

COURT OF APPEAL FOR ONTARIO

CITATION: Adler v. Woitowich, 2025 ONCA 108

DATE: 20250218

DOCKET: COA-24-CV-0742

Hourigan, Wilson and Madsen JJ.A.

BETWEEN

Heather Adler and David Kendall

Plaintiffs  
(Respondents)

and

William Woitowich and Sandra Daga

Defendants  
(Appellants)

Avrum Slodovnick, for the appellants

Monica Unger Peters and Megan Van Kessel, for the respondents

Heard: February 7, 2025

On appeal from the judgment of Justice Loretta Merritt of the Superior Court of Justice, dated May 28, 2024, with reasons reported at 2024 ONSC 3020.

REASONS FOR DECISION

**Introduction**

[1] This is an appeal from a summary judgment motion that arose from an agreement of purchase and sale for a house. The respondents, who were the purchasers, moved for summary judgment on the issues of liability and damages

for breach of contract. The motion judge determined there were no issues requiring a trial and granted damages in the sum of \$525,000, plus \$80,000 for the increased cost of borrowing and land transfer taxes, for a total of \$605,000. The appellants ask that the damages be set aside, and the matter be remitted back to trial on damages only.

### **Background**

[2] On December 3, 2021, the parties executed a standard form agreement of purchase and sale for a property located in the Birchcliffe-Cliffside district in Toronto. The respondents made two offers to purchase, which were rejected, and the parties agreed on a purchase price of \$2,100,000 with a closing date of February 17, 2022.

[3] On December 7, 2021, the appellants advised the respondents that they had changed their minds and they no longer wanted to sell the house. Over a week later, the appellants' lawyer sent a letter to the respondents and their real estate agents advising that they would not be completing the transaction in accordance with the agreement of purchase and sale.

[4] On January 11, 2022, the respondents accepted the appellants' anticipatory breach of the agreement and requested the deposit be returned. The appellants returned the deposit on February 8, 2022. On April 25, 2022, the respondents

bought a property in the Beaches neighbourhood of Toronto, which closed on July 14, 2022.

[5] On June 3, 2022, the respondents commenced an action claiming damages arising from the breach of the agreement of purchase and sale. At the hearing of the summary judgment motion, the respondents and the appellants' real estate agents, who were third parties at the motion, tendered expert reports regarding the market value of the Birchcliffe-Cliffside property. The motion judge found that April 25, 2022 was the appropriate assessment date to determine the damages that flowed from the breach of the agreement of purchase and sale. The expert retained by the respondents, Jennifer Skinn, valued the property at \$2,625,000 as of April 25, 2022. The appellants relied on the third parties' expert, Terry Rout, who valued the property at \$2,200,000 on that same date.

[6] The motion judge accepted Ms. Skinn's opinion, finding that she followed the accepted methodologies of the Appraisal Institute of Canada, while Mr. Rout did not. The motion judge also concluded that Ms. Skinn relied on a larger number of comparable properties and explained her adjustments, while Mr. Rout excluded comparable properties and was unable to provide a satisfactory explanation of his adjustments.

## **Analysis**

[7] The appellants submit that the trial judge erred in accepting Ms. Skinn's opinion because she failed to use houses that were comparable to the Birchcliffe-Cliffside property when arriving at her valuation. They argue Ms. Skinn relied on houses that had larger lots and were in a more expensive neighbourhood. Further, the appellants submit that the appraisal of Ms. Skinn, which valued the Birchcliffe-Cliffside property at \$2,625,000 on April 25, 2022, was unreasonable because it represents a 25 percent increase in purchase price in only five months, which conflicts with her own opinion that house prices only increased by approximately ten percent in that time frame.

[8] We do not accept this submission. Nor do we accept the appellant's submission that the motion judge ought to have sent the matter on to trial because of the disparate expert opinions.

[9] The motion judge considered the competing expert opinions and provided reasons for accepting Ms. Skinn's assessment over that of Mr. Rout. We see no error in her reasoning. The appellants seek to have this court compare the competing expert opinions and arrive at a different conclusion. That is not our role.

[10] Furthermore, the motion judge found that after the repudiation, the respondents were actively searching for a comparable property, and they mitigated their damages by purchasing the Beaches property. There was evidence upon

which the motion judge reached this conclusion, and she made no error in doing so.

[11] The motion judge determined that the measure of damages was the difference between the sale price of the Birchcliffe-Cliffside property and its market value on the date that the respondents purchased the Beaches property on April 25, 2022: see *The Rosseau Group Inc. v. 2528061 Ontario Inc.*, 2023 ONCA 814, 169 O.R. (3d) 192, at paras. 62-65. She found that there was a limited supply of houses in the areas the respondents were looking in, and that April 25, 2022 was the first date that they were able to purchase a house that suited their needs. That finding was available to her on the evidence and she made no error in her calculation of the damages.

### **Disposition**

[12] The appeal is dismissed. The appellants shall pay the respondents costs fixed in the agreed upon sum of \$10,000 all inclusive.

“C.W. Hourigan J.A.”

“D.A. Wilson J.A.”

“L. Madsen J.A.”