

NOVA SCOTIA COURT OF APPEAL

Citation: *Wirvin v. DMT Properties Ltd.*, 2003 NSCA 12

Date: 20030122

Docket: CA 178420

Registry: Halifax

Between:

Theresa Mary Wirvin

Appellant

v.

DMT Properties Limited

Respondent

JUDGE: BATEMAN, J.A.
HAMILTON, J.A. (Dissenting)

APPEAL HEARD: November 14, 2002

JUDGMENT DELIVERED: January 22, 2003

SUBJECT: Real Property - option to purchase - specific performance

SUMMARY: Appellant Wirvin leased a garage from D.M.T. The lease contained an option to purchase the property. Wirvin purported, by letter, to exercise the option. D.M.T. responded that the Wirvin letter had not been sufficient to exercise the option and further maintained that the lease was at an end due to a past default of rent. Wirvin indicated that it wished to purchase the property and asked D.M.T. to reconsider its position. D.M.T. did not respond. Wirvin did not tender the purchase price but sued for specific performance. At the commencement of trial D.M.T. changed its position and admitted that the first Wirvin letter had been sufficient

to exercise the option to purchase. It was D.M.T.'s position that absent tender, Wirvin could not succeed on its claim. Trial judge agreed and found that the evidence did not establish that D.M.T. had repudiated the exercised option to purchase. Wirvin's claim dismissed.

ISSUES: Wirvin appeals refusal of specific performance.

RESULT: Appeal allowed. Judge made palpable and overriding error in concluding that D.M.T. had repudiated the contract. D.M.T.'s letter denying proper exercise of the option and purporting to terminate the lease, in these circumstances, amounted to repudiation, relieving Wirvin of the need to tender as a precondition to specific performance.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 14 pages.