CITATION: 2026 NBKB 053

Docket: FC-319-2024

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

ON THE MOVE DIESEL REPAIR INC., CLEGHORN'S CUSTOM CONCRETE LTD., MILES CLEGHORN and MELISSA CLEGHORN,

Plaintiffs,

-and-

IND FORESTRY INC. and LEONARD MACKENZIE.

Defendants.

DECISION

Dates of Hearing:	February 2, 2026
Date of Decision:	March 18, 2026
Subject Matter:	**Enforcement of Settlement Agreement**
Before:	Justice Terrence J. Morrison
At:	Burton, New Brunswick
Appearances:	Cassey LaBelle, for the Plaintiffs
	Michael Heikkinen, for the Defendants

DECISION

Morrison, J.

I. INTRODUCTION

[1] This is a motion by IND Forestry Inc. and Leonard MacKenzie (the "Applicants") for enforcement of what they say is a settlement agreement, pursuant to rule 49.08(1) of the *Rules of Court*. The Respondents oppose the motion on two grounds: (1) the motion, if successful, would result in the dismissal of the plaintiffs' action, is therefore akin to summary judgment of a matter where there is a substantial dispute of fact; and (2) the purported settlement agreement should not be enforced because it was procured by unconscionable conduct and under economic duress.

II. FACTS

[2] The two principal actors are Leonard MacKenzie for the Applicants and Miles Cleghorn for the Respondents. Each submitted affidavits.

[3] Mr. MacKenzie is the sole director and shareholder of IND Forestry Inc., which owns real property located at 1455 Route 10, Noonan, New Brunswick (the "Property"). On the Property is a house and a three-bay garage.

[4] Mr. MacKenzie, on behalf of the Applicants, says that in March 2023 he became aware that Mr. Cleghorn and his wife, Melissa Cleghorn, were looking for a place to live pending the construction of a new home which was scheduled to be completed about the end of June. Mr.

MacKenzie says that "out of goodwill and generosity", he permitted the Cleghorns to move into the Property. Mr. MacKenzie also permitted Mr. Cleghorn's company, On the Move Diesel Repair Inc. ("OMDR") to operate out of two of the three bays in the garage. Mr. MacKenzie deposes that he understood from discussions with Mr. Cleghorn that the Respondents would occupy the Property for three to five months.

[5] According to Mr. MacKenzie, the parties entered into a month-to-month rental agreement (the "Rental Agreement") which provided for monthly rental payments of $4,595.94. It also required the Respondents to pay a damage/security deposit of $25,000, which was paid in cash. Mr. MacKenzie deposes that he saw Mr. Miles sign the Rental Agreement, but it was not returned to him, and he does not have a copy, and consequently it was not put into evidence.

[6] Mr. Cleghorn advances a completely different account. He says that in the fall of 2022 (not the spring of 2023, as stated by Mr. MacKenzie) he became aware of the Property and approached Mr. MacKenzie about renting it. Although not entirely clear from Mr. Cleghorn's affidavit (paragraphs 10-11, Record, p. 378) it appears that in March 2023 they agreed to a rent of $2500 a month.

[7] Mr. Cleghorn deposes that in April of 2023 he, on behalf of the Respondents, entered into verbal negotiations with Mr. MacKenzie regarding the purchase of the Property. According to Mr. Cleghorn, the parties reached an agreement whereby the Respondents would purchase the Property for the purchase price of $400,000, paying a $25,000 cash downpayment and an agreed schedule of "lease to own payments". Mr. Cleghorn deposes that Mr. MacKenzie

prepared a schedule of payments (the "Amortization Schedule") for the balance of the purchase price, with a rate of interest and monthly set fee. According to Mr. Cleghorn, the Respondents agreed to this arrangement from April 2023 onwards, and paid $3,996.47 a month plus HST in addition to the rents already agreed upon. These payments were to be applied to the payment of the purchase price for the Property. Mr. Cleghorn refers to this as the "Initial Purchase Agreement".

[8] For his part, Mr. MacKenzie concedes that in March 2023 he discussed the possibility of the Respondents purchasing the Property and that the Amortization Schedule was prepared, but no agreement was reached. Like the Rental Agreement, there is no written Initial Purchase Agreement, and none was entered into evidence.

[9] Mr. Cleghorn says that as a result of the Initial Purchase Agreement, from April 2023 to June 2024 the Respondents made 15 payments of $3996.47 plus HST in accordance with the Amortization Schedule, which payments were above and beyond previous rents agreed between the parties. Mr. Cleghorn attaches the invoices for these "purchase payments" as Exhibit "D" to his affidavit.

