

SUPREME COURT OF NOVA SCOTIA
Citation: *Christoff v. Boutilier*, 2022 NSSC 269

Date: 20220114
Docket: SYD No. 488374
Registry: Sydney

Between:

Elizabeth (Betty) Anne Christoff

Plaintiff

v.

Ralphina Boutilier

Defendant

Cost Decision

LIBRARY HEADING

Judge: The Honourable Justice Patrick J. Murray

Written Decision: February 10, 2022

Subject: Estate Law

Facts: [1] A Summary Judgment Motion was made by the Defendant Ralphina Boutilier, seeking that the claim of the Plaintiff Elizabeth (Betty) Anne Christoff be dismissed.

The Plaintiff filed a Statement of Claim on May 23, 2019 alleging that in 2010 the Defendant, Ralphina Boutilier, made herself the beneficiary of the insurance policy held with Canadian Premier Life Insurance.

[2] Ms. Christoff has stated that Ms. Boutilier filled out the beneficiary form and her mother signed it, but alleges that her mother was not competent. Ms. Christoff filed the affidavit of Dr. Puppala on October 21, 2021, which refers to his letter dated April 3, 2017. That letter refers to the competency of Ms. Deshaies when she was 96 years of age, in 2016, prior to her death on June 12, 2016. The change of beneficiary was made in 2010, six (6) years earlier when Ms. Deshaies was approximately 90 years of age. No medical evidence sets out the state of Ms. Deshaies and her competency at that point in time.

Issue: [3] Should the Summary Judgement Motion be granted?

Result:

The Court found the Defendant has satisfied her evidentiary burden to prove there is no genuine issue of material fact for trial. Even if there was a genuine issue as to whether Ms. Boutilier fraudulently obtained the change in beneficiary by forging Ms. Deshaies signature, the Court was not satisfied, that Ms. Christoff satisfied the evidentiary burden upon her to prove that her claim has a real chance of success, under the second part of the test for summary judgement. (Civil Procedure Rule 13.04). The Will of her mother left the residue of her estate to Ms. Christoff. An insurance policy containing a valid designation falls out the estate.

The Court granted the Summary Judgment Motion sought by the Defendant.

The sum of \$12,500 held by the Court shall be payable to Ms. Boutilier.

There will be no order for costs.

Caselaw:

Burton Canada Co. v. Coady, 2013 NSCA 95.

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Citation: *Christoff v. Boutilier*, 2022 NSSC 269

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Docket: SYD No. 488374

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Between:

Elizabeth (Betty) Anne Christoff

Plaintiff

v.

Ralphina Boutilier

Defendant

Judge: The Honourable Justice Patrick Murray

Heard: October 25, 2021, Sydney, Nova Scotia

Oral Submissions: January 14, 2022

Counsel: Elizabeth (Betty) Christoff, self-represented
Darlene MacRury for the Defendant

By the Court:

Introduction

[1] This is a Summary Judgment Motion by the Defendant Ralphina Boutilier, seeking that the claim of the Plaintiff Elizabeth (Betty) Anne Christoff be dismissed. The Court has considered the motion materials and the submission made at the hearing on January 14, 2022.

[2] I have reviewed the Plaintiff's affidavit of April 19, 2021, and the Statement of Claim of Ms. Christoff filed on May 23, 2019. The Statement of Claim alleges that in 2010 the Defendant, Ralphina Boutilier, made herself the beneficiary of the insurance policy held with Canadian Premier Life Insurance, the policy in question. Paragraph 9 of her claim reads:

9. Annie Deshaies purchased insurance from Canadian Premier Life Insurance in the year 2000. In 2010 Ralphina Boutilier made herself beneficiary of this policy. I have a copy of the beneficiary change in Ralphina Boutilier's own handwriting.

[3] Ms. Christoff has stated that Ms. Boutilier filled out the beneficiary form and her mother signed it, but alleges that her mother was not competent. Ms. Christoff filed the affidavit of Dr. Puppala on October 21, 2021, which refers to his letter dated April 3, 2017. That letter refers to the competency of Ms. Deshaies when she was 96 years of age, in 2016, prior to her death on June 12, 2016. (See Exhibit "D" in the affidavit of the Plaintiff filed April 19, 2021)

[4] The change of beneficiary was made in 2010, six (6) years earlier when Ms. Deshaies was approximately 90 years of age. I have not seen medical evidence that sets out the state of Ms. Deshaies and her competency at that point in time. I do note that she prepared three Wills; the first in 2006; the second one in the year 2010, and the third one two years later in 2012.

