
CANADA / JUDGMENT

Liu Estate (Re)

2019 BCSC 597

COURT

Supreme Court of British Columbia

DECIDED

15 March 2019

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2019 BCSC 597 Liu Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Liu Estate (Re),

2019 BCSC 597

Date: 20190315

Docket: P133761

Registry: Vancouver

Re The Estate of Xian Liu, Deceased

Before: The Honourable Mr. Justice Grauer

Oral Reasons for Judgment

Counsel for Applicant Li Xiaoqi:

M.S. Kerwin

Counsel for Respondent Jianhua Li:

H.H. Low, Q.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

March 15, 2019

Place and Date of Judgment:

Vancouver, B.C.

March 15, 2019

- [1] THE COURT: The applicant, Xiaoqi Li, is the daughter and only child of the deceased, Xian Liu, who died intestate on June 19, 2013, in China.
- [2] The respondent, Jianhua Li, is the surviving husband of the deceased and the father of the applicant. He is also the administrator in British Columbia of the deceased's estate by a grant of probate issued March 21, 2014, with Ms. Li's consent. Mr. Li and Ms. Li are both beneficiaries of that estate.
- [3] At the time of her death, the deceased and Mr. Li were the registered owners as tenants-in-common of two real properties in West Vancouver, which I will call 2783 and 2785. Their interests were equal. The properties have a combined value in the neighbourhood of \$14 million. As a result of the grant of administration, the deceased's two undivided 50 percent legal interests became registered in the name of Mr. Li as administrator.
- [4] Following the deceased's death, Mr. Li and Ms. Li reached an agreement, the terms of which are disputed. In the result, Mr. Li's personal interest in 2783 was transferred to Ms. Li.
- [5] On July 18, 2017, Ms. Li commenced a civil action in this court against Mr. Li, both personally and in his capacity of administrator of her mother's estate. In this action, Ms. Li claims, among other things, that she owns all of the beneficial interest in both West Vancouver properties. Ms. Li asserts that the properties were purchased with funds that were hers, not her parents.
- [6] Mr. Li has responded by alleging that Ms. Li fraudulently caused him to transfer to her, without his knowledge or consent, his one-half interest in 2783 and also his full title to another property (not part of the estate). He denies that Ms. Li has any beneficial interest in the West Vancouver properties.
- [7] I will not go further into the details of the allegations raised in that civil action.
- [8] With that context in mind, Ms. Li now applies for an order removing Mr. Li as personal representative of the estate, and appointing Nicole Garton as judicial trustee to administer the estate in his place, pursuant to s. 97(1) of the Trustee Act, RSBC 1996, c 464. She also seeks corollary relief, including a reference to the Registrar to pass Mr. Li's accounts prior to his discharge as administrator of the estate.
- [9] For the following reasons, I conclude that the application must be dismissed.
- [10] Counsel agree as to the applicable law. The deceased died before the Wills, Estates and Succession Act, SBC 2009, c 13, came into force, so that the provisions that apply to the distribution of the deceased's estate and the removal of the personal representative are to be found in the Estate Administration Act, RSBC 1996, c 122.

- [11] The intestacy rules under the Estate Administration Act, s. 85, provide that Mr. Li would be entitled to \$65,000 from the net value of the deceased's estate, with the residue then passing in equal shares to Mr. Li and Ms. Li. Absent appropriate agreement, this would require sale of the West Vancouver properties to the extent that they indeed constitute assets of the estate.
- [12] The court's power to remove an administrator is found in the Trustee Act and in its inherent jurisdiction. It is ancillary to the court's duty of ensuring that the estate is being properly administered, and its exercise is to be guided by the welfare of the beneficiaries: see for instance, *Conroy v Stokes*, [1952] 4 DLR 124 (BCCA).
- [13] Ms. Li asserts that an order removing Mr. Li as personal representative and appointing a judicial administrator is in the best interests of the beneficiaries. She notes in particular that Mr. Li took no steps to administer the estate between March 2014 and the commencement of her civil action in 2017, and that none of the assets of the estate has been distributed to the beneficiaries.
- [14] The purpose of an appointment of a judicial trustee pursuant to s. 97 of the Trustee Act is "to provide a middle course in cases where the administration of the estate by the ordinary trustee has broken down and it was not desired to put the estate to the expense of a full administration": *Alexander v Royal Trust Co*, [1949] 2 DLR 824 (ASC Appl Div); see also *Weinstein v Weinstein* (1996), 13 ETR (2d) 227 (BCCA). A judicial trustee should only be appointed for special reasons and where the circumstances warrant, such as where the administration of property by a trustee has broken down: *Wright v Canada Trust Co* (1984), 55 BCLR 349 (SC).
- [15] In this case, Ms. Li points particularly to the breakdown in trust between her and her father, given her claim and his allegations of fraud, resulting in significant friction, and the absence of appropriate activity on his part to wind up the administration of the estate. She asserts that there is a degree of hostility and distrust so strong that it cannot reasonably be expected that her father would act impartially, and she submits that it is necessary to appoint a judicial administrator who will act as a properly neutral third party able to take appropriate steps to administer the estate even-handedly, pending the resolution of the outstanding litigation.
- [16] The serious and unfortunate allegations between the parties cannot, of course, be resolved on this application, but I do not see that the concerns raised by Ms. Li have any air of reality to them in the context of the administration of this particular estate.
- [17] As noted, the assets of the estate purport to comprise the two West Vancouver properties. There is absolutely nothing Mr. Li or any other administrator could do to distribute the assets of the estate while Ms. Li's action is ongoing. Appointing a judicial administrator would make no difference at all. If Ms. Li's position in the civil action proves correct, then the estate will have no assets to distribute.

