

**CITATION:** *Caivan (Fox Run) Limited v. Gangwal et al*, 2025 ONSC 5604  
**COURT FILE NO.:** CV-24-94769  
**DATE:** 2025/10/21

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Caivan (Fox Run) Limited, Plaintiff

**-and-**

Abhishek Gangwal and Suhani Gangwal, Defendants

**BEFORE:** Justice A. Doyle

**COUNSEL:** Charlene Kavanagh & Caroline Bedard for the Plaintiff

Sherif Rizk for the Defendants

**HEARD:** September 22, 2025 at Ottawa

**REASONS FOR DECISION**

[1] The plaintiff, Caivan (Fox Run) Limited (Caivan) seeks summary judgment for damages in the amount of \$106,012.93 for failure by the defendants to complete the purchase of a property in a new development pursuant to an agreement of purchase and sale (APS) signed October 9, 2021. The closing date was ultimately set for August 16, 2023.

[2] Amendments to the APS permitted an assignment of the agreement and a right to the purchasers to list the property for sale on Multiple Listing Service (MLS) or other third-party platforms.

[3] On January 11, 2023, the plaintiff demanded that the purchasers remove the listing of the property on MLS. The purchasers removed the listing on February 7, 2023 and despite being told by Caivan on March 21, 2023 that they could relist the property on MLS, the purchasers told Caivan that the contract was at an end and demanded the return of their deposit.

[4] This case turns on whether, during this period of time, Caivan's refusal to abide by the amendment which permitted the purchasers to list the property on MLS amounts an anticipatory

breach of a fundamental term of the contract thereby repudiating the contract. Alternatively, did Caivan make misrepresentations entitling the defendants to the rescission of the contract?

[5] The defendants, Abhishek and Suhani Gangwal, seek an order for summary judgment against the plaintiff for negligent misrepresentation, unjust enrichment and breach of contract in the amount of \$125,452.50. Or, in the alternative, they claim the amount of \$85,452.50 (consisting of \$75,000 as a return of the deposit pursuant to the APS and \$10,452.50 as commissions repaid to the plaintiff) and the loss of opportunity for potential profit on resale resulting from the plaintiff's conduct in the amount of \$40,000.

[6] For reasons set out below, the court grants judgment in favour of Caivan as requested.

### **Background**

[7] On or about October 9, 2021, Caivan and the defendant, Abhishek Gangwal, entered into a conditional APS for the purchase of 127 Hackamore Crescent, Ottawa, with a solicitor-review period condition to be satisfied by 5:00 p.m. on October 14, 2021.

[8] The APS provided for the following:

- A purchase price of \$959,490.00 inclusive of HST;
- A deposit of \$75,000 made by the Gangwals: (the price included a premium as the lot backed on to a park which was a desirable feature of the property);
- Section 18(b) restricted the property from being assigned to anyone else without the express consent of Caivan and the consent could not be arbitrarily withheld;
- A prohibition of any advertising or listing of the property without Caivan's prior approval; and
- A clause confirming the APS included all the terms of the contract between the parties.

[9] On October 12, 2021, the defendant, Suhani Gangwal, who is a real estate agent, was added as co-purchaser on the APS (first amendment).

[10] On the same day, the parties agreed to an amendment to permit the purchasers a one-time right of assignment to a third party (second amendment).

[11] On October 14, 2021, Ms. Gangwal wrote to Cristina Crothers, a sales representative with Caivan, asking her to amend the agreement to permit the purchasers to list and advertise the property on MLS or other listing and advertising platforms.

[12] On October 15, 2021, the defendants again communicated to Ms. Crothers that they wished an amendment to remove restrictions on advertising the property or listing the property on MLS or other platforms as had been previously requested but not reflected in the previous amendment. Ms. Gangwal stated: “As you know, my signing of the contract yesterday was based on the understanding that assignment amendment will be provided without the MLS restriction”.

[13] On October 15, 2021, Leah Wellstein, an authorized signing officer of Caivan, executed an amendment to the APS, permitting the Gangwals a one-time right of assignment to a third party and removing all previous limitations on advertising the property for sale on MLS or other platforms (final amendment).

[14] In November and December 2022, the Gangwals listed the property for sale for \$999,000 on MLS and other online platforms and conducted an extensive advertising campaign.

