

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: ***Anderson Estate v. Polson,***  
2003 BCSC 1721

Date: 20031117  
Docket: S067937  
Registry: New Westminster

Between:

**The Estate of Astor Arthur Anderson  
also known as A.A. Anderson,  
by its Trustee Phillip A. Anderson**

Plaintiff

And

**Ronald John Polson and  
Polson Investments Ltd.**

Defendants

Before: The Honourable Mr. Justice Truscott

**Reasons for Judgment**

Counsel for the Plaintiff: T. Fowler

Counsel for the Defendant: G. Woitas

Date and Place of Hearing: November 6 and 7, 2003  
New Westminster, B.C.

[1] The estate of Astor Arthur Anderson, also known as A.A. Anderson, claims against the defendants for recovery on two demand notes made out to A.A. Anderson in the total sum of \$255,000.

[2] The first demand note was dated December 11, 1991 and was signed by the defendant Polson Investments Ltd., for the amount of \$200,000. It carried an interest rate of nine percent.

[3] The second demand note was dated February 1, 1998 and was signed by the defendant Ronald John Polson for the amount of \$55,000. It carried a zero interest rate.

[4] Following the making of the demand note of December 11, 1991, A.A. Anderson signed another document dated December 31, 1991 that purports to forgive the debt evidenced by the demand note on certain terms. The full document reads as follows:

Lopez Washington U.S.A.  
Dec. 31, 1991

TO WHOM IT MAY CONCERN:

Being of sound mind (and body!) on the above date..I do hereby declare that on Dec. 11, 1991 Ronald J. Polson President of Polson Investments Ltd. of 1519 W. 35<sup>th</sup> Av Vancouver B.C. Canada V6M 1H1 did sign a DEMAND NOTE payable to me in the amount of \$200,000.00 (Canadian) with interest at 9% (\$1500.00 per month..until the DEMAND NOTE is paid.

At the time of my death, this DEMAND NOTE shall be considered paid, and returned to Polson Investments Ltd. ... HOWEVER, if my wife Helen A. Anderson survives me, then Polson Investments Ltd. must provide a legal document duly signed, notarized etc. stating they will pay Helen A. Anderson the sum of \$1500.00 (Canadian) per month, as long as she shall live.

"A.A. Anderson"

Before me appeared A.A. Anderson, known to Me, and he signed this of his own free will,  
David F. Schwartz,  
Attorney for State of Washington  
Residing in San Juan County  
This 31<sup>st</sup> day of December, 1991  
"David F. Schwartz"

I, Ronald John Polson have read and do understand the above agreement and agree to abide by the terms contained therein. Dated at Vancouver, B.C. this 2<sup>nd</sup> day of January, 1992.

"Ronald J. Polson"  
(per) "Ronald J. Polson" President  
Polson Investments Ltd.

Witness to Ronald J. Polson  
"Yale M. Chernoff"  
Notary Public  
In and for the  
Province of British Columbia

[5] Following the making of the demand note dated February 1, 1998, A.A. Anderson signed a statement added to that note, dated March 31, 1999, which reads as follows:

March 31, 1999

The above loan to Ronald J. Polson in the amount of \$55,000 is to be forgiven at the time of my death and upon the same terms as the \$200,000 loan to Polson Investments Ltd. There is no interest owing other than the regular \$1,500. payments on the \$200,000 loan.

"A.A. Anderson"

[6] A.A. Anderson passed away on June 13, 1999, with the two notes outstanding.

[7] The only real issue in the lawsuit is the effect to be given to the document dated December 31, 1991 and the additional statement dated March 31, 1999, upon the death of A.A. Anderson.

[8] The estate of A.A. Anderson alleges that as both documents were operative only on the death of A.A. Anderson, they constitute testamentary dispositions that do not satisfy the requirements of s. 4 of the *Wills Act*, R.S.B.C. 1996 Chap. 489. That section requires that the testator's signature be made or acknowledged in the presence of two or more attesting witnesses present at the same time who subscribe the document in the presence of the testator. The December 31, 1991 document was witnessed by only one person, David F. Schwartz, and the March 31, 1999 additional statement was not witnessed at all.

[9] The defendants submit that the December 31, 1991 document and the March 31, 1999 note are not testamentary dispositions at all but are contracts made between A.A. Anderson and Polson Investments Ltd. The consideration provided by Polson Investments Ltd. for the forgiveness of these debts is submitted to have been Ronald Polson's continuing friendship with A.A. Anderson. Alternatively, it is submitted that the obligation of Polson Investments Ltd. set out in the December 31, 1991 document to continue to pay \$1,500 Canadian per month to Helen A. Anderson, as long as she lives, if she survived A.A. Anderson, was sufficient consideration.

