

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Linde v. Linde*,  
2019 BCSC 1586

Date: 20190627  
Docket: S112485  
Registry: Kelowna

Between:

**Howard Dean Linde and Beatrix Lauren Linde**

Plaintiffs

And

**Kenneth Roy Linde**

Defendant

Before: The Honourable Mr. Justice G.P. Weatherill

## **Oral Reasons for Judgment**

Counsel for the Plaintiffs:

K.D. Rule

Counsel for the Defendant:

D.E. Dent

Place and Date of Trial/Hearing:

Kelowna, B.C.  
June 24-26, 2019

Place and Date of Judgment:

Kelowna, B.C.  
June 27, 2019

[1] **THE COURT:** These are my reasons for judgment. If a transcript of these reasons is ordered I reserve the right to edit them for clarity, but the substance and the result will not change.

### **INTRODUCTION**

[2] This summary trial proceeding involves an unfortunate dispute between an 89-year-old father, the defendant Kenneth Linde (“Kenneth”), and his 60-year-old son, the plaintiff Howard Linde (“Howard”), and Howard’s wife the plaintiff Beatrix Linde (“Beatrix”). Meaning no disrespect to the parties, but for ease of reference, I will refer to each of them by their first names throughout these reasons.

[3] The dispute centers around Kenneth’s 623-acre ranch, located approximately 30 minutes southwest of Williams Lake, B.C., (the “Ranch”), and various water and other licences held in relation to the Ranch. The plaintiffs seek a declaration that they are entitled to ownership of the Ranch on Kenneth’s death on the basis of the equitable doctrine of proprietary estoppel. They also seek a declaration that Kenneth’s purported gift of the Ranch to the Esk’etemc First Nations Band (the “Band”) in April 2017 be declared void as against their equitable interest.

[4] The plaintiffs’ claim is founded on Howard working for his parents on the Ranch for virtually his entire life, including some 50 years as an adult, and Beatrix working with Howard and his parents on the Ranch since marrying Howard in 1996. They say that they were paid little or no compensation for their labour, but were happy to work hard on the Ranch on the understanding and on the expectation, based on assurances given by Howard’s parents, that they would inherit the Ranch on their death. Alternatively, they claim for unjust enrichment. They say that the promises Howard’s parents made to them over the years that they would inherit the Ranch on their death prompted them to give up alternative careers and deprived them of the ability to earn income elsewhere. They say that the equities in this case demand this Court to step in and prevent the disposition of the Ranch, its water and other licences, machinery and equipment, to anyone but them.

[5] Until 2014, the parties worked together on the Ranch as a family and in relative harmony. They also worked on Howard's neighbouring 126-acre farm that he purchased from his parents in the early 1980's. They shared machinery, equipment and effort. There is no dispute that throughout the years leading up to 2014 the parties understood and conducted themselves in a manner consistent with the plaintiffs inheriting the Ranch on Howard's parents' death.

[6] Regrettably, in 2014, the plaintiffs and Kenneth had a major falling out, the upshot of which was that, despite prior discussions and assurances to the contrary, Kenneth no longer felt any moral or legal obligation towards the plaintiffs respecting the Ranch or any other of his assets. On April 27, 2017 he transferred the Ranch to the Band under a land and asset transfer agreement (the "Transfer"). The Transfer has been registered in the Land Title Office, but is subject to and dependant on the outcome of this litigation. The Transfer is held in abeyance because of certificates of pending litigation filed by the plaintiffs against the Ranch's four titles on September 12, 2016.

[7] The Band has been aware of this proceeding since April 2017, when Kenneth transferred the Ranch to them, and are aware that their transfer is subject to the outcome of this proceeding. The Band is represented by counsel and has had over two years to file an appearance and seek standing in the case, but has apparently chosen not to do so. I am told that they are also aware of this summary trial proceeding, but have chosen to take no part and simply await its outcome.

