CITATION: Dawood v. Popes Property Holdings Inc. et al, 2025 ONSC 2144
COURT FILE NO.: CV-22-79696
DATE: 2025-04-07

2025 ONSC 2144 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
Fady Dawood	)	C. Argiropoulos, Counsel for the Plaintiff
	)	
	)	
	)	
Plaintiff/Moving Party	)	
	)	
- and -	)	
	)	
	)	
Popes Property Holdings Inc. and Nicholas John Pope	)	M. Radulescu, Counsel for the Defendants
	)	
	)	
	)	
Defendants/Respondents	)	
	)	
	)	
	)	**HEARD:** January 2, 2025

REASONS FOR JUDGMENT

THE HONOURABLE JUSTICE S. ANTONIANI

[1] The Plaintiff brings a motion for summary judgement in relation to its claims against each of the two defendants.

[2] The defendants agree that the matter should be resolved by summary judgment.

[3] The defendants do not oppose the Plaintiff's motion for summary judgment against the corporate defendant Popes Property Holdings Inc.("PPH").

[4] The defendants oppose the granting of the motion for summary judgment against the personal defendant and bring a cross-motion for reverse summary judgment, asking that I dismiss the Plaintiff's claim against the personal defendant Nicholas Pope ("Pope").

[5] The Plaintiff objects to the hearing of Pope's cross-motion for reverse summary judgment, arguing that it was not given sufficient notice of the same.

[6] The herein action alleges that the Defendants breached an agreement of purchase and sale (the "Agreement) relating to property municipally known as 16 Natchez Road, Kitchener, ON N2B 3A5 (the "Property").

[7] On March 11, 2022, the Plaintiff, as seller, entered into an agreement to sell the Property to a third party purchaser (the "Buyer:) for $880,000. It is agreed that the Buyer was entitled to assign the Agreement. The Buyer is not a party to this proceeding.

[8] An Assignment of the Agreement was made on March 18, 2022 ("the Assignment"). The Buyer assigned the Agreement to the corporate defendant, PPH. It is agreed that PPH did not complete the transaction as intended on May 2, 2022.

[9] The Plaintiff listed the Property for sale again and sold it a second time for $710,000. The Plaintiff claims total losses against the defendants, in the amount of $224,610.85.

ISSUES

[10] The issues to be determined on this motion are as follows:

1) Is there a genuine issue for trial or is this an appropriate case for determination by summary judgment?

2) Should the unopposed motion for summary judgment against the corporate defendant be granted?

3) Is the personal defendant liable for failure to complete the purchase? Can this be determined without a trial? If yes, should summary judgment be granted?

4) Should the court entertain the motion for reverse summary judgment? If yes, should reverse summary judgment dismissing the Plaintiff's action as against the personal defendant Pope be granted?

DECISION

[11] The decisions on the issues are as follows:

a) This is an appropriate case for summary judgment.

b) The unopposed motion for summary judgment against the corporate defendant PPH is granted.

2025 ONSC 2144 (CanLII)

c) There is no genuine issue for trial in relation to the personal defendant.

d) The motion for summary judgment against the personal defendant is dismissed.

e) It is appropriate to consider the motion for reverse summary judgment, which seeks to dismiss the Plaintiff's action as against the personal defendant Nicholas Pope.

f) The reverse summary judgment is granted, and the action is dismissed as against Nicholas Pope.

ANALYSIS

Legal Framework: Summary Judgment and Reverse Summary Judgment

[12] Pursuant to r. 20 of the *Rules of Civil Procedure*, R.R.O., Reg. 194, summary judgment may be granted where there is "no genuine issue requiring a trial with respect to a claim or defence."

[13] Rule 20.01 reads as follows:

> ***To Plaintiff***
> (1) A plaintiff may, after the defendant has delivered a statement of defence or served a notice of motion, move with supporting affidavit material or other evidence for summary judgment on all or part of the claim in the statement of claim R.R.O. 1990, Reg. 194, r. 20.01(1).
>
> (2) The plaintiff may move, without notice, for leave to serve a notice of motion for summary judgment together with the statement of claim, and leave may be given where special urgency is shown, subject to such directions as are just. R.R.O. 1990, Reg. 194, r. 20.01(2).
>
> ***To Defendant***
> (3) A defendant may, after delivering a statement of defence, move with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim. R.R.O. 1990, Reg. 194, r. 20.01(3).

