

**CITATION:** Century 21 People’s Choice Realty Inc. et al v. Bilkhu et al,  
2025 ONSC 4920  
**COURT FILE NO.:** CV-24-1147  
**DATE:** 2025 08 27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:** )  
)  
CENTURY 21 PEOPLE’S CHOICE ) Mandeep Toor, for the  
REALTY INC. ) Plaintiffs  
)  
BHUPINDER SINGH DHALIWAL )  
)  
Plaintiffs )  
)  
**- and -** )  
)  
)  
NANCY BILKHU ) Tejinderpal Sanghera, for the  
) Defendants  
MANPREET KANG )  
)  
)  
Defendants )  
)  
)  
) **HEARD:** August 21, 2025

2025 ONSC 4920 (CanLII)

**RULING ON MOTION**

**Wilkinson J.**

[1] The Defendants bring this motion seeking to set aside their noting in default and to obtain a timetable to file a statement of defence.

[2] This case involves a claim by the Plaintiff, Bhupinder Singh Dhaliwal, known as Bobby Dhaliwal, who is a real estate agent with the Plaintiff brokerage, Century 21 People's Choice Realty Inc. The Plaintiffs are seeking payment of commission fees that they say are owed to them. The total amount the Plaintiffs claim they are owed is \$47,460. The Plaintiffs also seek aggravated, exemplary and punitive damages of \$35,000.

[3] Mr. Dhaliwal deposed that he came into contact with the Defendant, Manpreet Kang, in the month of February 2022. Mr. Kang was interested in purchasing a residential property for investment purposes.

[4] Mr. Dhaliwal deposed that he located and introduced a property to Mr. Kang located at 26 Clockwork Drive in Brampton, Ontario. Mr. Dhaliwal stated in his affidavit that he was instructed to prepare and present an offer for its purchase, which he did.

[5] There is no dispute that the Defendant, Mr. Kang, signed a Buyer Representation Agreement ("the Agreement") with the Plaintiff, Bobby Dhaliwal, on April 15, 2022. The expiry date for the Agreement was July 31, 2022.

[6] The Agreement stated that the Defendants were hiring Mr. Dhaliwal to assist them with locating a single-family house for purchase, located in the Brampton or

Peel regions, surrounding areas, or anywhere in Ontario. Specifically, the Agreement stated at para. 2:

...If during the currency of this Agreement, the Buyer enters into an agreement to purchase any property of the general description indicated above, the Buyer agrees that the Brokerage is entitled to be paid a commission of 2.5% of the sale price of the property...

[7] The Agreement also stated at para. 2 that the Plaintiffs were entitled to be paid commission if a property shown during the representation period was purchased within 90 days after the expiration of the Agreement.

[8] The Agreement also specified at para. 1 that for the purpose of the Agreement, the term “buyer” was deemed to include spouses.

[9] Mr. Dhaliwal deposed that Mr. Kang ultimately decided not to purchase 26 Clockwork Drive. However, he later learned that three days later, the wife of Mr. Kang, the Defendant, Nancy Bilkhu, purchased the very same property on April 18, 2022.

[10] The transfer deed reflects Ms. Bilkhu being registered as the owner of the property on August 3, 2022.

[11] The Plaintiffs take the position that the Defendants breached the Agreement by Mr. Kang’s wife purchasing 26 Clockwork Drive three days after Mr.

Dhaliwal located the property and showed it to Mr. Kang, and by failing to pay any commission fees to Mr. Dhaliwal.

[12] The Defendants deny that they breached the Agreement. In particular, they submit that Nancy Bilkhu was not a party to the Agreement as she did not sign the Agreement. They therefore argue that the Agreement was not breached when Ms. Bilkhu purchased 26 Clockwork Drive, as the Agreement was between the Plaintiffs and Mr. Kang.

[13] The relevant procedural steps that have taken place in this proceeding are as follows:

- a. The statement of claim was issued on March 8, 2024;
- b. The statement of claim was served on the Defendants on May 22, 2024;
- c. The Defendants were noted in default the first time on June 24, 2024;
- d. The Defendants served a notice of intent to defend on August 2, 2024
- e. The Defendants requested to set aside the noting in default on August 12, 2024;
- f. The Plaintiffs consented to the noting in default being set aside on August 26, 2024;

