
CANADA / JUDGMENT

Taylor v. Sinclair

2017 BCSC 10

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 10 Taylor v. Sinclair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Taylor v. Sinclair,

2017 BCSC 10

Date: 20170104

Docket: S141215

Registry: Vancouver

Between:

Patricia Taylor

Plaintiff

And

Karen Lorie Sinclair

Defendant

Before: The Honourable Madam Justice H. Holmes

Reasons for Judgment

Counsel for the Plaintiff:

Katherine E. Ducey

Karla Mukai

Counsel for the Defendant:

Johanna M. Goosen

Place and Dates of Trial:

Vancouver, B.C.

June 27-30, July 4 and

August 5, 2016

Place and Date of Judgment:

Vancouver, B.C.

January 4, 2017

INTRODUCTION

- [1] Patricia Taylor seeks a declaration that Karen Sinclair, her only sibling, holds a residential property on Williams Road in Richmond, BC, in trust for the estate of their mother, Ruth Sinclair. Ms. Taylor also seeks a monetary judgment against Ms. Sinclair in the amount of half of the value of the Williams Road property as of the date of trial, less certain mortgage debts that I will describe later. It is common ground in the litigation that Ms. Taylor and Ms. Sinclair are the only beneficiaries under Ruth Sinclair's will, to share equally in her estate.
- [2] Ms. Taylor alleges that Ms. Sinclair breached a fiduciary duty to Ruth Sinclair by improperly using a power of attorney to transfer to herself Ruth Sinclair's long-time home on 7th Avenue in Richmond, BC. Ms. Sinclair then used the home to help secure and fund the purchase of the Williams Road property in her own name. Ms. Taylor submits that Ms. Sinclair therefore holds the Williams Road property in trust for Ruth Sinclair's estate.
- [3] Ms. Sinclair denies breaching a duty to Ruth Sinclair. She now acknowledges that she holds in trust for Ruth Sinclair's estate that portion of the Williams Road property that, at the time of the death, reflected the contribution to the purchase price traceable to the proceeds of the 7th Avenue property. However, she contends that she herself holds the beneficial interest in the remaining portion.
- [4] Ms. Sinclair also contends that in any event, the value of the estate's interest in the home is far exceeded by the amount owed to her for expenses she paid on behalf of Ruth Sinclair or her estate, together with quantum meruit compensation for caring for Ruth Sinclair during the last ten months of her life.

THE ISSUES

- [5] The parties' positions and the evidence give rise to the following main issues:
 - 1. whether Ms. Sinclair breached a fiduciary duty to Ruth Sinclair when she transferred the 7th Avenue property into her own name;

2. what portion of the interest in the Williams Road property Ms. Sinclair holds in trust for Ruth Sinclair's estate; and
 3. whether the estate owes Ms. Sinclair substantial amounts for expenses she paid on behalf of Ruth Sinclair or her estate, and as quantum meruit compensation for Ruth Sinclair's care in the final ten months of her life.
- [6] Before addressing these issues in turn, I will briefly outline some of the background to the dispute.

BACKGROUND

- [7] Henry and Ruth Sinclair raised their daughters in Saskatchewan. Ms. Taylor was the older of the two, born in November 1954; Ms. Sinclair was born in January 1962.
- [8] Henry and Ruth Sinclair moved to British Columbia in 1979. They lived first in Richmond and then in Victoria. In 1986 they returned to Richmond, where they lived for the rest of their lives.
- [9] Ms. Sinclair made the 1979 move to British Columbia with her parents, and lived with them until approximately 1997, when she began her long-term common law relationship with Christopher Burt. She and Mr. Burt have lived, since the purchase, in the Williams Road property that is the main subject of this action.
- [10] Ms. Taylor had left home in approximately 1972, while the family still lived in Saskatchewan. She began a university education, and later married and lived in Winnipeg.
- [11] Until his retirement at age 65, Henry Sinclair worked as a Woolworths store manager. Ruth Sinclair was never employed outside the home, and by all accounts led a very quiet life, particularly after Mr. Sinclair's retirement. She was heavily dependent on Mr. Sinclair in various ways. He drove her wherever she needed to go, and managed the couple's finances without her participation.
- [12] Henry Sinclair died in May 2008, predeceasing Ruth Sinclair by one year and four months. Mr. Sinclair was mentally sharp to the end, but became physically weaker in his final two years.
- [13] After Mr. Sinclair's death, Ruth Sinclair needed much more assistance from others, because she had depended so much on her husband. Ms. Sinclair took over her mother's finances, with Ms. Taylor's agreement and gratitude: Ms. Taylor recognized that their mother could not manage her own finances, and felt unable to herself take on this responsibility because she lived too far away.
- [14] Ruth Sinclair also needed more emotional support and help with daily living than she had before her husband's death. Ms. Sinclair and Mr. Burt visited more often than before, to check in on her and make sure that she had what she needed.

