

**CITATION:** StreetCity Realty Inc. Brokerage v. Paner House III Inc. 2026 ONSC 292  
**COURT FILE NO.:** CV-18-1590  
**DATE:** 20260114

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
STREETCITY REALTY INC. BROKERAGE and ) J. Conway, for the Plaintiffs  
BILL RASHMAWI )  
)  
Plaintiffs )

- and – )  
)  
PANER HOUSE III INC. and WAGDY A. ) B. Blay, for the Defendants  
BOTROS )  
)  
Defendants )

**Court File No. CV-18-261**

**AND BETWEEN:** )  
)  
2221736 ONTARIO INC. ) A. Sabo, for the Plaintiff  
)  
Plaintiff )

- and – )  
)  
PANER HOUSE III INC. ) B. Blay, for the Defendant  
)  
Defendant )

**HEARD:** October 6, 7, 8, 9, 2025

**REASONS FOR DECISION**

**RADY J.**

**Introduction**

[1] These two Simplified Rules lawsuits arise from a failed purchase and sale transaction. The plaintiff 2221736 Ontario (2221736) was the intended purchaser and it seeks to recover expenses it incurred in anticipation of the deal closing and a penalty payment to a

prospective subtenant of premises 2221736 was leasing. It also asks for compensation for a loss of anticipated rental revenue.

- [2] The plaintiffs StreetCity Realty Ltd. (StreetCity) and Bill Rashmawi seek to recover the commission to which they were entitled had the deal closed.
- [3] The defendant Paner House III Inc. (Paner House) has defended on the basis that the transaction constituted an illegal contract and that its principal was pressured by the plaintiffs to participate in the illicit scheme of their making.
- [4] The issue is whether a cash payment of \$25,000 from 2221736 to Paner House tainted the transaction and rendered it illegal, permitting Paner House to refuse to close. It also submits that the plaintiff has not demonstrated that it was ready, willing and able to close having failed to tender. Several arguments are advanced in defence of the damage claim as discussed below.

### **Procedural History**

- [5] The 2221736 action was commenced on January 31, 2018. It brought an unsuccessful motion for specific performance. Justice Gorman dismissed the motion on March 7, 2018.
- [6] On September 27, 2019, it brought a further motion for summary judgment, which was abandoned on July 9, 2020.
- [7] The StreetCity action was issued on August 2, 2018.
- [8] Statements of Defence were delivered in both actions and were subsequently amended.
- [9] On August 23, 2019, Justice Munroe ordered the two actions be tried together. StreetCity's claim against Wagdy Botros was discontinued on a without costs and with prejudice basis. A litigation timetable was imposed, all on consent.

### **The Evidence**

- [10] At the opening of trial, the parties tendered a joint document book. There was no issue respecting the authenticity of the documents and it was marked Exhibit 1 on consent. In addition, the parties filed affidavits, which constituted their evidence in chief. They were cross-examined. As already noted, there were earlier motions for specific performance and for summary judgment in the 2221736 action and transcripts of cross-examinations were available for use at trial. Portions were read in as part of 2221736's case.
- [11] In addition, Robert Wood, a local solicitor retained by 2221736 on the purchase, swore an affidavit, which was filed on consent. He was not cross-examined so his evidence is unchallenged.

