SUPREME COURT OF NOVA SCOTIA
Citation: *Brander v. Peers*, 2024 NSSC 202

Date: 20240704
Docket: 518134
Registry: Amherst

Between:

Scott Eldon Brander

Applicant

v.

Elaine Louise Peers

Respondent

Decision

Judge:	The Honourable Justice C. Richard Coughlan
Heard:	November 9 and 10, 2023, in Amherst, Nova Scotia
Last Written Submission:	June 7, 2024
Counsel:	Anthony S. E. Buckland, for the Applicant Bradford G. Yuill, for the Respondent

By the Court:

Introduction

[1] This proceeding demonstrates the problems which can arise when relatives are on opposite sides of a financial transaction. The Applicant, Scott Eldon Brander cultivated his relationship with his older cousin, the Respondent Elaine Louise Peers. Mr. Brander asked Ms. Peers if he and his partner Tammy LeBlanc could rent her property. Ms. Peers agreed they could, and they occupied the property. By at least June 2017 there were discussions of Ms. Peers selling the property to Mr. Brander. Discussions concerning the terms of a sale of the property continued until Ms. Peers notified Mr. Brander in August 2020 the property was no longer for sale.

[2] Mr. Brander was not happy. He retained counsel. He commenced an Application in Court for an order for specific performance of a rent-to-own agreement transferring title of the property to him or alternatively, transference of the property to him on the basis of proprietary estoppel or alternatively, for damages for breach of contract.

[3] Ms. Peers filed a Notice of Contest defending against the claims. She also claimed a declaration that Mr. Brander breached an oral tenancy agreement, an order of eviction and removal of Mr. Brander and his family from the property, and damages.

Evidence

[4] The evidence is as follows:

[5] Elaine Louise Peers is the owner of land located at 7307 Highway 366, Northport, Cumberland County, Nova Scotia PID numbers 25114745, 25114752 and 25114778. In September 2015 Ms. Peers listed the property for sale for $245,000.

[6] Scott Eldon Brander is Ms. Peers' first cousin. Mr. Brander is much younger than Ms. Peers. They met at family funeral receptions in 2002. Between 2004 and 2015 Mr. Brander would occasionally visit Ms. Peers when she was at her Northport property.

[7] In July 2015 Mr. Brander, then employed by Superline Fuels, now a self-employed heating contractor, installed a new fiberglass oil tank in Ms. Peers' Northport property. In September 2015 he agreed to winterize the heating lines and rads.

[8] On October 22, 2015, Mr. Brander emailed Ms. Peers telling her his relationship with his girlfriend was "on the rocks" and he might have to move out quickly. He asked Ms. Peers if he could stay at her place for a while. He agreed if he had to, he would pay for the utilities and oil while he was there.

[9] In an email dated March 8, 2016, Mr. Brander informed Ms. Peers he had resigned as branch manager of Superline Fuels.

[10] Mr. Brander notified Ms. Peers in April 2017 that he and his partner Tammy LeBlanc would like to rent Ms. Peers' home in Northport. They planned to build a home "out on the shore" on land they had on the Shinimicas River. Mr. Brander and Ms. LeBlanc planned to turn their town property into an income generating property. Ms. Peers agreed to rent her property for $850 per month plus the cost of heat, propane, and electricity. Mr. Brander was to be responsible for care, routine maintenance, and minor repairs. Mr. Brander and Ms. LeBlanc agreed and moved in. On May 22, 2017, Mr. Brander emailed Ms. Peers and asked if he could pay the rent on the second day of the month as that would give him time to collect the rent on his rental property.

[11] By at least June 2017 there were discussions about Ms. Peers selling the property to Mr. Brander either through a rent-to-own agreement or a sale with Ms. Peers taking back a mortgage. Discussions concerning the terms of the agreement for the sale of the real property continued between Ms. Peers and Mr. Brander during 2017, 2018, 2019 and 2020. In an email dated October 18, 2017, Ms. Peers confirmed the sale price as $177,000. On September 1, 2018, Ms. Peers emailed Mr. Brander inquiring whether he was soon ready to apply for a mortgage.

