

advised that the Defendant wished to appeal; I therefore paused the trial to give reasons.¹ I was subsequently advised the appeal was not proceeding, and the trial reconvened on November 20, 2024.

Rulings on Admissibility of Affidavit Evidence

- [3] Prior to the conversion of the application to an action, the evidentiary record included the following affidavits: Kevin Curridor sworn June 18, 2021, Gianni Curridor sworn June 18, 2021, Vasile Caniuca sworn June 23, 2021, Dimitrij Pylypej sworn June 24, 2021, Melissa Watts sworn June 25, 2021, Daniel Polakovic sworn June 28, 2021, Kevin Curridor sworn July 7, 2021, Gianni Curridor sworn July 7, 2021, and Ryan Banks sworn July 7, 2021.
- [4] Because I had ruled that any matters related to the termination of Gianni Curridor’s employment unrelated to the agreement of purchase and sale are inadmissible, portions of the affidavit of Vasile Caniuca sworn July 7, 2021, and the forensic accounting report of Chris Gray were excluded.
- [5] The trial took place over five days. The Plaintiff called two witnesses: Kevin Curridor and Gianni Curridor. The Defendant called five witnesses: Vasile Caniuca, Dimitrij Pylypej, Chris Gray, Daniel Polakovic and Phillip Alves. Melissa Watts and Ryan Banks did not testify.
- [6] Counsel for the Plaintiff sought exclusion of the affidavits of Melissa Watts and Ryan Banks because he was deprived of the opportunity to cross-examine them. In response, counsel for the Defendant submitted that Plaintiff counsel could easily have required their attendance at trial and/or “read in” their evidence.
- [7] I do not find either of the Defendant’s arguments compelling.
- [8] Rule 53.01(1) states as follows:

Unless these rules provide otherwise, witnesses at the trial of an action shall be examined orally in court and the examination may consist of direct examination, cross-examination and re-examination.²

In other words, the general rule is that evidence at trial is to be given orally.

¹ *Curridor v. Millstone Homes Inc.*, 2024 ONSC 5624.

² *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, made under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”)

- [9] Rule 53.02(1) permits a court to make an order allowing the evidence of a witness or proof of a particular fact or document to be given by affidavit *unless* an adverse party reasonably requires the attendance of the deponent at trial for cross-examination.
- [10] Pursuant to the order of McArthur J., the affidavits filed in the application formed part of the evidentiary record. However, Rule 53.02 (2) states:
- Where an order is made under subrule (1) before the trial, it may be set aside or varied by the trial judge where it appears necessary to do so in the interest of justice.
- [11] Rule 31.11(1)(a) permits the “reading in” of evidence from discovery of an adverse party. It is unclear to me as to whether either of these non-parties were examined for discovery and I was provided with no information in that regard. Even if they were, in my view, counsel for the Plaintiff reasonably expected and required them to be in attendance to be cross-examined at trial as *per* the general rule. The court was given no reason as to why these individuals did not or could not testify.
- [12] Pursuant to Rule 53.02(1), I determine that it is necessary in the interests of justice to vary the order of McArthur J. dated August 31, 2021, and to exclude the affidavits of Melissa Watts dated June 25, 2021, and Ryan Banks dated July 7, 2021, from the evidentiary record.

Positions of the Parties

- [13] The Plaintiff’s position is that the agreement of purchase and sale dated January 5, 2021 (the “APS”) for the home is valid and enforceable and that damages are payable.
- [14] The Defendant’s position is that the APS was fraudulently executed and is therefore invalid and unenforceable. As a result, the Plaintiff is not entitled to damages.

Factual Background

- [15] During the trial, counsel referred to the parties by their first names to avoid confusion. For consistency, I will use their naming convention throughout these reasons.
- [16] The Plaintiff, Kevin Curridor, (“Kevin”) is the son of Gianni Curridor (“Gianni”). Gianni is not a party to this action.
- [17] Vasile Caniuca (“Vasile”) and his wife Helen Caniuca are the owners and principals of the Defendant corporation, Millstone Homes Inc. (“Millstone”).
- [18] At the time of the impugned transaction, Gianni was the general manager of Millstone which builds residential homes in Lambeth and Komoka, Ontario.
- [19] Millstone commenced a separate action against Gianni, the outcome of which depends upon this trial.