### **BACKGROUND**

[8] Kenneth was born in 1930. He married Kathey and the couple had two sons: Douglas, born in 1957; and Howard, born in 1959. They purchased the Ranch in 1961. Kenneth spent his life as a rancher and supported his ranch lifestyle by working in various sawmills around the Williams Lake area until retiring in his later years. By all accounts, the ranching life was one of round-the-clock hard work and sacrifices and one that did not produce an abundance of income or wealth. It was income he earned from working in sawmills that supported Kenneth's family over the

years. Kenneth now receives a pension income of about \$38,000 per year from that work, together with his Canada Pension.

[9] Both Doug and Howard began working on the Ranch from a very young age and were encouraged by their parents to make ranching life their careers.

Throughout their lives Kenneth and Kathey made it clear to Howard and Douglas that they would inherit the Ranch if they were worked hard on it. Tragically, in 1982, at the age of 24, Douglas died leaving Howard as the only surviving child. Howard worked on the ranch for over five decades, being paid comparatively little in compensation. He says he did so on the understanding that one day the Ranch would be his. Kenneth does not deny that he made various comments to that effect to Howard over the years. Generally speaking, the work on the Ranch involved cattle operations, growing hay for sale, logging and operating a woodlot under a provincial licence, processing timber, and repairs and maintenance of various pieces of machinery and equipment. Hours of work varied depending on the time of year, the crops that were to be harvested, and other factors.

[10] In 2008 Kathey died, which was a devastating event for Kenneth. In January 2009, and in keeping with his previously stated succession plans, Kenneth retained a lawyer in Kamloops, Mr. Huyghebaert, to prepare certain estate planning documents. Those documents included transfers of the Ranch's four legal titles to Howard and himself as joint tenants. At the same time Kenneth transferred two bank accounts and a safety deposit box into his and Howard's names jointly. One of the documents drafted by Mr. Huyghebaert was a "declaration of trust", (the "Trust Declaration"), specifying that Howard's joint interest in the Ranch was held in trust for Kenneth and that Howard would transfer that joint interest back to Kenneth upon request. All of these documents were signed on January 16, 2009, at Mr. Huyghebaert's office. Howard was not advised to seek independent legal advice, nor was he advised that Mr. Huyghebaert represented Kenneth only. Nevertheless, Mr. Huyghebaert witnessed Howard's signature on the Trust Declaration. Another document Kenneth signed at the same time was a bill of sale absolute, transferring various goods, chattels and personal property to Howard. While the schedule to the

bill of sale is not in evidence, I understand it included various pieces of farm equipment and machinery used to run the ranch's operations.

[11] Beatrix and Howard were married in 1996. At the time, Beatrix was working as a substitute teacher in home daycare and preschool programs in the Williams Lake area and was completing her qualifications in early childhood education. She had a number of solid job offers in Williams Lake. Howard and Beatrix discussed Beatrix's future with Kenneth and Kathey, who encouraged her to give up that career and work at the Ranch, because "there was plenty of work to do on the farm" and because it would cost too much money for her to drive back and forth to town. Accordingly, she quit her employment and worked on the Ranch thereafter as a farm labourer, which she enjoyed. Similar to Howard, she understood from discussions with Kenneth and Kathey that with continued hard work and effort Howard and Beatrix would inherit the Ranch.

[12] Beatrix describes Howard as one of the hardest working people she has ever known, who worked tirelessly for Kenneth and Kathey on the Ranch. A number of members of the local community who knew the Linde family, and the parties generally, support Beatrix's comments about Howard's involvement and hard work on the Ranch and Kenneth's directions to Howard over the years. They support that Kenneth encouraged Howard to stay and work on the Ranch.

### **THE TRUST DECLARATION**

[13] Kenneth relies on the Trust Declaration to defeat the plaintiffs' claim. The Trust Declaration provides the following respecting the Ranch, which is referred to in it as the "Property":

I, Howard Dean Linde, do hereby acknowledge and declare that I have no interest whatsoever in the said lands and premises other than that of a bare trustee for Kenneth Roy Linde, the beneficial owner thereof. The registration of my name as a joint tenant is made only in order to provide for smooth and efficient transmission of the Property on the death of Kenneth Roy Linde. I further declare that any income or capital, whether in cash or otherwise, or any right in respect of such lands and premises, as well as any proceeds arising from the sale thereof, does not in any manner belong to me, but is the property of Kenneth Roy Linde, and I agree to transfer the said lands and

premises at any time upon the direction of the said Kenneth Roy Linde. I hereby covenant for myself and my executors and administrators with the said Kenneth Roy Linde that I will at any time hereafter, at the request and at the cost of Kenneth Roy Linde, assign and transfer the said Property as to an undivided one half interest to Kenneth Roy Linde or such other company or person or persons as Kenneth Roy Linde shall direct.

