

COURT OF APPEAL FOR ONTARIO

CITATION: Marley v. Salga, 2020 ONCA 104

DATE: 20200210

DOCKET: C67241

Simmons, Pepall and Trotter JJ.A.

BETWEEN

Karen Marley

Applicant (Appellant)

and

Suzanne Marcela Salga, Michelle Jessica Salga, The Estate of  
Leslie Salga, and Helmut Klassen, in his capacity as  
Estate Trustee of the Estate of Leslie Salga

Respondents (Respondents)

AND BETWEEN

Suzanne Marcela Salga and Michelle Jessica Salga

Applicants (Respondents)

and

Helmut Klassen and Karen Marley

Respondents (Respondent)

Lionel J. Tupman, Arie Bloom and Caroline Tarjan, for the appellant

Holly LeValliant and Joshua Eisen, for the respondents Suzanne Marcela Salga and Michelle Jessica Salga

Anne Marie DiSanto, for the respondent Helmut Klassen

Heard: February 3, 2020

On appeal from the judgment of Justice Robert B. Reid of the Superior Court of Justice, dated June 6, 2019 with reasons reported at 2019 ONSC 3527.

### APPEAL BOOK ENDORSEMENT

[1] We reject the appellant's argument that the recording on which the application judge relied was inadmissible. The appellant did not raise this as a ground of appeal. Further, the appellant pointed to no authority to support this position. We are satisfied that the recording was relevant to a material issue and admissible. In particular, it corroborated the respondents' position on the applications.

[2] The application judge set out the proper test for determining whether a joint tenancy has been severed. This is a fact specific inquiry. We see no basis on which to interfere with the application judge's decision. The appeal is dismissed.

[3] The respondents seek costs on a full indemnity basis against the appellant in the amount of \$78,860.02. We consider this amount grossly excessive. Their substantial indemnity costs claim in the court below was \$12,555.16. We order costs of \$25,000 on a full indemnity scale inclusive of disbursements and HST payable out of the estate. Like the application judge we conclude this litigation was

made necessary by the actions of the deceased. The appellant shall bear her own costs.