- [20] Kevin met Vasile in early 2019. Although they met through Gianni, they communicated frequently because of a mutual interest in luxury watches.
- [21] In July of 2020, Kevin and his then girlfriend, now wife, Heather Dennis (“Heather”), discussed moving to London from Windsor to be closer to his parents, who lived in London, and to her parents, who lived in Brantford. They believed there were better teaching opportunities for Heather in London. Because of the COVID-19 pandemic, Kevin (a mechanical engineer) could work remotely.
- [22] A vacant lot became available in Komoka, in a development called “Kilworth Heights” in which Millstone was building homes. Kevin learned about the lot through his father.
- [23] Vasile agreed to extend a “friends and family” deal to Kevin to purchase a new home.
- [24] Construction on the home commenced in late November of 2020. To keep construction costs low, Kevin paid separately for the concrete forming and labour for framing directly to the subtrades, in cash. Gianni communicated with the subtrades and delivered the cash payments to them.
- [25] Kevin requested a signed APS. While visiting his parents, Gianni gave Kevin a pre-filled copy of the APS dated January 5, 2021, which Kevin signed on January 7, 2021. Kevin gave Gianni a cheque payable to Millstone in the amount of \$1,500 which was deposited.
- [26] On February 11, 2021, Kevin received an email from Millstone’s office administrator, enclosing what he believed was a fully executed copy of the APS.
- [27] Kevin and Heather sold their home in Windsor. Heather quit her job in Windsor and obtained employment in London.
- [28] On March 29, 2021, Gianni was fired from Millstone because of allegations of theft and fraud. On the same day, Kevin learned from his mother that his father had been terminated. Kevin spoke to Vasile who indicated he was unwilling to complete the sale of the home.
- [29] On May 27, 2021, Vasile’s lawyer sent a letter to Kevin confirming that Millstone was unwilling to close on the sale of the home and alleging the APS was executed fraudulently.
- [30] A Certificate of Pending Litigation was issued and registered against the home pursuant to the order of George, J. dated August 27, 2021.³ It is rented to tenants of Millstone.
- [31] After the transaction failed, Kevin and Heather moved into Kevin’s parents’ home and then into an apartment in London. In August of 2023 they moved to Dubai, UAE, where they currently reside.

³ *Curridor v. Millstone Homes Inc.*, 2021 ONSC 5769.

Issues

- [32] On August 31, 2021, McArthur J. ordered a trial of the following issues pursuant to Rule 38.10(1)(b):
- a. Whether the APS between Kevin and Millstone dated January 5, 2021, is valid and enforceable;
 - b. Whether Kevin is entitled to specific performance of the APS, including what, if any purchase price adjustment is appropriate on account of construction upgrades which post-date the APS and what credits are appropriate on account of payments already made by him; and
 - c. In the alternative, the quantum of damages Kevin is entitled to, if any.

- [33] At the outset of trial, I was advised by counsel that Kevin has abandoned his claim for specific performance. Therefore, only two issues remain: the validity and enforceability of the APS, and the quantum of damages.

Issue #1: Is the APS dated January 5, 2021, valid and enforceable?

