

CITATION: Gonzalez v. Singh, 2024 ONSC 5043
COURT FILE NO.: CV-23-00692633-0000
DATE: 20240912

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ingrid Gonzalez and Luis Valdivia

Plaintiffs

AND:

Gurmeet Singh and Gurdev Singh Narula
a.k.a. Gurdev Raj Narula a.k.a. Dave Narula

Defendants

BEFORE: Chalmers J.

COUNSEL: *Guillermo Schible*, for the Plaintiffs

Pathik Baxi, for the Non-Party, Walia Surenda

HEARD: September 9, 2024, by videoconference

ENDORSEMENT

Overview

[1] The plaintiffs bring this motion for an order that the sale proceeds of the real estate properties that have been sold under power of sale by Surendra Walia and MGP Capital Inc. (MGP) on account of the debts of Gurmeet Singh be retained in trust, pending further order of this court. The plaintiffs argue that the mortgages were not legitimate.

[2] For the reasons set out below, I am not prepared to grant the relief sought by the plaintiffs. I find that there is insufficient evidence to conclude that the mortgages are not legitimate. I order that Mr. Walia may complete the sale of the Grange Sideroad property and may disburse the proceeds of the sale in the usual course.

Background

Factual Background

[3] The plaintiffs' vendors contracted with the defendants to sell their home for \$1,900,000. The closing date was August 2, 2022. The transaction did not close. The defendants state that they did not have sufficient funds to close because their counsel Amandeep Walia mistakenly wired over \$2.5 million of the defendant Singh's money to a fraudster.

[4] After the alleged mistaken transfer of the funds, the defendants sought an extension of time to close the real estate transaction. The plaintiffs did not agree. The defendants then sought an abatement of the purchase price by \$100,000 and an agreement to enter into a vendor take back mortgage for \$200,000. Again, the plaintiffs did not agree. The transaction did not close.

[5] The plaintiffs relisted their house for sale. They entered into a new agreement of purchase and sale dated January 30, 2023. The price was \$1,330,000. This was \$570,000 less than what the defendants had agreed to pay. The transaction closed. The plaintiffs claim damages related to the shortfall in the purchase price along with the damages they had to pay to vendors of two properties that they could not close because of the defendants' default. The plaintiffs also claim for increased financing costs. The total amount of the damages claimed exceed \$800,000.

[6] The non-party Surendra Walia was a mortgagee with respect to Mr. Singh's residence at 3722 The Grange Side Road, Caledon (Grange Sideroad). The face value of the mortgage was \$1,700,000. He advanced funds in the amount of \$1,664,764.34 to Mr. Singh's lawyer Amandeep Dullet on July 5, 2022. The charge was registered on title the same day. The charge was collateralized on three other properties, 712 Main Street, Shelbourne (Main Street), 102 Beaconsfield Ave., Brampton (Beaconsfield) and 1663 Hansuld Street, London (Hansuld). The wire transfer confirmation and registration are exhibits to the affidavit of Lisa Mote, sworn September 6, 2024.

[7] Mr. Singh was in default of the Walia mortgage. The balance came due on October 30, 2022. The mortgagee Mr. Walia proceeded with a power of sale. The statement of claim was issued on December 15, 2022. Mr. Singh did not defend. Through his counsel, Mr. Singh contacted Mr. Walia's counsel and proposed that the parties enter into a forbearance agreement. The parties entered into the forbearance agreement on January 5, 2023. Pursuant to the agreement, Mr. Singh was required to pay \$74,000 for mortgage interest arrears, \$2,000 for the legal fees for the agreement and a \$30,000 forbearance fee. The agreement provided that if the principal amount of the mortgage was not paid by May 30, 2023, the mortgagees were at liberty to immediately commenced default proceedings.

[8] Mr. Singh did not pay the principal amount of the mortgage by May 30, 2023. The mortgagees commenced default proceedings. The registrar granted judgment in the amount of \$1,939,896.79, plus costs of \$2,123.50 on June 26, 2023. The judgment ordered Mr. Singh to deliver possession of Beaconsfield, Main Street, Hansuld and Grange Sideroad properties to the mortgagees.

