CITATION: Earle-Barron v. Barron**,** 2012 ONSC 6294
COURT FILE NO.: 226922/04
DATE: 2012/11/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: LINDA EARLE-BARRON (Applicant)

- And –

JOHN BARRON (Respondent)

BEFORE: JUSTICE A. J. GOODMAN

COUNSEL: Simon Schneiderman, for the Applicant

Douglas J. Spiller, for the Respondent

HEARD: Written submissions filed

E N D O R S E M E N T

Introduction

[1] This protracted trial was primarily about the equalization of net family property. It is not disputed that much of the trial focused on the appropriate valuation of the applicant's company, ("USC"). The remaining issues included retroactive child and spousal support, equalization of net family property, the value of the matrimonial home, the promissory note, income issues and a s. 5(6) *Family Law Act ("FLA")* unconscionability claim.

[2] The trial commenced on April 18, 2011 and continued with various interludes until its conclusion on February 17, 2012. My written Reasons for Judgment were released on July 31, 2012. The parties were invited to make submissions as to costs in writing. I have reviewed the extensive materials furnished by both parties which included initial and reply submissions.[1]

Position of the parties

[3] The applicant submits that given the outcome at trial and her offers to settle, she should be awarded costs of $15,722.00 on a partial indemnity basis to March 24, 2011 and thereafter costs of $128,940.00 on a full indemnity basis, plus disbursements of $28,344.19 and HST.[2] In the alternative, should the court find that there was divided success, no costs ought to be awarded. In the third alternative, if costs are awarded to the respondent she should be given time to pay the costs and the trial judgment.

[4] The applicant disputes the respondent's costs submissions. She argues that they are predicated on conclusions that are inconsistent with the law and the evidence; provides excuses for the conduct of the respondent; claims fees and disbursements that are impermissible and are grossly disproportionate to any reasonable expectations of the case.

[5] The respondent seeks costs on a full indemnity basis from January 1, 2008 until the end of the trial in the amount of $211,065.25 for fees plus HST and $95,735.97 (inclusive of HST) for disbursements including expert witness costs. In the alternative, the respondent seeks costs on a partial indemnity basis as set out in the bill of costs. The amounts claimed are $154,638.25 for fees plus

[1] I did not consider a supplemental affidavit filed by the applicant.
[2] The terms "full indemnity" and "partial indemnity" are no longer reflected in the Family Law rules.

disbursements and $90,394.71 (inclusive of HST) paid for the expert's valuation of USC.

[6] The respondent submits that the issues of temporary and final child and spousal support were resolved on consent and accordingly these issues should be treated separately from the issue of retroactive support.

[7] The respondent also submits that he is entitled to receive full indemnity costs based upon applicant's bad faith. He submits that if the court finds that the conduct of the applicant falls short of bad faith, the proper remedy is to grant him partial indemnity costs from 2008 onwards and to include the entire amount of his expert's invoices. He also submits that should the court find that the applicant's misconduct was not serious enough to deprive her of costs for some portions of the case, the appropriate result would be to apply a set-off or reduction against any costs awarded to the respondent.

[8] The respondent argues that the applicant has failed to meet her onus in establishing that any of the offers made by her meets the conditions of Rule 18(14). In reply to the applicant's claim that no costs be awarded due to "divided success", the respondent submits that the court ought to consider that the key issue in the case was the valuation of USC. The time spent on the other issues pales in comparison to the USC valuation litigation.

Legal Principles

[9] Section 131 of the *Courts of Justice Act* provides considerable judicial discretion on the issue of fixing costs.

[10] Rule 18 of the *Family Law Rules* deals with offers to settle.

18(3) Making an Offer

A party may serve an offer on any other party.

18(5) Withdrawing an Offer

A party who made an offer may withdraw it by serving a notice of withdrawal, at any time before the offer is accepted.

18(6) Time-Limited Offer

An offer that is not accepted within the time set out in the offer is considered to have been withdrawn.

18(9) Accepting an Offer

The only valid way of accepting an offer is by serving an acceptance on the party who made the offer, at any time before,

(a) the offer is withdrawn; or
(b) the court begins to give a decision that disposes of a claim dealt with in the offer.

18(10) Offer Remains Open Despite Rejection or Counter-Offer

A party may accept an offer in accordance with subrule (9) even if the party has previously rejected the offer or made a counter-offer.

