

SUPREME COURT OF NOVA SCOTIA

Citation: *Jefferson v. Jefferson*, 2024 NSSC 43

Date: 20240117

Docket: 503147

Registry: Bridgewater

Between:

Tabatha Jefferson and Matthew Ritcey

Plaintiffs

v.

Trevor Jefferson and Chandell Lohnes

Defendants

Judge: The Honourable Justice Diane Rowe

Heard: April 24, 25, 26, 27, and 28, 2023, in Bridgewater, Nova Scotia

Oral Decision: January 17, 2024

Counsel: Colin Fraser, for the Plaintiffs
Kate Naugler, for the Defendants

By the Court, orally:

Outline of the Dispute

[1] Tabatha Jefferson (now Tabatha Ritcey) pleads that in April 2012, her brother Trevor Jefferson needed a place to live. Tabatha then owned, in fee simple, a house and land at 6 Lacey Lane, in Lunenburg County (the “Property”). As many of the persons in this matter have similar surnames, the Court will use first names, for ease of reference only.

[2] Tabatha states she gave permission to Trevor to live at the Property with his companion, Ms. Erin Wheeler and their two children, on the basis that he was not required to pay rent and that he would be responsible for repairs and maintenance of the Property while he was there.

[3] Tabatha submits that there was no tenancy established in this relationship, and that the *Residential Tenancies Act*, R.S., c. 401, s. 1., is not applicable to this matter. She believed that she could withdraw her permission for her brother to reside at her property at any time.

[4] Tabatha submits that Trevor did leave the Property for a period of time, from June of 2014, until he moved back in again on March 11, 2015, though then with a

new companion, Ms. Chandell Lohnes, and her children. Tabatha knew that he had moved back in again at the Property.

[5] On June 10, 2020, Tabatha and her husband, Matthew Ritcey, served a Notice to Vacate to Trevor and Chandell, giving notice that they were to leave no later than June 26, 2020. This was ignored, with litigation commencing.

[6] Trevor and Chandell did not leave. They continue to reside at the Property, and are also seeking remedies from the Court, set out with more particularity within this decision.

Procedural Background

[7] This dispute began as an application, filed on December 16, 2020. Tabatha and Matthew were seeking an Order of the Court to remove Trevor and Chandell from the Property.

[8] A Notice of Contest was filed, challenging the jurisdiction of the Supreme Court to hear the matter and arguing that the Respondents were tenants at will under a verbal agreement, with jurisdiction in accordance with the *Residential Tenancies Act*, or, in the alternative, seeking that the Court recognize an equitable

interest in the Property, with Trevor and Chandell as beneficial owners based upon an agreement.

[9] This Notice of Contest was amended on August 31, 2021, with pleadings added to claim: (i) beneficial title to the Property; (ii) Constructive Trust; (iii) Proprietary Estoppel; (iv) unjust enrichment; (v) quantum meruit; (vi) gift; and other equitable relief as contemplated by s. 41(d) of the *Judicature Act*, RSNS 1989, c. 240. The *Residential Tenancies Act* and the jurisdictional issue was still referenced within the Amended Notice as before.

[10] During this time, there was a change of counsel for Tabatha and Matthew Ritcey, with subsequent counsel adopting a different approach to the file.

[11] When the matter next came before the Court, counsel for the parties were in agreement that there would be no further proceeding in relation to the jurisdictional issue and the application of the *Residential Tenancies Act* to this dispute, and requested that the Court convert the application to an action, with new pleadings to be filed. The matter was estimated to require at least five days of Court time.

[12] The Notice of Action was filed December 22, 2022. The claim pleads that, in April 2012, Tabatha gave permission to Trevor to reside on the property, and that she could withdraw that permission and request that Trevor vacate whenever

she wished. It states that an inspector with the Municipality of the District of Lunenburg visited the Property on June 3, 2020 and found the chimney to be in a dangerous condition. This then necessitated the Notice to Vacate the Property given to Trevor and Chandell on June 10, 2020. The Plaintiffs are seeking an Order of the Court that the Defendants be removed from the Property, with a date certain for vacant possession, as well as a declaration that Trevor and Chandell have no legal or equitable interest in the Property.

[13] The Defence and Counterclaim by Trevor and Chandell was filed January 13, 2023. The Defendants admitted the facts in paragraphs 1, 7 and 8 of the claim. These three paragraphs confirm that Tabatha is the registered owner of the Property, and that on June 10, 2020, a Notice to Vacate was served on the Defendants, who continue to reside there without paying rent. The Defendant also responds that there is not a landlord and tenant relationship between the parties.

[14] The Counterclaim alleges that, in or around April 2011, Tabatha had promised Trevor that he could move to the Property to live to “make it his own and live there for as long as he wanted.” The Court notes that the Counterclaim also states that Mr. Fletcher Croft, the prior owner of the Property, had conveyed it to Tabatha on January 28, 2010, on the basis that Tabatha and Trevor would care for him and operate the Property as a farm.

[15] It is pled that Tabatha asked Trevor if he could move into the Property, and take on responsibilities for Mr. Croft, and be responsible for repairs and maintenance. Trevor states that Tabatha promised him if he did this, when Mr. Croft died, that the Property would become his. This is referenced as the “Agreement”.

[16] Trevor submits that, because of this Agreement, he and his former partner Ms. Erin Wheeler and their children, moved into the Property in April 2011, where Mr. Croft was still residing. He states that he and Ms. Wheeler provided care to Mr. Croft until he died on November 14, 2013.

[17] During this time, Trevor also pleads he performed repairs and maintenance to the Property, and it was approved by Tabatha, with her reaffirming her promise.

[18] Trevor’s pleadings are that he eventually re-partnered, with Chandell Lohnes, and she came to live at the Property with her two children in late 2014.

[19] Trevor submits that Tabatha reneged on her promise to him by conveying the Property into her and her husband Matthew’s names on January 25, 2018. She then requested that Trevor pay her rent, which he did not do. Trevor also indicates that “a few months later” she asked him and Chandell to leave the Property.

[20] Trevor's pleadings request that the Court find that Trevor has an equitable interest in the property, as well as Chandell, as beneficial owners or otherwise, based on the verbal agreement between the parties and their respective actions.

[21] They plead that they relied on Tabatha's promise that the Property would be Trevor's and he could "live there as long as he wanted". They submit they have invested time and money on repairs and maintenance on the Property.

[22] Trevor argues that Tabatha made a fraudulent representation to Trevor that the Property would be his if he cared for Mr. Croft until he died, and as a result he proceeded to make repairs and renovations.

[23] Further, it is alleged that Tabatha harassed and intimidated Trevor and Chandell, trespassed on the property, damaged the property including a water system (a hose), intruded on their seclusion, took surveillance of them with a drone, caused a private nuisance, made public and unmerited complaints to authorities and government, intercepted a firewood delivery, and made Trevor and Chandell fearful.

[24] In the alternative, it is also argued that Tabatha held the deed "in trust" for Trevor.

[25] In the further alternative, it is argued that the Agreement is a legally binding contract which was breached.

[26] In total, the Defendants (Plaintiff by Counterclaim) plead the following:

- (i) beneficial title to the Property;
- (ii) constructive Trust;
- (iii) proprietary Estoppel;
- (iv) unjust enrichment;
- (v) quantum meruit;
- (vi) gift;
- (vii) civil fraud;
- (viii) breach of trust;
- (ix) harassment;
- (x) intrusion upon seclusion;
- (xi) trespass;
- (xii) private nuisance;
- (xiii) breach of contract;
- (xiv) and other equitable relief as contemplated by s. 41(d) of the *Judicature Act*, RSNS 1989, c. 240.

[27] Trevor and Chandell seek that the Court make an Order for:

- (i) a declaration of equitable title in the property as beneficial owners;
- (ii) title and possession of the Property;
- (iii) a constructive trust over the Property;
- (iv) a declaration of the Respondent's interest in the Property;
- (v) restitution for unjust enrichment by constructive trust, proprietary estoppel, breach of contract and otherwise;
- (vi) a declaration that the Respondents' interest in the Property is a gift;
- (vii) general damages;

- (viii) special damages;
- (ix) pre-judgment interest;
- (x) costs; and
- (xi) “other”

[28] The matter was heard from April 24 to 28, 2023. At the close of argument, it was noted that there were no submissions filed by counsel in regard to the counterclaims for harassment; intrusion upon seclusion; trespass and private nuisance. Written submissions on these issues were completed by counsel for the parties on June 9, 2023.

