CITATION: **Acorn Development v. Sabounchi, 2025 ONSC 5015**
COURT FILE NO.: CV-20-00001648-0000
DATE: September 2, 2025

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
THE ACORN DEVELOPMENT CORPORATION	)	Gwendolyn L. Adrian
Plaintiff	)	
– and –	)	
FARIBORZ SABOUNCHI and FARANGIS TAJBAKHSH	)	Max Libman
Defendants	)	

HEARD**:** July 16, 2025

RULING ON MOTION

MATHAI J.

Introduction

[1] The Plaintiff, The Acorn Development Corporation ("Acorn"), commenced an action against the Defendants, Mr. Sabounchi and Ms. Tajbakhsh, for the breach of a purchase and sale agreement in relation to a newly constructed home.

[2] The Defendants did not respond to the served statement of claim and Acorn noted them in default. Default judgment was obtained on October 30, 2020. The default judgment ordered the Defendants to pay Acorn $489,890.62 in damages.

[3] Despite having been served with the statement of claim and default judgment,[1] Mr. Sabounchi did not tell his wife, Ms. Tajbakhsh, about either document because she was suffering from significant medical issues, and he did not want the additional stress to impact her already precarious health.

[4] Upon learning of the significance of the default judgment, Mr. Sabounchi reached out to Acorn's counsel to negotiate a settlement. With the aid of a friend, Mr. Sabounchi engaged in settlement discussions with Acorn's counsel. The Defendants' claim that these settlement discussions ultimately resulted in a September 1, 2023 agreement to resolve the default judgment. Again, due to her medical issues, Mr. Sabounchi did not tell Ms. Tajbakhsh about the settlement agreement.

[5] The three key terms of the September 1 agreement were: (a) the registration of a collateral mortgage on the Defendants' residence; and (b) the Defendants would pay Acorn a total of $195,000 on a payment schedule with the last payment being made on December 15, 2025; and (c) upon completion of both terms, Acorn would treat the default judgment as satisfied. With respect to the first term, Ms. Tajbakhsh was the only person on title for the Defendants' residence. Her consent to registering the collateral mortgage was necessary to implement this term.

[6] Mr. Sabounchi made the first two payments as required by the purported settlement agreement; however, a collateral mortgage has not yet been registered on the Defendants' residence.

[7] In the fall of 2024, Acorn took the position that Mr. Sabounchi had resiled from or breached the essential terms of the settlement agreement by not informing Ms. Tajbakhsh about the settlement and the need to register a collateral mortgage. As a result, Acorn took steps to enforce the default judgment by issuing a Notice of Garnishment on Ms. Tajbakhsh's bank account and requiring the sheriff to sell the Defendants' residence. The sale is scheduled for September 12, 2025.

[8] Given the pending sale, the Defendants commenced this urgent motion seeking to enforce the settlement agreement. The Defendants assert that they are prepared to make the final payment in December 2025, and that they remain prepared to have a collateral mortgage registered on the title of their residence.

[9] For the reasons that follow, I grant the Defendants' motion. I find that there was a mutual intention to create a legally binding contract and that Acorn and Mr. Sabounchi reached an agreement on all the essential terms of the settlement. I also find that Mr. Sabounchi neither resiled from nor breached the terms of the settlement agreement. While registering a collateral mortgage is an essential term of the settlement, the conduct of the parties demonstrates that the timing of registering the collateral mortgage was not an essential term. As such, the Defendants have not resiled from nor breached this term.

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[1] The record before me does not establish how Ms. Tajbakhsh was served with the claim or default judgment. Mr. Sabounchi confirms that he was served with the claim and default judgment. The Defendants have not alleged that service of the statement of claim or default judgment was deficient.

Analysis and Findings

[10] The Superior Court of Justice has jurisdiction at common law and under r. 49.09 to enforce settlements. A motion to enforce a settlement requires a judge to answer two questions. First, whether there is any genuine issue about the existence of a settlement agreement. Second, if there is no genuine issue with respect to the agreement's existence, should the court exercise its discretion to enforce the settlement? (see *Zaidi v. Syed, Estate of, et al*, 2023 ONSC 1244, 91 E.T.R. (4th) 434, at paras. 12–15, aff'd 2024 ONCA 40, 497 D.L.R. (4th) 138; *Milios v. Zagas* (1998), 38 O.R. (3d) 218 (C.A.); *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.* 2007 ONCA 497, 87 O.R. (3d) 443; *Stargrove Holdings Inc. v. Al Noubani*, 2022 ONSC 6006, at para. 4).

[11] In the paragraphs below, I address these two questions. In addressing each question, I summarize the relevant legal principles that govern my analysis, review the evidence on the motion and make findings of fact relevant to answering both questions.

(a) Was there a settlement?

(i) Governing Principles

[12] A settlement agreement is a contract and is subject to the general law of contract regarding offer and acceptance. For a concluded contract to exist, the court must determine whether the parties: (a) had a mutual intention to create a legally binding contract; and (b) reached agreement on all the essential terms of the settlement (see: *Olivieri v. Sherman*, 2007 ONCA 491, 86 O.R. (3d) 778, at para. 41).

[13] Agreement on the essential terms of the settlement does not mean that the parties must reach an agreement on all incidental matters, such as the method of payment or the exchange of releases (see *Sumarah v. International Property Group (Toronto) Limited*, 2024 ONSC 334, at para. 58; *Atkinson v. Whaley Estate Litigation*, 2019 ONSC 3708, at para. 48; *77 Charles Street Ltd. et al. v. Aspen Ridge Homes Ltd. et al.*, 2021 ONSC 2732, 67 C.P.C. (8th) 325, at para. 52). Where there is agreement on the essential terms, any disagreement with respect to the implementation of the essential terms does not change the fact that a settlement was reached (see *Oliver v. Racette*, 2011 ONSC 5870, at para. 46; *Martin v. St. Thomas – Elgin General Hospital*, 2018 ONSC 799, at para. 44).

