

CITATION: 2225064 Ontario Ltd. v. 55 Bradwick Limited, 2026 ONSC 4850
COURT FILE NOS.: CV-25-00004635-0000 and CV-26-00000048-0000
DATE: 20260824

ONTARIO
SUPERIOR COURT OF JUSTICE

COURT FILE NO.: CV-25-00004635-0000

BETWEEN:)
)
2225064 ONTARIO LTD.) Wendy Greenspoon-Soer, for the Applicant
)
Applicant)
)
– and –)
)
55 BRADWICK LIMITED and REN/TEX) Fabio M. Soccol, for the Respondent, 55
REALTY INC.) Bradwick Limited
)
Respondents) Jaime B. McKibbon, for the Respondent,
) Ren/Tex Realty Inc.
)

COURT FILE NO.: CV-26-00000048-0000

AND BETWEEN:)
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55 BRADWICK LIMITED) Fabio M. Soccol, for the Applicant
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Applicant)
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– and –)
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2225064 ONTARIO LTD. and REN/TEX) Wendy Greenspoon-Soer, for the
REALTY INC.) Respondent, 2225064 Ontario Ltd.
)
Respondents) Jaime B. McKibbon, for the Respondent,
) Ren/Tex Realty Inc.
)
)
) **HEARD:** July 30, 2026

REASONS FOR DECISION

CHARNEY J.:

- [1] These proceedings arise from the aborted sale of a commercial property located at 55 Bradwick Drive, Vaughan, Ontario (the “Property”). The transaction failed to close due to a Notice of Security Interest registered on the title to the Property. The parties seek a determination of who breached the purchase agreement and who is entitled to the deposit.
- [2] There is an Application and a Cross-Application, each with a different court file number. The Applicant in one proceeding is the Respondent in the other proceeding, and vice versa. The two proceedings are simply mirror images of each other and the parties have filed only one set of materials for both applications. For ease of reference, I will refer to the vendor, 55 Bradwick Limited, as the Vendor, and to the purchaser, 2225064 Ontario Ltd., as the Purchaser.
- [3] The second Respondent, Ren/Tex Realty Inc., is the listing brokerage that holds the deposit. It is named as a party to the Application for the purpose of obtaining a Court Order to pay the deposit to the successful party, and took no position in these proceedings.
- [4] Depending on the outcome, the Purchaser is also requesting an order directing a trial on the issue of damages. The Vendor is seeking only to retain the deposit.

Facts

Agreement of Purchase and Sale

- [5] The Vendor and Purchaser entered into an Agreement of Purchase and Sale (APS) on April 11, 2025, whereby the Purchaser agreed to purchase the Property from the Vendor for the purchase price of \$9,750,000.00. The Purchaser purchased the Property for use by a related corporation which carries on business as a manufacturer and distributor of frozen bakery products.
- [6] The Purchaser paid an initial deposit of \$250,000 and a further deposit of \$200,000, for a total of \$450,000.00, held by the Brokerage in trust (the “Deposit”). The closing date pursuant to the APS was originally October 1, 2025, and was extended by agreement to October 3, 2025, as set out below.
- [7] The following terms of the APS are relevant to this case:
 - Para. 4: CHATTELS INCLUDED:** None. Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.
 - Para. 5: FIXTURES EXCLUDED:** There are no fixtures excluded.
- [8] The APS contained a standard term allowing the Purchaser to require the Vendor to remove or remedy “any valid objection to title or ... any outstanding work order or deficiency notice” within a set deadline, and providing for the termination of the agreement and return of the deposit if the seller did not do so and the buyer refused to waive its rights:

Para. 8: TITLE SEARCH: Buyer shall be allowed until 6:00 p.m. on the 12th day of September, 2025 (Requisition Date) to examine the title to the property at his own expense...

Para. 10: TITLE:.... If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact that said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and accept against risk of fire (Title Insurance) in favor of the Buyer and any mortgage, (with all related costs at the expense of the Seller), and which the Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Cooperating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of title, Buyer shall be conclusively deemed to have accepted Seller's title to the property. [Emphasis added.]

- [9] Paragraphs 8 and 10 are part of the standard form agreement for agreements of purchase and sale. These provisions have been interpreted by various courts over the years. For example, in *2651171 Ontario Inc. v. Brey*, 2022 ONCA 148, the Court of Appeal referenced “the serious consequences that would flow from either meeting or failing to meet the deadline”. The Court stated, at para. 15:

The deadline for making the paragraph 8 objections was crucial because of the serious consequences that would flow from either meeting or failing to meet the deadline, as provided for in paragraph 10 of the agreement of purchase and sale. Paragraph 10 provided that if the respondent Brey failed to “remove, remedy or satisfy” “any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued”, which was made within the deadline provided for in paragraph 8, the agreement of purchase and sale would be at an end and the deposit would be returned to the appellant. However, it also stipulated that, “[s]ave as to any valid objection so made by such day and except for any objection going to the root of the title, [the appellant] shall be conclusively deemed to have accepted [the respondent Brey’s] title to the property.”

- [10] In addition, there was a Schedule “A” appended to the APS, the relevant terms of which provided:

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE VENDOR

The Seller hereby represents, warrants and covenants to the buyer the following representations, warranties and covenants:

the seller is the registered legal owner of the property:

...

