

SUPREME COURT OF NOVA SCOTIA

Citation: *Smith v. Beals Estate*, 2014 NSSC 156

Date: 20140424

Docket: Halifax No. 255996

Registry: Halifax

Between:

Carl David Smith

Plaintiff

v.

Estate of Ronald Lester Beals
Georgina Peggy Beals
Karen Grant Beals (Provo)
Robert Corey Grant

Defendants

Judge: The Honourable Justice Allan P. Boudreau

Heard: April 23, 2014, in Halifax, Nova Scotia

Oral Decision: April 24, 2014

Counsel: Carl David Smith - Self Represented as Plaintiff
Karen Beals (Provo) – Self Represented, for all Defendants

By the Court:

Introduction:

[1] This case is now almost 9 years in coming to trial. It involves a claim by Carl Smith, (“Mr. Smith”), that a Quit Claim Deed (the “Deed”) granted to Lester Ronald Beals, (“Lester Beals”), in April of 1991 should be declared invalid, ineffective and void. The principal allegation by Mr. Smith is that the Deed was obtained under false pretenses by Lester Beals. Lester Beals died in 1997.

Background:

[2] Prior to his death, Henry Beals owned a parcel of land on the Johnson Road in North Preston, Halifax County, (the “Lands”). Henry Beals died Intestate (ie. without a will) in 1974. Surviving him were his wife, Dora Beals, and 7 children; namely, Kevin Beals (now deceased), Edmund Lee Beals (now deceased), Lester Beals (now deceased), Russell Beals, Annette Beals (now Annette Smith), Allison Beals and Brenda Beals (later Brenda Fraser, now deceased). The estate of Henry Beals does not appear to have been probated; however, all of the children of Henry Beals executed a deed dated January 8, 1981, conveying all of their interests in the Land to their mother, Dora Beals. Mr. Smith has questioned the lawfulness of this

1981 deed; however, I see no legal reason to question the validity of this deed. It is simply the document which in effect confirms Dora Beals' title to the Lands in question after the death of her husband, Henry Beals. Dora Beals died in August of 1987, also without a will, leaving surviving her the same 7 children as upon her husband's death.

[3] Two of Dora Beals' surviving children died shortly after her. They were Brenda Fraser who died in July of 1989 and Edmund Lee Beals who died in January of 1991. At the time of their deaths, Brenda Fraser, had a surviving spouse, George Fraser, and Edmund Lee Beals had a surviving spouse, Volda (aka) Volga Beals. The present plaintiff, Carl Smith, is the son of Edmund Lee Beals and Volda Beals.

[4] The document which is at the heart of this litigation is the Quit Claim Deed dated April 15, 1991 and registered at the Registry of Deeds for Halifax County in Book 5058 at page 1039. It appears that photo copies only of this document have been produced in this litigation; however, I take them to be accurate copies of the Deed. This Deed purports to convey the Lands in question to one of Dora's children, Lester Beals, by way of Quit Claims or Releases. The grantors are purported to be the remaining 5 surviving children of Dora Beals, and/or their

spouses, if any. They are; Kevin Beals and his wife, Rose Beals; Russell Beals (divorced); Allison Beals and his wife Gloria Beals; Annette Smith and her husband, Merlin Smith; and Volga Beals (widow of Edmund Lee Beals). There is no mention of the deceased daughter, Brenda Fraser, in this Deed. There is a statutory declaration of Georgina Peggy Beals, the widow of Lester Beals, sworn to on February 15, 1999 and filed at the Halifax County Registry on December 3, 1999 which purports to name the remaining heirs of Dora Beals at paragraph 11. There is also no mention of Brenda Fraser in that paragraph.

[5] Lester Beals died in 1997. His present heirs are his surviving spouse, Georgina Peggy Beals, Karen Grant Beals (Provo), and Robert Corey Grant.

[6] There have been a number of lots of land conveyed to Beals family members over the years since the April 15, 1991 Deed to Lester Beals. Some of these family members had dwellings on the Land prior to 1991, but had no title to their lots. Also, some have acquired lots from Lester Beals or his heirs and built houses since 1991. A subdivision of the Land was effected around 2003 and approximately 5 or 6 lots were conveyed to extended family members, including the Plaintiff, Carl Smith, and his mother, Volda Beals.

[7] The 1991 Deed was left unchallenged until 2005, when Mr. Smith and Kevin Beals commenced the present litigation. Kevin Beals has since died and a legal representative of his Estate has not been appointed to date, in spite of directions to that effect by a number of judges dealing with this proceeding. As a consequence, Kevin Beals was removed as a party to this litigation by order of this Court dated December 2, 2013. Mr. Smith is the remaining Plaintiff. The defendants are the Estate of Lester Beals, and his heirs being his widow, Georgina Peggy Beals, Karen Grant Beals (Provo) and Robert Corey Grant.

