

**CITATION:** Moghadam v. Moghadam, 2025 ONSC 4695  
**COURT FILE NO.:** CV-25-99532  
**DATE:** 2025 08 13

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Soraya Moghadam, Applicant

**AND:**

Zahra Moghadam, Respondent

**BEFORE:** C. MacLeod RSJ

**COUNSEL:** Todd J. Burke and Thomas Yates, for the Applicant

Martin Z. Black, for the Respondent

**HEARD:** June 11, 2025

**DECISION AND REASONS**

[1] This is dispute arising from the illness and subsequent death of the late Rafie Moghadam. Soraya is the daughter of the deceased and of the Respondent, Zahra. Zahra is Rafie’s widow and Soraya’s mother. Soraya is currently the Estate Trustee, the trustee of a trust established by the will and is also in sole control of the family business, 4151909 Canada Inc., known as PARS 2000.

[2] Two disputes bring the parties to court. In this application (the “Insurance Application”), Soraya claims entitlement to proceeds of a life insurance policy in order to reimburse her for expenses for the care of her father prior to his death. In court file CV-24-94796, (the “Business Application”), Zahra seeks to have Soraya removed from her position of control over the estate and the business. The two matters were heard together, and these reasons deal with both.

[3] I have concluded as follows:

- a. The issues in dispute are appropriately decided on the Application records now before the court.
- b. Soraya Moghadam is entitled to the proceeds of Rafie Moghadam’s life insurance.
- c. The last will and testament of Rafie Moghadam including the trust provision remains valid.
- d. Soraya has not acted in an oppressive manner in her role as director of PARS 2000 and will not be removed as director by the court.

- e. Soraya is in a conflict of interest in her role as trustee and cannot continue to serve as trustee of the shares. The court will order her removed and replaced by a person to be agreed upon or appointed by the court.
- f. Soraya may continue as Estate Trustee

[4] The reasons are set out below.

## **Background**

### **1. The Business**

[5] The late Rafie Moghadam immigrated from Iran to Canada in 1967 and became a successful business owner. He served as President of Blue Line Taxi. In 1983 he and his wife, Zahra established a luggage storage, handling and transportation business at the Ottawa airport. That business (referred to as PARS 2000) is now operated by the corporate respondent. Soraya is currently the sole director and officer of the corporation.

[6] Prior to Rafie's death, the family consisted of Rafie, Zahra and their four children, Saied, Majid, Soraya and Sohaila. Soraya is a physician and a Senior Officer in the Canadian Armed Forces. The corporation was owned by Rafie and Zahra who each owned 50 common shares. In recent years, Saied was the Operations Manager of the company and had management of its day to day affairs. He was also a Director and the Treasurer.

[7] Starting in 2022, Soraya became more involved with the running of the company. She was made the corporate Secretary and a signing officer by her parents in that year. In 2023 a dispute arose between Soraya and Saied because of what Soraya believed were financial irregularities. In particular, according to Soraya, Saied was paying certain employees in cash without statutory deductions or remittances, had provided company vehicles to his wife and step-daughter and had made loans to company employees for non-business purposes.

[8] In May of 2023, Rafie and Zahra resigned as directors and appointed Soraya as the sole director. Saied was removed as a director. He was also removed as Treasurer. This was a deliberate choice by Rafie and Zahra to put Soraya in control of the corporation. The expectation was that Soraya would supervise the finances, sign cheques and paperwork and ensure the corporate finances were in order. It was expected that Saied would continue as the manager in charge of day to day operations but without signing authority.

[9] Subsequently, Soraya alleges that Saied refused to follow her direction, physically threatened her and continued to engage in unauthorized financial transactions. In July of 2023 Soraya terminated her brother's employment. Legal proceedings ensued to recover company property. (See 2024 ONSC 3886). The Court ordered Saied to return all company property including the vehicles. He is apparently also the subject of criminal charges.

[10] From 2023 until the present, Soraya has been the sole director and officer of the corporation. She attests that she has been working in the best interests of the corporation to regularize its finances and to return it to profitability.

