

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Hope v. Tabensky, 2007 NSSC 214

**Date:** 20070822

**Docket:** SPHa-257162

**Registry:** Port Hawkesbury

**Between:**

Donald Bernard Hope and Rosamond Hope

Plaintiffs

v.

Marie Tabensky

Defendant

**Judge:**

The Honourable Justice Frank Edwards

**Heard:**

June 6, 2007, in Port Hawkesbury, Nova Scotia

**Counsel:**

P. Gregory MacIsaac, for the plaintiffs  
Adam D. Rodgers, for the defendant

**By the Court:**

[1] This is an action respecting title to a certain piece of land. The Parties have submitted the following Agreed Statement of Facts:

- 1) In 1982, John and Marie Tabensky, spouses of each other, purchased lands (see Tab 1) in River Denys Basin, Inverness County, Nova Scotia, from Donald and Pearl Dodds for \$2,000.00.
- 2) In 1983, Donald Bernard Hope and Rosamond Hope were invited to enter a partnership called, A Group of Friends. This agreement is as in Tab 2 herein.
- 3) In 1983, a deed was prepared and signed from John and Marie Tabensky to the partnership, “A Group of Friends”, See Tab 3.
- 4) Marie Tabensky asserts this deed, Tab 3, was never delivered as she still had possession of it.
- 5) The Hope parties built a cottage without a building permit and have occupied this cottage since 1984.
- 6) Both parties paid taxes until recent years equally.
- 7) John Tabensky died in 2003.
- 8) Both parties asked Lorne MacDowell, Q.C., for an opinion as to their legal status and his opinion is attached as Tab 4.
- 9) For purposes of this litigation, the property is not large enough to subdivide.
- 10) Both parties have had appraisals and they are attached as Tab 5.
- 11) On August 11, 2005, a letter was sent to Donald and Rosamond Hope from Donnie Doucet (on behalf of Marie Tabensky)

instructing the Hopes to remove their cottage from the property by November 2, 2005.

The parties seek the following questions:

- a) Does the Statutes of Frauds apply to eliminate the Hope interest?
- b) Does the Hope party have a revocable license as per *Wyatt v. Franklin*?
- c) Does the deed to a “Group of Friends” create an enforceable interest?
- d) Does either party owe the other funds?
- e) Costs.

[2] The parties submitted a joint exhibit book which contains, in addition to the exhibits referenced in the Agreed Statement of Facts, discovery evidence of Marie Tabensky and Donald Bernard Hope.

[3] The issue is really whether the April, 1983 deed conveys title to the Hopes and, if so, the nature of that title.

[4] A useful starting point is to look at the intention of the parties at the time. The Tabensky’s had taken title as a joint tenants on July 22, 1982. The purchase

price was \$2,000.00. In her discovery, Ms. Tabensky says that she and her husband discussed the property with the Hopes *before* they decided to buy it (Discovery p. 4). In fact, she believes the Hopes saw the property before the Tabensky's purchased it. Mr. Hope testified that the Tabensky's "approached us about buying half the property". (Discovery p. 43)

[5] Then, on March 31, 1983, the two couples signed the "Joint Partnership Agreement"; the Tabensky's signed as "Partners A" and the Hopes signed as "Partners B". Schedule B of the Joint Partnership Agreement reads as follows:

"The Partnership known as "A Group of Friends" wish it to be made known that:

1. The purposes and aims of this partnership to be as follows:
  - a) to acquire lands and property from time to time in the name of "A Group of Friends" consent of both "Partners A" and "Partners B"
  - c) to provide for mutual use all "chattels" which may be part of said property"
  - d) above all to enjoy in fellowship and friendship use of all assets listed in partnership asset book.
2. Operating procedures of the partnership to be as follows:
  - a) All assets owned by "a group of Friends" will be listed in "Partnership Asset Book"

- b) All entries in “partnership asset book will be made by recording secretary, signed by her and the assistant recording secretary”.
- c) In the event of disposal by sale of any properties listed in the “Partnership Asset Book”. Monies shall be dispersed between Partnership A and Partnership B in proportion to the amounts in total invested by said partners
- d) Any partner is not permitted to enter into any liability agreement on behalf of the partnership known as “A Group of Friends” unless both partners agree to same by minutes at a regular called meeting.
- e) Each partner agrees that they will not transfer their ownership in said partnership to any individual, group or business unless written consent is given to vending partner agreeing to conditions and terms of sale.
- f) In the event of death of one of the partners in Partners A or the death of one of the partners B that deceased partners interest is assigned to surviving partner A or B.
- g) It is agreed that all immediate family may have free access and use of the property. Immediate family being described as mothers, fathers, brothers, sisters, sons and daughters. Other individuals may be granted free access and use of the property by mutual agreement of both partners.
- h) In the event either partner A or partner B wishes to dispose of their share of the partnership, first option given to other partner. Price to be established based on partner interest and a current value assessment made by a qualified assessor mutually agreeable to both partners.

