CITATION: EDDIE v. LEPP

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE	**Judge/Associate Judge**	**Court File Number**:
	Justice CHALMERS	**CV-18-00608665-0000**

Title of Proceeding:

EDDIE Plaintiff(s)

-v-

LEPP Defendants(s)

Case Management: ☐ **Yes** If so, by whom:	**No**

Participants and Non-Participants: *(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) **Plaintiff**	**Gwendolyn L. Adrian**	**gadrian@fijlaw.com**	**Tel: (905) 763-3770 x 241**	**Y**
2) **Defendant**	**Bob Lepp (self-represented)**	**Bob.Lepp@gmail.com**	**416-254-5916**	**Y**
3) **Parkbridge Lifestyle Communities Inc.**	**Joseph Hoffer**	**hoffer@cohenhighley.com**	**(519) 672-9330**	**Y**

Date Heard: *(Rule 59.02(2)(c)(iii))* **November 22, 2024**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ Motion ☐ Appeal ☒ Case Conference ☐ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ In Writing ☐ Telephone ☒ Videoconference ☐ In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule. 59.02(2)(c)(v))*

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Costs: On a indemnity basis, fixed at $ are payable by to [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

Overview

On January 3, 2023, Justice Pollak granted judgment in favour of Mandie Eddie against Robert Lepp. Judgment was in the amount of $550,000, plus costs of $51,298.54. Mr. Lepp has not paid any amount of the judgment. Mr. Lepp owns a modular detailed dwelling (the Real Chattel) located at 116 Techumseth Pines Drive, Tottenham, ON (the Property). The plaintiff brought a motion for an order in equitable execution to transfer ownership of the Property to the plaintiff or alternatively that the Property be sold to satisfy the outstanding judgment.

By endorsement dated October 23, 2024, I held that equitable execution of Mr. Lepp's modular home is available to enforce payment of the judgment. I ordered a judicial sale of the modular home (the Order). I stated that if the parties were unable to agree on the terms of the sale the parties shall attend a case conference on November 22, 2024, to address the issue.

On November 13, 2024, Mr. Lepp delivered a Notice of Appeal to the Court of Appeal. He did not bring a motion for a stay pending the appeal. At the case conference today, I was advised that Mr. Lepp scheduled an attendance in CPC on December 3, 2024, to seek an urgent motion for a stay of the Order.

Analysis

Is there an automatic stay of the order pending the appeal?

Rule 63.01 provides that the delivery of a notice of appeal of an interlocutory or final order stays, until the disposition of the appeal, any provision of the order for the payment of money.

Counsel for the plaintiff argues that there is no automatic stay of the Order. The Order was not for the payment of money. The Order was a declaration that a remedy in equitable execution was available and for a judicial sale of the property. Counsel for the plaintiff argues that the order for the payment of money was made by Justice Pollak on January 3, 2023. The Order appealed from is the sale of the property to satisfy Justice Pollak's order for the payment of money.

Mr. Lepp argues that the automatic stay provisions apply because the Order is for the payment of money. The Order is for the sale of the Property. The sale will generate money

which will then be paid to the plaintiff.

The automatic stay provisions of R. 63.01 are interpreted narrowly in terms of the kinds of orders that are subject to an automatic stay. To qualify as an order for the payment of money, the order must create a fixed debt obligation. The debt must be actual and not prospective or contingent: *Longley v. Canada (Attorney General),* [2007] O.J. No. 929(C.A.), at para. 12, and *Fontaine v. Canada (Attorney General),* 2012 ONCA 206, at para. 31.

In my view the Order does not create a fixed debt obligation. The fixed debt obligation was created by Justice Pollak's judgment dated January 3, 2023. The Order is for a judicial sale of property to facilitate enforcement of the judgment. Although the Order will result in a transfer of money to the plaintiff following the judicial sale, the Order does not create a new fixed debt obligation. I conclude that the Order is not an order for the payment of money, and therefore the automatic stay provisions of R.63.01(1) do not apply.

At the present time, there is no order pursuant to R. 63.02 to stay the Order. I find that unless and until a court orders a stay, the plaintiff may proceed with the sale of the property.

Terms of the Sale of the Property

In my endorsement dated October 23, 2024, I stated that if the parties were unable to agree on the terms of the sale, the terms would be imposed by me at the case conference.

