

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

RUSS KNIGHT

(Plaintiff) Appellant

-and-

***5750351 MANITOBA LTD., 4711824
MANITOBA LTD., HUDSON BAY TRADERS
LTD. and 10046552 MANITOBA LTD.***

(Plaintiffs)

- and -

LAKE ST. MARTIN FIRST NATION

(Defendant) Respondent

R. Knight

on their own behalf

B. D. Regehr, K.C. and

A. Rogers

for the Respondent

Chambers motions heard:

June 26, 2025

Decision pronounced:

September 3, 2025

TURNER JA

[1] The defendant (LSM) filed the present motions. LSM asks that the plaintiff, Russ Knight (Knight), be declared a vexatious litigant and that he not be allowed to continue with his current appeals and not be allowed to institute further proceedings in this Court without first obtaining leave of a judge pursuant to section 31.1 of *The Court of Appeal Act*, CCSM c C240 [the *Act*]. LSM also asks that Knight's appeals be dismissed as an abuse of process pursuant to section 31.3 of the *Act* or, in the alternative, there be an order for security for costs pursuant to section 31 of the *Act*.

[2] In response to the motions that he be declared a vexatious litigant, Knight states that he has only had two main lawsuits ongoing for the past seven years: one related to the alleged forgery of mortgage documents and the other against LSM in the present case. Knight submits that the appeals are not an abuse of process. He asserts that the trial judge made numerous errors on two mid-trial motions, described further below.

[3] For the reasons that follow, I grant the motions, in part. I agree that Knight is a vexatious litigant. Given the restrictions placed on my power as a judge sitting in chambers, I do not have the jurisdiction to dismiss the appeals as an abuse of process. I am prepared to order that security for costs be paid before the appeals can proceed further.

Background

Litigation with Lake St. Martin First Nation

[4] In September 2018, Knight and the three corporate plaintiffs, 5750351 Manitoba Ltd. (575), 4711824 Manitoba Ltd. and Hudson Bay Traders Ltd. (collectively, the corporate plaintiffs)¹, commenced an action against LSM. They claimed over \$20 million in damages from LSM for unpaid rent and utilities at an apartment building on Burnell Street (the Burnell property) and a former school building on Ness Avenue (the Ness property) (together, the properties), and also alleged that LSM was unjustly enriched to the detriment of the plaintiffs (the 2018 action).

¹ Knight controls the corporate plaintiffs.

[5] In September 2022, 575 and the remaining corporate plaintiff, 10046552 Manitoba Ltd. (1004), commenced another action against LSM (the 2022 action). They claimed over \$1 million in damages from LSM, claiming that LSM breached the terms of a twenty-year lease agreement for the Ness property.

[6] In April 2024, with the agreement of all parties, the 2018 action and the 2022 action were consolidated (the consolidated action). The matter was set to proceed to trial starting January 8, 2024.

[7] During the cross-examination of Knight on the first day of trial, he stated that he failed to disclose several documents that he had reviewed in preparation for trial, which he had with him in Court, including numerous rent rolls for the Burnell property, eighty-three signed tenancy agreements and several rental unit condition reports. As a result, the trial judge adjourned the trial to the next morning to allow LSM to review the documents. The trial was adjourned a further day to allow LSM to copy and continue to review the documents.

[8] When the trial reconvened, counsel for LSM advised the trial judge they discovered that, in 2015, an order was issued involving a secured lender, Cameron Stephens Financial Corporation (CSFC), on the Burnell property and 5448124 Manitoba Ltd. (544), which was a corporation controlled by Knight and his wife, Susannah Simes (Simes) (the 2015 order). The 2015 order stated that no litigation regarding the Burnell property could be commenced without notice to or consent of the receiver, or with leave of a judge. Counsel for the plaintiffs indicated that consent had not been sought or obtained. In addition, CSFC had not been notified of the proceedings.

[9] LSM requested an adjournment of the trial due to the failure to disclose documents and the breach of the 2015 order. The trial judge granted the adjournment and ordered that CSFC and the receiver be notified of the proceedings. A continuation date for the trial was not set, but a date for a mid-trial conference was.

The Mid-Trial Conference

[10] At a mid-trial conference on March 8, 2024, counsel for CSFC advised that a discharge of the 2015 order had been filed on March 6, 2024, so it was no longer in effect, but CSFC was still maintaining its priority claim regarding any damages that might be payable to Knight or the related corporations.