[12] In January 2019 there were problems with the septic tank. It was pumped and repaired. Ms. Peers told Mr. Brander he should pay the cost of repairs and deduct it from the amount he owed her.

[13] On February 5, 2019, Ms. Peers emailed Mr. Brander about a bill she received from Irving Oil for propane of $194.74.

[14] In an email dated May 8, 2019, Ms. Peers set out her understanding of the agreement between she and Mr. Brander as:

> So I do not need you to solve any more problems… just want you to have the "head's-up" that I have to get our "rent-to-own" agreement on paper and both of us to sign it and date it effective the dates when we made the verbal agreement. Or else I have to claim the monies above and beyond the property expenses as just plain rent… and pay the income taxes applicable. That would really reduce the amount accruing for you as "down-payment" – which is the intent of the deal in the first place: to facilitate your ability to get a mortgage within 2-3 years.
>
> So, I will proceed to write the agreement with the details and terms as I remember them, send the draft off to you and then we can work the final agreement from there – if that is ok still with you. Just let me know if you are still of the same mind as when we last talked about the details in November 2017 and when we first talked about the agreement in May/June 2017. For instance: the term for the agreement that you mentioned was 2 to 3 years. We can leave that standing but include a comment re: if necessary extending the term for an additional year. Also that **in general the monies work out** currently that for every $1000 that you send me, $500 covers actual expenses which I pay and $500 accrues to you as down-payment made. [emphasis in original]

[15] On May 9, 2019, Ms. Peers emailed Mr. Brander with the heading "start of 1st draft of agreement".

[16] Mr. Brander did not pay Ms. Peers rent for the month of April 2020.

[17] In August 2020 Ms. Peers informed Mr. Brander that the house was no longer for sale, that he had permission to occupy the premises until February 28, 2021 with no payment for January and February 2021 beyond the amount of the February Nova Scotia Power bill.

[18] Mr. Brander was not happy. He retained counsel.

[19] On December 23, 2020, Mr. Brander received texts from a Gary Corey of the Canadian Imperial Bank of Commerce which read:

> System gave me an ok, subject to appraisal and income confirmation. The system generates a request for an appraisal when approval is recommended
>
> …
>
> Your appraisal came in at 193k. We can go 80% of your purchase price or the appraisal…whichever is less.

[20] The approval was conditional subject to income confirmation. It is not known whether Mr. Brander would be approved for the mortgage.

[21] Mr. Brander is Ms. Peers' first cousin. Although he did not know her growing up, he cultivated his relationship with her. They spoke often.

[22] Mr. Brander and Ms. LeBlanc emphasized his family relationship to Ms. Peers with her. The emails between Mr. Brander and Ms. Peers contained family news. Mr. Brander referred to family problems including his financial problems and problems with Ms. LeBlanc's son and his health when seeking a deferral of or skipping payments due to Ms. Peers.

[23] Although Ms. Peers had listed the Northport property for sale in September 2015 for $245,000; the discussions with Ms. Peers was for a possible sale price in the vicinity of $180,000 – a reduction of $65,000. Ms. Peers stated her mother would be pleased the property was going to a cousin.

[24] On cross-examination Ms. LeBlanc testified that she probably complemented Ms. Peers saying Elaine (Ms. Peers) always did look good.

[25] An email from Ms. LeBlanc to Ms. Peers dated February 9, 202[?] was put to Ms. LeBlanc. It stated:

> Hello pretty lady I just wanted to let you know all your stuff is still here [smiley emoji]
>
> We never threw anything out only cards ect [*sic*]
>
> Blankets pillows shower curtains, pots, dishes a lot of bowls and dishes, mirrors wall pictures nick nacks…just so much I cannot list…the garage is still full as well oh all albums Christmas ornaments [smiley emoji] all books every book is still here Jackets just pretty much everything and of course all furniture as well [heart emoji] just wanted you to know As I promised I did take care of all your possessions [heart emoji] have a great day and here is hoping this stupid covid disappears
>
> Soon…..Tammy

[26] I find Ms. LeBlanc complimented Ms. Peers.

