CITATION: Dicenzo (Linden Park) Holdings Inc. v. Sadeghyar, 2026 ONSC 1566
COURT FILE NO.: CV-25-90712 and CV-25-91963
DATE: 2026-03-16

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
DICENZO (LINDEN PARK) HOLDINGS INC. Applicant	Cam Neil, for the Applicant
– and –	
FERDOWS SADEGHYAR Respondent	Basil Khan, for the Respondent
	HEARD: March 3, 2026

COURT FILE NO.: CV-25-91963

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
FERDOWS SADEGHYAR Applicant	Basil Khan, for the Applicant
– and –	
DICENZO (LINDEN PARK) HOLDINGS INC. Respondent	Cam Neil, for the Respondent

)
)

M. BORDIN J.

Overview

[1] This is a dispute between a builder vendor, DiCenzo (Linden Park) Holdings Inc., and Ferdows Sadeghyar, a purchaser of a new condominium unit. There is no dispute that the transaction failed to close, and the unit was placed back on the market and sold at a loss. The builder commenced an application seeking forfeiture of the deposit, damages for the difference between the ultimate sale price and the purchase price and carrying costs.

[2] The purchaser commenced a cross-application seeking to have the underlying agreement of purchase and sale declared void and unenforceable, and the return of his deposit with interest. The purchaser alleges the builder failed to provide the condominium guide required by s. 72(1)(b) (the "Guide") of the *Condominium Act*, 1998, S.O. 1998, c. 19 (the "Act"), the result of which is that the agreement was not binding on him.

[3] The builder asserts that the purchaser acknowledged receipt of the Guide. In the alternative, if the Guide was not provided to the purchaser, the purchaser is estopped from relying on the failure of the builder to provide the Guide, the purchaser affirmed the contract, or the purchaser relied on the "technical requirements" of s. 72(1)(b) of the Act in bad faith and the real reason the purchaser did not close is because he could not obtain financing.

[4] Neither party took the position that these cross-applications could not be determined on the affidavits and out-of-court cross-examinations. The builder insisted they could be determined on the paper record and cited authorities to support its position.

[5] The parties agreed on the builder's damages should the builder be successful, and on the amount of the deposit to be returned to the purchaser should the purchaser be successful.

Facts

[6] On March 5, 2022, the builder and the purchaser entered into an agreement of purchase and sale for 54 Linden Park Lane, Hamilton (the "Agreement"), which was to be a newly constructed condominium unit. The purchase price was $1,009,150. The First Tentative Occupancy date was February 23, 2024. The entire transaction was conducted electronically.

[7] The closing documents were signed by the purchaser on March 4, 2022. The builder executed them on March 5, 2022. Schedule "H" of the Agreement contains acknowledgement (the "Acknowledgement") by the purchaser that he received a copy of the Residential Condominium Buyers' Guide. The Acknowledgment contains the purchaser's electronic signature, and his electronic initials dated March 4, 2022. The first paragraph of the Acknowledgment states that the documents were provided to the purchaser in electronic format, including the Guide.

[8] As part of the disclosure package provided to the purchaser, he was provided with s. 73 of the Act which sets out that a purchaser who receives a disclosure statement and the condominium guide under s. 72(1) may rescind the Agreement before accepting a registrable deed.

[9] Appended to the Agreement and forming the first several pages of it was the "Information for Buyers of Pre-Construction Condominium Homes", authored by the Home Construction Regulatory Authority. It advised the purchaser, among other things, of his 10-day cancellation period and that "You should review your purchase agreement including this document with a lawyer familiar with condominium transactions". This form also bears the purchaser's signature.

[10] Sections 11 and 12 of the Agreement provide for the consequences of the purchaser failing to close, which include forfeiture of the deposit and all associated costs, losses and damages arising from the default.

