

CANADA / JUDGMENT

Ritz v. Vass

2026 BCSC 382

COURT

Supreme Court of British Columbia

DECIDED

5 January 2026

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2026 BCSC 382 Ritz v. Vass

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ritz v. Vass,

2026 BCSC 382

Date: 20260105

Docket: S140908

Registry: Kelowna

Between:

Frank Andrew Ritz, as co-administrator of the

estate of Theresia Ritz, deceased

Plaintiff

And

Rosemarie Theresa Vass, as co-administrator of the

estate of Theresia Ritz, deceased and in her personal capacity

Defendant

Before: The Honourable Justice S. Morishita

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

S.T. Rule

M.E. Vu

Counsel for the Defendant:

R.O. Levin

Place and Date of Hearing:

Kelowna, B.C.

December 18, 2025

Place and Date of Judgment:

Kelowna, B.C.

January 5, 2026

[1] THE COURT: These are my oral reasons for judgment. Should either party order a transcript, I reserve the right to edit them for grammar, clarity, style, brevity, and to add or expand on case citations or references. If I do make any edits, the substance of my decision will not change.

Introduction

[2] This is an estate matter. The plaintiff, Frank Ritz, and the defendant, Rosemarie Vass, are siblings. Their mother was Theresia Ritz. Theresia Ritz passed away on July 24, 2022. She was predeceased by her husband, who was also the father of Frank Ritz and Rosemarie Vass.

[3] Theresia Ritz died without a will.

[4] Mr. Ritz and Ms. Vass are the deceased's only children. There were no other children who predeceased the deceased leaving descendants. Thus Mr. Ritz and Ms. Vass are each entitled to an equal share of the deceased's estate.

[5] The grant of administration without will annexed was issued to Mr. Ritz and Ms. Vass on February 9, 2023.

[6] The main assets in the estate of the deceased at the time of death were as follows:

- a) real property located at 3101 McCulloch Road, Kelowna, B.C.;
- b) real property located at 3122 McCulloch Road, Kelowna, B.C.;
- c) real property located at 700/702 Kitch Road, Kelowna, B.C.; and
- d) real property located at 145/147 Woods Road, Kelowna, B.C.

[7] The deceased's main liabilities were as follows:

- a) there were two financial charges registered against title to the real property at 3101 McCulloch Road. The amounts owing as of the date of death were approximately \$130,000 and \$98,000;
 - b) following the completion of the deceased's final income tax return, there was approximately \$477,000 plus interest owing to the Canada Revenue Agency.
- [8] The parties sold the real property located at 700/702 Kitch Road, Kelowna, for a sale price of \$880,000.
- [9] The property located at 3122 McCulloch Road is listed for sale with a current listing price of \$575,000. It has been listed for sale since June 2024.
- [10] Until the date of the hearing, the parties have been unable to reach agreement on listing the 145/147 Woods Road property. The Woods Road property is a duplex that is currently rented out. The assessed value, as set out in the 2025 assessment notice, is \$866,000.
- [11] In addition, the parties have been unable to agree on listing the property at 3101 McCulloch Road. 3101 McCulloch Road consists of two detached residences. One residence is occupied by Ms. Vass and the other residence is occupied by Ms. Vass's daughter. The assessed value, as set out in the 2025 assessment notice is \$1,536,000.
- [12] Mr. Ritz seeks the following relief in his application:
- a) Orders for independent appraisals of the properties located at Woods Road and McCulloch Road;
 - b) An order that he have exclusive conduct of sale of the Woods Road property and that a sale of that property shall be subject to court approval unless agreed to by the parties;
 - c) An order that he have exclusive conduct of sale of 3101 McCulloch Road, and that a sale of that property shall be subject to court approval unless agreed to by the parties;
 - d) An order that Ms. Vass permit Mr. Ritz, real estate appraisers, realtors, and potential purchasers access to the property at specified times; and
 - e) An order that he be indemnified under the estate of Theresia Ritz for his reasonable legal expenses of and in respect of this application.
- [13] At the hearing, Ms. Vass advised that she is agreeable to an appraisal of the properties located at 145/147 Woods Road and at 3101 McCulloch Road. Accordingly, the orders sought at paragraphs 1 and 2 of the notice of application will be granted by consent.
- [14] In addition, at the hearing, Ms. Vass also advised that she is agreeable to listing the 145/147 Woods Road property for sale at a time and for a price recommended by the parties' realtor, Ryan Peterson.

[15] Mr. Ritz is not agreeable to joint conduct of sale and seeks the order as sought in the notice of application which is for sole conduct of sale.

Legal Framework

[16] The parties agree on the applicable legal principles which are set out in the notice of application as follows:

3. Rule 13-5(1) of the Supreme Court Civil Rules provides that "if in a proceeding it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court."
4. Subsection 3 provides that the court "may permit any person having the conduct of the sale to sell the property in the manner the person considers appropriate or as the court directs."
5. Subsection 4 provides the court with broad discretion to give directions for the purpose of [e]ffecting the sale.
6. The requirements for Rule 13-5 are disjunctive: it may either be necessary or expedient.

