

CANADA / JUDGMENT

Neubauer v. Neubauer

2025 BCSC 2584

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2584 Neubauer v. Neubauer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Neubauer v. Neubauer,

2025 BCSC 2584

Date: 20251110

Docket: S2510350

Registry: Victoria

Between:

Angela Neubauer

Plaintiff

And:

Joyce Elane Neubauer and Colin McCarthy

Defendants

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(In Chambers)

Appearing on her own Behalf:

A. Neubauer

For the Defendant Joyce Neubauer:

No appearance

Counsel for the Defendant Colin McCarthy

appearing by videoconference:

E. De Vos

Place and Date of Hearing:

Victoria, B.C.

October 24, 2025

Place and Date of Judgment:

Victoria, B.C.

November 10, 2025

- [1] THE COURT: Because I am giving these reasons orally, I reserve the right to edit a written version for clarity and for errors. The result will not change nor will the basis for the decision.
- [2] As is often the case in estate matters, many of the parties and other individuals referred to have the same last name, in this case "Neubauer". I will refer to these people by their first names to avoid confusion. I intend no disrespect.

Background

- [3] The overall proceeding is a challenge to the will of Gary Neubauer, who died on April 20, 2024, pursuant to the Wills Variation Act. The challenger is Gary's daughter, Angela Neubauer.
- [4] In the will, Gary left the remainder of his estate to his widow, Joyce Neubauer, if he predeceased her (as he did). Joyce has two children, Rebecca McCarthy and Geoff Wall. Angela and her brother, Derek Neubauer, are Gary's biological children. Gary told the notary who drafted his will, which was dated April 13, 2023, that he and Joyce intended to create "mirror wills" providing that the remainder of the property would be divided equally between the four children after the later of them died. However, the will, as drafted, leaves the remainder of the estate to Joyce without limitation.
- [5] In this specific application, which is what I am going to address today, Angela seeks:
- a) to remove Colin McCarthy, who is the husband of Rebecca and was named as the executor in Gary's will as the executor of the estate;
 - b) to stop ("enjoin") the pending sale of 38820 Buckley Avenue in Squamish (the "Family Home"), the principal asset of the estate.

- [6] There is an accepted offer on the Family Home for \$1.45 million, which compares to an appraised value of \$1.5 million. The offer is without any conditions and accepts the Family Home "as is". It closes on January 13, 2026. Angela objects to the sale on two grounds: first, that Mr. McCarthy was in a conflict of interest when he accepted the offer on behalf of the estate, and, second, that more value could have been obtained if the Family Home had been fixed up and made ready for the market.
- [7] More generally, Angela says Mr. McCarthy has not been a suitable executor and asks for a corporate trust company to be substituted pursuant to s. 158(3) of the Wills, Estates and Succession Act ("WESA").
- [8] In my view, four issues arise as a result of Angela's application:
- a) Was the sale of the Family Home "improper" because it was not arm's length? This is not so much about the substance of the transaction, but rather about whether Mr. McCarthy was too close to the purchaser to make the sale.
 - b) The second is whether the sale of the Family Home was "improvident", i.e., would better value demonstrably have been obtained if it was put on the market for longer?
 - c) Based on my findings on these two issues, should the sale of the Family Home be stopped or allowed to proceed?
 - d) In light of my findings on those issues, as well, and all the other relevant factual questions, should Mr. McCarthy be removed as an executor?

What I am Not Deciding

- [9] I want to be clear what I am not deciding. I am not deciding whether the will should be varied. That is for later in the proceeding. I acknowledge Angela's point that she does not get to see Joyce's will to ensure that it is a mirror to that of the deceased. I am not deciding that.
- [10] I am also not deciding whether everything Mr. McCarthy did as executor was correct. Ms. De Vos acknowledged that he made some errors. That is only before me to the extent these errors are said to justify removing him as an executor. One thing Angela pointed out was that she was not advised of her father's death for over a month and I understand why that would be upsetting, regardless of my analysis of the relief she seeks.

Was the Sale at Arm's Length?

- [11] Mr. McCarthy's evidence is all there is about the relationship between him and the buyer. He deposes to the following:

Squamish is a small community, and I recognized the name of the buyer from when I started working at the District of Squamish thirteen years ago.

We had no communication prior to or after the offer.

I have not had any business dealings with the buyer.

[12] Angela says Mr. McCarthy is in a conflict of interest as a result of this. But in my view, just being acquaintances, particularly in a community the size of Squamish, is not the same thing as being not at arm's length.

[13] I accept that on the evidence that I have there is not the kind of relationship between Mr. McCarthy and the buyer that would give rise to a conflict, especially taking into account that this is not a sale in Vancouver or a very large city, but in Squamish.