[15] On January 11, 2023, Caivan’s counsel, Frank Bourgault, forwarded a letter to EXP realty (Ms. Gangwal’s real estate agency) and a similar letter to the purchasers indicating that they were advised that they were advertising the property for sale on the internet and/or third-party listing services. It was sent to both addresses as the EXP realty was the address noted on the MLS listing.

[16] This letter states:

This letter shall serve as final notice to you that you must immediately remove and take down all for sale advertisement with respect to the Property. You are not permitted to list the Property for sale on MLS or any third-party listing services. If your compliance is not obtained forthwith, Caivan will take all legal action necessary to have the listing removed and may seek damages against you for any losses incurred as a result.

[17] On January 23, 2023, Ms. Gangwal wrote to Mr. Bourgault attaching the second and final amendments and inquiring: “We were wondering if you could explain why the final amendment dated Oct 14, 2021 (sic) does not supersede the amendment signed on Oct 9, 2021 (sic).”

[18] On January 30, 2023, Mr. Bourgault wrote to Ms. Gangwal:

“As previously indicated, the second amendment purported to delete a section in the agreement that had already been changed by the first amendment. Therefore, it is our position that the contents of the second amendment are not enforceable. Furthermore, I can also advise that even if an assignee is secured, our client would not be obligated to consent to such assignment given the existing default that is occurring while listing the property on MLS”.

[19] The Gangwals complied with Caivan’s demand and removed the listing on MLS on February 7, 2023, stating that it was “under protest”.

[20] On February 16, 2023, the Gangwals through their counsel, Mr. Bonera, offered to settle the matter by mutually terminating the APS, a return of the deposit paid by the purchasers and allowing Caivan to locate another purchaser.

[21] In this letter, the Gangwals state there was a mutual understanding at the signing of the APS that the amendment would include the removal of the MLS restriction. It explains that the ability to assign the APS was crucial to the purchasers from the outset and would not have entered into the APS if they had been made aware that they would be prohibited from listing the property on the MLS. Caivan’s demand that they remove the listing from the MLS and threatening them with legal action constituted a breach of the APS. They have removed the listing and prepared to resolve the matter by mutually terminating the APS and return of the deposit to the purchasers.

[22] There is no further correspondence from Caivan on the record until March 21, 2023 when Caivan’s counsel wrote to the defendants’ counsel. The complete email communication is set out below:

We have reviewed the documents and your letter of February 15, 2023. Our client’s position remains that at no time did it have the intention of allowing the Property to be listed on MLS. It appears that the Second Amendment was processed in error, and it is our view that it is

unenforceable.

Notwithstanding the above, and in the interest of avoiding any further disputes, our client has decided to allow for a one-time exception and honor the Second Amendment such that it will permit your client to list the Property on MLS. This decision does not constitute an admission of liability, but rather, a gesture of good will to resolve the issue amicably.

That being said, our client is not amenable to mutually terminating the APS and returning the deposit paid by your client, as requested in your letter. We look forward to completing this matter with the Purchaser.

[23] On July 24, 2023, another counsel for the defendants, Mr. James Macdonald, wrote to the plaintiff directly, confirming that Caivan's demand for the removal of the property from the MLS was a repudiation of the APS and hence, the contract was at an end and requested a return of the deposit.

[24] On August 8, 2023, Mr. Bourgault wrote to counsel for the defendants indicating that the plaintiff would not release the buyers from the transactions.

[25] Caivan's solicitors indicated that it was ready to close the transaction on August 16, 2023.

[26] The closing did not take place as the defendants did not provide funds and documents necessary to close the transaction.

[27] Commencing August 16, 2023, Caivan took measures to relist the property and marketed the property through cold calls, realtors, private brokerage auctions and circulation of "move-in" ready price list to a list of private email addresses. It did not list the property on MLS.

[28] On January 11, 2024, Caivan entered into an agreement for resale of the property at the purchase price of \$800,000 with a closing date in February 2024.

### **Position of the Plaintiff**

[29] The plaintiff was ready, willing and able to close on August 16, 2023 and at all material times.

[30] A seller is not required to change an agreement's obligations, terms or conditions to assist a purchaser. Once a purchaser fails to close the transaction, the seller need not deal with the purchaser any further: see *Calleja v. Ahmadi* 2022 ONCA 106.

