

The Estate of Amédée Goguen, Deceased, Eva Nickerson and Rita Earle, Administrators of the
Estate of Amédée Goguen (appellants) v. Alice Hachey (respondent)
(155-10-CA; 2012 NBCA 56)

Indexed As: Goguen et al. v. Hachey

New Brunswick Court of Appeal
Richard, Bell and Quigg, JJ.A.
June 28, 2012.

Summary:

Goguen held an interest in a credit union. In 2005, when aged 93, Goguen executed a beneficiary card by which he appointed Hachey as the person to whom his interest in the credit union was to pass and vest upon his death. Goguen died intestate in 2007, aged 95. Two relatives, Nickerson and Earle, were appointed administrators. They and the estate sued to have the beneficiary card declared invalid on grounds of mental incapacity and undue influence.

The New Brunswick Court of Queen's Bench, Family Division, in a decision reported (2010), 364 N.B.R.(2d) 381; 937 A.P.R. 381, dismissed the action, absent evidence to support the plaintiffs' allegations. The court ordered the administrators to personally pay Hachey's costs. The administrators appealed.

The New Brunswick Court of Appeal dismissed the appeal and ordered the administrators to personally, jointly pay the costs on appeal (\$3,500).

Company Law - Topic 7504

Credit unions - General - Passing of interest in credit union upon death - [See first **Gifts - Topic 773**].

Executors and Administrators - Topic 5544

Actions by and against representatives - Costs - Personal liability of representative - Goguen signed a beneficiary card (Credit Unions Act, s. 47), naming Hachey as beneficiary - When Goguen died intestate, his administrators challenged the validity of the beneficiary card, alleging undue influence - The trial judge dismissed the action - The judge held that the claim was totally devoid of merit and motivated by greed and by the hope of benefiting from Goguen's estate - The judge ordered the administrators to personally pay Hachey's costs - The administrators appealed, claiming that the judge's ruling on costs was clearly wrong - The New Brunswick Court of Appeal dismissed the appeal - There was no palpable and overriding error, thus deference was owed to the trial judge - The appeal court also ordered the administrators to personally, jointly pay the costs on appeal (\$3,500) - See paragraphs 31 to 36.

Gifts - Topic 773

Gifts inter vivos - Grounds for invalidity - Undue influence - Goguen signed a beneficiary card (Credit Unions Act, s. 47), naming Hachey as beneficiary - When Goguen died intestate, his administrators challenged the validity of the beneficiary card,

alleging undue influence - The trial judge dismissed the action - The administrators appealed, arguing that the trial judge erred in applying testamentary law to determine undue influence, thereby placing the onus of proving undue influence on the administrators - The New Brunswick Court of Appeal dismissed the appeal - A beneficiary card signed under s. 47 was more akin to a testamentary provision than to an inter vivos gift - Considering the nature of the beneficiary card, the presumption of undue influence did not apply - The onus of proving undue influence on a balance of probabilities rested on the party alleging undue influence, in this case the administrators - See paragraphs 15 to 30.

Gifts - Topic 773

Gifts inter vivos - Grounds for invalidity - Undue influence - The New Brunswick Court of Appeal stated that in matters of undue influence, the burden of proof differed depending on whether the gift was inter vivos, or took effect upon the donor's death - The court thereafter elaborated on the burden of proof issue - See paragraphs 16 to 21.

Gifts - Topic 955

Gifts inter vivos - Evidence and proof - Burden of proof - [See both **Gifts - Topic 773**].

Wills - Topic 1714

Preparation and execution - Undue influence - Evidence and proof - [See second **Gifts - Topic 773**].

Donations - Cote 773

Donations entre vifs - Motifs d'invalidité - Abus d'influence - [Voir **Gifts - Topic 773**].

Donations - Cote 955

Donations entre vifs - Preuve - Fardeau de la preuve - [Voir **Gifts - Topic 955**].

Droit des compagnies - Cote 7504

Caisse populaires - Généralités - Transfert d'un intérêt dans la caisse populaire au décès d'un membre - [Voir **Company Law - Topic 7504**].

Exécuteurs testamentaires et administrateurs - Cote 5544

Actions par et contre les représentants - Dépens - Responsabilité personnelle du représentant - [Voir **Executors and Administrators - Topic 5544**].

Testaments - Cote 1714

Préparation et exécution - Abus d'influence - Preuve - [Voir **Wills - Topic 1714**].

