

**CITATION:** Aliasi-Sini v. Arora, 2025 ONSC 202  
**COURT FILE NO.:** CV-23-00712126-0000  
**DATE:** 20250110

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
IZHAK ALIASI-SINI ) *David Rubin, for the Applicant*  
 )  
Applicant )  
 )  
– and – )  
 )  
SAMIR ARORA and EQUINOX ARORA ) Samir Arora on his own behalf and Equinox  
REALTY INC. ) Arora Realty Inc. on its own behalf ,  
 )  
Respondents )  
 )  
 )  
 )  
 ) **HEARD:** January 7, 2025 (In Writing)

2025 ONSC 202 (CanLII)

**REASONS FOR JUDGEMENT**

**MERRITT J.**

**OVERVIEW**

- [1] The Plaintiff Izhak Aliasi-Sini (“Izhak”) sues the Defendants Samir Arora and Equinox Arora Realty Inc. (“Arora” and “Equinox” respectively) for damages arising out of a failed real estate transaction. The main cause of action alleged is breach of contract.
- [2] The Defendants failed to defend the proceeding and was noted in default.
- [3] The Plaintiff brings a motion for default judgment.
- [4] On November 13, 2024 Koehnen J. ordered the Plaintiff to serve the motion for default judgment and a copy of his endorsement allowing the Defendants an opportunity to notify the Plaintiff by December 27, 2024 that they seek to respond, failing which the motion would proceed in writing.
- [5] The Plaintiff personally served the endorsement and motion record and the Defendants did not respond.

## **DECISION**

[6] For the reasons that follow I am granting the judgment for damages in the amount of \$527,279.92 plus prejudgment interest and costs as set out below.

## **THE ISSUES**

[7] The issues are:

Issue 1: Do the materials provide a basis for a finding of liability?

Issue 2: If so, what are the damages to which the Plaintiff is entitled?

## **ANALYSIS**

### **Issue 1: Do the materials provide a basis for a finding of liability?**

#### ***Consequences of noting in default***

[8] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[9] Pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[10] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

#### ***The test on a motion for default judgment***

[11] The test on a motion for default judgement is:

1. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim?
2. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim?
3. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

*(Elekta Ltd. v. Rodkin, 2012 ONSC 2062 at para. 14)*

[12] I am satisfied that the plaintiff has established liability based upon the following deemed admissions from the Statement of Claim, together with the evidence from the affidavit of Izhak affirmed October 22, 2024.

[13] On November 17, 2022 Izhak and Arora entered into an Agreement of Purchase and Sale whereby Izhak agreed to sell and Arora agreed to buy a residential condominium unit municipally known as Apartment 3017 [TPH17], 80 Harrison Gardens Blvd., Toronto being Unit Number 17, Level 30 and Parking Spaces numbers 69 & 70, Level A in Toronto Standard Condominium Corporation No. 1600 ("TSCC #1600") (the "Property" and the "APS" respectively)

[14] Arora anticipatorily breached the APS before the scheduled closing date.

[15] Izhak gave Arora numerous opportunities to remedy the breach and close the transaction; however, Arora failed to pay any deposits or close the transaction.

[16] Izhak resold the unit in July, 2023 with a closing on August 31, 2023, but at a significant loss.

[17] Izhak claims Arora's real estate brokerage Equinox is also liable.

[18] Arora was the principal and broker of record of Equinox and also its sole officer, director and shareholder.

[19] Izhak says that Arora either never intended to complete the transaction or knew he did not have the ability to close the transaction and entered into the APS in order to have Izhak take his unit off the market while Arora listed his own condominium unit which is in the same building and across the hall and is municipally known as Apartment 3019 [TPH19], 80 Harrison Gardens Blvd., in the City of Toronto being Unit Number 19, Level 30 and Parking Spaces numbers 78 & 79, Level A and Locker Unit #145, Level A in TSCC #1600 (the "Arora Property").

[20] Arora purchased the Arora Property on June 24, 2022 for \$1,350,000.00 and lived in it.

[21] Izhak listed the Property for sale on October 6, 2022 and Arora expressed interest in the Property after it was listed.

[22] Arora, through his brokerage, Equinox negotiated, as a Co-operating Broker, the Commission to be paid to Equinox as the Co-operating Brokerage for procuring an offer to purchase the Property, as well as the terms of an offer to purchase the Property.

[23] The APS provided for a purchase price of \$2,350,000 with an initial deposit of \$50,000 and a further deposit on November 30, 2022 of \$50,000 and a closing date of January 31, 2023.

