

CANADA / JUDGMENT

Thompson (Re)

2020 BCSC 2279

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2279 Thompson (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thompson (Re),

2020 BCSC 2279

Date: 20200117

Docket: S220350

Registry: New Westminster

In the Matter of the Patients Property Act, R.S.B.C. 1996,

Chapter 349 and amendments theret

And in the Matter of Hazel Lillian Thompson

- and -

Docket: S221711

Registry: New Westminster

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 49

Re: Hazel Lillian Thompson

Corrected Judgment: The text of the judgment was corrected on the front page on
January 4, 2022.

Before: The Honourable Mr. Justice Mayer

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:

S.A. Robinson

K. Tiwana

Counsel for the Respondents:

P.W. Lightbody

R. Brar, Articled Student

Place and Date of Trial/Hearing:

New Westminster, B.C.

December 13, 2019

Vancouver, B.C.

January 17, 2020

Place and Date of Judgment:

Vancouver, B.C.

January 17, 2020

- [1] THE COURT: These are my reasons in respect of the two petitions that were before me, both brought pursuant to the Patients Property Act, R.S.B.C. 1996, c. 349.
- [2] In the first application, Patricia Thompson seeks the following orders:
- 1) a declaration that her mother Hazel Thompson is, by reason of mental infirmity, incapable of managing herself and her affairs;
 - 2) the appointment of Solus Trust Company ("Solus") as committee of Hazel's estate, without bond;
 - 3) the appointment of Patricia as committee of the person of Hazel;
 - 4) that two real properties in Maple Ridge, owned by Hazel and a company controlled by her, be listed for sale and sold on terms to be determined by Solus; and
 - 5) that Patricia be reimbursed monies paid to cover Hazel's expenses in the amounts to be determined by Solus.
- [3] I just pause to say that I am going to be referring to the members of the family, the Thompson family, by their first names, just for convenience, and no disrespect is meant in referring to them in that manner.

- [4] In the second application, three of Hazel's other children, Moira, Gail, and Thomas Thompson, seek a declaration that Hazel is incapable of managing herself and her person. They seek orders that, instead of Solus and Patricia, they are appointed as co-committees of Hazel's estate and person; and that they be paid their reasonable costs and expenses of and incidental to their application out of Hazel's estate. These applications were made on notice to the Public Guardian and Trustee [PGT].

Background

- [5] Hazel is currently 89 years old, she is a widow, and currently resides at her home on Webster Road in Maple Ridge, B.C., a home that she previously shared with her deceased husband until he passed away in 2015. Patricia has resided with Hazel at the Webster Road home since around 2011.
- [6] In total, Hazel has six adult children: Patricia, Moira, Gail, and Thomas (who are all petition respondents) and Susan and Katherine. All of Hazel's children reside in the Lower Mainland, with the exception of Katherine, who lives in Lebanon.
- [7] By an enduring power of attorney dated December 1, 2015, Hazel appointed Patricia as a person able to make financial and legal decisions on her behalf.
- [8] By a representation agreement dated August 22, 2017, Hazel appointed Patricia and Susan her representatives, empowering them to make decisions concerning her health and care needs, should she become incapable of doing so, including, for example, where and with whom she resides.
- [9] Two psychiatric examinations of Hazel have been completed; the first by Dr. Mathew on May 31, 2019, and the second by Dr. Holden on March 12, 2019. Both Drs. Mathew and Holden have sworn affidavits setting out their opinion that Hazel is incapable of managing her person or her financial affairs by reason of neurocognitive disorder and severe dementia respectively. Both consider that her prognosis is poor. Dr. Holden's opinion is that further deterioration is inevitable.
- [10] As well, I was provided today with two further affidavits, attaching further opinions in letter format, from Drs. Mathew and Holden. The first, dated December 19, 2019, was provided by Dr. Holden, again a psychiatrist, to counsel for Patricia. I am just going to read a few portions of his opinion, without reading the entirety of the letter. Dr. Holden states that:

Mrs. Thompson (Hazel) will need supervision 24/7, but, in the absence of any active medical reasons or potentially dangerous behaviours (to herself or others) there is no reason why this cannot be in a home with relatives and locked doors -- at least at this stage.

