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1 --- UPON COMMENCING AT 2:12 P.M.

2 GAIL HERRINGTON; Affirmed

3 EXAMINATION BY MR. S. HARVEY:

4 1. Q. For the record, my name is Sage Harvey.  
5 I'm counsel for Ian Harvey, and I'm conducting an  
6 examination of Gail Herrington. Ms. Herrington, when  
7 did you purchase the property of 299 Warden Avenue  
8 with Ian Harvey?

9 MR. BOOK: Do you remember?

10 THE DEPONENT: I don't remember the date,  
11 yeah.

12 BY MR. S. HARVEY:

13 2. Q. Don't remember the date.

14 MR. BOOK: Well, it's in the exhibit, if you  
15 want it. I've given you the title search. We can  
16 answer that question for you.

17 THE DEPONENT: It's been a while.

18 MR. I. HARVEY: I believe it was April 27th,  
19 1981.

20 MR. BOOK: April 30th.

21 MR. I. HARVEY: Oh, sorry.

22 MR. BOOK: April 30th, 1981.

23 THE DEPONENT: April 30th, 1981.

24 BY MR. S. HARVEY:

25 3. Q. Do you know if it was purchased as

1 joint tenants or tenants in common?

2 A. Joint tenants.

3 4. Q. It was joint tenants. Was that joint  
4 tenancy ever severed?

5 A. Yes.

6 5. Q. Do you know when that was?

7 MR. BOOK: It's in the title search which is  
8 the exhibit. It was severed on the 20th of March 1992  
9 as Instrument #C765680.

10 BY MR. S. HARVEY:

11 6. Q. Do you know if Ian Harvey ever  
12 consented to severing the joint tenancy?

13 A. No.

14 7. Q. Now, was the property at 299 Warden  
15 Avenue, was a mortgage obtained to purchase it?

16 A. Yes.

17 8. Q. Do you know what the mortgage balance  
18 when the property was purchased?

19 A. When we purchased it?

20 9. Q. Yes.

21 A. Sixty-five.

22 MR. BOOK: Say a guess.

23 THE DEPONENT: I'm guessing.

24 MR. BOOK: Well, don't guess.

25 THE DEPONENT: Okay, sorry.

1 MR. BOOK: Hold on. It was a CIBC mortgage.  
2 I don't know if I have a copy of it. I might have.  
3 It might be in all this material.

4 MR. I. HARVEY: \$40,000.00 and 25, and  
5 then after the renovations \$75,000.00 on the CIBC.

6 THE DEPONENT: Okay.

7 BY MR. S. HARVEY:

8 10. Q. It's \$75,000.00, does that seem right  
9 to you?

10 A. Well, the purchase price was 60 -- hold  
11 on for a second here.

12 MR. BOOK: Must have left the whole bag ---

13 MR. I. HARVEY: I could assist, I mean.

14 BY MR. S. HARVEY:

15 11. Q. Okay.

16 A. Hmm?

17 MR. I. HARVEY: I could assist.

18 BY MR. S. HARVEY:

19 12. Q. He gets to say anything.

20 MR. I. HARVEY: Well, it's just -- it's just  
21 for brevity.

22 BY MR. S. HARVEY:

23 13. Q. You don't know?

24 A. I don't know, okay.

25 MR. BOOK: We don't have that information

1 with us.

2 BY MR. S. HARVEY:

3 14. Q. When did you separate from Ian Harvey?  
4 When was that?

5 A. It was in June of 1992 or '91, '91.

6 15. Q. Did you continue to live at 299 Warden  
7 Avenue after June 1991?

8 A. I left for two weeks. Two or three  
9 weeks, and I got a lawyer, and I was able to move back  
10 into the house with my children.

11 16. Q. When was that?

12 A. When did I move back in?

13 17. Q. Yes.

14 A. It was within two to -- I'm saying  
15 approximately two to three weeks after I had left --  
16 left the home.

17 18. Q. You returned to the home at 299 Warden  
18 Avenue on or around June ---

19 A. The end of June.

20 19. Q. End of June 1991?

21 A. Yes.

22 20. Q. How long did you continue to live at  
23 299 Warden Avenue after that?

24 A. Nine months approximately.

25 21. Q. Do you remember exactly when you left

1 299 Warden Avenue after moving back in late June?

2 A. Well, you said February, but I don't --  
3 not -- well, I was there for nine months, so sometime  
4 in February or March.

5 22. Q. Was this February or March 1992?

6 A. Yes.

7 23. Q. Why did you leave in February or March  
8 1992?

9 A. Because I was getting a little  
10 concerned about when Ian was showing up to pick the  
11 children up he was coming into the house, he was  
12 pushing me aside, he was going through the property in  
13 the home, he was going through the home to check out  
14 what I was up to -- what I was doing. He was --  
15 basically, he was not just picking the children up,  
16 and I also have evidence that he was trying to break  
17 into the home when I was at work.

18 24. Q. In your supplementary record at Exhibit  
19 G, you include an order from Master Cork where at Page  
20 3, Paragraph 6, Master Cork ordered that, "The husband  
21 shall not attend at the matrimonial home save for  
22 purposes of access or such other errands only after  
23 providing the petitioner with 24 hours notice.