- g. The Defendants served a demand for particulars on October 9, 2024;
- h. The Plaintiffs responded to the demand for particulars on October 31, 2024;
- i. The Plaintiffs requested that the statement of defence be served on December 12, 2024. There was no response to this communication.
- j. The Plaintiffs sent another email requesting the defence on February 3, 2025, and communicated that if the defence was not received by February 10, 2025, the Defendants would be noted in default;
- k. The lawyer for the Defendants sent an email on February 10, 2025 stating that she was in trial, and requesting another ten days to serve the statement of defence;
- l. Counsel for the Plaintiffs responded to the lawyer for the Defendants on February 14, 2025, and advised that an extension was granted, and the statement of defence was due by February 20, 2025. Counsel for the Defendants did not respond to this email;
- m. On February 26, 2025, the Plaintiff discovered that 26 Clockwork Drive was being sold under power of sale by the mortgagee bank;
- n. The Defendants were noted in default for the second time on March 7, 2025;

- o. Counsel for the Plaintiffs sent counsel for the Defendants an email informing them about the noting in default on April 7, 2025;
- p. Counsel for the Defendants sent an email to counsel for the Plaintiffs on April 8, 2025 attaching a statement of defence, and asking that the noting in default be set aside.

### **Position of the Plaintiffs**

[14] The Plaintiffs oppose the Defendants' motion to set aside the noting in default. They submit that the Defendants' delay in moving the action forward was inordinate, and that no reasonable explanation has been provided for the delay. The Plaintiffs further submit that the Defendants intentionally chose to delay serving their statement of defence on the Plaintiffs until after 26 Clockwork Drive was sold under power of sale, which they claim has severely prejudiced their ability to recover the commission payment owed to them.

[15] The Plaintiffs also argue that there is no merit to the Defendants' defence, because the Defendants admit in the statement of defence that Mr. Kang hired Mr. Dhaliwal under the Buyer Representation Agreement submitted by the Plaintiffs, and they also admit that Mr. Kang and Ms. Bilkhu are married.

### **Position of the Defendants**

[16] The Defendants submit that this motion was brought quickly after the Plaintiffs noted them in default. They also submit affidavit evidence that around the time that they were served with the statement of claim, their now seven-year-old child was dealing with autism, and they were unable to direct their attention to the claim.

[17] Mr. Kang deposed that the Defendants were required to seek treatment outside of Canada, including in the United States, India and Mexico, to assist with their daughter's autism diagnosis. The Defendants provide an email from the Brain Treatment Center in Columbus, Ohio, dated May 17, 2023, which they submit proves that their daughter was receiving treatment internationally, which they say explains their delay in responding to the statement of claim. The email does not have information specific to their child. Mr. Kang deposed that the autism diagnosis for their child took a huge mental toll on him and his wife. He did not submit any medical records or reports to support this statement.

[18] The Defendants also submit that they have a meritorious defence to the claim, as Mr. Kang was not the individual who purchased 26 Clockwork Drive. The Defendants therefore argue that the Agreement was not breached, as Ms. Bilkhu, the purchaser of the property, did not sign the Agreement.

[19] The Defendants also argue that they will suffer serious prejudice if their ability to defend the action is taken away, and the Plaintiffs are awarded damages for a claim which the Defendants say has no merit.

### **The Law**

[20] Rule 19.03(1) of the *Rules of Civil Procedure* states that a “noting of default may be set aside by the court on such terms as are just.” The threshold for setting aside a noting in default is low: *Kyles v. M.B.N.A. Mastercard Canada*, 2017 ONSC 5037, at para. 9.

[21] It is not in the interests of justice to strike pleadings or grant judgments based solely on technical default. The court will always try to see that issues between litigants are resolved on their merits whenever that can be done with fairness to the parties: *Nobosoft Corporation v. No Borders, Inc.*, 2007 ONCA 444, 225 O.A.C. 36, at para. 7.

[22] The Court of Appeal for Ontario provides guidance in *Franchetti v. Huggins*, 2022 ONCA 111, at para. 9, regarding relevant factors to consider when determining a motion to set aside a noting in default. Those factors are as follows:

- (a) The behaviour of the parties;
- (b) The length of the defendant’s delay;

- (c) The reason for the delay;
- (d) The complexity and value of the claim;
- (e) Whether setting aside the noting of default would prejudice a party relying on it;
- (f) The balance of prejudice as between the parties; and
- (g) Whether the defendant has an arguable defence on the merits.

[23] The onus of satisfying the court that the noting in default should be set aside rests with the defendant who has been noted in default: *Garten v. Kruk*, (2009), 257 O.A.C. 59 (Ont. Div. Ct.), at para.16.

[24] Parties should put their best foot forward on a motion and deliver all evidence that they wish the court to consider: *Garten v. Kruk*, (2009) CanLII 21206 (Ont. SC), at para. 4, rev'd on other grounds, (2009), 257 O.A.C. 59 (Ont. Div. Ct.).