[11] On March 7, 2022, the builder emailed the purchaser advising that he had until March 17, 2022, to terminate the Agreement pursuant to the Act and that the purchaser should seek legal advice. Attached to that email was the fully executed Agreement, Schedule I ("Limited Rights of Assignment") and the Disclosure Statement.

[12] The purchaser did not seek legal advice prior to signing the Agreement. He did not read the Agreement. The purchaser was aware of the 10-day cooling off period when he signed the Agreement.

[13] The purchaser paid a total deposit of $121,098 in two installments, with $116,098 paid on March 14, 2022.

[14] As a result of changes, the purchase price increased to $1,012,637.18. These changes were made pursuant to amendments to the Agreement signed by the builder on October 1, 2022, and January 19, 2023, and previously signed by the purchaser.

[15] Three days before the closing date, the purchaser's lawyers advised the builder that the purchaser was not in a position to continue with the purchase. The purchaser could not obtain financing and did not provide the closing funds. The transaction did not close on February 23, 2024.

[16] The builder eventually sold the property for $699,900.00 and incurred resale/carrying costs of $27,162.28. The deposit was forfeited to the builder and the parties agreed that the builder's net damages total $218,804.46.

[17] The purchaser did not demand return of the deposit until after the builder commenced this litigation on June 16, 2025.

[18] The purchaser is a university educated real estate professional and obtained his real estate licence in 2017. The courses he completed to obtain his licence included condominiums. He was engaged in property sales including new-build condos. He had been involved in 6 to 10 residential

real estate deals before March 2022. He received an award for top 5 in sales. In March 2020, the purchaser had personally purchased a pre-construction, new-build home, not a condo, from a builder. He sold the property in 2021.

The builder's statutory duty to provide the Guide

[19] The builder concedes it had a statutory duty to provide the Guide to the purchaser.

[20] Section 72(1)(b) of the Act provides in relevant part that the declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant or a person acting on behalf of or for the benefit of the declarant a copy of the applicable condominium guide under section 71.1. [Emphasis added.]

[21] The requirement to provide the Guide was introduced in changes to the Act in 2015, but was proclaimed into force on January 1, 2021, by Order in Council 1424/2020. Section 72(1)(b) was in force at the time of the Agreement.

[22] The courts have repeatedly held that the Act is consumer protection legislation: *Chen v. Brookfield Residential (Ontario) Limited*, 2022 ONCA 887, at para. 13; *Harvey v. Talon International Inc*., 2017 ONCA 267, 137 O.R. (3d) 184, at paras. 62-63.

[23] According to Hansard, 41st Parl., 1st Sess., No. 95 (15 September 2015), at p. 5075, the purpose of the Guide was to provide purchasers with an easy-to-read guide to condominium living at the time of sale, to help them make informed decisions, especially when compared with the legalistic contracts. Requiring developers to give buyers a copy of the Guide was to further the protection of consumers: Hansard, 41st Parl., 1st Sess., No. 105 (6 October 2015), at p. 5609.

[24] The inclusion of the requirement to provide the Guide to purchasers is in keeping with the consumer protection nature of the Act.

[25] The fact that a purchaser is sophisticated does not relieve the builder of its duty to provide a copy of the Guide. The builder conceded this in argument.

The purchaser was not provided with the Guide

[26] The purchaser says he was not provided with a copy of the Guide. The Acknowledgement is only one piece of evidence. It is not conclusive.

[27] The only evidence that he was provided with a copy is the Acknowledgment. The builder concedes there is no other evidence that the Guide was provided to the purchaser. Even though the transaction was entirely electronic, and the Acknowledgment states that all documents, including the Guide were provided electronically, and other key documents such as the disclosure document and the Agreement were provided electronically, there is no record of the Guide having been provided. One would think that, given production of the Guide is a statutory requirement, that the

builder would have kept a record of producing it to the purchaser, as it did with other key documents like the disclosure document.

