

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
DEUNGKYOUNG EO and JI EUN LEE)	
)	
Plaintiffs)	Steven Hong for the Plaintiffs, Eo and Lee
)	
– and –)	
)	
GUAN XIONG CHEN)	
)	
Defendant)	Vusumzi Msi and Julian Yang for the Defendant, Chen
)	
)	
)	HEARD: December 3, 2025

REASONS FOR DECISION ON MOTION FOR SUMMARY JUDGMENT

HEALEY J.

Nature of the Motions

- [1] The parties bring reciprocal cross-motions. The defendant seeks summary dismissal of the action. The plaintiffs seek summary judgment against the defendant for the sum of \$389,010 plus interest.
- [2] The plaintiffs argue that the documents at issue contractually entitle them to a monetary judgment. In the alternative, the plaintiffs seek restitution on the basis of unjust enrichment.
- [3] The parties’ dispute arises out of an assignment of an agreement of purchase and sale for a residential property that was never built.
- [4] The original vendor of the property, being the builder, went into receivership. The plaintiffs assert that this entitles them to a return of all monies paid by them to the defendant under the assignment agreement.
- [5] The determination of the motions rests entirely on an interpretation of the contractual documents.

- [6] The lawyers' submissions focused on two cases involving the same builder, both of which were decided in favour of the plaintiff/assignee: *Ayuba v. Erhunmwun*, 2025 ONSC 3639 and *Wei v Meng*, 2024 ONSC 3975.
- [7] For the following reasons, the contract in this case is distinguishable from the one struck by the parties in both *Ayuba* and *Wei*, and the dispute must be resolved in favour of the defendant.

Evidence

- [8] There are no facts in dispute. Both parties agree that a full appreciation of the factual and legal issues to be determined is possible on the record produced by the parties.
- [9] The defendant and a builder, Stateview Homes (NAO Towns) Inc. ("Stateview"), signed an Agreement of Purchase and Sale dated September 8, 2020 (the "APS"). The APS was for the purchase of property then identified as "Lot number 77" of a pre-construction townhouse project. The purchase price was \$928,990, with a closing date, acknowledged to be tentative, of May 18, 2023.
- [10] Under the terms of the APS, a deposit was to be paid to Stateview in four installments: \$20,000 on September 8, 2020, \$10,000 on October 7, 2020; \$10,000 on November 6, 2020 and \$40,000 on January 5, 2021. While there was some discussion in the plaintiffs' material about whether such deposits had actually been paid, no submissions were made and I infer that the plaintiffs now accept the defendant's evidence that he paid these sums to Stateview.
- [11] The APS allowed for the possibility of assignment by the purchaser upon receiving Stateview's consent. It entitled Stateview to approve the assignee and demand a "builders fee" of \$5,000 plus HST and legal fees as consideration. Stateview had its own form of contract for this purpose, entitled "Assignment of Agreement of Purchase and Sale" (the "Builder's Consent Agreement").
- [12] Through their respective realtors, in January 2022 the plaintiffs made an offer to acquire the defendant's interest in the APS by way of an assignment. The plaintiffs offered to purchase the defendant's interest for an amount totalling \$389,010 (the "Assignment Price"). The plaintiffs submitted a deposit of \$62,000 along with their offer.
- [13] The defendant tendered a counteroffer, which was accepted by the plaintiffs on January 25, 2022 (the "Assignment Agreement", including Schedules A, B and C).
- [14] The Assignment Agreement is in a standard form prescribed by the Ontario Real Estate Association, being Form 145. Schedule A to Form 145 contains additional terms to the Assignment Agreement. The plaintiffs placed their initials beside each of the defendant's changes to Schedule A now forming part of the Assignment Agreement. Schedule B describes the allocation of the payments to be made under the Assignment Agreement, and Schedule C is the original APS.

