KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 33**

Date: **2026 02 09**
File No.: KBG-RG-00561-2025
Judicial Centre: Regina

BETWEEN:

RONALD GREGORY MILLER

APPLICANT

- and -

JOANNE TULETA

RESPONDENT

Counsel:

Janine L. Lavoie	for the applicant
Gerald B. Heinrichs	for the respondent

FIAT — POPESCUL C.J.K.B.
February 9, 2026

I. INTRODUCTION

[1] Ronald Gregory Miller [Mr. Miller] commenced the within proceeding by originating notice seeking, pursuant to s. 107(1)(e) of *The Land Titles Act, 2000*, SS 2000, c L-5.1, an order declaring void a purchase and sale agreement dated June 10, 2005 [June Agreement], between himself and Joanne Tuleta [Ms. Tuleta] on the basis of frustration.

[2] In the face of this originating notice, Ms. Tuleta has brought two notices

of application raising procedural objections. The first, filed June 24, 2025 [First Application], advanced two grounds: (1) that the affidavit filed in support of Mr. Miller's originating application should be struck for non-compliance with Rules 13-31(1)(f) and 13-31(2) of *The King's Bench Rules* because it was sworn electronically; and (2) in the alternative, that Mr. Miller's application be adjourned because it is premature, seeing as no application has been made to the requisite approving authority with respect to the land, such that the merits cannot be properly considered until that process has been completed or otherwise disposed of; or (3) in the alternative, if the matter is to proceed as an originating application, that full disclosure be ordered, including document discovery and formal questioning; or (4) in the further alternative, that, pursuant to Rule 13-30, portions of Mr. Miller's affidavit be struck due to non-compliance with the rules governing affidavits.

[3] The second notice of application filed July 21, 2025 [Second Application], seeks to strike the originating application on the basis that the proceeding is contrary to Rules 3-2(1)(a) and (b) and 3-49, in that it should have been commenced by statement of claim rather than by originating application. In particular, Ms. Tuleta submits that the issues raised concern disputed facts respecting performance and contractual terms, rather than the determination of rights dependent solely on the interpretation of an interest in land, as required by Rule 3-49.

[4] Counsel for Ms. Tuleta properly abandoned the objection to the affidavit having been sworn electronically after the hearing. Both counsel agreed that the Rule 13-30 application concerning the alleged irregularities in Mr. Miller's affidavit should not be addressed at this stage, but rather by the judge hearing the applications, in the event that the originating application is not struck. Two issues therefore remain for determination: (1) the objection that the originating application is premature; and (2) whether the proceeding ought to have been commenced by statement of claim rather than by originating application.

II. FACTUAL OVERVIEW

[5] In June 2005, Ms. Tuleta agreed to purchase, and Mr. Miller agreed to sell, two parcels of land owned, then and now, by Mr. Miller. The parties then executed the June Agreement. Under the terms of that agreement, Ms. Tuleta was to pay Mr. Miller a specified sum by annual instalments, with the final instalment due in 2018. Title to the properties was not to transfer to Ms. Tuleta until all payments had been made.

[6] Ms. Tuleta fulfilled all of her payment obligations. Mr. Miller then instructed his former lawyer to transfer the two parcels to her. However, when counsel attempted to register title in Ms. Tuleta's name, the Information Services Corporation [ISC] refused the application because a third parcel of land was legally tied to the parcels Mr. Miller wished to transfer.

[7] The Acting Director of Community Planning explained in correspondence to Mr. Miller's former lawyer that the prohibition arose from *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [*The Planning and Development Act*], which provides that an approving authority shall not approve an application unless every lot or parcel of land has the legal and physical primary access required under subdivision regulations. Various potential workarounds were explored, but Mr. Miller ultimately concluded that he was unable to transfer the land as intended due to the operation of the law. He therefore brought an application seeking a declaration that the June Agreement had been frustrated.

[8] Mr. Miller filed his originating notice on March 24, 2025. Then, on June 19, 2025, Ms. Tuleta commenced an action by statement of claim wherein she seeks, among other things, a transfer of the subject parcels of land from Mr. Miller to her. Ms. Tuleta's statement of claim covers substantially the same subject matter as Mr. Miller's originating application.

III. ANALYSIS

1. Should the originating application be adjourned until a formal application is made to Community Planning, and rejected, thus proving that the untying of the parcels is impossible? [*First Application*]

[9] *The Planning and Development Act* together with its associated regulations, municipal bylaws and other related statutory instruments establishes a comprehensive and integrated framework for regulating the physical, economic, social and environmental development of communities in Saskatchewan. The legislative scheme is designed to ensure orderly and sustainable land use, promote responsible subdivision and development practices, and safeguard the public interest in areas such as access, servicing and environmental management.

