CITATION: Wang et al v. Jazzar Holdings Inc. et al, 2026 ONSC 2272
COURT FILE NO.: CV-25-00099053
MOTION HEARD: 2026-03-26

2026 ONSC 2272 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SHU WANG and PENG LU, Plaintiffs

- and –

JAZZAR HOLDINGS INC., SAMER AL-JAZZAR, a.k.a. SAMER JAZZAR, SANA AL HUSSAINI and OMAR JAZZAR, Defendants

BEFORE: Associate Justice Kamal

COUNSEL: David Cutler, for the Plaintiffs
Charlene Kavanagh, for the Defendants

REASONS FOR DECISION

Overview

1. On March 13, 2025, I granted the Plaintiffs' request to issue a Certificate Pending Litigation ("CPL") on the property municipally known as 105 Halliday Creek Road, Burnstown, Ontario (the Property). That decision is reported at *Wang et al v. Jazzar Holdings Inc.* et al, 2025 ONSC 1727.

2. That motion was brought *ex parte*.

3. The Defendants now seek to discharge the CPL on two grounds:

    a. The Defendants allege that the Plaintiffs did not meet the test for the CPL, including that the equities favour a discharge of the CPL; and

    b. The Defendants allege that the CPL should be discharged as a result of material non-disclosure.

4. The Plaintiffs oppose the Defendants' request.

5. For the reasons that follow, the Defendants' motion is dismissed, and the CPL shall remain in effect.

2026 ONSC 2272 (CanLII)

Background

6. The Plaintiffs commenced an action in 2023 against Jazzar Holdings Inc., Elevate and Samer Al-Jazzar, alleging breach of contract, breach of the duty of honest contractual performance, and misrepresentation, seeking an accounting of all monies paid by the Plaintiffs to those Defendants, recission of the Cost Plus Agreement, and/or damages in the amount of $550,000, plus interest and costs (the "Main Action"). That action is with respect to a construction project that is not with respect to the property subject to the CPL.

7. Samer Al-Jazzar ("Samer") is the principal of Jazzar Holdings Inc.

8. On January 29, 2025, Jazzar Holdings transferred the Property to Samer Al-Jazzar's parents, Omar Jazzar ("Omar") and Sana Al Hussaini ("Sana"), for $2.00. Jazzar Holdings had paid $1,950,000 to purchase the Property in 2022 (the "Transfer").

9. Sana and Omar are residents of the City of Amman, in the Kingdom of Jordan.

10. Three weeks later, the Property was publicly listed for sale on the Multiple Listing Service ("MLS"), at a price of $2,400,000.

11. The Plaintiffs found out about the Transfer in early March 2025.

12. They then commenced this Action and brought the motion for a CPL because they had concerns that it was a fraudulent conveyance made by Jazzar Holdings to defeat, hinder, delay or defraud their claims in the Main Action.

13. The Plaintiffs brought the CPL Motion because of the following facts and circumstances:

    a. Though the Property was purchased for $1.95 million in 2022, it was transferred by Jazzar Holdings to Al Hussaini and Jazzar on January 29, 2025, for $2.00.

    b. The Property was then listed for sale with Royal Lepage Team Realty, on February 18, 2025, for a price of $2,400,00.

    c. Samer was no longer building homes.

    d. Jazzar Holdings' license with the Home Construction Regulatory Authority ("HCRA") expired in 2024.

    e. Jazzar Holdings owed $13,009.31 to Tarion.

    f. Samer was in Jordan as of August 30, 2024 and unable to leave the country.

14. The Plaintiffs allege that the transfer of the Property was a fraudulent conveyance intended to defeat, hinder, delay or defraud creditors.

15. The Plaintiffs also had concerns respecting Samer and Jazzar Holdings ceasing operation of their construction business, selling Ontario assets, not paying debts owed to other creditors, ignoring the Main Action, their lawyers getting off the record, and Samer apparently relocating to Jordan.

16. The Defendants deny that the transaction was fraudulent or made with the intention to defeat, hinder, delay or defraud the claims in the Main Action.