[11] Soraya also attests that she has not been taking compensation from PARS 2000 herself but has ensured that income continues to flow to Zahra. Zahra is paid a monthly dividend which is her only income other than old age security and pension. There are corporate debts secured against Zahra's home.

## 2. The Will and the Trust

[12] Rafie and Zahra made new wills and powers of attorney in 2021. The wills were identical or mirror wills prepared after consultation with an experienced estate lawyer. Each of Rafie and Zahra had a primary and secondary will which is a device to avoid probate on the entire estate and thus reduce tax payable under the *Estate Administration Tax Act, 1998*.<sup>1</sup> In particular, the shares of PARS 2000 were to pass under the secondary wills.

[13] Rafie's secondary will provided that upon his death, his 50 shares in PARS 2000 would vest in a trust and Soraya was to be the trustee. Soraya was also appointed as Estate Trustee.

[14] Rafie's health had begun to deteriorate as early as 2018 but it was not known how serious his condition was. In 2023 Rafie was diagnosed with Fahr's Disease. Shortly afterwards he was hospitalized, commenced dialysis and developed mobility issues. He required attendant care and other supports. In 2024 he passed away and the provisions of his wills came into effect.

[15] Consequently, Soraya controls 50% of the shares of PARS 2000 as trustee and Zahra controls 50% of the shares as owner. This means that the corporation is deadlocked, Zahra cannot remove Soraya as a director and from her position of control without Soraya's agreement. None of the other family members hold shares and none of them are directors. Zahra attempted to remove Soraya at a shareholder meeting in 2025 but Soraya voted the trust shares against the resolution and remains in control of the corporation.

[16] The trust provisions of the secondary will are contained in paragraph 3 (b) of that will and read as follows:

"I direct my trustee to transfer and convey my shares in the capital of 4151909 CANADA INC., to my daughter, SORAYA MOGHADAM, to be held on the following trusts. During of the lifetime of my wife, ZAHRA MOGHADAM, my said daughter shall hold such shares in trust for my said wife. On the death of the survivor of me and my wife, I instruct that my said daughter continue to hold the shares of the said corporation in trust to ensure that the business of the corporation is run prudently and successfully. When the business of the corporation is sold, or twenty (20) years after the date of my death, the net proceeds from the sale of such shares shall be divided in the discretion of my said daughter to benefit primarily my son, SAIED MOGHADAM, who

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<sup>1</sup> S.O. 1998, c. 34, Sched. as amended. The Act imposes a tax of \$15 for each \$1,000 or part thereof by which the value of the estate admitted to probate exceeds \$50,000.00.

has been working in the business with the remainder of the proceeds from the sale of the business to be divided equally among my other three (3) children, namely: SORAYA, MAJID and SOHAILA, as shall then be living.”

[17] Besides being the beneficiary under the trust (at least during her lifetime), Zahra is also the residual beneficiary under the primary and secondary wills. Zahra asks the court to invalidate the trust provision set out above because it is void for vagueness or alternatively because the trust is void for lack of the “three certainties”, intention, subject matter and objects. If the trust is invalid, then Zahra argues, Rafie’s shares would fall into the residue of the estate and should vest in Zahra.

[18] In addition, or in the alternative, Zahra seeks to have Soraya removed as trustee and estate trustee due to a conflict of interest. Zahra also seeks oppression remedies against Soraya for the manner in which she is managing the corporation.

[19] Before turning to an analysis of the business and testamentary issues, I will briefly describe the facts giving rise to the insurance dispute.

### **3. Cost of Rafie’s Care**

[20] When Rafie became ill, he required attendant care, mobility aids and transportation for dialysis. It was decided that Rafie should live with Soraya. Although this was originally expected to be a temporary arrangement, it ultimately continued until Rafie’s death.

[21] Soraya also funded Rafie’s costs of care, spending \$179,725 from her personal savings. Of this amount, she has been reimbursed by Zahra in the amount of \$35,900.

[22] When Soraya agreed to continue to pay for Rafie’s costs of care, there was a discussion about reimbursing her when Rafie passed away and the proceeds of his life insurance would become available. Soraya was told by Zahra and by other family members that she would be entitled to the life insurance proceeds.