That is how he starts his opinion, but he goes on to say:

The progressive development of age-related physical complications will sooner or later intervene to such a degree that active medical nursing input is required.

Further:

Experience has shown that individuals who enter a care facility whilst still able to adapt mentally to the new surroundings, do a lot better than those who are placed in an extended care facility urgently without any advance preparation, for example, from a hospital emergency unit following a presentation for one or more of the inevitable consequences of aging: falls, fractured hips, confusion, urinary tract infections etc.

He goes on to say ultimately that:

Although it must be accepted that there is no definitive way to predict the timeframe [that is, what progression Hazel's condition will take]. On the other hand it should not be stated explicitly that unless Mrs. Thompson passes away during this interim phase, admission to a long-term care facility at some stage --

Essentially, Dr. Holden states that admission to a long-term care facility, absent Hazel passing away, is inevitable. His significant opinion is, in his words:

Taking all of these factors into account, considering my own knowledge of Mrs. Thompson and an understanding of the social situation, it would be my recommendation that she be placed in a care facility sooner rather than later.

[11] Now, that is the opinion of Dr. Holden, which is not binding on me, but, nonetheless, it is his opinion. The opinion of Dr. Mathew is much briefer. It is dated January 9, 2020. In his letter, again provided to counsel for Patricia, his opinion is as follows:

Based on the information and evaluation, it is considered in my medical opinion that she would benefit significantly by a placement to a supervised facility where this patient's activities of daily living can be addressed 24 hours of the day in a consistent manner.

[12] Hazel's estate consists principally of real properties located in Maple Ridge. The Webster Road home had a 2019 assessed value of approximately 1.4 million dollars. The other Maple Ridge property, which is on Dewdney Trunk Road, where Thomas has lived since 2010, is agricultural land. It had an assessed value in 2019 of \$119,550 as farmland and 2.236 million dollars without farm status. As I have already stated, the second property is held by Hazel through a holding company of which she is the sole shareholder.

[13] Hazel has other assets, including cash and investments, valued at approximately \$230,000. She receives an OAS survivor's pension of \$1,150 per month. I am advised that her debts are currently \$5,000 to the CRA and that she has a credit card debt of approximately \$25,000.

[14] Patricia says that she has been Hazel's primary caregiver for more than four years, but as a result of Hazel's diminished mental capabilities that Hazel now requires more care than Patricia is able to provide. She submits that it is now in Hazel's best interest to move into a care facility where 24-hour care can be provided. In addition, Patricia says that Hazel's cash resources and income are insufficient to cover her monthly expenses and, Patricia says, she is currently subsidizing some of Hazel's costs, in the amount of \$500 per month and various

extraordinary expenses, totalling approximately \$10,500 to date.

[15] Thomas says that he himself has made significant contributions enhancing the value of Hazel's estate, including completing a number of maintenance activities and improvements to the Dewdney Trunk Road property and perhaps to the Webster Street property as well.

[16] Moira, Gail, and Thomas say that an appointment of a corporate committee of the estate is not required and will result in unnecessary expense. They seek appointment as committees of Hazel's estate. In addition, they seek appointment as co-committees of the person of Hazel, on the basis that this is in accord with her wishes and that they are competent to provide the necessary care. They contend that Patricia is not capable of or appropriate to be appointed as committee of Hazel's person.

