

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

LIONEL ANDRÉ BOUCHARD,

plaintiff,

- and -

ANDRÉ LIONEL BOUCHARD,

defendant.

AFFIDAVIT OF WINSTON FREDERICK SMITH **FILED**
SEP 26 2011

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Barristers and Solicitors
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File No. 11275 W

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BETWEEN:

LIONEL ANDRÉ BOUCHARD,

plaintiff,

- and -

ANDRÉ LIONEL BOUCHARD,

defendant.

AFFIDAVIT OF WINSTON FREDERICK SMITH

I, WINSTON FREDERICK SMITH, of the City of Winnipeg, in the Province
of Manitoba, Lawyer,

MAKE OATH AND SAY THAT:

1. I am counsel for the plaintiff herein and, as such, have a personal knowledge of the facts, as hereinafter set forth except where the same is expressed on information and belief, in which case, I verily believe to be true.
2. In July of 2008, on the instructions of the plaintiff I commenced two actions against his son, the defendant as follows:
 - a) The within action is for an accounting of monies paid pursuant to an agreement for the sale of land between the plaintiff and the defendant as the plaintiff claims that the total purchase price has not been paid; and

b) The other action between the plaintiff and the defendant, being suit no. CI 08-01-57416 is a claim by the plaintiff to enforce a life estate interest in his home allegedly given to him by the defendant.

3. During the course of my conduct of these two actions, I became aware of an ongoing dispute between various siblings, children of the plaintiff, who were exerting, in my opinion, undue influence on him, including having him sign a release of all claims the plaintiff has against the defendant that had been apparently executed in January, 2008, without the involvement of any counsel;

4. As I was providing my services to the plaintiff in both actions, I found it increasingly difficult to contact him. In the month of August, 2008, I suspected the plaintiff was not being allowed to travel on his own and, while attempting to negotiate settlement of both the life estate and debt claim issues, I discovered that the plaintiff's calls were being monitored and his ability to use his cell phone was terminated.

5. In or about mid August, I was not able to contact the plaintiff at all and, therefore, in view of the fact Mr. Kelly Land was acting for the defendant in both actions, I sent him an email dated August 15, 2008 requesting his assistance in reaching the plaintiff. Attached hereto and marked as exhibit "A" to this my affidavit is a copy of my email to Mr. Land.

6. Subsequent to the email sent to Mr. Land, I received a call from the plaintiff and a meeting was scheduled for August 19, 2011.

7. On August 19, 2011, the plaintiff attended my office and, as a result of our discussion concerning the events that were occurring, including the prevention of his freedom and the control of his activities, the plaintiff was concerned about his own physical health and safety and accordingly, provided instructions to me to arrange his departure from the province. Attached hereto and marked as exhibit

"B" to this my affidavit is a copy of a declaration signed by the plaintiff providing instructions to arrange for his safe conduct out of Manitoba and delivery to the Province of British Columbia.

8. Although Mr. Land has made some effort to proceed with the two claims, I have not been able to obtain instructions from the plaintiff with regard to the continuance of the two actions.

9. Upon receiving service of the notice of motion by the defendant before the Master for orders regarding disclosure and security for costs, I learned from Mr. Land that the plaintiff had returned to the Province of Manitoba.

10. Upon making inquiries, I learned that the whereabouts of the plaintiff could be determined by contacting a person by the name of Peggy Keough or a person by the name of Marguerite Bouchard, the telephone numbers of both of whom were provided to me by Marlene Legare, one of the daughters of the plaintiff.

11. The efforts that I have made to contact the plaintiff since being served with the notice of motion referred to herein are as follows:

- a) Upon receiving advice from Mr. Land that the plaintiff was in Manitoba, I asked him to provide me with the plaintiff's whereabouts as I assume the defendant knows the whereabouts of the plaintiff, but Mr. Land has not responded to my request;
- b) On September 21, 2011, I called the said Peggy Keough's telephone number and left a message requesting her to call me;
- c) On September 23, 2011, I again called and spoke with Peggy Keough asking her to provide me with the whereabouts and contact information for

the plaintiff, but she refused saying that she was not allowed to provide me that information and asked that I not call her again and hung up;

- d) On September 23, 2011, I contacted Marguerite Bouchard, who advised me that she did not know where the plaintiff was and, in responding to my request that she pass a message on that I wish to contact and meet with the plaintiff, she advised that she would pass on the information when she was able to, and further advised that she could not do so for one to one and a half months from now since arrangements were being made for accommodations for the plaintiff;
- e) During the conversation with the said Marguerite Bouchard, I impressed upon her the urgency that I speak to and meet with the plaintiff as soon as possible and she advised that she would pass my message on and, in addition, she confirmed that the plaintiff was living in Manitoba;
- f) In the meantime, since being served with the notice of motion, I have made attempts to contact the plaintiff by letter, by email and by telephone directed to the residence of Marlene Legare, daughter of the plaintiff, with whom I was under the impression the plaintiff was still living.

