APS Defaults: Rights and Remedies for Developers and Purchasers

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Navigating Condo Development Law
(Law Society of Ontario CPD, October 16, 2026)

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Overview

An agreement of purchase and sale does not close. Now what? This is a question facing countless builders, buyers and barristers (and solicitors) as the pre-construction market faces a downwards shift not seen in decades.

The law of real estate defaults is an area which is not new and should provide predictable answers. It is black-letter law (essentially, contract law) that needs to be predictable and enforceable in order that parties can arrange their affairs and know with relative certainty what the outcome of a default will be. But the reality is that when large sums of money are on the line, the aspirational predictability of the law will always be tested by new arguments, new law and new unforeseen issues.

This paper aims to provide a practical guide to where the law stands on the current issues that arise in the unfortunate but increasingly common situation of an APS default, with a particular emphasis on pre-construction condominiums. The focus is on the issues that arise in a down market, (*i.e.* where the market value of the property has declined between the date of the APS and closing) and where the purchaser is the party who has failed to complete the transaction.

Recent Market Conditions

The recent shift in market conditions has challenged vendors and purchasers of newly built condominium apartments. The pressure is highest on buyers who signed agreements of purchase and sale for new builds at the market's peak and must now close their transactions.

For example, the Toronto condominium market experienced years of steady growth. According to the Toronto Regional Real Estate Board's Condo Market Reports, the average price of a Toronto condo climbed from $437,412 in 2016 to $710,520 in 2022. Over the same period, annual sales volume grew from 6,281 to 7,804 units.[1]

However, the market shifted abruptly in 2022. The volume of sales fell dramatically to 3,582. Prices fell too. By the second quarter of 2026, the average price had fallen to $634,972. While

[1] https://trreb.ca/market-data/condo-market-report/condo-market-report-archive/

signs of stabilization emerged in 2025 as annual sales crept back up to 4,295, the market remains down from its peak.[2]

The Financing Shortfall Risk

Consider a typical pre-construction agreement of purchase and sale requiring a 20% deposit. This would leave the buyer responsible for the remaining 80% plus closing costs. For an $800,000 unit, the buyer pays a $160,000 deposit and must finance or pay $640,000 and closing costs.

In a Rising Market (Pre-2022): If the property value grew from $800,000 to $880,000 by closing, securing an uninsured mortgage for 80% of the new market value, or $704,000, would likely cover the $640,000 and closing costs.

In a Falling Market (Since 2022): If the property value dropped from $800,000 to $720,000 by closing, securing an uninsured mortgage for 80% of the new market value, or $576,000, would leave the purchaser with a shortfall of $64,000 plus closing costs.

In a declining market, buyers, and especially overleveraged investors who counted on rapid appreciation, face critical risks. They must source tens of thousands of dollars in extra cash. Purchasers who cannot bridge the gap face appraisal shortfalls and potential defaults, inevitably raising the urgent question: *Can I get out of this deal?*

The Basic Liability for a Default

The basics are easy enough. Once an agreement is firm and binding it must be performed by both sides. If the vendor is ready, willing and able to close on the scheduled closing and the purchaser does not pay the purchase price for the property, the purchaser is in default of the agreement. The vendor may then terminate the agreement. The purchaser loses his or her deposit to the vendor and is liable for any damages sustained by the vendor that are not fully covered by the forfeited deposit.

Pre-Closing Rights and Arrangements

Assignments and extensions can provide relief for vendors and purchasers facing a default. Both options carry risks.

A purchaser facing default may seek to assign the agreement of purchase and sale to a new buyer with the financial capacity to close. However, pre-construction agreements of purchase and sale routinely limit the circumstances under which a purchaser may assign their rights. Vendors

[2] *Ibid.*

frequently prohibit assignments until the declarant has met a specific sales threshold for the development. In many agreements of purchase and sale, the vendor retains the discretion to approve or deny an assignment.

When it comes to a request for an assignment, a vendor typically wants to be satisfied that the assignee is likely to complete the transaction. To secure approval, the purchaser and their assignee should be prepared to demonstrate that the new assignee is *bona fide* and possesses the financial ability to close.

Even after the vendor has approved the assignment, the vendor, purchaser and assignee must typically execute an assignment on the vendor's form. For purchasers, such an assignment usually does not eliminate exposure. As a further measure of protection for the vendor, most assignment agreements provide that the original purchaser remains bound by the agreement of purchase and sale if the assignee fails to close.

But, what if the vendor refused an assignment? If a vendor refuses an assignment that is properly permitted by the APS and the purchaser subsequently defaults, the purchaser may have a legal defense to the vendor's claim to the deposit and damages. The common law duty of good faith requires a party whose consent is sought for an assignment of a contract to act reasonably, even if the contract does not contain language that the consent is not to be unreasonably withheld.[3] A purchaser would have to evaluate whether the vendor's refusal to permit an assignment was for an improper or ulterior purpose, the evidence of its assignee's ability to close, and the appropriate remedy.

Extensions offer temporary relief to a purchaser and a vendor. However, they may also run up costs and delay an inevitable default. Before entering into agreements to extend to arrange alternative financing, the purchaser must consider:

(a) Whether the purchaser has a reasonable prospect of obtaining financing;

(b) The fees to be charged by the vendor in connection with the extension, which may include a fee for the vendor and its lawyer; and

(c) The obligation to continue paying occupancy fees.

If there has been an extension followed by a default, could the purchaser attempt to revisit these fees? The purchaser may wish to consider the reasonableness of the vendor's legal fees, keeping in mind the proportionality of any challenge. They can also review the provisions of the agreement of purchase and sale and the *Condominium Act, 1998* to ensure occupancy fees were calculated correctly.

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[3] See *Quickie Convenience Stores Corp. v. Parkland Fuel Corporation*, 2020 ONCA 453 (CanLII), <https://canlii.ca/t/j8lp9>.

The *Condominium Act, 1998* – Layers of Consumer Protection

Part V of the *Condominium Act, 1998*, adds layers of protection for purchasers of newly built condominium properties. Ontario courts consistently recognize this statute as remedial consumer protection legislation that must be interpreted in favour of the buyer.[4]

Under s. 72 of the *Condominium Act, 1998*, a declarant must deliver two core documents to every pre-construction purchaser:

(a) A current disclosure statement, the contents of which are prescribed; and

(b) The applicable condominium guide, prepared by the Minister.

