

CITATION: *Madison Homes Cornell Rouge Limited v. Jia Lin Huang and Pingkai Wu*, 2025 ONSC 657
COURT FILE NO.: CV-18-00606853-0000 and CV-18-00606853-0000A1
DATE: 20250203

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Madison Homes Cornell Rouge Limited) Shane Greaves, for the Plaintiff
)
Plaintiff)
)
– and –)
)
Jia Lin Huang and Pingkai Wu) Jia Lin Huang, Self-represented
)
Defendants)
)
– and –)
)
Edward Wong and Living Realty Inc.)
Brokerage) Hans Engell, for the Third Parties
)
Third Parties (at the suit of the Defendant,)
Jia Lin Huang))
)
) **HEARD:** November 18-20, 2024

REASONS FOR DECISION

CALLAGHAN J.

[1] The plaintiff, Madison Homes Cornelle Rouge Limited (“Madison Homes”), is a developer of homes. Madison Homes sold a home (the “Home”) to the defendant, Jia Lin Huang (“Huang”), and her mother, Pingkai Wu (“Wu”). Huang and Wu did not close the transaction on the appointed closing date. Madison Homes sues for its loss on the sale. Huang counterclaims, asserting that the transaction is void and seeks a return of her deposit and punitive damages. She also sues the third parties, Edward Wong (“Wong”) and Living Realty Inc. Brokerage (“Living Realty”), which she claims acted as her agents on the transaction.

[2] For the reasons that follow, I grant judgment in favour of Madison Homes and dismiss both the counterclaim and third party claim.

Procedural History

[3] Madison Homes initially sued both Huang and Wu. Soon after executing the agreement of purchase and sale, Wu returned to China never to return to Canada. Madison Homes had difficulty serving Wu in China and eventually withdrew the action against her, choosing to proceed solely against Huang.

[4] The matter initially proceeded by way of a summary judgment motion brought by Madison Homes before Justice Belobaba. His Honour dismissed the summary judgment motion and ordered the matter to proceed to a hybrid trial. It was anticipated that the affidavits filed for the summary judgment motion would apply to the trial. While the evidence of most witnesses was submitted in affidavit form, the affidavits filed by Huang's witnesses were sworn more recently. As the third parties were not party to the summary judgment motion, the evidence of Wong was heard orally at trial.

[5] Huang had been represented by counsel throughout the proceeding, including at the summary judgment motion, but at the trial she represented herself. She did an able job.

[6] Huang requested, and it was agreed by Madison Homes and the third parties, that the cross-examinations of the Madison Homes' witnesses on the summary judgment motion could be filed as exhibits and that those transcripts would stand as the cross-examinations at trial. For the third party claim, which was heard together with the main claim, it was requested by Huang, and agreed by all parties, that the discovery transcript of Wong would also be filed and stand as part of the cross-examination of Wong.

[7] This trial was conducted using Cantonese and Mandarin interpreters. Huang's witnesses all testified through interpreters. However, their affidavits were all filed in English without a translation from Mandarin or Cantonese to English. The affidavits filed and used at the summary judgment motion were also in English. When the affidavits were filed at trial, the court specifically asked if there was any objection to the filing of the affidavits. There was none. The affidavits were accepted and filed as the evidence in chief of those witnesses. In closing, it was raised by the plaintiff that the affidavits of Wu and Zhanpeng Zheng ("Zheng"), who is Huang's husband, did not include the required certification that the affidavit was interpreted to the deponent in the presence of the person who witnessed the deponent swear the affidavit: R. 4.06(8) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"). Madison Homes submitted that neither Wu nor Zheng understand English sufficiently to have sworn the affidavits as filed in English. Huang's affidavit was also in English, but it is accepted that she speaks English sufficiently that no translation was necessary.

[8] Both Wu and Zheng testified that the affidavits were not translated by an interpreter. To translate the affidavits, Zheng relied on a computer translation program and Wu relied on a relative.

Counsel for Madison Homes argued that I ought not to place any weight on the affidavits. However, having not objected to the admission of the affidavits when asked by the court and having conducted the trial without reference to any objection to the affidavits, it would be unfair to reject the totality of the affidavit evidence now simply by placing no weight on the evidence. It was open to the plaintiff or third parties to object to the admissibility of the affidavits when they were admitted. Presumably for their own tactical reasons, Madison Homes and the third parties elected not to do so. Had they done so, the affidavits could have been dispensed with and the witnesses could have provided their testimony in chief through the interpreters at trial. Having raised the objection after the close of evidence, it is neither fair nor reasonable to redo the evidence orally. Accordingly, I have weighed the affidavits with the evidence on their cross-examinations rather than apply a wholesale discount of the affidavit evidence of Wu and Zheng. To the extent necessary, I dispense with the requirements of rule 4.06(8) and will consider the affidavits along with the oral testimony of Wu and Zheng, cognizant of their potential frailties. This is because I believe this will allow me to arrive at the most just determination of the real matters in dispute: R. 2.01 of the *Rules*.

