CITATION: Major Weston Homes Ltd. v. Li, 2025 ONSC 5240
COURT FILE NO.: CV-24-00002552-0000
DATE: 2025-09-12

SUPERIOR COURT OF JUSTICE – ONTARIO
491 Steeles Avenue East, Milton ON L9T 1Y6

RE: Major Weston Homes Limited, Plaintiff

AND:

Xiaoying Li, Defendant

BEFORE: Justice Kurz

COUNSEL: Paras Anand, for the Plaintiff

HEARD: September 8, 2025, by video conference

ENDORSEMENT

Background and Agreement of Purchase and Sale

1. This is a motion for judgment after a noting of default under Rule 19.05. Under Rule 19.06, a plaintiff is not entitled to judgment on a motion for judgment or trial merely because the facts alleged in a statement of claim are deemed admitted unless the facts entitle the plaintiff to judgment.

2. The Plaintiff Major Weston Homes Limited(“MW”) is a home builder. The Defendant is a purchaser who intended to buy a home from MW.

3. On December 7, 2021 the Defendant signed a binding agreement of purchase and sale (the “APS”) for the purchase of a new home (the “Property”) from MW for $1,309,990. The Defendant paid a series of deposits totalling $195,000 towards the purchase price.

Defendant's Breach of the APS Term Requiring Disclosure of her Solicitor

4. On or around January 18, 2024, MW delivered a letter to the Defendant setting the Firm Closing Date as April 12, 2024, as required by the APS.

5. Clause 12 of the APS required the Defendant (described as the "Purchaser") to retain a qualified solicitor for the transaction and provide that professional's name and contact information of her lawyer to the Plaintiff (described as the "Vendor") within 15 days, failing which the Purchaser would be in default of the APS. That provision states:

> Within 15 days after notification of the Vendor's acceptance of this Agreement, the Purchaser shall: (i) retain a solicitor in good standing with the Law Society of Ontario to represent the Purchaser with respect to this Agreement as the Purchaser's Solicitor, and (ii) notify the Vendor of the solicitor's contact information, failing which the Purchaser shall be in default hereunder. In the event of such a default, the Vendor may exercise any of its rights in the event of default or, in its sole, subjective absolute discretion, elect to forgive and allow rectification of the default on such terms and conditions as are acceptable to the Vendor.

6. Clause 12 also sets out remedies available to the Vendor in the event that the Purchaser fails to retain a solicitor at least 30 days prior to closing, as follows:

> In addition to and notwithstanding the above, in the event the Purchaser does not retain a solicitor at least 30 days prior to Closing and notify the Vendor thereof, the Purchaser shall not only be in default hereunder but also and acknowledges and agrees that **in such event tender by the Vendor is waived and the Vendor will be deemed on the day of Closing to be ready, willing and able to complete this transaction without having to give proof thereof.**
>
> [Emphasis added.]

7. The Defendant never provided the name of a solicitor to the Plaintiff/Vendor, despite numerous attempts to ascertain the identity of that solicitor.

8. On or about March 28, 2024, MW's solicitor sent an email to the Defendant stating that she had not provided her counsel's information and requested her to email her counsel's contact information.

9. On or about April 3, 2024, MW obtained occupancy permit of the New Home and provided it to the Defendant.

10. On or about April 9, 2024, the Plaintiff's solicitors wrote to a firm which had previously represented the Defendant, advising that they had been informed that the latter firm was acting on behalf of the Defendant. In the same email the Plaintiff's solicitors indicated that they had been unable to reach the Defendant and enclosed a copy of the APS.

11. On or about April 9, 2024, the Defendant's former solicitor sent an email to DW stating that they do have knowledge of the transaction, however, were not retained by the Defendant.

12. On or about April 11, 2024, the Plaintiff's solicitors sent an email to the Defendant referring to numerous attempts to contact her. The email also included a letter indicating that the Defendant was in default of the APS. The letter stated as follows:

> The final closing of the above-noted transaction is scheduled for April 12, 2024 (the "Closing Date"). To date, we have not been advised of the name of the solicitor representing you with respect to the closing. Please contact our office immediately to advise of the name of the solicitor acting on your behalf, or have your solicitor contact us forthwith so that we may forward the closing documents to him/her. We have enclosed a copy of the final Statement of Adjustments herein.
>
> We bring to your attention Section 12 of Schedule "X" to the Agreement of Purchase and Sale, dated December 7, 2021, relating to this transaction (the "Agreement"), wherein it is provided that failure to provide us with the identity of your lawyer no later than the earlier of (i) fifteen (15) days following the acceptance of the Agreement and (ii) thirty (30) days prior to

> the Closing Date, shall be a breach of the Agreement.
>
> Accordingly, without prejudice to our client's rights under the Agreement and at law, the Vendor is declaring the Agreement to now be in default and will proceed to seek the remedies available to it in the Agreement and at law.

