

HHD-FA06-4027147-S : SUPERIOR COURT  
STEPHANIE SANS (SZYMONIK) : J.D. OF HARTFORD  
V. : AT HARTFORD  
PETER T. SZYMONIK : FEBRUARY 18, 2011

**MOTION FOR RECONSIDERATION and STAY OF EXECUTION**

The Defendant in the above referenced matter, Peter T. Szymonik, respectfully requests that the Court grant a Motion for Reconsideration and issue a Stay of Execution of the order issued in relationship to the hearing on February 16, 2011, of the Plaintiff's Motion for Order-Post Judgment, dated February 14, 2011, on the following grounds:

**SUMMARY**

Parties' marriage of 16 years was dissolved by court order on April 30, 2008. Joint physical custody of the party's two minor children was ordered by the Court at the time the marriage was dissolved. The minor children are Adam Szymonik, now 6, and Jason Szymonik, now 9.

Joint physical custody was reaffirmed and reinforced by the Court via an Agreement of the Parties which was modified, supplemented and ordered by the Court on May 5, 2009.

**COMPLIANT**

1. Defendant has a legal right to fair and proper due process.
2. Defendant's co-counsel filed Motions for Withdrawal on January 26, 2011 and February 10, 2011, respectively. These withdrawals were properly scheduled by the Court to be heard concurrent with a hearing scheduled for February 16, 2011, on a Motion to Close Courtroom Proceeding. (Exhibit A.)
3. Defendant filed a Motion for Continuance on February 10, 2011 based on his counsel's withdrawal and his subsequent lack of legal representation (Exhibit A.)
4. The Court ruled against Defendant's Motion for Continuance in February 14, 2011 (Exhibit A.)

5. Defendant did not receive, and has not received, notice from the Court of the denial of his Motion for Continuance by postal mail, telephone call or fax, as required by procedure.
6. Defendant's then current, and now former, counsel also did not receive notice from the Court of the denial to grant Defendant's Motion for Continuance by postal mail, telephone call or fax.
7. Plaintiff filed a Motion for Order-Post Judgment on February 14, 2011, the day after being notified of the withdrawal of Defendant's counsel. (Exhibit A.)
8. Defendant received notice of the Plaintiff's Motion for Order-Post Judgment via postal mail on February 15<sup>th</sup>, 2011.
9. Defendant filed an Objection to Plaintiff's Motion for Order-Post Judgment on February 15<sup>th</sup>, 2011. (Exhibit A.)
10. The Defendant specifically marked his motion for objection as "Oral Argument Requested, *Hearing Requested Pending Court Determination of Sealing*", clearly requesting that the Court only hear arguments related Plaintiff's Motion for Order and Defendant's Objection, pending a formal review and determination by the Court if sealing was required prior to testimony being presented.
11. This determination of the need to seal arguments related to the Plaintiff's motion, and/or the Defendant's objection, was not made by the Court prior to the Court hearing arguments related to the Plaintiff's Motion for Order-Post Judgment, nor prior to the Court's issuing its order granting the Plaintiff's motion.
12. The Court Clerk's office reported to the Defendant via telephone call on February 17<sup>th</sup>, 2011, that the only motions scheduled to be heard on the hearing date of February 16<sup>th</sup>, 2011, were:
  - a. the two Defendant's Motions for Withdrawal filed by the Defendant's now former counsel
  - b. the Motion to Close Courtroom Proceeding.

