CITATION: Ambria (Bloomington) Limited v. Esmaeili, 2025 ONSC 6505
COURT FILE NO.: CV-23-00694589-0000
DATE: 20251120

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
AMBRIA (BLOOMINGTON) LIMITED	)	*Michael Doyle*, for the Plaintiff
	)	
Plaintiff (Defendant to the Counterclaim)	)	
	)	
- and -	)	
	)	
REZA ESMAEILI and SARA BIAN a.k.a. SARA BINA	)	*Jordan Goldblatt* and *Jacqueline Houston*, for the Defendants
	)	
Defendants (Plaintiffs by Counterclaim)	)	
	)	
	)	**HEARD at Toronto:** October 31, 2025

J.K. PENMAN J.

REASONS FOR JUDGMENT

Overview

[1] The action in this case involves a claim for damages relating to a failed agreement of purchase and sale.

[2] The plaintiff, Ambria (Bloomington) Limited ("Ambria") is a builder of residential homes. The defendants, Reza Esmaeili ("Esmaeili) and Sara Bian, entered into an Agreement of Purchase and Sale (the "Agreement") with Ambria to purchase a house that was yet to be constructed. Shortly thereafter, the defendants defaulted, causing Ambria to terminate the Agreement. Ambria advised the defendants that the funds they

paid were forfeited, and the Agreement was terminated “effective immediately”. Ambria did not build the Property and kept the deposit.

[3] Ambria brought a claim for damages in excess of $1 million. On this motion, Ambria seeks a declaration that the Agreement is still “binding and enforceable.” Ambria has also brought a motion for summary judgement.

[4] The defendants submit that Ambria has no further claim to damages, as it already accepted the defendants’ repudiation of the contract. The defendants also submit that even if Ambria was entitled to damages, it has not proven the damages on the motion. The defendants seek boomerang summary judgment and ask that Ambria’s claim be dismissed.

[5] The issues in the motion before me are as follows:

- Is the opinion evidence of Stefanie Cooper admissible?
- Was the Agreement of Purchase and Sale terminated?
- Is Ambria entitled to damages?
- Is boomerang summary judgment appropriate?

[6] For the reasons that follow, the plaintiff’s motion is dismissed. The defendants’ motion for boomerang summary judgment is granted. There is no genuine issue for trial.

Factual Background

[7] In 2002, Ambria was developing a new home building project consisting of free hold units on Old Bloomington Road in Aurora, Ontario (the “Project”).

[8] On February 8, 2022, the defendants entered into the Agreement with Ambria. The defendants agreed to purchase a property located in the Project, known as Lot 20, Model 70-03, Elevation A, (the “Property”).

[9] The purchase price was $4,009,990. It required an initial deposit of $30,000, which the defendants paid on February 8, 2022.

[10] Five further deposits were to be paid by the defendants. The second deposit was in the amount of $70,249.75, and due on March 8, 2022 (the “second deposit”). The defendants did not pay the second deposit and requested another extension while they attempted to sell their own property. The parties subsequently agreed to a one-month extension for the second deposit, making the new due date April 8, 2022. The Agreement was amended accordingly.

[11] A further extension for payment of deposits was sought by the defendants but denied by Ambria. The parties agreed that the third deposit in the amount of $100,249.75 was due on August 9, 2022.

[12] The defendants missed this third payment deadline. The next day, August 10, 2022, they advised that due to the “current market situation”, they could not sell their property and did not have the funds for remaining deposits. The cheques for the second and third deposits were returned due to insufficient funds.

[13] On November 14, 2022, Ambria gave the defendants until November 21, 2022, to remedy their default under the Agreement. They did not.

[14] On November 30, 2022, Ambria wrote to the defendants stating, “said Purchas[e] Agreement is hereby terminated effective immediately. All monies previously paid by you are forfeited in full to the Vendor as liquidated damages and not as penalty, without prejudice to the other rights and remedies available to the Vendor at contract, law and equity.”