[27] I find Mr. Brander and Ms. LeBlanc used Mr. Brander's relationship with Ms. Peers to gain a financial advantage with her.

[28] Although Ms. LeBlanc and Mr. Brander testified the Northport property was to be their forever home, they built a three-bedroom two bath home with an open kitchen/dining area on their Shinimicas River property about a mile from their forever home.

[29] On August 23, 2023, Ms. LeBlanc made a Facebook post stating: "Our house so far guys …. Siding this week thinking we will be in for January 1 maybe … very exciting times". In cross-examination when asked about the post she stated it could be January 1 of any year, not necessarily January 1, 2024. Obviously, the reference to January in the post refers to January 1, 2024.

[30] Mr. Brander and Ms. LeBlanc executed a mortgage in favour of Canadian Imperial Bank of Commerce in the principal amount of $232,884 on the Shinimicas River property.

[31] The Shinimicas River property is the "home on the shore" they planned to build before they moved to Ms. Peers' property.

[32] A Builders' Lien was filed against the Shinimicas River property.

[33] In his affidavit deposed on June 19, 2023 Mr. Brander stated that based on Ms. Peers' representation he was going to own the Northport property he made all repairs required to the home including:

a. Removing old carpet & replacing with laminate flooring that was here in the house.

b. Repatching the roof on the garage twice from hurricane.

c. Repairing leaking faucets & drains.

d. Replacing kitchen sink & faucets.

e. Replacing furnace break down on 4 occasions with parts.

f. Replacing foundation & support of back sun porch, opening wall in kitchen to make an additional kitchen area with breakfast bar and refinish trim on windows & floors, additional heating to properly heat the sun porch and additional lighting.

g. Dig & pumping septic tank in 2019-2020.

h. Installing new sump pump in March of 2022.

i. Dig & pump septic tank July 2022 and reroute piping & drains to drain better, and many other things that I can't remember.

[34] In Ms. LeBlanc's affidavit deposed on June 19, 2023 she stated that in anticipation of owing the property she and Mr. Brander made repairs to the property as follows:

a. Flooring in living room was replaced, we painted, removed wallpaper, cleared basement of clutter that was in the home from before.

b. We installed new plumbing (due to leaking pipes) and installed a new sink.

c. We built a new pantry because the old pantry was saturated in mouse urine.

d. We insulated the sunroom.

e. We graveled a large driveway, restored 80-year-old flower beds, trimmed trees, removed broken large trees, presser [sic] washed outside of the house and all decks, and cleaned the gutters, all to make the property up to our standards.

[35] No invoices or receipts for any labour or materials concerning the repairs or improvements Mr. Brander or Ms. LeBlanc deposed to, or testified about were placed in evidence.

[36] Mr. Brander deposed in February 2022 the basement flooded. That he purchased and installed a new sump pump. In an email to Ms. Peers on March 27, 2022, he stated the cost of supplying and installing a new submersible sump pump including HST was $813.25 which was taken out of rent as of July 2021. The March 28, 2022 payment to Ms. Peers was $200 instead of the normal $1,000. No invoices or receipts were placed in evidence concerning parts or materials purchased or calculation of HST to be remitted.

[37] On January 13, 2019, Mr. Brander emailed Ms. Peers with regard to problems with the septic tank and she authorized Mr. Brander to deduct the cost of pumping the septic tank from his rent which he did.

[38] Mr. Brander deposed that in July 2022 the septic tank failed for a second time. Mr. Brander, his stepson, and a friend dug the tank up by hand and pumped and repaired it.

[39] Mr. Brander deposed in August 2022 they lost their water supply – the well collapsed. They have had no water since the first week of August 2022.

[40] Ms. LeBlanc deposed that during Hurricane Fiona many trees on the property fell. One tree put a large hole in the garage roof. She and Mr. Brander fixed the roof and hired a crew to chainsaw down the broken large trees. Again no invoices or receipts for any of this work were put in evidence.

Is there a Contract?

