

CANADA / JUDGMENT

Dale v. Toronto Real Estate Board

2026 ONCA 252

COURT

Court of Appeal for Ontario

DECIDED

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Dale v. Toronto Real Estate Board

Collection

Decisions of the Court of Appeal

Date

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2026 ONCA 252

Docket numbers

COA-25-CV-0161

Judges

Fairburn, J. Michal; Rouleau, Paul S.; Wilson, Darla A.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Dale v. Toronto Real Estate Board, 2026 ONCA 252

DATE: 20260408

DOCKET: COA-25-CV-0161

Fairburn A.C.J.O., Rouleau and Wilson JJ.A.

BETWEEN

Lawrence Mark Dale, Stephen Moranis*, Fraser Beach and RealtySellers (Ontario) Limited as Assignor

Plaintiffs (Appellant*)

and

The Toronto Real Estate Board*, Maureen O'Neill, Tom Lebour, Dorothy Mason, Deborah Abraham, Ron Abraham, Stuart Braund, Larry Cerqua, Paul Etherington, Heather Fuller, Ann Hannah, William Johnston, Garry Lander, Ken McLachlan, Rosalind Menary, Joseph Shum, Richard Silver, John DiMichele, Don Richardson, Phil Sopher, David Brown, Wendy Carroll, Keith Tarswell, and Tom Bosley

Defendants (Respondent*)

Eli Karp, acting as agent for the appellant

Kevin W. Fisher and James Beesley, for the respondent

Heard: February 18, 2026

On appeal from the order of Justice Robert Centa of the Superior Court of Justice, dated January 10, 2025, and from the costs order, dated January 28, 2025.

REASONS FOR DECISION

- [1] The appellant, Stephen Moranis, appeals from an order dismissing his motion to set aside the consent dismissal of his action and to permit it to continue as if there had been no accepted offer to settle pursuant to r. 49.09 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. He also appeals the dismissal of an action he commenced in 2023 and the costs order.
- [2] The events underlying this appeal date back to 2009. In 2009, the appellant, along with others, brought two actions against 24 defendants, of which the Toronto Real Estate Board (TREB) was one.
- [3] In 2013, minutes of settlement were entered into settling the second action. This was followed by a consent order dismissing that action. In 2015, the appellant assigned his interest in the first action to another plaintiff, Mr. Dale. The first action was subsequently dismissed for delay.
- [4] On March 23, 2023, the appellant served his motion to set aside the consent dismissal of the second action and to permit it to continue as if there had been no accepted offer to settle pursuant to r. 49.09 of the Rules. In brackets on the first page of the notice of motion, he referred to the motion as being one “to Set Aside the Settlement Agreement under Rule 49.09 of the Rules”. On the same day, he issued a statement of claim (the third action) claiming “the same set of reliefs” as was sought in the second action. The defendants in the third action were the same as those in the second action. The statement of claim in the second action was attached as an appendix to the statement of claim in the third action.

- [5] The parties attended a case conference on November 1, 2023 to schedule the appellant's motion. TREB objected to scheduling the motion on various bases, including that the motion was an abuse of process. The case conference judge directed that TREB's objections be resolved prior to the hearing of the appellant's motion. He set the date of December 13, 2024 for the hearing of TREB's objections and implemented a timetable for the delivery of materials. The case conference judge directed that TREB deliver its motion record by February 29, 2024. His order provided that the issues to be addressed on December 13 were TREB's proposed motion to strike based on the lack of standing and abuse of process and, in the alternative, an order for security for costs.
- [6] TREB filed its motion materials dated February 29, 2024 seeking the dismissal of both the appellant's motion and the third action. The appellant did not file any responding materials, which were due April 30, 2024. However, the appellant's motion materials, including his affidavit, were included in the materials filed by TREB.
- [7] At the motion hearing on December 13, 2024, the motion judge invited the appellant to deliver written submissions on whether his motion and the third action should be dismissed pursuant to r. 2.1.01 of the Rules.
- [8] Following receipt of these submissions, the motion judge determined that, on their face, the appellant's motion and the third action should not be summarily dismissed pursuant to r. 2.1. He therefore determined that he should proceed to consider TREB's motion on the merits based on the materials filed in support of that motion.
- [9] Based on the materials filed, the motion judge concluded that the appellant's motion was a "transparent attempt to relitigate the issues in the first action (which was dismissed) and in the second action (which was settled)." As well, he dismissed the third action as an abuse of process, finding it was substantially the same as the prior actions.
- [10] The appellant submits that the motion judge erred in going beyond the issues that were to be addressed pursuant to the case conference judge's order and deciding the appellant's motion on the merits. The appellant further argues that the motion judge erred in admitting hearsay evidence, ignoring the appellant's evidence and dismissing the third action without analyzing whether it was in the interests of justice to enforce the settlement.
- [11] We do not agree. The motion judge dealt squarely with the issues he was to address pursuant to the case conference judge's order. He concluded that the appellant's motion to set aside the dismissal of the second action and the settlement was simply an attempt to relitigate issues that had been settled. We see no error in his decision. The appellant provided no basis for setting aside either the dismissal of the second action or the settlement. The uncontroverted evidence before the motion judge was that the settlement was consented to by the parties in 2013 and was acted upon for some eight years without apparent complaint. The fact that the appellant now alleges that, in 2021, the settlement was breached by TREB, one of the numerous settling parties, does not constitute a basis for setting aside the dismissal of the action nor the settlement.

