

CITATION: Brigit Nagy Estate, 2024 ONSC 2260
COURT FILE NO.: CV-23-92329-ES
DATE: 2024 04 16

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JOHN FARLEY and CAROLE ANN FARLEY as Estate Trustees of the
ESTATE OF BRIGIT NAGY, Applicants

-and-

ZOLTAN NAGY, JANA KREISEL and MARTA KUBANEK, Respondents

BEFORE: C. MacLeod, RSJ

COUNSEL: Miriam Vale Peters, for the Applicants

Denis Molnar, for the Respondent, Zoltan Nagy

David Vago, for the Respondents, Kreisel & Kubanek

HEARD: April 16, 2024

DECISION AND REASONS

[1] The Applicant Estate Trustees bring this application for the “opinion, advice and direction of the Court” in respect of Minutes of Settlement reached between the Estate and Zoltan Nagy. Such an application is authorized *inter alia* by s. 60 of the *Trustee Act*, RSO 1990, c. T.23 as amended. In effect, the Applicants wish the Court to confirm that the Estate Trustees can reach a settlement with Mr. Nagy even if the other Respondents do not agree.

[2] For the reasons that follow, I am satisfied that the Estate Trustees have the power to settle with Mr. Nagy and it is appropriate to do so. The consent of the other beneficiaries (the sisters of the deceased) is not required although it would be preferable to have such consent. Their opposition to the proposed settlement is unreasonable and it would not be in the best interests of the Estate to continue litigation. More importantly, the continuation of the litigation would impair the administration of the Estate and prevent its distribution.

[3] Settlement will permit an interim distribution and allow the Applicants to wrap up the Estate administration and obtain a clearance certificate. I am advised that the current value of the Estate is approximately \$703,605.00.

Background

[4] By way of background, the deceased Brigit Nagy, was predeceased by her husband, Paul Nagy. Paul died intestate on August 28, 2017 and Brigit was his Estate Trustee. Zoltan Nagy was a beneficiary under Paul's Estate but not Brigit's. He does have a personal claim against Brigit in connection with her administration of Paul's Estate and that in turn is a claim against Brigit's Estate.

[5] The claims of creditors must be dealt with before the Estate can be distributed to its beneficiaries. Under Brigit's will, the beneficiaries entitled to share in the residue of the Estate are the Applicants (as to a one-third interest) and the Respondents Kreisel and Kulbanek (one-third each). The Applicants live in Ontario and the other beneficiaries are in Europe.

[6] Zoltan Nagy is a beneficiary of Paul's intestacy under Ontario law because he is the natural son of Paul Nagy. He was born in Hungary and now lives in Switzerland. His parentage was the subject of litigation in Hungary in 1973. At that time the Budapest Metropolitan Court declared Paul to be Zoltan's biological father.

[7] It appears that following Paul's death in 2017, Brigit Nagy was unwilling to recognize Zoltan's status as Paul's son without DNA testing. Zoltan then brought an Application in Ontario (Court file 19-78891) and in August of 2019 Justice Pelletier granted an order declaring Zoltan to be Paul's son and entitled to share in Paul's estate. Pursuant to s. 7 (2) (5) of the *Childrens Law Reform Act*, RSO 1990, c. C.12, as amended (the *CLRA*"), the finding of the Hungarian court is presumed to be binding in the absence of conclusive evidence to the contrary. For reasons articulated in his decision, Pelletier, J. declined to order DNA testing and recognized the decision of the Hungarian Court in Ontario. Zoltan was declared to be Paul's heir and entitled to share in the intestacy.

[8] As Paul had died intestate, Part II of the *Succession Law Reform Act*, RSO 1990, c. S.26 as amended (the "*SLRA*") applied. The *SLRA* provides that after the spouse of an intestate deceased receives her preferential share, the residue is to be divided equally between the spouse and the issue of the deceased. In this case, Zoltan was entitled to 50% of the value of the Estate of Paul that exceeded \$200,000.00. Brigit would have been entitled to the first \$200,000.00 once all of the taxes, debts and expenses of the Estate had been paid.

