

AVERTISSEMENT

**Point de Bascule n'endosse pas le contenu de ce document. Il est archivé sur ce site
uniquement à des fins de référence.**

WARNING

**Point de Bascule does not endorse the content of this document. It is archived on this
website strictly for reference purposes.**

MAC's motion to compel transfer of ownership title (615 Belmont)

Date: February 15, 2012

Offers and counter-offers were made for the sale of the building located at 615 Belmont in Montreal between MAC and the original owner. MAC's motion claims that there was an agreement with the original owner of the building but that he eventually refused to close the deal.

MAC's motion aims at compelling the original owner to transfer the ownership title.

In section 22 of the document, Chiheb Battikh is identified as MAC's representative for this transaction. His role is also mentioned in sections 24, 25 and 26.

1
CM

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

NO: 500-17-070493-120

MUSLIM ASSOCIATION OF CANADA, a legal person incorporated under law and having a place of business at 12267 Laurentien Boulevard in the city and district of Montreal, in the province of Quebec, H4K 1N5;

Plaintiff

v.

██████████, businessman, domiciled and residing at ██████████ Avenue in the city and district of Montreal, in the province of Quebec, ██████████;

Defendant

MOTION TO COMPEL TRANSFER OF OWNERSHIP TITLE

(ART. 110 AND SS. C.C.P.)

ART. 1712 C.C.Q.)

I. INTRODUCTION

1. By way of this proceeding, Plaintiff seeks to obtain a judgment in lieu of the execution of a deed of sale that Defendant failed, refused or neglected to execute with respect to the property located at 615 Belmont Street, in the city of Montreal, Quebec, H3B 2L8 ("**Property**"), the whole, without valid reason or cause and despite an accepted offer dated September 2nd, 2011 (including a preliminary offer dated August 12th and counter offers dated 2011 August 18th, 2011 and August 25th, 2011) ("**Accepted Offer**"), as amended by a first letter of extension dated October 26th, 2011 ("**First Amendment**") and a second letter of extension dated December 1st, 2011 ("**Second Amendment**") (First Amendment and Second Amendment are collectively designated "**Amendments**"), copies of said Accepted Offer and Amendments are communicated *en liasse* as Exhibit P-1;
2. Plaintiff is also seeking to recover an amount of \$129,408.20 from Defendant, for punitive damages and for all others damages suffered by him and caused by Defendant;

II. PARTIES

3. The Plaintiff, Muslim Association of Canada ("**MAC**"), is a Civic and Social Organization (personified association) primarily engaged in promoting the civic,

social or other interests or purposes of their members, as appears from copies of the Quebec *Registraire des entreprises* system and the Federal Corporation Information communicated *en liasse* as Exhibit P-2;

4. MAC the "PURCHASER" of the Property under the terms of the Accepted Offer and Amendments (Exhibit P-1);
5. Mr. [REDACTED] (" [REDACTED] ") is an individual, owner of multiple buildings and doing business in selling and renting immovables;
6. Mr. [REDACTED] is the owner of the Property and the "SELLER" under the terms of the Accepted Offer and Amendments (Exhibit P-1);

III. BACKGROUND

7. As per the Accepted Offer and Amendments (Exhibit P-1), Mr. [REDACTED] agreed to sell the Property to MAC for a purchase price of FOUR MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$4,700,000.00);
8. MAC agreed to assume the mortgage in favour of the Royal Bank of Canada, the estimated balance of said hypothec being THREE MILLION ONE HUNDRED NINETY-EIGHT THOUSAND DOLLARS (\$3,198,000.92) as of August 12th, 2011, as appears from the Accepted Offer and Amendments (Exhibit P-1) section 3.0 b);
9. According to the terms of the Accepted Offer and Amendments (Exhibit P-1), a sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) has been remitted by MAC to "Dauth Sansfaçon Notaires" on September 12th, 2011 as a deposit;
10. As per the Accepted Offer and Amendments (Exhibit P-1), more specifically from sections 2.3, 5.2 and 5.4 but not necessarily limited, the Accepted Offer was conditional to inspections and due diligence;
11. In addition, under the terms of the Accepted Offer and Amendments (Exhibit P-1), more specifically from sections 2.3, 5.2 and 5.4 but not necessarily limited, MAC had a delay of SIXTY (60) business days, following the acceptance of the offer, to complete such inspections and due diligence, to its satisfaction;
12. As fully appears from sections 2.2 and 5.2 of the Accepted Offer and Amendments (Exhibit P-1), MAC had an additional delay of THIRTY (30) days to execute the deed of sale;
13. Consequently, MAC had initially until November 3rd, 2011 (i.e. SIXTY (60) days from acceptance dated September 2nd, 2011) to complete inspections and due diligence and until December 3rd, 2011 (i.e. THIRTY (30) days from due diligence) to execute the deed of sale;
14. Nevertheless, by the First Amendment dated October 26th, 2011 and the Second Amendment dated December 3th, 2011, Defendant and MAC mutually agreed to extend the delay until January 3rd, 2012 for the completion of the due diligence with respect to the environmental inspection, the whole as appears from the Amendments (Exhibit P-1) and as more fully explained hereinafter;

