

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
AJAI KUNNATH )  
 ) *S.A. Presvelos, for the Plaintiff*  
 )  
Plaintiff )  
- and - )  
 )  
ELLIE CARTIER and METRO-WIDE ) *Andrew Francis, for the Defendant*  
REALTY LTD., BROKERAGE )  
 )  
Defendants )  
 ) **HEARD:** January 8, 2026

**JUSTICE J.S. SHIN DOI**

**OVERVIEW**

- [1] The vendor plaintiff, Ajai Kunnath (the “Plaintiff”), sues the purchaser defendant, Ellie Cartier (the “Defendant”), for failing to close a real estate transaction. The parties discussed an extension of the closing, but the Plaintiff ultimately sold the Property (as defined below) to another party. The Plaintiff seeks summary judgment, claiming the deposit paid by the Defendant and damages. The Defendant brings a cross motion for summary judgment dismissing the Plaintiff’s action. The Defendant seeks the return of her deposit and damages.
- [2] I must determine:
1. whether summary judgment is appropriate to resolve the dispute;
  2. whether the Defendant committed an anticipatory breach of the Agreement of Purchase and Sale and if so, whether the Plaintiff accepted the repudiation and the Agreement of Purchase and Sale was terminated;

3. whether the Plaintiff was entitled to sell the Property to another buyer; and
4. whether the deposit paid by the Defendant should be released to the Plaintiff to apply to the Plaintiff's damages and if so, determine the Plaintiff's damages.

[3] I conclude that summary judgment is appropriate to resolve the dispute because there is no genuine issue for trial and there are no credibility issues. Also, the parties consented to the summary judgment process. I find that the Defendant committed an anticipatory breach of the Agreement of Purchase and Sale; the Plaintiff accepted the repudiation, and the Agreement of Purchase and Sale was terminated; the Plaintiff was entitled to sell the Property to another buyer; and the Plaintiff may retain the Defendant's deposit in the amount of \$70,000.00 and apply it to the Plaintiff's damages in the sum of \$78,906.49.

### **BACKGROUND FACTS**

- [4] The Plaintiff was the owner of certain property municipally known as 147 Spring Gate Boulevard, Vaughan, Ontario (the "Property").
- [5] On May 5, 2022, the Plaintiff listed the Property for sale in the amount of \$1,795,000.00.
- [6] On May 8, 2022, the Defendant made an offer to purchase the Property in the amount of \$1,755,000.00, with a deposit in the amount of \$70,000.00 and a completion date of no later than August 8, 2022, 6:00 p.m. The offer was not conditional upon the Defendant arranging financing. The Plaintiff accepted the offer and the parties entered into the Agreement of Purchase and Sale dated May 8, 2022.
- [7] On August 6, 2022, the Defendant communicated through her realtor that she was unable to complete the transaction because she could not obtain the necessary financing. The Plaintiff states that the Defendant represented that she could finance the Property only if the purchase price was reduced to \$1,700,000.00. The parties entered into an Amendment to Agreement of Purchase and Sale dated August 6, 2022, to amend the purchase price from \$1,755,000.00 to \$1,700,000.00.
- [8] On August 8, 2022, the Defendant asked to extend the closing date to August 15, 2022.
- [9] On August 8, 2022, at 5:08 pm, the Defendant's counsel advised, "Please note that we have not received your extension letter and our office is now closed. Any letter sent to us will be reviewed with our client tomorrow."
- [10] Then at 5:09 pm, the Plaintiff delivered an extension letter. At 5:12 pm, the Plaintiff asked that the letter be reviewed as it was not yet 6 pm.
- [11] The Plaintiff's extension letter stated that the Plaintiff was willing to extend the closing date to August 15, 2022, on certain terms and conditions, including an additional deposit of \$30,000.00, legal fees, mover fees, mortgage per diem interest, and utilities and property tax. The Plaintiff also included additional terms from a third party from whom the Plaintiff wished to purchase property. The Plaintiff stated that,

The terms of this extension are not negotiable. Anything but the acceptance of this letter in full will be treated as anticipatory breach of contract by your clients. If your client does not sign the attached irrevocable Direction and I do not receive written confirmation from you by 5:00pm today with respect to the above. I will consider this transaction at an end, and I will instruct my clients to mitigate<sup>4</sup> [sic] their damages as [sic] sue your client for all losses and damages incurred either now or in the future on account of your client's breach of contract. Please review the foregoing terms with your client. If your client is acceptable, we require your **written** confirmation on behalf of your client that he is agreeable to the above-noted terms by no later than 5:00 p.m. August 8th, 2022 (underlined and bold added for emphasis).