## **Analysis**

### **a) The behaviour of the parties**

[25] The Plaintiffs have behaved reasonably, including previously agreeing to the setting aside of the noting in default when the Defendants were first noted in

default. However, the Defendants have not behaved reasonably. After providing the Defendants several extensions to file the statement of defence, after having agreed to set aside the first noting in default, the Plaintiffs gave the Defendants a clear warning that they would be noted in default by February 20, 2025 if their defence was not delivered by that date. The Defendants did not respond to that email, nor did they file a statement of defence by the deadline. This factor weighs in favour of the Plaintiffs' position that the noting in default should not be set aside.

**b) The length of the Defendants' delay**

[26] The Defendants took 319 days after being served with the statement of claim to serve a statement of defence after being noted in default on two different occasions. Rule 18.01(a) of the *Rules of Civil Procedure* requires that a defendant must deliver a statement of defence within 20 days of being served with the statement of claim. Although in practice this deadline is frequently extended with the consent of the plaintiff, in the case before me, that consent was not granted beyond December 12, 2024. Even after this clear deadline was provided to the Defendants, they did not serve a statement of defence for almost another four months. This factor weighs in favour of the position of the Plaintiffs.

**c) The reason for the delay**

[27] The explanation for the delay given by the Defendants was that their now seven-year-old child had been diagnosed with autism, which required them to travel out of the country for treatment. I was not provided with any medical records or reports or affidavits from healthcare providers regarding the child to verify this situation, even though the Defendants brought this motion to set aside the noting in default. In addition, I was not provided with any specific information as to why medical treatment outside of Ontario was required to assist the child.

[28] I also note that in his affidavit, Mr. Kang stated that the Defendants were not able to communicate with their lawyer to provide instructions. Mr. Kang did not provide any further information as to why his child's diagnosis of autism prevented the Defendants from speaking with their lawyer and providing instructions.

[29] The medical condition of their child was the only reason the Defendants provided as to why they were delayed in serving their statement of defence. Life stressors such as a serious diagnosis for a medical condition may well be a factor that is relevant to consider when determining the reasonableness of the Defendants' reason for delay in serving a statement of defence. However, inadequate materials were placed before me to address this issue. The Defendants brought this motion. The onus was on them to provide documentation regarding this issue. They failed to do so.

**d) The complexity and value of the claim**

[30] This case is straightforward. The parties entered into a Buyer Representation Agreement with clear terms. The facts are not in dispute. The main issue in dispute is the interpretation of the Agreement, and whether Mr. Kang's wife was precluded from purchasing the subject property because of the Agreement. The amount in dispute is not excessive. This factor weighs in favour of the position of the Plaintiffs.

**e) Whether setting aside the noting of default would prejudice a party relying on it**

[31] The Plaintiffs argue that setting aside the noting in default will cause prejudice to them. They provided evidence that the property in question was to be sold by way of power of sale with a date of sale of January 5, 2025, and a closing date of February 27, 2025. The Defendants were therefore likely aware of the power of sale proceedings when further extensions of time to provide their statement of defence were granted by the Plaintiffs in December 2024 and in

February 2025. The Plaintiffs argue that the sale of the property has prejudiced their ability to recover judgment from the Defendants.

**f) The balance of prejudice as between the parties**

[32] While the Defendants will clearly be prejudiced if the noting of default is not set aside, the failure of the Defendants to serve a statement of defence in a timely way was not due to a technical default. They were given numerous opportunities to file the defence, and yet still failed to do so. In *Franchetti*, the Court of Appeal for Ontario endorsed the following commentary from the motion judge, at para. 17, “I agree that courts should strive to have matters determined on their merits and not be defeated by technical defaults, but parties are responsible for the[ir] actions, not only with respect to those actions upon which a cause of action arose, but thereafter as well.”

[33] A similar finding was made in *Shirzad v. Hussain et al.*, 2024 ONSC 5172, where the motion judge stated at para. 78, “While, on its face, the balance of prejudice would favour the Buyers, it is the Buyers’ own choices, not “technical defaults”, that have put them in the position they face. As a result, I find that the balance of prejudice favours the Seller in this case.

[34] Similarly, in this case before me, I find that the Defendants are responsible for their own actions and choices. They failed to deliver their statement of defence in a reasonable timeframe, resulting in potential prejudice to the Plaintiffs in their ability to recover a judgment against the Defendants due to the power of sale of the subject property. The balance of prejudice therefore favours the Plaintiffs.