[9] On May 16, 2024, Mr. Walia entered into an agreement of purchase and sale with 1000880192 Ontario Inc. to sell the Main Street property. The price was \$2,400,100. The plaintiffs argue that the sale price was significantly less than the amount Mr. Walia had loaned to Mr. Singh. The plaintiffs also argue that there was a competing offer from the tenant, Albert Marshall. In his affidavit sworn on this motion, Mr. Marshall deposes that as early as April 10, 2024 he offered to purchase the property unconditionally for \$2,500,000. Counsel for Mr. Walia argues that Mr. Marshall did not formally make an offer to purchase. Counsel also argues that the sale to the numbered Ontario company was preferable because it had no conditions and had a quick closing of May 24, 2024.

[10] The Beaconsfield property was also sold under power of sale. After payment of the first mortgage, Mr. Walia recovered \$46,686.

[11] Mr. Walia made attempts to sell the Grange Sideroad property. After listing the property, Mr. Singh allegedly attempted to set the property on fire. The property was left in a poor state. Mr. Walia was able to sell the property for \$4.6 million. The closing is scheduled for September 13, 2024. The first mortgage is held by Equitable Bank in the amount of \$2,001,000.

Procedural History

[12] The plaintiffs caused the statement of claim to be issued on January 9, 2023. It was later amended on June 26, 2023. The amended statement of claim does not specifically seek injunctive relief. The claim was not brought against Mr. Walia or MGP.

[13] The plaintiffs brought a motion for a *Mareva* injunction. The motion was on notice to the defendants and the two registered mortgagees, Mr. Walia and MGP. The matter came before Justice Akbarali on February 23, 2024. By endorsement dated March 4, 2024, she granted the *Mareva* injunction as against the defendant Singh. However, she was not prepared to grant any relief as against the non-parties, Mr. Walia and MGP.

[14] Justice Akbarali found on the evidence before her that there were legitimate questions about how Mr. Singh was structuring his affairs, but “also a lot of innuendo and speculation”. Justice Akbarali stated that she was “not prepared to make orders based on speculation”. She also stated that although the plaintiffs have suspicions about the legitimacy of the charges registered on title to Mr. Singh’s and his corporation’s properties, “there is nowhere near the evidence required on this record for me to make a determination of whether the charges are *bona fide*”.

[15] With respect to the relief sought that Mr. Walia and MGP stop taking steps to collect on default or consent judgments or loans she stated as follows:

[33] With respect to the request that the chargees stop taking steps to collect on default or consent judgments, or on loans they have granted, the plaintiff has given me no authority for this proposition. The chargees point out that a *Marvea* injunction does not create a proprietary interest in the frozen assets: *Budichnist Credit Union Limited v. 2321197 Ontario Inc. et al.*, 2022 ONSC 3414, at para. 84; *Aetna Financial Services v. Feigelman*, 1985 CanLII 55 (SCC), at para. 28.

[34] Secured creditors take priority over unsecured creditors: *Barber v. CannaPharmaRx*, 2021 ONSC 4844, at para. 19.

[16] Following the *Mareva* order, two of Mr. Singh’s properties were being sold pursuant to powers of sale. The properties are known as the Lundy’s Lane and C Line properties. The second mortgagee on the C Line property was Hitish Gidwani. Mr. Walia took an assignment of the second mortgage. Mr. Walia took an assignment of the first mortgage a few days later. Mr. Walia listed the property under power of sale. On March 19, 2024, Mr. Walia received an offer to purchase the C Line property for \$4,900,000.

[17] The second mortgage on the Lundy's Lane property was also held by Mr. Gidwani. The second mortgage went into default and it was assigned to MGP on October 12, 2022. MGP took power of sale proceedings. On March 21, 2024, MGP entered into an agreement of purchase and sale to sell the Lundy's Lane property. In accordance with the *Mareva* order, the plaintiffs were provided with notice of the pending sales.

[18] This matter first came before me in civil practice court on April 3, 2024. The plaintiffs sought an urgent motion date for an injunction to enjoin the mortgagees from selling the C Line and Lundy's Lane properties. The plaintiffs argued that the mortgages were not *bona fide*. I did not schedule an urgent motion. I ordered Mr. Singh to produce all documentation to establish the validity of the mortgages, by April 22, 2024. I scheduled the next case conference for April 23, 2024.

