IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Versluce Estate* v. *Knol*,
2007 YKSC 09

Date: 20070206
S.C. No. 03-A0109
Registry: Whitehorse

BETWEEN:

**GENEVIEVE PIPER, EXECUTRIX
THE ESTATE OF HARRY VERSLUCE, DECEASED**

PLAINTIFF

AND

LUCAS KNOL

DEFENDANT

Before: Mr. Justice L.F. Gower

Appearances:

Gary W. Whittle — Counsel for the Plaintiff
Lucas Knol — On his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is a dispute about whether the defendant, Lucas Knol, has an interest in certain land in the City of Whitehorse which once belonged to Harry Versluce, now deceased. Mr. Knol relies primarily upon a written agreement he made with Mr. Versluce, which he says gave him a first option to purchase the land upon its sale or subdivision. The plaintiff, Genevieve Piper, was the executrix of Harry Versluce's estate. She was also a beneficiary under Mr. Versluce's will, which was made about two months after the agreement, and has since inherited the land in dispute.

[2] Mrs. Piper principally seeks a declaration that Mr. Knol has no interest in the land. While Mr. Knol's pleadings are less than clear, his counterclaim that he has acquired an interest in the land seems to be based on arguments that he did so either by contract, or alternatively, by gift or adverse possession.

ISSUES

[3] Although there were a number of issues framed by Mr. Knol and counsel for Mrs. Piper, I have reduced them down to the following:

1. Mr. Knol's credibility.
2. Does the agreement between Mr. Knol and Mr. Versluce constitute a valid contract? In order to answer this question, I must also address two sub-issues:
    a) Is the agreement void for uncertainty?
    b) Was there adequate consideration provided by Mr. Knol?
3. If there was no valid contract, does Mr. Knol have an interest in the land:
    a) By way of a gift from Mr. Versluce? or
    b) By way of adverse possession of the land?
4. In the alternative, if there was a valid contract:
    a) What was the fair market value of the land as of the date the land was subdivided?
    b) Did Mr. Knol have an opportunity to exercise his option to purchase the land and has he ever expressed an intention to do so?
5. Has Mr. Knol failed to mitigate his damages?

FACTUAL BACKGROUND

[4] Harry Versluce was a Yukon pioneer. He came north with his brother, Peter Versluce, in the late 1930's, apparently walking into the Yukon Territory from Prince George, British Columbia. He became a prospector and staked various claims, including the land which is the subject of this dispute, in the Porter Creek area of Whitehorse. He also bought and sold military *matériel* associated with the construction of the Alaska Highway in the 1940's. By 1987, Mr. Versluce had essentially retired, although he continued to operate some business interests through a company called H & P Holdings.

[5] The land in dispute is a portion of what was originally a single large lot, Lot 1596. In about 1997, Mr. Versluce subdivided that large lot, creating a smaller portion on the northeast corner as Lot 1596-2. That left an L-shaped remainder of approximately 9.3 acres as Lot 1596-1. A number of buildings and structures were located on these lands over the years and were occupied, at various times, by Harry Versluce, his brother Peter, Genevieve Piper and her husband Gerry Piper, Lucas Knol, and others. Peter Versluce died in 1980.

[6] Mrs. Piper, now 64 years old, has a high school education, with training in typing and bookkeeping. She met Harry Versluce in the mid-1960's and began helping him with clerical matters in the early 1980's. At one point, she was a director of H & P Holdings, until that company was dissolved in 1998. Although she was never a full-time employee of Mr. Versluce, she collected the rents due from the various tenants on the land and generally assisted him with his bookkeeping and other matters until he died on April 5, 2002.

[7] Gerald Piper began dating Genevieve Piper in 1987 and met Harry Versluce that same year. In 1997, the couple purchased from Harry the subdivided Lot 1596-2, which comprised about 3 acres. They then renovated the small house on that property and moved in in 1998. The couple were married in 1999.

[8] Mr. Knol, now 50 years old, was born and raised in Holland. He came to Canada in 1975 and to the Yukon a year later. Shortly after arriving, he was introduced to Harry and Peter Versluce, as they also were originally from Holland. In 1984, Mr. Knol stayed in Harry's house for a period of time. However, by that time, Harry Versluce was elderly and quite hard of hearing, so that he used to play the radio and television at loud volumes. That prompted Mr. Knol to seek other accommodations on the property and eventually he moved into an abandoned "Atco-style" trailer on the south side of Lot 1596-1. He says he never asked Harry for formal permission to do this, but nor did Harry object. He also never paid Harry any rent for that accommodation.

[9] Mr. Knol had some placer mining interests in the Dawson City area of Yukon. Over the period from approximately 1984 to 2002, commonly, in the fall, he would return from Dawson City to the trailer, where he would reside for a few days to a few weeks, before departing from the Yukon for warmer climates down south. One year, he stayed in the trailer into the early part of the winter. He would then return to the Yukon for the summer seasons, primarily to mine his placer interests. His usual pattern was to first come to Whitehorse, where he would stay a few days to a few weeks in the trailer on the Versluce property, following which he would depart for Dawson City to do his mining. He would periodically return to Whitehorse and the trailer over the summer, depending on his mining schedule. One year in that time period, he spent a good portion of the

summer living in the trailer, as he was engaged in some major repairs to one of his motor vehicles.

[10] Upon leaving the Yukon, Mr. Knol would commonly spend a few days to a few weeks at a friend's residence in Vancouver, following which he often ventured out on various international travels around the world, until the following spring, when he would return to the Yukon.

[11] When he left the Yukon in the fall or winter, he would leave a number of his personal belongings and business records in the trailer, sometimes with one or more motor vehicles parked outside. Mr. Knol would also receive some of his personal mail at the post box communally used by all the residents on the Versluce property, which had a residential address of #4 – 1211 Birch Road. That post box was shared by Harry Versluce, the Pipers, Mr. Knol, and one or two others over the years.

[12] Mr. Knol states that, in the summer of 1999, Mr. Versluce told him that he would give the trailer to him with some of the surrounding land. Mr. Knol also says that Mr. Versluce said something to him at that time about Mr. Knol having squatter's rights to the land.

[13] Mr. Knol testified that in the late summer of 2001, Harry offered to draw up an agreement regarding the disposition of the trailer and the surrounding lands. Mr. Knol contacted the "Law Line", a local free public legal information program, and was directed to the public law library to obtain examples of precedent agreements. He and Mr. Versluce reviewed various drafts of such agreements, each respectively making their

own amendments, until a final written agreement was produced for signature by the parties on September 3, 2001, in the presence of Gary Bemis as witness.

[14] The agreement is a two-page document. The first page sets out the text of the agreement, and the second page attaches a diagram (or map) of the Versluce property, depicting the location of Lot 1596-1 relative to other properties in the area, including the smaller adjacent Lot 1596-2 on the northeast corner, purchased earlier by the Pipers. (Although there is no directional arrow on the diagram, other evidence was led to establish the orientation of the properties.)

[15] Because of the importance of the agreement to Mr. Knol's counterclaim, I will set out the text:

> "This is an agreement between Harry Versluce (owner) and Lucas Knol (purchaser).
>
> In consideration of $1.00 and other good and valuable consideration, Harry Versluce agrees that Lucas Knol has the right to occupy the trailer located at #4 - 1211 Birch Street in the City of Whitehorse and the lands immediately adjoining the said trailer. Lucas Knol shall have this right until such time as the lands, outlined in blue on the map attached, and form part of this agreement, or any part of those lands, may be offered for sale or subdivided. If the lands or any part of them are offered for sale or subdivided, Lucas Knol shall have the first option to purchase that part of the said lands as outlined in red on the above sketch. The purchase price to be paid by the purchaser to the owner, his heirs, executors and assigns, shall be the fair marked [as written] value of the said lands as determined at that time by an independent third party.
>
> This agreement shall continue to be binding to the benefit of the parties here to [as written] and their heirs executors, administrators and assigns."

The attached “map”/”sketch” seems to be a reduced photocopy of a planned drawing of the neighbourhood in which the property is located. However, there is no indication of scale or any other survey information indicating the dimensions of the various lots depicted. The blue and red markings appear to have been drawn in by hand by the parties, or either of them. The land “outlined in blue” is identified as Lot 1596-1. The land “outlined in red” includes the southern portion of Lot 1596-1, with an east/west boundary line indicated by a red broken line. This is the only hand drawn line which does not track the boundaries of Lot 1596-1 shown on the photocopy. On either side of the red broken line are two symbols, also drawn in by hand in blue ink, apparently indicating structures on the property. The structure on the north side of the red broken line apparently indicates the home in which Harry Versluce originally lived until the late 1980’s (at which point he moved into a new modular home on the northern portion of Lot 1596-1). The structure on the south side of the red broken line apparently indicates the trailer which Mr. Knol occupied over the years. I repeat that the photocopied diagram is not to scale, nor, in particular, is that portion of Lot 1596-1 outlined in red.