[9] Finally, Huang served an expert report addressing the valuation of the Home. She did not have the expert swear an affidavit. She had contacted the expert and asked him to attend the trial. He refused. It was explained to her that a summons could be issued to compel his attendance. After some consideration, Huang decided to proceed with the trial without calling the expert. The unsworn expert report was not admitted into evidence.

The Evidence

[10] In weighing the evidence, I found much of the evidence by Wu and Huang was intended to fit a narrative that both asserted that the sales representative for Madison Homes pressured them into the sale and that Wong was to protect their interest as their agent. I do not find either to be the case. The evidence of both Wu and Huang was not always consistent between the affidavits and the cross-examinations and frankly the conclusions that were asserted did not, in my view, flow from the evidence.

[11] Wu came to visit her daughter in December 2016. There was much to celebrate on Wu's visit. There was a new grandchild and Huang and her husband had just bought a new home. While out Christmas shopping, on either December 19 or 20, Huang and Wu saw a roadside advertisement for Madison Homes' Cornell Rouge development. The sign indicated that there were model homes available for viewing. As Huang had just bought a home, they decided to view the model homes for design ideas and to visit the showroom.

[12] While visiting the showroom, they met Stella Chu ("Chu"). Chu was initially misidentified as Diana Chang by Huang and Wu. Chu was a contract agent working for the real estate company that Madison Homes had retained to assist with the sale of the homes. Chu struck up a conversation with Wu and Huang.

[13] Because Wu only speaks Mandarin, which Chu speaks but not fluently, the discussion between Wu and Chu was in Mandarin and some English. Discussions between Huang and Chu were in English. While Huang says her English is not very good, there is no question she has an ability to understand English and has a level of proficiency in English. Huang went to high school in Toronto where she was taught in English. She then went on to the University of Toronto (“UofT”) where she studied in English and wrote her exams in English. She graduated with a four-year degree in finance. I do not accept that Huang was unable to communicate or read in English such that she was unable to understand the transaction which she entered with Madison Homes.

[14] There were several other people in the sales office. Most of the prime lots had been sold. Huang and Wu were interested in the Silkwood model home which was one of the more popular models with only one remaining for sale. In fact, another family was visiting the showroom at the very same time and looking to acquire that same model.

[15] During the discussion with Chu, Wu asked if there was any negotiation of the sale price, which she testified is common in China. Chu advised that Madison Homes did not negotiate the sale price. However, Chu advised that she could obtain a \$6,000 reduction through a real estate agent colleague of Chu’s who would “kick-back” half of his commission to them.

[16] After leaving the showroom, Chu is said to have called Wu several times over the next day. In cross-examination, Wu testified that Chu called her and told her it was fate that they met and that whether Wu bought or not, that Wu should come by and “chitchat”. Wu and Huang returned to the showroom the next day, according to Wu, “for the sake of chitchatting”. This contrasts with Wu’s affidavit where she asserts that Chu “emphatically” warned her to make a “quick decision” as the desired home would be gone within a day or two. I accept that the calls with Chu were more along the line of “chitchat” and were not untoward pressure sales calls.

[17] Wu and Huang repeatedly said that they had no intention of buying the home when they first visited the sales office on December 19 or 20. Notwithstanding they said they had no intention to buy a home, Wu and Huang returned on December 21 and executed an offer to purchase the Home (the “Offer”). The Offer was a Madison Home’s form and was submitted to Madison Homes. There was no cooling off period whereby the purchaser could rescind the offer.

[18] The purchase price of the Home was \$1,559,000 (the “Purchase Price”). This was a preconstruction purchase. The Home would not be ready for occupancy until mid-2018. The Offer included the Tarion standard form of conditions which included, in bold letters, that the purchaser should seek advice from a lawyer with respect to the purchase agreement or any amendment.

[19] Huang says that her mother was a foreign resident and that Chu told them that Madison Homes required that there be a resident of Canada as a co-signor of the Offer. Huang says Chu told her that she could be removed from the transaction once there was a mortgage in place and the balance of the Purchase Price was secured. Huang further states that Chu told them that Chu could arrange the mortgage and that this could be done three months before closing.

