CITATION: Potz v. Pietrangelo, 2026 ONSC 1405
COURT FILE NO.: CV-22-00001353-0000
DATE: 20260309

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ALLEN POTZ, Plaintiff

AND:

LINDA PIETRANGELO, Defendant

BEFORE: Associate Justice Mak

COUNSEL: Riley C. Brooks, for the Plaintiff

Linda Pietrangelo, acting in person

HEARD: September 17, 2025, by videoconference

REASONS FOR DECISION

Overview

[1] This action arises from a failed real estate transaction between the parties. The vendor plaintiff, Allen Potz, brings this motion for summary judgment against the purchaser defendant, Linda Pietrangelo.

[2] In her affidavit, Ms. Pietrangelo disputes that this matter is appropriate for summary judgment. She states this matter should proceed to trial.

[3] In her factum, Ms. Pietrangelo requests the court declare that Mr. Potz breached the agreement and for an order that Mr. Potz return the $20,000 deposit paid to him.

Factual Background

[4] Mr. Potz owned a property in Innisfil, Ontario. On October 28, 2021, he agreed to sell the property to Maurizio Bruno for $645,000. In this regard, Mr. Potz and Mr. Bruno entered into an Agreement of Purchase and Sale, which included the terms that Mr. Bruno would provide an initial deposit of $20,000, and the transaction would close on August 2, 2022. In his affidavit sworn in support of the relief sought in this motion, Mr. Potz states "to the best of his knowledge" that Mr. Bruno provided the $20,000 deposit.

[5] A copy of the Agreement, initialed and signed only by Mr. Bruno on October 27, 2021, includes a term in Schedule "A" to the Agreement stating: "The Buyer has the right to

advance the completion (close) date and title search date to a maximum of 120 days with 20 days written notice." (the "Unsigned Agreement").

[6] A signed copy of the Agreement, signed and initialed by both Mr. Potz and Mr. Bruno, includes a term in Schedule "A" stating: "The Buyer has the right to advance the completion (close) date and title search date to a maximum of 120 days with 20 days written notice. (Must be mutually agreed upon by both Seller and Buyer)" (the "Signed Agreement"). The statement "(Must be mutually agreed upon by both Seller and Buyer)" is in a different style and size of font than the sentence immediately preceding it, did not have any prompts for the insertion of the buyer's and seller's initials, and was not initialed by either Mr. Potz or Mr. Bruno.

[7] Ms. Pietrangelo was cross-examined on her affidavit that she affirmed for this motion. She states she was friends with Mr. Bruno at the time he entered into the Signed Agreement. She further states she knew about the terms of the Unsigned Agreement, and thought that the Signed Agreement included the Schedule "A" term allowing the buyer to advance the closing date, but without the added term that it must be mutually agreed upon by the parties.

[8] On or about January 27, 2022, Mr. Potz received an offer to amend the Signed Agreement, by way of the Ontario Real Estate Association (OREA) Form 120 Amendment to Agreement of Purchase and Sale. The amendment proposed to insert Ms. Pietrangelo as an additional buyer. The amendment included the following sentence which was located immediately above the signature lines: "All other Terms and Conditions in the aforementioned Agreement to remain the same." Mr. Potz and Mr. Bruno signed this amendment on January 27, 2022. Ms. Pietrangelo signed this amendment on January 19, 2022.

[9] At her cross-examination, Ms. Pietrangelo states that she was aware, by signing this amendment, that she was now a party to the Signed Agreement because she had been inserted as a purchaser. She states she did not review the Signed Agreement before signing this amendment because she thought the Signed Agreement's contents were the same contents as contained in the Unsigned Agreement.

[10] On or about May 8, 2022, Mr. Potz received a second offer to amend the Signed Agreement, again by way of the OREA Form 120 Amendment to Agreement of Purchase and Sale. The amendment proposed to delete Mr. Bruno as purchaser. Again, the amendment included the following sentence which was located immediately above the signature lines: "All other Terms and Conditions in the aforementioned Agreement to remain the same." Mr. Potz signed this amendment on May 8, 2022. Mr. Bruno and Ms. Pietrangelo signed this amendment on May 6, 2022.