Notwithstanding anything contained herein to the contrary the seller shall discharge all mortgages and will deliver the property free and clear of any encumbrances.

...

16. CHATTELS AND FIXTURES

The purchase price includes all existing electric light fixtures, heating and HVAC equipment, and appurtenances thereto and all other chattels, fixtures and equipment, which may be the property of the Seller and used in connection with the said premises, and all of which the Seller warrants to be free and clear of any encumbrances whatsoever and in good working order as of the date of closing.

- [11] The Court of Appeal has directed that a commercial contract should be interpreted “as a whole, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective”: *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust*, 2007 ONCA 205, 85 O.R. (3d) 254, at para. 24; *2651171 Ontario Inc.*, at para. 16.
- [12] Paragraphs 4 and 16 of Schedule “A” to the APS must be read together with paras. 8 and 10 of the APS. This means that, subject to requisitions that go to the root of title, or that are matters of conveyance, or latent title matters (all of which are discussed below), any requisitions relating to paras. 4 and 16 of Schedule “A” must be made by the deadline specified in paragraphs 8 and 10 of the APS. Otherwise, the deadline in paragraphs 8 and 10 is “rendered ineffective”.

Notice of Security Interest (NOSI)

- [13] In May, 1985 a former tenant of the Property – Windsurfing International Inc. - granted a security interest, as debtor, over the tenant’s equipment and machinery to a secured party, International Mercantile Factors Ltd. This security interest was registered on title to the Property on June 4, 1985 as Instrument No. LT228703 (the “NOSI”).
- [14] The NOSI provided as follows:

NOTICE OF SECURITY INTEREST

Notice of Security Agreement made between Windsurfing International Canada Inc. (Debtor) and International Mercantile Factors Ltd., as secured party.

By a security agreement made between Windsurfing International Canada Inc of 55 Bradwick Drive, Concord Ontario... as debtor, and International Mercantile Factors Limited as secured party, a security interest has been created in the undertaking of the debtor and all property of which the debtor is now or may hereafter become the owner including without limiting the foregoing all equipment, machinery, fixtures, furniture, plant and all accessories installed in or affixed or attached or appertaining to any of the foregoing.

A description of the land upon which the collateral is located or is affixed or is to be affixed is attached here to a Schedule "A".

- [15] The NOSI was signed by the secured party, but was not signed by the debtor (the former tenant).
- [16] The Vendor did not grant the NOSI to the secured party. The Vendor was not a debtor in respect of the NOSI and was not a party to the NOSI. The only parties were the former tenant and the secured party.
- [17] The lease with the former tenant lasted approximately 2 years and ended in August 1987 when the former tenant vacated the Property. The former tenant's equipment, machinery and other leasehold property that could have been secured by the NOSI was removed when the tenant vacated the property.
- [18] The Vendor was not given notice and did not know that the NOSI had been registered on title, and first learned about its existence in 2024.
- [19] The Vendor's real estate lawyer made efforts to have the NOSI deleted from the title by trying to track down the former tenant and the secured party. The former tenant had received a Certificate of Dissolution in August 1987. The secured party was amalgamated with another corporation and ceased activity in Ontario in 1999. The lawyer discovered that the secured party had, through amalgamation, become known as Charter Capital Corporation. On July 9, 2025, the lawyer requested a discharge of the NOSI from Charter Capital Corporation, but that corporation advised that the assets of the secured party were sold to a third party and resold further, and they did not know who was authorized to provide a discharge of the NOSI.
- [20] On August 7, 2025, the lawyer for the Vendor began preparation of an application under s. 102 of the *Land Titles Act* to remove the NOSI registered against the Property. To that end, he wrote to the Office of Public Services and Procurement Canada to determined whether it had any interest or claims against the secured party. On September 24, 2025 the Office of Public Services and Procurement Canada confirmed that it had no interest or claims

against the secured party and did not oppose the removal of the NOSI registered on the Property.

NOSI Requisition

- [21] As indicated above, paras. 8 and 10 of the APS provided that September 12, 2025 was the date for the Purchaser to examine title to the Property and to make any valid objections to title.
- [22] The Purchaser's solicitor delivered the NOSI Requisition on September 19, 2025, which was seven days after the Requisition Date of September 12, 2025 specified in paragraph 8 of the APS. The Requisition required "On or before closing, production and registration of a good and valid discharge of this Notice of Security Interest".
- [23] The lawyer for the Vendor responded:

Without admitting the validity of any of the requisitions contained in your letter of September 19, 2025 by reason that the time during which you were permitted to submit the same had already elapsed, and specifically denying your right to submit further or other requisitions, but merely so as to assist you in your investigation with respect to title, we wish to respond as follows...

The Notice of Security Interest registered as Instrument LT228703 that you are referring to arises from lease of part of the premise that has long since expired and for a tenant of the premises that has peacefully vacated the premises more than 20 years ago and as such all the claims and rights of such tenant and those claiming a security interest under such lease have also expired and are now statute barred. We have made application under section 102 of the Land Titles Act to delete the said notice of security interest. On or before closing we will provide you with evidence of its deletion.

- [24] Deleting the NOSI from title proved to be more difficult than the lawyer for the Vendor anticipated.
- [25] On September 26, 2025, the lawyer for the Vendor submitted to the Land Registry Office for pre-approval an Application by Owner of Land for Cessation of Encumbrance seeking to delete the NOSI pursuant to Section 102 of the *Land Titles Act* (the "Section 102 Application").

