CITATION: 13405176 Canada Inc. et al. v. James Selkirk Custom Homes Ltd., 2026 ONSC 600
COURT FILE NO.: CV-22-30
DATE: 20260202

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
13405176 CANADA INC., SUMEET ANAND and CINNI DEOL Plaintiffs	Gregory Weedon, for the Plaintiffs
– and –	
JAMES SELKIRK CUSTOM HOMES LTD. Defendant	Lou Vadala, for the Defendant
	HEARD: October 10, 2025

LACELLE, J.

[1] The plaintiffs entered into agreements of purchase and sale (the "Agreements") for new construction of residential homes in a Napanee subdivision with the defendant James Selkirk Custom Homes Ltd. ("Selkirk"). The plaintiffs allege Selkirk breached the Agreements to purchase by unilaterally terminating them. Ultimately, Selkirk resold the plaintiffs' lots. In doing so, it realized a profit in comparison to the sale priced under the Agreements. Selkirk profited by $165, 100 and $275, 100, on the lots, respectively.

[2] The plaintiffs bring a motion for summary judgment on the issues of liability and damages for breach of contract.

The positions of the parties

[3] The dispute centers around the interpretation of Schedule "I" of the Agreements. This schedule states that the transactions were conditional upon "registration of the Plan of Subdivision", with deposits to be returned if registration did not occur by December 31, 2021. Selkirk says because the Plan of Subdivision was not registered until May 26, 2022, the Agreements were rendered null and void, and there has been no breach of contract.

[4] The plaintiffs say Schedule "I" is invalid and unenforceable because the Tarion Addendum, which is mandated by regulation and forms part of every new home agreement in Ontario, permits only a closed list of early termination conditions ("ETCs"), and "registration of a plan of subdivision", is not among them.

[5] In any case, the plaintiffs argue that the final subdivision plan ` was granted by Council on August 17, 2021, prior to the December 31 deadline, and Selkirk effectively had control over when the Plan of Subdivision would be "registered", since this was only an administrative step that no longer involved any approvals. In either case, the plaintiffs say Selkirk's termination was unauthorized and amounted to breach of contract. The plaintiffs seek damages in the global sum of $440, 200.00 reflecting the loss of bargain occasioned by Selkirk's refusal to complete the transactions. The plaintiffs submit that there are no genuine issues for trial, and summary judgment should be awarded pursuant to this motion.

[6] Selkirk says this is not a case suitable for summary judgment and requires a trial to resolve the factual and legal disputes. Selkirk argues that whether the plaintiffs had satisfied all their obligations and were in a position to close, or whether their own conduct contributed to the failed closing, is a genuine issue requiring a trial. Further, since the plaintiffs' evidentiary record includes reference to conversations and correspondence with Michael Nobes with respect to his understanding of the process of registering the plan of subdivision, it will be necessary to examine Mr. Nobes with respect to his conclusions and opinions. Selkirk notes that Mr. Nobes is a Chief Building Official, not a planner, surveyor, or Service Ontario employee. Moreover, Selkirk asserts there is conflicting evidence as between the parties which cannot be resolved on the written record or documents and oral evidence and a trial is required. Finally, Selkirk disputes how the damages were calculated by the plaintiffs and says that the production of an expert report as to the value on the date of an alleged breach gives rise to a genuine factual issue requiring a trial.

[7] I must decide the following central issues:

a. Is this case properly dealt with by way of summary judgment?

b. Is Schedule "I" valid and enforceable?

c. If a breach of contract has occurred, how should damages be calculated?

Overview of the facts

[8] Except where otherwise indicated, the following facts are not in dispute.

[9] The action arises from the plaintiffs' purchase of two lots from Selkirk – Lot 54 and Lot 56 located at Gateway Place, Napanee.

[10] Lot 54 was the subject of an agreement of purchase and sale dated October 2, 2020, which set a purchase price of $364, 900. The tentative closing date was December 13, 2021. By December 2020, the financing condition was waived and the agreement was firm.

[11] On November 29, 2021, by way of amendment, the closing date was extended by Selkirk to May 27, 2022, and title was to be taken in the name of 13405176 Canada Inc. In May 2022, counsel for 13405176 Canada Inc. requested closing documents. Selkirk confirmed it would not close because of the alleged lack of responsiveness by the purchaser.