18(14) Costs Consequences of Failure to Accept Offer

A party who makes an offer is, unless the court orders otherwise, entitled to costs to the date the offer was served and full recovery of costs from that date, if the following conditions are met:

1. If the offer relates to a motion, it is made at least one day before the motion date.
2. If the offer relates to a trial or the hearing of a step other than a motion, it is made at least seven days before the trial or hearing date.
3. The offer does not expire and is not withdrawn before the hearing starts.

4. The offer is not accepted.
5. The party who made the offer obtains an order that is as favourable as or more favourable than the offer.

18(15) Costs Consequences -- Burden of Proof

The burden of proving that the order is as favourable as or more favourable than the offer to settle is on the party who claims the benefit of subrule (14).

18(16) Costs -- Discretion of Court

When the court exercises its discretion over costs, it may take into account any written offer to settle, the date it was made and its terms, even if subrule (14) does not apply.

[11] Rule 24 of the *Family Law Rules* provides a measure of guidance in the exercise of that discretion by enumerating certain factors that the court may consider in assessing costs.

24(1) Successful Party Presumed Entitled to Costs

There is a presumption that a successful party is entitled to the costs of a motion, enforcement, case or appeal.

24(4) Successful Party Who has Behaved Unreasonably

Despite subrule (1), a successful party who has behaved unreasonably during a case may be deprived of all or part of the party's own costs or ordered to pay all or part of the unsuccessful party's costs.

24(5) Decision on Reasonableness

In deciding whether a party has behaved reasonably or unreasonably, the court shall examine,

(a) the party's behaviour in relation to the issues from the time they arose, including whether the party made an offer to settle;

(b) the reasonableness of any offer the party made; and
(c) any offer the party withdrew or failed to accept.

24(6) Divided Success

If success in a step in a case is divided, the court may apportion costs as appropriate.

24(8) Bad Faith

If a party has acted in bad faith, the court shall decide costs on a full recovery basis and shall order the party to pay them immediately.

24(11) Factors in Costs

A person setting the amount of costs shall consider,

(a) the importance, complexity or difficulty of the issues;
(b) the reasonableness or unreasonableness of each party's behaviour in the case;
(c) the lawyer's rates;
(d) the time properly spent on the case, including conversations between the lawyer and the party or witnesses, drafting documents and correspondence, attempts to settle, preparation, hearing, argument, and preparation and signature of the order;
(e) expenses properly paid or payable; and
(f) any other relevant matter.

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[12] In *Serra v. Serra*[4] the Ontario Court of Appeal provided overarching comments with respect to costs rules, namely that modern costs rules are designed to foster three fundamental purposes:[3]

1. To partially indemnify successful litigants for the cost of litigation;
2. To encourage settlement; and
3. To discourage and sanction inappropriate behaviour by litigants.

[3] See also the Ontario Court of Appeal's decision in *Fong v. Chan* (1999) 46 O.R. (3d) 330.

[13] The court's role in assessing costs is not necessarily to reimburse the litigant for every dollar spent on legal fees. There is a component of reasonableness when costs awards are considered.

[14] Various courts have acknowledged that full recovery of costs may be the preferable approach so long as the successful party has behaved reasonably and the costs claimed are proportional to the issues and the result. In addition to the presumption that a successful party is entitled to the costs of the case, if a party has acted in bad faith, the court shall decide costs on a full recovery basis and shall order the party to pay them immediately.

[15] The case of *Reimer v. Appa* [2001] O.J. No. 1793 (S.C.J.) supports the proposition that while "success" is the starting point under Rule 24, other factors must be carefully considered.

Analysis

The litigation involving USC:

[16] The parties agree that the main issue at trial was determining the equalization issue of which the major contest was the value to be attributed to USC. They do not agree on the amount of trial time apportioned to this matter.

[17] The respondent submits that 75% of the trial time was taken up by USC valuation issues and s. 5(6) *FLA* issues and that the time allotted to spousal support and child support arrears and the value of lesser contentious property items took the balance of the time. The respondent argues that the s. 5(6) claims advanced by the applicant to the effect that USC declined due to “market forces” or that the respondent had gambled away the family monies were both zealously

put forward yet rejected by the Court. These important issues were introduced just prior to the trial and the respondent asserts that these matters may be seen as analogous to a claim of "fraud". Thus, he argues that the applicant ought to be penalized for the failure to establish these claims.

[18] Contrary to the respondent's position, the applicant argues that the USC issue took close to 60% of actual trial time.