[9] Zoltan took issue with the manner in which Brigit was administering the Estate. He alleged that she kept inadequate accounts, was negligent and increased the tax liability of the Estate. He alleged that she mismanaged a corporation owned by the Estate and failed to realize assets in a timely manner. It was alleged that Mrs. Nagy inappropriately mingled Estate funds with her own and inappropriately paid herself her preferential share in advance of a final accounting. On October 12, 2021, Zoltan Nagy was successful in obtaining an order compelling Brigit to pass her Estate accounts. (See 2021 ONSC 6766.)

[10] The Estate accounts ultimately filed in response to that order were not detailed. They purported to show that while Paul's Estate had originally had assets in Ontario of more than

\$600,000.00, the net residue of the Estate was roughly \$10,000. Zoltan did not accept the accounts as submitted and filed a Notice of Objection.

[11] It is important to recognize the sweeping remedies that are possible on a passing of accounts. *Rule 74.17* sets out detailed obligations on an Estate Trustee to keep and present records. *Rule 74.18 (11.7)* and other subrules contain further detailed obligations on a contested passing of accounts. Under *Rule 74.18 (13.1)*, a contested passing of accounts may lead to an order for trial of an issue or issues. If the Court does not approve the accounts, then the Estate Trustee may be ordered to reimburse the Estate or to make further accounting or a combination of remedies. These are personal obligations of the Estate Trustee.

[12] While Zoltan professed to be owed as much as \$400,000.00, even if the amount was much smaller, in the absence of proper accounting, Brigit could have been found liable to Paul's Estate and the beneficiaries. Brigit could certainly have been compelled to continue to maintain and file proper accounts until the Estate was completely administered and the Court was satisfied that she had fulfilled her fiduciary duties. Because of Zoltan's legitimate interest in Paul's Estate, Brigit was not entitled to simply treat Paul's Estate as her property or to avoid keeping accurate books and records.

[13] When Brigit died, the passing of accounts procedure was not completed. To the extent that Zoltan had a personal claim against Brigit or against the funds she had withdrawn from Paul's Estate, those became debts or potential debts of Brigit's Estate. On June 7, 2022, Justice Gomery signed an order to continue so that the passing of accounts in Paul's Estate became an obligation of Brigit's Estate. (Court file CV-22-88878-ES)

[14] Paul also had assets in Hungary, primarily an apartment (immovable property under Hungarian law) and some personal property (movable assets under Hungarian law). There were also Estate proceedings in Hungary which I understand, resulted in Zoltan obtaining a 25% interest in the immovable property and one of the other Respondents obtaining a 75% interest. Apparently, Zoltan reached an agreement with his co-owner and she now owns 100%. There remain some movable assets in Hungary with nominal value. The Hungarian Court has declared that the movable assets should be dealt with as part of Paul's Estate under Ontario law.

The Mediation & This Application

[15] On September 8, 2022, the parties (Brigit's Estate & Zoltan) appeared before the Court for directions. (in the 88878 file). On that occasion, I set a timetable for further exchange of documents in the passing of accounts, for production of vouchers and receipts leading up to a resolution or a contested hearing. I also directed that the issues be mediated. It is the policy of the Court to foster negotiated resolution of Estate disputes. This is reflected in the mediation provisions of *Rules 75.1* and *75.2*.

[16] In general, a negotiated resolution will be a less expensive alternative for the Estate than protracted litigation. That will not always be true as it will depend upon the strength of the case against the Estate, the size of the Estate and the amount in dispute. Obviously, an Estate will not

be obliged to pay claims that appear to be without merit, particularly it is probable the Estate can recover all of its litigation costs from the claimant or plaintiff.