Rawlins v. Rawlins, 2022 BCSC 288 at paragraph 10.

[17] As indicated by Justice Norell in Rawlins at paragraph 12, some of the relevant factors the court may consider in the estate litigation context are:

- 1) external economic factors;
- 2) alleged wasting of the asset;
- 3) the capacity of the parties to maintain the asset;
- 4) potential prejudice to either party;
- 5) the potential outcome of the trial;
- 6) whether a sale will promote settlement; and
- 7) the desire of one of the parties to purchase the other's interest.

The Parties' Positions

[18] Mr. Ritz submits that it is necessary or expedient to sell the 3101 McCulloch Road property. In support of this position, he argues the following.

[19] First, the property is not rented out. Instead, Ms. Vass and her daughter are living on the property, and Ms. Vass has not been paying rent or contributing towards the expenses. Mr. Ritz estimates that from the deceased's death on July 24, 2022, to July 31, 2025, a period of roughly three years, the expenses related to the property amount to just over \$48,500. These

expenses have been paid out of the estate. Mr. Ritz also notes that there have been repair bills for a water leak totalling over \$4,000. The expenses, Mr. Ritz submits, are depleting the estate.

- [20] Second, the parties recently had difficulty insuring the property, in part because the property is still in the name of the deceased's estate.
- [21] Third, Mr. Ritz says that Ms. Vass is in a "disabling" conflict of interest which results in her having no incentive to sell the property. In this regard, Mr. Ritz notes that Ms. Vass asserts that her parents granted her a life estate in the property as part of their cultural tradition and for the care she provided them while they were alive. Ms. Vass states that this life estate provides that she does not have to pay any rent or contribute to any expenses related to the property during her lifetime.
- [22] Mr. Ritz submits that there is no evidence to support this claim other than Ms. Vass's assertions. He notes that if this was their parents' intention, they could have made a will setting out such a disposition or registered a life estate on title on her behalf. They did neither.
- [23] Mr. Ritz also notes that at the April 3, 2024 hearing of his application to remove Ms. Vass as co-administrator, Ms. Vass represented to Justice Wilson that she had no intention of making a claim against the estate, either for compensation for her time caring for her parents or some claim to the 3101 McCulloch Road property beyond her one-half interest.
- [24] Mr. Ritz notes that Ms. Vass, in her amended response to civil claim, correspondence, and in her affidavit filed on this application, appears to be resiling from her representation to Justice Wilson. Nevertheless, Mr. Ritz notes that Ms. Vass has not filed a notice of civil claim or sought leave to late-file a counterclaim in this action making some type of claim to the property.
- [25] With respect to the 145/147 Woods Road property, Mr. Ritz is not agreeable to joint conduct of sale. In support of this position, Mr. Ritz states that, based on past experience with listing other properties, he is concerned that he and Ms. Vass will be unable to agree on a listing price and potential reduction of the listing price if necessary, which will ultimately delay the sale or require the parties to make further applications to this court.
- [26] Ms. Vass submits that she has acted only to maximize the value of the estate. She argues that this application amounts to a further attempt by Mr. Ritz to remove any authority she has as co-administrator of the estate. In addition, Ms. Vass notes that she has been involved in maintaining all the properties, including 3101 McCulloch Road, for the past 25 years, both while her parents were alive and since they have passed. She asserts that she is not obligated to pay occupational rent on the property or for expenses based on the agreement that she had with her parents that she could continue to reside in the house. Last, she alleges that Mr. Ritz owes money to the estate for missing items and for repayment of a mortgage.

- [27] As it relates to the factors set out in Rawlins, Ms. Vass submits that Mr. Ritz has provided no evidence that there is any urgency to sell 3101 McCulloch Road, or that there is any wasting of the property, or that there is any need for him to have sole conduct of sale. To the contrary, Ms. Vass argues that it would be better to sell any real property in the spring of 2026, which is when the real estate market in Kelowna is more favourable to sellers.
- [28] She further notes that the trial of this action is scheduled to start on May 25, 2026, and that granting the orders sought by Mr. Ritz would effectively decide the issues in dispute in this action, without having the benefit of the evidence being heard at trial.

