

ELLA INVESTMENTS LTD. v. VANDERCLAY DEVELOPMENT COMPANY LTD.

<p>Date:  FEBRUARY 22, 2024</p>	<p>Plaintiff(s): ELLA INVESTMENTS LTD. Counsel: J. Tayar Email: <a href="mailto:joshua@fredtayar.com">joshua@fredtayar.com</a></p> <p>Defendant(s): VANDERCLAY DEVELOPMENT COMPANY LTD. Counsel: J. Montgomery Email: <a href="mailto:jwm@lawhitby.com">jwm@lawhitby.com</a></p>
	<p>The Applicant seeks the appointment of a sales officer along with accompanying relief for the <i>Partition Act</i> (“the Act”) sale of a property municipally known as 18818 Woodbine Avenue in the Town of East Gwillimbury (“the Property”).</p> <p>The Respondent does not oppose the sale of the property but seeks a different means by which the property will be appraised, listed, marketed, and sold. The property is owned jointly by the Applicant and the Respondent.</p> <p>I am persuaded that the appointment of a sales officer and the process proposed in the draft judgment of the Applicant and dated February 22, 2024 (“the Applicant proposal”) is appropriate and is the best means by which the property should be marketed and sold.</p> <p>I find that the Applicant proposal offers the cleanest, most cost efficient and least convoluted process for the marketing of the property. Already the parties are on their third court appearance since the application was brought and the property has not yet been listed. It seems to me that the Respondent is suggesting still another court appearance for the purposes of it being able to bring forward a suitable candidate for sales officer. This is not a good use of judicial resources, nor is it cost effective or necessary.</p> <p>Like my brother McEwen J in <i>Shainhouse v Beatrice Leaseholds</i>, Toronto CV-15-11135 unreported decision, I seen no good reason</p>

to depart from the initial proposal of Mr Rutman/Zeifmans as a suitable candidate for the appointment. They have been appointed by this court in other cases; they are independent of the court process; they enjoy an excellent reputation.

The appointment of the sales officer will obviate the need for multiple court appearances to iron out differences and disagreements. Armed with a moderate level of discretion, the sales officer will likely only need to return the matter to court for the approval of an ultimate sale and for his costs and disbursements. In the absence of a sales officer, I am not at all confident that the parties would be capable of agreeing on a sales process without recourse to multiple court appearances.

As stated by my brother Dunphy J in *Chan v Chan*, 2021 7453 (Can Lii) at para. 5, "...the professional fees to be charged by RSM will almost certainly be a fraction of the legal costs to be incurred and time lost in coming back to court two, three or more times to resolve each discrete step in the process when the parties prove unable to agree...."

Paragraph 12 of the Applicant proposal allows for both parties to submit offers. I agree with the Applicant that a right of first refusal is not called for under the *Act* and might simply pollute and delay the marketing and sales process. Nor is there any legal obligation under the *Act* for one party to offer to buy the other out of its interest.

I agree with the Applicant that the process by which the sales officer will solicit marketing proposals from various real estate brokers is an effective, time sensitive, commercially expedient, and cost-efficient method of proceeding.

The brokers will be knowledgeable about the state of the market, comparable property values, and marketing strategies. As brokers, they derive a commission from the sale of the property thus giving them the incentive to attract the optimal selling price. Moreover, the surest way to determine a property's fair market value is to list it on that market.

For the foregoing reasons there shall be judgment on this application as per the proposed draft judgment filed by the Applicant and dated February 22, 2024.

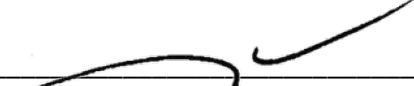
The Applicant seeks \$47,349.77 for costs of the Application. The Respondent suggests that \$10,000 is an appropriate award.

I am not persuaded that costs should be awarded on a substantial indemnity basis. There is no conduct warranting it. The Respondent took a position which was not accepted by the court. The sum sought by the Applicant is not proportionate to the importance of the issues or the complexity or length of the application. The previous court appearances were brief; there was no real opposition to partition and sale of the property only the method by which it was to be sold.

I have arrived at the conclusion that the sum of \$18,500 inclusive of HST and disbursements is a fair, reasonable, and proportionate sum for costs. That Respondent shall pay that amount of costs to the Applicant as a first charge out of its share of the proceeds of sale of the property.

Order to go accordingly.

Justice:

  
The Honourable Justice J. McCarthy