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STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
Case No. 102582-3

In re the MATTER of the ESTATE of ALBERT SOOKE

AMENDED ANSWER OF RESPONDENT

Christopher Kerl, WSBA #36139
117 East Louisa Street, Suite 347
Seattle, WA 98102
(206) 328-8500
kerl@kerl-law.com

*Attorney for Respondent/Estate Administrator
Simone Sooke*

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I. INTRODUCTION

The estate of Polly Sooke, through petitioner Kelly Buckingham, acting as personal representative of the estate of her mother, has now been found four times, at trial court and on reconsideration and at the Court of Appeals and on reconsideration, to have unlawfully conveyed Washington real property in 2018, worth over $300,000, belonging to a medically incapacitated Albert Sooke, to herself on the day of his death under a then-34-year-old non-enduring (non-durable) Canadian (BC) power of attorney.

Petitioner's brief completely omits reference to the dispositive BC Land Title Act, raised during appeal, which invalidates a non-enduring power of attorney three years after its execution (1984) for purposes of conveying real property, and effectively renders moot further argument about ratification. The trial court and Court of Appeals also both

found no admissible evidence to support petitioner's claim of ratification, which is her burden.

Petitioner has repeatedly attempted to obscure these facts and law with unproven allegations against respondent in the five years since. All lower courts have dismissed these self-serving allegations regarding the cognitively and physically impaired decedent's purported intention to gift petitioner and her family members the property. Albert Sooke's medical records from 2017 show that he suffered serious physical and cognitive impairments related to glioblastoma, from which he suffered and had a surgical brain resection procedure seven months before his death, and that he had also had a previous fall from a ladder. Medical records from the time of his fall in January 2018 show that he slipped on ice, that it was already previously planned for him to enter hospice care, and that a Washington palliative care physician determined he was incapable of making medical care decisions for himself five days before his death and the property transfers at issue, which

also included several vehicles. The record also establishes that Albert Sooke died of an overdose of morphine while in the care of petitioner Kelly Buckingham just a few hours after the transfers were made.

The self-serving declarations of petitioner and her family, claiming she transferred the property as a gift, were properly barred under Washington's dead man statute. Both Washington and British Columbia law contain numerous protections against inter vivos gifts by an agent, especially when a principal is incapacitated, to prevent just such self-enrichment. In addition to being found medically incapacitated and unable to make decisions by a physician, the trial court also found Albert Sooke to be legally incapacitated under Washington law after an evidentiary hearing.

The Court is asked to deny review on the basis of the multiple provisions of BC law invalidating the use of the power to convey real property, specifically the dispositive Land Title

Act, and the BC Property Law Act. Washington and BC laws strongly disfavor gifts by an agent to herself without consideration.

Should the court commence review, RCW 11.125.070 should be narrowly construed regarding “meaning and effect” of a foreign power to only include those issues relating to the extent of an agent’s authority under the power. Those issues not strictly related to the meaning and effect of the power, such as determining the mental capacity of a Washington resident, and admissibility of evidence in a Washington court are not within the reasonable ambit of the statute and should be adjudicated under Washington law. The Court is also asked to declare the invalid deed void ab initio.

Petitioner has repeatedly misstated and omitted facts and law throughout this case and on appeal, specifically failing to reference the dispositive BC Land Title Act in this petition, repeatedly and falsely claiming that the parties were legally

separated at the time of his death, grossly overstating BC law in her denied motion for reconsideration on appeal, and making misrepresentations and omissions regarding the deceased petitioner's residency to support a dubious claim to standing. In addition, petitioner's actions have continued for the past five years to deprive respondent of her long-time home and have caused waste of estate assets. These misrepresentations, misstatements, and omissions have caused significant delay and expense to address and refute.

II. IDENTITY OF RESPONDENT

Simone Sooke, administrator of the Estate of Albert Sooke, and his surviving spouse, is the respondent.

III. DECISION

Respondent requests that the Court deny review of the September 5, 2023, Court of Appeals decision and Order Denying Reconsideration, October 25, 2023. In the event review is taken further, respondent requests that RCW

11.125.070 be narrowly construed, finding that determination of capacity of a Washington resident be adjudicated under Washington law. Additionally, respondent requests that the invalid deed be declared void ab initio.

