

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Corkum v. Dagley, 2006 NSSC 126

Date: 20060420

Docket: SH 207076

Registry: Halifax

Between:

Caroline Corkum

Plaintiff

v.

Randall Stephen Dagley

Defendant

DECISION

Judge: The Honourable Justice Arthur W. D. Pickup

Heard: February 28, 29 March 1 and 2, 2006,
in Halifax, Nova Scotia

Written Decision: April 20, 2006

Counsel: Peter Bryson, Q.C., for the plaintiff Caroline Corkum
William Ryan, Q.C., for the defendant, Randall Dagley

By the Court:

[1] Eleanor Dagley purchased a house at 6 Ascot Way in Lower Sackville, Nova Scotia in 1986. Shortly thereafter the plaintiff Caroline Corkum moved into this property with her husband and young daughter. The plaintiff paid rent from 1986 to March of 1989. No further monthly rental payments were made to Eleanor Dagley after March of 1989. Mrs. Dagley conveyed the property to her brother, Randall Dagley, the defendant on June 8, 2001. Eleanor Dagley died on November 27, 2002.

[2] The plaintiff claims an interest in the property at 6 Ascot Way, alleging that there was an agreement between herself and Eleanor Dagley for her to purchase the property. In the alternative, she claims that she acquired an equitable right in the property as a result of her dealings with Eleanor Dagley.

[3] The plaintiff seeks:

1. A declaration that she has an equitable interest in the property;

2. An order requiring the defendant to convey the property to her in fee simple and free from any mortgage in exchange for the balance of the purchase price;
3. Alternatively, an order requiring the defendant to pay \$60,979.00 together with the commercial rate of interest to the plaintiff; and
4. Costs of this action.

[4] The defendant denies that Eleanor Dagley ever agreed to sell the property to the plaintiff and says their relationship was that of a landlord and tenant. He denies that the plaintiff has an equitable interest in the property and argues, in the alternative, that if there is an equitable interest he is a *bona fide* purchaser for value and his title defeats that of the plaintiff because he had no notice of the plaintiff's interest and purchased the property for valuable consideration.

[5] The defendant counterclaims for rent owing as a result of the plaintiff's occupation of the property during his ownership. The defendant acquired the property by deed dated June 8, 2001 and no rent was paid by the plaintiff until January 1, 2005, when she began paying rent of \$750.00 per month.

[6] Eleanor Dagley died on November 27, 2002. The only evidence of an agreement between her and the plaintiff comes from the testimony of the plaintiff and from her former spouse, Dana Corkum. The defendant and other witnesses provided further evidence as to the wishes of Eleanor Dagley respecting the property at 6 Ascot Way.

[7] The only direct evidence of Eleanor Dagley's wishes as to the property at 6 Ascot Way come from Wills that she executed in 1987, 1997 and the deed to the defendant dated June 8, 2001.

ISSUES

1. Did the plaintiff and Eleanor Dagley enter into a binding agreement for the sale of the property at 6 Ascot Way?
2. In the alternative, did the plaintiff acquire an equitable right to the property as a result of her dealings with Eleanor Dagley?

3. Was the defendant a *bona fide* purchaser for value without notice of any equitable claim of the plaintiff?

Issue #1 Did the plaintiff and Eleanor Dagley enter into a binding agreement for the sale of the property at 6 Ascot Way?

[8] The plaintiff claims an agreement existed between her and Eleanor Dagley whereby Ms. Dagley agreed to sell her the property at 6 Ascot Way for \$81,900.00. The plaintiff would pay monthly rent and the rent payments would be credited against the purchase price. The plaintiff also maintains that Eleanor Dagley agreed that she could undertake renovations to the property and receive a credit on the purchase price for the value of these renovations.

[9] The evidence to support the alleged agreement between the plaintiff and Eleanor Dagley comes primarily from the evidence of the plaintiff and her former spouse, Dana Corkum. She testified that in July of 1986 she, Mr. Corkum and their young daughter were living in an apartment in Cowie Hill. Eleanor Dagley visited her apartment and suggested that this was not an appropriate location for Sarah Corkum, their daughter, to be raised. She

then suggested that she could assist with the purchase of a home for the plaintiff and her family. Ms. Dagley contacted a real estate agent and she, the plaintiff and her daughter viewed five homes. Ms. Dagley purchased the property at 6 Ascot Way for Eighty-two Thousand Nine Hundred Dollars (\$82,900.00). The plaintiff testified that she paid a deposit of One Thousand Dollars (\$1,000.00) to the real estate agent.

