

Federal Court



Cour fédérale

**Date: 20090512**

**Docket: T-628-08**

**Citation: 2009 FC 493**

**Toronto, Ontario, May 12, 2009**

**PRESENT: Kevin R. Aalto, Esquire, Prothonotary**

**BETWEEN:**

**CLAUDIA RICCI**

**Plaintiff**

**and**

**JOHN TULLY and the Owners and  
All others Interested IN THE SHIP “CELESTRIS”**

**Defendant**

**REASONS FOR ORDER AND ORDER**

**Introduction**

[1] “FOREVER LOST” is the apocryphal name of the 48 foot sailboat which is at the centre of this proceeding (the “Sailboat”). The Plaintiff, Claudia Ricci (“Claudia”) and the Defendant, John Tully (“John”) are married and are currently involved in divorce proceedings in the Ontario Superior Court of Justice. Those proceedings were commenced subsequent to this action.

[2] There is a dispute as to the ownership of the Sailboat between Claudia and John. Claudia claims that she is the equitable owner of the Sailboat because she provided all of the purchase funds. She raised those funds by taking out a mortgage on her home which she had owned free and clear and which she had purchased and lived in prior to her marriage to John. For his part, John claims ownership by way of gift from Claudia and also alleges that he has spent endless hours repairing and restoring the Sailboat. For the reasons that follow, the Sailboat is indeed forever lost to Claudia and John and must be sold.

### Background

[3] Claudia is a 51 year old single parent who lives with her three children aged eighteen, twenty-one and twenty-four. She is employed as an early childhood education teacher with the Centered on Child Care Centre. She earns an annual gross salary of approximately \$40,000. Her evidence is that she runs a monthly financial shortfall of over \$1,000 a month due to debts she incurred to finance the purchase of the Sailboat.

[4] From about May 2004 until December 2006, Claudia and John were involved in a personal relationship and cohabited together. They were married on January 29, 2005. During that time, John was involved in a consumer proposal under the *Bankruptcy and Insolvency Act* and had negligible assets.

[5] During their cohabitation, Claudia and John lived in Claudia's home in Bolton, Ontario. Claudia had purchased that home in January 1998. At the time of the purchase there was no mortgage financing on the property. It is Claudia's evidence that the original intention of the purchase of the Sailboat was that she and John wished to use it as a retirement investment. They viewed it as being the basis of a charter company and that they would eventually retire and live aboard the Sailboat in the Caribbean. Claudia deposes that this was John's idea. He apparently had significant experience with Sailboats while Claudia had nominal experience.

#### Acquisition of the Sailboat

[6] Between August 2004 and November 2004, Claudia and John travelled to various locations in the United States looking at Sailboats. Eventually, they decided to purchase a 1990, 48 foot Jacobs Auxiliary sailboat which at the time was named "CELESTRIS". In November, 2004 the purchase was completed.

[7] Claudia's evidence is that John handled the administration of the purchase of the Sailboat on behalf of himself and Claudia and that the Sailboat would be registered in both of their names.

[8] The evidence is undisputed that the entire purchase price of the Sailboat in the amount of \$100,000 US was raised by Claudia. She borrowed the entire amount from TD Canada Trust by placing a mortgage on the home in the amount of \$132,000 Cdn. Her evidence is that after

consolidation of some of her personal expenses, she received a net amount of \$119,820.73 Cdn. from the proceeds of the mortgage which were then used to purchase the Sailboat.

[9] During their cohabitation, John and Claudia apparently contributed equally to the mortgage payments on the home. However, John did not contribute to the capital cost of the acquisition of the Sailboat. Possession of the Sailboat was taken in early 2005 and in May, Claudia and John sailed it back to Canada. Claudia states that John was responsible for making all necessary arrangements with respect to the import of the Sailboat to Canada and all necessary arrangements with Canada Customs and other government agencies. John failed to do so. As a result, the Sailboat was encumbered with a \$26,450 fine levied by Canada Customs. A further sum of approximately \$15,000 was levied with respect to importation taxes and duties.

[10] Claudia says in her affidavit that John suggested that Claudia pay these additional amounts since he did not have any money or assets and Claudia still had equity in her home. As a result, Claudia obtained a secured line of credit against the home for \$57,500 in June 2005 and paid an additional \$40,000 of this towards the fines and duties owing on the Sailboat.

[11] In December, 2006 Claudia refinanced her home to consolidate the debts incurred with respect to the Sailboat. This resulted in a mortgage in the amount of \$185,000 on the home. Her evidence is that of the mortgage amount, a total of \$159,000 relates to her investment in the Sailboat.

