

**CITATION:** Menon v. Simpson, 2025 ONSC 6720  
**COURT FILE NO.:** CV-24-84337  
**DATE:** December 1, 2025

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
KRISHNA MENON )  
 ) G. Weedon, for the Plaintiff  
Plaintiff )  
 )  
– and – )  
 )  
TRIVELLE SIMPSON ) C. Fraser, for the Defendant  
 )  
Defendant )  
 )  
 ) **HEARD:** November 18, 2025

2025 ONSC 6720 (CanLII)

**RULING ON SUMMARY JUDGMENT MOTION**

**JUSTICE P. R. SWEENEY R.S.J.**

- [1] This is a motion for summary judgment brought by the plaintiff and arising out of an aborted real estate transaction for the sale of 94 Cumberland Drive, Mississauga, Ontario (the “property”).
- [2] On May 13, 2023, the parties entered into an agreement of purchase and sale for the defendant to purchase the property (“APS”). The purchase price was \$8,385,000. The APS provides for deposits to be paid on acceptance, and an additional deposit to be paid on June 12, 2023. The defendant-purchaser was not able to complete the transaction on the initial closing date, and an extension was granted in conjunction with the payment of an additional deposit and per diem payments. The closing was further extended to September 14, 2023, and a final extension was granted until October 16, 2023. Ultimately, the sale was not completed on October 16, 2023.
- [3] There is no issue that the defendant breached the APS and is liable to the plaintiff for damages. The parties have agreed the carrying cost damages are \$550,000.
- [4] The issue to be determined is the loss of the benefit of the bargain.
- [5] The plaintiff ultimately sold the property to another purchaser for \$6,550,000. The plaintiff claims a damages of the loss of the benefit of the bargain of \$1,835,000, which is the

difference between the agreed upon purchase price of the defendant and the ultimate sale price.

- [6] The defendant assert that this is not an appropriate case for summary judgment and submits that the plaintiff failed to properly mitigate his damages.

### **LAW ON SUMMARY JUDGMENT**

- [7] Summary judgment motions must be granted whenever there is no genuine issue requiring a trial. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits of the motion. 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: Rule 20.04 of the *Rules of Civil Procedure*; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at [para. 49](#).
- [8] On a summary judgment motion, the evidence need not be equivalent to that at trial, but must be such that the judge is confident that she or he can fairly resolve the dispute: *Hryniak*, at [para. 57](#).
- [9] On a motion for summary judgment, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before him or her. If there appears to be a genuine issue requiring a trial, the judge 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): *Hryniak*, at [para. 66](#).
- [10] A respondent to a motion for summary judgment has an obligation to provide evidence, showing that there is a genuine issue for trial. A respondent to a summary judgment motion may not rest solely on the allegations or denials contained in its pleadings: Rule 20.02 of the *Rules of Civil Procedure*.
- [11] A responding party to a motion for summary judgment is obliged to put their best foot forward. They must do more than simply assert an uncorroborated fact or rely on bald allegations: *Park v. Chung*, 2011 ONSC 6969, at [para. 25](#).
- [12] On a motion for summary judgment, the court may generally assume that the record contains all the evidence that will be available at trial: *Sweda Farms Ltd v. Egg Farmers of Ontario*, 2014 ONSC 1200, at [para. 27](#).

### **ANALYSIS**

- [13] The sole issue on this motion is mitigation. The onus rests on the defendant to establish the plaintiff failed to make reasonable efforts to mitigate and that mitigation was possible: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51, [2012] 2 S.C.R. 675 at [para. 24](#), and *Gamoff v. Hu*, 2018 ONSC 2172, at [para. 34](#).
- [14] In this case, the plaintiff has provided evidence of the following:

- the property was relisted two weeks after the breach;
- the property was listed for the same listing price as it was when the defendant signed the APS;
- the plaintiff reduced the price on several occasions;
- there is evidence of discussions surrounding reduction in the price;
- the plaintiff considered leasing the property; and,
- the plaintiff marketed the property – not only on MLS, but by other ways, including a limited circulation magazines targeting the potential buyers in the area.

- [15] In the face of the plaintiff's evidence, the defendant asserts that expert opinion evidence should be provided. The defendant asserts that the property ought to have been listed for a lower price initially given the market was declining. The defendant further submits that when faced with an offer of \$7 million with a vendor takeback mortgage of \$2 million, the plaintiff ought to accept that offer. According to the defendant, expert opinion evidence could address the appropriate marketing for this high-end property.
- [16] The defendant had the opportunity to lead this evidence. This is precisely the situation where a party must lead trump or risk losing. This matter was adjourned from August 28, 2025, to allow the defendant to obtain additional evidence. No additional evidence was obtained.
- [17] The defendant's assertion that a trial would be proportional, given the significant amount of money involved, is not, in my view, an appropriate consideration. While the amount at stake and the costs associated with a trial are considerations in a proportionality analysis, the assessment is not limited to the amount of money involved. In my view, proportionality takes into consideration the amount of court time and process required to achieve a just result. It is not the case that just because there are hundreds of thousands or even million of dollars at stake that the issues are more complex.
- [18] In any event, in this case, the plaintiff has led evidence of their efforts to sell the property. The defendants have no evidence to establish that the steps taken to market were unreasonable or that the price obtained was unreasonable. The plaintiff was not required to accept the offer made with a vendor take back mortgage. That offer was not comparable to the offer made by the defendant since a vendor take-back mortgage may not be paid, leaving the vendor with nothing more that a claim against the mortgagor.
- [19] Moreover, the defendant has not provided an appraisal.
- [20] This is an appropriate case for summary judgment.
- [21] The defendant has not established that the plaintiff failed to make reasonable efforts to mitigate. I am satisfied that the plaintiff took reasonable steps to obtain the best price possible. The resulting price represents the plaintiff's loss of the benefit of the bargain with the defendant.

- [22] The defendant shall pay the plaintiff the difference between the agreed-upon contractual price and the ultimate sale price (\$1,835,000) together with the carrying costs agreed to between the parties (\$550,000). In addition, prejudgment interest is payable. Post judgement interest is payable at 4.0% in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- [23] With respect to the issue of costs, the plaintiff has claimed costs on a partial indemnity basis in the amount of \$20,693.85. The defendant does not dispute the reasonableness of those costs, and I am satisfied they are appropriate and proportional.
- [24] The defendant shall pay the plaintiff's costs fixed in the amount of \$20,693.85, all-inclusive.

Judgment accordingly.

Justice P. R. Sweeny R.S.J.

**Released:** December 1, 2025

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KRISHNA MENON

Plaintiff

– and –

TRIVELLE SIMPSON

Defendant

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