CITATION: Reel em Inn and Resort v. RNR Doemel Enterprises et al, 2025 ONSC 805
COURT FILE NO.: CV-20-0206
DATE: 2025-02-13

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
Reel em Inn and Resort at Whitefish Lake Inc.	)	Derek T. Noyes for the Plaintiff
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
RNR Doemel Enterprises, Richard Doemel, and Norma Doemel	)	C. Ryan Bodnar for the Defendants
	)	
Defendants	)	
	)	
	)	**HEARD:** November 12 and 13, 2024.

REASONS FOR JUDGMENT

THE HONOURABLE JUSTICE S. ANTONIANI

OVERVIEW

[1] These reasons follow a two-day trial that proceeded by Simplified Procedure, on November 12 and 13, 2024.

[2] Richard Doemel and Norma Doemel (the "personal defendants") were the owners and operators of RNR Doemel Enterprises, which operated a seasonal general store (the "Suomi General Store") on or near Whitefish Lake in the district of Thunder Bay. The 19 acre property included a store, an ice cream parlour, cabins, and it sold fuel. There was an above ground fuel tank on the property.

[3] The Suomi General Store, land, and related structures (the "Property") was listed for sale in October 2019, when Jacqueline Brousseau and her colleague were driving in the area of Whitefish Lake and noted that the property was for sale.

[4] The Plaintiff's representative, Jacqueline Brosseau, was the principal actor on behalf of the Plaintiff in all matters relating to the purchase of the Property. Over the course of two months the parties negotiated the purchase of the Property by the Plaintiff for $389,900.

[5] The Plaintiff paid a $50,000 deposit, prior to the parties signing the Agreement of Purchase and Sale (the "Agreement") on February 24, 2020. The intended closing date was April 6, 2020.

[6] The transaction was never completed after the Plaintiff discovered that there were outstanding work orders relating to the removal of an underground fuel tank, and the installation of an above ground fuel tank, which had been outstanding since the prior year.

[7] The Plaintiff now seeks:

a) A declaration that the contract is to be rescinded;
b) An order for a return of the deposit in the amount of $50,000, or an order for unjust enrichment in the amount of $50,000;
c) Special damages in the amount of $3768.02;
d) Punitive damages in the amount of $25,000;
e) Pre and post judgment interest; and

f) Costs.

[8] The Defendants counterclaimed for:

a) Forfeiture of the $50,000 deposit;
b) A finding that the Plaintiffs repudiated the contract;
c) $10,000 in costs associated with restoring the property to its original condition after the Plaintiff commenced and then abandoned renovation work;
d) $389,000 in relation to the difference in sale price to a future purchaser (the sale has not occurred as of the date of trial);
e) $10,000 in lost profit; and
f) Costs.

ISSUES

[9] The issues raised in the pleadings and on the evidence are as follows:

a) Should the Agreement be rescinded?
b) Was the Agreement repudiated and, if so, by which party?
c) If the Agreement was repudiated, what amount is required to return the parties to their pre-contract state?
d) If the Agreement was repudiated by the Plaintiff, what damages accrue to the Defendants?
e) If the Agreement was repudiated by the Defendants, what damages accrue to the Plaintiff? And which Defendants bear the liability?

DECISION

[10] For the reasons that follow, I find that the Defendant RNR Doemel Enterprises repudiated the Agreement. I find that the repudiation was accepted by the Plaintiff, and both parties thereafter

understood that the Agreement was terminated. As a result, the Defendant RNR Doemel Enterprises is required to return the $50,000 deposit to the Plaintiff.

[11] I find that Richard and Norma Doemel were unjustly enriched by their personal receipt and use of the deposit, and as such are jointly and severally liable to return the $50,000 to the Plaintiff.

[12] I find that, even if the Defendant had not repudiated the Agreement, it made false representations to the Plaintiff, of such significance to fundamental conditions of the Agreement, that the Plaintiff would have been entitled to equitable rescission of the Agreement, despite the existence of a whole agreement clause.

[13] All other claims, by either party, are dismissed.

