

CITATION: RBC Life Insurance Company v. Masitch et al, 2026 ONSC 2277
COURT FILE NO.: CV-24-00722690-0000
DATE: 20260327

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: RBC LIFE INSURANCE COMPANY, Applicant

AND:

DIMITRI MASITCH and OLEG MASITCH, Respondents

BEFORE: Justice B. Dietrich

COUNSEL: *Rolf Piehler*, for the Moving Party, Dimitri Masitch

Allan Weiss, for the Responding Party, Oleg Masitch

HEARD: February 17, 2026

ENDORSEMENT

- [1] This matter involves a dispute between two brothers over the proceeds of two segregated funds payable on the death of their late mother, Valentina Masitch (the “Deceased”). The Deceased died on December 14, 2023, intestate.
- [2] The Deceased was survived by her two children, the moving party/respondent, Dimitri Masitch (“Dimitri”), and the responding party, Oleg Masitch (“Oleg”)¹.
- [3] The Deceased designated Dimitri as the beneficiary on each of two segregated fund policies issued to her by RBC Life Insurance Company (“RBC Life”). They are known as Policy No. 723817 (non-registered) and Policy No. 723809 (TFSA) (the “TFSA”) (collectively, the “Policies”).
- [4] Following the Deceased’s death, when faced with a disagreement between Dimitri and Oleg regarding entitlement to the proceeds of the Policies, RBC Life brought the within application for an order granting the payment into court by RBC Life of the amounts payable under the Policies. Justice C. Stevenson granted that order on August 21, 2024 (the “Justice Stevenson Order”).
- [5] Dimitri brings this motion for an order granting him a payment out of court of the amounts paid into court pursuant to Justice Stevenson’s Order, plus interest, and an order that Oleg

¹ Because the parties share a common surname, I will refer to them using their first names. In doing so, I intend no disrespect.

pay Dimitri's costs of this motion. Dimitri is shown as the designated beneficiary on each of the Policies.

- [6] Dimitri submits that the beneficiary designations on the Policies are clear, and that there is no evidence to show that either beneficiary designation has been revoked. He also asserts that he is not aware of any statement or document made by the Deceased that suggests that the Policies should be dealt with in any way other than as provided by the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (the "SLRA"). The result would be a distribution of the entire proceeds of the Policies, plus accrued interest, to himself. Further, Dimitri submits that he provided funds to the Deceased from his personal injury settlement so that she could make investments in RBC Life investments. Therefore, it is unsurprising that the Deceased would have designated him as the beneficiary of the proceeds of the Policies.
- [7] Oleg submits that the Deceased named Dimitri as the designated beneficiary on the Policies as a matter of administrative convenience, and that she intended the proceeds of the Policies to be divided equally between her two sons, being her only children. Dimitri resides in Toronto, where the Deceased resided, and Oleg resides in Israel, where he was residing around the time the Deceased made the beneficiary designations. Oleg asserts that the Deceased had limited facility with the English language, and Dimitri assisted her with her financial affairs. Oleg further submits that, in his presence, Dimitri promised the Deceased that he would share the proceeds of the Policies equally with Oleg, and that Dimitri has breached that promise. Oleg further asserts that Dimitri would hold any proceeds of the Policy that are paid to him as beneficiary on a resulting trust for the Deceased's estate (the "Estate"). Because the Deceased died intestate, the residue of the Estate would be divided equally between the Deceased's two sons.
- [8] For the reasons that follow, I find that the proceeds of the Policies, and the interest accrued on them, should be paid out of court to Dimitri.

Issues

- [9] The issues in this matter are:
- a. Did Dimitri make a promise to share the proceeds of the Policies with Oleg, which he later breached, resulting in damages to Oleg?
 - b. As the designated beneficiary of the proceeds of the Policies, does Dimitri hold those proceeds on a resulting trust for the Estate, such that Oleg, as a beneficiary of one half of the residue of the Estate, is entitled to one half of the proceeds, plus interest?

Law

[10] The *SLRA* provides as follows, at s. 51(1), regarding the designation of a beneficiary under a plan²:

A participant may designate a person to receive a benefit payable under a plan on the participant's death,

- a) by an instrument signed by him or her or signed on his or her behalf by another person in his or her presence and by his or her direction; or
- b) by will

and may revoke the designation by either of those methods.

[11] Section 53 of the *SLRA* provides that where a participant in a plan has designated a person to receive a benefit under the plan on the death of the participant:

- a. the person administering the plan is discharged on paying the benefit to the person designated under the latest designation made in accordance with the terms of the plan, in the absence of actual notice of a subsequent designation or revocation made under section 51 but not in accordance with the terms of the plan; and
- b. the person designated may enforce payment of the benefit payable to him under the plan but the person administering the plan may set up any defence that he could have set up against the participant or his or her personal representative.

