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Amoah v. York Condominium Corp. No. 42

Eric Jr. Amoah, Plaintiff and York Condominium Corporation No. 42, Defendant

Ontario Superior Court of Justice

Bocci D.J.

Judgment: November 15, 2005

Docket: Toronto T98777-04

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Counsel: Eric Jr. Amoah, Plaintiff, for himself

Mr. B. Rutherford, for Defendant, Condominium Corporation

Subject: Contracts; Property; Torts

Sale of land --- Condominiums — Condominium corporation — Liability for damage.

Statutes considered:

Condominium Act, 1998, S.O. 1998, c. 19

Generally — referred to

Bocci D.J.:

1 The Plaintiff claims damages against the defendant, York Condominium Corporation No. 42, for improperly registering a lien on his unit, for mismanagement, breach of Trust and defamation.

2 The Plaintiff was to make monthly payments to the Condominium Corporation in the amount of \$313.76, representing common element payments by way of monthly pre-authorized withdrawals directly from his bank account. In addition to the common element payments, the plaintiff was to make quarterly special assessment payments in the amount of \$318.86, in January, 2003, April 2003, July 2003 and October, 2003. These payments were to be made by cheque.

3 There is no dispute that the plaintiff made payments in the amount of \$313.76, for the months of September,

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October, November and December, 2003. These payments are both supported by the plaintiff's bank records for these months and the defendant's ledger pertaining to the plaintiff's unit.

4 The issue arises as to whether the plaintiff made any payments with respect to the quarterly special assessment payments for the year 2003. The defendant corporation takes the position that no such assessment payments were made by the plaintiff during 2003, thereby placing the plaintiff in arrears as of January 30, 2003.

5 The Plaintiff takes the position that quarterly special assessment payments have been made and testified that he wrote cheques for the months of January, April and May, 2003, in the amount of \$318.86. He further testified that the money was taken from his account; however, he did not have any bank records or other documentation to support that he had made such payments, despite the fact that he could have obtained the cancelled cheques and bank records, as he has done with respect to the payment of the common element expenses. Despite several requests made of the plaintiff for production of this supporting documentation by the defendant he has failed to do so, even at the trial of this action.

6 With respect to the issue as to whether the plaintiff had in fact made payments for the quarterly special assessments in the year 2003, I accept the testimony of the defendant's witness Mr. Mark Ballah, a law clerk employed by the defendant's solicitors. Mr. Ballah testified that the corporation had received no payments for the quarterly special assessments for the year 2003 and his evidence is supported by the defendant's internal ledger.

7 With respect to the issue as to whether defendant improperly registered a Lien on the Plaintiff's unit, I summarize the sequence of the following events:

8 The plaintiff received a letter from the defendant's solicitors, dated January 15, 2004, enclosing a document entitled "Notice of Lien to Owner", advising that unless the office was in receipt of payment in the amount of \$1,559.26, prior to January 28, 2004, the defendant would proceed with the registration of a Certificate of Lien at the Land Registry Office. The letter also specified the manner in which payment was to be made, namely by money order or certified cheque payable in trust to the defendant's solicitors. This letter was sent by both Registered and Regular mail and there is no dispute with respect to its receipt by the plaintiff.

9 According to the said defendant's letter, dated January 15, 2004, the outstanding common expense arrears calculated as of the date of said letter totaled \$1,559.26. A review of the defendant's internal ledger entered into evidence by the defendant indicates that as of the date of the letter, there are no arrears for common expenses and that the arrears result from non payment of quarterly special expenses. The Notice of Lien provides a breakdown and states that the unpaid common expenses total \$1,260.14. Again a review of the ledger shows that the arrears are created from non-payment of the quarterly special expenses and the amount of arrears is correct.

10 By letter, dated January 29, 2004, the defendant notified the Maple Trust Company, the registered mortgagee of the Unit of the Lien of its intention to register a Certificate of Lien on the unit.

11 In terms of registering the lien, I find that the lien was properly registered pursuant to the provisions of the *Condominium Act*, S.O. 1998, c.19.

12 The Plaintiff testified that since receiving the letter from the defendant corporation, he has made several attempts to make payment of the arrears, by way of money orders and personal cheques all of which have been either refused or returned by the defendant corporation. In support of his position, the Plaintiff has submitted into evidence a copy of a money order, dated March 26, 2004 in the amount of \$941.28 and copies of personal cheques issued to the defendant corporation for payment of special assessment, dated October 1, 2003, January 1, 2004, April 1, 2004, July 1, 2004 and October 1, 2004, January 1, 2005 and February 1, 2005.

13 Mr. Mark Ballah, law clerk with the solicitors for the defendant corporation, testified as a witness on behalf of

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the defendant. Mr. Ballah testified that the cheques of the plaintiff were refused because payment was not made in full and not received before January 28, 2004, as stipulated by the letter, dated January 15, 2004. In addition thereto, the personal cheques were not issued as directed by said correspondence. Mr. Ballah also testified that a partial payment from Maple Leaf Trust, insufficient to discharge the lien was accepted in good faith; however, the lien was not discharged as the full amount of the same has not yet been received.

14 The Plaintiff raised an issue pertaining to how the payments received from him ought to have been applied. The Plaintiff argues that payment received should be applied to quarterly special assessments.

15 Mr. Ballah testified that any payments received are applied to the balance of outstanding arrears. In support of the defendant's argument that the condominium corporation is entitled to apply payments in such manner, Mr. Rutherford referred to *Cox and Halton Condominium Corporation No. 177 et al*, an unreported decision of Deputy Judge King, dated April 28, 1994, wherein he accepted the defendant's argument in that case, that the corporation was entitled to apply cheques received to what ever month it decided and that the first cheque could be applied to the last month owing.

16 I accept the defendant's argument that the corporation is entitled to apply payments received by the plaintiff to the balance of outstanding arrears.

17 There has been no evidence provided by the plaintiff in support of his claim for improper registration of the lien on his unit, mismanagement, misrepresentation, breach of trust and defamation. Accordingly, the plaintiff's claim is dismissed in its entirety with costs payable by the plaintiff to the defendant, fixed in the amount of \$300.00 plus court costs.

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