

## LexisNexis® Agricultural Law *NetLetter*

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### HIGHLIGHTS

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- \* A justice of the Court of Queen's Bench of Alberta has granted specific performance by ordering the transfer of farm land in accordance with the terms of an Option to Purchase. The court reviews Alberta law with respect to the exercise of options to purchase. Specific performance rather than damages was awarded, as damages were held to be an inadequate remedy due to the plaintiff's personal connection with the farm land. The land had special meaning to the Plaintiff because it had been her parents' historical home quarter when they immigrated to Canada. (Morrison v. Daus Estate, [CALN/2019-015](#), [\[2019\] A.J. No. 814](#), Alberta Court of Queen's Bench)

### NEW CASE LAW

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#### Morrison v. Daus Estate;

Alberta Court of Queen's Bench,

M.E. Burns J.,

June 19, 2019.

[CALN/2019-015](#)

[\[2019\] A.J. No. 814](#) | [2019 ABQB 448](#)

#### **option to purchase farm land — specific performance or damages — personal connection to the land.**

Darlene Morrison ("Morrison") commenced an action against the Estate of Jason Daus ("Daus" and the "Estate") for an order for specific performance to compel the Estate to transfer farm land (the "Farm") to Morrison in accordance with the terms of an Option to Purchase.

Morrison inherited the farm from her father in 2001.

Daus was Morrison's nephew.

Morrison agreed to sell the Farm to Daus in 2004 subject to the terms of an Option to Purchase which gave Morrison the right to purchase the Farm for the sum of \$110,600.00 plus existing improvements valued at \$16,900.00 and the value of improvements after the date of the Option as determined by an appraiser appointed by Morrison. The option had to be exercised within 1 year of the date of death, if Daus died before July 1, 2018. The purchase price was to be paid by a closing date which was to be 60 days after receipt of the notice of exercise of the option.

Daus died on September 1, 2016.

Morrison signed a Notice to Exercise the Option on September 14, 2016. The court found the Notice was served on September 22, 2016.

On November 7, 2016 the Estate advised Morrison that improvements had been made to the Farm. Morrison asked for particulars of the improvements and provided her appraiser's name. In December of 2016, the Estate ultimately identified the improvements - a game fence and dugouts - which were valued by the appraiser on January 4, 2017.

On January 20, 2017 Morrison tendered a trust cheque for \$156,310.00 based on the appraisal. The funds were tendered on the condition that they be held until the Estate provided a registerable transfer or for a maximum of 60 days.

On February 23, 2017 the Estate requested an extension of the closing date so that it could get its own appraisal - subject to the condition that by doing so it was not admitting that the Option was properly exercised.

On March 27, 2017 the Estate took the position that the Option had not been properly exercised.

The issues before the court were:

- whether any improvements had been made to the Farm.
- whether the Option had been exercised.
- whether the resulting Agreement for Sale was enforceable.
- whether specific performance rather than damages should be ordered.

Decision: Burns, J granted judgement to Morrison and awarded specific performance [at para 42 and 43].

After reviewing the evidence Burns, J concluded that no improvements had been made to the Farm [at para 6 to 19] and that the amount Morrison had tendered exceeded the amount payable plus GST [at para 33].

Burns, J held [at para 30] that the option had been exercised, and observed [at para 31] that when an option is exercised it becomes an enforceable agreement for sale: 364021 Alberta Ltd v 361738 Alberta Ltd [1994 ABCA 89](#), [\[1994\] 6 WWR 72](#).

Burns, J rejected the Estate's argument that the terms of the agreement for sale had not been complied with because the purchase price was not tendered until 115 days after notice to exercise the option had been given - after the 90 day period stipulated in the Option had expired. She held that for a party to invoke a "time is of the essence" clause they must be acting in good faith [at para 38]: *Bowlen v Digger Excavating (1983) Ltd*, [2001 ABCA 214](#), [11WWR 618](#). She also held that the Estate misled Morrison by seeking an appraisal for

improvements which were not made, and that most of the delay was the fault of the Estate [at para 39].

Burns, J exercised her equitable discretion to relieve Morrison of this clause's rigid application [at para 40].

Burns, J granted specific performance rather than damages [at para 41 to 43]. She concluded [at para 43]:

"In this case I find that the land does have special meaning to both Ms. Morrison and the Estate. The land is more than its market value, in a personal sense. Ms. Morrison testified to the Land's history within her family. The Lands are the historical home quarter for Ms. Morrison's parents who acquired it after immigrating to Canada in the 1950's...damages are not as sufficient remedy in this case.'

## CREDITS

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