

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3

4 DEPARTMENT WE-F HON. DAVID J. COWAN, COMMISSIONER
5

6 MIRI AVRAHAM,)
7)

7 PETITIONER,)
8)

8 VS.)

NO. SD027039
9)

9 NATAN RAHAMIM AVRAHAM,)
10)

10 RESPONDENT.)
11)
12)
13)
14)
15)
16)
17)
18)

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 JUNE 18, 2013
16
17

18 APPEARANCES:

19 FOR PETITIONER:

BRETT A. BERMAN, ESQ.

21 FOR RESPONDENT:

CHARLES M. GREEN, ESQ.
22
23
24
25
26
27
28

COPY

LISA MCLAY, CSR NO. 10765

1 SANTA MONICA, CALIFORNIA; TUESDAY, JUNE 18, 2013

2 A.M. SESSION

3 (APPEARANCES AS HERETOFORE NOTED.)

4
5 THE COURT: NUMBER 10 ON THE FAMILY LAW, AVRAHAM,
6 SD027039.

7 I'LL ASK THE CLERK TO SWEAR IN THE PARTIES.

8 MS. AVRAHAM: I DO.

9 MR. AVRAHAM: I DO.

10 THE CLERK: PLEASE STATE YOUR NAME FOR THE RECORD.

11 MS. AVRAHAM: MIRI AVRAHAM.

12 MR. AVRAHAM: NATAN AVRAHAM.

13 THE COURT: COUNSEL, IF YOU'LL STATE YOUR
14 APPEARANCES.

15 MR. GREEN: CHARLES GREEN FOR RESPONDENT, NATAN
16 AVRAHAM.

17 MR. BERMAN: BRETT BERMAN FOR PETITIONER.

18 THE COURT: GOOD MORNING TO ALL OF YOU. WE'RE
19 HERE ON A FOLLOW-UP FROM THE COURT'S HEARING ON
20 RESPONDENT'S REQUEST TO MODIFY. THE COURT MADE AN ORDER
21 THAT THE FAMILY RESIDENCE ON THE SHENANDOAH PROPERTY BE
22 SOLD. THE COURT RECEIVED THE COMPETING APPRAISALS --
23 COMPETING EVALUATIONS, I SHOULD SAY. PETITIONER'S WAS
24 HIGHER THAN RESPONDENT'S. THE RESPONDENT'S BRIEF ARGUES
25 FOR VARIOUS MODIFICATIONS OF THE JUDGMENT THAT THE COURT
26 DOES NOT THINK ARE WELL FOUNDED. THE COURT MADE AN
27 ORDER AT THE LAST HEARING AND THAT WAS FOR THE PROPERTY
28 TO BE SOLD, PERIOD. I'M NOT ENTERTAINING ANYTHING ELSE

1 TODAY. THE QUESTION THEN IS, WHO SHOULD BUY IT? WE DID
2 CONSIDER WHETHER -- AND THE COURT DID ORDERS THAT EITHER
3 SIDE COULD BUY IT IF THEY COULD COME TO AN AGREEMENT, OR
4 THAT IT BE PURCHASED BY A THIRD PERSON, ASSUMING THAT
5 THAT'S POSSIBLE, WHERE THERE IS THE DEBT AGAINST THE
6 PROPERTY.

7 IT APPEARS THAT THIS PROPERTY, AT LEAST
8 ACCORDING TO PETITIONER'S BROKER, COULD BE SOLD FOR
9 ABOVE THE DEBT AGAINST THE PROPERTY. I'M NOT SURE IF
10 IT'S -- I THINK, BASED ON RESPONDENT'S PEOPLE DOING THE
11 VALUATIONS FOR RESPONDENT, THAT IT'S NOT CLEAR THAT
12 THERE WOULD BE ENOUGH EQUITY TO ALLOW THE PROPERTY TO BE
13 SOLD. I'M NOT TRANSFERRING THE PROPERTY BACK TO
14 RESPONDENT. THE COURT HAS ALREADY MADE A JUDGMENT IN
15 THE AGREEMENT. THE ONLY ISSUE IS GOING TO BE, HOW ARE
16 WE GOING TO DO THE SALE?

17 MR. GREEN: YOUR HONOR, THERE IS -- I FEEL I'VE
18 PICKED UP A FEW MISUNDERSTANDINGS IN THE RECITATION OF
19 FACTS HERE. THE PROPERTY HAS BEEN ORDERED SOLD FOR
20 APPROXIMATELY 24 MONTHS.

21 THE COURT: AGAIN, I REITERATED THAT THE PROPERTY,
22 AGAIN, NEEDED TO BE SOLD BECAUSE THE PETITIONER HAD BEEN
23 LIVING THERE. IT HADN'T BEEN SOLD, APPARENTLY FOR GOOD
24 REASON, BECAUSE IT WASN'T, AT THAT TIME AT LEAST, WORTH
25 ENOUGH TO BE SOLD FOR MORE THAN WAS THE DEBT AGAINST IT.
26 BUT I'M NOT GOING TO TRANSFER THE PROPERTY TO
27 RESPONDENT.

