IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Imraj Holding Enterprises Ltd. v. 650273 Alberta Limited,* 2023 BCSC 256

Date: 20230222
Docket: S223028
Registry: New Westminster

Between:

Imraj Holding Enterprises Ltd.

Plaintiff

And

650273 Alberta Limited doing business as Centex Petroleum

Defendant

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiff:	K. K. Cheung
Counsel for the Defendant:	A. L. Folino K. M. MacEwan
Place and Dates of Hearing:	New Westminster, B.C. August 25, 26, 2022
Place and Date of Judgment:	New Westminster, B.C. February 22, 2023

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Introduction

[1] This action arises out of a failed real estate transaction.

[2] The plaintiff, Imraj Holding Enterprises Ltd. (“Imraj”), owned and operated a retail gas station in Salmo, BC (the “Property”). The defendant 650273 Alberta Limited dba Centex Petroleum (“Centex”) agreed to finance the purchase and installation of fuel facility equipment at the Property and to supply fuel to Imraj.

[3] Within a few years, Imraj ran into financial difficulty. On June 22, 2016, Imraj sold the Property to Centex but retained an option to repurchase the Property within three years (the “Repurchase Agreement”). Imraj advised Centex by April 2019 that it wanted to repurchase the Property, but the transaction did not complete in June 2019. Further negotiations between the parties led to a further attempt by Imraj to repurchase the Property in September 2019; however, the transfer did not complete, and this lawsuit ensued.

[4] Imraj filed a notice of civil claim alleging breach of contract and seeking specific performance or alternatively damages in lieu of specific performance. Centex denied all allegations in its response to civil claim. Centex filed a counterclaim against Imraj and its principal claiming the amount owing for financing of improvements to the Property. Centex concedes that its counterclaim falls away if Imraj fails on its claim for specific performance.

[5] The key issues to be decided are as follows:

a) Did Centex repudiate the Repurchase Agreement by refusing to transfer the Property to Imraj in June 2019?

b) Did Imraj accept Centex’s repudiation of the Repurchase Agreement?

c) If Centex breached the Repurchase Agreement, is Imraj entitled to specific performance?

d) Alternatively, if Centex breached the Repurchase Agreement, what is the proper measure of damages?

e) Did Centex agree to transfer the Property to Imraj in September 2019, either by extending the closing date on the Repurchase Agreement or by entering into a new contract?

[6] I find that Centex repudiated the Repurchase Agreement by refusing to transfer the Property back to Imraj for the consideration set out in that contract. Imraj accepted Centex's repudiation and is entitled to nominal damages.

[7] Centex and Imraj did not enter into a new contract after the Repurchase Agreement was at an end.

Procedural history and evidentiary issue

[8] The trial in this action was scheduled to proceed on August 15, 2022. Instead, the parties agreed that this matter could be decided by way of summary trial. Centex filed a notice of application seeking dismissal of the action or alternatively orders for certain remedies if Imraj is entitled to judgment. Imraj filed a response to the notice of application seeking judgment.

[9] The principals of both corporate parties filed affidavit evidence. Both parties filed affidavits appending correspondence between the parties and their counsel as evidence of the positions taken by the parties leading up to June 21, 2019 and the subsequent correspondence between counsel when the transfer of the Property did not complete on June 21, 2019. Neither party objected to the admissibility of this correspondence even though some of it was marked "without prejudice".

[10] During the hearing of the summary trial application, an issue arose when Imraj sought to rely upon evidence its principal gave on discovery. Centex objected, arguing that a party may not rely on its own evidence given on examination for discovery. Imraj took the position that the entire transcript was in evidence on the summary trial application, as each party had filed the other party's entire

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examination for discovery transcript as an exhibit to an affidavit. I find that the entire transcript from Imraj's principal was in evidence, but it remains open to Centex to argue that this evidence ought to be given little to no weight.

[11] Evidence given on an examination for discovery may be tendered in evidence on a summary trial application by a party who is adverse in interest: *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], Rule 9-7(5)(c), 9-7(6), 12-5(46).

[12] A failure to identify the questions and answers from an opposing party's examination for discovery upon which a party intends to rely is a procedural error that should be avoided: *Nagy v. William L. Rutherford (B.C.) Limited*, 2021 BCCA 62 at para. 31. Justice Burnyeat outlined the proper procedure for tendering evidence from an examination for discovery in the summary trial context in *Newton v. Newton and Newton*, 2002 BCSC 14 at para. 2. The court may choose to accept discovery evidence tendered in a manner other than as required by the *Rules* and described in *Newton*, as long as the tendering party has provided advance notice to the other side of the questions and answers to be relied upon: *Nagy* at para. 32.