17. The Defendants submit that the transfer was made for nominal consideration because Jazzar Holdings held the Property in trust for Sana and Omar, who were beneficial owners of the Property. Specifically, they say that the transfer was conducted in the normal course of business as Sana and Omar were the beneficial owners and they wished to sell it to recover their money, once it was decided not to develop the Property.

2026 ONSC 2272 (CanLII)

Issues:

18. This motion raises the following questions:

    1. Should the court discharge the CPLs based on the factors set out in legislation and caselaw, including whether the equities favour a discharge of the CPLs?

    2. Should the court discharge the CPLs based on the alleged material non-disclosure?

Analysis

The test on a motion to discharge a CPL

19. Section 103(6) of the Courts of Justice Act empowers the court to discharge a CPL:

    > Order discharging certificate
    >
    > 103 (6) The court may make an order discharging a certificate,
    >
    > (a) where the party at whose instance it was issued,
    >
    > > (i) claims a sum of money in place of or as an alternative to the interest in the land claimed,
    > >
    > > (ii) does not have a reasonable claim to the interest in the land claimed, or
    > >
    > > (iii) does not prosecute the proceeding with reasonable diligence;

> (b) where the interests of the party at whose instance it was issued can be adequately protected by another form of security; or
>
> (c) on any other ground that is considered just, and the court may, in making the order, impose such terms as to the giving of security or otherwise as the court considers just.

2026 ONSC 2272 (CanLII)

20. In the recent decision of *MCAN Home Mortgage Corporation v. Broad*, 2026 ONCA 217,[1] the Court of Appeal summarized the purpose of a CPL at paras. 23 – 24 (citations omitted):

> The purpose of a CPL is to give notice that an interest in land is in question in litigation. It serves to prevent the claimed interest from being defeated by a transfer or other dealing with the land in favour of a person who otherwise could assert they acquired the land without notice of that claimed interest…
>
> Section 103(6) of the CJA gives the court a discretion to discharge a CPL, with or without terms, in various circumstances, including where the party who obtained the CPL does not have a reasonable claim to the interest in land claimed, where they could be protected by another form of security, or “on any other ground that is considered just”. Section 103(7) stipulates that the effect of a discharge is to free up the land to be dealt with as though the CPL had not been registered.

21. Justice Emery summarized the analytical approach on a motion to discharge a Certificate of Pending Litigation in *2526716 Ontario Inc. v. 2014036 Ontario Ltd.*, 2017 ONSC 1762 at para. 48:

> The practical approach on a motion to discharge a CPL is to first determine if there is a triable issue as the threshold question mandated by Clock Investments. If and when this threshold question has been answered to the satisfaction of the court, the equities on all matters between the parties may then be considered for the exercise of the court’s discretion on a principled basis as to whether a certificate should be allowed or discharged.

22. In *Interrent International Properties Inc. v. 1167750 Ontario Inc*, 2013 ONSC 4746 (“*Interrent*”) at para. 15, Master MacLeod (as he then was) summarized the applicable principles as follows:

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[1] *MCAN Home Mortgage Corporation v. Broad*, 2026 ONCA 217 was released after the hearing in this matter, and as an appellate decision of a higher court, it is binding on this court.

> On a contested motion, the court must review all of the evidence filed by both parties and determine, on the totality of that evidence, whether there is a triable issue.
>
> In making this assessment, the court is not required to accept the pleadings or affidavit evidence uncritically. The court may consider cross-examination evidence and evaluate whether the claim has a reasonable prospect of success.
>
> A reasonable prospect of success includes not only a likelihood of proving the underlying cause of action but also obtaining a remedy relating to an interest in land. The court must be satisfied that damages would not be an adequate remedy.
>
> Even where the plaintiff has a potential claim to a remedy involving an interest in land, the court may nonetheless refuse a certificate if doing so would be unjust. The court must consider the equities of granting this form of interim relief. The decision is discretionary, not a mechanical application of a rigid test.
>
> Relevant discretionary factors include the strength of the plaintiff's case, whether the land is unique, the adequacy of damages as a remedy, whether the certificate appears to be sought for an improper purpose, and the balance of convenience.

23. In *Sparkman v. 2574328 Ontario Ltd.,* 2021 ONSC 4843, this Court confirmed that the discretionary factors applicable to a motion to discharge a certificate also apply in cases where a plaintiff seeks to trace an equitable interest or claim a constructive trust.