[11] Also at the mid-trial conference, counsel for LSM advised that the plaintiffs had not complied with the Court of King's Bench (the KB) Practice Direction that requires litigants to disclose the existence of any other proceedings that are related to an action in their pre-trial, triage or case conference briefs.² In two separate files, Knight alleged that mortgage documents for the Burnell property had been forged and fraudulent amendments had been made, resulting in loss of equity in the Burnell property (File No. CI21-01-33821 and File No. CI21-01-33788—detailed further below).

² See Court of King's Bench of Manitoba, "Practice Direction: Re: Tracking of Related Files" (23 June 2023), online (pdf): <manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_tracking_of_related_files.pdf> [KB Practice Direction].

The Motion for Costs

[12] In April 2024, LSM brought a motion to have costs awarded on a previous motion paid forthwith based on Knight's misconduct during the litigation, as well as for throwaway costs following the adjournment of the trial and security for costs.

[13] On August 22, 2024, the trial judge delivered reasons granting LSM's motion. The plaintiffs were ordered to pay the previous costs award of \$8,841.93 forthwith and throwaway costs of \$88,340.87. Those costs were paid by 1004. The trial judge also ordered that each plaintiff post security for costs of \$21,000. Counsel for 1004 paid the security for costs into Court for all the plaintiffs.

[14] The trial judge noted in *5750351 Manitoba Ltd v Lake St Martin First Nation*, 2024 MBKB 125 at para 39:

[The plaintiffs] are serial litigants in this court with a demonstrated track record of not paying any of the costs that have been awarded against them in the past. [Knight] in particular has been found to be a vexatious litigant in this court who has repeatedly refused to pay costs awarded against him and as such he is not entitled to the benefit of a doubt with respect to the potential payment of this award of costs.

The Motion to Strike

[15] On March 17, 2025, the trial judge heard a motion filed by LSM asking that 575's claim for damages in the statement of claim filed in the 2022 action be struck. LSM alleged that 575 did not have standing to seek relief in the 2022 action because 575 had no legal interest in the Ness property.

[16] The trial judge agreed with LSM and ordered that 575 be struck as a plaintiff from the 2022 action without leave to re-file or amend the pleading. He also ordered that certain paragraphs of the statement of claim be struck (the decision to strike). Knight now appeals that decision on File No. AI25-30-10219.

The Motion for Retroactive Relief

[17] On March 17, 2025, the trial judge also heard a motion filed by Knight for *nunc pro tunc* relief (in other words, retroactive relief). LSM argued that since the plaintiffs commenced the 2018 action in violation of the 2015 order, the paragraphs of the statement of claim regarding the Burnell property were invalid. Knight brought the motion to retroactively confer validity on those paragraphs of the statement of claim.

[18] The trial judge found that the paragraphs could not be validated retroactively; therefore, he ordered that those paragraphs of the statement of claim be struck without the right to re-file or amend the pleading (the retroactive relief decision). Knight now appeals that decision on File No. AI25-30-10217.

[19] The remaining aspects of the litigation remain pending in the KB, with another motion set to be heard in October 2025.

Other Proceedings Related to the Properties

[20] In addition to the 2015 order and the litigation with LSM, Knight has a lengthy and complicated history of litigation in Manitoba. Since 1995, he has been a plaintiff or defendant in over seventy matters in the KB and an

appellant in at least eight matters in this Court. Many of these matters relate to the properties.

Cameron Stephens Financial Corporation v Knight, 2020 MBQB
21 (File No. CI15-01-98487)

[21] CSFC brought an action against Knight and Simes, alleging default under their personal guarantee of the debts of 544 in relation to the Burnell property. The guarantee secured the entirety of a mortgage loan (\$9,425,000) CSFC had given 544.

[22] At the centre of the Knight and Simes' defence was an allegation that after they executed the mortgage, someone fraudulently altered its repayment terms.

[23] CSFC was granted summary judgment on January 30, 2020. The judgment was pursued by way of garnishment against Knight and Simes.

Crossroads-DMD Mortgage Investment Corporation v 5376115
Manitoba Ltd. (File No. CI16-01-00001)

[24] On March 21, 2016, default judgment was obtained against Knight and 575 related to foreclosure proceedings of the Ness property.

5750351 Manitoba Ltd. v Sigmar Mortgage Services Ltd. (File No.
CI17-01-10247)

[25] 575 attempted to stop the mortgage sale of the Ness property. The notice of application was struck on September 25, 2017 and costs were awarded to the defendant, Sigmar Mortgage Services Ltd.

Diverso Energy Inc. v 5750351 Manitoba Ltd. (File No. CI18-01-12999)

[26] Diverso Energy Inc. brought an action against 575 for unpaid accounts, totalling \$574,600.17 for the installation of a geothermal system at the Ness property. Default judgment was noted on September 10, 2018.

