

SUPREME COURT OF NOVA SCOTIA

Citation: Al-Mahamid v. Peart Estate, 2009 NSSC 285

Date: 20091009

Docket: Tru No. 311933

Registry: Truro

Between:

Khaled Al-Mahamid

Applicant

v.

The Estate of Edith Peart, late of Guysborough in the
County of Guysborough, Province of Nova Scotia

Respondent

Judge: The Honourable Justice Glen G. McDougall

Heard: September 8, 2009, in Truro, Nova Scotia

Written Decision: October 16, 2009

Counsel: Khaled Al-Mahamid, on his own behalf

By the Court:

[1] In what is styled an “*Ex Parte* Application”, Khaled Al-Mahamid seeks an order allowing him to represent the interests of his mother, Fozieh Al-Rifai, in a proposed action in which the defendant is the estate of Mr. Al-Mahamid’s former mother-in-law (now deceased).

[2] The motion is brought under **Civil Procedure Rule 36**. **Rule 36.01(1)** states:

36.01 - Scope of Rule 36

36.01 (1) This Rule allows for a party to represent the interests of another person in a proceeding, in one of the following ways:

(d) under a private instrument giving the party management of the property or affairs of the other person or appointing the party as representative, such as an executor under a will, a trustee under a trust that includes powers to sell or manage, or an attorney under a power of attorney;

(f) by appointment under this Rule.

[3] In addition to being allowed to represent Fozieh Al-Rifai, Mr. Al-Mahamid requests permission to proceed without counsel. **Rule 36.04** states:

36.04 A representative party must act by counsel, **unless a judge permits otherwise**. [emphasis added]

[4] Mr. Al-Mahamid first appeared before me on June 2, 2009. His request was denied, leaving it open to him to file an affidavit and a power of attorney appointing him as the representative of Mrs. Al-Rifai in the proposed action.

[5] Further documentation was obtained and filed by Mr. Al-Mahamid. The matter was once again set down, this time before Justice Cindy Bourgeois. Justice Bourgeois was not satisfied with the additional documentation and she too refused the request. This occurred on July 21, 2009.

[6] In an effort to address the deficiencies in the affidavit and other documentation presented to Justice Bourgeois, Mr. Al-Mahamid obtained an additional affidavit from Mrs. Al-Rifai, the contents of which was affirmed before a Canadian Consular official in Damascus, Syria, on August 17, 2009.

[7] Attached to this affidavit there is a Power of Attorney signed by Ms. Al-Rifai as well as a draft of the intended Notice of Action and Statement of Claim she wishes to commence against the Estate of Edith Peart, late of Guysborough, Nova Scotia. A copy of Mrs. Al-Rifai's passport (#000408376) bearing a photograph and her signature was also provided as part of the latest package of documents. The signature on the passport compares favourably to the signatures on the affidavit and the Power of Attorney.

[8] In her affidavit, Mrs. Al-Rifai states that she has been attempting to get a Visa to visit her son, Khaled Al-Mahamid, and his family, in Canada, for the past 12 years but without success. Furthermore, she states that:

The sums of money which are represented by the assets referred to in the Statement of Claim amount to my savings which were entrusted to my son for investment in Canada, in the case of those matters surrounding the purchase of real property; and represented *Mahar* all of which are mine.

[9] Paragraphs four and five of the intended statement of claim provide an explanation of “Mahar”.

¶ 4 At our [sic] about that time, as is customary in Islamic weddings, a dowry (Amaher@ [sic]) of gold jewelry [sic], with and without jewels, were set aside as dowry under Islamic law for the bride, Velvet Peart.

¶ 5 The maher [sic] was held in trust by Velvet Peart or under her control in trust against the possibility of divorce. Under Sharia law, if there were an adjudication that the divorce was the fault of the husband, the dowry would be adjudged the property of the wife. If the wife were adjudged at fault, the dowry would be returned to the parents of the groom.

[10] Without getting into all of the details of the allegations contained in the pleadings, Mrs. Al-Rifai’s claims against the Estate of Edith Peart include the return of the jewellery or what remains of it after its near total destruction in a fire or alternatively the amount paid to Edith Peart by her insurers for its loss. Mrs. Al-Rifai also claims compensation for the loss of her investments and the value of certain tools purchased for Mr. Al-Mahamid. The total sum claimed amounts to an estimated \$330,000.00.

[11] In regard to her lost investments the statement of claim states that they were entrusted to Mr. Al-Mahamid who used them to purchase two residential premises – one in Truro and one in Bedford. In order to satisfy certain banking requirements Edith Peart (now deceased) was asked to take nominal title to the properties in common with Mrs. Al-Rifai. After marital difficulties arose between Mr. Al-Mahamid and Edith Peart’s daughter, Mrs. Peart conveyed her title to the Bedford property to two other third parties. Furthermore, she refused to give up her claim to the title to the Truro property with the result that both properties were lost,

presumably through foreclosure, although that is not certain based on my reading of the statement of claim.

[12] Mrs. Peart is also alleged to have removed various tools and other personal items belonging to Mr. Al-Mahamid which had been located at the Truro property. Their whereabouts are unknown and a claim for \$40,000.00 for conversion of the items is being advanced presumably on the premise that they had been purchased with Mrs. Al-Rifai's money and entrusted to her son for safe-keeping. This is again not clear from reading the statement of claim.

[13] The proposed pleadings describe a rather convoluted interplay of ownership of real property along with personal property in the context of a matrimonial dispute with elements of Sharia law added to the mix.

[14] I question whether Mrs. Al-Rifai might not have cause for concern over the investments made by her son ostensibly on her behalf. Did he do enough to protect his mother's savings and did he fail to safeguard her best interests? I do not know for sure but considering what is known or alleged I am left with enough uncertainty to be uncomfortable with the proposed representative arrangement. There is potential for conflict of interest should the motion be allowed.

[15] I must, therefore, deny the motion. Moreover, even if I had been persuaded to permit Mr. Al-Mahamid to represent his mother in the proposed proceedings against the Estate of Edith Peart, I would not have allowed him to act without counsel.

[16] Mr. Al-Mahamid claims to have insufficient monetary resources to retain counsel. He provided the court with several cases from various Canadian Courts as well as a partial head note from a case decided by the United States Supreme Court. I have reviewed these materials. There is really nothing contained therein which is of any assistance to Mr. Al-Mahamid.

[17] If Mr. Al-Mahamid is attempting to invoke the protection afforded to Canadian citizens under the *Canadian Charter of Rights and Freedoms* I do not see how it can be extended to protect his mother who is neither a Canadian citizen nor even a resident of this Country.

[18] In any event, Mrs. Al-Rifai is not prevented from accessing a Canadian Court. She is at liberty to retain counsel in Canada directly or to have a representative appointed who, unlike her son, is not in a potential conflict of interest situation.

[19] For these reasons, the motion brought by Mr. Al-Mahamid is dismissed.

Justice Glen G. McDougall