

CITATION: Coco Developments Ltd. v. Sabir, 2026 ONSC 249
COURT FILE NO.: CV-23-31981
DATE: 20260113

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Coco Developments Ltd.)	
)	Shane Gould, for the Plaintiff
)	Plaintiff
)	
– and –)	
)	
)	
Shazia Sabir)	
)	
)	Defendant
)	Shazia Sabir, acting in person
)	
)	
)	
)	
)	
)	HEARD: June 19, September 10,
)	and November 19, 2025

2026 ONSC 249 (CanLII)

REASONS FOR JUDGMENT

DUBÉ J.:

A. NATURE OF THE MOTION

- [1] The plaintiff, Coco Developments Ltd. (“Coco Developments”), brings a motion seeking summary judgment pursuant to r. 20.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, against the defendant, Shazia Sabir (“Sabir”). The action is in accordance with the Statement of Claim that alleges a breach of Sabir’s agreement to purchase municipal property, 391 Hemlock Lane, Belle River, Ontario (the “Property”).
- [2] The plaintiff moves for summary judgment on the basis that the defendant has raised no genuine issue requiring a trial.
- [3] The defendant, in response, raises the following, submitting they are genuine issues requiring trial: (1) that the defendant’s ability to discharge her obligation under the APS

was frustrated; (2) that the plaintiff's damages are excessive; and (3) that the plaintiff failed to mitigate its damages.

[4] Broadly stated, two issues arise on this motion:

Issue 1: Is Coco Developments entitled to summary judgment against Sabir?

Issue 2: If yes, what quantum of damages is Coco Developments entitled to?

B. THE BACKGROUND FACTS

[5] My review of the background evidence is limited to those facts that are admissible, significant to the central issues, or provide context necessary to appreciate and determine the relevant issues.

[6] On or about September 21, 2021, Coco Developments and Sabir entered into an Agreement of Purchase and Sale ("APS"). Pursuant to the APS, Sabir agreed to purchase the Property from Coco Developments for \$851,130.50. Sabir then advanced three deposits in the aggregate amount of \$40,000 as stipulated by the APS (the "Deposits"). The initial closing date under the APS was October 6, 2022.

[7] On April 28, 2022, Coco Developments provided Sabir with notice that, in accordance with the APS, the closing date would be extended due to an unavoidable delay event, namely the COVID-19 pandemic.

[8] On August 9, 2022, the APS was amended, at Sabir's request, to include certain upgrades and changes, which increased the purchase price to \$851,978.

[9] On December 9, 2022, Coco Developments delivered a second notice to Sabir confirming an end to the unavoidable delay event and setting the closing date for February 9, 2023.

[10] On February 9, 2023, Sabir, through counsel, advised that she would be unable to close the transaction and requested an extension to March 10, 2023. Counsel for Sabir further advised that she had been unable to obtain mortgage approval.

[11] In response, Coco Developments, through counsel, stated that it would be willing to postpone the closing to March 10, 2023, on the condition that Sabir provide a further non-refundable deposit of \$40,000. Counsel also requested further clarification regarding the status of Sabir's mortgage application. Coco Developments then extended the closing date to February 10, 2023, to allow Sabir's counsel time to obtain instructions.

[12] On February 10, 2023, the parties agreed to extend the closing to February 13, 2023 (the "Amended Closing Date"). Counsel for Coco Developments confirmed, however, that a further 30-day extension would not be granted unless they received an update regarding the status of Sabir's mortgage application and confirmation that Sabir would pay the additional \$40,000 deposit. Coco Developments requested that this information be provided no later than 1:00 p.m. on February 13, 2023.