IV. RESPONSE TO ISSUES FOR REVIEW

A. The Court of Appeals applied the correct definition of ratification under BC law and did not err in affirming the trial court finding that the real property conveyance by Polly Sooke to herself was invalid and prohibited.

B. The Court of Appeals did not err in applying Washington law to determine the admissibility of evidence in a Washington court.

V. RESPONDENT'S ISSUES FOR REVIEW

A. Whether mental capacity of a Washington resident should be determined pursuant to Washington law.

B. Whether the invalid deed should be declared void ab initio.

C. Whether the surviving spouse has equitable and statutory community property interests in the marital home preventing unilateral gift by an agent.

VI. COUNTERSTATEMENT OF THE CASE

A. Factual Background

Prior to his death, Albert Sooke lived with his wife of 10 years, respondent Simone Sooke, at their home in rural Whatcom County. CP 349. Albert Sooke died January 16, 2018, from an apparent lethal dose of morphine, after having slipped on ice on or about January 3, 2018. CP 88, 380-384. He also suffered cognitive and motor issues related to a fall from a ladder and glioblastoma surgical resection he received in May 2017. CP 67-68, 71, 88, 90.

Dr. Lora Sherman, a palliative care physician, determined on January 11, 2018, five days before his death and the property transfers at issue, that Albert Sooke was unable to make medical decisions for himself due to confusion, inability to

communicate, and aphasia, among other factors. CP 173, RP 24, 25, 31, 34. At hearing July 19, 2021, the trial court determined that Albert Sooke lacked legal capacity under Washington law. CP 221.

In addition to the house, assessed in 2021 by Whatcom County at $222,272, Albert's estranged mother Polly Sooke also gifted several vehicles, including a vintage 1937 "Knucklehead" Harley Davidson motorcycle, estimated to be worth $48,000, to her son Anthony Sooke, who has been previously convicted of insurance fraud in BC. CP 72, 99-102, 214, 304, 386, 416-22.

B. Procedural Background

Respondent Simone Sooke, spouse of Albert Sooke, was properly appointed administrator of his estate February 14, 2018, pursuant to RCW 11.28 *et seq.*, for which as the surviving spouse she was not required to provide notice, and obtained a temporary restraining order to prevent transfer of estate assets

on March 16, 2018, with a final restraining order issuing April 6, 2018. CP 29. A petition for legal separation was erroneously filed in Whatcom County January 19, 2018, three days after Albert Sooke's death, under cause number 18-3-00044-37, on the advice of counsel to obtain an immediate restraining order for the unlawful property transfers then occurring. The petition was dismissed upon learning of Albert's death, and the restraining orders regarding property were obtained soon thereafter in the probate.

Kelly Buckingham has litigated this case since at least July 2019, when Polly Sooke died, without any legal standing to do so as representative of her estate in British Columbia, as her counsel admitted at two different hearings. CP 310-11, RP 192-3, 230. In opening a Washington probate for Polly Sooke shortly before appealing the matter in June 2022, petitioner's counsel misrepresented to the court that Polly Sooke was a Washington resident and failed to disclose the record from the BC probate court that no grant of probate had been issued to

allow petitioner Kelly Buckingham to act on behalf of her estate per RCW 11.20.090. CP 541-43, CP 310-11, RP 192-3, 230.

After deposition of Dr. Sherman, the trial court set an evidentiary hearing for July 19, 2021. CP 137-170, RP 3-112. At that hearing, the trial court determined that Albert Sooke lacked legal capacity under Washington law, that the power of attorney was non-durable, and that "all conveyances or transfers of real and personal property made under the purported authority of the power of attorney are null and void." CP 221-2.

In its opinion, Division One of the Court of Appeals affirmed the trial court findings and conclusions that petitioner failed to provide any admissible evidence of ratification by the decedent of the real property transfer and that it was invalid. Based on BC caselaw specifically defining ratification as a retrospective procedure, the opinion also more narrowly limited the time period for any possible ratification to the seven-and-a-

half-hour period after the deed was personally executed and recorded by the petitioner and the time Albert Sooke died.

VII. ARGUMENT

A. Dispositive BC Land Title Act Invalidates Non-Enduring Power Three Years After Execution, Rendering Argument about Ratification Moot; Review Should Be Denied.