BACKGROUND

[14] Many of the facts between the parties are not at issue.

[15] Both parties, in coming to and documenting the Agreement, acted without representation from lawyers or real estate agents. After negotiations, the Plaintiff paid a $50,000 deposit. At the request of the Defendants, the deposit was in the form of a cheque made payable to the personal defendants.

[16] Following payment of the deposit, the parties entered into the Agreement, in writing, on February 24, 2020. The Agreement was set out on a standard Ontario Real Estate Association ("OREA") form.

[17] Despite the Agreement requiring that the deposit be held in trust (as per the OREA standards), it was not contested that the funds were spent prior to the anticipated closing date, and

that the parties both understood this to be the intention. What is at issue between the parties, is whether the defendants made use of the deposit personally.

[18] Clauses 8 and 10 of the Agreement allowed for the Plaintiff to make requisitions regarding work orders, and to make demands that any outstanding orders be remedied. The Agreement did not provide a final date for the making of requisitions. As such, the default deadline, under the OREA standards, was five days prior to the closing date.

[19] The Agreement included no inspection clause and it included an "entire agreement" clause.

[20] The Agreement also included some additional handwritten terms. Most notably, it included a requirement that the fuel tank located on the property be "painted/reconditioned by seller as per legal requirements", as well as a provision that a specified list of contracts – which included "gas" – would be in good standing upon sale.

[21] The parties also agreed that the Plaintiff would be permitted to enter the premises to commence some painting and renovation work on the store, prior to the closing date. It was off season and the store was operating on winter hours. Thus, the Plaintiff's work could largely be done during the store's closed hours.

[22] The Plaintiff exercised its right to examine the state of the contracts and obtained authorization from Richard Doemel to permit the Technical Standards and Safety Authority (the "TSSA") to disclose information in relation to the fuel tank.

[23] Prior to the closing date, a representative of TSSA made the Plaintiff aware that there were nine work orders outstanding in relation to the fuel tank dating back to June 2019 (the "Orders"). The Orders necessitated a variety of work to be performed, some of which is described as follows:

i) To retroactively apply for a modification of the storage tank and piping system. This was required because an underground tank had been removed, and an above ground tank had been installed, all by the Defendants, and all without the required permit;
ii) To repair the suction systems on the above ground tank and install a shear valve;
iii) To engage a contractor to repair the valve, dispenser sump leak detection system, and the emergency vent, which did not terminate a minimum of 150 mm above the spill containment device;
iv) To complete and record results of daily checks on the vacuum gauge;
v) To paint the rusty areas of the above ground tank and associated piping; and
vi) To test the shear valve and leak detection system annually as required.

[24] The Orders indicate that non-compliance could result in significant penalties and fines, and that the gas license could be suspended.

[25] Upon becoming aware of the Orders, on March 23, 2020, Jacqueline Brosseau attended at the Property and asked the Defendant Norma Doemel to sign a proposed amendment to the Agreement. The so-called amendment sought to have the Defendants acknowledge in writing that there would be compliance with the outstanding Orders by the closing date or that, in the alternative, the Plaintiff's $50,000 deposit would be refunded (the "Proposed Amendment"). I take a moment here to point out that in fact, I find that the Agreement as signed by the parties would have required both of these things to occur in any event.

[26] The Defendant Norma Doemel refused to sign the Proposed Amendment. No Defendant responded to the Proposed Amendment thereafter. The Defendants did not suggest alternate wording for the Proposed Amendment or an extension of the closing date to allow them to comply with the outstanding Orders. They did not offer to indemnify the Plaintiff for any costs relating to the completion of the Orders. They did not offer a holdback from the purchase price. In fact, the

Defendants never communicated with the Plaintiffs again, until after the closing date, when they received a demand letter from the Plaintiff's lawyer.

[27] The Plaintiff's evidence is that on March 23, 2020, the date that Norma Doemel refused to sign the Proposed Amendment, the Plaintiff removed from the store all of the tools and supplies that were being used for the start of renovations. The Plaintiff did not return to the store again, as it understood that the Defendants were refusing to meet the terms of the Agreement, and as such understood that the Agreement was at an end.

