

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

B E T W E E N:

CHRISTINE RUPERT

Applicant/Defendant
Respondent in Appeal

- and -

WILLIAM MULLINS JOHNSON

Respondent/Plaintiff
Applicant in Appeal

NOTICE OF MOTION FOR LEAVE TO APPEAL

The Applicant/Plaintiff will make a motion to a Judge of the Superior Court of Justice, Divisional Court, to be heard on Wednesday June 18, 2014 at 9:30 a.m. or as soon after that time as the motion can be heard at 3 Dominion Street, Bracebridge, Ontario for an order granting leave to appeal from the decision of Justice Thomas M. Wood of the Superior Court of Justice sitting in Bracebridge dated March 3, 2014 ordering the Respondent's motion for a dismissal or stay of action number FC-13-196 dismissed, that action number CV-13-00492026 be consolidated with the above action and transferred to the District of Muskoka, that the Respondent serve and file a financial statement including full details of his structured settlement within 30 days of the order, and that the Respondent shall advance the sum of \$10,000 to counsel for the Applicant for expenses within 45 days of the order.

PROPOSED METHOD OF HEARING:

(a) The motion shall be heard orally.

THE MOTION IS FOR:

1. An order granting leave to appeal from the decision of Justice Thomas M. Wood of the Superior Court of Justice sitting in Bracebridge dated March 3, 2014;
2. Costs of this motion;
3. Such further and other order as may be requested and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The learned motions court Judge erred in making findings of fact without a proper evidentiary record before him thereby causing prejudice to the Plaintiff in the civil action and thereby pre-empting the ability of the Plaintiff to proceed with his action on its merits.
2. The learned motions court Judge erred by making findings of fact on the two procedural motions before him when it was inappropriate to make such substantive findings and when, in any event, such findings violated the

principle that assertions contained in the claim should be deemed to be proven at this stage of the proceedings.

3. The learned motions court Judge erred in law by entertaining an urgent motion when there was no urgency, where there was insufficient notice permitted to the Plaintiff thereby effectively preventing the Plaintiff from responding and where the only relief granted had no urgency.
4. The learned motions court Judge erred by transferring the action to the jurisdiction of Muskoka without considering that Muskoka was not the proper locus as the cause of action took place elsewhere.
5. The learned motions court Judge erred in law by ordering the Plaintiff to make a payment for legal costs to the Defendant without sufficient facts to establish a need for doing so and without giving the Plaintiff an opportunity to file responding material.
6. The learned motions court Judge erred in law by ordering the Plaintiff to make a payment of legal costs to the Defendant within the context of the family law application when, if it was inappropriate to make, it should have been made in the civil action in accordance with the requirements established by the Supreme Court of Canada.

7. In the alternative, the motions court Judge erred by treating the Statement of Claim in the civil action as an answer to the application in the family court action and not permitting the Plaintiff in the civil action to provide a substantive answer to the various claims in the family law application.
8. It is submitted that the above errors of law are in breach of existing case law and appear to be incorrectly decided.
9. Further, the above errors of law raise issues of general importance to the development of the law as well as to issues of fairness.
10. Rule 61 of the Rules of Civil Procedure.
11. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Order and Reasons of Justice Thomas Wood dated March 3, 2014;
2. The pleadings and proceedings herein including all documentation before Justice Wood;

3. Such further and other material as may be advised and this Honourable Court permit.

Date: March 11, 2014

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