[14] Rule 20.04 reads as follows:

> (2) The court shall grant summary judgment if,
>
> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or
>
> (b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied

2025 ONSC 2144 (CanLII)

> that it is appropriate to grant summary judgment. O. Reg. 284/01, s. 6; O. Reg. 438/08, s. 13(2).

[15] The effect of r. 20.04(2) was considered in the landmark case of *Hyrniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, where, at para. 49, the Supreme Court of Canada outlined a three-part test for determining when summary judgement is appropriate. The Court held that there will be no "genuine issue requiring a trial" where it appears that summary judgment (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to those facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[16] The issues to be determined relate to the interpretation of the Agreement, and specifically to the assignment of that Agreement. The Plaintiff agrees that the original Buyer had an unfettered right to assign. The Plaintiff and the Defendants had no direct dealings. The Defendants only dealt with the Buyer. As such, the outcome turns on an interpretation of the assignment and other documents, and does not require findings of credibility in relation to either party.

[17] I find that each motion can be determined on the record before me, and that this is an appropriate case for summary judgment.

The Reverse Summary Judgment Motion

[18] Counsel for the Plaintiff is opposed to this court considering Pope's motion for reverse summary judgement on the basis that it did not have sufficient notice of Pope's intention to request it.

[19] Pope argues that he did raise the reverse summary judgement issue, both in his factum on this motion, and through the case law provided. Pope argues that in any event, if this court believes that it should consider a motion for reverse summary judgement, then the notice issue, if any exists, may be cured by the court giving the Plaintiff notice during the hearing of the motion that the court intends to consider the issue, and allowing the Plaintiff time.

[20] I put counsel for the Plaintiff on notice of my intention to consider the motion for reverse summary judgment. I offered that we could recess to allow counsel to consider and address the issue later. Plaintiff's counsel declined the opportunity to adjourn or stand the matter down, and indicated that he was prepared to address the motion, while maintaining that the court should decline to consider the issue on the basis that he was owed the courtesy of actual notice from the personal defendant.

[21] The defendants' factum did provide factual notice of their intention to seek reverse summary judgment, albeit no formal notice was given via a Notice of Motion. In asking that the cross motion be considered despite the failure to provide formal notice, Pope relies on the decision of the Ontario Court of Appeal in *Graham v. Toronto (City)*, 2022 ONCA 149, at para. 9, wherein the court stated:

> Consequently, where a responding party has not filed a notice of cross-motion that seeks summary judgment against the moving party yet the motion judge intends to grant judgment against the moving

2025 ONSC 2144 (CanLII)

> party, the court must give the moving party some notice of that litigation risk so that the moving party can address it. The lack of such notice may render any resulting reverse summary judgment unfair.

[22] In discussing how a court may ensure that, in the absence of a formal cross-motion, a moving party has notice of the litigation risk of a reverse summary judgment, the court includes the following possibilities in *Graham*, at para. 10:

> …(ii) at the start of a motion hearing, the judge can inquire whether a reverse summary judgment will be sought; (iii) if, during the course of the hearing, the judge forms the view that he or she might grant a reverse summary judgment, the judge should so inform the parties to allow them to respond; or (iv) if, during the course of preparing reasons disposing of the motion the presiding judge forms the view that granting a reverse summary judgment might be appropriate in the circumstances, the judge should so inform the parties and afford them an opportunity to make further submissions.

[23] In the present case, the defendant's factum, uploaded to Case Center six weeks before this motion was heard, specifically references the *Graham* decision at paras. 31 and 33 of the factum, and the factum includes a specific request that the court grant reverse summary judgment, dismissing the case against Pope.

[24] A copy of the *Graham* decision, highlighted as to the passages I have relied on above, is included in the defendant's Book of Authorities, which was also uploaded to Case Center some six weeks before the hearing of this motion.