[12] Lot 56 was also the subject of an agreement of purchase and sale dated October 2, 2020. The agreement set a purchase price of $374, 900. Deposits were paid and conditions waived and the agreement became firm and binding.

[13] The first tentative closing date was November 1, 2021. At Selkirk's request, the closing date was extended twice, ultimately to April 29, 2022.

[14] By letter dated January 18, 2022, Selkirk terminated the agreement citing alleged 'unresponsiveness' by the purchasers. The purchasers' solicitor contacted Selkirk's counsel to confirm readiness to close on April 29, 2022. The transaction was not completed.

[15] The plaintiffs retained litigation counsel and on August 24, 2022, they jointly issued a statement of claim electing to terminate the Lot 54 and Lot 56 Agreements. At that point, Selkirk took the position that the failure to register the plan of subdivision entitled it to terminate the Agreements through Schedule "I".

Schedule "I" and The Tarion Addendum

Schedule "I"

[16] As I have reviewed, the Agreements each included Schedule "I". It was added by amendment to each Agreement on November 2, 2021. The clause read: "In the event that the Plan of Subdivision is not registered on or before the 31st day of December, 2021, then this Agreement shall become null and void and the Purchaser's deposits returned in full without interest or deduction". [emphasis added]

The Tarion Addendum

[17] The Tarion Addendum also formed part of each agreement as the Addendum is mandatory in all new construction contracts in accordance with the Ontario New Home Warranties Plan Act. Paragraph 6 of the Addendum is entitled "Early Termination Conditions". Paragraph 6(a) provides that "the Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section". [emphasis added]

[18] Paragraph 6(b) of the Addendum further provides that vendors are not permitted to include any conditions in the agreement other than those types of early termination conditions listed at Schedule "A". [emphasis added] It provides that non-compliant early termination conditions are rendered "null and void and not enforceable by the Vendor and does not affect the validity of the balance of the purchase agreement". It reads as follows:

> The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (j), (k) and (l) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (j), (k) and (l) below is deemed null and void and is not enforceable by the Vendor but does not affect the validity of the balance of the Purchase Agreement.

[19] Paragraph (j) provides that the purchase agreement may be conditional upon compliance with the subdivision control provisions (section 50) of the *Planning Act*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.

[20] As for Schedule A, it permits the Vendor of a home to make the Purchase Agreement conditional on a closed list of issues. This includes "upon receipt of Approval from an Approving Authority" for various things, such as consent to creation of a lot, and site plan agreements. [emphasis added] Schedule A specifies that "Approving Authority" means a government (federal, provincial or municipal) or governmental agency.

The facts - Approvals and Registration

[21] Selkirk obtained Draft Plan of Subdivision Approval on October 27, 2020. On August 17, 2021, The Town of Greater Napanee Council (the "Town") granted final approval of the plan of subdivision. According to the plaintiff, the Chief Building Official, Mr. Nobes, confirmed that as of August 17, 2021, all municipal Plan approvals had been obtained. All that was left to do was register the M-Plan on title. The M-Plan is 'deposited' by a surveyor and is processed by the Land Registry Office. In this instance, the M-Plan was not deposited until April 2022.

[22] While Selkirk has admitted that "the plan of subdivision is registered by the Defendant's representative or agent", it insists that cross-examination of Mr. Nobes about this process is required.

[23] Ultimately, the Plan of Subdivision was not registered until May 26th, 2022, some months after the December 31, 2021, deadline set by Schedule "I". Questions about why that happened were refused by Selkirk.

Resale of Lots 54 and 56

[24] Without notifying the plaintiffs, Selkirk resold Lot 54 for $530, 000 and Lot 56 for $650, 000 in 2022. This represents a difference of $165, 100 and $275, 100, on each lot, respectively.

[25] During examinations and cross-examinations, Selkirk refused questions pertaining to the dates he entered into the resale agreements. He refused to provide copies of the resale agreements to the plaintiffs to quantify their alleged damages.

[26] Given the refusals, the plaintiffs have obtained appraisal reports for each lot. The opinion about Lot 54 was that as of May 27, 2022 (the closing date), its value was $575, 000. On the date of the issuance of the claim (August 24, 2022), it was $545, 000.

[27] The appraisal for Lot 56 fixed its value on the closing date (April 29, 2022) at $600, 000. As of the date of the issuance of the claim, it was $570, 000.

