IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Eagles v. Buchanan, 2008 NSSC 99

Date: (20080215)
Docket: SN No. 247764
Registry: Sydney

Between:

Ralph Eagles and Bernice Eagles

Plaintiffs/
Defendants by Counterclaim

v.

Earl Buchanan and Mary Buchanan-Beaton

Defendants/
Plaintiffs by Counterclaim

Judge:	The Honourable Justice Frank Edwards
Heard:	February 11, 12 and 15, 2008, in Sydney, Nova Scotia
Final Written Submissions:	February 27, 2008
Oral Decision:	February 15, 2008
Written Decision:	April 8, 2008
Counsel:	Christopher Conohan, for the plaintiffs/defendants by Counterclaim Darlene MacRury, for the defendants/plaintiffs by Counterclaim

By the Court:

[1] ***Introduction:*** This case involves a "rent to own" agreement respecting a residential property in Glace Bay, Nova Scotia. I have found that the Defendants, the owners of the property, have breached the agreement by failing to provide necessary documentation to substantiate payments for municipal taxes, water and insurance. The Plaintiffs, the tenants/lessees, have met their obligations under the agreement. They have spent $14,000.00 on improvements to the property and made their rental payments. I have found that the Plaintiffs are entitled to specific performance of the contract.

[2] ***Facts:*** The Plaintiff, Bernice Eagles (Bernice) and the Defendant, Mary Buchanan-Beaton (Mary) signed a rent to own agreement on June 27, 2003. Mary signed on her own behalf and that of her husband, Earl Beaton (Earl). The agreement pertained to a property, 5 James Street, Glace Bay. The property contained a detached dwelling which had a traditional main floor, stairs leading to a loft, and a one-bedroom basement apartment. Mary had owned the property prior to her marriage to Earl. In 1995 or 1996, Mary and Earl moved to the Mira area. James Street had since been one of several rental properties the couple maintained in the Sydney and Glace Bay area.

[3] In 2003, Mary was a teacher at an adult school in Glace Bay. One of her students was Darrell Eagles (Darrell), Bernice's son. At some point, Darrell and Mary discussed the idea of a rent to own agreement regarding James Street. There is a dispute about who first raised the idea but that is not important. In any event, Darrell discussed the matter with his parents, Mary discussed it with Earl, and the parties agreed to enter into an agreement.

[4] The Agreement was prepared by Mary from a precedent she had obtained. Mary says she provided a copy to Darrell in April 2003 following their initial negotiation in March or April 2003. Both Darrell and Bernice say they did not see the agreement until June 27, 2003. In the context of all the evidence, it is obvious that they are correct and that Mary is mistaken.

[5] The purchase price typed on the agreement is $45,000.00. Above that figure is $43,000.00 handwritten and initialled by Mary. There is a dispute about why the price was changed. Mary says she dropped the price to cover the cost of anticipated roof repair. Bernice and Darrell say that the reduction was to reflect the math of their oral negotiation. They maintain that Mary agreed to repair the roof in

addition to lowering the price. I accept Mary's evidence on this issue and find that the Eagles have mistaken recollections.

[6] Aside from that one point, it is clear that the evidence of Bernice and Darrell is preferable to that of Mary. Both gave their evidence in an honest, straightforward manner. I believe them. In cross-examination, Mary was evasive and argumentative. She was anything but straightforward. Mary claims that the deposit agreed upon was $10,000.00. I do not believe her. The Eagles maintain that the agreed deposit was $6,500.00 and that they paid one half ($3,250.00) in April and the other half at the June 27 signing. The agreement has the April deposit $3,250.00 typed in; the June 27 deposit is handwritten ($3,250.00). There is no indication whatever of the $10,000.00 figure. The 3,250.00 figure is obviously one half of $6,500.00 and bears no relevance to a purported $10,000.00 figure.

[7] Mary says that the $600.00 per month payment was supposed to double after one year. The agreement makes no mention of that. Bernice and Darrell deny it. Surely Mary, the author of the agreement, would have made some notation on the agreement if in fact a $10,000.00 deposit and a doubling of the rent had been

discussed. It is obvious that Bernice and Darrell are telling the truth and that Mary is not.