[23] On Rafie’s death, the proceeds of the policy totalled \$68,919.01 which would have been paid to the beneficiary (Zahra) but instead were paid into court pursuant to an order of Justice Kaufman (Court file no. CV-25-99817). The Insurer sought that order pursuant to s. 214 of the *Insurance Act* because it had been advised of Soraya’s claim against the policy by her solicitor.

[24] There is no doubt that Soraya was assured by her mother and by other family members that she would be reimbursed and there is no doubt that the care costs she incurred are greater than the amount of the policy. The legal question is whether those representations constitute a binding obligation by Zahra and whether the proceeds now in court should be paid to Soraya.

[25] Rafie moved in with Soraya in July of 2023 as Zahra could not care for him nor afford the costs of care. Soraya claims that Zahra and she agreed Soraya would be reimbursed from the proceeds of the life insurance policy in late 2023 and the agreement was put in writing in January of 2024. Soraya continued to pay the costs of Rafie’s care until his death in July of 2024. She also paid his funeral expenses.

## Analysis and Decision

### 1. The proceeds of Insurance

[26] Dealing firstly with the question of the life insurance policy, I do not accept the argument on behalf of Zahra that this issue cannot be determined on an application. There is affidavit evidence, documentary evidence and cross examination. The alleged contract is not in any way complicated but a simple *quid pro quo*. Similar to a summary judgment motion, the question where a party has elected to proceed by application is whether or not the question may be fairly adjudicated on the paper record or whether the full forensic machinery of a trial is required.<sup>2</sup> This is the former and not the latter.

[27] The evidence clearly shows that assurances were given to Soraya that she would receive the insurance proceeds. True, this was not the reason she initially undertook to care for her father and the discussion about the insurance did not take place before she started to incur costs. The discussion did take place however when it was decided that Rafie should remain with Soraya and when she undertook to continue to pay for the necessary costs. Subsequently, the agreement was confirmed in writing. Under cross examination, Zahra confirmed that she signed the document although it made her angry.

[28] On the evidence, I have no doubt that assurances were given to Soraya and that relying on those assurances she continued to fund Rafie's expenses without demanding any significant contribution from her mother or other family members. I also conclude that Soraya agreed to accept the proceeds of the insurance rather than seeking reimbursement from Zahra or the estate or from PARS 2000.

[29] This was an entirely reasonable bargain where the family was faced with difficult circumstances. Zahra and Soraya knew that Rafie was terminally ill and would require expensive care that Zahra could not afford. Soraya agreed to fund the care on her own based on the assurance that she would be at least partially reimbursed when the life insurance paid out. The exact value of the insurance was not known but it was thought it might be as much as \$80,000. The evidence is that Soraya liquidated investments and drew upon her savings to fund Rafie's care.

[30] Of course this was not a business transaction but I have no hesitation in finding that the promise was made and relied upon and was intended to be a binding commitment.<sup>3</sup> It is entirely reasonable to enforce it based either on offer, acceptance and consideration or upon detrimental reliance and unjust enrichment.<sup>4</sup> It is appropriate to enforce the bargain and to declare that Soraya is entitled to the proceeds of the insurance policy.

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<sup>2</sup> See for example the criteria discussed in *2516216 Ontario Ltd. o/a NUMBRS v. AbleDocs Inc.*, 2023 ONSC 4713 and see *Yorkville East Developments Inc. v. York Condominium Corporation No. 194*, 2021 ONSC 5678 @ para 42

<sup>3</sup> *Schrempf v. Willchuk*, 2013 ONSC 2863

<sup>4</sup> *Moore v. Sweet*, 2018 SCC 52 (CanLII), [2018] 3 SCR 303

[31] I turn now to the question of the validity of the will and the trust.

## 2. The validity of the Trust

[32] As noted above, Rafie and Zahra made reciprocal wills. Evidently, it was intended that upon the death of either spouse the 50% ownership of the corporation held by the deceased would be held in trust for the other during his or her lifetime and upon the sale of the business or 20 years after the death of the testator, the value of the shares would be distributed to the four children.