[25] On my review of the defendant's factum and the highlighted book of authorities, I find that the Plaintiff had reasonable factual notice of the intention to seek a reverse summary judgment. As such, and taking into account the Plaintiff's indication that it was prepared to address the cross motion, I agree that it is appropriate to consider the motion for reverse summary judgment.

The Corporate Defendant

[26] The parties agree that PPH took an assignment of the Agreement from the Buyer on March 18, 2022. Nicholas Pope is the sole director, officer and shareholder of PPH. PPH was not incorporated until 12 days after the assignment, on March 30, 2022. Pope provided the deposit and signed on behalf of the yet to be incorporated PPH. The parties agree that the Buyer had the right to assign, and that the Plaintiff and the Buyer both understood that the assignment was intended to go to PPH, upon its incorporation.

[27] The Agreement, at para. 5 of Schedule A provided as follows:

> The Buyer has the right to change the name of listed buyer(s) on or before closing by providing Seller's lawyer with a signed direction. The Seller shall accept the Buyer's direction of title on closing to

2025 ONSC 2144 (CanLII)

> any such individual(s) and/or entity/entities as directed by the Buyer. So long as such individual(s) and/or entity/entities assumes all of the Buyer's obligations hereunder, the Buyer shall be released of all obligations and liabilities hereunder.

[28] Section 21 of Ontario's *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "*OBCA*") provides that:

> **Contract prior to corporate existence**
> **21** (1) Except as provided in this section, a person who enters into an oral or written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits thereof.
>
> **Adoption of contract by corporation**
> (2) A corporation may, within a reasonable time after it comes into existence, by any action or conduct signifying its intention to be bound thereby, adopt an oral or written contract made before it came into existence in its name or on its behalf, and upon such adoption,
>
> > (a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party thereto; and
> >
> > (b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

[29] Section 21(2) of the *OBCA* does not set out the "manner of adoption," and there is no principled basis for imposing a stringent requirement of formality: see *Design Home Associates v. Raviv*, (2004), 44 B.L.R. (3d) 114, (Ont. S.C.), at paras. 11 and 14., citing *Sherwood Design Services Inc. v. 872935 Ontario Ltd.*, (1998), 39 O.R. (3d) 576 (C.A.). In *Sherwood Design*, Abella J. A. (as she then was) stated:

> These statutory provisions have a very practical purpose in contract negotiations and should be interpreted in light of the realities of what occurs on a day-to-day basis. Individuals may negotiate an agreement in which one or the other, or both, do not wish to incur personal liability. Importantly, one side agrees to forgo security and deal with a shell company. The corporate vehicle to replace the parties may not be immediately available, but it is agreed that once it is in place and adopts the agreement, the individuals on that side of the agreement will have no remaining liability. There is, in those circumstances, no reliance on the individual's covenant, except in the interim. It is not a case of assignment or replacement of a covenant

2025 ONSC 2144 (CanLII)

> by that of a fresh entity requiring scrutiny. That is why a simple notification of intent is all that is required. It is known from the outset that a shell company will be on the other side of the closing and a minimum of formality is required, sufficient in essence to permit the parties to prepare for closing with certain knowledge of who the vendor and purchaser will be, and who will be responsible for a failure to close.

[30] The court in *Jonathan's – Aluminum. v. Retail,* 2015 ONSC 6485, at para. 50, held that factors favouring the adoption of a contract by a corporation under s. 21(b) of the *OBCA* include the following:

a) The contract stated that the individual was signing for a corporation;

b) The incorporation happened within a short time of the contract being signed;

c) The Plaintiff was immediately notified;

d) Both parties were aware of the individual's intention to sign on behalf of the corporation; and

e) All relevant information and forms were in the name of or addressed to the corporation.