**Background**

- [12] The following evidence is uncontroversial. Mr. Rashmawi is a real estate representative with StreetCity, which was engaged by Paner House on the sale and 2221736 on the purchase.
- [13] In September 2017, Wagdy Botros, who is a retired psychiatrist and the director and officer of Paner House entered into an Agreement of Purchase and Sale (APS) to sell 1408 Ernest Avenue in London. The property housed an office building. Paner House was the vendor. 2221736 was the purchaser. Its director and officer is Ahmed Seksek, who is a Doctor of Chiropractic.
- [14] Paner House signed an Ontario Real Estate Association (OREA) standard form Seller Customer Service Agreement on October 3, 2017. StreetCity was to be paid a commission of \$70,000 on the closing of the transaction.
- [15] The APS dated September 21, 2017, prepared on an OREA standard form, was executed by the parties. The purchase price was \$1,600,000. A deposit of \$25,000 was paid and the proposed closing date was November 30, 2017. The deal did not close. One of the conditions of sale, an environmental assessment, had not been satisfied in a timely way.
- [16] The parties executed a mutual release dated November 25, 2017, but the parties continued to discuss a sale. A second APS was executed by the parties dated November 26, 2017. It also provided for a purchase price of \$1,600,000 with the earlier deposit of \$25,000 to be transferred to the new deal. By this time, the environmental assessment condition had been satisfied.
- [17] StreetCity and Paner House executed a new Seller Customer Service Agreement. The seller agreed to pay a commission of 3.5% of the sale price (\$56,000). The executed agreement contains a handwritten addition below the commission payable. It says “-3000” which reflected a reduction by that amount of the commission payable on closing. The reasons for the reduction in commission are more fully described below.
- [18] Ultimately, this deal did not close. The reason why gives rise to the dispute in this case. The plaintiffs say the vendor refused with no legitimate justification.
- [19] The defendant submits that it was pressured by the plaintiffs into the deal, which was illegal and the other director and shareholder of Paner House, Dr. Botros’ wife, refused to consent to the sale.
- [20] The plaintiffs submit that Dr. Botros was the architect of the transaction, (which was not illegal) because he wished to extract a higher selling price.

## The Evidence

### *Nabil “Bill” Rashmawi*

- [21] Mr. Rashmawi is a sales representative with StreetCity where he has worked since 2010 when he obtained his licence. He came to know Ahmed Seksek and assisted him on the purchase of several commercial properties, and his attempted purchase of 1408 Ernest Ave. He understood Dr. Seksek wished to consolidate his professional practice there and to lease space to other medical professionals. He considered the location to be particularly attractive given the ethnic composition of the neighbourhood.
- [22] On September 21, 2017, Mr. Rashmawi presented Wagdy Botros with an APS for Ernest Ave. with a purchase price of \$1.6 million, a \$25,000 deposit and November 30, 2017, closing date. The APS had a number of conditions, including a satisfactory environmental report. The deposit was paid to StreetCity in trust. Mr. Rashmawi understood Dr. Botros to be the president and controlling mind of Paner House, which owned the property. At all times Mr. Rashmawi dealt with and negotiated with Dr. Botros and at no time was he made aware of any limitation on Dr. Botros’ authority.
- [23] The deal did not close because the environmental condition could not be satisfied in time. Nevertheless, the parties continued to talk. A second APS was presented and signed in November, on similar terms as the earlier agreement. By that time, an environmental report was in hand and the deal was firm.
- [24] Mr. Rashmawi’s evidence is that on November 21, 2017, Dr. Botros called him and demanded an additional cash payment of \$50,000. He expressed concern that he would be subject to a capital gain for which he wished to reduce his exposure. Knowing that Dr. Seksek had exhausted his financing options, Mr. Rashmawi made a proposal in order to save the deal. He was prepared to accept \$56,000 for his commission and Dr. Seksek would pay a further \$25,000 in cash. Dr. Botros accepted the proposal.
- [25] The parties agreed to meet on November 26, 2017, at a Tim Hortons in Baden, Ontario at which time the new APS and accompanying documents would be signed and the \$25,000 cash payment would be given. Mr. Rashmawi and Dr. Seksek travelled to Baden as arranged. Mr. Rashmawi agreed to take the further \$3,000 reduction in his commission in order to reimburse Dr. Botros for some recent expenditures he said he had incurred for the property which is reflected in a handwritten notation on the APS. Dr. Seksek handed over the \$25,000 cash payment that Dr. Botros had demanded, for which Mr. Rashmawi suggested a receipt be signed. Dr. Botros did so.
- [26] On December 9, 2017, Dr. Botros sent a text message to Mr. Rashmawi saying that the deal could not close because his spouse, who was said to be an equal owner of the property, refused to consent to the transaction. By that time, both parties had retained lawyers to act on the deal, Mr. Deane for Paner House and Mr. Wood for 2221736.

**Robert Wood**

[27] Mr. Wood swore an affidavit dated June 3, 2022. He deposed that he was proceeding in anticipation of closing when he was contacted by Mr. Deane on January 9, 2018, who advised that his client was not willing to close. Mr. Wood responded that the buyer's position was the APS was final and binding. Mr. Deane advised Mr. Wood two days prior to closing that he was no longer retained. Mr. Wood swore that he understood that the purchaser was ready, willing and able to close on the date scheduled.