24 A. Mm-hmm.

25 25. Q. You would agree that after this order

1 Ian Harvey only had the ability to attend the home for  
2 purposes of access and for errands?

3 A. Yeah, but what errands was he gonna be  
4 having at the home except to pick his children up, and  
5 you can pick the children up at the front door of the  
6 house. You don't have to be going through the house  
7 to the third floor of the house and wandering around  
8 to check and see what I'm up to. Or, going down to  
9 the basement. Children are at the front door ready  
10 for him to be picked up.

11 26. Q. If your concern was that Ian Harvey was  
12 engaging in inappropriate behaviour --

13 A. Mm-hmm.

14 27. Q. -- why did you not seek an order for  
15 exclusive possession of the home and to completely bar  
16 him from the home?

17 A. I didn't know what my legal rights  
18 were.

19 28. Q. Well, the very next order, Paragraph 7,  
20 states that, "This court orders that the issue of  
21 exclusive possession of the matrimonial home was  
22 adjourned pending cross-examination."

23 A. Hold on for one sec.

24 29. Q. You'd agree you had a lawyer at the  
25 time when this order was made?

1 A. Okay, which -- which number are you at?

2 30. Q. I'm referring to Page 3 of Master  
3 Cork's order.

4 A. Yes.

5 31. Q. Dated December 6th, 1991.

6 A. What number?

7 32. Q. At Paragraph 7.

8 A. Okay.

9 33. Q. Where it says, "This court orders that  
10 the issue of exclusive possession of the matrimonial  
11 home is adjourned pending cross-examination."

12 A. Okay. Okay, but what does that mean  
13 about me. At the time, I guess -- so, that it's  
14 conflicting here in what it's saying.

15 34. Q. My question is, is it your testimony  
16 that you did not know about the concept of exclusive  
17 possession --

18 A. Yes.

19 35. Q. -- of the home? That's your testimony  
20 even though on the very next paragraph after the order  
21 in relation to the very limited circumstances that Ian  
22 Harvey could attend the home that there's a paragraph  
23 about how exclusive possession of the matrimonial home  
24 can be obtained?

25 A. Well, it says it's adjourned pending

1 cross-examinations of the parties on material filed  
2 and to be filed. So, it was adjourned for the moment.  
3 So, right at this moment he -- he was able to come to  
4 pick his children up and give me 24 hours if he wanted  
5 something out of the home.

6 36. Q. I also refer you to the first page of  
7 Master Cork's order where it notes at Paragraph 5 that  
8 this is a motion of exclusive possession of the  
9 matrimonial home. So, my question is, how can it be  
10 your testimony that you weren't familiar with the  
11 concept of exclusive ---

12 A. So, then I had exclusive possession?

13 37. Q. No, my question is, is your testimony  
14 that at the time in February 1992 you weren't familiar  
15 with the concept of exclusive possession of the  
16 matrimonial home?

17 A. Well my -- me, I thought exclusive  
18 possession was that I was living in the home and Ian  
19 Harvey wasn't. He was living at his father's home.  
20 So, this says exclusive possession here, and on the  
21 next two pages over it says that he could come within  
22 giving me 24 hours notice.

23 38. Q. The paragraph says that, "He can attend  
24 for the home --"

25 A. Right.

1 39. Q. "-- for the purposes of access --"

2 A. Right.

3 40. Q. "-- or for errands upon providing 24  
4 hours notice."

5 A. Right.

6 41. Q. So, my question to you is, you're  
7 making allegations now about Ian Harvey that he was  
8 engaging in inappropriate conduct, is that correct?

9 A. Yes, when he was picking the children  
10 up he wasn't providing me 24 hours notice that he had  
11 to go into the house to do errands and to go through  
12 the home. He was there just to pick the children up.

13 42. Q. It's your testimony that you fled the  
14 home because of inappropriate conduct of Ian Harvey in  
15 picking the children up or attending at the home?

16 A. Yes, he broke a man's nose in my house.  
17 And, the police were called, and we could've charged  
18 him with assault, and the police wanted us to, but we  
19 decided not to.

20 43. Q. My question to you is, if, at the time,  
21 you felt that Ian Harvey was not behaving  
22 appropriately --

23 A. Mm-hmm.

24 44. Q. -- at the matrimonial home, referring  
25 to 299 Warden Avenue, and you no longer wanted him to

1 attend at the matrimonial home, why you didn't seek an  
2 order for exclusive possession of the home?

3 A. I don't know.

4 45. Q. Just referring to the first page, it  
5 states at Paragraph 5 that what you're seeking is an  
6 order for exclusive possession of the matrimonial  
7 home.

8 A. Well, I should've.

9 46. Q. In this application ---

10 A. The police actually suggested to me to  
11 leave the home because I wanted a restraining order on  
12 Ian Harvey coming to the home, and they told me I  
13 couldn't get one because he had -- his name was on the  
14 property as well as mine.

15 47. Q. Did you ever seek a restraining order?

16 A. The police told me I could not because  
17 his name was on the property as well as my own.

18 48. Q. Were you aware if you can get a  
19 restraining order through the family court process?

20 A. I was not, and the police didn't tell  
21 me that I could.

22 49. Q. Did you have a lawyer at the time?

23 A. I had a lawyer at the time, but I  
24 listened to the police officers that showed up.

25 50. Q. In this application, ND18696791, in any

1 court documents ---

2 A. Where are you?

3 51. Q. I'm just asking you.