[14] Howard's understanding when he signed the Trust Declaration was that it was part of what was required to put into effect a long-term plan that his parents and he had that he would inherit the Ranch on Kenneth's death. He says it was not explained to him and he signed it without understanding what it meant. Specifically, he says that:

I did not know that the document actually strips me of any legal rights I might have accumulated by working on the lands to that point and I would not have signed it had I known that.

[15] Kenneth's understanding of the Trust Declaration was that it formed part of his estate planning and included the Ranch being inherited by Howard on his death.

### **THE JOINT BANK ACCOUNTS AND THE SAFETY DEPOSIT BOX**

[16] As earlier mentioned, Kenneth also added Howard as a joint owner of two bank accounts and a safety deposit box. The safety deposit box contained 28 troy ounces of gold. Howard recalls that Kenneth said he could help himself to the money in the accounts if he needed it. Howard's understanding was that because of the hard work and effort he put into the Ranch over some 50 years, because he had been woefully underpaid for those efforts and because it was intended that he would take over the Ranch in any event, which required funds to operate, he was at liberty to use the monies in the bank account and sell the gold as needed for personal living and ranch operations. Instead of confirming this understanding with Kenneth and getting his blessings, as in my view he could and should have done, between 2009 and 2014 he gradually withdrew the money in one of the bank accounts, totalling approximately \$31,000, and took 17 troy ounces of the 28 troy ounces of gold in the safety deposit box, valued at approximately \$25,000. The total amount taken over those five years was approximately \$56,000.

[17] It appears that at some point prior to 2014, Kenneth discovered that the bank account containing about \$31,000 had been depleted. He confronted Howard, who offered to repay the funds. Kenneth's reply was that he would "let it go". Nevertheless, it appears Howard's action was a major disappointment for Kenneth.

[18] Sometime in 2014, Kenneth discovered that gold was missing from his safety deposit box, causing relations between Howard and Kenneth to sour significantly. For Kenneth, the missing gold was the final straw that destroyed his trust in Howard and Beatrix. Kenneth felt betrayed by Howard. In his view, Howard no longer had the sense of "family", and accordingly neither Howard nor Beatrix were any longer deserving of inheriting the Ranch. Nevertheless, despite the tension that existed, Kenneth, Howard and Beatrix continued working on the Ranch as before, but under strained conditions.

[19] In December 2015 Kenneth had a nasty accident while working on the Ranch, the details of which are not clear, that nearly cost him his life. Since then, he has not been able to engage in any ranch activities and has been living in a nursing home in Williams Lake. Howard and Beatrix have continued operating the Ranch, but since 2017 have not accounted to Kenneth for any of its profits.

[20] In June 2016, approximately two years after discovering the missing gold, Kenneth filed a petition in the Williams Lake registry under number WL16-17107, seeking, among other things, a declaration that Howard held his joint interest in the Ranch in trust for him. At that point Kenneth made his intentions clear that Howard and Beatrix were no longer going to inherit the Ranch and that he was going to gift it, together with the ranch machinery, equipment and water licences, to the Band.

[21] The plaintiffs countered by filing a notice of civil claim on September 12, 2016, and by registering CPLs against the four legal titles comprising the Ranch. As mentioned, they seek various forms of equitable relief respecting the Ranch and the declaration that Kenneth's intended gift of the Ranch to the band should be voided. Kenneth filed a response to the civil claim on November 22, 2016. In April 2017, Kenneth made good on his intended gift of the Ranch to the Band and signed the

Form A transfers to Charlene Belleau, the Band's then chief, in trust for the Esk'etemc First Nations under a land and asset transfer agreement dated April 27, 2017.

