IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pennington Estate v. Haffner,* 2025 BCSC 2277

Date: 20251119
Docket: S02618
Registry: Abbotsford

Between:

Nancy Elizabeth Stewart, as executor of the Estate of Carmen Pennington
Plaintiff

And

Margaret Ann Haffner
Defendant

Before: Associate Judge Krentz

Reasons for Judgment

In Chambers

Counsel for Nancy Stewart, as executor of the Estate of Carmen Pennington, deceased:	J. Sandhu
Counsel for Nancy Stewart, in her personal capacity and Jessica (Kathleen) Spence:	D.K. Magnus
Counsel for Margaret Haffner:	C.J. Stenerson
Place and Dates of Hearing:	Abbotsford, B.C. August 15, 2025 November 7, 2025
Place and Date of Judgment:	Abbotsford, B.C. November 19, 2025

Table of Contents

[1] In this application, the defendant Margaret Ann Haffner, seeks an order pursuant to Rule 22-5(8) of the *Supreme Court Civil Rules*, that this action be consolidated or be tried at the same time with *Haffner v. Stewart,* Abbotsford Registry File No. S05638. If such an order is made, the defendant further seeks an order that with respect to the actions:

> a. all documents listed and produced in one action shall be made available to the parties in the other action;
>
> b. examinations for discovery conducted in one action shall be for the purposes of both actions;
>
> c. all pleadings, transcripts, notices, admissions, demands, Interrogatories, replies and answers filed, served, delivered or produced in one action shall be made available to the parties in the other action;
>
> and same shall be open for use by the parties in either action as evidence without offence to the implied undertaking of confidentiality and subject to the directions of the Trial Judge.

BACKGROUND

[2] William John Pennington (“William”) and Carmen Pennington (“Carmen”) were married in 1976. Carmen had no children; and William had the following children from a prior relationship:

a) Margaret Ann Haffner (“Margaret”);

b) Nancy Elizabeth Stuart (“Nancy”);

c) Thomas William Pennington (“Thomas”); and

d) Melissa Ruth Lynne Hyland (“Melissa”).

[3] Nancy has an adult daughter, Jessica Kathleen Spence (“Jessica”).

[4] I will refer to the above-noted persons by their first names as was used during the hearing, intending no disrespect to any of them.

[5] William died on November 30, 2019 and Carmen died on June 15, 2022. At the time of his death, William was 95 years old; and at the time of her death, Carmen was 86 years old.

[6] During their marriage, William and Carmen resided in a home located at 33679 6th Avenue, in Mission, B.C.

[7] In 2004, William and Carmen executed reciprocal wills naming each other as executors and sole beneficiaries. The wills appointed Margaret as an alternate executor.

[8] Concurrent with the execution of the wills, Carmen and William added Margaret to the title of the matrimonial home as a joint tenant, allegedly for no consideration.

[9] After the death of William, Carmen executed a new will which directed that Nancy was to be the executor, with Jessica to be an alternate executor. The will directed that the residue of her estate was to be divided equally amongst Margaret, Nancy, Thomas and Melissa.

[10] Concurrent with the execution of the new will, Carmen also appointed Nancy and Jessica as her attorneys in an enduring power of attorney.

[11] At the time of Carmen's death, she held funds of approximately $167,000 in a credit union account, which passed to Jessica outside of the estate, as she had been added as a joint account holder with Carmen.

[12] In June 2022, Margaret transferred title of the 6th Avenue property to herself as the sole surviving joint tenant.

TRUST ACTION

[13] On July 14, 2022, Nancy in her capacity as executor of Carmen's estate, commenced an action claiming that Margaret held the 6th Avenue property in trust in favour of the estate.

[14] The next month, Margaret sold the property with the consent of the estate. The net sale proceeds are currently held in trust.

[15] In a response to the civil claim, Margaret alleges that she provided personal care to William for many years prior to his death; she contributed to the maintenance of the property, including payment of property taxes and insurance; and that at the time of the transfer, William and Carmen intended her to receive both legal and beneficial title to the property as a gift.

[16] In further response, Margaret alleges that William and Carmen had made significant financial gifts to both Nancy and Melissa and had provided no similar financial gifts to Margaret prior to the transfer.

