Court of King's Bench of Alberta

Citation: Moran v 1715664 Alberta Inc, 2026 ABKB 50

Date: 20260122
Docket: 2201 06453
Registry: Calgary

Between:

Douglas Moran and Wendy Moran

Plaintiffs

- and -

1715664 Alberta Inc

Defendant

Reasons for Judgment
of the
Honourable Justice E.J. Funk

A. Introduction and Background

[1] In 2015, the Moran's / Plaintiffs owned 10 units in a condominium complex in Lethbridge, AB. In October of that year, they entered into a contract with the Defendant / numbered company regarding these condo units. Mr. Craig is the owner and sole director of the Defendant / numbered company. He is a member of the Law Society of Alberta; his company drafted the contract that is at issue in these proceedings.

[2] Under the terms of this agreement, the Plaintiffs would transfer title of all 10 units to the Defendant in exchange for $1 and the Defendant assuming the mortgages relating to these units.

[3] The Plaintiffs transferred title of the 10 units to the Defendant. The Defendant subsequently sold five of the units and, with those sale proceeds, discharged the related mortgages. The Defendant continued to hold title to the remaining five units and continued to make the related mortgage payments. Recently, the Defendant sold two more units; the mortgages for which have been, or are in the process of being, discharged. The Defendant continues to hold title to the remaining three units.

[4] The Defendant has not "assumed" the mortgages in the sense of stepping into the shoes as mortgagor with TD bank (the mortgagee). The Defendant has not obtained new financing, as mortgagor, with a different mortgagee. Sometime after transferring title from the Plaintiffs to the Defendant, Mr. Craig advised the Plaintiffs that he cannot qualify for mortgage financing. The Plaintiffs continue to hold, and renew, the mortgages while the Defendant makes the mortgage (and related) payments.

[5] In their Statement of Claim, filed in 2022, the Plaintiffs allege breach of contract and seek specific performance, disgorgement of gains, and damages. In this summary trial, the two issues are:

a. Whether the Defendant is obliged to assume the mortgages on the properties, and if so, the nature of that obligation; and

b. Whether this Court can and will grant specific performance of the contract or order that the properties be sold and the sale proceeds applied to the remaining mortgages.

[6] The evidence in this summary trial consisted of affidavits sworn by Ms. Moran (for the Plaintiffs) and Mr. Craig (for the Defendant) along with two affidavits sworn by Mr. Craig's former paralegal. The evidence additionally consisted of transcripts from Questioning.

[7] The main issues in this summary trial are that of contractual interpretation regarding the phrase to "assume" the mortgages or "assume" the balances owing on the mortgages, the appropriateness of the remedy of specific performance for breach of the contract, if such breach is found, and any implied terms that may be necessary to give business efficacy to this contract.

A. Legal Framework

1. The modern approach in interpreting contracts

[8] The interpretation of contracts has evolved towards a practical, common-sense approach, not dominated by the technical rules of construction. The overriding concern is to determine the intention of the parties and the scope of their understanding at the time of entering the contract. Judges, as decision makers, are to read the contract as a whole, giving words their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time the contract was formed: ***Sattva Capital Corp v Creston Moly Corp,*** 2014 SCC 53 at para 47, cited in ***IFP Technologies (Canada) Inc v EnCana Midstream and Marketing***, 2017 ABCA 157 at para 298.

[9] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by it. The meaning which a document would convey to a reasonable person is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words, against the relevant background, would have reasonably been understood to mean: ***Sattva***, para 48.

[10] The goal, in contractual interpretation, is to ascertain the objective intention of the parties – a fact-specific goal – through the application of these legal principles of interpretation: ***Sattva***, para 49.

[11] The role and nature of the circumstances surrounding the formation of contracts forms part of the evidence that judges can consider when interpreting those agreements. While the surrounding circumstances may be considered in this exercise, they must not be allowed to overwhelm the words of the agreement. The goal of examining the surrounding circumstances is to deepen the judges' understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of any contract must be grounded in the text and read in light of the entire agreement. The surrounding circumstances cannot be used to deviate the court from the text such that a new agreement is effectively created: ***Sattva***, para 57.

[12] The nature of the surrounding circumstances that can be relied on in this analysis will vary from case to case. But it has its limits. It should consist only of objective evidence of the background facts at the time the contract was signed. It consists of knowledge that was, or reasonably ought to have been, within the knowledge of both parties at, or before, the date of signing the contract. Subject to these requirements, and the parol evidence rule, this includes "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable person": ***Sattva,*** para 58.

[13] In this case, the parties have filed affidavits that recite their subjective intentions at the time of signing the contract, and afterwards. The parties' subjective intentions are not objective evidence – their subjective intentions cannot form part of the relevant surrounding circumstances that I may consider in interpreting this contract.