A purchaser is not bound by the agreement of purchase and sale until the declarant has delivered copies of the signed agreement of purchase and sale, the disclosure statement and the condominium guide.

Once the purchaser has received all three documents, s. 73 of the *Condominium Act, 1998*, grants a purchaser a time limited right of rescission. Within ten days of the receipt of the three documents, the purchaser may rescind the agreement of purchase and sale and have their deposit returned.

Section 74 of the *Condominium Act, 1998*, imposes a continuing obligation on the declarant to deliver a revised disclosure statement whenever there is a material change to the information contained in it. "Material change" is defined as follows in s. 74(2):

> "material change" means a change or a series of changes that a reasonable purchaser, on an objective basis, would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit in the corporation that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 73, if the disclosure statement had contained the change or series of changes, but does not include, …

Note that proposed legislation contemplates that an increase of less than 10% in the common expenses would not amount to a material change, but this provision has not come into force.

The disclosure or discovery of a genuine material change triggers a new 10-day rescission window and refund right. Section 74 of the *Condominium Act, 1998*, is supposed to strictly dictate the timelines, procedures, and obligations that both vendors and purchasers must follow to exercise and challenge such a right of rescission.

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[4] See for example: *Lexington on the Green Inc. v. Toronto Standard Condominium Corporation No. 1930,* 2010 ONCA 751 (CanLII), <https://canlii.ca/t/2dcn0>; *Harvey v. Talon International Inc*., 2017 ONCA 267 (CanLII), <https://canlii.ca/t/h2z9j>.

When the market shifts, purchasers have attempted to invoke these statutory protections to exit their agreements. Ontario courts closely scrutinize the context and validity of these claims:

Abdool v. Somerset Place Developments of Georgetown Ltd., 1992 CanLII 8658 (ON CA), <https://canlii.ca/t/g99cv>: Somerset Place Developments of Georgetown Ltd. was the vendor and Abdool was one of a group of purchaser respondents in appeal. The purchaser sought rescission long after the initial 10-day period, claiming the vendor's original disclosure statement was deficient. The Court of Appeal confirmed that the delivery of a non-compliant disclosure statement cannot start the running of the 10-day rescission clock. However, the Court of Appeal provided guidance on what constitutes a material deficiency and ultimately ruled that the disclosures in this case were sufficient.

Dicenzo (Linden Park) Holdings Inc. v. Sadeghyar, 2026 ONSC 1566 (CanLII), <https://canlii.ca/t/kjtvd>: DiCenzo (Linden Park) Holdings Inc. was the declarant vendor and Sadeghyar was the purchaser. The transaction failed to close and the unit was remarketed and sold at a loss. The vendor sought forfeiture of the deposit and damages. The purchaser sought to have the underlying agreement of purchase and sale declared void and unenforceable and the deposit returned. The lynchpin of the purchaser's case was the assertion that they did not receive the condominium guide, as required by the *Condominium Act, 1998*. Even though the purchaser had signed an acknowledgement of receipt of the guide, the court considered that to be only one piece of evidence. Ultimately, the vendor was unable to establish that it had provided the guide to the purchaser. The agreement of purchase and sale was declared void and the deposit returned.

Harvey v. Talon International Inc., 2017 ONCA 267 (CanLII), <https://canlii.ca/t/h2z9j>: Talon International Inc. was the vendor and Harvey was one of a group of purchaser respondents in appeal. Several years after entering into the agreement of purchase and sale, the purchaser sought to rescind the agreement of purchase and sale on the basis of material changes to the disclosure statement. The dispute concerned the form of notice of rescission, which the vendor argued to be deficient. The case was decided in favour of the purchasers. Note however, the Court of Appeal did not actually rule on whether the change was material. Instead, it held that because the vendor failed to apply to the Superior Court within its mandatory 10-day window to challenge the notice, the vendor lost its right to dispute the materiality of the change.

However, consider another alleged material change case, *Chen v. Brookfield Residential (Ontario) Limited,* 2022 ONCA 887 (CanLII), <https://canlii.ca/t/jtm1l>: Brookfield Residential (Ontario) Limited was the vendor and Chen was the purchaser. As the time for completing the agreement of purchase and sale neared, the purchaser advised the vendor that they could not close due to the low appraisal value. A few weeks later, the purchaser delivered a notice of rescission due to an alleged material change in the disclosure statement. A month later the purchaser commenced a claim for the return of his deposit. The vendor counterclaimed for damages. Unlike *Harvey v. Talon International Inc.*, this time the court considered whether the change was material (even though no application was commenced by the vendor within 10 days of the notice of rescission). The Court of Appeal upheld the motion judge's conclusion that the notice of rescission was invalid because the change was not material. Further, the Court of Appeal concluded that the notice of rescission was an anticipatory breach and not a *bona fide*

attempt to address what he believed to be a material change. It was a strategy to avoid the agreement.

The Tarion Addendum – "… not meant to be read, still less to be understood"

The provisions of the Tarion Addendum are another potential source of protection for purchasers. The Addendum is a mandatory enclosure to every new home agreement of purchase and sale in Ontario for both condominiums and freehold homes.[5] It was originally implemented following a special committee chaired by former Supreme Court Justice Frank Iacobucci struck to address perceived issues with the timeliness of building and vendor terminations in a rising market.

Like the *Condominium Act, 1998*, the Addendum and the broader legislative scheme that implements it have been recognized by the courts as consumer protection legislation intended to remedy the inequality of bargaining power between developers and home buyers.[6] It recognizes the relatively more vulnerable position of purchasers. As such, courts, including the Court of Appeal, have held that the applicable legislation must be given a broad and liberal interpretation to achieve its remedial purposes.[7] Courts have struck down provisions in agreements of purchase and sale that are inconsistent with the Addendum.[8]

However, while the Addendum is undoubtedly consumer-protective in intent, it is also recognized that it is an instrument that seeks to balance the interests of both parties and to foster predictability of likely outcomes for both sides.

Despite these good intentions the Addendum is accomplishing its goals imperfectly – especially when it comes to predictability and user-friendliness. Justice Lauwers' well-known "two thumbs down" review of the Addendum's intelligibility in *Ingarra v. 301099 Ontario Limited (Previn Court Homes)*, 2020 ONCA 103 (CanLII), <https://canlii.ca/t/j55cz> says it all:

> [23] … The Tarion Addendum is not "consumer protective" by any stretch of the imagination. The current document is only marginally better drafted than its predecessor, which I described in the trial decision in *Sirasena,* at para. 11, as containing "consumer-

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[5] Section 8(1) of the *Warranty for Delayed Closing or Delayed Occupancy*, O Reg 165/08, <https://canlii.ca/t/54wlz> requires the inclusion of the Addendum as part of every new home purchase.

