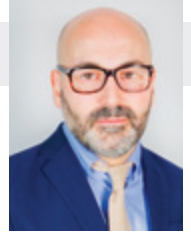


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Misdescriptions In Wills

THE BRITISH COLUMBIA SUPREME COURT HAS RECENTLY OPINED ON WHEN A COURT CAN REMEDY THE MISDESCRIPTION OF A BENEFICIARY IN A WILL.

In *Baliko Estate v. Baliko*, 2013 BCSC 2485 (B.C.S.C.), per Schultes J., a clause in a will purported to leave the residue of the estate to the “Kelowna General Hospital”. The will explicitly excluded the testator’s son. However, no actual legal entity was capable of receiving the gift of the estate’s residue. That is, a government organization, the Inland Health Authority (IHA) owned the building and operated the Hospital. The Kelowna General Hospital Foundation (the “Foundation”) was a charitable organization that was created to receive donations and raise funds on behalf of the Hospital.

On a petition by the executor of the Estate, the IHA argued that the Foundation ought to receive the residue of the estate. By contrast, the testator’s son argued that the gift failed as a result of being granted to a non-existent entity and, accordingly, he ought to receive the residue of the estate on an intestacy.

The British Columbia Supreme Court held that the gift was to go to the Foundation.

The Court held that Canadian Courts make every effort to discover which beneficiary was intended by the testator; they do not allow a misdescription to defeat the testator’s intention. Accordingly, citing *Waters’ Law of Trust in Canada*, 3rd ed. (Toronto: Thomson, 2005), the Court took the view that “if the description is sufficient with reasonable certainty to designate the intended beneficiary, the institution in that position is the intended recipient...If the beneficiary intended by the testator is thus discoverable, the courts have said on several occasions that there is no need to invoke the *cy-prés* doctrine”.

In this case, in the absence of any similarly named organization or any competing entity that fulfills an equivalent purpose, the Court placed itself in the testator’s shoes and held that no other reasonable interpretation was possible other than that the testator intended to benefit the Hospital. Unlike other cases that involve non-existent or defunct societies as beneficiaries, in this case the gift could easily be received through the vehicle of the Hospital’s charitable entity, i.e. the Foundation.