

CANADA / JUDGMENT

Sidhu v. Mand

2025 BCSC 2324

COURT

Supreme Court of British Columbia

DECIDED

27 November 2025

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2025 BCSC 2324 Sidhu v. Mand

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Mand,

2025 BCSC 2324

Date: 20251127

Docket: S252966

Registry: New Westminster

Between:

Kamaljeet Kaur Sidhu, Tarsem Singh Sidhu, Manvir Singh Sidhu and Ravneet Kaur Sidhu

Plaintiffs

And

Gurpreet Singh Mand, Sukhvir Kaur Mand and Surinder Kaur Mand

Defendants

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for the Plaintiffs:

G.S. Sanghera

Counsel for the Defendants:

K.S. Atwal

Place and Date of Trial/Hearing:

New Westminster, B.C.

September 19, 2025

October 15, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 27, 2025

- [1] The dispute between these parties is about the correct measure of damages for the defendants' admitted breach of a contract relating to the purchase and sale of property. In the notice of application, the plaintiffs seek judgment in the amount of \$214,041.25 or, alternatively, any amount the Court finds just. However, during the hearing they adjusted the amount they sought. The defendants' position is that no amount is owing to the plaintiffs and the application should be dismissed.
- [2] This matter was started on September 19, 2025, during an extremely busy day in general chambers. While it completed within the time estimate given by the parties, I was not satisfied there had been sufficient time to fully canvas the issues. I asked the parties to arrange a continuation before me which took place on October 15, 2025.
- [3] At that hearing, an issue arose during the plaintiffs' reply. The plaintiffs sought to adjourn the hearing to allow them to file more evidence. This was in response to the defendants' position that there was either no or insufficient evidence to support some of the specific amounts sought by the plaintiffs as part of the damages award.
- [4] I declined the request to adjourn the matter. In my view, it would not be fair as the parties ought to have filed all the material they needed before the hearing commenced on September 19, 2025.

FACTS

- [5] Few facts are disputed, and I set out below the facts material to the issues raised.
- [6] In August 2021, two of the plaintiffs entered into a contract of purchase and sale for a presale townhouse located in Surrey (the "Property"). The purchase price was \$860,000, and they paid a deposit of \$86,000. Clause 14 of that agreement permitted assignment of the contract only with the prior written consent of the developer.
- [7] In May 2023, with the consent of the developer, the plaintiffs entered into an assignment agreement with the defendants. Pursuant to that agreement, the defendants agreed to assume the plaintiffs' rights and obligation under the original contract. Relevant portions of the assignment agreement include:

- a) Clause 5.1 stated the defendants would pay an "Assignment Amount" of \$181,000 consisting of reimbursement of the deposit paid by the plaintiffs (\$86,000) and the balance of the Assignment Amount (\$95,000). The total purchase price was \$955,000.
- b) Clause 5.2 stated a "deposit of \$50,000, which will form part of the Assignment Amount, will be paid within 24 hours of acceptance".
- c) However, an addendum to the assignment agreement entered into the same day stated the \$50,000 deposit would be paid in two equal installments. The first was due two days after the developer consented to the assignment agreement, and the second was due by June 3, 2023. The defendants paid those amounts on time.
- d) Clause 5.12, titled "Assumption and Indemnity by Assignee", stated that the defendants agreed they would "observe and perform all of the obligations of the original purchaser" and would "indemnify and save harmless the Assignor from all actions, suits, costs, losses, damages, charges and expenses incurred by the Assignor" for any failure of the defendants' to perform the contract.
- e) Clause 5.17 stated the time is of the essence and that unless the "balance of the Assignment Amount is paid on or before the date specified, the Assignor may terminate this Assignment Agreement, and in such event, the amount paid by the Assignee will be non-refundable and absolutely forfeited to the Assignor without prejudice to the Assignor's other remedies".
- f) The balance of the Assignment Amount would be paid upon completion.
- g) The developer issued notice on September 21, 2023, stating the completion date would be October 5, 2023.
- [8] The parties agreed to extend the completion date twice, with the consent of the developer. The first extension was from October 5, 2023, to October 23, 2023, at a cost of \$400 per day. The second extension was from October 23, 2023, to November 16, 2023, at a cost of \$650 per day. The agreements stated those extension fees would be reflected on the final statement of adjustments.
- [9] The defendants failed to complete the assignment agreement, and the plaintiffs were obliged to complete the purchase from the developer. To do so, at the behest of the developer, the plaintiffs entered into a new agreement dated November 16, 2023, but the purchase price remained the same (\$860,000), and the plaintiffs were credited with the original deposit they had paid. However, the new contract had all four plaintiffs as purchasers rather than just the original two.
- [10] Counsel for the plaintiffs gave the defendants written notice of termination of the assignment agreement by letter dated March 27, 2024. The plaintiffs filed a notice of civil claim ("NOCC") the same day. The preceding facts are set out in the NOCC. In addition, the plaintiffs pleaded that they would use the Property as a rental.

