ROBINS APPLEBY
BARRISTERS + SOLICITORS

LEGAL PULSE
SUMMER 2022

NEWS

THE ALLURE OF ARBITRATION CLAUSES

BY DAVID TAUB AND ANISHA SAMAT

Commercial contracts often contain mandatory arbitration clauses, which compel parties to use this alternative dispute resolution (ADR) method to resolve disputes arising under the contract and bar parties from the courts. Although these clauses are intended to provide the parties with a quick and efficient method of resolving conflict, they are not always as straightforward as they seem and can require court intervention to enforce them.

This spring, Robins Appleby LLP Partner David Taub and Associate Anisha Samat successfully enforced an arbitration clause in a limited partnership contract. Justice Cory Gilmore of the Ontario Superior Court's Commercial List ruled firmly in favour of our clients and directed the parties to proceed to arbitration.

Gilmore J.'s decision can be found here.

BACKGROUND

Robins Appleby LLP represented two limited partners (LP3 and LP4) in a limited partnership that was created as an investment vehicle for a real estate development. The limited partners invested $6.5 million for the purchase of a property intended to be a golf course community in Ontario's Victoria Harbour (near Midland), for close. The property was never developed and sold in 2021 for close to $9.5 million. Despite the significant appreciation in value, however, LP3 and LP4 received a fraction of their original investment when the sale proceeds were distributed in April 2021.

LP3 and LP4 decided to resolve this issue via arbitration, relying upon the limited partnership agreement's arbitration clause. The arbitration clause clearly stated that all disputes under the contract would be resolved through arbitration.

THE LITIGATION

Upon being retained, Robins Appleby LLP served the General Partner (GP) with a Notice of Arbitration in May 2021. The GP and their counsel initially agreed to move forward with arbitration. The GP's counsel was holding the sale proceeds in trust, and undertook to preserve the proceeds until the resolution of the arbitration.

Shortly afterwards, the GP and their counsel reneged and refused to proceed to arbitration, declaring that they would no longer preserve the sale proceeds in trust.

Robins Appleby LLP was forced to act quickly again to move the arbitration forward and preserve the remaining sale proceeds. In July 2021, Robins Appleby LLP was able to obtain an injunction preserving the sale proceeds in trust until the hearing of the Application. The first available Court date to hear the Application was January 21, 2022, a significant delay.

In early January 2022, the GP scheduled an "urgent" hearing seeking to adjourn the Application, one week before the Application's scheduled hearing date. The GP argued that there were several threshold issues that needed to be resolved before the arbitration could take place. Robins Appleby LLP successfully counter-argued that the Application's hearing should not be adjourned, and any threshold issues could be effectively dealt with either at the Application or at the Arbitration.

The Application was ultimately heard as scheduled on January 21, 2022 and was a resounding success for LP3 and LP4. Justice Gilmore ordered that the arbitration was to proceed as per the arbitration clause in the limited partnership contract. Justice Gilmore also acknowledged that there had been significant delay caused by the GP and their counsel, and awarded LP3 and LP4 costs in the amount of $25,000. The injunction freezing the sale proceeds was also extended.

CONCLUSION

While Robins Appleby LLP succeeded at every step, it was not without a price. A straightforward arbitration clause that was intended to provide the parties with a quick and efficient means of resolving their disputes took significant time, effort, costs and judicial intervention to be enforced, delaying the arbitration itself by nearly a year.

While arbitration clauses can still be an excellent tool in commercial contracts and can often provide parties with a cost-effective and speedy means of dispute resolution, this may not always be the case when parties acting in bad faith abuse the legal system. Lawyers drafting such contracts should ensure that such arbitration clauses are constructed to be as unambiguous as possible and provide clarity on timelines where practicable. In our case, the goal of the GP was to stonewall, hoping that the legal fees needed to enforce their clear rights would deter LP3 and LP4 from moving forward. In this case, the GP failed, but less resilient investors may well have given up. The arbitration is now underway. LP3 and LP4 look forward to a judgment in their favour.

ASSESSMENT OF DAMAGES IN REAL ESTATE CASE

BY ELLAD GERSH

In its recent decision in Akelius Canada Ltd. v. 2436196 and B'Nai Fishel Corporation 2022 ONCA 2569, the Ontario Court of Appeal confirmed that an innocent purchaser of real property in Ontario is not entitled to damages for lost opportunity as a consequence of a breach by the vendor. In doing so, the Court of Appeal confirmed that in the real estate context, the date of breach is the relevant date for assessing damages, modified only to the extent that the innocent party satisfies the Court that a different date is fairer and more appropriate.

BACKGROUND

In this case, the parties entered into an August 2015 agreement of purchase and sale under which, the European-based purchaser, Akelius Canada Inc. (the "Purchaser") agreed to purchase seven residential apartment buildings from a Toronto-based vendor, 24361936 and B'Nai Fishel Corporation (collectively, the "Vendors"), for an overall purchase price of $228,958,320 (the "APS").

