

ONTARIO
SUPERIOR COURT OF JUSTICE
(Small Claims Court)

CESALTINA FIUSA, GILBERTO FIUZA, and RICARDINA FIUZA
Plaintiffs

- and -

CREEKSIDE REAL ESTATE GROUP INC., ANDREW DOOLING, JACQUELINE
FERGUSON, THE CORPORATION OF THE CITY OF CAMBRIDGE and WATERLOO
(REGION) POLICE SERVICES BOARD
Defendants

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P R O C E E D I N G S A T T R I A L
C O N T I N U A T I O N
(DAY FOUR)

BEFORE THE HONOURABLE MADAM DEPUTY JUDGE C. DICKENSON
on October 5, 2018 at KITCHENER, Ontario

APPEARANCES:

Mr. T. Ellis	Counsel for the Plaintiffs
Mr. F. Battiston	Counsel for the Respondent, Creekside Real Estate Group
Mr. A. Dooling	Unrepresented Respondent
Ms. J. Ferguson	Unrepresented Respondent

T A B L E O F C O N T E N T S

ONTARIO
SUPERIOR COURT OF JUSTICE

W I T N E S S E S

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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

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FRIDAY, OCTOBER 5, 2018

...UPON COURT COMMENCING (9:30:13)

...UNRELATED MATTERS SPOKEN TO

R E C E S S (9:33:48)

U P O N R E S U M I N G (9:59:53)

...UNRELATED MATTERS SPOKEN TO

THE COURT: All right. So that leaves matter number three, the continuation of the Fiuza trial, 344/15. Would the parties please come forward? All right we have Mr. Ellis on behalf of the plaintiffs, Mr. Battiston is here on behalf of Creekside and Ms. Ferguson and Mr. Dooling are also present. All right here we go with day number four and we've been adjourned since July 30th[sic]. It was the third day of trial and where are we at?

MR. BATTISTON: Cross-examination of Mr. Fiuza, Your Honour.

THE COURT: Okay. All right. Mr. Fiuza, would you please approach. Before we begin I just wanna make sure there's no witnesses in the courtroom.

MR. BATTISTON: Mr. and Mrs. Ford will have to wait outside.

THE COURT: All right. You need to be excused until you will be called to give evidence. All right. Everybody else is parties and we have some students who are here as witnesses today. All right. Okay. Do you want him to be re-sworn or do you think it's necessary?

MR. BATTISTON: As long as the witness knows he's to tell the truth and he's under oath, that's fine.

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THE COURT: Mr. Fiuza, you were sworn, Mr. Fiuza, Mr. Fiuza you were sworn on July 30th when you first gave evidence. You are still under oath. Do you understand that you're still under oath and must tell the truth?

THE INTERPRETER: Yes.

GILBERTO FIUZA: PREVIOUSLY SWORN

THE COURT: Yes, thank you.

MR. BATTISTON: This is my observation last time Mr. Fiuza testified, Your Honour that I can't hear what is being said at the witness box. so I would ask you to direct Mr. Fiuza speak up so that he actually makes an audible response to the questions because I have some trouble with the process.

THE COURT: I do recall that Mr. Battiston. I'm having difficulty hearing him and I'm sitting practically right beside him. Mr. Fiuza, we are all having difficulty hearing your answers even though you're speaking in Portuguese we need to hear your answer and then the interpreter will translate for us but please, I know you're very soft spoken but would you please speak up so that your voice carries out throughout the courtroom, okay?

MR. BATTISTON: I think - there doesn't have to be this close proximity between the interpreter and Mr. Fiuza and if the interpreter could stand over here, you know I'd like to see the exchange going on because I'm having trouble with this 'cause I can't hear what you're saying.

THE COURT: I'm not sure what it is you're having difficulty with.

MR. BATTISTON: Well...

THE COURT: In terms of her standing next to him.

THE INTERPRETER: Really, that's my position.

MR. BATTISTON: I'm uncomfortable with this
whispering going on.

THE COURT: Well there won't be any whispering.

MR. BATTISTON: All right.

THE COURT: I'll tell you that right now and if there
is any whispering, I'll put a stop to it but Mr.
Fiuza you must raise your voice, you must do that.
The problem is he speaks softly. I think the
interpreter is leaning in to hear him and I think
that's what's causing you concern.

MR. BATTISTON: Well, all right. We'll deal with it.

THE COURT: All right. Let's proceed.

MR. BATTISTON: It is a concern, so....

THE COURT: I've noted that Mr. Battiston.

MR. BATTISTON: I hope it won't get worse. Mr.
Fiuza, how....

THE INTERPRETER: Your Honour?

THE COURT: Sorry, sorry the interpreter just wanted
to mention something.

THE INTERPRETER: Also, the family - he also told me
that he has I think trouble listening. His hearing's
fine, okay.

THE COURT: Okay, all right. Thank you.

MR. BATTISTON: Maybe I've got the hearing problem
but I'd like to hear responses whether they're in
Portuguese or in English.

CROSS-EXAMINATION BY MR. BATTISTON:

Testifies through interpreter - Portuguese/English

MR. BATTISTON: Q. Mr. Fiuza, how are you doing today?

THE COURT: Sir, sir...

MR. BATTISTON: What did he say?

THE COURT: ...sir. Please you have to raise your voice. I can barely hear you. You are simply sitting there and mumbling and the microphone isn't even picking up your voice. You must raise your voice up. All right.

THE WITNESS: The problem is that since 23rd of November I....

MR. BATTISTON: Q. He what?

A. Since the 23rd of November he lost his voice and since then he has trouble with speaking up.

Q. The 23rd of November of which year?

A. Two thousand and fourteen.

Q. Two thousand and fourteen.

A. And, he has trouble speaking up.

Q. Why did he lose his voice in November of 2014?

A. Because I almost had a heart attack.

Q. You almost had a heart attack.

A. I was three hours and not myself - not being myself.

Q. In November of 2014? Really? And, why did that happen?

A. It's just because they said because of the, the heart problems.

Q. Okay.

A. Then it affected my voice. They don't know how to explain...

Q. I see.

A. ...that but this is what happened. I lost, I lost my voice.

Q. So, there was a heart problem condition that existed before November 2014?

A. No, I didn't have any problem.

Q. Oh, I see, so no problem before November of 2014, is that what I heard the answer?

A. No.

Q. No, there was no problem before that?

A. No.

Q. I see, and you lost your voice?

A. Yes.

Q. So, you were healthy before November 2014?

A. Yes.

Q. Okay and you went to the doctor and told your doctor that everything was fine before November 2014?

THE INTERPRETER: Yes, he was in good health.

MR. BATTISTON: Q. Okay and that was Dr. Camala right in 2014, that was your doctor?

A. Yes.

Q. And, she was the doctor that was here back in May who was summoned to appear here, that was your doctor, correct?

A. Yes.

Q. And, she brought all your papers so we could all take a look at your medical records, you remember that?

A. Yes.

Q. And you - I looked at some of the records. We'll look at them a little more closely in a few minutes but you remember going to see Dr. Camala in August of 2014, is that correct?

A. Yes, I do.

Q. You're nodding while I speaking. You understand some English don't you, Mr. Fiuza?

A. Yes, yes.

Q. I mean, it says you worked as a foreman in a warehouse for thirty-five years, right?

A. Thirty-three.

Q. Thirty-three years. Where was that at Facel (ph) or something?

A. Frito Lay.

Q. Oh, Frito Lay. Oh, I see okay and you've worked with people who spoke English all that time, I suppose right?

A. Yes, English and Portuguese.

Q. Okay but you were a foreman?

A. No, just labour.

Q. Okay so thirty-three years you did that job here in Canada?

A. Yes.

Q. I see and so Dr. Camala was your doctor in August of 2014, is that correct?

A. Yes.

Q. But she became your doctor after Dr. Snyder retired. Dr. Snyder was your doctor for years, was he not?

A. Dr. Snyder.

Q. Sorry?

A. Dr. Snyder.

Q. Dr. Snyder, right. You understand what I'm saying. Okay, that's fine. Okay so you're in good health. When did you retire Mr. Fiuza, from your job?

A. I now remember it's around I think 2010, 2012.

Q. Okay so you....

THE COURT: Sorry, excuse me. Do not speak from the courtroom please.

THE WITNESS: And two thousand and six.

MR. BATTISTON: Q. Two thousand and six, okay.

Someone reminded you of that, that's fine. So you, before 2006 you had a job working every day?

A. Yes.

Q. And you still live at the same house. At that time, you lived in the same house, correct?

A. Yes.

Q. And after work when you came home did you - what did you do at home, did you have a - did you keep a garden in your backyard?

A. Small.

Q. Small garden, yeah of course like everyone. Did you make tomatoes, do you do that kind of thing? Make tomatoes, make wine maybe?

A. Wine, no.

Q. Did you make wine? No? Did you drink wine, a little glass or two a day?

A. One glass sometime no alcohol, no like.

Q. I'm sorry I was talking.

A. No like the wine much. No alcohol and the wine.

THE COURT: Excuse me either Mr. Fiuza speaks through an interpreter or he speaks English. There's not going to be half and half. I understand he does understand some English but the problem is when you see a transcript you get this mixture of English and then translation from English or from Portuguese to English and it ends up being a mess. Trust me. I've seen this happen time and time again. So, it's either one or the other. It's not going to be half and half, seventy/thirty, it's just not. It's either

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you speak through an interpreter Mr. Fiuza or you speak English. Those are your choices, okay?

THE INTERPRETER: I just asked him to wait for you to finish and then I will translate.

MR. BATTISTON: Thank you.

5 Q. Okay, so you kept the garden in your backyard, is that always - have you always done that Mr. Fiuza?

A. Yes.

Q. And, you still do that today and you did it this summer and you still have the garden in your backyard?

10 A. Yes.

Q. And, what do you grow back there?

A. Tomatoes and collards, green collards.

THE COURT: Collards?

15 **MR. BATTISTON:** Q. Oh yeah, I don't know what that is okay. My wife probably knows what that is, okay. How 'bout exercise. Exercise, you go for walks?

A. Yes, I do.

Q. So, you did that while you were working or no?

A. Yes.

20 Q. And did you exercise at home even after you came home from work?

A. Yes.

Q. So, after you retired you had more time to exercise and walk?

25 A. Yes.

Q. I see okay. Do you have hobbies, Mr. Fiuza?

A. I do lots. I cook.

Q. Okay.

A. Garden. I have birds.

30 Q. Birds? Oh, canaries?

A. Canary.

Q. Canaries, right. I see.

A. And budgies.

Q. Budgies, yeah?

A. Yes.

Q. Okay, you take care of your birds. Do you belong
5 to a Church group Mr. Fiuza?

A. On Sunday I go to mass.

Q. Okay, all right and you've been doing that ever
since you retired?

A. Yes, I'm always busy.

Q. Oh, good. All right. Good. Now in this - in the
10 court papers Mr. Fiuza that, that you had Mr. Ellis prepare and
file for you....

THE COURT: Are you referring to the claim?

MR. BATTISTON: The claim, yes.

Q. At paragraph 15, sorry at paragraph 14 it says -
15 there's a reference to Shaun Elliott. Do you know who Shaun
Elliott is Mr. Fiuza?

A. I don't know.

Q. You don't know who he is, right? You ever spoken
20 to Shaun Elliott, Mr. Fiuza?

THE COURT: Could you speak up sir please. Keep your
voice up.

THE WITNESS: It's someone from the hospital?

MR. BATTISTON: Q. No, let me, let me read it to
25 you.

THE COURT: Mr. Battiston could you may be read it
in...

MR. BATTISTON: Slowly?

THE COURT: ...in sections so that the interpreter
30 can interpret it as she's going along because the
sentences are quite lengthy.

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MR. BATTISTON: I can assist the interpreter as well.

Q. So, here's the claim. In paragraph 14 it says,
[As read] After several attempts to have the
by-law enforcement and WRPS, the plaintiffs were
instructed by by-law officer Shaun Elliott that
they could proceed to appear before a Justice of
the Peace to file charges.

Do you remember that Mr. Fiuza?

A. No.

Q. No, you don't. Okay. At paragraph 15, sorry, no,
I'll read the rest of the bottom of paragraph 14 says,

[As read] Shaun provided them with the
occurrence numbers for the times that a by-law
officer attended at their residences for noise
complaints between February 21st, 2014 and July
27th, 2014.

Do you remember that?

A. Yes.

Q. So, you told Mr. Ellis to put this in your claim,
yes?

A. Yes, yes, I did.

Q. All right, but then it says at paragraph 15, that
the defendants four and five, so what it says here is that the
police and by-law,

[As read] Were unwilling to intervene on their
behalf to resolve and make the situation stop.

Do you remember that?

A. Yes.

Q. Is that a true statement?

A. Yes.

Q. So, for all those complaints did you have any
notes or records, Mr. Fiuza?

A. No.

Q. That was something your daughter took care of, right?

A. Yes.

Q. And we've seen and heard all those records, right?

A. Yes.

Q. There aren't any more that you have, correct?

A. No.

Q. So, but according to this statement it was the police and the By-Law people that you really had a problem with, isn't it Mr. Fiuza?

A. Yes.

Q. Yeah, because at paragraph 17 it says that the by-law and police failed to properly assess and investigate. Is that true?

A. Yes.

Q. 'Cause they should be the ones taking care of noise, aren't they?

A. Yes.

Q. And they had lack of training, is that what you told Mr. Ellis to complain about?

A. I didn't know the laws in Cambridge 'cause the laws are different everywhere.

Q. I think I saw somewhere in these documents; you were a police officer in Portugal, were you not?

A. Yes.

Q. So, you know something about investigating, don't you?

A. Yes.

Q. So, do you - did you believe when this document was prepared that the police and by-law failed to investigate properly, is that true?

A. No.

Q. No, that's not entirely true?

A. Yes.

Q. Yes, that's - it's - okay, yes, it's not true that they failed to investigate properly?

A. Possibly yes.

Q. Possibly, so they were good investigators?

A. Yes.

Q. And, if they didn't lay charges that was right?

A. Yes.

Q. Okay, and yet I hear that in this claim you make a claim against Mr. and Mrs. Buonvivere for money, is that true?

A. Yes.

Q. And, how much money is that?

A. Twenty-five thousand.

Q. Wow, I thought it was eight thousand for you?

A. I was talking in like the whole amount.

Q. Right.

A. Like the whole family.

Q. Okay but 'cause early on in this proceeding Mr. Ellis said that you were looking for \$8,000. Is that true?

A. I'm not sure.

Q. No? Why is Mr. Buonvivere and Mrs. Buonvivere at fault? What did they do wrong?

A. Because the property owner is the - is his responsibility of taking care of issues of the house.

Q. Is that a legal statement you're making?

A. In Cambridge, yes.

Q. In Cambridge what, I don't understand. That's the law?

A. In Cambridge is the homeowners, they're supposed to stop whatever the issue is.

Q. Who told you that?

A. Because I have a neighbour that lives across my, my house and he had the same problem and then his lawyer told him that it's the owner's responsibility.

Q. So, you're hearing it from the neighbour who heard it from his lawyer and that's why you're saying this today? Wait for the translation.

A. So, the lawyer make a document and he sign it.

Q. But you don't have that document?

A. Yeah, my neighbour across the street....

Q. Has it? Has the document?

THE INTERPRETER: Can you repeat, sorry, I didn't hear clearly.

MR. BATTISTON: Q. It's your neighbour that has the document?

A. Yes.

Q. You couldn't read the document?

A. I went with her because she wasn't allowed to make any more noises. So I went with her to be a witness when she signed. That's how I know.

Q. Okay, we're getting off track. That's fine. Let me ask you this, so you're saying Mr. and Mrs. Buonvivere owe you money just because they're the owners of the house?

A. I didn't understand your question.

Q. What did they do to you?

A. Who's Buonvivere?

Q. The owner, right there. Mr. Buonvivere.

THE COURT: Mr. Battiston perhaps it'd be more helpful to refer to them as Creekside.

MR. BATTISTON: Creekside.

THE COURT: Because he doesn't know who the individuals are.

MR. BATTISTON: I get it. I assumed he did.

THE WITNESS: Because he's the owner and from the beginning he had knowledge of what was happening.

MR. BATTISTON: Q. Okay and then what did he do?

A. Nothing.

5 Q. Nothing. So, you don't remember the evidence about Mr. Buonvivere coming to the house?

A. He went there but he didn't solve the problem.

Q. Oh, how do you know?

A. The problem wasn't solved.

10 Q. Okay and that's all you - you weren't there when he went next door?

A. Which, what do you mean?

Q. You say Mr. Buonvivere went next door but you weren't there when he went next door?

15 A. No, I just talked to her.

Q. What do you think he was supposed to do?

A. He had to make them stop with the music.

Q. Really. Okay so but you know there were no charges laid by the police and the by-law, correct?

20 A. Possibly, I don't know.

Q. You don't know that? Oh, 'cause you said they were good investigators?

A. Yes, but I don't know what the result was and what the findings.

25 Q. I see. So you know nothing about what happened between the police and the by-law officers?

A. The police said that they couldn't - not do anything. They said that they would go there and ask for them to turn the music down and they would say no.

30 Q. The police said that?

A. Yes.

Q. Okay so if the police couldn't say that. If Mr. Buonvivere said that what more could he do?

A. The property owner is the responsible so is his responsibility to make sure that the music would stop.

Q. And that's it?

A. Yes.

Q. But you also agree that the police and the by-law were more at fault for that, right?

A. I don't know.

Q. Well, they're the police. They could have stopped it.

A. I don't know. The laws in Cambridge are different.

Q. Well seems you know something about the law of owning property. Where did you get that information from?

A. So, the people that I know they also have properties and they are other ones that told me about how they deal with those issues. So, I was just following what they experience with their own.

Q. All right, but on book 1 at page 200.

THE COURT: The witness doesn't have any documents in front of him. Do we have any exhibits for the witness box please?

THE WITNESS: Two hundred?

MR. BATTISTON: Page 200.

THE COURT: So, we're referring to Exhibit 1, Mr. Battiston?

MR. BATTISTON: Book 1, Exhibit 1.

THE COURT: Yeah. For the record Exhibit 1, page 200, we hope.

