CITATION: Brar v. 11535455 Canada Inc., 2026 ONSC 6111
COURT FILE NO.: CL-26-00000067-0000
DATE: 20261029

SUPERIOR COURT OF JUSTICE – ONTARIO
COMMERCIAL LIST

2026 ONSC 6111 (CanLII)

RE: Jagteshwar Singh Brar, Estate of Harnek Singh Brar, and 2749706 Ontario Inc., Applicants

AND:

11535455 Canada Inc., Ali Osman Ruzgar, 2749879 Ontario Ltd., and 2794963 Ontario Inc., Respondents

BEFORE: Cavanagh J.

COUNSEL: *Craig Aitkin*, counsel for the Applicants

Stephen Schwartz and Darren Marr, counsel for the Respondents 11535455 Canada Inc. and Ali Osman Ruzgar

Charles Lun, counsel for the Respondent 2794963 Ontario Inc.

Rebecca Shoom, counsel for Vijay Khaneja

Abir Joshi, in person (written submissions only)

HEARD: June 29, 2026

ENDORSEMENT

Introduction

[1] The Applicants are Jagteshwar Singh Brar ("Brar"), Estate of Harnek Singh Brar (the "Brar Estate") , and 2749706 Ontario Inc. (together, the "Brar Parties"). Harnek Singh Brar was Brar's father who is deceased. 2749706 Ontario Inc. ("706 Ontario") is a company that was owned by Brar's father and claims to have owned 50% of the shares of 11535455 Canada Inc. ("115 Canada"). This is disputed by the Respondent Ali Osman Ruzgar ("Ruzgar").

[2] The Respondents are 11535455 Canada, Ruzgar, 2749879 Ontario Ltd. ("879 Ontario") and 2794963 Ontario Inc. ("963 Ontario").

[3] 879 Ontario is a corporation through which Ruzgar held a 50% interest in 115 Canada. 963 Ontario is a company whose principal is Abir Joshi ("Joshi") and who claims to be the owner of shares of 115 Canada through 963 Ontario.

[4] Brar and Ruzgar were in a dispute concerning 115 Canada and the development of a property owned by 115 Canada and municipally known as 2270 Morningside Avenue, Toronto (the "Property").

[5] In the Notice of Application, the Brar Parties allege that Ruzgar (through 879 Ontario), Brar's late father (through 706 Ontario) and Brar entered into a series of transactions involving 115 Canada and the Property from August 2020 to October 2020 which included personal guarantees on different credit facilities.

[6] A written settlement agreement dated May 23, 2025 (the 'Settlement Agreement") was made by Brar and 115 Canada and Ruzgar for the purpose of resolving the dispute concerning the Property.

[7] In the Notice of Application, the Brar Parties seek various relief including a determination of rights and a mandatory order for specific performance of the Settlement Agreement (and the releases referenced therein). The Brar Parties seek, in any case, the following relief through enforcement of the Settlement Agreement:

(a) Enforcement of the mutual releases to discontinue the Ali Action against them, as well as the solicitor involved, Khaneja;

(b) Directions to carry out the KPMG Audit and calculate the Equalization Amount;

(c) A compensation order in the amount of the Initial Settlement Amount of $14,000,000.00, plus or minus the result of the KPMG Audit. As per the contractually identified Adjustments, $4.25 million of this should be payable to the first mortgagee, Vector, and $4M would be payable to BVD for its second mortgage position; and

(d) Directions to register a charge in the nature of a collateral mortgage on the Morningside Lands.

[8] In their factum for this hearing, the Brar Parties seek an order that Ruzgar be given a reasonable period to try and voluntarily complete a buy out of the Brar Parties' interests in 115 Canada. If Ruzgar is not able or willing to do so, the Brar Parties submit that 115 Canada will need to be wound down and the Property will need to be marketed and sold. The Brar Parties request a separate hearing for submissions on these remedies.

[9] On September 3, 2025, a statement of claim was issued in an action commenced by 115 Canada and Ruzgar as plaintiffs against Brar, the Brar Estate, Joshi, 274 Ontario, 279 Ontario and others (the "Ruzgar Action"). In the Ruzgar Action, 115 Canada claims damages of $30 million against Brar for fraud and other causes of action as well as other relief. Ruzgar claims damages of $5 million against Brar for fraud and other causes of action, as well as other relief.

[10] In an endorsement dated March 20, 2026, Kimmel J. gave directions concerning this application and the Ruzgar Action. Justice Kimmel directed that the settlement enforcement aspects of this application should be adjudicated first as enforcement of the settlement, if ordered, would be dispositive of some if not all aspects of the matters in dispute and would, at the very

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least, narrow the remaining issues. The remaining aspects of the Brar Application and the Ruzgar Action were directed to be held in abeyance pending the adjudication of the settlement enforcement.