[28] There is no evidence on this issue apart from that of the plaintiffs. The plaintiffs' appraiser was not examined by Selkirk.

The availability of summary judgment

General principles

[29] The principles governing when summary judgment is appropriate are well known and I will not review them extensively here.

[30] Suffice to say that the governing two-part test was articulated by the Supreme Court of Canada in *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87. First, the judge hearing a summary judgment motion must determine, based only on the evidence in the record, if there is a genuine issue requiring a trial. Resort to additional fact-finding powers is not permitted at this first stage. If there is no genuine issue requiring a trial, then the matter may be summarily determined.

[31] If there appears to be a genuine issue requiring a trial, then the second step requires the judge to look beyond the evidence in the record. At this stage, the judge determines whether the need for a trial can be avoided by utilizing the additional fact-finding powers available to the judge under the relevant procedural rules. If it can, then the matter may, at the discretion of the judge, be summarily determined. If not, then summary judgment is not granted (*Hryniak*, at para. 67).

[32] Rule 20.04 of the *Rules of Civil Procedure* governs motions for summary judgment and sets out the enhanced fact-finding powers available to the court. A judge hearing a motion for summary judgment may weigh evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence, unless it is in the interests of justice for such powers to be exercised only at a trial. A judge may also require viva voce evidence by 'mini-trial'.

[33] On a motion for summary judgment, the court is entitled to assume that the parties have advanced their best case and have put their best foot forward: see for instance *Portuguese Canadian CU v. Pires*, 2011 ONSC 7448, at para. 11, affirmed 2012 ONCA 335; and *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200 at para. 26. As noted in *Scott v. Forjani*, 2021 ONSC 1996 at para. 14, "the overarching principle is proportionality. Summary judgment ought to be granted unless the added expense and delay of a trial is necessary for a fair and just adjudication of the case".

[34] Various courts have considered that a trial is not necessary to resolve contractual interpretation issues, especially with a complete and detailed record. This has been the case in other instances of breach of contract claims arising from failed real estate transactions: see, for instance, *Zoleta v. Singh and RE/MAX Twin City Realty*, 2023 ONSC 5898; *Forest Hill Homes v. Ou*, 2019 ONSC 4332, *Paradise Homes North West Inc. v. Sidhu*, 2019 ONSC 1600, and *Rosehaven Homes v. Aluko*, 2022 ONSC 1227.

Analysis

[35] I agree with the plaintiffs that this case centers around contractual interpretation, and in particular, whether Schedule "I" is valid and enforceable (Selkirk admits it is an early termination condition). If Schedule "I" is enforceable, the plaintiffs have no case. If it is not enforceable, there has been a breach of contract. As such, this case is particularly suitable for the summary judgment process. I find that this process is the most proportionate to the issues to be resolved. I further agree that Selkirk's own admissions and documentary record confirm that there is no genuine issue requiring a trial.

[36] As I have reviewed, the expectation on a motion such as this is that each party will put their best foot forward. Selkirk has provided insufficient competing evidence on issues it was easily able to address. This speaks volumes, as do Selkirk's refusals to provide various pieces of information. The e-mail thread in the record with Mr. Nobes, for instance, attaches business records which Selkirk refused to provide.

[37] The suggestion that this case features expert evidence that requires cross-examination is misplaced. The expert evidence relates only to damages. Selkirk has offered no competing evidence on this issue, though it could easily have done so. I am satisfied that the court record includes sufficient evidence to show the fair market value of the properties at the points in issue.

[38] As for the debate about the meaning of language in Schedule "I", and whether it is compatible with the Tarion Addendum, it can be resolved on this record. There is no need to delay or complicate proceedings by insisting on viva voce evidence from Mr. Nobes or anyone else. As I have said, Selkirk is presumed to have adduced all its relevant evidence on this issue. The case may be properly and justly decided on the record as it is.

[39] Finally, Selkirk argues that whether the plaintiffs had satisfied all their obligations and were in a position to close, or whether their own conduct contributed to the failed closing, is a genuine issue requiring a trial. The evidentiary record does not support this bald assertion. I am not satisfied that this is a genuine issue requiring a trial.

Is Schedule "I" valid and enforceable?

