

COURT OF APPEAL FOR ONTARIO

CITATION: Ictrading Inc. v. Trayanov, 2025 ONCA 793

DATE: 20251121

DOCKET: COA-24-CV-1260

Miller, Paciocco and Favreau JJ.A.

BETWEEN

Ictrading Inc. and Daeja Bjork Kjartandottir for the Estate of Volundur
Thorbjornsson

Defendants
(Appellants)

and

Vasil Trayanov and Olia Stantcheva

Plaintiffs
(Respondents)

Taayo Simmonds and Jamie Pudwell, for the appellants

Pavle Masic, for the respondents

Heard: October 15, 2025

On appeal from the judgment of Justice Rick Leroy of the Superior Court of Justice,
dated April 1, 2025, with reasons reported at 2024 ONSC 5930.

Paciocco J.A.:

I. OVERVIEW

[1] The appellants, Ictrading Inc. (“Ictrading”) and Daeja Bjork Kjartandottir for the estate of Volundur Thorbjornsson (“Wally”), appeal orders arising from a

motion for summary judgment in favour of the respondents, Vasil Trayanov and Olia Stantcheva. For the reasons that follow, I would allow the appeal.

II. MATERIAL FACTS AND DECISION BELOW

[2] In 2016, Wally acquired land in Carleton Place, Ontario (the “Post Yard”) in trust for Ictrading, with a view to establishing a condominium industrial park. Before that acquisition closed, Wally and Ictrading entered a contract with the respondents, who were interested in acquiring an unsevered portion of the Post Yard, described as “Parcel 6”, for the operation of their granite business. The contract provided that the respondents would occupy Parcel 6 immediately after the Post Yard purchase agreement closed, with a view to the respondents purchasing Parcel 6 if Ictrading obtained the necessary municipal approvals. The purchase price was \$275,000. The agreement was conditional on Ictrading obtaining approval from the municipality to convert the Post Yard to a commercial condominium within two years. Ictrading agreed in the contract to “proceed expeditiously with an application to convert”.

[3] Given that the purchase was contingent on approval of the condominium conversion by the municipality, the contract included several terms addressing the parties’ rights and obligations in the event that Ictrading was not able to get approval. The respondents agreed to pay a “deposit” of \$75,000 upfront, which they were entitled to have repaid, “should they elect to demand payment”, if Ictrading failed to convert the Post Yard to a condominium by the end of the

second year after the closing date. The contract stipulated that the respondents' \$75,000 payment would be used by Ice trading to assist in the purchase of the Post Yard.

[4] Monthly payments of \$1,333.33 by the respondents were also provided for. Monthly payments made in the first year were "deemed to be rent for the use and occupation" of Parcel 6, but monthly payments made after the first year were to be credited to the \$275,000 purchase price, should the conversion and transfer occur.

[5] Clause 6 of the contract provided:

6. In the event of a demand for repayment being made, Olia and Vasil shall receive no further compensation for any costs or improvements to Parcel 6 or refund of their payments made as rent, described in this Agreement, and shall vacate Parcel 6 in 30 days.

[6] The appellants initiated the process of condominium conversion without delay. On October 11, 2016, within two weeks of the appellants' acquisition of the Post Yard, Wally appeared before the municipal planning committee with his proposal. He was made aware at that time of multiple zoning deficiencies in his proposal and that the municipal administrator recommended that he submit an industrial plan of subdivision instead, a more expensive and complex process. Evidence was presented that Wally went before the council and planning staff again with various options, including on April 9, 2018, before the two-year period

had expired. However, condominium approval was not obtained by September 30, 2018, the end of the second year after the closing date.

[7] When the two-year period provided for in the contract lapsed, the respondents did not provide the appellants with a demand for repayment of the \$75,000, nor did they vacate the land. However, on September 19, 2018, the respondents registered a Notice of Option to Purchase against the property, and on November 1, 2018, they initiated an action against the appellants for an equitable lien to secure their initial deposit plus the monthly payments they had paid after the first year which were to be credited to the total purchase price of Parcel 6 (totalling approximately \$92,000 at the time). Their alternative claim was for damages for breach of contract,¹ which included these amounts, plus approximately \$140,000 for the costs of improvements they made to Parcel 6. They continued to make monthly payments of \$1,333. Meanwhile, Wally continued to pursue the condominium conversion proposal.