[14] The affidavits also contain the parties' subjective recollections of conversations that took place around the time of signing, and after. Without independent, objective, documentation reflecting these conversations, I am not prepared to consider the parties' subjective recollections as objective evidence of the background facts at the time the contract was signed. Nor am I prepared to consider the conversations and course of conduct that took place after the contract was signed; such evidence (if considered) would run afoul of the parol evidence rule.

2. The equitable remedy of specific performance

[15] Specific performance is an equitable remedy. Its appropriateness in any case is fact dependent. There are varied statements in the law regarding what is required to make out a case for specific performance in the context of a sale of real property. It is common for the courts to consider whether the property is unique; whether it has some special suitability to the plaintiff; and whether a substitute property is readily available. The key inquiry is whether damages are an adequate remedy to serve justice between the parties: ***Pittman Brothers Production Ltd v Evans***, 2024 ABCA 185 at para 15, citing ***Raymond v Anderson***, 2011 SKCA 58 at para 14.

[16] Specific performance is no longer the presumptive remedy in cases involving the sale of land: ***Pittman***, para 16, citing ***Semelhago v Paramadevan***, [1996] 2 SCR 415. The party claiming specific performance bears the burden of demonstrating that damages are not an adequate remedy: ***Pittman***, para 16, citing ***Bethel United Church v North Pacific Properties***, 2022 ABCA 224 at para 130.

B. Analysis

1. The Contract

[17] The contract at issue is a two-page "letter of agreement" that the Defendant / numbered company drafted. In its opening paragraph, the contract states:

> We confirm that [the Moran's] approached [the Defendant] a few months ago requesting that he consider taking over the Properties for the sum of $1.00 plus ***the assumption of the mortgages*** on each of the properties.... accordingly, we wish to document the transaction and confirm the following: [emphasis added]

[18] In numbered paragraphs, the contract continues:

1. [the Plaintiffs and Defendant had no previous dealings prior to this agreement];
2. Titles to the Properties, are being transferred to [the Defendant] for ***the assumption of the balances owing on the mortgages on each of the properties;*** [emphasis added]
3. The [Plaintiffs] confirm that all taxes on the Properties have been paid to December 31, 2015;
4. This transaction will have an effective date of November 1, 2015 and there will be no adjustment for property taxes;
5. [The Plaintiffs] will assist [the Defendant] in dealing with the mortgagees in order to have a new bank account opened from which the mortgagees will deduct the mortgage payments. The [Plaintiffs] will make the November 2015 mortgage payments on the Properties;
6. [The Defendant] confirms that once titles are transferred the [Plaintiffs] will no longer be liable for payment of any monies owing under the mortgages and [the Defendant] will be solely responsible for the same;
7. [The Defendant] indemnifies and holds harmless the [Plaintiffs] for any liability with respect to the mortgages on the Properties once titles have issued; and
8. [paragraphs regarding the waiving of ILA].

[19] Notably, for these purposes, the contract does not define the terms "assumption of the mortgages" and "assumption of the balances owing on the mortgages". The contract is silent regarding the parties' respective obligations once the mortgages that existed on the properties next came due for renewal. The contract contains no remedial clauses in the event either party breached their contractual obligations.

1. What is the meaning of "assumption of mortgages" and "assumption of balances owing on the mortgages" in this contract?

[20] The Plaintiffs urge an interpretation of the contract whereby the Defendant assumes all obligations as mortgagor (or borrower) and releases the Plaintiffs from these obligations.

[21] The Defendant argues the contract only requires it to make the payments on the mortgages, without stepping into any contractual obligations with any mortgagee (or lender). I disagree.

[22] When the parties signed this contract in 2015, there were approximately 23 years remaining on the mortgages' amortization periods. Five (5) of the 10 mortgages were with National Bank; the other five (5) were with TD Bank. The National Bank mortgages were scheduled for renewal at the end of 2016; the TD Bank mortgages were up for renewal in 2016 or 2017.

[23] The practical reality of the Defendant's interpretation would oblige the Plaintiffs (as mortgagors) to continue to remortgage these properties, for the Defendant's benefit. The Plaintiffs (as mortgagors) would be obliged to use their personal credit rating to obtain these mortgages, putting their credit rating at risk in the event the Defendant defaulted on its commitment to make payments on the mortgages. The Plaintiffs, through holding multiple mortgages, would potentially impede their ability to obtain other types of financing. This obligation would remain with the Plaintiffs (as mortgagors) for up to 23 years.

[24] The purpose of this contract was for the Plaintiffs to sell their 10 condo units to the Defendant. The nature of the relationship created by this contract was one of vendor – purchaser, with the purchase price (or consideration) being the balances owing on each of the mortgages. It is within this context that the meanings of the contract's words and phrases must be interpreted. This contractual purpose, and the relationship created by it, is not consistent with the vendor having a continued obligation, for up to 23 years, to hold and renew these mortgages, as mortgagors, with the attendant risks to their credit and impediment on their ability to borrow other funds.

