

Crossed-out conditions in agreement of purchase and sale held to be deleted (*Dehkordi v. O'Dell*)

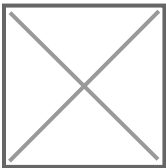
Agreement of Purchase and Sale | Litigation | Litigation & Dispute Resolution | Property

15 December 2025

In an agreement of purchase and sale (APS), buyers often include conditions that must be met before the agreement becomes legally binding. Two common conditions are financing, which gives the buyer time to secure a mortgage or obtain the necessary funds to complete the purchase, and a home inspection, which allows the buyer to have the property professionally inspected for any potential issues. Once these conditions have been satisfied, the buyer generally waives them by delivering a formal Waiver or through an amendment to the APS, and the agreement then becomes binding.

In the Superior Court of Justice's decision in *Dehkordi v. O'Dell et al.*, 2025 ONSC 6654, the method through which conditions were deleted during negotiations of an APS became the key issue in determining whether there was a binding agreement.

In June 2022, the plaintiff's real estate agent prepared an offer on the defendant sellers' property. The agent placed three horizontal lines across the home inspection and financing conditions, such that they appeared as follows:



The parties went back and forth on offers and eventually agreed on a purchase price of \$1,640,000. The plaintiff requested extensions on closing twice but ultimately could not obtain financing and failed to close the transaction. The sellers relisted the property and sold it for \$1,381,000.

The plaintiff sued the defendant sellers, his real estate agent, and two sets of lawyers he had retained to act for him on the closing. In his claim, the plaintiff sought a declaration that the APS was null and void, the return of his \$80,000 deposit, and \$500,000 in punitive damages. The defendants, except for the real estate agent, moved for summary judgment dismissing the plaintiff's claim. The defendant sellers also sought summary judgment of their counterclaim against the plaintiff, for their damages caused by his failure to purchase their property.

The main crux of the plaintiff's claim was that the APS was conditional on a home inspection and financing, and that the six horizontal lines were not intended to remove these conditions. Rather, the plaintiff argued that the six horizontal lines only deleted the specific lines of text through which the horizontal lines passed. The court wholly rejected this position.

In interpreting a contract, the court held that it must take a practical, common-sense approach. The overriding concern is to determine the intent of the parties and the scope of their understanding: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at para. 47. The court must also avoid a literal meaning that brings

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about an unrealistic result.

In this matter, the plaintiff asserted that his agent meticulously removed every other line but kept the remainder of the conditions in place. The court found that if the conditions were read with every other line removed, the text would become awkward, incomprehensible and gibberish.

The court further held that the evidence from the parties did not support this position. The plaintiff was the only person who took the position that the conditions were merely edited and not removed.

The defendants all gave evidence to the contrary, with the plaintiff's agent testifying that the plaintiff instructed him to remove the conditions to make his offer on the sellers' property more attractive. The sellers testified that they would not have accepted the offer if it remained conditional, as they had already refused a prior conditional offer on their home.

The court also found that the plaintiff's evidence that the offer was conditional ran contrary to his claim against his former lawyers. The plaintiff had retained two sets of lawyers to assist with the closing of the APS. In August 2022, he retained C and his firm. Prior to the first closing date, the plaintiff terminated C and then hired the lawyer, H and his firm. In his claims against both sets of lawyers, the plaintiff claimed that they failed to advise him that the offer was conditional and that he could withdraw from the APS.

On cross-examination, the plaintiff stated that he told both C and H that the APS was conditional but that they both ignored him. The court held that this was directly contrary to his position that his former lawyers never told him that the APS was conditional.

The plaintiff further argued that crossing out the conditions using a "X" had a different legal meaning than using horizontal lines, as his agent did in this matter. In a prior offer that the plaintiff made on another property, the plaintiff's agent used an "X". The court rejected this argument, noting that realtors may cross out clauses in various ways. It further held that accepted real estate practice required initials beside every change in an offer. If the agent had intended to delete only specific lines of the conditions, the plaintiff's initials would have appeared next to each of those lines, rather than beside the entire set of conditions.

The court found that there was no genuine issue requiring trial to conclude that the APS was not conditional. The plaintiff breached the APS when he failed to close the transaction. The court awarded the defendant sellers \$262,188.80, subject to the release of the plaintiff's \$80,000 deposit. With the deposit applied, the damages would be reduced to \$182,188.80. This amount represented the difference between the price the plaintiff had agreed to pay, and the amount ultimately received on the resale of the property.

The court also dismissed the claims against the plaintiff's lawyers, finding that both C and H could not be found negligent for failing to advise the plaintiff of an issue that did not exist.

With respect to C, the plaintiff had argued that he was negligent in failing to conduct a title search prior to the deadline stipulated in the APS (4 August 2022). The court held that there was no genuine issue requiring trial on this issue for two reasons.

First, the plaintiff had retained C after business hours on 4 August 2022. Accordingly, C's retainer did not begin until after the expiration of the 4 August 2022 deadline for a title search. Second, C conducted a title search on 5 August 2022 which did not disclose any title issues in any event. C sent a requisition letter to the sellers' lawyers and received confirmation that the mortgage registered on title would be discharged upon closing. The sellers did not object to the fact that the requisition letter was submitted one day late. As a result, the plaintiff did not suffer any damages from the failure to meet the 4 August 2022 deadline and the claim against C was [dismissed](#).

This decision confirms that conditions in an APS may be deleted in different ways, and that the court will interpret the agreement based on a common sense approach consistent with the terms of the contract as a whole. Buyers who are relying on conditions should ensure that conditions are removed only if and when they are satisfied.

This decision also confirms that claims against lawyers will not succeed where no actual damages have been suffered as a result of a lawyer's alleged conduct. The decision underscores the importance of engaging legal counsel early in the process – parties to an APS should retain a lawyer as soon as possible, and well in advance of any deadlines, to ensure all steps are completed properly and on time.

Representation by Gardiner Roberts LLP

The lawyer, C, and his firm were represented by Alexander Melfi and Simona Ristic of Gardiner Roberts LLP. Mr. Melfi is a partner, and Ms. Ristic is an associate in the firm's Dispute Resolution group. A PDF version is available for download [here](#).

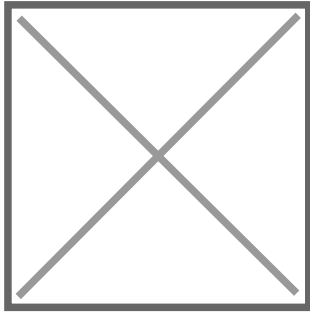
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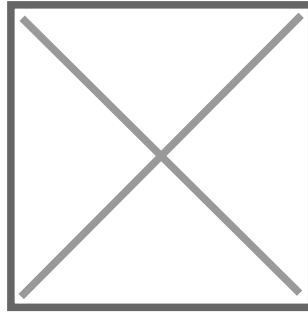
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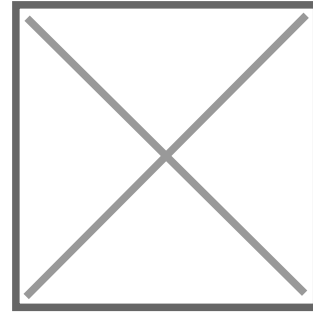
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