Analysis

[12] Based on the evidentiary record, I find, on a balance of probabilities, that Oleg cannot prove that Dimitri made a binding promise to the Deceased to share the proceeds of the Policies with him. I also find that Dimitri, as the designated beneficiary of the Policies, does not hold the proceeds of the Policy on a resulting trust for the Estate.

[13] In support of his claim, Oleg makes the following submissions:

- a. Because the Deceased had limited proficiency in English, Dimitri assisted the Deceased with her financial affairs, which Oleg could not do while living in Israel.

² The parties do not dispute that the policies are a "plan" as defined in s. 50 of the *SLRA*.

- b. Dimitri promised the Deceased, in the presence of Oleg, that he would divide the proceeds of the Policies equally between Oleg and himself. But Dimitri repudiated that promise after the Deceased's death and claims the proceeds as his own.
- c. This promise was consistent with the Deceased's numerous conversations among herself, Dimitri, and Oleg, as well as the Deceased's verbal statements, and handwritten notes attached to the RBC policy documents.
- d. Dimitri cannot prove that either of the Policies was purchased using funds from his personal injury settlement.
- e. In the case of *Calmusky v. Calmusky*, 2020 ONSC 1506, 60 E.T.R. (4th) 117, the court held that the presumption of a resulting trust applies to beneficiary designations of registered plans to adult beneficiaries, such that the beneficiary must prove that the funds were a gift to him or her and not the deceased's estate.

[14] Oleg's claim that Dimitri assisted the Deceased with her finances because she had limited proficiency in English is unsupported by any evidence other than Oleg's own evidence. Further, Oleg does not allege that Dimitri unduly influenced the Deceased or that she lacked capacity, knowledge, or approval regarding the Policies.

[15] The evidence bends in the opposite direction. The record shows that the Deceased had advisors at RBC Life, Tanya Rabenko and Mathew Kurian, with whom she consulted regarding her investments. Included in the documentary evidence adduced by Oleg are notes handwritten by the Deceased, in which she lists three notes for her advisors, whom she identifies in the notes by name. The first is a question relating to whether she needs to claim income for tax purposes. The second note reads, "Explane to me about Maturity Guarantee Death Benefit * any kind of deth???" The third note reads, "Do I have to hav a Vill 2 sons Dim + Oleg." These notes are written on two yellow Post-it notes. A third Post-it note contains another question: "This kind of Insurance is Good? OR ... could be better more beneficial to me? (my sons)."

[16] The three notes are attached to an RBC Insurance – Segregated Funds Policy statement addressed to the Deceased. The date of the statement is obscured, but the statement shows the value of the TFSA policy on June 30, 2022. The statement clearly shows the beneficiary to be Dimitri Masitch.

The Deceased's Intention

[17] There is no evidence to show whether the Deceased ever discussed the notes with her advisors at RBC Life and, if so, what their advice was. There is also no evidence to suggest that the Deceased made any changes to the Policies, including the beneficiary designation, between June 30, 2022 and her death in December 2023, or that she revoked either beneficiary designation.

- [18] The handwritten notes are compelling evidence that the Deceased was seeking advice from her advisors at RBC Life, and that she was not relying on Dimitri, wholly or perhaps at all, to assist her with her RBC Life investments.
- [19] I do not find that the handwritten notes are evidence of an express intention by the Deceased that the proceeds of the Policies were to be divided equally between her two sons. The notes include questions regarding her estate planning and information regarding her family, but they do not express any clear intention as to how her assets generally, or the proceeds of the Policies, specifically, would be administered on her death. The notes do not evidence any promise made by Dimitri to share the proceeds of the Policies with Oleg.
- [20] In support of Oleg's submission that Dimitri promised to share the proceeds of the Policies with him, Oleg relies on what he says were numerous conversations with the Deceased and Dimitri prior to the Deceased's death regarding her intention for the Estate, including that the proceeds of the Policies would be divided equally between her two sons. Oleg also states that the Deceased "made [Dimitri] promise in [Oleg's] presence that the RBC life insurance policies would be split equally among [them], her two sons and only children."
- [21] In considering the sufficiency of the evidence, I am mindful of s. 13 of the *Evidence Act*, R.S.O. 1990, c. E.23, which provides as follows:

In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his or her own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

- [22] Oleg's submissions that Dimitri and the Deceased made many statements about Dimitri's promise to share the Policy proceeds are both hearsay and uncorroborated. Dimitri disputes this evidence.
- [23] Oleg also relies on a video clip, which he says Dimitri made on his cell phone as he was walking to a bank, and then sent to Oleg. Oleg arranged for a certified translation of the audio from the video clip from Russian to English. The relevant part of the translation reads as follows:

There is the building, I am going. I forgot to say there is savings here. Mother left it, I won't tell you the address, nothing. You will do yourself with your lawyer... pay him money. You will crawl everywhere and do. ... But you know nothing. ... You have just grabbed onto what I told you, what I had promised to mother. What I had promised to mother is gone with mother. Do you understand me? As you told me: "Mother is dead – that's all. It was all in the past."...

