

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Clements Estate (Re), 2007 NSSC 168

Date: 2007/06/01

Docket: S.H. No. 273835

Registry: Halifax

IN THE MATTER OF: An application of Barbara Lynn Durling and Pamela Charlene Jefferson, as Executrices of the Last Will and Testament of William Frederick Clements, deceased

and

IN THE MATTER OF: Entitlement to Insurance Proceeds relating to the destruction by fire of a cottage located at 212 Springfield Lake Road, Middle Sackville, in the County of Halifax, Province of Nova Scotia

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Judge: The Honourable Justice A. David MacAdam

Heard: December 21, 2006, Nova Scotia

Final Written Submissions: January 11, 2007

Subject: Wills - Ademption - Testator dying in fire that destroyed property - Entitlement to Insurance proceeds.

Summary: The Testator devised his land and cottage to one of his children and her husband. He died in a fire that damaged the cottage. The parties agreed the Fire and Explosion Investigator's Report, and his affidavit, could be tendered without the necessity of his testifying. For reasons that appeared unclear, he concluded the Testator died from "smoke inhalation" before the cottage was "substantially damaged".

Issue: Was the devisee of the cottage and land entitled to the insurance proceeds for the damage to the cottage, or were they to be part of the residuary estate?

Result: In view of the Fire and Explosion Investigator's Affidavit and Report, it

appeared the Testator died before there was any substantial damage to the cottage. Consequently the cottage, with the land, passed to the personal representative of the deceased, with the beneficial interest to the devisee. As the “substantial damage” occurred after the “legal” and “beneficial title” had passed, the insurance proceeds were likewise payable to the personal representative to be held for the devisees of the cottage and land.

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