4 A. Oh.

5 52. Q. In any court documents did you ever  
6 allege that Ian Harvey was abusive towards you?

7 A. Yes, he was abusive towards me through  
8 my whole marriage.

9 53. Q. Is that specifically alleged in any of  
10 the court documents?

11 A. No.

12 54. Q. You acknowledge you're not alleging any  
13 kind of allegations of abuse until this month,  
14 September 2018?

15 A. I just thought that that was the type  
16 of marriage that I had, and -- until I finally flipped  
17 out and just left. I had an -- he was an abusive man  
18 through my whole relationship.

19 55. Q. But, you agree since June 1991 and  
20 throughout this family court proceeding --

21 A. Mm-hmm.

22 56. Q. -- you never in any court documents  
23 alleged that ---

24 A. No, I didn't.

25 57. Q. Now, you mentioned that you talked to

1 the police.

2 A. Mm-hmm.

3 58. Q. Did you ever obtain a police report?

4 A. No.

5 MR. S. HARVEY: I would actually like that  
6 as an undertaking with respect to either a police  
7 report or any documents in support of alleged abuse.

8 MR. BOOK: Refusal.

9 --- REFUSAL NO. 1

10 BY MR. S. HARVEY:

11 59. Q. Going back to my question as to why you  
12 didn't seek an order for exclusive possession, or  
13 about why you didn't seek a restraining order at the  
14 time. Is your testimony you don't know?

15 A. No, I didn't know I could get an order  
16 for exclusive possession. I didn't know. I -- sorry.

17 60. Q. Even though you sought exclusive  
18 possession back in December 1991?

19 MR. BOOK: She's already answered that.

20 THE DEPONENT: Yeah.

21 BY MR. S. HARVEY:

22 61. Q. Mr. Harvey has suggested that you  
23 couldn't afford the home at the time.

24 A. No, I left the home because I was  
25 afraid of Mr. Harvey, and I told -- that's why I

1 called the police and I wanted a restraining order. I  
2 should've put an alarm system in if I thought about it  
3 now. I should've, but I didn't.

4 62. Q. Since the separation in June 1991, did  
5 you pay anything towards the mortgage for the  
6 property?

7 A. I don't remember who was paying what.  
8 Sorry. Don't remember.

9 63. Q. You don't recall making any payments  
10 towards the mortgage of the property since the  
11 separation date?

12 A. I can't remember what our deal was as  
13 far as who was paying what. I -- I can't remember.

14 64. Q. When you left the home in February  
15 1992, do you know then if you were paying anything  
16 towards the mortgage?

17 A. No, when I left the home and Ian Harvey  
18 moved into the home then I was paying rent somewhere  
19 else, and so he -- he moved in so he -- he would be  
20 paying the mortgage. I can't pay a rent as well as  
21 mortgage at the same time.

22 65. Q. At least since February 1992 you  
23 haven't paid anything towards the mortgage towards  
24 this property at 299 ---

25 A. No, I've been paying rent.

1           66.           Q.    Have you paying anything towards the  
2                           property tax, or anything at all in terms of what the  
3                           carrying costs ---

4                           A.   I wasn't living there.  I was paying  
5                           rent somewhere else.  I was responsible for the hydro,  
6                           and the utilities, and everywhere -- everything  
7                           somewhere else.

8           67.           Q.    It's your testimony that at least since  
9                           February 1992 you haven't paid anything towards the  
10                          home?

11                          A.    No.

12           68.           Q.    To your understanding, in terms of  
13                          paying for the mortgage and carrying costs for the  
14                          home, since February 1992 they were paid by Ian  
15                          Harvey.  Is that your understanding?

16                          A.    Yes.

17           69.           Q.    You secured a loan from Robert Kernahan  
18                          in 1991, correct?

19                          A.    Right, correct.

20           70.           Q.    Do you know how much the loan was for?

21                          A.    It was for \$30,000.00, and by the time  
22                          Kernahan paid himself and Robert Price, or I think  
23                          Robert Price, but Mr. Price paid himself it was  
24                          \$36,000.00.

25           71.           Q.    This loan was secured as a mortgage?

1 A. No, it was actually a loan.

2 72. Q. But, it was secured against the  
3 property. It was put on title, is that correct?

4 A. I didn't -- it was never brought to me  
5 as a mortgage on the home.

6 73. Q. Just referring to your supplementary  
7 Affidavit at Exhibit H.

8 A. You have to realize that this is a  
9 person who had never taken even out a car loan in my  
10 life, so I didn't get into mortgages or anything. I  
11 thought it was a loan.

12 MR. BOOK: You have it.

13 THE DEPONENT: Is this it? So, where am I  
14 going?

15 BY MR. S. HARVEY:

16 74. Q. I'm referring to Exhibit H.

17 MR. BOOK: Yes.

18 THE DEPONENT: Mm-hmm.

19 BY MR. S. HARVEY:

20 75. Q. I'm referring to the date of instrument  
21 as November 27th, 1991, a charge --

22 A. Mm-hmm.

23 MR. BOOK: Say yes or no.

24 THE DEPONENT: Hmm?

25 MR. BOOK: Yes or no, not an mm-hmm.

1 THE DEPONENT: Oh sorry. Yes.

2 BY MR. S. HARVEY:

3 76. Q. My question, it's for \$36,000.00, is  
4 that for the loan you received from Robert Kernahan?

