

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
	)	
Russell Mino and Shelley Mino	)	Ronald C. Reaume, for the Plaintiffs
	)	
Plaintiffs	)	
<b>– and –</b>	)	
	)	
Florry Margaret Foster, Dean Beliveau, and Manor Windsor Realty Ltd.	)	Somayeh Rasouli, for the Defendant, Florry Margaret Foster
	)	
Defendants	)	
	)	
	)	
	)	<b>HEARD:</b> August 11 and 12, 2025

2026 ONSC 838 (CanLII)

**REASONS FOR JUDGMENT**

**HEBNER J.:**

- [1] The plaintiffs and the defendant, Florry Margaret Foster, entered into an agreement of purchase and sale (“APS”) dated April 19, 2022, amended April 30, 2022, whereby the plaintiffs agreed to sell to Ms. Foster the property located at 60 Riverview Drive, LaSalle, Ontario (“the property”) for the price of \$557,000. The closing was to take place on June 30, 2022. The sale did not close. The plaintiffs brought a claim for damages against Ms. Foster and, by way of motion, sought summary judgment against her.
  
- [2] The motion was initially heard on March 13, 2024. I released a decision on October 11, 2024, the disposition of which was as follows:  

I direct, pursuant to subrules rr. 20.04(2.2) and 37.13(2)(b) that a mini trial be held before me and oral evidence be presented by Ms. Foster, and that Ms. Foster be cross-examined, on the issues of whether she relied on the representation that the property was zoned residential, whether the reliance was reasonable, and whether the representation was material in her decision to purchase the property.
  
- [3] The mini trial took place on August 11 and 12, 2025. These are my reasons for judgment.

- [4] Regard should be had to my Ruling on the Motion at 2024 ONSC 5659 for a full recitation of the facts and the legal framework. For the purposes of this decision, I summarize the material facts and the parameters of the mini trial.

### **Summary of Material Facts**

- [5] The plaintiffs listed the property, a single detached dwelling, for sale with agent Dean Beliveau of Manor Windsor Realty Ltd. on April 1, 2022, with a list price of \$299,000. The market was at its peak at the time. The plaintiffs received five offers in all with the lowest being \$350,000 and the highest being that of the defendant, Ms. Foster's. Her offer was \$557,000 and it was accepted.
- [6] The offer was in the standard format containing all the standard terms. Specifically, Paragraph 9 of the APS stated the "Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by the Buyer is or will be lawful except as may be specifically provided for in this Agreement." There was nothing in this agreement dealing with the future intended use of the property by the buyer.
- [7] There was no financing condition in the APS.
- [8] After a closing extension at the defendant's request, the closing date was June 30, 2022, and the requisition date was June 23, 2022.
- [9] The defendant's real estate lawyer sent a requisition letter within the timelines required that had no mention of zoning issues.
- [10] The defendant asserts that her offer to purchase was based on an MLS listing on the Windsor-Essex County Association of Realtors website on April 11, 2022. The listing identified the zoning as residential. The property was actually zoned as W2 based on the LaSalle Comprehensive Zoning By-law 8600 that was proclaimed and replaced the previous by-law as of August 30, 2021, for the entire town of LaSalle. The W2 zoning provides for additional uses, including residential and specifically "Single-Detached Dwellings that existed prior to the date of this By-law."
- [11] On June 29, 2022, the lawyer for the defendant advised the lawyer for the plaintiffs that the defendant "no longer wishes to purchase this property due to the fact that it was misrepresented as residential property on the Agreement of Purchase and Sale and the property is zoned as W2." The letter is inaccurate. There was no such representation on the APS. Rather, the APS provided that the present use was residential and could be continued, which was accurate.

### **Positions of the Parties**

#### *The Plaintiffs*

- [12] The plaintiffs take the position that they were able to convey good title to the property and that the agreement reflects the deal that the parties chose to make. They assert that because

the agreement was not conditional on financing, the defendant knew she was submitting a cash offer at the time the APS was signed. The plaintiffs assert that there is no genuine issue requiring a trial and they are entitled to summary judgment.

- [13] The plaintiffs sold the property on December 1, 2022, for \$329,000. With the additional mortgage payments, taxes, lost rent, and utilities, the plaintiffs calculate their damages at \$237,675.42 less the \$20,000 deposit, for a total of \$217,675.42.

