COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *0994660 B.C. Ltd. v. Vanier,*
2023 BCCA 483

Date: 20231222
Docket: CA48794

Between:

0994660 B.C. Ltd.

Appellant
(Defendant)

And

Dominic Gary Vanier

Respondent
(Plaintiff)

Before: The Honourable Justice MacKenzie
The Honourable Justice Dickson
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated December 16, 2022 (*Vanier v. 0994660 B.C. Ltd.*, 2022 BCSC 2382, New Westminster Docket S241072).

Oral Reasons for Judgment

Counsel for the Appellant:	D.K. Magnus T.H. Suleyman
Counsel for the Respondent:	T.E. Watkins
Place and Date of Hearing:	Vancouver, British Columbia November 29, 2023
Place and Date of Judgment with Oral Reasons to Follow:	Vancouver, British Columbia November 29, 2023
Place and Date of Oral Reasons:	Vancouver, British Columbia December 22, 2023

Summary:

This appeal arises from an order for specific performance of a contract of purchase of sale of property that was granted following a summary trial. The essential issue on appeal is whether the judge erred in treating Schedule E, which contained an option to purchase as a part of the greater contractual dealings between the parties rather than a stand-alone contract. Held: Appeal dismissed. The judge made no reviewable error in reaching the conclusion that Schedule E was not a stand-alone contract and ordering specific performance. The issue of what consideration, if any, should be paid by the respondent to the appellant for the transfer of clear title to the property is remitted to the trial judge for determination.

ABRIOUX J.A.:

Introduction

[1] This appeal arises from the order made by a judge following a summary trial. The application was brought by the appellant and sought dismissal of the respondent's claim for specific performance of a contract of purchase of sale, which included an option, in relation to property located in Maple Ridge, British Columbia. The judge ordered specific performance and that the appellant transfer clear title of the property in question to the respondent.

[2] Central to the judge's order and the issues on appeal are questions of contractual interpretation.

[3] At the conclusion of the appeal, the Court advised the parties that the appeal would be dismissed with oral reasons to follow, but that the reasons would not address an issue which was apparently not argued in any detail, if at all, before the judge. This concerned what consideration, if any, should be paid by the respondent for the transfer.

[4] For the reasons that follow, the appeal from the order that the appellant transfer clear title to the property to the respondent is dismissed. Since the trial judge is not *functus*, the issue as to what consideration, if any, should be paid by the respondent to the appellant for the transfer is remitted to the judge.

Background

[5] The background is reviewed in some detail in Justice Thomas' reasons for judgment which are indexed as 2022 BCSC 2382. The following relates to the issues on appeal.

[6] The respondent Dominic Vanier's mother, Ms. Vanier, sold a 10-acre tract of land located in Maple Ridge, British Columbia to a real estate developer, Powerblock Management Corporation ("Powerblock"). Ms. Vanier's family home where she had lived for many years was situated on the property. She wished to retain title over that portion of the property (approximately 3.3 acres) so that her son, who had been residing on the property with her since 2011, in part to assist in her care, could ultimately become the registered owner of that portion of the property which comprised the family home (the family residence lot).

[7] Section 73 of the *Land Title Act*, R.S.B.C. 1996, c. 250 [*LTA*], prohibits sales of parts of land if it has not been approved for subdivision; otherwise, the property must be sold in its entirety.

[8] The municipality had not approved Ms. Vanier's property for subdivision but Powerblock believed that it could obtain approval after the sale, and could then transfer the family residence lot back to Ms. Vanier.

[9] The judge found that because the sale was structured in order to circumvent s. 73 of the *LTA*, the contract of sale, which had been drafted by a real estate agent under a dual agency agreement contained "complex contractual terms": at para. 10 (the "Contract").

[10] The Contract included Schedule E, which contained an option to purchase (the "Option"). The judge concluded that the entire Schedule E was "confusing and inconsistent". It was clearly drafted on the assumption that subdivision approval would successfully be obtained: at paras. 14–15. Schedule E did not stipulate what would occur if the property were not subdivided. Contrary to s. 73 of the *LTA,* Clause

4(ii) of Schedule E provided Ms. Vanier the right to obtain the family residence lot prior to the land being approved for subdivision.

[11] On February 4, 2014, prior to the finalization of the Contract, Ms. Vanier sent a letter to Powerblock setting out what she considered to be the essential contractual terms. She required several terms to be included, which included that the Option must be registered and that if subdivision did not occur, then title to the property would be reconveyed to her. These terms were then incorporated into the Contract but not into Schedule E.

[12] Powerblock assigned its interest in the Contract and Schedule E to the appellant shortly before the sale was completed on February 27, 2014. That day the purchase price of $950,000 was paid to Ms. Vanier (subject to closing adjustments). Schedule E was filed as an option at the Land Title Office, but it did not contain the other schedules referred to in Schedule E. Despite the terms in the Contract, the appellant did not file the “obligation” that would transfer the entire property to Ms. Vanier as a separate option, nor did it amend Schedule E to reflect this.