Aborted Closing

- [26] On the Closing Date of October 1, 2025, the lawyer for the Purchaser sent an email requesting a solicitor's undertaking to discharge the NOSI after closing. The Vendor's lawyer immediately sent the signed Solicitor's Undertaking to Discharge the NOSI, as requested. The undertaking stated:

In Consideration of and notwithstanding the closing of the above noted transaction, we hereby personally undertake to complete and register an application to delete the NOSI registered as instrument number LT228703 and to forthwith thereafter provide you with registration particulars thereof.

[27] The Vendor's lawyer also provided the Purchaser's lawyer with a copy of his September 26, 2025 s. 102 Application to the Land Registry Office. This Application included both owner and solicitor statements and the required Covenant to Indemnify the Land Titles Assurance Fund which had been submitted to the Land Registry Office.

[28] In an email near the end of day on October 1, 2025, the Purchaser's lawyer wrote to the Vendor's lawyer:

The lender's lawyer is looking for an explanation as to why you asked for pre-approval of the Application to delete the NOSI as opposed to registering it. Please advise.

[29] The Vendor's lawyer responded immediately, advising that he could not register the Application to delete the NOSI without pre-approval from the Land Registry Office because pre-approval from the Land Registry Office was required by Ministry of Government and Consumer Services Bulletin No. 2017-03. That Bulletin provides:

Pre-approval Necessary in Every Case

Since Section 102 applications are entirely at the discretion of the land registrar, all applications must be pre-approved (pursuant to the pre-approval protocols then in place for the land registry office in which the lands are situate) before being submitted for registration. Under no circumstances may a Section 102 application be submitted directly into the land registration system without approval. Section 102 applications that are submitted for registration without first being pre-approved will be denied certification and be immediately withdrawn without any refund of the registration fees.

[30] By 4:21 p.m. on October 1, 2025, it became clear that the transaction would not close that day, and the parties agreed to extend the closing until October 2, 2025.

[31] On October 2, 2025, the Purchaser's lawyer wrote to the Vendor's lawyer stating:

The only o/s [outstanding] item is the removal of the NOSI. So far Steward Title has refused to insure this NOSI and the lender will not advance without that exception being removed. I believe that the only solution is for you to register your application. Once registered I will provide it to the insurer together with your undertaking and that, I hope should satisfy them. Please let me know if you can do so.

- [32] Later on October 2, 2025, the Purchaser's lawyer sent a second email to the Vendor's lawyer:

This transaction was scheduled to be completed on October 1, 2025. As you were not able to delete Instrument No. LT228703, Notice of Security Interest, and thus provide good title to the Buyer and its lender, CIBC, we agreed to extend the closing to October 2, 2025. At approximately 3:09 p.m. today you advised that even though you had submitted the Application to Delete to the registrar for pre-approval, it was not obtained and you were not certain when it might be approved...I advised you that the CIBC lawyers...would not advance the mortgage money until the Application was registered. They do not understand why you opted to take the route of pre-approval as opposed to registering the Application and then dealing with the registry office if they rejected it.

- [33] The Purchaser's lawyer took the position that the Vendor's delay in closing had caused the Purchaser "great inconvenience and financial damages", and proposed a final closing date of October 9, 2025 if the Vendor reimbursed the Purchaser \$6,500 per day from October 1, 2025, for the delay.

- [34] These terms were not agreed to by the Vendor.

- [35] On October 3, 2025, the Purchaser's lawyer wrote again to the Vendor's lawyer to advise that the insurance and release of the mortgage funds had been approved:

Our title insurer has confirmed that it will underwrite the NOSI registration, and the lender's counsel has authorized release of the mortgage funds to my office. My client is therefore fully ready, willing and able to close this transaction today.

Your client's failure to close on October 1 or 2 has caused my client to incur significant and ongoing expenses, including loan interest at approximately \$1,500 per day. While my client is prepared, as a concession, to waive certain additional costs incurred, compensation is nonetheless required. Specifically, my client demands payment of \$1,500 representing one day's loan interest, together with a property tax adjustment effective as of October 2.

- [36] Five hours later on October 3, 2025, the Purchaser's lawyer wrote again to advise that he was concerned that the Land Titles Registrar would require his client to "provide a full indemnity with respect to any potential claims arising from the removal", and that his insurer had advised that the coverage would not cover any potential indemnity insurance. He stated:

My client is not prepared to assume such risk, even if supported by a cross indemnity from your client, as the enforceability and ultimate value of such an indemnity remain uncertain. We have not reached any agreement to

extend the closing of this transaction, given the uncertainty as to when the application may be processed and registered, or alternatively, when your client might succeed in obtaining a court order directing the deletion of the NOSI from title.

My client is ready, willing and able to complete the transaction in accordance with the Agreement of Purchase and Sale. Your client, however, is unable to convey good and marketable title and is therefore not in a position to complete the sale. In the circumstances, your client is in breach of the Agreement of Purchase and Sale. My client hereby expressly reserves all rights and remedies available to it at law and in equity, including but not limited to a claim for damages and the return of all deposits paid.