- [15] Paragraph 17 of the Assignment Agreement is central to the parties' dispute. The plaintiffs assert that in the event of default by Stateview, they are entitled to the return of all monies paid by them because of paragraph 17, which provides:

17. DEFAULT BY SELLER: The Assignee and Assignor acknowledge and agree that if this Assignment Agreement is not completed due to the default of the seller for the Agreement of Purchase and Sale (Schedule C) that is the subject of this Assignment, the Assignor shall not be liable for any expenses, losses or damages incurred by the Assignee and this Assignment Agreement shall become null and void and all monies paid by the Assignee under this Assignment Agreement shall be returned to the Assignee in full without interest.

- [16] Paragraph 17 is on the pre-printed Form 145. The same paragraph existed in the assignment agreements at issue in *Ayuba* and *Wei*. It was central to Justice Charney's decision in *Ayuba*. At para. 41, he stated:

Giving the words of para. 17 of the Assignment Agreement their ordinary and grammatical meaning, they can only mean one thing: if the Assignment Agreement cannot be completed because the seller (Stateview) defaults, the Plaintiffs get their full deposit back. Not some of the deposit, not the deposit minus the Defendant's expenses, but the full deposit.

- [17] The terms of Schedule A to the Assignment Agreement before this court, some of which are not standard to the Form 145 but were inserted by the parties, outline how the transaction was to proceed.

- [18] It notes that the Assignment Price is comprised of the \$80,000 deposit paid by the defendant to Stateview, plus the balance of \$309,010 (the "Assignment Fee").

- [19] The parties agreed that the \$62,000 deposit was "to be credited toward the Assignment Price on date of Assignment completion date". Upon the plaintiffs' delivery of the deposit, the defendant was to request Stateview's consent. The remaining sum of \$327,010 was agreed to be delivered by the plaintiffs to their solicitor in trust (the "Balance Payment"). Upon the Balance Payment being held by the plaintiffs' solicitor, all parties were to sign the Builder's Consent Agreement.

- [20] Upon receiving Stateview's signed consent to the assignment, all remaining money owed to the defendant would be paid and immediately released to him. The parties agreed that this would complete the Assignment transaction. The provision in Schedule A states:

Upon the Vendor's issuing the Vendor's Consent to this Agreement, the Assignee's Solicitor undertakes to pay the Balance Payment of Assignment Price to the Assignor. On the date of exchange of the

Vendor's Consent and Assignment Payment, this Assignment transaction shall be completed. [emphasis added]

- [21] To this end, the Assignment Agreement included the plaintiffs' explicit authorization to the defendant's solicitor to immediately disperse funds to the defendant or as directed by him. Schedule A provides:

The parties agree that, upon all conditions of this Agreement being met and the payment of the balance of the purchase price being concluded all monies held in trust shall be released to the Assignor and the brokerage shall be entitled to release any commissions payable to the brokerages as payment for services rendered. This clause shall constitute the Assignees full and final irrevocable direction to release the monies and no further authorization is required.

- [22] One of the changes required by the defendant in his counteroffer was that the Assignment Agreement would have a completion date. Schedule A specifies the completion date for the Assignment Agreement, as follows:

THE COMPLETION DATE of this Assignment shall be within ONE [1] business day following receipt of the fully executed consent to assign from the Vendor. The Assignee will pay the balance of payment for this Assignment Agreement, set out in item 6 of Schedule B, subject to any adjustments and any other provision of this Agreement to the Assignor, in the form of a Bank Draft or Certified Cheque payable to the Assignor's solicitor in trust upon acceptance of this Assignment Agreement and receipt of consent to assign from the Vendor.

- [23] Schedule A also provides:

In the event that the Agreement of Purchase and sale is not completed by the Vendor for any reason whatsoever, all deposit paid by the Assignee shall be returned to the Assignee and the Assignor shall not [sic] liable to the Assignee for any loss, costs, expenses or damages incurred by reason of the non-completion of the Agreement of Purchase and Sale and this Agreement.

- [24] The Builder's Consent Agreement contains a similar clause, at paragraph 9:

In the event that the Purchase Agreement is not completed by the Vendor for any reason whatsoever, and if the Vendor is required to return deposit funds pursuant to the terms of the Purchase Agreement, said deposit funds shall be returned to the Assignee and

the Assignor shall have no claim whatsoever against the Vendor for said deposit funds.

