SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Blanch v. Everhard*, 2020 NSSM 35

Date: 20201130
Docket: Sydney, No. 493968
Registry: Halifax

Between:

Sheree Louise Blanch

Claimant

v.

Cecelia Darlene Everhart

Defendant

Adjudicator:	Patricia Fricker-Bates
Heard:	March 4th, July 22, and September 30, 2020
Decision:	November 30, 2020
Appearances:	Sheree Louise Blanch, Claimant, self-represented; Cecelia Darlene Everhart, Defendant, self-represented.

BY THE COURT:

1. On November 19, 2019, the Claimant Sheree Louise Blanch filed a Notice of Claim with the Court. She claimed payment of money; general damages; interest; and costs totaling $25,000.00.

2. On December 6, 2019, the Defendant Cecelia Darlene Everhart filed a Defence and Counterclaim with the Court. In her counterclaim the Defendant sought payment of money, general damages, interest and costs totaling $25,000.00.

3. This case evolves around two lease to own sale agreements. The first is dated August 18, 2016 and reads, in part (see Exhibit #20):

> August 18th/2016
>
> LEASE TO OWN SALES AGREEMENT BETWEEN CECILIA [SIC] EVERHART (SELLER)
>
> AND JOSEPH JEAN TANGUAY, ISRAEL AND SHEREE BLANCH. (BUYERS)
>
> HOME IS LOCATED AT 519 ATLANTIC STREET, SYDNEY, NS B1P3S4

HOME IS BEING SOLD ON “AS IS, WHERE IS” BASES

…

PURCHASE PRICE IS $ 89,000

BUYER PAID $5000.00 NON REFUNDALBE DOWN PAYMENT

MORTGAGE TO BE AMORTIZED FOR 10 YEARS (120 MONTHS)

AMORTIZATION TO INCLUDE 7% INTEREST

FIRST PAYMENT DUE SEPT 1ST/2016

…

TOTAL MONTHLY DUE TO SELLER IS $985.76 ……MORTGAGE

76.82 ……TAXES

45.00 ……WATER

100.00…..INSURANCE

$1207.58…..TOTAL

…

SELLER AGREES THAT ASIDE FROM THE MORTGAGE OWING THAT THERE WILL BE NO LIENS PUT ON THE PROPERTY.

…

SELLER AGREES THAT WHEN MORTGAGE IS PAID IN FULL THAT ALL CLOSING COSTS ARE THE RESPONSIBILITY OF THE BUYER.

BUYERS AGREE TO NO UNLAWFUL ACTIVITY OR THIS AGREEMENT WILL BE TERMINATED AND HOMEP [SIC] RETURNED TO SELLER, AND ALL MONIES PAID TO THAT POINT WILL BE DEEMED AS RENT.

BUYERS AND SELLER AGREE THAT ONLY ONE OF THE PURCHASERS WILL BE SIGNING THIS CONTRACT TODAY WHICH WILL BE BINDING, AND OTHER PURCHASER WILL SIGN WHEN ARRIVES IN PROVINCE OF NOVA SCOTIA

BUYERS (Signed by Joseph Mark Israel) 8/18/16

Joseph Mark Israel

SELLER (Signed by Cecilia Everhart) 08/18/16

WITNESS (Signed by Wayne MacDonald) 08/18/2016

Wayne MacDonald

[Upper-caps in the original]

There is no dispute between the parties that at the time the Lease To Own Sales Agreement was executed, the Claimant was not in the Province of Nova Scotia. Contrary to the closing paragraph in the Agreement—"other purchaser will sign when arrives in Province of Nova Scotia"— there is no signature line in the agreement for the Claimant. Further, there is no identifying pronoun, i.e., he or she, in that clause.

The witness Wayne MacDonald died in or about March 2018.

4. The Claimant denies that on August 18, 2016, she was on a speaker phone asking the Defendant to put her on the lease-to-own sales agreement. The Defendant asserts that the conversation took place.