[8] Mary has acknowledged that the agreement has caused considerable tension between she and Earl. Earl's letter/notice to vacate dated March 31, 2005 somewhat supports that. He says, for example, that "... ***we*** were not exactly open to the idea (of a rent to own agreement)". More likely, ***he*** was not sold on the idea but, the property having been her's before the marriage, Mary insisted on going forward. When the deal did not live up to her expectations, I suspect that Mary dreamed up the notion of the $10,000.00 deposit and the doubling of the rent to placate Earl. Whatever her motive, I am satisfied that the notion of a $10,000.00 deposit and the doubling of the rent are complete inventions by Mary.

[9] Darrell moved into the property on July 1, 2003. I accept his evidence and that of his mother that the main floor was in a state of disrepair and that the basement apartment was literally unfit for habitation. With the prospect of eventual ownership, the Eagles undertook extensive repairs.

[10] For the first few months, there were no difficulties. Then, Mary became lax in providing receipts for rent. At Bernice's urging, Darrell requested receipts. Finally, on November 4, 2004, Mary provided a blanket receipt for $9,600.00 to cover the 16 months rent to date (including the first few months for which she had already provided receipts). This presaged the difficulty which was to come.

[11] Despite her experience, it appears that Mary may be somewhat disorganized when paperwork is involved. The agreement provided that Mary was to pay the yearly taxes, water and fire insurance, all of which were to be retained in her name. Once a year, Bernice was to reimburse Mary for these expenses (she elected yearly rather than monthly). The agreement is silent as to the precise amounts because they may vary from year to year (clauses 3, 4 and 5). Most significantly, the agreement is also silent on the mechanics of the reimbursement procedure. Clause 12 of the agreement provides for the delivery of further documents "to give full effect to the intent and meaning of this agreement." It was up to Mary to provide those documents and I am referring here to the tax and water bills and the invoice for the insurance.

[12] Despite her evidence to the contrary, I am satisfied that Mary did not get around to seeking reimbursement for the taxes, water and insurance until January 2005. At that time, Mary had sent her daughter Marci to pick up the rent at James Street. At the same time, Mary provided Marci with Mary's handwritten calculations of the amount owing but did not provide the supporting bills and invoices. The total was $1,215.00. There are considerable differences in the evidence as to this.

[13] In my view, Darrell probably knew about the $1,215.00 amount before January 28, he may even have had the money to pay that at that time in the expectation that he would receive the required bills and invoice. When that did not happen, he contacted his mother. When Darrell advised Bernice of the request, Bernice quite reasonably (and as clause 12 of the agreement entitled her) requested copies of the tax and water bills and insurance invoices to support the handwritten calculations. In the meantime, as an apparent good faith gesture, Bernice authorized Darrell to give Marci an interim payment of $415.00. Inexplicably, Mary never did provide the requested documentation. Mary thereby breached the agreement. This was the triggering event which derailed the whole agreement despite the best intentions of Bernice and Darrell.

[14] Because of Mary's failure to provide documentation and the apparent misinformation she supplied Earl, the situation deteriorated precipitously. On March 31, 2005, Earl hand delivered a notice to vacate to Darrell. This notice, to which I have already referred, also made reference to the purported $10,000.00 deposit and doubling of the rent after one year. It also offered to sell the property to the Eagles, not for $43,000.00 but for the original typed amount of $45,000.00 less credit for the $6,500.00 deposit. Earl offered no credit for the rent payments already made.

[15] The Eagles were understandably astounded by this document. The March 31 letter/notice demonstrates a blatant disconnect by Earl and Mary between the terms of the written agreement and their obligations thereunder. I am satisfied that there would have been no problem if Mary had simply provided the requested bills and invoices to Bernice in January 2005. Instead, the stage was set for a lengthy and costly lawsuit.

[16] The Eagles immediately retained counsel. By letter dated April 11, 2005, Counsel pointed out the obvious flaws in the March 11 letter/notice. He also went

on to state that the balance (after deduction for paid rent) was $24,500.00. On behalf of the Plaintiffs he offered to buy the Defendants out for that amount or continue the agreement as originally contemplated.

