

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE KINGDOM OF HEAVEN FOUND A SEAN  
(An Express Trust Organization)

Plaintiff

and

TANJA JOHNSON, HALA TABL and MICHAEL VON DEHN

Defendants

**FACTUM OF MOVING PARTY, MICHAEL VON DEHN**

**(Summary Judgment Motion Returnable September 7, 2023)**

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## **PART I - OVERVIEW**

1. This is a motion for summary judgment brought by the defendant Michael von Dehn, seeking to dismiss all claims as against him in this action.
2. The defendant Tanja Johnson is also moving for summary judgment, with her motion to be heard at the same time.
3. All claims as against the third defendant, Hala Tabl, have already been dismissed per the decision of Justice Hooper, dated February 1, 2023: [2023 ONSC 605](#).

## **PART II - SUMMARY OF FACTS**

### **Background**

4. This action is in relation to the estate (the “**Estate**”) of Joachim von Dehn (the “**Deceased**”), who died October 29, 2019.

**Affidavit of Michael von Dehn, sworn February 27, 2023 [“Michael’s Affidavit”] at paras 2, 11.**

5. The Deceased had no spouse at the time of his death. He was survived by his three children: Sean von Dehn (“**Sean**”), Michael von Dehn (“**Michael**”) and Tanja Johnson (“**Tanja**”).

**Michael’s Affidavit at para 3.**

6. The original assets of the Estate were the Deceased’s home at 1070 Hewitt Street in Gravenhurst, Ontario (the “**Home**”) and its contents, two automobiles, and a boat.

**Michael’s Affidavit at para 4.**

7. The plaintiff in this action is named as “The Kingdom of Heaven Found a Sean (An Express Trust Organization)”. This is not a legal entity.

**Michael's Affidavit at para 5; See also decision of Justice Hooper, [2023 ONSC 605](#), which struck the Statement of Claim in this matter as against the defendant Hala Tabl on the grounds that the plaintiff is not a legal entity.**

8. Effectively, the claims in this action are being brought by Sean.

**Michael's Affidavit at para 6; Exhibit 'A' (Statement of Claim).**

### **Claims Against Michael**

9. While there is some difficulty in parsing the Statement of Claim in this matter, it appears that the claims against Michael are as follows:

- (a) Various claims for damages related to the Estate being mismanaged in some way  
**See paras 1, 15, and 42 of the Statement of Claim, Exhibit 'A' to Michael's Affidavit.**

(i) \$895,863.60 and associated interest, arising from the Home having been sold through the power of sale process after the Deceased's death;

(ii) A claim that Michael provide the Home itself;

(iii) One ounce of gold "for every month a foreign tennant [sic] unlawfully remains" at the Home, "until the property is restored to the Kingdom of Heaven Found a Sean's Trust";

(iv) A commercial lien on Michael's business, von Dehn Homes, and on any other "real assets" Michael has, pending the resolution of this action;

(v) A Porsche 911 G.T.S standard transmission 2023 model automobile;

- (b) A claim that Sean has the "Supreme Claim of Right" over the Deceased's Estate, as the Deceased's oldest child;

**See para 57 of the Statement of Claim, Exhibit 'A' to Michael's Affidavit.**

- (c) A claim that Michael disposed of the Deceased's ashes without Sean having the ability to attend a ceremony; and

**See paras 16-20 of the Statement of Claim, Exhibit 'A' to Michael's Affidavit.**

- (d) A claim with respect to Michael not providing a certain letter to Sean.

**See paras 36-38 of the Statement of Claim, Exhibit 'A' to Michael's Affidavit.**

10. In summary, and using the same lettering as the above, Michael's defences to these claims are:

- (a) Michael is not the Estate Trustee; he is a beneficiary. He had no duty to administer the Estate. Regardless, Sean suffered no damages in any event.
- (b) Sean has no right to receive the entirety of the Estate simply by being the first-born child.
- (c) The two-year limitation period has passed with respect to anything Michael did regarding the Deceased's ashes. Regardless, Michael kept Sean informed and Sean approved everything Michael did with respect to the Deceased's ashes; and
- (d) Michael already provided Sean the letter he requested.

**Michael's Affidavit. at para 10.**

## **Estate Chronology**

### *Unusual Circumstances Involving Tiffany Singh*

11. The Deceased died on October 29, 2019 at his Home, where he lived alone. The police located Michael and informed him of the Deceased's passing. Michael then contacted Sean and Tanja to inform them.