[20] Chu testified that she did not tell Huang that she must be added to the transaction but could later be removed from any purchase obligations. She says that “only the head office would have such authority”. She did say that Madison Homes preferred a local purchaser as it made dealing with the home purchase administratively easier. Jennifer Lee (“Lee”) of Madison Homes also stated that there was an incentive for domestic purchasers as foreign purchasers had to pay a larger deposit.

[21] I do not accept that Chu insisted that Huang must be a signatory to the Agreement of Purchase and Sale (“APS”). Rather, Wu testified that she was returning to China and, as a result, she “was relying on her daughter to take care of things”. As this was a purchase by both Huang and Wu, it made sense that Huang would be a purchaser. This is consistent with Chu’s evidence that Madison Homes would prefer a domestic purchaser for ease of communication. In addition, as Lee testified, Madison Homes required a foreign purchaser to pay a larger deposit as security for closing the transaction. Huang, as the local resident, paid the deposits on the purchase.

[22] In terms of obtaining a mortgage, Huang testified in her affidavit that Chu advised if Huang and Wu had difficulty obtaining a mortgage that she could arrange for them to meet a mortgage broker. This is consistent with Chu’s testimony. However, during Huang’s cross-examination, the offer of an introduction became a statement by Chu that the purchase was “risk-free and that [Chu] would get the mortgage for us”. This was a clear overstatement. I do not accept that Chu told them that this was “risk free” or that she made a statement that she would get the mortgage for Huang and Wu. I accept that Chu offered to introduce them to a mortgage broker if they asked her. Huang and Wu never asked Chu to do so.

[23] Huang testified that Chu said the remaining homes in the current development would increase in price over the short and long term and that they could expect a “hefty” return if they purchased a property. Chu denied she made such representations but rather she said that she advised that Madison Homes may increase the sale price of the homes, as they had in the past, because there was a high demand for the homes. Lee testified that Madison Homes had steadily increased the sale price as the homes were in demand. Given the other statements, I do not accept Huang’s evidence that she was told anything other than that Madison Homes might increase the price, as they had done in the past.

[24] After the Offer was signed, Chu contacted Wong, a colleague at her real estate office, who agreed to facilitate the \$6,000 reduction in the Purchase Price. Wong signed documents representing that he had introduced Wu and Huang as buyers to Madison Homes. This was not true; he never met Wu or Huang.

[25] Wu and Huang again attended the sales office in early January to sign an acknowledgement that Wong had introduced them to the property (the “Acknowledgement”). Wong and Chu also signed documents that represented, among other things, that Wong was present when Huang and Wu signed the Offer. This was also not true.

[26] Huang and Wu testified that Chu arranged for Wong to be their agent to provide them advice on the transaction. However, neither Wu nor Huang had ever met or even tried to contact Wong for any advice or assistance in respect of the purchase. Wong's only role was to facilitate a discount on the purchase price. He did not advise Wu or Huang on the transaction. I reject that Wu or Huang ever relied on Wong in entering the transaction, other than to receive the \$6,000 discount.

[27] The signed Offer and Acknowledgement were then submitted to Madison Homes for acceptance. Madison Homes accepted the Offer and returned the Offer as an executed APS. It did so not knowing that Wong had never met Huang or Wu or that he was in no way involved with the sale.

[28] The APS did not contain any provision that would allow either purchaser to be released or otherwise have their name removed from the APS. The APS contained an entire agreement clause that there was no representation, warranty, collateral agreement, or condition affecting the sale transaction, other than the written terms of the APS.

[29] Wu returned to China shortly thereafter and never returned to Canada.

[30] On March 17, 2017, Huang returned to the sales office and contracted for certain upgrades and extra features to the Home for an additional \$4,452.49. In the end, the total purchase price with the adjustments and upgrades was \$1,590,085.46.

[31] Huang made 5 separate deposits of \$25,000, between January and April 2017, for a total of \$125,000, leaving a balance on closing of \$1,441,085.46. These amounts were paid by Huang from her bank account and without any contribution from Wu.

[32] Wu and Huang testified that Wu had taken ill and that the cost of treatment was expensive. Huang testified: "Because my mom became sick and then her treatment cost us a lot of money. It wasn't that we didn't want to close it, it was really that, the mortgage could not be secured". She also referred to policy changes that meant the "mortgage could not be secured".

