

CANADA / JUDGMENT

Fleetwood Investments Ltd. v. Ghavami

2003 BCCA 459

COURT

British Columbia Court of Appeal

DECIDED

14 August 2003

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2003BCCA0459 COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Fleetwood Investments Ltd. v. Ghavami, 2003 BCCA 459 Date: 20030814 Docket: CA030823 Between: Fleetwood Investments Respondent (Petitioner) And Davood Ghavami, Davood Ghavami doing business as CBI Electronics and the said CBI Electronics Appellant (Respondent) Before: The Honourable Mr. Justice Low The Honourable Madam Justice Levine The Honourable Mr. Justice Hollinrake Oral Reasons for Judgment Appellant appearing in person W.S. Morrison Counsel for the Respondent Place and Date: Vancouver, British Columbia August 14, 2003

- [1] LEVINE, J.A.: The appellant, Davood Ghavami, doing business as DBI Electronics, appeals from the order of Ross J. made May 12, 2003, declaring him in wrongful possession of premises at 982 Granville Street in Vancouver, ordering that a writ of possession be issued and costs in favour of the respondent, Fleetwood Investments Ltd. The order was stayed by the Chief Justice on May 15, 2003.
- [2] The appellant has occupied the premises since July 1, 1995, under a five-year lease and a five-year renewal of the lease (the "Lease"). In March 2002, the landlord and owner of the property, Mrs. June Lort, decided to sell the property. On March 19, 2002, Mrs. Lort had delivered to the appellant a Notice to Tenant of Termination of Lease, effective 11.59 p.m. on March 31, 2003.
- [3] The Notice of Termination was delivered pursuant to Article 6.22 of the Lease, which provides: 6.22 Expropriation/Sale/Demolition - If the demised premises shall be acquired or condemned by any authority having the power for such acquisition or condemnation for any public or quasi-public use or purpose, then and that event the term of this lease shall cease from the date of entry by such authority... Provided further and it is hereby agreed that should the property of which the demised premises form apart [sic] be sold or a ground lease of the entire property be granted for a term of twenty-one (21) years or longer or the building be required to be demolished for re-development purposes, the Landlord (Lessor) may terminate the within lease and tenancy hereby created, and the term hereby granted and any extension thereof by giving to the Tenant (Lessee) twelve (12) month's [sic] notice in writing of his intention so to do, which notice to vacate shall be sufficient [sic] given by leaving same on the said premises, and the Tenant shall forthwith on the expiration of such

notice peaceably and quietly surrender and deliver up to the Landlord possession of the said premises, and shall have no further claim hereunder of in respect of such termination.

- [4] On March 18, 2002, Mrs. Lort signed Form A Transfers, transferring the property to the nominee of the respondent. The Form A Transfers were submitted for registration to the Land Title Office on March 19, 2002. The sale completed on March 20, 2002, when the respondent paid Mrs. Lort for the property. Registration was completed on March 22, 2003, but would take effect "as of the date [March 19, 2003] and time when the application was received by the registrar" pursuant to s. 37 of the Land Title Act, R.S.B.C. 1996, c. 250. The evidence indicates that the effective time of registration of the transfer was before the time the Notice of Termination was delivered to the appellant.
- [5] After the respondent acquired the property, the appellant and respondent unsuccessfully negotiated for a new lease. The appellant advised the respondent's property manager on March 31, 2003, that he did not intend to vacate the premises as of 11.59 p.m. On April 1, 2003, the respondent served a Notice to Quit and on April 2, 2003, served a written Demand for Possession of the premises. The appellant refused to vacate the premises, and the respondent commenced an action by petition, seeking the orders ultimately granted by Ross J.
- [6] The appellant argued, among other things, that clause 6.22 of the Lease applied only when the property was sold for the purposes of redevelopment, and that the Notice of Termination was defective because Mrs. Lort was not the landlord at the time the notice was given. In support of his interpretation of clause 6.22, the appellant provided evidence, in the form of his affidavit and that of Mrs. Lort's property manager, that he had discussed the clause with the property manager before he signed the lease, and the property manager advised that the lease could be terminated under that clause only if the building was sold or demolished for the purposes of redevelopment.
- [7] Ross J. rejected both arguments. She held that clause 6.22 was clear and unambiguous, and applied to any sale, not only to a sale for redevelopment. She rejected the appellant's evidence of the interpretation of the clause as contrary to the clear meaning of the clause and lacking commercial sense.
- [8] With respect to the sufficiency of the notice to terminate, Ross J. held that Mrs. Lort was the landlord until the sale by Mrs. Lort to the respondent was completed by payment, on March 20, 2003.
- [9] The appellant's arguments on the appeal are the same as those presented to Ross J.
- [10] In my opinion, Ross J. made no error in interpreting clause 6.22 as she did and rejecting the appellant's parol evidence of the property manager's interpretation. Clause 6.22 sets out three independent causes for the landlord to terminate the lease: (1) should the property...be sold; or (2) should a ground lease of the entire property be granted for a term of 21 years or longer; or (3) should the building be required to be demolished for re-

development purposes. Like Ross J., I find no ambiguity in the language of the Lease that would justify turning to extrinsic or parol evidence to aid in its interpretation (see *Halagan v. Reifel*, [2001] B.C.J. No. 1309 at paras. 79-80 (C.A.)(QL); *Eli Lilly and Co. v. Novopharm Ltd*; *Eli Lilly and Co. v. Apotex Inc.* [1998] 2 S.C.R. 129 at paras. 57-9). Further, the Lease contained an "entire agreement" clause, clause 6.13, in which the appellant acknowledged that there were no representations or warranties not set out in the Lease, the Lease constituted the entire agreement between the parties and it could be modified only in writing.

- [11] I also agree with Ross J.'s conclusion that the Notice of Termination was not defective because it was given by Mrs. Lort as "landlord", although she had, on the day the notice was delivered to the appellant, transferred the property and assigned the Lease to the respondent. In law, Mrs. Lort continued to have an interest in the property until she was paid for the property (*Shebley v. Rur. Mun. of Mervin* No. 499 (1922), 63 D.L.R. 632 (Sask. C.A.); *H.W. Liebig Co. v. Leading Investments Ltd.*, [1986] 1 S.C.R. 70). The registration of the transfer was not completed until March 22, 2003. Had the appellant looked at the register on the date the Notice of Termination was delivered, he would have seen a pending application for registration of the transfer of the property. The application could have been withdrawn before registration was completed (see s. 167(1) of the Land Title Act). The registration took effect retroactively, to March 19, 2003, when it was completed on March 22, 2003, (s. 37 of the Act). Thus, on the date the Notice of Termination was delivered, Mrs. Lort was still the landlord.
- [12] I would dismiss the appeal and set aside the stay of execution of the order of Ross J.
- [13] LOW, J.A.: I agree.
- [14] HOLLINRAKE, J.A.: I agree.
- [15] LOW, J.A.: The appeal is dismissed and the stay of execution of the order of the chambers judge is set aside. "The Honourable Madam Justice Levine"

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Prepared on 27 October 2026 · Esheria