Evidence

[29] The hearing began with a discussion of the availability of Ms. Wheeler as witness. She now resides in Newfoundland, and was only available to participate remotely by video. Counsel for Trevor and Chandell indicated to the Court that Ms. Wheeler was unable to participate in the pre-hearing video test required in advance of the hearing, so she was withdrawing the witness. The Court asked counsel to clarify whether she wished to seek an adjournment of the hearing, with counsel stating that Ms. Wheeler was “not well” and unable to do the test, and so unable to attend the hearing at all due to illness, and that her instruction from Trevor was to proceed.

Adam Whynot

[30] Mr. Whynot attended the Property in 2018 for about one hour, at the request of Matthew Ritcey. He recalled the structure had rotten beams and was in poor condition. Mr. Whynot's evidence was that he talked to "a guy" who was there and showed us what he did to the place.

[31] Mr. Whynot recalled that there was a heated exchange between Matthew and "a lady" who was there.

[32] Mr. Whynot was a carpenter, self employed, for about 25 years. He was not offered as an expert. He charged about \$55 an hour but then charged about \$30 an hour for repair work. He had been hired by Matthew in the past for repair work.

[33] His view of the Property was that the house was old, rundown, was in excess of 70 years, with a leaking roof and rot.

[34] Mr. Whynot was a consistent witness, and detailed on the state of the structure as he saw it. His recollection was that he told Tabatha that it would cost as much to fix it as to tear it down.

[35] He established his costing based on the walkthrough, with a rough estimate of what each job would cost to fix, based on time, labour and materials. Tabatha

was present during the walkthrough. He thought the defendants were there but would not know them at the time he gave evidence.

[36] Mr. Whynot could not recall the number of bedrooms but did recall a rock foundation on the house. He was not clear on where he saw rotten beams or whether he was in the attic or basement.

Pamela Knickle

[37] Ms. Knickle's evidence was that she managed her father's rental properties in nearby Mush-a-mush, also referred to as Cornwall. She recalled that Trevor and Erin Wheeler rented a house from her father in 2011 to 2012.

[38] Ms. Knickle stated that they paid rent at the beginning of their occupation of her father's house and then stopped. She recalled she then involved the Residential Tenancies Board in the matter. Her evidence is that Trevor and Ms. Wheeler were more than one month in arrears.

[39] On cross examination, Ms. Knickle indicated she was unsure if Trevor and Ms. Wheeler were at the rental house for more than a year in 2011 to 2012, but she was firm that she attended the house more than twice during this time to collect rent and that the house was rented to Trevor and Ms. Wheeler.

[40] There are no copies of this lease agreement as over 11 years have elapsed. Ms. Knickle's father is deceased. She recalled though that the rent was \$500, and that there were arrears.

[41] Ms. Knickle could not recall whether Trevor had ever done work in exchange for renting the house, or houses. She was very credible when answering that her father did his own work on the heating system, and firm that there was no agreement with Trevor to waive rent in exchange for work on her father's homes. At times the cross-examination was heated, but Ms. Knickle was clear that her father did not enter into an agreement for Trevor to exchange work for rent.

Peggy Jefferson

[42] Ms. Jefferson is the mother to Trevor and Tabatha. Trevor and Tabatha are two of her four children. She lives very close to the Property.

[43] Her evidence was that Trevor and Erin had left the house at Mush-a-mush/Cornwall and asked if they could live with her at her home, offering to pay the light bill in exchange. She permitted them to live with her, but they did not pay this bill. She recalled this occurring at the end of December 2011 and they lived with her until April 1 or late March following, as they did not pay the bills. In April 2012, she recalled that they went to the Property to live with Fletcher Croft.

[44] Ms. Jefferson's memories of when Trevor next lived with her are quite clear. In June, 2014, Erin Wheeler left Trevor to go to Newfoundland, and took their two children with her. One of Ms. Jefferson's sons, Scott, died in September, 2014. Trevor moved out of the Property and moved in with his mother upon Scott's death.

[45] Ms. Jefferson was a credible and consistent witness, generally. Upon being asked why she permitted her son to move in and out of her home, despite her having asked him to leave before, her response was a simple "he's my son." She had welcomed all of her children and grandchildren back to her home at different times, parenting a few of them, including Trevor's eldest child. It was apparent that the dispute between her adult children and their partners caused her distress.

[46] Her recollection was that Trevor moved his clothes into her home in September, 2014, and that her common law partner Donald then went to the Property and removed items that Trevor did not want around anymore. On redirect, she was clear that Trevor had moved into her home, to reside full time.

[47] She recalled her daughter Tabatha assisting Mr. Croft on a daily basis, for many years. Tabatha would stay at her mother's house, as it was close to Mr.

Croft's. She recalled that her daughter was more involved in Mr. Croft's care, and generally doing "more" for him.

[48] Ms. Jefferson's relationship with Trevor is estranged, as she stated he told her Chandell did not like her, and told her not to speak to her children or wave to them. This admonition was extended to her husband Donald as well, although she remembered that Chandell's kids did spend time at her house. She did not recall arguments with Tabatha or that she had told Trevor his wife was unfaithful.

Matthew Ritcey

[49] Matthew is married to Tabatha and holds joint title to the Property. He was added to the title in 2018. His evidence was that this was intended to assist in obtaining a mortgage to build a house or tear down the one at the Property.

[50] His recollection was that Trevor and Chandell moved into the Property since about March of 2015. On cross examination, he indicated it could be late 2014.

[51] Matthew's affidavit contained photos of him doing levelling work with his own heavy equipment at the Property. This included removal of large pieces of junk metal and extensive excavation work in 2016 and 2017, with an improvement of the property. On cross examination, Matthew stated that Trevor helped with this

by “supervising” but that he was the person who excavated. This then was adjusted further, as Matthew indicated that he helped on the weekends at the Property before Trevor and Chandell moved in, and that he was responsible for road work mainly.

[52] His evidence concerning Mr. Whynot’s viewing of the property was consistent in regard to Chandell becoming very upset with him. He reiterated that Mr. Whynot told him it would cost more to tear down than to fix.

[53] Matthew exchanged emails with Trevor in 2020, as appended in his Affidavit of March 27, 2023 at Exhibit “D”.

[54] In an email dated April 19, 2020, Trevor sent Matthew a message in which he wrote: “Hey I heard you were thinking about selling properties back here. I am interested in the property the house is on. What price are you thinking of so I know if I can do it.” Matthew then informs Trevor that they are getting the land appraised and then will determine a price.

[55] Trevor’s response is: “Ok sounds good I will be waiting”.

[56] On April 20, 2020, Matthew emailed Trevor again, stating that Tabatha would not sell to Trevor: “... because of the way things happened over the years and when you guys were so close and you told her that she was dead to you.... I no

[sic] we had that talk in that truck and we agreed on certain things but them things did not come true unfortunately. When you guys find a place be sure to take everything you invested in the house, with in reason.”

[57] The email response from Trevor to this was: “We been planning to leave for awhile since you opened your mouth down here last time... We found out what kinda people you are so we had put our plan in action long ago. It’s a fact that we will be moving and if I don’t get the time and it’s gotta be drama free... I will be making a few phone calls that will turn you life upside down. It’s a free world and I have the right to wave to who I want when I want. You aren’t as innocent as you think you are. I’m done sitting around keeping my mouth shut and taking it up the ass.”

[58] Matthew’s email in return is a short: “I am so sorry to here that.”

[59] On direct examination, Matthew’s evidence was that the email reference to a “...talk in that truck...” referenced a conversation where he told Trevor the house was not fit to live in after the inspection by Mr. Whynot in 2018 and they agreed then it was time to go.

[60] Further, Matthew's affidavit appended pictures of the Property at Tabs "E" and "F" taken by a drone of the side and back door of the house, taken on March 22, 2021.

[61] His evidence was that these pictures were taken to show the poor condition of the house and the debris surrounding it. Another picture shows the back of the house, the above ground pool and new deck work, a new door and new paint. The house is not in good repair and with poor conditioning. One side of the roof has shingles with tar on the back side of tin. There is debris surrounding it.