[33] In cross-examination, Huang said she did not have the means to purchase the home and that her mother was to transfer money for the purchase. Although she also says she had no idea where her mother would obtain the funds to close. There is no evidence that either Huang or Wu attempted to obtain a mortgage nor is there any evidence as to their net worth or ability to obtain or service a mortgage.

[34] Huang says that in May or June, she tried to contact Chu but was unsuccessful. However, there is no written communication by Huang attempting to contact Chu. Wong was contacted by Madison Homes because Huang did not attend the pre-closing inspection of the Home. This was the first contact between the two. Rather than ask him for advice, Huang contacted Madison Homes directly to advise that she would not be able to close. Madison Homes suggested that she contact a lawyer.

[35] On July 25, 2018, counsel for Huang and Wu wrote a letter to Madison Homes. The letter reiterated many of the allegations in this litigation. The letter stated that Huang was added to the APS at the request of Chu (misidentified as Chang) due to the policy of the builder and that she would be removed “once [the] mortgage was secured, and the balance of the closing funds were in place”. There was no mention by the lawyer of Huang’s allegation that Chu would secure the mortgage funds. The letter relayed the allegations regarding Wong and the \$6,000 “kick-back”. The letter advised that: “Mrs. Wu has been ill and hospitalized in China since 2017. The lengthy illnesses have incurred substantial medical expenses while she was not able to work and to have sufficient down-payments to secure a mortgage for closing”. The letter concluded by saying that Huang and Wu were prepared to negotiate a settlement and that counsel was authorized to accept service if a court proceeding was commenced.

[36] After the sale did not close, Madison Homes marketed the Home. The uncontested evidence is that between 2016 and 2018, a significant number of purchasers failed to close home sales in the development. Madison Homes obtained an appraisal of the Home that assessed the value of the Home at \$1,000,000. The Home sold in August 2019 for \$1,149,672. Still, the Home was sold at a net loss of \$291,413. In addition, there were losses including ongoing taxes, utilities, legal, appraisal, interest, and resale transaction costs, which Madison Homes seeks to collect. There was no challenge to these amounts. The total claim is \$322,479.31.

[37] Huang counterclaims, saying, among other allegations, that the conduct of Chu was unconscionable. Huang seeks the return of the deposits and upgrade charges, a total of \$129,452. She also seeks \$100,000 in damages, arising from Madison Homes’ alleged “duress, misrepresentations, unethical and unconscionable conduct, procurement and issuance of altered documents and unjust enrichment”. There was no evidence of any such damages. There is a claim of \$500,000 for punitive damages.

[38] The third party claim seeks, among other things, contribution and indemnity from Wong and Living Realty. The third party claim against Wong essentially is that he failed to advise Huang of the risks of the transaction and that he misrepresented that he had properly advised the defendants and he colluded with Chu in making those representations in the documents submitted to Madison Homes with the purpose of inducing Huang and Wu to execute the APS. The third-party claim states, among other things, that Living Realty is vicariously liable for Wong and was negligent in supervising Wong.

Issues

[39] There are four issues to be determined:

- a. Is Huang liable to Madison Homes for the failed purchase?
- b. Is Wong liable to Huang for his actions?
- c. If Huang is liable to Madison Homes, what are the damages to Madison Homes?

- d. Alternatively, is Huang entitled to the return of the deposits and damages from Madison Homes pursuant to the counterclaim?

Liability of Huang to Madison Homes

[40] Huang raises several grounds as to why she should not be liable for the failure to close on the sale of the Home.

[41] In respect of the sales process, Huang alleges there were several misrepresentations made by Chu that induced Huang and Wu to make the Offer and enter the APS. The statement of defence and counterclaim sets out several representations in paragraph 21, allegedly made by Chu that induced her to enter the APS. The representations were given in evidence by Huang but never contradicted by Chu. The representations were as follows:

- “a. Wu and Huang were sent by destiny;
- b. There were only three properties with double garages left. One had bad Feng Shui. One was for about 1.7 million dollars, and the third one was for 1.6 million dollars;
- c. There [was] a big number of people waiting [to] purchase those properties;
- d. Particularly, the house of 1.6 million dollars was [in] high demand and a number of people were very interested in purchasing it;
- e. The location of all three properties is excellent; and
- f. Wu and Huang would regret and would be sorrowful if they did not seize a golden opportunity which could be gone at any minute.”

