SUPREME COURT OF NOVA SCOTIA

Citation: *Day v. Day*, 2025 NSSC 423

Date: 20251120
Docket: Hfx No. 539295
Registry: Halifax

Between:

Ramona Day

Plaintiff

v.

Lynn Marie Day, Toni Kathleen Day, Clark Peter Day, and Shirley Doreen Day Jr.

Defendants

Decision on the Plaintiff's motion

Judge:	The Honourable Justice John P. Bodurtha
Heard:	November 20, 2025, in Halifax, Nova Scotia
Oral Decision:	November 20, 2025
Written Decision:	January 19, 2026
Counsel:	Joseph Tracey, for the Plaintiff on the motion Jonathan Hooper, for the Defendants on the motion

By the Court:

Introduction

[1] This motion is about whether a settlement agreement exists between the parties.

[2] On November 20, 2025, I gave oral reasons with written reasons to follow. These are those reasons.

Facts

[3] On December 19, 2024, the plaintiff filed a notice of action and statement of claim, seeking a declaration of her equal ownership with the defendants of the real property situate at 57 Pinecrest Drive, Dartmouth. Nova Scotia (PID 56200) and 59 Pinecrest Drive, Dartmouth, Nova Scotia (PID 40885840) (together referred to as the "Property"). The defendants owned the Property as tenants in common, which they received as beneficiaries of their parents' estates. The requested declaration would reflect her one-fifth beneficial interest in the Property on title and would further reduce each of the defendants' legal ownership interests in the Property by 5%, from 25% to 20%. At that time, the plaintiff also sought punitive and aggravated damages against Lynn Marie Day for her alleged high-handed and oppressive conduct.

[4] The plaintiff recorded a Certificate of Lis Pendens on title to the Property on December 19, 2023, as document No. 125192949.

[5] On January 14, 2025, Lynn Marie Day filed a notice of defence and statement of defence for this matter.

[6] On February 6, 2025, the plaintiff's counsel, Joseph Tracey, sent formal offers (the "Offer") to settle the claim to each of the remaining defendants - Toni Kathleen Day Clark, Peter Day, and Shirley Doreen Day, Jr. - who had not filed a notice of defence and statement of defence. At that time, these defendants were unrepresented. Each offer was addressed to the individual defendant. The Offer contained the following terms:

> Terms for Settlement

> I, Ramona Day Joy, the Plaintiff, offer the following terms to settle all claims against the defendant:
>
> • Upon receipt of an executed deed transferring 5% of your ownership interest in the properties located at 57 & 59 Pinecrest Drive, Dartmouth (PID 56200 and PID 40885840) to the Plaintiff.
>
> • The deed will be prepared and recorded at the expense of the plaintiff.
>
> Each party shall bear their own legal costs.

[7] Lynn Marie Day did not receive any formal offers to settle.

[8] On February 12, 2025, Jonathan Hooper, counsel for the defendants, emailed Mr. Tracey to advise that he was retained by all four defendants and that they accepted the Offer to convey 5% of their respective ownership interest in the Property. He wrote:

> I confirm that all four of my clients: Lynn Marie Day, Toni Kathleen Day, Clark Peter Day and Shirley Doreen Day, Jr., accept your offer to convey 5% of their respective ownership interest in the properties at 57 and 59 Pinecrest Drive, Dartmouth, to your client Ramona Joy Day as full and final settlement of your claim against them. Please go ahead and prepare the deeds and I will arrange for my clients to sign them.

[9] Although Lynn Marie Day did not receive the Offer, the plaintiff did not object to Lynn Day's inclusion in the acceptance of the Offer.

[10] On February 21, 2025, Mr. Tracey emailed Mr. Hooper a copy of the deed and provincial deed transfer affidavit of value. The deed stated the defendants would convey 20% of each of their respective interests.

[11] On February 21, 2025, Mr. Hooper emailed Mr. Tracey and asked him to correct the deed to reflect the terms of the agreement between the parties. Mr. Tracey refused to revise the deed.

[12] The plaintiff then brought this motion seeking to enforce the agreement.

Issue

[13] Did the parties reach a binding and enforceable settlement agreement based on the Offer?

Analysis

[14] Rule 10.04 of the Nova Scotia *Civil Procedure Rules* (the "*Rules*") sets out the procedure for enforcing a settlement agreement:

> 10.04 Enforcement or settlement agreement or arbitration award
>
> (1) A party who alleges that, after a proceeding was started, the parties reached agreement for settlement of the proceeding or of a claim in the proceeding may make a motion for an order giving effect to the agreement.
>
> (2) The judge who hears the motion may do any of the following:
>
> > (a) declare that an agreement was, or was not, made and is, or is not, enforceable;
> >
> > (b) declare the terms of an agreement;
> >
> > (c) grant an order enforcing an agreement according to its terms;
> >
> > (d) order a trial under Rule 4 -Action or a hearing under Rule 5 - Application and give directions about the issues to be determined.

