



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**

**NOTICE OF CIVIL CLAIM**

Name and address of plaintiffs:

**KAREN ESPERSEN  
ERIK ESPERSEN  
c/o #15, 3105 31<sup>ST</sup> Street  
Vernon, BC V1T 5H9**

Name and address of each defendant:

**THOMAS OWEN QUIGLEY AND  
CATHERINE ANN QUIGLEY  
Edgewood, BC**

2021 JUN 03 10:10 AM  
Vernon Registry

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

#### TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFFS

### Part 1: STATEMENT OF FACTS

*[Using numbered paragraphs, set out a concise statement of the material facts giving rise to the plaintiff's claim.]*

1. The Plaintiffs, KAREN ESPERSEN and ERIK ESPERSEN, (hereinafter the “Plaintiffs”) c/o #15, 3105 31<sup>st</sup> Street, Vernon, British Columbia, and at all material times are the unregistered owners and equitable owners of a property located at 301 Langille Road, Edgewood, BC.
2. The Defendants, THOMAS OWEN QUIGLEY and CATHERINE ANN QUIGLEY, (hereinafter “the Defendants”), are the registered owners of a property located at 301 Langille Road, Edgewood, BC.
3. The property owned by the Plaintiffs and the Defendants is located at 301 Langille Road, Edgewood, BC, bearing PID Number 013-753-177, THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 12 TOWNSHIP 69 KOOTENAY DISTRICT EXCEPT PARCEL A (SEE 164186I)  
  
(hereinafter the “Property”).
4. The Plaintiffs were the legal and equitable owners of the Property for approximately 14 years until financial issues arose. The Property was subject to a foreclosure in 2013. Catherine Ann Quigley and Thomas Owen Quigley approached the Plaintiffs and offered assistance.
5. It was Thomas Owen Quigleys' dream to farm, and the Defendants intended to build a house on the land if permitted by the Agriculture Land Commission (ALR). The Plaintiffs agreed to take steps to subdivide 9 acres from the Property and Thomas Owen Quigley would complete renovations on the existing house as compensation for the 9 acres of land. The Plaintiffs advised Thomas Owen Quigley that removing the Property from the ALR would be difficult although the Plaintiffs would make the best efforts to do so.
6. The Plaintiffs operate an ostrich farm across the road from this Property which is also their

business. The Property is essential to the Plaintiffs.

7. It was agreed verbally that the Plaintiffs would assume any costs associated with the Defendants selling their house and pay all bills that pertain to the Property. The Plaintiffs paid all legal fees for Catherine Ann Quigley and Thomas Owen Quigley, land taxes on this Property, house insurance and renters' insurance.
8. The Plaintiffs replaced power poles in the yard at a cost of approximately \$7000 at the time Catherine Ann Quigley and Thomas Owen Quigley first purchased the legal title to the Property.
9. At the time of purchase and at all material times the Defendants acknowledged that the beneficial ownership of the Property was held by the Plaintiffs and the Defendants held the legal ownership of the Property in Trust for the Plaintiffs.
10. The mortgage was \$380,000 at the time of the foreclosure and when Catherine Ann Quigley and Thomas Owen Quigley purchased the Property they did not qualify for the whole amount and the mortgagee agreed to a price of \$320,000. The Plaintiffs have been paying the \$60,000 shortfall to RBC.
11. At the time of purchase, Catherine Ann Quigley and Thomas Owen Quigley sold their home and could not qualify for the purchase of the Property. Trevor Dexter Klug agreed to use his credit and income for a year to allow the Defendants to qualify for the purchase.
12. Trevor Dexter Klug provided list of all the expenses arising from the sale of the house owned by Catherine Ann Quigley and Thomas Owen Quigley and the Plaintiffs paid all expenses.
13. The Plaintiffs paid all expenses, including the mortgage, for one year which allowed for the removal of Trevor Dexter Klug from the title.
14. Catherine Ann Quigley and Thomas Owen Quigley resided on the Property for approximately two years rent and expense free. The Plaintiffs paid for hydro, tv, internet and installed a pad built with a power pole and septic pipes that lead into the Plaintiffs' septic. Catherine Ann Quigley and Thomas Owen Quigley have subsequently moved to a

campground on the lake. They pay only \$500 a month in rent.

