

SUPREME COURT OF YUKON

Citation: In the Matter of the Estate of
Donald Ross Miller, Deceased,
2013 YKSC 98

Date: 20130911
S.C. No. 08-P0027
Registry: Whitehorse

IN THE MATTER OF THE ESTATE

OF

DONALD ROSS MILLER, DECEASED

Before: Mr. Justice R.S. Veale

Appearances:

Barbara Hare

Beneficiary and Former Administrator,
Not appearing

Bev Miller

Beneficiary and Administrator,
Appearing on her own behalf

Anne-Marie Miller

Beneficiary,
Appearing on her own behalf

REASONS FOR JUDGMENT (Passing of Accounts)

INTRODUCTION

[1] Mr. Miller died without a will on May 5, 2008. His three adult daughters are entitled to equal shares of the Estate, subject to this judgment and the judgment of Vertes J. cited as *In the Matter of the Estate of Donald Ross Miller, Deceased*, 2012 YKSC 66.

[2] The assets of the Estate consisted of a house (803 Cook Street) in Whitehorse, a bank account, household furniture and various vehicles and equipment.

[3] Barbara Hare, the eldest daughter, applied for Letters of Administration which were granted on July 17, 2008, over the objection of Anne-Marie Miller.

[4] There was no further court activity until Anne-Marie Miller filed an application for an accounting on January 5, 2012. The house had not been sold and Anne-Marie Miller had not received anything from the estate that held an estimated gross value of \$202,750.

[5] The application for an accounting was case managed by me. All three sisters were self-represented.

[6] On January 19, 2012, I ordered that:

- a) Ms. Hare file an accounting;
- b) The bank account be frozen;
- c) The house be listed for sale;
- d) Any sale be approved by the Court; and
- e) All proceeds of the house sale be paid into court.

[7] In order to move the matter forward, Justice Vertes conducted a trial of the application for an accounting on June 30, 2012, despite the acknowledgment of all parties that the affidavit of Barbara Hare in support of the accounting was incomplete and confusing.

[8] On August 1, 2012, Justice Vertes delivered Reasons for Judgment, cited above, setting out directions to bring the Estate to a conclusion.

[9] This trial was heard on August 29, 2013, based upon the previous affidavits before the Court including several affidavits and reports of Collin Young, Chartered Accountant, who was appointed by the Court on March 18, 2013, to provide an

assessment of the accounting of Barbara Hare and a recommendation for the final distribution of funds between the three sisters. It should be noted that Barbara Hare terminated her participation in the court application and case management in early 2013. She filed her last affidavit which included the City of Whitehorse property tax information on February 28, 2013. She participated in discussions with the real estate agent on selling the house but did not appear in court to deal with the purchaser's application for damages on March 18, 2013. I had ordered her appearance on February 11, 2013. She did not appear at applications on case management thereafter, or this trial, although duly notified.

Reasons for Judgment of Justice Vertes

[10] The Reasons for Judgment of Vertes J., dated August 1, 2012, cited above, contain his decision on the application to pass accounts and distribute assets heard on June 30, 2012. Although he was able to resolve certain issues, he ultimately directed that Barbara Hare prepare a further and better accounting. He also directed her to obtain complete records from the Royal Bank and answer specific allegations made in the affidavits of Bev Miller dated February 13, 2012, and Anne-Marie Miller dated July 12, 2012. Barbara Hare has not complied with these directions.

[11] Vertes J. also recommended that Barbara Hare obtain professional accounting assistance for fees that did not exceed \$5,000 and seek further direction if fees exceeded that amount.

[12] Vertes J. directed that a further and better accounting be prepared and filed within three months of August 1, 2012, and provided to all beneficiaries. Barbara Hare did not comply with this direction.

[13] Barbara Hare expressly waived any claim for compensation. Vertes J. concluded with the following, at para. 27:

I want to emphasize in closing the benefits of cooperation and compromise. This Estate is not large and continuing litigation will only serve to diminish it. However, if litigation does continue, I strongly urge all parties to obtain legal advice.

[14] The specific orders of Vertes J. are as follows:

- a) that the Listing Agreement for 803 Cook Street be renewed for a further three-month period at a listing price of \$299,000. It was originally listed at \$319,000 and then reduced to \$309,000;
- b) he made no order as to whether the house be vacant or occupied except to point out the potential conflict with Barbara Hare occupying it and her duty as the administrator of the Estate;
- c) he ordered Barbara Hare to pay a reasonable occupation rent, cooperate with the sale and maintain the property in a clean and presentable manner;
- d) he ordered that Barbara Hare pay a nominal occupation rent of \$400 per month for the five months following the death of Mr. Miller when it was reasonable to look after Mr. Miller's animals and personal effects. For this period, the Estate should pay 50% of the utility expenses and 100% of the insurance and Barbara Hare should pay 100% of the telephone, cable and Internet charges, if any;
- e) for the period of November 1, 2008, to December 2010, when Barbara Hare's daughter lived in the house with her boyfriend, Vertes J. ordered the Estate to be credited with rent of \$600 per month, the utility expenses

allocated 90% to the tenants and 10% to the Estate, with the Estate paying 100% of the insurance and property taxes;

- f) Vertes J. ordered that the Estate be credited with \$600 per month when another person rented the house and be charged to Barbara Hare's share of the Estate;
- g) from September 2011, Barbara Hare has been living in 803 Cook Street with her daughter and ordered to credit the Estate with \$1,000 per month for so long as she continues to occupy it, allocating the utility costs, insurance, taxes and phone bills as above; those amounts being charged to Barbara Hare's share of the Estate;
- h) Vertes J. ordered Barbara Hare to move expeditiously to sell all other vehicles and equipment of Mr. Miller with all proceeds being credited to the Estate. Barbara Hare was ordered to itemize each item sold, the amount of the sale and credit the Estate. Barbara Hare did not comply with this order;
- i) Vertes J. ordered Barbara Hare to prepare a further and better accounting and obtain the complete records of the Estate bank account statements. Barbara Hare was also directed to answer the specific questions raised in Bev Miller's affidavit of February 13, 2012, and Anne-Marie Miller's affidavit of July 1, 2012, in affidavit form. Barbara Hare did not comply with these directions.