[33] Obviously, the parties discussed this with each other and with their lawyer before they made their wills. Rather than having their 50% interest in the corporation pass to the surviving spouse, the wills were structured to place those shares in a trust. Zahra continues to own her own shares which she may dispose of as she wishes (and of course she is also free to change her own will) but by the terms of Rafie's will, she will never inherit his shares. Never, that is, unless the trust is invalid but if it is valid, they are held in trust for her benefit during her lifetime and thereafter will be sold and the value of the shares distributed to the four siblings with preference to Saied.

[34] There is no doubt that in the wording of the trust, much is left to the discretion of the trustee. What does it mean, for example, to hold the shares in trust for Zahra's benefit during her lifetime. What rights or benefits flow to the holder of a beneficial life interest in shares? Presumably this means the trustee should exercise the shareholder rights in a manner that benefits Zahra. The law would also impose a duty on the trustee to account but it is not clear what other rights the beneficiary would have.

[35] Under the terms of the trust, Zahra would never obtain ownership of the shares. She is only entitled to their benefit during her lifetime. For that matter, the shares themselves do not vest in Soraya or her siblings. Under the terms of the trust, after the death of the spouse, the trustee is to "continue to hold the shares of the said corporation in trust to ensure the business of the corporation is run prudently and successfully". Then when the business is sold or 20 years after the death of the testator, the value of the shares is to be distributed to the children of the deceased, to "benefit primarily" Saied and then to the other three children equally.

[36] "Primarily" is not defined and it is notable the shares themselves are not left to Saied or to the other siblings.

[37] The question is whether this uncertainty is sufficient to void the trust.

[38] In my view it is not. Simply because a trustee is given wide or even complete discretion does not make a trust deed invalid. Discretionary trusts are valid trusts providing the intention to create a trust is clear, the property to be held in trust is fixed and the persons who are to benefit (the objects of the trust) are identified.<sup>5</sup> In this case the intention to create a trust is clear. The asset

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<sup>5</sup> *Waters' Law of Trusts in Canada, 4<sup>th</sup> Edition*, Chapter 2, p 28 & 36

to be held in trust is also clear (the shares). The beneficiaries of the trust are clear (Zahra for her lifetime and the four children thereafter). The purposes of the trust are also clear. The shares are to be safeguarded for the benefit of Zahra and to ensure the business is run “prudently and successfully” and subsequently for the benefit of the siblings when the business is sold.

[39] A discretionary trust is not invalid. A testator is entitled to vest complete and even arbitrary discretion in a trustee. In those circumstances the beneficiaries are not given a right to compel the trustee to make particular decisions provided the trustee acts in good faith and in accordance with the mandate conferred by the trust document.

### 3. The validity of the Will

[40] Apart from the argument about the validity of the trust, Zahra’s application also challenged the validity of Rafie’s will. Her counsel seeks to defer this question to another day but I agree with Soraya’s counsel that it is not proper to do so absent an agreement between the parties or a bifurcation order from the court.

[41] There is simply no basis to challenge the validity of Rafie’s will. There is no medical opinion or capacity assessment indicating that Rafie was mentally incapacitated in 2021 when he made his will. The evidence does not persuade the court that he made the will under undue influence by Soraya. To the contrary, the reciprocal wills made by both Zahra and Rafie suggest the opposite. They were both given legal advice and seen by the solicitor independently from Soraya. In addition, the wills create duties and obligations for Soraya but they do not provide her with a singular legacy to the disadvantage of other family members.

[42] There is much evidence about whether or not Zahra understood the nature of the trust and the will. Despite having lived in Canada for decades, having worked in English and raised her children in a household where English was the spoken language, she claims to need an interpreter to properly understand written documents. It is Soraya’s evidence that Zahra did discuss her will with her friend Parvin before executing it but the issue of the validity of Zahra’s will is moot. The validity of Zahra’s will is not in question and if she disagrees with it now, she may change her will and make a new one. She has already revoked the powers of attorney which named Soraya as attorney for property and for the person.

