

COURT OF APPEAL FOR ONTARIO

CITATION: Fernbrook Homes (Bass Lake) Limited v. Cameron Stephens
Mortgage Capital Ltd., 2026 ONCA 603

DATE: 20260827

DOCKET: COA-25-CV-1452

Miller, Wilson and Madsen JJ.A.

BETWEEN

Fernbrook Homes (Bass Lake) Limited and Crystal Homes (Eagles' Rest)
Corporation

Applicants
(Respondents)

and

Cameron Stephens Mortgage Capital Ltd. and Eagles Rest Estates Inc.*

Respondents
(Appellant*)

J. Daniel McConville, for the appellant

Stephen Brunswick and Victoria Ostrovsky, for the respondents

Heard: August 18, 2026

On appeal from the order of Justice Benjamin T. Glustein of the Superior Court of Justice, dated October 8, 2025, with reasons reported at 2025 ONSC 5710, [2025] O.J. No. 5921.

REASONS FOR DECISION

[1] This appeal is about whether the application judge erred in determining that a purchaser of building lots was not obliged to pay additional costs incurred by the

building lots' vendor for private water services, under agreements to which the purchaser was not a party, where the contract between the purchaser and vendor included water services in the purchase price. In our view, the application judge made no reviewable error.

[2] The appellant, Eagles Rest Estates Inc. (the "Vendor"), entered into an agreement of purchase and sale (the "2021 APS") with the respondent homebuilders, Fernbrook Homes (Bass Lake) Limited and Crystal Homes (Eagles' Rest) Corporation (the "Purchasers"). Pursuant to the 2021 APS, the Vendor agreed to sell to the Purchasers 208 developed building lots (the "lots") to be created on a plan of subdivision in the Township of Oro-Medonte in the County of Simcoe (the "Township"). The parties entered into a subsequent agreement of purchase and sale in 2023 (the "2023 APS") that replaced the 2021 APS and increased the purchase price to \$82,000,000.

[3] The 2023 APS contemplated that the Vendor would build infrastructure to connect the lots to the Township's drinking and wastewater systems. However, rather than doing that, the Vendor chose, without consulting the Purchaser or amending the agreement with the Purchaser (under which it might recoup costs), to build a private system for both water services. Instead, the Vendor entered into two municipal responsibility agreements ("MRAs") with the Township, to which the Purchasers were not party. Under the MRAs, the Vendor was responsible for

imposing and collecting charges for the connection to and use of the wastewater and drinking systems.

[4] The transaction closed in September 2024. The Purchasers refused to pay the Vendor's capital costs arising from the private construction of the wastewater and drinking water systems. In response, the Vendors brought an application. The application judge determined that the Purchasers had no obligation to pay for the capital costs incurred for the private water services, totaling over \$6,000,000.

[5] The Vendor submits that the application judge erred in failing to apply the principles of contractual interpretation to the 2023 APS by not considering that the MRAs authorized the Vendor to charge connection and service fees for water services. The Vendor says that although the 2023 APS assumes the Township would own and operate the water services, it effectively "stepped into the shoes" of the Township when it entered the MRAs and is therefore entitled to collect charges in its discretion.

[6] The application judge correctly set out the law applicable to contractual interpretation. He then applied that law, without error, to the record before him. Based on a careful review, he found that:

- (a) The Purchaser's only obligation, with respect to water services, was to pay connection and meter charges to the Township or to the Vendor if the Vendor had paid charges by the closing date;

- (b) The Vendor agreed to complete a list of “Vendor’s Services” as part of the sale price such as constructing, at its cost, “functioning storm and sanitary sewers” and “functioning [drinking] water services”;
- (c) The Vendor was aware, when negotiating the 2023 APS, that it would likely build and operate the wastewater system on a private basis yet proposed no changes to include such capital costs;
- (d) The Vendor neither consulted the Purchasers nor sought payment from them when deciding to construct a private water system rather than connect to municipal services and the Vendor therefore assumed the risk of doing so;
- (e) The Purchaser was not party to the MRAs negotiated by the Vendor with the Township; and,
- (f) Any issue about what charges the Vendor could seek from eventual homebuyers under the MRAs was not before the court.

[7] The conclusions of the application judge, being questions of mixed law and fact, are reviewable only for palpable and overriding error. He clearly based his objective analysis on the ordinary and grammatical meaning of the words, in the context of the agreements as a whole, in a manner consistent with the surrounding circumstances known by the parties at the time, and by considering their

reasonable expectations: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47.

[8] The application judge's interpretation of the 2023 APS reveals no error and we would not intervene.

Disposition

[9] The appeal is dismissed.

[10] Costs are set at \$15,000 inclusive of HST and disbursements, payable by the Vendor to the Purchaser in 30 days.

"B.W. Miller J.A."

"D.A. Wilson J.A."

"L. Madsen J.A."