

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

**Plaintiff**

**(Respondent to the motion)**

**-and-**

**TANJA JOHNSON, HALA TABL, and MICHAEL VON DEHN**

**Defendants**

**(Moving parties)**

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**FACTUM OF MOVING PARTY, TANJA JOHNSON**  
*(Returnable September 7, 2023)*

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Date: August 14, 2023

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**FACTUM OF THE MOVING PARTY, TANJA JOHNSON**

**PART I - OVERVIEW**

1. This is a motion for Summary Judgement pursuant to Rule 20 brought by the Defendant, Tanja Johnson.
2. This motion is being heard simultaneously with a motion for Summary Judgement brought by the co-defendant, Michael von Dehn.
3. By Order of Justice Hopper dated February 1, 2023, the action as against the co-defendant, Hala Tabl, was struck pursuant to Rule 21 on the basis that the plaintiff does not have legal capacity. The Order and reasons of Justice Hopper are appended to this Factum at Schedule C.

## PART II - THE FACTS

### The Parties

4. This motion for summary judgment is brought in an action commenced by “The Kingdom of Heaven Found a Sean (an Express Trust Organization)” (the “**Plaintiff**”) which is related to Sean von Dehn (“**Sean**”), against two of Sean’s siblings, namely Tanja Johnson (“**Tanja**”) and Michael von Dehn (“**Michael**”), about the estate of their father Joachim von Dehn (respectively “**Joachim**” and the “**Estate**”).
5. **Hala Tabl** is a lawyer who assisted Tanja Johnson secure a Certificate of Appointment of Estate Trustee without a Will for the Estate.

### Background

6. Joachim von Dehn died on October 29, 2019. This proceeding relates to his estate.

#### **Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 3**

7. To the best knowledge of Tanja Johnson up to until February 22, 2023, Joachim died intestate.

#### **Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 42**

8. Joachim was survived by his three children Sean, Tanja and Michael.

#### **Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 5**

9. Joachim was not survived by a spouse.

#### **Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 6**

10. The primary asset of the Estate was Joachim’s home at 1070 Hewitt Street, Gravenhurst Ontario (the “**Home**”).

#### **Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 7**

11. The Home was encumbered by a secured line of credit. The line of credit fell into arrears. The parties were notified by the solicitors for the financial institution (the “**Solicitors**”) that they would enforce the rights of the financial institution.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 8**

12. With consent from Michael, Tanja applied for a Certificate of Appointment as estate trustee without a Will for the Estate (the “**First Application**”) in April 2020.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 13**

13. Because Joachim had resided in Gravenhurst, the proper Court for the filing of the First Application was Bracebridge.
14. After Tanja filed the First Application, the estates registry at the Bracebridge Court took the position that Tanja’s application for an Order to Dispense with a Bond could not proceed without unanimous consent of all beneficiaries. Accordingly, Tanja brought an urgent Court application (the “**Urgent Application**”), seeking as relief, among other things, an order permitting her to file an application for a certificate of appointment and an order permitting her to apply for an Order dispensing with a bond both without Sean’s consent.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 16**

15. Michael and Sean were served with the application record and factum of the Urgent Application.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 18**

16. Sean then filed a Notice of Objection to the First Application in **Ottawa and posted it on his website.**

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 19**

17. Tanja, through her solicitor, notified the Court in Bracebridge of Sean’s objection to the First Application immediately after becoming aware of it.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 20**

18. By endorsement (the “**Endorsement**”), dated June 4, 2020 Woodley J., granted Tanja the right to pursue the application for appointment as estate trustee without Sean’s consent, and further provided that Sean could object to the First Application if he wished to. The Endorsement provides:

1. Having read the material filed, I am satisfied this matter requires the urgent attention of the Court to protect and preserve the assets for the intestate beneficiaries, namely, Tanja Johnson, Michael von Dehn, and Sean von Dehn (in equal parts).
2. Given the urgency attached to the application, the Applicant may file her Notice of Application for Appointment as Estate Trustee without a Will, with the court, with the usual materials, and without the consent of the Respondent Sean von Dehn, which consent is dispensed with, pursuant to Section 29(1) and (2) of the Estates Act, which application shall be dealt with on an expedited basis.
3. In the event the Respondent Sean von Dehn files the Notice of Objection as prepared by him with the Court, the within application shall return to any Justice of the Superior Court to determine whether the Notice of Objection should stand or be vacated and shall also consider whether an Estate Trustee During Litigation should be appointed on an urgent basis at that time.
4. A copy of this Endorsement, together with a copy of the Application for Appointment of Estate Trustee Without a Will, shall be served on the Respondent Sean von Dehn by email..

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 21, Exh. I**

19. The Endorsement and the First Application were served on Sean by Tanja through her solicitor.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 22**

20. Tanja re-filed the First Application with the Court in Bracebridge on or about June 12, 2020.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 23**

21. Sean did not file a Notice of Objection to the First Application.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 24**

22. Michael subsequently rescinded his consent to the First Application and as a result Tanja immediately withdrew the First Application on June 19, 2020.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 25**

**The Second Application in 2022 by Tanja for a Certificate of Appointment**

23. By letter dated January 31, 2022, Tanja, Sean, and Michael were notified by the Solicitors that the House had been sold, that they retained the net proceeds of the sale and that they would release these net proceeds upon receipt of a notarial copy of a certificate of appointment of estate trustee.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 27**

24. Tanja again engaged Hala Tabl to assist her to file an Application for a Certificate of Appointment of Estate Trustee Without Will for the Estate (the “**Second Application**”).

