CITATION: Boucher v. Molyneaux 2026 ONSC 704
COURT FILE NO.: CV-23-00000200-0000
DATE: 20260204

2026 ONSC 704 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
GREGORY KEITH BOUCHER and MAY ANNE BOUCHER	)	
Plaintiffs	)	Scott R. Fairley, for the Plaintiffs
– and –	)	
CAROLYN MOLYNEAUX and CATHERINE BRASSARD	)	
Defendants	)	Scott McMahon, for the Defendants
	)	**HEARD:** December 3, 2025

RULING ON MOTION FOR SUMMARY JUDGMENT

Casullo J.:

Overview

[1] This action arises out of a real estate transaction, where the defendants failed to close on the purchase of 30 Plunkett Court in Barrie, Ontario (the “Property”).

[2] The plaintiffs bring this motion for summary judgment seeking, *inter alia*, the following relief:

(a) Judgment against the defendants in the amount of $260,000 for their breach of the agreement;

(b) A declaration that the defendants’ deposit of $70,000 has been forfeited to the plaintiffs’ benefit;

(c) Judgment against the defendants in the amount of their damages for carrying costs of $16,258.04;

(d) A declaration that the defendants are liable to indemnify the plaintiffs for all amounts they were held to owe to the plaintiff in the action commenced under Court File Number CV-23-00000720, in relation to the agreement of purchase and sale for 7 Franklin Trail in Barrie, Ontario, including the loss of their deposit of $70,000; and

(e) Interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[3] The defendants submit that the plaintiffs' motion should be dismissed.

[4] The defendants have commenced a third-party action against their realtor and brokerage for negligence, breach of contract, and breach of fiduciary duty. That matter is proceeding separately, and the realtor/brokerage defendants in the third-party action neither defended in the main action, nor took a position on this motion.

Background

[5] On May 4, 2022, the plaintiffs listed the Property for sale for $1,899,000.

[6] On May 6, 2022, the plaintiffs received an unconditional offer from the defendants in the amount of $1,900,000. The plaintiffs accepted this offer, and the defendants submitted the required deposit.

[7] The closing date was scheduled for August 15, 2022.

[8] Considering that the defendants had unconditionally agreed to purchase the Property, the plaintiffs made an unconditional offer to purchase 7 Franklin Trail ("Franklin Trail") for $1,550,000, with a $70,000 deposit. The plaintiffs required the proceeds of sale from the Property to purchase Franklin Trail.

[9] On June 16, 2022, the defendants' solicitor, Mr. Burgess, contacted the plaintiffs' solicitor, Mr. Hill, to advise that the defendants wished to be released from their obligations because they would not be able to close. Mr. Hill advised that a release was not possible, given the unconditional purchase of Franklin Trail.

[10] On June 20, 2022, Mr. Burgess confirmed that the defendants would not be purchasing the Property, asking the plaintiffs to relist immediately to mitigate their damages. Mr. Burgess was also of the view that the defendants did not forfeit the deposit. Mr. Burgess also asked that the plaintiffs agree to sign a release.

[11] The plaintiffs were not prepared to sign a release, given the potential for their own liability in the event they could not close on Franklin Trail. The plaintiffs did advise that, given the anticipatory breach, they would remarket the Property.

[12] On June 23, 2022, the Property was re-listed for $1,899,000. The plaintiffs' realtor advised that the market was trending downward, so their asking price was reduced to $1,830,000 on June 27, 2022.

2026 ONSC 704 (CanLII)

[13] As the defendants predicted, they did not close on August 15, 2022.

[14] On August 22, 2022, the defendants submitted a new, conditional offer to purchase the Property for $1,800,000, a $100,000 discount from the original offer. One condition was a requirement that all parties release each other and the brokerages. Another was that the offer was conditional on financing.

[15] With no firm offer on the Property, the plaintiffs were financially unable to hold title to two properties with uncertainty as to when the Property might be sold, and at what value. They advised the vendor of Franklin Trail they could not close.

[16] The plaintiffs did not give up, however, and were willing to work with the defendants in an effort to forestall any exposure they might incur on Franklin Trail. They signed back the new offer at the original listing price of $1,899,000 and removed both conditions. They also offered to see whether they could resurrect the Franklin Trail purchase, which ultimately did not bear fruit. The defendants did not accept the signed back offer and counter offered with $1,830,000, and the release condition. Again, with the release condition as part of the bargain, this was not an acceptable offer to the plaintiffs.

[17] By September 20, 2022, the plaintiffs had not received an offer on the Property. On the advice of their realtor, they reduced the asking price to $1,779,000.

[18] Despite the lowered price, by December 2022 there were still no offers. The listing was suspended, and the Property relisted on January 6, 2023, for $1,650,000.

[19] On January 8, 2023, the plaintiffs received their first offer, $1,640,000, without conditions. On the advice of their realtor, they accepted the offer, which closed on March 17, 2023.

[20] On March 17, 2023, the defendants agreed to release the $70,000 deposit to the plaintiffs.

