

Decision

[5] For the reasons that follow I am adjourning the motion to allow the Plaintiff to file further evidence.

The Issues

[6] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiff is entitled?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability?

Consequences of noting in default

[7] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[8] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the Statement of Claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[9] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

The test on a motion for default judgment

[10] The test on a motion for default judgement is: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim? *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062 at para. 14.

[11] I am satisfied that the Plaintiff has established liability based upon the following deemed admissions from the Statement of Claim, together with the evidence from the affidavit of Nessa Craven sworn February 16, 2025.

[12] The Parties entered into an Agreement of Purchase and Sale (the “APS”) for the purchase of a residential home for \$1,339,900.00, municipally described as 54 Northrop, Clarington, Ontario, Ontario (the “Property”).

[13] The final closing date was scheduled for May 23, 2024 (the “Closing Date”).

[14] The Defendants agreed to pay for a number of extra upgrades/options for the Property worth \$1,469.00. The Defendants paid an additional deposit of \$1,469.00 to Plainview for these extras. As a result of these extras, the total final purchase price was increased to \$1,341,369.00.

[15] Under the terms of the APS, the Defendants were required to make a series of deposits. The first deposit in the amount of \$25,000.00 was due on acceptance of the APS on August 20, 2022. The remainder of the deposits were to be made in a series of monthly deposits from September 20, 2022, to September 20, 2023, in the total amount of \$75,000.00.

[16] The Defendants provided deposits in the total amount of \$101,469.00 (the “Deposit”).

[17] Although the Defendants requested an extension of the Closing Date, the parties did not agree on the terms of an agreement to extend the Closing Date.

[18] The Defendants failed to close the transaction on the Closing Date.

[19] On May 27, 2024, Plainview sent a letter to the Defendants’ solicitor and advised that as a result of the Defendants’ failure to deliver the required funds and documents on Closing Date the Defendants were in default under the terms of the APS and Plainview terminated the APS. Plainview advised that all monies paid by the Defendants were forfeited and reserved its right to seek damages as a result of the Defendants’ default.

[20] On or about July 29, 2024, the Plaintiff re-sold the Property for \$975,000.00, which closed on or about August 15, 2024 (the “Mitigation Sale”).

Issue 2: What are the damages to which the plaintiff is entitled?

Where the claim is a breach of contract from a failed real estate transaction, I say this:

[21] The Plaintiff has based its damages claim on the resale price.

[22] As the innocent party the Plaintiff has a duty to mitigate damages: *Rosehaven Homes Ltd. v. Aluko*, [2022] O.J. No. 838, at para.71.

[23] Where a plaintiff seeks default judgment in the context of an aborted sale of real estate, the plaintiff must satisfy the court that he made reasonable efforts to mitigate by attempting to resell the Property for fair market value in a timely manner: *Caivan (Renaud) Inc. v. Khan et al.*, 2024 ONSC 1986 at para 22 citing *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.* 1978 CanLII 1630 (ON CA), 20 O.R. (2d) 401 at p.23

[24] In *100 Main Street Ltd.*, at para 64 Morden J. adopted the view of *McGregor on Damages*, 13th ed. (1972) which states that the price at which a property has ultimately sold affords good evidence of the market value. See also *Briscoe-Montgomery v. Kelly*, 2014 ONSC 4240, at para.

22, where the Court cited Rosenberg J. (as he then was) in *Victorian (Ontario) Inc. v. DeFreitas et al.*, [1991] 16 R.P.R. (2d) 55 where he states, at para. 20, "...in my view, there is no better evidence to calculate the real damage suffered than the price that the plaintiff was able to obtain in the market for the resale for the home."

[25] When assessing whether the innocent party took reasonable steps to minimize the losses incurred, the court may consider:

- (a) the circumstances of the real estate market at the time;
- (b) how long it took for the innocent party to place the property for sale;
- (c) how long the property was for sale before it sold;
- (d) how the property was marketed;
- (e) at what price the property was relisted for sale;
- (f) how the property was exposed for sale;
- (g) whether there were any price reductions or other offers to purchase the property; and,
- (h) how many other offers were made and their particulars.

(*Rosehaven Homes Ltd.* at para 73)

[26] The plaintiff must show that the damages he claims are reasonable and flow from the breach: *Rosehaven Homes Ltd.*, at para 74.

[27] Damages also include the usual carrying costs: *100 Main Street* at p. 17, *Briscoe* at para 23.

[28] In this case the Plaintiff has not submitted any evidence regarding the factors set out in para 27 above.

[29] The Plaintiff is granted leave to file further affidavit evidence on or before June 23, 2025. Any further evidence must be filed with the court, sent to my Judicial Assistant by email and uploaded to CaseCenter by June 23, 2025 failing which the motion will be dismissed without costs.

Merritt J.

CITATION: Plainview Heights Property Ltd. v. Khatun, 2025 ONSC 3203
COURT FILE NO.: CV-24-00726050-0000
DATE: 20250529

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

PLAINVIEW HEIGHTS PROPERTY LTD.

PLAINTIFF

– and –

MOREOM KHATUN and RERAN UDDIN

DEFENDANT

REASONS FOR JUDGMENT

Merritt, J

Released: May 29, 2025