
CANADA / JUDGMENT

Korol (Re)

2014 BCCA 380

COURT

British Columbia Court of Appeal

DECIDED

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2014 BCCA 380 Korol (Re)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Korol (Re),

2014 BCCA 380

Date: 20141007

Docket: CA041017

In The Matter of the Patients Property Act

R.S.B.C. 1996, Chapter 349 and amendments

Re: Violet Martha Korol

Between:

Wayne Darrell Korol

Respondent

(Petitioner)

And

The Public Guardian and Trustee of British Columbia

Respondent

(Respondent)

And

Allen Bruce Korol

Appellant

(Respondent)

Before:

The Honourable Mr. Justice Harris

The Honourable Madam Justice Stromberg-Stein

The Honourable Mr. Justice Goepel

On appeal from: Orders of the Supreme Court of British Columbia,
dated June 3, 2013 (Korol (Re), 2013 BCSC 979) and September 3, 2013,
New Westminster Docket No. S149810.

Counsel for the Appellant:

J. Dubas

Counsel for the Respondent

Allen Bruce Korol:

K. Deane-Cloutier

Place and Date of Hearing:

Vancouver, British Columbia

September 18, 2014

Place and Date of Judgment:

Vancouver, British Columbia

October 7, 2014

Written Reasons by:

The Honourable Mr. Justice Goepel

Concurred in by:

The Honourable Mr. Justice Harris

The Honourable Madam Justice Stromberg-Stein

Summary:

Appeal from the orders of a chambers judge cancelling a Certificate of Pending Litigation ("CPL") and setting aside an order restricting dealings with property ("Restraining Order") that are the subject matter of a contested family law action. In 1961 the appellant, Allen, and his spouse,

Violet, were married. They separated in the early 1990s. In October 2011 Allen commenced a family law action claiming a 50% beneficial interest in two properties registered in Violet's name. Allen applied for and obtained CPLs against both properties. Under a power of attorney their son Wayne filed caveats and sought and obtained the Restraining Order. In March 2013, Wayne commenced these proceedings seeking orders appointing him committee of Violet's person and affairs. He also sought an order cancelling the CPL and setting aside the Restraining Order. The chambers judge granted all of the orders Wayne sought. Allen appeals the cancelling of the CPL and the setting aside of the Restraining Order.

HELD: Appeal allowed. The chambers judge misdirected himself when he cancelled the CPL and set aside the Restraining Order on the basis that such orders were in the best interest of the patient. In considering whether to cancel a CPL or a restraining order a judge must consider the appropriate statutory criteria. Allen was entitled to bring the application for reconsideration and special costs were unwarranted. Wayne had no standing to apply in his own right for either order.

Reasons for Judgment of the Honourable Mr. Justice Goepel:

INTRODUCTION

- [1] The respondent Wayne Darrell Korol ("Wayne") brought a petition pursuant to the provisions of the Patients Property Act, R.S.B.C. 1996, c. 349 (the PPA), seeking his appointment as committee of the person and affairs of his mother, Violet Martha Korol ("Violet"). In the petition he also sought orders cancelling a certificate of pending litigation ("CPL") and setting aside an order of Master Caldwell made pursuant to s. 284 of the Land Title Act, R.S.B.C. 1996, c. 250 (the "LTA") (the "Restraining Order"). Both the CPL and the Restraining Order concerned properties which are part of the subject matter of a contested family law action between Violet and her husband, the appellant, Allen Bruce Korol ("Allen").
- [2] The chambers judge appointed Wayne committee of Violet's person and affairs. He set aside the Restraining Order and cancelled the CPL. Allen now appeals the orders setting aside the Restraining Order and cancelling the CPL.
- [3] For the reasons that follow I would allow the appeal.

BACKGROUND

- [4] Allen and Violet were married on March 4, 1961. They are now 79 and 75 years old. They have four children who are all now adults. Throughout the marriage Allen worked as a land developer in British Columbia and elsewhere, assembling large parcels of land for commercial development. Allen indicates that Violet was a homemaker who raised the parties' children and assisted him in looking after the properties in British Columbia.
- [5] On April 15, 1978, the parties purchased a home on Chartwell Drive in West Vancouver ("Chartwell"). Title to Chartwell was placed in Violet's name alone. Chartwell became the family residence and Violet continues to reside there.