- [24] This is the only evidence of a promise made by Dimitri to his mother, the Deceased, which is corroborated. However, this evidence alone is inadequate to support Oleg's theory that Dimitri made a binding promise to his mother that, following her death, he would share the proceeds of the Policies equally with Oleg. There is no mention of the exact promise made and no mention of the Policies whatsoever. There is no mention of any consideration for such a promise. I do not find that the video clip evidences an intention of the Deceased, at the time she made the beneficiary designations, to make a gift of the proceeds of the Policies to Dimitri and Oleg equally.
- [25] If the Deceased had truly intended to do so, she could have designated both of her sons as the beneficiaries of the Policies. Based on her handwritten notes regarding the questions she listed for her RBC Life advisors, she wrote the names of both sons. There is no corroborated evidence as to why the Deceased chose to list only one of her sons as the designated beneficiary on the Policies, or what she intended the beneficiary to do with the proceeds of the Policies.

Resulting Trust

- [26] Oleg also argues that Dimitri holds the proceeds of the Policies on a resulting trust for the Estate. In this regard, he relies on the decision of the Supreme Court of Canada in *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795. In *Pecore*, the Supreme Court of Canada established that when an adult child receives a gratuitous transfer of assets from a parent, there is a presumption of a resulting trust. The court presumes that the transferor intended the asset to be held in trust for the parent's estate. The recipient must rebut this presumption with evidence. The burden lies on the recipient to prove the transfer was intended as a gift. The court must look at evidence of the transferor's intention at the time of the transfer (such as bank documents, control of the account, and testimonies).
- [27] Oleg also relies on the case of *Calmusky*. In that case, at para. 56, the court ruled that the presumption of a resulting trust applies to beneficiary designations of registered plans to adult beneficiaries. Accordingly, the beneficiary of the plan must prove the funds were a gift to the beneficiary and not intended for the deceased's estate.
- [28] Oleg did not refer to the case of *Mak (Estate) v. Mak*, 2021 ONSC 4415. But the decision in *Mak* is important to the consideration of whether the presumption of a resulting trust applies where an adult child is designated as the beneficiary of a registered plan. The court in *Mak* declined to follow *Calmusky*, in which the court did not refer to the *SLRA* or how Part III of that *Act*, which specifically permits beneficiary designations, would affect the presumption of a resulting trust.
- [29] In *Mak*, the court examined how the law regarding the presumption of a resulting trust would apply to a registered retirement income fund, citing *Pecore*, *Calmusky*, and other cases. Ultimately the court disagreed with the reasoning in *Calmusky*.
- [30] The court in *Mak* analysed the issue as follows, at paras. 42 to 47:

[42] This leaves the question as to whether there is a presumption of a resulting trust. The leading case on the principles of a resulting trust were canvassed in the Supreme Court of Decision in *Pecore v. Pecore*, [2007] SCJ No. 17. I will have further comments about this case later in these Reasons. At this point, the issue is whether the principle of a resulting trust applies to a beneficiary designation. The plaintiffs argue that the presumption of a resulting trust applies and relies upon the decision of this Court in *Calmusky v. Calmusky*, 2020 ONSC 1506. In that decision the Court found that the doctrine of resulting trust applied to an RIF beneficiary designation. In arriving at that decision, the court relied on an obiter comment of this Court in *McConomy-Wood v. McConomy* (2009), 46 E.T.R. (3d) 259 (S.C.). In that case, the Court found on the evidence that there was not the “slightest doubt” that by designating her daughter as the beneficiary under her RIF, the now deceased mother intended that her daughter hold the RIF proceeds in trust for the beneficiaries of the mother’s estate. The trial judge went on to say that if he had to decide the presumption issue, he would agree with the current trend expressed by the Supreme Court of Canada in *Pecore* against applying a presumption of advancement.

[43] The Court also relied on a Manitoba Court of Appeal decision in *Dreger (Litigation guardian of) v. Dreger* (1994), Man. R. (2d) 39. This was a case decided before the Supreme Court’s decision in *Pecore*. In that case the court found that the mother’s intention at the time she designated her son as a beneficiary was that upon her death, her son would take the proceeds for the benefit of her estate.

