours. . . "

[19] The correspondence includes drafts of letters Amineh apparently prepared, addressed to Seyffedin. One of the draft letters (at Exhibit "J", page 74) states:

. . . Seifi my dear brother I have expectations and please do not ignore my request of giving me what I have with you in anyway that you think is right before it falls into the inheritance of your own assets. Tell me as soon as possible how much and how you want to give what I have back."

[20] John has not had access to Seyffedin's materials, so he does not know if Amineh sent this letter, or one like it, to Seyffedin.

[21] John submits that correspondence from Seyffedin to Amineh, and the drafts of correspondence Amineh may have sent to Seyffedin, show that Seyffedin failed to account to Amineh regarding the assets and monies he held for Amineh, despite her requests.

[22] The defendants argue that John has not sufficiently set out his claim as he has not indicated the specific assets or funds he alleges Seyffedin held for Amineh, has not indicated when they were given to Seyffedin, and has not indicated the items in the safety deposit box that may have belonged to Amineh. These submissions seem to question whether John's pleadings set out a valid claim. They also show the difficulty John faces in this action: he believes he has a valid claim but does not have access to the evidence required to prove the claim.

- [23] John's applications must be considered on the pleadings filed for this action. The applications are presented early in the litigation process, before proper document discovery and examinations for discovery have been conducted. Requiring John, at this stage of the proceeding, to specify the assets and funds he alleges Seyffedin held for Amineh would deprive him of his right to plead his cause of action and defer proof of it until trial. It would require him to produce evidence at the outset, without the aid of discovery or other means available to him in the litigation. It confuses the function of pleading - to outline the claim or defence - and the purpose of trial - to determine whether, on the evidence, the claim or defence is made out: *McNaughton v. Baker*, (1988) 25 B.C.L.R. (2d) 17, at para. 28.
- [24] The guiding principle to be applied when considering the sufficiency of pleadings is as set out in *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45 at para. 17:
- ... A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action [citations omitted]. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial . . .
- [25] This reasoning should be applied on this application. At this stage of the proceeding, it cannot be said that John's case has no reasonable prospect of success. Indeed, the information in John's first affidavit provides a *prima facie* case for the cause of action set out in his amended notice of civil claim.
- [26] The main issues at the hearing, and the most contentious issues, are John's applications for orders that would appoint Emily Clough as the administrator of Seyffedin's estate and provide that Ms. Clough's fees be paid on a joint and several basis by Seyffedin's and Nahid's estates. Mohammed takes no position with respect to Ms. Clough's appointment as administrator, but submits that Ms. Clough's fees should be paid by John personally. The Enayat Beneficiaries oppose the appointment of Ms. Clough as administrator and propose that one of the Enayat Beneficiaries, Ali Enayat ("Ali"), be appointed administrator.
- [27] Mohammad's lawyer indicated that Mohammad does not want to be involved in this litigation and does not intend to file a response to civil claim to this action. Default judgment will likely be entered against him.
- [28] John says there currently is no personal representative of Seyffedin's estate because Seyffedin's personal representative, Nahid, is deceased and Nahid's executor, Mohammad, could have assumed the role of Seyffedin's executor pursuant to s. 145 of WESA, but refused to do so. Ali was named as an alternate executor in Seyffedin's Will, but, until recently, had not applied for appointment. Nor had anyone else.
- [29] This action concerns Seyffedin's estate. A personal representative for Seyffedin's estate is necessary in order to carry out investigations into the estate and determine the extent of property Seyffedin held in a constructive trust for Amineh at the time of his death.

- [30] John cannot conduct those investigations. Doing so would place him in a conflict of interest, as he is making a claim against the estate in this action.
- [31] Sections 130 and 131 of WESA deal with the priority among applicants for administration of a deceased person's will. Section 132 of WESA provides:
- (1) Despite sections 130 and 131, the court may appoint as administrator of an estate any person the court considers appropriate if, because of special circumstances, the court considers it appropriate to do so.
 - (2) The appointment of an administrator under (1) may be
 - (a) conditional or unconditional, and
 - (b) made for general, special or limited purposes.
- [32] John submits that the special circumstances of this case justify the appointment of an administrator under s. 132 of WESA. He says Ms. Clough is an appropriate choice to be the administrator. She is a lawyer experienced in the administration of estates. She has no interest in the outcome of this litigation.
- [33] John seeks Ms. Clough's appointment for the limited purposes of defending this action, securing assets, conducting investigations to determine the scope of Seyffedin's obligations to Amineh under a constructive trust and facilitating document disclosure. During the hearing, John's counsel clarified that Ms. Clough would be tasked to only investigate Seyffedin's property in British Columbia; the property described in the Statement of Assets and Liabilities Mohammad filed in the Supreme Court of British Columbia probate file for Nahid's estate on February 23, 2018.
- [34] John filed his notice of application seeking Ms. Clough's appointment as administrator on October 29, 2019, more than a year ago. Ali, as one of the Enayat Beneficiaries, opposed that application in an application response filed February 4, 2020. Ali later filed a notice of application on September 21, 2020, seeking an order that he be appointed as executor of Seyffedin's estate.
- [35] Ali's submissions focus on his status as alternate executor in Seyffedin's Will and on the welfare of the beneficiaries. He relies on the following passages from *Veitch Estate*, 2007 BCSC 952:
- [19] The principles in this regard are well-developed. In the first place, courts are reluctant to remove an estate trustee. That is because a priority is to respect the testator's decision to appoint that person
- [22] The main guide in exercising the court's discretion to remove trustees is the welfare of the beneficiaries. It is not the interests of a particular beneficiary that are to be considered, but the benefit of the beneficiaries collectively. [citations omitted]