- [37] The Covenant to Indemnify the Land Titles Assurance Fund is a requirement set out in Bulletin No. 2017-03. It can be provided by either the new registered owner or a prior registered owner, to be determined by the land registrar on a case-by-case basis. The Vendor did sign a Covenant to Indemnify the Land Titles Assurance Fund when it applied to delete the NOSI from title on September 24, 2025.
- [38] The Vendor's lawyer responded that evening, taking the position that it was the Purchaser who defaulted on the APS.
- [39] On October 6, 2025, the Purchaser's lawyer wrote again, with "formal notice that the Agreement of Purchase and Sale is hereby terminated" and demanding the immediate return of deposit funds.
- [40] The parties continued their discussions in an effort to find some solution to the indemnity insurance issue, but without success. I will not review these discussions in any detail because, in my view, the APS was terminated on October 3, 2025.

Deletion of NOSI from title

- [41] On October 9, 2025, the Land Registry Office advised the lawyer for the Vendor that they could not proceed under s. 102 of the *Land Titles Act*, and a Court Order was required to delete the NOSI from title.
- [42] Accordingly, the Vendor brought a court application to delete the NOSI from title and obtained the Court Order on November 24, 2025, declaring the NOSI to be of no force and effect and directing the Land Registry Office to delete it from title pursuant to Section 56(5) of the *Personal Property Security Act*, R.S.O. 1990.

Mitigation of Damages

- [43] Following the termination of the APS, the Vendor re-sold the Property to a third party for \$250,000 more than the sale price in the APS.

Positions of the Parties

- [44] The Vendor takes the position that the Purchaser breached the APS. The Purchaser's solicitor delivered the NOSI Requisition on September 19, 2025, which was seven days after the Requisition Date of September 12, 2025 specified in paragraph 8 of the APS. The NOSI was a claim against the chattels of the former tenant that had moved out of the Property almost 40 years before the closing date of the APS. The NOSI did not go to the root of title and was not a matter of conveyance. Accordingly, the late requisition meant that the Purchaser could not refuse to close simply because the NOSI remained on title.
- [45] The Purchaser takes the position that the NOSI went to the root of title, or, in the alternative, was a matter of conveyance. As such, the fact that the NOSI Requisition was delivered after the requisition date in the APS is of no consequence. The Purchaser was entitled to insist upon the deletion the NOSI, notwithstanding that the Requisition was submitted after the deadline for submitting title requisitions had lapsed. Since the Vendor could not convey good and marketable title due to the registration of the NOSI on title, it was the Vendor that breached the APS.

Analysis

Notice of Security Interest (NOSI)

- [46] A Notice of Security Interest (NOSI) is a legal notice registered on the land title registry under s. 54(1) of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 (PPSA), to notify others of a security interest in a fixture (such as HVAC equipment) attached to the property.
- [47] Central to the legal issues raised in this case is the legal effect of a NOSI registered under the PPSA. Sections 54(1) and (5) of the PPSA provides:

54 (1) A notice of security interest, in the required form, may be registered in the proper land registry office, where,

(a) the collateral is or includes fixtures or goods that may become fixtures...

(5) Where a notice has been registered under subsection (1), every person dealing with the collateral shall be deemed for the purposes of subsection 34 (2) to have knowledge of the security interest.¹

¹ Section 54 of the PPSA was amended in 2024 by the *Homeowner's Protection Act*, 2024, S.O. 2024, c. 18, to prohibit the registration of a NOSI with respect to consumer goods defined as "goods installed in a residential home that are used primarily for personal, family or household purposes". Pursuant to this amendment, all

[48] Also relevant to this analysis are the following sections of the PPSA:

s. 1.(1) “collateral” means personal property that is subject to a security interest;

“security interest” means an interest in personal property that secures payment or performance of an obligation...

s. 4.(1) Except as otherwise provided in this Act, this Act does not apply,

(e) to the creation or assignment of an interest in real property, including a mortgage, charge or lease of real property other than,

(i) an interest in a fixture, or

(ii) an assignment of a right to payment under a mortgage, charge or lease where the assignment does not convey or transfer the assignor’s interest in the real property;

s. 11.(1) A security interest is not enforceable against a third party unless it has attached.

(2) Subject to section 11.1 [not relevant here], a security interest ... attaches to collateral only when value is given, the debtor has rights in the collateral, or the power to transfer rights in the collateral to a secured party and,

(a) the debtor has signed a security agreement that contains,

(i) a description of the collateral sufficient to enable it to be identified,

...

s. 34.(1) A security interest in goods that attached,

(a) before the goods become a fixture, has priority as to the fixture over the claim of any person who has an interest in the real property; or

(b) after the goods became a fixture, has priority as to the fixture over the claim of any person who subsequently acquired an interest in the real property, but not over any person who had a registered interest in

consumer NOSIs currently registered on land titles are deemed to be expired. While these expired NOSIs continue to appear on land title documents, the land is not affected by the NOSI. This amendment does not apply to the NOSI at issue in this case.

the real property at the time the security interest in the goods attached and who has not consented in writing, to the security interest or disclaimed an interest in the fixture.

(2) A security interest mentioned in subsection (1) is subordinate to the interest of,

(a) a subsequent purchaser for value of an interest in the real property; or

(b) a creditor with a prior encumbrance of record on the real property to the extent that the creditor makes subsequent advances,

if the subsequent purchase or subsequent advance under a prior encumbrance of record is made or contracted for without knowledge of the security interest and before notice of it is registered in accordance with section 54.

