

Court of King's Bench of Alberta

Citation: 2255000 AB Ltd v 1645827 AB Ltd, 2026 ABKB 507

Date: 260713
Docket: 2403 20644
Registry: Edmonton

Between:

**2255000 Alberta Ltd and
2375355 Alberta Ltd.**

Plaintiffs/Appellants

- and -

**1645827 Alberta Ltd. and
Kewal Rishi**

Defendants/Respondents

Memorandum of Decision of the Honourable Justice Donald Lee

[1] The Plaintiffs, 2375355 Alberta Ltd. and 2255000 Alberta Ltd (“225”) are developers and claim an interest in land located at 1911 50 Street, in Edmonton (“the 225 Lands”). These are undeveloped lands adjacent to the lands which are the subject matter of this action.

[2] The 225 Lands do not have independent legal or physical access to a public roadway unless access is obtained across the adjacent parcel. Without either ownership of the adjoining lands or a registered access easement, the 225 Lands cannot be reached for development or servicing.

[3] In order for the Plaintiffs to move forward with the development of the 225 Lands, they entered into negotiations with 1645827 Alberta Ltd. (“164”) with regard to the purchase of approximately 80 acres of undeveloped land located in southwest Edmonton. The negotiations

went on over the course of 18 months, with the Parties allegedly reaching an agreement in mid 2024 with a purchase price of \$15,500,000.

[4] The Parties then retained counsel in mid-2024 to ‘paper’ their deal with 164. Kewal Rishi [“Rishi”] retained Gurinder Bhangoo, and 225/Kishi Dhawan retained Carl Bosecke [“Dhawan”]. At some point in time, Rishi, forwarded to Mr. Bosecke a document titled “Offer to Sell”, which contained the opening preamble:

Offer To Sell

1645827 Alberta Ltd (hereinafter refer to the “Vendor”) hereby
Offers to Sell the Property described herein to **2255000 Alberta
Ltd and/or Nominee** (hereinafter referred to as the “Purchaser”)...

[5] It was a comprehensive document of 13 pages with the concluding paragraph stating:

Acceptance

This Offer shall be irrevocable and open for acceptance by the
Purchaser until 12: 00 PM noon Time on the 20th day of June,
2024.

Purchasers Acceptance

The Purchaser hereby accepts the above offer and agrees to carry
out the sale on the terms and conditions above mentioned.

2255000 Alberta Ltd.

Per: _____

[6] There were emails back and forth between the lawyers, Mr. Bosecke and Mr. Bhangoo, whereby 225 was trying to negotiate some changes to the Offer to Sell. Ultimately, all of the proposed changes were rejected and Mr. Bhangoo sent an e-mail saying that his client was not willing to further negotiate on any of the requested changes.

[7] Then 225 accepted and signed the offer, returning it to Mr. Bosecke with the deposit monies.

[8] The Appellants appeal the Applications Judge granting the Defendants’ Summary Judgement. The Defendants seek an order directing the immediate removal of the Plaintiff’s caveat the Plaintiff’s registered against title to the property at issue in this proceeding, and dismissal of the Appeal. I heard this matter as a de novo appeal reviewed on a standard of correctness.

Analysis

[9] The parties have each tendered affidavits and transcripts from questionings conducted on them.

I. Negotiations Prior to July 15, 2024

[10] The parties initially negotiated directly with each other, with the Defendants emailing the Plaintiffs a version of the purchase agreement (“Agreement – July 4, 2024”). Dhawan of 225 admitted that the Plaintiffs drafted the initial contract.

[11] The Defendants then retained legal counsel, Mr. Gurinder Bhangoo (“Mr. Bhangoo”), to conduct negotiations with the Plaintiffs on their behalf. On July 9, 2024, Mr. Bhangoo requested a word version of the agreement from the Plaintiffs along with the name of their lawyer to continue negotiations. The Defendants wanted to alter some of the proposed terms. The Plaintiffs responded directly, providing Mr. Bhangoo a word copy of the agreement and advising him that they had not determined whether to retain counsel to negotiate the transaction.

[12] On July 10, 2024, the Plaintiffs provided Mr. Bhangoo a version of the agreement in word format that differs (“**Agreement of July 10, 2024**”) from the Agreement of July 4, 2024. The primary changes between the agreements relate to Clause 12 and Schedule B, with substantially more terms added, including in relation to the proposed vendor take back mortgage (“VTB”). Dhawan admitted that the Agreement of July 4, 2024 and Agreement of July 10, 2024 contained different terms.

[13] Mr. Bhangoo, on the same day, incorporated the revisions into the Agreement of July 10, 2024 and sent it to the Plaintiffs.