[12] On August 9, 2022, the Plaintiff followed up with the Defendant. The Defendant attempted to negotiate the extension letter. The parties continued discussions until August 22, 2022, and did not reach any agreement on an extension.

[13] On August 22, 2022, the Plaintiff accepted an offer to purchase the Property from another buyer for \$1,613,000.00 with a waiver of the real estate commission of \$37,290.00 because the buyer was a real estate agent.

## **ANALYSIS**

### **Is summary judgment appropriate to resolve the dispute?**

[14] Summary judgment is appropriate to resolve the dispute. Rule 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that:

(2) The court shall grant summary judgment if,

(a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

[15] I am satisfied that there is no genuine issue for trial because the parties agree on the facts and there are no credibility issues. Moreover, the parties agree to have the claim determined by summary judgment.

[16] Furthermore, the court has held that it is appropriate to grant summary judgment in the context of a failed real estate transaction. In *2174372 Ontario Ltd. v. Akbari*, 2023 ONSC 6047, Charney J. held, at para. 23:

There are numerous cases dealing with summary judgment motions by vendors following a purchaser's failure to close the transaction on the date set out in the agreement of purchase and sale. These cases are frequently amenable to a motion for summary judgment.

### **Did the Defendant commit any anticipatory breach of the Agreement of Purchase and**

**Sale? If so, did the Plaintiff accept the repudiation and was the Agreement of Purchase and Sale terminated?**

[17] I find that the Defendant committed an anticipatory breach of the Agreement of Purchase and Sale, the Plaintiff accepted the repudiation, and the Agreement of Purchase and Sale was terminated.

[18] In *Rahbar et al. v. Parvizi et al.*, 2022 ONSC 2136, 31 B.L.R. (6th) 71, aff'd 2023 ONCA 522, 485 D.L.R. (4th) 239, Koehnen J. considered anticipatory breach and a request for an extension. Koehnen J. held, at para. 24:

An anticipatory breach arises when one party, whether by express language or implied conduct, repudiates the contract or evinces an intention not to be bound by the contract before performance is due. To determine whether conduct amounts to a repudiation, the Court looks to whether a reasonable person would conclude that the breaching party no longer intends to be bound by the contract before performance is due. It is clear on the record that the applicants had no ability to close the purchase before 6:00 PM on December 15, 2021. Where a purchaser's lawyer undeniably communicates to a vendor's lawyer that the purchasers are not able to close on the scheduled closing date, that communication amounts to an anticipatory breach. The anticipatory breach here lay not in the request for an extension but in the communication that the vendor's financing had fallen through. The ultimate proof of that was that the applicants were not able to close by 6:00 PM as required. [Footnotes omitted.]

[19] In *Ching v. Pier 27 Toronto Inc.*, 2021 ONCA 551, 460 D.L.R. (4th) 678, the Court of Appeal for Ontario explained anticipatory breach, repudiation, and termination of a contract. At paras. 32-33, Thorburn J.A. wrote that:

... a repudiatory breach does not, in itself, terminate the contract. If the non-repudiating or innocent party does not accept the repudiation, then the repudiation has no legal effect....

Accordingly, the consequences of a repudiation are stated to depend on the election made by the innocent party. If the innocent party accepts the repudiation, the contract is terminated (sometimes referred to as disaffirmation). Alternatively, the innocent party may treat the contract as subsisting (sometimes referred to as affirmation). [Footnotes omitted.]

