

SUPERIOR COURT OF JUSTICE

5 B E T W E E N:

DESNEIGES SEGUIN

Applicant

10 - and -

LESLIE OSLACH

Respondent

15 P R O C E E D I N G S A T M O T I O N

20 BEFORE THE HONOURABLE JUSTICE J. RAMSAY  
on May 17, 2013 at WELLAND, Ontario

25  
30 APPEARANCES:

J. Marks

Counsel for the Applicant

W. Frith

Counsel for the Respondent

**SUPERIOR COURT OF JUSTICE**  
**T A B L E O F C O N T E N T S**

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Transcript Ordered: June 24, 2013

Transcript Completed: August 14, 2013

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Ordering Party Notified: August 15, 2013

FRIDAY, MAY 17, 2013

...

5 THE COURT: So, what have you got for me, Mr. Marks? You're moving for relief with respect to the matrimonial home.

MR. MARKS: That is correct Your Honour, and, and....

THE COURT: Is there also a motion in there about pleadings?

10 MR. MARKS: There is but....

THE COURT: Is that proceeding today or not?

MR. MARKS: We've received an amended pleading...

THE COURT: Okay.

15 MR. MARKS: ...from Mr. Frith, so we don't need to deal with that.

THE COURT: All right. Mr. Frith, may I have your submissions on the, the motion for exclusive possession and so on?

MR. MARKS: Your Honour, if I could interrupt?

20 MR. FRITH: Well, my friend is the moving party.

THE COURT: Okay, I know, but I want to hear from you. I want to hear from you why I shouldn't give him what he wants.

25 MR. FRITH: Yes. As was ordered by Justice Maddalena on January 11th, Mr. Oslach executed a listing agreement.

THE COURT: Yeah.

30 MR. FRITH: The wife has not yet executed it, ostensibly because Mr. Oslach did up a list of extra deficiencies in addition to those items enumerated on the seller information sheet. And, the reason he did that was because of the

information statement to sellers.

MR. MARKS: Your Honour, I'm sorry to interrupt, but are you aware that we've made an offer to buy the home?

5 THE COURT: Yeah, you want to buy it for 227.

MR. MARKS: Okay.

THE COURT: Right. Why wouldn't you want to sell it for 227? He thinks it's worth 150. Why doesn't he want to sell it for 227?

10 MR. FRITH: We made a counter offer. They want to close on May 27th. That gives him 10 days to locate alternate accommodations, arrange his own financing, do all the things to organize.

THE COURT: So when does he want to get out?

15 MR. FRITH: August 2nd, 60 days, the normal period for transactions such as this.

THE COURT: And the counter offer is what? He'll take the 227 and get out?

20 MR. FRITH: He'll take the 227 with an August 2nd closing date.

THE COURT: Okay.

MR. FRITH: My friend indicates in the offer initially made by the wife, they want the entire proceeds held in trust.

25 THE COURT: Right.

MR. FRITH: We're willing to hold 20,000 in trust. He needs that money to buy another house.

THE COURT: Okay, what, what's, what's your position on that?

30 MR. MARKS: My position is that my client's offer is an excellent offer to purchase. With respect to the timing, Your Honour....

THE COURT: Yeah, just about the timing and the, and the whole, and what goes into trust.

MR. MARKS: Firstly, if you look at the order of Madam Justice Maddalena, Your Honour.

THE COURT: Yeah.

MR. MARKS: Paragraph two of Her Honour's order, the net proceeds of sale shall be held in trust by the solicitor handling the sale until further order of the court.

THE COURT: Okay.

MR. MARKS: We, we are prepared to be flexible on that. We would, we would agree to \$40,000 being paid to....

THE COURT: Okay, and the rest gets held.

MR. MARKS: Yes.

THE COURT: All right.

MR. MARKS: And with respect to the closing date, Your Honour.

THE COURT: Yeah.

MR. MARKS: My client was, my client's evidence is that she was forced out of the matrimonial home...

THE COURT: Yeah.

MR. MARKS: ...because of physical abuse, emotional abuse and financial abuse. And, in terms of the objective evidence, Your Honour, there's a letter in there from Heather Delisle and I just want to take you to it. It's at Tab 20, 0 of the continuing record.

THE COURT: No, it's all right. You don't need to do that.

MR. MARKS: Okay.

THE COURT: Like, you want him out now because he's been in for so long.

MR. MARKS: Yes, that's right.

THE COURT: Okay.

MR. MARKS: And, and Your Honour....

THE COURT: Would it really matter if, if it was instead of now, if it was like 30 days from now?

MR. MARKS: No, we'd take 30 days, yes.