- [34] The main issue I must decide is whether the APS is valid and enforceable. In my view, this question must be answered in the affirmative.
- [35] Vasile testified that from time to time he sold Millstone homes to friends, family members, and employees on favourable terms. Only he could approve the terms of such deals. I heard evidence that a very similar deal was struck with another Millstone employee regarding the adjacent home.
- [36] Gianni was not only an employee, but a very close friend of Vasile such that they vacationed and attended a prayer group together. Gianni was initially hired as a service person at Millstone, but later promoted to general manager.
- [37] At trial, Vasile admitted that his friendship with Kevin was independent from his relationship with Gianni; they enjoyed discussing luxury watches and worked out together in the gymnasium in Vasile's home. However, Vasile testified that the "friends and family deal" was based upon his trust in Gianni and would never have been offered in the absence of that trust.
- [38] After some initial text messages, Vasile met with Kevin in July of 2020 at Millstone's office at which time he said to Kevin, "not to worry, you will get an amazing deal at cost", to which Kevin responded, "I really appreciate it as it will give me a start in life". Vasile responded, "the pleasure is mine".
- [39] Kevin testified that after the initial meeting, he met with Vasile again on October 30, 2020, at Millstone's offices, to discuss the structure of the sale, but Vasile does not recall the

second meeting. I preferred Kevin's testimony on this point over Vasile's because it was supported by text messages indicating Vasile requested the meeting.

- [40] It is common ground that the parties verbally agreed Millstone would construct the home "at cost", and that Kevin and *Vasile* (not Millstone) would split any profit on the eventual sale of the home. Therefore, I find that no later than October 30, 2020, Vasile and Kevin came to an agreement that Millstone would sell Kevin the home "at cost".
- [41] After the initial discussions, Vasile told Kevin he could be involved in designing the home and gave him "free run" to work with Millstone's employees. He told Kevin to make all the selections for the house which Kevin would receive at cost but cautioned him not to overspend because they wanted to maximize their profit on the home.
- [42] Construction of the home began in late November of 2020.
- [43] On January 2, 2021, Vasile left with his family for an extended vacation.
- [44] Prior to leaving, Vasile made two rubber stamps (one for his lawyer and another for himself) to allow documents and cheques to be signed in his absence. Vasile provided one stamp with his signature to Dimitrij Pylypej ("Dimitri"), Millstone's construction manager. Only Dimitri was authorized to use the stamp, and only Dimitri had access to it. Before any agreement of purchase and sale was stamped with his signature, Vasile stipulated he must be on the telephone to approve any deal.
- [45] To secure mortgage financing, and because he was reluctant to pay the sub-trades without a firm deal in writing, Kevin requested an agreement of purchase and sale through Gianni.
- [46] Vasile denies that Kevin required the APS "early" and testified that he does not sign an APS on a "friends and family deal" until the house is constructed, and all the cost numbers are known.
- [47] To create the APS, Gianni testified that Phillip Alves ("Phil"), Millstone's former design and construction manager, prepared a spreadsheet which estimated the cost of construction, including the lot, of \$571,404.85. This spreadsheet was provided to Gianni, who then provided it to Kevin. Phil testified that, in general, his budgets are accurate.
- [48] Gianni testified that in December of 2020, he advised Vasile about Phil's budget estimate, and Vasile instructed him to use the figure of \$600,000 as the purchase price in the APS. When Vasile inquired about a deposit, Gianni suggested \$1,500 plus direct payment to two subtrades. Vasile denies this discussion took place and denies any knowledge of the APS until after Gianni's termination.
- [49] On January 4, 2021, Gianni instructed Millstone's office administrator, Melissa Watts ("Melissa"), to prepare the APS in accordance with Vasile's instructions. Using the template in Millstone's computer system, she did so. Gianni testified he provided her with the particulars for the APS in accordance with the terms provided by Vasile.

