

COURT OF APPEAL FOR ONTARIO

CITATION: Golfnorth Properties Inc. v. 457351 Ontario Inc., 2015 ONCA 419

DATE: 20150611

DOCKET: C59807

Weiler, Cronk and Pepall JJ.A.

BETWEEN

Golfnorth Properties Inc.

Applicant
(Respondent)

and

457351 Ontario Inc. and Diana Vacca

Respondent
(Appellant)

Vittorio Vacca, as agent for the appellant

Simon J. Adler, for the respondent

Heard: May 13, 2015

On appeal from the order of Justice Nancy M. Mossip of the Superior Court of Justice, dated December 2, 2014.

ENDORSEMENT

[1] This is a companion appeal to the appeal bearing file number C59806. This court's decisions in both appeals are being released contemporaneously. Before this court, no issue was taken with Vittorio Vacca's standing to argue this appeal on behalf of the appellant.

[2] This appeal arises from the respondent's application for an order discharging the \$800,000 mortgage registered on the Erin property, which it brought against 457351 Ontario Inc. and Diana Vacca.

[3] In a prior proceeding, Lemon J. of the Superior Court of Justice interpreted the disputed agreement in the respondent's favour. Under the interpretation Lemon J. adopted, the respondent could decline to pay an \$800,000 mortgage, which was registered against title to the Erin property. If it did, the appellant had the option to repurchase the property from the respondent for \$1.2 million. The respondent did decline to pay the mortgage but the appellant did not proceed to repurchase the property pursuant to its option. The respondent therefore applied to have the mortgage discharged.

[4] In granting the respondent's application, the motion judge noted that the terms of the parties' agreement were clear. The motion judge concluded that the relief requested by the respondent should be granted as it logically flowed from the reasons of Lemon J.

[5] We agree with the motion judge that the mortgage should be discharged. The agreement expressly provided that if the transaction failed to close for any reason not directly attributable to the fault of the respondent, the mortgage was deemed to be satisfied in full. The order for discharge of the mortgage flowed from Lemon J.'s resolution of the parties' dispute and the appellant's failure to

repurchase the property for the purchase price of \$1.2 million. On the findings of Lemon J., that failure did not arise from any fault of the respondent.

[6] For these reasons, the appeal is dismissed with costs of \$2,000, inclusive of disbursements and applicable taxes, to be paid by the appellant to the respondent.

“K.M. Weiler J.A.”

“E.A. Cronk J.A.”

“S.E. Pepall J.A.”