[31] The defendants were not justified in failing to close the real estate transaction as they do not fit within any of four legally acceptable justifications as set out in *Tse v. Sood* 2015 ONSC 755.

[32] The plaintiff denies that it made representations that would permit a rescission of the APS, nor did the plaintiff breach a fundamental term of the APS. The plaintiff denies that there was an anticipatory breach that amounted to a repudiation of the agreement.

[33] The defendants removed the property from MLS as of February 7, 2023. They could have relisted the property once they received the plaintiff's email of March 21, 2023 stating that they would allow a relisting on MLS. It was not a one-time listing as the purchasers interpret it.

[34] The plaintiff submits that the purchasers did not relist the property because they knew it would be difficult to make a profit as the housing market had fallen.

[35] The plaintiff made reasonable efforts to mitigate their damages and obtained a fair market value for the property in a timely manner.

[36] Damages should include the difference between the original price and the purchase prices achieved on the sale, and consequential damages such as carrying costs post-breach and costs associated with the relisting and resale of the property. These are all foreseeable damages: see *Bang v. Sebastian* 2018 ONSC 6226, at paras. 47 and 53.

[37] The purchasers have failed to prove conspiracy. When a purchaser fails to close, deposits are forfeited without proof of any damage suffered by the seller and this is not unjust enrichment but rather there is a clear juridical basis for the forfeiture: see *Azzarello v. Shawqi*, 2018 ONSC 5414, aff'd 2019 ONCA 820.

### **Position of the defendants**

[38] The defendants submit that, at the time of the APS in 2021, Caivan advertised to potential buyers the benefit of assignment sale as an incentive for buying their properties in the Fox Run development.

[39] Their advertisement said, “Free Assignments” and for another development “APS assignments at no cost”. Also, Caivan offered referral commissions to real estate agents who successfully brought purchasers to Caivan’s properties.

[40] The purchasers were interested in buying property from Caivan for the express purpose of reselling it prior to completion by means of an assignment sale and marketing it on advertising platforms such as MLS and other advertising platforms.

[41] When the purchasers reviewed the draft APS, they expressly requested Ms. Cristina Crothers, the sales consultant, to immediately remove article 18(b) regarding listing restrictions of the property on MLS.

[42] After the APS was executed on October 9, 2021, there were a number of communications between the defendants and the plaintiff’s sales and legal team to add Suhani Gangwal as a co-purchaser. The defendants also requested an amendment to permit the right of assignment and removal of restrictions on advertising and listing the property on MLS. These amendments were accomplished by the second amendment and the final amendment.

[43] The property was listed on MLS during November/December 2022, and they were contacted twice during that period of time from representatives of Caivan demanding that they remove the listing. The purchasers provide the plaintiff’s representatives with a copy of the final amendment.

[44] After the listing of the property on MLS in November/December 2022, the purchasers were disturbed when they received the January 11, 2023 correspondence from the plaintiff’s counsel demanding for the removal on MLS as this would deprive them of the expected benefits they had contracted in the APS. The listing was removed on February 7, 2023. There is no evidence to support the plaintiff’s position that the final amendment was signed in error.

[45] The purchasers submit that Caivan never informed them that the amendment had been signed in “error” at the time of the final amendment being signed or, for 1.5 years. The purchasers were led to believe that they had the right to make an assignment through advertising on MLS without any restrictions. The October 14, 2021 correspondence with their sales representative, Ms. Crothers, is evidence that Caivan had an intention of allowing the purchasers the right to assign the title and advertise on MLS.

[46] When Caivan did not respond to their February 2023 correspondence indicating that the agreement was terminated and requesting their deposit, the purchasers assumed the matter was closed and they began focussing on other projects.

[47] The purchasers submit that had they known that they would be only allowed a “one-time MLS listing” as set out in plaintiff’s counsel communication of March 21, 2023, they would not have entered into the agreement. This unduly restricted the purchasers from finding a suitable buyer and maximizing their profits.

[48] The purchasers could not move forward to complete the transaction due to the plaintiff’s breach, negligent misrepresentation regarding the terms of the contract, failure to uphold a duty of honest performance in executing the terms and capriciously changing their positions regarding the purchasers’ right to list on MLS and to assign the APS.