[19] It is true that the applicant sought to reduce the equalization award on the basis of a claim for unequal division of net family property pursuant to s. 5(6) of the *FLA* with respect to the "*Serra*" issue and was unsuccessful in reducing the award on that basis.

[20] I have already taken into account the applicant's conduct and the actions of the related parties in my findings with respect to the overall determination of value of USC. I rejected the applicant's s. 5(6) claim and was critical of the applicant's conduct in failing to disclose some materials to Mr. Mozessohn, the respondent's expert, in a timely manner.[4] However, in the same vein, while preferring and accepting Mr. Mozessohn's valuation of USC as the starting point for my analysis, the applicant was successful in significantly reducing the respondent expert's opinion of value of USC. In effect, at the end of the trial, the final valuation was reduced by $121,500.00; which resulted in an amount slightly less than the midpoint between the two parties' initial stated positions of the value of USC.

[21] Therefore, I find that the parties enjoyed divided success on the central issue of the appropriate valuation of USC for equalization purposes

[4] As I will discuss later, I do not consider the applicant's conduct rising to a level of exhibiting bad faith.

[22] While there is no magic formula, in my opinion, the USC valuation and related s. 5(6) *FLA* claim, as well as all other issues annexed to the applicant's businesses occupied 66.6% of the trial time and the overall litigation.

[23] As stated, there were two components to the litigious issues raised at trial. These latter issues engulfed the remaining 33.3% of the trial time.

[24] Of these latter issues and with the exception of the s. 5(6) argument, (the respondent's alleged depletion of household income and related gambling), I accepted the applicant's evidence and her counsel's final submissions. I found in favour of the applicant with respect to the value of the matrimonial home, the validity of the promissory note to Pat Yarn, and her position as to the amount of the parties' income over the course of the years in question. Further, with two minor exceptions, I adopted the applicant's NFP statement, and her value of all of the assets and liabilities. I accepted her claim with respect to the retroactive child support obligations and the overpayment of spousal support.

[25] There is a presumption that each party is entitled to costs on the issues where they succeeded. I am satisfied that the applicant was successful on the remaining matters that were litigated during this trial. Therefore, the applicant is entitled to a measure of costs.

Offers to Settle

[26] The applicant argues that at least two of her Offers to Settle (March 24 and August 19, 2011) were, without considering prejudgment interest ("P.J.I."), more favourable than the results at trial. In support of her position she argues that, without P.J.I., the judgment at trial results in a net payable to the respondent by the applicant of $107,771.00 predicated on deductions from $183,589.09 of child support, $16,511.00, and spousal support overpayment, $49,307.00; plus a

$10,000.00 credit for an equalization advance ordered by Mr. Justice Corbett on November 7, 2006. [5] She claims that each of her Offers effectively waived her $10,000.00 equalization credit and her claim for spousal support overpayment of $49,307.00.

[27] The applicant concludes that the net payable to the respondent with the March 24, 2011 offer was $142,796.00 and with the August 19, 2011 offer, it was $112,796.00. She argues that with each of these offers the respondent would have done better than his net trial outcome, exclusive of interest, of $107,771.00.

[28] The respondent submits that none of the applicant's offers to settle trigger a higher scale of costs. The respondent argues that when looking at the applicant's first offer, the applicant claims that the net payable to the respondent would be $120,438.74. However he argues that the respondent's net payable including P.J.I. would be $133,653.45 after deduction of credits and spousal overpayment but not child support arrears, (which were neither forgiven nor waived in any of the offers). The applicant states that the March 24, 2011 offer should not be valued at $100,000.00, rather at $159,307.00 by adding the spousal overpayment and the $10,000.00 credit. The respondent disputes the fact that the applicant's offer is 'grossed up' in this manner, as such a gross-up is not set out in the actual offer which only referred to equalization. Therefore, he claims that the applicant's position is misleading and as such, cannot satisfy the burden of Rule 18. He adds that the claims for overpayment of spousal support were not added to the pleadings in any timely manner.

[29] With respect to the applicant's second offer made March 19, 2011, the respondent submits that the net payment to the respondent would be

[5] This amount was conceded by the respondent, during the trial.

$133,653.45 and the actual benefit of the second offer was $50,000.00 and not $92,796.00 as contemplated by the applicant. In concluding, the respondent urges the court to find that the award of $183,500.00 plus PJI suggests that he had no other option but continue the litigation against the applicant, notwithstanding the considerable economic imbalance between the parties and the applicant's financial resources.

