

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Hiltz v. Fields Estate, 2005 NSSC 301

Date: 20051104

Docket: S.T. No. 244625

Registry: Truro

Between:

Lisa Marie Hiltz (Burbine)

Plaintiff

v.

The Estate of Cheryl Haley Fields (Hiltz)

Defendant

DECISION

Judge: The Honourable Justice Douglas L. MacLellan

Heard: October 24, 2005, in Truro, Nova Scotia

Counsel: Robert Pineo, Esq., for the plaintiff
Alain J. Begin, Esq., for the defendant

By the Court:

[1] The plaintiff Lisa Marie Hiltz (Burbine)(hereinafter referred to as Lisa Hiltz) by Originating Notice (Application Inter Partes) requests that the Court determine her entitlement to real and personal property as set out in the Last Will and Testament of Charles Hubert Hiltz, her grandfather. She also asks for an order requiring either the return of chattels removed from the home formerly occupied by Charles Hubert Hiltz, or compensation for the value of these chattels. Finally, she asks that she be compensated for any wasting of the Estate and for property taxes not paid by Cheryl Haley Fields (Hiltz)(hereinafter referred to as Cheryl Fields) while she resided in the house in which she had a life interest.

[2] After this action was started Cheryl Fields died and the action was continued against her Estate.

Background

[3] In 1993, Charles Hubert Hiltz was living alone following the death of his wife. He made arrangements for his daughter Cheryl Fields to come to live with him in his home in Economy, Colchester County, Nova Scotia. She moved into

the house in 1993 and lived with Mr. Hiltz until his death in 1996. By paragraph 7 of his Will Charles Hubert Hiltz provided as follows:

I GIVE, DEVISE, AND BEQUEATH my residential real property located at Economy, aforesaid, and the contents thereof (with the exception of those items specifically dealt with under paragraph 6 above) to my daughter, CHERYL FIELDS, for her natural lifetime only and on her death or upon my said daughter indicating that she no longer desires to use same, then to my grand-daughter, LISA BURBINE, to be hers absolutely.

[4] The evidence before me is that following the death of Charles Hiltz, the plaintiff and her father, Brian Hiltz, went to the house in Economy and prepared a list of the chattels in the home. It was their view that the plaintiff was entitled to the home and the contents subject only to the life interest given to Cheryl Fields. Brian Hiltz testified that Cheryl Fields was at the house and that she indicated what items in the house actually belonged to her.

[5] Lisa Marie Hiltz testified that in June 2004, Cheryl Fields told her that she was leaving the house and that she no longer wished to live there. She said that prior to that visit she had been to the house a number of times and had made arrangements to deal with a problem Cheryl Fields had with squirrels getting into the house. She said that she had received a letter from the Municipal Tax Office

indicating that the property taxes on the property had not been paid. She said she discussed that with Cheryl Fields and that Ms. Fields made arrangements to make a payment on the arrears of taxes.

[6] At the time of the visit in June 2004, Cheryl Fields gave her the keys to the house and they talked about having her sign a deed of her interest in the property. She said she arranged for a deed to be prepared but that Cheryl Fields did not sign it.

[7] She said when she inspected the house after Cheryl left that she found a lot of the chattels which had been there in 1996 were missing and that the house was generally in very bad shape.

[8] She said that she got an estimate to do a complete clean-up of the house. The estimate was for \$5,846.00 from Service Master of Truro and it is dated December 16th, 2004. The estimate is attached to Lisa Hiltz's affidavit dated April 15th, 2005.

[9] No representative from Service Master was called as a witness at the hearing. Counsel for the defendant objected to that and suggested that the Court should not rely on the estimate because he was not permitted to cross-examine the author of the estimate.

[10] Lisa Hiltz testified that she originally started this action against Cheryl Fields, but that in May 2005, Cheryl Fields died and the matter proceeded against her Estate as represented by her son Charles Fields. She also indicated that she prepared a list of items missing from the house as of June 2004, which items she said were there in 1996 when Charles Hiltz died. She said that she confronted Cheryl Fields with the issue of the missing chattels and that she told her that she had removed the items 'to spite her'. She said that after Cheryl Fields died in May 2005, her heirs agreed to return to her some items which apparently had originally been in the house in Economy.

[11] She asked that the Court order the return of all of the items she alleges are missing from the house or that she be paid compensation for them.

[12] The defendant submitted as evidence a number of affidavits to suggest that the plaintiff was satisfied with the condition of the house at the time it was turned over to her by Cheryl Fields and that the house was not in any worst shape in 2004 than it had been while Charles Hiltz lived there.

