

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

CANADIAN IMPERIAL BANK OF COMMERCE

Applicant

-and-

**1299746 ONTARIO INC. o/a COMPUQUEST2000 and
2252709 ONTARIO INC.**

Respondents

**FACTUM OF THE RESPONDING PARTY
AIMEE LYNN BODIMEADE
(returnable JULY 17, 2017)**

July 14, 2017

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AND TO: HER MAJESTY THE QUEEN IN RIGHT OF THE
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**FACTUM OF THE RESPONDING PARTY
AIMEE LYNN BODIMEADE**

PART I – NATURE OF THE MOTION

1. The Receiver, Grant Thornton Limited (“GTL”) is seeking an Order for the approval of the sale agreement and a vesting order the real property known municipally as 7472 Ashburn Road, Whitby, Ontario (the “Ashburn Property”).
2. The sale is pursuant to the Order of Justice Conway, dated January 25, 2017, which states, at paragraph 10, “THIS COURT ORDERS that all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver shall be deposited into one or more new accounts to be opened by the Receiver (the “Ashburn Property Account”) and the monies standing to the credit of such Ashburn Property Account from time to time, net of any disbursements provide for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court, provided that this paragraph is without prejudice to Aimee’s or any other party’s right to address distribution of finds on any motion to address approval of the sale of the Ashburn Property.”

PART II – THE FACTS

3. Aimee Lynn Bodimeade is the sole registered owner of the Ashburn Property.¹ Gary has never been a registered owner of the Ashburn Property.
4. The Applicant has not alleged that Aimee guaranteed the debt which Gary and Compuquest owe to CIBC, or that the Ashburn Property is collateral or security for the debt which Gary and Compuquest owe to CIBC.
5. The Ashburn Property is the matrimonial home of Aimee and Gary. Gary is not currently residing in the matrimonial home. Neither party has commenced an application under the Family Law Act nor have the parties entered into a Separation Agreement or Domestic Contract under the Family Law Act.²
6. Aimee resides in the Ashburn Property with her three children, her elderly mother, nine horses, four cats and five dogs. Aimee also has livestock consisting of a cow, four goats and sixteen chickens.³
7. On February 4, 2016, Gary registered on title to the Ashburn Property a designation that the home is a matrimonial home pursuant to section 20 of the Family Law Act.⁴
8. CIBC's assertion that "Gary's interest in the Ashburn Property has vested in the Trustee" is not a fact but a legal argument. Pursuant to the Family Law Act, Gary's interest in the property as a non-titled spouse is a possessory interest and is not a proprietary interest, and therefore cannot vest in the Trustee.
9. The Ashburn Property is secured by a mortgage in favour of CIBC. Aimee kept the mortgage in good standing until the after the January 25, 2017 Order of Justice Conway. Aimee stopped paying the mortgage with the agreement of CIBC, but is willing to bring it into good standing if necessary.⁵

¹ Affidavit of Aimee Bodimeade sworn July 14, 2017 ("Aimee Affidavit") at paragraph 1.

² Aimee Affidavit, paragraph 2.

³ Aimee Affidavit, paragraph 16.

⁴ Second Report of the Receiver dated November 24, 2016 ("Second Report") at paragraph 13.

⁵ Aimee Affidavit, paragraph 26.

PART III – THE LAW

GARY'S INTEREST IN THE MATRIMONIAL HOME

10. The Family Law Act provides for an equalization of net family property upon the breakdown of the marriage. The equalization model involves a valuation of the family law assets and an accounting, but the assets themselves are not divided. Each spouse retains ownership of his or her own property both before and after the breakdown of the marriage. Neither acquires a proprietary or beneficial interest in the other's assets.⁶
11. In Ontario, separating spouses are not entitled to receive a division of property. Rather, they are entitled to receive one-half of the value of the property accumulated during the marriage.⁷
12. The right to claim possession of the matrimonial home is personal in nature. The claim for possession of a matrimonial home is not included in the bankrupt's assets for distribution to creditors and is not assignable and cannot be transferred to another.⁸
13. Part II of the Family Law Act awards possessory rights to spouses. Both spouses are given an equal right to possession of a matrimonial home regardless of its ownership. When only one of the spouses has an interest, the other spouse's right of possession is a personal right that can only be asserted against the owning spouse.⁹
14. Registration of a designation that a home is a matrimonial home gives notice to third parties that they are dealing with a matrimonial home. This is significant because of the restrictions on the titled spouse's power to dispose of or encumber an interest in the home. These restrictions, which are important not only to the spouses themselves but to all third parties who acquire interests in property that may be a family residence, are imposed to protect a non-titled spouse's right to possession.¹⁰
15. CIBC did not require Aimee to sign a personal guarantee for the line of credit, and CIBC did not require Aimee to charge the matrimonial home as collateral for the line of credit. Nine years later, after default by Compuquest and by Gary, CIBC cannot recover

⁶ *Schreyer v. Schreyer*, 2011 SCC 35, 2011 CarswellMan 334, [2011] 2 S.C.R. 605, at paragraph 15.

⁷ *Thibodeau v. Thibodeau*, 2011 ONCA 110, 2011 CarswellOnt 686, at paragraph 37

⁸ *Bolliger v. White*, 2016 ONSC 5024, at paragraph 8.

⁹ Family Law Act, R.S.O. 1990, c. F.3, sections 19(1) and 19(2).

¹⁰ Hovius, Berend: Canadian Family Law Quarterly, 2010 The Family Home: Legal Treatment in Ontario, at page 5.

its loss against Aimee as if she had signed a personal guarantee or mortgaged the home as collateral.

PART IV – ORDER REQUESTED

16. The Responding Party Aimee Bodimeade respectfully requests an order for the distribution of 50% of the net proceeds of sale to Aimee Bodimeade. Alternatively, Aimee seeks an order adjourning the motion to approve the sale until the distribution of the proceeds can be resolved; or in the alternative an order dismissing the motion to approve the sale of the Ashburn Property.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: July 14, 2017

A handwritten signature in black ink, appearing to read 'Andrea Robertson', is written over a horizontal line.

Andrea Robertson – LSUC #37990A
Counsel for the Respondent Aimee Bodimeade

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Court File No. CV-16-11369-00CL

ONTARIO

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PROCEEDING COMMENCED AT Toronto

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