[16] An original copy of the agreement was filed as an exhibit at the trial by Genevieve Piper. That copy has the word “void” written in two places on the first page and in one place on the diagram on the second page. Mrs. Piper testified that she recognized the word “void” as being in Harry Versluce’s handwriting. That opinion was shared by Gerry Piper and a neighbour, Yvonne LeBar, who each claimed to be familiar with Harry’s handwriting.

[17] On October 30, 2001, Harry executed a will in which he bequeathed all of Lot 1596-1 to Genevieve Piper. He also appointed Mrs. Piper to act as a co-executor of the will.

[18] Over the winter of 2001-2002, Harry Versluce began returning mail addressed to Mr. Knol at the post box for #4 – 1211 Birch Road. He, either himself or by directing the Pipers, would mark on such mail “return to sender” or “not here”.

[19] In early February 2002, Mr. Versluce was diagnosed with terminal cancer. With the assistance of Genevieve Piper, who coordinated the services of a cleaning lady and a nurse, he continued to live in his home on the property until August 2002. Mr. Knol again occupied the trailer in the summer of 2002, as per his usual pattern, and in particular, for an unspecified period of time in early August 2002.

[20] On August 5, 2002, Mr. Knol registered a caveat against Lot 1596-1 and in doing so, he swore a document which stated in part as follows:

> “ . . . Take notice that I, Lucas Knol, of Whitehorse claiming to have the first option to buy in the agreement to purchase any part of Lot 1596-1 . . . forbid the registration of any transfer affecting such land or the granting of a certificate of title thereto except subject to the claim herein set out . . . .”

[21] On the evening of August 7, 2002, Mr. Knol had a conversation with Mr. Versluce, indicating that he would be leaving for his mining interests in Dawson the following day. The conversation was cordial and no issues were raised with respect to Mr. Knol’s occupancy of the trailer.

[22] On August 8, 2002, a person by the name of Punch Coyne was on the property (either at Harry's request or with his consent) removing the wreckage of an old bus chassis. Mr. Coyne asked Mrs. Piper whether Harry would agree to trade the trailer which Mr. Knol had been occupying in exchange for Mr. Coyne removing some other scrap material from the property. Gerry Piper was present during this conversation. Mr. Versluce agreed and asked Gerry Piper to speak with Mr. Knol about removing his belongings from the trailer to expedite the arrangement with Mr. Coyne. Later that same day, Mr. Piper approached Mr. Knol and asked him to remove his belongings from the trailer, as requested by Mr. Versluce. Mr. Knol was on his way to Dawson City at the time of that conversation and continued on his way without emptying the trailer.

[23] After arriving in Dawson City, Mr. Knol wrote a letter to Harry Versluce dated August 11, 2002 in which he referred to the request that he vacate the trailer. The letter stated as follows:

> "Dear Harry. Just before I left for Dawson I heard from your neighbour that you planned to move the trailer I am staying in. Last year we had a written agreement that I could stay there [until] your lot is subdivided and [offered] for sale for [which] I have the first option to purchase.
>
> You did [offered] recently to stay in All's old house, to me, but I am asking you to wait to move the trailer [until] I got my belongings out of the trailer and you put the right to occupy the house in writing, through your lawyer Mr. Grant Macdonald.
>
> [Until] such time I keep my legal right to occupy the trailer."

The letter was copied to Mr. Macdonald.

[24] Interestingly, Mr. Knol made no mention in this letter of the caveat he filed just a few days earlier. Nor is there any evidence he mentioned it to Mr. Versluce during their conversation on the evening of August 7, 2002.

[25] On August 15, 2002, Harry Versluce passed away at the Whitehorse General Hospital at the age of 92.

[26] Mr. Knol returned to the Versluce property on September 6, 2002. Mr. Piper had erected a yellow rope at the head of the driveway to the property in order to keep out trespassers. Mr. Knol met with Mr. Piper and indicated that he wished to retrieve some of his belongings. Mr. Piper allowed Mr. Knol access to the property. Mr. Knol parked his vehicle near the trailer. He then returned to Mr. Piper a short time later and indicated that he wished to retrieve some belongings from another shed on the property. The following day, Mr. Piper found the appropriate key, unlocked the shed and allowed Mr. Knol to remove his belongings. Mr. Piper recalled that Mr. Knol loaded some belongings into his car later that evening and left the property. According to Mr. Knol, once he was allowed on the property, he went to his trailer. He believed that he stayed another week or two and then went to Vancouver.[1] I find as a fact that Mr. Knol had access to the trailer on September 6, 2002, stayed a couple of days and then left for Vancouver.

[27] On April 8, 2003, Mrs. Piper wrote to Mr. Knol informing him that the agreement he referred to in his caveat and his letter to Mr. Versluce of August 11, 2002, was null and void (she testified that she took this position because she believed Mr. Versluce

---

[1] Transcript, October 6, 2006, page 13.

himself had revoked the agreement by writing “void” on it in three locations). She further confirmed that Mr. Versluce had directed Mr. Knol to remove his belongings from the trailer on August 8, 2002, but that Mr. Knol did not do so before departing from the Yukon that fall. She advised that the trailer was padlocked and secured against entry by anyone, but that it would be removed from the property as soon as “the weather clears” in the spring of 2003. She also confirmed that Mr. Versluce began denying Mr. Knol access to the post box for #4 – 1211 Birch Road in the spring of 2002. She warned Mr. Knol that he was not allowed entry upon Lot 1596-1 at any time or in any manner whatsoever. However, she indicated that if Mr. Knol wished to repossess his belongings, then he could send her a written list itemizing those belongings and indicating which address in Whitehorse he wanted them delivered to.

[28] On April 28, 2003, Mrs. Piper obtained a Grant of Probate to administer Mr. Versluce’s estate, together with her co-executor. In applying for probate, Mrs. Piper swore an affidavit which attached an inventory of Mr. Versluce’s assets and liabilities. The list of assets included Lot 1596-1, which was stated to have a value at the time of Harry’s death of $149,850.00.

[29] At the trial, Mrs. Piper filed a “Property Assessment Notice” for Lot 1596-1 from the Department of Community Services, Government of Yukon, dated December 12, 2003, which stated that the “Assessed Value” of the improvements (buildings) and the land was $149,220.00. The Assessment Notice contained a further notation entitled “market value” which reads:

> “The combined assessment of land and buildings <u>may not equal the market value</u> of your property. Appraisals for this

> purpose require much more data, research and time than is available to the assessor for property tax assessments." (emphasis already added)

[30] As part of her administration of the estate, Mrs. Piper provided a notice to Mr. Knol to take proceedings on his caveat. Mr. Knol did not respond to that notice and on May 3, 2004, the caveat was removed.

[31] On June 9, 2003, Mr. Knol wrote to Mrs. Piper acknowledging her letter of April 8, 2003. He asserted his right to occupy the trailer pursuant to the agreement he had with Mr. Versluce. He denied being directed by Mr. Versluce to remove his belongings, but acknowledged that he was told by Mr. Piper that the trailer was to be removed from the property on the morning he left for Dawson City. He also denied that Mr. Versluce had refused him access to the post box for #4 – 1211 Birch Road in the spring of 2002. He put Mrs. Piper on notice that she would be responsible for paying for his rent and storage and would be responsible for his belongings and other damages resulting from her "illegal" actions, commencing April 8, 2003.

[32] On August 27, 2004, the title to Lot 1596-1 was transferred from Mr. Versluce's estate to Mrs. Piper. The "consideration" for the transfer was listed on the certificate of title as $149,850.00. In the "Affidavit as to Value", accompanying the transfer of land for that transaction, Mrs. Piper similarly swore that the value of the land and buildings was $149,850.00.

[33] Mrs. Piper filed as an exhibit at the trial an excerpt from a web page from the Yukon Department of Justice entitled "Frequently Asked Questions" about land titles matters. Under the subtitle "What information is contained in a Certificate of Title?" the

text refers to the “consideration price” and states “this does not always reflect the purchase price”.

