Case Name:

Carleton v. Beaverton Hotel

RE: Randy Carleton, Louise Kouba, Judith Avery, Jay Carleton and Mark Carleton, Plaintiffs, and Beaverton Hotel, Robert James Davis, Re/Max Country Lakes Realty Inc., Ian Burney, Kawartha Credit Union Limited, 1194206 Ontario Inc., Donald Warner, John Doe, the Township of Brock and the Regional Municipality of Durham, Defendants

[2010] O.J. No. 520

2010 ONSC 898

Whitby Court File No. 23745/03

Ontario Superior Court of Justice

J.E. Ferguson J.

February 5, 2010.

(18 paras.)

Civil litigation -- Civil procedure -- Trials -- Mistrials -- Application by defendants for mistrial allowed -- One mistrial already declared during first trial -- During this trial, plaintiff and his lawyer made repeated personal attacks on defendants' lawyer, despite warnings from court, in front of jury -- Plaintiff's lawyer caused excessive delays, requiring jury to be excused repeatedly -- Defendants' right to fair trial compromised by actions of plaintiff and his lawyer -- During cross-examination of defendant, plaintiff's lawyer placed large, unfavourable photograph of defendant in jury's view, an act that would have been sufficient on its own for mistrial order.

Application by the defendants for a mistrial. One mistrial had already been declared during the first trial of this action. The defendants alleged a second mistrial was warranted due to the uncivil and offensive conduct of the plaintiff and his lawyer and delay tactics of the plaintiff that led to jury mutiny. The plaintiff had expressed a desire throughout the trial to remove the jury. One witness changed his testimony entirely during voir dire and there was suspicion that it was due to improper conduct of plaintiff's lawyer. The plaintiff's lawyer also accused the defendants' lawyer of unfairness in front of the jury and repeatedly attempted to elicit hearsay evidence from witnesses. The

parties' lawyer had screaming matches outside the court. The plaintiff became aggressive in court, calling the defendants' lawyer and joke and a liar.

HELD: Application allowed. Regular problems occurred during every day of the trial. The jury was repeatedly excused, the plaintiff and his lawyer were repeatedly warned and the plaintiff's cross-examination was not completed because of problems. The plaintiff and his lawyer made repeated personal attacks on the defendants' lawyer, despite multiple warnings from the court. These attacks were made in front of the jury, as were accusations that the defendants' lawyer was dishonest. During the cross-examination of one of the defendants' the plaintiff's lawyer placed a large, unfavourable picture of the defendant in view of the jury. This alone would have been sufficient for a mistrial order. The defendants' right to a fair trial had clearly been compromised, necessitating the extreme remedy of a mistrial.

Counsel:

G. Neinstein and S. Koumarelas, for the Plaintiffs.

M.B. Forget and M. Hockin, for the Defendant Robert James Davis; Robert Zochodne, for the Defendants, Re/Max Country Lakes Realty Inc., and Ian Burney, for the Defendants.

ENDORSEMENT

1 **J.E. FERGUSON J.**:-- These reasons follow the second mistrial. Written reasons are required in order to deal with cost submissions.

2 This trial started on October 23, 2009 and ended with a mistrial on December 8, 2009. A copy of the Minute Book is attached as Schedule "A" to this endorsement. The submitted grounds for this mistrial, expanded upon below, include:

(i) behaviour on the part of plaintiff's counsel that was uncivil, offensive, and in violation of the duties of an officer of the court towards counsel and the court;
(ii) inappropriate, offensive conduct from the plaintiff, encouraged by his counsel;
(iii) instigating delay tactics aimed at causing a "mutiny" by the jury (the plaintiff's did not want the case tried by a jury)

3 The Supreme Court of Canada in *R. v. Burke* [2002] S.C.J. No. 56 sets out the test for granting a mistrial as whether there is a "real danger of prejudice ... or danger of a miscarriage of justice."

4 The Honourable Mr. Justice Donald S. Ferguson, in the Ontario Courtroom Procedure, 2009 comments that:

> A motion for mistrial is made because it is believed that the jury ... can no longer fairly adjudicate upon the case because of the release of information that has the potential to irremediably prejudice one of the parties.

5 Ferguson J. sets out the test and references *R. v. Burke* quoting:

> In declaring a mistrial the trial judge therefore turns his or her mind to the question of whether a mistrial is needed to prevent a miscarriage of justice. This determination will necessarily involve an examination of the surrounding circumstances. Injustice to the accused is of particular concern, given that the state with all its resources acts as the singular antagonist of the individual accused in a criminal case. This factor should be balanced against other relevant factors, such as the seriousness of the offence, protection of the public and bringing the guilty to justice.

6 The parties agree that declaring a mistrial is the last resort.

7 The Court of Appeal in *Landolfi v. Fargione* [2006] O.J. No. 1226, (C.A.) confirmed that the decision to declare a mistrial is squarely within a trial judge's discretionary domain.

8 In *Landolfi v. Fargiore* the following comments were made by the Court of Appeal, many of which have application to this case:

> [80] The complained of remarks regarding defence counsel directly called into question his character and truthfulness. By suggesting to the jury that defence counsel told the jury four "whoppers" or lies, "[made] things up" because the defence medical experts did not "help" the defence, and misled the jury regarding the evidence, plaintiff's counsel mounted a focused and personal attack on the professional integrity of defence counsel. In effect, he placed defence counsel on trial.
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> [88] Counsel for the Landolfis properly acknowledged before this court that there is no room in our adversarial system of justice for unwarranted *ad hominem* attacks at trial on opposing counsel. I agree. This is not simply a matter of courtesy. Such attacks are not only uncivil and unprofessional, left unchecked they also endanger trial fairness and stain the administration of justice.
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> [89] In this case, the offending comments regarding defence counsel were inflammatory and prejudicial to the defence because they improperly invited the jury to decide the case on the basis of an extraneous and irrelevant consideration - the credibility of defence counsel - rather than on the strength of the evidence adduced at trial: see *Ross v. Lamport*, [1955] O.R. 542 (C.A.) at 562-63, rev'd on other grounds, [1956] S.C.R. 366; and *Brochu*, *supra*, [2002] O.J. No. 4882, at paras. 15 and 16. In this sense, the comments risked diverting the jury's attention away from its true task, namely, an objective evaluation of the relevant issues, the positions of the parties in relation to those issues, and the evidence pertaining to the issues. The prejudicial impact was compounded by the fact, as I have said, that at least some of the comments on the evidence by the plaintiffs' counsel were inaccurate and misleading.
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> [90] Nor do I accept that the challenged comments concerning defence counsel were inadvertent minor lapses uttered during the heat' of an enthusiastic and