Discussion

- [29] I am satisfied that listing the 3101 McCulloch Road property for sale is both necessary and expedient.
- [30] In my view, the sale of the property is necessary because the administrators have a duty to gather up the assets and administer the estate in a timely fashion. The property, in my view, is wasting. The estate has incurred over \$50,000 in expenses to maintain the property while at the same time earning no rent, as Ms. Vass asserts that she is not obligated to pay rent or contribute towards expenses during her lifetime.
- [31] In addition, there is evidence that the property is becoming less insurable.
- [32] Further, Ms. Vass has asserted that she has the capacity to maintain the asset; however, she has not contributed to rent or expenses, nor has she provided any evidence of her financial ability to do so. In addition, there is no evidence that she has the ability to purchase Mr. Ritz's interest in the property.
- [33] Ms. Vass's arguments in relation to the Rawlins factors are mostly tied to her assertion that she had an agreement with her parents that she could continue to reside in the house for the remainder of her life. Nevertheless, there is no will providing for this, nor is there any documentary or corroborating evidence of this agreement. Moreover, as stated in April 2024, Ms. Vass indicated to Justice Wilson that she had no intention of making a claim against the estate. Although since then she has given evidence indicating that she is indeed making a claim against the estate, she has not filed an amended notice of civil claim or applied for leave to late-file a counterclaim.
- [34] On questioning from the court at the hearing of this application, counsel for Ms. Vass was not able to advise whether Ms. Vass intended on bringing such an application. Nevertheless, as it stands, based on the filed pleadings, Ms. Vass is not making a claim against the estate in relation to 3101 McCulloch Road. As such, her assertion that ordering the sale of 3101 McCulloch Road would effectively decide the issues in dispute in this action is misplaced because, based on the pleadings, the issue raised by Ms. Vass on this application is not in dispute.

- [35] In regard to Ms. Vass's argument about timing of the sale of the property, she provided no evidence in support of her position that listing properties in the spring is advantageous for sellers in the Kelowna market. Nevertheless, given that the parties have now agreed to an appraisal and given that some time would likely be required to prepare the property for listing, by the time the property is listed, spring will likely be approaching.
- [36] I am also persuaded by the applicant's argument about the respondent being in a significant conflict of interest. She has been living at the property since their mother passed away and has not been paying rent, nor has she been contributing to expenses. While she asserts that she has a basis for this, that arrangement results in her having no incentive to list the property. I further note that had Ms. Vass taken this same position on the hearing before Justice Wilson, she very likely would have been removed as an administrator due to the conflict of interest.
- [37] For these reasons, I am granting Mr. Ritz sole conduct of sale of the 3101 McCulloch Road property in the terms set out in the notice of application. However, I will add a term that Ryan Peterson will be the realtor, unless the parties agree to a different realtor. Mr. Peterson was someone that Ms. Vass brought on board and both parties appear to trust him.
- [38] I am also granting Mr. Ritz sole conduct of sale on the 145/147 Woods Road property with similar terms regarding Mr. Peterson as realtor. As indicated, Ms. Vass agreed at the hearing to list that property, but with the parties having joint conduct of sale.
- [39] I am making the order that Mr. Ritz has sole conduct of sale of the Woods Road property because I am concerned that Ms. Vass has shown a lack of urgency in listing the estate's properties. At the August 14, 2025 discovery, Ms. Vass indicated that she wished to list the Woods Road property when the market was better, but was vague and equivocal about when she would be agreeable to listing.
- [40] I further note that both in regards to the Woods Road property and the Kitch Road property, Mr. Ritz had to bring court applications to compel Ms. Vass to cooperate with the sales.
- [41] So, by reference to the notice of application, paragraph 1 will go as granted by consent in the terms set out in the notice of application. Similarly, paragraph 2 is granted by consent in the terms set out in the notice of application.
- [42] Paragraph 3 will be altered slightly and it will say: An order that Frank Andrew Ritz has exclusive conduct of sale of 145/147 Woods Road for private sale by general exclusive or multiple listing through Ryan Peterson, including his agents and his firm (or any agent that the parties may otherwise agree to), and they may agree to pay any real estate agent or firm who may arrange the sale of 145/147 Woods Road -- the rest of this is as written in the notice of application, so I will not continue to read out the remainder.

- [43] So basically what that is saying, is that it will be through Ryan Peterson and his agents, his firm, but in the event that the parties agree to someone else, the order allows you folks to do that. And of course, if something happens with Mr. Peterson, then you will have to come to court to have him removed if you cannot agree on somebody else.
- [44] Paragraph 4 will go as written in the notice of application.
- [45] Paragraph 5 will go as written in the application, except it will have the terms that will say for private sale by general exclusive or multiple listing through Ryan Peterson, through his agents and his firm (or any agent that the parties otherwise agree to), and they may agree to pay any real estate agent or firm, and then the rest of that wording goes exactly as in the notice of application.
- [46] Paragraph 6 is granted as written in the notice of application.
- [47] Paragraph 7 is granted in the terms set out in the notice of application.
- [48] I am going to grant the order that the applicant shall be indemnified out of the estate of Ms. Ritz for his reasonable legal expenses and in respect of this application. My understanding is that generally in these applications, where an executor or administrator is bringing an application, that they are indemnified for their costs on a solicitor-client basis.
- [49] And number 9 the order will be costs payable in any event of the cause, but not payable forthwith.
- [50] All right, does anybody -- the parties or Madam Registrar -- need any clarification?
- [51] CNSL R. LEVIN: No, thanks.
- [52] CNSL S. RULE: No, thank you, Justice.
- [53] THE COURT: All right. I want to thank the parties for your assistance, your submissions and materials, it was very helpful to me so I do appreciate all of your efforts. Thank you, Madam Registrar.

"Morishita J."

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