

SUPREME COURT OF NOVA SCOTIA

Citation: *Gracie Estate v. Gallagher*, 2024 NSSC 82

Date: 20240321

Docket: 528073

Registry: Sydney

Between:

Estate of Cameron Gracie Jr.

Plaintiff

and

Renee Gallagher

Defendant

and

Lori Nugent

Other

DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: February 27, 2024, in Sydney, Nova Scotia

Counsel: David Coles K.C., for Renee Gallagher
Alan Stanwick, for Lori Nugent

By the Court:

[1] Cameron Gracie died on April 21, 2021, at the age of 50. He had a house in Little Bras d’Or. In his will he gave a life interest in that house to his friend Lori Lynn Nugent. She was also named as the Executor of the will. Everything else he had was given to his two nephews, Jordan Gallagher and Lucas Gallagher. They would get the house in Little Bras d’Or when Lori Nugent’s life interest ended. The boys are still minors. Their mother Renee Gallagher is Cameron Gracie’s sister. On behalf of the boys, she wants to end Lori Nugent’s life interest in the house now. She says that Ms. Nugent is no longer living in the house and is no longer maintaining it or repairing it. All those things are required under the terms of Mr. Gracie’s will.

[2] Mr. Gracie’s will says that Lori Nugent will have the house at 612 Villa Drive, Little Bras d’Or, for her life or “until she ceases to use the property as her principal residence”. If she fails to reside in the property for a “continuous period of 90 days”, she is deemed to have changed her principal residence and her life interest is terminated. She would be required to pay all expenses associated with the property, “including the costs of maintenance, assessments, insurance premiums, taxes, water charges, and repairs to the property”. The will goes on to say that for greater certainty, Ms. Nugent may work outside Nova Scotia for more than 90 days but should be considered to be still residing at 612 Villa Drive so long as she continues to maintain the property and pay all expenses associated with it during her absence.

[3] That is all contained in paragraph 4(b) of the will dated May 28, 2019. It means that the home is there for Lori Nugent to live in, for as long as she lives in it and maintains it. If she does not live there, as her principal residence, the life interest is terminated. Unless she is working away, a period of non-residence for 90 days is deemed to mean a change in principal residence.

Issue

[4] The issue is less one of interpretation of the will and more a factual determination of whether Lori Nugent is residing at 612 Villa Drive and properly maintaining that property.

[5] Ms. Gallagher is asserting that Ms. Nugent does not reside at 612 Villa Drive, and that she has failed to maintain and repair the home. It is for her to prove one of those things on the balance of probabilities. And there is no “smoking gun”

here. There is, for example, no lease by which the possession of the property is legally granted to someone else. There is no evidence that the property has been uninsured or that the taxes and utilities have not been paid. Ms. Gallagher relies on circumstantial evidence by which she says an inference can be drawn that Ms. Nugent is not living in the house. She says that the water bills are not consistent with those of a house in which someone is living. She says that she has seen Lori Nugent's car in Sydney Mines on numerous occasions at the house that is still owned by Ms. Nugent. And she has seen Lori Nugent arrive at 612 Villa Drive and stay for only 5 minutes on a few occasions. She hired a private investigator who observed the same kinds of things over the course of 2 days. In her view, all of that adds up to prove that Lori Nugent is no longer residing in the home.

[6] Ms. Gallagher says that the house and property have been left to deteriorate. There has been material left on the property and the lawn has not been kept mowed. The deck has loose boards. She says that the sewer system has leaked onto her mother's property next door.

[7] Lori Nugent says that she has been living there, except for the times when she has been working out of the province, as permitted by the will. She says that she has maintained the property and done repairs as needed.

Nature of the Evidence

[8] This matter proceeded by way of affidavit evidence with cross-examination. Affidavits of Lori Nugent and Karen McCormick were filed. Both affidavits were properly confined to statements of fact observed by and within the knowledge of the person who swore the affidavit.

[9] An affidavit and supplemental affidavit of Renee Gallagher was filed. An affidavit and supplemental affidavit of her mother, Linda Gracie was filed. The affidavit of Bill Burke, a private investigator retained by Ms. Gallagher was filed. That affidavit attached his report. Mr. Burke's affidavit and report were properly confined to what he observed.

