

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

MICHAEL PEEL

Plaintiff

- and -

COLDWELL BANKER NORTHERN BESTSELLERS

and THE CITY OF YELLOWKNIFE

Defendants

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Transcript of the Oral Decision delivered by The Honourable  
Justice C.S. Brooker, sitting in Yellowknife, in the  
Northwest Territories, on the 2nd day of August, A.D. 2002.

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APPEARANCES:

Mr. M. Peel:

For himself

Mr. G. Malakoe:

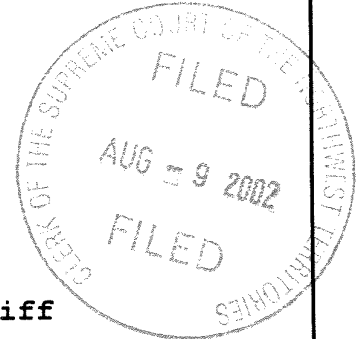
Counsel for the Defendant,  
Northern Best Sellers Ltd.

Mr. G. Phillips:

Counsel for CK Holdings Ltd.

Ms. S. Kay:

Counsel for the Defendant,  
City of Yellowknife



1 THE COURT: This is my decision on the  
2 Plaintiff's Notice of Motion which has been brought  
3 before me.

4 It is important to note that the relief you are  
5 seeking by way of this Notice of Motion is quite  
6 specific, Mr. Peel. You drafted the Notice of Motion,  
7 and you know what I am talking about there. You have  
8 asked for certain things from the Court.

9 I should tell you, as well, that a number of the  
10 things that you are seeking are somewhat technical  
11 under the law, and I appreciate that you are not a  
12 lawyer, but my obligation is to apply the law. I am  
13 obliged to.

14 In your Notice of Motion, you are seeking a stay  
15 of proceedings on the transfer of title to Lot 4,  
16 Block 539, Plan 2094, in the City of Yellowknife -  
17 from now on, I'll just call it "the lands" or "Lot 4"  
18 - pending the outcome of the Statement of Claim  
19 filed. In other words, how I interpret that is you  
20 want the transfer of title stopped until such time as  
21 the Court can rule on your action. The second thing  
22 you want is that a hold be put on the property, Lot 4,  
23 to prevent any development or improvements "that may  
24 cause me further damages," and that, in effect, is an  
25 application for injunction.

26 The basic outline of the facts as I determine  
27 them from the affidavit evidence that has been filed,

and which appears to be uncontradicted in any significant way, is that the Plaintiff was desirous of purchasing Lot 4. He obtained certain forms from the City, and then approached Marie Coe, of Northern Best Sellers Ltd., on the 10th or the 11th of June of this year. She's a realtor.

Mr. Peel provided Miss Coe with a signed Agreement for Sale, dated the 11th of June, and, indeed, provided it to her on that date, and then the next day he provided her with two certified cheques, one being the required deposit, the other being a security deposit, I think is how it is described. And, indeed, it is my recollection and Miss Coe actually attended at Mr. Peel's work site to obtain those cheques because the original cheques that Mr. Peel had provided were in the wrong amount or something.

In paragraph 11 of her affidavit, Miss Coe deposes that she explained to Mr. Peel that the offer which he had prepared could not be taken to the City until she had received the cheques, and she also explained, she says, to Mr. Peel that it was important that they get the offer and the cheques to the City as soon as possible to ensure that another offer was not accepted before Mr. Peel's. Or "ours", as she described it.

She deposes that she also explained to Mr. Peel

1 that the offer was not accepted until the  
2 representatives from the City signed the offer on page  
3 7.

4 On June the 11th -- sorry. On June the 12th, I  
5 think it is, she had, then, the two cheques in the  
6 correct sum and three signed copies of the document  
7 which she calls an Offer to Purchase. It is the same  
8 document that was obtained from the City by Mr. Peel.  
9 She says that she gave the file to her office  
10 administrator to "process". I don't know what is  
11 meant by that particular term "process".

12 It is also clear on the facts that Northern Best  
13 Sellers Ltd., with whom Miss Coe worked, had been  
14 retained as the City's realtor for the purposes of  
15 providing real estate sales and marketing services,  
16 including services with respect to the property which  
17 I think is called -- the property development which is  
18 called Kam Lake, of which Lot 4 is a part.

19 According to the affidavit evidence, there was at  
20 the same time another realtor in the Northern Best  
21 Sellers Ltd. office who was also trying to sell Lot 4.  
22 As Mr. Peel said in his argument, that other  
23 prospective purchaser was CK Holdings Ltd., who had  
24 been trying to purchase the property under - I gather  
25 from the submissions made - a variety of financial  
26 scenarios.

27 CK Holdings Ltd. came up with a cash offer to buy

1 the property, and I am satisfied from the wording of  
2 the affidavit of Miss Coe that the cash offer came up  
3 after -- I should say that for the purpose of this  
4 application, I am satisfied that the cash offer came  
5 up after Mr. Peel's offer had been received in the  
6 offices of Northern Best Sellers Ltd. I may not be  
7 entirely clear, but that is the inference that I draw.

8 Northern Best Sellers Ltd. recommended that the  
9 City accept the CK Holdings offer over the Plaintiff's  
10 offer. CK's offer was a cash offer, as I have said,  
11 whereas Mr. Peel's offer was an offer to pay the price  
12 over a period of time.