[15] On February 13, 2022, Ambria sued the defendants for breach of contract. On July 6, 2023, the defendants defended and counterclaimed, taking the position that Ambria was not in a position to carry out the Agreement. The defendants are no longer pursuing their counterclaim.

Legal Principles

i. Summary Judgment

[16] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides: “[t]he court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”.

[17] Rule 20.04(2.1) sets out the court's powers on a motion for summary judgment as follows:

> In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
>
> 1. Weighing the evidence.;
>
> 2. Evaluating the credibility of a deponent.;
>
> 3. Drawing any reasonable inference from the evidence.

[18] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66, the Supreme Court of Canada established a road map for how a motions judge should approach a motion for summary judgment:

> [T]he judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole. [Emphasis in original.]

[19] 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: *Hryniak*, at para. 49; *Moffitt v. TD Canada Trust*, 2023 ONCA 349, 483 D.L.R. (4th) 432, at para. 39.

[20] Summary judgment "remains the exception not the rule": *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44. The court should use its enhanced powers and decide a motion for summary judgment only where it leads to "a fair process and just adjudication": *Ang v. Lin*, 2023 ONSC 4446, at para. 15, citing *Perras Mongenais*, at para. 44 and *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6.

Request for Adjournment

[21] At the commencement of the hearing, Ambria brought a motion for adjournment, citing that its evidentiary record on the motion was "not complete". The plaintiff sought to "regularize" the record, conduct further cross-examinations, and file a factum. The defendants opposed the motion and submitted that the motion should be argued on the record before the court.

[22] Ambria commenced this claim on February 13, 2023. The defendants defended the action and served their Statement of Defence and Counterclaim on July 6, 2023. Esmaeili was examined on December 16, 2024, and a former Ambria employee was examined on December 17, 2024.

[23] The motion for summary judgment was originally scheduled for April 30, 2025. Pursuant to the Order of Akazaki J., Ambria's evidence was to be served by May 30, 2025. By that date, Ambria had filed only a single affidavit from Matthew D'Ambrosio, the

Director of Corporate and Legal at Ambria. Relying on the limited record, the defendants elected not to serve responding evidence.

[24] Ambria's factum was initially due on August 15, 2025, but an extension was granted to September 5, 2025. No factum was delivered.

[25] On September 8, 2025, Ambria advised it was seeking an expert opinion. In light of this late development, both parties' counsel agreed that a case conference was appropriate. The defendants did not suggest nor agree to an adjournment of the motion.

[26] By September 30, 2025, with no expert report or request for a case conference, the defendants confirmed their intention to proceed in accordance with the timetable.

[27] On October 20, 2025, Ambria served a supplementary record containing an opinion affidavit from Stefanie Cooper. The defendants objected to its admissibility and indicated they would challenge it at the hearing. Expert reports were not raised by counsel and were not part of the timetable ordered by Akazaki J.

[28] On October 28, 2025, Ambria served a further supplementary record, including a new affidavit from Mr. D'Ambrosio. It also indicated it would be seeking an adjournment of the hearing. This, too, was not contemplated by Akazaki J.'s order. The defendants oppose the adjournment request and submit that the affidavit constitutes inadmissible case-splitting but, if admitted, submissions could be made as to its weight.

[29] Now, counsel for Ambria submits that an adjournment is necessary to allow Ambria to adduce additional expert evidence on property valuation and loss of bargain damages. Counsel submits that difficulties have arisen in obtaining the expert report and that there are "gaps" in the damages evidence. However, no particulars were provided regarding the difficulties in obtaining a report, the nature of the additional evidence, the identity of the proposed expert, or the anticipated timeline.

