

CANADA / JUDGMENT

Dingwall Estate v. Pellerin

2020 BCSC 544

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 544 Dingwall Estate v. Pellerin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dingwall Estate v. Pellerin,

2020 BCSC 544

Date: 20200407

Docket: S1913396

Registry: Vancouver

Between:

Clint Robert Gordon Pellerin

as Committee of the Estate of Dorothy Elizabeth Dingwall

Petitioner

And

Julli Mary Cecile Pellerin

Respondent

Before: The Honourable Madam Justice Forth

Reasons for Judgment on Costs

Counsel for the Petitioner:

D. Moonje

The Respondent, appearing in person:

J.M.C. Pellerin

Written Submissions of the Petitioner:

December 13, 2019

Written Submissions of the Respondent:

Not provided

Place and Date of Judgment:

Vancouver, B.C.

April 7, 2020

Introduction

- [1] The parties appeared before me on December 9, 2019 on a petition brought by Clint Robert Gordon Pellerin as committee of the estate of Dorothy Elizabeth Dingwall (the "petitioner"), seeking the cancellation and removal of two liens filed by the respondent, Julli Mary Cecile Pellerin, against property located at 5789 Riverside Road, Abbotsford, B.C., which is owned by Ms. Dingwall (the "Property"). The respondent was self-represented at the hearing.
- [2] On December 12, 2019, I pronounced my oral reasons, indexed at 2019 BCSC 2283 (the "Oral Reasons"), cancelling the liens. The petitioner had requested that special costs be paid by the respondent. I agreed to permit written argument on this issue. The petitioner was given until December 13, 2019 at 4 p.m. to provide his written submissions. The respondent indicated that she needed a lengthy period of time to reply. She specifically requested that she be given 30 days to review the law and respond. At the respondent's request, I gave her until January 13, 2020 at 4 p.m. to file her written submissions.
- [3] On December 13, 2019, the petitioner served a four page submission in support of a claim for special costs.
- [4] The respondent did not file any submissions on special costs irrespective of the extension of time granted.

Background Facts

- [5] The background facts leading up to the filing of the liens are best reflected in the Court of Appeal reasons for judgment in *Pellerin v. Dingwall*, indexed at 2018 BCCA 110 [Pellerin CA], and the August 22, 2019 reasons for judgment of Justice Douglas in *Pellerin v. Pellerin* Vancouver Registry Action S194491 (B.C.S.C.), indexed at 2019 BCSC, 2234 [Pellerin SC].
- [6] The Court of Appeal, in *Pellerin CA*, set out the following relevant facts:

Background Facts

- [5] Ms. Dingwall is over 80 years old and suffers from advanced dementia. For most of her life, Ms. Dingwall lived in Alberta. Ms. Pellerin, her daughter, lives in British Columbia, while Mr. Pellerin, her son, lives in Alberta.
- [6] Between 2010 and 2014, Ms. Dingwall resided for various periods in both British Columbia and Alberta. In 2010, she purchased a home in Abbotsford, B.C. Ms. Pellerin lived in the Abbotsford house with Ms. Dingwall from approximately September 2013 to July 2014. During that time, Ms. Pellerin did not pay rent or contribute to the household expenses. Then, for a brief period between July and October 2014, Ms. Dingwall lived with Mr. Pellerin in his Alberta home, after which time he placed her in a care facility in Alberta.
- [7] In January 2015, Ms. Pellerin surreptitiously removed Ms. Dingwall from the care facility and returned her to the Abbotsford house. We were told at the hearing that Ms. Dingwall now lives in a care home in Mission, B.C.