A closing date of January 7, 2016 was set for the transaction. However, the deal did not close because the Vendors breached the APS on closing in failing to remove encumbrances from the properties, at which point the deposits were returned to the Purchaser. It was common ground that the purchase price of $228,958,320 also represented the value of the property as at the date of the breach of the APS. However, two and a half years later, in September 2018, the Vendors re-sold the Property for approximately 25% more, some $56,544,318. The Purchaser sued the Vendors for breach of contract alleging damages of $56,544,318 as its loss of value of the transaction.

MOTION DECISION

In the Court below, the motion judge found that the Vendors breached the APS but refused to award the Purchaser damages for loss of profits and limited the Purchaser's damages to its costs incurred in connection with the failed transaction in the sum of $775,855.46. In so doing, the motion judge found that the Purchaser was in the apartment investment and rental business seeking to purchase income producing properties for long term holds and refused to award damages based on the profit that it would have made had it purchased the properties as a speculator intent on re-selling properties for a quick capital gain. The motion judge also noted that the Purchaser refused to disclose information relating to buildings acquired after the January 2016 closing date which would have assisted the Court in determining whether the Purchaser had mitigated its loss in part or in whole, using the deposit funds that were returned from the failed transaction. Lastly, the motion judge declined to order costs in favour of either party in light of the mixed success on the motion.

The Purchaser appealed the issue of damages to the Court of Appeal and the Vendors cross-appealed the issue of costs.

COURT OF APPEAL DECISION

A three judge panel of the Court of Appeal unanimously upheld the motion judge's decision and dismissed the appeal and cross-appeal. In so doing, the Court of Appeal reaffirmed the established legal principle that in the real estate context the starting point for the assessment of damages for breach of contract is the date of breach.

As regards to the issue of damages, the Court noted that in certain circumstances it might be appropriate to move the assessment date somewhat later, however this has been done only where the plaintiff has established that it was not in a position to mitigate its damages and re-enter the market as at the date of the breach. The Court rejected the argument that the assessment date should be modified when a vendor defaults on a real estate transaction in a rising market because an innocent purchaser may have difficulty attempting to purchase a comparable property or properties in a rising market. The Court saw no principled reasons to deviate from the general principle in the circumstances of this case and held that the fact that a party is innocent does not displace the date of breach as the presumptive date for the measure of damages in a real estate case. Lastly, the Court of Appeal found that the Purchaser's position presumes that it would have sold at the high point which was inconsistent with the Purchaser's established business plans of keeping rental buildings for a longer period of time.

Lastly, as regards to the issue of costs, the Court of Appeal also dismissed the Vendors' cross appeal and upheld the motion judge's decision to decline to award costs finding that this was within the motion's judge's discretion as success was divided at trial.

PRACTICAL TAKEAWAYS

This case reaffirms the date of breach as the starting point in assessing damages for breach of contract in the real estate context. The Court may modify that date but only as fairness dictates and in circumstances where it is established that the innocent party (whether as purchaser or vendor) was somehow precluded from re-entering the market as at the date of the breach.

While decided in the context of investment properties, this case has much broader application and is especially relevant in the context of our current rapidly rising Ontario residential real estate market. For example, innocent purchasers faced with a vendor refusing to close on a property should consider the result in this case and make best efforts to mitigate their damages. This would involve locating and purchasing a suitable replacement property as soon as possible after the breach and seeking legal advice to determine whether they may have a valid claim for damages against the vendor for any higher purchase price they paid for a replacement property. Conversely, vendors should stay true to their bargain with purchasers and should caution against any temptation to profit from the rapidly rising real estate market by breaching their contractual obligations with the purchaser and re-selling at a higher price. This course of action may well lead to litigation exposure well in excess of any additional purchase price the vendor may obtain in the market, when factoring in damages and legal fees.

For further information or if you require assistance with your real estate dispute please contact Ellad Gersh at Robins Appleby LLP.

UPDATE ON EMPLOYMENT LAW MATTERS

BY BARBARA GREEN

TIME TO UPDATE THOSE EMPLOYMENT CONTRACTS

With many changes rapidly happening in the realm of employment law, such as those pertaining to termination clauses in employment contracts, now is a great time for employers to implement, or revise existing, employment contracts.

Employers often ask what could, or should, be in an employment contract. The following is a short list of clauses to consider which are not as obvious as others:

- Language about employees being required to comply with the employer's policies and that the policies form part of the employment agreement
- Termination clause
- Layoff provision
- Confidential information provision
- Non-solicitation clause
- Jurisdiction provision (in other words, which laws apply and where would any dispute be heard)

WORKING FOR WORKERS ACT, 2021

- In November, 2021 the Ontario government passed the *Working for Workers Act* which is now law.
- This Bill is not a new Act in itself but amends a number of existing employment related Acts, including the *Employment Standards Act, Occupational Health and Safety Act* and *Workplace Safety and Insurance Act*.

