

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

CAROLINE GRACE JACOBS

Applicant

- v -

CHARLES DEAN (CHUCK) WINKLER

Respondent

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Transcript of the Decision on the Application held in  
Chambers before The Honourable Justice J.Z. Vertes, sitting  
in Yellowknife, in the Northwest Territories, on the 30th  
day of June, A.D. 2000.

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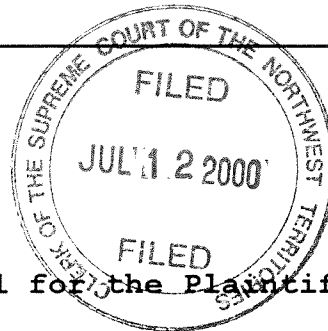
APPEARANCES:

Mr. H. Latimer:

Counsel for the Plaintiff

Mrs. J. Murray:

Counsel for the Defendant



1 THE COURT: All right, thank you. My concern here  
2 is to try and find some resolution to this impasse  
3 because it seems to me if this house is left  
4 indefinitely up for sale, the parties could end up  
5 realizing far less equity than the appraised value.  
6 As I said, would Ms. Jacobs be happier receiving a  
7 cash payout based on the appraised value of \$165,000,  
8 or would she be happier waiting until the house is  
9 sold and if it's sold for \$130,000.

10 MR. LATIMER: Well --

11 THE COURT: Well, I'm sure I know what the answer  
12 to that is.

13 MR. LATIMER: Okay.

14 THE COURT: I mean I don't need to hear lengthy  
15 submissions over that, but, I mean it's unrealistic  
16 to think that one can indefinitely stay in possession  
17 of this house without something being done.

18 Now, it seems to me when I look at the order of  
19 November, it was constructed in such a way that Ms.  
20 Jacobs and her daughter could continue living in the  
21 home, but premised on the notion that Ms. Jacobs  
22 would be paying all of the household expenses,  
23 including the mortgage payments. Premised, of  
24 course, in part on the fact that Mr. Winkler would be  
25 paying the support payments when due, so there was a  
26 balancing act. But, it certainly seems to me that  
27 there was some expectation that the house would be

1 sold in a relatively short period of time. Well,  
2 that hasn't happened for one reason or another.

3 So, it seems to me that perhaps the best way to  
4 resolve this impasse, especially with the looming  
5 foreclosure action, is to give some highly specific  
6 directions. And I want to emphasize, I'm operating  
7 on the premise that everybody acknowledges that Ms.  
8 Jacobs is going to receive 50 percent of the equity  
9 in this home plus the return of her \$9,000 subject,  
10 of course, to various adjustments.

11 Those adjustments would be that if Mr. Winkler  
12 ends up paying things that up until now that Ms.  
13 Jacobs should have paid for then, of course, there  
14 will be adjustments to that. But I can't make those  
15 adjustments here and now, those will have to be done  
16 at the time.

17 So, I'll make these directions. First of all,  
18 paragraph 5 of the order of November 10, 1999; that  
19 is the paragraph dealing with child support, interim  
20 child support, is vacated in its entirety and all  
21 child support obligations will cease as of today. Is  
22 something the matter Mrs. Murray?

23 MRS. MURRAY: No, Sir, I'm --

24 THE COURT: I'm sorry, I thought you were going to  
25 say something.

26 MRS. MURRAY: No.

27 THE COURT: I don't want any confusion about

1           whether a July 1st payment kicks in or not, but  
2           that's why I say it ceases as of today, I gather  
3           that's uncontested.

4   MR. LATIMER:           It's uncontested.

5   THE COURT:            The terms of paragraph 4, the interim  
6           spousal support of \$900 per month, I'm not prepared  
7           to vary that at this point. That will continue until  
8           the trial of this action. There are all sorts of  
9           other issues that have to be resolved with respect to  
10          the spousal support claim.

11                        With respect to the whole issue dealing with the  
12           possession and sale of the home, I will make the  
13           following directions. Does anyone have a copy of  
14           this listing agreement? I should of asked that.