[11] I follow the direction of Kimmel J. and decide the settlement enforcement aspects of this application.

[12] For the following reasons, this application, insofar as it seeks an order enforcing the Settlement Agreement and consequential relief, is dismissed.

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Factual Background

Parties

[13] I identified the parties in my introduction.

The Property

[14] The Property consists of 9.52 acres of undeveloped land located at 2270 Morningside Avenue, Toronto. The Brar Parties allege that Ruzgar and the Brar Estate used 115 Canada to purchase the Property on January 31, 2020 for $8,850,000.00. A change in the City of Toronto's municipal zoning laws allowing mixed commercial and residential uses increased its value.

Settlement Agreement

[15] On this application, the Brar Parties seek an order for specific performance of the Settlement Agreement entered into between Brar and 115 Canada and Ruzgar that was made for the purpose of resolving the dispute concerning the Property. The Settlement Agreement was signed on May 23, 2025.

[16] In his affidavit, Brar describes the Settlement Agreement:

> The Settlement Agreement sets out mechanisms for Ali to refinance and buyout the Brar Estate interest in 115 Canada and the Morningside Lands. Critically, the Settlement Agreement also unwinds the joint and several liability that exists between Ali, myself, and the Brar Estate by paying out 115 Canada's existing secured creditors. The underlying situation is complicated since Ali and the Brar Estate both have used 115 Canada and the Morningside Lands as cross-collateral with secured credit facilities held by corporations that the other does not control.

[17] The Settlement Agreement includes the following recitals which set out the context for the Settlement Agreement as agreed upon by the parties:

> **WHEREAS** 2749706 Ontario Inc. ("Jag's Father's Company") claims to have had fifty per cent (50%) of the shares in the Company at some point in time which is disputed by Ali.

AND WHEREAS Ali maintains that Jag or Jag's Father's Company never had any shares issued to them at any point in time.

AND WHEREAS Ali disputes any asserted ownership interest in the Company and in the property municipally known as 2270 Morningside Avenue, Toronto, Ontario (the "Property") by Jag or Jag's Father's Company.

AND WHEREAS Jag's Father's Company is claimed to be owned and controlled solely by Hamek Singh Brar who is Jag's father ("Jag's Father") but for all practical purposes Jag's Father is owner in name only and Jag has always been in actual control of Jag's Father's Company.

AND WHEREAS Jag' s Father is now dead and Jag has authority to act on behalf of his father's companies.

AND WHEREAS Jag's Father's Company in 2023 maintains the position that it sold and transferred all the shares it claims to have of the Company to 2794963 Ontario Inc. ("Abir's Company") which is a company that is claimed to be owned in part and controlled by Abir Joshi ("Abir").

AND WHEREAS Ali maintains Jag or Jag's Father's Company never had any shares in the Company and never had any authority to transfer or sell any shares in the Company to Abir or Abir's Company.

AND WHEREAS Ali disputes the asserted ownership interest in both the Company and the Property by Abir, Abir's Company, Jag's Father's Company, Jag or any other person or individual.

AND WHEREAS Ali maintains he is the sole owner of both the Company and the Property.

AND WHEREAS Ali maintains that the Notices of Change filed by Jag to add himself and Abir as directors of the Company were without proper consent or proper authorization by Ali or the Company;

AND WHEREAS Ali maintains the position that neither Jag nor Abir were ever directors or officers of the Company and no corporate resolutions or records were ever properly executed to appoint either Jag or Abir as Directors or Officers of the Company.

AND WHEREAS any claims that may exist between Jag and Abir or Abir's company shall be dealt with by Jag and Abir and Abir's Company separately;

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> **AND WHEREAS** the parties wish to fully and finally settle any and all claims, disputes, and issues between them related to the ownership interest of Jag or Jag's Father's Company in the Company and the Property, without admission of liability by any party;

[18] The Settlement Agreement contains 41 paragraphs under the following headings. I have reproduced or summarized below, some, but not all, of the provisions.

a. Paragraphs 1-7 are under the heading "Confirmation of Existing Liabilities Involving Jag or Abir".

