

COURT OF APPEAL FOR ONTARIO

CITATION: 1000425140 Ontario Inc. v. 1000176653 Ontario Inc., 2024 ONCA
610

DATE: 20240812

DOCKET: COA-23-CV-1364

Rouleau, Benotto and Thorburn JJ.A.

BETWEEN

1000425140 Ontario Inc.

Plaintiff

(Respondent)

and

1000176653 Ontario Inc., 1223408 Ontario Limited, Ray Gupta, Sandeep Gupta
and Sunray Group of Hotels Inc.

Defendants

(Appellants)

J. Thomas Curry, Jessica M. Starck and Bonnie Greenaway for the appellants,
1000176653 Ontario Inc., 1223408 Ontario Limited, Ray Gupta, Sandeep Gupta
and Sunray Group of Hotels Inc.

John J. Adair and Ritika Rai, for the respondent, 1000425140 Ontario Inc.

Heard: June 18, 2024

On appeal from the judgment of Justice Robert Centa of the Superior Court of
Justice, dated October 12, 2023, with reasons reported at 2023 ONSC 6688.

REASONS FOR DECISION

A. OVERVIEW

[1] This is a dispute over the purchase and sale of a luxury home in Burlington, Ontario (“the Property”).

[2] The respondent, 1000425140 Ontario Inc. (the “Purchaser”) brought a Claim against 1000176653 Ontario Inc. (the “Seller”) for rescission of the Agreement of Purchase and Sale (the “APS”), on the basis that the Seller made fraudulent misrepresentations that induced them to purchase the property. The Purchaser also brought a claim for conspiracy against 1223408 Ontario Limited, Ray Gupta, Sandeep Gupta, and Sunray Group of Hotels Inc. for damages claiming that they acted in concert with the Seller to commit fraudulent misrepresentation by omission “by concealing the withheld information about the ongoing threat to the Property”, and by transferring the legal ownership of the property and sending the proceeds to Sandeep Gupta.

[3] The parties agreed to proceed by way of a motion for summary judgment. Partial summary judgment was granted to the Purchaser. The motion judge ordered rescission of the APS of the Property for fraudulent misrepresentation and latent defect. He also ordered equitable damages.

[4] Although the notice of motion for summary judgment included the conspiracy claim, the motion judge noted that “The [Purchaser’s] factum on the motion for

summary judgment did not seek summary judgment on its claim in conspiracy. I do not grant summary judgment on that claim.”

[5] The Seller and the other appellants claim the motion judge erred by (i) reversing the onus of proof and holding that the Seller fraudulently misrepresented that the Property was “safe and secure” to induce the purchaser to buy the Property, (ii) finding that the Seller failed to disclose a latent defect in the property, and (iii) granting partial summary judgment in favour of the Purchaser.

[6] We begin by reviewing the circumstances of the purchase and sale followed by an analysis of the motion judge’s decision.

B. THE MARKETING AND SALE OF THE PROPERTY

[7] At the time of sale, the Property was owned by the Seller. The appellant Ray Gupta is the owner and sole director of the Seller.

[8] Ray Gupta’s son, Sandeep Gupta, was involved in the events surrounding the sale of the home and as noted by the motion judge, Sandeep Gupta “had a curious and complex relationship with [the previous occupant] Mr. Pleterski.”

[9] The Property was sold to the Purchaser. The Purchaser is a holding company incorporated on January 25, 2023. Its principal, Shai Gilgeous-Alexander, is a well-known and successful professional athlete and he and his partner, Hailey Summers, were looking for a home to start a family.

[10] All of the communications between the parties regarding the sale were between the two real estate agents: Mr. Jelen and Mr. Clavero.

[11] The transaction closed on May 10, 2023, for a purchase price of \$8.45 million.

C. SECURITY ISSUES DISCOVERED BY THE BUYERS AFTER CLOSING

[12] Four days after the closing, on May 14, 2023, Ms. Summers answered a knock at the door. The person was looking for Aiden Pleterski. Mr. Gilgeous-Alexander joined Ms. Summers at the door and stated he did not know who that was and closed the door. The stranger returned to his car but did not immediately leave the property. Ms. Summers went online and found that Mr. Pleterski was the self-described “Crypto King,” who had been sued for fraud and was involved in contested bankruptcy proceedings. Ms. Summers reported the incident to police.