[62] Matthew stated that the drone was never less than 100 ft over the Property and was "not often" flown.

[63] Matthew admitted that there is a 360 degree camera, with motion detectors, set up so that nothing is stolen from their other property that they own at 7 Lacey Lane, which is adjacent to the Property under dispute. They didn't intend for this security camera to capture activity at the Property.

[64] Trevor did work for Matthew in a towing business, in about 2013 until about 2018. Their relationship was not always negative.

[65] On cross examination, Matthew's evidence was that when Mr. Croft was alive that Trevor had screwed a door shut in the house, so that he and his family

did not deal with Mr. Croft. Mr. Croft lived on one side of the house on the Property, with Trevor and his family in the other. Matthew indicated that he had only been in the house about two other times after Mr. Croft had died.

[66] Matthew admitted that he gave Trevor cupboards that Trevor installed in the Property. He also drove Trevor to get wood, and lent him his truck.

[67] On redirect, it was apparent Matthew has not been inside the Property for years as he believes that Trevor will call the RCMP if he attempts to enter.

[68] Matthew is an interested party, and his evidence was, at some parts, self serving. The evidence concerning the email exchange of June 19 and 20, 2020 though is accepted for the truth of its contents concerning the enquiry from Trevor about purchasing the land from Tabatha and Matthew, and the ensuing responses.

Tabatha Ritcey

[69] Tabatha confirmed that she added Matthew to the title in 2018 in order to obtain financing to get renovations done on the Property.

[70] The Property has 15 acres of lakefront. She noted that Trevor and Chandell had built a play house, a shed, and a well house on the land.

[71] Tabatha acquired title in 2010, when Mr. Croft gave her the land. Her evidence was that Mr. Croft had congestive heart failure and was unmarried, without children. This was not the only land he had gifted her. In 2006 Mr. Croft had gifted her 7 Lacey Lane, and, in all, there were 6 properties gifted to her by Mr. Croft.

[72] She had given one parcel to her brother Corey. She granted him title, but after his marriage ended, he deeded it back to her. No money was exchanged.

[73] Tabatha recalled that Trevor moved into the Property in Spring of 2012, as he had “a racket,” or argument, with their mother over the power bill and its non-payment.

[74] She recalled he needed a place to go, and that she said he could stay at the Property, but for a short time. Mr. Croft’s house was full of “stuff” and there was no place cleared enough for other people to live there. The house had a rock walled basement, with a foundation caving in, and a leaking roof with buckets underneath.

[75] Tabatha stated she went to the Property every day. Mr. Croft did not go into all the rooms in the house, but wanted them left “as is.” She helped him with his chicken coops and egg business, took him for outings, and did personal care by

administering medications and eye drops. Trevor did not assist with any of these activities or tasks.

[76] Tabatha recalled that she told Trevor not to pay rent and that he didn't have to do anything. Trevor chose to put in gyprock on "their side" of the house that she and Mr. Croft had paid for, in order to create walls for Ms. Wheeler and the children on the other side of the house. She also paid for paint for the girls' room. Tabatha states that she and other family members all helped to "fix up" his side of the Property when he first moved in, as they had a good relationship then.

[77] Her evidence though, was that if something was broken on Trevor's side after he moved in then he was to maintain it, for example, if the pipes broke he would have to fix that.

[78] She recalled that on her brother Scott's death in 2014 that Trevor left the Property to move back in with their mother. Trevor's family had left, and Trevor was depressed.

[79] When she went to the Property at the end of December 2014, the house had been left without heat and the pipes were frozen, with the toilet cracked. Tabatha cleaned it up. Trevor stayed a few days as he then had visitation with his children,

who had come from Newfoundland, and then afterward he returned to his mother's house, where he stayed until March, 2015.

[80] In 2015, Tabatha had told Trevor to show the Property to his new partner, Chandell and if she wanted to stay "for a little bit" then it would be "okay with her."

[81] There was no rent discussed, but Tabatha stated that they did help with taxes.

[82] Then, in June 2018, Tabatha electronically messaged Chandell indicating she was planning on having work done in the spring, and if they planned on staying that rent of \$500 a month plus utilities would be due March 1. Chandell's reply to this message was: "work done where", and Tabatha responded, "house your living in". Chandell's response to this was: "how come your doing that when we are slowing trying to fix it". After Tabatha tells Chandell they plan on living there, Chandell responds: "Ok I will start looking for a new place asap".

[83] Tabatha stated she asked for rent at this point to cover the costs of a new roof, and to fix the Property. She and Matthew thought that Trevor and Chandell would then go find a new place to live, and no rent was paid. At about the same

time Matthew's father died after these messages were exchanged. Two more years passed.

[84] After the Notice to Vacate was served on Trevor and Chandell in June of 2020, the relationship had deteriorated by September 23, 2021, to the point where mutual Peace Bonds were entered into by all the parties, limiting communication to counsel.

[85] On cross examination, Tabatha was thoroughly questioned on how, as a stay at home mother to two children who lived at a distance from Mr. Croft, was she able to give him consistent care and attention. Tabatha was firm in her answers, as she outlined how her husband or other family members would care for her children, and she would stay at her mother's home overnight as needed. She outlined a day where she would get her oldest to school first, then take her younger one with her and get a babysitter. She would get Mr. Croft his groceries, meals and care for him. Tabatha would also camp at 7 Lacey Lane from time to time.

[86] Tabatha recalled that when Trevor moved in they talked about him moving in, but did not discuss what his plans were. On cross examination, Tabatha indicated that after 3 years had passed in 2018, she wished to change the arrangement, by then with Trevor and Chandell to receive rent payments to assist

with costs for work on the Property, with this as the basis for her request for rent in 2018. This was consistent with her evidence.

[87] Tabatha admitted on cross examination that she had asked her own daughter to contact Chandell via Snapchat to tell her that Trevor will not be living on her land, and: “it’s was a deal between Trevor and I... Thing fell threw [sic] and nobody talks so I can’t live like this no more. Not even feeling welcome on my on [sic] property...’ and that she (as “Kingpin”) “will just sell”. This screenshot of a message is not dated, and while Tabatha agrees that she is nicknamed “Kingpin” she does not remember taking the screenshot or providing it to her counsel. Her daughter, Samantha Jefferson, authenticated the document was a Snapchat she screenshotted of a message she had written on direction from her mother.

[88] The Court is left to infer that this Snapchat may be the trigger for the exchange between Matthew and Trevor in April of 2020 concerning a potential sale of the Property, but it is difficult to find this as a certainty.

[89] Tabatha answered on cross that the “thing” that fell through was “possibly her family relationship.” There was a ring of truth to that.

[90] In regard to how Tabatha acquired legal title to the Property, Tabatha recalled that in the winter of 2010 that she, Mr. Croft, and his lawyer went into his

lawyer's office. She recalls that her daughter was with her, and Trevor as well. Mr Croft was assisted by Trevor into the law office, but then he remained with her daughter in Tabatha's car.

[91] Tabatha was presented, during cross, with the Tax Assessed values for the Property, and she agreed that the valuation went up despite the house being dilapidated and with structural issues. However, on redirect, it was pointed out that between 2018 and 2019 the assessed value went down \$500.

[92] Tabatha agreed that Trevor did cut wood on the property for heating purposes while Mr. Croft was alive. Trevor would also help clean the chimney from time to time.

[93] Tabatha did foot care for Mr. Croft, she held a Power of Attorney for him, as well, and administered his finances.

[94] It was noted to the Court that Notice of 16 days were given to Trevor, Chandell and the two children to vacate the Property in 2020. The Court takes note that this Notice was served during the first months of the Covid-19 pandemic. Tabatha indicated that this time period was suggested by her prior counsel.

[95] Tabatha admitted to calling the Municipality to advise of potential safety issues at the Property, and admitted she did drive her 4 wheeler over the hose that

Trevor and Chandell had installed for their water, which was then being used as the well had run dry in 2020.

[96] Trevor and Chandell replaced the chimney and stove with a WETT certified chimney after being asked to leave the Property in 2020, at their own cost.

[97] Tabatha confirmed that she had also called the Department of Environment, after issuing the Notice to Vacate, concerning the septic system and pool.

