

CITATION: 400 East Mall GP Inc. v. Omololu, 2024 ONSC 703
COURT FILE NO: CV-22-00688059-0000
DATE: 2024-01-31

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 400 EAST MALL GP INC. v. OMOLOLU
BEFORE: ASSOCIATE JUSTICE D. MICHAEL BROWN
HEARD: September 14, 2023 (in person)
COUNSEL: S. Zampini for the Applicant
V. Opara for the Respondent

REASONS FOR DECISION

Procedural history

[1] This is a reference for the calculation of damages resulting from a failed real estate transaction. The applicant, 400 East Mall GP Inc. commenced an application relating to an agreement of purchase and sale (APS) for a newly constructed residential townhouse condominium, including a storage locker and parking unit, known municipally as unit 320, 402 The East Mall, Toronto, ON (the “Property”). The APS was terminated by the applicant/vendor following the breach of the agreement by the respondent, Olanrewaju Omololu, the purchaser of the Property.

[2] The application was heard before Justice Myers on December 5, 2022. The applicant sought a judgment for possession of the Property (which was occupied by the respondent at the time) and damages for breach of contract. Justice Myers found that the respondent breached the APS when he failed to close after the last extension and that the applicant had properly terminated the APS in accordance with its terms. Justice Myers further held that the respondent’s deposit was forfeited without prejudice to his entitlement to claim it as a credit in the damages calculation. He granted judgment for possession of the Property to the applicant and awarded pre-judgment interest at the rate of 20% in accordance with the APS. Justice Myers ordered this reference to an Associate Justice “for the calculation of the damages suffered by the applicant due to the respondent’s breach of contract, if any.” For the reasons that follow, I award damages to the applicant in the amount of \$97,835.92.

[3] This reference was assigned to me as referee by the Administrative Associate Justice on January 25, 2023. An initial telephone case conference was convened on February 3, 2023 at the request of the respondent before any notice of hearing for directions had been served. At that case conference, I scheduled the initial hearing for directions for March 3, 2023 by Zoom videoconference. The parties agreed at the hearing for directions that the hearing of the reference for the calculation of damages would be conducted in the manner of a motion for summary judgment. Evidence on the reference would be filed by way of affidavit and cross-examinations on affidavits, if any, would be conducted out of court, with the transcripts filed in advance of the hearing. The parties agreed that the reference would be heard on September 14, 2023 which was the earliest date available to the parties and the court.

[4] At the time of the initial hearing for directions, the Property had been relisted for sale for approximately two months but had not yet been sold. The applicant argued that an essential component of the damages claim is the difference between the purchase price agreed to by the respondent in the APS and the purchase price actually received by the applicant on the sale of the property to a new purchaser. As the property had not yet been sold to a new purchaser, the applicant took the position that damages had not yet crystallized. The applicant requested that it not be required to file its' evidence on the reference until after the property had been sold.

[5] To accommodate the applicant's request, a further hearing for directions was convened for June 9, 2023 and the parties were directed not to serve their evidence on the reference before that hearing. I directed the applicant to provide an update to the court in advance of that hearing on the status of the applicant's efforts to sell the Property. The applicant advised at the June hearing for directions that the Property had been sold to a new purchaser on April 12, 2023. Accordingly, I set a timetable for the exchange of evidence and other materials for the reference and the reference proceeded to a hearing on September 14, 2023 as scheduled.

Background facts

[6] The applicant is the developer and vendor of a residential townhouse condominium complex located at 400 and 402 The East Mall, Toronto, Ontario. The respondent is a licensed real estate salesperson/agent in the greater Toronto area. On September 28, 2021, the applicant, as vendor and the respondent, as purchaser, entered into the APS with respect to the Property. The purchase price of the Property agreed to in the APS was \$864,900.00, inclusive of HST. The APS also included that certain additional adjustments were to be paid on closing.

[7] The APS provided for the payment by the respondent to the applicant of deposits to be credited against the purchase price on closing. Prior to the respondent's breach of the APS, the respondent had made three deposit payments totaling \$73,245.00. The closing date for the Property was originally set for July 15, 2022. The respondent took possession of the Property on January 5, 2022 on an interim closing and began paying a monthly occupancy fee to the applicant pending final closing. The final closing was extended 4 times with the final closing date set for September 9, 2022. As Myers J. found, the respondent breached the APS by failing to close on September 9, 2022. The applicant terminated the APS on September 13, 2022.

