

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

BANK OF MONTREAL

Applicant

– and –

2380630 ONTARIO INC. and 2386174 ONTARIO INCORPORATED

Respondents

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION
243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED

BRIEF OF AUTHORITIES

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INDEX

1. *Shaher et al v. Rasheed et al*, 2011 ONSC 3679

CITATION: Shafer et al v. Rasheed et al, 2011 ONSC 3679
NEWMARKET COURT FILE NO.: CV-08-92552-00
DATE: 2011-06-28

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Ann Shafer

Plaintiff

Charles Baker, for the Plaintiff

- and -

Hany Rasheed, Executor and Trustee of the Estate of Hassan Rashid

Defendant

James Jagtoo , for Hany Rasheed, Executor and Trustee of the Estate of Hassan Rashid

AND BETWEEN:

Hany Rasheed, Executor and Trustee of the Estate of Hassan Rashid

Plaintiff by Counterclaim

- and -

Ann Shafer, Mona Shafer, Mohie Shafer and Patrick Di Monte

Defendants to the Counterclaim

Mona Shafer, Mohie Shafer,
Self-represented
Daniel Bernstein and Danielle Gallo, for
Patrick Di Monte

AND BETWEEN:

Mona Shafer and Mohie Shafer

Plaintiffs by Counterclaim

Hany Rasheed, Executor and Trustee of the Estate of Hassan Rahid and James Jagtoo

)
 Defendants to the Counterclaim)
)
) **HEARD:** February 15, April 1, 2011
REASONS FOR DECISION

McEWEN J.

INTRODUCTION

[1] All of the parties in this matter have brought motions before the court as follows:

1. Patrick Di Monte (“Di Monte”) seeks an order requiring Hany Rasheed (“Hany”), Executor and Trustee of the Estate of Hassan Rashid (the “Estate”), to post security for costs up to and including trial.
2. Ann Shafer (“Ann”) also seeks an order requiring the Estate to post security for costs up to and including trial.

Ann also has an outstanding motion to rectify the order of Lauwers J. dated October 7, 2009. This motion was not pursued at this time.

3. Mona Shafer (“Mona”) and Mohie Shafer (“Mohie”) seek the following orders:
 - a. An order requiring the Estate to post security for costs up to and including trial; and
 - b. An order dismissing the Estate’s counterclaim against them.

Mona and Mohie also sought an order placing a freeze on the home of the late Hassan Rashid (“Hassan”). This motion was abandoned at the hearing of the motion.

4. The Estate seeks an order against Ann and her spouse Bruce Chapman (“Chapman”), setting aside the transfer of property located at 1362 Revell Drive, Manotick, Ontario, (the “Property”) until further order of the this court or agreement between the parties.

[2] After a brief overview, I will deal with each of the motions, in turn, below.

OVERVIEW

[3] In December 2008, Ann commenced this action against Hassan, alleging that he gave her a promissory note in December 2002 in the sum of \$600,000, and neglected or refused to pay the note prior to his death in September 2009.

[4] This is not the only litigation between Ann and Hassan (now the Estate). Earlier, Hassan had commenced an action against Ann to return funds Hassan had paid to Ann pursuant to a promise of marriage that Ann allegedly made to Hassan, notwithstanding the fact that she was already married (“the first action”). That action was ultimately settled pursuant to minutes of settlement. Later, Hassan sought to obtain an order setting aside a consent order that was taken out after the settlement “on the ground of fraud or a fact arising or discovered after the order was made.” This motion was dismissed by Lauwers J. on March 31, 2009.

[5] Hassan, and later the Estate, were also involved in litigation against Mona, Ann’s sister, who went through a form of religious marriage with Hassan, even though she was married to someone else. Ultimately, the Estate pursued an action against Mona to recover monies, property and the interest in a home that they shared. This matter proceeded to trial before Wildman J. in May and June 2010 (“the second action”).

[6] As noted above, Hassan ultimately passed away in September 2009. This action has continued against the Estate.

