

COURT OF APPEAL FOR ONTARIO

CITATION: Metropolitan Toronto Condominium Corporation No. 1067 v.  
L. Chung Development Co. Ltd., 2012 ONCA 845

DATE: 20121203  
DOCKET: C55307

Laskin, MacPherson and Gillese JJ.A.

BETWEEN

Metropolitan Toronto Condominium Corporation No. 1067

Plaintiff (Appellant)

and

L. Chung Development Co. Ltd., Yiu W. Chung a.k.a. Andrew Y.W. Chung, Yiu C. Chung a.k.a. Tony Y.C. Chung, Tony Yiu-Cheung Chung, Yiu H. Chung a.k.a. Stephen Y.H. Chung, George Wood, Dolores Lawrence, Torchin Group Inc., and Cushman & Wakefield Ltd.

Defendants (Respondents)

Carol Dirks and Bruce Bahst, for the appellant

Milton A. Davis, for the respondents L. Chung Development Co. Ltd., Yiu W. Chung a.k.a. Andrew Y.W. Chung, Yiu C. Chung a.k.a. Tony Y.C. Chung, Tony Yiu-Cheung Chung, Yiu H. Chung a.k.a. Stephen Y.H. Chung, George Wood, Dolores Lawrence and Torchin Group Inc.

Elizabeth Ackman and Eric Snerka, for the respondent Cushman & Wakefield Ltd.

Heard: November 27, 2012

On appeal from the order of Justice James M. Spence of the Superior Court of Justice, dated March 8, 2012.

ENDORSEMENT

[1] The appellant Metropolitan Toronto Condominium Corporation No. 1067 (“MTCC”) appeals from the order of Spence J. dated March 8, 2012 granting summary judgment to the respondents and dismissing the appellant’s action. In basic terms, MTCC’s action alleged that by tortious conduct the respondents caused MTCC to pay a price about \$1 million over market value for surface rights to the condominium corporation parking garage. In making this allegation, the appellant challenges the Royal LePage appraisal report given to the bank to secure first mortgage financing for the surface rights sale in 2005.

[2] The motion judge held that summary judgment should be granted and the appellant’s action dismissed on a number of bases, including (1) the action was brought outside the relevant two-year limitation period, irrespective of whether the trigger date for the appellant’s claim was September 29, 2005, or August 1, 2008; and (2) on the merits, the appellant’s claim failed because of a combination of procedural defects (e.g. reliance on inadmissible expert evidence), his acceptance of the Royal LePage appraisal, the absence of other evidence showing the surface rights sale price was excessive, and the application of relevant legal principles (e.g. the doctrine of merger, the interpretation of various sections of the *Condominium Act*, and oppression).

[3] The appellant appeals virtually all aspects of the motion judge's decision. With leave, it argued a new ground of appeal, namely, that the relevant limitation period is 10 years, not two years, by virtue of the *Real Property Limitations Act*.

[4] In our view, the relevant limitation period is two years, and the appeal can be resolved on this issue alone. Although we have reservations about the motion judge's analysis in support of his principal conclusion that "the limitation period started to run in 2005 and expired in 2007", we do agree with his secondary conclusion on this issue, namely, that "even if the limitation period began on [August 1, 2008] and not before, the action was statute-barred" because MTCC did not commence its action until November 8, 2010.

[5] We agree with the respondents that MTCC had all the information relevant to its claims in this lawsuit when Mr. Kuang purchased from the respondents their 57 percent interest in the condominium on August 1, 2008. Mr. Kuang, the purchaser, drafted the Agreement of Purchase and Sale, which specifically listed as a Due Diligence Document, at paragraph 18, "Document disclosing the transaction details of selling all parking units from the Vendor to MTCC 1067." Mr. Kuang was represented by legal counsel and a real estate agent in the transaction. He invoked paragraph 18 and received additional information responsive to his request from the respondent. Importantly, in his affidavit in response to the summary judgment motion, Mr. Kuang stated that he was aware during the due diligence period before the August 1, 2008 closing that HSBC had

conducted an appraisal relating to the 2005 transaction. Nevertheless, against the backdrop of all this information and conduct, Mr. Kuang explicitly waived the due diligence clause and closed the transaction.

[6] We accept that the appellant and Mr. Kuang are different legal entities. However, when Mr. Kuang purchased the respondent's interest, he took over control of the board of the appellant. The Board, and therefore the appellant, must be fixed with the knowledge Mr. Kuang gained as a result of his purchase. There is nothing in the record to suggest that he and the other unit owners of the corporate appellant should now be permitted to resile from the consequences of the decisions Mr. Kuang made leading up to and on August 1, 2008.

[7] Finally, we do not think that the *Real Property Limitations Act* applies to the case as framed by the appellant. In its Statement of Claim, the appellant frames its action as one for damages flowing from the respondents' negligence, breach of contract, conflict of interest, and breach of duty of care, fiduciary duty and statutory duty. None of these relates to the categories of actions encompassed by the *Real Property Limitations Act*. Importantly, in its comprehensive submissions before the motion judge the appellant did not raise or argue this point.

[8] The appeal is dismissed. If the parties cannot agree on costs, the respondents may make brief submissions (not more than three pages) within 14

days of the release of these reasons. The appellant may reply with similar brevity within the following seven days.

“John Laskin J.A.”

“J.C. MacPherson J.A.”

“E.E. Gillese J.A.”