#### *The Defendant*

- [14] The defendant's evidence is that she suffers from autoimmune diseases and at the time of the agreement she planned to downsize from her home to one that was wheelchair accessible. The defendant planned to renovate the home to her liking and asserts that a W2 zoning may not have allowed the renovations. I note that there was no evidence that this was the case.
- [15] The defendant's evidence is that after her offer was accepted, she sought the advice of a mortgage broker to arrange financing. She was told that the land was not zoned residential but rather commercial. As a result, the mortgage interest rate, insurance, and mortgage payments would be substantially more than anticipated. The required down payment was more than anticipated.
- [16] The defendant asserts that she relied on the MLS listing information that the property was zoned residential, and that she refused to close the transaction as it was not so zoned.

#### **Parameters of the Mini Trial**

- [17] Ms. Foster's defence was anchored in her pleading of negligent misrepresentation.
- [18] In her affidavit filed on the motion, the defendant asserts that "the zoning information was a critical factor in determining the purchase price for me." She asserts: "[m]y primary reliance on the zoning information stemmed from the fact that I would have needed building permits to renovate the Property and make it accessible. W2/ commercial zoning may not have allowed for these alterations, leading to my lawful rescission of the APS."
- [19] I determined that the defendant's credibility on those statements was crucial to a determination of this case. Accordingly, I ordered a mini trial under r. 20.04(2.2) and 37.13(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The issues of the mini trial were: (1) whether the defendant relied on the representation; (2) whether the representation was material to her; and (3) whether the reliance was reasonable.

#### **Evidence at the Mini Trial**

- [20] There were two witnesses that gave evidence at the mini trial: Todd Burns, the defendant's real estate agent, and the defendant, Ms. Foster. It was very clear from the outset that there was animus between them. Ms. Foster had complained about Mr. Burns and Mr. Beliveau

(the plaintiff's agent) to the Real Estate Council of Ontario. The complaint about Mr. Burns was dismissed.

*Evidence of Mr. Burns*

- [21] Mr. Burns met Ms. Foster on April 19 of 2022. Ms. Foster's daughter, Melissa, worked for Mr. Burns' wife. Melissa asked Mr. Burns to contact Ms. Foster on a real estate matter and he did so.
- [22] Ms. Foster told Mr. Burns that she was interested in the plaintiffs' home and wanted to make an offer. Mr. Burns did some research and scheduled a showing for the same day. Mr. Burns said that the listing identified the zoning as residential. He did his own investigation and discovered the zoning had been changed to W2, an enhanced form of rezoning. He accessed the town of Lasalle's website and found a description of W2 zoning.
- [23] Mr. Burns said that he conveyed the information to Ms. Foster on the phone and by email. He also gave her a hard copy of the W2 zoning description when he saw her. All of this occurred on April 19 because that was the offer presentation day. If Ms. Foster wanted her offer to be considered, it had to be presented on April 19.
- [24] Ms. Foster determined the offer price herself, without Mr. Burns' input. They discussed conditions to include, and Ms. Foster said she did not want any conditions on the offer. She said financing was not an issue. The offer was prepared, presented, and accepted. There was a \$20,000 down payment made. The closing date was June 3, 2022.
- [25] Ms. Foster contacted Mr. Burns before the closing date and asked him to arrange an extension to June 30. The extension was accepted. Ms. Foster was having difficulty with her financing. Mr. Burns put her in touch with a mortgage broker and the three of them met. The mortgage broker presented three different offers of financing, none of which were acceptable to Ms. Foster.
- [26] Mr. Burns, on behalf of Ms. Foster, sought a release of the agreement from the plaintiffs. They refused.

*The Text Messages*

- [27] Mr. Burns provided screenshots of text messages between he and Ms. Foster. The messages included the following:

April 18, 2022 at 20:55

Ms. Foster wrote: Is this Todd? Just had a question about 60 riverview if you know how many offers there are currently?

April 19, 2002 at 08:19

Mr. Burns wrote: Hi, yes this is Todd. I messaged to find out how many offers there are, just waiting for a reply.

Ms. Foster wrote: Do you think it would be possible to do a walk through. I have considered an offer of \$517,270 what are your thoughts

Mr. Burns wrote: Yes for sure, I have a zoom call this morning at 10am. Once finished I will call you to set a time, the place is vacant so we can go pretty much anytime.

That sounds like a strong offering, but let's see how many offers are currently on the table.

