

# **SUPERIOR COURT**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-17-108306-195

DATE: March 28, 2023

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**BY THE HONOURABLE GEETA NARANG, J.S.C.**

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**RICHARD ERIC GORBARCZYK**

Plaintiff

v.

**LIOUBOV NORENKO GORBARCZYK**

Defendant

and

**M<sup>tre</sup> IGOR PRYSLAK**

Impleaded party

and

**THE REGISTRAR FOR THE LAND REGISTRY FOR THE REGISTRATION DIVISION  
OF MONTRÉAL**

Impleaded party

and

**THE REGISTRAR FOR THE LAND REGISTRY FOR THE REGISTRATION DIVISION  
OF TERREBONNE**

Impleaded party

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JN0524

## **JUDGMENT**

**(Application for the Nullity of a Will and Related Issues)**

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## I - OVERVIEW

[1] More than 25 years ago, Mr. Jan Gorbarczyk executed a notarized will. His grandson is now asking that the will be declared null. He is also asking that Declarations of Transmission made pursuant to the will be declared null and for damages.<sup>1</sup>

[2] There is no basis in fact or in law for the orders sought. The claim was filed too late and it is prescribed. Moreover, under the *Civil Code of Quebec*, every person with the "required capacity" has the right to decide what will be done with their property after they die,<sup>2</sup> and there is no evidence to support the contention that Mr. Jan Gorbarczyk was incapable when he executed his will or that he was subject to undue influence.

[3] At the hearing, the notary who executed Mr. Jan Gorbarczyk's will and several people who knew the deceased testified. They disagreed on many things: the nature of Mr. Jan Gorbarczyk's relationship with his son, the circumstances in which a woman named Lioubov Norenko came to Canada, whether she was the cause of rifts in the family. These issues are irrelevant to the judicial application for the nullity of Mr. Jan Gorbarczyk's will.

[4] The reasons for the finding that the application is without merit and must be dismissed are based on an analysis of the following questions:

1. Does Gorbarczyk Junior have the required interest to contest his grandfather's will?
2. Is the action prescribed?
3. Did Gorbarczyk Most Senior have the capacity to make a will on October 30, 1996?
4. Was Gorbarczyk Most Senior subject to undue influence?
5. Was Ms. Norenko's status as Gorbarczyk Most Senior's daughter in law essential to her status as heir?

[5] Before setting out the reasons for this judgment, a summary of the relevant facts is necessary.

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<sup>1</sup> The first conclusion sought in the Judicial Application is that Jan Gorbarczyk's will be declared null. All of the other conclusions sought (orders for a rendering of account, the nullity of Declarations of Transmission, declarations of ownership and damages) are ancillary to this first conclusion.

<sup>2</sup> *Civil Code of Quebec*, article 703.

## II - FACTS

[6] Mr. Jan Gorbarczyk will be designated as "Gorbarczyk Most Senior" in this judgment. It is his will that is at the center of this case.

[7] In the 1960s, Gorbarczyk Most Senior came to Canada with his wife, Maria Garczenko. The couple had experienced extreme hardships during World War II.

[8] Gorbarczyk Most Senior did well for himself and his family in Canada. He bought a triplex on the Plateau Mont-Royal where the family lived.<sup>3</sup> He also bought two properties in the Laurentians: a cottage and the adjacent vacant lot.<sup>4</sup>

[9] Gorbarczyk Most Senior and his wife had two sons. Their first son, Peter, had multiple sclerosis. He required care throughout his life and never lived on his own. Their second son was named Richard George Gorbarczyk. He will be referred to as "Gorbarczyk Senior" in this judgment.

[10] Gorbarczyk Senior had several children.<sup>5</sup> In 1977, he married Stella Kozdron. She already had two children, Domenico and Anna Salinitri, who Gorbarczyk Senior considered as his own. Gorbarczyk Senior and Ms. Kozdron also had a biological son, who they named Richard Eric Gorbarczyk. He is the Plaintiff in this case, and he will be referred to as "Gorbarczyk Junior" in this judgment.

[11] In the early 1990s, Gorbarczyk Most Senior and his wife arranged for Lioubov Norenko to come to Canada. Ms. Norenko visited once, married Gorbarczyk Senior – who was still married to Ms. Kozdron at the time<sup>6</sup> – and returned to the Ukraine. She then came back to Montreal with her son, Serguy Tkachenko, who Gorbarczyk Senior considered his own.

