

CITATION: Forest Hill Homes (Cornell Rouge) Limited v. Arashi, 2020 ONSC 796
COURT FILE NO.: CV-19-006144004-0000
DATE: 2020/02/05

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
FOREST HILL HOMES (CORNELL) *Shane Greaves* for the Plaintiff
ROUGE) LIMITED)
Plaintiff)
)
- and -)
)
FATEMEH ARASHI) *Fatemeh Arashi*, self-represented
Defendant)
)
) **HEARD:** January 29, 2020

PERELL, J.

REASONS FOR DECISION

[1] The Plaintiff, Forest Hill Homes (Cornell Rouge) Limited, is a real estate builder/developer that develops residential subdivisions and builds new residential homes. The Defendant, Fatemeh Arashi, purchased a home from Forest Hill Homes, but she failed to close the transaction. In this action, Forest Hill Homes sues Mrs. Arashi for breach of contract, and it brings a motion for summary judgment. Forest Hill Homes claims damages of \$622,505.66.

[2] Mrs. Arashi is a self-represented litigant, and she delivered an unsworn affidavit, which she incorporated into her responding record and into a factum that she delivered on the return of the summary judgment motion. Mrs. Arashi is an elderly woman. She is a widow, who was assisted by her daughter at the hearing of the motion. Mrs. Arashi and her daughter were intelligent and articulate, but they did not appear to understand adequately the legal issues in the immediate case.

[3] Commendably, honourably, and fairly, Forest Hill’s counsel did not object to the admission of Mrs. Arashi’s unsworn affidavit, and rather he argued that her late-arriving affidavit and factum did not reveal genuine issues for trial and, therefore, the court should grant a summary judgment.

[4] There was some real traction to Forest Hill’s counsel’s argument, but I am not satisfied that I can come to a just determination of this matter based on the current evidentiary record. There are two problems.

[5] First, treating Mrs. Arashi’s affidavit as a sworn affidavit, there is enough evidence there

to possibly raise genuine issues requiring a trial about: the formation of the contract; the extension agreements; the market value of the property; the calculation of damages, and mitigation of damages.

[6] I, however, say “possibly” because the possible genuine issues requiring a trial might not survive a cross-examination of Mrs. Arashi and Forest Hill Homes has not had an opportunity to cross-examine Mrs. Arashi.

[7] Second, given the possibility of genuine issues and given the enormous financial exposure, Mrs. Arashi, had she known better, would have certainly done what a competent lawyer would have done which is to cross-examine: (a) Michael Clark, the former General Counsel for Forest Hill Homes, (b) Amy Yeung, the current General Counsel for Forest Hill Homes; (c) Jonathan Dunlap, an appraiser, and (d) Toivo Heinsaar, an appraiser, all of whom swore affidavits in support of the motion for a summary judgment. She might also have retained an appraiser of her own.

[8] Generally speaking, on a motion for a summary judgment, the court has four choices: (1) adjourn the motion to ensure procedural fairness and compliance with the *Rules of Civil Procedure*; (2) dismiss the motion and direct the matter to a trial; (3) exercise the procedural powers provided by rule 20.04 (2.1), unless it is in the interest of justice for such powers to be exercised only at trial; or (4) grant the summary judgment motion.

[9] In the interests of justice, I had decided to remain seized of this matter and to adjourn it so that there can be cross-examinations. I direct the parties to attend before me to set a timetable for the cross-examinations.

[10] I recommend that Mrs. Arashi retain a lawyer to represent her. There is no guarantee that she will succeed in defending Forest Hill Home’s claim but, at the moment, she is very much overmatched by the well-represented Forest Hill Homes.

[11] Order accordingly.

Perell, J.

Released: February 5, 2020

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Plaintiff

- and -

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REASONS FOR DECISION

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