COURT OF APPEAL FOR ONTARIO

CITATION: Rabinowitz v. 2528061 Ontario Inc., 2026 ONCA 21
DATE: 20260119
DOCKET: COA-24-CV-0537

2026 ONCA 21 (CanLII)

Roberts, Trotter and Dawe JJ.A.

BETWEEN

Naftali Rabinowitz

Plaintiff (Appellant)

and

2528061 Ontario Inc.

Defendant (Respondent)

Eli Karp and Taek Soo Shin, for the appellant

Aoife Quinn and Devon R. Kapoor, for the respondent

Heard: January 7, 2026

On appeal from the judgment of Justice Lisa Brownstone of the Superior Court of Justice, dated April 25, 2024, and the order of Justice Lisa Brownstone of the Superior Court of Justice, dated February 10, 2025.

REASONS FOR DECISION

Overview

[1] This appeal arises out of a failed commercial real estate agreement of purchase and sale. The appellant brought two actions that were heard together for specific performance of the agreement of purchase and sale and repayment of the

six-month mortgage granted to the respondent, with interest at the prescribed rate of 12% commencing on the last day of the mortgage.

[2] Although the trial judge found that the respondent had repudiated the agreement of purchase and sale, she declined to grant specific performance of the agreement to the appellant and dismissed his action. She ordered repayment to the appellant of the 6-month mortgage granted to the respondent but refused to grant the prescribed 12% interest rate under the mortgage, finding that it contravened s. 8 of the *Interest Act*, R.S.C. 1985, c. I-15.

[3] The trial judge rendered her judgment in April 2024. Four months later, in October 2024, the appellant brought a motion for reconsideration of her refusal to grant specific performance and for leave to amend his pleading to claim damages as an alternative remedy, returnable in January 2025. The trial judge dismissed the appellant's motion.

Issues

[4] The appellant raises the following grounds of appeal:

(1) Did the trial judge err in failing to grant specific performance?

(2) In the alternative, did the trial judge err in failing to grant the appellant leave to amend the statement of claim to assert a claim for damages?

(3) In the mortgage action, did the trial judge err in finding that the 12% interest under the mortgage offended s. 8 of the *Interest Act*?

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i. No error in refusing specific performance

[5] We are not persuaded that the trial judge erred in refusing to grant specific performance.

[6] The trial judge's decision not to grant specific performance was open to her on the record and grounded firmly in the facts as she was entitled to find them. The granting of specific performance is an equitable, discretionary remedy based on the particular facts of the case: *Matthew Brady Self Storage Corporation v. InStorage Limited Partnership*, 2014 ONCA 858, 125 O.R. (3d) 121, at para. 32. The appellant does not challenge any of the trial judge's findings of fact.

[7] In our view, the trial judge correctly applied the governing principles and determined that the appellant had failed to discharge his burden to demonstrate that either the commercial property, purchased as a potential investment opportunity, or the agreement of purchase and sale was subjectively or objectively unique.

[8] We see no error in the trial judge's conclusions that: 1) the appellant had not demonstrated that damages would be inadequate; and 2) damages would in fact be an adequate remedy. Proving the inadequacy of damages, too, was the appellant's burden: *John E. Dodge Holdings Ltd. v. 805062 Ontario Ltd.* (2001), 56 O.R. (3d) 341, aff'd (2003) 63 O.R. (3d) 304 (C.A.), at para. 60; *Pittman Brothers Production Ltd v. Evans*, 2024 ABCA 185, 498 D.L.R. (4th) 107, at para. 16.

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[9] We also agree with the trial judge's determination that the fact that damages may be awarded against the respondent in another unrelated proceeding in relation to the same property does not render damages here inadequate or otherwise compel an order for specific performance.

[10] Absent an error, which we do not find here, the trial judge's decision not to grant specific performance is entitled to deference: *9725440 Canada Inc. v. Vijayakumar*, 2023 ONCA 466, 167 O.R. (3d) 734, at para. 31; *Matthew Brady*, at para. 32.

ii. No error in refusing the amendment of the statement of claim

[11] The trial judge's rejection of the appellant's request to amend his pleading to claim damages as an alternative remedy following judgment was also a reasonable exercise of her discretion.

[12] The appellant relies on r. 26.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which states that the court shall grant leave to amend a proceeding at any stage of an action, unless non-compensable prejudice would result.

[13] Prejudice within the context of an amendment sought at the end of or after trial has been held to mean that the amendment, if allowed, would alter the case to be met and that costs or an adjournment would not permit the defendant the opportunity or ability to fairly meet it: *Padfield v. Martin* (2003), 64 O.R. (3d) 577 (C.A.), at para. 37. Importantly, the discretion to permit amendments is not

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unlimited and is “intended to facilitate fairness and therefore justice, not to obstruct them, and on that basis, judges will refuse amendments”: *Robinson v. Robinson* (1989), 70 O.R. (2d) 249, at pp. 255-56; varied, but not on this point: (1993), 15 O.R. (3d) 485.