[13] Based on the evidence before me, I conclude and find as follows:

- (1) That Charles Hiltz kept his house generally in good condition and that after his death in 1996 the condition of the house deteriorated while Cheryl Fields lived there.
- (2) That the house needed a proper cleaning that was more than you would expect from general wear and tear for the years that Cheryl Fields resided in the house.
- (3) That a substantial number of chattels were missing in 2004 as opposed to what was present in the house in 1996 when Charles Hiltz died.
- (4) That Lisa Hiltz never accepted the house as being in an appropriate condition when she took it over from Cheryl Fields in 2004.
- (5) That Lisa Hiltz never agreed that the items returned to her satisfied her claim for other chattels missing from the house.

[14] Counsel have indicated that there is agreement that the defendant had a responsibility as a life tenant to pay the property taxes on the property while Cheryl Fields resided there. They also agree that subject to normal wear and tear the property should have been maintained by the life tenant and that the property should not have been wasted or neglected resulting in damage to the property.

The Claim for Back Property Taxes

[15] Counsel for the plaintiff requests that the defendant be responsible for the property taxes up to May 2005 when Cheryl Fields died. That proposition is based on the fact that Cheryl Fields refused to give a deed of her interest in the house to the plaintiff. Counsel for the Estate submits that it should not have to pay for after Cheryl Fields turned the property over to the plaintiff in June of 2004.

[16] I conclude that in light of the obvious bad blood between the parties it was reasonable for the plaintiff to expect that Cheryl Fields would confirm in writing by way of a deed that she was giving up her right to remain in the house and in light of her refusal to do so, her Estate should be responsible for property taxes up

until May 2005. I understand the amount owing up to that date is \$3,114.76.

Bill for Cleaning

[17] The plaintiff claims \$5,847.00 for the cleanup of the house. The author of the estimate was not available for cross-examination and therefore I am not prepared to accept that as proof of the needed cleanup. However, I have found that the house was generally in bad shape and that based on the description given by the witnesses as to the condition of the home I conclude that the plaintiff should be awarded an amount to satisfy her costs in regard to cleaning the home. I conclude that the amount of \$1,000.00 is sufficient to cover that cost.

Chattels Removed from the Property

[18] I understand that counsel for the defendant accepts the fact that Cheryl Fields had a responsibility to preserve all the chattels in the house at the time of Charles Hiltz's death and while she had the use of these chattels while she lived in the home she had a legal obligation to turn them over to the plaintiff when she either left the home or she died.

[19] I have concluded that a number of the chattels are missing.

[20] No specific estimate of their value is before the Court, however, the list which is attached to the plaintiff's affidavit as Tab 3 is submitted. I accept the plaintiff's position from a practical point of view it would be impossible to have an evaluation done since these items are not available for inspection. The plaintiff estimates the value of the articles at \$7,500.00. She also claims \$920.00 to cover the cost of the fridge and stove which she alleges are no longer working. She also claims for the cost of the water pump which was removed from the house.

[21] The only evidence offered by the defendant to contest the value of the missing articles was in relation to the water pump and through defence counsel's cross-examination of Cheryl Fields. The defendant submits that the plaintiff should not be compensated for the water tank which apparently still remains at the property.

[22] I understand the defendant's position to be that it is prepared to cover the cost of a new water pump and they have provided an estimate of \$287.49.

[23] The Court is at a serious disadvantage here because of the lack of information on the main claim for lost chattels. I also must consider that the items would probably depreciate in value in the each years they were legitimately used by Cheryl Fields.

[24] Looking at the list offered by the plaintiff, I would conclude that a value of \$5,000.00 should be put on the items not accounted for by the defendant.

[25] I would also award the sum of \$287.00 to cover the cost of a new water pump. I conclude that the water tank is still at the house. There was no evidence that it could not continue to be used.

[26] I am not prepared to compensate the plaintiff for the cost of a used fridge and stove. They were both in the house when Cheryl Fields left in 2004. If in fact they did not work at that time that could be because of normal wear and tear. However, I also accept the evidence from the defendant's witnesses by affidavit that they were working when Cheryl Fields left the home in June 2004.

[27] The plaintiff had originally requested an order requiring the return of the items taken from the house. Based on what I have heard it is my opinion that such an order would not be complied with and therefore I conclude that the only way to deal with the claim is to value the goods removed and order payment by the defendant.

[28] Based on these findings the plaintiff will have judgment against the defendant in the following amounts.

(1)	Property Taxes	\$3,114.76
(2)	Cleaning of House	\$1,000.00
(3)	Value of Items Missing	\$5,000.00
(4)	Replacement of Pump	\$ 287.00

[29] In addition the plaintiff is entitled to pre-judgment interest where appropriate and costs and disbursements. If the parties cannot agree on costs I would be prepared to counsel.

J.