

Court of King's Bench of Alberta

Citation: Singh v Park Royal Homes, 2025 ABKB 538

Date: 20250918
Docket: 2203 05960
Registry: Edmonton

Between:

Sawan Preet Singh

Plaintiff

- and -

Park Royal Homes, Park Royal Homes (2016) Ltd, Park Royal Marketing Ltd, 1981072 Alberta Ltd, Milestone Group of Companies, Milestone Builder Group, Marcson Homes, Jane Doe, John Doe, ABC Corporation and XYZ Corporation

Defendants

**Memorandum of Decision
of the
Honourable Applications Judge B.W. Summers**

Introduction

[1] This case deals with an agreement to build and sell a house which was purportedly terminated by the Defendant builder. The Plaintiff purchaser claims specific performance or damages for breach of contract as he did not get the house. The Defendant applies to have the Plaintiff's Certificate of Lis Pendens removed from the title to the subject property.

Facts

[2] A written agreement was entered into between the Plaintiff, as purchaser and “Park Royal Homes, an Alberta Corporation” as seller and builder (“Park Royal”) dated 15 March 2021 (“Purchase Contract”). Under the Purchase Contract Park Royal covenanted to build a home on a specified lot (“Home” and “Lot” respectively).

[3] Key provisions in the Purchase Contract included the following:

- (a) Construction of the Home shall be completed “utilizing a fixed price contract” and the price shall be \$429,645.05;
- (b) “The Purchaser acknowledges Change Orders will affect the timing of construction and may cause delay to which the Builder will not be responsible”;
- (c) Construction under the Purchase Contract is anticipated to commence and be substantially complete approximately 6 to 10 months after issuance of the Building Permit;
- (d) “The Builder and the Purchaser agree that should the Builder not be able to commence construction within a period of sixty (60) days from the date of this Contract due to causes beyond the Builder’s control, such as, inability to obtain necessary permits, inability of a developer to convey title, failure of the Purchaser to qualify for a mortgage or failure to comply with provincial or municipal statutes, then the Builder may cancel this Contract on written notice to the Purchaser. The Builder’s liability to the Purchaser shall be limited to the refund of monies paid by the Purchaser to the Builder after deducting any reasonable and necessary expenses incurred by the Builder prior to cancellation.” (“Clause 23”);
- (e) Any dispute under the Purchase Contract shall be submitted to mediation prior to any other dispute resolution process (“Clause 24”); and
- (f) The written contract is the entire agreement between the parties.

[4] The Plaintiff paid the deposits and waived the financing condition precedent under the Purchase Contract.

[5] The Plaintiff became concerned about the lack of progress on the Home and wrote to the President and CEO of Park Royal on May 11, 2021. The Plaintiff was called back by Park Royal’s general manager, Colin Wilson (“Wilson”) on May 12 and 13, 2021. Wilson advised that lumber prices had increased, that the cost to build a garage had doubled and Park Royal wished to return the Plaintiff’s deposit and avoid the agreement. The Plaintiff rejected Wilson’s suggestion and expressed his expectation that Park Royal would fulfil its obligations under the Purchase Contract.

[6] The parties entered into written change orders between June 2021 and March of 2022, apparently primarily related to a “legal basement suite” for the Plaintiff and his wife, as they intended to rent out the upstairs to generate the income required to pay the mortgage on the Home. However, it should be noted that the Plaintiff testified in questioning on affidavit that his wishes in this respect were conveyed to Park Homes long before the change orders and the delays were due to Park Homes’ “horrible horrendous customer service”.

[7] The purchase price increased as a result of the change orders, although there appears to be disagreement as to the amount of the increase. The Plaintiff submits that the “extras” were approximately \$3,000.00, resulting in a contract price of \$432,649.00. The Defendants say that the change orders increased the price by \$21,153.00, to a total of \$454,281.45, factoring in taxes.

