

CITATION: Niessen v. Niessen, 2025 ONSC 6070
COURT FILE NO.: FC-20-00000301-0000
DATE: 2025-10-31

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Stephanie Niessen, Applicant

AND:

Kevin Niessen, Rita Niessen and 20 Valley Communities Inc., Respondents

BEFORE: The Honourable Justice K. Bingham

COUNSEL: M. VanderSpek, for the Applicant

S. Harvey, as agent for the Respondent, K. Niessen

J. Reina, for the Respondents, Rita Niessen and 20 Valley Communities Inc.

HEARD: August 29, 2025

REASONS FOR DECISION

[1] The applicant brought a summary judgment motion seeking:

- a. A final order in accordance with an offer to settle accepted by the respondent September 7, 2023, save and except five paragraphs relating to the enforcement of the equalization payment;
- b. A final order permitting enforcement of the equalization payment of \$950,000 against the respondents, Rita Niessen and 20 Valley Communities Inc. (“20 Valley”), and, particularly, properties owned by Rita Niessen and/or 20 Valley;
- c. A final order declaring that the respondent Kevin Niessen is the beneficial owner of the properties municipally known as 3446 Rittenhouse Road and 3438 Rittenhouse Road;
- d. In the alternative to summary judgment:
 - i. An order striking Kevin Niessen’s pleadings;
 - ii. In the further alternative, an order staying Kevin Niessen’s claims pending payment of outstanding cost orders;

- iii. In the further further alternative, an order for payment for security for costs against all respondents in the amount of \$68,750.

[2] The respondent, Kevin Niessen, brought a cross-motion seeking disclosure from the applicant and an order requesting the involvement of the Office of the Children's Lawyer. I did not permit his motion to proceed as he did not file a factum, which is required for a long motion. I did permit him to make submissions on the applicant's motion notwithstanding that he had not filed a factum in relation to the summary judgment motion.

[3] The respondent, Rita Niessen, did not file a factum for the motion. It came to light during the argument of the motion that she has not filed an answer in this proceeding. Her counsel attempted to file an answer on three occasions. Each time, it was rejected, with notification. Counsel for Rita Niessen asked for leave to make submissions on the summary judgment motion. He did not seek an extension of time to file her answer. Since Rita Niessen has not filed an answer, she is in default. However, I did not displace the onus on the applicant to prove that there is no genuine issue for trial as it relates to the respondent, Rita Niessen.

[4] Rita Niessen is the director of the respondent, 20 Valley. 20 Valley did not file a factum or evidence on the motion. 20 Valley has not served or filed an answer. 20 Valley is in default of the proceeding.

[5] The applicant filed extensive material in support of her motion. Given that she bears the onus of establishing that there is no genuine issue requiring a trial, she needed to do so. However, the respondents are also required in responding to a summary judgment motion to put their best foot forward. The court is entitled to assume that the evidence filed on the motion is the best evidence that would be available at trial. On this point:

- a. 20 Valley filed nothing;
- b. Rita Niessen filed a short eight paragraph affidavit. It does not address any of the substantive issues raised by the applicant on the motion;
- c. Kevin Niessen filed two affidavits. The first deals only with the relief sought on his motion. The second, addresses the issues raised by the applicant, however, there are extensive sections of the applicant's evidence which are not contested or addressed by Kevin Niessen in his affidavit.

[6] Briefly, in submissions, counsel for Kevin Niessen suggested that he was somewhat guarded in his evidence because Mr. Niessen is facing criminal charges. This is remedied by section 5 of the *Canada Evidence Act* and does not excuse Kevin Niessen from his obligations on a summary judgment motion.

[7] Because all of the individual parties have the same surname, I refer to them by their first name or by their party status.

The Background of this Motion

The offer to settle and the acceptance of the offer to settle

[8] The applicant and the respondent, Kevin Niessen, were married March 27, 2010, separated August 23, 2019 and were divorced September 2, 2022.

[9] They have three children, who are currently ages 10, 9 and 7.

