

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Gould v Davis*, 2014 NSSC 241

**Date:** 2014-07-02

**Docket:** Ken No. 425233

**Registry:** Kentville

**Between:**

**Amber Annie-Marie Gould and  
Nancy Jean Gould**

Applicants

v.

**Eugene Davis**

Respondent

**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** June 23, 2014 in Kentville, Nova Scotia

**Counsel:** **Amber Gould** and **Nancy Gould**, self-represented applicants  
**Eric Sturk Q.C.** with **Iain Burton**, counsel for the respondent

**By the Court:**

[1] This Application in Court determines the priority between execution creditors and a purported third party purchaser for value without notice.

**Background**

[2] Eugene Davis and his spouse owned two adjoining properties: 678 Sturk Road, Aylesford (their personal residence, PID 55136592) and 699 Sturk Road, Aylesford (a small lot containing a mobile home leased as a residence, PID 55136683).

[3] Nancy Gould was employed by Eugene Davis to provide in-home personal care for himself, who was physical disabled from an accident, and his spouse, who suffered Alzheimer's, with funding provided by the Nova Scotia Department of Health. Nancy Gould's daughter Amber Gould provided in-home personal care services when Nancy Gould was not available. Nancy Gould and her husband leased the mobile home at 699 Sturk Road as their residence.

[4] In August 2011, Nancy Gould quit in objection to Mr. Davis's requirement that she repay to him, in cash, approximately one-half the wages earned and paid under the Nova Scotia Department of Health Personal Care Program. In response, Eugene Davis immediately evicted Nancy Gould from the mobile home and prevented her from recovering her personal property. In February 2012, Nancy Gould sued Eugene Davis in Small Claims Court for recovery of the amounts that he required her to remit to him in cash from her wages and for the value of the converted personal property. Amber Gould joined in the action for the wages she was required by him to remit in cash to Mr. Davis.

[5] A Small Claims Court Adjudicator heard the claims in September 2012. He awarded Nancy Gould \$16,686 and Amber Gould \$5,642. He found the Goulds credible, but Mr. Davis not credible. On November 2, 2012, Nancy Gould and Amber Gould obtained Certificates of Judgments and Execution Orders against Mr. Davis.

[6] On November 13, 2012, Eugene Davis appealed to the Nova Scotia Supreme Court. His appeal was dismissed on February 21, 2013.

[7] On March 5, 2013, PPRS Verification Statements under the *Creditors' Relief Act* for the judgments were issued, which were registered on March 12, 2013, in the Kings County Land Registry against the Davis' properties.

[8] On March 26, 2013, Eugene Davis, for himself and his spouse (by power of attorney) caused a Deed dated March 21, 2011, conveying their two properties to their son Bradley Davis, to be registered at the Kings County Land Registry. The Deed purports to convey both 678 Sturk Road and 699 Sturk Road to Bradley Davis. Counsel for Mr. Davis represented in oral argument that the registration was only with respect of the property at 699 Sturk Road.

### **This Application in Court**

[9] The Applicants seek an order effectively declaring that the purported conveyance to Bradley Davis was a fraudulent preference and/or ineffective as well as an order for the sale of the property at 699 Sturk Road by the Sheriff in accordance with the *Sale of Land under Execution Act* and *Creditors' Relief Act*.

[10] The evidence in this application includes the Court file respecting the Applicants' Small Claims Court action against the Respondent, the joint affidavit of Nancy and Amber Gould, the affidavit of Eugene Davis, and the affidavit of Bradley Davis. Counsel for the respondent declined the opportunity to cross-examine the Applicants on their affidavit. Amber Gould cross-examined Eugene Davis and Bradley Davis.

### **The Evidence**

[11] The joint affidavit of Nancy and Amber Gould generally reviews the circumstances of the Small Claims Court action, the judgment and execution orders issued the recording of those judgments against the Davis properties at the Kings County Land Registry, and the subsequent recording of two deeds respecting the two properties by Eugene Davis and his spouse.