[20] In this case, the Defendant committed an anticipatory breach of the Agreement of Purchase and Sale when she communicated that she needed another week to close the transaction. On August 6, 2022, the Defendant's realtor advised the Plaintiff that the Defendant was asking for another week to sort out financing for the closing. The Plaintiff's counsel explained that the Plaintiff had a purchase closing the same day which relied on the closing on August 8, 2022. On August 7, 2022, the Defendant's realtor advised that the mortgage broker found a private lender that can "hopefully" close on August 8, 2022. Then on August 8, 2022, the Defendant's counsel advised that the Defendant required an extension until August 15, 2022. The Defendant committed an anticipatory breach of the Agreement of

Purchase and Sale. As in *Rahbar*, the Defendant did not close because she did not have the financing, not because she was waiting for a response to her request for an extension.

- [21] In my view, the Plaintiff clearly and unequivocally accepted the Defendant's anticipatory breach of the closing of the Agreement of Purchase and Sale. The Plaintiff states in his letter dated August 8, 2022, that "anything but the acceptance of this [letter of extension] in full will be treated as anticipatory breach of contract...I consider this transaction at an end." The anticipatory breach was repudiation and the Agreement of Purchase and Sale was terminated.
- [22] The Defendant argues that the deadline for confirmation of the extension as stated in the Plaintiff's letter was 5:00 pm but the Defendant received the letter at 5:09 pm, nullifying the letter. In my view, that argument does not assist the Defendant. The Agreement of Purchase and Sale specifically states the transaction shall be completed by no later than 6:00 pm on August 8, 2022. The Defendant's counsel indicated at 5:08 pm that she had not received the extension terms and would not be reviewing it because she was closing her office for the day. The Defendant's counsel did not respond further that day.
- [23] Based on the evidentiary record, I find that at all times, the Plaintiff was ready, willing and able to close at the agreed time. On August 6, 2022, the Plaintiff's counsel informed the Defendant that the Plaintiff had a purchase closing the same day, August 8, 2022, which relied on the sale and the transaction could not be moved. The Defendant argues that the Plaintiff did not tender on the closing date and tendered one day late on August 9, 2022. The Defendant cites the letter dated August 9, 2022 which says the Plaintiff is "ready, willing and able to complete the transaction as of today's date." I conclude that the Plaintiff was the innocent party and therefore, was not required to tender to prove they were ready, willing and able to close because the Defendant had already repudiated the Agreement of Purchase and Sale (*Di Millo v 20992332 Ontario Inc.*, 2018 ONCA 1051).
- [24] The Defendant argues that the Agreement of Purchase and Sale was not at an end on August 8, 2022, because the parties were continuing to discuss an extension of the closing date. I disagree. The Defendant never responded to the Plaintiff until the next day, August 9, 2022. By then, the Agreement of Purchase and Sale was at an end. The Plaintiff accepted the anticipatory breach, treated the contract as repudiated, and terminated the contract. The facts indicate that despite negotiations for the next 14 days, the parties never agreed to an extension or terms. The Defendant tried and failed to negotiate a better price and favourable terms. The contract remained terminated.

**Was the Plaintiff entitled to sell the Property to another buyer?**

- [25] I conclude that the Plaintiff was entitled to sell the Property to another buyer. In my view, the Agreement of Purchase and Sale was at an end on August 8, 2022, because the Plaintiff accepted the repudiation and the parties never agreed to an extension of the closing date. Accordingly, the Plaintiff was under an obligation to mitigate his damages. I note that the Plaintiff was relying on the closing of the transaction so that the Plaintiff could enter into

a purchase transaction. It was appropriate for the Plaintiff to sell the Property to another buyer.

