

Property assignment dispute: Motion for certificate of pending litigation dismissed

By **James R.G. Cook**

Law360 Canada (March 31, 2026, 10:59 AM EDT) -- When a party assigns its interest in an agreement to purchase a property, do they retain any interest in the underlying property? In many assignment agreements, the assignor relinquishes all right, title and interest in the original purchase agreement in favour of the assignee. The practical consequence of such broad language is that the assignor may be left without any proprietary claim to the property if the assignee subsequently fails to fulfil its obligations under the assignment agreement.

The Ontario Superior Court of Justice recently confronted this issue in *Roopchan v. Abeywardena*, 2026 ONSC 1221, dismissing the plaintiff's motion for a certificate of pending litigation and underscoring the risks inherent in irrevocable assignment agreements.



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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 totalling \$85,936.

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. As consideration for the assignment agreement, the assignee was to pay the plaintiff \$283,035 by way of an initial deposit of \$115,500 and payment of the balance of \$167,535 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 Jan. 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 Jan. 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 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 recover 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 for the unpaid assignment amount.

In an effort to secure 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, 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 para. 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 para. 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. Without a viable proprietary claim, the plaintiff was left to pursue her remedy in damages alone, with no security over the property.

The decision serves as a cautionary reminder for assignors (and their advisers). An irrevocable assignment that transfers all right, title and interest in a purchase agreement that does not include a term to secure the assignor's entitlement to payment upon closing may leave the assignor with no proprietary interest in the property and no recourse beyond a personal claim for damages. Assignors should consider building protective provisions into assignment agreements to safeguard their position in the event of default by the assignee. At the very least, they should closely monitor developments surrounding the closing date for the assignee's purchase of the property to try to ensure they meet their obligations.

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