

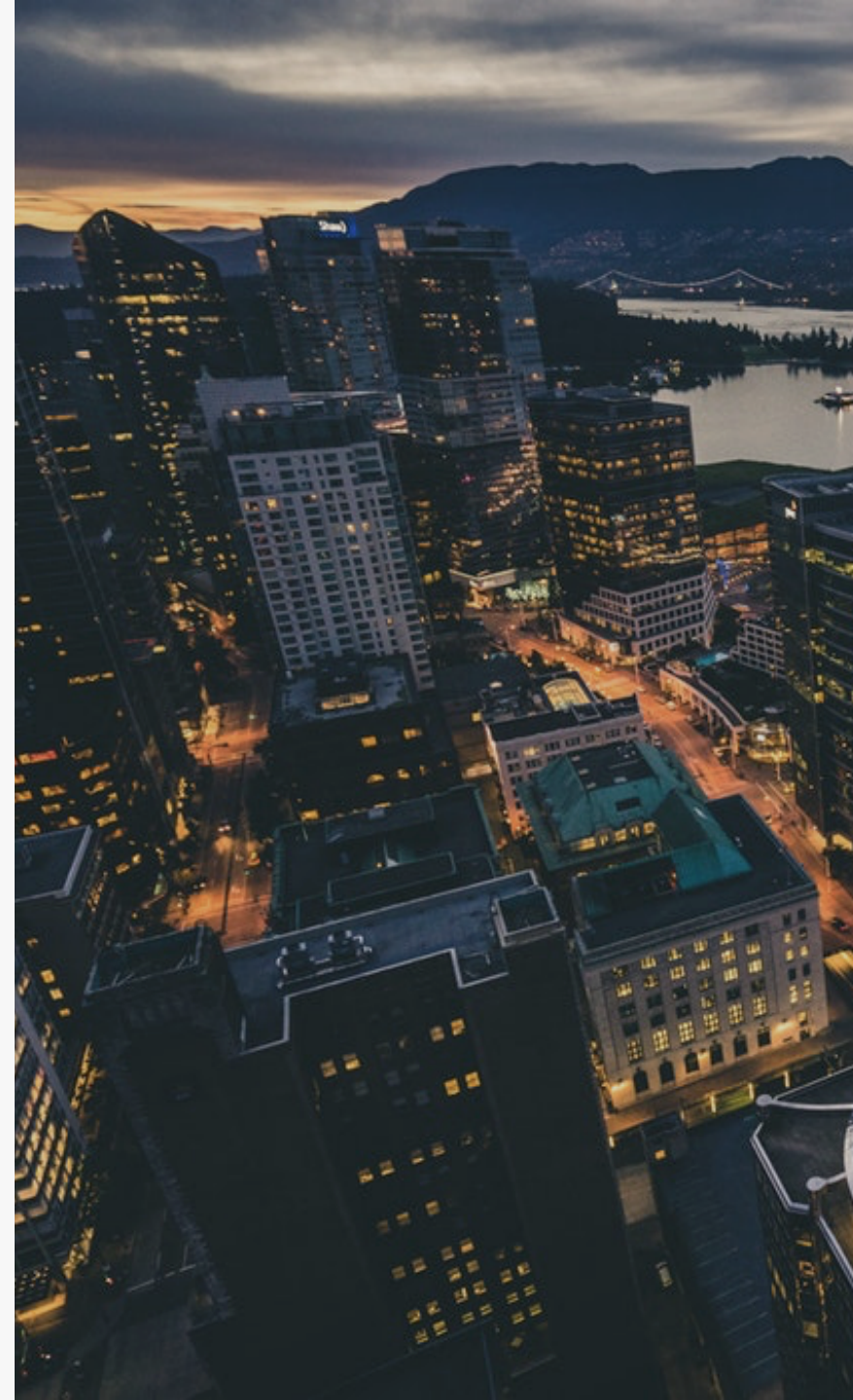
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- » Audrey Jun

S.A. v. Metro Vancouver Housing Corp., 2019 SCC 4

Case comment

Tuesday, February 26, 2019

CBA BC - Wills & Trusts - Vancouver Section Meeting



Background

» 1992

- S.A. becomes tenant with Metro Vancouver Housing Corp. (“MVHC”)
- S.A. starts receiving annual rental assistance
- Tenancy agreement includes requirement that S.A. provide annual income verification

» 2012

- Henson Trust settled – S.A. has beneficial interest

» 2015

- MVHC requests disclosure of trust balance
- S.A. refuses to disclose, says trust not “asset” for determining rental assistance eligibility
- MVHC says it considers trust “asset” and needs to know its value to determine eligibility
- S.A. stops receiving rental assistance from MVHC

Case History

S.A. v. Metro Vancouver Housing Corporation, 2015 BCSC 2260

- » Petitions filed by both S.A. and MVHC.
- » Petitions are joined for a hearing by court order.
- » Hearing to determine whether S.A.'s interest in the trust is an asset for the purposes of her rental assistance application.
- » S.A. unsuccessful.

S.A. v. Metro Vancouver Housing Corporation, 2017 BCCA 2

- » Disability Alliance BC – Intervenor – review of Henson trust use, provincial Ministry's trust policy
- » Court finds that S.A. has a beneficial interest in the Trust and therefore her Application for income assistance is incomplete.
- » S.A.'s appeal dismissed.

Issues

- » Should S.A.'s interest in the Trust be treated as an “asset” for the purposes of her rental assistance Application with MVHC?
 - **SCC: No**
- » Did MVHC have a contractual obligation to consider any complete assistance application received from S.A.?
 - **SCC: Yes**
- » Was the application that S.A. submitted, sans Trust information, complete to trigger this obligation?
 - **SCC: Yes**

Decision

- » Trust terms gave no actual entitlement to trust property.
- » S.A. was eligible to be considered by MVHC for rental assistance.
- » SCC issued declaratory relief – S.A. has a right to have her application considered in accordance with the terms of the application; her interest in the Trust is not an “asset” for this purpose.
- » SCC found S.A. may also be entitled to a monetary remedy for MVHC’s failure to consider her application, but insufficient evidence in the record to determine an amount.

Discussion & Reasons

» Features of Henson Trust:

- Trustee is given ultimate discretion re: payments;
- Beneficiary cannot compel the Trustee to make payments to her;
- Beneficiary's interest in the Trust is not absolute ("gift over") and she cannot unilaterally collapse the trust (under *Saunders v. Vautier* rule);
- Beneficiary does not have an enforceable right to receive income or capital (a fixed entitlement) – interest is mere hope that property will be distributed at some point.

» Basic principles of contract law:

- Application to be read as a whole;
- Word "assets" given its ordinary and grammatical meaning.

» A "reasonable person" would understand "assets" to mean property that can actually be used to pay their rent.

Findings & Lessons

- » Henson trusts remain useful estate-planning tools.
- » A discretionary trust set up for a person with disabilities who does not have control over the distribution of the trust property, should not be considered an “asset” so as to disqualify them from a social assistance program, depending on the terms of the program.
- » Reconciliation of the role of co-trustee with the absolute discretionary nature of the Henson trust.
- » In some cases, depending on contractual program terms, contractual interpretation principles will apply when deciding how the beneficiary’s interest in the trust affects their eligibility.
- » Familiarize yourself with:
 - legislation and regulations regarding social benefits (e.g. BC Employment and Assistance legislation);
 - terms of any program from which the beneficiary receives benefits.
- » Prospect that future policies, contracts, or both, may negatively impact the overall goal of discretionary trusts. Important to encourage policy and clarifications that support the SCC’s endorsement.

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