COURT OF APPEAL FOR ONTARIO

CITATION: Northbridge General Insurance Corporation v. Langston Hall Development Corporation, 2014 ONCA 551
DATE: 20140718
DOCKET: C58437

Hoy A.C.J.O., Gillese and Lauwers JJ.A.

BETWEEN

Northbridge General Insurance Corporation

Respondent

and

Langston Hall Development Corporation, Langston Hall Real Estate Corp., Del Terrelonge, John Wee Tom and Naheel Suleman

Appellants

Ryan R. Watkins, for the appellants

Dominique Michaud, for the respondent

Heard and released orally: July 17, 2014

On appeal from the partial summary judgment granted by Justice S. Greer of the Superior Court of Justice, dated February 7, 2014, with reasons reported at 2014 ONSC 856.

ENDORSEMENT

[1] The appellants Del Terrelonge, John Wee Tom and Naheel Suleman gave indemnities to the respondent Northbridge General Insurance Corporation in respect of a bond provided by Northbridge to Tarion Warranty

Corporation for a condominium project advanced by the corporate defendants. The corporate defendants are in receivership and did not take part in the motion for summary judgment before the motion judge or in this appeal.

[2] Northbridge sought partial summary judgment, as explained by motion judge, at para. 3, obliging the personal defendants to make the following payments:

> (a) unpaid insurance premiums owing to Northbridge pursuant to the terms of the commitment letter and the indemnity agreement between August 23, 2013 and the date of the summary judgment motion;
>
> (b) legal fees incurred by Northbridge in relation to issues arising from the Tarion bond between August 23, 2013 and the date of the summary judgment motion; and
>
> (c) the amounts paid by Northbridge to Tarion pursuant to demands made under the Tarion bond between August 23, 2013 and the date of the summary judgment motion.

[3] In addition, Northbridge also sought relief for future claims.

[4] The motion judge carefully analyzed the relevant documents and concluded, at para. 36, that the appellants were obliged to make all three types of payments if the corporate defendants did not, plus interest.

[5] We agree, for the reasons given by the motion judge, that there is no genuine issue requiring a trial in respect of Northbridge's entitlement to payment.

[6] First, the appellants' argument that Northbridge would be unjustly enriched if they are obliged to make these payments has no merit. So long as the bond remains in force, Northbridge is entitled to be paid its premiums and the appellants, as indemnitors, are required to pay if the corporate defendants do not, and the corporate defendants have no ability to do so.

[7] Second, there is no merit to the appellants' argument that Northbridge was obliged to take steps to have the Tarion bond released. That was the responsibility of the corporate defendants. The bond remains in full force and effect, as does Northbridge's obligation to make the various payments associated with it.

[8] Third, the appellants argue that the motion judge made a procedural error in allowing Northbridge to file a second reply affidavit after the cross-examinations on the other affidavits. The motion judge's manner of proceeding was entirely consistent with her discretion under the *Rules of Civil Procedure*, and with the approach urged by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC7. The second reply affidavit was served on November 8, 2013, and the motion was scheduled to be heard on November 26, 2013. The appellants took no steps to cross-examine the affiant before the argument of the

motion, but sought an adjournment to permit cross-examination. The motion judge described the situation at para. 5:

> Given that I have read all the materials for the motion, and given that a new motion date was not available until March 5, 2014, I was not prepared to grant the adjournment. I granted leave to Northbridge to file the affidavit, heard the motion but allowed the parties time to conduct the cross-examination and later provide me with written submissions on their positions. I did not write my judgment until after all submissions were in by January 2, 2014.

This ground of appeal also has no merit.

[9] The appeal is dismissed.

[10] The appellants concede that they are contractually committed to paying complete indemnity costs, which we fix all-inclusively at $13,500.

"Alexandra Hoy A.C.J.O."

"E.E. Gillese J.A."

"P. Lauwers J.A."