[12] The relevant portions of Eugene Davis' affidavit read as follows:

4. I currently live at 678 Sturk Road in Aylesford, identified by PID 55136592.
5. In June 2006, I entered into an agreement to sell to my son, Bradley Eugene Davis, two parcels of land, identified by PID 55136592 and PID 55136683. The parcel identified by PID 55136592 has a house on it, while the parcel identified by PID 55136683 is a smaller parcel and has a small trailer on it. Bradley was to pay me over a number of years.
6. In June 2006, Bradley started to pay me \$350.00 per month towards the purchase price of the property identified by PID 55136683. These payments were made through a pay allotment, directly from his employer, the Canadian Armed Forces.
7. In March of 2011, the full purchase price of \$20,300 for the parcel identified by PID 55136683 had been paid, and on March 21, 2011, I executed a Deed which granted this property to Bradley. Attached to this Affidavit as **EXHIBIT "A"** is a copy of this Deed.
8. In March of 2011 we agreed that I would collect rent money from Bradley until he returned home to live on the property he had purchased.
9. I did not register the Deed at the time it was executed in 2011 because at that time Bradley was being deployed overseas to Afghanistan, and I was worried about the possibility that something might happen to him there and that he would not return.
10. On March 26, 2013, I registered the Deed to Bradley under the Registry of Deeds.

11. I am told by Bradley, and verily believe it to be true, that he is going to be medically discharged from the Canadian Armed Forces in July 2015, and that his plan is to then move home to live in the trailer on the property which he purchased from me.

[13] The relevant portions of Bradley Davis' affidavit read as follows:

4. I am currently a Warrant Officer at Canadian Forces Base (CFB) Gagetown, in Oromocto New Brunswick.

5. In June 2006, I entered into an agreement with the Respondent to buy two parcels of land, identified by PID 55136592 and PID 55136683, and to pay him for the properties over a number of years.

6. In June 2006, I started to pay the Respondent \$350.00 per month towards the purchase price of the property identified by PID 55136683. These payments were made directly from my pay from the Canadian Armed Forces.

7. In March of 2011, the full purchase price of \$20,300 for the lot identified by PID 55136683 had been paid. Attached to this Affidavit as **EXHIBIT "A"** is a copy of my pay documents showing these payments from June 2006 to March 2011. On March 21, 2011, I am informed and do verily believe it to be true, that a Deed was executed which granted this property to myself.

8. From April 2011 until March 2014, I continued paying \$350 per month towards the purchase price of the property identified by PID 55136592.

[14] Eugene Davis gave the following oral evidence:

a) There was never a document in writing evidencing an agreement between him and his son Bradley respecting the transfer of 678 and 699 Sturk Road.

b) While uncertain of the dates that Bradley Davis was serving in Afghanistan, he believed it was 2010 and 2011.

c) He thought the Deed he signed on March 21, 2011, was only for 699 Sturk Road.

d) When asked why he did not record the Deed when executed in March 2011 and what he thought would happen to the Deed and the property if Bradley did not return from Afghanistan, he said he did not know.

e) When asked why he did not register the Deed when his son returned from Afghanistan in early 2012, as opposed to only after the Small Claims Appeal was dismissed, he was unable to answer.

f) When directed to a Deed attached to the Goulds' affidavit from himself and his spouse (signed by him as her power of attorney) to himself alone, dated January 4, 2012, for 678 Sturk Road, he stated that the Deed was to himself and his wife not to himself alone (despite the fact the Deed is clearly only to himself). On questioning by his own counsel, Eugene Davis stated:

i. He receives the \$350 per month allotment from his son directly and continues to receive money from his son in the same way.

ii. He disagreed with his counsel's suggestion that his home (678 Sturk Road) was in his name alone. When his counsel lead him in an attempt to explain to him that the Deed to him in January 2012 was so that he could renew the mortgage on the home without a signature from his spouse (who could not sign because of her medical condition), Eugene Davis said that he did not know that and the tax bill still comes in both names.

[15] Bradley Davis responded to questions from Amber Gould suggesting that the allotment from his pay directed to Eugene Davis at a Royal Bank Account, the particulars of which allotment were attached to his Affidavit, was not in fact made to the Royal Bank account because the Sheriff had told her that the account was closed, by stating the following:

a) The record attached to his affidavit was an accurate record of his direct pay allotment to a Royal Bank account in the name of his father.

b) He had allotted \$350 per month of his pay directly to his father's account from June 1, 2006 to March 31, 2014.

c) He stopped this direct pay allocation after March 31, 2014, because of some personal financial circumstances of his own.

[16] Bradley Davis also acknowledged:

a) There was nothing in writing to reflect an agreement in 2006 to purchase either 678 Sturk Road or 699 Sturk Road or both. He understood he was buying both properties with the idea he would have a place to come back to when he retired from the military.

b) He was stationed in Afghanistan from April 2010 to December 18, 2011. Because he suffered from PTSD he was on leave thereafter for 10 weeks. He was not in regular contact with his family. He did advise his father that he had returned from Afghanistan in early 2012.

c) He was in no hurry to get the Deed until he retired.