5. On September 16, 2016, there was an Amendment to the August 18th, 2016 Lease To Own Sales Agreement occasioned by the unfortunate passing of Joseph Mark Israel (aka "Marco" Israel) in early September 2016 (see Exhibit #20). It states, in part:

September 16/2016

Amendment to original contract with Joseph Jean Mark Tanguay Israel[1] AND Sheree Blanch dated August 18th, 2016.

Due to the unfortunate passing of JOSEPH MARK ISRAEL THE FIRST WEEK OF SEPTEMBER, 2016,

THE Original agreement of August 18th will become null and void if no payment is made toward agreement by Oct 15 2016. ERIC JOSEPH SERGE PELLETIER, a friend of the deceased has agreed to continue on With Mr. Israel and Ms. Blanch agreement and agrees to continuing, and finishing, the renovations that himself and Mr. Israel started on the home.

…

[1]Based on the evidence before the Court, 'Joseph Jean Mark Tanguay Israel', 'Joseph Mark Israel' and "Marco Israel' are one and the same person.

The down payment received by seller from Mr, Israel and Ms. Blanch WILL ONLY be carried forward to THIS New Amended Contract, with ERIC PELLETIER, IF ALL OTHER STIPULATIONS OF BOTH ORIGINAL AND AMENDED CONTRACT, AND LANDLORD TENANCY AGREEMENT ACT, ARE MET, BY MR. PELLETIER.

In the case of default of this amended contract, the home must be returned to the owner, Cecilia Everhart in good repair, fridge, stove, and dishwasher remain. All monies paid prior, will be deemed as rent only and any renovations or alterations made to the home must remain, and home returned in good repair.

Buyer	Eric Pelletier (printed out) (Signed by Eric Pelletier)	Date: Sept 23 2016
Seller	(Signed by Cecilia Everhart) Cecilia Everhart (printed out)	Date: Sept 23/ 2016
Witness	(Signed by Colleen Peterson) Colleen Peterson (printed out) 563-2600 Ext 4001	Date: Sept 23.2016

[Upper caps in the original]

It's clear from this Agreement that Eric Pelletier and Joseph Marc "Marco" Israel had started renovating the house at 519 Atlantic Street, Sydney, NS between August 18th and September 23rd, 2016. Again, the Claimant was not in the Province of Nova Scotia at the time of execution of this Amending Agreement to the original Lease To Own Sales Agreement of August 18, 2016.

6. On May 14, 2017, the Claimant Blanch and the Defendant Everhart entered into a Lease To Own Sales Agreement (see Exhibit #1):

LEASE TO OWN SALES AGREEMENT BETWEEN CECILIA EVERHART (SELLER)

AND SHEREE BLANCH (BUYER)

HOME IS LOCATED AT 519 ATLANTIC STREET, SYDNEY, NS B1P 3S4

HOUSE IS BEING SOLD “AS IS, WHERE IS” BASES

…

PURCHASE PRICE IS $65000.00

MORTGAGE TO BE AMORTIZED FOR 8 years and 7 months

AMORTIZATION TO INCLUDE 5% INTEREST

FIRST PAYMENT DUE JUNE 1ST/2017

…

TOTAL MONTHLY DUE TO SELLER IS $771.45 ……. MORTGAGE

78.00 …….. TAXES

45.00 …….. WATER

105.00 …….. INSURANCE

999.45 …….. TOTAL

BUYERS [sic] AGREE TO DEPOSIT 1000.00 PER MONTH IN SYDNEY CREDIT UNION ON OR BEFORE THE FIRST DAY OF EVERY MONTH.

BUYERS [sic] AGREE THAT THESE ITEMS CAN FLUCTUATE IN PRICE AND THAT ANY INCREASE OF THESE ARE TO BE PAID BY THE BUYER.

BUYERS [sic] ARE RESPONSIBLE FOR ANY AND ALL MAINTENANCE TO THE PROPERTY, INCLUDING LAWN CARE AND SNOW REMOVAL AND ANY AND ALL REPAIRS.