[17] Although they did not appear at the hearing of these petitions, the PGT as I have already mentioned, filed a response to the petition of Patricia. In its response, the PGT states as follows:

- that there is support for a declaration that Hazel is incapable of managing herself and her financial affairs;
- that "Hazel Thompson's representation agreement, primary caregiving, and the support of co-representative Susan support the appointment of Patricia as committee of the person";
- that the PGT the appointment of Patricia as committee of the person;
- that "what is clear is that family members, whether Patricia or the counter-petitioners [being Moira, Gail, and Thomas], cannot reasonably provide the level of care and support required by Hazel Thompson and which should be enjoyed by her";
- regardless of who is appointed committee of the person by the court, the PGT suggests that it be an implied term of the appointment that the committee keep their siblings promptly informed of significant health and personal care decisions made on behalf of Hazel and facilitate meaningful and independent contact between all of Hazel's children and Hazel;
- that the PGT is prepared to act as committee of the person only if they are also appointed committee of the estate; and
- finally, that the PGT recommends that the appointment of Solus as committee be made without the requirement to provide security.

[18] The parties and the PGT agree that Hazel is no longer capable of managing her personal or financial affairs. This belief is confirmed by the psychiatric opinions of Drs. Mathew and Holden. Pursuant to ss. 2 and 3 of the Patients Property Act, I am satisfied and hereby declare that Hazel is incapable of managing her affairs or herself, by reason of mental infirmity arising from disease, age, or otherwise.

[19] The issues remaining to be decided are, therefore:

- a) whether Solus or, alternatively, Moira, Gail, and Thomas should be appointed as committee of Hazel's estate; and
 - b) whether Patricia or, alternatively, Moira, Gail, and Thomas should be appointed as committee of Hazel's person.
- [20] Section 6 of the Patients Property Act sets out the court's jurisdiction to appoint a committee. The Patients Property Act does not expressly set out factors to be considered in determining who to appoint as committee. As a result, the decision of whom to appoint requires an exercise of the court's *parens patriae* jurisdiction.
- [21] Some guidance can be taken from s. 18 of the Patients Property Act, which states that, "A committee must exercise powers for the benefit of the patient and the family, having regard to the nature and value of the property of the patient and circumstances and needs of the patient and their family".
- [22] At para. 29 of his reasons for judgment in *Stewart Re*), 2014 BCSC 2321 Justice Masuhara set out a non-exhaustive list of relevant factors, relying on a number of authorities, to be taken into consideration in the appointment of a committee:
- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
 - (b) whether immediate family members are in agreement with the appointment;
 - (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
 - (d) the level of previous involvement of the proposed committee with the patient, [and] usually family members are preferred;
 - (e) the level of understanding of the proposed committee with the patient's current situation, and [whether] that person [will] be able to cope with future changes of the patient;
 - (f) whether the proposed committee will provide love and support to the patient;
 - (g) whether the proposed committee is the best person to deal with the financial affairs and ensure [that] the income [of the] estate are used for the patient's benefit;
 - (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to . . . handle the patient's affairs;
 - (i) who is best to advocate for the patient's medical needs;
 - (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry . . . out [such a plan]; and [finally]

- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.
- [23] As stated by Justice Masuhara in *Stewart (Re)*, the inquiry with respect to an appropriate committee is fact specific and a particular factor may not be applicable or may attract different weight, depending on the circumstances of the case.