[6] *Sirisena v. Oakdale Village Homes Inc*., 2010 ONSC 2996 (CanLII), <https://canlii.ca/t/2d3p6> at paras. 49-53.

[7] *Wu v. Suevilia Development Corporation*, 2024 ONCA 124 (CanLII), <https://canlii.ca/t/k2zb1>, at para. 46; *Reddy v. 1945086 Ontario Inc*., 2019 ONSC 2554 (CanLII), <https://canlii.ca/t/j044g>, at paras. 20-23; *Ontario New Home Warranty Program v. Lukenda* (C.A.), 1991 CanLII 7167 (ON CA), <https://canlii.ca/t/g1csr>, at para. 7.

[8] *Bellisario v. 2200 Bromsgrove Development Inc.,* 2025 ONSC 2546 (CanLII), <https://canlii.ca/t/kbrhd>, at paras. 77-90; *Sirisena v. Oakdale Village Homes Inc*., 2010 ONSC 2996 (CanLII), <https://canlii.ca/t/2d3p6> at paras. 54-58.

> unfriendly language". It is consistent with Lord Devlin's sardonic remark: "This sort of document is not meant to be read, still less to be understood": *McCutcheon v. David MacBrayne Ltd.*, [1964] 1 W.L.R. 125 (U.K. H.L.).
>
> [24] The Tarion Addendum is a small-font, single spaced, convoluted and confusingly long and obscure document, as s. 4 in the appendix to these reasons amply shows. It is a trap for the unwary, particularly the unwary lay person. …

As such, in cases where the Addendum is at issue, a very careful analysis of its provisions is required.

A central purpose of the Addendum is to set out, at the time the APS is signed, the dates by which the unit must be completed and ready for occupancy. To do this, the Addendum includes the Statement of Critical Dates (a list of dates that govern when construction will be completed) and sets a framework for how the builder can set occupancy dates.

The most important date on the Statement of Critical Dates for condominiums is the Outside Occupancy Date. If construction is not complete by the Outside Occupancy Date, the purchaser has a 30-day period after the Occupancy Date in which to terminate the transaction, entitling the purchaser to a refund of all monies paid to the builder plus interest.

However, the dates in the Statement of Critical dates may be extended if there is an "Unavoidable Delay", defined in the Addendum as "an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor". There have been a number of cases discussing whether the unavoidable delay provisions have been properly triggered by vendors.[9]

The Addendum also has provisions addressing early termination conditions (the nature and timing of which are strictly controlled by the Addendum; see s. 6) and the requirement that the builder provide an occupancy permit on or before closing (s. 9).

Importantly, the Addendum specifically preserves the rights the parties otherwise have at law or equity, including fundamental breach of contract (s. 10(f)).

The Addendum prohibits the parties from including any term in the APS that is not consistent with the Addendum and provides that if there is any conflict with the Addendum, the Addendum prevails (s. 13).

While the Addendum is an important tool, the Court of Appeal has given it a controlled interpretation. The Court of Appeal has held that even in situations where there is a violation of the Addendum resulting in damages, exculpatory clauses limiting purchasers' damages are

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[9] See, for example: *Ashcroft Homes v. Tarion Warranty Corporation*, 2023 ONSC 6527 (CanLII), <https://canlii.ca/t/k19x0>; *5000933 Ontario Inc. v. Mahmood et al*., 2022 ONSC 4726 (CanLII), <https://canlii.ca/t/jrfz7>.

enforceable so long as the exculpatory clause does not take away the protections of the Addendum: see *Ritchie v. Castlepoint Greybrook Sterling Inc.*, 2021 ONCA 214 (CanLII), <https://canlii.ca/t/jf4b1> and, more recently, *Shiralian v. Wyldewood Creek Inc.*, 2026 ONCA 163 (CanLII), <https://canlii.ca/t/kjmzs>.

A further notable feature of the Addendum is that it includes an arbitration clause with respect to terminations of the APS pursuant to the Addendum. Section 15 of the Addendum provides:

> **15. Disputes Regarding Termination**
>
> (a) The Vendor and Purchase agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.

With respect to legal costs, s. 15(c) provides that the "The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise." The Divisional Court had held that this costs provision alters the usual "loser pays" presumption in civil proceeding and creates a presumption that purchasers are entitled to their costs regardless of the outcome of the arbitration.[10]

However, s. 15 is restricted to disputes relating to termination of the APS under s. 11 of the Addendum (refund of monies paid on termination other than as a result of breach of contract by a purchaser). It does not apply to common law remedies. As discussed in *Grandfield Homes (Kenton) Ltd. v Chen,* s. 15 "… does not cover all disputes between a vendor and a purchaser arising from the termination of the APS for causes or reasons outside of the rights and obligations that it creates …"[11]

Contractual and Common Law Remedies

Beyond statutory protections, purchasers may raise common law and contractual arguments with respect to whether an agreement of purchase and sale is binding or enforceable.

A purchaser may be entitled to walk away from a transaction if the agreement of purchase and sale contains a condition that was neither fulfilled nor waived by the specified deadline.

Anecdotally, in the recently passed "hot" real estate market, conditional offers were heavily discouraged, as competing bidders routinely stripped them out to make their offers attractive to

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[10] *Shah v. 625 Sheppard Bayview Village GP Inc.*, 2025 ONSC 1779 (CanLII), <https://canlii.ca/t/kb7fq>, at para. 21.

[11] *Grandfield Homes (Kenton) Ltd. v. Chen*, 2020 ONSC 5230 (CanLII), <https://canlii.ca/t/j9khl>, at paras. 43 and 63.

sellers. In today's more balanced or declining market, purchasers may have the leverage to insert protective conditions (financing, home inspection, or status certificate review) that can provide a lawful exit if left unfulfilled.