15. The Plaintiffs paid \$1300 per month to the Defendants from 2015 to 2018 and thereafter \$1200 a month from 2018 to present day. The payments were all in excess of the mortgage payment and were intended to accelerate the paydown of the mortgage.
16. The Plaintiffs have paid the following:
  - a) All land taxes paid annually;
  - b) All farm insurance in Catherine Ann Quigley and Thomas Owen Quigley's name;
  - c) Interior renovations, a pad for the Defendants holiday trailer, a pond in the yard, groomed the entire yard to look like a park;
  - d) Renovated a second home on the Property that is now rentable;
  - e) Constructed a wood shed, deck to the second home and a back entrance;
  - f) A large fenced in garden space;
  - g) Renovated the kitchen with barn wood trim, redid the entire ceiling in the kitchen including new kitchen counter tops;
  - h) Painted and added new electrical outlets and fixtures upstairs;
  - i) Refinished the stairs going up stairs and finished woodwork in the living room; and,
  - j) Added a deck to the river below.
17. All expenditures were made on the basis of the agreement that the Plaintiffs are the beneficial owners of the Property. The Plaintiffs have taken steps to repurchase the legal interest of the Property from the Defendants and they have refused the request to transfer the legal title in breach of the agreement. In addition, the Defendants have taken steps to obtain an appraisal of the Property in order to obtain a second mortgage of the equity in the Property in breach of the agreement. The Defendants have failed to complete the agreement to transfer the Property to the Plaintiffs notwithstanding their agreement to do so.

18. The Plaintiffs duly and faithfully complied with the terms and conditions of the Agreement and paid all sums due and owing pursuant to the Agreement. The Plaintiffs have, at all material times, been and are now ready and willing to perform all the obligations under the said agreement to purchase the legal title from the Defendants.
19. The Defendants have breached the terms and conditions in the Agreement by failing and refusing to comply with the terms and conditions of the Agreement, the particulars are as follows:
  - a) Failing to complete the transfer of the Property to the Plaintiffs;
  - b) Failing to properly account for renovations and costs of renovations;
  - c) Failing to account for the mortgage payments made to the Defendants which are in excess of the mortgage payment; and,
  - d) Such further and other breaches as may become apparent to the trial of this matter;
20. The Defendants, in breach of contract, have refused to honor the terms and conditions of the contract and, in a high handed and malicious manner, refused to complete and transfer the legal title in accordance with the terms and conditions of the agreement.
21. In breach of the agreement, and notwithstanding requests made to the Defendants, the Defendants wrongfully failed and refused and continue to neglect and refuse to complete the said transfer or to take any steps towards such completion contrary to the express terms of the contract.
22. In the alternative, the Defendants hold the Property bearing PID Number 013-753-177, THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 12 TOWNSHIP 69 KOOTENAY DISTRICT EXCEPT PARCEL A (SEE 164186I) in Trust for the benefit of the Plaintiffs.

## **Part 2: RELIEF SOUGHT**

THE PLAINTIFFS CLAIM as follows:

- (a) An order of Specific Performance of the Agreement requiring the Defendants to transfer legal title to the Plaintiffs as beneficial owners;
- (b) Special damages in the amount to be determined;
- (c) General Damages;
- (d) Costs of the action to the Plaintiffs;
- (e) A Declaration that the Defendants hold the following property in trust for the Plaintiff:  
PID Number 013-753-177, THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 12 TOWNSHIP 69 KOOTENAY DISTRICT EXCEPT PARCEL A (SEE 164186I)
- (f) A Certificate of Pending Litigation be issued upon the following properties:  
PID Number 013-753-177, THE WEST ½ OF THE NORTHWEST ¼ OF SECTION 12 TOWNSHIP 69 KOOTENAY DISTRICT EXCEPT PARCEL A (SEE 164186I)
- (g) Such further and other relief as to this Honourable Court may seem just.

## **Part 3: LEGAL BASIS**

1. The Plaintiffs are the beneficial owners of the Property.
2. The Defendants hold legal title in trust for the benefit of the Plaintiffs.
3. The Defendants are bare trustees of the Property and are required to transfer the title to the Plaintiffs.
4. The agreement between the Plaintiffs and the Defendants requires that the Defendants transfer title to the Plaintiffs. The Defendants have breached their agreement with the Plaintiffs.
5. The Plaintiffs are entitled to an order for specific performance of the agreement to transfer the legal title from the Defendants to the Plaintiffs.

6. The Plaintiffs are entitled to an accounting of all claimed costs of renovations and an accounting of the payments made from the Plaintiffs to the Defendants.

Plaintiffs address for service:

c/o M. Shane Dugas  
Dugas Law  
#15, 3105 31<sup>st</sup> Street,  
Vernon, BC V1T 5H9

Fax number address for service (if any): 778-475-5925

E-mail address for service (if any): [shanedugas@dugaslaw.ca](mailto:shanedugas@dugaslaw.ca)

Place of trial: Vernon

The address of the registry is:  
Vernon Law Courts  
3001 - 27<sup>th</sup> Street  
Vernon, BC V1T 4W5

Dated: June 3, 2021



Signature of  
[ ] plaintiff [x] lawyer for plaintiffs  
**M. Shane Dugas**

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.

7. APPENDIX

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The claim arises as a result of the breach of contract.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

- a motor vehicle accident
- personal injury, other than one arising from a motor vehicle accident
- x a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

*[Check all boxes below that apply to this case.]*

- a class action
- maritime law
- aboriginal law

- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**