



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

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 a 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
7. 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 would then apply for subdivision of the Property, with the assistance of the Plaintiffs.
 - c) The Plaintiffs would later purchase a subdivided half of the Property back from the Defendants (the developed part of the Property).
 - d) The Plaintiffs would subdivide a 9 acre parcel of the Prentice Property and transfer that to the Defendants as well.
 - e) There was no set price the Plaintiffs would pay to the Defendants to repurchase the subdivided/developed half of the Property.
 - f) There was no set date for the Plaintiffs to repurchase the subdivided/developed half of the Property, but 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.

- g) In the interim the Plaintiffs could continue to live on the Property.
 - h) In the interim the Plaintiffs would cover the maintenance and carrying costs of the Property, including mortgage payments, utility payments, insurance premiums and property taxes.
 - i) In the event the subdivision of the Property was not approved, the parties agreed that the Defendants would keep legal title to the Property.
8. 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.
9. 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.
10. Since July 2015, the Defendants have been living in rental properties. In 2017, they moved to Edgwood, BC. As a result, they have incurred costs in the form of moving expenses and rent.
11. 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.
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.

Division 3 -- Additional Facts

1. None.

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 Defendants have fulfilled their obligations under the Second Agreement 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.
2. The Defendants are entitled to ownership for the Property.
3. The Defendants do not hold the Property in trust for the Plaintiffs.
4. The Plaintiffs have no equitable interest in the Property.

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): (604) 943-2077

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

Date: 18 November 2021



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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