- [15] Approximately three months after Henry Sinclair's death, Ruth Sinclair fell and hit her head. During her stay in hospital, from August 21 to September 4, 2008, she was diagnosed as in cognitive decline which was likely secondary to Alzheimer's disease. Ms. Sinclair was told that her mother could no longer live on her own, and that she needed to live somewhere without stairs.
- [16] To their considerable credit, Ms. Sinclair and Mr. Burt decided that Ruth Sinclair should live with them so that they could care for her as necessary. Ms. Taylor suggested that a residential care facility be considered instead - and I find that she made that suggestion out of concern for the burden Ms. Sinclair and Mr. Burt could be undertaking, and not, as Ms. Sinclair implied, in disregard of their mother's preferences or best interests - but Ms. Sinclair rejected that option out of hand.
- [17] Ms. Sinclair and Mr. Burt testified that, with a realtor's help, they looked for homes in which Ruth Sinclair could live with them in her own suite on the ground floor without stairs. They testified that suitable options were few, and that they felt under pressure to purchase the Williams Road property when the realtor presented it to them as meeting the necessary specifications. The home was a new one, and it included a ground-floor suite. The agreed purchase price was \$680,952, plus GST.
- [18] However, Ms. Sinclair and Mr. Burt lacked the funds to make the purchase, or sufficient assets against which to secure the necessary financing.
- [19] Mr. Burt then consulted a mortgage broker. The mortgage broker worked with a Vancouver lawyer to put together a financing arrangement that would allow for the purchase of the Williams Road property. Essentially, the entire interest in the Williams Road property would be mortgaged, as would the entire interest in Ruth Sinclair's 7th Avenue home. The financing arrangement also involved a \$50,000 mortgage being secured against Ms. Sinclair's New Westminster townhouse, but only for less than a month.
- [20] To support this arrangement, Ms. Sinclair transferred Ruth Sinclair's home on 7th Avenue into her own name. She did so on September 17, 2008, using a power of attorney that Ruth Sinclair had granted on August 21, 2007, which, it is not disputed, did not give authority to make the transfer. I will discuss later whether Ms. Sinclair breached a fiduciary duty in making the transfer and using the power of attorney to do so.
- [21] The agreement to purchase the Williams Road property was made on September 5, 2008, the day after Ruth Sinclair was discharged from hospital. Ms. Sinclair, Mr. Burt, and Ruth Sinclair moved in on October 17, 2008. In the six weeks between the hospital discharge and the move to the Williams Road property, Ruth Sinclair lived with Ms. Sinclair and Mr. Burt in their New Westminster townhouse.

- [22] After the move to the Williams Road property, Mr. Burt was Ruth Sinclair's primary caregiver. Mr. Burt had gone to a seminar about caring for people with dementia, given or recommended by staff during Ruth Sinclair's hospital stay. Mr. Burt remained in this role until Ruth Sinclair died ten months later.
- [23] During this time, in May 2009, Ms. Sinclair sold the 7th Avenue property for \$523,000. She used the net sale proceeds of \$503,781 to pay the various fees associated with the sale, and also to pay off the Home Trust and Verico mortgages (in the amounts of \$393,250 and \$51,718 respectively) that, to enable the Williams Road purchase, had been registered against title to both properties. The balance of \$57,705 she paid to herself.
- [24] On July 18, 2009, Ruth Sinclair was readmitted to hospital. She remained in hospital until her death on September 21, 2009.
- [25] As I noted earlier, Ruth Sinclair's will named Ms. Taylor and Ms. Sinclair as the equal beneficiaries of the estate. The will named Ms. Sinclair as executrix.
- [26] Ms. Sinclair has yet to settle the estate. She testified that at first she delayed doing so because she was waiting until she sold her own New Westminster townhouse, so that she could determine the value of the equity in the estate. However, she did not explain how the sale of her own asset would affect the value of her mother's estate. There is no suggestion that either Ruth Sinclair or her estate ever had any interest in the New Westminster townhouse. And the mortgage that, for less than a month, had been secured against the New Westminster townhouse to help finance the Williams Road purchase was long since paid out.
- [27] Ms. Sinclair did give Ms. Taylor some funds as an advance in respect of her interest in the estate when Ms. Taylor pressed because she was in need.
- [28] Ms. Taylor waited, but, faced with continual delays and no sign of change, she initiated this action in February 2014.
- [29] I will turn now to the main issues I outlined earlier.

1. DID MS. SINCLAIR BREACH A FIDUCIARY DUTY TO RUTH SINCLAIR?

- [30] It is common ground, and well-established by the evidence, that the power of attorney Ruth Sinclair granted to Ms. Sinclair did not permit Ms. Sinclair to transfer Ruth Sinclair's real property. The question is whether Ms. Sinclair breached a fiduciary duty to Ruth Sinclair when she did so, transferring the 7th Avenue property into her own name in September 2008.
- [31] Ms. Sinclair clearly owed a fiduciary duty to her mother when handling her financial affairs. Ruth Sinclair was in a vulnerable position, and was fully dependent on Ms. Sinclair to handle her finances. She had lost her husband of 50 years, was in mental decline, and was in no position to guard against any breach that Ms. Sinclair might commit. I view the situation as almost identical to that in *Egli v. Egli*, 2004 BCSC 529 at paras 76-80, where Garson J., then

of this Court, found a fiduciary duty to exist whether on the view that such a duty is inherent to the relationship between an appointee and a donor of a power of attorney, or on the basis of the three recognized indicators as applied to the particular case.