- [25] One of the original clauses that the parties chose to strike out in Schedule A was the following:

BALANCE OF PAYMENT UNDER THIS ASSIGNMENT AGREEMENT: The Assignee will deliver the balance of payment for this Assignment Agreement as more particularly set out in Item 6. On Schedule B, subject to adjustments, with funds drawn on a lawyer's trust account in the Form of a bank draft, certified cheque or wire transfer using the large Value Transfer System, to the Assignor prior to completing the transaction in the Agreement of Purchase and Sale attached hereto as Schedule "C" to be held in trust without interest pending completion or other termination of the Agreement of Purchase and Sale attached hereto as Schedule "C".

- [26] During argument this was referred to as the "Deposit Returning Provision" by Mr. Hong, which I adopt. This clause was not struck out in either *Ayuba* or *Wei*.
- [27] Both the plaintiffs and the defendant were represented by real estate agents during the negotiation, followed by lawyers. They had no direct communication.
- [28] It is common ground that both parties performed their obligations under the Assignment Agreement completely, and in accordance with its terms.
- [29] On March 22, 2022, Stateview provided its written consent to the assignment of the APS by delivering a signed Builder's Consent Agreement. The defendant's lawyer then prepared a statement of adjustments in relation to the assignment, setting out the remaining balance of the consideration to be paid by the plaintiffs, being the sum of \$291,460.17.
- [30] The Assignment Agreement was completed on March 24, 2022, when the adjusted balance of consideration in the amount of \$291,460.17 was released to the defendant.
- [31] From the defendant's point of view, this brought the transaction to an end. Regardless of what may or may not transpire afterward between the plaintiffs and Stateview, it is his position that the parties to this lawsuit had no further obligation to each other under the terms of the Assignment Agreement.
- [32] In January 2024, the plaintiffs received a notice of termination and disclaimer from the court-appointed receiver and manager of Stateview. The notice referenced both the APS and the Assignment Agreement, and confirmed that Stateview terminated and disclaimed the APS as of January 29, 2024.
- [33] After receiving the termination notice, the plaintiffs requested that the defendant return all monies paid under the Assignment Agreement. At the defendant's refusal, this proceeding was commenced in January 2025.

Position of the Parties

- [34] The plaintiffs' primary position arises from contractual interpretation. They submit that the defendant is contractually obligated by reason of paragraph 17 of the Assignment Agreement to return the Assignment Fee following Stateview's termination of the original APS. Their position is that it is inconsequential that the money had been paid in full under the Assignment Agreement, and that both parties had fully performed their obligations under it.
- [35] They argue that there are two completion dates, one for the Assignment Agreement and one for the APS. Paragraph 17 makes clear that if Stateview breached its obligations under the APS before the APS transaction closed, the defendant remained contractually liable to pay back the Assignment Fee in its entirety.
- [36] They further argue that it is not commercially reasonable to interpret paragraph 17 as being at an end two days after the Builder's Consent Agreement was signed and the funds released. Mr. Hong argued that such an interpretation was rejected by Cameron J. in *Wei*, at para. 38, where she wrote:

It is clear that the Assignment Fee was to be paid by the Plaintiff on the Assignment Closing Date which was three days after the consent of the Builder was received. It is therefore difficult to imagine why Article 17 would be necessary if it only operated up to the time of the Assignment Closing Date. If the Defendant is correct, then the parties would have included Article 17 to contemplate a situation where before the Plaintiff was contractually obligated to pay any money to the Defendant, the Plaintiff would be entitled to get that money back if the Builder defaulted. This makes no sense. Obviously the Plaintiff would not have paid the Assignment Fee if the Builder had already defaulted.

