

**CITATION:** Webster v. Dinardo, 2025 ONSC 6903  
**COURT FILE NO.:** CV-23-03  
**DATE:** 2025/12/9

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**BETWEEN:** Keith Webster

Plaintiff/Responding party

**AND:**

Enrico Dinardo

Defendant/moving party

**BEFORE:** The Honourable Justice R.J. Nightingale

**COUNSEL:** Bruce MacDonald, Counsel for the Defendant/moving party

Matthew Jarrett, Counsel for the Plaintiff /responding party

**HEARD:** November 25, 2025

**ENDORSEMENT**

- [1] The plaintiff brought a summary judgment motion against the defendant as a result of a failed real estate transaction. (the “second summary judgment motion”).
- [2] The defendant in this motion seeks an order under r. 21.01(3)(d) striking out the plaintiff’s second summary judgment motion on the basis that the issue raised therein is *res judicata*. He submits that it has already been determined in the plaintiff’s prior summary judgment motion granted on August 6, 2024 by Goodman J in *Webster v. Dinardo*, 2024 ONSC 4356 which disposed of the action on a final basis and from which no appeal was taken.
- [3] He also states that the plaintiff’s second summary judgment motion is an abuse of process.

- [4] The plaintiff states that the damages he now claims in his second summary judgment motion was not plead on his original summary judgment motion before Goodman J who did not grant damages for same. Accordingly, the plaintiff states he can now make this further claim for damages for loss of value of the property in question pursuant to r. 20.07 which states that “A plaintiff who obtains summary judgment may proceed against the same defendant for any other relief.”
- [5] The plaintiff commenced his action in February 2023 claiming damages against the defendant arising out of a failed real estate transaction. The defendant purchaser of the plaintiff’s home in Caledonia did not dispute that he breached the agreement by failing to close the transaction.
- [6] The plaintiff’s statement of claim alleged he suffered damages as the value of his Caledonia property had dropped by approximately \$90,000 since the closing date. The plaintiff was unable to sell the property because of the significant downturn in the housing market and he still owned it.
- [7] He also alleged that he sustained damages of \$212,800 based on the difference between the amount he was selling the Caledonia property for and the amount that he was required to purchase his new property in Alberta.
- [8] The plaintiff brought his motion for summary judgment before Goodman J for his damages. His factum specifically claimed he was seeking the following damages (among other things):
- “23(a) \$212,880 being the difference between the sale price of the Agreement and the Alberta Agreement or, alternatively, \$100,000 for the loss of value of the Property between the May 1st, 2022, date of the Agreement and the August 2nd, 2022, date of breach/closing.”
- [9] The plaintiff’s supporting affidavit confirmed that position. Moreover, at paragraph 38, the plaintiff’s factum stated:
- “In the circumstances, requesting this Court grant only \$100,000 in damages for the difference between the Agreement price and the fair market value at the date of breach/closing when it is clear the Property was almost certainly worth even less, given there was not a single showing or offer, is unreasonably generous to the Defendant.”

- [10] The plaintiff alleges that defendant's counsel argued before Goodman J that the plaintiff's claim for relief for loss of value of the Caledonia property was not before him on the motion. He alleges that Goodman J agreed with that defence position when he stated at paragraph 37:

“The relief related to damages for the alleged loss of value in the Caledonia Property is not pleaded for this motion.”

- [11] Defendant's counsel denies that he made that oral or written submission before Goodman J. Rather, he referred to the defendant's factum that was before Goodman J which stated the following:

“2(b). Damages - the plaintiff has failed to provide proper evidence of his damages and his claimed amounts are speculative and/or are not related to the breach of contract alleged by him in this proceeding.”

“14. The plaintiff claims losses for theoretical devaluation of his Caledonia property without having provided any expert evidence to support the claim and having elected to continue to reside in the property.”

“23. The fact is that the plaintiff chose not to resell his property, which sale might have provided some evidence of his loss. Neither has the plaintiff provided any valuation evidence to establish any loss of value arising out of the failed real estate transaction. In fact, the plaintiff listed his property for only three weeks, has not put any expert opinion evidence before the Court regarding the value of the property either at the time of the failed transaction or the present time.”