15. Consequently, MAC had finally until January 3rd, 2011 to complete inspections and due diligence and until February 3rd, 2012 to execute the deed of sale;

IV. FACTS GIVING RISE TO THE PRESENT CLAIM

16. During the month of September 2011, the services of Le Groupe Solroc ("Solroc") have been retained to complete the environmental analysis and inspection of the Property;
17. The environmental analysis and inspection of Solroc revealed outstanding issues requiring, among others, additional excavations on the Property, removal of soil in the basement of the Property and environmental rehabilitation of the Property, which have been proceed to with the agreement of the Defendant;
18. Due to this situation, extensions of delays included in the Amendments (Exhibit P-1) have been agreed by both MAC and Mr. [REDACTED] in order to ensure the completion of Solroc's environmental rehabilitation of the Property;
19. On December 22th, 2011, Solroc informed the Plaintiff (who informed the Defendant) that a last sample and analysis was necessary regarding the Property, as appears from a copy of an exchange of emails dated December 22th, 2011 communicated as Exhibit P-3;
20. On December 24th, 2011, the last sample was collected by Solroc;
21. Between December 24th, 2011 and December 29th, 2011, the analysis of said sample has been completed by Solroc;
22. On December 29th, 2011, Solroc verbally confirmed to Mr. Chiheb Battikh, MAC's representative ("Mr. Battikh"), the completion of Phase II of the environmental inspection and analysis, the whole to the satisfaction of MAC;
23. On December 29th, 2011 all the conditions of the Accepted Offer and Amendments (Exhibit P-1) was duly fulfilled to the satisfaction of the Plaintiff and with the knowledge of the Defendant;
24. Between the end of December 2011 and January 3rd, 2012, multiple attempts have been made by Mr. Battikh to contact Mr. [REDACTED], the whole in order to fix a closing date with the notary, Me Martin Sansfaçon, and get the deed of sale duly signed;
25. On January 3rd, 2012, Mr. Battikh sent a formal letter to Defendant on behalf of MAC, urging the Defendant again to contact Me Martin Sansfaçon, notary in order to fix a closing date and get the deed of sale duly signed, copies of said letter and proof of serving are communicated *en liasse* as Exhibit P-4;
26. Defendant knowingly and wilfully ceased any contact with Plaintiff and refused, omitted or neglected to comply with Mr. Battikh's communications and letter dated January 3rd, 2012 (Exhibit P-4);