[5] There is little question that the signature on the form is that of Ms. Deshaies. I accept that Ms. Boutilier was involved in assisting Ms. Deshaies in preparing the form, by writing in her own name where required on the form. There is evidence that the insurance company processed the change in beneficiary and had no concerns with the documentation submitted to effect the change. Ms. Boutilier has given evidence that she was a close friend of Ms. Deshaies and assisted in certain matters. Her affidavit states:

5. That Annie Deshaies and I were best friends, I thought of her as a grandmother figure in my life. I initially met her through a town bowling league. Our relationship grew through the years. I was in daily contact with Annie. We would go shopping, go for drives throughout Cape Breton. I would take her for medical appointment, we would attend social function, such as church suppers, together. Annie was always a part of any of my family gatherings for birthdays, grandchildren concerts, Christmas, etc. Whenever Annie needed anything she would call me and I would assist in any way I could. I deny any and all allegations that I used my friendship with Annie for personal gain or benefit.

[6] The law with respect to a motion for summary judgment is that the Court must not delve to deeply into matters of credibility or the weighing weigh evidence. *Burton Canada Co. v. Coady*, 2013 NSCA 95 at paragraph 87 reads as follows:

[87] Before turning to the final issue raised on appeal, I wish to provide a quick summary of the law as it presently stands in Nova Scotia concerning summary judgment litigation. From the jurisprudence to which I have referred as well as the case law cited therein, a series of well-established legal principles have emerged. I will list these principles in the hope that their enumeration will serve as a helpful checklist or template to guide counsel and judges in their application. In Nova Scotia:

1. Summary judgment engages a two-stage analysis.
2. The first stage is only concerned with the facts. The judge decides whether the moving party has satisfied its evidentiary burden of proving that there are no material facts in dispute. If there are, the moving party fails, and the motion for summary judgment is dismissed.
3. If the moving party satisfies the first stage of the inquiry, then the responding party has the evidentiary burden of proving that its claim (or defence) has a real chance of success. This second stage of the inquiry engages a somewhat limited assessment of the merits of the each party's respective positions.
4. The judge's assessment is based on all of the evidence whatever the source. There is no proprietary interest or ownership in "evidence".
5. If the responding party satisfies its burden by proving that its claim (or defence) has a real chance of success, the motion for summary judgment is dismissed. If, however, the responding party fails to meet its evidentiary burden and cannot manage to prove that its claim (or defence) has a real chance of success, the judge must grant summary judgment.
6. Proof at either stage one or stage two of the inquiry requires evidence. The parties cannot rely on mere allegations or the pleadings. Each side must "put its best foot forward" by offering evidence with respect to the existence or non-existence of material facts in dispute, or whether the claim (or defence) has a real chance of success.
7. If the responding party reasonably requires disclosure, production or discovery, or the opportunity to present expert or other evidence in order to "put his best foot forward", then the motions judge should adjourn the motion for summary judgment, either without day, or to a fixed day, or with conditions or a schedule of events to be completed, as the judge considers appropriate, to achieve that end.

8. In the context of motions for summary judgment the words “genuine”, “material”, and “real chance of success” take on their plain, ordinary meanings. A “material” fact is a fact that is essential to the claim or defence. A “genuine issue” is an issue that arises from or is relevant to the allegations associated with the cause of action, or the defences pleaded. A “real chance of success” is a prospect that is reasonable in the sense that it is an arguable and realistic position that finds support in the record, and not something that is based on hunch, hope or speculation.

9. In Nova Scotia, CPR 13.04, as presently worded, does not create or retain any kind of residual inherent jurisdiction which might enable a judge to refuse to grant summary judgment on the basis that the motion is premature or that some other juridical reason ought to defeat its being granted. The Justices of the Nova Scotia Supreme Court have seen fit to relinquish such an inherent jurisdiction by adopting the Rule as written. If those Justices were to conclude that they ought to re-acquire such a broad discretion, their Rule should be rewritten to provide for it explicitly.

10. Summary judgment applications are not the appropriate forum to resolve disputed questions of fact, or mixed law and fact, or the appropriate inferences to be drawn from disputed facts.

11. Neither is a summary judgment application the appropriate forum to weigh the evidence or evaluate credibility.

12. Where, however, there are no material facts in dispute, and the only question to be decided is a matter of law, then neither complexity, novelty, nor disagreement surrounding the interpretation and application of the law will exclude a case from summary judgment.

[7] It is clear from the evidence provided on this motion that Ms. Deshaies participated in activities at that time that would suggest on the facts that she was capable of managing her affairs. I am persuaded that the affidavit of Ms. Boutilier (filed December 16, 2020) is consistent with the documentation provided herein.

[8] In summary, I find the Defendant has satisfied her evidentiary burden to prove there is no genuine issue of material fact for trial. Even if there was a genuine issue as to whether Ms. Boutilier fraudulently obtained the change in beneficiary by forging Ms. Deshaies signature, I am not satisfied, that Ms. Christoff has satisfied the evidentiary burden upon her to prove that her claim has a real chance of success, under the second part of the test for summary judgement. (Civil Procedure Rule 13.04)

[9] I note that in her Will her mother left the residue of her estate to Ms. Christoff. An insurance policy containing a valid designation falls out the estate.

[10] For these reasons, I grant the Summary Judgment Motion of the Defendant.

[11] The sum of \$12,500 held by the Court shall be payable to Ms. Boutilier.

[12] There will be no order for costs.

Murray, J.