[8] The Statement of Adjustments delivered by the applicant on September 7, 2022 calculates the total purchase price for the Property as \$938,761.27, including HST. In addition to the original purchase price agreed to in the APS, the total purchase price in the Statement of Adjustments includes taxable adjustments for various additional fees and charges totaling \$73,861.27 (the “Additional Charges”). The Statement of Adjustments also provides for a \$5,000 courtesy reduction in the purchase price, negotiated by the parties.

[9] Despite failing to close, the respondent continued to occupy the Property until he was forced to vacate the property on December 21, 2022 pursuant to the order of Justice Myers. After regaining possession of the Property and performing some minor repairs and clean-up, the applicant re-listed the property for sale on January 5, 2023 on MLS at a price of \$759,000. No offers were received at that price. On February 10, 2023, the listing price was decreased to \$729,000.

[10] On March 3, 2023 the applicant received an offer to purchase the Property for \$690,000. After some negotiation, the Applicant agreed to sell the Property to the new purchaser for \$720,000 on March 5, 2023. The sale to the new purchaser closed on April 12, 2023. The Statement of Adjustments for the sale to the new purchaser calculates the total purchase price for the Property as \$ 721,497.25, including HST. In addition to the \$720,000 purchase price agreed to in the new purchaser’s APS, the total purchase price includes taxable adjustments for additional fees and charges (specifically, a Tarion fee and a Law Society levy) totaling \$1,497.21.

Damages for breach of contract

[11] The principles to be applied in calculating damages for breach of contract in the context of a failed real estate transaction were summarized by Justice Sanfillipo in *Bang v. Sebastian*, 2018 ONSC 6226 at paras 39-40:

Damages for breach of contract should place the plaintiffs in the monetary position that the plaintiffs would have been in had the purchaser defendant not breached the Agreement of Purchase and Sale.

[40] The principles applicable to the determination of damages arising out of a failed real estate transaction were stated by the Ontario Court of Appeal in *100 Main Street East Ltd. v. W.B. Sullivan Construction Ltd.* (1978), 1978 CanLII 1630 (ON CA), 20 O.R. (2d) 401 (C.A.), at pp. 414-415: “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.” Also, *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3 at para. 29, applying *Hadley v. Baxendale*, (1854), 9 Ex. 341, 156 E.R. 145, at p. 151: “[the plaintiffs are entitled to receive damages] such as may fairly and reasonably be considered either arising naturally ... from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.”

[12] In a failed real estate transaction, the loss of the bargain, or loss of the value of the sale (contract price minus market value of the land), is often the largest portion of the damages calculation. See *Forest Hill Homes v Ou*, 2019 ONSC 4332 at para 15; *100 Main Street East Ltd. v WB Sullivan Construction*, 1978 CanLII 1630 (ON CA) at para 55. 25. Where a purchaser fails to close a residential real estate transaction and the vendor resells the property, damages for loss of the value of the bargain may be calculated as (i) the purchase price in the original transaction minus (ii) the purchase price in the resale transaction. See *Bang v. Sebastian* at paras 44-47, *Forest Hill Homes (Cornell Rouge) Limited v. Wang*, 2020 ONSC 556 at paras. 16 and 20.

[13] In addition to damages for loss of bargain, damages for breach of contract for a failed real estate transaction may also include consequential damages resulting from the breach such as carrying costs of the property post-breach and the costs associated with the relisting and re-sale of the property: *Bang v. Sebastian* at para 53, *Forest Hill Homes* at para 17; *Degner v. Cabral*, 2019 ONSC 1610 (CanLII) at para 69.

[14] The applicant in this case claims damages for loss of bargain and other consequential damages for carrying costs and costs associated with the efforts to relist and resell the property. I will deal with these heads of damages separately.

Analysis - loss of bargain

[15] At the initial case conference prior to the hearing for directions, the respondent took the position that the terms of reference set by Justice Myers did not contemplate an assessment of damages for loss of bargain. At the hearing of the reference, however, the respondent conceded that such damages were appropriate. The parties agree that the applicant is entitled to loss of bargain damages calculated as the difference between the purchase price agreed to in the parties' failed real estate transaction and the purchase price paid by the new purchaser on April 12, 2023. However, the parties disagree on how the purchase price in the failed transaction should be calculated. The applicant would include in the purchase price all of the \$73,861.27 in Additional Charges included in the statement of adjustments, most of which were not included in the purchase price paid by the new purchaser. The respondent takes the position that none of the Additional Charges should be included in the purchase price of the failed transaction.

