CITATION: Floriri Village Investments Inc. v. Niazi Holdings Incorporated, 2024 ONSC 6945
COURT FILE NO.: CV-21-00655166-00CL
DATE: 20241213

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Floriri Village Investments Inc., Plaintiff (Moving Party)

AND:

Niazi Holdings Incorporated and Korce Group Ltd., (Defendants and Moving Parties)

BEFORE: C. Gilmore, J.

COUNSEL: *Elaine Peritz* and *Sean Graham*, Counsel, for the Plaintiffs

David Lobl and *Anna Chen*, Counsel, for the Defendants

HEARD: December 4, 2024

ENDORSEMENT ON MOTION AND CROSS-MOTION

Introduction

[1] Some of the issues in the within motion and cross-motion before the Court have been resolved. What remains is the Plaintiff's ("Floriri") motion for an equalization payment from the Respondents in the amount of $320,713.66 and the Respondents' ("Niazi") motion to require that the accounting formula used to calculate the equalization payment include the payment received by Ms. Aiello for her preference shares in Niazi. This would result in Ms. Aiello owing Mr. Bleta an equalization payment of $2,625,000.

[2] Other ancillary issues to be determined by this Court (as agreed) are as follows:

a. Whether a declaratory Order should be issued with respect to Mr. Bleta's status as sole Trustee and beneficiary of the Bleta Family Trust ("the BFT");

b. Whether certain original documents in Ms. Aiello's possession should be returned to Mr. Bleta;

c. Whether Mr. Bleta is owed the sum of $335 by way of redemption of Mr. Bleta's 33.5 preference shares in Floriri;

d. The form of a mutual release to be signed by the parties in the Estate Proceeding following a settlement of that matter; and

e. The designation of two burial plots which Mr. Bleta has agreed to transfer to Ms. Aiello.

[3] For the reasons set out below I find that Niazi's motion must be dismissed, and the relief sought found to be *res judicata.* The Respondents are required to pay the equalization payment to the Applicant. Directions are given below regarding the ancillary matters.

Background

[4] Leroy Bleta and Bertha Aiello are siblings. They have a sister, Marline Bleta, who is not involved in these proceedings. They are the children of Karafil Bleta ("the deceased") who died in 2008. The deceased worked tirelessly throughout his lifetime to build a significant portfolio of rental and residential properties for his children. Most unfortunately, Mr. Bleta and Ms. Aiello have engaged in endless legal disputes about the properties that their father worked so hard to accumulate.

[5] While there have been a substantial number of proceedings between Ms. Aiello and Mr. Bleta, and the Plaintiff and Defendant corporations ("the corporations"), these motions relate specifically to a decision resulting from a trial I presided over in November and December 2021. My trial decision was released on May 13, 2022 ("the Trial Decision", *Aiello et al. v. Bleta et al.*, 2022 ONSC 2798, 79 ETR (4th) 62).

[6] The main dispute in that trial was whether Ms. Aiello and her brother had come to an agreement with respect to her owning all of the common shares in Floriri and him being the beneficiary of the BFT, which owned all of the common shares of Niazi and Korce. I found that they had indeed come to an agreement and that the agreement resulted in Ms. Aiello being the beneficial owner of the common shares in Floriri and Mr. Bleta being the sole beneficiary and trustee of the BFT. As a result, Ms. Aiello has no interest in the common shares of Niazi or Korce.

[7] Mr. Bleta was unhappy with the Trial Decision and appealed. The Court of Appeal upheld the trial decision with reasons released in August 2023 (the "Appeal Decision", *Aiello v. Bleta*, 2023 ONCA 525, 88 ETR (4th) 198).

[8] In paragraph 250 of the TrialDecision, Imade the following finding:

> [250] Upon completion of the Loans Action, Ms. Aiello may seek an Order for specific performance that Mr. Bleta transfer his common shares in Floriri to her, with an equalization payment, in accordance with the accounting as at December 1, 2014.

[9] An equalization payment was not ordered to be made at the time of the Trial Decision due to certain intercorporate loans owing to Floriri by Niazi. There was an outstanding "Loans Action" brought by Ms. Aiello that was pending at the time of trial to determine that very issue. The Loans Action was heard by Justice Penny on December 13, 2023.