[22] Howard and Beatrix sought these declarations by way of a summary trial. At the outset of the hearing on June 24, 2019, the defendants applied to have the summary trial proceeding dismissed on the basis that it was not suitable for summary determination. After hearing arguments on the point, I ruled that the summary trial should proceed.

### **PROMISSORY ESTOPPEL**

[23] The law surrounding the equitable doctrine of proprietary estoppel is not in dispute. Equity enforces promises that the law does not. Howard and Beatrix claim that after over 50 years of Howard's dedicated hard work on the Ranch and over 20 years of Beatrix doing likewise, and based on representations and promises made to them by Kenneth and Kathey, it was their reasonable expectation that they would inherit the Ranch when Kenneth and Kathey died. The question for adjudication is whether, despite the legal rights Kenneth has under the Trust Declaration, equity, and specifically the doctrine of proprietary estoppel, now binds Kenneth to his word.

[24] The leading case in Canada on the doctrine of proprietary estoppel is *Cowper-Smith v. Morgan*, 2017 SCC 61. The principles that can be derived from that case are these:

[15] An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word [citations omitted]. The representation or assurance may be express or implied [citations omitted]. An inchoate equity [meaning one that is not fully formed, or that is uncrystallised] arises at the time of detrimental reliance on a representation or assurance. ... When the party responsible for the representation or assurance possesses an interest in the property sufficient to fulfill the claimant's expectation, proprietary estoppel may give effect to the equity by making the representation or assurance binding.

[16] ... Like other estoppels, proprietary estoppel avoids the unfairness or injustice that would result to one party if the other were permitted to break her word and insist on her strict legal rights [citations omitted]. ...

As well as is summarized in the headnote:

Whether a claimant's reliance was reasonable in the circumstances is a question of mixed law and fact. A trial judge's determination of this point is, absent palpable and overriding error, entitled to deference.

And:

Where a claimant has established proprietary estoppel, the court has considerable discretion in crafting a remedy that suits the circumstances. .... However, a claimant who establishes the need for proprietary estoppel is entitled only to the minimum relief necessary to satisfy the equity in his favour, and cannot obtain more than he expected.

[25] The most essential requirement is that there must be proportionality between the expectation and the detriment (*Cowper-Smith* at para. 56). Estoppel claims "concern promises which, since they are unsupported by consideration, are initially revocable. What later makes them binding, and therefore irrevocable, is the promisee's detrimental reliance on them. Once that occurs, there is simply no question of the promisor changing his or her mind" ([1998] R.L.R. 220 (W.J. Swadling), cited in *Gillett v. Holt & Anor*, [2000] E.W.C.A. Civ. 66, [2000] 3 W.L.R. 815 (C.A.) at 831 [*Gillett*]). It is the promisee's detrimental reliance on the promise which makes it irrevocable. The detriment need not consist of expenditure of money or other quantifiable financial detriment, so long as it is something substantial. Generally speaking, the approach is to determine whether a purported repudiation of the promise or assurance is unconscionable in all the circumstances. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. "Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded" (*Gillett* at 836).

**DISCUSSION**

[26] I am satisfied on the evidence that Howard and Beatrix have proven the elements of proprietary estoppel. They both, particularly Howard, relied on Kenneth and Kathey's assurances respecting inheriting the Ranch to their detriment. Howard worked on the Ranch all of his life for little pay, not only because he enjoyed the work and lifestyle, but because he understood the arrangement with Kenneth and Kathey was that he would inherit the Ranch on their passing. He was encouraged all his life by his parents to stay and work on the Ranch and not to follow other career paths. He was happy to do so for little or no compensation on the repeated assurances and expectation that he would inherit the Ranch on his parents' death. Indeed, that understanding was mutual. Had those promises never been made, it is impossible to know what Howard may have done with his life. It would be a matter of pure conjecture as to what the future might otherwise have held for him. Likewise, the evidence satisfies me that when Beatrix arrived on the Ranch in 1996, she too deprived herself by not taking advantage of her other career opportunities in favour of working on the Ranch and helping out Howard and his parents on the strength of what I am satisfied were clear and repeated assurances that Howard and she would inherit the Ranch. I am also satisfied that there was a pattern of Kenneth and Kathey underpaying Howard, and later Beatrix, for their farm labour and that that underpayment was part of their overall family plan that they would inherit the Ranch when Kenneth and Kathey passed.

