SUPREME COURT OF NOVA SCOTIA
Citation: *Baron v Ferguson*, 2026 NSSC 59

Date: 20260218
Docket: Syd No. 546189
Registry: Sydney

Between:

Renee Marielle Marie Baron

Applicant

v.

Louis Ferguson and Michelle Ferguson

Respondents

Judge: The Honourable Justice Scott R. Campbell

Heard: February 10, 2026, in Sydney, Nova Scotia

Decision: February 18, 2026

Counsel: Dianna M. Rievaj, for the Applicant
David J. Iannetti, for the Respondents

By the Court:

[1] The Applicant, Renee Baron, entered into an Agreement of Purchase and Sale with the Respondents, Louis Ferguson and Michelle Ferguson, on November 1, 2024 (the "**APS**"). By the terms of that APS, Ms. Baron agreed to pay the Respondents $330,000 to purchase the property identified as PID #15169907, with a civic address of 620 Shore Road in Sydney Mines, Nova Scotia.

[2] As of November 1, 2024, the land registration information for PID #15169907 identified that parcel as being 2.3 acres in size. This is consistent with the information that was included within the "cut sheet" for the property when it was listed for sale by the Respondents' realtor. That "cut sheet" went on to describe the property as follows:

> Step outside to find a large, meticulously manicured landscaped yard, providing ample room for outdoor activities. Whether you're dreaming of a private garage or envisioning a tennis court, the possibilities are endless in this expansive outdoor paradise.

[3] The 2.3 acre size, location and layout of PID #15169907 were confirmed by Ms. Baron's lawyer on November 12, 2024. The transaction then closed without incident on December 2, 2024.

[4] Unbeknownst to Ms. Baron, however, the Respondents had registered a plan of subdivision on PID #15169907 on November 14, 2024, two days after lawyer

review and two weeks prior to closing. The size of the parcel was reduced to approximately 1.4 acres. The remaining portion (hereafter referred to as the "**Lost Acre**") became a part of the neighbouring parcel also owned by the Respondents.

[5] Ms. Baron learned of this development a few weeks after closing, on December 15, 2024. Following some unsuccessful attempts to the resolve the issue informally, Ms. Baron commenced this Application in Chambers against the Respondents on August 20, 2025.

Applicant's Position

[6] When the transaction closed on December 2, 2024, Ms. Baron asserts that she had no knowledge about the plan of subdivision as registered by the Respondents on November 14, 2024. She had no knowledge that the size of the property had been reduced by approximately 1 acre. Further, Ms. Baron asserts that neither her realtor nor her lawyer were ever advised of the Respondents' subdivision in advance of closing.

[7] Given that Ms. Baron paid the full APS price of $330,000 on closing, she asserts an entitlement to the full extent of PID #15169907 as it was when the APS was executed on November 1, 2024. Accordingly, Ms. Baron seeks an order for specific performance or, alternatively, an award of damages.

Respondents' Position

[8] The Respondents blame their own realtor, Valarie Sampson. To quote from their Notice of Contest, they assert that "Ms. Sampson's negligence … was responsible for the whole fiasco".

[9] To the Respondents, the subdivision plan was completed in May 2024 and they had advised Ms. Sampson of their subdivision intentions throughout the listing of the property. The Respondents assert an understanding on their part that Ms. Sampson had communicated these subdivision intentions with all prospective buyers, including Ms. Baron.

[10] The Respondents characterize themselves as "innocent parties" in this dispute. To them, they did nothing wrong and it is all Ms. Sampson's fault.

[11] Importantly, however, the Respondents took no steps to join Ms. Sampson as a party to this proceeding, and they have asserted no claim against her in any other legal proceedings.

Issues

[12] There are two main issues for consideration:

1. Does the Applicant retain an equitable interest in the Lost Acre?

2. If yes, is it enforceable and what is the appropriate remedy?

[13] For the reasons that follow, I find in favour of the Applicant and conclude that an order for specific performance is warranted in the circumstances.

