Date: 20260917
Docket: PR 21-01-23682
CI 22-01-38901
(Winnipeg Centre)
Indexed as: Tritthart v. Culligan et al.
Cited as: 2026 MBKB 129

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

DOUGLAS WILLIAM TRITTHART, EXECUTOR OF THE ESTATE OF RONALD GORDON TRITTHART,	)	Debra Takeuchi for the applicant
applicant,	)	Ian Histed for the respondents
PATRICK CULLIGAN AND TYLENE ZEUCH,	)	
respondents.	)	Judgment Delivered: September 17, 2026

TOEWS J.

INTRODUCTION

[1] This is a motion for a determination of costs by the respondent, Patrick Culligan as a result of a probate application in which Douglas William Tritthart, the brother and the executor of the estate of Ronald Gordon Tritthart (the deceased) applied to the court to settle certain questions related to the ownership of a piece of land standing in the name of the deceased at the time of his death. Tylene Zeuch did not participate in these proceedings and costs are not being sought in respect of that party.

[2] The trial proceeded in respect of both the executor's application in PR 21-01-23682 and an action brought by the plaintiff, Patrick Culligan in CI 22-01-38901. My reasons for judgment in respect of the issues raised at trial are reported at ***Tritthart v. Culligan et al.***, 2024 MBKB 165.

[3] As a result of the position taken by counsel for Mr. Culligan in the closing arguments of these proceedings, it was only necessary for me to deal with the ownership or interest in a 10-acre parcel of as well as an incidental issue of a partial payment in the amount of approximately $1,500 allegedly made by Mr. Culligan towards the cost of the survey of the land.

[4] After a consideration of the evidence at trial, I made the following orders as set out in my reasons for decision, at para. 55:

> a) Mr. Culligan is entitled to a declaration that the agreement between the parties in respect of the 10-acre parcel of land referred to as lot #1 of the 80-acre parcel of land owned by the deceased at the time of his death, is a binding contract and includes a term that the deceased would, and therefore the executor of the estate will seek subdivision approval for the 10-acre parcel of land referred to as lot #1 of the 80-acre parcel of land owned by the deceased at the time of his death;
>
> b) Mr. Culligan is further entitled to an order that the executor make and pursue a *bona fide* application as may be necessary to obtain registration of the approved plan of subdivision, including registration of the approved plan with the appropriate planning authority if approval is obtained.
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> c) Such application shall be at the expense of the estate of the deceased and shall be made within 60 days following delivery of this judgment, or such extended period as may be ordered by the court or as may be agreed to by the parties;
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> d) In the event that the executor does not make such application within the time stated, or does not pursue such application with due diligence, Mr. Culligan shall be entitled to damages for loss of his bargain;
>
> e) Upon the application for subdivision being successfully made and completed, including registration of the approved plan, the remaining

provisions of the agreement, concerning the actual sale and purchase of the land, shall be specifically performed and carried into effect;

f) In the event that the executor makes and pursues a *bona fide* application as aforesaid, and such subdivision application is rejected, then Mr. Culligan's claim for specific performance of the provisions concerning sale and purchase stands dismissed, but that in view of the consideration paid by Mr. Culligan and the improvements made to the 10-acre parcel described as lot #1 in these proceedings, Mr. Culligan will be entitled to his damages in an amount to be determined by the court upon application to the court;

g) I am not prepared to order any additional costs and/or damages in favour of Mr. Culligan in respect of certain payments which are claimed in respect of any other surveyor or legal fees and which Mr. Culligan submits would have been applied to the purchase of Lot #2, set out in exhibit 15;

h) In view of my determinations, I find that the estate is not entitled to any rent from Mr. Culligan for the use of the disputed 10 acres; and

i) If the issue of costs in these legal proceedings cannot be settled between the parties, including any appropriate reduction in the amount of costs that Culligan would be entitled to on a tariff basis, but for the reliance on the disputed bill of sale in these proceedings, the parties may submit a written submission as to costs for the consideration and determination of the court.

[5] The parties have been unable to settle the issue of costs as between themselves and have provided me with written submissions in which they have set out their respective positions.

THE POSITION OF THE RESPONDENT

[6] It is the position of the successful party, the respondent, that the evidence accepted by the court at trial established a lawful agreement and that despite the applicant being aware of this evidence well in advance of trial, chose to proceed to trial. Even though the court determined that the bill of sale purporting to establish the sale of the land to the respondent was not found to be trustworthy, the respondent submits that the applicant's decision to challenge it by way of handwriting evidence was a "useless

detour" since the other evidence established the sale to the respondent. It is the position of the respondent that the cost of this detour should be born by the applicant.

[7] The respondent takes the position that the conduct of the applicant throughout the proceedings was an attempt to use his superior ability to absorb legal costs to oust the respondent from his legitimate tenure.

[8] The respondent notes that the costs of the litigation significantly exceed the substantive amount of the claim. He argues that the tariff costs for the application and action for injunction total $26,148 in accordance with the bill of costs provided to the court. Any reduction in that amount, he submits, should be very modest given the strength of the respondent's claim.

THE POSITION OF THE APPLICANT

[9] The applicant submits that owing to the respondent's conduct in this matter, he is not entitled to any costs and that each party should bear their own costs.

