

NOVA SCOTIA COURT OF APPEAL

Citation: *Brekka v. 101252 P.E.I. Inc.*, 2015 NSCA 73

Date: 20150728

Docket: CA 420096

Registry: Halifax

Between:

Betty Ann Brekka

Appellant/
Respondent by Cross-Appeal

v.

101252 P.E.I. Inc.

Respondent/
Appellant by Cross-Appeal

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: February 17, 2015, in Halifax, Nova Scotia

Subject: **Foreclosure. Alleged Settlement Agreement. Statute of Frauds. Part Performance. Corporations Registration Act. Judicature Act. Remedy. Judicial Discretion. Standard of Review.**

Summary: Mortgage default and foreclosure resulted in the public auction of two apartment buildings over the protests of the owner who said she had concluded a binding settlement agreement with the mortgagee which would have given her more time to arrange emergency financing. The dispute led to a variety of motions and separate hearings where it was determined that a binding settlement agreement had never been concluded and, in any event, the “settlement” failed to satisfy the **Statute of Frauds** in that it had never been reduced to writing. The owner’s acts did not constitute part performance in law such as to avoid the rigours of that statute.

Even though the mortgagee had not complied with the statutory provisions requiring it to register as a business in Nova Scotia, that defect could be cured by adding the assignor of the mortgages as a plaintiff. The effect of the amendment was that the Sheriff's sales were ratified and confirmed. The owner appealed and the mortgagee cross-appealed.

Held:

Appeals and cross-appeal dismissed. The Court analyzed and explained the doctrine of part performance in the context of the **Statute of Frauds** and in particular the meaning of the phrase "unequivocally referable". The first motions judge did not err in law or in fact in concluding that the owner's efforts in this case were not unequivocally referable to the alleged postponement agreement and therefore did not constitute part performance so as to avoid the statutory requirement that any contract of land be reduced to writing. Neither did the judge err in law or in fact in concluding, alternatively, that a binding settlement agreement had not been concluded.

The second motions judge did not err in law in interpreting the provisions of the **Corporations Registration Act**, nor in the exercise of his discretion in fashioning a remedy by permitting an amendment to the pleadings. In exercising his discretion the judge neither erred in principle, nor issued a directive which could be seen as producing a patent injustice.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 21 pages.