RIGHT TO DISCONNECT

- Under the *Employment Standards Act*, employers with over 25 employees will now be required to have a written policy about disconnecting from work.
- Disconnecting from work is defined in the Act as "not engaging in work-related communications, including emails, telephones, video calls or the sending or reviewing of other messages, so as to be free from the performance of work".
- The legislation does not provide a "right" to disconnect from work, but the right to a policy regarding the same.
- The policy must be in place by March 1 of any year during which the employer has 25 or more employees. Employees also have the right to receive copies of the policy 30 days within its enactment, 30 days within any changes being made, and for new hires, 30 days within commencement of their employment.
- Employers who meet the above-noted criterion were required to have these policies in place by June 2, 2022.
- The Ontario government has said that components of these policies would include setting expectations surrounding response time to emails or encouraging employees to disable notifications when outside working hours.
- There will be a 6 month grace period from the time the legislation came into force for employers to comply with these new right to disconnect requirements.

PROHIBITION ON NON-COMPETE AGREEMENTS

- Another change to the *Employment Standards Act* is a new prohibition of non-compete agreements between employers and employees.
- A non-compete agreement restricts an employee from engaging in any work or position after their employment ends which is in competition with the employer's business.
- A non-compete agreement as prohibited by the Act can be a standalone agreement or a provision within an employee's employment contract.
- According to the Act, these agreements or clauses not to compete are void.
- There are two exceptions set out in the Act to the general prohibition on non-competes:
  1. The first exception is that an employer and employee may enter into a non-compete if in the context of the sale of its business.
     - A non-compete may be permitted where the employer is selling its business and it is a term of the sale that the employer will not compete with the business purchasing it.
  2. The second exception is for executives. Non-competes may also be permitted where the employee holds a "chief executive position" within the company.
- As a result, employers should not be entering non-compete agreements with employees or including a provision to that effect in an employee's contract, unless in the context of a sale of a business or unless the employee is an executive.
- These changes are effective retroactively as of October 25, 2021 so they are already in effect.

FORCE MAJEURE RENT CONSEQUENCES

BY ELLAD GERSH, JOSEPH JAMIL, RACHEL PUMA AND ERRAN LEE

In two recent decisions, the Ontario Superior Court considered the parallel issue of whether commercial tenants were required to pay rental arrears during government imposed COVID-19 restrictions, with opposite outcomes.

In the March 2021 case of Windsor-Essex Catholic District School Board v 231846 Ontario Limited ("Windsor-Essex"), the Court found that the application of the force majeure clause resulted in the tenant's entitlement to rent abatement.

Conversely, in the September 2021 case of Braebury Development Corporation v Gap (Canada) Inc. ("Braebury Development"), the Court determined that the application of the force majeure clause did not excuse the tenant from paying rent.

The opposite outcomes in these two cases can be explained by the differences in the leases: whereas the lease in Windsor Essex provided for rent abatement when the force majeure clause was triggered, the lease in Braebury Development, expressly provided that the triggering of a force majeure clause would not excuse the tenant from prompt and timely payment of rent. Consequently, the different results in these two cases can be reconciled by basic principles of contractual interpretation.

WINDSOR-ESSEX

In Windsor-Essex, two school board tenants that leased recreational space from the defendant landlord who operated a community sports complex. The tenants' leases were virtually identical and each contained a force majeure clause which excused the parties from performing certain terms or acts under the lease if the party was delayed or hindered in or prevented from such performance by inter alia "restrictive governmental laws or regulations… or other reason whether of a like nature or not". In stark contrast to the Braebury Development decision described below, each lease also contained a clause stating that "there shall be an abatement of rent and additional rent if the force majeure provisions of [the force majeure clause] are applicable…"

From March 17, 2020 to August 11, 2020, the tenants were unable to use their respective leased premises as they intended due to "lockdowns" ordered by various levels of government impacting the Windsor-Essex County area. Both school boards paid rent to the landlord at the beginning of the "lockdown" period, but subsequently provided notice to the landlord that rent was abated pursuant to the force majeure clause and ceased to pay rent for the remainder of the "lockdown".

The Court found that the closure of businesses and facilities in response to the COVID-19 pandemic during the above-noted "lockdown" period was a force majeure event. This event prevented the landlord from providing the leased premises for its contracted use and the landlord was therefore unable to comply with a term of the lease. Thus, the Court found, that (a) the landlord was excused from its contractual obligation to provide the leased space to the school boards, and (b) the tenants were excused from paying rent during the aforementioned "lockdown" period.

The Court's analysis in Windsor-Essex did not include any discussion on the doctrine of frustration as the lease provided the tenant with a complete contractual remedy such that it was unnecessary for the tenant to rely on frustration.

BRAEBURY DEVELOPMENT

In Braebury Development, the defendant tenant operated a retail store in premises leased from the plaintiff landlord. The parties' lease contained a force majeure clause which excused the parties from certain obligations under the lease if the party was prevented from performing such obligations or hindered by "restrictive governmental laws or regulations" or other reason "of a like nature" beyond the party's control. However, the clause specifically stated that the triggering of the force majeure clause would not excuse the tenant from prompt and timely payment of rent.