[42] An actionable representation must be based on an objective statement of fact. Opinions are not objective statements of fact. The statements must be made with the intent that they be relied upon. At para. 76, the Court of Appeal for Ontario in *Hembruff v. Ontario (Municipal Employees Retirement Board)*, 2005 CanLII 39859, 78 O.R. (3d) 561, described actionable misrepresentations as follows:

It is, of course, well settled that a representation, to be of effect in law, should be in respect of an ascertainable fact as distinguished from a mere matter of opinion. A representation which amounts merely to a statement of opinion, judgment, probability, or expectation, or is vague and indefinite in its nature and terms, or is merely a loose, conjectural or exaggerated statement, goes for nothing, though it may not be true, for a man is not justified in placing reliance on it.

[43] In addition, when it comes to sales representations, not all statements are actionable. Many are simply sales promotions, not intended to be relied upon. In *Forest Hill Homes v. Ou*, 2019 ONSC 4332, 308 A.C.W.S. (3d) 432, Justice Morgan, when faced with a similar argument, observed at para. 13:

There is nothing about the sales agent’s representation that would have taken this statement outside of the contract or that amounts to an assertion

of fact on which a purchaser in the Defendants' position would reasonably rely. The supposed misrepresentation is at most a statement of opinion, and more likely it falls into the category of "mere puffery": see *Carlill v. Carbolic Smoke Ball Co.*, (1892), [1893] 1 Q.B. 256 (Eng. C.A.).

[44] The statements pled by Huang as misrepresentations are not actionable. Statements such as "the Home is in an excellent location", is an opinion, not a fact. Similarly, statements about the future value of the Home are statements of opinion of a future event: *Forest Hill Homes*, at para. 12; *Dodd v. RBC Dominion Securities Inc.*, 2007 CarswellOnt 4630. Other statements, such as Huang and Wu were sent "by destiny", are also not actionable statements of fact. As for the statements that there were fewer models available and that demand was high, there was no evidence that the homes were not in high demand. To the contrary, the evidence was due to the popularity of the homes at that time, the price was increased and there was only one remaining Silkwood, being the model of home that Huang and Wu desired. I do not find any misrepresentations as pled in the statement of defence and counterclaim.

[45] Next, it is suggested that Chu applied undue pressure or coercion on Huang and Wu to enter the APS. Undue pressure or coercion is actionable as "economic duress". The Court of Appeal described "economic duress" as follows in *Stott v. Merit Investment Corp.*, 1988 CanLII 192 (ON CA), 63 O.R. (2d) 545, at para. 48:

The term "economic duress" as used in recent cases, particularly in England, is no more than a recognition that in our modern life the individual is subject to societal pressures which can be every bit as effective, if improperly used, as those flowing from threats of physical abuse. It is an expansion in kind but not class of practices that the law already recognizes as unacceptable such as those resulting from undue influence or from persons in authority. But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to "a coercion of the will", to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no "realistic alternative" but to submit to it, to adopt the suggestion of Professor Waddams (S.M. Waddams, *The Law of Contract*, 2nd ed. (1984), at p. 376 et seq.). Duress has the effect of vitiating consent and an agreement obtained through duress is voidable at the instance of the party subjected to the duress unless by another agreement or through conduct, either express or implied, he affirms the impugned contract at a time when he is no longer the victim of the duress.

[46] The following additional observations were made by the Court of Appeal in *S.A. v. A.A.*, 2017 ONCA 243, 412 D.L.R. (4th) 470, at paras. 28-29:

[28] Another formulation of the test applicable to economic duress, taken from the *Pao On v. Lau Yiu*, [1979] 3 All E.R. 65 (P.C.), and cited in Stott, at para. 49 (WL Can), is: “the victim must have entered the contract against his will, must have had no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure”.

[29] Where duress is alleged, the contractual obligations often demonstrate some element of unusual advantage favouring the party with the dominant power.

[47] The fact that Madison Homes may have had a superior bargaining position to Huang and Wu does not establish duress. The test requires there to be some “coercion of the will of the contracting party and the pressure must be exercised in an unfair, excessive or coercive manner”: *Lei v. Crawford*, 2011 ONSC 349, 196 A.C.W.S. (3d) 1157, at para. 7; *Bang v. Sebastian*, 2018 ONSC 6226, 297 A.C.W.S. (3d) 732, at para. 9. Moreover, a sense of urgency, or the pressure to buy a preferred property or lot in a competitive market, without more, does not create undue influence (or amount to an unconscionable transaction): *Evans v. Mattamy Homes Limited*, 2019 ONSC 3883, 95 B.L.R. (5th) 333, at paras. 53-55; *Wang v. Mattamy Corporation*, 2019 ONSC 6675, 312 A.C.W.S. (3d) 496, at paras. 23-24. Further, an individual who has been the subject of duress may later affirm an otherwise voidable agreement by her later conduct: *Royal Bank v. 131864 Ontario Ltd.*, [2003] O.J. No. 6281, at para. 19; aff’d, 2003 CanLII 57367 (ON CA).

