CITATION: James D. Taylor Holdings Ltd. v. WJ Groundwater Canada Limited, 2025 ONSC 7243
OSHAWA COURT FILE NO.: CV-23-00000731-0000
DATE: 20251229

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
JAMES D. TAYLOR HOLDINGS LTD. and JAMES DARCY TAYLOR Plaintiffs	John W. Montgomery, for the Plaintiffs
– and –	
WJ GROUNDWATER CANADA LIMITED Defendant	Dylan Baker, for the Defendant
	HEARD: December 5, 2025

REASONS FOR DECISION

CHARNEY J.:

[1] The Plaintiffs, James D. Taylor Holdings Ltd. and James Darcy Taylor, bring this motion for summary judgment against the Defendant, WJ Groundwater Canada Limited.

[2] The motion relates to the Plaintiffs' action for damages arising out of the Defendant's failure to close the purchase of a vacant industrial property pursuant to an Agreement of Purchase and Sale (APS) dated January 19, 2022.

[3] The issue in dispute between the parties is whether the Plaintiffs' subsequent sale of the property was an improvident sale below market value and whether this raises a genuine issue requiring a trial. There is no dispute about liability, only damages are at issue.

Facts

[4] The Plaintiffs were owners of a commercial property located in the Township of Scugog, in the Town of Port Perry, Ontario (the "Property"). The Property was located in an industrial area and consisted of vacant land with no buildings or structures on it. It was listed for sale for $2.5 million.

[5] By APS dated January 19, 2022, the Defendant agreed to purchase the Property from the Plaintiffs for the sum of $2,400,000. The Agreement provides for an initial deposit to be paid to and held by the Plaintiffs' realtor, in the sum of $50,000, and for a closing date of April 15, 2022.

[6] The Defendant intended to use the Property to park and store drilling rigs and to construct a shop to service its equipment.

[7] The APS was a conditional agreement. It gave the purchaser 14 days to inspect the Property and was conditional upon the purchaser being satisfied "in its sole, absolute and unfettered discretion" by its inspection. The day before the expiry of the 14 day period, the parties agreed to extend the inspection period by a further 7 days. The day before the final expiry of the inspection period, the Defendant executed and delivered a written waiver, waiving the condition. A further deposit of $50,000 was paid pursuant to the terms of the APS.

[8] There is no dispute that, at this point, the APS was firm, and the parties were obliged to complete the transaction.

[9] On April 11, 2022, four days before the scheduled closing date, the Defendant advised the Plaintiffs, through counsel, that it was terminating the Agreement. The letter from the Defendant's counsel stated that the Defendant had "only recently" completed its review of the zoning of the Property and had concluded that the zoning did not permit the Defendant's intended use. The letter states that as a result, "…the Buyer has terminated the APS and considers the above captioned transaction to be at an end."

[10] There is no dispute that the Defendant repudiated the APS and failed to close the transaction in accordance with the terms of the APS.

Resale of the Property

[11] Shortly after the failure of the APS to close, the Plaintiffs re-listed the Property, with the same real estate agent and on the same terms which it was listed when the Defendant made its offer in January 2022.

[12] On May 13, 2022, the Plaintiffs received a conditional offer to purchase from a buyer named Hamid Vaezian, offering to purchase the Property for the sum of $1,928,000. The Plaintiffs signed the offer back at $2,150,000.

[13] Mr. Vaezian signed back this offer at $2,110,000, which the Plaintiffs accepted. The May 24, 2022 agreement was subject to conditions in favour of the buyer for a period of 30 days, which provided:

> This agreement shall be conditional until 5:00 PM on the 30th calendar day following the acceptance hereof by all parties hereto (the "Due Diligence Period") and upon the buyer satisfying himself in his soul and subjective determination that the Property is suitable for his purposes… Unless the buyer advises in writing within the Due Diligence Period that

> the Property is suitable for his purposes, this Agreement shall become void and the deposit money shall be returned to the Buyer in full without interest or deduction.

[14] Mr. Vaezian chose not to waive the buyer's conditions, with the result that the agreement became void, and the Plaintiffs were required to return the deposit.

[15] By mid-July 2022, the Plaintiffs had received no other offers and reduced the listing price by $50,000 to $2,450,000.

