

Motion for certificate of pending litigation dismissed in assignment dispute (Roopchan v. Abeywardena)

Agreement of Purchase and Sale | Commercial Real Estate | Fraudulent Conveyances Act | Litigation & Dispute Resolution | Mississauga

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Does an assignment agreement give a right to an interest in a property? Under the terms of many assignment agreements, the party agreeing to assign their interest to someone else (the assignee) relinquishes their right, title and interest in the underlying agreement to buy the property. This may mean that they have closed the door on their opportunity to claim an interest in the property if something goes awry and the assignee fails to complete the purchase under the terms of the assignment agreement.

This situation arose in *Roopchan v. Abeywardena*, 2026 ONSC 1221 (CanLII).

In October 2018, the plaintiff entered into an Agreement of Purchase and Sale (APS) with a developer for the purchase of a new construction condominium unit in Mississauga for \$572,900. The plaintiff paid interim deposits as required totaling \$85,936.00.

The plaintiff originally intended to purchase the unit as a residence for her son. That purpose changed by the time the occupancy date was scheduled so she decided to find someone to whom she could assign the APS.

In March 2022, the plaintiff entered into an Assignment Agreement with a new buyer (the assignee) under which she assigned her rights, title and interest under the APS for \$770,000.00. As consideration for the Assignment Agreement, the assignee was to pay the plaintiff \$283,035.00 by way of an initial deposit of \$115,500.00 and payment of the balance of \$167,535.00 upon final closing.

The assignee paid the deposit of \$115,500 to the plaintiff's lawyer, to be released to the plaintiff once the developer provided its consent to the assignment. A further agreement with the developer was then made under which the plaintiff irrevocably assigned her right, title and interest in the APS to the assignee, including the right to purchase the property.

In 2024, the assignee sought to terminate the Assignment Agreement with the plaintiff. When this was not accepted, the assignee sought to renegotiate the price, which was also refused. The "Outside Occupancy Date" for completion of the transaction was to be January 28, 2025. However, the plaintiff did not hear anything further from the assignee or the developer until April 2025.

In the interim, the assignee's parents and the developer entered into an amending agreement under which the parents replaced their son as buyers of the unit and completed the purchase transaction on January 14, 2025. None of the parties had contacted the plaintiff to advise her of this change.

The assignee never paid the balance of the agreed-upon price of \$167,535.00 owing to the plaintiff under the Assignment Agreement. However, despite knowing that the outside occupancy date had come and gone, the plaintiff did not take steps prior to April 2025, to investigate or recuperate the final amount owing to her from the assignee under the Assignment Agreement upon closing of the APS.

In April 2025, the plaintiff discovered through her real estate agent that the property had been sold to the assignee's parents. She sued the assignee's parents for damages in the amount of \$167,535.00 for the unpaid assignment amount.

In an effort to tie up the property pending adjudication of the dispute, the plaintiff brought a motion for a Certificate of Pending Litigation (CPL) to be registered on title to the property to provide notice of her claim.

To obtain a CPL, a plaintiff must establish that they have a reasonable claim to an interest in the specific property at issue, and not just that they have a claim for damages against the defendant. If the plaintiff can show they have an interest in the property, the court will then consider the equities involved.

The plaintiff's main argument was that even though she had assigned her interest in the APS, she had retained an interest in the property by way of a resulting or constructive trust. In that regard, she argued that she had contributed part of the purchase price for the property and had remained liable to the developer under the original APS if the assignee had defaulted.

As discussed in the Supreme Court of Canada's decision in *Pecore v. Pecore*, 2007 SCC 17 (CanLII), a resulting trust can arise where property is transferred for free from one person to another or where a person supplies the entire purchase price for the property but title is taken in another person's name.

In the motion judge's view, however, the plaintiff's claim to a resulting trust failed since the purchase price agreed to in the Assignment Agreement was paid in exchange for her interest in the property. In other words, there was no free or gratuitous transfer. The parties dealt with one another at arm's length, in a commercial context, and the plaintiff agreed to transfer all her rights, title and interest to the assignee under the APS, in exchange for money. Once that occurred, her earlier deposits to the developer were no longer considered as funds intended for her purchase of the property.

The plaintiff's claim for a constructive trust failed for similar reasons. A constructive trust is a remedy often applied to prevent unjust enrichment, which arises when there has been enrichment of one party, corresponding deprivation of another, and no "juristic reason" (or legal explanation) for the enrichment and corresponding deprivation: see *Cambone v. Okoakih*, 2016 ONSC 792, at paragraph 174.

In this case there was a juristic reason based on the terms of a binding contract—the Assignment Agreement with the assignee. There was no term in the Assignment Agreement reverting any interest to the plaintiff upon default, nor was the assignee restricted from further assignment.

Lastly, the motion judge considered the plaintiff's claim that the transfer was void under the *Fraudulent Conveyances Act*. A fraudulent conveyance may be grounds to obtain a CPL even where it does not create an interest in land on the part of the plaintiff, referring to *Claireville Holdings Limited v. Botiuk*, 2014 ONSC 6505.

However, the motion judge determined that there was insufficient proof of fraudulent intent on the part of the parties to the transfer to defeat or delay creditors, which is required to establish a fraudulent conveyance: *Brookfield Residential (Ontario) Limited v. Chen*, 2022 ONSC 1419 at paragraph 9.

In the case at hand, the plaintiff had a claim against the assignee for breach of contract. The remedy for such a claim was damages. The claim that she would be unable to recover judgment if a CPL was not granted was only speculative, which weighed heavily against granting the CPL.

In the result, the plaintiff's motion for a CPL was dismissed and she will have to pursue her claim for damages without security in the form of notice of an interest in the property.

The decision illustrates the potential perils of entering into an irrevocable assignment agreement that relinquishes one's interest in the property at issue without ensuring the assignee's obligation to complete payment under the assignment agreement upon the closing of the purchase of the property. A PDF version is available for download [here](#).

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