Issue One: Equitable Interest

[14] The Respondents entered into a contract for the sale of PID #15169907 as it was on November 1, 2024. The APS contained no conditions (or information) with respect to any potential subdivision or any potential changes to the parcel in advance of closing. The APS was in standard form and included the following clauses:

> 11.2 All representations given by the Seller contained in this Agreement shall survive the closing unless otherwise stated in this Agreement.
>
> …
>
> 11.5 No amendment to the terms of this Agreement shall be effective unless it is in writing and signed by all parties.

[15] Prior to closing, there were no amendments to the APS. Ms. Baron submits that she had no knowledge, either directly or through her agents, about the Respondents' subdivision of the property until after closing.

[16] Ms. Baron's own affidavit, sworn October 8, 2025, clearly states her position that: "[a]t no time prior to the property closing on December 2nd, 2024, did any of my Realtor, my lawyer, the sellers' Realtor, the sellers' lawyer, or the sellers themselves indicate that the property was going to be or had been subdivided."

[17] Ms. Baron was cross-examined by the Respondents' counsel. She did not waver or depart from her affidavit evidence in any material respect.

[18] Ms. Baron's position is confirmed by the affidavit from her realtor on the transaction, Steven Smith (sworn October 8, 2025), as follows:

> 16. The transaction closed as scheduled on December 2, 2024. I confirm that at no point prior to the closing was I given any indication from the sellers, their Realtor or the seller's lawyer that the land was going to be or had been subdivided.
>
> 17. In preparation for preparing this affidavit, I reviewed my emails and text messages from this transaction. I confirm that I do not have any record of any indication from the sellers, their Realtor or the sellers' lawyer that this property was going to be or had been subdivided. I specifically confirm that I was never given a copy of the 2024 Plan of Subdivision Survey.
>
> 18. The first I heard of the subdivision was some time after the transaction had closed and Renee called me in distress.

[19] Mr. Smith was not cross-examined on his affidavit.

[20] Ms. Baron also tendered an affidavit from her lawyer on the transaction, Anna Manley (sworn November 5, 2025). In this affidavit, Ms. Manley detailed the lawyer review that she conducted on November 12, 2024, as follows (in part):

> 7. At the time of my initial search of the Parcel Register for the Property [on November 12, 2024], the parcel description was based on a 2014 survey registered at the Cape Breton County Land Registration Office on January 9, 2014 as Document Number 104438446 …
>
> 8. At the time of my initial search on November 12, 2024, I noted no issues of concern and advised Renee of the same.
>
> 9. I can confirm that at the time of doing my initial search of the Parcel Register, there was no indication that a subdivision of the Property was pending or in process.

[21] From there, Ms. Manley detailed the nature of her closing day review, concluding (at paragraph 11): "I noted no concerns and proceeded to close the transaction in the normal course of things".

[22] Ms. Manley then confirmed that she was not advised of the Respondents' subdivision at any time prior to closing:

> 12. In preparation for preparing this affidavit, I reviewed my file, including my emails with my client, my client's Realtor, and the sellers' lawyer. I can confirm that at no time prior to closing was I given any indication from the sellers, the sellers' Realtor, my client's Realtor, or the sellers' lawyer that a subdivision was pending or had been completed.
>
> 13. A 2024 Plan of Subdivision Survey was registered at the Cape Breton County Land Registration Office on November 14, 2024 as Document Number 125010810. I have attached a true copy of the 2024 Plan of Subdivision Survey which I printed from POL at **Exhibit E** to this Affidavit. I was not notified of or provided with a copy of this Plan by the sellers, the sellers' Realtor, my client's Realtor, or the sellers' lawyer.
>
> 14. A Form 45-E, which is used to 'confirm, delete and as necessary, amend interests that have been placed in a parcel register on subdivision and to add the access type for the parcel' was recorded in the Parcel Register on November 26, 2024. I have attached a true copy of the Form 45-E which I printed from POL at **Exhibit F** to this Affidavit. I was not notified of or provided with a copy of the Form 45-E by the sellers, the sellers' Realtor, my client's Realtor, or the sellers' lawyer.