[16] On September 8, 2022 the Plaintiffs received a conditional offer to purchase the Property for the sum $1,500,000, from a buyer named Shane Pollock, who was also a commercial tenant of the Plaintiffs. After discussions with their real estate agent, the Plaintiffs signed this offer back at $2,100,000 on September 14, 2022. This figure was chosen because it was roughly the same amount that Hamid Vaezian had conditionally agreed to pay for the Property in May. Mr. Pollock did not accept the Plaintiffs' counteroffer, and made no further offers for the Property.

[17] In October 2022, the Plaintiffs reduced the listing price by a further $150,000 to $2,300,000. Despite this reduction, the Plaintiffs did not receive any further offers or inquiries of any kind regarding the Property to the end of 2022.

[18] The Plaintiffs' real estate agent suggested that they reduce the price to between $1,500,000 and $1.600,000. On January 19, 2023, the Plaintiffs reduced the listing price by $900,000 to $1.4 million. The Property was advertised as "Aggressively Priced for a Fast Sale".

[19] On January 20, 2023 – the day after the Property was listed at the reduced price – the Plaintiffs received an offer to purchase the Property for $1,500,000. This was the first offer the Plaintiffs had received since September, 2022. The Plaintiffs signed the offer back at $1,540,000, but the prospective buyer refused to increase its offer. The Plaintiffs accepted the $1,500,000 offer on January 24, 2023. The sale closed on March 22, 2023.

[20] Mr. Taylor alleges that at around the same time that he relisted the property for $1,400,000, and before he received the January 20, 2023 offer, he retained a certified appraiser to appraise the Property. He did not obtain the appraisal report until February 8, 2023. There is some dispute as to whether the Plaintiff retained the appraiser before or after the January 20, 2023 offer, but that dispute is not relevant to the determination of the legal issues in this case. In any event, that report appraised the Property for between $1,550,000 and $1,650,000 as of January 24, 2023. This amount was based on an exposure time (time on the market) of 1 to 3 months.

[21] Although the Plaintiffs' appraisal report is appended to Mr. Taylor's affidavit, the author of the appraisal report did not swear an affidavit or sign a Form 53 Acknowledgement of Expert's Duty. The Report sates that "the Intended Use of this report is to assist with litigation settlement related to the subject purchase and sale".

[22] Since the Report was not introduced through an affidavit sworn by its author, and the author of the Report did not sign a Rule 53 Acknowledgment, it is not admissible as expert evidence on this motion.

[23] The Plaintiffs take the position that they were not relying on this report as expert evidence. The Plaintiffs are relying on the re-sale price, which they say was an arm's length sale to a third party after months on the market and reflects the fair market value at the time of the sale.

Motions for Summary Judgment

[24] 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."

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

> 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.

[26] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, where it laid out a two-part roadmap for summary judgment motions at para. 66:

> On a motion for summary judgment under Rule 20.04, the 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.

[27] Even with these extended powers, a motion for summary judgment is appropriate only if the material provided on the motion "gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute" (*Hryniak*, at para. 50).

[28] In *Hryniak*, the Supreme Court held (at para. 49) that there will be no genuine issue for trial when the summary judgment 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."

[29] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party may not rest on mere allegations or denials of the party's pleadings, but must set out—in affidavit material or other evidence—specific facts establishing a genuine issue requiring a trial.

[30] It is well settled that "both parties on a summary judgment motion have an obligation to put their best foot forward" (see *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9). Given the onus placed on the moving party to provide supporting affidavit or other evidence under Rule 20.01, "it is not just the responding party who has an obligation to 'lead trump or risk losing'" (see *Ipex Inc. v. Lubrizol Advanced Materials Canada*, 2015 ONSC 6580, at para. 28).

[31] If the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party's evidence or risk a summary judgment.

[32] While Rule 20.04 provides the court hearing a summary judgment motion with "enhanced forensic tools" to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to "a fair process and just adjudication": *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44; *Eastwood Square Kitchener Inc. v. Value Village Stores*, Inc., 2017 ONSC 832, at paras. 3-6 (and cases cited therein).

