

COURT OF APPEAL FOR ONTARIO

CITATION: Forest Hill Homes (Cornell Rouge) Limited v. Hon, 2021 ONCA 774
DATE: 20211102
DOCKET: C68861

Doherty, Miller and Sossin JJ.A.

BETWEEN

Forest Hill Homes (Cornell Rouge) Limited

Plaintiff (Respondent)

and

Kay Hon

Defendant (Appellant)

Peter Doyun Kim and Richard An, for the appellant

Shane Greaves, for the respondent

Heard: October 25, 2021 by video conference

On appeal from the judgment of Justice Audrey P. Ramsay of the Superior Court of Justice on October 19, 2020; reported at 2020 ONSC 6321.

REASONS FOR DECISION

[1] The respondent developer sold a yet-to-be-built home to the appellant. The transaction was not scheduled to close until many months later. Prior to the closing, the value of the property had dropped significantly. The appellant advised the respondent she was out of the country and could not close the transaction for personal reasons. The respondent offered to extend the closing date. The appellant did not respond to that offer. The appellant did not close. The respondent sued the appellant and moved for summary judgment.

[2] By the time of the summary judgment motion, the appellant had added a counterclaim and issued a third party claim. Among the defences advanced on the summary judgment motion, was a claim that an agent, Romi Lau, who was in fact the respondent's agent on the transaction, had falsely told the appellant she was the appellant's agent.

[3] The motion judge granted summary judgment in favour of the respondent on the claim and the counterclaim. There was no motion for summary judgment on the third party claim, although the pleadings in that claim were part of the record filed on the summary judgment motion.

[4] The appellant first argues the motion judge made a clear and palpable error in finding that Ms. Lau did not represent to the appellant that she was the appellant's agent on the transaction. The trial judge concluded the appellant knew Ms. Lau acted for the respondent.

[5] There is no error in the trial judge's factual finding. On the appellant's own evidence, Ms. Lau represented to the appellant that she acted for the respondent. In addition, the acknowledgment provision in the agreement selling the property to the appellant identified the sales agents as agents for the vendor (respondent). Finally, again on the appellant's own evidence, she met Ms. Lau in the respondent's sales office.

[6] This evidence provided ample grounds for the trial judge's factual finding that there was no misrepresentation as to Ms. Lau's status.

[7] The appellant next submits the motion judge should not have granted summary judgment on the claim and counterclaim as long as the third party proceedings remained outstanding. The appellant argues this action and the third party proceedings were so intertwined as to make it contrary to the public interest to grant summary judgment on only one part of the whole.

[8] We reject this argument. While the factual narrative is common to the main action, the counterclaim and the third party claim, the claims advanced by the appellant against the agents in the third party claim are entirely different than the claims advanced by the appellant and the respondent in the main action and counterclaim. The issues raised on the summary judgment motion could be expeditiously and justly determined while leaving the third party claim to adjudication at a later point.

[9] The appellant further submits the motion judge wrongly made findings of fact and law applicable to issues relevant to the third party proceedings. The appellant contends that the third party proceedings were not before the motion judge for adjudication and that the findings made by the motion judge may unfairly subject the appellant to *res judicata* claims in the third party proceedings.

[10] We do not agree that the trial judge's observations at paras. 51-53 amounted to findings of fact or law in respect of issues relevant to the third party claim. However, to avoid the possibility of any prejudice to the appellant, it should be clear that nothing said by the motion judge should be taken as a finding of fact or law, binding on the court that ultimately hears the third party claims.

[11] The appeal is dismissed.

[12] Costs to the respondent on a partial indemnity basis, fixed at \$15,000, inclusive of disbursements and relevant taxes.

"Doherty J.A."
"B.W. Miller J.A."
"L. Sossin J.A."