28 MR. GREEN: WELL, THE ISSUE HERE IS IF IT IS SOLD,

1 JUST TO COVER THE COST OF SALE IT WOULD HAVE TO BE IN
2 THE 800 RANGE TO COVER THE COST OF SALE, THE CURRENT
3 ENCUMBRANCES --

4 THE COURT: WHAT ARE THE CURRENT ENCUMBRANCES?

5 MR. GREEN: THERE IS TWO LOANS ON THE PROPERTY.
6 THE ENCUMBRANCES ARE -- DO YOU HAVE THE CURRENT MORTGAGE
7 PAPERS? TOTAL LIABILITIES ON THE PROPERTY ARE 722,437
8 IS THE OUTSTANDING MORTGAGE RIGHT NOW.

9 THE COURT: ARE THERE TWO MORTGAGES?

10 MR. GREEN: YES, THERE ARE TWO MORTGAGES. THEY'RE
11 BOTH UNDER THE WELLS FARGO UMBRELLA, SO WE HAVE ONE
12 STATEMENT.

13 THE COURT: SO 722 IS BOTH OF THEM?

14 MR. GREEN: 722 IS WHAT'S OWED. NOW, WITH BROKERS
15 COMMISSION AND ARREARAGES WE'RE GOING TO BE CLOSE TO
16 EIGHT. NOW, WE HAVE THE SAFFORD (PHONETIC) -- NOW, I
17 WANT TO ALSO POINT OUT THIS MORTGAGE IS IN MR. AVRAHAM'S
18 NAME ALONE, SO PETITIONER HAS NEVER DEMONSTRATED ANY
19 EVIDENCE THAT SHE COULD REFINANCE AND TAKE THE PROPERTY.
20 SO IT HAS TO BE -- WE CAN'T LEAVE HIM ENCUMBERED IN THE
21 PROPERTY INDEFINITELY WHILE SHE LIVES THERE AND DOESN'T
22 PAY THE MORTGAGE. THE COURT DID FIND, I UNDERSTAND AT
23 THE LAST HEARING, SHE HASN'T PAID THE MORTGAGE FOR 30
24 MONTHS.

25 THE COURT: I DON'T THINK I MADE A SPECIFIC
26 FINDING, BUT CERTAINLY THAT WAS THE GIST OF THE
27 EVIDENCE.

28 MR. GREEN: RESPONDENT HAS REPEATEDLY STEPPED IN

1 TO SAVE THE PROPERTY AND PAY THE MORTGAGE. HOWEVER, HE
2 HAS A LETTER --

3 THE COURT: LET'S FOCUS ON WHEN --

4 MR. GREEN: THIS IS THE MOST MATERIAL ISSUE HERE.

5 MR. BERMAN: YOUR HONOR, MAY I OBJECT?

6 THE COURT: NO.

7 GO AHEAD.

8 MR. GREEN: THE MOST MATERIAL ISSUE HERE IS IF THE
9 PROPERTY IS SOLD PURSUANT TO THE ANALYSIS BY RUSSEL
10 SAFFORD, CPA, THERE IS GOING TO BE A CAPITAL GAINS
11 CONSEQUENCE --

12 MR. BERMAN: OBJECTION. THAT'S HEARSAY.

13 MR. GREEN: -- OF 106,000 --

14 MR. BERMAN: YOUR HONOR, I JUST WANT FOR THE
15 RECORD ---

16 THE COURT: SUSTAINED.

17 THE COURT ORDERED THE PROPERTY BE SOLD.
18 AGAIN, LIKE I THE SEVERAL TIMES ALREADY, LET'S FOCUS ON
19 HOW IT'S GOING TO BE SOLD.

20 MR. GREEN: YOUR HONOR.

21 THE COURT: DON'T TRY TO ARGUE. I MADE MY POINT.

22 MR. GREEN: I UNDERSTAND THAT'S HEARSAY. HOWEVER,
23 THERE WILL BE CAPITAL GAINS CONSEQUENCES.

24 THE COURT: I ALREADY MADE THIS JUDGMENT YEARS
25 AGO. I'M NOT CHANGING IT NOW YEARS LATER. SO IF THE
26 CAPITAL GAINS ARGUMENT SHOULD HAVE BEEN PRESENTED IF --
27 MAYBE IT WAS PRESENTED, I DON'T REMEMBER, BUT THE TIME
28 FOR IT TO BE RAISED WAS YEARS AGO, NOT NOW.