[14] Whether the parties had a mutual intention to be bound by an agreement is an objective inquiry, made in light of the words and actions of the parties as well as the factual matrix (see: *Olivieri*, at para. 17; *Huma v. Mississauga Hospital*, 2020 ONCA 644, 68 C.P.C. (8th) 294 ("*Huma (ONCA)*"), at para. 17; *S & J Gareri Trucking Ltd. v. Onyx Corporation*, 2016 ONCA 505, at paras. 7–8; *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, 3 S.C.R. 247, at para. 37). A settlement may be made orally, in writing or by an exchange of emails (see *Sumarah*, at para 58).

(ii) Preliminary Issue – Mr. Sabounchi's affidavit

[15] Acorn argues that Mr. Sabounchi's affidavit should be struck for failing to comply with r. 4.06(8) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. In the alternative, Acorn argues that any portion of Mr. Sabounchi's affidavit that is not corroborated by contemporaneous evidence should be given little, if any, weight.

[16] Pursuant to r. 4.06(8), where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly.

[17] Mr. Sabounchi's affidavit states that his first language is Farsi and that he has a basic understanding of English, but he is not fluent. It goes on to state that, "[i]n order to ensure that I have a full understanding of the contents of this affidavit, I have prepared this affidavit with translation assistance from my daughter, Mobina Sabounchi, who is fluent in both English and Farsi". Mr. Sabounchi's affidavit was commissioned by his counsel, Mr. Libman, who advised the Court in oral submissions that he did not have any concerns that Mr. Sabounchi did not understand English. Mr. Sabounchi's affidavit does not include a jurat that confirms his affidavit was interpreted by Mobina and that Mobina took an oath or affirmation to interpret the affidavit correctly. Mobina is not an official interpreter.

[18] In the circumstances of this case, I do not find it necessary to strike Mr. Sabounchi's affidavit or to give it the limited weight argued by Acorn. I come to this conclusion for four reasons.

[19] First, while there is ample evidence that Mr. Sabounchi requires assistance with understanding English, there is no evidence that he "does not understand" English. To the contrary, there is evidence before me that demonstrates that Mr. Sabounchi, while not completely fluent, does understand English. For example, it is uncontested that Mr. Sabounchi had a lengthy discussion with Acorn's counsel, Ms. Adrian, on September 20, 2024, without the use of an interpreter. This lengthy discussion without the aid of the interpreter clearly demonstrates that Mr. Sabounchi understands English.

[20] Second, Mr. Sabounchi's affidavit makes it clear that Mobina provided "translation assistance" so that Mr. Sabounchi could have a "full understanding of the contents of this affidavit". This is not an admission that Mr. Sabounchi did not understand the content of his affidavit. Rather, I am satisfied that Mobina's assistance helped ensure that Mr. Sabounchi fully understood the content of the affidavit.

[21] Acorn agues that Mobina is biased and, as a result, this Court should not accept that she accurately translated the affidavit for Mr. Sabounchi. While Mobina has an interest in the outcome of this motion, I have nothing before me that would suggest that this interest would result in her misinterpreting the content of her father's affidavit or that she would put words into Mr. Sabounchi's mouth such that the affidavit does not reflect his actual evidence.

[22] Third, even if r. 4.06(8) is engaged, I would rely on rr. 1.04, 2.01 and 2.03 to dispense with strict compliance with r. 4.06(8). Without Mr. Sabounchi's affidavit, I cannot make a just

determination on the central issues in dispute (see *Madison Homes Cornell Rouge Limited v. Jia Lin Huang and Pingkai Wu*, 2025 ONSC 657, at para. 8).

[23] Finally, Acorn did not raise an objection with respect to Mr. Sabounchi's affidavit until it filed its factum on this motion just two days prior to argument. To be fair, Acorn cross-examined Mr. Sabounchi on his understanding of English, and he confirmed that his written understanding of English was less than spoken English. However, counsel for Acorn never once suggested to Mr. Sabounchi that he did not understand or appreciate the content of his affidavit. In fact, portions of Mr. Sabounchi's affidavit were put to him during cross-examination and he never resiled from the accuracy of the content of his affidavit.

[24] More to the point, if Acorn believed that the affidavit did not represent Mr. Sabounchi's true evidence, then it should have raised the issue prior to cross-examination and certainly before it filed its factum on this motion. The affidavit was sworn on May 12, 2025, and cross-examinations occurred on June 26, 2025. There was ample opportunity for Acorn to raise this issue prior to cross-examination so that it could be addressed.

[25] While Acorn did not bring a formal motion to strike Mr. Sabounchi's affidavit, r. 2.02 requires a party to seek leave of the court to attack a document for an irregularity when a reasonable amount of time has elapsed after the party knows or ought to have known of the irregularity. The reason for this rule is simple: the *Rules of Civil Procedure* are not intended to be used as a means of ambushing opposing parties. I make no finding that Acorn intentionally ambushed the Defendants, but I do find that the lateness of Acorn's request for relief militates against the relief sought.

(iii) Was there an agreement on essential terms?

[26] In 2017, Mr. Sabounchi and his wife paid a deposit to buy a property from Acorn. This transaction did not close as the Defendants were unable to secure the closing funds. In the summer of 2020, Mr. Sabounchi was served with Acorn's statement of claim in relation to the failed real estate transaction. Mr. Sabounchi did not defend the action. The Defendants were noted in default and default judgment was obtained on October 30, 2020.

[27] Mr. Sabounchi was served with the default judgment against him and his wife. At that time, Mr. Sabounchi consulted with Legal Aid, but was unable to retain counsel and did not qualify for legal aid. Mr. Sabounchi did not tell his wife or children about the default judgment because he did not want to worry them and did not want to cause stress for his wife while she was experiencing serious medical issues.