- [50] Several schedules were included in the APS, including “Schedule A”, a legal description of the property, and specifications regarding the build including the concrete, doors, and windows, mechanical, plumbing, electrical, rough-ins, insulation and drywall, interior trim/hardware, painting, cabinetry, flooring, exterior, and landscaping/driveway. Schedule “A” also indicated that a 7-year Tarion warranty applies in accordance with the *Ontario New Home Warranties Plan Act*.
- [51] Schedule “F” to the APS, entitled “Conditions”, includes a clause which permits the purchaser to assign the APS upon payment of \$25,000. However, since Kevin never assigned the agreement, in my view, nothing turns on that clause.
- [52] Kevin testified he provided cash to Gianni for payment of the subtrades as follows: (1) \$21,000 to Core Forming Inc. for the foundation (January 7, 2021); and (2) \$16,000 to Under R Construction for framing and rental of a crane (January 20, 2021). Kevin produced statements from his personal account evidencing these withdrawals, but no receipts or invoices were received from the subtrades and no one from these companies testified at trial.
- [53] Vasile denied that Millstone ever paid its trades in cash and testified that all of Millstone’s transactions were recorded. He also testified that after the application was commenced, he requested that both subtrades provide him with invoices, and he produced documentary evidence to the court that Millstone paid them directly.
- [54] There is nothing in the APS about cash payments. Gianni testified that he was the conduit between Kevin and the subtrades because Kevin was living in Windsor. Kevin testified he paid a total of \$37,000 in cash to them *via* Gianni which was confirmed by Gianni.
- [55] Although some schedules were left blank, including the schedule regarding the model of the home, Kevin drafted the plans on his computer-assisted design program which were then submitted to the municipality to obtain the building permit. Kevin testified that he knew the layout and model of the home because he designed it.
- [56] The APS included terms such that Kevin would purchase the home for \$600,000 from Millstone and pay a deposit of \$1,500. It also indicated a closing date of May 28, 2021. Any extra items requested by Kevin would be adjusted on closing and paid to Millstone.
- [57] I find as a fact that because this was a “friends and family” deal, some of the details may have been left out because both parties understood them, but the essential terms of the APS were included: price, deposit, property description, and closing date.
- [58] Gianni presented the pre-filled APS form to Kevin who signed it on January 7, 2021. On the same date, Kevin provided a cheque to Gianni payable to Millstone in the amount of \$1,500.
- [59] On January 8, 2021, Gianni provided the APS to Dimitri, who retrieved the stamp from his vehicle and used it to execute the APS on behalf of Millstone. Dimitri denies stamping it and Vasile denied authorizing Dimitri to do so.

[60] The deposit cheque from Kevin was deposited by Millstone on January 8, 2021.

[61] I also find that throughout the negotiations and after the signing of the APS, the parties conducted themselves as though the home was Kevin's, and Kevin relied upon the signed APS. Specifically:

a. Vasile permitted Kevin to design the home, including the floorplan and exterior design with Phil's assistance.

b. Vasile permitted Kevin to work with Millstone's interior designer to choose the home's interior finishes which plans were finalized around January 13, 2021;

c. Kevin ordered the appliances for the home on January 22, 2021;

d. Kevin sent a copy of his rendering to Vasile who acknowledged receiving it from Kevin after which Vasile responded, "Wow!" and gave a "thumbs up" emoji;

e. Vasile instructed Millstone's employees to determine the budget and construction costs for the home as part of their duties;

f. Millstone obtained a building permit in accordance with Kevin's plans, referred to it as "Kevin's permit", and completed construction of the home based upon that permit;

g. Kevin communicated directly with Millstone's construction site supervisor, Ryan Banks ("Ryan") who indicated to Kevin that the closing date would likely be moved up to between May 1, and May 7, 2021;

h. Vasile admitted that he knew about the change in the closing date from May 28, 2021;

i. On February 7, 2021, Kevin and his spouse entered into an agreement of purchase and sale to sell their home in Windsor which closed on April 28, 2021;

j. On February 17, 2021, Dan Polakovic ("Dan"), Millstone's realtor presented Kevin with an offer to sell the home to a third party for \$999,999 in which Kevin was listed as the "owner in equity";

k. On February 24, 2021, Vasile had a text exchange with Kevin in which Vasile expressed admiration for the large offer received by Kevin on the home (which Kevin later declined);

l. After signing the APS, Kevin requested several upgrades, including finishing part of the basement based upon floorplans designed by him which were confirmed in an updated spreadsheet on March 8, 2021; and

m. Construction on the home continued following the execution of the APS and was ultimately completed.