Knight v Cameron Stephens Financial Corporation and Peter Ginakes (File Nos. CI21-01-33821 and AI23-30-09954); and Knight v D’Arcy & Deacon LLP (File Nos. CI21-01-33788 and AI23-30-09953)

[27] As noted above, Knight brought an action against CSFC and Peter Ginakes (Ginakes), as well as an action against D’Arcy & Deacon LLP. Ginakes was Knight’s former lawyer and D’Arcy & Deacon LLP previously acted for CSFC.

[28] In both actions, Knight claimed that mortgage documents related to the Burnell property were forged and fraudulently amended.

[29] Summary judgment was awarded on both matters in favour of the defendants with costs. The judge found that these new actions were collateral attacks on the decision in *Cameron Stephens Financial Corporation v Knight*, 2020 MBQB 21, which dealt with the same issues and the same parties.

[30] Knight appealed and both appeals were struck in this Court because security for costs was not paid. He applied for an extension of time to appeal that decision, which was dismissed in this Court. His application for leave to appeal to the Supreme Court of Canada was also dismissed with costs (see

Russell Edward Knight v Cameron Stephens Financial Corporation, 2025 CanLII 38341 (SCC)).

Knight v Stephen Cameron (File No. CI23-01-43864); Knight v Dickinson Wright LLP (File No. CI23-01-43865); and Knight v Scott Cameron (File No. CI24-01-44710)

[31] In 2023 and 2024, Knight and Simes commenced separate actions against Stephen Cameron (Stephen), Dickinson Wright LLP and Scott Cameron (Scott). The claims related to an allegation that one or more of the defendants improperly altered the mortgage granted to 575 for the Burnell property. Knight and Simes also claimed that Stephen made a derogatory racial comment, Scott forged initials on an agreement and Dickinson Wright LLP (a law firm that had previously represented CSFC) forged documents.

[32] Together, the three defendants brought a motion that alleged the claims were an abuse of process, did not disclose a reasonable cause of action, were frivolous and vexatious, and were collateral attacks on prior decisions, and asked that the plaintiffs be declared vexatious litigants.

[33] The motion judge agreed with the defendants. He struck the three statements of claim with costs. He declared Knight and Simes to be vexatious litigants and ordered that they not be allowed to commence any proceedings against the three defendants in the KB unless they first obtained leave of a judge.

Knight v Jonathan Goldenberg (File No. CI24-01-46760)

[34] Knight brought an action against Jonathan Goldenberg (Goldenberg), a Winnipeg lawyer who acted for CSFC, alleging that Goldenberg swore a false affidavit related to the previous allegations of the forged and fraudulent mortgage. The statement of claim was struck, with costs, and Knight was again declared a vexatious litigant.

Knight v John B. Martens (File No. CI24-01-46855)

[35] Knight filed a statement of claim against John B. Martens (Martens), a Winnipeg lawyer, alleging that Martens concealed a document related to the mortgage documents of the Burnell property. The statement of claim was struck, with costs, and Knight was again declared a vexatious litigant.

5448124 Manitoba Ltd. v Cameron Stephens Financial Corporation
(File No. CI24-01-47178 and AI24-30-10145)

[36] 544 filed a statement of claim against CSFC and Ginakes, claiming damages of \$18,575,000. The claim related to the Burnell property and alleged, among other things, that the mortgage documents were forged and fraudulently amended.

[37] The statement of claim was struck, with costs, and Knight was again declared a vexatious litigant.

[38] Knight filed a notice of appeal on behalf of 544 and sought leave to represent the corporation on the appeal. Leave was denied and the appeal was deemed abandoned after 544 failed to retain counsel (see *5448124 Manitoba Ltd v Cameron Stephens Financial Corporation*, 2025 MBCA 32 [544

Appeal)). Knight, on behalf of 544, also sought an extension of time to file a notice of appeal of the decision not to grant leave, which was denied, with costs (see 5448124 *Manitoba Ltd v Cameron Stephens Financial Corporation*, 2025 MBCA 58).

Should Knight Be Declared a Vexatious Litigant?

[39] The relevant legal principles regarding vexatious proceedings and vexatious litigants were canvassed by this Court in *Green v University of Winnipeg*, 2018 MBCA 137 [*Green*].

[40] Although the former section 31.1 of the *Act* was under consideration in *Green* (see para 19), the governing principles and relevant factors identified are equally applicable to the current section 31.1.

[41] As stated by Steel JA in *Green*: “Whether a proceeding is vexatious is a matter to be determined by objective rather than subjective standards” (at para 27). It involves “a holistic determination taking into consideration a variety of factors” (*ibid*).

