

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Stephen v. Patriquen, 2011 NSSC 117

Date: 20110328

Docket: 1201-60795

Registry: Halifax

Between:

Melanie Jane Stephen

Applicant

v.

Michael Patriquen

Respondent

Judge: The Honourable Justice Moira C. Legere Sers

Heard: March 10 and 21, 2011 in Halifax, Nova Scotia

Written Decision: March 28, 2011

Counsel: Melanie Jane Stephen, Self-represented
Michael Patriquen, Self-represented

By the Court:

[1] This is the transcribed oral decision (edited only as to grammar and style; not as to substance) in the matter between Melanie Jane Stephen and Michael Patriquen, 1201-60795.

[2] This is the continuation of the contempt proceeding that was started quite some time ago and was delayed initially because of a notice provision in the new Rules.

[3] The applicant, Ms. Stephen, was advised to personally serve the respondent, Mr. Patriquen.

[4] Although his counsel had been given the documentation and had indicated to the Court that the information had been passed on, nonetheless, to accord with the Rules, the matter was adjourned and Ms. Stephen was directed to provide notice to Mr. Patriquen of her application to apply for contempt.

[5] Permission to proceed with a contempt proceeding was granted on February 14, 2011.

[6] The matter started again at a hearing date on March 10, 2011. Evidence was given by Ms. Stephen. I believe at the commencement of cross-examination, Mr. Patriquen, who was present, indicated that he was ill and had to go to the washroom. After that he came back to indicate that he was too ill to proceed.

[7] The matter was adjourned to today's date being March 21, 2011 to complete the contempt proceeding. Mr. Patriquen is not here.

[8] My judicial assistant placed a call to Mr. Patriquen and spoke with someone who advised that he was told by his doctor not to be in attendance. The respondent faxed his letter of March 21, 2011.

[9] The record should show that this matter was scheduled for 10:00 o'clock and we had not heard from Mr. Patriquen in advance to advise that he would not be in attendance. Ms. Stephen is here.

[10] The fax has come through just recently, this being 10:25. It appears as if it were faxed at 14:49 on the 25th day of February. I am not certain why it has that transmission date on it because it is in fact 25 minutes after 10. The note indicates that Mr. Patriquen is referring to today's contempt proceeding. The note is marked March 21, 2011 and advises that he is just recently returned from hospital after an extended stay and he cannot attend this a.m. as ordered.

[11] He advises in this letter nonetheless that he has been completing for submission and filing with the court a notice of motion to vary the court order surrounding the contempt hearing today; he requests an adjournment; a request for recusal and a number of other documents.

[12] He advises his physical attendance is impossible; paperwork will be forthcoming and (will) include medical opinion and testing. The basis of that application will be evidence as to a medical condition.

[13] The Court had ordered Mr. Patriquen to have someone here on his behalf if he was unable to be present himself. No one is present and he says as follows:

proof that for me to have someone "attend in my place" is criminally illegal and any action taken toward that end is a conspiracy.

[14] He repeats what he has alleged from the beginning that he was not served with the proper paperwork and there is no service affidavit. He also advises his home:

is not in foreclosure.

Correspondence with Plaintiff will be presented with adjournment/vary motions this morning.

newspaper notice is for substituted service.

the applicants evidence on march 10 shows that 6th BoM is ok with 4 months to submit and carry on

rest of corrally relief judgment dictating that the adjacents lot **ONLY BE SOLD AS PACKAGE**

This will all be coming soon.

Notice

[15] I am satisfied that Mr. Patriquen has had notice of these proceedings, has been informed throughout and has had ample time to consult with a lawyer.

[16] Through the various adjournments he has indicated that he is unable to complete the proceedings; which is why we adjourned on the last date, with directions that he have someone here on his behalf, medical information or be here himself.

[17] I was only advised this morning that he apparently has a doctor's letter telling him not to come. I don't again have any medical information before me and it is 25 to 11; he is not present; the adjournment was for the purpose of allowing Mr. Patriquen to address this matter and to ensure somebody was here on his behalf.

[18] The matter has been before the Court on this very issue.

[19] The parties have had notice of this since well before October 25, 2010 when the first order granting permission to proceed on this matter was given by Jollimore J.

[20] Out of an abundance of caution, given the change in the Rules, it was set down before me to address the leave application on February 14, 2011, in which Ms. Stephen made it clear on the record with Mr. Patriquen present that she was seeking an order to allow her to sell the matrimonial home or take exclusive possession or permission to sell two vacant lots adjacent to the property because the mortgage was in arrears, the house was in foreclosure and a Sheriff's sale already advertised.

[21] The matter was then adjourned to March 10th for the commencement of the hearing, again to allow Mr. Patriquen time to (1) obtain counsel; (2) provide medical (information) or to have someone here and be prepared to proceed with the hearing.

[22] So in terms of notice, Mr. Patriquen is well informed.

[23] I further decided to proceed after carefully reviewing the documentation on file, including the orders for contempt relating to this proceeding that are part of the file record.