[13] In this case, Centex did not provide notice to Imraj or the Court that it intended to rely only on certain excerpts from Imraj's discovery evidence in the notice of application or the affidavit that attached Imraj's discovery transcript. Imraj says that it understood that all of the answers given by its representative on discovery were being tendered as evidence by Centex, which is not an unreasonable understanding based on the notice of application and affidavit filed.

[14] By attaching the entire examination for discovery transcript to an affidavit and failing to identify the questions and answers relied upon, Centex in effect tendered Imraj's principal's entire discovery transcript as evidence. I accept that this was not Centex's intention. On the other hand, Centex cannot be said to have adopted all of Imraj's principal's discovery evidence as accurate and true. It remained open to Centex to argue that Imraj's principal's discovery evidence ought to be given little to no weight, which is what Centex argued in the alternative. In the circumstances, it is appropriate to weigh the discovery evidence along with other evidence adduced at

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trial: *HSBC Bank Canada v. Singh*, 2017 BCSC 1893 at paras. 125–137. In this case, it turns out that the discovery evidence that Imraj seeks to rely upon on the issue of valuation is not persuasive or helpful to the assessment of damages, as discussed below.

[15] The parties agree that this matter is appropriate for determination by way of summary trial. Most of the evidence regarding the sale that failed to complete may be found in the exchange of correspondence between the parties. In these circumstances, I am satisfied that I am able to make the necessary findings of fact to determine the issues: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 215, 1989 CanLII 229 (C.A.).

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Background

[16] Imraj is engaged in the business of operating gas stations. Harpreet Singh Toor, the defendant by counterclaim, is the sole director and principal of Imraj.

[17] Centex is in the business of the distribution and retail sale of petroleum fuel.

[18] On January 10, 2012, Imraj became the registered owner of the lands and premises located at [content redacted], and legally described as: [content redacted] (defined above as the Property).

[19] In or about early 2012, Imraj and Centex entered into negotiations to allow Centex to become the exclusive fuel supplier for the retail gas station located on the Property. Centex agreed to provide financing to enable Imraj to install fuel facility equipment and improvements that needed to be made to the Property. Although Imraj was initially expected to pay directly for some of the improvements, Centex ultimately paid the entire cost of purchasing and installing fuel facility equipment and improvements at the Property, at a total cost of $485.996.18. In addition, in the fall of 2012, Centex advanced to Imraj an operating loan in the amount of $190,000, of which Imraj repaid $100,000 in December 2012.

[20] On January 1, 2013, Imraj and Centex entered into a retail facilities letter of agreement (the "RFA") that confirmed the terms of their fuel supply agreement and confirmed the terms of the loan from Centex to Imraj in the amount of $575,996.18 for the fuel facility installation and the operating loan (the "Fuel Facility Financing").

[21] In terms of fuel supply, the RFA provided that

a) Centex would be the exclusive supplier of fuel for sale at the gas station on the Property;

b) Imraj agreed to pay for each delivery of fuel within 10 days or on terms Centex may grant from time to time; and

c) if Imraj failed to pay for fuel, then Centex was entitled to suspend further fuel deliveries.

[22] In respect of the Fuel Facility Financing, Clause 13.10 of the RFA provided that

a) Centex would install equipment and make fuel facility improvements;

b) Imraj would repay the Fuel Facility Financing by paying Centex a minimum of $0.01 per liter of fuel purchased (in addition to fuel costs);

c) interest on the Fuel Facility Financing would be charged at a rate of prime plus 1.5% determined semi-annually;

d) Imraj would repay the entire amount of Fuel Facility Financing within ten years; and

e) the equipment and fuel facility improvements would remain the property of Centex until the Fuel Facility Financing was repaid in full.

[23] Beginning in or about December 2013, Imraj fell behind on payments to Centex for fuel that it supplied. The arrears accrued until approximately February 2015, when Centex stopped supplying Imraj with fuel for a period of time. After the

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parties had further discussions, Centex started supplying fuel again, but Imraj's fuel payments remained in arrears. By June 2016, Imraj owed Centex approximately $225,000 for fuel charges. Centex again stopped supplying fuel to Imraj.