[12] 1996 was an *annus horribilis* – a horrible year – for the Gorbarczyk family. On this, everyone agrees. In March 1996, Peter Gorbarczyk succumbed to multiple sclerosis and died. In October, his mother, Gorbarczyk Most Senior's wife, died. Then, in December, Gorbarczyk Most Senior died.

[13] Less than two months before his death, Gorbarczyk Most Senior executed a will. He gave his son, Gorbarczyk Senior, the right to reside in a "the dwelling of his choice" of the triplex on the Plateau Mont-Royal. He designated Ms. Norenko as the liquidator of his estate and constituted her as his "sole Universal Residuary Legatee".<sup>7</sup>

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<sup>3</sup> Exhibit P-10, Extract from the *Index des immeubles* for the district of Montreal.

<sup>4</sup> Exhibit P-11, Extract from the *Index des immeubles* for the district of Terrebonne and Exhibits P-12 and P-12.1, *Index des immeubles* for the district of Terrebonne.

<sup>5</sup> Gorbarczyk Senior did not share genetic material with all of his children.

<sup>6</sup> Gorbarczyk Senior and Ms. Kozdron were divorced in 2007; see: Exhibit P-5, Divorce Judgment of April 10, 2007.

<sup>7</sup> Exhibit P-9, Will of Jan Gorbarczyk of October 30, 1996.

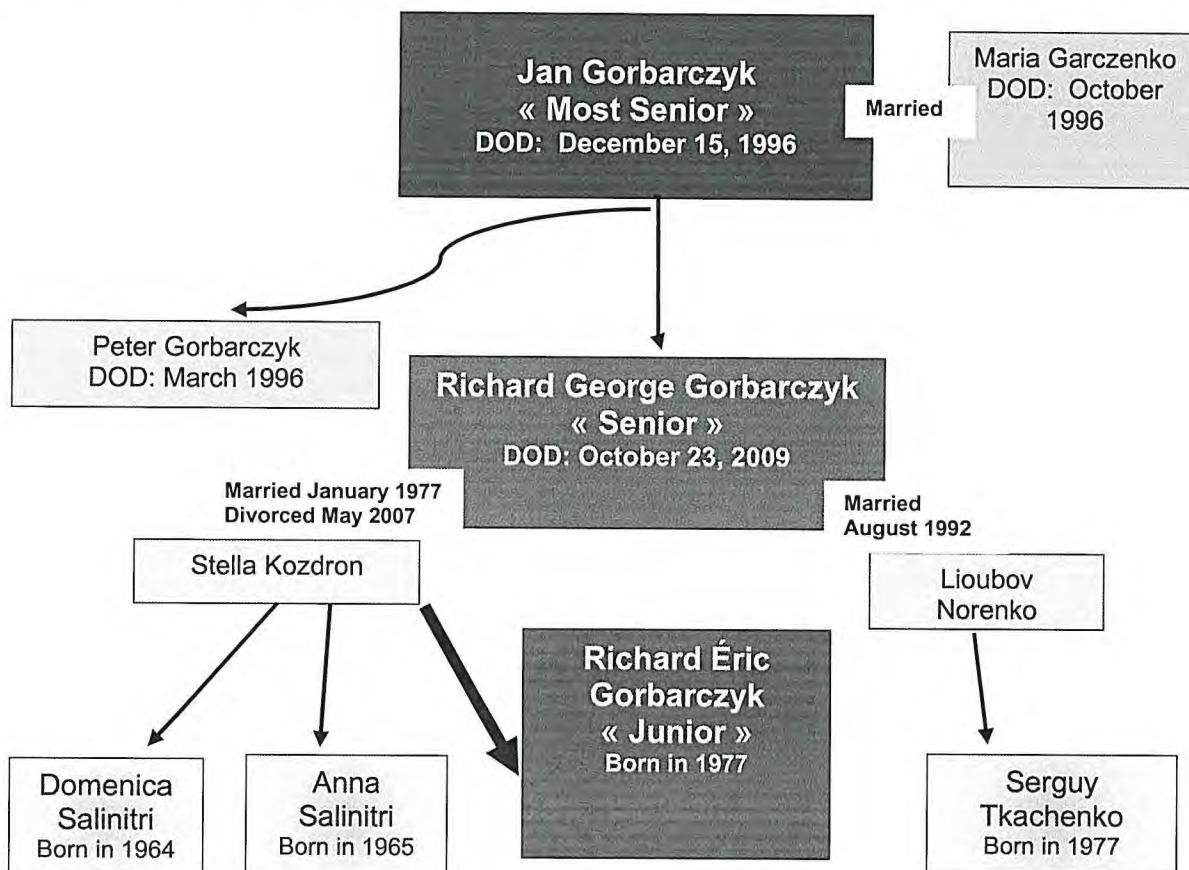
[14] In conformity with Gorbarczyk Most Senior's will, Ms. Norenko executed Declarations of Transmission for the triplex on the Plateau Mont-Royal (in December 1998), and the cottage in the Laurentians (in May 1999), transferring title to her name.<sup>8</sup>

