IN THE COURT OF PROBATE FOR NOVA SCOTIA
Citation: *Arron Estate (Re),* 2012 NSSC 292

Date: 20120801
Docket: Hfx. No. 393634
Probate No. 59089
Registry: Halifax

Between:

Franklyn D. Medjuck, Q.C.

Applicant

v.

Louise Wolfson and Malerie Arron Shusterman, as Executrixes and Beneficiaries of the Estate of Donald Arron, Louis Wolfson, Pamela Covens, and Elissa Arron Purl

Respondents

Judge: The Honourable Justice Peter P. Rosinski

Heard: July 18, 2012, in Halifax, Nova Scotia

Counsel: Ann Levangie & Sandra McCulloch, for the Applicant
Timothy C. Matthews, Q.C., for the Respondent, Louise Wolfson
Dale Dunlop & Ian Gray, for the Respondents, Malerie Arron Shusterman, Pamela Covens & Elissa Purl
Craig Garson, Q.C., for the Respondent, Louis Wolfson

By the Court:

Introduction

[1] Donald Arron passed away on May 8, 2011. His Will was probated and his daughters appointed co-executrixes on May 27, 2011. Donald Arron made it clear in his Last Will and Testament that his grandson Louis Wolfson was to have an exclusive first opportunity to buy any of the real property of his Estate. He had his Will drafted in a simple yet effective manner with the assistance of legal counsel.

[2] Louis Wolfson gave notice of his intention to exercise that right on December 8, 2011, yet to date no sale has taken place.

[3] Although the Will clearly specified how the price would be set (the average of two independent appraisals by AAIC qualified persons, less 10%), disagreements arose among the beneficiaries and co-executrixes, such that the Proctor for the Estate had to request that the court intervene to clarify **who has the right to choose the closing date** for the sales, that were clearly otherwise provided for in the Will.

[4] In my view, that this issue is before me signals an unfortunate unreasonableness that is in stark contrast to what Donald Arron had intended when he signed his Will.

[5] He intended that the closing date should be within a reasonably short period after independent appraisals of the properties had been received.

[6] It is time to respect his intentions under the Will.

Background

[7] This application in chambers was specifically argued by the Applicant as brought pursuant to section 64 of the *Probate Court Practice and Forms Regulations* made under s. 106 of the *Probate Act,* S.N.S. 2000 c. 31 as amended. My powers thereunder are in part contained in s. 67 which reads as follows:

> Without limiting the powers of the Court, the Registrar, on hearing an application under this part, may
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> a) receive evidence by affidavit or orally;
>
> b) dispose of issues arising out of the application;
>
> c) direct a hearing of issues arising out of the application and the procedure to be followed at the hearing;
>
> d) set the time or times within which matters or proceedings respecting the Estate shall be completed;
>
> e) grant any relief to which the applicant is entitled because of a breach of trust wilful default or other misconduct of the respondent;
>
> f) direct that notice of the Court's decision or order be given to a particular person;
>
> g) dispense with service of notice on any person if, in the opinion of the Court, service is impractical;
>
> h) order that any money in the hands of a personal representative be paid into any chartered bank to the credit of the Estate and not withdrawn without a court order;
>
> i) order that security for costs be given by any party;
>
> j) order that costs be paid from the Estate or by a person who is a party to the application;
>
> k) make any order the registrar considers appropriate in the circumstances.

[8] The matter of costs is also canvassed in s. 92 of the *Probate Act*.

[9] As evidence in the application, I have before me the affidavits of Proctor Frank Medjuck, Q.C., sworn April 23, 2012 and July 11, 2012; the affidavit of Louis Wolfson; and a thread of email communications tendered by consent as Exhibit No. 1.

[10] There was no notice of objection filed pursuant to s. 66 of the Regulations, nor were there any affidavits tendered by those parties disputing the proposed interpretation of the Will put forward by Louis Wolfson. No cross-examination took place of either affiant. I am satisfied that all parties interested herein are represented by counsel in this application.

Facts

[11] Donald Arron signed his Last Will and Testament on July 6, 2006. He passed away on May 8, 2011 and his Will was probated and a Grant of Probate issued on May 27, 2011 to his daughters Louise Wolfson and Malerie Shusterman as co-executrixes. Under the Will, Frank Medjuck, Q.C. was appointed Proctor of the Estate.

