

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Grand Bazaar Ala Turk North American Corporation v. Hammad*,
2023 BCSC 841

Date: 20230517
Docket: S2110888
Registry: Vancouver

Between:

Grand Bazaar Ala Turk North American Corporation

Plaintiff

And

Hesham Sulaiman Hammad

Defendant

Before: The Honourable Mr. Justice Thomas

Reasons for Judgment

Counsel for the Plaintiff:

B. Dorst

Counsel for the Defendant:

M.S. Dhanoya

Place and Date of Hearing:

Vancouver, B.C.
April 12-13, 2023

Place and Date of Judgment:

Vancouver, B.C.
May 17, 2023

Table of Contents

INTRODUCTION 3
PRELIMINARY ISSUE – SUITABILITY FOR SUMMARY TRIAL 3
PRINCIPLES OF CONTRACTUAL INTERPRETATION..... 5
FACTS FORMING SURROUNDING CIRCUMSTANCES..... 5
LAW ON OPTIONS TO PURCHASE 7
ANALYSIS..... 9
RELIEF 9

Introduction

[1] This is an application to determine if a residential lease contains an option for the renter to purchase the leased premises from the owner/leser of the property.

[2] The owner says that there is no option to purchase because:

- a) There was no consideration for the option separate from the lease; and
- b) The terms of the option are so vague that the option amounts to nothing more than an option to make an offer, as opposed to an option to purchase.

[3] In my view, there is no need to decide the issue of consideration. I agree with the owner that the option does not amount to an option to purchase.

Preliminary Issue – suitability for summary trial

[4] This is an application for a summary trial in action S2110888 by the defendant whom is the owner of the property. There is a related petition in S230057. Master Dick ordered that this action and the petition be consolidated and heard as one action in court file S2110888.

[5] The parties are of the view that the matter is appropriate to proceed as summary trial at this early stage in the proceedings. The facts are not in dispute. The only issue raised by the application is the interpretation of the contract.

[6] Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 permits a party to apply to the court for judgment by way of summary trial. Rule 9-7(15) provides:

Judgment

- (15) On the hearing of a summary trial application, the court may
 - (a) grant judgment in favour of any party, either on an issue or generally unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

(ii) the court is of the opinion that it would be unjust to decide the issues on the application.

[7] The decision as to the suitability of a summary trial is discretionary. *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 215, 1989 CanLII 229 (C.A.), sets out a number of factors in considering the suitability of proceeding summarily, including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, and any other matters which arise for consideration on this important question.

[8] Caselaw has since added factors including the cost of the litigation, the length of time of the summary trial, whether credibility is a critical factor in determination of the dispute, and whether the application would result in “litigating in slices”: *Dahl v. Royal Bank of Canada*, 2005 BCSC 1263 at para. 12.

[9] In determining suitability, courts should have regard to the objectives of proportionality and efficiency in deciding whether a summary trial is appropriate: *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at paras. 48–49.

[10] The fact that there may be a dispute on credibility does not mean that the matter cannot be dealt with by way of a summary trial: *Arbutus Investment Management Ltd. v. Russell*, 2022 BCSC 72 at para. 44.

[11] A party cannot frustrate an application for judgment by summary trial by failing to adduce evidence, and then arguing that the facts cannot be found: *Gichuru v. Pallai*, 2012 BCSC 693 at paras. 22–25, aff’d 2013 BCCA 60.

[12] In my view, after reviewing all of the evidence, and considering the contractual interpretation issue I am satisfied that this matter is appropriate to resolve by summary trial.

Principles of Contractual Interpretation

[13] The principles of contractual interpretation were set out by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*].

These principles require a contract to be interpreted “as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract.”

The purpose is to determine “the intent of the parties and the scope of their understanding.”

[14] Consideration of the surrounding circumstances recognizes that ascertaining the intention of the parties can be difficult when looking at words on their own because words do not have an immutable or absolute meaning. In *Sattva*, the Supreme Court noted that 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 the agreement.”

Facts forming surrounding circumstances

[15] The defendant is the owner/lesser of the property.

[16] The plaintiff began renting the premises in February 2019 for \$2,900.

[17] At this time the plaintiff indicated he was interested in purchasing the property.

[18] There was some dispute between the parties as to whether the rental agreement applied to part of the premises or the entire premises.

[19] A new lease was signed on January 1, 2020 for a one-year term for \$4,000 per month in rent.

[20] The increase in rent was due to clarification between the parties that the lease applied to the whole house.

[21] The lease noted the address of the premises was 141612 Grosvenor Road. Under the “what is included in the rent section”, it was noted: “free standing house building and adj. suite.”

[22] In December 2020 the parties engaged in further discussions about the plaintiff purchasing the property.

[23] The defendant wanted \$1,600,000 for the property.

[24] The plaintiff could not obtain financing for more than \$1,400,000.

[25] The plaintiff continued to reside in the property paying \$4,000 a month in rent. On January 1, 2022 the term lease converted to a month to month lease.

[26] The plaintiff drafted a new lease agreement. The new lease agreement was eventually signed by the defendant. It contained the following terms:

1 - Definitions

...

b. “Building” means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at 14162 Grosvenor Road Surrey BC V3R 5G8, as from time to time altered, expanded or reduced by the Landlord in its sole discretion

...