**Michael's Affidavit at para 11.**

12. Shortly thereafter, Michael was contacted by a lawyer, Greg McConnell, who indicated that a woman known as Tiffany Singh was the Estate Trustee for the Deceased's Estate. Ms. Singh had purportedly been a friend of the Deceased. Ms. Singh sent Michael photographs of a purported handwritten Will (the "**Handwritten Will**") made by the Deceased.

**Michael's Affidavit at paras 12-15.**

13. Michael advised Sean and Tanja that he intended to co-operate with Ms. Singh. At her request he provided her with the Deceased's ashes on December 7, 2019. Sean was agreeable to this and confirmed this via written messages with Michael.

**Michael's Affidavit at paras 16-17.**

14. Ms. Singh then disappeared. It became very difficult to get in touch with her. Michael urged her to bring forward the Handwritten Will to the courts or a lawyer, but she never did so. She eventually stopped responding entirely. Mr. McConnell indicated he had never actually been retained by Ms. Singh. Given the strange circumstances, Michael's belief was that the Handwritten Will was not valid, meaning that the Deceased had apparently died intestate.

**Michael's Affidavit at paras 18-19, 23.**

15. No end-of-life ceremony was ever held for the Deceased, so there was no ceremony from which Sean was excluded.

**Michael's Affidavit at para 20.**

*Boat*

16. The Deceased owned a dilapidated barge boat at the time of his death, which was sitting in the water at the community dock. Michael was advised by a neighbour of the Deceased that the lake was freezing and the boat needed to come out of the water or would be destroyed by ice. A friend of the Deceased offered to purchase the boat for \$1,000.00. Given the urgent circumstances, Michael proceeded with the sale after consulting with Sean and Tanja, who were both in agreement.

**Michael's Affidavit at para 21.**

*Tanja's First Attempt to Apply for Certificate of Appointment*

17. Eventually, in or around March 2020, Tanja decided to apply for a Certificate of Appointment of Estate Trustee Without a Will so that the Estate could be administered. Michael consented to her application.

**Michael's Affidavit at paras 22-24.**

18. Sean was initially in agreement but then changed his mind and decided he did not want Tanja to be the Estate Trustee. He decided that Tanja was not a rightful beneficiary because she had married and gave up the "von Dehn" name. He called Tanja "dishonourable", "malicious", and a "vile creature". He made demands that had to be met before he would consent to Tanja being

appointed, such as that Tanja and Michael had to pay to fix his teeth, or that Tanja and Michael would have to ensure he would not be homeless.

**Michael's Affidavit at paras 24-25.**

19. Because Sean would not consent to Tanja being appointed, she applied to court seeking to dispense with Sean's consent. This upset Sean so much that he threatened Michael that he would never talk to him or anyone in the family again. He threatened to send Tanja to jail.

**Michael's Affidavit at paras 26.**

20. At this point, Michael could not handle the stress of the situation, so he withdrew his consent to Tanja's application.

**Michael's Affidavit at para 27.**

21. Despite Michael withdrawing his consent, the court did still make an endorsement on June 4, 2020 that Tanja could apply for an Certificate of Appointment without Sean's consent. However, Tanja did not proceed further with her application at that time because Michael had withdrawn his consent.

**Michael's Affidavit at paras 28-29.**

*Sean Tries to Discharge Mortgage But Home is Sold Through Power of Sale*

22. At this point, Sean began trying to effectively act himself as executor.

**Michael's Affidavit at paras 30-36.**

23. There was a mortgage registered on the Home. Due to the Deceased's passing, the mortgage went into default and the lender indicated it would proceed with the power of sale process.



**Michael's Affidavit at para 31.**

24. Sean corresponded with the lender, and he was given the opportunity to pay off the mortgage to discharge it.

**Michael's Affidavit at para 32.**

25. Sean attempted to discharge the mortgage by writing a statement, applying his thumbprint, and submitting it to the lender as a valid discharge. The lender of course did not accept this.

**Michael's Affidavit at paras 33-34.**

26. The Home was ultimately sold via the power of sale process in October 2021 for \$425,000.00. There were surplus funds left of approximately \$306,000.00.

**Michael's Affidavit at paras 35, 37-40.**

27. As of the date of death in October 2019, the Home had only been valued at approximately \$174,900.00. The sale approximately two years later represented a significant increase in value.