**g) Whether the Defendants have an arguable defence on the merits**

[35] Mr. Kang alleges that the Agreement was not explained to him, and that he had not signed the Agreement at the time that the offer to purchase the property was prepared by the Plaintiff, Mr. Dhaliwal. He also alleges that he did not execute the entirety of the Agreement.

[36] The merit of the defence provided by the Defendants is dubious. Even if the Agreement was not fully explained to Mr. Kang, and I make no finding in this regard, he was still required to exercise due diligence before signing the document. In *United Associates Realty Inc. v. Lawrence*, 2021 ONSC 279, at para. 31, Justice André found that the test for enforceability of a Buyer Representation Agreement did not require the agent to explain it to the purchasers; all it required was that the agent not misrepresent the nature of the document. There is no evidence before me that the Plaintiffs misrepresented any of the terms of the Agreement to Mr. Kang. Accordingly, even if Mr. Kang established that the Agreement was not

explained to him, on the evidence before me this factor would not be sufficient to invalidate the Agreement.

[37] The Defendants' argument regarding the timing of the execution of the offer to purchase also fails. The Agreement states that if, during the currency of the Agreement, the buyer enters into an agreement to purchase *any* (emphasis added) property of the general description mentioned in the Agreement, the brokerage is entitled to be paid a commission. Mr. Dhaliwal deposed that both the Agreement and the Offer to Purchase were sent to Mr. Kang on the same day, and both were signed by Mr. Kang on April 15, 2022 as one document through DocuSign. Copies of both documents were also provided by the Plaintiffs.

[38] Since both the Agreement and the offer to purchase were forwarded to Mr. Kang for signature at the same time as one document, and both documents were signed by Mr. Kang on the same day, it was clearly the intention of the parties that the Agreement was intended to apply to the purchase of Clockwork Drive. Even if the documents had not been forwarded to Mr. Kang together, the Plaintiffs have a strong argument for compensation for the lost commission based on a claim for unjust enrichment. See: *Homelife Maple Realty et al v. Singh et al*, 2021 ONSC 4743.

[39] Although Mr. Kang deposed that he did not sign the entire Buyer Representation Agreement, he provided no further evidence or information in his affidavit to support this assertion. Accordingly, this defence has little to no merit on the evidence before me.

## **Conclusion**

[40] The Defendants have failed to provide reasonable evidence or justification for the noting in default to be set aside. The *Rules of Civil Procedure* have been enacted for a reason. While equitable factors may be available to defendants in a variety of circumstances to successfully establish that the noting of default should be set aside, the facts before me do not support such an outcome. The Plaintiffs provided extensive indulges to the Defendants, yet the Defendants still failed to respond to deliver a statement of defence, until they had been noted in default for the second time.

[41] In addition, the statement of defence filed by the Defendants discloses little merit to their defence. Ms. Bilkhu is the wife of Mr. Kang, and therefore also included in the Agreement. She signed the Agreement of Purchase and Sale just

three days after Mr. Kang signed the Buyer Representation Agreement. The facts before me suggest that by having Ms. Bilkhu purchase the property instead of Mr. Kang, the Defendants were attempting to avoid paying the Plaintiffs the commission owed to the Plaintiffs under the Agreement.

[42] The Defendants' motion to set aside the noting in default is denied.

### **Costs**

[43] As the successful party on the motion, the Plaintiffs are presumptively entitled to costs. The Bill of Costs submitted by the Plaintiffs seeks payment of \$2,850 plus HST = \$3,220.50 on a partial indemnity basis, plus disbursements of \$55 for printing costs. I was not provided with any invoices for the printing costs. The Bill of Costs from the Defendants totaled \$2,213.50 plus HST = \$2,501.26 for legal fees on a partial indemnity basis. Counsel for the Plaintiff was well-prepared, and the factum prepared by the Plaintiffs was of assistance to the court. I find that the Plaintiffs' proposed costs for the motion on a partial indemnity basis of \$3,220.50 are reasonable and proportional. There was no outrageous or scandalous behaviour on the part of the Defendants that justifies an award of

substantial indemnity costs. The Plaintiffs are therefore awarded costs of \$3,220.50 for this motion, payable within 30 days.

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Wilkinson J.

**Released:** August 27, 2025

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**B E T W E E N:**

CENTURY 21 PEOPLE'S CHOICE  
REALTY INC.

BHUPINDER SINGH DHALIWAL

Plaintiffs

**- and -**

NANCY BILKHU

MANPREET KANG

Defendants

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**RULING ON MOTION**

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Wilkinson J.

**Released:** August 27, 2025