[14] A reasonable person apprised of these facts would not think they would give rise to an inference that Mr. McCarthy would accept anything less than he thought would maximize the return to the estate, as a result of this limited acquaintance.

Was the Sale Improvident?

[15] When an executor or any other trustee sells an asset, a particularly important asset like the Family Home in this case, they have an obligation to get good value. A provident sale is one that gets good value for the estate. Price is obviously central to value, but these are not the same. Timing and conditions are also relevant.

[16] While the Court has some role in ensuring that an executor or trustee has discharged this duty, it must give considerable deference to their judgment. After all, it was the executor who was entrusted with making these decisions, not the applicant or the court. Moreover, if courts are too interventionist, this will have the perverse effect of making these transactions more difficult and will divert the estate's limited resources to litigation. So a judge will not second-guess an executor or trustee on judgment calls about value, so long as they exhibited the kind of prudence one would expect an executor or trustee to exercise with respect to their own property.

[17] In this case, the Family Home was only in Gary's name, but it was the matrimonial home of him and Joyce for approximately two decades. Before Gary died, he and Joyce decided they wanted to downsize. So it was reasonable in the circumstances for Mr. McCarthy to seek to sell and there was some pressure on him to do so quickly.

[18] Moreover, Mr. McCarthy was limited to the resources of the estate. It did not have much in the way of additional money to pay for repairs or improvements, even if those would ultimately increase the return. Mr. McCarthy had to work within this constraint.

[19] The property's assessed value as of July 1, 2024, was \$1.475 million, according to the local authorities, of which \$1.35 million was land value and \$125,000 was improvements.

[20] Mr. McCarthy deposes, and I do not have any evidence that contradicts this, that the Family Home needed major repairs including:

a) fixing leaking from the pool;

- b) the woodstoves and fireplaces were aging, which Mr. McCarthy -- who I should note works in the area of building inspection -- noted could be an insurance concern;
 - c) sinking driveways and sidewalks and a sinking workshop floor; and
 - d) a blown down fence.
- [21] Mr. McCarthy obtained a professional appraisal from Daniel M. Campbell, a professional appraiser. The appraisal was done on "as-is" basis, so the value is determined based on the assumption that there is not going to be repair work done. I note that it was not in the form of an expert report for court, but it is admissible in this proceeding as showing what Mr. McCarthy did to get the best value for the estate.
- [22] Mr. Campbell's estimated value for the Family Home was \$1.5 million as of September 12, 2025. This was based on a direct comparison approach, which relied in part on older sales, and I think I can take judicial notice that there has been a slow-down in the real estate market in British Columbia.
- [23] The realtor, Gena Belanger, listed it for \$1.499 million. An offer was received for \$1.45 million and Mr. McCarthy accepted it on behalf of the estate.
- [24] The difference between the appraised value and the offer is not unusual, especially in the context of an estate sale, and would not typically be the basis for interference by a court.
- [25] The offer may have been quick but it was on a no conditions "as-is" basis.
- [26] Angela's most persuasive argument is that the Family Home might have obtained a higher value if some money had been invested into doing the repairs Mr. McCarthy identified and possibly other realtor-recommended improvements. The appraisal is clear that the value is based on the "as-is" situation. It is at least arguable the estate might have been better off if it invested a little in improvements and not had to take an "as-is" offer.
- [27] However, the estate did not have resources to do significant renovations. Really, the Family Home was the only significant exigible asset. It would have had to be a beneficiary or an expected beneficiary that put in money and it is understandable that no one did, especially in this context where there is estate litigation.
- [28] It is also understandable that Joyce wanted to go through with the plan she and Gary had to downsize after Gary's death. In any event, the estate had no way of compelling her or anyone else to invest in improvements, assuming that she had the money to do that.
- [29] In addition, the appraisal mentions that the area is undergoing transition to multi-family dwellings and the assessment suggests that the land value is high relative to the improvements value. It may well be that investing in repairs would not have in fact obtained a higher price or at least not one that would have justified the investment. But in any event, this was not an option for the estate given its lack of liquid assets to fund such repairs.

[30] I think we have to recognize that any decision to accept an offer as opposed to continue on the market is a judgment call, and this Court is not in a better position than the executor to make that call. Deciding to accept the offer was not improvident.

Should I Enjoin the Sale?

[31] So now I turn to the applying this to the test of whether I should enjoin the sale.

[32] The test for any injunction of this nature is set out in the case of R.J.R.-MacDonald. The person seeking the injunction has to establish three things: one, that there is a serious question to be tried; second, that they would suffer irreparable harm if the injunction is not granted; and third, that the balance of convenience between irreparable harm they would suffer if the injunction is not granted but they are successful on the merits outweighs the irreparable harm that would be suffered by the party against whom the injunction would take place if they are successful on the merits.