[24] These records indicate that this is a matter that has some historic significance. A further adjournment, given Mr. Patriquen's assertion that he needs more time, both medically and because he believes the contempt proceedings are illegal:

- will not produce Mr. Patriquen;
- will not alleviate his illness such that the matter can proceed;
- he is resisting having either someone appointed on his behalf in order to address the matter or to address the matter directly;
- will possibly have the effect of creating an injustice against one the parties to this proceeding.

[25] Mr. Patriquen was present on the last day and although he had advised on previous appearances that he had been requested by his doctor to attend the hospital and be in the hospital, he resisted those attempts.

[26] It is clear that he is unwell physically. The Court adjourned after he informed the Court on the last day that he was vomiting blood. The Court gave him directions with respect to ensuring that the proper information was before the Court or that he was here or that someone was here on his behalf.

[27] It is clear that he is resisting; that he is filing motions to appeal, motions to declare these proceedings void and his letter refers to other motions with respect to recusal.

[28] If his medical condition is deteriorating, and I have no proof of that but it is not difficult to believe, then a delay will not affect the course of justice as it does not appear that Mr. Patriquen is prepared to address the proceedings.

[29] If I were to adjourn, there is no likelihood that Mr. Patriquen will appear or will address the Court's concerns about creating some finality with respect to this application.

[30] In addition, if the house issue is not addressed, it appears that both parties are likely to suffer the loss of any equity in the home through the foreclosure proceedings.

[31] Finally, while Mr. Patriquen's physical condition and appearances indicate he is not a well man, he is able to provide briefs of his interpretation of the law, effect research and address the matters within. The documentation he has filed that I have reviewed indicates that he is in fact addressing legal issues to stave off the continuation of contempt proceedings.

[32] I have no information that would allow me to proceed on the question of competency to excuse Mr. Patriquen for his failure to appear. Quite the contrary and although he is obviously ill, I have no medical evidence to indicate the extent of his illness or to address through him or directly, any process that would appoint a guardian ad litem for Mr. Patriquen.

[33] Thus, I am left with the information before me.

[34] The Courts have been directed to ensure that these matters are dealt with in a timely fashion.

[35] This matter has been delayed for a considerable period of time and needs to be resolved.

[36] The respondent is not here. Having previously dealt with the issue of service on the respondent and having previously stated the reasons for the conclusion that proper service has been affected, the Court has decided to proceed in order to complete the contempt proceeding.

[37] I reserve the right to edit the decision solely for the purpose of making it more readable and correcting any grammar.

[38] I have previously referred to the proof of notice of the proceeding, including the invoice which was tendered on March 10, 2011.

[39] The Affidavit of Service filed confirms service of the documentation on Mr. Patriquen as of February 1st. I have both the copy provided by Ms. Stephen and the Court's copy.

[40] The affidavit was served on Mr. King, Q.C. counsel for Mr Patriquen in the previous contempt proceeding when the matter proceeded before Jollimore J.

[41] Subsequently, Mr. Patriquen confirmed in court on March 10th that he did have a copy of the affidavit. It was clear in his discussions that he had a copy of the affidavit and the attachments. A reading of his representations to the Court, which are all typewritten, confirm that he is aware of the allegations before the Court, although he contests their sufficiency, accuracy and credibility.

[42] I have the *viva voce* evidence of Ms. Stephen, who gave testimony on March 10, 2011 with Mr. Patriquen present. She has continued on March 21, 2011 to update the Court on undertakings that were given under oath; that is to say, the evidence completes the undertakings she gave in her oral testimony on March 10th.

[43] I believe there is an Exhibit marked #1, the statement of Melanie Stephen setting out her version of the evidence and her concern about her credit rating, which she believes has been "decimated" by Mr. Patriquen's failure to abide by court order.

The Attached Interim Order

[44] I believe this was filed by Mr. Patriquen on the last day because he was alleging that the copy of the Interim Order of Justice Lynch contained in the original documentation provided to the Court by Ms. Stephen was in fact not the final order.

[45] For the purposes of this proceeding, the order of Lynch, J. issued the 12th of February 2007, heard on December 5, 2006 is not relevant to this proceeding. It is simply historical information which would indicate that the timely payment of mortgage, etc., has been an issue between these parties and that will be evident on a reading of the file as this is indeed a historically litigated divorce.

[46] I have confirmation of the notice of application made by the Bank of Montreal as referred to in the evidence. This Notice of Motion is contained in the Tuesday, January 25, 2011 excerpt from the business section of the Chronicle Herald confirming Ms. Stephen's information that the bank has taken formal action to move toward foreclosure of the properties cited in the Corollary Relief Judgment.

[47] I have a copy of a letter from Mr. Chisholm of Casey Rodgers Chisholm and Penney directed to Ms. Stephen as the owner and holder of the mortgage on the property located at 93 Orchard Drive, Upper Sackville, Nova Scotia, which property is the matrimonial property, advising that the total arrears as of November 5, 2010 are \$4,162.56 with the notation that if the total amount is not paid, plus interest, by certified cheque or bank draft to the law firm "in trust" at the above-noted address within 10 days of the date of the letter (which would have been November 19, 2010), they would be commencing legal proceedings to enforce the Bank of Montreal's claim against both Ms. Stephen.

