

ONTARIO
SUPERIOR COURT OF JUSTICE

(COURT SEAL)

BETWEEN:

GAIL HERRINGTON

Applicant

-and-

IAN HARVEY and LAURENTIAN BANK OF CANADA

Respondents

IN THE MATTER OF: That property municipally known as 299 Warden Avenue Toronto, Ontario

AND IN THE MATTER OF: *The Partition Act R.S.O. 1990, c. P4*

AND IN THE MATTER OF: *The Real Property Limitations Act R.S.O. 1990 c. L15*

APPLICATION UNDER RULE 14.05 (3) (e) and Rule 66.01 (1) of the Rules of Civil Procedures

NOTICE OF APPLICATION TO THE RESPONDENTS

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on *July, 27*, at *10am*, at 393 University Avenue Toronto, ON M5G 1E6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

S. Riccio
Registrar

Date April 18th, 2017 Issued by.....

Local registrar

Address of
court office

393 University Avenue
Toronto, ON M5G 1E6

TO Ian Harvey
299 Warden Avenue
Toronto, ON M1N 3A3

Laurentian Bank of Canada
c/o Janet Paulino
130 Adelaide Street West
Suite 300
Toronto, ON M5H 3P5

APPLICATION

1. The Applicant makes application for:

a) An Order directing that the following land be partitioned or sold:

Parcel 1527, Section Scarborough
Being part of Lot 8, Plan M-548
City of Scarborough
City of Toronto
Land Titles Division of Toronto (No.66)

b) An Order directing a reference to inquire into and determine all issues relating to the conduct of the sale and the taking of accounts; and

c) An Order deleting from title, that mortgage in favour of Robert Kernohan in Trust, that was subsequently assigned to the Respondent Laurentian Bank of Canada pursuant to a Transfer of Charge registered as instrument number C820125 on January 28, 1993.

d) Occupation Rent.

e) The costs of this Application.

2. The grounds for the application are:

a) The Applicant and the Respondent Ian Harvey are former husband and wife and hold the above described land as joint tenants. It is just and convenient that the land be partitioned or sold.

b) The Respondent Laurentian Bank of Canada, is statute barred from enforcing the mortgage assigned to it pursuant to a Transfer of Charge registered as instrument number C820125 on January 28, 1993, by reason of *the Real Property Limitations Act, R.S.O. 1990, c. L15*.

c) The Applicant relies upon the provisions of the *Partition Act RSO 1990, Chapter P4* and the provisions of the *Real Property Limitations Act, R.S.O. 1990 c. L15* and *Rules 66.01 (1) and 55.02 (2) of the Rules of Civil Procedure*.

3. The following documentary evidence will be used at the hearing of the application:

a) The Affidavit of Gail Herrington sworn on April 5, 2017 and the Exhibits attached thereto.

(April 5, 2017)

John Freeman
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Lawyers for the Applicant, Gail Herrington

RCP-E 14E (March 31, 2010)