- [32] Ms. Sinclair does not deny that she had a fiduciary duty to Ruth Sinclair in acting as her attorney. However, she submits that she did not breach the duty because she met the standard of care required of her. She submits that she acted in good faith, without secrecy, and in Ruth Sinclair's best interests; she relied on professional advisers to develop and guide her through the series of transactions that allowed her and Mr. Burt to move to a home in which they could take responsibility for Ruth Sinclair's care. It is undisputed that the Vancouver lawyer reviewed the power of attorney and raised no concerns.
- [33] This position has several problems.
- [34] First, it is not at all clear that the transfer of the 7th Avenue property was in Ruth Sinclair's best interests, or that Ms. Sinclair understood it to be so. It is true that the transfer was one of a series of transactions that gave Ruth Sinclair a very suitable living arrangement, which, no doubt, she greatly appreciated. However, on the evidence, this was not the only available living arrangement that would have been suitable. At the same time, the transfer deprived Ruth Sinclair of title to her main asset, and, through the heavy remortgaging, placed that asset at serious risk. As I will discuss below, I find that Ruth Sinclair was unaware that this was the case.
- [35] Nor am I convinced that Ms. Sinclair and Mr. Burt did not expect to themselves benefit through the move to the home on Williams Road, which was a newer and larger home than their New Westminster townhouse, and which they have shown no inclination to leave in the years since Ruth Sinclair's death.
- [36] Further, Ms. Sinclair benefitted directly from the transactions that allowed for the move when, not long afterwards, she sold the 7th Avenue property and kept \$57,705 from the net sale proceeds, failing entirely to account for that amount, either at the time or later, again in breach of her duty as a fiduciary to keep proper records and to make an accounting. While Ms. Taylor has not pleaded that Ms. Sinclair breached her fiduciary duty to Ruth Sinclair through this later conduct, the conduct followed directly from, and was enabled by, the September 2008 transfer, and casts a poor light on Ms. Sinclair's good faith and the openness of her conduct at the earlier stage as well.
- [37] Second, I do not accept that Ms. Sinclair was unaware at the time of the transfer of the limits on the scope of her authority. As I have noted, the Vancouver lawyer reviewed the power of attorney, and raised no concerns - a disappointing inattention to his responsibilities. Ms. Sinclair implied in her evidence that Ms. Morin-Nakashima, the notary public who prepared the powers of attorney for both Ruth and Henry Sinclair, and supervised the execution of those documents, also raised no concerns. To Ms. Sinclair's recollection, Ms. Morin-Nakashima said nothing to her in any detail about the documents; indeed, Ms. Sinclair testified that it was not until shortly before the trial that she realized that Henry Sinclair had

executed two separate powers of attorney, each appointing her. Ms. Sinclair testified that, in particular, she remembered no caution at all from Ms. Morin-Nakashima about any limits on the scope of her role or authority.

- [38] However, I am confident that Ms. Morin-Nakashima did explain those details, even if Ms. Sinclair no longer remembers that she did.
- [39] Ms. Morin-Nakashima testified in detail about her standard practice. She testified that she would carefully explain that a power of attorney creates a fiduciary relationship, and, that unless the power of attorney specifically provides for this - and this power of attorney did not - it does not grant the attorney ownership of any assets. Her standard practice was also to advise that the attorney must not use the power of attorney to transfer assets into his or her own name unless they have specific written instructions to do so, or unless the asset in issue is specifically referred to in the grant of authority. She would warn that it is a criminal offence to abuse a power of attorney.
- [40] Ms. Morin-Nakashima was an impressive witness who also appeared to be knowledgeable, experienced, and capable in her field. She had notes of her dealings with each of Henry and Ruth Sinclair, of the instructions they gave, and of her own observations about Ruth Sinclair's apparent condition, Henry having told her that not all of his wife's days were "good" ones. Ms. Morin-Nakashima's evidence describing her typical explanation of the powers granted and not granted by a power of attorney was extremely clear. There is every reason to conclude that her explanation would be understood.
- [41] Ms. Morin-Nakashima had no specific recollection of her meetings with Ms. Sinclair. However, there is no reason to conclude that she departed from her standard practice in them. Nor can I conclude that Ms. Sinclair did not understand what Ms. Morin-Nakashima told her.
- [42] Ms. Sinclair must have either proceeded in the face of actual knowledge that the power of attorney did not permit her to transfer the 7th Avenue property to herself, or wilfully blinded herself to that fact in the pressure to bring about a living arrangement that would work both for her mother and, as I find, for herself and Mr. Burt. She did not act selflessly, in only Ruth Sinclair's interests.
- [43] Ms. Sinclair submits next that she did not breach her fiduciary duty because Ruth Sinclair ratified the transfer of the 7th Avenue property.
- [44] Ms. Sinclair submits that Ruth Sinclair knew about the transfer, and effectively affirmed it after the fact. Ms. Sinclair submits that Ruth Sinclair clearly knew that her former home had been sold and the Williams Road home purchased, and, since she had signed nothing to effect these transactions, must also have known that Ms. Sinclair had used the power of attorney to carry them out. Ms. Sinclair submits that Ruth Sinclair indicated her acquiescence or consent by living in the Williams Road home without raising any questions or concerns about the transactions that had made the move possible.

- [45] I am unable to take this view of the evidence.
- [46] It is not at all clear that Ruth Sinclair was given any real details about the financial and ownership arrangements that would make the move possible. Ms. Sinclair testified that she told her mother about those details. However, she herself was unsure of them in giving her evidence; she testified things were confusing at the time because everything was happening so quickly. Further, in her examination for discovery she testified that she did not explain to Ruth Sinclair how the purchase would be financed. Moreover, Ms. Sinclair testified that she told Ruth Sinclair that the new home on Williams Road would be Ruth Sinclair's. At no time in her evidence did Ms. Sinclair indicate that she explained to her mother that she would have only an interest corresponding to the value traceable to the 7th Avenue property, as is now her position.
- [47] In order to secure mortgage financing to purchase the Williams Road house, Ms. Sinclair swore a statutory declaration, prepared by the Vancouver lawyer or his staff, in which she stated that the 7th Avenue property was tenanted. This was not true, and Ms. Sinclair knew that to be the case. If this was not a knowing untruth on Ms. Sinclair's part - and I would hesitate to conclude that it was - it was another indication that Ms. Sinclair herself was relatively uninformed about the transactions and the details of the steps necessary to carry them out; Ms. Sinclair was in no position to have informed Ruth Sinclair about these details sufficiently for her mother to have ratified them.
- [48] The evidence of what Ruth Sinclair was told about the purchase and the financing of the Williams Road property was vague at best. I find that Ruth Sinclair may well have understood that the Williams Road property would be "in Karen's name", as Mr. Burt testified he told her. However, I find that she did not understand that Ms. Sinclair would effectively treat that and the 7th Avenue property as her own, encumbering both of them beyond their value.
- [49] Moreover, even if Ruth Sinclair had been given full information about the transactions that gave rise to the move, her acquiescence would not have been sufficient to amount to ratification.
- [50] Ruth Sinclair was not incompetent to make decisions. However, it is clear from her hospital records and other evidence that she was confused and disoriented at times during her hospital stay, and that, after her discharge, she remained fragile. She was anxious to leave the hospital, had no independent advice of any sort, and was in no condition to question, oppose, or confront the daughter or her spouse who were taking care of her.
- [51] When Ms. Sinclair used the power of attorney to transfer the 7th Avenue property into her own name, she breached a fiduciary duty.
2. HOW MUCH OF THE INTEREST IN WILLIAMS ROAD DOES MS. SINCLAIR HOLD IN TRUST?