13. Still not having received any response from the Defendant, on or about April 17, 2024 , MW's solicitor emailed a letter to the Defendant indicating that MW was terminating the APS. It further informed the Defendant that:

a. MW would relist the Property for sale;

b. the deposits paid by the Defendant were forfeited; and that

c. MW would initiate a claim against the Defendant for any and all damages incurred due to Defendant's failure to complete the transaction.

APS Term Regarding Forfeiture of Deposit in the Event of Default

14. MW's right to retain the deposit provided by the Defendant is set out in clause 7 of Schedule X of the APS. It reads as follows:

> This offer is to be read with all changes of gender or number required by the context and, when accepted, shall constitute a binding contract of Purchase and Sale, and time shall, in all respects, be of the essence. Any breach by the Purchaser of any of the provisions of this Agreement shall entitle the Vendor, in addition to any rights or remedies that the Vendor may have in law or otherwise, to give notice to the Purchaser declaring this Agreement null and void, whereupon all deposit monies paid hereunder, and any monies paid for extras, shall be forfeited to the Vendor as liquidated damages and not as a penalty. The deposit monies are expressly deemed to be deposit monies only, and not partial payments.

Noting of Default

15. The statement of claim in this action was served on the Defendant on July 4, 2024. No statement of Defence or Notice of Intent to Defend has been filed. The Defendant was noted in default.

Law Regarding Anticipatory Breach

16. MW argues that it was entitled to terminate the APS, retain the deposit and relist the home because of the Defendant's breach of the APS terms set out above. It also argues that the Defendant's failure to provide the name of her solicitor or respond to its correspondence represents anticipatory breach of the APS.

17. In *Nicolaou v. Sobhani,* 2017 ONSC 7602, at paras. 37 – 42, Charney J. set out the law of anticipatory breach as it applies to a contract such as the APS, as follows:

> **37** The law relating to anticipatory breach of contract was summarized by the Ontario Court of Appeal in *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, at para. 37:
>
> > An anticipatory breach sufficient to justify the termination of a contract occurs when one party, whether by express language or conduct, repudiates the contract or evinces an intention not to be bound by the contract before performance is due. See *Pompeani v. Bonik Inc*. (1997), 1997 CanLII 3653 (ON CA), 35 O.R. (3d) 417, [1997] O.J. No. 4174 (C.A.). To assess whether the party in breach has evinced such an intention, the court is to ask whether a reasonable person would conclude that the breaching party no longer intends to be bound by it. See *McCallum v. Zivojinovic* (1977), 1977 CanLII 1151 (ON CA), 16 O.R. (2d) 721, [1977] O.J. No. 2341 (C.A.). ...[I]n determining whether the party in breach had repudiated or shown an intention not to be bound by the contract before performance is due, the court asks whether the breach deprives the innocent party of substantially the whole benefit of the contract.
>
> **38** In addition, the Ontario Court of Appeal held in *Remedy Drug Store Co. Inc. v. Farnham*, 2015 ONCA 576 at para. 47 that the test for anticipatory

breach is an objective one based on a consideration of the surrounding circumstances: "a party can repudiate a contract without subjectively intending to do so." The Court (at para. 48) adopted this summary from Angela Swan, *Canadian Contract Law*, 3d ed. (Markham: LexisNexis Canada, 2012), at p. 618:

> The person (or his or her solicitor) may believe when the statement is made that he or she has an excuse for non-performance and that it is the other party who is in breach of the contract. The characterization of the statement as an "anticipatory breach" [or "repudiation"] will then be made when the dispute goes to trial.