[21] The Property sold for $260,000 less than the original agreement with the defendants. The plaintiffs incurred carrying costs totalling $16,258.04. These costs are supported with receipts and invoices.

Franklin Trail

[22] Recall the plaintiffs had made an unconditional offer to purchase Franklin Trail for $1,550,000. When the trouble arose with the defendants, the vendor of Franklin Trail agreed to extend the closing for nine days (from July 18, 2022 to July 27, 2022) in an effort to resurrect the transaction with the defendants. As noted above, the plaintiffs were forced to breach the Franklin Trail contract.

[23] Franklin Trail was relisted, selling in October 2022 for $1,250,000, a reduction of $300,000. The vendor incurred carrying costs of $32,454.63.

[24] The vendors of Franklin Trail commenced an action against the plaintiffs, seeking damages of $393,189.87, and general damages of $1,000,000.

2026 ONSC 704 (CanLII)

[25] In May 2023, the plaintiffs agreed to forfeit the $70,000 deposit to the Franklin Trail vendors.

[26] The Franklin Trail vendors served a r. 49 Offer to Settle for $265,277.37, based on a calculation of the loss of value on the eventual sale price, plus carrying costs, less the $70,000 deposit. The plaintiffs accepted the offer.

2026 ONSC 704 (CanLII)

Issues

[27] The following issues will be determined on this motion:

a. Is this an appropriate case for summary judgment?

b. If the plaintiffs are entitled to damages, what is the quantum?

Positions of the Parties

[28] The plaintiffs submit this matter is well-suited to the summary judgment regime. Damages have been quantified, and cross-examinations on affidavits have been conducted.

[29] The Defendants submit that there is a genuine issue requiring a trial, not only with respect to the assessment of the plaintiffs' damages, but also as to what date the plaintiffs' damages should be assessed at. The defendants rely on an expert report authored by a 'mortgage expert' and produced in the third-party action, which is not properly before this court. It was that author's opinion that the plaintiffs would have qualified for financing to carry both the Property and Franklin Trail, given their good jobs, retirement savings, and investments. The author posited three different financing options which the plaintiffs could have successfully pursued.

[30] The defendants further submit that any determination by the court would result in a partial summary judgment at best, with the added risk of inconsistent findings.

[31] The defendants argue that in the absence of evidence of the changing/declining market conditions once the defendants announced they would be breaching the agreement, the presumptive measure of the plaintiffs' damages is the difference in value of the Property between June 16, 2022, and August 15, 2022, which evidence has not been put before the court.

[32] Finally, the defendants submit that the plaintiffs failed to adequately mitigate their damages, especially those arising from their inability to close on the Franklin Trail transaction.

The Law

[33] Rule 20.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provide that a plaintiff may move for summary judgment on all or part of the claim in the statement of claim.

[34] Rule 20.04 mandates that a court *shall* grant summary judgment if satisfied that there is no genuine issue requiring a trial.

[35] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 provides guidance with respect to summary judgment motions, at paras. 49 and 50:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
>
> These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[36] The Supreme Court continued, 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.

[37] In these passages, the Supreme Court of Canada has articulated a road map for judges to follow in summary judgment motions. First, without using the expanded fact-finding

2026 ONSC 704 (CanLII)

powers, a judge is to determine if there is a genuine issue requiring a trial. If there is no genuine issue requiring a trial, summary judgment is granted.

[38] If the judge finds there is a genuine issue requiring a trial, then she must next determine whether the need for a trial can be avoided by using the new powers: to weigh the evidence, evaluate the credibility of a deponent, draw any reasonable inference from the evidence [r. 20.04(2.1)], and hear oral evidence [r. 20.04(2.2)].

[39] The obligation that each party must "put its best foot forward" with respect to the existence or non-existence of a material issue to be tried continues to apply to the amended Rule 20. On a motion for summary judgment, a party is not "entitled to sit back and rely on the possibility that more favourable facts may develop at trial": see *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764, 108 O.R. (3d) 1, at para. 56.

[40] Motions for summary judgment on failed real estate transactions are becoming prevalent. The plaintiffs provided the court with several decisions whose facts are essentially on all fours with the case at bar: *Mari v. Sanjer et al.*, 2025 ONSC 1787, 59 B.L.R. (6th) 303; *Gamoff v. Hu*, 2018 ONSC 2172; and *Oliver v. Nourouzi*, 2024 ONSC 5071.

[41] In *Mari*, Krawchenko J. found that straightforward, failed real estate transactions could appropriately be dealt with by way of summary judgment.

[42] In *Gamoff*, Edwards J. (as he then was), found that where a purchaser failed to obtain financing in advance of a closing date, there were no genuine issues requiring "the full forensic machinery" of a trial.

[43] In *Oliver*, where the defendants had also brought a third-party claim against their realtor, Stevenson J. found the matter was an appropriate one for summary judgment.

[44] Recovering damages for carrying costs is a recognized head of damages in failed real estate transaction claims: *Sing and Kaur v. Feneich*, 2024 ONSC 5776.