**Ahmed Seksek**

[28] Dr. Seksek has been in private chiropractic practice in London since 2006, where he has operated two medical clinics. He developed plans to consolidate the two locations at one location in South London to serve a growing Middle Eastern demographic. He engaged Mr. Rashmawi to assist and they determined that 1408 Ernest Ave. was particularly suitable for his purposes. Mr. Rashmawi approached Dr. Botros to see if he would be prepared to sell the property. Dr. Botros agreed and an APS was executed with an anticipated November closing date. There were a number of conditions, including a satisfactory environmental assessment report. Ultimately, this deal could not be completed because the environmental condition could not be satisfied in time. Nevertheless, the parties continued to work on a deal and the initial APS was replaced by a second APS dated November 26, 2017.

[29] On November 21, 2017, Dr. Seksek was advised by Mr. Rashmawi that Dr. Botros wanted \$25,000 more in order to close the deal. He agreed to pay an additional \$25,000 in cash.

[30] A meeting was arranged for November 26, 2017, at Tim Hortons in Baden, Ontario, so that the necessary documents could be signed and Dr. Seksek would provide the additional cash payment. At the meeting, he requested and received a receipt for the cash signed by Dr. Botros and witnessed by Mr. Rashmawi.

[31] Dr. Seksek agreed in cross-examination that the sale price reflected in the APS was not the true sale price.

[32] On January 9, 2018, his solicitor was advised by Dr. Botros' lawyer that his client no longer intended to close the deal. Dr. Seksek deposed that he was ready, willing and able to close on January 31, 2018 as the APS contemplated.

**Wagdy Botros**

[33] Dr. Wagdy Botros testified that he was approached by Mr. Rashmawi about selling 1408 Ernest Ave. He agreed to do so and at Mr. Rashmawi's request signed a Seller Customer Service Agreement and an APS dated September 21, 2017. The deal did not close.

[34] According to Dr. Botros, after the deal did not close, Mr. Rashmawi relentlessly hounded him to agree to sell to the same purchaser. Dr. Botros resisted but Mr. Rashmawi continued

to pester him. In an effort to induce him to stop his unremitting pressure, Dr. Botros told him he would not sell because the resulting capital gain would be too much. In response, Mr. Rashmawi said he would reduce his commission and the purchaser would provide a further \$25,000 cash payment in order to defray any capital gain.

- [35] Dr. Botros agreed to meet Mr. Rashmawi in Baden. When Mr. Rashmawi arrived, he was unexpectedly accompanied by Dr. Seksek. Dr. Botros was asked to sign the new APS. He expressed concern that he had recently expended \$3,000 on the property. Mr. Rashmawi agreed to reduce his commission by a further \$3,000. Dr. Seksek handed over an envelope containing \$25,000 in small bills.
- [36] Dr. Botros signed the APS which showed the selling price to be \$1.6 million, the same consideration as the first agreement. He deposed that it was clear to him that neither Mr. Rashmawi nor Dr. Seksek intended to show the true consideration for the sale. Dr. Botros acknowledged that he signed a receipt for the cash he received. He testified that the receipt was prepared by Dr. Seksek on a piece of paper he had retrieved from the floor of the restaurant.
- [37] Dr. Botros says he felt uncomfortable about the deal but could not put a finger on the reason why. He began to be concerned the transaction was illegal. He conducted hundreds of Google searches, which confirmed his concerns and that he alone would face the consequences.
- [38] In December 2017, wishing to be considerate and to avoid making accusations about Mr. Rashmawi's professional conduct, he advised Mr. Rashmawi that his wife, who was the other shareholder in Paner House, would not consent to the transaction.
- [39] Dr. Botros deposed that he continues to hold the \$25,000 cash payment Dr. Seksek had given him. He testified that neither had Dr. Seksek requested its return nor had a court ordered him to do so. He had offered to return the money but only in exchange for a mutual release.

### Analysis

- [40] Mr. Rashmawi and Dr. Seksek gave their evidence in a straightforward way without exaggeration. There is no doubt that they both wanted the deal to close. Mr. Rashmawi obviously stood to earn a handsome commission even with a reduction. Dr. Seksek viewed 1408 Ernest Ave. to be an ideal location for the consolidation of his practice with other medical services.
- [41] Dr. Botros was a very poor witness. He is an educated man who is not unsophisticated in business matters. He is accustomed to dealing with lawyers and accountants. He painted himself as the hapless target of a relentless campaign to induce him to sell his property against his will. According to him, Mr. Rashmawi, whom he described in the most unflattering way, badgered him to agree to a scheme designed to conceal the real purchase

price of the property. He reluctantly agreed to it but began to experience second thoughts, concerns that were validated after some 200 hours of Google searches.

