COURT FILE NO.: CV-24-00004386-0000

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE:	CHEHAL, Jasbir Singh, plaintiff 1 CHEHAL, Jaspreet Kaur, plaintiff 2
	AND:
	SUNFIELD INVESTMENTS (BRAMALEA) INC., defendant
BEFORE:	Justice JUGINOVIC
COUNSEL:	VIG, Raghav, for the plaintiffs Email: raghav@rsglaw.ca
	CAMPBELL, Arlene, for the defendant Email: acampbell@whlawyers.ca
HEARD:	November 19, 2025, in person.

ENDORSEMENT

Overview

[1] The Plaintiffs, Jasbir Singh Chehal ("Jasbir") and Jaspreet Kaur Chehal ("the Plaintiffs"), are married and individuals who own a trucking and disposal business and additionally own several properties across the Greater Toronto Area.

[2] The Defendant, Sunfield Investments Inc. ("the Defendant"), is a builder of residential homes in the Greater Toronto Area. The Defendant is the vendor to the Agreement of Purchase and Sale (the "APS") at issue on this motion.

[3] On September 14, 2021, the Plaintiff Jasbir, entered into an APS, with the Plaintiff Jasbir as purchaser and the Defendant as vendor, to purchase a pre-construction

home in a subdivision, for the sale of Lot 1 on Plan No. 43R3604, described as Bramalea Lot (the “Property”).

[4] The first APS was for the sale of this pre-construction Property and is one of the lots located in a development named "Bramalea". The development itself is comprised of 15 lots and is located on Bramalea Road in Brampton, Ontario.

[5] The purchase price of the Property was $1,057,400. The deposits to be paid pursuant to the first APS totalled $160,000.

[6] On August 30, 2021, the Plaintiff Jasbir and the Defendant entered into an amendment to the first APS which added the Defendant Jaspreet as purchaser to the first APS. I will refer to the first APS and the amendment to the first APS as the APS.

[7] The Plaintiffs delivered deposit monies amounting to $160,000 as required by the APS. Additionally, the Plaintiffs paid an additional $5,000 for extras and upgrades.

[8] Clause 35 of Schedule “X” of the APS sets out the obligation for the Plaintiffs as purchasers to provide a Mortgage Approval Certificate and the consequences for the failure in doing so. In particular, clause 35 provides:

> FINANCIAL INFORMATION
> The Purchaser represents that the Purchaser is capable of obtaining the financing the Purchaser requires to enable to Purchaser to complete this transaction. The Purchaser hereby consents to the Vendor obtaining a consumer report containing credit and/or personal information for the purposes of this transaction. **In addition, the Purchaser shall deliver to the Vendor, within 10 days of acceptance of this agreement by the Vendor and thereafter within 14 days of demand from the Vendor or any agent thereof, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Closing Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement and a mortgage commitment from one of the**

> **Schedule "1" chartered banks in Canada with respect to this transaction of purchase and sale, all of the foregoing to be satisfactory to the Vendor in its sole, absolute and unfettered discretion. Any failure by the Purchaser to comply with the provisions of this paragraph shall constitute a default by the Purchaser, pursuant to which the Vendor shall have the right to terminate this Agreement and take forfeiture of the Purchaser's deposit in accordance with the provisions of the Agreement**. In this regard, the Purchaser acknowledges and agrees that (a) the aforesaid information has been provided with the Purchaser's knowledge and consent that such information may be used by the Vendor, its consultants and its lending institution(s) for the purpose of arranging financing to complete the transaction contemplated by this Agreement and; (b) such information may remain on file by the Vendor for future reference. [my emphasis]

[9] On October 25, 2023, and pursuant to clause 35 of the APS, the Defendant contacted the Plaintiffs *via* email to provide a current Mortgage Approval Certificate from a Canadian, Schedule 1 bank (a “Valid Mortgage Approval”) within 14 days. The email to the Plaintiffs included the following:

> I trust this email finds you well.
> I am writing to address an essential matter regarding your agreement with Sunfield Homes. According to the contractual terms and conditions that you have agreed to, it is a requirement for you to provide us with your Mortgage Approval Certificate within 14 days of this Notice.
> Please refer to the attached, which is an excerpt from the agreement that you signed stating this requirement.

[10] Having received no response from the Plaintiffs, the Defendant provided a subsequent notice of the same demand on November 21, 2023. This email to the Plaintiffs included the following:

> I trust this email finds you well.
> I am writing to address an essential matter regarding your agreement with Sunfield Homes. According to the contractual terms and conditions that you have agreed to, it is a requirement for you to provide us with a Current Mortgage Approval Certificate from a Schedule 1 bank within 14 days of this Notice. Please refer to the attached, which is an excerpt from the agreement that you signed stating this requirement.