[8] The appellants were noted in default in September 2019, which was ultimately set aside by this court in an earlier appeal: *Trayanov v. Icetradings Inc.*, 2023 ONCA 322 (“*Trayanov (2023)*”). In July 2020, the appellants delivered a statement of defence and brought a counterclaim for damages for breach of

¹ In their statement of claim, the respondents also pleaded “breach of trust” but did not pursue this alternative cause of action in the factum they filed in response to the appellants’ motion for summary judgment. They did not raise the breach of trust claim during the appeal, either. I will therefore say no more about it.

contract and unjust enrichment. In their counterclaim they demanded the respondents pay fair market value rent during their occupancy of the premises after the two-year period expired, commencing in October 2018.

[9] On October 30, 2019, the respondents registered a Certificate of Pending Litigation against the land, and on February 10, 2020, they secured an order that the monthly payments be paid into court, which the respondents continued to make at \$1,333 per month.

[10] On March 8, 2024, the appellants brought a motion for summary judgment on the respondents' claim and on their counterclaim. The motion was heard on September 25, 2024. The respondents opposed the summary judgment procedure, arguing that there were genuine issues requiring a trial. In the alternative, they asked for an order for specific performance or damages for breach of contract and/or unjust enrichment.

[11] The motion judge rejected the respondents' submission that summary judgment was not appropriate. He found that Wally "did what he said he would do" by proposing the conversion of the land, but nevertheless also held that the appellants breached their "duty to act in good faith and take all reasonable steps to complete the sale". The motion judge based this finding primarily on his conclusion that Wally failed "to notify the [respondents] in [a] timely fashion that the proposal in the agreement would never achieve municipal approval" and that

appeal to the Ontario Land Tribunal would be “futile”. The motion judge also found that Wally could have done more by “at least” completing “a cost benefit analysis of the instruction received from the municipality”.² Based on these findings, the motion judge ultimately concluded that “Wally let the [respondents] incur [...] improvements knowing he could not honour the commitment to transfer ownership.” He then cited the legal test for the cause of action of unjust enrichment before concluding that “it would be inequitable for the [appellants] to receive the benefit without fair compensation” and finding that “[f]or [the respondents] the order to relocate is accepted as life altering”.

[12] After engaging in this analysis, the motion judge ordered the appellants to pay damages in the amount of \$285,000 inclusive of all claims, including repayment of the deposit money of \$75,000. The balance of the \$285,000 consisted of \$193,500 for out-of-pocket expenses for improvements made to the property by the respondents, plus \$40,000 for “relocation costs” (which does not appear to have been pleaded by the respondents), minus a 10% discount.

[13] The motion judge also ordered the monthly payments which had been paid into court to be paid to the appellants, and he ordered the respondents to deliver

² I infer from the context of events and from the entirety of the decision that when the motion judge referred to “the instruction [Wally] received from the municipality”, he had in mind the recommendation made by the municipal administrator that Wally should instead pursue an industrial plan of subdivision.

vacant possession “within 60 days of satisfaction of the judgment against the [appellants].”

[14] He denied the respondents’ request for specific performance and did not address the appellants’ counterclaim.

[15] The appellants confirmed during the oral hearing before us that once the motion judge’s decision was released, the respondents, who remain on the property today, ceased making monthly payments into the court or to the appellants.

III. ISSUES

[16] The appellants appeal the motion judge’s order requiring them to pay \$285,000 and seek a direction that the respondents vacate the property within 60 days.³ They also seek an order, as requested in their counterclaim, that the respondents pay market rent of \$4,000 per month for their period of occupancy after the two-year term ended. They raise several grounds of appeal, that I will address in the following order:

- A. The motion judge erred in finding the appellants breached their “duty to act in good faith and take all reasonable steps to complete the sale”.