[24] By June 2016, Imraj was at risk of foreclosure by Kootenay Savings Credit Union in respect of a mortgage that was registered against title to the Property (the "KSCU Mortgage").

[25] On or about June 22, 2016, Imraj entered into a purchase and sale agreement to sell the Property to Centex for a total of $739,545 (the "Contract"), which was comprised of the following amounts:

a) $411,647, the amount owing on the KSCU Mortgage;

b) $102,898, the amount owed by Imraj to Kootenay Savings Credit Union on a line of credit; and

c) $225,000, the amount Imraj owed Centex for unpaid fuel.

[26] After entering the Contract, Imraj sought an addendum to allow it to repurchase the Property within three years, defined above as the Repurchase Agreement. Centex agreed to this additional term. As a result, Centex and Imraj signed an addendum to the Contract dated July 14, 2016, which provided that

a) Imraj was entitled to repurchase the Property from Centex for $739,545 "within 3 years by June 21, 2019"; and

b) if Imraj exercised its right to repurchase the Property, then the RFA (including the Fuel Facility Financing) would come back into effect from the date of repurchase until the Fuel Facility Financing was fully repaid.

[27] The parties agreed that the RFA would be paused until Imraj repurchased the Property.

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[28] Centex paid a total of $780,001.59 to complete the purchase of the Property on August 10, 2016, including property transfer tax, outstanding property taxes, and legal fees and disbursements.

Analysis

a) Did Centex repudiate the Repurchase Agreement by refusing to transfer the Property to Imraj?

[29] I am satisfied on the evidence that Centex anticipatorily repudiated the Repurchase Agreement when it refused to sell the Property to Imraj for $739,545 by June 21, 2019. Instead, Centex told Imraj that it must pay $1,460,105 in order to repurchase the Property. Centex's demand was inconsistent with the repurchase price set out in the Repurchase Agreement and constituted repudiation of the contract.

[30] On March 9, 2019, counsel for Imraj sent a letter to Centex advising that Imraj had instructed counsel to proceed with the purchase of the Property in accordance with the terms of the Repurchase Agreement. As part of their "due diligence", counsel requested sales figures from July 11, 2016 to the date of completion and equipment financing owing as of July 11, 2016, the date of the letter, and the date of completion.

[31] By letter dated April 18, 2019, Centex responded by advising that Imraj would have to pay $1,460,105 to repurchase the Property, broken down as follows:

a) $461,930.05 (balance of equipment financing);

b) $97,500.00 (balance owing on credit advanced);

c) $780,001.59 (total premise purchase price); and

d) $120,672.92 (unpaid fuel balance).

[32] Although Centex's April 18, 2019 letter was marked "without prejudice", Centex principals subsequently told Mr. Toor that Imraj was required to pay

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$1,460,105 to repurchase the Property when he called them to discuss their demand.

[33] Centex's refusal to transfer the Property back to Imraj unless it paid more than the amount prescribed by the Repurchase Agreement amounts to repudiation of that contract. The price to repurchase the Property was a key term of the Repurchase Agreement. Centex's refusal to transfer the Property back to Imraj unless Imraj paid a much higher amount deprived Imraj of "substantially the whole benefit of the contract" and amounted to repudiation of the Repurchase Agreement: *Kaur v. Bajwa*, 2020 BCCA 310 at para. 14.

[34] In particular, the Repurchase Agreement did not require Imraj to pay out the balance of the equipment financing payable pursuant to the RFA as a condition of the transfer of the Property: Centex unilaterally sought to insert this condition. Instead, the Repurchase Agreement provided that the RFA (including the Fuel Facility Financing) would come back into effect from the date of repurchase until the Fuel Facility Financing was fully repaid. In other words, the Repurchase Agreement contemplated that Imraj would resume paying the equipment financing costs after Imraj repurchased the Property and resumed operating the gas station.

b) Did Imraj accept Centex's repudiation of the Repurchase Agreement?

[35] On June 21, 2019, Imraj (through its counsel) unequivocally accepted Centex's repudiation of the Repurchase Agreement by writing as follows:

> We hereby notify you that our client accepts your repudiation of the Contract and will be commencing legal proceedings against your company for damages.

[36] Imraj's acceptance of Centex's repudiation brought the Repurchase Agreement to an end: *Inmet Mining Corp. v. Homestake Canada Inc.*, 2003 BCCA 610 at para. 203; *Dosanjh v. Liang*, 2015 BCCA 18 at para. 33; *Kaur* at para. 19.