“24. It is the plaintiff's obligation to put his best foot forward and there is no evidence to support losses associated with a decrease in value of the property.”

- [12] Defendant's counsel refers to paragraph 15 of Goodman J's decision which stated:

“The defendant does not dispute the breach but submits that the plaintiff has proffered no reliable evidence to suggest regarding his loss or damages. The plaintiff has not provided a reliable and proper market value of the property at the time of the breach on August 2, 2022.”

- [13] Accordingly, I cannot and do not conclude that defendant's counsel made that submission suggested by plaintiff's counsel in the absence of confirming evidence.
- [14] Goodman J at paragraph 29 considered the plaintiff's claim for damages of \$212,800 being the difference less commission between the sale price of the plaintiff's Caledonia property and the purchase price of his property in Alberta. He dismissed that claim and agreed with the defendant that this calculation was not a proper measure of damages and not related to an alleged breach of the contract. It was too remote and not in the reasonable contemplation of the parties.
- [15] Goodman J allowed the plaintiff's damages of \$38,005 incurred to settle the plaintiff's breach of the Alberta agreement on reasonable terms and \$5,000 as compensation for the interest, closing costs and related expenses for the failed Caledonia agreement.
- [16] With respect to the plaintiff's claim for damages for loss of value in the Caledonia property, Goodman J at paragraph 30 stated, "In oral submissions, the plaintiff conceded that his better position reflected the alternative claim, namely \$100,000, arising from breach of contract."
- [17] As indicated above, the plaintiff, relying on the first sentence Goodman J's paragraph 37, states that he can now pursue his claim for damages for the loss of value in the Caledonia property under r. 20.07 as he now has obtained and provided a retroactive appraisal and comparative market analysis of the realtor who unsuccessfully relisted the plaintiff's property following the breach of the agreement.
- [18] I disagree with that position for the following reasons.
- [19] Goodman J at paragraphs 31 and 32 did consider the issue of the damages for loss of value of the Caledonia property. He found that the evidence led by the plaintiff was that the property was relisted within a few days for only three weeks. He also found that the plaintiff had not provided any cogent valuation evidence to establish any loss of value arising out of the failed real estate transaction. He stated that the plaintiff had not put any qualified expert opinion evidence before the court regarding the value of the property either at the time of the failed transaction, shortly thereafter or the present time.

- [20] Goodman J specifically found that a market valuation by a realtor with a limited window for offers did not come close to satisfy expert reliable valuation opinion evidence. He concluded that no expert evidence was obtained and he was not persuaded that an “expert” market valuation report with a limited sales window was sufficient for the motion before him.
- [21] Although Goodman J noted at the beginning of paragraph 37 that the relief related to the damages for the alleged loss of value in the Caledonia property was not pleaded for that motion, the balance of that paragraph makes it clear that he did consider and decide that issue. The entire paragraph states as follows:
- “The relief related to damages for the alleged loss of value in the Caledonia Property is not pleaded for this motion. The plaintiff’s obligation is to establish damages applies before any issue of mitigation arises. Nevertheless, if I am in error on this point, as mentioned, I find that the damages for the specific claim have not been established on a balance of probabilities. On the evidence adduced on this motion, the plaintiff has failed to establish the market value of the property.”
- [22] Accordingly, Goodman J at paragraphs 45 and 46 for all of these reasons granted judgment in favour of the plaintiff in the amount of \$43,500 plus applicable interest but dismissed the other claims for damages. The judgment, including costs, was not appealed and has been paid in full by the defendant.
- [23] I conclude that the plaintiff is prevented from re-litigating the issue of the loss of value damages regarding the Caledonia property based on the principle of *res judicata*.
- [24] First, issue estoppel applies as a bar to raising the issue that had been earlier decided in the prior separate summary judgment motion in this action by Goodman J.
- [25] Second, the plaintiff is also prevented from doing so based on cause of action estoppel as the issue of the loss of value damages was or could have been the subject of the previous proceeding.
- [26] Issue estoppel, as noted in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, has been established by the defendant. The issue was the same as the one decided in the prior decision of Goodman J, his prior decision is final and the parties in both summary judgment proceedings are the same.