[14] Additionally, where an amendment results in a reopening of the trial to permit new evidence, the trial judge must exercise her discretion “sparingly and with the greatest care”: *671122 Ontario Ltd. v. Sagaz Industries Canada Inc*., 2001 SCC 59, [2001] 2 S.C.R. 983, at para. 61. In *Sagaz*, the Supreme Court approved a two-step test for reopening a case to call new evidence: the judge must be satisfied that the evidence would probably change the result and could not have been obtained by reasonable diligence before the trial: *Sagaz*, at para. 20.

[15] The trial judge appropriately recognized the prejudice to the respondent and the corresponding abuse of process that would have been caused by allowing an amendment in the present case. The appellant made the deliberate choice not to claim damages as an alternative remedy and confirmed to the trial judge in closing submissions that no damages were claimed. We agree that allowing the amendment at this late hour would cause prejudice to the respondent and to the administration of justice: *Tuffnail v. Meekes*, 2020 ONCA 340, 449 D.L.R. (4th) 478, at para. 120. In any event, the appellant has failed to satisfy the *Sagaz* test noted above, as he has not provided any evidence of his alleged damages.

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iii. Error in the interpretation of the interest clause

[16] We reach a different result with respect to the appellant's appeal from the judgment in his mortgage action.

[17] The six-month mortgage was given interest-free in consideration of the respondent agreeing to allow an extension of time for the appellant to conduct due diligence with respect to the subject property and the appellant's advance of $600,000 by way of the release of the purchase deposit of $250,000 and advancement of a further $350,000 to the respondent. On closing, the $600,000 advanced under the mortgage would be deducted from the purchase price. With respect to interest, the mortgage agreement stipulated as follows ("the interest clause"):

> The Interest Rate of the Charge shall be 0% until the Balance Due Date on July 10, [2018][1]. Beginning July 10, [2018], the Interest Rate of the Charge shall be 12.0%, calculated monthly, not in advance, until the payment of the Charge in full.

[18] There was no tying of the increase of the mortgage interest to any default. It was common ground that the mortgage was not in default on July 10, 2018.

[19] The trial judge interpreted the interest clause to mean that 12% interest would start to run on the first day of default on July 11, 2018. As such, she reasoned, the 12% interest provision offended s. 8 of the *Interest Act,* which

[1] The parties agreed that the text contained a typographical error: "2017" should be read as "2018".

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prohibits the charging of interest on arrears of principal or interest that exceeds interest charged on the mortgage prior to default.

[20] It is well established that ordinary commercial contracts must be interpreted in accordance with their plain language as understood by a reasonable business person, and in a way to avoid commercial absurdity: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 47-48; *Kentucky Fried Chicken Canada v. Scotts Food Services Inc.* (1998), 114 O.A.C. 357 (C.A.), at para. 27.

[21] Moreover, s. 8 of the *Interest Act* must be read "in light of, and harmoniously with s. 2" of the *Interest Act* that allows for parties, subject to any other provision, under the *Interest Act* or other Act of Parliament, to "stipulate for, allow and exact, on any contract or agreement whatever, any rate of interest or discount that is agreed on": *Krayzel Corp. v. Equitable Trust Co*., 2016 SCC 18, [2016] 1 S.C.R. 273, at para. 26.

[22] The trial judge did not apply this analysis, which is an error in principle. As a result, her interpretation is not entitled to appellate deference.

[23] We accept that the trial judge erred by failing to give effect to the clear words of the parties' mortgage agreement, which were commercially reasonable in the circumstances of this case. It was significant that the interest rate commenced prior to the mortgage being in default, as it was consistent with the parties' agreement

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with respect to the purchase of the property. The six-month interest-free mortgage became part of the purchase agreement between the parties and was premised on the completion of the purchase agreement. If the agreement did not close, then there was no further rationale for the interest-free mortgage. Rather, the mortgage would stand independently at a 12% rate of interest to which the parties agreed with the benefit of legal advice. There was no basis to disturb that agreement.

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Disposition

[24] Accordingly, we dismiss the appellant's appeal from the dismissal of his action for specific performance and his reconsideration motion. We allow the appeal in the mortgage action and order that the mortgage be repaid at 12% interest commencing on July 10, 2018, and in accordance with the terms of the mortgage.

[25] The respondent is entitled to the costs of the appeal from the dismissal of the action for specific performance and the reconsideration motion in the agreed upon all-inclusive amount of $25,000. The appellant is entitled to the costs of the appeal of the mortgage action on a full indemnity basis in accordance with the terms of the mortgage in the all-inclusive amount of $17,000.

[26] As for the trial costs, the respondent is entitled to the agreed-upon all-inclusive amount of $20,000.

[27] The parties agree that the respective costs amounts should be subject to set-off. Accordingly, the appellant shall pay the respondent the net, all-inclusive amount of $28,000.

“L.B. Roberts J.A.”
“Gary Trotter J.A.”
“J. Dawe J.A.”

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