[13] Ms. Summers was told that the police had received reports of people trying to break into the Property. Ms. Summers also discovered that Mr. Pleterski had defrauded some “very bad people” and someone had threatened to burn down the Property. Upon learning this, Mr. Gilgeous-Alexander and Ms. Summers moved out of the home and did not return.

[14] In June 2023, the Purchaser issued a Statement of Claim seeking a declaration that the Seller fraudulently misrepresented that the Property was “private and secure” to induce the Purchaser to sign the APS. The Purchaser also

claimed damages for conspiracy, as well as punitive damages, against all of the other defendants.

D. THE MOTION FOR SUMMARY JUDGMENT

[15] The Purchaser moved for summary judgment seeking rescission or equitable damages for fraudulent misrepresentation or the failure to disclose a latent defect. In the notice of motion, the Purchaser also sought summary judgment on the conspiracy claim, however, as noted above, the motion judge did not grant summary judgment on the conspiracy claim as the Purchaser's factum did not address the issue of conspiracy. The parties agreed before the motion judge that proceeding by way of summary judgment was appropriate.

[16] The following additional evidence was adduced on the motion:

- a. The previous occupant of the Property, Mr. Pleterski, was a self-described "Crypto King" who had been sued for fraud and was involved in bankruptcy proceedings. Sandeep Gupta knew Mr. Pleterski's investors had accused him of defrauding them of over \$25 million. He was worried that the defrauded investors would physically harm Mr. Pleterski as they were showing up at the Property while Mr. Pleterski was living there. Mr. Pleterski was therefore moved to a different property owned by the Guptas and paid no rent.
- b. The Guptas moved one of their employees into the Property to keep watch over it. The employee was "harassed" by people "coming up to the house every single day" such that the employee's wife refused to stay at the Property. Sandeep Gupta

also knew that Mr. Pleterski was kidnapped, a \$3 million ransom was sought, and he was released with blackened eyes. Sandeep Gupta gave sworn evidence in the bankruptcy proceeding before the sale of the Property to the effect that he was afraid for Mr. Pleterski's safety while he was living at the Property prior to his kidnapping.

- c. In March 2023, the trustee in bankruptcy released its third report, filed it with the court, and made it available to the creditors of Mr. Pleterski. In the report, the trustee noted that over \$1,000,000 of investor funds from the creditors went directly into the Property through rent payments and a deposit. Records indicated that most of the payments were made to Sandeep Gupta.
- d. None of this was disclosed to the Purchaser while the Property was on the market and then sold to the Purchaser. Instead, the Property was marketed as "private and secure".

[17] After reviewing the evidence, the motion judge found that Sandeep Gupta knew there was a safety risk at the Property at the time it was marketed and sold, and further found that Sandeep Gupta told Ray Gupta about the safety risk. He did so at paras. 106 to 111, for the following reasons:

... I am satisfied that there was a significant safety risk at the Burlington property at the time 653 Ontario marketed and sold the Burlington property to the plaintiff. I am also satisfied that Sandeep knew that there was a significant safety risk at the Burlington property at that time.

I also find that Ray knew from Sandeep that there was a safety risk at the Burlington property at the time it was marketed and sold to the plaintiff. Although Ray owned the Burlington property through 653 Ontario, he delegated many of the tasks associated with the house to Sandeep. It was Sandeep who "took the lead in

handling the tenancy arrangements with [Mr. Pleterski].” In his examination with the trustee, Sandeep referred to the fact that “we just listed [the Burlington property]” among many other times he used “we” to describe his role in handling issues related to the Burlington property.

Indeed, it was Sandeep who signed the agreement of purchase and sale and agreement to lease with Mr. Pleterski. The evidence does not make clear the source of Sandeep’s legal authority to sign the contract for 408 Ontario. In my view, nothing turns on that. The fact that Sandeep signed any version of the contract on behalf of 408 Ontario is clear and convincing evidence of his deep involvement in the sales of the Burlington property. This level of involvement justifies my inference that Sandeep told Ray everything he knew about Mr. Pleterski and dangerousness of the property, particularly when neither Ray nor Sandeep provided an affidavit on this motion. I do not accept that Sandeep would have kept those facts from his father, who owned the company that owned the Burlington property. I find that Ray knew that there was a safety risk at the Burlington property at the time that property was marketed and sold to the plaintiff.

