

SUPREME COURT OF NOVA SCOTIA

Citation: *Davies v. CBI Cape Breton Island Developers Inc.*, 2013 NSSC 375

Date: 20130809

Docket: Hfx. No. 388960

Registry: Halifax

Between:

Penny Davies and Ian Davies

Applicants

v.

CBI Cape Breton Island Developers Inc.

Respondent

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Judge: The Honourable Justice A. David MacAdam

Heard: August 6, 7, and 9, 2013, in Halifax, Nova Scotia

Written Release

of Decision: November 22, 2013

Subject: Contracts; property; misrepresentation

Summary: The applicants agreed to purchase a property on a resort development. They had assurances from the respondent developer that mortgage financing would be available at a ratio of 75% loan-to-value. However, the bank only offered a mortgage at a ratio of 65%, which was unacceptable to the applicants. The developer continued to represent that 75% financing could be arranged, possibly through a different bank, and the applicants made part payment. The applicants eventually terminated the agreement when the respondent failed to commence construction.

Issue: (1) Were the plaintiffs entitled to recover their part payment? (2) In the alternative, was the availability of financing an implied condition of the agreement? (3) In the alternative, was it an implied term of the agreement that the Resort be developed, and did the respondent breach this term by failing to construct the Resort? (4) In the further alternative, were the applicants entitled to damages for fraudulent or negligent misrepresentation? (5) In the final alternative, was there an innocent misrepresentation entitling the applicants to rescind the contract?

Result: There was an implied term that the applicants could obtain 75% loan-to-value financing. The claims founded on misrepresentation failed on the basis that it could not be said that the representations about the availability of financing at the required level induced the applicants to enter the contract. In addition, the representations about providing alternative banking arrangements were not representations of present or past facts, and as such were not actionable as misrepresentations. However, the failure to provide a date for the commencement of construction amounted to a breach of contract that entitled the applicants to treat the contract as terminated and require the return of funds they advanced.

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