[41] In the Notice of Application in Court Mr. Brander pleaded he and Ms. Peers entered into a rent-to-own agreement through email for the property at 7307 Highway 366, Northport, Cumberland County, Nova Scotia, identified by PID 25114778.

[42] In April 2017 Mr. Brander and his family moved into Ms. Peers' Northport house. The rent was $850 per month plus Mr. Brander was to pay for oil, propane and electricity.

[43] Shortly after moving into the home Mr. Branders told Ms. Peers he wished to enter a "rent-to-own" agreement to purchase the property. Ms. Peers' preference was to sell the property to Mr. Brander with her holding a mortgage for two to three years, as she stated in an email dated October 16, 2017.

[44] Ms. Peers wanted to consult a lawyer, have the details of the agreement worked out and have a lawyer draft the agreement. She had concerns as to whether the monies received would be considered income which could result in her losing her guaranteed income supplement, or how the agreement might affect the principal residence status of her house. These concerns were set out in an email Ms. Peers sent to Mr. Brander on October 6, 2017:

> But, Scottie, we do have to get the fine details worked out and the agreement drawn up by a lawyer, wouldn't you say?
>
> So far what I have not understood from what I have read on-line is: 1. whether I will have access to $$$'s that will be established as to be going toward the down-payment before the sale is completed. 2. Another thing is that it seems that a "lease to own" is still some kind of rental arrangement …which worries me that I will lose the GIS, guaranteed income supplement, if I declare much income. 3. And also I wonder if with renting, the status of the house as my "Primary Residence" will change and thus capital gains will be applicable to the sale price.

> I don't want to run afoul of Revenue Canada… I was audited for 2 years in the late 90's because of a stupid glitch but there was no money to find so it was a "make-work" wild goose chase for them and a real pain in the neck for me.
>
> I need to feel confident about these things before I can proceed as we discussed…so I will have to see a lawyer or an accountant ASAP. Of course with Jerry retired now, I have no idea who to talk to. Do you have a tax accountant that you have used or are using? Lee???

[45] In an email dated October 18, 2017, Ms. Peers discussed the possibility of the property being conveyed to Mr. Brander with a mortgage back to her. She stated, "If we can have the basics agreed upon I can see a lawyer as soon as I get home to begin to write up the agreement."

[46] On November 20, 2017, Ms. Peers emailed Mr. Brander she would get words on paper and off to him ASAP which he could confirm as correct or add other points so they would have what they need to protect both of them and then Ms. Peers will get it committed to a legal document that they both could sign.

[47] On November 22, 2017, Mr. Brander informed Ms. Peers his insurance company required an agreement drafted formally to place insurance on the property.

[48] Ms. Peers emailed Mr. Brander on September 1, 2018 asking if he was soon ready to apply for a mortgage adding, "I am believing that you and Tammy still do want to buy it???"

[49] On May 8, 2019 ,Ms. Peers emailed Mr. Brander stating that in general for every $1,000 Mr. Brander paid, $500 covers her expenses and $500 goes to Mr. Brander's credit. The same day Mr. Brander responded to Ms. Peers saying he thought the expenses were $200 with $650 going toward the down payment.

[50] The next day, May 9, 2019, Ms. Peers emailed Mr. Brander. The email is headed "start of 1st draft of agreement". In the email, Ms. Peers states:

> HI Scottie, I'd say that in writing the following it appears that I might be writing a story…LOL …but that is the way my brain works when trying to document something. It is just a starting point but if you'd say I am going in the right direction in setting out the big picture of our agreement then I will continue with the finer details of the terms as we discussed them in November.
>
> And we can also flesh out any conditions considered as naturally understood to be normal procedure between the owner of a property and the tenant of the property.

> I would like to note at some point that our agreement was deemed to be a mutually beneficial personal favour given to each other and not just an objective business agreement.

