

**CITATION:** *The Kingdom of Heaven Found a Sean v. Johnson et al.*, 2023 ONSC 6196  
**COURT FILE NO.:** CV-22-89835  
**DATE:** 2023-11-01

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** The Kingdom of Heaven Found a Sean, Plaintiff

**AND**

Tanja Johnson, Haba Tabl, and Michael von Dehn, Defendants

**BEFORE:** The Honourable Mr. Justice Marc Smith

**COUNSEL:** Sean von Dehn, for the Plaintiff

Joshua Vickery, Counsel Agent for the Defendant von Dehn

Christoper Crisman-Cox, Counsel for the Defendant Johnson

**HEARD:** October 23, 2023

**REASONS FOR DECISION**

**M. SMITH J**

[1] This proceeding relates to an estate matter involving three siblings.

[2] An action was commenced by The Kingdom of Heaven Found a Sean (An Express Trust Organization). The Plaintiff's legal name is Sean von Dehn. He is bringing a claim against his siblings, Tanja Johnson, and Michael von Dehn, regarding the estate of their deceased father, Joachim von Dehn.

[3] The Plaintiff is seeking damages in the amount of \$895,863.60, interest, his father's property, one ounce of gold for every month a foreign tenant unlawfully remains on his father's property, a commercial lien on the Defendants' properties, a new Porsche 911, and disclosure of all emails and correspondences between all Defendants.

[4] The Defendants Johnson and von Dehn are each bringing a motion for summary judgment.

[5] The other Defendant, Haba Tabl, had previously brought a motion pursuant to r. 21 of the *Rules of Civil Procedure*, R.R.O. 1990 Ont. Reg. 194 (the “*Rules*”). On February 1, 2023, Hooper J. granted the motion and struck the claim as against the Defendant Tabl (*Kingdom of Heaven Found v. Johnson*, 2023 ONSC 605).

[6] The Defendants Johnson and von Dehn have each filed comprehensive affidavits in support of their respective motions. The Plaintiff has not filed any responding materials. There is no evidence before me supporting the Plaintiff’s claims. At the motion, the Plaintiff relied upon the factum filed for the r. 21 motion.

### **LEGAL PRINCIPLES**

[7] Rule 20.04(2)(a) of the *Rules* provides that the Court shall grant summary judgment if it is satisfied that there are no genuine issues for trial.

[8] There will be no genuine issue for trial when the judge is able to reach a fair and just adjudication. It is achieved when the process allows the judge to make the necessary findings, apply the law to the facts, and the process is a more proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 49.

[9] The onus to establish the absence of a genuine issue rests on the moving party. However, the responding party also has an evidentiary burden, often referred to as “leading trump or risk losing”. The responding party cannot merely rest on the allegations or denials in the pleadings but must present evidence demonstrating that there are genuine issues for trial. The court can assume that the evidentiary record at the motion contains the evidence that will be presented at trial: *Massaroni v. Yum! Brands Inc.*, 2021 ONSC 5460, at paras. 36 and 37.

### **ANALYSIS**

[10] Joachim von Dehn died on October 29, 2019, and it appears that he may have died intestate. However, in the evidentiary record, there is some reference to a Holograph Will that was allegedly executed on February 16, 2012.

[11] On June 4, 2020, Woodley J. granted the Defendant Johnson the right to pursue an application for appointment as estate trustee, without Sean von Dehn's consent.

[12] In October 2021, the primary asset of the estate, namely the father's property located at 1070 Hewitt Street, Gravenhurst Ontario ("home"), was sold via power of sale. The net proceeds amount to approximately \$306,000.00, and it is currently being held at RBC, in an account for the estate.

[13] In March 2022, the Defendant Johnson filed an application for appointment as estate trustee, without a will. King Sean, House of von Dehn filed a notice of objection. On May 6, 2022, Casullo J. vacated this notice of objection and ordered the dispensing of a bond.

[14] The Certificate of Appointment of Estate Trustee was issued to the Defendant Johnson on October 7, 2022.

**No legal standing**

[15] Both Defendants take the position that the Plaintiff does not have any legal standing to bring this claim, on the basis that the Plaintiff is not a legal entity and has no status to commence an action in the province of Ontario.

[16] Hooper J. dealt with this argument in relation to the Defendant Tabl's motion and dismissed the claim. I adopt Hooper J's reasoning and conclusion, as set out in paragraphs 13 to 15 of her decision.

[17] The stated Plaintiff is not a person, a corporation, and has not been given any legal capacity by legislation. The claim against the Defendants Johnson and von Dehn are therefore dismissed.