³ The appellants have not taken issue with the fact that the motion judge granted judgments in favour of the responding party on a motion for summary judgment that they initiated, in the absence of a cross-motion by the responding party (often referred to as a “boomerang” or reverse summary judgment). We make no comment relating to that issue.

B. The motion judge erred in his application of the law of unjust enrichment.

C. The motion judge erred in dismissing the appellants' counterclaim without providing sufficient or adequate reasons.

D. The motion judge erred in his assessment of damages.

[17] The respondents brought a cross-appeal relating to costs awards below, but they did not pursue it. They took no issue in their cross-appeal with the decision of the motion judge not to order specific performance or impose an equitable lien.

[18] I would find that the motion judge made the errors identified by the appellants in issues A, B, and C. It is not necessary to address issue D.

A. THE MOTION JUDGE ERRED IN FINDING THE APPELLANTS BREACHED THEIR “DUTY TO ACT IN GOOD FAITH AND TAKE ALL REASONABLE STEPS TO COMPLETE THE SALE”

[19] As I read the decision, the motion judge found that the appellants breached the contract by breaching their “duty to act in good faith and take all reasonable steps to complete the sale”. He based that conclusion on his findings that they failed to make timely disclosure that the condominium conversion was futile, and they could have done more by “at least [completing] a cost benefit analysis of the instruction received from the municipality”. I am persuaded that the motion judge made palpable and overriding errors in arriving at these conclusions. Before describing those reasoning errors, I will remark on the motion judge’s identification

of the contractual obligation as the “duty to act in good faith and take all reasonable steps to complete the sale”.

[20] The motion judge grounded that duty in the appellants’ promise to “proceed expeditiously with an application to convert the property”, by applying the authorities of *Dynamic Transport Ltd. v. O.K. Detailing Ltd.*, [1978] 2 S.C.R. 1072, at p. 1084, and *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* (2003), 63 O.R. (3d) 304 (C.A.), at para. 23. Those cases held that such obligations may be implied in appropriate cases where a party promises to bring about an event.

[21] The law relating to good faith in contract law has evolved since these decisions were rendered, as a result of the Supreme Court of Canada’s decision in *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494. In *Bhasin*, at para. 33, Cromwell J. explained that “good faith contractual performance is a general organizing principle of the common law of contract which underpins and informs the various rules in which the common law, in various situations and types of relationships, recognizes obligations of good faith contractual performance”. In para. 64, Cromwell J. clarified that the organizing principle is “not a free-standing rule”. Therefore, it is inaccurate for judges to speak generally about the “duty of good faith.” They must instead identify the legal rule derived from the organizing principle of good faith that they are relying upon.

[22] *Bhasin* recognized that one of the rules that derives from the good faith principle imposes “a common law duty which applies to all contracts to act honestly in the performance of contractual obligations”: *Bhasin*, at para. 33. Based on the motion judge’s analysis, I understand him to have found that by not making timely disclosure that the conversion plan was futile, the appellants breached their duty to act honestly in the performance of their contractual obligations.

[23] The motion judge’s apparent reliance on his finding that the appellants could have done more by “at least” completing “a cost benefit analysis of the instruction received from the municipality” is more difficult to characterize as a breach of the duty to act honestly. It is a sufficiency issue, rather than a dishonesty finding. That breach arises, if at all, from the duty to “take all reasonable steps to complete the sale”, which the motion judge identified based on the decisions in *Dynamic Transport* and *Dodge*. As indicated, I am persuaded that the motion judge made palpable and overriding errors in finding the breaches that he did, which I now address.

[24] First, any finding that Wally breached his duty to act honestly in the performance of the contract depends on a finding that he acted dishonestly, which in this case requires a finding that he knew the condominium conversion was futile. In my view, the motion judge’s finding that Wally knew that he could not honour the commitment to transfer ownership sits uncomfortably with evidence of Wally’s lack of sophistication as confirmed by the “amateurish” proposal he presented, as

well as Wally's continuing efforts to gain approval for the conversion until well after the two-year period had expired. Indeed, the respondents argued in their motion materials that by continuing to pursue the condominium conversion after the two-year period had expired, the appellants had extended the timeframe for approval under the contract. They also pleaded that "[i]t was only when [the appellants] realized the costs of fulfilling their obligation under the Agreement were higher than anticipated that they insisted on the strict interpretation of the 2-year timeframe outlined in the Agreement." The motion judge did not attempt to explain his finding in the face of this evidence and the position taken by the respondents.