[17] There can be no tenable suggestion that the Eagles were in breach after March 11, because the Defendants had deemed the agreement terminated. Under those circumstances, it would not be reasonable to expect the Eagles to keep paying the Defendants until the matter was resolved through negotiation by Counsel or by decision of the Court.

[18] After receipt of the April 11 letter, the Defendants retained Counsel and Counsel for the Defendants responded by letter dated April 19, 2005. She demanded that the Eagles pay the outstanding tax, water and insurance amounts in 10 days or vacate the premises. Apparently, some subsequent negotiation then took place. The next written record is a letter dated May 4, 2005, from the Eagles' lawyer requesting confirmation of the $24,500.00 figure while acknowledging his clients' liability for the outstanding costs for insurance, water and taxes.

[19] There is then a further notice to quit dated May 10, 2005, hand delivered by Earl to Darrell. Darrell was to be out by May 25, 2005. On that same day, Plaintiffs' Counsel again sought written confirmation of the $24,500.00 figure. Defendants' Counsel replied saying the $24,500.00 had been rejected because her clients "no longer consider the agreement binding (because) ... of the failure to pay water, tax and insurance accounts on a timely basis." The offer now on the table was for $36,500.00 ($43,000.00 less $6,500.00 deposit). The Plaintiffs would receive no credit for over $18,000.00 rent paid to date.

[20] In the circumstances, the position taken by the Defendants was completely unreasonable and left the Plaintiffs no choice but to litigate the matter. They commenced the action on June 3, 2005. On June 16, 2005, the Plaintiffs applied for an interim injunction. On September 21, 2005, Justice Hood granted the injunction (Exhibit 2, tab 8).

[21] In compliance with the terms of the injunction, the Plaintiffs brought the payments under the agreement up to date with a payment of $6,465.51. They also provided cheques up to March 2007 (Exhibit 2, tab 8) to cover both rent and the projected monthly cost of taxes, water and insurance.

[22] When the cheques ran out in March, 2007, the absurdity of the Defendants' position again became apparent. For her part, Bernice kept depositing the $750.00 per month in her bank account (Exhibit 8). She mistakenly believed she had forwarded sufficient cheques to last through November 2007.

[23] For their part, the Defendants would have realized that they had no cheques after March 2007. A simple phone call to their lawyer should have initiated a request to the Plaintiffs' lawyer to provide more cheques. I have no doubt that more cheques would have been immediately provided. Regrettably, that is not what happened. I am satisfied that the Defendants were deeply resentful of the terms of the injunction and wanted an excuse to get around it.

[24] The Defendants waited until October 2007 by which date the arrears had accumulated to $5,194.00. They then brought an application for Summary Judgement alleging that because the Plaintiffs were in arrears, they were in breach of the agreement. By written decision dated January 25, 2008, Justice Hood dismissed the application. In light of all the facts disclosed at trial (which of course were not available to Justice Hood), the Summary Judgement application

was totally unreasonable and, from the outset, its chances of success were nil. It is yet another indication of what I find to be patently unreasonable conduct on the part of the Defendants.

[25] I am satisfied that the Plaintiffs, the Eagles, acted in good faith at all times since the signing of the agreement on June 27, 2003. The responsibility for the difficulties which culminated in this lawsuit lies completely with the Defendants.

[26] ***Law:*** The Plaintiffs claim specific performance of the contract. Specific performance is an equitable remedy which is provided when a common law remedy would be inadequate. Mr. Alan Schwartz of the Yale Law Journal was quoted in the text ***Remedies Cases and Materials*** 2nd Edition Waddams, at page 805 wherein he stated:

> "the purpose of contract remedies is to place a disappointed promisee in as good a position as he would have enjoyed had his promisor performed. Contract Law has two methods of achieving this compensation goal: requiring the breaching party to pay damages, either to enable the promisee to purchase a substitute performance, or to replace the net gains that the promise performance would have generated; or requiring the breaching party to render the promise performance. Although the damages remedy is always available to a disappointed promisee under current law, the remedy of specific performance is available only at the discretion of the court."