MARGARET'S ACTION

[17] On May 24, 2024, Margaret commenced an action naming Nancy in her personal capacity and in her capacity as executor of Carmen's estate, along with Jessica as a defendant. Margaret's claim is that the funds in the credit union account, along with contents of a safety deposit box and other chattels were improperly taken by Nancy and / or Jessica, including using the power of attorney, and those assets are held by them in trust in favour of the estate.

[18] In her response to Margaret's claim, Nancy in her capacity as executor of Carmen's estate denies any wrongdoing and repeated the claims against Margaret which she advanced in the trust action, including that Margaret held the 6th Avenue property in trust for the estate.

[19] Nancy and Jessica, in their personal capacity, also filed a response to Margaret's claim, and in it deny that they wrongfully removed any of Carmen's chattels and that Carmen had surrendered the safety deposit box well before her death. They further deny that Jessica holds the credit union funds in trust for the estate as Carmen fully intended those funds to pass to Jessica as a gift, and that any changes that were made by Carmen to her investments was done under her own free will, without any input from Nancy or Jessica.

[20] Similar to Nancy's response in her capacity as executor, in the response filed by Nancy and Jessica in their personal capacity, they refer to the trust action and that they are seeking a declaration that Margaret holds the 6th Avenue property in trust for the estate.

[21] In Margaret's action, in addition to alleging that Nancy and/or Jessica breached their fiduciary duties owed to Carmen through the misuse of the power of attorney, she further seeks leave of the court pursuant to s. 151 of the *Wills, Estates and Succession Act,* S.B.C. 2009, c. 13 [*WESA*], that she may pursue her action on behalf of the estate and further seeks an order removing Nancy as the executor, to be replaced by Margaret.

[22] Neither Thomas nor Melissa are named as parties in the actions. However, in emails sent by Thomas in 2022, the same issues that were later raised in Margaret's action were discussed amongst the children. In them, Thomas raised his concerns regarding the changes Carmen made to her financial portfolio that passed outside of the estate.

STEPS IN THE ACTIONS

[23] On June 20, 2023, an examination for discovery of Margaret was conducted by Nancy, in her capacity as executor. No other discoveries have taken place in either action.

[24] The parties have exchanged lists of documents in both actions. In some instances, the same documents are listed in both actions.

[25] In August 2024, counsel for the estate sought counsel's availability for a summary trial application in the trust action, with a view for it to be set for hearing in November 2024. In response, Margaret's counsel proposed that the two actions be tried together. Counsel for the estate responded that they did not agree with the two actions being consolidated or tried together.

[26] In January 2025, Margaret delivered an appointment for discovery of Nancy, in her capacity as executor of the estate. The discovery was set for a date in March 2025.

[27] A Case Planning Conference ("CPC") was initially scheduled for May 9, 2025.

[28] Margaret's counsel cancelled the discovery of Nancy, as Margaret wanted to first seek an order for consolidation or joinder of the actions. The CPC was adjourned by consent.

[29] In the case plan proposal that was filed by Mr. Stenerson, he proposed that the actions be tried together. In the case plan proposal filed by Mr. Sandhu, he proposed that a summary trial, with an estimated length of two to three days, be set in the fall of 2025. At the conclusion of the hearing, I was advised that it may be heard in the first week of December 2025.

[30] In the case plan proposal that was filed by Mr. Magnus, he indicated that the joinder of actions was opposed at this time and that the summary trial application in the trust action should proceed before the scheduling of a trial in Margaret's action.

ANALYSIS

[31] Consolidation is most appropriate where the commonality in issues and parties in the multiple actions will mean that the disposition of one action will necessarily dispose of the issues in the other (*Liu v. Tsai*, 2017 BCSC 221 at para. 3). That same test need not be met for a joinder order where the matters are to be heard together (*Ecoasis Developments LLP v. Sanovest Holdings Ltd.*, 2025 BCSC 991 at para. 39).

[32] In *Raymond James Investment Counsel Ltd. v. Clyne,* 2018 BCSC 720, the court set out a two-step analysis to determine whether proceedings should be tried together:

1) whether the proceedings involve common claims, disputes and relationships upon review of the pleadings; and

2) whether the proceedings are so interwoven as to make separate trials undesirable and fraught with expense.