> forceful closing address. In developing the theme in his closing address that defence counsel made speculative statements to the jury that were not supported by the evidence, plaintiffs' counsel, a very experienced personal injuries lawyer, stated that defence counsel "made up" evidence concerning Landolfi's injuries to which no medical expert had testified. In so doing, plaintiffs' counsel referred to defence counsel, on six separate occasions as "*Dr.*" McCartney.
>
> [91] In the context of the theme of plaintiffs' counsel's closing address, these sarcastic and repeated references cannot be viewed as accidental or trivial. They can have had no purpose other than to further denigrate defence counsel in the eyes of the jury and to prejudice the jury against defence counsel and, through him, his client. This was improper. As observed by this court in *R. v. Giesecke* (1993), 82 C.C.C. (3d) 331 at 334, leave to appeal to S.C.C. refused, *[1993] S.C.C.A. No. 412*, (1994), 86 C.C.C. (3d) vii, in the context of a criminal case:
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> > While counsel is not held to a standard of perfection in his or her address to the jury, there is a significant difference between remarks or observations one can characterized as inappropriate but contextually acceptable, and those made by counsel ... which, by their hyperbole, mischaracterization or insinuation, impair the possibility of a fair trial.

These comments are apposite here.

...

> [97] There is also a further aspect of this case about which it is appropriate to comment. At trial, plaintiffs' counsel resisted the defence mistrial motion, in part by seeking refuge in the premise that a civil jury trial is "not a tea party." In addition, at the conclusion of trial, when he was properly (and somewhat mildly) chastised by the trial judge for his attack on defence counsel in his closing address, plaintiffs' counsel made the remarkable response that trial counsel "have got to do what you have got to do."
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> [98] These statements were disdainful of the court and of counsel's obligations as an advocate and officer of the court, obligations owed to the court, the litigants and opposing counsel: see for example, *R. v. Felderhoof* (2003), 68 O.R. (3d) 481 (C.A.) at para. 83-84. They were also misconceived. Although it is true, in the language coined by Riddell J. in *Dale v. Toronto R.W. Co*., supra, [1915] O.J. No. 49, at p. 108, that "a jury trial is a fight and not an afternoon tea," a civil trial is not open season' for attacks on opposing counsel and litigants. This court recently stressed in *Felderhof*, at paras. 95 and 96, that the professional obligation of counsel to keep his or her rhetoric at trial within reasonable bounds has "nothing to do with trials not being tea parties'." Nor does a hard fought trial, like this one, license counsel to make inappropriate and prejudicial submissions to the jury, including those that cast aspersions on the integrity of the opposing counsel.

> [99] As I have said, the decision whether to declare a mistrial is squarely within a trial judge's discretionary domain. Consequently, a trial judge's decision on this issue attracts considerable deference from this court: see *Hamstra, supra*, [1997] 1 S.C.R. 1092, at para. 26; and *R. v. Emkeit* (1972), [1974] S.C.R. 133 at 139. Nonetheless, there may be situations where the nature of the offending remarks by counsel to a jury gives rise to a danger of substantial prejudice to the opposing litigant. In these circumstances, in my view, it is incumbent on the trial judge to intervene.
>
> [104] The offending comments by plaintiffs counsel in this case were sustained and serious. Viewed in their entirely, they exceeded by considerable margin the bounds of legitimate rhetoric in a closing jury address. Left unaddressed by the trial judge, they raised the real prospect that, in approaching its task, the jury may have taken into account irrelevant, prejudicial and distracting matters that it ought not to have been permitted to consider.

9 *R. v. Felderhof* [2003] O.J. No. 4819 is a case wherein the plaintiffs asked for a new trial on the basis that the trial judge, [2002] O.J. No. 4103, failed to curb the conduct of *Felderhof's* counsel which was described in para. [78] as including:

> * "unrestrained invective" (at para. 34).;
> * "excessive rhetoric" (at para. 34).;
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> * "The tone of Mr. Groia's submissions ... descended from legal argument to irony to sarcasm to petulant invective" (at para. 64).
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> * "Mr. Groia's theatrical excess reached new heights ...".
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> * "Mr. Groia's conduct on this occasion more resemble guerilla theatre than advocacy in court" (at para. 91).
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> * "unrestrained repetition of ... sarcastic attacks;
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> * "Mr. Groia's defence consists largely of attacks on the prosecution, including attacks on the prosecutor's integrity" (at para. 272).

10 The court continues at paras:

> **[79]** As the application judge noted, the problem was not simply with Mr. Groia's conduct. His rhetoric was, in many cases, tied to a view about what constitutes improper prosecutorial conduct that was simply wrong. As the application judge pointed out (at para. 29) , there is nothing wrong with a prosecutor seeking a conviction, yet "Mr. Groia constantly accused the prosecution of impropriety in doing the very thing it has the right to do". Mr. Groia accused the prosecution of unfairness for not introducing as part of its examination of Mr. Francisco, documents that it claimed favoured the defence and in objecting to the admissibility of such document in cross-examination. But, the prosecution is not duty bound to

introduce all possible documents in examination of its witness and is not acting improperly in objecting to the admission of inadmissible evidence. It was wrong for Mr. Groia to accuse the prosecution of improperly attempting to secure a conviction because it was trying to apply the rules of evidence. As the applicant judge said (at para. 33), "it is inappropriate to attack a prosecutor for seeking a conviction. To do so, demonstrates a misunderstanding of the vital distinction between a prosecutor who improperly seeks nothing but a conviction and a prosecutor who properly seeks a conviction within the appropriate limits of fairness".