- [62] From January to March of 2021 the real estate market was “extremely hot” resulting in many contracts for new homes being signed. Millstone’s realtor, Daniel Polakovic (“Danny”) testified he brought customers to Millstone, and they routinely reviewed and signed the agreements of purchase and sale documents following the company procedure as described by Vasile.
- [63] Again, Melissa did not testify at the trial. I was provided no reason as to why she did not, and I have excluded her affidavit evidence. I have little choice but to draw an adverse inference from Millstone’s failure to call her as a witness and can only conclude that she prepared the APS on Millstone’s behalf.
- [64] No record or log was kept by Millstone regarding the use of the stamp or where it was kept. In my view, the lack of tracking of the use stamp or its location demonstrates a shocking lack of control over corporate signatures applied to agreements of purchase and sale, especially since it was used on multiple house deals involving hundreds of thousands of dollars. Although Dimitri says he did not use the stamp on Kevin’s APS, and Vasile denies he authorized its application, the APS contains Vasile’s signature. Since Millstone cannot provide any documentary proof that it was not signed, I therefore conclude that the APS was executed by Millstone.
- [65] When Vasile returned to London, he met with Millstone’s employees who advised that Gianni had been defrauding Millstone. On March 29, 2021, Vasile confronted Gianni and fired him.
- [66] Vasile denied discussing Kevin’s purchase of the home in the termination meeting. That same afternoon, Vasile called Kevin and told him the deal was “off”. When Kevin told him they had a signed contract, Vasile denied it. Vasile then asked Melissa, who confirmed the existence of the signed APS.
- [67] On cross-examination, Vasile admitted that he never told Kevin about which employees at Millstone could sign APS documents, nor did he tell Kevin about the internal signing protocol involving the rubber stamp. His verbal instructions to the staff were that “Dimitri will sign cheques and contracts and whatever needs to be signed” but he agreed these instructions were never communicated to Kevin.
- [68] There is no dispute that Kevin received what he thought was a fully executed APS dated January 5, 2021, from Melissa by email on February 11, 2021. Kevin testified that the APS aligned with his expectations, looked standard to him, and that he did not question the validity of the signature on the document which looked like Vasile’s. He was unaware of the internal protocol described by Vasile regarding the use of the stamp.
- [69] Counsel for Millstone submits that I should make a finding regarding as to whether the APS was fraudulently executed by Gianni. In my view, it is unnecessary for me to do so.
- [70] The parties to the signed APS are Kevin and *Millstone*. Vasile’s signature was applied in his capacity as the owner and president of Millstone and not in his personal capacity.

[71] Importantly, Vasile admitted that when he left the country in January of 2021, he intended to sell the home to Kevin. However, on March 29, 2021, he changed his mind because of Gianni’s conduct. He also admitted that *Kevin* did nothing untoward to him or to Millstone.

[72] The Ontario *Business Corporations Act*⁴ precludes Millstone from asserting that the APS is unenforceable due to the “indoor management rule”. Section 19 reads as follows:

19 A corporation or a guarantor of an obligation of a corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation that,

(a) the articles, by-laws or any unanimous shareholder agreement have not been complied with;

(b) the persons named in the most recent notice filed under the *Corporations Information Act*, or named in the articles, whichever is more current, are not the directors of the corporation;

(c) the location named in the most recent notice filed under the *Corporations Information Act* or named in the articles, whichever is more current, is not the registered office of the corporation;

(d) a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or does not have authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such director, officer or agent;

(e) a document issued by any director, officer or agent of a corporation with actual or usual authority to issue the document is not valid or not genuine; or

(f) a sale, lease or exchange of property referred to in subsection 184 (3) was not authorized,

except where the person has or ought to have, by virtue of the person’s position with or relationship to the corporation, knowledge to that effect.

