

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-05-048670-994

DATE: May 4, 2012

IN THE PRESENCE OF: THE HONOURABLE ROGER E. BAKER, J.S.C.

LUBECKI TECHNICAL HOLDINGS INC.

Plaintiff

v.

ROYAL BANK OF CANADA

Defendant

JUDGMENT

[1] This is a damage action by Plaintiff against its banker the Royal Bank of Canada (hereinafter "Royal"). The case Plaintiff alleges against Royal is broad in its scope and is difficult to identify with precision the exact cause of action asserted by Plaintiff.

[2] At the outset of trial an application was made pursuant to article 273.1 C.C.P. which was granted, thereby splitting the action of Plaintiff with the consequence that the Court heard the issue of responsibility only.

[3] The principal allegations in the Re-Amended Detailed Declaration are the following:

- 1 - In 1990, 91 Royal was appointed the financial partner of Plaintiff through banking resolutions (P-1A and P-1B) of Plaintiff company.

- 2 - In 1994 Plaintiff was looking to acquire a building in Granby Quebec to expand its activities, which it carried out as a manufacturer of plastic extrusions.
- 3 - In this period Plaintiff rented premises of 5000 square feet in Granby and engaged a real estate agent to find a building for purchase of approximately 10,000 square feet for occupancy by July 1st, 1994.
- 4 - As such an acquisition proved impossible at the time, Plaintiff negotiated a lease agreement (P-2B) with 2422-0527 Quebec Inc. (hereinafter "Quebec Inc.") for premises at 635 Simonds Street in Granby, which draft agreement remained unsigned until 1996.
- 5 - That Plaintiff obtained an option to purchase the said premises which was a *sine qua non* condition for Plaintiff.
- 6 - A lawyer Me. Louis Normandin was at that time a principal director and shareholder of the lessor, while at the same time acting as legal counsel to the branch of the Royal in Granby where Plaintiff carried on its banking affairs.
- 7 - Plaintiff moved into the premises without benefit of a signed written lease which was only provided to Plaintiff on November 28, 1994¹.
- 8 - "That on or about February 1995, Me Louis Normandin indicated to Plaintiff that he did not intend to respect the Agreement of Lease, Exhibit P-2, as he did not care for the Law and that, he would take steps to ensure that Plaintiff would not be able to purchase the Building in any event; (...)." ²
- 9 - The option clause in the draft lease (P-2B) reads as follows:

"1.- Concerning the option to purchase, the price shall be 600,000 \$ and for the first term of the lease only (3 years). During that time the owner may continue to offer for sale said property after the acceptance of the lease containing the option to purchase therein granted to renter. Should the owner receive another acceptable offer to purchase, he will be obligated to notify the renter of same, by telegram.

Renter will then have a 30 day delay starting from the reception of said telegram to give to the owner or his broker, his written decision of either purchasing at the same conditions and terms of the acceptable offer the said property within 30 days from the expiration of the above delay or cancelling his option contained in said lease.

¹ This date, as shall be seen below, is incorrect.

² Re-Amended Detailed Declaration, para. 17.

Should the option to purchase be cancelled in said lease, the owner will then be free to accept said new offer to purchase or any other offers he may receive thereafter, the whole without any claim or recourse from either the renter or the owner.”³

- 10 - Mrs. Lubecki was advised in February 1996 that Plaintiff would be called upon to purchase the said rented building as a result of an offer to purchase from a third party, and at that time discussed a mortgage with Pierre Riopel, the new account manager at Defendant’s branch in Granby.
- 11 - In fact on March 10, 1996, Plaintiff received from the owner Quebec Inc. a copy of an accepted offer to purchase dated March 7, 1996 for an amount of \$560,000.00.
- 12 - Plaintiff acknowledges that as a result of the said notice (P-4), it had until April 7, 1996 to reply.
- 13 - Plaintiff then filed with the Defendant a mortgage application on March 13, 1996, and on the same day wrote Mr. Riopel, and delivered the letter (P-5) personally to the branch, which stated that Plaintiff had to reply no later than April 7, 1996 to the third party offer.
- 14 - Plaintiff alleges that Riopel told Mrs. Lubecki on several occasions that he needed to get authorization from the Montreal office in order to approve the mortgage loan for which Plaintiff had applied.
- 15 - Defendant colluded with Quebec. Inc to prevent Plaintiff from purchasing the building and “as a result of Defendant’s abusive, malicious and intentional conduct, Plaintiff lost its option to purchase the Building which was sold to a third party”⁴.

THE EVIDENCE

➤ MARIA LUBECKI

[4] She is the owner of Plaintiff company, and was the principal witness on its behalf.

