

**CITATION:** *Rossetti v. Rossetti et al.*, 2025 ONSC 4018  
**COURT FILE NO.:** CV-22-89192  
**DATE:** 2025/07/10

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
DAVID ROSSETTI )  
 ) Joshua Nutt, Counsel for the Applicant  
Applicant )  
 )  
– and – )  
 )  
MICHAEL ROSSETTI, THE ESTATE OF )  
ROBERT DANIEL HART, THE ESTATE )  
OF WALTER LOUIS HART, HELEN ) No one appearing for the Respondents  
EILEEN ROBERT BAILEY, THE )  
ESTATE OF KENNETH RICHARD )  
ROSSETTI, THE ESTATE OF PAUL )  
WALTER LOUIS ROSSETTI, STEVEN )  
ROSSETTI, ANTHONY JOSEPH )  
ROSSETTI, THE ESTATE OF LOUIS )  
JOSEPH ROSSETTI, and MURRAY H. )  
KIDECKEL )  
 )  
Respondents )  
 )  
 )  
 ) HEARD: In writing

2025 CanLII 66313 (ON SC)

**REASONS FOR DECISION**

**Corthorn J.**

***Introduction***

[1] The applicant is one of numerous family members who are identified as the registered owners of property in Elizabethtown, County of Leeds (“the Property”). For the purpose of determining property taxes payable, the Property has an assessed value of \$40,000.

[2] The applicant and the respondent, Anthony Joseph Rossetti (“Anthony”), are the only owners of the Property who have been paying the property taxes. They have been doing so since 1996; collectively they have paid in excess of \$18,000 in property taxes.

[3] The applicant requests an order for title to the Property to be vested in his name and Anthony’s name, as tenants in common, each with a 50 per cent interest in fee simple in the Property. The applicant also requests an order requiring the Director of Titles/Land Registrar to reflect that change in title to the Property.

[4] The application first came before the court, in writing, in 2023. In its 2023 endorsement, the court (a) highlights that the substantive relief requested appears to be reasonable, and (b) identifies procedural issues to be addressed before the substantive issues can be determined: *Rossetti v. Rossetti*, Ottawa, (27 March 2023), Court File No. CV-22-89192 (ON SC) (“*Endorsement*”).

[5] The proceeding was stayed, pursuant to r. 9.03(6) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, until either (a) the proceeding is properly constituted as against each of the five estates named as respondents (“the respondent estates”), or (b) the applicant obtains an order pursuant to r. 10.02 permitting the proceeding to continue without a representative for one or more of the respondent estates: *Endorsement*, at paras. 19-20.

[6] The applicant also requires relief to address his inability to locate the respondent, Murray H. Kideckel, and, in turn, serve Mr. Kideckel with the application record and other documents: *Endorsement*, at paras. 7-8.

[7] Last, the court ordered the applicant to consider what relief, if any, he requires to address the fact that (a) Mr. Kideckel is the trustee in bankruptcy for the applicant’s cousin, John Paul Hart; (b) there is no evidence that Mr. Hart was discharged from bankruptcy; (c) Mr. Hart’s assignment in bankruptcy (“the Assignment”) was registered on title to the property in 1997; and (d) Mr. Kideckel is not identified in the title of proceeding in his capacity as Mr. Hart’s trustee in bankruptcy: *Endorsement*, at paras. 9-11. In the balance of these reasons, I refer to Mr. Kideckel as “the Trustee”.

[8] Eleven individuals are listed, as owners, on the title to the Property. The listed owners include the applicant, his late father, the applicant’s five brothers (two of whom are deceased), three of the applicant’s cousins (two of whom are deceased), and Mr. Kideckel, in his capacity as trustee in bankruptcy for John Paul Hart.

[9] From the outset, the applicant's position has been that all respondents, other than the Trustee, consent to the relief requested. While that level of co-operation may have been evident to the applicant, it is important that the outcome on the application minimizes the potential for any one of the respondents to, at a later date, attack the outcome based on a procedural frailty.

[10] In response to the *Endorsement*, the applicant filed a supplementary application record and a supplementary factum. The supplementary application record includes an affidavit sworn by the applicant in October 2024 ("the 2024 affidavit"). In the 2024 affidavit, the applicant provides evidence in support of the procedural relief he now requests.

[11] The supplementary application record and supplementary factum are both dated November 2024. Those documents came before the court on June 20, 2025.