The plaintiff proposes the following terms of sale:

- The plaintiff shall have exclusive conduct of the sale and may list the Real Chattel for sale with a licenced real estate agent;
- The plaintiff may sign all documents to give effect to, and that are necessary to carry out the sale of the Real Chattel and to transfer legal and beneficial ownership to the purchasers;
- The plaintiff may enter into a contract of insurance to insure the Real Chattel from standard risks of peril;
- The plaintiff may sign any and all documents to give effect to a transfer of the Lease between the defendant and the Landlord Parkbridge to the purchasers;
- The Real Chattel shall be listed on MLS at a price of $575,000 for not less than 14 days;
- The costs of the sale shall be payable by the defendant from the proceeds of the sale;
- The defendant shall provide vacant possession of the Real Chattel to the plaintiff effective January 15, 2025;
- Signs may be posted on the land upon which the Real Chattel is affixed during the period when it is listed for sale;
- Within 14 days of receiving the sale proceeds, the plaintiff will conduct an execution search of Mr. Lepp to ascertain what amounts are owned by the defendant and will

disburse the sale proceeds less the costs of the sale on a *pro rata* basis to the creditors of the defendant.

In my view the terms of sale proposed by the plaintiff are reasonable.

Order for Possession

The plaintiff seeks an order for a writ of possession and writ of delivery. The writ of possession would only become effective if the defendant failed to vacate the property by January 15, 2025.

I am satisfied that vacant possession of the property is necessary to permit the sale of the property. I grant the writ of possession. The writ of possession is effective after January 15, 2025.

Costs

The plaintiff was successful on the motion. My endorsement dated October 23, 2024, provides that the plaintiff is presumptively entitled to her costs. I stated that if the parties were unable to agree on costs, the issue would be addressed at the case conference.

The plaintiff seeks her costs on a partial indemnity basis fixed in the amount of $12,669.75 inclusive of counsel fee, disbursements and H.S.T.

Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, provides the court with discretion in the determination of costs. In fixing costs of the motion, I am not undertaking the same task as an assessment officer or fixing costs with mathematical precision. I am to exercise my discretion guided by the factors set out in R. 57.01 and having regard to the overriding principles of reasonableness, fairness and proportionality. The costs must be within the reasonable expectation of the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), (*Boucher*) at para. 38.

I considered the factors set out in R. 57.01. The dispute between the parties was not overly complex. However, the defendant made a number of excuses for the payment of the judgment which tended to lengthen the proceedings. The motion was for the collection of a significant judgment, and I find that the issue was of importance ot the parties. I am satisfied that the hours and hourly rate claimed by the defendants' lawyer are reasonable. The hourly rate is in line with the hourly rates charged by lawyers with similar experience in Toronto.

I award costs to the plaintiff fixed in the amount of $12,000. I am satisfied that an award of costs in this amount is proportionate, fair and within the reasonable expectations of the defendant to pay.

The landlord Parkbridge participated on the case conference. I had ordered Parkbridge to attend the case conference to address the issue of the transfer of the lease to a purchaser of the property. Mr. Lepp argues that it is unfair that he be required to pay costs because I ordered Parkbridge's participation. It is my view that if Mr. Lepp had cooperated in the sale of his property to satisfy the outstanding judgment, the case conference and Parkbridge's

attendance would not have been required.

Parkbridge seeks its costs for attending the case conference in the amount of $2,825.53 inclusive of counsel fee, disbursements and H.S.T. Parkbridge's involvement in the case conference was limited to addressing the issue of the transfer of the lease. Counsel for Parkbridge was very helpful to the court with respect to the wording of the final order.

I am satisfied that Parkbridge is entitled to its costs. I fix the costs in the amount of $2,000 inclusive of counsel fee, disbursements and H.S.T.

The costs awarded to the Plaintiff and to Parkbridge are orders for the payment of money. The cost orders are automatically stayed as a result of the delivery of the Notice of Appeal.

Disposition

I make the following order:

- The plaintiff may proceed with the sale of the Property;
- I signed the draft order setting out the terms of the sale;
- If Mr. Lepp does not vacate the property by January 15, 2025, the plaintiff is entitled to a writ of possession. I signed the draft order for the writ of possession;
- Mr. Lepp is ordered to pay the costs of the plaintiff fixed in the all-inclusive amount of $12,000 and the costs of Parkbridge in the all-inclusive amount of $2,000.

I remain seized with respect to any issues that may arise regarding the sale of the Property.

Additional pages attached: ☐ Yes **X** No

November 22, 20 **24**
Date of Endorsement *(Rule 59.02(2)(c)(ii))*

Signature of Judge/Associate Judge *(Rule 59.02(2)(c)(i))*