[33] The factors to be considered were summarized in *Callan v. Cooke*, 2020 BCSC 290 at para. 124, they include whether having actions heard together will:

a) create a saving in pre-trial procedures;

b) reduce the number of trial days taken up by the actions being heard together;

c) avoid serious inconvenience to a party being required to attend a trial in which they only have a marginal interest;

d) save the time and witness fees of experts;

e) dispose of all actions at the same time due to common issues of fact or law;

f) avoid a multiplicity of proceedings;

g) the relative stages of the actions;

h) whether the trial will be delayed and prejudice one or some of the parties; and

i) whether the refusal to join actions risks inconsistent results.

[34] In exercising its discretion under Rule 22-5(8), the court must ultimately decide whether the degree of commonality and intertwinement of the issues outweighs prejudice to the party opposing joinder. Put another way, the ultimate question is whether an order joining actions, to be heard together, makes sense and is in the interests of justice (*Ecoasis* at para. 40).

[35] In support of her application, Margaret submits the actions involve the same parties (whether named or interested) and the same estate. Neither action is at an advanced stage. Examinations for discovery have not been concluded, no conventional trial dates are set, and no party would suffer prejudice if the order sought was made. Rather, there would be a saving of time and expense if the status of all the disputed estate assets was determined in one action or trial.

[36] In opposing this application, Nancy in her position as executor, submits that the relationship between the parties in the two actions is too connected to permit consolidation. Margaret is the sole defendant in the trust action. Margaret's action

seeks to remove and replace Nancy as executrix of the estate. If Margaret is successful in replacing Nancy as the executrix of the estate, Margaret would be the sole plaintiff and sole defendant in the trust action. It is well established that a personal representative cannot bring an action against themself as that would be a conflict of interest (*Rodgers v. Rodgers Estate*, 2017 BCSC 518 at para. 59).

[37] Nancy further submits that it is prejudicial to the estate and its beneficiaries to further delay resolution of the trust action. The net sale proceeds remain in trust generating no income or interest and if recovered by the estate, they can be invested or disbursed. This outcome does not prejudice Margaret or her action. Nancy submits the trust action is at a stage where it can proceed to summary trial. Margaret has not obtained leave of court in relation to her action, which is a requirement before any litigation steps can be taken.

[38] In opposing this application, Nancy (in her personal capacity) and Jessica submit there are different procedural implications between an order consolidating two or more proceedings and that which requires the trials in the multiple proceedings are to be heard at the same time. They submit that consolidation is only appropriate where the commonality in issues and parties in the multiple actions will mean that the disposition of one action will necessarily dispose of the issues in the other action.

[39] They submit that the disposition of either action will not dispose of the other, so consolidation is not appropriate. This is especially true given that the parties and the issues are not the same.

[40] I agree that the disposition of either action will not necessarily dispose of the other. For example, if the trust action against Margaret is successful, that in and of itself will not dispose of the claim by Margaret that Nancy and Jessica misused the power of attorney and wrongly removed assets from the estate. Accordingly, a consolidation of the action may not be appropriate.

[41] With respect to the two-step analysis to join the actions for trial, I find that the actions have an interconnected relationship. They have common parties and where the parties may not be common, each action may require the testimony of witnesses who are either parties or a witness in the other action. For example, although he is not a party, Thomas raised concerns regarding the changes Carmen made to her financial portfolio that passed outside of the estate, so he may be a witness in Margaret's action. At the same time, in the trust action against Margaret, as a beneficiary Thomas may testify about the circumstances related to Margaret being added as a joint tenant to the 6th Avenue property. In other words, the parties and witnesses are involved in each of the actions, one way or another. It is also possible that Jessica would be called as a witness against Margaret in the trust action and she is a defendant in Margaret's action.

[42] Another example as to how the actions involve common claims, the responses filed by the parties largely mirror the claims that they advance in their respective actions. Likewise, documents that have been listed by a party in one action are to some extent duplicated in their list of documents for the other action. Accordingly, I find that the first step in the analysis to join the actions has been met by Margaret.

[43] In determining if the second step in the analysis has been met by Margaret, I have considered all the factors summarized in *Callan v. Cooke*. The prominent considerations include that having the actions tried together will likely create a saving in pre-trial procedures and reduce the number of trial days taken up by the actions. Both actions are at the early stage of the litigation and the joinder will allow for disposal of both actions at the same time, based on their common issues.