[28] Mr. Sabounchi sought the assistance of his close friend, Navid Azarakhsh, to assist him in negotiating a settlement with Acorn. Mr. Sabounchi sought his friend's assistance because he was not comfortable negotiating a complicated legal settlement as English was not his first language. Mr. Azarakhsh did not swear an affidavit on this motion.

[29] In addition to Mr. Azarakhsh, Mr. Sabounchi asked Mobina to speak to Acorn's lawyers on his behalf. Mr. Sabounchi's affidavit makes it clear that every time Mr. Azarakhsh and Mobina spoke to Acorn's counsel, they did so with his full understanding and authority.

[30] On January 12, 2022, Mr. Sabounchi and Mr. Azarakhsh discussed the possible resolution of the default judgment with Acorn's then counsel, Raffaele Sparano. Mr. Sparano is no longer with FIJ Law, the law firm that represents Acorn in these proceedings. After their discussion, Mr. Sparano sent a letter to Mr. Sabounchi and Mr. Azarakhsh wherein he confirmed the content of the discussion and advised that Acorn, "would be prepared to consider any reasonable Offer to Settle their Judgment that you wish to make and request that any such Offer be made to me in writing".

[31] On February 24, 2022, Mr. Azarakhsh sent a letter to Mr. Sparano which offered to settle the default judgment in exchange for a payment of $100,000 to be paid within a year. On March 17, 2022, Mr. Sparano responded in writing and rejected the offer. Mr. Sparano proposed a counteroffer that involved Mr. Sabounchi paying $40,000 within 30 days of a settlement agreement and payment of $350,000 within the next 120 days. The counteroffer was contingent upon Ms. Tajbakhsh being advised of the default judgment. The counteroffer did not require the Defendants to register any collateral mortgage on their residence.

[32] On June 1, 2022, Mr. Sparano sent a letter to Mr. Sabounchi and Mr. Azarakhsh that confirmed a discussion he had with them on May 18, 2022. Amongst other things, the letter confirms that Mr. Sabounchi rejected the March 17, 2022, counteroffer and that Acorn was willing to consider a further offer.

[33] On June 16, 2022, Mr. Azarakhsh made a settlement offer with two options: (1) Mr. Sabounchi would pay Acorn a total of $110,000 over the course of three payments between September 2022 and May 2023; or (2) that Mr. Sabounchi would pay $140,000 by September 2023. This offer was rejected.

[34] On November 3, 2022, Mr. Azarakhsh wrote Mr. Sparano and made another offer to settle. In this offer, Mr. Azarakhsh advised that Mr. Sabounchi was agreeable to Acorn registering a second mortgage on his residence and a payment of $175,000 on a payment schedule. This was the first time that a collateral mortgage was discussed.

[35] On November 20, 2022, Mr. Sparano wrote Mr. Sabounchi and Mr. Azarakhsh rejecting the offer made on November 3. The letter also included a further offer to settle which, amongst other things, required Mr. Sabounchi to pay Acorn a total of $195,000 in full satisfaction of the default judgement and that Mr. Sabounchi agree to a second mortgage being registered against his principal residence for $195,000.

[36] On February 15, 2023, Mr. Azarakhsh wrote to Mr. Sparano and proposed payment of $170,000 on a payment plan that included payments from September 15, 2023 to February 15, 2026. On March 3, 2023, Mr. Sparano wrote Mr. Azarakhsh and rejected this offer. In his March 3 correspondence, Mr. Sparano made a further offer to settle which made it clear that Acorn would not accept a payment of less than $195,000 in full satisfaction of the default judgment. On May 3, 2023, Mr. Azarakhsh wrote Mr. Sparano and advised that Mr. Sabounchi was agreeable to pay Acorn $195,000 in full satisfaction of the default judgment.

[37] On May 10, 2023, Mr. Sparano wrote Mr. Sabounchi and Mr. Azarakhsh and proposed that the $195,000 be paid in full by July 1, 2025, and subject to several conditions, one of which included a second mortgage being registered on the Defendants' residence.

[38] By August 1, 2023, Acorn had not heard from Mr. Sabounchi with respect to the May 10, 2023, offer. As a result, Mr. Sparano wrote Mr. Sabounchi and Mr. Azarakhsh and extended the May 10 offer with conditions that were updated to reflect the lapse in time. It is also clear from this correspondence that Mr. Sparano was aware that Ms. Tajbakhsh was the sole person on title for the Defendants' residence.

[39] On August 29, 2023, Mr. Azarakhsh wrote Mr. Sparano to confirm a discussion they had earlier in the week. In the August 29 email, Mr. Azarakhsh advised that Mr. Sabounchi was agreeable to the following:

> (a) by December 15, 2023, Mr. Sabounchi would:
>
> > (i) pay Acorn $2,500; and
> >
> > (ii) Ms. Tajbakhsh would provide approval to register a collateral mortgage on their principle residence;
>
> (b) by March 15, 2023 Mr. Sabounchi would pay Acorn another $2,500; and
>
> (c) Mr. Sabounchi would pay Acorn $190,000 by December 15, 2025.

[40] On September 1, 2023, Mr. Sparano wrote Mr. Sabounchi and Mr. Azarakhsh and advised that the payment schedule proposed by Mr. Sabounchi was agreeable to Acorn, "on the key condition that Ms. Tajbakhsh grants the second mortgage on the property". Mr. Sparano also advised he would prepare the minutes of settlement and release.

[41] On November 10, 2023, Mr. Azarakhsh wrote Mr. Sparano and asked whether the minutes of settlement had been drafted. On the same day, Mr. Sparano advised that they were prepared and provided to Acorn.