- [11] The defendants filed a response to the civil claim in August 2024. They denied that the plaintiffs have suffered any loss or damage. However, under "Legal Basis", the only defence raised is that the developer failed to comply with its disclosure obligations under the Real Estate Development Marketing Act, S.B.C. 2004, c. 41.
- [12] The plaintiffs filed this application on June 12, 2025. In it, they seek judgment for \$214,041.25 consisting of:
- a) \$131,000 for the unpaid balance of the Assignment Amount;
 - b) \$23,677.50 in extension fees;
 - c) \$43,000 for GST;
 - d) \$15,200 for property transfer tax; and
 - e) \$1,163.75 for legal fees upon closing.
- [13] The defendants filed a response and supporting affidavit on August 14, 2025, in which they allege, among other things, that the plaintiffs had sold the townhouse for \$945,000 and, therefore, suffered no loss or damage. The defendants also submit the plaintiffs' failure to disclose that sale in their notice of application or supporting affidavits ought to disentitle them to relief.
- [14] On August 18, 2025, the plaintiff Kamaljeet Sidhu filed an affidavit in response to the defendants' response and affidavit. She confirmed the plaintiffs sold the Property for \$945,000 and that sale completed in February 2025. That affidavit also contains her explanation of the plaintiffs' loss, as follows:
- a. The Assignment Agreement had originally been made for \$955,000.00. The property resold for \$945,000.00 - a loss of \$10,000 in market value;
 - c.[sic] After closing costs of approximately \$15,000.00, the net proceeds were even lower;
 - d. We did not receive repayment of the balance of the \$36,000 deposit that was supposed to be reimbursed under the Assignment Agreement; and
 - e. We incurred holding costs, including property tax of \$3,300.00 for 2024, property insurance of \$945.00 for 2024, and the shortfall between our financing obligations and rental income. Our monthly obligations consisted of approximately \$4,850.00 in mortgage payments plus \$1,200.00 in interest-only payments relating to the remaining deposit, for a total of \$6,050.00 per month. The rental income received was approximately \$3,300.00 per month, leaving a net shortfall of \$2,750.00 per month. From November 2023 to February 2025 (15 months), this resulted in a total loss of \$41,250.00.

[15] The only exhibit attached to her affidavit is the sellers' statement of adjustments and pay-out statement. It confirms that the net proceeds the plaintiffs realized after the sale in February 2025 were \$930,433.90, which is consistent with her evidence that closing costs were approximately \$15,000.

[16] However, there are no documents to substantiate the \$41,250.00 in holdings costs.

LEGAL PRINCIPLES

[17] The parties submitted that the matter is appropriate for summary determination. I agree. The resolution turns almost exclusively on undisputed facts and the contractual terms.

[18] In *Mandl v. Fong*, 2024 BCSC 1190 at para. 73, Justice Hori outlines the legal principles for assessing damages in cases in which a purchase is in breach of a contract for the purchase and sale of real property:

[73] Justice Kirchner, in *Kaltenegger v. Cao*, 2022 BCSC 2203, set out the legal principles for assessing damages in cases in which a purchaser is in breach of a contract for the purchase and sale of real property. I have summarized those legal principles as follows:

- a) As far as money can do so, the vendor is to be placed in the same position as the vendor would have been in had the purchaser performed the contract: *Di Castri's The Law of Vendor and Purchaser*, 3rd ed, Vol. 2, Ch. 17 ("Di Castri");
- b) Recoverable damages must be reasonably foreseeable: *Di Castri*;
- c) The measure of damages is generally the difference between the contract price and the re-sale price together with any actual costs incurred by the vendor as a result of the breach: *Di Castri*;
- d) Absent a re-sale of the property, the measure of damages is the difference between the contract price and the market value of the property at the date of the breach which is usually the completion date: *Di Castri*;
- e) The vendor must take reasonable steps to mitigate damages: *Di Castri*;
- f) Any deposits paid by the purchaser must be taken into account: *Di Castri*;
- g) While damages are usually assessed as at the date of the breach, the court has a discretion to choose a different date that would arrive at a more just result: *Kaltenegger* at para. 147 citing *Ranisavljevic v. Sathasivam*, 2020 BCSC 413 at para. 114;
- h) In the case of real estate in a falling market, assessing damages as at the date of the breach may not fairly compensate the vendor who makes reasonable efforts to re-sell the property: *Kaltenegger* at para. 147;