[8] Mr. Smith challenges the validity of the 1991 Deed on the basis that it was improperly obtained. He says that Lester Beals pressed his siblings to sign the Deed to himself representing that a tax sale of the Lands may be near and that he would hold the Land for the benefit of all the Beals family. He is in effect alleging a fraudulent misrepresentation on the part of Lester Beals, which now falls on his Estate and his heirs.

[9] Mr. Smith, in his closing submissions, said he did not want the Deed totally nullified and removed from the Registry Records, presumably so as not to invalidate the conveyance of the parcels of land already conveyed to himself and

other family members. It appears that he is claiming invalidity of the Deed as far as it affects the remaining lands.

The Law:

[10] This case does not turn on any jurisprudence except as to the burden of proof. What Mr. Smith alleges, as the plaintiff, he must prove on a balance of probabilities; that is to say, his allegations must be more probable than not. The case turns on findings of fact by the Court.

Evidence:

[11] The evidence consists of a package of documents filed with the court on April 15, 2014 by Mr. Smith (marked as Exhibit #1), and the testimonies of Mr. Smith, Keith Beals and Georgina Peggy Beals.

Testimony of the Witnesses:

[12] Mr. Smith testified that he had been approached by Lester Beals in 1991 to sign a deed for the Lands in question on behalf of Kevin Beals. He said he asked and was told that Kevin Beals had given his permission, but that he still said no! Mr. Smith was not present at the April 15, 1991 signing of the Deed.

[13] Keith Beals, the brother of the plaintiff, Carl Smith, testified that he was present at Lester Beals' house when the Deed in question was signed. In direct examination he said that the following person were also present:

- His aunt, Georgina Peggy Beals
- Allison Beals
- His mother, Volda Beals
- Russell Beals
- Annette and Merlin Smith

Plus lawyer Gus Weatherburn (who is now deceased).

Then he said his sister, Victoria, who is now deceased was also there. He said he signed the Deed on behalf of Kevin Beals. He testified that he had been approached by Lester Beals a day or so before. He said he had been talking to Lester Beals in the yard and was told that a lawyer was coming the next day to sign a Deed. He said Lester Beals told him that the Government was going to take the Land. He said Lester Beals wanted him to sign his uncle Kevin's name. He said he was told, when he asked, that his uncle Kevin did not know about it. This latter statement is the opposite of what Mr. Smith testified that Lester Beals told him about Kevin Beals' consent. Keith Beals said that all present signed the Deed. He said he understood that Lester Beals would not really own the land but just be

“taking care of it”. He said Kevin and Rose Beals were in Toronto. He said lawyer Weatherburn was there by himself. He did not see another witness. On cross-examination, he said that his aunt Gloria was present also. He said the land was to be in a sort of trust with Lester Beals because no family members had deeds to their property, even though some had a house on the Land.

[14] Keith Beals agreed that since the 1991 Deed, 5 or 6 family members have received deeds to their property which was subdivided from the Land.

[15] He agreed that Lester Beals would have been responsible for paying any expenses regarding the Land, such as taxes.

[16] Georgina Peggy Beals, Lester’s widow, testified. She was also present as the 1991 signing of the Deed. She said she did not know in what capacity Keith and Victoria Beals were at that meeting. She agreed that it was Lester Beals’ intention to pay the taxes and take care of the Land. She said Lester gave deeds to any family member who asked. She said it was not the intention that Lester keep all the Land for himself and that that is what he had done, as had the Defendants after Lester’s death. There appears to now remain approximately 7 to 8 acres from the original 24 acre Land, most of which may be land in the back of lots fronting the road.

Analysis:

[17] It is noteworthy that no one except Keith Beals, the nephew of the late Kevin Beals, testified on behalf of the plaintiff, Mr. Smith, although approximately half a dozen of the signatories to the April 15, 1991 Deed are still alive.

[18] Georgina Beals was asked to testify by Mr. Smith after the close of the case, which I permitted. She admitted that it was not Lester's intention to take all of the Land for himself and that Lester and his heirs had been faithful to that intention. If the Deed to Lester was impressed with any kind of trust, as contended by Mr. Smith, then the responsibility would be upon Mr. Smith to prove the terms of such a trust, and that those terms had not been respected. Both of those things have not been proven in sufficient detail to permit the court to conclude that a trust, if any, was not respected.

[19] Also the Deed was signed in the presence of lawyer Weatherburn and there was no evidence tendered that would prove that Kevin Beals had not approved of or consented to the Deed and authorized its execution in the circumstances that existed some 23 years ago.

Conclusion:

[20] In the final analysis, Mr. Smith has not proven, on a balance of probabilities, that the April 15, 1991 Deed was not lawfully executed by the parties and signatories to that Deed. It has also not been proven that the terms or conditions for that conveyance have not been respected. Mr. Smith has stated that he wants the Deed to stay on the record, apparently because his and other deeds would be adversely affected. The Deed is either valid, or it is not. It cannot be halfway.

[21] I declare that the April 15, 1991 Deed stands as is and from whom and for what it purports to convey; nothing more and nothing less.

[22] Mr. Smith's action is therefore dismissed, without any cost awarded.

Boudreau, J.