[10] In the Loans Action, Floriri proceeded by way of summary judgment motion seeking repayment of intercorporate debt totalling $1,688,351 from Niazi and $305,696 from Korce. Floriri admitted it owed Korce $550,000 resulting in Floriri owing Korce a net amount of $244,304. In the end, Korce and Niazi agreed that the sum of $1,444,047 was owed to Floriri. Justice Penny further found that my judgment confirmed that in giving up her rights to any interest in the BFT, Ms. Aiello agreed that Floriri would make an equalization payment of $1,123,333.34. Therefore, as the loans amount of $1,444,047 was agreed upon, and the equalization payment had already been determined in my judgment, the net amount owing by the defendant corporations was $320,713.66. Penny, J. stayed payment on the judgment until the share transfer to Floriri took place and the issues related to the pledged GICs in favour of TD Bank were resolved.

[11] Ms. Aiello had also brought an oppression application against Niazi for redemption of her preference shares in Niazi in the amount of $999,007.05 and other relief. Ms. Aiello had delivered her Notice of Election to redeem her preference shares in Niazi in 2021 but Mr. Bleta refused to pay the redemption amount.

[12] In his endorsement dated September 22, 2023 (*Aiello v. Niazi and Bleta*, 2023 ONSC 5588), Justice Osborne noted that Niazi was opposing the redemption on the grounds that paying out the required amounts would render Niazi insolvent. Justice Osborne rejected this argument for two reasons. First, he referred to the Trial Decision and specifically the Share Transfer Agreement ("the STA") in which Mr. Bleta represented Niazi's value as of October 1, 2014 as being $14,779,757.75. Second, he reviewed Niazi's financial statements from February 2021 and 2022 and found that properties owned by Niazi would not have to be sold or encumbered in order to satisfy the redemption amount.

[13] Mr. Bleta also argued that the oppression application ought to be stayed pending the outcome of the Loans Action. Justice Osborne specifically stated at paragraph 34 of his endorsement that "the preference shares (together with associated redemption rights) in Niazi are not at issue in the Loans Action." It is clear from the Trial Decision as well that the preference shares in Niazi were to be dealt with in a "separate proceeding or forum if required" (see para. 239).

[14] Mr. Bleta is entitled to the same number of preference shares in Niazi as Ms. Aiello and has the option of redeeming them at any time. It is not known if he has done so.

The Issues

A. The Positions of the Parties

Mr. Bleta

[15] Mr. Bleta argues that while he is no longer in a position to dispute that there was an agreement between him and his sister regarding the ownership of the corporations, the trial judge did not make any order as to the quantum of the equalization payment. Neither did the Court of Appeal.

[16] Mr. Bleta further submits that the trial judge relied on the STA for evidence to determine the calculation of the equalization payment. He submits it would be unfair to rely on that agreement to determine the calculation for two reasons: first, it was never signed; and second, the accounting in the STA did not take into consideration the value of the preference shares in Niazi for which Ms. Aiello has already been paid almost $1M pursuant to Justice Osborne's endorsement. Failing to take these considerations into account would result in unfairness to Mr. Bleta and a massive overpayment to Ms. Aiello.

[17] Mr. Bleta argues that the existence of the STA is insufficient to determine the calculation of the equalization payment because it could not have considered the value of the preference shares which were disposed of long after the STA was drafted.

[18] Further, an examination of the STA shows that it dealt with the preference shares, yet the Trial Decision expressly states that it does not apply to the preference shares.

[19] Mr. Bleta does not agree that Justice Penny decided the equalization issue in its entirety. Justice Penny only decided what the offset was between the intercorporate loans and the equalization payment set out in the Trial Decision. He stayed his Order for the equalization payment pending further evidence related to cross-collateral obligations which had not yet been resolved.

[20] Mr. Bleta has provided the expert report of Claudio Martellacci dated March 20, 2024. Mr. Bleta submits that although he assisted with the preparation of the accounting in the STA, he is not an accountant, and the equalization payment should be calculated based on sound accounting principles. The report sets out the Fair Market Value of Floriri as $19,321,000 and Niazi as $14,071,000 as of October 1, 2014. The differential is $2,820,000. Mr. Bleta submits this is what he owed by Floriri.

