CITATION: Pichette v. 13941281 Canada Inc., 2026 ONSC 6156
COURT FILE NO.: CV-23-00000028-0000
DATE: 2026-10-30

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
STEPHANIE KELLY-PICHETTE AND KYLE PICHETTE Plaintiffs	Kimberly Kenney, counsel for the Plaintiffs
– and –	
13941281 CANADA INC. and REALTY LEADERS INC. c.o.b. as ROYAL LEPAGE NORTHERN REALTY LEADERS, BROKERAGE Defendants	No-one appearing for the defendants, 13941281 Canada Inc. and Realty Leaders Inc. c.o.b. as Royal Lepage Northern Realty Leaders, Brokerage
	HEARD: October 28, 2026 (in writing)

DECISION ON MOTION FOR JUDGMENT

CULLIN J.

OVERVIEW OF THE PROCEEDING

[1] This is an action arising from a failed real estate transaction between the plaintiffs and the defendant, 13941281 Canada Inc. ("the defendant" and collectively, "the parties").

[2] On April 11, 2022, the parties entered into an Agreement of Purchase and Sale ("the APS") with respect to a property in Timmins. The plaintiffs were the vendors, and the defendant was the purchaser. Pursuant to the APS, the defendant paid a $10,000.00 deposit in trust to Royal Lepage. The transaction was subsequently not completed.

[3] The plaintiffs have commenced this proceeding seeking declaratory relief and damages against the defendant including forfeiture of the deposit, carrying costs pending the property's eventual sale, and recovery of the difference in the sale price.

[4] The plaintiffs have brought a motion for judgment against the defendant. The motion follows my order of December 18, 2025, which struck the defendant's statement of defence due to non-payment of costs. The defendant was subsequently noted in default on October 27, 2026.

[5] Royal Lepage is a party to the proceeding because it continues to hold the deposit funds. It has not defended the action. An order is sought directing it to pay the deposit funds to the plaintiffs.

LIABILITY OF THE DEFENDANT

Position of the Plaintiffs

[6] The plaintiffs submit that they have met the burden of proving liability against the defendant through the deemed admissions in the statement of claim, and through the affidavit evidence of Stephanie Kelly-Pichette, sworn September 12, 2023 and October 14, 2026, and of Chantal Rogowski, sworn September 25, 2026.

The Law

[7] A defendant noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim: Rule 19.02(1), *Rules of Civil Procedure*. Deemed admissions are restricted to admissions of fact. They do not include conclusions of law or of mixed fact and law: *Paul's Transport Inc. v. Immediate Logistics Ltd.*, 2022 ONCA 573, at para. 77.

[8] A plaintiff is not entitled to judgment merely because the facts alleged in the statement of claim are deemed to be admitted. The facts must entitle the plaintiff to judgment: Rule 19.06. With respect to the issue of liability, however, this requirement typically poses a low burden on the plaintiff: *Umlauf v. Umlauf*, 2001 CanLII 29068 (ONCA), 53 OR (3d) 355, at paras. 7-9.

[9] Absent a legally acceptable justification, a purchaser who fails to complete an unconditional agreement to purchase a property is in breach of the terms of the agreement: *Mikhalenia v. Drakhshan*, 2015 ONSC 1048, at para. 21. Once the sale price for a transaction is agreed upon, a purchaser cannot rely upon their inability to secure financing as a justification for failing to complete the transaction, unless the transaction has been made conditional upon obtaining financing: *Tribute (Simcoe Street) Limited v. Ali*, 2022 ONSC 3501, at para. 55.

Analysis

[10] From the facts deemed to be admitted in the statement of claim, and the affidavit evidence of Stephanie Kelly-Pichette and Chantal Rogowski, I find the following:

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a. On April 11, 2022, the plaintiffs entered into an Agreement of Purchase and Sale ("APS") in which they agreed to sell 11-15 Aura Lake Street in Timmins ("the Property") to the defendant.

b. Pursuant to the APS, the sale price was $485,000 and the closing date was May 31, 2022.

c. Pursuant to the APS, the defendant paid a deposit of $10,000 to Royal Lepage, in trust, pending completion of the sale.

d. On April 21, 2022, the defendant delivered a Notice of Fulfillment of Condition to the plaintiffs.

e. The closing date was extended twice, to June 7, 2022 and then to June 21, 2022.

f. On June 20, 2022 the defendant requested a further extension, which the plaintiffs refused.

g. On June 21, 2022, the plaintiffs' counsel tendered their closing documents on the defendant.

h. The defendant failed or refused to complete the APS on June 21, 2022.