> Paragraph 1 states that the following is the list of "all existing liabilities that Jag, Jag's father's Company, Abir or Abir's Company has ... had (directly or indirectly) placed on Ali personally or the Company, or any of Ali's properties or companies owned or controlled by Ali, or any other assets of Ali or the Company. The listed liabilities are:
>
> a. a second mortgage to BVD Capital Corporation for the principal amount of $4,000,000;
>
> b. a third mortgage to BVD Capital Corporation for the principal amount of $2,500,000;
>
> c. a PPSA from 115 Canada to Abir's Company for the principal amount of $2,500,000; and
>
> d. a second mortgage on the property municipally known as 150 Pony Drive, Newmarket, Ontario from Ruzgar's company for the principal amount of $1,300,000 (the "Pony Drive mortgage")
>
> Paragraph 2 provides that "Jag confirms that any and all funds advanced from all of the liabilities listed in paragraph 1 above were used by him for his own personal benefit, where (sic) incurred for his own personal benefit and are not in anyway the responsibility of Ali, the Company or any of Ali's other companies."
>
> Paragraph 3 provides that Jag confirms that he will be responsible to pay out and discharge all the liabilities listed in paragraph 1 above including but not limited to, any costs, interest, penalties, legal fees or payments with regards to the listed liabilities.
>
> Paragraph 4 provides that "[w]ith regards to the liabilities listed in paragraph 1, Jag confirms he will reimburse Ali if Ali is forced to make any payments to anyone or incur any costs, including but not limited to any legal fees, penalties, interest or costs of any nature".

b. Paragraphs 7-9 are under the heading "Refinance of the Property".

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In Paragraph 7 Jag confirms that Ali is authorized to refinance the Property to obtain a new first mortgage on the Property, the principal of said mortgage is not to exceed Fifteen Million Seven Hundred Fifty Thousand dollars (CAD $15,750,000) to any new lender at Ali's sole discretion (the "New First Mortgage").

In paragraph 8, the parties confirm that the closing date of the New First Mortgage is tentatively scheduled for May 27, 2025 but the parties acknowledge the closing date may need to be extended to allow sufficient time for the new first lender to complete all their due diligence requirements (the "New First Mortgage Closing Date"). Ali confirms he will advise Jag to any changes to the New First Mortgage Closing Date as soon as reasonable possible once Ali is aware of any changes to the New First Mortgage Closing Date.

In paragraph 9, Jag acknowledges and confirms Ali may sign and provide a certificate of incumbency to the new lender for the New First Mortgage that confirms Ali is the only shareholder, director and officer of the Company. Jag or Jag's Father's company shall not challenge or dispute the authenticity of this certificate of incumbency.

c. Paragraphs 10-12 are under the Heading “Initial Settlement Amount” and provide:

10. An initial settlement payment by Ali to Jag will be set at a total sum of Fourteen Million Canadian Dollars (CAD $14,000,000.00) (the "Initial Settlement Amount'").

11. Payment of the Initial Settlement Amount shall be subject to adjustments, terms and conditions as further outlined in this Agreement.

12. For further clarity, no payment to any party shall be made until all of the appropriate adjustments have been made and all the terms and conditions as further outlined in this Agreement have been complied with in their entirety.

d. Paragraphs 13-24 are under the heading “Adjustments to the Initial Settlement Amount”.

Paragraph 13 provides that the amount of $4,250,000 shall be deducted from the Initial Settlement Amount upon completion of the payout of the Vector Mortgage.

Paragraph 14 provides that an additional amount of $4 million shall be deducted from the Initial Settlement Amount upon completion of payout of both the existing second and third BVD. It provides that Brar shall cooperate and work with Ruzgar to take all steps

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necessary to obtain the discharge statements from BVD before the New First Mortgage Closing Date.

Paragraph 15 provides that the additional amount of $750,000 shall be deducted from the Initial Settlement Amount upon completion of the payout by Ruzgar's lawyers of any outstanding property taxes on the Property, any mortgage interest paid by Ruzgar on the Vector mortgage from February 2025 until the mortgage is paid out, any penalties any extension fees incurred and paid by Ruzgar on the Vector mortgage, all legal fees incurred by Ruzgar to resolve and settle all matters covered by the Settlement Agreement and any other costs that may arise to complete the terms of the Settlement Agreement.

Paragraph 17 provides that KPMG LLP will be retained as an independent third-party auditor by Ruzgar and Brar to complete a full audit of 115 Canada to determine any equalization adjustment amount as of the closing date of the new first mortgage which shall be final and binding on the parties.

e. Paragraphs 25-28 are under the heading "Discharges and Steps to be Done on or Before the Closing of the New First Mortgage" and provide:

25. At least two days prior to closing the New First Mortgage, Jag acknowledge that Ali requires a discharge statement as well as the signed acknowledgement and direction for the discharges of each of the second and third mortgage charges on the Property held by BVD CAPITAL CORPORATION in order proceed with the New First Mortgage. The lender for the New First Mortgage will not provide funds or close the New First Mortgage until they have received and reviewed the discharge statements and the signed acknowledgement and direction for the discharges from BVD CAPITAL CORPORATION.