Ray is the sole officer and director of 653 Ontario. He alone had the authority to cause 653 Ontario to market and sell the Burlington property. A corporation is generally imputed to have the knowledge of its directing minds. For the purposes of this action, it is appropriate to attribute his knowledge to 653 Ontario and conclude that it knew what Ray knew.

I find, therefore, at the time 653 Ontario marketed and sold the property to the plaintiff, Sandeep, Ray, and 653 Ontario each knew that the Burlington property was not safe. I also find that 653 Ontario made a knowingly false statement when it represented that the property was private and secure; and

Silence can amount a fraudulent misrepresentation where, as here, the circumstances establish that the dishonest conduct of 653 Ontario intended to deceive the

plaintiff by its failure to disclose the relevant information and intended to commit this fraudulent act through non-disclosure of the relevant information. 653 Ontario suppressed the truth about the Burlington property, which in this case amounted to a fraudulent misrepresentation. However, it also went further and made positive representations that the property was private and secure. Those representations were knowingly false. [Emphasis added]

For these reasons, the motion judge determined it was appropriate to attribute Ray Gupta's knowledge to the Seller.

[18] The motion judge therefore granted summary judgment against the Seller on the basis that the Seller (i) made fraudulent misrepresentations to the Purchaser that the Property was "private and secure" knowing that it was not, and (ii) failed to disclose a latent defect in the Property, that is, that there was an ongoing safety risk at the Property. The motion judge ordered rescission of the APS and equitable damages to put the Purchaser in the position it was in before it was induced to enter into the transaction.

[19] He found that a seller's "silence can amount a fraudulent misrepresentation" where, as here, the Seller failed to disclose relevant information about the Property. He found the Seller "suppressed the truth about [the Property which], ... amounted to a fraudulent misrepresentation."

[20] He further found that the Seller made positive representations that the property was private and secure when those representations were knowingly false.

He found the representations were made with the intention that they be acted on by the Purchaser.

[21] The motion judge noted that Ray Gupta did not file an affidavit to say that he did not know the Seller's real estate agent represented to the buyer's agent that the property was "private and secure." Nor did counsel for the Seller cross-examine Ms. Summers on her allegation that the Purchaser relied on the seller's representations.

[22] The motion judge held that as a result of the Purchaser's reliance on the false statements, the Purchaser suffered damages.

E. ANALYSIS AND CONCLUSION

(1) The Test on a Motion for Summary Judgment

[23] The motion judge correctly noted that, "on a motion for summary judgment, each party is required to put their best foot forward. They are not permitted to sit back and suggest that they would call additional evidence at trial. The court proceeds on the basis that the parties have each advanced their best case and that the record contains all the evidence that would be led at trial." See *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764, 108 O.R. (3d) 1 at para. 56, aff'd on other grounds, [2014] 1 S.C.R. 8; *Canada (Attorney General) v. Lameman*, [2008] 1 S.C.R. 372, 2008 SCC 14, at para.11.

(2) The Fraudulent Misrepresentation Claim

[24] The motion judge then correctly articulated the law of fraudulent misrepresentation as follows:

- a. The defendant made a false representation of fact;
- b. The defendant knew the statement was false or was reckless as to its truth;
- c. The defendant made the representation with the intention that it would be acted upon by the plaintiff;
- d. The plaintiff relied upon the statement; and
- e. The plaintiff suffered damages as a result.

See *Mariani v. Lemstra* (2004), 246 D.L.R. (4th) 489 (Ont. C.A.), at para. 12, leave to appeal refused, [2004] S.C.C.A. No. 355; *Chaba v. Khan*, 2020 ONCA 643, at para. 15, leave to appeal refused, [2020] S.C.C.A. No. 442.

