IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ross v. Chen,*
2024 BCSC 223

Date: 20240212
Docket: S215862
Registry: Vancouver

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Between:

Carolyn Ross in her personal capacity and as the Executrix of the Estate of Douglas Ross

Plaintiffs

And:

American Income Life Insurance Company, Aaron Chen and Bonnie Ross

Defendants

Before: The Honourable Madam Justice Morellato

Reasons for Judgment
In Chambers

Counsel for the Plaintiffs:	K.E. Ducey
Counsel for the Defendant American Income Life Insurance Company:	M. Chan
Counsel for the Defendant Bonnie Ross:	T.R. Britnell, KC
Place and Dates of Hearing:	Vancouver, B.C. March 23, 2023 May 18, 2023
Place and Date of Judgment:	Vancouver, B.C. February 12, 2024

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INTRODUCTION

[1] This summary judgment application concerns the life insurance proceeds of Mr. Douglas Ross. There are three insurance policies in dispute, with proceeds totaling $113,314.86 (“Insurance Proceeds”). The Insurance Proceeds were paid to the deceased’s mother, Mrs. Bonnie Ross, by the defendant American Income Life Insurance Company (“American Life”) as she was the designated beneficiary under the policies.

[2] The plaintiff, Ms. Carolyn Ross, was the wife of Mr. Ross. She seeks the following orders:

(1) a declaration that the deceased’s mother, Mrs. Bonnie Ross, received the $113,314.86 from American Life on a constructive trust in favour of the plaintiff;

(2) Mrs. Bonnie Ross pay the Insurance Proceeds received from American Life to the plaintiff;

(3) Mrs. Bonnie Ross pay pre-judgment interest from November 23, 2020 until the date of judgment;

(4) costs.

[3] More specifically, this application is based on the plaintiff’s claim that the defendant mother has been unjustly enriched on the basis that the plaintiff “was the intended beneficiary and can show deprivation and enrichment without juristic reason.”

[4] The defendant mother asserts she holds the legal and beneficial title to the Insurance Proceeds as the designated beneficiary under the three disputed policies and, further, that she was not unjustly enriched. While she admits she was enriched, she asserts there was no corresponding detriment suffered by the plaintiff. Moreover, she asserts that there is a juristic reason for her retention of the Insurance Proceeds because, first, she was expressly named as a beneficiary in each of the three policies in question and, second, there is no residual reason to deny coverage for public policy or other reasons, equitable or otherwise.

[5] This summary trial application does not seek any relief against American Life or the its insurance agent, Mr. Aaron Chen. Although the plaintiff's Notice of Claim also alleges that that Mr. Chen and American Life were negligent in failing to meet their duty of care, the negligence claim was not advanced at this summary trial application.

[6] I will address the issue of unjust enrichment and constructive trust following a review of the factual matrix before me.

BACKGROUND FACTS

[7] Mr. Douglas Ross died at the age of 50 while on a hunting trip on October 20, 2020, as a result of an ATV accident.

[8] For clarity and ease of reference and with the greatest of respect, in setting out the background facts, I will refer to the following persons as follows: to Mr. Douglas Ross, as either the "Deceased" or "Doug"; to the Ms. Carolyn Ross as the "plaintiff" or "Carolyn"; to Mrs. Bonnie Ross as the "defendant mother" or "Bonnie"; to the Deceased's father as "Thomas", to the Deceased's sister as "Cheryl"; and to the Deceased's business partner Mr. Tyler Brost, as "Tyler" .

[9] Doug and Carolyn began living together in a marriage-like relationship in 2005 and were married in 2009. Carolyn had a son from a previous marriage; the family subsequently grew when they had two children during their relationship. Carolyn's first son, Noah Iverson, was born April 25, 2002; Liam Ross was born May 28, 2008 and Holden Ross was born September 17, 2010.

[10] Doug's marriage to Carolyn was his second marriage. He first married in 1993 and divorced in 2001. During his first marriage Doug moved from Maple Ridge back to Tsawwassen where he had grown up and where his parents continued to live. Doug lived close to his parents during both his first and second marriage.