- [13] On February 13, 2023, at 1:56 p.m., counsel for Sabir advised that her position remained unchanged and that she was requesting a further 30-day extension. No mention was made as to whether Sabir would provide the additional \$40,000 deposit.
- [14] On February 13, 2023, at 2:34 p.m., counsel for Coco Developments wrote to Sabir's counsel, advising that the additional deposit had not been received. Counsel for Coco Developments stated that if the transaction was not closed by the end of the day, Sabir would be considered in default of the provisions of the APS, the APS would be deemed terminated, and Coco Developments would reserve all rights under the APS.
- [15] Sabir failed to respond to Coco Developments' request and subsequently failed to close the transaction on the Amended Closing Date. Coco Developments was ready, willing, and able to close.
- [16] On March 21, 2023, Coco Developments re-listed the Property for sale on the MLS at the price of \$852,000. On October 17, 2023, based on the advice of its real estate agent, Coco Developments, re-listed the Property for sale on the MLS for \$762,000.
- [17] On June 12, 2024, Coco Developments received an offer to purchase the Property from Amritpal Singh for \$729,000. This was the only offer they received for the Property. Coco Developments accepted the offer on June 14, 2024, and the transaction was closed on July 31, 2024.
- [18] In Schedule "E" of the Terms and Conditions of the APS, section 25.1 provides that on the Buyer's default, the Buyer shall:
- [F]orfeit all Deposit(s) in full, without prejudice to the Seller's rights to recover from the Buyer(s) all additional costs, losses, and damages arising out of the Default pursuant to the terms of this Agreement.
- [19] As a direct result of Sabir's failure to close the APS, Coco Developments incurred damages in the total amount of \$75,772.93.
- [20] As the Property was a new build, Coco Developments was required to charge and remit H.S.T. on all sale transactions. The H.S.T. is applied on closing and a portion of the H.S.T. is rebated to the purchaser.
- [21] Coco Developments incurred losses from the aborted sale equal to the difference in the original net purchase price and the ultimate re-sale price, plus carrying and sale costs. The net loss is \$75,772.93, broken down as follows:
- Total loss – (\$777,026.77 (original net purchase price) - \$668,888.14 (re-sale net price) = \$108,138.63
- PLUS**
- Realty Taxes – \$833.71

- Municipality of Lakeshore Water Taxes – \$1,449.39
- Hydro One – \$1,099.82
- Enbridge – \$1,135.45
- Security Costs – \$3,115.93 (Costs incurred for third party security services after default and prorated across the 29 lots in this development which remained unsold, for the period until they are sold.)

TOTAL DEFICIENCY – \$115,772.93

(LESS THE DEPOSIT – \$40,000)

TOTAL DAMAGES – \$75,772.93

[22] Coco Developments commenced this proceeding via a Statement of Claim issued on March 24, 2023, and served Sabir on the same day. Sabir delivered a Statement of Defence on April 14, 2023.

C. THE LAW OF SUMMARY JUDGMENT

[23] Rule 20.04(2) states:

- (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.

[24] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, the Supreme Court of Canada provided guidance on circumstances in which summary judgment is appropriate. At paras. 49-50, Karakatsanis J., writing for the court, stated:

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.

- [25] 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 fact-finding powers under r. 20.04(2.1) and r. 20.04(2.2).
- [26] A party on a summary judgment must put its “best foot forward.” A court is entitled to assume that the record contains all the evidence that a party would present at trial: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 26, aff’d 2014 ONCA 878, leave to appeal ref’d, [2015] S.C.C.A. No. 97.

D. ANALYSIS

Issue 1: Is Coco Developments entitled to summary judgment against Sabir?

- [27] For the following reasons, I find there to be no triable issues emerging from Sabir’s submissions and therefore Coco Developments is entitled to summary judgment.

Did Sabir’s failure to obtain financing amount to frustration of contract?

- [28] The defendant states in her affidavit, sworn May 7, 2025, that she “was unable to close the transaction on February 9, 2023, due to extraordinary circumstances beyond my control.” She then lists those events:
- a. Accident – In December 2022, she was involved in a serious car accident resulting in significant injuries that left her unable to work. This, in turn, affected her financial stability and prevented her from securing the necessary mortgage financing.
 - b. Theft – A third party, Balraj Singh, on an unknown date, stole a substantial sum of money that she had reserved for purchasing the property. This left her without the necessary funds to close the transaction.
- [29] In her May 7 affidavit, Sabir stated that two exhibits were attached: Exhibit “A,” consisting of “medical records confirming my injuries and their impact on my ability to obtain financing”; and Exhibit “B,” consisting of “police reports, bank statements, and legal documents confirming the theft.” However, no exhibits were in fact attached to the affidavit.