### ***The Issues***

[12] The only substantive issue to be determined is whether the applicant is entitled to a vesting order, pursuant to which he and Anthony are, as tenants in common, named the owners of the Property.

[13] The procedural relief the applicant requires relates to the following matters:

- a) The title of proceeding for and service of documents on the Trustee;
- b) Proper constitution of the proceeding as against the respondent estates; and
- c) Service of documents on the respondents other than the Trustee.

[14] I will first determine the procedural issues.

### ***The Procedural Issues***

#### ***a) The Trustee – Service of Documents and the Title of Proceeding***

[15] In an affidavit sworn in November 2022 ("the 2022 affidavit"), the applicant identifies Murray H. Kideckel as the trustee in bankruptcy for the applicant's cousin, John Paul Hart. The applicant reviewed documents registered on title to the Property. From that review, the applicant discovered the Assignment and identified the Trustee.

[16] As of 2022, the applicant was unable to locate the Trustee. The applicant had conducted online searches for the Trustee. Based on those searches, the applicant formed a belief that the Trustee has retired from professional life. The applicant's evidence, based on information and belief, is that the law firm which registered the Assignment on the title to the Property does not have any contact information for the Trustee.

[17] Based on the applicant's evidence, as set out in the 2022 affidavit, I find that (a) John Paul Hart remains an undischarged bankrupt, and (b) the Trustee cannot be located.

[18] There is no evidence as to any communication by or on behalf of the applicant with John Paul Hart or as to the state of the relationship between the applicant and his cousin. The applicant lives in the Ottawa area; the 1997 Assignment lists a Barrie, Ontario address for John Paul Hart.

[19] As one of eleven owners of the property, John Paul Hart would have a nine percent interest in the Property. There is no evidence that any creditors sought to pursue a transfer of the Trustee's interest in the Property as a method of enforcement of their entitlement to payment from John Paul Hart.

[20] The document registered on title is an "Assignment, for the general benefit of all creditors". That document does not include information about the amount of John Paul Hart's indebtedness.

[21] I find that it is necessary, in the interest of justice, to dispense with service of documents on the Trustee: see *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 16.04(1).

[22] In the title of proceeding, the Trustee is identified in his personal capacity. The title of proceeding must identify him as the Trustee in Bankruptcy for John Paul Hart. The applicant is granted leave to make the necessary amendments to the description of the Trustee in the title of proceeding.

***b) Proper Constitution of the Proceeding as Against the Respondent Estates***

[23] Five estates are named as respondents in the proceeding. The relief requested in the original notice of application does not address proper constitution of the claims against the respondent estates. The applicant now seeks leave to amend the title of proceeding to identify one or, where applicable, two estates trustees for each of the respondent estates.

[24] Set out below is a summary of the relationship between the applicant and each of the deceased family members and a description of the extent to which representation of respondent estates has been formalized:

- The estate of Robert Daniel Hart
  - The applicant's cousin
  - In a will signed by the late Robert Daniel Hart, and witnessed by two individuals in 2019, the deceased widow, Cathy Hart is named as the sole estate trustee;

- The estate of Walter Louis Hart
  - The applicant's cousin
  - Judith S. Hart is named in the deceased's will as the sole executor;
- The estate of Kenneth Richard Rossetti
  - The applicant's brother
  - The deceased's children, Chad Rossetti and Laura Rossetti are named in the deceased's 2011, handwritten will, as co-executors;
- The estate of Paul Walter Louis Rossetti
  - The applicant's brother
  - The deceased did not have a will
  - The deceased's widow, Miriam Rossetti, handled estate matters following her husband's death in September 2011; and
- The estate of Louis Joseph Rossetti
  - The applicant's father
  - In March 2007, a certificate of appointment of estate trustee without a will was issued, pursuant to which the applicant and Anthony are appointed as estate trustees.

[25] I start with the Estate of Paul Walter Louis Rossetti. It would be inaccurate to describe Miriam Rossetti as an estate trustee for her late husband's estate. Paul died without a will. Miriam Rossetti did not obtain a certificate of appointment of estate trustee without a will. Either the court appoints Miriam Rossetti as the litigation administrator for Paul's estate (see r. 9.03(3)) or the court orders that the proceeding continue in the absence of a person representing Paul's estate (see r. 10.02).

[26] Paul died almost fourteen years ago. All of the applicant's siblings, sisters-in-law, and cousins-in-law have been co-operative throughout the proceeding. In the circumstances, an order pursuant to r. 10.02, regarding Paul's estate, is in the interest of justice, proportionate, cost-effective, and efficient.