[15] In 2007, Gorbarczyk Senior and Ms. Kozdron were divorced.<sup>9</sup>

[16] Two years later, in 2009, Gorbarczyk Senior died. He was in Cuba vacationing with Ms. Norenko and their son Mr. Tkachenko at the time.

[17] The parties agree that Gorbarczyk Senior's three children – Gorbarczyk Junior, Domenico and Anna Salinitri – are the heirs of his estate.<sup>10</sup>

[18] The Gorbarczyk family tree and estate matters may be summarized as follows:



<sup>8</sup> Exhibit P-13, Declaration of Transmission of December 23, 1998, and Exhibit P-14, Declaration of Transmission of May 1, 1999. As explained by the notary, Maître Igor Pryslak at trial, the Declaration for the cottage was delayed because of an issue with the designation of the property.

<sup>9</sup> Exhibit P-5, Divorce Judgment of April 10, 2007.

<sup>10</sup> Gorbarczyk Senior left a notarized will. Pursuant to article 764 of the Civil Code of Québec, the legacy to Ms. Kozdron falls given their subsequent divorce and, pursuant to article 5 of the will, Gorbarczyk Junior, Domenico and Anna Salinitri are co-heirs in equal shares (Exhibit P-7, Will of Richard Gorbarczyk of May 8, 1985).

[19] Shortly after Gorbarczyk Senior's death, in November 2009, a lawyer sent a letter to Ms. Norenko on behalf of Gorbarczyk Senior's three eldest children, Gorbarczyk Junior, Mr. and Ms. Salinitri,<sup>11</sup> to which they received at least two responses.<sup>12</sup>

[20] In 2019, Gorbarczyk Junior obtained a judgment from this Court declaring that Ms. Norenko was in bad faith when she married his father, Gorbarczyk Senior, because she knew that he was married to Ms. Kozdron at the time.<sup>13</sup>

[21] Then, on June 13, 2019, Gorbarczyk Junior filed the judicial application in which he pleads the nullity of Gorbarczyk Most Senior's will, the matter that will be decided in this judgment.

### **III - REASONS**

#### **1. Does Gorbarczyk Junior have the interest required to contest his grandfather's will?**

[22] To file a judicial application, a plaintiff must have a "sufficient interest" in the matter submitted to the Court.<sup>14</sup> The interest must be "legal, direct, personal, acquired and existing".<sup>15</sup> In estate matters, interest to contest a will is usually reserved for the liquidator and the heirs of an estate<sup>16</sup>.

[23] In this case, Gorbarczyk Junior argues that his father could have contested his grandfather's will and that, as heir to his father's estate, he can now contest his grandfather's will<sup>17</sup>. The argument seems straightforward, but it is complicated because Gorbarczyk Junior is not the liquidator of his father's estate: Mr. Frank Conte is.<sup>18</sup>

[24] This issue was not raised at trial. Re-opening the proof at this stage would violate the principle of proportionality. Furthermore, it is not necessary to hear the parties and decide the issue of Gorbarczyk Junior's interest because of all the other reasons for which Gorbarczyk Junior's judicial application is destined to fail.

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<sup>11</sup> Exhibit D-6, Letter of November 24, 2009.

<sup>12</sup> P-18, Letter December 2, 2009, and Exhibit D-8, Letter of January 26, 2010.

<sup>13</sup> Exhibit P-4, Judgment rendered on May 27, 2019, in *Gorbarczyk v. Gorbarczyk et al*, file no 500-04-069378-165.

<sup>14</sup> *Code of Civil Procedure*, article 85.

