

The appeal was heard by MACLAREN, MAGEE, and HODGINS, JJ.A., LATCHFORD, J., and FERGUSON, J.A.

A. Cohen, for the appellant.

A. C. McMaster and D. C. Ross, for the defendants, respondents.

FERGUSON, J.A., reading the judgment of the Court, said that the action was for breach of an agreement between the parties, dated the 6th November, 1914, whereby the defendants agreed to sell and the plaintiff agreed to buy, for the purpose of resale as a subdivision, certain lots in or near the city of Niagara Falls, Ontario, and also for an injunction restraining the defendants from committing certain acts alleged to be done or intended to be done in violation of the agreement.

The action was founded on the assumption that the agreement was, at the time the action was begun, a valid, binding, and subsisting agreement. The defence was that the agreement had been terminated; and the defendant company's counterclaim, is so far as allowed by the trial Judge, was for a sum of money advanced by the company, at the request of the plaintiff, for the purpose of laying down water-mains.

After stating the effect of the evidence, the learned Judge said that he was convinced by it that the plaintiff, if he had not prior to the cancellation legally abandoned his rights under the contract, had in fact at least intended to abandon the property in so far as carrying on an active selling campaign was concerned. The learned Judge could not, in all the circumstances, agree with the contention that the plaintiff sought and obtained a waiver, or that the defendant company did any act whereby, between the 31st May and the 19th July, it waived its right of cancellation; and there was nothing in the evidence that made it unfair or inequitable to leave the parties to their strict legal rights, or on which the plaintiff could base a valid and enforceable claim for equitable relief.

The plaintiff appealed also against the judgment in favour of the defendant company on its counterclaim, which was allowed in respect of one item of \$400. The plaintiff could not, on the evidence, escape liability as to this.

By the notice of appeal the plaintiff attacked the judgment of the trial Judge in so far as it dismissed the action against the individual defendants. On the evidence, there was no reason to differ from the findings on that part of the case.

In all respects the judgment of the trial should be affirmed.

*Appeal dismissed with costs.*