[48] I presume by saying "both" they were referring to Mr. Patriquen but they did not address the letter to Mr. Patriquen.

[49] At this juncture, the Bank has advised that they will not accept partial payments on arrears and will require the total arrears to be brought to date and confirmation that there is proof of insurance on the property.

[50] Ms. Stephen is not in a position to know whether the property is insured and Mr. Patriquen has opted not to provide evidence in writing or to continue with the proceeding.

[51] The allegations in the proceeding and in the notice include the following. I will delete the inflammatory words for the purposes of this decision and simply refer to the issues that the Court faces in the contempt process.

- Notice of Motion for Contempt which was date stamped December 21, 2010 alleges that Mr. Patriquen disobeyed court orders to keep the mortgage in good standing and pay the property taxes as originally instructed by the court by Interim Order December 5, 2006, Interlocutory Order November 19, 2007 and January 28, 2010, noting that he had been previously found in contempt.

- The Affidavit which was attached contained the particulars and refers to the Corollary Relief Judgement which is attached to the affidavit. There are some particulars in the affidavit that are not relevant including the marriage date, etc. for the purposes of this proceeding.
- Various court orders have been cited, commencing with the December 5, 2006 order wherein Mr. Patriquen was court-ordered to assume the mortgage payments. There were occupational rent cheques which were to cease as of December 1, 2006.
- Mr. Patriquen was also to pay the separate property tax and maintain home insurance while he was in possession of the property.
- He was also to maintain insurance and he was found in contempt previously by failure to pay mortgage, taxes as well as insurance.

[52] Mr. Patriquen has been in possession of the property solely, and I say solely as between himself and Ms. Stephen, since September 22, 2006.

[53] Ms. Stephen advised that previously when contempt proceedings were taken, at or about the time leading up to a court hearing, the respondent would pay the mortgage at the last minute by cash and submit a money order to HRM Property Tax Division.

[54] The divorce proceedings commenced on May 17, 18 and 19th before the Honourable Justice R. Williams in 2010. The Court ordered the respondent, Mr. Patriquen, to continue with the court orders to pay the mortgage and property taxes until the property was disposed of by Sheriff sale or after October 1, 2010.

[55] In her affidavit, the applicant noted that the respondent last made a mortgage payment July 16, 2010. As of the date of her affidavit on September of 2010, there were four payments in arrears.

[56] The mortgage, she advises, is in her name only and she is contacted regularly by the mortgage holder.

[57] She believes her credit has now been destroyed.

[58] The bank charges her \$42.50 NSF for every cheque that does not clear, each time they try to retrieve a mortgage payment from her account.

[59] Mr. Patriquen submitted a cheque dated June 30th to HRM and it was returned August 9th. Again, Ms. Stephen received an NSF charge on the returned cheque. She advises that as of the date of her affidavit, Mr. Patriquen had not made a property tax payment since May of 2010. She attached a copy of the notification from HRM; it is marked Exhibit "H" to her affidavit.

[60] As indicated, Exhibit "A" to her affidavit is an Interim Order which deals with historic matters prior to the Corollary Relief Judgment and is not particularly relevant other than to establish the litigious history.

[61] She also attaches an Order for Contempt made by Campbell J. and a copy of the directions before Williams J. in which he confirmed by way of running file that he was satisfied at that time that Mr. Patriquen was in contempt. That would be prior to his Corollary Relief Judgement.

[62] To get to the essence of Mr. Patriquen's complaints in his documentation, he believes that: "sufficient detail has not been set out in affidavit to confirm and specify his breach."

[63] I am satisfied that the affidavit contains the particulars sufficient to confirm to the Court his obligations by way of the Corollary Relief Judgement.

[64] This Corollary Relief Judgement is attached to the original documentation. It confirms the division of property; confirming as well an attachment for Exhibit "f" - the requirement that Mr. Patriquen pay tax payments monthly and confirmation from the Bank of Montreal in Exhibit "g" of an email directed to Ms. Stephen advising her as of September 10th that the arrears were \$1,588.00. And Exhibit "h", the administrative charge for the failure to pay the HRM taxes.

[65] Exhibit "h" as well, indicates that the city will no longer take anything but certified cheque or money order and further that the cheque for March for \$475 for the taxes to HRM has bounced.

[66] I will now refer to the court orders that set out with clarity the obligations of the parties in these proceedings. It is to be noted that both parties know of the Corollary Relief Judgement and clearly refer to them (in their submissions before the Court).

Orders

[67] Williams J. issued a Corollary Relief Judgment out of which this flows. He heard the matter on May 17, 18, and 19, 2010. Mr. King, Q.C. represented Mr. Patriquen at that time. The respondent was unrepresented.

[68] A Notice of Appeal was filed by Mr. Patriquen from the decision given on May 28, 2010.

[69] The Divorce Judgement is dated the 26th of July 2010. The Corollary Relief Judgment is of the same date.

[70] By Memorandum on July 22, 2010 it is to be noted that Justice Williams advised that he had released the written decision on June 18, 2010 and at that time was not aware as at the date of release of his decision that the matter had been appealed.

[71] The Notice of Appeal indicated that the appeal was filed on June 15th, with the Court of Appeal and on June 18th at the Family Division.