- i) In a falling market the court should award the vendor damages equal to the difference between the contract price and the highest price obtainable within a reasonable time after the purchaser's breach of contract: *Cassidy v. Smith*, 2008 BCSC 1778, at para.29; and
 - j) What constitutes a reasonable time after the date of the breach will depend on the reasonableness of the vendor's actions in trying to sell the property: *Kaltenegger* at para. 148.
- [19] In *Peak Real Estate Marketing Ltd. v. 697604 B.C. Ltd.*, 2009 BCSC 634, the court discussed damages when an assignment agreement was terminated. At para. 26 the court stated the usual measure is an amount that would put the innocent party in the same position as if the contract had been carried out. However, the defendant's position was that damages upon termination of the assignment agreement had been agreed to by the parties pursuant to clauses addressing the forfeiture of the deposits. The defendant's position was that no further money was owed beyond the forfeited deposit for the breach of contract. The court agreed, in part:
- [28] I find that regardless of whether the Assignment Agreement was terminated pursuant to clause 3 or 7, the submissions of the defendants have merit. Clause 3 states that in the event of termination (which I have found to have occurred), the defendants shall forfeit any non refundable portions of the Assignment Price. Clause 7 states that if the plaintiffs elect termination (which I have found they did) the defendants shall irrevocably forfeit all payments made by them to the plaintiffs. The effect of these clauses is the same: upon termination, the deposits are forfeited to the plaintiffs.
- [30] In sale cases, the law has long recognized the forfeitures of deposits as a form of liquidated, or pre-estimated damages, and have upheld them in cases even where they exceeded or were less than the actual damages suffered (*Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co.*, [1915] A.C. 79 (H.L.); *Prudential Insurance Co. of America v. Cedar Hill Properties Ltd.* (1994), 100 B.C.L.R. 2d 312, [1995] 3 W.W.R. 360 (C.A.); and *British Columbia Development Corporation v. NAB Holdings Ltd.* (1986), 6 B.C.L.R. (2d) 145, 30 D.L.R. (4th) 560 (B.C.C.A.)).
- [31] Not all forfeited deposits will be construed as liquidated damages, and not all liquidated damages clauses will be upheld by the court. The key is reasonableness. The amount must be a "genuine pre-estimate of the expected loss that a party will sustain in the event of a breach of contract, based on the facts at the time of contracting" (*Harvin D. Pitch & Ronald M. Snyder, Damages for Breach of Contract*, 2d ed., looseleaf (Toronto: Carswell, 1989) at p. 6-2).

- [20] The court continues at para. 32 to say that a reasonable deposit is seen as a guarantee of performance as well as in a payment on account. Where an amount is out of proportion to the damage suffered from a failure to perform, a court may find that forfeiture unconscionable or punitive and not uphold it. Similarly, if the actual damages exceed the amount of liquid damages in the contract, the plaintiffs' recovery may be restricted to the lower amount (para. 33).
- [21] The court held that damages for breach of contract were limited to the forfeiture of the deposits and did not award to the plaintiffs' recovery of the balance of the assignment price. However, that conclusion did not affect the plaintiffs' ability to enforce a separate promise of indemnity made in a different clause of the contract. Accordingly, the court ordered the defendant to pay \$600,000 under that provision.

ANALYSIS

- [22] There is no dispute that the defendants have forfeited the \$50,000 deposit, but the parties disagree whether the defendants owe any more money for their failure to complete the assignment agreement.
- [23] The defendants argue the plaintiffs are not entitled to judgment. First, they say the lack of disclosure of the sale of the Property means they came to court "without clean hands", disentitling them to any relief. Second, they sold the Property just over a year after purchasing it for \$85,000 more than they paid for it, so they suffered no loss. Lastly, they contend even if the plaintiffs did suffer a loss, they have failed to adduce any evidence of efforts they took to mitigate their loss.
- [24] I am aware the "clean hands" doctrine is generally considered an equitable principle, and it is not clear to me if it applies to these facts. No case law was provided to me. For that reason, I decline to dismiss the application on that basis alone.
- [25] However, I am troubled by the lack of disclosure. The original quantification of the loss set out in the plaintiff Tarsem Sidhu's affidavit was \$214,041.25 based on recouping the balance of the Assignment Amount, extension fees, GST, property transfer tax, and legal fees. After revealing that they sold the Property, the plaintiffs rely on evidence from Ms. Sidhu, and reduced their quantification of loss by over 50% (\$102,250). The obvious concern is whether the failure to reveal the sale when they filed the application was an attempt to receive a higher amount of damages.