[11] Having still received no response from the Plaintiffs, the Defendant sent a Final Notice of the same demand on December 23, 2023. This final notice delivered *via* email and by mail included:

> I trust this email finds you well.
> I am writing to address an essential matter regarding your agreement with Sunfield Investments (Bramalea) INC. According to the Agreement of Purchase and Sale, you are required to provide us with a Current Mortgage Commitment from a Schedule 1 bank that is satisfactory to the vendor and its lenders within 14 days of demand. This notice constitutes demand by the vendor for you to provide a Current Mortgage Approval Certificate from a Schedule 1 bank within 14 days of the date of this email. Please note you were given two notices, one in October and another in November. This will be your final notice. Failure to provide the required evidence of your mortgage approval has been and continues to be a default of your Agreement of Purchase and Sale. We cannot start construction of your home without your mortgage approval, not receiving this document will cause irreparable damage to our banking commitments, to our relationship with our lenders, trade companies, and possibly Tarion. Also note that failure to provide the required evidence of your mortgage approval is a default of your Agreement of Purchase and Sale, and failure to comply with the terms of the Agreement of Purchase and Sale will result in the enforcement of the default against you. Please refer to the attached, which are excerpts from the agreement that you signed stating these requirements.

[12] On January 4, 2024, the Plaintiff Jasbir delivered, *via* email, a 'Conditional Mortgage Approval Commitment Letter' ("the Letter") which was dated January 2, 2024. The Letter was submitted by Blaise Alamira, a mortgage development manager, from the National Bank of Canada.

[13] On January 5, 2024, Nicole Lecce ("Ms. Lecce"), a sales representative of Sunfield Investments (Bramalea) Inc., contacted the National Bank to confirm the validity of the Letter provided by the Plaintiffs.

[14] On January 9, 2024, Ms. Lecce received a response from Sandra Pandeirada, the Manager, Customer Service at the National Bank of Canada, advising that there is no one at the National Bank named Blaise Alamira. In particular, her email stated:

> From: Pandeirada, Sandra <Sandra.Pandeirada@nbc.ca>
> Sent: Tuesday, January 9, 2024 12:38 PM
> To: Nicole Lecce <Nicole@sunfieldhomes.com>
> Cc: Filleti, Grace <Grace.Filleti@nbe.ca>
> Subject: RE: Mortgage Approval - Confirmation of Validity (Bramalea Lot 1)
> Importance: High
> Hello Nicole,
> Grace mentioned that you reached out to inquire about two mortgage approvals that you've recently received. The approvals are issued by Blaise Alamira.
> Please note that there is no employee at the National Bank of Canada by the name Blaise Alamira.

[15] On February 23, 2024, the Defendant sent a letter to the Plaintiffs noting that they defaulted under the APS and therefore the Defendant was terminating the APS and forfeiting all deposits provided to date - $165,000 - on the basis that the Letter purporting to be a “Valid Mortgage Approval” provided by the Plaintiffs was in fact not valid but fraudulent.

[16] The Plaintiffs have brought an action for specific performance (amongst other relief) to compel the Defendant to complete the transaction pursuant to the APS. Their Statement of Claim was issued on September 25, 2024. The Statement of Defence and Counterclaim was delivered on December 12, 2024, and the Defence to Counterclaim was delivered on January 28, 2025.

[17] Concerned that the Defendant may sell or further encumber the Property pending disposition of the index action, the Plaintiffs bring this motion seeking leave to issue a Certificate of Pending Litigation to be registered against the Property. In the alternative, the Plaintiffs seek an interlocutory injunction pending disposition of the index action, restraining the Defendant from entering into an agreement of purchase and sale with respect to the Property with any third party.

[18] At the outset of this hearing, the Plaintiff's abandoned their motion seeking leave to issue a Certificate of Pending Litigation. Accordingly, this motion proceeded only on the Plaintiffs' alternative request seeking an interlocutory injunction restraining the Defendant from selling the Property to any third party.

[19] For the reasons that follow, the Plaintiffs' motion seeking interlocutory injunctive relief is dismissed.

Plaintiff's Position

[20] The Plaintiffs submit that when the Defendants demanded a Valid Mortgage Approval, they demanded the impossible. The Plaintiff, Jasbir, deposes that the delivery of a Valid Mortgage Approval is impossible because:

(a) No Schedule 1 Bank could give a firm commitment for a title closing that was years in the future;

(b) The Property had not been registered and had not been assigned a PIN; therefore, there was no civic or legal description of the Property to be mortgaged;

(c) No mortgage lender or broker could reasonably, or at all, deliver any binding mortgage approval for a transaction that would close in the indeterminate future.

[21] The Plaintiff, Jasbir, deposes that notwithstanding their position that it would be impossible to deliver any meaningful or binding confirmation from a mortgage lender, the Plaintiffs approached their realtor who provided the Plaintiffs with a

Conditional Mortgage Approval Letter from Blaise Alamira on behalf of the National Bank dated January 2, 2024 (the “Letter”). The Plaintiffs delivered this Letter to the Defendant on January 4, 2024.

[22] On February 23, 2024, the Defendant notified the Plaintiffs that the Defendant contacted the issuer, National Bank, who denied that it issued the Letter and further advised that it was not valid.