[42] On November 16, 2023, Mr. Sparano wrote Mr. Sabounchi and Mr. Azarakhsh and advised that he was finalizing the forbearance agreement and collateral mortgage. Mr. Sparano also advised that Acorn needed to ensure that Ms. Tajbakhsh was "aware of the *settlement reached*" (emphasis added). Mr. Sparano wrote, "[w]hile we understand that Mr. Sabounchi wished to keep Ms. Tajbakhsh out of the settlement discussions initially, *now that we have reached a Settlement* and we are finalizing the documents for the same (which she will need to execute), she MUST be made aware of it, including in particular by our offices" (emphasis added). To that end, Mr. Sparano requested that Mr. Sabounchi, Mr. Azarakhsh and Ms. Tajbakhsh schedule a ZOOM call for the following week. In that correspondence, Mr. Sparano advised that, "without a call to confirm Ms. Tajbakhsh's understanding of the Settlement and Collateral Mortgage, the *settlement cannot be completed* and, therefore, our client will be left with little alternatives with respect to the Judgment" (emphasis added).

[43] By mid-November 2023, Acorn had discovered that there was already a second mortgage on the Defendants' residence. Despite knowing of the existence of a second mortgage, Acorn continued to move forward with implementing the settlement agreement, including registering the collateral mortgage.

[44] On December 6, 2023, Mr. Sparano's law clerk sent a follow-up email to Mr. Sabounchi and Mr. Azarakhsh requesting that a ZOOM call be scheduled as the, "settlement documents need to be finalized and signed by the end of the year". In this email, Mr. Sparano's law clerk also advised that a draft of the forbearance agreement would be provided to Mr. Sabounchi in advance of the ZOOM call.

[45] On December 13, 2023, Mr. Azarakhsh wrote Mr. Sparano to confirm a discussion that he and Mr. Sabounchi had with Mr. Sparano. In that correspondence, Mr. Sabounchi agreed to pay $30,000 in the next 3–6 months to delay informing Ms. Tajbakhsh of the settlement and collateral mortgage. On December 22, 2023, Mr. Sparano wrote to Mr. Sabounchi and Mr. Azarakhsh and advised that his client was content with delaying the ZOOM call until April 30, 2024 on the condition that Mr. Sabounchi pay $15,000 by January 2, 2024 and $15,000 by March 31, 2024. While made a bit late, the parties agree that these payments were made during the first quarter of 2024.

[46] Based on the above correspondence, Acorn knew that it was resolving the default judgment with Mr. Sabounchi even though Ms. Tajbakhsh was not aware of the settlement agreement and that Mr. Sabounchi was keeping this information from his wife due to her ongoing health concerns. It is also clear that to implement the settlement agreement, Ms. Tajbakhsh would have to consent the registering the collateral mortgage.

[47] In March 2024, Mr. Sparano wrote Mr. Azarakhsh and Mr. Sabounchi to advise that he was leaving FIJ on April 5, 2025. In that correspondence, Mr. Sparano asked that future communications be sent to Robert Izsak.

[48] On April 4, 2024, Mr. Sparano, Mr. Sabounchi and Mr. Azarakhsh had a telephone conversation. There is no contemporaneous correspondence that confirms what was discussed on the call. Mr. Sabounchi's affidavit states that the discussion on April 4 confirmed: (a) that a settlement was reached; (b) that Mr. Sabounchi was required to pay $165,000 to Acorn by December 15, 2025; (c) that Ms. Tajbakhsh needed to consent to a collateral mortgage being registered on the principal residence; (d) that a meeting with Ms. Tajbakhsh was needed to discuss the collateral mortgage; and (e) that a new lawyer named Robert Izsak would be taking over the file.

[49] Except for Mr. Sabounchi's evidence on the April 4 call, the facts detailed above are not in dispute. The facts are derived entirely from the contemporaneous correspondence relied upon by both parties. Based on the correspondence, I find that there is no genuine issue that Acorn and Mr. Sabounchi did, in fact, agree to resolve the default judgment on September 1, 2023, on the following terms:

(a) Mr. Sabounchi would pay Acorn $2,500 on or before December 15, 2023;

(b) On or before December 15, 2023, Ms. Tajbakhsh would provide her consent to registering a collateral mortgage on the principal residence;

(c) Mr. Sabounchi would pay Acorn $2,500 on or before March 15, 2024;

(d) Mr. Sabounchi would pay Acorn $190,000 on or before December 15, 2025; and

(e) Upon payment of the above noted amounts, Acorn would consider the default judgment satisfied in full and would vacate any writ or mortgage and deliver a satisfaction piece.

[50] On December 22, 2023, Mr. Sabounchi and Acorn subsequently agreed to two modifications to the September 1, 2023 agreement. First, the payment schedule and payment amounts were changed. Second, Ms. Tajbakhsh no longer had to provide consent for the collateral mortgage by December 15, 2023. Instead, Mr. Sabounchi and Acorn agreed that a ZOOM call would be scheduled with Ms. Tajbakhsh on or before April 30, 2024.

[51] The agreement made on September 1, 2023, and subsequently amended on December 22, 2023 reflects the essential terms for the settlement agreement. I also find that registering a collateral mortgage is an essential term of the settlement. I arrive at this conclusion for three reasons.

[52] First, Mr. Sparano's September 1, 2023 email described the collateral mortgage as a "key condition". Mr. Sabounchi's October 23, 2024 email also confirms that the settlement agreement was contingent on registering a second mortgage. The essential nature of this term is also confirmed by the settlement discussions leading up to the September 1, 2023 agreement. Acorn only offered to accept $195,000 in full satisfaction of the default judgment after Mr. Sabounchi offered to register a collateral mortgage on the Defendants' residence.

[53] Second, Mr. Sabounchi's primary argument on this motion is that registering a collateral mortgage is an essential term of the settlement agreement and that he has not breached this term. Mr. Sabounchi's alternative argument is that the registering of a collateral mortgage is not an essential term.

