

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Kenneth Wilson, plaintiff
AND: Clarke Jared Rieck, defendant
BEFORE: Mr Justice Ramsay
COUNSEL: W. Gerald Punnett for plaintiff; Robert Smith for defendant
HEARD: January 25, 2021 at Kitchener

ENDORSEMENT

The case

[1] The plaintiff sues for damages for the defendant's having sold land with respect to which the plaintiff had a life estate or an option to purchase, or some right to remain in possession for life, based on an agreement between the parties that was never reduced to writing. In closing submissions, it was submitted that I should make an order giving him an option to purchase the property or a life interest therein.

Overview

[2] The case is built on a 30-year-old lie. In 1991, when the plaintiff could not keep his mortgage in good standing, he went to the Clarkes, a nice, decent couple of his acquaintance, and asked them to buy it. They did. They let him stay in the property as a tenant. In the first few months he talked with them about buying it back. They listened to him. He never had the means to make a serious offer, so he never bought it back. The plaintiff confused this simple landlord tenant relationship by inventing the promise of an option to purchase.

[3] For years the plaintiff abused the Clarke's kindness. He never paid rent consistently. He made some utility payments. He let the house fall into disrepair. In the mean time, he was collecting rent from sub-tenants. He grew the fabricated option to purchase into a life tenancy. It was said to be off the books for the Clarke's supposed benefit. They got him evicted in 1994, but he just moved back in. He made it too hard to get him out. Eventually he moved onto his next victim.

[4] Perhaps realizing that the Clarkes would eventually sell the property, the plaintiff introduced Mr Clarke to the defendant, a young man who wanted to buy a fixer-upper. The plaintiff told the defendant that he had an interest in the house. The defendant talked about this with him and with the Clarkes. But after he spoke to his lawyer he realized that the

plaintiff had no rights in the residence, apart from tenancy. He bought the house and entered a written agreement to let the plaintiff stay on as a tenant. In the agreement, the plaintiff explicitly agreed that he had no interest in the house.

- [5] The plaintiff did not keep up on the rent. In 2018 he was evicted. He moved out and now sues for damages based on his long con.

The evidence

- [6] The plaintiff lived at 84 Hickson Drive in Kitchener from 1960 to 2018, when he was evicted by order of the Landlord and Tenant Board. In 1992 the property was transferred to Patricia Clarke. The mortgage to the Royal Bank was discharged. In 2014 the property was transferred to the defendant. In 2018 the plaintiff was evicted at the instance of the defendant.
- [7] The plaintiff says he was friends with Steven and Patricia Clarke. They offered to pay off the mortgage and take title on the property in exchange for the plaintiff paying them back. The plaintiff would retain rights to the property. This was for the benefit of all, because it gave Patricia Clarke a tax break.
- [8] The plaintiff says that Patricia Clarke tried to evict him in 1993, but the judge refused eviction. Court records show, however, that on June 9, 1993, Sills J. of the Ontario Court (General Division) ordered the plaintiff to pay back rent in the amount of about \$10,000, failing which a writ of possession would issue. A writ of possession did issue on October 7, 1994. Another one issued the following month.
- [9] The Clarkes agreed to sell the property to the defendant in 2012 but the deal could not be completed until 2014. The property was in a state of disrepair. The defendant moved a carpenter in to do repairs before the sale closed. On August 28, 2012 the plaintiff and the defendant signed a lease as tenant and landlord.
- [10] The plaintiff remained on the property until 2018. He testified that the deal between him and the defendant was that he, the plaintiff, would stay in the house for life. If the defendant wanted to start a family and move in, he, the defendant, would build a room for the plaintiff. The plaintiff would contribute \$500 a month to the building of the room. When it became apparent that the room was not going to be built, he stopped paying. The benefit to the defendant was that he was buying the property for less than it was worth.
- [11] The defendant bought the property for \$255,500. A valuation by a real estate appraiser puts the value at \$250,000 at the time. I consider that expert opinion to have more weight than that of Mr Nicholson, who was a real estate agent who just pulled up information about a few comparable sales and whose expertise in valuation of residential property was not established. The comparable sales were in better shape. That observation assumes that Mr Nicholson's opinion was admissible, which it was not.
- [12] The defendant says that there was no agreement for anything more than a tenancy. He let the plaintiff stay until wanted to sell and the buyers did not want a tenant. His evidence is supported by Patricia Clarke. She bought the house from the Royal Bank when it foreclosed on the plaintiff. She let him stay as a tenant. Eventually she got him evicted, but he kept

coming back and breaking in, so she let him stay as a tenant. He did not pay rent consistently. He paid some water bills and some electrical bills. He had sub-tenants who were paying him rent. It was just too much trouble to get anything from him.