[10] The plaintiff's evidence is that a binding agreement was reached with Eleanor Dagley to sell the property to the plaintiff on the following terms:

- (1) The purchase price was to be \$81,900.00 which represented the purchase price that Eleanor Dagley initially paid for the property less a \$1,000.00 deposit paid by the plaintiff;
- (2) Monthly rent in the amount of \$500.00 was to be paid by the plaintiff to Eleanor Dagley and these payments of rent would be credited against the purchase price of the house.
- (3) The property at 6 Ascot Way was mortgaged by Eleanor Dagley. The interest and cost of financing would be paid by Eleanor Dagley as a gift to the plaintiff.

(4) The plaintiff and her husband could renovate the downstairs of the house and the cost of renovations would be credited toward the purchase price.

[11] The plaintiff paid rent to Mrs. Dagley from 1986 until March of 1989.

[12] The alleged agreement between Eleanor Dagley and the plaintiff was not in writing. The plaintiff acknowledged that the only request that she made of Eleanor Dagley to have the agreement in writing was made in March of 2002.

[13] Dana Corkum gave evidence on behalf of the plaintiff. Mr. Corkum was married to the plaintiff for 15 years. They divorced in 2004.

[14] Mr. Corkum confirmed that in 1986 they were having difficulty with their finances and that Eleanor Dagley came to them and suggested that she was going to buy a house in Lower Sackville and wished that they would move into the house.

- [15] When asked on direct examination what arrangements were made with Eleanor Dagley when they moved into 6 Ascot Way, Mr. Corkum testified that he and the plaintiff were to pay rent.
- [16] Despite Mr. Corkum's understanding that they were renting the property, he testified that he and the plaintiff expended a lot of money on the property and it was his understanding that the equity built into the house from these renovations would be "our equity".
- [17] Mr. Corkum testified that it was always his expectation that the property would be willed to himself and the plaintiff and, if not, there would be an option to purchase. He testified on cross-examination that he spoke to Eleanor Dagley several times both before and after her illness about purchasing the house and on each occasion was told that she was not prepared to sell the property. This is the extent of the evidence of the plaintiff to support the agreement to purchase 6 Ascot Way.
- [18] Eleanor Dagley was a meticulous record keeper. She prepared several ledgers in her own handwriting detailing the costs associated with 6 Ascot

Way. One of these ledgers is contained in Exhibit 1, Volume I, Tabs 1 and 2. At Tab 1 there is reference to an “opening balance” of \$81,900.00. This is the amount which the plaintiff testified was the purchase price for the house. She testified to contributing \$1,000.00 as a deposit towards the purchase of the house. The Statement of Adjustments in evidence (Exhibit 1, Volume I, Tab 23) shows a purchase price of \$82,900.00. The plaintiff asserts that the opening balance of \$81,900.00 supports her testimony that she contributed \$1,000.00 to the deposit. There is a column in the ledger entitled “balanced owed” and it appears to show the purchase price of \$81,900.00 declining by \$500.00 as each rental payment is made.

[19] While to some extent this ledger would support the plaintiff’s position, there is no direct evidence to explain the reason for the inclusion of this declining balance column in the ledger. The ledger is entitled “Statement of Income and Expenses” and outlines total rental income, including a figure representing a “rental loss” for the period noted. This evidence should be contrasted with the 1987 Will of Eleanor Dagley which makes no reference to the \$81,900.00 purchase price nor does it make any reference to rent

payments being credited to the plaintiff against the purchase price. At the time of the 1987 Will the plaintiff was paying rent to Eleanor Dagley.

[20] This is the extent of the evidence to support the plaintiff's claim. Other witnesses have provided the court with evidence that is inconsistent with the existence of an agreement between the plaintiff and Eleanor Dagley. There is also documentary evidence which is inconsistent with the plaintiff's testimony. After the purchase of 6 Ascot Way, Eleanor Dagley executed 3 Wills and deeded the property to the defendant in 2001. All of these documents, in my view, are direct evidence of Eleanor Dagley's wishes at the time the documents were executed.

