

CANADA / JUDGMENT

Pachaly (Re)

2025 BCSC 1784

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1784 Pachaly (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pachaly (Re),

2025 BCSC 1784

Date: 20250915

Docket: P210938

Registry: Victoria

In the Matter of the Estate of Harald von Wallenberg Pachaly, Deceased

Before: Registrar Gaily

Reasons for Decision

Counsel for the Applicant, Andreas von Wallenberg Pachaly, Beneficiary:

D. Parlow

Y. Gao

Counsel for the Respondent, Stephan Maximilian Treuleben-von Gans, Executor and Trustee of the Estate of Harald von Wallenberg Pachaly, Deceased:

J. Dorfmann

J. Fung

Place and Date Hearing:

Vancouver, B.C.

July 31, 2025

Place and Date of Decision:

Vancouver, B.C.

September 15, 2025

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Introduction

- [1] In the context of a reference to the registrar to pass the accounts of the executor of the British Columbia estate of Harald von Wallenberg Pachaly (the "Deceased"), the Deceased's son and sole beneficiary of the BC estate, Andreas von Wallenberg Pachaly (the "Beneficiary"), applies for an order requiring further disclosure from Maximilien Treuleben-von Gans (the "Executor"). In particular, the Beneficiary seeks an order that the Executor provide the Beneficiary's expert physical access to the Executor's iPad, on which, using the Apple Notes app, the Executor recorded notes of the tasks he performed and the time he spent administering the estate (or alternatively, an order providing access to the Executor's iCloud account), so the Beneficiary's expert can review the metadata associated with the relevant notes.
- [2] For the reasons detailed below, I dismiss the Beneficiary's application and deny the relief sought because I find that the Beneficiary has not met the evidentiary burden required to obtain the extraordinary order he seeks. The metadata the Beneficiary seeks is a document within the meaning of the Supreme Court Civil Rules [SCCR] that can be ordered produced. The metadata is only accessible from the physical device or the Executor's iCloud account. An order to produce an electronic device, such as the Executor's iPad, for inspection by an expert to obtain metadata is an exceptional order. To justify it, there must be strong evidence, not just mere speculation, that the party whose electronic device is sought is not disclosing or is deleting relevant information. Based on the evidence before me, I find that the Beneficiary has not produced strong evidence that the Executor is not disclosing relevant information justifying the order he seeks. Further, I find that in the circumstances of this estate matter, the order that the Executor produce his iPad or allow the Beneficiary's expert access to his iCloud account, would result in an unjust infringement of the Executor's privacy and provide access to private information of third parties.
- [3] I award the Executor his costs of the application, payable as special costs from the BC estate.

Background to the Application

- [4] The Deceased died in Germany on July 13, 2021, leaving property and assets in Victoria, BC (the "BC Estate"), as well as an estate in Germany, governed by two separate wills. The Deceased appointed the Executor as his executor under both wills, dividing the estates between his two surviving children (the Beneficiary's sister is the sole beneficiary of the German estate). The BC estate consisted of a 95-suite rental apartment building in Victoria (the "Aquarius"), as well as funds in four accounts at a Victoria branch of the Bank of Montreal (the "BMO Accounts"). At the time of his death, the Deceased's BC Estate was valued at approximately \$21 million CAD and there were no liabilities.
- [5] In October 2021, the Executor submitted the estate grant in the Victoria registry and on November 29, 2021, the Executor was granted probate of the BC Estate. On November 9, 2022, the Executor sold the Aquarius for \$26,650,000 CAD. The Executor prepared interim accounts, which were provided to the Beneficiary in April 2023. The Beneficiary did not consent to the accounts and through counsel, advised the Executor to commence proceedings to formally pass the accounts.
- [6] On February 14, 2024, the Executor applied for an order directing a reference to the Registrar to pass his accounts for the period from July 14, 2021 to December 31, 2023 (the "Interim Accounts"), as well as an order that the passing of the Interim Accounts take place in Vancouver (as opposed to Victoria, where the estate proceeding was initiated). The Beneficiary consented to the orders sought by the Executor and on March 13, 2024, Associate Judge Robertson directed the reference to pass the Interim Accounts and ordered that the hearing will take place in Vancouver.
- [7] On April 26, 2024, the Executor filed the appointment for the passing of the Interim Accounts, scheduling a pre-hearing conference ("PHC") for September 17, 2024 (the "First PHC"). At the First PHC, the parties advised that the process of exchanging documents to support the remuneration and fees claimed as estate expenses by the Executor was underway and, other than the length of the hearing, they did not seek any orders. I ordered that the passing of the Interim Accounts be set for no less than 12 days. (It is currently scheduled to commence in the fall of 2026.) I granted them leave to schedule a further PHC if necessary.
- [8] The parties appeared before me at a second PHC on March 26, 2025 (the "Second PHC"). At the Second PHC, the parties advised that there were issues regarding the disclosure and exchange of documents, most of which are in German, requiring translation. They also advised that they anticipated the need for a separate hearing regarding document production prior to the passing of accounts. I granted the parties leave to schedule a further PHC to hear the application for further and better document production, and I seized myself of any further PHC proceedings.