THE COURT: May, June, all right go ahead Mr. Frith.

MR. FRITH: There's two other aspects of the offer, which made by the wife, which are unsatisfactory.

THE COURT: Yes, tell me about them.

MR. FRITH: The warranting that all the chattels are in good working order as of the date of closing. As Mr. Oslach puts in his affidavit, most of that stuff's pretty old. He's not going to warrant anything.

THE COURT: Yeah.

MR. FRITH: Secondly is with respect to the pool. The pool is one of the items on that deficiency list, which he withdrew, but it sets out and he has an estimate. It, it would cost him about \$7,000, for, to do the repairs, so he's not warranting anything about the pool and he doesn't want to spend \$7,000 to get the pool in shape.

THE COURT: Okay.

MR. FRITH: It's an "as is" situation.

THE COURT: Okay.

MR. MARKS: Your Honour, if I could respond to that?

THE COURT: Yeah.

MR. MARKS: We're not asking Mr. Oslach to spend \$7,000 to make any repairs to the pool. My client's, my client's concern is this is somebody who has been abusive towards her during the marriage, forced her out of the matrimonial home. She left the matrimonial home leaving almost all of the contents with Mr. Oslach. He continues to intimidate her, he continues to punish her.

There's, there's a consent order for spousal support, but he wasn't happy with the fact that, you know, she wouldn't adjust spousal support downward and so he put a stop payment on the March spousal support cheque. That's like three months after a consent order. My client is, has lived here all her life, she went to the bank, these people know her. She went to the bank to cash her spousal support cheque. She had to stand there for, I don't know, five or 10 minutes while they, somebody went back, came back to her and said we can't, we can't cash your cheque.

This was very embarrassing for her. She's now had to go, Your Honour, to, to the FRO and say, you know, I want the Family Responsibility Office to take, take charge of, of spousal support as a result of that. He, he continues to intimidate her in respect of the consent restraining order. You know, he knows where she customarily takes her walks on Merritt Island in Welland. He showed up, parked directly nose to nose against her vehicle, he knows what her vehicle looks like. He's walked directly next to her, smirked

5 at her as he was walking by. She's concerned, you know, that he's gonna sabotage the home, he's gonna, he's gonna do things to the pool, he's gonna leave the place in a mess and all she's asking for with respect to the pool being left in a broom swept condition is a \$5,000 hold back, and....

THE COURT: What does that mean, a \$5,000 hold back?

10 MR. MARKS: In the event....

THE COURT: You mean she gets to keep, hang on to \$5,000 so that she can get the place cleaned?

MR. MARKS: If she gets there...

THE COURT: Okay.

15 MR. MARKS: ...and it's not in a broom swept condition, that's the term in my, in the, in the offer, Your Honour, that's attached to the factum. If it's not in a broom swept condition, she gets to keep it. And, with respect to the pool, it would be easy to just sabotage the pool, you know do something to a screw or something and, and, and the cleaning system would not, would not be working. All she's asking for, she's not asking him to spend \$7,000, all she's asking for is a hold back of \$1,000 until it can be verified by the purchaser that the solar panels and associated equipment are in good working order. Failing which, the hold back shall be used to repair or if necessary....

25 THE COURT: Got a draft order?

MR. MARKS: I, I don't have a draft order, sorry.

30 THE COURT: Okay, all right. Okay, give me half-



an-hour.

5 MR. MARKS: Your Honour, I just, sorry I just want to make, I know you, it's obvious you've read - I'm sorry I just want to make one other point here.

THE COURT: Yeah.

MR. MARKS: Beyond the fact, that you've got this about the 155 and my client's offering 227 but...

THE COURT: Yeah.

10 MR. MARKS: ...she's not asking for notional commission. She's not asking for that, she's not asking for notional legal fees and that's a combined savings....

15 THE COURT: No, I don't understand why she's offering 227 when he says it only worth - like why shouldn't he have to sell it to her for, like somewhere in the middle, like 180. Why, why does she get 220, why, why does he, why does she have to pay him 227? He says it's worth 150.

20 MR. MARKS: Right, she believes it's worth....

THE COURT: And he's deliberately been, he's deliberately made sure that it didn't sell.

MR. MARKS: Right.

25 THE COURT: So she's got to buy it, so why 227? Maybe we should ask Mr. Frith that. Why does she have to pay 227 when he says it's worth 150?

MR. FRITH: That's explained in his affidavit sworn May the 14th, Tab 22.

THE COURT: Yeah.

30 MR. FRITH: "I increased my offers because I did not want to move due to sentimental attachment to the home and family memories, not because I

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agreed with the applicant's appraisal of that..."