[8] Park Royal received the requisite building permit. The Plaintiff says that it was issued on January 18, 2022. Park Royal says that the building permit was issued on or about March 1, 2022.

[9] On March 3, 2022 Wilson sent a letter to the Plaintiff by email entitled “Cancellation Notice of Job #1999 MC”. That letter stated:

First, I want to thank you for choosing Park Royal Homes to build your new home. The past year has been unprecedented on several levels, first with the Covid-19 Pandemic, and then with material price increases and shortages.

Typically we endeavour to ask our trade partners to lock in their pricing, so we can pass along great value to the consumer. What we are now experiencing are supply issues, coupled with rampant material price increases, all while dealing with processes which have been slowed down through working through the pandemic. Many of our trades and suppliers are notifying us that they are simply unable to hold our original pricing at historic levels.

Our purchase and sale agreement, under section #23, states that if we are unable to start your home for over 60 days, we do have the right to cancel the agreement. To put things in perspective for you, given all the increases that have occurred, the base price of your house model is now \$328,050 as compared to \$261,864 when you purchased. That represents a total increase of \$66,186! This amount makes it impossible to begin the construction of your home, and we unfortunately must exercise our right and cancel as per section 23.

As a good faith gesture, we would be willing to proceed if you were willing to cover \$49,639.50 of the increase amount. We apologize for the inconvenience and realize that this may or may not be possible for you to accommodate. Even though section #23 makes provisions for reasonable and necessary deductions to be made from the deposit, we are prepared to waive that right and refund your deposit in full.

If you choose to proceed, we want to be transparent that the road ahead has some foreseeable bumps in it. According to the national office of the Canadian Home Builder’s Association, “closing times on houses is now delayed across the country an average of 6 weeks” due to material shortages. While it is impossible to predict what future shortages may exist, if these numbers hold true, our historical build time would shift from 6.5 months +/- from basement to possession to 8 months +/-.

I will reach out to you again personally, to see what you have decided, and to arrange for the necessary paperwork.

(“Wilson’s Letter”)

[10] The Plaintiff sent an email reply on March 11, 2022 that stated:

Hello Collin (sic),

As per clause #3 in schedule A, we are in a fixed price contract.

I do not believe your reasons that you are citing apply within clause # 23.

As per clause # 24: DISPUTE RESOLUTION, I am invoking my right to peaceful mediation.

I look forward to your prompt email response.

[11] By letter to the Plaintiff dated March 15, 2022 the lawyers for Park Royal responded:

We are the solicitors for Park Royal Homes Ltd (“Park Royal”). We have reviewed the Purchase Contract dated March 15, 2021 (the “Contract”), Park Royal’s letter dated March 2, 2022 and your email correspondence dated March 11, 2022.

Park Royal has elected to terminate the Contract pursuant to clause 23 due to causes beyond Park Royal’s control. As the Contract has been terminated, Clause 24 no longer has any effect.

Park Royal has offered a discounted price adjustment to avoid the necessity of Clause 23 termination. Please provide your election directly to Park Royal, or to the undersigned by March 31, 2022. Subsequent to that date, we will deem your lack of response to constitute an agreement to terminate the Contract, and will bring an Application to pay your deposit funds into Court.

We look forward to receipt of your election.

(“Lawyer’s Letter”)

[12] The Plaintiff commenced this action by Statement of Claim filed on April 19, 2022. The Statement of Claim asserted that the Defendants had repudiated the Purchase Contract, but the Plaintiff had not and would not accept that repudiation. The Statement of Claim sought specific performance and damages. A Certificate of Lis Pendens (“CLP”) was issued by the Court on the same date.

[13] Six days after the Plaintiff commenced this action an email was sent to the Plaintiff attaching a Plan Set and Plot Plan for the Plaintiff’s signature, with respect to the Purchase Contract. That email had a logo for Marcson Homes and came from the email salesadmin@milestonebuildersgroup.com. The Plaintiff signed and returned the Plan Set and Plot Plan.