[72] The release of the written decision on June 18th took place before the appeal was brought to the attention of the Court.

[73] A stay application was made by Mr. Patriquen relating to the Corollary Relief Judgement and divorce proceedings.

[74] The appeal was heard on July 29, 2010 and his motion for stay of execution was dismissed. The Decision of our Chief Justice is on file.

[75] Most recently, as of the 25th day of November 2010 by motion from the Deputy Registrar of the Court, Mr. Patriquen`s appeal was dismissed, essentially for his failure to appear as required for perfection and proceeding with the appeal.

[76] Thus, the orders of Williams J. are the appropriate orders for review.

Details of Corollary Relief Judgment

[77] In the original division of property, there are two pages dealing with the division of property. In particular, on page 2, paragraph (i) the Court ordered the former matrimonial home and adjacent properties consisting of three lots (PID #s 00459438, 40128506 and 40128514) to be listed for sale for a total price of \$257,270.

[78] Williams, J. then set out what appears to be an attempt to regulate the negotiation for the selection of a real estate agent, the lawyer and the process to be followed in order to affect, in this highly contested matter, an appropriate division of property; reserving for himself the right to review the manner of sale of the former matrimonial home.

[79] In addition, he gave an order with respect to the former matrimonial home prohibiting the sale of the home before July 31, 2010 due to the fact that it was before the Court for a review on August 3rd and he retained the jurisdiction to further adjourn the matter if there was acceptable offer within a closing date.

[80] He gave Mr. Patriquen exclusive right to accept or reject any offer but with requirements and conditions including notice to the applicant. He gave directions on page 3 as to how the net proceeds of the former matrimonial home would be distributed and the fees dispersed and he addressed the division of the outstanding property taxes.

[81] Notably in page 2, Justice Williams said as follows:

(iv) Petitioner (Mr. Patriquen) **shall continue to have exclusive possession of the former matrimonial home and continue to be responsible for the mortgage, taxes and home insurance until the former matrimonial home is sold and shall at all times cooperate with the listing, showing and sale of the former matrimonial home as a condition of his continued exclusive possession.**

(v) **The Court expressly reserves its jurisdiction to review the Petitioner's exclusive possession in the event that there are allegations or assertions that establish in evidence that cooperation is not forthcoming by the Petitioner. (The Petitioner being Mr. Patriquen.) The above-noted listing shall be until July 31, 2010.**

[82] Following this court order, a decision was rendered by the Chief Justice of Nova Scotia respecting the stay application and the written decision coming out of the review of Justice William's order heard August 3, 2010 with written decision August 5, 2010.

[83] Counsel for the petitioner (Mr. King Q.C.) was present and the respondent was self-represented.

[84] Justice Williams refers to the previous order and notes that the matter came before him as it related to the matrimonial property issue, which he said "has a torturous background." He advised as follows, paragraph three, page 2:

At the time of the trial of this matter, I concluded that the evidence before me was clear in indicating that neither party was in a financial position to buy out the other party. I have really nothing different before me at this time.

Since the time of my oral decision the bickering between the parties and disagreements have continued and the matter needs to come to a conclusion. These are two adults. There's a property that must be sold. Mr. Patriquen clings to the desire that the home be maintained so he can care for his son there and, to some extent, his daughter. But simply put, he can't afford to stay there based on the evidence before me and he can't afford to pay out Ms. Stephen and the file is absolutely clear in indicating that were he to stay here without the ownership of the property being resolved the matter would continue in the fashion that it has with multiple disagreements between the parties, multiple court applications of various kinds and no resolution as continued acrimony and problems. That scenario is in a word intolerable for everybody.

I have considered Mr. Patriquen's circumstances and those of his son. I have considered or had the benefit of reviewing the decision of Chief Justice MacDonald of the Court of Appeal made last week in the stay application. I have considered the circumstances as they have been presented to me and as they have unwound over the past couple of months when I thought that I was giving the parties an opportunity to sell the property.

I attempted to make these things simpler and the acrimony between the parties continues to frustrate these efforts.

The order, as it relates to the matrimonial home, will be varied or adjusted as follows to bring the matter to a conclusion.

1. To clarify the Corollary Relief Judgment, the order from today's date will provide that the matrimonial home and adjacent property containing the three lots identified in clause 2(I) of the Corollary Relief Judgment will be sold as a package not separately, unless both parties agree in writing to the contrary. I want to be clear, I am not saying unless both parties or the Court orders. I am saying unless both parties agree. So unless both parties agree these properties sell as a package.

It is not my intention that this matter come back to Court to myself or another judge to review whether they should be divided up. If you don't agree that they be divided up, it doesn't happen. Pure and simple.

2. Clause 2(ii) of the Corollary Relief Judgement will be adjusted to provide that Mr. Patriquen shall have the right from today's date forward to list the matrimonial home and adjacent properties with a real estate agent of his choice for the total sale price of \$257,270.

3. The listing agreement entered will be expressly subject to the other provisions of this order including specifically clause 3, which will provide that Section 2(8) of the Corollary Relief Judgment, which will be amended and varied to provide that no offer to purchase the matrimonial property and adjacent properties may be accepted without both parties signing the acceptance.