From March 24, 2020 until May 19, 2020, the Government of Ontario required all non-essential businesses to close to limit the spread of COVID-19. The tenant failed to pay any rent for April or May 2020, and paid part of the rent for the months from June until September 2020.

The Court held that the force majeure clause was triggered by the government's COVID-19 restrictions as they constituted restrictive governmental laws or regulations. This meant that both parties were excused from obligations under the lease, except that the tenant was not excused from prompt and timely payment of rent.

The Court also held that the presence of the force majeure clause clearly showed that the parties contemplated situations where the performance obligations would be impacted due to circumstances outside of the parties' control. Therefore, the doctrine of frustration could not apply.

KEY TAKEAWAYS

These cases establish that the government's COVID-19 restrictions which were promulgated in 2020 will likely constitute "restrictive governmental laws or regulations" within the meaning of the language commonly used in force majeure commercial leasing clauses. However, it should be remembered that whether an event is considered to be a force majeure event is dependent on the specific language of the force majeure clause and whether that clause actually hinders or prevents the party from complying with the terms of the agreement.

As to the issue of rent abatement during the force majeure period, since these two cases turned on the express terms of the lease, arms-length parties negotiating their commercial leases should ensure they turn their mind to and expressly provide for the consequences in circumstances where the force majeure clause is triggered. The language in Braebury Development is the commercial norm; however, in the last few years, we have seen a slight shift in that tenants with sufficient negotiating power are able to carve out certain events (such as pandemic or government restrictions) as force majeure events which would permit an abatement of rent.

Lastly, as regards to the doctrine of frustration of contract, these cases indicate that the doctrine does not apply where force majeure consequences are contemplated by the parties, as was the case in Braebury Development. This is because the doctrine of frustration of contract applies where there is an unforeseen event that renders the contract impossible to perform. Even without a force majeure clause, going forward, it will be difficult to claim that COVID-19 is an unforeseen event for any contracts entered into since the pandemic began.

For further information or if you are concerned about your rent payment responsibilities/rights under a commercial lease, please do not hesitate to contact a member of Robins Appleby LLP's real estate or litigation team.

[i] Windsor-Essex Catholic District School Board v 231846 Ontario Limited, 2021 ONSC 3040.
[ii] Braebury Development Corporation v Gap (Canada) Inc, 2021 ONSC 6210.

PITFALLS OF EARLY TERMINATION CONDITIONS

BY LEOR MARGULIES

Two recent court decisions have rekindled the focus on the hot real estate marketplace and escalating costs, and their impact on termination of low-rise and high-rise preconstruction contracts. There is both good and bad flowing from both of those decisions. Builders need to take care when drafting their agreements, both in completing the Tarion addendum and also protecting themselves from potential damage claims and actions for a specific performance by insertion of certain provisions.

The recent case of Green Urban People Ltd. and Lucas Berthault et al. highlights the dangers of builders taking advantage of early termination conditions in order to cover escalating costs and increased prices in the rising market (Berthault v. Green Urban 2021 ONSC 8039).

In this case, Green Urban sold 26 municipal freehold, common element condominiums pursuant to agreements containing early termination conditions which required the builder to obtain "severance, site-sign agreement, draft plan and condominium exemption and part lot exemption by-law." The vendor also did not tick off the appropriate box in s. 6(c) as to whether or not the agreement actually contained an early termination condition. The condition expired at the end of October 2020 and was not met. The vendor is required to send notice out five days after expiry of the condition to notify a purchaser whether the condition has been satisfied but if it does not send out such notice, the condition is deemed not satisfied. In this case, the vendor did not send out the notice until eight months later.

Instead, it continued to accept deposits from some of the purchasers and sent out a notice on March 1, 2021 extending the tentative closing date. It was only on March 1, 2021 that Green Urban sent out notices to the purchasers that the agreements were being terminated as a result of the early termination condition not having been satisfied.

Green Urban went back to all 26 purchasers and offered to resell the units at a 25 per cent increase, citing the increase in construction costs. Eighteen purchasers agreed to sign the agreements at the increased price. The 11 purchasers of the remaining eight units brought an application to court to seek certificates of pending litigation to be registered on title, pending an arbitration proceeding being heard pursuant to the provisions of the addendum, to determine whether or not the early termination condition was valid in light of a number of technical objections that were raised. These related to the failure to tick off the appropriate box confirming that there was or was not an early termination condition, and also failing to separate out all of the various governmental approval conditions contained in the one condition. There is a requirement under the addendum that every condition be separately identified.

In order for the court to award a certificate of pending litigation which would tie up the property and prevent the vendor from reselling it pending arbitrator's determination, the purchasers had to establish two things:

a. that there was a triable issue, (i.e. a legal basis for the purchasers to win); and

b. in the event that the purchasers were successful, that the purchasers would be entitled to an order for specific performance of the purchase and sale agreement, as opposed to only damages.