[10] When the parties separated, they resided in the matrimonial home but had sold it the day prior to separation. They also purchased a property located at 3922 23rd Street, Vineland (“3922”). The parties were joint owners of 3922.

[11] The applicant and Kevin Niessen commenced litigation. As part of the litigation, the applicant served an offer to settle dated July 15, 2022. Kevin Niessen was represented by counsel when the offer to settle was served. It remained open for acceptance.

[12] The applicant, having concerns about the manner in which Kevin Niessen was managing his assets, brought a motion for certificates of pending litigation and a contempt motion. These materials were served on Kevin Niessen September 5, 2023.

[13] On September 8, 2023, when Kevin Niessen was representing himself, he accepted the offer to settle and returned the signed offer to settle, witnessed by his mother, Rita Niessen, to the applicant’s counsel.

[14] Pursuant to the terms of the accepted offer to settle, he had 90 days to pay the equalization payment. He failed to do so.

The corporations

Northshore Homes Ltd.

[15] This corporation was incorporated August 19, 2016 and owned solely by Kevin Niessen. Northshore Homes purchased the Azalea Crescent property.

Solera Commons Inc. becomes 20 Valley Communities Inc.

[16] This corporation was incorporated in January 2021. Kevin and Rita Niessen were officers of the corporation.

[17] On March 28, 2022, its name was changed to 20 Valley Communities Inc. Kevin Niessen remained the director.

[18] On August 23, 2022, Rita Niessen was named the director of 20 Valley.

[19] The address of the corporation remained 3922, where Kevin Niessen was residing, until he was required to vacate August 1, 2025.

The properties

3922

[20] 3922 was jointly owned by the applicant and the respondent, Kevin Niessen. On August 3, 2022, without the applicant's knowledge or consent, Kevin Niessen transferred 3922 into his sole name. He accomplished this by having someone present as the applicant at the lawyer's office and consent to the transfer. Kevin Niessen has been charged with fraud over \$5,000 as a result of his actions. These charges remain outstanding.

[21] At the time of the transfer, Kevin Niessen also registered a mortgage against the property, eliminating any equity in the property. 3922 was eventually sold pursuant to power of sale proceedings.

[22] The applicant's equalization payment, agreed to by Kevin Niessen by way of his acceptance of the offer to settle, was to be paid by way of transfer of 3922. Kevin Niessen accepted the offer to settle on these terms notwithstanding that at the time of the acceptance, he knew that the applicant was not a joint owner of 3922 and that it was mortgaged such that there was no equity in the property.

Azalea Crescent

[23] This property was purchased by Northshore Homes. In March 2021, Kevin Niessen transferred the property to a corporation owned by Rita Niessen to avoid the loss of the properties. Subsequently, Solera Commons Inc. (a corporation owned by the respondent) acquired ownership of the properties.

[24] On February 28, 2022, the properties were transferred to an unknown corporation, Stoney Oak, for \$2,010,000 cash.

[25] After discharging the mortgage registered on title, the net proceeds of sale for Azalea Crescent were \$717,600.

19th Street Jordan

[26] One month after the sale of Azalea Crescent, 20 Valley (formerly Solera Commons) purchased 19th Street, Jordan. A downpayment of \$473,250 was paid towards the purchase price and there is a first charge registered for \$1,419,750. On February 25, 2023, a second charge was registered against the property for \$410,500.

4040 Victoria Avenue

[27] This property was owned by Kevin Nissen and his parents, Rita and Heinz Niessen.

[28] On June 30, 2023, ownership of this property was swapped for 3446 Rittenhouse, which was previously owned by Southwestern Ontario Youth for Christ.

Rittenhouse Properties

[29] On June 30, 2023, the day of transfer to 20 Valley, a charge is registered against the property for \$420,000. On August 23, 2023, a second charge of \$220,000 is registered.

[30] In September 2023, a caution is registered on title by the applicant. On the expiry date of the caution, 20 Valley transfers ownership of the property for no consideration to Rita and Heinz Niessen.