- [6] In the 1990s Allen and Violet provided money to the three eldest children to purchase condominiums in Langley. One of the children had difficulty maintaining his mortgage commitments and his property was subsequently transferred to Violet ("Langley").
- [7] Allen and Violet separated in the early 1990s. In the 1990s Allen started doing business in Costa Rica and began to reside there the majority of the time. In his material he indicates that after separation he continued to forward significant sums to support Violet, some of which he claims were used to upgrade and maintain Chartwell. He alleges that he advanced approximately \$1,200,000. He says that he and Violet have an understanding that Allen has a 50% beneficial interest in all real property registered in Violet's name including Chartwell and Langley.
- [8] After the parties separated Allen indicates that he took steps in Costa Rica to annul the marriage. On July 8, 1999 he purported to marry in Florida. On his application to marry, Allen stated that his previous marriage had ended as a result of an annulment issued in 1993 based on the laws relating to annulment in Costa Rica.
- [9] At the time of the initial application in this proceeding it was not clear whether the annulment was valid. More importantly it was not known whether Allen and Violet were still married. What was clear was that they had lived separate and apart for some 20 years.
- [10] In January 10, 2008, Violet granted Wayne a power of attorney. He was also named as executor of her will, which will is dated April 1, 2010.
- [11] On October 11, 2011, Allen commenced a family law action (Vancouver Registry E113148) naming Violet and Wayne as respondents. In the family law action Allen claims a 50% beneficial interest in Chartwell and Langley. He alleges in the pleading that since 1996 he has transferred approximately \$1,200,000 to Violet's benefit. In an alternative allegation, he alleges that Wayne has taken monies forwarded to Violet and used them for unrelated purposes. He seeks an order of compensation and damages against both Violet and Wayne for an amount up to \$3,000,000 on the basis of breach of express trust, resultant trust, constructive trust, restitution and quantum meruit. As part of that family action Allen applied for and ultimately registered CPLs against Chartwell and Langley.
- [12] Under the authority of the power of attorney, Wayne filed caveats in regard to Chartwell and Langley. He then filed a petition seeking orders pursuant to s. 284 of the LTA prohibiting dealings with those properties. In that proceeding, Master Caldwell made the Restraining Order on December 1, 2011. The Restraining Order prevented further dealings with Chartwell or Langley pending further orders of the court. In addition the Restraining Order directed that issues concerning the equity in Chartwell and Langley and an accounting in regard to those properties would be determined in the family law action that Allen had commenced. Allen consented to the terms of the Restraining Order.

- [13] On March 13, 2013, Wayne commenced these proceedings for an order that Violet, by reason of mental infirmity arising from disease, age or otherwise, was incapable of managing herself and her affairs and for an order appointing him committee of Violet's person and affairs without the necessity of furnishing a bond or other security. He sought an order cancelling the CPL against Chartwell and setting aside the Restraining Order. In support of the application he filed his own affidavit and affidavits of two medical practitioners, who each deposed that Violet was incapable of managing her affairs.
- [14] At the time of the application Violet was 73 years old and retired. She continued to live at Chartwell with the assistance of a full-time caregiver. Her income was indicated to be approximately \$3,200 per month, comprised of Canada Pension and Old Age Security benefits plus rental income of \$2,600 from Langley and an Arizona property. Her monthly expenses are stated to be \$9,175.
- [15] The materials indicated that the 2013 assessed value of Chartwell was \$2,654,000 while the assessed value of Langley was \$301,000. Both properties are subject to lines of credit mortgages. The mortgages on Chartwell total approximately \$550,000. Based on their assessed value the equity in Chartwell and Langley at the time the application was brought was \$2,113,017 and \$245,942 respectively.
- [16] A market value appraisal of Chartwell dated June 12, 2013 was also in evidence. That appraisal valued Chartwell at \$2,915,000.
- [17] In his affidavit Wayne deposed that to pay her living expenses Violet had borrowed against lines of credit on the Chartwell property. He noted that as a result of limitations set out in the Restraining Order she could not borrow any more against that property. Similarly, he deposed that Violet had used lines of credit against Langley for the upkeep and maintenance of Langley and another property registered in her name that was located in Arizona.
- [18] In his response to the petition Allen raised some questions concerning the medical evidence, but indicated he was not actively opposing the appointment of a committee. Allen's position was that Wayne should not be appointed committee because of potential conflicts of interest. He submitted that the proper choice of committee would be the Public Guardian and Trustee of British Columbia ("PGT").
- [19] Allen opposed cancelling the CPL or varying the Restraining Order. He submitted that the evidence did not justify the wholesale cancelling of the CPL or variation of the Restraining Order given uncertainty concerning Violet's medical situation and future needs.
- [20] In its response to the petition, the PGT indicated that Wayne appeared to be the appropriate person to act as committee, save and except for the fact that he is a respondent in the family law action. It noted the exact nature and extent of the claim against Wayne in the family law action was unclear. It suggested that if Wayne was named as committee, there should be protections in place in respect of his authority to deal with Violet's real property. The PGT proposed that any order should contain specific terms that are standard in circumstances in

which a committee is appointed in lieu without a bond.