[10] Mr. MacKenzie says that the monthly payments made by the Respondents were "rent payments". Attached as Exhibit "B" to Mr. MacKenzie's affidavit are the same invoices referenced by Mr. Cleghorn in his affidavit.

[11] In early June 2024, Mr. MacKenzie deposes that he advised the Respondents that they needed to vacate the Property within 30 days, as he wished to begin making use of the Property. Mr. Cleghorn, on the other hand, says that Mr. MacKenzie, without any advance notice or reason, advised him that the Applicants would no longer honour the Initial Purchase Agreement.

[12] On June 6, 2024, counsel for the Respondents wrote to Mr. MacKenzie, advising of their position that the Respondents had purchased the Property for $400,000 pursuant to the Initial Purchase Agreement between the parties, made monthly payments in accordance with the Amortization Schedule, and made improvements to the Property. In the letter, counsel for the Respondents denies that the agreement was a lease, but rather a purchase agreement. The Respondents' counsel advises that the Respondents would not be vacating, and that his client "is prepared to enforce its rights in court".

[13] Mr. MacKenzie deposes that out of a good faith wish to resolve the dispute with the Respondents he instructed the Applicants' counsel to make an offer to settle the same. On July 8, 2024, the Applicants' counsel, advised as follows: (1) the arrangement between the parties was a rental agreement, not a purchase agreement; (2) any improvements to the Property made by the Respondents were without permission; and (3) made an offer to settle the matter by offering to sell the Property to the Respondents for $550,000 plus HST, with a closing date of August 15, 2024. It noted that the applicant would not provide any form of financing in relation to the transaction.

[14] This initial offer to settle prompted a series of counteroffers passing between the parties' respective counsel between July 8 and August 1, 2024. Ultimately, on August 1, 2024,

the parties reached an agreement and counsel for the Respondents authorized the preparation of a formal agreement of purchase and sale (the "APS"). The essential terms of the settlement agreement are:

a) The Property, including the commercial garage, furnace, oil tanks and select toolboxes and benches located in the garage would be sold to the Plaintiffs for $475,000.00 plus Harmonized Sales Tax ("HST");

b) The Plaintiffs would provide a bank draft to Cox & Palmer in the amount of $40,000.00 (the "First Deposit") within five business days of acceptance of the Settlement which would be applied to the purchase price if the deal closed by September 13, 2024;

c) The Defendants would return the $25,000.00 Security Deposit to the Plaintiffs;

d) Within two business days of the return of the $25,000.00 Security Deposit, the Plaintiffs would then make an additional $10,000.00 deposit (the "Second Deposit");

e) The Settlement was not conditional on financing, nor would the Defendants be financing the Settlement; and

f) The deal would close September 13, 2024, failing which the $50,000.00 deposited by the Plaintiffs would be forfeited to the Defendants and the Plaintiffs would have to vacate the Property no later than September 30, 2024.

(the "Settlement Agreement")

[15] On August 7 or 8, 2024 (the evidence is not entirely clear regarding which date), the Respondents paid the First Deposit ($40,000) provided for in the Settlement Agreement. At the Respondents' request, the Applicants agreed to postpone the return of the $25,000 Security Deposit until Monday, August 13, 2024. On that date, Mr. MacKenzie deposes that he arrived at the offices of the Respondents' counsel 30 minutes before a pre-arranged time, however he received a call from his counsel who told him that none of the plaintiffs were available to accept

the funds that day (because the funds were in the form of cash they could not be left or accepted by the Respondents' counsel). Mr. MacKenzie continued to await delivery instructions from the plaintiffs. Since the Respondents did not receive the Security Deposit, they did not submit the Second Deposit.

[16] On August 19, 2024, counsel for the Applicants advised the Respondents' counsel that the Respondents' HST numbers were required in order for the Applicants to sign the APS. Although the Respondents' counsel and the Applicants' accountant indicated that the HST numbers could be acquired with a few days, they were not received until September 10, 2024, the same day that the Respondents' counsel requested a further extension of the closing date to October 25, 2024. Email correspondence between the solicitors on August 9 discloses some disagreement with respect to the wording of the APS. By email, at 4:42 p.m. on August 9, 2024, counsel for the Applicants demanded that the agreement of purchase and sale be signed that day or Mr. MacKenzie would be "blocking access to the property at 5:00 p.m.". Counsel for the Respondents responded that there was no deadline for signing the APS, and that the Applicants had been paid the First Deposit, but the Respondents did not yet receive the Security Deposit. The email closes with the warning, "Your client will be subject to trespass and a potential assault charge. I am calling the police". This dispute appears to have been resolved.

