

COURT OF APPEAL FOR ONTARIO

CITATION: Colasanti v. 1808278 Ontario Inc., 2019 ONCA 96

DATE: 20190208

DOCKET: C65020

Hourigan, Miller and Paciocco JJ.A.

BETWEEN

Richard R. Colasanti, James A. Colasanti,
W. Kelly Colasanti and Tracy Jo Lee Gitke,
Trustees of the estate of Ronald Colasanti, deceased

Respondents (Plaintiffs)

and

1808278 Ontario Inc.

Appellant (Defendant)

Myron W. Shulgan, for the appellant

Rodney M. Godard and Angela Kubica, for the respondents

Heard and released orally: February 7, 2019

On appeal from the judgment of Justice Thomas J. Carey of the Superior Court of Justice, dated February 2, 2018.

REASONS FOR DECISION

[1] The appellant 1808278 Ontario Inc. (“180”) gave a promissory note, in the amount of \$171,000, to Ronald Colasanti. On default, it took the position that the promissory note was void for failure of consideration. Mr. Colasanti brought an

action in debt. That action was continued by the trustees of his estate, which was awarded judgment.

[2] Mr. Colasanti was a principal of a company that owned a 69 acre parcel of land in Kingsville, Ontario. That land parcel was acquired by the appellant in 2009, for the purpose of constructing a greenhouse to grow vegetables. When the appellant subsequently applied for a building permit, it was advised by Kingsville's Chief Building Official that it needed to first acquire a water allocation that Kingsville had made to Mr. Colasanti some years prior. The appellant took the position that it acquired the water allocation in its purchase of the 69 acre parcel. The Chief Building Official disagreed and withheld the building permit.

[3] The appellant negotiated with Mr. Colasanti to acquire the assignment of the water allocation. Ultimately, the appellant gave Mr. Colasanti the promissory note in exchange for Mr. Colasanti executing the assignment of part of his water allocation, amounting to 400,000 gallons of water per day. The trial judge found that Mr. Colasanti acted in good faith. Upon receiving the executed assignment, the Chief Building Official issued the building permit and the appellant constructed its greenhouses.

[4] The appellant later refused to make payment as required by the promissory note.

[5] At trial, the appellant's principal testified that he had never intended to pay on the promissory note, and only signed it to expedite the building permit from Kingsville. The appellant took the position that it had already acquired the water allocation through its purchase of the 69 acre parcel of land, and that the Chief Building Official erred in refusing to recognize this. It further argued that Mr. Colasanti never held the water allocation personally, and could not transfer what he did not have. Accordingly, it argued, Mr. Colasanti's purported transfer to the appellant of the appellant's own property – a water allocation that in fact never belonged to Mr. Colasanti at any time – could not constitute valid consideration for the promissory note.

[6] The trial judge held that "the transfer of the allocation was the valuable consideration for the promissory note" and granted judgment on the debt.

[7] On appeal, the appellant renews its argument below.

[8] We do not agree that the trial judge erred.

[9] In exchange for the promissory note, the appellant obtained an immediate resolution of its water supply problem, which enabled it to obtain a building permit. The trial judge did not err in finding this to be valid consideration, capable of supporting the promissory note. Whether it was legally necessary for the appellant to obtain a transfer of the water allocation from Mr. Colasanti, and whether Mr. Colasanti held the allocation in his personal capacity, are issues that cannot be

decided in this forum. Nor need these issues be resolved in order to determine whether consideration was received. For its own reasons, the appellant did not pursue the available statutory appeal from the decision of the Chief Building Official. Furthermore, Kingsville was not made a party to this litigation and, as the trial judge noted, “(t)his was not the proper forum to test the legality of the water allocation scheme.”

DISPOSITION

[10] The appeal is dismissed. Costs of the appeal are awarded to the respondent in the amount of \$13,000 inclusive of disbursements and HST.

“C.W. Hourigan J.A.”

“B.W. Miller J.A.”

“David M. Paciocco J.A.”