[5] Plaintiff stated that when her company moved into the premises at 635 Simonds Street in Granby on July 1, 1994, there was no written lease executed with the landlord (Quebec Inc.). There was however a draft lease which was still in the process of being negotiated, and which contained an option to purchase for Plaintiff.

³ Exhibit P-2B.

⁴ Re-Amended Detailed Declaration, para. 45.

[6] Mrs. Lubecki testified that in February 1995 she had a conversation with Me. Louis Normandin who was one of the shareholders of Quebec Inc. which owned the building where Plaintiff operated its business. She stated that Normandin told her that he did not have to respect the terms of the option to purchase, and that he would sell the building to one of his friends.

[7] Nevertheless, she discussed a letter (P-4) from Me. Normandin dated March 8, 1996 which advised that Quebec Inc. had received an offer for the building and that in spite of the fact that Plaintiff had still not signed a formal lease with Quebec Inc., Plaintiff might in any event exercise the right to purchase within a delay of thirty days, that is, prior to April 7, 1996.

[8] She testified that she had decided to purchase the property in her own name and wrote to Mr. Riopel at Royal on March 25, 1996 (P-7) to that effect; in this letter she enclosed a short form of her personal balance sheet which she characterized in the letter as "a value of my assets."

[9] Mrs. Lubecki wrote Mr. Riopel on March 29, 1996⁵ which letter advised him as follows:

- -In respect of Plaintiff's financial statements for the year ending December 15, 1995, she had spoken to her accountant who would not be able to furnish financials for Plaintiff prior to "April 15th or so"⁶.
- She intended to purchase the building in her personal name, and as the acquisition would cost \$570,850.00, she would like to receive a mortgage in the amount of \$460,000.00.
- She further stated that an answer was required within the next few days as she had to make up her mind very quickly.

[10] In cross-examination Mrs. Lubecki admitted that she wrote Mr. Riopel on February 21, 1996 (D-24A) stating that she lacked banking experience regarding the corporate world.

[11] She stated in a letter to Mr. Riopel on April 11, 1996 (D-12) that "Regarding the building, I have not given a positive answer, and at present it is in the air, so just put that whole investigation on hold regarding the mortgage."

⁵ Exhibit D-13.

⁶ *Ibid.* at page 1.

➤ PIERRE RIOPEL

[12] Pierre Riopel was responsible for Plaintiff's account in 1996. He testified that there was an enormous amount of correspondence with the client in the period January to the end of April 1996; he thought there was a serious weakness in the management of the company. He said that Plaintiff was constantly in default to furnish the required monthly statements.

[13] Mr. Riopel discussed the issue of Plaintiff's mortgage application. He stated that it was his practice to request financial statements for all mortgage applications. He said that Judes Mimeault, responsible for credit at the Granby branch of Royal in 1996 and who had a personal credit limit of \$1,000,000.00, had the authority to grant Plaintiff's mortgage application.

[14] Mr. Riopel was looking to Mimeault in Granby for approval of the mortgage, and not attempting to get approval in Montreal, as alleged by Plaintiff.⁷

DISCUSSION

[15] The issue to be determined by the Court is whether Royal committed any act or series of acts which prevented Plaintiff from acquiring the building for reasons which can be attributed to the wrongdoing of the Defendant.

[16] In its Declaration⁸ under article 274.1 C.C.P., Plaintiff framed the issue to be determined as follows: Was Plaintiff prevented from obtaining financing for the acquisition of the building as a result of the negligence of Pierre Riopel?

[17] The thrust of Plaintiff's case had apparently shifted from the wrongdoing of Me. Normandin to the negligence of Pierre Riopel.

[18] The principal allegation against Me. Louis Normandin is to be found in paragraph 17 of the Re-Amended Declaration which reads as follows:

“That on or about February 1995, Me Louis Normandin indicated to Plaintiff that he did not intend to respect the Agreement of Lease, Exhibit P-2, as he did not care for the Law and that, he would take steps to ensure that Plaintiff would not be able to purchase the Building in any event;

- a) That said declaration was made on February 20th 1995;
- b) That said declaration was made verbally;

⁷ Re-Amended Detailed Declaration, para. 25.

⁸ Dated August 14, 2007.

- c) That Plaintiff did not inform Defendant at that time as it could not anticipate Defendant's abusive and malicious conduct;".

