

COURT OF APPEAL FOR ONTARIO

CITATION: Sky Homes Corporation v. Mah, 2024 ONCA 463

DATE: 20240610

DOCKET: COA-23-CV-0777

Miller, Zarnett and Thorburn JJ.A.

BETWEEN

Sky Homes Corporation

Plaintiff  
(Respondent)

and

Wah Wei Mah\*, Yue Jin Mah\* and Remax West Realty Inc.

Defendants  
(Appellants\*)

Mark A. Russell, for the appellants

Gillian Gondosch and Gerard Borean, for the respondent

Heard: June 6, 2024

On appeal from the order of Justice Hugh K. O'Connell of the Superior Court of Justice, dated June 7, 2023, with reasons at 2022 ONSC 3444.

REASONS FOR DECISION

[1] The parties entered into an Agreement of Purchase and Sale in November 2016 for a residential property in the pre-construction stage. The appellant purchasers provided a deposit of \$250,000, and the purchase price was \$2,421,844.51.

[2] The closing date was initially set for December 5, 2017. The respondent vendor advised in October, 2017 that it would be extending the closing date to February 15, 2018 as the home would not be completed in time. The appellants signed an amendment resetting the closing date to that date. On February 7, 2018, the appellants advised the respondent that they would not be able to close. The respondent terminated the APS on February 15, 2018, and relisted the property the next day. It was ultimately sold nearly 17 months later, at a price \$571,844 lower than the original purchase price.

[3] The respondent vendor brought a motion for summary judgment, seeking, among other heads of damage, the sale price differential and pre-judgment interest accruing at 20%.

[4] The appellant purchasers advanced several arguments in resisting the motion. They argued that the dispute was not amenable for resolution by way of summary judgment, because issues they raised required assessments of credibility. With respect to liability, they argued that because the respondent did not properly amend the APS to change the closing date, and since neither party

was in a position to close on that date, the APS should be considered abandoned and the purchasers should have their deposit returned.

[5] In the alternative, the appellants argued before the motion judge that if they were in breach of the APS, the respondent's claim for damages was excessive because: (1) the sale was improvident — according to their expert, it was effected at a price below market value; (2) the sales efforts of the respondent were unreasonable, since according to their expert it was offered at too high a price resulting in it lingering on the market too long, driving up the pre-judgment interest amount; (3) the 20% rate of contractual pre-judgment interest advanced on the motion had not been pleaded and in any event was not enforceable as it had not been brought to the appellants' attention at the time the APS was signed; and that damages should be limited to \$164, 596.37, including pre-judgment and post-judgment interest.

[6] The motion judge allowed the motion and awarded damages of \$1,074,196.37 plus interest.

[7] The motion judge's analysis, in full, is reproduced below:

There is no basis I find to dismiss the motion for summary judgment.

I find that the defendants breached the APS by failing to close the deal on February 15, 2018. Further, I find that the damages as sought by the plaintiff are payable by the defendants, as amended during the argument before the

court, in the amount of 1,074,196.37, plus applicable interest.

There is no basis to submit this matter to trial or mini trial.

[8] On appeal, the appellants argue the reasons are inadequate as they do not allow for meaningful appellate review. They argue that this court cannot know why the motion judge rejected the appellants' arguments about whether the APS was breached, on what basis he rejected the argument that the sale was improvident or the evidence in support of that argument or both, and why he rejected the argument that the respondent vendor was not entitled to the contractual rate of pre-judgment interest at the rate of 20%.

[9] We agree with the appellants that the motion judge's reasons do not allow for appellate review. The reasons do no more than summarize the parties' positions, and then state the result the motion judge reached. They do not provide any insight into the motion judge's path of reasoning or what factual findings were made to lead to those the conclusion. As in *Farej v. Fellows*, 2022 ONCA 254, at para. 43, with these reasons, "counsel cannot effectively make arguments about the sufficiency of the evidence, the reasonableness of the fact finding, or alleged errors in law because the reasons of the trial judge do not provide the window into the trial judge's conclusions and reasoning process necessary to make those arguments."

**DISPOSITION**

[10] The appeal is allowed and the order vacated. The motion for summary judgment is returned to the Superior Court of Justice to be heard before a different justice on the same record. The appellants are awarded costs of the appeal in the amount of \$14,220, inclusive of HST and disbursements, as agreed between the parties. Costs of the motion below are reserved to the Superior Court.

“B.W. Miller J.A.”

“B. Zarnett J.A.”

“Thorburn J.A.”