II. The Plaintiffs Then Retain Counsel to Negotiate the Purchase

[14] The Plaintiffs then retained Mr. Carl Bosecke (“Mr. Bosecke”) as counsel to conduct negotiations with Mr. Bhangoo on their behalf. Mr. Bosecke emailed Mr. Bhangoo at 8:30 AM on July 15, 2024 advising that “our client has made some amendments to your version of the agreement and is now prepared to proceed on the basis of the Offer to Sell attached.”

[15] Mr. Bhangoo responded at 9:27 AM by email stating that “I have attached word copy of the Agreement in which I made some changes and sent to your client... I notice some changes have been incorporated; however, some are still not accepted.” In the email, Mr. Bhangoo attaches a copy of the revised agreement (“Agreement – July 15, 2025”). Mr. Bhangoo then lists changes the Defendants seek to the contract: Clause 2 (a different closing date), Clause 5 (new change – adding “addition of the land by the municipality for widening the roads”), Clause 7(c) (requirement of vacant possession at the time of sale), Clause 10.1 (addition of representations and warranties regarding the lands), Clause 12(h)(removal of acceptance that VTB be “be subservient on title to any loan” the Plaintiffs take on the land), Clause 12(i) (no real estate commissions), and Schedule B (interest on the VTB at a rate of 12% per annum, the Plaintiffs payment of VTB preparation and registration on full-indemnity basis, and VTB being the first charge on title). The changes were reflected in Agreement – July 15, 2025.

[16] Dhawan admitted that upon receiving Mr. Bhangoo’s email, he understood that the parties had not reached an agreement on the purchase of the lands and negotiations were still occurring between the parties.

III. Negotiations Continue Until the Defendants Refuse Any Further on July 29, 2024

[17] Mr. Bhangoo and Mr. Bosecke continued negotiations over emails. Mr. Bhangoo added text in red to the initial email he sent to Mr. Bosecke at 9:27 AM on July 15, 2024, setting out the Defendants’ position in detail. Mr. Bosecke responded with Plaintiffs’ position in blue text. As Dhawan admitted, the parties did not agree to the (a) closing date, (b) due diligence period, (c) providing vacant possession of the lands at the time of closing, (d) the Defendants’ VTB being subordinate to other mortgages on title, and (e) the rate of interest charged on the VTB.

IV. The Defendants End All Further Negotiations on July 29, 2025

[18] The parties continued to exchange emails from July 15, 2025 to July 24, 2025, where they attempted to reach an agreement on the outstanding issues. The initial focus of the parties was on resolving the issue of whether the Defendants' VTB could be postponed or rendered subordinate to any other loans the Plaintiffs obtained on the lands. Dhawan agreed that the failure to reach consensus on the proposal to subordinate or postpone the VTB for any new financing meant there was no agreement between the parties on the sale of the lands.

[19] The Defendants took the position that without the removal of the VTB postponement clause, the transaction would not proceed. Eventually, the Plaintiffs agreed to proceed without the partial discharge clause and without any provision for financing postponements.

[20] However, other terms remained in dispute. This includes the date of closing and the VTB interest rate.¹⁸ The Defendants proposed a closing date of 25 days from the conditions waiver date; the Plaintiffs preferred a 30 day closing date with a modified conditions waiver date of 120 days from the acceptance of the agreement. In relation to the interest rate that would be charged on the VTB, the Defendants sought 12% per annum while the Plaintiffs' position was 4% per annum.

[21] On July 19, 2024, in response to Mr. Bhangoo inquiring whether the Plaintiffs would accept the Defendants' position on the closing date and VTB interest rate, Mr. Bosecke advised that "I don't believe anything has changed since I last spoke with my client regarding those items."

[22] At this point, Mr. Bhangoo does not respond, and Mr. Bosecke follows up with two emails. First, on July 23, 2024, Mr. Bosecke stated that he "would like to finalize" the agreement before his client leaves town. Later that day, Mr. Bosecke advised that he has been waiting for Mr. Bhangoo "to send the final signing version of the agreement."

[23] On July 24, 2025, Mr. Bhangoo responded: "my instructions are not to negotiate further on this and my client is not considering your client's offer thanks." The Defendants have backed out of negotiations and did not wish to sell the lands to the Plaintiffs.

V. The Plaintiffs Provide a Final, Executed Agreement Containing Rejected Terms

[24] The next day, Mr. Bosecke wrote to Mr. Bhangoo stating that his client accepted all the terms proposed by the Plaintiffs and attached an executed version of the agreement ("Unilateral Agreement"). However, the version sent included the VTB postponement clause. It was the precise clause that the Defendants had previously rejected and indicated they would not proceed with the transaction if it was included.

[25] Dhawan acknowledged that the version they signed had the VTB postponement clause, despite the Defendants not agreeing to the sale if it was included as part of the agreement. Dhawan stated that this was the version Mr. Bosecke provided to the Plaintiffs as the final agreement to sign, and instead of seeking clarity around the inclusion of the VTB postponement clause, executed and emailed it back to Mr. Bhangoo.

