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Talk Isn’t Cheap: Ontario Court of Appeal Upholds Oral Agreement for the Sale of Land

In its recent judgment in *2730453 Ontario Inc v 2380673 Ontario Inc*, the Ontario Court of Appeal upheld the trial decision of the Honourable Justice Centa, which awarded specific performance to the Purchaser (successfully represented by Lenczner Slaght) for the Vendor’s breach of an oral agreement for the purchase and sale of a 32-acre parcel of land for development. In doing so, the Court clarified the legal requirement that a prospective purchaser must prove “detrimental reliance” in undertaking acts of part performance before an oral agreement will be enforced in the face of the *Statute of Frauds*.

Factual Background and Trial Decision

In September 2019, the parties entered into an oral agreement for the sale of an undeveloped parcel of land. It was agreed that the parties would then engage their lawyers to paper the transaction, including preparing a written agreement of purchase and sale, in advance of the closing date. In the interim, the parties engaged in various steps toward the closing of the transaction, including conducting due diligence and obtaining various searches and assessments of the property. They engaged real estate counsel to prepare and exchange the necessary paperwork and to then draft, negotiate, and finalize the written sale agreement. On the date of closing, however, the Vendor refused to close. The Purchaser commenced an action seeking specific performance of the oral agreement and the Vendor sought to rely on section 4 of the *Statute of Frauds* which prohibits the sale of land in the absence of a written agreement.

In his 2022 trial decision, the trial judge found that an oral agreement for the purchase and sale of the property had been reached and ordered specific performance of the agreement. In doing so, Justice Centa applied the equitable principles of fairness underpinning doctrine of part performance, the legal exception to the *Statute of Frauds*, and found that the parties had engaged in a process of closing the agreement in the intervening months and that there had been acts of part performance and sufficient detriment on the part of the Purchaser so as to make it unfair for the Vendor to refuse to

close.

These acts of part performance included, among other things, obtaining an environmental assessment, a survey of the property, performing title searches and other due diligence, negotiating and preparing a commission agreement, engaging legal counsel to close the transaction, negotiating, drafting, and revising the written agreement of purchase and sale, and tendering the full purchase amount on the vendor at the time of closing. The trial judge also found that the Vendor had undertaken its own acts of performance under the agreement in connection with the property in dispute.

Justice Centa ordered that the Vendor complete the sale of the land to the Purchaser. The Vendor appealed.

The Court of Appeal Clarifies the Need for "Detrimental Reliance"

On appeal, the Vendor argued that the trial judge had erred in his application of the doctrine of part performance because the Purchaser's acts of part performance were not irremediably detrimental (for example, while the Purchaser had delivered the full purchase funds, the Vendor had not accepted them) or that the detriment was otherwise minimal and could have been compensated for.

The Court of Appeal disagreed and upheld the award of specific performance. The Court clarified the Supreme Court of Canada's formulation of the detrimental reliance aspect, the "substantive core of the part performance doctrine", as set out in *Hill v Nova Scotia (Attorney General),* and provided a timely refresher on the law of specific performance since its 2009 decision in *Erie Sand and Gravel Limited v Tri-B Acres Inc.*

In dismissing the appeal, the Court described the acts of part performance completed by the Purchaser as "part of a package of efforts made by the Purchaser to fulfill the Vendor's requirements for completion of the transaction". The Court found these acts to have been properly considered acts of part performance by the trial judge, going so far as to root those acts in the guiding principles set out by the Supreme Court of Canada in *Bhasin v Hrynew*, stating: "a real estate transaction involving a multimillion-dollar tract of land is quintessentially one that requires 'the cooperation of the parties to achieve the objects of the contract'".

In response to the Vendor's submission that such acts were not irremediably detrimental to the Purchaser, the Court made it clear that trial judges are not asked to consider whether the detriment suffered by the Purchaser was itself irremediable, but rather whether the Purchaser had "acted to his detriment in

carrying out irremediably his own obligations (or some significant part of them) under the otherwise unenforceable contract".

The Court of Appeal explained that "irremediable performance" is when a party completes their obligations under an agreement for no other reason than the expectation that the other party will keep its promise, which makes those efforts valuable.

Once there has been irremediable performance, the Court found, there is no additional requirement that the detriment itself be irremediable. The fact of having taken those steps alone is detrimental. The Court also accepted the Purchaser's submissions that there can be no dollar limit or financial threshold that determines whether the equitable doctrine of part performance will apply as "equity cannot be reduced to a precise formula" and the "real detriment" arising from the Vendor's breach was in denying the Purchaser the acquisition of the property that it wished to combine with its own and develop after having reached an oral agreement and then remaining committed to the completion of that bargain.

Key Takeaways

This appeal serves as an important reminder of the broad approach to the equitable doctrine of part performance endorsed by the Court of Appeal in *Erie.*

Courts are prepared to enforce oral agreements for the sale of land based on the actions taken by the parties and trial judges will be afforded considerable deference in using these doctrines when enforcing bargains fairly struck.

When involved in disputes arising from real estate transactions, it is important for both clients and counsel to understand the broad, flexible nature of these doctrines and clarify and emphasize the steps taken by parties in reliance on oral agreements in the record if seeking to enforce these kinds of contracts.

While this decision reinvigorates some of the protections available to oral agreements, it also underscores the importance of clearly memorializing agreements for the purchase and sale of land in writing whenever possible in order to minimize the risk and uncertainty inherent in litigation.