- [9] On June 18, 2025, the Beneficiary filed this application. The Executor filed his application response on July 25, and the parties appeared before me on July 31.
- [10] The application record included the Executor's Statement of Account Affidavit and his Affidavit in Support of the Application to Pass the Accounts, both filed February 14, 2024 (the "P40" and "P38" respectively), as well as the Executor's third affidavit, filed on July 27, 2025 (the "Third Executor Affidavit"), and the first affidavit of Delane Zenk, a legal assistant at Clark Wilson LLP, counsel for the Executor, filed on July 25, 2025 (the "Zenk Affidavit"). The record also included the first affidavit of the Beneficiary's expert, Alain Filotto, filed on June 6, 2025 (the "Filotto Affidavit"), and the second affidavit of Teresa Leung, an assistant at Kornfeld LLP, counsel for the Beneficiary, filed on June 6, 2025 (the "Leung Affidavit"). The Beneficiary did not file an affidavit in support of his application.
- [11] As set out in the P40, the Executor seeks remuneration of \$1,509,268.20. In the P38, to justify the remuneration he seeks, the Executor deposed to the work he had performed administering the BC Estate and he exhibited time sheets showing the time he spent on tasks, a total of over 1,250 hours (the "Canadian Timesheets") (P38, Ex. E and F). In the P38, the Executor deposed that the Canadian Timesheets were prepared in contemplation of the application to direct the passing of accounts, "but are based on [his] contemporaneously recorded notes of [his] time spent on various administrative tasks" (P38, para. 20).
- [12] On March 3, 2025, the Executor's counsel emailed the Beneficiary's counsel the Executor's list of documents (Leung Affidavit, para. 6, Ex. E), which included links to documents. One of the linked documents, EXE002319, is defined by the parties as the "Supporting Documents" (Leung Affidavit, para. 10, Ex. I). (There is no dispute that the Executor redacted some entries on the Supporting Documents, but the issue of redacted documents was no longer before me on this application.) On March 6, the Beneficiary asked the Executor to provide the Supporting Notes in its native format (among other things). On March 17, the Executor advised that during his administration of the BC Estate, he kept detailed notes of the tasks he performed on the Apple Notes app on his iPad (the "Apple Notes"), which were in turn used to create the Supporting Documents on which the Canadian Timesheets are based (this is also deposed to in the Third Executor Affidavit, excerpted below).
- [13] On April 24, the Beneficiary reiterated his request for the Supporting Notes in their native file format, advising that his expert, Mr. Filotto, could obtain the metadata with direct access to the Executor's iPad, or from backed up Apple Notes from the Executor's iCloud account (this is also deposed to the Filotto Affidavit, para. 6).
- [14] On May 16, the Executor refused to provide the Beneficiary's expert access to his iPad or iCloud account, asserting that it was an intrusion of the Executor's privacy rights, and the Beneficiary is not entitled to examine the Supporting Notes in their native file format.