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[11] Doug and Carolyn first purchased a home in Surrey in 2007 and in 2011 they purchased a home in Tsawwassen, where Doug once again lived close to his parents.

[12] Doug's father, Thomas Ross, predeceased him. His mother was 79 years old at the time of this hearing and is retired. She lives independently but has some mobility issues. Doug's only sibling is his sister, Cheryl.

[13] The evidence before me established that Doug was very close to his mother and father, and that he had a strong relationship with them until the time of his death. I also accept that for the most part, he had a good relationship with his sister Cheryl.

[14] Doug regularly visited his parents at least twice a week. Like his father, he was a carpenter.

[15] In 2003, Doug started a construction company with his friend Tyler. His mother deposes that as her husband's health worsened, Doug would "check in" with them more often to make sure they were alright. After his father died in 2018, he continued to visit his mother often. His mother deposes that he would often stop by after work as they lived close by each other in Tsawwassen. Tyler also provided evidence, consistent with that of the defendant mother, regarding the close connection between Doug and his parents.

[16] After Liam was born in 2008, it was agreed between Doug and Carolyn, that Carolyn would stay home to care for their children. Carolyn returned to work part-time in 2017 and earned approximately $30,000 annually. Doug was the primary income earner. Carolyn explains that she was not working at the time of his death because of the 2020 Covid-19 pandemic.

[17] Doug's construction business continued until his untimely death in 2020. Tyler deposes that a significant part of their construction business involved managing projects and attending to forms, permits and other paperwork and,

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moreover, that Doug "was an intelligent person and was careful and diligent with forms and permits."

[18] Carolyn is the executrix and sole beneficiary of Doug's estate.

A. The Insurance Policies

[19] Doug purchased four insurance policies from American Life, three of which are in dispute in these proceedings. The particulars of the disputed policies are as follows:

(1) Whole Life Policy #CD3902903 issued on September 1, 1992 ("1992 Life Insurance Policy"). The face value of this policy is $18,222. This policy was purchased a year before the Deceased married his first wife.

The designated beneficiaries under this policy are the Deceased's mother and father, Bonnie and Thomas; the alternate beneficiary is his sister, Cheryl.

(2) Hospital Indemnity Policy #CD3902902 issued on September 1, 1992 ("1992 Hospital Indemnity Policy"). The face value of this policy is $4,000.

Again, the designated beneficiaries under this Hospital Indemnity Policy are the Deceased's parents, Bonnie and Thomas; the alternate beneficiary is his sister, Cheryl.

Notably, on December 22, 2004, Doug completed and signed a Policy Service Request form that changed the designated beneficiaries on both the 1992 Hospital Indemnity Policy as well as the 1992 Life Insurance Policy: Doug designated his mother as his sole beneficiary, thereby removing his father. He did not change the designation of his sister Cheryl as his alternate beneficiary. The requested changes were approved by the Insurance Company on January 5, 2005.

(3) Whole Life Policy #CD9322743 issued on July 19, 2006 ("2006 Life Insurance Policy"), issued approximately a year after Doug and Carolyn began living with each other. The face value of this policy was $79,271. The designated beneficiary is once again the Deceased's mother; the alternate is his sister, Cheryl.

(together referred to as the "Disputed Policies").

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[20] When Doug and Carolyn lived in Surrey, they held mortgage insurance on their Surrey home. When the couple moved to Tsawwassen in August 2011, they took out a substantial mortgage. The evidence before me is unclear as to whether mortgage insurance was taken out on the Tsawwassen home and later cancelled, or whether mortgage insurance was ever purchased at all on that home. Carolyn deposes they never took out mortgage insurance on the Tsawwassen home. Tyler deposes that upon hearing of Doug's death, Carolyn commented that their mortgage had been cancelled just six months prior to his death. Bonnie also deposes there had been mortgage insurance on the Tsawwassen home but that it had been cancelled. In any event, it is clear that no mortgage insurance was in place at the time of Doug's death. Furthermore, Doug purchased a fourth insurance policy in 2011 from American Life, naming Carolyn as the beneficiary.