[27] In my view, the plaintiffs ought to receive what they were promised by Howard's parents, which includes the Ranch and machinery and equipment, the water licences and the woodlot. Although Kenneth and Kathey's various statements respecting inheriting the Ranch may not have been clear and unequivocal, the nature of that communication was clear – that Howard would inherit the Ranch so that it would remain in the family. Having Howard on the Ranch made it possible for Kenneth to work in sawmills and build up a pension for his retirement. Howard did not have that opportunity. His parents' encouragement to stay on the Ranch was a powerful factor that caused Howard to remain and work there and continue for some

50 years, rather than move away and pursue some other career. The fact that Kenneth assisted Howard and Beatrix in purchasing the woodlot and selling them 126 acres of an adjacent property in 1980 was part and parcel of that assurance and agreement. Taken in context, Kenneth's years of assurances that the Ranch would be Howard's on his death was unambiguous and was intended to be taken seriously. It was a promise which one would reasonably expect a father of a child working on a ranch to make.

[28] The evidence is also clear that Kenneth and Kathey considered Howard to be a partner in the Ranch business operations. For example, in 1989 Kenneth and Kathey sought to cease paying UIC premiums for Howard as an employee and in July of that year filed a document for tax purposes stating that Howard was "the only child and sole heir of the ranch" and that "he was part owner and one of these days it's all going to be his to worry about".

[29] Indeed, it is clear that Kenneth maintained this position throughout Howard's life until 2014, when he was aged 84 and felt betrayed by Howard's actions. Kenneth states in his affidavits:

- 8.b. ... I would never deny that I told Howard on numerous occasions that I planned on leaving the [R]anch to him. Until events which I regarded as betrayal ..., I hoped and planned to do so. ...
10. It is certainly true that my son Howard participated with me in my ranching business. I don't want to diminish his participation, ...
14. I always hoped that to the greatest extent possible my ranch could be preserved as a family endeavour after my passing. Thus, in 2009, not long after my wife died in 2008, I did some simple "estate planning" and transferred all of my family wealth into joint ownership with my son Howard. At that stage I was already close to 80 years old. This transfer was not in any sense intended to fulfil a contractual debt to my son Howard and Howard paid me nothing in return. Rather, it was intended to simplify things for my son at my passing. In order to ensure that the family assets would remain available to me if I needed them during my lifetime the lawyer had my son Howard sign a declaration of trust which specified that I would remain the "real" owner during my lifetime. ... At that point in my life I felt that Howard and I had a strong sense of family. I believe that Howard was grateful for everything, which is more than I had given to him prior to the estate planning exercise. I believed that he understood that I would try

to retain the family farm for him, but that nonetheless it was mine to do with as I liked.

[30] The “betrayal” that is at the root of this litigation related to Howard taking money as needed from Ken’s bank account and gold from his safety deposit box to pay for personal and ranch expenses, which Howard understood Kenneth had agreed to. Kenneth deposes the following:

16. ... [Howard] has sworn that I told him he could use the monies on deposit in the bank account if he needed to do so. I don't recall telling him that, but I may have done so. If I did so, however, it would have been in the expectation that Howard understood that these assets represented my life savings and that I might need them to support myself in my later years and so that his use of such funds should only be in the most dire of circumstances and with full disclosure to me. There was no disclosure. ...

[31] Kenneth goes on to say that he, “always felt that the [R]anch should go to Howard if he participated fairly”, but he was shocked to discover that the bank account was empty and the gold from the safety deposit box gone. At that point he asked Howard to transfer the Ranch back to him, because his sense of family was gone and there was no longer any reason to keep the Ranch in the family. While it is true that Howard should have, in the circumstances, discussed removing the gold in the safety deposit box with Kenneth and obtain his blessings before doing so, that “misconduct”, if it can be called that, does not negate his equitable claim against the Ranch (*Mayer v. Mayer*, 2012 BCCA 77 at paras. 86, 90-99).