[30] In my view, the submissions advanced by Ambria amount to speculation and do not establish a sufficient basis for adjournment. This is Ambria's own motion for summary judgment, seeking damages arising from a failed real estate transaction. The issues are straightforward, and the applicable legal test is well established. Most importantly, in a motion of summary judgment, the court is entitled to assume that the plaintiff has put its "best foot forward" and that the records contain all the evidence which the parties will present at trial: *New Solutions Extrusion Corporation v. Gauthier*, 2010 ONSC 1037, at para. 12, aff'd 2010 ONSC 348, citing *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R., at para. 11.

[31] When considering whether to grant an adjournment, the court must balance the interests of the plaintiff, the interests of the defendant and the interests of the

administration of justice in the orderly processing of civil trials on their merits: *Graham v. Vandersloot*, 2012 ONCA 60, 108 O.R. (3d) 641, at para. 5.

[32] While the granting of adjournments is discretionary, it must be grounded in a demonstrable need. I do not accept counsel's contention that the evidentiary record is "not complete." This is Ambria's motion. Ambria missed the timetabled dates that had been established and agreed to, has filed additional evidence, and is now belatedly attempting to supplement its case.

[33] The motion for an adjournment is dismissed. The motion for summary judgment will be argued on the record before the court.

Issue 1: Is the opinion evidence of Stefanie Cooper admissible?

[34] Ambria seeks leave to rely on the opinion evidence of Stefanie Cooper; a realtor registered with the Real Estate Council of Ontario ("RECO"). Ms. Cooper is the General Manager, Sales and Marketing Director for Team2000, who are the exclusive realtors for Ambria.

[35] The defendants oppose the admission of Ms. Cooper's opinion evidence on the grounds that her evidence does not satisfy the *Mohan* criteria, specifically, that she is not independent and that she is not a "properly qualified expert": *White Burgess Langille Inman v. Abbott and Haliburton Co.,* 2015 SCC 23, [2015] 2 S.C.R. 182, at paras. 19, 53 ("*White Burgess*"). I agree.

[36] The Supreme Court has cautioned that "impartiality, independence, and absence of bias" underscore expert evidence: *White Burgess*, at para. 32. This goes not just to the weight of the evidence but also to its admissibility.

[37] The onus is on the defendants to establish that there is a realistic concern about the expert's evidence. If they are able to do so, Ambria must satisfy the court that the evidence is admissible on a balance of probabilities.

[38] I must assess whether Ms. Cooper is in a relationship to which she would be unable to carry out her primary duty as an expert in a "fair, nonpartisan and objective" manner: *White Burgess*, at para. 50.

[39] I recognize that Ms. Cooper delivered a signed Acknowledgment of Experts Duty form. This does not, in and of itself, immunize her evidence from challenge. This is especially true, as the factual record supports a legitimate concern that she lacks independence and has a potential for bias.

[40] Ms. Cooper was the realtor who personally sold the property to the defendants. She gave Ambria strategic advice on how to mitigate the damages. She opined on her own brokerage firm's mitigation efforts, which she described as "reasonable and consistent with accepted industry practice".

[41] Ms. Cooper was the point of contact between Ambria and the defendants until the date of the breach and commencement of the litigation. Her opinion is based on her experience with the Project and the Property that is at the heart of his litigation.

[42] I am persuaded that Ms. Cooper's evidence is entirely tainted by her work for Ambria, "assess[ing] the value of the Property", facilitating communications with the defendants, and providing advice on mitigating damages. As the defendants put it, "this is an opinion borne out of an echo chamber".

[43] I am not satisfied that Ms. Cooper's evidence is sufficiently independent and impartial. It will not be admitted.

[44] I will add that I am not satisfied that Ms. Cooper is properly qualified. Ms. Cooper has provided no CV of her experience, or whether she has ever been qualified to give expert evidence before. Her qualifications are that she has been a registrant with RECO since 2011 and the General Manager of Sales and Marketing for Team2000 for 10 years.

[45] It is not clear to me how this makes Ms. Cooper an expert on the valuation of properties, which is typically done through a qualified appraiser or valuator. I am not persuaded that Ms. Cooper has the requisite "special" or "peculiar" knowledge to qualify her as an expert in this area: *Dulong v. Merrill Lynch Canada Inc*. (2006), 80 O.R. (3d) 378 (S.C.), at pp. 386-87.