5 MR. BOOK: Counsel, you should know that  
6 that's not what happened. Mr. Kernahan took the loan  
7 and put then -- he's the one who negotiated putting  
8 this money -- this loan into an RRSP, and then  
9 transferred it out, and Laurentian Bank held his RRSP.  
10 That's how it came about as a mortgage.

11 MR. I. HARVEY: No.

12 MR. BOOK: Isn't that right?

13 BY MR. S. HARVEY:

14 77. Q. I'm just asking questions. You got a  
15 \$30,000.00 loan from Robert Kernahan --

16 A. Mm-hmm.

17 78. Q. -- which you've already testified, yes?

18 A. Yes, yes.

19 79. Q. Which wound up to be \$36,000.00, and  
20 that loan was eventually secured on title.

21 A. As far as I was concerned I was taking  
22 out a loan.

23 80. Q. Is your testimony that you never  
24 consented for this loan to be secured on title as a  
25 mortgage?

1           A.    Mr. Nadler was my lawyer as well as Mr.  
2           Kernahan's lawyer at the same time, so he wrote up all  
3           the papers and consulted with Mr. Kernahan, and I'm --  
4           I didn't know how it was being -- all I know is it was  
5           told to me it was a loan.

6       81.           Q.    Okay.

7           A.    However they handled it, but I was told  
8           it was a loan.

9       82.           Q.    I actually do have a copy of the  
10          mortgage here.  Sorry, I'm just going to provide the  
11          copy of the mortgage to Ms. Herrington.  My question  
12          is, is that your signature?

13          A.    Yes.  Okay.

14          MR. BOOK:  Can I get a copy of that?

15          MR. S. HARVEY:  Sure.  I can make a  
16          photocopy afterwards.

17          MR. BOOK:  Thank you.

18          BY MR. S. HARVEY:

19       83.           Q.    You agree you signed for a \$36,000.00  
20          mortgage to be put on title?

21          A.    Well, if that's what you have in front  
22          of you then I did.

23       84.           Q.    Do you remember what the interest rate  
24          was for this mortgage or loan?

25          A.    The original interest rate was fine,

1 but if I didn't pay it after a certain amount of time  
2 it went up exponentially, and I was hoping that our  
3 divorce would be finalized in six months, but it  
4 wasn't because once Ian found out that this was put on  
5 the house he said he was going to drag this on and on  
6 and on, and so we couldn't get it finalized in time.

7 85. Q. I'm just reading what the mortgage  
8 says. It's at "one and one eighth percent calculated  
9 monthly not in advance. Being equivalent to 13,886  
10 per annum, calculated half yearly not in advance from  
11 November 26th, 1991 to May 26th, 1992, and thereafter  
12 interest at three and three quarters percent per  
13 month, calculated monthly not in advance being  
14 equivalent to 49.436 per annum calculated half yearly  
15 not advanced from May 26th, 1992 to November 26th,  
16 1993." Does that seem right?

17 A. Yes.

18 86. Q. Yes? Yes?

19 A. Yes.

20 87. Q. Are you aware of any payments that were  
21 made towards this mortgage?

22 A. We didn't even know where to make a  
23 payment, and ---

24 88. Q. So, the answer is no?

25 A. No.

1           89.           Q.    You're not aware of any payments made  
2                    towards it.  What was this loan for?

3                    A.    We were going to start our own  
4                    business, so we took out a loan.

5           90.           Q.    Was it for a franchise fee for a new  
6                    housekeeping business?

7                    A.    Yes.

8           91.           Q.    Would you agree that this mortgage --  
9                    this \$36,000.00 mortgage, it was eventually assigned  
10                   to Laurentian Bank of Canada?

11                   A.    Yes, without my knowledge.  Yes.

12           92.           Q.    Before going to Robert Kernahan, did  
13                    you go to any other lenders seeking a loan?

14                   A.    I went to my own bank.  Didn't really  
15                    discuss anything with them, just said I'd like --  
16                    could I take out a loan with him?  And, they said,  
17                    "No, actually you'd have to have your husband sign if  
18                    you want to take out any type of loan."  Didn't tell  
19                    them what kind of loan or anything.  I said, "Okay,  
20                    thank you."  And, then a friend of mine worked at the  
21                    mortgage broker, and she said, "Well, I know a  
22                    gentleman.  We only do commercial mortgages, so I know  
23                    a friend of mine who does personal loans."  And,  
24                    that's when Steven Price came involved, and I called  
25                    him, and he said, "You know, let me look around and

1 see what I can do." And, that's how I ended up with  
2 Steven Price.

3 93. Q. You mentioned going to a bank. What  
4 bank was that?

5 A. That was CIBC, of my own branch.

6 94. Q. When was that? When did you discuss a  
7 loan with CIBC?

8 A. Probably before I took this loan out,  
9 so -- so, I guess around November of 1991.

10 Approximately, I'm not sure of the date.

11 95. Q. You said that you were told by the bank  
12 to get a home equity loan, you would need ---

13 A. No, I didn't mention home equity. I  
14 didn't mention anything, and I just talked to them a  
15 brief one-minute discussion saying, "If I wanted to  
16 get a loan for a set amount of money, how would I go  
17 about it?" And, they say, "You should bring your  
18 husband in," meaning Ian Harvey, or your husband that  
19 was on title with you and the bank at that moment, and  
20 I said, "Okay, thanks a lot." And, I said, "Bye."