[11] At her cross-examination, Ms. Pietrangelo stated she was aware, due to this second amendment, that she was now the sole purchaser of the property. She stated she did not review the Signed Agreement before signing this second amendment. She stated she understood that the only change made to the Signed Agreement was removing Mr. Bruno

as purchaser, and that all other terms and conditions in the Signed Agreement remained the same.

[12] Prior to closing, Ms. Pietrangelo's real estate agent contacted Mr. Potz to request the closing date be advanced. At her cross-examination, Ms. Pietrangelo stated this request was made in April 2022 for a closing date in June 2022. She states she made this request because she was worried about the real estate market conditions. Mr. Potz refused her request. He states in his affidavit that he refused because he routinely rented the property out as a short-term rental on Airbnb and, at that time, he had pre-scheduled bookings confirmed and paid for prior to August 2, 2022.

[13] In her affidavit, Ms. Pietrangelo stated that in July 2022, her lawyer advised Mr. Potz's lawyer that she had a change in financial circumstances, and she proposed to purchase the property at a market value of $560,000 with a six-week extension of the closing date. Mr. Potz refused this proposal.

[14] Mr. Potz states in his affidavit that on August 2, 2022, he remained ready, willing and able to close the transaction. On that day, Mr. Potz's real estate solicitor advised Ms. Pietrangelo's real estate solicitor by email correspondence that Mr. Potz was ready, willing and able to close.

[15] On August 2, 2022, Ms. Pietrangelo did not complete the transaction.

[16] On or about August 3, 2022, Mr. Potz re-listed the property for sale for the purchase price of $645,000. The property was listed for approximately four weeks at this price. Mr. Potz stated in his affidavit that the property was relisted at this price to try to solicit the same or similar offer as that made by Mr. Bruno.

[17] On September 1, 2022, another buyer offered to pay $552,000 to purchase the property. Mr. Potz accepted this offer. The transaction closed on September 29, 2022 for $552,000.

[18] At the motion hearing, Ms. Pietrangelo filed two decisions of the Real Estate Council of Ontario ("RECO") arising from complaints she made at some unknown juncture to RECO regarding Mr. Bruno's agent and the listing agent. In her complaints, Ms. Pietrangelo stated the listing agent, unilaterally and without consent, modified the terms of a clause in the Signed Agreement related to the closing date of this real estate transaction.

[19] On February 9, 2024, RECO made the following findings with respect to the listing agent:

> It appears that the respondent [agent], on sign-back of the purchase agreement, modified an existing clause that led to confusion and challenges for the transaction. We note that neither party to the transaction initialed changes to the clause. The essence of obtaining initials on modifications to a purchase agreement relates to signifying and consenting to a proposed change.

> It is reasonably expected that any inserted clauses are structured clearly and with enough detail to avoid confusion, and further, we suggest they be reviewed with a third party such as the respondent's Broker of Record, or a lawyer before their use.
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> OUTCOME
>
> After the collection and review of the information and documents relevant to the complaint, there is sufficient corroborating evidence available to support the allegations. Given the circumstances of the complaint matter, the respondent [agent] appears to have not fully met the standard of conduct expected of them.
>
> Accordingly, a Warning is being issued to the respondent that any future complaint(s) about similar conduct may result in greater disciplinary action.
>
> The respondent [agent] is required to complete REIC 2280 - Legal Issues in Real Estate at the Real Estate Institute of Canada at their own expense and provide evidence of successful completion to RECO on or before July 24, 2024.

[20] On February 9, 2024, RECO made the following findings with respect to Mr. Bruno's agent:

> Although we note that concerns regarding the closing date clause were not raised during the original buyer's involvement in the transaction, it is incumbent upon a real estate registrant to inform their client about any fundamental changes included in a purchase agreement.
>
> Further, there is a reasonable expectation for a real estate registrant to review a counteroffer for modifications that may be deleterious to the interests of their client, capturing the client's understanding and acknowledgment of the risks and obligations prior to acceptance.
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> It appears that neither party to the transaction initialed changes to the closing acceleration clause. The essence of obtaining initials on modifications to a purchase agreement relates to signifying and consenting to a proposed change.
>
> OUTCOME
>
> After the collection and review of the information and documents relevant to the complaint, there is sufficient corroborating evidence available to support the allegations. Given the circumstances of the complaint matter, the respondent [agent] appears to have not fully met the standard of conduct expected of them.