- [15] In the Third Executor Affidavit, which was prepared for this application, the Executor explained the process used to create the Canadian Timesheets from the Notes on his iPad as follows:
15. Whenever I carried out an activity relating to the Canadian Estate and German Estates, I briefly dictated the specific details of my activity, including the start and end times, into my Notes.
 16. Occasionally, during a task, I noted down the scope of an activity on a scrap of paper and later noted the task in my Notes through dictation or writing.
 17. While adding information into my Notes, I classified the activities as relating to the German Estate (using a "D") or the Canadian Estate (using a "K").
 18. Over the course of the month, I continuously corrected any spelling or grammar errors in my Notes. In doing so, I added more details where necessary to improve clarity.
 19. At the beginning of each month, I made final corrections to the previous month's dictations. My assistant [name omitted] occasionally made spelling and grammar corrections to my Notes as well.
 20. I use my iPad for my personal and professional business activities in addition to my Estate work. As such, my iPad contains personal and confidential information about me and various third parties.
 21. In my [P38] at para. 20, I referred to my Notes as being made contemporaneously. In saying "contemporaneously", I intended to convey that my Notes were made soon after I completed an administration task. I did not intend this to mean that I made notes at the exact time that the task occurred.
 22. At a later date, my assistant transferred the data into Microsoft Word (the "Supporting Documents") so that it could be finalized as a timesheet of my activities with respect to the Canadian Estate (the "Canadian Timesheets") and the German Estate. The finalized Canadian Timesheets were subsequently translated into English using AI. The Canadian Timesheets are attached as Exhibit "E" to my [P38].
 23. The Supporting Documents have been produced as EXE002319 with redactions. The redacted portions of the Supporting Documents include information relating to the German Estate. I have reviewed the redacted portions to confirm that everything relating to the Canadian Estate has been disclosed. I have also sent my lawyers the unredacted Supporting Documents so that they can verify this.
 24. I have attempted to provide the information contained in my Notes in their original format. However, to my knowledge, it is not possible to export these files in their original format and they can only be exported from the Notes App as text via email, copy and paste or as a PDF. When I export data in this way, a new file with a new date is created.

- [16] In objecting to the remuneration the Executor seeks, the Beneficiary disputes the amount of time that the Executor says he spent administering the BC Estate. The Beneficiary disputes that the Executor made the Supporting Notes contemporaneously and asks for access to the Supporting Notes in their native format to access the metadata to confirm when the Notes were made.
- [17] The Beneficiary seeks further production from the Executor in the following proposed order:
2. Within 14 days of the date of this Order, the Executor provide the [Beneficiary's] expert, Alain Filotto (the "Expert"), with physical access to the Executor's iPad that was used to record document EXE002319 in Apple Notes (the "iPad") together with any user information and passwords necessary to allow the Expert to ascertain the date of creation and the date of last modification for each Apple Note that makes up EXE002319 (the "Metadata").
 3. Further, and in the alternative, within 14 days of the date of this Order, the Executor provide the Expert with access to the Executor's iCloud account with a full back up of the iPad (the "iCloud Account") together with any user information and passwords necessary to allow the Expert to obtain the Metadata.
 4. In the further alternative, within 14 days of the date of this Order, the Executor provide his counsel with the means through which to extract the Metadata in a secure setting following which it will be provided to counsel for the [Beneficiary].
- [18] The Beneficiary also seeks costs of the application.

Discussion

- [19] Rule 25-13 of the SCCR provides for the remuneration and passing of an executor's accounts. Under R. 25-13(3)(b), on an application for an order for the passing of accounts and the fixing and approving of remuneration, the court may direct the registrar to conduct an accounting. Rule 25-13(4) provides that when such a direction is made, R. 18-1 of the SCCR applies.
- [20] The Beneficiary relies on R. 18-1(5) of the SCCR, which provides that at a hearing under R. 18-1, the registrar may "direct production of documents and give general directions for the conduct of the hearing".
- [21] Metadata is a producible document within the meaning of the SCCR, as set out in *Sonepar Canada Inc. v. Thompson*, 2016 BCSC 1195, at paras. 31 and 46 [Sonepar]. The Executor does not dispute this.
- [22] The Beneficiary submits that the Supporting Notes in their native format are relevant to the passing of the Executor's accounts because they deal with the remuneration sought by the Executor, which is an issue in dispute.