[13] On December 9, 2014, Ms. Vanier assigned her interest in the Option to Dominic Vanier which was then registered in the New Westminster Land Title Office. Mr. Vanier has continued to occupy the family residence at all times.

[14] In 2019, upon review of the Option, Mr. Vanier met with the appellant’s representative because he was concerned that he did not understand Schedule E. The appellant requested a two-year extension to Schedule E to obtain approval for subdivision and an option to extend the two-year extension for another two years at his option. Mr. Vanier agreed.

[15] After the extension was agreed to, the relationship between the parties deteriorated. The appellant did not exercise its option to extend Schedule E for a further two years and the time period in Schedule E expired. Subdivision approval was never obtained.

[16] On August 18, 2021, the appellant filed an application in the New Westminster Land Title Office to cancel the Option by effluxion of time. It did so even though subdivision approval had not been obtained. Accordingly, it could not transfer the family residence lot to Mr. Vanier.

[17] At the summary trial, the appellant argued that Schedule E existed in isolation of the Contract and thus, Mr. Vanier's right to purchase had expired, title had passed to the appellant, and Mr. Vanier should vacate the property. This is because Schedule E specifically provided that it contained the entire agreement between the parties and it was registered at the Land Title Office separately from the Contract.

[18] Mr. Vanier's position was that Schedule E was a poorly drafted essential component of the Contract whose terms, when read together with the Contract, was to provide the appellant with two additional years to obtain the municipality's approval for subdivision, failing which the entire property would be conveyed to him.

The Summary Trial Reasons

[19] Having reviewed the background, the judge referred to general principles of contractual interpretation including *Sattva Capital Corp v. Creston Moly Corp*, 2014 SCC 53. He found that the February 4, 2014 letter (referred to in para. 11 above) made it clear that the parties intended to have the property approved for subdivision and that if that did not occur, title over the entire property would be conveyed to Mr. Vanier. It was also evident that Ms. Vanier and the appellant were concerned as to the wording of the Contract and relied on Powerblock to ensure that it was consistent with their intentions. This context informed his interpretation of the Contract and Schedule E because both documents were too confusing to understand on their own: at paras. 39–41.

[20] The judge also concluded that Schedule E was not intended by the parties to be, nor did it have the effect of being a stand-alone contract. Rather, it formed part of the Contract: at para. 43. He did not accept the appellant's argument that the principle of merger applied observing that it constituted an equitable remedy and applied to the terms of a contract relevant to the transfer of title, not to an obligation

imposed on the purchaser by the contract after title had passed. It was not the parties' intention to extinguish Ms. Vanier's right to obtain the entire property if subdivision was not authorized in the time specified by the Contract: at paras. 47–48.

[21] Accordingly, the judge decided that since Schedule E was unclear, it should be interpreted within the context of the parties' intentions. He specifically considered Clause 4 of the Contract which provided that the appellant was required to transfer clear title of the property to Mr. Vanier if the time allowed to obtain subdivision authorization had expired. He did not accept the appellant's suggested interpretation that if Mr. Vanier did not provide notice under Schedule E that he intended to exercise the Option that he would lose his right to the entire property. Instead, the proper interpretation was that Clause 4 of the Contract was triggered by the expiration of time allowed to obtain authorization for the subdivision contained in Schedule E: at paras. 49–52.

[22] The judge was satisfied that Mr. Vanier had established that the family home property was unique to him and a monetary award would not be appropriate finding that:

> [55] The plaintiff has been living in his family home, which has been in his family for 50 years. His mother wanted him to live in the family home and he wants to live in the family home. The purchase was specifically crafted to preserve the plaintiff's ability to keep the family home. It is clear that money would not compensate the plaintiff for the loss of the family home.

[23] Accordingly, he granted the remedy of specific performance as provided for in Clause 4 of the Contract: at paras. 56–59.

[24] The judge did not dismiss the action in its entirety in that "several minor issues with respect to accounting of monies between the parties" still remained to be resolved: at para. 59.

[25] In April 2023, the parties appeared before the judge in order to settle the terms of the trial order.

[26] One of the issues before the judge related to Clause (v) of the February 4, 2014 letter which provided:

> (v) If rezoning and subdivision do not occur by the option exercise date it should be clear title to the property will be reconveyed, at no cost to Vanier, free and clear of financial encumbrances. Our client also wants a cap on the lender financing to Powerblock (ie. $800,000.00).