[23] Ms. Manley was cross-examined on her affidavit. She agreed that the new subdivision was registered two days after her lawyer review. She noted that she only became aware of the subdivision when Ms. Baron advised her of this after closing.

[24] Ms. Manley explained, in credible detail, why she had no reason to conduct a full review for any new subdivisions on the day of closing. This is because there

was no indication from the Respondents or their agents that there was to be a subdivision. Where there is to be a post-agreement subdivision, Ms. Manley explained that she would expect to see the subdivision plan as a part of the agreement itself. Otherwise, she would expect to see this as a condition in the Agreement of Purchase and Sale, with a separate condition date and with a different process to ensure proper recording and consent on the part of the purchaser.

[25] I turn now to the Respondents' evidence. Each of the Respondents tendered an affidavit (each sworn on September 4, 2025).[1]

[26] Mrs. Ferguson was not cross-examined on her affidavit. Consistent with the Respondents' Notice of Contest, Mrs. Ferguson points the finger at Ms. Sampson. In part, her affidavit provides as follows:

> 5. In April [2024], we proceeded with the subdivision plan, which was completed on May 10, 2024. At that time, my husband gave the survey to CBRM Public Works North for approval which was completed and sent to the CBRM planning office for final approval.
> 6. On May 30, 2024 the house was listed for sale, and Ms. Sampson was given the survey plan for the subdivision of the property. My husband and I both inquired as to how she would proceed with the new property subdivision plan …
> 7. Many prospective buyers toured the house over the summer and early fall. Although there were no offers, we continued to tell Ms. Sampson to make sure everyone was aware of the subdivision plan. …
> 9. When the offer was presented to us by Ms. Sampson, we asked to confirm that the Applicant(s) were aware of the subdivision plan before we continued with the

[1] In advance of the hearing on February 10, 2026, the Court accepted redacted versions of these two affidavits on consent of the parties. Further redactions were applied during the hearing itself. The redactions confirm the parties' agreement on impermissible hearsay statements, which the parties agreed should be disregarded by the Court.

> sale … Shortly after she presented the offer and left our residence she sent a text to my husband … we assumed there was no issue with the subdivision.

[27] Mr. Ferguson's affidavit contains the same evidence in all material respects.

[28] Mr. Ferguson was cross-examined on his affidavit, and he confirmed the following points:

1. The APS makes no reference to the intended subdivision.
2. The "cut sheet" makes no reference to the intended subdivision.
3. Mr. Ferguson saw a copy of the "cut sheet" before it "went live".
4. After the subdivision was registered on November 14, 2024, there was no reduction in the APS purchase price of $330,000.
5. Mr. Ferguson never walked the property lines with Ms. Baron.
6. Mr. Ferguson never personally told Ms. Baron, Mr. Smith, or Ms. Manley that the property was going to be subdivided in advance of closing.

[29] This takes me to Ms. Sampson's evidence.

[30] The Respondents sought and were granted leave to call Ms. Sampson as a witness in their case. During both her direct examination and cross-examination, Ms. Sampson testified about a telephone call she purportedly had with Mr. Smith

when she was present with the Fergusons in the kitchen at their home. According to Ms. Sampson, Mr. Smith confirmed during this call that he was aware of the intended subdivision and that he had a copy of the actual subdivision plan.

[31] Ms. Sampson believes this telephone call might have occurred just before Ms. Baron waived the APS conditions, but she was unable to specify a certain date. On multiple occasions throughout her testimony, Ms. Sampson was unable to remember certain important details about the transaction and time period in question.

[32] The fact remains, however, that Ms. Sampson says that Ms. Baron's realtor (Mr. Smith) was aware of the intended subdivision prior to closing.