[28] The Acknowledgement is problematic because it states that in addition to the Guide the purchaser was provided with the disclosure document and an executed copy of the Agreement. The Acknowledgment was signed by the purchaser on March 4, 2022. The Agreement was not fully executed until the next day and so could not have been provided on March 4, 2022. The evidence discloses that the disclosure document was not provided until March 7, 2022. This leaves serious doubts as to the accuracy of the Acknowledgment.

[29] In these circumstances, I conclude that the builder has not established, anywhere near a balance of probabilities, that the Guide was provided to the purchaser. I find as a fact that it was not provided to the purchaser.

Consequences of the builder not providing the Guide to the purchaser

[30] Section 72(2) of the Act provides that "[a]n agreement of purchase and sale of a unit or a proposed unit entered into by a declarant or a person acting on behalf of or for the benefit of the declarant is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement and the condominium guide in accordance with subsection (1). [Emphasis added.]

[31] Section 73(1) of the *Condominium Act* provides that "[a] purchaser who receives a disclosure statement and the condominium guide under subsection 72 (1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form. [Emphasis added.]

[32] Section 73(2) of the *Condominium Act* provides that a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor who must receive the notice within 10 days of the latest of:

> (a) the date that the purchaser receives the disclosure statement;
>
> (b) the date that the purchaser receives a copy of the applicable condominium guide under section 71.1; and
>
> (c) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser.
>
> [Emphasis added.]

[33] The purchaser's evidence is that he did not learn of the implications of ss. 72 and 73 with respect to the Guide until he retained a lawyer to defend the application, on or about July 7, 2025.

[34] The parties have each provided cases in support of their position. Counsel advises that there are no cases in which a failure to provide the Guide has been considered to determine whether the agreement is binding on the purchaser.

[35] The builder, relying on comments in *Budinsky v. Breakers East Inc*. (1992), 6 O.R. (3d) 255, [1992] O.J. No. 65 warns of the impact on the builders if the purchaser is allowed to terminate the agreement. The builder also relies on *Budinsky* for the court's criticism of the "technical" position taken by the purchaser in that case and the risks to the condominium construction industry if the purchaser's position were accepted.

[36] *Budinsky* considered s. 52 under the now repealed *Condominium Act*, R.S.O. 1980, c. 84, an earlier version of the Act that required the builder to deliver a disclosure statement, not the Guide. Section 52(2) provided that the purchaser, "before receiving delivery of a deed to or transfer of the unit, may rescind the agreement of purchase and sale within ten days after receiving the disclosure statement or, where there has been a material amendment thereto, within ten days after receiving the material amendment."

[37] The builder in *Budinsky* delivered the disclosure statement. The applicant took the position the disclosure did not comply with the statute. Borins J. held that the statute did not entitle a purchaser to walk away from an agreement to purchase a condominium unit at any time before final closing on discovering that the contents of a disclosure statement do not comply with the statute. In his view, the purchaser, having received a disclosure statement, was required to decide within the 10 day period whether to rescind the agreement and if the purchaser did not do so, the purchaser was limited to a claim for damages for a false or misleading disclosure statement.

[38] *Benner v. HLS York Developments Ltd*. (1985), 52 O.R. (2d) 243, [1985] O.J. No. 2647 (H.C.J.), cited in *Budinsky*, held that the right to rescind remains outstanding until the vendor provides a disclosure statement which complies with the provisions of the statute. In the absence of such a disclosure statement, the purchaser could elect to rescind the agreement at any time. Failing to do so within 10 days of the receipt of a form of disclosure statement was of no moment. If a disclosure statement was found wanting so that in effect it was not a disclosure statement as required by the statute, then a purchaser was at no time required to complete the transaction: *Benner*, at para. 6.

[39] Borins J. in *Budinsky* disagreed with *Benner* and with *Abdool v. Somerset Place Developments of Georgetown Ltd.* (1991), , 4 O.R. (3d) 280 (Gen. Div.) which arrived at a similar conclusion to that reached in *Benner*. In *Abdool*, the purchasers were provided with a seven-page disclosure statement which they asserted did not comply with the statute and that they therefore were not bound the agreements. The motion judge agreed.