24 – General Provisions

...

24.4 With this agreement Landlord/Agent agrees to grant to the Tenant/Agent an irrevocable Option to Purchase the leased premises (the “Property” and/or the “Building”) as described in Clause # 1.1b of this agreement. The total purchase price offered by the Landlord/Agent is CA\$1,600,000. However, the Tenant/Agent may renegotiate a final purchase price at the time of exercising the option.

[27] On October 24, 2021 the plaintiff provided notice pursuant to Clause 24.4 that he intended to exercise his option to purchase. He advised he did not yet have financing but would attempt to organize his financing as soon as possible.

[28] On November 6, 2021 the defendant attempted to terminate the lease to allow his family members to live in the house through an eviction notice.

[29] On December 6, 2021 the plaintiff re-iterated his attempt to exercise the option and provided the defendant with a Contract of Purchase and Sale.

[30] This contract contained numerous clauses pertaining to the sale of the property:

- a) It specifically defines the property to be purchased;
- b) It set out a purchase price and a deposit of \$10.00;
- c) Required a reconciliation of rent with the purchase price;
- d) A requirement that the defendant provide a property disclosure statement;
- e) A statutory declaration of residency and entitlement of the plaintiff to hold back taxes;
- f) A condition, allowing the plaintiff to void the contract subject to clear title on the property and his ability to obtain financing by January 4, 2022;
- g) That the sale contains all furniture and chattels contained on the property;
and
- h) A closing date of January 31, 2022 and a possession date of February 1, 2022.

[31] On May 6, 2022 the Residential Tenancy Branch determined the eviction notice was linked to this action such that a determination of whether an option to purchase had been executed needed to be determined before the validity of the eviction notice could be determined.

Law on Options to Purchase

[32] In *1042056 B.C. Ltd. v. Elegant Alexandra Gate Project Ltd.*, 2018 BCSC 314 Justice Maisonville noted:

[32] The plaintiffs relied upon the decision of Robins J.A., for the Ontario Court of Appeal, who held at page 5 in *Bawitko*:

As a matter of normal business practice, parties planning to make a formal written document the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all of the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by way of memorandum, by exchange of correspondence, or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement containing specific terms and conditions. When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.

[33] It is important to note, however, that Robins J.A. did not stop the analysis at that point and noted that:

... when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. ...

[34] Robins J.A. succinctly summed up:

... In other words, in such circumstances the "contract to make a contract" is not a contract at all.

[33] In *Dulik v. Underwood*, 2007 BCSC 1417 Justice Rogers noted:

[34] It is true that the parties did discuss a sale and that they got as far as agreeing on a price of \$180,000. However, the parties did not agree upon several other elements essential to a contract for the sale of real estate. In point of fact, the parties appear to not have even turned their minds to those elements. Chief among the missing ingredients are closing and possession dates. Also missing from the discussion was any mention of what would happen if Ms. Dulik was unable to earn enough in commissions to pay for the unit. Specifically, the parties did not agree upon by what means the unpaid balance of the purchase price would be paid or how it would be secured, within what timeframe the balance would be paid, or whether interest would accrue on it. These are all terms necessary to a contract for purchase and sale of real estate: *Booth v. Finch*, [1996] B.C.J. No. 2082 (C.A.). Absent those essential elements, the parties' discussions amounted to no more than an agreement to agree. Alternatively, if their discussions generated the skeleton of a contract for the purchase and sale of the condominium, that

contract was void for uncertainty because it was lacking those essential elements.

[35] There was, therefore, no binding or enforceable contract between the parties for the sale of Unit #310 to the plaintiffs. The plaintiffs' claims for title to the Unit and for specific performance cannot, therefore, succeed.

Analysis

[34] In my view Clause 24.4 does not set out sufficient elements of a contract for purchase of land to make the clause an option to purchase. As such, in this case, the clause is simply an option to negotiate and has no legal effect or consequence.

[35] This determination is primarily based on three reasons:

- 1) Clause 24.4 of the option to purchase provides the plaintiff the ability to negotiate a lower price;
- 2) Clause 1.1b provides a vague definition of what is to be purchased and makes it subject to unspecified variation by the defendant; and
- 3) The contract of purchase and sale sets out at least eight additional factors that are important to the sale but are not included in Clause 24.4. In my view, all eight of these factors, with the exception of the \$10 deposit, are essential terms to a contract of purchase of land which are not present in the option.

Relief

[36] I declare that the January 1, 2020 tenancy agreement does not contain an option to purchase the property.

[37] I order the certificate of pending litigation registered under number CA9580061 be discharged forthwith.

[38] In my view, given my determination that there is no option to purchase contained in the tenancy agreement, the dispute over the validity of the eviction notice falls within the exclusive jurisdiction of the Residential Tenancy Branch.

[39] I order the dispute over the eviction notice be remitted back to the Residential Tenancy Branch for resolution.

[40] The defendant applicant has been entirely successful in this summary trial. He would normally be entitled to costs.

[41] If the parties wish to make submissions on costs they can apply to the registry to appear before me.

“Thomas J.”