



**AMENDED PURSUANT TO SUPREME COURT
CIVIL RULE 6-1(1)(a)(i) ORIGINAL FILED ON
NOVEMBER 18, 2021**

**No. 57144
Vernon Registry**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KAREN ESPERSEN and ERIK ESPERSEN

PLAINTIFFS

AND:

**THOMAS OWEN QUIGLEY and
CATHERINE ANN QUIGLEY**

DEFENDANTS

AMENDED RESPONSE TO CIVIL CLAIM

**Filed by: The Defendants, Thomas Owen Quigley and
 Catherine Ann Quigley (the "Defendants")**

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant Taylor North's Response to Facts

1. The facts alleged in Paragraphs 2, 16(b), 16(e), 16(f), 16(g), 16(h) and 16(i) of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in Paragraphs 1, 3, 5 to 11 inclusive, 13, 14, 15, 16(a), 16(c), 16 (j) and 17 to 22 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in Paragraphs 4, 12, and 16(d) of Part 1 of the Notice of Civil Claim are outside the knowledge of this Defendant.

Division 2 – Defendants Version of Facts

1. The Defendant Catherine Anne Quigley's ~~sister~~ is ~~an retired~~ educational assistant ~~and currently works as a personal care aid~~. She is the sister of the Plaintiff Karen Espersen.

2. The Defendant Thomas Owen Quigley is a retired building contractor.
3. At all material times, the Plaintiffs have been living in a house on the developed portion of the subject Property, located at 301 Langille Road, Edgewood, BC (the "Property").
4. In or about 2013 the Plaintiff Karen Espersen made representations to the Defendants that she and Erik Espersen had previously entered into a verbal agreement with Ariel Prentice for the transfer of an approximately 15 acre parcel of land located at the civic address of 331 Langille Road (the "Prentice Property") from Prentice to the Plaintiffs in exchange for the Plaintiffs building a dirt road for Prentice. At that time, the Plaintiff Karen Espersen and the Defendants entered into a verbal agreement whereby the Plaintiffs would transfer the Prentice Property to the Defendants, in exchange for the Defendant Thomas Owen Quigley performing approximately \$100,000 of renovations to a house on the Property, the legal title for which was at that time still in the name of the Plaintiffs (the "First Agreement").
5. In accordance with the First Agreement, the Defendant Thomas Owen Quigley began performing renovations to the house on the subject Property, including *inter alia*, installing a new furnace, bathroom renovations, installation of a new deck, new doors, installation of a dishwasher, installation of new plumbing, installation of new power lines from the house to the pumphouse for the well, and installation of water lines.
6. Subsequently, in early 2014, the Plaintiffs defaulted on the mortgage payments for the subject Property, and the Property was foreclosed upon by the Royal Bank, which eventually obtained an order nisi and order for conduct of sale. Thereafter, the Plaintiffs and the Defendants reached a new verbal agreement (the "Second Agreement") as follows:
 - a) The Defendants would purchase the Property through the foreclosure proceedings. Title of the Property would be transferred to the Defendants.
 - b) The Defendants Plaintiffs would then become responsible for making best efforts, as agents of the Defendants, to apply for a boundary adjustment as between the Prentice Property and the Property, which would add 9 acres from the Prentice Property to the Property.
 - c) Concurrent with, or shortly after the boundary approval, the Plaintiffs would also make their best efforts to apply for subdivision of the Property, to divide the Property into parcels of land of 28 acres and 30 acres in area with the assistance of the Plaintiffs.

- d) The Plaintiffs would later purchase a subdivided half of the Property back from the Defendants (the developed part of the Property, that is, the 30 acre parcel of land.
- e) ~~The Plaintiffs would subdivide a 9 acre parcel of the Prentice Property and transfer that to the Defendants as well.~~
- f) There was no set price the Plaintiffs would pay to the Defendants to repurchase the subdivided/developed half of the Property.
- g) There was no set date for the Plaintiffs to repurchase the subdivided/developed half of the Property, except that the Plaintiffs would only be able to repurchase the Property after the boundary adjustment was complete, and it was understood between the parties that it would take some time for the Plaintiffs to rebuild their credit so they could finance the purchase.
- h) In the interim the Plaintiffs could continue to live on the Property as tenants.
- i) In the interim, the Plaintiffs would pay rent to the Defendants and cover the maintenance and carrying costs of the Property, including ~~mortgage payments~~, utility payments, insurance premiums and property taxes.
- j) In the event the boundary adjustments and subdivision of the Property was not approved, the parties agreed that the Defendants would keep legal title to the Property and the Second Agreement would no longer be binding on the parties.

7. In reliance on the Second Agreement, on or about November 14, 2014, the Defendants purchased the Property through the foreclosure proceedings at a price of \$320,000, plus costs, for a total expense of approximately \$367,000. The purchase was partially financed by a new mortgage registered against the Property, which was co-signed by Trevor Dexter Klug, and Mr. Klug was initially placed on title to the Property as a temporary measure, until such time as the Defendants were able to sell their home in Three Hills, Alberta, and refinance.
8. In further reliance on the Second Agreement, in July 2015 the Defendants sold their home in Three Hills, Alberta, then refinanced and took out a new mortgage against the Property, which did not involve Trevor Dexter Klug. Mr. Klug was removed from title to the Property on or about March 4, 2016.
9. Since July 2015, the Defendants have been living in rental properties. In 2017, they moved to Edgewood, BC. As a result, they have incurred costs in the form of moving expenses and rent.
10. Since obtaining title to the Property, the Defendant Thomas Owen Quigley has constructed an RV pad on the subject Property, as well as a deck down at the river which runs through the Property.