- [52] Ms. Sinclair now acknowledges that she at all times held the 7th Avenue property in trust for her mother. In her evidence in the trial, she agreed that after she transferred the property into her name, the beneficial interest in the property nonetheless remained her mother's.
- [53] However, Ms. Sinclair submits that the same is not true of the entire interest in the Williams Road property. She submits that the estate holds only that portion of the beneficial interest in that property that represents value traceable to the 7th Avenue property. This, she submits, is limited to the amounts (totaling \$444,968) used from the 7th Avenue proceeds of sale to pay down the Home Trust and Verico mortgages on the Williams Road property. Ms. Sinclair notes that the other loans that financed the purchase were in her name alone.
- [54] Ms. Sinclair reasons that, with the estate's interest thus having a value of \$444,968 at the time of purchase, her own interest in the property had a value of \$270,032, being the difference between \$444,968 and the purchase price of \$715,000 (including GST).
- [55] For the following reasons, I cannot agree with Ms. Sinclair's analysis.
- [56] Ms. Sinclair effectively substituted the Williams Road property for the 7th Avenue property, as Ruth Sinclair's main asset, and then treated that asset as her own. To the extent that the value of the Williams Road property, at the time of the purchase, exceeded the sale value of the 7th Avenue property, the difference was covered by mortgages registered against both properties that were greater than the value of either alone, placing each property at risk. As I have discussed, the series of transactions that achieved the substitution was never ratified or even properly disclosed, and was not intended to involve any form of gift to Ms. Sinclair. Nothing in these circumstances permits a conclusion that Ruth Sinclair intended Ms. Sinclair to acquire any part of the beneficial interest in the Williams Road property.
- [57] Nor, I find, did Ms. Sinclair at the time view the property as in part hers. She and Mr. Burt as much as acknowledged this by referring to the Williams Road property as Ruth Sinclair's house, as they each testified they did. Nothing in their evidence, or any other evidence, suggested that at any time they viewed the Williams Road property as Ruth Sinclair's home only to the extent of the proportion of its value traceable back to the 7th Avenue property. From the start, that amount was less than the full value of the Williams Road property, and, one would expect some reference to have been made to a shared beneficial interest if such had been the understanding.
- [58] A fiduciary who breaches his or her duty cannot benefit from the breach. He or she cannot use the position for personal advantage: *Strother v. 3464920 Canada Inc.*, 2007 SCC 24 at paras. 74-76, *Kask Estate v. Welsh*, 2000 BCSC 791 at para. 24. If the fiduciary does so, he or she is accountable to the donor for resulting profit: *Strother, Houston v. Houston*, 2012 BCCA 300, at para. 54. For this reason also Ms. Sinclair cannot succeed in her claim to hold part of the beneficial interest in the Williams Road property. I note in this regard that no claim against Ms. Sinclair is made in respect of the benefit she received as a result of living in the home and using its equity for her own purposes.

- [59] Ruth Sinclair's estate holds beneficial title to the entire interest in the Williams Road property.
- [60] As one of the two equal beneficiaries of the estate, Ms. Taylor seeks damages equivalent to half the value of the Williams Road property as of the date of the trial, less any debts owed by the estate at the time of the death. Ms. Taylor agrees that one such debt - which she says is the only one - is the amount owing under the mortgages on the property at the time of Ruth Sinclair's death, which was approximately \$340,000. In light of the property's appraised value of \$1,500,000 as of the trial, less the mortgage in the amount of approximately \$340,000, Ms. Taylor seeks judgment in the amount of \$580,000 (\$1,500,000 less \$340,000, then divided by two).
- [61] While I would thus declare that Ms. Sinclair holds the Williams Road property in trust for the estate, I am unable to grant Ms. Taylor the monetary judgment she seeks against Ms. Sinclair. Such a remedy is more properly granted as against the estate, and the estate is not a party to the litigation.
3. WHAT DOES THE ESTATE OWE TO MS. SINCLAIR?

Introduction

- [62] Ms. Sinclair claims that the estate owes her large amounts for various expenses she incurred on Ruth Sinclair's or the estate's behalf. She submits that any judgment in favour of Ms. Taylor should take account of these debts, which likely - depending on the Court's findings about the expenses - will reduce the judgment to zero.
- [63] Ms. Taylor agrees that any judgment in her favour should be reduced by the approximately \$340,000 amount owing on the mortgages on the Williams Road property at the time of Ruth Sinclair's death. She submits that no other debts to Ms. Sinclair should be deducted.
- [64] However, because the estate is not a party to this litigation, Ms. Sinclair can no more have an offsetting remedy in respect of the debts she claims than Ms. Taylor can have a monetary remedy against Ms. Sinclair personally. The debts, if proven, are payable by the estate, and the estate is not a party to the litigation.
- [65] Although I will grant no remedy, I will indicate my findings of fact about the claimed debts. Ms. Sinclair presented a large amount of evidence and made detailed submissions about them, and Ms. Taylor responded. It is clear that further proceedings will be necessary in order for the estate to be settled. These findings may assist the parties in that process.
- [66] Ms. Sinclair sets out the expenses she claims in six detailed appendices (appendices B through F) to the written submissions her counsel presented in support of her oral submissions at the end of the trial. Copies of supporting receipts are provided in a large binder.