39 Similarly, the Ontario Court of Appeal in *Pompeani* adopts the following statement from Waddams, The Law of Contracts, 3rd ed., paras. 613-614:

> Repudiation can be by words or conduct evincing an intention not to be bound by the contract. It was held by the Privy Council in *Clausen v. Canada Timber & Lands, Ltd*. that such an intention may be evinced by a refusal to perform, even though the party refusing mistakenly thinks that he is exercising a contractual right. [Emphasis added]

40 When confronted by an anticipatory repudiation or breach, the innocent party has a right to elect to terminate the agreement or accept the repudiation as discharging the agreement. The effect of exercising the right to terminate the agreement relieves the party of any further obligation to perform its obligations under the contract and allows it to pursue damages for the breach of contract without the need to tender: *Pompeani; Bethco Ltd. v. Clareco Canada Ltd*. (1985), 1985 CanLII 2252 (ON CA), 52 O.R. (2d) 609, John D. McCamus, "The Law of Contracts 2nd Ed." Irwin Law, 2012, at 686.

41 See also: *Place Concorde East Limited Partnership v. Shelter Corporation of Canada*, 2006 CanLII 16346; 270 DLR (4th) 181 (ON CA), at para. 50:

> Thus, a repudiatory breach does not automatically bring an end to a contract. Rather, it confers a right upon the innocent party to elect to treat the contract at an end thereby relieving the parties from further performance. As a general rule, the innocent party must

make an election and communicate it to the repudiating party within a reasonable time: see *Chapman v. Ginter* 1968 CanLII 72 (SCC), [1968] S.C.R. 560 at 568. However, in some cases the election to treat the contract at an end will be found to have been sufficiently communicated by the innocent party's conduct: John D. McCamus, The Law of Contracts, (Toronto: Irwin Law Inc., 2005) at pp. 641-42.

42 Finally, the analysis of Lederer J. in *Kalis v. Pepper*, 2015 ONSC 453 at paras. 10 to 12 is also relevant to the issues raised in this case:

> The question of who gets the deposit is answered by a determination of whether the defendants repudiated the contract:
>
> > [U]pon default or repudiation by the purchaser the vendor may retain the deposit as liquidated damages.
>
> (Victor Di Castri, The Law of Vendor and Purchaser, Volume 2, Carswell, at s.<check-sect/>805)
>
> When can it be said that a contract has been repudiated? It has been said that:
>
> > Repudiation is conduct that demonstrates that a contracting party has absolutely renounced its contractual obligations.
> >
> > ...
> >
> > A party to a contract repudiates by clearly stating that he or she does not intend to perform his or her obligations under the contract.
> >
> > (Paul Perell, Real Estate Transactions, 2nd edition, Canada Law Book at p. 340, [and cases cited therein]...
> >
> > ...
> >
> > For any action or statement to be relied on as repudiation, it must be clear, absolute and certain. Otherwise, any expressed uncertainty could be taken as repudiation and it would be impossible (or at least risky) for a party to a contract to express concerns or seek assistance from the other party to address such concerns lest it be taken as repudiation.

Analysis

18. The Defendant clearly breached the term of the APS requiring her to retain a qualified solicitor and provide MW with the name of her solicitor within 15 days. The reason for this term is straightforward and relates to commercial expedience: so that the vendor, MW, could close the sale transaction for the Property, with the purchaser, the Defendant. By failing to take those steps required by the APS, the Defendant also anticipatorily breached the APS' terms regarding closing. As a result, MW was not required to tender an order to claim that the Defendant had breached the APS. These breaches occurred despite notice of the breaches provided to the Defendant by MW's solicitors.

19. As a result, MW was entitled to declare the Defendant in breach, retain her deposit payment, resell the Property and seek to recover any losses. That right arises from

> Default in payment of any amount payable pursuant to this Agreement on the date or within the time specified, shall constitute substantial default hereunder, and the Vendor shall have the right to terminate this Agreement and retain all deposit monies in full without prejudice to the Vendor's rights to additional deposit monies that may be required and any other rights it may have hereunder and at law including the right to recover from the Purchaser all additional costs, losses and damages arising out of default on the part of the Purchaser pursuant to any provision contained in this Agreement, including interest thereon from the date of demand for payment at the rate of 20% per annum, calculated daily, not in advance, until paid [emphasis added].

20. Here, MW's loss is relatively straightforward. The purchase price set out in the APS was $1,309,990. It was ultimately sold for $971,800, leaving a shortfall of $338,000. Less the total deposit of $195,000.00, the shortfall is $143,190.00.