[49] The purchasers did not wish to revive the contract as the purchasers’ obligation under the APS was terminated upon the plaintiff’s breach, that the “one-time” exception was delayed and after the purchasers had ended the MLS listings. Also, there was a risk to the purchasers if they had to disclose to a potential buyer regarding disputes with Caivan.

[50] Caivan had expressed unclear intentions to permit the assignment sale, and the purchasers had lost their trust that Caivan would honour their commitments due to their past misrepresentation and changing positions.

[51] In summary, the plaintiff’s refusal to abide by the terms of the final amendment constituted a repudiatory breach of contract that went to the heart of the contract.

[52] Alternatively, the defendants are entitled to the equitable remedy of rescission.

[53] Regarding Caivan's duty to mitigate its damages, Caivan's failure to expose the property to a broader real estate market including MLS, improperly pricing the property for sale, and its incorrect assessment of the real estate market and its fair market value led to Caivan's failure to mitigate its damages.

[54] In addition, Caivan should not have waited until August 16, 2023, to start the resale of the property when they were told in February that the purchasers were not proceeding with the sale.

### **Issues**

[55] The issues for the court's determination are as follows:

- Should the court grant summary judgment in that there is no genuine issue requiring trial?
- Did the final amendment form part of the APS?
- Were the defendants justified in not closing the transaction?
- Was there a fundamental breach of contract or put another way, did Caivan repudiate the contract that went to the heart of the contract? Did Caivan commit an anticipatory breach of the APS?
- Was there misrepresentation? Are the purchasers entitled to rescission?
- Can the purchasers' other claim of conspiracy or unjust enrichment succeed?
- Did Caivan mitigate its damages by making all reasonable efforts to resell the property at fair market value in a timely manner?

### **Analysis**

### **Summary Judgment**

[56] As stated in *Hryniak v. Maudlin* 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49, there is no genuine issue requiring a trial when the Court is able to reach a fair and just determination on the merits of the motion. This will be the case where the process (1) allows the Court to make necessary findings of fact; (2) allows the Court to apply the law to the facts; and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result.

[57] A responding party is required to put its best foot forward and cannot simply assert a bald denial; rather, it must set out relevant evidence with specific facts and coherent evidence thus demonstrating that there is a genuine issue for trial.

[58] The Supreme Court in *Hryniak v. Maudlin* set out a two-step test for summary judgment:

- a. First, the motion judge must determine if there is a genuine issue requiring a trial based on the written record and without resorting to its new powers under Rule 20.04(2.1) or 20.04(2.2); and
- b. If there appears to be a genuine issue requiring a trial, the motion judge must then determine if the need for a trial can be avoided by using the new powers under Rule 20.04(2.1) or 20.04(2.2).

[59] Based on the fulsome record and the fact that this case is largely document-based, with few witnesses, and limited contested factual issues and discrete issues, the court finds that there is no genuine issue requiring trial.

[60] The issues are contractual and based on agreement signed by the parties and communications between them.

[61] I find that the evidentiary record provided by the parties is sufficient for the court to make all relevant findings of fact, to apply the law to those facts and to adjudicate the matter.

[62] Dealing with this matter by way of summary judgment is a more proportionate, more expeditious and less expensive means to achieve a just result.

**Did the final amendment form part of the APS?**

[63] The final amendment was an agreement that the parties were entitled to rely on. The purchasers expended time and resources to list the property on MLS.

[64] There is no evidence presented by Caivan that the agreement was signed “in error”.

[65] Therefore, I find that the final amendment was a contract and formed part of the APS and there is no genuine issue requiring a trial.

***Were the defendants justified in not closing the transaction?***

*Introduction*

[66] In *Tse v. Sood*, Perrell J. noted that there are four main legally acceptable justifications for a purchaser refusing to close a real estate transaction. The four situations that entitle a purchaser to not close are:

1. Non-satisfaction of a condition precedent;
2. Breach of a fundamental promise;
3. Vendor’s failure to convey good title; and
4. Misrepresentation, along with the other elements of a claim for the equitable remedy of rescission being satisfied: *Tse v. Sood*, at paras. [8-10](#).

[67] Numbers 2 and 4 above are relevant here.