[23] The Plaintiffs were further notified that this amounted to a default under the APS and that the Defendant was exercising its rights to terminate the APS and the Deposit monies would be forfeited.

[24] The Plaintiffs submit that having accepted, without protest, the Letter as it did when first received, the Defendant is now estopped from denying compliance. They submit that the Defendant, by its silence during the period between January 4, 2024 and February 23, 2024, has ratified and acquiesced the binding effect of each APS. To this submission, the Defendant responds that at no time did it represent to the Plaintiffs that they had satisfied the requirement under the APS to provide a Valid Mortgage Approval nor did the Defendant ratify or acquiesce to the legitimacy of the Plaintiffs' Letter.

[25] In his reply affidavit, the Plaintiff, Jasbir, deposes that the Plaintiffs were not aware of the email conversations between the National Bank and the Defendant nor were they aware that Blaise Alamira is not an employee at the National Bank of Canada. The Plaintiffs submit that they relied on their realtor who provided the Letter which was provided to the Defendant in good faith. The Plaintiff, Jasbir, further deposes

that the Plaintiffs were not informed about the Defendant's concern about the Letter prior to the termination of the APS.

[26] In any event and in reply to the Defendant's position regarding its obligation to its own lender, the Laurentian Bank, the Plaintiffs point out that the agreement between the Defendant and its lender does not solely require purchasers to provide mortgage pre-approval – this is only one method by which purchasers can demonstrate financial capacity to close. The Plaintiff submits that the Defendant could have asked for evidence of liquid resources and/or equity sufficient to close the transaction. They submit that had the Defendant asked for this alternative confirmation, they would have provided the same to the Defendant.

[27] To support its position that the Plaintiffs, if asked, could have demonstrated sufficient liquid resources and/or equity to close the transaction, the Plaintiff, Jasbir, deposes that he owns several properties in the Greater Toronto Area including the following:

Address	Approximate Value	Approximate Equity
70 Belladonna Brampton, ON L6P 4B7	$4.2 Million	$2.2 Million
192 Thorndale Rd., Brampton, ON L6P 3K8	$1.9 Million	$700,000
53 Davenfield Cir, Brampton, ON L6P 4M1	$1.2 Million	$800,000
83 Village Lake Crescent Brampton, ON L6S 6K1	$1.3 Million	$600,000

[28] He further deposes that he has a successful trucking business which generates approximately $2.5 million in gross revenue every year and a disposal business

with a yearly gross revenue of approximately $1.6 million. He deposes that he owns about 4 million dollars worth of commercial equipment.

[29] Although the Plaintiffs provided no documentation to support their claims of property ownership, equity and the value of their businesses, the Plaintiffs submit that they would clearly have been able to arrange an alternate mortgage approval letter or provide evidence of liquid resources and/or equity sufficient to close the transaction. However, the Defendant, assuming the Plaintiffs defaulted, instead of informing them and providing an opportunity to cure the alleged default, terminated the APS.

[30] The Plaintiffs submit that the Defendant's termination of the APS is wrong and unconscionable because:

(a) At the time of the Defendant's demand there was no registrable Property, and no PIN assigned such that no lender would provide a binding commitment of any mortgage;

(b) The Defendant knew that title closings would not take place for years and no lender would commit or standby for that period;

(c) No mortgage approval could be delivered in the time indicated; and

(d) There is no requirement in law or practice mandating the closing of a transaction using mortgage funds, i.e. purchasers are at liberty to complete their purchase with cash on closing.

[31] The Plaintiffs further submit that the termination of the APS and the refusal to proceed with the transaction, is motivated by a collateral purpose and is in bad faith: namely, the desire to resell the Property at a higher market price in the face

of a rising market and/or the Defendant terminated the APS to avoid paying delayed compensation that the Plaintiffs would be entitled to under the *Ontario New Home Warranties Plan Act*, R.S.O., 1990. C.O.31 and Tarion Rules.

[32] Finally, the Plaintiffs submit that assuming the Letter is fraudulent, the lack of a Valid Mortgage Approval cannot be a valid ground to terminate the APS.

[33] Because the Plaintiffs are concerned that the Defendant may sell or further encumber the Property pending disposition of the index action, they submit that an interlocutory injunction is appropriate because:

(a) The Plaintiffs submit that they have a strong *prima facie* case because, (i) they have an interest in the Property by virtue of their deposit and therefore claim a purchaser's lien, and (ii) they submit that the termination of the APS is predicated on whimsical, arbitrary, speculative and hypothetical grounds.

(b) The Plaintiffs will suffer irreparable harm if the Defendant is not restrained from selling the Property to a third party. The Plaintiff deposes that he purchased this Property for his family to reside in including his elderly parents. He deposed that the Property is closely located to a school namely, Louise Arbour Secondary School, where he intends to send his son and is also closely located to William Osler Hospital. The Plaintiffs submit that there are no suitable readily available alternatives. If the Property is sold to a third party, monetary damages would be inadequate compensation.

