

SUPREME COURT OF NOVA SCOTIA

Citation: *Sheppard v. Deveaux*, 2017 NSSC 137

Date: 2017-02-24

Docket: Syd. No. 456896

Registry: Sydney

Between:

Lisa Sheppard

Applicant

v.

Robert Deveaux

Respondent

Decision on Application in Court

Judge: The Honourable Justice Robin C. Gogan

Heard: February 16, 2017, in Sydney, Nova Scotia

Counsel: Alan Stanwick, for the Applicant
William Burke, for the Respondent

By the Court:

Introduction

[1] This is an Application in Court commenced by Lisa Sheppard. Sheppard seeks a Warranty Deed from Robert Deveaux. Sheppard says that the parties entered into an Agreement for the sale of a residential property on May 29, 2014 and that she complied with the Agreement. Deveaux contests the Application and says that Sheppard has not complied.

[2] This decision will address whether Sheppard is entitled to the relief she seeks. The focus of the decision will be whether the evidence supports that Sheppard complied with the Agreement.

[3] For the foregoing reasons, I conclude that Sheppard has not discharged the burden upon her in this case. The Application is therefore dismissed.

Background

[4] Sheppard and Deveaux are not strangers to one another. They had a relationship in the past which serves as background in this matter. When the parties began this relationship, Sheppard owned a home at 100 School Street,

Glace Bay, Nova Scotia where she lived with her 2 children. Sheppard owned the School Street property until she sold it on May 2, 2014.

[5] While Sheppard was still living at the School Street property, Deveaux bought a property located at 17 Third Street in Glace Bay. This is the property that is the subject of dispute. Deveaux purchased the property on March 15, 2013. It was Sheppard's evidence that she was interested in buying the Third Street property and was upset when she found out it had been purchased by Deveaux. However, she came to believe that Deveaux had purchased the property for her and over time, with Deveaux's consent, she began to use the property and carry out improvements. There was discussion, at some point, that Sheppard and Deveaux would move into the Third Street property together but this never happened.

[6] Sheppard said that she was fond of the neighborhood where the Third Street home was located. She asked Deveaux if she could move in and he agreed. He arranged for power to the house and she had friends clean, paint, do some repairs and install kitchen cabinets. Sheppard said that she moved in sometime between December, 2012 and January, 2013 but Deveaux did not have legal title to the property until May 2, 2014.

[7] It was Deveaux's evidence that at some point the pipes froze at Sheppard's School Street home. Following this event, Sheppard asked to move into Third Street. Deveaux agreed. At the time, Sheppard was receiving a housing allowance from Community Services of about \$400 a month. She said she paid this to Deveaux for some period of time. She stopped paying Deveaux at some point after she sold her School Street home in May, 2014. There was evidence that Sheppard was supposed to disclose the sale of the School Street property to Community Services and she did not. When the sale was discovered by Community Services, Sheppard was penalized by suspension of her benefits for a year and 9 months. For that period, she had no income.

[8] Sheppard says that she made an Agreement with Deveaux to buy the Third Street Property. She says that she first paid him a total of \$5,500 for the home, comprised of a \$4,000 cash payment and a \$1,500 cash payment but that "she doesn't know when those payments were made". Deveaux wanted more than \$5,500 for the home and the parties agreed to a purchase price of \$10,000.

[9] The Agreement between the parties was written down by Sheppard and is *Exhibit "A"* to her Affidavit. It is signed by the parties and 2 witnesses. It confirms that Deveaux would transfer the property to Sheppard for a purchase

price of \$10,000. He would provide the deed and “she will drop off money”. The water and tax accounts were to be changed into Sheppard’s name.

[10] Both parties acknowledged their signatures and the basic terms of the Agreement. The parties disagree on compliance with the Agreement. Sheppard says that she paid Deveaux for the home and has never received a Deed. Deveaux says he was only paid \$4,500 and that Sheppard lived in the house until October 1, 2016 and didn’t pay the water or taxes on the home. The property is now scheduled for a municipal tax sale on March 30, 2017.