> Accordingly, a Warning is being issued to the respondent [agent] that any future complaint(s) about similar conduct may result in greater disciplinary action. The respondent is required to complete the RECO's Introduction to TRESA course at their own expense and provide evidence of successful completion to RECO on or before April 9, 2024.

[21] Ms. Pietrangelo is a mortgage broker who has had a licence for approximately 10 years. She states she has been involved in many transactions throughout her career. During her cross-examination, she agreed that she is aware that the content of an Agreement of Purchase and Sale are the terms and conditions that govern the sale. She stated due to an oversight, she missed that the Signed Agreement contained the term in Schedule "A" "(Must be mutually agreed upon by both Seller and Buyer)".

[22] Mr. Potz was not cross-examined on his affidavit. Mr. Bruno did not swear an affidavit for this motion.

Law and Analysis

[23] Subrule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 directs the court to grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[24] There will be no genuine issue requiring a trial when the court can reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process allows the court to make the necessary findings of fact, allows the court to apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 49 (*"Hryniak*").

[25] The Supreme Court of Canada provides a two-step process for the court to approach a motion for summary judgment in *Hryniak* at paragraph 66.

[26] First, the court should determine if there is a genuine issue requiring a trial based only on the evidence before them, without using the fact-finding powers in r. 20.04(2.1) and (2.2), which allow a judge to weigh evidence, evaluate credibility and draw inferences from the evidence. There will be no genuine issue requiring a trial if the summary judgment process provides the court with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure.

[27] Second, if there appears to be a genuine issue requiring a trial, the court should determine if the need for a trial can be avoided by using these powers. An associate judge cannot exercise these powers, as r. 20.04(2.1) and (2.2) state they may only be exercised by a judge. The judge may use these powers if 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.

[28] The onus is on Mr. Potz to show there is no genuine issue requiring a trial. If he meets that burden, the onus shifts to Ms. Pietrangelo to prove a real chance of success in her defences at trial: *Guarantee Co. of North America v. Gordon Capital Corp.,* [1999] 3 SCR 423 at para. 27. Pursuant to r. 20.02, "the responding party cannot rely on allegations or denial, but must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial".

[29] On a summary judgment motion, both parties must put their "best foot forward". The court will assume the parties have placed before it, in some form, all of the evidence that will be available for trial: *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200 at paras. 32 and 33, aff'd 2014 ONCA 878. This evidence does not need to be equivalent to that at trial, but must be such that the court is confident it can fairly resolve the dispute: *Hryniak v. Mauldin*, *supra* at para. 57.

[30] As noted by Charney J. in *2174372 Ontario Ltd. v. Akbari*, 2023 ONSC 6047 ("*2174372 Ontario Ltd.*") at paragraph 23, "There are numerous cases that deal 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".

[31] As set out in my reasons below, this matter is appropriate for summary judgment, and Ms. Pietrangelo has not persuaded me there is a genuine issue requiring a trial. I find it is also unnecessary for me to use the enhanced powers under r. 20.04(2.1) and (2.2). The record before me is sufficient to resolve the disputed issues fairly and justly.

[32] For the court to determine whether Ms. Pietrangelo breached the Agreement of Purchase and Sale with Mr. Potz, the court must first determine which agreement was valid and binding on the parties: the Signed Agreement or the Unsigned Agreement.

[33] Mr. Potz's position is that the Signed Agreement is valid and binding, and the parties were *ad idem* with respect to their contractual obligations. Mr. Potz and Mr. Bruno both signed the Signed Agreement. If the Signed Agreement is valid and binding, Mr. Potz had the contractual right to deny Ms. Pietrangelo's request to advance the closing date, and Ms. Pietrangelo breached the Signed Agreement by failing to close on August 2, 2022.