[14] The Plaintiff’s Statement of Claim was amended two times on May 17, 2022. The amendments related to adding Defendants related to the Defendants named in the original Statement of Claim.

[15] The CLP was filed against title to the Lot on June 8, 2022.

[16] On June 14, 2022 lawyers for the Defendants wrote to the lawyer for the Plaintiff and confirmed that Clause 24 applied to the dispute between the parties and invited the Plaintiff’s proposal for mediation. The lawyers for the Defendants also sent an offer to sell the Home to the Plaintiff for the price of \$506,402.93 without prejudice to the Plaintiff’s right to claim damages of \$66,186.00. The Plaintiff did not accept that offer.

[17] On June 21, 2022 Park Royal Homes (2016) listed the Lot for sale and continued construction of the Home. Construction of the Home was completed in December 2022.

[18] The Plaintiff looked into buying another house, but could no longer afford to do so given the increase in house prices.

[19] On December 5, 2022, the Defendants filed an application to strike the portions of the Plaintiff's claim relating to specific performance and for a stay of the action pending mandatory mediation ("Defendants' Application");

[20] A Statement of Defense was filed on January 27, 2023. That pleading included the following:

- (a) Park Royal Homes is the trade name of the Defendant Park Royal Homes (2016) Ltd;
- (b) The owner of the Lot was the Defendant 1981072 Alberta Ltd ("198");
- (c) The Lot is not unique but part of the McConachie neighbourhood;
- (d) The Plaintiff directed changes to the Home between March 2021 and March 2022 that increased the purchase price to \$454,281.45;
- (e) Park Royal Homes was unable to commence construction of the Home for over a year due to causes beyond its control, including the Plaintiff's change orders delayed the obtaining of the necessary permits, as well as substantial delays in the housing industry such as availability of trades and supply chain issues, which coincided with the COVID-19 pandemic; and
- (f) On June 14, 2022 Park Royal Homes invited the Plaintiff to engage the dispute resolution mechanism in the Purchase Contract and offered to amend the Purchase contract for \$506,402.93, without prejudice to the Plaintiff's right to claim damages in contract.

[21] On February 3, 2023, the Plaintiff filed an application for summary judgment.

[22] On May 2, 2024 Park Royal Homes (2016) Ltd ("Park Royal 2016") and 198 filed a Counterclaim for damages arising from the filing of the CLP against title to the Lot. The Plaintiff's Statement of Defense to Counterclaim was filed May 15, 2024.

[23] Affidavits have been filed by both sides and questioning conducted with respect to some affidavits.

The Defendants' Application to discharge the CLP

[24] The thrust of the Defendants' Application was that the CLP should be removed from title to the Lot since the Plaintiff would never be entitled to the remedy of specific performance. They say that there is nothing unique about the Lot and there is no evidence that a substitute would not be available. They also argue that the Plaintiff would not be able to obtain the remedy of specific performance as the Plaintiff would not be able to close the sale as he has not established that he could get financing at a higher price. The Defendants have referred the Court to a number of cases that deal with specific performance: *Semelhago v Paramadevan*, [1996] SCR 415; *Remington Development Corporation v Canadian Pacific Railway Company*, 2022 ABKB 692; *Strategic Acquisition Corp v Multus Investment Corporation*, 2013 ABQB 462; *Fitzpatrick v*

Boschee, 2006 ABQB 72; *De Sena v Allure Homes Ltd*, 2002 ABQB 561; and *Poirier v Diamond Key Homes Ltd*, 2009 ABQB 139.

[25] The Plaintiff referred to *Lucas v 1858793 Ontario Inc (Howard Place)*, 2021 ONCA 52. In that case the Ontario Court of Appeal confirmed that the plaintiff purchaser was entitled to the equitable remedy of specific performance in large part due to the conduct of the seller who purported to resell the property to the seller's relatives on favourable terms. That case is not binding upon me and is clearly distinguishable on a factual basis.