[21] Eleanor Dagley executed Wills in 1987, 1997 and 2001. The terms of the 1987 and 1997 Wills are inconsistent with the agreement alleged by the plaintiff.

[22] The first will was executed by Eleanor Dagley on March 18, 1987. This will appears to have been drafted after the purchase of the Ascot Way property and after the alleged agreement between the plaintiff and Eleanor Dagley.

[23] There is no mention in the 1987 Will of the purchase arrangement alleged by the plaintiff. However, there is an option given to the plaintiff for the purchase of the property at 6 Ascot Way. The purchase price is stated as \$82,500.00, which is inconsistent with the purchase price of \$81,900.00 suggested by the plaintiff. If the purchase price was \$81,900.00 then it would be reasonable to conclude that Mrs. Dagley would have stated that price in the Will. Further, if the rent was being credited monthly as the plaintiff maintains, and if the ledger in Exhibit 1, Volume I, Tabs 1 and 2 is interpreted in the manner the plaintiff suggests, it would also be reasonable to conclude that the stated purchase price in the option given in the Will would be reduced by the amount of rental payments made up to the time the Will was prepared or as of Mrs. Dagley's death. Likewise, there is no mention in the Will of credits for any renovations completed at 6 Ascot Way although the plaintiff maintains that this was the arrangement she had made with Eleanor Dagley. This Will is direct evidence of Eleanor Dagley's wishes at the time and is clearly inconsistent with the evidence of the plaintiff as to the existence of an agreement to purchase 6 Ascot Way.

[24] The Will also gives Caroline Corkum and Dana Corkum an option to purchase the property from the Estate on or before the 1st day of January 1994. This option to purchase is inconsistent with the agreement as alleged by the plaintiff. The inclusion of the date of January 1, 1994 is interesting. There is some evidence to suggest that this was the anticipated retirement date for Eleanor Dagley. The plaintiff indicated that she told her mother about her agreement with Eleanor Dagley (Elizabeth Jean Collins). Mrs. Collins testified that Eleanor Dagley came to her around 1987 and told her she was going to purchase a house and that she would like to have the plaintiff live in it until she retired in seven years. Seven years from the time of the preparation of the Will would be approximately 1994. The evidence of the plaintiff's mother is consistent with the terms of the Will and inconsistent with the plaintiff's allegation of an agreement.

[25] On November 18, 1997 Mrs. Dagley executed a new Will. Under this Will, the property at 6 Ascot Way was devised to Caroline Corkum. There is no reference to any agreement with the plaintiff. The gift of the property is an outright devise. Eleanor Dagley owned a condo at 5521 Carriageway

Crescent, where she lived. Under this Will, the condo was devised to Caroline Corkum and Patricia Levy.

[26] There was a third Will executed on June 8, 2001. However there was no mention of the Ascot Way property, which had already been conveyed to the defendant.

[27] In addition to this direct evidence of Eleanor Dagley's intentions, there is other evidence supporting the defendant's position.

[28] In 2003, the plaintiff experienced problems with a water heater in the residence at 6 Ascot Way and asked the defendant Randall Dagley to repair it. He did so. This, in my view, is inconsistent with the plaintiff's position that she had an equitable interest in the property and that there was a binding agreement between her and Eleanor Dagley to have the property conveyed to her. It would be reasonable to conclude that the plaintiff, in calling the defendant to replace the water heater, was acknowledging the defendant's ownership of the property and her status as tenant.

[29] The plaintiff maintains that she had an agreement to purchase the property with rental payments and renovations to be deducted from the purchase price. However, Eleanor Dagley paid for some improvements to the property, including a wrap-around deck, a shed and the installation of bars on the ground level windows. These improvements cost \$7,321.64. That Eleanor Dagley would spend \$7,321.64 on a property that she had agreed to sell for \$81,900.00 is inconsistent with the plaintiff's assertion of an agreement. That Eleanor Dagley did expend this substantial amount of money is, in my view, consistent with her ownership of the property as alleged by the defendant.