THE COURT: No, no I said but he says it's worth 151.

MR. FRITH: When Mr. Rewbury's appraisal which Mr. Oslach disagrees with for the reasons set out in his critique and so on, he thought at that time it was worth about 155.5...

THE COURT: Right.

MR. FRITH: ...because of the sale of a comparable property just down the street...

THE COURT: Okay.

MR. FRITH: ...that was....

THE COURT: Well, what does he think it's worth now?

MR. FRITH: 180.

THE COURT: So why shouldn't she buy it for 180? Why does she have to pay 227 when he says it's worth 180?

MR. FRITH: Because he doesn't want to sell. He wants to buy her out...

THE COURT: Well why doesn't he?

MR. FRITH: ...but she has an unreasonable price that he won't go for. That's what's held this up for so long. Mr. Rewbury's appraisal is printed right on the front of it, "matrimonial negotiations not for court purposes."

THE COURT: Yeah.

MR. FRITH: How reliable is that? If he's not willing to stand behind it in court.

THE COURT: He has to buy it, he has to buy her out or get out.

MR. FRITH: And, he signed a listing agreement.

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He's agreed to withdraw his deficiency list, he's agreed he will not be present during showings, which is what the...

5 THE COURT: Why did he want to be there in the first place?

MR. FRITH: Because....

10 THE COURT: Look, I've sold a house before. You give the realtor a key, they put a box on it, and the last thing they want in the house is you when they're selling it, right?

15 MR. FRITH: I understand, because in January of 2012 when he was away on vacation she went over with a locksmith and Mr. Rewbury and he alleges she made off with numerous items of furniture and knick knacks.

THE COURT: It's her furniture, it's her house, and she lived there for 20 years.

MR. FRITH: And she already moved to another house and has furniture.

20 THE COURT: Well, yeah I know that she takes the furniture. It's all going to, it's all going to get accounted for in the equalization.

MR. FRITH: Yeah, but when she does that...

25 THE COURT: How much is the furniture worth anyways?

MR. FRITH: ...when she does that without his knowledge and consent when he's away on vacation....

30 THE COURT: Well, yeah, but he's a bit of a bully, he's kind of hard to approach, right?

MR. FRITH: Well, those are allegations. It's a "he said, she said" situation.

5 THE COURT: They have, no they're more than "he said, she said," okay they're more than that. I mean look, I hear these things a lot, I don't know...

MR. FRITH: So do I.

THE COURT: ...but, so what, so that makes it hard for her to talk to him, okay. That's what. I mean, I've read what he wrote. I can tell he's a bully just by what he writes.

10 MR. FRITH: He's afraid that if he's not in the house, the real estate agent has access, she's going to come over and lift more stuff.

THE COURT: So why has he agreed now?

MR. FRITH: I beg your pardon?

15 THE COURT: So why has he agreed not to be there now?

MR. FRITH: Because I had a serious talk with him.

20 THE COURT: Right, you told him that he was being unreasonable, which is what I thought. Okay, I'll be back in about half-an-hour.

MR. FRITH: Which, which is why he's withdrawn that position.

25 THE COURT: Yeah, right he was being unreasonable until he got a lawyer who talked some sense into him. Yeah, okay, all right I'll be back in half-an-hour.

R E C E S S

30 U P O N R E S U M I N G :

THE COURT: The wife moves for an order for

exclusive....

MR. FRITH: Excuse me, Your Honour.

THE COURT: Sorry did you, were you not finished Mr. Frith? Sorry about that.

MR. FRITH: No. One thing I didn't get a chance to address...

THE COURT: Yeah.

MR. FRITH: ...in Ms. Seguin's offer to buy Mr. Oslach's interest in paragraph one of the offer, which is Tab F...

THE COURT: Yeah.

MR. FRITH: ...has chattels included. Mr. Oslach deleted some of those chattels in his counter offer, and just hoping that could be taken into consideration.

THE COURT: I'm sorry, he deleted?

MR. FRITH: Yes, existing stove, existing microwave, existing water softener system...

THE COURT: I'm sorry, I'm just not following the sense of it. Does that mean he wants to keep them or wants to give them up?

MR. FRITH: He wants to keep those.

THE COURT: Oh, okay, does, does she want them?

MR. MARKS: Yes she does, Your Honour.

THE COURT: She wants the stove and the....

MR. MARKS: Yes she does. She's made a very generous offer.

THE COURT: Yeah, okay.

MR. MARKS: These are things that normally would remain.

MR. OSLACH: No they're not.

MR. MARKS: When we talk about the microwave,

it's a custom kitchen and the microwave that sits there is, is perfectly suited for the, the space that's been built for the microwave.