[26] The Defendants never executed the Unilateral Agreement. Mr. Bhangoo immediately responded to Mr. Bosecke's email, advising him that "my client is not proceeding with your client's offer. He has advised he will not accept any other counter offer either (increase price or

otherwise). He has also requested that you client should not contact him. If you can please pass this on to your client.”

[27] The Plaintiffs then registered a purchaser’s interest caveat against the lands based on the Unilateral Agreement and commence this action.

Conclusion

[28] The Plaintiffs (2255000 Alberta Ltd and 2375355 Alberta Ltd) are suing to enforce an alleged agreement to purchase lands owned by the Defendants (1645827 Alberta Ltd and Kewal Rishi).

[29] The Defendants seek summary dismissal of the action or removal of a caveat registered by Plaintiffs against the property title.

[30] Key Facts:

- Negotiations began in July 2024, with several versions of a purchase agreement exchanged.
- Both sides retained legal counsel and continued to negotiate terms, including closing date, due diligence, vacant possession, vendor take-back mortgage (VTB) terms, and interest rate.
- Essential terms remained unresolved: closing date, VTB interest rate, vacant possession, and whether the VTB would be subordinate to other mortgages.
- On July 24, 2025, Defendants ended negotiations, stating they would not proceed with the sale or accept further offers.
- Plaintiffs subsequently sent a “Unilateral Agreement” containing terms (notably the VTB postponement clause) previously rejected by Defendants.
- Defendants never signed this agreement and explicitly refused to proceed.

[31] Legal Argument:

- Plaintiffs argue that an enforceable agreement exists, “after offer and acceptance” and a paid deposit. The best case scenario for the Defendant was that portions of the Offer to Sell, that was prepared by the Defendants’ lawyer and sent to the Plaintiffs’ lawyer, that was ultimately signed, contained conflicting provisions. The Plaintiffs are not taking the position that they are entitled to secondary financing and will take the position that they are not entitled to secondary financing if the Court ultimately allows for specific performance.
- Defendants argue there was no “consensus ad idem” (mutual agreement) on essential terms, so no enforceable contract was formed. The Plaintiffs’ attempt to enforce the Unilateral Agreement is invalid, as it contains terms the Defendants had rejected.

[32] The record establishes that there is no serious issue to be tried, as the Plaintiffs’ deponent, Dhawan admitted under oath that there was no consensus ad idem on the terms around the purchase of the property. At questioning, Dhawan admitted that there was no agreement between the parties on essential terms.

[33] Therefore, I dismiss the Appeal and grant summary dismissal of the Plaintiffs' claim and order the discharge of the caveat registered against title. My decision proceeds on settled principles of contract formation and is based on in the objective documentary record, rather than subjective belief, and asserted equities.

[34] I conclude that no binding agreement for the purchase and sale of land was formed. Applying the objective reasonable-person test, I find that the parties' communications disclosed ongoing negotiations in which essential terms were not agreed upon. On the evidence, the Defendants had clearly and objectively terminated negotiations before any acceptance by the Plaintiffs. The emails stating that the Defendants were not considering the Plaintiffs' offer and were not prepared to negotiate further are decisive and unambiguous evidence of termination.

[35] I reject the Plaintiffs' submission that a subsequently transmitted revised agreement gave rise to an enforceable contract. That document introduced further changes and failed to resolve outstanding issues previously identified in the negotiations. I conclude that transmitting such a document after negotiations had been terminated did not revive discussions and did not create a contract. While it is legally possible for parties to resume negotiations after termination, I find no objective evidence that this occurred.

[36] I further confirm that subjective intention, belief, or expectation cannot overcome the absence of objective consensus on essential terms. The proper inquiry remained what a reasonable person would conclude from the parties' communications, read as a whole and in their commercial context.

[37] The Plaintiffs also placed reliance on section 191 of the Land Titles Act without first establishing a viable underlying proprietary interest. As my analysis makes clear, statutory, or interim relief cannot supply what contract doctrine withholds. Further, the Plaintiffs' position implicitly depended on subjective intention and post-hoc characterization of negotiations, an approach inconsistent with the objective test governing contract formation. Finally, the Plaintiffs offers no persuasive response to the re-introduction of previously rejected terms in the alleged "final" agreement, a difficulty I treat as fatal to any meeting of minds.

[38] Having determined that no enforceable agreement existed, I hold that there is no legal basis to maintain the caveat. The asserted proprietary interest stood or fell with the existence of a binding contract, which I found absent. The caveat is therefore ordered discharged.

Heard on the 2nd day of April, 2026.

Dated at the City of Edmonton, Alberta this 13th day of July, 2026.

Donald Lee
J.C.K.B.A.

Appearances:

Stephen J. Livinstone, KC
McLennan Ross LLP
for the Plaintiffs/Appellants

Avnish Nanda
Nanda & Company
for the Defendants/Respondents