MR. BATTISTON: Yeah, matches, great.

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THE COURT: All right. First let me see if it matches mine 'cause mine is the actual exhibit. What are we looking at?

MR. BATTISTON: Page 200 would be at the bottom right hand corner, Your Honour.

THE COURT: Yes it, no I know but remember everything got mis-numbered.

MR. BATTISTON: Yes, yes, no it looks like we're - as far as I know.

THE COURT: Well no 'cause you don't know what I've got in front of me so I need to know what it is that he's looking at.

MR. BATTISTON: He's looking at the bottom half of the page, an e-mail dated September - Saturday, December 13th, 2014.

THE COURT: Okay.

MR. BATTISTON: Q. Now, Mr. Fiuza this is an example of all the complaints that were made to the police and By-Law, is that correct?

A. Yes.

Q. And, this is your daughter writing to I believe it's the By-Law Department.

THE COURT: I guess we don't know because it's blacked out.

MR. BATTISTON: Q. I'm looking at the last line of the message that says,

[As read] This is noise abuse. Can't even call by-law because no one does anything.

Right? Is that a true statement? So, it's by-law didn't do anything, right?

A. Yes.

Q. Turn to page 212 of that same book. It's an e-mail of December 19, 2014.

THE INTERPRETER: Yeah.

MR. BATTISTON: Q. Yeah, good. Right, so....

THE COURT: Which one are we looking at?

5 **MR. BATTISTON:** Q. Right in the middle of the page there's a bullet point and the e-mail to noise complaints, this is to the By-Law Department Mr. Fiuza?

THE INTERPRETER: The bottom one?

MR. BATTISTON: Right in the middle.

10 **THE COURT:** The middle one. The big one. The biggie.

MR. BATTISTON: Q. The line is,

[As read] Don't call by-law as nothing will be done by by-law.

15 You see that?

A. Yes.

Q. Yes. And, this is your daughter writing to By-Law Department again, right?

A. I don't know.

20 Q. You don't know? That's an e-mail from your daughter to the By-Law Department, you don't....

A. Okay, yes.

Q. Right. Okay. Again, it's the By-Law Department that's the problem?

25 A. Possibly.

Q. Well, that's what that statement says, right? Is that what it says?

A. Yeah.

Q. It doesn't say the landlord doesn't do anything?

30 A. Yes, he didn't do anything.

Q. Right. Thank you. And, again this is an example of the fact that your daughter was in charge of all the complaints to by-law and police, is that correct?

A. Correct.

Q. Book 3, Tab 5.

THE COURT: For the record that's Exhibit 3.

MR. BATTISTON: Is that Exhibit 3? Yes, that's right. I have page eight on the right bottom corner, the communication to Mayor Doug Craig. Your Honour can I assist you....

THE COURT: I'm there. I'm kinda distracted by Mr. Ellis approaching the witness without any permission so....

MR. ELLIS: Sorry, Your Honour.

THE COURT: Please don't do that.

MR. ELLIS: I was providing the....

THE COURT: I understand that sir but you can't just simply walk up to the witness in the middle of a trial.

MR. ELLIS: Sorry, Your Honour.

THE INTERPRETER: I'm sorry...

MR. BATTISTON: Tab 5, page 8 is the bottom right hand corner.

THE COURT: Okay, my page 8 is the last page of I think a letter or an e-mail to Gary Goodyear(ph) and Jan Leggit(ph).

MS. DIBIASE: Can you try page 22, Your Honour 'cause I had a notation on my copy that....

THE COURT: Okay on my page 22 is a letter or e-mail rather to Mayor Doug Craig.

MR. BATTISTON: Yes. Yeah 22. Thank you, Stephanie.

THE COURT: That's what we're looking at but it's different in the witness book?

MR. BATTISTON: I hope not.

MS. DIBIASE: You may want to double-check the witness.

MR. BATTISTON: Can I double-check, Your Honour?

THE COURT: Yes, you may.

MR. BATTISTON: For some reason it is twenty-two on that one and not mine. Okay, good all right we're all on the same page, so to speak.

Q. So, because your daughter was in charge of dealing with the noise problems, Mr. Fiuza this is an indication that on August 22nd, 2014 she wrote to the mayor, is that correct?

THE COURT: We're looking at the one at the bottom of the page?

MR. BATTISTON: Correct yes, right at the bottom, yes.

THE WITNESS: Correct.

MR. BATTISTON: Q. So, on August 22nd, 2014 your daughter said, the situation that my parents and I have been dealing with since February of 2014.

A. Yes.

Q. And February 2014 was the date that Mr. and Mrs. Dooling moved in next door to you, is that correct?

A. Yes.

Q. Do you remember when they moved in?

A. Yes.

Q. And the situation is what situation, Mr. Fiuza?

A. You mean at this time or back then?

Q. Back then - well in August - this communication to the Mayor said, the situation. What was the situation?

A. Sorry, I'm not understanding.

Q. What was your daughter writing to the Mayor about?

A. Because of the music.

Q. Ah. That's the situation that she's referring to.

A. Yes.

Q. And, when did the music start?

A. Since the first day they move in.

Q. First day they moved in, Mr. and Mrs. Dooling.

What was the music, what - explain it to me.

A. It's a noise. The only thing I hear is loud music.

Q. What time of the day?

A. So, when he will - so when the husband would come home, he would start around quarter to four...

Q. Mm-hmm.

A. ...and then it will go close to midnight. Twelve.

Q. Every day?

A. Every day and on weekends it would start from about eleven in the morning and it will go to about four in the morning.

Q. Every weekend?

A. Always.

Q. You didn't sleep?

A. No.

Q. Your health was affected?

A. Yes.

Q. Right from the beginning?

A. Yes. Yes, because I had a hard time sleeping.

Q. So, you had a hard time sleeping right from February of 2014?

A. Yeah.

Q. Did you have anxiety as a result of the music?

A. Yes.

Q. Did you have anxiety at any time before February of 2014?

A. No.

Q. Were you ever on medication before February of 2014?

A. Yes, I had medication for cholesterol and for the blood pressure and once in a while I will have - take some pills if I, if I couldn't sleep.

Q. Couldn't sleep already, before February 2014?

A. Yes, once in a while; not always.

Q. So, there was a history of not sleeping properly, is that correct?

A. Yes, correct.

Q. For years, several years before 2014?

A. The problem was when I worked, I had three shifts so every week I would be changing shifts. So it was hard for me to sleep because I was changing shifts.

Q. Did that affect your health too, Mr. Fiuza?

A. No.

Q. Did you ever get mild depression because of it?

A. No.

Q. You sure?

A. No.

Q. That's something you told Dr. Snyder, Mr. Fiuza?

A. He was the one that gave me the first pills.

Q. And he was your treating doctor for many years before 2014, correct?

A. Yes, from the beginning.

Q. And when you went to see Dr. Snyder you went to see him even by yourself right; you spoke to him in English?

A. Yeah, with the doctor I would go there and we could understand each other.

Q. Of course.

A. It wasn't necessary. I didn't need an interpreter.

Q. And if you told him you weren't feeling well, you explained it to him, right?

A. Yeah, I talked to him and I said that I didn't have any health problems, sometimes I couldn't sleep and that's it.

Q. And sometimes you told him about health problems, correct?

A. I never really had health problems.

Q. Okay, before 2014?

A. No, I didn't have any problems.

Q. No?

A. Every time I would go see the doctor he would say, oh you are a strong man, you're a strong man. So I didn't think I have a problem.

Q. Did you have digestive disorder before February 2014?

A. Yeah, I knew I think I had something like acid in my stomach.

Q. Maybe a condition called GERD?

A. I don't know, what is that?

Q. Made you feel chest pains?

A. No.

Q. You don't remember?

A. No, it was just acid in my stomach.

Q. But the doctor treated you for that, did he not?

A. He gave me some pills to help and then he sent me to do some tests and then it came back clear, I didn't have any.

Q. When was that, do you remember?

A. I'm not sure but I think it was either 2014 or 2015 I went to do the test for my stomach in Kitchener. I remember it was Kitchener.

Q. Not before that?

A. I also remember I went to the hospital and they put a tube inside me but they didn't find anything.

Q. And, when was that?

A. No, a long time ago.

Q. I've got some records I can help you remember some of these points Mr. Fiuza.

THE COURT: Have these medical records even been filed as evidence yet?

MR. BATTISTON: I'm going to have to deal with them one at a time, Your Honour.

THE COURT: Okay.

MR. BATTISTON: Q. Did you ever have sinus congestion before February of 2014?

A. A little bit.

Q. Just a little. Tell your doctor about it?

A. Yes, he gave me something.

Q. And more medication for that?

A. It was just a nasal spray.

Q. One time?

A. Twice a day, one puff in the morning and one in the evening.

Q. When was that?

A. No, I always had it around the house.

Q. Always had it?

A. After a while I didn't need it anymore so it's been awhile since I have that.

Q. Been awhile, since what while? When?

A. It's been awhile since I took the medication for the sinus.

Q. In 2014?

A. I remember that in 2014 I, I was taking that.

Q. 'Cause you had the sinusitis thing?

A. Yes.

Q. Okay. And when you went to - well you remember Dr. Kamala came here in May the last time you testified Mr. Fiuza; you remember that right?

THE COURT: When did Dr. Camala testify?

MR. BATTISTON: Sorry?

THE COURT: When did Dr. Camala testify?

MR. BATTISTON: No, she didn't testify. No, she did not.

THE COURT: She was here in the courtroom.

MR. BATTISTON: Q. She was here and you remember she was ordered to bring your medical file; do you remember that?

A. Yes.

Q. And, she was ordered because you did not authorize that in advance when I requested it of Mr. Ellis, is that correct?

A. Yes.

Q. So, I have since had an opportunity to review all those records Mr. Fiuza.

A. Well you shouldn't because you didn't have the authorization.

Q. I shouldn't? Was there something to hide in those records, Mr. Fiuza?

A. No.

Q. Okay.

A. But you're not supposed to.

Q. Well....

THE COURT: Mr. Fiuza, Mr. Fiuza this is an order of the Court. That is the authorization.

THE WITNESS: Okay.

MR. BATTISTON: Q. I'm showing you one of the records that was provided to me Mr. Fiuza and it is a record that was from Dr. Snyder because in September 2008 Dr. Snyder was your doctor, was he not? Right?

A. Yes.

Q. And, his notation - do you remember going to see him in September of 2008 because he said you were there?

A. Yes.

Q. You remember going right?

A. Yes.

Q. And in the second line of his notes say, I think he has a long-term problem with mild anxiety disorder. You read that?

A. I remember that I was always changing shifts maybe because of that.

Q. Okay, but the doctor said, a long-term problem so that'd been going on for some time.

A. Since probably since I worked because of changing shifts.

Q. For thirty years you had mild anxiety disorder.

A. Thirty-three.

Q. Thirty-three years you had mild anxiety disorder.

A. Yeah, but I didn't worry too much.

Q. Well because he gave you medication for that. Zoloft, that's what it says.

A. But that was just for about like four weeks or six months.

Q. But the anxiety disorder continued?

A. No.

Q. Oh, I see. But this was, this was a significant medical condition that pre-dated 2014, Mr. Fiuza, don't you agree?

A. No.

Q. Okay, well let's see where we go from here. You went back to him in January of 2008. You see right in the middle of the page?

A. Two thousand and eight?

Q. Nine, January 15, 2009 so about five months later and at that time his first notation said, still having epic gastric discomfort. That's something to do with your stomach. That's what you talked about earlier, is it not?

A. Yes.

Q. And you had excess frequent urination during the day and at night, another medical problem.

A. Yes.

Q. And for that you got - you were prescribed Hytrin, another medication.

A. Yes.

Q. And if you look at the bottom of that paragraph, not only do you have the gastric problem but the anxiety is acting up again because the doctor recommended that you resume the Zoloft medication 'cause you still had trouble sleeping?

A. Yes.

Q. So, you said you took the medication for four weeks but you had to take it again at different times, is that right?

A. Yes.

Q. Can I say that it happened so many times you forget exactly how many times you've had to go back on to this Zoloft medication?

A. No.

Q. No, you don't forget?

A. You mean like taking this medication?

Q. Yes.

A. I think it was just for a little while but....

Q. Well, you said that the first time but then in January you had to take it again, did you forget?

A. Yes, she gave me the prescription but I never bought the medication.

Q. Oh, you didn't bother to take it in 2009?

A. Yes.

Q. Yes, what? You didn't bother to take it?

A. In 2009, right?

Q. You forgot to take it?

A. No.

Q. No, you didn't forget, you just didn't - decided not to?

A. Yeah, I didn't take it.

Q. Didn't bother.

MR. BATTISTON: We have to mark each of these individually?

THE WITNESS: I didn't see it was making any difference so I stopped.

MR. BATTISTON: Q. What?

A. It wasn't making any difference with the medication so I didn't take it.

Q. Oh.

MR. BATTISTON: So this is the next exhibit.

THE COURT: No, I'm going to stop you right there, Mr. Battiston. The problem is this page, in and of itself, has no identifying features okay. In my view it is appropriate and proper to file all of the medical records produced instead of just serving....

MR. BATTISTON: They were sent to me in a loose printout.

THE COURT: Pardon?

MR. BATTISTON: They were sent to me in a loose printout. Dr. Camala's file was a loose printout. She took her file back so I only took relevant records that I could at the time. Remember she was here.

THE COURT: I remember she was here.

MR. BATTISTON: And we were delayed about three hours.

THE COURT: Oh yeah, I remember that but here's the problem. This is - I don't know if this is a page from her file, Dr. Snyder's files or not.

MR. BATTISTON: These were sent to me by Mr. Ellis. Mr. Ellis can confirm. Here's the whole binder.

THE COURT: I understand that and I remember that. All of those records should be one exhibit and then we can refer to the pages. That way there's continuity. That way there's...

MR. BATTISTON: That's fair.

THE COURT: ...identifying features. That way I know that the evidence is accurate and reliable.

MR. BATTISTON: Yeah. Well....

THE COURT: I mean I understand the problems that we've had with the doctor but that is the package. But what she produced should be....

MR. BATTISTON: Well, these notes, these notes weren't in here.

THE COURT: Those notes weren't....

MR. BATTISTON: These pre-date - these '08 records predate September of 2015 and that was the problem.

When she came here, I had to flag certain records and make copies of those before she took her file back so most of this is not something I will be referring to until further on in my questioning.

THE COURT: And that's fine but I have a real problem with Dr. Camala in the first place not producing her file.

MR. BATTISTON: Well.

THE COURT: I mean that's just unacceptable. This is a personal injury claim more than anything and without the evidence which includes the medical records I don't know how the plaintiffs' going to prove their claim because the defendants are entitled to cross-examine on everything.

MR. BATTISTON: Okay. Can I speak to Mr. Ellis?

THE COURT: Let's you know what, let's take a morning break for fifteen minutes and you two can discuss this issue. I can tell you right now. I am not happy about the status of these medical records. My understanding was that Dr. Camala produced her file and should have given a full copy of her file.

CLERK OF THE COURT: This court's in recess until recalled.

R E C E S S

(11:08:58)

U P O N R E S U M I N G :

(11:27:55)

CLERK OF THE COURT: Order. All rise. The Superior Court of Justice has now resumed. Please be seated.

MR. BATTISTON: Your Honour we've organized it into a single entry and a single exhibit which are the....

THE COURT: This is a compilation of Dr. Snyder's and Dr. Smith's records?

MR. BATTISTON: Correct.

THE COURT: Okay.

MR. BATTISTON: And, this is the next exhibit that we wish to have entered.

THE COURT: Exhibit 8?

EXHIBIT NUMBER 8: Medical records of G. Fiuza - produced and marked

MR. BATTISTON: Yes. The pages Your Honour are numbered on the bottom right hand corner.

THE COURT: Okay.

MR. BATTISTON: Which I don't have, I'm going to have to rely on....

THE COURT: So, the page that we were referring to which was an excerpt I guess of Dr. Snyder's records 'cause it's back to 2008 is page number 1.

MR. BATTISTON: Page 1.

THE COURT: But, these aren't all of the records that Dr. Camala showed up with?

MR. BATTISTON: Well she had a file. She had to take the - I marked the pages that I had an opportunity to determine were relevant and she had to take the file.

THE COURT: All right. Just so I know that they're just excerpts and not the complete file.

MR. BATTISTON: Correct. No, no, definitely not complete because there was confusion. In the interim Mr. Ellis was provided a number of documents but they didn't pre-date 2015. There were records that pre-dated 2012 so anyway we'll clarify that confusion

because I'm only - I'm gonna be asking specific questions about the specific documents that now are presented before you in that convenient exhibit which we have numbered 8?

THE COURT: Yes.

MR. BATTISTON: Eight, all right.

MR. BATTISTON: If I can ask you to turn to page 2 of Dr. Camala's excerpts, Your Honour, Mr. Fiuza.

MR. BATTISTON: Q. This is clinical data from August of 2009. Your name is at the top of the page Mr. Fiuza. Do you remember going to see Dr. Snyder in August of 2009?

A. Yes.

Q. And it says in the middle of the page, it says, MS sore neck after heavy labour. Was that something from work Mr. Fiuza?

A. Yes.

Q. It was right? But the next line it says, insomnia. Again, you were having trouble sleeping in 2009?

A. Yes.

Q. And you were prescribed Zoloft once again.

A. Yes.

Q. And, that's the anxiety medication, is it not?

A. I don't know.

Q. That's what it said on the previous page.

A. I don't know.

Q. Did you take it?

A. A very short time.

Q. Don't like taking that Zoloft thing?

A. No, I don't like.

Q. At the bottom there are notations, there's five remarks. You see where it says, five remarks? Now, it looks like

this was the same day because it talks about the insomnia, you see that?

A. Yes.

Q. But further down it says GERD, G-E-R-D. It's gonna come up again so I did - although the writing is a little difficult it's GERD, G-E-R-D. Do you remember that?