(c) The Plaintiffs submit that the balance of convenience lies with the Plaintiffs. If the injunction is granted, and the APS is completed between the Plaintiffs and the Defendants, no harm would be suffered by the Defendants, however, if the injunction is not granted, irreparable harm would be suffered by the Plaintiffs.

[34] The Plaintiffs undertake to pay damages should it be found that the Order sought should not have been granted and the Defendant is successful at trial.

Defendant's Position

[35] Larry Lecce ("Mr. Lecce"), the President of the Defendant Sunfield Investments (Bramalea) Inc., deposes that, as a builder of residential homes, the Defendant has entered into various financing arrangements and agreements in order to cover the costs of developing the residential properties - costs which the Defendant must absorb before the whole of the sale price of the properties is received from the purchasers.

[36] Mr. Lecce submitted excerpts of its financing agreement with its own lender, Laurentian Bank, relating to the residential property development at issue on this motion. The Defendant is obliged, pursuant to the terms of this financing agreement with its lender to ensure that all purchasers are approved for mortgage financing or able to demonstrate financial capacity to close. Paragraph 18 of that agreement is entitled "Conditions Precedent to Remaining Construction Advances", and subparagraph 18(g) sets out the terms which requires 100% of the

purchasers to be approved for mortgage financing or demonstrate financial capacity to close which must be satisfactory to Laurentian Bank.

[37] The Defendant underscores that irrespective of the Defendant's obligations to its lender Laurentian Bank, the Plaintiffs had a contractual obligation to the Defendant, pursuant to s.35 of the APS, to provide a Valid Mortgage Approval upon request.

[38] Mr. Lecce submits that it is 'standard industry practice' to require mortgage approvals from purchasers of pre-construction homes, in particular he deposes that:

> "It is standard industry practice for vendors of pre-construction homes to request a Mortgage Approval Certificate from purchasers during the various stages of a development. The Mortgage Approval Certificates are used by the vendor as evidence that, upon the successful completion of a development, the properties contained in the development will be successfully transferred as the purchasers have the ability to close on their respective agreements of purchase and sale. Without the provision of valid Mortgage Approval Certificates from purchasers in a development, a vendor is at risk of losing their financing, thus putting the viability of the entire development at risk."

[39] This 'standard industry practice' is reflected in clause 35 in Schedule X to the APS. In order to enter into the APS, the purchaser must agree to the terms set out in the APS including those set out in clause 35. The Defendant submits that the Plaintiffs agreed to these terms when it signed and entered the APS. The terms of clause 35 include the obligation to provide a valid Mortgage Approval Certificate from a Schedule 1 Bank within 10 business days of any request.

[40] Mr. Lecce deposes that the failure to provide Valid Mortgage Approvals can result in the loss of financing for a development. This risk is exacerbated when a purchaser submits a Valid Mortgage Approval that purports to be valid but is in fact a fraudulent document.

[41] The Defendant submits that contrary to the Plaintiffs' assertion, a "firm" mortgage commitment was never requested. What was requested was a current mortgage approval certificate from a Schedule 1 Bank as expressly provided for in the APS.

[42] Mr. Lecce deposes that upon receipt of the Plaintiffs' Letter on January 4, 2024 from the National Bank of Canada and issued by Blaise Alamaira, the Defendant contacted the National Bank to verify the Plaintiffs' Letter.

[43] On January 9, 2024, the Defendant was advised by the National Bank that there is no employee at the National Bank named Blaise Alamira.

[44] The Defendant submits that given that the document submitted by the Plaintiffs was signed by an individual who was not an employee of the National Bank of Canada the document is clearly fraudulent.

[45] On February 23, 2024, and on the basis that the Letter was in fact not a valid mortgage approval but a fraudulent document, the Defendant terminated the APS and took forfeit of the deposit of $165,000.00. In its letter to the Plaintiffs, it noted:

> On January 4, 2024, you provided the Vendor with a Mortgage Approval dated January 2, 2024 (the "Commitment Letter")(enclosed). The Vendor contacted the issuer, National Bank, who denied that it issued the Commitment Letter and further advised that it was not valid. Under Clause 35, failure to provide the Mortgage Approval Certificate constitutes a default under the APS:
> 35. FINANCIAL INFORMATION
> The Purchaser represents that the Purchaser is capable of obtaining the financing the Purchaser requires to enable to Purchaser to complete this transaction. The Purchaser hereby consents to the Vendor obtaining a consumer report containing credit and/or personal information for the purposes of this transaction. In addition, the Purchaser shall deliver to the Vendor, within 10 days of acceptance of this agreement by the Vendor and thereafter within 14 days of demand from the Vendor or any agent thereof, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Closing Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in

> accordance with this Agreement and a mortgage commitment from one of the Schedule "1" chartered banks in Canada with respect to this transaction of purchase and sale, all of the foregoing to be satisfactory to the Vendor in its sole, absolute and unfettered discretion. Any failure by the Purchaser to comply with the provisions of this paragraph shall constitute a default by the Purchaser, pursuant to which the Vendor shall have the right to terminate this Agreement and take forfeiture of the Purchaser's deposit in accordance with the provisions of the Agreement. In this regard, the Purchaser acknowledges and agrees that (a) the aforesaid information has been provided with the Purchaser's knowledge and consent that such information may be used by the Vendor, its consultants and its lending institution(s) for the purpose of arranging financing to complete the transaction contemplated by this Agreement and; (b) such information may remain on file by the Vendor for future reference.
> As set out in Clause 35, the Vendor is exercising its rights to terminate the APS and all deposits paid under the APS, totalling $165,000, are forfeited to the Vendor.