[44] In my view, however, there is good reason to doubt the conclusion that the doctrine of resulting trust applies to a beneficiary designation. First, the presumption in *Pecore* applies to *inter vivos* gifts. This was a significant factor for the Court of Appeal in *Seguin*, and similarly is a significant difference in the context of a resulting trust. Further, the decision of this Court in *Calmusky* has been the subject of some critical comment. As noted by Demetre Vasilounis in an article entitled “A Presumptive Peril: The Law of Beneficiary Designations is Now in Flux”, the decision in *Calmusky* is, “ruffling some feathers among banks, financial advisors and estate planning lawyers in Ontario”. In his article, the author comments that there is usually no need to determine “intent” behind this designation, as this kind of beneficiary designation is supported by legislation including in Part III of the *Succession Law Reform Act* (the “SLRA”). Subsection 51(1) of the SLRA states that an individual may designate a beneficiary of a “plan” (including a RIF, pursuant to subsection 54.1(1) of the SLRA.)

[45] Section 53 of the SLRA provides that an institution administering the “plan” must pay it out in accordance with subsection 51(1) beneficiary designation upon the plan owner’s death.

[46] It is also important that the presumption of resulting trust with respect to adult children evolved from the formerly recognized presumption of advancement, a sometimes erroneous assumption for a parent that arranges for joint ownership of an asset with their adult child is merely “advancing” the asset to such adult child as such adult child will eventually be entitled to such asset upon such parent’s death. The whole point of a beneficiary designation, however, is to specifically state what is to happen to an asset upon death.

[47] I have therefore concluded that the *Pecore* presumption of a resulting trust does not apply to a beneficiary designation for the mother’s RRIF. Like the situation with the presumption of undue influence, the onus is on the plaintiffs to establish that the Mother’s intention was to benefit her estate with the beneficiary designation. Having failed to do so I have concluded that the plaintiffs have failed to establish an entitlement to the proceeds of the RIFF.

[31] I agree with the court’s reasoning in *Mak* and prefer it to the reasoning in *Calmusky*.

[32] Applying the reasoning in *Mak*, I find that the onus is on Oleg to establish that the Deceased’s intention was to benefit her estate by making the beneficiary designation. I also find that Oleg has not met his onus, and he has not established an entitlement to the proceeds of the Policies. He has not proved that the Deceased made the beneficiary designation for administrative convenience, or that she intended that the proceeds of the Policies would be shared equally between her sons.

Constructive Trust

[33] Oleg further asserts that a valid beneficiary designation does not end the legal inquiry where equity demands intervention. He relies on the Supreme Court of Canada decision in *Moore v. Sweet*, 2018 SCC 52, 3 S.C.R. 303, in support of his argument that this court retains jurisdiction to impose a constructive trust over life insurance proceeds where permitting the named beneficiary to retain the full proceeds would result in unjust enrichment and would be against conscience.

[34] In *Moore*, the Supreme Court of Canada held that equity may intervene where a valid designation has been made; the beneficiary has received a benefit; the claimant has suffered a corresponding deprivation; and there is no juristic reason for the enrichment.

[35] I find that Oleg has not shown unjust enrichment, a corresponding deprivation, and a lack of juristic reason for the enrichment in this case.

Disposition

- [36] I grant Dimitri's motion.
- [37] An Order shall issue, in the form signed by me, directing that the funds paid into court by RBC Life pursuant to the Justice Stevenson Order, together with the interest thereon, shall be paid to Dimitri.

Costs

- [38] Dimitri was successful on his motion, and he is presumptively entitled to his costs.
- [39] Costs are, generally, in the discretion of the court, pursuant to s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising its discretion, the court considers the factors set out in r. 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including the principle of indemnity, the reasonable expectations of the unsuccessful party, and complexity and importance of the issues. Overall, the costs must be fair and reasonable: *Boucher v. Public Accountants Council for the Province of Ontario (2004)*, 71 O.R. (3d) 291 (C.A.), at para. 38.
- [40] Based on his costs outline, Dimitri seeks costs, on a partial indemnity basis, in the amount of \$4,335.22, inclusive of HST and disbursements. Considering the relevant factors, I find that the issues were important to both parties but not that complex. The scale and quantum of costs sought by Dimitri are fair and reasonable in the circumstances of this case. Oleg did not submit a costs outline, so I cannot assess his reasonable expectations.
- [41] Accordingly, I fix Dimitri's costs at \$4,335.22, inclusive of HST and disbursements, payable by Oleg to Dimitri within 30 days. If these costs are not paid within 30 days, these costs may be deducted from Oleg's share of the Estate and paid to Dimitri.

B. Dietrich, J.

Date: March 27, 2026