A. I don't know what GERD means.

Q. I looked this up Mr. Fiuza and GERD is gastroesophageal reflux disease.

A. Yes.

Q. It's a digestive disorder.

A. Yes, okay.

Q. And it says GERD usually feels like a burning chest pain, is that true?

A. No.

Q. Is that what you were suffering from?

A. No.

Q. You sure? It's heartburn?

A. Yeah, like acid.

Q. Acid, you had GERD. You were diagnosed with a condition at that time, do you remember?

A. No, I don't know.

Q. No? And, I also read that heartburn pain is sometimes mistaken for the pain associated with heart disease or a heart attack. Did you feel those symptoms, Mr. Fiuza?

A. No.

Q. No, you just said that in November of 2014 you went for heart tests?

A. Yes.

Q. Is that what it was for? You thought it was GERD or you thought it was a heart attack, maybe you had the GERD?

A. No.

Q. Pretty serious - you thought you had a heart attack.

A. 'Cause my heart was pumping very fast. So that's why when the heart was pumping too fast, I was like very - it felt like I was like kinda like dying.

Q. Dying?

A. Felt like.

Q. Felt like you were dying, like you were having a heart attack?

A. Yeah, yeah, I was very confused.

Q. And was that because of medication, GERD, what was the reason?

A. No, it wasn't the medication.

Q. No reason?

A. So, the problem with the heart it was that I was always being waking up because of the loud music.

Q. That's what it was?

A. And I was always tired and I couldn't sleep properly and that's why it was - this was happening.

Q. And, who said that. Did you say that to your doctor?

A. I told that to the doctor.

Q. When?

A. I told the hospital when that happened. Yeah, I don't think I ever talked to my family doctor regarding that.

Q. Turn to page 4 if you would Mr. Fiuza of the records before you.

THE COURT: It's Exhibit 8?

MR. BATTISTON: Of Exhibit 8, yes correct.

Q. Clinical data for September 20th, 2011. So, more than a year later you went back to Dr. Snyder, you remember that?

A. Yes.

Q. Looks like a pretty thorough examination at that time, do you remember it?

A. Yeah, he did a lot of tests.

Q. All right look in the middle. Dr. Snyder noted that you had gastritis in 2008. Do you remember we already touched on that?

A. Yeah, yeah, okay.

Q. AS and AI mild, that refers to anxiety does it not?

A. Yeah, but I don't think so.

Q. Not much, okay and the GERD in 2009, you see that?

A. Yes.

Q. But at the bottom in 2011 we see those same entries; one, two, three, four, five, six, seven, eight. Number three, I don't even know what that is. Dysfemia, what was that? Do you remember?

THE COURT: Dyslipidemia, is that what you're referring to is dyslipidemia?

MR. BATTISTON: Q. Dyslipidemia, do you know what that is Mr. Fiuza?

A. No, I don't.

Q. Do you remember complaining about that?

A. No.

Q. No, okay. Number four GERD comes up again in 2011, you're still suffering from GERD. That's what it says.

A. Yeah, that's always....

Q. It's always been. Still have it today?

A. No.

Q. When did it stop?

A. It just depends what I eat. If I eat something that is too acid then I will have it.

Q. And if there's a lot of acid you feel chest pain?

A. No.

Q. How about insomnia, look at number six you were still suffering from insomnia in 2011?

A. Yeah, because from the work - coming from work and it was hard to control.

Q. In 2011? I thought you quit work in 2006?

A. I didn't work anymore but my body was still - hadn't adjusted for me not working anymore.

Q. Still hadn't adjusted. You stopped work in 2006, is that true?

A. Yes.

Q. Five years later you're still suffering from insomnia?

A. Yes.

Q. Okay, was there any music causing you not to sleep in 2011? Well let's not have a discussion, yes or no?

A. Yes.

THE INTERPRETER: Sorry, what?

A. No, it wasn't the music because there was no music in 2011.

MR. BATTISTON: Q. There was no music in 2011 was there, but you did have insomnia?

A. A little bit, yes.

Q. A little bit? Your doctor said your insomnia is better so it had to have been really worse at some point.

A. Yeah.

Q. All right. Let's turn to the next page which are a series of entries for - starting November 2009. In the middle of the page there's an entry from Dr. Snyder's notes of September 16, 2010 and it says Echo shows only mild AS. You had a heart condition - Echo shows only mild AS, mild AS and AT. Is that for the anxiety Mr. Fiuza?

A. I don't remember.

Q. In March of 2011, two thirds down the page.

Obviously, your heartburn was still an issue because you were prescribed a different medication, Pariet. Do you remember taking that medication?

A. Yes.

Q. And then in June of 2011 you're going to the doctor once again, prescribed something else. Some other medication for frequent urination during the night?

A. Yes, that was because of the prostate but that has nothing to do with that.

Q. So, you're taking medication that's making you urinate. You have mild anxiety and you're not sleeping. That was all happening before February of 2014, isn't that correct?

A. Yeah.

Q. All right thank you. Turn to the next page if you would. Now we're into page 6 of the notes and records you're looking at. So the doctor's office went on a different system and the notes look different but these are your patient notes. Do you agree, Mr. Fiuza?

A. Yes.

Q. In the middle of the page on April 10th, 2013 you went to see Dr. Snyder, did you not?

A. Yes, I went there to make....

Q. And it says, annual health exam so that was....

A. Yes.

Q. You talked about all kinds of things with Dr. Snyder, do you remember?

A. Yes.

Q. And it said, after the entry annual health exam it says, ongoing pain, lower back and left buttock.

A. Yeah, that is because I had a work accident.

Q. A work accident, when?

A. I don't remember when.

Q. Way back when you were still working before 2006?

A. Yeah, it was right in the beginning when I started working there.

Q. And you had back pain the whole time?

A. No, no, it got better after a while.

Q. Ongoing means it was going on for some time, correct?

A. Yeah, it depends what I do.

Q. Right. Is it the sciatic nerve acting up, Mr. Fiuza? That can hurt.

A. Yeah, I know it was a nerve that was pinching....

Q. And that can hurt, eh? Real pain.

A. Yeah, yeah the nerve was pinching, yes.

Q. The discs are pinching your nerve?

A. Yes.

Q. Oh, that didn't go away, did it?

A. No. Yeah, but I don't have any more problems with that.

Q. Okay but it was ongoing at the time. It was ongoing for some time?

A. In the beginning yes and then I went to the chiropractor and then....

Q. In 2013?

A. No.

Q. So, what did you do in 2013?

A. It was depending what type of activity I was doing maybe I was in the garden doing something.

Q. Maybe? Okay. So, every time you do the garden you probably get this back pain?

A. Yeah, I think it's because I carry heavy weight.

Q. Yeah, that's understandable, I mean you're not young anymore. It hurts when it hurts though, doesn't it?

A. Yeah, but I haven't had like always.

Q. Well when you were complaining about it did it prevent you from sitting down without pain?

A. Yes.

Q. So, you couldn't sit down too easily, right?

A. Yes.

Q. And did it affect your sleep? It probably kept you awake at night.

A. It didn't affect like my sleep. It was like it hurt a little bit but it wasn't something that disrupted.

Q. All right. Well, look at further down where it says, functional inquiry.

A. Okay.

Q. And, it says, poor sleep as usual. The same thing comes up. Do you see that? So, you complained to your doctor that you had poor sleep and that it was usual. Four hours maximum. Did you remember telling Dr. Snyder that?

A. Yes.

Q. All right. Did you take more medication for that?

A. You mean for the pain or for the sleep?

Q. Yes, well for sleeping, I don't know whatever. How did you help yourself or try and help yourself?

A. Tylenol.

Q. Tylenol? So, it was your back?

A. Yes.

Q. Oh, so it was the back that was causing you not to sleep?

A. Sometimes if it was hurting then I would take a Tylenol and then I will lay down and then I will be fine.

Q. Okay but it was - the sleep was described as poor?

A. Yeah, it was still like my sleep pattern wasn't still good just because working so many years.

Q. And that was usual for the past ten, fifteen, twenty years, is that correct?

A. Yeah.

Q. All right. Turn to the next page if you would which is number, page 7, entries in your medical records that are from - that are marked page 2 of 60 at the top right hand corner but they're page 7 of the exhibit. In the middle there's a notation of your visit to the doctor on May 27 of 2013.

A. Okay, yes.

Q. I'm bringing it up again because this is another entry where you complain to the doctor, still trouble sleeping. Do you see that?

A. Yeah.

Q. And you were prescribed Imovane.

A. Yes.

Q. Another medication. As well, further down it says Ramipril and Zopiclone. You were taking all those medications, Mr. Fiuza?

A. I think that's for the stomach.

Q. What's that?

A. I think the Ramipril's for the stomach.

Q. Oh, you take the medication to sleep and you're taking medication for your stomach 'cause your stomach was still bothering you?

A. Yeah, the stomach I had to take every day.

Q. The GERD, for the GERD problem?

A. Yes.

Q. The heartburn?

A. Yeah, if I just take that then I don't have any problems with the acid.

Q. And you're taking that every day?

A. Yeah, one.

Q. One pill every day?

A. Yes.

Q. Still today?

A. Yes, in the morning.

Q. Still today?

A. Yes.

Q. Wow, that's many years of taking that medication,
eh? Yes?

THE INTERPRETER: It was the last one and he's
pointing to the Ramipril. He said he start taking
that after...

THE WITNESS: I start taking that after I saw the
heart doctor.

MR. BATTISTON: Q. In 2013?

A. No, the heart doctor was 2014, sorry.

Q. Oh '14, so you're taking Ramipril in 2013?

A. Yeah, maybe I don't know.

Q. Yeah, a little confused maybe.

A. Yeah and I don't know what the Zopiclone is.

THE COURT: Zopiclone?

THE WITNESS: Zopiclone, yes.

MR. BATTISTON: Q. You don't know what that is?
Maybe you forgot that you took that too?

A. The ones that I know I take three medications.
One for the cholesterol, one for the blood pressure and one for the
acid. Those are....

Q. But then you also took that medication for the
anxiety every once in a while, too, correct?

A. No, I haven't had that in a long time.

Q. So, you were prescribed the medication but you didn't take it?

A. Yeah, no.

Q. Interesting.

A. It didn't, it didn't work, so.

5 Q. All right. The next page is page 9, 8. Page 8 is the next page. There are notations regarding more visits, January of 2014. It says you have diarrhea with cramps, do you remember that?

A. Yes.

10 Q. And that's what you went to the doctor for?

A. Yes, that's right.

Q. Okay, well your doctor told you to avoid cheese and all dairy. So this was part of your gastro problem?

A. Yes.

15 Q. Right, so your stomach problem was acting up and made you go in January of 2014?

A. Yes.

20 Q. All right. There's an entry in April of 2014. What did you go then for? Maybe to refill your medication, you see where it says, refill Micardis and Zopiclone. So you took your medication?

A. Yes, every four months I have to go to check my blood pressure.

25 Q. I see and you had no complaints on April 21st, 2014?

A. No.

Q. All right. Then in July it says here that's when Mr. Snyder retired, do you remember that?

A. Yes.

30 Q. And, Dr. Camala Smith became your doctor?

A. Yes.

Q. And you remember that you were called into the office to see her - to see Dr Camala for your annual health exam, do you remember that?

A. Yes.

Q. And you went in to see her on August 20th, 2014?

A. Yes.

Q. So, she was a new doctor and she asked you all kinds of questions. Do you remember that?

A. Yes.

Q. Because it says, past history review. She asked you about everything that was wrong with all your health issues before August of 2014. Do you remember that?

A. Yes.

Q. And then she asked you about family history, do you remember that?

A. Yes.

Q. Social history, you remember that?

A. Yes.

Q. And she was asking you questions in English?

A. Yes.

Q. And you were answering in English, did you understand her questions?

A. Sometimes my daughter would go with me.

Q. Your daughter wasn't there on this occasion.

A. No, not this day.

Q. All right so it was you and Dr. Camala, correct?

A. Yes.

Q. Was your wife with you?

A. Yes, she always goes with me.

Q. She was in the room when Dr. Camala was speaking with you?

A. Yes, most likely.

Q. Oh, I see. So, you had a conversation that you understood what you were talking about and what she was asking you, correct?

A. Yes.

Q. All right. So, if you go further down on the page where it says, lifestyle review, this is what Dr. Camala wrote after speaking with you. It says, smoking none. You don't smoke, correct?

A. No.

Q. The next entry says, ETOH, 1 to 2 wine per day. So you told her you drank one to two glasses of wine per day.

A. All my meals, yes.

Q. Yeah, of course. You told her that. Oh, but I was confused by that because earlier you said there was no alcohol in your house. So we're talking regular drinks, wine with meals, right?

A. Sometimes I like wine but with no alcoholic and you can get it at Zehrs.

Q. There it says, one to two wine per day, wine is wine, right? Two glasses of wine is fine, right, that's what they say.

A. Yeah, one and a half. Small like this.

Q. That's okay. You've got vitamins that you were taking at the time, Mr. Fiuza?

A. Yes.

Q. Oh, so there's more pills you're taking that you forgot to tell us about. So there's vitamins you're taking?

A. Yes.

Q. All right and it says, other drugs. Is that the drugs for your cholesterol?

A. Yes, and blood pressure.

Q. And your stomach medication.

A. Sorry, can I ask you....

Q. And the stomach medication that you take every day?

A. Yes, yes and also, I drink the acid....

Q. Then in August of 2014 it says, exercise, lots of gardening. Is that true?

A. Yes.

Q. Oh, so did you have a big garden in 2014?

A. No, it's small. I don't have a lot of space.

Q. Lots of gardening means you were out there working many hours a day on your garden, nothing wrong with that. Good exercise.

A. Yes, it's like back and forth, I walk.

Q. Of course, oh and it says, walks plus, plus, so lots of walking?

A. Yes.

Q. Okay. Then she asked you about sexual health relationships and she puts, no concerns?

A. Yeah.

Q. Right, no problems at home?

A. No.

Q. Zero. Good. Then it says down at the very bottom, mood, you see where it says, mood. No concerns, it says that, right?

A. Yeah.

Q. It says, how are you feeling these days and you said, I'm good.

A. Yeah.

Q. So, in August of 2014 you didn't have a problem not sleeping?

A. I always had a little bit but it wasn't like....

Q. Not a big deal, right, nothing to tell your doctor about?

A. Yeah, no.

Q. Okay. Mr. Fiuza, this, this appointment in August of 2014 was almost five months after Mr. and Mrs. Dooling moved in next door.

A. Yes.

Q. You did not say to your doctor that you were having any problems sleeping or any problems with your sexual relationship or anything else that you thought was important to tell your doctor when she asked you how you were doing.

A. Yeah, I didn't say anything 'cause she already knew all my history so why would I mention it.

Q. Right, anything important she already knew and you would have told her, right?

A. Yeah.

Q. Okay. So, when this music started in February of 2014, I guess it wasn't important in August of 2014; five months later that you claim it affected your health?

A. I always mentioned to her about that. She always knows....

Q. She was your new doctor. You'd never spoken to her before. She didn't know anything about music.

A. Yeah, I just remember that I think she started a little bit before Dr. Snyder left so I don't remember maybe she knew.

Q. Maybe you didn't tell her anything at all about the music, right?

A. Yeah.

Q. Didn't mention it?

A. No.

Q. No, because it didn't bother your sleep because in August of 2014 you didn't complain about not being able to sleep.

A. No, because she already had the history of my problem. She already knew I was going....

Q. 'Cause she knew you had a sleep disorder?

A. Yeah.

Q. She knew you had a gastrointestinal problem?

A. Yeah.

Q. And she knew you had a mild depression problem?

A. No, it was very little.

Q. But she knew?

A. Yes, she did.

Q. And, you didn't tell her anything new from what she already knew from the file?

A. No.

Q. Book 3.

THE COURT: Exhibit 3?

MR. BATTISTON: It is.

Q. Bottom right hand corner of that page, it's page

8.

THE INTERPRETER: Sorry, we don't have....

THE COURT: Mr. Ellis?

MR. BATTISTON: Mr. Ellis, a copy for the witness.

Oh, you know what, I might have extras.

THE COURT: He doesn't have it.

MR. BATTISTON: He has it there?

THE INTERPRETER: No, no, no.

MR. BATTISTON: Q. Okay, this is the page of Exhibit 3 and this was produced by Mr. Ellis early on, Mr. Fiuza.

THE COURT: What are we looking at?

MR. BATTISTON: It is a triage screening form of Cambridge Hospital.

THE COURT: Okay, is that at Tab 7?

MR. BATTISTON: It's Tab 7.

THE COURT: What page?

MR. BATTISTON: Bottom right hand corner should read page 8, Your Honour. An entry for November 15th, November 15th, 2014.

THE INTERPRETER: I apologize....

THE WITNESS: Yes, yes, I went to the hospital.

MR. BATTISTON: Q. Okay, you went to the hospital in November of 2014 and it says, presenting complaint, chest pain. Do you remember that?

A. Yes, the pain started throughout the night.

Q. Right.

A. And then because it didn't went away then I went to the hospital.

Q. Emergency. It must have been pretty serious pain.

A. Yes, it was like my heart and it felt like stress and like my head was like pounding too.

Q. Wow, so did you feel like it was a heart attack?

A. Yeah, in the beginning I thought it was a heart attack.

Q. Okay and it said further down at the bottom it says, chest pain and headache?

A. Yes.

Q. And it says, sinus congestion. So your sinuses were all stuffed?

A. Maybe, if that's what if they said but I don't have....

Q. That's why you were feeling dizzy because of a sinus congestion too?

A. No, I always have a little bit of sinus so....

Q. Always, really? Is that chronic sinusitis?

A. A little bit.

Q. Is it sinusitis, you heard that before?

A. Usually is just around November and December because of the change of the weather that's when I have that.

Q. Headaches from your sinuses?

A. I don't have headaches; it's just it gets all plugged.

Q. Well on this occasion you went to Emergency and they said further down, is it, wobbly and shaky. Were you wobbly and shaky?

A. Yes.

Q. So that was from the chest pain that you thought you were having a heart attack or the sinus congestion?

A. No, it wasn't the sinus. It was the heart.

Q. The heart. You will agree with me that by the fall of 2014 you had a few serious medical issues, did you not, Mr. Fiuza?

A. No.

Q. No? Going to Emergency at Cambridge Hospital does not - is not to be considered a serious medical episode?

A. Yes, but I just went because I wasn't feeling well.

Q. All right, that's why we go to hospitals, right?

A. Yes.

Q. We do. We do.

MR. BATTISTON: Your Honour I'm sorry. I have one more document but it's not part of that exhibit.

