

CANADA / JUDGMENT

Koochin Estate (Re)

2024 BCSC 2447

COURT

Supreme Court of British Columbia

DECIDED

10 December 2024

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2024 BCSC 2447 Koochin Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Koochin Estate (Re),

2024 BCSC 2447

Date: 20241210

Docket: S23405

Registry: Nelson

In the Matter of the Estate of Katie Koochin, Deceased

Before The Honourable Madam Justice Lyster

Oral Reasons for Judgment

Counsel for the Petitioner:

P. Beug

On his own behalf:

G. Koochin

Place and Date of Hearing:

Rossland, B.C.

December 10, 2024

Place and Date of Judgment:

Rossland, B.C.

December 10, 2024

- [1] THE COURT: These are my oral reasons in this matter. Should a transcript be ordered for any reason, I will review it to ensure that citations and quotations are complete and accurate and for readability. The analysis, reasoning, and results will not change.
- [2] The court has before it a petition filed by Sara Makortoff in her capacity as the executor of the estate of Katie Koochin. I will from time to time refer to the members of the family by their first name, of course, meaning no disrespect in doing so but for ease of reference.
- [3] Katie Koochin was the mother of Sara Makortoff, Valerie Veysey, Marisha Koochin, and George Koochin. By this petition, Sara, in her capacity as executor, seeks a number of orders:
- a) that Mr. Koochin vacate the lands and premises at 1912 Makayev Road, Castlegar, no later than January 2, 2025;
 - b) a writ of possession;
 - c) that Mr. Koochin remove his personal possessions from the property no later than January 2;
 - d) that the executor may dispose of any possessions remaining on the property after that date;
 - e) that Mr. Koochin not return to the property after January 2;
 - f) liberty to apply for additional orders as might be necessary to enforce the court's order; and
 - g) special costs, or alternatively costs.
- [4] Mr. Koochin, for his part, opposes all of the orders sought.

Background

- [5] By way of brief background to this matter, Mrs. Koochin passed away on April 20, 2023. She had a will pursuant to which Sara was named as the trustee. At paragraph 6, Mrs. Koochin directed her trustee to hold her property, on a number of trusts and to divide the residue of her estate amongst her children, that is, the four children I have named, in equal parts, share and share alike.
- [6] In paragraph 9, she directed that her trustee, in the administration of her estate could, amongst other things, convert her estate, or any part of it, into money. At paragraph 10, she directed that in dividing or distributing her estate, her trustee could decide which assets of her estate to allocate to any share or interest in her estate and the value of those assets.
- [7] At paragraph 13, she directed that her trustee, subject to any contrary provisions in the will, may exercise any rights, powers, and privileges in connection with any property, personal or real, forming:

part of my estate to the same extent as I could if I were alive and the only owner of that property. My trustee's powers which may be exercised how, when, and on whatever terms my trustee decides include at (a) selling any of that property.

- [8] It is the Makayev Road property which is in addition here and which forms, as I understand it, the bulk of the estate.
- [9] Probate was granted on October 19, 2023.
- [10] Mr. Koochin lives in a secondary home on the property. He has done that for some years, and he has done so without paying rent and without any tenancy agreement. He continues to live in that secondary home on the property.
- [11] After Mrs. Koochin died, the four siblings met in May 2023. At that time, George expressed a desire to purchase the property. He needed to work on obtaining financing, and he was going to do that while Sara sought to have the will probated.
- [12] In October 2023, after probate was granted, there were further discussions between Sara and George, and Sara agreed to give George a further six months to obtain the financing necessary to purchase the property from the estate.
- [13] In April and May 2024, there were further discussions and negotiations, or at least attempted negotiations, in the course of which Sara made George an offer for him to purchase the property, and George did not accept that offer, nor did he make a counter-offer. Ultimately, in June 2024, Sara listed the property for sale.
- [14] According to the evidence before the court, including an affidavit from the realtor, there were some difficulties in terms of George providing access to the secondary home on the property to the realtor and making inappropriate remarks to potential purchasers.
- [15] An offer was made by third party purchasers on August 15, 2024. Sara gave George notice of that offer and provided him with a further 48 hours to make an offer on the property. He did not make an offer. Sara entered into negotiations with those third party purchasers and entered into a contract of purchase and sale for the property on August 18, 2024, with the property being sold for \$790,000 (the "Contract").
- [16] All conditions on the Contract have now been removed, and the sale is to close on January 10, 2025. Pursuant to the terms of the Contract, the estate must provide the purchasers with vacant possession, thus leading to the application now before the court.
- [17] As I have said, George Koochin opposes the orders sought. In heartfelt submissions to the court, he referred, amongst other things, to wanting to maintain the legacy of his parents and grandparents who had owned this property. He referred to the historical significance of the property and wanting to maintain that historical significance. He refers to his desire to establish an art academy which would operate on the property, and he gave extensive submissions about the efforts he has made to establish that academy. He says he has nowhere else to go and cannot afford to move.