[10] As with other structured regulatory regimes, *The Planning and Development Act* prescribes formal application processes, decision-making procedures and avenues for appeal. Applicants are required to obtain the necessary approvals from the appropriate approving authorities, who must assess compliance with statutory requirements and subdivision regulations. Where approval is denied or conditions are imposed, *The Planning and Development Act* provides mechanisms for review or appeal to ensure procedural fairness and consistency in the administration of planning decisions.

[11] Counsel for Ms. Tuleta submits that Mr. Miller's action, based on the doctrine of frustration, is premature. In her view, the issue of frustration cannot be adjudicated until Mr. Miller first submits a formal application to Community Planning and that application is subsequently refused. Only then, she argues, could it properly be said that the June Agreement has become frustrated.

[12] Counsel for Mr. Miller takes the opposite position. She argues that the

June Agreement imposes no obligation on Mr. Miller to apply to Community Planning, and the Court cannot insert such a requirement in the absence of an express contractual term. Accordingly, she submits that Mr. Miller is entitled to advance his frustration application at this time.

[13] In my view, Ms. Tuleta's argument on this point cannot succeed. Mr. Miller has commenced these proceedings by originating application seeking a declaration of frustration. Frustration occurs when, after a contract is formed, a supervening event, neither anticipated nor caused by either party, renders performance impossible, illegal or fundamentally different from what was originally agreed. See *Kreway v Kreway*, 2016 SKQB 115; and *Naylor Group Inc. v Ellis-Don Construction Ltd.*, 2001 SCC 58. As applicant, Mr. Miller bears the burden of establishing that the June Agreement has been frustrated. Whether he will ultimately be able to satisfy that burden remains to be seen.

[14] While it may be prudent to pursue all available applications or appeals and the failure to do so could impact Mr. Miller's ability to establish frustration on the merits, that assessment is properly left to the court hearing the substantive application. It is not for this Court, at a preliminary stage, to impose steps not required by the contract or to pre-empt the usual adjudicative process.

[15] Accordingly, I find no basis to adjourn or delay these proceedings pending the additional process urged by Ms. Tuleta. She remains free to advance that argument at the appropriate time on the merits. That aspect of Ms. Tuleta's application is dismissed.

2. Should Mr. Miller's originating application be struck on the basis that the proceeding ought to have been commenced by statement of claim rather than by originating notice? [*Second Application*]

[16] *The King's Bench Rules* make clear that, in general, and for actions of the type presently before the Court, proceedings may be commenced either by statement of claim or by originating application: Rules 3-2(1)(a) and (b). However, the statement of claim remains the default mode. Rule 3-2(2) directs that all actions are to be commenced by statement of claim "unless an enactment or these rules provide otherwise". Correspondingly, Rule 3-2(3) provides that an action may be commenced by originating application "if these rules authorize the commencement of an action by originating application".

[17] Rule 3-49(1) then enumerates the categories of matters that may be started by originating application. The provisions relevant to this case include:

> 3-49(1) An action may be started by originating application if the remedy claimed is:
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> …
>
> (d) the determination of rights that depend solely on the interpretation of:
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> (i) a deed, will, contract or other instrument; or
>
> …
>
> (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interests or charges;
>
> …
>
> (i) with respect to any matter where it is unlikely that there will be any material facts in dispute.

[18] The practical distinction between commencing an action by statement of claim and by originating application lies primarily in the applicable procedure. A statement of claim engages the full suite of litigation processes, such as document discovery, questioning, pre-trial conferences and other procedural tools, allowing for a more comprehensive examination of the issues. An originating application, by contrast, offers a more streamlined process, designed for matters that can be effectively resolved on a more limited record.

[19] Rule 3-51 reflects this distinction by providing that Parts 4 (Managing Litigation) and 5 (Disclosure of Information) do not automatically apply to actions commenced by originating application, subject to the important qualification that these Parts may apply if "the parties otherwise agree or the Court otherwise orders". Rule 3-53 confirms the Court's flexibility:

> 3-53 At any time in an action started by originating application, the Court may, on application, direct that all or any rules applying to an action started by statement of claim apply to the action started by originating application.

[20] Taken together, these provisions show that the statement of claim is the standard route, offering the full range of procedural tools, while the originating application provides a more streamlined process suited to specific circumstances. The Rules allow flexibility, and the Court may, where appropriate, apply the procedures associated with a statement of claim to an action commenced by originating application.

[21] Rules 3-51 and 3-53 of *The King's Bench Rules* confer a broad discretion on the Court to determine what procedures should govern an originating application, including whether aspects of Parts 4 and 5, or the Rules applicable to an action commenced by statement of claim, should be imported. That discretion should be exercised with care and in a principled and restrained manner. Such procedural augmentation is warranted where a genuine triable issue exists that cannot be fairly and justly resolved on the existing record, having regard to the scale of the interests at stake. Where additional procedural steps are necessary to secure a fair and just determination, the Court may and should order them. See *Hildebrand v Hattum*, 2021 SKQB 136 at para 46.