THE COURT: Is that for Exhibit 7?

MR. BATTISTON: This will be one page. We can staple it on?

MS. DIBIASE: Yeah, the last page, look at Mr. Ellis' copy, that can probably be page 12 if Your Honour doesn't have a problem with that?

MR. BATTISTON: Sorry, Your Honour if we can attach this as page 12 but I only have one copy.

MS. DIBIASE: Oh, then....

MR. BATTISTON: It can be the court's....

THE COURT: You can do that during the lunch break and we'll correct it after lunch.

MR. BATTISTON: All right so well, I'll mark it page 12 and 13 and we'll fix the form of that.

Q. This is another record from September of 2015, Mr. Fiuza and it appears to me that Dr. Camala's writing to Dr. White. Do you remember going to see Dr. White in September of 2015?

A. Yes.

Q. Yes, you do? And, Dr. Camala said,
[As read] Please see this seventy-two-year-old male who presents with a history of year-round allergies.

A. I have but it's not all the time.

Q. He has chronic rhinosinusitis. That's what Dr. Camala says.

A. I don't know, she never said that....

Q. Well, okay she's the doctor, she knows, doesn't she?

A. Yes.

Q. All right and it says, current medical issues include - this is September of 2015 - hypertension, hypercall.

A. Sorry, I don't know what that is.

Q. Neither do I and it says, risk high, regardless it sounds pretty serious. BPH, do you know what that is?

A. No.

Q. GERD, that's your stomach problem, right?

A. Yes.

Q. Insomnia, you know what that is? Can't sleep.

A. Yes.

Q. September of 2015, you can't sleep. No bone mass
and needs yearly ECHO. Ecogram, I guess that's for your heart?

A. I haven't been done that anymore.

Q. Oh, you don't do that either? Okay. I'll ask you
again by September of 2015...

THE COURT: Mr. Fiuza?

THE INTERPRETER: Yeah, no I gonna say that.

THE COURT: Well counsel wasn't finished asking a
question so I can't have three people talking at the
same time so let's start with the question and the
answer and the translation.

MR. BATTISTON: Q. Will you agree with me that Dr.
Camala sent you to Dr. White because in September of 2015 you had a
number of significant medical issues?

A. Yes.

Q. And I read about sinusitis and sinusitis gives you
headaches, did you suffer from headaches?

A. No.

Q. Poor sense of smell? Did you suffer from that?

A. No.

Q. I read that sinus infections can cause middle ear
problems due to congestion of the nasal passageways demonstrated by
dizziness; did you feel that?

A. No, I don't have that.

Q. No? That's what happened when you went to
Emergency, you were dizzy.

A. Yeah, but it was the heart that was beating too
fast.

Q. Well, are you the doctor?

A. I mean, I'm not the doctor. I went to the doctor to the emergency department because I felt my heart was pumping too fast.

Q. Oh, we got that a heart attack or thinking you have a heart attack is pretty serious, yes, I agree.

A. Yes, I was like pale like a piece of paper.

Q. None of these records confirm that any of these symptoms you're suffering relate to music from the Dooling's house, do you agree?

A. But in the hospital, they never asked me that question.

Q. Oh, really? All right.

A. They only treat my heart.

Q. But the reason you want money from my client is because you say all these problems are caused by what they did not do?

A. Yes, because now I went to the hospital.

Q. Mm-hmm. When?

A. Fifteen of November, then 22nd of November, March 9....

Q. With all those issues you had going on.

A. And there's one more.

Q. Yeah, did your daughter take you on those occasions Mr. Fiuza?

A. Yes.

Q. Yeah, figured.

MR. BATTISTON: Those are all my questions. Thank you.

THE COURT: Mr. Dooling or Ms. Ferguson, do either of you have any questions of Mr. Fiuza?

MR. DOOLING: No.

THE COURT: No, all right. Thank you. Mr. Ellis any re-exam?

MR. ELLIS: No, Your Honour.

THE COURT: All right. Perhaps this is a good time to take a lunch break then and we will resume at 1:30 and then at that time we can modify Exhibit Number 8. All right.

CLERK OF THE COURT: All rise. This Superior Court of Justice is in recess until 1:30.

R E C E S S

(12:17:02)

U P O N R E S U M I N G :

(01:28:54)

CLERK OF THE COURT: All rise. Superior Court of Justice has now resumed. Please be seated.

THE COURT: Before we get started maybe we could take stock of where we're at and how much more time is gonna be required 'cause I doubt very much we're going to finish today. I didn't think so, okay. Mr. Ellis we're finished with two of your witnesses. Who else do you have to call?

MR. ELLIS: I only have one more witness Your Honour.

THE COURT: That's it?

MR. ELLIS: Yeah.

THE COURT: That's Mrs. Fiuza?

MR. ELLIS: Yes.

THE COURT: Okay. Mr. Battiston, how 'bout you?

MR. BATTISTON: I have Mr. Buonvivero. There are two witnesses that were summoned by Mr. Ellis as a result of my Rule 18 evidence by way of letters. They're here for the third time.

THE COURT: Okay.

MR. BATTISTON: And, they've been sitting outside so I really think that we should make an exception and get them in and out and done but Mr. Buonvivere, those two witnesses and Mr. Dooling has an affidavit that has to be presented through testimony. So that's pretty ambitious to think we're going to be getting through all that today.

THE COURT: We're not going to. How long is Mrs. Fiuza going to take?

MR. ELLIS: I'm saying that I shouldn't be more than an hour and then however long but I don't know whether we should do the two other witnesses first so they can get out of here because my clients got to be here every day anyways.

THE COURT: That's true. I mean if the parties are happy with interspersing these people out of order...

MR. BATTISTON: I'm sure we can figure out the evidence.

THE COURT: ...let's deal with that. I'd rather have them called, get them out of the way...

MR. BATTISTON: Perfect.

THE COURT: ...so that they don't have to return one more day or coming back another day either this year or next so let's get the Fords going then. So, this will actually be part of the defendants' case.

MR. BATTISTON: Correct.

THE COURT: And, Mr. Battiston will be calling these two witnesses.

MR. BATTISTON: Correct.

THE COURT: And then when we're finished with them, we will resume hopefully and complete Mrs. Fiuza today.

MR. BATTISTON: Hopefully.

THE COURT: I hope - I'm being hopeful. Don't worry, I'm not gonna keep everybody 'till 6:00 or 6:30 because I know Octoberfest is looming....

MR. BATTISTON: I gotta go catch a turkey at the farm.

THE COURT: That's another consideration so - okay who would you like to call first.

MR. BATTISTON: Christopher, sorry Jaimee - Mrs. Ford, Mrs. Jaimee Ford.

THE COURT: Would you page, yeah, we can page her or....

MR. BATTISTON: Stephanie can.

THE COURT: Oh, Stephanie if you want to run out and get them that's fine. Thank you. All right. Mrs. Ford if you'd like to come forward and get in the witness box. You can either stand or be seated, it's up to you but the reporter's going to ask you if you wish to be sworn or affirm.

CLERK OF THE COURT: Do you wish to be affirmed or swear on a holy book?

MS. FORD: I'll swear.

JAIMEE FORD: SWORN

CLERK OF THE COURT: Kindly state and spell your full name for the record.

MS. FORD: Jaimee Ford. It's J-A-I-M-E-E, F-O-R-D.

EXAMINATION IN-CHIEF BY MR. BATTISTON:

Q. Thank you, Mrs. Ford. You've been very patient with us. I know this is the third attendance for you and Mr. Ford.

We thank you for your service and this is the time which you will now have a right to speak instead of waiting outside while you don't know what's going on in here. Mrs. Ford based on the information that came to you through Mr. Buonvivere last February, that information being that the plaintiffs in this action made statements to the effect that the existing relationship with the new neighbours, in other words you and Mr. Ford were quite good and that there were no issues or problems. I think having heard that from Mr. Buonvivere you were then compelled to make certain statements which you then set out in a letter, is that true Mrs. Ford?

A. That's correct, yes.

Q. And that letter was given - passed on to me and likewise to my colleague, Mr. Ellis, and it's the letter dated February 23rd, 2018, is that correct?

A. That is also correct.

Q. And, after Mr. Ellis received the letter you were then sent a notice requiring you to attend these proceedings, is that correct Mrs. Ford?

A. Yes.

Q. I have a clean copy for the witness. Mr. Ellis you have yours I presume.

MR. ELLIS: Yes.

THE WITNESS: I've brought my own. I'm fine thank you.

MR. BATTISTON: Q. And you have your own. Okay well this is for the Court then. And, Mrs. Ford that - if you're looking at the same letter I am, it's dated February 23rd, 2018? You're nodding yes, you have to say yes.

A. Yes.

Q. Good and at page 3 that's your signature?

A. Indeed.

Q. Indeed, and you signed the letter confirming that the statements you made in the letter are true?

A. To the best of my knowledge at that point in time. I did just recently - I was corrected in one of my statements that....

Q. Why don't we get - okay then it you know what it sounds like there's a correction somewhere?

A. Yes.

Q. When you get to that point you can please point it out to us otherwise we'll start at the beginning which is the letter which says, that this is to confirm that my husband Christopher and I are tenants at 542 Elgin Street. Is that correct?

A. Indeed.

Q. And, your two sons are how old?

A. They are now nine and seven.

Q. But you moved in in November of 2015, correct?

A. Yes.

Q. And you still reside there?

A. Yes.

Q. You said in your letter,

[As read] You have an advanced diploma with distinction from Conestoga College in the field of Business Administration and Management?

A. Yes.

Q. Where do you work today Mrs. Ford?

A. I work for a hearing aid manufacturer in Cambridge. We're mostly just a distributor.

Q. Okay, all right and are you missing work today?

A. I am indeed.

Q. Again, okay. I apologize for that. Background information you confirm you live in a semi-detached home that is attached to the home occupied by the Fiuza's. Is that correct?

A. That is correct.

Q. I'll let you pick up at this point Mrs. Ford with the statements you make in the letter. Please feel free to refer to the letter but be specific as Her Honour wishes to follow along with the letter and at the same time listen to what you have to say. So start with the line that's actually under background information.

A. Are you expecting me to read it?

Q. Either refer to it, I'm sure you have a recollection of what you wrote but describe, make your statement today as you now have an opportunity to do so but what you think is relevant in response to that statement about the relationship with your neighbours being a good relationship or not, subject to what you have to say. So, go ahead.

A. Thank you. As it clearly says in my letter there's been numerous complaints made from our neighbours to ourselves in regards to mostly noise and anything that happens outside or inside the household. Anything that has to do with music at all is pretty much not allowed. So we've just taken it upon ourselves not to listen to music anymore because anytime that we chose to play it we were told to shut it off, basically.

Q. And what times of the day were those, Mrs. Ford?

A. Anytime of the day. One o'clock in the afternoon. Three o'clock in the afternoon, eight p.m.

Q. Outside, inside?

A. Outside, inside, from the basement, from the upstairs, from the main floor. It just - even, even video games coming through the tv in the basement. We were asked to shut those off at one point too.

Q. We're not talking the stereotypical teenage, two teenage boys blaring rock and roll, headbanging music, are we?

A. No.

Q. What are we talking about?

A. There was the one time when we received a complaint it was rock band and so that's when you use the guitar to play the music that's on there.

Q. A video game?

A. Yes, it's a video game yes and it was just on the television in the basement.

Q. What time was that, what day was it?

A. Probably about 9:00 p.m. And, you know probably a Friday or Saturday night when the kids were in bed and we were just amusing ourselves.

Q. Yeah, yeah.

A. My husband and I. And so, my husband....

Q. Talk about the line, crossing the line you refer to in the first paragraph, what is that all about?

A. Well and I was just going to say in regards to the music that anytime we've been outside working on the vehicles, my husband used to have a subwoofer in his vehicle and so quite a few times it's needed to be repaired or brought in, taken out, those sorts of things and so when he has to fix it he needs to test it to make sure it works and she's gone and told him to turn the bass off, her being Cesaltina. Turn the bass off completely which is the whole point of a subwoofer is to create bass.

Q. Are you talking after two hours, after six hours, after how long?

A. No, just to test it to make sure it's working, maybe five minutes of having the music on, you know. And then so when the kids are outside and they start playing, at one point - when we first moved in it seemed okay that the kids could just play

across the whole yard because it's a semi-detached house and we share the whole front yard.

Q. These are your kids?

A. My children, yes.

Q. And other kids?

A. And other kids, yes. They have friends on the street that come over and play.

Q. Small kids under the age of ten?

A. Yes, all under the age of ten and some of them are even much younger than that and so they don't necessarily understand that legally there's a property line that's there and it's this invisible line that goes down the middle of the grass and so technically they're not supposed to cross it so....

Q. What's the problem?

A. They're trespassing.

Q. Who said that?

A. Cesaltina. They have asked and requested that our children do not cross the property line while they're playing outside because it's trespassing.

Q. You witnessed this? You came out?

A. Yes.

Q. To tell you or tell the kids?

A. Kind of a mixture of both. I think just saying it out loud outside like, don't come over here.

Q. In the presence of the kids?

A. Yes.

Q. All right. You recall that. You recall the one incident like that?

A. Yes, at least once and also in regards to that, the second time she didn't say anything but we had the missionaries from our Church over and we were doing yard work and we were out there working and of course these are missionaries. The one was

from Taiwan and the other one was from Utah and so especially the Taiwanese girl she doesn't understand this.

Q. Property lines?

A. Property lines concept at all because their culture is so completely different there and we had just told them in advance like don't cross the line and when we had stepped back we had noticed that we were being watched while we were working on the garden and it was Cesaltina in her front window and she, she appeared to be giving not a nice look when they had crossed the property line so I just reminded them come back this side.

Q. All right.

A. Moving further down the list, this first list on the first page it talks more about the music and, and playing video games and then this sixth point here,

[As read] Our dog barking six times at approximately 10:30 p.m. while a stranger was walking in front of the house.

I remember this night quite vividly because we had been out at a friend's farm, enjoying the evening and on the way home the truck had died. We were stranded on the highway, on the side of the highway at probably 10:00, 10:30 at night waiting for the tow truck and Christopher received a text message on his phone like, if you're going to be out late have someone take care of your dog because he's barking. And so obviously the intention of that evening was not to be stranded on the highway and so....

Q. 'Cause otherwise the dog comes inside?

A. The dog was inside. He was barking inside the house, sitting on the front couch looking out the window.

Q. Waiting for you to come home.

A. Waiting for us to come home. Probably needing to go to the bathroom, those sorts of things.

Q. Got it, got it, okay.

A. And so - and that was her quote exactly was that he barked six times and so a dog to bark six times is unbearable.

Q. Six times.

A. When we first moved in and everybody's adjusting to the house, we heard strange noises too and we weren't quite sure what they were and so the first one she had confronted us on that we further investigated was the loud bangs that come from the house. And so this house was built in the '70's where maybe building codes weren't as of the standards as they are now so when you flush the upstairs washroom the pipes on the main floor bang and so this is what the....

Q. They do?

A. Yes, and so this is what the complaint was about was the pipe and the wall bangs.

Q. Complaints made to you?

A. Yes.

Q. By whom?

A. By Cesaltina, she had come over to the house the one time.

Q. Knocking on the door?

A. Yeah, and at the same time that was the instance when she had complained about the bass-like vibrations in her bedroom at night and that's because it's hardwood floors and my children like to have white noise and they sleep with a fan on and so the vibration of the metal fan on the floor I guess travels into her bedroom and causes bass-like vibrations.

Q. So, you had to fix that?

A. We just told her it's a fan you're going to have to deal with it.

Q. All right. Keep going.

A. We've both notice, Cesaltina and I, have both noticed that the water softener regenerates or recycles at night.

It does whatever process it does, I'm not sure but it makes a loud bang when it does that. I guess it shakes or something maybe.

It's programmed to do it at 3:00 o'clock in the morning so you're sleeping. Sometimes it wakes you, sometimes it doesn't.

Q. This is the water softener in your house?

A. Yes, in the basement at the house.

Q. That's a problem, that was an issue once?

A. Yes, yeah because it creates a lot of noise.

Q. Was the noise fixed?

A. It hasn't woken me up in a long time so I don't, I don't know.

Q. All right. All right. Keep going.

A. And, we haven't received a complaint about it in probably at least a year, year and a half. So, moving to the next page. This is point number one. This is more, I think in my opinion just my personal opinion of one of my interactions with her. It was when I was in between semesters. I needed to look for employment because before I was going to summer school and doing my semester straight through. This one they weren't offering my courses so I needed to work during that summer and I knew that Cesaltina had been working for temp agencies and because we were - we had only moved in I think it's 2015 I didn't know Cambridge/Kitchener area so I asked for a recommendation from her because she was working for a temp agency who she would recommend. And that's when we had just started having a regular conversation about the agencies. That's when she had told me she worked for two agencies. I was asking her you know are they good jobs that they're finding you, do they pay well. Those sorts of questions and that's when she had expressed to me that she felt that sometimes the places that they found could be toxic or some of the employees or the culture of the company could be toxic and that she had requested on more than one occasion that she be moved and that

if I felt that way I could also request to the employment agency to be moved to a different location. And so that was just one of our conversations that we had had about her and my employment.

Q. But she didn't maintain regular employment, what does that mean?

A. No because she's constantly asking to be moved based on our conversation and just the length of terms that she was able to get. Sometimes she'd only be assigned maybe a three-month contract sort of thing so.

Q. Okay, all right. Keep going.

A. With point two it was after we had just moved in. I remember - I'm sorry, that's point three I'm thinking of now. It says on May 9th, 2016 I observed Cesaltina's father cleaning out the gutters from the roof of his solarium and I just - I remember being in the bedroom and seeing him out the window on the roof because you don't expect - it's not an everyday occurrence. So I remember thinking oh, like that's odd and here I am partially naked. So I had to close the blinds but I just remember thinking how odd that was because it was just only recently expressed to us that he was ill and that he wasn't feeling well and so to see an elderly ill man on a roof cleaning gutters was odd.