A purchaser may seek to rescind an agreement of purchase and sale on the basis of misrepresentation. To be successful, the purchaser would have to establish three core elements: the vendor made a false statement, the statement was material to the decision to purchase and it induced the purchaser to enter into the agreement. Again, the issue of materiality would have to be determined to the facts of the case.[12]

Vendors routinely include entire agreement clauses within the standard terms of the agreement of purchase and sale – it is part of the OREA form. An entire agreement clause explicitly states that the written contract contains the entire agreement between the parties, effectively superseding and nullifying any prior oral or written representations, marketing materials, or pre-signing promises. As a result, they provide vendors and purchasers with more certainty as to the property being sold.

Finally, defaulting purchasers may find recourse in equity in the form of relief from forfeiture. Under s. 98 of the *Courts of Justice Act*, Ontario courts possess the discretionary power to relieve a party from the strict contractual forfeiture of their deposit. The Court of Appeal has affirmed[13] the long-standing, two part test for forfeiture from *Stockloser v. Johnson*, [1954] 1 Q.B. 476 (C.A.):

> (1) whether the forfeited deposit was out of all proportion to the damages suffered; and
>
> (2) whether it would be unconscionable for the seller to retain the deposit.

Naeem v. Bowmanville Lakebreeze West Village Ltd., 2024 ONCA 383 (CanLII), <https://canlii.ca/t/k4kp3> is an example of a decision in which the purchaser obtained relief from forfeiture of a deposit. The vendor had suffered no damages. Due to the circumstances of the purchaser and the conduct of the vendor, the Court of Appeal upheld the motion judge's decision to grant relief from forfeiture and order the return of the purchaser's deposit. The decision in *Naeem* should however be viewed as exceptional given its facts and the then-prevailing market context.

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[12] *Issa v. Wilson*, 2020 ONCA 756 (CanLII), <https://canlii.ca/t/jbvmh>.

[13] See *Mouralian v. Groleau*, 2024 ONCA 342 (CanLII), <https://canlii.ca/t/k4ghw>.

Anticipatory Breach

An anticipatory breach occurs where a party indicates, prior to the time for performance of the contract coming due, that they are unwilling or unable to perform the contract.[14] The definitive explanation of an anticipatory breach from the Court of Appeal is as follows:

> … An anticipatory breach sufficient to justify the termination of a contract occurs when one party, whether by express language or conduct, repudiates the contract or evinces an intention not to be bound by the contract before performance is due. … To assess whether the party in breach has evinced such an intention, the court is to ask whether a reasonable person would conclude that the breaching party no longer intends to be bound by it.[15]

In the context of an APS, this occurs most frequently where a party indicates that they will not be completing the APS on the closing date.

The question of what conduct amounts to an anticipatory breach is a question of fact. A mere request for an abatement, an extension, or a suggestion that a purchaser is having issues securing financing is probably not sufficient. But a definitive statement that a purchaser will not be able to secure financing and will not be able to close is. An interesting example of the sometimes fine line between discussion and repudiation is provided by *Zoleta v. Singh and RE/MAX Twin City Realty*, 2023 ONSC 5898 (CanLII), <https://canlii.ca/t/k0pz3>, at paras. 47-50. In that case, the lawyer for the purchaser advised that his clients would "require" an abatement of $355,000. The Court found that the use of the would "require" was "synonymous with a demand rather than a request" and unequivocally communicated that he would not complete the purchase without an abatement. It was therefore a repudiation of the contract.

Time of the Essence and Extensions

Virtually every agreement of purchase and sale will have a clause providing that "time is of the essence". A "time of the essence" clause means that the breach of a time limit in a contract will permit the innocent party to terminate the contract, even if the delay in performance is very short or of little consequence.[16] In the real estate closing context, this means that closing obligations, including payment of the purchase price, must be made by the time stipulated in the contract.

One potential area of dispute is where the conduct of the opposite party has caused the delay in performance. In this situation, a court may find that time is no longer of the essence. This is

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[14] *Nutzenberger v. Mert*, 2021 ONSC 36 (CanLII), <https://canlii.ca/t/jdkhl>, at paras. 49-55.

[15] *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92 (CanLII), <https://canlii.ca/t/1vp4h>.

[16] *Di Millo v. 2099232 Ontario Inc.*, 2018 ONCA 1051 (CanLII), <https://canlii.ca/t/hwnvq>, at paras. 31-35; *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, 2024 ONCA 6 (CanLII), <https://canlii.ca/t/k20lq>.

what happened in *Fortress Carlyle Peter St. Inc. v. Ricki's Construction and Painting Inc.*, 2019 ONCA 866 (CanLII), <https://canlii.ca/t/j355k>, where a delay in payment of closing funds was found to have been caused by the vendor's own default in providing a proper estoppel certificate in accordance with the parties' agreement.

In practice, extensions will often be granted, potentially on terms, where there is a realistic possibility that an extension will enable the purchaser to close. But there is no obligation to provide one and the failure to be ready to close – even briefly – will trigger the right of the opposite party to terminate the agreement.

Defences

Builder did not build what was promised

A potential argument that purchasers may pursue is that the builder did not deliver what was promised, giving rise to a fundamental breach of such a magnitude so as to warrant relieving the purchaser from completing the transaction. Such an argument is most commonly made on the basis that what was built did not match the plans or specifications provided for in the agreement of purchase and sale.

Most agreements explicitly permit builders to make changes to the construction of a building without giving rise to an entitlement to rescind the agreement. Furthermore, even in the absence of such a clause the test at common law for a fundamental breach is a high bar and requires that the breach be one that deprives the innocent party of "substantially the whole benefit" of the contract.[17]

One recent case, *Trivedi v. 2607305 Ontario Inc.*, 2025 ONSC 72 (CanLII), <https://canlii.ca/t/k8mt8> is illustrative. In *Trivedi*, the purchaser bought the penthouse unit, which was on the third floor of the development. The builder then added a fourth floor resulting in the purchaser's unit no longer being the penthouse. The Court found that this was not sufficient to give rise to a fundamental breach and that the APS remained binding (interestingly, the Court found that the change was a material change giving rise to rescission rights under the *Condominium Act*, but the buyers had missed the 10-day period for exercising that right).

Cases where purchasers have been relieved of the obligation to close based on changes to construction include *Varghese v. Hogg Construction Ltd.*, 2023 ONSC 5837 (CanLII), <https://canlii.ca/t/k0mtn> (a four foot reduction to the length of the living room in an already small room where the contract only permitted "minor" changes) and *Danko v. 792207 Ontario Ltd.*, 2004 CanLII 27685 (ON CA), <https://canlii.ca/t/1gwq9> (elimination of a cathedral ceiling that was a "crucial" feature to the purchasers' retirement home).