21 96. Q. Were you discussing a loan that would  
22 be secured on title?

23 A. No. I didn't even get into that far of  
24 a conversation.

25 97. Q. If you're saying that you didn't

1 discuss a loan secured on title, why was the bank  
2 talking about how you needed your husband's permission  
3 or that you needed consent?

4 A. I don't know. You'd have to ask the  
5 teller that because I just had, like I said, a very  
6 brief conversation with them. I was standing at the  
7 teller's booth. I didn't even go and talk to  
8 somebody.

9 98. Q. What I'm going to suggest to you is  
10 that you did discuss a home equity loan with the bank,  
11 and they told you that in order to get a home equity  
12 loan you would need your husband's consent. Is that  
13 accurate?

14 A. You can suggest anything you want, but  
15 I say no.

16 99. Q. You're saying no, but you mentioned the  
17 bank did discuss with you about needing your husband's  
18 consent?

19 A. Yes, like I said, it was a one-minute  
20 discussion at a teller's booth.

21 100. Q. Just going back to the order of Master  
22 Cork dated December 6th, 1991. At Page 3, Paragraph 4  
23 --

24 A. Mm-hmm.

25 101. Q. -- there was an order on consent that

1           "both the Petitioner, yourself, and the Respondent  
2           shall preserve all property currently in their  
3           possession until further order of the court."

4                   A.    Mm-hmm.

5    102.           Q.    That was an order that was made on  
6           December 6th.

7                   A.    Mm-hmm, and that was after the fact  
8           there when I took the mortgage out.

9    103.           Q.    Yes, and yet on November 27th --

10                   A.    Mm-hmm.

11   104.           Q.    -- just over a week before you put a  
12           mortgage on the property.

13                   A.    That's what I said. This is after the  
14           fact.

15   105.           Q.    You agree you got a preservation order  
16           that the parties to encumber any -- for the  
17           matrimonial home, when you just put a mortgage on just  
18           over a week before. You would agree with that? Yes?

19                   A.    At -- yes, at the ---

20   106.           Q.    Because the mortgage was -- with  
21           Robert Kernahan, that was put on title on November --

22                   A.    November.

23   107.           Q.    -- November 27th, 1991.

24                   MR. BOOK: This was dated --

25                   MR. S. HARVEY: December the 6th.

1 MR. S. HARVEY: -- December the 6<sup>th</sup>, 1991.

2 THE DEPONENT: December -- that's right.

3 MR. I. HARVEY: I'm going to leave it at ---

4 BY MR. S. HARVEY:

5 108. Q. Now, do you know if Robert Kernahan  
6 ever communicated with Ian Harvey prior to the  
7 mortgage being placed on title?

8 A. No.

9 MR. BOOK: You don't know, or he didn't?

10 THE DEPONENT: I don't know. I don't know.

11 BY MR. S. HARVEY:

12 109. Q. You would agree that Ian Harvey never  
13 consented for this mortgage with Robert Kernahan being  
14 placed on title?

15 A. Yes.

16 110. Q. You would agree that he had no  
17 knowledge of the mortgage being placed on title until  
18 after it was placed on title?

19 A. Yes.

20 111. Q. Do you know when Ian Harvey found out  
21 about this mortgage?

22 A. Well, exact date, no. But, I -- after  
23 reading through all this documentation, I found out  
24 that Laurentian Bank sent him a notice that the --  
25 Kernahan had rolled everything over to an RRSP with

1 Laurentian Bank and had sent it to 299 Warden Avenue  
2 as my address. That's all I know. I'm not sure if he  
3 found out earlier or not, but they didn't send it to  
4 me. I didn't find out that Kernahan had rolled this  
5 into an RRSP. That's how Laurentian Bank got involved  
6 in this. He did it without discussing anything with  
7 me.

8 112. Q. You would agree that the property of  
9 299 Warden Avenue was a matrimonial home in the sense  
10 that you both lived in the property prior to  
11 separation?

12 A. Yes.

13 113. Q. Were you aware that at the time this  
14 mortgage with Robert Kernahan was put on title that  
15 you needed the consent of the other spouse in order to  
16 put a mortgage on title? Were you aware?

17 A. No, and that is brought up in these as  
18 well that I read through. That I said to Mr. Nadler  
19 that the home is owned by myself and my ex-husband. I  
20 never called it a matrimonial home because at the time  
21 I took the loan out I did not know that you could put  
22 a loan on a matrimonial home. I didn't -- I never  
23 called it a matrimonial home. I said it was a home  
24 that was owned by Mr. Harvey and myself. And, he went  
25 ahead, and he did -- he put the loan through anyways.

1 114. Q. You agree that this mortgage through  
2 Robert Kernahan has clouded title since November 1991?

3 A. Yes.

4 115. Q. Would you agree that if the property  
5 were sold today you couldn't give clear title to the  
6 property because the likely proceeds would not ---

7 A. No.

8 116. Q. Would you agree or not agree?

9 A. I don't agree. I -- I -- I think we  
10 can get that loan or that mortgage off of the  
11 property.

12 117. Q. But, until it's removed you would agree  
13 that you couldn't give clear title if the property was  
14 sold today?

15 A. Well, it's not being sold today.

16 118. Q. For the past 16 years, or sorry, 26  
17 years since 1992, you would agree that if the property  
18 were sold you wouldn't be able to give clear title?