The BC Land Title Act states that an unregistered non-enduring power of attorney is invalid for purposes of conveying real property three years after its execution. See Appendix, BC *Land Title Act* [RSBC 1996] Chapter 250, *Part 6—Powers of Attorney*, Section 56. The non-enduring Sooke power at issue was executed in 1984 and was not valid to convey real property in 2018, rendering further argument about ratification moot. As subsection (3) makes clear, an enduring power is distinguished from a non-enduring power (as is at issue in this case). Further, as subsection (1) also makes clear, the statute is effective unless the power contains language expressly excluding effect of the statute, which the Sooke power does not contain. Subsection

(2)(b) further states that it invalidates a "dealing" more than three years after execution of the power. Section 20 (1) of the Act further provides that an unregistered instrument or power does not operate to transfer an estate or interest in land at law or in equity. Appendix, BC *Land Title Act* [RSBC 1996] Chapter 250, *Part 3—Registration and Its Effect*, Section 20(1).

This BC statute is dispositive. Analysis of the agent's authority under the BC power pursuant to RCW 11.125.070 must include this provision of BC law, which provides another completely independent basis upon which the court must find the real property transfer invalid. The agent Polly Sooke would not have been able to use the unregistered 1984 non-enduring power to transfer real property in BC in 2018, so she therefore could not use it to do so in Washington State.

This flatly dispositive statute was cited in respondent's answer to petitioner's denied motion for reconsideration on

appeal. Petitioner's failure to disclose this statute to the Court could reasonably be considered a violation of RPC 3.3(a)(3).

B. Division One Opinion Relies on BC Common Law Definition of Ratification Consistent with Canada's Interpretation Act.

Petitioner's argument that the Division One opinion improperly relied on the common law definition of the term "ratification" laid out in the BC Supreme Court case *G.R.A.M. Contracting* is misleading and inapposite. (Per Kloegman, J. at para. 29.) *G.R.A.M. Contracting Ltd. v. Biosource Power Inc*., 2014 BCSC 350, 2014 CarswellBC 538 (B.C.S.C.).

The definition laid out in *G.R.A.M.* is clear and consistent at common law with Canada's Interpretation Act, which calls for usage of common **law** terminology in the English-speaking provinces, not the "plain, ordinary meaning" as petitioner argues. "…[T]he civil law terminology or meaning is to be adopted in the Province of Quebec and the common law terminology or meaning is to be adopted in the other

provinces." *Interpretation Act*, R.S.C., 1985, c. I-21, Section 8.2., *G.R.A.M. Contracting Ltd. v. Biosource Power Inc*., 2014 BCSC 350, 2014 CarswellBC 538 (B.C.S.C.).

The *G.R.A.M.* court definition of the term ratification states:

> Ratification is a question of fact. It **must be evidenced by clear, adoptive acts**, manifesting the principal's intention to be bound by what the agent has done. If the principal takes any benefits or profits of the agent's acts, that is strong evidence of such an intention. **Ratification operates retrospectively** to endow the agent with actual authority to perform the act in question, as if the agent had been given such authority prior to performing the act. **The burden of proving ratification is on the party alleging that ratification has occurred ..** ." (Per Kloegman, J. at para. 29.) *G.R.A.M. Contracting Ltd. v. Biosource Power Inc*., 2014 BCSC 350, 2014 CarswellBC 538 (B.C.S.C.). [Emphasis added.]

Ratification is a general legal principle applicable across many areas of the law and has the same generally accepted meaning as set forth in *Black's Law Dictionary*:

> **Ratification,** *n.* **1.** Confirmation and acceptance of a previous act, thereby making the act valid from the moment it was done…**2.** *Contracts*. A person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at

the time no authority to act as the person's agent…**3.** *Int'l law… Black's Law Dictionary* 1268-1269 (Bryan A. Garner ed., 7th ed, West 1999).

Appellant's argument that some general rules providing *guidance* regarding general principles of statutory and contract interpretation does not supersede specific definitions of the term provided in many cases across Canada. "Ratification is an act by a principal **after** the agent has acted with the third party, whereby the principal confirms that what the agent did at the time without authority of the principal, is now binding on the principal." (At para. 26.) *Re Moore* (2006). 2006 NSSC 216, 246 N.S.A. (2d) 392, 780 A.P.A. 392, 2006 Carswell NS 284 (N.S.S.C.). [Emphasis added.] "Before a person can be held to have **"ratified"** an unauthorized act, it must appear that he has adopted it by **unequivocal conduct, with full knowledge of all the circumstances**." *Elite Cafe Ltd. v. Baloise Fire Insurance Co.,* (1932) 3 W.w.A. 625 (C.A.); [Emphasis added.] The *Chieu* case cited by petitioner concerns a "preferred" method of

interpretation of a federal administrative immigration regulation. *Chieu v. Canada,* 2002 FCA 3 (CanLII), 2002 SCC 3. It does not support the proposition that a BC court's specific definition of the term would not be the controlling authority in interpreting a BC statute.