### **The Submissions**

[17] Counsel for the Respondent submits that the absence of a written record of the agreement for the purchase by Bradley Davis of the two properties is not fatal to his position.

[18] Counsel submits that if the Court believes that the pay allotment of \$350 per month from June 1, 2006 to the present was for the purpose of purchasing the 678 and 699 Sturk Road properties, then the conveyance of March 21, 2011, gave Bradley Davis an equitable property interest in 699 Sturk Road, which predated the Goulds' recorded judgments. He submits that the recorded judgment should not attach to 699 Sturk Road because Bradley Davis, an innocent

third-party purchaser of the property for value without notice, received equitable title and Eugene Davis ceased to have title on January 11, 2011.

[19] He submits that the completion of the oral agreement of purchase and sale created a trust relationship between Eugene Davis and Bradley Davis, such that before the Small Claims Court action was commenced and the judgments were entered against the properties, Eugene Davis had divested himself of any interest in 699 Sturk Road. For this, counsel refers the Court to *Clem v Hants-Kings Business Development Centre Ltd*, 2004 NSSC 114, and *Royal LePage Relocation Services v Ross*, 1986 CarswellNS 416 (NSSC).

[20] Counsel submits that the “new” *Land Registration Act* has not changed the law respecting priority between judgment creditors and innocent third party purchasers for value without notice; however, because 699 Sturk Road had not yet been “migrated” to the new system, the common law trust principles should continue to apply to this case.

[21] The Respondent’s position rests upon a finding that Eugene Davis and his spouse had divested themselves of any interest in 699 Sturk Road, and held it in trust for Bradley Davis, before the judgments were recorded.

[22] In his oral closing arguments, counsel for Eugene Davis makes the following additional submission: if the Court determines that the March 21, 2011, Deed did not divest the Respondent of his interest in 699 Sturk Road, the interest of the Respondent’s spouse was not divested. She owned a half-interest in the 699 Sturk Road property, which half-interest was not subject to the recorded judgments.

[23] The Applicants’ written brief simply argues that the purported conveyance was made with the knowledge of the impending action and for the purpose of affecting a fraudulent conveyance contrary to the Statute of Elizabeth.

### **Analysis**

[24] I agree, in principle, with the Respondent’s submission of the law. The Gould judgments attach only to the property interest held by the judgment debtor at the time they were recorded at the Land Registry Office.

[25] I further agree that when a valid contract for sale of land comes into existence and is not aborted, the vendor becomes in equity a trustee for the purchaser of the estate sold and beneficial ownership passes to the purchaser.

[26] In effect, the execution creditor stands in no better position in respect of the real property than the debtor. The recording of the judgments only gives the creditor priority over dealings with the property carried out by the debtor subsequent to the recording of the judgments.

[27] The key to application of these key principles is: (a) finding that a valid agreement of purchase and sale was entered into in 2006 between Eugene Davis and Bradley Davis, and (b)

finding that the Deed signed January 21, 2011, purporting to convey both 678 and 699 Sturk Road constituted “completion” of the agreement of purchase and sale.

[28] As this Court noted in *Bocaneala v Liberatore*, 2013 NSSC 372:

[31] Fact finding requires the Court to assess both reliability and credibility. Reliability relates primarily to the assessment of a witness’s capacity to observe, recall and communicate accurately. Credibility involves the assessment of the believability or truthfulness of evidence.

[32] In *R v Béland*, [1987] 2 SCR 398, at paragraph 20, the Supreme Court recognized the significance of oral evidence in the assessment of credibility since litigation replaced trial by combat as the method for resolving disputes.

[33] To assist in the assessment of credibility courts have approved many tools. I have done so in several decisions, including, in particular, *Re Novak Estate*, 2008 NSSC 283. Among the tools used are:

- i) a consideration of the motives that witnesses may have to give the evidence as they do;
- ii) the consistency or inconsistency over time between the witness’s different iterations of the facts, and internal inconsistencies within a witness’s testimony;
- iii) the presence of collaborative or supporting evidence;
- iv) the demeanor or the manner of giving evidence, but with caution; and,
- v) above all, the court has to assess what appears to make common sense; in that regard, this Court notes the words of Justice O’Halloran of the British Columbia Court of Appeal in *Faryna v. Chorny*, 1951 CarswellBC 133, at paragraphs 9 and 10:

If a trial judge’s finding of credibility is to be depend solely on which person he thinks makes the better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and just would then depend upon the best actors in the witness box. . . . the appearance of telling the truth is but one of the elements. . . . Opportunities for knowledge, powers of observation, judgment, memory, ability to describe clearly what the witness has seen or heard, as well as other factors, combine to produce what is called credibility. . . . The credibility of interested witnesses, that is . . . cannot be gauged solely by the test of whether the personal demeanor of particular witness carried conviction of the truth.