[68] The Supreme Court of Canada reminds us of the difference between repudiation and rescission in *Guarantee Co of North America v. Gordon Capital Corp* [1999] 3 S.C.R. 423:

Rescission is a remedy available to the representee, *inter alia*, when the other party has made a false or misleading representation. Repudiation, by contrast, occurs by words or conduct evincing an intention not to be bound by the contract. Contrary to rescission, which allows the rescinding party to treat the contract as if it were void *ab initio*, the effect of repudiation depends on the election made by the non-repudiating party. If the non-repudiating party accepts the repudiation, the contract is terminated, and the parties are discharged from future obligations,

although rights and obligations that have already matured are not extinguished. If the repudiation is not accepted, the contract remains in being for the future and each party has the right to sue for damages for past or future breaches. Courts must be sensitive to the potential for misuse of the term rescission and must analyse the entire context of the contract and give effect, where possible, to the parties' intent. Where, as in this case, the misrepresentation becomes a term of the contract, rescission will be available if the misrepresentation is "substantial", "material" or "goes to the root of the contract".

[69] I will deal with the purchasers' claims in the following order: repudiation, rescission, conspiracy and unjust enrichment.

*Was there a fundamental breach of contract or put another way, did Caivan repudiate the contract that went to the heart of the contract.*

[70] First, the purchasers argue that the plaintiff repudiated a fundamental term of the contract by demanding they remove the property on MLS on January 11, 2023 or that there was an anticipatory breach.

[71] Performance of a contract will depend on the agreement of the parties deduced from their words and conduct in all the surrounding circumstances.

[72] One of the most important consequences of breach of contract is its effect on the obligation of the party not in breach. The purchasers had an agreement that permitted them to list the property on MLS and could have insisted that the plaintiff abide by the terms of the agreement.

[73] In *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.* 2008 ONCA 92, the Court of Appeal stated that only a fundamental breach would give the defendants the right to treat the Agreement as at an end and a fundamental breach is one which deprives the innocent party of substantially the whole benefit of the contract: at para. 35.

[74] The Court of Appeal continued, listing the five factors the court should consider when determining whether the conduct has deprived the innocent party of substantially the whole benefit of the contract:

1. the ratio of the party's obligations not performed to that party's obligations as a whole; (2) the seriousness of the breach to the innocent party;
2. the likelihood of repetition of such breach;
3. the seriousness of the consequences of the breach; and
4. the relationship of the part of the obligation performed to the whole obligation: *Spirent Communications of Ottawa Limited*, at para. 36, [citation omitted].

[75] In *Spirent*, the Court of Appeal found that the anticipated delay in occupancy did not deprive the sublessee of substantially the whole benefit of the contract. The lease was for 3 years, so a delay in occupancy of six weeks was not so significant that it amounted to deprivation of substantially the whole benefit of the agreement.

[76] The sublessee argued that the anticipated delay was of fundamental importance to it because if there was a delay of occupancy it would have been “out on the street”. It could have maintained the existing lease and look to Sirent for compensation for those additional costs.

[77] With respect to whether Spirent had evinced an intention not to be bound by the agreement, the delay was as a result of weather and mistakes of other parties. Spirent wanted the agreement to continue. In that case, the Court of Appeal concluded that Spirent gave no indication by conduct or language that it wanted to repudiate the agreement or that it did not intend to be bound by its provisions.

[78] At paragraph 37 of *Spirent*, the court again explained that:

“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. 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. Having said that, when determining whether such an intention has been evinced, the courts rely on much the same analysis as they do in respect of claims of fundamental breach. That is, in 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 [Citation omitted].

[79] Based on the 5 factors set out in *Spirent*, the court makes the following findings:

- The purchasers admitted that they were drawn to the plaintiff's development project as there was free assignment;
- The listing of the property was of importance to the purchasers who stated that they were attracted to Caivan's sale of properties as they permitted assignments.
- The purchasers made efforts immediately after the APS was signed to work on removing the restriction of listing of the property on MLS.
- The plaintiff retracted their position and there is no evidence that it would be repeated; and
- This turn of position was serious to the purchasers, but it was rectified in 1.5 months.

[80] There is no evidence or explanation of how the final amendment was processed in error as stated by the plaintiff's officer Brian Creech in his affidavit sworn October 21, 2024, or in the plaintiff's communications.

[81] Nevertheless, the plaintiff's demand to remove the listing of the property in January 2023 did not deprive the purchasers from the whole benefit of the contract.