24. An action to set aside a fraudulent conveyance is a proceeding in which an interest in land is brought into question. See *Fernandes v. Khalid*, 2021 ONSC 190 at paragraph 33 citing, among other cases, *Bank of Montreal v. Ewing* (1982), (1982), 1982 CanLII 1794 (ON SC), 35 O.R. (2d) 225 (Ont. Div. Ct.).

25. A plaintiff may obtain a CPL even if the plaintiff has not yet obtained judgment. In the circumstances, the applicable test is set out in *Grefford v. Fielding*, 2004 CanLII 8709 (ON SC), [2004] O.J. No. 1210, [2004] O.J. No. 1210 at paragraph 26 and summarized as follows:

> 26 …in order to obtain a CPL in an action claiming to set aside an alleged fraudulent transfer pursuant to the *Fraudulent Conveyances Act*, (i) before obtaining judgment in the main action, and (ii) where the claim in the main action does not concern an interest in the land allegedly fraudulently transferred, the following legal tests should be met:

2026 ONSC 2272 (CanLII)

(i) The claimant must satisfy the court that there is high probability that they would successfully recover judgment in the main action;

(ii) The claimant must introduce evidence demonstrating that the transfer was made with the intent to defeat or delay creditors; evidence that the transfer was for less than fair market value lightens the burden; and

(iii) The claimant must demonstrate that the balance of convenience favours issuing a CPL in the circumstances of the particular case.

26. This test was also recently discussed in *Jiujias v. Lau*, 2024 ONSC 3926 at paragraph 7.

2026 ONSC 2272 (CanLII)

i) The claimant must satisfy the court that there is high probability that they would successfully recover judgment in the main action

27. The Defendants submit that there is not a high probability that the Plaintiffs will successfully recover judgment in the 2023 Action or in the present matter. The Defendants rely on admissions made by the Plaintiffs during their examinations for discovery. For example, they admitted the authenticity and validity of the contracts related to 84 Kenins: the Original APS, Second APS, Costs-Plus Agreement, Termination, and Mutual Release. They admitted they understood these documents at the time they executed them, and they in fact signed and entered into them. Further, they admitted they were represented by legal counsel when they executed these documents.

28. In the original motion, I considered the strength of the evidence, the legal and factual basis, and defences and counterclaims. I noted that while there may be an issue of the specific amount owing, or some defences, I was satisfied that this prong of the test was met as there is a high probability that the Plaintiffs will recover some judgment in the Main Action. This continues to be accurate after review of the evidence presented in the current motion.

29. The Defendants in the Main Action did not produce the documents that would support or justify the invoices rendered to the Plaintiffs during the construction. Accordingly, the Plaintiffs obtained approximately 80 undertakings, including with respect to the documents that might support the amounts charged by Jazzar Holdings and others for the construction of the home. However, the Defendants in the Main Action failed to answer many of their undertakings, and in December 2024, the Plaintiffs brought an undertakings motion. Justice London-Weinstein ordered that they provide answers to undertakings, questions that had been refused, questions that had been taken under advisement, and follow-up questions. Though some further answers and documents were provided by the Defendants on May 1, 2025, many of the undertakings remain outstanding.

30. The Defendants also argued that the high probability of success must be against the party affected by the CPL. The Defendants submitted that there may be a probability of success

against Elevate, but Elevate is not a party to the property where the CPL is placed. In the present case, the allegation is with respect to fraudulent conveyance. There is evidence that the affairs of Elevate and Jazzar Holdings are intertwined. I am not persuaded that there would only be success against Elevate. It is a live issue whether it is appropriate to pierce the corporate veil and in my view, there is a reasonable prospect of success.