[46] The report itself is also lacking in analysis, detail and sources. Ms. Cooper does not provide helpful analysis but rather opines on the value of the Property at the time it was purchased. She repeatedly states that she reviewed certain information, but she does not discuss the nature or details of that information. Ms. Cooper refers to "market conditions" without any evidence as to what those "market conditions" were at the time.

[47] Ms. Cooper also opines that her valuation is based on "comparable sales". However, she contradicts this by stating that there is an "absence of comparable data", and that there are no "direct comparables". While Ms. Cooper refers to resources and datasets, none of the reports are identified or cited.

[48] Ms. Cooper opines that she could have looked beyond Aurora to establish the Property's value but did not do so, out of concern for "diluting analytical reliability". This weakens the value of Ms. Cooper's "opinion".

[49] I do not accept Ambria's argument that in answer to these issues, the defendants could have cross-examined Ms. Cooper. There is no obligation on the defendant to examine witnesses whose evidence is not properly before the court: *Suwary v. Women's College Hospital*, 2008 CanLII 8789 (Ont. S.C.), at para. 31.

[50] It is concerning that Ms. Cooper is, in part, providing an opinion of her own work. She is inextricably tied to this litigation and its result. I have carefully considered the evidence and arguments of counsel, and ultimately, I am not satisfied that Ms. Cooper's

opinion evidence is sufficiently independent and impartial. In addition, I am not satisfied that she is properly qualified.

[51] It is my view that the report has very little probative value, as it never actually opines on the value of the Property at any date other than the purchase date. This is important because the plaintiff is seeking loss of bargain damages.

[52] The opinion evidence of Ms. Cooper will not be admitted

Issue 2: Was the Agreement of Purchase and Sale terminated?

[53] There is no dispute that the defendants defaulted on the Agreement. Ambria claims, however, that the Agreement is still "binding and enforceable". I do not agree.

[54] The defendants entered into the Agreement in February 2022 for a pre-constructed property valued at over $4 million. Under the Agreement, the defendants paid an initial deposit of $30,000 and undertook to pay a second deposit by March 2022. That second deposit was never made.

[55] The defendants sought two extensions between March and November 2022. The first extension was granted while the second was not. On November 21, 2022, the defendants communicated by email to Ambria's counsel that they are unable to make any further payments. They requested that the contract be cancelled. This communication constitutes a clear and unequivocal declaration of anticipatory breach and repudiation of the Agreement. The defendants expressly indicated they were not in a position to perform their contractual obligations, thereby placing the innocent party, Ambria, to an election.

[56] The law is well-settled: upon repudiation, the innocent party may i) hold the contract open for performance; or ii) accept the repudiation, thereby terminating the contract. Accepting the repudiation brings the contract to an end, relieving both parties of future obligations while the rights and obligations that have already matured are not extinguished.

[57] As the Supreme Court of Canada stated in *Guarantee Co. of North America v. Gordon Capital Corp*., [1999] 3 S.C.R. 432, at para. 40: if "the non-repudiating party accepts the repudiation, the contract is terminated, and the parties are discharged from ***future obligations***" [Emphasis added].

[58] The Agreement directly contemplated that Ambria had a right to unilaterally declare the purchaser in default and the Agreement terminated. Section 37.1 of the Agreement reads as follows:

> 37.1 In the event that the Purchaser defaults on any of its obligations contained in this Agreement, …, then the Vendor, in addition to any other rights or remedies this Agreement provides, may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained in this

> Agreement (including without limitation, the right to make colour and finish selections with respect to the Dwelling as provided or contemplated in this Agreement), ***and/or unilaterally declare the Purchaser in default and/or this Agreement to be terminated and of no further force or effect***, whereupon, save and except as provided in the Addendum to the contrary, the Deposits and Extras theretofore paid, together with all interest accrued thereon at the prescribed rate pursuant to the Addendum, if any, shall be forfeited to the Vendor, in addition to(and without prejudice to) any other rights or remedies available to the Vendor at law or in equity. […]

