COURT OF APPEAL FOR ONTARIO

CITATION: Scarlato v. Buzbuzian, 2022 ONCA 352
DATE: 20220504
DOCKET: C69760

Benotto, Miller and Copeland JJ.A.

BETWEEN

Armando Scarlato Jr.

Plaintiff (Appellant)

and

Richard Buzbuzian and Jason Monaco

Defendants (Respondents)

Alfred S. Schorr, for the appellant

Niklas Holmberg, for the respondents

Heard: April 26, 2022

On appeal from the judgment of Justice Andrew Pinto of the Superior Court of Justice, dated July 7, 2021.

REASONS FOR DECISION

[1] The appellant's action for breach of contract was dismissed on a motion for summary judgment. The appellant alleged that the respondents breached an agreement to pay him a commission or finder's fee for introducing him to a third-party corporation, Aires Tech, for the purposes of proposing an IPO of Aires Tech

shares. The appellant claimed that the terms of the agreement were set out in two emails between the appellant and the respondents, dated April 10 and 11, 2017. The appellant's evidence was that the emails established an agreement that he would receive a percentage of funds raised by the IPO, to be paid to him by Aires Tech.

[2] The motion judge dismissed the action on the basis that the two emails did not constitute a contract between the parties. Significantly, the terms set out in the emails did not include a finder's fee to be paid to the appellant by the respondents or even by Aires Tech. Even if an obligation to pay a finder's fee could be implied, the motion judge found that the email exchange would nevertheless have been deficient for the purposes of contract formation: the proposal was premised on the signing of a term sheet that was never signed and a proposed "3 corner amalgamation" with Aires Tech that was never concluded; it was never decided whether the respondents or their holding companies would be parties to the agreement; and the emails contemplated that remuneration to the appellant would come from Aires Tech, which was not a party to the alleged contract, and not the respondents.

[3] In the alternative, the motion judge found that the appellant was estopped from bringing the action against the respondents on the basis of a settlement agreement reached with Aires Tech.

[4] On appeal, the appellant argued that the motion judge is not entitled to the deference that *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, says is ordinarily owing to a motion judge's contractual interpretation because the motion judge failed to attend to all of the evidence before him, making the decision unreasonable. In particular, the motion judge was said to have ignored evidence that it is customary in contractual negotiations of this nature to prepare a term sheet, and to have ignored the term sheet drafted by the appellant and supplied to the respondents. The terms set out therein would have supplied the context needed to understand the contract agreed to by the respondents, particularly the obligation to pay a finder's fee to the appellant. Accordingly, the motion judge erred in granting summary judgment and the appellant asks that the order for summary judgment be set aside and the matter be set down for trial.

[5] We do not agree that the motion judge erred. A question of contractual interpretation, which includes whether a contract was formed, is a question of mixed fact and law, and a motion judge's findings in this regard are entitled to deference: *Sattva*; see also *2484234 Ontario Inc. v. Hanley Park Developments Inc.*, 2020 ONCA 273, 150 O.R. (3d) 481, at para. 42. We do not agree that the motion judge failed to consider the surrounding circumstances in interpreting the emails said to constitute the contract. The appellant's unequivocal position below was that the terms of the agreement were to be found entirely within the exchange

of emails of April 10 and 11. As the appellant argued, those emails referred to the term sheet. The motion judge made the express finding that signing the term sheet was a step in the plan proposed by the appellant. But the motion judge also found that the term sheet was never finalized and signed, notwithstanding Mr. Buzbuzian's statement that it should be revised to incorporate the agreed terms from the email exchange, and that the term sheet – much of which was written in indefinite language – did not remedy the contractual deficiencies in the email exchange that the motion judge identified. The term sheet did not, for example, purport to create an obligation on the respondents to pay any commission to the appellant. These findings were open to the motion judge on the record before him and we would not interfere with them.

[6] The appellant also argued that the motion judge erred in holding that his claim was estopped because of a settlement agreement with Aires Tech. He argued that the settlement agreement was made with respect to other claims against Aires Tech, and did not extend to the action against the respondents. As we have already concluded that the motion judge did not err in finding there was no contract, it is not necessary that we consider the motion judge's alternative finding that the appellant was estopped by a release from pursuing this action.

DISPOSITION

[7] The appeal is dismissed. Costs are awarded to the respondents in the amount of $20,000 including disbursements and HST.

M. L. Benotto J.A.

J.A.

J.A.