Petitioner cites to the 2005 BC contract case *Taddei*, which concerns contract interpretation, **not** statutory interpretation, to make the somewhat circular and selectively textualist argument that the specific definition of ratification supplied in the 2014 BC contract case *G.R.A.M. Contracting* should not apply in interpreting the BC *Property Law Act* requirement for ratification of any gift of real property by an agent to herself. *Group Eight Investments Ltd. v. Taddei*, 2005 BCCA 489 (CanLII), *G.R.A.M. Contracting Ltd.* at para. 29.

The BC Property Law Act states an attorney in fact cannot sell or transfer real property to herself "unless the power of attorney expressly authorizes it or the principal ratifies it."

BC *Property Law Act*, [RSBC 1996] CHAPTER 377, Section 27. The Court of Appeals properly applied the definition of ratification provided in the *G.R.A.M.* case to the requirements of the Property Law Act and determined under the evidence that ratification did not occur. It should also be noted that petitioner's argument implies that using the trial court definition of ratification would somehow materially affect the outcome, but does not explain how. Both the trial court and the court of appeals determined that petitioner failed to provide admissible evidence of ratification, irrespective of the definition used.

C. Petitioner's Brief Misleadingly Omits Reference to Previously Rejected Argument Re BC's Narrow 'Principled Hearsay' Exception.

In her second argument, petitioner argues that BC law regarding evidence of ratification "would result in a different outcome because B.C. has no Deadman's statute." Again, she fails to disclose, however, the relevant BC law and that Division One rejected this argument in her denied motion for reconsideration, wherein she misstated BC law to argue that

BC's 'principled hearsay' exception would permit testimony barred under Washington's dead man statute. RCW 5.60.030.

In her previous motion, petitioner cited the *Peterson* case, which allowed statements by the deceased to a "disinterested professional," i.e. his solicitor. *Peterson v Welwood*, 2018 BCSC 1379, para. 129, (CanLII). The *Peterson* case in fact expressly provides that the first factor to consider in determining the reliability of statements in such instances is "1) the presence or absence of a motive to lie." *Peterson* at para. 78.

This is why the dead man's statute exists in Washington, because of the obvious incentive to lie in such circumstances by someone who stands to benefit. There is no "circumstantial guarantee of trustworthiness" and reliability here as required under *Peterson* (para. 129). In fact, just the opposite inference is more reasonably taken here, namely that Polly Sooke had a $300,000+ incentive to make false statements for her own

benefit. And the same logic is equally applicable to statements of her daughter, appellant Kelly Buckingham, and son Anthony Sooke, who have already benefitted or stand to financially benefit from such claims.

The BC court in *Armstrong v. Kotanko*, similarly considered the testimony of a disinterested solicitor but viewed testimony of a friend of one of the parties with a high degree of skepticism. *Armstrong v Kotanko*, 2023 BCSC 989 (CanLII), paras. 30-31, 44-46. Similarly in *Harshenin*, the court considered the testimony of a disinterested solicitor. *Harshenin v. Khadikin*, 2015 BCSC 1213 (CanLII), paras. 50-53, 61-62. In none of these cases was the testimony of an interested party accepted. While perhaps slightly less black letter law than Washington's dead man statute, this approach has the same practical effect.

Taking the issue analysis a step further, there is in fact a double reliability hurdle under BC law. *Peterson* requires the

court to make a threshold determination before even getting to question of whether a principled hearsay exception may apply:

> It is important to recognize that, as a preliminary threshold issue, the court must first find on a balance of probabilities that the statement was in fact made by a deceased declarant before it goes on to determine the treatment and weight of such evidence. *Peterson* at para. 79.

Given that the decedent was found to be uncommunicative and incapable of making informed decisions regarding his own medical care five days before his death by a disinterested professional (and the trial court itself, which deemed him to lack capacity under Washington law), this is a very high threshold and the court can reasonably reject any assertions to the contrary. CP 173, RP 24, 25, 31, 34, CP 221.

