

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BARKLEY STEPHEN HERON

Petitioner

- and -

ANN MARIE HERON
also known as ANN MARIE LEPINE

Respondent

MEMORANDUM OF JUDGMENT

[1] This is a divorce and matrimonial property action. At the regular Family Law Chambers sitting on November 24, 2011, the Petitioner made application for an order allowing for the release of approximately \$200,000.00 from money currently held in trust to retire a debt to the Canada Revenue Agency (“CRA”). Alternatively, the Petitioner sought an order permitting the sale of 6083 NWT Ltd. with proceeds to be used to retire the CRA debt. The application was made orally through counsel, without prior notice to the Respondent and without a written, filed Notice of Motion.

[2] By way of background, a special chambers date was set for November 16, 2011 to hear submissions on the relief sought in the Notices of Motion filed on September 19, 2011 and October 4, 2011, including the terms of an agreement on division of property and debt. Due to the illness of the Respondent’s counsel, that date was cancelled. Justice Charbonneau directed that the matter be placed on the regular Family Law Chambers list for November 24, 2011, at which time counsel were to speak to a new hearing date. The Respondent’s counsel, Ms. McIlmoyle, arranged for an agent to appear on November 24, 2011. The court was advised that Ms. McIlmoyle remains ill and her firm is assisting the Respondent in retaining

new counsel. The issue of the hearing date has been adjourned to December 8, 2011.

[3] In making the application, the Petitioner's counsel expressed his client's concern about the delay and in particular, the impact of this on the Petitioner's interests in the property, including potential action that could be taken by the CRA to enforce the debt. There was no affidavit material filed specifically for this application, but the Petitioner's counsel pointed to paragraph 8 of the Petitioner's affidavit of November 2, 2011 where it is deposed that the CRA is "threatening to shut down [his] business". There are no specific details about any impending recovery action to be taken by the CRA in the evidence. Moreover, the affidavit material on the file reveals that the debt has been in existence and known to both the Petitioner and the Respondent for some time.

[4] There are circumstances where short notice of relief sought is justified, but this is not among them. The urgency that would justify such an extremely abbreviated notice period has not been made out. Fairness requires that the Respondent have appropriate notice of the specific relief sought so that she may respond. Accordingly, I order that the Petitioner's application to release proceeds from money held in trust to retire the CRA debt or, alternatively, to permit the sale of 6083 NWT Ltd. be adjourned *sine die* but may be brought back upon notice to the Respondent in accordance with the *Rules of the Supreme Court of the Northwest Territories*.

K. Shaner
J.S.C.

Dated at Yellowknife, NT, this
28th day of November 2011

Counsel for the Petitioner: James R. Scott

Agent for Betty Lou McIlmoyle,
Counsel for the Respondent: Margo Nightingale

S-1-DV 2011104099

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HONOURABLE JUSTICE K.M. SHANER
