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Commercial Litigation Insights: Developers Beware: Courts Curb Developer Overreach on Closing Adjustments

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By Lia Boritz

A recent Ontario Superior Court decision offers a cautionary tale for developers – and a significant win for residential purchasers.

In *Bellisario v. 2200 Bromsgrove Development Inc.*, 2025 ONSC 2456, a group of purchasers of pre-construction units in a townhouse complex challenged surprise closing adjustments totalling tens of thousands of dollars, imposed on them shortly before the scheduled closing date. The developer claimed the right to recover all of the adjustments imposed under the purchase agreement ("**APS**"). The purchasers challenged the validity of the adjustments, arguing that the charges were not authorized under the APS and that the developer had acted in bad faith.

The Court's ruling delivers a strong message to developers: discretion in closing adjustments must be exercised transparently, in good faith, and within the four corners of the contract.

What did the APS allow?

At issue was a clause permitting the developer to charge purchasers for certain utility infrastructure costs. The clause stated that the developer was entitled to a reimbursement of:

(A) the cost of any water and water check/sub meter costs, installation and connection charges and hydro and gas/BTU check/sub meter costs, installation and connection charges; and

(B) a proportionate share of all electricity, gas, water, sanitary, drain and sewer infrastructure, installation, connection and energization costs (or security relating thereto) **paid by the Vendor to or deposited by the Vendor with the Municipality or utility service provider** […] and by charging the Purchaser in the statement of adjustments with that portion of such charges.

The developer interpreted this provision to include amounts paid to its own contractors or other third parties. The Court concluded that based on the plain and ordinary meaning of the words in the APS, clause (B) only authorized adjustments for payments actually made to **utility service providers or municipalities** – not internal development costs.

Justice Papageorgiou held that the language of the APS was unambiguous. If the developer intended to be able to recover internal costs, it should have said so clearly. Even if ambiguity had existed, the Court held that the doctrine of *contra proferentem* would have resolved the issue in favour of the purchasers.

Good Faith and the Use of "Certificates"

The APS also included a clause allowing the developer to issue a vendor's certificate specifying the closing adjustments and stating

that such certificate “shall constitute sufficient evidence for the purpose of calculating [the adjustments]”.

The developer relied on this clause to justify the added charges but also to argue that the adjustments could not be challenged in Court. Justice Papageorgiou found that the certificate delivered by the developer did not insulate it from its obligation to act in good faith, which requires that discretionary rights in contracts be exercised honestly, fairly, and reasonably.

Here, the Court found that:

(i) the developer failed to act transparently or disclose the nature or quantum of the expected adjustments early in the process; and

(ii) the certificate was being used by the developer as a shield for excessive charges that were inconsistent with the purchasers’ expectations and the costs they agreed to pay under the APS.

As a result, the certificate was not binding and could be challenged in Court. The developer’s own evidence confirmed that it had passed on costs to the purchasers that it was not permitted to under the APS. An accounting and reference on damages was ordered to determine the precise amount of damages owed to the purchasers.

Limitation of Liability Clause

The APS contained a limitation of liability clause purporting to shield the developer from damages arising out of “any default” of the developer. The Court refused to enforce the clause because:

(i) it conflicted with the Tarion Addendum to the APS; and

(ii) it was unconscionable and contrary to public policy given the nature the transaction, the inequality of bargaining power and the inability of the purchasers to meaningfully negotiate the terms of the APS.

Key Takeaways:

- **Drafting matters**: Adjustment clauses must be precise in scope and application.
- **Transparency is critical**: Costs not disclosed up front or not contemplated by the agreement are vulnerable to challenge.
- **Certificates are not immune from scrutiny**: even certificates intended to be final and binding are subject to judicial review if the evidence reveals bad faith or overreach.
- **Consumer protection prevails**: Courts will not enforce clauses that undermine statutory protections or good faith obligations.

This case is a stark reminder for developers and their counsel that aggressive adjustment strategies can backfire, leading to liability and reputational risk.

For purchasers, the decision affirms their right to transparency and fairness. For developers and their counsel, it is a timely call to revisit the structure and language of their standard APS documents to ensure that their adjustment clauses are clear.

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