[12] Donald Arron owned significant real estate at the time of his death, and specifically properties at 7145 Quinpool Road and 2759 and 2966 Windsor Street, Halifax, Nova Scotia.

[13] Clause 6(g) of Donald Arron's Will reads as follows:

> Sale to family or executors
>
> You may sell any asset of my Estate to members of my family or to my individual executors at its fair market value upon terms you may consider prudent, subject to the following:
>
> > I direct that my executors sell the real estate portion of my Estate at their convenience and at their discretion, upon terms they think are best in their sole judgment and provided always that my grandson, Louis Wolfson, of Halifax Nova Scotia, has the right to purchase any of the real properties at a price calculated by taking the average of two independent appraisals done by members in good standing of the Accredited Appraisers Institute of Canada, and also that my grandson, Louis Wolfson, has the right of first refusal if any bona fide offer to purchase any real property of mine is received from an independent third party. The actual price to be paid by my grandson, Louis Wolfson, will be determined by either of these two methods, less a 10% discount to reflect savings to my Estate in marketing costs and real estate commissions.

[14] On December 8, 2011, Wayne Marryatt, as Mr. Wolfson's counsel, wrote to the Proctor of the Estate regarding his entitlement to purchase the real estate of Donald Arron pursuant to Clause 6(g) of the Will, and indicated that he wished to purchase the above noted three properties. In the letter he suggested an April 1, 2012 closing date. It is clear that from the start, the two co-executrixes, Louise Wolfson and Malerie Shusterman, did not agree on the interpretation and means of execution of clause 6(g) in the Will.

[15] Mr. Dale Dunlop, representing Malerie Shusterman, Pamela Covens and Elissa Arron Purl, all of them being beneficiaries and present or alternative co-executrixes, wrote to the Proctor by letter dated December 15, 2011:

> . . . It is also my opinion that the wording [of the Will] is sufficiently vague or ambiguous that it requires either agreement between Louis and the executrixes as to how it should be interpreted or, failing that, a determination by the courts as to how it should be interpreted. The problems as I see them lie in three areas - the first relates to who picks the appraisers and how they are paid, the second relates to the timing of the sales and the third relates to bona fide offers from third parties.
>
> I understand that you introduced the beneficiaries to a proposal from Tim Margolian that might see the three remaining properties fetch as much as $8 million if sold as a group. Apparently nothing has come of this, but Malerie whose job as executrix is to ensure the beneficiaries receive the maximum benefit of the Estate proceeds, wishes to permit Mr. Margolian to at least try to determine if there is legitimate third party interest in the properties. This does not seem unreasonable in light of the provisions of the Will. If, after a reasonable period of time, there are not third party offers, then the executrixes should proceed with the appraisal process.
>
> Under any reasonable interpretation of the appraisal process, both sides, being Louis and the Estate, should select an appraiser of their choice at their expense. The purchase price should be the mean average of the two appraisals less the 10%. The appraisal should take place as close in time to the intended closing as possible.
>
> From Malerie's point of view as executrix this is how she believes the matter should proceed and so instructs you. Malerie's position is supported by Pam and Elissa.

[16] While Donald Arron was still living, he tasked Louis Wolfson with the management of his extensive real estate investments. Mr. Wolfson has continued to manage these properties since that time to the date of the hearing.

[17] Mr. Dunlop's clients questioned the quality of property management that Louis Wolfson was providing in relation to the Estate properties, and consequently on April 5, 2012, a chartered accounting firm provided an opinion that "the management reports prepared by the manager for use by the Estate for the years ended December 31, 2010 and November 30, 2011 are accurate and represent, in all material respects, the actual operating results of the properties".

[18] The April 1, 2012 proposed closing date in Mr. Marryatt's December 8, 2011 letter passed. The proposed closing date was revised by Mr. Wolfson to May 1, 2012.