[37] In response, Centex purported to extend the closing deadline to June 27, 2019 with a letter from Centex's counsel to Imraj's counsel dated June 25, 2019. However, because Imraj had already accepted Centex's repudiation, the

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Repurchase Agreement was at an end, and Centex could not unilaterally revive it. In any event, the June 25, 2019 letter suggested that Imraj was entitled to exercise its right to repurchase the Property by paying the amounts set out in Centex's letter dated April 18, 2019, which I have found was inconsistent with the Repurchase Agreement. The June 25, 2019 letter could not and did not reverse Centex's repudiation of the Repurchase Agreement.

c) Is Imraj entitled to specific performance as a result of Centex's repudiation of the Repurchase Agreement?

[38] I find that Imraj is not entitled to specific performance for the following reasons:

a) Imraj accepted Centex's repudiation and elected to sue for damages;

b) Imraj failed to establish that it was ready, willing and able to complete the Repurchase Agreement on the closing date; and

c) Imraj has not established that the Property was unique.

[39] By its counsel's letter dated June 21, 2019, Imraj accepted Centex's repudiation of the Repurchase Agreement, bringing the contract to an end. By accepting Centex's repudiation, Imraj was not entitled to seek specific performance: *Dosanjh* at para. 54.

[40] Further, a person who seeks specific performance "must show, in order to succeed, that he was ready, willing and able to complete on the day and in the manner fixed by the agreement": *Norfolk v. Aikens* (1989), 41 B.C.L.R. (2d) 145 at 157, 1989 CanLII 245 (C.A.). Imraj failed to establish that it was ready, willing and able to complete the Repurchase Agreement on or before June 21, 2019. In particular, Imraj did not prove that it had the funds available to pay $739,545 on or before June 21, 2019.

[41] Finally, Imraj failed to prove that the Property is unique. In an action arising out of a failed real estate transaction, specific performance is only available where

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damages are an inadequate remedy because the property in issue has a "peculiar and special value" to the plaintiff: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 at para. 38; *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415 at para. 20, 1996 CanLII 209. The onus is on the party seeking specific performance to establish that the property is unique: *Ali v. 656527 B.C. Ltd.*, 2004 BCCA 350 at para. 23. Uniqueness includes both a subjective and objective aspect, and "investment properties are candidates for damages and not specific performance": *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* (2001), 56 O.R. (3d) 341 at para. 59–60, 2001 CanLII 28012 (Ont. S.C.J.), aff'd (2003), 63 O.R. (3d) 304, 2003 CanLII 52131 (Ont. C.A.).

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[42] In this case, the Property had a gas station on it as well as a restaurant and convenience store. Although I accept that the Property was a well-known truck stop, it was a commercial investment and not objectively unique. Imraj would be able to run a gas station on another property, and in fact did have another gas station business in another municipality. The cases relied upon by Imraj to argue that specific performance is required are distinguishable: the properties in those cases were residential premises with unique characteristics or involved a mining property that is not readily replaceable. Although Mr. Toor had a connection to the Property through his previous ownership, I am not satisfied that the evidence proves on a balance of probabilities that damages would be inadequate to compensate Imraj for breach of contract.

[43] Imraj says in its written argument that specific performance is the appropriate remedy because its losses are "so speculative that it would be difficult to appropriately calculate damages". Imraj's failure to lead sufficient evidence to prove its losses does not entitle it to an order for specific performance.

d) What is the proper measure of damages for Centex's repudiation of the Repurchase Agreement?

[44] Imraj has failed to prove losses arising from Centex's breach. As a result, Imraj is entitled only to nominal damages: *Vancouver Canucks Limited Partnership*

v. Canon Canada Inc., 2015 BCCA 144 at paras. 145–147; *SWS Marketing Inc. v. Zavier,* 2022 BCSC 743 at para. 290.

[45] Contract damages are generally assessed as of the date of the breach: *Dosanjh* at para. 55. In this case, damages ought to be assessed as of the date that Centex repudiated the Repurchase Agreement, i.e., April 18, 2019.

[46] Expert evidence is generally required to assess damages in cases involving collapsed real estate transactions: *Dosanjh* at para. 63. In this case, there was little evidence upon which the Court could make any finding as to the value of the Property as of April 2019. In particular, Imraj failed to tender an appraisal of the Property as of April 2019.

[47] Imraj conceded that it was not entitled to rely upon an appraisal report dated July 2, 2013, as it was not served in accordance with the *Rules*. The July 2, 2013 appraisal does not assist the Court to determine the value of the Property as of April 2019 in any event.