[30] The plaintiff acknowledged that, although she has asserted this agreement between her and Eleanor Dagley, she only asked for it to be put in writing in March of 2002 . She acknowledged that during the period of her occupation from 1986 until Eleanor Dagley's death in November 2002 there were no other such requests. This, in my view, is inconsistent with her assertion of a binding agreement between herself and Eleanor Dagley.

- [31] The plaintiff claims that rent paid would be credited against the purchase price. She did not pay rent after 1989. It seems inconceivable that the plaintiff would occupy the property from 1989 until 2001, without paying rent especially, since her position was that any rental payments would be credited to the purchase price.
- [32] The onus is on the plaintiff to prove the existence of an agreement on a balance of probabilities. I am not satisfied on the evidence that the plaintiff has discharged her burden to prove that an agreement existed between her and Eleanor Dagley and I dismiss her claim on that basis.
- [33] Subsequent to the trial, I asked counsel to provide submissions on the applicability of Section 45 of the *Nova Scotia Evidence Act*, R.S., c.154 to these proceedings.
- [34] Section 45 states:

45 On the trial of any action, matter or proceeding in any court, the parties thereto, and the persons in whose behalf any such action, matter or proceeding *is*

brought or instituted, or opposed, or defended, and the husbands and wives of such parties and persons, shall, except as hereinafter provided, be competent and compellable to give evidence, according to the practice of the court, on behalf of either or any of the parties to the action, matter or proceeding, provided that in any action or proceeding in any court, ***by or against the heirs, executors, administrators or assigns*** of a deceased person, ***an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision therein on his own testimony***, or that of his wife, or of both of them, ***with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence.***

- [35] The essence of Section 45 provides that parties to an action and their spouses are competent and compellable at trial provided that in any proceeding “by or against the heirs, executors, administrators or assigns of a deceased person” the opposite party shall not succeed “on his own testimony, or that of his wife, or both of them, with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence.”

- [36] Section 45 refers to “wife” rather than “spouse”. Considering the section as a whole, it would appear that the reference to “wife” should be read as “spouse” as the use of the term “wife” appears to be an example of archaic drafting relevant to the time period in which this section became law.

[37] I am satisfied that Section 45 is applicable in that the evidence of Caroline Corkum and that of her former spouse, Dana Corkum, relating to any agreement with Eleanor Dagley or statement or acts of Eleanor Dagley must be corroborated by other material evidence. A review of the evidence would suggest that there is no such corroboration. There is no agreement in writing and the one document brought forward, the ledger entitled “Statement of Income and Expenses”, is inconsistent with the Will executed by Eleanor Dagley in 1987.

[38] I am satisfied that the requirements of Section 45 are met and that this section would apply to these proceedings. Having said that, my conclusion that the plaintiff’s claim should fail was reached without the benefit of section 45. I do not need to rely upon the lack of corroboration, but I am satisfied that section 45 would also prevent the plaintiff from succeeding.

[39] The plaintiff suggests that the provisions of s.45 would apply to the claim of Randall Dagley that he is a *bona fide* purchaser for value without notice of 6 Ascot Way. Even if the provisions of Section 45 apply to the defendant

there is ample corroboration to support the defendant's position. For example, there is the deed dated June 8, 2001, as well as the evidence provided by Albert Bremner and Joan Brown as to the purchase price for the property.

[40] In summary I have concluded (without the benefit of applying s.45 of the *Evidence Act*) that the plaintiff has not discharged her burden to prove an agreement existed between her and Eleanor Dagley and her claim is dismissed on that basis.

ISSUE #3 Was the defendant a bona fide purchaser for value without notice of any equitable claim of the plaintiff.

[41] Before addressing the plaintiff's claim that she acquired an equitable right in the property at 6 Ascot Way, I will first determine whether the defendant was a *bona fide* purchaser for value without notice of any equitable claim the plaintiff might have had.

[42] The defendant acquired the property by deed. If he was a *bona fide* purchaser for value without notice of the equitable claim of the plaintiff, any

equitable remedy claimed by the plaintiff would be defeated. Put another way, a person who attempts to take from an equitable estate must show that they are a *bona fide* purchaser for value without notice of the equitable claim.

[43] There is no issue as to the validity of the deed to the defendant. The primary issue is whether he is a *bona fide* purchaser for value. The two main questions in this regard are whether the defendant acquired the property for value and whether he took with or without notice. I will first deal with the notice issue.

