

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

5448124 MANITOBA LTD.	)	R. Knight
	)	<i>on behalf of the Appellant</i>
)	
	)	A. Sandhu
	)	<i>for the Respondent</i>
(Plaintiff) Appellant	)	<i>Cameron Stephens</i>
	)	<i>Financial Corporation</i>
)	
- and -	)	T. K. Reimer
	)	<i>for the Respondent</i>
	)	<i>Peter Ginakes</i>
)	
CAMERON STEPHENS FINANCIAL CORPORATION and PETER GINAKES	)	<i>Chambers motion heard and</i>
	)	<i>Decision pronounced:</i>
	)	April 3, 2025
(Defendants) Respondents)	
	)	<i>Written reasons:</i>
	)	April 17, 2025

EDMOND JA

Introduction

[1] The defendants, Cameron Stephens Financial Corporation (CSFC) and Peter Ginakes (Ginakes) (collectively, the defendants), both filed motions seeking to stay or dismiss the plaintiff’s appeal as an abuse of process or, alternatively, if appropriate, order security for costs respecting the appeal. The plaintiff appeals a decision of a motion court judge dismissing the plaintiff’s

claim on numerous grounds, including that the action filed amounts to an abuse of the Court's process.

[2] This matter originally came on for hearing before me in chambers on February 27, 2025. The plaintiff is a corporation and one of its directors and shareholders, Russell Knight (Mr. Knight), appeared to make submissions on behalf of the plaintiff. Mr. Knight is not a lawyer. Mr. Knight and his spouse (Ms. Simes) are the sole directors, officers and controlling minds of the plaintiff.

[3] Mr. Knight asked for permission to appear and make submissions as an advocate for the plaintiff. I advised Mr. Knight that the proper process was to file a motion, together with a supporting affidavit, seeking leave of the Court to appear as a representative. The hearing was adjourned to permit Mr. Knight to file his material. On March 20, 2025, Mr. Knight filed a notice of motion and supporting affidavit affirmed by him.

[4] Before addressing the merits of the defendants' motions, I agreed that this Court should first decide whether a stay should be granted on the basis that the plaintiff is a corporation and the common law rule applies, namely: that, barring exceptional circumstances, a corporation must have a lawyer present to advance submissions before a full panel of this Court (see *7602678 Manitoba Ltd v 6399500 Manitoba Ltd*, 2024 MBCA 59 [7602678 *Manitoba*]).

[5] After hearing submissions, I stayed the appeal with brief reasons to follow. These are those reasons.

Background Facts

[6] In 2015, the plaintiff borrowed \$9,425,000 from CSFC to refinance a loan on an apartment building. The loan was secured by a mortgage and by a personal guarantee executed by Mr. Knight and Ms. Simes.

[7] The plaintiff defaulted on payments required pursuant to the mortgage and CSFC applied for the appointment of a receiver over the plaintiff's assets. In the receivership application, the plaintiff did not challenge the validity of the mortgage. The receivership order was granted on October 16, 2015 (Court of King's Bench File No. CI15-01-97928) (the receivership order). CSFC issued a statement of claim to enforce the guarantee against Mr. Knight and Ms. Simes (Court of King's Bench File No. CI15-01-98487). A motion judge granted summary judgment to CSFC, upheld the validity of the mortgage, and dismissed allegations made by Mr. Knight and Ms. Simes that the mortgage was forged.

[8] The plaintiff did not appeal the receivership order and Mr. Knight and Ms. Simes did not appeal the decision granting summary judgment.

[9] In 2021, Mr. Knight and Ms. Simes issued statements of claim against the defendants and D'Arcy & Deacon LLP. The same motion judge granted summary judgment (the second summary judgment) against Mr. Knight and Ms. Simes, finding that the validity of the mortgage had already been conclusively upheld in the first summary judgment and the receivership order.

[10] Mr. Knight and Ms. Simes filed two appeals respecting the second summary judgment decision (Court of Appeal File Nos. AI23-30-09953 and AI23-30-09954). Consent orders were filed requiring Mr. Knight and Ms. Simes to post security for costs for both appeals. Mr. Knight and Ms. Simes breached the consent orders and the appeals were struck by a chambers order pronounced on October 26, 2023.

[11] Mr. Knight and Ms. Simes filed two motions to extend the time to appeal on two related matters in this Court. Both motions were dismissed by chambers orders pronounced February 8, 2024 and March 28, 2024, respectively.

[12] Between late 2023 and mid-2024, Mr. Knight, Ms. Simes and the plaintiff filed six new statements of claim that dealt primarily with the validity of the mortgage and the enforcement steps taken and court proceedings that followed the plaintiff's original default on the mortgage loan. The following actions were commenced:

- 1) Mr. Knight and Ms. Simes against Stephen Cameron (Stephen), a principal of CSFC;
- 2) Mr. Knight and Ms. Simes against Scott Cameron (Scott), a principal of CSFC;
- 3) Mr. Knight and Ms. Simes against Dickenson Wright LLP, Ontario counsel for CSFC;
- 4) Mr. Knight and Ms. Simes against Jonathan Goldenberg, counsel at D'Arcy & Deacon LLP;

- 5) Mr. Knight and Ms. Simes against John Martens, Manitoba counsel at MLT Aikins LLP for CSFC; and
- 6) 5448124 Manitoba Ltd. against CSFC and Ginakes.