[98] In addition, Tabatha swore an affidavit in support of Trevor's family court matter involving the dissolution of his partnership and parenting time with his children. In that affidavit, sworn September 5, 2014, she stated she was the sole registered owner; had never asked Trevor or Ms. Wheeler to leave; that she is "pleased and relieved" that Trevor has been performing repairs and renovations; and that "it is my position that Mr. Jefferson can make the property his home on the same basis for as long as he wants."

[99] Tabatha's evidence was that she gave this evidence in that other proceeding but not as an agreement that Trevor could own her property, but that he could live there as long as he wanted on the same basis.

[100] Tabatha noted that Trevor and Chandell had paid some taxes, but there was little certainty on the amount. She noted that Trevor built a pool, and that she

believed that the pool is on part of the septic field. She believes Trevor uses water from the lake for the pool as the well has run dry.

[101] Tabatha indicated Trevor and Chandell did do repairs to the house, in constructing the pool and deck, and painting the shingles. She noted a patio door was installed, which Tabatha noted occurred after she gave notice to vacate in 2020 and the sun porch on the house was thereafter ripped off.

Patricia Jefferson

[102] Patricia is the former sister in law of Tabatha and Trevor. She has known Tabatha for about 40 years. She was married to their brother Corey.

[103] The Court was required to make a determination on the admissibility and scope of her evidence, as it became apparent that similar fact evidence was the focus of her examination concerning Tabatha and her brothers' dealings with land.

[104] The Court considered and applied *R v. Handy*, 2002 SCC 56, and is mindful of the factors in determining whether similar fact evidence was admissible. The acts sought to be entered were not close in proximity, as they would each be 7 to 11 years in separation.

[105] Further, there was little similarity between these two incidents. This dispute before the Court is to determine whether an agreement, a misrepresentation or some other equitable interest exists to give rise to an interest in land or restitution to the benefit of Trevor and Chandell as opposed to a separate proceeding in which a legal interest in land was documented and registered between different parties. Further, counsel for the Defendants had not asked Tabatha whether she had held deeds in trust for any others during her cross examination.

[106] With some limiting, Patricia was then questioned on the evidence she did have concerning the Property, and not the details of her ongoing matrimonial dispute with the litigants' brother, Corey. She did characterize her relationship with Trevor as formerly volatile with ups and downs.

[107] She observed Trevor working on Mr. Croft's Property. This included assisting with the chickens. She gave evidence that she clipped Mr. Croft's nails, and administered eyedrops. She did state Tabatha took Mr. Croft to the hospital.

[108] Patricia's evidence was that one time while she cut Mr. Croft's toenails, that he said he was going to give property to Tabatha and "the boys" were supposed to have the rest, with Trevor to be a farmer.

[109] Patricia did state that Tabatha was at Mr. Croft's house every day. Her evidence corroborated that Trevor had left the house unattended in late 2014, with the pipes freezing, requiring the family to help put in the pipes and clean up. She also alluded to the family helping out when Trevor moved in with Chandell, by washing the walls, which included Tabatha and herself with other family members and friends engaged in this.

[110] Her evidence was that she heard Tabatha say Trevor was to use the Property to make it his "at least six times.. over the years." The statement, if made, can't be accepted for the truth of its contents as it is hearsay, and Tabatha was not cross examined on it.

[111] Patricia stated that she was present at the incident involving the delivery of firewood to the Property, and observed that Tabatha was upset and had refused delivery.

[112] Patricia was also present during an incident involving a blueberry patch with driving over it by Tabatha. This incident was not canvassed with Tabatha when she was being cross examined.

Donald Green

[113] Mr. Green is Peggy Jefferson's partner of 30 years. He has known the litigants since their childhood.

[114] He knew Mr. Croft as a neighbour and was familiar with the Property. He noted that the chicken coops were now gone, the ceilings improved, and that it was generally cleaner.

[115] The ceilings had fallen, and Trevor had put them back up again. The roof has problems with leaks, and parts, but not all, are fixed. Mr. Green also believed that the plumbing was replaced after the pipes froze. He estimated the time as concurrent with Trevor having left the Property during winter.

[116] He did not recall Trevor helping with the plumbing, but rather Corey and his friends making the repairs. His memory was that Trevor was not living at the Property, but living with him and Ms. Jefferson. Trevor lived with them for months.

[117] Mr. Green disposed of everything at the Property, other than the children's items that were located at Mr. Croft's home, by burning them, at Trevor's request.

[118] Mr. Green helped fix the Property by installing a new floor in the bathroom, cleaning the house and removing old gyprock. He also assisted Trevor in putting up new gyprock before Chandell moved into the Property.

[119] He gave Trevor supplies, including shingles and a roll of roofing materials. Mr. Green was given old cupboards, which he gifted to Trevor to install at the Property.

[120] Mr. Green was refreshingly frank in his evidence, although a bit confused on dates. He was unequivocal that he wanted to stay uninvolved and was not present for conversations about the Property.

[121] Mr. Green was very firm that Tabatha helped Mr. Croft more than any other person, with Tabatha being present there every day.

Trevor Jefferson

[122] Trevor's evidence was that he moved into the Property before Easter, in 2011. He recalls that his sister and he drove to get his daughters at the North Sydney ferry at one point, but it was not clear from his evidence which year he was referencing.

[123] Trevor's literacy skills are limited, and he acknowledged that the affidavit evidence he swore was read to him.

[124] At the outset of his evidence, counsel for Trevor and Chandell placed two documents before the Court purporting to be signed by Robert Knickle, Ms.

Pamela Knickle's father, and by Erin Wheeler, concerning their tenancy at that location. These documents were produced to counsel the evening before Trevor's examination in Court was to proceed as they had just been found the night before by Trevor and Chandell. The documents were not authenticated and they were not admitted.

[125] Trevor's evidence was that his wife does all his banking, as Ms. Wheeler did before the end of their relationship. Before Ms. Wheeler, he indicated that Tabatha dealt with his finances.

[126] He recalled that he was unsure if he was with Mr. Croft and Tabatha, or alone with Mr. Croft, but that Mr. Croft said "You boys are gonna get land". He assumed Mr. Croft had included Tabatha as she had a parcel at 7 Lacey Lane.

[127] Trevor stated that while he lived in Cornwall he was working at the Property in the back woods for about 5 years before then but was not at the house. Mr. Croft had fallen and spent the night on the floor of his chicken coop. Trevor stated that it was Tabatha who took Mr. Croft by the arm to help him at that time.

[128] Trevor's evidence was that he observed Mr. Croft was having difficulties. The Court does not find his evidence that he moved in to assist Mr. Croft as reliable or credible.

[129] Trevor's recollection of his rental arrangement with Mr. Knickle and the collection of rent was also not credible. He indicated that he would pay Ms. Knickle's father most of the time, and Erin would drop off payments to Ms. Knickle in cash. His evidence was that he lived at the Knickle property for two years, or possibly three, and was never behind on the rent.

[130] Trevor stated that he had finished rooms at the Knickle property, and that he was given two months free rent. He had also paid in cash for replacement of a tank.

[131] Trevor confirmed that Ms. Knickle had been to the house in Cornwall but that he did not see her. Trevor disputed that the Residential Tenancies Board was involved in that tenancy at the Knickle's home, and that he was not asked to leave.

[132] Trevor did recall a conversation of "some sort" but not too much of concerning an agreement with Tabatha and the Property. He believed that she was going to hold the Property in her name until it could be put in his name, as she did not trust Ms. Wheeler to not claim half an interest.

[133] On a question concerning whether he did live with his mother Ms. Jefferson, Trevor said no, that he and Ms. Wheeler moved directly to the Property. However, he then revised this response to that of Ms. Wheeler putting the kids to bed at his

mother's house and so he and Ms. Wheeler did stay there. On cross examination, he then said he did not live with his mother.

[134] Trevor indicated that Tabatha had said on a dozen times, beginning before he lived at the Property, that the Property was to be "his place" and he could do whatever he wanted. However, he could not confirm if she said this to him after Mr. Croft died. He was unable to say when the last time she said that the house was to be his. There is no reliability or any detail in these statements attributed to Tabatha, and the Court can't rely upon it. His own counsel directed Trevor to consider Tabatha's affidavit in Trevor's family court proceeding.