[43] The question is the validity of Rafie’s will – or more properly his wills because if his secondary will is invalid, that would also invalidate his primary will. That would result in an intestacy. The evidence is that neither Zahra or Rafie had wills before they had these wills prepared in 2021. In any event, despite speculation by family members who swore affidavits, the evidence does not support a finding that Rafie’s will is invalid.<sup>6</sup>

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<sup>6</sup> The onus is on the party challenging a will that is executed pursuant to the statutory formalities. See *Zarrin-Mehr v. Shokrai*, 2024 ONSC 1754. While that case deals with a will proven in solemn form, the criteria discussed therein are applicable. As to undue influence, see *Seguin v. Pearson*, 2018 ONCA 355 @ para. 11

[44] I am not persuaded there is any basis to challenge the validity of Rafie's will or the validity of the trust. Under the will, Soraya is both the Estate Trustee and the Trustee of the Trust.

#### 4. Removal of Soraya as Trustee, Estate Trustee or Director

[45] This brings us to the question of whether Soraya can continue to act as sole director of the corporation, Estate Trustee and Trustee of the trust that holds the shares.

[46] As discussed above, Soraya was appointed as the sole director of the corporation by the sole shareholders of the corporation before Rafie's death. Now that she controls Rafie's shares by virtue of controlling the trust that holds the shares, the corporation is deadlocked, and she cannot be removed as director. Nor can the size of the board be increased, or other directors appointed which would be alternatives to removing Soraya. No shareholders' resolution can pass unless she agrees.

[47] It is important to stress that only Zahra and Rafie were ever shareholders. None of the other family members have ever been shareholders and apart from Saied, none of the other family members have ever held a formal position in the corporation until Soraya was appointed by her parents. It is Zahra who now seeks to have Soraya removed from her position but she cannot do so by exercising her power as a shareholder due to the fact that Soraya holds equal voting power.

[48] As a director of the corporation, Soraya owes a fiduciary duty to the corporation and must act in its best interests. That is not the same thing as acting in the best interests of an individual shareholder or following the wishes of the shareholder.

[49] It is Soraya's evidence that she found financial practices in the corporation which were an existential threat to the business and also, because corporate loans are secured against Zahra's house, a threat to Zahra's financial well being. In particular Soraya took this view concerning paying employees "under the table" without complying with federal and provincial laws, allowing Saied to make loans to employees with company assets, purchasing company vehicles for the use of his wife and stepdaughter who did no work for the company. As a consequence of her efforts to end these practices, she has also fired Saied and involved the corporation in litigation, struggled to retain staff and seen a dip in profits.

[50] Zahra objects to all of this. She has now reconciled with Saied and wants Soraya to step down. The problem is that when cross examined, Zahra advised that she was willing to endorse the previous practices. It might be in the best interests of family harmony to take this approach, but it can hardly be said that it would be in the best interests of the business or the corporation to allow it to operate illegally or to permit misuse of company assets. I do not accept that the steps taken by Soraya to bring the business into compliance with its legal and financial obligations were

unfair to Zahra or a breach of any responsibility that Soraya had assumed. It is the duty of directors and not shareholders to manage or supervise the business of a corporation.<sup>7</sup>

[51] The evidence does not support use of the oppression remedies to remove Soraya as a director. She cannot be shown as exercising her authority as director in a manner that is “oppressive or unfairly prejudicial to or that unfairly disregards the interests” of Zahra in her capacity as a shareholder.<sup>8</sup> Zahra disagrees with decisions made by Soraya but that does not make them oppressive or contrary to Zahra’s ownership interests.

[52] While Soraya may well be doing her best to discharge her duties as the director of the corporation, her position as the trustee of Rafie’s shares is problematic. Firstly, the trustee is obliged to hold the shares for the benefit of Zahra during her lifetime. Again, the duty of the trustee is to the trust itself and not to simply follow the wishes of a beneficiary. An issue would arise, for example, if Zahra wished the trustee to take steps that would diminish the value of the business or the shares so that there might be no value to distribute to the ultimate beneficiaries. So Zahra’s wishes are not the only consideration and Zahra’s life interest in the shares must be balanced against the rest of the trustee’s mandate.