[19] Mr. Singh failed to provide any documentation to establish the validity of the mortgages by April 22, 2024. He attended the case conference however he arrived 30 minutes late. I ordered that MGP may proceed with the sale of the Lundy's Lane property. If there were any net proceeds following the sale, the proceeds were to be held in trust for the benefit of this proceeding. I also ordered that Mr. Walia may proceed with the sale of the C Line property, however the lawyer for Mr. Walia was required to hold \$400,000 in trust for the benefit of this proceeding. I scheduled the plaintiffs' motion to determine the legitimacy of the mortgages for June 11, 2024.

[20] Mr. Singh did not attend on the return of the motion. It was expected that he had fled the jurisdiction following the investigation by the OPP into the fire at the Grange Sideroad property. Counsel for the plaintiffs sought an adjournment of the motion to determine the legitimacy of the mortgages. Counsel stated that he wished to proceed with a motion for a finding that Mr. Singh is in contempt of court. I scheduled the liability phase of the contempt motion for August 6, 2024. The motion to determine the legitimacy of the mortgages was adjourned to the same date.

[21] The liability phase of the contempt motion proceeded on August 6, 2024. I found Mr. Singh was in contempt of court. I scheduled the penalty phase for September 9, 2024 at 11:00 a.m. The penalty phase was to be in person. I also ordered that the plaintiffs' motion with respect to the legitimacy of the mortgages, it would also be heard on September 9, 2024 at 2 p.m. If Mr. Walia brought a motion to release the money currently held in trust, it would be heard at the same time as the plaintiffs' motion.

[22] On the return of the motion, the court office did not assign an in person courtroom for the penalty phase of the contempt hearing. The penalty phase did not go ahead. I schedule the new date for the penalty phase of the contempt motion for September 30, 2024 at 2 p.m.

Analysis

[23] The plaintiffs bring this motion for an order that the sale proceeds of the real estate properties that have been sold under power of sale by Mr. Walia and MGP be retained in trust pending further order of this court. In particular, the plaintiffs seek an order that the proceeds from the sale of the Grange Sideroad property that is expected to close on September 13, 2024, be retained in Mr. Walia's lawyer's trust account.

[24] The plaintiffs' motion is for injunctive relief. The plaintiffs rely on s. 101 of the *Courts of Justice Act*, and R.40.01 of the *Rules of Civil Procedure*. I note that the plaintiffs have not issued a Statement of Claim against Mr. Walia or MGP.

[25] The plaintiffs argue that the mortgages held by Mr. Walia and MGP are not legitimate. The plaintiffs state that the mortgages are part of a scheme on the part of Mr. Singh to defeat his creditors.

[26] As noted by Justice Akbarali in her endorsement dated March 4, 2024, the "court must be vigilant to ensure that the claims by a third party to this property are *bona fide* and not simply a ploy, with the assistance of an unscrupulous debtor to secure access to the property and avoid the consequences of the injunction.": *Hans v. Volvo Trucks North America Inc.*, 2014 BCSC 1123, at para. 523. Justice Akbarali stated that there was "a lot of innuendo and speculation" with respect to the legitimacy of the mortgages. She noted that the plaintiffs' "suspicions" were "nowhere near the evidence required on this record before me to make a determination of whether the charges are *bona fide*: at paras. 15, 36.

[27] The plaintiffs argue that since the *Mareva* injunction was argued before Justice Akbarali there are new developments that support their position that the mortgages are not *bona fide*. The plaintiffs rely on the following:

- Mr Singh has not complied with the order that he prove the legitimacy of the mortgages;
- Mr Singh has possibly fled the jurisdiction;
- Mr. Walia is selling the properties at dramatically lower prices.

[28] Mr. Singh's failure to comply with the order that he prove the legitimacy of the mortgages was one of the reasons that I found him in contempt of court. Although Mr. Singh was in breach of the court order, there was no order requiring Mr. Walia or MGP to establish the legitimacy of the mortgagees. I am of the view that Mr. Singh's breach has no application with respect to the rights of the mortgagees to enforce their security.

[29] The plaintiffs argue that Mr. Walia is selling the properties at dramatically lower prices. As an example, the plaintiffs refer to the Somerset property being listed at \$1.7 million on November 29, 2023. The property was sold several months later by Raj Loomba for \$800,000. The connection between Mr. Loomba and Mr. Walia is not clear to me. In any event, the plaintiffs failed to produce an appraisal for the property that indicated that the sale price was below the market value. There is no evidence that any other offers were made to purchase the property. I note that the Somerset property was not subject to any order of the court.

