

# Court of King's Bench of Alberta

**Citation: Chomlak v Myer, 2024 ABKB 463**

**Date:** 20240730  
**Docket:** 2103 00139  
**Registry:** Edmonton

Between:

**Garrett Chomlak**

Applicant

- and -

**Patricia Myer**

Respondent

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**Memorandum of Decision  
of the  
Honourable Justice T.L. Friesen**

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## **Introduction**

[1] The Applicant, Garrett Chomlak, seeks to enforce an Option-to-Purchase Agreement (the Agreement) signed by the parties on September 28, 2015, which he says gives him the right to purchase agricultural property, SE 7-55-12-W4 (the Property), for a set price of \$160,000.00. In the alternative, he seeks damages, and in the further alternative, reimbursement for taxes paid in relation to the Property.

[2] The Respondent says the Agreement is unenforceable and refuses to sell the Property to the Applicant for the set price. She argues that no damages are proven but agrees that the Applicant should be reimbursed for taxes paid.

## Background

[3] Brian Myer, the Respondent's husband, was given Power of Attorney over her affairs on October 27, 2020. On January 8, 2021, she was declared incapable. The Respondent is currently residing in a care facility and was unable to participate in any aspect of these proceedings. Mr. Myer acted as her litigation representative in this action.

[4] The parties agreed to proceed with the hearing of the action based on affidavit evidence and transcripts of cross-examination of the following individuals: Mr. Chomlak, Mrs. MaryAnn Chomlak (Mr. Chomlak's mother) and Mr. Myer. The Respondent was unable to provide any first-person evidence.

[5] The Property is the Respondent's primary asset. She has no descendants. The parties are related to one another through the Applicant's father, who was the Respondent's cousin. The land has been in the Chomlak family for over 50 years.

[6] The property has been rented and farmed by non-family members since at least 2000, and (based on the evidence available to the Court) by Mr. James Antoniuk from 2014 to 2021. The cash lease agreement with Mr. Antoniuk, initially arranged by Mr. Chomlak's father, was renewed in November 2019 and extended to November 2020. The Applicant Mr. Chomlak arranged the renewal.

[7] The Respondent inherited sole title to the Property in March 2015, after her mother's death. The Agreement was entered into six months later, after an event which was being held to celebrate the Respondent's mother's life. The Applicant's mother acted as witness to the Agreement.

[8] The Agreement is as follows:

I, P. Myer, agree to give Garret Chomlak, first rights at purchasing the quarter of land known as SE-7-55-12-W4. This purchase process is to take effect October 28, 2019, the day following the end date of the 5-year lease agreement between Patricia Myer and James Antoniuk.

I agree to sell this quarter of land, with 146 acres of farmable land (or thereabouts) to Garrett Chomlak. Purchase price is to be \$1000.00 per acre for a total of \$160,000.00.

Seller: P. Myer, (signed), dated Sept 28, 2015

Buyer: Garrett Chomlak, (signed), dated Sept 28, 2015

Witness: Maryann Chomlak, (signed), dated Sept 28, 2015.

[9] The parties discussed and signed the Agreement at a park. The Respondent did not discuss the Agreement with her husband, although he was somewhere nearby at the time. Mr. Chomlak's mother was the only person who witnessed the Agreement being signed.

[10] Mr. Myer asserted that he did not find out about the purported Agreement to sell the land to Mr. Chomlak for \$160,000.00 until several years later, in 2020, when he attempted to arrange sale of the land to the renter Mr. Antoniuk on the Respondent's behalf.

[11] The Applicant states that he assisted his father with renting out the land from 2000, up to and including 2014, on the Respondent's mother's behalf. The Applicant contends that in 2014, he took over his father's duties, which included finding renters and negotiating and drafting a lease for the Property.

[12] From 2015 to 2020 the Applicant paid property taxes on the Property on several occasions and provided the Court with receipts. In total he paid \$4,143.20 in property taxes for which he has not been repaid. He says he did this anticipating that he would one day own the Property.

[13] The Applicant asserts that in early October 2019 he attempted to exercise the option to purchase for the amount set out in the Agreement. He says the Respondent requested a delay for one year so she could continue to receive rental income from the Property. As per his affidavit evidence, the Applicant agreed to this, and agreed that the option granted would become effective on October 28, 2020 (the Extension Agreement).

[14] No written records or evidence were provided with respect to the alleged Extension Agreement. Mr. Chomlak was not cross-examined on this point.