[34] Ms. Pietrangelo's position is that the Unsigned Agreement is valid and binding, because the Schedule "A" term "(Must be mutually agreed upon by both Seller and Buyer)" that was part of the Signed Agreement was not initialed by Mr. Potz and Mr. Bruno. She submits if the Unsigned Agreement is valid and binding, Mr. Potz breached the Unsigned Agreement by not allowing her to advance the closing date as she had requested, and therefore he is not entitled to the damages he seeks.

[35] Mr. Potz relies upon *J.M.B. Cattle v. Kaufman*, 2015 ONSC 7372 ("*J.M.B. Cattle*") in support of his position. At paragraphs 46 and 47, Price J. stated:

> …Mutual assent is not required for the formation of a valid contract, only a manifestation of mutual assent. Whether or not there is a manifestation of mutual assent is to be determined from the overt acts of the parties.
>
> In order to form a contract, the parties must be of one mind ("*ad idem*") as to the essential terms of the contract, namely the parties, the period, and the price. To determine whether the parties reached a meeting of the minds, or consensus ad idem, the court applies an objective test. The court considers whether a reasonable person, apprised of all the circumstances, would believe that the parties had reached an agreement.

[36] Regarding this objective test, in *Saint John Tug Boat Co. Ltd. v. Irving Refining Ltd.*, 1964 CanLII 88 (SCC), [1964] S.C.R. 614 at pp. 621-622, Ritchie J. wrote for the court, as follows:

> The test of whether conduct, unaccompanied by any verbal or written undertaking, can constitute an acceptance of an offer so as to bind the acceptor to the fulfilment of the contract, is made the subject of comment in Anson on Contracts, 21st ed., p. 28, where it is said:
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> > The test of such a contract is an objective and not a subjective one, that is to say, the intention which the law will attribute to a man is always that which his conduct bears when reasonably construed, and not that which was present in his own mind. So if A allows B to work for him under such circumstances that no reasonable man would suppose that B meant to do the work for nothing, A will be liable to pay for it. The doing of the work is the offer; the permission to do it, or the acquiescence in its being done, constitutes the acceptance.
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> In this connection reference is frequently made to the following statement contained in the judgment of Lord Blackburn in *Smith v. Hughes* [(1871), L.R. 6 Q.B. 597 at 607], which I adopt as a proper test under the present circumstances:
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> > If, whatever a man's real intention may be he so conducts himself that a reasonable man would believe that he was consenting to the terms proposed by the other party and that other party upon that belief enters into a contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

[37] Ms. Pietrangelo relies upon the two RECO decisions in support of her position on this motion. Although the RECO decisions state that neither party to the transaction initialed changes to the closing acceleration clause, and that "[t]he essence of obtaining initials on modifications to a purchase agreement relates to signifying and consenting to a proposed

change", and found the agents appeared to have not fully met the standard of conduct expected of them, these RECO decisions do not speak to whether the Signed Agreement is binding under these circumstances. Further, the RECO decisions do not state whether RECO considered the relevant fact that Ms. Pietrangelo signed two amendments on two separate occasions months after the Signed Agreement that confirmed the terms and conditions in the Signed Agreement remain the same.

[38] I find that *J.M.B. Cattle* is informative as to the legal impact of the lack of initials on the Schedule "A" term in the Signed Agreement. Price J. stated at paragraph 46 of *J.M.B.* Cattle that if an offer is made to purchase property, and only some of the handwritten additions are initialed, there can still be a binding contract.

[39] In reviewing the factual circumstances of this failed real estate transaction, I find the Signed Agreement is valid and binding on the parties, and the Unsigned Agreement is not a valid and binding agreement on the parties.

[40] In making this finding, I find that a reasonable person, apprised of all the circumstances, would believe that the parties had reached an agreement that included the Schedule "A" term "(Must be mutually agreed upon by both the Seller and Buyer)", for the following reasons:

(a) Although this term was not initialed by Mr. Potz and Mr. Bruno, they both signed the Signed Agreement which included this term in Schedule "A". In contrast, only Mr. Bruno signed the Unsigned Agreement.

