COURT OF APPEAL FOR ONTARIO

CITATION: Zadeh v. Khaibari, 2019 ONCA 253
DATE: 20190329
DOCKET: C65853

van Rensburg, Hourigan and Huscroft JJ.A.

BETWEEN

Shaghayegh Chiti Zadeh

Applicant
(Respondent)

and

Alireza Khaibari, also known as Alireza Khibari
and Homelife Landmark Realty Inc., Brokerage

Respondents
(Appellant)

Dheeraj Bhatia, for the appellant Alireza Khaibari

John Lo Faso and David Morawetz, for the respondent Shaghayegh Chiti Zadeh

Heard: March 27, 2019

On appeal from the order of Justice Jocelyn Speyer of the Superior Court of Justice, dated August 10, 2018, with reasons reported at 2018 ONSC 4667.

REASONS FOR DECISION

[1] The appellant argues that the application judge erred in virtually all of her conclusions concerning the respondent's application arising out of a failed agreement of purchase and sale (the "APS").

[2] We see no merit in any of the appeal grounds raised.

[3] First, the application judge did not err in concluding that the respondent had standing to sue on the APS. She was the legal owner of the property and was party to the APS. As the application judge noted at para. 20 of her reasons, there was no evidence about the arrangements between the seller and her brother. The respondent's lack of involvement in and knowledge of the sales process (for example, not knowing who hired the realtor in the disputed transaction) was simply irrelevant to her standing to bring the application. Again, as the application judge noted, the respondent's lack of knowledge might impact on the evidentiary value of her affidavits, but it does not affect her standing. We see no error.

[4] Second, the appellant repeats the argument advanced before the application judge that he was not required to pay the second deposit called for in the APS. This argument rests on a reading of the correspondence that it cannot bear, and the application judge made no error in rejecting it. Her conclusion that there was no oral agreement to delay payment was supported by the evidence, as was her conclusion that the respondent did not breach the APS by failing to provide the original survey and clear title to the property. The application judge found on the available evidence that a copy of the survey was provided within the time period provided for in the APS. There is no basis to interfere with that finding.

[5] Third, the application judge properly concluded that the respondent's failure to discharge an existing private mortgage by July 4, 2017, when the appellant sent his letter demanding the return of the first deposit, could not constitute a breach because the closing was not scheduled to occur until one week later, on July 11, 2017, and title-related breaches are assessed at the closing date.

[6] Fourth, the application judge made no error in concluding that the appellant's July 4, 2017 letter constituted anticipatory breach. Counsel for the appellant asserted no less than five times that the APS was null and void and demanded return of the deposit. Nor is there any merit in the appellant's contention that the respondent did not terminate the contract as a result of the appellant's anticipatory breach. He did precisely that in clear terms in his letter of July 5, 2017.

[7] Finally, the appellant raises another issue that is not developed in his factum. Counsel submits that he was not provided with sufficient time to make his submissions before the application judge, although he provided written submissions at the application judge's request. We would not give effect to this ground of appeal. The appellant did not file a transcript or any other evidence to support this ground of appeal.

[8] The appeal is dismissed.

[9] The respondent is entitled to costs in the agreed amount of $15,000, inclusive of taxes and disbursements.

"K. van Rensburg J.A."
"C.W. Hourigan J.A."
"Grant Huscroft J.A."