- [27] The defendant has also established that the plaintiff cannot now pursue the loss of value damages issue based on cause of action estoppel as all four factors noted in *Dosen v. Meloche Monnex Financial Services Inc.*, 2021 ONCA 141 following *The Catalyst Capital Group Inc. v. Vimpel Com Ltd.*, 2019 ONCA 354 have been established in this case.
- [28] First, Goodman J's decision in the prior summary judgment proceeding was a final one.
- [29] Second, the parties in the prior summary judgment motion in the same action before him and in this plaintiff's second summary judgment motion are the same.
- [30] Third, the cause of action for damages as a result of the failed real estate transaction in the plaintiff's prior summary judgment motion before Goodman J was not separate and distinct from his second summary judgment motion.
- [31] Fourth, the basis of the plaintiff's prior summary judgment motion and the second summary judgment motion was argued or could have been argued in the prior summary judgment motion if the plaintiff had exercised reasonable diligence.
- [32] The court in *The Catalyst Capital Group Inc.* confirmed that the parties to a proceeding have an obligation to raise every claim and every defence they wish to have adjudicated in the dispute.
- [33] Goodman J at paragraph 37 went on to assess the plaintiff's damages for loss of value of the Caledonia property if he was wrong on whether that was included in the motion before him. He found that the plaintiff had not established his claim for such damages including because he had filed no expert opinion evidence. He dismissed that claim for damages referring to the long-established law that on summary judgment motions the parties are required to put their best foot forward and lead evidence to address the issues raised.
- [34] Goodman J clearly held that the plaintiff failed to provide the proper and required evidence of the loss of value of the Caledonia property and rejected that claim for that head of damages but awarded damages for the other amounts noted above. Goodman J's decision was final and did not include any reservation of a right by the plaintiff to pursue his loss of value damages if he subsequently obtained the required expert opinion evidence. In my view, the

plaintiff cannot try again to make the same claim for damages that was dismissed because he now says he has that evidence.

- [35] In addition, the plaintiff's attempt now to make another claim for damages for loss of value of the Caledonia property should not be permitted to proceed being an abuse of process of the court. In this case, the plaintiff's second summary judgment motion litigation before this court is in essence an attempt to relitigate the same claim that Goodman J already determined and found was not established because the plaintiff failed to provide the necessary evidence to support it. *Toronto (City); 1255717 Ontario Ltd., et al. v. Glenrio Financing Limited et al.*, 2025 ONSC 1630.
- [36] I also do not accept the plaintiff's submission that r. 20.07 permits him to now claim loss of value damages on the Caledonia property.
- [37] Rule 25.06(9)(a) states that where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed, the amount claimed for each claimant in respect of each claim shall be stated.
- [38] The plaintiff's statement of claim contained a claim for relief and did specify the nature of the relief claimed by him being general damages for breach of contract of \$290,000 which included the loss of value of the Caledonia property.
- [39] The words "other relief" noted in r. 20.07 in my view refers to claims for relief not covered in the original summary judgment motion. In this case, as indicated above, the plaintiff's claim for relief for damages for breach of contract including the loss of value of the Caledonia property clearly was. In addition, the rule should not be interpreted in such a way which would override or not follow the substantial law of issue estoppel and cause of action estoppel both of which have been established in this case.

## Conclusion

- [40] It is plain and obvious and beyond doubt that this is a clear case where the plaintiff's second summary judgment motion for loss of value damages regarding the Caledonia property cannot succeed on the basis of *res judicata* and abuse of process. There are no relevant factors including lack of fairness established that would impeach the result of Goodman J's decision and would

warrant the exercise of the court's discretion to decline to apply the doctrines of *res judicata* and abuse of process in this case.

[41] The defendant's motion is granted and the plaintiff's second summary judgment motion is dismissed.

[42] The plaintiff shall pay to the defendant the sum of \$7,500 for costs including HST and disbursements.

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Nightingale J

**Date:** December 9, 2025

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**B E T W E E N:**

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**ENDORSEMENT**

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R. J. Nightingale, J.

**Released:** December 9, 2025