- I) Bank accounts may be established in the name of the partnership with two assigning officers for each transaction.
  
- j) Offices of the partnership to be
  - John Tabensky, President
  - Donald Hope, Treasurer
  - Marie Tabensky, Recording Secretary
  - Rosamond Hope, Assistant Recording Secretary.

Meetings may be called by the President as required. All minutes are to be kept in the partnership minute book. All minutes are to be duly signed as recorded and authenticated by all partners.

I agree to the conditions listed in Section B.

Signed, sealed and delivered in the presence of

\_\_\_\_\_  
John Tabensky

\_\_\_\_\_  
Marie Tabensky

\_\_\_\_\_  
Donald Hope

\_\_\_\_\_  
Rosamond Hope

[6] It is clear from the foregoing that Partners A and B intended to have a tenancy-in-common as between the two sets of partners. [See especially clauses 1(c) and (d) and 2(c), (d) and (e).]

[7] It is equally clear that each set of partners intended to have a joint tenancy regarding their respective one-half interest in the property. Clause 2(f) gives the right of survivorship to the surviving spouse of Partner A or Partner B.

[8] In April 1983, the Tabensky's executed a Warranty Deed regarding the subject property. The deed designates the Grantee as:

“A joint partnership, known as ‘Group of Friends’, John Tabensky, President and Donald Hope, Treasurer of Port Hawkesbury in the County of Inverness and Province of Nova Scotia.”

[9] I am satisfied that the intent of the deed was to give effect to the factors the parties had set out just a few weeks earlier in Schedule B of the Joint Partnership Agreement. There is no question but that the Tabensky's intended that the Hopes would become co-owners of the property. The first entry in the Partnership Asset Book is “Land”, purchased by “Tabensky” “July - 1982 April - 1983” “Value 1492.” In her discovery, Ms. Tabensky says that the “1492” was probably the amount they had paid on their loan toward the purchase price between July ‘82 and April ‘93 (Discovery p. 13). Clearly, that entry was made so that the parties could

equalize their respective contributions to both the purchase price of the land and the costs of developing and maintaining it. (Discovery of Mr. Hope pp. 44 and 45)

[10] In this Province, a partnership (whether registered or not) cannot hold title to real property. The April 1983 deed therefore did not convey title to the “Group of Friends” partnership. But did the deed effectively convey title to Partners A and Partners B of the partnership? I believe it did.

[11] If the deed and the partnership agreement are read together, it is clear that what the parties really wanted to do was to share ownership of the particular piece of property (and possibly acquire more property in the future). John Tabensky and Donald Hope are both identified (albeit as officers of the partnership) in the Grantee section of the deed. They did not have to be. Perhaps being non-lawyers, they wanted to make it clear that they were the actual grantees. And perhaps they were concerned about the legal status of their proposed partnership. In any event, the deed does identify the real intended recipients of title to the subject property. Accordingly, in my view, John Tabensky thereby took title to one-half interest in the property on behalf of Partners A, that is, jointly on behalf of himself and Marie Tabensky. Similarly, Donald Hope took title to the remaining one-half interest on



behalf of Partners B, that is, jointly on behalf of himself and Rosamond Hope.

Marie Tabensky now solely owns one-half interest as John Tabensky's survivor.

She and the Hopes therefore hold title to the entire property as tenants-in-common.

[12] There is no question about delivery of the deed as John Tabensky, a grantee, kept possession of it. There was no one else to whom delivery could have been preferred. There is also no issue of license as between tenants-in-common.

[13] The April, 1983 deed, read in conjunction with the Joint Partnership Agreement, satisfies the requirements of the Statute of Frauds. While that deed, as I have interpreted it, delineates the respective interests of the parties, it does not give satisfactory notice of the conveyance to third parties. A new deed should therefore be executed by Ms. Tabensky or, if she refuses, by the Sheriff within 60 days of this decision to convey the property to Marie Tabensky and jointly to the Hopes in accordance with this decision. That is, as I have noted, Marie Tabensky and the Hopes will hold title to the whole property as tenants-in-common. The Hopes shall hold their one-half interest as joint tenants.

[14] The parties shall each bear their respective costs of this action.

Order accordingly.

J.