- [37] The plaintiffs submit that it is not commercially reasonable for the contract to be interpreted to result in a loss to them of \$389,010 (possibly \$80,000 less if they can recover the deposit from Tarion), in the event of Stateview's default.
- [38] The defendant's counsel submits that *Wei* and *Ayuba* are correctly decided. However, Mr. Msi distinguishes those cases based on differences in the contract in the instant case and those that were before the courts in *Wei* and *Ayuba*, which gave rise to different intentions for those parties. In this case, the parties inserted provisions that were deliberately meant to be inconsistent with paragraph 17. Unlike *Wei* and *Ayuba*, the parties here unequivocally specified the steps required to complete their Assignment Agreement, and then fully performed all agreed-upon steps. They further agreed that the Assignment Agreement was thereafter at an end. The subsequent event of the builder's failure to close is not actionable after the completion of the Assignment Agreement. What occurred in this case was a risk assumed by the plaintiffs.

- [39] The defendant also argues that the alternative relief based on unjust enrichment must fail. He submits that the contract raises a juristic reason for his retention of the Assignment Fee. The unfairness being argued by the plaintiffs was a risk inherent in the bargain that was negotiated and freely made by the plaintiffs.
- [40] The defendant submits that the clear and unambiguous wording of the Assignment Agreement indicates the parties' intentions. To interpret the contract as the plaintiffs suggests, assigning subjective intent by looking at the surrounding circumstances to effectively create a new agreement, is contrary to the direction from the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.* 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 57-59.

Issues

- [41] The issues to be decided are:
1. Whether there is any genuine issue that would preclude the granting of summary judgment either granting or dismissing the claim.
 2. Whether the defendant is contractually obligated to return the Assignment Fee of \$389,010, plus interest, following the builder's termination of the original APS.
 3. In the alternative, whether the plaintiffs are entitled to restitution on the basis of unjust enrichment.

The Law

Summary Judgment

- [42] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides: "The 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." Rule 20.04 (2.1) sets out the court's powers on a motion for summary judgment.
- [43] The applicable principles that guide a summary judgment motion derive from *Hryniak v. Mauldin*, 2014 SCC 7. With respect to when summary judgment may be granted, Karakatsanis J. stated, at para. 49:

There will be no genuine issue requiring trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- [44] At para. 50, the Court defined the overarching issue to be "whether summary judgment will provide a fair and just adjudication." Karakatsanis J. went on to say that "the standard

for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.”

- [45] The evidence adduced on a summary judgment motion need not be equivalent to that at trial. A documentary record may be enough, if it allows the motion judge to have confidence that she can fairly resolve the issues: *Hryniak*, at para. 57.
- [46] The law from the Ontario Court of Appeal is clear that the court must take a hard look at the evidence on a motion for summary judgment to determine whether there is a genuine issue requiring a trial and may freely canvas the facts and law in doing so. No party is entitled to rely on the prospect of additional evidence that may be tendered at trial; all parties have an obligation to put their best foot forward on a summary judgment motion: *Switzer v. Petrie*, 2024 ONCA 474, at para. 8.
- [47] Having reviewed the material filed and listened to the arguments advanced by counsel, I concur with the parties and am satisfied that there is no need for a trial in this case. I have confidence that a proper determination can be made on the record before me. Granting summary judgment on this evidentiary record is a fair and just result and will serve the goals of timeliness, affordability, and proportionality given that neither the facts nor the law are in dispute.

Contractual Interpretation

- [48] The primary object of contractual interpretation is to give effect to the intention of the parties at the time of contract formation: *Bhasin v. Hrynew*, 2014 SCC 71, at para. 45.
- [49] The applicable principles of contractual interpretation are described in *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.* 2024 SCC 20, 175 O.R. (3d) 240, at paras. 63-65. *Earthco* confirms, at para. 29, that the modern contractual approach described by the court in *Sattva* still applies. The overriding goal is to determine the intent of the parties and the scope of their understanding, and to do so, a “decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract”: *Sattva*, at para. 47.
- [50] Further, while the surrounding circumstances are relied on in the interpretation process, courts cannot use them to deviate from the text and effectively create a new agreement: *Sattva*, at para. 57. The surrounding circumstances are facts known or facts that reasonably ought to have been known to both parties at or before the date of the agreement: *Sattva*, at para. 60.

Analysis

- [51] The facts of this case are distinguishable from both *Wei* and *Ayuba*.