The Alberta Proceedings

- [8] On February 5, 2015, Mr. Pellerin sought an order from the Alberta Court of Queen's Bench appointing him as Ms. Dingwall's guardian and trustee. Ms. Pellerin opposed the order and, in September 2015, filed an application to move the proceedings to British Columbia. Her application was never heard and the proceedings continued in Alberta. Ms. Pellerin made both jurisdictional and substantive arguments opposing Mr. Pellerin's application.
- [9] Madam Justice Nixon granted the order sought on June 7, 2016: *Re Dingwall* (7 June 2016), Calgary DA01-013787 (A.B.Q.B.). She determined the court had the jurisdiction to make that order pursuant to s. 45 of the Adult Guardianship and Trustee Act, S.A. 2008, c. A-4.2, as Ms. Dingwall's return to Alberta in 2014 established the requisite ordinary residence. The order appointing Mr. Pellerin guardian provided him with the authority to make decisions respecting: Ms. Dingwall's health care; where, with whom, and under what conditions she is to live, either permanently or temporarily; and the carrying on of any legal proceeding not related primarily to Ms. Dingwall's financial matters.
- [10] The order appointing Mr. Pellerin as trustee applied to all of Ms. Dingwall's personal property and to all of her real property in Alberta, and also provided:

2.3 To the extent it is recognized by the courts of, and subject to compliance with the laws of British Columbia, this order applies to the following real property of [Ms. Dingwall]:

Municipally known as 5786 Riverside Street, Abbotsford BC ...

2.6 The trustee has no authority to sell, transfer, or encumber real property of the adult, or to purchase on behalf of the adult, except as follows:

- The trustee may lease real property of the adult for a term not exceeding 3 years;

· The trustee may register this order against the title to the adult's real property, and the Registrar of Land Titles and Survey Authority of British Columbia shall register this order;

T The trustee is authorized to:

· Sell the Adult's property municipally known as 5786 Riverside Street, Abbotsford, British Columbia V4X 1T6 and legally described as Lot 1 Except: Parcel "C" (Reference Plan 5370) Section 10 Township 17 New Westminster District Plan 888 excepting thereout all mines and minerals (the "Property"). Proceeds from the sale of the Property, after payment of all encumbrances, legal costs, and outstanding taxes (if any) be deposited into a Canadian Bank in Calgary, Alberta which is owned solely by the Adult and under the control [of] the Trustee on behalf of the Adult.

The British Columbia Proceedings

- [11] On May 5, 2016, a few weeks prior to the hearing before Nixon J., Ms. Pellerin filed a petition with the Supreme Court of British Columbia seeking a declaration that her mother was incapable of managing herself or her affairs due to mental infirmity. Ms. Pellerin also sought an order appointing her as committee of her mother's person and estate under the Patients Property Act, R.S.B.C. 1996, c. 349.
- [12] Mr. Pellerin applied to have the petition stayed or dismissed pursuant to R. 21-8 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], and the Court Jurisdiction and Proceedings Transfer Act, S.B.C., 2003, c. 28 [CJPTA]. He argued the Supreme Court did not have jurisdiction to hear Ms. Pellerin's petition. In the alternative, he argued that if the court did have jurisdiction, it should decline to exercise that jurisdiction as Ms. Pellerin had already attorned to the jurisdiction of the Alberta Court of Queen's Bench. He also sought costs against Ms. Pellerin.
- [13] The PGT made submissions on the applications, contending the court had jurisdiction to hear the petition, and that it should not decline to exercise jurisdiction, both to address the limits of the enforceability of the Alberta order and to protect the interests of incapable persons.
- [7] The Court of Appeal allowed the appeal on the basis that the trial judge, in his reasons indexed at 2017 BCSC 680, erred in making orders in a matter over which he declined jurisdiction, but the trial judge's stay of the petition was upheld. Therefore, Mr. Pellerin remained Ms. Dingwall's guardian and trustee pursuant to Justice Nixon's order.
- [8] I note that in Pellerin CA, there was a request made for Ms. Pellerin to pay specials costs. The Court of Appeal decision provides:
- [51] This Court has held that special costs awarded to punish and deter a litigant's reprehensible conduct only have regard to such conduct during the course of litigation: *Smithies [Holdings Inc. v. RCV Holdings Ltd.]*, 2017 BCCA 177] at para. 134.

