

COURT OF APPEAL FOR ONTARIO

CITATION: Comfort Capital Inc. v. Yeretsian, 2024 ONCA 321

DATE: 20240426

DOCKET: COA-23-CV-0646

Pepall, Trotter and Dawe JJ.A.

BETWEEN

Comfort Capital Inc., The Bank of Nova Scotia Trust Company,
E. Manson Investments Ltd., Fenfam Holdings Inc., 593651 Ontario Ltd.,
1031436 Ontario Inc., Alrae Investments Inc., Barry Spiegel, Sharon Nightingale,
David Sugar, Phyllis Sugar, National Tire Ltd., 1119778 Ontario Limited,
1415976 Ontario Limited, Alrae Investments Inc., Bamburgh Holdings Ltd.,
Beverley Gordon, Diane Grafstein, Richard Gruneir,
B & M Handelman Investments Ltd., Ridgeway Occupational Consultants Inc.,
Yerusha Investments Inc., Mihal Tylman, A. Eliezer Kirshblum,
593651 Ontario Limited, The Bank of Nova Scotia Trust Company in Trust for
Bailey Levenson, The Bank of Nova Trust Company in Trust for
Rosemonde Kelly, Anne Handelman, Yerusha Investments Inc.,
Celmar Investments Corp., Beverley Gordon, Philgor Investments Ltd.,
Brilliant Investcorp Inc., Maxoren Investments, 2227046 Ontario Limited,
Dast Properties Limited, Tova Markovzki, Joseph Suckonic and
B & M Handelman Investments Limited

Applicants (Appellants)

and

Annie Yeretsian, 2399029 Ontario Inc.*, 2457674 Ontario Inc.,
Moss Development Ltd. and Terry Wilson

Respondents (Respondent*)

Peter Smiley, for the appellant Money Gate Corporation

Eli Karp, for the respondent Curah Capital Corporation

James Zibarras, for the respondents 239029 Ontario Inc. and World Corporation

Heard and released orally: March 28, 2024

On appeal from the order of Justice Peter J. Cavanagh of the Superior Court of Justice, dated November 24, 2022.

REASONS FOR DECISION

[1] The appellant Money Gate Corporation appeals from the dismissal of its motion for an order that the Receiver in this proceeding distribute proceeds of disposition arising from the sale of property in Vaughan. The motion was brought within the context of a claims process. The appellant asserted that in its capacity as mortgage administrator, it was the assignee of a second mortgage on the property. The assignment was never registered on title.

[2] As the motion judge stated at para. 39 of his reasons: “The disagreement on the motion is about whether, as [the appellant] contends, the payments were made by [the appellant] as mortgage administrator using funds raised from private investors to enable [the appellant] to purchase, as assignee, the interests of the four holders of the Second Mortgage, or, as [the respondent] 029 contends, the payments were made using 029’s money, or money directed by the Laila Group to be used from mortgage advances on the MGMIC mortgage against the Boake Property and the King High Property, to discharge the Second Mortgage.”

[3] Despite an order to produce proof of payment, the appellant was unresponsive. The motion judge found that the appellant failed to produce evidence identifying the source of funds allegedly used to pay for the assignment

and made a finding of fact that it never acquired an enforceable assignment of the second mortgage. As the motion judge pointed out, this would be the result regardless of any hearsay objections. The same would be true with respect to the appellant's other evidentiary objections.

[4] We see no error in the motion judge's dismissal of the appellant's motion.

[5] The appellant also seeks leave to appeal the costs order which is of course discretionary in nature. Among other things, the motion judge noted that the appellant had failed to file its own cost outline. This impeded the motion judge's ability to assess the appellant's submission that the costs claimed were unreasonable.

[6] We see no basis on which to interfere with the motion judge's costs order.

[7] Leave to appeal costs is dismissed as is the appeal. On consent, the appellant is to pay \$10,000 to each of the two sets of respondents as costs of the appeal inclusive of disbursements and applicable tax.

"S.E. Pepall J.A."
"Gary Trotter J.A."
"J. Dawe J.A."