[17] On August 19, 2024, the Respondents, through their counsel, requested an extension of the closing date from September 13 to September 30, 2024. The Applicants agreed, provided that the Respondents would be required to vacate the Property by October 6, 2024, if the closing did not occur. The parties were in agreement, and the APS was finalized the next day.

[18] On September 10, 2024, counsel for the Respondents requested a further extension of the closing date to October 25, 2024, failing which the Property would be vacated by November 3, 2024. The Applicants responded on September 12, 2024 that they were prepared to grant the extension on condition that the non-refundable deposit be increased from $50,000 to $65,000. By email on September 13, 2024, counsel for the Respondents rejected the proposal and advised that his clients were no longer agreeable to purchase the Property and demanded return of the $25,000 cash Security Deposit and the $40,000 First Deposit.

[19] The Respondents commenced the within action on October 2, 2024. They vacated the Property on October 9, 2024.

III. ANALYSIS AND DECISION

A. *General Principles*

[20] Rule 49.08(1) provides as follows:

> 49.08(1) Where a party to an accepted offer to settle fails to comply with the terms thereof, the other party may, subject to the provisions of paragraph (2), apply to the court
>
> (a) for judgment in the terms of the accepted offer, or
> (b) where the defaulting party is a plaintiff, to have his proceeding dismissed or, where the defaulting party is a defendant, to have his defence to the proceeding struck out.

[21] The importance of respecting pre-trial settlements was highlighted in *Ward Estate v. Canadian Marconi Co.* 1992 CarswellNB 60, at para. 13:

> 13 **The matter of the integrity of pre-trial settlements and the importance of the capacity to rely on offers made by opposing counsel goes to the matter of the effective administration of justice in civil cases.** I can understand the difficulty faced by a solicitor who may find his authority varied after an offer is made and accepted. **However, once a valid settlement is concluded it must be stood by, absent mutual agreement to repudiate it.** [Emphasis added]

(See also: *Bentley v. Miller*, 2010 NBQB 40)

[22] Formation of a settlement agreement is governed by the well-accepted principles applicable to contract formation. An agreement is reached where the essential terms of the agreement are understood, together with the requisite contractual elements of offer, acceptance and consideration (*Hughes v. The City of Moncton*, 2006 NBCA 83; *McNichol v. Cooperators General Insurance Company*, 2020 NBQB 188).

B. *Binding Agreement Concluded*

[23] In my view, the evidence clearly supports a finding that by August 1, 2024 the parties had reached an agreement, the essential terms of which are set out in paragraph 14 above.

[24] While there were modifications to the terms of the Settlement Agreement as it relates to the closing date, the date for vacant possession and the timing of deposits, the essential terms of the Settlement Agreement were concluded on August 1, 2024 by way of offer and acceptance, and supported by consideration. There was also part performance of the agreement when the Respondents paid the $40,000 First Deposit on August 7/8, 2024. All parties to the

Settlement Agreement were represented by experienced legal counsel. The terms of the Settlement Agreement were negotiated by these solicitors, and the terms settled and agreed by exchange of correspondence between them. There is no suggestion that the parties' solicitors did not have authority to conclude the Settlement Agreement.

[25] It is also clear to me that the purpose and intent of the agreement was to settle the dispute between the parties regarding whether the initial arrangement between them was that of the Rental Agreement (as alleged by the Applicants) or that of a rent-to-own Initial Purchase Agreement (as alleged by the Respondents). The purpose of the Settlement Agreement was to avoid the litigation that was explicitly threatened and clearly contemplated when the parties reached their agreement on August 1, 2024.

[26] The Respondents do not seriously argue that the Settlement Agreement was not reached, nor do they seriously contest the terms of the same. Absent other considerations discussed below, the Settlement Agreement would be enforceable, pursuant to rule 49.08.

C. *Economic Duress*

[27] The Respondents submit that the Settlement Agreement is not enforceable because it was procured by unconscionable conduct and under duress. The essence of the Respondents' position in this regard is succinctly summarized in paragraphs 32-34 of their Motion Brief:

> 32. On the first point, it is submitted that the purported settlement pertaining to purchasing the property in 2024 is not a valid and binding settlement as any alleged settlement was proffered by

coercive conduct and unequal bargaining positions. Accordingly, it should not be enforced as such under Rule 49.