19 MR. BOOK: Well, that's a legal question. I  
20 don't think she can answer a legal question, Counsel.

21 BY MR. S. HARVEY:

22 119. Q. Now, Ian Harvey has testified that  
23 because of this mortgage he says that he can't sell  
24 the property and he can't obtain mortgage financing  
25 for the property. Do you agree with those statements?

1 MR. BOOK: Again, she can't put herself into  
2 his mind and his experience.

3 MR. S. HARVEY: Well, I'm asking her based  
4 on her perspective if she would agree with those  
5 statements.

6 THE DEPONENT: I don't know.

7 MR. BOOK: Don't answer that question.  
8 That's an improper question. That's his evidence. We  
9 don't know what he's done or not done, or what efforts  
10 he's made or not made. We do know that he never  
11 pursued his claim.

12 --- REFUSAL NO. 2

13 BY MR. S. HARVEY:

14 120. Q. In the family court application, did  
15 you make a claim for an interest in the matrimonial  
16 home, or equalization?

17 MR. BOOK: Hold on a second. We've got that  
18 here. I think it's an exhibit. In the divorce case?

19 MR. S. HARVEY: Yes, in the divorce case,  
20 yes. The original divorce case with Court File  
21 ND18696791.

22 MR. BOOK: Well, there is a claim for an  
23 equalization, Paragraph 1C6. There's a claim for  
24 exclusive possession. There's a claim for  
25 occupational rent. That's the claims.

1 BY MR. S. HARVEY:

2 121. Q. My question was, did you pursue a claim  
3 for equalization, and I think -- so, the answer based  
4 on review of the application, the answer is yes?

5 MR. BOOK: Yes, that's right.

6 BY MR. S. HARVEY:

7 122. Q. Yes, okay.

8 A. Yes.

9 MR. BOOK: But, you asked something else  
10 about interest.

11 MR. S. HARVEY: I was asking before about  
12 what the interest rate of the mortgage was?

13 MR. BOOK: Because there was a claim for  
14 prejudgement interest and post judgement interest.

15 BY MR. S. HARVEY:

16 123. Q. Now, how did the family court case,  
17 this case file ND18696791, how did that end?

18 A. How did I get divorced?

19 124. Q. Well, how did this court file case end?

20 A. Okay, sorry, I don't understand.

21 125. Q. You're not litigating this family court  
22 case today, is that correct?

23 A. I -- no, I've got -- I've received my  
24 divorce, so everything else was finalized except for  
25 the house. And, it ended by me going into a judge's

1 chambers and me after five or six years of being  
2 separated and not divorced, I asked for my divorce and  
3 he gave me my divorce that day. And, he said, "You  
4 can settle the house at a later date."

5 126. Q. In terms of the Minutes of Settlement  
6 it was previously submitted as an exhibit. The  
7 minutes of settlement are dated April 12th, 1995.

8 A. Mm-hmm.

9 127. Q. You've seen this document before,  
10 correct?

11 A. Oh, I'm sure I have at some point.

12 128. Q. Is this your signature at the last  
13 page, Page 4?

14 A. Yep, yes.

15 129. Q. Do you agree that these Minutes of  
16 Settlement resolved the issue with regards to your  
17 interest in the property at 299 Warden Avenue?

18 A. Well, no, nothing's been resolved.  
19 I've never -- I -- yes, I did take out this loan. I'm  
20 calling it a loan still, but you call it a mortgage,  
21 but none of all of this has been settled. I don't  
22 think that -- no, it hasn't been settled.

23 130. Q. What I'm suggesting to you is this  
24 Minutes of Settlement resolved your interest in the  
25 matrimonial home at 299 Warden Avenue based off of the

1 appraisal that was to be obtained in 1995.

2 MR. BOOK: That's not a question.

3 THE DEPONENT: No, I don't understand.

4 BY MR. S. HARVEY:

5 131. Q. That's what I'm suggesting to you, and  
6 I guess your answer is, no, you don't agree?

7 A. No, I don't agree.

8 132. Q. Now, Paragraph G of the Minutes of  
9 Settlement makes the -- would you agree that the  
10 Minutes of Settlement are conditional upon the second  
11 mortgage being removed?

12 MR. BOOK: Well, Counsellor, you're putting  
13 her in a difficult situation because you're asking her  
14 for legal opinions on the Minutes of Settlement.

15 MR. S. HARVEY: Well, I'm asking her based  
16 on her interpretation of the Minutes of Settlement --

17 MR. I. HARVEY: That she signed.

18 MR. S. HARVEY: -- that she signed, if  
19 payment, because there is payment that's provided in  
20 the agreement that it's conditional upon her  
21 discharging this second mortgage. What I'm asking her  
22 is based on her understanding of the agreement.

23 MR. BOOK: I suggest the Minutes of  
24 Settlement speak for themselves.

25 MR. S. HARVEY: Well, I need to establish in

1 terms of what her understanding is of the agreement.  
2 This is purely a factual question as to what she  
3 understood the agreement to mean.

4 MR. BOOK: As of 1995.

5 MR. S. HARVEY: Yes, so, what I imagine a  
6 trial would be about is with regards to how the  
7 parties interpreted this agreement to mean. Your  
8 client might suggest a different interpretation than  
9 what my client says, but I need to know at least what  
10 is her interpretation of this agreement.