[30] The plaintiffs also argue that the Grange Sideroad property was listed for sale on November 29, 2023 for \$6,499,999. The property was sold approximately 6 months later for \$4.6 million. The closing is September 13, 2024. Again, there is no appraisal that establishes that the sale price was less than the market value. There is no evidence that there were competing offers. I also note that after the date the property was listed for sale, Mr. Singh is alleged to have set the house on fire. The damage to the property could account for the sale price being less than the listing price.

[31] I also note that there is evidence on the motion that real estate prices were in a state of flux at the relevant time. Mr. Singh entered into the agreement of purchase and sale to purchase the plaintiffs' property for \$1,900,000. When the transaction did not close on August 2022, the plaintiffs entered into a new agreement of purchase and sale dated January 30, 2023. The new price was \$1,330,000. This was a drop of \$570,000 or 30% in approximately 6 months. There is no suggestion in the material before me that the plaintiffs did not properly mitigate their damages or that the sale was improvident.

[32] The plaintiffs also argue that Mr. Walia did not advance the funds that were secured by the mortgages. Mr. Walia filed an affidavit from Lisa Mota, a law clerk in his lawyer's office. The plaintiffs argue that the affidavit ought to have been sworn by Mr. Walia and seek an adverse inference. I am not prepared to make an adverse inference. The plaintiffs delivered their material on September 3, 2024. Counsel for Mr. Walia argues that there was insufficient time for Mr. Walia to swear the affidavit and deliver their material by September 6, 2024.

[33] The exhibits to Ms. Mota's affidavit include the charge on the Grange Sideroad property. The principal sum was \$1,700,000. The date of maturity was October 30, 2022. The charge was registered on title on July 5, 2022. Mr. Singh retained his real estate lawyer Amandeep Dullet to complete the transaction. Mr. Walia's lawyer was Ranjeet Walia. The exhibit to Ms. Mota's affidavit includes the document from TD Commercial Banking confirming that there was a successful wire transfer in the amount of \$1,664,764.34 to Mr. Dullet on July 5, 2022 at 12:29 pm. I am satisfied on the evidence before me that Mr. Walia advanced the funds for the mortgage.

[34] I am also of the view that when the mortgage went into default, Mr. Walia took the usual and appropriate actions to enforce the mortgage. In my view Mr. Walia acted reasonably in listing the property and entering into the forbearance agreement. When the forbearance agreement was breached by Mr. Singh, Mr. Walia moved for judgment and obtained an order for possession. As noted above, there is no evidence that the Grange Sideroad property was sold at less than the market value.

[35] I note that the mortgage was entered into, and the funds advanced before the plaintiffs' cause of action against Mr. Singh arose on August 22, 2022. The plaintiffs argue that Mr. Singh and Mr. Walia entered into the mortgage scheme, because Mr. Singh knew he was going to breach the agreement of purchase and sale in 6 weeks time and was putting his assets out of the reach of the plaintiffs.

[36] I am unable to conclude that the Grange Sideroad mortgage was illegitimate and was entered into to defeat the plaintiffs' future claim for damages. This is pure speculation. As noted by Justice Akbarali, the plaintiffs may have suspicions about the legitimacy of the mortgages. However, the evidence does not support a finding that the mortgages are not *bona fide* and should not be enforced.

[37] I find that the mortgage on the Grange Sideroad property is a mortgage for value, and the mortgagees are entitled to enforce the mortgage.

Disposition

[38] I dismiss the plaintiffs' motion. I order that Mr. Walia may proceed with the sale of the Grange Sideroad property that is scheduled to close on September 13, 2024. Mr. Walia may disburse the proceeds from the sale in the usual course.

[39] Mr. Walia did not bring a motion for the release of the \$400,000 that is currently being held in trust for the benefit of this action. The funds will continue to be held in trust pending a further order of this court.

[40] Mr. Walia and MGP were successful on this motion and are presumptively entitled to their costs. If the parties are unable to agree, the cost issue will proceed in writing. Mr. Walia and MGP may deliver their written cost submissions consisting of no more than 3 pages in length excluding the cost outline, within 10 days of the date of this endorsement. The plaintiffs may deliver their written submissions in response within 10 days of receiving Mr. Walia and MGP's submissions.

DATE: September 12, 2024

Chalmers J.