And clause 4 which shall provide that the property will be sold by public auction on a date to be determined by the Sheriff and upon terms for sale similar to those in foreclosure and sale on any date so determined by the Sheriff after October 1st, 2010.

[85] The Court provided his authority for so ordering and finally reserved jurisdiction for himself or other justices of the Court to provide further particulars of the sale of the property and direct that a copy of the order arising from today's date be provided to the Sheriff's office. All other provisions of Corollary Relief Judgement remain the same.

[86] While a rather complicated history, what in essence has happened is that the taxes are in arrears; the mortgage is in arrears; there has been no movement to proceed to agree to a separate sale of the lots in order to save the matrimonial home; there is no action taken to properly list the property.

[87] I have evidence to cause me to conclude that the state and condition of the home makes it extremely undesirable for sale including the fact that:

Mr. Patriquen lives in the home; that his physical health has considerably deteriorated according to his own representations;

His son who is also suffering from disability as a result of a shooting accident is living in the home and according to Mr. Patriquen, being cared for by him; and

His 18 ½ year old daughter is living there.

[88] Ms. Stephen advises with respect to the two children that the 18 ½ year old is no longer in school but she is welcome to continue living in the home should the Court grant exclusive possession.

[89] She advised that she has been working with her son who has now been accepted into a clinical trial in Lyndhurst, Toronto. He is to be there for eight weeks, starting April 18, 2011 and she is prepared to care for him until such time as he leaves for Toronto and has in fact promoted his involvement in this clinical trial and is prepared to do what she can to assist him on his return.

[90] She has also advised the Court that Mr. Patriquen has other options for living arrangements including living with his girlfriend and he has the support of his mother.

[91] Mr. Patriquen has advised the Court that he has a license to grow marijuana and he is doing so in the home. As a result of Ms. Stephen's conversations with the agent who was retained to look at the home, there has been a negative effect on interior of the home as a result of the operations within the home and the inability of Mr. Patriquen to care for the home.

Mr. Patriquen's Submissions (no evidence was tendered)

[92] I would say first, before I deal with relief, I have reviewed all of the documentation supplied to me by Mr. Patriquen prior to today and I have sorted out the gist of what he has argued.

[93] *That the order granting Ms. Stephen the right to proceed to a contempt proceeding was not in a proper form.* I am satisfied that it is an effective order,

having been drafted by the Court. The order submitted by Ms. Stephen was not in proper form and did not properly convey the intent. I am not attributing any intent to mislead or misrepresent; simply it was a matter of understanding how the order granting leave should be drafted.

[94] *Mr. Patriquen has consistently argued before the court that he does not have sufficient details of his contempt in order to allow him to respond. It is very clear on the documentation that this is a very straight forward matter. He was ordered to pay the mortgage, taxes and keep the property insured and he has failed to do so.*

[95] *He has advised that he has in the process a Notice of Intention to proceed on appeal, which was filed on February 21, 2010, which indicates that he will be proceeding forthwith on an appeal to the Supreme Court of Canada with respect to all the trial decisions reached, orders issued, Corollary Relief issued, divorce judgement and related Nova Scotia Court of Appeal decisions issued in chambers by the tribunal et al. in the above-noted matter. I have previously dealt with the result of his Notice of Appeal relating to Corollary Relief Judgment and Divorce orders issued. That has been the application for stay and the appeal was dismissed.*

[96] *Mr. Patriquen, in a document he filed this morning at about 10:07 am (after the court clerk called to determine his whereabouts and discovering he would not be in attendance), advised that he will be making an application, as I understand it, to seek to recuse myself. I do not have that application before me and nothing filed before me that would allow me (to proceed) in order to obtain that information. By nothing, I mean nothing substantive that would allow me to consider it over and above the memo that he has sent in today.*

[97] *He advised his medical condition does not allow him to be present. I have no medical information other than something that was handed to me in the course of making my decision, to which I will refer but it is not properly put before the court.*

[98] *If in fact Mr. Patriquen were to prove that he was medically physically unable to be present, he ought to have had someone appointed on his behalf to be here. It is my belief that his requests for adjournments and requests to put the matter off are simply, effectively, stall tactics to avoid dealing with an issue that needs to be dealt with in order to save the matrimonial home property from foreclosure.*

[99] I have nothing to indicate that he is mentally unable to proceed or to have someone here on his behalf.

[100] *He has advised that the request to have someone attend in his place is criminally illegal and any action taken toward that end is a conspiracy.* I have no evidence to support that.

[101] *He has suggested in court on the last day that the foreclosure is not proceeding.* The only credible evidence I have is that it (the foreclosure) is, in fact, imminent.

[102] *He relies on Justice Williams' amended order to say that only the property must be sold in total.* I have evidence to suggest to me that without allowing for a sale of part of the lots, the entire three lots will likely go to foreclosure.

[103] *Mr. Patriquen said at one point that he has a number of life-threatening conditions and diseases.* He did indicate on the last day that he had refused his doctors desire to have him admitted as an inpatient. I have confirmed that his physical state does not appear to be good but as for his cognitive state; I have no information to suggest that he is not competent to proceed.