[25] What's more, the contract provides no consideration to the Plaintiffs for their continued obligation to remortgage the properties for the Defendant's benefit. This benefit includes the Defendant enjoying a lower interest rate than if it (or Mr. Craig) held these mortgages as mortgagors. In other words, the Defendant is paying less money in interest because these mortgages have been renewed using the Plaintiffs' credit.

[26] It is trite law that consideration is an essential element of valid contracts. The Defendant's interpretation, if accepted, operates to create an ongoing benefit to the Defendant with no corresponding consideration to the Plaintiffs. This lack of consideration weighs against the Defendant's interpretation of what it means to "assume the balances owing" on the mortgages.

[27] Finally, the Defendant's interpretation requires an implied term that is inconsistent with the factual matrix that existed when the parties entered this contract and the presumed, objective, intentions of the parties.

[28] Implied terms can arise from: 1) custom; 2) the legal incidents of a particular class or kind of contract, or 3) the presumed intentions of the parties, where the term is necessary to give business efficacy to the contract: ***Brandt Industries Canada Ltd v EVRAZ Inc NA Canada***, 2025 ABKB 542 at para 25, citing ***Double N Earthmovers Ltd v Edmonton (City)***, 2007 SCC 3 at para 3, referring to the test set out in ***Canadian Pacific Hotels Ltd v Bank of Montreal***, 1987 CanLII 55 (SCC) at paras 51-53.

[29] There is no evidence before me from which I can conclude the implied term the Defendant urges arises from custom or the legal incidents of this type of contract. Mr. Craig, in his second affidavit, provides evidence regarding real estate transactions he has conducted with other vendors, who are not part of this litigation, in support of his preferred interpretation. Mr.

Craig is not an expert witness in these proceedings. His evidence regarding other real estate transactions does not serve as evidence of custom or the legal incidents of this kind of contract. Accordingly, any implied terms must arise from the presumed intentions of the parties that are necessary to give business efficacy to this agreement.

[30] When implying a term based on the presumed intentions of the parties, "what is important... is a focus on the intentions of the actual parties. A court, when dealing with terms implied in fact, must be careful not to slide into determining the intentions of reasonable parties. This is why the implication of the term must have a certain degree of obviousness to it, and why, if there is evidence of a contrary intention, on the part of either party, an implied term may not be found on this basis". In determining the intentions of the parties, attention must be paid to the express terms of the contract in order to see whether the suggested implication is necessary and fits with what has clearly been agreed upon, and the precise nature of what, if anything, should be implied: ***M.J.B. Enterprises Ltd v Defence Construction (1951) Ltd***, [1999] CanLII 677 (SCC) at para 29 [emphasis in original].

[31] The suggestion here that the parties would have intended for the Plaintiffs to maintain the obligations, and risks, as mortgagors (for up to 23 years) is contrary to what would have been known or contemplated by the parties when they signed this agreement.

[32] The term "assume the balances owing on the mortgages" connotes a greater obligation than merely taking over the monthly payments. I pause here to note the Defendant drafted this contract. The Defendant is in the business of purchasing, and holding, real estate for investment purposes. It strikes me that if the parties intended for the Defendant to merely take over the mortgage (and related) payments, while the Plaintiffs continued to hold, and renew, the mortgages, the Defendant would have chosen different language when drafting this agreement.

[33] When I consider all of these factors, I find the reasonable expectations of the parties would have been for the Defendant, as purchaser, to take over the obligations as mortgagor and release the Plaintiffs, as vendors, from these obligations. There is nothing in the wording of the contract, nor the circumstances surrounding its signing, that persuades me the objective intentions of the parties were to oblige the Plaintiffs to continue to hold these mortgages, for the Defendant's benefit, for the next 23 years.

[34] Because I have resolved the issue of the Defendant's obligation under the contract through the principles of contractual interpretation, there is no need to imply further terms into this agreement on this issue.

[35] The Defendant clearly breached its obligation under the contract. More than 10 years after signing, the Plaintiffs continue to hold the mortgages on the remaining three condo units. The next question is whether the equitable remedy of specific performance can and should be applied to remedy this breach.

2. Is the remedy of specific performance available for the Defendant's breach?

[36] The contract at issue is silent regarding any remedies if the Defendant breached its obligation to assume the balances owing on the mortgages. Without any remedial clause in the contract, the court must imply one.

[37] The Plaintiffs seek an implied term of specific performance of the Defendant's obligation, failing which, the properties should be sold and the remaining mortgages discharged.