- [23] The Beneficiary does not deny that the Supporting Notes have been provided to him in hard copy, but he challenges that they were made contemporaneously (as the Executor deposed in the P38 noted above) and seeks to confirm that they were not made contemporaneously by accessing the metadata.
- [24] The Beneficiary denies that he is engaging in a fishing expedition, but says the order he seeks is a targeted request for specific information, that is, only the metadata for the Supporting Notes. The Beneficiary submits that there will be minimal intrusion on the Executor's privacy, pointing to Mr. Filotti's experience (which includes his tenure as an RCMP officer) among other things.
- [25] In response, the Executor submits that a beneficiary seeking to hold a trustee to account has "fundamentally different document production rights than a litigant in a civil action", citing *Yurkiw Estate (Re)*, 2025 BCSC 1026 at para. 11, and *Patrick v. Telus Communications*, 2005 BCSC 1762. The Executor acknowledges that a beneficiary has a right to documents in the possession of the trustee that were prepared "for the purpose of administering the trust", but submits that the rule is not absolute, citing *Barbieri Estate v. White*, 2023 BCSC 1176, at para. 47 and 54-56 [Barbieri].
- [26] The Executor submits that in assessing document disclosure claims in estate litigation, the court's focus should be on assessing and balancing the rights of the beneficiary against competing interests, such as personal or commercial confidentiality (citing Barbieri at paras. 57-58, and *Al Sabah Estate (Re)*, 2020 BCSC 169 at paras. 43-48) [Al Sabah]. The Executor submits that in this case, I should consider the competing interests of the Beneficiary's sister, the beneficiary of the German estate administered by the Executor, among other things.
- [27] The Executor says that on an application for inspection of an electronic device, the court must balance the objective of proper disclosure with the targeted party's privacy rights, as well as the privacy rights of third parties who may have access to the device or who may have communicated with the targeted party on matters unrelated to the litigation, citing *Sonepar* at para. 46, and *Greg Court Developments Ltd. v. Sievert*, 2014 BCSC 551 at para. 35.
- [28] The Executor submits that the Beneficiary has not established that there are exceptional circumstances justifying an order that the Executor produce his iPad and that the Beneficiary has not tendered any evidence, let alone strong evidence, that the Executor is intentionally deleting relevant material or otherwise deliberately thwarting the discovery process (*Sonepar* at para. 46).
- [29] The Executor submits that by seeking an order for production of the metadata for the Supporting Notes, when the Supporting Notes have already been produced to him, the Beneficiary is engaged in a "fishing trip" to bolster his suspicion that the Executor is exaggerating the amount of time he spent administering the BC Estate to increase his remuneration. The Executor submits that a passing of accounts is not the forum for beneficiaries to embark on a "fishing trip" to find evidence of trustee bad faith or pursue

other remedies against executors (citing *Al Sabah* at para. 47).

- [30] As I stated at the outset of these reasons, I am not satisfied on the evidence before me that the Beneficiary has established that there are exceptional circumstances warranting an order that the Executor produce his iPad for inspection by the Beneficiary's expert, or allowing the expert access to the Executor's iCloud account.
- [31] It is clear to me in my limited interaction with the parties at their appearances before me that the relationship between the Beneficiary and the Executor has broken down. The Beneficiary does not trust the Executor, and suspects he is exaggerating the time he spent administering the BC Estate so that he can claim the maximum remuneration, which in turn reduces the residue of the estate available to the Beneficiary. As the Beneficiary's counsel phrased it, the Beneficiary suspects the Executor is seeking to "feather his nest" through the remuneration he seeks at the passing of the accounts.
- [32] However, I find that without compelling evidence, the lack of trust and the Beneficiary's "mere suspicion" that the Executor is exaggerating the time he spent administering the BC Estate, does not justify the extraordinary order the Beneficiary seeks regarding the production of the Executor's iPad or access to the iCloud account.
- [33] I agree with the Executor that at the passing of accounts, the Beneficiary will be afforded ample opportunity to test the Executor's credibility regarding the time he claims he spent administering the BC Estate on the information that the Executor has produced.
- [34] I accept the Executor's evidence that his iPad contains private information regarding the administration of the German estate and private communications with third parties who are not part of the BC Estate (such as the Beneficiary's sister). I do not question the professional integrity of the Beneficiary's expert, but I am not satisfied that in the circumstances, based on the evidence before me, that it is appropriate to order the Executor to produce his iPad for inspection by the Beneficiary's expert to obtain the metadata, or to allow the Beneficiary's expert access to the Executor's iCloud account. I find that extraordinary order is not justified in the circumstances and would result in an unjustified invasion of the Executor's privacy and the private information of other third parties.
- [35] I have dismissed the Beneficiary's application. I award the Executor his costs of the application as special costs payable from the BC Estate.

"Registrar Gaily"

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