[44] I am also concerned that if the actions proceeded separately, there will be a risk of inconsistent results. As noted earlier, it is likely that the parties and witnesses would be testifying in both actions. The credibility of the parties and witnesses may be put in issue, so there is a risk of inconsistent findings of credibility.

[45] Lastly, there may not be prejudice to any of the parties, as trial dates have not yet been set. Nancy, in this action, may pursue a summary trial application seeking on behalf of the estate to recover the sale proceeds currently held in trust. I do not consider a joinder order will prevent Nancy from pursuing her summary trial application. If I am wrong in reaching that conclusion, I find that such prejudice is outweighed by the other factors that favour joinder.

[46] Nancy, in her position as executor, submits that without obtaining leave of the court, Margaret does not have standing in this application. Section 151 of *WESA* provides that a beneficiary or intestate successor, with leave of the court, may sue (or defend a suit) in the name of the personal representative of the deceased person.

[47] While she acknowledges that the court may grant leave to a party under s. 151 of *WESA* after they have already filed a notice of civil claim, Nancy submits that if a party chooses to seek leave of the court after filing a notice of civil claim, they must apply for leave of the court before taking any further litigation steps.

[48] In support of this position, Nancy relies upon *dicta* contained in *Chung v. Chung*, 2022 BCSC 1396. Justice Majawa stated the following at para. 39:

> It seems to me that the appropriate approach contemplated by s. 151(1.1) would be to file a NOCC in which the specified persons are named as plaintiffs and to clearly indicate in the relief sought section that the plaintiffs are seeking leave under s. 151(1) of *WESA*.

[49] That is exactly what Margaret has done in para. 1, under the heading “Relief Sought”, in her notice of civil claim.

[50] However, in the same paragraph, Majawa J. noted:

> … As stated earlier, no further steps would be permitted to be taken by the specified persons until, and if, such leave was granted.

[51] I conclude that the reference to further steps in the litigation refers to steps taken on behalf of the estate. In para. 38, Majawa J. noted that “s. 151(1.1) does not negate the need for … [the plaintiffs] to obtain leave to pursue the claim on behalf of

the estate. As leave is required, the plaintiffs would not be permitted to take any further steps until it is granted".

[52] In this application, I do not find that Margaret is taking steps on behalf of the estate, rather, she is seeking an order to join the actions; and at a later date, she would be required to seek leave under s. 151 of *WESA* to pursue claims on behalf of the estate.

[53] In opposing this application, Nancy invites the court to make a finding that Margaret is not acting in good faith, which is a requirement under s. 151(3)(a).

[54] I do not find that is a relevant consideration on this application, rather, it will be a consideration of the court when, and if, Margaret seeks leave pursuant to s. 151 of *WESA*.

[55] Likewise, it is not a relevant consideration in this application that Margaret may not be successful in obtaining leave as she cannot be substituted as an executor in place of Nancy, as that would create a situation where she would be suing herself on behalf of the estate. Again, that is an issue that can be determined at the leave application, as it is unlikely that Nancy, as an executor, would be entirely replaced by Margaret, as Nancy could be given a limited purpose grant to continue the action against Margaret. In the alternative, Margaret could be successful in having Nancy removed as the executor, to be replaced by a non-party, such as Thomas.

[56] For the reasons set out above, I dismiss the application for consolidation of the actions but will order that this action (Abbotsford File No. S02618) and the action *Haffner v. Stewart* (Abbotsford File No. S05638) be tried at the same time. I further order that with respect to both actions:

a. all documents listed and produced in one action shall be made available to the parties in the other action;

b. examinations for discovery conducted in one action shall be for the purposes of both actions;

> c. all pleadings, transcripts, notices, admissions, demands, Interrogatories, replies and answers filed, served, delivered or produced in one action shall be made available to the parties in the other action;
>
> and same shall be open for use by the parties in either action as evidence without offence to the implied undertaking of confidentiality and subject to the *Supreme Court Civil Rules* and the directions of the Trial Judge.

[57] As Margaret has been successful in her application, I am of the view that she is entitled to costs of the application. If any of the parties seek a different order with respect to costs, they have leave to make brief written submissions within 10 days of receiving a copy of these Reasons. The other parties, if they wish, then have 10 days after receiving the written submission to file their response.

"Krentz A.J."