31. Based on the evidence before me, I am satisfied that there is high probability that the Plaintiffs would successfully recover judgment in the main action.

ii) The claimant must introduce evidence demonstrating that the transfer was made with the intent to defeat or delay creditors; evidence that the transfer was for less than fair market value lightens the burden

32. A plaintiff must introduce evidence of a fraudulent conveyance, such as demonstrating that badges of fraud exist. There is a relatively low threshold for satisfying this part of the *Grefford* test, because key findings of fact are properly made by a trial judge, not a motion judge. Evidence that an impugned transfer was made for less than fair market value lightens a plaintiff's burden at this step of the test. However, it alone is not enough to discharge a plaintiff's burden of proof, particularly where a defendant can show a *bona fide* purpose for the transfer. See *Szymanski v. Lozinski*, 2019 ONSC 6968, at para. 7 and 8.

33. It is undisputed that the Transfer of the property was made for nominal consideration. The Defendants submit that the Transfer was made for a legitimate purpose. Specifically, the Defendants submit that Jazzar Holdings held the Property as a trustee for Omar and Sana, who beneficially owned the Property at all material times.

34. Omar and Sana wished to sell the property as early as September 2024, because they no longer planned to develop the property, and they wanted to recover money that Omar had lent to Jazzar Holdings and Elevate.

35. The Plaintiffs submit that Jazzar Holding was not a bare trustee of the property and that the property was not held in trust for Omar and Sana.

36. I am not convinced that Jazzar Holdings held the Property as a trustee for Omar and Sana, who beneficially owned the Property at all material times. I am also not satisfied that the Defendants have shown a bona fide purpose for the Transfer.

37. The evidence before me shows that Jazzar Holdings did hold properties in trust for Sana and Omar. These parties had entered into a Trust Agreement on November 1, 2018, which was restated on May 24, 2021, and in September 2022. However, none of these Trust agreements were for this property.

2026 ONSC 2272 (CanLII)

38. Interestingly, there was no Trust agreement with respect to this property until January 29, 2025 – the date of the transfer. This is peculiar considering that Jazzar Holdings had entered into multiple trust agreements with Sana and Omar previously.

39. I also note that on the Transfer document, the deed states that Sana and Omar are "A transferee named in the above-described conveyance." There was an option to indicate that they were trustee, but they did not indicate that.

40. The evidence demonstrates that the Defendants all conducted themselves on the basis that Jazzar Holdings was the beneficial owner of the Property. This is fatal to the Defendants' attempt to now claim that Jazzar Holdings was only a bare trustee of that property.

41. The Defendants also submitted that the Plaintiffs have not demonstrated that badges of fraud exist.

42. A useful catalogue of badges of fraud identified in the case law is provided in *Ontario Securities Commission v. Camerlengo Holdings Inc*., 2023 ONCA 93, at para. 12. Amongst others, the following badges of fraud are applicable and relevant in this case:

    - the existence of a family or close relationship between the parties to the transaction;
    - the transfer had the effect of defeating, hindering, delaying, or defrauding creditors;
    - there was evidence of haste in making the transaction;
    - the consideration for the transfer did not correspond to the value of the property;

43. Jazzar Holdings, Sana and Omar have a family and close relationship. The transfer had the effect of defeating, hindering, delaying, or defrauding Jazzar Holdings' creditors. The fact that they signed a trust agreement on the same day as the Transfer, despite their pattern of conduct to the contrary, is evidence of haste in making the transaction. There is no dispute that the consideration for the transfer did not correspond to the value of the property.

44. All that is necessary to satisfy the second part of the *Grefford* test is to demonstrate that a triable issue exists that the impugned transaction was carried out with the intent to defeat or delay creditors, including the Plaintiffs. See *Tibollo v. Robinson*, 2023 ONSC 3492 (Ont. Div.Ct.) at paragraph 24.

45. Unlike the first branch of the test, which requires a higher onus of proof ("high probability"), the second branch of the test merely requires one to lead "evidence to show the existence of a triable issue". See *Jennifer Horrocks v. Bruce McConville et al*, 2020

2026 ONSC 2272 (CanLII)

ONSC 4645, at paragraph 11; *Jodi L Feldman Professional Corp v. Foulidis*, [2018] OJ No 6641, 2018 ONSC 7766, at paragraph 17.

46. I am satisfied that there is a triable issue that the Transfer of the property was carried out with the intent to defeat or delay creditors, including the Plaintiffs.