[11] Before leaving this review of the background, I note that I have referred to the evidence of the parties’ “Agreement” as written down by Sheppard and signed by the parties on May 24, 2014. I acknowledge that Sheppard consistently referred to the handwritten document as a “receipt”. It was her evidence that by the time the parties put the Agreement in writing, she had already paid Deveaux part of the purchase price. More will be said about that in the reasons below.

Issue

[12] Strictly speaking, the issue in this matter is whether Sheppard is entitled to a Deed to the Third Street property. Having heard the evidence and submissions

from the parties, the real issue is whether Sheppard paid the entire purchase price of \$10,000.

Position of the Parties

Lisa Sheppard

[13] Sheppard submits that she is entitled to a Deed from Deveaux under the terms of their Agreement. She says that the Agreement was clear and that she complied with it by paying the \$10,000 purchase price. It was her evidence that she initially paid Deveaux a total of \$5,500.00 and subsequently paid him another \$4,500. All payments were cash payments. Sheppard has no receipt from Deveaux for any of the payments confirming the amount or date of payment.

[14] It is Sheppard's position that the document that she prepared on May 24, 2014 is a receipt. She says that the language of the document, and specifically the words "I Bobby Deveaux *sold* Lisa Sheppard the property" reflects that some money had already been paid. She submits that the words "she will drop off money" later in the document reflect the fact that there remained a balance owing which was later paid.

[15] Sheppard now seeks compliance from Deveaux. She acknowledges that she has not paid the water and tax accounts presently outstanding.

Robert Deveaux

[16] Deveaux submits that “no good deed goes unpunished”. He says that he did receive \$4,500 in cash toward the purchase but nothing else. He let Sheppard stay in the home as long as he did without further payment because he was sympathetic to the hardship it would cause to make her leave. He says that he continues to be willing to close the transaction if Sheppard pays the outstanding amount of \$5,500 plus the water and tax account balances.

[17] In support of his position that he has not been fully paid, Deveaux offered the evidence of Glen Kaiser. It is Kaiser’s evidence that he acted as a “go-between” for the parties in the summer of 2015 when Sheppard tried unsuccessfully to make arrangements to pay the balance owing. Deveaux says that this evidence supports that the purchase price was never fully paid and that \$5,500 is still owing.

Analysis

[18] This decision rests on a credibility assessment of the parties. In my view, there is no real issue as to whether an Agreement existed or its basic terms. The dispute is whether the purchase price was paid by Sheppard. Sheppard must establish that the purchase price was paid on a balance of probabilities. If she discharges this burden, she is entitled to Deveaux's compliance with the Agreement.

[19] I did not find Sheppard's evidence credible or reliable. I say this for several reasons.

[20] First, I must agree with the Respondent's submission that Sheppard's evidence was "fluid". Her version of the events was vague and confusing and at times glib, evasive and combative. It was my impression that she was consciously avoiding certainty in her answers. The best that can be said is that she had a very poor recollection of details that she should have known to be significant in this contest.

[21] Second, there were concerning inconsistencies in her evidence. For example, in her affidavit at paragraphs 7 to 10, Sheppard sets out the payments made to Deveaux pursuant to their "verbal agreement". She said that she first gave

him \$5,500. Deveaux said he wanted \$10,000 for the property so she then gave him another \$4,500. No further details are given respecting any money paid. Sheppard concludes by saying that the entire amount was paid in cash from the sale of her School Street home. There is no mention in her Affidavit evidence about payments made from settlement funds.

[22] When cross-examined, Sheppard's evidence was confusing. She said that she had wanted to buy the Third Street property herself but was waiting on a "settlement". She later explained that in 2012 (she thought) she received 2 settlements related to claims involving her 2 children. The settlement amounts were \$8,000 and \$13,000. Initially, she responded that the day she received the larger settlement, she paid Deveaux \$4,000 in cash. Deveaux refused to take the funds when first offered but then accepted the money saying he would use it toward renovations on the home. Sheppard's evidence at this point did not assert that this money was a partial payment toward purchasing the home. Nor did she say Deveaux accepted on this basis. Quite to the contrary.