[46] The Defendant submits that when the Plaintiff failed to provide a 'Valid Mortgage Approval', they breached the APS and accordingly the Defendant exercised its right pursuant to the APS to terminate the APS and take forfeiture of the deposit provided by the Plaintiffs – to date $165,000.00

[47] Mr. Lecce submits that the Plaintiffs' submission that it is impossible to obtain mortgage approval certificates for pre-construction properties is simply wrong. He submits, to the contrary, these mortgage approvals for pre-construction properties are routinely provided by Schedule 1 Banks. This is evidenced by the fact that, as provided by the Defendant in his motion record, other valid mortgage approval documents were provided to the Defendant by other purchasers without issue which included a purchaser who provided pre-approval from the National Bank. These were provided by other purchasers in the same pre-construction development and under the same timelines imposed on the Plaintiffs.

[48] The Defendant points out that leaving aside the incongruous position the Plaintiffs take – that it is impossible to provide a Valid Mortgage Approval and yet they ultimately purported to provide a Valid Mortgage Approval from the National Bank – the Plaintiffs never approached the Defendants to express any of their concerns regarding the ability, or impossibility, of providing the requested documentation.

[49] The Defendant further submits that separate and apart from the rights afforded to the Defendant under the APS, by providing a fraudulent document to the Defendant, the Plaintiffs breached the duty of good faith owed to the Defendant, and on that basis, the Defendant is entitled to terminate the APS and take forfeiture of the deposit of $165,000.00.

[50] The Defendant expressly denies the Plaintiffs' allegation that the Defendant conducted itself in bad faith and expressly denies the Plaintiffs' allegation that the termination of the APS was motivated by improper or collateral purposes. The Defendant submits that the singular reason for terminating the APS was the Plaintiffs' default under s.53 of the APS.

[51] With respect to the Plaintiffs' submission that they would suffer irreparable harm if an injunction were not granted, the Defendant submits that there is nothing unique about either the Property or the Property's location. For the most part, the layout of the Property and its elevation are pre-determined as is the case with most pre-construction homes. Similarly, the Defendant submits there is nothing unique about the location – it is not within an exclusive or restricted area, it is in the middle of Brampton surrounded by other residential properties of a similar character. Ms. Lecce submits that she completed a search to determine similar properties that

were offered for sale in the same area as the Property. In total, between February 2024 and June 2025, there were at least four properties available that were similar in location to the Property; had a similar number of bedrooms as the Property, and were a similar size to the Property.

Issue

[52] Have the Plaintiffs established that an interlocutory injunction restraining the Defendant from sale of the Property to a third party is appropriate?

Law & Analysis

[53] The Plaintiffs seek an interlocutory injunction pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and Rule 40 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[54] An interlocutory injunction is a discretionary remedy, which is generally only granted by courts in exceptional circumstances.

[55] The applicable test for interlocutory injunctive relief is well-established. Otherwise known as the *RJR* test, the onus is on the moving party to satisfy the following three factors:

(1) That there is a serious issue to be tried or there is a strong *prima facie* case for the action,

(2) That they will suffer irreparable harm not compensable in damages if an injunction is not granted until the completion of the trial, and

(3) That the balance of convenience favours granting the relief sought because they would suffer greater harm than the responding party if the injunction is not granted.

See *RJR-MacDonald Inc*. v. *Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311; *R.* v. *Canadian Broadcasting Corporation*, 2018 SCC 5, [2018] 1 S.C.R. 196).

[56] While the three factors are not to be viewed as self-contained water-tight compartments in that the strength of one factor may compensate for the weakness of another (*Circuit World Corp*. v*. Lesperance* (1997), 1997 CanLII 1385 (ON CA), 33 O.R. (3d) 674)), the three factors are conjunctive: failure to satisfy any one factor will lead to the denial of the interlocutory injunction: *Musqueam First Nation* v. *Canada (Public Works and Government Services)*, [2008] 3 C.N.L.R. 265 (F.C.A.) at paragraph 3.

[57] The onus therefore is on the Plaintiffs to satisfy, on a balance of probabilities, *each* of the three *RJR* factors.

Serious issue to be tried or a strong prima facie case for the action:

[58] Under the first branch of the *RJR* test, a preliminary assessment must be made of the merits of the case to ensure that there is a "serious issue to be tried" which I find is the test to be applied to the injunctive relief the Plaintiffs are seeking on this motion.