1 MR. GREEN: BUT THEY WILL BOTH SHARE THIS CAPITAL
2 GAINS AND THIS WILL BE A DEFICIENCY FOR BOTH OF THEM.

3 THE COURT: THAT'LL BE THEIR PROBLEM. I CAN'T DO
4 ANYTHING ABOUT IT NOW YEARS LATER.

5 LET'S TALK AGAIN ABOUT -- THE FINAL TIME,
6 UNLESS YOU WANT TO COME BACK AT 1:30 -- ABOUT HOW ARE WE
7 GOING TO GET THIS PROPERTY SOLD?

8 MR. GREEN: YOUR HONOR, THAT'S THE QUESTION,
9 BECAUSE IT'S BEEN UNDER THE CONTROL OF PETITIONER TO
10 SELL FOR THE LAST TWO YEARS.

11 THE COURT: MR. BERMAN, IT SEEMS TO ME THAT THE
12 COURT DOES HAVE SOME QUESTION ABOUT WHETHER OR NOT THIS
13 PROPERTY CAN BE SOLD AFTER COST OF SALE AND THE DEBT.
14 BECAUSE YOUR NUMBER MAY BE A LITTLE HIGH, HIGHER THAN
15 ALL OF THE RESPONDENT'S ONES. IT'S PRETTY CLOSE.

16 MR. BERMAN: I THINK THAT THEY BOTH KIND OF MEET
17 IN THE MIDDLE AT 800,000. I THINK THAT'S THE LOW END OF
18 OUR'S AND MAYBE THE HIGH END OF THEIR'S. SO IF THE
19 COURT SAYS, "ALL RIGHT. WELL, IT'S \$800,000, THE FAIR
20 MARKET VALUE." LET'S GET IT BACK ON THE MARKET AND SELL
21 IT. AND WHATEVER THE CONSEQUENCES MAY BE WITH REGARD TO
22 TAX ISSUES, THOSE WILL HAVE TO BE DEALT WITH -- I HAVE
23 SEVERAL ARGUMENTS. I'M NOT GOING TO EVEN GO INTO TO
24 ADDRESS SOME OF THIS -- PLEADINGS ARE LATE. THEY'RE
25 ASKING FOR A LOT OF NEW THINGS. BUT MY CLIENT JUST
26 WANTS TO GET IT SOLD.

27 I DO WANT TO FIX THE RECORD. THERE HAVE
28 BEEN TIMES WHERE SHE HAS NOT PAID THE MORTGAGE BUT

1 THAT'S ONLY BECAUSE RESPONDENT HADN'T PAID THE MORTGAGE.
2 ALSO, I JUST WANT THE COURT TO UNDERSTAND THAT THERE IS
3 A LOAN ON WOOSTER. IT'S RELATED. THIS IS BRIEF, BUT
4 THERE IS A LOAN ON WOOSTER THAT THE RESPONDENT TOOK OUT.
5 HE'S BEEN ORDERED TO PAY BACK THAT LOAN. HE DOESN'T --

6 MR. GREEN: OBJECTION, YOUR HONOR. LET'S STAY
7 WITH WHAT'S RELEVANT HERE TODAY.

8 THE COURT: DON'T INTERRUPT. LET HIM FINISH.

9 MR. BERMAN: THAT'S ONE OF THE ISSUES HERE. SO
10 WHEN THERE TIMES WHETHER PETITIONER DOESN'T PAY THE
11 MORTGAGE, SHE'S PAYING HIS LOAN ON WOOSTER, WHICH IS
12 THOUSANDS OF DOLLARS, AND THAT'S IN THE PLEADINGS. WE
13 ASK THAT THE COURT ORDER IT SOLD. WE SLOMO (PHONETIC)
14 IS THE GENTLEMAN WHO WAS -- SLOMO SIDENFELD (PHONETIC)
15 WAS THE BROKER BEFORE, WE'D ASK WE USE HIM AGAIN. HE
16 KNOWS THE AREA. AND LET HIM TRY TO SELL IT. ONE THING
17 I WOULD ASK --

18 THE COURT: WHAT ABOUT THE OTHER IDEA, SINCE THERE
19 IS NOT MUCH EQUITY IN THIS PROPERTY ANYWAY, WHY DON'T
20 YOU JUST LET RESPONDENT BUY IT FOR THE AMOUNT HE'S GOT
21 STUCK IN THE WOOSTER ESCROW AND A FEW OTHER PLACES?

22 MR. BERMAN: I DON'T EVEN KNOW HOW TO -- I'M NOT
23 SURE EVEN WHAT HE'S PROPOSING.

24 THE COURT: BEST CASE SCENARIO, EVEN UNDER
25 PETITIONER'S VALUATION, HOW MUCH IS SHE GOING TO GET OUT
26 OF THIS THING, 10, 20,000?

