SUPREME COURT OF YUKON

Citation: *Estate of Veinott*, 2019 YKSC 20

Date: 20190412
S.C. No. 17-P0023
Registry: Whitehorse

Estate of Arnold Leroy Veinott, Deceased

Before Madam Justice E.M. Campbell

Appearances:
Meagan Hannam — Counsel for Linda Smeeton
Peter Sandiford — Counsel for Richard Veinott

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application to determine whether two vehicles included in the estate of Mr. Arnold Veinott are to be divided between the parties or are part of the residue of the estate, which is to be transferred to Mr. Richard Veinott. This application raises the question of the proper interpretation of a clause in a consent order filed in this matter and a related settlement agreement reached by the parties regarding their father's estate.

FACTS

[2] Mr. Arnold Veinott passed away on May 2, 2017, at the age of 92. His wife having predeceased him, Mr. Arnold Veinott left behind two children, Linda Smeeton, and Richard Veinott.

[3] In the years preceding his death, Mr. Arnold Veinott executed three different wills. The first in 2009, the second in 2012 and the last in 2015.

[4] In his will dated May 1, 2009, the deceased named his daughter, Linda Smeeton, as his executor. According to that will, the deceased's estate was to be divided equally between Linda Smeeton and Richard Veinott.

[5] In his will dated March 5, 2012, the deceased named his two children, Linda Smeeton and Richard Veinott, as co-executors. Linda Smeeton was to receive $100,000, while the residue of the estate was to go to Richard Veinott. The will also provided that Ms. Smeeton and Mr. Veinott were entitled to choose items from their father's articles of personal, domestic and household use or ornament.

[6] In his last will dated February 26, 2015, the deceased named his son, Richard Veinott, as his executor and beneficiary of the residue of his estate. According to the last will, Ms. Smeeton was only entitled to receive items of her choosing from articles of personal, domestic and household use or ornament belonging to her father not already disposed of pursuant to his will.

[7] A dispute arose between Ms. Smeeton and Mr. Veinott regarding the validity of the last two wills. In a separate action, Ms. Smeeton commenced court proceedings contesting the appointment of Richard Veinott as executor of their father's estate, the validity of her father's last will, and the transfer of his house, prior to his death, to Mr. Richard Veinott as a joint tenant.

[8] The parties entered into a settlement agreement dated December 1, 2017. Following the settlement agreement, a consent order was filed on December 13, 2017, providing:

> 1. Richard Veinott shall be appointed as Executor of the Estate of Arnold Veinott (the "Estate") pursuant to the Will of Arnold Veinott dated February 26, 2015.
>
> 2. Linda Smeeton and Richard Veinott are each entitled to half of all of the articles of personal, domestic and

household use or ornament of the Estate and are to agree on such division between themselves;

3. Linda Smeeton is entitled to payment of $125,000 from the Estate, for her own use absolutely;

4. Richard Veinott is entitled to the residue of the Estate;

5. The caveat filed against the Estate in this matter is withdrawn;

6. A grant of probate shall be issued to Richard Veinott in accordance with the terms set out in paragraphs 1-3 above pursuant to the ordinary rules of the Yukon Supreme Court; and

7. This Order is made on a without costs basis.

[9] On or about December 20, 2017, as per the parties' settlement agreement and the filed consent order, the Estate paid $125,000 to Ms. Smeeton's counsel in trust for her.

[10] The settlement agreement also contains a number of clauses that do not appear in the filed consent order. One of them requires the parties to agree as to the distribution of their father's articles of personal, domestic and household use or ornament. The agreement also refers to the parties' decision to come to an agreement, at a later date, on a process for such a distribution.

[11] Section 9 of the agreement provides that, in the event of a disagreement, a judge shall determine the distribution of their father's articles of personal, domestic and household use or ornament. Specifically, it reads, "Either party is at liberty to seek directions from the Yukon Supreme Court concerning the terms, implementation and enforcement of this Agreement or the Probate Consent Order at any time."

[12] On or about September 13, 2018, the parties reached a partial agreement regarding the division of their father's articles of personal, domestic and household use

or ornament. That partial agreement was incorporated in an order dated September 13, 2018, and filed on September 18, 2018. The order relates to articles such as the deceased's gold watch, photographs, plates, etc.

[13] However, at the time of his death, Mr. Arnold Veinott had two vehicles, a 1999 Chrysler LHS and a 2016 Ford Focus SE, which was subject to financing. The parties cannot agree on whether these two vehicles are subject to division between them or not.

ISSUES

[14] The only remaining issue between the parties is whether their father's two vehicles are articles of personal, domestic and household use or ornament that are subject to the division contemplated in the filed consent order and related settlement agreement. If they are, on what terms shall they be divided?

