

THE QUEEN'S BENCH  
Winnipeg Centre

BETWEEN:

LIONEL ANDRE BOUCHARD.

Applicant.

- and -

ANDRE LIONEL BOUCHARD and JACK BOCK.

Respondents.

AFFIDAVIT OF ANDRE LIONEL BOUCHARD

I, Andre Lionel Bouchard, of the City of Portage la Prairie, in the Province of Manitoba.

MAKE OATH AND SAY:

1. That I am one of the Respondents herein and as such have personal knowledge of the matters hereinafter deposed to by me, except where stated to be based upon information and belief and where so stated I do verily believe same to be true.
2. That I have read the Affidavit of the Applicant, my father Lionel Andre Bouchard, sworn July 4, 2008 and make this Affidavit in response thereto.
3. That in response to Paragraph 4 of the Affidavit my father has in fact lived in the residence



and resided there up until approximately February 1, 2006. The photos attached to the Affidavit are actually photos from 1990 and do not reflect the condition of the property at the time my father moved to St. Eustache Manor on February 1, 2006.

4 That in response to Paragraph 6 in September, 2002 the Applicant and I entered into an Agreement to purchase the balance of the farm. Attached hereto and marked as Exhibit "A" to this my Affidavit is a copy of the Purchase Agreement. At the same time we entered into a written Agreement dated September 23, 2002, in respect of a right to occupancy in favour of the Applicant. Attached hereto and marked as Exhibit "B" to this my Affidavit is a copy of the said Agreement. As can be seen from the document there were several conditions in respect of the right to occupancy concerning the property which were agreed to by all parties at the time of the purchase.

5. That the Applicant did in fact live on the property up until February 1, 2006. Shortly prior to that date on December 16, 2005, the Applicant had a severe fall on ice. He spent nearly a month in hospital. Upon the recommendation of the Grace Hospital and the recommendation of Agnes Wiedman, my father was assessed at the Mental Health Program at Portage District General Hospital. Prior to the assessment we had spoken to my father about the dangers of living alone. Myself and my sisters, Linda and Claire, were aware of the problems he was having looking after himself. His daughter, Marlene Legare, who he indicates was going to look after him became subject to a Court Order and not allowed to have contact or communication with any family member, including the Applicant. These proceedings had been going on for some time prior to the ultimate date of the Order being February 8, 2007. As such Marlene Legare was not available to look after our father. Upon his fall it became evident to me from the condition of his home that he was not in a



position to return. The home was full of garbage, scattered clothing, papers, junk and was difficult to move around in as a result of the amount of refuse in it. It was clear that my father had not adequately looked after himself and was not in a position to do so. He was in the habit of attending at the Municipal Nuisance Yard and collecting junk and bring it home and either storing it in the yard or in his home. Several rooms it was almost impossible to enter the property as a result of the amount of the garbage in the home. For that reason upon his discharge I was willing to subsidize my father's rent at any future accommodation he had. We entered into a subsequent agreement dated February 11, 2006, confirming that arrangement. Attached hereto and marked as Exhibit "C" to this my Affidavit is a copy of the agreement confirming my obligation to pay the February, March and April, 2006 fees of \$200.00, at the St. Eustache Manor and to revisit the situation as of June 1, 2006.

6. That very shortly after the February 11, 2006, Agreement was entered into my father was assessed by Bruce A. Jamieson a Community Mental Health Worker. Attached as Exhibit "D" to this my Affidavit is a copy of the report and recommendations. Of note is the advice of the Community Health Worker that "He (the applicant) appears to be quite comfortable with the move to St. Eustache Manor, indicating that he has thought about moving for some time as he's had his name in at Elie Manor for several years, although he is still sixth on the waiting list." At no time as asserted did I compel my father to leave the residence although I certainly supported his decision to go into the St. Eustache Manor. I was also aware at the time that he would have preferred to have gone into the Elie Manor however no space was available. Attached hereto and marked as Exhibit "E" to this my Affidavit is a copy of the Lease signed by my father on February 14, 2006, at St. Eustache Manor.



7. That in response to Paragraph 9 at no time did I barge into his property, as he alleges, or at all, demanding that he leave. The only discussions we had at all during this period of time were over my concern and that of my sisters with the exception of Marlene, for my father's safety and well being in trying to live on his own in a remote residence. Attached hereto and marked as Exhibit "F" to this my Affidavit is the Final Amendment to the Life Interest of my father that resulted from the discussions we had in late February, early March of 2006. This was the last time my father ever raised returning to the home until this Application was brought.