[31] Given the fact that PPH appears to have been incorporated specifically for the purpose of adopting the agreement, the facts to consider on the issue of adoption of the contract are limited: the record includes a copy of the Assignment. The Assignment names PPH as the assignee. Pope's name and signature appear on the last page for the assignee. The Buyer is not a party to this action and provided no evidence, but the Plaintiff agrees that it was aware of the Buyer's intention to assign the Agreement, and the Plaintiff was aware specifically that the assignment was to go to PPH. PPH hired counsel to act for it on the purchase of the Property, and counsel for PPH communicated with counsel for the Plaintiff, requesting an extension of the closing date.

[32] By letter dated April 29, 2022, counsel acting on behalf of PPH wrote to counsel for the Plaintiff, requesting an extension of the closing date to May 26, 2022. That letter references only the corporate defendant, PPH, as the client and purchaser. The extension was not granted, and PPH failed to complete the transaction.

[33] On a review of the record, I agree with the parties that there is no genuine issue for trial with respect to PPH.

[34] PPH accepted an assignment of the Agreement, and it failed to complete the transaction. PPH did not produce evidence to challenge the quantum of damages claimed. I find that, on a balance of probabilities, PPH is liable to the Plaintiff for his loss, in the amount of $224,610.85.

Nicholas Pope

2025 ONSC 2144 (CanLII)

[35] Pope is the sole director of PPH. On March 18, 2022, Pope executed the Assignment. The Assignment named PPH as the assignee. As indicated, Pope was not a named party to the Assignment. PPH was incorporated on March 30, 2022. The Agreement did not require the Plaintiff to have notice of any assignments, though it is apparent that, at least after receiving the lawyer's letter on April 29, 2022, the Plaintiff did in fact have notice that PPH was the intended assignee.

[36] Pope admits to having signed the Assignment, on behalf of PPH. In examinations on this motion, the Plaintiff agreed that the original purchaser had the right to assign. The Plaintiff agreed, and it was evident throughout his cross examination, that he knew that PPH was the intended assignee. The Plaintiff stated that he never had any interaction with Pope.

[37] There is no requirement in the Agreement that the seller receive notice of any assignment. The assignment clause simply provides that the "Seller shall accept the Buyer's direction of title on closing to any such individual(s) and/or entity/entities as directed by the Buyer." As such, the seller was not entitled to any assignment-related information in advance of closing.

[38] Pope asserts that PPH adopted the contract from Pope in accordance with s. 21 of the *OBCA,* at which time Pope ceased to be liable under the Agreement.

[39] The parties agree that by operation of s. 21 of the *OBCA*, the assignment from Pope to PPH is valid, despite the fact that PPH was not incorporated until after the assignment. I agree that the totality of the facts here disclose sufficiently that PPH adopted the contract.

[40] The Plaintiff's position that Pope should be found personally liable does not rest on an argument that s. 21 of the *OBCA* does not apply to the facts here. Rather, the Plaintiff argues that the fact that Pope personally signed the Assignment, prior to the incorporation of PPH, and that he likely personally provided the $5,000 deposit, are two factors to be considered in determining whether he should be held personally liable. He suggests that since Pope was the only officer and director of PPH, and therefore he personally made all of the decisions, including decisions which led to the failure of PPH to complete the transaction. On that basis, Pope should be personally liable. Although the Plaintiff did not plead that Pope abused the corporate form or used the corporation as a shield for improper or fraudulent conduct, these submissions amount to a suggestion that the court should pierce the corporate veil.

[41] This is not a case where the facts could support piercing of the corporate veil in Ontario. That test is set out in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A) at pp. 433-34: "courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct."

[42] The fact that a director or officer decided, in that capacity, that a corporation should breach a contract does not amount to the type of improper conduct that justifies piercing the corporate veil, at least where the director or officer could not be sued for the tort of inducing breach of contract: see *FNF Enterprises Inc. v. Wag and Train Inc*., 2023 ONCA 92, 165 O.R. (3d) 401, at para. 24.

2025 ONSC 2144 (CanLII)

[43] The fact that Pope signed the Assignment on behalf of PPH, and/or that he provided the $5,000 deposit personally do not alter the assessment. As the only officer of the corporation, it is self evident that Pope would have to sign all documentation on behalf of PPH. This is the exact scenario anticipated by the provisions of s. 21 of the *OBCA*. There are no facts pled which suggest that the new corporation was incorporated and then used as a shield for improper conduct.

