

CANADA / JUDGMENT

Barber v. Shut

2007 BCSC 1593

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1593 Barber v. Shut

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Barber v. Shut,

2007 BCSC 1593

Date: 20071031

Docket: 05-5948

Registry: Victoria

Between:

Doreen Shirley Barber and Earl Gary Barber

Plaintiffs

And:

Dr. Patricia Ellen Wilhelmina Shut

Defendant

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Plaintiffs:

R. L. Richey

Counsel for the Defendant:

B. D. Home

Dates and Place of Trial/Hearing:

June 4, 5 and 6, 2007

Victoria, B.C.

- [1] This is an action for specific performance of an alleged agreement to transfer land. The property at issue is a parcel of land located on Pender Island that is owned by the defendant and is adjacent to the plaintiffs' residential property.
- [2] In the alternative the plaintiffs claim damages for breach of an agreement and/or damages on a quantum meruit basis as compensation for the provision of caretaking services to the defendant by the plaintiffs at her request and for payment of the sum of \$1,942.05 being the surveying costs related to drawing a plan of the land that is the subject of this action.
- [3] The defendant denies that there was any agreement to transfer land and says that there was only discussion between the parties that fell well short of agreement, or alternatively that the terms were too uncertain to form a valid contract. The defendant also says that, in the alternative, if there was an agreement it is unenforceable because it is not in writing, contrary to s. 59(2)(a) of the Law and Equity Act, R.S.B.C. 1966, c. 253.
- [4] Lastly, the defendant argues any agreement found to exist is unenforceable as a result of duress placed upon the defendant by the plaintiffs. As to the services provided, the defendant claims that these were gratuitous services and were not requested by her. She argues that the plaintiffs are responsible for the survey fees paid.

Facts

- [5] The plaintiffs own and reside on a property on Bedwell Harbour Road, Pender Island, British Columbia. The defendant owns an adjacent property. The plaintiffs had resided on their property since October of 2000 and the defendant has owned hers since November of 2002.
- [6] The plaintiffs initially enjoyed a good relationship with the defendant as they had with the prior owner of her property, Mr. Anderson. In the course of a discussion in the summer of 2003, the plaintiffs indicated to the defendant that they wanted to extend their property behind their home and wished to purchase part of the defendant's property for that purpose. The defendant was apparently aware of this wish from the prior owner, Mr. Anderson, and was prepared to assist the plaintiffs and she told the plaintiffs that it was not necessary for them to buy the land as she would transfer a portion of her property to them at no cost.
- [7] The parties had some limited discussion about the extent of the property the plaintiffs wanted to acquire and they knew it needed to be drawn in the form of a plan of subdivision. To that end, a survey was required and Mr. Richard Wey, a surveyor from Sidney, British Columbia, who the defendant had retained previously, was contacted. The plaintiffs made arrangements through Mr. Wey's office to have him attend on the property when he was next on Pender Island.

- [8] On August 1, 2003, the plaintiffs and defendant were present at the plaintiffs' residence with Mimi Nordby, the person responsible for a cemetery located near the plaintiffs' property. The defendant wanted to discuss cemetery plots and the plaintiffs had arranged for her to meet Ms. Nordby at their residence. Ms. Nordby recalls the date through records of the cemetery that show the defendant purchased some plots on August 1, 2003 for a price of \$450. She recalls the defendant in particular because the defendant had expressed a wish to have her cats buried in the cemetery with her.
- [9] On that day, while the defendant was present at the plaintiffs' residence, Mr. Wey arrived to conduct the survey. All of the parties, the plaintiffs, the defendant and Ms. Nordby recall him arriving. The plaintiffs say that they had requested his attendance, but had not arranged any specific date. The plaintiffs say that it was customary on the Island for trades or service people to attend when they can and to get to as many requests for service as possible while they are on the Island.
- [10] The defendant apparently now believes that there was some sort of a plot to have her there on that particular day when the surveyor arrived. She believes that the attendance of Mr. Wey at the plaintiffs' residence that day had been pre-arranged so that he would attend at a time when she was present. The plaintiffs deny making any such arrangement and I accept their evidence.
- [11] After the surveyors had completed their work and had left, the plaintiffs say that they walked the proposed boundaries so that the defendant could see the area that was to be transferred. Mr. Barber says that he pointed out the flagging tape that marked the proposed boundary. The plaintiffs say that at that time the defendant's only concern was that she wanted to ensure that a large maple tree remained on her side of the proposed boundary line. The plaintiffs also note that when the plan was initially prepared in a rough form, the tree was marked on it as a result of her concern.
- [12] I accept that the reason for placing the particular tree on the initial draft of the plan was in fact to assure the defendant that the tree was to remain on her side of the property and I further accept that the defendant was shown the flagging tape that marked the approximate location of the proposed boundary.
- [13] Through the remainder of the summer of 2003, it appears that the parties enjoyed frequent social contact. Mrs. Barber said that on one occasion she and the defendant were discussing the property transfer and she gave a dollar coin to the defendant to represent what she felt was necessary consideration. Mrs. Barber has some background in property matters and was aware of the need for consideration for a contract to be enforceable. She said that the defendant told her there was no need for the coin and that she did not actually take it away.