**Michael's Affidavit at para 40.**

28. Michael is not aware as to what happened to the Deceased's two automobiles, and there is no evidence in the record on this point.

**Michael's Affidavit at para 35.**

*Tanja's Second Attempt to Apply for Certificate of Appointment*

29. Although there were surplus funds available from the Home sale, there was no way for the beneficiaries to access these funds without an Estate Trustee being appointed. As such, in or around March 2022, Tanja made a second attempt to be appointed as Estate Trustee. Michael consented to her application.

**Michael's Affidavit at paras 41-42.**

30. On May 6, 2022, Justice Casullo made an endorsement that a Certificate of Appointment could issue to Tanja. The endorsement indicated that Justice Casullo had considered a Notice of Objection from Sean, and was satisfied it should be vacated.

**Michael's Affidavit at para 43.**

31. A Certificate of Appointment was ultimately issued to Tanja on October 7, 2022.

**Michael's Affidavit at para 44.**

*Original of Handwritten Will*

32. In February 2023, it came to light that apparently an original of the Handwritten Will does exist. While this may affect how the Estate is ultimately distributed, it is not relevant to the claims Sean has brought against Michael in this action and should not affect the result of this motion.

**Michael's Affidavit at paras 45-46.**

**PART III - ISSUES, LAW & ANALYSIS**

33. The issues for this factum are:

- (a) Summary judgment should be granted to dismiss all claims against Michael on the basis that the plaintiff "The Kingdom of Heaven Found a Sean" is not a legal entity.
- (b) In addition, summary judgment should be granted to dismiss all claims as against Michael on a substantive basis, such that the dismissal is "with prejudice" to Sean's ability to re-commence such claims in his own name. The categories of claims to be addressed are:

- (i) The Home having been sold through power of sale, and any other alleged mismanagement of the Estate;
- (ii) Sean having “Supreme Claim of Right” over the Deceased’s Estate by virtue of being first-born child;
- (iii) Michael having provided the Deceased’s ashes to Ms. Singh; and
- (iv) Michael providing to Sean a certain letter that he requested.

### **Appropriateness of Summary Judgment**

34. First, as a threshold matter, Summary judgment is appropriate where there is “no genuine issue requiring a trial”.

*Rules of Civil Procedure, R.R.O. 1990, Reg.194, Rule 20.04(2)*. See also *Hyrniak v. Mauldin, 2014 SCC 7*.

35. Sean has not filed any evidence on this motion, and so there is nothing to establish that there is any issue that would require a trial.

36. In addition, and as will be discussed in more detail below, Michael has put forward clear evidence to establish that Sean’s claims have no merit and cannot succeed at trial, such that there is no genuine issue requiring trial.

### **Plaintiff Not a Legal Entity**

37. The Plaintiff, named as “The Kingdom of Heaven Found a Sean” is not a legal entity capable of commencing this action, and so on that basis alone all claims against Michael should be dismissed.

38. In Justice Hooper's February 1, 2023 decision dismissing the claims in this action as against Hala Tabl, the Court has already made a determination that the plaintiff is not an entity with any legal capacity to commence litigation. Justice Hooper dismissed the claims against Hala Tabl on that basis. The same reasoning and conclusion should apply here.

[\*The Kingdom of Heaven Found a Sean v. Johnson et al.\*, 2023 ONSC 605](#)

### **Michael Not Estate Trustee**

39. With respect to Sean's claim regarding the Home being sold through power of sale, and any other miscellaneous claims regarding the financial management of the Estate, Michael's answer is that he is simply not the Estate Trustee for this Estate.

40. Michael is a beneficiary of the Estate only. As such, he owes no duty to Sean with respect to the administration of the Estate.

41. Shortly after the Deceased's passing, Tanja Singh represented herself to Michael as being the named executor in the Handwritten Will. Michael initially accepted this and asked Ms. Singh to present the Handwritten Will to the court.

42. Following Ms. Singh's disappearance, it appeared that the Deceased may have actually died intestate. In that case, there would have been no Estate Trustee until someone applied for and received a Certificate of Appointment. Michael never applied for a Certificate of Appointment, but Tanja did. Due to Sean's resistance, Tanja had to apply twice to be appointed.