[11] The defendant entered into a legally binding agreement with the plaintiffs, waived the conditions in that agreement, and then failed to close the transaction as agreed. The plaintiffs were entitled to refuse the defendant's further extension request: *1179 Hunt Club Inc. v. Ottawa Medical Square Inc.*, 2019 ONCA 700, at para. 13. I find that the defendant is liable to the plaintiffs for breaching the agreement.

ASSESSMENT OF DAMAGES

Overview of Damages Claimed

[12] The statement of claim seeks forfeiture of the deposit in the amount of $10,000, carrying costs in the amount of $31,238.14, and the difference in the agreed and ultimate sale price in the amount of $89,500.

The Law

[13] When a transaction for the sale of land is not completed due to the default of a purchaser, the vendor is entitled to retain any deposit on the contract without having to prove their actual damages: *De Palma v. The Runnymede Iron & Steel Company*, [1949] O.J. No. 495 (C.A.); *Signal Chemicals Ltd. v. Dew Man Marine Trade Inc.*, 2011 ONSC 3951; and, *Mikhalenia*, at para. 31.

[14] Absent language to the contrary, the Court may infer that a deposit is intended to guarantee performance of a contract and is not merely an installment paid toward the purchase

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price: *De Palma*, paras. 9-11, 14. The use of the word “deposit” is sufficient to convey this intention: *De Palma*, at para. 9; *Mikhalenia*, at paras. 32-33; *Pleasant Developments Inc. v. Iyer*, 2006 CanLII 10223 (ON SCDC), at para. 8.

[15] When a vendor incurs damages as a result of a failed transaction, any forfeited deposit is, absent terms in the contract to the contrary, to be applied to those damages: *Azzarello v. Shawqi*, 2019 ONCA 820, at paras 42-55.

[16] Upon finding that a breach of contract has occurred, the Court must determine damages in accordance with the principles established in *Hadley v. Baxendale*, (1854) 9 Exch 341. The objective of an award of damages is to return the non-breaching party to the position that they would have been were it not for the breach: *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 SCR 12, at para. 12.

[17] Following a failed real estate transaction, the plaintiff’s damages will be the difference, if any, between the sale price under the APS and the subsequent sale price, as well as any additional carrying costs incurred by the plaintiffs to mitigate their damages and otherwise address the breach: *Goldstein v. Goldar*, 2018 ONSC 608, at para. 25.

Analysis

Deposit

[18] The APS provided the following language regarding the deposit:

> **DEPOSIT:** Buyer submits upon acceptance Ten Thousand Dollars (CDN$) 10,000.00 by negotiable cheque payable to Royal Lepage Northern Realty Leaders, Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, “Upon Acceptance” shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

[19] I find that it was the intention of the parties that the deposit was to be forfeited if the defendant failed to close the transaction due to its own fault.

[20] I find that, as a result of its failure to close the transaction, the defendant forfeited its deposit to the plaintiffs. I find, applying the reasoning in *Azzarello*, that the deposit is to be credited against any damages awarded to the plaintiffs.

Difference in Sale Price

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[21] From the facts deemed to be admitted in the statement of claim, and the affidavits evidence of Stephanie Kelly-Pichette and Chantal Rogowski, I find the following:

a. Pursuant to the APS, the sale price for the Property was $485,000 and the closing date was May 31, 2022.

b. After the failed transaction with the defendant, the plaintiffs re-listed the Property for sale and accepted the one and only offer received for the amount of $392,500. That transaction closed on November 21, 2022.

[22] I find that the difference in sale price was $92,500, and that the plaintiffs are entitled to damages in this amount.