[10] Affidavits are legal documents. Usually they are drafted by lawyers, taking care to follow the rules that govern their content. They are not supposed to be colourful. They may even tend toward being a bit boring. They are not intended to serve as the person's pitch to the judge, including the affiant's opinions, their summary of the information obtained from others, their views about what inferences should be drawn from evidence, and their speculations about what

might or might not have happened. The rules of evidence apply to them. This case did not involve the almost ritual excising of improper portions of affidavits. No objections were made to admissibility at the outset.

[11] But Ms. Gallagher's affidavit contained several statements that should not be included in an affidavit.

August 16, 2023 Affidavit

[12] Paragraph 4: Ms. Gallagher says that in February 2023, she inquired of the estate lawyer why she had received a letter from him saying that Ms. Nugent could be found at 6 Convent Street, and he responded, "It's my understanding that Lori is back and forth between the homes." She said that she told the lawyer that Ms. Nugent had not been present at 612 Villa Drive for many months because the same two lights were left on, and the driveway was not shovelled. "It was only after that that she returned to the property on the 6th, 7th and 8th of February to change the lights being left on to create the impression someone was living on the property." Mr. Coles, for Ms. Gallagher argued that the statement from the lawyer was not hearsay because it was not tendered for the truth of its contents. Even if that is the case, Ms. Gallagher was not in a position to speculate about what Ms. Nugent did on the property or the reason why she may have changed light bulbs over the course of three days. The statement is at best, a form of argument.

[13] Paragraph 5: Ms. Gallagher refers to water usage increasing after tenants moved into the property. Ms. Gallagher has no personal information that the property at 612 Villa Drive was ever, at any point, rented to anyone.

[14] Paragraph 10: Ms. Gallagher attaches a chart setting forth "observations made" in respect of 612 Villa Drive. Some of those observations were made by her. Some were made by her mother. Some make no reference at to who made the observations.

[15] Paragraph 15: Image 11 is said to be of "Tenant Vehicles" present on the evening of July 21. Once again, Ms. Gallagher has no personal information as to whether there were any tenants at 612 Villa Drive.

Supplemental Affidavit, February 1, 2024

[16] Paragraph 2: Ms. Gallagher provides information from Cape Breton Regional Municipality about the water consumption at 612 Villa Drive. She

references Ms. Nugent's evidence about working in New Brunswick for 14 days and says that during the billing cycle Ms. Nugent used only 3,000 litres. "This would suggest, based on the consumption chart that this is not Ms. Nugent's primary residence." That is argument. It has no place in an affidavit.

[17] Paragraph 3: Ms. Gallagher notes that a shower uses 225 litres of water and during the period from October to December 2022, Lori Nugent could have showered 4 times but not used water for anything else given the consumption. "In my opinion this is not reasonable for someone living in the home." That is clearly and obviously an opinion. It should not be in a party's affidavit.

[18] Paragraph 6: Ms. Gallagher notes that Ms. Nugent's evidence claims that she took possession of the home in May 2021 and has lived there ever since. "Why would the water account statement show the mailing address of 6 Convent Street, Sydney Mines, when that home was being occupied at different times by tenants, according to Ms. Nugent, not being used as her residence." That paragraph contains no information whatsoever that it is within the knowledge of the affiant Ms. Gallagher. It is a rhetorical question. It is clearly argument and should never have been included in an affidavit.

[19] Paragraph 11: Ms. Gallagher describes the layout of the home at 612 Villa Drive. "In Ms. Nugent's Affidavit, she claims she lived in this home for a period of 7 months with 4 adults and a baby, while her daughter lived in her 3 bedroom, 2 bath home alone at 6 Convent Street, Sydney Mines. In my opinion, this makes no sense." That is a form of argument expressed as an opinion. It should not have been included in an affidavit.

[20] Paragraph 18: "Ms. Nugent has failed to satisfy her obligations required for her to keep her life interest." Once again, that is an argument.