Appointment as Committee of the Person

- [24] In evaluating whether Patricia or, alternatively, Moira, Gail, and Thomas should be appointed as committee of the person for Hazel, I have considered the relevant factors set out in *Stewart (Re)*. The best available evidence with respect to Hazel's wishes regarding who could make decisions regarding her health and care needs is, in my view, her decision in 2017 to appoint Patricia and Susan as her representatives. There is no evidence on which I can determine that the 2017 representation agreement was made at a time when Hazel was not capable to make it. Susan, I note, has consented to the appointment of Patricia as the only committee of Hazel's person. Her consent is not a requirement, but it is an indication of her willingness to give up her rights as a representative. In my view, Hazel's decision to grant representation rights to Patricia and Susan in 2017 is a factor favouring the appointment of Patricia as committee of the person.
- [25] Second, although the evidence filed in the petitions before me makes it clear that the Thompson siblings (and in particular Patricia and Thomas) do not currently get along, there is evidence that they and other members of the family have been able to cooperate, in some respects, in providing care to Hazel when required. For example (and this is only one example), making arrangements for family members to stay with Hazel when Patricia has been required to travel for work or personal purposes. I am satisfied that Patricia has made an effort (which has not been perfect, but, nonetheless, an effort has been made) to keep her siblings informed with respect to Hazel's care needs and conditions. In my view, this factor supports Patricia's appointment as committee.
- [26] Although other members of Hazel's family have had a role in her care, there appears to be no dispute that primary care has been provided by Patricia over the past four years. Gail, Moira, and Thomas have criticized Patricia's care, at least the quality of her care, including providing nutritious meals; taking Hazel to work when it was inappropriate for her to do so; consuming alcohol or other substances in her presence; the cleanliness of Hazel's home and of Hazel's person; and other matters. Patricia denies that she has failed to provide the required and appropriate level of care to Hazel. She does not deny that it has become increasingly difficult for her to provide necessary daily care to Hazel, and, for this reason, she wishes to arrange for Hazel to move into a nearby care facility.

- [27] Doctor. Mathew and Dr. Holden's opinion, again, is that Hazel's dementia will worsen and, therefore, in my view, her care needs will likely increase. There is evidence which establishes that Hazel has wandered from the Webster Road property on occasion; and, as well, from other locations. In addition, I note that both Drs. Mathew and Holden consider that transitioning Hazel into a care home sooner rather than later is likely prudent. I note, as well, that the PGT considers that none of the Thompson siblings are able to provide the level of care and support required by Hazel Thompson and which should be enjoyed by her.
- [28] I just pause to note that this does not and should not in any way be taken as a suggestion that each of the Thompson siblings and their respective families do not care for Hazel and do not wish her the best. That is not the point. The point is whether or not, on the evidence available for me (and medical evidence is very probative), I am sufficiently satisfied that members of the family, on their own, are capable of taking care of Hazel.
- [29] Patricia proposes that she be appointed as Hazel's committee of the person and says that it is her intention that Hazel be moved into a care facility where she can receive 24-hour care. She says that, if this occurs, she will continue to provide ongoing reports to her siblings regarding Hazel's care and condition; and that, in addition to more constant professional care in a home, living in a home will reduce conflicts that have occurred between the Thompson siblings during visits with Hazel at the Webster Road property or other locations.
- [30] In my view, on the basis that Hazel will be admitted to a suitable care facility in the Lower Mainland, Patricia has the ability to perform the duties that she will be required to perform as her personal committee. I am not satisfied that Moira, Gail, and Thomas have presented a suitably-detailed plan for Hazel's care if they are appointed as her personal committees. I do accept that they desire to do so and that it is a heartfelt desire, but, in this case, what I am putting in the balance is their submission that they will make the appropriate arrangements and have appropriate people, without, in my view, a more detailed plan, particularizing precisely how they intend to see to Hazel's care on an ongoing basis.
- [31] Counsel submitted that they should be given an opportunity to do so. In my view, providing such an opportunity, when there is an alternative where Hazel's care needs are more certain, puts Hazel at unnecessary risk. I am simply not in a position to make that determination based on the materials before me. It is clear to me that Hazel either does require or likely will require 24-hour care as her dementia progresses. Again, none of the Thompson siblings have indicated how they would deal with her complex care needs as her condition deteriorates.
- [32] The PGT has recommended that, if Patricia is appointed as personal committee, that she be required to keep her siblings promptly informed of significant health and personal care decisions made on behalf of Hazel and to facilitate meaningful and independent contact between Hazel and all of her family. I agree with this recommendation.

- [33] In all of the circumstances, I consider it appropriate and so order that Patricia be appointed as committee of the person of Hazel, on the condition that Hazel is, at the earliest reasonable opportunity, admitted to a suitable residential care facility within the Lower Mainland. Before selecting an appropriate care facility, Patricia shall make all reasonable efforts to involve her siblings in the selection process. Patricia shall keep her siblings promptly informed of all health and personal care decisions made on behalf of Hazel, beyond a de minimis standard (in other words, beyond those that are not significant in any way) and will make all reasonable efforts to facilitate meaningful and independent contact between Hazel and all members of her family. I pause to note that, if Patricia fails to do so, it is certainly open to the balance of Hazel's family to seek relief from the court to ensure that appropriate access is provided.