[15] The plaintiff argues that in keeping with the language used by the parties with respect to the Property, the agreed upon Offer sought the reduction of each defendant's share in the aggregate ownership of the Property by 5%, from 25% to 20%, such that the plaintiff would receive, in total, a 20% interest in the Property, if all four defendants agreed to the settlement.

[16] It is clear from the subsequent letters that the plaintiff intended that 5% of each defendant's ownership interest in the Property meant a reduction of each defendant's ownership by 5% such that each of the five heirs would become an equal owner of the Property (as the defendants held equal one-fourth (25%) shares of the Property as tenants in common).

[17] The defendants rejected this interpretation and took the position that the Offer provided that each defendant was to transfer 5% of their ownership interest in the Property to the plaintiff. As each defendant held a 25% interest, they were to transfer 5% of this interest to the plaintiff, meaning each defendant would need to grant the plaintiff 1.5% of their individual ownership interest (5% of 25%=1.25%), and the result would provide the plaintiff with a 5% (1.25%*4) total legal interest in the Property.

[18] Each party had a different understanding of what the essential terms of the Offer meant, specifically the wording "5% of your ownership interest". A misunderstanding as to the essential terms of an agreement was discussed in

Canadian National Railway v. Halifax (Regional Municipality), *2014 NSCA 104*, at para. 61:

> 61 In *The Law of Contracts*, 2nd ed (Toronto: Irwin Law Inc., 2012), p. 527, Professor John D. McCamus elaborates:
>
>> The mere fact that one party suffers from a misunderstanding of one or more of the terms of an agreement does not necessarily lead to the conclusion that no *consensus* has been achieved. Where the other party correctly understands the meaning of the agreement, a *consensus* may be achieved on the basis of the objective theory of contract formation. *Notwithstanding the misunderstanding, the other party to the agreement may be entitled to rely on the mistaken party's objective manifestation of assent as a basis for the creation of a valid and binding consensus*. As Blackburn, J. observed in *Smith v. Hughes* [(1871), L.R. 6 Q.B. 597 (Div. Ct.)]: "If whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party and that the other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms." *Thus, even where a consensus may be said to fail at a subjective level, the consensus may be achieved on an objective basis and the contract so created is an enforceable one*. **A *consensus* may fail, however, where each party has a different understanding of a term that is so ambiguous or vague or imprecise that neither party can insist on his or her own meaning as being the true or correct meaning of the term of which the other party has objectively assented. In such a circumstance, the common law of contract formation holds that no enforceable contract has been created**. Similarly, a *consensus* will fail where one party is aware of the other party's mistaken understanding of a particular term. Again, the lack of *consensus* leads to the conclusion that no contract has been created at common law. ...
>>
>> [Italicized emphasis added in original; bolded emphasis is mine.]

[19] I find that the Offer agreed to between the parties contained terms upon which the parties were not *consensus ad idem.*

Conclusion

[20] Both parties contend that a binding and enforceable settlement agreement was reached. However, it is clear from the correspondence between the parties that there was no meeting of the minds. The plaintiff believed that she was receiving 20% of the total interest in the Property, 5% from each defendant. This differs from the

defendant's belief that they were each transferring 5% of their total 25% interest in the Property (1.25%).

[21] The parties never reached a binding and enforceable settlement agreement because there was no meeting of the minds regarding the terms of the Offer.

[22] The plaintiff has not met the burden of demonstrating that the parties reached a binding and enforceable agreement.

[23] If the plaintiff intended that 5% of each defendant's ownership interest in the Property was 20%, they should have clearly stated that. I find the Offer contained ambiguous terms that resulted in each party having a different understanding of the application of those terms. Therefore, the agreement is unenforceable. The defendants accepted the Offer based on each defendant conveying 5% of their ownership interest in the Property. The plaintiff meant a conveyance of 20%. This misunderstanding as to the amount of the defendants' interest in the Property demonstrates that there was no meeting of the minds between the parties when the defendants accepted the plaintiff's Offer.

[24] The plaintiff's motion is dismissed with costs payable to the defendants. If the parties are unable to reach an agreement on costs, I will receive written submissions within 30 days of the date of this decision. I would ask counsel for the defendants to prepare the form of Order.

Bodurtha, J.