[49] The remedy given to the secured party who has priority under the PPSA is found in subsections 34 (3) and (7):

34 (3) If a secured party has an interest in a fixture that has priority over the claim of a person having an interest in the real property, the secured party may, on default and subject to the provisions of this Act respecting default, remove the fixture from the real property if, unless otherwise agreed, the secured party reimburses any encumbrancer or owner of the real property who is not the debtor for the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.

...

(7) A person having an interest in real property that is subordinate to a security interest in a fixture may, before the fixture has been removed from the real property by the secured party in accordance with subsection (3), retain the fixture upon payment to the secured party of the amount owing in respect of the security interest having priority over the person's interest.

[50] In the present case, the NOSI included all fixtures that were the property of the tenant. Those fixtures were not identified in the NOSI.

[51] The NOSI could not, and did not purport to, include fixtures that were the property of the Landlord. Under the PPSA, the tenant cannot grant a security interest in the landlord's property.

[52] Pursuant to para. 5 of the APS, all fixtures were included in the APS.

- [53] The APS did not include any chattels, and so that part of the NOSI is not relevant.
- [54] Pursuant to paras. 8 and 10 of the APS, the Purchaser had until September 12, 2025 to examine the title to the property to raise any valid objection to title to be removed, remedied or satisfied by the Vendor. “Save as to any valid objection so made by such day and except for any objection going to the root of title, Buyer shall be conclusively deemed to have accepted Seller’s title to the property.” [Emphasis added.]
- [55] There is no dispute that the Purchaser did not raise the objection to title in respect of the NOSI by the September 12, 2025 deadline. The central question for the purpose of this case is whether that objection fell within either of the two exceptions to this deadline: whether the objection went to the “root of title” or was “a matter of conveyance”.
- [56] The legal principles relevant to each of these questions were helpfully summarized by Perell J. in *Chan v. Mangal*, 2022 ONSC 2068, at paras. 21 – 25 [footnotes omitted]:

The title search provision in the standard agreement of purchase and sale provides deadlines for searches and inquiries about the title to the property, municipal work orders, and deficiency notices, the present use of the property, and insurability. If the purchaser misses the deadline for these inquiries, some of which, strictly speaking, are not title matters, then the literal effect of the concluding part of the title provision is to deny the purchaser the right to object, unless the objection is classified as an objection “going to the root of title,” which is a very serious title problem that could amount to a total failure of consideration.

However, notwithstanding the wording of the Title provision, courts allow purchasers to object to what are known as matters of conveyance after the requisition deadline. The case law has recognized different kinds of title requisitions. There are four kinds of title requisitions: (1) title requisitions going to the root of title; (2) title requisitions that are matters of conveyance, which means that are within the power of the vendor to satisfy; (3) latent title requisitions, which refers to title requisitions that cannot be found during the search period; and (4) what might be called a title requisition simpliciter; that is, a requisition that is not latent, or a matter of conveyance, and it does not go to the root of title.

Matters going to the root of title were best defined in a famous lecture given at the Law Society’s Special Lectures by William Howland, who later went to the bench and eventually was Chief Justice of Ontario. His lecture is quoted in *Majak Properties Ltd. v. Bloomberg*. Mr. Howland stated:

Are there any objections to title which are so serious that the purchaser can still make them even though they were not submitted within the prescribed time for making title objections? The answer is that

objections which go to the “root of title” can still be raised by the purchaser. If there is a total failure of consideration and the purchaser would receive nothing at all, not even the possession of the property, an objection to title on such grounds would go to the root of title [...] Title is the foundation of the contract. Apart from the situation where the vendor has no power to sell, it is difficult to define accurately what objections go to the root of title. If the vendor does not have the power to give the purchaser what it is intended by the contract he shall have then the objection [sic] may then go to the root of title [...]

The second kind of requisition is a requisition that is a matter of conveyance. Matters of conveyance may be requisitioned up until closing notwithstanding the requisition deadline specified in the standard provision found in agreements of purchase and sale. In his lecture, Mr. Howland described matters of conveyance. He stated:

In the first place a distinction must be drawn between matters of conveyance and matters of title. If the objection is one of conveyance rather than of title, the purchaser does not have to submit it within the time for submitting requisitions on title. Matters of conveyance may be said to be those of which the vendor alone or with other persons whose concurrence he can require is in a position to convey the title to the property. They assume that the vendor has a right to make title or to cause it to be made and are concerned with the satisfaction of the right. [...]

By this definition, a requisition that is within the power of the vendor to handle is a matter of conveyance.

The third type of requisition is latent title matters; these are title matters that are not discoverable during the requisition period. For present purposes, I need not discuss this type of requisition. I do need to address the fourth kind of requisition, which may be described as a requisition simpliciter; these are simple title requisitions that need to be made in a timely way. These title requisitions are: (a) not matters of conveyance, (b) not matters that go to the root of title, and (c) not latent title matters. If the purchaser's lawyer fails to note and requisition about this type of title requisition in a timely manner, then the purchaser will lose the right to object at all, because pursuant to the Title provision of the standard form agreement of purchase and sale, he or she will be deemed to have accepted the vendor's title to the property. [Emphasis added.]

Does the NOSI go to the root of title?