[26] I referred counsel for the Plaintiff and counsel for the Defendants to my Memorandum of Decision in *Gillson Homes Ltd v Chopra*, 2024 ABKB 82. In that case I denied the would-be purchaser specific performance on the basis that the subject contract was for construction of a house on the subject lot and the relationship between the parties was such that specific performance of such a contract was not realistic. Furthermore, I anticipated that the parties would be back before the courts many times dealing with building and cost issues as the construction progressed.

[27] In this case, the Plaintiff (who was present in the courtroom) orally stated during argument that the house constructed on the Lot in this case was the same as the one that he had directed (implying that specific performance was still available). However, there was no evidence before me on this point and counsel for the Plaintiff indicated in argument that "specific performance was not my client's election anymore". Counsel for the Plaintiff stated that at this stage the preferred remedy for his client appeared to be damages.

[28] Given the position of the Plaintiff, as stated by his counsel, it is apparent that specific performance is no longer being pursued. Consequently, I direct that the CLP be discharged from title to the Lot.

[29] In their brief, the Defendants sought a declaration of entitlement to damages against the Plaintiff for wrongfully filing and maintaining the CLP. The Defendants' filed Application did in fact seek compensation from the Plaintiff under s 149 of the *Land Titles Act*. That section states:

149 A person filing or continuing a certificate of *lis pendens* without reasonable cause is liable to make compensation to any person who may have sustained damage by that filing or continuation.

[30] Counsel for the Plaintiff argued that his client had the right to elect to pursue specific performance or damages as his remedy right up to the time of trial and consequently, there is nothing wrong with the position that the Plaintiff has maintained to this point in time.

There is a lack of evidence before me as to how long the Plaintiff has known that he would not be pursuing specific performance and whether the Plaintiff should be liable for damages. There is no evidence of damages suffered by any of the Defendants. Accordingly, I defer the Defendants' claim for damages for consideration to a future hearing, discussed below.

The Plaintiff's Application for summary judgment

[31] Counsel for the Plaintiff says that this is a case where it is appropriate that the Plaintiff's claim for damages for breach of contract should be determined summarily. He refers to paragraph 47 in the Court of Appeal's decision in *Weir-Jones Technical Services Inc v Purolator Courier Ltd*, 2019 ABCA 49.

[32] The position of the Plaintiff is this: the Purchase Contract was a fixed price contract that Park Royal found to be improvident as cost prices increased; Park Royal wanted to get out of the Purchase Contract because of the price increases; Park Royal purported to terminate the Purchase Contract under Clause 23; that attempt to terminate was unlawful since Clause 23 does not allow for termination for price increases under this fixed price contract; the purported termination was a wrongful repudiation of the Purchase Contract; and consequently Park Royal is liable to the Plaintiff for breach of contract.

[33] The language used by counsel for the Plaintiff to describe what happened here includes “what Park Royal attempted was a “stickup for another \$50,000”; Park Royal’s attempt to use Clause 23 was “disingenuous”; its conduct was “over the top”; and the “case shouts out bad faith”.

[34] The Defendants say that Park Royal did not act in bad faith, but legitimately used Clause 23 to terminate the Purchase Contract. The Defendants also say that the record is not sufficient such that the case may be fairly determined summarily.

[35] The Defendants refer to the evidence provided by representatives of Park Royal. Firstly, Wilson stated in his affidavit (at paragraph 9):

Construction of the home did not commence for over a year. The delay was due to substantial delays across the housing industry including the availability of trades and Park Royal Homes’ suppliers dealing with staff shortages, supply chain issues and rapid price fluctuations, all of which coincided with the emergence of the COVID-19 pandemic.