[59] The Agreement expressly provides that upon purchaser default, the Agreement is terminated, and the purchaser releases the vendor from further obligations. The clause further stipulates that deposits shall be forfeited to the vendor. This makes commercial sense and is in keeping with a reading of the whole of the Agreement. In the absence of such a clause, a defaulting purchaser may still expect the vendor to build the property. I do not accept this is what the parties bargained for: *Sattva Capital Corp. v Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 57-58.

[60] Ambria elected to accept the defendant's repudiation on November 30, 2022. From that point forward, the contract was terminated. Ambria was relieved of its obligations to construct the Property, and the defendants forfeited their deposit. Ambria's rights to pursue remedies at law or equity are confined to those accrued prior to termination. Claims for future costs or lost profits are not recoverable because the parties agreed that termination extinguishes obligations going forward.

[61] By accepting the repudiation, Ambria exercised its contractual and legal right to terminate. The clause allows the vendor to unilaterally terminate the contract, keep the purchaser's deposit, and pursue "any other rights or remedies available to the vendor at law or in equity". What Ambria must recognize is, by accepting the defendant's repudiation and terminating the contract, Ambria no longer has the right in law or equity to pursue further damages. In other words, by explicitly stating that it was terminating the contract, Ambria relieved both itself and the defendants from any further obligations. While the deposits can be forfeited, Ambria cannot now seek damages as if the contract had been performed. To do so would contradict the express terms of the Agreement and the governing principles of contract law.

[62] I am satisfied that Ambria accepted the repudiation of the Agreement and provided notice to the defendants that it was terminating the Agreement "effective immediately". By virtue of the explicit wording of the Agreement, no further obligations were imposed on the parties.

Issue 3: Is Ambria entitled to damages?

[63] The question of damages on early default is specifically addressed in the Agreement; that is, forfeit of the deposit. That is what the Agreement contemplated, and that is what occurred in this case.

[64] In *Domicile Developments Inc.*, *v. MacTavish* (1999), 45 O.R. (3d) 302 (C.A.), the purchaser entered into an agreement with the vendor to buy a property, with a closing date and a "time is of the essence" clause. The purchaser repudiated the agreement, but the vendor rejected the repudiation and kept the agreement alive. The vendor was not ready to close on the agreed date because the house was not substantially completed. Neither party tendered. The vendor later resold the house to a third party without setting a new closing date or reinstating the time is of the essence clause. The court dismissed the vendor's claim for damages against the purchaser, finding that it had breached the agreement by failing to meet its own obligations: *Domicile*, at pp. 307-08. This relieved the purchaser of liability.

[65] This is analogous to the present case. Ambria elected to terminate the Agreement and by doing so, the obligations of both parties came to an end. Moreover, there is no evidence that Ambria performed its side of the Agreement. To the contrary, Ambria conceded that the Property was never built. Most importantly, Ambria agreed that the Agreement was at an end.

[66] Ambria cannot now claim damages as though it performed the Agreement, or as in *MacTavish*, kept the Agreement alive. Even if the Agreement was still "binding and enforceable", Ambria has not performed its own obligations. The Property was never built, Ambria gave notice the Agreement was terminated, and the defendants were provided with a release. Ambria has no entitlement to damages.

[67] Even if I am incorrect in this finding, I would not award damages because Ambria has failed to prove any loss. Ambria asserts that the default termination caused damages exceeding $1 million. It is well established that a plaintiff must prove the quantum of damages flowing from the breach; "reliance on guesswork is not appropriate".: *Martin v. Goldfarb*, 1998 CanLII 4150 (ON CA).