26. BVD CAPITAL CORPORATION has advised that they shall provide a discharge statement and a signed acknowledgement and direction for the discharges for each of the second and third mortgage charges on the Property held by BVD CAPITAL CORPORATION to the Company, but they first require a personal promissory note from Jag (the "Promissory Note").

27. By May 27, 2025, Jag shall provide the Promissory Note to BVD CAPITAL CORPORATION.

28. On or before the closing date of the New First Mortgage, Jag, shall discharge the third mortgage Charge to BVD CAPITAL CORPORATION, registered as a Charge instrument #AT6436723 on the Property.

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f. Paragraphs 29-33 are under the heading “Releases” and include the following provisions:

> 29. Ali, Jag and the Company shall execute a full and final mutual release in the form annexed hereto as Schedule "A", which shall, upon execution, be held in escrow by counsel for the respective parties until the full performance and compliance by Ali and Jag under this Agreement. The release shall, among other things, cover any and all claims that Jag may have with respect to Ali, the Company and/or the Property including, specifically, any claim that Jag may have (directly or indirectly) any beneficial interest in or ability to control either the Company or the Property.
>
> 30. Subject to full performance and compliance under this Agreement, Jag shall co-operate with Ali and take all steps necessary to obtain a full and final release of Ali and the Company from BVD CAPITAL CORPORATION. An acceptable template of the full and final release to be signed is annexed hereto as Schedule "B". The release shall, among other things, cover any and all claims BVD CAPITAL CORPORATION may have against Ali and the Company for the mortgages, the guarantees, and the underlying indebtedness associated with each mortgage.
>
> 31. Subject to full performance and compliance under this Agreement, Jag shall take all steps necessary to obtain a full and final release to fully release Ali from any of Jag's companies, Jag's Father's-Company and any other third-party or entity as may be required if any further Undisclosed Liabilities are found. An acceptable template of the full and final mutual release to be signed is annexed hereto as Schedule "C".

g. Paragraphs 34-35 are under the heading “Confirmation that Jag Have (sic) No Rights or Interests in the Company or the Property”.

h. The remaining paragraphs are under the headings “No Admission of Liability”, “Confidentiality”, ‘Governing Law”, “Entire Agreement”, “Independent Legal Advice”, and “Counterparts”.

Action by 115 Canada and Ruzgar against Brar and others

[19] On September 3, 2025, the Ruzgar Action was commenced by 115 Canada and Ruzgar as plaintiffs against Brar, the Brar Estate, Joshi, 274 Ontario, 279 Ontario and others.

Analysis

[20] The Brar Parties and Ruzgar agree that an enforceable agreement was made in the Settlement Agreement.

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[21] The Brar Parties submit that the Settlement Agreement remains in force and that it was breached by Ruzgar. They elect to enforce the Settlement Agreement and mutual releases.

[22] Ruzgar submits that Brar breached the Settlement Agreement and thereby repudiated it, which was accepted, thereby bringing it to an end.

Legal Principles

[23] In *Remedy Drug Store Co. Inc. v. Farnham*, 2015 ONCA 576, the Court of Appeal, at para. 42, addressed the test for repudiation of a contract. The Court of Appeal held, citing *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC), [1999] 3 S.C.R. 423, at para. 40, that repudiation occurs by the words or conduct of one party to a contract that show an intention not to be bound by the contract. The Court of Appeal described anticipatory repudiation is essentially the same as repudiation *simpliciter* – the only difference is timing. The Court of Appeal held that the same principles guide anticipatory repudiation and repudiation, and observed that courts often use the terms interchangeably.

[24] In *Remedy Drug*, the Court of Appeal, at para. 45, described the test for anticipatory repudiation as an objective one. To assess whether the party in breach has evinced an intention to repudiate the contract, the court is to ask whether a reasonable person would conclude that the breaching party no longer intends to be bound by it. In objectively construing the purported breaching party's intention, the surrounding circumstances must be considered. A finding of anticipatory repudiation is reserved for cases in which the conduct at issue can be said to be serious. In *Remedy Drug*, the contract at issue was a settlement agreement. The Court of Appeal, at para. 66, held that the circumstances do not provide a compelling reason to depart from the general principle that it is important to hold parties to their settlements.