[48] Both Wu and Huang say they had no interest in buying a home when they attended on December 19 and 20. Rather, they simply wanted to view the model for design ideas for Huang’s recent purchase. They attribute their purchase of the Home to the undue pressure and coercion of Chu. They first allege that Chu hounded Wu in the day following the first visit with repeated phone calls. Yet Wu, when she testified in cross-examination, said that Chu wanted to “chitchat”, which does not amount to inordinate or unfair pressure by Chu for them to buy the Home.

[49] Whatever the reason for entering the showroom initially, Wu and Huang decided to embark on an investment purchase. Neither of them had any intention of living in the Home, with Wu in China and Huang having just bought a family home. Wu sought a discount on the Purchase Price that led to the discussion of using another agent to obtain a “kickback”. They returned the next day, intent on purchasing the Home. They then returned a third time on January 3 to sign the Acknowledgement. Huang returned a fourth time to provide the deposit cheques. Huang returned a fifth time in March to select upgrades for the Home. Huang testified that the upgrades for the Home were needed because what was included in the APS “was just pure ugly”. All these attendances were entirely voluntary.

[50] As already noted, this was not a purchase that Huang regretted until her mother took ill and could not assist in financing the purchase. In this case, there was no economic duress. In my view, there was no untoward pressure or coercion. Moreover, if there had been undue pressure when signing the Offer, Huang affirmed the transaction on the other four attendances where she did not object or complain but rather took further steps to honour the APS, such as paying the

deposits. In my view, her conduct was inconsistent with duress; rather, as noted, her conduct was consistent with her affirming the transaction.

[51] There is a general plea in the statement of defence of unconscionability relating to the sales process. For a contract to be unconscionable, there must be an inequality of bargaining power and, an improvident transaction: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at para. 64. Inequality occurs when one side cannot protect their interest in the contracting process. This may be due to a lack of knowledge or experience or other relevant disadvantages that “impaired a party’s ability to freely enter or negotiate a contract, compromised a party’s ability to understand or appreciate the meaning and significance of the contractual terms, or both”: *Uber Technologies Inc.* at para. 68. The Court went on to provide a contractual example of an inequality being when “only one party could understand and appreciate the full import of the contractual terms, creating a type of “cognitive asymmetry”: *Uber Technologies Inc.* at para. 71.

[52] An improvident contract, being the second part of the test, is a contract which “unduly advantages the stronger party or unduly disadvantages the more vulnerable”: *Uber Technologies Inc.* at para. 74. This is to be assessed at the time the contract is formed. The doctrine does not assist parties trying to “escape from a contract when their circumstances are such that the agreement *now* works a hardship upon them”: *Uber Technologies Inc.* at para. 74. Further, the terms are said to be unfair to the weaker party “when, given the context, they flout the ‘reasonable expectation’ of the weaker party”: *Uber Technologies Inc.* at para. 77. Finally, the application of the unconscionable doctrine is “inherently contextual” and “necessarily dependent on the circumstances” *Uber Technologies Inc.* at para. 78.

[53] Notwithstanding that she had just purchased a home and she graduated as a finance major, Huang states she never read the APS, Acknowledgement, or any other documents relating to the transaction. She asserts that this is because she does not speak English. Yet, as I have found, Huang not only went to school in English but graduated from UofT with a finance degree. She had the fluency, ability, and means to appreciate the documents she signed. I do not accept that she could not protect her interest by either reading the documents or by seeking assistance if truly needed. In my view, Wu and Huang have advanced a narrative intended to exculpate them from the transaction but which is not grounded in the facts. Huang’s failure to read the APS was not a result of an inability to comprehend the APS, but rather, reflected that she was content with the purchase until she and her mother were unable to obtain financing for the closing.

[54] Huang further asserts that she was added as a purchaser because Madison Home’s policy was that it would not sell to a foreign purchaser. She was told that she would be removed from the APS once the mortgage was confirmed. Her statement of defence and counterclaim alleged that she would be released upon the following conditions:

- a. Once the mortgage was secured and the balance of closing funds were in place; and

b. Huang advised [Chu] three months prior to closing. Diana Chang then would remove Huang from the agreement of purchase and sale.

