

1990

S.H. No. 73846

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:

SALSMAN INVESTMENTS LIMITED,

PLAINTIFF

- and -

THOMAS HOWLAND and BOZENNA HOWLAND,

DEFENDANTS

HEARD: At Halifax, Nova Scotia, before the Honourable
Mr. Justice David W. Gruchy in Chambers,
on August 22nd, 1990.

DECISION: September 27, 1990

COUNSEL: Elizabeth M. Haldane, Solicitor for the
Plaintiff

David F. English, Solicitor for the Defendant

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GRUCHY, J.:

The plaintiff is Salsman Investments Limited and is the vendor in an agreement of purchase and sale with the defendants, Thomas Howland and Bozenna Howland. The agreement of purchase and sale is an "approved form Nova Scotia Real Estate Association Agreement of Purchase and Sale". It consists of the terms of an offer and acceptance. The offer was dated May 22nd, 1990 and the acceptance of that offer was dated May 25th, 1990.

I am informed by the parties that there are no problems with respect to time limits, either in the agreement or otherwise, and that provided title is

sufficient, the transaction will proceed.

Mr. David F. English represents the purchasers. He objected to title by letter dated June 19th, 1990 addressed to Mr. George Caines, who is described in the agreement of purchase and sale as the solicitor for the vendor. The letter stated, in part:

"There is an insufficient root of title to lands in question. We are unable to locate a Warranty Deed behind 1967, and we require sixty years to a warranty deed.

We are not prepared to base our certificate of title on two quit claim deeds, one dated July 21, 1902, between John Brown and Mary C. Brown, to John W. Brown, recorded in Book 95, page 133, Windsor Registry of Deeds, recorded the 9th of October, 1902. The second is a quit claim deed dated April 6, 1908, between John W. Brown and Maggie Brown, and recorded in Book 104, page 95, Windsor Registry of Deeds, recorded the 21st of April, 1908."

Apparently, on the basis of that objection to title, the plaintiff has taken this action and has asked for an order pursuant to the **Vendors and Purchasers Act**, R.S.N.S. 1989, c. 487.

In his objection to title, Mr. English set forth the entire title, as known, to the property in question. I will set it forth below:

"QCD	John Brown et ux
B95 P133	Mary C.
July 21, 1902	
Oct. 9, 1902	and
\$500.00	
	John W. Brown
	L/Q inter alia (72½ acres)

QCD	John W. Brown et ux
B104 P95	Maggie
April 6, 1908	
April 21, 1908	and
\$600.00	
	James Brown

Conveys 95/133

WD	Reginald Brown, unmarried
B266 P75	George Brown et ux
Aug. 23, 1967	Alma
Sept. 8, 1967	heirs-at-law James Brown
\$1.00	
	and
	Lloyd Patterson

Whereas James Brown, late of Walton, in the County of Hants and Province of Nova Scotia, died intestate, seized and possessed of the hereinafter described lands.

And Whereas the Grantors herein, Reginald Brown and George Brown, are the only heirs-at-law of the said James Brown, deceased.

And Whereas the Grantors are desirous of conveying their interests in the hereinafter described lands to the Grantee herein.

Conveys 104/95

Agmt	Lloyd Patterson
B279 P238	
Sept. 1, 1967	and
April 14, 1970	
\$1.00	Russell M. White

timber on 266/75 for the price of
\$3,000.00

R 320/769

Mtg
B286 P417
April 16, 1971
April 19, 1971
\$6,000.00

Lloyd Patterson et ux
Mabel

and

Avco Delta Realty Limited

mtg 266/75 inter alia

R 355/485

Plan P-647
Jan. 25, 1974
Feb. 28, 1974

Lloyd B. Patterson

copy attached

WD
B322 P302
Feb. 27, 1974
Feb. 28, 1974
\$1.00

Lloyd B. Patterson et ux
Mabel L.

and

George E. Fraser

Conveys L/Q (46.32 acres with r o w)

WD
B331 P775
Oct. 5, 1974
Oct. 8, 1974
\$1.00

George E. Fraser et ux
Audrey

and

Walter John Hawkins

Conveys 322/302

WD
B411 P772
July 24, 1980
Aug. 1, 1980
\$1.00

Walter John Hawkins et ux
Mona Marie

and

Salsman Investments Limited

Conveys L/Q"

The lands, I am informed, are vacant lands and are located at Tennecape, Nova Scotia. Tennecape is a rural area in Hants County.

No defence was filed or other material supplied to me by the defendants. The respective positions of the parties are set forth in their pre-hearing memoranda, each dated August 20th, 1990. The parties have agreed that I should proceed on the basis of the information contained in the statement of claim, the affidavit of Elizabeth Haldane and the pre-trial memoranda.