- [57] Based on the various provisions of the PPSA quoted above, it is my view that the NOSI over the former tenant's fixtures did not go to the root of title. A NOSI, even when

registered on title, is not a matter of title to the real property. It is a warning to a subsequent purchaser of the real property that chattels on the property may be subject to a security interest. The PPSA does not create rights in real property: PPSA s. 4(1): *Home Trust Company v. Kitchener (City)*, 2013 ONSC 2190, at para. 25.

- [58] In *Grant Thornton Limited, as Court-appointed Receiver v. 1902408 Ontario Ltd.*, 2021 ONSC 1237, Cavanagh J. held that a claim to enforce and realize on a security interest in personal property, including fixtures, under the PPSA was subject to the two year limitation period in the *Limitations Act, 2002*. He held, at para. 27:

Sluyter argues that the PPSA applies to land because, pursuant to the exclusion in s. 4(1)(e), it applies to fixtures. I disagree. The PPSA recognizes that goods attached to real property may retain their discrete character as personal property. The PPSA allows a secured party to take a security interest in tangible personal property, “goods” which became fixtures, something that was not allowed at common law. The security interest that the PPSA permits a secured party to take in goods which are fixtures is an interest in personal property. It is not an interest in real property. [Emphasis added.]

- [59] The PPSA does not create a right or interest in real property – the interest of the secured party is limited to the fixture, which, by virtue of the PPSA, retains its character as personal property. Assuming the validity of the NOSI that was registered on title, s. 34(3) of the PPSA permits the security holder with an interest in a fixture that has priority over the claim of a person having an interest in the real property to, on default, remove the fixture from the real property subject to the cost of repairing any physical injury but excluding diminution in the value of the real property caused by the absence of the fixture or by the necessity for replacement.
- [60] This right of the secured party to remove the fixture does not create “a total failure of consideration” such that “the purchaser would receive nothing at all, not even the possession of the property”, and does not, therefore, go to the root of title.
- [61] That does not necessarily end the analysis. In *EPRF Holdings Limited v. Fergus Bloor Inc.*, 2024 ONCA 707, the Court of Appeal stated, at para. 23 that,

[A]ll of the surrounding circumstances must be considered to determine if the alleged impediment to title would, in any significant way, affect the purchasers' use or enjoyment of the property”. The materiality of a deficiency should accordingly be assessed with regard to how, objectively speaking, the defect could impede the peaceful enjoyment of property.

- [62] I must be careful in applying this analysis to the present case. The *EPRF Holdings* case, and the authority relied on in that decision (*1854822 Ontario Ltd. v. The Estate of Manuel Martins*, 2013 ONSC 4310), related to a requisition that was made within the Requisition Date deadline. The issue, therefore, was not whether the defect (an open building permit)

went to the root of title, but whether it was a valid requisition. Nonetheless, the Court of Appeal in *EPRF Holdings* did adopt the following sentence from *1854822 Ontario Ltd.*: “Where “the purchaser’s right to enjoyment of the property is by no means certain”, the open building permit is not a “minor defect” but rather goes to the root of title”.

- [63] This, to me, muddies the water because a requisition made *before* the Requisition Date does not have to go to the root of title to be a valid requisition. Out of an abundance of caution, however, I will consider whether the NOSI “could impede the peaceful enjoyment of the property”.
- [64] In the present case, the evidence is that the NOSI applied only to fixtures that might have been installed by the former tenant 40 years before. The lease with the former tenant ended in August 1987 when the former tenant vacated the Property. The former tenant’s equipment, machinery and other leasehold property that could have been secured by the NOSI was removed when the former tenant vacated the Property.
- [65] Moreover, the NOSI itself did not comply with the requirements of s. 11 of the PPSA, which provides that a security interest is not enforceable against a third party unless it has attached. Section 11(2)(a)(i) provides that a security interest attaches to collateral only when “the debtor has signed a security agreement that contains... a description of the collateral sufficient to enable it to be identified”. The NOSI registered in this case was not signed by the debtor, and, more importantly, did not include “a description of the collateral sufficient to enable it to be identified”.
- [66] Finally, on October 1, 2025, the Vendor’s lawyer provided an undertaking to discharge the NOSI post-closing.
- [67] Given this evidence, there was no real prospect that the NOSI could impede the Purchaser’s peaceful enjoyment of the Property or materially affect the use of the Property.

Is the NOSI a matter of conveyance?

- [68] As indicated above, matters of conveyance may be requisitioned up until closing notwithstanding the requisition deadline specified in the standard provision found in agreements of purchase and sale. Perell J. adopted the following definition of “matters of conveyance” in *Chan v. Mangal*: “Matters of conveyance may be said to be those of which the vendor alone or with other persons whose concurrence he can require is in a position to convey the title to the property.”
- [69] The distinction between matters of conveyance and matters of title was also explained by Krever J. (as he then was) in *O’Neil v. Arnew*, 1976 CanLII 758 (ON HCJ), 16 O.R. (2d) 549, at para. 28:

A matter of conveyance... as opposed to one of title, is an encumbrance which the vendor is able to pay off and discharge “by virtue of his own interest in, or his own power over, the property, or [by] the concurrence of a party... which the vendor can compel”:

...

If there are liens, charges or encumbrances on the property which the purchaser is not to assume these are only matters of conveyance if they can be discharged by the vendor as a matter of right – for example, if there is a right to prepay a mortgage.

[citations omitted.]