[34] After writing his letter to Mrs. Piper on June 9, 2003, Mr. Knol went to the RCMP in Whitehorse in an attempt to recover his belongings. Although he was initially advised that it was “civil matter”, the officer he spoke to did offer some assistance, but that was ultimately not forthcoming. After a number of further unsuccessful attempts by Mr. Knol to seek the assistance of the officer, he made a complaint about the officer to the RCMP Public Complaints Commission, but was once again advised that it was a civil matter.

[35] Mr. Knol made no attempts to deal with Mrs. Piper, as the co-executor of Mr. Versluce’s estate, to recover his belongings, because he was concerned about possible violence from Mr. Piper, based upon earlier alleged threats by Mr. Piper. In particular, Mr. Knol alleged that Mr. Piper told him that he had a way of getting rid of trespassers on the property, as he stored a number of readily accessible firearms, and that he had a military background and had been “trained to kill”.

[36] Mr. Knoll also contacted Yukon Legal Aid and a number of private lawyers, but did not retain anyone to assist him. Ultimately, he did his own legal research to determine his rights and has represented himself ever since. He took no further substantive steps to retrieve his belongings or to assert his interest in the land, until he filed his counterclaim on December 15, 2005.

[37] The action by Mrs. Piper was originally filed November 7, 2003. On February 23, 2004, Mrs. Piper obtained an order authorizing substitutional service upon Mr. Knol. On June 22, 2005, Mrs. Piper obtained a without notice order that the fair market value of

Lot 1596 would be determined by a local realtor, that notice of the subdivision of Lot 1596-1 be given to Mr. Knol, and that an offer for the sale of Lot 1596-1 be made to Mr. Knol for the fair market value determined by the realtor. On December 6, 2005, an order was made confirming that Mrs. Piper complied with the order of June 22, 2005.

[38] Mr. Knol testified that he did not receive notice of Mrs. Piper's claim until sometime in 2005 and in response he filed his initial statement of defence on November 14th of that year. His initial counterclaim was filed on December 15, 2005 and was amended on August 31, 2006.

ANALYSIS

1 Mr. Knol's credibility.

[39] I generally found Mr. Knol's evidence throughout the trial to be lacking credibility. His testimony was at times inconsistent, argumentative, evasive and peppered with prevarication. While there are numerous examples of this, I will cite but a few to make my point:

1. At his examination for discovery on September 19, 2006, Mr. Knol deposed that in 1984, it was colder than normal and Mr. Versluce asked him whether he would like to stay in Mr. Versluce's house, which Mr. Knol did for a short time. However, at trial, Mr. Knol said "I don't think I stayed in his house at all in 1984".[2] He also disputed that it was cold that year.
2. At his examination for discovery, Mr. Knol deposed that in 1984, he was mining his claims in Dawson City until the fall, when he left the Yukon for Vancouver and from there he travelled to Holland. He returned to the

[2] Transcript, October 6, 2006, p. 65.

Yukon in the spring of 1985 and then mined in the summer months until leaving the Yukon again in the fall. He said that from then on, it was "pretty well every year the same. From here, spend a few weeks in Vancouver, from there I went to Holland, spring time again back to Yukon". He said that was "sort of the pattern until the present"[3]. However, the following exchange occurred at trial:

> "Q. So just to be clear for His Lordship and the Court, from 1976 to 2003, your pattern was from Holland you came back to the Yukon in the spring, and then again you would mine in the summer months down in Dawson City. And in the fall you would come back to Whitehorse, and then you would go to Vancouver, and from Vancouver you would go to Holland. And from Holland you would either come back to the Yukon, or as you say, do some other travelling, but ending up back in Yukon in the spring?
>
> A. That's not correct at all, what you just said.
>
> Q. What did I say that was incorrect?
>
> A. Because I just explained that it varies. There's no set pattern --
>
> Q. No, but your pattern - -
>
> A. No, the pattern is never the same."[4]

The inconsistency, it seems to me, is glaringly obvious.

3. Similarly, in what I find to be an argumentative fashion, Mr. Knol was asked at trial:

> "Q. You used the trailer from 1984 until sometime in 2003?

[3] Transcript, October 6, 2006, pp. 50-51.
[4] Transcript, October 6, 2006, p. 49.

> A. No, that's not correct.
>
> Q. Not correct? Be careful, Mr. Knol, I want to make sure you heard my question. You used this trailer from 1984 until sometime in 2003?
>
> A. Yes, I heard your question, and I'm telling you, you're not correct on that."[5]

No explanation was forthcoming from Mr. Knol as to why he felt the question was incorrect.

4. At trial, Mr. Knol was asked to read to the Court his letter to Mr. Versluce dated August 11, 2002. The copy of that letter filed as an exhibit was partially obscured on the left-hand margin and some of the words on that side of the page were not entirely legible. Mr. Knol was asked about the following sentence:

> "Last year, we had a written agreement that I could stay there [in the trailer] until your lot is subdivided and [offered] for sale. . . ".

The word "your" in front of "lot" was partially obscured. Mr. Knol's testified that he interpreted that passage as reading "until <u>our</u> lot is subdivided". When challenged by counsel on the point, Mr. Knol then said "I don't remember exactly what I wrote four years ago".[6]

This, in my opinion, is an example of prevarication. Mr. Knol attempted to take advantage of the fact that the word "your" had been partially obscured. Obviously, it would be to his advantage to interpret the

---

[5] Transcript, October 10, 2006, pp. 53-54. **Note:** The Transcripts dated October 10 and 12, 2006, as filed, are mislabeled. The Transcript labeled October 10 is, in fact, the Transcript of October 12, and *vice-versa*. I have used the correct Transcript dates in all my footnotes.

[6] Transcript, October 12, 2006, p. 7.

questionable word as “our”, which would then imbue him with certain rights to the land. However, there is no reason whatsoever for Mr. Knol to have written the word “our” in reference to the land, because the agreement itself stated that Mr. Versluce was the “owner” and that, until such time as Mr. Knol exercised his first option to purchase, at most the agreement provided him was a right to occupy the trailer and the lands immediately adjoining.

5. In filing the caveat against Lot 1596-1, Mr. Knol expressly deposed that he was making oath and that the allegations in the caveat “are true in substance and in fact as I verily believe.” However, his sworn statement that he claimed he had the first option to purchase “any part of Lot 1596-1” pursuant to the agreement was clearly incorrect. The most that the agreement entitled Mr. Knol to was a first option to purchase the “lands as outlined in red” on the attached sketch and not “any part” of Lot 1596-1. At best this was carelessness on Mr. Knol’s part. At worst, it was a deliberate overstatement of his position under oath. In either event, it impacts adversely on his credibility.

6. At trial, Mr. Knol was asked about his belongings which were left behind in the trailer, for which he seeks damages. In particular, he was asked about certain files including geological, drilling and legal files which he claimed to have left behind and which he has not yet recovered. To get an idea of the number and volume of these files, counsel asked Mr. Knol to visualize

stacking the files one on top of the other to give the Court a rough idea of how high the stack of paper would be. This was Mr. Knol's answer:

> "I find it sort of difficult because if I would stack them up that way they would fall over and all get messed up, so I always had a bit of a wider base. So I found it a bit difficult to answer that, what the height would be, when I stack them up in that format.
>
> Q. Do you know how many individual files you had?
>
> A. No, I don't remember how many files I had. Certain files I do remember, what I just remembered.
>
> Q. Do you remember how many pieces of paper in total you had in all your files?
>
> A. No." [7]

I find this to be an example of evasion.

7. In his answers to Mrs. Piper's interrogatories, Mr. Knol swore that Mr. Piper informed him "on several occasions" that he was in the army, trained to kill and had weapons stored on the property. At trial, Mr. Knol similarly testified that "the fact that Mr. Piper was talking about his weapons <u>all the time</u> made it clear to me that he is a person to be reckoned with" (my emphasis). However, earlier in his testimony, Mr. Knol acknowledged that he only had <u>two</u> conversations with Mr. Piper about Mr. Piper's weapons.[8]

8. Mr. Knol testified that in 2002, he had a conversation with Mr. Versluce which he described as follows:

> ". . . I observed that Harry's - - <u>he told me</u>, actually, that he was - - <u>that he had cancer</u>. And he also told

[7] Transcript, October 10, 2006, p. 47.
[8] Transcript, October 10, 2006, pp. 175 - 176 and p. 164.