[13] On May 22, 2024, a motion judge heard motions to strike three of these actions. The motion judge issued an endorsement signed June 11, 2024, allowing the motions to strike all three actions and declaring the plaintiffs in those actions to be vexatious litigants. The motion judge also ordered that Mr. Knight and Ms. Simes be prevented from commencing any proceedings in the Court of King's Bench against Stephen, Scott, CSFC, Cameron Stephens Mortgage Capital Ltd., Dickinson Wright LLP, or any director, officer, employee, representative or any other affiliate, including legal counsel of such entities, without first obtaining leave from a judge.

[14] On November 8, 2024, the motion judge who issued the endorsement granted orders striking each of the six actions and declaring Mr. Knight and Ms. Simes vexatious litigants respecting matters connected to the mortgage and the plaintiff's default.

[15] This appeal is advanced to appeal one of the orders that struck the plaintiff's action against the defendants and declared Mr. Knight and Ms. Simes vexatious litigants. The other five orders have not been appealed by Mr. Knight and Ms. Simes.

Law

[16] As stated earlier, the common law rule is that, barring exceptional circumstances, a corporation must have a lawyer present to advance

submissions before a full panel of this Court. The leading authority addressing the factors to be considered in determining whether to permit non-lawyers to represent corporations in appeal hearings is *7602678 Manitoba*. That decision set out the following non-exhaustive list of factors that are to be considered where a corporation seeks leave to be represented by a non-lawyer (*ibid* at para 39):

- 1) the impecuniosity of the corporation and its ability to afford a lawyer;
- 2) whether the corporation would be unduly prejudiced if the motion was refused;
- 3) the complexity of the legal issues;
- 4) the proposed representative's competence;
- 5) the proposed representative's track record in Manitoba courts;
- 6) whether the proposed representative would also be a witness;
- 7) the will of the Legislature concerning what constitutes the unauthorized practice of law; and
- 8) proportionality considerations.

Analysis and Decision

[17] The starting point is that this Court has consistently refused to permit non-lawyers to represent corporations in appeal hearings before a full panel. The onus is on the corporation to prove, by way of clear and unambiguous evidence, that exceptional circumstances exist.

[18] Mr. Knight submitted that he was allowed to appear and argue matters in the Court of King's Bench. For the same reasons, he submitted that

he should also be granted leave to advance submissions on behalf of the plaintiff in this Court.

[19] As was explained in *7602678 Manitoba*, r 15.01(2) of the MB, *King's Bench Rules*, Man Reg 553/88, provides that a corporation that “is a party to a proceeding may be represented by a duly authorized officer of that corporation resident in Manitoba or by a lawyer.” That rule permitted Mr. Knight to appear and represent the plaintiff in some instances before the Court of King’s Bench. However, that is not the case in this Court, which follows the common law rule.

[20] The reasons for the common law rule were reviewed and explained in *7602678 Manitoba* at paras 31-39. I do not propose to repeat the reasons in this decision.

[21] Based on the evidence that has been filed, I propose to review each of the relevant factors outlined in *7602678 Manitoba* to assess whether exceptional circumstances exist in this case.

Impecuniosity

[22] The plaintiff has filed insufficient evidence of impecuniosity. While evidence and reports filed in the receivership proceedings establish that the assets of the plaintiff were insufficient to satisfy the full amount due and owing to CSFC, there is no evidence, including financial statements, bank statements or income tax returns, which discloses the present financial circumstances of the plaintiff and its ability to retain a lawyer. The plaintiff has retained lawyers in the past to advance its claims. The only financial information included in Mr. Knight’s affidavit are copies of his personal tax

return for 2023 showing a self-employed commission income of \$29,490; T4A forms showing taxable CPP benefits and taxable pension paid totalling \$21,168.72; and Ms. Simes' notices of assessment for the 2021 and 2023 tax years showing total income of \$48,622 and \$5,735 respectively. Nothing further is provided proving the plaintiff is impecunious.

Undue Prejudice to the Plaintiff

[23] The sheer number of different actions and the allegations made in the statements of claim, as well as in the notice of appeal, illustrates that Mr. Knight, who has no legal training, is ill-equipped to capably represent the plaintiff.

[24] Rather than addressing the factors that must be considered to determine this motion, the notice of motion and supporting affidavit seeking leave to represent the plaintiff make numerous allegations, including incompetence of Mr. Knight's previous lawyers, criminal behaviour among the defence legal counsel, document tampering, forgery, fraudulent behaviour, coercion, concealment and collusion. Mr. Knight submits that, due to the lack of trust in his former lawyers and the potential conflicts of interest that have arisen, the only viable solution is for him to represent the plaintiff in this appeal.