27 MR. BERMAN: PERHAPS, YOUR HONOR --

28 THE COURT: THEN TAKE HIS 40 AND YOU'RE DONE.

1 MR. GREEN: THAT WOULD BE AGREEABLE, YOUR HONOR.

2 MR. BERMAN: IT'S NOT AGREEABLE.

3 THE COURT: WHY NOT?

4 MR. BERMAN: BECAUSE SHE WANTS THE HOUSE, TOO.

5 THE COURT: SHE'S SELLING THE HOUSE.

6 MR. BERMAN: THEY'RE BOTH IN THE SAME POSITION.

7 THE COURT: THEN IS -- IF SHE WANTS IT SOLD NOW
8 YOU'RE TELLING ME SHE WANTS TO KEEP IT.

9 MR. BERMAN: SHE DOESN'T WANT TO SELL IT FOR
10 \$40,000.

11 THE COURT: ALL SHE'S GOING TO GET OUT OF IT, EVEN
12 UNDER YOUR VALUATION, IS LESS THAN 40,000.

13 MR. BERMAN: IF WE'RE TALKING ABOUT BUYING THE
14 HOUSE FOR 20 OR \$40,000 THEN, AGAIN, SHE WOULD ENTERTAIN
15 THAT AS WELL.

16 THE COURT: I WANT YOU, TO OVER THE BREAK -- I
17 KNOW YOU WANT TO GET OUT OF HERE BY 1:30, BUT WE'VE HAD
18 A VERY BUSY MORNING AND I THINK THIS CASE HAS CAUSED
19 APPEALS AND COMPLAINTS AND THE LIKE AND I DON'T WANT TO
20 HOLD A HEARING TOO QUICKLY. I WANT TO ADDRESS THE
21 ISSUES. I'D LIKE TO HAVE IT DONE, BELIEVE ME, BY NOON
22 AS WELL, BUT I THINK THE CASE WARRANTS BEING MORE THAN A
23 FIVE-MINUTE HEARING. SO I WANT YOU, OVER THE LUNCH
24 BREAK, TO THINK SERIOUSLY FROM JUST A DOLLARS AND CENTS
25 POINT OF VIEW WHETHER IT MAKES SENSE TO TAKE THE MONEY
26 HE HAS SITTING IN ESCROW AND LET HIM HAVE THE PROPERTY.
27 HOW MUCH MORE IS SHE GOING TO GET FROM THE SALE ANYWAY?
28 IF IT'S JUST ABOUT TIME THERE IS A SHAM AS HE'S ARGUING

1 BY PETITIONER JUST TO BUY TIME BECAUSE SHE KNOWS IT
2 WON'T SELL, THAT'S NOT WELL-TAKEN. SO THINK ABOUT IT
3 OVER THE BREAK BECAUSE WE'RE OUT OF TIME. BECAUSE AT
4 THE END OF THE DAY ALL I WANT TO DO IS MAXIMIZE THE
5 VALUE TO THIS ESTATE, AND SO IF THAT'S THE WAY TO DO IT
6 I THINK THE PETITIONER SHOULD THINK ABOUT AGREEING TO
7 THAT PROPOSAL.

8 SEE YOU AT 1:30.

9 MR. BERMAN: THANK YOU, YOUR HONOR.

10 MR. GREEN: THANK YOU, YOUR HONOR.

11
12 (AT 12:00 P.M. A LUNCH RECESS WAS TAKEN
13 UNTIL 1:30 P.M. OF THE SAME DAY.)
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 SANTA MONICA, CALIFORNIA; TUESDAY, JUNE 18, 2013

2 P.M. SESSION

3 (APPEARANCES AS HERETOFORE NOTED.)

4
5 THE COURT: BACK ON NUMBER 10, AVRAHAM.

6 MR. BERMAN: BRETT BERMAN ON BEHALF OF PETITIONER.

7 MR. GREEN: CHARLES GREEN ON BEHALF OF RESPONDENT,
8 WHO IS PRESENT.

9 THE COURT: ALL RIGHT. GOOD AFTERNOON. PLEASE
10 HAVE A SEAT.

11 MR. BERMAN, HAVE YOU AND YOUR CLIENT HAD A
12 CHANCE TO THINK ABOUT THE COURT'S COMMENTS BEFORE THE
13 BREAK?

14 MR. BERMAN: WE HAVE, YOUR HONOR, AND JUST AS A
15 PRELIMINARY, THE MONEY THAT MR. AVRAHAM IS CITING AS
16 AVAILABLE TO BUY OUT MS. AVRAHAM, THAT MONEY IN ESCROW
17 IS ACTUALLY MS. AVRAHAM'S MONEY, SO IF WE WERE GOING TO
18 DO ANY KIND OF BUYOUT OF ANY KIND, AND I'M NOT EVEN --
19 I'LL GET TO THAT IN A MOMENT, BUT WE'D ASK THE MONEY
20 COME FROM A NEW SOURCE. MR. AVRAHAM OWES MS. AVRAHAM
21 SIGNIFICANT FUNDS FROM AN INNOCENT SPOUSE THAT WAS
22 DECIDED IN PETITIONER'S FAVOR. SO IF THERE IS GOING TO
23 BE A BUYOUT WE'D ASK THAT IT NOT COME FROM MONEY SITTING
24 IN ESCROW BECAUSE, IN FACT, THAT IS PETITIONER'S MONEY.