Ms. Aiello

[21] Ms. Aiello's position is that the issue of the equalization payment is mentioned frequently throughout the Trial Decision, and it is clear that the payment is based on the accounting in the STA. However, that payment was subject to an adjustment depending on the outcome of the Loans Action. That is, the Court did not order Floriri to pay the defendant corporations over $1M when it was clear from the evidence at trial that they owed loans to Floriri which may exceed that amount. Ms. Aiello submits that the Court of Appeal did not disturb the approach taken by the trial judge, and that the issue has been decided and cannot be relitigated.

[22] She submits that her brother now seeks to include the preference shares in Niazi as part of the equalization payment calculation despite the fact that they were not considered at trial because they were not transferred to the siblings until after their mother's death. The preference shares were transferred from their mother's Estate to the siblings equally on February 18, 2021 (before the trial was heard).

[23] Ms. Aiello points to the fact that the Court of Appeal confirmed that the preference shares were not factored into the ownership issues that were litigated in 2021 at paragraph 20 of their decision:

> [20] (In addition, contrary to the appellants' submissions, the trial judge made no order concerning the preference shares held in trust for the siblings' mother until her death in 2020, nor was there any evidence referred to in the trial judge's reasons that the issue of the preference shares factored into the parties' decision in 2014 regarding the ownership and/or management of the corporations.)

[24] Ms. Aiello submits that her brother could have litigated the preference shares issue at trial but chose not to. Further, it is unfair of her brother to raise this issue now. If he had agreed to include it as a trial issue, the Court would have dealt with it. Requesting that the value of preference shares now be factored into the intercorporate loan issue is an attempt to re-litigate issues which have already been decided, and mix intercorporate loans with amounts to which Ms. Aiello is personally entitled (the preference shares).

Analysis

[25] There are three key sources which must be referred to in order to understand why the Defendants cannot relitigate the issue of the Equalization Payment: the STA, the Trial Decision, and the Court of Appeal Decision.

The Share Transfer Agreement

[26] The STA was prepared by Mr. Bleta. While it was never signed by the parties, it represents the direction they intended to go with respect to a division of their interests in the corporations.

[27] The following is salient concerning the STA:

a. While Mr. Bleta submitted that any equalization payment must be calculated based on “sound accounting principles” he was quite content to rely on the intercorporate accounting provided by the company accountant Mr. Gic in 2016.

b. Mr. Bleta sought to have Floriri pay him over $1M in exchange for his sister receiving a 100% interest in Floriri. He did not “count” a number of outstanding debts owed to Floriri and as found in the Trial Decision, he knew about those debts, he just did not want to pay them. As such, an equalization payment could not have been calculated at the time of trial because the amount of the intercorporate loans was not known and/or was disputed by Ms. Aiello.

c. The STA stipulates that part of the agreement would be that each party would receive new common and preference shares representing 100% of their interest in the corporations. There is no mention in either the accounting or elsewhere in the STA that a separate calculation would be done in relation to the preference shares, or that the value of the preference shares was subsumed in the accounting. Rather,

the accounting is quite specific in referencing only the corporate real estate assets and any corresponding liabilities.

The Trial Decision

[28] Mr. Bleta insists that the Trial Decision does not make any Order with respect to the equalization payment and therefore the calculation of such payment should be based on the most current and accurate information as set out in his expert's report.

[29] However, the judgment resulting from the Trial Decision at paragraph 3, sets outs as follows:

> 3. THIS COURT ORDERS that upon completion of the Loans Action, Bertha Aiello may seek an Order for specific performance that LeRoy Bleta transfer his common shares in Floriri to her, with an equalization payment, in accordance with the accounting as at December 1, 2014.

[30] It is clear that the "accounting" referred to in the Trial Decision is the accounting excerpted from the STA (this is not disputed by the parties). The accounting stipulates that Floriri owes Niazi $1,123,000.