43. It now appears that the Handwritten Will may actually be valid, although a court may need to make a determination on that point. But whether the Handwritten Will is valid or whether the Deceased died intestate, in either case Michael is not the Estate Trustee.

44. Michael did take some very limited action regarding the Estate early on following the Deceased's passing. This was out of necessity and with the approval of Sean and Tanja. Michael dealt with the Deceased's remains and handed over the ashes to Ms. Singh at her insistence. He also sold the Deceased's boat so that it would not be destroyed due to the imminent freezing of the lake.

45. Such limited actions do not make Michael the Estate Trustee, such that he would have the full authority and duty to administer the Estate. Rather, these actions simply mean that at most he was a "trustee de son tort" with respect to the specific actions he took. That means he could be liable if he acted improperly and caused loss, only with respect to the specific actions he took. It does not mean that Michael somehow became responsible for the entire administration of the Estate simply by dealing with the disposition of the Deceased's remains or by selling the Deceased's boat.

46. The principles applicable to a trustee de son tort have been summarized by the Supreme Court of Canada as follows:

...[S]trangers to the trust can be liable as trustees *de son tort*. Such persons, although not appointed trustees, "take on themselves to act as such and to possess and administer trust property". See *Selangor United Rubber Estates, Ltd. v. Cradock (No. 3)*, [1968] 2 All E.R.

1073, at p. 1095. In the *Selangor* case, Ungoe-Thomas J. went on to describe the distinguishing features of such constructive trustees:

.... (a) they do not claim to act in their own right but for the beneficiaries, and (b) their assumption to act is not of itself a ground of liability (save in the sense of course of liability to account and for any failure in the duty so assumed), and so their status as trustees precedes the occurrence which may be the subject of claim against them.

Thus a trustee *de son tort* will not be personally liable simply for the assumption of the duties of a trustee, but only if he or she commits a breach of trust while acting as a trustee. See *Barnes v. Addy* (1874), L.R. 9 Ch. App. 244; Underhill and Hayton, *Law Relating to Trusts and Trustees* (14th ed. 1987), at p. 351; Philip H. Pettit, *Equity and the Law of Trusts* (6th ed. 1989), at p. 152.

[\*Air Canada v. M & L Travel Ltd.\*, 1993 CanLII 33 \(SCC\)](#) at IV(2)(a).

47. Sean has pleaded no claim with respect to the sale of the Deceased's Boat. The matter of the Deceased's ashes is discussed in more detail below, as its own separate issue.

48. Crucially, Michael had no authority or duty with respect to preventing the sale of the Deceased's Home through the power of sale process, because Michael was not the Estate Trustee. Michael also never held himself out to the Deceased's lender that he had authority to deal with this issue, and never took it upon himself to attempt to address this issue with the Deceased's lender on behalf of the Estate.

49. In fact, it was Sean, not Michael, that tried to deal with the lender on behalf of the Estate. Sean attempted to get the mortgage discharged from the Home, but was unsuccessful. He tried to

get the mortgage discharged by simply presenting the lender with a statement that he signed with his thumbprint. Naturally, this did not work.

50. Ultimately, given that the Estate had no significant assets other than the Home it would have been necessary regardless to sell the Home. Neither Michael nor Tanja nor Sean had the could sell the Home without obtaining a Certificate of Appointment. Tanja had tried to apply for such a Certificate prior to the Home being sold, but Sean severely resisted this.

51. In any event, Sean has suffered no loss with respect to the sale of the Home. If the Home had been sold promptly following the Deceased's passing, the opinion of value obtained by Tanja was to list the Home for sale at \$174,900.00. There is the only evidence in the record as to the approximate value of the Home at that time. However, what instead happened was that, because there was no Estate Trustee in place with respect to the Estate, the Home sat idle for approximately two years until the lender eventually forced a sale through the power of sale process. However, as a result of that delay, the Home experienced a surge in its value, as part of a well-known increase in Ontario property values during that time period. As a result, the surplus proceeds remaining after the conclusion of the power of sale process (approximately \$306,000) is apparently more than what the Home would have sold for if it had been sold promptly following the Deceased's passing.

52. To summarize, any claims Sean is making against Michael with respect to the Home cannot succeed, such that there is no genuine issue requiring a trial. Michael is not the Estate Trustee; his is only a beneficiary of the Estate. He had no duty or authority with respect to administering the Estate, and in particular with respect to the liquidating the Home. In any event, Sean suffered no damages with respect to this issue.

