

Do requisitions concerning gas leases go to root of title? (Van Hove v. Dryuff)

Agreement of Purchase and Sale | Litigation | Litigation & Dispute Resolution | Real Estate

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In a real estate transaction, the agreement of purchase and sale will include a deadline by which a buyer may submit requisitions for issues that they want the seller to address prior to closing. Typical requisitions pertain to discharging mortgages, outstanding work orders, or other potential encumbrances on title. A purchaser must submit requisitions prior to the requisition date stipulated in the Agreement of Purchase and Sale (APS). Certain requisitions, however, pertain to issues so fundamental to the APS that a purchaser may submit them even after the requisition deadline.

If a seller fails to satisfy a valid requisition prior to the closing, the buyer may be in a position to refuse to complete the transaction. Traditionally, an outstanding requisition on an issue that goes to “root of title” allowed a buyer to refuse close. The traditional “root of title” analysis is not always clearly applied.

This is illustrated by the decision of the Court of Appeal for Ontario in *Van Hove v. Dryuff*, [2025 ONCA 240](#), which overturned a summary judgment decision in [2024 ONSC 5038](#).

In this matter, the plaintiff sellers entered into an APS to sell their property to the defendant buyers for \$2,355,000, set to close on 2 September 2022. The buyers paid a \$50,000 deposit.

The buyers’ lawyer sent a requisition letter prior to the deadline for doing so, demanding that all oil and gas leases registered on title be removed. The sellers did not do so by the closing date and the buyers refused to close. The sellers ultimately sold the property to another purchaser for \$1,850,000.

The sellers sued the buyers for the difference in sale price and moved for summary judgment.

In order to succeed on their motion, the sellers had to demonstrate that the buyers had no valid justification for failing to close on the APS. The buyers argued that they had made a valid requisition regarding the oil and gas leases. This requisition was not fulfilled, and as such, this failure was a complete defence to their refusal to close.

The motion judge disagreed.

The buyers relied on cases where an issue was raised after the requisition deadline but nevertheless went to “root of title”. In such instances, the courts have found that the issue was so significant that it resulted in a total failure of consideration and that buyers were not receiving what they had contracted for. That was not the situation at hand.

In the motion judge’s view, while some issues that go to the root of title can be raised as a valid reason for refusing to complete a transaction, even if those objections were not made prior to the requisition deadline, this did not mean that *any* unfulfilled requisition would justify failing to close. It would be an absurd result if any unfulfilled requisition made within the timeline could be a valid defence to a failure to close. The motion judge reasoned that: “A requisition must be on an issue that goes to the root of title for it to be a valid defence against a failure to close.”

Based on this approach, the buyers did not establish that the requisition regarding the gas and oil leases was a valid reason to refuse to close. Based on the record filed for the motion, there was no evidence to demonstrate that the gas well on the property, and the three expired oil and gas leases registered on title, would

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result in a total failure of consideration. In other words, there was no evidence that the buyers would not receive what they contracted for if the leases were not discharged.

The motion judge therefore determined that the buyers were liable to the sellers for the difference in purchase price, the carrying costs of the property until the sellers' ultimate sale of the property, the seller's legal costs incurred for the ultimate sale, bridge financing, and the interest on a line of credit. In total, this amounted to \$542,269.76.

The Court of Appeal [overturned](#) the motion judge's decision, providing a one-paragraph explanation for the motion judge's error: "The purchasers submitted requisitions concerning oil and gas leases within the time frame for doing so under the agreement of purchase and sale. The motion judge erred in law in holding the requisitions were invalid because they did not go to the root of title". For this point, the Court of Appeal referred to the decision of *Chan v. Magral*, 2022 ONSC 2068.

In *Chan v. Magral*, the court undertook a review of the four types of requisitions:

1. Title requisitions that go to root of title
2. Title requisitions that are matters of conveyance
3. Latent title requisitions
4. Title requisition *simpliciter*

The first type, requisitions that go to root of title, was considered by the motion judge in *Van Hove*. The second type, requisitions that are matters of conveyance, involved issues that are within the power of the seller to satisfy. The third type, latent title requisitions, deal with issues that could not be discovered during the requisition period. The final type, simple title requisitions, are requisitions that must be made in a timely way and cannot be submitted after the requisition deadline.

In *Chan v. Magral*, the failed APS did not close due to the seller's failure to remove a mortgage, notice of interest, and four open building permits from title prior to closing. The sellers had requisitioned the removal of the open building permits past the requisition date. By the day of closing, the seller had failed to remove the permits, and the buyers refused to close. The court held that this requisition was a matter of conveyance which could be requisitioned right up until closing. The court held that the buyers were justified in refusing to close and entitled to the return of their deposit.

It is not precisely clear why the Court of Appeal disagreed with the motion judge's decision in *Van Hove v. Dryuff*, given the brevity of the reasons, but one may surmise that the issue was in the motion judge's failure to consider the analysis outlined in *Chan v. Magral*, and concluding simply that a requisition *must* be on an issue that goes to the root of title for it to be a valid defence against a failure to close.

The Court of Appeal has affirmed in other cases that some types of requisitions that do not relate to root of title *per se* may still provide grounds to refuse to close. In *EPRF Holdings Limited v. Fergus Bloor Inc.*, 2024 ONCA 707, the Court affirmed that outstanding work permits were valid grounds to refuse to close.

In *Van Hove v. Dryuff*, whether or not the requisition concerning the gas and oil leases was valid was left to be determined on another day. A PDF version is available for download [here](#).

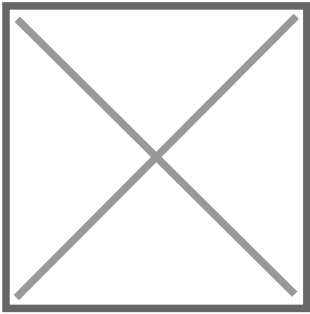
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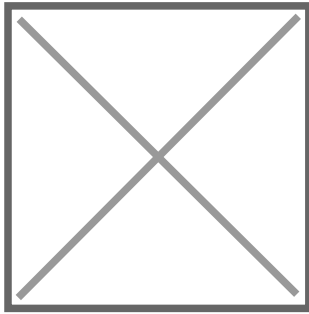
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