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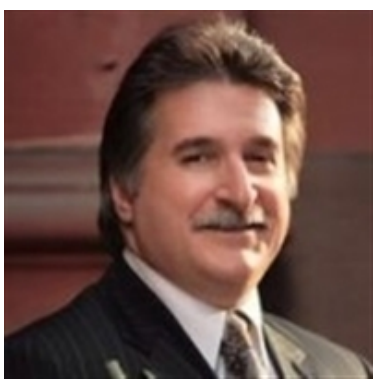
Dispute over joint accounts pits family against charity



When drafting a will, it may be more prudent to specify a dollar amount donation for a charity instead of naming the charity a residuary beneficiary, says Toronto-area estates litigation lawyer Charles Ticker, noting the latter option may open the door to disputes down the road, as seen in a recent Ontario Court of Appeal case.

Sawdon Estate v. Sawdon involved an aging father who, before his death in 2007, made several bank accounts into joint accounts with himself and two of his five children. He told his two sons that upon his death, the money was to be distributed among the five kids.

The deceased man's will didn't mention the bank accounts, and provided that the Watch Tower Bible and Tract Society of Canada, a registered charity representing Jehovah's Witnesses, was to receive the residue of the estate.

Watch Tower claimed that the funds in the bank accounts – slightly more than $1 million – formed part of the estate, while the two sons claimed the funds were to be distributed equally among the children, as their father had instructed.

*Pecore v. Pecore*erred to in the ruling, with the trial judge concluding the funds in the bank account were not part of the estate, and "although gratuitous transfers between a parent and an adult child are subject to the presumption of resulting trust in favour of the deceased parent's estate, that presumption had been rebutted."

The Court of Appeal came to the same conclusion and held that from the time the joint bank accounts were opened, those holding the legal title to the bank accounts held the beneficial right of survivorship in trust for the deceased's children in equal shares.

When handling estate administrations, Ticker says he has come across issues with leaving the residue of an estate – as opposed to leaving a specific dollar amount – to a charity.

"Anyone who's a residuary beneficiary will want to make sure they get everything that's coming to them, and it can create administrative difficulties sometimes," he says. "I think there's less chance of a dispute if you say, 'I'm leaving a dollar amount as opposed to a share of the residue.' That left it open to the charity in *Sawdon* to argue that the joint bank accounts were part of the residue. If the will stated that it was $100,000, it would have had to come out of the estate, and even if they tried to argue over the bank accounts, they would be limited to how much they could get.

"From what I've seen, sometimes where a charity is a residuary beneficiary they're going to go to the estate trustee and demand an accounting – they want to make sure everything that's coming to them has been accounted for. It can cause delays and administrative expense, but, as a residuary beneficiary, they're entitled to that. They're entitled to be satisfied that everything has been accounted for," says Ticker.

Another issue of interest in the *Sawdon* case relates to how the costs were handled, says Ticker.

The trial judge ordered Watch Tower to pay the estate trustee's trial costs on a partial indemnity basis, but refused the estate trustee's request for an order that the estate indemnify him for the balance of his trial costs. Previous case law had suggested that costs should either be paid by the losing party or in some limited cases, paid out of the estate where the will or testator had caused or contributed to the issues being litigated. It was an either /or approach as opposed to both. The trial judge refused to consider a blended costs award. The estate trustee, one of the deceased' s sons, sought and was granted leave to appeal the costs order by way of cross-appeal.

The cross appeal was successful, with the court holding "the trial judge erred in principle in refusing to declare that the estate trustee is entitled to be indemnified for his trial costs not recovered from Watch Tower."

The court said the blended costs order was appropriate because certain public policy considerations applied – namely the need for proper administration of the estate.

"As the estate trustee acted reasonably throughout and for the benefit of the estate, he is entitled to be indemnified from the estate for his trial costs not recovered from Watch Tower," the court held.

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