[25] It is unnecessary to decide whether this appeal amounts to an abuse of this Court's process. I agree—at least on a preliminary consideration of the evidence filed by the defendants—that this appeal lacks merit and the plaintiff is attempting to re-litigate the validity of the mortgage signed in 2015. These matters have been determined in several previous decisions that were either not appealed or, if they were appealed, the appeals were struck.

[26] In the circumstances, while I appreciate the plaintiff has had difficulty retaining counsel, I am not satisfied that the plaintiff will suffer undue prejudice if it is required to do so to advance its appeal.

Complexity

[27] I am satisfied, given the lengthy procedural history and the number of different actions that have been commenced, that there is a level of complexity to this appeal.

Competence of Mr. Knight

[28] The statement of claim and notice of appeal filed by Mr. Knight are difficult to understand and are replete with scandalous and vexatious statements about the counsel and judges who have dealt with the various claims that have been advanced since 2015. I agree that the phrase referenced in 7602678 *Manitoba* applies equally here and that Mr. Knight's involvement is "demonstrably unhelpful" (*ibid* at para 46).

Track Record of Mr. Knight

[29] Mr. Knight does not have an enviable track record before the courts. The positions that he has advanced have been dismissed and, most recently, he has been declared a vexatious litigant in the Court of King's Bench. He has not appealed that order to this Court. His track record of attempting to re-litigate previous decisions of the courts has resulted in multiple cost orders against him and the plaintiff. There is no evidence that the costs orders have been satisfied.

Acting as Representative and Witness

[30] The notice of appeal demonstrates that Mr. Knight is a key witness for the plaintiff as he and Ms. Simes signed the underlying mortgage and guarantee that he has been disputing for many years. It is clear that he intends to act as both a representative of the plaintiff and a key witness. Given the personal interests of Mr. Knight and Ms. Simes and the fact that they have been declared vexatious litigants, this factor weighs against granting leave to Mr. Knight to represent the plaintiff on this appeal.

Unauthorized Practice of Law

[31] This factor was addressed in *7602678 Manitoba* because the plaintiff was a suspended lawyer. Mr. Knight is not a lawyer. However, section 20(3) of *The Legal Profession Act*, CCSM c L107 [the *Act*], prevents him from carrying on the practice of law in the expectation of a fee or reward. There is no evidence that Mr. Knight is seeking a fee or reward for his services from the plaintiff. Further, as was pointed out in *7602678 Manitoba*, the exceptions to the unauthorized practice of law set out in section 20(4)(e) of the *Act* speak of “an officer or employee . . . preparing a document for the use of the organization or to which it is a party”. I agree that the reference to preparation of documents does not include the preparation of pleadings, facta or appeal books that are required in an appeal before this Court. It certainly does not include the right to appear on behalf of and speak for a corporation at a hearing before a full panel of this Court unless the applicant satisfies the exceptional circumstances test. The exceptions in the *Act* do not assist Mr. Knight. As a result, in my view, this is a neutral factor.

Proportionality and Access to Justice Considerations

[32] While access to justice is a cornerstone of our judicial system, that must be weighed against the serious injustice that has been caused and will continue to result if Mr. Knight continues to represent the plaintiff. Mr. Knight has been responsible for filing numerous claims and appeals, which have required the defendants and other parties to proceed with motions to strike the actions and the most recent orders have declared Mr. Knight a vexatious litigant. From a proportionality perspective, the defendants have expended significant amounts of time, effort and legal fees to deal with multiple similar claims that have been struck on the basis that they are an abuse of the Court's process.

[33] Further, if the plaintiff does have limited or no financial means to satisfy the outstanding costs awards or any further costs awards that may be made, it would be unfair and contrary to access to justice for the plaintiff to continue to litigate actions that have been entirely unsuccessful without any repercussions or liabilities to satisfy the successful party's costs. This is contrary to the public interest.

Conclusion

[34] Weighing all of these factors, I am not satisfied that Mr. Knight can properly advise the plaintiff or conduct the appeal on its behalf. This is not a case where Mr. Knight or the plaintiff have established exceptional circumstances such that this Court should grant leave to permit Mr. Knight, a director of the plaintiff, to file court documents and speak on its behalf before a full panel. Accordingly, I order that the appeal in this matter be stayed and that no further court document shall be filed on behalf of the plaintiff until it

retains legal counsel who undertakes to appear at further hearings before this Court.

[35] The plaintiff will be permitted time to retain a lawyer. It will have until May 8, 2025 to retain a lawyer and that lawyer must advise the Court of Appeal registry that they are acting, failing which the appeal will be deemed abandoned.

[36] If the plaintiff does retain a lawyer, the defendants may contact the registrar to reschedule a date for the hearing of the motions. The defendants are awarded tariff costs respecting this motion.

JA