[135] Trevor alluded to wanting to get a government grant to upgrade the Property, but was unable to do so without it being registered in his name. He recalled that Tabatha's response was that she would not vest the deed in Trevor's name, again to avoid matrimonial property division, but this time with Chandell.

[136] Trevor did not give evidence that he knew why Tabatha would be keeping his deed in her name for him. He was unclear on dates, and was unsure about the year he moved into the Property with Ms. Wheeler and their children.

[137] He acknowledged that when Mr. Croft was taken places, it was Tabatha mainly, or Ms. Wheeler, and, on one occasion, Mr. Croft himself driving. He saw

his role as doing repairs, dealing with animals, shovelling the driveway and working with chicken coops. There was also garbage dumping, and some wood clearing and chopping. His involvement in Mr. Croft's personal care was to place pills on a spoon that Mr. Croft would then bring to his own mouth. Occasionally, he would make porridge for Mr. Croft, and gathered his mail, although Tabatha told him to stop.

[138] Trevor recalled that at least twice Tabatha said the house was not fit for Mr. Croft, and it was cleaned "as a team". This included Tabatha cleaning out a can that Mr. Croft defecated into, which Mr. Croft once threw at her.

[139] Trevor put in a new countertop, prior to Mr. Croft's death, as part of the cleaning measures. Tabatha also installed a pump.

[140] He did install a lock on the door between Mr. Croft's living area in the house and the side that Ms. Wheeler, he, and their children lived in, and all the rooms had deadbolts. He was worried that the children would access Mr. Croft's medications.

[141] Trevor observed that Mr. Croft also hired a neighbour to assist him with his farm.

[142] After Mr. Croft died, Trevor's evidence is that he continued to work on the house by putting on shingles, new boards, a new window, patio doors on the back,

a section of the roof, and some rafters. Trevor states he installed two 20 ton jacks in the basement, but there is no photographic evidence or any evidence tendered of this. It is not clear exactly when this work occurred, or if this is intended to include all the work done from the time either before his taking residence in March of 2015 or since.

[143] His recollection of the day that the Property was conveyed from Mr. Croft to Tabatha is that he, Mr. Croft and Tabatha were present and that he helped Mr. Croft into the law office. He believed that the paperwork was done so that the property would be held in Tabatha's name and when the time was right, the brothers would then have it in their names.

[144] In regard to the pipe freezing incident, Trevor recalled that this occurred when Tabatha drove him to North Sydney to get his daughters at the ferry for a Christmas season visit. The house was unattended. He did not recall who fixed it when the pipes froze, but that he bought the PVEX pipe, with tools, clamps and the toilet, and brought it in the house and someone else fixed it.

[145] Trevor outlined in detail the process for replacing the shingles and the odd roof rafter. He reboarded wood that was rotten and soft. The plaster was moldy as well. His evidence is that the roof is not sagging now and that the chimney is lined.

[146] Trevor noted cleaning up the yard is still an ongoing project.

[147] Trevor is no longer working on the house, although most of the roof has been recovered, with some remaining. He has not received compensation from Tabatha for the work and has no receipts for materials.

[148] Trevor maintains that Tabatha harassed him and Chandell by calling the municipality, the Department of Environment, Nova Scotia Power, and the RCMP, with the Fire Marshall and initiating this litigation.

[149] When initially asked what time frame this responded to, his response was confused.

[150] Trevor states that Tabatha has threatened him and his family, but that there are no specific threats. When prompted by his counsel, he then spoke of Tabatha swearing, and making a rude gesture perhaps.

[151] Trevor was not credible on whether he typed the April 19, 2020 email to Matthew, although he did adopt the contents as he said he did so without meaning anything. This was amended on cross examination when he confirmed that Chandell had typed the email and he worked with her on it.

[152] Trevor's evidence is that some of the shingle materials he used were purchased for about \$200 or \$270, when he was still partnered with Ms. Wheeler. He acknowledged they were not best quality but were still on the building and were what Mr. Croft wanted installed.

[153] Trevor also acquired building materials from a family owned saw mill that he went to with Matthew and Tabatha and they all brought back 50 to 60 2x4s for the roofing at the Property. The blueberry farming continued, in order to maintain the farm tax exempt status on the Property.

[154] He received free windows from a company that he had installed on the house on the Property and then two additional windows at a low cost, the value of which he could not remember.

[155] The roofing shingles and tar paper were purchased by him and Chandell. Further, they replaced two doors with second hand doors.

[156] Trevor reviewed a number of photographs of work undertaken in the house, and he acknowledged that Tabatha was involved in aspects of the repair, particularly before Mr. Croft died. This included refinishing floors, with the stain purchased by Ms. Wheeler.

[157] He did obtain lumber as scrap wood and would use this as free materials to build and add to the house. This included left over Aspenite that Chandell had obtained from her father, which is cheap. Trevor appears to have gotten most of the wood for free.

[158] The rock for the walkway was free, and gathered from the land. A well house was constructed by Chandell's father and his friend.

[159] On cross examination, Trevor stated that Tabatha got the Property in her name because Mr. Croft did not put it in Trevor's name because "he was living there". This is not consistent with the evidence, and not credible, as the transfer to Tabatha occurred in 2010, years in advance of Trevor moving to the Property.

[160] On cross examination, Trevor also stated that there was a "mix up" in the Deeds, and that he was supposed to have a lifelong interest in the woods. This is novel, and not in the pleadings.

[161] This was in contradiction to discovery evidence, in which Trevor stated he understood Mr. Croft wanted the deed to go to Tabatha as she "took care of the paperwork".

[162] Trevor confirmed asking Mr Green to dispose of the contents at the Property in 2014. He was angry and saw the house as a “graveyard” after his wife and kids left.

[163] Trevor agreed that Chandell moved into the Property in March 2015. He agreed that he, Patricia, Tabatha, and friends and his mother all helped to clean it up in preparation for Chandell and her kids to move in.

[164] He confirmed he was present the day Adam Whynot attended at the house to look at the Property and he showed him around. This included showing Mr. Whynot the inside and outside of the property. He did not recall him saying it was less expensive to tear down than to repair.

[165] Trevor did not admit he knew that Chandell had been told by Tabatha that she and Matthew wanted to move into the property in Spring, 2018 although he did remember Chandell responding that they would move out. He did not confirm that it was after this exchange that Trevor decided to install a new pool.

[166] It was suggested that the emails exchanged in April, 2020 about purchasing the Property were not serious, to which Trevor answered “if it was a buck, would be interested...”. He agreed that he did not intend to leave the Property at that time however he confirmed he was having his own conversation with a local realtor to

find a new home, and was pre-approved for a mortgage by a major bank on at least three occasions.

[167] Trevor confirmed that the play house can be removed from the Property. Further, the pool can be removed.

[168] There were at least three buildings still standing on the Property that Trevor agreed should be torn down. He agreed that Matthew was engaged in heavy excavation work that was unpaid. Matthew also permitted his excavator to be used for levelling. Matthew also gave Trevor a furnace to install, which he did not, as Trevor felt it was not worth it.

[169] It was suggested on cross that, in regard to Matthew's email, in which he tells Trevor that when they find a place they are to take everything invested in the house, Matthew and Tabatha did not take further steps in order to give them time to find a new place to live. Trevor did agree with this suggestion.

Chandell Lohnes

[170] Chandell moved into the Property in March 2015. She married Trevor on July 5, 2020, just weeks after the Notice to Vacate was served on them.

[171] She was not responsive to questions concerning why or if any event started her conflict with Tabatha. Chandell did respond with particularity concerning obtaining a Peace Bond, which she sought in order to address an incident in which she encountered Tabatha threatening to tear down the pool.

[172] Chandell also referenced an incident in which Tabatha refused delivery of wood to the Property, and she called the police to apprehend Tabatha. Chandell watched Tabatha drive by quickly. She stated Tabatha then called Chandell a derogatory term “five or six times” and then pushed Chandell while calling her a “squatter”.

[173] Chandell’s evidence is that within a day of this incident, people from the municipality were at the Property to inspect.

[174] Chandell also stated that in May of 2021, that her children saw Tabatha taking pictures and videos. This has been confirmed by Matthew and Tabatha, in their evidence, and the purposes for those photos being taken.

[175] Her understanding when she moved into the Property was that she could live there “forever”. She did not hear Tabatha say it would be for a short time, or Trevor say this either.