- [14] The plaintiffs say that they believed from their discussions with the defendant that there was no objection to proceeding with the land transfer and they authorized a plan of subdivision to be prepared. The surveyor required a letter of authorization from the defendant before he could proceed and on August 14, 2003, the defendant signed such a letter. That letter is contained in Exhibit 1 at Tab 40, page 4.
- [15] The defendant says she was tricked into signing this document. She alleges that she was plied with liquor at social occasions at the plaintiffs' residence and pressured in other ways. I do not accept her allegations. I accept the plaintiffs' evidence that they simply advised her that a letter of authorization was needed before the surveyor could commence his work and that she signed it willingly with no indication of reluctance whatsoever.
- [16] The defendant is a medical doctor who works in the United Kingdom as a locum for the most part and is frequently away from the Island. In September 2003, the defendant went back to her locum work in the United Kingdom. The parties, however, remained in communication. Mr. Wey began work on obtaining approval for the subdivision of the property and noted that the title was encumbered with two mortgages and a judgment.
- [17] Meanwhile, the defendant and the plaintiffs seemed to be on good terms. The defendant made frequent requests of the plaintiffs to attend to matters related to her property. These requests included collecting and depositing rents from resident tenants, buying a camcorder for the defendant's use, and several other items of personal or property related nature.
- [18] In December of 2003, she wrote to Mr. Wey requesting the survey bills. In the letter she said, "I want to give my neighbours some land and I just need to understand where the new boundary is going to be first".
- [19] Meanwhile, Mr. Wey had prepared and submitted a subdivision application to start the approval process. The application was described as a boundary adjustment, rather than a subdivision.
- [20] In correspondence through the winter of 2003/04, the plaintiffs reported frequently on the state of the property and the work that Mr. Barber had done for the defendant. At no time was there any comment or reaction from the defendant that he should not be doing that work for the defendant.
- [21] By April 2004, the two-lot subdivision had received preliminary layout approval. Throughout that time it appears that the defendant was still making requests of the plaintiffs with respect to property matters. On April 28, 2004, she wrote and said, "Thank you very much for taking on the job of property managers at this difficult time." She went on to discuss various issues related to the property.