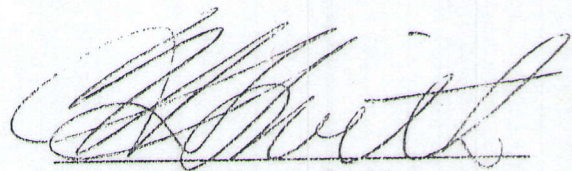
12. I am concerned for the welfare of the plaintiff and the fact that, although it is likely my request to meet person to person with the plaintiff has already been communicated to the person or persons in whose custody or control the plaintiff presently is, the failure to willingly bring the plaintiff to my office to meet with me again raises my concern for the safety and health of this 87 year old gentleman.

13. In addition, the plaintiff is indebted to the Hook & Smith law firm for a substantial amount of fees for the legal services provided in both this action and the Court of Queen's Bench action no. CI 08-01-57416 and the Plaintiff has not made any arrangement to pay the outstanding indebtedness.

14. In view of all the facts stated herein and the fact that I have not received any instructions from the plaintiff regarding a response to the present motion pending before the presiding Master, or with regard to conduct of the main action itself, I have no alternative but to withdraw as counsel for the plaintiff in both this action and in suit no. CI 08-01-57416.

15. I make this Affidavit *bona fide* and in support of my application to this Honourable Court for an order permitting me to withdraw from this action as counsel for the Plaintiff and for any other order respecting the representation of the plaintiff as this Court may see fit.

SWORN before me at the City of)
Winnipeg, in the Province of Manitoba,)
this 23rd day of December, 2011.)
_____)
A Notary Public in and for the)
Province of Manitoba.)



Winston Frederick Smith

From: Winston Smith <wsmith@hookandsmith.com>
Sent: August 15, 2008 2:08 PM
To: 'kpl@cgklaw.ca'
Subject: RE: Bouchard v. Bouchard

WINDAWIT OF
WINSTON FREDERICK SMITH
SWORN BEFORE ME AT THE CITY OF
WINNIPEG IN THE PROVINCE OF MANITOBA.
THIS 23RD DAY OF SEPTEMBER 2011
A NOTARY PUBLIC
IN AND FOR THE PROVINCE OF MANITOBA

Kelly,

I am presently out of the office and will be absent until August 26th.

Before leaving my office yesterday I drafted a letter to you setting forth the proposal to settle both the life estate and debt claim issues. During the course of my meeting with my client over the last few days, I realized that your client appears to be in contact with my client. In fact Andy called my office on Tuesday looking for Mike Slegers and, apparently, had been waiting for both Mr. Slegers and my client outside my office as they had traveled together from Elie to Winnipeg. The association seemed to be a follow-up to the meeting on Sunday between our respective clients and Mr. Slegers at which the initial settlement discussions commenced.

I now am awaiting my client's review and approval of the settlement proposal before I can send it on to you. However, despite my efforts to contact my client or Mr. Slegers, I am unable to do so and the reason for that is he, apparently, is meeting with your client and Mr. Slegers. Would you be so kind as to call your client and ask him to have his father call me at my lake number 1-204-~~XXXXXXXXXX~~

Although there is, of course, no legal restriction in the parties to a conflict discussing resolution of issues between themselves, there are a few reasons why I would suggest they not do so in this case until the terms of any settlement are finalized between counsel. In saying this, I realize that your client may be looking for suitable accommodation for his father, but I suggest even this step be guided by counsel to ensure we are all on the same page.