...

[84] It is important that everyone, including the courts, encourage civility both inside and outside the courtroom. Professionalism is not inconsistent with vigorous and forceful advocacy on behalf of a client and is as important in the criminal and quasi-criminal context as in the civil context. Morden J.A. of this court expressed the matter this way in a 2001 address to the Call to the Bar: "Civility is not just a nice, desirable adornment to accompany the way lawyers conduct themselves, but, is a duty which is integral to the way lawyers do their work." Counsel are required to conduct themselves professionally as part of their duty to the court, to the administration of justice generally and to their clients. As Kara Anne Nagorney said in her article, "A Noble Profession? A Discussion of Civility Among Lawyers" (1999), 12 Gerogetown Journal of Legal Ethics 815, at 816-17, "Civility within the legal system not only holds the profession together, but also contributes to the continuation of a just society. ... Conduct that may be characterized as uncivil, abrasive, hostile, or obstructive necessarily impedes the goal of resolving conflicts rationally, peacefully, and efficiently, in turn delaying or even denying justice." Unfair and demeaning comments by counsel in the course of submissions to a court do not simply impact on the other counsel. Such conduct diminishes the public's respect for the court and for the administration of criminal justice and thereby undermines the legitimacy of the results of the adjudication.

...

[88] Later, the application judge held that while defence counsel had the right to make submissions about alleged abuse of process and prosecutorial misconduct it was "unnecessary for him to couch those submissions in a repetitive stream of invective against Mr. Naster's professional integrity" (para. 271). I agree in part with the application judge. The defence has the right to make allegations of abuse of process and prosecutorial misconduct, but only where those allegations have some foundation in the record, only where there is some possibility that the allegations will lead to a remedy and only at the appropriate time in the proceedings. See *R. v. Kutynec* (1992), 7 O.R. (3d) 277 at 288-89 (C.A.). The trial judge was not obliged to repeatedly listen to those allegations outside of a specific Charter or abuse of process motion. Thus, I do no agree that the trial judge was obliged to listen to Mr. Groia's complaints every time he was moved to make one. I have al-

ready stated my view that it is not appropriate for the defence to use allegations of abuse of process to circumvent the normal rules of evidence and have suggested a procedure to deal with this specific issue should it arise again at the resumed trial. More generally, the trial judge should have instructed Mr. Groia to refrain from his comments concerning abuse of process or prosecutorial misconduct until the time came to make his abuse of process motion. Mr. Groia's obligation to advance his client's case did not give him the right to continue to make claims of professional misconduct and abuse of process that had not substance and before he was prepared to fully argue the issues.

...

[93] Since the defence can only secure a stay of proceedings by proof of, for example, "improper motives or bad faith" this has led to an unfortunate escalation of the rhetoric where the defence alleges an abuse of process. It is a very serious matter to make allegations of improper motives or bad faith against any counsel. Such allegations must only be made where there is some foundation for them and they are not to be made simply as part of the normal discourse in submissions over the admissibility of evidence or the conduct of the trial. To persist in making these submissions does not simply hurt the feelings of a thin-skinned opponent. Those types of submissions are disruptive to the orderly running of the trial. They sidetrack the prosecutor and the trial judge from the real issues at the trial. No prosecutor, no matter how thick-skinned, is obliged to hear the kind of allegations made by Mr. Groia in this case, until there was some prospect that these allegations would be proved and lead to a remedy. The trial judge should have instructed Mr. Groia to stop and to reserve his concerns about the conduct of the prosecution until the time came to make the abuse of process motion. Even when that time came, defence counsel is obliged to make submissions without the rhetorical excess and invective that Mr. Groia sometimes employed.

...

[96] This has nothing to do with trials not being "tea parties". Every counsel and litigant has the right to expect that counsel will conduct themselves in accordance with the The Law Society of Upper Canada, Rules of Professional Conduct. Those rules are crystal clear. Counsel are to treat witnesses, counsel and the court with fairness, courtesy and respect. See Rules 4 and 6 and Commentaries. I have set out what seems to have been the genesis for the acrimony between counsel in this case. Even if Mr. Groia honestly believed that the prosecution tactics were excessive and could amount to an abuse of process, this did not give him a licence for the kind of submissions he made in this case. As the application judge said, "[a]buse of process and prosecutorial misconduct ... form part of the arsenal of defence tactics". But, motions based on abuse of process and prosecutorial misconduct can and should be conducted without the kind of rhetoric engaged in by defence counsel in this case.

11 Rule 4.01(1) of the *Rules of Professional Conduct* require that "a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect." The commentary adds:

> The lawyer has a duty to the client to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, which the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing where justice can be done. Maintaining dignity, decorum, and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

12 Rule 6.03 states that "a lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice". The commentary adds:

> The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their function properly.
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> Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward other legal practitioners or the parties. The presence of personal animosity between legal practitioners involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.
>
> A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice, or charges of other legal practitioners, but should be prepared, when requested, to advise and represent a client in a complaint regarding another legal practitioner.

13 Mr. Forget provided extensive submissions and provided the following examples as to why he believes a mistrial is the only remedy available to the court. I agree with him. The principles as set out by the Court of Appeal and the Rules of Professional Conduct have been violated. The trial was an embarrassment to the judicial process. In view of the seriousness of these allegations I am going to set out these examples at length (These were provided by Mr. Forget and checked with my notes. Transcripts were not available). Some reference to the first mistrial is required in order to put the examples in context:

1) Following Mr. Neinstein's opening in the first trial (which also ended in a mistrial), Mr. Forget indicated that he had 38 problems with Mr. Neins-

tein's opening. Mr. Neinstein responded with a comment paraphrased by me 'I knew that would happen ... this was Mr. Forget's game plan'. After Mr. Forget provided his Bill of Costs, Mr. Neinstein said something like Mr. Forget was a man without a moral compass and that to seek costs in this situation exhibited unmitigated gall. Mr. Neinstein also stated that he seriously doubted the trial could proceed because the court declined to recuse itself after bias was suggested. Mr. Neinstein also commented that Mr. Forget "speaks with a forked tongue".