33. It is submitted that the overarching theme present in this matter is the blatant unconscionability all throughout the dealings between the parties. The unconscionability began with the repudiation of the initial agreement to purchase the property for $400,000.00 after the Plaintiffs made significant contributions towards the purchase price as well as capital improvements to the property. This unconscionable conduct then amplified when the Plaintiffs felt they had no other option but to negotiate the purchase of the property they believed they had already purchased but for a much higher price, all of this occurring amid the persistent threat of eviction from their family home.

34. Based on the principles of equity, it is submitted that this conduct amounted to unconscionability such that purported settlement ought to be invalid.

[28] The plaintiffs argue that the negotiations leading to the Settlement Agreement took place in a context of oppressive conduct which placed the Respondents in unequal bargaining position, leaving them no choice but to agree to the Applicants' terms. In support of their position the Respondents referred to *Colson v. Beauregard*, 2014 NBQB 155. In that case, the Court refused to enforce an agreement relating to the division of marital property on the basis that the wife executed the agreement under circumstances where she was vulnerable and oppressed. In applying principles of unconscionability, inequality of bargaining power and undue influence, the Court concluded that there was no binding agreement. The case is clearly distinguishable from the facts of the present case. First, the purported agreement arose in the context of a domestic dispute and not, as here, in a commercial context. Second, in *Colson*, the wife did not have any legal advice. That is not the case here.

[29] The Applicants referred the Court to the oft-quoted decision in *Kawartha Capital Corp. v. 1723766 Ontario Limited*, 2020 ONCA 763. The circumstances of that case are similar to the present case. In that case, the defendant retained the plaintiff to perform construction work on a property. In the course of construction, disputes had arisen with respect to delays in the work and unpaid invoices. The parties, represented by counsel, undertook negotiations to resolve the dispute which resulted in minutes of settlement. Pursuant to the settlement, the defendant agreed to pay the plaintiff an initial payment of $400,000 by September 23, 2016, and a second payment of $162.932.33 by March 12, 2017. The plaintiff agreed to discharge a construction lien it had placed upon the property upon receipt of the initial payment of $400,000. The parties subsequently agreed to amendments, extending the date for the initial payment to September 29, 2016 and increasing the amount of the second payment to $185,999.32. The initial payment due under the settlement was made on September 29, 2016, and the construction lien was discharged. The second payment was never made, and the plaintiff commenced an action to recover the second payment. The defendant defended, alleging that economic duress made the minutes of settlement unenforceable.

[30] The Ontario Court of Appeal rejected the defendant's argument and set out the test to establish economic duress at paragraph 11:

> 11 For a party to establish economic duress, it must show two things: first, that it was subjected to pressure applied to such an extent that there was no choice but to submit, and second, that the pressure applied was illegitimate. **On the first prong of the test, the court considers four factors:**
>
> > **(a) Did the party protest at the time the contract was entered into?**

> **(b) Was there an effective alternative course open to the party alleging coercion?**
>
> **(c) Did the party receive independent legal advice?**
>
> **(d) After entering into the contract, did the party take steps to avoid it?**
>
> If the party alleging duress satisfies those four factors, it must go on to satisfy the second prong, by showing that the pressure exerted was illegitimate: *Techform Products Ltd. v. Wolda* (2001), 2001 CanLII 8604 (ON CA), 56 O.R. (3d) 1 (C.A.), at paras. 31-34, leave to appeal refused, [2001] S.C.C.A. No. 603. [Emphasis added]

[31] With respect to the first factor, there is no evidence at all that the Respondents protested that they were being compelled to enter into the Settlement Agreement. In the email from the Respondents' counsel on August 1, 2024, stating that, "We have a deal", there is nothing to indicate that the Respondents were accepting the terms "under protest".

[32] Was there an effective alternative course open to the Respondents? The answer to that question is yes. There were several options open to the Respondents when the Applicants advised them in or about the first week of June 2024 to vacate the premises within 30 days. The Respondents could have commenced an action to enforce what they called the Initial Purchase Agreement and sought a certificate of pending litigation to be registered against the Property. They could also have sought injunctive relief, restraining the Applicants from evicting them pending determination of the dispute. While the Respondents now assert that they felt they had no choice but to agree to the Applicants' terms, they offered no evidence to suggest that they or their counsel considered the alternatives mentioned above, or any other alternatives.

