

CITATION: Hussaini v. Checroune, 2025 ONSC 5058
COURT FILE NO.: CV-14-506305
DATE: 20250908

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN:

JAMSHID HUSSAINI, NEELOFAR AHMADI and HOMELIFE DREAMS
REALTY INC., Plaintiffs (Defendants to the Counterclaim)

-and-

ALAIN CHECROUNE and 1482241 ONTARIO LTD., Defendants (Plaintiffs by
Counterclaim)

BEFORE: Leiper J.

COUNSEL: *Neil Paris and Zachary Parrott* – Lawyers for the Plaintiff (Defendants to the
Counterclaim)

Alain Checroune, self represented and not participating - (Defendant (Plaintiff by
Counterclaim)

HEARD: Read In writing on September 8, 2025

Endorsement on a Motion for Default Judgment

Introduction

[1] The plaintiffs have brought a motion in writing for default judgment against the individual defendant, Alain Checroune (“Checroune”) arising out of a failed share purchase agreement between them, which would have provided the plaintiffs with ownership of an office building located at 240 Duncan Mill Road in Toronto (“Duncan Mill”).

[2] This action has a lengthy procedural history, which is well documented in the materials, and in the appendix attached to the plaintiffs’ factum which is part of the court record. I have

reviewed this material but will only include facts in these reasons which are necessary to understand these reasons for decision.

[3] In brief, I find that the plaintiffs are entitled to default judgment, damages for breach of contract and compensation as an oppression remedy under the *Business Corporations Act*. My reasons follow.

The Failed Share-Purchase Transaction and Subsequent Proceedings

[4] In 2012, the individual plaintiffs and Checroune entered into a share purchase agreement for the plaintiffs' purchase of Duncan Mill. Checroune was the sole shareholder of the corporate defendant at that time.

[5] The agreement required Checroune to provide clear title to Duncan Mill. The closing date was October 1, 2015. The individual plaintiffs paid Checroune \$1,200,000 for 20% of the shares in the corporate defendant.

[6] Checroune was required to make best efforts to secure clear title by discharging a certificate of pending litigation that was on title (the "Bitton CPL"). Upon doing so, the individual plaintiffs were to pay \$4,800,000 to Checroune to secure the remaining 80% of the shares, while also obtaining financing to discharge the remainder of the mortgage registered on title. The ultimate purchase price for the shares was \$15,000,000.

[7] As part of the agreement, the individual plaintiffs were to rent the sixth floor of Duncan Mill and sub-let space on the sixth floor to other businesses as part of their goal of building a business centre.

[8] The transaction did not close. Checroune took steps to sell the property to other buyers. He interfered with the individual plaintiffs' and their sub-tenants' ability to use the space at Duncan Mill. He told one of the individual plaintiffs that he would encumber the property and defeat their interest in the property using power of sale proceedings.

[9] The plaintiffs brought a claim for specific performance, seeking to have the transaction close. In 2017, the defendants brought a motion for summary judgment which was unsuccessful: see *Hussaini et al. v. Checroune et al.*, 2017 ONSC 2435.

[10] Subsequently, Checroune encumbered the property with additional mortgages and took steps to have the corporate defendant declare bankruptcy. Those proceedings are set out in the affidavit material and need not be repeated in detail.

[11] The Trustee in Bankruptcy sold Duncan Mill on March 29, 2018 for \$19,000,000, and the court authorized payments to the creditors from those funds. The plaintiffs did not receive any payment from those funds. They did not receive the balance of the shares as contracted.

Findings

[12] The plaintiffs moved on July 19, 2024, before Associate Justice La Horey to strike and dismiss Checroune's pleadings based on his failure to comply with prior orders of the court.

Checroune did not attend that motion. The record shows that he has not taken an active part in this litigation since 2019, absent one attendance in 2023.

[13] Associate Justice La Horey struck Checroune's pleadings and noted him in default.

[14] Plaintiff counsel subsequently noticed an issue with part of the factual foundation in the material on the default motion, that being service of an affidavit of documents on the plaintiffs' former lawyer. New plaintiff counsel raised the issue after the order had issued through correspondence both to Checroune (who did not respond) and via direct correspondence to Associate Justice La Horey's judicial assistant. No further direction or amendment to the order were made. Checroune continues to be in default of the portions of the orders requiring him to file a notice of intention to defend in person.

[15] I am satisfied based on the efforts of counsel, and the updated material as to their follow-up correspondence with the court, that Associate Justice La Horey's order is valid, and I may rely on it.

[16] The material establishes that Checroune, in his individual capacity breached his obligation to fulfil the share purchase agreement, once he had cleared the cloud on the title to Duncan Mill. The evidence from the plaintiffs is that instead he harassed them to leave the building, used economic incentives to lure their subtenants from the sixth-floor space, and used other manoeuvres to frustrate the sale after obtaining a deposit from them of \$1.2 million. He failed to close on the transaction when he was able to do so. He breached the contract with the plaintiffs. As the innocent parties, the plaintiffs were not required to tender in these circumstances: *Millo v. 2099232 Ontario Inc.*, 2018 ONCA 1051 at paras. 44-45, 64.