15   MRS. MURRAY:         Sir, I have the listing at my office.

16   THE COURT:            Mr. Latimer?

17   MR. LATIMER:         No, we've not had it.

18   THE COURT:            All right, all right. Both parties  
19           are to cooperate with the realtor on trying to effect  
20           the sale. If, and I don't -- and I've read, Mr.  
21           Latimer, the allegations about Mr. Vance's girlfriend  
22           and all of these other things, I don't care. It's a  
23           business deal. Treat it like a business deal, all  
24           right? Everybody.

25   MR. LATIMER:         Okay.

26   THE COURT:            The real estate agent is to sell --  
27           has got the listing. If the home is not sold by the

1 31st of July, then within 15 days thereafter -- and  
2 when I say "sale," I should say, "an agreement of  
3 purchase and sale is not executed," because I realize  
4 you may have an agreement for the sale, but the  
5 closing may not be for a month or two months or  
6 something.

7 If an agreement of purchase and sale is not  
8 executed by the 31st day of July, then the home is to  
9 be vacated by no later than the 31st of August by Ms.  
10 Jacobs. Exclusive possession is to revert to Mr.  
11 Winkler as of the 31st of August and within 60 days  
12 thereafter, Ms. Jacobs is to be paid out her equity  
13 in the home based upon the appraised value of  
14 \$165,000.

15 Now, when I say "paid out her equity," that's 50  
16 percent of the equity plus her \$9,000, subject to any  
17 adjustments for things that Mr. Winkler paid that Ms.  
18 Jacobs should have paid under the terms of the  
19 November 10th order, because the other terms will  
20 continue so long as Ms. Jacobs is in possession,  
21 exclusive possession of the home, she's responsible  
22 for all payments.

23 Now, none of this gives immediate relief to  
24 anybody, but the point is you have some deadlines,  
25 and all of the necessary adjustments can be made  
26 either upon the sale, at which time then you just  
27 take a straightforward division of the equity and

1 take the 9000 into account, then do your adjustments;  
2 or, if there is no sale, then based upon the 165,000.

3 You have some dates to work to and maybe with  
4 those dates, with these terms, the foreclosure  
5 proceedings can be held off for awhile. I suspect  
6 the foreclosure couldn't be put through within the  
7 next few months in any event.

8 MRS. MURRAY: My Lord, I do -- I have the listing as  
9 presented by Mr. Vance.

10 THE COURT: I was more concerned about the listing  
11 agreement with the realtor, because I don't know what  
12 was signed with the realtor, whether the realtor was  
13 given an exclusive listing arrangement or --

14 MRS. MURRAY: I think that indicates, Sir, that it's  
15 MLS in the top left-hand corner.

16 THE COURT: This does show is to be a multiple  
17 listing service, yes.

18 MS. JACOBS: Does it have to be Dale Vance and his  
19 receptionist that handles this?

20 MR. LATIMER: I think --

21 THE COURT: Mr. Sheriff, that's fine. I mean  
22 let's use some common sense here, people, and if  
23 there is some other particular agent that could  
24 handle the sale, maybe it would be wiser to have that  
25 other agent deal with it. I'm sure Mr. Vance has  
26 some associates that can deal with it just as  
27 effectively as he can.

1                   Madam Clerk, you can give this back to Mrs.  
2                   Murray. Thank you.

3           MR. LATIMER:            In any event, it appears to be a  
4                   multiple listing, My Lord.

5           THE COURT:            All right. So, anything else?

6           MR. LATIMER:            No, My Lord, that's it.

7           THE COURT:            Mrs. Murray?

8           MRS. MURRAY:           No, Sir.

9           THE COURT:            All right, thank you.

10           **(COURT ADJOURNS)**

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12                   **Certified pursuant to Practice Direction #20**  
13                   **dated December 28, 1987.**

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15                   \_\_\_\_\_  
16                   **Sandra Burns C.S.R. (A), R.P.R**  
17                   **Court Reporter**