[40] The Court of Appeal for Ontario in *Abdool v. Somerset Place Developments of Georgetown Ltd*., 96 D.L.R. (4th) 449 considered two appeals, *Abdool* and *Budinsky*. The court specifically noted that none of the purchasers in *Budinsky* complained about any deficiency in the disclosure

statement or the accompanying material during the 10-day statutory period or at any time prior to commencing the application: para. 17.

[41] The Court of Appeal did not accept Borins J.'s conclusion in *Budinsky* referenced above. The court found that s. 52 must be viewed in light of its underlying full disclosure philosophy and held that the consumer protection afforded to purchasers by giving them 10 days within which to consider the required information is predicated on the assumption that the disclosure requirements have been satisfied. The court could not accept that no matter how manifestly devoid of content a document purporting to be a "disclosure statement" may be, or no matter how false, misleading or deceptive the document may be, once the cooling-off period has expired, a purchaser's only recourse was damages: *Abdool* (Court of Appeal), at para. 35.

[42] The builder relies on *Chen v. Brookfield Residential (Ontario) Limited*, 2022 ONCA 887 to argue that the purchaser cannot invoke the Act's rescission regime as a tactical device to escape a binding agreement. The builder asserts that where a purported notice of rescission is not a *bona fide* response to a genuine statutory deficiency but instead a strategy to evade performance, it is invalid and constitutes anticipatory breach.

[43] Chen had agreed to purchase a condominium. Chen notified the respondent that either a mutual release from the transaction or a postponement was required because Chen did not have the ability to close the deal due to a low appraisal value. After the respondent offered a brief extension, Chen advised the respondent that a cancellation of the deal was required: *Chen*, at para. 3. Chen provided what purported to be a written notice of rescission pursuant to s. 74(6) of the Act, claiming that the "amenities" had not been completed as set out in the disclosure statement: *Chen*, at para. 4.

[44] The court noted that s. 74 of the Act imposes a continuing obligation on the seller of condominium property to disclose to purchasers when there is a "material change" to the information contained in a disclosure statement required by s. 72 of the Act. If the changes are material, s. 74(6) allows the purchaser to rescind the agreement by delivering a notice of rescission under s. 74(7): *Chen*, at para. 13.

[45] The decision in *Chen* turned on the finding that there had not been a material change within the meaning of s. 74, and therefore Chen could not rescind the contract: *Chen*, at para. 17. Chen's notice, prior to his notice of rescission, that he would not be able to close due to the low appraisal value was an anticipatory breach in part because the notice of rescission was invalid. The other reason was that the notice of rescission was not a *bona fide* attempt by Chen to address what he believed to be a material change. Rather, it was a strategy to evade the agreement: *Chen*, at, para. 23. The court held that Chen's conduct prior to the purported rescission clearly demonstrated Chen was unwilling and unable to perform Chen's contractual obligations.

[46] The court held that a notice of rescission that was not provided in good faith cannot qualify as a notice of recission under s. 74(7) of the Act: *Chen*, at para. 24.

[47] All the above referenced cases, including *Budinsky* and *Chen*, address situations where the disclosure statement was provided but it was alleged to be inadequate, or that amended disclosure statements were required, or that there had been a material change. None of them address a situation where there has been a failure to disclose at all. Therefore, the comments in *Budinsky* relied on by the builder in written and oral submissions do not assist where there was a complete failure to provide the required Guide to the purchaser, which is what occurred here.

[48] The court in *Budinsky* clearly concluded that if no disclosure statement was delivered, the purchaser was, pursuant to the Act, entitled to avoid the binding effect of the agreement of purchase and sale: para. 5.

