

358426 Ontario Ltd. v. Liappas (Trustee of)

Between

358426 Ontario Limited, 681124 Ontario Limited and Mortgage Connections Ltd., plaintiffs (appellants), and David T. Murdoch Reciever and Trustee Limited, trustee of the bankrupts Photis Liappas and Despina Liappas, 855469 Ontario Limited and Cunningham, Swan, Carty, Little and Bonham, defendants (respondents)

[1997] O.J. No. 4962

DRS 98-12571

Court File No. C19900

Ontario Court of Appeal

Toronto, Ontario

Carthy, Abella J.J.A. and Borins J. (ad hoc)

December 10, 1997.

(2 pp.)

On appeal from Platana J.

Practice — Appeals — Restrictions on argument on appeal.

Appeal by the plaintiffs from trial judgment. At issue was the credibility of the evidence concerning production of the estoppel certificates.

HELD: Appeal dismissed. The trial judge's reasons addressed the arguments of the appellants on the credibility issue and the court was not prepared to consider the appellants' revised argument and to retry the action.

Counsel:

J. Gardner Hodder, for the appellants.

Michael Royce, for the respondents.

The judgment of the Court was delivered by

¶ 1 **CARTHY J.A.** (endorsement):— We have reviewed the submissions of trial counsel for the plaintiffs and the reasons of the trial judge are a direct response thereto, centering upon the credibility issue as to the production of estoppel certificates. We are not prepared to consider the appeal on a revised argument because to do so in this case is to retry the action.

¶ 2 The appeal is dismissed with costs.

CARTHY J.A.