2026 ONSC 2272 (CanLII)

iii) The claimant must demonstrate that the balance of convenience favours issuing a CPL in the circumstances of the particular case

47. It is open for the Court to consider the equities between the parties in determining the balance of convenience, as stated by Diamond J. in *Jodi L. Feldman Professional Corporation v. Foulidis*, 2018 ONSC 7766, at para. 25. In determining the equities between the parties, Courts often refer to the factors enunciated in *572383 Ontario Inc. v. Dhunna*, 1987 CarswellOnt 551, often referred to as the "*Dhunna* factors."

48. *572383 Ontario Inc. v. Dhunna*, 1987 CarswellOnt 551 sets out the following factors the court can consider on a motion to discharge a CPL:

    a. whether the plaintiff is a shell corporation,

    b. whether the land is unique,

    c. the intent of the parties in acquiring the land,

    d. whether there is an alternative claim for damages,

    e. the ease or difficulty in calculating damages,

    f. whether damages would be a satisfactory remedy,

    g. the presence or absence of a willing purchaser, and

    h. the harm to each party if the CPL is or is not removed with or without security.

49. In *2254069 Ontario Inc. v. Kim*, 2017 ONSC 5003, the Court set out a slightly modified version of the *Dhunna* factors to establish that the following are relevant factors for consideration on a contested Motion for leave to issue a CPL:

    a. whether the land in question is unique,

    b. whether there is an alternative claim for damages,

    c. the ease or difficulty of calculating damages,

d. whether damages would be a satisfactory remedy,

e. the presence or absence of a willing purchaser,

f. the balance of convenience, or potential harm to each party, if the CPL is or is not granted,

g. whether the CPL appears to be for an improper purpose,

h. whether the interests of the party seeking the CPL can be adequately protected by another form of security, and

i. whether the moving party has prosecuted the proceeding with reasonable diligence.

50. I note that these factors are not intended to be exhaustive, nor is any one determinative. Rather, the court must exercise its discretion in equity and look at all relevant matters between the parties. See *Snook v. Royal Stone Interlocking Concrete Ltd.*, 2021 ONSC 3476 at paragraph 38; *Dhaliwal v. 2581576 Ontario*, 2021 ONSC 8247 at paragraph 48.

51. The Defendants made submissions with respect to lack of fair and full disclosure as part of considering the equities. I will address the argument regarding fair and full disclosure in a separate section below.

52. Based on the numerous factors outlined in the caselaw, in my view, the following considerations are relevant in the present case:

a. the intent of the parties in acquiring the land

b. whether there is an alternative claim for damages

c. the balance of convenience, or potential harm to each party, if the CPL is or is not granted

d. whether the CPL appears to be for an improper purpose

53. These factors must also be considered bearing in mind that a CPL can be obtained in an action claiming to set aside an alleged fraudulent transfer pursuant to the *Fraudulent Conveyances Act*, (i) before obtaining judgment in the main action, and (ii) where the claim in the main action does not concern an interest in the land allegedly fraudulently transferred.

54. Courts have long recognized that actions to set aside an alleged fraudulent conveyance of land inherently involve claims in which an interest in land is brought into question, even if a plaintiff has not established an interest in the relevant land. See *Abu-Saud v. Abu-*

2026 ONSC 2272 (CanLII)

Saud et al., 2023 ONSC 6199 at para. 17. Fraudulent conveyance claims can support a claim for a CPL, but do not create an interest in land on the part of the claimant. See *Claireville Holdings Limited v. Botiuk*, 2014 ONSC 6505.

2026 ONSC 2272 (CanLII)

55. In my view, there is reasonable suspicion and concern regarding the intent of the parties (Jazzar Holdings, Sana and Omar) in transferring the property. This factor weighs in favour of maintaining the CPL.

56. As to whether there is alternative relief available in the form of damages, the Defendants submit that the Main Action is an action for monetary damages in relation to 84 Kenins. An alternative prayer for relief requests specific performance of the Original APS, which the Plaintiffs voluntarily terminated two (2) years ago. Therefore, the 2023 Action is not a claim for an interest in land and certainly not an interest in the Property. The Defendants submit that subsection 103(6)(a)(ii) of the CJA squarely applies to these facts and dictates that the CPLs be discharged.