[16] Most of the Additional Charges are similar in character. They pass on to the respondent as purchaser a *pro rata* portion of certain expenses associated with the development or construction of condominium complex. Other Additional Charges pass on to the respondent costs associated with closing the transaction. The respondent submits that the applicant has filed insufficient evidence to support the inclusion of the Additional Charges in the purchase price. The respondent further argues that the fact that the Additional Charges were not included in the purchase price to the new purchaser, despite the new purchaser having executed a nearly identical APS, supports a finding that these charges should be excluded from the purchase price of the failed transaction.

[17] The applicant argues that the inclusion of the Additional Charges in the statement of adjustments delivered at the time of the intended closing and the respondent's failure to object to the statement of adjustments at that time is sufficient grounds for including the Additional Charges in the purchase price. I disagree. As the transaction never closed, there was never an agreement on the statement of adjustments. There was no meeting of the minds on the Additional Charges, either as to their inclusion or as to quantum.

[18] In my view, before including any of the Additional Charges in the purchase price for the purposes of a damages calculation I must be satisfied that (a) the APS provides for the inclusion of Additional Charge, and (b) that the applicant has demonstrated on the evidence before me that the expenses associated with the Additional Charge were, in fact, incurred, and that the amount claimed represents the respondent's appropriate share in accordance with the terms of the APS. For the reasons that follow, I find that while the Additional Charges are provided for in the APS, the applicant has failed to demonstrate either the existence or the amount of the associated expenses.

[19] Each of the Additional Charges in the statement of adjustments is identified by the associated paragraph or subparagraph of the APS. Most of the Additional Charges are described in subparagraphs of paragraph 15 of the APS which is entitled "Adjustments". Paragraph 15 reads, in part:

In addition to the Purchase Price, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect of the Unit either on the Occupancy Date or the Closing Date as determined by the Vendor. The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed to the Closing Date...

[20] I will address each of the claimed Additional Charges separately. The amounts listed for each are exclusive of HST.

Development Charges/Levies, 15(k) - \$22,603.10

[21] Subparagraph 15(k) of the APS describes this Additional Charge, in part, as follows:

The amount of any development charge(s), transportation levies or other levy or similar charge or taxes (the "Levies") assessed against or attributable to the Unit as at January 25, 2019 (or assessed against the property or any portion thereof, and attributable to the Unit by pro-rating same in accordance with the proportion or percentage of common interests attributable thereto), pursuant to, *The Development Charges Act 1997*, S.O. 1997, as amended from time to time, or the *Education Act* S.O. 1997, as amended from time to time, the *Planning Act*, S.O. 1990, as amended from time to time, the *City of Toronto Act 2006*, S.O. 2006, as amended from time to time or any other legislation or law, or by any level of government or other

authority. Such amounts to include all site plan application fees and building permit fees. The amount of the foregoing adjustment shall be determined by a certificate signed on the part of the vendor which the purchaser agrees to accept.

[22] The applicant on this reference has filed no evidence of any charges or levies assessed against the Unit or the property as described in subparagraph 15(k). Further, the applicant has filed no evidence identifying the source of the \$22,603.10 amount included in the statement of adjustments nor how it was calculated. No signed certificate determining the amount was included in the record before me. I would therefore exclude this Additional Charge from the purchase price of the failed transaction for the purpose of the calculation of damages for loss of bargain.

[23] I would also exclude this Additional Charge from the calculation of the applicant's damages based on a failure to mitigate. The APS signed by the new purchaser included an identical subparagraph 15(k) and yet the purchase price paid by the new purchaser as reflected in the new purchaser's statement of adjustments did not include any amount payable in respect of subparagraph 15(k). The fees and charges referenced in subparagraph 15(k) are those attributable to the Unit (the Property) being purchased as at January 25, 2019. If subparagraph 15(k) obligated the respondent to pay a certain amount, it also obligated the new purchaser to pay that amount. In failing to enforce that obligation against the new purchaser and require payment by the new purchaser of the amount payable under subparagraph 15(k), the applicant has failed to mitigate its damages with respect to this Additional Charge.