[17] In addition to cost effectiveness and the goal of preserving Estate assets for the beneficiaries, negotiated resolution of claims serves the end of efficient administration of Estates. Estate Trustees have an obligation to complete the administration of the Estate efficiently. If the Estate Trustees are bogged down in pursuing or defending litigation on behalf of the Estate, the administration of the Estate will be prolonged and delayed. An Estate must be represented by counsel in litigation and the legal costs will come out of the Estate. The Estate will also be liable for the costs of the other party if the Estate is found to be liable at the end of the litigation.

[18] When the parties went to mediation, the Estate Trustees reached an agreement with Zoltan. The agreement included a payment of \$80,000 to be made from Brigit's Estate. In addition, the Estate agreed to relinquish any claim to the remaining assets in Hungary. The minutes of settlement – which were handwritten by the mediator – were contingent on the beneficiaries consenting.

[19] The Applicant Estate Trustees have been unable to obtain the consent of the Respondent beneficiaries. To the contrary, they now oppose the settlement.

[20] The Estate Trustees now bring this application asking the Court to approve the settlement and to declare that the Estate Trustees may proceed with the settlement without the consent of the other beneficiaries. Zoltan supports the application and is prepared to be bound by the settlement without the consent contemplated in the minutes assuming the Court rules in favour of the Applicants.

The Position of the Respondents

[21] The Respondents take the position that the settlement should not be approved. They do not believe that Zoltan has a strong case against the Estate and they are aware that the deceased had continued to dispute his entitlement or any wrongdoing on her part up until her death.

[22] Counsel for the Respondents was able to articulate their position, but he was not able to demonstrate that Zoltan's case against the Estate was in any way frivolous. Zoltan is a beneficiary of Paul's Estate. He was entitled to call upon Brigit to account for her handling of the Estate and to challenge her calculations. Had he enjoyed even moderate success, he would have been entitled to costs. Those issues were still before the Court when Brigit passed away and the Court made the necessary Order to Continue.

Analysis and Decision

[23] In addition to the standard language requiring and empowering the Estate Trustees to pay the just debts of the Estate in priority to distributing the residue of the Estate to the named beneficiaries, the Will of the deceased also contains language empowering the Estate Trustees to settle claims. Paragraph 6 (h) of the Will provides that the Trustees may "compromise, settle or waive any claim due or by my Estate, without the consent of any person interested under my Will."

[24] Paragraph 6 of the Will also provides that providing the Trustees are acting reasonably and prudently, they need not obtain Court approval for any actions and that “any doubts as to whether my Trustee has the power to perform an act shall be resolved in the Trustee’s favour.”

[25] It is quite clear that the Testator wished her Trustees to have complete discretion in resolving claims against the Estate and did not wish to burden them with the obligation of consulting the beneficiaries. I have no hesitation in finding that the Trustees had and have the discretion to enter into a settlement with Zoltan.

[26] In addition to the terms of the Will, s. 48 (1) of the *Trustee Act* provides that a personal representative may pay or allow any claim on any evidence that the representative thinks sufficient. The purpose of this discretion is to permit the Trustee to administer the Estate by settling claims efficiently. The Trustee has both a moral and legal obligation to ensure the debts of the Estate are paid and may pay such debts as the Trustee is convinced are owing. It is not necessary for the creditor to prove the claim to the satisfaction of a Court.

[27] Section 60 of the *Trustee Act* permits the instant application. A Trustee may seek opinion, advice and direction from the Court. Section 60 (2) then protects the Trustee acting pursuant to such opinion, advice or direction by deeming the Trustee to have discharged their duty unless guilty of fraud or misrepresentation or wilful concealment in presenting the matter to the Court.

[28] In my view, Zoltan had a legitimate claim against Brigit for the administration of Paul’s Estate. It is not apparent on the evidence before me on this application whether he would have been owed significantly more than the \$5,000 that had been Brigit’s position in her original statement of account, but it is likely the Court would have found some further amount to be owing.