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 28**

25. Through her counsel, Tanja asked each of Michael and Sean to consent to the Second Application.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 29**

26. Michael consented to the Second Application, and his consent was filed with the Second Application.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 30**

27. The Second Application was served on Sean, together with Michael’s consent in accordance with the *Rules*. Sean was also served with the Endorsement.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 31**

28. The Second Application was prepared and filed electronically with the Court in Bracebridge on behalf of Tanja by her solicitor Hala Tabl on March 24, 2022.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 34**

29. By Order of Justice Casullo dated May 6, 2022 directed to the registrar, Sean's objection to the Second Application was vacated. Justice Casullo wrote:

Having reviewed the affidavit of Tanja Johnson sworn March 24, 2022, as well as the endorsement of Woodley J. dated June 4, 2020, and the Notice of Objection of King Sean, House of von Dehn, I am satisfied the Notice of Objection should be vacated. Given the value of the Estate, an Estate Trustee During Litigation is not warranted. Certificate may issue, and Order dispensing with bond has been executed.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 35, Exh. T**

30. The Second Application was granted, and a Certificate of Appointment of Estate Trustee was issued to Tanja by the Court in Bracebridge on October 7, 2022.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 36**

31. Tanja has received the funds from the Solicitors and begun preliminary steps to administer the Estate.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 37**

32. On February 22, 2023 Hala Tabl was contacted by Greg McDonnell a solicitor who advised that he had possession of an original holograph will of Joachim von Dehn made February 16, 2023 (the "**Holograph Will**").

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 41**

33. Tanja had no knowledge that an original of the Holograph Will existed until February 22, 2023. Tanja has no reason to believe that the Holograph Will is not valid.

**Affidavit of Tanja Johnson, sworn February 27, 2023, Par. 42**

34. There is no evidence that the Holograph Will was revoked by a subsequent will.

35. Neither Tanja nor Sean are beneficiaries of the Holograph Will.
36. The executor named in the Holograph Will, Tiffany Singh, wishes to have Tanja to complete administration of the Estate as estate trustee, with distribution to be made in accordance with the Holograph Will.

### **PART III - THE ISSUES**

37. Should summary judgement be granted dismissing the Action in favour of the Defendant Tanja Johnson?
38. In the alternative, should summary judgement be granted on certain claims in favour of the Defendant Tanja Johnson?
39. In the alternative, should certain claims be struck from the Statement of Claim as frivolous, vexatious or disclosing no cause of action?



## PART IV – LAW AND ARGUMENT

### Rule 20 – relevant provisions

40. The relevant sections of Rule 20 are –

#### **Where Available**

....

#### ***To Defendant***

(3) A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim. R.R.O. 1990, Reg. 194, [r. 20.01 \(3\)](#).

#### **Evidence on Motion**

**20.02** (1) An affidavit for use on a motion for summary judgment may be made on information and belief as provided in [subrule 39.01 \(4\)](#), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts. O. Reg. 438/08, s. 12.

(2) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest solely on the allegations or denials in the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial. O. Reg. 438/08, s. 12.

#### **Disposition of Motion**

#### ***General***

**20.04** (1) Revoked: O. Reg. 438/08, s. 13 (1).

(2) The court shall grant summary judgment if,

(a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment. O. Reg. 284/01, s. 6; O. Reg. 438/08, s. 13 (2).

[underlining added]

## **Powers**

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence. O. Reg. 438/08, s. 13 (3).

### ***Hryniak v. Mauldin, 2014 SCC 7 (CanLII), [2014] 1 SCR 87***

41. The relevant considerations applicable to summary judgement motions are:

[49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[50] These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

### ***Hryniak v. Mauldin, 2014 SCC 7 (CanLII), [2014] 1 SCR 87***

## **Evidential issues**

42. A timetable was ordered for prosecution of this motion which included deadlines for the delivery of evidence and examinations, if any. This Order is appended as Schedule D.

43. Tanja served and filed her Motion Record on March 1, 2023. Tanja’s affidavit evidence addresses each substantive issue in the Claim and her Defence related to this motion.
44. Tanja was not examined on her affidavit by any party.
45. Sean did not file any responding evidence and thus there is no evidence supporting any of Sean’s claims nor showing that a trial is required for any of Sean’s claims as required by *Rule 20.02*.

### **The Plaintiff is Not a Legal Entity**

46. The Plaintiff is named in the Statement of Claim as “The Kingdom of Heaven Found a Sean, an Express Trust Organization”. The Plaintiff is not a legal entity and has no status to commence an action in Ontario.
47. The test applied pursuant to Rule 21 is that it must be “plain and obvious” and “beyond doubt” that the claim as pleaded discloses no reasonable cause of action. This test is more stringent than the test applicable under Rule 20.
48. Justice Hopper struck the claim as against Hala Tabl pursuant to Rule 21 because it was plain and obvious and beyond doubt that the Plaintiff lacks legal capacity:

[13] The test to determine legal capacity is whether it is “plain and obvious” that the plaintiff does not have legal capacity to bring a claim: *Zuppinger v. Slightham*, 2019 ONSC 5117, at para 9.