BUYERS [sic] AGREE TO KEEP THE PROPERTY IN GOOD REPAIR, AND IF IN DEFAULT OF THIS AGREEMENT, LEAVE THE PROPERTY IN GOOD REPAIR AND ALL APPLIANCES REMAIN.

SELLER AGREES THAT ASIDE FROM MORTGAGE OWING THAT THERE WILL BE NO LIENS PUT ON THE PROPERTY.

SELLER AGREES THAT THE BUYER CAN PAY OFF MORTGAGE WITH NO INTEREST PENALTY.

…

SELLER WILL NOT DEFAULT ON ANY MORTGAGE PAYMENTS.

BUYER AGREES THAT WHEN THE MORTGAGE IS PAID IN FULL THAT ALL CLOSING COSTS ARE THE RESPONSIBILITY OF THE BUYER.

BUYERS [sic] AGEE TO NO UNLAWFUL ACTIVITY OR THIS AGREEMENT WILL BE TERMINATED AND HOME RETURNED TO SELLER, AND ALL MONIES PAID TO THAT POINT WILL BE DEEMED AS RENT.

Buyer	(Signed by Sheree Blanch)	14th May 2017
Seller	(Signed by Cecilia Everhart)	May 14, 2017
Witness	(Signed by ???)	14 May 2017
	(signature of witness not decipherable)	

[Upper-caps in the original]

This latter Agreement is the only Agreement actually signed by the Claimant. It is also the only Agreement where her name appears in the signature portion of the Agreement: neither the August 18, 2016 Agreement nor the Amending Agreement of September 23, 2016, have included a place in the signature portion of the Agreements for the Claimant's signature.

7. The Claimant testified that she was a "mortagee", that she was going to fix the home at 519 Atlantic Street, Sydney, Nova Scotia to the best of her ability and then rent it out. The Claimant had at least two successive tenants at 519 Atlantic Street following the signing of the May 14, 2017 Agreement. However, the Defendant held the deed to and a separate mortgage on the property, the particulars of which were not before the court. When the insurance on the property was cancelled effective July 3, 2019, she sold the home at 519 Atlantic Street, Sydney, NS for $70,000.00 in October 2019 (see Exhibit No. 38 re: Agreement of Purchase and Sale dated October 24, 2019).

8. The Claimant submits that insofar as the August 18, 2016 Agreement and the Amending Agreement of September 23, 2017 are concerned, she still was in British Columbia. She testified that she left British Columbia on October 31, 2016 to come to Nova Scotia and arrived in Nova Scotia on November 7, 2016. She testified that she had bought a home in Whitney Pier before leaving British Columbia. She did not live at 519 Atlantic Street, Sydney, NS.

9. The Defendant Everhart testified that after Marco Israel signed the Lease-To-Own Sales Agreement on August 18, 2016, he "tore the house apart in seven to eight days." She indicated that he tore out the chimney. The Claimant testified that Marco Israel also tore out the furnace at 519 Atlantic Street, Sydney, NS; and referred to text messages between she and Marco Israel (see Exhibit #2, text message received from Marco Israel on August 21, 2016 at 10:30:14 PM) wherein he states "… tweaked my back lifting furnace when I'm outta shape." So, there appears to be common ground between the Claimant and the Defendant that when they entered the Agreement on May 14, 2017, that the home at 519 Atlantic Street, Sydney, NS, was in a state of disrepair.

10. On May 11 and 12, 2017, there was a series of text messages between the Defendant and the Complainant (see Exhibit #5) wherein the Defendant writes at 2017-05-11 at 12:12:05 PM:

Hi, Sheree. I have been trying to think what can work for the both of us,. I have some ideas. Can you please give me a call when you get a chance.

So, it would appear at that point in time that the Claimant and the Defendant were on good terms with each other. The series of text messages outlines the negotiations the two parties undertook on May 11th to 13th, 2017, in reaching the Agreement of May 14, 2017.

11. In a text dated 2017-05-29 at 8:07:58 AM, the Claimant wrote the following:

Hi Cecelia. I've started work and cleaning the house. I have been doing some thinking and I'd really prefer to fix the place and sell it. I don't think I can rent it and come out ahead. Anyway, I hope you can support that direction. Thanks so much.

