

Superior Court of Justice Family Court Branch
(Name of Court)

at 102 East Main Street, Welland, Ontario, L3B 3W6
(Court office address)

Endorsement

Date	Applicant(s): Desneiges Séguin	<input checked="" type="checkbox"/> Present
	Counsel: James S. Marks	<input checked="" type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent(s): Leslie Oslach and James Oslach	<input checked="" type="checkbox"/> Present
	Counsel: <i>Mr Friel</i>	<input checked="" type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.		

May 17, 2013.

Order to go in terms of written endorsement attached.

James S. Marks

As to costs
 for 3 months Re A. has been
 offered to pay more than he thought
 the project was worth. It should
 not have taken a court order
 to get him to accept. He has
 since then had the three
 months that he wanted. 1/2

today.

The A. has been successful
and the R. has been

more than unreasonable. He has
made it difficult to resolve the matter.

Harry said that it seems to
me that \$20,000 is ~~excessive~~,

beyond an amount that I'd have

been contemplated. Also,

the \$20,000 would be full indemnity.

The App. should be compensated on
a substituted indemnity basis.

I fix costs at \$11,250 and

order R. to pay her pro rata,

with the result that her net

may be deducted from the money

to be paid to her by A.

James Lawrence

3724/12

I misconceived the lawyer's arguments, so I am going to start over from the beginning.

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. 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 holdback 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.

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.

On January 13, 2013, Maddalena J. gave the husband until January 18 to buy the wife out on the basis of a \$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.

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 eaves trough 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 2. 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.

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.

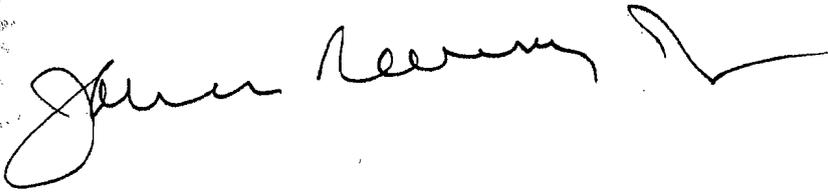
The husband is ordered to sell his interest in the matrimonial home to the wife based on a value of \$227,000. The wife is entitled to hold back \$6,000 and to apply \$5,000 to cleaning the home, removing junk, and repairing damaged fixtures, if necessary, and \$1,000 to repair the pool, if necessary. 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. 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.

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 the property is sold. The husband has family and assets and I find that he has the ability to find suitable interim accommodation.

A handwritten signature in cursive script, appearing to read "James Reaney", followed by a large, stylized flourish or checkmark.