- [70] Mortgages and liens are generally matters of conveyance as that term has been defined, because they can be discharged by the vendor as of right. Discharge of these encumbrances requires only that the vendor pay a specified amount of money.
- [71] Similarly, a NOSI in which the Vendor is the debtor would also be a matter of conveyance because the Vendor, as debtor, can discharge the NOSI by paying a specified amount of money. This may be true even in some cases in which the Vendor is not the debtor but can identify the secured party and pay the debt to have the NOSI deleted.
- [72] In the present case, however, the Vendor was not a party to the security agreement, and, despite making best efforts, was not able to locate the secured party in order to have the NOSI deleted from title. Having been unable to find the secured party, the Vendor tried to bring an Application under s. 102 of the *Land Titles Act* to have the NOSI deleted from title, but this application was rejected by the Land Registry Office. Finally, the Vendor brought a court application to delete the NOSI from title and obtained the Court Order on November 24, 2025. The Vendor could not, however, obtain a court order “as a matter of right”. A court order could not be obtained by the Vendor acting “alone or with other persons whose concurrence he can require.” The Vendor had to persuade the Court that the order was merited in the circumstances of the case.
- [73] Thus, I conclude that the NOSI was not a matter of conveyance in this case because the Vendor had no right to discharge it as a matter of right.

Forfeiture of Deposit

- [74] Based on the foregoing analysis, the Purchaser failed to make the NOSI requisition by the Requisition Date and was, by para. 10 of the APS, “conclusively deemed to have accepted Seller’s title to the property”. It was, therefore, the Purchaser who breached the APS by failing to close on October 3, 2025.
- [75] The innocent party is presumptively entitled to retain the deposit without the necessity to prove damages.
- [76] The Purchaser seeks relief from forfeiture of the deposit under s. 98 of the *Courts of Justice Act*, which authorises the Court to grant relief against forfeiture “on such terms as to compensation or otherwise as are considered just”.

- [77] It is well established that a deposit is intended for forfeiture to the vendors upon the purchaser's breach of contract. Furthermore, a deposit may be forfeited without proof of damages. In *De Palma v. Runnymede Iron & Steel Co.*, 1949 CanLII 73 (ON CA), [1950] O.R. 1 (C.A.), at p. 8, the Court of Appeal held that where the sale of land does not close due to a default by the purchaser, the vendor is entitled to the deposit without having to prove actual damages. The Court of Appeal adopted the following statement from *Howe v. Smith*, (1884), 27 Ch. D. 89, by Fry L.J. at p. 101, as follows:

Money paid as a deposit must, I conceive, be paid on some terms implied or expressed. In this case no terms are expressed, and we must therefore inquire what terms are to be implied. The terms most naturally to be implied appear to me in the case of money paid on the signing of a contract to be that in the event of the contract being performed it shall be brought into account, but if the contract is not performed by the payer it shall remain the property of the payee. It is not merely a part payment, but is then also an earnest to bind the bargain so entered into, and creates by the fear of its forfeiture a motive in the payer to perform the rest of the contract.

- [78] In *Pleasant Developments Inc. v. Iyer*, 2006 CanLII 10223 (ON SCDC), the Divisional Court summarized the legal principles applicable to deposits at paras. 7-8:

The law is clear that a deposit may be forfeited without proof of damages. See *DePalma v. Runnymede Iron & Steel Co.*, 1949 CanLII 73 (ON CA), [1950] 1 D.L.R. 557. In other words even in the case where the vendor resells at a purchase price that is high enough to compensate for any loss from the first sale, the vendor may nevertheless retain the deposit. See *Perell and Engell, Remedies and the Sale of Land*, 2nd ed at p. 186.

While I accept that the language of the contract is not by itself determinative, the use of the word "deposit" will imply that the payment is intended for forfeiture upon the purchaser's breach. See *Perell and Engell, supra*, at p. 187. The common law position is that if the agreement is silent and the purchaser defaults, the deposit, by its very nature is forfeited to the vendor. See *Salavatore et al, Agreement of Purchase and Sale (Toronto: Butterworths, 1996)* at p. 61.

- [79] See also: *Benedetto v. 2453912 Ontario Inc.*, 2018 ONSC 4524, at paras. 25-28; *Tibor Urac v. Mohamed Ferawana*, 2017 ONSC 385, at para. 32.
- [80] Even if the amount paid is characterized as a non-refundable deposit, if the amount of the deposit is out of all proportion to the losses suffered, the court may order the deposit be returned: *Dovbush v. Mouzitchka*, 2016 ONCA 381, at para. 31, and cases cited therein. To obtain relief from forfeiture on this basis, the Purchaser must establish i) the forfeited sum was out of proportion to the damages suffered; and ii) it would be unconscionable for the

vendor to retain the money: *Varajao v. Azish*, 2015 ONCA 218, at para. 11; *Redstone Enterprises v. Simple Technology*, 2017 ONCA 282, at para. 20.

