



material was of assistance to the court when Mr. Savary argued the motion as a self represented party.

- [5] This motion involved only the plaintiffs and the defendants, Mr. Savary and King Custom Homes. A student at law for Tarion Warranty Corporation, Mr. Timothy Brooks, kept a watching brief from the floor of the court but did not have any active role on the motion.
- [6] Before I heard the motion, and on consent of Mr. Savary, it was agreed that the monies on deposit with the real estate brokerage would be paid into court to the credit of the action.
- [7] The plaintiffs, responding parties on the motions filed a motion record and a factum.
- [8] I have considered all of the material, inclusive of the submissions of Mr. Savary for himself and his company, and counsel for the McKinlays.

*Position of Mr. Savary and Kings Custom Homes*

- [9] Mr. Savary argued that the CPL should be lifted. I advised the parties that I would consider the content of the factum that his former lawyer filed, in the equation, as Mr. Savary had not done so. Indeed, my questions for Mr. Savary involved the relief that was available on the motion as articulated in that factum.

*Position of the McKinlays*

- [10] Mr. Robinson referenced the affidavit of Virginia McKinlay, sworn June 25, 2019 which is included in the responding motion material. There was no cross examination on that affidavit.
- [11] Mr. Robinson noted that the evidence as proffered should therefore be accepted on the motion.
- [12] Any delay in this matter does not rest with the McKinlays. The CPL is dated but that is a function of the defendants' action or lack of action. In this respect the McKinlays are simply trying to protect their financial interests.
- [13] The McKinlays are content to have the CPL lifted on the basis that sufficient monies are deposited in court to preserve the funds that they claim they are out, based on the conduct of Mr. Savary and his company.
- [14] At paragraph 56 of Mrs. Mckinlay's affidavit she sets out a resolution that would involve the lifting of the CPL based on deposits made to Mr. Savary, payment advanced for upgrades, and out of pocket expenses and interest.
- [15] I note that the position of the McKinlays, subject to the quantity of the amount to be paid into court is consistent with the alternative position advanced by Mr. Savary's former counsel in its motion record, and as set out in its factum.

- [16] The Court asked counsel for the McKinlays how much Tarion has paid out to the McKinlays.
- [17] Counsel for the McKinlays advised that the amount paid out by Tarion to the McKinlays should precipitate a further payment into court of \$22,500.00 plus costs, to discharge the CPL.
- [18] Upon the court questioning Mr. Savary, he advised the court that he could pay monies into court so that the CPL could be lifted, provided he was given time to do so.
- [19] I do not find that the CPL should be lifted absent protection via payment into court of monies to satisfy what the CPL is meant to protect.
- [20] I find that the amount that should be paid, given the payout by Tarion, should be \$22,500.00.
- [21] This is based upon the calculation at paragraph 24 of the factum of Mr. Savary and accords with the position of the McKinlays.
- [22] It does not include the \$12,000 to be deposited with the court, which was dealt with on consent, prior to hearing of the motion, as that quantity is to the credit of the action, and not for CPL consideration.
- [23] It would seem to me that the resolution as noted herein is to the benefit of both parties and accomplishes the respective protection of the interests of both parties.
- [24] I will however consider cost submissions of both parties, based on cost submissions of 3 pages in total, and any bill of costs provided. As Mr. Savary is the moving party he shall proceed first and do so by February 07, 2020 by service on Mr. Robinson and filing at the Peterborough courthouse. Mr. Robinson to respond within 7 days of receipt of Mr. Savary's materials.
- [25] I am aware that costs for the prior aborted attendance were reserved by that justice.
- [26] The Court will give Mr. Savary 60 days from today to post with the Superior Court Accountant, at Peterborough, the sum of \$22,500.00.
- [27] Upon receipt of those funds and proof of same the CPL can be lifted. If the funds are not so deposited the CPL will remain on title. In this respect this litigation appears to be lagging and should be put on track.

  
H.K. O'Connell, J.

**CITATION:** *McKinlay v. Savary and Kings Custom Homes Inc.*, 2020 ONSC 711  
**PETERBOROUGH COURT FILE NO.:** CV-322/16SR  
**DATE:** 20200131

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Michael John McKinlay and Virginia McKinlay

*Plaintiffs/Responding Parties on Motion*

**– and –**

Cory Shane Savary, Kings Custom Homes also known as  
Kings Custom Homes Incorporated, Nancy Desjardine,  
and Frank Real Estate Ltd. o/a Royal Lepage Frank Reasl  
Estate Brokerage

*Defendant/Responding Party on Motion*

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**RULING**

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O'Connell J.

**Released: January 31, 2020**