MR. OSLACH: Not built.

MR. MARKS: The, the water softener system, Your Honour, is a water softener system that came from the wife's inventory in her former water store business. The existing Weber barbecue is connected to a gas, gas line. It was a gift from the son to his mother. Existing window drawings, again these are custom window drawings that go...

THE COURT: Well, they're fixtures aren't they?

MR. MARKS: Yes, Your Honour, yes.

THE COURT: They're fixtures.

MR. FRITH: Drapes? With respect....

THE COURT: Drapes are not fixtures.

MR. FRITH: No.

THE COURT: But nobody takes drapes. You always leave the drapes when you sell a house, cause they only fit the windows of the house right?

MR. FRITH: Not everybody, sir, in my experience.

THE COURT: Really?

MR. FRITH: Yeah.

THE COURT: I always do. I always leave my drapes. What am I going to do with old drapes in a new house? They won't fit the windows.

MR. MARKS: Similarly with the mirrors, Your Honour, there's like a huge mirror over the fireplace in the house. Considering, Your Honour, that we are not asking for notional commission, or notional real estate fees, considering my client's generous offer, it's

5 reasonable that these items remain in the, in the home. Also, Your Honour, considering that my client was forced out of the matrimonial home, she took very little with her. The husband has had the benefit of....

10 THE COURT: Well I'm going to split the difference. I'm going to - yeah, okay. The wife moves for an order of exclusive possession and sale of the matrimonial home. The wife says that the home is worth \$227,000. The husband says that it is worth \$180,000. The wife wants me to order the husband to sell her the home on the basis of the greater value, i.e. for half of \$227,000 which is \$113,500. Is that right? Have I got that right?

15 MR. MARKS: Yes, Your Honour.

MR. FRITH: Yes sir.

20 THE COURT: Subject to a hold back of \$5,000 for cleaning, and \$1,000 to repair the damage to the pool, to repair any damage to the pool, if necessary. The parties separated in 2011 after 43 years of marriage, during which the husband earned the family income and the wife took care of the home and children. The wife fled the  
25 matrimonial home to escape abuse by the husband, which I consider on the evidence of her and her grown son to be proven, rather than "he said, she said," as it has been put in argument. The wife has bought her own home while the husband has  
30 been in the matrimonial home all this time. On January 13, 2013, Maddalena, J. gave the husband until January 18 to buy the wife out on the basis

of \$170,000 value, failing which the home would be listed for sale. The husband did not buy out the wife, and the wife listed the home. The husband would not turn over a key to the selling agent. Instead, he insisted on being present for each showing. He told the agent that she had to make a positive disclosure to each potential buyer of certain things he described as deficiencies, but which were in fact, at best, patent defects such as an old furnace. He also insisted on excluding from sale certain fixtures that are normally included, such as custom window blinds and eavestrough parts. I conclude that he was trying to sabotage the sale. He is now willing to accept the wife's price but he wants to stay until August 2nd. That would have the effect of depriving the wife of another summer's selling season. He is also unwilling to accept her terms about preserving property. I find that the wife's concerns about the husband damaging or removing fixtures and leaving the property in a mess are well founded based on his past conduct, including his conduct since the litigation commenced. An order will go as asked subject to the modifications to which the wife has agreed. The husband is ordered to sell his interest in the matrimonial home including fixtures, appliances and barbecue, water filter and window dressings. That's these named items, plus fixtures. Based on a value of \$227,000, the wife is entitled to hold back \$6,000 and to apply \$5,000 to cleaning the home, removing junk, and



5 repairing damaged fixtures, if necessary, and  
\$1,000 to repair the pool, if necessary. If  
those actions are not necessary, the wife will  
pay the unused held back amount to the husband.  
The proceeds of sale will be held in trust save  
for \$40,000 to each party. This will give the  
husband the ability to make a down payment on a  
new residence. The wife is granted exclusive  
possession effective June 15, 2013. The husband  
10 will remain responsible for half the utility  
bills and half the property taxes until the  
property is sold. The husband has family and  
assets, and I find that he has the ability to  
find suitable interim accommodation. Are you  
15 asking for costs, Mr. Marks?

MR. MARKS: Yes, Your Honour. I have a bill of  
costs prepared.

MR. FRITH: I just have a question, Your Honour.

THE COURT: Yes.

20 MR. FRITH: You said at least \$40,000 to each  
party?

THE COURT: Yeah.

MR. FRITH: Out of the \$113,500?

25 THE COURT: No, no. Out of the proceeds of the  
sale. Once she gets, once she gets the proceeds  
of the sale, it's going into trust, except he  
gets 40 grand so he can put it down, and she gets  
40 grand from her half.

MR. FRITH: Okay, so on June 15, she...

30 THE COURT: Oh wait a minute, wait a minute.

MR. FRITH: ...she pays him \$113,500....

THE COURT: I mixed that up.

MR. FRITH: That's....

THE COURT: She's paid him so she gets it all doesn't she? I get it, so she wants....

MR. FRITH: No, no, they own, they own the property as joint tenants.

THE COURT: Wait a minute, wait a minute, wait a minute. Yeah, but she's buying his half.

MR. FRITH: Correct, for \$113,500.

THE COURT: So he doesn't need any \$40,000 out of proceeds of sale. That's the whole point isn't it? Yes, I mixed that up. I'm all, I'm all, I'm all mixed up.

MR. FRITH: She owes him \$113,500 to close the deal.

THE COURT: Right.

MR. FRITH: And my question is, why would she get to hold back \$40,000 for her?

THE COURT: She doesn't. I wasn't talking about that, I was talking about proceeds of the ultimate sale to a third person, which I don't need to.

MR. FRITH: Correct.

THE COURT: She's going to get them all because she's going to buy him out.

MR. FRITH: Correct, correct.

THE COURT: Got it. Thank you for correcting me. That was, yeah that was....

MR. FRITH: Thank you.

THE COURT: So I'm going to scratch out that, yeah she doesn't get to hold back - yeah I didn't mean she got to hold back from, she gets to hold back six from 113, and of course once he gets

those, once he gets the 113 he can make a down payment.

MR. MARKS: Your Honour, we're, we're asking that \$40,000 out of the \$113 be paid to him and the balance to be held in trust.

THE COURT: Oh, I didn't know that. Why is that? Why would I do that?

MR. MARKS: Well, because there's a potential equalization payment to be made.

THE COURT: Oh, I see.

MR. MARKS: Yeah.

THE COURT: I see.

MR. MARKS: And he's, he's got a defined benefit pension plan.

THE COURT: Right.

MR. MARKS: And he hasn't valued it yet.

THE COURT: I see, okay. What do you have to say about that Mr. Frith?

MR. FRITH: We sent the forms...

MR. MARKS: So that....

MR. FRITH: ...signed by Mr. Oslach, to Mr. Marks.

MR. MARKS: If I could just finish.

THE COURT: Just a minute, just a minute. Oh, all right. Okay, go ahead.

MR. MARKS: I just, I just want to add one thing. So, you look at the order of Justice Maddalena, Your Honour.

THE COURT: Yeah.

MR. MARKS: It was her, her order that all of the proceeds of sale be held in trust...

THE COURT: Right.

## Seguin and Oslach

MR. MARKS: ...the net proceeds of sale be held in trust.

THE COURT: Yeah, that was assuming that, assuming that it was being sold on behalf of the two of them.

MR. MARKS: Right, yeah.

THE COURT: So....

MR. MARKS: We're agreeable to \$40,000 being paid out to Mr. Oslach and the balance of that being held in trust.

THE COURT: You want to pay him \$40,000 now...

MR. MARKS: We want to pay \$113....

THE COURT: ...and you'll hold the rest in trust...

MR. MARKS: Yes.

THE COURT: ...pending equalization.

MR. MARKS: Yes.

THE COURT: I see, okay. Now, yes, go ahead, Mr., Mr. Frith what's your position on that?

MR. FRITH: My friend was about to complain that the pension hasn't been evaluated yet.

THE COURT: Right.

MR. FRITH: We sent the appropriate forms, already signed and filled out by Mr. Oslach to Mr. Marks, because there's a section she has to send.

THE COURT: Okay.

MR. FRITH: But he hasn't sent them back, and as of last Friday tells us Mr. Oslach made a mistake in it.

THE COURT: Okay, but he's...

MR. FRITH: Why not send them back as soon as the

mistake was discovered?

THE COURT: Okay, but he does have a pension?

MR. FRITH: It's not his fault.

THE COURT: It's no, no but is his pension in pay?

MR. FRITH: Yes.

THE COURT: Well his pension is in pay. It's not, it's not an asset for equalization.

MR. FRITH: My friend wanted it evaluated.

THE COURT: Okay.

MR. FRITH: So we're complying with his request.

THE COURT: Okay, but what's going to be equalized? What's going to be equalized, Mr. Marks?

MR. MARKS: Whatever....

THE COURT: I mean, there's the house.

MR. MARKS: Yes, and then there's assets that, that he has.