2) After the first mistrial the parties attended to discuss scheduling (Mr. Neinstein intended to call about a dozen expert witnesses). In response to Mr. Forget's comment that he would not consent to this number of experts, Mr. Neinstein stated that there was no right to limit his number of experts and commented that Mr. Forget did not control the court and that Mr. Forget was turning the case into a circus.
3) After the opening at the second trial, the jury was excused and Mr. Neinstein excitedly commented that someone had "gotten to" his first witness (Mr. Marshall) who had done a total about face, but that he was not surprised. Improper conduct by Mr. Forget with respect to Mr. Marshall was suggested.
4) While Mr. Marshall was testifying in the *voir dire* held to determine if he could be declared an adverse witness, there was a comment by Mr. Neinstein that Mr. Marshall was making eye contact with Mr. Forget. When raised I confirmed that Mr. Forget, at that particular moment, had in fact been looking towards co-defence counsel, Mr. Zochodne.
5) Mr. Neinstein commented during the *voir dire* that he was shocked that his friends did not want to get to the truth of this matter.
6) On October 30, 2009 Mr. Neinstein again submitted that this was not a proper case for the jury. He raised the issue of "video doctoring" and stated that he was not surprised that Mr. Forget would engage in such behaviour.
7) On November 2, 2009 I provided an article to counsel published in the Sunday Toronto Star. I had been informed by the police situated at the information desk at the main floor of the court house about a yelling match between counsel outside the courthouse. I was also concerned about this serious aggressive allegation that the defence had tampered with the surveillance and had "gotten to" Mr. Marshall. After I commented about civility, Mr. Neinstein stated that he had never been in a situation wherein opposing counsel had brought so many motions, (I note that we were two weeks post pretrial motions; which only took about two days).
8) During the plaintiff's examination in-chief Mr. Neinstein attempted to elicit hearsay evidence about Mr. Carlton's experts. There was an objection raised and submissions made in the absence of the jury. After ruling that this was improper and the jury returned, this was again attempted by Mr. Neinstein. The jury was again excused. During submissions Mr. Neinstein asked if the court took direction from Mr. Forget.
9) Upon continuing Mr. Carleton again made reference to his experts being good doctors. Mr. Neinstein, in the presence of the jury, indicated to his

client that he shouldn't do this because Mr. Forget would object. (This comment was initiated by Mr. Neinstein and without the court's involvement).

10) On November 4, 2009 the plaintiff gave a long-winded answer about his ex-wife. After objection and upon hearing submissions I indicated that Mr. Carleton would be given some latitude because of his head injury. I told the jury this. At this point I had not seen the video surveillance, which I subsequently saw which paints the plaintiff as somewhat of a different person than that testifying at trial. At this point there had also not been any expert evidence about the extent of Mr. Carleton's head injury. I also commented to the jury that Mr. Carleton would be allowed some latitude before hearing expert evidence on this point.

11) Mr. Neinstein indicated that he wanted to see the video surveillance and wanted to know which ones were being played. Again, he alluded to tampering. The court indicated that for purpose of impeachment, the defence was not in fact required to provide the videos and that the defence only needed to satisfy the court that there was an inconsistency or inconsistencies.

12) During cross-examination Mr. Neinstein, in front of the jury, repeatedly said that his client was brain damaged. He made comments such as that he knows his "learned friend was attempting to be fair" but suggested that Mr. Forget should be referring to other documents in cross-examination.

13) Mr. Forget properly put passages from the plaintiff's sister's transcript to Mr. Carleton. Mr. Neinstein objected and submitted that the entire transcript had to be put to the witness. (This happened repeatedly) I was clear that Mr. Forget could put whatever proper/admissible document that he chose to Mr. Carleton and that any other admissible passages of documents could be dealt with by Mr. Neinstein in re-examination. I indicated that I would give him latitude. Mr. Neinstein suggested that he had never heard of such a ruling but then said that he would be quiet and go with the ruling of the court. He said that Mr. Forget will bear the price of misleading. I had already indicated that what Mr. Forget was doing was quite proper.

14) Despite making that ruling and in the presence of the jury, Mr. Neinstein almost immediately again stated that what Mr. Forget was doing was unfair, but added that he would deal with it in re-examination.

15) Mr. Neinstein continually commented that Mr. Forget was cutting off his witness. After Mr. Neinstein said this Mr. Carleton told Mr. Forget aggressively to stop cutting him off. Mr. Carleton said things to Mr. Forget such as "what are you trying to do with my head", "why are you making a joke". These comments followed my ruling that Mr. Forget's conduct was appropriate and that his questions were proper.

16) Mr. Carleton again said that Mr. Forget was "a joke." He told Mr. Forget to stop laughing and indicated that he would not save him and would let him drown. When he said this plaintiff's counsel were laughing. The court again told Mr. Carleton that what Mr. Forget was doing was proper.