[24] Arora also signed the Confirmation of Co-operation and Representation Buyer/Seller on behalf of Equinox, forming part of the Purchase Agreement.

[25] Arora almost immediately defaulted in his performance of the Purchase Agreement by failing to make the payment of any deposits, despite making continued promises to do so.

[26] Izhak tried to mitigate his loss by amending the APS on January 5, 2023 to extend the closing date to March 2, 2023 (with an option to extend further) and changing the required deposits to a total of \$75,000 payable as follows:

1. January 11, 2023 - \$10,000.00;
2. January 20, 2023 - \$15,000.00;
3. January 31, 2023 - \$25,000.00; and,
4. February 15, 2023 - \$25,000.00

(the “Amended APS”).

[27] Arora failed to pay any of these deposits and, six days after signing the Amended APS he told Izhak he would not be able to close the Amended APS.

[28] The Amended APS was negotiated and entered into in bad faith because Arora never intended to pay any deposits. He never intended to complete the transaction or knew that he did not have the financial ability to do so.

[29] Arora and Equinox abused their respective positions as broker of record and co-operating broker to mislead Izhak with respect to the APS and the Amended APS.

[30] Arora only entered into the APS and the Amended APS in order to induce Izhak to take the Property off the market as a "sold" unit in order to improve the prospects for Arora to list and sell the Arora Property. Arora listed the Arora Property for sale on December 14, 2022;

[31] Arora and Equinox breached their respective obligations as broker of record and co-operating broker by knowingly misleading Izhak and the Listing Brokerage with respect to Arora's intention and ability to complete the Purchase Agreement or the Amended Purchase Agreement;

[32] On January 13, 2023, Izhak accepted Arora's repudiation of the APS.

[33] Arora did not attempt to close the APS or amended APS transactions.

[34] On July 15, 2023 Izhak entered into a new agreement of purchase and sale with a new buyer to sell the Property for \$1,840,000 with a closing date of August 31, 2023 (the “New APS”). The Property sold in accordance with the New APS.

**Issue 2: What are the damages to which the plaintiff is entitled?**

[35] Izhak’s damages are based on the resale price.

[36] As the innocent party Izhak has a duty to mitigate damages: *Rosehaven Homes Ltd. v. Aluko*, [2022] O.J. No. 838, at para.71.

[37] Where a plaintiff seeks default judgment in the context of an aborted sale of real estate, the plaintiff must satisfy the court that he made reasonable efforts to mitigate by attempting to resell the Property for fair market value in a timely manner: *Caivan (Renaud) Inc. v. Khan et al.*, 2024 ONSC 1986 at para 22 citing *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.*, 1978 CanLII 1630 (ON CA), 20 O.R. (2d) 401 at p.23

[38] In *100 Main Street Ltd.*, at para 64 Morden J. adopted the view in *McGregor on Damages*, 13th ed. (1972) which states that the price at which a property has ultimately sold affords good evidence of the market value. See also *Briscoe-Montgomery v. Kelly*, 2014 ONSC 4240, at para. 22, where the Court cited Rosenberg J. (as he then was) in *Victorian (Ontario) Inc. v. DeFreitas et al.*, [1991] 16 R.P.R. (2d) 55 where he states, at para. 20, "...in my view, there is no better evidence to calculate the real damage suffered than the price that the plaintiff was able to obtain in the market for the resale for the home."

[39] When assessing whether the innocent party took reasonable steps to minimize the losses incurred, the court may consider:

1. the circumstances of the real estate market at the time;
2. how long it took for the innocent party to place the property for sale;
3. how long the property was for sale before it sold;
4. how the property was marketed;
5. at what price the property was relisted for sale;
6. how the property was exposed for sale;
7. whether there were any price reductions or other offers to purchase the property; and,
8. how many other offers were made and their particulars.

(*Rosehaven Homes Ltd.*, at para 73)

[40] Izhak must show that the damages he claims are reasonable and flow from the breach: *Rosehaven Homes Ltd.*, at para 74.

[41] Izhak claims damages as follows:

1. The \$510,000 difference between the purchase price under the APS (and the Amended APS) and the purchase price under the New APS.
2. The \$4,935.92 legal fees paid to Arora's lawyer with respect to the APS and the Amended APS.