THE CHAMBERS HEARING

[21] Much of the chambers hearing was dedicated to discussion as to the appropriateness of Wayne acting as committee. Submissions were also made concerning the merits of the family law action and the strength of Allen's potential claim to Chartwell and Langley. In regard to the CPL and Restraining Order, Wayne's stated concern was their impact on his ability to raise money for Violet's ongoing care. In the course of submissions Wayne's counsel indicated that one alternative they were considering was to obtain a reverse mortgage on Chartwell. In the course of that submission Wayne's counsel said as follows:

And so it is not clear that she would in fact be able to get a reverse mortgage, but if she did, basically what would happen is they would pay off the two lines of credit on Chartwell at 550 and they would need to have the CPL filed by Allen in the family matter discharged, obviously it could go back on immediately after they get their security. [Emphasis added.]

[22] The chambers judge released written reasons on June 3, 2013. The reasons are indexed at 2013 BCSC 979. He noted several authorities for the proposition that the determination of choice of committee under the PPA must be based on the best interests of the patient: *Pineo (Re)*, [1985] B.C.J. No. 1171 (S.C.); *Mawdsley v. Austin* (1984), 14 D.L.R. (4th) 315 (B.C.S.C.); and *Lee (Re)*, 2002 BCSC 838. He concluded that even if there was a possible conflict between Wayne and his mother, the extent of same was minor in relation to the amount involved in the estate and that Wayne was the best person to defend Violet's interests. In the result he appointed Wayne committee.

[23] At para. 27 of his reasons the chambers judge noted that the PGT had recommended what he understood to be standard terms in lieu of Wayne providing a bond. Those terms, which he held should form part of the order, are:

- a) the Committee is restrained from disposing of or encumbering the real property specified in the Schedule to the Affidavit of Kindred and Fortune without further order on notice to the Public Guardian and Trustee or without the prior written consent of the Public Guardian and Trustee.
- b) If the Committee sells any of the real property, the net sale proceeds shall be transferred from the conveyancing lawyers' trust account to a financial institution where an investment has been established by the Committee in compliance with the Trustee Act. The Committee shall have no access to the capital of the investment, other than for reinvestment purposes, without the prior written consent of the Public Guardian and Trustee. The financial institution and any other successor institutions shall be served with a copy of the order and proof of service of the order shall be provided to the Public Guardian and Trustee forthwith thereafter.

[24] His comments in regards to the CPL and the Restraining Order were limited to the

following:

[28] With the foregoing precautions in place I am satisfied that the Certificate of Pending Litigation should be discharged as it relates to the West Vancouver property.

...

[30] The order of Master Caldwell of December 11, 2011 is hereby set aside in its entirety subject to the terms of this order as set out in paragraph 27 of these reasons for judgment.

THE RECONSIDERATION APPLICATION

[25] On August 20, 2013, Allen filed a notice of motion seeking reconsideration of the judgment. He sought orders that Chartwell could not be sold without his approval or consent, that any borrowings against Chartwell be subject to an accounting in the family law action, and the CPL on Chartwell only be postponed to allow certain specified financing to be put in place. In support of his application Allen referred specifically to the comments of Wayne's counsel at the initial hearing that the CPL could go back on the property after the new financing was arranged.

[26] In advance of the reconsideration hearing, Allen had been able to confirm that there was no annulment registered in Costa Rica which would have ended or dissolved Violet and Allen's marriage. In the result they are still legally married under the laws of Canada.

[27] On August 30, 2013, Allen commenced a second family law proceeding (Vancouver Registry E132519) seeking a division of assets under the Family Law Act and in the alternative under the Family Relations Act. He also seeks a divorce. In the second family law proceeding, Allen again sought a CPL over Chartwell and Langley.