[25] In *Olivieri v. Sherman*, 2009 CarswellOnt 9587, 2009 ONCA 772, the Court of Appeal, at para. 34, confirmed that if a settlement agreement is repudiated, the innocent party has the right to elect to treat the Settlement Agreement as at an end, with both parties then being discharged from further performance under the settlement agreement. The Court of Appeal held that enforcement of a settlement agreement in such circumstances would create a real risk of injustice and ought not to be ordered.

[26] The recitals show the factual context for the Settlement Agreement, which I have considered.

Brar Parties' Position

[27] Brar's evidence is that he was ready, willing and able to close the Settlement Agreement.

[28] Brar submits that Ruzgar had an obligation under the Settlement Agreement to obtain a new first mortgage on the Property with the principal amount of the new mortgage not to exceed $15,750,000. Brar submits that the closing date of the new first mortgage was to be May 27, 2025, the date on which both parties were to satisfy their respective obligations under the Settlement Agreement.

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[29] Brar's evidence is that Ruzgar had arranged most of the financing needed to complete the steps set out in the Settlement Agreement but he was unable to fully arrange financing to do so including, specifically, arranging financing for the amount needed to pay out BVD Capital which held a second mortgage on the Property securing the principal amount of $4 million.

[30] Brar submits that as a result, the closing date passed without closing of the new first mortgage.

[31] Brar submits that it is not open to Ruzgar to fail to perform his obligation to obtain financing in the Settlement Agreement and, instead, sue the Brar Parties.

[32] Brar submits that Ruzgar is currently in breach of the Settlement Agreement. He seeks specific performance of the Settlement Agreement including enforcing the Full and Final Mutual Releases included as part of the Settlement Agreement with the result that the action commenced by Ruzgar and Brar should be terminated.

Ruzgar's Position

[33] Ruzgar agrees that the parties reached an enforceable agreement through the Settlement Agreement.

[34] Ruzgar opposes the requested order for specific performance to enforce the Settlement Agreement. He contends that Brar breached the Settlement Agreement and thereby repudiated it. Ruzgar submits that as an innocent party to Brar's repudiation, he had the right to elect to treat the Settlement Agreement as being at an end with all parties being discharged from further performance thereunder, and that he has done so.

Was Ruzgar ready, willing and able to close the Settlement Agreement?

[35] The Settlement Agreement provides in paragraph 7:

> Jag confirms that Ali is authorized to refinance the Property to obtain a new first mortgage on the Property, the principal of said mortgage is not to exceed Fifteen Million Seven Hundred Fifty Thousand dollars (CAD $15,750,000) to any new lender at Ali's sole discretion (the "New First Mortgage").

[36] In paragraph 8 of the Settlement Agreement, the parties confirm that the closing date of the New First Mortgage is tentatively scheduled for May 27, 2025 but the parties acknowledge the closing date may need to be extended to allow sufficient time for the new first lender to complete all their due diligence requirements (the "New First Mortgage Closing Date"). Ruzgar confirms he will advise Brar of any changes to the New First Mortgage Closing Date as soon as reasonable possible once he is aware of any changes to the New First Mortgage Closing Date.

[37] In his affidavit, Brar states:

> 3. The Settlement Agreement sets out mechanisms for Ali to refinance and buyout the Brar Estate interest in 115 Canada and the Morningside Lands. Critically, the Settlement Agreement also

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unwinds the joint and several liability that exists between Ali, myself, and the Brar Estate by paying out 115 Canada's existing secured creditors. The underlying situation is complicated since Ali and the Brar Estate both have used 115 Canada and the Morningside Lands as cross-collateral with secured credit facilities held by corporations that the other does not control.

4. My information and knowledge is that Ali had most of the refinancing needed to complete the steps set out in the Settlement Agreement. Ali fell slightly short, however, and refused a more limited vendor takeback arrangement from an existing creditor.

...

43. My knowledge and information is that Ali had most of the refinancing needed to complete the steps set out in the Settlement Agreement. Unfortunately, Ali only arranged to raise $12,500,000.00 in financing, compared to the $15,750,000.00 target amount in article 7 of the Settlement Agreement.

44. Note that this figure is not the same as the Initial Settlement Amount owing to the Brar Estate. Rather, it is an amount needed to payout the secured creditors and liabilities identified in the Settlement Agreement. The Brar Estate was willing to have the positive balance of the Equalization Payment owing to us to be converted into a subordinated secured creditor and mortgagee position (see Settlement Agreement, article 23).

45. The Settlement Agreement did, however, require that the mortgagee secured creditors that Harnek and/or I had guaranteed to be paid out, including Vector and BVD. The 963 Ontario/"Joshi Company" interest also had to be paid out to unwind the share pledge. Terms to allow for the 963 Ontario/Joshi related discharges were in fact reached.