(b) On two subsequent occasions – January 19, 2022 and May 6, 2022 – Ms. Pietrangelo signed amendments that confirmed the terms and conditions in the Signed Agreement remain the same, and therefore conducted herself as having agreed to the terms and conditions in the Signed Agreement, including its Schedule "A" terms.

(c) Neither party presented evidence that Ms. Pietrangelo or Mr. Bruno advised Mr. Potz at any time before August 2, 2022 that either Ms. Pietrangelo or Mr. Bruno had been acting under the belief that the terms in Schedule "A" to the Signed Agreement did not include the term "(Must be mutually agreed upon by both the Seller and Buyer)".

[41] Ms. Pietrangelo relies upon several decisions in support of her position on this motion. First, she relies upon *Williams v Century 21 Realty* ("*Williams*"). However, she did not provide a copy of this decision to the court, and advised the court it was a matter from New York state. Ms. Pietrangelo submits Mr. Potz breached an implied duty of good faith under *Williams* and Ontario real estate principles in refusing to close the transaction on the "agreed-upon early date" without an explanation. I reject her submission because I have found the Signed Agreement is valid and binding on the parties, Mr. Potz did not breach the Signed Agreement, and the parties did not agree to close the transaction on a date earlier than August 2, 2022.

[42] Ms. Pietrangelo next relies upon *2336574 Ontario Inc. v. 1559586 Ontario Inc.*, 2020 ONSC 3650, purportedly written by Perell J. and released June 19, 2020. Ms. Pietrangelo provided the court with a summary that she found online of this decision. However, I was unable to locate this decision, and Ms. Pietrangelo did not provide a copy to the court.

[43] The summary provided by Ms. Pietrangelo states the plaintiff seller refused to close on a real estate transaction and attempted to unilaterally change the terms of the Agreement of Purchase and Sale, and the defendant buyer sued for breach of the contract. The summary states the court found the agreement was valid and binding, and rejected the unilateral attempt to vary the terms of the agreement.

[44] Assuming this decision exists, based on the summary provided by Ms. Pietrangelo I do not find the decision helpful to her position. The facts are different than the facts of this within matter. In that case, the plaintiff attempted to unilaterally change the agreement's terms after an agreement had been entered into with the defendant. In this matter, the parties signed an agreement that had a clause inserted, without it being initialed by either party, prior to the parties signing the Signed Agreement.

[45] I put to Ms. Pietrangelo that the correct citation for the decision is *2336574 Ontario Inc. v. 1559586 Ontario Inc.*, 2016 ONSC 2467. Ms. Pietrangelo rejected this. In any event, I have reviewed this decision, written by Morgan J. He found the purchaser defaulted on the Agreement of Purchase and Sale by missing the closing date by one day, which is enough to put an end to the contract. Therefore, I find this case also does not aid Ms. Pietrangelo's position.

[46] Ms. Pietrangelo also relies upon *Bhasin v. Hrynew*, 2014 SCC 71. Although she did not state the exact grounds upon which she relies upon this decision, in her factum she discusses the duty of good faith and fair dealing, citing *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45. I find neither of these decisions assists Ms. Pietrangelo, as I have found the Signed Agreement to be valid and binding despite the term "(Must be mutually agreed upon by both the Seller and Buyer)" lacking the initials of either party.

[47] Based on the foregoing, the court finds there is no genuine issue requiring a trial with respect to both the validity and the breach of the Agreement of Purchase and Sale. The Signed Agreement, signed by both Mr. Potz and Mr. Bruno, is binding and valid on Mr. Potz and Ms. Pietrangelo. Mr. Potz was ready, willing and able to close on August 2, 2022. Ms. Pietrangelo breached the terms of the Signed Agreement when she failed to close on August 2, 2022.

[48] Ms. Pietrangelo's defence to the Claim is that Mr. Potz breached the Unsigned Agreement because he did not agree to advance the closing date upon her request. Therefore, her defence relies entirely upon on the court finding that the Unsigned Agreement is valid and binding upon the parties. As I have found that the Unsigned Agreement is not valid and binding, Ms. Pietrangelo has not discharged her onus to prove a real chance of success in her defence at trial.

