



Damages

Aborted Transactions: What Sellers Can Do to Minimize their Damages

In a recent Court of Appeal decision, *Tribute Springwater Limited v. Atif* 2021 ONCA 463, the respondents had signed a purchase and sale agreement to purchase a home for \$1,115,490.00 plus upgrades of \$335,134.13 from the builder, Tribute Springwater Limited ("Tribute"). However, the respondents failed to close their purchase despite the builder extending the closing date by a period of a month. Approximately a year following the purchasers' failure to complete the transaction, the seller successfully sold the property to new buyers for \$985,000, a price much lower than the negotiated price of the original agreement of purchase and sale with the respondent.

To recoup the resulting loss, the seller plaintiff sued the defaulting purchasers for damages in breach of contract, in this case being the difference between the original purchase price and the price at which the property was finally sold, less the real estate commission. The buyer respondent argued that the builder had failed to take reasonable steps to mitigate their damages since they had only tried to sell the property internally through their agents until a month or so prior to the eventual sale, rather than externally on the Multiple Listing Service ("MLS"). As a result, the property was only marketed externally on MLS for a month before it sold. In essence, the buyer respondent argued it was unreasonable not to list the property externally on MLS immediately following the aborted transaction.

On appeal, Tribute successfully argued it had mitigated its damages. They had initially tried to sell the property internally to mitigate any price decline in their other properties and avoid paying a real estate commission on any transaction. In addition, an appraisal confirmed house prices had increased between the time of the date of the aborted transaction and when the new buyers had purchased the property. That is to say, even if the property had been marketed on MLS and sold at an earlier date, it would have sold for less, resulting in greater damages for the respondent. In the circumstances, the seller plaintiff took the necessary steps to mitigate their damages.

This case provides a clear reminder of the consequences for those purchasers who fail to follow through on their agreements of purchase and sale. In cases where buyers are unable to close for any reason, we are well positioned to assist you as the seller in minimizing your liability and, hopefully, restructuring the transaction to ensure the desired result. At De Francesca Law, we routinely represent both sellers and buyers in real estate deals occurring in changing economic times and have significant expertise in managing outcomes from a range of complexities associated with aborted transactions.