[33] For the reasons set out below, I conclude that this is an appropriate case for summary judgment, and that the Defendant has not persuaded me that there is a genuine issue of material fact requiring a trial.

Analysis

[34] There are numerous cases dealing with summary judgment motions by vendors following a purchaser's failure to close the transaction on the date set out in the agreement of purchase and sale. These cases are frequently amenable to a motion for summary judgment. The principles applicable to these cases are straightforward, and the relevant facts are often not in dispute.

[35] Where the purchaser is in default of the APS, the plaintiff is entitled to retain the deposit paid, although the deposit must be credited against any other damages claimed: *Pleasant Developments Inc. v. Iyer*, 2006 CanLII 10223 (ON SCDC), at paras. 7-8; *Azzarello v. Shawqi*, 2019 ONCA 820, at paras. 45, 53-54.

[36] The vendor has a duty to mitigate its damages: *Bang v. Sebastian*, 2018 ONSC 6226, at para. 42, (aff'd on appeal, 2019 ONCA 501). Generally, this is accomplished by the arm's length sale of the property at market value, *Bang*, at para. 46.

[37] The damages amount is the difference between the price under the APS and the price of the new sale of the property once it closes, plus any additional carrying costs incurred by the vendor in mitigating its loss and dealing with the purchasers' breach: *Goldstein v. Goldar*, 2018 ONSC 608, at para. 25. This, of course, assumes that the subsequent sale is an arm's length market value transaction.

[38] See also: *Park Avenue Homes Corp. v. Malik*, 2022 ONSC 973, at paras. 38-39:

> Against a purchaser who aborted an agreement of purchase and sale, the plaintiff vendor is entitled to its loss of bargain, which is the difference between the original sale price and the re-sale price for which the property was eventually sold. *767804 Ontario Limited v. Bartoletti*, 1998 CarswellOnt 1567; *Azzarello v. Shawqi*, 2018 ONSC 5414; *Bang v. Sebastian*, 2019 ONCA 501 (CanLII); *Victorian Homes (Ont.) Inc. v. DeFreitas*, 1991 CarswellOnt 414, at para. 20; *Briscoe-Montgomery v. Kelly*, 2014 ONSC 4240 (CanLII), at para. 22.
>
> In addition, the jurisprudence recognizes that a Plaintiff can claim interest and interim financing costs, real estate commissions, legal fees, and other carrying costs associated with the breach. *Briscoe-Montgomery v. Kelly*, supra, at para. 23; *Fang v. Peroff*, 2014 CarswellOnt 3800, at para. 51; *Azzarello v. Shawqi*, supra, at para. 54.

[39] In most of these cases, it is unnecessary for the plaintiff to obtain an expert real estate appraisal for the motion. The only two numbers the court requires are the original sale price in the aborted APS and the re-sale price. If the property is sold on the open market in an arm's length sale, the re-sale price is the best evidence of the market value at the time of the re-sale.

[40] The onus is on the Defendant to prove that the Plaintiffs failed to make reasonable efforts to mitigate, and that mitigation was possible:

> [T]he plaintiff must prove his or her calculation of damages. Thus, the plaintiff must adduce evidence of the contract price and of the market price or resale price upon which he or she relies in establishing the loss of bargain and then the onus is on the defendant to show, if he or she can, that if the plaintiff had taken certain reasonable mitigating steps, then the innocent party's losses would be lower.

Deco Homes (Richmond Hill) Inc. v. Serikov, 2021 ONSC 2079, at para. 7.

[41] In the present case, the Plaintiffs calculate their damages as follows:

Difference between APS and re-sale price: $900,000

Property tax (April 15, 2022 – March 22, 2023): $6,940.86

Lawn and property maintenance: $8,780.10

Snow removal and salting: $10,212.38

Legal costs: $1,957.33

Appraisal: $2,373.00

_____

TOTAL: $930,263.67

[42] The Defendant argues that the Plaintiffs did not take reasonable measures to mitigate damages, and that the claimed loss of $900,000 was the result of an improvident sale.

[43] In addition, the Defendant challenges several of these carrying costs.