[19] Mr. Wolfson had his counsel Mr. Wayne Marryatt, write a letter dated April 26, 2012 to the Proctor, which read in part:

> Further to our recent telephone conversation, we understand that the Estate of Donald Arron is not prepared to complete the sale of the properties to our client on May 1, 2012. We further understand that an application is being made to the Court for an interpretation of the provisions of the Will of Donald Arron. Our client is prepared to extend the closing of the transactions to the earlier of:
>
> > 1. The date which falls 20 business days after the Court has rendered its decision on the Application to interpret the Will; or
> >
> > 2. August 1, 2012, provided that if the Court's decision is rendered between July 12, 2012 and August 1, 2012, this date shall be extended such that there shall be 20 business days between the rendering of the decision and the closing date of the transactions...
>
> Please confirm that this extension of the closing date is acceptable to the Estate.

[20] The Proctor then began communications in part by email correspondence with the two executrixes, Louise Wolfson and Malerie Shusterman, which is captured in Exhibit No. 1.

[21] The most significant excerpts thereof are the following:

> [April 26, 2012 at 6:46 p.m. the Proctor wrote to the two executrixes as well as Mr. Matthews and Mr. Dunlop under the re line "letter re-extension of closing"]
>
> Louise and Malerie:
>
> Please consult with your respective counsels and give me your instruction on how you should would like me to respond. I suppose the alternatives are "yes', "no", or "it all depends on the Court's decision."
>
> Frank

[22] By email sent from Ontario on May 1, 2012 at 6:14 p.m. [being 7:14 p.m. in Nova Scotia where Mr. Medjuck was resident] Malerie Shusterman responded:

> Re: Letter re-extension of closing
>
> Frank,
>
> The answer is yes, I will agree to the extension.
>
> Malerie

[23] Thus, the May 1, 2012 proposed closing date passed. On May 4, 2012 the Proctor sent an email to Louis Wolfson's real property counsel Wayne Marryatt, which was copied to Louise Wolfson, Mr. Matthews, Malerie Shusterman, Mr. Dunlop, Mr. Garson and Andrew Wolfson who is a practicing lawyer and father of Louis Wolfson. In that, the Proctor stated:

> Re: Estate of Donald Arron - extension
>
> Wayne,
>
> Since your last email concerning your request for an extension, I have received the consent of the second co-executrix by email. If you are satisfied with the terms of your last letter, we can leave it at that. Otherwise we can revisit this matter next week.
>
> Frank

[24] However it appears disagreement persisted and that on May 22, 2012, the Proctor filed the herein application in chambers requesting an order from the court "determining the interpretation of Clause 6(g) of the Last Will and Testament of Donald Arron executed on July 6, 2006."

The Law

[25] The court's jurisdiction to deal with the interpretation of Donald Arron's will is set out in s. 8(1)(c) of the *Probate Act*, S.N.S. 2000, c. 31 which permits the court to "effect and carry out the judicial administration of the estates of deceased persons through their personal representatives, and hear and determine all questions, matters and things in relation thereto necessary for such administration."

[26] The *Wills Act*, R.S.N.S. 1989, c.505, as amended, notes the time from which a will "speaks":

> 23 Every will shall be construed, with reference to the real and personal property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will;

and s. 46 of the *Probate Act* deems that all real property owned by a deceased person on their death is vested at that moment in their personal representative by operation of law.

[27] I am guided by the general principles of interpreting Wills as reiterated in the decision of Justice David R. Chipman, in the case of *Smithers v. Mitchell Estate* [2004] N.S.J. No. 482, 2004 NSCA 149, at paragraph 19, where he wrote:

> The first duty of the court is to ascertain the intention of the testator from the language used in the Will. Regard must be had, not only to the whole of any clause in question, but to the Will as a whole, which forms the context of the clause. Effect must be given, if at all possible, to all parts of the Will. **A fair and literal meaning should be given to the actual language of the Will, the ordinary and grammatical sense of the words to be assigned unless the context otherwise dictates. The context may well include "surrounding circumstances**". Only after the language employed by the testator has been approached in this fashion need resort be had to case law and legal rules to see if any modification is required. These principles were referred to with references to relevant authorities by Davison, J. in *Re: Carter Estate* (1991), 109 N.S.R. (2d) 384 (T.D.). The role of "surrounding circumstances" in this exercise was

discussed by this Court in *Re: Murray Estate* (2001), 191 N.S.R. (2d) 63, at paras. 20-25.