[104] Since the order of Justice Williams, the evidence that I have confirms that the only hope to avoid foreclosure on all three lots is to grant exclusive possession to Ms. Stephen to put herself in the home and to use whatever she can, while respecting the rights of Mr. Patriquen and the requirements that his share be held in trust; to proceed to clean up the property, make it saleable and subsequently list it.

[105] The only way to finance that from her perspective, given the particulars that Ms. Stephen has put before the Court, is to be allowed to sell one of the lots at least. She requests permissions to sell both in order to satisfy immediately the bank, HRM taxes to ensure the property is properly insured. There are no other options before me that would stop the law firm from advancing on the Bank of Montreal's claim.

[106] Mr. Patriquen does not appear to be in a state of body or health in which he is prepared to do that and in fact he has had exclusive possession since 2006 and the matter has almost concluded by a loss of the matrimonial property.

The Law

[107] In preparation for this proceeding, I have reviewed the recent case authorities on contempt proceedings including the Nova Scotia Court of Appeal decision in **TG Industries Limited v. Williams**, a decision of Bateman J.A., Flynn, J.A., and Cromwell, J.A., at 2001 Carswell NS 219; 2001 NSCA 105; **Blackman v. CIBC Wood Gundy Financial Services Inc.**, 2009 Carswell NS 814, 2009 NSSC 416; and as reviewed under the Rules as well as in **Mason v. Lavers**, a decision of Justice P. J. Duncan, found at [2011] N.S.J. No. 78.

[108] I confirm what is set out:

that the elements of the contempt proceedings must be proven beyond a reasonable doubt (and it has);

that the power of contempt I am aware must be used cautiously and with great restraint and in so doing I have limited the relief to allow for Mr. Patriquen to have an opportunity to be heard on the disbursements of funds over and above what is required to save the property.

[109] I am aware that the core element of civil contempt is failure to obey a court order, of which the alleged contemtor is aware, as stated in **TG Industries Limited** that contempt is known as conduct which disregards orders or judgements and can be found in not doing something ordered to be done in a case as stated in **Poje v. British Columbia (Attorney General)**, [1953] 1 S.C.R. 516 at 522, a decision written by Kelloch, J.

[110] Further, McLachlin J., (as she then was) in **United Nurse of Alberta v. Alberta (Attorney General)**, [1992] 1 S.C.R. 901 at 931: "a person who simply breaches a court order . . . is viewed as having committed contempt."

[111] It has been written, and I have observed in the cases, that intention to disobey is not an element of civil contempt.

Conclusion Regarding Contempt Hearing

[112] Therefore, just based on the contempt proceeding, I am satisfied that Mr. Patriquen is in contempt of the Corollary Relief Judgement in itself and as

amended on review by Justice Williams in that he has failed to pay the mortgage payments and tax payments, such that the home is now moving toward foreclosure. The question is what to order.

[113] To address the contempt and to force compliance with the order:

I grant exclusive possession of property referred to as the matrimonial property in the Corollary Relief Judgement to and include the former matrimonial home and adjacent property consisting of three lots, PID #s 00459438, 40128506 and 40128514, **with the purpose** to take possession of home and **if necessary**, sell one of the lots in order to satisfy the bank and the taxes and to ensure it is properly insured.

In following the order of Justice Williams, to engage a listing agent chosen by Ms. Stephen (and this will vary the Corollary Relief Order), who shall then retain a solicitor chosen by the real estate agent but that solicitor or firm must not have been a solicitor or a firm previously engaged by either the petitioner or the respondent.

I recognize that this is a variation of the directions of Justice Williams, however it is the only way to satisfy and salvage what is possibly the remaining equity in the matrimonial home and properties.

[114] Ms. Stephen shall continue to have exclusive possession of the former matrimonial home. She shall be responsible for mortgage, taxes and home insurance until the matrimonial home can be brought into a state suitable for sale by way of an application to vary and by this court order.

[115] The Court reserves jurisdiction under an application to vary to review Ms. Stephen's exclusive possession and to review the terms and the manner of her exclusive possession so as to allow Mr. Patriquen an opportunity to be present and to speak to the sale of remaining lot containing the matrimonial home and the third lot.

[116] There are three lots. I am only granting Ms. Stephen authority to sell one of the lots. I want Mr. Patriquen to have an opportunity, if and when Ms. Stephen is able to get the matrimonial home up to a proper state of repair so that a listing agent is prepared to list it, to have some say over how the monies get divided.

[117] A Court would have more opportunity to review the full conditions and terms of the Corollary Relief Order.

[118] That will (also) give Ms. Stephen an opportunity to bring before the Court an accounting of what has happened with the money, what reparations have been done to the home, what the real estate agent says about the possibility of sale and how soon that should happen.

[119] Ultimately, it appears to be the intention of Justice Williams to have the property sold so that the parties would receive their equity. That still has to be accomplished in some way, either by a buy out or to allow Mr. Patriquen an opportunity to recover whatever it is he needs to recover.

[120] Ms. Stephen will have to be responsible for an accounting for any of the monies paid out on the sale of the property in order to satisfy the encumbrances, the taxes and the mortgage.

