

EDMOND ROBIN JR. AND LUCIEN	}	APPELLANTS;
BOVET (<i>Plaintiffs</i>)		
AND		
AARON GUTWIRTH AND OTHERS	}	RESPONDENTS.
(<i>Defendants</i>)		

1962
 *Oct. 22
 —

1963
 Mar. 7
 —

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

*Real property—Deed of sale—Interpretation—Right to expropriation in-
 demnity—Rights of privilege creditors.*

*PRESENT: Taschereau, Fauteux, Abbott, Martland and Judson JJ.

¹[1952] 2 S.C.R. 495, 104 C.C.C. 97, 15 C.R. 181.

²[1953] 1 S.C.R. 220, 105 C.C.C. 97, 16 C.R. 119.

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By a deed of sale, the plaintiffs sold their land and buildings to the predecessors in title of the defendants. The right to use part of the land and all the buildings as well as to remove the buildings until full payment of the purchase price was reserved to the plaintiffs. Anticipating the probable expropriation of the property by the city, clause 7 stipulated that any compensation paid for the expropriation of "ladite terre" should be remitted to the plaintiffs and applied to reduce the balance due on the purchase price. The city expropriated part of the property including the buildings and deposited the compensation into court. The plaintiffs applied to the Superior Court to have the amount paid to them as creditors secured by hypothec and privilege of bailleurs de fonds. The Court so ordered on condition that the defendants be credited for it. The plaintiffs appealed upon the ground that the defendants were not entitled to be credited with the part of the indemnity covering the value of the buildings. The appeal was dismissed and the plaintiffs appealed to this Court.

Held: The appeal should be dismissed.

Clause 7 was inserted in the deed having in mind an expropriation which was imminent, and the word "terre" as used was broad enough to include both land and buildings. That clause was not necessary to protect the plaintiff's rights as privileged creditors. It was intended to settle in advance that the defendants were to be entitled to receive credit on account of the balance of the purchase price for the full amount of the prospective indemnity.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, affirming a judgment of Tellier J. Appeal dismissed.

Thomas Vien, Q.C., for the plaintiffs, appellants.

Alfred Tourigny, Q.C., and *Henri-Paul Lemay, Q.C.*, for the defendants, respondents.

The judgment of the Court was delivered by

ABBOTT J.:—On October 14, 1958, by deed before Roch-A. Bergeron, notary, appellant sold a farm property—being part of original lot no. 481 on the Official Plan and Book of Reference of the Parish of Longue-Pointe—with the buildings thereon erected, to Federal Construction Limited and Huron Investment Corporation, predecessors in title of the respondents. The price of sale was \$500,000 of which \$200,000 was paid in cash, the balance of \$300,000 payable on or before October 15, 1963, being secured by hypothec and privilege of bailleur de fonds.

¹[1962] Que. Q.B. 86.

Under the terms of the said deed of sale appellants reserved the right to continue to occupy the buildings and to cultivate the land upon the following conditions:

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CONDITIONS SPECIALES:

Les vendeurs se réservent le droit de continuer à habiter les bâtisses érigées sur ladite terre et de s'en servir de même qu'à cultiver ladite terre, aux conditions suivantes, savoir:

Abbott J.

1. Les vendeurs continueront d'occuper tous les bâtiments mentionnés ci-dessus, avec une lisière de vingt-cinq pieds (25') de terrain tout autour d'eux, ainsi que trois (3) arpents en arrière de ces bâtisses, tant et aussi longtemps que le solde du prix de vente mentionné ci-après n'aura pas été payé, de même que les intérêts;

2. Les vendeurs pourront cultiver le résidu de ladite terre tant que les acquéreurs n'en auront pas besoin pour les fins de leur exploitation.

* * *

5. Il est entendu entre les parties que les acquéreurs pourront payer le solde du prix de vente avec intérêts en aucun temps; elles devront, cependant, donner aux vendeurs un avis de six mois, par lettre recommandée, avant d'exiger de ces derniers qu'ils libèrent ladite terre, mais ces derniers auront alors le droit d'enlever à leurs frais, toutes les bâtisses et les transporter ailleurs s'ils le jugent à propos, sans indemnité de part et d'autre;

6. Dès qu'un bloc de terrain de dix arpents aura été libéré de l'hypothèque mentionnée ci-dessus et libéré aux acquéreurs, le droit des vendeurs de cultiver sur ce bloc cessera;

The property sold was adjacent to the Montreal Metropolitan Boulevard, then under construction, and the deed of sale also contained the following special condition:

7. Il est à la connaissance des parties aux présentes que la terre ci-dessus vendue a front sur le Boulevard Métropolitain, traversant l'île de Montréal, actuellement en construction, et qu'il est probable qu'une partie de ladite terre sera expropriée pour les fins dudit Boulevard Métropolitain; dans ce cas, toute somme d'argent payée aux vendeurs ou aux acquéreurs en compensation de l'expropriation de partie de ladite terre devra être remise aux vendeurs et par eux appliquée en réduction de tout solde du prix de vente alors dû.