[15] The Property is estimated to have been worth \$389,000.00 at the time the Agreement was entered into in 2015, and as of April 2021 was worth approximately \$461,000.00.

[16] The Applicant communicated to Mr. Myer in October 2020 that he wanted to exercise his option to purchase the Property for the agreed upon price of \$160,000.00. Mr. Myer, on the Respondent's behalf, refuses to sell the Property to Mr. Chomlak for that amount.

### **The Parties' Arguments**

[17] The Applicant argues that the Agreement constitutes an enforceable contract. The Respondent argues that the Agreement is unenforceable as no consideration was agreed to or provided to Ms. Myer at the time it was entered into. The Respondent further asserts that even if consideration was provided, the contract itself is unconscionable and/or the product of undue influence.

[18] The Applicant maintains that he provided consideration for the Agreement by helping the Respondent and her mother secure renters for the Property; paying the outstanding property taxes; giving effect to both parties' wishes to keep the Property in the family; and "intending to execute the option." He denies the allegation that the contract is unconscionable or that he unduly influenced Ms. Myer to sign it.

### **Issues**

1. Does the Agreement constitute a valid option-to-purchase contract?
2. If so, is it unenforceable due to unconscionability or undue influence?

3. If the Agreement is invalid, or unenforceable, is Mr. Chomlak entitled to damages on any other basis?

## Jurisprudence

[19] An option to purchase is a type of contract which grants the optionee a right to purchase the optionor's property at a fixed price within a certain time: *North Calgary Community Church v 510207 Alberta Ltd*, 2004 ABCA 357 at para 12 [*North Calgary*]; *Automaster Automotive Services Ltd v Kenco Enterprises Ltd*, 2009 BCSC 1594 at para 18. Like any other contract, an option to purchase requires offer, acceptance, consensus *ad idem*, consideration, and certainty of terms such as the parties, subject matter and price: *North Calgary* at para 12; Anne La Forest, *Anger & Honsberger Law of Real Property*, 3rd ed at §23:14 (Toronto: Thomson Reuters, 2023), online: Westlaw Canada.

[20] However, an option to purchase is considered a specialized instrument. As such, an option to purchase must also contain the following three features:

- i. Exclusivity and irrevocability of the offer to sell within the time period specified in the option;
- ii. Specification of how the contract of sale may be created by the option holder; and
- iii. Obligation of the parties to enter into a contract of sale if the option is exercised.

*North Calgary* at para 12, citing *Mitsui & Co (Canada) v Royal Bank of Canada*, [1995] 2 SCR 187 at paras 27-28.

[21] An agreement not under seal for the extension of time for the exercise of an option to purchase is ineffectual unless based upon consideration: Victor DiCasteri, *Law of Vendor and Purchaser*, 3rd ed at §6:10 (Toronto: Thomson Reuters, 2020), online: Westlaw Canada.

[22] The doctrine of consideration is based on the principle of reciprocity; something of value in the eye of the law must be exchanged for a promise to make it enforceable as a contract: Hugh G Beale, ed, *Chitty on Contracts*, 35th ed (London, UK: Thomson Reuters, 2023), vol 1 at 542. Valid consideration flows from the promisee and includes "some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other": *Beazer v Tollestrup Estate*, 2017 ABCA 429 at para 41.

[23] Courts do not generally judge the adequacy of the consideration as long as some value in a business sense exists: *Verwoerd v Verwoerd*, 2017 ABQB 272 at para 214, citing *370105 Alberta Ltd v Brazos Petroleum Corp*, [1993] 3 WWR 186 at para 15. The mere fact that someone has a *motive* to enter into a contract with someone else is not consideration unless the motive has "...some value in the eye of the law": see Beale at 548-549.

[24] As an option contract is distinct from the subsequent agreement to sell lands arising from the option, the consideration for the option to purchase must also be distinct. The parties may agree to apply the amount paid as consideration for the option towards the purchase price if the option is exercised: DiCasteri at §6:9. However, where the only consideration for the option is the obligation of the optionee to pay the purchase price, the requirement of consideration to support the contract is not met: DiCasteri at §6:9.

