

CANADA / JUDGMENT

Wedgewood Marcon Homes (First) Ltd. v. Minor

2009 BCSC 1553

COURT

Supreme Court of British Columbia

DECIDED

13 November 2009

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2009 BCSC 1553 Wedgewood Marcon Homes (First) Ltd. v. Minor IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wedgewood Marcon Homes (First) Ltd. v. Minor, 2009 BCSC 1553 Date: 20091113 Docket: S093780 Registry: Vancouver Between: Wedgewood Marcon Homes (First) Ltd. Petitioner And Michael Wallace Minor, James McLeman and Lombard General Insurance Company of Canada Respondents Before: The Honourable Mr. Justice Grezell Reasons for Judgment Counsel for the Petitioner:: P.K. Sandhu Counsel for the Respondents: W.J. McMillan Place and Date of Hearing: Vancouver, B.C. July 8, 2009 Place and Date of Judgment: Vancouver, B.C. November 13, 2009

- [1] This matter was heard on July 8, 2009. I delivered oral reasons for judgment on July 16, 2009, in which I ordered that the petition by Wedgewood be struck out and that the issues between the parties be tried by an action brought by the respondents.
- [2] Wedgewood's petition claimed certain deposit monies paid by the respondents Minor and McLeman, in respect to a contract of purchase and sale be forfeited. Prior to the matter being heard, the respondents had commenced an action claiming the contract was invalid because of alleged breaches of various provisions of the Real Estate Development Marketing Act, S.B.C. 2004, c. 41, by the petitioner and sought return of the deposit monies paid under the contract.
- [3] At the time of my oral judgment, because counsel for one of the parties was not able to be present, I ordered that if the parties could not agree on how costs of the application were to be dealt with they could submit written submissions.
- [4] I have now received and reviewed those submissions.

- [5] The parties acknowledge I have discretion in the matter of awarding costs. One of the primary reasons for ordering this matter be decided after a trial concerned a position taken by the respondents that they had not received proper delivery of various documentation as required by the Act. This is a factual matter that will ultimately be determined by the trial judge. In my view, the trial judge will be in the best position to make the decision as to who should bear the costs of this application after hearing the evidence.
- [6] It is so ordered. "GREYELL J."

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