

NOVA SCOTIA COURT OF APPEAL

Citation: *Hilchie v. Waterton Condominiums Inc.*, 2012 NSCA 126

Date: 20121221

Docket: CA 377999

Registry: Halifax

Between:

Jayson Hilchie, Amanda Jackson, Gregory Wentzell, Bradford Dempsey

Appellants

(Respondents on Cross Appeal)

v.

The Waterton Condominiums Inc., a body corporate, and
3182673 Nova Scotia Limited, a body corporate

Respondents

(Appellants on Cross Appeal)

Judge: The Honourable Chief Justice Michael MacDonald

Appeal Heard: October 1, 2012

Subject: **Contracts; Conditions precedent**

Summary: Each of the four appellants signed agreements to purchase units in a proposed Halifax condominium project known as The Waterton. There were significant delays and, in the end, the sales were never completed. This appeal involves the fallout from these aborted transactions.

Specifically, at trial, the respondent developer relied on a clause in each agreement that made the sales conditional upon the condominium project being registered under Nova Scotia's *Condominium Act*, RSNS 1989, c. 85 prior to the scheduled closing

date. So when the closing date came and went without registration, the developer maintained that the agreements were rendered null and void. The purchasers, on the other hand, maintained that the relevant clause did not render the contracts void and, in any event, the developer did not exercise its required due diligence in effecting the registration.

The trial judge found for the purchasers, maintaining that the relevant clause did not have a terminating effect. At the same time, she found that the developer exercised appropriate due diligence in its efforts to register the project. Further, she denied the purchasers' claim for specific performance (because the properties were not sufficiently unique) and, for breach of contract, ordered only nominal damages for alleged loss of bargain.

The purchasers appealed the damage award and the developer cross-appealed the breach of contract finding.

Held: Cross-appeal allowed. The relevant clause rendered the agreements conditional upon timely registration. In other words, the registration clause represented a common law "true condition precedent". Therefore, with the judge acknowledging the developer's appropriate due diligence, the agreements were rendered null and void when the closing date came and went without registration. As such, there was no breach of contract. Therefore, the cross-appeal is allowed and, consequently, the main appeal is dismissed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.