CITATION: Arista Homes (Boxgrove Village) Inc. v. Ding, 2025 ONSC 2581
NEWMARKET COURT FILE NO.: CV-19-00139549
DATE: 20250428

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Arista Homes (Boxgrove Village) Inc., Plaintiff

AND:

Ding Ding, Defendant

BEFORE: The Hon. Madam Justice A.A. Casullo

COUNSEL: Sukhdeep Gill, Ed Hiutin, for the Plaintiff

Quinn Giordano, Leon Li, for the Defendant

HEARD: April 17, 2025

ENDORSEMENT

Overview

[1] This action arises out of a failed real estate transaction. The Plaintiff, Arista, brings this summary judgment motion seeking a declaration that the full deposit, paid pursuant to the Agreement of Purchase and Sale ("APS"), is forfeited to it.

[2] The Defendant, Mr. Ding, seeks relief from forfeiture of the deposit.

Background

[3] On September 6, 2016, Mr. Ding agreed to purchase 101 Luzon Avenue, Markham, Ontario from the Arista. The purchase price was $1,386,286.92. Mr. Ding paid a $100,000 deposit, plus a further $7,280.68 for extras, for a total deposit of $107,280.68.

[4] The APS was not conditional on financing.

[5] The closing date was scheduled for November 1, 2018. At Mr. Ding's request, the closing date was extended to November 30, 2018.

[6] Mr. Ding failed to complete the transaction on November 30, 2018.

[7] Arista eventually resold the property for $1,380,000, sustaining a $6,286.92 loss. With carrying and other costs factored in, Arista's total damages were $27,788.42.

[8] Mr. Ding concedes that Arista sustained damages in the amount of $27,788.42.

[9] Mr. Ding also concedes that Arista is entitled to recoup its losses from the $107,280.68 deposit.

[10] Thus, it is the providence of the remaining $79,492.26 that is to be determined by the Court.

Positions of the Parties

Arista

[11] The issue to be determined – forfeiture of the deposit monies under the APS – is amenable to summary judgment. This is particularly so in light of Mr. Ding's concession that he breached the APS, and his agreement on the quantum of damages sustained by Arista.

[12] On the facts before the court, Arista is *prima facie* entitled to the deposit. Where a transaction involving the sale of land does not close due to a purchaser's default, the general rule is that the vendor is entitled to retain the deposit. Damages need not be proven.

Mr. Ding

[13] Arista would benefit from an unwarranted windfall should it be permitted to retain the entire balance of the deposit, which far exceeds its actual damages.

[14] Pursuant to s. 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, Mr. Ding asks that he be granted relief against forfeiture of the deposit. Mr. Ding proposes that the $79,492.26 be used to satisfy Arista's legal fees and any accrued interest, and that the remaining balance be returned to him.

Summary Judgment

[15] I am satisfied that on these particular facts that there is no genuine issue requiring a trial. Summary judgment is an appropriate vehicle to determine whether the deposit should be forfeited to Arista, or whether Mr. Ding should be entitled to relief from forfeiture.

Relief from Forfeiture

[16] Counsel agree that the test for relief from forfeiture can be found in *Stockloser v. Johnson*, [1954] 1 All E.R. 630, as articulated in *Gagliardi v. Al-Karawi*, 2023 ONSC 6853, at para. 44:

a. The sum forfeited must be out of all proportion to the damage; and

b. It must be unconscionable for the seller to retain the money.

[17] In *Gagliardi*, Chown J. conducted a welcome review of the jurisprudence concerning relief from forfeiture, concluding that in cases where a sale falls through owing to the buyer's default, it is all but impossible for the buyer to recover the deposit.

[18] I turn now to the first branch of the *Stockloser* test, and whether the sum forfeited is out of proportion to the damages sustained by the moving party. Here Arista sustained, at best, *de minimis* damages. In instances of little-to-no damages, courts will apply the principal of proportionality to the amount of the deposit itself. In other words, I must consider whether the deposit is proportional to the purchase price. In this case, the $107,280.68 deposit represents 7.7 percent of the purchase price.

[19] Deposits of 8.3 percent, 20 percent and 25 percent have been found to be proportionate: *McGregor v. Tucci*, 2021 ONSC 4379, para. 18; *Azzarello v. Shawqi*, 2018 ONSC 5414, at para. 66.

[20] I find that the deposit falls within the reasonable range, and Mr. Ding has not satisfied the first branch of the test.

[21] I turn now to the second part of the *Stockloser* test, and consider whether it would be unconscionable for Arista to retain the deposit. As the Court of Appeal noted in *Redstone Enterprises Ltd. v. Simple Technology Inc*., 2017 ONCA 282, 137 O.R. (3d) 374, at para. 25: "the finding of unconscionability must be an exceptional one, strongly compelled on the facts of the case."

[22] Where there is no flagrant disproportionality between the purchase price and the deposit, the court looks to other indicia of unconscionability: inequality of bargaining power, a substantially unfair bargain, the relative sophistication of the parties, the gravity of the breach, the conduct of the parties, etc. The list of indicia is not a closed one: *Redstone*, at para. 30.

[23] Mr. Ding relies on a recent Court of Appeal decision to ground his request for relief from forfeiture. In *Naeem v. Bowmanville Lakebreeze West Village Ltd*., 2024 ONCA 383, the Court of Appeal upheld the motion judge's ruling which granted Ms. Naeem relief from forfeiture. However, *Naeem* is readily distinguishable. The builder was a sophisticated homebuilder. In contrast, the buyer was a vulnerable widow who was working two jobs while undergoing cancer treatment. The motion judge, Cameron J., was critical of the builder's conduct, finding that it deliberately misled Ms. Naeem to believe she had no choice but to follow a course of action which ultimately led to the breach.

[24] The indicia of unconscionability do not apply here. Mr. Ding was not a vulnerable buyer who might be easily misled by Arista. He was a sophisticated party who referenced his professional expertise in his dealings with Arista. He willingly entered into the APS. He was represented by a solicitor in the lead-up to the closing date. Through his solicitor Mr. Ding requested not only an extension to the closing date, but tried to negotiate a vendor take-back mortgage on his own terms. He did not allege that the bargain he entered into was unfair, or that there was any inequality of bargaining power. The sole issue for Mr. Ding was financing.

[25] Having failed to satisfy the court that permitting Arista to keep the deposit would be unconscionable, Mr. Ding has failed part two of the *Stockloser* test.

Conclusion

[26] The motion for summary judgment is granted, and the $79,492.26 deposit is forfeited to Arista.

Costs

[27] I understand that the costs of this motion will be a hotly contested issue. While the parties are urged to agree on costs, if they are unable to do so they may contact the trial coordinator to request a two-hour costs hearing before me.

[28] Prior to the costs hearing, counsel shall upload to Case Center written submissions as follows:

- Arista's submissions five days prior to the costs hearing;
- Mr. Ding's submissions three days prior to the costs hearing.

[29] Submissions on costs are limited to three pages, plus necessary attachments (i.e., offers to settle, bills of costs, etc.).

CASULLO J.

Date: April 28, 2025