Petitioner's previous argument that the exception should apply because of "necessity" is also flawed, as the "necessity" here was of petitioner's own making. If Albert Sooke was as competent as the petitioner alleges, why couldn't he have

simply executed a quitclaim before a notary? The trial court made the same observation…

> Ideally in hindsight you would say, well, get something in writing from him that says, you know, you want the property transferred. RP 26 (6/3/22).

The doctor's findings regarding Albert Sooke's cognitive problems and the lack of anything written, which could reasonably be expected of someone competent, do not corroborate petitioner's self-serving claims that he knowingly gifted them all his property. Petitioner's testimony was properly barred under Washington's dead man's statute and does not meet the threshold requirement, or reliability and necessity required under any BC principled hearsay exception.

Additionally, petitioner cites one sentence in the power to make the also previously rejected argument that there is some kind of implied or prospective self-ratification power conferred on the agent to enrich herself, while ignoring the first paragraph

of the power, which expressly empowers the attorney in fact on the principal's exclusive behalf: "My true and lawful Attorney, for me and in my name and on my behalf and for my sole and exclusive use and benefit…" CP 108. Division One rejected this argument as well in its opinion as without any supporting authority and properly relied on the BC Property Law Act and the *G.R.A.M.* case.

D. Washington Law Governs this Action; RCW 11.125.070 Does Not Override RCW 5.60.030 or Washington Rules of Evidence.

This Court's review authority is predicated on Washington law. RCW 11.125.070 is a Washington statute under which the Court is authorized to construe the "**meaning and effect**" of a foreign power of attorney pursuant to foreign law. It contains no provision allowing a court to make evidentiary decisions about the admissibility of testimony in a Washington court based on foreign law. RCW 11.125.070 does not vitiate or override RCW 5.60.030 or the Washington State Rules of Evidence. These alleged statements of the decedent were

supposedly made in Washington concerning Washington property and submitted to a Washington court. The decedent's alleged hearsay statements purporting to relate the truth of the matter are prohibited under ER 802 and RCW 5.60.030 and were offered in declarations written and submitted well after the fact (several over four years later) to a Washington court in the midst of already contentious litigation.

This Court has already noted in its opinion that the declarations submitted by appellant were insufficient to establish that Albert Sooke ratified the property transfers by "clear, adoptive acts," another requirement under *G.R.A.M. Contracting*, which would be an insurmountable deficiency regardless of whether they might be admissible or not. (Per Kloegman, J. at para. 29.) *G.R.A.M. Contracting Ltd. v. Biosource Power Inc*., 2014 BCSC 350, 2014 CarswellBC 538 (B.C.S.C.). Considerations of what may or may not be allowed under BC law concerning the admissibility of evidence have no reasonable bearing on what is admissible evidence in a

Washington court. Further, a trial court's order on the admissibility of evidence is reviewed under an abuse of discretion standard, and petitioner has failed to establish the court abused its discretion in finding as it did. *Univ. of Wash. Med. Ctr. v. Wash. Dep't of Health,* 164 Wn.2d 95, 104, 187 P.3d 243 (2008).

E. Capacity of a Washington Resident Treated by a Washington Physician is Properly Determined under Washington Law.

As noted above, the trial court first determined that the decedent Albert Sooke lacked capacity under Washington law, affirming the determination of Dr. Sherman that he lacked medical decision-making capacity at least as of January 11, 2018, five days before he died and effectively rendering him unable to ratify the agent's property transfers on January 16, 2018. CP 173, 221; RP 24, 25, 31, 34. This order was made after live testimony of Dr. Sherman, in which she explained the criteria she used for making such determinations as a routine

part of her position as a palliative care physician: Does the patient understand 1) their current medical condition, 2) their treatment options, 3) the ramifications of their decisions, and 4) whether the patient can communicate those decisions. RP 33.

1. Capacity Determination Distinct from Meaning and Effect of Power of Attorney Under RCW 11.125.070.

Review of the statute at RCW 11.125.070 would appear to be a case of first impression. This court should clarify to what extent Washington courts should defer to foreign jurisdictions. Respondent Simone Sooke maintained objection throughout the case that such determination should be made under the standard of Washington law at RCW 11.125.020(5), as the trial court first determined. CP 246.

