

# KEEPING CURRENT

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## Sellers repudiated agreement of purchase and sale by failing to address outstanding work orders (*Reel em Inn and Resort v. RNR Doemel Enterprises*)

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A seller's failure to advise a buyer that outstanding work orders against a property will be addressed before closing may entitle the buyer to terminate the transaction, as demonstrated by the Ontario Superior Court of Justice decision in *Reel em Inn and Resort v. RNR Doemel Enterprises*, [2025 ONSC 805](#).

The dispute involved a 19-acre property near Whitefish Lake, Thunder Bay, consisting of a seasonal general store, an ice cream parlour, cabins, and a fuel station. There was also an above ground fuel tank on the property.

In February 2020, the buyer and sellers negotiated a deal without representation from lawyers or real estate agents, pursuant to which the buyer agreed to purchase the property for \$389,900. The buyer paid a deposit of \$50,000 and the parties entered into a written Agreement of Purchase and Sale (APS) on the standard form of the Ontario Real Estate Association (OREA). Closing was scheduled for April 6, 2020.

Clauses 8 and 10 of the APS allowed the buyer to make requisitions regarding

work orders and to demand that any outstanding orders be remedied. As the APS did not provide a specific deadline for making requisitions, the default deadline under the standard OREA form applied, which was five days prior to the closing date.

The APS included some additional handwritten terms, including a requirement that the fuel tank be "painted/reconditioned by seller as per legal requirements", as well as a provision that a specified list of contracts, including "gas", would be in good standing upon sale.

The parties also agreed that the buyer would be permitted to enter the store premises to commence painting and renovation work prior to the closing date. As it was off season, the buyer's work could largely be done during the store's closed hours.

The buyer obtained the sellers' authorization to permit the Technical Standards and Safety Authority (TSSA) to disclose information in relation to the fuel tank. The buyer learned from the TSSA that there were nine work orders

outstanding in relation to the fuel tank dating back to June 2019.

The work orders required various work to be completed, including a requirement to retroactively apply for a modification of the storage tank and piping system. This was required because an underground tank had been removed and an above ground tank installed by the sellers without a permit.

The work orders indicated that non-compliance could result in significant penalties and fines, and that the gas license could be suspended.

On March 23, 2020, upon learning of the work orders, the buyer requested that the sellers sign an amendment to the APS pursuant to which they would acknowledge in writing that there would be compliance with the outstanding work orders by the closing date or that the \$50,000 deposit would be refunded.

The sellers refused to agree to the proposed amendment and did not suggest alternate wording or an extension of the closing date to allow them to comply with the outstanding work orders. They did not offer to indemnify the buyer for any costs relating to the completion of the work orders or propose a holdback from the purchase price.

In fact, the sellers did not communicate with the buyer again before the scheduled closing date. The buyer ceased doing any work to the general store and removed all tools and equipment. The sale did not close.

After the failed closing date, the buyer's lawyer sent a demand letter for the return of the \$50,000 deposit. The sellers refused and litigation ensued, leading to a two-day trial.

By the time of the trial, the sellers had taken steps to comply with the work orders but still needed to obtain a Phase II Environmental Assessment

and to complete any remediation resulting from that assessment. The property had not been sold notwithstanding multiple failed offers and a \$40,000 reduction in the purchase price.

The sellers' position was nevertheless that the buyer did not have the right to terminate the transaction. They claimed that the buyer had repudiated the APS by demanding the amended terms. They sought costs for repairing the buyer's incomplete work and damages for breach of the APS, in addition to forfeiture of the deposit.

The trial judge found, however, that it was not the buyer but the sellers who had repudiated the APS. Repudiation occurs where a party indicates an intention not to fulfill any future obligations under a contract, whether by words or conduct: *Pompeani v. Bonik Inc.*, [1997 CanLII 3653 \(ON CA\)](#).

In the trial judge's view, the sellers' refusal to address compliance with the work orders amounted to a fundamental breach of a condition of the APS (*968703 Ontario Ltd. v. Vernon*, [2002 CanLII 35158 \(ON CA\)](#)), particularly insofar as the APS included gas contracts and fuel tank provisions.

In that regard, as of March 23, 2020, two weeks before the scheduled closing date, the sellers knew that they were not in a position to comply with the work orders. They knew that they required an extension of the closing date, or needed to reach an agreement that would have permitted the sale to close, while leaving them responsible to comply with the work orders. The refusal to sign the proposed amendment was a clear communication of the fact that they did not intend to comply with the terms of the APS and that they had therefore repudiated it.

In the trial judge's view, it was reasonable for the buyer to conclude that when the sellers refused to sign the amendment to the APS, they were



neither able nor willing to comply with the work orders and to meet the terms of the APS. The buyer was entitled to consider this refusal as depriving them of the substantial benefit of the contract, because they were not able to assess the possible cost of compliance with the work orders and any associated costs or obligations.

The buyer appropriately concluded that the sellers had repudiated the agreement. Further, the buyer packed up their tools and supplies and ceased any work on the property, which was sufficient evidence of the buyer's acceptance of the sellers' anticipated repudiation. It was therefore understood by all parties that the APS was "off the table". There was no obligation on the buyer's part to tender at closing or take any other formal steps to confirm the sellers' repudiation of the APS.

The buyer was therefore entitled to the return of the deposit. The trial judge declined to award either side damages for any work done to the property by the buyer. The buyer chose to begin work at their own peril while they were still making inquiries about the property. The sellers permitted the work to be done at their own peril in advance of closing.

The decision reflects the issues that may arise when outstanding work orders are discovered by a buyer before closing. In most cases, even if a seller is not aware of work orders when entering into an agreement to sell a property, they should take reasonable steps to work out a solution with the buyer rather than maintaining silence and taking the position that the buyer was not entitled to raise them as an issue.

## Contact us

If you have a litigation matter and are in need of legal advice, please contact [James Cook](mailto:jcook@grllp.com), at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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