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[21] Carolyn deposes that on October 13, 2011, she and Doug met with an American Life insurance agent at their home. She deposes:

> At the time, we told the agent that Doug was the sole income earner in the family. We discussed what coverage Doug had in place and how much I would receive if the he were to die. The amounts we discussed included the amounts of the policies which he already owned prior to the meeting.

[22] Carolyn refers in her affidavit to a "worksheet" that the life insurance agent, Mr. Woo, left with her on October 13, 2011. The worksheet is not clear and difficult to decipher. It refers to a number of figures including the numbers "$18,222" and "$79,271" which appears to refer to the 1992 Life Insurance Policy and the 2006 Life Insurance policy. However, those policies are not specifically identified as such on the worksheet and no specific beneficiaries are named in the worksheet. It was at this meeting that Doug purchased a life insurance policy for $30,000, designating Carolyn as the beneficiary; that is, Accidental Death Benefits Policy #CD9617298. It appears Carolyn also purchased life insurance that day, although its details were not provided.

[23] Carolyn deposes that she and Doug relied on American Life to provide them with appropriate advice on planning for their future life insurance needs "particularly

in the event something were to happen with Doug as the sole income earner in the family." She also deposes:

> Following this meeting it was my understanding that I was the beneficiary of all of Doug's insurance plans with AIL [American Life] and he the beneficiary of mine. I have no doubt that Doug thought the same thing.

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[24] At the October 13, 2011 meeting, Doug requested duplicate copies of the three previous policies he purchased from American Life. Doug signed the applicable form; the filed copy at American Life indicated that America Life "handled" the request on November 7, 2011. Although, Carolyn could not remember when she first saw these policies, she confirmed on discovery that they did keep a file with "some policies" but she could not recall if all three of the Disputed Policies were in the file, although she acknowledges they "might have all been together". Carolyn's List of Documents contained each of the Disputed Policies.

[25] In an affidavit sworn by Corey Herrick, assistant general counsel at Globe Life Inc., Mr. Herrick states that America Life is a wholly owned subsidiary of Globe Life. He confirms Doug's service request form for duplicate copies of these policies was submitted to American Life in November 2011. He further deposes that this form contains a section that can also be used to request a change of beneficiary and that the section had been left blank.

[26] No requests to change the beneficiary of the Disputed Policies were made after Doug changed the 1992 policies so that his mother, Bonnie, would be the sole beneficiary.

[27] Carolyn deposes that in 2016, she and Doug had another meeting at her home with the defendant Aaron Chen, who was an agent of American Life "to review and update our mutual life insurance plans with [American Life]". She also deposes that she "relied" on Aaron Chen as a representative of American Life "to provide us with appropriate advice on planning for our mutual life insurance needs based on their family circumstances", noting that "Doug and mine personal circumstances had not changed from the meeting in 2011.

[28] Carolyn further deposes as follows:

> Again, we discussed the amount of coverage that was in place using the worksheet from 2011. From our discussions I understood that I was the beneficiary of all Doug's insurance as we discussed the amounts that I would receive on this death which included the amounts payable on all his policies with [American Life]. At no time did Mr. Chen indicate that I was not.
>
> At no time during either of these meetings or at any time thereafter, did American Life or their representative advise me or Doug what steps needed to be taken to update the named beneficiary on his existing policies.

[29] Bonnie acknowledges that she was not aware that her son had taken out insurance policies where she was named as a beneficiary until after his death. Nevertheless, she deposes that since her son had named her as the beneficiary "from the beginning" and then kept her as beneficiary of the Disputed Policies over the years and through two marriages, she felt he must have wanted her to have the Insurance Proceeds. She adds:

> I feel like [Doug] entrusted the money to me and that he would have wanted me to use if for Liam and Holden (He also treated Noah as his son, but I am not close to Noah and his biological father is still alive.) ….

[30] Bonnie deposes that she has set aside the Insurance Proceeds, primarily for Liam and Holden, as follows:

- $3,500 for a memorial picnic bench for Doug at the Rotary Park in Tsawwassen;
- $5,000 donation to South Delta Minor Hockey Association in Doug's memory for their player assistance fund;
- $47,500 invested for her grandson Holden;
- $47,500 invested for her grandson Liam; and
- $9,814.86 on legal fees for this dispute and to restore her access to Holden and Liam.