[28] In particular, the parties made no further attempt to communicate with one another, at all, after March 23, 2020. Richard Doemel testified that he did not seek legal counsel or retain a lawyer for the purpose of closing the deal, as he understood that the deal was off the table.

[29] The sale did not close on April 6, 2020. On April 7, 2020, the Plaintiff's counsel sent a demand letter for the return of the $50,000 deposit.

[30] At trial, the Defendants agreed that they were not in compliance with any of the Orders on the closing date. As of the date of trial, in November 2024, the original Orders have been complied with, resulting in a requirement that a Phase II Environmental Site Assessment ("Phase II Assessment") and any potential remediation resulting from that assessment be completed. The Defendants' evidence is that no standard bank financing will be available to any purchaser until the Phase II Assessment is completed.

[31] The Property has been listed for sale since the failed April 6, 2020, closing date. There have been multiple failed offers. The purchase price has been reduced by $40,000. The Defendants' evidence is that one of the issues for any prospective purchaser has been the inability to obtain standard financing, as a result of the outstanding environmental assessment.

LEGAL PRINCIPLES

Distinguishing Recission and Repudiation

[32] The Plaintiff ask for recission, and the Defendants argue that the Plaintiff repudiated the contract. In considering these arguments, I have referred to *Guarantee Co. of North America v. Gordon Capital Corp*., [1999] 3 S.C.R. 423, at para. 40, wherein the Supreme Court explained the difference between rescission and repudiation:

> 39 A fundamental confusion seems to exist over the meaning of the terms "rescission" and "repudiation." This confusion is not a new one, as it has plagued common law jurisdictions for years. Rescission is a remedy available to the representee, *inter alia*, when the other party has made a false or misleading representation. A useful definition of rescission comes from Lord Atkinson in *Abram Steamship Co. v. Westville Shipping Co.*, [1923] A.C. 773 ([U.K.] H.L.) at p. 781:
>
> > Where one party to a contract expresses by word or act in an unequivocal manner that by reason of fraud or essential error of a material kind inducing him to enter into the contract he has resolved to rescind it, and refuses to be bound by it, the expression of his election, if justified by the facts, terminates the contract, puts the parties *in status quo ante* and restores things, as between them, to the position in which they stood before the contract was entered into.
>
> …
>
> 40 Repudiation, by contrast, occurs "by words or conduct evincing an intention not to be bound by the contract. It was held by the Privy Council in *Clausen v. Canada Timber & Lands Ltd.*, [1923 CanLII 430 (UK JCPC), [1923] 4 D.L.R. 751], that such an intention may be evinced by a refusal to perform, even though the party refusing mistakenly thinks that he is exercising a contractual right" (S. M. Waddams, *The Law of Contracts* (4th ed. 1999), at para. 620). Contrary to rescission, which allows the rescinding party to treat the contract as if it were void *ab initio*, the effect of a repudiation depends on the election made by the non-repudiating party. If that party treats the contract as still being in full force and effect, the contract "'remains in being for the future on both sides. Each (party) has a right to sue for damages for *past or future breaches*" (emphasis in original): *Cheshire, Fifoot and Furmston's Law of Contract* (12th

> ed. 1991), by M.P. Furmston at p. 541. If, however, the non-repudiating party accepts the repudiation, the contract is terminated, and the parties are discharged from future obligations. Rights and obligations that have already matured are not extinguished. Furmston, *supra*, at pp. 543-44.

[33] The distinction between these two concepts is crucial, as the available remedies differ. Notably, recission is an 'act' undertaken by the innocent party following a misrepresentation (or other essential error) made by the 'non-innocent party'. Where the 'act' is carried out properly (i.e., unequivocally) and such is based on a proper vitiating event, the contract is rescinded (is void *ab initio*). No further election is required. The process surrounding repudiation is different; it requires the innocent party to elect whether to accept the breaching party's repudiation/intention not to be bound: see *Brown v. Belleville (City)*, 2013 ONCA 148, 114 O.R. (3d) 561. Only upon election is the contract either terminated or upheld.