Q. Energetic, working is that what it was?

A. Yeah, well I wouldn't necessarily say energetic but he was up there in full force, bending over the side of the roof cleaning out the gutters.

Q. Okay how about be doing work around the house generally, was he out there doing that?

A. In the yard, more the yard work. I know that they have a large solarium which houses many different sorts of plants, mostly tomato plants that they're constantly having to maintain at the back of the yard. They have a large garden. I've noticed corn

growing back there. Other larger crops like that that there - you know would obviously require maintenance.

Q. How about the fence. He built the fence I thought I heard you say?

A. Christopher had noticed that on the driveway side of their house, a fence had recently been built and so probably he could speak better to that but I see a fence standing there now which was not standing before.

Q. All right. Keep going.

A. And so, I also said that he's also out there maintaining the coy pond all the time.

Q. The what?

A. The coy pond.

Q. Oh, the fish?

A. Yes, the fish.

Q. Oh, that's what that is. Okay he mentioned something like that. I didn't understand. The coy pond is those Asian fish, is that what it is?

A. They're the big type of Japanese fish.

Q. Oh, they've got that on their property as well?

A. Yeah, apparently, it's actually quite big enough that the fish can hibernate in it over the winter.

Q. Wow.

A. So, he needs to go out and....

Q. They sleep at the bottom of those ponds?

A. Yes, at the bottom of the pond and so I guess in the fall time he goes out and does his yearly maintenance to be able to shut it down or whatever needs to be done for them to go to sleep.

Q. Okay. Number three sounds interesting. What was that conversation about?

5 A. Yeah so that was February 2016 we were - we were
all kind of outside. The boys and I and Christopher and the boys
were running around and Chris was in and out. We were doing front
yard maintenance. We've got these weird flower-type weeds that
grow in the front lawn and so Cesaltina's mother and I were out
10 there and we were working on pulling these things up and trying to
figure out what they were and in between raking we were having a
little bit of a chat. And at that point in time I just remembered
that she almost - her appearance was like distressed that she was
feeling stressed and she started talking to me as if she was
15 feeling stressed and needed somebody to confide in and just vent to
and that's when she had made mention that Cesaltina needed to get a
good job so that she could move out of the house and that just - it
was just the things that she was saying and I couldn't quote her
exactly but just the things that she was saying that was making me
20 feel that Cesaltina was being a burden to them. That just you know
she had done her job as a parent and her child should have moved
away by now. And, so that was the vibe that I got from that
conversation, I guess. As I said she just looked and felt stressed
to me. That she was looking for a shoulder to cry on almost.

25 Q. Did you and Christopher have a good relationship
with the parents in the beginning?

A. I think so, yeah.

30 Q. In the beginning?

A. Yeah, in the beginning absolutely and I don't
think that we've ever expressed any issue with them directly. At -
through most of our living there, Christopher would mow the full
length of the grass all the way through and then the next time
Cesaltina's father would mow the whole grass. You know so it was
more of a turn taking thing which I thought was how neighbours did
it and in the winter time, same thing with the sidewalk and the
snow and at one point I'd go over and help them shovel their

driveway or he'd come over and even just last year he came over and helped to snow blow our driveway. He cleared the end out for me when I needed to get to work one day just last year.

Q. Is that still going on?

A. Well, we'll have to see this winter but last winter yes. He cleared the end of the driveway with his snowblower for me.

Q. How about the grass cutting?

A. No, that's never shared anymore. There was an incident that had happened where I think it was Christopher and Cesaltina had an argument of some sort and Chris just said, that's it. You're going to treat me like that then I'm not going to do you any favours anymore. So, now it looks quite funny...

Q. How about relationship...

A. ...when there's a line cut right down the middle of the grass.

Q. Got it. And, then you get to section four of your letter, you talk about the relationships with other residents in the neighbourhood?

A. Mm-hmm and this I just kind of put together some of the variations of conversations that we had had in passing. You know, when she's had complaints about other neighbours. At one time the neighbours on the other side, 536, had friends living with them because the friends had fallen on hard times and so they were kind of staying there for a while and she complained about the amount of kids in there and that she looked into Children's Aid Society and how many children are allowed to share a bedroom and if boys were allowed to sleep with the girls.

Q. How did you know that?

A. Because she told me.

Q. Who did?

5 A. Cesaltina. We stood in her driveway on the front porch and we had a whole conversation because she was upset that alongside of their house was filled with garbage and recycling and it looked messy and cluttered and so she was complaining about that and she said that there was too many people living in the house and that's when she had made mention to me standing on her front porch that she had thought about calling Children's Aid Society because there was too many kids in the house and with the boys sleeping with the girls.

10 Q. And do you know if that happened?

A. I don't think that Children's Aid Society was ever called, no.

15 Q. Okay. Tent in the backyard; what is that about?

A. Again, they were still living there and so there were quite a bit of kids and the kids had....

20 Q. Oh, that's the same thing across the street?

A. The same yeah, no their on the other side of her property so they share the driveway side. So, she had complained about the messiness in their driveway. She had complained about the grass being too tall in their backyard. She had complained about one of the kids having the friends over who had lived in - who was kind of spending his teenage time in the shed so he'd have his friends over and they would be loud and....

25 Q. Do you think any of these observations weren't of any concern on your part personally?

30 A. No. I think it was a family that fell on hard times and they moved in with their friends. I think that everybody has their own level of cleanliness and clearly if the City wasn't condemning the house then it wasn't overly messy. It built up because there was so many people living there that by the time it got put out weekly it was more than a regular household would have.

Q. Did that at any point in time did you formulate certain opinions about Cesaltina's personality based on all of this? Is the word oversensitive descriptive perhaps?

A. Yes, I would say so. There's so many other words that I could choose to use though too, just....

Q. Like what?

A. It's hard to narrow it down because of the fluctuations in personality that I have seen come from her. One minute she can be super nice and then the next minute she seems to be overly angry and it can almost change on a split second and so it....

Q. Are the noise complaints warranted?

A. I wouldn't think so. I would think that it is reasonable enjoyment of life and I've noticed that our ability to have our right of reasonable enjoyment of life has diminished since the time that we have moved in. And I know that at the very beginning we almost felt threatened by this lawsuit that it could also happen to us if we weren't careful and watched ourselves because of some of the instances that we had been told happened prior. I know that even when our landlord was searching for residents he had made mention of it and that when we had expressed to him that we were more interested in having our family room being set up in the basement with the tv and stuff, he found that that was preferable maybe over other possible tenants because they may have planned to have the tv on the main floor where it could have caused more issues. So even from the time that we moved in noise was the concern.

Q. Expressed to you by Mr. Buonvivere?

A. Yeah.

Q. The last point on the page....

A. Sorry, I'm still upset about that that personality. I find that a really hard question to answer because

yeah. I don't even know if I'd call it oversensitive. It's - there's no word to describe it really because she's - I think the best way I've ever heard it put is that at least she doesn't have her own life so she has to get involved in everybody else's life and be more involved in what they're doing. So it's almost like she needs to take time for herself and get out you know.

Q. You could be left - you'd rather be left alone I presume at this point? Enjoy your life?

A. Yeah.

Q. On your own?

A. Yeah.

Q. As reasonably as you think that could be?

A. I think so.

Q. You don't want to be held into a lawsuit like this do you?

A. No, definitely not.

Q. Point five says she appears to be watching you, could you expand on that?

A. That's based on some of the other comments that we have heard. Just in conversation that she's made to us. The first one says we wanted to build a shed in the backyard so Joe came down and he was removing some of the tree limbs so that we could put the shed up there and she was like immediately at our back fence. Like she saw that he was over and something was happening and maybe even the noise brought her over as well from the chainsaw and she had asked if Joe would be willing - she asked me personally if I could ask Joe if he would be willing to cut down part of the tree that was overhanging onto her fence. I asked Joe and he said, no and I told her that Joe said no, it's on your property you can take care of it.

Q. Tell me about the rabbit. Tell us about the rabbit, it's number six.

A. There were other times, sorry just in number five. Other times that she had just made random comments about what we were doing and both - I remember one time her mom and her came over because we had made lots of changes in the backyard. We took out this huge garden and laid patio and they were over there. I thought it was a neighbourly think like just wanting to see and stuff but as time progressed and these visits kept happening it was odd.

Q. Intrusive?

A. Intrusive, yes, invasive yeah, yeah.

Q. And you did what you had to do anyway in the backyard, right?

A. Yeah, we were just making changes.

Q. What was the concern?

A. I don't know if there was a concern or if it was just interest. It just felt like we were being watched.

Q. I see. Talk about the rabbit.

A. Sorry, I don't mean to keep going back on you...

Q. Oh, okay, go ahead.

A. ...but there was and I'm not sure which point it was in here. There was also the time where she had made mention and it could be further down the list that she asked us - oh, no it's right here in point five here. Why did you bother putting up the pool if the kids were only in it four times. I found that strange...

Q. She said that to you?

A. ...like I knew that during the summer, that summer that the kids weren't really in it but for her to say four times, like you counted or something or...

Q. A little weird?

A. ...you're watching them in the backyard. How do you know that the kids were even in the pool? How do you know that

I have a pool? You know, 'cause there's large shrubbery and the big solarium so it just - that was the other part that made me feel that I was being watched.

Q. The rabbit?

A. I believe that this was during a time when Christopher and I were still smoking cigarettes. So we happened to be outside having a cigarette that evening and we saw the rabbit and I think he was - he was coming from the neighbour's house that we share our driveway with and he was running up and he was going to cross the road and I just remember yelling at the rabbit, no rabbit, don't do it, don't do it, because we saw the car coming and the rabbit did it anyways and he ended up going over the wheel and he got run over pretty hard and then so once the car left he came running back and he just took refuge under Cesaltina's car. And so of course like I was concerned for the rabbit. So I went to look at him and we saw that he was limping when he was hopping towards her car and you could tell that he had been badly injured. So we called, I think it was myself actually that called the Humane Society to say like at least come and get it and put it down. Let it - don't make it suffer, right and so that's when - so of course we're trespassing. We're on her property. We're on our knees looking underneath her car to see the location of the rabbit and she came out to question us why we're on her property and we explained the situation to her that the rabbit had gone under the car and I think she went in the house for a minute and then came back out with maybe a sweater or something. I also remember her coming back outside when the animal control person had pulled up in front of the house and I remember her watching the rabbit being taken away and then we had you know our farewells and everybody just went inside.

Q. That was it. All right and then the last point. Just a day before you wrote the letter. Maybe we should hear from Chris about this?

A. I think so, yeah. From me it was more just what the neighbour had told me and what Christopher had told me.

Q. All right. That's - we'll hear from Christopher about that.

MR. BATTISTON: Thank you Mrs. Ford. Just hang on there. Mr. Ellis may have some questions for you.

A. Sure.

CROSS-EXAMINATION BY MR. ELLIS:

Q. Thank you for coming. So, at the very beginning you had stated that you only wrote these letters because Joe came to you and told you what was being said in the trial so then you wrote these letters?

A. I think that's fair to say.

Q. So, when did, when the issues start happening? Like when you first moved into the unit next door were you informed by Joe about what had happened so far with the previous tenants?

A. And even before we signed the rental agreement, we were made aware, yeah that there were some noise concerns that came from the, the next door neighbours and that you know if we had the tv in the basement that that would probably be better for the sound.

Q. So, when we, when we go through all this stuff that you had put into this letter when did the issues start between you and the neighbours, if you could give us an idea?

A. I'm trying to recall because it - we've lived there for so long now but I want to say almost right away.

Q. Okay.

A. Pretty much as soon as we moved in, we started having issues because we thought oh maybe it was just the previous neighbours that were here that didn't get along or maybe there was some over exaggeration and then that's when we quickly learned that, no.

5 Q. Well because your first issue on your document starts in May of 2016, when you observed Cesaltina's father cleaning the gutters from the roof of the solarium?

A. That's correct. That is when my letter starts. That's because I had - because I actually took a picture in case 10 the court wanted to see it. I mean that was dated May 9th and so that was the first confirmed date that I could put because I had physical evidence.

Q. Okay.

A. But the issues started right away.

15 Q. Okay. So, you're stating the issues on the first page, they all started right away?

A. In terms of music, absolutely.

Q. And, were by-law called?

A. We've never had by-law call - been called on us, 20 to our knowledge.

Q. So, it was just conversations between you and Cesaltina?

A. Yes and because we knew that there was previous incidences we had asked that if our music was too loud or if we 25 were doing anything that was upsetting them to provide us with a text message or come and knock on the door; to do the friendly, neighbourly thing and just communicate with us because we'd rather be civil about it and try and be neighbourly.

30 Q. So, you stated that you guys were neighbourly, you guys were mowing each other's lawns and stuff like that so that ended right away?

A. No, it's been an up and down variation, I would say. There's been times where they've been more friendly with us and other times not and I believe and Chris could probably speak to it more than I could because he's the one that made the decision to stop cutting the lawn.

5 Q. The day of the barking dog, was that not a text message that informed you that the dog had been barking all day?

A. No. I have the picture. I could refresh my memory if I read the text message, would that be okay?

10 Q. I've never seen the text message so I was just asking whether or not it said that. So, and the pipes in the walls banging, was there a long drawn out issue about that or was it a discussion that you guys found out?

A. It was a one-time conversation yeah.

15 Q. So, it really wasn't a complaint it was there's noise in the wall. You found the noise in the wall. You found it out to be the pipes?

20 A. So, she came over to complain that there was loud banging coming from our house and we were like that's interesting and then we did some testing and found out that it was the pipes in the wall and informed her of that. Basically said that there's nothing we can do about it so we would all have to manage with the noise.

25 Q. And, was anything brought up about it since then?

A. I don't think so, no.

30 Q. So, then you talked about the fact that the water softener woke you up?

A. Yes.

Q. So, was that a complaint from her or something that you acknowledged that there was the water softener making noise in the basement?

A. I think that she had brought it up to us and then that's when we had mentioned to her that we had also heard it too because it had woken us up.

Q. Okay. So, you had stated that you found it bizarre that Mr. Cesaltina[sic] was on the roof doing gutter work or garden [sic] work in the summer of 2017? No, May 2016.

A. As I mentioned previously, I found it strange because I had been made aware of his previous medical conditions. I was under the impression that a very ill man lived next door to me.

Q. So, during that winter did you see him outside shoveling the snow or anything like that?

A. It was so long ago I couldn't recall.

Q. But you can recall all this but you can't recall whether or not he shoveled the snow that first winter you were living there?

A. During the first winter we were living there we weren't necessarily concerned with what was going on in the house beside us. We were more concerned about getting our children set up in school and my homework at that time and being able to unpack and have a good Christmas. So there were so many other personal things going on in our lives at that point that I don't even think it was an issue. I also remember during that time period that our neighbours that shared the driveway who have since left also did a lot of shoveling and would also shovel a lot of the road or the sidewalk rather so between whoever was shoveling, I couldn't remember.

Q. So, the people that moved in next door because of hard times were they previous friends of yours?

A. No.

Q. No, you had never met them before then.

A. No, we had never met them until we moved in.

Q. Okay. Did all of the problems not actually initiate when the Fire Department was called about an open fire?

A. All of the problems?

Q. Yes?

A. That's a very large statement.

Q. Well the fact that you took issue with what was being said to you, did all of that transcribe after the Fire Department was called about the open fire in your backyard?

A. I don't think so because I remember asking her about it. I was still trying to be civil and speak to her neighbourly as I had mentioned before. I remember problems starting right almost from the time that we had moved in. So, I don't think anything, anything really changed. I don't think it escalated because of that one incident. I think it pretty much stayed at the same level of....

Q. So, under tab or paragraph four on page two of your statement where you say Cesaltina regularly complains about many residents. So it sounds like you guys were sociable during this time when you guys were talking on her front porch you said?

A. In my personal opinion I have tried to be sociable with her and civil with her the entire time that we've lived there because I don't believe in having negative relationships. I would rather just - we have to live next door to each other. We have to share a wall. Why not do it civilly and so I've had many conversations with them based around other incidences that have happened.

Q. Is it not true that this whole statement only came out because Joe wanted you to write it for this trial?

A. I believe that Christopher offered to write letters or help Joe in regards to this trial because of her comments made on February 22nd which was and obviously as we had just mentioned Chris is going to speak more to it but basically

from what he told me he had felt threatened that she had said to him that like don't forget we're going back to court, sort of connotation.

MR. ELLIS: Those are all my questions.

MR. BATTISTON: No further questions. Thank you, Mrs. Ford.

THE COURT: Thank you very much Mrs. Ford. You may step down. If you wish to remain in the courtroom you can.

MRS. FORD: Okay.

THE COURT: Okay.

MR. BATTISTON: If we can call Christopher Ford, Your Honour.

THE COURT: Sure, yeah. If you would like to come forward, Mr. Ford. Please have a seat in the witness box. You can either be seated or stand, whatever way you're more comfortable.

CLERK OF THE COURT: Do you wish to affirm or swear on a holy book?

MR. FORD: I will swear on the holy Bible.

CHRISTOPHER FORD: SWORN

CLERK OF THE COURT: Please state and spell your full name for the record.

MR. FORD: Christopher Ford. C-H-R-I-S-T-O-P-H-E-R, F-O-R-D.

CLERK OF THE COURT: Thank you very much. You may be seated.

EXAMINATION IN-CHIEF BY MR. BATTISTON:

Q. Mr. Ford, thank you for coming back again today. We've already made everyone aware that this is your third

attendance here at the courthouse by giving your service to the system basically. We thank you for that. You were summoned here and are required to attend and at this point you finally have an opportunity to speak. We've gone through the evidence that Mrs. Ford presented through her letter and your letter pretty much contains a lot of the same things. So we don't need to hear a repetition of that so I'll try and direct you in a more particular sort of way if I can to avoid the repetition.

MR. BATTISTON: So, if - first of all, did we make the last letter an exhibit formally?

THE COURT: No.

MR. BATTISTON: We didn't?

THE COURT: I was going to ask you about that.

MR. BATTISTON: Yeah, I just remembered.

THE COURT: All right good.

MR. BATTISTON: Headnote, yes.

THE COURT: Exhibit Number 9.

MR. BATTISTON: I have a copy here.

THE COURT: I already have a copy.