[19] Me. Normandin testified prior to trial pursuant to article 404 C.C.P. as follows:

"Q- *Maintenant, je fais référence au paragraphe 17 de la déclaration qui est indiqué :*

« On or about February nineteen ninety-five (1995), Maître Louis Normandin indicated to Plaintiff that he did not intend to respect the agreement of lease, Exhibit P-2, as he did not care for the law and that he would take steps to ensure that Plaintiff would not be able to purchase the building in any event. »

Quelle est votre réponse à cette affirmation?

R- *Encore une fois, complètement ridicule. C'est une invention. Voyons donc! Que je respecterais pas la loi. D'ailleurs, ce paragraphe-là, ça fait part en février quatre-vingt-quinze (95). Donc, elle était dans la bâtisse depuis pas tout à fait un an. L'offre d'achat est arrivée un an après. Puis on avait toujours pas de bail. On avait une offre de location, là. Je lui ai quand même soumis l'offre d'achat.*

*Mais, pour moi, là, je suis avocat, une offre d'achat qui est acceptée, là, une offre de location, c'est-à-dire, qui est acceptée, ça a une valeur, ça vaut quelque chose. C'est complètement ridicule, ça, ça a pas de sens, cette histoire-là. Ça ressemble à de la paranoïa plus que d'autre chose."*⁹

[20] Mrs. Lubecki testified that Me. Normandin had told her in February of 1995 that he would not sell her the building, and that furthermore he would not respect the lease. It is useful to remember that in February 1995 Plaintiff had occupied the premises for approximately one year without benefit of a signed lease; there was however a draft which contained the right of first refusal.

[21] What Mrs. Lubecki was not able to explain to the Court is the following contradiction: if Me. Normandin threatened her in 1995 that Plaintiff would never be able to purchase the building, why then would Me. Normandin have sent a registered letter (P-4) to Plaintiff on March 8, 1996 advising that in spite of the fact that there was no lease signed between them, he was honouring a verbal obligation and was giving Plaintiff 30 days to advise whether it would purchase the building for \$560,000.00, thus matching the offer which was annexed to the letter? This is not the letter of someone intent on preventing a purchase by Plaintiff.

[22] From the point at which Normandin wrote giving Plaintiff 30 days to exercise its option, Plaintiff, through the incompetence and almost wilful blindness of Mrs. Lubecki

⁹ Examination prior to trial of Me. Louis Normandin held pursuant to art. 404 C.C.P. on October 25, 2011, pps. 62-63.

failed to furnish Royal with its relevant financial statements, and persisted in stating that she wanted financing far beyond what she had been told was the maximum percentage that Royal was prepared to lend against the capital amount of the desired mortgage loan.

[23] The plethora of letters from Lubecki to Royal, particularly to Mr. Riopel in the 30 day period after the Normandin letter indicate that the writer (Mrs. Lubecki) simply had no understanding of what was required to obtain a commercial mortgage loan. She is now attempting to blame her banker for her own inexperience.

[24] Mrs. Lubecki contended that she was never informed by Royal that it required the financial statements of Plaintiff for the year ending December 15, 1995 for the purpose of analyzing the request for a mortgage loan. This is contradicted by her letter (D-13) to Mr. Riopel of March 29, 1996, only a few short days prior to the expiry of the 30 day option:

“Dear Mr. Riopel :

Thank you for your time, which you spent with us this morning.

As follows are the subjects I am to get back to you on Monday, April 1st, 1996:

1: Our financial statement for the year ended December 15, 1995: (...).”

[25] The issue of the financial statements of Plaintiff in support of the request for a mortgage is critical in understanding the lack of experience of Mrs. Lubecki. She obviously didn't consider it important to arrange for their production on an expedited basis. In any event, she had already written to Royal stating that she would purchase the building personally, thus in theory rendering the financial statements of Plaintiff irrelevant, and in fact, enclosing her own personal statement¹⁰.

[26] The contractual obligation of Plaintiff to furnish the Royal with financial statements is found in the contract with Royal (D-2) which required Plaintiff to furnish the statements for the year ending December 15, 1995 by March 15, 1996. Plaintiff was in default to comply with this requirement. The statements were given to Royal on May 23, 1996, almost two months after the date Plaintiff had contracted for, and five weeks after the expiry of the date for the exercise by Plaintiff of the right of first refusal on the building,

[27] When the financial statements of Plaintiff were finally supplied on May 23, 1996, three weeks later on June 14, 1996, Royal increased Plaintiff's line of credit from \$100,000.00 to \$175,000.00, agreed to a small business loan in the amount of \$134,000.00, as well as other smaller accommodations.¹¹

¹⁰ Exhibit P-7.

¹¹ Exhibit D-24, Letter of confirmation by Royal of June 14, 1996.

