

**CITATION:** Leathers v. Shojaei, 2020 ONSC 1775  
**COURT FILE NO.:** CV-18-137337  
**DATE:** 20200508

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
ROSALIND LEATHERS	)	
	)	C. Baker, for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
MARY SHOJAEI, also known as	)	H. Perlis, for the Defendants
MAHNAZ SHOJAEI and CENTURY 21	)	
HERITAGE GROUP LTD.	)	
	)	
Defendant	)	
	)	
	)	
	)	<b>HEARD:</b> October 31, 2019

**LAVINE, J.**

- [1] The plaintiff has brought a motion for summary judgment against the defendant, Shojaei, seeking damages allegedly sustained due to that defendant’s failure to complete a real estate transaction.
  
- [2] This is a motion for summary judgment. The law with respect to summary judgment motions was ably summarized by Diamond J. in *Penretail v. 2380462 Ontario Inc.*, 2016 ONSC 600, at paras 7 – 10. I adopt the law stated therein. To succeed on a summary judgment motion, the moving party must persuade the motion judge that there is no genuine issue requiring a trial. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits of a motion for summary judgment, This will be the case when the process: (1) allows the judge to make the necessary findings of fact; (2) allows the judge to apply the law to the facts; and (3) is a proportionate, more expeditious and less expensive meant to achieve a just result.
  
- [3] For the plaintiff to succeed in this action and on this motion, the plaintiff must establish that there was an agreement between the plaintiff and the defendant.
  
- [4] In this case, there is an Agreement of Purchase and Sale, signed by the plaintiff and the defendant. The plaintiff, who, at the time, was 91 years old, first entered into a Listing

Agreement with the defendant, a real estate agent, to allow the defendant to list and sell the plaintiff's home. A few months later, the plaintiff entered into an exclusive Listing Agreement with the defendant, and an Agreement of Purchase and Sale, dated June 13, 2017. The Agreement provided for the sale of the plaintiff's home to the defendant for \$680,000 with a closing date, ten months later, of April 27, 2018. The Agreement, in Schedule A, provided the defendant with the right to assign the Agreement of Purchase and Sale.

[5] The plaintiff, in her affidavit, states that she signed the Agreement of Purchase and Sale with the ten-month closing period, and the right to assign, to allow the defendant to "shadow-flip" the property for a higher price. The defendant states that she intended to find another buyer for the property and that the long closing allowed time to find a buyer, but also that the plaintiff's daughter asked for the lengthy closing to allow her mother, the plaintiff, to become accustomed to the idea of leaving the property, to which she was very attached.

[6] In the month prior to closing, the defendant advised the plaintiff that she was not able to close and sought to amend the Agreement. There is exchange of correspondence between counsel from the defendant seeking an extension of the closing date and assignment of the Agreement, and from the plaintiff's counsel setting out terms sought by the plaintiff in consideration for an amendment. An amendment to the Agreement was not agreed upon and the defendant did not complete the transaction on the closing date.

[7] The defendant urges that, the following exchange, during the plaintiff's examination for discovery, necessitates a trial:

Q 144: Did Mary agree she was going to buy your house?

A: She said she might be buying it, yes.

Q 145: Did she ever – did you and she ever enter into an agreement for Mary to buy ---

A; No.

Q 146: --- your house?

A: No.

[8] In the above questions, "Mary", refers to the defendant, Mary Shojaei. The plaintiff's answers to those questions cause concern for me on this motion. The answer, on its face, is inconsistent with the plaintiff's own affidavit and the uncontroverted evidence of both parties.

[9] As already stated, it is uncontroverted that there is a signed Agreement of Purchase and Sale. The evidence of both parties with respect to their conduct in the month prior to the closing, their discussions about an amendment to the Agreement and the correspondence

between counsel for the defendant, requesting an extension of the closing date, and counsel for the plaintiff demanding terms for an amendment, collectively leaves no doubt that both parties conducted themselves on the basis that there was a binding agreement.

- [10] The defendant relies on the questions and answers, solely, without context, as the examination for discovery of the plaintiff was not provided to me. The question itself is confusing. I have considered that the plaintiff is elderly. I have considered that the evidence is that the discussions about the sale of the house with the defendant involved the plaintiff's daughter and also other members of the family.
- [11] I am satisfied that the case is appropriate for summary judgment. I am able, on the record before me, to make the necessary findings of fact. It is irrefutable that there was an agreement upon which the plaintiff and defendant relied and acted. The answers given by the plaintiff on discovery do not detract or undermine the overwhelming evidence of the signed agreement and the parties' conduct in reliance of that agreement. The defendant failed to complete the transaction on the closing date provided in the Agreement of Purchase and Sale. The defendant was in breach of the agreement.
- [12] I am also satisfied that the defendants have not raised a viable defence, nor is there any genuine issue which necessitates a trial.
- [13] I am satisfied that the defendants' position that the plaintiff was contributorily negligent or failed to properly mitigate by not agreeing to an amendment of the agreement is not supported by the evidence. The plaintiff's counsel, by letter dated April 18, 2017, offered to amend the agreement to extend the closing date and assign it to a new buyer to May 15, 2018, on terms. There is no evidence that the defendant responded to the plaintiff's proposal.
- [14] Further, after failing to complete the transaction, the defendant never contacted the plaintiff to seek to complete the transaction with the new buyer.
- [15] The plaintiff relisted the property and it sold a month later, on May 28, 2018, for a purchase price of \$510,000. The plaintiff seeks damages of \$170,000 being the difference between the sale price in the Agreement of Purchase and Sale with the defendant, and the sale price, when re-sold a month later, and pre-judgment interest.
- [16] In her examination for discovery, the defendant confirmed that \$510,000 was a fair price in the market at the time the property re-sold. I am satisfied that the plaintiff's evidence that she immediately re-listed the property, followed the advice of her real estate agent regarding the marketing of the property, and the confirmation of the defendant that a fair price was received, is sufficient to establish that the plaintiff properly mitigated her damages.
- [17] Applying well-established principles for the assessment of damages when a purchaser breaches an agreement of purchase and sale of land, the plaintiff is entitled to her loss of bargain of \$170,000.

[18] For the foregoing reasons, the plaintiff's motion for summary judgment against the defendant, Mary Shojaei, is granted and an order shall issue for:

- (1) Judgment against the defendant, Mary Shojaei, in the amount of \$165,000 plus post judgment interest in accordance with the *Courts of Justice Act*;
- (2) The deposit of \$5,000 to be forfeited to the plaintiff and paid by the real estate agent to her; and
- (3) Dismissal of all other claims by the plaintiff, Rosalind Leathers, against Mary Shojaei.

[19] If the parties cannot agree on costs, they may contact the trial coordinator to schedule a costs hearing before me to address the issue of costs.

*Order to go accordingly.*



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Lavine, J.

**Released:** May 8, 2020