> me that he couldn't eat any more, and it didn't look too good with his health." [9] (my emphasis)

However, when asked about that conversation later in his testimony, Mr. Knol gave the following evidence:

> "Q. Harry told you he had cancer. Remember when he told you that?
>
> A. Harry never told me he had cancer."[10]

Similarly, and yet later in his testimony, Mr. Knol gave the following answer:

> ". . . I already told you before, that Harry never said to me he had cancer. All he said was that he couldn't eat, and maybe I assumed he had cancer, but at the time I wasn't sure about that."[11] (my emphasis)

9. Mr. Knol said that he became aware that Mr. Versluce used Grant Macdonald as his lawyer at the time they were discussing a draft of the agreement of September 3, 2001. In particular, Mr. Knol testified as follows:

> "We went through it a few times and made a few little changes. Harry did said – did say one time, 'We better put this in front of a lawyer to get witnessed.' And he says – and I ask which lawyer he prefer. He says 'Mr. Macdonald. 'I said, 'That's fine with me because he's also my lawyer.'"[12] (my emphasis)

However, later in his testimony, Mr. Knol provided the following answer:

---

[9] Transcript, October 6, 2006, p. 9.
[10] Transcript, October 10, 2006, p. 134.
[11] Transcript, October 10, 2006, p. 142.
[12] Transcript, October 6, 2006, p. 8.

> "A. You're correct on that Harry wanted to get it witnessed in front of a lawyer, that's how it was, but you said Grant Macdonald. The name Grant Macdonald was, at that stage, not mentioned.
>
> Q. No, no, because I got that from you, sir, in your direct examination. On Friday that's what I got from you, because that's what you told the Court. At least, that's what I heard.
>
> A. What I said was, Harry said, 'We have to go in front of a lawyer.' At that stage he didn't mention the name of Grant Macdonald."[13] (my emphasis)

10. One of the most noteworthy inconsistencies in Mr. Knol's testimony related to the question of whether he had "financiers" available to support him in exercising his option to purchase the land. Mr. Knol's answers to interrogatories from Mrs. Piper were filed as an exhibit in this trial. The answers were provided by Mr. Knol in writing under oath. Answer number 22 reads as follows:

> "I have talked to financiers who are willing to back me if the price is fair market value at $149,850.00 and no more . . .". (my emphasis)

At his examination for discovery on September 19, 2006, Mr. Knol was asked further questions about the financiers. He said that one was "Karl Gruber" and another was a realtor from Coldwell Banker Real Estate by the first name of Dave.

However, at trial, Mr. Knol gave the following evidence:

> "Q. And one of those financiers is Karl Gruber?

[13] Transcript, October 10, 2006, p. 136.

A. That's not correct.

Q. That's not correct? You're sure about that?

A. Karl Gruber would have been interested, but there was nothing established if he would finance it.

. . .

Q. Do you remember telling [counsel at the examination for discovery] that a realtor from Coldwell [Banker] was also a financier?

A. No, I doubt if I said that."[14]

Later in his cross-examination, after being confronted with the testimony that he gave at his examination for discovery, Mr. Knol astonishingly continued with the following evidence:

"Q. So what's the truth today?

A. What you want to know?

Q. I want to know who the financiers are?

A. <u>There are no financiers</u>.

Q. That's your evidence today, there are no financiers? And when did they cease to be financiers?

A. <u>They never ceased to be financiers</u>.

Q. And they never were financiers?

A. <u>They never were financiers</u>." [15]
(my emphasis)

[14] Transcript, October 10, 2006, p. 110.
[15] Transcript, October 10, 2006, p. 113.

2(a) Is the agreement void for uncertainty?

[40] It is trite law that a contract may be declared void by reason of uncertainty. If a contract is not clearly created by the parties' language, the courts cannot construct one. If an agreement is too vague to be enforced, then there is no legally enforceable contract, particularly when the terms in question relate to essential aspects of the contract. While the courts will try and find a clear meaning, if at all possible, in the absence of the requisite certainty, they will not declare that a contract exists. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Carswell, 2006), at pp. 17 through 20.

[41] Mr. Knol agreed with counsel for Mrs. Piper that, in the written agreement of September 3, 2001, Harry Versluce essentially promised Mr. Knol two things:

1. that he could occupy the trailer "and the lands immediately adjoining the said trailer" until such time as Lot 1596-1 was offered for sale or subdivided; and
2. in that event, Mr. Knol would have the first option to purchase "that part of the said lands as outlined in red" on the attached sketch.

I find that both promises are unenforceable by reason of uncertainty.

[42] With respect to the first promise, there is simply no way of knowing the metes and bounds of the "lands immediately adjoining" the trailer. In particular, it is unclear how many square meters or hectares Mr. Versluce intended that Mr. Knol should have the right to occupy. For example, I don't know whether Mr. Versluce intended that Mr. Knol would occupy the lands within a 5 metre radius of the trailer, or a fifty metre radius.

[43] Similarly, with the second promise there is no way of knowing the precise area or boundary of the “lands as outlined in red” on the sketch attached to the agreement. While I have stated that the sketch appears to be a photocopy of a planned drawing, there is no reference to the scale of the drawing or any survey markers which would indicate the precise location of the northern (east/west) boundary which was drawn in by hand as a broken line in red ink.

[44] This uncertainty was confirmed by the evidence of Jim Yamada, who was qualified to provide an expert opinion on the appraised fair market value of the two portions of Lot 1596-1, which were created when that lot was officially subdivided on August 22, 2005 into Lots 1609 and 1610. When asked in cross-examination by Mr. Knol to compare the size of Lot 1610 with the “lands as outlined in red” in the written agreement of September 3, 2001, Mr. Yamada replied that he could not “go by a sketch”. Rather, he needed a plan of survey, such as the one which was filed as Exhibit 27 at the trial, confirming the dimensions of the subdivided Lots 1609 and 1610. Mr. Yamada also testified to the effect that the exact location of the east/west boundary between Lots 1609 and 1610 would have a critical impact on the relative fair market value of each lot. In the written appraisal filed by Mr. Yamada, he expressed the expert opinion that the appraised value of Lot 1610, as of the date of the subdivision on August 22, 2005, was $135,000.00 for 4.55 acres. Later in the written appraisal, Mr. Yamada expressed a further opinion as to the likely appraised value of a “conceptual lot” which he described as Lot 1610-A, whose east/west boundary would be further to the north, but just south of Harry Versluce’s old house, such that the total area would be 5.83

acres. He stated that the appraised value for conceptual Lot 1610-A would be $173,000.00 - $38,000.00 more than the appraised value for Lot 1610.

[45] Finally on this point, even though the east/west boundary for conceptual Lot 1610-A appeared to me to be much closer to the relative location of the broken red line on the sketch attached to the agreement of September 3, 2001, Mr. Knol himself continued to argue that the precise dimensions of the “lands as outlined in red” on the agreement were still significantly different from conceptual Lot 1610-A.

[46] Without knowing the precise dimensions of the “lands as outlined in red” in the September 3, 2001 agreement, there is no way of assessing the fair market value of those lands. Therefore, even if Mr. Knol had the opportunity and ability to exercise his first option to purchase, it would have been impossible for him to do so without being able to determine the fair market value.

[47] In short, I declare that the written agreement of September 3, 2001 is not a contract by reason of uncertainty.

2(b) Was there adequate consideration provided by Mr. Knol?

[48] In the event that I am in error in concluding that the agreement is void for uncertainty, I will address the issue of consideration. The agreement refers to “consideration of $1.00 and other good and valuable consideration” passing from Mr. Knol as the purchaser to Mr. Versluce as the owner of the lands.

[49] Once again, it is trite law that in order for an agreement to become a contract, there must be an offer, an acceptance, and the exchange of valuable consideration. The

latter may consist of either some right, interest, profit or benefit accruing to one party, or some forbearance, detriment or loss undertaken by the other: *Spruce Grove (Town)* v. *Yellowhead Regional Library Board*, [1982] A.J. No. 669 (Alta.C.A.), at para. 7. To constitute sufficient consideration, there must be some real value passing from one party to the other. Purely nominal consideration may, in some circumstances, be insufficient. In *Gilchrist Vending Ltd.* v. *Sedley Hotel Ltd.* (1967), 66 D.L.R. (2d) 24 (Sask.Q.B.), at p. 5, (QL), the stated consideration of one dollar was found to be “purely nominal” and insufficient to constitute an enforceable contract. Rather, in the absence of valuable consideration, the agreement in that case was reduced to nothing more than a voluntary promise from one party to another.