[40] In considering whether Schedule "I" is valid and enforceable, it is helpful to consider *Reddy v. 1945086 Ontario Inc.*, 2019 ONSC 2554. That case also involved consideration of contracts which incorporated the Tarion Addendum to Agreements of Purchase and Sale.

[41] In that case, Penny J. noted that under the Addendum, a vendor must agree to "take all commercially reasonable steps within its power to satisfy" the early termination conditions (para. 6(f)). As noted in that case, the addendum is a standard form agreement that provides a space for each early termination condition to be described. Each space also contains language which contemplates early termination conditions which involve third-party approvals from an "Approving Authority", which is effectively defined to mean governmental and statutory regulatory bodies.

[42] In considering whether the early termination condition at issue in *Reddy* was null and void, the court held:

a. It is well-established that the *Ontario New Home Warranties Plan Act*, and its regulations, constitute consumer protection and remedial legislation. As such, a broad and liberal interpretation of its provisions in light of their object and purpose is appropriate (at para. 20);

b. Where statutory regulations dictate requirements for what must be in documents, those regulations must be construed strictly and, where there are two possible interpretations of circumstances under which a protection is to be extended, the one more favourable to the consumer should govern (at para. 21);

c. The provisions of the Addendum prevail over any offending provision (at para. 22);

d. The imposition of regulatory warranties should not unduly favour purchasers in a manner that is onerous for builders or that fails to recognize the inevitability of certain delays in new home construction (at para. 24);

e. One of the well-accepted tenets of contract interpretation is that a contract is to be interpreted in a fashion that accords with sound commercial principles and good business sense and that avoids a commercial absurdity (at para. 28);

f. The obligation to take all commercially reasonable steps within one's power to satisfy an early termination condition cannot be read harmoniously, and is in conflict with, a right to rely on a sole, absolute and unfettered discretion in respect of that same condition (at para. 37);

g. The provisions of the Tarion Addendum and other interpretive principles require that an interpretation more favourable to the purchasers, and the one which is consistent with the Addendum, be adopted (at para. 39);

h. The *contra proferentem* doctrine requires the court to find an interpretation of the language used that is favourable to the consumer, not to mandate an outcome in favour of the consumer independent of the terms of the agreement (at para. 41).

[43] Relying on the principles outlined in *Reddy*, the plaintiffs argue that commercial absurdity would follow if "registration" in Schedule "I" was the equivalent of "approval" in Schedule A of the Addendum. If that were so, any builder could insert this type of clause and get out of the terms of a contract simply by failing to register the approval of a municipality for a subdivision. I agree. Schedule A of the Tarion Addendum does not permit early termination upon "registration", but only upon obtaining approval from an approval authority. I find that Schedule "I" is inconsistent with the Tarion Addendum, and thus, it is null and void. I am satisfied that no other conclusion is consistent with the consumer protections offered by the Tarion Addendum.

[44] Further, the requirement that Selkirk act diligently was in the contract (Clause 34 of the Agreement). The approvals required to allow Selkirk to register the Plan of Subdivision were obtained in August 2021. Yet, the Plan of Subdivision was not registered until May of 2022. Selkirk admits that the plan of subdivision was to be registered by his representative or agent (Admission #57). Alongside this admission, I consider that there is no evidence to support the

conclusion that Selkirk was diligent in ensuring that the registration of the Plan of Subdivision occurred. To permit Selkirk to rely on Schedule "I" in these circumstances would result in an injustice.

[45] In the result, I agree with the plaintiffs. Schedule "I" is an impermissible and non-compliant early termination condition. Clause 34 of the Agreement imposed an enforceable duty on Selkirk to diligently obtain Planning Act compliance. I find Selkirk failed to perform that duty, unilaterally terminated valid Agreements, and resold the plaintiffs' properties at a profit. I find that Selkirk breached its contracts with the plaintiffs.

How should damages be calculated?

[46] Selkirk has not filed any objective evidence disputing the assessment of damages by the plaintiffs, their quantum, or their mitigation.

[47] The plaintiffs submit that the date for the assessment of damages is "up in the air". The plaintiffs prefer that damages be assessed at the time they filed their suit, when Selkirk was placed on written notice of the plaintiffs' election to accept the repudiation of the contracts and bring their claims for damages. Alternatively, damages could be assessed on the respective closing dates of the Agreements, when counsel for the plaintiffs was first advised of Selkirk's position and Selkirk was advised the plaintiffs would seek damages. The plaintiffs acknowledge that given the case law, presumptively, the date to assess damages is the date of closing. They argue, however, that since pursuant to the Tarion Addendum, closing dates for a new home are flexible, the most fair date to use in assessing damages is the date of the claim.