[44] In my view, the wording in the Agreement between the Plaintiff and the Buyer regarding assignment is entirely permissive, and the possibility that the Agreement could be assigned to a shell corporation with no assets was a clear possibility.

[45] I do not find that any of the additional issues raised, if proven, would demonstrate fraud or improper conduct on the part of Pope, sufficient to vest him with personal liability.

[46] In particular, I find all arguments in relation to possible issues that Pope may have had with the existing tenant at the Property, and whether or not the tenant in fact threatened that he would not vacate the property, or whether it was intended that the tenant be assumed by the purchaser, are not relevant to the issue of whether Pope has personal liability.

[47] The Plaintiff argues that "at no time did the defendants make the plaintiff aware that financing to purchase the subject property would be obtained by any individual or entity other than the defendants themselves." The Plaintiff also alleges that PPH had an undisclosed partner. There is no provision in the Agreement requiring the seller to be made aware of financing arrangements, and whether the Buyer or assignee was acting on its own accord or on behalf of another Buyer, and whether the assignee had partners. These issues are not relevant to a consideration of the possible personal liability of Pope.

[48] I find specifically that whether or not Pope failed to advise the Plaintiff of the fact that PPH had a partner, or that the partner was an individual named Colin MacDonald, and whether Colin MacDonald was going to be responsible for arranging the financing, are all irrelevant to the issue of Pope's personal liability. There are no facts pled to suggest that the financing arrangements did not materialize on account of fraudulent or improper conduct on the part of Pope.

[49] The Plaintiff was not new to real estate purchases, having owned at least two properties prior to the property which is the subject of this proceeding. The Plaintiff agreed in cross examination that he understood that the initial purchaser was planning to assign the sale to PPH. The Agreement does not require consent from the seller before assignment, nor does it require personal covenants or other security from any assignee.

[50] Pope argues that he is not a proper defendant as there is no privity of contract between the Plaintiff and Pope, and that there is no juristic reason to pierce the corporate veil. I agree.

[51] There will be judgment against PPH. When it failed to close the transaction, it breached the Agreement, and as such is liable to the Plaintiff. I do not find that PPH had any responsibility to disclose its partners, shareholders, or its intentions regarding financing to the Plaintiff. It had an obligation to complete the purchase, and it did not so do.

[52] On a balance of probabilities, I find that no liability lies with Nicholas Pope personally.

2025 ONSC 2144 (CanLII)

ORDER

[53] Judgment is granted in favour of the Plaintiff as against the corporate defendant Popes Property Holdings Inc., in the amount of $224,610.85.

[54] The action is dismissed as against Nicholas Pope.

COSTS

[55] I would urge the parties to agree on costs. If the parties are unable to agree, then costs submissions may be made as follows:

a. Within 15 calendar days of the distribution of these reasons to counsel, the defendants Popes Property Holdings Inc. and Nicholas Pope shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers;

b. The Plaintiff Fady Dawood shall serve and file its responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 25 calendar days of the distribution of these reasons;

c. The defendants' reply submissions, if any, are to be served and filed within 30 calendar days of the distribution of these reasons, and are not to exceed two pages;

d. If no submissions are received within the times allocated by either party, said party shall be deemed to have no submissions; and

e. If no submissions are received by either party, the parties will be deemed to have resolved the issue of the costs, and costs will not be determined by me.

_____

S. Antoniani J.

Released: April 7, 2025

2025 ONSC 2144 (CanLII)

CITATION: Dawood v. Popes Property Holdings Inc. et al, 2025 ONSC 2144
COURT FILE NO.: CV-22-79696
DATE: 2025-04-07

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Fady Dawood

Plaintiff/Moving Party

- and –

Popes Property Holdings Inc. and Nicholas John Pope

Defendants/Respondents

REASONS FOR JUDGMENT

S. Antoniani, J.

Released: April 7, 2025

2025 ONSC 2144 (CanLII)