MR. BATTISTON: You have one okay that's Exhibit 9.

THE COURT: And that is Mrs. Ford's letter.

EXHIBIT NUMBER 9: Letter of J. Ford, February 23, 2018 - produced and marked

MR. BATTISTON: In which case the letter - we can either pencil it in or mark it in at this point the letter from Christopher Ford also dated February 23, 2018 will be the next exhibit.

Q. Do you have a copy with you Mr. Ford?

A. Not in front of me, no.

MR. BATTISTON: Q. Oh, that's fine. I've got you.

This is the letter that you provided to Mr. Buonvivere after there was information conveyed back to you that your neighbours had a good relationship with you and Mrs. Ford back on February 23, 2018. Is that your signature on the second page of that letter Mr. Ford?

A. That is.

Q. Okay. We've heard about the problems or the - shall we say the issues that arose regarding the music. Maybe we heard about your truck and the music and your speaker. Maybe you can give a little more detailed explanations to your version of those events.

THE COURT: Mr. Battiston, I don't have a copy of that letter.

MR. BATTISTON: Oh, I'm sorry.

THE WITNESS: You can have this one if you like. I don't really need it.

THE COURT: No, no.

MR. BATTISTON: Q. No, no we've got plenty. Yeah, I bring extras.

MR. BATTISTON: Sorry, Your Honour.

THE COURT: We always have lots of copies, don't worry.

MR. BATTISTON: Q. Okay, music Mr. Ford?

A. In terms of what? Can you re-phrase that question?

Q. Sure. The whole reason this - we're all here as....

A. In terms of the truck or just music in general?

Q. Music in gen - tell us about music....

A. There's been numerous times about it. One time that's actually not in here is doing laundry and my computer

speakers on the other side of the house. That was one of them.
Being woken up at 11:30 for music....

Q. Hold on, hold - okay tell us about the laundry.
We didn't hear about that.

A. Oh, I was doing my laundry listening to music
through my computer and....

Q. What time?

A. Three, four o'clock in the afternoon.

Q. On what day?

A. Would have been a weekday maybe a Wednesday, those
were my general days off.

Q. Wednesdays are your day off?

A. Yes, it was a winter schedule from my previous
employer.

Q. What kind of work do you do?

A. I drive truck.

Q. And, what time do you go to work?

A. Six o'clock in the morning most days but there are
times where it's 2:00 a.m. that I have to get up early and drive to
Guelph to get my truck, down to Brampton to get the load, turn
around and come back and start my day. So long hours and little
sleep.

Q. What's your normal sleep time?

A. About four hours.

Q. Sleep time. What time to you go to bed?

A. Oh, 7:30, 8:00 o'clock.

Q. Seven-thirty, 8:00 o'clock at night?

A. Yeah, about the same time as my kids.

Q. Really. House gets pretty quiet, I assume?

A. Yeah.

Q. All right. Keep going.

A. So yeah, I was doing my laundry, listening to my music on my computer and Cesaltina came over to bang on the door. It sounded like somebody was trying to break-in almost. The dog started barking so I went upstairs and she kind of yelled me to turn the music down. So, I did. Whatever.

Q. When was that?

A. That was like five, four, 5:00 o'clock.

Q. No, no, after you wrote this letter?

A. No, that was before this letter actually so that was kind of the ones I just forgot about. The truck music, that was in here. I'm working on my stereo. Yes, I do have big subs in it but it was very low, right I'm trying to accommodate them at the same time.

Q. What day of the week was that complaint?

A. I couldn't even tell you the day.

Q. No?

A. It was middle of the day like you know the sun's still up. I'm outside in a t-shirt and shorts.

Q. Summer?

A. Yeah, so.

Q. Who came over to complain?

A. Cesaltina came out her front door.

Q. Say what?

A. Turn it down, snotty.

Q. And you did?

A. No.

Q. Okay.

A. At the time of that I finally had enough of the complaints, right. Like I said I got woken up one morning at 11:30 - well one night at 11:30 p.m. being told to turn my music down when I was already in bed for a 2:00 o'clock morning. Then later find out that it was a neighbour three doors over.

Q. You got awakened by whom?

A. By Cesaltina.

Q. Doing what phoning or....

A. Phoning me yeah.

Q. On your cell phone?

A. Mm-hmm.

Q. Yes?

A. Yes.

Q. And the whole house was sleeping?

A. Absolutely, both my wife and I were in bed.

Q. And the kids too?

A. Kids too. Absolutely. Kids go to bed at 7:30 at that time.

Q. The day before you wrote this letter, we've heard there was a memorable event, significant event on February 22nd, you remember?

A. There's too many....

Q. No, no, your letter on page two.

A. Oh, yeah that one. Mm-hmm.

Q. Yeah. Tell us about that?

A. Well I mean it's pretty much like I say it's like shoveling snow off the end boulevard, grass way into the parking lane, bike lane before the traffic lane, just to let it melt with the heat that we're having. We were going through a bit of a heat wave right then so I shoveled off just what was you know the pile from the driveway. She almost got rear-ended by a car signaling late and I asked if she was okay you know I'm still a nice guy and I got snotty attitude and she went in the house and then later she's taking pictures of it and then....

Q. Like the snow?

A. Yeah, the snow on the road.

Q. Oh, she was blaming you for having to do something on the road with her car?

A. Yeah, she almost got rear-ended right but that's in sense of the signal late into the driveway.

Q. Okay.

A. Yeah, so she was taking pictures. She told me that she was going to court with Joe and I kind of felt threatened like is this just gonna to happen to me too, I'm gonna get sued too.

Q. That's the result that day, that's what you felt?

A. Yes. Mm-hmm and then here we are in court.

Q. Yeah. Would you prefer your relationship to just continue as separate from each other? You don't want to be hassled. You don't want to hassle anybody else, is that fair?

A. No, yeah.

Q. You plan to stay there for a while?

A. Absolutely.

Q. Your preference would be to have neighbourly relations with everyone?

A. Well, yeah, it'd be nice to be able to get along yeah but that doesn't seem like an option at this moment.

Q. All right. Mr. Ford, anything you want to add before you may have to answer some questions from Mr. Ellis.

A. That's fine.

MR. BATTISTON: Okay, just hang on tight and thank you again for coming.

A. Yeah, no problem.

CROSS-EXAMINATION BY MR. ELLIS:

Q. Are you not in court because your landlord asked you to write these statements?

A. Mm-hmm.

Q. So, it's not because of the plaintiffs?

A. Mm. That question begs to differ I mean if it wasn't for her none of this would be happening right now so....

Q. Did you help put the roof on the plaintiffs' house?

A. Absolutely.

Q. And, when abouts was that?

A. Moved in when, in 2015 so that probably would have been in the summer of 2016.

Q. And everything was good between you and the neighbours up to that point?

A. Yeah, like I said there was you know the few complaints but we were trying to work through it and be civil about it absolutely but yeah for the most part everything was fine.

Q. Were you informed by the landlord about the issues that had happened with the previous tenants?

A. Among the landlord, the neighbours, everybody else that lived around me, yeah. I was informed about her, yeah.

Q. Did a lot of the problems start after there was the Fire Department called about the fires in your backyard?

A. No.

Q. No, you didn't have an issue with that?

A. No, they started prior to that. I've just tried to let things go but you know a person can only take so much.

Q. So, you stated that you had a complaint because your music on your laptop was across the house while you were doing laundry?

A. It's not a laptop, it was a desktop but yes.

Q. Was there a subwoofer hooked to that?

A. No.

Q. There was no subwoofer?

A. No.

Q. Okay, it was just small speakers - just the computer speakers.

A. The computer speakers that come mounted into the monitor.

Q. Was it loud for you to be able to hear in the laundry room across the house?

A. It wasn't across the house laundry room. I mean it's a small basement right, it's not a monstrous house.

Q. So, the computer was in the basement, you were in the laundry room?

A. Yeah. Laundry room's in the basement. Computer's in the basement. So, I mean yes it was loud enough that I could hear it but I mean, come on, it's a computer.

Q. No, I agree. And you feel that your relationship's severed now with your neighbours?

A. With her yes. The parents I have no problems with. They're very polite. Her father will feed my dog treats through the fence or the bush line fence if you want to call it. You know they're great. I have no issues with them whatsoever.

MR. ELLIS: All righty, those are all my questions.

MR. BATTISTON: Thank you Mr. Ford.

THE COURT: Thank you very much Mr. Ford, you may step down.

THE WITNESS: Thank you.

THE COURT: Can we mark this as Exhibit 10.

EXHIBIT NUMBER 10: Letter of C. Ford, February 23, 2018 - produced and marked

MR. FORD: Thank you, Your Honour.

THE COURT: Thank you. All right. It's about twenty after two. You think you're going to be about an

hour so with Mrs...

MR. ELLIS: I believe maximum an hour.

THE COURT: And, is she going to require an interpreter as well?

MR. ELLIS: Yes.

THE COURT: Yes, okay maybe now's probably a good time to take the morning break then instead of interspersing it during her testimony so we will break for fifteen minutes. All right. Thank you.

CLERK OF THE COURT: All rise. This Superior Court of Justice stands recessed for fifteen minutes.

R E C E S S

(2:23:58)

U P O N R E S U M I N G :

(2:38:48)

CLERK OF THE COURT: Order. All rise. This Superior Court of Justice has now resumed. Please be seated.

THE COURT: All right Mr. Ellis. Let's resume your case and hopefully finish with Mrs. Fiuza.

MR. ELLIS: Yes. I call Ricardina Fiuza.

CLERK OF THE COURT: Do you wish to affirm or swear on a holy book?

THE INTERPRETER: Holy book.

RICARDINA FIUZA: SWORN

Testifies through Interpreter - Portuguese/English

CLERK OF THE COURT: Please state and spell your full name for the record.

MS. FIUZA: Ricardina, R-I-C-A-R-D-I-N-A, Fiuza F-I-U-Z-A.

CLERK OF THE COURT: Thank you very much. You may be seated.

EXAMINATION IN-CHIEF BY MR. ELLIS:

Q. Thank you, Ms. Fiuza. Can you tell us how you're involved in this case?

A. Yes. In February of 2014 we got new neighbours Andrew and Jacqueline. It started with the music. It was very loud like making a noise like toom, toom, toom and it was very loud. I asked my daughter if she could talk to them and ask them to turn the music down. So, she went to their house and asked and they said no and it just never stopped. It was always on and on. And then after my daughter called the by-law, he came to our house a couple of times and the name of the by-law is Shaun. And then he said that he had called Joe that if he could come down so we could work an arrangement. So then in my house it was Shaun and Joe and then they said that we are there because I had requested for some help.

So, after a few days it was a bit quieter and then they ask for the help and then what they did - I'm sorry, they requested if they could help and what they did they put like a pillow on top of the speaker. And then after a while then everything started again. It was with the music and then it was all the time we couldn't not eat; we could not sleep. And then from then on it was always like that.

So, then there's another time that I noticed the noise was still going on and that's when I always requested my daughter or my husband could help in the matter. Then Cesaltina was started like trying to help and she called the police and the time that the police came over they inform us that they could not do anything. They could not help us in that matter. So, then there was one day that I recall it was late at night that I told my daughter Cesaltina can you call Joe and see if he can do anything. So, when she called, he said, oh just close your ears.

MR. BATTISTON: You know what I'm tolerant to a point Your Honour but I think this is hearsay so we've heard evidence from another witness about this particular point.

THE COURT: Yeah, we have.

MR. BATTISTON: This witness was sitting here, heard it so....

THE COURT: Oh, I realize that Mr. Battiston. I'm quite attuned to hearsay but I'm gonna allow it anyways. Continue.

THE WITNESS: So, and from that point on the music never stopped. It always got worse. Sometimes it was Friday night. Sometimes two or three in the morning the By-Law would come by because of our complaints. Also, in the meantime my husband went to the hospital four times. And so, when my husband start to get - going to the hospital he went twice in November on the 15 and on the 22nd and then usually Cesaltina would go with him and again he went in February and in March because of what was happening with the noise.

And then because of the situation my husband start not eating well, not eating well, not eating well and sleeping well, sorry and I also started to get stressed. And then I also started not feeling well and I went to the hospital. And I also went to the hospital twice. We'll call the police and the police will say again, there's nothing we can do. I will ask Andrew can you please turn the music down and then he will always say, no I'm not gonna turn it down.

And then so it's been twenty months that we've been in this, in this situation and it's like a struggle and a fight and we are suffering and it's like if we are like dying little by little and it's really hard on us. So in the these last two years my husband has because of the stress he has lost a lot of weight and

it's been very hard on all of us for us to try to sleep because of the music. We start taking two capsules of melatonin and also one sleeping pill because the music always keep us up or wake us up. So, in these last twenty months we've been suffering a lot and it's like being between life and death because we are in a very hard situation.

MR. ELLIS: Q. What twenty months are you referring to?

A. I'm referring from February 2014 to November 2015.

Q. And how has your life been since then?

A. Now doing better. My - I gained back some of the weight I had lost but my husband's still very frail, he never got his weight back.

Q. And how is life with your new neighbours next door?

A. In the beginning was very lovely. I think they came in my house maybe two or three times and he mentioned that he was a roofer. So then because he mentioned he was a roofer I asked Cesaltina if she could ask him if he would put the roof in our house or change the roof.

Q. So, do you have a good relationship with your tenants[sic] now, or your neighbours I mean, not your tenants, I apologize?

A. No.

Q. No? Why not?

A. Not right now because there was a few days that he use to park his car in front of my driveway and I'm talking about like the distance from the driveway to my front window was about like two metres and then he use to put his music and it was like a bang sound. Yeah, so then I asked Cesaltina can you come with me so we can ask him to turn the music down. So, when I asked, he started yelling at me and he swore at me and he made the reference

saying I already been into prison so I don't know what he was referring that to. So, later on that day his wife Jaimee came over to my house and she apologized and she said that he was having some problems and she noticed that I was also crying because I was stressed.

5 Q. So back to between February 2014, October 2015 were you aware that your daughter was trying to record the neighbours?

10 A. Yeah, she saw on the internet how you could record it so she got a small recorder to try to record the sound of the music but then it was not the appropriate piece to have the music recorded.

15 Q. Were you aware whether any of the recordings worked or not?

20 A. So, what we did we contact a company in Toronto that deals with recording and so they asked us to send a recording. They said, what you guys have is not appropriate but we can have a look, so....

MR. BATTISTON: I'm sorry, Your Honour.

THE COURT: I know what your objection's going to be but trust me....

MR. BATTISTON: We've gone through this before.

THE COURT: Yeah.

25 **MR. BATTISTON:** Mr. Ellis was kind enough to give me another copy of the letter that he had six months ago. At that time the issues were there was no CV, wasn't served as an expert's report and no expert's acknowledgement attached.

THE COURT: Oh, trust me Mr. Battiston this evidence is not getting any better.

30 **MR. BATTISTON:** I'm just wondering where we're going with this 'cause we've heard this before.

THE COURT: Yeah, perhaps Mr. Ellis can enlighten us.

MR. ELLIS: I went and had an expert report done, Your Honour with a CV and it was served....

THE COURT: When was this?

MR. ELLIS: Pardon me?

THE COURT: When was this?

MR. ELLIS: April 16, 2018.

THE COURT: And, is that part of these materials?

MR. ELLIS: That is part of the materials I would like to enter right now.

THE COURT: Why hasn't this been brought up before?

MR. ELLIS: It was attempted to be brought up in May, Your Honour when you said it had to be brought in through a witness, so I was bringing it through this witness.

MR. BATTISTON: Actually no.

THE COURT: I don't think that's correct.

MR. BATTISTON: No, it wasn't served as an expert's report. It was sent to us as a letter. The issue was well can this opinion form part of the evidence where you haven't got a CV proving or evidencing the fact that...

THE COURT: Qualification.

MR. BATTISTON: ...it's a qualified person and secondly it didn't have the required acknowledgement from the expert saying, I'm an expert. I'm gonna be objective. I'm not partisan and I will therefore give my opinion in the best way I can, *et cetera, et cetera*. So, that was it. It was ruled inadmissible at the....

THE COURT: Yeah, and it didn't comply with Rule 18.02.

MR. BATTISTON: You don't need a witness *per se*, you just have to serve it in advance. I then have the opportunity of assessing it...

THE COURT: Yes.

MR. BATTISTON: ...and deciding whether to call the expert and whether it's going to be a valid exercise.

THE COURT: Whether you want the expert summonsed or not.

MR. BATTISTON: So, it's coming now at the end of my friend's case and I think he's - was trying to do through the back door what he couldn't do through the front door.

MR. ELLIS: I'm not understanding, Your Honour.

THE COURT: You're not understanding what? If I already said....

MR. ELLIS: I served this as an expert report.

THE COURT: If I have already said it is not a proper expert report because it doesn't comply with Rule 18.02, then how does it get any better?

MR. ELLIS: Your Honour the one that you're referring to is the one that was in the documents that did not have a CV. This does have a CV.

THE COURT: I don't know what you're referring to Mr. Ellis. I don't know what you're referring to. Are you telling me this witness retained an expert with respect to the recordings? Is that what you're trying to tell us?

MR. ELLIS: Yes, it is.

THE COURT: Mrs. Fiuza?

MR. ELLIS: She paid for it, yes.

THE COURT: Well she paid for it but she didn't contact the expert. She didn't give him a mandate, did she?

MR. ELLIS: No. She asked her daughter to do it.

THE COURT: No, of course not.

MR. BATTISTON: Actually, I have the right to ask what are the instructions. Where does the information come from and that's part of what I...

THE COURT: And this was back - when did this all happen. We were here. We've been here. This is the fifth day we've been here. January 16th, February 27th, May 18th, July 30th and October 5th. So what report are you now saying is different from the one that was previously rejected as evidence?

MR. ELLIS: The report that was previously rejected Your Honour was the report that can be found in book number 3, Tab number 5.

THE COURT: The one from Studio A.

MR. ELLIS: Yes, where you stated to me, Your Honour that....

THE COURT: Well, wait a minute she just said she contacted a Toronto company. This from Studio A on Mcbrine in Kitchener.

MR. ELLIS: I've not presented this forward to you Your Honour. This is the Toronto company I'm referring to.