[32] Like all equitable remedies, proprietary estoppel requires fairness. Any claim and ultimate award must be proportionate to the expectation on the one hand and a detriment on the other. This case is distinguishable from cases such as *Sabey v. Rommel*, 2014 BCCA 360, where the plaintiff worked and studied dressage on the deceased’s horse farm for a period of two and a half years, all the while receiving assurances that he would eventually inherit the horse farm. At trial, Mr. Sabey was awarded the farm on the basis of proprietary estoppel. On appeal, the court held that awarding Mr. Sabey the entire horse farm was out of proportion to the detriment he suffered and would not do justice between the parties. The case was remitted back

to the Supreme Court for an assessment of damages for unjust enrichment and express or implied trust.

[33] The appraisal evidence in this case suggests that the current value of the Ranch is \$780,000. In the context of Howard spending his entire life working on the Ranch for some over 50 years after Kenneth discouraged him from doing any work other than working on the Ranch, with revenues flowing largely to him while Kenneth worked at the sawmills, being paid very little and with the expectation he would one day inherit it, and, while it is virtually impossible to place any value on either that work or the detriment, I find that the Ranch's value is proportionate to what Howard put in.

[34] In terms of Beatrix's claim, she has attempted to estimate the value of her labour and effort into the ranch by estimating the number of hours per year and applying a value of \$15 per hour. That estimate equates to an equivalent of approximately \$17,000 per year in earnings, or over \$350,000 in the 20 years or so that she worked on the Ranch. I find this amount is reasonable also. In my view, given the work the plaintiffs have and continue to put into the Ranch's operations, the value of the farm is proportionate to their contribution and detriment.

[35] Kenneth seeks to rely on the Trust Declaration as a complete defence to Howard's claim. He argues that Beatrix's claim stands or falls with Howard's. I conclude that the Trust Declaration was intended as part and parcel of the overall estate planning process that was intended to ensure the Ranch was transferred to Howard on Kenneth's death. Indeed, the words of the trust deed itself confirm the point. It was drawn simply to protect Kenneth in the future if he needed protection. It was not intended that Howard was giving up any equitable claim he may have had to the Ranch. Howard was not given legal advice about the Trust Declaration or what legal effect it may have. It was not sent out for independent legal advice. He was not informed of what other options there might have been to signing the Trust Declaration. It was not signed with his full, free and informed thought or consent (*Bostrom v. Bigford*, 2019 BCSC 79 at paras. 117-119). In any event, and regardless

of the Trust Declaration, given the equities in this case Kenneth cannot rely on his strict legal rights. The Trust Declaration is not sufficient to trump Howard and Beatrix's proprietary equitable estoppel claim.

[36] In the final analysis, it is not only the numerous comments and assurances made by Kenneth and Kathey, but the detrimental reliance that grounds Howard and Beatrix's claim. Given the background and the decades of work on the Ranch, it was inherently reasonable for Howard, and later Beatrix, to expect that they would inherit the Ranch. In these circumstances, the plaintiffs taking money and gold out of the joint bank account and safety deposit box does not justify disinheriting them and does not negate Howard's over 50 years of hard work on the Ranch while Kenneth worked outside the Ranch. This is especially so since Kenneth apparently acquiesced initially and Howard and Beatrix offered to pay him back.

[37] In 2014, when Kenneth decided he had changed his mind about Howard and Beatrix inheriting the Ranch, the assurances he had earlier made to them were irrevocable and Kenneth was no longer able, in equity, to dispose of the Ranch as he then saw fit. Therefore, the plaintiffs' claim for proprietary estoppel succeeds. Although unnecessary, I also find that the plaintiffs have proven a claim for unjust enrichment in the amount of the current fair market value of the Ranch and its licences.