[31] Bonnie continued to see Liam and Holden about twice weekly after her son's death until January 2021. She deposes that Carolyn refused to let her see her grandchildren at that time. However, this issue was resolved through mediation. Bonnie's visits with Liam and Holden were restored in December 2021.

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B. Other Policies and Financial Circumstances of the Plaintiff

[32] Carolyn deposes that in addition to the $30,000 American Life policy that Doug purchased in 2011, in which she was named as a beneficiary, he also named her as a beneficiary in the life insurance and accidental death benefits policy through his company's extended health benefit plan; she received $50,000 in this regard.

[33] In addition, Carolyn deposes that she was the named beneficiary of a policy that Doug purchased in 2018 from Industrial Alliance, in which she received $70,000. Carolyn confirmed she also received $100,000 from Doug's interest in his construction company, and a further $80,000 in RRSPs which were transferred to her. She deposed that in total she received $330,000 in monetary benefits after the death of her husband.

[34] Carolyn deposes that at the time of Doug's death, their home mortgage was approximately $530,000. She explains that the mortgage was not insured as they considered it to be too expensive. Their home in Tsawwassen is a large four-bedroom home in good condition with a pool and hot tub. While no formal appraisal was provided, as of July 2020, the BC Assessment authority valued the property at $2,020,000.

[35] Carolyn deposes that the "only reason that I have been able to keep the Tsawwassen home since Doug's death is due to the financial support from my extended family". She explains that the insurance proceeds she received after his death, Doug's RRSP's and the money from his business were not in themselves sufficient to keep the home. While she did receive significant additional funds from an on-line "Go Fund Me" campaign and this helped her financially, she deposes that, without the support of her family, she would have lost her home.

C. Payment of Premiums

[36] Doug always paid the premiums for the Disputed Policies with his money from his personal bank account at the Tsawwassen Branch of the Canadian Imperial Bank of Commerce ("CIBC Account"). His mother did not pay any premiums.

[37] When Doug and Carolyn opened a joint bank account ("Joint Account"), Doug's earnings were deposited into the Joint Account. To fund the payment of the insurance premiums from the CIBC account, he withdrew money from the Joint Account, deposited the money into his CIBC Account, and then paid American Life from his personal CIBC Account. It is not clear on the evidence before me when the Joint Account was opened, or the cost of maintaining the Disputed Policies before and after the parties began living together and/or opened their joint bank account.

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DISCUSSION

[38] I should note at the outset that the defendants did not argue that this case was not suitable for summary disposition. I agree with the parties' assessment that this case ought to be addressed summarily.

[39] Rule 9-7(15)(a) of the *Supreme Court Civil Rules* provides that this Court may grant judgment in a summary trial application in favour of any party, either on an issue or generally, unless:

> (i) the court is unable on the whole of the evidence before it on the application, to find the facts necessary to decide the issues of fact or law, or
>
> (ii) it would be unjust to decide the issues summarily (see also *D2 Contracting Ltd. v. The Bank of Nova Scotia*, 2015 BCSC 1634 at paras. 32-33, aff'd 2016 BCCA 366).

[40] I have carefully considered this matter and find I am indeed able to decide the issues of fact and law before me. In reaching this conclusion, I have considered the seminal decision of the Court of Appeal in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.), where the Court identified a number of factors that inform the assessment of whether it would be unjust to decide the issues before it on a summary trial basis. The Court reasons, at para. 48, that the chambers judge is entitled to consider, among other things:

> … the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward

> to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[41] The objectives of proportionality and efficiency are clearly important consideration in deciding whether a summary trial is appropriate. I am also satisfied that the evidence necessary to decide this case could be tendered by affidavit and properly determined on that basis.

[42] In a similar vein, *Gichuru v. Pallai*, 2013 BCCA 60, the Court notes, at para. 31, that factors which a court must consider, included “the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices”: see also *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, aff’d 2006 BCCA 369.

