

COURT OF APPEAL FOR ONTARIO

CITATION: Rampal v. Aujla Derry Investments Inc., 2022 ONCA 884

DATE: 20221219

DOCKET: C70418

Paciocco, Harvison Young and Thorburn JJ.A.

BETWEEN

Rajeev Kumar Rampal

Applicant (Appellant)

and

Aujla Derry Investments Inc. and Aujla Investments Inc.

Respondents (Respondents)

Patrick Di Monte, for the appellant

James Smith, for the respondents

Heard: December 9, 2022

On appeal from the order of Justice Gisele M. Miller of the Superior Court of Justice, dated February 10, 2022.

REASONS FOR DECISION

OVERVIEW

[1] The appellant, Rajeev Kumar Rampal, is appealing a decision denying his application for a declaration that he has beneficial ownership in a condominium unit. That application is based on Mr. Rampal's claim that the respondents, Aujla Derry Investment Inc. and Aujla Investments Inc. (collectively "Aujla")

wrongfully terminated a Reservation Agreement that entitled Mr. Rampal to enter into an agreement to purchase the unit. For the reasons that follow, we deny the appeal.

THE MATERIAL FACTS

[2] On November 12, 2015, Mr. Rampal entered into a Reservation Agreement with Aujla “to secure the right to submit an Offer to Purchase on a unit within [a] proposed [commercial] condominium project”. He paid a \$5,000 deposit on November 21, 2015, permitting him to make an offer to purchase the unit at a specified price. On July 20, 2017, as per the terms of the Reservation Agreement, Aujla provided Mr. Rampal with a disclosure package and an Agreement of Purchase and Sale (“APS”) for execution within 10 days. Mr. Rampal did not execute the APS, nor did he pay the APS deposit as required by the Reservation Agreement. Although the parties engaged in continuing discussions with a view to completing the sale, the sale was not completed.

[3] At the end of January 2018, Aujla prepared a mutual release for Mr. Rampal. A meeting subsequently took place with Mr. Rampal. On March 8, 2019, Aujla sent an email to the email address that Mr. Rampal had provided, stating, “As discussed late last year that you have been released from the reservation agreement based on the clause outlined with you in person at my office.”

[4] Further efforts were made to contact Mr. Rampal by email, each asking for the mutual release to be executed and offering to return the Reservation Agreement deposit, but Mr. Rampal never responded. In January 2020, having decided that a formal release was not required, Aujla sent a cheque to the lawyer who had been acting for Mr. Rampal in the amount of the Reservation Agreement deposit. However, the cheque was returned by the lawyer, who indicated they were no longer acting for Mr. Rampal. The lawyer provided an address for Mr. Rampal's place of business. On July 22, 2020, Aujla sent a cheque in the amount of the Reservation Agreement deposit with accrued interest to that address with a covering letter that said, "The agreement is at an end since there was no consensus as to its essential terms".

[5] One year later, in July 2021, Mr. Rampal initiated an application seeking a declaration of beneficial ownership in the designated condominium unit, claiming that Aujla wrongfully terminated the Reservation Agreement. Mr. Rampal now appeals the denial of that application.

ISSUES

[6] In oral argument, Mr. Rampal did not pursue the grounds of appeal advanced in his appeal factum but argued instead that the repudiation of the Reservation Agreement by Aujla was invalid because Aujla did not provide

reasonable notice of its repudiation of the Reservation Agreement. This forms the basis of the sole ground of appeal advanced.

ANALYSIS

[7] Mr. Rampal submits that the need for reasonable notice arises because time, which was of the essence under the Reservation Agreement, ceased being of the essence after the parties continued to negotiate the terms of the APS after the 10-day period had expired.

[8] We are not persuaded by this argument. It is not clear that this submission was made before the application judge. It appears from the endorsement of the application judge that a related but materially different argument was advanced instead, namely that Aujla had failed to provide written notice. The application judge rejected this argument after finding as a fact that Aujla did so through its letter of July 22, 2020. It would be difficult to find error in the decision of an application judge based on an issue that does not appear to have been argued.

[9] Moreover, the reasonable notice submission was not addressed in the appellant's appeal factum. It would be unfair to Aujla to determine the appeal on this basis.

[10] Even if we consider this ground of appeal on its merits, it must be dismissed. The Reservation Agreement, which contains an "entire agreement" clause, says

nothing about the need for reasonable notice before repudiation after the expiry of the initial 10-day period.

[11] Moreover, on the record before the application judge, it would be difficult to accept Mr. Rampal's complaint that he did not have reasonable notice before the Reservation Agreement was formally repudiated. Throughout his dealings with Aujla, Mr. Rampal persistently refused to agree to the APS that Aujla had provided or to pay the requisite APS deposit as required under the Reservation Agreement and the APS. As the application judge recognized, this gave Aujla the right to repudiate the Reservation Agreement. When it became apparent that terms could not be reached, beginning in January 2018, Aujla did all it could reasonably be expected to have done to make clear to Mr. Rampal that it was repudiating the agreement. Yet he did not respond. He either ignored the communications or failed to receive them by not maintaining lines of communication for more than two years until the formal repudiation occurred on July 22, 2020. In the circumstances, it does not lie in Mr. Rampal's mouth to maintain that he did not have reasonable notice before the Reservation Agreement was formally repudiated.

CONCLUSION

[12] The appeal is dismissed.

[13] As agreed between the parties, costs are payable to the respondents in the amount of \$7,500, inclusive of HST and disbursements.

“David M. Paciocco J.A.”

“A. Harvison Young J.A.”

“J.A. Thorburn J.A.”