- [42] Dr. Botros was not a credible witness. He was at times argumentative and evasive. His evidence is not supported by the contemporaneous documentary material. The email exchanges between Mr. Rashmawi and him at the time of the first deal make clear that Dr. Botros believed the building was being sold undervalue notwithstanding the appraisal obtained by Dr. Seksek for mortgage purposes. He was speaking with prospective tenants and was contemplating re-listing the property if the deal did not close. Consequently, when that happened, he had an improved negotiating position. He knew that Dr. Seksek was a very motivated purchaser. He pressed his advantage, extracting an additional \$50,000, partly in cash and partly by way of reduced commission. The only person to benefit was Dr. Botros himself.
- [43] I reject his evidence that he wanted to resist Mr. Rashmawi's entreaties but he agreed only to be polite and to deflect his pressure. The more likely explanation is that he believed he could obtain more for the property. He used his wife's alleged objection to the deal as a pretext to avoid closing because he thought he could do better. It is significant that his wife was not called as a witness at trial. Dr. Botros' evidence about what his wife told him is hearsay.
- [44] It is also significant that when Dr. Botros swore an affidavit in defence of the motion for specific performance, it is silent on his wife's alleged objection and the issue of illegality. That motion was initiated in February 2018, very shortly after the deal did not close when memory of events would be fresh. It is reasonable in the circumstances to infer that Dr. Botros' wife's alleged refusal is an excuse concocted long after the events in question.
- [45] Furthermore, his real estate lawyer's retainer was terminated just before the scheduled closing date, making the purchaser's ability to formally tender difficult, if not impossible. Mr. Wood swore that he understood the purchaser was in a position to close. His evidence is unchallenged. I do not consider his statement to be equivocal and conclude that the purchaser was ready, willing and able to close.
- [46] It is also noteworthy that Dr. Botros has never returned the \$25,000 cash payment Dr. Seksek gave to him, but has essentially held it hostage in exchange for a mutual release. When Mr. Conway suggested in cross-examination that he could have returned the funds at any time, Dr. Botros said he was "talking nonsense". I disagree. The funds should have been returned without delay. Indeed, one might have expected him to do so if he thought the deal was illegal.
- [47] I am not persuaded that the transaction was in fact illegal. There is no evidence about how the additional consideration was to be reflected on closing. That was a matter between Dr. Botros and his lawyer – whose retainer was terminated just before closing and who provided no evidence during the course of these proceedings. Dr. Seksek agreed that the

APS did not reflect the modified purchase price. However, he did not testify that 2221736 intended to misrepresent the consideration in the closing documents.

- [48] Neither Mr. Deanes' nor Mr. Wood's files were produced, which presumably would have contained draft closing documents that may have shed light on how the additional payment was to be reflected. I also note that the receipt signed by Dr. Botros characterizes the \$25,000 cash as "partial payment", which I interpret to mean partial payment of the purchase price. It is also possible that the funds could be considered an extension fee although there was no direct evidence on the point, and like Dr. Botros' argument that the agreement was illegal, it appears to be a recent characterization.

### **Damages**

- [49] Mr. Rashmawi's claim is straightforward. He asks for the reduced commission Dr. Botros agreed to pay namely \$53,000 plus HST and prejudgment interest.
- [50] As a result of Paner House's refusal to close, 2221736 submits that it has incurred the following damages:
- a. Broker's fee of \$16,000 paid to DLC Forest City Funding. Dr. Seksek testified that the fee was payable even though the initial deal did not close.
  - b. Phase 1 Environmental Site Assessment account for \$2,938 undertaken by EXP. This was a condition of financing.
  - c. \$2,712 for Valco Appraisal. This too was a condition of financing.
  - d. Property Inspection account for \$2,034, another financing condition.
  - e. MM Architectural Design - \$8,475 for architectural designs prepared in anticipation of the amalgamation of Dr. Seksek's two clinics.
  - f. Vivos Web website fees of approximately \$140, related to modifications to the plaintiff's website in anticipation of the move.
  - g. the \$25,000 cash payment that has never been returned.
- [51] In addition to those expenses, a claim is advanced for \$25,000, which Dr. Seksek deposed he was obliged to pay an intended tenant, Dr. Chang, as a penalty because 2221736 could not honour a sublease agreement they had negotiated for space at 1080 Adelaide Street which Dr. Seksek was leaving to consolidate his business at Ernest Ave. Dr. Seksek's evidence is that he agreed to the penalty payment in order to avoid a lawsuit. A copy of a cheque for \$25,000 to Dr. Chang is included as an Exhibit to Dr. Seksek's Affidavit, but it bears no stamp or marking that would show it was negotiated.