John's Actions

[12] It is Claudia's evidence that the Sailboat was to be registered in both her name and John's name. This is so given the fact that she contributed all of the money for the acquisition of the Sailboat. However, as John was responsible for all of the administration relating to the acquisition of the Sailboat and its importation to Canada, on the registration documents, only John is identified as the owner and purchaser of the Sailboat in the bill of sale. When it was registered with the Canadian Registrar of Vessels, it was registered solely in his name.

[13] Unfortunately, the marriage did not last long and Claudia and John separated on or about December 1, 2006. At that time, John moved out of Claudia's home but kept possession of the Sailboat. It is moored at a marina on Lake Ontario in Toronto. Claudia's evidence is that she does not have any keys, pass codes or any other access whatsoever to the Sailboat and does not use it. It is solely used by John.

[14] A separation agreement was entered between Claudia and John. In that separation agreement, John agreed to make all of the mortgage payments taken out to acquire the Sailboat. Until May 2008, the payment on the mortgage was approximately \$1,411. Since May, the monthly payment is approximately \$1,370 per month.

[15] John gave Claudia approximately \$14,046 to cover the monthly mortgage payments from December, 2006 until the end of February, 2008. A cheque provided on March 1, 2008 in the amount of \$750 did not clear. Claudia's evidence, which was uncontradicted, is that John failed to make any further payments until ordered by this Court to do so.

[16] This action was commenced by Statement of Claim issued April 22, 2008. A warrant for the arrest of the Sailboat was issued on April 23, 2008 and served on the Sailboat on April 25, 2008. The Sailboat has remained under arrest within the jurisdiction of this Court since that time.

[17] A Vessel Registration Query Search result from Transport Canada's website completed on May 28, 2008 indicates that the ownership of Sailboat was registered to Marguerite Dunning on May 6, 2008. This is obviously subsequent to the arrest of the Sailboat. Marguerite Dunning is apparently a woman with whom John had a relationship subsequent to his separation from Claudia. At the time of the change of ownership the name of the Sailboat was changed from "CELESTRIS" to "FOREVER LOST". A further Vessel Registration Query Search result from Transport Canada was conducted on July 17, 2008 and shows that the ownership was switched back from Marguerite Dunning to John. The name of the Sailboat remains "FOREVER LOST".

These proceedings

[18] As noted, the Sailboat is currently under arrest pursuant to an arrest warrant issued by this Court on April 25, 2008. The Statement of Claim in this proceeding seeks various heads of relief including the following:

- a) A declaration that Claudia acquired and is entitled to a 100% interest in the Sailboat and that it be registered with the Canadian Registrar of Vessels in Claudia's name;
- b) Permanent possession and occupation of the Sailboat by Claudia;
- c) Alternatively, a declaration that Claudia has an equitable mortgage equivalent to the value of her financial contributions to the purchase, restoration, upkeep and importation expenses of the Sailboat.

[19] The Statement of Defence filed by John in this proceeding pleads that he has a long history of involvement with boating as an owner, operator and hobbyist and that he has owned approximately ten vessels in his lifetime. He pleads that Claudia had no experience with boating or admiralty matters and that she never intended to be directly involved in the ownership or operation of the Sailboat. John also pleads that the contributions made by Claudia were and were always intended to be gifts to John and that Claudia never was intended to have any ownership interest in the Sailboat. Alternatively he pleads that any moneys contributed for the purchase of the Sailboat came from spousal assets and not from a mortgage on a property owned by Claudia.

[20] He does concede that some of the purchase funds came from a mortgage from a home which he describes as the matrimonial home in which he and Claudia were cohabiting as spouses and in which property Claudia did not at any relevant time have sole interest. John pleads that he has spent more than 1,500 hours and more than \$50,000 in the last four years bringing the Sailboat to sea worthy and marketable condition.

[21] John specifically relies in his Statement of Defence on the doctrine of *forum non conveniens*. He pleads, essentially, that this action is frivolous and vexatious and that all issues relating to the Sailboat and the division of family assets should be dealt with by the Family Court Division of the Ontario Superior Court of Justice and not this Court.