[82] In my view, the plaintiff did not, by words or conduct, show an intention not to be bound by the contract or commit a fundamental breach that deprived the purchasers of substantially the whole benefit of the contract.

[83] There was no anticipatory breach which gives the innocent party, the purchasers, the right to terminate the contract for non-performance as the party in breach cannot offer future performance.

[84] Even when the plaintiff told the purchasers to remove the listing, the purchasers were in their legal right to continue their listing despite the demands of the vendors who were mistaken about the status of the right to list.

[85] The purchasers did comply but did not relist the property when they were told they could resume the listing of the property in the March 21, 2023 correspondence from plaintiff's counsel. This correspondence rectified the situation by permitting the relisting as the parties agreed in the final amendment.

[86] That is, Caivan did not say they were unwilling to close the sale on the agreed closing date — in fact it communicated that it wanted to close and confirmed that they were allowing them to relist on MLS.

[87] Disputes over the MLS-listing clause alone would be seen as a collateral dispute, not a renunciation of the main obligation to transfer title.

[88] In this case, the purchasers classified the plaintiff's actions and words as a repudiation and communicated to the plaintiff that they believed that the contract was at an end. But here, the plaintiff did do an about turn and said that they were willing to perform that term of the contract.

[89] The purchasers did not relist thereby not mitigating their damages and reducing their loss.

[90] The wording of the March 21, 2023 correspondence makes it clear that the purchasers were entitled to a one-time assignment in accordance with the second amendment and were allowed to list the property on MLS or other listing services as per the final amendment.

[91] In conclusion, there was not a repudiation of the contract indicating a total abrogation of the contract with all of its obligations so that the purchasers did not need to perform the contract.

[92] The purchasers have a right to claim damages due to Caivan's conduct.

[93] However, the purchasers have not set out the evidence to quantify their claim for damages for the loss of opportunity when they were not permitted to list the property from February 7, 2023 to Mach 21, 2023. There is evidence of email communications between her and two realtors dated

February 7, 2023 where one realtor requests further detail about the property and the other realtor writes that they have a client who might be interested in the property. There is no evidence of a firm assignment or sale of the property or the loss of profits.

[94] The purchasers are required to put their best foot forward in a summary judgment motion. Here, the purchasers made a bald claim of \$40,000 for loss of profit without supporting evidence.

**Was there misrepresentation? Are the purchasers entitled to rescission?**

[95] The purchasers allege the following negligent misrepresentations in their statement of defence/counterclaim.

- The purchasers would be able to obtain written consent to sell and such consent not to be unreasonable denied;
- Would not be liable to repay any commissions payable to it for the referral fee; and
- That the plaintiff had obtained the appropriate approval at the time of the signing of the amendments to the APS.

[96] The purchasers argue that the plaintiff made misrepresentations at the time of the signing of the APS which induced the purchasers to enter into the agreement on the basis that they would be able to list the property on MLS and other platforms.

[97] This argument is supported by plaintiff's communication who claimed the amendment that allowed MLS listing was "a mistake and unenforceable."

[98] The purchasers also point to the plaintiff's communication of March 21, 2023 stating that "at no time did it have the intention of allowing the property to be listed on MLS". This was contrary to the assertions and representations made by the parties and as seen in the final amendment.

[99] The Court of Appeal in *Soboczynski v. Beauchamp* 2015 ONCA 282, at para. 70, sets out the five elements of the negligent misrepresentation:

The tort of negligent misrepresentation has five elements: These elements are (1) a duty of care based upon a special relationship between the plaintiff and defendant; (2) an untrue, inaccurate or misleading statement by the defendant; (3) negligence on the part of the defendant in making the statement; (4) reasonable reliance by the plaintiff on the statement; and (5) damage suffered by the plaintiff as a result. [Citations omitted.]

[100] I find that the evidence does not establish that Caivan failed to disclose or mislead the purchasers into inducing them to sign the agreement.

[101] Also, one of the purchasers was a real estate agent and there is no special relationship between the parties.

[102] The court finds that there were no misrepresentations made out at the time of the signing of the APS. In fact, the execution of the amendments is a clear indication of the meeting of the minds of the parties that the purchasers were entitled to assign with the plaintiff's consent and list the property on MLS.

[103] There is no evidence before the court to establish that there were misrepresentations at the time of the signing of the agreement.