[25] The motion judge made the following findings of fact in respect of the fraudulent misrepresentation claim that were firmly grounded in the record:

- a. Ray Gupta was the directing mind of the Seller.
- b. He was told by Sandeep that there was a safety risk at the Burlington property at the time it was marketed and sold to the plaintiff;
- c. The Seller therefore knew there was a safety risk when the Property was marketed and sold;
- d. The Seller's real estate agent nonetheless marketed the Property as "private and secure";

- e. The Seller elected to file no evidence to counter the Purchaser's allegation that the Seller knew the Property was being marketed as "private and secure";
- f. The Purchaser's agent filed an affidavit and gave evidence that privacy and security were "quite important" to the Purchasers when purchasing their home; and
- g. No one on behalf of the Seller disclosed the serious safety concerns.

[26] As the directing mind of the Seller corporation, it was appropriate for the motion judge to impute Ray Gupta's knowledge onto the Seller that nonetheless represented the property as "private and secure". Given the knowledge that was imputed, the representation constituted a fraudulent misrepresentation on the part of the Seller corporation.

[27] We also see no error in the motion judge's finding that the Seller made the representation with the intention that it would be acted on. This inference was available to the motion judge in the context of the evidence as a whole and the absence of evidence by Ray Gupta and the Seller's real estate agent denying the obvious inference that the representation was made with the intention that it be acted on by the Purchaser.

[28] The motion judge then accepted the uncontradicted evidence of the Purchaser that they would not have entered into the APS absent the false representations about the privacy and security of the Property and that the

misrepresentation was material as a reasonable person would consider it relevant to the decision to purchase the Property.

[29] We find no palpable and overriding error of fact or mixed fact and law in the motion judge's findings in respect of the fraudulent misrepresentation. Moreover, his finding did not constitute a reversal of the onus of proof; rather, it was recognition that the Seller failed to put his best foot forward and adduce any evidence to dispute the evidence lead by the Purchaser that (i) privacy and security were important to them, (ii) the Seller's agent marketed the property as private and secure, and (iii) the Seller knew it was being marketed this way so the sale would close despite knowing that the Property was not secure.

[30] A finding of fraud in the context of a real estate transaction induced by misrepresentations is sufficient reason not to allow execution of the contract to constitute a barrier to rescission: *Singh v. Trump*, 2016 ONCA 747, 408 D.L.R. (4th) 235, at para. 157; *Redican v. Nesbitt*, [1924] S.C.R. 135. As such, rescission of the APS was warranted along with equitable damages for additional expenses related to the purchase and ownership. For these reasons, we would dismiss the first ground of appeal.

(3) Latent Defect

[31] Given our conclusion that the claim for fraudulent misrepresentation was amply supported by the evidence, there is no need to address the ground of appeal regarding latent defect in deciding that rescission was an appropriate remedy.

(4) Whether Bifurcation was Appropriate

[32] The third and final issue raised by the appellants, is whether the fraudulent misrepresentation claim is linked to the conspiracy claim such that it was inappropriate to grant partial summary judgment.

[33] The essence of the conspiracy claim, as set out in the pleading, is whether any of the appellants (or, in the motion judge's words: "the remaining defendants"), conspired with the Seller to make fraudulent misrepresentations by concealing the withheld information about the ongoing threat to the Property.

[34] The issue of the appropriateness of bifurcating proceedings was addressed by Gillese J.A. in *Truscott v. Co-Operators General Insurance Company*, 2023 ONCA 267, 482 D.L.R. (4th) 113. Gillese J.A. allowed an appeal of a partial summary judgment motion. She accepted the submission that partial summary judgment was not appropriate and ordered the whole claim to proceed to trial. She held at para. 54 that:

The motion judge correctly articulated the following legal principles governing partial summary judgment motions, at paras. 42-43 of his reasons. Partial summary judgment

is a rare procedure, reserved for an issue or issues that may be readily bifurcated from those in the main action, and that may be dealt with expeditiously and in a cost-effective manner: *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, at para. 34. Partial summary judgment should be granted only in the clearest of cases and only if doing so does not give rise to any of the associated risks of delay, expense, inefficiency, and inconsistent findings.

[35] As noted by this court in *Truscott* and in *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561 at para. 38, before granting partial summary judgment, an analysis should be conducted to determine whether summary judgment is appropriate in the context of the litigation as a whole, and to address possible concerns.

[36] While the motion judge did not directly address the issue of appropriateness, the only issue raised by the appellants is the possible inconsistency in the findings of fact.