[10] The principles of testamentary dispositions were discussed by the Court of Appeal in **Wonnacott v. Loewen** (1990) 44 B.C.L.R. (2d) 23. In that decision Seaton J.A. for the court accepted the test from **Cock v. Cooke** (1886) L.R. 1 P. 241, as the correct test:

It is undoubted law that whatever may be the form of a duly executed instrument, if the person executing it intends that it shall not take effect until after his death, and it is dependent upon his death for its vigour and effect, it is testamentary.

[11] **Elliott v. Turner and Turner** (1944) 2 D.L.R. 313 (Ont. H.C.), was also cited in **Wonnacott** with approval. In that decision the following facts were noted as appearing where

documents are held to be testamentary: 1) no consideration passes, 2) the document has no immediate effect, 3) the document is revocable, 4) the position of the deceased and the donee does not immediately change.

[12] Applying the principles to the facts of this case I find that the document of December 31, 1991 is a testamentary disposition. A.A. Anderson intended that it would only take effect on his death when the demand note of December 11, 1991 would be considered paid. The document was dependent upon his death for its vigour and effect.

[13] There was no consideration given by Polson Investments Ltd. for this forgiveness. I reject the defendants' submission that Mr. Polson's friendship with A.A. Anderson was consideration in law. Mr. Polson made it clear in his evidence that his friendship with A.A. Anderson did not depend at all on this document being executed by A.A. Anderson. In fact he protested when A.A. Anderson offered this document to him.

[14] I do not see the agreement of Mr. Polson or Polson Investments Ltd. to continue to pay Helen A. Anderson \$1,500 per month, if she survived A.A. Anderson, as impacting on the testamentary nature of the document. The forgiveness was not to take effect until the death of A.A. Anderson and only then,

if his wife Helen A. Anderson survived him, would the interest payment of \$1,500 per month continue.

[15] The document had no immediate effect, it was revocable as A.A. Anderson could have recovered on the note during his lifetime, and the position of A.A. Anderson and the defendants did not immediately change. The defendants did make themselves contingently liable to pay Helen A. Anderson \$1,500 Canadian per month as long as she lived, but that was dependent entirely on her surviving A.A. Anderson. The defendants were not bound to pay any more interest than they had been paying on the note itself, and if A.A. Anderson had not forgiven the debt at his death, his estate would have been thereafter entitled to recover that interest in any event.

[16] In my opinion the fact requirements set out in *Elliott v. Turner* are present here.

[17] With respect to the additional statement of March 31, 1999, on the note of February 1, 1998, for \$55,000, since the loan of \$55,000 was also to be forgiven only at the time of A.A. Anderson's death upon the same terms as the \$200,000 note, it is my conclusion that it constitutes a testamentary disposition as well for the same reasons. In the case of this statement there was no obligation put upon either of the defendants at all.

[18] The defendants take the position that although Ronald John Polson personally signed this \$55,000 note, it arose out of a \$50,000 debt of Polson Investments Ltd. and should be considered as a debt of the company and not of Mr. Polson personally. Mr. Polson's evidence was that the note was put in his name only to reflect that he owed \$5,000 in interest on the \$50,000 debt to Polson Investments Ltd. and once he paid off the \$5,000 interest the loan was to revert to the company only. His evidence at trial was that he did pay off \$5,000 in interest, although he had given evidence at his examination for discovery that he had not. He allowed at trial that maybe he was wrong in saying that he paid the interest.

[19] I must reject Mr. Polson's submissions as well. These two loans of \$200,000 and \$55,000 were part of a series of business and personal loans made by A.A. Anderson to the defendants through the years. Some of the loans through the years were to Mr. Polson personally and some were to Polson Investments Ltd. The note of December 11, 1991, was clearly an obligation of only the company. According to the evidence it was a consolidation of existing loans up to that point in time. On the other hand the note of February 1, 1998, was clearly an obligation of Mr. Polson personally. The statement



A.A. Anderson added to the note and signed indicates that he considered this a personal loan as well.

[20] Mr. Polson thought he had paid this note down to \$50,000 but agreed that he might be mistaken. I cannot accept this uncertain evidence that he gave.

[21] There was evidence at trial concerning the ongoing state of the relationship between A.A. Anderson and Mr. Polson through the years but I do not have to consider this evidence in light of my findings that the document of December 31, 1991 and the statement of March 31, 1999, are unenforceable as being testamentary dispositions that do not comply with the ***Wills Act***.

[22] The plaintiff will have judgment against Polson Investments Ltd. on the demand note of December 11, 1991, for \$200,000 plus contractual interest of nine percent per annum from July 1, 1999, to the date of this judgment. The evidence was that contractual interest was paid up to and including June, 1999.

[23] The plaintiff will also have judgment against Ronald John Polson on the demand note of February 1, 1998, for \$55,000.

[24] The plaintiff will have its costs against both defendants on scale 3 after taxation thereof.

"J. Truscott, J."  
The Honourable Mr. Justice J. Truscott