

CITATION: Inamdar v. Zhang, 2025 ONSC 4210
COURT FILE NO.: CV-25-746568
DATE: 20250716

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
PARVEZ PEERPASHA HUSENI) *Michael Myers & Parjot Benipal, for the*
INAMDAR) Applicant
)
Applicant)
)
– and –)
)
LIN ZHANG) *Allen Chao-Ho Chang & Helena Yiran*
) *Shao, for the Respondent*
Respondent)
)
)
) **HEARD:** July 15, 2025

2025 ONSC 4210 (CanLII)

LEIPER J.

REASONS FOR DECISION

Introduction

[1] The Purchaser, Parvez Peerpasha Huseni Inamdar (the “Purchaser”) seeks to rescind an Agreement of Purchase and Sale, dated May 15, 2025 (“APS”) based on a restrictive covenant he discovered after he signed the APS.

[2] The APS is for the sale of the property municipally known as 2527 Bayview Avenue, Toronto, Ontario (the “Property”) for which the Purchaser has paid a \$150,000 deposit and a total purchase price of \$2,300,000.

[3] The Seller advertised the Property, which is ½ acre of vacant land in the Bayview/York Mills area of Toronto in these terms:

Prestigious Vacant Land In Bridle Path Community! Build Your Dream Estate Located In Toronto’s Elite Bridle Path Community (C12). This Extraordinary Lot Boasts An Impressive 109.88 Ft Frontage, Providing The Perfect Setting To Build Your Custom Dream Home Renowned Designer Richard Wengle’s Approved

Drawings Are Available, Allowing You To Construct A Nearly 6,000 sq. ft. Luxury Residence Plus A Basement And A 3-car Garage. Surrounded By Multi-million-dollar Estates, This Property Offers Unmatched Prestige And Exclusivity. Located Just Moments From Bayview Avenue, And You Will Enjoy Convenient Access To Top Private Schools Such As Crescent, TFS, And Havergal, As Well As The Prestigious Granite Club, Golf Courses, Parks, Shops, Restaurants, Sunnybrook Hospital, And Major Highways, All While Being Part Of One Of Torontos Most Sought-after Neighbourhoods. With A Competitively Priced Lot And A highly Motivated Seller, This Is A Rare Opportunity To Bring Your Vision To Life In A World-class Community. Property Tax Assessment Is Not Yet Received, Only Estimated!

(a) Sold As Is, Where Is. Start Building Your Dream Estate Today! To Explore This Exceptional Offering And Make Your Dream Home A Reality!

[4] The closing date on the transaction is July 18, 2025, two days from today.

[5] The Purchaser intended to develop the property and construct a multi-unit townhouse or condominium. It is common ground that he did not make his intentions known to the Seller until after the APS was signed.

[6] However, during negotiations, the Purchaser made two initial offers that were not accepted. Each of these offers had a condition which read:

“This Agreement of Purchase and Sale shall be conditional until 5:00pm of 22nd May, 2025 and within this time frame Purchaser will work on all of the following conditions:

(a) the Purchaser at its own cost and expense conducting the necessary due diligence to confirm that the Property can be developed in a way that is economically feasible in the sole and absolute discretion of the Purchaser including but not limited to, the Purchaser’s ability to obtain suitable financing for the acquisition and development of the Property and appropriate zoning; ...”

[7] The Purchaser chose to remove this clause from the ultimate offer which formed the basis of the agreed upon APS, making it an unconditional offer.

[8] In 2023, Hongyu Zhang registered a restrictive covenant to run with and bind the land, pursuant to s. 119 of the *Land Titles Act*, R.S.O. 1990, c. L.5. The covenant, AT6279367, was registered on February 10, 2023. It reads:

The owner(s) of Parcel 1 and Parcel 2 and their successors in title from time to time, (collectively, the “Owners”) will observe and comply with the restrictive covenants set forth below:

1. Only one single detached house may be permitted to be constructed on each of Parcel 1 and Parcel 2, and no application shall be made by the Owners to rezone either of Parcel 1 or Parcel 2 nor shall any of the Owners make application to the Committee of Adjustment of the City of Toronto or such other authorities, municipal or provincial, to permit more than one single detached house to be constructed on each of Parcel 1 and Parcel 2.