The key passage is this:

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[34] It is not required that a trier of fact believes or disbelieves a witness's evidence in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and attach different weight to different parts of it.

[29] In the Respondent's oral argument, counsel submitted that, absent an issue of enforceability between a vendor and purchaser, an agreement of purchase and sale of land need not be in writing; however, in my view, to constitute a valid legal agreement, the essential terms of the agreement must exist. At a minimum, the essential terms must include an identification of the parties, the lands that are the subject matter of the agreement and the price to be paid for those lands.

[30] I am not satisfied that it has been established, on a balance of probabilities, that either the subject matter or the purchase price of the June 2006 agreement have been identified or that a legal contract was entered; said differently that a valid contract or agreement existed. Further, I am not satisfied that the deed of March 21, 2011, was a conveyance in completion of an 'agreement' of June 2006, whether a valid contract, or only an informal arrangement, was made in June 2006.

[31] The evidence of both Eugene Davis and Bradley Davis is that the subject matter of the 2006 agreement was both the 678 and 699 Sturk Road properties. There was no evidence before the Court of an agreement with respect to the price of both properties.

[32] In or about June 2006, Bradley Davis began depositing \$350 a month into his father's account. It is likely, but not entirely clear, that this was for the purpose of someday becoming the owner of both 678 and 699 Sturk Road.

[33] It is clear that Bradley paid his father \$350 per month by way of pay allotment directly into a Royal Bank account of Eugene Davis from June 1, 2006 to March 31, 2014. It is unclear what happened after March 31, 2014. Eugene Davis, in answer to his counsel's question, states that he continues to receive payment to present date. Bradley Davis seemed to state that since March 31, 2014, he ceased the pay allotment or making payments, because of his financial circumstances.

[34] There was no evidence as to when Bradley was entitled to ownership and possession of both 678 and 699 Sturk Road. Eugene Davis gave no evidence in this regard. Bradley Davis says he was not concerned about receiving title until he was ready to retire at some unknown date in the future.

[35] I find that there was no agreement as to the essential terms of any "agreement" entered into between Eugene Davis and Bradley Davis in 2006.

[36] Eugene Davis believed that the March 21, 2011, Deed, executed by him and his spouse was for 699 Sturk Road only. He intended to convey only the 699 Sturk Road property. Eugene Davis says that the Deed was prepared because in January 2011 Bradley had paid the sum of \$20,300 for 699 Sturk Road.



[37] This is inconsistent with what appears to be the only identified term of the 2006 agreement; specifically, that Bradley was purchasing both properties. It is also inconsistent with the March 21, 2011, Deed that actually conveys both the 678 and 699 Sturk Road properties. The description of the properties in the March 21, 2011, Deed is consistent with the purported oral 2006 agreement, the purchase price for which Bradley was still paying on March 31, 2014 – after the Gould judgments had been recorded against the properties.

[38] I conclude that Eugene Davis' current explanation that the 2011 Deed was for only 699 Sturk Road, for which Bradley paid \$20,300.00, is a fabrication, made in an attempt to defeat the Gould judgments, after he lost his appeal. There was no 'agreement' for only 699 Sturk Road, and, I conclude, that the 2011 Deed was not prepared or executed in furtherance of an 'agreement' for 699 Sturk Road.

[39] Bradley Davis continued to pay to his father \$350 per month after January 21, 2011. If, contrary to the face of the document itself, the March 21, 2011, Deed was intended to convey only 699 Sturk Road and if 699 Sturk Road was paid in full as of March 21, 2011, the explanation as to why the Deed was not recorded at that time, or at least before March 26, 2013, is not credible.

[40] On the one hand Eugene Davis says that the deed (which he testified only conveyed 699 Sturk Road) was not recorded because at the time Bradley Davis was serving in Afghanistan and he was uncertain as to whether Bradley would return. Bradley returned from Afghanistan in December 2011 and advised his father of his return in the spring of 2012, but still the Deed was not recorded.