- [52] In my view, on the record before this Court, Ms. Pellerin did nothing reprehensible in bringing her petition to the Supreme Court of British Columbia. Whatever view one takes of her "surreptitious actions" in relocating Ms. Dingwall from Alberta to British Columbia, or in continuing to not follow the Alberta court's orders as Mr. Pellerin alleges, that conduct is properly characterized as pre-litigation conduct. Under the bright line rule adopted in *Smithies*, such conduct is not to be considered in awarding special costs. Mr. Pellerin cannot point to Ms. Pellerin engaging in any reprehensible conduct during the course of this litigation, and accordingly his claim for special costs must fail.
- [9] The Court of Appeal varied the chambers judge's order that permitted Ms. Pellerin "solicitor and client costs" payable from Ms. Dingwell's estate to an order that Ms. Pellerin is not entitled to costs. The issue of the determination of costs payable by Ms. Pellerin was remitted back to the judge.
- [10] The petitioner then sought an order of vacant possession of the Property. This petition was heard before Douglas J. on July 30, 2019. Her relevant factual findings in *Pellerin SC* are:
- [2] Ms. Dingwall suffers from advanced dementia and currently resides in a care home. The petitioner says the estate of Ms. Dingwall is currently being depleted as the respondent, Ms. Julli Mary Cecile Pellerin ("Ms. Pellerin"), daughter of Ms. Dingwall, has been living at the Property for several years while paying nothing for her use or occupation.

POSITIONS OF THE PARTIES

- [3] It is the petitioner's position that:
- (a) The Property must be sold to:
- (i) Prevent further depletion of the estate by Ms. Pellerin; and
- (ii) Fund Ms. Dingwall's ongoing care needs; and
- (b) The Property must be vacant in order for it to be sold given Ms. Pellerin's efforts to obstruct the sale of the Property to date.
- [4] The petitioner says Ms. Pellerin's continued use and occupation of the Property is a drain on the estate of Ms. Dingwall which continues to pay the Property taxes, mortgage payments, and other costs associated with maintaining the Property while receiving no rental income from Ms. Pellerin.
- [5] Ms. Pellerin represented herself at the hearing of this petition. She was aware this matter was initially returnable on May 28, 2019 before Madam Justice Forth who adjourned it to July 30, 2019 on a peremptory basis. Ms. Pellerin understood this to mean the hearing of the petition would proceed on its merits on July 30, 2019. She filed no response, sought no further adjournment, and confirmed she wished to proceed without counsel.

- [6] At the hearing of this petition, Ms. Pellerin effectively conceded she needs to vacate the Property. It is apparent from the evidence before this court, the particulars of which I do not propose to review in detail, that relationships within this family have become very acrimonious.
- [7] Ms. Pellerin focused her submissions on why she should be given more time to vacate the Property. She initially asked that she be given until the end of January 2020 within which to do so. She later suggested the end of November 2019 would allow her sufficient time to save some money, to pack and move her possessions, and to find a new place to live. Ms. Pellerin said she is not amenable to allowing a real estate agent access to the Property in the interim to permit the petitioner an opportunity to begin the process of listing, showing, and selling it.

THE FACTS

Representation of Ms. Dingwall

- [8] On February 5, 2015, the petitioner filed an application in the Alberta Court of Queen's Bench seeking an order naming him as guardian and trustee of the estate of his mother, Ms. Dingwall. On June 7, 2016, Nixon J. made such an order.
- [9] Despite the commencement of those proceedings in Alberta, Ms. Pellerin filed a petition in B.C. on May 5, 2016, seeking to be appointed as committee of the person and estate of Ms. Dingwall. Mr. Justice Brown declined jurisdiction. The petitioner's appeal of that decision was subsequently allowed by the B.C. Court of Appeal. The committee order from Alberta remained in effect.
- [10] On January 24, 2019, by order of the Lieutenant Governor in Council, the petitioner was appointed committee of the estate of Ms. Dingwall in the Province of British Columbia pursuant to s. 31(1) of the Patients Property Act, R.S.B.C., c. 349.

