

COURT OF APPEAL FOR ONTARIO

CITATION: Grewal v. 2390364 Ontario Inc., 2023 ONCA 316

DATE: 20230503

DOCKET: COA-22-CV-0033

Roberts, Miller and Coroza JJ.A.

BETWEEN

Hardeep Grewal and Ranjit Dhillon

Applicants
(Appellants)

and

2390364 Ontario Inc.

Respondent
(Respondent)

Bhupinder Nagra, for the appellants

Harry Korosis and Melanie Slater, for the respondent

Heard: May 1, 2023

On appeal from the judgment of Justice M. Suranganie Kumaranayake of the Superior Court of Justice, dated August 4, 2022, with reasons reported at 2022 ONSC 4548.

REASONS FOR DECISION

[1] The appellants appeal the dismissal of their application for specific performance of their January 12, 2021 agreement of purchase and sale with the respondent for the purchase of a modular mobile home park.

[2] At the conclusion of the appellants' submissions, we dismissed the appeal with reasons to follow. These are those reasons.

[3] The application turned on a narrow factual issue: did the appellants deliver to the respondent a notice of fulfilment of the condition in the agreement of purchase and sale before the January 31, 2021 deadline? If they did not, the respondent could treat the agreement of purchase and sale as at an end. Having carefully reviewed the evidence before her, the application judge determined that they had not. As a result, she ordered that the agreement of purchase and sale was not binding upon the parties and was null and void, and that the respondent return the appellants' deposit to them.

[4] The appellants submit that the application judge fell into reversible error because she materially misapprehended the evidence, failed to consider and weigh relevant evidence, engaged in speculative reasoning, and conducted a flawed credibility assessment. They argue that she erred in her alternative finding that even if there had been a valid agreement of purchase and sale, the appellants had failed to demonstrate that they were entitled to the remedy of specific performance.

[5] We are not persuaded by any of these submissions. Essentially, the appellants' submissions amount to an invitation for this court to undertake afresh the application judge's well-supported findings based on the evidentiary record

before her. Absent error in principle or palpable and overriding error, which we do not see here, that is not our task on appellate review.

[6] The application judge gave cogent reasons that were firmly rooted in the evidence for rejecting the appellants' evidence that they had delivered the notice of fulfilment to the respondent's principal on January 13, 2021, and for accepting the respondent's denial that they had done so. As the application judge correctly noted, the fact that the appellants may have attended at the respondent's premises on that day does not prove that they met in person with the respondent's principal or delivered the notice of fulfilment to him.

[7] Indeed, as the application judge rightly noted, the appellants' evidence was undermined and contradicted by other evidence that she was entitled to accept, including: the appellants did not obtain the respondent's acknowledgment of receipt signature on the space indicated for that purpose on the notice of fulfilment; on March 2, 2021, the appellants asked the respondent's principal to sign an amendment to the agreement of purchase and sale to extend the time for the fulfilment of the condition and to backdate the agreement of purchase and sale to allow for that amendment; and in none of the contemporaneous correspondence between the solicitors for the parties did the appellants ever allege that they had previously delivered the notice of fulfilment prior to the expiry of the deadline for fulfilling the condition. We see no basis to intervene with the application judge's findings.

[8] Given our disposition of the first ground of appeal, we do not reach the issue of specific performance.

[9] Accordingly, we dismiss the appeal.

[10] The respondent is entitled to its partial indemnity costs in the amount of \$8,000.

“L.B. Roberts J.A.”

“B.W. Miller J.A.”

“S. Coroza J.A.”