- [26] As cited below, the vendor has a duty to mitigate its damages where there is a failure to close a real estate transaction: *Bang v. Sebastian*, 2018 ONSC 6226 at para. 42, (aff'd on appeal, 2019 ONCA 501).
- [27] The Defendant argues that the Plaintiff ought to have given notice to the Defendant prior to selling the Property to another buyer. The Defendant says that the Plaintiff re-listed the Property on August 20, 2022, and sold it on August 22, 2022. On August 19, 2022, the Plaintiff through their agent informed the Defendant that they were still open to securing a deal but were now also open to the idea of relisting as well in the interim. The Plaintiff then relisted the Property on August 20, 2022. On August 22, 2022, the Defendant asked to purchase the Property at a further reduced price of \$1,630,000.00 and said that they needed a vendor take back mortgage. The Plaintiff replied that they were not agreeable to a vendor take back mortgage. The parties could not agree on terms. I conclude that the Defendant had sufficient time to negotiate with the Plaintiff from August 8 to August 22, 2022, but the Defendant wanted more favourable terms including a further reduction of the price and a vendor take back mortgage.
- [28] The Plaintiff lost “trust and confidence” in the Defendant’s ability to obtain financing to close on the Property. The Plaintiff thought that the Defendant was leveraging her lack of finances to renegotiate the purchase price. The Plaintiff explains that they had to act quickly to relist and sell the Property to finance the purchase of their own property before their extension deadline of August 26, 2022. The Plaintiff had tried to negotiate a later time period, but the vendors had already extended the Plaintiff’s closing from August 8, 2022, to August 19, 2022, and were only willing to extend until August 26, 2022. After receiving four offers for the Property, the Plaintiff sold the Property for \$1,613,000.00 plus a waiver of commission of \$37,290.00, which the Plaintiff deemed a sum of \$1,650,000.00 for the Property. I reject the Defendant’s argument that the Plaintiff failed to expose the Property to the market and prematurely accepted an offer for the Property that was far below the Property’s market value. The Defendant submits an appraisal for a market value of \$1,730,000.00. The Plaintiff accepted the highest offer received. Moreover, the Plaintiff was in a precarious situation because the Plaintiff was in breach of their own purchase agreement due to the delay in negotiating terms with the Defendant. The Plaintiff was able to negotiate a revival and bridge financing to close on their property. I find that the Plaintiff appropriately mitigated their damages.
- [29] The Defendant argues that she did not sign a release which was a condition of the Plaintiff’s agreement with the new buyer of the Property, and therefore the Agreement of Purchase and Sale had not yet been terminated or completed. The resale agreement of purchase and sale between the Plaintiff and the new buyer states that the offer is conditional upon the Plaintiff obtaining a release from a prior Agreement of Purchase and Sale by August 23, 2022 at 5:00 p.m. That condition is the new buyer’s condition, not the Plaintiff’s condition. The condition should not be characterized as the Plaintiff conceding that the Agreement of Purchase and Sale with the Defendant was still in effect.

**Should the deposit be released to the Plaintiff? What are the Plaintiff's damages?**

- [30] The Defendant's deposit should be released to the Plaintiff and applied to the Plaintiff's damages.
- [31] The legal principles applicable to damages for failed real estate transactions were set out by Charney J. in *Akbari*, at paras. 24-28:

[24] Where the purchaser is in default of the APS, the plaintiff is entitled to retain the deposit paid, although the deposit must be credited against any other damages claimed: *Pleasant Developments Inc. v. Iyer*, 2006 CanLII 10223 (ON SCDC), at paras. 7-8; *Azzarello v. Shawqi*, 2019 ONCA 820, at paras. 45, 53-54.

[25] The vendor has a duty to mitigate its damages: *Bang v. Sebastian*, 2018 ONSC 6226 at para. 42, (aff'd on appeal, 2019 ONCA 501). Generally, this is accomplished by the arm's length sale of the property at market value, *Bang*, at para. 46.

[26] The damages amount is the difference between the price under the APS and the price of the new sale of the property once it closes, plus any additional carrying costs incurred by the vendor in mitigating its loss and dealing with the purchasers' breach: *Goldstein v. Goldar*, 2018 ONSC 608, at para. 25. This, of course, assumes that the subsequent sale is an arm's length market value transaction.