Alan G. Hayman, Q.C. also appeared. He represented a predecessor in title to the vendor.

The **Vendors and Purchasers Act**, provides, inter alia, as follows:

" 2. In the completion of a contract of sale of land, the rights and obligations of the vendor and the purchaser shall, subject to any stipulation to the contrary in the contract, be regulated by the following rules:

(a) recitals, statements and descriptions of facts, matters and parties contained in statutes, deeds, instruments, conveyances or statutory declarations, any of which are more than twenty years old at the date of the contract, unless and except in so far as they are proved to be inaccurate, shall be sufficient evidence of the truth of such facts, matters and descriptions;

(b) a registered release of a discharged mortgage shall be sufficient evidence of the mortgage without the production of the mortgage, unless and except in so far

as the release is proved to be inaccurate, and the vendor shall not be bound to produce the mortgage unless it is in his possession or power.

3. In an application under this Act or in an action, it shall not be necessary to produce any evidence which by Section 2 is dispensed with as between vendor and purchaser, and the evidence therein declared to be sufficient as between vendor and purchaser shall **prima facie** be sufficient for the purposes of the action or application.

4. A vendor or purchaser of any interest in land or his representative may, at any time and from time to time, apply in a summary way to a judge or local judge of the Trial Division of the Supreme Court in respect of any requisition or objection or any claim for compensation, or any other question arising out of or connected with the contract and the judge or local judge may make such order upon the application as appears just, and refer any question to a referee or other officer for inquiry and report."

The title in question cannot be traced to a crown grant and cannot be traced to a warranty deed which is sixty or more years old. Ordinarily, there is no question but that a title traced back only to a quit claim deed would not be considered a good root of title.

"A 'good root of title' was considered to be the first deed or grant of the fee simple in the land registered for more than forty years which did not depend on any other instrument for its validity." [Anger and Honsberger Law of Real Property (2d), p. 1120, footnote (4)]

It is not necessary, on the facts before me, to decide the appropriate period required to establish

title. If either of the 1902 and 1908 deeds can form the good root, then the time requirement has been met. The first warranty deed in the chain of title is 1967 and the period thereby created cannot meet the least demanding standard.

In this case, both the 1902 and 1908 conveyances are in quit claim form.

A quit claim deed transfers only that title which the vendor has. There is no warranty of title. If the vendor has no title, no title passes. If the vendor has good title, good title passes.

It has been submitted that the combination of the recitals in the 1967 deed and s. 2 of the **Vendors and Purchaser Act** are sufficient to give a good root of title. The submission is to the effect that reliance may be placed upon the recital which is more than twenty years old; therefore, the ownership of James Brown, which can only arise from the 1908 deed, is of sufficient age to be relied upon.

The first recital in the 1967 deed from the heirs of James Brown sets forth that James Brown "died intestate, seized and possessed of the hereinafter described lands".

"A recital is evidence only of what is actually

recited..." [Anger and Honsberger Law of Real Property, supra, p. 1282]

But the recital herein merely says that James Brown died "seized and possessed" of the lands. It does not say how he had achieved that degree of ownership. In fact, that ownership may have been achieved by possession alone, without reliance upon the 1908 deed. The recital does not indicate when James Brown died or when he obtained the ownership. The fact that he was "seized and possessed" of the land in question may have been of relatively recent origin and may have been a possessory title only. The recital does not change the fact that the 1908 conveyance was a quit claim deed. The 1908 deed was not a good root of title and this recital does not change that fact.

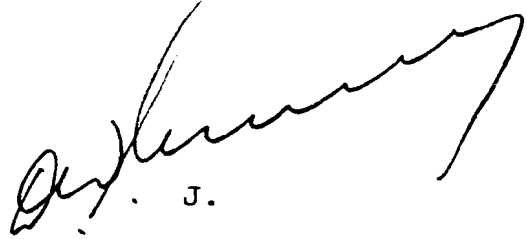
The parties may well be able to prove satisfactory title by means of evidence of possession for the required period. I do not have sufficient factual information to draw any conclusions on that period, but the recital in the 1967 deed, if supplemented with additional information, may create the title needed by the parties.

The objection to title, however, is valid, and an appropriate order will issue on the request of the defendants.

There will be no costs awarded in this matter

as it came before the court in the manner of a joint reference for an adjudication to the title objection.

Order accordingly.

A handwritten signature in black ink, appearing to be "D. J. J.", written in a cursive style. The signature is slanted upwards to the right and ends with a long, sweeping flourish.

Halifax, Nova Scotia

September 27th, 1990