The Defendant responded on 2017-05-29 at 1:13:58 PM:

Yes that is fine. Whatever is best for you. Is fine with by me.

Later, on 2017-06-07 at 2:51:28 PM, the Claimant wrote:

Cecilia, I am trying to figure out a way to sell the house … a little complicated. I am drawing up new paperwork that makes it work for both of us. Can you please let me know your address and marital status. Th [sic] so much.

The Defendant responded on 2017-06-07 at 2:53:02 PM:

I have no idea what you are saying can you give me a call.

The relationship between the Defendant and the Claimant disintegrated from there.

12. The Claimant maintains that she entered the Agreement of May 14, 2017, out of compassion for the Defendant "because of what her friend Marco did." She testified that she looked upon the property as an investment. However, she eventually wanted to sell the property and consulted legal counsel as to how it could be done. According to the Claimant, when she began to ask questions about the Agreement of May 14, 2017, the Defendant "got irate". In the end result, no new contract was negotiated.

13. A number of problems subsequently developed at 519 Atlantic Street, Sydney, NS after the signing of the Agreement on May 14, 2017. These included an increase in insurance premiums; changing of locks; the installation of gyprock which frustrated the full inspection of the basement; installation of faulty electrical wiring (see Exhibit 21); and the eventual cancellation of the fire insurance at 519 Atlantic Street, Sydney, NS. (see Exhibit 39). The Defendant testified that her mortgage on the property got called in when the insurance was cancelled and she had to sell the property at 519 Atlantic Street, Sydney, NS.

14. The relationship between the Claimant and the Defendant disintegrated to the point that on May 3, 2019, Defendant Everhart made application before the Residential Tenancies Board for "termination of tenancy and vacant possession" of 519 Atlantic Street, Sydney, NS. Her application was dismissed on June 18, 2019, as the Residential Tenancy Officer found that "when payments are applied towards a purchase price and increases the ownership interest of the purchaser, it is not considered rent. Instead, it is

considered an Agreement of Purchase and Sale." The Residential Tenancy Officer dismissed Defendant Everhart's application on the basis that she did not have jurisdiction to hear the application given that a landlord-tenant relationship could not be established (see Exhibit #11).

15. On June 3, 2019, Defendant Everhart took out a Notice under the *Protection of Property Act*, R.S.N.S. 1989, c. 3, directing the Claimant "to immediately cease and desist from making any further threats, or persist with any harassing behaviour" (see Exhibit #41).

16. The Claimant testified that in August 2019 the Defendant sent her a "stream of material from a detective who turned out to be phony" in an effort to get her, the Claimant, out of 519 Atlantic Street, Sydney, NS (see Exhibit # 18).

Decision of the Court

17. This case serves as a cautionary tale to those who undertake real estate transactions without the guidance of or input from legal and property professionals knowledgeable in the field.

18. The Claimant and the Defendant testified during the hearing and a total of 42 exhibits were submitted to the Court. I am satisfied on the evidence before me that the only agreement to which the Claimant was a party was the Agreement dated May 14, 2017.

19. In my review of the evidence surrounding the Agreement of August 18, 2016 and the Amending Agreement of September 16, 2016, I am unable to conclude on a balance of probabilities that the Claimant was a party to either document. At the material times, the Claimant was not resident in Nova Scotia but was living in British Columbia. The Lease to Own Agreement of August 18, 2016 states: "buyers and seller agree that only one of the purchasers will be signing this contract today which will be binding, and other purchaser will sign when arrives in province of nova scotia." However, there is no designated space for the Claimant's signature and, further, the Defendant did not produce a copy of that Agreement with the Claimant's signature thereon in keeping with the narrative in the August 18, 2016 Lease-to-Own Sales Agreement. Insofar as the September 16, 2016, Amending Agreement is concerned, again, the Claimant was not in the Province of Nova Scotia. Again, there is no signature space on the Agreement for the

Claimant's signature. Further, Joseph Mark "Marco" Israel died shortly after signing the August 18, 2016 Agreement; Wayne MacDonald who, according to the Defendant, told her that the Claimant wanted to fix the house "because she really feels bad," also has since died; Eric Pelletier, who, under the Amending Agreement of September 16, 2016, agreed to "continuing, and finishing, the renovations that himself and Mr. Israel started on the home," was not called as a witness; and Colleen Peterson, who witnessed the signatories to the September 16, 2016 Amending Agreement was not called as a witness. The name of the witness to the May 14, 2017 Agreement is unclear but, in any event, was not called as a witness.

