

COURT OF APPEAL FOR ONTARIO

CITATION: Lucijanic v. Hashmi, 2019 ONCA 97

DATE: 20190208

DOCKET: C65439

Hoy A.C.J.O., Simmons and Pardu JJ.A.

BETWEEN

John Lucijanic and Jennifer Lucijanic

Plaintiffs (Respondents)

and

Shazia Hashmi and Syed Hashmi

Defendants (Appellants)

Murad Ali Khan, for the appellants

Evelyn Perez Youssoufian, for the respondents

Heard and released orally: February 1, 2019

On appeal from the order of Justice E. Ria Tzimas of the Superior Court of Justice, dated April 30, 2018.

REASONS FOR DECISION

[1] The motion judge granted the respondents summary judgment declaring that the appellants breached the terms of their April 1, 2017 agreement to purchase 800 Sales Court, Milton, Ontario, from the respondents. The motion judge ordered

that the appellants' deposit be forfeited and ordered the appellants to pay damages to the respondents.

[2] The appellants do not contest the motion judge's declaration that they breached the agreement. Indeed, they acknowledged before the motion judge that they had breached the agreement. Rather, on appeal they repeat the argument made to the motion judge that in refusing their offer to complete the transaction at a price that was less than stipulated in the agreement, but more than the price at which the respondents ultimately sold the property, the respondents failed to take reasonable steps to mitigate their loss. The appellants say that failing to give proper consideration to the respondents' refusal of this offer led the motion judge to erroneously conclude that there was no genuine issue requiring a trial.

[3] We reject this argument. The appellants offered to complete the transaction at a reduced price prior to the agreed upon closing date, and before failing to complete the transaction as required by the agreement. As the motion judge stated, the respondents "were under no obligation to mitigate anything until the [appellants'] breach of the agreement."

[4] As the motion judge further noted, after the appellants failed to close, the property was re-listed for all to consider and to make an offer, and nothing impeded the appellants from making a new offer. We agree with the motion judge that in the circumstances the respondents were not required to specifically approach the

appellants and give them an opportunity to better the third-party offer the respondents ultimately accepted. We also agree with the motion judge that there was no genuine issue requiring a trial.

[5] Accordingly, the appeal is dismissed. The respondents are entitled to their costs of the appeal, fixed in the amount of \$9,500, inclusive of HST and disbursements.

“Alexandra Hoy A.C.J.O.”

“Janet Simmons J.A.”

“G. Pardu J.A.”