THE COURT: I better take a look at the financial statements then, right? Because the pension is not going to be equalized, it's in pay.

MR. MARKS: Well, it has to be, it has to be valued, Your Honour.

THE COURT: That may be...

MR. MARKS: Yes.

THE COURT: ...but if that's, it's not going to be, if he's getting it, it's not an asset, it's an income source. Well let's see, where's the financial statements?

MR. MARKS: The, the option, Your Honour, is the financial statements. The wife's financial statement is at Tab 2...

THE COURT: Tab 2.

MR. MARKS: ...of the continuing record.

THE COURT: Tab 2, yes.

MR. MARKS: And, the husband's financial statement is at Tab 13.

THE COURT: So. Well, at this point how much equalization is he going to have to pay her according to you, or according to her? Or have you got that far yet?

MR. MARKS: We, we really don't know, Your Honour, because he hasn't provided us with disclosure as ordered by Madam Justice Maddalena.

THE COURT: All right. And how much, what's his position on equalization at this point, according to 13?

MR. MARKS: His position on equalization payment, if you look at his financial statement, Your Honour, which is at Tab 13.

THE COURT: Tab 13, yeah.

MR. MARKS: Page 5 is where it starts of his financial statement.

THE COURT: Okay, so....

MR. MARKS: He's valued his 50 percent interest in the commercial property at 36 Thorold Road East that sits on an acre of land, at \$150,000. Then on Page 6 he's saying....

THE COURT: Okay.

MR. MARKS: Yeah, and then what you can....

THE COURT: I don't see anywhere where anybody is saying how much the other one owes him, or how much he owes anybody, or she owes anybody. This, this, this, is that, have you got that far yet?

## Reasons for Judgment - Ramsay, J.

MR. FRITH: Just a comment about that 36 Thorold Road property, that was inherited by Mr. Oslach and his brother, who is present in court. The wife is making a claim against it...

MR. MARKS: We, we haven't....

MR. FRITH: ...however that is yet to be proven...

THE COURT: Okay.

MR. FRITH: ...and is specifically denied.

THE COURT: Okay.

MR. MARKS: We haven't received any evidence that that property was inherited.

THE COURT: Okay, all right. Who's doing all the huffing and puffing? Is it you or him?

MR. FRITH: Mr. Oslach.

THE COURT: It better not be you. All right, give me a half-an-hour. I'll be back again.

## R E C E S S

U P O N R E S U M I N G :

THE COURT: I misconstrued the lawyer's arguments so I am going to start over from the beginning.

## R E A S O N S F O R J U D G M E N T

RAMSAY, J. (Orally):

The wife moves for an order for exclusive possession and sale of the matrimonial home. The wife says that the home is worth \$227,000. The husband says that it is worth \$180,000.

## Reasons for Judgment - Ramsay, J.

5 The wife wants me to order the husband to sell her the home on the basis of the greater value, i.e. for half of \$227,000, \$113,500 subject to a hold back of \$5,000 for cleaning, and \$1,000 to repair damage to the pool, if necessary. She wants to pay him \$40,000 right away, which would give him the ability to put a down payment on a new place, and put the remaining \$67,500 into trust pending equalization.

10 The parties separated in 2011 after 43 years of marriage, during which the husband earned the family income and the wife took care of the home and children. The wife fled the matrimonial home to escape abuse by the husband, which I consider on the evidence of her and her grown son to be proven, rather than "he said, she said" as it has been put in argument. The wife has bought her own home while the husband has been in the matrimonial home all this time.

15 On January 13, 2013, Maddalena J. gave the husband until January 18 to buy the wife out on the basis of \$170,000 value, failing which the home would be listed for sale. Maddalena J. ordered that in the event of a sale to a third party, the proceeds would be held in trust.

20 The husband did not buy out the wife, and the wife listed the home. The husband would not turn over a key to the selling agent. Instead, he insisted on being present for each showing. He

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## Reasons for Judgment - Ramsay, J.

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told the agent that she had to make a positive disclosure to each potential buyer of certain things he described as deficiencies, but which were in fact, at best, patent defects, such as an old furnace. He also insisted on excluding from sale certain fixtures that are normally included, such as custom window blinds and eavestrough parts. I conclude that he was trying to sabotage the sale.

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He is now willing to accept the wife's price but he wants to stay until August 2nd. That would have the effect of depriving the wife of another summer's selling season. He is also unwilling to accept her terms about preserving property.

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I find that the wife's concerns about the husband damaging or removing fixtures and leaving the property in a mess are well founded based on his past conduct, including his conduct since the litigation commenced. I think that the only way to move this litigation forward is to force the husband to sell out to the wife, and to remove him from the property. He has not complied with Maddalena J.'s order as far as disclosure is concerned, so all but the \$40,000 should be put into trust in case the husband ends up owing money. I would not expect him to cooperate in paying it out.