What Damages Should be Awarded to Mr. Potz?

[49] In *2174372 Ontario Ltd.*, Charney J. stated the legal principles that apply to failed real estate transactions:

> [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.
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> [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.
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> [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.
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> [27] See also: *Park Avenue Homes Corp. v. Malik*, 2022 ONSC 973, at paras. 38-39:
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> > 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.
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> [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:
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> > [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.
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> *Deco Homes (Richmond Hill) Inc. v. Serikov*, 2021 ONSC 2079, at para. 7.

[50] In this matter, Mr. Potz seeks damages of $104,568.84, comprised of the following:

(a) $93,000, being the difference between the purchase price in the Signed Agreement ($645,000) and the purchase price of the property of $552,000 when the transaction closed on September 29, 2022;

(b) Carrying costs of $4,068.84 for the property from August 2 to September 29, 2022; and

(c) $7,500 in lost income from Airbnb rentals at the property from August 2 to September 29, 2022.

[51] At the motion hearing, Mr. Potz's counsel provided amended calculations for some of the carrying costs, along with a breakdown. The carrying costs now total $3,965.12, as follows:

(a) $3,264.88 for mortgage payments made between August 2 and September 29, 2022;

(b) $181.33 for Innisfil power bills from August 2 to September 29, 2022;

(c) $121.94 for Enbridge bills from August 2 to September 29, 2022;

(d) $173.10 for property insurance from August 2 to September 29, 2022; and

(e) $223.87 for Rogers bills from August 2 to September 29, 2022.

[52] Applying the principles outlined in *2174372 Ontario Ltd.*, I find as follows:

(a) Mr. Potz reasonably mitigated his damages by listing his property the day after Ms. Pietrangelo failed to close on the property on August 2, 2022. He waited almost one month before receiving an offer on September 1, 2022. As a result of this listing, Mr. Potz made an arm's length sale of the property that closed on September 29, 2022.

(b) Mr. Potz is entitled to damages of $93,000, representing the difference between the price under the Signed Agreement and the price of the new sale of the property when it closed on September 29, 2022.

(c) Upon review of the documentation Mr. Potz relies upon in support of his carrying costs, and the explanation of the calculations provided at the motion hearing by Mr. Potz's counsel, I am satisfied Mr. Potz incurred the carrying costs as outlined above in paragraph 51 due to the sale of the property closing on September 29, 2022 instead of August 2, 2022. Therefore, Mr. Potz is entitled to damages of $3,965.12 for these carrying costs he incurred from August 2 to September 29, 2022.

[53] Mr. Potz submits that because the sale of the property did not close on August 2, 2022, he could have had the property booked with Airbnb reservations that would have earned him income of $7,500 until the subsequent sale of the property. If I award lost income based on

what Mr. Potz proposes, I would be putting Mr. Potz in the position he would be in if the sale had closed on September 29, 2022.

[54] What Mr. Potz proposes is in direct conflict with the following principle he cites in his factum – "The most general principle relating to the assessment of the damages is that 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": *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.*, 1978 CanLII 1630 (ON CA) at pp. 414-415. If the Signed Agreement had been performed, Mr. Potz would not have had any income from Airbnb rentals at his property from August 2 to September 29, 2022. Therefore, I decline to award Mr. Potz $7,500 for this lost income.

[55] Mr. Potz submits the $20,000 deposit was forfeited due to Ms. Pietrangelo's failure to close the transaction. He relies on *Pleasant Developments Inc. v. Iyer*, 2006 CanLII 10223 (ON SCDC) at paragraph 8 in support of his position, which states:

> While I accept that the language of the contract is not by itself determinative, the use of the word "deposit" will imply that the payment is intended for forfeiture upon the purchaser's breach. See *Perell and Engell, supra*, at p. 187. The common law position is that if the agreement is silent and the purchaser defaults, the deposit, by it very nature is forfeited to the vendor. See *Salavatore et al, Agreement of Purchase and Sale (Toronto: Butterworths, 1996)* at p. 61.