THE COURT: Studio A in Kitchener?

MR. ELLIS: No, Valcoustics Canada Ltd. in Toronto. It is not in this binder.

THE COURT: Oh, I am totally confused Mr. Ellis because - are you as well Mr. Battiston? I don't know what is going on here.

MR. BATTISTON: Mr. Ellis sent me a document back in the early part of the year dated April 16, 2018 with no *curriculum vitae* attached and I had no reason to consider it a document that was being tendered for the purposes of having - yeah, you touched that yeah, that's the one you gave me today. There was no CV at the time and that was the issue...

MR. ELLIS: Well this is the....

MR. BATTISTON: ...one of the issues being that it wasn't tendered as a report upon which this Court could rely and the opinions of which were conveyed from an expert. There was no support in my friend's position that the person who signed this letter was an expert. There was no acknowledgment from the expert as the Rule requires so that's what happened at the time. If this is something new well then, it's being served now, today, tendered for the purposes of being entered as an expert report when I have not had a chance to assess where we're going with this and ask the usual questions.

MR. ELLIS: Your Honour, I will withdraw, withdraw the request. Let's move on.

THE COURT: Well, we've been here five times and if you sent this report in April to Mr. Battiston and today on October 5th, now you're trying to enter it as an expert report, that is wholly inappropriate. You know what the Rule says. You know what's required. If you were going to tender this as an expert report it has to comply with 18.02 and you don't jump up at the end of the day on October 5th and say you now want to enter it as an expert report. I don't know how many times I have to tell you there

is no trial by ambush. None. So, get organized before you go to trial and not in the midst of trial. We will not be hearing this evidence. Please move on.

MR. ELLIS: Those are all my questions.

CROSS-EXAMINATION BY MR. BATTISTON:

Q. Mrs. Fiuza, how are you? Not bad?

A. Okay.

Q. Okay, just okay today?

A. No.

Q. Not okay?

A. I have some nervous because....

THE COURT: No, please Mrs. Fiuza you must speak to the interpreter and not in English.

THE WITNESS: Okay. I'm stressed and I'm tired and when I asked Joe for help if he had listened to us, we wouldn't be here after two years.

MR. BATTISTON: Q. Now we've heard many things said during this trial. You were here for the whole trial Mrs. Fiuza. I never heard evidence that you asked Joe for help.

A. Yeah, Joe was in my house with the by-law and we talk and the next time that there was a noise and I asked my daughter can you call Joe. The answer that he gave her was like just tell her to shut her ears.

Q. Actually, that's not what we heard but anyway, Mrs. Fiuza you did not talk to Joe after he came to your house.

A. My daughter.

Q. Right, that's the part we heard, yes. Yes, terrible, terrible. So, from February when Mr. and Mrs. Dooling moved into the house it must have been terrible because you said you were dying little by little.

A. Yes, that is true.

Q. Dying little by little, not eating.

A. No. I wasn't eating properly, I wasn't sleeping.

I didn't have the desire to leave my home.

Q. Well February was winter so you were stuck inside,
5 listening to that music day and night.

A. Yes.

Q. Again, dying worse little by little.

A. Yes, little by little.

Q. Dr. Camala was your doctor too, was she not Mrs.
10 Fiuza?

A. Yes.

THE COURT: Before I forget, did we amend that
exhibit by adding page 12?

MR. BATTISTON: I only had one copy of that last
15 letter, Your Honour. You have it so that's the
exhibit, right? That's the one we marked?

THE COURT: Yes.

MR. BATTISTON: Okay, good. Yes.

THE COURT: All right. I wanna make sure. So that's
20 page 12 that's added to that exhibit?

MR. BATTISTON: Yes.

THE COURT: Oh, I've got a page 13.

MR. BATTISTON: Twelve and 13

THE COURT: Twelve and 13, okay.

MR. BATTISTON: 'Cause the record continued on two
25 pages.

THE COURT: Okay.

MR. BATTISTON: Q. Mrs. Fiuza, you've already - we've
30 already heard how Dr. Camala was required to send your medical
records to Mr. Ellis, right?

A. Yes.

99.

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Q. Your medical records were sent to Mr. Ellis who sent them to us and these are your medical records, correct?

A. Yes.

Q. Mr. Ellis can confirm that. That would be the medical records of Dr. Camala regarding Ricardina Fiuza.

THE COURT: Yes, that will be Exhibit 11?

EXHIBIT NUMBER 11: Medical records of R. Fiuza -
produced and marked

MR. BATTISTON: Q. And, if you can turn to, there's a page that's marked page....

THE COURT: I don't have a copy.

MR. BATTISTON: Yeah, I know I'll give you a copy of the excerpt that I'm going to refer to Your Honour if that's okay, sorry. And there, it's this page here.

THE COURT: I need a full copy...

MR. ELLIS: I can give...

THE COURT: ...of the exhibit. Can we just hold on here?

MR. BATTISTON: Yeah. So, I'll give the witness the extra.

MS. DIBIASE: No, Tim has an extra copy.

MR. BATTISTON: Oh, he's got an extra copy.

MS. DIBIASE: Yeah.

MR. ELLIS: I do and if you could give me one quick second, I'll give you a copy.

MR. BATTISTON: Your Honour, I'm going to be referring to the page numbered on the top right corner 33 of 80.

THE COURT: Okay.

MR. BATTISTON: Now they're a little disjointed in the book but aside from a middle section without page numbers it's a printed page 33 of 80, okay?

THE COURT: Yes.

MR. BATTISTON: Q. Mrs. Fiuza has a copy?

A. Yes.

Q. Got it. Okay. All right so Dr. Camala sent us all your medical records Mrs. Fiuza and she was your doctor as of August 2014, is that correct?

A. Yes.

Q. And, you understand enough English to have a discussion with your doctor, isn't it true?

A. Not much.

Q. Let the record show the witness answered in English that she said, not much. Okay so she understood the question and gave the answer in English 'cause she knows where I think - I think she knows where I'm going with this. So Mrs. Fiuza you went to see your doctor on August 19th, 2014, that was Dr. Camala, right?

A. Yes.

Q. And, your daughter wasn't with you that day?

A. I think she went with me.

Q. She was? Okay so would you answer any questions of your doctor not truthfully?

A. I listened to what she's asking.

Q. So, she asked you questions?

A. Yes, she did. She did ask me.

Q. This was the first time you saw Dr. Camala?

A. Yes.

Q. Was Dr. Snyder your doctor also?

A. Yes.

Q. Oh, so Dr. Snyder retired and Dr. Camala - the office called you to come in and you met Dr. Camala for the first time in August of 2014, correct?

A. Yes.

Q. And so, Dr. Camala wanted to know everything that was important to hear from you about your health, isn't that true?

A. Correct.

Q. Correct and you answered her truthfully?

A. Yes, I said the truth.

Q. And your daughter was even there?

A. Yes, she was.

Q. So, when she asked you how you were doing, what did you say?

A. So, I wasn't feeling well 'cause in August 2014 we already starting to have problems because of the music.

Q. Well your evidence was that you were dying little by little every day since February 1st, 2014. That's what you said, right?

A. Yes, 2014 to 2015, yes.

Q. Okay. You said you were dying little by little every day after February 1st, 2014, correct?

A. Yes, it was twenty months of....

Q. I got it, I got it. So, August 19th was almost five - February, March, April, May, June, July - almost seven months that you were dying little by little every day, correct?

A. Yeah it started in 2014.

Q. Got it, yeah.

A. And it went until 2015.

Q. Okay. So, the answer is yes that this was almost seven months, February, March, April, May, June, July, August, almost seven months had passed, right? Yes, it has to be a yes 'cause on August 19th you went to see the doctor. She asked you,

how is your mood. Did you understand the question? Your daughter was there too, you understood?

A. My mood was always the same. I was stressed that day.

Q. Here the doctor said, no concerns, no concerns.

A. Yeah, but at that time I was already starting to get....

Q. At that time, you were dying little by little. You'd already may have been half dead. Why didn't you tell your doctor that?

A. I always had the hope that the music was going to stop and then things will be different.

Q. It was hope that's why - You didn't tell your doctor because you had hope, is that what you said?

A. Yeah.

Q. You see further up it says, general sleep, energy, weight loss, appetite, those are all questions that she asked you. How is your sleep? How is your energy? Is there weight loss that we should be concerned about? Is there a problem with your appetite? The answer is what? What's the N stand for? None, no problem, isn't that what that means? Yes or No. Can you ask the witness just answer what does the N mean, no problem? Sorry, can you translate that?

A. At the time I didn't have the problem.

Q. Ah, that's what I thought. Thank you. Up above it says, sexual health relationships. Sorry it has to be so private but you were asked that question by your doctor. No sexual health relationships, the answer is, can you read that to her?

A. Yeah, not at the time though.

Q. Not at the time okay we'll just leave it at that. No problem because up above the doctor said, family history review. She went through all of this with you, isn't that right?

A. Yeah, my family didn't have any, any health issues.

Q. No, your family history. Did they ask you about your family history? What - is everything okay with the family?

A. Yes.

Q. And then at the end - you answered yes in English. Okay fine. At the end, at the bottom it says, impression, stable. Stable. BP satisfied. That probably means the doctor was satisfied with your answers.

A. Yeah that was in the beginning when the music started.

Q. No, hold on. Whoa, whoa, whoa, don't make an excuse yet. You said from February you were dying little by little. This is August 19th. You're almost seven months into these experiences that were killing you little by little. Was the doctor's answers - were the doctor's answers accurate based on the information you gave her? Were the doctor's answers truthful?

A. Yes, but this is 2014 you're asking me.

Q. So, the doctor's answers were accurate at the time, correct?

A. At the time, yes.

Q. Yes. Based on the information you gave her in a very truthful manner, correct?

A. Yes, truthfully, yes.

MR. BATTISTON: I have no more questions. Thank you.

THE COURT: Mr. Dooling or Ms. Ferguson do you have any questions of Mrs. Fiuza?

MR. DOOLING: No.

THE COURT: No? All right, thank you. Anything on re-exam, Mr. Ellis?

RE-EXAMINATION BY MR. ELLIS:

Q. Can you go to page at the top it says, 47 of 80 of Exhibit Number 11?

A. Okay, yeah.

Q. Can you say what the date on this document is?

A. January 14, 2015.

Q. At the very top it says 47 of 80?

A. Yeah, 47 of 84, that's what it says.

THE COURT: Well, that's not, you've got to look at 47 of 80. It should be February 11, 2015 at the top.

THE INTERPRETER: Yes, yes, I've got it right this time.

MR. ELLIS: Q. And this is a medical report from your doctor?

THE COURT: Well no, that's not a medical report.

MR. ELLIS: Oh, sorry.

THE COURT: It's a referral letter.

MR. ELLIS: Q. It's a referral letter. Can you tell us where the referral letter's from or to?

A. It's for people that have mental health issues.

Q. And why were you referred to this place?

A. She sends us the referrals that we could go there to see if we're having any troubles with our mental health.

Q. Due to what?

A. Because of stress and the music.

MR. ELLIS: Those are all my questions, Your Honour.

THE COURT: Mrs. Fiuza you may sit down. Thank you. And that's your case Mr. Ellis?

MR. ELLIS: That's my case, Your Honour.

THE COURT: Thank you. Mr. Battiston, I know it's twenty after three did you want to get started and go 'til about 4:30.

MR. BATTISTON: I can start with Mr. Buonvivere.

THE COURT: Okay. That's fine.

MR. BATTISTON: Oh, sorry, sorry, sorry.

THE COURT: Please step forward sir. Thank you.

CLERK OF THE COURT: Do you wish to affirm or swear
on a holy book.

MR. BUONVIVERE: On the Bible.

JOSEPH BUONVIVERE: SWORN

CLERK OF THE COURT: Please state and spell your full
name for the record.

MR. BUONVIVERE: Joseph Buonvivere. J-O-S-E-P-H B-
U-O-N-V-I-V-E-R-E.

CLERK OF THE COURT: Thank you very much. You may be
seated.

MR. BATTISTON: Your Honour we can facilitate the
evidence and presentation of the evidence by virtue
of the fact that we have trial affidavits filed.

THE COURT: All right.

MR. BATTISTON: That basically streamline
presentation, have the exhibits attached, can be
referred to.

THE COURT: Is there a problem, Mr. Ellis?

MR. ELLIS: Well these were all filed after the
second day of trial, Your Honour.

THE COURT: Which was February. Okay.

MR. BATTISTON: I could have taken the position that
I didn't have to call Mr. Buonvivere but my friend
has had these affidavits in his possession since
February which is longer than he certainly needs to

review and examine and assess my complete transparency with respect to the evidence, so.

THE COURT: I've got one for Mr. Dooling which is actually the file date is February 14th, 2014.

MR. BATTISTON: Yeah.

THE COURT: Let me see if there's one in here for Mr. Buonvivere.

MR. BATTISTON: Yeah, I hope so.

THE COURT: So, do I.

MR. BATTISTON: Says trial affidavits.

THE COURT: Oh, okay it's in this big brief.

MR. BATTISTON: There you go.

THE COURT: All right. Doesn't look like it's been....

MR. BATTISTON: Q. You brought your copy with you, Mr. Buonvivere?

A. Yes.

THE COURT: It doesn't appear that there's any date stamp on it. It is dated February 6, 2018.

MR. BATTISTON: Oh, it was filed....

THE COURT: I mean you've certainly have had it more than thirty days before today Mr. Ellis, correct?

MR. ELLIS: That's correct, Your Honour.

THE COURT: Yeah, okay. All right in the interest of speeding this up and I don't see any issue with respect to the service of this, let's proceed.

EXAMINATION IN-CHIEF BY MR. BATTISTON:

Q. We'll start with the background information which we laid out originally in section (b) of your affidavit or that trial document that you're looking at Mr. Buonvivere.

THE COURT: What are you referring to?

MR. BATTISTON: The affidavit, schedule B of the affidavit, page 3.

THE COURT: Oh, okay.

MR. BATTISTON: Q. Outline for us your background and your family's background Mr. Buonvivere.

5 A. So basically, my wife and I have a few rental properties. We purchased them over our marriage and expanded our portfolio in the summer of 2010 to include some properties in Cambridge and then maintained rental properties for about twenty-five years or so.

10 Q. And, you personally are involved in managing, administrating?

A. Yeah, it's a part time business for myself. I manage and maintain our portfolio properties.

15 Q. Okay, are they all residential properties?

A. Yes.

Q. Okay, when did you start doing that?

A. The first property we had was about twenty-five years ago and then expanded back in 2010 to include a few more properties at that time.

20 Q. Okay, there's greater detail set out if you go to tab - the February 6th part of the affidavit which is probably - sorry Tab C, Mr. Buonvivere.

THE COURT: I don't seem to have a Tab C.

MR. BATTISTON: Q. Is there a Tab C?

25 A. No.

THE COURT: No.

MR. BATTISTON: Q. There's another schedule to this -
1B.

MS. DIBIASE: Which affidavit 'cause there's more than one in here.

MR. BATTISTON: Q. There's more than one here. After Tab 12 there should be - there's another schedule A or there it is there's a blue separator midway through and then the tabs start 1 again with a supplementary affidavit.

A. Schedule A.

THE COURT: I've got it. Tab B, a supplementary affidavit.

MR. BATTISTON: Yeah. Okay, good.

Q. Another schedule A which was the second - the affidavit sworn February 6th, correct Mr. Buonvivere?

A. Yes.

Q. All right. So, there was a section there that outlined the background, some of which you refer to right now. Paragraph 5 talks about what in particular you do before leasing a property. Could you get into that for us?

A. Yes, so back in 2010 I joined an organization called REIN which is based in BC, which is Real Estate Investment Network and it was just like-minded professionals looking to maintain rental properties and through my association with REIN developed skills to purchase properties, screen tenants and maintain that portfolio business. I developed I guess a screening process for my tenants and you know which started from initial phone calls with them just to vet them prior to showing them the property.

Q. Any tenant, for any property that you've got.

A. Any tenant, any property, yes.

Q. So, you don't delegate this to any other subordinates or anything, you do this?

A. No. Yeah, I take a lot of - pay a lot of attention to detail. I'm a very good listener so my screening process would start with initial phone calls. I make lots of notes about that conversation. When I meet the prospective tenant I'd have them

fill out a questionnaire and basically cross-reference that information with the notes I've taken over the phone and then you know showing them the property, kind of assess the type of people that I'm renting to, make sure they're the kind of fit for the property and the neighbourhood and then you know enter into a lease agreement once I'm satisfied with their credit checks and their history of rental history and employment history.

Q. Referrals? Referral previous residences?

A. Yeah. Talk to previous landlords if possible. Family members if possible.

Q. Yeah.

A. So just do a lot of diligence around vetting them prior to renting properties.

Q. The next section in the schedule A affidavit you're looking at is the history of 542 Elgin Street North. In particular, you purchased the property in 2010, correct?

A. That's correct.

Q. First set of tenants you get into some of those details in the next subsequent paragraphs?

A. Yeah, the first set of tenants was three social workers. Probably in their early twenties. Just fresh out of school and they seemed like a good group of girls. They all worked full time. They were social workers so I thought they were a good fit. They stayed in the property for almost four years and over that time had no issues whatsoever. The only reason they left was 'cause they - the girls wanted to go their own way.

Q. Okay. Second set?

A. Second set of tenants. It's a situation, it was a professional hockey player moving back in Ontario with his brother and his family. So he was married with two children I believe and had three dogs so very busy household. They were moving up back to the area. Their parents lived here. Went through their reference

checks, met the father, met the family, met them and they all seemed like good tenants and quickly moved in February I believe of 2013. And the only reason they left, they purchased a house in Guelph to settle with their family. Anytime I went to see them very polite. It was a very busy household. The brother would be home a lot. He had a part time job. The brother - the main tenant, the husband was a professional hockey player so he was home a lot during the day, working at nights playing hockey. So, it was a very busy environment with the three dogs, the kids and the brother's at home playing you know video games with their kids and things like that.

Q. Okay. Then we get to what 2014?

A. Yeah, so 2014 met Andrew and Jacqueline. Had a quick conversation with Andrew on the phone that they were looking at leaving, got into a little bit of history of their relationship....