[50] It is also important to remember that past consideration is no consideration at all. Rather, there must be some mutuality between the actions of one party and the subsequent promise from the other party who benefits from those actions. For instance, if the detriment suffered by one party was not suffered in return for anything, or the promise of anything, from the other party, then there is no consideration. While there may well have been some hope on the part of the acting party, even the expectation of something, if there was no promise at the time of the act being performed, then there is no consideration: see *MacKenzie* v. *MacKenzie*, [1996] P.E.I.J. No. 20, (P.E.I.S.C.) at paras. 9 and 10.

[51] In the case before me, Mr. Knol testified about various services that he performed for Harry Versluce’s benefit, such as gardening, fixing fences and various odd jobs on and about Harry’s property. He also said that he periodically delivered mail for Mr. Versluce and purchased groceries and ran other errands for him. However, there

was no evidence from Mr. Knol that he did any of these things specifically in exchange for any promise by Mr. Versluce relating to the lands in question. Indeed, when he was pressed on cross-examination to speak about the nature of the consideration which passed from him to Mr. Versluce, as identified in the agreement of September 3, 2001, Mr. Knol spoke of such things as his ongoing friendship with Mr. Versluce and the attentiveness, prudence and love that he expressed towards Mr. Versluce in the relationship. Implicitly then, at trial, Mr. Knol was not seeking to rely on the previous services that he provided to Mr. Versluce as part of the consideration for the September 3, 2001 agreement.

[52] To be clear, I find that the type of consideration which Mr. Knol relies upon, that is his ongoing affection for Mr. Versluce and the prudence and attentiveness that he put into the relationship, was not something of real value in the eyes of the law and, standing alone, would not constitute sufficient or adequate consideration to create an enforceable contract. In short, it did not amount to the “other good and valuable consideration” expressed in the agreement.

[53] That leaves the question of the stated “consideration of $1.00”. Here, I find that Mr. Knol’s credibility was significantly impeached on cross-examination. When Mr. Knol was examined for discovery on September 19, 2006, less than a month prior to the commencement of trial, he was specifically informed by the examining counsel that it was extremely important that he understood each question asked because Mrs. Piper would be relying on every answer given, as complete, honest and truthful, and that any information left out of an answer would be used by Mrs. Piper to challenge his credibility at trial. Mr. Knol expressly indicated that he understood that to be the premise of the

examination for discovery. Furthermore, at the close of the examination for discovery, Mr. Knol once again acknowledged that he understood every question asked and that he had provided honest, truthful and complete answers.

[54] At one point during the discovery, he was specifically asked about the nature of the consideration for the agreement of September 3, 2001. At that time, he relied on the nature of the previous services he provided for Mr. Versluce, and answered accordingly. Then came the following question:

> ". . . besides the information that you've provided to us this morning in terms of the assistance that you provided to him?
>
> A. You're talking about cash?
>
> Q. Anything. I'm just wanting to make sure that we're clear; that I'm clear on your answer.
>
> A. Yeah, it's basically – well, my time, and there's no cash paid to him or anything."[16] (my emphasis)

It is particularly significant to me that it was Mr. Knol who raised the issue of whether any money was paid by him to Mr. Versluce in consideration for the agreement. Then, having raised the issue himself, and being asked to clarify it, he stated that there was "no cash" paid to Mr. Versluce "or anything".

[55] In contrast, at trial, Mr. Knol stated that he did in fact pay the sum of one dollar to Mr. Versluce after the agreement was signed. He explained that he remembered about paying Mr. Versluce one dollar after counsel for Mrs. Piper asked the witness to the agreement, Gary Bemis, whether he observed Mr. Knol give anything to Mr. Versluce at

[16] Transcript, October 10, 2006, p. 91.

the time the agreement was signed. Mr. Knol continued to explain that he only had a twenty dollar bill on his person at the time. He said that he asked Mr. Bemis if he had change, to which Mr. Bemis replied “No” and then, in Mr. Bemis’ presence, he asked Mr. Versluce if he had change, to which he also replied in the negative. Mr. Knol then testified that after Mr. Bemis left, Mr. Versluce wanted him to pick up some groceries, so he went to the neighbourhood grocery store for that purpose and, while there, changed his twenty dollar bill. When he returned later to Harry’s residence that day, he said “I left a dollar on the table”.[17]

[56] I am not satisfied, on a balance of probabilities, that Mr. Knol paid any money to Mr. Versluce as consideration for the agreement. I find that there was a significant inconsistency between Mr. Knol’s testimony at the examination for discovery and the trial. I further note that Mr. Bemis made no mention in his testimony of Mr. Knol asking him or Mr. Versluce if either had change for Mr. Knol’s twenty dollar bill. Given that Mr. Bemis was closely cross-examined on this point by counsel for Mrs. Piper, and gave fairly detailed answers about what happened during the forty to sixty minutes he was present at the time when the agreement was signed, I would have expected him to remember such a detail. Rather, when counsel asked Mr. Bemis “What happened after the agreement was signed?”, Mr. Bemis simply replied that he might have had another coffee. When asked whether he observed Mr. Knol giving anything to Mr. Versluce while Mr. Bemis was present, he replied in the negative.

[57] Also, if Mr. Knol truly felt that the actual payment of the one dollar as consideration for the agreement was as important as he apparently remembered at trial,

[17] Transcript, October 10, 2006, p. 93.

then I would have expected him to have placed the one dollar directly into Mr. Versluce's hands, rather than simply leaving it on a table after returning with the groceries.

[58] In short, I find Mr. Knol's evidence on the point lacked the ring of truth.

[59] Further, even if I am wrong about this and Mr. Knol did pay one dollar to Mr. Versluce, that, together with his friendship, prudence and attentiveness would still not constitute adequate consideration.

[60] In the absence of adequate consideration, the agreement is not a valid contract. Rather, it remains nothing more than a unilateral and revocable promise from Mr. Versluce to Mr. Knol.

[61] I am further satisfied, on a balance of probabilities, that Mr. Versluce did indeed revoke his promises to Mr. Knol at some point between September 3 and October 30, 2001, when Mr. Versluce executed his will, bequeathing Lot 1596-1 to Mrs. Piper.

[62] In particular, I find that the words "void" were written three times on the agreement by Mr. Versluce. His handwriting was recognized by Mrs. Piper and, while I acknowledge that she is an interested party, I found her to be a credible witness. She was not significantly challenged by Mr. Knol on cross-examination. Indeed, there was no evidence of any particular animosity between Mrs. Piper and Mr. Knol. Rather, Mr. Knol testified that it was Mr. Piper who was hostile towards him. Mrs. Piper also had business involvements with Mr. Versluce going back as far as the winter of 1981/82. She was a co-director with Mr. Versluce in H & P Holdings for a number of years. She collected his rents and generally assisted him with his bookkeeping. Therefore, I have no difficulty

accepting her evidence that she recognized the words “void” as being in Mr. Versluce’s handwriting. In addition, Mrs. Piper’s evidence on this point was corroborated by Mr. Piper, who was also familiar with Mr. Versluce’s handwriting, having looked at some of his diaries dating back to 1992. Finally, Yvonne LeBar also recognized the words “void” as being in Mr. Versluce’s handwriting. She had been a close family friend of Mr. Versluce since the early 1980’s. He had visited her house on several occasions. She had been a recipient of greeting cards signed by Mr. Versluce and had also seen a number of contracts and other documents with Mr. Versluce’s writing on them.

3(a) If there was no valid contract, does Mr. Knol have an interest in the land by way of a gift from Mr. Versluce?

[63] Mr. Knol testified that in the late summer of 1999, Mr. Versluce said that he was going to give the trailer to him “with some land”. Mr. Knol further said that Mr. Versluce told him that he had obtained “squatter’s rights” to the land in any event.[18] There was no discussion between them of any kind of an agreement in 1999.[19] Thus, the question remains whether this conversation and the subsequent conduct of Mr. Versluce constituted a legally perfected gift of the trailer and “some land”, presumably in the vicinity of the trailer.

[64] First, I am not satisfied, on a balance of probabilities, that Mr. Versluce had such a conversation with Mr. Knol. Not only do I question Mr. Knol’s credibility generally, in particular, I find it glaringly inconsistent that Mr. Versluce would, in 2001, co-create (as Mr. Knol testified) a written agreement with Mr. Knol which gave the latter “the first option to purchase” the subject lands, if in fact Mr. Versluce had previously made a “gift”

[18] Transcript, October 10, 2006, p. 83.
[19] Transcript, October 10, 2006, p. 86.

of the lands to Mr. Knol. If Mr. Versluce had truly given the trailer and the lands to Mr. Knol (leaving aside for the moment the question of whether “some land” had been identified with sufficient certainty) in 1999, then it seems inconsistent that he would have reneged on his previous commitment and required Mr. Knol to purchase the lands in 2001. I don’t mean here that Mr. Versluce could not have changed his mind and decided not to perfect the gift, but in moral terms, if what Mr. Knol says were true, it would seem as if Mr. Versluce was backtracking on an earlier statement of his intention. That would be inconsistent with the evidence of several witnesses, including the Pipers, Mr. and Mrs. LeBar, Bill Trerice and Mr. Knol himself, that Mr. Versluce had a reputation in the community for being an honest and straight-dealing man whose word was his bond.