[54] Third, requiring the collateral mortgage is objectively important in the context of Acorn forbearing the full amount of the default judgment and interest that is collecting on the judgment. I recognize that there are some cases which have found that security for the payment of funds is not an essential term (see *Farrell v. Riley*, 2023 ONSC 3333, at paras 27–29; aff'd 2024 ONCA 449, at paras. 44–45; *Angelini Estate v Angelini*, 2024 BCSC 1105, at paras. 26–27); however, these cases do not set a universal rule that security for an agreed upon payment will never be an essential term.

[55] The decisions in *Farrell* and *Angelini* do not arise from a forbearance agreement. This distinction is important. Acorn already has an order granting them $489,890.62 plus interest. Given the time between the first two payments and the last scheduled payment, interest on the full judgment is significant. This is not a situation where Acorn is settling an action recognizing a risk that it may not be successful in obtaining a judicial order granting it damages. Instead, Acorn is

settling the default judgment on a significant discount in exchange for greater certainty of realising some of the money it is already owed. A collateral mortgage provides it with greater certainty that it will realise some of the money in a situation where, absent the mortgage, it has less "insurance" on collecting any money owed to it pursuant to the default judgment.

[56] While the collateral mortgage charging documents, forbearance agreement and release were not executed, those aspects of the settlement agreement are not essential terms. Rather, those aspects of the settlement agreement relate to the implementation of the essential terms (see *Sumarah*, at para. 58; *Atkinson*, at para. 48; *77 Charles Street Ltd*., at para. 52).

[57] In concluding that a contract on the essential terms of a settlement was reached, I have also considered communications by Acorn's counsel from May 2024 to November 2024 that suggest that no agreement was reached. I have also considered Acorn's argument that no common intention could have been reached because Ms. Tajbakhsh did not know about the settlement agreement.

[58] With respect to the first issue, there are three emails that Acorn relies upon as objective evidence that it did not form a common intention to settle the default judgment. The first two emails are from Mr. Izsak. On May 9, 2024, Mr. Izsak emailed Mr. Sabounchi and Mr. Azarakhsh stating as follows: "I understand that two good faith interim payments have been remitted and the additional time requested has been granted *to finalize the settlement* with Ms. Tajbakhsh, who must execute the A+D for the registration of the collateral mortgage against her property" (emphasis added).

[59] On June 3, 2024, Mr. Izsak again wrote Mr. Sabounchi and Mr. Azarakhsh wherein he stated, "[i]t looks like the parties were *close to finalizing a settlement* at the time that [Mr. Sparano] left our firm. I obviously cannot complete a settlement agreement if no one is communicating with me" (emphasis added).

[60] The third email is from Ms. Adrian, who took carriage of this matter from Mr. Izsak in August 2024. On November 21, 2024, Ms. Adrian emailed Mr. Sabounchi, Mr. Azarakhsh and Mobina in response to Mr. Sabounchi's October 23, 2024, correspondence wherein he asserted that a settlement agreement was reached and still in place. In that email, Ms. Adrian wrote:

> Mr. Sabounchi:
>
> You are misstating the facts. Any agreement was contingent on obtaining a mortgage to secure payment and on your wife knowing about the judgment. You backed away from that. That means the *agreement was never finalized*. *You cannot claim an agreement was reached when you were not willing to meet certain terms*.
>
> For clarity, do not attempt *to revive that agreement*. You refused to agree to those terms and that opportunity is now gone.
>
> Please keep in mind that the time you want for your wife, who is also a debtor, is only allowing interest to increase the amount of debt.
>
> I have started the process for the sheriff to sell the property. Your wife will receive the documents shortly. If she wants to settle this, she should reach out to me. She

> should also know that the numbers you were talking about with [Mr. Sparano], are not what the current settlement will be. (emphasis added)

[61] Acorn argues that the three emails demonstrate that Acorn did not reach a common intention to settle the default judgment. I reject this argument for the following reasons:

(a) Mr. Sparano's emails include clear language indicating that an agreement was reached. Based on this agreement, Mr. Sabounchi made the two $15,000 payments. Mr. Sparano's emails are a better reflection of Acorn's intention at the relevant time because Mr. Sparano was steering the negotiations with Mr. Sabounchi and Mr. Azarakhsh;

(b) Mr. Izsak only had carriage of this matter from May 2024 until July 15, 2024, when Ms. Adrian joined FIJ. I interpret his emails as referencing the fact that the parties had to complete several steps to implement the agreement. This makes sense based on the events leading up to Mr. Izsak's emails as the Forbearance Agreement and Collateral Mortgage documents had not yet been sent to Mr. Sabounchi; and

(c) Ms. Adrian's warning not to "revive that agreement" is consistent with an allegation that Mr. Sabounchi breached an essential term of the settlement agreement. Again, this makes sense based on the event leading up to Ms. Adrian's stern warning. I do not interpret this email as evidence that Acorn did not reach a common intention with Mr. Sabounchi to resolve the default judgement on the essential terms detailed above. I will have more to say on the breach issue in the next section of this decision.

[62] With respect to the second issue, I find that Ms. Tajbakhsh's lack of knowledge of the settlement agreement is not a barrier to concluding that there was a common intention to settle. Specifically, there is no dispute that Acorn was aware that Ms. Tajbakhsh was not advised of the default judgment and settlement agreement, but they continued to negotiate in good faith with Mr. Sabounchi. It would be fundamentally unfair for Acorn to negate the settlement agreement with Mr. Sabounchi when it knew that Ms. Tajbakhsh was not aware of the settlement. Additionally, Ms. Tajbakhsh is now aware of the settlement agreement and seeks to be bound by the agreement. In the unique circumstances of this case, I find that a common intention was reached even though Ms. Tajbakhsh was not aware of the default judgment or the settlement agreement.

[63] In light of the above, I find that Acorn and Mr. Sabounchi formed a mutual intention to create a legally binding contract and that they reached an agreement on the essential terms of the settlement.

(iv) Did Mr. Sabounchi resile from or breach the settlement agreement?

[64] Acorn alleges that Mr. Sabounchi resiled from or breached the settlement agreement because he is unable to pay the $195,000 on December 15, 2025, and because the collateral mortgage has not been registered.