[21] Ms. Gallagher's mother, Ms. Linda Gracie swore 2 affidavits. In the affidavit of August 23, 2023 at paragraph 6 she says that starting on February 8, 2023, she noticed a woman and man living at the house. "I have been informed by an individual familiar with this situation that Karen McCormick commenced living in the property as tenants effective February 8th." At the hearing, counsel for Ms. Gallagher, David Coles K.C. asked Ms. Gracie to provide the identity of the undisclosed informant, familiar with the situation. It was Renee Gallagher. What is entirely baffling is how an affidavit can be filed with the phrase "I have been informed by an individual familiar with this situation".

[22] When an affiant, particularly a party, wants to use the phrase, “in my opinion” that is an almost sure sign that what they want to do is to offer an opinion or make an argument. They cannot do either. A party is not an expert and cannot be an expert. They cannot swear or affirm in an affidavit about what they believe to be reasonable or unreasonable or what they believe makes or does not make sense.

[23] The clear rules that apply to the contents of affidavits have been established now for decades. When they are not followed it is reasonable to question how the affidavits could have been filed at all.

Ms. Nugent’s Residences

[24] Lori Nugent owns 6 Convent Street in Sydney Mines. She says that when Cameron Gracie died, in April 2021, and she was given a life interest in the property, she decided to stay at 612 Villa Drive. In summary, her evidence is that she has continued to live at 612 Villa Drive since then. She has worked outside the province for periods of time. Her daughter has lived there periodically with her. Another family lived there with her for a while. But she has never rented out 612 Villa Drive to anyone else and has not lived at 6 Covent Drive as her residence since the end of May 2021. For a while during the summer of 2021, she spent times at both houses but in September 2021 she moved all her belongings into 612 Villa Drive.

[25] Ms. Nugent said that she left Cape Breton and worked in Alberta from May 31 to July 5, 2021. She had her daughter check in on the property while she was away. From July 5, 2021 until the end of September 2021, she stayed at 612 Villa Drive, but also spent time at her house on Convent Street. In September 2021 she moved all her belongings into Villa Drive.

[26] She rented her place on Convent Street from October 2021 to May 2022 to Savannah Groves. She and her daughter Madelyn lived at 612 Villa Drive. In April 2022, from April 17-29, she worked in Alberta.

[27] In June 2022, when Savannah Groves’ tenancy was at an end, Madelyn moved into 6 Convent Street, while Ms. Nugent remained at 612 Villa Drive. She worked in New Brunswick for a week in August 2022, but otherwise resided at Villa Drive. Madelyn remained at 6 Convent Street until the end of August 2023.

[28] At that time Ms. Nugent decided to rent 6 Convent Street from September 1, 2023 until the present, she has rented that property to Avery Sutherland and Joanna Johnson.

[29] On February 5, 2023, Ms. Nugent's friend, Karen McCormick moved in with her at 612 Villa Drive. She brought with her, her daughter, her daughter's boyfriend and their infant daughter. They needed a place to stay for a while and they remained there until the end of August 2023, when they found their own place. No rent was paid. Ms. McCormick and her family were not tenants at Villa Drive and evidence of both Ms. McCormick and Ms. Nugent was that Ms. Nugent lived in the property. Before Cameron Gracie died, he converted some basement rooms into bedrooms so he could use the house as an Airbnb business. There are three bedrooms in the home.

[30] Ms. Nugent said that since she took possession of 612 Villa Drive in early May 2021, she has paid all expenses associated with it, including maintenance, assessments, insurance premiums, taxes, water charges, and repairs. She said that she has maintained it when she was working outside Cape Breton. From May 2021 until now she has either lived in the house or been working away and maintaining it.

The Inference of Non-residence

[31] Renee Gallagher says that Lori Nugent is not telling the truth. She says that Lori Nugent has not been living at 612 Villa Drive. Of course, she has not been there the entire time watching the house. She lives in Porters Lake. Neither she, nor her mother Linda Gracie, have been inside the home since Cameron Gracie's death. But she says that she infers that the house has been unoccupied or rented to tenants. Her "opinion" is that Lori Nugent is not living in 612 Villa Drive, but she cannot say that for a fact. She can provide facts or evidence from which she says that is the most reasonable inference that can be drawn.