[27] Regarding the four other respondent estates, the only estate trustees who obtained a certificate of appointment are the applicant and Anthony. Pursuant to a certificate issued in March 2007, they are appointed as estate trustees without a will for their late father's estate.

[28] The applicant is not in a position to act in a representative capacity for his late father's estate in this proceeding. The applicant proposes that the title of proceeding be amended to include only Anthony as the estate trustee for the late father's estate.

[29] The applicant did not provide the court with any case or other authority regarding representation of an estate, for the purpose of litigation, where (a) both estate trustees are the only parties named in their personal capacity who stand to benefit from the substantive relief requested, and (b) all parties other than the estate trustees, who are participating in the proceeding (i.e., not the Trustee) consent to the relief requested.

[30] For those reasons, and because the court anticipates that these reasons finally resolve the substantive issues, an order pursuant to r. 10.02 is made regarding the father's estate.

[31] The order to be issued and entered pursuant to these reasons will include (a) the existing title of proceeding; (b) include a term setting out the amended title of proceeding that shall appear in all documents subsequent to the date of the order; and (c) finally determine the substantive issues. The court anticipates there will be no further steps taken in the proceeding—there is no foreseeable reason that any additional documents would need to be delivered in the proceeding.

[32] Based on the finality arising from these reasons, and for the sake of consistency, an order pursuant to r. 10.02 is also made regarding the three remaining estates.

[33] In summary, an order pursuant to r. 10.02 is made with respect to each of the respondent estates. With the claims against the respondent estates properly constituted, the stay of the proceeding, as ordered in the *Endorsement*, is lifted.

[34] I turn to the final procedural issue—service of documents on the respondents (other than the Trustee).

***c) Service of Documents on the Respondents (Other than the Trustee)***

[35] The relief requested in the original notice of application does not include an order dispensing with service, on the respondents, of any of the documents filed in support of the application. The applicant now seeks an order dispensing with service of the supplementary application record on the respondents; the applicant does not request an order dispensing with service of the supplementary factum on the respondents.

[36] The court’s discretion to make an order for substitutional service or an order dispensing with service is found in r. 16.04(1). That subrule sets out the discretion as follows:

Where it appears to the court that it is impractical for any reason to effect prompt service of an originating process or any other document required to be served personally or by an alternative to personal service under these rules, the court may make an order for substituted service or, where necessary in the interest of justice, may dispense with service.

[37] In the 2024 affidavit, the applicant explains that, in September 2023, his counsel sent a letter, by email, to relatives of the deceased individuals (“the September 2023 letter”). The purpose of the letter was to gather information in support of proposed amendments to the title of proceeding. Each of the relatives responded with the requested information, some of which is reflected in para. 24, above.

[38] There is no evidence to support a finding that it would be impractical for the applicant’s counsel to send a single email, addressed to the same relatives, attaching copies of the supplementary application record and supplementary factum. Nor is there any evidence to support a finding that it would be impractical for the applicant’s counsel to include the individual respondents as recipients of the same email.

[39] With service by email possible for the majority, if not all, of the individual respondents and respondent estates, and with electronic copies of the supplementary materials available, it is not “necessary in the interest of justice” to dispense with service of the supplementary materials on the respondents.

[40] The applicant shall serve the individual respondents, other than the Trustee, and the respondent estates with a copy of each of the following documents: (a) these reasons, (b) the supplementary application record, (c) the supplementary factum, and (d) the order taken out pursuant to these reasons. Service of those documents on the respondent estates shall be effected by sending the documents by email to the individuals listed as recipients in the September 2023 letter.

[41] Before I determine the substantive relief, I wish to address the manner in which the applicant pursued the procedural relief he required.

***d) A Motion was Required***

[42] The proper course for the applicant to have followed was to bring a motion for the requisite procedural relief; he should have filed a motion record, which includes a notice of motion and the documentary evidence in support of the relief sought on the motion. Once that motion was determined, the applicant could then have delivered any additional materials upon which he relies in support of the application. On delivery of the latter documents, the applicant could request that the court continue to hear the application in writing.

[43] The applicant chose, instead, to file a supplementary application record and supplementary factum.

[44] The supplementary application record includes a draft amended notice of application and the 2024 affidavit. There is no order pursuant to which the notice of application is amended; the materials filed do not include a motion record for an order granting the applicant leave to amend the notice of application.