[22] On August 25, 2008 the Court heard a motion brought by Claudia seeking the sale of the Sailboat. There was a cross-motion by John to stay the action in favour of the proceedings in the Superior Court of Justice. At that hearing, with the encouragement of the Court, the parties reached an agreement which was encapsulated in my Order of September 30, 2008. The essential terms of that order are as follows:

1. The Defendant, John Tully, shall make payments to the Plaintiff in the amount \$1,085.00 on the first day of each month beginning September 1, 2008 until a final determination is reached in this matter. Mr. Tully shall have a maximum of two opportunities to rectify failure to make a monthly payment by making payment within 48 hours of notice of his failure to make a payment.
2. The Defendant, John Tully, shall obtain Hull and Machinery insurance on the Vessel within two weeks of the date of this Order. The amount of the insurance shall be an agreed value of \$160,000.00 or the value of the Vessel as determined by a qualified marine surveyor, whichever is less. The cost of the insurance and any necessary survey for the insurance shall be at Mr. Tully's expense.
3. The Plaintiff shall be entitled to have an independent survey of the Vessel conducted at her own expense upon reasonable notice to the Defendant, John Tully.
4. The Vessel shall remain under Arrest.
5. The Defendant, John Tully, shall mark the Vessel with its name and official number in accordance with the *Canada Shipping Act, 2001*, forthwith.



6. The Defendant, John Tully, is prohibited from any dealing with the Vessel pursuant to s.75 of the *Canada Shipping Act, 2001* for the duration of this lawsuit or until such further Order of this Court.

7. The Plaintiff's motion for sale of the Vessel *pendente lite* is hereby adjourned *sine die* returnable in the event of default of this Order.

8. This action is hereby stayed subject to enforcement of the terms of this Order.

[23] Unfortunately, John has failed to comply with the Order of September 30, 2008 in two material respects: first, he defaulted in making the monthly payments; second, he failed to maintain insurance on the Sailboat. Notwithstanding these defaults, John continues to reside and has full use of the Sailboat.

#### The Current Motions

[24] Two motions are now before the Court. One from Claudia which effectively renews her motion of August 25, 2008 for the sale of the Sailboat together with other relief relating to payment of the proceeds of the sale of the Sailboat against the mortgage on the property. The evidence on this motion from Claudia, which is uncontested by John, is that John has stopped making payments to her respecting the mortgage; that she has spoken to the insurance broker involved in placing insurance on the Sailboat in September and has been advised that the insurance premium has not been paid since September, 2008 and was cancelled effective January 16, 2009; and, the underwriters are owed the sum of \$657.98 for the period September 2008 through January 2009.

[25] Claudia also deposes, based on her conversation with the underwriter that the policy of insurance that was issued was based on the removal of propane tanks from the Sailboat and that the underwriter was misinformed by John that they had been removed.

[26] Claudia has also been informed by Marguerite Dunning, who was involved in a relationship with John following the breakdown of the marriage with Claudia, that propane tanks were being used on the vessel when she (Ms. Dunning) was living on board and that at least as of November 2008 the galley was under reconstruction and propane tanks were on board and being used. The insurance on the Sailboat requires that there be no propane on the Sailboat. Further, as of March 9, 2009, the date of a further survey of the Sailboat undertaken at the expense of Claudia, propane continued to be used on the Sailboat. Claudia deposes, on information and belief, that there is no shutoff valve, there is no gas sniffer or ventilation and the galley remains under refit with propane tanks in the centre of the cockpit.

[27] To add to the financial woes and the precarious position of the Sailboat, the dockage fees also appear to be in arrears.

Motion to get off the record

[28] At the outset of the hearing, the motion to get off the record was heard first. John's lawyers sought the usual order pursuant to Rule 125 of the *Federal Courts Rules*. John was also present in Court. Rule 125(40) provides that the order is not effective until proof of service of the order is

filed. This provision in the rule is there to ensure that the Order comes to the attention of the party and that it is properly filed. Here, there could be no doubt that John knew the Order permitting his counsel to be removed from the record was granted. Indeed, John was asked if he had submissions to make and advised that he did not.

[29] John's counsel was then advised that he was excused. There then occurred a somewhat Monty Pythonesque exchange between the Court and John's former counsel. He advised that he did not wish to leave and notwithstanding the Order that he no longer represented John, wished to remain and make submissions on Claudia's motion. He based this position on the fact the Order made removing him as solicitor of record did not take effect until proof of service on John was filed which he argued had not yet happened. Orders of the Court take effect from the time they are made by the judicial officer. In this case, there could be no doubt that John was fully aware of the Order of the Court. The protection of Rule 125(4) was not required and I ruled that counsel could not have it both ways – be removed as counsel and then remain and make submissions when his client was clearly present and representing himself. Counsel advised that what he was “hoping to do is obtain a just hearing of the issues at issue on this motion [Claudia's motion]”. This comment provoked an extensive colloquy between the Court and John's former counsel regarding his participation, John's right to be heard and my overarching responsibility as a judicial officer to comply with my oath of office to ensure a fair hearing.