[67] I will address in turn the expenses as Ms. Sinclair groups them, beginning with those listed in Appendix B, after first making some general comments about this claim and the evidence to support it.

General Comments

- [68] Ms. Sinclair's claim for reimbursement has but weak documentary support, despite the very large number of receipts or invoices that she tendered in evidence. For many of the expenses she claims, the evidence on which she relies does not adequately establish that she paid the expense, that she did so from her own funds (and not Ruth Sinclair's), and that the expense was for something relating to Ruth Sinclair or her estate. Compounding these problems with the documentary evidence, Ms. Sinclair's memory about these various matters was extremely vague.
- [69] I find that Ms. Sinclair had no real system for accounting for the funds she personally received from Ruth Sinclair or used from her accounts. Ms. Sinclair agreed that generally she did not record how, or from what source, the expenses she claims were paid. Nor did she file any tax returns for Ruth Sinclair for the years 2008 and 2009.
- [70] There is no evidence at all about the bank account Ms. Sinclair testified she opened jointly with Ruth Sinclair after Henry Sinclair's death. As a result, it is impossible to determine which of the expenses Ms. Sinclair claims were actually paid from the account. The only reasonable inference is that a fair number of them were.
- [71] In addition, the large body of receipts and invoices on which Ms. Sinclair relies provides unreliable evidence for several reasons.
- [72] It includes duplicate receipts, as well as claims for both the amount of the receipt and for the corresponding payment (for example, through Ruth Sinclair's Mastercard account). As I will discuss, it also includes some expenses that were not paid at all or were paid by others, as well as many which clearly benefitted Ms. Sinclair and Mr. Burt far more than Ruth Sinclair, if they benefitted her at all.
- [73] Finally, I am not convinced that the notation "Est" that Ms. Sinclair placed on receipts and invoices she says related to expenses paid on behalf of the estate, were notations made at or around the time of payment. I accept Ms. Sinclair's evidence that she maintained a file into which she put some of the estate's receipts or invoices on an ongoing basis. However, I find that some of the documents labelled "Est" to have been assembled from other sources in an after-the-fact effort to identify expenses which might be attributed to Ruth Sinclair's benefit or support.
- [74] I turn now to consider the specific groups of claims.

Appendix B - Claim for Miscellaneous Expenses Paid on Ruth Sinclair's Behalf

- [75] Appendix B lists miscellaneous expenses, totalling \$31,581, which Ms. Sinclair claims to have paid on Ruth Sinclair's behalf between March 2008, two months before Henry Sinclair's death, and December 2011. The expenses for the period while Ruth Sinclair was still alive reflect various costs of daily life, such as for clothing, toiletries and other personal items, medical or pharmacy expenses, and insurance. Then follow certain costs associated with Ruth Sinclair's death. Finally, the claim includes amounts paid to Ruth Sinclair's Mastercard account in 2010 and 2011 for interest on the account, which, by the end of 2011, stood at \$21,200.
- [76] I will discuss each of these three groups of expenses separately. These comments apply mainly to the Appendix B part of Ms. Sinclair's claim, but also, to some extent, to some of the other parts.
- [77] For the first group of expenses underlying Ms. Sinclair's Appendix B claim, the main difficulty is that the evidence does not establish that they were paid by Ms. Sinclair herself, and not from her mother's own funds. These are expenses said to have been incurred while Ruth Sinclair lived on 7th Avenue.
- [78] Ms. Sinclair acknowledged that while Ruth Sinclair was still living at the 7th Avenue property, most of her expenses were paid from her own account. She testified that on occasion she supplemented her mother's funds from her own. However, she gave no detail of any kind about any such transaction, and provided nothing in support. The only conclusion from the evidence is that Ruth Sinclair funded her own expenses at that stage.
- [79] For the second group of expenses, relating to the period when Ruth Sinclair lived with Ms. Sinclair and Mr. Burt on Williams Road, at least two main difficulties arise.
- [80] The first is that, as for the earlier period I have just discussed, Ruth Sinclair's own funds appear to have paid a substantial portion of these expenses.
- [81] Ms. Sinclair used Ruth Sinclair's bank account (whether her original account, or the joint account Ms. Sinclair later opened) into which Ruth Sinclair's monthly CPP and OAS income was deposited. There was some dispute as to the amount of that income, and I find that it was a total of \$1,400 per month after Henry Sinclair's death.
- [82] Ms. Sinclair also received \$57,705 from the proceeds of the sale of the 7th Avenue property in May 2009. Ms. Taylor makes no claim in respect of that amount, but submits that it should be taken into account as a source of funds used for Ruth Sinclair's support, and I agree. I take the same view of the various amounts Ms. Sinclair received from death benefits payable in respect of each parent, garage sale proceeds, the sale proceeds of Henry Sinclair's vehicle, and the balance in Ruth Sinclair's account, together amounting to more than \$12,000.