20. The Defendant relies on passages in the Lease to Own Agreement of August 18, 2016 and the Amending Agreement of September 16, 2016, that reference the Claimant: see paragraphs 3 and 5 herein. However, those clauses alone cannot make the Claimant a party to either contract—the Claimant was not in the Province of Nova Scotia at the time the contracts were made, there is no signature line for her name in either contract, there is no evidence before the Court that the Claimant signed either contract upon her arrival in Nova Scotia, and there is no evidence before me that the contracts had been forwarded to the Claimant for an electronic signature.

21. Michelle Lahey of LaFosse MacLeod appeared before the Court as an "agent for the Defendant". In questioning the Claimant, she referred to the May 14, 2017 Lease To Own Sales Agreement as "a simple and amateur" Agreement in which "the language is simple"; and referred to the Claimant and the Defendant as "two persons with no training in the law". I note that the Residential Tenancy Officer in her Order of June 18, 2019, dismissing the Defendant's application under the *Residential Tenancies Act*, observed that "Ms. Everhart said she drafted the agreement herself without the assistance of a lawyer" and found that "the two parties have an amateur agreement entitled "Lease to Own Sales Agreement'." Therein lies the rub: no legal input was sought by either the Claimant or the Defendant as to the particulars of the Agreement or the legal implications of the documents, its terms or alleged breaches thereto. The Claimant acknowledged in cross-examination that she knew she could have sought independent legal advice before signing, but declined to do so.

22. I was puzzled by the Claimant's reference to herself as a "mortagee" when testifying. Upon a closer study of the May 14, 2017 Lease to Own Sales Agreement, there is reference to the Seller as the Defendant and the Buyer as the Claimant, and also reference to a "mortgage to be amortized for 8 years and 7 months" with "taxes, water and insurance to be paid monthly by the buyer". There then is a clause whereby the "Total monthly due to the Seller is $771.45 … Mortgage." Further, the "Seller agrees that Buyer can pay off mortgage early with no interest penalty". This begs the question: Is this document a Lease To Own Sales Contract or a Mortgage? Given the lack of legal input that went into the drafting of the May 14, 2017 Lease To Own Sales Agreement, the resulting confusion over the legal status of each party vis-à-vis the Agreement is understandable. The decision of the Residential Tenancies Officer dated June 18, 2019, further underscores the confusion over the legal implications of the May 14, 2017 Lease To Own Sales Agreement in that the Officer found that "when payments are being applied towards a purchase price and increases the ownership interest of the purchaser, it is not considered rent. Instead, it is considered an Agreement of Purchase and Sale."

23. So, I have before me an agreement that purports to be a May 14, 2017 Lease To Own Sales Agreement, that also appears to act as a Mortgage, but also could be considered an Agreement of Purchase and Sale. Neither the Claimant nor the Defendant called any witnesses with expertise in matters of real estate or property law. In the absence of any evidence from someone qualified in real estate dealings, the true legal nature of the document remains ambiguous. Therefore, in the absence of evidence as to the true legal nature of the document, the certainty of its terms, the legal obligations of the parties and the consequences of any breach, any alleged breach or breaches of the May 14, 2017 Lease To Own Sales Agreement cannot be determined on a balance of probabilities by this Court.

24. I am dismissing both the Notice of Claim of the Claimant Blanch; and the Defence and Counterclaim of the Defendant Everhart.

25. There shall be no order for costs.

Patricia Fricker-Bates
Adjudicator