COURT OF APPEAL FOR ONTARIO

CITATION: Paracha v. Naqi Construction Ltd., 2024 ONCA 816
DATE: 20241105
DOCKET: COA-23-CV-0104

Simmons, Coroza and Sossin JJ.A.

BETWEEN

Shazia Tariq Paracha, Tariq Paracha and Shabana Zain

Plaintiffs (Respondents)

and

Naqi Construction Ltd., Rabia Batool, and Muhammad Ali

Defendants (Appellants)

Tariq Wasey Khan, for the appellants

Rosemary A. Fisher and Daniel R. Lilko, for the respondents

Heard: October 10, 2024

On appeal from the judgment of Justice Ivan S. Bloom of the Superior Court of Justice, dated December 6, 2022.

REASONS FOR DECISION

OVERVIEW

[1] The appellants, Muhammad Ali and Rabia Batool,[1] appeal from the decision of the trial judge in relation to four residential properties and the costs award of

[1] The third appellant listed, Naqi Construct Ltd., is Mr. Ali's company and is not involved in the relevant transactions in any material way.

$400,000 in favour of the respondents, Tariq Paracha, Shazia Paracha, and Shabana Zain. At the conclusion of the hearing, we denied leave to appeal the costs award because the request for leave was out of time and, in any event, the arguments raised did not meet the high threshold for granting leave. We also dismissed the substantive grounds of appeal for reasons to follow. We now provide our reasons.

[2] The parties were involved in four real estate transactions together: 15 Coomer Crescent, Ajax, Ontario (the "Coomer property"), 63 McSweeney Crescent, Ajax, Ontario (the "McSweeney property"), 9 Sykes Street, Ajax, Ontario (the "Sykes property") and 2137 Saffron Drive, Ajax, Ontario ("the CedarOaks property"). Tariq Paracha and Shazia Paracha (together, "the Parachas") are husband and wife, and Shabana Zain is their relative. Muhammad Ali and Rabia Batool are husband and wife.

[3] The litigation between the parties related to a sum of money (at least $363,000) that the respondents advanced to the appellants. There was no dispute that the funds were advanced to the appellants. The respondents claimed this money was advanced to purchase ownership interests in the above listed properties. The appellants denied the claim and submitted that most of the money was given to them as a loan. The trial judge rejected the appellants' position and found that the funds advanced were not loans but funds to purchase, renovate and sell the properties as investments.

DECISION BELOW AND FINDINGS OF FACT

[4] As there exists no contractual documentation defining the rights and obligations as between the parties with respect to the transactions, the trial judge had to make most of his findings based on the credibility and reliability of witness testimony, including the testimony of Serwat Ahmed, the real estate agent who had assisted with the relevant transactions.

(1) The Coomer Property

[5] There were two issues before the trial judge with respect to the Coomer property. First, whether beneficial interest in the property was shared as between the parties such that the appellants were entitled to a portion of the rent earned from the property, and second, whether the Parachas were owed damages for defective renovation work done by Mr. Ali on the property or, in the alternative, whether the appellants were owed money for Mr. Ali's work as well as the return of tools left at the property as alleged in the appellants' crossclaim.

[6] Upon a review of the parties' evidence, including the testimony of Ms. Ahmed, whom he found credible and reliable, the trial judge found that the property was entirely beneficially owned by the Parachas. He found that Mr. Ali's credibility was "badly damaged" at trial and that Ms. Batool's evidence lacked any details of an existing investment in the property by herself or her husband. The appellants were therefore not entitled to rent earned from the property.

[7] With respect to Mr. Ali's renovation work, the trial judge found that the contract for this work had been made orally. He noted that in the absence of specifications in the contract, work that is "not of reasonable workmanlike quality" constitutes a breach of said contract.

[8] Both parties proffered expert opinions as to the quality of Mr. Ali's work. As the Parachas' experts had conducted independent inspections of the property and their evidence was not damaged in cross-examination, the trial judge preferred their evidence over the evidence adduced by the appellants' experts who either had not conducted independent inspections or presented unreliable testimony. Finding that the appellants had failed to establish the value of any tools left at the property or that the Parachas had prevented them from retrieving said tools, and had failed to establish that they completed the renovation to "a standard of reasonable workmanlike quality", the trial judge dismissed the appellants' counterclaim.

(2) The McSweeney Property

[9] The McSweeney property was purchased in Ms. Batool's name. It was agreed that Mr. Ali did renovation work on the property. The property was subsequently sold and the appellants and the Parachas each claimed exclusive entitlement to the proceeds of sale.

[10] The trial judge once again considered the evidence of Ms. Ahmed and found that her evidence confirmed the evidence of the Parachas that they alone funded the purchase and renovation of the McSweeney property. He applied the doctrine of resulting trust and concluded that the Parachas were entitled to the proceeds of sale.

(3) The Sykes Property

[11] The Sykes property was held in the appellants' names until its sale. The respondents claimed that they were entitled to 75% and 25% of the proceeds, respectively (75% to the Parachas and 25% to Ms. Zain). The appellants claimed instead that the Parachas held no beneficial ownership in the property and the proceeds were to be divided with 70% to themselves and 30% to Ms. Zain. Accordingly, they also claimed 70% of the rent earned from the property before its sale.

[12] The trial judge accepted the evidence of the appellants and Ms. Ahmed and apportioned the interests of the parties as follows: Ms. Zain held 25%, the Parachas held 52%, and the appellants held 23%. He found the testimony of the Parachas and Ms. Zain to be precise and consistent as compared to the testimony of the appellants, who he found "lacked enough precision to be convincing". The trial judge accepted the evidence of Ms. Zain that the property had never been rented out and thus dismissed the appellants' claim for monies from rent.