17) Mr. Carleton made a comment in cross-examination to Mr. Forget something like "you don't know what I own; they are honest people not like you."
18) There was then a complaint by Mr. Neinstein that Mr. Forget on the overhead in front of the jury was highlighting documents. I indicated that he was doing nothing wrong.
19) There was then an exchange over this issue in the absence of the jury. I confirmed that Mr. Forget was doing nothing wrong. I indicated to the jury on their return that Mr. Forget was doing nothing wrong.
20) On November 5, 2009, Mr. Carleton told us that morning that he was having a really bad day and wasn't sure how long he would last. Mr. Neinstein continually indicated that Mr. Forget (despite my earlier ruling), needed to put other documents to the witness, in front of the jury. This continued despite the fact that I had indicated both in the presence and absence of the jury that what Mr. Forget was doing was appropriate, and that Mr. Neinstein would be given latitude in re-examination.
21) Mr. Carleton said he was ill. The jury was excused. An early lunch was called. Mr. Carleton was removed from the court house in an ambulance and taken to the hospital. Mr. Neinstein again stated that we needed to get rid of the jury. I indicated that the case was not too complex for the jury but that if he wanted to bring such a motion, he should serve materials. Medical information confirmed that test results were required before Mr. Carleton's doctor would recommend he continue to testify.
22) When we returned on November 9, 2009 despite the earlier ruling, Mr. Neinstein insisted that Mr. Carleton be shown other documents.
23) After the break I was advised that Mr. Neinstein had called Mr. Forget "a prick." Mr. Carleton was very upset and believed that Mr. Forget was laughing at him. Mr. Neinstein acknowledged such an exchange took place, but indicated that it was a rather heated exchange between all of them. I noted that I found the explanation to be satisfactory. I believe I suggested that everyone calm down.
24) I was also advised at that time as to what had happened the week prior, (when I had been told by the police about the shouting match). I was told that Mr. Davis had been approached by Mr. Neinstein outside the courthouse and that there was some exchange between them. Mr. Forget ran out of the court house to tell Mr. Neinstein to not speak to his client and that is when the shouting occurred. Mr. Neinstein's position as to the exchange is on the record. He denies that he talked to Mr. Davis about the case but rather said it was just a casual conversation while standing outside. I am not in the position to make a finding as to what happened, nor do I need to. With the jury present there was an exchange between the plaintiff and Mr. Forget during which Mr. Carleton said something like when people leave you they leave you for good. The jury was sent out. Mr. Forget indicated that Mr. Carleton had given him the finger when he was in the stand and that he had earlier called him an asshole. I could not see the placement of

the hand and I did not hear the exchange. I told Mr. Carlton to refrain from inappropriate comments.

25) On November 10, 2009 Mr. Neinstein again suggested that a further document had to be put to his client (despite my ruling which had been repeated many times). Mr. Carleton said to Mr. Forget something like "you are aggravating me", my brain will go off, I need more time."

26) After questioning Mr. Carleton about his sister's role in getting a contract for his business, there was an objection and the jury was sent out. Mr. Neinstein suggested that Mr. Forget had suggested fraud, collusion, and corruption regarding the plaintiff's sister, Judy Avery. Mr. Forget responded, to which I agreed, that he did not use those terms. I indicated that I did not take any of Mr. Forget's questions to be in the form of those allegations. I accepted that Mr. Forget was attempting to suggest to the plaintiff that he needed his sister to get his business contract.

27) While Mr. Forget was putting photos to Mr. Carleton, Mr. Neinstein kept asking for the date of the photograph (which Mr. Carleton did not ask for.) Mr. Neinstein said in the presence of the jury that it was unfair to use a photo taken after the accident. I told Mr. Forget that he could use whatever photograph he wanted and indicated to Mr. Carleton that he could comment on the photograph however he wanted, including telling us whether it reflected the day of the accident. Mr. Neinstein said in front of the jury several times that it was not fair to use these photos even after I had ruled that Mr. Forget could use the photos.

28) The jury was sent out. Again I confirmed that Mr. Forget could use the photos he wanted. I indicated to Mr. Carleton that Mr. Forget was not trying to trick him and that he could answer the questions about the photographs. I told him he could testify as to any differences between what the photos showed and how he remembered the scene on the day of the accident.

29) During cross-examination, when Mr. Carleton was not being responsive, the jury was sent out and I told him that he was not being responsive. Mr. Neinstein submitted that it was Mr. Forget's fault. I instructed Mr. Carleton to really listen and to answer the question put to him. When the jury came back in Mr. Carleton stated that he was only operating "half-assed". I confirmed that we would stop in 10 minutes. Mr. Carleton accused Mr. Forget of being a liar.

30) On November 12, 2009 Mr. Neinstein objected to the pace of the questions (not Mr. Carleton.) I had already told Mr. Carleton to let us know if Mr. Forget was going too fast.

31) Mr. Carleton's examination for discovery evidence was again put to him with Mr. Neinstein commenting that other portions needed to be put to him. I again reminded Mr. Neinstein that Mr. Forget was not obliged to put every passage to the witness and that he could deal with it in re-examination. The jury was sent out and I again indicated that what Mr. Forget was doing was appropriate.

32) When the jury returned I told them that Mr. Forget was following the proper procedure and that Mr. Neinstein would be entitled to re-examine using the transcript.
33) Mr. Carleton called Mr. Forget a liar again, and the jury was sent out. I told Mr. Carleton to listen to the question and answer it even if he did not like it. I told him that he was not to accuse Mr. Forget of being a liar.
34) In cross-examination Mr. Carleton said to Mr. Forget something like, "You don't know anything about construction. You will try and mix things around. You are an idiot. Kick me out right now." He indicated that he was going to be sick.
35) After a break, Mr. Carleton indicated while looking at a photo of the roof-top that there was blood on the patio stone. Mr. Neinstein said, in a low voice in the presence of the jury something like "it looks like blood to me." I indicated after the jury was sent out that Mr. Neinstein was not to make such comments in front of the jury.
36) While being cross-examined on hospital records, Mr. Neinstein again said several times that he was sure that his learned friend had forgotten other records. With the jury out I confirmed that what Mr. Forget was doing was appropriate and again told Mr. Neinstein that he could put the medical records to his witness in re-examination. I confirmed my belief that Mr. Neinstein had not thoroughly canvassed the medical records with Mr. Carleton as they were made exhibits on consent and also repeated that he would have latitude in terms of re-examination.
37) On November 13, 2009, Mr. Forget indicated on the record that Mr. Carleton had just given him the finger to which Mr. Carleton responded that he was scratching his face. Mr. Carleton suggested that Mr. Forget had a complex. On hearing this Mr. Neinstein laughed. Mr. Forget asked for a caution. I confirmed to Mr. Carleton that Mr. Forget was doing his job and that he should not be doing improper things if he was. I could not see Mr. Carleton's right hand from where I was sitting.
38) Despite making and confirming my ruling that Mr. Forget was able to decide what records to put to the plaintiff, and in front of the jury, Mr. Neinstein stated that Mr. Forget should read the next line from the records. Mr. Carleton again indicated that Mr. Forget was a joke. Mr. Neinstein's response was that his client was a brain injured person. (No evidence has been led on this point regarding a brain injury other than Mr. Carleton's comments).
39) On the issue of the plaintiff's allegation of losing teeth in the accident, a medical document was put to him confirming that he had no lacerations in the mouth area. Mr. Neinstein stated in front of the jury that the teeth had been knocked out and that records would show that (he did not make an objection and seek a ruling he just blurted that out).
40) On November 16, 2009, in Mr. Carleton's first 10 minutes of cross-examination, he stated that he could not proceed. In the absence of the jury he told the court that he could not think because he had hit a deer with his car that weekend. The jury was excused. His brother-in-law, who was in

court with him, confirmed Mr. Carleton was going to see his doctor. I asked his brother-in-law to have the doctor provide a report and to include recommendations as to what he could do to Mr. Carleton to finish his testimony. (We never received any recommendations).