Appointment of Committee of the Estate of Hazel

- [34] The evidence before me establishes that Hazel's estate is of significant value, but that she does not have sufficient monthly income to support her monthly costs. The committee of Hazel's estate is, in my view, required, in order to ensure that her assets are appropriately managed, so that sufficient funds remain available to pay for her ongoing care, and, consistent with the requirements of s. 18 of the Patients Property Act, to, as much as possible, preserve the value of her estate for as long as Hazel is alive and for the benefit of her beneficiaries.
- [35] I am satisfied that Patricia and Thomas, and perhaps other siblings, have a conflict of interest with respect to the management of Hazel's estate. It is clear that Patricia and Susan, on the one side, and Moira, Gail, Thomas, and Katherine, on the other side, have had difficulty cooperating on major decisions involving Hazel in the past.
- [36] Both Patricia and Thomas have been residing on property owned by Hazel for some time, without payment of rent. There is a dispute with respect to the source of charges to Hazel's Visa. That is, whether the charges were made by Patricia for her own purposes and which have resulted in a \$25,000 Visa debt. This dispute arises principally from the other family members' concerns that Hazel is parsimonious, to use that word, and typically did not use a credit card in the past. There is also a dispute with respect to whether Thomas has paid all utilities costs arising from his use of the Dewdney Trunk Road property. There is also a dispute with respect to whether Thomas has illegally been using one or both of Hazel's properties for cultivating marihuana. In addition, there is evidence which suggests that, as recently as March 2019, Thomas was seeking to facilitate a transfer of the Dewdney Trunk Road property into his name.
- [37] Now, with respect to the financial disputes, I am not making any determination with respect to the validity of the cross-claims of the parties of financial impropriety. In addition, I am not making any determination with respect to whether or not there was a justifiable reason for Thomas to seek to facilitate a transfer of the Dewdney Trunk Road property into his name. There may well have been. I am simply raising all of those issues to demonstrate that

there are financial disputes between the parties and that those disputes, in my view, raise the spectre of a conflict of interest which may inhibit their abilities to fairly, for all parties, manage the estate of Hazel.

- [38] In my view, putting one group of Hazel's children in charge of her financial affairs will inevitably result in further disputes. Patricia, apparently alive to this possibility, and despite the fact that she currently has financial authority over Hazel's estate, pursuant to the 2015 power of attorney, wishes to, in effect, transfer financial management of her mother's estate to Solus, as an independent party. I am satisfied that it is likely that Patricia and Thomas, and perhaps others of Hazel's children, will be unable to manage Hazel's financial affairs without raising suspicion and concern of self-interest and financial mismanagement amongst the siblings.
- [39] As I have already said, the PGT supports the appointment of Solus as committee of Hazel's estate. I note that Solus is required to manage Hazel's estate in a dispassionate and fair manner. I am not convinced that the costs of Solus' appointment are inappropriate relative to the value of Hazel's estate. In my view, there are adequate protections built into the Patients Property Act to ensure that Solus' charges are appropriate and that they are reporting regularly to the PGT.
- [40] Pursuant to s. 10 of the Patients Property Act, if Solus is appointed, they must deliver a true account of property belonging to Hazel to the PGT. They must also pass their accounts before the PGT, including, if required by the PGT, a true accounting of the estate, including its revenues, debts, credits, and effects. Solus has consented to its appointment as committee of Hazel's estate. In all of the circumstances, I consider it appropriate that Solus be appointed as committee of the estate of Hazel Thompson, without bond, and I so order.
- [41] Now, although Solus has statutory obligations that do not require an order from the court regarding their obligations to report to the PGT the Patients Property Act, I am going to make some additional orders:
1. After Solus determines the full value of Hazel's estate, including real property, cash, and investments, and the extent of any liabilities of or to the estate, Solus shall provide a report in this respect to each of Hazel's children.
 2. In determining liabilities to Hazel's estate, Solus shall consider the issue of unauthorized use of the Webster and Dewdney Trunk Road properties and authorized uses, including whether any rent or reimbursement of expenses arising from use of such properties are owing to the estate, and shall provide a report in this respect to each of Hazel's children.
 3. Solus shall consider both the advisability of an immediate order for sale of these properties or alternatives to the sale of the properties, including borrowing against them, in light of Hazel's best interests and given her needs. This will include, after consultation with Patricia only in her capacity as personal committee, consideration of whether and when a sale is required in order to provide sufficient funds for Hazel's ongoing support and care. In