[25] Second, based on the evidence the motion judge reviewed in his reasons for decision he must have inferred Wally's knowledge from either the information Wally learned at the planning committee meeting of October 11, 2016, or from events that occurred after the expiry of the two-year period when Wally continued to pursue the condominium proposal, which the motion judge recounted in detail. Both lines of inference are problematic. The motion judge initially characterized the outcome of the October 11, 2016, meeting as "not promising", a description that does not sit well with an inference that the shortcomings in the plan would have been so obvious to Wally that he must have known that the proposal was futile. As for Wally's meetings with the council and the planning committee after September 30, 2018, these events are not material to the good faith analysis because by then Wally's obligation to seek a condominium conversion had

expired. Whatever he learned or did on these occasions cannot contribute to a finding relating to his honest performance of the contract.

[26] Finally, to the extent that the motion judge predicated his lack of good faith finding on Wally's failure to complete a cost-benefit analysis relating to the industrial plan of subdivision, this was also an error because the contract was premised on a planned condominium conversion. The appellants had no contractual obligation to consider this alternative plan. A breach finding based on the failure to undertake a cost-benefit analysis also clashes with the motion judge's own finding that the industrial plan of subdivision was "a much more complicated and expensive undertaking than the condominium conversion" and "qualitatively different from a condominium conversion that was contemplated when the agreement was drawn". The motion judge also held that to order the appellants to pursue the industrial plan of subdivision would amount to a "re-write of the Agreement between the parties". If these findings were available to the motion judge based on the record before him, it is difficult to understand why he would fault the appellants for failing to complete a cost-benefit analysis.

[27] I am persuaded that together these palpable reasoning errors undermine the central foundation for the breach of good faith conclusion, since they are the sole foundation upon which that finding is built. I would therefore allow this ground of appeal.

B. THE MOTION JUDGE ERRED IN HIS APPLICATION OF THE LAW OF UNJUST ENRICHMENT

[28] I am also persuaded that the motion judge erred by misapplying the legal test for the equitable cause of action of unjust enrichment.⁴ Although he began his analysis by examining whether there was a breach of contract, when his decision is read as a whole, it becomes evident that he lost sight of this focus and ultimately identified the appellants' liability based on the equitable cause of action of unjust enrichment which has no application in this case given that the relationship between the parties is governed by their contract.

[29] The motion judge's focus on "equity" became evident early in his decision. I agree with the respondents' characterization that the "entirety of the [r]easons is animated by considerations of equity". After finding a breach of the duty to "act in good faith and take all reasonable steps to complete the sale", but before identifying the damages he would be awarding, the motion judge abruptly and without explanation shifted his analysis to focus exclusively on equitable considerations, in disregard of the terms of the contract. He concluded that the respondents' improvements to the property enhanced its value, and then cited the requirements "to successfully bring a claim against a defendant for unjust

⁴ During the appeal, the appellants emphasized that the respondents had not pleaded unjust enrichment, implying that the motion judge erred by basing his decision on a cause of action that was not pleaded. The respondents did not plead unjust enrichment in their statement of claim, but did raise it in their factum on the motion for summary judgement. The motion judge did not address whether he was exercising discretion to permit the claim to proceed, but it is evident that he ruled upon it so it must be assumed that he did so. Since the exercise of that discretion was not made an issue before us, I will not address this issue.

enrichment”. As I have described, after setting out the elements of unjust enrichment he then found that “it would be inequitable for the [appellants] to receive the benefit without fair compensation” and that “[f]or the [respondents] the order to relocate is accepted as life altering”. It is only after making these findings that the motion judge addressed the issue of damages without any regard to the terms of the contract between the parties.