[32] The evidence that she provided can be put in two categories. The first is based on observations by her and by the private investigator whom she hired, Bill Burke of BurkeCo Investigations in Dartmouth. The second is information on water usage in the property.

Observations

[33] Ms. Gallagher said that she drove by Lori Nugent's house at 6 Convent Street in January 2022. Her car was in the driveway and the shoveling was "consistent with her occupying the property as a residence". This was at the times that Ms. Nugent says she had rented 6 Convent Street to someone else. Having the driveway shoveled is consistent with anyone occupying the home. The presence of Ms. Nugent's car there on that occasion is hardly evidence that she was living there.

[34] At some point Ms. Gallagher asked the estate lawyer, Mr. Irvine, why he had sent her a letter saying that Lori Nugent could be found at 6 Convent Street. He told her that she was back and forth between the homes. Mr. Irvine was not called as a witness. There is no affidavit from him. There is nothing written from him about where Ms. Nugent could be found at that time and no explanation for the phrase "back and forth between the homes" if that is, in fact, a quote of what he said. But the response is not intended to prove that Ms. Nugent was back and forth between the two homes.

[35] Ms. Gallagher said that after a later discussion with Mr. Irvine, in which she told him that Lori Nugent was not living at 612 Villa Drive, Ms. Nugent returned to the property to change the lightbulbs. Ms. Gallagher said that they were being left on to "create the impression that someone was living in the property." Ms. Gallagher can say what she observed but she certainly cannot properly speculate about Ms. Nugent's intent and cannot even say whether Mr. Irvine reported the conversation with her to Ms. Nugent.

[36] Ms. Gallagher kept a record of observations of 612 Villa Drive between November 17, 2022 and July 21, 2023. There are 23 observations recorded. Five of those are Renee Gallagher seeing that Lori Nugent's car was parked at her own property at 6 Convent Street. Those were, January 22, February 28, March 31, April 1, again on April 1 (putting a dog into the hatchback of another vehicle) and yet again on April 1, this time travelling near Convent Street and remaining there. Five observations of Lori Nugent's car parked in the driveway of 6 Convent Street are not from Renee Gallagher at all, but are from Linda Gracie, her mother. Those were March 21, March 30, April 9, April 11, and June 12. Four observations are from Bill Burke, the private investigator, who was said to have observed Ms. Nugent "coming and going" from 6 Convent Street on March 28 and 29 and saw her car parked at 6 Convent Street on April 3 and 4. Those are not consistent with the information contained in the investigator's report. Mr. Burke was in Cape Breton observing Ms. Nugent on March 29 and 30. He made no observations about

April 3 or 4. Ms. Gallagher's affidavit also refers to other observations made by her mother Linda Gracie. On three occasions Ms. Gracie observed Ms. Nugent at 612 Villa Drive for 5 minutes each time. "The 2 lights left on all the time were changed." It is not clear whether they were changed on each occasion. There are three references to "tenant vehicles" being present. Presumably the observation was made by Ms. Gallagher, though the document does but say. There is nothing to indicate what vehicles they were or how the person who observed the vehicles knew who they belonged to or who were tenants at 612 Villa Drive. There is no evidence that there were any tenants at 612 Villa Drive.

[37] An affidavit from Bill Burke was filed. It attached his report.

[38] In that report Mr. Burke says that "it appears" that Karen McCormick resides at 612 Villa Drive however "there are other indicators suggesting she resides at 6 Ashley Street, Sydney Mines". The report does not say what any of the indicators are. Essentially, the investigator was in the area for two days, March 28 and 30. On April 13, 2023 he wrote his report. He saw Lori Nugent at 6 Convent Street on March 28 at about 3:30 pm. The car was there for 3 minutes before leaving. On March 30, 2023, Mr. Burke saw Ms. Nugent's car parked in the driveway of 6 Convent Street at 11:00 am and saw it leave at close to 4:00 pm that day. The car went to Shopper's Drug Mart, returned to 6 Convent Street at 4:28 pm and parked briefly before driving off. The vehicle went to another address in Sydney Mines, then returned to 6 Convent Street at about 5:30 pm. The investigator saw nothing further and left at 6:00 pm. Lori Nugent's car was going to and from 6 Convent Street The investigator's evidence does not indicate whether the car, or Ms. Nugent, stayed there all night or returned to 612 Villa Drive at some point.

