

# MICHIGAN LAWYERS WEEKLY

## Parties dispute Canadian order for Novi home

### Judge orders that the lis pendens be struck, discharged

By: Michigan Lawyers Weekly Staff in Verdicts & Settlements October 27, 2015

A Canadian Family Court granted plaintiff's motion where the relief sought was to prohibit defendant from selling or encumbering her home in Novi. Plaintiff filed the instant action seeking enforcement of that order in Oakland County Circuit Court, and filed a lis pendens on the Novi property.

Plaintiff sought enforcement of a Canadian Court order, which prohibited defendant from listing for sale, selling, transferring or causing the property to be listed, sold or transferred until further order from the Canadian Court. The Canadian order also prohibited defendant from encumbering or further mortgaging her right, title and interest in the subject property.

Plaintiff sought relief under the Uniform Foreign-Country Money Judgments Recognition Act (MCL 691.1131 et seq) and also under the principles of comity [in which political entities, such as states, nations or courts from different jurisdictions, will mutually recognize each other's legislative, executive and judicial acts].

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8), alleging plaintiff failed to state a claim for which relief could be granted, requesting the lis pendens be removed. Defendant's argument relied on the fact that the UFCMJRA was inapplicable because the order plaintiff submitted was not a final order from Canada, did not grant a sum of money, and originated from the family court.

Further, defendant contended, if the Oakland County Circuit Court would recognize the order, plaintiff argued that the plain language of the Canadian Order only prohibited defendant from taking certain actions as it pertained to the property, and that the Canadian Order did not allow plaintiff to encumber it by placing a lis pendens on the property.

Plaintiff filed a response to the motion that abandoned the claim under the UFCMJRA and asked the court to recognize the order under the principles of comity.

The court determined:

- 1) Because plaintiff abandoned their argument under the UFCMJRA, the court did not consider defendant's arguments, as they were now moot.
- 2) The court could apply the principles of comity, but did not find it appropriate in this instance. Citing five cases in plaintiff's response brief where nonfinal orders were enforced in Michigan, the court found that the instant case was distinguishable from those five. Three of the five cases involved a final judgment, enforcement of a settlement agreement, or a bankruptcy court stay order; one case involved a child support order (money judgment); and the final case was an allegation of a violation of a foreign divorce order, where the court properly declined jurisdiction.
- 3) The Canadian order does not provide that plaintiff may encumber the property; instead, it only provides that defendant not change the status quo of the property.
- 4) If defendant violated the Canadian order, the proper remedy was to appear in Canada.

The court granted defendant's motion, dismissed the plaintiff's complaint, and ordered that the lis pendens be struck and discharged.

Brandon Shamoun, counsel for defendant, provided case information.

**Type of action:** Enforcement of foreign order to encumber property

**Name of case:** *Balsmeier v. Balsmeier*

**Court/Case no./Date:** Oakland County Circuit Court; 15-147086-CH; Sept. 16, 2015

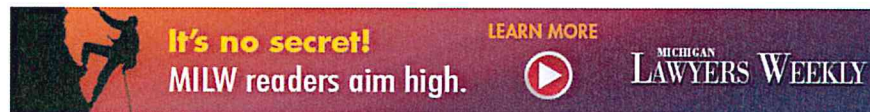
**Name of judge:** Hon. Leo Bowman

**Judgment:** Dismissal

**Attorney for plaintiff:** Andrew J. Broder

**Attorney for defendant:** Brandon Shamoun

Tagged with: JUDGE LEO BOWMAN OAKLAND COUNTY CIRCUIT COURT



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