determining whether a sale of one or more of Hazel's properties is required, Solus shall consider ramifications of such sales on Hazel, including but not limited to taxable gains in connection with the sale of either property and an investigation as to where such proceeds are payable, in light of any agreement between Hazel and her children.

I pause to note that Solus is not empowered to make a determination with respect to the enforceability of an agreement between the parties, but it certainly is able to conduct an investigation into the agreements between the parties. The parties being the children of Hazel and Hazel.

4. If Solus is satisfied that a sale of one or more of the properties, or borrowing against any of those properties, or investments of the estate is in the best interest of the estate or is required to fund Hazel's ongoing support and care, they will have an unrestricted power to deal with the properties as they consider appropriate, but, prior to taking any steps to dispose of or otherwise encumber any of the properties, Solus shall provide no less than 30 days' clear notice of their intention to do so to Hazel's children.

Costs

- [42] Both of the parties have sought costs on a solicitor and client own basis, payable by the estate in this case. I am going to pause briefly just to ask counsel whether or not they are in a position to provide brief submissions in that respect. My intention or my inclination, somewhat reluctantly, but my inclination is to require the estate to pay the costs of each of the parties in respect of their applications. I say that because I believe that the applications were brought in good faith and were brought because of a legitimate belief on behalf of both sides that they were in the best position to provide for Hazel's ongoing needs. I will start with you, Ms. Robinson, please.
- [43] MS. ROBINSON: My Lord, I am not taking any issue with that, if that's what the court is inclined to do, is to make that order.
- [44] THE COURT: Yes. Mr. Lightbody?
- [45] MR. LIGHTBODY: It's almost something that I would need instructions on, but I think, thinking this through a little bit, that sounds like the appropriate order given the --
- [46] THE COURT: Well, just let me --
- [47] MR. LIGHTBODY: -- given the outcome.
- [48] THE COURT: For the gallery let me just say this: The typical -- Mr. Lightbody, as you know, the typical order would be that the successful party is entitled to the costs. So under usual circumstances that would mean that Patricia would be entitled to her costs, all of her costs in respect of her petition, and would be entitled to her costs in respect of the cross-petition that was brought by the other parties.