[45] In the draft amended notice of application, at sub-paragraphs 2(e) to (j), the applicant sets out the procedural relief he now seeks. Those sub-paragraphs address the title of proceeding, proper constitution of the claims against the respondent estates, and service of documents on the respondents.

[46] The steps taken by the applicant subsequent to the release of the *Endorsement* are an “irregularity” within the meaning of r. 2.03.

[47] To address the irregularity, the court exercises its discretion pursuant to r. 2.03. The court treats the draft amended notice of application as a notice of motion; the supplementary application record as a motion record; and the supplementary factum as filed for the dual purpose of the motion and the application. Treating the supplementary materials as filed on a motion is a just outcome (r. 2.03) and is in keeping with both the general principle (r. 1.04(1)) and the principle of proportionality (r. 1.04(2)).

[48] By way of general comment, I note that the court frequently receives documents titled “amended notice of motion” and, somewhat less frequently, documents titled “amended notice of application”, without the moving party obtaining an order for leave to amend the original document. Nothing in the *Rules* permits a party to amend any document—a notice of motion, a notice of application, or a pleading—without obtaining an order of the granting leave to amend. When a party purports to file an ‘amended’ document in that manner, or otherwise fails to comply with the *Rules*, the party creates unnecessary work for the court’s administrative staff and makes unnecessary use of judicial resources.

[49] To bring finality to the proceeding, in a manner that is proportionate to the monetary value of the Property, the procedural relief granted on the motion and the substantive relief granted on the application shall be addressed in the same order.

[50] I turn to the substantive issues raised on the application.

***The Substantive Issue***

[51] The single substantive issue to be determined is whether the applicant is entitled to a vesting order, pursuant to which he and Anthony are, as tenants in common, named the owners of the Property.

[52] Relying on communication with the individual respondents and relatives of the deceased family members, the applicant submits that all the respondents, other than the Trustee, consent to the relief sought. The individuals with whom the applicant or his lawyer communicated are clear in their respective consent to the substantive relief sought.

[53] The remaining hurdle for the applicant is the registration of the Assignment, on the title to the Property, and the transmission of John Paul Hart's interest in the Property to the Trustee.

[54] If the Trustee wished to divest all or a part of his right, title, or interest in the Property, he was required to register a notice of quit claim or renunciation on title to the Property: see *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 20(1). There is no evidence that the Trustee took any steps to register a notice of divestment of his interest in the Property.

[55] The applicant asks the court to make a vesting order pursuant to s. 10(1) of the *Trustee Act*, R.S.O. 1990, c. T.23. That sub-section stipulates that the court has the discretion to make a vesting order where a trustee cannot be found or where it is uncertain whether the trustee is living or dead:

In any of the following cases, [...]

(b) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is a minor, or is out of Ontario, or cannot be found; or [...]

(d) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or [...]

the Superior Court of Justice may make an order, vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of the contingent right to such person as the court may direct.

[56] Based on the applicant’s 2022 affidavit, I am satisfied that the Trustee “cannot be found” within the meaning of s. 10(1)(b) of the *Trustee Act*. The court therefore has the discretion to make a vesting order regarding the Property. The framework to be applied when determining whether to exercise that discretion is set out in *Third Eye Capital Corporation v. Resources Dianor Inc.*, 2019 ONCA 508, 70 C.B.R. (6th) 181. That decision was made in the context of a receivership proceeding.

[57] The applicant before this court (a) submits that there is a paucity of case authority addressing vesting orders made pursuant to s. 10(1) of the *Trustee Act*, and (b) asks the court to apply the *Third Eye Capital* framework by analogy. Vesting orders generally have their origin in equity and are discretionary in nature; it is reasonable to apply the *Third Eye Capital* framework, by analogy, for the matter before this court.

[58] At para. 109 of *Third Eye Capital*, Peppall J.A. describes the starting point to determine whether an interest in land should be extinguished, stating that “a court should consider (1) the nature of the interest in land; and (2) whether the interest holder has consented to the vesting out of their interest either in the insolvency process itself or in agreements reached prior to the insolvency.”

[59] Regarding the first factor, the Trustee’s interest in the Property is financial only. Yet, there is no information in the Assignment as to John Paul Hart’s level of indebtedness when he made his assignment in bankruptcy. The proposed tenants in common, on the other hand, have existing personal ownership interests in the Property. They each also have a financial interest in the Property based on their respective contributions to payment of property taxes. The first factor favours the applicant (and Anthony).