46. This left Ali short of the amount needed to payout BVD. BVD was willing to negotiate a compromise with Ali. It was not, however, willing to completely discharge its interest until a deal was finalized. I have knowledge of the specific negotiations. But Ali and BVD fell out over terms circa July and August 2025.

47. Ali is currently in breach of the Settlement Agreement. He failed or refused to carry forward with the process and closing, and instead started a legal action.

48. I am seeking specific performance of the Settlement Agreement. This includes enforcing the Full and Final Mutual

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> Release it includes to end the Ali Action commenced on September 3, 2025 under Court File No. CV-25-00750898-0000.

[38] Under the Settlement Agreement, Brar was responsible to pay out and discharge the liabilities listed in paragraph 1. These amounts total $10,300,000. One of these amounts is the second mortgage to BVD Capital for the principal amount of $4,000,000.

[39] Paragraph 13 provides that the amount of $4,250,000 (50% of the principal of the Vector mortgage) shall be deducted from the initial settlement payment by Ruzgar to Brar of $14 million (provided for in paragraph 10) upon completion of payout of the existing first mortgage in favour of Vector. Paragraph 14 provides that an additional amount of $4,000,000 shall be deducted from the initial settlement amount upon completion of payout of both the existing second and third mortgages in favour of BVD, and that Brar shall co-operate with Ruzgar to obtain discharge statements from BVD before the "New First Mortgage Closing Date".

[40] The effect of these provisions of the Settlement Agreement is that Brar's payment to Vector ($4,250,000) and to discharge the BVD Second Mortgage ($4,000,000) were to be funded from the new financing Ruzgar was arranging. These amounts would be deducted, as liabilities owed by Brar to Ruzgar, as part of the adjustments to the initial settlement amount as described in paragraphs 10-24 of the Settlement Agreement.

[41] Ruzgar's evidence is that even though he did not receive any funds advanced by BVD under the second mortgage, he agreed to pay BVD $4,000,000 to obtain a discharge of the second BVD mortgage as part of an overall settlement with Brar because he viewed the payment as a cost of obtaining closure with Brar and the payment would permit a fresh start for development of the Property.

[42] The balance of the liabilities that were Brar's responsibility totalling $6.3 million (the BVD Third Mortgage, the PPSA registration and the Pony Drive Mortgage) were required to be discharged by Brar pursuant to paragraph 3 of the Settlement Agreement.

[43] Ruzgar's evidence is that he had arranged financing through Banc Developments Limited ("Banc"). He deposes that Banc was prepared to grant 115 Canada the required financing to discharge the Vector Mortgage and the BVD Second Mortgage. He deposes that before it issued a commitment letter, Banc requested a discharge statement from Vector, which was provided, and a discharge statement from BVD Capital, which was not provided. Ruzgar deposes that, at his request, Banc did not issue a commitment letter until BVD Capital provided discharge statements because he did not wish to incur a discharge fee for the issuance of a commitment letter until all conditions were in place.

[44] A representative of Banc sent an email dated April 26, 2025 referring to "the deal" he talked to Ruzgar about. He states that the loan amount for one year would be in the total amount of $15,730,000 and he states the conditions for the mortgage loan. The total amount was comprised of a loan amount of $13 million, a fee of $1.3 million, and one year of interest of $1,430,000. In response to undertakings given on his cross-examination, Ruzgar produced documents relating to the proposed Banc refinancing including a draft credit agreement showing a "Facility Amount" of $15,730,000, and a draft charge showing a principal amount of $15,730,000.

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[45] Brar's evidence that Ruzgar was unable to raise financing to discharge the Vector mortgage is stated to be based on his information and knowledge. Brar submits that the amount of the Banc financing was insufficient to pay the Vector mortgage ($8.5 million) and the BVD second mortgage ($4 million), together with arrears of taxes.

[46] The evidence from Ruzgar is to the contrary, and he supported his evidence with an email from a representative of Banc and draft mortgage documents. Ruzgar deposes that the value of the Property in February 2025 was appraised at $38.9 million and increased to $51.7 million on an "if approved" basis. He deposes that there was little concern that the required financing of approximately $15,750,000 could be obtained by pledging the Property as security.

[47] On the record before me, Brar has not shown that Ruzgar was unable to complete the Settlement Agreement because he was unable to raise sufficient financing to pay out the Vector mortgage and the BVD second mortgage. The commitment for the Banc financing was not completed while the required discharge statements were still outstanding. Given the correspondence with Banc, and the appraised value of the Property, I accept Ruzgar's evidence that he was able to raise the required financing to complete the Settlement Agreement.