[55] As I have noted, I am of the view that Huang has exaggerated and misrepresented the discussion regarding the need for her to sign the Offer and Chu's supposed guarantee of the mortgage financing. As already found, I do not accept that Chu insisted that Huang must be a signatory to the APS.

[56] In terms of mortgage financing, nowhere in the statement of defence and counterclaim does Huang allege Chu said she would obtain the mortgage financing for the purchase. In addition, when Huang's lawyer wrote in July 2018, he made no mention of any representation that Chu would obtain mortgage financing. As already noted, I do not accept that Chu guaranteed the mortgage financing. Rather, she offered to make an introduction to a mortgage broker, if requested. There was no request. Indeed, there is no evidence of any attempt by Wu or Huang to obtain mortgage financing.

[57] I do not find that there was an inequality of bargaining power as described in *Uber Technologies Inc.* that resulted in Huang being a buyer along with her mother. She chose to be a buyer. She also chose not to read the Offer/APS or other documents or otherwise take steps to protect her interest.

[58] This was not an improvident purchase. Rather, as discussed in *Uber*, this is a situation where "the agreement *now* works a hardship upon" Huang and Wu. By their own evidence, Wu's change of circumstances meant they could not obtain mortgage financing. The failure to obtain financing is neither an unusual nor unexpected event in the world of home sales: *Bang*, at para. 32; *Forest Hill Homes*, at paras. 5-6.

[59] In conclusion, Huang has failed to demonstrate that she signed the Offer because of misrepresentations or because she was under economic duress or that the APS was unconscionable. There was no argument relating to unjust enrichment or any other discernable cause of action. As a result, I find that Huang freely signed and breached the APS by not closing.

Liability of Wong

[60] In respect of Wong, Huang submits that he did not protect her interest in the transaction. Instead, he simply took the commission and offered no assistance. It is argued that Wong owed Huang and Wu a fiduciary duty to protect their interest.

[61] It is also alleged that Chu was a party to Wong's wrongful behaviour. As such, Huang not only seeks to have Wong held responsible for the failed transaction, but she also says that Chu's complicity should result in the APS being set aside.

[62] I accept that Wong and Chu worked in concert to achieve a discount for Huang and Wu. The result was that Madison Homes would pay a commission that it need not have paid. However, Huang and Wu were also party to the deception. They knew Wong did not introduce them to

Madison Homes and that he was not entitled to a commission. Huang and Wu did not look to Wong to protect their interest. The reality is that Wong was not acting as a real estate agent. He was merely a facilitator for a reduction of the Purchase Price.

[63] A fiduciary duty does not arise simply because of the title of one of the parties. A fiduciary duty exists where there is a substantive relationship of trust which is a determination of fact: *Hodgkinson v. Simms*, 1994 CanLII 70, [1994] 3 S.C.R. 377, at pp. 418-19. An essential feature of a fiduciary relationship, such as an agent and principal, is that there be “reliance in fact”; labels alone do not create a fiduciary relationship: *Phillips v. R.D. Realty Ltd.*, 1995 CanLII 7114 (ON SC): aff’d 1996 CanLII 10251 (ON CA), 30 O.R. (3d) 158, leave denied [1996] S.C.C.A. No. 542 (Q.L.).

[64] There was no relationship of trust and confidence between Huang and Wong. Huang did not confer upon Wong any power or discretion to be exercised on her behalf. There was never an expectation that Wong would protect the interest of either Wu or Huang in the transaction. Accordingly, the evidence does not establish that Wong either acted as agent or owed any fiduciary duty to Huang.

[65] Accordingly, I dismiss the third party claim and the claim that the conduct of Wong and Chu invalidates the APS.

Counterclaim

[66] Given the counterclaim was predicated on the arguments above, the counterclaim is also dismissed.

Damages

[67] In terms of damages, where a purchaser fails to close on a real estate transaction, the vendor is to be placed in the same position as if the APS had not been breached by the purchaser. This generally involves an assessment of the contract price less the market value of the land at the time of the breach, although the date of valuation may vary depending on the case: *DHMK Properties Inc. v. 2296608 Ontario Inc.*, 2017 ONCA 961, 288 A.C.W.S. (3d) 387, at para. 15; *Forest Hill Home*, at para. 15; *Bang*, at paras. 39-40; *100 Main Street East Ltd. V. WB Sullivan Construction*, 1978 CanLII 1630 (ON CA), 88 D.L.R. (3d) 1, at para. 55. In this case, the breach occurred 2 ½ years after the APS was signed, when Huang failed to close.