**SUMMARY OF RELIEF**

[38] I make the following orders:

1. The Form A Transfer executed on April 28, 2017 by the defendant Kenneth Roy Linde in favour of Charlene Belleau, in trust and registered at the Kamloops Land Title Office under numbers CA5999276 and CA59992779, respecting the following four properties:

(a) a Fractional North East ¼ Section, Township 78  
Lillooet District, PID: 013-279-581;

(b) a Fractional North West ¼ Section, Township 78 Lillooet District except Plan KAP47269, PID: 013-279-611;

(c) the South ½ of the South ½ Section 22, Township 78 Lillooet District, PID: 013-279-629, and;

(d) District Lot 433, Lillooet District Except Plan KAP47269, PID: 013-279-653,

together called the “Ranch Property”, is set aside as being void as against the plaintiffs;

2. All of the rights title and interest in the Ranch Property shall be transferred into the name of Howard Dean Linde as Trustee to hold upon the following trusts:

(a) During the lifetime of Kenneth Roy Linde:

(i) the Ranch Property shall be beneficially held for Kenneth Roy Linde, but with no power on the part of the Trustee to encroach upon the capital of the trust for the benefit of Kenneth Roy Linde or for any other persons;

(ii) to pay Kenneth Roy Linde, as income from the trust, 50% of the net profits derived from the Ranch Property each year on a quarterly basis until his death;

(b) On the death of Kenneth Roy Linde, the Trustee shall distribute all of the Ranch Property to and for the benefit of Howard Dean Linde and Beatrix Lauren Linde, or the survivor of them, for their own use absolutely;

(c) Provided, however, that should Howard Dean Linde and Beatrix Lauren Linde, or the survivor of them, predecease Kenneth Roy Linde, then the Trustee shall distribute the Ranch Property to Kenneth Roy Linde for his own use absolutely;

3. Beatrix Lauren Linde shall be the successor Trustee if Howard Dean Linde becomes unwilling or unable to act or continue acting as Trustee of the Ranch Property;

4. The plaintiff, Beatrix Lauren Linde, shall have the opportunity to apply to be made a co-owner of Woodlot Licence W0586 and the defendant shall cooperate fully with the plaintiffs in signing any forms, documents, applications, consents or other materials which may reasonably be necessary to support her application for co-ownership of Woodlot Licence W0586;

5. The plaintiff, Beatrix Lauren Linde, shall have the opportunity to apply to be made co-owner of the Replaceable Grazing Licence RAN76869 and the defendant shall cooperate fully with the plaintiffs in signing any forms, documents, applications, consents or other materials which may reasonably be necessary to support her application for ownership of Replaceable Grazing Licence RAN076869;

6. The plaintiff, Beatrix Lauren Linde, shall have the opportunity to apply to be made co-owner of the following water licences:

(1) Licence No. C029797 St. Peter Spring, Purpose: Domestic, Quantity: 4.546;

(2) Licence No. C029798 St. Peter Brook, Purpose: Irrigation, Private, Quantity: 7400.88;

(3) Licence No. C029799 St. Peter Brook, Purpose: Stream Storage: Non-Power, Quantity: 1233.48;

- (4) Licence No. C030583, Bowe Spring, Purpose: Domestic, Quantity: 2.273;
- (5) Licence No. 030583, Bowe Spring, Purpose: Irrigation, Private, Quantity: 61674;
- (6) Licence No. C034721, Godwin Lake, Stream Storage, Non-Power, Quantity: 61674, and;
- (7) Licence No. C119566, Godwin Lake Irrigation, Private, Quantity: 61674;

and the defendant shall cooperate fully by signing any forms, documents, applications, consents or other material which may be reasonably necessary to support her application for co-ownership of those water licences;

7. The defendant shall fully cooperate with and sign any documents that may reasonably be necessary to replace the hydro meters that have been removed from the Ranch Property. If the defendant fails or neglects or refuses to cooperate by signing the various documents that I have ordered, the necessity to have him sign those applications is ordered dispensed with;

8. The defendant's petition filed on June 22, 2016, under Number 16-17107, Williams Lake registry, shall stand dismissed with each party to bear their own costs.

[39] Respecting costs, neither party in this case made any submissions on costs, so I will hear submissions now.

[SUBMISSIONS RE COSTS]

[40] **THE COURT:** Costs are always discretionary. In this case, in the specific circumstances of what happened and the background, I agree with Mr. Dent that each party here should bear their own costs, so that is my order.

“G.P. Weatherill J.”