- [30] Sabir swore a supplemental affidavit on August 26, 2025, stating the following in respect to the events underlying her frustration claim:
- a. Accident – On January 31, 2023, she suffered a serious motor vehicle accident that resulted in significant injuries requiring ongoing medical treatment. Sabir also clarified that the date of the accident noted in the first affidavit was incorrect. She then stated that “[d]ue to these circumstances, I was unable to work, and my financial position worsened...” She proceeded to claim that:
 - i. She was working with mortgage agents to secure financing for the property, but due to the accident, her income interruption, and changed circumstances, her mortgage application was not approved.
 - ii. In September 2023, she suffered a second accident that worsened her physical and emotional health, requiring ongoing medical treatment. Severe stress, anxiety, and depression made it extremely difficult for her to manage her financial and legal obligations.
 - b. Theft – She initiated a court case against Mr. Singh as a result of his theft of her funds (SC-21-4783).
- [31] Attached to the supplemental affidavit are medical records from the Emergency Department at Three Hills Health Centre in Red Deer, Alberta, dated January 31, 2023, indicating treatment for “Neck Trauma” resulting from a motor vehicle accident. The records note the reason for the visit as “Multisystem Trauma – Blunt” and list the diagnoses as “MVC,” “Concussion,” “Neck strain,” and “Knee strain.” The concussion protocol was discussed with the defendant, who was instructed to follow up with her physician within two to three days and to return to the Emergency Department if symptoms worsened. She was prescribed Tylenol and Tramadol for pain management.
- [32] A second attachment is a medical note dated July 12, 2025, indicating that the defendant was seen by a physician at a clinic in Calgary, Alberta and was “advised to rest from work due to medical reasons between July 1 and August 30, 2025, post-MVA.”
- [33] A further medical note dated October 9, 2025, was provided by a different physician from the same Calgary clinic. The note indicates that Sabir attended as a walk-in patient because her family doctor was unavailable, that she required the note for court purposes, and that she was being seen by her family doctor for “multiple concerns and not working currently.”
- [34] Finally, the defendant provided a copy of an Amended Plaintiff’s Claim, Court File No. SC-21-4783, dated November 8, 2021, from Brampton, Ontario, seeking damages of \$28,818.70. The claim alleges breach of contract and/or fraudulent misrepresentation arising from Mr. Singh’s alleged theft of work-related commissions and a loan advanced based on fraudulent misrepresentation. The alleged events occurred between January and October 2021.