Regarding the first issue, the court held that the purported deficiencies and the drafting of the early termination clause were sufficient to constitute a triable issue. On the second issue, the court held that if successful, the purchasers may very well be entitled to an order for a specific performance for the contract. This result is exceptional as normally, in order to obtain an order for a specific performance for land, the property must have such unique characteristics that damages would not be a sufficient remedy. In this case, the court made a determination that because prices had gone up so dramatically in the area, the property was unique in that it could not be replaced at the same price in the area.

The case is groundbreaking because uniqueness for real estate is generally not measured based on cost. That is and can be normally compensated by damages. Nonetheless, the court held that due to the extraordinary change in the marketplace, this property was unique to these purchasers.

There are two lessons to be learned in this case. Firstly, drafting and completion of the addendum must be carefully done and strictly adhered to. Secondly, a builder's conduct and treatment of its purchasers will impact the court's ultimate determination. The builder waited eight months before terminating the agreements and led the purchasers, by his actions, to believe that the agreements were fully unconditional. They had accepted the deposits and sent out extensions of the tentative occupancy dates. They admitted in court that the increase in costs was a material factor in making the decision. The equities certainly favoured the purchasers. Being a good corporate citizen and dealing fairly with purchasers will go a long way in equalizing a perceived imbalance of bargaining power between consumers and builders.

On a more positive note, the Supreme Court of Canada recently upheld the Court of Appeal decision in the Castlepoint-Greybrook case (Ritchie v. Castlepoint Greybrook Sterling Inc. [2021] O.J. No. 1741). In that case, the developer terminated preconstruction condominium agreements on the basis that the developer was not able to obtain satisfactory financing. A class action was commenced by the purchasers with regards to the proper exercise of the developer's discretion relating to the financing condition and its good faith in taking all reasonable steps to satisfy the condition.

The developer chose to bring an expeditious procedure known as a motion for summary judgment, to dismiss the claim on the basis that even if the purchasers were correct in their assertion, the purchase agreement contained a clause that specifically provided in the event of termination of the agreement by the vendor, whether for cause or otherwise, the purchasers' remedies would be strictly limited to a return of the deposit. The Supreme Court of Canada upheld the enforceability of the clause and the right of parties to negotiate an agreement that limits remedies in the event of a default. Accordingly, the class action was dismissed as even if the purchasers were successful in attacking the exercise of the early termination clause, there would be no damages rewarded.

Here are some concluding thoughts:

a. Builders should conduct themselves throughout the course of a purchase agreement in a reasonable and fair fashion, keeping their purchasers fully informed on the status of approval, construction and other conditions that will impact on closing;

b. Builders and their lawyers should be exceptionally careful in completing the addendum which provides significant purchaser rights. Tarion and the courts generally favour consumers in the event of any ambiguity;

c. Builders should consult with their lawyers to incorporate appropriate clauses that may lawfully limit their exposure to damages, as well as specific performance; and

d. Builders must also be mindful of their obligation to take commercially reasonable steps to satisfy the early termination conditions. Their efforts can and will be examined by the courts and Tarion.

Leor Margulies has been a member of the Toronto real estate community for more than 35 years and heads the real estate group at Robins Appleby LLP.

NEW BLOG SERIES: CRA WITH FAYE

Faye Kravetz, Partner in our Tax Group, sheds light on common frustrations, questions and thoughts about the CRA.

Faye practices planning and dispute resolution in multiple areas of domestic and international taxation, including transactional matters, estates, non-profits and charities. She brings multiple perspectives to her practice having worked abroad and with the CRA.

Read her first blog post below.

Why is CRA asking me for a document they already have?

I frequently receive this question from clients and lawyers facing a CRA audit. Typically it is followed by a second question: the auditor should already have it… shouldn't they?!

These questions are always laden with frustration. Being audited is already time-consuming and unnerving. In a world where privacy is protected in most other contexts, audits can feel particularly invasive. To be asked for an already-filed return or form only adds to the irritation. Now the taxpayer must spend its own resources trying to source and produce that document. These requests can also exacerbate audit-related anxiety, leading to a third question: what could CRA possibly be looking for if they want to scrutinize a document they already have?!

Here's the answer. CRA is big. And when I say big, think HUGE. Huge as in there can be whole groups of people devoted to a line item on a particular trust tax return. And those people rarely if ever speak to the person who is peering into all your history and reporting relating to a year in which you filed taxes on that return. I can almost guarantee that Jill Auditor has never met Joe Line-Item and wouldn't even know how to contact him/her/them. So the reason the audit department is requesting a document you already filed with the CRA is because, simply: a) they do not have it, and b) the easiest way to get it is to ask you.

This may not be a big revelation, but I hope it demystifies the audit process a little. By explaining the process, I aim to make audits a little less stressful and a little more amicable. In turn, this should help to bring you closer to the resolution you want.