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[17] *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC), [1989] 1 SCR 426, <https://canlii.ca/t/1ft7s>.

Closing date not properly set

A closing date must be properly set on sufficient notice and in accordance with the provisions of the Tarion Addendum, discussed above. The Addendum should be carefully reviewed by both parties to ensure that the scheduling of the closing date is in accordance with the Addendum. It is unlikely that the setting of a closing date not in accordance with the Addendum would amount to a repudiatory breach if the issue is corrected. But the termination of an agreement by a builder in reliance upon its own improperly scheduled closing date could allow a purchaser to accept such purported termination as a builder's repudiation.

Vendor was not ready, willing and able to close – the "double default"

A potential defence to a claim that a purchaser has defaulted is an argument that the vendor was itself unable to complete the transaction in accordance with its terms. In order to complete the transaction, the vendor must be able to convey title and must have actually completed construction – which includes obtaining an occupancy certificate in accordance with the Tarion Addendum (discussed above).

If both parties default on the agreement, the situation gives rise to a "double default". In a double default situation, the law imposes the following solution: (1) time is no longer of the essence, and (2) the contract remains alive and either party may restore time of the essence and set a reasonable closing date: *Domicile Developments Inc. v. MacTavish*, 1999 CanLII 3738 (ON CA), <https://canlii.ca/t/1f9hj>; *King et al. v. Urban & Country Transport Ltd. et al.*, 1973 CanLII 740 (ON CA), <https://canlii.ca/t/g15kf>.

Critically, in a double default situation, a party who is not able to close on the closing date must reset time of the essence and give the other party a reasonable opportunity to complete the transaction before they are entitled to terminate. If this opportunity is not provided and the party terminates the agreement, this termination will itself be a breach of the agreement giving the other party the right to terminate the agreement.

Good faith contractual performance

The Supreme Court's jurisprudence over the last decade has recognized a duty of good faith contractual performance and a duty of honest performance (see *Bhasin v. Hrynew*, 2014 SCC 71 (CanLII), [2014] 3 SCR 494, <https://canlii.ca/t/gf84s> and *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 (CanLII), [2020] 3 SCR 908, <https://canlii.ca/t/jc6vt>).

While these duties no doubt apply to an APS and will sometimes be raised, the scope of the duty does not extend to requiring a vendor to accept anything less than full performance of a contract. It does not require a vendor to adjust a purchase price or grant extensions or other indulgences based on market condition or appraisals. And the contents of the duty will be informed by the fact that unlike in many cases dealing with these duties, an APS is not a long-term relational contract but is a one-time transactional exchange.

Damages

There has been a default. Now for the million dollar question: what damages is the vendor entitled to? The short answer is all reasonable damages arising from the purchaser's breach, net of a credit for the deposit paid by the purchaser.[18] As in other areas of the law, the innocent party is entitled to be restored to the position they would have been in had the contract been performed.

The primary driver of damages will in most cases be the loss on the resale (the difference between the APS price and the market value on the date of the breach). Other damages will relate to the costs of reselling the property (for example realtor's fees) or costs of carrying the property (such as municipal taxes, condominium fees and utilities). A typical breakdown of damages might look something like this:

Loss on Resale ($1,500,000 APS price minus $1,150,000 resale price)	$350,000
Utilities	$1,000
Realtor Fees	$50,000
Condo Maintenance Fees	$2,000
Municipal Taxes	$2,000
Extras Placed in Home	$20,000
Credit for Deposit	($200,000)
Total	**$225,000.00**

Loss of bargain (loss on resale)

The basic rule is that damages are to be assessed as of the date of the breach of contract (typically, the closing date). However, it is accepted that the damages in an APS default situation are to be assessed based on the highest price obtainable for the property within a reasonable time following the failed closing date. The basic principles are set out in *642947 Ontario Ltd. v. Fleischer*, 2001 CanLII 8623 (ON CA), <https://canlii.ca/t/1f1hr>, at para. 41:

[18] Regarding the entitlement to credit a forfeited repost against damages, see *Azzarello v. Shawqi*, 2019 ONCA 820 (CanLII), <https://canlii.ca/t/j2tqx>, at paras. 42-55.

> (1) The basic principle for assessing damages for breach of contract applies: the award of damages should put the injured party as nearly as possible in the position it would have been in had the contract been performed.
>
> (2) Ordinarily courts give effect to this principle by assessing damages at the date the contract was to be performed, the date of closing.
>
> (3) The court, however, may choose a date different from the date of closing depending on the context. Three important contextual considerations are the plaintiff's duty to take reasonable steps to avoid its loss, the nature of the property and the nature of the market.
>
> (4) Assessing damages at the date of closing may not fairly compensate an innocent vendor who makes reasonable efforts to resell in a falling market. In some cases, the nature of the property -- for example an apartment building-- hampers the vendor's ability to resell quickly. Thus, if the vendor takes reasonable steps to sell from the date of breach and resells the property in some reasonable time after the breach, the court may award the vendor damages equal to the difference between the contract price and the resale price, instead of the difference between the contract price and the fair market value on the date of closing.
>
> (5) Therefore, as a general rule, in a falling market the court should award the vendor damages equal to the difference between the contract price and the "highest price obtainable within a reasonable time after the contractual date for completion following the making of reasonable efforts to sell the property commencing on that date"
>
> (6) Where, however, the vendor retains the property in order to speculate on the market, damages will be assessed at the date of closing.[19]

In short, where a purchaser fails to close a real estate transaction and the vendor subsequently sells the property in mitigation of its damages, the formula for calculating the loss of bargain damages is presumptively the original contract price minus the resale price.[20]

Mitigation

It is common for defaulting purchasers to take the position that the vendor's resale of the property did not achieve a high enough resale price and was either below market value or depressed by insufficient marketing efforts. Such arguments are challenging. It is well-established that a vendor reselling the property in mitigation of damages is only held to a standard of reasonableness, not perfection. As Justice Perell has put it:

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[19] See also: *Akelius Canada Ltd. v. 2436196 Ontario Inc.*, 2022 ONCA 259 (CanLII), <https://canlii.ca/t/jndp3>; *100 Main Street East Ltd. v. W.B. Sullivan Construction*., 1978 CarswellOnt 1459 (C.A.) at paras. 55 and 73.