In this case, be aware of the following reasons why I am convinced that counsel be the only negotiators:

- (a) In the circumstances of this case there is a presumption on your client of undue influence in achieving any settlement of any issues between father and son that would not be arguable if the settlement process were conducted between their respective counsel and, thus, they each have received independent legal advice;
- (b) Your client apparently brought Dr. Bruce Jamieson to the Sunday meeting of the parties to discuss settlement, much to the surprise of my client and Mr. Slegers. I am advised that Dr. Jamieson apparently conducted an interview of my client and pronounced him capable of handling his own affairs! If your client did in fact invite this doctor to be present to examine my client, he has acted inappropriately to say the least and clearly has attempted to prejudice my client's rights; and
- (c) As I told you over the telephone on Tuesday, last, at that same meeting your client presented my client with two discharges of the two caveats our office registered against the farm lands. Apparently, they were drafted by a daughter of my client, Lynda Staub, who is an employee of the Land Titles Office. Such action was also inappropriate in view of the fact that this action is an obvious attempt to take advantage of my client and, once again, to prejudice his rights by having him discharge his legitimate claims against his son. This is particularly reprehensible behavior in the face of their knowledge that their father has legal counsel.

Accordingly, in addition to your request to your client to tell his father to call me at the above number as soon as possible, I request you advise your client to then stay away from my client and not to have any further contact whatsoever with him except as advised by you, his counsel, as such contact may be agreed between counsel.

Thank-you,

Winston

Hook & Smith
Barristers, Solicitors & Notaries Public
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Winnipeg, Manitoba
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fax: 204-837-9846
res: 204-488-0765
cel: 204-955-0001
email: wsmith@hookandsmith.com

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CANADA)
)
 PROVINCE OF MANITOBA)
)
 TO WIT)
)

IN THE MATTER OF Lionel André
 Bouchard, of the Town of Elie,
 in the Province of Manitoba.

I, LIONEL ANDRÉ BOUCHARD, of the Town of Elie, in the Province of Manitoba, retired,

DO SOLEMNLY DECLARE THAT:

1. I authorize the firm of Hook & Smith and their solicitors and the investigation firm of Oliver, Yaskiw & Associates and their respective employees, agents and principals to take all steps necessary to assist and escort me immediately from the Province of Manitoba to the Province of British Columbia and to take all necessary steps in order to accomplish such move.
2. In assisting me as requested and authorized in paragraph 1 hereof, I hereby remise, release and forever discharge the firm of Hook & Smith and their solicitors and the investigation firm of Oliver, Yaskiw & Associates and their respective employees, agents and principals from any and all liability that may arise as a result of their compliance with my authorization to assist me.
3. I give this authorization for the purpose of removing myself from members of my family and others in Manitoba who have confined and restricted my movements and my ability to communicate freely with my counsel and with my relatives and friends.
4. I further authorize the firm of Hook & Smith and their solicitors and the investigation firm of Oliver, Yaskiw & Associates and their respective employees, agents and principals to take all steps necessary to recover any of my personal property still remaining in the possession of Mike Slegers or any other member of my family and also to obtain possession of a 2007 Dodge Caravan VIN 1D4GP24R17B224765, owned by my daughter, Marlene Legare, of Maple Ridge, British Columbia. I acknowledge that the vehicle is presently registered with BC licence plate no. 854 MBA, but I understand that new plates have been issued for the vehicle in the BC licence plate no. [REDACTED]

THIS IS EXHIBIT B REFERRED TO IN THE AFFIDAVIT OF.....

WINSTON FREDERICK SMITH

SWORN BEFORE ME AT THE CITY OF WINNIPEG IN THE PROVINCE OF MANITOBA.

THIS 23RD DAY OF SEPTEMBER 2011.

[Signature]

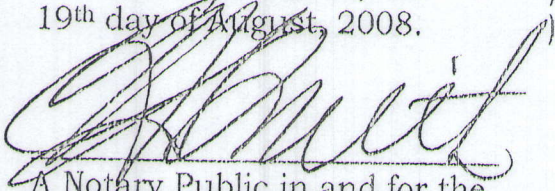
A NOTARY PUBLIC

IN AND FOR THE PROVINCE OF MANITOBA

5. I authorize the firm of Hook & Smith and their solicitors and the investigation firm of Oliver, Yaskiw & Associates and their respective employees, agents and principals to provide such information from time to time as may become necessary to any police authority who are making inquiries as to my whereabouts.

AND I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the *Canada Evidence Act*.

DECLARED before me at the
City of Winnipeg, in the
Province of Manitoba, the
19th day of August, 2008.



A Notary Public in and for the
Province of Manitoba



LIONEL ANDRÉ BOUCHARD