[18] In addition to the lack of legal standing, I am of the view that the claims against the Defendants Johnson and von Dehn must also fail because I am satisfied that there is no genuine issue requiring a trial with respect to the Plaintiff's various claims against these Defendants. I say so for the reasons set out below.

### **Claims against the Defendant Johnson**

[19] The claims against the Defendant Johnson can be characterized under three categories: (a) procedural issues; (b) inheritance rules; and (c) property disputes.

#### Procedural issues

[20] The Plaintiff's procedural allegations can be found in paragraphs 47 and 48 of his Statement of Claim. He claims that no Certificate of Estate Trustee was ever filed in court or awarded to protect the interests of the deceased.

[21] The endorsements of Woodley J. and Casullo J. clearly dealt with the Defendant Johnson's application and the objections filed by Sean von Dehn. During argument, it was suggested that the Plaintiff never received the endorsement of Casullo J., but there is no evidence to support this assertion.

[22] Regardless, the Plaintiff's procedural allegations are without foundation and do not represent a valid legal claim. The Defendant Johnson followed the appropriate process to be appointed as estate trustee, in accordance with the *Rules*.

[23] If the Plaintiff was dissatisfied with the orders of Woodley J. and/or Casullo J., he could have taken steps to appeal or vary these orders. It is inappropriate to collaterally attack these decisions.

#### Inheritance rules

[24] The Plaintiff's inheritance allegations can be summarized in paragraph 57 of the Statement of Claim, which reads: "*Sean Stephen von Dehn does hold the Supreme Claim of Right upon Joachim's Estate as the next of kin in Order of Succession.*"

[25] If the deceased died intestate, the claim would be dealt with in accordance with s. 47(1) of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, where each sibling would receive an equal share of the estate. If the Holograph Will is deemed to be valid, Sean von Dehn is not a beneficiary.

[26] The Plaintiff's arguments that the deceased left him his entire estate is not supported by any evidence. The suggestion that the Defendant Johnson has no legitimate or valid claim on the estate is without merit and unsupported in the evidence.

Property disputes

[27] The Plaintiff alleges the following against the Defendant Johnson: (a) she is in possession of over \$40,000.00, previously unaccounted for; (b) there is no information regarding two vehicles or the contents of the home; (c) regarding the home, it was not supposed to be sold, but rather, it was to be developed and maintained into a sustainable homestead; and (d) the Defendant Johnson defaulted on the mortgage and she accepted full responsibility for any harm done because of the power of sale.

[28] There is no evidence to support any of these allegations.

[29] As clearly set out in the affidavit material, the home, being the primary asset, was sold under power of sale, because of the default under the mortgage. Sean von Dehn attempted to discharge the mortgage by writing a statement, applying his thumbprint, and submitting it to the lender as a valid discharge. Not surprisingly, this was not accepted by the lender.

[30] The home sold for \$425,000.00, which was significantly above the selling price obtained by the Defendant Johnson in February 2020. Other than the home, there were no other significant assets. The home needed to be sold.

[31] The Defendant Johnson was named as the Estate Trustee approximately one year after the home was sold.

[32] There is no evidence before me of any wrongdoing on the part of Defendant Johnson.

[33] The Plaintiff will be capable of challenging the administration of the estate, pursuant to the process that is set out in r. 75 of the *Rules*.

[34] The Plaintiff has not presented any evidence regarding the property allegations, nor has he substantiated any ascertainable damages.

### **Claims against the Defendant von Dehn**

[35] The Plaintiff's claims against the Defendant von Dehn can be characterized under four categories: (a) sale of the home; (b) inheritance rules; (c) disposing of ashes; (d) failure to provide a letter.

#### **Sale of the home**

[36] The Plaintiff alleges that the Defendant von Dehn was responsible for the default of the mortgage, and that he failed to secure the value of the home. There is no evidence to support these allegations.

[37] The Defendant von Dehn is a beneficiary of the estate and not the estate trustee. The evidentiary record shows that he did not administer the estate, nor was he involved in the sale of the home. He did not have any authority to deal with the lender and there is no evidence that he took it upon himself to address any financial issues of the deceased regarding the mortgage.

[38] To the contrary, as noted earlier, it was Sean von Dehn that made attempts to discharge the mortgage, to no avail.

[39] In any event, as noted above, the home was sold at a much higher value than what was previously assessed, and there were no options but to sell the home because that it was the primary asset. The Plaintiff has not demonstrated that Sean has suffered a loss because of the sale of the home.

#### **Inheritance rules**

[40] The Plaintiff makes the same allegations that he is entitled to the entirety of the estate because he is the first born. For the same reasons as those set out above, there is no validity to this claim.

Disposing of ashes

[41] The Plaintiff claims that the Defendant von Dehn improperly disposed of the ashes.