- [83] Ruth Sinclair's monthly income, together with the substantial funds Ms. Sinclair received and used, were much more than enough to pay for Ruth Sinclair's expenses at the Williams Road property.
- [84] The second main difficulty is that some of the expenses appear to have benefitted Ms. Sinclair and Mr. Burt as much or more than they benefitted Ruth Sinclair. For example, \$3,960 is claimed for housecleaning, and smaller amounts for gardening services. There is no indication that these amounts are but a portion of the overall expenses for these services, representing Ruth Sinclair's share of them. The only reasonable inference is that Ms. Sinclair claims the full cost of the services, even though, on the face of the matter, she and Mr. Burt benefitted personally to the extent of two-thirds.
- [85] The third group of expenses are payments for interest on Ruth Sinclair's Mastercard account after her death. The evidence includes only those Mastercard statements which show a payment for which Ms. Sinclair asks to be reimbursed. However, it can be seen from the statements that are in evidence that the outstanding balance for the account was zero in June 2008, but had risen to \$10,055 by October 2008, with a substantial amount of interest payable. The balance was \$11,645 in November 2008, and had risen to \$19,727 by July 2009.
- [86] One difficulty with Ms. Sinclair's claim for these expenses is that it is plain from the evidence that the outstanding balance was in large part generated by cash advances she took, and there is little, if any, satisfactory evidence to explain how she used the cash. (I should note also that the expenses claimed for while Ruth Sinclair was still living also include some payments to Mastercard for interest, and my comments apply to these also.)
- [87] Ms. Sinclair acknowledged three cash advances, totalling \$18,000, in October and November 2008, and in February 2009. She testified that these were gifts from Ruth Sinclair, but I am unable to accept that evidence. Ms. Sinclair's evidence was vague on this point, and gave no detail about the motivating reasons or occasions for the gifts, except that Ruth Sinclair wanted to contribute to the household expenses. She began by testifying that the largest advance was used to pay the Williams Road mortgage, but revised that evidence in cross-examination when it was noted that the advance was made (on October 9, 2008) before the first mortgage payment was due.
- [88] Furthermore, Ruth Sinclair's funds were already contributing very substantially to the household expenses, even if she herself was not aware of this. I also find it very unlikely that Ruth Sinclair would have made large cash gifts that drove her Mastercard into serious deficit.
- [89] Another difficulty with Ms. Sinclair's claim for the Mastercard interest payments is that it appears that the cash advances that generated the debt in the account were used to pay some of the expenses for which Ms. Sinclair makes a separate claim. For example, Ms. Sinclair initially testified that the cash advances were gifts to help her pay the mortgages. However, even if they were - and I have rejected Ms. Sinclair's evidence that the cash advances represented gifts - it is flawed logic that would have the estate compensate Ms.

Sinclair for the very mortgage payments that the cash advances were to fund.

[90] In my view, Ms. Sinclair should not be reimbursed for any of the Appendix B expenses.

Appendix C - Claim for Carrying Costs for the 7th Avenue Property

[91] Appendix C lists costs associated with the 7th Avenue property between May 2007 and June 2009, and its later sale. These include utilities, insurance, mortgage payments, gardening and cleaning services, and legal fees. They amount to \$73,975. The costs associated with the sale, notably property transfer tax, represent a substantial portion of that total.

[92] Some of these expenses, namely legal fees and utility bills, were, in fact, paid out of the proceeds of sale of the property, and not by Ms. Sinclair. This is apparent from the order to pay prepared at the time of the sale.

[93] For other expenses, the evidence supporting Ms. Sinclair's claim suffers from many of the weaknesses I mentioned earlier.

[94] Ms. Sinclair should not be personally responsible for the property transfer tax payable for the 7th Avenue property, or for the Williams Road property, when that property is sold and the estate settled.

[95] However, Ms. Sinclair should not be compensated for the remaining expenses she claims in respect of the 7th Avenue property.

Appendix D - Claim for Carrying Costs of the Williams Road Property

[96] Appendix D lists costs of the same general types associated with the Williams Road property. For the period between September 2008 and September 2009, they amount to \$56,451 for mortgage payments, plus \$21,310 for other expenses. For the period after September 2009, they amount to \$196,154 for mortgage payments, plus \$216,421 for other expenses. The grand total claimed for Williams Road is \$490,336. Ms. Sinclair suggests that \$36,720 be deducted for the rental income she and Mr. Burt received from international students; this would leave a net amount of \$453,616 claimed in relation to the Williams Road property.

[97] Ms. Taylor agrees, and I do too, that the estate is responsible for the mortgage on the Williams Road property owing at the time of Ruth Sinclair's death. This was approximately \$340,000.

[98] In my view, Ms. Sinclair is entitled to no further reimbursement.

[99] The largest component of Ms. Sinclair's Appendix D claim is for mortgage payments. However, the mortgages Ms. Sinclair caused to be secured against the property were in her name alone, and they generated very substantial funds for her.

[100] In the course of the original financing of the Williams Road purchase, and the rolling mortgages that followed in the ensuing years, Ms. Sinclair used a total of approximately \$272,000 from the mortgage loans for her own purposes (not including the \$57,705 she received from the net sale proceeds of the sale of the 7th Avenue property in May 2009):

- (a) \$92,174 paid to her personally from a Premiere Canadian mortgage in late October 2009;
- (b) \$25,006 which she used to pay various personal debts from a TD mortgage in September 2010;
- (c) \$32,498 paid to her personally from the same mortgage loan;
- (d) \$71,378 paid to her personally from a second TD mortgage in July 2011; and
- (e) \$50,000 being the full amount of a private mortgage loan in April 2013, paid to her personally.

[101] Ms. Sinclair thus benefitted to a considerable extent from very substantial mortgage loans which fully encumbered the estate's property, and placed it at risk.

[102] It is true that Ms. Sinclair was personally responsible for the mortgage loans. However, without the Williams Road property as security, she would not have been able to obtain the loans, or the cash that they generated; her own financial situation was not sufficient. She thus benefitted personally without risk to any personal equity.