Development Charges/Levies, 15(l) - \$8,681.07

[24] The Additional Charge described in subparagraph 15(l) is identical to the charge described in subparagraph 15(k) except that it relates to new charges and levies that were not exigible as of January 25, 2019. As with 15(k), no evidence has been filed regarding the underlying expenses nor any signed certificate determining the amount. Subparagraph 15(k) also appears in the APS of the new purchaser without any corresponding charge paid by the new purchaser on closing. Accordingly, I would exclude this Additional Charge from the calculation of damages for the reasons given in relation to subparagraph 15(k), above.

Parkland Charges, 15(m) - \$ 9,300.34

[25] Subparagraph 15(m) of the APS provides for the payment of the Unit's attributable share of "an amount equal to the fair market value of any lands/property convey (sic) by the Vendor to any Governmental Authority for park land dedication and/or the amount contributed as cash in lieu thereof and the amount of any other park levy or similar contribution(s)" The applicant has filed no evidence of any land conveyed by the applicant to a Governmental Authority for park land or of any park levy or similar contribution. There is no evidence in the record before me as to the source of the \$9,300.34 amount included as Parkland Charges in the statement of adjustments nor how it was calculated. I would therefore exclude this amount from the purchase price of the failed transaction for the purpose of calculating damages for loss of bargain.

[26] Subparagraph 15(m) was included in the APS of the new purchaser but there was no corresponding Parkland Charge paid by the new purchaser. I would therefore also exclude this Additional Charge from the calculation of the applicant's damages on the basis of the applicant's failure to mitigate for the reasons given above.

Utility/Meter Connection Fees, Water and Hydro, 15(h) - \$20,095.96

[27] Subparagraph 15(h) of the APS provides for the payment of the Unit's attributable share of "any charges paid by the Vendor/Declarant to a utility or service provider or supplier, including without limitation any charges for the installation, connection, energization, meter or meter installation of water, gas or hydro services, or for any energy requirements prescribed by the City of Toronto, such charges being absolutely determined by a certificate signed on the part of the Vendor, as well as the cost of any check meters and ancillary devices and equipment related thereto and the cost of installation thereof." The applicant has filed no evidence of any charges paid to a utility or service provider or supplier nor any signed certificate determining such charges. There is also no evidence in the record before me as to the source of the \$20,095.96 amount included as in the statement of adjustments nor how it was calculated. I would therefore exclude this amount from the purchase price of the failed transaction for the purpose of calculating damages for loss of bargain.

[28] Subparagraph 15(h) was included in the APS of the new purchaser but there was no corresponding Utility/Meter Connection Fees paid by the new purchaser. I would therefore exclude this Additional Charge from the calculation of the applicant's damages on the basis of the applicant's failure to mitigate for the reasons given above.

Additional Charges for closing costs

[29] The remaining Additional Charges reflected in the statement of adjustments are adjustments that reimburse or compensate the applicant/vendor for expenses incurred on closing. As the transaction never closed these expenses were never incurred. The applicant has therefore suffered no loss with respect to these Additional Charges as result of the respondent's breach. I would not include these charges in in the calculation of the purchase price for the failed transaction.

Calculation of loss of bargain

[30] For the reasons given above, I would exclude all of the Additional Charges from the calculation of the purchase price of the failed transaction. The purchase price of the failed transaction should include only the original purchase price agreed to in the APS, minus the \$5,000 courtesy reduction. The purchase price in the APS is inclusive of HST. The parties agree that for the calculation of damages the purchase price should be not include HST as the tax is remitted to the government. I would calculate the purchase price of the failed transaction as follows:

$$[\text{APS Purchase Price } (\$864,900.00) - \text{Courtesy Discount } (\$5,000)] \div 1.13 \text{ (remove HST)} = \$760,973.45$$

[31] For the purpose of calculating the damages for loss of bargain I would also exclude the \$1,497.21 in additional charges from the purchase price paid by the new purchaser. I would calculate the new purchaser's purchase price as follows:

$$\text{APS Purchase Price } (\$720,000.00) \div 1.13 \text{ (remove HST)} = \$637,168.14$$

[32] The applicant's damages for loss of bargain are therefore \$123,805.31, being the difference between the failed transaction purchase price of \$760,973.45 and the new purchaser purchase price of \$637,168.14.