25 THE COURT: HOW MUCH DOES SHE WANT FOR THE
26 PROPERTY, CASH?

27 MR. BERMAN: WE JUST RECEIVED WORD, AND I SENT
28 MR. GREEN AN E MAIL FROM THE REAL ESTATE BROKER, A HOUSE

1 ABOUT FOUR DOORS DOWN YESTERDAY SOLD FOR ABOUT 990. ALL
2 WE'RE SUGGESTING -- AND, AGAIN, I GAVE COUNSEL A COPY OF
3 THIS E MAIL -- ALL WE'RE SUGGESTING IS THAT THE COURT
4 ALLOW THE HOUSE TO BE LISTED AT THAT HIGHER PRICE FOR A
5 SHORT PERIOD OF TIME. IF IT DOES NOT SELL THEN
6 CERTAINLY MR. AVRAHAM COULD HAVE THE OPPORTUNITY TO BUY
7 OUT MY CLIENT, BUT THAT REALLY IS A GAME CHANGER AND THE
8 REAL ESTATE VALUES ARE -- THAT'S HOW THEY'RE DETERMINED,
9 BY COMPARABLES AND --

10 THE COURT: IS THE PROPERTY DOWN THE STREET A
11 COMPARABLE?

12 MR. BERMAN: ACTUALLY, IT'S A TWO BEDROOM, ONE
13 BATH AND THE THIS HOME THAT THE PARTIES OWN IS A FOUR
14 BEDROOM, TWO BATH.

15 THE COURT: SO THE OTHER HOME IS SMALLER BUT A
16 HIGHER VALUE. HAS IT BEEN DONE UP RECENTLY?

17 MR. BERMAN: THAT I DON'T KNOW. THE REAL ESTATE
18 BROKER -- I KNOW YOU HAVE A BUSY COURTROOM -- IS
19 AVAILABLE TO TALK TO THE COURT. HE COULDN'T COME IN,
20 BUT WE TALKED TO HIM OVER THE NONE HOUR. I DON'T KNOW
21 WHAT WORK HAS BEEN DONE TO THE HOUSE, I JUST KNOW THAT
22 THAT IS A COMPARABLE BASIS.

23 THE COURT: ALL RIGHT.

24 COUNSEL?

25 MR. GREEN: FIRST OF ALL, YOUR HONOR, I OBJECT TO
26 THE INTRODUCTION OF EVIDENCE, IT'S NOT IN HIS PAPERS.
27 THE REAL ESTATE BROKER --

28 THE COURT: OVERRULED. NEXT ISSUE.

1 MR. GREEN: WHAT?

2 THE COURT: THAT POINT IS OVERRULED. NEXT POINT.

3 MR. GREEN: THE REAL ESTATE BROKER LISTED IT AT
4 850 AND THIS IS ALSO THE BROKER WHO WAS UNABLE TO SELL
5 IT FOR THE PAST 24 MONTHS.

6 SECONDLY, THE ISSUE OF INNOCENT SPOUSE
7 TAXES IS NOT BEFORE THE COURT.

8 THE COURT: AGREED. NEXT POINT.

9 MR. GREEN: AS TO THE CAPITAL GAINS ISSUE, I'D
10 LIKE TO CLEAR UP A MISUNDERSTANDING HERE WITH THE COURT.
11 THE CAPITAL GAINS -- AND THE COURT CAN TAKE JUDICIAL
12 NOTICE OF THE INTERNAL REVENUE CODE SECTION ON CAPITAL
13 GAINS.

14 THE COURT: I WON'T, BECAUSE I DON'T KNOW IT.

15 MR. GREEN: HOWEVER, THE CAPITAL GAINS ONLY
16 ACCRUED A YEAR AGO. THERE WAS NO CAPITAL GAIN
17 CONSEQUENCE. HE LOST HIS \$250,000 DEDUCTION BY BEING
18 OUT OF THE HOUSE FOR MORE THAN 24 MONTHS. THAT ACCRUED
19 A YEAR AGO. IF THE HOUSE WAS DILIGENTLY SOLD WHEN --