11. In response to Part 1, Paragraph 16(d) of the Notice of Civil Claim, the Defendants say that the renovations of a second home on the Property, which include construction of a woodshed, deck, and back entrance for the second home, were completed and paid for by David and Lorraine Bilinski, not the Plaintiffs.
12. In accordance with the Second Agreement, in or about 2016 the Defendants applied for subdivision of the Property, through the Plaintiff Karen Espersen, who acted as agents for the Defendants in the subdivision application. However, the subdivision application was denied, in 2017.
13. The Plaintiffs have wrongfully demanded that the Defendants transfer title of the Property back to them.
14. Because their money has been tied up with the subject property, the Defendants have missed out on opportunities to purchase other properties, and in the meanwhile, property values have increased. The Defendants are no longer in a position whereby they can afford to purchase another property to live on.
15. The Plaintiffs have wrongfully allowed third parties, David and Lorraine Bilinski, to reside on the Property, without payment of any rent to the Defendants.

Division 3 -- Additional Facts

1. ~~None~~ The Defendants never intended to create or hold the Property in trust for the Plaintiffs' benefit.
2. Any modifications, renovations, or improvements made by the Plaintiffs to the Property were done with the intention to benefit the Plaintiffs, and were completed without the consent of the Defendants.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendants consent to the granting of none of the relief sought in Part 2 of the Notice of Civil Claim.
2. The Defendants oppose the granting of the relief sought in paragraphs (a) to (g) inclusive of Part 2 of the Notice of Civil Claim.
3. The Defendants take no position on the granting of the relief sought in none of the paragraphs of part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The Second Agreement was an oral agreement between the parties, and the Defendants take the position that the requirements of s. 59(3) of the *Law and Equity Act* have not been met. Therefore, the Second Agreement is not enforceable.
2. Under the Second Agreement, the Plaintiffs agreed to:
 - a) provide their best efforts, as the agent of the Defendants, to apply for the boundary adjustment;
 - b) provide their best effort to have the subdivision of Property approved; and
 - c) purchase one of the newly created lots from the subdivision, which had the original structures remaining on it, from the Defendants after the boundary adjustment and subdivision were approved.
3. Under the Second Agreement, the Defendants agreed to:
 - a) purchase the Property in the foreclosure proceedings;
 - b) give permission to the Plaintiffs to act as their agent for the purposes of the boundary adjustment and subdivision applications;
 - c) allow the Plaintiffs to reside on the Property as tenants; and
 - d) sell one of the newly created lots from the subdivision, which had the original structures remaining on it, to the Plaintiffs after the boundary adjustment and subdivision were approved.
4. The Defendants have fulfilled their obligations under the Second Agreement to the best of their abilities, and have provided good and valuable consideration for purchase of the Property. The Second Agreement does not require that they transfer title back to the Plaintiffs unless and until the subdivision and boundary adjustment are approved, and even then, no price for the Plaintiffs to pay to the Defendants for the transfer was agreed upon by the parties.
5. The Second Agreement was merely an agreement to agree, and is therefore not enforceable.
6. The Plaintiffs failed to obtain a subdivision of the Property, and therefore the Second Agreement is not enforceable as against the Defendants.
7. The Second Agreement is not a contract because there was no meeting of the minds between the parties as to their mutual obligations. In particular, there was no agreement as to the price to be paid by the Plaintiffs to the Defendants for the subdivided lot, and no agreement as to a formula to calculate said price. Nor did the Second Agreement contemplate a time frame for completion of a subdivision or a

transfer. Nor did the Second Agreement contemplate what would happen if the subdivision application was unsuccessful. Without the parties fully contemplating and agreeing upon these terms, there was no *consensus ad idem*, and the Second Agreement is unenforceable.

8. Any modifications, renovations, or improvements to the Property by the Plaintiffs were performed for the benefit of the Plaintiffs themselves while they reside on the Property, and do not create an equitable interest in the Property for the Plaintiffs.
9. The Defendants deny that any modifications, renovations or improvements to the Property by the Plaintiffs have added to the value of the Property, and put the Plaintiffs to the strict proof thereof.
10. The Defendants are entitled to ownership ~~for~~ of the Property.
11. The Defendants do not hold the Property in trust for the Plaintiffs.
12. The Plaintiffs have no equitable interest in the Property.
13. In the further alternative, the Defendant is entitled to set-offs against the claim of the Plaintiff, as follows:
 - a. Repayment of the purchase price of the Property;
 - b. Repayment of carrying costs incurred by the Defendants;
 - c. Damages for ouster, including occupational rent; and
 - d. Interest.

Defendant's address for service:

c/o Richard P. Barton
DuMoulin Boskovich LLP
Barristers and Solicitors
3009 – 28th Street
Vernon, B.C. V1T 4Z7

Fax number address for service (if any): (778) 943-2133

E-mail address for service (if any): n/a

Date: 18 November 2021

"RICHARD P. BARTON"

Signature of Richard P. Barton
Lawyer for the Defendants

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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