[27] The authors of the text go on to discuss the particular use of specific performance with respect to land contracts:

> "There is an almost automatic right to a specific performance with respect to contracts for the purchase and sale of land. Why? Is such a role appropriate? Consider the following arguments. From the purchaser's side specific performance would usually be appropriate. By it's very nature, land has a quality of uniqueness which renders damages inappropriate in most cases. It is much less clear, however, the specific performance should inevitably follow. Most purchasers of land have selected a particular process because it meets their needs or subjective desires. However, where the purchaser is a speculator looking for resale, it is hard to see why a specific performance would inevitably follow and why damages do not offer complete redress."

[28] The Plaintiff relies upon the case of ***Maisonneuve v. Delaurier*** 2007 Carswell B.C. 457 (S.C.). In that case the Vendor and Purchaser entered into a Rent to Own Agreement that provided the Purchaser with an option to purchase the property at the end of a two year period. The agreement contained provisions recognizing that the Purchaser was paying premium rent designed to save towards the purchase price. The Purchaser had delivered twelve post dated rent cheques and continued extensive renovations to the property and the Vendor subsequently relayed that they no longer wanted to sell the property. The Purchaser sought an action for specific performance for damages for breach of the agreement. The action was allowed and the specific performance was ordered.

[29] At page 9 of the decision, the court held:

> "56 In my respectful view, specific performance is the appropriate remedy in this case. The property is unique in character to the plaintiff and he has had possession of the property since at least September 1, 2001. From the outset he has cleaned up and cared for the property, and over the years has invested heavily in improving and renovating the property. Those investments include both the cost of materials and a substantial amount of labour which could be considered sweat equity'.
>
> 57 In reaching this conclusion I am aware that the plaintiff, at one point, apparently formed the intention to sell the property, but, in my view, the equities of the present circumstances favour an order for specific performance.
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> 58 The onus is on the plaintiff to establish that damages are not an adequate remedy. In the circumstances of this case he has met that burden.
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> 59 To attempt to assess damages in this case would be, to some extent, to allow the defendants to benefit from their breach of the agreement they made and to profit from the plaintiff's efforts. Such a result would be wholly inequitable in the circumstances of this case.
>
> 60 There will be an order for specific performance."

[30] For their part, the Defendants cite ***Gilbert v. Fotherby***, [2007] N.S.J. No. 295; 2007 NSSC 211 and ***Francis v. Clarke***, [1999] N.S.J. No. 289; (1999) 178 NSR (2d) 168. Both of these cases are distinguishable from the present case. In

the former, the Vendors clearly established breach of the essential terms of the agreement. As I have noted, that is not the situation here. In fact the Eagles have proven that the contract was breached by the Defendants. Similarly, and for the same reason, the ***Francis*** case has no application to the case before me.

[31] ***Conclusion:*** The Plaintiffs have made extensive and costly improvements to the property totalling over $14,000.00. They have held up their end of the bargain. They are entitled to specific performance of the contract. At this stage because of the Defendants' breach and the high potential for further problems if the agreement is continued, specific performance means that the Plaintiffs are entitled to immediately buy out the Defendants and have the property conveyed to them. It is the only logical remedy in the circumstances as I have found them to be.

[32] I am therefore ordering that the property be conveyed by warranty deed to the Plaintiffs within 30 days of the date of the Order herein. If the Defendants are unwilling to sign the deed, the Order will authorize the Sheriff to do so on their behalf. The terms of the sale will be $43,000.00 less the deposit of $6,500.00 and adjusted for any rent or other stipulated payments paid and unpaid since June 27, 2003. Counsel should meet immediately to work out the figure.

[33] Obviously in view of the facts I have found them, the counterclaim has no merit whatever and is therefore dismissed. They are claiming in part for rent for the apartment. I do not know how they think that can be justified under this agreement.

[34] ***Costs:*** The Plaintiffs shall have their costs and reasonable disbursements to be taxed by me. Counsel made written submissions on costs which I have reviewed with them during a recorded conference call on (March 11, 2008). At that time, I determined that the "amount involved" was $50,000.00 (the purchase price plus one-half the costs of renovations - the other half being deemed normal maintenance). By the Tariff (basic scale), I set the costs at $7,250.00 plus $5,000.00 for two and a half days of trial. The Chambers applications (Injunction and Summary Judgement added another $1,000.00 ($500.00 for each application). Disbursements (not challenged) were $1,177.27.

Order accordingly.

J.