13 It appears from the evidence that the City  
14 accepted Northern Best Sellers' advice or  
15 recommendation and sold the property to CK Holdings  
16 Ltd. I am not exactly sure from the evidence as to  
17 what date the CK Holdings Ltd. offer was accepted;  
18 but, in any event, it is clear from the record that  
19 the Plaintiff commenced his action against Coldwell  
20 Banker Northern Best Sellers and the City of  
21 Yellowknife by Statement of Claim issued June 20th,  
22 2002. On that same day, the Plaintiff filed a  
23 Certificate of lis pendens against the title to Lot 4.  
24 And again on that same day, but obviously after the  
25 lis pendens was filed, title to the property was  
26 issued by the Registrar of Land Titles here in the  
27 Northwest Territories in the name of CK Holdings Ltd.,

and the lis pendens is noted on the Certificate of Title, at the back with the encumbrances.

Now, with respect to the specific relief which Mr. Peel seeks in this application, it is my decision that it is too late to stay the transfer of title. That is the first thing you have sought. Title has already been transferred to the new purchaser, CK Holdings Ltd. And as I have said, however, I note that your lis pendens is noted on the back of the Title and thus the new Title was issued with that notation.

With respect to the second form of relief that you seek, which is the hold on development which you have asked for, in my opinion what you are seeking by the hold is, in reality, an interim injunction, and that raises two specific issues. Firstly, since you are seeking an injunction, or hold as you have described it, on development, you have to look at who you are seeking it against. And your Statement of Claim, the only parties who are involved legally at this stage are Coldwell Banker Northern Best Sellers and the City of Yellowknife. To the extent that you want to stop CK Holdings Ltd. itself from doing anything, they are not a party to this application and, thus, I would have no jurisdiction to make an order against someone who is not a party. To the extent that your application for an injunction or hold

1 can be referenced to the City of Yellowknife, who is a  
2 Defendant and Respondent to the application, or to  
3 Coldwell Banker Northern Best Sellers, who is also a  
4 party to the action and a Respondent, I can clearly  
5 deal with that and have jurisdiction to deal with  
6 that.

7 Since it is an interim injunction application  
8 against those two parties, I have to apply the law as  
9 it relates to interim injunctions; and, indeed, it is  
10 a three-part test, as counsel have pointed out.

11 The first thing that you as the Applicant have to  
12 satisfy me on a balance of probabilities, Mr. Peel, is  
13 that there is a serious question to be tried. The  
14 second thing you have to satisfy me of is that there  
15 will be irreparable harm done to you if the injunction  
16 or hold is not granted, and the third thing you have  
17 to do is satisfy me on a balance of probabilities that  
18 the balance of convenience favours the granting of the  
19 injunction as opposed to not granting it.

20 Under the law, the first prong of the test - that  
21 is, the serious question to be tried - is not a very  
22 onerous test, and I am certainly prepared to find on  
23 the evidence before me that in this case there is a  
24 serious question or issue to be tried. So you  
25 satisfied me on the first prong. However, I am not  
26 satisfied on the other two parts of the test. For  
27 example, the evidence does not satisfy me that there

1 will be irreparable harm to you if I do not impose the  
2 hold on the development in the manner in which you  
3 seek. I note that you do not oppose all development  
4 -- or you do not seek an injunction against all  
5 development or improvement, only developments or  
6 improvements that "might cause him further damage" or  
7 "might cause you further damage". If any such  
8 development does, in fact, occur, I am satisfied it  
9 can be compensated for by money damages. Certainly  
10 nothing on the evidence that has been placed before me  
11 shows or proves that you will, in fact, suffer  
12 irreparable harm, which, by definition, cannot be  
13 compensated for in money damages if the injunction is  
14 not granted.

15 With respect to the balance-of-convenience prong,  
16 I find that it favours rejecting the injunction, or  
17 the hold as you described it. There is no evidence  
18 before me as to what type of development or when a  
19 development or improvements will take place. See, as  
20 I pointed out earlier on, CK Holdings at present has  
21 the title to the land. They are not a party to the  
22 action. They are not really a party to the  
23 application, although they are clearly represented  
24 here. Any hold or injunction, even if placed against  
25 the City, would affect CK Holdings Ltd., and, in the  
26 consequence of all of that, I am just not satisfied  
27 that the balance of convenience favours the granting



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of an injunction.

Finally, although it is not necessarily determinative here, there is a wealth of authority that says a court should not grant an injunction unless the person seeking the injunction has filed with the Court an undertaking to pay damages in the event he is ultimately unsuccessful. There is no such undertaking here.

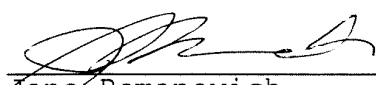
For all of these reasons, I am obliged to dismiss your application for the relief that you seek in the Notice of Motion, and I do so.

**(DISCUSSION)**

THE COURT: With respect to Mr. Peel's motion, which I have dismissed, costs will be in the cause. And that means, Mr. Peel, that the costs will be determined when the trial is determined, essentially. It will follow the result of the trial.

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Certified Pursuant to Rule 723  
of the Rules of Court

  
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Jane Romanowich,  
Court Reporter