

CITATION: Mattamy (Jock River) Limited v. Tripple S & A Inc. 2026 ONSC 4012
COURT FILE NO.: CV-24-97941
DATE: 2026 07 09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MATTAMY (JOCK RIVER) LIMITED, Plaintiff
and
TRIPPLE S & A INC., Defendant

BEFORE: C. MacLeod RSJ

COUNSEL: Ryan Bodnar, for the Plaintiff (moving party)
Mark Addo, for the Defendant (responding party)

HEARD: July 8, 2026

ENDORSEMENT

[1] This is a motion for summary judgment brought on behalf of the plaintiff and resisted by the defendant. The action seeks damages due to the failure of the defendant to close the purchase of a new home located in Ottawa and constructed for the defendant pursuant to an agreement of purchase and sale.

[2] There is no dispute about the basic facts. The plaintiff was the vendor and the defendant the intended purchaser of a new home in Ottawa that had been priced at \$789,301.00 inclusive of extras and HST. The Agreement of Purchase and Sale (APS) was signed in November of 2022 and closing was to have taken place at the end of May of 2024. Unfortunately, this coincided with a period of rising interest rates and by the closing date, the value of the real estate had declined.

[3] Just prior to closing, the defendant advised that it could not close and thus breached the APS. In July of 2024, the plaintiff was able to sell the property for \$699,999.00. The defendant agrees that in 2024, the sale price represented the fair market value of the property.

[4] The plaintiff claims damages of \$97,945.65 consisting of a) the difference in the original sale price and the ultimate sale price (\$89,311.00), b) real estate commission inclusive of HST (\$36,199.50), c) legal fees for entering and terminating the APS (\$2,435.15) and d) a deduction for the forfeited deposits (\$30,000.00). The plaintiff also claims costs of the action and of this motion.

[5] There is no real defence disclosed by the affidavit evidence. The defendant implies but has not proven that the property was originally overvalued. A director of the defendant does attest that Mattamy “represented that the property was offered at a fair market price comparable to similar homes in the same development”. He goes on to state that “following the execution of the APS,

the Defendant became aware that Mattamy had sold comparable homes in the same vicinity for approximately \$664,900 to \$699,990”. That may be literally true, but it is also disingenuous. The listing prices annexed to the affidavit are from 2024 and not 2022. There is no doubt that real estate values had dropped by 20% over that period of time. There is no evidence that Mattamy was listing similar homes at those prices in 2022 when the APS was signed. Moreover, the defendant could conduct its own research to satisfy itself that it was striking a fair bargain. The evidence does not support reliance on a misrepresentation. In any event, the allegation that there was a misrepresentation is vague and is not particularized.

[6] The evidence discloses that in late 2023, about six months prior to the scheduled closing date, the defendant advised the plaintiff that it wished to market the home prior to closing and would be trying to sell it. The plaintiff agreed that it would be permissible for the defendant to buy the home and then to sell it by way of assignment. The defendant listed the property in September of 2023 and in April of 2024 for \$770,000.00 but did not find a buyer.

[7] It was only on May 28, 2024 just days prior to closing and after all closing documents had been prepared that the solicitor for the defendant advised that “due to the market condition, the client advised he would be unable to close the transaction.” The plaintiff accepted this anticipatory breach, advised that it would hold the defendant purchaser liable for the shortfall and expenses and proceeded to list the property for sale.

[8] There is evidence that the purchaser asked the vendor to reduce the price and indicated it would have closed the transaction had Mattamy done so. Mattamy was not prepared to close with the defendant for a reduced price and to waive its right to claim damages.

[9] The APS contained the following provisions in “Schedule Q”:

Purchaser's Acknowledgement

1. The Purchaser acknowledges and agrees that the Purchase Price set out in the Cover Page of this Agreement is firm and binding.

2. The Purchaser is aware that real estate market conditions may fluctuate and change between the time of signing the Agreement and the day of closing. Such fluctuations may be in an upward or downward trend. The Vendor is not responsible for these market conditions, nor does the Vendor have any control over such fluctuations.

3. The Purchaser understands that the Agreement, including all obligations, terms and conditions, is firm and binding upon acceptance. Accordingly, the Vendor will not agree to any changes or reductions to the purchase price, nor will the Vendor provide or be obligated to provide any incentives, deposit structure changes, design studio incentives, adjustments, or changes to the obligations, terms and conditions of the Agreement.

[10] There is no doubt that this schedule formed part of the agreement. The APS and this schedule are attached to both the plaintiff's affidavit and that of the defendant. The defendant knew that the contract was binding and that pursuant to the agreement each party specifically assumed the risk of market fluctuations between the date of signing and the date of closing.

[11] In my view the evidence discloses no defence. There is no evidence of misrepresentation or detrimental reliance. A change in the value of the land and increase in interest rates would be insufficient to demonstrate “frustration of contract” even had that been pleaded. The possibility of price fluctuations was clearly within the contemplation of the parties when they signed the agreement.

[12] There is no genuine issue requiring a trial. It is inappropriate to adjourn a summary judgment motion to a trial simply in the hope that the defendant may be able to marshal better evidence.¹ The motion is the time to put the evidence forward if it exists and failure to do so may attract an adverse inference. It should not attract the inference that better evidence may be developed if the defendant is simply given more time.² Parties opposing summary judgment are obligated to put their best foot forwards unless there is some legitimate reason for being unable to do so (for example the motion is brought before production and discovery).³

[13] It is only where the evidence discloses a genuine issue which cannot be resolved on affidavit evidence or by the use of enhanced fact finding powers, that a trial should be ordered. In this case the trial would be a Rule 76 trial so the evidence in chief would be by affidavit in any event.

[14] No real defence is apparent on the evidence before me. The plaintiff is entitled to judgment for the difference in the price and the commission and fees incurred by having to sell the property a second time.

[15] I accept that real estate commission and wasted legal fees were also expenses incurred by the plaintiff but I have a slight issue with the amounts that are claimed. The plaintiff’s evidence does not disclose whether or not commission would have been paid on the first sale and whether or not some of the legal fees charged by the real estate lawyer were or could have been salvaged for a closing two months later than planned. For that reason, I reduce the commission damages by 50% and the legal fees by \$1,000.00. In conclusion, there will be judgment for \$78,845.9.

[16] The plaintiff is also entitled to costs of the action. On the basis of the costs outline, I award costs on a partial indemnity scale and fix them at \$8,000 inclusive of disbursements and HST.

Mr. Justice C. MacLeod

Date: July 8, 2026

¹ *Lukey Capital Corp v. 1000110300 Ontario Inc. et al*, 2024 ONSC 6589

² *Dia v. Calypso Theme Waterpark*, 2021 ONCA 273 and see specifically Rule 20.02

³ *Ottawa-Carleton Standard Condominium Corporation No. 668 v. Urban Capital (York) Inc.*, 2018 ONSC 1260