- [35] Sabir asserts that unforeseen and uncontrollable circumstances arising from the January 2023 accident and the alleged theft by Singh prevented her from completing the transaction. She submits that she should be excused from performance under the doctrine of frustration of contract. She further submits that Coco Developments' refusal to grant a one-month extension to arrange financing unless she paid an additional \$40,000 was unreasonable in light of her medical and financial hardships.
- [36] In *Bang v. Sebastian*, 2018 ONSC 6226, Sanfilippo J. stated that to establish whether a contract has been frustrated, the party claiming frustration must show the following, at para. 28:
- ...a supervening event occurred that has altered the contract to such an extent that to compel performance would cause one of the contracting parties to do something that is radically different than what the parties had agreed to under the contract.
- [37] Further, the party claiming the contract has been frustrated has the onus of establishing that performance of the contract as originally agreed would be impossible: *Liddell v. Mousavi*, 2024 ONSC 6431, at para. 44.
- [38] The medical records provided by Sabir are limited and indicate relatively minor injuries from a motor vehicle accident she later claimed occurred on January 31, 2023, shortly before the Amended Closing Date. One set of records is dated January 31, 2023, while another medical note is dated October 9, 2025 – approximately two and a half years after the breach of contract and following what appears to have been a second motor vehicle accident.
- [39] The defendant's evidence regarding the impact of her injuries on her ability to obtain financing is vague. In her August 26 affidavit, she asserts that, due to the accident, her inability to work, interrupted income, and changed circumstances – together with the alleged theft of funds by Singh – her “mortgage application was not approved.” However, given her onus, neither her evidence nor the medical or court records provide sufficient detail on how the accident specifically impacted her ability to work, and how that and the theft undermined her capacity to secure financing. In short, the defendant has failed to establish a nexus between her relatively minor injuries, an unspecified period of inability to work, and the alleged theft of \$28,818.70 (which occurred more than a year before the breach) and her failure to obtain financing and fulfill her obligations under the APS.
- [40] Further, it remains unclear whether any impact on her ability to obtain financing from these events was permanent rather than temporary or transient: *Paradise Homes North West Inc. v. Sidhu*, 2019 ONSC 1600, at para. 21. There was little in the content of the emails between the defendant's counsel and Coco Developments to suggest that the impact of the accident on her ability to work and obtain financing was anything other than temporary. In an email dated February 9, 2023, the defendant, through counsel, requested a one-month extension, at least, to arrange financing. While the “at least” part opens the possibility of an extension beyond one month, there is no evidence at that time indicating that the nature of her injuries

required a longer extension, nor did she state that she would be unable to close entirely due to the accident, or for any other reason.

- [41] Importantly, there is no evidence from the defendant's employer or prospective lenders explaining why she did not obtain financing, why she was unable to close the transaction, or whether she even made bona fide efforts to secure financing that proved unsuccessful. In this respect, I have no mortgage application, correspondence with lenders, or communication with mortgage brokers to confirm that the events she relies upon had any influence on her inability to finance the purchase of the Property.
- [42] With respect to the alleged theft of funds, the only document provided by the defendant was the Amended Plaintiff's Claim against Mr. Singh. This is despite her affidavit stating that she possessed additional supporting materials, including police reports and bank statements. I further note that during examinations, the defendant testified under oath that she was unaware of other documents having been filed with the court in relation to this matter or that a decision had been issued. Evidence obtained by the plaintiff indicates that these assertions were – at best – inaccurate.
- [43] A settlement conference was held on April 5, 2023, to address the matter claiming theft against Mr. Singh. At this time the court directed Sabir to provide all documentation she intended to rely upon at trial by June 30, 2023. Sabir failed to comply, and her action against Mr. Singh was subsequently dismissed for delay.
- [44] On June 17, 2025, counsel for Sabir submitted a Notice of Motion and Supporting Affidavit seeking to set aside the dismissal. The motion was heard by Deputy Judge Jamal on September 11, 2025, who ultimately dismissed the motion.
- [45] On September 30, 2025, counsel for Sabir filed a further Notice of Motion and Supporting Affidavit with the Brampton Small Claims Court, seeking to appeal the Endorsement of Deputy Judge Jamal. In support of this new motion, Sabir swore an affidavit dated September 30, 2025. On examination, Sabir admitted that she had not read the affidavit before signing it but confirmed that she was aware of the affidavit's existence.
- [46] As of the present date, the action against Mr. Singh remains dismissed for delay.
- [47] In the matter before me, the defendant bears the burden of proving frustration. On the evidence presented, I find no triable issue. Sabir's evidence is insufficient. There is no corroboration from lenders or other sources to establish that any disruption caused by the accident or alleged theft was permanent rather than temporary, or that these events materially impaired her ability to obtain financing. Similarly, there is no evidence that such impairment radically altered her ability to complete her contractual obligations as agreed to in the APS, thus rendering performance impossible: *Lecco Ridge Developments Inc. v. Vaquero*, 2022 ONSC 6547, at para. 59.
- [48] The evidence establishes that Sabir failed to complete the purchase under an unconditional agreement because she could not secure financing. Whatever the cause, this constitutes a breach of the APS: *Azzarello v. Shawqi*, 2018 ONSC 5414, 439 D.L.R. (4th) 127, at paras.