- [52] In *Wei*, not only was the Deposit Returning Provision not struck out, but in Schedule A, like here, the parties added terms related to the timing of payment under the Assignment Agreement. As noted by Cameron J. at para. 36, the plaintiff in that case was required to deliver payment of the assignment fee prior to completing the transaction in the “New Build Agreement” (equivalent to the APS), to be held in trust pending “completion” or other termination of the New Build Agreement. She concluded that “this reiterates the understanding that ‘completion’ in Article 17 means completion of the transaction between the plaintiff and the builder.”
- [53] This, in my view, places into context her comment within para. 38 cited earlier in these Reasons: “If the Defendant is correct, then the parties would have included Article 17 to contemplate a situation where before the Plaintiff was contractually obligated to pay any money to the Defendant, the Plaintiff would be entitled to get that money back if the Builder defaulted. This makes no sense.”
- [54] Another distinguishing feature of *Wei* is that the assignment agreement signed by the parties in that case contained a clause requiring the defendant to return payment to the plaintiff if the purchase agreement could not be completed. It read:
- If eventually, the builder decides to cancel the project and the cancellation confirmation has been delivered to purchaser, the assignor shall return the difference which is (Item 1 schedule B minus Item 2 Schedule B) to assignee instantly.
- [55] *Ayuba* had a slightly different variation. In *Ayuba* the payment terms reached by the parties stated that the final payment to the defendant under the assignment agreement was not due until the final closing of the main purchase and sale agreement, when Stateview was to transfer title of the property to the Ayubas. The Deposit Returning Provision was not struck out.
- [56] Therefore, based on the term of their assignment agreement, the intention of the parties in *Ayuba* was that their obligations to one another would not be exhausted until the closing of the main agreement of purchase and sale. Because that did not occur, Charney J. determined that the assignment agreement had never been completed and paragraph 17 of Form 145 remained operative to compel return of the money paid to the defendant to that point: para. 36.
- [57] In the case before me, the parties likewise specified the steps necessary to dispense with their obligations to one another. Those steps were different from the agreement reached in *Wei* and *Ayuba*, and had been fully satisfied by the time that Stateview went into receivership. The completion of the Assignment Agreement was explicitly defined by the parties. Pursuant to the terms of Schedule A, upon exchange of Stateview’s consent to the assignment and full payment of the monetary consideration, the completion of the Assignment Agreement would arrive, and the Agreement would be at an end. Unlike in *Wei*, no money was left remaining in trust and the parties expressly agreed that it could be released to the defendant. Unlike in *Ayuba*, no final payment remained outstanding.

- [58] I cannot accept the plaintiffs' argument that there were two "completion dates" agreed to by the parties, so that the Assignment Agreement was not at an end until the closing of the APS. Everything that was added to, or deleted from, Schedule A is inconsistent with the terms of paragraph 17 that "all monies paid by the Assignee under this Assignment Agreement shall be returned to the Assignee in full without interest."
- [59] First, the parties added a provision in which they agreed that the deposit would be returned to the plaintiff if Stateview did not complete the Agreement of Purchase and Sale. In doing so, they expressly turned their minds to what their obligations would be if, for any reason, Stateview could not complete its bargain. Mr. Hong argued that, because the parties could not bind Stateview, this provision compelled the defendant to pay the deposit to the plaintiff. This provision, he argued, supports the interpretation that the Assignment Agreement was "alive" until the APS closed, or Stateview defaulted.
- [60] There are two problems with this argument. The first is that this interpretation would ignore the reality that Stateview remained in receipt of the initial \$80,000 deposit from the defendant and was holding it in trust. Schedule B of the Assignment Agreement refers to this \$80,000 as "deposit(s) paid by Assignor to the seller under the original Agreement of Purchase and Sale as indicated in Schedule C, to be paid by the Assignee to the Assignor as follows:". The plaintiffs' assertion is that by not crossing out paragraph 17, the parties were expecting that everyone be put back into their original position if the APS fell apart. If that were true, it would not make sense that Stateview retain this money while the defendant be expected to pay it to the plaintiff.
- [61] The second problem is that paragraph 9 of the Builder's Consent Agreement specifically addresses Stateview's obligation to return the deposit to the plaintiff.
- [62] The provisions of Schedule A are also inconsistent with paragraph 17 in that they define the completion, they expressly note that the Assignment Agreement will be at an end upon full performance, and nothing remained for the parties to do. If the parties wanted their legal relationship to survive beyond the termination of that Agreement, they were free to specify that intention. But "reading in" such an interpretation is entirely inconsistent with the rest of the terms of the Agreement.
- [63] The plaintiffs have also argued that it makes no commercial sense for the Assignment Agreement to offer protection to the parties for only a short period, from its inception on January 25, 2022, until the purported completion date of March 24, 2022. Equally so, it does not make sense for the parties to intend that the defendant should remain liable to repay the entire amount when: a) the parties agreed that the funds should be released to him; and b) there is no definite closing date for the APS. Although May 18, 2023 was targeted as the "occupancy date" in the APS, the APS provides: The Purchaser acknowledges that the Occupancy Date is tentative and shall be confirmed by the Vendor in accordance with the terms and conditions hereinafter set out and such Occupancy Date may be extended as provided in this Agreement.