[14] To have legal capacity, a party must be a natural person, a corporation, or a body which has given that capacity by legislation: *Jackson v. Toronto Police Association*, 2008 CanLII 68152 (Ont. S.C.), at para 18, *Ora Trustees Ltd, et al. v. Wade, et al.*, 2022 ONSC 1427, at para 36.

[15] The stated plaintiff has none of these characteristics. It is not a person, a corporation, and has not been given any legal capacity by legislation. As a result, the claim is struck on that basis.

### ***The Kingdom of Heaven Found a Sean v. Johnson et al., 2023 ONSC 605***

49. Judgement on the entire claim as against Tanja Johnson should be granted under Rule 20 for the same reason.

50. On a related note, Sean is not a lawyer and has not right to represent an entity other than himself.

### **Categorizing the Allegations**

51. Many of the allegations in the Statement of Claim are not recognizable legal claims and no damages are claimed or quantified. For instance, paragraph 44 of the Statement of Claim provides the following allegation that is not a claim -

44. Sean clearly advised Tanja that she is as King to be fully liable for all the harm she has done to the Estate of Joachim and the Estate's intended Beneficiaries from the time of Joachim's death on October 29th, 2019, until Present,

52. However nonsensical the allegations are, they appear to fall into the three following categories -

- a. Allegations that the Second Application was not filed properly. Paragraphs 47 and 48 of the Statement of Claim provide:

47. No application for Certificate of Appointment of Estate Trustee was ever filed with the Court by Tanja or her lawyer, Hala, on March 24th, 2022,

48. Even after the Courts confirmed for Sean that there was no application before the Court for Joachim von Dehn's Estate, Tanja and her lawyer insisted it was filed electronically by Way of email, but Will not produce a receipt of their filing,

- b. Allegations that Sean is the primary beneficiary of the estate, entitled to inherit the entire Estate, perhaps under some concept of primogeniture; paragraphs 10, 45, 54 and 57 provide –

10. Tanja has no legitimate or valid claim on the von Dehn Estate, and represents a foreign House and interest.

45. Tanja agreed to accept full liability for all harm done to the Real property Value of the Estate of Joachim by the power of sale, and to the Estate's intended Beneficiary, Sean, House von Dehn,

54. Tanja and Mike robbed Sean of his right to Honour his Father and secure the Real Value of Joachim's Estate for the intended Beneficiary,

57. Sean Stephen von Dehn does hold the Supreme Claim of Right upon Joachim's Estate as the next of kin in Order of Succession,

- c. Allegations related to accounting for the Estate, which again are allegations but not formulated as legal claims:

49. Tanja's (unfiled) Court application indicated that Tanja is in possession of over forty thousand dollars (Canadian) previously unaccounted for and above and beyond the surplus remainder funds from the power of sale,

50. Tanja refuses to disclose to Sean how she came to be in possession of an additional forty thousand dollars worth of assets,

53. Addressing each of these three types of allegations in sequence, it is clear on the evidence that a trial is not required to dispose of any of them and judgement on all should be granted in favour of Tanja.

#### **The appointment process allegations**

54. The process for appointing an estate trustee and for challenging the appointment of an estate trustee is set out in Rules 74 and 75 of the *Rules of Civil Procedure, RRO 1990, Reg 194* (the "**Rules**"). This procedure has already been invoked by Sean von Dehn and his objection to the application of the Defendant Tanja Johnson has been considered and rejected by the Court.
55. It is clear on the face of both the Woodley and Casullo endorsements that they were fully aware of and considered Sean's objections.
56. The Second Application was filed in Bracebridge by Hala Tabl electronically on March 24, 2022. Service of this filing on Sean is expressly acknowledged in paragraph 46 of the Statement of Claim.

**Affidavit of Tanja Johnson, Exhibit S  
Statement of Claim, paragraph 46**

57. The Second Application resulted in a Certificate of Appointment, issued October 7, 2023, by the Court in Bracebridge.

**Affidavit of Tanja Johnson, Exhibit U**

58. Sean appears to mistakenly believe that the Second Application was dealt with by the Court in Barrie.
59. The allegations in paragraphs 47 and 48 are not legal claims. In any event, on the evidence these allegations are clearly wrong and no trial is required to deal with them. Judgement on these paragraphs should be granted to Tanja.

**The inheritance allegations**

60. Any claim by Sean that he alone is entitled to inherit the Estate must clearly be wrong as directly contrary to all possible outcomes for the Estate:
- a. If Joachim died intestate, then Sean's claims about inheritance are directly contrary to section 47(1) of the *Succession Law Reform Act*, R.S.O.1990, c.S.26; and,
  - b. If the Holograph Will is valid then inheritance from the Estate should be in accordance with its terms.
61. No trial is required to deal with any allegation or claim in the Statement of Claim about inheritance and judgement on them should be granted to Tanja.

**The accounting allegations**

62. The process for challenging the administration of an estate by an estate trustee is set out in Rule 75 of the Rules and in particular the Rules provide a complete process for passing of accounts by an estate trustee once the estate has been administered.
63. Challenges to the estate accounting are premature at this stage. It is very likely that any trustee of the Estate will proactively seek to pass their accounts. If not, an application to compel and accounting can be brought.