[34] As per *Guarantee Co*, at para. 42, where the court deems a party to have alleged rescission in place of a proper claim for repudiation, and vice versa, the court has the power to remedy such irregularity:

> 42 … merely clarifying the distinction between rescission and an accepted repudiation does not end the discussion. Since "rescission" has frequently been used to describe an accepted repudiation, courts must be sensitive to the potential for misuse. To that end, courts must analyse the entire context of the contract and give effect, where possible, to the intent of the parties. If they intended "rescission" to mean "an accepted repudiation", then the contract should be interpreted as such.

[35] The legal principles of repudiation were described *in Ching v. Pier 27 Toronto Inc*., 2021 ONCA 551, at paras. 31 - 33:

> 31 In considering the issue of repudiation, it is helpful to address the governing principles.
>
> 32 As noted by Cronk J.A. in *Brown v. Belleville (City)*, 2013 ONCA 148, 114 O.R. (3d) 561, at para. 42, a repudiatory breach does

> not, in itself, terminate the contract. If the non-repudiating or innocent party does not accept the repudiation, then the repudiation has no legal effect. In his text, *The Law of Contract in Canada*, 6th ed. (Toronto: Carswell, 2011), Professor Gerald Fridman explains as follows, at p. 595:
>
> > From the time that this kind of termination was recognized, it was accepted that there could be no such thing as unilateral repudiation. Just as the making of a contract requires the joint participation of both parties, an offeror and an acceptor, so the discharge of a contract, even where the discharge is by repudiation, in advance of the time for performance, also requires the conformity and acquiescence of both parties. [Emphasis in original.]
>
> 33 Accordingly, the consequences of a repudiation are stated to depend on the election made by the innocent party. If the innocent party accepts the repudiation, the contract is terminated (sometimes referred to as disaffirmation). Alternatively, the innocent party may treat the contract as subsisting (sometimes referred to as affirmation). See *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC), [1999] 3 S.C.R. 423, at para. 40.

[36] The acceptance of repudiation may be oral, written, or inferred from the conduct of the innocent party in the particular circumstances of the case.

[37] In detailing that repudiation can occur where one party indicates an intention not to fulfill any future obligations under a contract, the court in *Guarantee Co.* left open the idea of anticipatory repudiation. Such was well set out in *Pompeani v. Bonik Inc.* (1997), 35 O.R. (3d) 417, (C.A.), at paras. 39-42:

> 39 An anticipatory breach occurs where one party to a contract repudiates the contract before performance is due: *Kloepfer Wholesale Hardware & Automotive Co. v. Roy*, 1952 CanLII 8 (SCC), [1952] 2 S.C.R. 465. [1952] 3 D.L.R. 705.

40 In *Cehave N.V. v. Bremer Handelsgesellschaft m.b.H, [The Hansa Nord*], [1976] Q.B. 44 at p. 59, [1975] 3 All E.R. 739 (C.A.), [at p. 59], Denning M.R. defined anticipatory breach in this way:

> When one party, before the day when he is obliged to perform his part, declares in advance that he will not perform it when the day comes, or by his conduct evinces an intention not to perform it, the other may elect to treat his declaration or conduct as a breach going to the root of the matter and to treat himself as discharged from further performance ...

41 Professor Waddams referred to anticipatory breach in his text, The Law of Contracts, 3rd ed. paras. 613-14 in this way:

> Repudiation can be by words or conduct evincing an intention not to be bound by the contract. It was held by the Privy Council in *Clausen v. Canada Timber & Lands, Ltd.* that such an intention may be evinced by a refusal to perform, even though the party refusing mistakenly thinks that he is exercising a contractual right.
>
> The innocent party is not, however, obliged to bring the action immediately. The party can continue to press for performance and bring the action only when the promised performance fails to materialize. It has been said in many cases that there is an option to "accept" the repudiation and sue at once or to ignore it and press for performance, and that an unaccepted repudiation is of no consequence. (Footnotes omitted.)

