

**IN THE COURT OF APPEAL OF MANITOBA**

*Coram:* Mr. Justice Christopher J. Mainella  
Madam Justice Karen I. Simonsen  
Madam Justice Lori T. Spivak

***BETWEEN:***

<b><i>HUGH ANTHONY HULL</i></b>	)	<b><i>H. A. Hull</i></b>
	)	<i>on his own behalf</i>
	)	
<i>(Applicant) Appellant</i>	)	<b><i>K. A. Vilks</i></b>
	)	<i>for the Respondent</i>
	)	<i>(via videoconference)</i>
- and -	)	
	)	<i>Appeal heard and</i>
<b><i>B2B BANK</i></b>	)	<i>Decision pronounced:</i>
	)	<b><i>November 3, 2020</i></b>
<i>(Respondent) Respondent</i>	)	
	)	<i>Written reasons:</i>
	)	<b><i>November 12, 2020</i></b>

**COVID-19 NOTICE:** As a result of the COVID-19 pandemic and pursuant to r 37.2 of the Manitoba, *Court of Appeal Rules*, Man Reg 555/88R, this appeal was heard remotely by videoconference.

**SPIVAK JA** (for the Court):

[1] The applicant appealed the dismissal of his application against the respondent for a pending litigation order, an interlocutory injunction in regards to a foreclosure proceeding, and an “in camera evidentiary review” and sealing order. He also moved to admit fresh evidence on the appeal in an “in camera hearing” and for a sealing order of that evidence. At the hearing,

we denied his motion and dismissed his appeal with brief reasons to follow. These are those reasons.

[2] The respondent held a mortgage registered against real property commonly known as 292 Ash Street in Winnipeg, Manitoba (the property). It had commenced foreclosure proceedings on the property for default on the mortgage.

[3] The applicant claimed that he created a private trust that holds title to the property and was entitled to relief to halt foreclosure proceedings because of an alleged breach of trust. The alleged private trust took title to the property after the mortgage was registered and without the knowledge of the respondent. The applicant asserted various equitable rights including that he is “heir to the inherent jurisdiction exclusive equity” and that he required a private in chamber review for “a court of equity to see . . . [a] private trust”. He argued that the right of redemption had been assigned to the private trust and sought a “full accounting” from the respondent.

[4] The application judge dismissed the application on the ground that there was no evidence before the Court and no basis at law to justify the relief requested. In particular, he found that the pending litigation order was sought by a trust which was an unnamed party, and that there was no evidence of the applicant’s interest in the property, the mortgage, the applicant’s rights under the mortgage or the respondent’s contractual obligations. He further held that the applicant did not rebut the presumption in favour of an open court and an open court record to justify an in camera hearing or a sealing order.

[5] The applicant appeals on the ground that he was denied his “equitable rights and defences” and is entitled to an in chamber review of his

“private privileged trust.” At the hearing we were advised that the mortgage has now been paid and discharged and that mortgage foreclosure proceedings have been discontinued. Therefore, the applicant’s main arguments on appeal were that he requires an in camera hearing for this Court to view “the private trust” and for the respondent to provide a “full accounting” based on the right of redemption.

[6] We are all of the view that there is no merit to this appeal. Nor is there any legal basis for the applicant’s request to admit fresh evidence and for an in camera hearing and sealing order from this Court.

[7] The evidence proposed to be filed does not meet the test for admission (see *Palmer v The Queen*, [1980] 1 SCR 759). Further, there is no justification for a departure from the open court principle (see *Jane Doe et al v Manitoba*, 2005 MBCA 57).

[8] As for the appeal proper, the application judge’s decision was discretionary and entitled to deference. Failing a reviewable error on the law or the facts, this Court will not intervene unless it is so clearly wrong as to amount to an injustice. There was no error by the application judge on the law or with respect to his factual findings. His decision was neither clearly wrong or an injustice. To the contrary, this was a proper exercise of judicial discretion.

[9] Accordingly, the appeal was dismissed with costs in favour of the respondent.

“Spivak JA”

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“Mainella JA”

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“Simonsen JA”

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