- [81] The Court of Appeal noted in *Redstone*, at para. 19: “Deposits are commonplace in the operation of the market, especially for larger assets such as residential and commercial real estate”. The Court emphasized “that relief against forfeiture should only occur in exceptional circumstances”: *Redstone*, at para. 65.
- [82] In *Azzarello v. Shawqi*, 2018 ONSC 5414, Nishikawa J. reviewed a number of cases that considered whether the deposit was disproportionate to the sale price. She stated, at para. 66:

Courts have found that deposits in the amount of 4.8 percent, 20 percent, and 25 percent of sale price were not unconscionable: *Signal Chemicals Ltd. v. Dew Man Marine Trade Inc.*, 2011 ONSC 3951 (CanLII), 8 R.P.R. (5th) 151, at para. 16 (citations omitted). The percentage is not determinative, but is merely a factor. In *Redstone*, the deposit was approximately 7 percent of the purchase price and was found not to be commercially unreasonable. In *Mikhalenia*, at para. 46, the deposit was \$100,000.00 on a total sale price of \$1,300,000.00 (6.67 percent) and was found not to be unconscionable. In this case, the \$75,000.00 deposit was approximately 4.8 percent of the \$1,555,000.00 purchase price.

- [83] In *Gagliardi v. Al-Karawi*, 2023 ONSC 6853, Chown J. reviewed a number of cases that considered whether the deposit was disproportionate to the sale price. He stated, at paras. 71-73:

No Canadian case that I could find has found a deposit so large as to be unconscionable. Canadian courts have found that deposits of 20%, 25% and 28% were reasonable deposits and declined relief from forfeiture: *Liu*; *Hinkson Holdings*; *Nawara v. Riverstone*, 2019 ONSC 111.

The reason it is so difficult to establish unconscionability in a deposit case is that the buyer has always agreed to pay the deposit. In addition, real estate deals rarely involve vulnerable parties or significant unequal bargaining power. If the deposit is for a reasonable amount in relation to the purchase price, and if the contract does not proceed due to the breach of the buyer, it is difficult to see how it could be unconscionable to make the buyer pay what it agreed and expected to pay.

Unconscionability is not a factor in this case. At 6.3% of the purchase price, the deposit was reasonable. The plaintiffs can in no way be accused of oppression, extraction of an extravagant sum, or sharp exercise of contractual rights. Under the Stockloser formulation, this factor weighs against from relief from forfeiture.

- [84] See also: *Signal Chemicals Ltd. v. Dew Man Marine Trade Inc.*, 2011 ONSC 3951, at para. 16: “Cases have held that deposit amounts were not penalties where they were in the order of 4.8%, 20% and 25%” (citations omitted).
- [85] In the present case, the deposit was 4.6% of the sale price, nowhere near the level that could be described as unconscionable.
- [86] Nor are there other indicia of unconscionability. There is no evidence of any inequality of bargaining power, or of a substantially unfair bargain. This was a commercial agreement, and the Purchaser is a sophisticated party. There is nothing “exceptional” about this case that would justify relief.

Other Damages and Bifurcation

- [87] The parties had initially agreed that they would bifurcate the hearing and seek a determination of who breached the APS and who is entitled to the deposit, followed by an order directing a trial on the issue of damages. Accordingly, neither party submitted any evidence relating to incidental damages.
- [88] In its factum, the Vendor confirmed that, in the event the Vendor is successful, it did not intend to pursue a trial for damages. This position is likely based on the fact that the Property was resold for \$250,000 above the original APS sale price, so once the deposit is deducted from other incidental damages like carrying costs, the Vendor suffered no damages.
- [89] Given my decision and the Vendor’s position, no additional “trial of an issue” is required.
- [90] I note that the Court of Appeal has discouraged parties from proceeding in the bifurcated process initially proposed by the parties in this case. In *Grandfield Homes (Kenton) Ltd. v. Chen*, 2024 ONCA 236, the Court stated, at para. 15, “that ordering the trial of the additional damages would result in a bifurcation of the issue of damages, an unnecessary multiplicity of proceedings, and potential prejudice to the respondent”. The Court explained, at para. 18:

Allowing the bifurcation of the issue of damages gives rise to an unnecessary multiplicity of proceedings. Proceeding in this way squanders scarce judicial resources and prejudices the efficient and due administration of justice. While the bifurcation of issues may, in some cases, be a sensible way to proceed, there was no reason why the issue of damages could not be determined in one proceeding in this case.

- [91] The parties cannot assume that they will get two hearing dates or be permitted to litigate by installments. If the parties want to proceed on a bifurcated basis, they should seek judicial approval.

Conclusion

[92] For the foregoing reasons, this Court Orders:

- a. The Purchaser's Application is dismissed;
- b. The Vendor's Cross-Application is granted, including a declaration that the Purchaser breached the APS and forfeiture of the Deposit.

[93] If the parties cannot agree on costs, the Purchaser may file costs submissions of no more than 3 pages, plus costs outline and any offers to settle, within 20 days of the release of this Decision. The Vendor may file responding submissions on the same terms within a further 15 days. Costs submissions should be uploaded to Case Center and forwarded to my Judicial Assistant at Robyn.Pope@Ontario.ca.

Justice R.E. Charney

Released: August 24, 2026

CITATION: 2225064 Ontario Ltd. v. 55 Bradwick Limited, 2026 ONSC 4850

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

2225064 ONTARIO LTD.

Applicant

– and –

55 BRADWICK LIMITED and REN/TEX REALTY
INC.

Respondents

AND BETWEEN:

55 BRADWICK LIMITED

Applicant

– and –

2225064 ONTARIO LTD. and REN/TEX REALTY
INC.

Respondents

REASONS FOR DECISION

Justice R.E. Charney

Released: August 24, 2026