Carrying Costs

[44] Dealing first with the carrying costs, I agree with the Defendant that the claims for lawn and property maintenance and snow removal (total $18,992.48) are not recoverable in this case. To support these claims, the Plaintiff enclosed two invoices, both of which postdated the transfer of the Property to the new purchaser. The invoices were rendered by an unspecified individual to the corporate Plaintiff. Under cross-examination, Mr. Taylor admitted that he personally rendered the invoices to his corporate co-plaintiff. I agree with the Defendant that the Plaintiff cannot pay itself nearly $20,000 for property maintenance and claim this as damages against the Defendant.

[45] Similarly, the Appraisal Report obtained by the Plaintiffs specifically states that its "Intended Use" was "to assist with litigation settlement related to the subject purchase and sale". This is not a "carrying cost", it is a cost undertaken in contemplation of litigation. It might qualify as a disbursement if legal costs are awarded to the Plaintiffs.

Improvident Sale/Mitigation of Damages

[46] The Defendant proposes a complex scheme for calculating damages in this case. Rather than just subtracting the re-sale price from the contract price in the APS, the Defendant argues that the Court must calculate the difference between the contract price "and the market value at the relevant time", which the Defendant states is the "assessment date". The "assessment date" is either the closing date in the APS or around one month thereafter

(the date of the Vaezian APS). The Court should determine the value of the Property at the "assessment date" by examining expert appraisal reports. Since Vaezian agreed to pay $2,110,000 on the "assessment date", the damages are the difference between the APS ($2,400,000) and the amount that Vaezian agreed to pay, even though that deal was never competed.

[47] The Defendant asserts that the re-sale price is irrelevant unless the Plaintiffs can prove that they took reasonable steps to ensure that the Property was sold at fair market value. This requires expert evidence from the Plaintiffs.

[48] The Defendant's position is based on a misreading of the relevant authorities.

[49] In addition to the cases reviewed at paras. 35 – 40 above, the following cases were referred to by the parties and are particularly apposite.

[50] In *Arista Homes (Richmond Hill) Inc. v. Rahnama*, 2022 ONCA 759, the Court of Appeal dealt with the calculation of damages for loss of bargain where a purchaser fails to close a real estate transaction. The Court summarized the "settled principles of law for calculating loss of bargain damages", at para. 9:

> Where a purchaser fails to close a real estate transaction and the vendor takes reasonable steps to sell the property in an arm's length sale to a third party in mitigation of damages, and there is nothing improvident about the sale, the difference between the two sale prices will be used to calculate the damages: *642947 Ontario Ltd. v. Fleischer* (2001), 2001 CanLII 8623 (ON CA), 56 O.R. (3d) 417 (C.A.) at para. 41; *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd*. (1978), 1978 CanLII 1630 (ON CA), 20 O.R. (2d) 401 (C.A.), at para. 55. In such circumstances, there will be no need for expert evidence: *Marshall v. Meirik*, 2021 ONSC 1687, at para. 30, aff'd 2022 ONCA 275. [Emphasis added.]

[51] The parties also relied on the *Marshall v. Meirik* case, which was approved by the Court of Appeal in the passage cited above. In that case, Kimmel J. does refer to the "assessment date", but it is clear from her analysis that the "assessment date" is just the date of resale, at para. 34:

> I have determined the damage assessment date to be the date of the New APS. I find that the market value of the Property on the assessment date of September 20, 2017 was the arm's-length negotiated purchase price under the New APS of $1.525 million. I have not been presented with any evidence that would justify departing from the norm of accepting the purchase price under the New APS to be the market value of the Property on that day.

[52] Kimmel J. also held (at paras. 34 and 42) that the plaintiffs in that case did not have to provide a market value opinion to establish the market value of the property, they could

rely on the sale price in the arm's length purchase.[1] The onus with respect to the issue of mitigation "is squarely on the defendants once the plaintiffs have proven their damages" (at para. 43).

[53] The Defendant has filed an expert appraisal report by Robert Solnick, Vice President of Cushman & Wakefield, which was retained to provide an expert opinion "as to the reasonableness and reliability of the market value opinion" contained in the Plaintiff's appraisal report. Mr. Solnick is an Accredited Appraiser with the Appraisal Institute of Canada and did sign a Form 53 Acknowledgement of Expert's Duty. He was not cross-examined by the Plaintiffs. His report is dated September 23, 2024.