[59] The Defendant fairly concedes that the less exacting standard of a “serious issue to be tried” is applicable on the first branch of the *RJR* test as the Plaintiffs are seeking a prohibitory injunction not a mandatory injunction. Generally, a prohibitory injunction directs a party *from refraining to do* something, while a mandatory injunction directs a party *to do* something.

[60] As outlined by the Supreme Court of Canada in *R*. v. *Canadian Broadcasting Corp*., supra, at paragraphs 15 and 16, the distinction between the two kinds of injunctive relief warrants a different test to be met on the first branch of the *RJR* test. A mandatory injunction requires a higher standard that the moving party must satisfy which is, the moving party must show a strong *prima facie* case.

[61] Here, the Plaintiffs are seeking that the Defendant *refrain* from selling the Property to a 3rd party, hence, the standard of “a serious issue to be tried” is applicable.

[62] The threshold to meet “a serious issue to be tried” is a low one: *RJR-MacDonald Inc*. v. *Canada (Attorney General)*,at paragraph 49. As set out in *RJR-MacDonald Inc*. v. *Canada (Attorney General)*, at paragraph 50:

> Once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial. A prolonged examination of the merits is generally neither necessary nor desirable.

[63] The exceptions that apply to the general rule that a judge should not engage in an extensive review of the merits are not applicable in the circumstances here hence I proceed on the basis that a prolonged examination of the merits is not necessary.

[64] The Plaintiffs’ submission, that the low threshold applicable to “a serious issue to be tried” is recognized in light of the evidentiary challenges facing moving parties

at the preliminary stages of a case, is not quite accurate. The threshold is low because on a motion for injunctive relief the Court is not determining whether or not the moving party will succeed at trial but rather whether there is a serious issue to be tried. The Plaintiff then goes on to compound his error by suggesting that because there are a number of "serious issues to be tried" – wrongful termination of the APS; enforceability of the Clause 35 of Schedule X; and bad faith on the part of the Defendant - the Plaintiff has therefore met the threshold test. The Plaintiff conflates the low threshold test with simply submitting the bald assertion that there are "serious issues to be tried". While the threshold is low, it is not so low that all the Plaintiff needs to establish is the assertion that there are serious issues to be tried. The Plaintiffs have the burden of establishing that the issues they submit to be tried are indeed "serious issues to be tried".

[65] I have serious reservations about whether the Plaintiffs have met the threshold of a "serious issue to be tried" for the following reasons:

(1) The Plaintiffs failed to provide a Valid Mortgage Approval as required by the APS and therefore breached the contract triggering the Defendant's rights pursuant to the APS. It would appear that the document submitted by the Plaintiffs purporting to be a Valid Mortgage Approval is fraudulent and therefore not a Valid Mortgage Approval because:

- The "valid mortgage approval", the Letter, was submitted by a person by the name of Blaise Alamira, a mortgage development manager, from the National Bank of Canada, who is in fact not an employee of the National Bank of Canada.
- The Plaintiffs provided no evidence to explain or rebut the inevitable inference of fraud from the fact that Blaise Alamira is not an employee of the National Bank of Canada. The Plaintiffs' submission on the motion that perhaps she moved on to other employment after January 2, 2025 is neither evidence nor a compelling submission in the face of

evidence from the National Bank of Canada that she is not an employee (common sense suggests that had she been an employee when the document was submitted to the Defendant, the Bank would have said so).

- I accept the Defendant's submission that it is highly unusual for a real estate agent to obtain the mortgage pre-approval on behalf of the client. I would go further and state it is likely unethical for a real estate agent to do so.
- Given the Plaintiffs' successful businesses and extensive investment properties, it is clear that the Plaintiffs are not unsophisticated. The Plaintiffs submitted that they have more than sufficient equity that had the Defendant asked they could have easily demonstrated their financial ability to successfully close the transaction. If that is the case, it begs the question: why have your real estate agent secure mortgage pre-approval on your behalf? Why not secure the mortgage pre-approval yourself? Why not, when a Valid Mortgage Approval was demanded, offer the Defendant proof of financial ability to close as an alternative to a mortgage pre-approval?
- The Plaintiffs' position is that in circumstances where there is no no registrable Property, no PIN assigned, construction of the Property has not commenced or completed and the closing date is unknown, it is impossible to obtain a Valid Mortgage Approval. The Plaintiffs on this motion were not able to reconcile this position with the fact that they ultimately delivered the impossible.
- The fact that the Plaintiffs delivered the impossible further underscores that the document sent by the Plaintiff Jasbir purporting to be a Valid Mortgage Approval appears to be fraudulent.
- There has been no evidence from the Plaintiffs, at all, to support the validity of the Letter purporting to be Valid Mortgage Approval. It was incumbent on them to demonstrate that in fact what they provided to the Defendant was valid when it appears to be fraudulent.
- In all the circumstances, and on the record before me, the Defendant was entitled to reject the Plaintiffs' document as not being a Valid Mortgage Approval and therefore the Plaintiffs breached the APS in failing to provide one as required.