<sup>15</sup> *Brunette v. Legault Joly Thiffault, s.e.n.c.r.l.*, 2018 SCC 55 (CanLII), paragraph 12 and following.

<sup>16</sup> *Feldman c. Succession de Lande*, 2021 QCCS 2949, paragraph 14 and following.

<sup>17</sup> *Civil Code of Québec*, articles 802 and 1316.

<sup>18</sup> Exhibit P-7, Will of Richard Gorbarczyk of May 8, 1985, article 7.

## 2. Is the action prescribed?

[25] The three-year prescription period applies to this case because Gorbarczyk Junior is asking for the nullity of his grandfather's will and related relief.<sup>19</sup> The application was filed on June 13, 2019. As such, if the right of action to contest Gorbarczyk Most Senior's will arose before June 13, 2016, it is prescribed.

[26] Both Gorbarczyk Junior and his father had the information they needed to contest Gorbarczyk Most Senior's will for many years, yet they did nothing. Accordingly, the judicial application is prescribed and must be dismissed.

### 2.1 Prescription as concerns Gorbarczyk Senior

[27] At the time of Gorbarczyk Senior's death, his right to contest Gorbarczyk Most Senior's will was prescribed. It is impossible for his right of action to be transmitted – to his son, Gorbarczyk Junior, or to anyone else – because it was already prescribed when he died.

[28] Gorbarczyk Most Senior died on December 15, 1996. The evidence reveals that, on that day, Gorbarczyk Senior already knew the contents of his father's will.

[29] Maître Pryszlak, the notary who executed Gorbarczyk Most Senior's will, testified credibly at trial. He explained that, in 1996, he had two meetings with Gorbarczyk Most Senior: the first to discuss the contents of his will and a second to execute his will. Maître Pryszlak is certain that Gorbarczyk Senior was present at the first meeting and cannot recall whether he was present at the second.<sup>20</sup> At trial, Mr. Tkachenko confirmed that Gorbarczyk Senior was present at the first meeting. Then, Gorbarczyk Most Senior's intention to designate Ms. Norenko as his sole universal heir was discussed. Mr. Tkachenko testified that he remembers Gorbarczyk Senior asking his father whether this was "exactly what he wanted", and Gorbarczyk Most Senior answering "yes".

[30] The fact that Gorbarczyk Senior was present at the initial meeting about his father's will is uncontested. If he was present, he was necessarily aware of the contents of the will. Further, Maître Pryszlak testified that, the day after the will was executed, Gorbarczyk Senior picked up a copy of it at his office.

[31] Moreover, between Gorbarczyk Most Senior's death in 1996 and Gorbarczyk Senior's death in 2009, there is an abundance of evidence which proves that Gorbarczyk

<sup>19</sup> Gorbarczyk Junior pleads that the ten-year prescription period applies. The argument is unfounded. The right he is claiming is personal in nature; as such articles 2921 and 2925 of the *Civil Code of Québec* and the three-year prescription period apply. His claim is not a petition to have a heirship recognized, to which article 626 and 650 of the *Civil Code of Québec* and the ten-year prescription period would apply.

<sup>20</sup> The fact that Gorbarczyk Senior was present at least one meeting is corroborated by the fact that, in his records, the notary has a copy of Gorbarczyk Senior's Medicare card (Exhibit D-19, Photocopy of I.D. from October 1996 meeting).

Senior knew what was in his father's will and that, pursuant to the will, two properties were transferred to Ms. Norenko: the triplex on the Plateau in 1998, and then the cottage in the Laurentians in 1999.<sup>21</sup> He did not contest the will and his right to do so was prescribed in 2019 when Gorbarczyk Junior filed his judicial application.

[32] Between 1996 and 2009, Gorbarczyk Senior was living with Ms. Norenko in the triplex, and they were a couple. Couples usually share information about their financial affairs, especially about the building in which they live.

[33] Moreover, Ms. Norenko – not Gorbarczyk Senior – signed at least three leases with Nicole Matte for one of the units of the triplex.<sup>22</sup> Ms. Matte testified at trial. She explained that Ms. Norenko dealt with financial matters relating to the triplex, while Gorbarczyk Senior dealt with upkeep and repairs.

[34] Finally, the Declarations of Transmission for the triplex on the Plateau Mont-Royal and the cottage in the Laurentians were in the public domain.

