

# KEEPING CURRENT

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## Developer breached Agreement of Purchase and Sale by demanding additional charges at time of closing (*Taheripouresfahani v. Dormer Bond Inc.*)

By James R.G. Cook

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In litigation arising from disputed real estate transactions, courts are frequently confronted with circumstances where a buyer tries to close for less than the agreed sale price. In many cases where a buyer tries to close for less than the price agreed to by the parties, the buyer is the party in default, and the seller is entitled to retain the deposit paid in addition to seeking other damages from the buyer. In some cases, however, a failure to close may be due to additional unanticipated charges imposed by the seller on top of the original agreed-upon price. A seller's demand for more than the agreed purchase price is just as much a default as a buyer's demand to pay less. Whether or not such charges are permitted is generally determined by the wording of the Agreement of Purchase and Sale (APS) between the parties.

*Taheripouresfahani v. Dormer Bond Inc.*, [2025 ONSC 5833 \(CanLII\)](#) arose from a dispute between the buyers and the developer/seller of a newly built property in Richmond Hill, Ontario.

In 2020, the buyers entered into an APS with the developer for the purchase of the property for \$761,490. The buyers paid installments of more than \$114,000 as a deposit and \$11,540 for additional upgrades. The final closing date was to be designated by the developer's lawyer upon at least 14 days' notice.

Pursuant to the terms of the APS, the buyers were allowed to move into the property before the final closing date once occupancy was permitted. In April 2023, the buyers moved into the property as permitted and began to make monthly occupancy payments of \$3,782.

On July 31, 2023, the developer delivered a notice scheduling the closing date of September 15, 2023.

On September 7, 2023, the developer delivered a Statement of Adjustments to the buyers' lawyer which included additional charges totaling almost

\$60,000. The charges were stated to be for:

- Development Charges/Increased Levies: \$8,000 plus HST
- Meters (Hydro/Gas): \$8,163 plus HST
- Vendor's Legal and Administrative Fees: \$8,605 plus HST
- Alternative Materials Cost: \$27,021.08 plus HST

A flurry of correspondence ensued between the lawyers over whether or not the charges were permitted under the APS. The developer offered to reduce some of the charges but demanded a mutual release in return. The buyers refused and demanded that all the additional charges be removed. The transaction was not completed by the September 15, 2023 closing date but the lawyers continued to exchange correspondence in the following days concerning the statement of adjustments and additional charges.

On September 26, 2023, the developer's lawyer confirmed that the transaction had been terminated. The developer demanded that the buyers vacate the property.

Litigation ensued, with each party moving for summary judgment.

The motion judge noted that a buyer is generally entitled to proof of figures contained in a statement of adjustments: *Bellisario et al v. 2200 Bromsgrove Development Inc.*, [2025 ONSC 2546](#), at paragraph [61](#).

The motion judge further noted that the APS specifically stated that the balance due on closing would be adjusted to include "any development, education, park or other levies or imposed charges or taxes by Government Authority". Accordingly, while the development charge of \$8,000 was potentially allowed by the APS, the developer had an obligation to

explain how the charge was calculated. The developer had failed to provide any evidence to substantiate the charge, referring only to an unexplained "formula" used by the municipality.

Further, while the APS permitted adjustments for the cost of hydro and gas meter installation, the developer did not provide any documents to the buyers or the court on the motion to demonstrate how the amounts were determined.

A similar issue arose regarding the legal and administrative fees. While the APS provided such fees to be added to the statement of adjustments under specific conditions relating to NSF or "stop-payment" cheques, these did not apply in this case.

Lastly, the motion judge found that none of the "alternative materials cost" charges were provided for in the APS and that there was no evidence to support the amount charged by the developer.

The motion judge concluded that it was not the buyers who breached the APS but the developer who tried to close for more than the agreed upon price in the APS by adding approximately \$60,000 in charges that were either unjustified or not authorized. The developer's attempt to claim any one of these charges was a violation of the APS.

As a matter of law, the motion judge determined that the demand for additional payment as a condition of closing was an anticipatory breach of contract based on the principles discussed by the Court of Appeal for Ontario in *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, [2008 ONCA 92](#), at paragraph [37](#).

The motion judge [decided](#) that buyers were therefore entitled to the return of their deposit

and amounts paid for upgrades to the property.

While that result would have ordinarily been determinative of the dispute, the case was unusual due to the fact that the buyers had taken possession of the property in April 2023 and resided in it for at least a year thereafter. By the time of the hearing in 2025, they still had furniture in the property and continued to pay for internet and security cameras. The buyers also refused to consent to an order of possession in favour of the developer. The motion judge found the buyers' refusal to pay the developer for their possession of the property to be an untenable position.

In the result, therefore, the buyers were found to be responsible for the monthly occupancy of \$3,782 up to the date of the decision in October 2025 (totaling \$68,076), as well as for reimbursement of property taxes of \$6,586.56 paid by the developer during that period and unpaid condominium fees of \$3,882.

Costs of the litigation based on the divided success of the summary judgment motions are to be determined.

The decision demonstrates that sellers seeking to impose additional charges on the agreed-upon purchase price will need to ground such charges in the specific terms of the APS and have an obligation to provide satisfactory back-up documentation to substantiate the charges. Buyers who take possession of a property before closing should be prepared to compensate a seller for their time in possession of the property before it is re-sold to another buyer.

## **Contact Us**

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or [jcook@grllp.com](mailto:jcook@grllp.com).

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