[33] I do not think it was disputed that Angela has a serious question to be tried on the merits of the case. That is a low standard. It means that it is not a case that is doomed to fail. I accept that she meets this standard in terms of challenging the will.

[34] I also accept that she has established some irreparable harm, which is the next thing Angela would have to establish. This just means harm that is not likely to be compensable in damages in the event that the party seeking the injunction is successful. In this sense, Angela does have irreparable harm because if she is right that the house is being sold for too little and she is successful in challenging the will and is entitled to some part of the estate, there is no way for her to get more than a share of the amount obtained, and there would be no way to go back and get damages against anyone.

[35] However, the balance of convenience weighs against enjoining the sale. The irreparable harm point goes in both directions. If the sale is delayed and there is no money in the estate for upkeep, then the condition of the Family Home will continue to deteriorate. It is not at all clear that the market will get better, and there is a real prospect that this would just mean that there would be another sale ultimately have to be approved by a court, which would of course cause expense to the estate, and there is no real reason for me to think that the value to the estate, were I to do this, would be more than it is if I dismiss the application for the injunction.

[36] So the weight of irreparable harm is greater on the parties against whom the injunction would be brought. The estate would certainly have no effective recourse against Angela. She has not offered to put it in an undertaking for damages, and even if she did I do not think the estate would be very likely to recover or that it would actually be a good idea for anyone if that happened.

[37] So I am therefore not going to enjoin the sale. The sale can complete as agreed.

Legal Test for Removal of an Executor

[38] Now, I am going to turn to the question of whether Mr. McCarthy should be removed as executor. Section 158(3) of WESA states in relevant part:

- (3) Subject to the terms of a will, ... the court, by order, may remove or pass over a person otherwise entitled to be or to become a personal representative if the court considers that the personal representative or person entitled to become the personal representative should not continue in office ..., including, without limitation, if the personal representative or person entitled to become the personal representative, as the case may be,

...

(f) is

(i) unable to make the decisions necessary to discharge the office of personal representative,

(ii) not responsive, or

(iii) otherwise unwilling or unable to or unreasonably refuses to carry out the duties of a personal representative,

to an extent that the conduct of the personal representative hampers the efficient administration of the estate, ...

[39] Section 158(3) is inclusive, and so therefore it is not necessarily a case one has to fit within one of the subparagraphs but they are illustrative of the type of reasons that would be legitimate to remove or pass over a person otherwise entitled to be or to become a personal representative.

[40] There is some case law on the application of s. 158(3) that makes clear that the will-maker's choice of executor is entitled to deference and will only be interfered with if there is clear and cogent evidence of a reason to do so. The main consideration is the welfare of the beneficiaries. The executor or trustee's acts or omissions must be of such a nature as to endanger the administration of the trust: *Parker v. Thompson*, 2014 BCSC 1916, at para. 37.

Should Mr. McCarthy Be Removed as Executor?

[41] Applying this to Mr. McCarthy, Angela points out that he distributed some of the effects belonging to the estate before she brought her claim. I will not get into the details because the evidence is not totally clear about this, but in her view, that includes valuable pieces of Aboriginal art and albums and LPs of great sentimental and possibly some financial value. She is understandably upset about the time it took to notify her about her father's death, and, as is often the case in estate litigation, there do appear to be tensions between Gary's original family and his widow and stepchildren that go back quite likely to when Gary first got together with Joyce.

- [42] However, none of this is "clear and cogent" evidence of acts or omissions that endanger the administration of the trust. I need to give weight to the deceased's right to decide who would be his executor.
- [43] Also, when I think about the welfare of the beneficiaries, I have to consider that the beneficiaries would be the ones who would ultimately pay for the cost of a professional trust company. That cost would be substantial. The main asset of the estate after the sale will be the proceeds of the sale of the Family Home, which will remain in a trust account, and hiring a trust company, which would certainly be in the tens of thousands of dollars, is unlikely to be worth it for an estate of this size and lack of a diverse range of assets. I do not think this would be in the interest of the beneficiaries.
- [44] On the evidence before me, while he may have made mistakes, and while there definitely has been these longstanding tensions, Mr. McCarthy has not done anything fundamentally wrong or has endangered or is likely to endanger the administration of the trust.

Order

- [45] I therefore dismiss Angela Neubauer's applications. The cost of the executor will be out of the estate, and Ms. Neubauer will bear her own costs.

"J. G. Morley, J."

The Honourable Justice Morley

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