NOTICE

[44] The plaintiff claims that she had a prior equitable interest in the property and that the defendant had notice of her claim.

[45] Bruce Ziff, in *Principles of Property Law*, 3rd ed. discusses the issue of a prior equitable interest and a subsequent legal one and, in particular, explains why a *bona fide* purchaser for value of the legal title who buys land without notice of an equitable interest will not be bound by that interest.

1. *When the prior interest is equitable and the subsequent one is legal, the legal claim will sometimes prevail. Equitable rules are not so strongly tied to chronology, though this element can be a significant factor. Equity acts on the conscience of the relevant parties; that is why a bona fide purchaser for value of the legal title who buys land without notice of an equitable interest will not be bound by that interest. The good faith purchaser has what we would now call a 'clear conscience', and the presence of such a person can alter the ordering of rights. Assume, for instance, that A, the owner of the legal fee simple of Blackacre, agrees to sell to B. They sign a contract by virtue of which B acquires an equitable interest in the land. Following this, A receives a much more lucrative offer from C, to whom the property is then sold, thereby 'gazumping' the first purchaser, B. Assume finally that there is eventually a conveyance of the legal title to C, who remains unaware of the prior deal. **Equity would probably grant C priority, as a bona fide purchaser of the legal title taking without notice of the purely equitable interest of B. While B can maintain an action for damages against A, there is no recourse against C to recover the realty. The corollary of this is that if C is not a good faith purchaser, B should be given priority.** [emphasis added]*

The author further discusses the requirement that the subsequent owner must be a purchaser for value and that the owner took the property without notice of the equitable interest:

The '*bona fide* purchaser for value without notice' is treated as the "polar star" of equity, especially in disputes of this type. However, in order to be able to claim this status the full constellation of factors must exist. The element of good faith embraces the absence of notice, but also has a broader connotation. Fraud in the acquisition of that legal interest will destroy this element even if there was no knowledge of the prior equitable right. In short, the requirement of good faith is no more than an application of the maxim 'those who come to equity must come with clean hands'. To be a good faith purchaser, one must not have the grime of unfairness under one's fingernails.

Another maxim underscores the requirement that the subsequent owner must be a purchaser for value: generally speaking, 'equity will not assist a volunteer'. A donee of property might well be disappointed by the discovery that the gift is received is less valuable than expected (*i.e.*, because it belongs to someone else), but this will not prompt equitable protection. To qualify as a purchaser, some value, even if below the full market value, must be received in money or money's worth and it must actually be provided.

[46] Professor Ziff discusses notice at pp. 415-416:

The absence of notice of the rival equitable right at the time the consideration is paid is essential if the legal owner is to enjoy priority. In equity, notice may be (i) actual; (ii) imputed; or (iii) constructive. *Actual notice* means a real knowledge of the circumstances. The reading of the relevant document is the paradigm form. The test of actual notice is a stringent one: it appears that an examination of document X, which refers to document Y, does not normally amount to actual notice of document Y. In addition, knowing that a party is in possession of the property is not generally treated as actual notice of the interest under which that possession is enjoyed. Information conveyed by rumour is also not adequate.

Imputed notice is that which is attributed to a principal through an agent. One is put on *constructive* notice of facts or circumstances that ought to have been appreciated or understood. This is a legal fiction that is designed to promote care on the part of a buyer. In the sale of land, constructive notice may be found when a purchaser would likely have become aware of a relevant fact had all of the normal inquiries been conducted. The chief consideration in determining whether notice should be deemed to exist is whether a prudent person should have made the necessary inquiries in view of the known circumstances. Therefore, constructive notice may be found when some information is available to the purchaser who either deliberately avoids conducting a further investigation or neglects to do so. While knowledge that there is a person in possession is not enough to count as actual notice, it is normally sufficient to impel a purchaser to determine the basis upon which this possession is being enjoyed, and the failure to do so will typically lead to a finding that there was constructive notice of that interest.

[47] The plaintiff asserts that the defendant had actual knowledge of her equitable interest in the property on the basis he knew she was in possession. She also suggests that because the defendant knew she expended monies on the property he had constructive knowledge of the equitable interest she claims.