These restrictive covenants shall expire thirty-five (35) years from the date of registration of this Application to Annex Restrictive Covenants, and shall have no force or effect thereafter.

[9] The Seller, Lin Zhang (the “Seller”) seeks to have this application dismissed on the basis that the Purchaser is not entitled to rescission. The Seller submits that he was not advised of the Purchaser’s intentions and points out that the Property was advertised as a prime lot for building a single detached house. The Seller submits that he made no misrepresentations to the Purchaser which could support a remedy in rescission.

[10] Both the Purchaser and the Seller rely on section 10 of the APS in support of their relative positions. Section 10 stipulates:

10. TITLE: Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Purchaser and any mortgagee, (with all related costs at the expense of the Seller), and which Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating

Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Purchaser shall be conclusively deemed to have accepted Seller's title to the property.

[Emphasis added]

The Issue

[11] There is a single issue in this Application. Is the Purchaser entitled to rescission because of the restrictive covenant?

The Relevant Law

[12] Rescission is an equitable remedy, which may be applied to negate an agreement entered under inequitable circumstances, such as duress, undue influence, illegality, fraud, misrepresentation, mistake or frustration: *Urban Mechanical Contracting Ltd. v. Zurich*, 2022 ONCA 589 at paras. 35-39.

[13] Depending on the circumstances, a purchaser may be entitled to rescind an agreement of purchase and sale on the basis that a seller failed to disclose an easement or restriction on title in an agreement of purchase and sale: *McLean v. Crotty*, 2018 ONSC 6211 at paras. 21-26; *Savo and Robichaud v Moursalien*, 2016 ONSC 3326 at paras. 44-58.

[14] In cases involving the condition of a property and an unconditional purchase, the courts have found that absent "fraud, mistake or misrepresentation, a purchaser takes existing property as he finds [it].": *Cotton v. Monahan et al*, 2010 ONSC 1644 (CanLII) at para. 44.

[15] The maxim, "caveat emptor, qui ignorare non debuit quod jus alienum emit", which translates as "let the purchaser, who ought not to be ignorant of the amount and nature of the interest, exercise proper caution" applies to the purchase and sale of real property: *Outaouais Synergist Inc. v. Lang Michener LLP*, 2013 ONCA 526 at para. 68. A vendor is protected by this maxim, so long as they do not disclose partial information that by the absence of the whole truth, becomes false: *Outaouais Synergist Inc.* at paras. 77-78.

Analysis

[16] The Purchaser makes several submissions in support of his request for rescission of the APS.

[17] First, he submits that section 10 of the APS only exempts *restrictive* covenants that run with the land, from the requirement to transfer "good title" which is free from restrictions, charges, liens and encumbrances. He submits that this is a positive covenant, given that it requires that once an owner chooses to construct a dwelling on the lands, that such dwelling must

be a “single detached house” in accordance with the registered covenant. The Purchaser submits this is a positive obligation, not a restriction.

[18] I disagree. The wording of the covenant is restrictive. It limits construction but does not require there to be any construction on the vacant lot being transferred. As such, it does not impose a positive obligation to build anything. It is only once the owner of the Property chooses to build on the land that the limits apply. Under the plain wording of the covenant, an owner may only construct a single detached dwelling, must refrain from seeking rezoning, and must refrain from applying to the Committee of Adjustments for permission to build other than a single detached dwelling. These are restrictions on what an owner may do, not requirements for what an owner must do.

