

Commercial Litigation Insights: The Court of Appeal Rules Against a Purchaser's Unilateral Withholding of Payment

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Buyers should be careful about withholding part of the purchase price when disputing a seller's compliance with the terms of an option. In *1785192 Ontario Inc v Ontario H Limited Partnership*, [2024 ONCA 775](#) ("**178 Ontario Inc.**"), the Court of Appeal considered whether withholding part of the purchase price constitutes a breach of contract.

Background

In *178 Ontario Inc.*, the tenant decided to exercise the option to purchase properties from the landlord as contained in the leases. The option to purchase clause included a mechanism for setting the price at which the landlord would be required to sell the properties:

[A] purchase price equal to the average of the appraised fair market value of the Leased Premises as determined by two appraisers, one chosen by the Landlord and one chosen by the Tenant.

The appraisals provided by the landlord and tenant differed significantly: the landlord's appraisal valued the property at \$31,200,000, while the tenant's appraisal set the value at \$11,746,000. Pursuant to the clause, the midpoint of \$21,473,000 became the purchase price. Yet, both parties initially disputed the validity of each other's appraisals. Ultimately, the landlord accepted the tenant's appraisal as valid and agreed to the midpoint price, but the tenant never accepted the landlord's appraisal, viewing it as an attempt to artificially raise the price.

The tenant attempted to close the deal but tendered only a partial amount of the purchase price. The landlord rejected this as non-compliant with the contract and demanded the remaining balance. The tenant argued that it was ready to complete the transaction, but, given the dispute, had wired an amount in excess of the funds in dispute to its solicitor to be held in trust pending future litigation.

The Decision

One of the issues in this case was whether the tenant had breached the contract by failing to tender the full purchase price.

The application judge found that both parties obtained compliant appraisals. The mechanism set out in the leases took into account that each party may seek an appraisal using reasonable assumptions most favorable to that party. The application judge also accepted the tenant's argument that its partial payment was acceptable under the circumstances, as the dispute over the price was ongoing. The judge relied on abatement cases, which allow a purchaser to withhold partial payment when dissatisfied with the quality of the property being purchased, provided they secure an amount equivalent to the purchase price.

The Court of Appeal overturned the application judge's decision.

On appeal, the Court found no clear legal authority supporting the idea that a buyer can unilaterally withhold part of the purchase price during a dispute over what the correct price should be. It concluded that the tenant had breached the contract by tendering only part of the purchase price. The tenant’s unilateral decision to place the disputed portion of the price in trust was not an acceptable form of payment.

Key Takeaway

The essence of the Court’s decision in *178 Ontario Inc.* is that when an option to purchase is exercised, it is a binding contract that must be adhered to with the terms set out in the option agreement. A purchaser cannot unilaterally withhold a portion of the purchase price when there is a dispute over the purchase price.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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