[43] Furthermore, the Court in *Gichuru* underscores, at para. 32, that both parties must come to a summary trial hearing prepared to prove their claim, or defence, because:

> … judgment may be granted in favour of any party, regardless of which party has brought the application, unless the judge concludes that he or she is unable to find the facts necessary to decide the issues or is of the view that it would be unjust to decide the issues in this manner…

[44] In this light, I am not only satisfied that I am able on the whole of the evidence to decide the issues before me; I am also satisfied I am able to do so fairly. It is in the interest of justice to do so considering, for example, the amounts involved, the cost and time of further litigation, the relative simplicity of the factual matrix and my conclusion that the parties have put their best evidence forward in their affidavit materials, as they are required to do in such cases.

[45] In short, I am of the view that this case is appropriate for summary disposition.

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A. Unjust Enrichment and Constructive Trust

[46] As regards the merits of the case, counsel for the plaintiff begins her legal submissions by relying on the decision in *Roberts (Martindale Estate) v. Martindale*, [1998] 55 B.C.L.R. (3d) 63, CanLII 4561 (BCCA) at para. 24 and arguing that constructive trusts have been imposed in situations where "justice and good conscience require it." Counsel adds that where the intention to benefit a disappointed beneficiary can be proven, the court will impose a constructive trust over the life insurance proceeds: see *Knowles v. Leblanc*, 2021 BCSC 482.

(i) Intention of the Deceased Regarding the Appropriate Beneficiary

[47] While I am mindful of the findings in both *Knowles* and *Martindale*, I am unable to conclude, on the facts before me and on a balance of probabilities, that the Deceased intended Carolyn to be the beneficiary of the Disputed Policies, rather than his mother. I note that the Courts in *Knowles* at para. 37 and *Kang v. Kang*, 2002 BCCA 696 have recognized the difficulty in obtaining relief in such cases where there is ambiguity about the deceased' intentions; yet, this is such a case. In the final analysis, I am simply not persuaded or able to conclude that "justice and good conscience" require the imposition of a constructive trust. Nor am I satisfied that an unjust enrichment has occurred in this case.

[48] In cases such as this, the specific context and the particular circumstances before the court are especially important. Doug took out two policies in 1992 with a face value of $18,222 and $4,000 respectively, naming his parents as beneficiaries. Twelve years later, he took the initiative to change the named beneficiaries in both of these polices to his mother exclusively. He was clearly aware of the process of changing the named beneficiaries, which required simply filling-out and signing a form which enabled him to do so. The facts that Doug understood the process of changing named beneficiaries but that he did not take the further step of doing so with regard to the Disputed Policies militates against the conclusion that it was his intention to do so after 2004. Moreover, this conclusion is supported by the

evidence of his business partner, Tyler, who described Doug as a capable project manager who was careful and diligent about filling out forms.

[49] The conclusion that Doug did not intend to remove his mother as beneficiary of the Disputed Policies is also consistent with the evidence of both Doug's mother and Tyler that Doug had a very close relationship with his parents. Bonnie deposes that he would visit at least twice a week and often after work, and usually without a particular purpose. The uncontroverted evidence is that Doug saw his mother regularly throughout the course of his life, would visit her regularly and would phone her "almost every day."

[50] Doug's commitment to providing for his mother in the event of his death and his intention to do so was buttressed by the fact that he purchased the 2006 Life Policy, naming his mother as a beneficiary, the year after he began living with Carolyn and her son Noah. In this light, a reasonable inference can be drawn that Doug's intention to provide for his mother by taking out these insurance policies continued after he began his relationship with Carolyn. Furthermore, the purchase of these policies for his mother's benefit is not logically inconsistent with his intention to also provide life insurance for his wife and children, particularly since Doug also took out life insurance policies and made other provisions for his wife in the event of his death.

[51] Bonnie testified that she recalled Doug telling her that the had purchased the 1992 policies although she could not recall if he told her he had purchased the 2006 policy. She also recalled that Doug occasionally mentioned that "he had to get to the CIBC to deposit money for the premiums."