[49] Referring to the earlier unreported decision of the Court of Appeal for Ontario in *Brunott v. Coolmur Properties Ltd.*, dated October 24, 1983 (noted at 22 A.C.W.S. (2d) 509), the Court of Appeal in *Abdool* held that it was implicit in *Brunott* that the court interpreted s. 52 to mean that if a declarant fails to deliver a disclosure statement in accordance with the requirements of s. 52, the agreement of purchase and sale may be declared non-binding at any time before title has been conveyed: para. 32.

[50] The Court of Appeal in *Abdool* held that a disclosure statement which fails to meet the requirements of the statute cannot be a disclosure statement within the meaning of the statute and that delivery of a disclosure statement which fails to comply with the statute cannot start the 10-day period for rescission: para. 37.

[51] The modern approach to statutory interpretation was described by Iacobucci and Major JJ. in *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757, at para. 77:

> The approach to statutory interpretation can be easily stated: one is to seek the intent of Parliament by reading the words of the provision in context and according to their grammatical and ordinary sense, harmoniously with the scheme and the object of the statute (*Interpretation Act*, R.S.C. 1985, c. I-21, s. 12; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *R. v. Gladue*, [1999] 1 S.C.R. 688; E. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87).

[52] The modern approach has been further distilled to the useful shorthand of "text, context, and purpose": *R. v. Guerrier*, 2024 ONCA 838, at para. 22, referring to *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, 485 D.L.R. (4th) 583, at para. 69.

[53] The meaning of the text is clear. Section 72(1) of the Act requires delivery of both the disclosure statement and the Guide. Providing the Guide is mandatory: s. 72(1)(b). An agreement is not binding on the purchaser until the Guide (and disclosure statement) has been delivered to the purchaser: s. 72(2). If a guide (and disclosure statement) is provided to the purchaser, the purchaser may, at any time before accepting a deed to the unit, rescind the agreement: s. 73(1). The requirement to provide a written notice of rescission within 10 days is not triggered until the

purchaser receives all three of the agreement, disclosure statement and the Guide: s. 73(2). If the Guide is not provided, the 10 days never begin to run, and the purchaser may rescind the agreement any time prior to taking transfer of the deed.

[54] This interpretation is supported by the context and purpose of the Act which is consumer protection legislation, and which is clearly meant to ensure that purchasers have all the mandated information so that they can decide whether to proceed with the agreement. There is nothing to suggest that application of the Act depends on the level of sophistication of a purchaser. There is nothing to suggest that a purchaser cannot decide to close for other reasons. A purchaser may also elect to close despite the non-compliance of the builder with its obligation to provide the Guide or disclosure.

[55] This interpretation is also supported by the decisions interpreting the obligations to provide the disclosure statement in s. 52 of earlier versions of the Act. Specifically, in *Budinsky* the court held that if no disclosure statement is delivered, the purchaser was entitled to avoid the binding effect of the agreement of purchase and sale. In *Brunott*, clarified in *Abdool* (Court of Appeal), the court held that if a declarant fails to deliver a disclosure statement the agreement be declared non-binding at any time before title has been conveyed. There is no meaningful reason to distinguish between the operative language of s. 52 of the former legislation and s. 72 of the Act and not to apply this reasoning to the Guide.

[56] I find that pursuant to s. 72, the Agreement is not binding on the purchaser and that the purchaser is entitled to rescind the Agreement.

Estoppel and affirmation of contract do not assist the builder

[57] The builder asserts the purchaser affirmed the contract by paying a large deposit after signing the Agreement, selecting upgrades and extras and signing amendments, and by not raising an issue with the Guide or demanding return of the deposit until the application was commenced. The cases cited by the builder in support of its position do not assist as they are not cases governed by the Act.

[58] The builder's position on affirmation would run counter to and negate ss. 72 and 73 of the Act. The affirmation of the contract contemplated by the Act is accepting the transfer of the deed. That never occurred here.