[My emphasis]

[28] My colleague Justice Patrick Murray stated in *Peach Estate (Re)* 2011 NSSC 74:

> In *Mitchell*, Chipman J.A. in discussing the role of surrounding circumstances "in this exercise", referred to *Re: Murray Estate*, where he referenced the decision of Bayda, J.A. in *Haidl et al v. Sacher et al* [1980] 1 W.W.R. 293 (C.A.) at paragraphs 21-23 as follows:
>
> > '21 The Court of Appeal of Saskatchewan in dismissing the appeal addressed the question of surrounding circumstances. Bayda J.A., (as he then was) speaking for the court, asked at p. 296 **whether the so-called "ordinary meaning" rule of construction should first be applied without admitting and taking into account surrounding circumstances unless it is found that its application produces a meaning which is unclear and ambiguous, or whether the law required the surrounding circumstances to be admitted at the start**, and that the "ordinary meaning" rule of construction should be applied in light of them. The former approach was referred to as procedure A and the latter as procedure B.
> >
> > 22 Bayda J.A. then embarked upon an examination of authorities in England and Canada and concluded at p. 302 that the **Canadian authorities tended to put forward procedure B as the proper approach**. In his view, it was the approach most likely to elicit the testator's intention and thus more desirable. (cited in part only)
> >
> > 23 In my opinion, this is as good a statement as any as to how we should perform our function. It is not strictly necessary here to determine which procedure is preferable because, as I have said, we are driven to examine surrounding circumstances in any event. **Obiter, I would express a preference to the view taken by Bayda J.A.** See also Feeney, supra, [paragraph] 10.53-10.57.' (Emphasis added)
>
> 40 Surrounding circumstances may therefore be examined or "admitted at the start", meaning that the "armchair rule" can be applied at the outset. Whereas this

> is consistent with what is being suggested by counsel for the parties, it is what I intend to follow. I would note that in *Re: Saunders Estate* (2005), 236 N.S.R. (2d) 16, McDougall, J. followed the approach in *Mitchell* (C.A.).
>
> 41 Finally in *Re Murray Estate*, the Appeal Court gave further insight as to what is considered evidence of surrounding circumstances when Chipman J.A. stated at para. 19:
>
> > "Whatever approach is favoured, there is sufficient uncertainty here to require us to examine **surrounding circumstances, such as the testator's lifestyle, means and assets, and relatives and associations in construing the words of the will.**"
> >
> > (My emphasis added)

[29] In the case at Bar, I understand the parties to adopt the “procedure B” approach as correct, and I propose to follow it, noting that Justice Chipman endorsed it in “obiter.”

[30] Thus I will assess the Will’s meaning using the words within the four corners of the Will itself, and if ambiguity arises, I will resort to a consideration of the context, including the “surrounding circumstances”, which are to be distinguished from direct evidence of testamentary intent [which is generally inadmissible per Chipman, J.A. at para. 18 in *Re Murray Estate*, 2001 NSCA 25]:

> 28 Nor, in my view, is it necessary to resort to an examination of the "surrounding circumstances". **Evidence of "surrounding circumstances" is to be distinguished from direct evidence of testamentary intent**. In Haidl v. Sacher (1979), 106 D.L.R. (3d) 360, Bayda, J.A. (as he then was) of the Saskatchewan Court of Appeal, said at p. 363:
>
> > ... "surrounding circumstances" as used in these reasons refers only to indirect extrinsic evidence. It has no reference whatever to direct extrinsic evidence. It has no reference whatever to direct extrinsic evidence of intent, the admission of which is governed by a different set of conditions. The former **consists of such circumstances as the character and occupation of the testator; the amount, extent and condition of his property; the number, identity, and general relationship to the testator of the immediate family and other relatives; the persons who**

> **comprised his circle of friends, and any other natural objects of his bounty**.
>
> - Per Chipman, JA in *Smithers v. Mitchell Estate* 2004 NSCA 149 (2004) 228 NSR (2d) 295 (CA). [My emphasis]