[36] Ali also refers to *Flores v. Mendes*, 2014 BCSC 951 at para. 40:

Ultimately, the first duty of the court is to place the administration of an estate in the hands of the person who is likely best able or suited to convert it to the advantage of those who have claims against it, either by paying the creditors or by making the appropriate necessary distributions [citations omitted].

[37] Ali says the correct procedure would result in him being appointed to act as executor and argues that John's application effectively seeks to pass over him as executor of Seyffedin's estate because he is interested in the outcome of the action.

[38] Ali submits that it is unclear if John has a financial interest in Seyffedin's estate. He argues filing a notice of civil claim against the estate does not necessarily make John a person with an interest in the estate. As John has not secured a judgment, Ali says any interest John may have in the estate has not crystalized and he therefore does not have the ability to determine who should be appointed to represent the estate. Ali argues that if the estate needs to be represented, he should be the person to do it. Ali points out that he has the support of all the beneficiaries of Seyffedin's estate (i.e. the Enayat Beneficiaries) to act in that role.

[39] John's counsel addressed Ali's submissions in his reply. He argues that the principles Ali relies on are inapplicable to John's application, because:

- a) There is no estate for Ali to administer. Seyffedin's estate is "fully administered" and there are no regular administration chores left to do;
- b) John is not seeking the appointment of an executor. An executor is tasked with carrying out the will-maker's testamentary wishes. Seyffedin's testamentary wishes have been fully administered. Here, John seeks the appointment of an administrator for special circumstances relating to this case only. The desires of Seyffedin and his beneficiary, Nahid, are irrelevant for this purpose;
- c) John points out that the Enayat Beneficiaries are strangers to Seyffedin's estate. They were not beneficiaries of Seyffedin's estate. Nahid was. She is deceased. She and her estate can have no interest in this action. Likewise, her beneficiaries can have no interest in litigation concerning the administration of Seyffedin's estate;
- d) The case authorities Ali relies on concern following a will faithfully and in the interests of the beneficiaries. John argues that protecting the interests of the beneficiaries does not include passing converted property impressed with a trust to the beneficiaries. John submits this case features special circumstances which make it distinct from the usual rules concerning passing over, removing, or selecting a personal representative to administer an estate; and

- e) The order sought concerns investigation. It is not about carrying out Seyffedin's testamentary wishes. It is the opposite. It seeks an investigation to determine what Seyffedin held for his sister, Amineh, and to right a wrong Seyffedin committed in relation to that property.
- [40] John submits that his application seeks an appointment of an administrator in very special circumstances, which have nothing to do with Seyffedin's choice of personal representative or with passing over Ali.
- [41] In addition, John submits that Ali would be a poor choice as administrator of the estate. Ali resides in Washington, D.C. He is employed as a professor at the University of Gothenburg in Sweden. Ms. Clough works as a lawyer in Vancouver. The fact that Ms. Clough is present in the jurisdiction where the administration will take place supports her being appointed rather than Ali: Flores at para. 38. John also fears that if Ali is appointed administrator, steps in the investigation and litigation may be compromised. He is self-interested in the outcome. He only applied to become administrator long after Ms. Clough was proposed for that role.
- [42] These submissions show why the regular rules favouring Ali's appointment should not apply.
- [43] I am satisfied that the special circumstances of this case justify an order pursuant to s. 132 of WESA. John has established that Ms. Clough should be appointed as administrator of Seyffedin's estate for the limited purposes he proposes.
- [44] John seeks payment of Ms. Clough's costs from Seyffedin and Nahid's estates on a joint and several basis. To be clear, John does not seek indemnity for his litigation costs from the estates.
- [45] The administrator will be appointed primarily to investigate the extent that Seyffedin held assets in trust for Amineh. Seyffedin did not account to Amineh on the assets and funds he held for her, despite her requests that he do so. Seyffedin's misdeeds or shortcomings in accounting for Amineh's property and returning it to her have resulted in this lawsuit. The administrator's investigation may remedy some of Seyffedin's shortcomings in this regard. Identifying the assets Seyffedin held for Amineh would determine the assets remaining in the estate.
- [46] In *Parker v. Thompson*, 2014 BCSC 2311, at para. 10, the court indicated that the costs regime for general civil litigation applies in estate litigation, except in a limited number of circumstances where public policy considerations permit costs to be paid out of the estate. As explained in the quote at para. 11 of the case, where the validity of the will, the capacity of the will-maker, or the meaning of the will is in issue, the costs of the parties can be ordered to be paid out of the estate. This is upon the principle that if such an issue must be litigated to remove doubts about the estate, then the interested parties should not be out of pocket if the result is not in their favour.

