COURT OF APPEAL FOR ONTARIO

CITATION: Stayside Corporation Inc. v. Cyndric Group Inc., 2024 ONCA 708
DATE: 20240923
DOCKET: COA-23-CV-0875

Miller, Trotter and Copeland JJ.A.

BETWEEN

Stayside Corporation Inc.

Plaintiff (Appellant)

and

Cyndric Group Inc. and Richard Menard

Defendants (Respondents)

Charles Guilbault, for the appellant

Stéphane Émard-Chabot, for the respondents

Heard and released orally: September 20, 2024

On appeal from the order of Justice Adriana Doyle of the Superior Court of Justice, dated August 10, 2023, with reasons reported at 2023 ONSC 4093.

REASONS FOR DECISION

[1] The appellant 677 entered into an agreement with the respondents to purchase 50 acres of land.[1] A condition precedent of the agreement of purchase and sale was that the respondent vendors commence an application to sever the

[1] 677 was not originally a party to the action, which was commenced by Stayside. We note that although the motion judge made an order adding 677 as a plaintiff, the style of cause was never amended.

50 acre parcel from the 100 acres owned by the respondents, on receiving a $5,000 payment from the appellant 677. The condition was to have been completed or waived by December 5, 2014.

[2] The payment was never made and the condition was not satisfied. 677 advised it still wished to proceed with the purchase. The parties agreed that 677 would thenceforth undertake the severance application.

[3] 677 brought two applications to the United Counties of Prescott and Russell to sever the parcel. The first application lapsed due to inaction in the summer of 2017. The respondents offered to take over the severance process, which 677 refused. 677 commenced a second application on June 2, 2017. That application also languished after the respondents provided numerous extensions.

[4] On March 12, 2018, the respondents advised that there would be no more extensions. On April 6, 2018, they advised that they considered 677 to have repudiated the APS.

[5] In July 2018, Stayside, to whom the contract had been assigned by 677, commenced this action seeking specific performance.

[6] The respondents brought a motion for summary judgment dismissing the action, which was granted.

[7] The appellants appeal on the basis that the motion judge erred in finding anticipatory breach.

[8] We do not agree.

[9] The motion judge correctly identified the relevant factors in determining whether an anticipatory and fundamental breach of the contract has been established. These are set out in *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, 88 O.R. (3d) 721, at para. 27:

> (1) the ratio of the party's obligations not performed to the obligation as a whole;
>
> (2) the seriousness of the breach to the innocent party;
>
> (3) the likelihood of repetition of such breach;
>
> (4) the seriousness of the consequences of the breach; and
>
> (5) the relationship of the part of the obligation performed to the whole obligation.

[10] The motion judge found that severance was a condition precedent and that the appellants were not diligent in pursuing the severance, such that the respondents were entitled to conclude that the appellants had repudiated the agreement.

[11] The appellants' argument that the respondents were in breach of their obligations under the APS, and therefore not entitled to rely on anticipatory breach was rejected by the motion judge. The appellants' argument relies on various factual assertions that the motion judge rejected. The motion judge's findings were

based in the record and open to her. The appellants have not identified errors that would justify our interference.

[12] The appeal is dismissed. The respondents are awarded costs of the appeal in the amount of $10,000, inclusive of HST and disbursements.

"B.W. Miller J.A."
"Gary Trotter J.A."
"J. Copeland J.A."