

SUPERIOR COURT OF JUSTICE

(Toronto Region)

B E T W E E N :

DARLENE REMLINGER

Applicant

- and -

PIERRE MARCOUX and CAROLINE BOUGIE

Respondents

REASONS FOR JUDGMENT

BEFORE THE HONOURABLE MADAM JUSTICE A. POLLAK,
held at 361 University Avenue,
Courtroom 3-2, TORONTO, Ontario,
on MONDAY, AUGUST 10, 2009.

APPEARANCES:

D.A. Decker

Counsel for Applicant

I.E. Book

Counsel for Respondents

(i)
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MONDAY, AUGUST 10, 2009

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R E A S O N S F O R J U D G M E N T

POLLAK, J.: (Orally)

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This is an application pursuant to the *Vendors and Purchasers Act* and Rule 14, brought by the Vendors of the property in question. The transaction has been postponed pending the result of this application.

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The Vendors rely on Article 10 of the Agreement of Purchase and Sale, which they argue provides that they have validly answered a requisition regarding an open file with the City of Toronto regarding the property by obtaining title insurance for the Purchasers. They argue that this is a matter of contract interpretation involving the word "insurance" would necessarily include title insurance. They have provided evidence that all of the

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Purchaser's questions were answered with respect to coverage and were assured by the insurer providing the title insurance.

The Purchasers argue that this application is not properly brought pursuant to the *Vendors and Purchasers Act* as the requisition deals with building issues and zoning bylaws and not title. The Purchasers argue that this application is proper pursuant to Rule 14. There is, however, no submission made with respect to the effect of such, other than the application concerns matters of general application.

The Purchasers argue that the word "insurance" in the contract is vague and that, therefore, that part of the contract is unenforceable. No judicial support was offered to support that argument. Rather, the Purchasers argue that they will suffer exposure to litigation and uncertainty, and that the insurer will not properly

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solve all of their concerns. Many examples of possible serious harm to the Purchasers were provided. They are forced to enter into a contract with a third party against their will.

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Although one can understand the Purchaser's unwillingness to accept the insurance as a solution to their concerns, they have signed an Agreement of Purchase and Sale which is clear on its face. They could have refused to agree to this provision. Further, title insurance and Article 10 of the Agreement is a standard practice in real estate in Toronto.

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Article 10 is a standard clause in use in Toronto, in real estate transactions. The Purchasers have not provided any support for the argument that title insurance is not included in the term "insurance."

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Further, there is judicial precedent to support the Vendor's position in the decision of Justice Himel in the case of

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Roit and Goldenberg. I agree with Justice Himel's analysis of Article 10 of the Agreement of Purchase and Sale and see no reason to depart from it. Although the Purchasers argue that the facts of that case are different, Justice Himel did find that the objection went to the root of title or concerned a latent defect. Further, it cannot be that each case would have a different interpretation of the meaning of "insurance" in the contract, depending on its facts.

The Purchasers have provided no valid reason to dispute the Vendor's position in this case. Further, the Vendors have been very diligent in ensuring that the Plaintiff's concerns are answered through the title insurance.

This Court declares that the requisition has been satisfactorily answered by the commitment to provide title insurance. The Purchasers are therefore not entitled

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to rescind the Agreement on the basis of that their requisition has not been properly answered.

Both parties provided Bills of Cost with that of the Purchaser's being for \$11,629.00 on a partial indemnity basis, and the Vendor submitting the amount of \$9,800.00 on a partial indemnity basis. The Vendor, as the successful party, is awarded the amount of \$9,800.00 to be paid by the Purchaser for costs, including disbursements and GST.

I am just going to endorse the record.

I have just indicated: "Application granted for Reasons given orally in Court."

Thank you both.

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Certificate of Transcript**

CERTIFICATE OF TRANSCRIPT**

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I, STEPHANIE C. PURTILL, having taken the record via Stenomask, using recording equipment and cassette tapes provided by the Ministry of the Attorney General, certify that this document is a true and accurate transcript, transcribed to the best of my skill and ability, of the recording of REMLINGER v. MARCOUX and BOUGIE, in the SUPERIOR COURT OF JUSTICE, before Madam Justice A. Pollak, held at 361 University Avenue, Courtroom 3-2, TORONTO, Ontario, on MONDAY, AUGUST 10, 2009, taken from Recording No. 8419-3-2-005/2009, which has been certified in Form 1.

Fri, 22 January 2010
Date

Stephanie C. Purtill
Stephanie C. Purtill
Official Stenomask Reporter

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