42 An anticipatory breach discharges the innocent party of its obligations under the contract and allows it to pursue damages without the need to tender: *Bethco Ltd. v. Clareco Can. Ltd.* (1985), 1985 CanLII 2252 (ON CA), 52 O.R. (2d) 609, 22 D.L.R. (4th) 481 (C.A.); *McCallum v. Zivojinovic*, *supra*, at 723.

ANALYSIS

Repudiation

[38] The Plaintiff presented the Proposed Amendment to the Agreement, in person to Norma Doemel on March 23, 2020, immediately after the Plaintiff became aware of the existence of the Orders. The April 6, 2020, closing date was exactly two weeks away.

[39] Norma Doemel refused to sign the Proposed Amendment. The wording of the document was not much more than asking the Defendants to confirm their continued intention to be bound by the existing terms of the contract, and a form of requisition that defects be remedied. By that point in time, only two weeks before closing, having become newly aware of the other Orders, I find that it was reasonable for the Plaintiff to conclude that when the Defendants refused to sign the document, they were neither able nor willing to comply with the Orders, and to meet the terms of the Agreement of Purchase and Sale. I find that the Plaintiff appropriately concluded that the Defendants had repudiated the agreement.

[40] The Defendants admit that Norma Doemel refused to sign the Proposed Amendment, and that they did not address the Proposed Amendment in any way after it was presented and rejected. Richard Doemel testified that he always intended to continue to be responsible for the outstanding Orders and their associated costs. However, I heard no evidence as to how and when Mr. Doemel articulated this intention to the Plaintiff, and therefore on what basis the Plaintiff would have had any comfort in this position. Mr. Doemel testified further that he intended to seek legal advice on the issue of the Proposed Amendment, before he signed it. I reject all of this evidence as it is not supported in any way, even by Richard Doemel's own evidence. According to him, he never spoke to the Plaintiffs about the Orders after March 23, 2020 and he never did seek the advice of legal counsel to discuss the amendment or any aspect of the sale, prior to the anticipated closing date.

[41] I find that as of March 23, 2020, the Defendants knew that they were not in a position to comply with the Orders. They knew that they required an extension of the closing date, or to propose some alternate amendment that would have permitted the sale to close, while leaving them responsible to comply with the Orders. I find that Norma Doemel's refusal to sign the Proposed

Amendment was a clear communication of the fact that the Defendants did not intend to comply with the terms of the Agreement and that they had therefore repudiated the Agreement.

[42] When, on the same date as the refusal, the Plaintiff packed up their tools and supplies and left, it was understood by all parties that the Agreement was "off the table". I find that the Plaintiff anticipated the Defendant's intention to repudiate the agreement. Neither party ever communicated again, up to and including the scheduled closing date. I find that the Plaintiff's actions in packing up their materials and leaving were sufficient evidence of their acceptance of the Defendant's anticipated repudiation.

[43] I find that refusing to address compliance with the Orders amounted to a fundamental breach of a condition of the Agreement as per *968703 Ontario Ltd. v. Vernon*, (2002), 58 O.R. (3d) 215 (C.A.), particularly insofar as the Agreement included gas contracts and fuel tank provisions.

[44] The Plaintiff was entitled to consider this refusal as depriving them of the substantial benefit of the contract, because in all of the circumstances, they were not able to assess the possible cost of compliance with the Orders and any costs or obligations that may have followed compliance.

[45] To highlight this point, I note that the Defendants testified that they eventually complied with the Orders, and that as a result they are now required to have a Phase II Assessment completed. Richard Doemel indicated that the cost of the Phase II Assessment was quoted to him at $12,000, and that any remediation costs which could follow the assessment remain unknown. He agreed that the remediation costs could be very high.

[46] Richard Doemel also testified about the difficulty that the Defendants are now having in trying to sell the property, because another result of the outstanding Phase II Assessment is that purchasers are unable to obtain financing.