[19] I find that the covenant is fairly described as a “restrictive covenant” and comes within the phrasing of s. 10 of the APS. As such, the cases dealing with undisclosed easements such as *McLean v. Crotty* and *Savo and Robichaud v Moursalien*, do not assist the Purchaser, given the specific reference here in the APS in the case at bar, to excepting registered restrictive covenants that run with the land.

[20] The Purchaser submits that even if this is a restrictive covenant, the Seller has not met the remaining term of s. 10 of the APS, which requires compliance with the covenant. There is no building on the land which is in violation of the restrictive covenant. The parties disagree as to whether a response is required to the outstanding requisition to know whether there is a pending rezoning application or application to the Committee of Adjustments. That issue has not entirely been crystallized given that there remain two days until closing. On the record before me, and prior to closing date, I cannot conclude that the restrictive covenant has not been complied with such that it provides a remedy in rescission to the Purchaser.

[21] Finally, the Purchaser submits that rescission as an equitable remedy is available because given the price he paid, the nature of the Property, and the local trends in properties being similarly developed in this area of the City, the Seller ought to have told him of the existence of the unusual restrictive covenant registered against the Property.

[22] I accept that the Purchaser has been taken by surprise in learning of the restrictive covenant. I accept that this may have had an impact on his business plans for developing and reselling multiple units on the Property. However, the Purchaser did not disclose to the Seller his intentions for the property prior to signing the APS. He did not ask if there were any limitations on development. The Seller was not required to actively inquire into the Seller’s intentions or to divine from the negotiated price that the Seller must have had a certain kind of development in mind.

[23] The Seller actively marketed the Property as a lot to build “Your custom Dream Home” and referred to specific plans for a 6,000 square foot “Estate”. He used phrasing that included “As Is, Where Is.” The Seller made no representations that the Property could be built out with anything but a single, very large, home. Indeed, his emphasis in the listing describing a

particular type of building might fairly lead a prospective purchaser with other ideas in mind to ask the question (prior to signing an APS) whether there could be any problem in building something other than a detached home. His use of the term “As Is” with reference to vacant land is also an interesting choice. This was a hint that any purchaser was accepting the Property, with positives and potentially negatives, associated with it, without fully spelling out what they were. As it turns out, there was a negative, the lawfully registered restrictive covenant, which was easily available to anyone who did a title search.

[24] Given the price paid for this land and the Purchaser’s plans to act as the developer of townhouses there, I infer that he is not an unsophisticated party. He could have inserted terms into the APS to protect himself from registered restrictive covenants that might interfere with his plans. His initial offers included a condition that permitted time to exercise due diligence and find out if the property could be developed in a way that was “economically feasible.” He chose to remove this condition, and in doing so, he accepted a measure of risk. Perhaps he thought he was getting a bargain by purchasing this amount of land for the price, making it worth the risk. Having discovered after the fact that there was a registered restrictive covenant on title, he now asks the court to relieve him of the bargain that he made in clear terms, and having turned his mind initially to an alternative means to protect his financial interests. The doctrine of *caveat emptor* applies: the Purchaser chose not to exercise caution that he knew was available to him to insist upon or forego the purchase.

[25] It is true that the Purchaser did not tell the Seller of his plans for the land before the APS was signed. But the Purchaser had included conditions in his first two offers permitting him to assess the economic viability of “development.” This was a clue that the Seller was dealing with a developer. He sat silent and waited for an unconditional offer, knowing of the restrictive covenant. His choice, which I have found was not actively deceptive, has nevertheless led to litigation and injected uncertainty into the transaction. While he may not have crossed the line, he certainly edged up against it. He could have avoided litigation by being more upfront about the existence of the restrictive covenant, if he was truly pricing the Property to only attract buyers interested in building a single family, detached home.

Conclusion

[26] The Application is dismissed. If the parties are unable to agree as to costs, they may make written submissions within 15 days of the date of release of this endorsement, maximum 3 pages, via of judicial assistant Ms. Giordano (michelle.giordano@ontario.ca).

Leiper J.

Released: July 16, 2025

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