20 THE COURT: DOESN'T YOUR CLIENT OWE SIGNIFICANT
21 AMOUNTS OF MONEY TO THE GOVERNMENT ALREADY?

22 MR. GREEN: YES --

23 THE COURT: I DON'T UNDERSTAND WHY HE'S WORRIED
24 ABOUT CAPITAL GAINS WHEN THERE IS A TAX FRAUD ISSUE OUT
25 THERE.

26 MR. GREEN: THERE IS NO TAX FRAUD ISSUE. THERE IS
27 NO CIVIL OR CRIMINAL INVESTIGATION. THERE ARE TAXES
28 OWED.

1 THE COURT: HOW MUCH ARE OWED?

2 MR. GREEN: APPROXIMATELY 200,000 HE OWES.

3 THE COURT: JUST 200,000?

4 MR. GREEN: BUT THAT'S A SEPARATE ISSUE, AND HE
5 DOESN'T OWE HER FOR THAT IF THERE IS INNOCENT SPOUSE.
6 IF THERE IS INNOCENT SPOUSE THE IRS WILL NOT PURSUE HER
7 FOR IT. BUT THE COMMUNITY MAY OR MAY NOT BE LIABLE.
8 AND INNOCENT SPOUSE WAS ONLY 2006. THERE'S OTHER
9 YEARS --- AND THAT'S NOT BEFORE THE COURT. WE HAVEN'T
10 PREPARED EVIDENCE TO DETERMINE WHO OWES WHAT ON TAXES,
11 WHO OWES WHAT ON ---

12 THE COURT: I'M NOT MAKING DECISIONS ON TAXES.

13 MR. GREEN: SO THE ISSUE HERE IS IF WE SELL THE
14 HOUSE THEN THERE IS A CAPITAL GAINS CONSEQUENCE, AND
15 THAT DOES NOT MAXIMIZE THE RETURN --

16 THE COURT: I THINK THE ISSUE IS PREMATURE AS YOU,
17 YOURSELF, SAID ABOUT THE TAXES.

18 WHAT I'M GOING TO DO -- THE ONLY ISSUE
19 BEFORE THE COURT TODAY IS HOW ARE WE GOING TO SELL THIS
20 PROPERTY. BEFORE THERE IS ANY FINAL SALE IT WILL BE
21 SUBJECT TO COURT CONFIRMATION. SO IF BEFORE -- IF
22 SOMEBODY WANTS TO BUY THIS HOUSE THEN WE CAN FACE THIS
23 ISSUE ABOUT CAPITAL GAINS AND SO FORTH.

24 MR. GREEN: WELL, MR. AVRAHAM -- THE COURT'S LAST
25 ORDER GAVE THE RESPONDENT THE OPPORTUNITY TO BUY THE
26 HOUSE.

27 THE COURT: BUT HE DIDN'T COME UP WITH ANYTHING TO
28 BUY IT WITH.

1 MR. GREEN: HE'S ASKING THE COURT NOW TO SET THE
2 PRICE AND TO TELL HIM, BASED ON THE INFORMATION --

3 THE COURT: I DON'T SET THE PRICE. THE MARKET
4 SETS THE PRICE.

5 MR. GREEN: WE'VE PROVIDED INFORMATION SAYING WE
6 BELIEVE IT'S APPROXIMATELY 800,000 OR LESS. THEY
7 PROVIDED A MAXIMUM OF 850. WE ASK THE COURT TO
8 DETERMINE WHAT IS THE BUYOUT AMOUNT FOR HIM TO PAY HER
9 AND GIVE HIM A TIME PERIOD IN WHICH TO TENDER THAT.
10 PURSUANT TO THE COURT'S LAST ORDER, HE IS ASKING THE
11 COURT TO ALLOW HIM TO BUY THE HOUSE.

12 THE COURT: HOW MUCH DOES YOUR CLIENT WANT FOR THE
13 PROPERTY? JUST GIVE ME A PRICE.

14 MR. BERMAN: WELL, ACCORDING TO THE HOUSE THAT WAS
15 SOLD YESTERDAY FOR 990, SHE WOULD ASK FOR 990.

16 THE COURT: SO 990 IN 30 DAYS.

17 MR. GREEN: YOUR HONOR, WE OBJECT TO THAT. THAT'S
18 NOT --

19 THE COURT: YOU ASKED ME HOW MUCH --

20 MR. GREEN: BUT THE EVIDENCE BEFORE THE COURT --
21 THE COURT ASKED US STATE COMPS, THEY DO NOT HAVE A COMP
22 FOR 990. WITH ALL DUE RESPECT TO THE COURT, PICKING 990
23 OUT OF AIR --

24 THE COURT: I'M NOT PICKING IT OUT OF THE AIR. HE
25 TOLD ME HE GOT AN OFFER FROM DOWN THE STREET THAT SOLD
26 FOR 990.