[17] I turn next to the damages owed to the plaintiffs.

[18] The plaintiffs initially sought specific performance of the share purchase agreement, which once completed would have given them ownership of the building through the corporate defendant. The intervening bankruptcy, sale and distribution of the only valuable asset owned by the corporate defendant makes this remedy meaningless to them. They have alternatively sought damages in lieu of specific performance, based on the evidence of the contracted purchase price for the shares (\$15 million) and the value of the building, demonstrated by its sale price of \$19 million.

[19] Checroune's individual actions in failing to close, encumbering the property with additional mortgages, and harassing the plaintiffs and subtenants of the building render him liable in damages to the plaintiffs. The evidence from the plaintiffs is that he told them he would interfere with their interest by encumbering the building and attracting a power of sale. This is precisely what happened. Having done so, the value of the building (and thus the shares which was the mechanism by which the plaintiffs was to be used for them to purchase the building) is established. There is a direct causal link between the price paid, the actions to prevent the transaction from closing and the ultimate value of the building.

[20] I find that the plaintiffs are entitled to damages of \$4 million for the lost gain they would have reasonably could have obtained had the transaction proceeded.

[21] The plaintiffs also seek the return of their deposit paid to Checroune. In the summary judgment proceedings, Checroune claimed that he applied the deposit moneys to other amounts owed to the corporate defendant by the corporate plaintiff, Homelife. However, as the plaintiffs point out, Homelife was not a party to the share purchase agreement, and the provisions of that agreement did not permit Checroune to use the deposit funds for alleged amounts owed by any other entity.

[22] I find that the plaintiffs are entitled to the return of their deposit in the amount of \$1.2 million.

[23] Finally, the plaintiffs seek oppression remedies for the acts undertaken by Checroune in breach of his obligations under the share purchase agreement, and in essentially harassing them to leave the building space they had leased pending the closing of the transaction, and depriving them of the benefit of leasehold improvements they had made as part of their expectation to build a business centre.

[24] Under s. 248(3) of the *Business Corporations Act*, a Court may order “any other person, to pay to a security holder any part of the money paid by the security holder for securities” (g) or make “an order compensating an aggrieved person”(j): *Business Corporations Act*, RSO 1990, c. B. 16, s. 248.

[25] The evidence on this motion is that Checroune interfered with the subtenants and prevented the transaction from closing. His conduct after signing the agreement included pulling a knife on a sub-tenant, (for which he was charged criminally), locking out sub-tenants, closing the building without warning, issuing false parking violations, failing to keep the elevators in service, turning off the lights during business hours, and failing to maintain air conditioning. He made offers of lower rent to induce the plaintiffs’ sub-tenants to move to other floors, interfering with their economic rights.

[26] I am satisfied that the plaintiffs have established that they should be entitled to a further remedy of compensation for these actions as part of an oppression remedy under the *Business Corporations Act*.

[27] I accept the plaintiffs’ evidence that they lost the value of leasehold improvements in the amount of \$130,000, of lost rents from sub-tenants in the amount of \$800,000, and order additional compensation for Checroune’s oppressive acts in the amount of \$930,000.

[28] The only amounts sought which I do not order as part of the damages award, are the two payments for lost commission and a damage deposit which was alleged to have been made under duress. The materials do not provide the test or connect the evidence to the test for duress. It is a bald allegation without support, thus I would not make those orders.

[29] The plaintiffs are entitled to prejudgment interest on the damages relative to the breach of the agreement running from October 1, 2015, which was the date on which the transaction was to close. They shall apply that rate to those damages for the purposes of the order.

[30] The plaintiffs are also entitled to prejudgment interest on the compensation for Checroune’s oppressive acts. The range and seriousness of these acts, the reasonable expectations of the

plaintiffs under the terms of the share purchase agreement and the attempts by Checroune to change the terms to extract more money from the plaintiffs satisfy me that he had no intention of ever completing this transaction at the time he made the agreement. His course of conduct satisfies me that he used this asset to extract a deposit from the plaintiffs who he then harassed and bullied into withdrawing from the building. The oppressive acts spanned two years until the plaintiffs left the building. A legitimate starting point for the purposes of prejudgment interests is thus also October 1, 2015, the planned date of closing of the share purchase transaction.

[31] Finally, the plaintiffs are entitled to their costs of the litigation and the motion for default judgment. Several costs orders have been made at various stages of the litigation, which the plaintiffs have removed from their bill of costs.

[32] I order costs to the plaintiffs on a partial indemnity basis in the amount of \$230,312.52. Substantial indemnity costs are not indicated here where the defendant has walked away from the litigation but has not otherwise misconducted himself as a litigant. The defendant's conduct toward the plaintiffs in the context of the agreement has been compensated by the awards of damages.

[33] The plaintiffs may provide an order in line with these reasons via Ms. Giordano: michelle.giordano@ontario.ca.

Leiper, J.

Date: 8 September 2025