[42] Izhak initially listed the Property for sale on November 30, 2022 at the same price it was listed for when Arora purchased it but there was little interest; hence, Izhak entered into the Amended APS with Arora. In January, after Arora breached the Amended APS Izhak completed some small repairs and found another broker to sell the property. It was listed on February 6, 2023 for the same price of \$2,388,000. When there was no interest, and following the broker's advice, the price was lowered on March 8, 2023 to \$2,188,000 and then Arora again expressed interest in purchasing the Property and proposed a purchase price of \$2,250,000 but this offer was ultimately conditional on Izhak providing a full and final release with respect to the APS and the Amended APS which he was not prepared to do. Izhak was also concerned about being tricked by Arora.

[43] There was still no other interest in the property and Izhak dropped the price to \$2,088,000 on April 25, 2023 and against to \$1,988,000 on May 8, 2023.

[44] When there was still no activity or offers by May 18, 2023, Izhak decided to cancel the listing with the new broker and he then retained Barbra Pollock & Corinne Kalles Harvey Kalles Real Estate on June 4, 2023. The new listing resulted in six showings of the Property and, after some back and forth negotiation on the price, and the eventual resale

[45] I am satisfied that Izhak's efforts to mitigate were reasonable. He made reasonable efforts to mitigate by attempting to resell the Property for fair market value in a timely manner:

[46] I am satisfied that the legal fees incurred with respect to the APS and Amended APS are damages which are reasonable and flow from the breach.

[47] Izhak's damages are reduced by \$11,200.00 plus HST (i.e. \$12,656.00) because the real estate commission expense on the resale was lower. The original sale called for payment of commission at the total rate of 4% of \$2,350,00.00 or \$94,000.00 while the resale called for commission of 4.5% of \$1,840,000.00 or \$82,800.00, a difference of \$11,200.00 plus HST.

[48] The total damages are therefore \$502,279.92

### ***Punitive damages***

[49] The Plaintiff seeks punitive damages in the amount of \$25,000.

[50] Punitive damages are awarded in exceptional cases for "malicious, oppressive and high-handed" misconduct that "offends the court's sense of decency": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (CanLII), [2002] 1 SCR 59 at para 36 citing *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, at para. 196.

[51] Punitive damages are designed to punish rather than to compensate. "In the case of a claim for breach of contract, an "actionable wrong" can be found in breach of a distinct and separate contractual provision or other duty such as a fiduciary obligation or "a breach of the contractual duty of good faith": *Elekta* at para 25 citing *Honda Canada Inc. v. Keays*, 2008 SCC 39, para. 62.

[52] Punitive damages are restricted to advertent wrongful acts that are so malicious and outrageous that they are deserving of punishment on their own. The general objectives of punitive damages are punishment, deterrence and denunciation: at para 43.

[53] The governing rule for quantum is proportionality: *Whiten* at para 74.

[54] In this case, Arora and Equinox breached their respective obligations as broker of record and co-operating broker by knowingly misleading Izhak and the Listing Brokerage with respect to Arora's intention and ability to complete the APS or the Amended APS.

[55] Arora breached his contractual duty of good faith by either never intending to complete the transaction or knowing he did not have the ability to close the transaction and entering into the APS in order to have Izhak take his unit off the market while Arora listed his own condominium unit thus reducing the supply of available units while reaping the benefit of having the APS as a favourable yardstick by which to measure the market value of his own unit.

[56] Arora was disciplined by the Real Estate Council of Ontario on May 27, 2024 for similar conduct. In *Real Estate Council of Ontario v. Samir Kumar Arora (registered as Samir Arora)* Arora was fined \$12,500 for neglecting to maintain fair and honest communication with other registrants during a trade in real estate, contrary to section 3 of the *Code of Ethics*; and failing to demonstrate financial responsibility in the course of business contrary to section 35 of the *Code of Ethics*.

[57] In March to June 2022, a few months before expressing interest in the Plaintiff's property, Arora was involved in another personal purchase of property where he lied about having a lawyer and being able to close the transaction and engaging in abuse behaviour when confronted with the consequences of his failure to close on time.

[58] In the present case, the emails from Arora to the Plaintiff's lawyer contain allegations that the lawyer is misleading his client and "becoming a hindrance to resolving this matter", threats to commence a counterclaim, numerous broken promises to call the lawyer, and a pattern of stringing the Plaintiff and his lawyer along with various excuses.

[59] Arora also accused the Plaintiff, his listing broker and his lawyer of coercion and harassment, making misrepresentations, and engaging in illegal and unethical conduct, breach of fiduciary duties and wrongdoing.