- [22] On April 29, 2004, the defendant suggested a notary public in Sidney (Exhibit 1, Tab 17). This suggestion had to be for the purposes of attending to the property transfer that was being discussed between the parties. There is no indication of any other purpose that a notary public would serve in connection with relations between the defendant and the plaintiffs.
- [23] Again, on May 9, 2004, the defendant wrote to the plaintiffs and said, "If you do any work like mowing or fixing things you should bill me by the hour and pay yourself from the rent money. That is what the rent money is for." (Exhibit 1, Tab 19). That letter clearly indicates that the defendant was aware that Mr. Barber was mowing grass and doing other work on her property and that it was understood he was to be paid for doing so.
- [24] The exchange of correspondence between the parties over this period of time reveals a continuing good relationship between the parties. The defendant had no hesitation in asking the plaintiffs to take on various small projects such as maintenance, improvement and repair, tending to issues respecting the tenants on the property, and personal banking of the defendant.
- [25] On May 29, 2004, the plaintiffs wrote to advise of various matters including matters surrounding the house sitter of the defendant, an individual named Amanda (Exhibit 1, Tab 21). This correspondence reveals the first sign of potential difficulty between the plaintiffs and the defendant. It appears from the correspondence that followed that the plaintiffs viewed Amanda somewhat negatively.
- [26] In that letter, the plaintiffs reported on the progress of the subdivision and inquired if the defendant was prepared to go ahead with the property transfer. Mr. Barber added, "If you are at all hesitant about proceeding we can wait until you've had an opportunity to view it for yourself. Please let us know your wishes." What they wanted her to view for herself was the final draft of the plan, as it appears that up until that point at least, she had not seen it.
- [27] Later they wrote again with respect to issues surrounding the defendant's property. Again, they asked if the property transfer could proceed. There were several faxed letters back and forth respecting matters relating to the defendant's property problems, including several related to the defendant's house sitter Amanda. The defendant initially seemed to accept Amanda was a problem, but later that appeared to change.
- [28] It is clear from the correspondence that Mr. Barber was spending considerable time and effort on the defendant's property. He was dealing with items of maintenance and care of the property, including spending hours handpicking tent caterpillars from fruit trees so that the defendant could keep the property "organic" and not use any chemicals to kill insects.
- [29] The letters from the plaintiffs were cordial and pleasant, outlining what they had been doing and asking for directions or approval. There was no sign or indication of any pressure upon the defendant to do anything respecting the property transfer, other than to inquire whether it could go ahead.

- [30] On June 14, 2004, the defendant wrote the plaintiffs in reply to their May 29, 2004 letter. She thanked the plaintiffs for the work they had done, reminding Mr. Barber to pay himself the "going hourly rate" for what he had done. She provided a list of several other requests for the plaintiffs to attend to, including rounding up all of the stray cats they could find around her property and taking them to the vet to be neutered and vaccinated and then returned to the house sitter.
- [31] By July 31, 2004, the defendant faxed a short note advising that her job had completed and she had not found anything else. She said that if she did not find any other employment soon, she would return to Pender Island. In fact, she did not return and the next correspondence seems to be in early December 2004. Again, the defendant made some requests for the plaintiffs to attend to personal banking matters.
- [32] By July of 2005, the plaintiffs were concerned about Amanda, the house sitter the defendant had employed, and in a long letter to the defendant they reported on the difficulties between the tenants on the property and Amanda. This letter reported in a plain spoken way about the problems they felt Amanda was causing. This letter contains the first indication of the plaintiffs' concern that the defendant might be unwilling to complete the property transfer to them.
- [33] Mr. Barber described the work that he had done on the defendant's property and estimated its value at about \$350 per month. He again advised the defendant that he needed to replace his old deck and needed to know if the property transfer was to proceed. There is no indication of any pressure; only a request that if she had not "changed her mind" could she forward the necessary documents.
- [34] This letter prompted an odd response given the history of the relationship between the parties up until that point. The response from the defendant appears at Tab 36 of Exhibit 1. The defendant purported to accept a "resignation" that had not been offered and then provided a narrative respecting what she considered Mr. Barber had been asked or authorized to do.
- [35] She concluded the letter, complaining that "your notary public" sent a confidential letter by fax to her at her then place of employment. The letter related to the removal of a judgment from the title to her property that had been placed by her prior employers. She said that as a result of that letter falling into the hands of someone who apparently was one of the people she worked for, or worked with, she had lost her position as a locum.
- [36] The defendant's letter was a recitation of the history of this matter that the defendant portrayed as being completely the fault of the plaintiffs. She seemed to have forgotten all of the details and history of her relationship with the plaintiffs and complained that her bank manager was "very concerned about why you made me sign these strange letters", referring apparently to the authorization letter that had been delivered to Mr. Wey.

[37] By the end of this letter, it can be seen that the defendant had decided that she had been forced to agree to the property transfer, had been misled as to its extent, or had been forced to sign the so-called "strange letters" after being plied with alcohol by the plaintiffs.

Was there an enforceable contract?

[38] On the evidence, I have no difficulty in accepting the plaintiffs' version of events. They both gave their evidence in a clear and careful manner. Their evidence was consistent with the documentation that has been filed as exhibits, and was corroborated in part by the witness Mimi Nordby.

[39] The defendant gave long, rambling, often non-responsive answers during the course of her evidence, and her evidence was inconsistent, not only with the plaintiffs' evidence but with several of her own letters as well.