[31] Regarding an assessment of the context, and "surrounding circumstances" in particular, Justice Moir's comments in *Skerrett v. Bigelow Estate* 2001 NSSC 116, para. 13 have been accepted as a proper statement of the law regarding the so-called "armchair rule":

> All counsel agree that I should apply the general principles for interpreting wills. As Mr. Quigley says, this is because "the application of the doctrine of acceleration is largely dependent upon the intention of the testator". Counsel referred me to passages in MacKenzie, Feeny's Law of Wills (Toronto, 2000, 4th ed.), including para. 10.1 and 10.14, which include:
>
> > In interpreting a will, the **objective of the court of construction should be to determine the precise disposition of the property intended by the testator.** The court should attempt to ascertain, if possible, the testator's actual or subjective intent as opposed to an objective intent presumed by law. The court should be concerned with the meaning that the particular testator attached to the words used in his or her will rather than with a hypothetical standard that might be that of an average or reasonable person. This approach requires the court to consider the testator's peculiar and unique language, all the circumstances surrounding his or her life and all the things known to him or her at the time he or she made his or her will which might bear on the type of dispositions he or she actually intended to make by the will.
> >
> > **The court puts itself in the position of the testator at the point when he or she made his or her will, and, from that vantage point, reads the will, and construes it, in the light of the surrounding facts and circumstances. This approach is commonly referred to as the "armchair rule".**
> >
> > [Emphasis added]
>
> I agree that these principles generally control the assessment of [the testator's intentions]...It is actual or subjective intent which is

> sought. It is to be sought in the language of the Will understood in light of the surrounding circumstances.

Position of the Parties

Malerie Arron Shusterman, Pamela Covens and Elissa Purl

[32] Mr. Dunlop presents their position as follows:

> My client's position is quite simple. They agree that Mr. Louis Wolfson does have an option to purchase any or all of the Estate properties at a 10% discount from the agreed price. They also agree with the submissions of others that the reasonable way to determine the price is for the Estate to appoint one appraiser and Mr. Wolfson another. The price would be the halfway point between the two appraisals less 10%.
>
> Where my client's disagree is that Your Lordship should do anything more than confirm what all sides agree upon. Submissions have been made that You should also determine the timing of the sale. Under the terms of the will that discretion lies with the Executors and my clients believe it should stay there.

[33] He argued that there is no ambiguity in the Will and therefore no need to go outside its four corners to interpart the testator's intention, even regarding the only disputed issue - who determines the timing of the sale of the properties pursuant to clause 6(g) of the Will.

[34] Recognizing that "someone has to decide" the timing of the closing date for sale of those properties to Louis, he argues that the discretion is clearly in the hands of the co-executrixes, though he concedes that the co-executrixes must act "reasonably" in the exercise of that discretion.

[35] He argues that to date, the delay that is complained about by Louis Wolfson (by virtue of the co-executrixes not being in agreement respecting the interpretation of clause 6(g)) has not been unreasonable. Moreover he denies that Malerie Shusterman's email of May 1, 2012 is an agreement to the proposed closing dates in Wayne Marryatt's April 26, 2012 letter insofar as sale under clause 6(g) of the Will is concerned. Consequently, the court need not resolve any "dispute" between the parties at this time, as the exclusive discretion to determine

the closing date for the property sales to Louis Wolfson under the Will rests with the co-executrixes.

Louis Wolfson

[36] Mr. Garson put forth his position as follows:

> Louis submits that clause 6(g) of his late grandfather's Will is clear and unambiguous. However should your Ladyship determine that there is ambiguity in this clause, Louis' Affidavit provides sufficient factual background to enable the Court to read the Will and construe it "in light of the surrounding facts and circumstances." In either case, Louis submits that clause 6(g) of the Will confers a right of purchase on him with respect to these three (3) properties. In addition, Louis respectfully submits that Your Ladyship should fix firm dates for the provision by the Estate of updated appraisals and fix the closing date.

[37] He points out that Louis first made known his intention to purchase the three properties in a letter to the Estate dated December 8, 2011. Since then proposed closing dates of April 1 and May 1, 2012 have come and gone solely because Malerie Shusterman, in her capacity as co-executrix has not agreed with Louise Wolfson in her capacity as co-executrix regarding this issue. That disagreement left the Proctor unable to advance the sale of the properties to Louis Wolfson.