[36] Secondly, the Defendants refer to the affidavit of the president and CEO of Park Royal 2016, Miles Kohan filed February 9, 2023, which stated in part (at paragraph 10):

In addition to the issues in Mr. Wilson’s Affidavit outside the control of Park Royal Homes that contributed to the delay over one year in commencing construction of the home, such as the labour and material supply issues, Park Royal Homes was unable to obtain necessary permitting ie the building permit.

[37] The affidavit of Miles Kohan further provides numerous pieces of evidence asserting why factual statements made by the Plaintiff are incorrect. By and large, these statements by Mr. Kohan are hearsay referring to things that he said were related to him after the fact.

[38] The starting point in considering the Plaintiff’s claim for breach of contract is Wilson’s Letter. Although it states “...we (Park Royal) unfortunately must exercise our right and cancel as per section 23”, it goes on to say that “(a)s a good faith gesture, we would be willing to proceed if you were willing to cover \$49,639.50 of the increased amount”.

[39] If Wilson’s Letter is a termination of the Purchase Contract, it is a qualified termination. It is qualified by allowing the Plaintiff to undo the termination by agreeing to pay more money.

[40] If Wilson’s Letter putting forward a qualified termination is a repudiation of the Purchase Contract, as alleged by the Plaintiff, the Plaintiff did not accept that repudiation. The Plaintiff responded that Park Royal’s use of Clause 23 was not valid and pursuant to Clause 24 he was invoking his right to peaceful mediation. This is an affirmation of the Purchase Contract.

[41] The Lawyer’s Letter sent in response to the Plaintiff said that his client had terminated the Purchase Contract “pursuant to Clause 23 due to causes beyond Park Royal’s control” and

consequently “Clause 24 no longer has any effect”. That letter went on to note: “Park Royal has offered a discounted price adjustment to avoid the necessity of Clause 23 termination. Please provide your election directly to Park Royal, or the undersigned by March 31, 2022. Subsequent to that date, we will deem your lack of response to constitute an agreement to terminate the Contract, and will bring an application to pay your deposit funds into Court.”

[42] The Lawyer’s Letter is confirmation that Park Royal’s termination was a qualified termination.

[43] The Plaintiff responded to the Lawyer’s Letter by commencing this action and filing the CLP.

Breach of the Purchase Contract

[44] At the very heart of this case is the question as to whether Park Royal breached the Purchase Contract when it put forward a qualified termination in Wilson’s Letter and repeated that qualified termination in the Lawyer’s Letter. An underlying question is whether the evidence is such that I can determine summarily the issue as to whether there was a breach of contract by Park Royal.

[45] I can see where Park Royal thought that it could use Clause 23 a year after entering into the Purchase Contract because it had taken that long to get a building permit brought about by changes requested by the Plaintiff. But Clause 23 states that the Builder is entitled to terminate “for causes beyond its control”. Clause 23 provides examples of causes beyond the builder’s control and increases in price are not included.

[46] Conversely, it is clear that the Plaintiff put great reliance on the Purchase Contract being a “fixed price contract”.

[47] I think that the interpretation of Clause 23 must include the fact that the Purchase Contract was stated to be a fixed price contract and price increases to the Builder are not included as an example as to something beyond Park Royal’s control.

[48] The Defendants put forward evidence to suggest that the termination was brought about by delays beyond Park Royal’s control such as obtaining a building permit one year after the Purchase Contract was entered into and problems with supply chain issues. But these are causes suggested after the fact. What speaks volumes is that Park Royal’s termination was a qualified termination. Park Royal was willing to carry on completion of the Purchase Contract, if the Plaintiff just agreed to pay more. This suggests that the purported termination was not beyond Park Royal’s control.

[49] I think that the evidentiary record is such that I can make a fair and just determination on this issue of liability on the record before me. The evidence clearly establishes that Park Royal’s purported termination, a qualified termination seeking a higher price, was a breach of the Purchase Contract.

[50] At this stage, I must address who among the Defendants may be liable for breach of the Purchase Contract. Apparently, Plaintiff’s counsel named every party whose name appeared in the documents. But this does not make them liable.