[47] I find that the repudiation was based on the inability or unwillingness to execute on a condition of the contract which was fundamental to the entire contract. The Defendants agreed that they knew that the Plaintiff considered the Agreement to be terminated, and at no time thereafter did the Defendants communicate an intention to return the Agreement into good standing.

[48] I find that a return of the deposit is in any event required under the terms of the Agreement signed by the parties. Pursuant to para. 10 of the Standard OREA Agreement terms:

> "If within the timelines referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice … is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction…."

[49] The Defendants argue both that no requisition was made and that they were not given an opportunity to purchase insurance to address the work orders, as per para. 10. I find that the Proposed Amendment was a requisition in writing, which was sufficient to put the Defendants on notice that the purchasers required them to remedy the Orders.

[50] It is notable that on the Defendants' own evidence, they were aware that it was not possible for them to be in compliance with the Orders by the closing date, even at the time that they signed the Agreement on February 24, 2020. I reject the submission of the Defendants that they intended to purchase insurance, or that they could have in fact purchased insurance against the costs of the Orders. I do not accept that such insurance would have been available for purchase. No evidence was called on this issue and no communication of such intention was ever made.

[51] I find that, had the Plaintiff not walked away when it anticipated the Defendant's repudiation, the Defendant would not in any event have been in a position to close the transaction, as it did not, and could not have, complied with the Orders in time.

[52] The Defendants suggested, without any evidence to show for their claim, that the Plaintiff did not close because it did not have access to funds needed to complete the transaction. Without evidence to the contrary, I accept the Plaintiff's evidence that it had access to the funds necessary to complete the transaction, but did not move to complete the transaction because it accepted the Defendants' repudiation, and understood that the Defendant had not complied with the Orders.

Damages

[53] I reject the argument of the Defendants that, pursuant to the terms of the Agreement, the $50,000 deposit became non-refundable upon the Plaintiff entering the property before the closing date and starting its renovation work. There is no evidence to corroborate this position. The Agreement specifies that the deposit would be returned upon the occurrence of certain events, which I have found occurred.

[54] The parties each makes claims for damages arising out of the renovation work which was commenced by the Defendants. It is agreed that the Defendants left the work in an unfinished state. The Defendants claim they are entitled to damages for the cost of repairing the premises after the Plaintiffs left unfinished work.

[55] The Plaintiff does not claim that they improved the Property, but they make a claim for $3,768.02 in special damages in relation to the money spent on their beginning renovation work. I did not hear sufficient evidence with respect to the Plaintiff's claim for special damages. I am not able to determine the quantum spent and lost, and in particular there was no evidence as to what portion of the amount could not be mitigated and/or recovered.

[56] The Defendants referred me to *Isabelle v Lahie, Canlii* 56484 ONSC, wherein the court found that a landowner who invited another to expend money on his land is liable to the person who expended the money, but that the onus is on that person to prove the amount by which the property was improved.

[57] There was no evidence to suggest that the property was improved by the Plaintiff's partial renovations. There was some evidence produced of amounts spent by the Plaintiff when they entered the Property and commenced work. There was no evidence produced regarding the Plaintiff's attempt to mitigate the loss of the renovations, such as attempts to return some of the items purchased. I note that there were some receipts provided that had a 90-day return policy, which would have been available to the Plaintiff well after the aborted closing date.

[58] It was at their own peril that the Plaintiff chose to begin work while they were still making inquiries and not yet owners in possession of the Property. There was some evidence that when they left quickly on March 23, 2020, there was unfinished work which cost the Defendants some amount to put back in order. The Defendants claim $10,000 in costs associated with restoring the Property to its original condition. The only evidence presented was the affidavit evidence of Richard Doemel, wherein he estimated that he spent $5,000 on materials to restore the premises. The Defendants permitted the work to be done in advance of closing, also at their own peril. There was no evidence that the parties discussed what the outcome would be in relation to costs incurred, or caused, by the Plaintiff's assumption of work prior to closing, in the event that the sale did not close. Neither party presented evidence upon which I could properly assess their claims.