[7] In addition to defending this action, the Estate also commenced a counterclaim against Ann, Mona, Ann and Mona’s father Mohie, and Di Monte who represented Hassan in the first action. The Estate alleges, *inter alia*, that Ann promised to marry Hassan, when she was already legally married, in order to extract monies from him. The Estate further alleges that Ann, Mona and Mohie participated in a scheme to prevent Hassan from collecting the monies Ann promised to pay Hassan as a result of the settlement of the first action.

[8] The Estate also alleges that Di Monte was negligent in his representation of Hassan with respect to the settlement in the first action, in that, *inter alia*, he failed to procure or obtain documentation required under the terms of the settlement and, particularly, failed to register a mortgage as contemplated by the agreement.

[9] Mona and Mohie, thereafter, counterclaimed against the Estate and its solicitor, James Jagtoo (“Jagtoo”), for damages for civil conspiracy as well as punitive damages and costs. The action against Jagtoo has been previously dismissed by order of Howden J. dated November 5, 2009.

[10] In addition to this action and the first action, Hassan and Ann have also been before the Superior Court on a number of occasions with respect to the Property. The Property was previously the subject matter of orders by Maddalena J., Ferguson J. and Boswell J. Boswell J. set aside a conveyance of the Property from Ann to Chapman. Lauwers J. ultimately set aside the order of Boswell J. in the decision he rendered on March 31, 2009 ([2009] O.J. No. 5799), dismissing Hassan’s motion. This will be discussed further below.

[11] Given the number of times Hassan, Ann, Mona and the Estate have attended in Superior Court, Wildman J. finally stated as follows in 2010 ONSC 4351 at paragraph 61:

I accept that I have not heard all of the evidence related to those actions but I have heard quite a bit. The practical reality is I do not see why Ann Shafer would be pursuing a judgment against an estate that, apparently, has no assets in Ontario. I'm not sure if that was a tactical move, in case Mr. Rashid was successful in this action against Mona Shafer, but that question will be resolved by my decision. I also do not see how Mr. Rashid's estate should be pursuing their counterclaim without posting some sort of security for costs, as Hany Rashid does not live in this jurisdiction and the estate apparently has no assets here. I struggle to understand the basis of the claim against Mona Shafer for "civil conspiracy", when she did not participate in the negotiation of the Minutes of Settlement, did not sign them, and they provided she would be entitled to Independent Legal Advice before providing the mortgage. I certainly hope that all concerned step back and think about the wisdom of continuing the civil lawsuits. There has already been enough unproductive misery and expense for everyone concerned.

[12] Despite Wildman J.'s advice, the parties have continued on within claims and counterclaims.

DI MONTE'S MOTION FOR SECURITY FOR COSTS

[13] Di Monte has two arguments with respect to its motion for security for costs:

1. There is good reason to believe that the action is frivolous and vexatious, as against Di Monte, and the Estate has insufficient assets in Ontario to pay the costs of Di Monte. Di Monte relies upon rule 56.01 (1)(e) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.
2. The Estate Executor and Trustee, Hany, is not ordinarily a resident in Ontario and currently resides in Egypt. Di Monte further argues that Hany is unwilling to enter Ontario due to concerns he has about his potential arrest arising from allegedly fraudulent activities. Furthermore, the Estate does not have sufficient assets in Ontario to satisfy an order for costs. Di Monte relies upon rule 56.01 (1)(a).

[14] For the reasons that follow, I accept the second argument of Di Monte and order that the Estate post security for costs in the amount set out below.

[15] I do not accept that security for costs should be posted pursuant to Di Monte's first argument in that there is good reason to believe that the action is frivolous and vexatious. While the Estate's claim against Di Monte is not a strong one, I cannot conclude at the hearing of the motion that there is good reason to believe the action against Di Monte is frivolous and vexatious.

[16] There is little doubt that Hassan did little to enforce the settlement against Ann. At the same time, it certainly appears that Di Monte did not obtain the legal documentation in a timely

way, required pursuant to the written agreement that Hassan and Ann had entered into. While Di Monte provides an explanation in this regard, I cannot conclude that there is good reason to believe that the allegations against him are frivolous and vexatious.

[17] Counsel for Di Monte urges me to follow certain passages from the decision of Lauwers J. with respect to Hassan's failure to act in a timely way to enforce the settlement against Ann. I have reviewed the passages and while they do support this assertion, it does not change my view above.