[52] I also note, that after Doug married his first wife in 1993, he did not remove his parents as the named beneficiaries of the insurance policies he purchased for his parents in 1992.

[53] Again, Doug did take a number of measures to provide insurance coverage for his wife and children. When the couple purchased their home in Surrey, the

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mortgage insurance was purchased and paid for by primarily or entirely by Doug as the family's main provider. When that Surrey property was sold and after the couple purchased their home in Tsawwassen in August 2011, a decision was made at some point prior to Doug's death not to have mortgage insurance in place. Carolyn noted mortgage insurance for the Tsawwassen home was felt to be too expensive. Nevertheless, shortly thereafter, in October 2011, Doug purchased a life insurance policy for $30,000 designating Carolyn as the beneficiary. In addition, Doug's intention to provide insurance coverage for his wife and children is apparent by his decision to supplement this $30,000 policy. Carolyn was made the named beneficiary in other life insurance policies that are not in dispute in this case. Doug named Carolyn in an accidental death benefits policy through the life insurance and extended benefits policy of his construction company. Also, Carolyn was the named beneficiary of an Industrial Alliance insurance policy, also purchased by Doug. Carolyn also received compensation for Doug's interest in his construction company as well as his RRSPs. This evidence is consistent with my conclusion that Doug's intention was to take steps to provide life insurance not only for his wife and children but also for his mother. He in fact did so.

[54] I am mindful that the insurance proceeds and other funds received by Carolyn after Doug's death were not sufficient to cover the outstanding mortgage on the family home. Yet, that was a decision that the couple was entitled to make at the time they purchased the Tsawwassen home in 2011. Nevertheless, Doug took other steps, including naming Carolyn as beneficiaries in other insurance policies, to secure the family's future. Further, as noted earlier, a reasonable inference may be drawn that if Doug wished to change the name of the beneficiaries in the Disputed Policies, he would have done so, just as he did in 2004 in regard to the policies he purchased in 1992, when he made his mother the exclusive beneficiaries of those policies. This conclusion is supported by Tyler's evidence that a significant part of Doug's business involved managing projects and attending to forms and other paperwork. Again, it was a simple matter for Doug to fill out forms that change the named beneficiaries in the Disputed Policies from this mother to his wife. Yet, he did

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not do so, although he had done so in the past when he named his mother as the exclusive beneficiary of the 1992 policies.

[55] I have very carefully considered Carolyn's evidence that it was her "understanding" that she was the beneficiary of all of Doug's insurance plans, as well as her "belief" that her husband "thought the same thing." However, it is not Carolyn's understanding that is determinative but the entirety of the evidence informing Doug's intent in this regard. The evidence before me does not support the conclusion, on a balance of probabilities, that Doug ever requested a change of beneficiaries to the Disputed Policies. Nor does the evidence establish that he intended to request a change of beneficiaries for purposes of designating Carolyn or the children as his beneficiaries on the Disputed Policies but neglected to follow through.

[56] Simply put, I am unable to conclude on the evidence before me and on a balance of probabilities that it was ever Doug's intention to remove his mother as the beneficiary on the Disputed Policies. In this context, "justice and good conscience" do not require the imposition of a constructive trust on the insurance proceeds.

B. Unjust Enrichment

[57] I have also specifically considered the applicant's submission that her claim is "in essence" framed in unjust enrichment. She submits that "if the disappointed beneficiary can prove they were the intended beneficiary and can show deprivation and enrichment without juristic reason, the court will impose a constructive trust over the life insurance proceeds." She argues that the provisions of the *Insurance Act* RSBC 2012, c. 1, which requires the funds to be paid to the named beneficiary, do not preclude a finding that the funds are received in trust "for the intended beneficiary and does not constitute a juristic reason for the named beneficiary to keep the funds": see *Moore v. Sweet*, 2018 SCC 52.

[58] A difficulty with the plaintiff's unjust enrichment argument is that it is premised on the assumption that she has proven she was the intended beneficiary of the

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Disputed Policies. The evidence before me, considered as a whole, does not support this finding.