[20] *100 Main Street Ltd. v. W.B. Sullivan Construction Ltd.*, 1978 CanLII 1630 (ON CA), <https://canlii.ca/t/g15fk>, at para. 55; *Marshall v. Meirik*, 2021 ONSC 1687 (CanLII), <https://canlii.ca/t/jdqpw>, at para. 29.

> In assessing the innocent party's efforts at mitigation, the courts are tolerant, and the innocent party need only be reasonable, not perfect; in deciding what is a reasonable way to mitigate the effects of a breach of contract, the innocent party is not to be held to too nice a standard; it need only act reasonably, using what it knows then, without hindsight, and it need not do anything risky.[21]

This reasonableness standard recognizes the difficult position a vendor is in when undertaking mitigation. If a vendor spends money on remarketing a unit, staging or retaining an outside realtor, a defaulting purchaser might argue these expenses (damages) should not have been incurred and should not be recoverable; if these steps are not taken, a defaulting purchaser might argue that the steps should have been taken and would have resulted in a superior resale price. Courts are appropriately hesitant to assume the role of "Monday morning quarterback" when assessing mitigation efforts with the benefit of hindsight.

Furthermore, the reasoning behind these principles of mitigation has an additional dimension in the context of an APS default: there is absolutely no advantage to an innocent vendor to do anything other than maximize the resale price of the property. Selling the property for less than the highest price attainable makes absolutely no sense from the perspective of the vendor's own self-interest.

In addition, consistent with the general law of mitigation, once the plaintiff has established its loss (APS price minus resale price), the onus then shifts to the defendant to show that the plaintiff failed to make reasonable efforts to mitigate and that mitigation was possible: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 (CanLII), [2012] 2 SCR 675, <https://canlii.ca/t/ft808>, at para. 24; *Marshall v. Meirik*, 2021 ONSC 1687 (CanLII), <https://canlii.ca/t/jdqpw>, at para. 44.

The "mass default" situation

A challenging issue that the courts will have to grapple with given current market conditions is how to treat the obligation to mitigate where a builder is faced with a mass default of numerous condominium units across a single project. How do the principles of mitigation apply to a specific unit when the builder is confronted with the unenviable dilemma of having to remarket numerous properties at once?

A number of recent cases have started to address this issue. In *Tribute (Springwater) Limited v. Sumera Anas*, 2020 ONSC 5277 (CanLII), <https://canlii.ca/t/j9kjf>, at paras. 26-28, the Court held that it was "troubled" by the plaintiff's mitigation efforts:

> [26] I am also troubled by the Plaintiff's mitigation efforts. Specifically, the practice of only selling directly through one of Tribute's sales representatives or agents, as opposed to the multiple listing service (MLS), raises the question of whether the Plaintiff used commercially reasonable efforts to re-sell the Property in order to mitigate damages. As set out above, the Liolios Affidavit provides that one rationale for re-selling

[21] *Malatinszky v. Miri*, 2020 ONSC 16 (CanLII), <https://canlii.ca/t/j4j6f>, at para. 82.

> homes directly through Tribute's sales representatives is to avoid adversely impacting other customers of Tribute. Query whether the goal should be to obtain the best price reasonably possible in the open market in order to mitigate the damages suffered by the purchaser who failed to close on the transaction due to an inability to get financing.
>
> …
>
> [28] … In my view, Tribute's internal practice of doing the marketing through their sales representatives or agents, not through MLS, and without an appraisal is not sufficient and is self-serving.

In *Tribute (Springwater) Limited v. Atif*, 2021 ONCA 463 (CanLII), <https://canlii.ca/t/jglbt>, at para. 22, the Court of Appeal was also "troubled by" the decision to list the property internally rather than listing on MLS, but nonetheless did not give effect to the argument given that it was not raised at first instance.

Conversely, in *Pristine Homes (Belle Aire) Inc. v. Saida Mohamed Nur*, 2021 ONSC 6395 (CanLII), <https://canlii.ca/t/jjf4q>, the Court found the vendor's explanation for why the property was not listed on MLS and its alternative marketing efforts to be reasonable: see paras. 52-58. The explanation included not wanting to flood the market.

In *Ambria (Otonabee) Limited v. Shaw et al*, 2025 ONSC 6519 (CanLII), <https://canlii.ca/t/kh0d0>, the Court awarded the vendor, who was claiming damages of $674,990, only nominal damages of $10,000 on the basis that the vendor had not made reasonable mitigation efforts. The vendor had only undertaken private marketing efforts and attempted to facilitate the sale of the unit to other defaulting purchasers. By the time of the summary judgment motion, the property had still not been resold. The vendor had tendered evidence of the market value of the property in 2025, but no evidence of the value in 2023 when the default occurred. Justice Parghi held that, in accordance with the *642947 Ontario Ltd. v. Fleischer*, 2001 CanLII 8623 (ON CA), <https://canlii.ca/t/1f1hr> case discussed above, the date of assessment of damages was in 2023. As the vendor presented no evidence of the value in 2023, it had not met its burden of proving damages.

Finally and most recently, in *Eyelet Investment Corp. v. Zhou*, 2026 ONCA 453 (CanLII), <https://canlii.ca/t/kln30>, the Court of Appeal affirmed a decision declining to award damages based on a resale price on the basis that the vendor had failed to provide sufficient evidence about the marketing strategy for the particular property at issue. Damages were instead awarded based on appraisal evidence of the value.

The lessons for builders arising from these cases is that a detailed explanation of the marketing strategy that has been pursued should be articulated in the evidence. Courts will be tolerant in appropriate cases but do require an explanation for the decisions that have been made. And if in doubt, although it is not required (see discussion of expert evidence below), the tendering of appraisal evidence as a backup to establish market value on the appropriate date for the assessment of damages should be considered.

No obligation to accept an offer from defaulting purchaser

The obligation to mitigate does not oblige a vendor to accept an offer from a defaulting purchaser or to purchase the property for less than the agreed-upon purchase price: *Azzarello v. Shawqi*, 2019 ONCA 820 (CanLII), <https://canlii.ca/t/j2tqx>, at paras. 36-40.

Expert evidence?