[18] I am also mindful of the fact that Lauwers J. did not condone all of Di Monte's work on behalf of Hassan with respect to formalizing the agreement between Hassan and Ann. In fact, Lauwers J., at paragraph 35, specifically speaks to the fact that neither Di Monte nor Ann's solicitor attended to the formalization of documents required by the Minutes of Settlement and, had they done so on a timely basis, the availability of the collateral mortgage and the effect on the Minutes of Settlement, if the mortgage was refused, would have been engaged and resolved.

[19] Based on the foregoing, I would therefore dismiss Di Monte's motion for security for costs against the Estate brought pursuant to rule 56.01 (1)(e).

[20] I do find, however, that I should exercise my discretion and make an order for security for costs pursuant to rule 56.01 (1)(a).

[21] Based on the record before me, the following appears to be undisputed:

1. Hassan, unfortunately, passed away in September 2009.
2. Prior to his death, Hassan resided primarily in Egypt for approximately three years.¹
3. Hany does not reside in Ontario and resides in Egypt. He did not return to the jurisdiction for the second trial before Wildman J., allegedly due to the fact that he was worried about being arrested.²
4. No evidence is before the court at the hearing of this motion that either the Estate or Hany have any assets to pay the costs of Di Monte if successful. In fact, Hany's affidavit, filed for the motion, is completely silent with respect to what, if any, assets he or the Estate has either in Ontario or abroad. The Estate may have some modest assets in Ontario resulting from the judgment of Wildman J., but it is clear from her decision that the Estate also has legal fees to pay that may be substantial and there is no evidence overall of a positive asset base.

¹See Reasons for Decision of Wildman J. dated August 11, 2010, paragraph 1 (2010 ONSC 4351). I am of the view that I should follow the findings of Wildman J. where appropriate, which were made after a lengthy trial involving Hassan and Mona.

²Reasons for Decision of Wildman J., *supra*, paragraph 16.

5. There was no evidence, at the motion, that the Estate is impecunious or would suffer financial hardship if required to post security for costs.

[22] A foreign plaintiff may avoid posting security for costs if it can establish one of the following:

- (a) it has exigible assets in a reciprocating jurisdiction that are sufficient to satisfy a costs award;
- (b) it is impecunious and its claim is not “plainly devoid of merit”; or
- (c) such an order would create such a financial hardship that it would impose a substantial impediment to pursuing the action and prevent a meritorious claim from proceeding.

See *Uribe v. Sanchez* (2006), 33 C.P.C. (6th) 94 (Ont. S.C.) (Master Dash) at paragraphs 4-6; *Zeitoun v. Economical Insurance Group* (2008), 292 D.L.R. (4th) 313, 91 O.R. (3d) 131 (Div. Ct.), *aff'd* (2009), 307 D.L.R. (4th) 218, 96 O.R. (3d) 639 (C.A.) regarding impecuniosity at paragraphs 45-46, 49-50.

[23] Based on the facts above, the plaintiff has not made out any of these arguments and, in fact, has adduced no evidence at the hearing on these critical points.

[24] It is important to consider, however, whether the Estate is a foreign plaintiff in light of the fact that the will is being probated in the Province of Ontario. Counsel concedes that only the Estate, and not the Estate Executor and Trustee, can be subject to an order for security for costs. In this regard, I adopt the reasoning of Burnett J. in *Henry Estate v. Henry* (2010), 261 Man. R. (2d) 26 (Man. Q.B.), in which the court ordered that security for costs be posted as the executors resided outside of the Province of Manitoba and did not have assets in the Province. In *Henry Estate*, the executors were described at paragraph 33, quite rightfully in my view, as “nominal plaintiffs”. I am also mindful of the fact that, pursuant to section 2 (1) of the *Estates Administration Act*, R.S.O. 1990, C. E.22 all of the real property in the Estate would vest in Hany, who resides in Egypt.

[25] In the circumstances, where there is no evidence the Estate has any tangible assets in Ontario, it would therefore be appropriate to order security for costs. No party introduced into evidence a copy of the Estate file.