Albert Sooke lived in Washington State, died in Washington state, was determined medically incompetent by a Washington physician, and this matter is being adjudicated by a Washington court. CP 349, 380; RP 24-5, 31,34. RCW

11.125.070 directs that the meaning and effect of a ***power of attorney*** should be determined according to the law of the relevant jurisdiction; it does not specifically direct that any determination of capacity be made according to foreign law. Petitioner's argument below and the court's analysis is also flawed because it is attempting to conflate "meaning and effect" of a power of attorney under 11.125.070, which is a legal question with determination of capacity, which is largely and necessarily a factual question best left for Washington experts to ascertain in a manner consistent with Washington standards. To allow otherwise, would result in inconsistent and unpredictable outcomes if Washington courts were required to regularly attempt to interpret foreign statutes with differing standards to determine capacity. Particularly as here, where a Washington resident is evaluated by a Washington physician.

Under a conflict of laws analysis, Washington law is also the logical choice given the greater contacts of the parties and subject matter of the case. *Woodward v. Taylor*, 184 Wash.2d

911, 918, 366 P.3d 432, 435 (2016). Albert Sooke was a Washington resident, respondent Simone Sooke is a Washington resident, the real property is located in Washington, the medical care in question was administered by a Washington physician, and the probate action has been maintained in Washington courts.

2. Trial Court's Initial Finding of Lack of Capacity Under Washington Law Was Correct.

The trial court initially found Albert Sooke lacked capacity as of January 11, 2018, under Washington law. CP 221; RCW 11.125.020. This is the correct standard to apply. First, it is consistent with the determination of medical incapacity. CP 173, RP 24, 25, 31, 34. Second, the BC statute to determine capacity (for a non-enduring power) is very vague and ill-defined (CP 266), allowing imputation of capacity to a person who was clearly seriously cognitively impaired with minimal ability to communicate, who had already been found

incapable of comprehending or making decisions regarding his own medical care by a physician. Third, given the standard to establish that ratification occurred, as required under BC law, "clear, adoptive acts, manifesting the principal's intention to be bound by what the agent has done," a higher threshold of capacity, consistent with the Washington standard of capacity is required. *G.R.A.M. Contracting Ltd. v. Biosource Power Inc*., 2014 BCSC 350, 2014 CarswellBC 538 (B.C.S.C.).

Albert Sooke was deemed uncommunicative on January 11, 2018, by his doctor; he was given a fatal dose of morphine on January 16. CP 380-4. There is no reasonable way petitioner can establish Albert Sooke possessed the necessary cognitive and communicative faculties necessary to prove ratification occurred under Washington or BC law, especially in the short, seven-and-a-half-hour window before his death. This court can and should reasonably find that Washington standards of capacity apply to Washington residents.

F. Given that Agent Lacked Authority to Convey Real Property, Deed Should be Declared Void *Ab Initio.*

In view of the BC Land Title Act provision invalidating a non-enduring power of attorney to convey real property after three years and the lower court findings that petitioner failed to establish that ratification occurred, it is clear that the agent Polly Sooke never had authority to convey the property at issue, and the deed should be declared void *ab initio.* BC *Land Title Act* [RSBC 1996] Chapter 250, *Part 6—Powers of Attorney.*

Without legal authority to convey, no conveyance can or could occur. In *Bryant v. Bryant,* this Court, referencing real property conveyances specifically, held "An attorney in fact has no power to execute any conveyance other than that which might fall within the strict definition of the terms of his or her power." *Bryant v. Bryant*, 125 Wash.2d 113, 118, 882 P.2d 169 (1994). "The instrument will be held to grant only those powers which are specified, and the agent may neither go beyond nor deviate from the express provisions." *Id.* at 118. In *Lazov v.*

Black, this Court affirmed a trial court finding of a void deed when the agent's authority had been terminated by revocation. *Lazov v. Black*, 88 Wn.2d 883, 567 P.2d 233 (1977). See also *Estate of Nelson v. Nelson*, No. 59056-1-I (Div. 1) (2008) unpublished, (deed void when family member unlawfully gifted real property to herself, exceeding authority under power).

The common thread of all these cases is that unlawfully conveyed deeds were found void by Washington courts when the agent conveyed real property without authority, regardless of whatever specific reason the agent may have lacked authority. Polly Sooke lacked authority to convey the Whatcom County property to herself, and this Court should find the deed void and quiet title in the property to the Estate of Albert Sooke under RCW 11.96A.020.