[31] The Rittenhouse property is severed. There are three properties: 3446, 3440 and 3438.

[32] While there is active litigation with respect to a certificate of pending litigation, a charge in the amount of \$1,137,000 is registered against 3446. Reid J. noted concerns about the respondents' lack of candor relating to the charge.

[33] At the time Reid J. released his decision with respect to 3446, it does not appear that he was aware that in addition to mortgaging the property, 20 Valley had transferred one of the severed lots to Rita and Heinz.

[34] In August of 2024, after the applicant has brought a motion to enforce the terms of settlement, Kevin Niessen asked her to lift the certificate of pending litigation to permit the sale of one of the severed lots, being 3440. She agreed.

[35] To complete the sale of 3440, there are Tarion fees to be paid. It is notable that the letter from Tarion is addressed to Kevin Niessen and Northshore Homes Ltd., not Rita Niessen, Heinz Niessen or 20 Valley, the titled owners.

[36] After payment of the charges and liens registered against 3440, the applicant received no funds from the sale as had been intimated by Kevin Niessen.

[37] There are two properties remaining, 3446, owned by 20 Valley and 3438, owned by Rita and Heinz Niessen.

Law and Analysis

Summary Judgment

[38] Summary judgment is a tool to promote an accessible justice system by allowing for the timely resolution of cases in a manner that is proportionate to the complexity of the case. “[S]ummary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.” See: *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para 5.

[39] On a summary judgment motion:

- a. The burden of proof is on the moving party to establish that there is no genuine issue requiring a trial for its resolution;
- b. The responding party has a positive obligation to put their best foot forward to defend the motion. The responding party cannot respond by identifying evidence that would be available at trial or argue that the moving party's evidence must be tested through cross-examination. The responding party must meet its obligation by proving specific facts showing the genuine issue(s) requiring a trial. The respondents did not take this obligation seriously.
- c. Even if the respondents' evidence does not establish a genuine issue requiring a trial, the court must still be satisfied on the evidence before it that the moving party has established that there is no genuine issue requiring a trial: *Kawartha-Haliburton Children's Aid Society v. M.W.*, 2019 ONCA 316, 24 R.F.L. (8th) 32 at para. 80.
- d. The judge is entitled to assume that the parties have put before her or him all the evidence they would be able to adduce at trial: *Gough v. Gough* 2019 ONSC 5441 at para. 33.
- e. The overarching consideration is whether the summary judgment process can be resolved justly.

Order pursuant to an accepted offer to settle

[40] Settlement of legal disputes is strongly encouraged by the court, particularly so in family law proceedings.

[41] Absent exceptional circumstances, a court will not interfere with a settlement reached between the parties. This is particularly so where the litigation concerns children. Settlement reduces conflict and helps the parents focus on the children's best interest.

[42] There are strong policy reasons for enforcing settlements. As held by MacKinnon J. "Litigants need to know that the terms of an accepted offer will be binding and enforced by the court. In particular, it ought not to be possible to vitiate an accepted offer by a simple change of mind": *Quesnel v. Nadon-Quesnel* (2001), 24 R.F.L. (5th) 89 (Ont. S.C.) at para. 18.

[43] Kevin Niessen acknowledges that he accepted the offer to settle. However, he submits that the court should decline to enforce it for the following reasons:

- a. That the parenting schedule in the purported agreement is not in the children's best interest:
 - i. The parenting schedule in the offer to settle is the parenting schedule ordered in 2021, with Kevin Niessen's consent. He alleges that he was under duress when he agreed to the schedule but he provides no particulars of the factors that created the duress;