[30] It is not entirely clear from the motion judge’s reasons whether he relied on the doctrine of unjust enrichment as the basis for awarding restitution damages for breaching the duty of good faith, or whether he considered the cause of action for unjust enrichment as a standalone basis for awarding damages to the respondents. Either way, it was an error for him to rely on unjust enrichment to award damages in this case.

[31] As I have concluded that the motion judge erred in finding that there was a breach of the duty of good faith, there is no basis for awarding damages to the respondents for breach of contract. At most, the respondents would be entitled to the return of their \$75,000 deposit and possibly interest relating to the \$75,000 as provided for under the terms of the contract between the parties. Even if the motion judge had not erred in finding a breach of the duty of good faith, he should have assessed damages based on the standard measure of expectation damages for breach of contract. In effect, absent exceptional circumstances, “where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it,

to be placed in the same situation, with respect to damages, as if the contract had been performed”: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, at para. 27. Restitution damages should be awarded in breach of contract cases only where other remedies, including the ordinary measure of expectation damages are inadequate, such as where the plaintiff has suffered no loss, or where the plaintiff’s loss is less than the defendant’s gain: *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [2020] 2 S.C.R. 420, at paras. 53-57; *Mutual Trust Co.*, at paras. 30-31; *Cassano v. The Toronto-Dominion Bank*, 2007 ONCA 781, 87 O.R. (3d) 401, at para. 27; and *Apotex Inc. v. Eli Lilly and Company*, 2015 ONCA 305, 125 O.R. (3d) 561, at para. 56. Here, the motion judge made no effort to explain why he would be resorting to restitution damages instead of the ordinary measure of expectation damages. In any event, given that there was no breach of the duty of good faith, there was no basis for the motion judge to award the damages he did.

[32] Alternatively, if the motion judge was purporting to award damages to the respondents for unjust enrichment as a standalone cause of action, it was also an error for him to do so. There is no action for unjust enrichment where there is a juristic reason for the enrichment and corresponding deprivation: *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at para. 40. The existence of a contract between the parties is an established category of juristic reason that defeats a claim for unjust enrichment; where there is a contract that governs the dealings

between the parties, “the analysis ends [and] the plaintiff’s claim must fail because the defendant will be justified in retaining the disputed benefit”: *Moore v. Sweet*, 2018 SCC 52, [2018] 3 S.C.R. 303, at para. 57.

[33] In this case, the contract between the parties fully addressed the parties’ rights and obligations in the event the appellants were not able to obtain approval from the municipality. Any compensation available to the respondents if approval was not obtained was to be determined in accordance with the terms of the contract, not based on a standalone claim for unjust enrichment. The agreement permitted the respondents to demand reimbursement of the \$75,000, and it addressed the obligation to pay interest on that \$75,000 after payment was demanded, but clause 6 explicitly precluded the respondents from receiving any reimbursement for the improvements they made to the property or for any amount they paid as rent. Moreover, the agreement made no provision for the respondents to receive relocation costs, which notably were not a benefit or enrichment received by the appellants.

[34] Accordingly, it was an error for the motion judge to rely on unjust enrichment to award damages to the respondents, whether he did so for the purpose of calculating the damages for breach of the duty of good faith or whether he applied unjust enrichment as a separate cause of action.

C. THE MOTION JUDGE ERRED IN DISMISSING THE APPELLANTS' COUNTERCLAIM WITHOUT PROVIDING SUFFICIENT OR ADEQUATE REASONS

[35] The motion judge did not refer to the appellants' counterclaim in his reasons. He did, however, provide some relief in the appellants' favour. He ordered the respondents to deliver vacant possession, and he ordered payment to the appellants of the funds that had been paid into court. However, I would find that he failed to address the appellants' counterclaim for market rent after the expiry of the two-year contract period, arising from the respondents' continued occupation of Parcel 6. That was a central feature of the appellants' counterclaim, which was advanced before him. Notably, in the earlier appeal at this court, van Rensburg J.A. commented that the appellants have an "arguable counterclaim": *Trayanov (2023)*, at para. 28. The counterclaim should have been considered by the motion judge when the matter was returned to the trial court.