[35] Gorbarczyk Junior's lawyer argues that prescription was suspended from 1996 to 2009 because of the principle that married spouses "do not prescribe against each other during their community of life."<sup>23</sup> Based on the facts of this case, there is no basis to find that prescription was suspended following the principle. If Gorbarczyk Senior sought to obtain the nullity of his father's will, he would not have had to file a judicial application against Ms. Norenko, personally, but an application against her as liquidator of his father's estate.

[36] At trial, both Gorbarczyk Junior and Mr. Salinitri testified that their father gave them the impression that they would be "taken care of" and that, one day, the properties would be theirs. This may be so but, in light of the overwhelming evidence that Gorbarczyk Senior knew that Ms. Norenko was the sole heir of Gorbarczyk Most Senior's estate, these impressions are irrelevant.

## 2.2 Prescription as concerns Gorbarczyk Junior

[37] Even if Gorbarczyk Senior's right to contest his father's will was not prescribed, Gorbarczyk Junior's application is destined to fail because his right to contest Gorbarczyk Most Senior's will is prescribed.

[38] Gorbarczyk Junior filed his judicial application on June 13, 2019. He pleads that, after his father's death in 2009, he did not have enough information to contest his grandfather's will and that it was impossible for him to act.

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<sup>21</sup> Exhibit D-14, Extract from the Index des immeubles.

<sup>22</sup> Exhibit D-4, Leases, *en liasse*.

<sup>23</sup> *Code of Civil Procedure*, article 97.

[39] These arguments are without merit.

[40] The evidence reveals that Gorbarczyk Junior knew or could easily have known the contents of his grandfather's will for many years but decided to do nothing. In deciding to do nothing, he allowed his right to petition the Court and argue the nullity of Gorbarczyk Most Senior's will to lapse.

[41] Shortly after their father's death, Gorbarczyk Junior, Mr. and Ms. Salinitri mandated a lawyer to correspond with Ms. Norenko about Gorbarczyk Most Senior's estate. They made several demands and, in the first letter sent to Ms. Norenko, their lawyer writes: "If you fail to confirm to me before Friday November 27<sup>th</sup>, 2009, 2pm, that you intend to provide full access to all of the assets of the estate, my clients will take all necessary legal proceedings in order to protect the assets of the estate."<sup>24</sup>

[42] Gorbarczyk Junior and his siblings were never given "full access" to the assets of Gorbarczyk Most Senior's estate, but they did not file an application with the Court. They had consulted a lawyer, presumably knew of their rights, and yet they did nothing.

[43] Gorbarczyk Junior argues that it was impossible for him to act and that Ms. Norenko "hid" information from him, thereby suspending prescription. While it is correct that this Court has found that Ms. Norenko acted in questionable ways concerning her husband's estate,<sup>25</sup> this does not necessarily mean that it was impossible for Gorbarczyk Junior to act and assert his rights.<sup>26</sup> Shortly after his father's death, he had a lawyer and access to information needed to contest his grandfather's will. As explained by the notary Maître Pryslak, after Gorbarczyk Senior's death, he had a heated telephone conversation with Ms. Norenko and Gorbarczyk Junior during which it was agreed that a copy of Gorbarczyk Most Senior's will would be given to Gorbarczyk Junior.

[44] Moreover, at trial, Gorbarczyk Junior testified that he had a conversation with Ms. Norenko at his father's funeral. They discussed the cottage in the Laurentians, and she told him, "No, it's not yours." He nonetheless remained convinced that he would inherit the cottage in the Laurentians and the triplex on the Plateau Mont-Royal because he was convinced that his grandfather had bequeathed the properties to his father. There was no basis for this belief and Gorbarczyk Junior did not verify the Land register to see who held title to the properties. In doing nothing, he allowed any right he may have had to contest Gorbarczyk Most Senior's will to become prescribed.

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<sup>24</sup> Exhibit D-6, Letter from Maître Jean-Félix Racicot to Ms. Norenko of November 24, 2019. See, also: Exhibit D-7, Letter from Maître Jean-Félix Racicot to Maître David Rosenzveig of December 8, 2009, Exhibit D-8, Letter from Maître David Rosenzveig to Maître Jean-Félix Racicot of January 26, 2010, Exhibit D-10, Letter from Maître Jean-Félix Racicot to Maître David Rosenzveig of February 22, 2010.

