

Dispute over exchange of keys leads to five years of litigation over sale of church property (Gyimah v. The Roman Catholic Episcopal Corporation of The Diocese of Hearst in Ontario)

Dispute | Litigation | Litigation & Dispute Resolution | Property

8 April 2025

Courts generally expect parties to a real estate transaction to work together to ensure that it is completed as scheduled. While some unanticipated issues may arise that provide genuine grounds for a buyer to refuse to close, other issues should be addressed cooperatively with a view to completing the transaction.

In *Gyimah v. The Roman Catholic Episcopal Corporation of The Diocese of Hearst in Ontario*, 2025 ONSC 2080 (CanLII), a dispute over the delivery of the keys to the property on closing day led to five years of litigation.

In May 2019, the plaintiff entered into an agreement of purchase and sale (APS) to purchase a property in Cochrane, Ontario, owned by the defendant, the Roman Catholic Episcopal Corporation of the Diocese of Hearst in Ontario (the Church), for \$65,000.

The plaintiff agreed to purchase the property without seeing it and paid a \$9,000 deposit. He lived in Toronto, and had his own real estate agent and lawyer, who were also situated in Toronto. The Church's real estate lawyer was in Hearst, approximately 2.5 hours from the property.

On the day of closing, 28 June 2019, the plaintiff's lawyer delivered the closing funds and exchanged all signed closing documents with the Church's lawyer electronically. However, an issue then arose as to whether the keys had to be delivered to Toronto.

The Church's lawyer had understood that arrangements were made between the parties' real estate agents to have the keys available for pick up at a local convenience store in Cochrane.

However, at 1:36 p.m. on the closing day, the plaintiffs' lawyer sent an email to the secretary for the Church's lawyer asking that the keys be delivered to him in Toronto and indicating that they would only register the transfer once he received the keys. The Church's lawyer reviewed this email at 3:00 p.m.

At 3:41 p.m., the Church's lawyer responded and advised that the Church considered the transaction to be complete and that it was absurd to demand that the keys be delivered to Toronto that same afternoon.

The plaintiff's lawyer responded that the Church was in breach of the APS. He stated that the plaintiff was in a position to close but that they were still awaiting tender. He asked for confirmation that the funds had not been released as the transfer had not been registered.

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The Church first offered to send the keys by overnight bus to the plaintiff and then delivered them by courier when the plaintiff did not agree. The plaintiff still refused to accept the keys and the transaction was never completed.

In 2020, the Church relisted and sold the property for \$80,000. However, the Church held onto approximately \$58,000 received from the plaintiff. The Church's position was that even though it was able to sell the property for \$15,000 more than the sale price the plaintiff had agreed to pay, it had suffered damages for carrying costs before the resale.

Litigation ensued, with the plaintiff seeking rescission and damages in the amount of \$58,600.22 which was the balance he paid on closing, recovery of the \$9,000 deposit, plus reimbursement of legal fees. The disputed funds were held in term deposits in the interim.

The dispute eventually proceeded to a two-day trial in 2025.

In assessing which party breached the APS, the trial judge referred to principles of contractual interpretation in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, including the importance of the "setting" in which the contractual words in the contract were used. Of significance was the fact that the plaintiff, his lawyer, and his realtor were in Toronto, while the property was an eight-hour drive away in Cochrane.

In the trial judge's view, the plaintiff breached the APS for several reasons:

- While the APS provided for a 6:00 p.m. closing deadline for vacant possession to be provided, the APS did not specifically refer to delivery of keys.
- Prior to the closing date, following the exchange of requisitions, the plaintiff's lawyer prepared amended closing documents which omitted any reference to the keys so it was reasonable for the Church and its lawyer to conclude the keys were not one of the required deliveries on closing. In the trial judge's view, this made sense because the property was 8 hours away from the plaintiff, his lawyer, and realtor.
- If the Church was mistaken, this did not amount to bad faith or a failure to be ready, willing, and able to close. The Church's mistake was simply a misunderstanding.
- Conversely, it was unreasonable for the plaintiff to take the position that the Church had failed to tender since by the time he demanded that the keys be delivered to Toronto, there was no time to do so by 6:00 p.m.
- The Church was otherwise ready, willing and able to close. Everything had been accomplished except for the key delivery issue that arose on closing day.

As a matter of law, the trial judge found that the failure to deliver the keys was not a failure to tender or a breach that went to the root of the contract such that the plaintiff could then walk away from the transaction. Among other cases, the trial judge referred to *Adusei v. Ravindra*, 2024 ONSC 432, where the court held that the failure of the sellers to leave the keys in a lockbox was a minor, curable issue that did not permit the buyers to avoid the consequences of failing to close the transaction. While the APS provided that time was of the essence, the court has the discretion to relieve a party from any such obligations in appropriate circumstances.

However, while the buyer did not have the right to refuse to complete the transaction, the Church failed to persuade the court that it was entitled to keep the plaintiff's funds once it sold the property for more than the amount that the plaintiff had agreed to pay.

The Church could have paid the funds into court and sought to justify retaining any balance but did not do so prior to trial. At trial, the Church's proven damages for carrying and other costs turned out to be only \$15,219.61, before taking into account the increase in sale price of \$15,000. Accordingly, the Church's total damages were only \$219.61.

the Church was ordered to repay to the plaintiff the sum of \$70,142.23, made up of the \$9,000 deposit, \$58,600.22 of funds paid by the plaintiff at the time of the aborted closing, and \$2,761.62 of interest earned. The court has yet to determine costs of the proceeding.

At the outset of the reasons the trial judge commented that the case should never have happened and that "it was a shame that there was no early case conference where a judge could have sought to resolve this matter, because it was eminently resolvable." Instead, the parties spent years in litigation which likely did not achieve a financially advantageous outcome for either of them. A PDF version is available for download [here](#).

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