Q. Sorry, they were looking to leaving?

A. Their current house. They were living with Andrew's father at the time so I showed them the property. Don't remember the exact dates but they were respectful of the house, very quiet reserved family. At the time they just had one daughter. So, looked like a good you know....

Q. How old was the daughter?

A. At the time I would probably say five or six, so a young child.

Q. Okay.

A. Very - you know they were interested in moving. Got them to fill out the application, validated that information in terms of employment and their rental history. I did a credit check on them. Everything turned out perfectly. I spoke to Andrew's boss at the time to check his employment history and salary and everything confirmed.

Q. Is that an application from them which is at Tab 1 of the affidavit, the affidavit you're looking at there?

A. Yes, that's correct.

MR. BATTISTON: Your Honour how shall we refer to the document. The exhibit. Is the whole binder the next exhibit? Is that appropriate?

THE COURT: Is that what you wish to do, I mean?

MR. BATTISTON: If we can. It hasn't been marked yet I don't think.

THE COURT: No, it hasn't been marked. Is this Exhibit 12?

CLERK OF THE COURT: Yes.

THE COURT: Yeah. So, this would be your trial affidavit brief...

MR. BATTISTON: Yes.

THE COURT: ...of Creekside. We can mark that as Exhibit 12. Any issues with that, Mr. Ellis?

MR. ELLIS: No, Your Honour.

EXHIBIT NUMBER 12: Trial Affidavit Brief of Creekside - produced and marked

THE COURT: All right.

MR. BATTISTON: Okay.

Q. So, this is Tab 1 of the supplementary affidavit Mr. Buonvivere, is the application for rental accommodation from the Doolings. Is that correct?

A. That's correct.

Q. And, they both work?

A. At the time Jacqueline wasn't working.

Q. Okay.

A. Or no, sorry she just recently started a job, three months into it at the time.

Q. Yeah, yeah.

A. Andrew worked full time as a welder. So just in terms of history work employment, capture all that in the application and then would follow-up with the references that were provided to verify that information.

Q. Okay. Everything let's see - Tab 2 is a residential lease you had them sign once you were satisfied to proceed, is that correct?

A. That's correct.

Q. So, by early January of 2014 they signed the lease and they moved in?

A. Yes.

Q. On February 1st?

A. February 1st, 2014.

Q. 2014. They stayed for - well they stayed until February 25, 2015, correct?

A. It was September 25, 2015.

Q. 25th right, yeah.

A. I received notice that they want to move.

Q. All right. Okay when did the problems start?

A. First, I heard of it was April. So, they moved in February 1st. They got settled in. Spoke to them a couple of times after they moved in to make sure they were settled in and all the paperwork was fine with setting up the utilities.

Q. And, you live in Toronto?

A. I live in Toronto, yes.

Q. Etobicoke, right?

A. Yes, so the first I heard of any sort of situation I was phoned I believe it was April 5th of 2014. I was out at some friends for dinner. We just happened to be talking about the real

estate business and I got a phone call from the by-law officer at that time just sayin' that there was a noise complaint at one of my properties. So, he explained the situation. They went to the house....

Q. He explained this to you?

A. Yes, yes, the by-law officer explained that they were called for a noise complaint at 542 Elgin Street. They went to the house to see what the situation was and could not hear anything or lay any charges. So it was more informational at the time.

Q. Did they require any action from you at the time?

A. Not that night but what I did do the next day is I spoke to Andrew just to hear his side of what happened and just you know he reiterated that there was - the by-law was called, they came and they could not find any evidence of noise. He also mentioned that there were prior complaints prior to me being called on April 5th of noise complaints.

Q. Okay. Were you given details of those?

A. Not so much so. Just that the neighbour was complaining about hearing music.

Q. Did you get the name of the - who called you? Someone from the By-Law Department?

A. I believe it - the first person I spoke to I believe would be Shaun Elliott.

Q. Okay.

A. Which I would then would converse with over the next couple of months.

Q. Oh, with Shaun?

A. I believe it was Shaun that I spoke to the first time.

Q. Oh, but then you became familiar with Shaun?

A. Yes.

Q. Was he the officer assigned to this file?

A. Yeah, he seemed to be the one that would be called.

Q. Inherited you, okay. If it helps your affidavit at paragraph 21 you talk about an incident May 31st, 2014 at paragraph 21.

A. Okay. So, I guess leading up to May 31st I was approached or called a couple of times by Shaun Elliott by the by-law and Cesaltina then called on occasion explaining you know about the noise and how could I let these people enter her house. I listened to her. I explained that....

Q. Into her house?

A. Into her house which okay they aren't in your house maybe the noise is bothering you so I listened to her. I said, you know, I'll talk to Andrew and Jacqueline, see what's going on and anytime I did speak to her, Cesaltina, I would always follow it up with a phone call to Andrew and Jacqueline just to hear their side of the story. I wasn't always called by by-law. It might have been a few times over the course of this matter but took action right away to see what the situation was.

Q. So as of May 31st, 2014, no charges were laid or information to that effect came to your attention?

A. That's correct. No charges were ever laid.

Q. Did you ask the by-law officer what's the problem or asked questions like that? What are you going to do about it?

A. Yeah and I basically asked you know what sort of level of tolerance. I'm not familiar with the laws in Cambridge. I would assume that noise laws would be the same. In Toronto it's typically 11:00 o'clock and then you could complain but apparently in Cambridge if there is any noise whatsoever the people have a right to call the by-law. So, in talking to Shaun he educated me a little bit more on those by-laws and how that works but he was

never able to find unreasonable noise or anything to charge them with.

Q. May 31st there seemed to be quite an exchange of phone calls and information between yourself, the by-law officer and Cesaltina. Is that a flurry of calls all the same day?

A. Yes.

Q. Really?

A. Yes. It was back and forth. You know if I did not pick up the phone right away then there'd be a voice message and then I'd return her call or vice versa if I couldn't get in touch with Andrew I'd call him back just to make sure I understood what the situation was.

Q. And, that was a Saturday night?

A. Yes.

Q. What time? What time were these communications taking place?

A. I think it probably started early in the morning. I would say probably ten timeframe so, maybe seven, eight in the evening. I wouldn't necessarily pick up my phone. I would just leave it in the kitchen and then check voice messages the next day.

Q. Well the next day was June 1st and you were contacted by the City of Cambridge By-Law Department again?

A. That's correct.

Q. And you spoke with Andrew....

A. Again, probably it was Shaun Elliott about the situation again. No evidence of any sort of you know to lay any charges and I wasn't sure if at that time you know I asked you know what can we do and I'd been speaking with Andrew prior to that. I offered to buy another stereo system to try to mitigate any sort of noise just to kind of help facilitate this. And, speaking again with Shaun that day, I wasn't sure if that was the time that we agreed or he asked me if I could come out with him. It'd be a good

idea if we listened or went to the house together just so we can both experience it. And, I believe that's when we set up the date to go out on June 10th.

Q. On June 10th, you're at paragraph 32 of the affidavit, yes. We've all heard how you went to the house and this was the day on June 10th.

A. Yes.

Q. All right and you went to see the Doolings?

A. Yes, first I went to see Jacqueline and Andrew.

Q. And Shaun was there too?

A. Shaun was there and I believe....

Q. Were the police involved at this point?

A. No, they were not there. It was just Shaun Elliott, by-law officer.

Q. Okay.

A. So upon getting to the residence Shaun wanted to set up a similar type of experience so he had Andrew turn on the tv, what he would normally listen to, set it at a volume that they would normally listen to and then Shaun and myself went next door to the Fiuza's house.

Q. Oh?

A. And then we went in the front door to experience what they would be hearing.

Q. Right.

A. And at the front door we couldn't hear anything. They invited us into their house. We sat in the living room and again could not hear any unreasonable noise.

Q. But you could hear something?

A. No. I heard the birds in the basement.

Q. Okay, we heard about the birds.

A. Street noise but no music *per se*.

Q. This was in the middle of the day sometime?

A. I think we went there around 5:00 o'clock in the evening.

Q. On June 10th was what day of the week?

A. From memory I think it might have been a Monday or Tuesday, I don't....

Q. It was a weekday night?

A. It was a weekday, yes.

Q. All right. So, you sat there in the living room and what happened?

A. Could not hear anything. Basically, you know we spoke about putting a pillow under the speaker again. Shaun and I chatted about that. We left the Fiuza's house, we went back to Andrew, made that recommendation again, putting a pillow underneath the speaker to try to muffle some of the bass. Again, offered to buy him another stereo system just to help alleviate this issue and then basically Shaun said you know this is a situation that we're with. You can't really hear - you can't hear anything in the residence but they're just complaining about it.

Q. You don't need the hassle in other words. See what we can do to get rid of this thing?

A. Yeah, I was just trying to help out where I could.

Q. Was there anything more you could have done?

A. Not at the time, no.

Q. You didn't live in the house?

A. No.

Q. You're tenant - you had turned possession over to your tenants, correct?

A. That's right.

Q. And you'd spoken to Andrew and Jacqueline many times?

A. Yeah and anytime speaking with them....

Q. Did you know about their work schedule like what was the house like? What was their normal house situation?

A. I know Andrew would start work very early. Not sure how late in the day, being shift work it would probably rotate. Jacqueline was working a new job so you know with a young girl at home I don't think it was as busy as the previous tenants with two brothers and three dogs being there.

Q. They didn't have a dog?

A. No.

Q. And then Jacqueline was expecting with the twins, right?

A. That's correct, yes.

Q. Still working. Taking care of the daughter?

A. Yes.

Q. And Andrew was working - waking up way early in the morning to go to work.

A. That's correct.

Q. Did anything change from the information that was presented to you in the application? Was the family life exactly how it was presented to you in the application with the information provided?

A. Yes, it was. They always seemed very respectful. A little reserved family. Quiet and that's one of the main reasons why I chose them to live in the house.

Q. Okay, what do you think's the problem?

A. I just think that the sensitivity or aversion to any sort of noise is causing the problem not necessarily music or the sounds from their house.

Q. With your neighbours? With the neighbours?

A. With the neighbours, yes.

Q. June 14th at paragraph 35 you made a statement, I remember the events of this day very clearly. What happened on June 14th?

A. Yeah, I was in Montreal for the day and I believe I received a phone call from Cesaltina, probably 9:30 in the morning. So, I took the call and then she was complaining about the noise and again how can I let these people into my house. I listened to her. I said you know I was out there. I could not hear anything. The by-law people could not do anything. They could not find any evidence of noise to lay any charges and you know so I spoke to her at that time. I phoned Andrew shortly thereafter just to find out what has happened 'cause we were just there a few days prior listening with by-law.

Q. Was there a party, was there something, was there....

A. No, just day to day life. And so, nothing out of the normal happened that weekend. Then she just - you know she phoned. I spoke to her. I talked to Andrew and I believe I might have called her back to say listen I spoke to Andrew and according to him there was no unreasonable noise being heard.

Q. Did you hear from the by-law officer, from Shaun?

A. Not that day, no.

Q. All right, paragraph 40 is your last record of speaking to Cesaltina.

A. July 26th?

Q. Yes.

A. Yeah that - so we did speak a lot over the time period. She left voice messages and then I would follow-up. The last time we spoke was July 26th and that's the last I heard of her regarding these complaints. Over time you know throughout the duration of the Doolings' lease I would speak to Andrew and Jacqueline just, you know, every few months and I would ask how

things were going and you know they would get a few complaints but again same situation. By-law might have been called but then again no evidence of any noise.

Q. And, did that come back to your attention in the ensuing months?

A. No.

Q. July, August, now you're into August, September of 2014.

A. Yeah, nothing formally. Nothing I could recall until I was served with papers at this trial.

Q. Police. Did the police ever call you?

A. I don't remember the specific dates. So I know there was an attempt between the Doolings and the Fiuzas to come up with - and I might be confusing other matters that they were involved in with them to mediate or resolve these issues. And I spoke to the police once in a while, I don't remember the officer's name. Again, you know just to let me - just inform me of the situation that they were called to the house but again no charges or no....

Q. Were you always particular to ask about that, were there charges laid?

A. Oh, yes, yes. So, any situation again you know with by-law or police they found no evidence to lay any charges.

Q. Okay, did you think about serving notice to terminate the lease Mr. Buonvivere?

A. One of the first things I did when this matter came to my attention back in April by the by-law, I looked into *Landlord Tenant Act* just to see what my obligations were and the *Landlord Tenant Act* is clearly an agreement between the landlord and the tenant, not necessarily between myself and neighbours. And so reading through that I really had no obligation to the neighbours because they were not my tenant. I looked at what you

know what I could do if something was to come up from this, if there were charges and again, I wasn't going to look to evict a family, a young family with no evidence of any sort of wrongdoing. So, I did my research, parked that in the back of my mind and just kind of went on with things and wait to see you know what progressed from there and again no charges were ever laid or you know anything to that matter.

Q. When did it next come to your attention that there was a more serious problem relating to the property?

A. When I got notice of this trial.

Q. The sue - when you got sued?

A. When I got sued, yes. I don't remember the date but it was....

Q. Might have been - well the action was commenced in February of 2015. So it was basically almost on the anniversary date of the lease, do you remember that?

A. Yes, I was surprised to receive those papers. I thought the matter - I thought everything was fine. I heard nothing further, you know....

Q. Nothing before then, after that last phone call?

A. Nothing from Cesaltina from July prior.

Q. But, at that time you also noticed that the plaintiffs were suing the City of Cambridge By-Law Enforcement Department and Waterloo Police Services?

A. Yes, on the same suit. I was confused why there were so many people named on that.

Q. Yeah.

A. And why I was included as well as being the landlord.

Q. Yeah. What could you have done? What didn't you do, do you know?

A. Not really. I tried as much as I could to alleviate the problem or do what I could within my powers to help the situation so that you know the issue would go away.

Q. Obviously, it didn't.

A. No.

Q. And then the claims were dropped against police and the by-law people.

A. Yeah, I heard that the claims were subsequently dropped against the police and by-law, not knowing why and that but we were still named in this lawsuit.

Q. This was after we went to a settlement conference in April of 2015?

A. Yes.

Q. And we didn't hear anything more for a while?

A. No. Since that conference I think we got notice of trial several months later. Again, I didn't even know what was happening with the matter.

Q. We went - we first showed up here in January of 2018.

A. For court yes.

Q. Right? You also found out along the way that by-law services actually refused to continue responding to Ms. Fiuza's complaints?

A. Yeah. In some of the information that we gathered, all the number of occurrences from the by-law, there was some, I guess, letter back from the by-law that they would not respond to any further complaints because they never found any sort of issue upon arriving to the house.

Q. Just permit me a second if you will. Could you - at paragraph 40, sorry 48 of the supplementary affidavit you actually counted that over twenty months there were over sixty

occurrences that were documented in all the documents that were served? Sixty occurrences, is that correct?

A. That's correct actually my wife went through all the information that was submitted as part of this case and counted all the e-mails and the occurrences that the by-law and police were called.

Q. And, no charges were ever laid?

A. Exactly. All those occurrences, nothing was found.

MR. BATTISTON: All right. Thank you. Those are my questions Mr. Buonvivere. Stay there and Mr. Ellis may have some questions for you.

THE COURT: Mr. Ellis?

MR. ELLIS: Should I start my cross-examination?

THE COURT: How long do you think you're going to be?

MR. ELLIS: Probably an hour and a half, maybe two hours.

THE COURT: An hour and a half. Well, I don't think anybody relishes staying here 'til 6:00 o'clock, I'm pretty sure about that so rather than interrupt you. I hate to do this sir. I really do because I know you've been here five times now and now you're going to have to come back for a sixth time to be cross-examined but I don't think we can get around that unfortunately. So, we will have to adjourn to a later date and let's see if we can set that date right now if possible. If you would just step-down sir. Sorry about that.

The earliest date I can do because my schedule's already set until then would be November 30th.

MR. BATTISTON: Two seconds, we'll check that. We're good?

MS. DIBIASE: Mm-hmm.

MR. BATTISTON: November 30th works for me, Your Honour.

THE COURT: Mr. Ellis?

MR. ELLIS: Yes, I can do November 30th.

THE COURT: Mr. Buonvivere?

MR. BUONVIVERE: Yes, I'm good.

THE COURT: Mr. Dooling and Ms. Ferguson.

MR. DOOLING: Yes.

THE COURT: Okay, so we will adjourn this to November 30th 10:00 a.m. I guess we should schedule another full day the way things are going. We'll have to finish Mr. Buonvivere and then we have Mr. Dooling's affidavit that he will have to give evidence on and then be cross-examined and then will that be it for the evidence and then the parties can make their legal argument.

MR. BATTISTON: Let's do it.

THE COURT: All right so one day. If you could book that in for one day. So, just so we're all clear this is what's gonna happen on November 30th. Mr. Buonvivere's cross-examination will be completed. Mr. Dooling will - he has filed an affidavit; he can be cross-examined on that affidavit and then that will be the end of the evidence. I take it Ms. Ferguson won't be filing - she hasn't filed any evidence so that will be it. Word of warning I don't want to hear any surprises on November 30th. Is everybody clear about that? Nobody's gonna jump up and say....

MR. BATTISTON: 'Tis the season to be jolly.

THE COURT: Yeah, well nobody better jump up and say oh I've got another witness or another document or something 'cause I'm not - I won't even address that. So, I'm just gonna endorse the record. If the parties are going to make legal argument on November 30th you better have your case books prepared and exchanged with one another before then and I don't mean the day before and I don't mean the morning of either. I mean well in advance 'cause this will be pretty soon when one year that this matter has gone for trial and it's a little beyond the norm to say the least. All right that's everything.

CLERK OF THE COURT: All rise. The Superior Court of Justice is now closed.

C O U R T A D J O U R N E D

(03:56:19)

126.

R. v. Fiuza v Creekside et al
Certification.

FORM 2

Certificate of Transcript
Evidence Act, subsection 5(2)

5 I, **Gloria Scheerer**, certify that this document is a true and
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in the Small Claims Court, Superior Court of Justice held at **85**
Frederick St., Kitchener, Ontario, taken from Recording No.
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10 Form 1 by Yasameen Walizada.

August 16, 2019

CCR, ACT

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15 (Date)

(Signature of authorized person)

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