[28] This activity by Royal in June 1996 in respect of Plaintiff's banking needs only confirms the bank's position that it was waiting for the financial statements. Clearly this is not the behaviour of a bank trying to effectively cripple a client, as Mrs. Lubecki suggests in her pleadings and testimony.

[29] In two letters Plaintiff wrote in April 1996, it clearly renounced its option to exercise the right of first refusal:

1- Letter to 2422-0527 Quebec Inc. of April 6, 1996 (D-16):

"Re: Offer to Purchase of March 7th, 1996

Gentlemen:

We are replying to your letter dated March 8th, 1996 enclosing the above purchase offer, and received by ourselves on or around March 12th, 1996.

We do not view this purchase offer as complete nor done in good faith, as it does not contain ALL agreements made with the prospective purchasers, nor is it factual, and more particularly in respect of clauses 3.3 and 4.1.

We have no interest in blocking any sale which is fully revealed to ourselves regarding our first right of refusal and respects the contractual agreement of our lease. However, we shall use all legal recourses available to protect our interests and to ensure that your company honours its obligations respecting the lease arrangement and requires any potential buyer of the property to respect our rights.

In addition, you have not fulfilled the obligation of your contractual agreement with ourselves regarding your counter-offer of May 16th, 1994, in which you undertook to notify us via telegram, giving us a 30 day delay from RECEIPT of such telegram.

In summary, we demand that the lease be signed, and we await receipt of a COMPLETE offer to purchase, via telegram, incorporating all agreements and understandings between your company and the prospective purchasers, regarding the building in question, where we are presently renting.

Unless a proper lease is executed suitable for registration by April 12th, 1996, we shall instruct our attorneys to institute legal proceedings requiring your company's authorized signature to the lease document, which shall contain all terms and conditions of the offer, counter-offer and acceptance, requiring that any sale of the property in question requires the purchaser to honour our lease arrangement.

Yours truly,

LUBECKI TECHNICAL HOLDINGS INC."

and

2- Letter to Royal of April 11, 1996 (D-12):

“(…)

Regarding the building, I have not given a positive answer, and at present it is in the air, so just put that whole investigation on hold regarding the mortgage. Granby lawyers aren't much help, so I am using some Montreal lawyers who are up on the law, and in summary the proprietors of the building have some legal problems. I want to remain with our original plans of remaining here for another 4 and half years, and not taking on unnecessary financial pressure.

Thank you

Maria Lubecki ”

[30] Thus, by these two letters, one to Plaintiff's landlord expressing a desire to occupy the premises as a tenant, and the second to Royal in which Mrs. Lubecki abandons her interest in acquiring the property, and expressing a desire to remain in the building as a tenant for a further four years without “taking on unnecessary financial pressure,”¹² it was made clear that prior to the expiry date on the option Plaintiff wished to lease rather than purchase the building.

[31] Mrs. Lubecki continued her untrammelled attack against employees of the Royal in a letter (D-23) to John E. Cleghorn, the president of Royal, well after the issue of the option was irrelevant. She wrote Cleghorn on June 5, 1997 again attacking the reputation of Me. Normandin, as well as lawyers generally and judges:

“(…) We had to obtain a lawyer from Montreal, and a Judge from Montreal, as the same in Granby were 'chicken' and intimidated by Me. Normandin. That unnecessary exercise enriched our lawyers by \$15,000.00!”¹³

[32] This unseemly and defamatory attack on the lawyers and judges of Granby Quebec is completely uncorroborated; it is nothing but a gratuitous and petulant diatribe.

BURDEN OF PROOF

[33] Plaintiff has alleged wrongdoing by its banker, the Royal Bank of Canada, and that this wrongdoing prevented it from acquiring a building which it was then occupying as a lessee. The evidence in the record bears no relation to the allegations of Plaintiff. Indeed, all the evidence, whether the voluminous correspondence between Plaintiff and Defendant, as well as evidence adduced at trial, leads to the conclusion that Plaintiff may well have suffered as a consequence of the ineptitude of Mrs. Lubecki. There is not an iota of proof in the record demonstrating any wrongdoing on the part of this Defendant which caused Plaintiff any harm whatsoever. The action by Plaintiff is entirely without merit.

¹² Exhibit D-12.

¹³ Exhibit D-23, p. 3 (emphasis added).

[34] The cross-demand is without foundation.

FOR THESE REASONS, THE COURT:

[35] **DISMISSES** the action of Plaintiff, with costs;

[36] **DISMISSES** the cross-demand, with costs.

ROGER E. BAKER, J.S.C.

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Dates of hearing: November 7, 8, 9, 10, and 14, 2011