

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Quinton v. MacKinnon*, 2020 NSSM 36

Date: 20201214

Docket: Sydney, No. 491513

Registry: Halifax

Between:

Andrea Michelle Quinton and
Alyssa Marie Butts

Claimants

v.

Elizabeth MacKinnon

Defendant

Adjudicator: Patricia Fricker-Bates

Heard: February 5th, August 12th, and October 14th, 2020

Decision: December 14, 2020

Appearances: Andrea Michelle Quinton and Alyssa Marie Butts, Claimants,
self-represented;¹
Elizabeth MacKinnon, Defendant, self-represented.

BY THE COURT:

1. On November 7, 2019, the Claimants Andrea Michelle Quinton and Alyssa Marie Butts filed an Amended Notice of Claim with the Court. They are seeking the following:

I [sic] WOULD LIKE THE RESIDENCE AT 121 VICTORIA ROAD IN SYDNEY NS, WHICH IS CURRENTLY OWNED BY MYSELF AND MY DAUGHTER, RETURNED IN GOOD CONDITION. I [sic] WOULD LIKE THE CURRENT TENANT/DEFENDANT TO VACATE THE PREMISES. (\$20,000.00)
[Upper caps in the original]

¹ Andrea Michelle Quinton and Alyssa Marie Butts are mother and daughter respectively.

The Amended Claim was signed by Andree Quinton on November 4, 2019.

2. On March 17, 2019, the Defendant Elizabeth MacKinnon filed a Defence and Counterclaim with the Court. In her counterclaim the Defendant writes:

I paid for the house \$20,000. She cut of my power, and my cousins that were staying with me there [sic] welfare, she even hired a lock smith and broke in after I said no, my lawyer got the money, but she still refuse to give the deed to him or me. I want my deed [remaining sentence is scratched out]. EMK
3. A preliminary hearing was held via telephone on August 12, 2020. In attendance were the Claimants, the Defendant and two witnesses for the Defendant. However, the matter could not proceed to hearing for the following reasons: (1) the Defendant had not picked up the 10 documents filed at the Court by the Claimants and was ordered to do so before the next hearing date; and (2) this Adjudicator ordered the Claimants to file up-to-date bills outstanding for water and taxes at 121 Victoria Rd., Sydney, NS; and the Defendant to file documentary confirmation of monies being held in trust by her lawyer to cover the outstanding water and tax bills at 121 Victoria Rd., Sydney, NS. In addition, the Defendant advised that she had to leave to attend at the hospital for blood work. The Court advised the Defendant that her calendar has to be clear on any future court dates. The witnesses were advised that the hearing would not be proceeding that night. Claimant Andree Michelle Quinton asked if she could call witnesses at the next hearing and the court advised that she could do so.
4. The matter came on for hearing on October 14, 2020 via telephone. Both Claimants testified as did the Defendant. No other witnesses were called by either the Claimants or the Defendant. Both Claimants work for the federal government. The Defendant is a crab fisherperson who works out of Pleasant Bay.

5. Based on the evidence before me, the Defendant entered into a rent-to-own contract with the Defendant on April 2, 2015 (see Exhibit 4).

Rent to Own Contract

Whereas Richard Cormier and Elizabeth MacKinnon (hereinafter Renters) desires [sic] to possess and have the use of certain property (121 Victoria Road, Sydney, NS) owned by Andree Quinton-Shaw and Alyssa Marie Butts (hereinafter Owners) and,

Whereas, the parties have agreed that Renter shall take possession of the property (121 Victoria Road, Sydney, NS) on **04/01/2018** or on such a date prior to the agreed upon date as terms of payment have been satisfied and have the use of the property until this agreement is terminated, and

Whereas Renter and Owner intend that ownership of the property shall transfer to Renter upon the full completion of this agreement,

Now, therefore, the parties agree as follows:

Renter shall pay Owner the sum of **\$500.00 minimum** on **04/01/2015** and the same sum on the 1st day of each month for rental of the property.

...

The parties agree that the purchase price of the property is **\$18,000.00**.

The parties agree that **%100** [sic] of each month's rent payment shall be applied towards purchase of the property.

The parties agree that ownership of the property shall transfer to Renter upon Renter's completion of **ALL** payments to total the full amount of **\$18,000.00** as described above.

The parties agree that if Renter fails to complete the contemplated purchase of the property for any reason, no refunds or credits shall be due to Renter.

...

Renter is responsible for payment of the CBRM Water Utility bill to put into the name of the Renter.

Renter is responsible for payment of all utilities (NS Power/Cable/Internet/Telephone) and such utilities will be in the name of the Renter.

CBRM Property Taxes (to remain in the name of the Owner until full completion of this agreement and ownership transferred) will be paid by the Renter at time due when provided by bill from Owner.

Land migration fee shall be paid in full by the Renter at the time of deed transfer when the agreement is completed and property is paid in full to the Owner.

If Renter fails to make a payment within 30 days of its due date, Renter agrees to surrender the property to Owner upon the Owner's demand.

If Renter fails to make a payment within 30 days of its due date, Renter agrees that Owner shall have the right to enter the Renter's property for the purpose of taking possession of the rented property.

[Emphasis in the original]

The Agreement is signed by Wade Gallant and Andree Quinton Shaw² as Owner; and Richard Cormier and Elizabeth MacKinnon as Renter.

6. The Claimants allege at least three breaches of the Agreement by the Defendant: (1) the Defendant paid the \$18,000.00 purchase price by July 29, 2018 rather than by the stipulated date of 04/01/2018; (2) the tax and water bills were not paid; and (3) the land migration fee was not paid.
7. The Defendant maintains that the Claimant Quinton agreed that she "could have a couple of extra months to pay out the house at the end." The Claimant Quinton disagrees.
8. The Defendant testified that in so far as the water and tax bills are concerned, her lawyer Toney Mozvik, QC, said to bring in the deed and

² Claimant Andree M. Quinton no longer uses the name "Shaw".

everyone should be paid. She referred to Mr. Mozvik's letter of September 5, 2019 to Claimant Quinton (see Exhibit #6). The body of that letter is as follows:

September 5, 2019

Andree Quinton

Via Email: Andree.Quinton@cic.gc.ca

Dear Ms. Quinton:

Re: Rent to Own Contract

Please be advised that I have been retained by Lizzie MacKinnon to complete the Rent to Own Contract entered into by you on April 12, 2015.

As I understand the matter all payments have been made regarding the purchase price of eighteen thousand (\$18,000.00) dollars. However, currently there remains an outstanding balance of about fourteen hundred (\$1400.00) dollars on taxes. As well, migration of the property needs to take place at my client's expense in order to complete the agreement.

Please be advised my client is prepared to pay for the migration and the outstanding taxes immediately. We simply need you to attend at our office to sign the deed as required under the rent to own contract. Please advise when you will be able to do so.

My client is anxious to finalize this matter. She hopes it will not be necessary to proceed to court with an application requiring you to honour the Rent to Own Contract. However, if we must do so we will be seeking legal costs against you for his unnecessary and reckless use of the courts time.

I look forward to hearing from you.

Yours very truly,

The Breton Law Group

Pamela Austin/for

Tony W. Mozvik, Q.C.

Dictated but not read

9. On February 5, 2020, at 5:37 AM, Claimant Butts sent an email to Real Estate Agent Roy Milley (see Exhibit #6) with the following question:

In the event of a private home sale, with the home in question having significant outstanding debt for the property taxes and the water bill (both bills currently in the original owner's name). Upon transfer of the deed, do these debts become the responsibility of the owner?

Claimant Butts sent a follow-up email at 7:45 AM:

One more question just to be clear that I understand, So it is absolutely fair to request that debts be settled prior to signing over the deed to the house?

And if a lawyer is requesting that the deed be signed over PRIOR to the debts being settled, that should raise some flags?

In a reply email to Claimant Butts on February 5, 2020 at 9:32 AM, Mr. Milley wrote:

Good morning, Alyssa

The lawyer representing the buyer would ensure that taxes and water bills would be paid off before the deed transfers over to the new owner/buyer. They actually come ahead of all other charges against the property including mortgages.

And, in another follow-up email on February 5, 2020 at 10:17 AM, Mr. Milley wrote:

Absolutely! The lawyer representing the seller gives the lawyer representing the buyer an undertaking stating that any debts against the property will be paid off on closing from the buyer's proceeds before the deed is transferred over to the buyer/new owner. If by chance the lawyer is representing both sides, the lawyer should then give a letter directly to the buyer stating the same.

Most buyers are obtaining a mortgage so the instructions to the lawyer for the buyer would also include instructions to pay off any charges against the property before disbursing their mortgage funds.

Roy

Based on this back-and-forth with real estate agent Roy Milley, the Claimants felt that they were within their rights to refuse to provide to the Defendant or her lawyer the deed to the property at 121 Victoria Rd., Sydney, NS until the outstanding water and tax bills were satisfied along with migration fees.

10. The Claimants also point to a series of emails in 2018 and 2019 (see Exhibit #5) as evidence of the alleged breaches of contract. One of the text messages (date unclear) confirms that when the other “renter” to the Rent to Own Contract, Richard Cormier, left the Defendant, “that’s when the rent started getting behind.” The Defendant, herself, testified that approximately two years after she and Mr. Cormier entered into the contract, their relationship broke down and he left. Approximately \$9000.00 had been paid at the time. Claimant Quinton acknowledged that the full purchase price had not been paid prior to Mr. Cormier’s departure. According to the Defendant, Mr. Cormier’s departure left her financially strapped.

11. In an effort to force the Defendant out of the residence at 121 Victoria Road, Sydney, NS, Claimant Quinton took the Defendant to the Residential Tenancies Board. In a decision dated August 22, 2019, Residential Tenancies Officer Jason Warham found the following (see Exhibit #7):

The parties entered into what appears to be an agreement of purchase and sale mingled with lease terms. The landlord [Andree M. Quinton] is alleging the tenant did not honour the agreement of purchase and sale in full and thus requests vacant possession and wishes me to terminate the tenancy. The landlord also alleges that the tenant has not paid any “rent” for over 12 months.

Both parties agree that the purchase price was \$18,000.00 and both agreed that this was paid albeit late but it was paid nonetheless.

...

This matter involves a tenant who resided in the property whose rent payments went towards the purchase price. The tenant has paid the purchase price. There are serious issues concerning ownership interests and the compliance with other clauses of the sale such as transferring ownership and tax payments. ... In my view I do not have jurisdiction over this matter.

There is no evidence before me that the Claimants herein appealed the decision of the Residential Tenancy Officer.

12. At this Court's direction, the Claimants filed up-to-date water and tax bills from CBRM: as of August 17, 2020, the total due in outstanding water fees was \$2,253.92; and as of July 28, 2020, the total amount outstanding in municipal taxes was \$2,169.98. The Court recognizes that those amounts probably have increased to date.
13. Also, at the Court's direction, the Defendant filed proof-of-funds in her lawyer's trust account. As of January 28, 2020, the Defendant had \$3300.00 in the trust account at the law firm of The Breton Law Group.

Decision of the Court

14. The evidence establishes that the Defendant paid the \$18,000.00 purchase price for the residence at 121 Victoria Road, Sydney, NS. It establishes that the Defendant fell on economic hard times after Mr. Cormier left but continued to engage with the Claimants to make the payments. The evidence shows that the Defendant acted in good faith, hired a lawyer to complete the Rent to Own Contract and followed the advice of her legal counsel as it concerns the outstanding municipal tax and water bills and the cost of migration.
15. The evidence also establishes that the Claimants acted on the advice of a real estate agent in refusing to hand over the deed to the Defendant's lawyer

until the municipal tax and water bills were paid as well as the cost of migrating the property.

16. There was some confusion on the Court's part as to what the Claimants were seeking given that the figure \$20,000.00 was found in the body of the Notice of Claim. However, in closing argument the Claimants were quite clear that they were not looking for damages—the reference to \$20,000 was the dollar value they put on the house at 121 Victoria Road, Sydney, NS. Instead, they were looking for the Defendant to vacate the premises at 121 Victoria Road, Sydney, NS, as they wanted to resume possession of the residence.
17. The Defendant, in her Defence and Counterclaim and closing summation, advised the court that she wants the deed to the property at 121 Victoria Road, Sydney, NS.
18. At the outset of this hearing, I advised the parties that the matter may be outside the jurisdiction of the Small Claims Court. However, I indicated that I would hear the matter and determine the issue of jurisdiction as part of my decision.
19. In *Swaine v. Hackney*, 2010 NSSM 83, Adjudicator Patrick L. Casey, QC, considered the issue of jurisdiction and s. 10(a) of the *Small Claims Court Act*. He states (at para. 24):

However, even though the Small Claims Court of Nova Scotia has jurisdiction involving any issue up to its monetary limits if it is a claim involving a contract or tort, if the claim involves determination of an issue concerning recovery of land or an interest in land then it is beyond the jurisdiction of the Court although framed in contract or tort.

See also *Marchbank v. Rutherford*, 2016 NSSC 251.

- 20.** Upon a review of all the evidence and upon hearing the submissions of the parties, I find that the Claim before this Court and the remedies being sought by both the Claimant and the Defendant are outside the jurisdiction of this Court by virtue of s. 10 (a) of the *Small Claims Court Act*:

Exclusions from jurisdiction

10 Notwithstanding Section 9, no claim may be made under this Act

- (a)** for the recovery of land or an estate or interest therein;

The Defendant is looking for a deed to secure her interest in the property at 121 Victoria Road, Sydney, NS; and the Claimants are looking for what amounts to an exclusive possession order that would oust the Defendant out of 121 Victoria Road, Sydney, NS, despite the equity she arguably has built in the property.

- 21.** In the absence of jurisdiction to adjudicate the Claim, this Court is dismissing both the Notice of Claim and the Defendant's Defence and Counterclaim.

Patricia Fricker-Bates
Adjudicator

December 14, 2020