POSITIONS OF THE PARTIES

[15] Ms. Smeeton submits that she is entitled to half the value of the vehicles because the consent order provides that she is entitled to half of her father's articles of personal, domestic and household use or ornament. She submits that their father was retired, used his vehicles for personal matters and parked them in garages located on his property. According to Ms. Smeeton, the vehicles constitute articles of personal, domestic and household use or ornament, and are, therefore, subject to division between the parties.

[16] Ms. Smeeton further submits that her share of the vehicles is not subject to any debt related to vehicle financing as the residue of the estate is liable for the payment of debts. According to her, specific legacies of personal property are not subject to

repayment of any encumbrances registered against the property, in this case, the vehicles.

[17] Ms. Smeeton submits that the Chrysler LHS is worth approximately $2,000. She estimates the value of the Ford Focus at approximately $16,000, based on her review of the sale price for similar vehicles advertised by car dealers in Whitehorse.

[18] Consequently, she submits that she is entitled to half the value of the two vehicles or $9,000. While she is open to other ways of dividing the vehicles, Ms. Smeeton submits that splitting their combined value is the easiest way to divide this property.

[19] Ms. Smeeton seeks special costs of this application, in any event of the cause, on the basis that the issue surrounding the division of property between the parties arises from the need to interpret a provision of their father's will.

[20] In response, Mr. Veinott submits that the settlement agreement supersedes their father's last will and fully defines the parties' rights in respect of the estate.

[21] Mr. Veinott agrees that the two vehicles are part of the estate. However, his position is that the two vehicles are not articles of personal, domestic and household use or ornament as contemplated by the consent order and related settlement agreement. In the alternative, the vehicles are to be divided "as is, where is".

[22] Mr. Veinott estimates the value of the Chrysler LHS at $1,500.00. Based on what is commonly referred to as the "Black Book", he estimates the value of the Ford Focus at $13,000. As of September 5, 2018, the balance of the loan on the Ford Focus was $15,335.02

[23] Mr. Veinott submits that finding the estate liable to discharge the encumbrance on the Ford Focus (financing on the vehicle) would go against the express terms of the settlement agreement.

[24] He also submits that, as this is a dispute regarding the proper interpretation of a contract (the settlement agreement) and not the will, the parties should bear their own costs.

[25] The parties filed a number of affidavits as well as written submissions and caselaw in support of their respective positions.

ANALYSIS

1. Are the two vehicles "articles of personal, domestic and household use or ornament"?

[26] The filed consent order contains the following:

> 2. Linda Smeeton and Richard Veinott are each entitled to half of all of the articles of personal, domestic and household use or ornament of the Estate and are to agree on such a division between themselves

[27] The parties agree that their father used his vehicles for personal matters. Ms. Smeeton's assertion in one of her affidavits that the Ford Focus was parked in the garage attached to their father's house, and that the Chrysler LHS was parked in the garage at the back of the property was not contested by Mr. Veinott. In any event, Ms. Smeeton's assertion is consistent with the deceased's use of his vehicles for personal matters.

[28] The parties also acknowledge that the vehicles are of no sentimental value to them.

[29] Both parties submit that, in the filed consent order and related settlement agreement, they used wording substantially similar to the words used in their father's

last will to describe the property subject to division. They used the expression: “articles of personal, domestic and household use or ornament”, which is also found in their father’s last will. The parties therefore rely on a number of decisions involving the interpretation of similarly worded testamentary clauses in support of their respective positions. In some cases, vehicles were found to be included in clauses similar to the one the parties chose to use in their filed consent order and related settlement agreement, in others, they were not.

[30] This mixed result is consistent with the legal principle of interpretation stated in the caselaw filed by the parties, which provides that the role of a court interpreting a will is to give effect to the intent of the testator. The caselaw further provides that the interpretation of a clause at issue cannot be achieved in isolation. The intention of the testator is to be determined from the whole will taken together (*MacCulloch Estate v. MacCulloch*, [1981] N.S.J. No. 41 (Sup. Ct.), at para. 5).

[31] As stated in *MacRae v. Syryda*, 2011 AQBQ 277, at para. 30: “… the task of this Court is to find the deceased’s subjective intent, not some hypothetical objective intent, prior cases are of little assistance.”

[32] The difficulty in this case arises from the fact that the settlement agreement reached by the parties and confirmed in the filed consent order departs from Mr. Veinott’s last will. The settlement agreement and filed consent order provide for a cash payment of $125,000 to Ms. Smeeton, whereas, in his last will, the deceased did not provide for a cash payment or any other financial interest in his estate.