[42] In *Re Lang Michener and Fabian* (1987), 37 DLR (4th) 685 at 691, 1987 CanLII 172 (ONSC (H Ct J)), cited with approval in *Green* at para 29, Steel JA adopted the following non-exhaustive list of factors to assist a court in determining whether proceedings are vexatious:

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable

person can reasonably expect to obtain relief, the action is vexatious;

- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[43] Although an order limiting an individual's ability to access or continue legal proceedings "should not be lightly granted" (*ibid* at para 80), I am satisfied that Knight has shown a persistent, vexatious approach to litigation and should be declared a vexatious litigant.

[44] The same arguments regarding the properties have been raised and adjudicated time and time again in multiple proceedings. Throughout Knight's history of litigation, he has returned to the same issues and the same arguments. His claims regarding the properties have repeatedly been determined by courts in this province. The claims have often been determined

by default judgment or by summary judgment in the KB or have been struck in this Court.

[45] I pause to note that Knight has not sought leave to represent the corporate plaintiffs on the present appeals; therefore, he is currently the only party pursuing the appeals. Barring exceptional circumstances, the common law rule applies: that 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).

[46] Even though the decision to strike was made as part of the consolidated action, it specifically arose from the 2022 action to which Knight was not a party. 575 is the only party affected by the decision to strike. Knight cannot pursue an appeal on 575's behalf unless he is granted leave, which, as noted above, he has not sought and has been denied previously regarding another one of his corporations (see *544 Appeal*).

[47] The notice of appeal regarding the decision to strike only raises grounds of appeal that relate to the corporate plaintiffs. In summary, the grounds of appeal are that the trial judge erred in not finding that 575 was the beneficial owner of the Ness property, that a mortgage company was acting as a bare trustee to oversee the sale of 575 to 1004, and that LSM expressed a clear desire to continue occupying the Ness property by paying rent to 1004. None of the grounds of appeal relate to Knight in his personal capacity as a plaintiff and, as I have already noted, he cannot represent the corporate plaintiffs without leave of a judge.

[48] Knight has repeatedly brought actions against lawyers who have represented opposing parties and brought an action against his own lawyer. All such attempts have been unsuccessful, with the claims being struck.

[49] It appears that other than the costs that were paid by 1004, as noted above, no other costs awards have been paid by Knight in any of the above litigations.

[50] When I look at the history of Knight's litigation in Manitoba and his conduct during some of those litigations, I can come to no other conclusion than his proceedings in this Court have reached the level of being vexatious and that he should be declared a vexatious litigant.

[51] The allegations of forgery and fraudulent amendments to documents have been rejected by courts of competent jurisdiction time and time again. Knight failed to disclose several relevant documents prior to the consolidated action trial with LSM, failed to comply with the 2015 order and failed to comply with the KB Practice Direction regarding related proceedings. In addition, Knight has failed to pay multiple judgments and costs awards made against him, now totalling millions of dollars.

[52] Knight is declared a vexatious litigant and, as detailed further below, is prohibited from initiating any further appeals or filing any applications or motions in this Court in connection with the properties without first obtaining leave of a judge of this Court.

Should the Present Appeals Be Dismissed as an Abuse of Process?

[53] Section 31.3 of the *Act* provides:

Abuse of process

31.3 Nothing in section 31.1 or 31.2 limits the authority of the court to stay or dismiss a proceeding as an abuse of process or on any other ground.

Abus de procédure

31.3 L'article 31.1 ou 31.2 ne limite pas le pouvoir du tribunal de suspendre ou de rejeter une instance en raison d'un abus de procédure ou pour tout autre motif.

[54] Section 7(1) of the *Act* limits the powers of a chambers judge to hearing and disposing of matters that are incidental to a matter pending before the Court. This has been interpreted to mean that the issue to be decided by the chambers judge must play only a subordinate role in relation to the ultimate outcome of the appeal (see *British Aviation Insurance Group v Coseco Insurance Co*, 2010 MBCA 56 at para 2).

[55] Staying a proceeding as an abuse of process was specifically addressed in *Canada (Attorney General) v Courchene*, 2010 MBCA 4 at para 8:

[Section 31.3 of the *Act*] clearly states that staying a proceeding as an abuse of process is within the purview of “the court.” It makes no reference to a chambers judge. This is to be contrasted with s. 31.2(3) (which is referred to in s. 31.1) that specifically refers to “a judge sitting in chambers or the court.”

In my view, the same comments apply to the dismissal of an appeal.

[56] A decision to dismiss Knight’s appeals would be the ultimate outcome given that it would bring an end to the appeals. As such, sitting alone as a chambers judge, I do not have the jurisdiction to grant the order requested. Therefore, the request is denied.