- [18] In this regard, Mr. Li's interests, as 50 percent beneficiary along with Ms. Li, are aligned with the interests of the estate in protecting its assets against a claim that those assets belong to someone else. Ms. Li's interests, on the other hand, are opposed to those of the estate, hence her inclusion of the estate as a defendant in her civil action. The real conflict of interest here is between Ms. Li as beneficiary of the estate and Ms. Li as purported sole beneficial owner of the assets of the estate, not between Mr. Li and Ms. Li as joint beneficiaries, or between Ms. Li as beneficiary and Mr. Li as administrator.
- [19] With respect to administering the estate, in terms of managing the expenses of the two properties and avoiding waste, it is true that for a period of time, from at least 2014 when Mr. Li discovered what he alleges to be Ms. Li's fraud, to 2017, Ms. Li was covering the expenses. During that time, Mr. Li deposes that he made numerous attempts to contact his daughter to try to resolve the issues that had arisen between them, but received no responses from her. That evidence is not contradicted. Since then, there can be no doubt that Mr. Li has undertaken the full, proper administration and protection of the properties, including appointing a property manager, paying all of the expenses, seeing to rental, and so on. Consequently, on the evidence, there is no need for the appointment of a judicial administrator to administer and preserve the assets of the estate. The assets are not endangered.
- [20] Indeed, by defending Ms. Li's claim, which he is doing at his own expense, Mr. Li is protecting the assets of the estate. It is not easy to see how this could be improved by the appointment of a judicial administrator who would not have the means to defend the estate and would presumably have to sell the assets to cover the cost.
- [21] It is also correct that Mr. Li has passed no accounts since his appointment in 2014. That in itself is rarely a ground for removal. Similarly, friction or hostility is not of itself a reason for removal unless grounded on the way in which the estate has been administered -- see Conroy at page 127. Examples include misconduct, such as substantial overcharges. See also *Rose v Rose* (2006), 81 OR (3d) 349, where the high degree of conflict between the trustee and the beneficiaries was particularly problematic because there was also a conflict of interest in the manner in which the trustee was using trust properties. Objectivity was lacking.
- [22] In the present case, unlike the authorities upon which she relies, Ms. Li has not demonstrated any way in which her welfare as beneficiary is threatened by her father continuing in the position of administrator. On the evidence before me, I am satisfied that the welfare of the beneficiaries is best served by maintaining the status quo until such time as the litigation between Ms. Li and the estate and her father has been resolved.. Doing what Ms. Li asks might assist her as claimant against the estate, but it is not necessary to protect her interests as beneficiary. It follows that Ms. Li has failed to show sufficient cause for the appointment by the court of a judicial trustee in place of the existing trustee in accordance with s. 97(1) of the Trustee Act.

[23] Given the unique circumstances of this case, I am also satisfied that it would serve no purpose to require a passing of accounts at this time. The application is accordingly dismissed.

[24] The parties may speak to costs. You may go first, Ms. Low.

[SUBMISSIONS AS TO COSTS]

[25] THE COURT: Well, I think costs should follow the event, and Mr. Li will have his ordinary costs of this application.

[26] I am grateful to counsel for the thorough and expeditious way in which this matter was handled. Thank you.

"GRAUER, J."

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