[176] Chandell stated that around 2018, after Mr. Whynot was at the Property, that she apologized to Tabatha and that Tabatha said she could stay as long as she wanted because she never wanted to live at the Property. This statement is illogical, and without any detail to ground it in reality, in light of the evidence taken as a whole.

[177] She did acknowledge yelling at Matthew when he attended with Mr. Whynot to look at the Property in 2018 and remembered kicking a door shut, with Trevor catching it.

[178] Exhibit “E” of Chandell’s affidavit, dated May 20, 2021, sets out a table of estimated expenses, generated by Chandell as a “low ball” estimate.

[179] The first page attempts to estimate Trevor Jefferson’s contribution to the Property from April 2011 to February 2015. This is totalled at \$76,200, for 2968 hours. It is appended to her affidavit, and predates her occupation of the Property and can not come within her knowledge.

[180] The second and third pages set out estimates that Trevor and Chandell made to the Property from March 2015 to the present. They contain estimates for labour and materials to the amount of \$151,082.82. These estimates are not supported by any receipts.

[181] In regard to the presence of a drone, there was one instance of a drone being observed, which caused Chandell discomfort. It corresponds to the evidence of Matthew in this regard. This is also the case in regard to the security cameras and flashing light which she stated she found weird, but not scary. There was only one instance of this flashing light.

[182] On cross examination, Chandell said she knew the Property was owned by Tabatha but did not talk to her about how Chandell was able to stay there without paying rent. She did admit receiving the email from Tabatha requesting that \$500 rent per month be payable in 2018 and that she did write back that she would “start looking for new place asap”.

[183] It was suggested to her that she did not intend to move in 2018, and she confirmed she did not. The WETT certified chimney was installed after the Notice to Vacate was received in June 2020.

[184] The Peace Bond entered into was a mutual one as referenced in September 2021, for all parties to refrain from contact. It was the only one entered and there were no charges laid in regard to any of the incidents which Chandell had referenced.

Fact and Law

[185] The Court finds that Trevor and Ms. Wheeler, with their children, went to the Property to live with Fletcher Croft in April 2012.

[186] This is supported by the evidence of Tabatha, Ms. Jefferson and Ms. Knickle. Ms. Knickle's evidence establishes that Trevor and Ms. Wheeler lived in her father's property for a period in the preceding year until they were told to leave due to arrears in rent.

[187] Trevor and Ms. Wheeler then moved in with Ms. Jefferson and Mr. Green for a period of a few months, ending in March, 2012. They were then asked to leave as they were not paying the electric bill, which was their only obligation to his mother and her husband rather than pay rent. Trevor then asked Tabatha if they could move in with Mr. Croft at the Property.

[188] I do not accept Trevor's evidence that he moved to the Property before Easter of 2011.

[189] Mr. Croft died on November 14, 2013. That is one year and five months in total that Trevor and Ms. Wheeler lived at the Property, while Mr. Croft was alive.

[190] Trevor then continued to live at the Property another seven months after Mr. Croft died. He moved out in June 2014 to live with his mother, as Ms. Wheeler had

ended their relationship and moved to Newfoundland with their children. Sadly, Tabatha and Trevor lost a sibling in September, 2014, which anchors their date.

[191] Trevor asked Mr. Green to destroy all the contents of the Property, by fire, as he was depressed.

[192] Trevor restarted a relationship with Chandell, in the interim. He did not return to the Property until March 2015, with Chandell Lohnes and her two children. Trevor and Chandell did not have to pay rent, but were to perform maintenance and repairs, as needed. Chandell did not discuss this at all with Tabatha, leaving it to Trevor.

[193] Trevor advances different theories in regards to his evidence. In one version, he and Tabatha had a long standing agreement predating his moving into the Property that they would work together to care for Mr. Croft so that she would acquire the Property and she would then hold it in her name for his ultimate benefit at an unknown later time. This would have required proof that Mr. Fletcher Croft, the prior owner of the Property had conveyed it to Tabatha on January 28, 2010, on the basis that Tabatha and Trevor would care for him and operate the Property as a farm. Again, this is not established on the evidence. The one utterance attributed to Mr .Croft in this regard is from Trevor, and is not corroborated and is uncertain.

[194] In another version, Trevor moved into Mr. Croft's home with an agreement, made on the basis of a fraudulent misrepresentation by Tabatha, that if he then cared for Mr. Croft he would acquire ownership of the Property.

[195] Then, one other version is that Tabatha held the Deed to the Property in trust, pending the outcome of matrimonial litigation, and that Trevor's work and materials in the Property would be accepted as establishing a "life interest" or a full property interest in the Property as an owner.

[196] As there are multiple issues in this matter, I will first address those which have no support in the evidence that the Court does accept.

Gift

[197] There is no evidence to support the claim by Trevor and Chandell that there was a gift of the Property to them by Tabatha or Mr. Croft, and none that the Court can rely upon to find that Mr. Croft intended a gift of Property at any time to Trevor.

Civil Fraud

[198] There is no evidence to support the claim that there was a civil fraud, in a false representation by Tabatha to Trevor or Chandell, such that they were induced to enter into an agreement that was not to his or their benefit.

Breach of Trust

[199] This is similarly the case of the claim for breach of trust where there was an abuse by Tabatha alleged, and that she was in a position of authority and acting as against the interests of Trevor. There is no duty of trust made out in the evidence.

Breach of Contract and Equitable Claims

[200] The claim for breach of contract requires that the claimant demonstrate that there is an existence of a contract, a breach of one or more terms of the contract, and that there has been damages as a cause of the breach. In this matter, neither party referenced the *Statute of Frauds* RSNS 1989, c. 442, in respect to what would, if all the elements of an agreement or spoken agreement between Tabatha and Trevor were proven, be a parol agreement in respect to an interest in land and, as such, would be unenforceable. The Court reviewed current law in Nova Scotia and found that appellate consideration was given to this in *Reid v Reid* 2020 NSCA 32 (CANLII), and was within the ability of counsel to have included with the numerous cases submitted for this Court to consider.

[201] In *Reid v Reid, supra* the Court of Appeal considered the lower Court's decision to recognize there was an unenforceable parol agreement concerning an "in-law suite" that was constructed as an addition to a house and proceed to make an order for unjust enrichment. In that matter, an elderly mother in law paid for an apartment addition, leaving behind her fully paid for home to move in to this addition at her son's home, expecting that she would live with her son and daughter-in-law for a term of years, although the term was not defined with particularity in the evidence. The daughter-in-law sought to have her mother-in-law quit the premises, and engaged in oppressive methods, first indicating she wished to sell the property, and then proceeding to cut off the water and electricity to the apartment in winter. The Court of Appeal upheld Moir J, in the trial decision, making an award for unjust enrichment and a restitutionary award, as well as a related award for punitive damages. The Court noted in its decision that there was no claim for proprietary estoppel based in detrimental reliance on representations made at the trial, and so did not address this element.

[202] In this matter, Trevor and Ms. Wheeler asked Tabatha for her permission to live in the Property. Tabatha agreed that they could live in the Property, so long as they maintained the Property and made associated repairs. There was no term for when this arrangement would end, but based on the evidence this use was first

permitted by Tabatha to assist Trevor with his family obligations with Ms. Wheeler until he left the Property in June of 2014. This is consistent with her affidavit evidence, tendered in Trevor's family court proceeding, but it did not indicate that he was to receive a vested property interest, akin to a life interest, but that he could reside at the Property rent-free on the condition that he maintain and repair it, as required, for the benefit of his family and children with Ms. Wheeler.

[203] The Court does not find that there was a related expectation that they would then engage in care for Mr. Croft, or that Trevor and Ms. Wheeler's care of Mr. Croft would result in an ownership interest in the Property. Tabatha already owned the Property, as it was transferred to her in 2010. In any event, it was readily demonstrated that Tabatha did the bulk of care for Mr. Croft, over the years.

[204] Relatedly, the Court also did not find evidence that Tabatha assumed title for the Property in the expectation that it would, at some unknown date, be transferred to Trevor. In that sense, the claim for a beneficial interest under this heading for Trevor and Chandell is not supported by the evidence.

[205] Then, later, Tabatha had extended a similar offer to Trevor in March 2015 when she permitted Trevor and Chandell to take up residence at the Property to live rent free, subject to repair and maintenance.