Ms. Pellerin's Occupation of the Property

- [11] Ms. Pellerin has lived at the Property for approximately ten years. During that time, she has paid nothing for her use and occupation of the Property, except for one \$1,300 payment ordered by Madam Justice Forth on May 28, 2019, and a second payment in the same amount (which she provided to the petitioner's counsel in court on July 30, 2019), representing the second payment ordered payable by Madam Justice Forth on or before July 1, 2019. Ms. Pellerin says she has incurred expenses to maintain the Property while she has lived there, although that statement was unsubstantiated by any evidence.

- [12] On August 9, 2016, Ms. Louise Schneider, solicitor to the Public Guardian and Trustee of B.C. (the "PGT"), filed a caveat on title to the Property to protect the interests of Ms. Dingwall given concerns regarding her lack of mental capacity to manage her own legal and financial affairs. Counsel for the petitioner advised the court the PGT has confirmed it does not require notice of any application regarding the Property and considers the petitioner able to sell the Property in his capacity as committee.

Need to Sell Property

- [13] Ms. Dingwall was diagnosed with Alzheimer's disease in 2012, at which time she was living with the petitioner in Calgary, Alberta. Extracts from the medical records of family physician, Dr. Peter Barnsdale, indicating Ms. Dingwall has been diagnosed with severe dementia of mixed etiology, were in evidence.
- [14] The evidence filed by the petitioner on this petition indicates the current monthly cost of have Ms. Dingwall remain in a care facility is \$1,621.26.
- [15] The petitioner's counsel says Ms. Pellerin has caused judgments to be registered against the Property in a manner contrary to the best interests and intentions of Ms. Dingwall and thereby caused the estate to incur costs.
- [16] The petitioner's efforts to secure rent from Ms. Pellerin have been unsuccessful and he says it is therefore necessary to sell the Property in order to preserve Ms. Dingwall's estate and to ensure there are adequate resources to provide for her ongoing care needs.

Petitioner's Attempts to Sell Property

- [17] By letter dated October 19, 2018, the petitioner's lawyer, Mr. Moonje, wrote to Ms. Pellerin to advise her the estate intended to sell the Property in order to generate the funds necessary to pay for Ms. Dingwall's long-term care needs. In his letter, Mr. Moonje noted previous correspondence to Ms. Pellerin regarding her ongoing occupation of the Property had gone unanswered.
- [18] Mr. Moonje enclosed a tenancy agreement for execution by Ms. Pellerin, together with a request that she enter into a month-to-month lease in the amount of \$925 and provide him with a set of keys to the Property. Ms. Pellerin was advised that, in the absence of a tenancy agreement, she could not continue to occupy the Property and would need to make arrangements to move elsewhere.
- [19] Ms. Pellerin did not response to Mr. Moonje's requests. Accordingly, he advised her by letter dated November 27, 2018, that proceedings to obtain vacant possession of the Property would be initiated "shortly".

- [20] On February 25, 2019, in his capacity as committee, the petitioner entered into a listing agreement with REMAX agent, Ms. Dale Kler, to sell the Property. The petitioner says Ms. Pellerin obstructed attempts to sell the Property by refusing to allow the realtor access to the Property for the purpose of showing it to prospective purchasers. The petitioner says he does not have keys to the Property and that Ms. Pellerin has a large guard dog and a "Beware of Dog" sign at the Property.
- [21] Ms. Kler's sworn affidavit was in evidence. It supports the petitioner's position that Ms. Pellerin has obstructed efforts to list and sell the Property. Ms. Kler deposes she has received multiple requests to view the Property which she has necessarily declined because she has been unable to access the Property.
- [11] The order made by Douglas J. pursuant to her Pellerin SC decision (the "Douglas Order") was that the respondent would have to vacate the Property on or before noon on September 30, 2019.
- [12] The respondent did not vacate the property by that date, which resulted in further costs being incurred by the petitioner. A summary of the steps taken and the filing of the liens are set out in my Oral Reasons. The following facts are relevant:

Background Facts

- [3] The petitioner has been the guardian and trustee of his mother and her estate since 2016. Ms. Dingwall has dementia and resides in a care facility, and the petitioner wishes to sell the Property in order to pay for her care needs.
- [4] Until recently, Ms. Pellerin has been living in the Property rent-free. The petitioner brought an application before Justice Douglas seeking an order that Ms. Pellerin vacate the Property to permit the petitioner to sell it, as Ms. Pellerin refused to pay rent or to cooperate with the sale. Justice Douglas granted the order and gave Ms. Pellerin until noon on September 30, 2019 to vacate, which was approximately one year after she first received notice that the petitioner wished to sell the Property.
- [5] On September 23, 2019, counsel for the petitioner, emailed Ms. Pellerin, to remind her of the need to act on the deadline in the reasons of Justice Douglas.
- [6] On September 24, 2019, Ms. Pellerin registered [two builders liens (the "Liens")] each for \$751,103.60 against title to the Property. Each claim of lien provides that the sum is owed to Ms. Pellerin and that she was engaged by Ms. Dingwall. Under the description of the work done and material supplied, the one lien describes "LABOUR & Building Materials supplied for [the Property]", and the other is described as a "PROTEST" claim of lien and says "Refer to Bill-charging instrument Labour & Materials supplied for Home".
- [7] On the same day the Liens were filed, Ms. Pellerin issued to Dorothy Dingwall a bill for "goods and services" accumulated over ten years, from 2009 to 2019, with a total owing of \$751,103.60. She sought payment to herself. No evidence has been produced to support this

figure, although Ms. Pellerin said in her submissions before me that it is the value of the work that she and her brother Maurice have put into the Property over the years, and it includes \$213,000 that she owes to a contractor for renovations he performed on the Property beginning in 2011. She claims that this contractor will be providing a bill for the past work he has performed. She says that Ms. Dingwall authorized her to perform whatever work needed to be done on the Property, and they agreed to work out the repayment in the future. These were all oral discussions with Ms. Dingwall and there is nothing in writing to support this.

- [8] Ms. Pellerin did not vacate the Property by noon on September 30 as required by the order of Justice Douglas. At some time prior to October 3, 2019, a sign was posted on the Property which stated:

NOTICE

A Claim of Debt has been placed on this

Property... AN OUTSTANDING AMOUNT has NOT

BEEN PAID -- under Section 38, 39, 40 Criminal Code of Canada.

I Claim Lawful possession of the property until All Debts are Satisfied.

A Builders lien has been filed

PROTEST DURESS

FEE Schedule APPLies

50K/person/violation.

- [9] A Writ of Possession was filed on October 8, 2019 to the Sheriff to cause the petitioner to have possession of the Property.
- [10] A bailiff was hired to facilitate the removal of Ms. Pellerin from the Property, and the Writ of Possession was executed on October 23, 2019. The costs incurred for the services of the bailiff were just under \$7,000.
- [11] On November 14, 2019, counsel for the petitioner emailed Ms. Pellerin asking her to remove the Liens by 4:00 p.m. on the following Monday, and notifying her that a court proceeding would be initiated if she failed to do so. Ms. Pellerin says that she did not review this email until November 22, at which time she immediately responded and advised the petitioner that the Liens would not be removed. The position taken by Ms. Pellerin was that Justice Douglas had made mistakes and had failed to "apply Equity where indeed it does apply." She states that "Equity prevails over nonsense and deception".