[30] As a result of this exchange, John and his former counsel entered into a form of retainer agreement whereby John authorized his former counsel to make submissions on his behalf on the merits of Claudia's motion.

The Motion for the sale of the Sailboat

[31] While the issue for determination from Claudia's standpoint is the disposition of the Sailboat, John's position was that the matter should be stayed to be dealt with in the divorce proceedings in the Ontario Superior Court of Justice.

[32] It is to be noted that John has filed no responding evidence undermining or in any way contradicting the affidavits filed by Claudia on this motion. He relies only on the affidavit filed in opposition to the motion when it was originally heard. Thus, the allegations regarding the failure to pay the mortgage, the condition of the Sailboat, the insurance on the Sailboat and the other matters deposed to in Claudia's affidavits are uncontradicted. The only other evidence before the Court is that contained in the Motion Record to remove John's counsel as solicitors of record.

[33] In that material, there is an exchange of e-mails between John and his former counsel in which John unequivocally states that "she can have the f\*\*\*\*\* thing". It requires no great mental gymnastics to conclude that John is referring to the Sailboat.

## Jurisdiction Issue

[34] The Federal Court has concurrent jurisdiction with the Provincial Superior Courts in relation to Canadian Maritime Law. A party seeking to enforce rights against a vessel is entitled to seek relief in this Court. As a statutory Court, this jurisdiction is found in section 22 of the *Federal Courts Act* which provides as follows:

### **Navigation and Shipping**

22. (1) The Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.

### **Maritime jurisdiction**

22. (2) Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:

(a) any claim with respect to title, possession or ownership of a ship or any part interest therein or with respect to proceeds of sale of a ship or any part interest therein;

(b) any question arising between co-owners of a ship with respect to possession, employment or earnings of a ship;

(c) any claim in respect of a mortgage or hypothecation of, or charge on, a ship or any part interest therein or any charge in the nature of bottomry or respondentia for which a ship or part interest therein or cargo was made security;

...

Jurisdiction applicable

(3) For greater certainty, the jurisdiction conferred on the Federal Court by this section applies

(a) in relation to all ships, whether Canadian or not and wherever the residence or domicile of the owners may be;

...

(b) in relation to all mortgages or hypothecations of, or charges by way of security on, a ship, whether registered or not, or whether legal or equitable, and whether created under foreign law or not.

[35] Does the Sailboat fit within these provisions? In my view it unquestionably does as ship is defined to mean “any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion . . .”

[36] Thus, this Court clearly has the jurisdiction to deal with the Sailboat. However, the Federal Court should not become a surrogate divorce court for warring spouses to engage in a battle over family assets when the proceedings should properly be brought in the Provincial Family Courts.

[37] John’s counsel raises the spectre of this Court becoming a backdoor divorce court over family owned boats and for one embittered spouse to “seek an illegitimate juridical advantage” over the other by proceeding in this Court to obtain possession or sale of a family asset. This argument is based largely on the fact that John uses the Sailboat as his home and so he argues that he should not be dispossessed until the matrimonial proceedings, commenced after this proceeding, are concluded.

[38] In my view, that is not the case here. This is a case where there is clear evidence that the Sailboat while in the sole possession of John is in jeopardy from fire, seizure by creditors or other danger. This Court has the jurisdiction and powers to prevent further deterioration of the Sailboat or to ensure that it is not put in jeopardy to third party creditors.

[39] John's counsel points to the multiplicity of proceedings and additional costs which results from concurrent proceedings in two courts. There may be separate proceedings but that, in and of itself, is insufficient for this Court to concede jurisdiction to the Provincial Court in this case. This Court can focus on the issues relating only to the Sailboat without being encumbered by the sometimes complex matrimonial and emotional issues permeating family law proceedings.

[40] John's counsel also raised the possibility of inconsistent findings between Courts. However, the Sailboat or its proceeds of sale will have to be accounted for in the overall financial settlement in the matrimonial proceedings. This Court is simply exercising its jurisdiction to preserve the asset or its proceeds and is not engaging in a determination of issues in the matrimonial proceedings.