[40] I find the defendant did agree to transfer some portion of her land to the plaintiffs and that she was shown the proposed new boundary and was aware of the approximate shape and size of the property that was being discussed. Why she changed her mind is not clear. It may be that she had reservations from the outset about the size of the property, but if she did she did not tell the plaintiffs. She allowed them to continue to think that she was prepared to transfer the land without compensation. At some point, she changed her mind and refused to proceed further. It may be that she received advice from others, or that she realized that she could not simply give away land that was part of the security she had granted to the bank by way of a mortgage.

[41] I find also that she authorized Mr. Wey to act on her behalf without having been pressured to do so by the plaintiffs and that she had been more than willing to transfer some portion of her property to the plaintiffs at no cost to them other than the expense of the subdivision.

[42] I cannot find on the evidence that any money or other consideration had ever been paid to bind the transaction as a result of Mrs. Barber handing one dollar to the defendant.

[43] The plaintiffs submit that the defendant agreed to transfer a parcel of land that had been defined in at least general terms on August 1, 2003 and that she was aware of the size and shape of the property. That the plaintiffs made her aware of the approximate boundaries of the parcel of land at issue is clear from their letter to her on April 1, 2004 (Exhibit 1, Tab 14). In that letter, sent by email, the plaintiffs describe with some precision where the boundaries were to be located. They said that it was "exactly as the plan Mr. Wey made up for us that shows the maple tree on it". That plan is contained in Exhibit 1 at Tab 40, page 2. It was contained in Mr. Wey's file and is marked "Prepared for discussion purposes". I find as a fact that the defendant was shown that plan.

[44] There is no evidence to establish that the defendant ever saw any other plan or sketch of the proposed subdivision, or that she knew the extent of the property in question in more specific terms. While I accept that she knew the approximate boundaries and appeared through much of the relationship with the plaintiffs to be in agreement with the transfer of a

parcel of her land that is roughly consistent with the parcel outlined in the survey plan contained at Exhibit 1, Tab 40, page 2, I cannot find that she ever expressed her agreement on the precise boundary of the property to be transferred.

- [45] The defendant did sign the authorization for Mr. Wey authorizing him to proceed with the application for subdivision of her property and I find that she did so without any pressure from the plaintiffs and well knowing that the purpose was to prepare a plan of the property that was to be transferred. She also took steps to have the judgment that was filed against her property released. It is not clear to me if that was done at the request of the notary public in furtherance of the subdivision proposal or if was a response to the judgment creditors' request to release money held in court that had been garnisheed from her bank account, as there is correspondence in evidence that supports either conclusion.
- [46] The plaintiffs relied in part on the decision of *Pfeiffer v. Russell*, [1999] B.C.J. No. 2253 (B.C.S.C.). In that case, an appeal from the Provincial Court, the defendant appellants argued that the trial judge erred in finding that an oral agreement for the sale of land was enforceable. The agreement was that the "back half" of the defendant vendor's land was to be sold at a certain price with terms that payment was to be made at the end of three years. The plaintiff purchaser was allowed to take occupation of the land and lived in a cabin there for a period of time before the vendor agreed to sell the land upon to someone else.
- [47] The trial judge found that there was certainty with respect to the land to be transferred, the price and the time of payment. He found that the plaintiff was allowed to take possession of the cabin on the land as part of the agreement. These findings were not disturbed on appeal. As in this case, the land in question had not been subdivided.
- [48] In upholding the finding that the contract was enforceable the court referred to the case of *Wightman v. Mattu*, [1994] B.C.J. No 838 (B.C.S.C.) where the trial judge made this comment:
- Contracts for the sale of unsubdivided land impose unusual demands on realtors and solicitors. The uncertainty of the approval process, both with respect to approval itself and the length of time required to accomplish subdivision, creates a practical requirement that the issue of who is to bear the risk of delay or rejection be dealt with by the parties. Failure to do so is not easily solved by implication of a term that the subdivision will take place within a reasonable time. The absence of any agreement as to this important term is another indicator that the agreement reached between the parties was incomplete and contemplated a future agreement on the terms of their bargain.
- [49] In *Pfeiffer*, supra, the trial judge found all of the essentials necessary for a binding contract were present, including a defined parcel of land that was the subject of the agreement. While the land had yet to be subdivided, the trial judge held that was the obligation of the vendor of unsubdivided land and that the defendant could not rely on his own failure to complete the subdivision as a defence to an action for breach of the agreement he had made.

