

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: IAS PART 32

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MARIE F. KAVANAUGHT,

MEMORANDUM DECISION

Plaintiff,

Index No. 19639/2007

-- against --

LESLEY SIMEON,

Defendant.

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The following papers were read on this motion: The Order to Show Cause dated May 19, 2008, the transcripts of hearings on the order to show cause of October 6, 2008, Oct. 16, 2008, and April 17, 2009, and all exhibits entered into evidence during the three-day hearing, including the house appraisals; and post-hearing memoranda and reply memoranda from counsel.

CHARLES J. MARKEY, J.:

The principal issue in this motion, by order to show cause, seeking to hold the defendant-husband in contempt for his alleged failure to cooperate in the equitable division and distribution of the marital property, is the date of valuation of the marital residence and the taxi medallion.

This Court, having considered all the arguments, read the memoranda of law, and having done its own, independent legal research is convinced that, in determining equitable distribution under N.Y. Domestic Relations Law section 236[B], the earliest date of valuation, as contended by defense counsel, is proper. *See, Kane v. Kane*, 163 AD2d 568 [2d Dept. 1990]; *see also, Mesholam v. Mesholam*, 11 NY3d 24 [2008].

Concerning the taxi medallion, counsel for both parties introduced into evidence charts from the New York City Taxi and Limousine Commission (“TLC”) reflecting the average value of a taxi medallion for various months during 2008 and 2009. These charts may be readily obtained by checking the web site of www.nyc.gov/taxi and then clicking “Industry Information.” The web site also shows the values of medallions during 2007. The Court, in the case at bar, values the taxi medallion at \$429,000, as contended by defendant-husband, representing its value in January 2008, the date closest to the date of the divorce. Plaintiff-wife had urged a valuation of \$559,000, the value as of January, 2009, closest to the hearings on equitable distribution. The Court’s review of the TLC tables reveal that the value of taxi medallions continually increases significantly over time, regardless of whether the economy is sluggish, presumably based on laws of supply-and-demand in the transfer of a limited number of medallions.

Regarding the marital residence, the Court determines that the marital residence’s value is \$350,000, accepting the earlier valuation date of August 21, 2008. The expert witness, Stephen E. Gutleber, Jr., testified that, in January, 2008, the value of the house was also \$350,000, a

significant fact since the undersigned granted the divorce on December 12, 2007.

The plaintiff sought appraisals based on more recent dates of valuation that would have translated into [1] a far higher amount for the taxi medallion, by about \$100,000, and [2] a lower amount for the house, by about \$12,000 because of a downturn in the real estate market caused by a conservative economy and the unwillingness of buyers to make deals. Plaintiff's argument for a later valuation date is premised on the fact that defendant would not agree to equitable distribution absent the present order to show cause. She argues she should not have to suffer a monetary loss if her former husband dragged his feet.

First, plaintiff has not sustained its burden on the point of showing her former husband's contumacious behavior by credible evidence during the hearing. He had represented himself pro se during the divorce, but obtained a lawyer immediately upon being served with the present order to show cause. If he balked at equitable distribution, it was solely as to disagreements with the plaintiff's aforementioned valuations. Second, any charge of contumacious behavior is belied by the fact that, in 2006, when the marriage was already falling apart, he obtained, at his own expense, a bank loan to pay off the remaining mortgage on the marital house in excess of \$50,000. The defendant-husband alone is obligated to pay off the bank loan even though he no longer lives in the marital home. Second, to accept plaintiff's valuation dates would do violence to well-settled law that require the courts to use the earliest dates possible.

As well-summarized by defense counsel's memorandum of law, positing the arithmetic of deductions and offsets, the defendant-husband shall pay to the plaintiff-wife the sum of \$26,587. Defendant-husband shall pay this sum to plaintiff-wife immediately. Expecting and anticipating the defendant-husband's cooperation, the order to show cause seeking a contempt finding is denied, except to the extent of making the aforementioned valuations. Cooperation of paying the aforementioned amount immediately to the plaintiff-wife will obviate the need for further review by the undersigned.

Finally, this Court appreciates the vigorous advocacy of both attorneys, who, while fighting hard for their respective clients, helped ease the acrimony between the dueling litigants, who had been married for over 20 years.

Settle order on notice for initial review by the Matrimonial Clerk in Jamaica.

Hon. Charles J. Markey
Justice, Supreme Court, Queens County

Dated: Long Island City, New York
July 20, 2009

Appearances:

For Plaintiff: Dorothy Atchinson, Esq., 90-25 161st St., Jamaica, New York 11432

For Defendant: Frederica L. Miller, Esq., 299 Broadway, ste. 800, New York, NY 10007