[36] The respondents argue that the motion judge implicitly ruled on the counterclaim by finding in favour of the respondents on their breach of contract and unjust enrichment claims after these causes of action had been raised by both parties. I disagree. The fact that the motion judge ruled on the respondents' claims is no indication that he considered the competing claims of the appellants.

[37] The respondents also appear to argue that the motion judge resolved the issue raised in the counterclaim by not finding that the contract was terminated, such that the respondents were entitled to remain in possession of Parcel 6 and

pay \$1,333 per month pursuant to the terms of that ongoing contract. If the respondents are making this point, I would reject it. Although the motion judge did not explicitly say that the contract was terminated, it is obvious that he concluded that it was terminated since he ordered the respondents to deliver vacant possession. If he believed the contract continued, he would not have done so. Indeed, given the terms of the contract, a finding that the contract did not terminate at the end of the two-year period would have reflected a palpable and overriding error.

[38] Similarly, I am not persuaded by the respondents' submission that the motion judge addressed the appellants' counterclaim for commercial rent at the fair market rate when he summarized the appellants' assertion that Parcel 6 in its present condition should attract rent income of \$4,000 per month. The motion judge referred to the appellants' asserted increase in market rent in support of his finding that the improvements to the property made by the respondents enhanced the value of Parcel 6, not to address the appellants' restitution claim for market rent.

[39] There is therefore nothing in the decision explaining why he limited recovery for monthly occupancy to \$1,333, the amount specified in the expired contract. In my view, his reasons are therefore insufficient to permit meaningful appellate review, the standard for the adequacy of reasons: *R. v. Sheppard*, 2002 SCC 26,

[2002] 1 S.C.R. 869, at paras. 24-25; *Gholami v. The Hospital for Sick Children*, 2018 ONCA 783, at para. 63.

[40] I would therefore find that the motion judge's reasons relating to this live issue, a key argument before him, were insufficient and I would allow this ground of appeal.

CONCLUSION

[41] For the foregoing reasons, I would allow the appeal.

[42] Accordingly, I would make the following modifications to the motion judge's order dated April 1, 2025:

- I would set aside para. 1 which ordered the appellants pay the respondents \$285,000 in damages.
- I would vary para. 4 which ordered the respondents to deliver vacant possession within 60 days of the appellants satisfying the damage award, by requiring the respondents to deliver vacant possession within 60 days of the release of this decision.⁵

⁵ I make this order because the respondents (1) did not cross-appeal the motion judge's refusal to impose an equitable lien, (2) did not cross-appeal the motion judge's order that they vacate the property, and (3) conceded during the oral hearing on appeal that they were not entitled to stay on the property after the two-year period ended.

- I would set aside para. 8 which ordered the parties bear their own costs of the motion for summary judgement.
- I would set aside para. 9 which ordered that the judgment does not attract prejudgement interest.
- I would not disrupt the other terms of the order.

[43] I would order a new trial on the respondents' contract claim, relating only to the \$75,000 deposit and any associated prejudgment interest. I would not permit the respondents to argue any of their other claims at the new trial, because they cannot possibly succeed based on the causes of action they pleaded. I would also order a new trial on the appellants' counterclaims. I would leave the parties free, if they so choose, to pursue these issues on motions for summary judgement. This order is without prejudice to the appellants to amend their claim to include compensation for the respondents' continued occupancy of Parcel 6 after the summary judgment was issued.

[44] I would dismiss the respondents' cross-appeal relating to the motion judge's cost orders as abandoned.

[45] I would order costs in this appeal to be payable by the respondents to the appellants in the amount of \$15,000 inclusive of all applicable taxes and disbursements, as agreed by the parties. I would reserve the issue of costs of the motion for summary judgment heard in September 2024 for the new judge.

Released: November 21, 2025 “B.W.M.”

“David M. Paciocco J.A.”

“I agree. B.W. Miller J.A.”

“I agree. L. Favreau J.A.”