[31] Paragraph 23 of the STA specifically sets out how the equalization amount was calculated as follows:

> 23. Bertha and LeRoy agree that the net value difference of the principal assets and debts of Niazi, Korce and Floriri are as follows, and that the net value equalization calculation are as follows:
>
> | | | |
> |---|---|---|
> | Floriri: | | **$20,307,402.30** |
> | Niazi: | $14,779,757.75 | |
> | Korce: | $ 3,280,977.88 | **$18,060,735.63** |
> | **Equalization difference:** | | **$ 2,246,666.67** |
> | **Equalization debt due LeRoy from Bertha: forthwith payable without interest until December 1, 2016, at which time the full balance shall become payable forthwith together with interest from that date at the prime lending rate for residential mortgage loans of TD Canada Trust, calculated semi-annually.** | | **$ 1,123,333.34** |

[32] This is reiterated at paragraph 6 the Loan Action Endorsement of Justice Penny, in which he found as follows:

> [6] Following a two week trial, Gilmore J. granted judgment (Aiello v. Bleta, 2022 ONSC 2798) in favour of Ms. Aiello, declaring that, by a December 1, 2014 agreement with her brother, Ms. Aiello acquired the shares of Floriri in exchange for giving up her rights to the remaining corporate interests of the BFT (the

defendants) and in exchange for her agreement to pay an "equalization" payment to Mr. Bleta, which Gilmore J. determined to be $1,123,333.34: Aiello, at para. 103.

[33] It is clear that Justice Penny did not have any difficulty with interpreting the Trial Decision to mean that Floriri was required to pay an equalization payment to the BFT. Justice Penny was tasked with determining the "offset" between what was owed by Floriri to the BFT and vice versa. That is exactly what he did, and as outlined above, he determined that the net obligation owed by the Defendants was $320,713.66.

[34] Mr. Bleta argues that the equalization payment was intended to equalize the personal assets and debts of the parties. This, by necessity must include the Niazi preference shares. As such, Mr. Bleta argues that this Court cannot rely on Justice Penny's decision as determinative of the equalization payment issue. Justice Penny ordered that a separate motion be scheduled due to the impact of other "cross-collateral obligations on the value differential or the calculation of the equalization payment."

[35] I disagree with this interpretation of Justice Penny's reasons for the following reasons:

a. Justice Penny does not mention the preference shares in his decision nor does the issue appear to have been raised before him. His decision focuses solely on a calculation of intercorporate debt and does not mention any personal debt owing by either Mr. Bleta or Ms. Aiello.

b. He does mention the issue of the $1.5M in Floriri GICs pledged to TD as collateral security for Korce's TD bank indebtedness and suggests that this could affect the equalization payment: see Loan Action Endorsement, at para. 19.

c. The issue of the pledged GICs formed part of the original motion material before the Court but was not argued before me. The Court was advised that the issue of certain undischarged mortgages and the pledged GICs had been settled by the parties.

d. Justice Penny agreed to schedule a motion for further outstanding issues related to the calculation of the equalization payment, but those issues did not include the Niazi preference shares. The issue of the Niazi preference shares and their redemption was well known to the parties at the time of Justice Penny's decision, as Ms. Aiello's Application for redemption of the Niazi preference shares owned by her was heard by Justice Osborne in January 2023.

The Court of Appeal Decision

[36] Part of Mr. Bleta's Notice of Appeal sets out as follows:

THE GROUNDS OF APPEAL are as follows:

1. The learned trial judge erred in finding that a legally enforceable agreement was made between Ms. Aiello and Mr. Bleta in 2014 (the "Alleged Agreement") with respect to

the division of ownership of Floriri Village Investments Inc. ("Floriri"), Niazi Holdings Incorporated ("Niazi") and Korce Group Ltd. ("Korce") (collectively, the "Companies"), despite:

a. There being no agreement on the essential terms including, but not limited to, (i) the quantum of the equalization payment to be paid; and (ii) whether Mr. Bleta or Ms. Aiello is to be paid the equalization payment;

b. Finding that the issue of the equalization payment requires additional litigation;

c. Valuations of the Companies not having been undertaken until after the date of the Alleged Agreement; and,

d. Any consideration of the preferred shares of each of Floriri and Niazi that were owned by the Estate of Karafil Bleta at the time of the Alleged Agreement;

[37] The Court of Appeal dismissed those grounds of appeal at paras. 20-21, 24, stating:

