

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE KINGDOM OF HEAVEN FOUND A)	
SEAN (An Express Trust Organization))	King Sean, House von Dehn, Hand of
)	Stephen, for The Kingdom of Heaven Found
Plaintiff)	a Sean
)	
– and –)	
)	
TANJA JOHNSON, HALA TABL, and)	Christopher Crisman-Cox for Michael von
MICHAEL von DEHN)	Dehn
)	
Defendants)	Neil Milton for Tanja Johnson
)	
)	Jenny Bogod for Hala Tabl

HEARD: In writing

ENDORSEMENT ON REQUESTION TO DISMISS UNDER R. 2.1.01

Justice Sally Gomery

1. The defendant Michael von Dehn seeks the dismissal of this action as against him. Rule 2.1.01 of the *Rules of Civil Procedure* provides that the court may stay or dismiss a proceeding “if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court”.
2. Having reviewed the statement of claim, I decline to dismiss the action at this point.

3. The court must wield r. 2.1.01 carefully. The Ontario Court of Appeal has repeatedly emphasized that r. 2.1.01 is a blunt instrument, reserved for the clearest of cases.¹ The abusive nature of a proceeding must be apparent “on the face of the pleadings themselves”.² There are other steps that a party may take to have a proceeding struck, such as a motion under r. 21.01(3)(d) or r. 25.11(b) or (c). To trigger dismissal under r. 2.1.01, a proceeding must be obviously devoid of any merit, so much so that it would be unfair or pointless or abusive to force the defendant to defend to it or to bring a motion to dismiss.

4. In considering whether a claim ought to be struck under this rule, the court must carefully consider whether the plaintiff may have a viable cause of action, on a generous reading of the pleading, and even if no recognized cause of action is obviously pleaded. The plaintiff should be given the benefit of the doubt, especially if they are self-represented.

5. In his requisition, the defendant Mr. von Dehn says that the plaintiff is not a legally recognizable entity, that some of the remedies sought are patently unavailable, and that the claims against him appear to be premised on his duties as an estate trustee for his father, even though he has not been appointed estate trustee. Mr. von Dehn also notes odd allusions to “some type of medieval conception of law” in the statement of claim.

6. Although I agree that some allegations, claims, and language, in the statement of claim are unusual, untenable, or implausible, the plaintiff’s core allegation is not obviously frivolous or vexatious. He alleges that the defendants Mr. von Dehn and Ms. Johnson have colluded to deprive the beneficiary of the plaintiff trust, Sean von Dehn, of his rightful share of his father’s estate. He alleges that the defendant Hala Tabl, a lawyer, breached her fiduciary duties towards the estate’s beneficiaries.

7. It is significant that Michael von Dehn has served and filed a statement of defence to the action. He pleads that the claims and the allegations underlying them are unclear. The statement

¹ *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733; *Khan v. Krylov & Company LLP*, 2017 ONCA 625; and *Khan v. Law Society of Ontario*, 2020 ONCA 320.

² *Raji v. Borden Ladner Gervais LLP*, 2015 ONSC 801, at para. 8.

of claim is, however, sufficiently intelligible for him to understand the gist of the plaintiff's complaint and to respond to it.

8. I also note that the defendant Ms. Tabl has served a motion to strike, which is set for hearing on November 8, 2022. The other two defendants could join this motion.

9. My decision does not in any way imply that the action will or should succeed, or that it should even proceed to the discovery stage. But the action is not so patently frivolous, vexatious or abusive on its face that it should be struck peremptorily under r. 2.1.01.



Justice Sally Gomery

Date: September 21, 2022