[65] To answer whether Mr. Sabounchi resiled from or breached the settlement agreement, I must address two related issues. First, I must resolve conflicting evidence on two telephone calls

that occurred on June 11, 2024, and July 9, 2024. Once resolved, I must decide what impact these calls have on the question of whether Mr. Sabounchi resiled from or breached the settlement agreement. Second, I must address whether the failure to register the collateral mortgage is a breach of an essential term of the settlement. I address each issue in turn.

[66] In Mr. Izsak's affidavit, he states that he had a call with Mr. Azarakhsh, in the absence of Mr. Sabounchi, on June 11, 2024. Mr. Izsak states that during that call, Mr. Azarakhsh stated: (a) that the proposed settlement was "done"; (b) that Ms. Tajbakhsh did not know about the mortgage and Mr. Sabounchi did not want to tell her because it would be detrimental to her health; (c) that the terms of the first mortgage on the principal residence would not permit a second mortgage; and (d) Mr. Sabounchi could not enter into the proposed settlement because he no longer had money to make the final payment.

[67] On June 14, 2024, Mr. Izsak sent a reporting email to his client (some of which was redacted due to solicitor-client privilege) advising that Mr. Sabounchi was "burnt ground" in terms of collections because he no longer had any money and because the first mortgage prevented Ms. Tajbakhsh from granting a second collateral mortgage on the residence. Mr. Izsak advised his clients that they were left with the judgement and writs that continue to bind the residence. Mr. Izsak also advised that he asked Mr. Azarakhsh whether Mr. Sabounchi could make any additional payment to reduce the judgment.

[68] Mr. Izsak's affidavit goes on to state that he had another call with Mr. Azarakhsh on July 9, 2024. Again, this call was conducted in the absence of Mr. Sabounchi. On that call, Mr. Azarakhsh advised that Mr. Sabounchi might be able to make a small payment in the autumn. In response, Mr. Izsak told Mr. Azarakhsh that he would recommend enforcing the judgment through a public auction.

[69] On July 9, 2024, Mr. Izsak sent a reporting email to his client (some of which was redacted due to solicitor-client privilege) confirming that there was no solid proposal being made by Mr. Sabounchi.

[70] Mr. Sabounchi's evidence on these two calls differs.

[71] In Mr. Sabounchi's affidavit, he states that he was on both the June 11 and July 9 telephone calls with Mr. Azarakhsh. On the first call, Mr. Sabounchi's claims that Mr. Izsak wanted to determine the next steps to carry out the terms of the settlement agreement and that Mr. Izsak agreed to schedule another call in, "a month or so to set firm plans for fulling the agreement".

[72] With respect to the second call, Mr. Sabounchi's evidence is that Mr. Izsak agreed to continue to delay Ms. Tajbakhsh's involvement considering her ongoing medical issues. In cross-examination, Mr. Sabounchi was not challenged on his recollection of what was discussed during the two calls. While this certainly raises a *Browne v. Dunn*, (1893), 6 R. 67 (H. L.), issue, the failure to challenge Mr. Sabounchi's evidence on this point does not mean that I must accept his evidence on these calls (*R. v. Quansah*, 2015 ONCA 237, 125 O.R. (3d) 81, at para. 80).

[73] On the issue of the telephone calls, I prefer Mr. Izsak's evidence for the following reasons:

(a) While he does not have contemporaneous notes of the telephone calls, Mr. Izsak's reporting emails are nearly contemporaneous to the calls. Those emails are consistent with Mr. Izsak's affidavit. I am not willing to make an adverse inference with respect to the portions of the emails that are redacted because the Defendants did not challenge the assertion of solicitor client privilege by way of refusal motion. Additionally, it is very unlikely that the emails would contradict that narrative of what was discussed during the calls. It is a matter of common sense that a lawyer emailing his clients would not write an email to their clients which is internally inconsistent;

(b) On July 17, 2024, Mobina sent an email to Mr. Izsak where she advises that she was writing on behalf of her father since his English "isn't that great" and "in regards to the conversation you had with Navid". The email only references a conversation that Mr. Izsak had with Mr. Azarakhsh. This supports Mr. Izsak's evidence that Mr. Sabounchi was not on the July 9 call;

(c) In the July 17 email, Mobina states, "I know there was a conversation that was had with Navid in regards to seeing if I will be able to give the required amount of funds". The email goes on to offer approximately $400-$500 a month to pay down the judgment. This is also consistent with Mr. Izsak's evidence of what occurred during the July 9 call as reflected in his affidavit and his reporting email;

(d) Mr. Azarakhsh did not file an affidavit in support of the Defendants' motion; and

(e) The July 17 email does not make any reference to an agreement to delay speaking to Ms. Tajbakhsh about the settlement offer. Rather, the focus of the email is on Mr. Sabounchi's financial difficulties and his attempt to make additional payments to pay down the judgment.

[74] While I accept Mr. Izsak's evidence about what was discussed during the two calls, I do not believe that this acceptance compels me to find that Mr. Sabounchi has resiled from or breached the settlement agreement.

[75] With respect to the payment term of the settlement agreement, I arrive at this conclusion for three reasons.

[76] First, the settlement agreement required Mr. Sabounchi to pay Acorn $165,000 on or before December 15, 2025. Unless he fails to pay that amount by December 15, 2025, he has not breached this essential term.

[77] Second, had Acorn believed that Mr. Sabounchi resiled from the settlement, I would have expected Acorn to have advised him that the settlement agreement had been repudiated. There is no evidence that Mr. Izsak advised Mr. Sabounchi that his inability to make the final payment on December 15, 2025 was being treated as a repudiation of the settlement agreement. In fact, Acorn's first suggestion that an essential term was breached was not until Ms. Adrian's November 21, 2024 email reproduced above. This email was sent in response to Mr. Sabounchi's email dated October 23, 2024. In that email, Mr. Sabounchi asserted that a settlement agreement was in place, that it

was conditional on his wife agreeing to register a collateral mortgage and offering to schedule a meeting with Ms. Tajbakhsh on November 13, 2024.

