

CITATION: Leanne Homes Limited v. Singh, 2024 ONSC 6634
NEWMARKET COURT FILE NO.: CV-24-00000475-0000
DATE: 20241127

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Leanne Homes Limited, Plaintiff

AND:

Avtansh Singh, Gurmeet Singh, and Parneet Kaur Dhunna, Defendants

BEFORE: The Hon. Madam Justice A. Casullo

COUNSEL: Mr. Paras Anand, for the Plaintiff

Mr. Stuart Reddington, for the Defendant Avtansh Singh

No one appearing for the Defendants Gurmeet Singh or Parneet Kaur Dhunna

HEARD: November 13, 2024

ENDORSEMENT

Overview

- [1] In the main action, the plaintiff homebuilder, Leanne Homes Limited (“LHL”), seeks recovery of damages, including loss of market value, reduction in resale value, expenses, fees, and carrying costs from the defendants for breach of an agreement of purchase and sale, more particularized below.
- [2] On this motion, LHL seeks an interim, interlocutory injunction against the defendant, Avtansh Singh (“Avtansh”), prohibiting him from selling the property located at 6491 Edenwood Drive, Mississauga (the “Mississauga Property”). Avtansh owns the Mississauga Property with Simranjeet Chabra Singh as tenants-in-common.
- [3] In the alternative, should the Mississauga Property be sold, LHL seeks an order that the proceeds of sale be held in trust, or paid into Court, pending the conclusion of this action.
- [4] LHL submits that if the injunction is not granted, it will have no means to recover any judgment it may obtain in the main action.

Background

- [5] On May 23, 2021, the three defendants executed an Agreement of Purchase and Sale (“APS”) with LHL for the purchase of a new home in Shelburne, Ontario (the “Shelburne

Property”). The sale price was \$1,182,990, for which the defendants paid a \$170,000 deposit.

- [6] LHL delivered to the defendants two Notices of Unavoidable Delay in 2022.
- [7] On June 6, 2023, LHL set a firm closing date of January 18, 2024.
- [8] Over this period of time, the defendants requested extensions, which LHL granted.
- [9] The defendants did not close on the scheduled closing date of January 18, 2024, and the APS was terminated on January 22, 2024.
- [10] LHL has not returned the \$170,000 deposit.
- [11] LHL issued its statement of claim on January 29, 2024.
- [12] Gurmeet Singh and Parneet Kaur Dhunna, who are spouses, were initially represented by Mr. Reddington. They have since absconded (the “Absconding Defendants”). LHL was successful in obtaining a Mareva injunction against the Absconding Defendants under a separate court action (CV-24-00000417).
- [13] It is LHL’s evidence that the Absconding Defendants have been depleting the equity in their properties with a view to defeating LHL’s ability to recover damages. LHL seeks to paint Avtansh with the same brush.

Positions of the Parties

- [14] LHL submits that Avtansh is attempting to liquidate his assets in his efforts to sell the Mississauga Property through the Multiple Listing Service (“MLS”) and private sale.
- [15] It is LHL’s position that it will suffer irreparable harm if the injunction is not granted. Moreover, the balance of convenience, and the interests of justice, favour the granting of the injunctive relief.
- [16] Avtansh submits that LHL has failed to mitigate its losses, as the Shelburne Property is not yet listed for sale. Further, LHL has failed to provide particulars of any damages it has suffered.

Evidence on the Motion

- [17] Avtansh bought the Mississauga Property in order to provide a home for himself and his new wife while awaiting completion of the Shelburne Property. He and his wife continue to reside there.
- [18] In his affidavit sworn in response to LHL’s motion, Avtansh said he has no intention of selling the Mississauga Property.

- [19] During cross-examination on his affidavit, Avtansh advised that he tried to sell the Mississauga Property on the MLS in anticipation of the January 18, 2024 closing date but did not get any showings or offers. He has not listed it since.
- [20] The only evidence in support of LHL’s contention that Avtansh is trying to sell the Mississauga Property is an undated MLS listing. In any event, Avtansh did not deny he tried to sell the Mississauga Property.

Discussion

- [21] The only issue to be determined by this court is whether LHL has satisfied the test for an interim injunction. The leading authority in respect of injunctions remains *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, which provides the following three-part test that a moving party must meet at pp. 348-349:
- a) Is there a serious issue to be tried;
 - b) Will the applicant suffer irreparable harm if the injunction is not granted; and
 - c) Where does the balance of convenience lie?

Serious Issue

- [22] In *RJR-MacDonald*, the Supreme Court held that a “serious issue to be tried” is a low threshold, and this aspect of the test is satisfied as long as the action is neither frivolous nor vexatious.
- [23] This test is met here. The plaintiff has a strong *prima facie* case for breach of contract.

Irreparable Harm

- [24] What is the nature of the harm LHL will suffer if the injunction is not granted? LHL suggests that any judgment obtained will be hollow if Avtansh and the Absconding Defendants dissipate all of their assets.
- [25] It is on this branch of the test that LHL’s motion fails. In the absence of any quantification of damages, what irreparable harm will LHL suffer? The record is silent in this regard. In other words, there is no evidence to suggest what LHL’s damages might be, or whether they will even exceed the \$170,000 deposit.
- [26] When asked what steps LHL has taken to sell the Shelburne Property in order to crystalize its loss, counsel advised that efforts to sell on both the MLS, and privately, have been unsuccessful. I reminded counsel that this evidence was not properly before the court. Counsel asked for an opportunity to submit a further affidavit outlining LHL’s efforts to mitigate its damages. That request was denied.

- [27] While this is not a summary judgment motion, on any motion, the moving party has an obligation to put their best foot forward. This is particularly so when the moving party seeks to prohibit the responding party from performing a particular act.
- [28] I did permit counsel to submit, after the motion was concluded, any cases he could find in which a court had granted an injunction in the absence of quantifiable damages. These cases, which I have reviewed, are distinguishable.
- [29] For example, in *Christian-Philip v. Rajalingam*, 2020 ONSC 1925, 58 C.P.C. (8th) 146, there was no evidence that the defendants had the means to satisfy any judgment obtained by the plaintiff. In this case, LHL has the \$170,000 deposit from which it can recoup its losses.

Balance of Convenience

- [30] Which of the parties before the court will suffer the greater harm if the interlocutory injunction is granted or refused?
- [31] I find that Avtansh would suffer the greater harm. LHL seeks to estop him from dealing with one of his primary assets, albeit one he owns only as a tenant-in-common.

Conclusion

- [32] On the facts of this particular case, LHL's motion for an interim injunction is dismissed.
- [33] In light of my findings, particularly in respect of the irreparable harm test, this is also not an appropriate case in which to grant any of the additional or alternative relief sought by LHL, as set out in paragraphs 2-12 of the Notice of Motion.

Costs

- [34] If the parties are unable to agree on the costs of this motion, they may reach out to my judicial assistant, Nicole Anderson (nicole.anderson@ontario.ca), to arrange a short costs hearing via Zoom.
- [35] If it assists the parties in reaching a consensus, I anticipate awarding costs to Avtansh in the vicinity of \$3,500. Of course, this position is imparted without being apprised of any offers to settle the motion.

CASULLO J.

Date: November 27, 2024