[53] In this case, however, Soraya has used her control of the shares to block her mother’s motion to replace her as director – in other words to keep herself in power. She has also apparently received the dividends due on Rafie’s shares but has not paid those dividends to Zahra (they are being held in a fund). She has not consulted with Zahra on her stewardship of the shares nor provided her with any accounting. Those errors can be corrected and might not in themselves justify removal but seen in context, the situation is now impossible.

[54] I do not suggest that Soraya is guilty of any wrongdoing, but she is in an impossible conflict of interest. Her duty as a director is different from her duty as the trustee of the trust. She is also the executrix or Estate Trustee of both the primary and secondary wills.

[55] These duties might conflict at the best of times but currently Soraya is in litigation with Zahra over the insurance proceeds and is funding the litigation which she is pursuing against Saied on behalf of the business. She cannot be permitted to control the trust shares to keep herself installed as director when the other 50% shareholder for whom she holds Rafie’s shares in trust, wishes to install new management.

[56] I conclude that Soraya must be replaced as Trustee of the trust. Zahra’s counsel stated that they were no longer seeking to remove her as Estate Trustee.

[57] Counsel for Soraya objected to the request to remove her as trustee on the basis that the Notice of Application did not specifically request this relief. Although the court must be alert to ensure no one is taken by surprise and parties should ordinarily be held to their pleadings, the

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<sup>7</sup> S. 102 (1), *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 as amended

<sup>8</sup> S. 241 (2) of the CBCA, *supra*

original and the amended notices of application contain broad and sweeping claims for injunctions, receiverships and other relief which were ultimately resolved by the consent order made in January. Following that order, counsel had narrowed the issues and the court had agreed that all issues be heard together.

[58] This relief was set out in the factums and addressed in argument and is alternative relief to the declaration of invalidity of the trust. If necessary, I would permit amendment of the Notice of Application, but I am satisfied this is not an issue which should be a surprize to anyone. It was addressed by the affidavit evidence and in cross examination.

[59] Having decided to remove Soraya as trustee of the shares, the court is faced with a dilemma. The problem is who should be installed in her place? Rafie's will (and Zahra's) provides for an alternative Estate Trustee (Fereshteh Hashami) but did not name an alternative trustee for the shares.

[60] The court has the power to appoint an alternative trustee both pursuant to statute and in the exercise of its inherent jurisdiction to supervise trusts. Ideally, the trustee would be a neutral person who understands the obligation to administer the shares for Zahra's benefit while also discharging the obligation to preserve their value for the future. This does not necessarily mean simply following Zahra's directions.

[61] Zahra is suggesting her daughter, Sohaila who has some business background and appears to have played something of a peacemaker role within the family. Sohaila, however, has sworn an affidavit in this proceeding and has also taken positions that may not be in the best interests of the corporation. A trust company or other professional does not appear to be a viable option.

[62] In my view the best solution is to permit the parties time to agree on an alternative person to act as trustee. Failing agreement, I will hear further submissions. This point was not addressed at any length at the hearing because the arguments were focused on whether or not any relief should be granted.

### **Summary and Conclusion**

[63] In conclusion, while the court will not make an order removing Soraya as director of the corporation, the court will make an order removing Soraya as trustee over the shares. An alternative trustee will be appointed who is either satisfactory to the parties or appointed by the court.

[64] I note that there had been discussion about mediation and I encourage the parties to consider that option. It might be beneficial to involve all of the family members with a view to reaching a comprehensive agreement about the future of the business, how Zarah's financial needs will be met and how all of the beneficiaries may share in future proceeds of sale.

[65] In the meantime, Soraya is entitled to the proceeds of Rafie's life insurance policy which are currently held in court. Those funds may be paid to her in full satisfaction of any claim to be reimbursed for the costs of Rafie's care.

[66] If necessary, I will hear submissions on costs.

[67] If it is necessary to schedule an appearance to name the trustee, for further direction or to argue costs, counsel may approach my office to obtain a date.

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Justice C. MacLeod

**Date:** August 13, 2025