

Province of Nova Scotia)
County of Lunenburg)

IN THE COURT OF PROBATE
Cite as: Tanner Estate (Re), 2009 NSPB 1

IN THE MATTER OF: The Estate of Paul George Wallace Tanner, deceased

DECISION

Decision: July 24, 2009

Counsel: David Hirtle, Proctor for the Estate
Patrick A. Burke, Solicitor for the Board of Trustees of Common Lands

Background and Findings:

On July 23, 1998 an action was commenced in the Supreme Court of Nova Scotia - The Board of Trustees of Common Lands v Paul George Wallace Tanner, Brenda Guitare, Alfred Ronald Joseph Guitare. This action was started with respect to certain lands located at Stonehurst, Lunenburg County, Nova Scotia. Paul George Wallace Tanner died on January 17, 2004. Upon the filing of the application for a grant of probate these lands were included as an asset of the estate. The lands were also included as an asset of the estate in the Inventory. The lands were the major asset of the estate.

Ricky Nelson Tanner, continued the action in his capacity as Personal Representative of the Estate of Paul George Wallace Tanner. The matter was heard before the Honourable Mr. Justice G. Warner who granted a Declaration that the Plaintiff, The Board of Trustees of Common Lands, were the legal owner of the lands. He also ordered that nominal damages in the amount of \$100.00 are awarded against the Estate of Paul George Wallace Tanner only. He also ordered “the Defendant, the Estate of Paul George Wallace Tanner, shall pay to the Plaintiff its taxed costs in the amount of \$20,671.66 (fees \$11,540.00 disbursements \$9,131.66)”.

On March 2, 2005 The Board of Trustees of Common Lands filed in the Court of Probate a Notice of Claim (S.48(1)) in the Estate of Paul George Wallace Tanner for an amount to be determined which would include the amount in the Statement of Claim and specific damages for removal of mobile home and related buildings from the property and costs.

On January 3, 2006, Ricky Nelson Tanner filed a Notice of Claim for \$46,414.50 for legal fees in connection with the Supreme Court application paid by Ricky Nelson Tanner on behalf of the Estate. An Order was issued by Justice G. M. Warner on March 24th 2006 ordering the Defendant, the Estate of Paul George Wallace Tanner, to pay to the Plaintiff, The Board of Trustees of Common Lands the amount of \$20,671.66 (Fees \$11,540.00 and Disbursements \$9,131.66).

On June 2nd, 2009 an Order - Insolvent Estate was issued. An Application to Pass Accounts by a Hearing was filed and issued and was to be served on the beneficiaries and all creditors of the estate. A Notice of Objection to Accounts was filed by Patrick A. Burke, Q.C. on behalf of The Board of Trustees of Common Lands.

Issue:

Do the legal fees paid by Ricky Nelson Tanner personally in relation to the foregoing trespass Action have priority for payment out of Estate assets over the costs of the Action which were ordered to be paid pursuant to the Supreme Court Order?

Decision:

When deciding the settlement of an insolvent estate I refer to Section 83(3) of the *Probate Act* which sets out the following order of debts to be paid:

- (a) first - in payment of funeral expenses, including a headstone, to the extent such express appear reasonable;
- (b) second - in payment of probate taxes and court fees;
- (c) third - in payment of the personal representative's commission and legal fees, on an equal footing;
- (d) fourth - in payment of reasonable medical expenses incurred during the last thirty days of the deceased's life, on an equal footing;
- (e) fifth - in payment of all other debts.

The final account shows the following:

Assets as per Inventory:

Savings Account	\$ 3,656.57
Shares	15, 271.95
Real Property	<u>125,000.00</u>
Total	143,928.52

Adjustments to value of Inventory:

Real Property	-125,000.00
Shares	- 7,634.28
Bank Account	<u>64.00</u>
Total	-132,570.28

Income of the Estate totaling 22,002.17

Disbursements paid by the Estate

Receiver General	222.04
Conrad & Feindel	1,063.75
Trustees of Common Lands	100.00
Receiver General	1,256.33
CD Consulting	322.31
Receiver General	<u>15.00</u>
Total	2,979.43

Disbursements paid by Personal Representative, Ricky Nelson Tanner - not reimbursed

Probate Fees	1,355.00
Royal Gazette	55.20
Probate Fees	88.25
Income Tax	5,699.06
Income Tax Preparation	400.00
Income tax Preparation	<u>90.00</u>
Total	7,687.51

Disbursements paid by Barbara Tanner (spouse) - not reimbursed

Funeral Expense	5,260.47
Headstone	<u>3,300.00</u> reasonable??
Total	8,560.47

Claim of Ricky Nelson Tanner 46,414.50

Claim of Board of Trustees of Common Lands \$20,671.66.

This leaves approximately **\$30,380.98** of undistributed property.

In Estate Matters in Atlantic Canada it is stated at page 370:

“...the one creditor whose claim is generally superior to that of all others is revenue Canada, no matter what the province statutes may say!”

Therefore Mr. Tanner would be reimbursed the **\$5,699.06** he paid to **Revenue Canada**.

Under the terms of Section 83 of the Probate Act the first item to be paid would be the **funeral expenses**, therefore Barbara Tanner would be reimbursed for her expenses of **\$8,560.47**.

Second item to be paid under the Probate Act would be payment of all **probate taxes and court fees**. The Personal Representative, Ricky Nelson Tanner, would be reimbursed **Probate fees of \$1,355.00 and \$88.25 totaling \$1,443.25, and the Royal Gazette of \$55.20.**

This leaves an approximate balance of **\$14,623.00**.

Third item to be paid, is the Personal Representative’s commission and legal fees.

Fourth item to be paid, is medical expenses, which there are none.

Fifth item to be paid, is payment of all other debts.

I have reviewed the briefs and information provided to me and have determined that the claim of The Board of Trustees of Common Lands and Ricky Nelson Tanner should be distributed pro rata.

Dated this 24th day of July, 2009.

Claire J. Feener
Registrar of Probate