- [18] It is clear on all of the evidence, including Mr. Koochin's unsworn submissions, that he has been unable to obtain the financing necessary for him to purchase the property. He has spoken to lenders, and they have not been willing to grant him a mortgage or to give him a loan. He has spoken to various community agencies and, while some of them appear to have been supportive of his desire to open an art academy, none of them have been prepared to provide funding for him to do so. He has spoken to friends and family.
- [19] The long and the short of it is he cannot get the money necessary to buy the property. He asks his sisters, his fellow beneficiaries under the terms of Mrs. Koochin's will, and, indeed, this court, to help. He says he would do anything to stay and to achieve the dreams he has for this property.
- [20] This court, however, cannot force the estate to wait forever for Mr. Koochin to obtain financing to purchase the property. He has been provided with ample time to obtain the financing necessary to purchase the property. Sadly he simply has been unable to obtain it. Certainly, this court cannot force the estate or the other siblings to finance Mr. Koochin's purchase of the property by way of a vendor take-back mortgage or some other mechanism.
- [21] To not grant the orders sought at this point would require the estate to breach its contract with the third party purchasers which, of course, would expose the estate to the risk of potential liability for breach of contract. It is Sara's obligation as the executor to act in the best interests of the estate and the best interests of all the beneficiaries, and she has done so through entering into the Contract.
- [22] The court is not, and could not, be without sympathy to the situation in which Mr. Koochin now finds himself. His plans and his dreams for this property are laudable. I further accept that being required to leave the property by January 2, 2025 may be difficult.
- [23] However, in that regard, it must be noted that Mr. Koochin has had notice since August 2024 of this pending sale, yet it would appear he has chosen to take no steps to leave, or to prepare to leave, the property.
- [24] In that regard, it is notable what he told Valerie in September 2024, as she states in her affidavit at paragraph 8:
8. In September 2024, I was working on cleaning out the larger house on the property. On September 12, 2024, George advised me that he was going to get an injunction to stop the sale of the Property. He told me that he would make it so miserable for anyone who was interested in the Property, that no one will want to buy it. He stated that we had no right to sell the Property. He accused me and my sisters of being greedy, vindictive, and malicious.
- [25] He has also, as set out in the affidavit of attempted service of Ms. Morrow, erected signs on the property, stating, "this home is not for sale". He appears to be willing to do anything to try and keep the property from being sold.

- [26] In the course of his submissions, Mr. Koochin sought to rely on the Universal Declaration of Human Rights. That declaration has simply no application to the matter before this court. He said in the course of his submissions that his parents and, in particular, his mother, had told him words to the effect that he and his family could stay on the property. There is, however, no evidence to substantiate that, and there is no claim before me of Mr. Koochin having some sort of beneficial interest in the property.
- [27] He complains about the interpretation of the will, but there has been no application under the Wills, Estates and Succession Act, S.B.C. 2009, c. 13. In any event, the will is quite clear - Sara Makortoff, as the executor, has the authority to act as she has done and as she intends to do. She has further taken the proper approach in filing this petition as *Rawlins v. Rawlins*, 2023 BCSC 225 at para. 58 makes clear.
- [28] Therefore, pursuant to s. 86 of the Trustee Act, R.S.B.C. 1996, c. 464 and this court's inherent jurisdiction, I grant the orders sought at paragraphs 1-6 of the petition. With respect to the writ of possession which is sought at paragraph 2 of the orders sought, the enforcement of that writ is suspended until January 3, 2025.
- [29] What that is intended to do is to give Mr. Koochin the opportunity to comply with this court's orders, and it will only be if he refuses, or fails to do so, that that writ of possession will become enforceable.
- [30] The estate seeks special costs or alternatively costs. I have not heard from the parties on costs. It is my view, subject to any submissions which the parties might have on that subject, that the estate should have its costs at scale B. While Mr. Koochin's conduct leading up to this matter has been problematic, I do not see anything in his litigation conduct, per se, which would rise to the level of being scandalous and reprehensible to support a special costs order.
- [31] Any submissions on costs, Mr. Beug?
- [32] CNSL P. BEUG: No. We are seeking some costs at scale B.
- [33] THE COURT: Thank you. Any submissions on costs, Mr. Koochin?
- [34] G. KOOCHIN: I'm sorry. I don't understand the question.
- [35] THE COURT: As the successful party, the estate is generally entitled to seek from you, as the unsuccessful party, a portion of its costs in having had to come to court to get these orders.
- [36] G. KOOCHIN: Well, I have no money. What -- what are we -- what are we supposed to do? We're going to -- we're going to -- we're going to starve to death. This is -- this is -- this is a kind of genocide. I'm sorry.
- [37] THE COURT: Well, that is my ruling. The court will now stand down. Thank you.

"L.M. Lyster J."

LYSTER J.

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