[33] The parties also chose to adopt modified language regarding the division of their father’s articles. The will provides that: “Upon my death, to allow my children, who

survive me, to choose from all articles of personal, domestic and household use or ornament belonging to me at my death…" (my emphasis)

[34] On the other hand, the filed consent order and related settlement agreement provide that the parties "are each entitled to half of all the articles of personal, domestic and household use or ornament of the Estate and are to agree on such a division between themselves." (my emphasis)

[35] The settlement agreement also states that the parties must provide full and final releases to each other.

[36] The parties decided to settle their dispute through an agreement that departs from their father's last will. As a result, I do not find it necessary, nor do I find it necessarily useful, in the particular circumstances of this case, to determine what the intent of the testator was or what he meant when he used the expression "articles of personal, domestic and household use or ornament belonging to me at my death" in his will, as that determination is dependent on his whole will, which the parties have partly set aside.

[37] What this Court has to determine, is the meaning of the expression at issue in the parties' filed consent order and related settlement agreement. In order to do so, I am of the view that the approach to take is the same approach that applies to the interpretation of contracts.

[38] In coming to this conclusion, I have considered the decision of Justice Gower in *Sutherland v. Collett Estate*, 2017 YKSC 36, where he approached the interpretation of a settlement consent order the same way he would have approached the interpretation of a contract. (para. 37)

[39] As stated by Justice Rothstein for the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, at para. 47:

> [47] … the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" … To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. (citations omitted)
>
> [48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement.
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> [48] … the goal of the exercise is to ascertain the objective intent of the parties – a fact-specific goal – through the application of legal principles of interpretation.

[40] If the court finds ambiguity, it may resort to extrinsic evidence in resolving the ambiguity (*RBC Dominion Securities Inc. v. Crew Gold Corp*., 2016 ONSC 5529, at para. 52; aff'd 2017 ONCA 648).

[41] In order to determine whether the vehicles are included in the division of property provided by the filed consent order and related settlement agreement, the Court must look at the agreement as a whole "in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective." (*RBC Dominion Securities Inc.*, at para. 52)

[42] Through their settlement agreement and filed consent order, the parties have clearly expressed their intention to settle in full their dispute regarding their father's estate.

[43] A reading of the settlement agreement and filed consent order as a whole also lead to the conclusion that the financial aspect of Ms. Smeeton's claim against her father's estate was settled by a lump sum payment of $125,000.

[44] The clause concerning the division of the deceased's "articles of personal, domestic and household use or ornament" must be read in conjunction with the financial settlement also provided for in the settlement agreement and filed consent order.

[45] I note that the clause of the consent order relating to the division of the deceased's articles does not refer to the value of the articles nor does it state that the parties are each entitled to "half of the value" of the said articles.

[46] Relying on the practical and common sense approach adopted by the Supreme Court of Canada in *Sattva*, I agree with Mr. Veinott that it would not make sense to interpret the clause regarding the division of articles as giving Ms. Smeeton an additional unspecified financial interest in the estate that would require a detailed accounting of the deceased's articles, when the settlement agreement and filed consent order contain a clause that settles Ms. Smeeton's financial claim in the estate by a fixed lump sum payment of $125,000.

[47] I do not find that the terms "articles of personal, domestic and household use or ornament" are ambiguous. Rather, I find that read as a whole, the provisions of the settlement agreement and filed consent order reveal that the parties' objective intent was to provide, on the one hand, for a full and final financial settlement of Ms. Smeeton's claim through a lump sum payment of $125,000; and, on the other hand, for a right for both parties to obtain or retain, on an equal basis, articles belonging to their father that were either meaningful to them and/or they wish to retain. The

settlement agreement and filed consent order also confirm that the residue of the estate is to be transferred to Mr. Veinott.

[48] While the vehicles were used by their father for personal matters, the parties have acknowledged that neither vehicle holds any sentimental value for them. The parties' interest in the vehicles lies in their financial value.

CONCLUSION

[49] As I have found that the clause concerning the division of the deceased's articles was not intended to provide any further financial interest to either party, but to allow them to obtain or retain articles that were either meaningful to them or that they wish to keep, I conclude that the vehicles are not articles of personal, domestic and household use or ornament that are subject to division between Ms. Smeeton and Mr. Veinott as per the settlement agreement and filed consent order. They are part of the residue of the estate.

COSTS

[50] While the initial dispute between the parties involved their father's will, this application relates to the interpretation of a clause the parties chose to include in their settlement agreement and filed consent order.

[51] I agree with Mr. Veinott that the difficulties that arose in relation to the division of the articles provided by the settlement agreement and filed consent order were caused in whole or in part by the parties themselves.

[52] The parties will therefore bear their own costs in relation to this application.

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CAMPBELL J.