- [47] Here Ms. Clough's main role, as administrator of Seyffedin's estate, is to try to determine what Seyffedin held for Amineh. This comes within the class of cases set out in para. 5(1) of *Turner v. Andrews*, 2001 BCCA 76, where courts allow payment of costs from an estate if the work to be done would ascertain the interests of the beneficiaries or would answer a question which arises in the administration of the estate. It is work required to determine how much of the estate, if any, should be carved out for what Seyffedin held in a constructive trust for Amineh, and thereby determine the amount available for the beneficiaries.
- [48] The order John seeks would allow payment from the estates of Ms. Clough's fees and expenses for her work as administrator of Seyffedin's estate. Seyffedin's estate no longer has any assets. They were all dispersed to Nahid after Seyffedin's death and are now part of her estate. The trust impressed on Seyffedin's assets passed to Nahid and her estate. In the broad discretion conferred by s. 132 of WESA, it is appropriate to order that Ms. Clough's fees and expenses for her work as administrator be paid jointly and severally by Seyffedin's and Nahid's estates.
- [49] John concedes it would be appropriate to not fetter the judgment of the trial judge regarding costs that may be incurred for Ms. Clough's work as administrator. He suggests that it should be noted that the trial judge would have the ability to determine if John should reimburse Nahid's estate for the costs incurred for Ms. Clough's work. I agree this form of order should apply.

Result

- [50] The applications set out in the notice of application filed by John M. Jahanbani, as personal representative of the estate of Amineh Pourmohsen, Deceased, in action P150458, Vancouver Registry, on October 29, 2019 will result in the following orders:
- a) The applications at Part 1, paras. 1, 3 and 4 relate to the appointment of Emily Clough as administrator of the estate of Seyffedin Pourmoshen Araghi, deceased. They are granted. Ms. Clough's appointment will be for the limited purposes of defending Supreme Court of British Columbia, Action No. S193778, Vancouver Registry, securing assets, conducting investigations to determine the scope of Seyffedin's obligations to Amineh under a constructive trust, and facilitating document disclosure. Ms. Clough is to only investigate Seyffedin's property in British Columbia, being the property described in the Statement of Assets and Liabilities Mohammad Mohseni filed in the Supreme Court of British Columbia probate file for Nahid's estate on February 23, 2018. Ms. Clough is to report on the findings of her investigations to counsel for the plaintiff and counsel for the Enayat Beneficiaries in the litigation action, Action No. S193778;
 - b) The order sought at para. 2 is an alternate order and is not granted;

- c) The order sought at para. 5 is granted on the basis that the Administrator's costs will be payable on a full indemnity basis jointly and severally from the estate of Seyffedin Pourmohsen Araghi, deceased, and the estate of Nahid Enayat Araghi, deceased.

[51] The plaintiff's notice of application filed in this action on October 29, 2019 will result in the following orders:

- a) The application at Part 1, para. 1 concerns amendments to the notice of civil claim to indicate Ms. Clough's role as administrator of Seyffedin's estate. It is granted;
- b) The applications at Part 1, para. 2 were adjourned generally during the course of the hearing;
- c) The application at Part 1, para. 3, is granted by consent of all parties, with the documents to be produced by H. Kamoosi Notary Corp. to Ms. Clough;
- d) The application at Part 1, para. 4, is granted by consent of all parties, with the documents to be produced by Veritas Law to Ms. Clough;
- e) The application at Part 1, para. 5, is not opposed by any party and is granted;
- f) The application at Part 1, para. 6(a) is granted. Within 30 days of today, Mr. Mohseni is to prepare and deliver to Ms. Clough a catalog of the contents of the CIBC safety deposit box registered in the name of Seyffedin Pourmohsen Araghi and/or Nahid Enayat Araghi, deceased. The applications in paras. 6(b) and (c) are adjourned generally; and
- g) The application at Part 1, para. 7, concerning the costs of production of documents pursuant to the orders at paras. 3, 4 and 6, is granted.

[52] The application in the notice of application filed by Ali Enayat on September 21, 2020, seeking to have himself appointed as executor of the estate of Seyffedin Pourmohsen Araghi, deceased, is dismissed.

[53] Are there submissions on costs for this hearing?

[SUBMISSIONS RE: COSTS]

[54] Costs of this application are to be determined as costs in the cause, pursuant to Rule 14-1(12).

"Master Vos"

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