[41] Pursuant to section 50 of the *Federal Courts Act* this Court may stay proceedings properly commenced within its jurisdiction. This section mandates as follows:

50. (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter  
(a) on the ground that the claim is being proceeded with in another court or jurisdiction; or  
(b) where for any other reason it is in the interest of justice that the proceedings be stayed.

[42] To stay proceedings on the ground that the claim is being pursued in another Court, a party must demonstrate that it is more convenient and appropriate to pursue the action in the other Court and will best secure the ends of justice [see *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897 at paras. 33 and 53]. It is also to be noted that it is a remedy to be exercised sparingly and only in the clearest of cases. The principles relating to the stay of a proceeding were recently summarized in *Kent v. Universal Studios Canada Inc.*, 2008 FC 906 at paras. 15 through 18 as follows:

- [15] The general test to be applied on a motion for a stay pursuant to section 50(1) of the *Federal Courts Act* is a two-part test, which has been consistently applied by this Court and other Courts over many years. This two-part test requires that the defendant demonstrate:
- a. that the continuation of the action will cause prejudice or injustice (not merely inconvenience or extra expenses) to the defendant; and
  - b. that the stay will not work an injustice to the plaintiff.

There is a long line of cases that support this two-part test. They include: *Empire-Universal Films Limited et al. v. Rank*, [1947] O.R. 775 (H.C.), at p. 779; *Hall Development Co. of Venezuela, C.A. v. B. and W. Inc.* (1952), 16 C.P.R. 67 (Exch. Ct.), at p. 70; *Weight Watchers International Inc. v. Weight Watchers of Ontario Ltd.* (1972), 5 C.P.R. (2d) 122 (F.C.T.D.), at pp. 129-130; *Varnam v. Canada (Minister of National Health and Welfare)*, [1987] F.C.J. No. 511 (F.C.T.D.), at p. 3; *Figgie International Inc. v. Citywide Machines Wholesale Inc.* (1992), 50 C.P.R. (3d) 89 (F.C.T.D.), at p. 92; *Discreet Logic Inc. v. Registrar of Copyrights* (1993), 51 C.P.R. (3d) 191 (F.C.T.D.), at p. 191; *Biologische Heilmittel Heel GmbH et al. v. Acti-Form Ltd.* (1995), 64 C.P.R. (3d) 198 (F.C.T.D.), at p. 201; *Compulife Software Inc. v. Compuoffice Software Inc.* (1997), 77 C.P.R. (3d) (F.C.T.D.), at p. 456; *Canadian Pacific Railway Co. v. Ship Sheena M* (2000), 188 F.T.R. 16 (F.C.T.D.), at p. 16; *White v. E.B.F. Manufacturing Ltd.*, 2001 FCT 713 (CanLII), at para. 5; and, *Safilo Canada Inc. v. Contour Optik Inc.* (2005), 48 C.P.R. (4<sup>th</sup>) 339 at p. 27.



[16] It should also be noted that the granting of a stay is a discretionary order and the Court's discretion must be exercised sparingly and only in the clearest of cases. There are many cases which support this proposition including: *Mugesera v. Canada*, [2005] 2 S.C.R. 91, at para. 12; *Safilo Canada Inc. v. Contour Optik Inc.*, *supra*, at para. 27; and, *Compulife Software Inc. v. Compuoffice Software Inc.*, *supra*, at para. 16.

[17] A summary of guidelines which have evolved over time to assist in the determination of whether a stay should be granted are usefully summarized by Justice Dubé of this Court in *White v. EBF Manufacturing Limited et al.*, [2001] F.C.J. 1073 as follows:

1. Would the continuation of the action cause prejudice or injustice (not merely inconvenience or extra expense) to the Defendant?
2. Would the stay work an injustice to the Plaintiff?
3. The onus is on the party which seeks a stay to establish that these two conditions are met;
4. The grant or refusal of the stay is within the discretionary power of the Judge;
5. The power to grant a stay may only be exercised sparingly and in the clearest of cases;
6. Are the facts alleged, the legal issues involved and the relief sought similar in both actions?
7. What are the possibilities of inconsistent findings in both Courts?
8. Until there is a risk of imminent adjudication in the two different forums, the Court should be very reluctant to interfere with any litigant's right of access to another jurisdiction;
9. Priority ought not necessarily be given to the first proceeding over the second one or, vice versa.

[18] These guidelines have been approved in other cases in this Court. See, for example, *Safilo Canada Inc. v. Contour Optik Inc.*, *supra* at pp. 349 - 350.