[48] The defendant acknowledged in testimony that he was aware before he received the conveyance of the property that the plaintiff and her family were living there. The defendant also acknowledged that the plaintiff had spent money renovating the property. He specifically acknowledged that he was aware of improvements to the property such as landscaping, the installation of an asphalt driveway, the construction of a shed, the building of a deck, improvements to the bathroom and a new wood stove.

[49] The defendant testified that Eleanor Dagley complained about some of these renovations being done by the plaintiff and her husband and, in particular, that she complained about the wood stove that was installed in the property. She also complained about the basement renovations. He stated that Eleanor

Dagley told him that the plaintiff and her husband “were on their own” or words to like effect in respect of the basement renovations.

[50] There is no evidence that Eleanor Dagley told the defendant of any arrangement between herself and the plaintiff as alleged by the plaintiff.

[51] The defendant did testify that on numerous occasions Eleanor Dagley complained to him that the plaintiff had not paid rent. He testified that when Eleanor Dagley advised him that she was going to transfer the property to him she indicated that she wanted him to have the property and said words to the effect that he would “kick Caroline’s arse out”.

[52] The question is whether the defendant had actual or constructive notice of any equitable interest of the plaintiff. What would a careful, prudent and reasonable person do in these circumstances when purchasing the property, knowing of the occupation of the plaintiff and knowing that certain renovations were carried out by her to the property?

[53] I accept the evidence of the defendant that he was not told by Eleanor Dagley about any agreement she had with the plaintiff. I accept his evidence that he was told on several occasions that the plaintiff was renting the property and had not paid the rent for a considerable period of time. From these comments it would be reasonable for the defendant to conclude that there was a landlord/tenant relationship between the plaintiff and Eleanor Dagley. Other than the plaintiff and her spouse all other witnesses appear to have concluded that Eleanor Dagley was the sole owner of the property and could do with it what she wished.

[54] The defendant testified, that he was told by Eleanor Dagley that she wanted to have him “kick Caroline’s arse out”. It would be reasonable for the defendant to conclude from those comments that the plaintiff had no interest in the property beyond her tenancy.

[55] The defendant testified that Eleanor Dagley made it clear she did not want the plaintiff to “get her hands on that property” or words to like effect. It would be reasonable for him to conclude from those comments that Eleanor Dagley was the owner and had the right to deed the property to him.

[56] While the defendant has acknowledged that he was aware of the occupation of the property by the plaintiff and the fact that she had expended money, it was clear he was not aware of any arrangement between the plaintiff and Eleanor Dagley that would give the plaintiff an interest in this property other than as a tenant.

[57] I am satisfied that all the comments by Eleanor Dagley to the defendant would lead him to reasonably conclude that the plaintiff was a tenant and had no other interest in the property.

[58] I am satisfied that the defendant was aware of the friction between Eleanor Dagley and the plaintiff. The plaintiff was not paying rent. This was a sore point with Eleanor Dagley. Given the tension between Eleanor Dagley and the plaintiff it is understandable that the defendant did not contact the plaintiff to discuss her interest, if any, in the property. All of the discussions that the defendant had with Eleanor Dagley would lead him to reasonably conclude that the plaintiff had no interest in the property and therefore there would be no need to contact her. On the facts, I am satisfied that it was

reasonable for the defendant not to contact the plaintiff to inquire of her as to whether or not she had any interest in the property.

[59] I am satisfied that the defendant did not have actual or constructive notice of any equitable interest of the plaintiff.

[60] Having determined that the defendant took conveyance of the property without notice of any equitable interest of the plaintiff, it is necessary to determine whether he acquired the property for value.

[61] The defendant claims that he paid \$50,000.00 in cash to Eleanor Dagley for the purchase of the property. The plaintiff suggests that the defendant is not credible in his assertion that he paid Eleanor Dagley \$50,000.00. The defendant testified that he paid the money to Eleanor Dagley in three installments, the first being \$38,000.00 in cash followed by two payments of \$6,000.00 each.