Offers and result at trial

[30] In principle, I accept the applicant's position that PJI, in the appropriate case, ought not to be determinative of whether or not a valid offer is triggered under Rule 18 of the *FLA*. I agree that various courts have made findings and comparisons of offers to trial judgments in family law cases without necessarily referring to or including P.J.I. I am also satisfied that, in the appropriate case, a set-off in the "net" calculations can justify disregarding P.J.I., as interest accumulates well before trial and could serve to operate to the detriment of the offering party. However, this issue is easily remedied as any party to a proceeding can always include or specifically exclude PJI in their offer to settle.

[31] I agree with the applicant that given the multiple issue nature of claims and offers in this case, it is reasonable to disregard P.J.I. when comparing the various offers with my judgment. However, that argument can cut both ways. Given the interrelationship of the issues and related claims, it is counterintuitive to carve out portions of each of the applicant's offers to determine whether or not they may fall under the rubric of Rule 18. I find that the various offers did not address all of the issues in dispute at trial. More importantly, in order for the applicant to be successful, I would have to consider the language contained within the various offers presented by the applicant and attempt to manipulate them to fit with the results obtained at trial. Frankly, I am not able to reconcile the

applicant's various offers to the issues and the clear results obtained at the conclusion of trial. I accept the respondent's submissions on this issue. Even if I were to leave aside the impact of PJI on the outcome, in my view, none of the offers made by the applicant were as, or more favourable than the order made at trial. I conclude that the applicant's has not met her onus and the offers do not trigger the cost consequences of Rule 18(14).

[32] On August 31, 2010 the respondent filed a single offer to settle the matter for a $300,000.00 payment (all inclusive); which offer remained open to trial. In my view, this offer also fails to trigger the cost consequences under Rule 18(14).

[33] However, Rule 18(16) allows the court to take into account any written offer "even if subrule (14) does not apply." In this respect, I conclude that the applicant's offers reflect good faith and efforts to settle the case. Conversely, I do not construe that the respondent's single offer represents good faith or a realistic offer to settle. Thus, in my award of costs for this portion of the trial, I have considered the applicant's offers in this context.

Rule 24 considerations

[34] With none of the offers triggering Rule 18(14) cost consequences, I must now consider Rule 24 and in particular, sub rule 24(11). Several factors are not in dispute, including the importance of the litigation to the parties, the complexity and difficulty of some of the equalization issues and the applicable lawyers' rates.

[35] In determining costs, the court may consider whether a party has behaved unreasonably. Both parties argue that the other acted in a manner that can only be described as bad faith.

[36] In the case of *C.S. v. M.S.*,[6] Perkins J. dealt with the issue of bad faith:

> The essence of bad faith is the representation that one's actions are directed toward a particular goal while one's secret, actual goal is something else, something that is harmful to the other person affected or at least something they would not willingly have supported or tolerated if they had known. However, not all bad faith involves an intent to deceive…
>
> At some point, a party could be found to be acting in bad faith when their litigation conduct has run the costs up so high that they must be taken to know their behaviour is causing the other party major financial harm without justification.

[37] I was critical of the behaviour exhibited by both parties, in particular regarding their respective income disclosure. I was also critical of the applicant with respect to her conduct regarding USC. The respondent argues that the CRI and Phillips schemes were "the tip of the iceberg" and suggests a motive for the applicant to shield her activities. I agree with the respondent that Mrs. Earle-Barron lied under oath in her discovery examination and was less than forthright with respect to certain USC transactions.[7] However, as mentioned, I have already factored the applicant's conduct into my findings, including but not limited to, my conclusion with respect to the overall value of USC, my rejection of the applicant's s. 5(6) FLA claim as well as the entirety of the CRI transactions along with the evidence of the improper payments to Max Persaud. In part, the applicant's conduct warranted the award of P.J.I in favour of the respondent.

[38] While the applicant's pre-trial conduct suggests that she failed to disclose financial documentation and the respondent was required to take steps to prompt

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[6] [2007] O.J. No. 2164 (Sup Ct.) aff'd [2010] O.J. No. 1064 (C.A.). See also *Biddle v. Biddle*, [2005] O.J. No. 1056.