G. Spouse of 10 Years Has an Equitable and Statutory Community Interest Under BC and Washington Family and Estate Law; Even if Decedent was Competent, House Was Not His to Unilaterally Gift (Even if Ratified).

The BC Family Law Act provides that a spouse of more than two years has a spousal interest in the increase in the value of a marital home, even if the property may be characterized as separate or "excluded." BC Family Law Act, [SBC 2011] CHAPTER 25, Part 5, Subsection 82(g). Similarly in Washington, there is a presumption of community property in Washington, including any increase in the value of a marital home "with which personal services ostensibly belonging to the community have been combined, the rule is that all the income or increase will be considered as community property…" *Hamlin v. Merlino*, 44 Wn.2d 851, 858, 272 P.2d 125 (1954), Harry M. Cross, *The Community Property Law in Washington* (*Revised 1985*), 61 WALR 13, 28 (1986).

In the context of intestate succession, both BC and Washington also define and provide for a surviving spouse's interests. BC Wills Estates and Succession Act [SBC 2009] CHAPTER 13 Part 3, Section 21(4); RCW 11.04.015.

In view of a spouse's equitable and statutory interests in property of the marital community and estate, petitioner's actions, unilaterally gifting herself virtually the entirety of real and personal property belonging to both the decedent and his wife, are a conversion of the spouse's interest and must be invalidated to protect her rights. Albert Sooke could not disinherit his wife and neither could his mother.

H. Recognizing "Gift" of All Estate Property Would Defraud Other Creditors.

Third party creditor claims of $70,083 (hospital and bank) have been filed in this probate action. Additionally, $11,861 in seriously delinquent property taxes are owed. Any recognition of the appellant's "gift" of virtually the entire estate, estimated to be worth more than $300,000, to herself and her children, leaving nothing to pay claims and taxes would effectively defraud legitimate creditors of the estate.

I. BC and Washington Law Strongly Disfavor "Gifts" Without Consideration by an Agent to Herself.

BC law contains multiple provisions of law to safeguard property of people from having assets converted by unscrupulous attorneys in fact. The Property Law Act expressly disallows gifts by an agent to herself without ratification. BC *Property Law Act*, [RSBC 1996] CHAPTER 377, Section 27. Caselaw imposes a fiduciary duty on an agent to not abuse a power for their "own profit, benefit, or advantage." *Egli v. Egli*, 2004 BCSC 529 (CanLII), paras. 81-82. The Land Title Act contains provision limiting the use of a non-enduring power to only three years. BC *Land Title Act* [RSBC 1996] Chapter 250, Part 6—Powers of Attorney, Section 56. The principled hearsay exception limits testimony to truly disinterested professionals. *Peterson v Welwood*, 2018 BCSC 1379, para. 129, (CanLII). The Patients Property Act in fact suspends any power of attorney when someone is deemed incompetent. BC *Patients Property Act* [RSBC 1996] CHAPTER 349 Section 19.1.

Washington law contains many similar protections against financial abuse under powers of attorney. The dead man's statute, RCW 5.60.030, bars people from testifying for their own benefit. RCW 74.34.020 (7)(b) protects vulnerable people from financial exploitation, such as misuse of a power of attorney, of which petitioner's actions are almost a letter-perfect violation. Caselaw imposes a high bar of clear, cogent, convincing, and satisfactory evidence on anyone seeking to justify "gifts" made under a power of attorney. *In re Estate of Palmer*, 187 P.3d 758, 145 Wn.App. 249 (Div. 2, 2008), *Doty v. Anderson*, 17 Wn.App. 464 at 467-8, 563 P.2d 1307, (Div. 3, 1977). An agent's authority to convey is strictly limited by the terms of her power. *Bryant v. Bryant*, 125 Wash.2d 113, 118, 882 P.2d 169 (1994).

It bears repeating that Albert Sooke was declared medically incapacitated. CP 173, RP 24, 25, 31, 34, CP 221. That the proximate cause of his death was an overdose of morphine in the company of petitioner. CP 339, 382-84. And

that petitioner's mother transferred virtually all of Albert's property to herself and her son the day of his death. CP 95-97, 99-102, 108-110, 296.