[62] The defendant testified that, although Eleanor Dagley wanted to gift him the property, he insisted on paying \$50,000.00. He recalls going to his house

and obtaining \$38,000.00 cash from three locations, one of which was a safe. Consistent with having paid that amount was his testimony that Eleanor Dagley, upon counting the money told him that there was only \$37,900.00, and that he owed a further \$100.00 on the first payment. He later paid this amount. The defendant testified that he made two further payments of \$6000.00 each for a total purchase price of \$50,000.00.

[63] Equally consistent with the defendant's evidence was the fact that Eleanor Dagley then set up a meeting with Albert Bremner, a solicitor in Chester, to document the payment. The meeting was set up on a Sunday. Mr. Bremner confirmed that Eleanor Dagley was his client and that he took clear instructions from her. He also testified that Eleanor Dagley had set up the meeting.

[64] A receipt was prepared by Mr. Bremner. Mr. Bremner testified that the clear instruction he received from Eleanor Dagley, and the intent of the document he prepared, was to evidence the payment of the sum of \$50,000.00 by the defendant to Eleanor Dagley for the purchase of 6 Ascot Way. The wording of the receipt on its face is confusing and one could interpret it as having the

opposite effect. However, Mr. Bremner was clear and unequivocal in his evidence that the intent was to show receipt of the sum of \$50,000.00, which was paid by the defendant to Eleanor Dagley. Both the defendant and Eleanor Dagley signed the receipt and it was witnessed by Mr. Bremner.

[65] Further evidence as to the payment of \$50,000.00 was provided by Joan Brown, a sister of Randall Dagley and Eleanor Dagley. Ms. Brown testified that on the same day Eleanor Dagley and the defendant attended at Mr. Bremner's office she had a conversation with Eleanor Dagley in which Ms. Dagley confirmed that the defendant had paid her \$50,000.00 for the house and they were going down to the lawyer's office to get a receipt for this payment.

[66] I am satisfied on the evidence that consideration was paid in the amount of \$50,000.00. Mr. Dagley confirmed the payment of this amount and Mr. Bremner testified that he had clear instructions from Eleanor Dagley that this amount was to be documented by way of a receipt. The receipt was prepared and signed by both parties.

- [67] Joan Brown's evidence supports this arrangement.
- [68] I am satisfied that the conveyance from Eleanor Dagley to the defendant was for value. Further, I am satisfied that the defendant had no notice constructive or otherwise of any interest of the plaintiff in the property at 6 Ascot Way.
- [69] The defendant having paid value for the property and having no notice of the plaintiff's equitable interest took a legal fee simple title to the property that defeats any equitable claim of the plaintiff.
- [70] Having so found, it is not necessary that I determine whether the plaintiff acquired an equitable right to the property as a result of her dealings with Eleanor Dagley, as the defendant was a *bona fide* purchaser value without notice of any equitable interest.
- [71] For the foregoing reasons I dismiss the plaintiff's action with costs to the defendant.

COUNTERCLAIM

[72] The defendant is claiming against the plaintiff for rent owing as a result of the plaintiff's occupation of the property from June 8, 2001 to January 1, 2005.

[73] The plaintiff lived rent free in the property from 1989 until January 1, 2005. She paid \$750.00 per month rent to the defendant from January 1, 2005.

[74] Since he acquired the property on June 8, 2001, the defendant has been responsible for the costs associated with ownership. The plaintiff lived rent free in the property for an extended time during the ownership of the defendant as she did for the majority of the time during the ownership of Eleanor Dagley.

[75] I award the sum of \$750.00 per month payable to the defendant by the plaintiff for rent for the period of June 8, 2001 to January 1, 2005. I award the defendant costs on the counterclaim.

- [76] The defendant suggests that this is an appropriate case in which to award punitive and aggravated damages against the plaintiff.
- [77] The plaintiff elected not to bring action against the Estate of Eleanor Dagley but rather waited until the death of Mrs. Dagley and brought action against the defendant.
- [78] While I have not accepted the evidence of the plaintiff that there was an agreement between her and Eleanor Dagley respecting the property, it is obvious that her belief in the existence of an agreement motivated these proceedings. I am not satisfied that the plaintiff's motive for her refusal to accept the defendant as the rightful owner of the property was malicious, but rather I conclude that it arose from the mistaken belief that an agreement existed between her and Eleanor Dagley.
- [79] I make no award for punitive or aggravated damages.
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Justice Arthur W. D. Pickup