[78] Third, Mr. Sabounchi's evidence is that he met with Ms. Adrian on September 20, 2024. The fact that meeting occurred is not in dispute. Mr. Sabounchi's claims that during this meeting, Ms. Adrian demanded that Ms. Tajbakhsh attend a ZOOM meeting to discuss registering the collateral mortgage. This also suggests that Acorn had not treated the agreement as repudiated.

[79] Acorn disputes Mr. Sabounchi's evidence on what occurred during the meeting on September 20, but Ms. Adrian did not swear an affidavit challenging Mr. Sabounchi's evidence.[2] Of course, the absence of conflicting evidence does not mean that I must accept Mr. Sabounchi's evidence on what occurred.

[80] I have certainly found other aspects of Mr. Sabounchi's evidence troubling and have rejected those portions. That said, I am entitled to accept all, some, or none of Mr. Sabounchi's evidence and I accept his evidence that Ms. Adrian requested Ms. Tajbakhsh immediately attend a ZOOM meeting to discuss the registration of the collateral mortgage. I come to this conclusion for the following reasons:

(a) Mr. Sabounchi's evidence on this meeting also describes several statements made by Ms. Adrian that would generously be described as unsympathetic and inpatient. I find that these statements are consistent with the tone of Ms. Adrian's communications as reflected in her emails to Mr. Sabounchi and Mobina from August 2024 to November 2024;[3]

(b) Mr. Sabounchi's evidence on what was discussed during the meeting is consistent with Ms. Adrian's subsequent email correspondence. In his affidavit, Mr. Sabounchi states that he asked Ms. Adrian whether he could accelerate payments, like he had done in December 2023, to put off discussing the second mortgage with Ms. Tajbakhsh. Ms. Adrian indicated that she would consider the offer and calculate how much was owed. On September 22, 2024, Ms. Adrian emailed Mr. Sabounchi and advised that the total outstanding was $809,754.09; and

(c) Mr. Sabounchi was never cross-examined on the contents of what was discussed during the September 20, 2024 meeting. Unlike the conflicting evidence on the June 11 and July 9 telephone calls, Acorn has no evidence that conflicts with Mr. Sabounchi's evidence on the September 20, 2024 meeting.

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[2] During Mr. Izsak's cross-examination, Ms. Adrian confirmed that she drafted and sent a report regarding this meeting to Acorn. Acorn has refused to produce any portion of Ms. Adrian's report, even in redacted form.

[3] Some of the emails sent by Ms. Adrian were terse and contained factual inaccuracies. For example, Ms. Adrian asserted that the Defendants had not made any payments. This was not accurate. On another occasions, Ms. Adrian asserted that the Defendants had not answered any undertaking from the June 2023 debtor examination. This, too, was in accurate.

[81] In accepting Mr. Sabounchi's evidence on the September 20, 2024 meeting, I have also considered the conflicting evidence on whether that meeting was pre-scheduled, as Mr. Sabounchi testified in cross-examination, or was an unscheduled meeting as testified by Ms. Adrian's receptionist. Even if I admitted and accepted the receptionist's evidence,[4] the inconsistency over how the meeting occurred does not cause me concern in accepting Mr. Sabounchi's evidence. Whether Mr. Sabounchi attended unannounced is a peripheral issue to what occurred during the meeting.

[82] In evaluating Mr. Sabounchi's credibility writ large, I have also considered the fact that Mr. Sabounchi admitted to lying to his wife about why a Notice of Garnishment was issued on her bank account on October 15, 2024. I find that this lie does not require me to reject all of Mr. Sabounchi's evidence because he explained why he lied to his wife: he was concerned that the stress of this situation would exacerbate her serious health issues. This explanation was not challenged by Acorn.

[83] With respect to the collateral mortgage, I reject Acorn's argument that immediate registration of the collateral mortgage was an essential term of the settlement. I conclude that the *timing* of the registration was not an essential term based on the following conduct of the parties:

(a) The September 1, 2023 agreement did not require Ms. Tajbakhsh's consent to register the collateral mortgage until December 15, 2023, over three months after the settlement was reached;

(b) Acorn agreed to delay speaking to Ms. Tajbakhsh until April 30, 2024;

(c) Despite April 30, 2024 passing, Mr. Izsak did not advise the Defendants that Acorn took the position that Mr. Sabounchi had either resiled from the settlement agreement or was in breach of the agreement by failing to obtain Ms. Tajbakhsh's consent to a collateral mortgage;

(d) At the September 20, 2024 meeting, Ms. Adrian wanted Ms. Tajbakhsh to immediately consent to the collateral mortgage despite the passing of the April 30, 2024 date; and

(e) Despite having completed the forbearance agreement and collateral mortgage documents, counsel for Acorn never forwarded them to Mr. Sabounchi.

[84] Where there is no express reference in an agreement to the time of performance of an essential term, the law requires performance within a reasonable time. What is reasonable is determined on the facts of the individual case (see *Ju v. Tahmasebi*, 2020 ONCA 383, 447 D.L.R. (4th) 349, at para. 20; *Khani v. Araghi*, 2025 ONCA 24, 505 D.L.R. (4th) 174, at para. 53). In this case, the time for performance of the collateral mortgage term must be linked to the purpose of the

[4] Counsel for Acorn examined the receptionist pursuant to r. 39.03 after all parties submitted their affidavit evidence and completed cross-examinations. Rule 39.02(2) forbids a party from conducting r. 39.03 examinations after all party affidavits are delivered and all party cross-examinations are complete, absent leave of the court or consent. Acorn did not seek leave of the court to conduct the examination.

term: additional security for Acorn if the Defendants fail to make the final December 15, 2025 payment.