27 MR. GREEN: HE DID NOT SHOW ME ANYTHING. WHAT
28 HE'S DOING IS HEARSAY.

1 THE COURT: EVERYTHING YOU'RE DOING IS HEARSAY --

2 MR. GREEN: NO. I HAVE A DECLARATION UNDER THE
3 EVIDENCE CODE, THE 800 SECTION, HE'S ALLOWED TO VALUE
4 HIS HOME --

5 THE COURT: YOU ASKED ME FOR A PRICE THAT YOUR
6 CLIENT COULD BUY IT FOR. I'VE ASKED THE PETITIONER HOW
7 MUCH SHE WANTS, THE AMOUNT IS 990. IF YOUR CLIENT WANTS
8 AN OPPORTUNITY TO BUY IT --

9 MR. GREEN: SO IS THAT THE COURT'S ORDER, THAT ONE
10 HALF -- IS THE COURT MAKING A FINDING THAT'S THE CURRENT
11 FAIR MARKET VALUE?

12 THE COURT: NO.

13 MR. GREEN: ... BUT THAT'S WHAT THE COURT'S ORDER WAS;
14 DECLARATIONS REGARDING THE CURRENT FAIR MARKET VALUE,
15 HOW EACH PARTY IS GOING TO PAY FOR IT, PROOF OF
16 QUALIFICATION FROM LENDER AND NAME OF LISTING BROKER,
17 THAT'S WHAT WE CAME PREPARED FOR.

18 THE COURT: THAT'S WHAT THE COURT ASKED YOU TO
19 BRING. THE COURT DID NOT SAY THAT IT WAS GOING TO MAKE
20 A FINDING. THE COURT WOULDN'T MAKE A FINDING. HAS NO
21 IDEA WHAT THE FINDING IS AS TO WHAT THE VALUE OF THIS
22 PROPERTY IS IT HASN'T SEEN OR HAD APPRAISALS ON. I WILL
23 GIVE THE RESPONDENT THE OPPORTUNITY TO BUY THIS
24 PROPERTY. I'VE SEEN HOW MUCH EACH OF YOU THINK IT'S
25 WORTH. THERE'S BEEN NEW EVIDENCE OFFERED SINCE -- WE
26 DIDN'T EVEN HAVE THIS MORNING AS TO WHAT COMPARABLE
27 PROPERTY IS WORTH DOWN THE STREET.

28 WAS THIS SOLD, MR. BERMAN?

1 MR. BERMAN: SOLD YESTERDAY.

2 MR. GREEN: WE DON'T EVEN HAVE AN ADDRESS.

3 MR. BERMAN: I E MAILED IT TO COUNSEL.

4 THE COURT: THE COURT'S ORDER IS THAT THE
5 RESPONDENT HAS 30 DAYS TO PAY -- IT'S COMMUNITY
6 PROPERTY, SO HE ONLY HAS TO PAY ONE HALF OF THE EQUITY
7 OVER --

8 MR. GREEN: NET EQUITY.

9 THE COURT: NET EQUITY.

10 SO IF YOU TOLD ME THIS MORNING IT WAS --
11 722 WAS THE AMOUNT OWED --

12 MR. GREEN: DELINQUENCIES IN ADDITION TO --

13 THE COURT: WHATEVER THE OFFICIAL AMOUNT IS THAT
14 THE LENDERS SAY IS THE AMOUNT OWED ON THE LOAN, THE
15 DIFFERENCE BETWEEN THAT AMOUNT AND 990, ONE HALF OF
16 THAT, IF THAT'S PAID WITHIN 30 DAYS THEN THAT'S THE
17 DISPOSITION. IF IT'S NOT PAID WITHIN THAT TIME WE'LL
18 HAVE A FURTHER HEARING IN 30 DAYS TO DETERMINE WHO WILL
19 BE THE LISTING BROKER AND FOR WHAT AMOUNT.

20 MR. GREEN: YOUR HONOR, MAY THE COURT -- IN THE
21 ALTERNATIVE MAY THE COURT HAVE A 730 APPRAISAL TO
22 DETERMINE IF THE 990 IS --

23 THE COURT: NO, BUT YOU CAN PRESENT EVIDENCE OF
24 YOUR OWN AS TO FURTHER EVIDENCE AS TO WHAT YOU THINK
25 YOUR CLIENT THINKS THE VALUE IS AND THE COURT WILL
26 LISTEN TO THAT EVIDENCE IN 30 DAYS FROM NOW. FIRST YOU
27 WANTED AN OPPORTUNITY FOR YOUR CLIENT TO BUY IT. I'M
28 GIVING HIM THAT OPPORTUNITY. IF HE DOESN'T EXERCISE IT

1 THEN WE'LL DECIDE HOW MUCH IT SHOULD BE LISTED FOR.

2 MR. GREEN: SHOULD THAT BE BY FURTHER NOTICED RFO
3 OR --

4 THE COURT: NO. WE'RE JUST CONTINUING THIS
5 HEARING FOR 30 DAYS UNTIL JULY 18TH.

6 CAN YOU BOTH COME IN ON JULY 18TH?

7 MR. BERMAN: YOUR HONOR, MS. AVRAHAM WILL BE IN
8 ISREAL. SHE'LL BE BACK ON AUGUST 7TH -- AUGUST 2ND. SO
9 THE SECOND WEEK OF AUGUST AFTER THAT OR THAT WEEK IS
10 FINE.