- ii. Kevin Niessen has taken no steps since 2021 to vary the parenting order;
 - iii. Even now, he is not seeking to vary the schedule, only to obtain a voice of the child report to obtain the children's views and preferences;
 - iv. He provided no evidence on the summary judgment motion to support his assertion that the parenting time provisions are not in the children's best interest.
- b. That the applicant has not provided annual financial disclosure as required:
- i. The respondent acknowledges that he has not complied with disclosure orders made throughout this proceeding;
 - ii. Both parties are expected to comply with disclosure obligations. The applicant will have these obligations moving forward;
 - iii. The thrust of the respondent's argument is that the quantum of child support and spousal support that he is required to pay is too high. Again, he has never sought to vary the temporary order for support since it was granted in February 2022. Furthermore, it is impossible for him to argue that the quantum is inappropriate when he has not complied with his disclosure obligations.
- c. The agreement does not accurately provide for child support based on the *Child Support Guidelines*:
- i. The offer to settle incorporates the terms of the temporary support order granted in February 2022;
 - ii. The parties were divorced later that same year. In granting the divorce, the court had to be satisfied that the support arrangements were appropriate. The respondent did not object to the appropriateness at that time. Furthermore, since the temporary order has been issued, the respondent has sent inappropriate texts to the applicant where he complains about the support payments and the incomes upon which they are based. He identified this concern long before he chose to accept the terms of settlement.
- d. The child and spousal support amounts in the purported agreement are unconscionable:
- i. The respondent has made this assertion but has provided no facts to support it;
 - ii. Again, he cannot make this argument given the absence of his compliance with disclosure orders;

- iii. The temporary support order was granted based on an imputed income to the respondent, because his taxable income does not reflect his true income for support purposes. The imputed amount was ordered on the basis of the respondent's own expert report, filed on the motion.
- e. The respondent was self-represented when he accepted the offer to settle:
 - i. The respondent asserts that if he was represented at the time he signed the offer to settle he could have "understood the nature and consequences of the agreement and could have been advised about the unfairness of the agreement".
 - ii. I reject this assertion. The respondent was represented when the offer to settle was served. He was under no obligation to sign it on the day that he chose to.
 - iii. The respondent has advanced no evidence that he did not understand the agreement. As previously mentioned, he was complaining by text message about terms included in the offer to settle prior to its acceptance.
 - iv. There is no presumption that a contract signed in the absence of independent legal advice will be set aside.
- f. The property terms of the purported agreement are unconscionable:
 - i. The respondent asserts that the equalization payment was unconscionable. However, he has not provided any factual underpinnings to support his position;
 - ii. In particular, the respondent has not, in his evidence, addressed the network of corporations and properties which he has been involved with or documents to support the value of the assets.
- g. That he was under duress when the offer was accepted:
 - i. Kevin Niessen has provided no evidence setting out the basis upon which he asserts that he was under duress when he accepted the offer;
 - ii. He was under no obligation to accept the offer at that time;
 - iii. The applicant submits that he accepted three days following receipt of her motion material for certificates of pending litigation and contempt. Service of court material does not create a situation of duress;
 - iv. His assertion of duress is unsupported by his evidence.

[44] He also submits that the applicant delayed in her obligation under *Family Law Rule* 18(13) to have the offer turned into an order. I do not accept this submission. Following the acceptance, the applicant waited 90 days for the equalization payment to be paid. When it was not paid, she brought a motion seeking enforcement. Rule 18(13) provides that the choice was hers: she could seek to have parts of the offer within the court's jurisdiction turned into an order or continue as if the offer was not accepted.

[45] The applicant chose the former and brought a motion. The respondent did not respond and the motion was heard as a basket motion. Given the relief sought, it was ordered to proceed as an oral motion. Through his counsel, the respondent asked for time to try and sell property (19th Street) and 4040 Rittenhouse. The applicant cannot be faulted for delay for agreeing to a delay requested by the respondent himself.

[46] I find that the applicant has met her onus and proven that there is no genuine issue requiring a trial and that the portions of the accepted offer within the court's jurisdiction shall be turned into an order because:

- a. Kevin Niessen accepted an offer to settle that had remained open for over one year. He was under no obligation to accept the offer;
- b. Pursuant to the terms of the offer, it became binding Minutes of Settlement and a domestic contract at the time of signing. Kevin Niessen has never sought to set aside the contract.