41) As I was becoming concerned about the "down time", I asked to be provided with the video surveillance so that we could proceed with Mr. Neinstein's motion to prevent it from being used for impeachment purposes. I obviously had to watch the surveillance before I could determine if there were inconsistencies. Mr. Neinstein as well was provided with the surveillance.

42) Mr. Carleton's doctor reported that he was unfit to testify until certain test results were received. Mr. Neinstein commented that the video surveillance was highly inappropriate and stated that it would "shock the conscience of the court". He wanted to cross-examine the maker of the videos. He submitted that I should not have watched the videos. (I indicated that I had watched the earliest and latest surveillance but had not reached the surveillance taken in between.)

43) On November 25, 2009, while Mr. Forget was cross-examining on the medical records, Mr. Neinstein again submitted in the presence of the jury that other records should be put to the witness and stated that he knew Mr. Forget wanted to be fair. This was despite that the ruling had been repeatedly made. Mr. Neinstein said in front of the jury that Mr. Forget was hiding something. In the absence of the jury I indicated that this comment was inappropriate and reminded him that I had made the ruling. It was apparent that I had become frustrated with Mr. Neinstein. I agreed that Mr. Carleton should leave the courtroom despite being a party while we discussed this point because we had reached a main impeachment issue. Mr. Neinstein commented that the court was being unfair and that Mr. Forget was being unfair. I confirmed that I had already made the ruling which I had repeated it a dozen times. Mr. Neinstein invited me to tell him to not make any further objections, which I declined to do.

44) In front of the jury Mr. Neinstein objected that Mr. Forget was highlighting a document while putting it to Mr. Carleton. I advised Mr. Forget to keep doing what he was doing.

45) On November 26, 2009 Mr. Neinstein interrupted his witness and told Mr. Forget that Mr. Carleton should be allowed to answer the question. Mr. Carleton said that Mr. Forget was being very ignorant when Mr. Forget suggested to Mr. Carleton that his experts were being paid, in the presence of the jury, Mr. Neinstein stated something like "is there anything wrong with experts being paid." I confirmed in the presence of the jury that there was nothing improper about Mr. Forget's line of questioning and told him to keep going.

46) While being cross-examined again about his injured teeth, Mr. Neinstein again complained in front of the jury that further documents should be put to Mr. Carleton. I again confirmed that he could deal with this in re-examination. Mr. Neinstein, in the absence of the jury, asked the court who

was running the court. Mr. Neinstein asked the court as to whether I was saying that it was okay for Mr. Forget to elicit misleading evidence. I indicated that Mr. Forget was not misleading the court and repeated that he was not obligated to put every record to Mr. Carleton.

47) At that point Mr. Forget indicated that he would be moving for a mistrial if Mr. Neinstein objected again (to the same thing) and that if so, he would be seeking significant costs. I said something like "fair enough" following which Mr. Neinstein again asked who was running the courtroom. I then told everyone to stop talking and stated that it was not inappropriate for Mr. Forget to put Mr. Neinstein on notice that he would be moving for a mistrial.

48) The issue of Mr. Carleton's return to work was being canvassed with him. Mr. Carleton said to Mr. Forget, "you are a joke. You have no idea what the real world was like." I told Mr. Carleton that he should not make such comments about Mr. Forget and reminded him that Mr. Forget was doing nothing wrong. I again told Mr. Carleton to not call Mr. Forget a liar.

49) In the absence of the jury, there was a discussion about the video surveillance. Again it was described by Mr. Neinstein as being shocking. He said something like "Mr. Forget thinks he will pull a fast one on the court."

50) On November 27, 2009 while a record was being put to the witness, again, Mr. Neinstein stated that Mr. Forget needed to put something else to Mr. Carleton. In front of the jury I stated that Mr. Neinstein should refrain from making the same objection. Mr. Neinstein apologized.

51) After the jury was excused, Mr. Forget indicated that he now wanted to play the surveillance. Ms. Koumarelas was not present (she had had a death in the family and was understandably absent). Mr. Neinstein was not prepared to argue the point as Ms. Koumarelas had researched the issue. I agreed to wait for Ms. Koumarelas. I was then told that on Thursday, in front of the jury, Mr. Neinstein had placed a large board containing a large photograph at the end of his table, directly in front of the jury. Mr. Forget had noticed it on Thursday and had forgotten to raise it with the court on Friday morning. The photo was not helpful to the defence. Mr. Neinstein had apparently earlier put this photo in view of the jury. Mr. Forget asked Mr. Neinstein to take it away and Mr. Neinstein told him to not tell him what to do. (He did remove it apparently) I looked at the photo in issue on the large board and it certainly was not helpful to the defence on the liability issue.

52) On Friday I indicated that I wanted the particulars of the alleged video tampering produced by 5:00 p.m. that day and that a fine tuning of the details was to be produced when Ms. Koumarelas became available. Nothing was provided on Friday. Brief information was provided on the Sunday.

53) Counsel came to court with large boards containing examples of information that they said represented video tampering. They had not given any prior notice of these details. The main issue behind the allegation of the tampering was with the clock/timer on the machine. Because he was not told of the issue Mr. Forget was not in a position to have his investigator

present to explain the problem with the clock/timer. (The allegation with respect to the surveillance revolves around the clock and the recorded times).