[28] The reconsideration application came on before the chambers judge on September 3, 2013. He gave brief unreported oral reasons dismissing the application. He said as follows:

[1] I think what we are doing here is -- I agree with your friend that this is not the appropriate forum to deal with the protection of your client's position. I do not believe that reconsideration is merited in the circumstances here, although I am empowered, I have the discretion, to be able to proceed in that regard. I really do not think it is necessary here to -- because I do not see any potential miscarriage of justice at this point in time. My previous order, I think it was June 5th, I am not -- I may be wrong in that.

...

[3] The order and the CPL is to be discharged, not replaced on title, and I am not going to put limits or conditions on the borrowing as suggested because I do not believe -- as I said, in this application, I am dealing with protection of the patient, in particular, and I see no particular prejudice to Allen Korol on this matter.

[29] He ordered Allen to pay special costs of the reconsideration application to Wayne.

- [30] On November 22, 2013 a justice of this court stayed the order setting aside the Restraining Order.

ISSUES ON APPEAL

- [31] The appeal challenges the orders cancelling the CPL and setting aside the Restraining Order. Allen submits the orders were not supported by law or the evidence. He submits that the CPL and Restraining Order protected his interests in the subject properties.
- [32] Allen also challenges the order that he pay special costs of the reconsideration application. He submits that regardless of whether or not he was successful on that application, it was an application he was clearly entitled to bring and his conduct did not warrant the imposition of the sanction of special costs.
- [33] Wayne submits the chambers judge did not err in setting aside the CPL and the Restraining Order. He submits that the orders in question are discretionary in nature and the Court should not interfere with the exercise of the chambers judge's discretion. He submits that in matters under the PPA the best interests of the patient are paramount and guide all decisions. He submits that the CPL and Restraining Order were causing hardship to Violet because they had the effect of depriving her of the capacity to deal with her real property and thus depriving her of the funds she needed to survive. In the circumstances he submits no error was made.

FRESH EVIDENCE APPLICATION

- [34] In advance of the appeal both parties applied to admit voluminous amounts of evidence that was not before the chambers judge. This material included both "fresh evidence" and "new evidence". Fresh evidence is evidence that existed at the time of the chambers hearing while new evidence concerns events that took place after the hearing; *Scott v. Scott*, 2006 BCCA 504 at para. 22.
- [35] The usual test governing the admission of fresh evidence in a civil appeal is set out in *R. v. Palmer*, [1980] 1. S.C.R. 75 at 775-776 [Palmer]. This test requires the appellant to demonstrate that the evidence was not discoverable by reasonable diligence before the end of the trial; that the evidence is credible; that it would be practically conclusive of an issue before the court; and that if believed, the evidence could have affected the result of the trial.
- [36] The *Palmer* test does not apply to evidence of events that occurred subsequent to the order under appeal. This latter type of evidence must still be relevant to an issue under appeal and will only be admitted in rare cases: *Jens v. Jens*, 2008 BCCA 392 at para. 29.

- [37] The fresh evidence the parties wish to introduce concerns information and documents which have been disclosed in the course of the family law proceedings and go to the merits of the respective parties' position in those proceedings. None of that evidence is relevant in determining the issues before the Court on this appeal. I would dismiss all the fresh evidence applications for want of relevance.
- [38] The new evidence is related to financing that was registered against Chartwell since the orders of the chambers judge. On October 18, 2013, Wayne, in his capacity as committee, obtained a mortgage against Chartwell from the North Shore Credit Union in the principal amount of \$450,000. There is evidence of communication between Allen's counsel and counsel for the North Shore Credit Union that the Credit Union is not opposed to a CPL being placed on the property subject to a priority agreement, the terms of which have been negotiated to the satisfaction of the Credit Union and the parties. Under the terms of the priority agreement the aggregate principal, charges and interest of all mortgages secured on Chartwell shall not exceed \$1,450,000. The priority agreement would allow advances to Violet up to one-half of Chartwell's appraised value.
- [39] I would allow the North Shore Credit Union mortgage and the priority agreement to be admitted as new evidence on this appeal. The North Shore Credit Union Mortgage and the priority agreement indicate that continuation of the CPL and the Restraining Order would not prejudice Violet's interest.

THE ADJOURNMENT APPLICATION

- [40] On September 3, 2014, Wayne set down an application to adjourn the appeal pending completion of the family law trial. The trial is scheduled to be heard in April, 2015. In his written submissions in support of the adjournment application Wayne's counsel submitted that an adjournment would not prejudice Allen because the stay of the order setting aside the Restraining Order prevents Violet from dealing with Chartwell and Langley without court order, provides for an accounting in the family law action, and provides that those orders are without prejudice to the positions of either party in the family law action. In these circumstances he submitted there was no practical benefit in Allen having the CPL reinstated.
- [41] Allen did not consent to the adjournment. Ultimately Wayne withdrew the application and the appeal went ahead as scheduled.