[59] I should note in this regard that the doctrine of constructive trust is a remedy not a cause of action. I accept that as a matter of law, the remedy of a constructive trust may be imposed in the appropriate case where the deceased intended the disappointed beneficiary to be the beneficiary under a policy rather than the named beneficiary. However, the evidence before me does not establish such an intention in this case.

[60] Furthermore, I have also methodically considered and applied the doctrine of unjust enrichment in assessing whether a constructive trust is warranted, quite apart from the intention of the Deceased.

[61] I begin my noting that in *Moore v. Sweet* at para. 33, the Court underscored that it is "crucial to recognize that a proper equitable basis must exists before the courts will impress certain property with a remedial constructive trust" and, further, it adds that that "a cause of action in unjust enrichment may provide such an equitable basis, so long as the plaintiff can also establish that a monetary award in insufficient" and also that there is a link between their contributions and the disputed property. In this case, I am not at all persuaded that a monetary award is insufficient. The defendant has established that she has saved and invested most of the Insurance Proceeds. There is very little prospect of a "dry judgment".

[62] I have also specifically considered and applied the three-part legal test for the establishment of unjust enrichment as articulated in cases such as *Moore v. Sweet* at paras. 41-58; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 85; and *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paras. 44-46. In these cases, the Supreme Court of Canada has affirmed that in order to prove unjust enrichment, the evidence must satisfy the follow three-step analysis:

(1) the defendant has been enriched;

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(2) there is a corresponding detriment on the part of the plaintiff that corresponds to the benefit that the plaintiff received; and

(3) if enrichment and corresponding deprivation are established, the plaintiff must also establish that there is no juristic reason (that is, no justification in law or equity) for the defendant's enrichment at the plaintiff's expense.

There are two stages to this third branch of the legal test:

> First stage: the plaintiff must establish that the defendant's retention of the insurance proceeds *cannot be justified on the basis of any established categories of juristic reason*: i.e., a contract, a disposition of law, a donative intent, or other valid common law, equitable or statutory obligations. If this is established, the plaintiff has established a *prima facie* case.
>
> Second stage: *If the prima facie case is established*, the defendant may rebut the *prima facie* case by showing there is some residual defence or reason to deny recovery.
>
> At this stage, if it is engaged, there is a *de facto* burden of proof place on the defendant to show the reason why the enrichment should be retained. The court will look at all the circumstance of the case in order to determine whether there is a residual reason to deny recovery.
>
> *If* this stage is engaged on the facts before it, the court must in such circumstances have regard to the parties' reasonable expectations and public policy.

[63] Carolyn asserts this test has been proven on the facts before me. As noted earlier in these reasons for judgment ("Reasons"), Carolyn asserts, Bonnie has been enriched and that she suffered a corresponding deprivation, without juristic reason. Carolyn asserts that because there is no juristic reason, Bonnie must show why her enrichment should be retained and she has not done so.

[64] Bonnie acknowledges that she was enriched by the receiving the Insurance Proceeds. Clearly, this is the case. While Bonnie will gift much of these proceeds to her two biological grandsons, she nevertheless received the Insurance Proceeds and has used them according to her own discretion, including paying for certain legal fees.

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[65] As regards the second question of whether Bonnie was enriched at Carolyn's expense, the Court in *Moore v. Sweet* reasoned that the plaintiff must show that a "tangible benefit" passed from Carolyn to Bonnie and that a straightforward economic approach is taken in this regard, with moral and policy considerations coming into play at the third or juristic stage of the legal analysis: see paras. 41 and 46. That economic approach must, of course, be based on the evidence before me and must be established on a balance of probabilities.

[66] The only economic connection between Carolyn and the Disputed Policies or the "tangible benefit" from Carolyn to Bonnie is the payment of some of the insurance premiums for the Disputed Policies from a joint bank account between Doug and Carolyn. However, the of the quantum of these premiums over time was not addressed in the evidence placed before me, presumably because Carolyn is seeking the entirety of the Insurance Proceeds and not any out-of-pocket expenses related to the insurance premiums.

