

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Silvio v. Harun*, 2018 NSSC 228

Date: 2018 - 09 - 25

Docket: 1201-68775

Registry: Halifax

Between:

Dominic Hakim Silvio

Petitioner

v.

Diana Harun

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: December 6, 2017 and May 2, 2018

Counsel: Godfred T. Chongatera, for Dominic Silvio
Diana Harun, unrepresented

Summary: Parties held to terms of Corollary Relief Order despite each party's failure to follow terms to date.

Key words: Spousal support, Corollary Relief, Enforcement

Legislation: *Divorce Act*, R.S.C. 1985 (2nd Supp.), c. 3

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By the Court:**Introduction**

[1] Prior to their divorce, Dominic Silvio and Diana Harun agreed on the terms of an Interim Consent Order. A few months later they negotiated the terms of their Corollary Relief Order at a settlement conference. Despite their agreements, they have not followed the terms of the court orders. Each faults the other.

[2] Mr. Silvio wants me to order that he not be required to make any further payments to Ms. Harun for their property division and spousal support. He says Ms. Harun owes him \$5,000.00 because she took money that she was not entitled to from her credit line. He asks that he receive the entirety of any surplus after the foreclosure on the matrimonial home and, if there is a deficiency following the foreclosure, that he and Ms. Harun share it equally.

[3] Ms. Harun responded to the application, seeking enforcement of the Corollary Relief Order and asking that

- she be credited for all the mortgage payments she made on Mr. Silvio's behalf
- Mr. Silvio pay any mortgage arrears that have accumulated
- Mr. Silvio pay any penalties that have resulted from his failure to pay the mortgage
- Mr. Silvio pay her spousal support according to the terms of the Corollary Relief Order and
- Mr. Silvio make the equalization payment ordered by the Corollary Relief Order.

The Orders

[4] In February 2016, Mr. Silvio and Ms. Harun resolved an interim motion by consent. Ms. Harun was represented. Mr. Silvio was not. The order, issued on April 4, 2017 said:

- Mr. Silvio would have interim exclusive possession of the matrimonial home
- Effective March 2016, Mr. Silvio would pay the mortgage
- Ms. Harun would authorize Mr. Silvio to have full access to the mortgage details and she would confirm this in writing to the bank which held the mortgage
- The home equity credit line (at the same bank) "shall be frozen so that neither party may draw down funds on this joint debt" which was secured against the matrimonial home
- Ms. Harun would authorize Mr. Silvio to have full access, to make enquiries about the credit line and any activity on it, and she would confirm this in writing to the bank

[5] Their settlement conference was on June 21, 2016. The Divorce and Corollary Relief

Orders were issued in August 2016. Again, Ms. Harun was represented and Mr. Silvio was not. The relevant terms of the Corollary Relief Order are:

- Mr. Silvio would pay monthly spousal support of \$300.00 for twelve months, starting on August 27, 2016
- Mr. Silvio would continue to live in the matrimonial home
- Before August 30, 2016, Mr. Silvio would refinance the matrimonial home and retire the mortgage and the line of credit secured against the equity in the matrimonial home
- When the home was refinanced, Mr. Silvio would pay Ms. Harun \$10,000.00 by bank transfer
- Mr. Silvio would pay a further \$5,000.00 to Ms. Harun by August 30, 2017, either as a lump sum or by instalments
- Mr. Silvio had transferred the car to Ms. Harun
- All other personal property had been divided
- Each would be responsible for debts in his or her own name and “the parties shall indemnify one another for any loss incurred by one party as a result of the other party’s debt(s).”

[6] The interim order described the credit line as a “joint debt”. In fact, the home, the mortgage and the credit line are all in Ms. Harun’s sole name.

[7] The Corollary Relief Order anticipated that Mr. Silvio would retire the mortgage and credit line and re-finance the home in his name. It’s unclear how this would be done because there was no plan for him to own the home – alone or with Ms. Harun as a co-owner – and no requirement that she would consent to the re-financing. Mr. Silvio couldn’t mortgage it.

[8] The Interim Consent Order required Mr. Silvio to pay the mortgage “effective March of 2016”. Ms. Harun said that Mr. Silvio began to pay the mortgage on April 29, 2016.

[9] Ms. Harun withdrew funds from the credit line after the Interim Consent Order was issued. She said she used the money from the credit line to pay her living expenses, the children’s expenses and the mortgage “once [she] realized that [Mr. Silvio] would not honor his promises as referenced in both the Interim Consent Order and the Corollary Relief Order.”

[10] Mr. Silvio said that Ms. Harun continued to withdraw money from the credit line “in the month following the Settlement Conference” and that her withdrawal of \$20,000.00 from the credit line kept him from refinancing the home to retire the debts, and paying spousal support.

[11] Ms. Harun said that Mr. Silvio stopped paying the mortgage “in or around September 2016” and that she has done her best to make the mortgage payments since then. Mr. Silvio doesn’t dispute that Ms. Harun made payments on the mortgage after the divorce.

[12] Ms. Harun said it wasn't possible to freeze the credit line while there was still a balance owing on it. She said that she needed to use money from the credit line to support herself and the children and to pay the mortgage.

[13] The bank foreclosed. The results of the foreclosure are unknown.

[14] Mr. Silvio offered no evidence that he paid the spousal support. Ms. Harun provided MEP records showing that Mr. Silvio paid spousal support of \$2,400.00 from October 2016 to March 2017. He owes \$1,200.00 in spousal support. He says that Ms. Harun's use of the credit line (for which he was to be responsible) should be treated as the equivalent of spousal support. This argument is not persuasive: the credit line is Ms. Harun's debt. Her use of her debt does not satisfy Mr. Silvio's obligation to pay spousal support.

[15] Mr. Silvio says he should be reimbursed \$5,000.00 for funds Ms. Harun withdrew from the credit line because "she wasn't entitled" to the money. The credit line was (and is) Ms. Harun's credit line. She is the only person entitled to take money from it. Mr. Silvio is not entitled to be reimbursed by Ms. Harun for her use of her debt.

[16] Mr. Silvio's claims for any surplus from the foreclosure or, alternately, that he and Ms. Harun share any deficiency from the foreclosure are premised on him having some entitlement to the matrimonial home's value or some responsibility for its indebtedness. The Corollary Relief Order gave him no interest in the matrimonial home beyond the right to occupy it. I have no evidence of the value of this right or that it is in any way related to the equity in the home. Ms. Harun owns the home and she is solely responsible for any deficiency on the foreclosure and solely entitled to any surplus.

[17] Ms. Harun asks that she be credited for all the mortgage payments she made on Mr. Silvio's behalf, that he pay any mortgage arrears that have accumulated and any penalties that have resulted from his failure to pay the mortgage. Here, Ms. Harun has serviced her debt secured by her property. She should not be reimbursed for payments she has made on her own debts.

[18] Ms. Harun retained the couple's vehicle and received an equal share of Mr. Silvio's pension. Since the Interim Consent Order, she has been responsible for her debt on her home for all but the few months when Mr. Silvio was able to manage it. The Corollary Relief Order contains no other details of their property division. Mr. Silvio was required to pay Ms. Harun \$15,000.00 and he has not. This obligation remains.

[19] Ms. Harun is left with the home, the mortgage and the credit line. She will receive the surplus of the foreclosure and be responsible for any deficiency. Mr. Silvio owes her \$1,200.00 in spousal support and \$15,000.00 for the property division. Mr. Silvio has been deprived of his right to occupy the matrimonial home. I have no evidence valuing this loss to Mr. Silvio.

[20] I have prepared the order arising from these applications and enclose a copy for each party.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia