

Date: 1999 07 16
Docket: CV 01937

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROSEMARY CAIRNS and
ROLAND SEMJANOVŠ

PLAINTIFFS and
DEFENDANTS by COUNTERCLAIM

-and-

SANDRA SOMERVILLE

DEFENDANT and
PLAINTIFF by COUNTERCLAIM

REASONS FOR JUDGMENT

- [1] Of the two alternative approaches to the resolution of the differences between the parties discussed during the hearing of this matter, on its continuation this week following my trial decision filed on July 13th, 1994, one alternative involves extensive and quite complex considerations and calculations, the other has what I see as the virtue of simplicity, which avoids those complexities and their potential for further disputation. It is clearly in the interests of all the parties to bring their longstanding differences to the earliest possible fair and final resolution.
- [2] The parties agree that an order should issue to the effect that the undivided one-third interest of the defendant in the residential property known as 5213, 54th Street, Yellowknife, is deemed as of today to have been sold and transferred to the plaintiffs as joint tenants, and not as tenants in common, for a consideration in a dollar amount fixed by the Court. It is this amount that has now to be decided.

- [3] As recited in my reasons for judgment filed in 1994, Mr. Gorrie and Ms. Somerville, who with Ms. Cairns had acquired the property initially as tenants in common in equal individual shares and also had all three together granted a mortgage on the property to Central Mortgage and Housing Corporation in order to obtain funds to make that acquisition, left Yellowknife in or about 1976, though they returned in 1977 when they executed a tenancy agreement in favour of Katimavik, a successor to the Company of Young Canadians (of which Ms. Somerville had been an officer earlier). Ms. Cairns eventually completed their arrangement with Katimavik, which regrettably allowed the property to suffer damage and fall into a state of disrepair, items stored in a locked room by Ms. Somerville being stolen and never recovered. The financial statements kept by Ms. Cairns showing revenues and expenses relating to the property for the years 1975 through 1979 revealed that the annual expenses exceeded revenues in each year except 1978 and that, overall, the property was a losing proposition as an investment for rental purposes during that period of years.
- [4] Mr. Gorrie sold and transferred his undivided one-third share in the property (in two equal one-sixth shares) to the plaintiffs in 1982, for a consideration of \$5,000. Attempts made by the plaintiffs to purchase Ms. Somerville's share were however unsuccessful. Negotiations to that end were stalemated in June 1982 when Ms. Somerville agreed to a sale subject to certain specific conditions which proved to be incapable of fulfilment, her agreed price being \$2,500. In due course Ms. Cairns fulfilled as much of the conditions as lay in her power to complete, the remainder being impossible due to circumstances wholly beyond her control. The executed land transfer of Ms. Somerville's share could therefore not be used; it was in unregistrable form, in any event, due to a deficiency in the affidavit of execution.
- [5] According to Ms.Cairns, the figure of \$2,500 had been reached by dividing the amount of the mortgagors' equity in the property into three equal shares as of the date of Ms. Somerville's departure from Yellowknife in 1976, a similar calculation having yielded the amount of \$4500 offered to Mr. Gorrie at a later date for his share in the property. I conclude that this \$4500 amount reflected approximately a one-third share in the mortgagor's then equity in the property, there being no evidence to the contrary, in or about June 1982. In doing so, I find nothing in the report of Andrew K. Wong, C.G.A., an associate in McKay & Partners Chartered Accountants (Exhibit P12), or elsewhere in the evidence, to cause me to revise or alter that amount.
- [6] Rather than finding the sum of \$2,500 agreed to by Ms. Somerville as accurately reflecting the value of her equity in the property in June 1982, taking account of the circumstances in which she agreed to that amount at the time, I conclude that

- the appropriate figure is instead \$4,500, as calculated by Ms. Cairns in making her offer to Mr. Gorrie. The departure of Ms. Somerville from Yellowknife in 1976 and the strained relations between the parties which followed do not, in my respectful view, alter the value of Ms. Somerville's equity as of June 1982.
- [7] Rather than using the current estimated value of the property (now free of the mortgage thanks to it being discharged in full in 1992 by the plaintiffs) at \$120,000; adjusting for the various factors advocated by counsel for the plaintiffs to yield a valuation of Ms. Somerville's undivided one-third share in the property (after adjustments) at \$4,533.63, I prefer to rely on the above mentioned figure of \$4,500 - which is coincidentally almost the same as that reached by the contentious and complex chain of calculations (based, among other things, on estimates of labour costs for work done by the plaintiffs on the property, which work is itself in real doubt in terms of its effect on the property's market value, and so on) advocated by counsel for the plaintiffs.
- [8] Nor do I accept that the amount of \$4500 reflecting Ms. Somerville's equity in the property in 1982 is to be deemed a loan earning interest for her from the plaintiffs from then until now. She simply walked away from the property and contributed nothing to it after 1977; and she proved to be totally unco-operative in terms of achieving a resolution of matters in 1982 and thereafter. It was open to her, as much as the plaintiffs, to seek to protect her interest by bringing court proceedings; but she left it to them to do so.
- [9] Having crystallised the equities of the parties as of June 1982, it is neither appropriate nor necessary for me to embark upon calculations of occupancy rent due to the defendant by the plaintiffs as sought in the counter-claim. And having avoided the complex approach based upon the current market value of the property, I need not enter upon any consideration of the income taxation aspects of the plaintiff's claimed labour costs in reference to improvements made by them to the property, not to do more than mention the contention inherent in their reliance upon a construction industry conventional rule-of-thumb in estimating prospective (as opposed to fixing actual) labour costs. I find, in any event, that the defendant, by her conduct in relation to the property and the plaintiffs, has disentitled herself to any equitable interest in the property beyond June 1982. The relief claimed in paragraphs (b) and (c) of the prayer for relief in the counter-claim is therefore denied.
- [10] Moreover, the relief sought in paragraph (d) of that prayer for relief is also denied, having been in effect abandoned at the hearing, where counsel for the defendant agreed to an order for deemed sale in lieu thereof, avoiding any risk of an eviction of the plaintiffs from their home of many years standing. In the result, an order

of deemed sale, as agreed, shall issue showing the price as \$4500 payable by the plaintiffs to the defendant.

- [11] As to costs, taking the proceedings as a whole, success has been divided: the plaintiffs are obtaining a joint title and the defendant is to recover the value of her equitable interest in the property. Absent any other consideration, each party shall bear his or her own costs.

M.M. deWeerd
D.J.S.C.

Dated at Yellowknife, Northwest Territories
this 16th day of July, 1999

Counsel for the Plaintiff
and Defendants by Counterclaim:

Austin F. Marshall, Esq.

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and Plaintiff by Counterclaim:

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