[33] With respect to the third factor, it is beyond dispute that the Respondents received independent legal advice. All of the negotiations leading to the Settlement Agreement were carried on through the parties' respective solicitors.

[34] Did the Respondents take steps to avoid the Settlement Agreement? The essential terms of the Settlement Agreement were agreed to on August 1, 2024. There was part performance of the agreement by the respondent when they paid the $40,000 First Deposit. The Respondents continued to finalize the details of the Settlement Agreement, including agreeing to the wording of the APS and negotiating an extension of the closing date. It wasn't until September 12, 2024 (the day before the original closing date and a week before the extended closing date) and only after the Respondents wanted a further extension that they resiled from the Settlement Agreement.

[35] The Respondents have satisfied none of the four factors of the first prong of the test outlined in *Kawartha* and they have failed to establish that the Settlement Agreement is voidable due to economic duress.

[36] Further, there are specific allegations of duress raised by the Respondents which do not ring true when the entirety of the evidence is considered. An underlying theme from the Respondents is that in the face of imminent eviction of their family from their home on the Property they had no choice but to agree to the terms of the Settlement Agreement. The evidence of Mr. MacKenzie is that the Respondents vacated the home/house portion of the Property on July 30, 2024, which is the day before the Settlement Agreement was concluded. The evidence is that the Settlement Agreement and post-settlement dealings with respect to the finalization of the APS took

place in the context of OMDR. The family was already gone (Supplementary Affidavit of Leonard MacKenzie, par. 9).

[37] The evidence of Mr. MacKenzie is that after the plaintiffs had vacated the Property he was advised by a mutual friend of his and Mr. Cleghorn's that Miles and Melissa Cleghorn entered into an agreement with "R. Foster" in the summer of 2024 to build them a new home. This evidence is corroborated by Service New Brunswick Parcel Information, showing that there was a transfer from R. Foster Developments Inc. of a parcel of land in Charters Settlement on August 14, 2025. On the same date, there is a mortgage from the Cleghorns, for the principal sum of $712,213.77 (Record, p. 155-161).

[38] According to Mr. MacKenzie's affidavit evidence he was a customer of OMDR. Mr MacKenzie deposes that on September 25, 2024, five days prior to the extended closing date he, received a letter addressed to all customers of OMDR, advising its customers that it was relocating from the Property to a different address, effective October 1, 2024.

[39] In his responding affidavit, Mr. Cleghorn makes a bald boilerplate statement that the Respondents disagree in whole or in part with many statements contained in Mr. MacKenzie's affidavit, including the allegations noted above. However, other than this bald denial, Mr. Cleghorn does not specifically address or counter the allegations. In my view, Mr. MacKenzie's evidence in that regard stands uncontradicted.

[40] Finally, the Respondents also claim that throughout the negotiations they believed that a requirement for financing would be a condition of the transaction. They claim that upon receipt of the draft APS there was no financing condition. The Respondents claim that this was another example of further oppressive conduct on the part of the Applicants. I disagree. The evidence is that the Respondents may have wished for and even requested a financing condition. However, nowhere in the evidence is there any suggestion that the Applicants at any time agreed to a financing condition.

D. *Factual Controversy*

[41] As mentioned, the Respondents take the position that the motion, if successful, amounts to a summary judgment of matters where there is a substantial dispute of fact and ought to be denied.

[42] There is a substantial dispute of fact as to whether the initial agreement between the parties was a rental agreement or an agreement to purchase the Property on an installment basis. There are aspects of both positions advanced by the respective parties that are troublesome. Neither the purported Rental Agreement advanced by the Applicants nor the purported Initial Purchase Agreement advanced by the Respondents were put into evidence. Whether either was reduced to writing and executed remains an unanswered question.

[43] Although part of the Rental Agreement advanced by the Applicants was for the residential lease of the house on the Property, there is no evidence that the Applicants complied

with section 9(1) of the *Residential Tenancies Act*, SNB 1975, c. R-10.2, with respect to the preparation and execution of a Standard Form Lease. On the other hand, it is impossible to reconcile the rent payments and the purported purchase payments in the Amortization Schedule referred to in Mr. Cleghorn's affidavit.