- [49] In this case, again accepting that the applications were brought in good faith by all parties and really out of their interest in ensuring that Hazel's needs are addressed, I don't consider it appropriate to penalize the other members of the family and I think the estate has sufficient assets to cover these costs.
- [50] I don't want to establish a precedent, though, and to have the parties consider that they can bring any number of applications and they are likely to get a similar award going forward, it is only in the circumstances of the applications before me that I consider that it would be appropriate.
- [51] All right. So Mr. Lightbody, anything further?
- [52] MR. LIGHTBODY: I am satisfied with what you are inclined to do, My Lord.
- [53] THE COURT: All right, so costs will be on that basis then. And if it is necessary I will further order that once those costs have been determined and agreed upon between counsel for both parties Solus is authorized to make the appropriate payments from the estate of Hazel to the parties.
- [54] All right, Ms. Robinson, anything else?
- [55] MS. ROBINSON: I'm just making sure that I got the last part, just the obligations on Solus correct, so that I can advise them. So after -- what I have here is after Solus determines the full value of the estate, including assets and liabilities, they are going to report -- make a -- give a report to all of Hazel's children.
- [56] THE COURT: Yes.
- [57] MS. ROBINSON: They will consider unauthorized and authorized uses of properties including payment or non-payment of rent and will provide a report again to all of Hazel's children whether there is any money owing to or from the estate. Solus shall consider all factors regarding the sale of the property or alternatives to sale of the property and will consider after meeting with Patricia as committee of the person, whether the sale should -- should go forward and shall conclude an investigation as to whether any assets or any agreements with respect to the assets regarding the parties -- I wasn't sure if you said whether any agreements are effective or are in place or what was the -- just to review the agreements, is that what you are saying?
- [58] THE COURT: Yes. Listen, I can read them back to you.
- [59] MS. ROBINSON: Okay, thank you.
- [60] MR. LIGHTBODY: Well, I will confess that I did not get your ruling, your specific orders down as you rattled them off, but I would certainly like to do so and I don't know what the most efficient way of doing that is, whether you issue something for counsel or if you read them back and we --

- [61] THE COURT: Let me read them back.
- [62] MR. LIGHTBODY: Yes.
- [63] THE COURT: I don't think they are that long. I am only going to read back the additional parameters I will put on Solus as a result of their appointment. All right.
- [64] First of all, after Solus determines the full value of Hazel's estate including real property, cash and investments and the extent of any liabilities of or to the estate it shall provide a report in this respect to each of Hazel's children. That was the first.
- [65] Second, in determining liabilities to Hazel's estate Solus shall consider the issue of unauthorized or authorized use of the Webster and Dewdney Truck Road properties including whether any rent or expenses incurred as a result of such use are owing to the estate and shall provide a report in this respect to each of Hazel's children.
- [66] Solus shall consider both the advisability of an immediate order for sale of the properties or alternatives to sale, including borrowing against the equity in the properties in light of Hazel's best interests and given her needs. This will include after consultation with Patricia as her personal committee consideration of whether and when a sale is required in order to fund Hazel's ongoing support and care.
- [67] I am going to say more about that in a minute because I don't want there to be any confusion about Patricia's role.
- [68] Continuing on: In determining whether a sale of one or more of Hazel's properties or borrowing against them is required Solus shall also consider the ramifications of such sales on Hazel, including but not limited to taxable gains in connection with the sale of either property and shall investigate where sales proceeds are payable in light of any agreement made between Hazel and her children.
- [69] Finally, if Solus is satisfied that a sale of one or more of the properties or a financing of the properties or sale of investments or other assets of the estate is in the best interests of the estate or is otherwise required to fund Hazel's ongoing support and care they shall have an unrestricted power to deal with the properties as they consider appropriate, but prior to taking any such steps shall provide no less 30 clear days' notice of their intention to do so to Hazel's children.
- [70] Did you get that?
- [71] MS. ROBINSON: Thank you.
- [72] THE COURT: Mr. Lightbody?
- [73] MR. LIGHTBODY: Did I get that?
- [74] THE COURT: Did you get that?