[22] Also of relevance is Rule 1-3, which sets out the purpose and intent of *The King's Bench Rules*, namely, to provide a framework by which claims can be justly resolved through the court process in a timely and cost-efficient manner. In *Pervez v*

Caskey, 2013 SKQB 377, I observed:

> [25] … the new Rules [which came into force on July 1, 2013] were drafted with a view to making our system of justice more efficient, accessible and affordable for all the citizens of Saskatchewan, without compromising fairness. One of the ways to achieve access to affordable justice is to recognize, as an important guiding principle, the concept of proportionality.

[23] Ms. Tuleta argues that the originating application ought to be struck because it falls outside the scope of Rule 3-49. She relies in part on Rule 3-49(1)(i) and on authorities interpreting former Rule 452. These submissions are without merit.

[24] First, Rule 3-49 should be interpreted broadly. As noted, initiating actions by statement of claim invokes full procedural machinery that may be unnecessary in some cases. In light of the modern emphasis on proportionality and streamlined processes where appropriate, as highlighted in *Hryniak v Mauldin*, 2014 SCC 7, the commencement of actions by originating application should not be unduly restricted. This is not to encourage misuse of the streamlined procedure nor to displace traditional pleading-based litigation. Rather, it is to ensure that the chosen procedure reasonably reflects the nature and needs of the dispute.

[25] Second, the substance of the action commenced in this case does fall within what is contemplated by Rule 3-49(1)(d) and/or (e). This should not be taken to mean that all actions relating to the doctrine of frustration should or can be brought by originating application, as each case is different and must be assessed on its own circumstances. Here, properly characterized, the action seeking a declaration that the contract has been frustrated falls within these enumerated categories. Although the analysis may engage factual context, the essential relief sought is a declaration of the parties' rights flowing from a written agreement in light of supervening events. In substance, the Court is asked to determine the continuing legal effect of the instrument and whether, on its proper construction and application, it has been discharged by

operation of law. That is a determination of rights that depends on the interpretation and legal effect of an instrument within the meaning of Rule 3-49(1)(d). Where, as here, the contract concerns an interest in land, the declaration necessarily also determines whether any interest in or charge on land continues to exist, bringing the matter within Rule 3-49(1)(e) as well. Accordingly, an application seeking a declaration of frustration is, in the circumstances of this case, properly brought within these two provisions.

[26] Third, the submission that Rule 3-49(1)(i) restricts the use of originating applications is mistaken. Contrary to Ms. Tuleta's position, Rule 3-49(1)(i), which permits the use of an originating application "with respect to *any matter* where it is unlikely that there will be any material facts in dispute" [emphasis added], expands, rather than contracts, the circumstances in which an originating application process may be used. It is an independent category that operates irrespective of the others listed in the Rule. The older authorities interpreting former Rule 452, decided decades before the promulgation of the new Rules, are of limited interpretive assistance.

[27] Fourth, there is no prejudice to Ms. Tuleta in permitting this matter to proceed by originating application. Rules 3-51, 3-53, 3-54 and 3-55 provide ample mechanisms to incorporate additional procedural steps, whether by agreement or by court order. Even if, with the benefit of hindsight, a statement of claim might have been preferable, any procedural deficiency can readily be cured through these provisions. During the hearing, counsel for Ms. Tuleta was expressly invited by the Court to identify what additional procedures would be required to ensure a fair determination of the issues. He declined to entertain the idea of resolving his application in this way, electing instead to pursue the application to strike. Counsel for Mr. Miller submits that Ms. Tuleta's refusal to address any procedural concerns through agreed-upon steps, her decision to commence a parallel statement of claim, and her initiation of multiple ancillary applications have served only to complicate and distract from the central issue, which is whether the June Agreement has been frustrated. In light of the nature of the

applications and the course of the litigation to date, these concerns are not easily dismissed. By contrast, counsel for Mr. Miller was prepared to engage in whatever procedural tailoring is necessary to ensure fairness.

[28] For these reasons, Ms. Tuleta's application to strike Mr. Miller's originating application is dismissed.

IV. CONCLUSION

[29] The applications contained in both of Ms. Tuleta's notices of application are dismissed, with costs to Mr. Miller.

[30] The parties are encouraged to confer and determine, as contemplated by Rule 3-51, which portions of Parts 4 and 5 should apply to the originating application. I will remain seized to assist should they be unable to agree.

C.J.K.B.
M.D. POPESCUL