- [50] In this case, while I have found the defendant agreed to transfer some land to the plaintiffs, it was not an agreement in the true nature of a contract. The evidence indicates something rather more like a proposed gift. There was no price to be paid, nor was there any time set for completion and while the general description and size of the parcel had been discussed it had not been settled. In addition, there were two mortgages on the land and there was no indication that the holder of those mortgages had ever agreed to release a portion of its security.
- [51] Where the court can find the clear intentions of the parties from the language of the agreement, it should give effect to such intentions by inferring anything necessary so as to give effect to an agreement: *Marquest Industries Ltd. v. Willows Poultry Farm Ltd.* (1968), 1 D.L.R. (3d) 513 (B.C.C.A.). I do not find myself able to supply or infer the terms that are necessary to enforce a contract to transfer land in these circumstances.
- [52] The defendant relies on *Pickering v. Harper Ranch Ltd.*, [1997] B.C.J. No. 1038 (B.C.S.C.), where there was a dispute over a parcel of land that a neighbouring land owner had allegedly agreed to transfer to the plaintiff to provide space for a septic field. As in this case, there was general discussion of roughly where the parcel was located, but the precise boundaries were never settled. As a result, the action was dismissed on the basis that the parties did not have a binding agreement.
- [53] The same principle was applied in the case of *Booth v. Finch*, [1996] B.C.J. No. 2082 (B.C.C.A.), where the court adopted with approval the statement of Lord Wright in *Scammell v. Ouston*, [1941] 1 All E.R. 14 (H.L.) that:

It is a necessary requirement that agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite or capable of being made definite without further agreement of the parties that the promises and performances to be rendered by each party are reasonably certain.

- [54] In my view, that principle applies in this case. While the defendant was aware in a general way of the size and shape of the land that was to be transferred and had seen where the surveyor's flagging tape was placed and the initial draft of the plan, she did not at any time see or approve of the final plan.
- [55] Perhaps more importantly, the arrangement made between the parties did not have any of the characteristics of an enforceable contract. The parcel of land to be transferred, once defined, was not to be sold but given to the plaintiffs. The arrangement between the parties had none of the normal indications of a contract and all of the indications of an intended gift.

[56] There was nothing in writing respecting the proposed land transfer and nothing that could be said to satisfy the provisions of the Law and Equity Act to show that the defendant had done any act herself or acquiesced in any act of the plaintiffs that acknowledged that an enforceable contract had been made between them. On these findings the action for specific performance or damages must be dismissed.

Claim in quantum meruit

[57] The plaintiffs' claim in the alternative is on the basis of quantum meruit. They allege that they should be compensated for the work and effort that they put in on the defendant's behalf. While most of this work was done by Mr. Barber, the evidence indicates that Mrs. Barber contributed as well.

[58] I agree that they are entitled to payment for the work and effort that they put in attending to many of the details that were related to the management of the defendant's property while she was away, and to the various personal requests that she made of them from time to time. It is also clear from the correspondence that she encouraged the plaintiffs to do this work and that she encouraged the plaintiffs to believe they were to be paid for their work.

[59] I have reviewed the correspondence between the parties that is in evidence and have come to the conclusion that the plaintiffs provided services for the defendant from September 2003 to September 2005. During that period of time the plaintiffs attended to many items of work or service at the request of and for the benefit of the defendant. I find that an appropriate level of compensation for the work and effort would be as Mr. Barber suggests at \$350 per month for each of the 24 months for a total of \$8400.

[60] The plaintiffs also claim reimbursement for the surveyor's fees in the amount of \$1,942.05.

[61] In reliance upon the defendant's advice that she would transfer the property, the plaintiffs hired the surveyor that the defendant had recommended and incurred and paid the fees charged.

[62] The fees of the surveyor would not have been incurred at all but for the defendant's conduct. I have found no evidence of any pressure or improper conduct by the plaintiffs and I find that at all times the plaintiffs were responding in good faith to an offer made to them by the defendant that she later reconsidered and then refused to complete.

[63] While I have found that no enforceable contract was ever entered, it is my view that the defendant did lead the plaintiffs to believe that she would transfer the land to them and then reneged on that agreement. In reliance upon the defendant's promise the plaintiffs incurred the expense of the surveyor's fees.