[47] With respect to the five paragraphs relating to the payment of the equalization payment:

- a. Kevin Niessen agreed to terms he knew could not be completed because of his own misfeasance;
- b. He did not pay the equalization payment;
- c. The applicant knew when the offer was accepted of the fraudulent transfer, but she allowed him time to satisfy the equalization payment by other means;
- d. There is no evidence from any of the respondents that would change the factual matrix at trial.

Enforcement of Equalization Payment Against Third Parties

[48] The applicant asks for orders such that the equalization payment can be realized by way of an enforcement of the respondent's beneficial interest in 3446 and 3438 Rittenhouse Road.

[49] 3446 is owned by 20 Valley.

[50] 3438 is owned by Rita and Heinz Niessen. Heinz Niessen not a party to these proceedings.

[51] While the applicant initially sought to add Heinz Niessen as a party, this request was not pursued, even when the applicant came to learn that 3446 was transferred from 20 Valley to him and Rita Niessen.

[52] The court cannot make findings or grant relief in relation to an individual who is not a party to the proceeding: *D'Angelo v. Barrett*, 2016 ONCA 605 at para. 18. Therefore, the relief sought by the applicant must be limited to Rita Niessen's 50 percent ownership in 3438.

[53] Since separation, Kevin Niessen has had control over a number of properties. Solera Commons (now 20 Valley) had over \$700,000 in net proceeds payable after Kevin Niessen owed the applicant an equalization payment of \$950,000. No payment was made.

[54] There was equity in 3922 at the date of separation: that is why the applicant proposed that the equalization be satisfied using this property. Kevin Niessen transferred this property in a very concerning manner, mortgaged it, without providing an accounting of where the mortgage funds went and then lost the property to power of sale proceedings when he failed to pay the mortgage.

[55] Properties owned by Rita Niessen and/or 20 Valley can be used to secure the applicant's equalization payment if the applicant shows that either has been unjustly enriched. Once proven, the court may determine whether the appropriate remedy is to grant an interest in property or make a monetary award.

[56] The respondents, collectively and individually, received a tangible benefit from the applicant, namely inappropriately obtaining her share in 3922 which was mortgaged to provide further funds for their exclusive use. These funds were used to finance and acquire new properties and projects.

[57] The applicant has suffered a corresponding deprivation, the loss of her interest in the property at 3922 and an inability to receive the equalization payment to which she is entitled.

[58] Kevin Niessen and Rita Niessen's actions are of concern to the court, as was previously noted by Reid J. when, during a motion for a certificate of pending litigation, properties subject to the motion were transferred and mortgaged.

[59] The respondents suggest that the transfer happened prior to the consent order restricting the encumbering of the property. However, if this is true, the respondents entered into a consent order not to encumber property knowing the property had already been encumbered and failing to disclose this information to the court or the applicant.

[60] The applicant has shown that Kevin Niessen's actions amount to "catch me if you can". Kevin Niessen does not personally have sufficient assets to pay the equalization payment owed to the applicant. While a monetary award is the primary remedy when a party has been unjustly enriched, a proprietary award may be considered if the monetary award is inappropriate or insufficient and the applicant can show a direct causal connection between her contributions in the acquisition and the property.

[61] I am not satisfied that the equalization payment can be enforced against Rita Niessen personally, as this may include other assets owned by her that are not related to Kevin Niessen.

[62] I find that Kevin Niessen, having taken the applicant's interest in 3922, acquired properties now owned by Rita Niessen and 20 Valley to conduct his own affairs. He is the true owner of 50 percent of 3438 Rittenhouse Road and all of 3446 Rittenhouse Road. I reach this conclusion for the following reasons:

- a. Kevin Niessen was an owner of Solera Commons, which became 20 Valley. After the name change, the address of the corporation did not change;
- b. Kevin Niessen's own affidavit evidence is that Azalea Crescent was transferred to a corporation owned solely by Rita Niessen "to avoid a complete loss and the eventual bankruptcy of the project";
- c. Until the applicant relied on it in court, Kevin Niessen listed himself as the director of 20 Valley on its LinkedIn profile;
- d. On August 9, 2023, Kevin Niessen signed a commitment letter for financing on 3446 Rittenhouse Road. He signs on behalf of 20 Valley as the borrower and confirmed that he has the authority to bind the corporation;
- e. On December 20, 2024, Kevin Niessen's lawyer sent a letter to the applicant's counsel indicating that Kevin Niessen wished to refinance 3438 Rittenhouse, which is owned by Rita and Heinz Niessen;
- f. Kevin Niessen is the guarantor of the mortgage on 3446 Rittenhouse Road;
- g. Kevin Niessen's evidence is that his parents sold their home in 2022 at 6 Bullocks Corner to build a youth centre at 4040 Victoria Avenue. This is contradicted by Kevin's evidence on July 7, 2021 that a youth centre was in existence at 4040 Victoria Avenue. Kevin was an equal owner of the property at 6 Bullocks Corner with Rita and Heinz Niessen. However, no particulars of the net proceeds of sale of 6 Bullocks Corner has been provided nor any evidence showing the tracing of these funds. There is evidence that 4040 Victoria Avenue was swapped for 3446 Rittenhouse Road with the ownership transferring to 20 Valley;
- h. Rita Niessen, in her affidavit, has provided no evidence with respect to the acquisition of 3446 and 3438 Rittenhouse Road, or her role as director of 20 Valley;
- i. Shortly after the sale of Azalea Crescent, 20 Valley purchased 19th Street. Kevin Niessen's evidence in his affidavit of August 1, 2025 is that "he was only the property manager and was hoping to sever the properties but for financial reasons was unable to do so". It defies belief that a property manager would think they had the authority to pursue the severance of a property or that it would be their

responsibility to do so. I infer from this evidence that Kevin Niessen is the operating mind of 20 Valley.

Final Order

[63] For these reasons:

- a. Final order to issue in accordance with paragraph 1 the applicant's notice of motion dated June 26, 2025;
- b. SDO to issue;
- c. Final order to issue declaring that the respondent, Kevin John Niessen, is the exclusive beneficial owner of the property municipally known as 3446 Rittenhouse Road, Vineland, Ontario;
- d. Final order to issue declaring that the respondent, Kevin John Niessen, is the exclusive beneficial owner of the 50 percent of the property municipally known as 3438 Rittenhouse Road, Vineland, Ontario owned by Rita Niessen;
- e. Final order to issue that the equalization payment of \$950,000 is enforceable against:
 - i. The property municipally known as 3446 Rittenhouse Road, Vineland, Ontario having the legal description set out in paragraph 2(a) of the applicant's notice of motion dated June 26, 2025;
 - ii. Fifty percent of the property municipally known as 3438 Rittenhouse Road, Vineland, Ontario and owned by Rita Niessen having the legal description set out in paragraph 2(b) of the applicant's notice of motion dated June 26, 2025.
- f. The parties shall engage in meaningful discussions respecting the issue of costs.
- g. In the event they are unable to resolve the issue of costs, the applicant shall serve and file written submissions of no more than three pages, double spaced (with case law hyperlinked), plus a detailed bill of costs and copies of any offers to settle by November 14, 2025. Responding submissions of no more than four pages, double spaced (with case law hyperlinked), plus a detailed bill of costs and copies of any offers to settle, shall be served and filed by the respondent by November 28, 2025. Reply submissions of the applicant, if any, of no more than two pages, double spaced, shall be served and filed by December 5, 2025.
- h. No party shall include information with respect to the discussion to try to resolve the issue of costs.

- i. If a party does not meet these deadlines, there shall be no costs payable to that party. If no submissions are received, the parties will have been deemed to have settled the issue of costs as between themselves.
- j. In addition to being filed with the court, a copy of the submissions shall be directed to my attention by email to St.Catharines.SCJJA@ontario.ca.

K. Bingham, J.

Date: October 31, 2025