Cases Noticed:

Hay Estate, Re, [1995] 2 S.C.R. 876; 183 N.R. 1; 82 O.A.C. 161, reld to. [para. 2].

Vout v. Hay - see Hay Estate, Re.

Goodman Estate v. Geffen, [1991] 2 S.C.R. 353; 127 N.R. 241; 125 A.R. 81; 14 W.A.C. 81, reld to. [para. 2].

DeWitt Estate, Re (2005), 286 N.B.R.(2d) 50; 748 A.P.R. 50; 2005 NBCA 69, reld to.

[para. 2].
Hoyt v. Murphy (2004), 268 N.B.R.(2d) 322; 704 A.P.R. 322; 2004 NBCA 19, reld to.
[para. 2].
Sweed Estate, Re (1988), 91 N.B.R.(2d) 416; 232 A.P.R. 416 (C.A.), reld to. [para. 2].
Spence Estate, Re (1988), 87 N.B.R.(2d) 415; 221 A.P.R. 415 (C.A.), reld to. [para. 2].
Thompson Estate, Re, [1975] 2 S.C.R. 271; 2 N.R. 364, reld to. [para. 2].
Goldsworthy v. Thompson - see Thompson Estate, Re.
Schwartz v. Schwartz, [1972] S.C.R. 150, reld to. [para. 2].
St. Onge Estate v. Breau (2009), 345 N.B.R.(2d) 101; 889 A.P.R. 101 (C.A.), reld to.
[para. 2].
McKean Estate, Re (2000), 224 N.B.R.(2d) 321; 574 A.P.R. 321 (C.A.), reld to. [para. 2].
Burns Estate, Re (2010), 356 N.B.R.(2d) 263; 919 A.P.R. 263; 2010 NBQB 85 (Prob.
Ct.), reld to. [para. 10].
Randall v. Hare - see Burns Estate, Re.
Krys v. Krys, [1929] S.C.R. 153, reld to. [para. 17].
Csada v. Csada (1984), 35 Sask.R. 301 (C.A.), leave to appeal refused (1985), 58 N.R.
236 (S.C.C.), reld to. [para. 17].
Stephens v. Austin, [2003] B.C.T.C. 341; 2003 BCSC 341, reld to. [para. 19].
Marsh Estate, Re (1991), 104 N.S.R.(2d) 266; 283 A.P.R. 266 (C.A.), reld to. [para. 21].
Elliott v. Turner and Turner, [1944] O.J. No. 508 (H.C.), reld to. [para. 24].
Anderson Estate v. Polson, [2003] B.C.T.C. 1721; 2003 BCSC 1721, reld to. [para. 24].
Fontana v. Fontana, [1987] B.C.J. No. 452 (S.C.), reld to. [para. 27].
Tamblyn v. Leach; Tamblyn Estate v. Leach (1981), 13 Man.R.(2d) 398 (Q.B.), reld to.
[para. 27].
Stewart v. Nash, [1988] O.J. No. 960 (H.C.J.), reld to. [para. 28].
Flack v. Caputo Estate, [2008] B.C.T.C. Uned. 356; 2008 BCSC 670, reld to. [para. 29].
Flack v. Rossi - see Flack v. Caputo Estate.
Jumelle v. Soloway Estate et al., [2001] Man.R.(2d) Uned. 43; 2001 MBCA 61, reld to.
[para. 33].

Statutes Noticed:

Credit Unions Act, S.N.B. 1992, c. C-32.2, sect. 47 [para. 23].

Authors and Works Noticed:

Oosterhoff, Albert H., *Wills and Succession* (6th Ed. 2007), generally [para. 17].

Counsel:

Brian Delaney, for the appellants;
Thomas Maillet and Emilie Savoie, for the respondent.

This appeal was heard on November 16, 2011, before Richard, Bell and Quigg, J.J.A., of the New Brunswick Court of Appeal. The following decision was delivered on June 28, 2012, for the court, by Bell, J.A.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon

Company Law - Topic 7504

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Wills - Topic 1714

Preparation and execution - Undue influence - Evidence and proof - The New Brunswick Court of Appeal stated that in matters of undue influence, the burden of proof differed depending on whether the gift was inter vivos, or took effect upon the donor's death - The court thereafter elaborated on the burden of proof issue - See paragraphs 16 to 21.