11 MR. BOOK: Well, I think if you phrase it  
12 this way, what was your understanding of Paragraph GI  
13 as of 1995 when this agreement was signed? When you  
14 signed it, what did you understand?

15 THE DEPONENT: Yeah, 1995 I understood this,  
16 but things have changed since 1995. I mean this is --  
17 -

18 BY MR. S. HARVEY:

19 133. Q. My question was, was it your  
20 understanding that Mr. Harvey would be providing an  
21 equalization payment to you after this mortgage is  
22 removed? Was that your understanding?

23 A. If we had done it in 1995.

24 134. Q. This was signed in 1995.

25 A. Yeah, but nothing happened in 1995.

1           135.           Q.    You would agree that there's not a time  
2                            limitation on here that says that the mortgage has to  
3                            be removed in 1995?

4                            MR. BOOK:  To be fair, I think it's fair to  
5                            say, correct me if I'm wrong, that when these Minutes  
6                            of Settlement were executed it was on the  
7                            understanding that everything would be done at once.  
8                            In other words, she couldn't ---

9                            MR. S. HARVEY:  Well, we don't have evidence  
10                           of that so, you're basically imposing a different  
11                           interpretation of ---

12                           MR. BOOK:  I'm going to ask her to reply, so  
13                           you can ask her if you want in exam.  If the house  
14                           weren't sold, or if you didn't get paid out by Mr.  
15                           Harvey at the time, were you able to discharge this  
16                           mortgage on your own?  And, I suggest to you the  
17                           answer's going to be no.

18                           BY MR. S. HARVEY:

19           136.           Q.    I need to be able to ask her with  
20                            regards to, there's a payment that's supposed to be  
21                            made as per the Minutes of Settlement, and whether  
22                            it's her understanding that that payment is  
23                            conditional upon the mortgage being removed.

24                            A.    But, there was no payment made.

25           137.           Q.    Well, no, so I'm referring to ---

1 A. You're confusing me.

2 138. Q. I'm referring to Paragraphs A to E that  
3 refer to payments to be made by Mr. Harvey.

4 A. Yeah, in 1995.

5 139. Q. You would agree that there's no time  
6 limitation that in terms of when payments are to be  
7 made other than it's conditional upon the mortgage  
8 being removed. Again, my question is, are these  
9 payments that are supposed to be made including at  
10 Paragraph E the \$6,500.00, the payments that are  
11 discussed from Paragraphs A to E of the Minutes of  
12 Settlement; is it her understanding that these  
13 payments were conditional on the mortgage being  
14 removed?

15 A. At the time this was written?

16 140. Q. It's a yes or no?

17 MR. BOOK: Well, it can't be yes or no.

18 BY MR. S. HARVEY:

19 141. Q. I'm trying to understand. It's a very  
20 simple question.

21 A. To you it's a simple question.

22 142. Q. Are these payments conditional?

23 A. Yes, in 1995.

24 143. Q. So, we'd agree that the payments that  
25 are discussed in Paragraphs A to E are conditional

1           upon the mortgage being removed?

2                   A.    In 1995.

3    144.           Q.    You would agree nowhere in the  
4                   agreement does it say that the mortgage has to be  
5                   removed in 1995?  Yes or No?

6                   MR. BOOK:  I don't believe it.  I mean, is  
7                   there a timeframe within which this must be completed?

8                   BY MR. S. HARVEY:

9    145.           Q.    Is there a timeframe which in this must  
10                   be completed?  Is there any limitation in that  
11                   agreement?

12                   MR. BOOK:  I don't see a timeframe, but I  
13                   don't think it matters.

14                   MR. S. HARVEY:  It's her testifying.

15                   MR. BOOK:  Okay, go ahead.  Do you see a  
16                   timeframe?  What was your understanding of when this  
17                   would have to be completed?

18                   THE DEPONENT:  Well, I -- I didn't have a  
19                   timeframe of when it had to be completed.  I -- I  
20                   mean, I -- I walked out of this relationship with --  
21                   without getting a penny from anywhere here, so ---

22                   BY MR. S. HARVEY:

23    146.           Q.    With respect to you saying you not  
24                   getting a penny, you acknowledge that you received  
25                   this loan from Robert Kernahan?

1 A. Yes.

2 147. Q. And, you agree ---

3 A. I'm talking about the house.

4 148. Q. Yes, but you agree that you received  
5 that money based on you mortgaging the property?

6 A. Okay.

7 MR. BOOK: She said that she understood it  
8 to be a loan, but it turned out it was a mortgage.

9 THE DEPONENT: Right.

10 MR. S. HARVEY: I have a bit of a concern  
11 that you're kind of testifying for her.

12 MR. BOOK: Okay.

13 BY MR. S. HARVEY:

14 149. Q. I'm going to encourage you not to  
15 answer for her because it's my examination here and  
16 you really can't testify for her. We agreed you  
17 signed the mortgage?

18 A. Well, my signature's on there, so...

19 150. Q. Yes, you signed for the mortgage, and  
20 you received -- you acknowledged that you received the  
21 equivalent amount, \$36,000.00, based on you mortgaging  
22 the property. So, you agree you did receive something  
23 for your interest in the property?

24 A. Okay, fine.

25 151. Q. And, you would also agree that there

1 was a legal aid lien placed on title?