Petitioner had the burden to prove a gift under both BC and Washington law and failed under both. It is clear from all these protections built into the law that both Washington and British Columbia strongly disfavor gifts made by an agent to herself without consideration. The Court must view this case in light of all these legal prohibitions against agent misconduct, what has actually been established as true in this case, and affirm the previous logical and just conclusions of the lower courts.

J. Conclusion.

Review should be denied on the basis of the BC Land Title Act, which invalidates a non-enduring power three years after its execution, rendering further argument about ratification moot. Review should also be denied because there is no

material difference in the admissibility of interested testimony under BC law versus under Washington's dead man statute.

In the event further review is taken, the Court should narrowly construe RCW 11.125.070 to only apply to the actual authority conferred under a foreign power, its meaning and effect. Other issues concerning a Washington resident, living in Washington, concerning Washington property, treated by a Washington doctor, before a Washington court, such as determination of capacity and admissibility of evidence do not fall reasonably within the language and scope of the statute, and would contravene existing, applicable Washington law and result in inconsistent applications and outcomes.

Given the dispositive BC Land Title Act, invalidating the power, and the trial court ruling that the real property conveyance was invalid and prohibited due to the agent's lack of authority and failure to establish ratification, the deed should be found *void ab initio*.

RAP 18.17 CERTIFICATION: Respondent confirms that this brief, not including text exempt from the total word count, is 5,675 words.

Respectfully submitted this 3rd day of January, 2024.

/s/*Christopher Kerl*

Christopher Kerl, WSBA# 36139
117 East Louisa Street, Suite 347
Seattle, WA 98102
kerl@kerl-law.com

Attorney for Respondent and

Estate Administrator Simone Sooke

DECLARATION OF SERVICE

I, Christopher Kerl, hereby declare that on the 3rd day of January, 2024, I caused a true and correct copy of the following:

1. Respondent’s Answer;
2. Subjoined Declaration of Service;

to be served on the following:

Law Offices of Lisa Saar
805 Dupont St., Ste 6, Bellingham, WA 98225
5355 Tallman Ave NW, Ste 202, Seattle, WA 98107
lisa@lsaarlaw.com

DATED this 3rd day of January, 2024,

By /s/*Christopher Kerl*__________

Christopher Kerl,
Attorney for Respondent

APPENDIX

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96250_06

LAND TITLE ACT

[RSBC 1996] CHAPTER 250

Part 6 — Powers of Attorney

Power of attorney valid for 3 years only

56 (1)For the purpose of this Act, but subject to subsections (2), (3) and (5) and unless the effect of this section is expressly excluded in it, a power of attorney filed in the land title office either before or after this Act comes into force is not valid after 3 years after the date of its execution.

(2)Subsection (1) does not invalidate

(a)a dealing that is

(i)otherwise valid,

(ii)registered before October 31, 1979, and

(iii)entered into by an attorney acting in good faith under a valid power of attorney filed with the registrar before October 31, 1979, or

(b)a dealing that is

(i)otherwise valid, and

(ii)entered into within 3 years after the date of execution of a valid power of attorney.

(3)For the purpose of this Act, but subject to section 57 (1), an enduring power of attorney that is filed under section 51 of this Act remains valid, unless terminated by another means, until an order terminating the enduring power of attorney is filed in the land title office.

(4)Section 57 (3) of this Act applies to the order filed under subsection (3) as if it were a notice of revocation.

(5)Subsection (1) does not apply to a power of attorney executed by a corporation after July 30, 1981.

(6)The amendments to this section made by the *Attorney General Statutes Amendment Act, 1981* do not apply to powers of attorney executed before July 30, 1981.

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96250_03

LAND TITLE ACT

[RSBC 1996] CHAPTER 250

Part 3 — Registration and Its Effect

Unregistered instrument does not pass estate

20 (1)Except as against the person making it, an instrument purporting to transfer, charge, deal with or affect land or an estate or interest in land does not operate to pass an estate or interest, either at law or in equity, in the land unless the instrument is registered in compliance with this Act.

(2)An instrument referred to in subsection (1) confers on every person benefited by it and on every person claiming through or under the person benefited, whether by descent, purchase or otherwise, the right

(a)to apply to have the instrument registered, and

(b)in proceedings incidental or auxiliary to registration, to use the names of all parties to the instrument, whether or not a party has since died or become legally incapacitated.

(3)Subsection (1) does not apply to a lease or agreement for lease for a term not exceeding 3 years if there is actual occupation under the lease or agreement.

C.A. KERL PLLC

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