

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Moore v. Moore Estate, 2008 NSSC 294

Date: 20081007

Docket: SPHa-252489

Registry: Port Hawkesbury

Between:

Marion Moore and Connie Moore,

Plaintiffs

v.

The Estate of Donald Moore, represented by Evelyn Moore, Personal
Representative, and Darlene Moore, and Marlene Moore Power

Defendants

Editorial Notice

Addresses and phone numbers have been removed from this unofficial electronic
version of the judgment.

Judge: The Honourable Justice Frank Edwards

Heard: September 22 - 24, 2008, in Port Hawkesbury,
Nova Scotia

Written Decision: October 7, 2008

Counsel: Adam D. Rodgers, for the plaintiffs
Ralph W. Ripley, for the defendants

By the Court:

[1] ***Facts:*** The Plaintiffs in this case are Marion Moore and Connie Moore. These ladies are the grandchildren of the late Marion E. Moore. The Defendant is the Estate of Donald Moore represented by his Personal representative, Evelyn Moore. Evelyn Moore passed away in 2008 prior to this hearing. The Defendants Darlene Moore and Marlene Moore-Power are two of the children of Donald and Evelyn Moore.

[2] The late Marion E. Moore was the wife of Edward J. Moore, who predeceased her. This couple had two children, the late Donald Moore and the late Percy J. Moore. When Edward Moore died, Marion E. Moore, Donald Moore, and Percy Moore divided up the land previously owned by Edward J. Moore by way of mutually signed Quit Claim Deeds. Marion E. Moore retained the “house lot” where she had resided with her husband. She continued to live in this home in Pleasant Bay until approximately one year before her death in 1986.

[3] In 1985 or 1986, the Plaintiffs became aware of the existence of a deed purportedly conveying the house lot from the late Marion E. Moore to her son, the late Donald Moore. This deed was dated August 26, 1975, and was recorded at the

Registry of Deeds in the County of Inverness on August 29, 1975, in Book 140 at page 222.

[4] The Plaintiffs contend that this deed was never signed by their grandmother, the late Marion E. Moore, and that the signature on that deed is a forgery. The Plaintiffs retained the services of a forensic document examiner, Brian Fillmore, who has prepared a report concluding that this signature is indeed not that of the late Marion E. Moore. The Defendants hired the forensic document examiner, Brian Lindblom, who has reached the opposite conclusion.

[5] Since the death of the late Marion E. Moore, Donald Moore has been renting the property in question to various individuals. This ceased in September 2004 when the Plaintiffs took physical control of the property. The late Marion E. Moore and the late Percy J. Moore died intestate.

[6] **Issue:** Have the Plaintiffs proven on a balance of probabilities that the deed dated August 26, 1975 from Marion E. Moore to Donald Moore is a forgery?

[7] **Analysis:** The Plaintiffs have failed to prove that the deed in question is a forgery. In fact, after listening carefully to the expert handwriting evidence, I am satisfied that the deed is probably **not** a forgery.

[8] The Plaintiff's expert, Brian Fillmore, is a highly qualified and experienced document examiner. Mr. Fillmore has testified approximately 650 times at all levels of court in each of the Atlantic Provinces. Mr. Fillmore allowed his membership in the American Board of Forensic Document Examiners (ABFDE) to lapse in 2000. There is no comparable certification body in Canada. I am satisfied that, given his impressive experience and qualifications, Mr. Fillmore's non-membership in ABFDE does not affect the admissibility or weight of his evidence.

[9] The main difficulty with Mr. Fillmore's opinion is that it was based upon very limited (both in quantity and quality) specimen handwriting. In fact, Mr. Fillmore had only two **original** specimen deeds. He also had photocopies of another deed and a draft will. All four documents were executed on the same date and thus provided only limited evidence in the natural variation in the handwriting of the late Marion Moore. Both experts gave evidence regarding the utility of photocopies when assessing handwriting. Put simply, photocopies have limited

utility. Original documents are much preferred particularly when assessing the fluency of execution of a simulation.

[10] During the trial, the Plaintiffs produced an Agreement dated February 15, 1979, purportedly signed by Marion Moore (Exhibit 3). Despite its late production, I permitted the Plaintiffs to introduce the document subject to the right of the Defendants to apply to have the document examined. (The Defendants did not pursue this option.) The Parties to the Agreement were the Queen in right of Canada and Marion Moore. It contains the signature of “Mrs. Marion Moore”.

[11] At the conclusion of his evidence, I asked Mr. Fillmore whether it would be fair to ask him to examine the signature on Exhibit 3 and give an opinion. He replied in the affirmative and examined the signature with a magnifying glass during a brief (5 minute) adjournment. Mr. Fillmore then gave the opinion that the signature on the agreement was made by the same person who had signed the specimen deeds. This fortified his opinion that the signature on the questioned deed was not made by Mrs. Marion Moore.

[12] At the conclusion of his evidence, I gave the Defendant's expert, Mr. Lindblom, the same opportunity to examine the Agreement and compare the signature with that on the questioned deed. Mr. Lindblom declined. He said that he would require a lot of time to examine the signature under a microscope before he would feel confident enough to give an opinion. In light of all the evidence I heard regarding the complexities and subtleties of handwriting analysis, I am satisfied that Mr. Lindblom chose the more prudent course. I therefore give no weight to the opinion expressed by Mr. Fillmore following his necessarily cursory examination of the Agreement.

[13] As noted, the Defendants called Brian Lindblom who, like Fillmore, was also highly qualified and experienced in handwriting comparison and analysis. Mr. Lindblom had the advantage of a much broader range of specimen handwriting than did Mr. Fillmore. Both experts agreed that if the questioned signature was a forgery, it was a freehand simulation. I was persuaded by Mr. Lindblom's evidence that a simulator would not have been able to get all the subtle features or the fluency of execution which characterized the original signature of Marion Moore. In short, I am satisfied that Mr. Lindblom is correct when he says "there is very strong support" for the view that the questioned signature is not a forgery.

[14] **Conclusion:** The Plaintiffs' action to set aside the Deed from Marion E. Moore to Donald Moore is dismissed. The Plaintiff failed to prove on a balance of probabilities that the questioned deed was a forgery. The children of the late Donald Moore and Evelyn Moore are the owners of the questioned lot of land.

[15] The Defendants counterclaimed that in May 2005 they had lost a sale of the subject property to one Matthew Moore for \$80,000.00. However, the Defendants introduced no evidence to demonstrate what the property would sell for if put on the market today. They have therefore not proven a loss. Similarly, there is little evidence of rent they might have collected had they been able to rent the property. And finally, the claim for punitive damages against the Plaintiffs has not been made out. The Plaintiffs honestly believed the deed was a forgery. Their conduct in taking possession of the property is not sufficiently egregious to warrant a punitive damage award.

[16] The Defendants shall have their costs and reasonable disbursements. Mr. Ripley will have 7 days to make a written submission on costs. Mr. Rodgers will then have a further 7 days to respond.

J.