[33] This is inconsistent with Ms. Baron's evidence and Ms. Manley's evidence. Perhaps more significantly, it is also inconsistent with Mr. Smith's own evidence. As noted above, the Respondents chose not to cross-examine Mr. Smith, and his evidence is otherwise uncontroverted on this application.

[34] I observe that Ms. Sampson's evidence is also inconsistent with the evidence from Mr. and Mrs. Ferguson in certain respects. Ms. Sampson suggests that she was present with the Fergusons in their kitchen when the purported call with Mr. Smith took place. But neither of the Fergusons provide evidence about this. I note their affidavit evidence that they "assumed there was no issue with the subdivision" and

their reference to a text message exchange with Ms. Sampson (as opposed to her presence in their kitchen during a telephone call with Mr. Smith).

[35] These inconsistencies cast further doubt, in my view, on the reliability and credibility of Ms. Sampson's evidence. All things considered, I prefer Mr. Smith's evidence.

Findings on Issue One

[36] I find that Ms. Baron had no knowledge about the subdivision prior to closing. I also find that neither Mr. Smith nor Ms. Manley were advised of the subdivision or any intention to subdivide prior to closing.

[37] Through their agent(s) or otherwise, the Respondents deprived Ms. Baron of the opportunity to consider the change in circumstances and to make an informed decision on how to proceed. On closing, the Respondents received the full APS purchase price of $330,000 but failed to satisfy their end of the bargain.

[38] In this context, the Applicant asserts a claim in equity. She relies upon the decision of this Court in *Elliott v Lowe*, 1969 CarswellNS 3, 1 NSR (2d) 187, paragraph 9 of which provides as follows:

> The authorities are clear and none need be cited for the proposition that an equitable estate vests in the purchaser of land under an agreement for sale on the execution and delivery of the agreement. Further, while there is no reference, in

> the representations of the plaintiff, to the equitable jurisdiction of the Court or to the remedy of specific performance, the relief requested amounts to a judgment for specific performance.

[39] In his article "Death to *Semelhago!*" (2016), 39:1 *Dalhousie Law Journal* 1 at pages 4 – 5, Professor Bruce Ziff elaborates upon the purchaser's position in equity as follows:

> It has long been understood that once the agreement has been executed, that is, even before legal title passes on the closing date, the purchaser has more than just a contractual right against the vendor. The purchaser is said to hold an equitable interest in the property. As a corollary, the vendor is treated as a constructive trustee; the purchaser is the *cestui que* trust …
>
> The basis for this trust flows from the maxim that equity treats as done that which ought to be done. As there is a promise to convey the land, equity treats the purchaser as already enjoying the status of owner. However, that treatment is contingent on whether equity will order specific performance of the contract. In other words, if and only if equity would compel the transfer of title, will it conceive of the purchaser as being an owner in the interim.
>
> Treating the availability of specific performance as the *sine qua non* of an equitable interest **creates a paradox**. The purchaser's equity (and the creation of this special constructive trust) is treated as arising the moment the contract is made. However, whether equity will compel this transfer to be completed is never certain at that point. Before equity will order performance it must be shown that damages provide an inadequate remedy.
>
> [emphasis added]

[40] The "paradox" referred to by Professor Ziff gives rise to what may appear to be an inherent circularity. The equitable interest exists, but it only vests and is only enforceable if specific performance is available as a remedy in the circumstances. See, however, P.J. Turner, "Understanding the Constructive Trust Between Vendor and Purchaser" (2012), 128 *Law Quarterly Review* 582 at pages 590 – 591.

[41] Ultimately, I do not need to resolve the paradox. When the Respondents subdivided the property and transferred the Lost Acre to themselves as a part of their neighbouring lot, Ms. Baron retained an equitable interest in the Lost Acre.

[42] This is because, as discussed below, I find that Ms. Baron is entitled to specific performance in the circumstances of this case.