In August 1959 a portion of the said property then owned by respondents—which included the part upon which the buildings were erected—was in fact expropriated by the Montreal Metropolitan Corporation for the extension of the Metropolitan Boulevard. Proceedings were taken before the Public Service Board of the Province of Quebec to fix the compensation payable and by a report dated July 21, 1960, deposited August 15, 1960, while the Montreal Metropolitan Corporation, the Public Service Board awarded compensation in the amount of \$173,204.16.

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That award was homologated by a judgment of the Superior Court on September 8, 1960, and on the same date the amount awarded was deposited into Court to be paid *à qui de droit*.

On September 22, 1960, appellants filed a petition in the Superior Court asking for an order that the amount deposited in Court be paid to them as creditors secured by hypothec and privilege of bailleurs de fonds.

On October 26, 1960, judgment was rendered by Tellier J. granting the appellants' petition, the operative part of that judgment being as follows:

DECRETE que les requérants Robin et Bovet ont droit de retirer en entier le montant déposé par la Corporation de Montréal Métropolitain, soit une somme de \$173,204.16, comprenant le dépôt préliminaire effectué le 19 octobre 1959, lequel montant devra être crédité aux présents mis-en-cause pour valoir sur le prix de vente, en capital et intérêt en vertu de l'acte du 14 octobre 1958; tel paiement équivaudra à quittance par les requérants aux mis-en-cause, sur le prix de vente, mais sujet à la limitation ou à l'étendue des libérations hypothécaires conventionnelles des parties, suivant l'acte du 14 octobre 1958; DECRETE que sur paiement de la susdite somme, main-levée d'hypothèque sur l'immeuble concerné devra être donnée par et en faveur des parties susdites, mais seulement sur la partie, l'étendue et pour les valeurs mentionnées et prévues au paragraphe 4 des «Conditions Spéciales» de l'acte du 14 octobre 1958 dans l'occurrence main-levée hypothécaire jusqu'à concurrence d'une somme de \$125,000 et sur les parties de l'immeuble mentionnées à la description technique et au plan préparé par Laurent C. Farand, arpenteur-géomètre, en date du 28 septembre 1960; les honoraires et les déboursés de chaque quittance seront à la charge des présents mis-en-cause; l'accomplissement de toutes ces formalités selon les termes et conditions de l'acte du 14 octobre 1958; ORDONNE au Protonotaire de cette Cour de procéder à telle distribution sans les formalités d'un jugement et selon les termes ci-dessus.

From this judgment appellants appealed to the Court of Queen's Bench¹ upon the ground that respondents were not entitled to receive credit for the indemnity to the extent that the said indemnity covered the value of the buildings expropriated. The appeal was dismissed, Badeaux J. dissenting. From that judgment appeal was taken to this Court.

The majority opinion in the Court below was delivered by Montgomery J. with whom Casey, Hyde and Taschereau JJ. concurred. I am in agreement with his reasons and conclusions and there is very little that I can usefully add to them.

¹[1962] Que. Q.B. 86.

Appellants sold the property with all the buildings erected thereon, although reserving certain temporary rights of use and occupation, as provided in the special conditions to which I have referred. Moreover the expropriation award contained the following provision:

L'exproprié ou ses ayants droit pourra ou pourront déménager les constructions érigées sur l'une ou l'autre des emprises ou les démolir et en conserver les matériaux pourvu que le terrain exproprié soit libéré du tout dans un délai de SIX (6) mois de la date du dépôt.

It is clear that special condition 7 was inserted in the deed of sale having in mind an expropriation which was imminent, and the word "terre" as used in the said clause is broad enough to include both land and buildings. The said condition was not necessary in order to protect appellants' rights as privileged creditors and I agree with the opinion of the majority in the Court below that it was intended to settle in advance that the purchasers were to be entitled to receive credit on account of the balance of purchase price for the full amount of the prospective indemnity.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Attorneys for the plaintiffs, appellants: Vien, Paré, Ferland, Barbeau & Pelletier, Montreal.

Attorneys for the defendants, respondents: Lemay, Martel, Poulin & Corbeil, Montreal.

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