BIG DEALS

ROBINS APPLEBY LLP CLOSED A $194M DEAL IN JANUARY 2022

Robins Appleby LLP was involved in a major transaction which involved closing a deal in January 2022 for an aggregate sale price of $194,000,000. This deal was a collaboration between our Real Estate, Employment Law and Tax practice groups. Real Estate Group Partner Leor Margulies, Associate Rachel Puma, and Law Clerk Natalie Caprara acted for Trans County Development Corporation Limited on the sale of a Toronto apartment portfolio comprising 7 apartment buildings with 479 suites to Hazelview Acquisitions Inc. Tax Partner David Schlesinger and Associate Thomas Witteveen provided expert tax advice on the structure of the transaction, and Litigation Partner Barbara Green with support from Articling Student Erran Lee provided practical advice regarding employment matters related to the deal.

ANNOUNCEMENTS

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WELCOME ONBOARD ANISHA SAMAT

Anisha is an associate in our Litigation Group where she maintains a broad commercial litigation practice. She has experience in real estate disputes, fraud, bankruptcy and insolvency, receiverships, general contract disputes and class action lawsuits.

2 CONGRATULATIONS TO THE FOLLOWING LAWYERS ON BEING ADMITTED AS PARTNERS OF ROBINS APPLEBY LLP

ISMAIL IBRAHIM

Ismail is a valued member of the firm's Business Law Group and co-lead of the Housing Team where he practices in the areas of housing, corporate, procurement and privacy. Ismail brings a practical approach to the law using his experience as an engineer, a lawyer and an executive.

FAYE KRAVETZ

Faye is a valued member of the firm's Tax Group where she practices planning and dispute resolution in multiple areas of domestic and international taxation involving various combinations of individuals, corporations, estates, trusts, non-profits and charities. Faye brings multiple perspectives to her practice having previously worked abroad and with the CRA.

LADISLAV KOVAC

Ladislav is a valued member of the firm's Real Estate Group where he works on commercial lending, commercial purchases and sales, development and new condominiums. Ladislav has experience in secured lending, land assemblies, acquisitions, sales, and other real estate matters.

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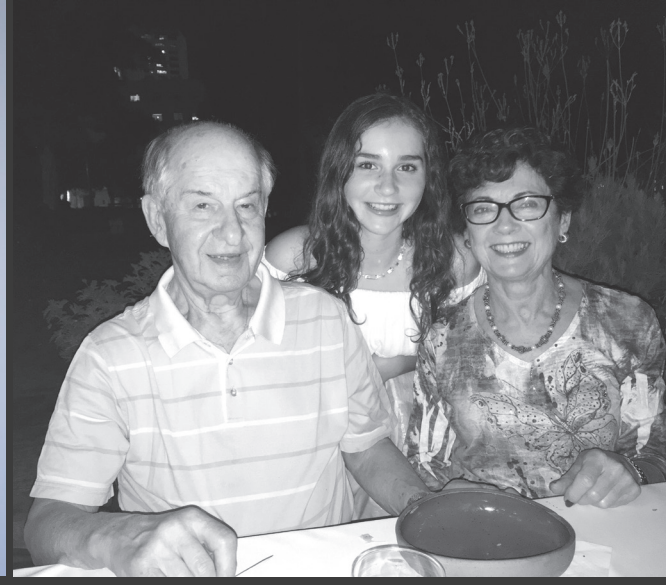
CONGRATULATIONS LEOR MARGULIES!

We are pleased to announce that Leor Margulies—Co-Leader of our Real Estate group, has been awarded the OBA's 2021 Award of Excellence in Real Estate.

Leor received his award on June 15th, at the OBA Conference Centre in Toronto, while colleagues, family and friends cheered him on.

This was a well-deserved award indeed. Congratulations Leor!



IN MEMORIAM: GERALD M TAUB Q.C.

Gerald (Gerry) Taub, Head of the Real Estate Group at Robins Appleby LLP from 1980 until the early 2000s, passed away peacefully on Thursday, February 17, 2022, at the age of 84. Gerry left a tremendous legacy in our Real Estate Group, in our firm and most importantly, among his family and friends.

His first day of work was February 1, 1980. Thirty-four years later, in the May 2014 issue of "Legal Pulse," Gerry reflected on how both technology and the practice of Commercial Real Estate had changed during his career:

> *When I started, you began your career from the "bottom," in the Registry Office, searching titles and closing deals face-to-face. The use of precedents was not in vogue to the same degree as it is now.*
>
> *Technology was just starting with the Xerox manual feed. Dictating was by shorthand and dictating equipment was reel-to-reel. Faxes had not been created. Deliveries were by taxi, mail or courier. Today, the pace is "instant." Documents are created in a fraction of the time that they were back then.*
>
> *Billings were not on an hourly basis, but what the market would bear. When billing, if the client took a hit, you cut your fee, but made it up when the client made a "score."*
>
> *The relationship between the lawyer and client was more personal. "Assistants" were secretaries many of whom, like today, knew more about completing a deal than the lawyers and were greatly relied upon.*

Gerry was a talented lawyer who handled only the most creative and challenging of legal structures. Whenever someone said it couldn't be done, Gerry found a way to structure a deal that would work. I guess he loved a challenge.