64. An application for a certificate of appointment must disclose the estimated value of the estate on death. In this case, the Second Application disclosed the value of the House as known to Tanja at the time. The net proceeds received by an estate may differ significantly from the value disclosed on the application for a certificate of appointment, both with respect to expenses and increases in value of assets.
65. There is no need for a trial to deal with Sean's allegations about the Estate accounts, which are allegations but not claims. Judgement should be granted to Tanja, without prejudice to any subsequent accounting by the trustee of the Estate and without prejudice to any subsequent properly founded application to compel the trustee of the Estate to pass their accounts.

**Striking individual paragraphs**

66. All of the paragraphs 54- 62 have no meaning or relevance in law and should be struck, either under Rule 21 or judgement granted on them in favour of Tanja under Rule 20.
67. If these paragraphs are struck, then it is clear that there are no claims against Tanja for which a trial is required.

**PART V – THE RELIEF SOUGHT**

68. Tanja Johnson seeks:
- a. Summary Judgement dismissing all of the Action as against her on the basis that there is no claim in the Statement of Claim for which a trial is required;
  - b. In the alternative, Summary Judgement dismissing all claims in the Action for which a trial is not required;
  - c. In the alternative, an Order striking all paragraphs from the Statement of Claim that are clearly wrong, vexatious, and irrelevant;
  - d. Costs on a substantial indemnity basis, and express authority to pay these costs

from any amount due to Sean as a beneficiary of the Estate.

All of which is respectfully submitted.

August 14, 2023

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## Schedule A – List of Authorities

1. *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87
2. *The Kingdom of Heaven Found a Sean v. Johnson et al.*, 2023 ONSC 605

## **Schedule B – Relevant Statutes and Regulations**

*Rules of Civil Procedure, R.R.O. 1990, Reg. 194. Rule 20.*

### ***To Plaintiff***

**20.01** (1) A plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in the statement of claim. R.R.O. 1990, Reg. 194, r. 20.01 (1).

(2) The plaintiff may move, without notice, for leave to serve a notice of motion for summary judgment together with the statement of claim, and leave may be given where special urgency is shown, subject to such directions as are just. R.R.O. 1990, Reg. 194, r. 20.01 (2).

### ***To Defendant***

(3) A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim. R.R.O. 1990, Reg. 194, r. 20.01 (3).

### **Evidence on Motion**

**20.02** (1) An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01 (4), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts. O. Reg. 438/08, s. 12.

(2) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest solely on the allegations or denials in the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial. O. Reg. 438/08, s. 12.

### **Factums Required**

**20.03** (1) On a motion for summary judgment, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party. O. Reg. 14/04, s. 14.

(2) The moving party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least seven days before the hearing. O. Reg. 394/09, s. 4.

(3) The responding party's factum shall be served and filed with proof of service in the court office where the motion is to be heard at least four days before the hearing. O. Reg. 394/09, s. 4.

(4) REVOKED: O. Reg. 394/09, s. 4.

## **Disposition of Motion**

### ***General***

**20.04** (1) REVOKED: O. Reg. 438/08, s. 13 (1).

(2) The court shall grant summary judgment if,

- (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or
- (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment. O. Reg. 284/01, s. 6; O. Reg. 438/08, s. 13 (2).

### ***Powers***

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

- 1. Weighing the evidence.
- 2. Evaluating the credibility of a deponent.
- 3. Drawing any reasonable inference from the evidence. O. Reg. 438/08, s. 13 (3).

### ***Oral Evidence (Mini-Trial)***

(2.2) A judge may, for the purposes of exercising any of the powers set out in subrule (2.1), order that oral evidence be presented by one or more parties, with or without time limits on its presentation. O. Reg. 438/08, s. 13 (3).

### ***Only Genuine Issue Is Amount***

(3) Where the court is satisfied that the only genuine issue is the amount to which the moving party is entitled, the court may order a trial of that issue or grant judgment with a reference to determine the amount. R.R.O. 1990, Reg. 194, r. 20.04 (3); O. Reg. 438/08, s. 13 (4).

### ***Only Genuine Issue is Question of Law***

(4) Where the court is satisfied that the only genuine issue is a question of law, the court may determine the question and grant judgment accordingly, but where the motion is made to an associate judge, it shall be adjourned to be heard by a judge. R.R.O. 1990, Reg. 194, r. 20.04 (4); O. Reg. 438/08, s. 13 (4); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

### ***Only Claim Is For An Accounting***

(5) Where the plaintiff is the moving party and claims an accounting and the defendant fails to satisfy the court that there is a preliminary issue to be tried, the court may grant judgment on the claim with a reference to take the accounts. R.R.O. 1990, Reg. 194, r. 20.04 (5).

### **Where Trial is Necessary**

#### ***Powers of Court***

**20.05** (1) Where summary judgment is refused or is granted only in part, the court may make an order specifying what material facts are not in dispute and defining the issues to be tried, and order that the action proceed to trial expeditiously. O. Reg. 438/08, s. 14.