[38] In oral argument he suggested that: the only remaining issue in dispute, using Mr. Dunlop's December 15, 2011 letter as a touchstone, is the timing of when the closing of the sale of the properties to Louis Wolfson should take place; a mechanism has been agreed upon to fix the price, and there are no offers from bona fide third party purchases in play at present.

[39] As to the timing issue, he argues that Malerie Shusterman has agreed to the dates suggested in the April 26, 2012 letter from Wayne Marryatt by her May 1, 2012, 6:14 p.m. email response to Mr. Medjuck's enquiry.

[40] Even if this agreement were not binding in the Estate, he argues that the timing of the closing date should be in the exclusive discretion of Louis Wolfson since he is the person given the **right** to purchase the properties from the Estate, subject to a reasonableness requirement on his part.

Frank Medjuck

[41] As Proctor for the Estate, his role is neutral however he does have a duty to assist the executrixes in advancing the Estate's affairs to move toward a settlement of the accounts and distribution of the Estate's assets ss. 69 - 82 *Probate Act* S.N.S. 2000 c. 3 as amended.

[42] Ms. Levangie on his behalf put his position forward as follows: She argues that clause 6(g) of the Will is not ambiguous, but even if it were found to be so regarding the timing issue, there is an agreement between the co-executrixes (therefore the Estate) and Louis Wolfson that would make the closing dates in the April 26, 2012 letter of Wayne Marryatt applicable to the sale of the properties to Louis Wolfson.

[43] She reiterated that: the delay has been significant; the bulk of the Estate is real estate; and "estates are not in the business of managing properties."

Louise Wolfson

[44] Mr. Matthews on her behalf put forward her position as follows:
The reason "why we are here" in this Application is explained by the materials before the court. He says they lead to the conclusion that some of the beneficiaries are not at all content with the instructions in the Will regarding the distribution of the assets. That dissatisfaction has caused Ms. Shusterman to not agree to the earlier requests by Louis Wolfson to set a pricing mechanism, or to set a closing date for the sale of the properties to him; and her position has unreasonably delayed the Estate's ability to sell the properties.

[45] He argues that once Louis gave notice of his intention to buy the properties, then the Estate's executrixes, who have a duty to act reasonably, should have set a closing date within a reasonable time thereafter.

[46] His client, Louise Wolfson, was agreeable to doing so, but Malerie Shusterman was not agreeable, and hence the Proctor's hands were tied in that respect.

[47] He characterizes the May 1, 2012 email from Malerie Shusterman as an agreement on her behalf to the closing dates contained in the April 26, 2012 letter from Mr. Marryatt.

Analysis

[48] Firstly, let me say that I find any agreement between the (co-executrixes on behalf of the) Estate and Louis Wolfson regarding the actual closing date is not binding on this court.

[49] There is a suggestion here that the parties can by their agreement assist in or override the proper interpretation of the testator's intention in his Will on its face - namely, as to who should have the right to decide when the closing of the sale of properties will be and who will choose the appraiser, etc.

[50] If the parties among themselves have a private agreement about how to proceed, that does not bind or concern the court in this application, as I must follow the law regardless of the wishes of private parties.

[51] Therefore, even if I found as a fact that there was an agreement regarding the closing date, choice of appraisers and price of the properties, etc., I must still apply the law in spite of such a factual reality.

[52] Thus I ask myself: Is the Will on its face ambiguous regarding the testator's intention as expressed in Clause 6(g)?

[53] An examination of the entire Will reveals an attempt at simplicity and clarity. As Mr. Matthews indicated, as one reads through Clause 6(g) it gets continually more restrictive and requires a reading down of the co-executrixes' discretion.