[73] The “indoor management rule” at common law ensured that a good faith third party is entitled to assume that a corporation’s internal policies and procedures have been followed and “should not have to worry about whether internal housekeeping is in order”.⁵ The policy underlying this rule, enshrined in s. 19 of the *OBCA*, is to ensure that internal

⁴ *Business Corporations Act*, R.S.O. 1990, c. B.16 (“*OBCA*”).

⁵ *Ramsay v. Winkleigh Co-operative Housing Corp.*, 2010 ONSC 4676, at para. 37; and *AOD Corp. v. Miramare Investment Inc.*, 2022 ONCA 95, at para. 20.

corporate restrictions on authority or failure of the corporation to follow its procedures do not stand in the way of its obligations to a third party.⁶

- [74] The indoor management rule is applicable “even if a forgery has taken place”.⁷ Courts have accepted this where the third party had no basis for believing that the document was a forgery and there is nothing on the face of the document that would suggest that it was anything other than what it appeared to be.⁸ Unless Millstone can prove that Kevin knew or ought to have known that the APS was executed fraudulently, the APS is enforceable and binding upon Millstone.
- [75] Kevin testified he received the fully executed APS on February 11, 2021, *via* email from Melissa who was a representative of Millstone. I accept his evidence he had no idea that there was an issue with the signature on the APS.
- [76] The agreement contained the essential terms agreed upon by Kevin including price, deposit, property description, and closing date. I found his evidence to be credible and reliable. There was no evidence to suggest that Kevin had any knowledge of an irregularity in Millstone’s internal authorization practices. In fact, Vasile testified that Kevin was unaware of Millstone’s internal signing protocols.
- [77] When Kevin received the APS from Millstone’s administrator that bore Vasile’s signature, it was not apparent on the face of the document that a stamp was used (because it was an emailed copy), and Kevin testified he had no knowledge of the existence of the stamp. He was therefore entitled to reasonably assume that the signature was genuine and that all internal protocols had been followed. Even if the document was forged by Gianni, there is no evidence that Kevin was aware of any such forgery.
- [78] Kevin was cross-examined extensively regarding cash payments made to the subtrades. I was asked to infer that because he arranged for the cash payments, Kevin and/or his father were implicated in fraudulently executing the APS. In my view, such an inference is not grounded in the evidence and involves a leap of logic I am not prepared to take.
- [79] Kevin was also cross-examined about a cheque from Gianni paid to Millstone after Gianni’s termination from its employ. The defence submits the existence of this cheque should have caused Kevin to make inquiries about the APS. However, the cheque was paid after March 29, 2021, and therefore Kevin could therefore not have known of its existence on the day he received the signed APS which was over a month earlier (February 11, 2021).
- [80] Other than vague allegations, I find there is no evidence to support a finding that Kevin knew or ought to have known about his father’s alleged duplicity *prior* to his termination and no evidence to support a finding that Kevin forged the APS himself. Kevin was

⁶ *Ramsay v. Winkleigh Co-operative Housing Corp.*, *supra*, at para. 37.

⁷ *Martin v. Artyork Investments Ltd.*, [1991] O.J. No. 1990.

⁸ *Farrell v. Kavanagh*, 2020 ONSC 8154, at para. 200.

therefore entitled to rely upon the signed APS between himself and Millstone because of the indoor management rule contained in s. 19 of the *OBCA*.

[81] Based upon the above, I therefore conclude that the APS was a valid and enforceable contract between Kevin and Millstone.

Issue #2: What is the appropriate quantum of damages?

[82] I now turn to the quantum of damages.

[83] The parties have agreed that the value of the home on November 1, 2021, was \$1.2 million.

[84] Kevin submits he is entitled to the difference between the purchase price of \$600,000 and \$1.2 million which is \$600,000.

[85] From the \$600,000, Kevin concedes that the cost of the post-APS upgrades in the amount of \$52,131 contemplated on closing should be deducted. He then adds \$1,500 for the deposit, and \$37,000 for the cash paid to the sub-trades.