[121] Ms. Stephen will have to go before the Court after receiving an assessment by a real estate agent as to what it will take to bring this property to sale to obtain permission from a Court to use the proceeds of the sale of that home, if any are left, in order to effect the necessary repairs.

[122] If Mr. Patriquen does not agree with the real estate assessment of the repairs, he may retain his own real estate agent to provide an assessment.

[123] The proceeds of sale have to go toward saving the matrimonial property and not any personal interests of Ms. Stephen in order to get it to a point where a Court can look at it and make a decision as to how to effect what can now be effected because of the sad financial state.

[124] Therefore, the parties will need to go before the Court for a variation order.

[125] I am giving you (Ms. Stephen) the right through the contempt proceedings to go into the home and to effect the sale of one of the properties to give the bank sufficient confidence that something positive is happening.

[126] They (the bank) may not accept that and if it goes to foreclosure, it goes to foreclosure. But if they do accept it, then you are getting back into the home, you

are able to sell the lot to pay the outstanding taxes, mortgage and hold creditors at bay.

[127] In order to use any of the remaining money in the application to vary, Mr. Patriquen must be given proper notice so that his health and considerations can be looked at.

[128] He can be advised of his obligation to make sure somebody is representing him, either by way of a guardian ad litem or himself, that he will be able to have a say over how the proceeds are used. Ms. Stephen may ask a Court to release monies.

[129] Ms. Stephen will have to have a real estate agent's statement about what needs to be done to bring this house to saleable condition.

[130] So, first the bank has to approve it. If they approve it, you sell the lot to satisfy the outstanding liens.

[131] Anything that is spent after that requires that Mr. Patriquen must be notified by way of an application to vary the proceeding.

[132] Ms. Stephen must provide proof to the Court of what the real estate agent says needs to be done and to ask the Court permission to use the proceeds to bring it up to that condition, because ultimately it either has to be sold in accordance with the Court order or you have to get permission to buy him out.

[133] Thus, I am varying the Corollary Relief Judgement so that the respondent no longer has any right (to retain the real estate agent).

[134] I am giving to Ms. Stephen the right to retain the real estate agent, to obtain expert information from this agent as to what needs to be done to sell it, what is now the fair market value because the fair market value or sale price used by Justice Williams is dated and may not be an appropriate selling price.

[135] With more notice the parties can determine whether they can bring it to a point of sale, given the history of the matrimonial home, what has happened in it and its current state.

[136] I am, however, incorporating paragraph 3, the net proceeds of the sale of the lot, being the proceeds of sale after the usual adjustments on closing as between the purchase and the vendor, real estate commission, legal fees, disbursements on migrating title to the property or properties and legal fees and disbursements on closing and payment of the mortgage that is outstanding on the matrimonial home as well as the HRM taxes, as well as the insurance to keep it insured, the balance shall be held in trust by the solicitor for the firm who acts for Ms. Stephen on closing.

[137] The matter shall be brought back by way of application to vary in order to have further notice to Mr. Patriquen in order to allow him an opportunity to be heard and to deal with any requests for disbursements of proceeds to make reparation to the matrimonial home prior to sale.

[138] Pending a judge hearing this on application to vary, unless the parties consent, no monies need to be paid out to effect the equal division until such time as the application to vary comes before the Court.

[139] In order words, I am not voiding the adjustments that were set out in Justice Williams` decision, in paragraph (i) and (ii). I am anticipating there will be insufficient funds on the sale of one property and it is simply a matter of allowing for sufficient payment to stave off the foreclosure, if that is, in fact, what you are asking for.

[140] I am deferring for the variation what, if any, amendments, variations or modifications will be made to Justice Williams' orders as to how the payments are to be made from any equity, if any exists at this point, including his reference to any actions from Canada Revenue Agency to the equity of Mr. Patriquen.

[141] I am reserving for the judge who will hear that for this reason. There is evidence before me that there have been sufficient payments made by Ms. Stephen from the dates of the order forward in order to save the property, such that there may have to be an accounting and adjustment made to satisfy Ms. Stephen before the balance of the equity is divided for distribution in accordance with the orders.

[142] I have varied clause 10 of the August 5th order to allow for Ms. Stephen to list the property in the event the advice from the real estate agent and/or the bank is to list the matrimonial home and adjacent properties for a fixed price. If that price

differs from the price set out in the Corollary Relief Judgment of \$257,270, you are required to get the Court's approval should Mr. Patriquen not specifically agree to the sale price and that can be contained in your application to vary as well. I do this because I have no evidence of current market valuations or the evidence from the real estate agent.

[143] I make these adjustments in light of the clear intention in the Corollary Relief Judgment that the trial justice anticipated it may be that another Justice of the Court would have to vary the terms of the order with respect to sale of the property.

[144] I have reviewed the evidence and addressed whether there is evidence before me of due diligence with respect to the present circumstances and I have no evidence.

[145] I have reviewed the need to determine whether there is clarity in the court order as noted in **Soper v. Gaudet**, 2011 NSCA and I am satisfied that the order is clear and unambiguous and the contempt as well is clear.

[146] I have received by fax just now a letter from Dr. Lappin after the decision (at 11:31) which presents some difficulties.