<sup>25</sup> Exhibit P-4, Judgment rendered on May 27, 2019 in *Gorbarczyk v. Gorbarczyk et al*, file no 500-04-069378-165, paragraph 33.

<sup>26</sup> This case is different from the cases cited by Gorbarczyk Junior, such as *Starnino c. Conezsys Systems inc.*, 2005, QCCA 131, in which parties "frauduleusement" hid and falsified documents (see: paragraph 5 of the judgment).

[45] Both Gorbarczyk Junior and Mr. Salitritini testified that, after their father's funeral, they "expected" to receive a phone call from a notary about properties their father had inherited from their grandfather, but the phone call never came. Almost ten years lapsed between Gorbarczyk Senior's death (on October 23, 2009) and the filing of the judicial application contesting Gorbarczyk Most Senior's will (on June 13, 2019). As such, the claim is prescribed.

**3. Did Gorbarczyk Most Senior have the capacity to make a will on October 30, 1996?**

[46] Even if Gorbarczyk Junior's application were not prescribed, it is destined to fail.

[47] Gorbarczyk Junior argues that, on October 30, 1996, his grandfather did not have the required capacity to execute a will and that the will he executed on this day should be annulled. The argument is without merit: every person is presumed to have the capacity to execute a will<sup>27</sup> and, in this case, there is no evidence to rebut this presumption.

[48] The notary who executed the will, Maître Prysak, testified that he "chatted" with Gorbarczyk Most Senior in October 1996 and that there were no indications that he was not of sound mind. Gorbarczyk Most Senior told him that he was "very satisfied" with Ms. Norenko and that she had been a "good caretaker" of his late son, Peter.

[49] Gorbarczyk Junior pleads that the "oddity" of Gorbarczyk Most Senior's will combined with Gorbarczyk Most Senior's declining health and hospitalization in December 1996 led to a factual presumption that he was incapable of making a will. While it is correct that, in some situations, there may be a factual presumption that someone does not have the required capacity to make a will,<sup>28</sup> this is not such a case. Gorbarczyk Junior's argument must fail because the two premises on which it lies are incorrect.

[50] First, Gorbarczyk Most Senior's decision to bequeath all his property to Ms. Norenko is not odd. She cared for his son Peter when no one else was available to do so. Further, his son had a history of financial difficulties and mismanaging his affairs.<sup>29</sup> Finally, Gorbarczyk Most Senior made provisions to ensure that his son would always have somewhere to stay. There is a provision in his will giving Gorbarczyk Senior the "right to reside for the remainder of his lifetime" in a "dwelling of his choice" of the triplex on the Plateau Mont-Royal.<sup>30</sup>

[51] Second, the evidence concerning Gorbarczyk Most Senior's health does not demonstrate – or even imply – that he was incapable when he executed his will on October 30<sup>th</sup>, 1996. According to medical records, he was admitted to the hospital on or

<sup>27</sup> *Civil Code of Québec*, article 4.

<sup>28</sup> *Brusenbauch c. Young*, 2019 QCCA 914, paragraphs 16 to 29.

<sup>29</sup> Among other things, Gorbarczyk Most Senior had lent his son tens of thousands of dollars for a business venture that eventually failed.

<sup>30</sup> Exhibit P-9, Will of Jan Gorbarczyk of October 30, 1996, article 5.

around December 11<sup>th</sup> and he died on December 15<sup>th</sup>, 1996.<sup>31</sup> He was losing weight and refusing to drink. He likely had lung cancer which had metastasized. The notes indicate that “*selon famille veut pas vivre*”.<sup>32</sup> Notes dated December 12<sup>th</sup>, mention that Gorbarczyk Most Senior showed signs of being lost and confused since the death of his wife and that he sometimes thought he was in the Laurentians when he was actually in Montreal. There is also a note concerning the possibility of a “*depression majeure*” and “*deuil pathologique*”, as well as the observation that he was in an “*état dépressif*”.<sup>33</sup>

[52] It is important to remember Gorbarczyk Most Senior’s circumstances at the time: he had recently lost his son Peter and his wife. In these circumstances, depression is understandable. It does not necessarily lead to the conclusion that he was incapable on October 30<sup>th</sup>, when he executed his will. Likewise, a degree of confusion about where one is, does not automatically entail that one does not know what one wants and that one does not have the capacity to make a will.<sup>34</sup> In a case about the nullity of will, the Court of Appeal recently observed that: “[D]istress is not to be confused with incapacity.”<sup>35</sup>

