



Life's brighter under the sun

Pre-Planning with Insurance Planning is the Best Solution

Sanjana Bhatia, B.B.A., LL.B., LL.M. (Tax), TEP

Director, Tax and Insurance Planning

Insurance Tax Solutions

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Simpson v. Simpson Estate, 2021 BCSC 1486 (Simpson) is a recent decision where a shareholder's estate plan went awry because the shareholder's will did not line up with the shareholders' agreement. As a result, the court rectified the shareholder's will under British Columbia's *Wills, Estates and Succession Act (WESA)*.

Simpson demonstrates that it is important to align shareholders' wills with shareholder agreements funded with life insurance. *Simpson* also shows that insurance planning is vital to help achieve estate equalization.

Facts

John Thomas Simpson (Thomas) and Michael Patrick Lawler (Michael) were equal shareholders in a business located in Vancouver, British Columbia. Thomas' will provided that his corporate shares were to go to his two adult children. The will, however, did not specifically state that Thomas wished to gift **the fair market value (FMV) of his shares** to the children. The will also left the rest of Thomas' estate to his second spouse, Ingrid Helga Zaste (Ingrid).

Thomas' shares were also subject to a shareholders' agreement that contained a buy-sell clause. The buy-sell clause stated that:

- If a shareholder died, the surviving shareholder was to purchase the deceased shareholder's shares at FMV. The shares' FMV would be determined at the date immediately preceding the shareholder's death.
- Each shareholder was required to have an insurance policy to fund the buy-out. Their respective spouses or another immediate family member would be named as irrevocable beneficiary.
- The surviving shareholder would pay the deceased's shareholder's estate the FMV of the shares less the amount of the life insurance proceeds.



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According to the buy-sell clause, Thomas purchased a \$150,000 life insurance policy. Ingrid was the policy's irrevocable beneficiary.

In 2018, Thomas passed away. Michael exercised his right to purchase Thomas' shares as set out in the buy-sell clause. Michael paid Thomas' estate a net purchase price of \$91,365.33 calculated as follows:

The shares' FMV	\$268,750.00
Less: Insurance proceeds	(155,884.67)
Less: Accounting adjustments	<u>(21,500.00)</u>
Net purchase price	\$91,365.33

Ingrid was the sole executor and trustee of Thomas' estate. Ingrid argued that:

- The gift of Thomas' shares to the children under his will failed. This is because the buy-sell clause required Michael to buy those shares.
- The shares therefore became part of the estate.

If the above arguments succeeded, then Ingrid would receive the shares' net purchase price and the insurance proceeds. This also meant that Thomas' children would not receive anything from their father's estate.

Court's Decision

Thomas' children applied to the B.C. Superior Court to rectify their father's will. They asked the court to add a provision to the will stating that the shares **or the FMV of the shares as determined by the shareholders' agreement** pass to them.

The court granted the children's application for rectification and concluded that:

- Thomas' intention was that the FMV of his shares would go to his children.
- Thomas' will as originally written failed to carry that intention out.

- The failure was a consequence of an error (as per WESA section 59(1)(a)).¹ The error was that Thomas did not realize that the gift of his shares had to specifically address the buy-sell clause.

The court also noted that Thomas named Ingrid as a beneficiary on another \$43,000 personally owned life insurance policy. The court speculated that Thomas likely purchased this policy because he knew that Ingrid would not receive the insurance proceeds which provided the funding for the buy-sell agreement.

Key takeaways

Some of the key takeaways from *Simpson* are as follows:

- This case demonstrates that it is important to align shareholders' wills with shareholders' agreements funded with life insurance.
- Estate equalization would have been a good solution in this case. For example, Thomas' \$43,000 life insurance policy could have been increased to the FMV of his shares. Alternatively, Thomas could have bought another policy equalling the FMV of his shares. Ingrid, as named beneficiary, would have received those proceeds. Thomas' children would receive the FMV of his shares.
- To achieve estate equalization, it may be better for Clients to purchase more than one policy to fund different purposes: 1) buy-sell clauses; 2) spousal support; 3) support for children, and 4) charitable gifts.
- This case is a reminder that Clients need to work with their insurance, legal and accounting professionals to ensure a successful insurance and estate plan. This will help to avoid the time, expense, stress and uncertainty of litigation. Pre-planning with insurance planning is the better and optimal solution.

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¹ WESA paragraph 59(1)(a) states that upon application to a court, a court may order that a will be rectified if the court determines that the will fails to carry out the will-maker's intentions because of an error arising from an accidental slip or omission.