#### ***Directions and Terms***

(2) If an action is ordered to proceed to trial under subrule (1), the court may give such directions or impose such terms as are just, including an order,

- (a) that each party deliver, within a specified time, an affidavit of documents in accordance with the court's directions;
- (b) that any motions be brought within a specified time;
- (c) that a statement setting out what material facts are not in dispute be filed within a specified time;
- (d) that examinations for discovery be conducted in accordance with a discovery plan established by the court, which may set a schedule for examinations and impose such limits on the right of discovery as are just, including a limit on the scope of discovery to matters not covered by the affidavits or any other evidence filed on the motion and any cross-examinations on them;
- (e) that a discovery plan agreed to by the parties under Rule 29.1 (discovery plan) be amended;
- (f) that the affidavits or any other evidence filed on the motion and any cross-examinations on them may be used at trial in the same manner as an examination for discovery;
- (g) that any examination of a person under Rule 36 (taking evidence before trial) be subject to a time limit;
- (h) that a party deliver, within a specified time, a written summary of the anticipated evidence of a witness;

- (i) that any oral examination of a witness at trial be subject to a time limit;
- (j) that the evidence of a witness be given in whole or in part by affidavit;
- (j.1) that any oral examination of a person or witness proceed by video conference;
- (k) that any experts engaged by or on behalf of the parties in relation to the action meet on a without prejudice basis in order to identify the issues on which the experts agree and the issues on which they do not agree, to attempt to clarify and resolve any issues that are the subject of disagreement and to prepare a joint statement setting out the areas of agreement and any areas of disagreement and the reasons for it if, in the opinion of the court, the cost or time savings or other benefits that may be achieved from the meeting are proportionate to the amounts at stake or the importance of the issues involved in the case and,
  - (i) there is a reasonable prospect for agreement on some or all of the issues, or
  - (ii) the rationale for opposing expert opinions is unknown and clarification on areas of disagreement would assist the parties or the court;
- (l) that each of the parties deliver a concise summary of his or her opening statement;
- (m) that the parties appear before the court by a specified date, at which appearance the court may make any order that may be made under this subrule;
- (n) that the action be set down for trial on a particular date or on a particular trial list, subject to the direction of the regional senior judge;
- (o) for payment into court of all or part of the claim; and
- (p) for security for costs. O. Reg. 438/08, s. 14; O. Reg. 689/20, s. 19.

### ***Specified Facts***

(3) At the trial, any facts specified under subrule (1) or clause (2) (c) shall be deemed to be established unless the trial judge orders otherwise to prevent injustice. O. Reg. 438/08, s. 14.

### ***Order re Affidavit Evidence***

(4) In deciding whether to make an order under clause (2) (j), the fact that an adverse party may reasonably require the attendance of the deponent at trial for cross-examination is a relevant consideration. O. Reg. 438/08, s. 14.

### ***Order re Experts, Costs***

(5) If an order is made under clause (2) (k), each party shall bear his or her own costs. O. Reg. 438/08, s. 14.

### ***Failure to Comply with Order***

(6) Where a party fails to comply with an order under clause (2) (o) for payment into court or under clause (2) (p) for security for costs, the court on motion of the opposite party may

dismiss the action, strike out the statement of defence or make such other order as is just. O. Reg. 438/08, s. 14.

(7) Where on a motion under subrule (6) the statement of defence is struck out, the defendant shall be deemed to be noted in default. O. Reg. 438/08, s. 14.

### **Costs Sanctions for Improper Use of Rule**

**20.06** The court may fix and order payment of the costs of a motion for summary judgment by a party on a substantial indemnity basis if,

- (a) the party acted unreasonably by making or responding to the motion; or
- (b) the party acted in bad faith for the purpose of delay. O. Reg. 438/08, s. 14.

### **Effect of Summary Judgment**

**20.07** A plaintiff who obtains summary judgment may proceed against the same defendant for any other relief. R.R.O. 1990, Reg. 194, r. 20.07.

### **Stay of Execution**

**20.08** Where it appears that the enforcement of a summary judgment ought to be stayed pending the determination of any other issue in the action or a counterclaim, crossclaim or third party claim, the court may so order on such terms as are just. R.R.O. 1990, Reg. 194, r. 20.08.

### **Application to Counterclaims, Crossclaims and Third Party Claims**

**20.09** Rules 20.01 to 20.08 apply, with necessary modifications, to counterclaims, crossclaims and third party claims. R.R.O. 1990, Reg. 194, r. 20.09.

**Schedule C – Order and Reasons of Justice Hopper**

**CITATION:** *The Kingdom of Heaven Found a Sean v. Johnson et al.*, 2023 ONSC 605  
**COURT FILE NO.:** CV-22-89835  
**DATE:** 2023/02/01

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
THE KINGDOM OF HEAVEN FOUND	)	Sean von Dehn, self-represented
A SEAN (An Express Trust Organization)	)	
	)	
Plaintiff/Responding Party	)	
	)	
<b>– and –</b>	)	
	)	
TANJA JOHNSON, HALA TABL, and	)	Susan Sack, counsel for the moving party,
MICHAEL Von DEHN	)	Hala Tabl
	)	
Defendants /Moving Party	)	
	)	
	)	
	)	<b>HEARD:</b> November 3, 2022

**HOOPER J.**

[1] This is a motion brought pursuant to Rule 21 of the *Rules of Civil Procedure* R.R.O. 1990 Reg. 194, by the Defendant, Hala Tabl, to strike the Plaintiff’s Statement of Claim, without leave to amend, on the basis that it is deficient, an abuse of process, and has no chance of success.