[7] I did not specifically find that the applicant lied or deceived this court during her testimony or in the conduct of the case.

the applicant to comply with various interlocutory steps, during the trial it appeared that respondent's counsel may have overstated the impact of such non-disclosure. I did not get the sense that the extent of this non-disclosure was as ominous and pervasive as suggested by counsel. Simply failing to provide prompt disclosure or to take appropriate steps without intent to deceive or conceal is not bad faith. [8] While unfortunate, I do not find that the applicant's behaviour falls under the ambit of bad faith as contemplated by Rule 24(8). It is a merely one of the factors I will address in my consideration of Rule 24(11).

[39] As mentioned, the respondent also claims that, in part, the s. 5(6) *FLA* arguments regarding the household expenses and gambling issues advanced by the applicant are equivalent to fraud allegations. In my opinion, that is overstating the case as neither involved any quasi-criminal or dishonest conduct and do not rise to the level of fraudulent misconduct. The applicant was entitled to advance the claims that she did.

[40] On the other hand, I conclude that the respondent's behaviour was unreasonable considering that he did not to make any reasonable offers to settle, and he refused without valid excuse or just cause to support his children.[9] The respondent waited until the commencement of trial to agree to custody and future child support and to forego his claim for spousal support. In my view, these issues ought to have been conceded well before the trial date. I agree that the applicant had to incur some costs of trial preparation on these issues.

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[8] There was no finding by this court that the Applicant failed to comply with court orders. I do not find that in the evidence that the applicant set out with the intent to inflict financial or emotional harm on the respondent.

[9] This activity ought to be discouraged. See *Tauber v. Tauber* (2000) O.J. No. 2133**.** (S.C).

[41] While acknowledging this court's findings that Mr. Barron did not disclose his income until closer to the trial date, the respondent submits that there are mitigating circumstances in play. The respondent argues that his misjudgment with respect to spousal and child support is sanctioned in the court's decision and ought not to rebut the entitlement to costs to a party who has been successful overall in the outcome. I respectfully disagree. However, that being said, the respondent's belief and conduct in purposely not stating or disclosing his true income for the purposes of support does not amount to bad faith.

[42] With the exception of the s. 5(6) gambling issue, I find that the applicant's course of conduct throughout the trial proceedings and the positions that she took were reasonable. [10] While I found there was no basis for applicant's claim that there should be an unequal equalization payment with respect to the respondent's gambling and use of discretionary household income, that claim took some modest trial time but did not significantly prolong the proceedings. I am not condoning her inaction in disclosing timely financial information and submitting to court orders in advance of trial. However, I am not satisfied that the applicant's litigation conduct resulted in a protracted trial. I cannot say the same for the respondent.

[43] In my opinion, the respondent appeared less prepared for trial. As stated, his first net family property statement was amended and the information contained therein was incomplete. Despite repeated disclosure requests, he did not produce his relevant and highly material personal bank account records until he was in the middle of his testimony. Most, if not all of his financial calculations as set out in his materials were unrealistic and unhelpful.

[10] It is true that the respondent was successful in rebutting the s. 5(6) argument raised by the applicant and I have taken that matter into account in my assessment of costs.

[44] At the outset of the trial, counsel for the respondent did not concede the vast number of documents and volumes of materials, which documents ought to have been readily admitted. This amounted to duplication of exhibits and protracted trial time. In my view, based on the evidence, timely admissions ought to have been made by the respondent in lieu of disputing almost every issue. With all due respect, counsel's questioning of witnesses was repetitive.

[45] In dealing with this segment of the trial, the respondent's final submissions were, for the most part, not substantiated by the evidence and amounted to guesswork and speculation. As an example, the respondent's materials depicted the applicant's income amount fixed at $200,000.00 for all of the relevant years. This quantum was clearly not close to being substantiated by any evidence at trial and was not helpful. Even during the course of closing submissions, I was presented with a revised net family property statement and supporting calculations chart that was akin to a "ball park" estimate.

[46] In contrast, the applicant's materials and the presentation of evidence in this trial were efficient, orderly and helpful. Applicant's counsel's arguments were focused and direct and clearly linked to the evidence at trial.

[47] I have also considered the respondent's submissions where he is seeking costs which relate to previous motions or to case conferences, where costs had been adjourned to the trial judge. In my review of these orders, I am not satisfied that he is entitled to any costs related to case conferences; or for amounts for which only an estimate can be provided, or for most of the pretrial motions.