[103] As to the regular mortgage payments, I cannot accept that the estate should bear them. It was Ms. Sinclair's responsibility to settle the estate, and she took no steps at all to do so. Instead, Ms. Sinclair chose to remortgage the property more than once, encumbering it further by almost \$300,000, and delaying payments against the principal of the estate's original debt. The mortgage payments Ms. Sinclair made after her mother's death went almost exclusively to paying down the interest on these new mortgages.

[104] Moreover, she and Mr. Burt continued living in the home without paying occupation rent. Indeed, while they did so, Ms. Sinclair and Mr. Burt collected rental income from students. Mr. Burt testified that the cost of food and other items for the students often exceeded the rent received. However, I consider it unlikely that Ms. Sinclair and Mr. Burt would have continued to rent rooms if that happened more than rarely. I find it likely that they received a net income of, at least, \$36,720, the "fair average" amount Ms. Sinclair acknowledged through her closing submissions at the end of the trial.

[105] The Appendix D claim includes large amounts for utility bills and for maintaining the house and the property.

[106] However, it seems that all of the expenses for utilities, except those provided by Shaw and Telus (which Mr. Burt testified he paid), and for maintaining the household and the property, are attributed to Ruth Sinclair, without deduction to reflect the benefit to Ms. Sinclair and Mr. Burt.

- [107] For example, nothing in the evidence explains why the approximately \$40,000 in housekeeping expenses at the Williams Road property should be attributed to Ruth Sinclair or her estate. Ms. Sinclair and Mr. Burt employed a housekeeper when they lived in the New Westminster townhouse, and it is reasonable to conclude that they would have continued to employ a housekeeper in any event.
- [108] Nor is there any explanation for attributing gardening expenses to Ruth Sinclair.
- [109] Finally, the Appendix D claim includes some costs for improvements. For example, \$3,678 and \$1,450 are claimed for the installation in 2010 of a patio and an outdoor fireplace.
- [110] On the evidence, I am not persuaded that these increased the value of the property by more than their cost, despite the fact that they are mentioned in a valuation as features of the property. Rather, I conclude that the patio and fireplace were added because Ms. Sinclair and Mr. Burt expected to enjoy them, and did.
- [111] Furthermore, the actual cost of these additions is unclear. Mr. Burt testified that the invoices which are in evidence were never actually paid. Rather, he provided computer services which he described as "contra" or "in lieu". However, the nature and actual value of Mr. Burt's services is not in evidence. He gave no detail about these exchanges, or about the value of his computer services.
- [112] Ms. Sinclair should not be reimbursed for carrying costs of the Williams Road property.

Appendix E - Claim for Carrying Costs of Ms. Sinclair's Townhouse

- [113] Ms. Sinclair asks to be reimbursed for the carrying costs of her New Westminster townhouse after the Williams Road purchase. She claims \$22,701 for the period before Ruth Sinclair's death, and \$63,683 for the period from the death until the sale of the townhouse in August 2013, for a total of \$86,384. These amounts reflect mainly mortgage payments, strata fees, taxes, and utility bills, less rental income and net sale proceeds. Details are set out in Appendix E to Ms. Sinclair's written submissions.
- [114] Ms. Sinclair reasons that the estate should bear these costs since she and Mr. Burt needed to live in the Williams Road property in order to care for Ruth Sinclair, and it would have been uneconomic for them to have sold the townhouse before they did. They would have incurred a substantial penalty under the mortgage had they sold the townhouse before five years from its purchase. And had they sold immediately at the five-year point, they would have incurred a loss because the market for similar townhouses was low; Ms. Sinclair and Mr. Burt waited for it to rise.
- [115] Ms. Sinclair's position cannot succeed because the evidence is not sufficient to indicate that suitable but less costly care alternatives for Ruth Sinclair were not available. Ms. Sinclair proceeded unilaterally with the arrangements for the move to Williams Road without, I find, properly informing Ruth Sinclair of the financial consequences - and without informing her at all that the townhouse's carrying costs would be included in those

consequences - and without taking any steps at all to consider other reasonable arrangements.

[116] Moreover, even if her reasoning could support her claim in respect of the period up until Ruth Sinclair's death, it certainly does not support her claim in respect of the almost four years that followed. The obvious course of action, after the death, was for Ms. Sinclair to have settled the estate, as it was her responsibility to do, by selling the Williams Road property and distributing the proceeds under the will. Ms. Sinclair and Mr. Burt could then have returned to live in the New Westminster townhouse, as they had done before.

[117] Ms. Sinclair should not be reimbursed for the carrying costs of her New Westminster townhouse.

Appendix F - Claim for Quantum Meruit Compensation

[118] Appendix F sets out Ms. Sinclair's claim for quantum meruit compensation based on unjust enrichment as described in *Peter v. Beblow*, [1993] 1 SCR 980. She claims, using (for the period during which Ruth Sinclair lived with her and Mr. Burt) the respective costs of professional care through an agency and by a live-in caregiver. These claimed costs are \$111,901 and \$51,447 respectively.

[119] The Supreme Court of Canada refined the test for unjust enrichment in *Kerr v. Baranow*, 2011 SCC 10 at para. 32. Unjust enrichment "permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment". Juristic reason, as the Court clarified at para. 44, will bar relief where there is an entitlement to enrichment, such as a contract or gift, but can also account for the legitimate expectations of the parties and moral or policy considerations.

[120] I am unable to agree that Ms. Sinclair should receive compensation on a quantum meruit basis. While Ruth Sinclair undoubtedly benefitted from the care that Mr. Burt and Ms. Sinclair provided, there was neither corresponding deprivation nor absence of juristic reason for their actions. In my view, the care she and Mr. Burt provided was no more than is given to an aging parent by a loving adult child with no greater expectation than to share in the estate. Also, the care was for only a short period of time, as it turned out, and had only minor effect on Ms. Sinclair's and Mr. Burt's lifestyle or activities.