[147] It is March 20, 2011. It came in after the evidence was closed. The doctor is not present and there is no opportunity to cross examine.

[148] Dr. Lappin indicated that Mr. Patriquen was diagnosed with congestive heart failure as well as other serious medical conditions. She writes:

His therapy has not been stabilized at this time and he remains unwell.

I would strongly recommend that this patient be off work and refrain from anything but minimal activity for a minimum of two months.

It has come to my attention that Mr. Patriquen is to report to court tomorrow. It is not medically recommended at this time. Please accept this letter as a formal excuse from any court proceedings for approximately two months. Documentation is available from the hospital, or my office, to confirm the medical condition of this patient if necessary.

[149] I have indicated to Mr. Patriquen previously that this medical information would have to be brought by him. The Court does not investigate or obtain evidence.

[150] The content of this letter would indicate there does not appear to be any end to the adjournments. If he is unable to be here for a minimum of two months, by that time the property would be lost.

[151] There is no information before me that would cause me to conclude that an adjournment would produce anything but confirmation of foreclosure. As difficult as this is, given Mr. Patriquen's obvious illness, the Court is not in a position to adjourn the matter or to hold off on taking action and issuing an order simply because he is in ill health.

[152] The Court can address this concern through the remedy by giving Mr. Patriquen time to remove himself from the property in order to reestablish himself either at his mother's property or his girlfriend's property in Spryfield.

[153] I am aware that one has to give Mr. Patriquen enough time to move, but also give the bank enough time to allow Ms. Stephen to redeem or pay the taxes and mortgage. I have no idea how long he was in hospital; he was discharged March 18th. I will give him two weeks, with assistance, because of his condition, to vacate.

[154] Mr. Patriquen shall vacate the home by noon on **April 1st, 2011**. (*Edit note: This was subsequently adjusted to **April 15th, 2011** to account for the delay in issuing the order notifying the respondent.*)

[155] This should give him and his girlfriend enough time to gather himself together and to put him in a position where he can reestablish himself.

[156] It is very unfortunate that Mr. Patriquen is ill. I have not enough information to know how long he has been in hospital but I can readily believe that he is ill.

[157] A further delay may put them both out of a home and the son, and they would lose everything.

[158] This is a matter that Mr. Patriquen has been aware of for a considerable period of time, at least since October of 2010. It is unfortunate that both his illness and the threat of foreclosure escalated. This is a tough thing to have to do but it is the only way to save the property and perhaps save Mr. Patriquen from his own inability to follow the Court order in terms of meeting the financial requirements.

[159] If I do not do this, in my view both of you will lose and I understand you have the right to have this finally dealt with.

[160] The order of Justice Williams stated that Mr. Patriquen was to keep the home, be responsible for it and continue to be responsible for the mortgage, taxes, home insurance until it is sold and shall at all times cooperate with the listing, showing and sale of the matrimonial home as a condition of his continued exclusive possession up to and including the date on which he leaves the home. It says he shall be responsible for maintaining it in proper form. He continued to be legally responsible for maintaining the mortgage, taxes and home insurance.

[161] He is not to remove from the home anything, other than his possessions, that would interfere with the proper sale of the home or sabotage a sale such that any damage is created to the home as the result of the removal of any fixtures of that nature.

[162] The order can contain the usual police clause but Ms. Stephen will have to negotiate that herself.

[163] The Court appreciates Ms. Stephen's right to ask for costs.

[164] The Court deferred on the issue of costs, simply because Mr. Patriquen ought to be able to speak to costs. Ms. Stephen shall have the right to write to the court on the position on costs, what it is she wants and provide a copy to Mr. Patriquen.

[165] Mr. Patriquen may then have one month to respond to that in order to be in a better position once he has resettled, to address his mind to this and again, if he doesn't wish to do it himself, to have someone appointed on his own behalf in order to address these issues.

[166] The purpose of this is to essentially purge the contempt, to get Ms. Stephen back into a situation where she can keep the creditors at bay. It is not to provide Ms. Stephen with free rein to spend the matrimonial proceeds.

[167] Once the bank and taxes are satisfied as they relate to matrimonial property, then in order to release any further proceeds, she will need court permission. Ms. Stephen shall advise the Court of the information she has, verified from some other source besides herself.

[168] The Court will need to know what somebody objective can say about the condition of home and what needs to be done to bring it up to a suitable standard for sale to get an appropriate price. That is what that judge is going to want to know, if in fact you are making the application to release any proceeds, if there are any left after the sale of that lot.

[169] I will hear the cost application.

[170] The application to vary may be set down in the ordinary course to whomever can hear it. There are some judges who cannot due to conflict.

[171] The Court is not aware of any application to recuse herself. Mr. Patriquen has a right to bring that forward.

[172] In any event, to disburse the proceeds, you need to go back to deal with my contempt order giving you power to do certain things and also a judge on a variation proceeding will want to see the whole picture in terms of Williams' J. two orders and my order.

[173] In recognition of Mr. Patriquen's ill health, the Court advises Ms. Stephen to proceed cautiously.

Moira Legere Sers, J.

March 28, 2011
Halifax, Nova Scotia