

Case Name:
Roach v. Saito

Between
Charles C. Roach, appellant (plaintiff), and
Robert K. Saito, respondent (defendant)

[2006] O.J. No. 742
Court File No. 423/04

**Ontario Superior Court of Justice
Divisional Court - Toronto, Ontario
J.D. Cunningham A.C.J.S.C.J., M.R. Meehan and
G.J. Epstein JJ.**

Heard: February 10, 2006.
Oral judgment: February 10, 2006.
Released: February 23, 2006.
(8 paras.)

Counsel:

Kikélola Roach, for the Appellant
Ryan Naimark, for the Respondent

The judgment of the Court was delivered by

¶ 1 **J.D. CUNNINGHAM A.C.J.S.C.J.** (orally):— It is not necessary to repeat here the essential facts as set out in the respective facta. Needless to say, this has been an unseemly tale of woe.

¶ 2 The standard of review here, a situation involving mixed fact and law, is that the findings and conclusions of a trial judge will not be reversed absent a palpable and overriding error.

¶ 3 In the Reasons for Decision of the learned trial judge, significant findings of fact were made central to the issues before us. We are unable to say those findings demonstrate a palpable and overriding error.

¶ 4 As to the purported assignment dated September 18, 1998, we agree with the conclusions of Somers J. who determined that this was not a valid legal assignment, pursuant to s. 53(1) of the Conveyancing and Law of Property Act.

¶ 5 This purported assignment fails to meet the conditions set out in s. 53(1). Even if we were to disagree with Somers J. and find the assignment valid, the plaintiff had no right to possession of the sculpture given the outstanding debt. Somers J. found as a fact that there was an arrangement whereby the sculpture would be returned once the amount owing was paid off. In the meantime, it was being held by Dr. Saito as a pledge. The

plaintiff was aware of the outstanding debt owing by Mr. Hadjor to Dr. Saito. Mr. Hadjor had no right to assign the sculpture to the plaintiff because it had previously been pledged by Mr. Hadjor to Dr. Saito as collateral for a debt that was still outstanding at the time of the purported assignment.

¶ 6 As to value, the learned trial judge did not err in rejecting the plaintiff's method of determining the sculpture's value. His preference for the evidence of William Kime, a recognized expert and indeed the only witness to testify as to value was logical and indeed appropriate. It was clearly supported by the evidence before him.

¶ 7 Finally, it has been argued that Dr. Saito was negligent. The trial judge was correct in his conclusion that there was no evidence of negligence and also that at the time the sculpture was damaged the defendant owed no duty of care to the plaintiff.

¶ 8 The appeal is dismissed. Costs to the respondent fixed at \$5,000.00, all inclusive.

J.D. CUNNINGHAM A.C.J.S.C.J.

M.R. MEEHAN J.

G.J. EPSTEIN J.