[53] Both Gorbarczyk Junior and Mr. Salinitri testified that they visited Gorbarczyk Most Senior at the triplex on the Plateau Mont-Royal before his death and that, at 10 AM, he had a bottle of vodka in hand and he was inebriated. In consideration of this event, Gorbarczyk Most Senior’s situation in 1996, the family’s *annus horribilis*, must be remembered. He had just lost his son and his wife. Day drinking in these circumstances is not evidence of incapacity. Further, the visit was sometime in November 1996 and Gorbarczyk Most Senior executed his will on October 30<sup>th</sup>.

#### **4. Was Gorbarczyk Most Senior subject to undue influence?**

[54] Gorbarczyk Junior argues that Ms. Norenko’s designation as heir and liquidator should be nullified because she exercised undue influence on Gorbarczyk Most Senior to name her as universal heir and liquidator of his estate. The argument is without merit.

[55] Undue influence exists when a person uses “improper schemes disgraceful devices, lies, slander, deceit and trickery, or deliberate misrepresentations”<sup>36</sup> to influence a testator.

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<sup>31</sup> Exhibit P-19, Documents regarding medical records, *en l’iasse* and Exhibit P-28, Transcription of medical records.

<sup>32</sup> Exhibit P-28, Transcription of medical records, page 2.

<sup>33</sup> Exhibit P-28, Transcription of medical records, pages 5, 6 and 7.

<sup>34</sup> MORIN, Christine, «La capacité de tester: tenants et aboutissants», (2011) 41 R.G.D. 143: “l’analyse de la jurisprudence révèle qu’il est impossible d’établir une relation causale simple entre la présence d’une maladie physique ou mentale et l’absence de volonté de tester. Même les maladies dégénératives, tel l’Alzheimer, ne créent pas de véritables présomption d’incapacité à consentir. [...] la seule présence de la maladie est insuffisante pour faire annuler un testament.”

<sup>35</sup> *Brusenbauch c. Young*, 2019 QCCA 914, paragraph 44.

<sup>36</sup> *Brusenbauch c. Young*, 2019 QCCA 914, paragraph 17.

[56] In 1996, Ms. Norenko spent time with Gorbarczyk Most Senior while her husband was at work, and she visited him in the hospital. She had the opportunity to influence; that is all. There is no evidence whatsoever to support the allegation that she acted in an untoward manner towards him. It is an unfair assumption made by Gorbarczyk Junior because he is dissatisfied with the contents of his grandfather's will.

[57] At trial, the parties and several witnesses agreed that the family patriarch, Gorbarczyk Most Senior, was a strong-willed man, who knew what he wanted and was difficult to influence. There is no evidence that this was not the case on October 30<sup>th</sup>, 1996, when he executed his will.

##### **5. Was Ms. Norenko's status as Gorbarczyk Most Senior's daughter in law essential to her status as heir?**

[58] Finally, Gorbarczyk Junior argues that Ms. Norenko's designation as heir and liquidator should be nullified because she is designated as Gorbarczyk Most Senior's "daughter-in-law" in his will and, in 2019, this Court nullified Gorbarczyk Senior's marriage to Ms. Norenko because he was married to Ms. Kozdron when he married her.<sup>37</sup> This argument, too, must fail.

[59] For the purpose of interpreting wills, what matters is the testator's intention.<sup>38</sup> In this case, to interpret that intention in light of a judgment rendered more than a decade after the will was made – and of which the testator was necessarily unaware – does not make sense.

[60] Moreover, according to the notary who executed the will, Gorbarczyk Most Senior decided to name Ms. Norenko the sole heir of his estate in recognition of the help she provided in caring for his son Peter, not because he was his son's wife.

#### **IV - NOTICES OF ADVANCE REGISTRATION**

[61] After instituting his judicial application, Gorbarczyk Junior filed notices of advance registration in the Land register of Montreal (for the triplex on the Plateau Mont-Royal) and of Terrebonne (for the vacant piece of land in the Laurentians).<sup>39</sup>

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<sup>37</sup> Exhibit P-4, Judgment rendered on May 27, 2019 in *Gorbarczyk v. Gorbarczyk et al*, file no 500-04-069378-165.