[38] Specific performance is a discretionary, equitable, remedy whereby the court orders a party to do what it has contracted to do. The court will typically exercise this discretion only where equitable intervention is both justified by the conduct of the parties and necessary to do justice because an award of damages would not provide the plaintiff with an adequate remedy in the circumstances: Jason W Neyers, *Fridman's The Law of Contract in Canada*, 7th ed (Toronto: Thomson Reuters Canada, 2024) at pp 1003-1008.

[39] The Supreme Court has held that a claim for specific performance will only insulate a plaintiff from the consequences of failing to mitigate its losses where "some fair, real, and substantial justification" exists for the plaintiff's preference for performance over an award of damages: ***Southcott Estates Inc v Toronto Catholic District School Board***, 2012 SCC 51 at paras 35-36.

[40] In ***Semelhago***, the Supreme Court stated that specific performance will be available only where money cannot compensate fully for the loss, because of some "particular and special value" of the land to the plaintiff: ***Semelhago***, para 21.

[41] Since ***Semelhago***, most cases dealing with specific performance in the context of agreements for the sale and purchase of land focus on the "uniqueness" of the property as the yardstick against which the court measures whether damages are an appropriate remedy. This case is an out-liar from those cases.

[42] Here, the Plaintiffs have suffered no monetary losses from the Defendant's continued and ongoing breach of the contract. There is no suggestion that the condo units hold any "particular and special value". Instead, the Plaintiffs argue that the "particular and special" asset at risk is their credit, and the potential impacts on their credit through holding these mortgages for the Defendant's benefit.

[43] Credit, as an asset, means a good history, borrowing power, and debt (when used strategically) as a resource to build wealth, secure favourable borrowing terms, and achieve financial goals. It is about leveraging borrowing capacity for investments like real estate or business growth. A strong credit profile unlocks lower interest rates and broader financial opportunities. Credit is unique.

[44] In this case, the Defendant has relied on the Plaintiffs' strong credit profile as a resource to unlock lower interest rates than what it, as a corporation, or Mr. Craig (as its principal) could otherwise obtain. The Defendant is using the Plaintiffs' credit profile to unlock broader investment opportunities for itself. In so doing, it puts the Plaintiffs' credit profile at risk and reduces the Plaintiffs' borrowing capacity.

[45] It is difficult to imagine how damages are capable of compensating the Plaintiffs for the Defendant's continued and ongoing use of their credit profile.

[46] At the end of the day, one must not lose sight of the nature of the Defendant's breach. The balances owing on the mortgages were the consideration in this real estate transaction. The Defendant received title to the properties; it failed to fulfill its obligation to provide consideration for those properties.

[47] I have already found the reasonable expectations of the parties were for the Defendant, as purchaser, to take over the obligations as mortgagor and release the Plaintiffs, as vendors, from these obligations. The implied term that is necessary to give business efficacy to this agreement is found in the remedy of specific performance: if the Defendant fails to take over the

obligations as mortgagor, it shall sell the properties and discharge the remaining mortgages from the sale proceeds. On the evidence before me, I see no other practical way to give effect to the parties' reasonable expectations.

C. Conclusion

[48] As stated at the outset, the two issues on which this matter was set down for summary trial are:

a. Whether the Defendant is obliged to assume the mortgages on the properties, and if so, the nature of that obligation; and

b. Whether this Court can and will grant specific performance of the contract or order that the properties be sold and the sale proceeds applied to the remaining mortgages.

[49] For the reasons explained, the Defendant's obligation to assume the mortgages includes taking over the obligations as mortgagor and releasing the Plaintiffs from these obligations.

[50] Having interpreted the contract in this way, and having reviewed and considered the relevant authorities, I am satisfied the Court can, and will, grant specific performance of the contract.

[51] Having found the Defendant has breached its obligations under the contract, it is ordered:

1. The Defendant shall secure financing for the properties within 30 days of receipt of these Reasons.
2. If the Defendant fails to secure financing at the end of these 30 days, the Defendant shall forthwith list the properties for sale.
3. The Defendant shall apply the sale proceeds to discharge the remaining mortgages.
4. If the sale proceeds are insufficient to discharge the mortgages, the Defendant shall be responsible for any outstanding amounts necessary to discharge the mortgages.
5. The Defendant shall promptly notify the Plaintiffs when the remaining mortgages are discharged.

[52] The Plaintiffs are entitled to the costs of this action. If the parties are unable to agree on costs, they may write to me within 30 days of receipt of these Reasons. Any written submissions must be accompanied by a Bill of Costs and must not exceed five (5) typed pages, excluding attachments and / or authorities.

Heard on the 8th day of January, 2026.
Dated at the City of Calgary, Alberta this 22nd day of January, 2026.

E.J. Funk
J.C.K.B.A.

Appearances:

Terrance A. Meyers
Achieve Legal
for the Plaintiffs

Cody Melnyk
Craig Law LLP
for the Defendant