[48] However, I note that the applicant did not complete her undertakings until after the April, 2010 motion was served. The applicant, through counsel, sent the last of the undertakings June 10, 2010 after delivery of the motion. Accordingly

the applicant's conduct caused the respondent to move for an order and costs of the particular motion were reserved to the trial Judge.[11] I agree with the general statement that non-compliance with court orders should have some direct consequences. I am satisfied that the respondent's costs ought to be reimbursed for counsel's attendance related to the April 2010 notice of motion for the reasons provided by counsel. As this motion was necessary to facilitate compliance, the respondent will be credited for costs in the amount of $3500.00.

I have attempted to determine costs on the basis of an amount which is fair and reasonable for the unsuccessful party to pay, in the particular circumstances of this case, rather than an amount fixed by the actual costs incurred by the successful party.[12] However, in deciding quantum, I must be mindful that the court is obliged to consider, in addition to all the factors in Rule 24(11), "any other relevant matter", which includes the ability to pay. Having said this, I emphasize that ability to pay alone cannot override the other factors. Proportionality is an important principal in family law.

I have considered, to the extent that I am permitted, the good faith of the applicant's offers to settle. Aside from the USC and unconscionability issues, (which will reflect a reduction in costs), the applicant took a realistic approach in quantifying the overall equalization obligation. In contrast, the respondent never seemed to face the reality of what he would likely end up receiving. To a degree, I find that the respondent's actions prolonged the trial.

Bill of Costs

[11] Generally, costs could have been dealt with at every stage of the proceeding. Subrule 24(10).
[12] *Boucher v. Public Accountants Counsel (Ontario)* [2004] O.J. No. 2634, Ont. C.A.).

[49] Generally, the court ought not to second guess the time spent by counsel. The court is not required to go through the hours, or disbursements, line by line, in order to determine what the appropriate costs are or ought to be. Nor is the court to question the fees claimed unless they are clearly excessive or overreaching.

[50] I have reviewed the time dockets and information provided by applicant's counsel in support of the costs outline. I am satisfied that Mr. Schneiderman's hourly rate and the time spent on this file for the preparation leading up and for his efforts during the trial are appropriate and reasonable, particularly given the skill he displayed and the conduct of the trial.

[51] Except for any fees related to the invoices submitted by Taylor Leibow, I am satisfied that the disbursements incurred by the applicant were reasonable.

[52] For the reasons provided, I decline to award full recovery costs. In the exercise of my discretion and in applying the appropriate principles pursuant to the *FLA Rules* and relevant authorities, as well as considering the factors and conclusions outlined above, I find that a fair and reasonable figure in all the circumstances is $40,950.00 for legal fees and $5000.00 for disbursements.

Other issues

[53] Finally, as a result of counsel's correspondence to the court, I am willing to offer a limited clarification to my reasons on certain points raised by counsel.

[54] The respondent seeks a clarification of para. 102 of my reasons for judgment, wherein it was stated the respondent conceded owing $16,223.00 for arrears. In my review of counsel's oral submissions, Mr. Spiller conceded that the FRO documentation indicated an amount of $16,223.22 for arrears.

However, in his submissions, counsel disputed the actual quantum and argued specifically that this amount ought to be reduced to $7,354.00. Nonetheless, I accepted the applicant's position on this issue.

[55] The applicant seeks a clarification of para. 287 of my reasons for judgment. As this involves the applicant's rights to the matrimonial home, the intention of the order was to indicate that upon the full satisfaction of the applicant's payment to the respondent on account of equalization, (which may be subject to the award of costs in favour of the applicant, as provided for in these reasons) the respondent shall remove all encumbrances, claims or liens registered against the matrimonial home. Finality is required and each party shall satisfy their financial obligations to the other without undue delay.

Conclusion

[56] The parties agree that there is a $10,000.00 credit in favour of the applicant against the equalization payment ordered by this court due to an amount paid at the end of 2006.

[57] On consent, the parties agree that the wrongful dismissal action be dismissed without costs.

[58] The parties enjoyed divided success with regards to the main issue in this case, namely, the valuation of USC for equalization purposes. Therefore, each party shall bear their own costs for this portion of the trial.

[59] With respect to the remaining issues litigated during this trial, the applicant was the successful party and therefore she is entitled to costs. It is ordered that costs are to be paid by the respondent to the applicant fixed in the amount of $45,950.00 plus HST, payable forthwith.

"Justice A. J. Goodman"

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Justice A. J. Goodman

DATE: November 6, 2012