

COURT OF APPEAL FOR ONTARIO

RE: WATERLOO NORTH CONDOMINIUM CORPORATION  
NO. 168 (Plaintiff) –and– ONTARIO NEW HOME WARRANTY  
PROGRAM (Appellant/Defendant) –and– ERIC WHALLEY  
CONSTRUCTION LIMITED, BERRIER HILL INVESTMENTS  
LIMITED, JOHN ARMOUR, KENNETH GOOD, CANADIAN  
WESTERN BANK (formerly NORTH WEST TRUST  
COMPANY), M.R.S. TRUST COMPANY (formerly MacKENZIE  
TRUST COMPANY) and CANADIAN SCHOLARSHIP TRUST  
FOUNDATION (Respondent/Third Party)

BEFORE: CATZMAN, LASKIN and BORINS JJ.A.

COUNSEL: Peter Balasubramanian  
for the appellant  
  
Barry C. Fick  
for the respondent Kenneth Good

HEARD: January 13, 2004

On appeal from the judgment of Justice Mary Anne Sanderson of the Superior Court of Justice dated March 23, 2002.

**ENDORSEMENT**

[1] Ontario New Home Warranty Program (“ONHWP”) appeals from the judgment of Sanderson J. dismissing its third party action against Kenneth Good as guarantor under a guarantee given in support of Berrier Hill’s application to ONHWP for registration as a vendor/builder under the *Ontario New Home Warranties Plan Act*.

[2] Berrier Hill made two applications for registration, which were submitted for approval to a body known as the Registrar’s Advisory Committee. The first application was made in late February or early March 1989; the second, in late April 1989. The first application was rejected; the second was approved. There were material differences between the two applications, including the fact that the first application called for construction of 354 condominium units, whereas the second application called for construction of 246 condominium units.

[3] There were two guarantees in evidence at the trial. One, which bore the authentic signature of the respondent, was undated (the “undated guarantee”). The other, on which the respondent’s signature was forged, was dated April 26th, 1989 (the “forged guarantee”). While the trial judge made no finding that the undated guarantee accompanied the first application, she did find (as appears below) that the guarantee that was before the Committee when the second application was considered and approved was the forged guarantee. In her reasons, she made a number of findings, including the following:

- the documents considered by the Committee to be the relevant and operative documents in support of Berrier Hill’s second, and successful, application for registration included the forged guarantee;
- the undated guarantee was not before the Committee at the time it approved the second application;
- in approving that application, the Committee accepted the forged guarantee; and
- the forged guarantee was invalid and unenforceable against Mr. Good.

[4] These findings – which are fatal to ONWHP’s position on this appeal – were supported by the evidence adduced at the trial, and we are not persuaded that the trial judge committed any palpable and overriding error in making them.

[5] The appeal is dismissed with costs, fixed in the sum of \$8,600.00, inclusive of disbursements and G.S.T.

Signed: “M.A. Catzman J.A.”  
“John Laskin J.A.”  
“S. Borins J.A.”