[25] Consideration requires mutual promises, even if the promise of one of the contracting parties is implied: Beale at 546. However, each of the parties must have an interest in the nature of the conduct being promised by the opposite party: *Cor-Ex Vacuum Services Inc v Associated Aggregates Inc*, 2021 ABQB 995 at paras 53, 55, citing *Canadian Encyclopedic Digest*, 4th ed, Contracts, “Consideration for Contract: Nature of Consideration: Mutual Promises”; now see §22 (January 2024), online: Westlaw Canada. Importantly, one party cannot, after the contract has been formed, unilaterally decide what that consideration is going to be: see for example *642718 Alberta Ltd v Alberta (Minister of Public Works, Supply & Services)*, 2004 ABQB 539 at paras 42-43, revd on other grds (costs), 2005 ABCA 292.

### Analysis

[26] The Applicant argues that the following three actions constitute valid consideration:

1. Securing renters for the property
2. Paying property taxes
3. Agreeing to keep the property “in the family”

[27] At the time the option was signed in September 2015, the Property was subject to a five-year lease agreement from 2014-2019. That long-term lease was arranged over a year before the Applicant entered into the Agreement with the Respondent. Even if the Applicant helped secure that lease and drafted its terms, this is at best “past consideration”. There is no evidence that the Respondent requested that the Applicant assist her with this, or more importantly, that the Respondent’s assistance was a condition of a future Agreement to grant him an option to buy the property.

[28] The Applicant secured renters (the same renter) and entered into a lease on behalf of the Respondent in 2019. This was four years *after* the option was signed. Again, there is no evidence that the parties agreed that in exchange for the option, the Applicant would agree to help secure renters for the Respondent once the five-year lease was expired.

[29] With respect to the payment of property taxes, there is no question that this was a benefit to the Respondent. However, the same problem arises as in the case of securing renters for the property: there is no evidence that this was expressly agreed to by the parties at the time the contract was entered into as consideration for the future option to purchase. Mr. Myer’s uncontradicted evidence was that they did not know that the Applicant was paying the property taxes and they offered to pay him back. In support of this assertion is the fact that in 2020 the Myers paid the taxes themselves.

[30] Finally, Mr. Chomlak asserts that his promise to Ms. Myer that he would keep the property in the family was valid consideration for her giving him the future option to purchase. There is no direct evidence from anyone other than Mr. Chomlak himself that this was important to Ms. Myer, although it is clearly important to Mr. Chomlak. Further, the land in question has been rented out to a third party for a lengthy period and there is no specific evidence about its uniqueness other than the length of time the family has owned it. In these circumstances, the motive to keep the piece of land “in the family” is not something that has “...value in the eye of the law” and therefore, does not constitute valid consideration for the option to purchase: see Beale at 548-549.

[31] Additionally, there is no evidence that the Respondent was contemplating selling the property before the Agreement was signed. There is no evidence that she needed to sell it, for example, that selling to the Applicant at some point in the future would give her some sort of additional benefit, such as relieving the burden of taking care of the property or providing her with cash urgently needed.

[32] There was no valid consideration given for the option to purchase; therefore, the option is unenforceable.

[33] If I am wrong about the lack of consideration, the contract fails on the basis that it lacks sufficient specificity on the issues of exclusivity and irrevocability, as well as specificity with respect to how the eventual contract of sale would be created by the option holder, as described in *North Calgary* at para 12.

[34] Given my decision on the issue of failed contract formation, there is no need to address the further issues raised: unconscionability and undue influence.

### **Damages**

[35] As Mr. Chomlak has been unsuccessful in arguing that the option to purchase is enforceable there is no contractual basis on which he can claim damages. However, Mr. Chomlak argued in the alternative that he is entitled to compensation for the amounts paid towards property taxes on the basis that the Respondent has been unjustly enriched.

[36] I agree. The Applicant was deprived of \$4,143.20 he paid in property taxes, and the Respondent correspondingly enriched. There is no juristic reason why the Respondent should continue to have the benefit of those funds. The Applicant is awarded \$4,143.20 in damages on that basis.

### **Costs**

[37] If the parties are unable to come to an agreement with respect to costs within 30 days of issuance of this judgment, they may make a costs application to me, in writing, and I will issue further direction to them as to how that application will proceed.

Heard on the 7<sup>th</sup> day of December, 2023.

**Dated** at the City of Edmonton, Alberta this 30<sup>th</sup> day of July, 2024.

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**T.L. Friesen**  
**J.C.K.B.A.**

**Appearances:**

Travis McKay  
Hillenbrand Kozicki LLP  
for the Applicant

Charles A. Dixon  
Dixon Legal  
for the Respondent