(4) The CedarOaks Property

[13] At the time of trial, CedarOaks was the primary residence of the appellants. Title to the property is held in Ms. Batool's name.

[14] The Parachas claimed that the parties had made an oral agreement with respect to the CedarOaks Property. They claimed that the parties had agreed the property would be bought in Ms. Batool's name, but the beneficial interest would be held equally as between the Parachas and the appellants as tenants in common. Further, they claimed the parties had agreed that Ms. Paracha's name would be added to the legal title later, but the appellants went back on their agreement after the fact and refused to do so.

[15] The appellants, in turn, claimed that no such agreement existed and claimed they were the sole legal and beneficial owners of the CedarOaks property. In the alternative, they argued that if the Parachas were found to have beneficial interest in the property any such interest should be reduced because of the significant sum of money spent by the appellants on upgrades to the property.

[16] The trial judge found the testimony of Ms. Ahmed as well as Darren Brand, an employee of the builder of the CedarOaks property, to be determinative of the issue. Ms. Ahmed's testimony aligned with Ms. Paracha's testimony that Ms. Paracha invested in the property with the understanding that she would be added as a purchaser to the purchase agreement later. Mr. Brand testified that the

sales agent prepared an amendment to the purchase agreement to add Ms. Paracha as a purchaser (all three testified that Ms. Paracha could not sign at the time because of a planned trip to Pakistan). The trial judge recognized that the appellants had attacked Mr. Brand's evidence as hearsay but held that since the appellants had not raised the argument as an objection to the admissibility of the evidence, their argument went only to the weight of the evidence. Regardless, the trial judge found that Mr. Brand's testimony was bolstered by the unsigned draft amendment which was admitted into evidence and confirmatory of his account.

[17] The trial judge found that the Parachas and the appellants had contracted to buy the CedarOaks property in equal shares as tenants in common and that the contract was enforceable. Based on that contract, Ms. Paracha paid half of the downpayment for the property. The ownership structure of the contract did not change based on the payments made by the appellants towards upgrades to the property. Moreover, the appellants flouted the contract between the parties by moving into the home and treating it as entirely their own beneficially.

ANALYSIS

[18] The appellants now raise several grounds of appeal. It is not necessary to outline each ground of appeal. Suffice it to say that the appellants claim that the judgment must be set aside because the trial judge misapprehended the evidence,

failed to consider relevant evidence, failed to resolve contradictory evidence, and did not provide adequate reasons for disregarding the evidence of the appellants.

[19] We disagree with the appellants' submissions. In effect, the appellants, on appeal, ask this court to re-try the case. That is not our task. The trial judge made detailed findings of fact and he specifically noted that Mr. Ali's credibility was badly damaged at trial and that Ms. Batool's credibility was similarly damaged by other witnesses.

[20] The standard of review for questions of fact and mixed questions of fact and law is highly deferential; an appellate court will only interfere with such findings if there has been a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

[21] In this case, the appellants have failed to file all the evidence attested to in their Certificate of Completeness, leaving this court without the full record. Based on the evidence before this court, the appellants have failed to demonstrate any error that would displace the deference owed to the trial judge's findings.

[22] The appellants also raise for the first time on appeal an argument that was not made at trial. They argue that pursuant to ss. 4 and 9 of the *Statute of Frauds*, R.S.O. 1990, c. S.19, agreements concerning an interest in land must be evidenced in writing and signed by the parties and, if not, are void and unenforceable at law. The appellants submit that the trial judge erred in rendering

his decision regarding the CedarOaks Property when he accepted the formation of an oral contract for an interest in the property.

[23] We reject this argument. Putting aside for the moment that the absence of a written contract would be no answer to the trial judge's decision with regard to the CedarOaks Property as s. 10 of the *Statute of Frauds* carves out an exception to s. 9 to permit the recognition of trusts that arise out of implication or construction of law, the appellants' argument is a new issue that was not raised at trial and, as mentioned above, the appellants have not filed the complete record of transcripts from the trial.[2] It is incumbent on the party seeking to raise a new argument before this court to persuade us that "the facts necessary to address the point are before the court as fully as if the issue had been raised at trial" (internal quotations omitted): *Svia Homes Limited v. Northbridge General Insurance Corporation*, 2020 ONCA 684, 7 C.C.L.I. (6th) 1, at para. 25. The appellants have put before this court only a subset of the transcripts of the evidence. Portions of the evidence related to the CedarOaks transaction including the Parachas' evidence is missing. The

[2] Section 9 of the *Statute of Frauds* states "[s]ubject to section 10, all declarations or creations of trusts or confidences of any lands, tenements or hereditaments shall be manifested and proved by a writing signed by the party who is by law enabled to declare such trust, or by his or her last will in writing, or else they are void and of no effect." Section 10 states "[w]here a conveyance is made of lands or tenements by which a trust or confidence arises or results by implication or construction of law, or is transferred or extinguished by act or operation of law, then and in every such case the trust or confidence is of the like force and effect as it would have been if this Act had not been passed."

absence of this material without any explanation is fatal to this new ground of appeal and we decline to consider it.

DISPOSITION

[24] For these reasons, the appeal is dismissed, and leave to appeal costs is denied. The respondents are entitled to costs of the appeal fixed in the amount of $25,000 all-inclusive.

“Janet Simmons J.A.”
“S. Coroza J.A.”
“L. Sossin J.A.”