There is usually no need for the innocent vendor to lead expert evidence to establish the value of the property at the time of the resale or otherwise. As set out by the Court of Appeal in *Arista Homes (Richmond Hill) Inc. v. Rahnama*, 2022 ONCA 759 (CanLII), <https://canlii.ca/t/jst5d>, at para. 9:

> [9] Where a purchaser fails to close a real estate transaction and the vendor takes reasonable steps to sell the property in an arm's length sale to a third party in mitigation of damages, and there is nothing improvident about the sale, the difference between the two sale prices will be used to calculate the damages. … In such circumstances, there will be no need for expert evidence … [References omitted]

Arista v. Rahnama is a case in which the motion judge did not find a failure to mitigate, but nevertheless resorted to using the defendant's expert's appraisal of the property's value on the date of the resale to calculate damages instead of using the actual resale price. This approach was rejected by the Court of Appeal.

Similarly, in *Marshall v. Hall*, 2025 ONSC 910, the trial judge relied on an appraisal valuing the property higher than the resale price as a basis for finding that the resale had not constituted reasonable mitigation. The Divisional Court overturned the decision and held that it was "an error of law for the trial judge to bypass the resale value as the presumptive fair market value of the property …" The Court rejected the trial judge's assertion that "absent exceptional circumstances, a resale below fair market value may not constitute 'reasonable steps' [for mitigation]": *Marshall v. Hall*, 2025 ONSC 910 (CanLII), <https://canlii.ca/t/k9dvt>, at paras. 47, 52-55.

These principles were applied most recently in *Rosehaven Homes Limited v. Jamil*, 2026 ONCA 446 (CanLII), <https://canlii.ca/t/klkcx>, where the Court of Appeal endorsed the principles set out in *Marshall v. Hall* and held that the motion judge had erred in declining to award damages for the loss on the resale in the absence of expert or other appropriate evidence of the impact of the vendor's allegedly insufficient mitigation efforts.

Interest?

Many pre-construction condominium agreements of purchase and sale provide for a contractual rate of interest applicable to any amounts on which a purchaser is in default of payment, including the purchase price.

There is a line of cases that has declined to award contractual interest rates where the rate at issue is "surprisingly onerous and unexpected" and was not drawn to the purchaser's attention: see

Forest Hill Homes v. Ou, 2019 ONSC 4332 (CanLII), <https://canlii.ca/t/j1hqd>, at paras. 19-20; *Lecco Ridge Developments Inc., v. Vaquero*, 2022 ONSC 6547 (CanLII), <https://canlii.ca/t/jt5g5>, at paras. 68-82. These cases apply the principles of from *Tilden Rent-A-Car Co. v. Clendenning*, 1978 CanLII 1446 (ON CA), <https://canlii.ca/t/g1bxl> (car rental contracts with surprisingly onerous terms that are not read by customers) to the APS context.

Based on the current case law, the line for where interest becomes sufficiently onerous appears to be between 12% and 15% per annum. Interest rates of 20% (*Forest Hill Homes*, *supra*) and 15% (*Lecce Ridge*, *supra*) have been found to be surprisingly onerous and unenforceable. Conversely, an interest rate of 12% has been found to be enforceable: *Arista Homes (Kleinburg) Inc. v. Sarah Igbinedion*, 2019 ONSC 7086 (CanLII), <https://canlii.ca/t/j3vkj>.

Procedure and Jurisdiction

We have covered the black letter law. But parties should not overlook civil procedure, and in particular summary judgment. It is well-accepted that in most APS default cases, summary judgment under Rule 20 of the *Rules of Civil Procedure* is an appropriate procedural vehicle for adjudicating the entire case.[22] Most APS default cases involve issues of contractual interpretation and liability well-suited to summary judgment. Situations where summary judgment are not appropriate will usually be restricted where there are genuine credibility issues.

Given the above, counsel commencing and defending such actions would be well-advised to consider the availability of hearing dates and the applicable motion scheduling procedures in the jurisdiction being considered where there are multiple appropriate courthouses in which to commence a claim. For example, in Toronto there has been a trend away from scheduling summary motions and a requirement to attend Civil Practice Court to establish the suitability of summary judgment.

[22] There are countless cases granting summary judgment in this area; see for example *Brown v. Bolarinwa*, 2026 ONSC 4854 (CanLII), <https://canlii.ca/t/kn6p6>, at paras. 23-33; *Bang v. Sebastian*, 2018 ONSC 6226 (CanLII), <https://canlii.ca/t/hvl92>.

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1. *Quickie Convenience Stores Corp. v. Parkland Fuel Corporation*, 2020 ONCA 453 (CanLII), <https://canlii.ca/t/j8lp9>

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2. *Lexington on the Green Inc. v. Toronto Standard Condominium Corporation No. 1930*, 2010 ONCA 751 (CanLII), <https://canlii.ca/t/2dcn0>
3. *Harvey v. Talon International Inc.*, 2017 ONCA 267 (CanLII), <https://canlii.ca/t/h2z9j>
4. *Abdool v. Somerset Place Developments of Georgetown Ltd.*, 1992 CanLII 8658 (ON CA), <https://canlii.ca/t/g99cv>
5. *Dicenzo (Linden Park) Holdings Inc. v. Sadeghyar*, 2026 ONSC 1566 (CanLII), <https://canlii.ca/t/kjtvd>
6. *Harvey v. Talon International Inc.*, 2017 ONCA 267 (CanLII), <https://canlii.ca/t/h2z9j>
7. *Chen v. Brookfield Residential (Ontario) Limited*, 2022 ONCA 887 (CanLII), <https://canlii.ca/t/jtm1l>

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8. *Ingarra v. 301099 Ontario Limited (Previn Court Homes)*, 2020 ONCA 103 (CanLII), <https://canlii.ca/t/j55cz>
9. *Sirisena v. Oakdale Village Homes Inc.*, 2010 ONSC 2996 (CanLII), <https://canlii.ca/t/2d3p6> at paras. 49-58
10. *Wu v. Suevilia Development Corporation*, 2024 ONCA 124 (CanLII), <https://canlii.ca/t/k2zb1>, at para. 46
11. *Reddy v. 1945086 Ontario Inc.*, 2019 ONSC 2554 (CanLII), <https://canlii.ca/t/j044g>, at paras. 20-23
12. *Ontario New Home Warranty Program v. Lukenda* (C.A.), 1991 CanLII 7167 (ON CA), <https://canlii.ca/t/g1csr>, at para. 7
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14. *Ritchie v. Castlepoint Greybrook Sterling Inc.*, 2021 ONCA 214 (CanLII), <https://canlii.ca/t/jf4b1>
15. *Shiralian v. Wyldewood Creek Inc.*, 2026 ONCA 163 (CanLII), <https://canlii.ca/t/kjmzs>
16. *Ashcroft Homes v. Tarion Warranty Corporation*, 2023 ONSC 6527 (CanLII), <https://canlii.ca/t/k19x0>