13. Plaintiff' Motion for Order-Post Judgment was not properly calendared or scheduled to be heard during the February 16<sup>th</sup>, 2011 hearing.
14. Defendant received no notification from either the Court, or the Plaintiff, via postal mail, telephone call or fax that that Plaintiff's Motion for Order-Post Judgment was marked as "Ready", as required by due process and procedure.
15. Defendant's now former counsel received no notification from either the Court, or the Plaintiff, via postal mail, telephone call or fax that that Plaintiff's Motion for Order-Post Judgment was marked as "Ready", as required by due process and procedure.
16. Defendant received no notification from the Court or the Plaintiff, via postal mail, telephone call or fax or otherwise, that the Plaintiff intended to have Plaintiff's Motion for Order-Post Judgment heard by the Court during the hearing scheduled for February 16<sup>th</sup>, 2011, in violation of due process and as required procedure.
17. Defendant's now former counsel received no notification from the Court or the Plaintiff, via postal mail, telephone call or fax or otherwise, that the Plaintiff intended to have Plaintiff's Motion for Order-Post Judgment heard by the Court during the hearing scheduled for February 16<sup>th</sup>, 2011, in violation of due process and required procedure.
18. Because of the above, the Defendant was not prepared or able to offer a proper defense or argument against Plaintiff's Motion for Order-Post Judgment and was unfairly blind-sided, having suffered the withdrawal of his counsel only minutes prior.
19. The Court inquired of the Defendant, but did not verify before requesting and soliciting his testimony, that the Defendant had Pro Se status.
20. Plaintiff's failure to follow procedures and the Court's failure to properly notify the Defendant of court filings and rulings resulted in precisely what the Defendant feared and detailed in his Objection to Plaintiff's Motion for Order-Post Judgment – the Plaintiff taking unfair advantage and unfairly influencing the Court.
21. Defendant was, and remains, unable to present his defense or arguments related to Plaintiff' Motion for Order-Post Judgment in open court. The Defendant clearly stated this position and concern to the Court in his opening statement to the Court.

22. Upon hearing the Defendant's open statements and concerns, the Court should have immediately ceased all further arguments on the Plaintiff's motion, until such time that the Defendant was properly notified, able to properly prepare evidence and testimony, and properly and freely present his testimony and evidence to the Court under seal, pending the formal review by the Court of his evidence to determine the need for sealing.
23. By allowing further testimony, the Court may have inadvertently allowed testimony which may prove to be damaging and threaten the very asset the Court's order is seeking to preserve and protect in the best interests of the parties and their minor children.
24. Further, the Court's granting of the Plaintiff's Motion for Order-Post Judgment was done under the Court's stated belief that such order was procedural in nature with a "low bar" for consideration. This determination would be appropriate for the Court to make in a typical, customary or new divorce case, or a case where the parties were both otherwise able to financial support themselves and their minor children in spite of such order and not suffer unwarranted harm from such order.
25. However, the party's case before the court represents the culmination of years of tortuous and financially and otherwise devastating litigation that has directly impacted the party's wellbeing as well as that of their minor children, involves very closely interrelated, intertwined and unique factors – most notably the subject of the Plaintiff's motion, is extreme and highly unusual in nature and requires and demands special handling and consideration in every aspect of the case. This precludes the opportunity of the Court to treat any motion before it in a procedural or mutually exclusive manner. This is clearly evidenced by the Court's extraordinary need to seal the courtroom, even to hear testimony related to the case, and by the numerous outside parties involved in the case.
26. Grounds for granting a Motion for Reconsideration and Stay of Execution include: a decision was made without all facts related to a motion or order presented, or that the Court did not have access to all evidence related to a motion prior to granting an order. Aside from the procedural problems, this is clearly the case.
27. The Court cannot and should not make or issue any orders prior to being fully aware of all of the issues related to any motions put before the court, and hearing of the complete and full implications of the financial and other implications of the granting such orders. This cannot happen until and unless the Defendant (and Plaintiff) are able to offer testimony and present arguments under seal and in a closed courtroom.

28. The Court granted Plaintiff's Motion for Order-Post Judgment even in the in the absence of viewing the parties respective financial affidavits, without considering relevant financial sections of the party's divorce decree, and without being afforded the opportunity to consider and review financial evidence related to the **immediate and irrevocable harm** such orders would unfairly impose on the Defendant and his ability to care for his minor children.
29. As one example, in "Section 13. Property Settlement" of the parties divorce decree, referred to by the Plaintiff in their motion, Plaintiff failed to represent to the Court the following additional and very relevant financial clauses directly related to the subject of and nature of Plaintiff's motion – withholding information which directly and adversely impacts the Court's ability to properly determine and apply said order, and creating grounds for granting this compliant:

*"Section 13 (c) **The plaintiff-wife hereby waives any claim to any escrowed monies and any settlement proceeds received by the defendant in the future.** [...]"*

Additionally, ***any settlement proceeds received by the defendant in the future shall be his sole property,** subject to the obligations set forth in subparagraph (a) and (b) above"*:

30. The Defendant has not been offered the opportunity to present to the Court for its consideration the immediate and devastating impact, **in the form of additional and substantial debt and new litigation**, which would result from the Court's order on March 5, 2011. The Court should not issue orders that cause such harm to the Defendant and his family **without consideration of the other litigation directly tied to the asset in question** and the devastating impact such order and eventuality would have on Defendant's ability to care for himself and his minor children.
31. The nature and size of the Defendant's asset being impacted by the Court's order is also unknown by the Court. More specifically, whether or how the Court's orders may impact such asset, especially given the open ended nature of the order the Court issued, and whether such open ended nature of the order is even warranted or fair.
32. The Court's lack of such information or knowledge directly impacts the Court's ability to make a proper determination in regards whether granting the Plaintiff's motion is simply procedural and customary in nature, or highly damaging and threatening to the asset

and/or parties involved, most notably, the Defendant and his ability to care for his minor children.

33. Defendant was not offered the opportunity, and remains unable to offer testimony and information to the Court, related to the Plaintiff's Motion for Order-Post Judgment and the far reaching implications that grant of the order would have on other issues before the court, including and specifically related to the custody issues, and other areas which extend far beyond the four corners of the Court's orders and into other litigation the Defendant is subjected to and mandated to comply with.
34. Without access to and knowledge of these factors, the Court cannot and does not have the ability to make an informed decision regarding the impact of granting of the order. Defendant has a legal right to be afforded the opportunity to present all relevant issues and facts to the court.
35. The Court did not consider the precedent that a similar court order, timed in a similar manner, also placing Defendant's assets in escrow, created a situation of extreme financial devastation for the Defendant which directly resulted in:
  - the destruction of the Defendant's formerly exceptional credit ratings,
  - doubling of the marital credit card debt the Defendant was burdened with,
  - a start of a foreclosure action against the Defendant's home of 13 years,
  - a devastating impact on Defendant's job prospects and his ability to care for his minor sons.
36. The Defendant is, to this day, suffering and struggling to recover from the direct impact this nearly identical court order had on his financial condition and situation, which in turn had and continues to have a corresponding adverse impact on the Plaintiff and the minor children.
37. In granting the Plaintiff's Motion for Order-Post Judgment, absent of all relevant information related to the immediate and irrevocable impact of such order on the Defendant, the Court has in effect created a condition **directly contrary to the intent of the order** to protect an asset in the interests of the minor children, and to prevent them from becoming wards of the state, the concern expressed to the Court by the Guardian ad Litem.

38. The Court order exempting \$10,000 of monthly family support from the order was based solely on a rhetorical argument made by the Defendant as he was blind-sided and unprepared to offer testimony in his defense.
39. The Defendant's family has suffered extreme financial hardship directly due to the Plaintiff's frequent and abandoned motions before the Court and are unable to provide the Defendant with further support, making the Court's exemption meaningless to address to concern the Defendant represented to the Court.
40. The Court's order has substantially and negatively impacted the Defendant's ability to secure new counsel.
41. As feared, the Plaintiff's counsels motion and the Court's order has had an immediate and chilling effect on the parties voluntarily negotiations and conversations designed specifically to resolving all issues between them – most notably and especially, financial issues. No discussions or communication have been engaged in by the parties since the time of the order. As such, the motion filed by the Plaintiff's counsel leading to the granting of the motion may be deemed as interference.
42. The Court's order conflicts with previously ordered instructions from the Court that the parties enter into negotiations to resolve the differences between them outside of Court.
43. The Court's order is based solely in presumption, without any basis in fact or belief or represented in any argument, that the asset in question needs to be protected from the Defendant in the interests of the Plaintiff and the minor children.
44. By making its presumption, the Court has placed a grossly unfair, extreme and unwarranted burden on the Defendant given the open-ended nature of the order, again, not being aware of the nature and size of the asset in question and the appropriateness of such order given the limited nature of claims made by the Plaintiff.
45. The Defendant has a long and positive history of meeting his financial obligations to the Plaintiff when able to do so and is seeking to continue to do so in good faith.
46. Further, it is the intention of the Defendant to present evidence to the Court, if required, that the asset in question needs be protected and preserved for the minor children from the Plaintiff.

