

COURT OF APPEAL FOR ONTARIO

CITATION: Sheth v. Randhawa, 2022 ONCA 707

DATE: 20221018

DOCKET: C69649

Doherty, Benotto and Copeland JJ.A.

BETWEEN

Lovera Sheth

Appellant/Plaintiff

and

Karanpaul Randhawa, TSD Law Professional Corporation,
Anoop Singh Dhillon, Bindaas Capital, Ash Karia, Sujoy Pal,
Dr. Mangesh Inamdar Medicine Professional Corporation,
11035738 Canada Inc., Shan Mangal and Gurpal Singh

Respondents/Defendants

Doug LaFramboise, for the appellant

Michael R. Kestenberg and Aaron Hershtal, for the respondent, Karanpaul
Randhawa

Samir Chhina, for the respondents, 11035738 Canada Inc., Shan Mangal and
Gurpal Singh

Demetrios Yiokaris and Abir Shamim, for the respondents, TSD Law Professional
Corporation and Anoop Singh Dhillon

Matthew Harris, for the respondents, Bindaas Capital, Ash Karia, Sujoy Pal, and
Dr. Mangesh Inamdar Medicine Professional Corporation

Heard: October 13, 2022

On appeal from the order of Justice Cynthia Petersen of the Superior Court of Justice, dated June 14, 2021.

REASONS FOR DECISION

[1] The appellant's property was sold under power of sale. She brought an action against the mortgagee, and everyone connected to the sale, alleging that there had been a conspiracy to defraud her. She then moved to set aside the sale. The motion judge dismissed her motion and all her claims against the multiple respondents, except for an accounting by the mortgagee. She appeals the order and submits that the motion judge did not give proper consideration to the evidence of fraud and the fact that the sale was improvident.

Facts

[2] The appellant had three mortgages on a property purchased in November 2017. The respondents Bindaas Capital ("Bindaas"), Pal and Inamdar Corp. held the first mortgage in the amount of \$610,000, Bindaas held the second for \$160,000, and Park Lane held the third for \$90,000. The respondents Karia and Mangal are the principals of Bindaas.

[3] By July 2018, the appellant had defaulted on the first and second mortgages. On July 30, 2018, Bindaas, Pal and Inamdar Corp. issued a Notice of Sale with a demand for payment. No payment was made.

[4] Another Notice of Sale was issued by Bindaas, Pal and Inamdar Corp., with a further demand for repayment of \$636,391 by April 5, 2019. The third mortgagee, Park Lane, was served with the Notice of Sale under the first mortgage. The first mortgage was ultimately transferred to Bindaas and Brinder Nagra in July 2019 (the “Bindaas Group”).

[5] All of this led to lawsuits by the appellant against Bindaas and the Bindaas Group, relating to the appellant's defaults. Karanpaul Randhawa (“Randhawa”) represented the Bindaas group.

[6] On December 4, 2019, the parties entered into a settlement agreement to resolve the two enforcement actions. Pursuant to the settlement, the appellant agreed to pay a total of \$893,000 within 7 days, failing which she had seven days to cure such default, failing which the Bindaas Group could bring an *ex parte* motion for judgment in the amount of \$927,465, representing the total sums due under the first and second mortgages as of December 2019.

[7] The appellant did not pay on time. Randhawa advised the appellant’s counsel, on January 2, 2020, that Bindaas would provide an indulgence until January 10, 2020, for payment. The funds were still not paid, and the Bindaas Group proceeded with an *ex parte* motion for enforcement.

[8] On February 13, 2020, the motion for enforcement of the settlement was heard. Emery J. ordered the appellant to pay the Bindaas Group the sum of

\$927,465 and ordered costs of the motion payable by the appellant in the amount of \$3,128.

[9] Meanwhile, both the appellant and the respondents were trying to sell the property. Neither kept the other informed. The Bindaas group accepted an offer from 11035738 Canada Inc. ("1103 Corp.") for \$970,000 on an "as is" basis. The appellant accepted an offer from Bobby Abraham for \$1,000,000, which included a collateral agreement allowing her to remain on the property.

[10] On February 28, 2020, Bindaas' real estate solicitor sent the appellant's real estate solicitor a discharge statement for \$980,272. The appellant disputed the amount because it was higher than the amount ordered by Emery J. on February 13, 2020. Her litigation counsel wrote to Randhawa, advising that the discharge statement was incorrect. Randhawa advised that he was no longer retained by Bindaas on the matter.