[85] Mr. Sabounchi's October 23, 2024 email demonstrates that the Defendants were prepared to schedule the ZOOM call with Ms. Tajbakhsh on November 14, 2024 and subsequently register the collateral mortgage. Had this occurred, the collateral mortgage would have been registered well in advance of the last payment date and Acorn would have obtained the security it desired. Put another way, the Defendants would have satisfied the collateral mortgage term in a reasonable time prior to the last payment date. Instead, Acorn took the position that no settlement agreement was finalized but maintained that it was amenable to resolution for an amount north of $195,000 (see Ms. Adrian's November 21, 2024 email).[5]

[86] In light of the above, I find that the Defendants have neither resiled from the collateral mortgage term nor have they breached the term. The Defendants maintain that they are prepared to register the collateral mortgage. To ensure that Acorn has the security it negotiated for, the Defendants are ordered to register the collateral mortgage on mutually agreeable terms on or before October 31, 2025.

[87] As noted above, I accepted Mr. Izsak's evidence that Mr. Azarakhsh advised him that a collateral mortgage could not be registered in June 2024 because it would conflict with the terms of the first mortgage. However, the evidence before establishes that the financing for the Defendants' residence was up for renewal in the summer of 2025. There is no evidence before me that demonstrates that a collateral mortgage would conflict with the terms of the current mortgage(s). The Defendants did not produce the terms of their mortgage(s) on the property and Acorn did not request an undertaking for updated mortgage terms once finalized. Ultimately, the Defendants represent to the Court that they are prepared to register a collateral mortgage. I accept that they are ready, willing and able to do so.

[88] To summarize, I find that Mr. Sabounchi has not resiled from the settlement agreement, nor has he breached an essential term of the settlement. To enforce the terms of the settlement, I order that the collateral mortgage be registered on or before October 31, 2025 and that a forbearance agreement be finalized by the same date. I also order that the Defendants pay the outstanding amount of $165,000 on or before December 15, 2025. Failure to adhere to any of these orders will result in the Defendants being in breach of the essential terms of the settlement agreement and Acorn will be entitled to enforce the default judgement.

(b) Should the court exercise its discretion to enforce the settlement?

[89] Settlements are to be encouraged. Where a settlement is reached, the party resisting settlement has a heavy burden to show why the court should not give effect to the agreement. The

[5] The Defendants have not alleged that Acorn's position, as reflected in Ms. Adrian's November 21, 2024 email, was motivated by a desire to obtain more money than what Acorn had agreed to on September 1, 2023. As such, I make no specific finding on Acorn's motivations.

court's discretion not to enforce a settlement should be exercised sparingly (see *Lumsden et al. v. The Toronto Police Services Board et al*., 2019 ONSC 5052, at para. 23).

[90] A court may decide not to enforce a settlement where there is evidence that: (1) the resulting agreement was unconscionable, fraudulent or based on a party's misapprehension of a material fact which was known to the opposite party; (2) the solicitor representing the party was not retained or did not have authority to settle, and this limitation was known to the opposite party; and (3) the party lacked the legal or mental capacity to enter into the settlement at the material time (see *Huma et al. v. Mississauga Hospital and Queensway Health Centre (Trillium Health Partners) et al*., 2019 ONSC 5115, 42 C.P.C. (8th) 95, at para. 30; aff'd in *Huma (ONCA)*, at para. 25). I accept that the above factors are not an exhaustive list.

[91] In its factum, Acorn does not address whether this Court should enforce the settlement agreement. Rather, under the argument that Mr. Sabounchi resiled from the settlement agreement, Acorn argues that Mr. Sabounchi breached his general duty of honesty in contractual performance by lying or misleading his wife. It is not clear to me how misleading a non-arms length co-defendant could give rise to a breach of general honesty in contractual performance with respect to Acorn. Putting aside this issue, Acorn knew that Mr. Sabounchi had not told his wife about the settlement, knew why he did not tell her and still negotiated a settlement. This is not fraud, nor can it be said that Acorn was mislead. As a result, I find that there is no basis to refuse to enforce the settlement agreement.

Conclusion

[92] The Defendants' motion to enforce settlement is granted and the sale of the Defendants' residence, scheduled for September 12, 2025, must be cancelled.

[93] To enforce the settlement agreement, I order that:

> (a) The collateral mortgage be registered on mutually agreeable terms on or before October 31, 2025;
>
> (b) That a mutually agreeable forbearance agreement be executed on or before October 31, 2025; and
>
> (c) That the Defendants pay the outstanding amount of $165,000 on or before December 15, 2025.

[94] If the parties cannot agree to the terms for the collateral mortgage or the forbearance agreement, then they can arrange a case conference with me to speak to these issues.

[95] With respect to costs, I find that Mr. Sabounchi's decision to keep Ms. Tajbakhsh in the dark is the main reason, though not the sole reason, for why this motion was necessary. As such, while I am prepared to order costs in favour of the Defendants, I find that the amount requested, $41,486.41, should be significantly reduced.

[96] I also find that the amount sought by the Defendants is higher than what a reasonable party would expect. There is no doubt that this motion was important to the Defendants. However, the

Defendants' requested costs are more than $15,000 higher than Acorn's partial indemnity costs of $26,431.44. Part of the explanation for this discrepancy is the difference in lead counsel's hourly rate. Ms. Adrian's (called to the Bar in 2007) partial indemnity hourly rate is $280/hr. Mr. Libman's (called to the Bar in 2018) partial indemnity rate is $390/hr. While both counsel made excellent submissions, I find Mr. Libman's hourly rate to be high for his year of call when compared to Ms. Adrian's hourly rate for her year of call.

[97] In considering the above, I fix costs of the motion at $15,000 inclusive of H.S.T and disbursements. Acorn shall pay the costs award within 30 days.

The Honourable Justice Sunil S. Mathai

Released: September 2, 2025