

CITATION: Popack v. Lipszyc, 2009 ONCA 365
DATE: 20090504
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COURT OF APPEAL FOR ONTARIO

Winkler C.J.O., MacFarland, and LaForme JJ.A.

BETWEEN:

Joseph Popack, United Burlington Retail Portfolio Inc., and United Northeastern Retail
Portfolio Inc.

Plaintiffs (Appellants)

and

Moshe Lipszyc and Sara Lipszyc

Defendants (Respondents)

Marvin J. Huberman, for the appellant

Colin P. Stevenson, for the respondent

Heard and endorsed orally: April 30, 2009

On appeal from the order of Justice A. Pollack of the Superior Court of Justice dated
September 2, 2008.

APPEAL BOOK ENDORSEMENT

[1] On this record it is anything but clear that this arbitration agreement is incapable
of performance.

[2] The May 8, 2008 letter is anything but dispositive, the circumstances of its admission before the motions judge make that factor quite clear.

[3] In our view this matter must be referred to the Crown Heights Beth Din under the auspices of Rabbi Schwei to proceed with the arbitration on a fixed timetable or clearly indicate the refusal of the Beth Din under his auspice to further deal with the matter.

[4] The order of the motion's judge shall be varied in accordance with these reasons.

[5] Costs in the sum of \$27,500 inclusive of disbursements and GST to the respondents.