- [64] While my view of the evidence leads me to the conclusion that the defendant should pay the surveyor's fees, I can find no basis in law to order her to do so. There was no enforceable contract that she breached and the surveyor's fees do not fit into any other category that supports a remedy.
- [65] I have considered the concept of quasi contract where a remedy can be awarded in certain circumstances even though there is no binding contract. In *Luscar Ltd. v. Pembina Resources Ltd.*, (1994), 162 A.R. 35, at para. 110 (Alta. C.A.) the court described quasi contract this way:

The law of quasi contract was developed to remedy those situations where agreements are otherwise unenforceable under contract law because of one of the following defects: informality, incapacity, illegality, want of authority, mistake, misunderstanding, uncertainty, frustration, misrepresentation, etc. In such circumstances where there is no valid contract between the parties, the equitable doctrine of unjust enrichment and restitution applies. The reason for this equitable intervention is simple: without a valid and enforceable contract upon which to rely, the injured party would otherwise have no recourse against the enriched party.

- [66] It appears that to have a remedy in quasi contract it must be established that a benefit of some kind has been conferred on the defendant by the plaintiffs or that the facts support an action for restitution. The difficulty in this case is that there was no enrichment of the defendant at the plaintiffs' expense respecting the work done by the surveyor that could satisfy the principles required to establish unjust enrichment as set out in *Pettkus v. Becker* (1980), 117 D.L.R. (3d) 257 (S.C.C.), nor is there proof of the necessary principles to establish a remedy in an action for restitution: *Aetna Insurance Co. v. Canadian Surety Co.*, [1994] 8 W.W.R. 63 (Ont. C.A.).
- [67] In view of the above authorities, I am not able to order the defendant to pay to the plaintiffs the surveyor's fees. Even though the plaintiffs paid the fees, the results of the survey did not benefit the defendant in any way so as to support a claim that she was unjustly enriched. Also, there was no compulsion in law upon the plaintiffs to pay the fees which is a factor that must be established to prove a claim in restitution. That portion of the plaintiffs' claim must be dismissed.
- [68] Therefore, I find the plaintiffs are entitled to judgment against the defendant in the amount of \$8,400 being the total of \$350 per months for 24 months on the claim of quantum meruit, together with court order interest. Interest shall be calculated and paid on the total amount from January 1, 2006 to the date of payment.

Counterclaim

- [69] The defendant has filed a counterclaim seeking the removal of the certificate of pending litigation, something that in my view follows from the dismissal of the specific performance action. I therefore direct that the certificate of pending litigation be removed from the title to the defendant's property as part of the outcome of the plaintiffs' claim rather than part of the counterclaim.
- [70] The defendant has also claimed storage costs, aggravated damages and punitive damages. These relate to a period of time where the parties began to have serious disagreements and Mr. Barber had parked his camper partially on the defendant's property. This was a portion of the property that was clearly within the scope of discussions of the proposed property transfer and the camper was just a few feet onto the defendant's property at the rear of the plaintiffs' house.
- [71] The aggravated and punitive damages are alleged to arise from a time when the defendant told Mr. Barber to remove the camper and he refused. He believed at the time that by moving the camper he might have indicated acceptance of the defendant's position that he and his wife had no entitlement to the land. The defendant involved the police and the camper was eventually moved. Without going further, I find that there is absolutely no basis in the evidence or in law that could support a claim for either aggravated damages or punitive damages on the facts of this case.
- [72] The defendant gave no evidence of any loss or harm that she suffered other than simple annoyance with respect to the camper and it encroached only a few feet upon a part of her property that was well away from the parts of the property she and her tenants occupied and used. There is absolutely no evidence of any harm or loss that occurred to the defendant and I can find no basis for any award of damages on the counterclaim and it is therefore dismissed.
- [73] While the specific performance action and action on the alleged contract have been dismissed, it seems to me that the plaintiffs have been sufficiently successful with respect to this matter that they are entitled to their costs on Scale B. While I accept that the amount awarded is within the jurisdiction of the Provincial Court where costs would not be available, it is my view that given the conduct of the defendant, costs should be awarded on the scale appropriate to this court.

"J. K. Bracken, J."

The Honourable Mr. Justice Bracken

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