Having said all this, these will be factual issues that will need to be decided at trial on a complete evidentiary record.

(2) The Plaintiffs submit that because the Defendants accepted, without immediate protest, the Letter purporting to be a Valid Mortgage Approval, they should be estopped from asserting that the APS was breached. On this motion, and in the absence of evidence to suggest otherwise, I do not

accept that a period of approximately six weeks before the Defendant notified the Plaintiffs of their breach and terminated the APS was not done within a reasonable time such that the Defendant lost its right to rely on the breach by the Plaintiffs as a basis to terminate the Agreement. Again, these will be factual issues that will need to be decided at trial on a complete evidentiary record.

(3) The Plaintiffs submit that, assuming the Letter is fraudulent, the lack of a Valid Mortgage Approval cannot be a valid ground to terminate the APS. Clause 35 of Schedule "X" of the APS suggests otherwise. This submission has no merit. See *Shah* v. *Southdown Towns Ltd*., [2017] O.J. No. 4673 (S.C.J.).

(4) The Plaintiffs also submit that they were never told about the concerns with the Letter they submitted. Additionally, the Plaintiffs submit they were never offered the opportunity to demonstrate financial capacity to close other than providing a mortgage pre-approval. This is particularly unconscionable, the Plaintiffs submit, because it is impossible to obtain a mortgage pre-approval for the reasons already described. In essence, the Plaintiffs submit that they should have been provided an opportunity to cure their default and the Defendant's termination of the APS is wrong and unconscionable and in bad faith. Nothing in the APS provides for the 'opportunity' the Plaintiffs submit they should have been provided. Moreover, insisting on compliance with the agreed upon terms of the APS is neither wrong, unconscionable or bad faith: *Deangelis* v. *Weldan Properties (Haig) Inc*., [2017] O.J. No. 3487 (SCJ) at paragraph 38. Again, these will be factual issues that will need to be decided at trial on a complete evidentiary record.

(5) The Plaintiffs further submit that the termination of the APS and the refusal to proceed with the transaction, is motivated by a collateral purpose and is in bad faith: namely, the desire to resell the Property at a higher market price in the face of a rising market and/or the Defendant terminated the APS to avoid paying delayed compensation that the Plaintiffs would be entitled to

under the *Ontario New Home Warranties Plan Act*, R.S.O., 1990. C.O.31 and Tarion Rules. The Plaintiffs have provided no evidence to support their assertion of bad faith or improper collateral purpose. The only evidence before me on this record is the Defendant terminated the APS and forfeited the deposit pursuant to its rights under the APS because the Plaintiffs failed to provide a Valid Mortgage Approval as demanded. These allegations will need to be determined at trial assuming there is an evidentiary record supporting the assertions.

[66] On the record before me, and for the reasons outlined, while I have serious reservations about whether the Plaintiffs have met the threshold of a 'serious issue to be tried", the threshold is a low one, and I am satisfied that they have established that the case is not frivolous or vexatious, even if the Plaintiffs are unlikely to succeed at trial. The Plaintiffs has established a "serious issue to be tried", though it is very weak and barely weighs in favour of granting the injunction. However, regardless of my conclusion on the first branch of the RJR test, I find that the Plaintiffs have failed to satisfy the second branch of the *RJR* test.

Irreparable Harm

[67] "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured: *RJR-MacDonald Inc*. v. *Canada (Attorney General)*, at paragraph 59.

[68] Have the Plaintiffs established that a failure to grant the injunctive relief could so adversely affect their interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the motion for an interlocutory injunction?

[69] I find that the Plaintiffs have failed to satisfy this second branch of the *RJR* test because they have provided no evidence of irreparable harm, in particular, they have failed to establish that monetary terms and/or damages would be inadequate compensation.

[70] The most the Plaintiffs have submitted on the issue of irreparable harm is that they purchased the Property for their family and it would be close to a school they would like to send their son. I have no evidence of the son's age, nor where he currently attends school, nor why the school close to this Property is special. Given the closing date is unknown, it is also unclear whether their son would still be able to attend the school or not.

[71] The Plaintiffs additionally submit that the Plaintiff Jasbir's elderly parents would live with them and that this Property is close to the William Osler Hospital. Again, I have no evidence where the elderly parents are currently living, what the state of their health is and why this Property is unique in its proximity to a hospital.

[72] It is helpful to consider the principles applicable when a purchaser claims specific performance of a contract for the sale of residential property.

