

In the Court of Appeal of Alberta

Citation: Singh v. 862500 Alberta Ltd., 2010 ABCA 117

Date: 20100413
Docket: 0903-0227-AC
Registry: Edmonton

Between:

Paramjit Singh

Appellant

- and -

**862500 Alberta Ltd., carrying on business under
the firm name and style of Super-Tec Homes**

Respondent

The Court:

**The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Keith Ritter
The Honourable Madam Justice Patricia Rowbotham**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Judgment by
The Honourable Mr. Justice S.M. Sanderman
Dated the 14th day of May, 2009
Filed on the 27th day of July, 2009
(2009 ABQB 293, Docket: 0603 09837)

**Memorandum of Judgment
Delivered from the Bench**

Rowbotham J.A. (for the Court):

[1] On March 8, 2006, the appellant (purchaser) and the respondent (vendor) entered into a residential purchase agreement, for a home being built by the vendor. The purchase price was to be paid “on the completion and possession of the Residential Unit and Land, whichever occurs first.” The completion date referenced in the agreement was “on or about April 30, 2006”. The appellant did not pay the purchase price on that date. The appellant ultimately tendered the purchase price on May 19, 2006. The respondent refused to close. The appellant sued for specific performance or damages in lieu and for punitive damages. The respondent counterclaimed for damages in relation to a subsequent agreement for sale which was frustrated by a caveat and *lis pendens* filed by the appellant. The trial judge dismissed the appellant’s claim and granted judgment on the counterclaim.

[2] The appellant’s main ground of appeal is that the trial judge erred in finding that the balance of the purchase price was due on April 30, 2006. He also says that the trial judge erred in granting judgment on the counterclaim.

[3] The trial judge found that the appellant was not ready, willing and able to complete the transaction until May 19, 2006 at the earliest (para. 22). This finding of fact is well supported by the record. Inquiries of the appellant and his lawyer regarding the cash to close prior to May 19, 2006 were never answered in the affirmative. Indeed, the record establishes that the appellant did not have the funds until May 18, 2006. The trial judge also found that the home was ready for occupation on April 28, 2006 (para.12). In so finding, the trial judge accepted the evidence of the respondent’s sub-trades and rejected the evidence of the appellant. The trial judge was mindful that although there was still some seasonal exterior work to be completed (para.6.), the appellant was ready to move in and sought to do so.

[4] The appellant submits that the trial judge erred when he interpreted the agreement to require that the funds be tendered by the purchaser on April 30, 2006. The interpretation of a contract is a question of law, reviewed on the standard of correctness: *Double N Earthmovers Ltd. v. Edmonton (City of)*, 2005 ABCA 104, 363 A.R. 201 at para. 16.

[5] Clauses 5 and 9 of the agreement deal with payment. Clause 5(g) requires that the balance of the purchase price and interest, if any, are payable on the completion and possession of the residential unit and land, whichever occurs first. Clause 9 deals with completion date and states that the builder agrees to have the residential unit completed on or about April 30, 2006. The trial judge considered each of these clauses in determining that the money was payable on April 30, 2006.

[6] The appellant says that clause 5(g) delineates two paths to determine the time for payment, and that the “possession” rather than the “completion” path was engaged in this case. As such, the

respondent was obliged to follow the procedure set out in clause 7 which allows for a walk through and inspection prior to possession. As the respondent did not follow this process, possession did not occur and the payment was not due.

[7] The respondent says the trial judge followed the correct path, being the “completion” path. Completion is not defined in the agreement. We are satisfied that the trial judge’s finding that the home was ready for occupancy was tantamount to a finding of completion, and being the earlier date, this was the date for payment of the purchase price.

[8] The appellant also says that the trial judge either failed to consider or incorrectly interpreted other clauses of the agreement. He points to clauses 14, 18, and 26. The trial judge considered each of these clauses. In our view, he correctly concluded that none of these clauses had the effect of extending the time for payment to some unspecified future date.

[9] In the result, we see no reviewable error in the trial judge’s dismissal of the action.

Counterclaim

[10] On June 5, 2006, the appellant filed a caveat against the title, claiming an interest by virtue of a purchaser’s lien. The respondent submitted that the caveat was wrongfully filed and, as a result, it suffered damages. Subsequent purchasers sued the respondent with respect to a failed purchase. That lawsuit, we were advised today, has now been settled. The trial judge dealt with the counterclaim in one paragraph. He said:

He lost any interest he had in this land and the Caveat that he placed on the property must be discharged. Mr. Deol is entitled to damages in relation to this failed transaction, but they cannot be ascertained with certainty at this time..... [para 49]

He then went on to provide a mechanism for the quantification of the damages.

[11] Section 144 of the *Land Titles Act*, R.S.A. 2000, c. L-4 requires that for compensation to be awarded for the wrongful filing of a caveat, the caveat must be filed or continued “without reasonable cause”.

[12] The trial judge’s reasons contain no reference to, nor any analysis of, whether the appellant’s actions in filing and continuing the caveat were reasonable. Although we dismissed the main appeal, we cannot say that the appellant’s position regarding the interpretation of the contract was entirely unreasonable.

[13] In conclusion, the appeal on the first ground of appeal is dismissed. The appeal on the second ground, being the counterclaim, is allowed and the judgment on the counterclaim is set aside. Given the divided success we direct that each party bear the costs of its own appeal.

Authorized to sign for: Rowbotham J.A.

Submissions by counsel on costs at trial

Berger J.A. (for the Court):

[14] We are all agreed that the costs award at trial will not be disturbed.

Appeal heard on April 1, 2010

Memorandum filed at Edmonton, Alberta
this 13th day of April, 2010

Berger J.A.

Appearances:

B.G. Doherty
for the Appellant

M.L. Engelking
for the Respondent