[104] In addition, the purchasers have advanced a further argument that, by Caivan telling them to take down the listing in January 2023, the plaintiff violated their duty of good faith and duty of honest performance by deceitfully misrepresenting to the purchasers that they were in default of the agreement and that the final amendment was void and they would withhold consent to an assignment.

[105] Parties to a contract owe a duty of honest performance i.e. "that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract": *Bhasin v. Hrynew* 2014 SCC 71 [2014] 3 S.C.R. 494.

[106] That is, the principle of honest performance is one of good faith to a standard that parties must perform their contractual duties, honestly and reasonably and not capriciously and arbitrarily: see *Bhasin*, at para. 63.

[107] The plaintiff failed in its duty of honest performance when it sent communication that set out a legal position that was a misrepresentation of the terms of the APS. The plaintiff was obviously mistaken as to their respective legal status regarding the purchasers' right to list the property. The plaintiff used language demanding compliance with no room for discussion.

[108] But shortly thereafter, Caivan rectified the situation.

[109] The court does not find that Caivan's conduct should lead to a rescission of the contract as the misrepresentation is not "substantial", "material" or "went to the root of the contract".

[110] As stated in [\*Zhang v. Primont Homes Inc\*](#), 2023 ONSC 4036 at para 20, aff'd 2024 ONCA 622, the purchasers had the option to proceed with the contract and then make a claim for a financial amount representing profit lost on account of the plaintiff's conduct.

[111] Again, the purchasers can certainly claim damages for the loss of opportunity to profit from the listing had they been able to list during the period that the property was not permitted to be listed. January to March 2023. There is no evidence presented to indicate what they would have lost due the property not being listed during this period of time.

*Can the purchasers' other claims of conspiracy or unjust enrichment succeed?*

[112] Conspiracy has been pleaded in the claim but was not actively pursued at the hearing. The purchasers have not articulated who are the members of this conspiracy.

[113] The court finds that the evidence does not establish that there was a conspiracy.

[114] Regarding unjust enrichment, this restitution invites an inquiry into the injustice of any enrichment and suggests the conclusion that the substantial breach of contract lead to an unjust enrichment to the party of the party who breached.

[115] There is a juristic reason for the plaintiff to retain this deposit as the APS provides it is forfeited to the plaintiff if the purchasers fail to close the transaction. In addition, Ms. Gangwal's commission was not payable as the transaction did not close and real estate commissions are only payable upon closing.

[116] Therefore, both claims fail.

*Did Caivan mitigate its damages by making all reasonable efforts to resell the property at fair market value in a timely manner?*

[117] Given my above findings and the purchasers' refusal to close, the plaintiff is entitled to damages for the loss on resale plus costs. The usual measure of damages for a buyer's failure to close is the difference between the contract price and the price the vendor ultimately obtains on resale, plus reasonable carrying costs, resale expenses, etc.: see *Singh v. Trump*, 2016 ONCA 747.

[118] The vendor has a duty to mitigate losses, but if they resell for less than the contract price despite reasonable efforts, they can sue the defaulting purchaser for that loss.

[119] I note the following:

- The plaintiff could not list the property or attempt to sell the property before the closing date as it had a binding contract with the purchasers for a closing on August 16, 2023;
- Once the closing date had passed, the plaintiff was then in a position that it could legally sell the property;
- They sent over 30,000 emails to real estate agent addresses and some may have listed the property on MLS and other such services;
- The plaintiff participated in auctions for the property as a "move-in ready home";
- Flyers were prepared for this auction that took place on November 23, 2023;
- The statistics filed indicated that the home prices had substantially declined since 2021;
- The plaintiff did not reduce the sale price to \$879,990 until after it was on the market for a month and this price was maintained throughout the fall of 2023;
- The interest rates increase caused the drop of the average house prices by approximately 20% according to the new housing price index (HNPI);

- The statistics filed show that in October 2022 prices were inflated compared to the previous year and the pandemic times showed an increased demand for properties which drove prices up 11% in that year;
- The market was at a peak in October 2021 when the parties executed the APS, with a 24.8% increase shown;
- In August 2023, the housing market showed a decline of 1.3% and the borrowing rates had elevated to 5%;
- In December 2023, the plaintiff reduced the list price of the property to \$815,000; and
- A January 2024, notice showed a significant decrease of home prices in Ottawa

[120] Given these statistics, I find that the sale price for the agreement to sell in January 2024 of \$800,000 was reasonable. I note that there was a comparable home (but had an extra bathroom) that sold for \$775,000.