11 THE COURT: THEN RESPONDENT WILL HAVE MORE TIME TO
12 TRY TO BUY THE PROPERTY UNTIL AUGUST 6TH.

13 MR. GREEN: BUT, YOUR HONOR, THE HOUSE IS
14 DELINQUENT. PETITIONER HAS CONTINUED NOT TO PAY THE
15 MORTGAGE AND THIS UNDULY PUTS A BURDEN ON RESPONDENT.

16 THE COURT: SEE YOU ON AUGUST 6TH, 8:30 A.M. FOR A
17 FURTHER HEARING RELATING TO SALE OF THE PROPERTY. IF
18 THE RESPONDENT PAYS ONE HALF OF THAT DIFFERENCE I'VE
19 ALREADY IDENTIFIED PRIOR TO THEN, THEN HE SHOULD BE ABLE
20 TO BUY THE PROPERTY.

21 MR. GREEN: YOUR HONOR, THERE'S BEEN SERIOUS
22 FRUSTRATION OF ANY EFFORTS FOR COOPERATION IN THIS CASE
23 FROM PETITIONER AND HER COUNSEL THROUGH MY EXPERIENCES
24 WITH THIS CASE. THE 40,000, FOR EXAMPLE --

25 THE COURT: I DON'T --

26 MR. GREEN: HOW ARE WE GOING TO TENDER THE MONEY
27 TO THEM? THEY WILL REFUSE TO MEET AND CONFER PROPERLY
28 ON WHAT THE --

1 THE COURT: IF I SEE THAT THERE'S BEEN A BAD FAITH
2 ON MR. BERMAN OR HIS CLIENT'S PART, THE COURT WILL
3 ALWAYS RETAIN JURISDICTION TO IMPOSE SANCTIONS. I HAVE
4 CONFIDENCE THAT MR. BERMAN, FROM HIS BEHAVIOR IN THIS
5 CASE, IS GOING TO ACT RESPONSIBLY. IF HE DOESN'T I'LL
6 BE SURPRISED, AND IF I AM THEN THE COURT WILL IMPOSE
7 SANCTIONS. DO EVERYTHING IN WRITING, OF WHAT DID OR
8 DIDN'T HAPPEN, BUT YOU'RE TWO PROFESSIONALS AND I EXPECT
9 BOTH OF YOU TO WORK IT OUT.

10 MR. GREEN: JUST TO RECAP, SO THE COURT WILL ALLOW
11 RESPONDENT TO PROVIDE EVIDENCE OF AN APPRAISAL AT THE
12 NEXT HEARING IN THE EVENT HE DOESN'T CHOOSE TO EXERCISE
13 THE BUYOUT OF NET EQUITY, ONE HALF OF THE NET EQUITY, AT
14 THE VALUATION OF 990?

15 THE COURT: CORRECT.

16 NOTICE WAIVED?

17 MR. BERMAN: NOTICE WAIVED.

18 MR. GREEN: NOTICE WAIVED.

19 MR. BERMAN: I WILL BE ON A FAMILY VACATION THAT
20 WEEK. I WOULD RATHER NOT APPEAR BY COURT CALL. COULD
21 WE DO THE WEEK AFTER?

22 THE COURT: YES. AUGUST 13TH.

23 DOES THAT WORK FOR YOU?

24 MR. BERMAN: I HAVE A MEDIATION ON THE 13TH. I
25 COULD DO THE 12TH, 15TH OR 16TH.

26 THE COURT: AUGUST 12TH, 8:30.

27 MR. BERMAN: THANK YOU, YOUR HONOR.

28 MR. GREEN: SO HE HAS UNTIL THE 12TH NOW?

1 THE COURT: YES.

2 MR. GREEN: SO HE CAN WALK IN THE MORNING OF THE
3 12TH AND TENDER ONE HALF OF THE NET EQUITY?

4 THE COURT: (INAUDIBLE).

5 MR. GREEN: AND, YOUR HONOR, I BELIEVE RESPONDENT
6 WISHES TO BE HEARD.

7 THE COURT: I DON'T HAVE TIME TO. I MADE A
8 DECISION. WE'RE MOVING ON TO THE NEXT CASE.

9 THANK YOU.

10 MR. BERMAN: THANK YOU, YOUR HONOR.

11 MR. GREEN: THANK YOU, YOUR HONOR.

12
13 (THE PROCEEDINGS WERE CONCLUDED.)
14
15
16
17
18
19
20
21
22
23
24
25
26
27