

# COURT OF APPEAL FOR ONTARIO

CITATION: Middlesex Condominium Corporation 229 v. WMJO Limited, 2014

ONCA 203

DATE: 20140317

DOCKET: M43095 (C57409)

Juriansz, Pepall and van Rensburg JJ.A.

BETWEEN

Middlesex Condominium Corporation 229

Plaintiff (Respondent/Appellant in Appeal)

and

WMJO Limited, Ayerswood Development Corporation, Middlesex  
Condominium Corporation 282, Middlesex Condominium  
Corporation 492 and Middlesex Condominium Corporation 500

Defendants (Moving Parties/Respondents in Appeal)

Paul Morrissey, for the appellant

Scott Turton, for the respondents

Heard and released orally: March 3, 2014

On appeal from the order of Justice Kelly A. Gorman of the Superior Court of  
Justice, dated June 27, 2013.

## ENDORSEMENT

[1] The respondents move to quash this appeal on the basis that the appellant seeks to appeal an interlocutory order.

[2] The order below dismissed the appellant's summary judgment motion. In reaching her conclusion the motion judge analyzed the applicable legal principles.

[3] This court has decided in *Ashak v. Ontario (Family Responsibility Office)*, 2013 ONCA 375, 363 D.L.R. (4th) 322, at para. 11, that if a motion judge dismissing a motion for summary judgment proposes to make a binding determination of law, he or she should specifically make reference to rule 20.04(4) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and the legal determination made should form part of the formal order. This approach was more recently confirmed in *Dams v. TD Homes and Auto Insurance Co.*, 2013 ONCA 730.

[4] In this case the motion judge made no reference to rule 20.04(4) and no legal determinations are included in her formal order.

[5] It follows that the motion judge did not make any binding determinations of law. Her legal analysis simply indicates the course of her reasoning in reaching the conclusion to dismiss the appellant's summary judgment motion. Should the appellant proceed to trial, the motion judge's reasons should not be treated as final determinations of the legal issues raised. The moving party recognizes this is the case.

[6] The order made in this case is not a final order. The appeal is quashed.

[7] Costs of the motion in the appeal fixed in the amount of \$7,500 all inclusive.

“R.G. Juriensz J.A.”

“S.E. Pepall J.A.”

“K. van Rensburg J.A.”