COURT FILE NO.: CV-18-00602981-000
DATE: 05072019

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ANDREW CORMIER, Applicant

AND:

2164971 ONTARIO INC, ABBAS MOHAMMAD AND THE DIRECTOR OF TITLES PURSUANT TO S. 57(14 OF THE LAND TITLES ACT, Respondents

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

BEFORE: S.F. Dunphy J.

COUNSEL: *See sign in sheet*

HEARD at Toronto: May 7, 2019

ENDORSEMENT

[1] The parties appeared before me this morning on an application to enforce a settlement agreement. The respondent takes the position that the settlement agreement has been repudiated. Nobody took the position that there was no settlement agreement. I provided a short, handwritten endorsement in the (vain) expectation that a "settlement of the settlement" could be worked out in accordance with the directions I gave. I was too optimistic. Accordingly, I am expanding upon the ruling I gave.

[2] I found at the hearing that the settlement agreement had not been repudiated. The two grounds of repudiation cited by the respondent related to (i) failure to complete the mortgage refinancing of a property referred to in the settlement agreement; and (ii) failure to transfer certain automobiles beneficially owned by the first two respondents but legally owned by the applicant.

[3] As to the first ground, the settlement agreement itself provides that the remedy for failure to refinance the mortgage is that the respondent is permitted to sell the property and repay the mortgage in that fashion. This has not been done. The applicant is seeking to complete the mortgage refinancing TODAY and the parties have run aground on a chicken and egg problem. To refinance, the respondent needs to get off title. The

respondent wants to stay on title until the full proceeds are paid to discharge the mortgage. That is why lawyers have invented escrow agreements. It is astonishing that the parties have been unable to resolve this issue until now, but it would appear the respondent's hope to rescind the settlement agreement has been a contributing factor.

[4] The second ground has to do with the transfer of about ten automobiles held in trust by the applicant or his company for the respondent. The applicant has agreed to transfer title – the respondent does not want to receive a transfer of title because it is feared that somehow this will cause the license plates to be cancelled or insurance to be lost. I am unable to understand the fear, but it is nowhere part of the settlement agreement. The applicant is obliged to transfer his right title and interest – as it is and not as it is desired to be – to the respondent company or as directed. He is not obliged to provide a power of attorney to do so at a later date of the respondent's choosing. If there is a breach, it is on the part of the respondents who are seeking more than they have a legal right to.

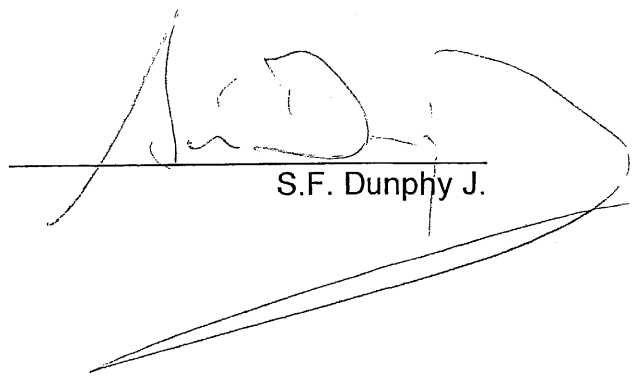
[5] That being said, commercial common sense dictates that the parties ought to have solved this ages ago with communication and cooperation. It is and was in their mutual interest to do so. The applicant is entitled to get off title – and to shed the contingent liability associated with legal title to automobiles – not to be kept on title indefinitely. There is no reason in logic or in law that a transfer from the legal owner to the beneficial owner ought to produce dire consequences at the MTO that has been brought to my attention.

[6] I gave the parties the afternoon to attempt to work out a consent order to deal with these problems but they have been unable to do so. That is disappointing.

[7] I am in no position to arbitrate two competing orders late in the afternoon and am profoundly disappointed in the inability of the parties to solve this simple logistical problem. I am not seized of the matter as I shall not be in town for the balance of the week. Most Ontario judges will not be sitting either. There is a conference.

[8] Accordingly, I can do no more at this hour but confirm that which was implicit in my endorsement this morning. The settlement remains in force. It has not been repudiated. The applicant is not required to deliver blank powers of attorney regarding the vehicles but is required to transfer what interest he has in them, subject to such leases as there may be.

[9] If further motions are needed to enforce this VERY simple settlement, costs will no longer be off the table. I had ordered both parties to bear their own costs until now because it seemed to me that communication – or the lack of it – was largely responsible for inflating a simple problem into a large one. If further judicial intervention is required – beyond a consent order – to close this settlement, it shall be clear to all concerned that costs are an issue that will be on the table.



S.F. Dunphy J.

Date: May 7, 2019

NO. ON LIST: 2

DATE: May 7, 2019

COURT FILE NO: CV-18-00602805-0000

SHORT TITLE: Cormier, Andrew VS Mohammad Abbas

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APPEARING FOR

PLAINTIFF/PETITIONER/APPLICANT
DEFENDANT/RESPONDENT
OTHER–SPECIFY

APPEARING FOR

PLAINTIFF/PETITIONER/APPLICANT
DEFENDANT/RESPONDENT
OTHER–SPECIFY

TYPE OF MOTION (CHECK ONE ONLY)

CONTEMPT
DECLARATION
DISMISS ACTION
INJUNCTION
JUDGMENT ORDER TO GO
STAY PROCEEDINGS

****LENGTH OF MOTION/APPLICATION:** 2 hours

VEXATIOUS PROCEEDINGS

EXPEDITE
TRIAL A. G.
MATTER
ATTEND EXAMINATION
APPEAL MASTER
OTHER SUMMARY JUDGEMENT MOTION

****RULE:** 49.09

NATURE OF MOTION (CHECK ONE ONLY)

CONTESTED
UNOPPOSED

ON CONSENT
WITHOUT NOTICE