[86] Additionally, Kevin seeks the interest rate differential based upon the mortgage interest rate of 1.99% and the current mortgage rate of 4.59% for a total to trial of \$72,130, plus a mortgage insurance premium differential due to his inability to “port” a portion of his previous mortgage premium from his Windsor property in the amount of \$6,283 and a land transfer tax differential between a \$600,000 property and a \$1.2 million property in the amount of \$12,000.

[87] The total damages Kevin is seeking is \$673,522.⁹

[88] Millstone submits that assuming I find a valid and enforceable contract, there are two alternative approaches to damages.

[89] The first is to take the valuation price (\$1.2 million) less the APS price (\$600,000) less closing costs (\$79,994.25) less the post-APS upgrades (\$52,131) divided by 50% for a total of \$233,937.38.

[90] The second is based on Millstone’s “actual cost” which was to be calculated on closing and would have included adjustments to ensure that all of Millstone’s costs, including overhead, were captured. This calculation yields net proceeds to Kevin of \$179,176.29 (\$1,200,000 - \$761,653.18 less closing costs of \$79,994.25).

[91] Because I have found that the APS was valid and enforceable based upon a purchase price of \$600,000, in my view, Millstone’s alternative damages calculation is untenable.

⁹ The total of the damages submitted by Kevin is mathematically \$676,792, but I have included only the lower submission.

- [92] Although there is evidence that by October 30, 2020, Kevin and Vasile formed a collateral agreement to split the profits, the APS was between Kevin and *Millstone*, which is a corporation separate and distinct from Vasile. Millstone was *not* a party to the collateral agreement and advanced no counterclaim. I therefore decline to consider the collateral agreement in my calculation of damages.
- [93] The purpose of damages in a breach of contract action is to put the plaintiff into the position he would have been in but-for the breach. Here, had Millstone not resiled from the APS, Kevin would have purchased the home for \$600,000. Since the parties have agreed that the home was worth \$1.2 million, the difference is \$600,000.
- [94] The deposit would have been subtracted from the purchase price; Kevin is therefore not entitled to be re-imbursed \$1,500.
- [95] Kevin seeks re-imburement for the \$37,000 in cash paid to the sub-trades. However, I have already found that the APS was a complete agreement on its face. There is no mention in the agreement regarding cash paid to sub-trades and Millstone presented documentary evidence that it paid those sub-trades. Although it was open to Kevin to call these individuals as witnesses, he did not do so. I am therefore not prepared to re-imburse Kevin for those payments which, if made, were collateral to the APS.
- [96] The parties agree that the post-APS “upgrades” total \$52,131 which should be subtracted from the total damages because they were never incurred.
- [97] I agree with Millstone’s deductions of land transfer tax in the amount of \$7,519.25 (based upon a pre-HST purchase price of \$552,212.39 for a \$600,000 new home) as well as approximately \$2,000.00 in legal fees. I decline to deduct any additional land transfer tax and legal fees on any speculative re-sale of the home.
- [98] No home ever replaced the house in Windsor. In my view, the expenses sought associated with portability of the mortgage and the interest rate differential are not recoverable.
- [99] I therefore find the total damages payable to Kevin are \$538,349.75 plus applicable pre-judgment interest pursuant to s. 128 of the *Courts of Justice Act*¹⁰.

Costs

- [100] If the parties cannot agree on costs, the Plaintiff may make cost submissions limited to three pages, exclusive of bills of costs, within 30 days of receipt of these reasons, and the Defendant may make its cost submissions within 15 days from receipt of the Plaintiff’s submissions. There shall be no reply without leave of the court.

¹⁰ *CJA, supra.*

“Justice E. ten Cate”

Justice E. ten Cate

Released: February 4, 2025

CITATION: Curridor v. Millstone Homes Inc. 2025 ONSC 745
COURT FILE NO.: CV-21-00001097
DATE: 20250204

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN CURRIDOR

Plaintiff

– and –

MILLSTONE HOMES INC.

Defendant

REASONS FOR JUDGMENT

ten Cate J.

Released: February 4, 2025