> [20] This is consistent with Aiello's position that she renounced her ownership interest in the BFT in exchange for her ownership interest in Floriri. (In addition, contrary to the appellants' submissions, the trial judge made no order concerning the preference shares held in trust for the siblings' mother until her death in 2020, nor was there any evidence referred to in the trial judge's reasons that the issue of the preference shares factored into the parties' decision in 2014 regarding the ownership and/or management of the corporations.)
>
> [21] Second, contrary to the appellants' assertion, Aiello did not disagree with the equalization amount when she was provided with the Draft Share Transfer Agreement; rather, she asserted that the outstanding loans to Floriri be paid prior to the determination of the equalization amount (with the matter of the loan claims to be determined in the Loan Action).
>
> […]
>
> [24] There was a formula for equalization, but the trial judge decided it would be unfair to force Bleta [sic] to repay the equalization as, "[a]ny loan repayment would be subject to an adjustment in relation to an equalization payment."

[38] The Court of Appeal agreed that there was a formula for an equalization payment, but that such payment was effectively deferred pending the outcome of the Loans Action. Further, the Appeal reasons make it clear that the preference shares did not factor into the equalization payment. At the outset of the Trial Decision, it was also made clear that the decision related only to the ownership of the common shares of the companies and not the preference shares as per Justice McEwen's endorsement with respect to the issues to be tried.

Summary and Application of the Law

[39] Mr. Bleta takes the position in his factum that the equalization payment remained a subject "to be agreed upon" by the parties. I disagree. The amount of the equalization payment was known by the parties and set out in the STA. The STA was also before the Court of Appeal. It was only the adjustment for intercorporate loans that required a further decision by way of the Loans Action.

[40] Further, it cannot be ignored that the STA accounting was prepared by Mr. Bleta. He wanted his sister to sign the STA and pay him over $1M in exchange for her receiving 100% of the Floriri common shares. Mr. Bleta engaged the family corporate accountant and obtained property valuations to support his calculations. He now resiles from this and submits that the accounting is incorrect, incomplete and that it should now include the personal interests of Ms. Aiello and himself.

[41] The fact that finalizing the equalization payment was left to another day in the Trial Decision does not mean that no finding was made in that regard. As in many complex cases that contain multiple moving parts, the finalization of the equalization payment was dependent on a further calculation that simply was not available to the Court at the relevant time but was available later and determined by Justice Penny.

[42] In the Commercial case of *Bryton Capital Corp. GP Ltd. v. CIM Bayview Creek Inc.*, 2023 ONCA 363, the Court set out the salient principles related to the doctrine of *res judicata* as follows at paras. 41-43:

> [41] The doctrine of *res judicata* is based on the principle that "[a]n issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner", and that "[d]uplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided": *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 18.
>
> [42] *Res judicata* has two main branches: cause of action estoppel and issue estoppel. Cause of action estoppel prohibits a litigant from bringing an action against another party when that same cause of action has been determined in earlier proceedings by a court of competent jurisdiction, and also prevents a party from re-litigating a claim that could have been raised in an earlier proceeding: *Dosen v. Meloche Monnex Financial Services Inc. (Security National Insurance Company)*, 2021 ONCA 141, 457 D.L.R. (4th) 530, at para. 31. For cause of action estoppel to operate "it is not enough that the cause of action could have been argued in the prior proceeding. It is also necessary that the cause of action properly belonged to the subject of the prior action and should have been brought forward in that action": *Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 50, leave to appeal refused, [2019] S.C.C.A. No. 284.
>
> [43] Issue estoppel is narrower than cause of action estoppel as "[i]t applies to prohibit the re-litigation of an issue that has already been decided in an earlier proceeding, even where the cause of action is different in the two

proceedings": *Dosen*, at para. 32. For issue estoppel to operate, there are three conditions: (1) the same issue has been decided in an earlier proceeding; (2) the prior judicial decision was final; and (3) the parties to the earlier and subsequent proceedings are the same: *Fresco v. Canadian Imperial Bank of Commerce*, 2022 ONCA 115, 160 O.R. (3d) 173, at para. 79. Even where the three requirements for issue estoppel are met, the courts retain a residual discretion to refuse to apply the doctrine: *Fresco*, at para. 81.

