

LOGIE, J.

FEBRUARY 9TH, 1920.

MASON v. GOLDMAN.

Vendor and Purchaser—Agreement for Sale of Land—Time for Closing Sale—Waiver of Default—Part of Purchase-money Payable by Transfer of “Guaranteed Mortgages”—Tender of Conditional Guarantee—Necessity for Unconditional one—Specific Performance—Compensation or Damages.

Action by the vendor for specific performance of an agreement for the purchase and sale of land.

The action was tried without a jury at a Toronto sittings.

K. F. Mackenzie, for the plaintiff.

L. C. Smith, for the defendants.

LOGIE, J., in a written judgment, said that the agreement was evidenced by an offer, dated the 4th April, 1919, by the defendant Etta Goldman, and an acceptance thereof, dated the 10th April, 1919, by the plaintiff. It was admitted that Etta, though signing the offer as principal, was in fact the agent of her husband, the defendant Henry Goldman.

A contention that—time being of the essence of the agreement and the plaintiff not having been ready to close at the time fixed by the contract for closing—the defendants had the right to cancel, was disposed of by the correspondence: there was a waiver.

The real question between the parties was, whether the mortgages and assignments thereof tendered to the plaintiff as part of the purchase-money sufficiently complied with the provision of the contract whereby “about \$3,500” of the purchase-money payable to the plaintiff was to be paid by the defendants to the plaintiff by “the transfer of about \$3,500 in mortgages which are guaranteed by D. Davis and his wife.”

The guarantee thus referred to was an unconditional one, and the plaintiff was not bound to accept a conditional guarantee contained in two assignments executed by David Davis and his wife.

There should be judgment for the plaintiff for the specific performance of the agreement. If an unconditional guarantee of “D. Davis and his wife” of the mortgages to be assigned to the plaintiff is furnished within 10 days, this must be accepted by him. Failing this, the plaintiff should recover damages assessed at \$3,500 as compensation in money in lieu of the mortgages so guaranteed.

The plaintiff should have his costs of the action.