[48] I find that Ruzgar was ready, willing and able to complete the Settlement Agreement.

Did Brar breach the Settlement Agreement?

[49] Pursuant to paragraph 8 of the Settlement Agreement, closing of the refinancing was to occur on May 27, 2025 unless it was extended by Ruzgar at the request of the new first lender. Pursuant to paragraph 28 of the Settlement Agreement, on or before the closing of the new first mortgage, Brar was required to discharge the BVD third mortgage. Brar was also responsible to pay out the indebtedness secured by the PPSA registration and discharge the PPSA registration, and discharge the Pony Drive mortgage.

[50] Under paragraph 14 of the Settlement Agreement, Brar agreed to cooperate with Ruzgar to take all steps necessary to obtain discharge statements from BVD before the new first mortgage closing date. Under paragraph 25, the parties confirmed that the lender for the new first mortgage will not provide funds or close the new first mortgage unless it has received and reviewed the discharge statements and the signed acknowledgement and direction for the discharges from BVD.

[51] Ruzgar's evidence is that Brar failed to obtain the discharge statements and the acknowledgement and direction to discharge the BVD mortgages and, as a result, the closing could not take place on May 27, 2025. His evidence is that Brar did not provide the releases required by the Settlement Agreement.

[52] On his cross-examination, Brar agreed that he did not have cash available on May 27, 2025 to pay out and obtain discharges for (i) the indebtedness secured by the PPSA registration ($2,500,000); (ii) the Pony Drive mortgage ($1.3 million); and (iii) the BVD third mortgage ($2.5 million). With respect to the BVD third mortgage, Brar's evidence was that he needed a promissory note which was required by BVD. The Settlement Agreement at paragraph 26 provides that BVD has advised that it shall provide a discharge statement and a signed acknowledgement and direction for the discharges of the second and third mortgages but it first requires a personal promissory note from Brar which, pursuant to paragraph 27, he was to provide by May 27, 2025.

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[53] In response to an undertaking given on his cross-examination, Brar produced a document dated May 23, 2027 signed by him and directed to BVD by which he "personally guaranteed" payment to BVD in the amount of $2,500,000. No promissory note was provided by Brar to BVD as required by paragraph 27 of the Settlement Agreement. Brar says that he was able to provide the required promissory note.

[54] The promissory note was needed for BVD to provide a discharge statement and a signed acknowledgement and direction for the discharges. Under paragraph 28, Brar was required to discharge the BVD third mortgage on or before the closing date of the new first mortgage, and he was unable to do so because he lacked funds.

[55] The BVD third mortgage was not paid out and discharged. On May 27, 2025, Brar's lawyer sent an email to Ruzgar's lawyer forwarding an email from Brar to him stating that he, Brar, is in discussions with BVD where they would "give paid-out of $6,500,000 where $4,000,000 will be paid out and remaining $2,500,000 will be part of VTB". Ruzgar deposes that in a phone call after the scheduled closing date, Brar told him that he could not pay his obligations under the Settlement Agreement. He deposes that Brar contacted him in an attempt to negotiate new terms of the Settlement Agreement.

[56] Under the Settlement Agreement, Brar was required to discharge the BVD third mortgage on or before the closing date of the new first mortgage. The evidence is clear that Brar did not do so, and that he lacked funds to do so. On the scheduled date for closing, Brar's email shows that he was trying to negotiate with BVD new terms by which he would not be required to pay $2.5 million to discharge the BVD third mortgage. The evidence also shows that Brar lacked funds to pay the indebtedness secured by the PPSA registration ($2.5 million) and the Pony Drive Mortgage ($1.3 million). Under the Settlement Agreement, Brar was responsible to pay out and discharge these liabilities.

[57] Ruzgar deposes that on June 6, 2025, Brar sent him an email concerning proposed changes to the Settlement Agreement. Ruzgar was willing to consider new settlement terms as shown by email correspondence on June 6 and 9, 2025. This correspondence shows that Ruzgar was not holding Brar to his obligations under the Settlement Agreement, and he had elected to treat the Settlement Agreement as at an end. He began negotiating new terms with Brar. Ultimately, no new terms were agreed upon. This correspondence also shows that Brar had elected to treat the Settlement Agreement as at an end because he could not satisfy his financial obligations under the Settlement Agreement. He then tried to negotiate new settlement terms.