<u>Analysis</u>

(a) Is this an appropriate case for summary judgment?

[45] The defendants have admitted to the breach, leaving no genuine issue requiring a trial.

[46] The defendants admit the plaintiffs are the innocent parties. I could not agree more.

[47] There is no need to avoid summary judgment considering the existence of the third-party action. The defendants' claims against their realtor are separate and distinct from this matter, and there can be no risk of inconsistent findings.

(b) If the plaintiffs are entitled to damages, what is the quantum?

2026 ONSC 704 (CanLII)

[48] The plaintiffs have proven that the defendants breached a valid and enforceable contract. It was a binding agreement on the defendants. The defendants gave notice of their anticipatory breach. The plaintiffs are accordingly entitled to damages.

[49] The analysis then turns to quantum. The plaintiffs' damages have crystalized in respect of the losses flowing from the defendants' breach. So too have the "flow through" damages sustained by the vendors of Franklin Trail. This occurred when the plaintiffs' accepted the offer to settle served by the Franklin Trail vendors.

[50] The plaintiffs have adequately mitigated their damages. The defendants have failed to persuade the court that further mitigation was possible.

[51] The expert in the third-party action suggested financing options which the plaintiffs should have pursued. These included finding a private lender or mortgage investment company, accessing their existing line of credit, obtaining blanket mortgages with high interest rates, the spectre of repayment penalties, and so forth.

[52] As the expert opined, at p. 9 of his expert report:

> At the end of the day no one wants to be in the Boucher's situation. No one wants to incur costs to solve a problem that they did not directly cause. Based on the description of the Bouchers' financial situation prior to these events, they lead their financial affairs conservatively and prudently. (Solid incomes, stable jobs, low debt, savings and substantial equity in their home.) If I were them, none of the options I have presented would have left a good taste in my mouth. It would be natural to feel dissatisfied with any option that caused them to incur costs and fees.

[53] The duty to mitigate requires a plaintiff to take reasonable steps to mitigate loss, not any and all steps: *Saramia Crescent General Partner Inc. v. Delco Wire and Cable Ltd.*, 2018 ONCA 519, at para. 80.

[54] The plaintiffs acted reasonably in their efforts not only to resell the Property, but also to limit their exposure on the vendor's claim *vis-à-vis* Franklin Trail.

[55] The defendants' argument that the plaintiffs' damages should be calculated based on the value of the Property at the time of the breach, versus the selling price at a later date, also fails. I find favour with Rosenberg J.'s (as he then was) findings in *Victorian Homes (Ont.) Inc., v. DeFreitas* (1991), 47 C.P.C. (2d) 246 (Ont. Gen. Div.), at para. 20:

> While hypothetical appraisals at the time of the breach might disclose different figures, in my view, there is no better evidence to calculate the real damage suffered than the price that the plaintiff was able to obtain in the market for the resale of the home.

<u>Conclusion</u>

2026 ONSC 704 (CanLII)

2026 ONSC 704 (CanLII)

[56] The plaintiffs' motion for summary judgment is granted and the following orders made:

(a) The plaintiffs are entitled to judgment against the defendants in the amount of $556,535.41, broken down as follows:

30 Plunkett Court Damages:

Difference in sale price: $260,000.00

Carrying costs: $16,258.04

Total: $276,258.04

(less $70,000 deposit)

Total: $206,258.04

7 Franklin Trail Damages:

Deposit forfeited: $70,000.00

Settlement: $265,277.37 + $15,000 (costs) = $280,277.37

Total: $350,277.37

Total damages between the two properties: $556,535.41

(b) The $70,000 deposit is declared to be forfeited by the defendants to the plaintiffs.

(c) Prejudgment interest at the rate prescribed by the *Courts of Justice Act,* from February 9, 2023, to today's date, and post-judgment interest thereafter.

Stay of Enforcement

(d) In the event the plaintiffs' motion was successful, the defendants asked that a stay of enforcement be imposed pending the outcome of the third-party action. They asked for this relief "in the interests of justice."

(e) The defendants' request is denied. Their action against their realtor is separate and apart from the losses sustained by the plaintiffs in this action. It would seem particularly mean-spirited to award judgment in favour of the plaintiffs, then ask them to wait to recover their damages with no sound juridical basis for doing so.

Costs

(f) As the successful parties, the plaintiffs are presumptively entitled to their costs.

(g) Counsel are invited to come to an agreement on costs. If they cannot, I will receive written submissions on a 7-day turnaround, commencing with the plaintiffs, followed by the defendants, commencing 14 days from the date of release of these reasons. Cost submissions shall be no more than 2 pages in length (14 pt. font size, regular 1-inch margins, 1.5 spacing), exclusive of any costs outline or offers to settle. All costs submissions shall be delivered via email through my assistant at BarrieSCJJudAssistants@ontario.ca.

(h) If no submissions are received within 14 days from the above date, the issue of costs will be deemed to have been settled between the parties, and costs will not be determined by me.

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CASULLO J.

Released: February 4, 2026

2026 ONSC 704 (CanLII)