

CANADA / JUDGMENT

Pearlson Estate v. Pearlson

2001 BCSC 1569

COURT

Supreme Court of British Columbia

DECIDED

13 November 2001

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2001BCSC1569 Citation: Farley v. Pearlson re costs Date: 20011113 2001 BCSC 1569 Docket: 97/4179 Registry: Victoria IN THE SUPREME COURT OF BRITISH COLUMBIA BETWEEN: LUCIEN TERESA FARLEY, ADMINISTRATRIX AND TRUSTEE OF THE LAST WILL AND TESTAMENT OF COLIN HENRY PEARLSON, DECEASED PLAINTIFF AND: JACQUELINE JUNE PEARLSON DEFENDANT RULING ON COSTS OF THE HONOURABLE MR. JUSTICE RALPH Counsel for the plaintiff William G. MacLeod Counsel for the defendant Hugh S. McLellan Date and Place of Hearing/Trial: October 29, 2001 Vancouver, B.C.

- [1] On August 31, 2001, I issued Reasons for Judgment on the plaintiff's application for judgment under Rule 18A. The administratrix and trustee of the estate of the late Mr. Pearlson had sought a determination of whether Mr. and Mrs. Pearlson's joint tenancy of a Denman Island property had been severed. It was the defendant Mrs. Pearlson's position that the joint tenancy had not been severed and that upon Mr. Pearlson's death on April 28, 1997, she became entitled to the land as the surviving joint tenant. I held, however, that the tenancy had been severed and that the plaintiff holds a one-half interest in the property as a tenant in common.
- [2] The plaintiff now seeks costs. The defendant says that the costs should be paid out of Mr. Pearlson's estate. Two issues are raised:
1. Is the unsuccessful defendant or the estate liable for costs?
 2. Given that there remain for determination in the action some issues not raised in the Rule 18A application, is it appropriate to award costs at this time?
- [3] In *Johnson v. Pelkey*, [1998] B.C.J. No. 3257 (S.C.) Baker J. stated at para. 46, that "the general rule in cases involving estate litigation, as in other litigation, is that the successful parties should have their costs paid by the unsuccessful parties, and not by the estate." Counsel for the defendant has offered no real basis for departing from the general rule. The action relates to the dealings of Mr. and Mrs. Pearlson with the property a number of years before Mr. Pearlson's death and does not, for example, relate to any testamentary disposition of the testator or his testamentary capacity. In my view the estate is not liable for the costs.

- [4] The judgment granted August 31, 2001, did not entirely dispose of the action. It did, however, dispose of the most critical issue. The court has a discretion in such circumstances and in my view the appropriate order is that the plaintiff is entitled to her costs incidental to the Rule 18A application (see *Westburne Industrial Enterprises Ltd. v. Penner*, [1995] B.C.J. No. 709 (S.C.), *Chan v. GMS DataLink International Corp.*, [1996] B.C.J. No. 2015 (S.C.)). "Bryan F. Ralph, J." The Honourable Mr. Justice Bryan F. Ralph

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