[59] I decline to order special damages to the Plaintiff in relation to the work they did, or damages to the Defendants in relation to any costs incurred from the Plaintiff's aborted renovations.

Which of the named Defendants are liable to the Plaintiff?

[60] The personal defendants argue that the Agreement was between the two corporate entities and that they are not personally liable. The Plaintiff argues that the personal Defendants were unjustly enriched.

[61] This is not a situation of piercing the corporate veil. I accept the Plaintiff's evidence that the personal Defendant Richard Doemel asked that a cheque be made to him and his wife personally. Acting on behalf of the Corporation, he directed the purchaser to pay him and his wife the deposit personally. The cashed cheque in the names of Richard and Norma Doemel is in evidence.

[62] Despite acknowledging that the deposit cheque was made out to Richard and Norma Doemel personally, at their request, Richard Doemel testified that the $50,000 deposit cheque was deposited into his corporate account. He testified that he knew this because his corporate account is the only bank account he has had for several decades. This evidence did not accord with his sworn evidence in examinations for discovery, where he testified that he did have a personal account, or with the affirmed evidence of Norma Doemel at this trial, when she testified that the $50,000 was deposited into a joint bank account held by herself and Richard Doemel.

[63] Despite providing a defence stating that they were improperly named in this action, the personal Defendants refused to produce evidence during discovery to show where the deposit funds were deposited. They provided no evidence at trial, to show either which account the funds were deposited into, or what use was made of the funds.

[64] At the time of providing the cheque, the Plaintiff indicates that it was aware that the personal Defendants intended to spend the money before closing, and the Plaintiff did not take issue with this. Neither party was represented by counsel, and at the time they entered into the Agreement, neither believed that there was any reason that the sale would not close. I do not infer from this that the Plaintiff intended to forfeit the deposit even if the sale was not completed.

[65] I draw an adverse inference from the failure of the personal Defendants to provide documentary evidence in relation to a known contentious issue, which was within entirely within the control of the Defendants and presumably would have been simple to produce. No explanation was provided for the failure to provide this important evidence which might have been conclusive on some of the issues.

[66] "The doctrine of unjust enrichment provides an equitable cause of action that retains a large measure of remedial flexibility to deal with different circumstances according to principles rooted in fairness and good conscience." The test for unjust enrichment has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment: *Pacific National Investments Ltd. v. Victoria (City)*, 2004 SCC 75, at paras 13, 14.

[67] I find on a balance of probabilities that Norma and Richard Doemel asked for the cheque to be made to them personally, with an intention to use it personally, and that they derived a benefit from the deposit money, either entirely personally, or jointly with the corporate defendant. As such, I find that the personal defendants were enriched. The Plaintiff is now owed $50,000 and has suffered a deprivation. I have found that the Agreement mandates a return of the deposit, and that Defendants have no other lawful claim to the funds. The elements of unjust enrichment are all present. I find that the personal defendants are jointly and severally liable with the corporate Defendant for the Plaintiff's losses and to repay the deposit, and for the costs of this action.

Recission:

[68] As noted above, recission of contract may be the remedy to the innocent party, where there is some form of misrepresentation, fraud, or essential error that is "substantial" or "goes to the root of" the contract: see *Guarantee Co*, at para. 44.

[69] I accept also that parties to a contract have a duty of good faith, as stated by the Court in

Bhasin v. Hrynew, 2014 SCC 71, [2014] 3 S.C.R. 494 at paras 62-64:

> "It is, to say the least, counterintuitive to think that reasonable commercial parties would accept a contract which contained a provision to the effect that they were not obliged to act honestly in performing their contractual obligations….
>
> The first step is to recognize that there is an organizing principle of good faith that underlies and manifests itself in various more specific doctrines governing contractual performance. That organizing principle is simply that parties generally must perform their contractual duties honestly and reasonably and not capriciously or arbitrarily.
>
> As the Court has recognized, an organizing principle states in general terms a requirement of justice from which more specific legal doctrines may be derived. An organizing principle therefore is not a free-standing rule, but rather a standard that underpins and is manifested in more specific legal doctrines and may be given different weight in different situations."