2. That in response to Paragraph 13 the Applicant was in fact in St. Eustache Manor from February 15, 2006, until June 1, 2007. At that time he decided to, on his own, rent an apartment in Elie from TB Holdings. When he disclosed this I agreed with him that I would continue the \$200.00 per month rent subsidy which amounted to, essentially half of his rent. He indicated to me at the time that he wished to live in Elie closer to his friends. Attached hereto and marked as Exhibit "G" to this my Affidavit is a copy of his renewal of that tenancy which he signed on March 1, 2008. Attached hereto and marked as Exhibit "H" to this my Affidavit is a copy of the Notification of Cancellation of that tenancy. This move was again prompted solely by my father and was not directed by any of the family. At no time did he indicate any intention to return to the former residence. The residence in fact remained empty from February, 2006 through to December, 2007. It was in December, 2007 that I rented the property to the Co-Respondent, Jack Bock, on a month to month basis. At that time the Respondent had been out of the property for nearly 22 months and apart from the possibility of moving back in on June 1, 2006 had never expressed any intention of going so nor any interest in doing so.

*Not a letter  
until December  
he is not  
interested*



8. That specifically in response to Paragraph 13 at no time after June 1, 2006, did the Applicant ever indicate to me that he wished to return to the former residence or had an intention or resuming his life interest therein. That continued as late as January 20, 2008, when I last saw my father at the family birthday party held for him with my sisters, in Manitoba. I in fact had paid to my father his January rent subsidy on January 22, 2008, in the amount of \$200.00 and shortly thereafter provided him a lump sum of \$2,000.00 for the balance of the year. Attached hereto and marked Exhibit "I" to this my Affidavit are copies of those two cheques dated January 22, 2008, and March 11, 2008.

9. That in response to Paragraph 14 the only individual who was renting the property was Jack Bock who in fact only commenced occupation of the property in a Tenancy Agreement in December, 2007. No request, as indicated, had been received by the Applicant to move into the property at the time the rental agreement was entered into.

10. That between February 13, 2008, and June 1, 2008, my father ceased having any communication with myself or the family. I am aware that he again began having communication with my sister Marlene in British Columbia and that she in fact had the Court Order amended in British Columbia in December, 2007, permitting her contact with the Applicant. After two weeks of not hearing anything from him and being unable to locate him in Elie we contacted the RCMP and made a missing persons report. Subsequently we received a call from his sister indicating that he was on holidays. It has only been since receipt of the correspondence from the Applicant's counsel being a letter received by me by ordinary mail in early April, 2008 together with the filing of a Caveat against the property by the Applicant that I was aware that he wished to attempt to resume his life interest in the property.



11. That in response to Paragraph 16 we did in fact clean the residence at the time of my father's admission to hospital. As indicated he had a habit of going to the Municipal Nuisance Yard and collecting garbage and junk which he stored on the property and inside the house. My father had no furnishings or possessions of any significant value beyond those which he took with him to St. Eustache Manor. Any other items were placed in storage on the property.

12. That in response to Paragraph 17 I have never been requested by anyone to provide access to the property for retrieval of equipment.

13. That in response to Paragraph 19 I have assumed since June 1, 2006, and the Applicant renting property in Elie that he had permanently vacated the home and had no intention to re-attend. We have had many opportunities to discuss the issue between June 1, 2006, and January 22, 2008, however, not once did he ever make an indicating that he was intending to retake possession or that he expected or felt he was entitled to any compensation in respect of the issue.

14. That in respect of his rent for February, March and April, 2006, at St. Eustache Manor I in fact subsidized his rent as called for. I also subsidized his rent beyond that period of time. Attached hereto and marked as Exhibit "J" to this my Affidavit are copies of six cheques being from June 30, 2006, through to November 30, 2006, for \$200.00 each as the rent subside together with my bank statements confirming the withdrawal of those funds. The cheques were all made payable to the Credit Union and Lionel Bouchard for rent. As indicated previously I was in no way involved with the applicant's rental of the suite in Elie and was anticipating that the Applicant would have moved into the Personal Care Home in Elie which he had his name on the waiting list for a considerable




period of time. The rental suite in Elie was not something that I was aware of until well after the fact that my father had already rented the property. I am aware that some time around June 1, 2008, my father returned to the Elie area and moved in with Mike Slegers. I am aware that he has spoken to the Headingley RCMP and to my knowledge almost no family members have had any direct communication with the Applicant since his return from British Columbia. I am aware that he is in contact with my sister, Marlene, in British Columbia.

15. That I make this Affidavit bona fide.

SWORN Before me at the City of )  
Winnipeg, in the Province of )  
Manitoba, the 21<sup>st</sup> day of July, 2008 )

  
ANDRE LIONEL BOUCHARD

  
KELLY P. LAND  
A Barrister entitled to practice in and  
For the Province of Manitoba