- [52] Finally, a claim is made for \$45,000, which is the additional revenue of \$750 monthly the plaintiff submits it would have received from Dr. Chang over the course of the five year sublease, a copy of which is appended to Dr. Seksek's affidavit as an Exhibit.
- [53] The defendant advances several arguments with respect to damages summarized as follows:
- (i) the damages were not sustained by 2221736 but rather by other corporations owned and operated by Dr. Seksek;
  - (ii) with respect to the alleged payment and lease arrangement with Dr. Chang, the head lease has not been produced and the sublease that has been produced was with Seksek Chiropractic P.C. and not 2221736;
  - (iii) the penalty payment of \$25,000 was arbitrarily calculated and voluntarily paid;
  - (iv) there is no evidence the cheque was delivered or cashed. Proof of payment is required;
  - (v) alleged damages sustained prior to Nov 26, 2017 were released by the mutual agreement of the parties when the first deal did not close;
  - (vi) any damages could have been mitigated if the plaintiff had accepted the defendant's offer to lease the premises.

### Analysis

- [54] I acknowledge that some of the expenses claimed were paid by Hands On Health Wellness Centre or Seksek Chiropractic Professional Corporation. Both companies are controlled by Dr. Seksek and the evidence is that any payments he made through them were made on behalf of 2221736. In my view, the evidence sufficiently establishes that the plaintiff is out of pocket for those expenses detailed at paragraph 53 (a) through (f). Given that Dr. Seksek controls the three corporations that paid the bills, it strikes me as a triumph of form over substance to have required all three to be named as plaintiffs, or in the alternative for them to commence an action against 2221736 for the recovery of funds they expended on its behalf.
- [55] With respect to the release signed when the first transaction did not close, the evidence is that those expenses would have been incurred for the second deal regardless. It makes little sense to require the plaintiff to incur those expenses again.
- [56] There is no dispute that the plaintiff is entitled to the return of the \$25,000 it paid to the defendant.
- [57] The arrangement with Dr. Chang is problematic. First, I was referred to no contractual requirement for the payment of \$25,000. It was a voluntary payment allegedly made to

avoid litigation but there is no evidence a lawsuit was ever contemplated or threatened by Dr. Chang.

- [58] Moreover, there is no evidence the cheque for \$25,000 and payable to Dr. Chang was ever negotiated. For all of these reasons, no allowance is made for this claim.
- [59] The rent differential claim for \$45,000 is also problematic. The plaintiff has appended the sublease agreement between Seksek Chiropractic P.C. and J. Chang Dentistry P.C. dated December 14, 2017, which shows a monthly rental of \$7,750 monthly for 60 months. Dr. Seksek deposes that the existing lease rate for the premises was \$7,000. However, no copy of that lease agreement is provided to verify the information or the term of that lease.
- [60] I also note that the lease with Dr. Chang contemplated that the lessor would provide four months rent free, which I calculate to be \$31,000 which would have significantly offset that claim in any event.
- [61] As to mitigation, I am not persuaded that the plaintiff was obliged to accept the defendant's offer to lease space to it. There is no evidence of what terms were being offered.

### **Disposition**

- [62] The plaintiff StreetCity Realty is entitled to judgment of \$59,890 (\$53,000 plus HST) plus prejudgment interest.
- [63] 2221736 is entitled to judgment of \$57,299.00 plus prejudgment interest.
- [64] I will receive brief written submissions on costs not exceeding three pages plus Bills of Costs from the plaintiffs within 20 days of the release of these Reasons. The defendant shall deliver its submissions ten days later. There is no right of reply.

*"Justice H.A. Rady"*

Justice H.A. Rady

**Released:** January 14, 2026