[206] Tabatha was aware that Trevor, first with Ms. Wheeler, and then with Chandell, undertook improvements to the house. These repairs and improvements occurred without compensation to Trevor and Chandell, as they were permitted to live at the Property without paying rent. While there was evidence that he and Chandell did so with the assistance of others, and did so on a slim budget, this work was undertaken on the Property in the expectation that if they did so then they could continue to live at the Property, rent free. Further, Tabatha's evidence is that they also contributed to tax payments, which was accepted, and that they received municipal services accordingly.

[207] This parol agreement, while unenforceable, was for an indeterminate time, and was not to create a permanent interest in the Property. It appeared, on the evidence, that it would have been or may have been for a term of at least two years.

[208] The remedy for a breach of such an unenforceable agreement lies in equity, and a claim for unjust enrichment. Trevor and Chandell, however, have continued to live at the Property, rent free, and continued to improve it at their own expense despite being informed in 2018, and again in 2020, that Tabatha and Matthew wished that they would leave.

[209] I will turn now to the submission that proprietary estoppel should be found in regard to Trevor and Chandell's claim to an interest in the Property.

[210] This area of the law was canvassed by Keith, J in *Layton v Layton* NSSC 2021 (CANLII), and relied upon by Tabatha and Matthew. Keith J writes at paras 13 to 17 that:

[13] Certain components of the legal test for proprietary estoppel warrant additional comment. With respect to the first part of the test (i.e. a promise or representation):

1. The promise or representation must be made by the person possessing an interest in the property in question;
2. The promise or representation may be expressed or implied (para 15 of *Cowper*) but must be sufficiently clear based on the evidence;
3. The promise or representation must be reasonable or realistic in the circumstances (*Paul v. Vancouver International Airport Authority*, [2000 BCSC 341](#)).

[14] With respect to the second aspect of the test, detrimental reliance is typically a question of fact. However, as discussed below, the Court should be careful to identify the nature of the unrequited detriment as it will affect the scope of relief. Equity serves to remedy the injustice in a proportionate manner (i.e. in a way that vindicates and corrects the specific expectation which was unjustly broken).

[15] As to the third part of the test, unconscionability is singularly important. Equity does not lightly set aside the common law, and proprietary estoppel is not a panacea designed to routinely displace an owner's strict legal rights. The doctrine is reserved for those exceptional circumstances where it would be unconscionable to allow an owner to ignore enforceable promises by seeking refuge under a rigid application of the common law.

[16] The concept of unconscionability is also important because it provides an appropriate standard through which the Court might apply the doctrine of

proprietary estoppel. It ensures that equity does not become a dispensary of “palm-tree justice”, offering cures to perceived injustices based entirely on what a particular judge might arbitrarily think is fair or unfair. Adopting unconscionability as the guiding standard ensures that judicial discretion is exercised in a way which is principled, predictable and consistent. To that end, unconscionability is typically revealed through a five-part test:

1. The applicant must have made a mistake as to his or her legal rights;
2. The applicant must have expended some money or must have done some act on the faith of his or her mistaken belief;
3. The defendant must know of the existence of his or her own right which is inconsistent with the right being claimed by the applicant;
4. The defendant must know of the applicant's mistaken belief of his or her rights; and
5. The defendant must have encouraged the applicant in his or her expenditure of money or in the other acts which he or she has done either directly or by abstaining from asserting the legal right.

(*Canadian Encyclopedic Digest* III.2, para 155.1)

[17] Finally, with respect to the final issue of an appropriate remedy, the Court goes no further than what is necessary to satisfy the equity. As indicated, the remedy must be crafted in a proportionate manner. In *Cowper-Smith*, McLachlin, CJ wrote for the majority (citations removed):

Courts of equity must therefore strike a balance between vindicating the claimant's subjective expectations — which, in their full context, may or may not reflect a reasonable valuation of the claimant's detriment — and correcting that detriment, which may be difficult or even impossible to measure.... In no case, however, may the claimant obtain more than he expected... (at para 48)

[211] Tabatha urges the Court to consider that her statement in the Family Court affidavit, to wit that Trevor can make the Property his home “on the same basis for as long as he wants” was made in the context only of supporting him in a family court application in relation to Ms. Wheeler. However, the Court notes that a similar arrangement was entered into when Chandell and Trevor took up residence at the Property. The evidence of all the parties is that they were involved in fixing

the Property to make it habitable and comfortable for Trevor, Chandell and the two children who reside there. Repairs were undertaken on the roof, the surrounding grounds, and shingles, as well as the ceilings, among many other improvements to the property undertaken by Trevor and Chandell, with the support of others, including Tabatha and Matthew.

[212] Trevor did make a mistake in regard to his legal rights, as it was not reasonable for him to conclude that he was acquiring an ownership interest in the Property. Chandell relied upon his understanding of the arrangement.

[213] Trevor and Chandell did expend some money and labour on the basis of this mistaken belief that an interest in the Property was being created. The messages exchanged between Chandell and Tabatha in 2018 demonstrate that Chandell thought the improvements were for an interest in the Property, although she was told by Tabatha at this time that this was not the case, but they continued with the further improvements and refused to quit. Two years passed, and nothing further was done by Tabatha to assert her interests, and she was aware of ongoing work on the Property.

[214] The Court finds that improvements to the Property made from March 2015 to June 2020 were made in reliance on the mistaken belief that Tabatha and

Matthew was not going to assert their legal rights fully, and that Trevor and Chandell were making an investment in the Property. This is supported by Matthew's encouragement in the June 2020 email exchange for Trevor to take his investment out of the Property, "within reason."

[215] In regard to the claim for unjust enrichment, Moir J, in *Reid, supra* (trial) at paras 13 and 14 set out the test:

[13] A party seeking a remedy for unjust enrichment must establish:

1. An enrichment of the defendant;
2. A corresponding deprivation of the plaintiff;
3. An absence of juristic reason for the enrichment.

[14] Unjust enrichment awards are restitutionary. The plaintiff's deprivation is not limited to out-of-pocket expenses and so may not equal the defendant's enrichment. A benefit conferred may far exceed the initial deprivation suffered (see for example *Moore v. Sweet*, [2018 SCC 52](#) at ¶44). The nature and the quantum of the remedy may vary depending on the circumstances. It can be an amount equal to what a plaintiff gave or paid. Alternatively it may be an amount representing the "value retained" by the defendant. In some cases a proprietary remedy may be preferable to a monetary award (*Kerr v. Baranow*, [2011 SCC 10](#), at ¶49-50). More will be said about this when considering the judge's remedy.

[216] The Court finds that the three elements of unjust enrichment are met (as set out in *Kerr v Baranow*, as referenced above).

[217] Chandell and Trevor did enrich Tabatha and Matthew's interest by making tangible improvements to the Property. Further, Chandell and Trevor did act to their detriment by going beyond simple repair and maintenance of the Property, in

exchange for living at the Property rent free, and, although the value of their improvement is not to the extent set out in their evidence, it is not negligible.

[218] The next branch of whether there is an absence of a juristic reason is challenged by Tabatha and Matthew, on the basis that the free rent in exchange for improvements satisfies this aspect. This argument does not succeed in the face of Matthew's statement via email exchange in April 2020 that Trevor and Chandell are to take their investment out of the property. This indicates recognition that something additional, to which Matthew and Tabatha do not feel entitled, has been made or added to the Property by Trevor and Chandell without a legal basis.

[219] The Court refers to para 46 and 47 of *Kerr, supra* in regard to the remedy for unjust enrichment as a matter of restitution:

[46] Remedies for unjust enrichment are restitutionary in nature; that is, the object of the remedy is to require the defendant to repay or reverse the unjustified enrichment. A successful claim for unjust enrichment may attract either a "personal restitutionary award" or a "restitutionary proprietary award". In other words, the plaintiff may be entitled to a monetary or a proprietary remedy (*Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989 CanLII 34 \(SCC\)](#), [1989] 2 S.C.R. 574, at p. 669, *per* La Forest J.).

(a) *Monetary Award*

[47] The first remedy to consider is always a monetary award (*Peter*, at pp. 987 and 999). In most cases, it will be sufficient to remedy the unjust enrichment. However, calculation of such an award is far from straightforward. Two issues have given rise to disagreement and difficulty in domestic unjust enrichment claims.