[2] The litigation involves a dispute over the Estate of the late Joachim von Dehn (the “Deceased”) who died intestate on October 29, 2019. The Deceased is survived by three children – Sean von Dehn (who now refers to himself as King Sean), Tanja Johnson, and Michael von Dehn. The named plaintiff is “The Kingdom of Heaven Found a Sean,” which purports to be an “express trust organization” operated by King Sean. Within these reasons, the court will refer to King Sean by his legal name, Sean von Dehn.

[3] The moving party, Ms. Tabl, is a lawyer. She represented Tanja Johnson in relation to Ms. Johnson’s Application for a Certificate of Estate Trustee without a Will of the Estate of the Deceased (the “application”). Within that application, Ms. Johnson sought an order to dispense with the requirement to post a bond.

[4] Ms. Johnson’s application was initially brought before Justice Woodley in June 2020 during the suspension of court operations under COVID-19. Justice Woodley reviewed the

application materials and the objection of Sean von Dehn, and made the following interim disposition:

1. Having read the material filed, I am satisfied this matter requires the urgent attention of the Court to protect and preserve the assets for the intestate beneficiaries, namely, Tanja Johnson, Michael von Dehn, and Sean von Dehn (in equal parts).
2. Given the urgency attached to the application, the Applicant may file her Notice of Application for Appointment as Estate Trustee without a Will, with the court, with the usual materials, and without the consent of the Respondent Sean von Dehn, which consent is dispensed with, pursuant to Section 29(1) and (2) of the Estates Act, which application shall be dealt with on an expedited basis.
3. In the event the Respondent Sean von Dehn files the Notice of Objection as prepared by him with the Court, the within application shall return to any Justice of the Superior Court to determine whether the Notice of Objection should stand or be vacated and shall also consider whether an Estate Trustee During Litigation should be appointed on an urgent basis at that time.
4. A copy of this Endorsement, together with a copy of the Application for Appointment of Estate Trustee Without a Will, shall be served on the Respondent Sean von Dehn by email.

[5] The application was thereafter refiled to be dealt with on an expedited basis and Sean von Dehn filed his objection.

[6] On May 6, 2022, Justice Castillo wrote the following endorsement:

Having reviewed the affidavit of Tanja Johnson sworn March 24, 2022, as well as the endorsement of Woodley J. dated June 4, 2020, and the Notice of Objection of King Sean, House of von Dehn, I am satisfied the Notice of Objection should be vacated. Given the value of the Estate, an Estate Trustee During Litigation is not warranted. Certificate may issue, and Order dispensing with bond has been executed.

[7] On August 24, 2022, the within statement of claim was issued. The claim is a long, rambling document; however, the paragraphs that relate to Ms. Tabl are reproduced below, exactly as stated within the claim:

[21] Sometime around May of 2020, Mike told Sean he was going to support an application by Tanja Johnson for a Certificate of Appointment of Estate Trustee over Joachim's Estate.



[24] Sean agreed to support the application of Tanja Johnson under duress and on the condition that no legal fees be charged to the Estate, legal fees will be paid by Tanja Johnson.

[25] Tanja Johnson agreed to these conditions and Sean agreed to meet with her lawyer, Hala Tabl (hereby 'Hala') to provide his conditional consent.

[26] Hala refused to accept the conditional consent form Sean had prepared and insisted he sign the unconditional consent form without providing any disclosure of Estate assets or a copy of the application [for King] to consent to.

[27] Sean cannot in Good conscience consent to an application he has not seen.

[28] Tanja Johnson made an application for Certificate of appointment of Estate Trustee without Sean's consent and requested that Honourable Justice Susan J. Woodley:

- (a) deny Sean his right to object to Tanja's application;
- (b) deny Sean his right to make his own application;
- (c) For Sean to pay all legal fees and costs to be excluded from the proceeding.

[46] Tanja Johnson's lawyer, Hala Tabl served Sean with a Notice of application for Certificate of appointment of Estate Trustee on March 24<sup>th</sup>, 2022 (for Tanja).

[47] No application for a Certificate of appointment of Estate Trustee was ever filed with the court by Tanja or her lawyer, Hala, on March 24<sup>th</sup>, 2022.

[48] Even after the Courts confirmed for Sean that there was no application before the Court for Joachim von Dehn's Estate, Tanja and her lawyer insisted it was filed electronically by way of email but will not produce a receipt of their filings.

[49] Tanja's (unfiled) court application indicated that Tanja is in possession of over forty-thousand dollars (Canadian) previously unaccounted for and above and beyond the surplus remainder funds from the power of sale.

[51] Hala Tabl is liable because she has a duty and obligation to advise Tanja of her Fiduciary obligations, and to Act in accordance with the Rule of Law and in the best interest of the entitled Beneficiaries,

[52] It is not the duty and obligation of a lawyer to pervert the Rule of Law and encourage Trustee potentials to take advantage of Estate Beneficiaries,

[53] Hala Tabl has a duty and obligation to Post a performance bond to ensure compliance with Fiduciary obligation and the Rule of Law.