[54] Mr. Solnick disagrees with the Plaintiffs' appraisal and concludes that the market value of the Property on January 24, 2024 was $2,240,000.

[55] I note that Mr. Solnick uses January 24, 2024 as his assessment date, rather than the January 24, 2023 date used by the Plaintiffs' expert. I will proceed on the assumption that this is a typographical error on Mr. Solnick's part, since neither party pointed out this discrepancy in their submissions.

[56] Mr. Solnick explains that he disagrees with the Plaintiffs' expert for the following reasons:

- Two of Hammer's comparable sale transactions are not cogent for valuation purposes as they feature significantly different characteristics when compared to the Subject Property.

- Several of the adjustments applied in the Hammer valuation analysis, such as time and location are not appropriate because of their direction or quantum.

[57] Mr. Solnick concludes:

> Given the foregoing, I believe that Hammer has underestimated the market value of the Subject Property using the Direct Comparison Approach. The Cushman revised market value opinion for the Subject Property is greater than that indicated in the Hammer Report ($495,000 per acre) and, in my opinion, is $700,000 per acre. My conclusion is based on the market evidence included in the Hammer Appraisal Report and the characteristics of the Subject Property, including its location and physical characteristics.

[1] I have some difficulty understanding how the "assessment date" could be any date other than the re-sale date, or how the Court can calculate loss of bargain damages if the plaintiff decides not to re-sell the property. See for example: *2174372 Ontario Ltd. v. Akbari*, 2023 ONSC 6047. I leave that for another day.

[58] The issue is whether this opinion supports the Defendant's position that the sale of the Property was an improvident sale below market value and whether this raises a genuine issue requiring a trial.

[59] The Plaintiffs take the position that since they are not relying on their own expert appraisal to support their damages claim, the fact that the Defendant's expert disagrees with the "reasonableness and reliability of the market value opinion" contained in the Plaintiffs' appraisal report is irrelevant. The best evidence of market value is what a property listed on the open market sells for in an arm's length sale to a third party.

[60] In this case the Property was listed for sale on MLS starting in May 2022 for approximately 9 months before the Property was finally sold. It was listed at $2,500,000 for two months, and did not sell. The price was then reduced to $2,450,000 and received only one offer of $1,500,000. The price was reduced again in October 2022 to $2,300,000. Despite this reduction, the Plaintiffs did not receive any further offers or inquiries of any kind regarding the Property to the end of 2022.

[61] The Defendant's expert report is a critique the Plaintiffs' expert's appraisal methodology, it is not a critique of or comment on the Plaintiff's sales process. For example, the Defendant's expert does not comment on the fact that the Property was listed for $2,300,000 (just over the $2,240,000 valuation proposed by the Defendant's expert) for 3 months and did not sell or garner any real interest at that price.

[62] At the end of the day, the Property is only worth what someone is willing to pay for it.

[63] In order demonstrate that there is a genuine issue requiring a trial, the Defendant must present evidence of shortcomings in the sale process. In *Marshall v. Meirik,* Kimmel J. summarizes the defendants' onus, at paras. 44 – 45:

> [T]o satisfy the court, on a balance of probabilities and without the use of hindsight, both that:
>
> a. the plaintiffs failed to make reasonable efforts to mitigate, based on evidence identifying certain reasonable steps that they failed to take, or identifying some step that was taken that was not reasonable; and
>
> b. mitigation was possible.
>
> This court has found that "the absence of evidence from a professional which opines that the shortcomings in the sale process alleged by the purchasers actually had an impact on the final sale price…" is fatal to a defendant's position that a plaintiff (vendor) failed to mitigate the damages.

[64] Kimmel J. concluded that the appraisal evidence submitted by the defendant in that case was not sufficient to defeat a motion for summary judgment because the appraisal evidence did not address any shortcomings in the plaintiff's sale process. She stated, at para. 46:

> In this case, the defendants have presented evidence from two experts about the market value of the Property, but neither of those experts have provided any testimony about identified reasonable steps that the plaintiffs failed to take, or identified steps that were taken by the plaintiffs that were not reasonable, nor have either of these experts testified that the plaintiffs' losses could have been reduced if different steps had been taken.