- [12] It is well established that, where a settlement is reached, the interests of finality prevail unless there are contractual problems such as fraud, misrepresentation, duress, undue influence, unconscionability, or mutual or unilateral mistake: *Deschenes v. Lalonde*, 2020 ONCA 304, 447 D.L.R. (4th) 132, at para. 28, leave to appeal refused, [2020] S.C.C.A. No. 244. The appellant did not suggest any of these problems existed.
- [13] Curiously, in his affidavit filed in support of his motion, the appellant took the position that the terms of the minutes of settlement should be enforced by way of a court order. He ended his affidavit with the following: “I swear this affidavit in support of the [appellant’s] motion to enforce the settlement of this Action and for no other or improper purpose.” A similar request that a judgment be entered in the terms of the minutes of settlement was listed in paragraph 14 of the grounds for the motion. As noted earlier, however, the motion the appellant in fact brought did not seek the relief he referenced in his affidavit and in paragraph 14 of the grounds for the motion, but rather sought to have the settlement and consent dismissal set aside. In his factum on appeal, he again refers to the motion as “seeking to set aside the dismissal of the ... action” and later, as seeking “to set aside the Settlement Agreement”. As he should, the motion judge considered the motion as framed. He found, in effect, that it was an abuse of process and he quite properly made no finding as to whether there had been a breach of the settlement nor whether an order enforcing the settlement was appropriate.
- [14] Contrary to the appellant’s submissions, in reaching his decision, the motion judge did not rely on hearsay and did not ignore the appellant’s materials. In fact, the motion judge’s decision was largely based on the appellant’s own materials, albeit filed as part of the respondent’s materials supporting its motion. From those materials it was apparent to the motion judge, as it is to us, that the settlement and consent dismissal were properly made and that no complaint was raised for many years. The appellant’s concern as expressed in his affidavit is of an alleged breach of the settlement. The relief the appellant sought in his motion, however, was not to enforce compliance but rather to resurrect the issues that were raised in the first and second action, the first having been dismissed for delay and the second having been settled and dismissed on consent over ten years ago. Although one of the grounds the appellant listed in support of the relief sought in his motion was a request that this court enter “a judgement in the terms of the Minutes”, this was not the relief sought on the motion nor does it appear to have been advanced in the court below.
- [15] The doctrine of abuse of process serves to prevent the relitigation of issues that have already been decided and to prevent the pursuit of litigation that would violate principles such as judicial economy, consistency, finality and the integrity of the administration of justice: *Pine Glen Thorold Inc. v. Rolling Meadows Land Development Corporation*, 2025 ONCA 604, 178 O.R. (3d) 241, at para. 41, leave to appeal requested, [2025] S.C.C.A. No. 459. The doctrine was properly applied in the circumstances of this case.

- [16] The motion judge also addressed whether the third action should be struck. He found that, on its face, it was an attempt to obtain “the same set of reliefs sought in’ the second action” that is, it sought to relitigate issues raised in the second action and settled by way of minutes of settlement and a consent dismissal of the claim. His finding that the third action was an abuse of process was amply supported by the record and the motion judge gave cogent reasons for concluding that the third action was “a misuse of the court’s procedure and allowing it to continue would bring the administration of justice into disrepute.” We see no basis to interfere.
- [17] For these reasons, the appeal is dismissed. As leave to appeal the costs order was not sought, the costs appeal is also dismissed. Costs in the sum of \$35,000 as agreed between the parties are payable by the appellant to the respondent TREB.

“Fairburn A.C.J.O.”

“Paul Rouleau J.A.”

“D. A. Wilson J.A.”

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