[67] As noted earlier in these Reasons, Doug was the main provider for the family. His pay cheques were deposited into his own account before his marriage-like relationship with Carolyn and they were later deposited into a joint account with Carolyn at some point after they began living together. After the joint account with Carolyn was established, and after his pay cheques were paid into that joint account, Doug did not pay the insurance premiums from the joint account. Rather, he transferred the monies he needed to pay the premiums for the Disputed Policies form the joint account into his separate, personal CIBC account. The premiums for the Disputed Policies where paid out of his personal CIBC account even after the joint account was established. There is no evidence before me that Carolyn took issue with the insurance monies being transferred out of the joint account into Doug's separate account, or that she questioned him about it. She simply deposes that Doug also paid the premiums for the policy she purchased from American Life from the same personal account he had with CIBC.

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[68] The evidence does not establish when the joint account with Carolyn was first established or how much money was transferred out of that account over the years to Doug's personal account in order to pay the premiums for the Disputed Policies. This particular evidence, regarding the out-of-pocket expenditures or costs of the premiums paid on the Disputed Policies, is evidence that could have been tendered at the summary trial but was not. Accordingly, no finding in this regard is possible. In any event, Carolyn's case was not based on claiming reimbursement of the insurance premiums paid from the joint account; again, she claims the entirety of the Insurance Proceeds that were paid under the Disputed Polices by American Life. In supporting this entitlement, she asserts that it was Doug's intention that she should be the beneficiary under these policies *and that this is the tangible benefit that passed to Bonnie instead of her*. However, I have concluded the evidence as a whole does not support the conclusion that Doug intended that Carolyn to be the beneficiary of the Disputed Policies rather than Bonnie. Accordingly, no such benefit passed from Carolyn to Bonnie. In this light, it cannot be said that Bonnie benefitted at Carolyn's expense.

[69] Quite apart from the issue of whether there is a corresponding deprivation, I am satisfied that there is nevertheless a valid juristic reason for denying Carolyn's claim to the Insurance Proceeds. That is, at the first stage of the third branch of the legal test for unjust enrichment, Carolyn has failed to show there is no juristic reason for Bonnie's retention of the Insurance Proceeds. The established categories of contract, the disposition of law and the statutory obligations at play all require the Insurance Proceeds to be paid to Bonnie.

[70] The *Insurance Act* provides that an insured may designate a person to whom the insurance proceeds are to be paid. The Disputed Policies are contracts obliging American Life to pay the Proceeds to Bonnie as Doug's designated beneficiary: *Insurance Act*, RSBC 2012, c. 1, s. 59(1).

[71] Furthermore, I also agree with counsel for the defendant mother that the *Insurance Act* is applicable because it is not ousting any common law or equitable

rights of Carolyn to the Insurance Proceeds. There is no pre-existing agreement with Doug, contractual designation, or other legal basis entitling Carolyn to the Proceeds. Nor does Carolyn have any equitable rights to the Insurance Proceeds. Her evidence that Doug intended to make her his designated beneficiary is "at best ambiguous". I am satisfied the evidence establishes that Doug intended to make Bonnie his designated beneficiary.

[72] As such, Carolyn has not made out a *prima facie* case as envisioned by the third branch of the legal test. Accordingly, the second stage analysis relating to the third branch of the unjust enrichment test is not engaged, and I need not proceed further in my analysis. Even if it had been, having reviewed all the circumstance of this case, I am satisfied that there are further reasons to deny the remedy sought by the plaintiff. The facts before me do not support a reasonable expectation that Carolyn is entitled to the Insurance Proceeds. Conversely, once Bonnie was advised that she was indeed the named beneficiary, the overall factual matrix supports a reasonable expectation that she receive these funds.

[73] Furthermore, in the context of this case, public policy favours upholding the Disputed Policies. An insured person ought to be able to rely on a contract they make with their insurer as part of their estate planning. There are a myriad of reasons for an insured to choose someone other than a spouse as one of their designated beneficiaries.

[74] For all these Reasons, this application is dismissed. Unless there are circumstances of which I am unaware, the defendant is entitled to her costs at Scale B.

"MORELLATO J."

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