[10] This submission is based on the applicant's argument that the respondent's conduct unnecessarily lengthened the duration of the trial and complicated the proceeding. The applicant notes that a large portion of the trial was spent on the bill of sale purportedly signed by the deceased. This included the time spent on challenging the expertise of the handwriting expert called by the applicant and by refusing to accept the expert opinion on the issue.

[11] In this respect, the applicant relies on the following paragraphs of the reasons for decision which I delivered in this matter:

> [43] I am not satisfied that the bill of sale relied upon by Mr. Culligan in these proceedings is genuine. It seems unlikely to me that the deceased would not have

> produced this bill of sale in his meeting with Ms. Tavares when he met with her on November 1, 2021, if it actually existed on that date, but only produced a copy of the aerial photograph of his property, along with the markings on it delineating the proposed lots. There appears to have been no mention of the bill of sale dated June 16, 2021, at their meeting, and I agree with Ms. Tavares that this is a document that she would also have copied had it been produced by the deceased. I also find it difficult to believe that when Mr. Culligan telephoned her the day after the deceased passed away, that he would not have mentioned the existence of this document while he was expressing concerns to her about whether he would be able to stay on the property after the death of the deceased.
>
> [44] Furthermore, I also find it odd that Ms. Tavares would not have raised the issue of the existence of a written bill of sale if she was familiar with or had knowledge of the existence of such a document when she discussed the property with the executor during her conversation with him on or about November 19, 2021. The executor stated that there was no mention of any paperwork and specifically no mention of a bill of sale during that conversation. Rather the conversation focused on the existence of a "gentleman's agreement" or a "verbal agreement" and whether a verbal agreement of that nature could be "held up" in court.

[12] Furthermore, the applicant submits that the respondent should not be entitled to any costs arising in respect of the action he commenced in CI 22-01-38901 in respect of the restoration of Hydro Service. The applicant submits that the filing of that action was unnecessary relying on the reasons of the court at para. 24 of the reasons for decision:

> [24] After the death of the deceased, he stated that Manitoba Hydro shut off the electricity that serviced the property but as the court record sets out, the electricity was restored by order of this court. Without getting into the back and forth of the dispute between the executor and Mr. Culligan it is only necessary to state that the issue of the supply of power has now been addressed by virtue of Mr. Culligan supplying his own power by the use of solar equipment.

REASONS FOR DECISION

[13] Court of King's Bench Rule 57.01 sets out the factors the court may consider when awarding costs:

Factors in discretion

57.01(1) In exercising its discretion under section 96 of The Court of King's Bench Act, to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle made in writing,

(a) the amount claimed and the amount recovered in the proceeding;
(b) the complexity of the proceeding;
(c) the importance of the issues;
(d) the conduct of any party which tended to shorten or lengthen unnecessarily the duration of the proceeding;
(d.1) the conduct of any party which unnecessarily complicated the proceeding;
(d.2) the failure of a party to meet a filing deadline;
(e) whether any step in the proceeding was improper, vexatious or unnecessary;
(f) a party's denial or refusal to admit anything which should have been admitted;
(f.1) the relative success of a party on one or more issues in a proceeding in relation to all matters put in issue by that party;
(g) whether it is appropriate to award any costs or more than one set of costs where there are several parties with identical interests who are unnecessarily represented by more than one counsel; and
(h) any other matter relevant to the question of costs.
Costs against successful party

57.01(2) The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.

Court may fix costs

57.01(3) In awarding costs, the court may fix all or part of the costs, with or without reference to Tariff A or B, instead of referring them for assessment, but in exercising its discretion to fix costs the court will not consider any tariff as establishing a minimum level for costs.

Disbursements

57.01(4) The court may disallow a disbursement in whole or in part where, based on all circumstances of the case, it is satisfied that a disbursement claimed by a party was not reasonably necessary for the conduct of the proceeding or was for an unreasonable amount.

Costs may be assessed

57.01(5) Where the costs are not fixed, they may be assessed under Rule 58.

Authority of court

57.01(6) Nothing in this Rule affects the authority of the court,

(a) to award or refuse costs in respect of a particular issue or part of a proceeding;
(b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding; or
(c) to award all or part of the costs on a lawyer and client basis.

[14] In considering the factors relevant to the determination of costs, I am satisfied that as the successful party to this litigation, the respondent is entitled to costs, taxes and disbursements as set out in the bill of costs provided to the court by the respondent subject to a reduction in the amount of costs arising out of the unnecessary extension of the trial in challenging the bill of sale. In my opinion, in challenging the expertise and opinion of the applicant's expert without providing any rebuttal expert or other evidence in that respect, the respondent unnecessarily prolonged the trial and complicated the process. Accordingly, I will reduce the costs for preparation for trial and trial fees by the amount of $3,000 leaving the amount of costs in that action at $16,575.

[15] I am not prepared to dismiss the claim for costs in respect of the action to restore Hydro. In the context of these proceedings, I do not consider the commencement of those proceedings to be frivolous or otherwise unnecessary even though the respondent ultimately took steps to obtain power through an alternate power source.

[16] Accordingly, in the result I would award the respondent costs in respect of PR 21-01-23682 in the amount of $16,575 and costs in respect of CI 22-01-38901 in the amount of $3,325. In addition, the respondent is ordered to pay the applicable retail sales tax

and goods and service tax on those amounts. Printing and filing costs in the amount of $500 are also ordered.

[17] I would also fix the amount of additional costs in the sum of $300 payable by the applicant to the respondent in respect of the written submission made to the court in respect of the determination of costs.

_____ J.