[27] See also: *Park Avenue Homes Corp. v. Malik*, 2022 ONSC 973, at paras. 38-39:

Against a purchaser who aborted an agreement of purchase and sale, the plaintiff vendor is entitled to its loss of bargain, which is the difference between the original sale price and the re-sale price for which the property was eventually sold. *767804 Ontario Limited v. Bartoletti*, 1998 CarswellOnt 1567; *Azzarello v. Shawqi*, 2018 ONSC 5414; *Bang v. Sebastian*, 2019 ONCA 501 (CanLII); *Victorian Homes (Ont.) Inc. v. DeFreitas*, 1991 CarswellOnt 414, at para. 20; *Briscoe-Montgomery v. Kelly*, 2014 ONSC 4240 (CanLII), at para. 22.

In addition, the jurisprudence recognizes that a Plaintiff can claim interest and interim financing costs, real estate commissions, legal fees, and other carrying costs associated with the breach. *Briscoe-Montgomery v. Kelly*, supra, at para. 23; *Fang v. Peroff*, 2014 CarswellOnt 3800, at para. 51; *Azzarello v. Shawqi*, supra, at para. 54.

[28] While the onus is on the Defendant to prove that the Plaintiff failed to make reasonable efforts to mitigate, and that mitigation was possible:

[T]he plaintiff must prove his or her calculation of damages. Thus, the plaintiff must adduce evidence of the contract price and of the market price or resale price upon which he or she relies in establishing the loss of bargain and then the onus is on the defendant to show, if he or she can, that if the plaintiff had taken certain reasonable mitigating steps, then the innocent party's losses would be lower.

*Deco Homes (Richmond Hill) Inc. v. Serikov*, 2021 ONSC 2079, at para. 7.

[Emphasis added.]

- [32] The Plaintiff seeks the sum of \$171,095.39 in damages.
- [33] Applying the general principles above, I conclude that the Plaintiff's damages are the difference between the price under the Agreement of Purchase and Sale as amended and the price of the new sale. The price under the Agreement of Purchase and Sale was \$1,755,000.00 and then reduced to \$1,700,000.00 pursuant to an amendment. The Plaintiff sold the Property for \$1,650,290.00 (\$1,613,000.00 plus a waiver of the real estate commission in the amount of \$37,290.00). The Plaintiff's damages are \$1,700,000.00 minus \$1,650,290.00 which is the amount of \$49,710.00.
- [34] The Plaintiff also claims \$20,393.38 in costs for the bridge financing that he was required to obtain, \$7,488.30 in fees, and \$1,314.81 in costs. The Plaintiff is entitled to claim those costs. The closing of the Property with the new buyer was scheduled for September 8, 2022, and therefore, necessitated the Plaintiff in obtaining bridge financing for their purchase transaction which closed on September 2, 2022. The Plaintiff incurred additional legal fees and costs including a per diem lawyer's rate for the failed purchase transaction.
- [35] The Plaintiff's total damages equal the sum of \$78,906.49. The Defendant's deposit of \$70,000.00 should be released to the Plaintiff and applied to that sum. The Defendant then owes the amount of \$8,906.49 in damages to the Plaintiff.

## CONCLUSION

- [36] I grant summary judgment in favour of the Plaintiff. I dismiss the Defendant's motion.
- [37] The Defendant is liable to the Plaintiff for damages in the sum of \$78,906.49. The Defendant's deposit of \$70,000.00 shall be released to the Plaintiff and applied to the damages. The Defendant shall pay the Plaintiff the balance in the amount of \$8,906.49.
- [38] The Plaintiff is the successful party and presumptively entitled to costs. The parties made oral submissions on costs and filed costs outlines. If the parties wish to submit any offers to settle for consideration, they may do so by emailing [Gladys.gabbidon@ontario.ca](mailto:Gladys.gabbidon@ontario.ca) and uploading copies to Case Centre within 15 days.

**Released:** February 23, 2026

**CITATION:** Kunnath v. Cartier, 2026 ONSC 1096  
**COURT FILE NO.:** CV-23-00692968-0000  
**DATE:** 20260223

2026 ONSC 1096 (CanLII)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

AJAI KUNNATH

Plaintiff

**- and -**

ELLIE CARTIER and METRO-WIDE REALTY LTD.,  
BROKERAGE

Defendants

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**REASONS FOR JUDGMENT**

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JUSTICE J.S. SHIN DOI

**Released:** February 23, 2026