[27] The appellant sought to have the transfer of the property conditional on the payment of an amount which was subject to a mortgage which had been registered after it obtained title in February 2014. Mr. Vanier's position was that the property was to be transferred free and clear of any financial encumbrances. The judge's decision is set out in the Transcript of Proceedings (no reasons for judgment having been requested by the parties):

> THE COURT: So my understanding is that under reasons in paragraph 16, that the issue -- the reference to that $800,000 was made, which was conveyed in a letter, which was that as a provision was that the maximum mortgage on the property could be -- had to be capped, and presumably, as I understood the deal, and I'm welcome to hear submissions on this, it was that there needed to be a cap on the financing to ensure that clear title could be transferred in the sense that if there was too much financing on it, the company might not be able to pay off the mortgage in time to execute the agreement. That's how I understood the provision. In which case, then, the way the clause would work would be that it would be clear title that would be transferred, not with a mortgage. That's how I read that.
>
> I don't know what words have been drafted by the parties or if there's any views on that, but -- because I don't have draft orders in front of me right now.

[28] The entered order provides:

> THIS COURT ORDERS that:
>
> 1. The defendant 0994660 B.C. Ltd. will transfer to the Plaintiff Dominic Gary Vanier clear title to the real property at 23895 – 124 Avenue, Maple Ridge, B.C. …
> 2. The defendant will pay to the plaintiff costs of this action to date.

On Appeal

[29] The appellant raises a number of grounds of appeal relating to the Contract, the Option and Schedule E. It also argues that the judge erred in failing to apply the doctrine of merger and in awarding specific performance.

[30] In my view, the essential issue on appeal is whether the judge erred in finding that Schedule E which contained the Option was not a stand-alone contract but rather formed part of the entire contractual dealings entered into between the parties and which included the contract of purchase and sale.

[31] As I have noted, during the hearing of the appeal an issue also arose, being what consideration, if any, should be paid by Mr. Vanier for the clear title transfer of the property to him.

Discussion

[32] I will first briefly comment on the standard of review. The alleged errors on appeal raise questions of mixed fact and law which, absent an extricable question of law (none having been identified in this case) are subject to a deferential standard of review. Subject to the finding of a palpable and overriding error there is no basis for this Court to interfere with the order.

[33] In my view, the core question on appeal can be summarily disposed of.

[34] The judge correctly outlined the legal framework which applied to the interpretation of the contractual documents in question which included the Contract, Schedule E and the Option. It was also entirely open to him to conclude that the February 4, 2014 letter clearly set out the parties' intentions.

[35] At the hearing of the appeal, the appellant conceded that if it were unable to establish a palpable and overriding error in the judge's conclusion that Schedule E was not a stand-alone contract then its various arguments were problematic and likely could not succeed.

[36] In my view, not only did the judge identify the correct legal framework, in the sections of his reasons entitled "Is Schedule E a standalone contract?" and "The meaning of the Contract", he applied his findings of fact, which were well-grounded in the evidence, to that framework.

[37] Simply put, there is no principled basis upon which this Court could or should interfere with the judge's conclusion that Schedule E was not a stand-alone agreement and that an order of specific performance should be granted to Mr. Vanier in the circumstances of this case.

[38] A more troubling issue arises in relation to the consideration, if any, which Mr. Vanier should pay to the appellant for the transfer of title of the property to him.

[39] Ms. Vanier received $950,000 when she sold the property in February 2014. Mr. Vanier has continued to live there paying the respondent certain expenses which relate to his occupation. Any adjustments between the parties in relation to those expenses are the "minor" accounting issues referred to by the judge in the reasons.

[40] In his Response to the appellant's summary trial application, Mr. Vanier raised certain equitable arguments in opposing the application to have his action for specific performance dismissed which included alleging a resulting trust and unjust enrichment. I would note that specific performance is itself an equitable remedy.

[41] In my view, the issue of what consideration should be paid, if any, in the event the Option were not exercised or expired is also one to be considered within the context of the principles of contractual interpretation identified by the judge in the reasons. Further findings of fact may well be required for a decision on this point. After all, the entire property has been ordered to be conveyed to Mr. Vanier, not just the family residence lot, since that cannot occur in that the property has not been subdivided. And yet, Ms. Vanier has received the agreed upon purchase price for the entire property.

[42] It would appear no substantive arguments were made by the parties on this issue and it is clear that there is no analysis by the judge indicating this occurred, nor is there any decision pertaining to this matter. In that regard, the appearance before the judge to settle the terms of the trial order only resulted in a decision as to the encumbrances on title and not the question of the consideration to be paid as intended by the parties, if any, if the Option were not exercised or expired.

[43] This is not a “minor” matter of outstanding adjustments between the parties. In my view, there is no recourse but to send this issue back to the judge for determination. It will be entirely up to him to decide whether further evidence is required and to direct the manner in which a further hearing is to take place.

Disposition

[44] For these reasons I would dismiss the appeal and remit to the trial judge for his determination the issue of what consideration, if any, should be paid by Mr. Vanier to the appellant for the transfer of clear title to the property.

[45] **MACKENZIE J.A.**: I agree.

[46] **DICKSON J.A.**: I agree.

[47] **MACKENZIE J.A.**: The appeal is dismissed with the issue identified under the “Disposition” in the reasons for judgment remitted to the trial judge for his determination.

“The Honourable Mr. Justice Abrioux”