32–33, rev'd on other grounds 2019 ONCA 820, leave to appeal ref'd [2019] S.C.C.A. No. 521. While the theft and accident injuries may explain her inability to obtain financing, they do not excuse the breach: *Prowse v. Noroozi*, 2021 ONSC 3099, at para. 41.

- [49] Further, the vendor is under no obligation to offer an extension to close a real estate transaction for any reason, including the purchaser's inability to obtain the necessary financing: *2100 Bridletowne Inc. v. Ding*, 2021 ONSC 2119, at para. 66; *1179 Hunt Club Inc. v. Ottawa Medical Square Inc.*, 2019 ONCA 700, 438 D.L.R. (4th) 566, at para. 13. Absent bad faith, the vendor is entitled to insist on strict compliance with the agreed upon terms: *Zoleta v. Singh and RE/MAX Twin City Realty*, 2023 ONSC 5898, at para. 69. There is no evidence that Coco Developments acted unreasonably, as alleged by the defendant, or in bad faith.
- [50] Sabir also expressly waived any financing conditions for the purchase. During her examination on October 21, 2025, she confirmed signing Schedule "H" to the APS on September 21, 2021, which effected that waiver. There is no evidence that she did not understand its implications.
- [51] Accordingly, I agree with the plaintiff that the circumstances described by Sabir do not amount to frustration and therefore it is not a genuine issue requiring trial. At most, they explain her inability to secure financing but do not discharge her obligation under the APS to close on the Amended Closing Date.

Are the damages submitted by Coco Developments excessive?

- [52] The defendant argues that the plaintiff's damages including carrying costs are excessive and unreasonable, citing construction delays and questioning how Coco Developments allocated security costs among 29 unsold lots, including the Property. Under paragraph 25 of Schedule "E" to the APS, Sabir expressly agreed to assume these costs in the event of default.
- [53] In *Paradise Homes*, Brown J. cites with approval at para. 26, the general principle underlying the damages to which Coco Developments is entitled as summarized by Victor DiCatri, Q.C. in *The Law of Vendor and Purchaser*, 3rd ed. (Carswell: 1989) (loose-leaf revision), at para. 888:

The measure of damages is the difference between the contract price and the resale price together with any actual costs incurred as a result of the breach. Absent resale, the measure, basically, is the difference between the contract price and the market value at the date of the breach; normally, this is the completion date. Reasonable steps must have been taken to mitigate damages. The deposit must be taken into account. Additional amounts, such as a second real estate commission, have to be justified. To be recoverable, damages must be reasonably foreseeable.

- [54] The plaintiff is entitled to be put in the position it would have been in if the contract had been performed so far as money can do it: *Paradise Homes*, at para. 27. In this respect, the

vendor's damages include the difference between the price under the agreement and the price of the new sale of the property once it closes plus additional carrying costs incurred by the vendor in mitigating their loss and dealing with the purchaser's breach: *Goldstein v. Goldar*, 2018 ONSC 608, at para. 25.

- [55] Carrying costs that the courts have incorporated into such an award of damages include those identified in para. 17 of *Forest Hill Homes (Cornell Rouge) Limited v. Wang*, 2020 ONSC 556.
- [56] While the defendant provided no evidentiary basis for her claim that construction delays inflated damages, I accept her position regarding the carrying costs for security. After reviewing the affidavit of Jenny Coco sworn December 2, 2024, and Exhibit 17, it remains unclear how Coco Developments attributed \$3,115.93 in security costs to the Property. I will therefore deduct this amount, reducing total damages to \$72,657.

Did Coco Developments take reasonable steps to mitigate their damages?