[26] With respect to the issue of quantum, Di Monte seeks the payment of security for costs up to and including trial. In my view, this would be excessive given the fact that there is no guarantee whatsoever that this matter will proceed through to a full trial, and it must be kept in mind that the vast majority of cases settle prior to trial.

[27] I am prepared, however, to order security for costs up to the completion of the pre-trial stage, and I accept the hourly rates and hours proposed by Di Monte in his draft bill of costs as

being reasonable in the circumstances of this case. If the matter proceeds past the pre-trial stage Di Monte can review his motion at that time at the pre-trial or later if he wishes.

[28] I am therefore prepared to order that the Estate post security for costs in the amount of \$13,951.04 plus HST and disbursements of \$1,386.56 inclusive of HST, as set out in Di Monte's draft bill of costs.

[29] The monies are to be paid into court within 60 days of the date of this order.

ANN'S MOTION FOR SECURITY FOR COSTS

[30] Ann also seeks an order for security for costs against the Estate with respect to the counterclaim that the Estate has commenced against her.

[31] For the reasons below, I dismiss Ann's motion for security for costs. Counsel for Ann concedes that any amount awarded to her should be less than the amount awarded to Di Monte since, in fact, she commenced the action against the Estate and can only seek security for costs with respect to the counterclaim. I agree.

[32] With respect to the costs of defending the counterclaim, however, I do not agree that Ann will incur much in the way of additional costs, if any, over and above that of the action she is pursuing for the following reasons:

1. The subject matter of both the main action and the counterclaim are completely interwoven and the pursuit of the counterclaim will not result in much, if any, additional legal costs.
2. The amount sought in the counterclaim is much smaller than the amount sought in the main action.

[33] Counsel for Ann submits that the main action involves a discrete issue concerning a promissory note while the counterclaim involves more involved facts which will require additional evidence. I disagree. Both the main action and the counterclaim concern the entire interaction between Hassan and Ann regarding the monies he paid or promised to pay to her. I simply cannot conclude that the counterclaim will result in much, if any, additional legal costs.

[34] I therefore conclude that it would not be a reasonable exercise of my discretion to compel the Estate to pay security for costs to Ann with respect to the modest counterclaim against Ann.

MOTIONS OF MONA AND MOHIE

[35] Mona and Mohie also proceeded with a motion requiring the Estate to post security for costs, and with a motion that the counterclaim of the Estate be dismissed against them with costs.

[36] I dismiss both of these motions.

[37] Mona and Mohie are self-represented. Even though I encouraged them to retain solicitors, they advised that they could not due to their unfortunate financial situation. They did not file any materials whatsoever at the hearing of the motion; therefore, no evidence was before the court to consider the merits of their motions.

[38] Additionally, they have not complied with previous orders made against them, as follows:

- (a) They remain in violation of costs orders made by Gilmore J. dated November 26, 2009, in the amount of \$8,118.93; the costs order of McIssac J. dated April 15, 2010, in the amount of \$1,000; and the cost order of Justice Sosna dated May 4, 2010, in the amount of \$3,150.
- (b) Additionally, Sosna J. ordered certain paragraphs, words, phrases and sentences be struck from their statement of defence and the defendants have not complied with that order.

[39] Accordingly, it would be improper, in my view, to exercise my discretion to order the Estate to pay security for costs to Mona and Mohie when they remain in violation of the above orders.

[40] With respect to the motion to dismiss the counterclaim of the Estate against Mona and Mohie, no evidence was adduced by them at the hearing of the motion. In the motion record, the only grounds raised are that the Estate has no legal right to pursue them; however, this statement is wrong in law, as the Estate's claim against them is properly constituted at this time.

THE ESTATE'S MOTION TO SET ASIDE THE TRANSFER OF THE PROPERTY FROM ANN TO CHAPMAN THAT OCCURRED ON JUNE 17, 2008

[41] I should point out that at the original hearing of the motions, I adjourned this motion since Chapman had not been served with the materials and was unrepresented. Mr. Baker advised upon the re-attendance that he acted for both Ann and Chapman, and the motion proceeded on April 1, 2011.