[51] The Defendants say that Park Royal 2016 was the proper party to the Purchase Contract, although it was not correctly described as such in the Purchase Contract. Plaintiff’s counsel does not dispute that Park Royal 2016 is the party liable under the Purchase Contract.

[52] The Plaintiff's claim against any other of the Defendants is just not tenable. There is just no evidence of liability on their parts. If specific performance were still a potential remedy, then a claim against 198 as the registered owner of the Lot would be considered. But with the Plaintiff's abandonment of the remedy of specific performance a potential *in rem* claim against 198 disappears.

[53] The Plaintiff's application for summary judgment against Defendants other than Park Royal 2016 is dismissed.

[54] The Plaintiff has put forward the affidavit of Mark G. Jones, CPA for the Plaintiff's calculation of damages as a result of Park Royal 2016's breach of the Purchase Contract ("Damages Calculation Report"). I find that affidavit an unsatisfactory proof of damages because it contains many assumptions of fact that are in dispute or are not in evidence, including the following:

- (a) There is a dispute as to the value of extras requested by the Plaintiff in change orders. The Plaintiff says that it was \$3,000.00 and Park Royal says that it was \$21,153.00;
- (b) There is not adequate evidence of comparable house prices. Simply noting the change in Park Royal 2016's list price of the subject Home and Lot or an offer that Park Royal 2016 made to the Plaintiff in Wilson's Letter does not prove the loss that the Plaintiff suffered as a result of the breach;
- (c) The changes in mortgage interest rates are not in evidence; and
- (d) There is no evidence as to fair market rental for the upstairs portion of the Home that the Plaintiff planned to rent out. The expert calculation simply assumes that the number "hoped for" by the Plaintiff represented fair market rental rate.

[55] The final statement in the Damages Calculation Report is: "We note that if the assumptions on which this report were based are found to be incorrect, our Report may be different and subject to revision."

[56] Furthermore, the Plaintiff has not asserted a date of assessment of damages and a reason for picking that date. Rather, the expert's calculations consider the following dates for an assessment of damages: December 31, 2021, March 31, 2022, June 30, 2022, September 30, 2022 and December 31, 2022. The Plaintiff has not suggested a proper date and why that date should be preferred by the Court for the calculation of damages.

[57] The Plaintiff's application for summary judgment against Park Royal 2016 is dismissed for want of evidence on the damages suffered by the Plaintiff.

Conclusion

[58] My conclusions with respect to these cross applications are as follows:

- (a) The CLP is to be discharged from the title to the Lot;
- (b) Whether the Plaintiff is liable for damages for wrongfully filing and maintaining the CLP, and if so, the amount of the damages, is not determined here as the evidence is incomplete on this issue. The Defendants' application in that regard is dismissed, but with leave to adduce further evidence on this issue;

- (c) The Plaintiff's application for summary judgment against any Defendant other than Park Royal 2016 is dismissed;
- (d) Park Royal 2016's qualified termination of the Purchase Contract constitutes a breach of contract;
- (e) The damages that the Plaintiff may be entitled to against Park Royal 2016 for breach of the Purchase Contract is not determined here as the evidence is unsatisfactory. The Plaintiff's application for summary judgment against Park Royal 2016 is dismissed, but with leave of the Plaintiff to adduce further evidence;
- (f) Whether the parties wish to pursue their respective damage claims summarily, or in a mediation or in a trial, I leave to the parties to decide; and
- (g) Costs will be determined at the time of the Court's decision on damages.

Heard on the 29th day of July, 2025.

Dated at the City of Edmonton, Alberta this 18th day of September, 2025.

B.W. Summers
A.J.C.K.B.A.

Appearances:

E. Mark Keohane
E M Keohane Legal Counsel

for the Plaintiff

Taylor Maxston
Stillman LLP
for the Defendants