- [57] The defendant submits that the plaintiff failed to take reasonable steps to mitigate its losses by not considering market conditions when re-listing the Property, delaying resale for over a year, and reducing the price from \$852,000 on March 31, 2023, to \$729,900 upon its sale in June 2024.
- [58] As set out in *Marshall v. Meirik*, 2021 ONSC 1687, at paras. 43-44, once the plaintiff has proven their damages, the onus rests squarely on the defendant to satisfy the court that on a balance of probabilities and without use of hindsight, (a) the plaintiff failed in their duty to make reasonable efforts to mitigate based on evidence of reasonable steps which they failed to take or of unreasonable steps taken; and (b) mitigation was possible. Sabir bears the onus of proving that Coco Developments failed to mitigate its damages.
- [59] The evidence clearly shows that Coco Developments took reasonable steps to mitigate its losses. The Property was re-listed shortly after Sabir's default at \$852,000, but no offers were received. On the advice of its real estate agents, the price was reduced to \$762,000 on October 17, 2023, and several open houses were held, yet the Property remained unsold. No offers were received for well over a year, until June 12, 2024, when an offer of \$729,000 was accepted two days later, with the sale closing on July 31, 2024.
- [60] Beyond bare assertions, the defendant has not identified any reasonable steps the plaintiff failed to take, or any unreasonable steps taken. On the contrary, the evidence demonstrates that Coco Developments acted diligently and reasonably in attempting to resell the Property: *Malatinszky v. Miri*, 2020 ONSC 16, at para. 84.
- [61] Accordingly, there is no triable issue with respect to whether Coco Developments failed to take reasonable steps to attempt to mitigate its losses.

Issue 2: What quantum of damages is Coco Developments entitled to?

- [62] As a direct result of Sabir's failure to close the APS, Coco Developments submits they incurred damages in the total amount of \$75,772.93.
- [63] As I found above, I do not agree with the amount charged to the defendant for security costs, therefore I will deduct \$3,115.93 from this amount. This leaves a total in damages of \$72,657.

E. JUDGMENT

- [64] I am satisfied, based on the evidence before me, that there are no genuine issues requiring a trial with respect to those arguments raised by the defendant. Additionally, on the evidence, I was able to come to a decision on the quantum of damages owed to Coco Developments.
- [65] Accordingly, I find this is a proper case for summary judgment against the defendant. I order the following:
- a. The defendant, Shazia Sabir, shall pay to the plaintiff, Coco Developments Ltd., the sum of \$72,657 in damages.
 - b. Prejudgment interest on that sum at the rate of 4.0 percent per annum from February 9, 2023, until December 3, 2025, in the sum of \$8,185.36.
 - c. Post judgment interest at the rate of 6.0 percent per annum from December 3, 2025, in accordance with s. 129 of the *Court of Justice Act*, R.S.O. 1990, c. C.43.

F. COSTS

- [66] I find the plaintiff to be the more successful party.
- [67] The parties are to file brief written submissions with the court, of no more than five (5) double-spaced pages (exclusive of any costs outline, bill of costs, dockets, offers to settle, or authorities), in accordance with the formatting standards of r. 4.01 and the following schedule:
- a. The plaintiff shall deliver their submissions within thirty (30) days following the release of these reasons.
 - b. The defendant shall deliver her submissions within twenty (20) days following service of the plaintiff's submissions.
 - c. The plaintiff shall deliver their reply submissions, if any, which shall be limited to no more than three (3) double-spaced pages, within five (5) days following service of the defendant's submissions.

[68] If any party(s) fails to deliver their submissions in accordance with this schedule, they shall be deemed to have waived their rights with respect to the issue of costs. The court may proceed to make its determination in the absence of their input or give such directions as the court considers necessary or advisable.

Brian D. Dubé
Justice

Released: January 13, 2026

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COURT FILE NO.: CV-23-31981
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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Coco Developments Ltd.

Plaintiff

- and -

Shazia Sabir

Defendant

REASONS FOR JUDGMENT

Dubé J.

Released: January 13, 2026