[42] This motion involves a rather convoluted and lengthy fact situation, as follows:

- (a) In the first action, Hassan sought to enforce minutes of settlement.
- (b) Hassan, in the context of that litigation, brought a motion returnable June 18, 2008, seeking an order prohibiting Ann from mortgaging, signing, transferring, selling or in any other way dealing with the Property.
- (c) After being served with the motion record and one day before the hearing of the motion, Ann transferred the Property to Chapman for \$1.00.

- (d) On June 8, 2008, Maddalena J., unaware of the transfer the day before, granted the order sought by Hassan, prohibiting Ann from mortgaging, signing, transferring, selling or in any other way dealing with the Property. When attempts were made to register this order of Maddalena J. on title, the June 17, 2008 transfer came to light.
- (e) Consequently, Hassan brought an urgent motion before Ferguson J. on June 20, 2008, and Ferguson J. ordered that the order of Maddalena J. be registered, notwithstanding the transfer.
- (f) On July, 8, 2008, another motion was made to the court to set aside the June 17, 2008, transfer of the Property. Ann consented to the relief sought and Chapman did not oppose the motion. Boswell J. made an order declaring that the transfer was void. In his reasons (2008 CanLII 47480), Boswell J. concluded at paragraph 15 that “the appearance of impropriety is evident” and that Ann offered no explanation that might provide a reasonable and innocuous explanation for the transfer.

[43] At the hearing of this motion, Ann did adduce evidence with respect to the transfer. It is Ann’s position, based on her evidence and the evidence of Chapman, that in February 2008 Chapman transferred a half-interest in the house to her, not because she had paid for it or earned any interest in it, but rather in the hopes that this “gesture” would assist their romantic relationship which was apparently suffering some difficulty.

[44] Ann and Chapman claim that the transfer did not in fact strengthen their relationship and that immediately prior to the return of the June 18, 2008 motion, Ann told Chapman words to the effect that she did not feel that it would be appropriate for her to continue to have an interest in the house and that she should give it back to him.

[45] This assertion is made, notwithstanding the fact that Chapman borrowed \$150,000 from Ann to purchase the house. Ann and Chapman have claimed that they repaid “by way of cash”, and by Chapman allowing Ann and her children to stay in the home free of charge.

[46] Mr. Baker concedes that there is an appearance of “bad timing”.

[47] Mr. Baker argues, however, that what the Estate seeks is, in reality, a Mareva injunction and as such the motion cannot succeed since the Estate cannot meet all of the criteria that are necessary in order to obtain a Mareva injunction. I disagree.

[48] I agree with counsel for the Estate that the provisions of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29 apply to this matter.

[49] The relevant statutory provisions provide as follows:

1. In this Act,

“conveyance” includes gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise; (“cession:”)

“personal property: includes goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in a bank, company or corporation, and any interest therein; (“biens meubles”)

“real property” includes lands, tenements, hereditaments and any estate or interest therein. (“biens immeubles”) R.S.O. 1990, C. F.29, s.1.

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns. R.S.O. 1990, c. F.29, s.2.
3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section. R.S.O. 1990, c. F.29, s. 3.
4. Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser. R.S.O. 1990, c. F.29, s.4.

[50] Although no case law was provided to me to assist with respect to providing an interim type relief, I have concluded that section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 provides me with authority to grant the relief that the Estate seeks.

[51] In *392278 Ontario Ltd. (c.o.b. Group Three) v. Interopeka S.A.* (2001), 38 R.P.R. (3d) 239 (Ont. S.C.), aff'd [2002] O.J. No. 3795 (C.A.), the court, citing *Re Fancy*, (1984), 46 O.R. (2d) 153 (S.C.), discussed the law on fraudulent conveyances and what are considered badges of fraud at paragraph 38:

As to the proper test to be applied in these circumstances, counsel for the plaintiff relied on the decision in *Ricchetti v. Mastrogiovanni*, [1988] O.J. No. 2569. The following passages from that decision are relevant, at pages 4 and 5:

The law on the subject of fraudulent conveyances is accurately stated by Mr. Justice Anderson in *Re Fancy*