53. Aside from the claims related to the Home, Sean also makes a claim for “a Porsche 911 G.T.S standard transmission 2023 model automobile”. There is no basis articulated in Sean’s Statement of Claim for why he would be entitled to this. However, it appears this would have to be premised on Michael engaging in some type of financial mismanagement regarding the Estate. Again, this is answered by the fact that Michael is not the Estate Trustee. Michael had no authority or duty to deal with the Deceased’s automobiles and he did not take it upon himself to do so. Michael’s evidence is that he has no knowledge of what happened to the Deceased’s two automobiles. Sean has provided no evidence to the contrary. There is no genuine issue requiring a trial on this point.

#### **Sean Not Entitled to Entirety of Estate Simply by Being First-Born Child**

54. Sean makes the assertion in his Statement of Claim that he has the “Supreme Claim of Right” over the Deceased’s Estate by virtue of being the first-born child.

55. It is trite law that the medieval concept of primogeniture has no place today in Ontario’s legal system. There is no legal basis by which Sean would be entitled to the entirety of the Deceased’s Estate, simply by being the first-born child.

#### **No Supportable Claim Regarding Deceased’s Ashes**

56. There is no merit to Sean’s claim that Michael improperly disposed of the Deceased’s ashes.

57. First, Michael provided the ashes to Ms. Singh approximately two years and eight months before Sean’s Statement of Claim was issued.



58. As such, any possible claim Sean may have had with respect to Michael giving the ashes to Ms. Singh is barred by Ontario's general two-year limitation period. There is no issue with respect to discoverability as Michael immediately informed Sean after he had provided the ashes to Ms. Singh.

[Limitations Act, 2002, S.O. 2002, c. 24, Sched B, s. 4.](#)

59. Regardless, Michael did nothing wrong. He had been told by a lawyer that Ms. Singh was the Estate Trustee. Ms. Singh was asking for the Deceased's ashes. Michael consulted with Sean, and Sean approved giving the ashes to Ms. Singh. After Michael gave the ashes to Ms. Singh, he informed Sean, and Sean confirmed in writing that he took no issue with this. If the Handwritten Will turns out in fact to be valid, then in fact Michael gave the ashes to the Deceased's named Estate Trustee.

60. Based on these facts, Sean simply has no valid claim against Michael with respect to Michael's handling of the Deceased's ashes.

#### **Michael Already Provided Letter to Sean**

61. Sean's final claim against Michael is that Michael did not provide him with a particular letter.

62. Sean is referring to a letter that Michael came across in the Deceased's Home. It was a letter written by Sean to the Deceased.

63. Michael did in fact provide this letter to Sean, prior to Sean commencing the present action.

64. In his affidavit for this motion, Michael attached a copy of the letter itself as well as a copy of an email exchange where Sean confirmed receiving the letter.

**Michael's Affidavit at paras 64-68, Exhibits 'R' and 'S'.**

65. Sean has not disputed that he did receive the letter. Sean simply has no valid claim with respect to this letter.

#### **PART IV - ORDER REQUESTED**

66. On this motion, Michael seeks the following orders:

- (a) An order for summary judgment dismissing all claims made in this proceeding as against Michael, with prejudice to the ability of Sean to bring any such claims in his own name; and
- (b) An order that Michael's costs of this motion, and the proceeding as a whole, are to be paid on a full-indemnity basis by Sean personally, and such costs are authorized to be paid in whole or in part out of any entitlement which Sean has in the Deceased's Estate.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of August, 2023.



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Christopher Crisman-Cox,  
**MILLER THOMSON LLP**

## SCHEDULE “A”

### LIST OF AUTHORITIES, APPLICABLE STATUES, AND RULES

1. [\*Air Canada v. M & L Travel Ltd.\*, 1993 CanLII 33 \(SCC\)](#)
2. [\*Hyrniak v. Mauldin\*, 2014 SCC 7](#)
3. [\*Limitations Act, 2002\*, S.O. 2002, c. 24, Sched B, s. 4](#)
4. [\*Rules of Civil Procedure\*, R.R.O. 1990, Reg. 194, Rule 20](#)
5. [\*The Kingdom of Heaven Found a Sean v. Johnson et al.\*, 2023 ONSC 605](#)

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RCP-F 4C (September 1, 2020)