

NOVA SCOTIA COURT OF APPEAL
Citation: *Corkum v. Dagley*, 2007 NSCA 9

Date: 20070123
Docket: CA 267229
Registry: Halifax

Between:

Caroline Corkum

Appellant

v.

Randall Stephen Dagley

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: January 18, 2007

Subject: *Real Property; Oral agreement to purchase real property; Actual and constructive notice; Equitable interests in real property; The Evidence Act, R.S.N.S. 1989, c. 154, s. 45*

Summary: The appellant claimed an interest in certain residential property pursuant to an oral agreement to purchase with the late Eleanor Dagley and, alternatively, an equitable right in the property. According to the appellant, the 1986 agreement provided that her monthly rent payments and the cost of renovations would be credited against the price Ms. Dagley paid for the property. She paid rent until March of 1989 and made improvements to the property. Ms. Dagley conveyed the property to the respondent in 2001 when the appellant was still in occupation. The trial judge was not satisfied on the evidence that the appellant had proven the existence of an agreement on a balance of probabilities. He also found that the respondent acquired the property for value, that he took without actual or constructive notice of any equitable interest of the appellant, and that, in the circumstances of this particular case, the respondent had made such inquiries as a reasonable person would make. The trial judge also decided that the word “wife” in s. 45 of the *Evidence Act* should be read as “spouse,” and that the provision applied to the evidence of the appellant and her former

spouse.

Issue: Whether the trial judge had erred in finding that

(1) no contract existed;

(2) that the respondent did not have notice of any equitable rights of the appellant in the property or, alternatively, in finding that the respondent had no duty to inquire about her equitable rights, while in occupation;

(3) s. 45 should substitute the word “spouse” for “wife,” and alternatively, that that provision would prevent her succeeding in her claims. Whether the judge erred in his assessment of the damages awarded the respondent on his counterclaim for rent.

Result: Appeal dismissed with costs. The trial judge made no palpable and overriding error in finding that the appellant had not proven the existence of an oral agreement, or in finding that the respondent had not had actual or constructive notice and, in the circumstances of this particular case, that he had made such inquiries as a reasonable person would make. As the judge explicitly stated that he had not relied on s. 45 or the lack of corroboration in deciding to dismiss, it was not necessary to determine whether he erred in regard to that provision. In assessing damages, the trial judge had neither applied a wrong principle of law nor had he made an award that constituted a wholly erroneous estimate of the damage.

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 4 pages.