Carrying Costs

[23] From the facts deemed to be admitted in the statement of claim, and the affidavit evidence of Stephanie Kelly-Pichette and Chantal Rogowski, I find that the carrying costs incurred by plaintiffs with respect to the Property during the relevant period are the following:

a. Interest payments of $1,280.67;

b. Insurance payments of $2,838.42;

c. Property taxes of $1,135.32;

d. Water and sewer payments of $3,166.54

e. Repairs and maintenance of $15,430.01;

f. Hydro payments of $5,568.34;

g. Union gas payments of $1,510.41; and,

h. Water heater rental payments of $308.43.

[24] I find that the total carrying costs incurred by the plaintiffs was $31,238.14, and that the plaintiffs are entitled to damages in this amount.

CALCULATION OF DAMAGES PAYABLE AND PREJUDGMENT INTEREST

[25] The damages owing by the defendant to the plaintiffs shall be calculated as follows:

Difference in sale price:	$92,500.00
Carrying costs:	$31,238.14
Less: Deposit	($10,000.00)
Total damages:	**$113,738.14**

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[26] The plaintiffs claim prejudgment interest. The statement of claim was issued on February 27, 2023. I am prepared to award prejudgment interest from that date.

[27] The plaintiffs have not provided a calculation of prejudgment interest. I am prepared to award prejudgment interest having regard to the average prejudgment interest rate provided by the *Courts of Justice Act*, R.S.O. 1990, c.C.43, from the first quarter of 2023 to the last quarter of 2026. The average prejudgment interest rate for that period is 3.9%.

[28] The time period over which prejudgment interest will be payable is February 27, 2023 to October 30, 2026, or 1341 days. The *per diem* interest rate for damages of $113,738.14 at an annual interest rate of 3.9% is $12.15. For the period of 1341 days, prejudgment interest is therefore $16,293.15.

COSTS

[29] The plaintiffs' counsel has submitted a Bill of Costs setting out fees of $8,267.50 and disbursements of $1,536.83. The disbursements are inclusive of HST

[30] The following fees and disbursements were included in the Bill of Costs submitted by the plaintiffs on this motion:

a. On September 12, 2025, the plaintiffs were awarded full indemnity costs following the defendant's unsuccessful motion to amend its pleadings. Those costs represented fees of $4,225 and disbursements for photocopies of $169.50 (inclusive of HST).

b. On November 27, 2025, the plaintiffs were awarded costs of $1,500 plus HST following an appearance regarding a motion to strike. That amount represented fees.

[31] After accounting for the costs and disbursements awarded to date, the total net costs and disbursements that could be awarded to the plaintiffs is $2,542.50 for fees and $1,367.33 for disbursements. I am prepared to award the entire amount claimed for disbursements and substantial indemnity costs for fees, based on 85% of net incurred fees.

[32] Costs will therefore be fixed in the amount of $3,809.41, representing $2,161.13 for fees, HST on fees of $280.95, and disbursements (inclusive of HST) of $1,367.33.

DISPOSITION

[33] For the reasons given, this motion is disposed of as follows:

a. There shall be a declaration that the defendant, 13941281 Canada Inc., breached the Agreement of Purchase and Sale, dated April 11, 2022.

b. There shall be a declaration that the deposit paid by the defendant, 13941281 Canada Inc., in the amount of $10,000, pursuant to the Agreement of Purchase

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and Sale dated April 11, 2022, is forfeited to the plaintiffs. It shall be ordered that the deposit be paid by the defendant, Realty Lenders Inc., to the plaintiffs.

c. It shall be ordered that the defendant, 13941281 Canada Inc., pay damages and prejudgment interest to the plaintiffs in the total amount of $130,031.29, calculated as follows:

    i. Damages of $123,738.14;

    ii. Credit to the damages owing of $10,000 for the forfeited deposit; and,

    iii. Prejudgment interest on net damages of $16,293.15.

d. It shall be ordered that the defendant, 13941281 Canada Inc., pay costs to the plaintiffs, inclusive of disbursements and HST, in the amount of $3,809.41.

Released: October 30, 2026

Cullin J.

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Defendants

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