**WHEREFORE**, the Defendant respectfully asks the Court to:

Grant the Defendant's Motion for Reconsideration based on procedural irregularities and errors on the part of the Court which failed to properly notify the Defendant of the court rulings.

Grant the Defendant's Motion for Reconsideration based on the failure of the Plaintiff to properly schedule and notify the Defendant of the marking and intent to have Plaintiff's motion heard on February 16, 2011 and immediately following the withdrawal of Defendant's counsel, all of which denied the Defendant the right to due process and the opportunity to properly prepare for the hearing which led to the Court's untimely granting of the Plaintiff's Motion for Order-Post Judgment.

Grant an immediate Stay of Execution of the order granting the Plaintiff's Motion for Order-Post Judgment until such time the Defendant is offered proper notice and opportunity to present his case and argument to the Court in a proper forum and closed courtroom where the Defendant may offer his complete and full testimony, arguments and evidence to the Court free of any hindrances or legal obstacles, and when the Court has the opportunity to receive, review and re-examine all information and evidence relevant to the Plaintiff's Motion for Order-Post Judgment which may cause it to reverse its ruling.

**ORDER**

The foregoing motion having been heard, it is hereby ordered that:

Defendant's Motion for Reconsideration is and Stay of Execution of Order is:

GRANTED/DENIED

JUDGE/CLERK DATED: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Defendant's Motion for Reconsideration and Stay of Execution was sent by fax, email and US Mail postage prepaid to Plaintiff's counsel on this, the 18<sup>th</sup> Day of February 2011:

Attorney Leo V. Diana  
Diana, Conti & Tulina  
1091 Main Street  
Manchester, CT 06040

FAX: (860) 647-7950

By the Defendant

A handwritten signature in black ink, appearing to read "Peter T. Szymonik". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Peter T. Szymonik

ORAL ARGUMENT REQUESTED

HEARING REQUESTED, PENDING CLOSED COURTROOM PROCEEDING

## EXHIBIT A

|        |            |   |   |     |
|--------|------------|---|---|-----|
| 246.01 | 01/26/2011 | D | MOTION TO SEAL DOCUMENT   | Yes |
| 246.02 | 01/26/2011 | D | MOTION TO CLOSE COURTROOM PROCEEDING  | Yes |
| 247.00 | 01/26/2011 | D | MOTION FOR PROTECTIVE ORDER   | No  |
| 248.00 | 01/26/2011 | D | MOTION FOR CONTINUANCE<br><i>RESULT: Granted 1/28/2011 HON MARK TAYLOR, J</i>     | No  |
| 248.10 | 01/26/2011 | D | MOTION FOR PERMISSION TO WITHDRAW APPEARANCE                                      | Yes |
| 249.00 | 01/28/2011 | P | OBJECTION   | No  |
| 250.00 | 02/10/2011 | D | MOTION FOR PERMISSION TO WITHDRAW APPEARANCE !NEW                                 | Yes |
| 250.10 | 02/10/2011 | D | MOTION FOR CONTINUANCE !NEW<br><i>RESULT: Denied 2/14/2011 HON MARK TAYLOR, J</i> | No  |
| 251.00 | 02/14/2011 | P | MOTION FOR ORDER POST-JUDGMENT !NEW   | Yes |
| 251.10 | 02/14/2011 | D | MOTION FOR PERMISSION TO WITHDRAW APPEARANCE !NEW                                 | Yes |
| 252.00 | 02/15/2011 | D | AMENDMENT !NEW  | No  |
| 253.00 | 02/15/2011 | D | OBJECTION TO MOTION !NEW  | Yes |

| Individually Scheduled Court Dates as of 02/17/2011       |            |         |                   |            |
|---|------------|---------|-------------------|------------|
| HHD-FA06-4027147-S - SZYMONIK,STEPHANIE v. SZYMONIK,PETER |            |         |                   |            |
| #   | Date       | Time    | Event Description | Status     |
| 1   | 03/08/2011 | 10:00AM | Hearing           | Proceeding |
| 2   | 03/22/2011 | 10:00AM | Hearing           | Proceeding |