Analysis - consequential damages

[33] The applicant claims consequential damages that include carrying costs of the Property post-termination, the costs associated with relisting the property and getting the property ready for resale and costs thrown away in relation to the failed transaction. The chart in the applicant's factum lists consequential damages totaling \$85,573.28. Counsel for the applicant conceded in oral submissions that the \$29,760.00 listed in the factum in relation to commissions paid to World Class Realty Point Brokerage Inc. on closing of the sale to the new purchaser were not appropriately included in damages.

[34] The respondent agreed in written or oral submissions that the following amounts claimed by the applicant were appropriately included in the calculation of the applicant's consequential damages:

- Commission to Spectrum Realty Services - \$4,444.50
- Paid to United Messengers Ltd. - \$22.44
- Paid to 7845332 Canada Inc. - \$1,497.25

[35] The following consequential damages claimed by the applicant are disputed by the respondent:

Property taxes

[36] The applicant claims carrying costs for the Property, including property taxes associated with the Property, from September 13, 2022 (the date of termination) to April 12, 2023 (the date of sale to the new purchaser). The applicant has filed evidence of the actual property taxes paid in 2022. The property taxes claimed for 2023 are based on the amount credited to the new purchaser on closing on April 12, 2023.

[37] The respondent concedes that property taxes should be payable for 2023 but takes the position that no amount should be payable for property taxes or any carrying cost in 2022 while the respondent was paying a monthly occupancy fee. The respondent argues that the applicant's carrying costs are included in and subsumed by the occupancy fee. I disagree. The monthly

occupancy fee paid by the respondent was a payment made for the respondent's occupancy of the Property pending closing. It was not intended to cover all of the respondent's carrying costs of the Property. That said, I agree the occupancy is meant to off-set the carrying costs and I would set off the occupancy fee paid against the carrying costs in that period. The respondent paid occupancy fees for the months of September, October and November 2022, totaling \$8,537.67.¹ That amount should be deducted from any carrying costs awarded as damages to the applicant.

[38] I find that the amounts claimed by the applicant for property taxes are reasonable and supported by the evidence. The applicant is entitled to damages in respect of property taxes in the amount of \$1,278.66 for 2022 and \$1,392.60 for 2023.

Financing costs

[39] The applicant claims construction financing carrying costs for the Property for the period September 13, 2022 to April 12, 2023 in the amount of \$39,847.52. The applicant obtained financing for the condominium complex from Windsor Capital at a 10% annual rate of interest. That financing is being paid down in parts out of the proceeds from the sale of each unit as it closes. The respondent's failure to close prevented the applicant from paying down the amount would otherwise have been available at closing. Instead, the applicant was unable to make such payment until the closing of the new purchaser transaction. The applicant claims 10% interest on the amount ultimately paid down for the period between termination of the respondent's APS and the closing of the sale to the new purchaser sale.

[40] The respondent objects to the claim for financing costs on a number of grounds, none of which I find to be persuasive. In both of his affidavits filed, the respondent asserts that Windsor Capital account is an equity partner with the applicant in the project. The applicant's affiant, Jordan Teperman, a vice-president of the company, denies that Windsor Capital is an equity partner in the project. Teperman was not cross-examined. The respondent also makes bald assertions that the applicant has its hand in a number of different projects and that National Bank is the chief financier of the project, not Windsor. Leaving aside whether this is relevant to the issues on this reference, these assertions are also flatly denied by Teperman, whose evidence is unchallenged in this regard.

[41] It is reasonable to assume that a delay in closing on property that is financed will result in increased financing costs to the vendor. Additional financing costs have been included in consequential damages awards granted by the court in actions involving failed real estate transactions. See *Beatty v. Wei*, 2018 ONSC 6221 at para 11(d) and 11(e); *Park Avenue Homes Corp. v. Malik* at para 40(b). I am satisfied on the evidence before me that the respondent's breach in this case resulted in increased construction financing costs to the applicant and that the

¹ The respondent claims to have also paid occupancy rent for December 2022 and January 2023, but I am not persuaded by the evidence in support of that assertion.

amounts claimed reasonably reflect the amount of this loss. The applicant is entitled to consequential damages in respect of increased financing costs in the amount of \$39,847.52.

