

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

GAIL HERRINGTON

Applicant

- and -

IAN HARVEY and LAURENTIAN BANK OF CANADA

Respondents

SUBMISSIONS FOR JUDICIAL MEDIATION OF THE RESPONDENT, IAN HARVEY¹

1. If the minutes of settlement dated April 12, 1995 is not upheld, the property municipally known as 299 Warden Avenue, Toronto, Ontario M1N 3A3 (“the property”) should be divided as follows:

Home Value: \$819,000 (midpoint of the estimated sale price of the property provided by Ron Baldwin on April 23, 2019, a Sales Representative at Royal LePage Estate Realty)

- \$46,273.50 (estimated realtor commission at 5.0% plus HST).

- \$1,200.00 (estimated legal fees for the sale).

= \$771,527

Divided by 2

= \$385,763.50

Ms. Herrington’s share of the proceeds must be deducted by the additional amounts:

¹ Being submitted on a without prejudice basis.

- \$43,000.00 (estimated cost to remove the lien placed on title by Legal Aid Ontario for Ms. Herrington's legal representation).
- \$57,000 (representing one half of the mortgage cost plus interest since 1995 paid by Ian Harvey. Mortgage costs paid by Ian Harvey could be sought before 1995 and during the marriage)
- \$106,500 (representing one half of the cost of repairs and renovations done to the property since 1992 and paid by Ian Harvey)
- \$4,015 (representing one half of the home insurance cost of the property since 1991 and paid by Ian Harvey)
- \$37,666 (representing one half of the property taxes of the property since 1991 and paid by Ian Harvey)
- \$236,750 (representing one half of the loan by Ray Harvey plus interest to the parties that was to be secured against the value of the home. Ian Harvey had agreed to be responsible to pay this amount as part of the minutes of settlement dated April 12, 1995 but if this agreement is out, then this amount is payable by both parties).

= \$-99,167.50

2. Mr. Harvey has previously offered to resolve this matter for \$70,000.
3. Even if this application is resolved on a without costs basis, Mr. Harvey should be reimbursed \$25,000 for commencing legal action to attempt to have the mortgage placed on title by Ms. Herrington removed.
4. The calculations in paragraph 1 do not go back all the way to the purchase of the property but if the respective financial contributions of the parties were considered from the date of purchase of the property, Ms. Herrington would be entitled to even less share of the property value.
5. If the minutes of settlement dated April 12, 1995 are not enforced then the agreement of Mr. Harvey to pay Ms. Herrington \$5,000 for equalization of net family property is also out because the agreement to pay that amount was part of the same comprehensive agreement. The limitation period for pursuing a claim for equalization of net family property is two years since divorce or six years since separation and has long expired. A claim for equalization of net family property is also not before this court.
6. If Mr. Harvey is willing to settle this matter without enforcing the minutes of settlement dated April 12, 1995 then Ms. Herrington should be willing to resolve this matter without payment of occupancy rent. The claim for occupancy rent is also not strong considering:

- a. Occupancy rent is considered to be an exceptional remedy and discretionary when awarded.
- b. Delay is a major factor to consider whether to award occupancy rent. Ms. Herrington waited 26 years after leaving the property before commencing this application.
- c. All of the carrying costs of the property have been paid by Mr. Harvey since Mr. Herrington left the property.
- d. Ms. Herrington has not provided any corroborating evidence that she was ousted from the property.
- e. Occupancy rent is an equitable remedy and Ms. Herrington does not have clean hands.
- f. Ms. Herrington's delay in receiving her equity in the property is a result of own her actions in unlawfully placing a mortgage on title, immediately defaulting on the mortgage and waiting over 25 years to take any action to remove the mortgage.

April 26, 2019

Sage Harvey

LSUC #: 63691d

55 Town Centre Court, Suite 636

Toronto, Ontario M1P 4X4

Tel: (647) 669-4121

Fax: (647) 498-1023

Email: sage@harveylawtoronto.com

Lawyer for the Respondent, Ian Harvey