Gerry had a talent for analyzing and structuring transactions, making the most complex transactions gel, working successfully for all parties. Gerry could do this because he was so creative and knew his clients so well.

Jim Leon, chief financial officer at Menkes Developments, one of Gerry's clients, remembers that in order to build the North York Centre built on top of the subway stop at Yonge-Sheppard from 1987 to 1989, Menkes had to purchase all the properties in two large city blocks including private homes, a church, a fire station, a restaurant—about 40 properties in all.

"Every time we bought a property, the deal was structured as a new company and a new title for the property. Some were clearly of Hebrew background, others were just wacky. Gerry acted for us on all those purchases. I would look at the names of these companies and just laugh and marvel at the ingenuity of them," said Leon.

"And that was the largest development project Menkes had undertaken in Toronto back then," said Leon.

"Legend has it that the methodology of coming up with these company names was a regular pub night at Robins Appleby. I think there may have been a ratio of creativity related to beer," said Leon.

When Leor Margulies started working with Gerry Taub in 1985, there were only three lawyers in our Commercial Real Estate Group. Over the decades, the firm went through an evolution. Gerry and Leor were a part of the group that together built our real estate group into the significant player we still are today in real estate development and lending fields in Greater Toronto.

He represented many entrepreneurial and institutional clients over the years including many members of the Ismaili community, Peter Pocklington, BMO, Sun Life Insurance and a host of both developers and lenders.

"When Gerry was conducting student interviews, a security code was required to access the building after hours. I asked Gerry how the interviewees were going to get in without the security code. To which he replied: 'That'll be the first test of their street smarts!'" said Carol Duran, Gerry's long-time assistant.

"Gerry had a deep sense of decency. Despite the sometimes gruff exterior, usually because other people couldn't think as fast as him, there was a fundamentally good man," Carol added.

When asked what characteristics make a successful commercial real estate lawyer in that May 2014 newsletter, Gerry responded:

> *They must have a basic grounding in the fundamentals of contract law and property law from "Berashis" [the beginning]. You cannot go from law school to lawyering. Also, they must develop a credible relationship with the other side's lawyer. It makes life easier.*

He was a great leader, a wonderful family man and leaves behind his wife of 62 years, Shirley Taub. Dear brother of Bernie Taub. Loving father of Ian and David (David Taub is a partner in our Litigation Group) and daughter-in-law Fern Betel. Loving son-in-law Ken Nathens and the late Deborah Taub, Gerry's and Shirley's daughter. Gerry leaves behind many adoring grandchildren: Philip, Charles, Jake, Katie, Sarah, and Lauren.

LAWYER SPOTLIGHT ON ISMAIL IBRAHIM

Q) How long have you been with Robins Appleby LLP?

A) I joined Robins Appleby LLP in January 2020 right before Covid hit. This is the third time in my life that I have started/switched to a new job. The first time was in 2001 right around the IT bubble crash. The second was in 2009, right after the market crash. For everyone's sake, I hope I stay at Robins Appleby LLP for a very long time.

Q) Can you give us some insight into your practice?

A) I am a partner in the business law group, but also work closely with the real estate group. I provide strategic legal advice to clients on a variety of topics including corporate/commercial agreements, governance, construction agreements, privacy and housing law.

As the former General Counsel and Corporate Secretary, I was fortunate to get a lot of experience in all aspects of social housing, which helps me provide practical advice to housing clients; advice that melds legal doctrine with operational needs.

Q) How do your past experiences as an engineer and an executive help in your practice?

A) As an engineer and an executive, I learned the importance of making practical decisions to solve problems. I routinely use this skill to assist clients solve legal problems that includes consideration of their strategic needs.

Being an executive also teaches you the importance of looking at the big picture. I use this skill to dissect complex problems into parts that are most relevant to help clients focus on the key issues.

Q) As Co-lead of the Housing group here at Robins Appleby LLP, can you share some of your thoughts around the work you do?

A) The Housing group is quite unique as we are one of the only firms in Ontario that has a dedicated Housing team. The cross-functional team is composed of lawyers who can effectively leverage their experiences from their housing and commercial practices to provide legal advice on housing matters. Counted amongst our clients are numerous municipalities, non-profit housing providers and private developers who rely on the Housing team's breadth and depth of experience in corporate and real estate law to assist them in all aspects of housing matters. As such, we assist our clients to create more social and affordable housing.

Q) How does it feel to have made Partner this year?

A) There are a lot of very talented people here that I learn from each and every day and our clients are always involved in new and interesting projects that I can get involved in. Therefore, I am very pleased to be a Partner at Robins Appleby LLP, but not as happy as my parents. They have been telling everyone about it, even though I am not sure they really understand what a partnership really is.