[48] On this issue, I am guided by *The Rosseau Group Inc. v. 2528061 Ontario Inc.*, 2023 ONCA 814. In that case, the court held at para. 1 that "[w]hen a vendor breaches an agreement to sell real estate, the normal measure of the innocent purchaser's damages is the difference between the purchase price and the market value of the property on the date the sale was to be completed".

[49] At paras. 62-65 the court further explained this rule and its rationale:

> [t]he normal measure of damages for a failed real estate purchase is the difference between the contract price and the market value of the land on the "assessment date". The assessment date is usually the date on which the purchase was scheduled to close. Although the court may set a later date if the party seeking damages satisfies certain criteria, the presumption is that damages are to be assessed as of the date of the breach. That presumption is not easily displaced; any deviation from it must be based on legal principle. [citations omitted]
>
> There are several reasons why the normal measure is the presumptive, measure of the innocent party's damages and is not to be easily displaced.
>
> First, when a purchase contract is performed, the purchaser pays the purchase price on closing and obtains, on the same date, ownership of an asset. Damages are awarded on the principle that the innocent party, as nearly as possible, should be put in the position it would have been in if the contract had been performed. Using,

> as the measure of damages, the difference between the purchase price and the land's market value on the closing date puts this principle into effect …
>
> Second, commercial certainty is enhanced by a predictable damages methodology. This court has stated that an early, and predictable, date on which the innocent party's damages are crystallized promotes efficient behaviour and reduces uncertainty and speculation [citations omitted]. Although made in the context of a sale of goods, the observation applies equally to the sale of land.

[50] While I recognize my discretion to depart from this approach, this rule for assessing damages and the rationale for it best serve the interests of justice in this case. I am not persuaded, despite the able arguments of plaintiffs' counsel, that I should depart from this direction from the Court of Appeal.

[51] Consequently, I assess damages as of the closing dates under the Agreements.

[52] As to the value of the properties on those dates, I have concluded that the actual resale price of the properties is the best evidence as to their value. As noted in *Scott v. Forjani*, "the value of the property is typically what a purchaser is willing to pay for it". I agree with the plaintiffs' submission at para. 96 of their factum that on the question of value, "there is no better evidence than the true resale values of the properties to third party bona fide purchasers for value. I prefer this approach to relying on the opinions offered in the appraisals obtained by the plaintiffs.

[53] Selkirk has refused to provide to the plaintiffs the actual re-sale agreements, or to confirm the date on which it entered into those agreements. This is an appropriate circumstance in which to draw a negative inference against Selkirk. It is more than fair, in these circumstances, to infer that the resale date coincides with the assessment dates for damage calculation purposes.

[54] The Lot 54 Agreement was scheduled to close on May 27, 2022. I find that as of this date, the market value for Lot 54 was $530, 000 since this was the price for which Selkirk resold the property (with closing on December 2, 2022). I find that the loss of bargain for the purchasers of Lot 54 was $165, 100.

[55] The Lot 56 Agreement was scheduled to close on April 29, 2022. I find that as of this date, the market value for Lot 56 was $650, 000, being the price for which Selkirk resold the property (with closing on July 29, 2022). I find the loss of bargain for the Lot 56 purchasers was $275, 100.

[56] I am wholly satisfied that the plaintiffs are entitled to damages that place them in the position that they would have occupied had Selkirk honoured its contractual obligation.

[57] In summary, and for the reasons outlined above, I find that:

1. The motion for summary judgment is granted in favour of the plaintiffs;

2. Selkirk breached the Lot 54 Agreement and Lot 56 Agreement with the respective plaintiffs; and

3. Selkirk shall pay to the plaintiffs damages in the sum of $440, 200 [$165, 100 (Lot 54) + $275, 100 (Lot 56)].

[58] In the event the parties are unable to resolve the issues of costs and pre- and post-judgment interest, submissions may be made in accordance with the direction of the Local Administrative Judge for Kingston.

Madam Justice Laurie Lacelle

Released: February 2, 2026

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REASONS FOR JUDGMENT

Madam Justice Laurie Lacelle

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