DISCUSSION

A. Standard Of Review

- [42] The standard of review for discretionary decisions was recently restated by the Supreme Court of Canada in *Penner v. Niagara (Regional Police Board)*, 2013 SCC 19:

- [27] A discretionary decision of a lower court will be reversible where that court misdirected itself or came to a decision that is so clearly wrong that it amounts to an injustice: *Elsom v. Elsom*, [1989] 1 S.C.R. 1367, at p. 1375. Reversing a lower court's discretionary decision is also appropriate where the lower court gives no or insufficient weight to relevant considerations: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at pp. 76-77.

B. Analysis

- [43] The initial reasons of the chambers judge were mostly directed to the question as to whether or not a committee should be appointed and who that committee should be. Having decided that Wayne should be committee, he then stated the order should include the terms proposed by the PGT. Noting the inclusions of those precautions he then, without further explanation, cancelled the CPL and set aside of the Restraining Order.
- [44] Throughout the proceedings Wayne had submitted that the test to be followed in considering all of the applications was the best interest of the patient. In the reconsideration application the chambers judge, in his very terse reasons confirming that the CPL should be cancelled and the Restraining Order set aside, appears to have adopted that suggestion when he said:
- [3] The order and CPL is to be discharged, not replaced on title, and I'm not going to put limits or conditions on the borrowing as suggested because I do not believe --- as I said, in this application, I am dealing with protection of the patient, in particular, and I see no particular prejudice to Allen Korol on this matter. [Emphasis added.]
- [45] With respect, in deciding to cancel the CPL and to set aside the Restraining Order on the basis of the protection of the patient, the chambers judge misdirected himself and fell into error. The error is fatal for the portion of his order dealing with the CPL and Restraining Order. The CPL and the Restraining Order should not have been summarily removed on the basis that they were not in Violet's best interest.
- [46] While there is no doubt on the authorities that the best interest of the patient is the test in determining how the affairs of the patient are to be organized, that test does not spill over into litigation in which the patient is a party. In such litigation the fact that one of the parties acts through a committee is of no moment in determining how a particular application is to be decided.
- [47] In this case Allen and Violet are in the midst of a dispute concerning ownership of Chartwell and Langley. Allen claims he is entitled to a one-half interest in each property. The CPL and the Restraining Order give notice to third parties of his claim and protect his interests while the litigation is ongoing. The terms requested by the PGT that the chambers incorporated into the order were not for Allen's benefit. They are standard terms in committee proceedings when a committee is appointed without bond. They are intended to protect the estate of the committee against wrongdoing by the committee. They do not justify

cancellation of the CPL or setting aside the Restraining Order.

- [48] I should further note that in light of the priority agreement, continuing the CPL and the Restraining Order does not prejudice Violet. The priority agreement allows advances to Violet up to one-half the appraised value of Chartwell. In his aborted adjournment application Wayne acknowledged that the Restraining Order provided important benefits to Allen. He did not suggest it was in any way prejudicial to Violet.
- [49] In summary, the chambers judge misdirected himself as to the law that applies to cancelling the CPL and setting aside the restraining order. For the reasons indicated below, the cancelation of the CPL and the discharge of the Restraining Order must be considered in respect of the relevant LTA provisions (i.e., ss. 256-257 and 284).
- [50] There appears to have been no basis for the order of special costs against Allen on the reconsideration application. Given the position taken by Wayne's counsel at the initial hearing that the CPL could be reinstated on the property once new financing was in place, it was clearly appropriate for Allen to bring that matter to the judge's attention. Allen's conduct in doing so was not such that it should be the subject of rebuke or sanction: *Stiles v. B.C. (W.C.B.)* (1989), 38 B.C.L.R. (2d) 307 (C.A.) at 311. Even if the appeal had otherwise failed, I would have allowed the appeal of the special costs order.
- [51] The chambers judge applied the wrong test in setting aside the Restraining Order and cancelling the CPL. This court cannot consider the applications on their merits because Wayne brought these applications in his own name, not as committee. In his own name he had no standing to apply to cancel the CPL or set aside the Restraining Order.
- [52] CPLs are a creature of statute. Section 215 of the LTA allows a party claiming an interest or estate in land to register a CPL. Sections 256 and 257 of the LTA sets out the procedure that must be followed to remove a CPL. The relevant portions read:
- 256 (1) A person who is the registered owner of or claims to be entitled to an estate or interest in land against which a certificate of pending litigation has been registered may, on setting out in an affidavit
- (a) particulars of the registration of the certificate of pending litigation,
 - (b) that hardship and inconvenience are experienced or are likely to be experienced by the registration, and
 - (c) the grounds for those statements,
- apply for an order that the registration of the certificate be cancelled.
- ...
- (3) An application under this section must be made to the court in which the proceeding was commenced and must be brought