54) On November 27, 2009, Mr. Neinstein indicated that he would be unavailable on Tuesday of the following week. He was in the Court of Appeal. Subsequently he advised that the date was Monday. They advised that they were content to proceed on the Tuesday but in the meantime I had agreed to continue on another unrelated matter on the Tuesday. We therefore ended up with two more "down days." I accepted that this mix up was done inadvertently.

14 These are just some of the examples. There were regular problems every day of the trial. We never completed the plaintiff's cross-examination. The video surveillance was never put to him as the application for the mistrial preceded that exercise.

15 During this trial I witnessed the following things occurring:

1) Both Mr. Carleton and Mr. Neinstein made repeated personal attacks against Mr. Forget, some in the presence of the jury.
2) Mr. Neinstein accused Mr. Forget of being unfair with the use of documents during cross-examination some 13 times in the presence of the jury and some 33 times in front of me, most taking place after I had made the formal ruling. (Mr. Forget provided the numbers which he had cross-referenced with Ms. Hockin's and Mr. Zochodne's notes.)
3) Mr. Carleton accused Mr. Forget of being a liar, described him as a joke and stated things such as that he would let him drown and that Mr. Forget did not know anything. This conduct continued despite warnings from me that sanctions would be sought in the event he continued with such totally inappropriate comments.
4) Mr. Neinstein made repeated allegations of dishonesty against Mr. Forget, including accusations of misleading the jury; tampering with evidence - the videos; allegations of collusion and fraud regarding the plaintiff's sister and of having inappropriate communications with a witness.
5) Mr. Neinstein compromised the fair presentation of the evidence. He placed an oversized photo mounted on a board (which was not an exhibit) which was unfavourable to the Defendants, in clear view of the jury, while Mr. Carleton was under cross-examination. It is impossible to know what effect this photograph had on the jury who were listening to Mr. Carleton's cross-examination at the time.

16 The cumulative effect of personal attacks against Mr. Forget, some made in the presence of the jury, and the allegations of impropriety and dishonesty on the part of Mr. Forget in terms of witness and video tampering have compromised the defendants' right to a fair trial and have effected the administration of justice.

17 The placing of the large photo in front of the jury during Mr. Carlton's cross-examination compromised the defendants' right to a fair trial and has effected the administration of justice. That

action alone merited a mistrial. Rules of conduct have been violated and the integrity of the judicial system has been compromised.

18 The prejudice that has been caused could not be cured by an instruction to the jury. The court had no option but to declare a mistrial.

J.E. FERGUSON J.

* * * * *

Schedule A

Superior Court Of Justice

Ontario

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Date:Nov 12, 09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
12:44	Witness resumes stand
	Jury enters – cross examination continues
13:02	Jury excused – Witness excused
	Lunch recess
14:21	Resumed
	Mr Carleton resumes stand
	Jury enters – Cross examination continues
15:06	Jury excused for the day
	Witness excused
	Matter adjourned until November 13, 2009 @ 9:30am

Superior Court
Of Justice
Ontario

MINUTE BOOK

Date:Nov. 13/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff :Carleton, Randy et al - Counsel: G. Neinstein/ S. Koumarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes -Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper
9:36	Court commences
	Discussions held re: scheduling
	Mr. Carleton resumes stand – reminded still under oath
9:40	Jury enters – Cross examination continues by Mr. Forget
10:12	Nr. Neinstein has an objection
	Jury excused
	Mr. Neinstein submissions re: Questioning
10:16	Mr. Forget submissions
10:18	Reply submissions
	H/H advises Mr. Neinstein any issues with cross examination can be clarified during re-examination
10:28	Jury enters – Cross examination continues
10:55	Jury excused – Witness excused
	Recess
11:20	Resumed – Mr. Carleton resumes stand
11:22	Jury in – Cross examination continues
12:00	Jury excused – Witness excused
	Brief recess
12:16	Resumed
	Mr. Carleton resumes stand
	Jury enters – cross continues
12:56	Jury excused – witness excused
12:58	Lunch
14:20	Resumed – Discussions re: Mr. Carleton to ill to continue today
	Jury excused for day - Discussions
	Matter adjourned to November 16, 2009 @ 9:30 am for continuation

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date:Nov. 16/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff :Carleton, Randy et al - Counsel: G. Neinstein/ S. Koumarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes -Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper
9:40	Court commences
	Mr. Carleton resumes stand – reminded still under oath
	Jury enters – cross examination continues by Mr. Forget
10:00	Mr. Carleton requests a short recess
	Jury excused
10:03	Recess
10:32	Resumed
	Discussions re: Mr. Carleton is ill and cannot testify today
	Mr. Carleton is excused
	Discussions re: scheduling of motions to be argued
10:40	Jury excused
	Discussions continue
10:47	Matter adjourned to November 18, 2009 @ 9:30am for continuation of trial

Superior Court
Of Justice
Ontario

MINUTE BOOK

Date:Nov. 18/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff :Carleton, Randy et al - Counsel: G. Neinstein/ S. Koumarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes -Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper
10:06	Court commences
	Discussions re: scheduling / motions to be argued today
	Motion: Leave to call more than than 3 expert witnesses
	Mr. Neinstein's submissions
	Mr. Forget's submissions
	Reply submissions
Ruling	**Leave is granted to call more than 3 expert witnesses subject to some fine tuning as the trial progresses**
	Discussions re: surveillance videos
10:46	Recess
10:58	Resumed
	Motion: Adverse Witness
	Ms. Koumarelas submissions
11:10	Mr. Zochodne submissions
11:20	Mr. Forget's submissions
11:45	Reply submissions
11:58	H/H will reserve Judgment on the motion
11:58	Mr. Forget's submissions re: Mr. Carleton's actions and comments during course of the trial
12:35	H/H addresses counsel
12:49	Matter adjourned to Wednesday November 25, 2009