[121] Ms. Sinclair had always been close to her mother, and to both parents when Henry Sinclair was still alive. As she did before, at Williams Road she often checked on her mother to make sure that she had what she needed. She also prepared extra portions of the meals she cooked for herself and Mr. Burt, and then took her mother's meal to her in her suite.

- [122] This care was no doubt valuable to Ruth Sinclair's well-being, but it was not unusual or difficult for Ms. Sinclair to provide. Ms. Sinclair continued to work full-time while Ruth Sinclair lived at Williams Road. She lost no income because of any increased obligation to her mother. The single detriment that she could identify to her own lifestyle or to her life with Mr. Burt as a couple was that they felt unable to go on vacation while her mother was living with them.
- [123] As I mentioned earlier, Mr. Burt was Ruth Sinclair's primary caregiver during the ten months that she lived on Williams Road. As Ms. Taylor notes, he is not a party to the litigation. However, since one might argue that the care he gave may be considered to have been indirectly provided by Ms. Sinclair - and I do not decide that point - I will comment on the claim based on the care he gave.
- [124] As I find, caring for Ruth Sinclair did not seriously disrupt Mr. Burt's ordinary life, although it added a layer of responsibility to it. Ruth Sinclair needed someone to monitor and supervise her daily living, but she did not need much direct attention. She looked after most of her personal needs herself, and she spent most of her day in her suite watching television, which she enjoyed. Also, it is clear from the evidence that Ruth Sinclair respected Ms. Sinclair's and Mr. Burt's privacy, and accordingly tended to keep to her own suite unless there was a social occasion.
- [125] For the most part, Mr. Burt's role was therefore to check on Ruth Sinclair once in a while during the day, and to keep a log of her food and drink so that, if necessary, others could determine whether they were sufficient. On one occasion, when Ruth Sinclair was unpleasantly ill, Mr. Burt cleaned her up and dealt with her laundry.
- [126] There is no reliable evidence that Mr. Burt lost any income during the time he cared for Ruth Sinclair in this way. Mr. Burt was self-employed at the time and worked from home. He testified that he may have lost some income during the approximately ten months that Ruth Sinclair lived with him and Ms. Sinclair, but he could not quantify the amount. The documentary evidence indicates that Mr. Burt's declared annual income did not vary much over the years: in 2007, he made \$11,161, in 2008, \$9,108, and in 2009, \$3,999.
- [127] I consider also that Ms. Sinclair and Mr. Burt were not alone in providing care to Ruth Sinclair. Ms. Taylor came from Alberta for substantial periods to help her mother, both shortly after Henry Sinclair's death and again to help with the move to Williams Road. On each visit, she devoted her time almost entirely to Ruth Sinclair.
- [128] Ms. Taylor's evidence about these visits was challenged in the trial, and Ms. Sinclair testified that the visits were shorter and less useful to their mother than Ms. Taylor indicated. However, I find Ms. Taylor's recollection of these and other visits to be more accurate than Ms. Sinclair's. Ms. Taylor had more reason than Ms. Sinclair to remember the visits. Her recollection also accords with objective evidence (such as receipts for purchases for their mother), while Ms. Sinclair's does not.

- [129] Ms. Taylor came to help with the move to the Williams Road property. She stayed first at the New Westminster townhouse, arriving on approximately October 11, 2008, and remained for almost a month to help with the move and with Ruth Sinclair's transition. That latter visit fell within the period for which Ms. Sinclair seeks quantum meruit compensation. The visit required Ms. Taylor to leave her work, foregoing income.
- [130] The point of describing the care Ms. Taylor gave is not to determine the number of primary care days supporting Ms. Sinclair's claim, with compensation to be allocated accordingly. Ms. Sinclair takes that approach in her Appendix F.
- [131] Rather, Ms. Taylor's care demonstrates that a loving adult child will willingly restrict her or his own lifestyle in order to ensure that an aging parent feels confident, comfortable, and supported by those he or she loves, and will do so without expectation of compensation. Ms. Sinclair did just that in inviting her mother to live with her and Mr. Burt.
- [132] In these circumstances, it is difficult to view Ruth Sinclair as having been unjustly enriched at Ms. Sinclair's expense.
- [133] Since I have concluded that Ms. Sinclair should not receive compensation for the care she and Mr. Burt gave to Ruth Sinclair, the expert opinion of Theresa Wong, submitted by Ms. Sinclair, does not assist. Ms. Wong, occupational therapist, described the costs of care through an agency, and of care given by a live-in caregiver.
- [134] But even had I concluded that Ms. Sinclair should receive some compensation, the report would not have helped me determine the value of the care she and Mr. Burt provided. This is because the report assumes a much higher level of care than Ruth Sinclair needed or received.

CONCLUSIONS

- [135] For the reasons I have given, I have concluded that Ms. Sinclair breached a fiduciary duty to Ruth Sinclair, and that she holds the entire interest in the Williams Road property in trust for the estate. As between Ms. Taylor and Ms. Sinclair, it is agreed that the estate bears responsibility for the amount (approximately \$340,000) outstanding under the mortgages at the time of Ruth Sinclair's death.
- [136] Also, I conclude that Ms. Sinclair has not established that the estate owes her any more than she has already received by various means.
- [137] Since Ms. Taylor's claims are as a beneficiary of the estate, and the estate is not a party to the litigation, she can have no monetary remedy against Ms. Sinclair.
- [138] However, I will direct that Ms. Sinclair is to take steps forthwith to settle the estate and distribute the proceeds.
- [139] I will also remain seized of any further applications that may arise in that process.

"The Honourable Madam Justice H. Holmes"

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