[23] Later in her evidence, Sheppard said that she paid Deveaux \$4,000 and \$1,500 in cash, both amounts coming from the first settlement but "she doesn't know when" and "I am not sure of the dates" the payments were made. Although

uncertain of the particulars of these payments, Sheppard was sure that they were made from the settlement funds. She further testified that other smaller amounts were paid to Deveaux around that same time for a vehicle (\$2,000) and home appliances. Sheppard then testified that she paid the remaining \$4,500 to Deveaux out of the proceeds of her School Street home in May of 2014. In my view, Sheppard's answers when cross-examined were internally inconsistent and inconsistent with her affidavit evidence.

[24] Finally, there was evidence that cast doubt on Sheppard's general credibility. First, there was evidence that Sheppard had not been forthright in her dealings with Community Services in the past. Second, the hearing of this matter was adjourned on 2 occasions before proceeding. On the second date set Sheppard did not appear as scheduled. It was reported by counsel that school was cancelled due to inclement weather and that Sheppard was not able make suitable child care arrangements that day to attend the hearing. When the hearing proceeded, Sheppard was questioned about the earlier reason for the adjournment and confirmed the reason she did not attend the earlier date. She was then confronted with a Recognizance for her older son requiring that he remain at her address with certain limited exceptions. Her response was that she did not depend on her older son for childcare arrangements. The response rang hollow.

[25] In contrast with Sheppard's evidence, Deveaux's evidence was simple, straightforward and consistent. He acknowledged that the parties had been in a relationship in the past. He said that there had been discussion of him and Sheppard moving into the Third Street property together but this never happened. He had carried out some renovations to the property. He had received money from Sheppard for a truck and he had received \$4,500 in cash from her toward the purchase of the Third Street property. He was aware that Sheppard had received settlement money at some point but denied knowing the amounts or receiving any part of those funds. He denied that he had purchased Third Street as a gift for Sheppard.

[26] Deveaux said that he let Sheppard continue to live in the Third Street property until she left herself in October 2016. He explained that Sheppard had paid the initial \$4,500 and he let her stay because she had asked for more time to pay the balance owing. This was during the period Sheppard had no income because of Community Services had halted her benefits.

[27] On this latter point, Glen Kaiser testified. It was his evidence that he had been approached by Sheppard in the summer of 2015. She wanted Kaiser to contact Deveaux to see if he would take monthly payments for the balance owing

on the Third Street property. Kaiser said that Sheppard advised him that she owed Deveaux \$5,500.

[28] When cross-examined, Kaiser acknowledged that he was a friend of Deveaux's but described himself as a "mutual friend" of the parties and had hoped to act as a "go-between" to see if arrangements could be made. There was resonance in his version of events given that Sheppard had known Kaiser previously and had originally dealt with him to try and purchase the Third Street property. It also makes sense that Sheppard would try and make payment arrangements after her benefits from Community Services were restored.

[29] In the end, I accept the evidence given by Deveaux and Kaiser. Their evidence was clear and cogent and much more compelling from a common-sense perspective. For the reasons already stated, I am left with the view that it is unsafe to rely up the assertions made by Sheppard. She had no receipt to support that she made payments totally \$10,000 to Deveaux. Deveaux acknowledges receipt of \$4,500 but contests receipt of a further \$5,500. It remains possible that Sheppard made the remaining payment but I am not persuaded on a balance of probabilities given all of the evidence heard in this matter.

Conclusion

[30] For the foregoing reasons, Sheppard's application is dismissed. Deveaux shall not be required to provide a Warranty Deed to Sheppard for the Third Street property.

[31] As Deveaux remains willing to conclude the transaction, I allow 90 days for Sheppard to pay the balance owing in exchange for a Deed to the Third Street property. In the event that no payment is made, Deveaux shall return the \$4,500.00 to Sheppard forthwith. I make no order as to the outstanding utility accounts as this issue was not before me, no Notice of Contest was filed in this proceeding and, no evidence proffered as a basis for any determination.

[32] If the parties are unable to agree on costs, I would ask for written submissions no later than 30 days from today.

Gogan, J.