[51] Then Ms. Peers includes the draft agreement in the email, which provides:

> This agreement is between cousins Scott Brander and Elaine Peers.
>
> The history behind this agreement is : Early in April 2017 Scott phoned Elaine asking to "house sit" her vacant, furnished house which had been listed for sale more than one year. Scott asked to reside in it for a short period of time – one to two years. It was immediately agreed that Scott could occupy the house if he paid the utilities and left it "as found" when he moved out, plus he would pay $850 per month. Elaine offered to keep the NS Power in her name initially to pay said costs out of the $850 paid monthly by Scott.
>
> By July 2017 the "house-sit" arrangement changed and soon become a "lease-to-own" commitment. While still a verbal agreement, the overriding tenet was that all monies Scott paid to Elaine above her expenses for the property would accrue to Scott's credit toward down payment when he would seek a mortgage through a broker to buy the house within the one to two year period of time. In November 2017, when talking face to face the finer details of this agreement were worked out and are thus made firm with this written agreement.
>
> The purpose of this agreement is to firmly establish the terms of the on-going verbal agreement between Scott and Elaine under which Scott Brander occupies and seeks "within 1 to 2 to, possibly, 3 years" to purchase the house and property at 7307 Hwy 366, Northport, NS. owned by Elaine Peers. Said verbal agreement was understood to be in effect starting June 1, 2017 and this was reconfirmed in person in November 2017 and is hereby formally committed to with the witnessed signatures of Scott and Elaine a-fixed to this document.
>
> In July 2017, the price for the house and property which Scott and Elaine agreed upon is $180K. This price remains in effect during the term of this agreement. The monies accruing as down payment are meant to improve Scott's chance for success in attaining a future mortgage to buy the said property. Elaine will provide a receipt for the monies that accrue annually to Scott. It is agreed that should Scott's plan to purchase not come to fruition, the monies accrued will be split 50/50 between Scott and Elaine upon the premises being vacated and returned in good repair to Elaine (or her agent).

Mr. Brander did not respond to the May 9, 2019 email.

[52] Mr. Brander says the above draft agreement is the rent-to-own agreement between himself and Ms. Peers. In his affidavit deposed to on June 19, 2023, Mr. Brander stated:

> The agreement was that every dollar after expenses (said expenses being power at $150 per month, property taxes roughly $1200 per year, and insurance at roughly $1200 per year) went towards the downpayment.

[53] On cross-examination Mr. Brander testified the agreement was that with every $1,000 he paid to Ms. Peers $200 went to expenses and $650 went to his credit.

[54] On April 26, 2020, Mr. Brander emailed Ms. Peers stating:

> Hello Elaine
>
> Sorry I haven't sent you any rent for April. With covid19
> Basically shutting me down I have been trying to access some extra funding. So far I haven't been Able to. It looks I may have some coming my way in May. I haven't been working much and business is down about 85% and April is slow anyway. It sucks. So I am sorry to ask you to let me off the hook for April rent and I will forward you money for the power bill at least you won't have to cover that.
>
> Before this I had my ducks in a row to complete the deal on the house next month but I have to dig into the funds for this deal. If things go according to my readjusted plans it will be August or September before we can seal the deal.
>
> I hope this doesn't cause you any trouble and Like I said I am confident that we can close the deal by fall unless the banks change their way of doing things. Surely not.
>
> Thanks for everything
>
> Love
> Scott

[55] The issue of whether a binding contract or simply an "agreement to agree" existed was addressed in *United Gulf Developments Ltd.* v. *Iskandar*, 2008 NSCA 71 where Cromwell, J.A., as he then was, in giving the Court's judgment stated at paragraph 14:

> To have an enforceable contract, there must be agreement between the parties as to all essential terms. To use the language of a leading case, a contract "… settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties": **May and Butcher, Ltd. v. The King**, [1934] 2 K.B. 17 (H.L.) at p.21. Determining what terms are "essential" in a particular case is, however, more difficult than stating the principle. The sort of terms that are considered essential varies with the nature of the transaction and the context in which the agreement is made: **Mitsui & Co. v. Jones Power Co.**, 2000 NSCA 95, 189 N.S.R. (2d) 1 (C.A.) at para. 64. [emphasis in original]

and at paragraphs 75 and 80:

> [75] Parties may agree that they will execute a future, more formal document. If they have agreed on all of the essential terms and it is their intention that their agreement be binding, there is an enforceable contract; it is not unenforceable simply because it calls for the execution of a further formal document. The question is whether the further documentation is a condition of there being a bargain, or whether it is simply an indication of the manner in which the contract already made will be implemented. Professor Waddams, in **The Law of Contracts**, 5th ed. (Toronto: Canada Law Book, 2005) puts the question well:
>
> > Is execution of the formal contract a step in carrying out an already enforceable agreement, like a conveyance under an agreement to buy land, or is it a prerequisite of any enforceable agreement at all? … [T]he test must be reasonableness of the parties' expectations. Has the promisor committed himself to a firm agreement or does he retain an element of discretion whether or not to execute the formal agreement? In the former case there is an enforceable agreement. In the latter there is none." (section 51 page 36,)
>
> …
>
> [80] The judge properly instructed himself on the law; no issue is taken with the three legal propositions he set out at para. 34 of his reasons:
>
> > [34] I accept that the applicable law provides that there will be no binding contract when:
> >
> > 1. Essential provisions intended to govern the contractual relationship have not been settled or agreed upon.
> >
> > 2. Where the contract is too general or uncertain to be valid in itself and is dependant upon the making of a formal contract.
> >
> > 3. The understanding or intentions of the parties is that their legal obligations are to be deferred until a formal contract has been approved and executed. [emphasis in original]

[56] Ms. Peers always wished to consult counsel about the contract between herself and Mr. Brander. She had concerns which could affect the terms of any contract. Ms. Peers did not wish to lose the guaranteed income supplement she received, did not want to lose the principal residence status of the house which she called "primary residence", and did not want to run afoul of Revenue Canada stating in her email to Mr. Brander on October 6, 2017, "I need to feel confident about these things before I can proceed as we discussed." Mr. Brander was aware of these issues.

[57] Mr. Brander agreed there should be a formal agreement prepared. When Ms. Peers asked for Mr. Brander's comments on her draft of an agreement he did not respond.

[58] Considering the evidence as a whole, I find it was the intention and understanding of the parties that essential terms to govern their contractual relationship were not settled or agreed upon until they received legal advice and a contract between them had been approved and executed.

Proprietary Estoppel

[59] In the alternative, Mr. Brander pleaded the title of the Northport property should be transferred to him on the basis of proprietary estoppel.

[60] The elements of proprietary estoppel was addressed by McLachlin, C.J.C., in giving the majority judgment in *Cowper-Smith* v. *Morgan*, 2017 SCC 61 where she stated at paragraph 15:

> An equity arises when (1) a representation or assurance is made to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be unfair or unjust for the party responsible for the representation or assurance to go back on her word"
>
> …
>
> When the party responsible for the representation or assurance possesses an interest in the property sufficient to fulfill the claimant's expectation, proprietary estoppel may give effect to the equity by making the representation or assurance binding.

Proprietary estoppel can do what other estoppels cannot – it can found a cause of action *Cowper Smith* at paragraph 17.

[61] McLachlin, C.J.C. went on to say at paragraph 18:

> … Recent decades have seen a softening of the five criteria, or "probanda", set out by Fry J. in *Willmott* v. *Barber* (1880), 15 Ch. D. 96, at pp. 105-6 – and cited by this Court in *Canadian Superior Oil Ltd. v. Paddon-Hughes Development Co.*, [1970] S.C.R. 932, at pp. 938-39, and *Sohio Petroleum Co. v. Weyburn Security Co.*, [1971] S.C.R. 81, at pp. 85-86 - as judges have moved away from strict

> requirements that would constrain their ability to do justice in the circumstances of a particular case.

[62] Was a representation or assurance made to Mr. Brander on the basis of which he expected that he will enjoy some right or benefit over property?