Ms. Foster wrote: Excellent I'm not concerned with financing, however I will reach out to the bank again this morning just to let them know what I am doing. Thank you.

April 19, 2022 at 11:15

Mr. Burns provided the legal description of the property.

Ms. Foster wrote: W2 water development Allows additional residential No larger 75m gross area Pull record of title to see easement number. Can look it up.

The other agent should be able to look at the record of title and there's an easement number that can be looked up. LaSalle said it could be something as simple as access to the Hydro but there's nothing on record with the township about an easement. The listing is also incorrect it's not residential it is W-2

Mr. Burns wrote: Okay that's good news then

Ms. Foster wrote: Let's not share that with them obviously the other agent really didn't do their work.

Mr. Burns wrote: No worries, see you at 1pm. (this was the scheduled first viewing)

April 19, 2022 at 15:14

Mr. Burns wrote: Hi Florry, can I have the email address you want the offer sent to please. Thank you

Ms. Foster wrote: Thank you

I haven't received anything yet

Sent thank you

Mr. Burns wrote: Awesome thank you Florry, fingers crossed

- [28] Ms. Foster signed the offer after the viewing. Mr. Burns submitted it to the plaintiffs' agent. Mr. Burns said that he had no input into the offer price of \$557,000.

*Evidence of Ms. Foster*

- [29] Ms. Foster has several health issues that she described. She has chronic fibromyalgia and Hashimoto's disease. She has lost a kidney and has had both hips replaced. She said that in light of her health issues and physical limitations, she looked for a smaller home without stairs. She also sought the ability to build an additional dwelling unit on the property for her daughter to live in.
- [30] Ms. Foster found the subject property on an MLS listing and noted the residential zoning. She did not discuss the zoning with Mr. Burns. She had purchased or sold a number of properties in the past (approximately 13 in total) and so she knew the parameters of residential zoning. Ms. Foster said that when she submitted her offer, she believed the zoning to be residential. She said she would not have submitted an offer had she known the zoning was W2.
- [31] Ms. Foster said that the first time she learned of the true zoning was in a meeting with a mortgage broker, an appraiser, and Mr. Burns after the offer was accepted. The appraiser who was at the meeting said that he could not appraise the property as he was only licensed for residential appraising. Ms. Foster said she was told she had to pay a down payment of up to 52% and the mortgage would have a 9.90% interest rate. During the meeting, Ms. Foster directed Mr. Burns to contact the plaintiffs and advise them that she would not close the transaction due to misrepresentation. Mr. Burns told Ms. Foster that such a communication should come from her lawyer.
- [32] Ms. Foster acknowledged that she and Mr. Burns communicated with each other through text messages. She did not produce the messages she had on her own phone.
- [33] When the messages reproduced above were put to Ms. Foster, she said she could not recall them. She said that Mr. Burns did not send any messages advising of the W2 zoning.
- [34] In cross-examination, Mr. Reaume took Ms. Foster through the text messages. She said she did not recall those text messages. She said she had text messages on her own phone but did not produce them. Mr. Reaume asked about the text message identifying the zoning as W2 that Mr. Burns said was sent by Ms. Foster and she said she did not recall it.

- [35] Ms. Foster did recall Mr. Burns' message requesting her email address and her message providing that address. She also recalled the emails exchanged after the offer was submitted and the emails requesting a change in the closing date. She did not recall any of the exchange about the zoning.