57. A CPL is intended to protect an interest in land in situations where other remedies would be ineffective. It is not intended to be an instrument to secure a claim for damages. **See** *Nabizadeh v. Manifar*, 2015 ONSC 5503, followed by Trimble J. in *Cosentino v. Alilovic*, 2020 ONSC 1050, at para. 112.

58. However, the jurisprudence reflects a different approach when there is a concern for a fraudulent conveyance. As Papageorgiou J. stated in *Nedaneg Financial Corporation v. Talebzadeh*, 2025 ONSC 848 at para. 33, an "understanding of the underlying facts and evidence is critical to the assessment of the equities and balance of convenience where a judgment creditor alleges a scheme to place assets beyond the reach of the creditor, because such conduct is inequitable in itself". The court must, therefore, assess whether damages are an adequate remedy considering all of the evidence.

59. In the present case, in considering all of the evidence, if the CPL is discharged, damages are not an adequate remedy, as money will end up in Jordan.

60. In considering the balance of convenience, or potential harm to each party, if the CPL is or is not granted, I am considering both parties' perspectives. If the CPL is discharged, and the Property is sold, the claim for fraudulent conveyance would be prejudiced. As a result, the Plaintiffs would be prejudiced in enforcing any judgment against Jazzar Holdings from the Main Action.

61. Furthermore, the Defendants did not file any evidence of actual prejudice if a CPL were to be maintained. Of course, the Defendants may be prejudiced by the CPL, as it may impede a potential sale. However, there is no impending sale. Furthermore, I was not provided with any evidence as to why the property needs to be sold before the actions are resolved. The only explanation I was provided was that Omar and Sana wished to sell it to recover their money, once it was decided not to develop the Property. This does not establish any potential harm.

62. I acknowledge that the onus is on the Plaintiffs to demonstrate that the balance of convenience favours maintaining the CPL. In my view, the Plaintiffs have met this onus.

63. Finally, there is no evidence that the CPL appears to be for an improper purpose.

64. Overall, a consideration of the *Dhunna* factors (and other factors outlined in the case law) weighs against discharging CPL. I accordingly find that the Plaintiffs have met their onus of establishing that the balance of convenience favours the issuance of a CPL.

2026 ONSC 2272 (CanLII)

Alleged material non-disclosure

65. Rule 39.01(6) provides that where a motion is made without notice, "the moving party must make full and fair disclosure of all material facts, and failure to do so is in and of itself sufficient ground for setting aside any order obtained on the motion".

66. In *R. A. Fox v. R.S. Fox*, 2014 ONSC 1135, the Divisional Court outlined the reason for Rule 39.01(6), at paras. 11-13:

> The reason for requiring such disclosure is based on the recognition that the judicial officer hearing a motion has only the moving party or their counsel before him. There is usually no opponent present who can file opposing evidence and make opposing submissions. Accordingly, there is a heavy burden on a moving party to tender evidence that he might prefer not to tender so the judicial officer can obtain a reasonably balanced view of those facts that might reasonably affect the outcome of the motion.

67. This Rule does not require that an order obtained in the absence of full and fair disclosure be set aside; rather, it provides only that it may be set aside solely on that basis. See *Gong v. Neuhaus Management Ltd.*, 2021 ONSC 531, at para. 51.

68. A court still has the discretion to consider whether a CPL should be continued or discharged under s. 103(6) of the CJA, even where there has been material non-disclosure. See *Gong*, at para. 51.

69. In the context of a CPL discharge motion, material facts are facts that must be brought to the court's attention and that may have affected the outcome of the motion to obtain the CPL.

70. The moving party bears a heavy onus to make complete disclosure and ensure the facts before the court are "complete, true and plain", because the opposing party is not given the opportunity to present evidence, respond, or cross-examine on an *ex parte* motion.

71. The Defendants specifically submit that the following facts were not disclosed by the Plaintiffs in the original motion:

    a. The Plaintiffs executed a release in favour of Jazzar Holdings on August 25, 2021. They entered into a contract with Elevate Ltd. for the custom home build. The release was not provided in the original materials.

    b. The Defendants submit that the Plaintiffs did not provide full and fair disclosure of the evidence given at examination of discovery. For example, the Defendants say that the Plaintiffs cherry-picked excerpts from the examinations of Samer and the manager of Elevate Ltd., Barry MacDonald.

