

Claim No. 322863

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Learning v. 3093619 Nova Scotia Ltd., 2010 NSSM 21

Between:

LISA LEARNING & EGON WALLET

CLAIMANTS

- and -

3093619 NOVA SCOTIA LIMITED

DEFENDANT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: March 8, 2010

Decision: March 18, 2010

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

This action came before the Small Claims Court on March 8, 2010, at Halifax, Nova Scotia.

The Claimants were requesting a return of a deposit for the purchase of a condominium unit. The Claimants alleged the Defendant was unable to close the transaction in accordance with the Purchase and Sale Agreement.

Facts

- The parties entered into a Purchase and Sale Agreement on October 9, 2007.
- The closing date was to be the 21st day of April, 2009.
- The agreement states at paragraph 9: “Extension of Closing: If the Declaration and Description have not been accepted for registration on or before the Closing Date, the day for completion of this transaction shall be extended seven (7) days after the Purchaser has been notified by the Vendor that such documents are so accepted for registration by the Registrar of Condominiums, but in no event shall the completion of this transaction be extended beyond 180 days following the Closing Date. The Purchaser shall not be entitled to compensation for any losses he or she may suffer as a result of such extension of the Closing Date.”
- On April 17, 2009, an Amendment to the Purchase/Sale Agreement extended the closing date to October 30, 2009. The amendment also stated in part, “...and the Agreement of Purchase and Sale shall remain in full force and effect.”
- As of the date of this hearing, the Declaration and Description have not been accepted by the Registrar or Condominiums.

Analysis

The closing date was changed from April 21, 2009, to October 30, 2009. This closing date has been extended until seven (7) days after the Claimants have been notified that the Registrar of Condominiums has accepted the Declaration and Description documents for that condominium. To date the condominium has not been accepted by the Registrar. When the Registrar does so and the Defendant notifies the Claimants, then the closing will happen seven (7) days after this notification, but in any event no later than 180 days following October 30, 2009. Subject to any further amendment, the latest date that this Purchase and Sale Agreement would be in effect

is April 30, 2010. This, of course, could be to the benefit of the Claimants as purchasers, as well as the Defendant, for their financing.

This action, as a consequence, is premature and if the Agreement is not completed by April 30, 2010 at the very latest, due to the Defendant not being able to have the condominium registered, then the Claimants could demand their deposit. If the Claimants refuse to complete the transaction within the extension period described in paragraph 9 of the Purchase and Sale Agreement, then the Claimants will forfeit the deposit. As a result of this action being premature, I shall stay the action until after April 30, 2010, after which time if the Defendant has been unable to complete the transaction then the Claimants may continue with this action.

IT IS HEREBY ORDERED that this action be stayed until May 1, 2010, after which time the Claimants may make an Application to have the matter continued pursuant to their current pleadings.

Dated at Halifax, Nova Scotia, this 18th day of March, A.D., 2010.

David T.R. Parker
Adjudicator of the Small Claims
Court of Nova Scotia