[59] The builder raises estoppel by convention and estoppel by representation. Both were defined by the Supreme Court in *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53:

> 4 Estoppel by convention operates where the parties have agreed that certain facts are deemed to be true and to form the basis of the transaction into which they are about to enter (G. H. L. Fridman, *The Law of Contract in Canada* (4th ed. 1999), at p. 140, note 302). If they have acted upon the agreed assumption, then, as regards that transaction, each is estopped against the other from questioning the truth of the statement of facts so assumed if it would be unjust to allow one to go

> back on it (G. S. Bower, *The Law Relating to Estoppel by Representation* (4th ed. 2004), at pp. 7-8).
>
> 5 Estoppel by representation requires a positive representation made by the party whom it is sought to bind, with the intention that it shall be acted on by the party with whom he or she is dealing, the latter having so acted upon it as to make it inequitable that the party making the representation should be permitted to dispute its truth, or do anything inconsistent with it (*Page v. Austin* (1884), 1884 CanLII 6 (SCC), 10 S.C.R. 132, at p. 164).

[60] There has been no agreement as to facts deemed to be true as between the parties. I have found that the Guide was not provided to the purchaser. The builder cannot insist on reliance on an acknowledgment that it provided the Guide, when it did not do so. Further, the Acknowledgement is a seriously flawed document. It contains statements which are not true. It was prepared by the builder.

[61] Further, I have serious doubts that estoppel can undermine the clear statutory duty of the builder to provide the Guide mandated by the Act. The builder has not provided any authority to indicate it does. As noted by the court in *Glen Ash Developments v. Bolingbroke*, 1979 CarswellOnt 2699, [1979] 2 A.C.W.S. 56, at para. 23, which considered an early version of the Act, there can be no waiver of a statutory requirement which is imposed in the public interest and estoppel cannot operate to prevent or hinder the performance of a statutory duty. Further, I note that s. 176 of the Act provides that the Act prevails over any agreement to the contrary.

[62] The Acknowledgment cannot be relied on by the builder to establish the required agreement as to the fact of delivery of the Guide in the face the requirements of the Act.

[63] For the same reasons, the builder cannot rely on the Acknowledgement as a positive representation by the purchaser that it received the Guide.

[64] I find that neither form of estoppel applies.

Good faith on the part of the builder

[65] The builder submits that it acted in good faith and did everything except provide the Guide or provide proof that it provided the Guide. It points to its effort to ensure that the purchaser knew his rights. The builder points to the additional steps taken to ensure the purchaser understood his rights and that the sophisticated purchaser failed to read all the documents or to obtain legal advice during the 10-day cancellation period.

[66] Accepting all this as true, it does not absolve the builder of its obligation to comply with the Act. The builder failed to do so when it failed to provide the Guide to the purchaser.

Disposition

[67] The builder's application is dismissed. The purchaser's application is granted. The purchaser is entitled to a declaration that the Agreement is not binding on him and to the return of his deposit of $121,098.00 together with interest to the date of payment pursuant to the Act.

[68] The parties are to attempt to agree on the calculation of interest. If they are unable to do so, they may arrange through the trial coordinator an appearance to address the issue.

[69] As agreed between the parties, the purchaser is entitled to his costs fixed in the amount of $31,000 all-inclusive on partial indemnity basis.

Bordin J.

Released: March 16, 2026

CITATION: Dicenzo (Linden Park) Holdings Inc. v. Sadeghyar, 2026 ONSC 1566
COURT FILE NO.: CV-25-90712 and CV-25-91963
DATE: 2026-03-16

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DICENZO (LINDEN PARK) HOLDINGS INC.

Applicant

– and –

FERDOWS SADEGHYAR

Respondent

– and –

FERDOWS SADEGHYAR

Applicant

– and –

DICENZO (LINDEN PARK) HOLDINGS INC.

Respondent

REASONS FOR DECISION

M. Bordin J.

Released: March 16, 2026