[73] With respect to the overarching test for granting specific performance, Brown, J., in *Lucas v. 1858793 Ontario Inc.* (c.o.b. Howard Park), [2021] O.J. No. 356 (C.O.A.) at paragraph 69, stated:

> … in the contemporary real estate market, which is characterized by the mass production of urban residential housing, it cannot be assumed that damages for breach of contract for the purchase and sale of real estate would be an inadequate remedy in all cases: at para. 21. Accordingly, specific performance should not be granted as a matter of course absent evidence that "the property is unique to the extent that its substitute would not be readily available": at para. 22. Therefore, a party seeking specific performance must establish a fair, real, and substantial

> justification by showing that damages would be inadequate to compensate for its loss of the subject property …

[74] The Court went on to define ‘uniqueness’,

> Uniqueness does not mean singularity or incomparability. Instead, it means that the property has a quality (or qualities) making it especially suitable for the proposed use that cannot be readily duplicated elsewhere: Dodge (S.C.), at para. 60. For example, a rising real estate market, particularly where the purchaser's deposit remains tied up by the vendor, may indicate that the transaction could not have been readily duplicated or that other properties were not readily available at the time of breach within the plaintiff's price range: Walker v. Jones (2008), 298 D.L.R. (4th) 344, at para. 165; Sivasubramaniam v. Mohammad, 2018 ONSC 3073, 98 R.P.R. (5th) 130, at paras. 84 and 92, aff'd 2019 ONCA 242, 100 R.P.R. (5th) 1.
> The court should examine the subjective uniqueness of the property from the point of view of the plaintiff at the time of contracting: Dodge (S.C.), at para. 59. The court must also determine objectively whether the plaintiff has demonstrated that the property or the transaction has characteristics that make an award of damages inadequate for that particular plaintiff: Dodge (S.C.), at para. 59; Di Millo v. 2099232 Ontario Inc., 2018 ONCA 1051, 430 D.L.R. (4th) 296, at paras. 70-73, leave to appeal refused, [2019] S.C.C.A. No. 55.
> Lucas v. 1858793 Ontario Inc. (c.o.b. Howard Park), at paragraphs 74 and 75.

[75] The Plaintiffs have not established that there is anything unique about the Property or the transaction (to the contrary the evidence submitted by the Defendants suggests it is not unique) that could not be monetarily compensated. There is no explanation set out in the Plaintiffs’ materials as to why the particular location of the Property is unique to the family’s needs.

[76] Nor have the Plaintiffs provided any evidence that damages would be difficult to quantify.

[77] No other evidence was offered by the Plaintiffs in support of their contention that they would suffer irreparable harm if an injunction is *not* granted. There is clearly an onus on a party seeking an injunction to place sufficient evidence before the

court on which a finding can be made that irreparable harm will be sustained if the injunction is not granted. As stated by the Court in *754223 Ontario Ltd*. v. *R-M Trust Co*., [1997] O.J. No. 282 (S.C.J.) at paragraph 40:

> Further, in order to establish irreparable harm, the evidence must be clear. Irreparable harm cannot be founded upon mere speculation. This evidence must be sufficient to support a finding that the moving party would suffer such harm not that it is merely likely: see RJR Macdonald, supra, at page 135; and Centre Ice Ltd. v. National Hockey League (1994), [1994] F.C.J. No. 68, 53 C.P.R. (3d) 34 (Fed. C.A.), at page 52.

[78] The evidentiary record before me is so bereft of any particulars concerning the Plaintiffs' alleged irreparable harm that, on the evidence before me, I cannot conclude that the Plaintiffs would suffer any irreparable harm, that can not be quantified in monetary terms and monetary damages.

[79] Whether or not there is the possibility of residual equitable jurisdiction to relieve against the forfeiture of the deposit is not an issue on this motion and does not otherwise support the question of irreparable harm – in fact, those are clearly compensable damages.

[80] In the circumstances, I conclude that the Plaintiffs have not established that they will suffer irreparable harm that can not be compensated in damages if an injunction is not granted until the completion of the trial.

The Balance of Inconvenience

[81] Since a failure to establish irreparable harm is fatal to the Plaintiffs' motion, it is not necessary for me to consider whether the balance of convenience test is met.

However, in my view, the Defendant would suffer the greater harm if the injunction were granted.

[82] The third branch of the *RJR* test is described as "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits": *RJR-MacDonald Inc*. v. *Canada (Attorney General)*, at paragraph 62. I agree with the Defendant's submission that they would suffer greater harm because an injunction would restrict the Defendant from mitigating its damages caused by the Plaintiffs' breach of contract and it would leave the Defendant with a Property it could not resell (as the Defendant has reasonably taken the position that it would not voluntarily resell to a party who has provided fraudulent information).

[83] I find that the Plaintiffs have failed to establish irreparable harm if the injunction were *not* granted and I find the balance of convenience favours the Defendant.

Disposition

[84] The Plaintiffs' motion seeking an interlocutory injunction restraining the Defendant from selling the Property to third parties is dismissed.

Costs

[85] The parties are encouraged to agree on the issue of costs. If they are unable to do so, then I will receive costs submissions in accordance with the following timetable:

a) Each side shall serve and file their costs submissions of no more than two (2) single-spaced pages, exclusive of case-law, offers to settle and bills of cost within ten (10) calendar days of the release of these reasons.

b) Each side shall be entitled to serve and file a reply submission of no more than one (1) singlespaced page, exclusive of case law within seven (7) calendar days of receipt of the other side's originating costs submissions.

Juginovic J.

Released: January 5, 2026