

COURT OF APPEAL FOR ONTARIO

CITATION: Rosehaven Homes Limited v. Jamil, 2026 ONCA 446

DATE: 20260617

DOCKET: COA-25-CV-0351

Tulloch C.J.O., Rouleau and Lauwers JJ.A.

BETWEEN

Rosehaven Homes Limited* and Bram-Rose Homes Inc.

Plaintiffs (Appellant*)

and

Salman Jamil

Defendant (Respondent)

Neil G. Wilson, for the appellant

Salman Jamil, acting in person

Heard: June 9, 2026

On appeal from the judgment of Justice Phillip Sutherland of the Superior Court of Justice, dated February 20, 2025, with reasons at 2025 ONSC 1159, and from the costs judgment, dated March 26, 2025, with reasons at 2025 ONSC 1881.

REASONS FOR DECISION

[1] The respondent buyer sought an adjournment in addition to an earlier adjournment granted to permit him time to retain counsel. We declined his request.

[2] The appellant seller seeks an increase in the damages award from the respondent buyer, respecting a real estate transaction that failed to close because

the respondent buyer did not have the funds. The appellant seller submits that the trial judge erred in not giving effect to the applicable law.

[3] Where a buyer fails to close on a real estate transaction and the seller re-sells, the law as to the seller's damages is set out in *Arista Homes v. Rahnama*, 2022 ONCA 759, at para. 9:

Where a purchaser fails to close a real estate transaction and the vendor takes reasonable steps to sell the property in an arm's length sale to a third party in mitigation of damages, and there is nothing improvident about the sale, the difference between the two sale prices will be used to calculate the damages: *642947 Ontario Ltd. v. Fleischer* (2001), 56 O.R. (3d) 417 (C.A.) at para. 41; *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.* (1978), 20 O.R. (2d) 401 (C.A.), at para. 55. In such circumstances, there will be no need for expert evidence: *Marshall v. Meirik*, 2021 ONSC 1687, at para. 30, aff'd 2022 ONCA 275.

See also *Marshall v. Hall*, 2025 ONSC 910 (Div. Ct.), 66 R.P.R. (6th) 48, at paras. 52-55.

[4] The trial judge erred in not taking the approach set out in *Arista Homes* and in *Marshall v. Hall*. Expert evidence may be admitted by which the buyer can establish the seller's failure to take reasonable steps to resell in mitigation, or to establish that the resale value was improvident. But in this case the respondent buyer adduced no expert evidence that the resale process was unreasonable, nor did the appraisal evidence establish that the resale price was improvident. There was no evidence that the appellant seller's mitigation efforts fell short. There was

no evidence that the resale price in the arm's length transaction should not be the basis for the loss of bargain damages calculation.

[5] The appeal is allowed and the judgment amended accordingly. The \$36,053.02 that was awarded to the appellant in para. 3 of the judgment is amended to \$69,761.09, reflecting an additional \$33,708.07 from what was ordered below. The \$22,639.32 in pre-judgment interest that was awarded to the appellant in para. 4 of the judgment is amended to \$43,806.14, reflecting an additional \$21,166.82 based on a rate of 12% per annum. The appellant seller admits that the respondent buyer paid the judgment under appeal, leaving the respondent buyer responsible to pay the outstanding balance of \$54,874.89 plus costs, fixed at \$8,000. We decline to adjust the costs on the motion for summary judgment.

"M. Tulloch C.J.O."
"Paul Rouleau J.A."
"P. Lauwers J.A."