[68] Up until three days before the hearing, Ambria relied on a single affidavit from Mr. D'Ambrosio addressing damages. That affidavit contained only two paragraphs referencing categories of damages: carrying costs, construction costs, remarketing costs, administrative fees, and the anticipated difference between the purchase price and its current value. No supporting documentation, such as reports, invoices, agreements, or policies, was appended. The affidavit consisted of bald, unparticularized, and unsubstantiated assertions.

[69] The plaintiffs then served a supplementary affidavit from Mr. D'Ambrosio, dated October 28, 2025, which purported to provide particulars of the damages referenced in the first affidavit.

[70] The defendants object to the admissibility of the supplementary affidavit, arguing that it constitutes impermissible case-splitting. They submit that they were entitled to know the case against them and that allowing new evidence at this stage would be unfair.

[71] In *Johnson v. North American Palladium Ltd.*, 2018 ONSC 4496, at para. 13, Perell J. explained:

> The rule against case-splitting restricts reply evidence and submissions to matters raised by the responding party and does not permit new evidence. The rationale is that the defendant is entitled to know and respond to the case being made. It is intrinsically unfair for a plaintiff to add new evidence or argument after the defendant has completed its case.

[72] That is precisely what occurred here. Ambria's motion record was filed on May 30, 2025. Based on that record, the defendants elected not to deliver responding evidence. Written submissions were exchanged under the agreed timetable. On the eve of the hearing – after reviewing the defendants' argument on insufficiency – Ambria sought to introduce a supplementary affidavit to fill evidentiary gaps.

[73] No explanation has been provided for this late filing. This action was commenced in April 2023 as a claim for damages. Ambria was required to prove those damages. The expenses now raised would have been known at the time of breach and throughout the scheduling of this motion.

[74] Ambria's approach is fundamentally unfair, and I am not permitting it to rely on Mr. D'Ambrosio's supplementary affidavit.

[75] Even if I were to admit Mr. D'Ambrosio's supplementary affidavit, I am not persuaded that it provides a reliable basis upon which I can assess damages. I will briefly address some of the assertions in the affidavits to illustrate my concerns.

[76] In Mr. D'Ambrosio's original affidavit, he attested that Ambria had suffered "carrying costs" in the amount of $243,517.72, which includes interest, insurance, utilities and property taxes. There was no indication on how Ambria arrived at that figure.

[77] In the second affidavit, Ambria asserts that their interest calculations now amount to $324,251.51. This $80,733.79 increase is seemingly based on the theory that had the defendants not defaulted, Ambria would have earned interest on the deposit monies received. This is not a reliable measure. Ambria would have incurred construction costs, which presumably would have been paid with the deposit funds. It is not believable that the money would be sitting unused, earning interest.

[78] Additionally, Ambria now provides documentation for property taxes. It suggests that 741 days have passed from the date of closing to the date of the hearing. Therefore, Ambria states that it has incurred $1,633.99 in property taxes, which it would not have been responsible for had the defendants performed the contract. However, Ambria has

included costs of insurance and utilities along with the property taxes in its overall calculation of carrying costs, for which there is no supporting documentation or evidence. I am unable to properly assess the merits of the claim for carrying costs given how it has been presented.

[79] In Mr. D'Ambrosio's original affidavit, he stated that construction or "soft costs" were estimated to be $210,000 more than originally budgeted. It is unclear in the affidavit what "construction or soft costs" entail. The costs were also assessed based on the "termination and closing date". The difficulty is that those are different dates – November 30, 2022, was the termination date, and October 24, 2023, was the anticipated closing date.

[80] Now based on an opinion from "Manocchio", Mr. D'Ambrosio attests that construction costs would be 10% higher since the purchaser's default. He states that Ambria now requires an additional $111,185.92 to construct the Property. There is no evidence as to who Manocchio is, or how it is they came to their calculations. This person was not referred to in the first affidavit. There is also no explanation for the increase of $111,185.92. On the record before me, it appears to have been "picked out of thin air."