[65] Similarly, for the same reasons, I am unable to accept Mr. Knol’s testimony that Mr. Versluce told him in 1999 that he thought Mr. Knol had “squatter’s rights” to the land. If Mr. Versluce truly felt that Mr. Knol had squatter’s rights, and therefore some form of proprietary interest in the land, then it would have been inconsistent for Mr. Versluce to require Mr. Knol to purchase that same land just three years later.

[66] Even if I am wrong in my assessment of Mr. Knol’s credibility on this point, I further find that there was no perfection of the gift in a legal sense. In general, for a gift to be perfectly constituted, there must be an intention to donate, an acceptance of the gift by the recipient, and a sufficient act of delivery by the donor. Unless all three elements are found to exist, no gift passes and the donor may revoke his or her intention: Bruce Ziff, *Principles of Property Law*, 3rd ed. (Scarborough: Carswell, 2000) at p. 140.

[67] For there to be an effective delivery, the gifted property must literally be given away, in the sense that it passes from the possession of the donor to the recipient. Prior to the delivery being effected, the donor is free at any time to change his or her mind without facing legal consequences. The act of the transfer also serves to provide tangible proof of the gift; words alone are insufficient. The delivery of the gift demonstrates that the donor intends to be bound by the act of giving: Bruce Ziff, *Principles of Property Law*, 3rd ed., cited above, at pps 141-142.

[68] In this case, there was no transfer of possession of the land or the trailer (as for the latter, Mr. Knol admitted that he gave a key to the trailer to Mr. Versluce in the early 1990's and never intended to stop Mr. Versluce from having access to it). Therefore, even assuming the words alleged by Mr. Knol were spoken by Mr. Versluce, the gift is ultimately incomplete and abortive and Mr. Versluce did not transfer any interest in the land or the trailer to Mr. Knol: *Kingsmill* v. *Kingsmill*, [1917] O.J. No. 30 (Ont.C.H.C.), paras. 13 and 15.

3(b) If there was no valid contract, does Mr. Knol have an interest in the land by way of adverse possession of the land?

[69] A number of basic elements must be established by anyone seeking to acquire property through adverse possession, sometimes referred to colloquially as squatter's rights. The doctrine is based on the failure of the owner to take action within the relevant limitation period to either pursue the squatter for trespass or to take action for recovery of the land. For the squatter to succeed, the act of possession must generally be:

1. open and meritorious;
2. adverse;

3. exclusive;
4. peaceful;
5. actual;
6. continuous; and
7. inconsistent with the rights of the true owner.

If any one of these elements is missing, the claim will fail: Bruce Ziff, *Principles of Property Law*, 3rd ed., cited above, at p. 26.

[70] In this case, Mr. Knol's claim that he acquired squatter's rights to any portion of Lot 1596-1 must fail for the following reasons.

[71] First, Mr. Knol argued that s. 2(1)(e) of the Yukon *Limitation of Actions Act*, RSY 2002, c. 139, sets out the applicable limitation period. That provision states that "actions for trespass or injury to real property or chattels" shall be commenced within six years after the cause of action arose. However, that submission is inapplicable because Mrs. Piper, as executrix of Harry Versluce's estate, has not pled an action of trespass. Indeed, her action principally seeks declaratory relief, specifically that Mr. Knol has no interest in law or in equity in Lot 1596-1.

[72] As an aside, counsel for Mrs. Piper submitted that s. 17 of the *Limitation of Actions Act* would apply to this case, rather than s. 2(1)(e). Section 17 states that no person shall take proceedings "to recover any land after 10 years from the time at which the right to do so first accrued to some person through whom the person claims, hereinafter called "predecessor" . . .". I take this to mean that the section might be

applicable if Mrs. Piper, as executrix for Mr. Versluce's estate, took proceedings to "recover" any portion of Lot 1596-1 from Mr. Knol, by claiming through Mr. Versluce as the "predecessor", by virtue of his original ownership of the property. However, Mrs. Piper's action is not an action to recover land. Indeed, there is no need for her to bring such an action, as she never lost possession of the land. As I said, her action essentially seeks declaratory relief with respect to the land.

[73] In his text, *Limitation of Actions in Canada*, (Toronto: Butterworths, 1972), J.S. Williams, at p. 85, states that an action for recovery of land is "the successor to the action in ejectment". Similar comments are made by Graeme Mew in his text, *The Law of Limitations*, 2nd ed., (Ontario: Butterworths, 2004), at p. 207, where he dealt with the general principles relating to recovery of land. There, he states:

> "At common law, a person who is wrongfully dispossessed or who discontinues possession of land has the right to enter upon the land and repossess it. This right has been modified by statutes – in most provinces the general Limitations Statute . . . – which limit the period of time in which an owner of land can make entry or distress or bring an action to recover the land . . . ". (my emphasis)

[74] Since neither Mr. Versluce nor Mrs. Piper have ever been ejected or dispossessed of the lands by Mr. Knol, with respect, I fail to see how s. 17 of the *Limitation of Actions Act* has any application either.

[75] Second, Mr. Knol's possession of the trailer and surrounding land was not "adverse", since the requirement of adversity means that the squatter must not be in possession with the permission of the owner, and the occupation cannot be adverse if the superior right of the true owner is acknowledged. Further, a heavy onus rests with the squatter to prove otherwise: Bruce Ziff, *Principles of Property Law*, 3rd ed., cited

above, at p. 28. In this case, I find that Mr. Knol was, at all material times, allowed to occupy the trailer and the surrounding lands initially with the implied permission of Mr. Versluce, and later with his express permission, by way of the right to occupy the lands in the September 3, 2001 agreement. I accept that Mr. Knol never paid rent for that privilege, but that circumstance is insufficient to satisfy the requirement of adversity.

[76] Third, Mr. Knol's occupation of the trailer and the surrounding lands was not "exclusive". Mr. Knol conceded that he gave Mr. Versluce a key to the trailer sometime in the early 1990's and that he never took the key back from Mr. Versluce.[20] He said he gave the key to Mr. Versluce so that he had access to the trailer during the time when Mr. Knol was not there.[21] He also said that he never intended to stop Mr. Versluce from having access to the trailer.[22]

[77] Fourth, Mr. Knol's occupation of the trailer was not "continuous". While I recognize that in some circumstances, intermittent use may meet the requirement of continuity, Mr. Knol's use of the trailer and the surrounding land does not. It is true that, from 1984 on, he left a number of his personal belongings in the trailer each winter when he left the Yukon to travel down south and around the world. However, that does not change the fact that he was not physically present on the property and in occupation of the trailer for more than a few days or weeks each year. At most, the evidence was that he physically occupied the trailer for only two or three months in a given year.

---

[20] Transcript, October 12, 2006, p. 36 and October 10, 2006, p. 123.
[21] Transcript, October 10, 2006, p. 11.
[22] Transcript, October 10, 2006, p. 61.

[78] Finally, I am unable to find that Mr. Knol used the land in a way which was "inconsistent" with the rights of Mr. Versluce, as the true owner. (It may be that this factor relates more to the issue of adversity, since it involves an intention to exclude the owner from such uses as the owner wants to make of the property: Bruce Ziff, *Principles of Property Law*, 3rd ed., cited above, at p. 129.) As I have already stated, Mr. Knol did not have exclusive use of the trailer from the early 1990's on, and there is no evidence that he made any use of the property which was intended to be inconsistent with Mr. Versluce's use of the property as owner. Further, given that I have found Mr. Knol only occupied the trailer with Mr. Versluce's permission and that the latter had access to the trailer from the early 1990's on, Mr. Versluce could have terminated Mr. Knol's occupancy at any time.

4(a) In the alternative, if there was a valid contract, what was the fair market value of the land as of the date the land was subdivided?

[79] Mr. Knol attempted to argue that the fair market value of the land was determined by Mrs. Piper when she swore her "affidavit as to value" in transferring Lot 1596-1 from Mr. Versluce's estate to herself. In that affidavit, she stated that the value of the property was $149,850.00. That same figure appears as the "consideration" on the Certificate of Title to the property. It is also the figure which Mrs. Piper attributed to Lot 1596-1 in the inventory of assets and liabilities attached to her application to probate Mr. Versluce's will.