The husband is ordered to sell his interest in the matrimonial home to the wife based on the

## Reasons for Judgment - Ramsay, J.

5 value of \$227,000. The wife is entitled to hold back \$6,000, and to apply \$5,000 to cleaning the home, removing junk, and repairing damaged fixtures, if necessary, and \$1,000 to repair the pool, if necessary. If those actions are not necessary, the wife will pay the unused held back amount to the husband. The wife shall account to the husband for the held back amounts within 90 days of taking possession.

10 The wife shall pay the husband \$40,000 now and she shall put the remainder of the purchase price into trust, pending equalization or further order of this court. The purchase price includes the fixtures. In addition, it includes window dressings, kitchen appliances, the barbecue, and the water filter. The husband can take the furniture.

20 The husband is ordered not to damage the property or to remove any items to which this endorsement does not entitle him. The wife is granted exclusive possession effective June 15, 2013. The husband will remain responsible for half the utility bills and half the property taxes until  
25 the property is sold. The husband has family and assets and I find that he has the ability to find suitable interim accommodation.

30 THE COURT: Are you asking for costs?

MR. MARKS: Yes, Your Honour. But with respect to the transfer of proceeds, could my client have

## Submissions on Costs

until June the 15th to come up with the money?

THE COURT: Yes. Mr. Frith did you have something to say?

MR. FRITH: Yeah, a question about the pool hold back. Mr. Oslach's lists of deficiencies it's already shown that the pool is in need of repair. The \$1,000 for pool repairs, is that for the present condition or...

THE COURT: No, that's for anything....

MR. FRITH: ...is that for any damage not disclosed by his deficiency list?

THE COURT: Right, the latter. Yes.

MR. FRITH: Thank you. It's an "as is" deal. Thank you.

THE COURT: Yes. What are your submissions on costs, Mr. Frith? This seems like a lot of money for a motion, doesn't it?

MR. FRITH: Yeah, I'm just reading this for the first time, Your Honour. I need a moment please.

THE COURT: Sure.

MR. FRITH: Whoa, whoa, is my first comment.

MR. MARKS: Your Honour, there's....

THE COURT: Yeah, while, while Mr. Frith is reading, why don't you tell me how you get up to \$20,000 for a motion.

MR. MARKS: This, this started back in February, Your Honour.

THE COURT: Yeah.

MR. MARKS: We've done three affidavits and I've done a factum. I've attended at court twice, and I'd like to refer Your Honour to, to the transcript of, of the last time we were in court.

## Submissions on Costs

That's at - I've filed the transcript. I don't know if it's here.

THE COURT: Yeah, I saw it. I didn't read it.

MR. MARKS: Okay.

THE COURT: March 27?

MR. MARKS: That's correct, Your Honour.

THE COURT: Maddalena J. again?

MR. MARKS: Yes. So, if you turn to, I'm just going to find it here in my own. Turn to page eight. So, at that point, Your Honour, Mr. Oslach had offered \$205,000, even though he's got a three-page critique in his sworn affidavit saying it's only worth \$155,500. So, on page eight of the transcript you'll see that at line, line 23, I advised....

THE COURT: Did you say page eight?

MR. MARKS: Page eight, Your Honour.

THE COURT: Yes.

MR. MARKS: Page eight, line 23, I advised Her Honour that my client would be happy to pay \$210,000. And then, if you go on to page, to page nine starting at line 10, Mr. Frith advised the court "Mr. Oslach puts no faith in [that would be my client's appraisal of \$227,000] it's that high. That's what's stymied..." And, you'll see down a little longer, just, just a few lines down, one line up from line 15. The court, "...so if he doesn't, okay but if he doesn't think it's that high, she's offering 210, so he would end up getting more than his 180." And Justice Maddalena already clued into that. Like if he thinks it's only worth \$180, if he thinks

## Submissions on Costs

5 this appraisal is way too high and she's offering \$210, why wouldn't he accept that? Justice Maddalena was prepared to, to resolve the matter that day, and you'll see, Your Honour, if you go on to, to, to page, page 17 of the transcript, starting at line 23, page 17, Your Honour.

THE COURT: Yeah.

10 MR. MARKS: And it's, it's starting at line 23 of that transcript and, and Justice Maddalena is simply trying to convince Mr. Frith to stay, to come back at 2:30 and to resolve everything that day, so we wouldn't have to come back to court today. And, Her Honour says at line 23:

15 You're talking an enormous amount of money, and I'm just looking at it from a practical perspective to say, look can we not agree on a figure, just either she buys him at the figure that she's now proposed, or if he  
20 wants to come out with a higher figure. Otherwise, you already have an order that says it's going to sell, and it's done with today.