[63] In April 2017 Mr. Brander notified Ms. Peers that he and his partner Tammy LeBlanc wished to rent Ms. Peers' home in Northport. Ms. Peers agreed to rent them the property for $850 per month plus heat, propane, and electricity. Mr. Brander was to be responsible for care, routine maintenance, and minor repairs. Subsequently Mr. Brander told Ms. Peers they wished to purchase the property. Negotiations between Ms. Peers and Mr. Brander concerning a possible sale of the property took place. This is a very different situation than was present in *Cowper-Smith*. Ms. Peers did not represent Mr. Brander would receive title to the Northport property to encourage Mr. Brander to rent the property. Here Mr. Brander was negotiating with Ms. Peers to enter a contract by which he would acquire title to the property.

[64] I find Ms. Peers did not make a representation or assurance to Mr. Brander that he would have some right or benefit over the Northport property. They were negotiating a contract for the sale of the property.

[65] Was Mr. Brander's reliance reasonable? To establish a proprietary estoppel the promise must be unambiguous and must appear to have been intended to be taken seriously *Cowper-Smith* at para 26.

[66] In the circumstances of this case any reliance by Mr. Brander is unreasonable. The parties were simply negotiating a contract for the sale of the property which did not result in an agreement between the parties. Considering the facts of this case there is no unfairness or injustice which Mr. Brander would suffer so as to support a claim of proprietary estoppel. The claim of proprietary estoppel is dismissed.

Residential Tenancy

[67] Mr. Brander took the position that a claim by a landlord or tenant must first be brought before the Residential Tenancies Board. In preparing my judgment I became aware of the decision in *Roumeli Investments Ltd. v. Gish*, 2018 NSCA 27 in which the Court of Appeal found the Supreme Court has jurisdiction with issues arising from residential tenancies, but a court should conduct an analysis pursuant

to that in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 to determine whether to exercise or decline jurisdiction. On March 12, 2024 I wrote to counsel informing them of the *Roumeli* judgment and asked for their submissions by April 12, 2024 as to whether I should exercise or decline jurisdiction to deal with the residential tenancy issue. On May 15, 2024 I delivered a judgment in which I found, after conducting a *Weber* analysis and considering the circumstances of this proceeding, I should exercise the Court's jurisdiction to deal with the residential tenancy issue. Counsel were instructed to file any additional submissions on the residential tenancy issue. The last submission was due by June 7, 2024.

[68] The circumstances which give rise to the relationship of landlord and tenant in respect of residential premises is set out in Section 3 of the *Residential Tenancies Act*, RSNS 1989 c. 401 (Act):

> 3 (1) Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.
>
> (2) For the purposes of subsection (1), the relation of landlord and tenant is deemed to exist in respect of residential premises between an individual and a person when an individual
>
> (a) possesses or occupies residential premises and has paid or agreed to pay rent to the person;
>
> (b) makes an agreement with the person by which the individual is granted the right to possess or occupy residential premises in consideration of the payment of or promise to pay rent;

[69] Mr. Brander rented Ms. Peers' property at Northport, Nova Scotia. He paid rent to Ms. Peers. Although the arrangement was informal, there was no written lease, the Act applies to the rental. Ms. Peers was the landlord and Mr. Brander was the tenant.

[70] No term of the lease was agreed to by the parties. Considering the facts including that Mr. Brander and Ms. LeBlanc initially wished to rent the property while they built their home on land they owned on the Shinimicas River, I find the residential premises were let from month to month.

[71] Ms. Peers did not provide Mr. Brander with a copy or reproduction of the Act as required.

[72] Mr. Brander submits Ms. Peers breached statutory conditions set out in Section 9 of the Act including conditions 1, 2 and 3.

[73] I do not consider Mr. Brander's hearsay evidence that Bruce Trenholm was told by Ms. Peers that he was not allowed on her property.

[74] Mr. Brander was to be responsible for care, routine maintenance and minor repairs of the property while renting it.

[75] In his submissions Mr. Brander estimated the renovations cost him approximately $5,000. Ms. Peers gave Mr. Brander free rent for the months of April and May 2017 to compensate him and Ms. LeBlanc for cleaning the property and storing her personal possessions upon occupying the property. Some of the improvements deposed to appear to have been undertaken by Mr. Brander and Ms. LeBlanc for their enjoyment of the property such as replacing flooring, painting, removing wallpaper, graveling a driveway, restoring flower beds and other outside work to "bring the property up to their standards".