Security for Costs

[57] Section 31 of the *Act* provides:

Security for costs

31 A judge of the court in chambers may, under special circumstances, make an order or orders for security for costs of any appeal.

Sûreté en garantie des dépens

31 Le juge du tribunal siégeant en cabinet peut rendre des ordonnances prévoyant la constitution d'une sûreté en garantie des dépens d'appel, lorsque des circonstances exceptionnelles le justifient.

[58] The principle of security for costs was outlined in *Amneet Holdings Ltd v 79548 Manitoba Ltd*, 2003 MBCA 108 at para 7:

The governing principle in an application for security for costs under s. 31 is that such an order must be “just” in the “particular circumstances of the case.” See *Moss (Bankrupt), Re* (2001), 160 Man.R. (2d) 80, 2001 MBCA 166, and *Harvard Investments Ltd. v. Canadian National Railway Co.* (2002), 170 Man.R. (2d) 10, 2002 MBCA 127. As noted by Scott C.J.M. in *Franck Estate v. Webster et al.* (1998), 129 Man.R. (2d) 87 (C.A.) (at para. 32): “An order for security for costs should only be granted where it is essential to do so, in the interests of justice, to provide defendants with some protection for their potential costs.” Scott C.J.M. was speaking about security for costs for trial but the words are equally applicable to such an application on an appeal.

[59] A court should conduct a preliminary consideration of the merits of the appeal, mindful of the applicable standard of review, the financial means of the respondent, the likely recovery of costs once the appeal has been determined and the conduct of the litigants (see *The College of Pharmacists of Manitoba v Jorgenson*, 2020 MBCA 80).

[60] As noted at paragraphs 45 to 47 above, Knight has not sought leave to represent the corporate plaintiffs on the appeals; therefore, he is currently the only appellant and only in his personal capacity. As such, in the circumstances, I must also consider whether the notices of appeal raise Knight's interests or not.

[61] On the appeal of the retroactive relief decision, the notice of appeal asserts that the trial judge erred in finding that the receiver was not discharged prior to the expiry of the limitation period and in finding that the plaintiffs did not inform the receiver of the proceedings. I note that a decision whether to provide retroactive relief is discretionary; therefore, the standard of review is deferential (see *Canadian Imperial Bank of Commerce v Green*, 2015 SCC 60 at para 95). None of the grounds of appeal relate to Knight in his personal capacity as a plaintiff.

[62] On the appeal of the decision to strike, the notice of appeal asserts that the trial judge erred in not finding that 575 was the beneficial owner of the Ness property, that a mortgage company was acting as a bare trustee to oversee the sale of 575 to 1004 and that LSM expressed a clear desire to continue occupying the Ness property by paying rent to 1004. The grounds advanced relate to the trial judge's findings of fact. As such, the standard of review will be one of palpable and overriding error. The decision specifically arose from the 2022 action to which Knight was not a party. 575 is the only party affected by the decision to strike.

[63] I have not been provided with any information regarding Knight's financial means, but as noted above, he has failed to pay judgments and costs awards in the past.

[64] In addition to the multiplicity of proceedings regarding the properties, Knight's conduct during the trial with LSM weighs in favour of an order for security for costs. He did not disclose a large number of relevant documents, he did not comply with the 2015 order and he failed to comply with the KB Practice Direction regarding disclosure of related proceedings.

[65] When I consider all the relevant factors, I am satisfied that an order for security of costs in the amount of \$3,000 for each appeal is appropriate.

Disposition

[66] In the result, I grant the motions, in part.

[67] I am satisfied that Knight has persistently instituted and continued vexatious proceedings and I grant the following order:

- a) Knight is declared a vexatious litigant in this Court.
- b) Knight is prohibited from initiating any further appeals or filing any applications or motions in this Court in connection with the properties without leave of a judge of this Court.
- c) Knight is required to pay all outstanding costs awards in this Court before leave of a judge of this Court may be sought.
- d) The registry is authorized to reject any documents submitted by Knight that they determine to be non-compliant with the *Act*, the MB, *Court of Appeal Rules (Civil)*, Man Reg 555/88R, or an order or direction of this Court.

- e) The registry shall report to the Court any violations of this order so that this Court may determine whether any further order should be made, direction provided or action taken.

[68] The request to have Knight's appeals dismissed is denied.

[69] Security for costs in the amount of \$3,000 for each appeal (for a total of \$6,000) shall be paid no later than October 15, 2025, failing which, the appeals will be struck without any further order. The filing deadlines on the appeals are suspended until the security for costs is paid in full.

[70] LSM is entitled to tariff costs for the present motions.

Turner JA