[60] I find that the conduct of both Arora and Equinox is so outrageous that it is deserving of punishment and that \$25,000 is an appropriate and proportionate amount for punitive damages.

### **PREJUDGMENT INTEREST**

[61] The Plaintiff claims prejudgment interest on his damages of \$502,279.92 from August 31, 2023 when the Property was resold, at the rate of 5.3% which is the rate under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*CJA*") when the Statement of Claim was issued on December 29, 2023.

[62] The Plaintiff also claims prejudgment interest from January 31, 2023 to August 31, 2023 on the full purchase price under the APS (i.e. \$2,350,000) in the amount of \$72,341.36. The Plaintiff submits that he is entitled to compensation for loss of use of the purchase price under the APS during this period of time. Rather than lead evidence of the prevailing interest or investment rates, he asks for prejudgment interest at the *CJA* rate of 5.3% when the claim was issued.

[63] In support of this claim the Plaintiff relies on *Skyrise Developments Limited v. Abrahams*, 1996 CanLII 8011 (ON SC), 29 O.R. (3d) 451 where the court awarded a developer interest on the unpaid balance due under an agreement of purchase and sale. In *Skyrise*, there was no explanation as to why this additional prejudgment interest was awarded. *Skyrise* is distinguishable because the circumstances in *Skyrise* were different. There, the Plaintiff was a developer who was building a condominium and the court awarded prejudgment interest on the amounts due on occupancy and presumably those funds were needed to pay expenses associated with construction.

[64] In the present case, had Arora completed the transaction Izhak would have had to move out of his home. He did not provide evidence as to his plans for living accommodation once his home was sold.

[65] Other than a bald statement that he believes he is entitled to prejudgment interest on the original purchase price, Izhak has not submitted any evidence as to what use he might have made of the funds. The factum says:

Rather than attempt to call evidence of whatever interest or investment rate the Plaintiff could have achieved by investing the sum, he simply asks that he be awarded pre-judgment interest at the prevailing rate when the claim was issued from January 31, 2023 to August 31, 2023 on the purchase price of \$2,350,000.00 when the resale closed, a total of \$72,341.36.

[66] Also, I was not pointed to any case which has followed this approach in the last 30 years. While I am not foreclosing the possibility of such an award of prejudgment interest in another case in the future based on proper evidence, here I decline to exercise my discretion to award prejudgment interest on the amount of the purchase price under the APS.

[67] Prejudgment interest is not awarded on punitive damages: s.128(4)(a) *CJA*.

[68] The Plaintiff is entitled to prejudgment interest on the damages, excluding the punitive damages, calculated from the date the cause of action arose being January 31, 2023 to today at the rate of 5.3%.

### **COSTS**

[69] The plaintiff requests costs on a substantial indemnity basis in the amount of \$26,530.26 inclusive of HST and disbursements.

[70] Substantial indemnity costs may be warranted in two circumstances. The first is where, as a result of an offer to settle under r. 49 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, substantial indemnity costs are explicitly authorized. The second circumstance is where the unsuccessful party has engaged in behaviour worthy of sanction.

[71] Where a party has engaged in conduct that is reprehensible, scandalous, or outrageous, a court may sanction this conduct through an award of elevated costs: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, at para. 28; *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, at p. 134.

[72] The kind of conduct that will justify an elevated level of costs is not limited to conduct in the proceedings and can include the circumstances that gave rise to the litigation: *Mortimer v. Cameron (1994)*, 1994 CanLII 10998 (ON CA), 17 O.R. (3d) 1 (C.A.), at p. 23, as cited in *Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, at para. 43.

[73] In this case the Defendants entered into the APS and the Amended APS in bad faith and for an improper purpose. Arora and Equinox abused their respective positions as broker of record and co-operating broker to mislead Izhak with respect to the APS and the Amended APS

[74] Arora also made very serious allegations against Izhak, his listing broker and his lawyer as set out in para. 59 above.

[75] I find that the Defendants engaged in conduct which should be sanctioned by an award of substantial indemnity costs.

[76] I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the defendant. The Defendants shall pay costs of \$26,530.26 inclusive of HST and disbursements to the Plaintiff.

[77] The plaintiff shall provide a submission on the details of the interest calculations together with a draft judgment within 14 days by email to my Judicial Assistant and uploading to CaseCenter.

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Merritt, J.

**Released:** January 10, 2025

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**REASONS FOR JUDGMENT**

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Merritt, J.

**Released:** January 10, 2025