[220] In *Tomek v Zabukovec*, at trial level, it was noted at para 66 and 67 that:

[66] Once unjust enrichment has been established, the court is first to consider a monetary remedy prior to granting a proprietary remedy such as a constructive trust. If a monetary remedy is considered appropriate, I am to consider the mutual benefit conferred on each party and use it as a "set-off" when ascertaining a monetary remedy: *Granger*, at para. [50](#); *Kerr*, at paras. [109-115](#).

[67] Before making a proprietary award, the court must be satisfied that a monetary award is insufficient in the circumstances. In so determining, the court should consider the probability of recovery and whether the Husband and Wife should be granted the additional rights that flow from owning property: *Kerr*, at para. [52](#).

[emphasis added]

[221] In considering the evidence, it appears that while Trevor and Chandell did make contributions to the improvement of the Property in terms of labour and materials beyond that of repair and maintenance, their money and energy was largely commensurate with the benefit obtained of a rent free accommodation in Lunenburg County, for a term of eight years and continuing.

[222] It is possible for the Court to arrive at a monetary award rather than proceeding to order a proprietary award in this circumstance. The Court may make findings on the value of the improvements made to the house and surrounding yard on the evidence, which the Court can accept for labour and materials provided above the level of basic maintenance and repair to the Property, but with an application of a corresponding discount to address the involvement of Tabatha, Matthew, and many others, including family and friends, as well as a discount for

materials, which Trevor and Chandell either obtained for free or which were provided at low, or no, cost.

[223] If the Court accepts the amount of \$500 as representative of a reasonable rental amount for a rural home in Lunenburg (based on the evidence of Ms. Knickle and Tabatha) which was then payable in 2011, and requested in 2018, and then applies this to the period from March 2015 and continuing to at least Dec 31, 2023, the resulting amount is \$52,500, in a benefit to Trevor and Chandell for unpaid rent for their accommodations, which is continuing.

[224] As noted before, I do not accept Chandell's evidence concerning Trevor's contributions to the Property before March 2015. In reviewing the evidence, from all the Parties, I find that the two pages as Exhibit "E" grossly inflates their contribution to the Property and does not account for the work done by Matthew, Tabatha, and others in their extended family and friends, in improving the Property, or reflect the actual value of free or donated materials.

[225] Trevor's own evidence is that some building materials were free, paid for by Mr Croft prior to his demise (in the case of shingles), donated (in one case by Matthew of an uninstalled furnace), or deeply discounted. The valuation of their work, on the basis of a \$25 per hour rate, is not supportable. Further, the above

ground pool, listed as an improvement was admitted to be removable in the event that they were to vacate the Property and is not included in my rough calculation of benefits to the Property.

[226] If the Court discounts the hours of labour by 50 percent and applies a rate of \$25 an hour, which is a general amount for basic labour in cleaning or removing garbage or garden materials, the total is still not equal to half the benefit of the rent unpaid for this time period.

[227] Further, if the Court also discounts the materials listed within by the evidence that some of the materials were free (windows), discounted, are removable improvements (the pool) or paid for by others (shingles, roofing materials), and then adds an adjusted amount to the discounted total for labour, it is still roughly equivalent to the amount of foregone rent payment from 2015 to late 2023.

[228] The Court, then, in applying a set off, determines that it would appear that this is all equivalent, and there is no order for a monetary amount for unjust enrichment in the circumstances.

[229] The roof is repaired, but not finished. The photographic evidence demonstrated amply to the Court that significant ongoing repairs and clean up of

the Property is still required. Trevor, in his evidence, admitted that at least three of the structures on the Property are in a “tear down” state. The deck and pool are new, but appended to a structure that requires additional work. The interior cupboards were donated and installed for the use of the occupants.

[230] The Court does, however, take note that the assessed value of the property did improve from 2011 to the present, but this can not be presumed to be solely attributable to the work and materials of Trevor and Chandell and may be influenced by broader significant inflationary pressures. It was not demonstrated to the Court that the increase in the Property’s assessment was done as a result of an investigation of the Property by the Property Valuation Corporation of Nova Scotia by a visit to the Property or house.

[231] Further, Chandell’s father and a friend made improvements to the Property in the amount of expenditure for the well house, and a play house. The Play house may be removed, but the well house may not.

[232] In addition, the rock walkway is a permanent addition to the Property. It is difficult for the Court to value this, but the labour is not contained in the estimate prepared by Chandell in her affidavit. The rock was sourced from the Property,

with levelling of a driveway assisted by Matthew. It is not possible to assign a firm value on that improvement.

[233] For the purposes of focusing this decision, I will next also address tort claims for harassment, intrusion upon seclusion, trespass and private nuisance. These claims are not supportable on the evidence, which speaks to single incidents that did not give rise to tortious damages, and are dismissed. It appears to the Court that all parties are acting in a manner that is not conducive to public order and peace, from time to time, and the mutual peace bonds demonstrate that they all are capable of restraint.

[234] Tabatha's counsel submits that in the event that they are successful in obtaining an Order for vacant possession of the Property that any award of costs be set off as against tort damages if they were found.

[235] I do not have a corresponding submission on costs from Trevor's counsel at the time of the decision.

Conclusion

[236] Judicial notice is taken of the housing crisis in Nova Scotia. This preceded the Covid 19 pandemic, and has since intensified more lately in 2023. Further, it is

not remarkable for this Court to take judicial notice of accompanying high inflation that has been triggered, on a year over year basis, since the pandemic began and which affects all aspects of the economy, including housing. Rural Nova Scotia is caught in the grips of a lack of affordable housing.

[237] In fashioning a remedy, the Court has considered this in respect to the matter of making an Order for vacant possession of the Property for a set date. In this regard, I reviewed the decision of Murphy J, in *Killam Properties Inc. v Frail*, 2009 NSSC 419 for general guidance. While I am aware that was a decision involving the application of the *Residential Tenancies Act* in the context of a long standing rental, it was informative in the exercise of discretion in crafting an Order that will impact a family, with children, to vacate a property. In that matter, Murphy J., held that a three month period of notice was appropriate, taking into account the school year of the children affected by the Order and intervening holidays.

[238] As I have taken into account the current housing stressors in Nova Scotia and am mindful that two children who are presently enrolled in school will be affected by the Order, I find that a reasonable period to vacate is about six months, and would fix the date of June 30, 2024 for Trevor and Chandell to vacate the Property and obtain other accommodations. There shall continue to be no rental

amount paid in the interim, as an approximation for the value of additions to the Property created by Chandell's family, and the walkway, which will not be removed.

[239] Legal title in 6 Lacey Lane is to remain and be declared as with Tabatha and Matthew, solely. The Court does not find that a "life interest" was created or given to Trevor by Tabatha. The Order will reflect that there is no equitable or other interests to the benefit of Trevor or Chandell in the Property, other than that referred to in this decision.

[240] Further, all personal items, such as the pool and play house that can be removed by Trevor and Chandell, without damaging the Property's structure or its integrity, can be removed prior to the date set in the Order. The walkway can not be removed.

[241] If counsel for the Defendants consents as to the form of Order, counsel for the Plaintiffs is to immediately send the completed form of Order to the Court for issuance. However, if counsel for the Defendants objects to the form of Order and if proposed amendments are unacceptable, then counsel for the parties shall each submit forthwith to the Court:

- a. Their proposed forms of Order; with

b. A brief explanation as to why their form of Order is to be preferred.

[242] The Court will then settle the form of Order expeditiously.

[243] Written submissions on the issue of legal costs are to be filed within one month from the date of this decision by counsel.

[244] The Court wishes, in closing, to address one matter. In the course of her oral submissions to the Court, counsel for Trevor and Chandell made an ambiguous statement to the Court that the Court should address certain matters raised to their satisfaction in the decision when it was made.

[245] As I stated then, and restate here, judges are not told what to write in their decisions. Every judge decides on the application of the law and findings of evidence, impartially, in keeping with the principle of judicial independence. This is a cornerstone of the Canadian judicial system.

[246] They are not to be moved by any outside influence, or by threat, direct or implied, in the exercise of their judicial role. This principle was paramount for the Court in considering this matter, with this oral submission addressed in Court as it happened, for the purposes of informing participants.

[247] This concludes my decision.

Diane Rowe, J