2026 ONSC 2272 (CanLII)

72. With respect to the Release, I was aware of the Release. Specifically, the Statement of Defence and Counterclaim (in which the Release is explicitly referred to) was filed with the Court, and that pleading was referred to in my original decision.

73. Furthermore, I am of the view that the Release itself is not a material fact – the existence of the Release was known at the time of the original motion.

74. The Release is not a material fact because it cannot act as a complete bar to the Plaintiffs' claims against Jazzar Holdings in the Main Action, given that many of the allegations of Jazzar Holdings' misconduct took place after the Release was signed. The evidence also suggests that Jazzar Holdings was still dealing with the Plaintiffs and others on the project after it was signed. The Release does not shield Jazzar Holdings from its subsequent unlawful conduct, if proven.

75. Furthermore, the Release was limited in its use, and it would only protect Jazzar Holdings from the Plaintiffs' claims arising out of the original contract. Jazzar Holdings' misrepresentations and statutory violations of the *Ontario New Home Warranties Plan Act*, which go beyond the Release and are the subject of the Plaintiffs' claims in the Main Action, would still be subject to liability.

76. Lastly, the Release would not protect Jazzar Holdings from the Plaintiffs' allegations that Jazzar Holdings was a sham corporation.

77. The Release was narrow and with respect to the agreement. However, that is not the entire subject matter of the Plaintiffs' claims. The Plaintiffs' claims include misrepresentation, statutory breach, and other claims. Statutory breach cannot be contracted out of through the Release.

78. In my view, the Release was not a material fact.

79. The Defendants also argued that the Plaintiffs did not provide full and fair disclosure of the evidence given at examination for discovery.

80. Having now reviewed the evidence, the discovery evidence would not have affected the outcome of the original motion.

81. I have considered the Defendants' other concerns, including the undertakings, legal representation, and timing and service of the Statement of Claim. These are not material facts.

82. In support of their position, the Defendants rely on contested facts, interpretations, and inferences. However, it is not the role of this court on this motion to assess credibility or to decide disputed issues of fact and credibility. See *Karkoulis v. Karkoulis* 2023 ONSC 499 at para. 32.

83. To be considered material, the fact alleged to have not been disclosed must be one that would have affected the outcome of the original motion; the question is whether the moving party on the without notice motion neglected to advise the court of a fact that may have influenced the court's approach to the motion. Rule 39.01(6) is not engaged if the undisclosed facts go to the merits of the overall action, but not the original motion. See *Correct Group Inc. v. City of Barrie*, at paras. 70-71.

84. The Defendants relied on *Henein v. Alala*, 2021 ONSC 5871. However, in that case, counsel for the plaintiffs incorrectly advised the Court that the property at issue was being sold and the failure to provide information that specifically challenged the plaintiff's entitlement to a 50% interest. These are materially different than the importance of the Release.

85. Accordingly, I do not find that there was a material non-disclosure or lack of full and frank disclosure.

86. Having regard to the nature of the Plaintiffs' claims, the alleged omissions and non-disclosure do not affect the outcome of the motion.

87. If I am wrong, Rule 39.01(6) does not require that an order obtained in the absence of full and fair disclosure be set aside, only that it may be set aside. A court still has the discretion to consider whether the CPLs should be continued, and in this case, the CPLs should not be discharged because: 1) any undisclosed facts were only minimally material; and 2) I appreciate that the materials for the CPL motion were a product of the urgency in the face of the recent transfer and MLS listing of the property.

Conclusion

88. For these reasons, the Defendants' motion to discharge the CPL is dismissed.

89. Counsel and the parties are encouraged to agree on costs.

2026 ONSC 2272 (CanLII)

90. In the event the parties are unable to agree on costs of the motion, they may make written submissions limited to a maximum of three pages. The Plaintiffs shall deliver their costs submissions within 10 days. The Defendants shall deliver their responding costs submissions within a further 10 days. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves.

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Associate Justice Kamal

DATE: April 16, 2026

2026 ONSC 2272 (CanLII)