2 A. Well, yes, because I couldn't -- yes.

3 152. Q. You agree that was secured against the  
4 value of the home as well?

5 A. Yes.

6 153. Q. Those are two things that you do  
7 acknowledge you received --

8 A. Mm-hmm.

9 154. Q. -- based on your interest in the home?

10 A. Yes.

11 155. Q. In terms of removing this mortgage  
12 that's since been assigned to Laurentian Bank of  
13 Canada, you brought this application here filed in  
14 2017. Have you made any efforts before then to try to  
15 remove this mortgage? You can't speak to your  
16 counsel.

17 A. I know, I know, I know. I didn't speak  
18 to him. Yes.

19 156. Q. Can you tell me what those efforts  
20 were?

21 A. We have been in contact with Miss Havis  
22 as far as removing the mortgage.

23 157. Q. When was that? What timeframe are you  
24 talking about?

25 A. Within the past few months.

1 158. Q. My question is, prior to this  
2 application which was filed in 2017, what efforts were  
3 made in terms of you trying to remove this mortgage  
4 that has since been signed to Laurentian Bank of  
5 Canada?

6 A. None.

7 159. Q. None, okay. Just turning to Page 3 of  
8 the Minutes of Settlement, Paragraph F, where it  
9 stated, "These Minutes of Settlement are subject to  
10 either party and their respective counsel receiving  
11 third party independent legal advice in order to  
12 satisfy themselves that these Minutes of Settlement  
13 can be acted upon without liability to either party."

14 A. Mm-hmm.

15 160. Q. My question is, are you aware of  
16 yourself or your counsel obtaining any third party  
17 independent legal advice?

18 A. No.

19 161. Q. No, and why not? Why hasn't it been  
20 pursued?

21 A. Because we didn't need to receive it.  
22 I don't even know why this is even in here. She never  
23 received third party independent legal advice.

24 162. Q. I think you answered that question.  
25 Now, in the original family court application, did you

1 make a claim for occupancy rent -- I think the answer  
2 was yes. You may want to refer to the -- if you can  
3 refer to the application.

4 A. Mm-hmm. Okay.

5 163. Q. Okay.

6 A. Mm-hmm.

7 164. Q. Do you know what happened to that claim  
8 for occupancy rent?

9 A. Nothing so far.

10 165. Q. Is it fair to say that that claim was  
11 abandoned?

12 MR. BOOK: I don't believe there's a note of  
13 abandon in the file?

14 THE DEPONENT: No.

15 MR. S. HARVEY: Again, I'd ask you not to  
16 answer for her.

17 MR. BOOK: Well, that's a legal answer.

18 MR. S. HARVEY: Well, you can object to  
19 questions, but you can't answer.

20 MR. BOOK: I'll object to that.

21 --- REFUSAL NO. 3

22 THE DEPONENT: Unless I go down to the  
23 courthouse I wouldn't know if it's abandoned or not.

24 BY MR. S. HARVEY:

25 166. Q. You would agree that after these

1 Minutes of Settlement were signed in 1995 that no  
2 claim for occupancy rent was pursued between the time  
3 period from 1995 to 2017?

4 A. No, nothing was pursued. I haven't  
5 filed anything since then. You have to under...

6 167. Q. Did you ever seek for the property at  
7 299 Warden Avenue to be sold?

8 A. Once, yes.

9 168. Q. When was that?

10 A. It was about two years after I had left  
11 the home. Or, was I still in the home -- oh my gosh,  
12 I don't remember. It was by a Mr. Garden. Yes, I  
13 can't remember the date, but we did put it up for  
14 sale.

15 169. Q. Do you remember what year it was in  
16 terms of when it was ---

17 A. I don't remember. It was a long time  
18 ago.

19 170. Q. It wasn't until at least two years  
20 until after you left the home?

21 A. I'm trying to remember. I can't  
22 remember exactly when it was, but it was right -- just  
23 after our separation, and it was within a year or two  
24 of me leaving the house, so it was -- it was early on.  
25 I don't remember exactly when.

1 171. Q. Are you aware if there was an agreement  
2 to list the property for sale?

3 A. Yes, he was a registered real estate  
4 agent.

5 172. Q. The property didn't sell?

6 A. No, it didn't.

7 173. Q. Beyond this one period of time, did you  
8 ever seek the property to be sold again?

9 A. No.

10 174. Q. Those are the questions I wanted to  
11 ask.

12 MR. I. HARVEY: In the separation agreement  
13 ---

14 MR. S. HARVEY: Just one moment of  
15 indulgence.

16 MR. I. HARVEY: In the separation agreement  
17 there's no discussion of --

18 MR. S. HARVEY: I think those are my  
19 questions I wanted to ask.

20 MR. BOOK: Re-examination, one question.

21 MR. S. HARVEY: Okay.

22 MR. BOOK: At any time, were you able to  
23 access sufficient funds to discharge or remove the  
24 Laurentian Mortgage without accessing your equity in  
25 the house?

1 THE DEPONENT: No.

2 MR. BOOK: Thank you.

3 --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 3:08 P.M.

4

5

6

7

8 I hereby certify that this is the

9 examination of GAIL HERRINGTON,

10 taken before me to the best of my

11 skill and ability on the 27th day of

12 September, 2018.

13

14 -----

15 Pooja Joshi - Court Reporter

16

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19

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