### **Issues on this motion**

[8] The moving party argues the claim should be struck on three grounds:

- a. The statement of claim should be struck as void of merit as a lawyer does not owe a duty to a non-client.
- b. The statement of claim should be struck as it is a collateral attack on the order of Carusso J. dated May 4, 2022.
- c. The statement of claim should be struck as the plaintiff has no legal capacity.

### **Decision**

[9] For the reasons that follow, the statement of claim will be struck as against Hala Tabl as the plaintiff has no legal capacity. The claim is struck without leave to amend to the stated plaintiff, the Kingdom of Heaven found a Sean. This does not restrict Sean von Dehn from commencing an action personally, although that proceeding will face the same scrutiny as to whether it discloses a reasonable cause of action.

### **Legal principles on a Motion to Strike**

[10] Rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 allows the court to strike out a pleading on the ground that it discloses no reasonable cause of action:

#### **Where available**

#### ***To any Party on a Question of Law***

**21.01(1)** A party may move before a judge,

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

[11] The only issue on a motion under this rule is the sufficiency of the pleading. No evidence is admissible.

[12] The test on a motion to strike a claim is a stringent one – the pleading is not to be struck unless it is “plain and obvious” and “beyond doubt” that the claim discloses no cause of action. The facts as pleaded are deemed to have been proven for the purposes of the motion unless they are patently ridiculous or manifestly incapable of proof; *Paton Estate v. Ontario Lottery and Gaming Corporation (Fallsview Casino Resort and OLG Casino Brantford)*, 2016 ONCA 458 at para 12.

[13] The test to determine legal capacity is whether it is “plain and obvious” that the plaintiff does not have legal capacity to bring a claim: *Zuppinger v. Slightham*, 2019 ONSC 5117, at para 9.

[14] To have legal capacity, a party must be a natural person, a corporation, or a body which has given that capacity by legislation: *Jackson v. Toronto Police Association*, 2008 CanLII 68152 (Ont. S.C.), at para 18, *Ora Trustees Ltd, et al. v. Wade, et al.*, 2022 ONSC 1427, at para 36.

[15] The stated plaintiff has none of these characteristics. It is not a person, a corporation, and has not been given any legal capacity by legislation. As a result, the claim is struck on that basis.

[16] While the lack of legal capacity is dispositive of the motion, even if the claim had been brought by Sean von Dehn personally, I would have struck paragraphs 47, 48, 49 and 53 on the basis that these facts are patently ridiculous and are a collateral attack on the order of Justice Carusso. Justice Carusso’s endorsement is clear. There was obviously material before the court for this order to be granted. I further note that there was no appeal of that order. An appeal would have been the time to argue deficiencies in the evidence considered by the court.

[17] As for the argument that Ms. Tabl does not owe a duty of care to a non-client, it is not “plain and obvious” that a lawyer acting for a prospective Estate Trustee owes no duty of care to the estate’s beneficiaries. I would not have struck the claim on that basis alone.

### **Conclusion**

[18] The statement of claim is struck as against Hala Tabl without leave to amend to the stated plaintiff, The Kingdom of Heaven found a Sean.

[19] The moving party filed a bill of costs seeking with the partial indemnity fees, HST and disbursements totaling \$6,823.50. I find these costs to be reasonable and appropriate. As the stated plaintiff is not a legal entity, costs are awarded against Sean von Dehn personally for this amount.

An electronic signature in black ink, appearing to read 'Justice J. Hooper', is written over a faint, semi-transparent watermark that says 'Electronic Signature'.

---

Justice J. Hooper

**Released:** February 1, 2023

**CITATION:** *The Kingdom of Heaven Found a Sean v. Johnson et al.*, 2023 ONSC 605

**COURT FILE NO.:** CV-22-89835

**DATE:** 2023/02/01

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

-and-

TANJA JOHNSON, HALA TABL, and  
MICHAEL Von DEHN

---

**REASONS FOR JUDGMENT**

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Justice J. Hooper

**Released:** February 1, 2023

**Schedule D – Exhibits S & U**


**Re: SCJ ESTATES - NEW - Application for Certificate of Appointment of Estate Trustee without a Will - vonDehn**

Hala Tabl <htabl@miltonsip.com>

Thu 2022-03-24 7:15 PM

To: Bracebridgeestates@ontario.ca <Bracebridgeestates@ontario.ca>

Cc: Erica Kapa <ekapa@Ontario-probate.ca>

 17 attachments (3 MB)

Letter to Court.pdf; Information Form.pdf; 74A - Application.pdf; 74B - Affidavit of Service.pdf; 74C - Certificate of Appointment.pdf; 74H - Signed Consent.pdf; 1 - Death certificate.pdf; 2- Affidavit to dispense with bond.pdf; 3 - Order to dispense with bond.pdf; 4- SVD rcp-e-75-1-0921.pdf; 5 - SVD File No. 4656-111 - Consent Request for Mrs. Tanja Johnson.pdf; 6 - SVD Notice of Civil and Criminal Liability, Breach of Trust, Abdication of Oath; CJC file\_ 21-0502 (21-0261).pdf; 7 - SVD Notice of Claim and Letter of Demand-Estate, Noah.pdf; 8 - SVD Notice of Criminal Intent\_ Extorsion, Fraud, Gross Negligence as Trustee - Issued to Noah S. Potechin and Laraine Burton.pdf; 9 - SVD URGENT, UNDER DURESS\_ Requisition for Order of Appointment of Estate Trustee; Joachim Heinrich von Dehn, Deceased.pdf; 10 - SVD Barrie Court, Notice of Express Trust\_ Joachim Heinrich von Dehn.pdf; 11 - Woodley J Endorsement.pdf;

Good evening,

This is an application for a certificate of appointment without a will. We are filing electronically only.