Other Damage Claims

21. MW claims a number of other damages, as follows:

a. cleaning costs while the Property was relisted of $1,776.20;

b. further realty/property tax charges before the reselling of the Property of $2,000.00;

c. Utilities from the date of default to the date of resale: $3,468.12; and

d. Real estate commission of $33,080.93.

22. I find that each of the expenses save that of real estate commission is a proper one and allow them, for an added total of $7,244.32.

23. I do not grant real estate commission, which I understood is charged at 4% because that commission (in a slightly higher amount) would have been paid if the defendant had not defaulted but closed instead. Counsel for MW claimed that the real estate fee was an additional one, and that it had to pay one for the aborted APS. I see no clear evidence to that effect in the materials before me.

Judgment Amount

24. Accordingly, I grant judgment to MW of $143,190.00 + $7,244.32, for a total of $150,434.32.

Prejudgment Interest

25. MW claims interest at the rate of 20% per annum, that being the rate it says is set out in the APS. The relevant term, at clause 7 of Schedule X of the APS is set out above.

26. MW relies on the decision of McCarthy J. in *1157391 Ontario Inc. v. Ortiz,* 2020 ONSC 6604, at para. 19, where he wrote:

> **19** I see no basis upon which to deny the Plaintiff the interest rate agreed to by the contracting parties. Section 128(4)(g) of the *Courts of Justice Act* expressly states that interest thereunder shall not be awarded if it is payable by a right other than under that section. The Defendants have had the use

> of the funds owing to the Plaintiff since the date of the first milestone draw. A contractual rate of interest is meant to encourage prompt payment. The Defendants could have alleviated some of their exposure to the contractual interest by paying the disputed funds into an interest-bearing account.

27. That being said, the Defendant's debt to MW did not crystalize until the sale of the Property to the second purchaser was completed. It cannot be said that the Defendant had the use of money when the amount of the money was not yet determinable. Further, the Defendant was not informed of the amount being claimed until service of the statement of claim. Thus, she could not have paid the amounts being claimed by MW until service because that amount would have been unknown to her.

28. I also note that in *Forest Hill Homes (Cornell Rouge) Ltd. v. Ou,* 2019 ONSC 4332, Morgan J. spoke about a similar rate of interest in a standard form builder's contract, which he referred to as a "surprisingly onerous term". That interest rate is four times higher than the current prejudgment interest rate.

29. At paras. 20 - 21, Morgan J. explained why he would not award the surprisingly onerous interest rate set out in the APS before him as follows:

> **20** I am not convinced that a party in the Plaintiff's position -- a subdivision builder with a standard form of contract for each of its purchasers -- can enforce a surprisingly onerous and unexpected term in that contract without at least drawing it to the other party's attention. The record indicates that indeed the high interest rate was not called to the Defendants' attention, and there is nothing to suggest that the Defendants, who signed the APS on the same day that it was presented to them and without any legal advice, understood or were cognizant of this term.
>
> **21** As this court stated in *Aviscar Inc v Muthukumaru*, 2009 CarswellOnt 4003, at para 23, "The law is that if a person signs a contract without reading it, that person is bound by the terms of the contract. That is the general rule. There are exceptions if the signing person can establish that there was fraud, misrepresentation, or there was a very onerous term that a reasonable person would not expect to be in the contract." In my view, this is one of those cases that falls into the latter category.

30. To counsel's credit, he cites *Forest Hill Homes* and attempts to distinguish it. Counsel argues that there is no pleading that the Defendant was unaware of the surprisingly onerous interest rate. Of course there was no defence pleading at all.

31. But it was open to the Plaintiff to provide proof that the surprisingly onerous interest rate was actually brought to the Defendant's attention. It was also open to MW in its standard form APS, to require a purchaser to initial the interest clause to show that he or she was aware of the term. That did not happen here. Also there was no independent legal advice. The fact that the Defendant and her agent signed every page of the APS does not show that the surprisingly onerous interest rate was brought to her attention.

32. Accordingly, pre and post judgment interest shall be pursuant to the *Courts of Justice Act*.

Conclusion

33. The Defendant shall pay MW $150,434.32 plus prejudgment interest commencing the date of issuance of the statement of claim in this action.

34. Costs of this action and motion are fixed at $9,000.

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Kurz J.

Released: September 12, 2025