Q) You're also an avid chess player having played in local, national, international and even the Chess Olympiads—what was that experience like? Would you do it again?

A) Playing in the Chess Olympiads was a dream come true. I have been playing chess since I was six years old and love to compete in tournaments. In 2002, I was fortunate to be invited to the Chess Olympiads in Bled, Slovenia, where I competed against some of the best players in the world. My overall record of 6 wins, 3 draws and 3 losses was a lot more respectable than I would have predicted going in, but the highlight was meeting players from all over the world.

I would love to play in the Olympiads again someday, but I am okay if the opportunity is given to younger players. I already have my memories that will last a lifetime.

Q) What do you enjoy most about being a lawyer?

A) I like solving complex problems and being a lawyer certainly provides me with opportunities to test my problem-solving skills. I am also fortunate to work with some great people, colleagues and clients, which make the work more enjoyable.

Q) What other hobbies do you have?

A) Besides chess, I am an avid reader and I am usually reading something. I also love movies and I am excited that movie theaters have opened up again. I recently saw the new "Dune" movie on IMAX and can't wait for the second part.

PRACTICE GROUP HIGHLIGHTS

EMPLOYMENT LAW: WHAT EVERY EMPLOYER SHOULD KNOW

Many employers do not realize that there can be tremendous cost-savings with carefully drafted employment contracts and proper severance packages. There are also several mandatory employment policies that must be implemented, even if you only have a few employees. Consulting with an employment lawyer should often be a first step before considering any changes to the workplace.

Our firm is pleased to provide full-service employment law services which includes:

- Employment litigation
- Preparation of employment contracts
- Preparation of, implementation of, and negotiations with regards to severance packages
- Advice and guidance in all areas of employment law, human rights law and workplace harassment claims
- Preparation of employment policies
- Assistance with workplace investigations

To explore how we can be of assistance to you,
please contact Barbara Green at bgreen@robapp.com or 416-360-3379.
Our employment law team looks forward to working with you.

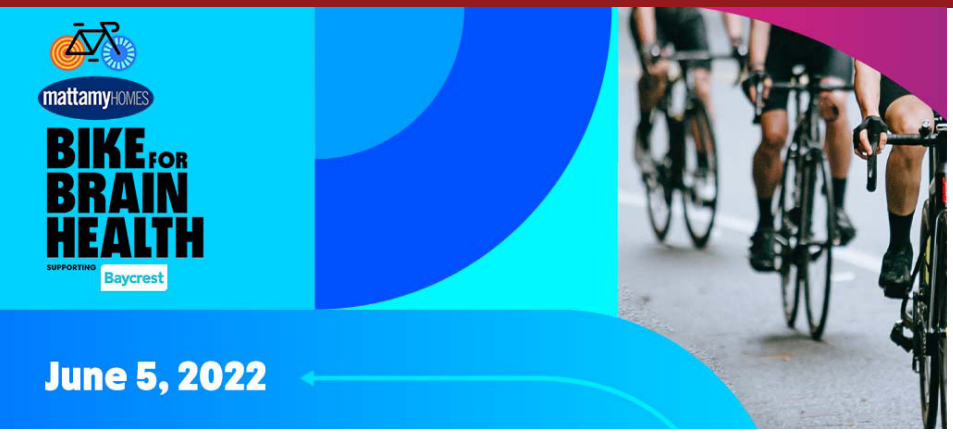
TAX DISPUTE RESOLUTION & TAX LITIGATION TEAM

With Federal debt reaching new heights and aggressive new tax reform and enforcement methods being implemented by the Federal Government to raise revenue, it is now more important than ever for individuals and privately owned businesses to turn to a tax team they can trust. Our team of tax lawyers and tax litigators at Robins Appleby LLP is ready to assist. We work tirelessly with our clients and their accountants to protect them from overreaching audits and to assist with disputed reassessments of tax by the Canada Revenue Agency.

Robins Appleby LLP offers an experienced and integrated team of tax planning, tax dispute resolution and tax litigation experts to tackle tax disputes and tax appeals. For more information, please contact a member of our team below.

Amanda Laren Feigen
David Schlesinger
Ellad Gersh
Errol Tenenbaum
Faye Kravetz
Irving Marks
Lorne Greenspoon
Michael Gasch
Ronald Appleby
Thomas Witteveen

COMMUNITY INVOLVEMENT



BIKE THE DVP!

On June 5th the Robins Appleby LLP team—cleverly named Robins Rockets, participated in the Baycrest Foundation's Bike for Brain Health. Participants chose between a 25, 50, or 75 km route and put the pedal to dementia prevention on the Don Valley Parkway.

The Robins Rockets included our lawyers, staff and their families and friends who raised vital funds to help Baycrest in its work to defeat dementia. These critical funds will be directed toward areas that require timely investments for care, innovation, education and research at Baycrest—all with the same goals: creating a world where every older adult enjoys a life of purpose, inspiration and fulfilment.