

SUPREME COURT OF YUKON

Citation: *Easterson v Kluane First Nation*,
2024 YKSC 23

Date: 20240524
S.C. No. 19-A0168
Registry: Whitehorse

BETWEEN:

MARY EASTERSON

PLAINTIFF

AND

KLUANE FIRST NATION

DEFENDANT

Before Justice K. Wenckebach

Counsel for the Plaintiff

Daniel S. Shier

Counsel for the Defendant

Mercy Iannicello

ENDORSEMENT

[1] Mary Easterson commenced an action against Kluane First Nation.

Unfortunately, during the course of the litigation, Mary Easterson passed away. There is a will; and Mary Easterson appointed her daughters, Juniper Groves and Donalda Easterson, to be the executors of the estate. The beneficiaries under the will are Mary Easterson's grandchildren. Ms. Groves and Donalda Easterson have not applied for probate of the will.

[2] A settlement agreement has been reached in the action. Presumably Ms. Groves and Donalda Easterson provided instructions to counsel on the settlement on behalf of

the Estate. Plaintiff's counsel now seeks to amend the style of cause to name the plaintiff as "The Estate of Mary Easterson, Deceased"; that the proceedings be continued by the Estate of Mary Easterson; and that Ms. Groves and Ms. Easterson be granted authority as executors to instruct counsel in the action and enter into a settlement to resolve it. The question the application raises is whether executors named in a will can conduct litigation on behalf of an estate when the executors have not received letters of probate.

[3] Plaintiff's counsel submits that the executors' authority to act on behalf of the estate springs from the will itself, not from judicial authorization. He argues that the executors are therefore entitled to act on behalf of the estate in litigation without being required to apply for probate. Defendant's counsel took no part in the application.

[4] It is settled law that an executor can commence an action on behalf of an estate without seeking probate (*Romans Estate v Tassone*, 2009 BCCA 421 at para. 17 ("*Romans Estate BCCA*")). However, other parties may require that the plaintiff prove their authority by providing letters probate. The court may, in appropriate circumstances, on its own motion, also require that the plaintiff prove their authority by providing letters probate, even if the defendant is prepared to admit the executor's title (*Romans Estate v Tassone*, 2009 BCSC 194 at para. 40). Moreover, executors are required to obtain probate to obtain judgement (*Romans Estate BCCA* at para. 17).

[5] Although here the plaintiff is mainly seeking to amend the style of cause, the reason the plaintiff brings this application is to be able to complete the settlement with the defendant. A settlement would substantively affect the estate's interests. I therefore

conclude that Ms. Groves and Donalda Easterson must provide letters of probate before the court will order that the style of cause be amended.

[6] The plaintiff's application is denied.

WENCKEBACH J.