[43] In which case, I turn now to the issue of remedy.

Issue Two: Appropriate Remedy

[44] The Applicant seeks specific performance. She correctly notes that specific performance is not automatic. Rather, "specific performance is an exceptional equitable remedy, and this discretionary remedy should not be lightly employed by the court": *Doucette v Giannoulis*, 2006 NSSC 166 at paragraph 37.

[45] In *3315029 Nova Scotia Limited v 3288075 Nova Scotia Limited*, 2023 NSSC 114 at paragraph 101, Justice Hoskins outlined the three factors for consideration on any request for specific performance:

1. The uniqueness of the property.
2. The inadequacy of damages as a remedy.
3. The behaviour of the parties.

[46] As to the first factor, the Applicant has the evidentiary onus to prove that the property in dispute is unique. In the leading Supreme Court of Canada decision of *Semelhago v Paramadevan*, [1996] 2 SCR 415 at paragraph 22, Justice Sopinka wrote:

> Specific performance should, therefore, not be granted as a matter of course absent evidence that the property is unique to the extent that its substitute would not be readily available.

[47] In assessing the evidence on this factor, there is both a subjective and objective component to uniqueness. To quote Justice Lax in *John E. Drodge Holdings Ltd. v 805062 Ontario Ltd.* (2001), 56 OR (3d) 341, aff'd (2003), 63 OR (3d) 304:

> [59] There is both a subjective and objective aspect to uniqueness. While it is difficult to be precise about this, it strikes me that normally, the subjective aspect will be less significant in commercial transactions and more significant in residential purchases, unless the motivation in the latter case is principally to earn profit. In terms of the subjective aspect, the court should examine this from the point of view of the plaintiff at the time of contracting. In some cases, there may be a single feature of the property that is significant, but where there are a number of factors, the property should be viewed as a whole. The court will determine objectively whether the plaintiff has demonstrated that the property has characteristics that make an award of damages inadequate for that particular plaintiff. Obviously, investment properties are candidates for damages and not specific performance.
>
> [60] It is important to keep in mind that uniqueness does not mean singularity. It means that the property has a quality (or qualities) that makes it especially suitable for the proposed use that cannot be reasonably duplicated elsewhere. To put this another way, the plaintiff must show that the property has distinctive features that make an award of damages inadequate. The plaintiff need not show that the property is incomparable.

[48] From that perspective, I have carefully considered the Applicant's evidence on uniqueness. I place significant weight on the following statements from Ms. Baron's affidavit:

> 4. I explained to [Mr. Smith] that I was looking for a property with the following criteria:
>
> a. a residential property with at least 3 bedrooms;
>
> b. not needing a huge amount of renovation work;
>
> c. a space for to operate a small business;
>
> d. a space to operate an AirBNB rental;
>
> e. located within 25 number of minutes of Sydney;
>
> f. a water view was preferable; and
>
> g. a purchase price around $325,000
>
> 5. There weren't a lot of other properties for sale that met my criteria. I did considered [*sic*] and view a few other properties before making the offer on this one, but each one had problems. For example, some did not have the privacy I wanted, others the property itself was too small and others had possible conflicts with neighbouring properties that I didn't want to get involved with.
>
> …
>
> 8. The property [at 620 Shore Road] met the majority of my wish list. The house was what I was looking for, but additionally the lot itself was perfect. It was described in the cut sheet as 'an expansive outdoor paradise' in the cutsheet and I couldn't agree more. I particularly liked the "L" shape of the lot because it meant that out building/garage could be set apart from the house. Placing the building off to the side of the "L" would provide privacy for both myself living in the house and any AirBnB guests who would stay in the out building. Because of how the lot was sloped, if we built the out building in the "L" portion of the lot, I would be able to advertise a desirable water view for the AirBnB guests.

[49] None of this evidence was questioned during Ms. Baron's cross-examination.