- [12] On November 25, 2019, a contract of purchase and sale of the Property was entered into, with a purchase price of \$540,000 and a closing date of December 18, 2019. The contract stipulates that the completion date may be moved by up to 30 days in the event the Liens are not cleared from title by the agreed-upon date. The petition to have the Liens removed from title was filed on the same day.
- [13] On December 2, 2019, the petitioner obtained an order from Master Harper to have this petition heard on short leave. The order set out the hearing date for December 9 on the condition that delivery of the petitioner's affidavits and notice of the hearing be provided to the respondent before 4:00 p.m. on that day via email. The petition response and accompanying materials were to be delivered before 2:00 p.m. on December 6. The petitioner served Ms. Pellerin with the materials and provided notice of the hearing by email in accordance with the terms of the order. No petition response affidavit was filed or served by Ms. Pellerin.
- [14] Ms. Pellerin says that she did not see the email serving her with the documents until December 5, 2019. She says the reason for this is that she does not have time to go through her emails every day because her time is occupied working as a first-aid attendant.

Preliminary Issue - Adjournment of the Hearing

- [15] At the beginning of the hearing, Ms. Pellerin asked that the matter be adjourned to allow her to have more time to review the documents and to obtain counsel to represent her on the matter. She said that she had not read the materials and needed more time to respond.
- [16] When asked what sort of materials or evidence she would produce if given more time, Ms. Pellerin said she would provide affidavit evidence of the work that she, her brother Maurice, and the contractor performed on the Property, as well as evidence of the suffering that she, Maurice, and the contractor have undergone. She also submitted that she would provide evidence of a realtor who will show that the Property is being sold for a price below market value.
- [17] With respect to obtaining counsel, Ms. Pellerin conceded that she has not taken any steps to look for a lawyer since receiving the petitioner's emails. She says that the reason for this is because she did not have any of the materials and she expected to be provided more materials at the hearing on December 9. The filed materials had been attached to the emails that were sent to her. She submits that she would not be able to retain counsel until January at the earliest because no lawyer will take on work at this time of year.

- [18] I find that it is not in the interests of justice to grant an adjournment of this matter. Ms. Pellerin has had notice that the petitioner wished her to remove the Liens, and that he would be initiating a court proceeding if she failed to do so, since at the very latest, November 22. She has known that the petitioner has been making efforts to sell the Property for over a year. Despite this, she admits that she has taken no steps to seek the assistance of a lawyer. Her submission that no lawyer would be available to assist her is purely speculative.
- [19] Ms. Pellerin admits that she read the emails from the petitioner's counsel with the attached materials on December 5, but when she came to court for the hearing on December 9, she said that she had not read the materials. The materials consist of three affidavits and the petition which total 35 pages.
- [20] While I understand that Ms. Pellerin is frustrated by the shortened time-frame for the hearing of this matter, it is important for the petitioner to be able to sell the Property so that he can pay for Ms. Dingwall's care, as the reasons of Justice Douglas make clear. It is a responsibility of all parties to ensure they are checking their emails in a timely manner and making every effort to prepare themselves for court appearances.
- [13] I found that the liens were not properly filed and should be removed. In respect to the respondent's failure to vacate the Property, I noted:
- [41] The failure of Ms. Pellerin to comply with the order to vacate the Property is also a concern. It appears that Ms. Pellerin took the position that because she had filed the Liens she was entitled to stay in lawful possession of the Property until the debts were satisfied. This position was legally incorrect and contrary to the order of Justice Douglas and as such Ms. Pellerin had to vacate the Property. This resulted in the petitioner having to incur additional costs to enforce Justice Douglas's order.
- [42] In the future, Ms. Pellerin would be advised to seek legal advice before she decides to violate a court order since her violation, in this case, was on a mistaken legal belief.

Legal Test

- [14] The test for awarding special costs requires some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceeding, which makes such costs desirable as a form of chastisement: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.). In *Garcia*, the Court explained at para. 17 that "reprehensible" conduct includes scandalous or outrageous conduct, but also encompasses milder forms of misconduct deserving of rebuke. A weak claim alone is not a sufficient basis on which to award special costs: para. 23.
- [15] In the context of a lien claim, the Court in *Concord v. 371773 B.C. Ltd.*, 2002 BCSC 900, considering the following factors:

[27] In my opinion, the plaintiff's failure to come to terms with the manifest deficiency in its claim at an early stage in the proceedings represents the sort of reckless indifference to the legitimate interests of the defendant as is envisioned by the authorities which cite reprehensible conduct as a basis for awarding special costs.