[39] Those observations allow for the inference that Ms. Nugent frequented the property at 6 Convent Street Sydney Mines. She owns that property. This was at the time when her daughter Madelyn was staying at the property with her newborn child.

Water Use

[40] Renee Gallagher says that she received a summary of the municipal water charges for 612 Villa Drive, for the periods from October 5, 2022 to January 3, 2023, and January 4, 2023 to April 4, 2023. She says that the statement "clearly shows" that there was almost no water usage from July 2022 to January 3, 2023,

and that this is inconsistent with the house being occupied. The water charges increase on the May bill after she says tenants moved in part way through February. She says that putting tenants in the building is inconsistent with it being used by Lori Nugent as a principal residence. Lori Nugent says that at no time was 612 Villa Drive rented to tenants.

[41] The water usage evidence is based on a water consumption table published by the Nova Scotia government and information on reading a water meter from the Cape Breton Regional Municipality. Ms. Gallagher says in her affidavit that the water bill for 612 Villa Drive, from July to September 2022 was \$68.27. The base meter charge in CBRM at that time was \$63.71 and a cubic metre of water was billed at \$1.52 per cubic meter.

Therefore $68.27 - 63.71$ (Base charge) = $4.56 / 1.52$ (rate for cubic metre) = 3 cubic metres used in a 3-month period. Ms. Nugent stated that during this time she worked in New Brunswick from August 22 to September 5, 2022. Therefore, for a 91-day billing cycle, Ms. Nugent was away for 14 days but used 3 cubic metres of water or 3,000 litres. This would suggest, based on the consumption chart, that this is not Ms. Nugent's primary residence.

[42] For the period from October to December 2022, Ms. Gallagher swears in her affidavit that the;

water statement shows the bills was $65.23 - 63.71$ base charge = $1.52 / 1.52$ charge per cubic metre = 1 cubic meter used. Ms. Nugent stated she was away in Alberta working from September 11 to November 5. Therefore, Ms. Nugent worked away for approximately 60 days but was home at 612 Villa Drive for the other 31 days of this 91-day billing cycle. This suggests that this is not Ms. Nugent's primary residence. One cubic metre = 1,000 litres of water. A shower uses 225 litres of water, Ms. Nugent could have showered four times in those 31 days but never used any water for anything else. In my opinion this is not reasonable for someone living in the home.

[43] The CBRM water rates are admissible as a public document. Ms. Gallagher's interpretation is a different matter. Affidavits set out facts that the affiant knows to be true and sometimes information that they have been given that they believe to be true. In that case, the source of the information must be identified. Affidavits are not legal argument. And they are not opinion. The information set out in Ms. Gallagher's affidavit dated February 1, 2024, about water consumption, is a combination of argument and opinion.

[44] Determining, based on water consumption records, whether a person is residing in a home, would require the consideration of several variables. The amounts provided in the Nova Scotia government issued “Personal Use Water Log” are for the purpose of allowing homeowners to determine how much water they use and to find ways to reduce their use. The amounts are noted as being estimates only and “may vary”. There is no evidence that the water meter at 612 Villa Drive is accurate. The water bills, as public documents, are presumed to be an accurate reading of the water meter. But there is nothing to establish that the meter itself is accurate.

[45] The purpose of the government issued water log is for homeowners to find ways to reduce their household use. It does not purport to be an accurate description of the amounts of water used for each activity. And there is no evidence as to the average amount of water used by a single person over the course of a billing cycle much less any indication of what factors might cause the use to be above or below average. Ms. Gallagher offers her opinion that the use was not reasonable for someone living in the home at 612 Villa Drive. That is correct insofar as it indicates that the issue is a matter of opinion. But it is not an opinion that she can give. It requires the opinion of an expert.