<sup>38</sup> *Succession de Charpentier*, 2022 QCCA 660, paragraph 28; *Nixon c. Pinelli*, 2000 CanLII 1350 (QC CA), paragraphs 31 to 42.

<sup>39</sup> Exhibit D-14, Extract from the *Index des immeubles* for the district of Montreal and Exhibit D-13, Extract from the *Index des immeubles* for the district of Terrebonne. The cottage in the Laurentians has been sold for some time and, as such, no notice was registered for it. The request was made at the end of the trial and, at my request, confirmed in an email sent by Ms. Norenko's lawyer.

[62] Ms. Norenko asks that these notices now be stricken. Her request will be granted. Once Gorbarczyk Junior's judicial Application is dismissed, there is no reason for the notices of advance registration to stand.

## **V – CONCLUSIONS**

### **FOR THESE REASONS, THE COURT:**

[63] **DISMISSES** the Plaintiff's *Amended Application of December 5<sup>th</sup>, 2019, to Annul Jan Gorbarczyk's Last Will Dated of October 30<sup>th</sup>, 1996, and the Declarations of Transmissions that Followed*;

[64] **GRANTS** Defendant's request to strike the two notices of advance registration;

[65] **ORDONNE** à l'Officier de la publicité foncière de la circonscription de Montréal de procéder à la radiation de l'avis de préinscription d'une *Requête en annulation* publié le 9 décembre 2019 au bureau de la publicité des droits de la circonscription foncière de Montréal sous le numéro 25 089 659 contre l'immeuble désigné comme suit :

Un immeuble connu et désigné comme étant le lot numéro UN MILLION DEUX CENT MILLE TROIS CINQ CENT QUATRE-VINGTS DEUX MILLE TROIS MILLIONS HUIT CENT TRENTE-SEPT MILLE CENT QUATRE (lot 1 203 582), suivant le plan de cadastre du Québec, circonscription foncière de Montréal, province du Québec.

Avec un immeuble connu et désigné comme étant le 4441-4445, rue Henri Julien, Montréal, Québec, H2W 2K9;

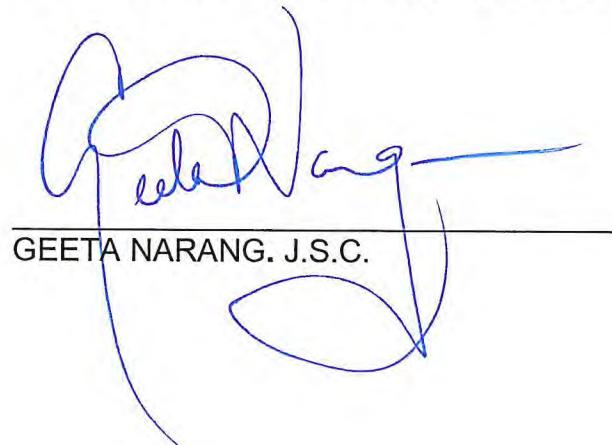
[66] **ORDONNE** à l'Officier de la publicité foncière de la circonscription de Terrebonne de procéder à la radiation de l'avis de préinscription publié le 9 décembre 2019 au bureau de la publicité des droits de la circonscription foncière de Terrebonne sous le numéro 25 090 500 contre l'immeuble désigné comme suit :

Un terrain vacant sur la rue Manolakos, Val David, Québec, sous le numéro de lot DEUX MILLIONS NEUF CENT QUATRE-VINGT-DEUX TROIS CENT QUATRE-VINGT 2 992 380 du cadastre officiel du Québec, circonscription de Terrebonne;

[67] **ORDERS** Plaintiff to sign any documents that may be required to strike the notices of advance registration described above at paragraphs 64 and 65; to radiate the pre-inscription as herein described below within thirty (30) days of judgment to be rendered herein;

[68] **EXEMPTS** the Defendant from serving a notice of service of this judgment on the Plaintiff;

[69] The whole, with legal costs, including all costs of striking the notices of advance registration, against the Plaintiff.



GEETA NARANG. J.S.C.

Maître Mathieu Prince  
DLB AVOCATS, S.E.N.C.  
Lawyers for Plaintiff

Maître Sylvan Schneider  
Schneider AVOCATS INC.  
Lawyers for Defendant

Hearing dates: November 21, 22, 23 and 24 2022