[41] Secondly, if the March 21, 2011, Deed was intended to convey only 699 Sturk Road (on the basis that that property had been paid for), Bradley Davis should have been the beneficiary of the rental income from the property.

[42] Paragraph 8 in Eugene Davis' affidavit makes no sense. Why would Eugene "collect rent from Bradley until he returned home to live on the property he had purchased" and for which he had supposedly paid in full? If rents were collected by his father, it would only make sense that he collected them as agent for Bradley and there is no evidence Bradley Davis was given credit against the purchase of 678 Sturk Road for the rental income of 699 Sturk Road. If the word "from" in paragraph 8 was a typographical error (not corrected at the hearing), and should read "for", Bradley should have been given credit for rents, but there was no evidence that he was.

[43] This evidence suggests that the March 21, 2011, Deed was not intended to convey only 699 Sturk Road for which Eugene Davis' payment in full was made as of March 2011. In combination with the other circumstances, it causes the Court to disbelieve Eugene Davis' evidence that the January 21, 2011, Deed was intended to convey 699 Sturk Road to Bradley.

[44] While demeanor has limited value, it is a factor in determining the credibility of witnesses. It is also relevant to determining the reliability of evidence. Eugene Davis' oral evidence was internally inconsistent and frequently conflicted with the documentary evidence placed before him.

[45] The submission that the March 21, 2011, Deed was a conveyance of 699 Sturk Road, is inconsistent with Eugene Davis' evidence that he did not immediately register it because he was worried that his son would not return and that he did not know what he would have done with the deed if Bradley had not returned. Additionally, he had no answer for some important questions, such as, why he did not register the March 21, 2011, Deed for what he says was only 699 Sturk Road when Bradley returned from Afghanistan. This evidence also negates the existence of a legal agreement in 2006.

[46] His evidence was unreliable. I do not rely upon the evidence of Eugene Davis for the truth. It appeared self-serving.

[47] On January 4, 2012, Eugene Davis and his spouse (for whom he signed as power of attorney) conveyed 678 Sturk Road to himself alone. In his oral evidence, Mr. Davis insisted, despite attempts by his counsel to suggest to him otherwise, that 678 Sturk Road was in the name of both him and his spouse. Despite efforts by his counsel to suggest the purpose for the conveyance to him alone was to facilitate remortgaging the property, he still insisted the property was in the name of him and his spouse.

[48] The property-online record, with respect to the property interests in 678 Sturk Road, attached to the affidavit of the Goulds, shows that the Deed of January 4, 2012, was registered on January 12, 2012, at the Land Registry. This was the same date that a mortgage in favour of First National Financial GP Corporation was registered.

[49] The fact of the January 12, 2012, conveyance and mortgage of 678 Sturk Road is inconsistent with the March 21, 2011, Deed from Eugene Davis and his spouse to Bradley Davis of both 678 and 699 Sturk Road, if the 2011 Deed was in respect of a 2006 agreement for sale to Bradley Davis.

[50] This additional inconsistency is troubling. Why, in January 2012, would Eugene convey to himself, and mortgage, 678 Sturk Road if he had a valid 2006 contract to sell it to Bradley, for which Bradley was paying since March 2011?

[51] The inconsistencies lead me to conclude that the 2006 agreement, if one existed, was, at best, an informal understanding between family members, not a contract intended to be legally enforceable as between Bradley and his parents.

[52] I conclude that there was no clear, valid or legal agreement of purchase and sale created in 2006. There may have been an oral 'understanding' between Bradley Davis and his father that Bradley would eventually own 678 and 699 Sturk Road, and that, in the meantime, he would pay Eugene Davis \$350 per month towards eventually acquiring title. The essential terms and the essential intention to create a legally binding agreement do not appear to have existed. The January 2012 Deed is contrary to any such agreement or intention.

[53] Eugene Davis has not established, on a balance of probabilities that a valid agreement of purchase and sale was entered into in 2006 containing the essential terms including a purchase price for 678 and 699 Sturk Road or a completion date.

[54] Eugene Davis has not established, on a balance of probabilities that the deed he and his spouse executed on January 21, 2011, was made pursuant to a valid agreement of purchase and sale. It might have been no more than the frequently-used inexpensive alternative method of estate planning; that is, preparation and execution of a deed that, in the event of the passing of Eugene Davis and his spouse, is “delivered” and registered to convey the real property to the heir. This is speculation only, and is not an essential finding for the purposes of my conclusion that the March 21, 2011 Deed was not prepared and executed (and delivered on March 26, 2013) pursuant to a valid contract between Bradley and his parents.