[56] In this matter, the Signed Agreement states the deposit is to be held in trust pending completion or other termination of the agreement and is to be credited toward the purchase price upon completion. The Signed Agreement does not state what happens to the deposit when there is an "other termination" of the agreement.

[57] The wording of this clause is the same as the wording in the Agreement of Purchase and Sale that the Court of Appeal considered in *Azzarello v Shawqi*, 2019 ONCA 820 (*"Azzarello*"). In *Azzarello*, the vendor suffered a loss because of the purchaser's breach. One of the issues the Court of Appeal considered is whether the deposit should be treated as part payment and credited toward the vendor's damages, or if it is retained in addition to the damages, subject to relief from forfeiture.

[58] In *Azzarello*, the Court of Appeal found the deposit was not forfeited, and it was to be credited to the vendor's damages. Feldman J.A. explained the reasoning behind this finding at paragraphs 52 and 53:

> [52] [The motions judge in *Bang v. Sebastian*, 2018 ONSC 6226, aff'd 2019 ONCA 501] found that the result was dictated by the wording of the agreement of purchase and sale, at paras. 69 and 71:
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> > Real estate transactions routinely involve the payment of deposits. The proper application of the deposit in circumstances where the purchaser fails to complete the transaction is governed by the

> parties' agreement. Here, the wording of the Agreement of Purchase and Sale states expressly that the deposit is to be "credited towards the purchase price" on completion of the transaction.
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> […]
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> I find that the wording of the deposit term in the Agreement of Purchase and Sale clearly and unambiguously reflects the parties' intention that the deposit would be applied as a credit to the payment obligation owed by the purchaser defendant to the vendor plaintiffs on completion of the transaction. There is no difference to the use of the deposit in the event of termination of the agreement as opposed to its successful completion. Rather, it was intended to be applied as a credit to the obligation owed by the purchaser to the vendors: whatever form that obligation might take. I conclude that the $35,000 paid by the purchaser defendant is to be paid to the vendor plaintiffs and credited against the damages that they have proven.

> [53] I agree with this analysis. While the agreement only specifically calls for the deposit to be credited to the purchase price on completion of the agreement, the measure of damages is based on the difference between the purchase price and the lesser amount that the property sold for after the purchaser's default. In other words, it is based on the vendor receiving the purchase price that was bargained for. One can infer that the intent of the parties was that the deposit be applied to the purchase price whether received on completion or as damages.

[59] Applying *Azzarello*, the quantum of damages awarded to Mr. Potz is to be reduced by deducting the amount of the deposit from these damages.

Disposition

[60] Based on the issues in this matter and the evidence before me, I find that this summary judgment motion allows the court to make the necessary findings of fact and apply the law to those facts. A summary judgment motion is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial in this case.

[61] I find there is no genuine issue requiring a trial as to which Agreement of Purchase and Sale was valid and binding on the parties, Ms. Pietrangelo's breach of the Signed Agreement, and Mr. Potz's entitlement to damages arising from this breach of the Signed Agreement. I therefore grant judgment to Mr. Potz in the amount of $76,965.12, plus pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[62] The quantum of Mr. Potz's damages is comprised of $93,000, being the difference between the purchase price in the Signed Agreement (i.e. $645,000) and the purchase price of the property when the transaction closed on September 29, 2022 (i.e. $552,000), as well as carrying costs of $3,965.12, less $20,000 for the deposit Mr. Potz received.

Costs

[63] Mr. Potz provided a Bill of Costs at the motion hearing. Ms. Pietrangelo did not. If the parties cannot agree to the disposition of the costs of the motion, they may make submissions in writing, not exceeding three pages each double-spaced – Mr. Potz within 20 days and Ms. Pietrangelo within 10 days thereafter – to the attention of the Trial Coordinator.

C. Mak AJ.

Released: March 9, 2026

CITATION: Potz v. Pietrangelo, 2026 ONSC 1405
COURT FILE NO.: CV-22-00001353-0000
DATE: 20260309

ONTARIO

SUPERIOR COURT OF JUSTICE

ALLEN POTZ

Plaintiff

– and –

LINDA PIETRANGELO

Defendant

REASONS FOR DECISION

C. Mak AJ.

Released: March 9, 2026