[29] Even if Zoltan was not owed significant amounts of money, he was still owed a proper accounting. In the absence of a settlement, the Estate would have been compelled to continue to run up accounting and legal costs to complete the passing of accounts. It is unlikely the Estate could have recovered those costs from Zoltan because of Brigit’s failure to keep accurate Estate accounts in a proper format with appropriate documentation. In fact, as noted earlier, Paul’s Estate and Brigit could well have been liable to Zoltan for the costs of his application and costs incurred in opposing the passing of accounts.

[30] An objective review of the history of this matter shows that Brigit improperly tried to deprive Zoltan of his share in Paul’s Estate by disputing a finding of parentage already determined in Hungary. Brigit did not administer Paul’s Estate efficiently, did not seek to discharge her duty to resolve or pay Zoltan’s claim and did not keep Estate accounts with the necessary precision.

[31] It is possible Brigit was simply careless and possible the significant tax debt of Paul’s Estate could not have been avoided. Apart from helping herself to her \$200,000 preferential share before completing the administration of the Estate, there is no clear evidence that Brigit engaged in actual wrongdoing or bad faith. It is not necessary for the Trustees to acknowledge any intentional wrongdoing on the part of Brigit to conclude that is in the best interests of the Estate to bring the dispute with Zoltan to a conclusion.

[32] I am of the view that it was well within the discretion of the Trustees to settle with Zoltan. I am further of the view that the settlement is a reasonable one which is in the best interests of the administration of the Estate and of all beneficiaries.

[33] There will be an Order approving the settlement and authorizing the Trustees to proceed with the Minutes of Settlement without the consent of the beneficiaries.

Costs

[34] The Applicants seek costs against the Respondent beneficiaries. I decline to make that order for several reasons. Firstly, the Estate inherited this problem because Brigit failed to resolve it before her death. Secondly, although the Will provided the Trustees with the necessary discretion to proceed without the consent of the Respondents, the Minutes were made contingent on such consent.

[35] The beneficiaries appear not to have fully understood why Zoltan had a claim against the Estate and they are under no obligation to provide their consent to something they disagree with. This Application was therefore necessary.

[36] The Respondents were represented at the hearing and stated their position but they did not file documents, cross examine on affidavits or otherwise run up the costs or complicate the arguments.

[37] Finally, under the Will the Applicants as Estate Trustees are entitled to claim compensation in addition to their share of the bequest. The residue to be divided between the Applicants and the Respondents (other than Zoltan) will be calculated after deducting the costs of administration including legal fees and any claim for compensation by the Trustees. I consider it reasonable for the Estate to pay the costs of this application.

[38] The Applicant's costs shall be paid from the Estate. Zoltan's costs of appearing on the application and filing a Factum should also be paid from the Estate. In the absence of a bill of costs or costs outline, I would fix Zoltan's costs at \$3,500.00. I will hear submissions if that award is deemed inappropriate. The Respondent beneficiaries shall bear their own costs.

Summary

[39] The Estate may proceed to pay Zoltan the \$80,000 contemplated by the minutes plus the costs awarded above and may relinquish any claim to the immovables in Hungary.

Justice C. MacLeod

Date: April 17, 2024

CITATION: Brigit Nagy Estate, 2024 ONSC 2260
COURT FILE NO.: CV-23-92329-ES
DATE: 2024 04 17

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: JOHN FARLEY and CAROLE ANN FARLEY as
Estate Trustees of the ESTATE OF BRIGIT NAGY,
Applicants

AND:

ZOLTAN NAGY, JANA KREISEL and MARTA
KUBANEK, Respondents

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Miriam Vale Peters, for the Applicants

Denis Molnar, for the Respondent,
Zoltan Nagy

David Vago, for the Respondents,
Kreisel & Kubanek

DECISION AND REASONS

Regional Senior Justice C. MacLeod

Released: April 17, 2024