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Lapadula v. Grewal

Between
Santino Lapadula and Linda Lapadula, Plaintiffs, and
Armar Kaur Grewal and Balwant Grewal, Defendants

[1991] O.J. No. 2131

Action No. 64182/91Q

Ontario Court of Justice - General Division
Toronto Motions Court

O'Driscoll J.

Heard: October 9, 1991
Judgment: December 4, 1991

(4 pp.)

T.P. Charney, for the Plaintiffs.
L. Blackman, for the Defendants.

O'DRISCOLL J.:--

I. Nature of Proceedings

The plaintiffs seek judgment, pursuant to Rule 20, for the damages suffered when the defendants refused to close a real estate deal.

II. The Facts

1. On January 24, 1990, the defendants signed an offer to purchase the plaintiff's property. The offer was accepted. No real estate agent was involved. The sale price was \$326,000. A deposit

of \$20,000 was paid by the defendants to the plaintiff.

2. On August 8, 1990, the deal aborted when the defendants refused to close the real estate transaction.

3. On August 15, 1990, the plaintiffs listed the property with a real estate agent.

4. On August 20, 1990, in a falling real estate market, the plaintiffs accepted an offer to purchase their property for the price of \$274,500 - a sum \$51,500 less than the price that the defendants had agreed to pay.

The other damages of the plaintiffs are:

1. 6% real estate fees on the sum of \$274,500 - \$16,470.00.
2. Costs thrown away on the aborted sale - \$1,006.14

Total =	\$68,976.14
Less Deposit =	\$20,000.00

Net	\$48,976.14

5. On September 24, 1991, Sheard J. granted judgment to the plaintiff:

(a) a declaration that the defendants had forfeited the \$20,000 deposit,

(b) an order that the deposit plus all accumulated interest be paid to the plaintiffs,

(c) the issue as to damages was adjourned to October 9, 1991 to enable counsel for the defendants, if so advised, to cross-examine Linda Lapadula on her affidavit, sworn August 14, 1991.

6. On October 2, 1991, Linda Lapadula was cross-examined by counsel for the defendants.

7. On October 7, 1991, counsel for the plaintiffs examined Tony Palmieri, the real estate agent who obtained the August 20, 1990 offer.

III. Conclusions

1. The plaintiffs acted reasonably in attempting to mitigate their damages in a falling real estate market. In my view, the affidavit of Linda Lapadula and the cross-examination thereon and the examination and cross-examination of Tony Palmieri (especially Q. 92 and Q. 188-195), provide ample evidence of mitigation by the plaintiffs.

2. The defendants have put before the court nothing but theory. Far from putting forth their "best foot", the defendants, on this record, have not put forth any genuine issue as to the quantum of damages suffered by the plaintiffs. No affidavit evidence and no appraisals were filed by the defendants.

IV. Result

The plaintiffs to have judgment against the defendants in the sum of \$48,976.14 together with pre-judgment interest from August 20, 1990 according to the provisions of the Courts of Justice Act, 1984.

V. Costs

The defendants to pay, forthwith, to the plaintiffs their costs of the motion before Sheard J., which he set at \$1,500, as well as the costs of this motion set at \$1,500.

O'DRISCOLL J.