[28] In the present case I find the following factors support such a finding:

1. The claim of lien when filed was clearly out of time.
2. The agent of the plaintiff in making the claim of lien used a fictitious date to attempt to establish that it fell within the statutory time frame.
3. It became evident that one of the principal issues between the plaintiff and the defendant was whether the claim of lien was filed in a timely way.
4. The contract said to found the claim of lien was between the plaintiff and a third party and hence the need for the plaintiff to provide full and frank disclosure in support of its claim of lien was greater than if the defendant was privy to the contract and had knowledge equal to the plaintiffs.
5. The defendant was compelled to incur considerable expense in defending against this action which could have been resolved at an earlier date with significantly less expense involved.

Position of the Petitioner

[16] The petitioner submits that the respondent made unsubstantiated submissions at the hearing of this petition on December 9, 2019. He asserts that most of the factors in the Concord decision are present here. He points to the added legal fees the petitioner has incurred to deal with the actions of the respondent in filing the liens. He submits there is no reasonable basis to have Ms. Dingwall's estate pay legal fees, which are needed to pay her care costs, arising from the filing of the "bogus liens".

Analysis

- [17] The actions of the respondent leading up to the filing of the liens demonstrated a callous disregard for the Douglas Order, which required her to vacate the Property on September 30, 2019 by noon. She used the excuse of filing the liens as a reason not to vacate the Property. There was no legal basis for her taking this position, and the only reasonable explanation for her doing so was to attempt to justify her disregard of the Douglas Order, since she was clearly aware that the petitioner had the authority to sell the Property by this time.
- [18] The respondent sent to Ms. Dingwall a "bill of sale" claiming that the work done and material supplied amount to \$751,103.60. There was no evidence, including in the evidence that the respondent said she would bring if permitted time to adjourn the hearing, that supports that this amount of work and supplies were ever provided.

- [19] I note that during her oral submissions, she claimed that some contractor had performed renovation work on the Property to the amount of \$213,000. She was not able to produce any invoice for the work done, claiming that the contractor was going to provide a bill for the past work he had performed. She claims the work had been performed beginning in 2011. It is hard to comprehend why a contractor would not have issued any invoice as of December 2019 for work that commenced 8 years earlier. In any event, the only individual that would have a claim to file a lien would be the contractor if the work had been properly authorized and completed.
- [20] The respondent posted a notice on the Property alleging that a claim in debt had been placed against the Property and claimed that she had lawful possession of the property until all debts were paid. There was no legal basis for her taking this position as she was aware of the Douglas Order requiring her to vacate the Property and that the petitioner had legal authority to sell the Property as committee for Ms. Dingwall. The threat in the notice of a \$50,000 person violation was an empty threat designed to intimidate the petitioner from enforcing the Douglas Order or to intimidate potential buyers from showing interest in the Property.
- [21] In my view, the actions taken by respondent in the sending of the bill of sale, posting of the notice, and filing of the liens does constitute reprehensible behavior.
- [22] The petitioner is responsible for providing care to their mother, Ms. Dingwall. The steps taken by the respondent continue to cause her mother's estate to be depleted by legal fees. She used the filing of the liens with a view to extract a resolution, despite the fact that she had no legal basis for filing the liens and the liens were filed out of time. The attempt to use the removal of the liens as a bargaining tool also constituted reprehensible behaviour warranting special costs.
- [23] In light of all the circumstances, I find that for this petition, the respondent should pay special costs to the petitioner, and I so order.
- [24] The respondent's signature on the form of the order arising from these reasons is dispensed.
- "Forth, J."

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