[43] I find that the principles in *Bryton* apply to the within case for the following reasons:

a. The issue of the redemption of the preference shares was argued and decided by Justice Osborne in January 2023. At paragraph 30 of his decision he makes it clear that the Application before him did not relate to the Corporate Action (the Trial Decision) or the appeal of that decision. He further stated at paragraph 34 of his decision that the preference shares in Niazi were not at issue in the Loans Action. Justice Osborne's decision was not appealed.

b. Justice Penny's decision disposes of the equalization payment issue with the only condition being the effect of the pledged GICs. That issue has been resolved by the parties. Justice Penny's decision was not appealed.

c. The Trial Decision is final as it was upheld on appeal. Both the Trial Decision and the Court of Appeal decision make reference to the equalization payment being the amount referenced in the "accounting" in the STA.

d. The calculation of the equalization payment was deferred pending the Loans Action. That does not mean the equalization payment should be recalculated. Indeed, Justice Penny relied on the amount of the equalization payment in the STA to determine the net intercorporate obligation.

e. Mr. Bleta seeks now to "blend" personal and corporate assets and debts and have his sister pay him over $2M. It is too late. The issue of the Niazi preference shares and the intercorporate loans have been decided. Mr. Bleta cannot re-litigate these issues to the "benefit of the losing party and the harassment of the winner."

[44] Ms. Aiello argued that Mr. Bleta's cross-motion was an abuse of process as per the principles set out in *Peter B. Cozzi Professional Corporation v. Szot*, 2019 ONSC 5071, at para. 16. She submits that Mr. Bleta's cross-motion misuses Court procedure and erodes public confidence in the proper administration of justice.

[45] While I would not go so far as to call Mr. Bleta's motion an abuse of process, I note that both parties are precluded from bringing any further proceedings in this Court without my leave. The endless retribution litigation between these siblings ends here.

The Ancillary Matters

The Burial Plots

[46] Mr. Bleta has agreed that he will transfer two of the family burial plots to his sister Marline and the adjacent two plots to Ms. Aiello.

[47] It is further agreed that Mr. Bleta will provide the cemetery with a letter confirming that the interment rights to those plots are held by Marline and Ms. Aiello. Marline has agreed that she and husband will be buried in her plots. She has advised the cemetery of this arrangement and the cemetery has approved of the arrangement.

[48] What remains in issue is Mr. Bleta's insistence that Ms. Aiello's burial plots be used only for family members. While Ms. Aiello agrees that one of the plots will be used for her own interment, she does not wish to be dictated to by her brother with respect to the use of the remaining plot. She is single and could remarry. Any number of changes could happen in her life.

[49] Mr. Bleta is concerned that the cemetery will not accept a transfer of the plots without them being designated. There was no evidence filed that this was the case.

[50] If Mr. Bleta is agreeing to transfer the burial plots to Ms. Aiello, he cannot add restrictions to that agreement. Ms. Aiello has agreed to use one of the plots for herself. If the cemetery has restrictions of its own, Ms. Aiello can deal with that once she is the owner of the plots. Mr. Bleta need not be involved.

The Mutual Releases

[51] The parties dispute the form of release in relation to the Estate and Guardianship matters including the Passing of Accounts. A settlement was reached in these matters in May 2024.

[52] After some discussion during the hearing, it was agreed that the best course of action would be to wait until the decision in this matter was released because the parties would have a better understanding of what litigation remained outstanding.

[53] Within 10 days of the release of this decision, Mr. Graham is to provide a new form of release for the Estate and Guardianship matters to opposing counsel for review.

The Return of Original Documents to Mr. Bleta

[54] Mr. Bleta provided his sister with a number of original documents for the purposes of the trial heard in 2021. He seeks a return of those documents to ensure they are available in the event he is audited by the Law Society of Ontario.

[55] Ms. Aiello's position is that Mr. Bleta is referring to two different categories of documents. The first category relates to the purchase and sale of certain real estate by Ms. Aiello. Those are her personal documents and Mr. Bleta has no rights in relation to them. The second category are Estate related documents. As both Mr. Bleta and Ms. Aiello were Estate Trustees of their father's Estate, the documents belong to them equally.

[56] Ms. Aiello is entitled to retain the originals of her personal documents. Where Mr. Bleta acted as solicitor on those real estate transactions, he may request copies from Ms. Aiello in the event of a Law Society audit.

[57] Due to disputes between Ms. Aiello and Mr. Bleta they were removed as Estate Trustees of their father's Estate and replaced by Scotiatrust in November 2018. As such, the Estate documents can be sent to Scotiatrust as the Succeeding Estate Trustee. The Estate documents will remain with Scotiatrust and either party may request copies if required.