- [64] Turning to the issue of unjust enrichment, the steps for the analysis are well known. There are three elements: an enrichment of the defendant by the plaintiff; a corresponding deprivation of the plaintiff; and an absence of juristic reason for the enrichment: *Garland v. Consumers' Gas Co.*, 2004 SCC 25, at para. 30; *Kerr v. Baranow*, [2011] 1 SCR 269, at paras. 36-40.
- [65] One of the established juristic reasons to deny recovery is a contract: *Kerr*, at para. 41; *Moore v. Sweet*, 2018 SCC 52, at para. 57.
- [66] The juristic reason analysis proceeds in two stages. The first stage requires the plaintiff to demonstrate that the defendant's retention of the benefit cannot be justified on the basis of any of the established categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations: *Sweet*, at para. 57, citing *Garland* at para. 44; *Kerr*, at para. 41.
- [67] If any of these categories applies, the analysis is at an end and the plaintiff's claim fails because the retention of the disputed benefit by the defendant is justified: *Sweet*, at para. 57.
- [68] Where the plaintiff successfully demonstrates that none of these established categories of juristic reasons apply, a *prima facie* case is established and the analysis proceeds to the second stage. This stage requires the defendant to rebut the plaintiff's *prima facie* case by showing that there is some residual reason to deny recovery. At this point, the court must consider the parties' reasonable expectations and public policy.
- [69] This case does not proceed to the second stage of the unjust enrichment analysis, since the defendant has established that it is entitled to retain the benefit based on the terms of the Assignment Agreement.
- [70] Although this is a very unfortunate outcome for the plaintiffs, it is dictated by the terms of the bargain that they struck.

Costs

- [71] The parties exchanged offers to settle; neither offer engages the cost consequences of Rule 49.10.
- [72] The defendant seeks costs in the amount of \$37,000 inclusive, on a partial indemnity basis.
- [73] The plaintiffs' counsel has filed a costs outline prior to knowing the outcome of the motion, indicating that they would have sought costs if successful in the amount of \$11,060.58 on a partial indemnity scale. This is some indication of the plaintiffs' reasonable expectations as the unsuccessful parties.
- [74] The large discrepancy between these numbers is explained in part by the fact that there were two lawyers for the defendant working on this matter from the inception of the action. Even the dockets indicate that there was ongoing discussion and review between the

lawyers at almost every stage of the file, which will necessarily have resulted in overlap and duplication of work.

[75] After a consideration of each of the factors set out in r. 57.01(1), and stepping back to consider an amount that is fair and reasonable for the plaintiffs to pay in costs, this court orders that the plaintiffs shall pay the defendant's costs fixed in the amount of \$20,000 inclusive.

Order

[76] This court orders:

- (1) The plaintiffs' claim is dismissed.
- (2) The plaintiffs shall pay costs of this action to the defendant fixed in the amount of \$20,000.

HEALEY J.

Released: December 12, 2025