The Inference

[46] It is notoriously difficult to prove a negative, even on the balance of probabilities. The onus is on the party making the assertion, here, Ms. Gallagher. It is for her to prove that it is more likely than not, that Lori Nugent is no longer using 612 Villa Drive as her principal residence. The will of Cameron Gracie does not define “principal residence”. In Cameron Gracie’s will principal residence is not a property that one designates, as one might for income tax purposes. It is where a person ordinarily lives. It is not the cottage or the bungalow. The home at 612 Villa Drive was left for Lori Nugent to use as her home. It was not an income property or a temporary residence.

[47] The will does say that Ms. Nugent will be deemed to have changed her principal residence if she fails to reside at 612 Villa Drive for a continuous period of 90 days unless she is working outside Nova Scotia. The will contemplates absences of up to 90 days that are not work related outside Nova Scotia. She could for example, take an extended vacation, for almost 3 months, or could stay at a cottage for that period. She could even live somewhere else, in Nova Scotia, on a

temporary basis, as long as that place does not become her principal residence and she does not stay there for more than 90 days.

[48] The provision deeming a change of residence after 90 days of continuous absence does not mean that the change of residence can only happen that way. For example, Ms. Nugent could not take up residence at another property, and return to 612 Villa Drive for one night each 90 days to preserve her life interest. Once Ms. Nugent changes her principal residence her interest in 612 Villa Drive would be at an end, whether she has been absent for one night or 90 nights. But after 90 nights, that interest ends, whether she has established another residence or not, unless she has been working out of the province.

[49] Ms. Gallagher is then required to prove that Ms. Nugent has either established another principal residence so that 612 Villa Drive is no longer her principal residence, or that she has failed to reside at the home for 90 continuous days.

[50] The only evidence of any other principal residence was that she owned and went to 6 Convent Drive in Sydney Mines on several occasions. The evidence does not suggest that the most reasonable inference to be made is that Lori Nugent remained at that address for periods of time to establish her principal residence there. There was, for example, no evidence of her vehicle being there for several nights, or of her doing work in and around the property. Seeing her or her car there periodically does not show that she maintained 6 Convent Street as her principal residence or as the place where she normally or ordinarily resided. She used 6 Convent Street as her mailing address. But other than periodically going there, that was the only evidence of a residential connection to that property beyond being the owner of it. And she provided evidence that she had moved her belongings into 612 Villa Drive and had lived there since Cameron Gracie's death.

[51] The evidence does not support as the most reasonable inference that Ms. Nugent used 6 Convent Street as her principal residence. And there is no evidence to support an inference that she had established any other address, except 612 Villa Drive, as her principal residence. Her evidence, which I accept, was that she did not live at 6 Convent Street as her principal residence.

[52] If it cannot be inferred that Ms. Nugent has changed her residence to 6 Convent Dr., or anywhere else, the other option is to prove the inference that she has not resided at 612 Villa Drive for more than 90 days. She could, of course, be away for periods of time, while keeping it as her principal residence. The

observations made by Ms. Gallagher, her mother Ms. Gracie, and the private investigator show that there were periods of time when Ms. Nugent was not there. None of that evidence suggests that she was absent for more than 90 consecutive days. The water usage was argued to show that the house was vacant, but again, it does not establish a vacancy of more than 90 days without some kind of expert opinion. Going back and forth between houses does not mean that 612 Villa Drive was no longer Ms. Nugent's principal residence.

[53] Ms. Gallagher suggested that it made "no sense" in her opinion for Ms. Nugent to remain in 612 Villa Drive, which had only one bedroom, with 3 other adults and a baby, when her own property at 6 Convent Street was occupied only by her daughter. The problem with that observation is that the evidence of both Ms. Nugent and Karen McCormick was that before his death Mr. Gracie had renovated the home to add 2 more bedrooms to function as an Airbnb. Both Ms. Nugent and Ms. McCormick gave evidence about the living arrangements. Ms. McCormick and her family stayed there without paying rent. They bought firewood and provided for their own groceries. They were not, contrary to the assertions made by Ms. Gallagher and Ms. Gracie, tenants.