[11] On March 9, 2020, the deal between Bindaas and 1103 Corp. closed, and the property was transferred to 1103 Corp. The sale occurred by Power of Sale under the first mortgage. The second mortgage was discharged. The third and fourth mortgages were extinguished by the Power of Sale. A new charge was registered to the respondent Gurpal Singh for \$880,000.

[12] The appellant was not immediately advised by either Bindaas or Randhawa that the property was sold. On March 16, 2020, the appellant brought an

emergency motion and obtained an order from Bloom J., setting the amount required to discharge the two mortgages at \$929,498 and ordering that amount to be paid into court, upon which payment the mortgages would be discharged. Bloom J. also ordered the Bindaas Group to pay the appellant's costs in the amount of \$3,500.

[13] The appellant did not attempt to register the March 16, 2020 order discharging the mortgages until May 7, 2020. Abraham paid \$920,998 into court, of which \$800,000 was borrowed from the National Bank. Abraham also paid off the third mortgage to Parklane in the amount of \$51,000, apparently without realizing that that mortgage had been extinguished as a result of the Power of Sale. Abraham was not a party to this proceeding.

[14] The appellant continued to occupy the property and paid no rent to 1103 Corp., which has born the carrying costs for the property since March 9, 2020, when the sale closed.

[15] On May 12, 2020, 1103 Corp. issued a notice requiring the appellant to vacate on or before May 17, 2020. On May 13, 2020, the appellant issued a statement of claim suing all the respondents, seeking an order setting aside the conveyance to 1103 Corp., and requiring the transfer of the property to Abraham. She alleged that the conveyance was the product of their fraud and conspiracy.

Decision Below

[16] The motion judge dismissed all the appellant's claims except for the accounting by Bindaas.

[17] She held that there was no direct evidence of fraud. With respect to circumstantial evidence, she concluded that 1103 Corp. was a *bona fide* purchaser, there was no evidence the transfer documents contained false statements, and the consideration paid by 1103 Corp. was not inadequate, let alone grossly inadequate. The traditional "badges of fraud" were absent. The only two "badges of fraud" potentially present were secrecy in the manner of conveyance, because the appellant was not told of the sale, and the rushed closing of the deal between Bindaas and 1103 Corp. She found that the secrecy and the short closing were explained by the appellant's history of default and delay.

Analysis

[18] The appellant submits that the motion judge erred by considering the traditional "badges of fraud" generally, without consideration of her circumstances.

[19] We do not agree. The appellant invites us to rehear the motion without regard to the findings of the motion judge.

[20] The motion judge was alive to badges of fraud relied on by the appellant. She concluded that – given the appellant's history of default – it was understandable that she was not advised of the sale to 1103 Corp. The

respondents were reasonable to be concerned that she would seek to frustrate the sale, thereby continuing the delay of the enforcement proceedings.

[21] The short closing was not unusual or suspicious, given that Bindaas had given the appellant ample time to pay out the money owed on the two mortgages. Bindaas was understandably eager to close the deal with 1103 Corp. so it could finally collect the monies owing to it on the mortgages.

[22] The appellant also submits that the sale to 1103 Corp. was improvident and that the motion judge erred in concluding otherwise.

[23] Again, we disagree.

[24] The property was sold under Power of Sale. The purported sale to Abraham, upon which she relies as a comparator, was for \$1 million with a collateral agreement that she be allowed to remain in possession. The sale to 1103 Corp. was for \$970,000 “as is”. Thus, 1103 Corp. would assume the arrears in property taxes and no real estate fees were payable. The sale to 1103 Corp., therefore, was more beneficial than the purported arrangement with Abraham. 1103 Corp. was an arm’s length purchaser. It was open to the motion judge to determine that the sale was not improvident.

[25] There was no evidence supporting fraud in this case. Nor was there any evidence of conspiracy. The appellant produced no evidence of an agreement

between the defendants to injure her, nor that she suffered damages due to their conduct.

[26] The appellant's submissions are framed as a request to have this court rehear the motion below. The motion judge's findings were open to her on the evidence, and we see no reason to interfere with the findings and her thorough analysis.

[27] The appeal is dismissed.

[28] The costs awarded by Simmons J.A. were in the cause. Given our disposition, those costs are now payable. In accordance with counsel's agreement, costs of the appeal are as follows: \$10,000 to the Randhawa respondents; \$10,000 to the Dhillon respondents; \$2,000 to the Bindaas respondents; and \$2,000 to the Mangal respondents. These amounts are inclusive of disbursements and applicable taxes.

"Doherty J.A."
"M.L. Benotto J.A."
"J. Copeland J.A."