Legal Fees

[42] The applicant seeks damages in the amount of \$4,796.08 in respect of legal fees paid to the applicant's lawyers in relation to work done on the respondent's sale prior to termination. The legal work includes advice and services provided in relation to the vendor take-back mortgage offered to the respondent. The applicant claims these as costs thrown away as a result of the respondent's breach. The court has held that such legal costs are recoverable when the breach of contract causes the vendor to lose the value of the legal services that they had incurred to complete the APS; *Bang v. Sebastian* at para 59. That is the result of the breach on this case. I award the applicant damages for legal fees as claimed.

Maintenance fees

[43] The applicant seeks maintenance fees in the amount of \$2,325.18 paid to the condominium corporation from December 2022 to April 12 2023. These are clearly carrying costs that the applicant would not have had to bear but for the respondent's breach. I would include these fees in the applicant's damages.

Cleaning fees

[44] The applicant claims \$209.05 paid to a cleaning company to prepare the Property for re-sale. This a cost reasonably incurred as a result of the respondent's breach which should be included in the calculation of the applicant's damages.

Consequential damages total

[45] Based on the foregoing I award the applicant consequential damages in the total amount of \$47,275.61 calculated as follows:

| | |
|--|-------------------|
| • Commission to Spectrum Realty Services | \$4,444.50 |
| • Paid to United Messengers Ltd. | \$22.44 |
| • Paid to 7845332 Canada Inc. | \$1,497.25 |
| • Property Taxes for 2022 | \$1,278.66 |
| • Property Taxes for 2023 | \$1,392.60 |
| • Construction financing costs | \$39,847.52 |
| • Legal Fees | \$4,796.08 |
| • Maintenance Fees | \$2,325.18 |
| • Cleaning Fees | \$209.05 |
| • Less 3 months Occupancy Fees | (\$8,537.67) |
| <hr/> TOTAL | <hr/> \$47,275.61 |

Disposition

[46] Justice Myers held that the respondent's purchase deposit was forfeit without prejudice to his entitlement to claim it as a credit in the damages calculation. The parties agree that the \$73,245.00 deposit may be credited against damages in its entirety. The respondent shall therefore pay to the applicant damages for loss of bargain in the amount of \$123,805.31, plus consequential damages of \$47,275.61 less the deposit of \$73,245.00 for a total damages payment of \$97,835.92.

Costs

[47] At the conclusion of the hearing of the reference I asked the parties for their submissions on costs, both with respect to the costs they were seeking if they were successful and to the costs they should reasonably be required to pay if they were unsuccessful. However, the parties both advised that they would be relying on without prejudice offers to settle in their costs submissions which would not be appropriate to disclose to the court in advance of my ruling. Accordingly, I directed the parties to make their costs submissions in writing and to mark them confidential and email them to the assistant trial coordinator for my review after I had made a determination on the merits of the reference.

[48] The result of this reference was mixed. The parties each filed a damages chart at the hearing the reference. The applicant's chart calculated the damages after the discount for the deposit at \$239,236.68. The respondent's chart calculated damages at \$56,206.46. The damages awarded were between the parties' respective positions. While the result is somewhat closer to the respondent's calculation, I note that the respondent appeared to have softened his position considerably at the hearing of the reference. I say appeared because it was never entirely clear what the respondent's position was leading up to the hearing of the reference as the respondent did not file a factum or a compendium although my endorsement for the exchange of materials provided for the filing of both.

[49] Given the mixed result, I am inclined to order that there be no costs of the reference. My review of the parties' costs submissions does not alter that view. Although each of the parties did serve offers to settle in advance of the hearing, neither parties' offer was met or exceeded by the result. In other words, the result is also between the respective offers to settle.

[50] For these reasons, I am exercising my discretion to order that there be no costs of this reference.

Report on reference

[51] Pursuant to rule 55.02(20), the applicant, having carriage of the reference, shall prepare a draft report based on my findings in these reasons and shall confer with the respondent on the form and content of the draft report. If the parties are able to agree on the form and content of the report, applicant's counsel shall submit a Word copy of the report to me through my ATC, Gobiga

Amalakumar, at Gobiga.Amalakumar@ontario.ca. If I determine that there are no issues as to the content of the report, I will sign it and release it; if there are, I will convene a case conference with counsel on a mutually convenient date. If the parties are unable to agree on the form and content of a draft report, they may email Ms. Amalakumar to obtain a date for a case conference before me to settle the report.

DATE: January 31, 2024

D. Michael Brown, Associate Judge