

**SUPREME COURT OF NOVA SCOTIA**

*Cite as: Clem v. Hants-Kings Business Development Centre, 2004 NSSC 114*

**Date:** 20040611

**Docket:** SH 218441

**Registry:** Halifax, NS

**Between:**

Darrell Clem and Joanne Comeau

Applicant

v.

Hants-Kings Business Development  
Centre Ltd., a body corporate

Respondent

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**Judge:** The Honourable Associate Chief Justice Michael MacDonald in Chambers

**Heard:** April 21, 2004 in Halifax, Nova Scotia

**Decision Released:** June 11, 2004

**Subject:** Real Property Conveyancing, Agreements of Purchase and Sale, Judgements, *Registry Act*, R.S.N.S., 1989, c. 392

**Summary:**

This Application raises an interesting conveyancing question. What happens when a judgement is secured and recorded against the vendor after an agreement of purchase and sale is signed, but before the deed is tendered and recorded?

On August 24, 2002, the Applicants, Darrell Clem and Joanne Comeau, contracted to purchase property located at Millville, Kings County, from Elmer and Viola Dupuis. After the agreement of purchase and sale was signed, but before the deed was tendered, Viola Dupuis had a judgement recorded against her by the Respondent, Hants-Kings Business Development Centre Ltd.

The Applicants, as third party purchasers, maintain that the judgement does not attach to the property, because the agreement of purchase and sale pre-dates the judgement. They seek a declaration accordingly.

The Respondent Creditor, on the other hand, seeks to execute against the property because title was still in Viola Dupuis' name at the time of the judgement was recorded.

**Issue:** What property interest does a vendor retain after an agreement of purchase and sale is signed? Is it something upon which a judgement can attach?

**Result:** The Application is granted. Upon signing an agreement of purchase and sale, a vendor holds the property in trust for the purchaser. While this trust relationship maybe dubious before the actual closing, once the sale is complete, the trust relationship is considered to have been unrestricted from the beginning (the "relation back" theory). Therefore, in the case at Bar, the judgement debtor, having signed an agreement of purchase and sale, no longer held the beneficial interest (upon which a judgement could attach).

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