[81] In Mr. D'Ambrosio's first affidavit, he claimed remarketing costs of $29,030. Now Mr. D'Ambrosio opines that an additional $40,000 would be required for remarketing the Property. Mr. D'Ambrosio attests that this is because of a 38% increase in marketing costs since the Agreement was terminated. It is not clear from the record, how the 38% increase was calculated, or why remarketing the Property will cost so much more than when it was originally marketed. The affidavit refers to increased marketing budgets for all 50 lots that remain unsold, averaging at $15,470 per lot. This is an odd calculation. It appears to be premised on the fact that there were 50 unsold lots in 2021, and 50 unsold lots in 2025. I am left wondering why the marketing costs have risen so dramatically when the number of unsold lots has not changed. This is another unreliable measure on which I am being asked to assess damages.

[82] Mr. D'Ambrosio, in his original affidavit, claimed $25,000 in administrative fees, again with no particularization or documentation. In his supplementary affidavit, Mr. D'Ambrosio now claims double that amount at $50,000. This figure is based on costs associated with several other defaulting purchasers and the termination of corresponding Agreements of Purchase and Sale. As a result, Ambria's team of employees was required to expend significant company time to deal with the fallout of these defaults. However, I fail to see how costs associated with other defaulting purchasers is the responsibility of these defendants. Again, these are unreliable assertions with no evidentiary foundation.

[83] Ambria claims loss of bargain damages in the amount of $801,998. This figure represents a difference of approximately 20% due to market decline. These damages have not been proven. First, the damage period does not extend beyond the date of the breach and second, given my conclusion that Ms. Cooper's evidence is not admissible, there is no evidence on this point.

[84] Ambria has not established a claim for damages.

Issue 4: Is Boomerang Summary Judgment appropriate?

[85] Both parties agree that this case is suitable for summary judgment. Based on the admissible evidence before me, I am satisfied that the issues are not complex, the paper record is straightforward, and there are no credibility or factual issues in dispute.

[86] The parties on a summary judgment motion must “lead trump or risk losing”. I am entitled to assume that the records contain all the evidence which the parties will present at trial. Given the onus placed on the moving party to provide supporting affidavit or other evidence, “it is not just the responding party who has an obligation to 'lead trump or risk losing'”: *Ipex Inc. v. Lubrizol Advanced Materials Canada*, 2015 ONSC 6580, at para. 28.

[87] Ambria has been on notice that the defendants are seeking boomerang summary judgment. On a motion for summary judgment, the judge may grant judgment in favour of a responding party, even in the absence of a cross-motion for such relief: *Singh v. Trump*, 2016 ONCA 747, 408 D.L.R. (4th) 235, at para. 147; *Saxberg v. Seargeant Picard Incorporated*, 2024 ONCA 931, at paras. 37-40. There is no procedural unfairness to this approach in this case as the only evidence that has been proffered is by Ambria.

[88] Ambria has moved for summary judgment, and I am satisfied based on the evidence and submissions of counsel that the parties have put their “best foot forward.” Ambria has put before the court the evidence and facts necessary to determine whether Ambria is entitled to damages. I have found that Ambria accepted the termination of the Agreement, and on the explicit wording of the Agreement, the obligations of the parties ceased at that time. No future obligations existed from that point onwards, and Ambria has no claim for damages.

Conclusion

[89] Ambria has not satisfied me that they are entitled to summary judgment. There is no genuine issue for trial. The only reasonable outcome in the circumstances is that Ambria’s claim be dismissed.

Costs

[90] I would encourage the parties to try to settle costs of the motion. If they cannot, the defendants may serve and file written cost submissions within 20 days of the release of these Reasons for Judgment, followed by the plaintiff’s written cost submissions within a further 15 days. The costs submissions shall not exceed three pages in length, excluding the Bill of Costs.

J.K. Penman J.

Released: November 20, 2025

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(Defendant to the Counterclaim)

- and -

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a.k.a. SARA BINA
Defendants
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REASONS FOR JUDGMENT

J.K. Penman J.

Released: November 20, 2025