

Court of King's Bench of Alberta

Citation: Fiesta Homes Ltd v R & L Investments Inc, 2026 ABKB 339

Date: 20260504
Docket: 2603 06199
Registry: Edmonton

Between:

Fiesta Homes Ltd

Plaintiff

- and -

R & L Investments Inc

Defendant

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

[1] The Plaintiff applied in morning chambers for partial summary judgment. I reserved my decision in order to review the pleadings, affidavits, transcript of cross examination on affidavit and relevant case law.

[2] The Plaintiff was the seller of a four-unit complex ("Property"). The Defendant was the purchaser.

[3] The partial summary judgment sought is to have the real estate brokerage pay the deposit of \$109,250.00 to the Plaintiff on the basis that the Defendant failed to close the transaction and pursuant to the residential purchase contract ("Contract"), the deposit is to be forfeited to the seller.

[4] The Defendant has filed an Amended Statement of Defense and issued third party proceedings against the real estate brokerage and mortgage brokerage that assisted the Defendant with respect to this transaction.

[5] The position of the Defendant in opposing the application for partial summary judgment is that: the Contract was entered into by the Defendant based upon the representation by the Plaintiff that the Property was suitable for CMHC financing (“Representation”); the Defendant entered into the Contract relying upon the truth of the Representation; the Representation was false; and the Plaintiff made the Representation knowing that it was false or recklessly with the intention that the Defendant would act upon the Representation and enter into the Contract.¹ The Defendant seeks rescission of the Contract as a result of the Plaintiff’s negligent and /or fraudulent misrepresentation (“Misrepresentation Allegation”).

[6] The Plaintiff denies the Misrepresentation Allegation, but says that in any event the Court does not need to consider the Misrepresentation Allegation because of the following clause found in section 15.1 of the Contract:

15.1 The seller and buyer confirm that this contract sets out all the rights and obligations they intend for the purchase and sale of the Property and that:

- (a) this contract is the entire agreement between them;
 - (b) unless expressly made part of this contract, in writing:
 - (i) verbal or written collateral or side agreements or representations or warranties made by either the seller or buyer, or the seller’s or buyer’s brokerage or agent, have not and will not be relied on and are not part of this contract; and
 - (ii) any pre-contractual representations or warranties, howsoever made, that induced either the seller or the buyer into making this contract are of no legal force or effect.
- (Entire Agreement Clause”)

[7] In the case of *1234389 Alberta Ltd v 606935 Alberta Ltd*, 2020 ABQB 28 the Court had to consider the application of an entire agreement clause with respect to a sale of land where environmental contamination had not been disclosed. The Court found the seller liable for fraudulent misrepresentation, but her realtors were protected from the purchaser’s claim for negligent misrepresentation because they were protected by the entire agreement clause in the contract.² This case makes it clear that an entire agreement clause will not protect a party that has induced entry into the contract by a fraudulent misrepresentation.

¹ The original Contract was entered into by the principals of the Defendant, but the Contract was later changed to name the corporation as the purchaser.

² Although the seller’s realtors were not liable for negligent misrepresentation, they were found liable on other grounds.

[8] In *Stack v Hildebrand*, 2010 ABCA 108 (“*Stack*”) our Court of Appeal set out the following elements of fraudulent misrepresentation:

[13] The following elements must be proved to establish liability for fraudulent misrepresentation: (1) a false representation or statement made by the representor; (2) which was knowingly false; (3) which was made with the intention to deceive the representee; and (4) which materially induced the representee to act, causing damage: *TWT Enterprises Ltd. v. Westgreen Developments (North) Ltd.* (1992), 1992 ABCA 211 (CanLII), 127 A.R. 353 at para. 14, 3 Alta. L.R. (3d) 124 (C.A.). In *1018429 Ontario Inc. v. FEA Investments Ltd.* (1999), 1999 CanLII 1741 (ON CA), 125 O.A.C. 88, 179 D.L.R. (4th) 268, the Court said that the two components of fraudulent misrepresentation are a false statement, whether made knowingly or recklessly, and reliance on the truth of the statement by the person to whom it is made. For an action in deceit or fraud to lie, the person making the statement must either know the statement to be false, or be reckless as to its truth or falsehood: *Derry v. Peek*, [1889] UKHL 1, 14 App. Cas. 337 at 375.

[9] In the *Stack* case the Court of Appeal found that the chambers judge had erred in failing to consider that recklessness may amount to fraudulent misrepresentation (paragraph 19).

[10] In this case before me, the Plaintiff’s representative Chintan Dipakbhai Patel (“Mr. Patel”) testified in cross examination on affidavit that he was aware of the eligibility requirements under the CMHC MLI Select Program of there being separate water meters and common access to mechanical rooms (which the Property did not have), but the Plaintiff’s broker Keith Shack had advised Mr. Patel, that he had found a way around it.

[11] On the record before me I am not prepared to conclude that the Plaintiff’s Alleged Misrepresentation (that the Property was suitable for CMHC financing) was not made recklessly. It is possible that the Alleged Misrepresentation could amount to a fraudulent misrepresentation.

[12] I add, parenthetically, that upon review of the transcript of Mr. Patel’s cross examination on affidavit, I am very concerned that many questions of Mr. Patel were refused by his counsel as the Entire Agreement Clause made them irrelevant. I disagree with that position put forward by the Plaintiff’s counsel during Mr. Patel’s questioning. Most of those questions went to the state of knowledge and/or belief of Mr. Patel with respect to CMHC’s requirements. For example, Plaintiff’s counsel refused the request of Defendant’s counsel that Mr. Patel check his personal and work email addresses for records pertaining to the CMHC MLI Select Program, resting on the rationale that the Entire Agreement Clause made such an inquiry irrelevant.

[13] The Defendant has pleaded fraudulent misrepresentation. The inquiry into what Mr. Patel knew and communicated about the CMHC MLI Select Program is relevant to that issue before the Court.

[14] Finally, I note that in the questioning of Mr. Patel a contradiction in his communication to the buyer’s real estate agent was noted. In his affidavit Mr. Patel stated that he disclosed to the buyer’s real estate agent that the CMHC MLI Select Program had requirements that the Property did not meet (separate water meters and access to the mechanical room). However, in a text to the buyer’s real estate agent Mr. Patel told the agent that CMHC had not finalized these requirements.

[15] The Plaintiff's application for partial summary judgment is dismissed.

[16] If the parties cannot agree on costs, an application may be made before me in morning chambers within 30 days of the date of this Memorandum of Decision.

Heard on the 20th day of April, 2026.

Dated at the City of Edmonton, Alberta this 4th day of May, 2026.

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

Appearances:

Robert O'Neill KC
DLA Piper (Canada) LLP
for the Plaintiff

Thomas Boyd
McLennan Ross LLP
for the Defendant