[50] Notably, the Lost Acre was critical to maintaining the "L" shape of the property. The "L" shape of the lot was eliminated by the subdivision.

[51] Ms. Baron's evidence on uniqueness is confirmed by her realtor, Mr. Smith. For example, Mr. Smith's affidavit includes the following uncontroverted evidence:

> 5. When [Ms. Baron] retained me, she communicated that she was looking for a residential property in a location that would work with her son's school, the Harbourview Montessori School in Westmount. As a result, I focused my search on properties in and around Westmount, Sydney and North Sydney. She was also not interested in taking on a home that required substantial renovations.
>
> 6. I narrowed it down to 7 potential properties, including the one she bought. One we were unable to see because an offer was accepted before we got to it. One she declined to visit because it was in an undesirable part of town. Three would have required more than cosmetic renovations. One was higher than her price point and we were informed already had multiple competing offers.

[52] Overall, I am satisfied that Ms. Baron has satisfied her evidentiary burden to show uniqueness.

[53] Referring back to paragraph 60 of Justice Lax's decision in *John E. Drodge Holdings Ltd*, Ms. Baron has established that the property "has a quality (or qualities) that makes it especially suitable for the proposed use that cannot be reasonably duplicated elsewhere". In turn, Ms. Baron has also established that the property "has distinctive features that make an award of damages inadequate."

[54] Thus, the Applicant has also satisfied the second factor for specific performance. As Ms. Baron states in her affidavit:

> 28. Money in an amount equal to the value of the acreage severed from the Property will not put me back in the position I would have been had the sellers not reduced the size of the Property. I'm not certain at this point whether I am able to build the outbuilding I had planned on my now much smaller Property. Even if I can, I will be losing the backyard space I had

> anticipated on keeping for my own enjoyment. More importantly, I will be losing the privacy I would have achieved by placing the outbuilding on the "L" portion of the lot and I will not be able to advertise a water view to my AirBnB clients because the house will block the view.

[55] In the circumstances, I find that an award of damages would be an inadequate remedy for Ms. Baron.

[56] This takes me to the third and final factor: the behaviour of the parties. Because specific performance is an equitable remedy, Ms. Baron must come to the Court with "clean hands".

[57] I find, without any hesitation, that she has satisfied this requirement. Ms. Baron is an innocent party. She is blameless in this unfortunate turn of events.

[58] The same cannot be said about the behaviour of the Respondents, by their agent(s) or otherwise. When significant changes are made to a parcel, *after* the APS has been executed and *after* lawyer review, the seller should take pains to ensure that actual and express notification has been made to the purchaser in advance of closing. That did not happen in this case.

[59] Accordingly, I find that an order for specific performance is an available and appropriate remedy in this proceeding.

Conclusion

[60] For all the foregoing reasons, I allow this Application in Chambers with costs to the Applicant.

[61] I will issue an Order requiring the Respondents to take all necessary steps to legally convey the Lost Acre to Ms. Baron, at the Respondents' own expense. I ask the Applicant's counsel to prepare the draft form of Order in the ordinary course. If an agreement cannot be reached on form, the matter shall be brought to my attention for direction in accordance with Rule 78.04 of the *Civil Procedure Rules*.

[62] As to the quantum of costs, the Applicant proposed a departure from Tariff C and requests a lump-sum amount equal to 75% of actual legal fees incurred, plus disbursements (with evidence on actual legal fees and disbursements to be provided). As support for this proposition, the Applicant points to the conduct of the Respondents throughout this proceeding.

[63] In contrast, the Respondents requested the opportunity to make submissions on costs following the Court's decision on the merits.

[64] Although I agree that the Respondents' conduct has tended to extend and increase the costs in this proceeding, I am not prepared to award lump-sum costs without first having the opportunity to review evidence as to actual amounts.

[65] If the parties cannot reach an agreement on costs and disbursements, I will accept submissions and supporting evidence within 30 calendar days of the date of this decision.

Campbell, Scott J.