[54] Under "Sale to Family or Executors" we see that: the executrixes "may sell any asset of my Estate. **I direct** that my executors sell the **real estate portion** of my Estate at their convenience and at their discretion, upon terms they think best in their sole judgment and **provided always** that my grandson Louis Wolfson... has the **right to purchase** any of the real properties at a **price calculated** by taking the average of two independent appraisals done by members in good standing of the Accredited Appraisers Institute of Canada... less a 10% discount to reflect savings to my Estate in marketing costs and real estate commission." [My emphasis]

[55] There is no material ambiguity here. A proper interpretation of the Will does not necessitate a consideration of surrounding circumstances or extrinsic evidence of the testator's intentions. Louis Wolfson is entitled to buy any of the properties in question for a fixed price (the average of two independent AAIC appraisals, less 10%). By choosing to calculate the price using two independent appraisals, the Testator intended to approximate a fair market value in a simple manner.

[56] In my view, the Testator also intended that the closing would be held within a reasonable time after the appraisals were submitted. Appraisals may arguably become less relevant if not updated as time passes; other circumstances relevant to the properties' value may change over time. Moreover, the Estate and purchaser both have an interest in not unreasonably delaying the sales. As Ms. Levangie fairly observed: "estates are not in the business of managing properties."

[57] Nevertheless, as Edwards, J. did in *Mitchell Estate v. Mitchell Estate* 2003 NSSC 223 (affirmed on appeal, para. 30, 2004 NSCA 149), I conclude that, if I went on to consider the context and "surrounding circumstances," they confirm that Mr. Arron was an astute, successful businessman who was prone to prefer straightforward language in a Will to express his intention. Moreover, he entrusted to his daughters Louise and Malerie the executorship of his Will, and had wanted to ensure that exclusively Louis had the opportunity to buy his properties. Preferring to keep these matters in the hands of his family was by design. I infer that he would be surprised that this matter ended up in court. I infer that the choice of appraisers and timing of the closing would be minor details that in his view did not need elaboration in his Will. Therefore, even using this approach, the result would have been the same.

[58] There is no material ambiguity here. Mr. Arron intended that the closing take place within a reasonable period of time after the notice of intent to purchase.

[59] I have authority in part pursuant to s. 67 of the *Probate Regulations* (*Court Practice, Procedure and Forms)* and ss. 7 and 8 of the *Probate Act*, to direct any person to comply with the *Probate Act* and to set the time within which matters respecting the Estate shall be completed.

[60] I conclude herein that:

i) The period from December 8, 2011, when Louis Wolfson made his intention to purchase known, to date is an unreasonable delay in his being able to close the purchase of the properties;

ii) The delay is primarily attributable to arguably legitimate initial concerns voiced by Malerie Shusterman and her sisters;

iii) Mr. Wolfson's suggested closing dates in the Marryatt April 26, 2012 letter are reasonable and any extension thereof would unfairly continue the unreasonably long period to date.

[61] I conclude that the co-executrixes herein have a legal obligation, with due dispatch and diligence, to do all things necessary to ensure that Donald Arron's intention, that the properties in question be sold to Louis Wolfson, is effected as soon as possible.

[62] I therefore declare and order the following (adopting the proposed draft consent order submitted by Mr. Matthews on behalf of his client, Louise Wolfson and those of Mr. Garson for Louis Wolfson, and Ms. Levangie for the Proctor, Mr. Medjuck):

1. Clause 6 (g) of the Will confers an option to purchase the properties on Louis Wolfson, and upon its exercise by Louis Wolfson at a sale price determined by the formula set out in that clause.

2. Each of the properties shall be appraised by two appraisers, one to be selected by Louis Wolfson and to be paid by him, the other to be selected by the Proctor (acting on behalf of the co-executrixes) and to be paid from the Estate. Such appraisals shall be conducted by a member in good standing of the Accredited Appraisers Institute of Canada. Any updating of existing appraisals or appraisals shall be completed on or before August 15, 2012.

3. The sale price shall, with respect to each of the properties, be calculated as the average of the two (updated) appraisals, less 10%.

4. The closing date for the sale transaction shall be on or before September 14, 2012.

5. Deeds for the properties and any other collateral documents necessary or advisable to complete the sale, as determined by the Proctor and by Louis Wolfson or his solicitor, shall be executed and delivered by Louise Wolfson and Malerie Arron Shusterman as co-executrixes of the Estate.

6. The Proctor's costs of this application shall be paid out of the Estate. Each of the other parties shall pay her or his own costs.

Rosinski, J.