25 And, we were prepared to stay and finish it off that day and save all kind of costs. And Mr. Frith wouldn't stay. He said he had a, he had to go to St. Catharines, it was a consent  
30 adjournment, he was already late for it, and if you read the transcript you can, you can just see Justice Maddalena coming at it again and again and again, saying to Mr. Frith "Why can't you

## Submissions on Costs

5  
come back at 2:30?" So, we're here today. It could have been settled that day in front of Her Honour, Your Honour. And, you know it's, it's a lot of work to do these affidavits, to review Mr. Frith's affidavit, sorry Mr. Oslach's affidavit, to prepare a factum, you know, dealing with everything my client has had to go through for the past two years. That's why it's so high.

10  
THE COURT: Is that amount, is that your, is that full recovery, substantial recovery, partial? What is it?

MR. MARKS: That, that would be full recovery.

15  
THE COURT: That would be full. Okay, all right, thank you.

MR. MARKS: And I, I do have an offer to settle. Actually, I should pass that up to you as well. It's not, it's not identical to Your Honour's judgment today, but it's pretty close. It's, it's - now the offer to settle was not made until  
20  
May the 6th so....

THE COURT: Okay, thank you. Yes, Mr. Frith?

MR. FRITH: Yes, with respect to the transcript, may I respectfully refer Your Honour to page 16?

THE COURT: Yeah.

25  
MR. FRITH: Line 24:

30  
I'm ready to stay here and finish it today, and I'll have to make amends with whatever other court or powers that be, because I didn't appear when I said I was going to. But, I'll stay here as long as it takes.

## Submissions on Costs

So, my friend was incorrect by saying...

THE COURT: Okay.

MR. FRITH: ...I torpedoed the thing that day.  
Her Honour released me to go.

5 THE COURT: No, well I don't, I don't think he  
said that. Anyway, I'm not really concerned  
about what happened then, except that, except  
that 210 was offered and turned down.

MR. FRITH: He made it a counter offer at \$215.  
10 Here is the offer to settle...

THE COURT: Right.

MR. FRITH: ...on behalf of Mr. Oslach. I would  
like to see my friend's time dockets, to be able  
to comment properly on his bill of costs.

15 MR. MARKS: If, if you'd look at - I don't have  
my dockets, Your Honour, but if you look at the  
affidavits that my client has prepared, they  
contain a lot of exhibits. We worked very hard  
to present this court with objective evidence,  
20 and to prove my client's case, and Mr. Oslach had  
a list of deficiencies, a list of exclusions. We  
had to go through all of those, deal with all of  
those. And this, this motion was necessitated by  
his unreasonable behaviour. And....

25 THE COURT: Okay, anybody got a calculator?  
Thank you.

MR. MARKS: Just one other thing. It's in the  
transcript where Justice Maddalena warned both  
parties there's gonna be a big cost order. She  
30 said it. She could see it.

## R E A S O N S   F O R   R U L I N G

RAMSAY, J. (Orally):

5           As to costs, for three months the applicant has  
been offering to pay the respondent more than he  
thought the property was worth. It should have  
not taken a court order to get him to accept. He  
has since then had the three months that he  
wanted today.

10           The applicant has been successful, and the  
respondent has been more than unreasonable. He  
has made it difficult to resolve the question.  
Having said that, it seems to me that \$20,000 is  
15           beyond an amount that would have been  
contemplated. Also, the \$20,000 would be full  
indemnity. The applicant should be compensated  
on a substantial indemnity basis.

20           I fix costs at \$11,250 and order the respondent  
to pay them forthwith, with the result that this  
amount may be deducted from the money to be put  
into trust by the applicant.

25           THE COURT: All right, thank you very much.

MR. FRITH: Sorry, costs include HST?

THE COURT: Yes, that's it, all in.

MR. FRITH: Thank you.

THE COURT: Yes.

30           ...

...PROCEEDINGS CONCLUDED



FORM 2

**Certificate of Transcript**  
**Evidence Act, Subsection 5(2)**

I, Kelsey Haymes, certify that this document is a true and accurate transcription of the recording of Seguin and Oslach in the Superior Court of Justice, held at 102 East Main Street, Welland, Ontario taken from File No. 4521 CRT4 20130517 094808, which has been certified in Form 1.

August 15, 2013  
(Date)

K Haymes  
(Signature of authorized person)