[80] As I previously noted, the consideration price on the Certificate of Title does not always equal the purchase price. Indeed, the consideration price here seems to generally reflect the assessed value on the Property Assessment Notice, which was

$149,220.00. That very same document indicated that the assessed value of the land and buildings “may not equal the market value” of the property. Indeed, Mrs. Piper testified that she used the figure of $149,850.00 because that was her understanding of the assessed value of the property for tax purposes, which she likely acquired from the Property Assessment Notice.

[81] Jim Yamada, the expert appraiser, testified about the distinction to be made between valuing a property for tax assessment purposes and valuing it for the purpose of establishing its current fair market value. The former, he said, is not a current value, but is based on historical information about other properties within the area and the purpose of such an appraisal is to attribute the amount of property taxes payable for a property relative to other properties in the area. The overall objective is to achieve a result where properties of relatively the same size in the same area are taxed at a similar or uniform rate. On the other hand, fair market value is the most probable price the property could fetch in a competitive and open market, assuming a fair sale, a willing buyer and a willing seller, and a reasonable time allowed for exposure for sale, as of a specified date. Therefore, said Mr. Yamada, the assessed value for tax purposes is not a current fair market value.

[82] Mr. Knol cross-examined Mr. Yamada on the fact that ss. 10(1) and (3) of the *Assessment and Taxation Act*, RSY 2002, c. 13, speaks of the “fair value” of the land being assessed for tax purposes. However, there is no definition of “fair value” within the *Act*. Further, the considerations which may be taken into account in determining the “fair value”, under s. 10(1) are arguably broader than those which would ordinarily be taken into account in determining “fair market value”. Finally, s. 10(3) of the *Act* specifies that

“Regardless of when the land is assessed, it shall be assessed according to the fair value it would have had on July 31” of the previous taxation year. Clearly then, the “fair value” is not a current value.

[83] Therefore, I conclude that “fair value” under the *Assessment and Taxation Act* is not equivalent to “fair market value” in the sense testified to by Mr. Yamada. Rather, I interpret “fair value” as a value which is considered to be fair and reasonable in the circumstances specifically relating to the tax assessment process. In other words, it is a fair value in the context of the overall objective of the tax assessment scheme.

[84] Mr. Knol also argued that Mrs. Piper was acting as an independent third party at the time the property was transferred to her, from the estate, by which time it had been subdivided. Here, he is referring to the requirement in the written agreement of September 3, 2001 that the fair market value of the lands, when offered for sale or subdivided, would be determined “by an independent third party”.

[85] I reject that argument for two reasons. Clearly, Mrs. Piper, as executrix of the estate of Mr. Versluce, was standing in the shoes of Mr. Versluce and acting on his behalf at all material times after Mr. Versluce passed away. Therefore, any claim that Mr. Knol had in asserting an interest in the land following Mr. Versluce’s death would necessarily have been against the estate, as represented by Mrs. Piper. Consequently, I am unable to accept that Mrs. Piper could have, in any way, been considered an independent third party at the time of the transfer of Lot 1596 from the estate to herself personally.

[86] Secondly, the valuation of the lands under the agreement of September 3, 2001, was to be as of the date that they were offered for sale or subdivided. The lands were never offered for sale (except to Mr. Knol himself, a point which I will return to later). Rather, Lot 1596-1 was transferred from the estate to Mrs. Piper on August 27, 2004 by virtue of having been bequeathed to her under Mr. Versluce's will. Further, the sub-division of the lands had not, at that time, been perfected yet.

[87] Admittedly, there was some confusion in the evidence as to the effective date of the subdivision of Lot 1596-1. This arose from a misunderstanding on the part of the Pipers that when they had the property surveyed in 2004 for the purpose of effecting the subdivision, they did not realize at that time that they had to pay a further fee to have the official plan of survey registered with the Land Titles Office. Consequently, the letter from Mrs. Piper's counsel to Mr. Knol dated January 5, 2005 incorrectly stated that, as of August 27, 2004, when the land was transferred from the estate to Mrs. Piper, it had "been subdivided into two lots sub-divided". In fact, at that point, only the survey work had been performed. Once this misunderstanding was corrected and the Pipers paid the necessary fees, the official plan of survey was registered on August 22, 2005, and it is as of that date that the subdivision of Lot 1596 into Lots 1609 and 1610 became effective.

[88] Having rejected Mr. Knol's arguments on this point, the only remaining evidence as to the fair market value of Lot 1596-1, and Lot 1610 in particular, came from realtor Dan Lang and appraiser Jim Yamada. Mr. Lang was not called as a witness. Rather, his evidence was submitted in documentary form. He performed a comparative market evaluation of Lot 1596-1 as of July 11, 2005. At that time, he noted that the City of

Whitehorse had agreed in principle to subdivide Lot 1596-1 into Lots 1609 and 1610. However, as of that date, the subdivision had not yet been completed. In any event, his opinion as to the fair market value of Lot 1596-1 at that time was $390,000.00. Mr. Lang subsequently submitted a comparative market evaluation for Lot 1610 on December 22, 2005, expressing the opinion that it might fetch a selling price between $110,000.00 and $125,000.00.

[89] Mr. Yamada, on the other hand, was qualified as an expert at the trial in the appraisal of property values. In his opinion, the fair market value of Lot 1610, based on a rate of $29,634.00 per acre, was $135,000.00 as of the date of subdivision on August 22, 2005. Interestingly, if Mr. Yamada would have used the value of $29,634.00 per acre and appraised the entire acreage of what used to be Lot 1596-1, by my calculations he would have come up with a figure of about $275,600.00 (versus Mr. Lang's figure of $390,000.00).

[90] I prefer Mr. Yamada's evidence on this point and find that the fair market value of the lands as of the date the land was subdivided is as follows:

1. Lot 1596-1 - $275,600.00.
2. Lot 1610 - $135,000.00.
3. Conceptual Lot 1610A - $173,000.00.

4(b) In the alternative, if there was a valid contract, did Mr. Knol have an opportunity to exercise his option to purchase the land?

[91] I mentioned earlier in these reasons an order was made by this Court on June 22, 2005 that an offer for sale of Lot 1596-1 be made to Mr. Knol in the amount of

the fair market value, as determined by realtor Mr. Lang, and further that notice be given to Mr. Knol of the subdivision of Lot 1596-1. Finally, it was ordered that the offer and the notice be sent to Mr. Knol via his addresses in Vancouver, British Columbia, Nieuwleusen, Holland, and Whitehorse, Yukon.

[92] Although a subsequent order was made on December 6, 2005 confirming that Mrs. Piper complied with the directions given in the earlier order of June 22nd, it remains unclear to me when Mr. Knol actually received notice of these matters. He testified that he first became aware of this action by the letter from Mrs. Piper's counsel to him dated January 5, 2005 and that he did not search the Court file until he returned to the Yukon later that year. In any event, it was subsequently established at the trial that the subdivision had not yet occurred as of the date of the order of June 22, 2005, but became effective on August 22, 2005. It also became apparent at trial that Mrs. Piper was no longer relying upon the opinion of Mr. Lang as to the fair market value of either Lot 1596-1 or Lot 1610, since she retained Jim Yamada to provide a further supplementary opinion in that regard.

[93] Having said that, Mrs. Piper's counsel informs me, and there is no indication to the contrary, that a copy of Mr. Yamada's written appraisal was provided to Mr. Knol as an expert report at least 60 days before trial in compliance with Rule 40A of the *Rules of Court*. Further, Mr. Yamada's appraisal expressly refers to the registration of the plan of survey for Lot 1610 on August 22, 2005. Therefore, I find that Mr. Knol had actual notice of the fair market value for both Lot 1610 and conceptual Lot 1610A as of the date of the subdivision of Lot 1596-1. He further had both actual notice of the subdivision, by virtue of receiving Mr. Yamada's appraisal, and constructive notice of it, by way of registration

of the plan of survey, which thereafter was a public document searchable by Mr. Knol. Finally, Mr. Knol, by virtue of Mrs. Piper's compliance with the order of June 22, 2005, had notice of her intention to sell to him what used to be Lot 1596-1.

[94] Notwithstanding all of these events, there is no evidence that Mr. Knol ever attempted to exercise his option to purchase the land, or any portion thereof, or that he even expressed an intention to do so prior to filing his counterclaim.