[55] I find that the January 21, 2011, Deed did not reflect an intention by Eugene Davis and his spouse to divest their ownership interest in either 678 or 699 Sturk Road at the time of execution, or at any time before the Gould judgments were recorded at the Land Registry against the Davis properties. There was no evidence that Bradley has yet been paid for the two properties. Eugene Bradley testified that Bradley continues to pay, and Bradley testified he stopped the direct deposit from his pay on March 31, 2014.

[56] The documents attached to the Gould affidavit show that 699 Sturk Road was assessed at \$37,800 in 2013, and 678 Sturk Road at \$47,600 in 2014. Bradley would have deposited to his father’s account \$12,600 in the 36 months from April 2011 to March 31, 2014 (at \$350 per month). If the price he “paid” for 699 Sturk Road as of March 2011 was \$20,300 (\$350 per month for 58 months), it is unlikely that the \$12,600 that he deposited in his father’s account between April 2011 and March 31, 2014, would have constituted payment of full of the balance owing for both properties.

[57] The explanation as to why the March 21, 2011, Deed was not registered until March 26, 2013, makes no sense. If it was not registered because Bradley Davis was serving in Afghanistan and Eugene Davis was uncertain about his prospects of survival, then it should logically have been registered when Bradley advised him of his return early in 2012. Eugene Davis’ reply to a question as to why he did not record it in the spring of 2012 made no sense. It is not consistent with an intention to divest himself of an ownership interest in favour of Bradley Davis.

[58] In summary, no valid contract containing the essential terms of an agreement existed in 2006, or at any subsequent time, between Eugene Davis and Bradley Davis for the conveyance of either 678 or 699 Sturk Road, or both. The purported conveyance executed March 21, 2011, with respect to both lots was not intended to be an immediate conveyance of Eugene Davis’ interest in the properties described in the deed. Whatever the intended understanding between Eugene Davis and Bradley Davis in 2006, there is no evidence of the essential terms of the understanding or that they had been fulfilled before the Gould judgments were recorded against Eugene Davis’ interest in 678 and 699 Sturk Road.

[59] At paragraph 17 in *Clem*, the Court wrote when distinguishing two decisions referred to by the judgment creditor: “... while the trust relationship between vendor and purchaser may be dubious before closing, once the agreement is completed the trust relationship is solidified retroactively. This has been referred to as the “relation-back” theory.” In *Clem* there existed a clear, written, valid, enforceable agreement of purchase and sale.

[60] In this case there is not only absence of a clear agreement containing the essential terms of an agreement, but no term as to when the agreement would be completed, and Eugene Davis' property interest was to end.

[61] In the result, the Court finds that Eugene Davis and his spouse still retained the ownership of 699 Sturk Road, and that Bradley Davis had no equitable ownership interest in 699 Sturk Road at the time of the recording of the Gould judgments.

[62] Before the purported conveyance of March 21, 2011, Eugene Davis was only a one-half owner of 699 Sturk Road. I find that the recorded judgments of Nancy and Amber Gould take priority to the ownership interest of Eugene Davis in 699 Sturk Road as of the recording of the Gould judgments.

[63] The Applicants are entitled to an order directing the sale of Eugene Davis' one-half undivided interest in 699 Sturk Road pursuant to the *Sale of Land under Execution Act* and the *Creditors' Relief Act*.

[64] The Applicants are entitled to costs of this Application in Court. Normally costs are awarded on a party-and-party basis and a scale of fees is contained in *Civil Procedure Rule 77*. In this case, the Applicants are self-represented. Self-represented parties are not deprived of entitlement to costs, but any decision respecting costs must "do justice between the parties" and, for that purpose, the Court has a general discretion to award fair costs.

[65] There is no evidence before the Court as to the value of Eugene Davis' half interest in 699 Sturk Road, except the property-online record that shows property assessment for tax purposes in the amount of \$37,800 in 2013, suggesting that Eugene Davis' half interest might be worth approximately \$19,000. Absent evidence of the amount of the mortgage on 678 Sturk Road, there is no evidence of the equity of Eugene Davis in that property (or if there is any equity).

[66] Tariff A normally applies to a decision after a proceeding including an Application in Court. Where the amount involved is less than \$25,000, the basic scale provides for fees of \$4,000 plus reasonable disbursements.

[67] Tariff A costs should be reduced to do justice between the parties. The Applicants are awarded costs of \$2,000.

Warner, J.