[68] In this case, Madison Homes provided an appraisal of the home at the time of closing, being the date of breach. The appraised value of the Home at closing was \$1,000,000, being \$599,000 less than the Purchase Price. This valuation was not disputed.

[69] The law requires that once there is a loss, the plaintiff has an obligation to take steps to mitigate that loss. Where the defendant asserts that the plaintiff did not mitigate the loss, the defendant has the obligation of establishing that the plaintiff failed to take reasonable steps to mitigate the loss: *100 Main Street Ltd.*, at p. 23.

[70] In this case, Madison Homes marketed and resold the Home for \$1,149,672.42, being almost \$150,000 more than the appraised value. There is no evidence to suggest that Madison Homes was not reasonable in its mitigation attempts or that it could have achieved a higher resale price. Accordingly, Madison Homes is entitled to the difference between the Purchase Price and the resale price realised, which is \$291,413.

[71] Madison Homes is also entitled to those expenses it incurred in maintaining the home from the date of breach to the date of the resale of the Home. These expenses would not have been incurred by Madison Homes had Huang closed the transaction as required by the APS. These expenses include realty taxes, expenses relating to maintaining the Home, legal costs thrown away, appraisal costs, and increased or thrown away commissions: *Bang*, at para. 57; *Paradise Homes North West Inc.*, 2019 ONSC 1600, 303 A.C.W.S. (3d) 433, at para. 8; *Lecco Ridge Developments Inc., v. Vaquero*, 2022 ONSC 6547, 2022 A.C.W.S. 5593, at paras. 6-90; *Mattamy (Jock River) Limited v. Glover*, 2024 ONSC 4411, 2024 A.C.W.S. 4108, at para. 14; *Madison Homes v. Shi*, 2020 ONSC 7810, 330 A.C.W.S. (3d) 73, at paras. 23-36.

[72] The Plaintiff has provided evidence of the following costs/expenses that it incurred with respect to the Property after the Defendants’ breach:

- (a) realty taxes between the Closing Date and the Resale Closing Date;
- (b) natural gas between the Closing Date and the Resale Closing Date;
- (c) electricity between the Closing Date and the Resale Closing Date;
- (d) cost of the appraisal;
- (e) legal costs thrown away in the failed transaction;
- (f) increased commission paid to the real estate agent on the resale transaction; and
- (g) marketing associated with the failed transaction.

[73] I accept that each of the above items are reasonable and foreseeable expenses incurred by Madison Homes because of Huang’s failure to close the transaction. Those amounts are therefore recoverable against Huang. Madison Homes incurred realty taxes of \$1,512.95; gas and utilities of \$1,412.98 and 479.65; an appraisal for \$367.25; legal fees on the aborted transaction of \$542.40; commission on the resale of \$13,000.10, and a second MLS listing of \$11,440. In addition, notwithstanding the fact that the Defendants did not close the sale of the Property, Madison Homes was required to pay its sales agent, International Home Marketing Group Limited (“IHMGL”), a commission in the amount of \$2,293.90.

[74] The total damages incurred by Madison Homes are as follows:

	TYPE	AMOUNT
(a)	Failure to Pay Balance Due on Closing	\$291,413.04

		\$1,512.95
(b)	Realty Taxes – 2019	
(c)	Gas - Enbridge	\$1,429.98
(d)	Utilities – Alectra	\$479.69
(e)	Appraisal	\$367.25
(f)	Legal Costs	\$542.40
(g)	Co-operating Agent’s Commission on Resale	\$13,000.10
(h)	MLS Listing Agreement Fee	\$11,440.00
(i)	IHGML Commission on Original Sale	\$2,293.90

TOTAL: \$322,479.31

Disposition

[75] Madison Homes is entitled to judgment in the amount of \$322,479.31 plus pre- and post-judgment interest, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[76] The counterclaim and third-party claims are dismissed.

Costs

[77] I encourage the parties to agree on costs. If they cannot, I will receive costs submissions as follows:

- a. Any party claiming costs shall file written submissions of no more than four pages, plus a bill of costs and any offers to settle, within ten days of the release of these reasons.
- b. Any responding submissions shall be limited to three pages, plus a bill of costs and any written offers to settle and shall be delivered within one week of receipt of the other party’s costs submissions.
- c. Any reply to submissions shall be delivered within two business days of receipt of responding submissions and shall be no more than one page in length.

d. All submissions shall be uploaded to Case Center delivered to me by way of email to my assistant from whom you received this decision.

Callaghan J.

Released: February 3, 2025