## Discussion

### *Assessment of the Evidence*

- [36] Mr. Burns was direct in answering Mr. Reaume's questions. That was not the case when Ms. Rasouli was cross-examining him. He was argumentative and combative with Ms. Rasouli. Similar comments can be made about Ms. Foster. She was direct in answering her own lawyer's questions but was evasive and argumentative with Mr. Reaume. It was very clear that animus existed between these two persons on both sides.
- [37] I turn then to the text messages. I found the evidence of the text messages to be compelling. The screenshots of the messages appeared to be authentic. Mr. Burns provided all of the text messages between he and Ms. Foster, comprising of 56 pages of messages even though many of them were not relevant to the issues in this case. There was no attempt by Mr. Burns to provide only certain messages and not others. Ms. Foster suggested that they had been tampered with but there is no indication or any evidence of that. Each page of the text communications, including page 3, the page that contains Ms. Foster's message confirming the W2 zoning, had the date and time on it along with Ms. Foster's first name, Florry, and her initials. On its face, there is no indication that the page had been tampered with. The next page, page 4, also references the W2 zoning and contains the request from Mr. Burns that Ms. Foster provide her email address, a message that Ms. Foster admits receiving.
- [38] Having heard the evidence and after reviewing the messages, I find the suggestion that the messages were tampered with to be improbable.
- [39] Ms. Foster was evasive when she was cross-examined on the text messages. She said she could not recall them. She then admitted some of the messages but not all of them. She said that certain messages were not on her phone although she did not provide screenshots or a printout of the messages she had on her phone.
- [40] I accept the evidence of Mr. Burns that the messages were sent and received as they are depicted in the screen shots provided and marked Exhibit number 2.
- [41] In my October 11, 2024 Ruling, at para. 39, I said:
- To be successful in her defence, the defendant would have to prove that the plaintiffs, or their agent, made a false statement; that she relied on the statement when she entered the contract to purchase the property; that the reliance was reasonable in the circumstances; and that the representation was material.
- [42] I address each of the components of the test separately.

1. Did the plaintiffs or their agent make a false statement?

[43] The answer to this question is yes. The plaintiff's agent identified the zoning as residential in the MLS listing. The zoning was in fact W2.

2. Did the plaintiff rely on the statement when she entered into the contract to purchase the property?

[44] The answer to this question is no. Based on the text messages, I find that once Ms. Foster had the legal description of the property, she did her own investigation into the zoning of the property. She knew the zoning was W2 on the day she viewed the property and told Mr. Burns about it before she signed the offer to purchase later on that same day. This is not surprising as the ability to renovate the existing dwelling unit and build a second dwelling unit on the property was important to her. Moreover, Ms. Foster was an experienced purchaser having previously been involved in 13 real estate transactions. Ms. Foster did not rely on the zoning information in the MLS listing. She knew it was zoned W2, was happy with the discovery, and went so far as to tell Mr. Burns not to share the information with the plaintiffs' agent.

[45] Given my finding on the second question, there is no need to consider the last two questions.

[46] I am satisfied, based on the evidence before me, that there are no genuine issues requiring a trial with respect to arguments raised by the defendant. Accordingly, I find this is a proper case for summary judgment against the defendant and I hereby grant it.

[47] Additionally, on the evidence, I was able to come to a decision on the quantum of damages owed to the plaintiffs.

### **Damages**

[48] I find in favour of the plaintiffs and now consider the calculation of damages.

[49] The plaintiffs sold the property on December 1, 2022, for \$329,000. The difference between \$557,000 and \$329,000 is \$228,000. The plaintiffs also paid additional mortgage interest of \$3,303.74. I find the following additional claimed damages to be reasonable:

1. Realty taxes of \$697.92
2. Hydro of \$401.62
3. Gas expenses of \$120.00
4. Water expenses of \$160.78
5. Reliance expenses of \$158.36

6. Insurance of \$333.00

[50] There is a claim for loss of rent of \$4,500 for which I have insufficient evidence and so I decline to include that amount.

[51] The total amount of damages is \$233,175.41. As I understand it, the deposit continues to be held by the defendant, Manor Windsor Realty Ltd. The deposit should be paid to the plaintiffs. After deducting the \$20,000 deposit, the damages are \$213,175.41.

**Disposition**

[52] I order as follows:

1. I find in favour of the plaintiffs and grant them summary judgment.
2. The defendant, Florry Foster, shall pay to the plaintiffs, damages in the sum of \$213,175.41.
3. The deposit of \$20,000 shall be released to the plaintiffs.
4. The parties may make written costs submissions of no more than five pages, not including relevant offers to settle and bills of costs, based on the following timeline:
  - a. The plaintiffs within ten days;
  - b. The defendant, Ms. Foster, within ten days thereafter;
  - c. The plaintiffs may reply within five days thereafter.

XXXXXXXXXXXXXXXXXXXXXXXXXX

Pamela L. Hebner  
Justice

**Released:** February 23, 2026

**CITATION:** Mino et al. v. Foster et al., 2026 ONSC 838  
**COURT FILE NO.:** CV-23-31731  
**DATE:** 20260223

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

**BETWEEN:**

Russell Mino and Shelley Mino

and

Florry Margaret Foster, Dean Beliveau, and  
Manor Windsor Realty Ltd.

---

**REASONS FOR JUDGMENT**

---

Hebner J.

**Released:** February 23, 2026