[54] Put bluntly, the question is whether the inference urged by Ms. Gallagher, based on periodic observations and water usage, allows for a stronger inference than the affidavit evidence of Ms. Nugent. It does not. I accept Ms. Nugent's evidence that she has resided at 612 Villa Drive as her principal residence.

Property Maintenance and Repair

[55] Ms. Gallagher says that the property has been left to deteriorate. The grass has not been cut so the lawn was overgrown. The garbage box that had been at 612 Villa Drive. She provided photographs of junk left on or about the property. That included roof sprayer equipment, roofing company debris in the woods, roofing company solvents and glues, and her father's blue 4-wheeler left to deteriorate outside.

[56] Ms. Nugent says that she hires a person to mow the grass. As with any home, there may be times when it gets too high. But it gets cut and maintained. The garbage box was not removed. It was stolen and then replaced. As for the junk, Linda Gracie confirmed that the roofing materials belonged to her late husband, who had a roofing business. When he died, in 2018, some of the materials were taken out of a storage shed and left on the property at 612 Villa Drive. They were there, largely in that state, since before Cameron Gracie died.

The impression one is left with, from Ms. Gallagher's affidavit is that Ms. Nugent has allowed the place to fall into disrepair, with junk left around the property. The affidavit does not provide the important context that the junk was there in April 2021 when Cameron Gracie died. The other aspect of the "junk" is that it is personal property, not part of the real estate over which Ms. Nugent has a life interest. She has an obligation as Executor to distribute it, but she has no right to simply dispose of it or have it hauled away.

[57] There are pictures showing that the deck needs some repair. Ms. Nugent explained that some of the boards on the deck sometimes come loose and can simply be pushed back into place.

[58] During the hurricane of September 2022, a large tree from 612 Villa Drive fell on the neighbouring property at 606 Villa Drive owned by Linda Gracie. As of August 2023, it was still there. Ms. Nugent explained that she had sought help from the hurricane relief fund. That took more time than anticipated but eventually the tree was removed by the municipality. Ms. Gallagher said that when the tree fell it "caused two other cedars and a bridal wreath spirea tree" in Linda Gracie's yard, to die. Ms. Nugent is responsible for the repair and maintenance of 612 Villa Drive. Under the will of Cameron Gracie she is not responsible to repair Ms. Gracie's property next door. There may be a claim against her. But it is not under the will.

[59] On December 4, 2023, Linda Gracie, Renee Gallagher's mother, started a Small Claims Court action against Lori Nugent. She claimed that Ms. Nugent had damaged her property by allowing sewage from a no longer functioning sewage disposal field to come onto her property. Ms. Nugent has filed a defence. That case has not been resolved and is scheduled for court in March 2024. There are issues that will have to be decided and the evidence provided in this matter does not permit the inference to be made that the problems experienced at 606 Villa Drive as a result of a lack of maintenance and repair at 612 Villa Drive.

[60] Ms. Nugent has not failed to repair and maintain the property at 612 Villa Drive, as required by the will of Cameron Gracie.

Summary

[61] In her cross-examination Linda Gracie provided a piece of context. It might have been something that could have been speculated about anyway. But Ms. Gracie offered some insight into the background of this matter. Her son Cameron

Gracie got the property at 612 Villa Drive from her and her husband, assuming that when he died, it would go to his sister's boys. That was a fair assumption, but it isn't what actually happened. Lori Nugent's life interest stands between Cameron Gracie's nephews and their inheritance.

[62] Cameron Gracie's will gave Lori Nugent that life interest. It set the terms of that life interest. She has that as long as the home remains her principal residence. I accept her evidence that she has kept it as her principal residence. She has the obligation to maintain it and repair it. She does not have to improve it. And her level of maintenance and repair need not meet the exacting standards of some owners. She cannot dissipate the asset. That will doubtless leave room for more costly legal disputes for years to come. But as of now, the level of repair and maintenance has met the standard required.

[63] The application is dismissed. I will hear the parties on costs, in writing, within 30 days of this decision.

Campbell, J.