The Final Hearing

[15] I adopt the law with respect to the administration of estates as set out by Vertes

J. at paras. 8 and 9 of his Reasons for Judgment:

[8] I think it would be helpful to restate some fundamental principles relating to the administration of estates. Generally speaking, an administrator has four obligations:

1. To make a complete and true inventory of the estate of the deceased;
2. To administer the estate including the payment of all debts and the realization of all assets;
3. To make an accounting of the administration when required to do so; and
4. To pay the residue of the estate to the persons entitled to it.

[9] An administrator must act responsibly and diligently, being sure to avoid putting their personal interest in conflict with the interests of all of the beneficiaries. It is the duty of all estate administrators to keep proper books of account and to be ready to account for the estate property which they are bound to administer. Section 55 of the Yukon *Trustee Act*, R.S.Y. 2002, c. 223, directs that, unless their accounts are approved and consented to by all beneficiaries, an administrator must pass their accounts and if their accounts are incomplete or inaccurate, they may be required to attend before the Court to show cause why the accounts have not been passed.

[16] The final hearing in this matter was heard with oral evidence on August 29, 2013.

The main witness was Collin Young, the court-appointed Chartered Accountant, who has filed five affidavits reporting on matters and seeking directions to deal with the Canada Revenue Agency and the Royal Bank to address the incomplete accounting of Barbara Hare. Fees of \$15,415.31 have been paid to Collin Young and a further provision of \$10,000 for finalizing the Estate. These amounts have been charged to Barbara Hare's share of the Estate as she has completely abdicated her role as

administrator and provided no assistance to Mr. Young who has had the difficult task of reconciling financial matters. The Court ordered the Royal Bank to provide its Estate account records to assist Mr. Young.

[17] On July 30, 2013, the Court removed Barbara Hare as administrator in order that Mr. Young could make a voluntary disclosure arrangement with the Canada Revenue Agency and arrange with the new administrator, Bev Miller, to complete annual estate tax returns for 2008 through 2012, requiring a tax payment of \$5,981.29, which I ordered to be paid.

[18] Mr. Young prepared a detailed report setting out the financial calculations of Vertes J. and sought further court direction for matters that he was unable to reconcile.

[19] Mr. Young reported that after implementing the judgment of Vertes J. and the documentation he was able to locate, he found that advances or charges to Barbara Hare amounted to \$49,540.79, and advances to Anne-Marie Miller in the amount of \$3,000 and advances to Bev Miller of \$9,342.10. As a result of evidence from Anne-Marie Miller and Bev Miller, I determined that Bev Miller received \$4,223.95 as a reimbursement for funeral expenses and \$3,118.15 as the payout of a Registered Income Fund in which she was the named beneficiary. These two amounts were accordingly credited back to Bev Miller's share of the Estate. The payout of the Registered Income Fund is not an asset of the Estate.

[20] Further evidence was presented on various assets and expenses incurred on the sale of 803 Cook Street.

[21] I ordered that the \$975 paid by Barbara Hare to a bookkeeper be charged against her share of the Estate as it did not add any further assistance to the Court or Mr. Young to explain the incomplete accounting of Barbara Hare.

[22] I find that Barbara Hare did not account for the sale of tidy tanks valued at \$600 and ordered that amount to be deducted from Barbara Hare's share of the Estate.

[23] I find that Barbara Hare left the premises of 803 Cook Street in a state of uncleanliness and disrepair, requiring Anne-Marie Miller and Bev Miller to incur expenses and time to assist in closing the real estate transaction. Anne-Marie Miller shall be reimbursed in the amount of \$515 for cleaning and towing expenses and Bev Miller in the amount of \$317 for cleaning and moving expenses. Both amounts shall be deducted from Barbara Hare's share of the Estate.

[24] Two invoices for repairs to the 803 Cook Street residence were charged during Barbara Hare's occupation. Bulldog Plumbing was paid \$561.75 and Precision North was paid \$892.50. I find that Barbara Hare shall pay 2/3 of the fees as there is no explanation for the invoices and the amount of \$969.50 shall be deducted from her share of the Estate.

[25] I order Barbara Hare to pay rent for ½ month in March 2013, in the amount of \$500 and have this amount deducted from her share of the Estate.

[26] I value the household items at 803 Cook Street in the amount of \$1,500 to be credited to the Estate and charged to Barbara Hare's share of the Estate. Both Anne-Marie Miller and Bev Miller requested that this amount be paid to the Mae Bachur Animal Shelter as a donation in memory of their father, Donald Miller, and I so order.

[27] I further order that the final Northwestel telephone bill in the amount of \$221.76 shall be paid by the Estate.

[28] Both Anne-Marie Miller and Bev Miller have faithfully made great efforts to conclude this court action, filed numerous affidavits and attended numerous case management meetings as well as one day of trial on two separate occasions. I award them the nominal amount of \$1,000 each for court costs. The amount of \$2,000 shall be deducted from the share of Barbara Hare in the Estate.

[29] I also order advances on their respective shares in the amount of \$5,000.

[30] The balance of the orders made should be carried out when the Canada Revenue Agency's approval is received and filed in court by Collin Young.

[31] In the event that there are any funds left in the Estate after Mr. Young's final account and the final estate tax for 2013 is paid, that amount shall be divided equally between the beneficiaries.

VEALE J.