[76] I have no confidence in the extent or cost of any repairs or improvements Mr. Brander and Ms. LeBlanc may have made to the property. A court must do the best it can in assessing damages even if the amount is a matter of guess work *Penvidic Contracting Co. Ltd. v. International Nickel Company of Canada Ltd.*, [1976] 1 S.C.R. 267 at page 279. Mr. Brander will receive the sum of $2,000 for the cost of any repairs or improvements made to the property.

[77] I find that Ms. Peers did breach statutory conditions 1 - Condition of Premises and 2 - Services when the well collapsed in August 2022 and she did not have the well repaired. Mr. Brander is entitled to general damages for interference with their enjoyment of the property as a result of the breach of statutory conditions, in the amount of $5,000.

[78] From October 2018 to August 2022 Mr. Brander paid Ms. Peers $1,000 per month except for the following months, when he paid the following:

- April 2019 $350;
- May 2019 – no payment;
- February 2020 $1,200;
- March 2020 – no payment;

- April 2020 $200;
- November 2020 $1,025;
- December 2020 $1,050;
- April 2021 $1,100;
- March 2022 $200; and
- May 2022 – no payment

[79] From September 2022 to April 2023 Mr. Brander made the following payments to Ms. Peers:

- September 2022 $150;
- October 2022 $200;
- November 2022 $200;
- December 2022 – no payment;
- January 2023 $200;
- February 2023 $200;
- March 2023 - no payment; and
- April 2023 $200

[80] In her May 8, 2019 email to Mr. Brander, Ms. Peers stated if Mr. Brander's plan to purchase did not come to fruition, the monies accrued would be split fifty/fifty between them upon the premises being vacated and returned in good repair to Ms. Peers. The monies accrued was $500 per month.

[81] In the period October 2018 to August 2022 Mr. Brander paid Ms. Peers at least $1,000 per month for 40 months which means Mr. Brander would be entitled to $10,000 if the premises are returned to Mr. Peers in good repair. I reserve the issue of whether the premises are returned to Ms. Peers in good repair and the affect, if any, the state of the premises at the time of Mr. Brander vacating the premises has on the issue of damages.

[82] Considering all the facts of this proceeding the tenancy of Mr. Brander of Ms. Peers' property at Northport, Nova Scotia will terminate on July 31, 2024 and Mr. Brander is to vacate the residential premises on that date.

[83] For the period from September 2022 while remaining in possession of the premises Mr. Brander has not paid any rent to Ms. Peers. The agreement when Mr. Brander rented the property from Ms. Peers was he would pay rent of $850 per month. For each month from and including September 2022 in which Mr. Brander remains in possession of the property he will pay rent of $850 per month to Ms. Peers. Mr. Brander owes Ms. Peers rent for the period September 1, 2022 to July 31, 2024 in the amount of $19,550.00.

[84] Ms. Peers is also seeking aggravated damages. The circumstances in which aggravated damages may be awarded was described in *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130 by Cory, J. in giving the majority judgment at page 1205:

> Aggravated damages may be awarded in circumstances where the defendants' conduct has been particularly high-handed or oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. The nature of these damages was aptly described by Robins J.A. in *Walker v. CFTO Ltd.*, *supra*, in these words at p. 111:
>
> > Where the defendant is guilty of insulting, high-handed, spiteful, malicious or oppressive conduct which increases the mental distress -- the humiliation, indignation, anxiety, grief, fear and the like -- suffered by the plaintiff as a result of being defamed, the plaintiff may be entitled to what has come to be known as "aggravated damages".

[85] I do not find this is an appropriate case for an award of aggravated damages.

[86] Ms. Peers is also seeking an award of punitive damages. In *Hill v. Church of Scientology of Toronto*, *supra*, Cory J. described the nature of punitive damages at page 1208:

> Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the jury or judge expresses its outrage at the egregious conduct of the defendant. They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[87] I do not find this is an appropriate case for an award of punitive damages.

[88] If the parties are unable to agree I will hear them on the issues of prejudgment and costs.

Coughlan, J.