

SUPREME COURT OF NOVA SCOTIA
Citation: *Gray Estate v. Gray*, 2016 NSSC 359

Date: 20161116
Docket: HFX No. 447609
Registry: Halifax

Between:

Douglas Garrison, as the Executor of The Estate of Lila Gray
Plaintiff
v.
Aerial Scott Gray
Defendant

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Judge: The Honourable Justice Patrick J. Murray
Heard: August 4, 2016, in Halifax, Nova Scotia
Final Written Submissions: September 9, 2016
Written Decision: November 16, 2016

Summary:

The Estate sought three remedies on this motion: 1) an interlocutory injunction which would preserve the two real properties and ensure they will not be wasted or sold until the matter can be decided on its merits; 2) to grant an accounting of the estate, in light of the allegations of financial impropriety against the Defendant that are made by the Plaintiff; and 3) to amend its' Statement of Claim.

Mr. Gray in his motion sought: 1) that Mr. Garrison's affidavit be

struck; and 2) that the motion of the Plaintiff be denied.

Result:

The Court made the following ruling:

- 1) Portions of the affidavit of Mr. Garrison are struck with the result that those paragraphs shall be admitted as set out in Appendix "A".
- 2) The determination of evidentiary issues at trial will be for the presiding judge. The rulings on this motion are not binding on the trial judge.
- 3) Ms. Sampson need not be added as a Defendant for the purpose of this motion. However, in light of Rule 35.03(4)(c) the Plaintiff shall consider adding Ms. Sampson as a Defendant in the action.
- 4) An accounting is ordered to be completed by the Defendant, Mr. Gray, in accordance with the direction contained in paragraph 77 of the Decision.
- 5) The Amendments sought by the Plaintiff are granted with costs in favour of the Defendant in the amount of \$500.00.
- 6) In all of the circumstances, the Court is satisfied that it is just and convenient to grant an interlocutory injunction on the basis of the three part test contained in *RJR*.
- 7) The issuance of the Order on this motion is subject to the following directions given by the Court:
 - a. The Plaintiff shall file a proper undertaking of the Plaintiff in accordance with the *Rule 41.06(1)*;
 - b. While the Plaintiff has sought possession of the properties, this relief was not claimed in either the Notice of Motion or the order provided to the Court;
 - c. In the circumstances, the court found it appropriate that the Plaintiff be given reasonable access to the real properties at reasonable times upon reasonable notice to the Defendant, Mr. Gray and to Ms. Sampson. Access shall be for the purposes of maintaining the properties and/or the completion of the duties upon the Executor and Personal Representative of the Estate of Lila Gray. The

obligation on the Defendant not to commit waste remains.

- d. Should the Plaintiff require possession and control of the properties, then the Plaintiff shall seek such a remedy on Notice by way a separate Motion.
- 8) In the result the Defendant's motion is dismissed. Costs are awarded to the Plaintiff, in the cause.

Cases cited:

R v. Khelawon, 2006 SCC 57; *Waverley (Village Commissioners) v. Nova Scotia (Minister of Municipal Affairs)*, 1993 CanLII 3403 (NSSC); *Weldon v. Kavanagh (N.S.C.A.)*, [1989] N.S.J. No. 397; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Manitoba (Attorney General v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110; *Anderson v. Evans*, 2005 NSSC 50.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
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