

Court File No. CV-14-513935

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

BDO CANADA LIMITED IN ITS CAPACITY AS TRUSTEE OF THE ESTATE
OF 2283942 ONTARIO INC., A BANKRUPT

Plaintiff

and

SHIU KWAN LO AND SONS LTD., 2433591 ONTARIO INC.,
2435982 ONTARIO INC. and HERMAN KUANG

Defendants

**REPLY AND DEFENCE TO COUNTERCLAIM TO THE STATEMENT OF
DEFENCE AND COUNTERCLAIM OF THE DEFENDANT, 2433591
ONTARIO INC.**

1. The Plaintiff admits the allegations contained in paragraphs 5, 11, 12, and 13 of the Statement of Defence and Counterclaim.
2. The Plaintiff denies the allegations contained all of the remaining paragraphs of the Statement of Defence and Counterclaim.
3. Contrary to the allegations contained in paragraph 1 of the Statement of Defence and Counterclaim the defendant 2433591 Ontario Inc. (the “Assignee”) and the defendant 2435982 Ontario Inc. (the “Purchaser”) were aware that:
 - (a) The Plaintiff had financing available to it to discharge the mortgage which was held by the Assignee (the “Mortgage”);

- (b) The Plaintiff requested a discharge statement prior to the transfer of the Property known municipally as 3320-3330 Midland Avenue, Toronto, Ontario (the “**Property**”) from the Assignee to the Purchaser; and
- (c) The Assignee failed to provide a discharge statement to the Plaintiff.
4. Contrary to the allegation contained in paragraph 1 of the Statement of Defence and Counterclaim the Property was not sold for fair market value. The Assignee, the Purchaser and the defendant Herman Kuang (“**Kuang**”) deliberately failed to list the Property for sale or to test the open market and instead incorporated the Assignee and the Purchaser for the sole purpose of taking an assignment of the mortgage in order to do a “quick flip” of the Property between related companies. Further the Assignee made no attempt to obtain a cash deal and instead entered into a transaction where the majority of the purchase price was paid via a vendor take back mortgage so as not to pay any equity to the Plaintiff. A higher purchaser price would have been obtained but for these failures on the part of Kuang and the Assignee.
5. The Plaintiff pleads that none of the factors set out in paragraph 2 of the Statement of Defence and Counterclaim would affect the value of the Property. The fact is that Kuang and the Assignee deliberately failed to list the Property for sale or test the open market in order to do a “quick flip” to the Purchaser, a related company. A higher purchaser price would have been obtained but for this failure on the part of Kuang and the Assignee.
6. Contrary to the allegations contained in paragraph 4 of the Statement of Defence and Counterclaim the Plaintiff has not delayed this matter. None of the defendants responded to the Statement of Claim. The Plaintiff was forced to bring a motion for substituted

service in order to serve the Amended Statement of Claim on Kuang. None of the defendants responded to the Amended Statement of Claim and Kuang, the Assignee and the Purchaser were all noted in default. Following the noting in default Kuang and the Assignee retained counsel and served defences. Any delay was caused by Kuang, the Assignee and the Purchaser.

7. Contrary to the allegations contained in paragraph 6 of the Statement of Defence and Counterclaim the Plaintiff arranged for financing and had funds available to it to discharge the Mortgage. As set out in paragraphs 21 to 24 of the Amended Statement of Claim, the Plaintiff repeatedly contacted Kuang to request a discharge statement for the Mortgage. Despite these requests, Kuang and the Assignee failed to provide a discharge statement and on October 2, 2014, Kuang caused the Assignee to transfer the Property at undervalue to the Purchaser, a related company.
8. In response to the allegation contained in paragraphs 7 and 16 of the Statement of Defence and Counterclaim, the Plaintiff was ready, willing and able to discharge the Mortgage on or about September 18, 2014, at which point it would have stopped paying interest to the Assignee. Further, upon enforcing on the Mortgage, the Assignee was paid the amount due and owing to it. Accordingly no further payments are due on the Mortgage held by the Assignee.
9. Contrary to the allegation contained in paragraph 14 of the Statement of Defence and Counterclaim, on September 18, 2014, it was not too late for the Plaintiff to redeem the Mortgage and the time to redeem the Mortgage had not expired. The Plaintiff pleads that

no binding agreement of purchase and sale had been entered into prior to September 18, 2014, and accordingly the right to redeem had not been extinguished.

10. Contrary to the allegation contained in paragraph 15 of the Statement of Defence and Counterclaim the transfer of the Property from the Assignee to the Purchaser was not an arm's length transaction. The Assignee and the Purchaser are related companies. The principal of the Purchaser and the lawyer for the Purchaser is Diana Young ("Young"). Young and Kuang are spouses of one another.
11. The Assignee, the Purchaser, Kuang and Young were all aware that the Plaintiff was ready, willing, and able to redeem the Mortgage. The transfer of the Property from the Assignee to the Purchaser was done in an attempt to defeat the Plaintiff's right to redeem.
12. Contrary to the allegation contained in paragraph 17 and 18 of the Statement of Defence and Counterclaim, the failure by Kuang and the Assignee to provide a discharge statement when the Plaintiff requested one is not a technical defect. The effect was to deny the Plaintiff its right to redeem the Mortgage. The Plaintiff pleads that this failure was deliberate and not inadvertent or unintentional.
13. On November 27, 2015, the Plaintiff filed an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the "BIA"). Pursuant to section 69 of the BIA all proceedings against the Plaintiff, including the counterclaim brought by the Assignee, are stayed. The Assignee has not obtained an order lifting the stay imposed pursuant to section 69 of the BIA. The Plaintiff pleads that the counterclaim is stayed.
14. The Plaintiff asks that the Counterclaim be stayed in accordance with the BIA.

March 24, 2017

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PROCEEDING COMMENCED AT
TORONTO

REPLY

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