[13] The defendant took proceedings to evict the plaintiff when he stopped paying rent. The Landlord and Tenant Board ordered the plaintiff to vacate the premises by September 30, 2018 and fixed the arrears of rent at \$2,275.

[14] The plaintiff vacated the property. He says he is living in his car. He did not explain when asked why he has not made other arrangements for accommodation. He has three children. He did not say how he could exercise an option to purchase.

[15] The alleged oral agreements cannot create a legal interest in the land. They are not valid under the *Statute of Frauds*, RSO 1990, c. S-19. The question is whether the plaintiff has proven an equitable right to possession of the premises or part thereof or an equitable option to purchase, the breach of which could entitle him to compensation in damages.

Reasons for dismissing the action

[16] I do not believe that any such equitable right exists for the following reasons:

- a. The plaintiff's account of the eviction proceedings of 1993 are contradicted by the record. He has no credibility as a witness. As far as I am concerned he is a fabulist. That became evident in the preliminary questions in chief. He couldn't tell me whether he was married or single without explaining how he came to be divorced and that he was sure his wife would come back one day.
- b. The plaintiff's tale is implausible. The defendant took care to use a lawyer to buy and then to sell the property. All aspects of both sales were properly documented. Why would he at the same time make an undocumented deal to encumber this significant asset?
- c. For that matter, why would he enter into such a deal at all? I can see no benefit to him. The benefit alleged by the plaintiff, purchase for a lower price than fair market value, is contradicted by the valuation. Furthermore, there is no reason in the evidence why Mrs Clarke would have benefited from a sale at a lower price.
- d. The plaintiff's witness, Mr Nicholson, said that after the fact the defendant told him that originally the sale from Mrs Clarke to the defendant would have had a right for the plaintiff to stay for life, but after seeking legal advice he decided against it. The plaintiff confirms this. Mr Nicholson's account is correct, but incomplete. When the defendant was first exploring purchase, he was under the impression that the plaintiff had some right to the house. When he found out that he did not, he stopped talking to him and negotiated the sale with the Clarkes. He told the plaintiff that he would not buy the house with some sort of trust for the plaintiff. The Clarkes had humanitarian concern for the plaintiff (as the defendant did: he found him new accommodations and offered him money for rent), but the

Clarkes confirmed that the plaintiff had no right to the property. The plaintiff did not promise him any.

- e. The plaintiff is contradicted by the defendant and Patricia Clarke, both of whom I found credible. They say that initially the Clarkes talked about selling the house on the basis that the plaintiff would be there. The plaintiff declined. He bought the house for fair market value. The clause in the agreement of purchase and sale that mentions the plaintiff residing in the house is struck out and initialled by both parties to the sale.
- f. The plaintiff's account is contradicted by the lease he signed in 2012. He recognized himself as a tenant and agreed:

By signing this agreement, Kenneth Wilson agrees to fully release all claims and ties to the house at 84 Hickson Drive, Kitchener, Ontario. After signing this document, Kenneth Wilson will not have any ties or claims on the property previously mentioned.

- g. The plausible explanation for the dealings between the plaintiff and the defendant is that they were tenant and landlord. This explanation is consistent with the conduct of the defendant before the Landlord and Tenant Board and with the lease signed by the plaintiff.
- h. Finally, there is no credible evidence that the defendant got any consideration for any promise or representation to let the plaintiff stay in the house or that the plaintiff relied to his detriment on any such promise. Since 1992 his position has been the same: he has been a grifter and a freeloader.

Conclusion

[17] The action is dismissed. The parties may make written submissions to costs not exceeding three pages in length, to which may be appended a bill of costs and any offer to settle, the defendant within seven days and the plaintiff within seven days thereafter.



J.A. Ramsay J.

Date: 2021-01-26