[95] Further, in that counterclaim, as amended on August 31, 2006, Mr. Knol seeks the following relief:

> "A. a declaration that the Agreement is a valid contract.
>
> B. a declaration of title by prescription of that part of the property surrounding the Plaintiffs trailer witch [as written] is outlined in red on the map and forms part of the Agreement for a nominal fee of $1.00 and no more.
>
> [I have interpreted Mr. Knol's claim of "prescription" as a claim for title by adverse possession, even though there is a distinction between the two terms – the former deals with non-possessory rights only.]
>
> C. a declaration that the value of the Property is determined at the time of subdivision, August 27, 2004, at $149,850.00 and no more.
>
> D. an Order directing the Defendant to sell to the Plaintiff the area outlined in blue on the map that forms part of the Agreement, less the fair market value of the area outlined in red, based on the value of $149,850.00 for the whole Property.
>
> E. compensatory and punitive damages for trespass by the Defendant and such further relief as to this Honourable Court seems just.
>
> F. costs; and,
>
> G. such further and other relief as to the Honourable Court seems just.
>
> H. damages for extra drilling to the amount of $29,200.00."

[96] It thus becomes obvious that Mr. Knol is not seeking specific performance of the agreement of September 3, 2001. If the agreement is a valid contract, then its terms would prevail. However, the problem here is two-fold. Not only does Mr. Knol incorrectly seek a declaration that the fair market value of the property is $149,850.00 as of August 27, 2004 (for the reasons just discussed), he also seeks a further order that “the area outlined in blue on the map that forms part of the Agreement”, that is, Lot 1596-1, be sold to him “less the fair market value of the area outlined in red, based on the value of $149,850.00 for the whole Property.” He previously defined “Property” in his amended counterclaim as being Lot 1596-1. Thus, Mr. Knol is seeking to purchase Lot 1596-1 for $149,850.00, less the fair market value of the “area outlined in red” on the map that forms part of the agreement. With respect, that claim is nonsensical. Even assuming that the fair market value of Lot 1596-1 was in fact $149,850.00, Mr. Knol has provided no reason whatsoever why that price should be reduced by whatever the fair market value of the area outlined in red might be. More importantly, it was the very area “outlined in red” which Mr. Knol originally sought to acquire through the agreement and not the entirety of Lot 1596-1.

[97] In summary, in the event that the September 3, 2001 agreement were to be found to constitute a valid contract, I find that Mr. Knol has had more than sufficient opportunity to exercise his first option to purchase the lands therein described (whatever they may comprise), but he has made no good faith effort nor expressed any intention whatsoever to do so.

5. Has Mr. Knol failed to mitigate his damages?

[98] A large part of Mr. Knol's counterclaim is for consequential damages arising from the allegation that he was unable to recover his belongings left behind in the trailer, after he was directed by Mrs. Piper not to return to the property by her letter of April 8, 2003. However, it is important to note that Mrs. Piper expressly invited Mr. Knol to deal with the recovery of his belongings and implicitly offered to negotiate with him on that issue. In the last paragraph of her April 8th letter, she wrote as follows:

> "If you want to repossess your belongings that you left in the old trailer, you will have to send me a written list, signed by you, itemizing each one of said belongings and indicating to what address in Whitehorse you would have said belongings delivered."

[99] Mr. Knol said that he felt he would be in danger from Mr. Piper if he attempted to deal with Mrs. Piper on this issue. He said that he had been indirectly threatened by Mr. Piper on two occasions. Once was when Mr. Piper was walking around the property allegedly wearing army fatigues. According to Mr. Knol, Mr. Piper told him that he had a way to get rid of people who don't belong on the property, that he was in the army and had been trained to kill and that he had weapons stored all over the property. The second occasion was on August 8, 2002. On that day while he was driving away from the property, Mr. Piper directed Mr. Knol to stop his motor vehicle. He then allegedly approached Mr. Knol's vehicle with a "rolled up belt" in his hand, holding it in a threatening manner while saying to Mr. Knol "You have to get your stuff out of the trailer, the trailer is going to go".[23] Mr. Knol thought that was strange, because Mr. Versluce had not mentioned it to him the night before. Mr. Knol told Mr. Piper that he had no authority

[23] Transcript, October 6, 2006, p. 10.

to speak about matters between him and Mr. Versluce. He also had a further conversation with Mr. Piper about the possibility of keeping his car on the property. Mr. Knol conceded that Mr. Piper had never threatened him directly.[24]

[100] At his examination for discovery of September 19, 2006, Mr. Knol deposed that Mrs. Piper had never threatened him.

[101] To begin with on this point, I am not satisfied that Mr. Knol has suffered any compensable damages. First, there was no evidence, apart from Mr. Knol himself, whether or how Mr. Knol's belongings came to be missing. Second, he has not suffered any damages as a result of a breach of contract by Mr. Versluce or Mrs. Piper, as executrix, since there was no valid contract. Third, since he acquired no interest in the land by way of gift or adverse possession, his claim for damages arising from "trespass" by Mrs. Piper must also fail. Fourth, he was given an actual opportunity to take his possessions with him on August 8, 2002 and again when he returned to the property and the trailer on September 6, 2002 and he failed to do so. Fifth, he provided no evidence as to the cost of the items he claims to have lost or the extra drilling costs.[25]

[102] Furthermore, Mr. Knol was invited to deal with the recovery and repossession of his belongings by Mrs. Piper in her letter to him of April 8, 2003. He refused to even discuss the matter with Mrs. Piper. While I appreciate that he may not have wished to be dictated to by Mrs. Piper as to the manner in which he could recover his belongings, that is, to send her a "written list", the fact remains that Mr. Knol's overall response and relative inaction was unreasonable. Other than unsuccessfully attempting to solicit the

[24] Transcript, October 6, 2006, p. 11.
[25] Transcript, October 12, 2006, pp. 15-18.

assistance of the RCMP, and consulting (but not retaining) a few lawyers, Mr. Knol took no further steps to retrieve his belongings from the trailer. He mentioned in his evidence and his submissions that he thought a lawsuit would be forthcoming, and yet he did not even take the initiative of commencing such a suit.

[103] In particular, I am not satisfied, on a balance of probabilities, that Mr. Piper indirectly threatened Mr. Knol as Mr. Knol alleges. I say that primarily because of my overall concerns with Mr. Knol's credibility. I am prepared to accept that he may have had one or two conversations with Mr. Piper about the fact that Mr. Piper had been in the army and had received some basic training (as had Mr. Knol in Holland) and that Mr. Piper was not happy about having trespassers on the property (as is apparent from the fact that Mr. Piper strung a rope to block the entrance to the driveway of the property after Mr. Versluce passed away). I would even be prepared to accept that Mr. Piper had something in his hand on August 8, 2002, when he stopped Mr. Knol in his motor vehicle and informed him that he had to remove his belongings from the trailer, as it was being traded. However, having observed both Mr. Piper and Mr. Knol testify, I remain unpersuaded by Mr. Knol that Mr. Piper had anything in his hands at that time and place for the purpose of threatening Mr. Knol. Indeed, the conversation on that occasion apparently continued on a relatively civil basis, with Mr. Piper assisting Mr. Knol by pointing out an area on the property where he could store his motor vehicle. Further, when Mr. Knol returned to the property on September 6, 2002, Mr. Piper was nothing but cooperative. These facts are inconsistent with the suggestion by Mr. Knol that he was being truly threatened by Mr. Piper.

[104] Nor did Mr. Knol have any reason to feel threatened by Mrs. Piper. Although Mr. Knol interpreted her letter of April 8, 2003 as being some form of a threat, his reaction in that regard was also unreasonable. Other than exchanging the occasional word while coming and going, Mr. Knol had only had one significant conversation with Mrs. Piper, which took place years earlier when Mr. Knol was residing together with Mr. Versluce in one of the houses on the property.

[105] Therefore, in the final alternative, even if Mr. Knol suffered any compensable damages, which I do not find, he clearly failed to mitigate those damages by taking no reasonable steps to recover his belongings on or after August 8, 2002.

CONCLUSION

[106] I declare that Mr. Knol has no interest at law or in equity in the lands described as Lot 1596-1, Plan 97-77, Porter Creek, Whitehorse, Yukon Territory, as subdivided, or at all. I dismiss Mr. Knol's counterclaim in its entirety. Costs are awarded to Mrs. Piper.

[107] Pursuant to Rule 41(8) of the *Rules of Court*, I direct that it is not necessary for Mr. Knol to approve in writing the order confirming this judgment.

GOWER J.