- (a) as an application in that proceeding, if the applicant is a party to the proceeding, or
- (b) by petition, if the applicant is not a party.

257 (1) On the hearing of the application referred to in section 256 (1), the court

- (a) may order the cancellation of the registration of the certificate of pending litigation either in whole or in part, on
 - (i) being satisfied that an order requiring security to be given is proper in the circumstances and that damages will provide adequate relief to the party in whose name the certificate of pending litigation has been registered, and
 - (ii) the applicant giving to the party the security so ordered in an amount satisfactory to the court, or
 - (b) may refuse to order the cancellation of the registration, and in that case may order the party
 - (i) to enter into an undertaking to abide by any order that the court may make as to damages properly payable to the owner as a result of the registration of the certificate of pending litigation, and
 - (ii) to give security in an amount satisfactory to the court and conditioned on the fulfilment of the undertaking and compliance with further terms and conditions, if any, the court may consider proper.
- (2) The form of the undertaking must be settled by the registrar of the court.
- (3) In setting the amount of the security to be given, the court may take into consideration the probability of the party's success in the action in respect of which the certificate of pending litigation was registered.

[53] The present application was decided without any reference to the governing legislation. Section 256 only allows "a person who is the registered owner or claims to be entitled to an estate or interest in land against which a [CPL] has been registered" to apply for an order that the registration be cancelled. At the time of the application Wayne was neither the registered owner nor a person entitled to an estate or interest in the land which was the subject of the CPL. While Wayne did hold a power of attorney he brought the application to discharge the CPL in his own name. Wayne had no standing to apply to cancel the CPL.

[54] Section 257 sets out the considerations that a judge must ponder when asked to cancel a CPL. Those considerations include whether damages might be an adequate remedy and whether one side or the other should post security. In determining those questions the judge may consider the merits of the proposed claim. In this case the judge did not consider any of the relevant statutory criteria. His failure to do so would be in itself fatal to the order setting aside the CPL.

- [55] It is important to also appreciate that restraining orders are obtained pursuant to the LTA as well. Any consideration as to whether they are to be discharged should be made in light of s. 284 and the case law which governs the grant and variation of injunctions obtained pursuant to that section.
- [56] In this case the Restraining Order specifically allowed Violet, the PGT and any committee of Violet to apply to set aside the Restraining Order on 14 days' notice to Allen and other interested parties. The order did not authorize Wayne in his personal capacity to do so. Wayne brought these proceedings in his personal capacity. As in the case of the CPL he did not have standing in his personal capacity to set the Restraining Order aside.
- [57] In fairness to the chambers judge I would be remiss if I did not note that counsel provided little assistance to the Court. None of the parties brought the governing provisions to the attention of the chambers judge or made submissions on them. Wayne's status to bring the applications was not challenged.

C. Conclusion

- [58] I would set aside paragraph 6 of the chambers judge's order which set aside the Restraining Order. Paragraph 7 of the order, which cancelled the CPL, should be replaced by an order allowing Allen to file a Certificate of Pending Litigation against Chartwell, respecting his claims in family law proceedings E113148 and E132519, upon signing the priority agreement to the North Shore Credit Union in the form agreed. The priority agreement should be attached to the order.
- [59] In regard to costs, I would set aside paragraph 11 of the order awarding special costs against Allen. Allen is entitled to party and party costs against Violet of the reconsideration application and the costs of the appeal. The PGT is, on terms agreed to by the parties, entitled from the estate to its costs of the appeal.
- [60] Allen placed before us a draft order which contained several other provisions. In my view those matters are all best dealt with in the family law proceedings and I do not believe it is necessary to make any further orders to dispose of this appeal.
- [61] I have not dealt with the merits of the applications. Any party with standing remains at liberty to apply in the court below on proper material to cancel the CPL or set aside the Restraining Order.

"The Honourable Mr. Justice Goepel"

I AGREE:

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Madam Justice Stromberg-Stein"

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