- [75] MR. LIGHTBODY: I got -- I think I can make sense of my notes from this.
- [76] THE COURT: Some of it comes from the recommendations of the PGT; I just followed some of the language but not all of it. All right, so I have my notes, so if there are any questions you can always ask and I can confirm.
- [77] Now just a final comment: From the materials it's clear that -- and perhaps this doesn't exist anymore because counsel have dealt with this, but it appears as if some of the family members had a concern that Patricia is going to be in charge; that is not my view.
- [78] Solus is independent, Solus has an obligation to Hazel's estate and that is not an obligation to Patricia; that is an obligation to Hazel and essentially to her family as well. That raises some complicating issues because of course at some point instructions will be required potentially.
- [79] Solus, I am satisfied has the experience and the expertise to deal with this and they also should know that if they require direction with respect to how to carry out their obligations as committee of the estate that they should be referring to either the PGT, if appropriate, or to the court for further orders.
- [80] So in no way should my reasons be taken as an indication that Patricia is managing the financial affairs of Hazel and has ultimate authority; that in fact is not the case.
- [81] All right, second: With respect to Patricia's role as committee of the person, in my view that role is relatively limited, will be more limited as a result of what I expect will be Hazel's transition into a care facility. But nonetheless she does have the ability as committee of the person to make decisions with respect to Hazel's health and personal needs, as committee of the person.
- [82] I have ordered that she keep the family advised of all issues concerning Hazel's health and care needs rather than -- and the more limited requirement to provide advice with respect to significant matters of health, because I think the family has a right to know.
- [83] I am not going to make an order with respect to access to information from whatever care facility Hazel is ultimately admitted to but certainly I will just say to the gallery that if they are not being provided with appropriate information it is always open to them to apply to the court for independent access to such information if it's not being provided to them, because in my view there is no reason why the family shouldn't have access to the same information that is being provided to Patricia with respect to Hazel's ongoing care and her status.
- [84] Now, I also want to make another additional point. In my reasons you heard me indicate that Solus will be required to consult with Patricia in her role as committee of the person in determining the necessity to sell properties. Solus will make the decision as to whether it's necessary to sell properties or finance -- borrow against the properties. What I meant by that was Patricia in her role as committee of the person will be making arrangements for

Hazel's transitioning into a care facility and therefore is in a position to provide relevant information to Solus with respect to the costs and when funds are going to be required, and that is it. It is not that she has the ability as committee of the person to direct Solus in any respect on the management of Hazel's property and the sale thereof.

[85] And that's everything. Yes, Mr. Lightbody?

[86] MR. LIGHTBODY: With regard to notice from Solus of 30 clear days of an intention to sell property, I'd like to have a little better understanding of what -- what the court is envisioning in that regard. So Solus would make a decision to sell --

[87] THE COURT: Or borrow against.

[88] MR. LIGHTBODY: -- or borrow against and give notice in writing to each of the siblings and the siblings within that 30 days would then have the right to oppose, I suppose, is the purpose of the notice?

[89] THE COURT: That's the purpose of the notice.

[90] MR. LIGHTBODY: All right. Yes.

[91] THE COURT: Yes. And I just -- I determined that 30 days was adequate time for the parties to prepare the necessary materials to report to the PGT, materials to apply to court to prevent that from occurring or to report to the PGT if they consider it's appropriate to do so.

[92] Yes, Ms. Robinson?

[93] MS. ROBINSON: So you -- sorry. So you are envisioning whether the 30 days if they oppose, that they would bring on an application at that point or are you saying that -- like if they're opposing their decision to selling, is that not a decision of the committee of the estate that they can still have that decision at the end of the day? They'll send notice that they are going to do it --

[94] THE COURT: Yes.

[95] MS. ROBINSON: -- but if anybody disagrees with that decision?

[96] THE COURT: It's up to them to decide what steps are necessary to prevent Solus from carrying out that activity.

[97] MS. ROBINSON: Okay, but Solus will have the unrestricted -- you mention after giving the notice to --

[98] THE COURT: It's a notice requirement.

[99] MS. ROBINSON: Yes, okay.

[100] THE COURT: It simply allows them to either appeal to the PGT one way or another or to bring an application before the court to prevent that step from taking place.

[101] MS. ROBINSON: Okay.

[102] THE COURT: And that's mainly because there's an issue with the properties and ownership of the properties and rights of Hazel's children with respect to the proceeds. All right?

[103] MR. LIGHTBODY: Right.

[104] THE COURT: Anything else?

[105] MR. LIGHTBODY: No, My Lord, thank you.

[106] MS. ROBINSON: Thank you.

[107] THE COURT: Hand the materials back, Madam Registrar.

[108] THE CLERK: Order in chambers. Chambers is adjourned.

"Mayer J."

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