(1984), 51 C.B.R. (N.S.) 29

"The plaintiff must prove that the conveyance was made with the intent defined in that section [i.e. section 2 of the *Fraudulent Conveyances Act*]. Whether the intent exists is a question of fact to be determined from all of the circumstances as they existed at the time of the conveyance. Although the primary burden of proving his case on a reasonable balance of probabilities remains with the plaintiff, the existence of one or more of the traditional "badges of fraud" may give rise to an inference of intent to defraud in the absence of an explanation from the defendant. In such circumstances there is an onus on the defendant to adduce evidence showing an absence of fraudulent intent. Where the impugned transaction was, as here, between close relatives under suspicious circumstances, it is prudent for the court to require that the debtor's evidence on bona fides be corroborated by reliable independent evidence".

The "badges of fraud" referred to by Mr. Justice Anderson are those et [sic] out in *Re Dougmor Realty Holdings Ltd.*, (1966), 59 D.L.R. (2d) 432:

- (1) Secrecy
- (2) Generality of Conveyance
- (3) Continuance in possession by debtor
- (4) Some benefit retained under the settlement to the settlor.

The above passages set out the test to be applied. The badges of fraud alleged by the plaintiff are established.

[52] In *Conte Estate v. Alessandro*, [2002] O.J. No. 5080 (S.C.), aff'd [2004] O.J. No. 3275 (C.A.), Rouleau J. at paragraph 43 listed the following as badges of fraud:

- The transferor has few remaining assets after the transfer;
- Transfer to a non arm's length person;
- There are actual or potential liabilities facing the transferor or he is about to enter upon a risky undertaking;
- Grossly inadequate consideration;
- The transferor remains in possession or occupation of the property for his own use after the transfer;

- The deed contains a self-serving and unusual provision; and
- The transfer was effected with unusual haste.

[53] In this case, I conclude that there is ample evidence of “badges of fraud”, as follows:

- The transfer was for a nominal amount.
- The transfer was a non arms length transaction between Ann and Chapman.
- There were potential liabilities facing Ann with respect to the outstanding lawsuit of Hassan.
- The explanation of Ann appears to be self-serving.
- The transfer was effected with unusual haste immediately prior to the motion.
- The court, at the hearing of the motion, was not advised of the transfer.
- Ann continues to live in the home with Chapman, and continues to use and benefit from the property after the transfer.

[54] Since I find that these badges of fraud exist, the burden now shifts to Ann to adduce evidence showing an absence of fraudulent intent. However, I simply do not accept Ann’s explanation with respect to how and why the transfer took place. It is simply not credible, given the facts outlined above. On the balance of probabilities, I therefore conclude that the conveyance of the property was made with the attempt to defeat Hassan, now the Estate, of his lawful action against Ann.

[55] I accordingly order that the transfer of the property by Ann to Chapman made on June 17, 2008, under Registration No. OC863546 be set aside pending further order of the court or agreement between the parties.

CONCLUSION

[56] The following orders will therefore issue:

1. The Estate will post security for costs in the amount of \$13,951.04 plus HST, and disbursements of \$1,386.56 inclusive of HST within 60 days.
2. Ann’s motion for security for costs is dismissed.
3. Mona and Mohie’s motion for security for costs is dismissed.
4. Mona and Mohie’s motion to dismiss the counterclaim is dismissed.

5. The transfer of the property from Ann to Chapman made on June 27, 2008, under Registration No. OC863546 is set aside pending further order of the court or agreement between the parties.

[57] Based on the orders above, pending any offers to settle, it would appear to me that Di Monte is entitled to the costs of his motion for security costs from the Estate. It also appears as though the Estate is entitled to its costs against Ann with respect to both her motion for security for costs and the Estate motion to set aside of the transfer of the Property. Similarly, the Estate is entitled to its costs against Mona and Mohie with respect to the motion brought by them for security for costs and to dismiss the counterclaim against them.

[58] If the parties cannot agree with respect to the issue of costs, written submissions are to be exchanged and filed with court within 30 days.

McEwen J.

Released: June 28, 2011

BANK OF MONTREAL

v. **2380630 ONTARIO INC., et al.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**BRIEF OF AUTHORITIES
(Re Motion Returnable November 14, 2018)**

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