[48] Imraj purchased the Property in 2012 for $849,000; however, the Property was improved by the installation of equipment and fuel facility improvements after Imraj purchased the Property, which likely increased the value of the Property by an amount not clear on the evidence.

[49] Imraj suggests that the Property's value can be assessed based on a third party's offer to buy the Property in 2015 or 2016. Imraj relies on Mr. Toor's discovery evidence (filed by Centex) that Imraj had an accepted offer of $1,200,000 in 2015 or 2016. As noted earlier in these reasons for judgment, I accept that Imraj is entitled to rely on Mr. Toor's discovery evidence in these circumstances. However, Mr. Toor's evidence is of little assistance in part because it is unclear. Mr. Toor said that he had an accepted offer, but the buyer backed out when told that Imraj owed $600,000 or $700,000 to Centex (presumably for the Fuel Facility Financing and unpaid fuel charges); this suggests that Imraj's ongoing obligation to Centex under the RFA affected the fair market value of the Property. There were no documents tendered by

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Imraj to support Mr. Toor's vague account of another potential purchaser before the Property was conveyed to Centex in 2016. In any event, evidence about a potential sale in 2015 or 2016 does not establish the Property's value in April 2019. Mr. Toor's evidence about an offer to purchase the Property is not reliable nor helpful.

[50] Imraj points to the declared value attributed to the Property on the Land Title Office registration when the Property was conveyed to Centex in August 2016 as evidence of the Property's value. However, Imraj offered no evidence as to the source of this declared value. The declared value is no substitute for a proper appraisal. And again, the declared value as of August 2016 does not assist in determining the value as of April 2019.

[51] As noted above, Imraj says that the difference between fair market value and the purchase price would not adequately compensate Imraj for its losses because this approach ignores the loss of income streams from the fuel facility, the convenience store and restaurant. However, Imraj failed to lead any evidence to prove or quantify such losses. I note that Imraj lost the Property in the first place because the businesses were apparently not profitable enough to pay the KSCU Mortgage and fuel charges.

[52] Imraj seeks an order that it be permitted to prove damages at a later date if the Court is unable to assess damages on the available evidence. Imraj points to a similar order made in *Trinden Enterprises Ltd. v. Ramsay et al.*, 2004 BCSC 226 at a summary trial application. However, I note that the plaintiff in that case specifically sought such an order in its notice of application if it was not granted specific performance. In this case, Imraj did not seek such relief in its application response. Further, the parties agreed to have this action resolved by way of summary trial during the originally scheduled trial dates. As plaintiff, Imraj ought to have been prepared to prove its losses.

[53] Mr. Toor provided some evidence that Imraj incurred expenses to try to complete the repurchase of the Property in September 2019. However, there is no

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evidence that Imraj incurred expenses as a result of Centex's repudiation of the Repurchase Agreement in April 2019.

[54] Imraj is entitled to damages arising from Centex's breach of the Repurchase Agreement, but Imraj has failed to prove any loss. In the circumstances, I find that Imraj is entitled to nominal damages of $1000.

e) Did the parties enter into a new contract for Imraj to repurchase the Property?

[55] Given my finding that the Repurchase Agreement was at an end when Imraj accepted Centex's repudiation on June 19, 2019, the final issue to be decided is whether the further negotiations between the parties resulted in a new contract for sale of the Property from Centex to Imraj. Imraj pleaded that Centex agreed to complete the transaction by extending the closing date in the Repurchase Agreement but then breached the contract by failing to complete. However, the Repurchase Agreement was at an end, and I find that the parties failed to enter into a new contract because neither party accepted the terms proposed by the other throughout negotiations in August and September 2019. In short, there was no new contract capable of enforcement.