[121] The defendants have filed a letter from Ms. Gangwal's real estate company. It indicates that the Canadian Real Estate Associations' seasonally adjusted HPI shows that the home prices for single-family homes in the Ottawa region went up from October 2021 (HPI of 282.1) to August 2023 (HPI of 287.1). The average prices for single family homes in the Richmond neighbourhood (location of the property at tissue) had increased from \$1,062,200 from September 2023 to October 2024 indicating an increase of 10.6% over the purchase price here of \$959,490.

[122] This aforementioned letter carries no weight with the court as it is from the real estate agency where Ms. Gangwal has an association. This is not an independent letter and is self-serving.

[123] Despite the fact the original price in the APS was \$959,490 and the property sold for \$800,000, due to the market volatility and fluctuating interest rates, I find that the plaintiff fulfilled their duty to mitigate losses, and it made all reasonable efforts to obtain the best possible price. It was not required that Caivan list the price on MLS as it exhausted many other alternative options.

[124] The plaintiff arranged for an immediate sale once the closing date did not transpire and moved to obtain a fair market value for the property in a timely manner.

[125] The plaintiff can properly sue the purchasers for the loss of profit (i.e., the shortfall between the original purchase price and the resale price) plus reasonable incidental damages.

[126] Therefore, the plaintiff will be entitled to damages in the amount of \$106,012.93 as a result of the Gangwals' breach of the APS, as set out below which is calculated as follows:

- a. \$141,142.00, exclusive of HST, representing the difference between the original sale price of \$870,345.00 and the resale price of \$729,204.00, exclusive of HST;
- b. HST on the amount above, being \$16,231.33;
- c. \$22,600.00, inclusive of HST, being commission paid to the real estate agent upon the resale of the Property;
- d. \$1,039.60, inclusive of HST, being legal fees incurred in connection with entering into and then terminating the original APS (\$850.00 in fees, plus \$70.00 in disbursements, plus HST of \$119.60);
- e. totalling \$181,012.93;
- f. after deducting the Gangwals' deposit of \$75,000.00, Caivan's damages are \$106,012.93.

### **Summary**

[127] Accordingly, the court finds that there is no genuine issue requiring a trial. The court is able to render a fair and just determination on the merits. The court has an extensive record of affidavits, transcripts of cross-examination and documentary evidence attached to the affidavits which provide the court with sufficient objective evidence to make determinations on the issues.

[128] The court can make necessary findings of fact and there are no credibility issues that require a trial. The court finds that summary judgment is a proportionate, more expeditious, and less expensive means to achieve a just result.

[129] The central issue in determining whether a summary judgment should be rendered is whether the conduct of the plaintiff in refusing for a period of approximately two months amounted to an anticipatory breach thereby justifying the plaintiff's termination of the APS. I find that there was not a breach that amounts to a repudiation of the contract nor representations that would entitle the purchasers to a rescission of the agreement.

[130] The purchasers believe that they lost opportunity by the refusal of the plaintiff to allow the list. There has been no quantification by evidence of what they lost by not having it listed on MLS. They claim \$40,000 but there is no evidence of how they arrived at this figure.

### **Costs**

[131] The plaintiff, as the successful party, is presumptively entitled to costs. If the parties cannot agree on the issue of costs, they are to submit their two-page written submissions along with offers to settle by October 28, 2025. The parties are not to file bills of costs as they have already been filed on Case Center.

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Justice A. Doyle

**Date: October 21, 2025**

**CITATION:** *Caivan (Fox Run) Limited v. Gangwal et al*, 2025 ONSC 5604  
**COURT FILE NO.:** CV-24-94769  
**DATE:** 2025/10/21

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**RE:** Caivan (Fox Run) Limited, Plaintiff

**-and-**

Abhishek Gangwal and Suhani Gangwal,  
Defendant

**COUNSEL:** Charlene Kavanagh & Caroline Bedard  
for the Plaintiff

Sherif Rizk for the Defendants

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**REASONS FOR DECISION**

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A. DOYLE J.

**Released: October 21, 2025**