Superior Court
Of Justice
Ontario

MINUTE BOOK

Date:Nov. 26/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff :Carleton, Randy et al - Counsel: G. Neinstein/ S. Koumarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper
9:50	Court commences
	Discussions re: scheduling
	Mr. Carleton resumes stand – reminded still under oath
	Jury enters
	Cross examination continues by Mr. Forget
10:35	Mr. Neinstein has an objection
	Jury excused
	Mr. Neinstein's submissions re: questioning
	Mr. Forget's submissions
	H/H advises Mr. Neinstein, as per previous ruling, he can deal with the issue during re-examination
10:42	Jury enters – H/H addresses the jury re: procedure for cross examination
	Cross examination continues
11:01	Mr. Neinstein has an objection
	Jury excused
	Mr. Neinstein submission re: questioning
	Mr. Forget advises he will be moving for a mistrial if Mr. Neinstein keeps interrupting during cross examination
	H/H advises Mr. Neinstein she has ruled already on the Cross examination and Mr. Forget is not during anything improper
11:05	Recess
11:25	Resumed
	Mr. Carleton resumes stand
	Jury enters – Cross examination continues
12:34	Jury excused – Witness excused
	Discussions
12:35	Lunch recess

Superior Court
Of Justice
Ontario

Date:Nov. 26/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
13:40	Resumed
	Mr. Carleton resumes stand
	Jury enters – Cross examination continues
14:45	Jury excused – Witness excused
	Discussions held
	Matter adjourned to November 27, 2009 @ 11:30am

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date:Nov. 27/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff :Carleton, Randy et al - Counsel: G. Neinstein/ Mr. Michaelson
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper
11:35	Court commences
	Mr. Carleton resumes stand
	Jury enters – cross examination continues by Mr. Forget
12:28	Jury excused – Witness excused
	Discussions held re: scheduling
12:38	Recess
13:02	Resumed
	Discussions held
13:08	Mr. Carleton resumes stand
	Jury enters – Cross examination continues
14:22	Jury excused – Witness excused
	Discussions
14:35	Matter adjourned to Monday November 30, 2009 @ 9:30am

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Of Justice
Ontario

MINUTE BOOK

Date:Nov. 30/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff: Carleton, Randy et al - Counsel:S.Kourmarelas /Mr. Michaelson
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper - Voir Dire
10:20	Court commences
	Mr. Forget advises the court he is requesting a mistrial
	Mr. Forget's submissions re: reasons for mistrial
10:34	Ms. Kourmarelas submissions
	Motion for mistrial will be held Wednesday morning
	Voir Dire commences
	H/H addresses counsel re: surveillance voir dire
10:43	Mr. Forget's submissions re: surveillance videos
11:49	Ms. Kourmarelas submissions
11:51	Recess
12:18	Resumed
	Discussions re: H/H advises counsel she will unseal the courtroom for a criminal matter tomorrow
	Mr. Michaelson submissions on the law pertaining to the voir dire
12:25	Ms. Kourmarelas submission on voir dire
13:24	Mr. Michaelson submissions on the law
13:35	Discussions
13:40	Recess
14:16	Resumed
	Mr. Forget's reply submissions
14:32	Mr. Zochodne's submissions
14:35	Mr. Forget's further reply submissions
14:41	Discussions
14:50	Matter adjourned until December 2, 2009 @ 1:00 pm

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date:Dec. 2/09 Rm # 9	**BEFORE THE HONOURABLE JUSTICE SALMERS**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff: Carleton, Randy et al - Counsel: G. Neinstein
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Trial Proper - Mid Trial Conference
10:03	Court commences
	H/H addresses counsel re: mid trial conference being held today and advises he will meet with them in chambers at this time
10:10	Court held down awaiting mid trial conference in chambers
13:15	Lunch recess
14:15	Resumed – Mid trial conference continues in chambers
15:05	Count resumes
	H/H addresses counsel re: mid trial conference held today
15:15	Matter adjourned to December 3, 2009 @ 9:30am for motion

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date: Dec. 3/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff: Carleton, Randy et al - Counsel: G. Neinstein/S. Kourmarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Motion for Mistrial
10:09	Court commences
	Discussions
10:12	Brief recess
10:28	Resumed
	Mr. Forget's submissions on Mistrial motion
10:42	Brief recess
10:45	Resumed
	Mr. Forget continues submissions
11:15	Recess
11:41	Resumed
	Mr. Forget continues submissions
13:05	Lunch
14:18	Resumed
	Mr. Forget continues submissions
15:00	Brief recess
15:12	Resumed
	Mr. Forget continues submissions
16:20	Matter adjourned to December 4, 2009 @ 9:30a.m. for continuation of motion

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date: Dec. 4/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff: Carleton, Randy et al - Counsel: G. Neinstein/S. Kourmarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Motion for Mistrial
9:40	Court commences
	Mr. Zochodne submissions on motion for mistrial
9:56	Ms. Kourmarelas submissions
10:23	Recess
11:15	Resumed
	Ms. Kourmarelas submissions continue
12:18	Recess
12:35	Resumed
	Ms. Kouramarelas submissions continue
13:00	Lunch recess
14:04	Resumed
	Ms. Kourmarelas submissions continue
14:25	Mr. Forget reply submissions
15:08	Matter adjourned until Tuesday December 8, 2009 @9:30am for Judgment on mistrial and continuation of trial

Superior Court
Of Justice

Ontario

MINUTE BOOK

Date: Dec. 8/09 Rm # 9	**BEFORE THE HONOURABLE MADAM JUSTICE FERGUSON**
File # CV-03/23745	**CARLETON, Randy et al VS. DAVIS, Robert et al**
P. Vennor	Plaintiff: Carleton, Randy et al - Counsel: G. Neinstein/S. Kourmarelas
C. Strumos	Defendant: Davis, Robert - Counsel: M. Forget / M. Hockin
	Defendant: Remax Country Lakes - Counsel: Robert Zochodne
	Defendant: Burney, Ian - Counsel: Robert Zochodne
	Judgment on Motion
9:47	Court commences
	H/H advises she has granted Mr. Forgets motion
	MISTRIAL DECLARED
	Discussions re: scheduling and costs
9:51	Brief recess awaiting Jury members in order for H/H to excuse them
10:10	Resumed
	Jury enters
10:11	H/H discharges jury
	Discussions
10:16	Matter complete

cp/e/qllxr/qljxr/qljyw/qlaxw