[60] Turning to the second factor from *Third Eye Capital*, there is no evidence to support a finding that the Trustee consented or agreed to the vesting order requested by the applicant.

[61] The applicant asks the court to consider that there is no evidence of either the Trustee or John Paul Hart taking any steps—for over 25 years—to address registration of the Assignment on the title to the Property. The applicant submits that the Trustee’s lack of involvement with the Property during that stretch of time favours the applicant or renders the second factor neutral. I disagree. I find that, in the absence of any evidence specific to the issue, the outcome on the second factor is inconclusive.

[62] At para. 110 of *Third Eye Capital*, Peppall J.A. explains the next step in the framework when consideration of the first and second factors leads to an inconclusive or ambiguous result. In that circumstance,

The court may then engage in a consideration of the equities to determine if a vesting order is appropriate in the particular circumstances of the case. This would include: consideration of the prejudice, if any, to the third party interest holder; whether the third party may be adequately compensated for its interest from proceeds of the disposition or sale; whether, based on evidence of value, there is any equity in the property; and whether the parties are acting in good faith. This is not an exhaustive list and there may be other factors that are relevant to the analysis.

[63] Moving on to that next step, I make the following findings regarding the equities in the matter before this court:

- If a vesting order is made, there is little, if any, prejudice to either the Trustee or John Paul Hart, given the lack of evidence of any expression of interest, on their respective parts, in the Property;
- The monetary value of the Trustee's financial interest in the Property is modest. Even if the Property were sold, after accounting for property taxes paid by the applicant and Anthony, after paying a real estate commission, and after paying legal fees, the net proceeds payable to each of the eleven owners would likely be a small, four-figure amount; and
- The applicant, the respondent family members, and the respondent estates are acting in good faith.

[64] The equities favour granting a vesting order, declaratory relief with respect to ownership of the Property, and an order requiring the Director of Titles / Land Registrar to amend the registry to reflect the relief granted in these reasons.

### ***Disposition***

[65] In summary, the court grants the following relief:

- a) The applicant is granted leave to amend the title of proceeding to reflect the fact that the Murray H. Kideckel is the Trustee in Bankruptcy for John Paul Hart;
- b) The requirement to serve any documents on Murray H. Kideckel, in his capacity as the Trustee in Bankruptcy for John Paul Hart is dispensed with;

- c) An order pursuant to r. 10.02, permitting the proceeding to continue in the absence of persons appointed to represent the respondent estates;
- d) The applicant shall serve the individual respondents and the respondent estates with copies of these reasons, the supplementary application record, and the supplementary factum;
- e) Service of documents on the respondent estates shall be effected by sending the documents by email to the individuals who are listed as recipients in the September 2023 letter;
- f) The declaratory relief requested at para. 21(a) of the supplementary factum is granted (i.e., identifying the applicant and Anthony, as tenants in common, as owners of the Property);
- g) The vesting order requested at para. 21(b) of the supplementary factum is granted (i.e., the applicant and Anthony, as tenants in common, are the owners of the Property); and
- h) The Director of Titles / Land Registrar of Leeds (No. 28) shall amend the registry to reflect ownership of the Property as described in sub-paragraphs (f) and (g), above.

[66] The applicant does not seek and there shall be no costs of the application.

[67] With all of the individual respondents, other than the Trustee, and the respondent estates consenting to the relief requested and because no notices of appearance were delivered, the applicant is not required to obtain from the respondents' approval as to form and content of the order to be issued and entered pursuant to these reasons. I dispense with that requirement.

**Date:** July 10, 2025

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Madam Justice Sylvia Corthorn

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**SUPERIOR COURT OF JUSTICE**

DAVID ROSSETTI

Plaintiff

– and –

MICHAEL ROSSETTI, THE ESTATE OF ROBERT DANIEL HART, THE ESTATE OF WALTER LOUIS HART, HELEN EILEEN ROBERT BAILEY, THE ESTATE OF KENNETH RICHARD ROSSETTI, THE ESTATE OF PAUL WALTER LOUIS ROSSETTI, STEVEN ROSSETTI, ANTHONY JOSEPH ROSSETTI, THE ESTATE OF LOUIS JOSEPH ROSSETTI, and MURRAY H. KIDECKEL

Defendants

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**REASONS FOR DECISION**

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Madam Justice Sylvia Corthorn

**Released:** July 10, 2025