This application has challenges as one of the beneficiaries, after being served, filed a notice of objection, and other material, with the Court in Barrie.

We are bringing the material received to the attention of the Court and attaching a letter explaining the situation and the files that we were sent.

Attached:

- Letter to the Court
- Information form
- 74A - Application
- 74B - Affidavit of service
- 74C - Certificate of appointment
- 74H - Consent of the beneficiary Michael von Dehn
- 1- Notarized proof of death
- 2- Affidavit to dispense with bond
- 3- Order to dispense with bond
- 4-10 Notice of objection of the beneficiary Sean von Dehn and attachments
- 11- Endorsement of her honour Justice Woodley.

I look forward to hearing from you.

---

Hala Tabl, M.Eng (Elec), BA/MA Law (Cantab)

Barrister & Solicitor

Miltons Estates Law

e-mail: [htabl@ontario-probate.ca](mailto:htabl@ontario-probate.ca)

phone: 613-567-7824 x229

mail: 200-15 Fitzgerald Road, Ottawa, ON K2H 9G1

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March 24, 2022

Bracebridge (Muskoka District) Courthouse  
3 Dominion St.  
Bracebridge, Ontario P1L 2E6

Re: Estate of JOACHIM VONDEHN (AKA JOACHIM VON DEHN), deceased

---

Dear Registrar,

We are filing an application for a certificate of appointment of estate trustee without a will on behalf of Tanja Johnson.

This file was brought before the Court in Barrie in 2020, and there was an endorsement from her Honour Justice Woodley outlining how the probate application should move forward. The probate application was withdrawn before processing.

The beneficiary, Sean von Dehn, has not consented to the new probate application, however, he was served with the application, a copy of the consent of the beneficiary Michael von Dehn, and a copy of the endorsement. He has since sent the Court in Barrie an email, and copied us on it, including a notice of objection, an email he has sent us detailing his reasons for refusing to consent, and a number of notices he wishes to bring to the Court's attention.

We are attaching his email to the Court in Barrie and its attachments with the application (files number 4-10 with SVD as prefix).

The endorsement of Woodley J. is also attached. Paragraph 3 of the endorsement specifically addresses the event that Sean von Dehn objects to the application.

We look forward to hearing from you.

Yours truly  
Miltons Estate Law



*per* Hala Tabl.



FORM 74C  
Courts of Justice Act  
ONTARIO

2020-59

SUPERIOR COURT OF JUSTICE

**CERTIFICATE OF APPOINTMENT OF ESTATE TRUSTEE**

IN THE ESTATE OF **JOACHIM VONDEHN (AKA JOACHIM VON DEHN)**, deceased,  
who died on **29 October 2019**

**without a Will.**

and whose last known address was:

Street address	<b>1070 Hewitt Street</b>
City or town	<b>Gravenhurst</b>
Province/State	<b>Ontario</b>
Postal code/Zip code	<b>P1P 1R1</b>
Country	<b>Canada</b>
Occupation:	<b>Self-employed</b>

*(Reproduce this section for multiple applicants)*

<b>Name of Applicant:</b>	<b>Tanja Johnson</b>
Street address	<b>88520 McIntosh Line, RR#2</b>
City or town	<b>Gorrie</b>
Province/State	<b>Ontario</b>
Postal code/Zip Code	<b>N0G 1X0</b>
Country	<b>Canada</b>
Occupation:	<b>Registered Nurse</b>




THIS

Certificate of Appointment of Estate Trustee without a Will

is hereby issued to the above-named applicant under the seal of the court.

OCT 7 - 2022

DATE:

  
Registrar

M. Murphy  
Bracebridge (Muskoka District) Courthouse  
3 Dominion St.  
Bracebridge, Ontario P1L 2E6

RCP-E 74C (September 1, 2021)

IN THE ESTATE OF JOACHIM VONDEHN (AKA JOACHIM VON DEHN), deceased

Court File No. 2020-59

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
AT BRACEBRIDGE (MUSKOKA DISTRICT)**

**CERTIFICATE OF APPOINTMENT**

Miltons Estates Law  
200-15 Fitzgerald Road  
Ottawa, ON K2H 9G1

Hala Tabl  
(LSO# 59563N)

Tel: (613) 567-7824  
Email: htabl@ontario-probate.ca

Lawyer for the Applicant

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

-and-  
Defendants

**TANJA JOHNSON, HALA TABL, and MICHAEL VON DEHN**  
Court File No. CV-22-00089835-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT OTTAWA

**FACTUM OF TANJA JOHNSON**

Miltons Estates Law  
200-15 Fitzgerald Road  
Ottawa, ON K2H 9G1

Neil Milton  
(LSO #33823T)

Email: [nmilton@ontario-probate.ca](mailto:nmilton@ontario-probate.ca)  
Tel: (613) 567-7824

Lawyers for the Defendant, Tanja Johnson