[65] Similarly, at para. 54, Kimmel J. concludes:

> The defendants continue to argue, as they did at the initial hearing, that the failure to obtain a sale price close to what they agreed to pay under the APS and within the range of the market values that their two experts have indicated (of between $1,945,064.00 and $2,000,000.00) indicates an unreasonably inferior effort to obtain the best value (highest obtainable price)... The onus requires the identification of the failed mitigation efforts. No expert has testified that these steps taken by the plaintiffs were unreasonable or that there were other steps that should have been taken, and that behaving differently would have led to a higher re-sale price. That is the evidence that the defendants needed to present to meet their onus. They have not done so.

[66] This analysis applies with equal force to the present case. The Defendant has provided an expert market valuation, but that report does not provide any evidence about "identified reasonable steps that the Plaintiffs failed to take, or identified steps that were taken by the Plaintiffs that were not reasonable, nor … that the Plaintiffs' losses could have been reduced if different steps had been taken".

[67] See also *Cuervo-Lorens & Zabik v. Linda L. Carpenter*, 2016 ONSC 4661, at para. 6, (aff'd *Cuervo-Lorens v. Carpenter*, 2017 ONCA 109), where the Court stated:

> I find that the purchaser reasonably mitigated her damages when confronted with the purchasers' repudiation. She need only have acted reasonably. The onus is on the purchasers to show that she did not meet the standard. The evidence demonstrates that she relisted the property within six or seven days of the repudiation. She retained the services of the same real estate agent who had acted for her on the initial sale. The property was marketed using essentially the same methodology that resulted in the first sale. There were multiple offers, two or three of which did not result in binding agreements before the final one was entered into. All of this speaks of reasonableness. Of greater significance, however, in the context of a summary judgment motion, is the absence of evidence from a professional which opines that the shortcomings in the sale process alleged by the purchasers actually had any impact on the final sale price… There is little better evidence of market value than the price at which the property actually sold following what appears to be appropriate and apparently motivated marketing.

[68] The Defendant has two complaints about the Plaintiffs' marketing of the Property after the termination of the APS. First, Defendant's counsel complains that the Plaintiffs marketed the Property at the original listing price for approximately two months. This, he argues, was too high, and was unreasonable.

[69] Second, the Defendant's counsel complains that the Plaintiffs reduced the listing price by $900,000 to $1.4 million on January 19, 2023, and advertised the Property as "Aggressively Priced for a Fast Sale". Counsel for the Defendant argues that this was too low, and amounted to a "fire sale", announcing to the world that the Plaintiffs were desperate to sell and would take less than fair market value.

[70] There is, however, no evidence to support the Defendant's argument that the Plaintiffs' marketing strategy was unreasonable or led to a below-market value sale.

[71] The Defendant has not presented evidence that the alleged shortcomings in the sale process actually had any impact on the final sale price. The expert evidence presented by the Defendant has not "identified reasonable steps that the plaintiffs failed to take, or identified steps that were taken by the plaintiffs that were not reasonable, nor … that the plaintiffs' losses could have been reduced if different steps had been taken". Argument and speculation by counsel cannot take the place of evidence.

[72] In these circumstances, I conclude that the Plaintiffs acted reasonably in accepting the $1,500,000 offer on January 24, 2023.

Conclusion

[73] The Plaintiffs' motion for summary judgment is granted.

[74] Damages are calculated as follows:

Difference between APS and re-sale price: $900,000

Property tax (April 15, 2022 – March 22, 2023): $ 6,940.86

Legal costs: $ 1,957.33

_____

Total: $908,898.69

Less deposit paid of $100,000

_____

Total: $808,898.69

[75] If the parties cannot agree on costs, the Plaintiffs may serve and file costs submissions of no more than 3 pages plus costs outline and any offers to settle within 20 days after the

release of this decision, and the Defendant may serve and file responding costs submissions on the same terms within a further 15 days. Costs submissions should be uploaded to Case Center and forwarded to my Judicial Assistant at Robyn.Pope@Ontario.ca.

Justice R.E. Charney

Released: December 29, 2025

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REASONS FOR DECISION

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