[42] The evidence demonstrates that the Defendant von Dehn gave the ashes to the deceased's partner, with the consent of Sean von Dehn.

[43] Even if Sean von Dehn denies giving consent, he was aware of the manner in which the ashes were disposed of, approximately two years and eight months before the issuance of the Statement of Claim. The Plaintiff's claim would be statute barred.

Failure to provide a letter

[44] The Plaintiff alleges that the Defendant von Dehn failed to disclose a letter that had been written by Sean von Dehn to the deceased.

[45] The evidence is clear that the letter was provided by the Defendant von Dehn to Sean von Dehn on April 5, 2022.

[46] Nothing turns on this letter and there is no evidence that the delay of providing this letter has caused a loss to the Plaintiff.

**Conclusion**

[47] The Plaintiff did not file any responding materials because he claims that the Defendants' evidence proved his claim. The Plaintiff was mistaken. The evidence presented by the Defendants prove that there are no genuine issues requiring a trial.

[48] The Plaintiff was given the opportunity to articulate his position during the motion, but he failed to adequately address the issues raised by the Defendants. Rather, he argued, amongst other things, that a previous court endorsement was not binding, he accused the court staff of collusion, he accused the Defendant Johnson of unlawfully influencing the judiciary, he accused counsel and the parties of fraudulent conduct, and he submitted that there was criminal trespass on a trust. In

sum, the Plaintiff fell short of substantiating any of the claims against the Defendants Johnson and von Dehn.

[49] For the foregoing reasons, I am satisfied that the Defendants have demonstrated that there are no genuine issues requiring a trial. Based on the record before me, there is simply no evidence upon which the court could conclude that there are any genuine issues. The Plaintiff's claims against the Defendants Johnson and von Dehn are dismissed in their entirety.

[50] The dismissal of the Plaintiff's claims against the Defendants Johnson and von Dehn are made with prejudice to Sean von Dehn's ability of bringing, in his own name, any of the claims raised in the Statement of Claim.

### **Costs**

[51] The Defendants have filed costs submissions. The Defendants Johnson and von Dehn have incurred costs in the amount of \$26,398.49 and \$30,032.15, respectfully. These represent full indemnity figures. I gave the opportunity to the Plaintiff to address the issue of costs. He indicated that he is seeking three times the amount sought out by the Defendants.

[52] Costs are at the discretion of the Court, as set out in s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[53] Rule 57.01(1) of the *Rules* sets out the factors a court may consider when deciding on a costs award, including the importance of the issues, the complexity of the proceedings, the amount claimed and recovered in the proceeding, the principle of indemnity and the concept of proportionality.

[54] The overriding principals of fairness and reasonableness must be applied to each individual case: *Boucher v. Public Accountants Council (Ontario)*, [2004] O.J. No. 2634.

[55] The Defendants Johnson and von Dehn are the successful parties and are presumptively entitled to their costs.



[56] The Plaintiff's action was devoid of merit, and it was not overly complex. It was, however, very important to the parties, especially given the relief being sought by the Plaintiff.

[57] The Defendants were required to prepare comprehensive materials to address all the Plaintiff's unsubstantiated allegations.

[58] The parties also attended several court appearances, including the adjournment of this motion on September 7, 2023. The Defendants were ready to proceed with the motion for summary judgment, virtually, but it had to be adjourned because the Plaintiff advised the court that he intended to record the audio of the hearing and post it on the public record. The court ruled that the matter needed to proceed in person.

[59] The Defendants Johnson and von Dehn have spent significant legal fees in dealing with the Plaintiff's unreasonable conduct. The Plaintiff should not have pursued a claim that was clearly unsubstantiated in law. The Plaintiff must be held accountable for the position that has been taken in this litigation and it must be sanctioned through a high-level cost award.

[60] The Plaintiff's action was misconceived. The Plaintiff failed to file any responding materials or present any valid or compelling arguments. This motion was not a close call. Accordingly, a reasonable and proportionate award of costs is that each Defendant be awarded substantial indemnity costs.

[61] The Defendant Johnson is awarded the all-inclusive sum of \$23,798.36. The Defendant von Dehn is awarded the all-inclusive sum of \$27,028.94.

[62] Given that the stated Plaintiff is not a legal entity, the costs are awarded against Sean von Dehn personally. These amounts shall be paid, in whole or in part, out of any entitlement which Sean von Dehn has in the deceased's estate.



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M. Smith J

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**B E T W E E N:**

The Kingdom of Heaven Found a Sean

Plaintiff

**– and –**

Tanja Johnson, Hala Tabl, and Michael von Dehn

Defendants

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**REASONS FOR DECISION**

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M. Smith J

**Released:** November 1, 2023