

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MICHELINE L. GAUDET and
WADE C. FRIESEN

Applicants

- and -

LUMEN C. MARIANAYAGAM and LUMEN C.
MARIANAYAGAM in his capacity as Executor of
Bastiampillai Anthony Emmanuel Marianayagam's Estate
and PHILOMENA BLOSSOM MARIANAYAGAM as
named Executor of the last will of Bastiampillai Anthony
Emmanuel Marianayagam's Estate

Respondents

MEMORANDUM DIRECTING TRIAL

[1] The Applicants seek (i) an order for specific performance of an agreement of purchase and sale of a lot and (ii) an interpleader order so that various encumbrances on the lot may be lifted so as to transfer clear title. They emphasize that there is urgency to their application because the City of Yellowknife intends to offer the lot for sale at a public auction to be held on June 1, 2005. The proposed auction arises from property tax arrears owing on the lot.

[2] The Respondent Philomena Marianayagam did not appear on the application, although served with notice. The Applicants and the Respondent Lumen Marianayagam are all self-represented.

[3] While the Respondent Lumen Marianayagam has advanced somewhat contradictory positions in response to this application, his ultimate position is that he opposes it and considers himself not to be bound by the agreement for purchase and sale, which appears to have been signed initially only by his mother, Philomena Marianayagam. However, as Lumen Marianayagam is the title-holder to the lot by virtue of being the surviving joint tenant, specific performance could only be granted against him. The claim against his mother can be for damages only. At least, this is how the matter appears, based on the documentation filed to date.

[4] From the materials filed, the following issues arise:

1. Whether Lumen Marianayagam is bound by the agreement of purchase and sale, assuming it is proven that he did not counter-sign the offer to purchase until after the original closing date (Exhibit K to the affidavit of Micheline Gaudet sworn April 18, 2005);
2. The legal effect, if any, of the parties' failure to enter into a tenancy-at-will agreement as contemplated by the agreement of purchase and sale;
3. Whether any discussions between the parties about decreasing the purchase price affect the right to specific performance;
4. The nature of the property and the Applicants' apparent intention to sell it shortly after acquiring it may have a bearing on whether the appropriate remedy is specific performance or damages.

[5] Resolution of the above issues will depend on the facts and the parties do not agree on all the facts. There may be other issues as well. Those I have listed are simply those that I see at this point from the materials filed and the parties' submissions.

[6] Accordingly, I direct that there be a trial of the Applicants' claim for specific performance and damages. The interpleader action cannot be dealt with until the parties' rights are resolved at trial.

[7] I direct that the parties file pleadings in this matter. The Applicants are directed to file a statement of claim by June 30, 2005, and serve it on the Respondents. The Respondents will have 30 days from the date of service to file their statement or

statements of defence and serve same on the Applicants. Thereafter, the parties are to proceed in accordance with the Rules of Court.

[8] I urge all parties to retain legal counsel to represent them in this matter to ensure that their respective positions are fully and properly placed before the Court.

[9] Obviously this does not resolve the immediate issue of the tax sale. However, should the tax arrears remain unpaid and the lot be sold by the City, the Applicants may still pursue their claim for damages.

Dated this 25 day of May 2005.

V.A. Schuler,
J.S.C.

Heard at Yellowknife, NT
May 13, 2005

The Applicants appeared in person

The Respondent Lumen C. Marianayagam appeared in person

No one appeared for the Respondent Philomena Blossom Marianayagam

Edward Gullberg appeared for the City of Yellowknife

Roderick Onoferychuk appeared for Royal Bank Visa

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