Payment for the Floriri Preference Shares

[58] Mr. Bleta seeks payment of $335 for the 33.5 preference shares he owns in Floriri.

[59] Ms. Aiello submitted that the preference shares in Floriri were redeemed some time ago. Mr. Bleta was sent a cheque for his shares but did not cash the cheque.

[60] Mr. Bleta issued an Application in 2022 naming Floriri and Ms. Aiello as the Respondents. He made various claims against Floriri in that Application including a claim for a declaration that the redemption of his preference shares in Floriri was null and void.

[61] No steps have been taken in that litigation by either party in some time. Mr. Bleta is content to have the Application dismissed. Ms. Aiello wants her costs of the dismissal. She did not file any responding record.

[62] The subject Application, being Court File No. CV-22-00691109-000 is dismissed. Ms. Aiello is entitled to costs of the dismissal in the amount of $335. Mr. Bleta will not receive any redemption for his preference shares in Floriri in exchange for the payment of costs.

The Declaration in Relation to the BFT

[63] In his Notice of Motion, Mr. Bleta seeks a declaration that as of October 1, 2014 he was sole trustee and beneficiary of the BFT.

[64] Ms. Aiello submits that this relief was added after Floriri's motion was scheduled and that such relief may require notice to third parties.

[65] It appears that a declaration may be going beyond what is necessary. A finding is hereby made that Mr. Bleta is the sole beneficiary and trustee of the BFT and has been since October 1, 2014. This formed part of the Trial Decision and is not in dispute.

Orders

[66] Given all of the above, I make the following Orders:

a. The relief sought in Floriri's motion is granted. The Defendants shall pay to Floriri the sum of $320,713.00 by way of final equalization payment. Upon the payment being made, all issues related to the intercorporate loans between the Applicant and

Respondents are resolved subject to any further agreements related to the pledged GICs and the undischarged mortgages. Floriri did not seek interest on the equalization payment in its relief. As such, no interest payment is ordered.

b. The Respondents are granted 90 days from the release of the costs decision in this matter to make the equalization payment. In the event the Respondents fail to make the required payment in 90 days, interest shall accrue on the equalization payment at the rates prescribed in the *Courts of Justice Act*, R.S.O. 1990, c. C.43 commencing on the 91st day.

c. The Defendants' motion is dismissed subject to the rulings on the Ancillary issues set out below.

d. Mr. Bleta is to transfer two of the Park Lawn cemetery burial plots to Ms. Aiello without restriction or condition. Ms. Aiello is to use one of the plots for her own interment.

e. Within 10 days of the release of these reasons, Mr. Graham is to provide a revised mutual release in relation to the Estate and Guardianship matters which have been previously settled.

f. Ms. Aiello may retain any documents related to her personal real estate transactions which were produced for trial purposes. If Mr. Bleta is audited by the Law Society in relation to those real estate transactions (as acting solicitor), Ms. Aiello agrees to produce to the Law Society the abovementioned documents upon request.

g. Documents in Ms. Aiello's possession that relate to her father's Estate shall be deposited with Scotiatrust and available to be viewed and copied by either party upon request.

h. Mr. Bleta's Application in Court File No. CV-22-00691109-000 is hereby dismissed. Mr. Bleta shall pay costs of the dismissal in the amount of $335 in exchange for which he shall not receive any redemption payment for his preference shares in Floriri.

i. A finding is hereby made that Mr. Bleta is the sole beneficiary and trustee of the BFT and has been since October 1, 2014.

[67] None of the parties herein nor Mr. Bleta or Ms. Aiello personally may commence any further litigation in the Superior Court of Justice of Ontario (in any Region) without leave given by me or my designate.

[68] The parties are to provide their written submissions on costs as follows:

a. The Plaintiff within 7 days of the release of these reasons.

b. The Defendants 7 days thereafter.

c. Any reply by the Plaintiff 5 days after the Defendants' submissions.

d. Costs submission may not exceed three pages in length exclusive of any Bill of Costs, case law or Offers to Settle.

All costs submissions are to be delivered to my judicial assistant.

.

C. Gilmore, J

Date: December 13, 2024