[43] In considering all of these factors and in particular, the interests of justice, the interests of the parties and the juridical advantage conferred on Claudia militate against granting a stay. While John's counsel characterized the advantage conferred on Claudia as an illegitimate juridical advantage because of the ongoing matrimonial proceedings, in my view, that is exactly the type of juridical advantage that can only be obtained in this Court on these facts. By virtue of the availability of *in rem* proceedings the Sailboat has been arrested and Rules 490 and 491 of the *Federal Courts Rules* provide a procedure for the sale of arrested property.

[44] These proceedings were commenced prior to the matrimonial proceedings and it would be unjust to Claudia to now give them priority. It is indeed arguable that by disposing of the Sailboat in these proceedings in the form of the order below that the matrimonial proceedings will be simplified and that a speedier resolution of family property issues can be sorted out. Claudia does not argue that the order of this Court would result in the Sailboat or its proceeds of sale being put beyond the reach of the Ontario Superior Court of Justice. Nor could she as it seems apparent the Sailboat was acquired during the marriage and would have to be accounted for in the division of family assets. In any event, those are matters for the Family Court not for this Court.

[45] Finally, in *Streibel v. Chairman* 2002 FCT 545, Prothonotary Hargrave noted that the test for putting a party in possession of a vessel was low and that if there is plausible evidence that the vessel should have the protection of a sheriff or other party then this Court can order it [see the

discussions at para. 15]. Here, based on the evidence before me, there is no doubt that the funds for the purchase came from the mortgage on the home originally purchased by Claudia prior to the marriage; that notwithstanding the Court's prior order that John make the mortgage payments that he has failed to do so; that amounts for insurance and dockage are unpaid and outstanding; that John refuses or is unwilling to make the payments; that insurance was not obtained for the Sailboat as required; and, that the Sailboat is in jeopardy because of its unfinished condition and the failure to make the required payments.

[46] Thus, John shall deliver up possession of the Sailboat to Claudia for sale. The proceeds of sale to be paid on the terms noted below. The parties may contact the Court as necessary to deal with any specific requirements relating to the sale of the Sailboat or other issues arising from the implementation of this Order. Costs of these proceedings to date are to Claudia on a solicitor and client basis.

Federal Court



Cour fédérale

**ORDER**

**THIS COURT ORDERS that:**

1. The Sailboat, “FOREVER LOST”, formerly known as “CELESTRIS”, registered on the Canadian Ship Registry shall be immediately turned over to the possession of the Plaintiff.
2. The Sheriff is empowered to assist in providing possession to the Plaintiff in the event that it is necessary.
3. The Plaintiff shall immediately list the Sailboat for sale at an amount set out in the marine survey contained in the Motion Record or at such amount not less than the amount in the marine survey as recommended by any broker retained to sell the Sailboat. Any agreement for purchase and sale of the Sailboat shall be subject to approval by this Court.
4. The proceeds of sale shall be paid in the following priority:
  - a. All outstanding liens or amounts for dockage, survey costs, insurance and underwriter costs shall be paid out of the proceeds of sale;
  - b. The legal costs of the Plaintiff shall be paid from the proceeds of sale which costs shall be subject to review by this Court;

- c. An amount equal to the outstanding amount on the mortgage on 159 Hanton Crescent, Bolton, Ont., and
  - d. The balance, if any, to be paid into this Court to await the outcome of the matrimonial proceedings in the Ontario Superior Court of Justice.
5. In the event the matrimonial proceedings in the Ontario Superior Court of Justice are not finalized within 12 months of the date of this Order, either of the parties may return to this Court to seek an order disposing of any monies paid into this Court.
6. The action insofar as it deals with the determination of ownership or any right to any of the proceeds of sale by John Tully are stayed pending the outcome of the matrimonial proceedings in the Ontario Superior Court of Justice or further order of this Court.
7. If there are any issues or difficulties between the parties regarding the provisions or implementation of this Order, a case conference shall be arranged to deal with such issues.

“Kevin R. Aalto”  
\_\_\_\_\_  
Prothonotary

Federal Court



Cour fédérale

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** T-628-08

**STYLE OF CAUSE:** CLAUDIA RICCI  
v.  
JOHN TULLY and the Owners and All Others  
Interested IN THE SHIP “CELESTRIS”

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** March 17, 2009

**REASONS FOR ORDER  
AND ORDER BY:** AALTO P.

**DATED:** May 12, 2009

**APPEARANCES:**

Marc D. Isaacs FOR THE PLAINTIFF

Gavin Magrath FOR THE DEFENDANT

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