17. *5000933 Ontario Inc. v. Mahmood et al*., 2022 ONSC 4726 (CanLII), <https://canlii.ca/t/jrfz7>
18. *Shah v. 625 Sheppard Bayview Village GP Inc.*, 2025 ONSC 1779 (CanLII), <https://canlii.ca/t/kb7fq>, at para. 21
19. *Grandfield Homes (Kenton) Ltd. v. Chen*, 2020 ONSC 5230 (CanLII), https://canlii.ca/t/j9khl, at paras. 43 and 63

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20. *Issa v. Wilson*, 2020 ONCA 756 (CanLII), <https://canlii.ca/t/jbvmh>
21. *Mouralian v. Groleau*, 2024 ONCA 342 (CanLII), <https://canlii.ca/t/k4ghw>
22. *Naeem v. Bowmanville Lakebreeze West Village Ltd*., 2024 ONCA 383 (CanLII), <https://canlii.ca/t/k4kp3>

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23. *Nutzenberger v. Mert*, 2021 ONSC 36 (CanLII), <https://canlii.ca/t/jdkhl>, at paras. 49-55
24. *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92 (CanLII), <https://canlii.ca/t/1vp4h>
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26. *Di Millo v. 2099232 Ontario Inc.*, 2018 ONCA 1051 (CanLII), <https://canlii.ca/t/hwnvq>, at paras. 31-35
27. *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, 2024 ONCA 6 (CanLII), <https://canlii.ca/t/k20lq>
28. *Fortress Carlyle Peter St. Inc. v. Ricki's Construction and Painting Inc.*, 2019 ONCA 866 (CanLII), <https://canlii.ca/t/j355k>

Defences

Builder did not build what was promised

29. *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC), [1989] 1 SCR 426, <https://canlii.ca/t/1ft7s>
30. *Trivedi v. 2607305 Ontario Inc.*, 2025 ONSC 72 (CanLII), <https://canlii.ca/t/k8mt8>
31. *Varghese v. Hogg Construction Ltd.*, 2023 ONSC 5837 (CanLII), <https://canlii.ca/t/k0mtn>
32. *Danko v. 792207 Ontario Ltd.*, 2004 CanLII 27685 (ON CA), <https://canlii.ca/t/1gwq9>

Vendor was not ready, willing and able to close – the "double default"

33. *Domicile Developments Inc. v. MacTavish*, 1999 CanLII 3738 (ON CA), <https://canlii.ca/t/1f9hj>

34. *King et al. v. Urban & Country Transport Ltd. et al.*, 1973 CanLII 740 (ON CA), <https://canlii.ca/t/g15kf>

Good faith contractual performance

35. *Bhasin v. Hrynew*, 2014 SCC 71 (CanLII), [2014] 3 SCR 494, <https://canlii.ca/t/gf84s>
36. *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 (CanLII), [2020] 3 SCR 908, <https://canlii.ca/t/jc6vt>

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37. *642947 Ontario Ltd. v. Fleischer, 2001 CanLII 8623 (ON CA)*, <https://canlii.ca/t/1f1hr>, at para. 41
38. *Akelius Canada Ltd. v. 2436196 Ontario Inc.*, 2022 ONCA 259 (CanLII), <https://canlii.ca/t/jndp3>
39. *100 Main Street East Ltd. v. W.B. Sullivan Construction*., 1978 CarswellOnt 1459 (C.A.) at paras. 55 and 73
40. *Marshall v. Meirik*, 2021 ONSC 1687 (CanLII), <https://canlii.ca/t/jdqpw>, at paras. 29 and 44

Mitigation

41. *Malatinszky v. Miri*, 2020 ONSC 16 (CanLII), <https://canlii.ca/t/j4j6f>, at para. 82
42. *Southcott Estates v. Toronto Catholic District School Board*, 2012 SCC 51 (CanLII), [2012] 2 SCR 675, <https://canlii.ca/t/ft808>, at para. 24

Mass defaults

43. *Tribute (Springwater) Limited v. Sumera Anas*, 2020 ONSC 5277 (CanLII), <https://canlii.ca/t/j9kjf>, at paras. 26-28
44. *Tribute (Springwater) Limited v. Atif*, 2021 ONCA 463 (CanLII), <https://canlii.ca/t/jglbt>, at para. 22
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46. *Ambria (Otonabee) Limited v. Shaw et al*, 2025 ONSC 6519 (CanLII), <https://canlii.ca/t/kh0d0>
47. *Eyelet Investment Corp. v. Zhou*, 2026 ONCA 453 (CanLII), <https://canlii.ca/t/kln30>

No obligation to accept offer from defaulting party

48. *Azzarello v. Shawqi*, 2019 ONCA 820 (CanLII), <https://canlii.ca/t/j2tqx>, at paras. 36-40

Expert evidence

49. *Arista Homes (Richmond Hill) Inc. v. Rahnama*, 2022 ONCA 759 (CanLII), <https://canlii.ca/t/jst5d>, at para. 9

50. *Marshall v. Hall*, 2025 ONSC 910 (CanLII), <https://canlii.ca/t/k9dvt>, at paras. 47, 52-55
51. *Rosehaven Homes Limited v. Jamil*, 2026 ONCA 446 (CanLII), <https://canlii.ca/t/klkcx>

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52. *Forest Hill Homes v. Ou*, 2019 ONSC 4332 (CanLII), <https://canlii.ca/t/j1hqd>, at paras. 19-20
53. *Lecco Ridge Developments Inc., v. Vaquero*, 2022 ONSC 6547 (CanLII), <https://canlii.ca/t/jt5g5>, at paras. 68-82
54. *Tilden Rent-A-Car Co. v. Clendenning*, 1978 CanLII 1446 (ON CA), <https://canlii.ca/t/g1bxl>
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56. *Brown v. Bolarinwa*, 2026 ONSC 4854 (CanLII), <https://canlii.ca/t/kn6p6>, at paras. 23-33
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