27. By letters dated January 18th and 27th, 2011, the undersigned attorney, on behalf of Plaintiff, formally gave notice to Defendant to execute the deed of sale regarding the Property and sign the transfer of ownership documents prepared by Me Sansfaçon on January 30th, 2012, as appears from copies of said letters and proof of serving communicated *en liasse* as Exhibit P-5;
28. Said formal letters (Exhibit P-5) were also giving notice to Defendant that Plaintiff offered and was still offering to fulfill its own obligation by executing the deed of sale and by transferring the balance of the purchase price to the notary;
29. Me Normand Pinel, attorney for the Defendant, informed the undersigned attorney, by letters sent on January 25th, 2012 and January 30th, 2012, that Defendant would not be present at the closing and that he refused to execute the deed of sale, as appear from copies of said letters from Me Pinel dated January 25th, 2012 and January 30th, 2012, communicated *en liasse* as Exhibit P-6;
30. On January 27th, 2012, taking into account that the balance of the hypothec assumed by Plaintiff was THREE MILLION ONE HUNDRED NINETEEN THOUSAND NINE HUNDRED SEVENTY-EIGHT DOLLARS (\$3,119,978.78), Plaintiff remitted to "Dauth Sansfaçon Notaires" the balance of purchase price of ONE MILLION FIVE HUNDRED AND TWO THOUSAND SIX HUNDRED AND NINETY-FOUR DOLLARS (\$1,502,694.00), to be applicable as tender and deposit, as appear from a copy of the receipt of Me Martin Sansfaçon dated January 27th, 2012 communicated as Exhibit P-7;
31. On January 30th, 2012, Plaintiff duly signed the deed of sale prepared by Me Sansfaçon according to the terms of the Accepted Offer and Amendments (Exhibit P-1), copy of said deed of sale signed by Plaintiff and dated January 31st, 2012 is communicated as Exhibit P-8;
32. To date, Defendant refused, omitted or neglected to execute the deed of sale transferring the ownership of the Property to Plaintiff in accordance with its obligation under the Accepted Offer and Amendments (Exhibit P-1) and is in default;
33. Defendant did not conduct himself in good faith, acting knowingly and wilfully in such a way as to prejudice the Plaintiff;

V. CLAIM

34. Considering the above-mentioned, Plaintiff is entitled to request from this Honourable Court to declare that the tender and deposit of the purchase price made by Plaintiff regarding the Property are sufficient, valid and discharging;
35. Considering the above-mentioned, Plaintiff is also entitled to request from this Honourable Court to obtain a judgment in lieu of an executed deed of sale transferring the ownership of the Property to Plaintiff due to the fact that Defendant failed, refused or neglected to execute said transfer without valid reason or cause and despite the Accepted Offer and Amendments (Exhibit P-1);

36. In addition, Plaintiff is entitled to claim from Defendant an amount of \$129,408.20 representing the damages suffered by MAC, broken down as follows:

- Environmental inspection and rehabilitation charges	\$69,408.20
- Lawyers' fees (to be perfected)	\$20,000.00
- Punitive Damages	\$20,000.00
- Damages for troubles, annoyances and inconveniences	\$20,000.00
TOTAL	\$129,408.20

37. The Plaintiff hereby reserves all its rights to modify any amounts claimed hereby and to amend this Motion in order to consider any amount of similar nature of damages until a final judgment is rendered and any amount paid by Plaintiff for expertise and lease audit fees and expenses;
38. The present Motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion in accordance with its conclusions;

DECLARE that the tender and deposit of the purchase price made by Plaintiff is sufficient, valid and discharging;

TRANSFER the ownership and **DECLARE** the Plaintiff sole owner of the following immovable property, namely:

An immovable known and described as being the lot number ONE MILLION ONE HUNDRED AND SEVENTY-NINE THOUSAND THREE HUNDRED AND NINETY (1 179 390) upon the CADASTRE DU QUÉBEC, in the Registration Division of Montréal.

With a building thereon erected and bearing the civic number 615, Belmont Street, Montreal, Province of Quebec, H3B 1L8.

ORDER the Registrar of the Land Registry Office for the Registration Division of Montreal to proceed with the registration of rights resulting from the judgment to be rendered on the present Motion in favour of the Plaintiff with regards with the immovable property here above-described;

ORDER the Defendant to pay to the Plaintiff the amount of \$129,408.20, with interests at the legal rate, plus the additional indemnity provided by law, to accrue from January 3rd, 2012;

RESERVE the Plaintiff's right to amend this Motion to add any and all amounts of damages until a final judgement is rendered;

ORDER the provisional execution of the judgment, notwithstanding the appeal;
THE WHOLE with costs, including the costs of expertise and disbursements.

MONTREAL, THIS 15TH DAY OF FEBRUARY,
2012

(S) LANGLOIS KRONSTRÖM DESJARDINS, S.E.N.C.R.L.

LANGLOIS KRONSTRÖM DESJARDINS L.L.P.
Attorneys for Plaintiff

COPIE CONFORME/TRUE COPY

Langlois Kronström Desjardins
LANGLOIS KRONSTRÖM DESJARDINS, S.E.N.C.R.L.