[58] In *The Rosseau Group Inc. v. 2528061 Ontario Inc.*, 2023 ONCA 814, the Court of Appeal, at para. 40, held that tender is not required from an innocent party enforcing his or her contractual rights when the other party has clearly repudiated the agreement or made it clear that they have no intention of closing the deal. Before the date of closing, Brar had failed to obtain a discharge statement from BVD. On the date of closing, Brar had confirmed that he was trying to negotiate a new arrangement with BVD that would not require payment of the BVD third mortgage, as required by the Settlement Agreement. In these circumstances, Ruzgar was not required to tender the Banc funds required for the refinancing to show that he was ready, willing and able to complete the Settlement Agreement by discharging the Vector Mortgage and the BVD second mortgage.

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[59] On the evidence before me, I find that Brar was unable to complete his obligations under the Settlement Agreement on the agreed upon date for closing. The evidence shows that Brar breached the Settlement Agreement by (i) failing to discharge the BVD third mortgage; (ii) failing to repay the indebtedness secured by the PPSA registration and discharge this registration, (iii) failing to repay the indebtedness secured by the Pony Drive mortgage and obtaining a discharge of this mortgage, (iv) failing to obtain discharge statements and a signed acknowledgement and direction from BVD for the discharges of the BVD mortgages, and (v) failing to obtain releases in favour of Ruzgar and 115 Canada from BVD, Joshi and 963.

[60] Brar has not shown that he was ready, willing and able to fulfill his obligations in the Settlement Agreement. To the contrary, Brar showed an intention not to be bound by the Settlement Agreement through his email on the closing date expressing that he was trying to negotiate new terms with BVD. Brar again showed an intention not to be bound by the Settlement Agreement in his June 6, 2025 email to Ruzgar in which he states that he has changed the Settlement Agreement and expresses his plan to get the signed agreement to the lawyer for BVD before the end of the day. Ultimately, as noted, no new settlement agreement was made. I conclude that a reasonable person would conclude from these circumstances that Brar no longer intended to be bound by the Settlement Agreement.

[61] The failure by Brar to repay the BVD third mortgage and to repay the indebtedness secured by the PPSA registration and the Pony Drive mortgage were fundamental to the Settlement Agreement. Without performance of these obligations, Ruzgar would not receive the benefit of the Settlement Agreement.

[62] I conclude that Brar repudiated the Settlement Agreement and that Ruzgar elected to accept the repudiation, with the result that the parties to the Settlement Agreement were discharged from further performance thereunder.

Submissions of 2794963 Ontario Inc.

[63] Abir Joshi ("Joshi") is the principal of 2794963 Ontario Inc. 2794963 Ontario Inc. ("963 Ontario") is a named respondent to this application. 963 Ontario is not a party to the Settlement Agreement.

[64] 963 Ontario contends that 706 Ontario irrevocably sold its shares in 115 Canada to 963 Ontario. 963 Ontario submits that the Brar Parties cannot transfer 963 Ontario's shares in 115 Canada because they cannot sell what they do not own.

[65] 963 Ontario denies that Ruzgar was the sole shareholder of 115 Canada at any time, whether through 2749879 Ontario Ltd. or otherwise.

[66] 963 Ontario requests a dismissal of the Brar Parties' application to enforce the Settlement Agreement.

[67] Given my disposition of the application, it is not necessary for me to address the substantive submissions made on behalf of 963 Ontario.

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Written submissions of Abir Joshi

[68] Joshi claims to be a stakeholder. Joshi did not appear at the hearing of this application but he uploaded written submissions to Case Center. Joshi submits that the Settlement Agreement is void and unenforceable.

[69] Given my disposition of the application, it is not necessary for me to consider Joshi's submissions.

Submissions of Vijay Khaneja

[70] Vijay Khaneja is a lawyer who represented 115 Canada in connection with various secured creditor transactions. He is not a party to the Settlement Agreement. He has an interest in the outcome of this application because the Full and Final Mutual Release at Schedule "A" of the Settlement Agreement expressly extends to the settling parties' "attorneys" and "representatives".

[71] Khaneja was permitted to deliver a factum as an interested party by the endorsement of Kimmel J. dated March 27, 2026. Khaneja supports enforcement of the Settlement Agreement on the same grounds as those advanced by the Brar Parties.

[72] Khaneja is not a party to the Settlement Agreement or the application. I give his submissions little weight. I do not change my disposition of this application based on the submissions of Khaneja.

Disposition

[73] For these reasons, this application, insofar as it seeks an order enforcing the Settlement Agreement and consequential relief, is dismissed.

[74] If the parties are unable to resolve costs, they may make written submissions (with reasonable page lengths) according to a timetable agreed upon by counsel and approved by me.

Cavanagh J.

Date: October 29, 2026

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