[37] For the reasons that follow, we conclude that partial summary judgment was appropriate in these circumstances as there is no danger of inconsistent findings of fact. The issue of Ray Gupta's personal liability for conspiring to make fraudulent misrepresentation is separate and distinct from the liability of the corporation for which he is a director and officer.

[38] The particulars of this alleged conspiracy in the Statement of Claim at paras. 33 to 35, are as follows:

33. The remaining defendants acted in concert with 653 Co. to commit the fraudulent misrepresentation by omission. They did so because they had a strong economic interest in the Property, which they hoped to maximize by concealing the withheld information about the ongoing threat to the Property. This was a conspiracy to commit an unlawful act, being the fraudulent misrepresentation.

34. The particulars of the conspiracy include the transfer of legal ownership from 122 Co. to 653 Co., which was a sham transfer, the improper use of corporate vehicles (both 122 Co. and 653 Co.) to hold the asset while the value of same was delivered to Sandeep Gupta, and a joint decision by Sandeep Gupta and Ray Gupta not to disclose the ongoing threat to the Property, in particular the threatening visits, to the prospective purchasers (including the plaintiff).

35. Further particulars of the conspiracy are known to the defendants.

[39] Although the motion judge imputed the knowledge of Ray Gupta as the directing mind onto the Seller corporation — and therefore held the Seller liable for fraudulent misrepresentation — he explicitly found that: “I am not prepared to find Ray Gupta, Sandeep Gupta, or Sunray Hotels liable for the misrepresentations.”

[40] In particular, the Statement of Claim did not allege that any of Ray or Sandeep Gupta or Sunray Hotels made fraudulent misrepresentations. As such, he held at para. 134 that,

Because the [Purchaser] did not plead that Ray Gupta, Sandeep Gupta, and the Sun Ray Group of Hotels Inc. should be found personally liable for fraudulent misrepresentation, they could not be expected to know that they should be prepared to meet that allegation. Had

they known that they were required to meet that allegation, they might well have filed affidavits or conducted their defences differently. In my view, it would be unfair to make such a finding that was not anchored in the pleadings or evidence of the parties.

[41] The Seller and the other appellants argue however, that by imputing Ray's knowledge onto the Seller on the basis that Ray Gupta was the directing mind of the Seller, the motion judge effectively found both Ray Gupta and the corporation liable for fraudulent misrepresentation. As such, they argue that the conspiracy trial may produce inconsistent findings because, in the conspiracy claim, a court may find that Ray Gupta did not commit fraud.

[42] We disagree that the motion judge found Ray Gupta personally liable for fraudulent misrepresentation. As noted above, the motion judge explicitly stated that he was not making such a finding. In a trial where his personal liability is at issue Ray Gupta may well, as the motion judge noted, choose to testify and conduct the defense differently. Moreover, as set out in *Montreal Trust Co. of Canada v. Scotia McLeod Inc.* (1995), 26 O.R. (3d) 481 (C.A.), this court noted the following at p. 491:

Considering that a corporation is an inanimate piece of legal machinery incapable of thought or action, the court can only determine its legal liability by assessing the conduct of those who caused the company to act in the way that it did. This does not mean, however, that if the actions of the directing minds are found wanting, that personal liability will flow through the corporation to those who caused it to act as it did. To hold the directors of [the corporation] personally liable, there must be some

activity on their part that takes them out of the role of directing minds of the corporation. In this case, there are no such allegations. [Emphasis added.]

[43] It is trite law that the liability of a corporation flows from its directing mind(s). However, to find that directing mind(s) necessarily incur personal liability for those acts would constitute a complete disregard for the corporation and its separate legal status.

[44] A trial judge may find that Ray Gupta did not make fraudulent misrepresentations in his personal capacity and only did so as the sole owner and director of the Seller. Separate considerations are at play, a separate analysis must be conducted, and a separate conclusion reached on the basis of this different legal test.

[45] For these reasons, we see no reason why the conspiracy claim cannot proceed to determine whether some or all of the appellants, including Ray Gupta in his personal capacity, conspired with the Seller to participate in the fraud.

[46] The appeal is therefore dismissed with costs payable by the appellants to the respondent in the amount of \$25,000 all-inclusive, as agreed upon by the parties.

“Paul Rouleau J.A.”

“M.L. Benotto J.A.”

“Thorburn J.A.”