[44] But none of this matters. The factual controversy over whether the arrangement was a rental or purchase agreement was at the heart of the dispute which led to the Settlement Agreement. The very purpose of the negotiations which led to the Settlement Agreement was to resolve and settle that issue. In short, once the Settlement Agreement was concluded the factual controversy was rendered moot.

[45] There is another area of the evidence which is in dispute. Although not central to the Respondents' argument, Mr. Cleghorn alleges that Mr. MacKenzie engaged in threats and intimidating behaviour. The allegation is found at paragraph 25 of Mr. Cleghorn's affidavit:

> 25. During negotiations in June, July and August of 2024 through counsel, MacKenzie engaged in harassing and intimidating behaviour.

[46] Mr. MacKenzie denies having engaged in any pattern of threats or other aggressive behaviour.

[47] Also in Mr. Cleghorn's affidavit, there is reference to a physical altercation between his father-in-law and Mr. MacKenzie on June 26, 2024. Mr. MacKenzie admits the incident, but says the assault was initiated by Mr. Cleghorn's father-in-law. Mr. Cleghorn's affidavit also refers to communication between counsel on August 9, 2024, regarding signing of the APS. Counsel for

the Applicants, in an email at 4:42 p.m., insisted that the APS be signed that day or the Applicants would block access to the Property at 5:00 p.m.

[48] It is hornbook law that contracts induced by threats of actual or threatened violence are unenforceable. In cases where there are dire threats of physical violence to the parties or others, such as threats to kill family members or forcibly confine them, duress will be found. It must be shown that the threat induced the making of the contract (John D. McCamus, *The Law of Contracts*, 3rd ed. (Toronto: Irwin Law Inc., 2020), at pages 403; 408-409).

[49] With respect to the June 26, 2024 incident between Mr. MacKenzie and Mr. Cleghorn's father-in-law, there is no evidence that the altercation was in any way associated with exerting pressure on the Respondents to complete the Settlement Agreement. Further, none of the Respondents were involved or even present.

[50] Regarding the August 9, 2024 email exchange between counsel, the threat to block access can hardly be described as a physical threat. In any event, it occurred after the Settlement Agreement was concluded. The evidence is that the Property was not blocked and the APS was not signed until days later.

[51] In my view, the general allegations of harassing and intimidating behaviours found at paragraph 25 of Mr. Cleghorn's affidavit are so vague that they cannot be said to satisfy the requirements for a specific physical threat that induced the decision to enter into the Settlement Agreement. Threats of violence amounting to duress are serious allegations. Vague, generalized

allegations will not suffice. The fact that there is a factual dispute in that they are denied by Mr. MacKenzie is of no import. The factual controversy does not justify denying the motion and requiring the Applicants to either proceed to trial or advance a motion for summary judgment.

[52] I have already dealt with the other, more specific "threat" allegations, to the extent that one could consider them to have a physical component. There is no evidence that they had any bearing on the formation of the Settlement Agreement. The Respondents' arguments that these factual controversies justify a trial (or alternatively a motion for summary judgment) is rejected.

IV. CONCLUSION

[53] During the hearing of this matter I raised with counsel that if the Applicants were successful it would result in the dismissal of the Respondents' (plaintiffs') Notice of Action With Statement of Claim Attached but would not dispose of the Applicants' (defendants') Counterclaim. Counsel for the Applicants advised the Court that if the motion was granted the Applicants would withdraw their Counterclaim.

[54] The Applicants' motion is granted. It is HEREBY ORDERED THAT:

(a) the Settlement Agreement between the parties is valid, binding and enforceable against the Respondents (plaintiffs);

(b) the plaintiffs' action is dismissed;

(c) the defendants' counterclaim is dismissed;

(d) pursuant to Rule 42.04, the Clerk issue a Certificate (Form 42B) revoking the certificate of pending litigation registered on title against the Property.

[55] Specific performance of the terms of the Settlement Agreement requires the Respondents to forfeit $50,000.00 to the Applicants as liquidated damages for their failure to close on the sale of the Property. It also requires the Applicants to return the $25,000.00 cash Security Deposit to the Respondents. I will leave it to counsel to work out the details regarding the payment of the balance of the liquidated damages and the return of the Security Deposit. However, I will retain jurisdiction to issue further directions in this regard if counsel are unable to reach agreement on these issues.

[56] Having been successful, the Applicants are entitled to costs which I fix under Rule 59 for an amount involved of $50,000.00 in the amount of $4,875.00 payable forthwith.

_____
Terrence J. Morrison
Justice of the Court of King's Bench