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Date: AUG 12/10

File: FC-07-26235-01

TO: JOHN P. SCHUMAN FAX # 416-449-7071

- This does not appear to be a Newmarket action.**
- Court file number incorrect/not provided.**
- Title of proceeding incorrect.**
- Personal attendance required.**
- Fee required in the amount of \$**
- Cheque not signed/wrong amount/figures and body of cheque differ.**
- Fee not required – cheque returned.**
- Defendant (s) noted in default.**
- Proof of service required/affidavit not sworn.**
- Order/Judgment granted – Please see copy of Judge’s endorsement**
- Notice of Motion required Rule 37.12 (2)**
- Other :**

Melanle Derblidge
Client Service Representative

CITATION: Bott v. Bott. 2010 ONSC 4322
COURT FILE NO.: FC-07-026235-01
DATE: 2010-08-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sandra Carol Mary Bott, Applicant

AND:

John Arthur Rhys Bott, Respondent

BEFORE: McGee J.

COUNSEL: J. P. Schuman , Counsel for the Applicant

Respondent – In person

HEARD: August 3, 2010

ENDORSEMENT

- [1] The respondent father issued a Motion to Change on May 21, 2010 with a First Appearance on July 13. On that date the clerk endorsed that the applicant was to serve and file a Response to the Motion to Change, and then set the matter to a Dispute Resolution Officer on August 13, 2010 at 9:00 a.m.
- [2] Counsel for the applicant has filed a 14B Motion seeking an order to, *et alia*, stay the Motion until such time as the respondent has demonstrated to the court that he has made reasonable efforts to comply with the existing Court Order.
- [3] The 14B Motion was served on June 29, 2010. No response has been filed by the respondent. He has not filed a 2009 Income Tax Return.
- [4] The parties entered into an Agreement to Arbitrate in 2008. A Final Award was made on January 12, 2009, with an Award as to costs which followed on February 26, 2009. Those awards were converted into orders of this court on September 16, 2009 by Justice Nelson.
- [5] Mr. Bott brought a Motion to Change in Oshawa on December 16, 2009. It was dismissed on its merits by Justice Timms and in his endorsement he directed that any further Motions be brought in Newmarket. Nonetheless, Mr. Bott issued a Motion to Change on March 30, 2010, from the Oshawa Court, which Motion was received by mail to the applicant's solicitors on April 15.

- [6] Justice Gunsolus endorsed that Mr. Bott did not have jurisdiction to bring his Motion to Change in Oshawa and dismissed his proceeding with costs. Those costs remain outstanding.
- [7] Mr. Bott then issued this Motion to Change, which he did not serve until June 4, 2010. I have reviewed his materials, which take the same form as his previous efforts. Mr. Bott takes issue with the Arbitration Award and seeks to terminate child support for their two children, effective prior to the date of the Award. He has paid no child support in satisfaction of that Award.
- [8] The applicant states that there has been no material change in circumstances. Although I cannot make such a finding at this stage, I note that the respondent's materials do not address this requirement – rather he continues his objection to the original award, laying unwarranted blame at the arbitrator and his former counsel.
- [9] Rule 14(23) is quite clear that the failure to obey a Court Order, such as the payment of child support, special expenses, or costs; disentitles a party from seeking a further order of the court.

FAILURE TO OBEY ORDER MADE ON MOTION

- [10] (23) A party who does not obey an order that was made on motion is not entitled to any further order from the court unless the court orders that this subrule does not apply, and the court may on motion, in addition to any other remedy allowed under these rules,
- (a) dismiss the party's case or strike out the party's answer or any other document filed by the party;
 - (b) postpone the trial or any other step in the case;
 - (c) make any other order that is appropriate, including an order for costs. O. Reg. 114/99, r. 14 (23); O. Reg. 89/04, s. 6 (7).
- [11] Providing that there are no outstanding costs awards, presenting the court with evidence which raises a reasonable prospect that the court may find that there has been a material change in circumstances since the granting of an Award/Order is a sufficient basis upon which a Court can choose not to exercise its authority under Rule 14(23).
- [12] No such prospect can be found in the respondent's materials. He has neither set out the material change upon which he relies, nor fully evidenced his current income. He has taken no steps, or made any efforts to comply with the Arbitration Award, now converted to an order of this court. Most importantly, he has chosen to ignore a prior costs award made by this court.
- [13] Order to go as follows:
1. The DRO date of August 13, 2010 is vacated.

2. The Motion to Change is stayed until such time as the Respondent has paid all costs awards to date, inclusive of those of the arbitrator and this court; and he has filed his 2009 Income Tax Return.
3. The respondent is required to seek the leave of the court prior to bringing any further Motions to Change the order of Justice Nelson dated September 16, 2009.
4. Costs are awarded to the applicant on this motion in the amount of \$850.
5. All outstanding payments for costs as well as today's amount shall be enforced as child support.
6. Support Deduction Order to issue.



Justice H. McGee

Date: August 3, 2010