[56] Between mid-August and early September 2019, counsel for the parties exchanged a series of offers and counter-offers:

a) August 15, 2019: Imraj offered to purchase the Property for $739,545, with a completion date within 90 days of acceptance by Centex of the offer to purchase, and the RFA would be reinstated with an accounting to be done to determine the balance of the outstanding amount owing for equipment financing;

b) August 21, 2019: in response, Centex offered to sell the Property to Imraj for a price of $739,545, subject to the usual adjustments; the RFA would be revived as suggested by Imraj; Imraj would send closing documents at least three days prior to the proposed closing date of September 4, 2019;

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Imraj would pay for store inventory as at the closing date; and Imraj would obtain its own BCLC retailer license. Centex stated that if Imraj failed to tender closing documents and pay the purchase price in its entirety on the closing date, then Imraj would not be entitled to any further extensions;

c) August 26, 2019: Imraj offered to complete as outlined in Centex's August 21, 2019 letter, but with the proviso that Centex would allow Imraj to obtain an appraisal of the Property and that the closing date would be extended to October 31, 2019. Imraj requested a reasonable estimate of the inventory to be purchased;

d) August 28, 2019: Centex agreed to extend closing to September 11, 2019, but it would not agree to allow an appraisal;

e) September 5, 2019: Imraj asked whether Centex would be agreeable to allowing Imraj to assign "the Contract" to a third party; and

f) September 6, 2019: Centex declined to allow an assignment and advised that it looked "forward to completing the transaction on September 11, 2019 as set out in previous correspondence".

[57] As of September 6, 2019, I find that there was no binding contract between the parties. On September 6, Centex renewed its offer to Imraj to complete the transaction on the terms set out in its letter dated August 21, 2019, substituting September 11 for September 4 as the closing date. In order to form a binding contract, Imraj needed to accept the terms proposed by Centex or comply with them by tendering funds (including funds to cover the cost of inventory) and providing closing documents by September 8, 2019. Instead, on September 9, 2019, Imraj requested another week's extension, which Centex declined to grant on September 10, 2019. As of September 10, 2019, in my view, there was no longer an offer from Centex available for Imraj to accept.

[58] On September 10, 2019, Imraj made a new offer to purchase the Property (though it was not framed as a new offer) by sending closing documents to Centex

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with undertakings and a seller's statement of adjustments. The undertakings provided that Imraj would not attempt to register the transfer of the Property until Imraj's counsel had sufficient funds in their trust account (when added to the proceeds of the new mortgage) to allow the transaction to complete in accordance with "the contract of purchase and sale made between the Buyer and Seller and the approved Seller's statement of adjustments". In other words, Imraj intended to register the transfer before tendering funds. Further, the seller's statement of adjustments reflected only the purchase price of $739,545 and Imraj's share of property taxes: it did not include the store inventory.

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[59] On September 11, 2019, Centex replied to Imraj's offer with a counter-offer that allowed Imraj to deliver closing funds (increased to include payment for fuel on site) and completion of the transfer to occur on September 12, 2019, provided that Imraj signed an acknowledgment of the amount owing under the RFA and demonstrated it was GST-registered and had insurance. Centex's counter-offer gave Imraj the option of paying for the fuel on site or having Centex remove the fuel from the tanks.

[60] In response to Centex's counter-offer, Imraj wrote to Centex on September 11, 2019 to advise that Imraj had the funds available to complete the transaction (as set out in its September 10, 2019 seller's statement of adjustments) and that Imraj was ready, willing and able to complete. Imraj threatened legal action, including a claim for "specific performance of the Contract", if Centex failed to complete. The "Contract" was defined as the contract of purchase and sale dated June 22, 2016 and addendum (i.e. the Repurchase Agreement). However, as I have found, as of September 11, 2019, the Repurchase Agreement was at an end and no longer capable of enforcement. Further, as of September 11, 2019, there was no other contract between the parties capable of enforcement.

[61] Imraj wrote again on September 12, 2019, insisting that the transaction should complete based on its September 10, 2019 seller's statement of adjustments, without the need for the RFA acknowledgment or insurance; however, Centex was

not prepared to proceed on that basis. In the weeks that followed, the parties exchanged further offers in an attempt to complete the transaction, but they could not agree on terms.

[62] In summary, despite an exchange of various offers and counter-offers, I find that the parties failed to enter into a new contract after June 19, 2019, for Imraj's repurchase of the Property. There was no new contract for Centex to breach.

Conclusion

[63] I find that Centex breached the Repurchase Agreement. Imraj is entitled to nominal damages of $1000. The balance of Imraj's claim against Centex is dismissed. As there is no order for specific performance in favour of Imraj, the counterclaim is necessarily dismissed.

[64] As this matter is now concluded without an order for specific performance in favour of Imraj, it is appropriate to discharge the certificate of pending litigation filed by Imraj. I order the Nelson Land Title Office to cancel the certificate of pending litigation registered as charge number CA7987501 against the Property to be cancelled upon production of a certified copy of my order.

[65] As success is divided, the parties shall bear their own costs.

"Lamb J."

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