

2014 CarswellOnt 15946
Ontario Superior Court of Justice

Galli v. Serena Homes Ltd.

2014 CarswellOnt 15946, 247 A.C.W.S. (3d) 221

**Sergio Galli, Plaintiff and Serena Homes Limited, Fatima Ramji, Karim Lalji,
Wilma Shaffick, Wendy Shaffick, Serena Homes (Bradford) Ltd., Serena Homes
(Dixie) Limited, 2035395 Ontario Limited and 2056039 Ontario Limited,
Defendants**

Tzimas J.

Judgment: November 4, 2014

Docket: CV-14-956-00

Counsel: Alfred Schorr for Plaintiff
Kevin Sherkin, Ryan Wozniak for Defendants

Subject: Property

Headnote

Real property --- Registration of real property — Certificate of pending litigation (lis pendens) — Definition of interest in land

Defendants brought motion for removal of caution and declaration that plaintiff was not entitled to certificate of pending litigation (CPL) — Motion granted — Plaintiff did not have interest in development properties — Plaintiff's interest related only to income to be earned from development properties — Plaintiff's registration of caution, having been denied CPL on ex parte basis was bad faith conduct in face of order that told him to give notice to parties — Plaintiff admitted that caution was registered for no other reason than to compel defendants to negotiate with him — Registration of caution was damaging to alleged profit interests.

Table of Authorities

Statutes considered:

Land Titles Act, R.S.O. 1990, c. L.5
s. 62 — considered

MOTION by defendants for removal of caution and declaration that plaintiff was not entitled to certificate of pending litigation.

Tzimas J.:

1 The defendants brought a motion seeking the removal of a caution and a declaration that the plaintiff is not entitled to a CPL. The Orders sought by the defendants are granted as follows:

- a) The Land Registrar is directed to immediately delete the Caution registered by Galli on July 21, 2014 and renewed on September 23, 2014 against the title to the property known municipally at 3075 Cawthra Road;
- b) Mr. Galli's CPL motion is dismissed with costs on a substantial indemnity basis;
- c) The declaration that Galli has no interest in the Development Properties is granted; and
- d) The defendants are granted leave to amend their Statement of Defence in accordance with the form set out in Schedule A of their Notice of Motion.

2 My orders are based on my consideration of the parties' evidence, their submissions and the supporting law. On the strength of Mr. Galli's own evidence and the submissions of his own counsel I find that Mr. Galli does not have an interest in the Development Properties. His registration of the caution, having been denied the issuance of a CPL on an *ex parte* basis was bad faith conduct in the face of an order that told him to give notice to the parties. He cannot now come to court and ask for the court's discretion in his favour.

3 More significantly, Mr. Galli's dispute relates to a potential claim to a share of the profits that may arise from this development. Mr. Galli admitted under oath that he did not have an interest in the Development Properties themselves, that his interest related only to the income to be earned from the Development properties and that the caution was registered for no other reason than to compel the defendants to negotiate with him.

4 The registration of the caution is in fact damaging to alleged profit interests. If the 22 transactions fail to close, there will be no profits. The law is well established that a party will not be entitled to a CPL where, as here, it has no interest in the land, where the CPL would result in significant prejudice to the opposing party and where the moving party's interest in the property in question is merely commercial. The same would apply to the registration of a caution.

5 Insofar as Mr. Galli's other justification lies in his attempt to give notice of a trust between SHL, Galli and Lalji, s. 62 of the *Land Titles Act* prohibits such registration. In other words, a caution is registered on that basis is improper and in violation of s. 62 of the LTA and must be deleted.

6 In light of my findings, an Order is to be issued as noted above. The defendant are entitled to costs. If they cannot come to an agreement, they may make written submissions in 2 pages, double-spaced and attach their Bill of Costs and any relevant offers by November 15, 2014. Mr. Galli shall have the right to respond by November 30, 2014.

Motion granted.