[70] In my view, the precontract negotiations are also subject to the duty of good faith. I accept the Plaintiff's evidence that Richard Doemel intentionally made pre-contract misrepresentations, specifically surrounding the fuel tank and outstanding Orders. The Plaintiff asks me to find that, despite the existence of an "entire agreement" clause, the Plaintiff was entitled to rely on the misrepresentations in seeking rescission, as it was the misrepresentations themselves that informed the drafting of the Agreement. The Plaintiff relied on the misrepresentations in deciding which conditions it included in the Agreement. Housed within this argument is an assertion that these misrepresentations went to the core of the contract.

[71] I accept that the Plaintiff included the fuel tank clause (regarding painting/reconditioning) and no other "gas contract" requirement specifically in the Agreement because the Defendant stated that this was the only issue in relation to the gas service. I reject the Defendant's evidence that they disclosed all the Orders and issues to the Plaintiff, or that Richard Doemel ever told Jacqueline Brosseau that he intended to remain personally responsible for compliance with the Orders "at any cost", and that the Plaintiff thereafter elected to include only the requirement for the painting/reconditioning of the above ground tank. I find that the Defendants failed in their duty

to act in good faith, and could not thereafter rely on the "entire agreement" clause to their advantage.

[72] I find that the Defendants' silence as to the outstanding Orders amounted to a misrepresentation: *1000425140 Ontario Inc. v. 1000176653 Ontario Inc., 2024 ONCA 610.*

[73] The cost of addressing the Orders is yet unknown, but the Defendants agree that it could be very significant, and testified that the unresolved environmental assessment is currently preventing them from selling the property. Non compliance with the Orders risked a loss of the right to sell gas. I find that the Orders were latent defects that the Defendants deliberately concealed, and that the Plaintiff reasonably relied on the Defendants' representations to her: *Krawchuk v Serbank*, 2011 ONCA 352. In any event, the distinction between latent and patent defect is immaterial here, since the Plaintiff found the defects, and asked the Defendants to address them, and the Defendants refused.

[74] As indicated at the outset of these reasons, I would have granted equitable rescission in this case, despite the existence of the "entire agreement" clause. However, the remedy would be the same. As such, I have relied instead on the Defendant's repudiation of the contract, which has the same result in the particular circumstances of this case, where the Agreement was never concluded.

Summary

[75] I find that the Defendant repudiated the Agreement. I find that the Plaintiff accepted the repudiation.

[76] If the Defendants had not repudiated the contract, upon all of the evidence heard and the facts I found here, I would have allowed the Plaintiff's claim for recission.

[77] Given my other findings, the Defendants' counterclaim is dismissed in its entirety, as are the Plaintiff's remaining claims. I am not persuaded that punitive damages are warranted in these circumstances.

[78] The Defendants are jointly and severally liable to the Plaintiff for $50,000, plus pre and post judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

COSTS

[79] I would urge the parties to agree on the issue of costs. If they are unable to do so, then costs submissions may be made as follows:

(a) Within 14 days of this order, the Plaintiff shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers; and

(b) The Defendants shall serve and file any responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 21 days of this order; and

(c) The Plaintiff's reply submissions, if any, are to be served and filed within 30 days of this order.

[80] If no submissions are received within the timelines specified the parties will be deemed to have no submissions to make, or to have resolved the issue of the costs and costs will not be determined by me.

S. Antoniani J.

Released: February 13, 2025

CITATION: Reel em Inn and Resort v. RNR Doemel Enterprises et al, 2025 ONSC 805
COURT FILE NO.: CV-20-0206
DATE: 2025-02-13

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Reel em Inn and Resort at Whitefish Lake Inc.

Plaintiff

- and –

RNR Doemel Enterprises, Richard Doemel, and Norma Doemel

Defendants

REASONS FOR JUDGMENT

S. Antoniani, J.

Released: February 13, 2025