Balance of the Assignment Amount

- [26] Mr. Sidhu claimed the entire unpaid balance of the \$131,000 Assignment Amount, whereas Ms. Sidhu only seeks \$36,000 representing the difference between the forfeited deposit and the reimbursement of deposit.

- [27] The defendants contend the plaintiffs are limited to the \$50,000 forfeited deposit because it is a pre-assessed amount of liquidated damages. They base that on the wording of the contract, especially clause 5.17. They argue that clause makes no sense if it was intended that the entire amount of the Assignment Amount could be recovered. They argue the phrase "the amount paid by the assignee will be non-refundable and absolutely forfeited on account of damages" is only consistent with the deposit representing pre-assessed liquidated damages.
- [28] Based on the reasoning in Peak Real Estate Marketing Ltd., I agree the deposit was intended to represent pre-assessed liquidated damages. As such, I conclude the plaintiffs are not entitled to the balance of the Assignment Amount for failing to complete the purchase.
- [29] However, I note that clause 5.17 states the deposit is forfeited "without prejudice to the Assignor's other remedies". Together with the indemnity clause, I find the plaintiffs may recover more, but only if they have established they suffered a loss and demonstrated that they took reasonable steps to mitigate that loss.

Other Amounts Claimed by Ms. Sidhu

- [30] In her affidavit, Ms. Sidhu seeks \$10,000 for the difference between the total purchase price in the assignment agreement and the amount the plaintiffs sold the Property for in February 2025.
- [31] That does not represent a loss suffered by the plaintiffs. The plaintiffs were never going to receive the total purchase price in the assignment agreement, so the difference between that and the selling price is unrelated to the defendants' breach.
- [32] The total purchase price under the assignment agreement was the amount the defendants would pay to buy the Property. Of that amount, the plaintiffs would have received only the Assignment Amount, and the rest would have been paid to the developer.
- [33] The plaintiffs also claim "approximately \$15,000" in closing costs, but that relates to the costs when they sold the Property in February 2025. According to the statement of adjustments attached to Ms. Sidhu's affidavit, the plaintiffs received a net amount of \$930,433.90 after selling the Property for \$945,000, a difference of \$14,566.10.
- [34] I do not see how those costs are related to the defendants' breach. When the defendants failed to complete the assignment agreement, the plaintiffs were obliged to purchase the Property from the developer. It would appear those closing costs might arise directly from the defendants' breach, but not the costs to re-sell the Property.
- [35] Ms. Sidhu deposed the plaintiffs suffered a loss of \$41,250 in holding costs, but there is no documentary evidence to support that assertion. The plaintiffs submit there was no reason the Court could not rely on the statements in Ms. Sidhu's affidavit that those were the holding costs.

- [36] I disagree. The plaintiffs have the burden of proving their loss, and the lack of documents to support her claim is material, especially because her claim is imprecise. She deposed that the plaintiffs suffered a shortfall between financing costs and rental income, but she uses the word "approximately" to qualify both amounts, indicating they are merely estimations. No documents are attached to verify the amounts. I reiterate my concern about the plaintiffs' initial failure to disclose the sale of the Property in the affidavit accompanying the notice of application. For those reasons, I am not convinced that the plaintiffs have proven that loss.
- [37] Ms. Sidhu also claimed \$36,000 as the difference between the forfeited deposit of \$50,000 and the reimbursement of the full \$86,000 that the plaintiffs paid to the developer. However, when the plaintiffs purchased the Property, the developer credited them with the entire deposit they paid. Thus, they did not "lose" that amount because it was credited towards the purchase price.
- [38] In my view, the amounts claimed by Ms. Sidhu are not recoverable because they do not arise from the defendants' breach.

Amounts Claimed by Mr. Sidhu

- [39] In the notice of application, the plaintiffs sought damages for paying \$23,677.50 in extension fees, \$43,000 in GST, \$15,200 in property transfer tax, and \$1,163.75 in legal fees for closing. The statement of adjustment attached to Mr. Sidhu's affidavit confirms the accuracy of those amounts.
- [40] I accept that the legal fees and the property transfer tax are amounts the plaintiffs never would have incurred except for the defendants' breach of the assignment agreement. Presumably, the defendants would have borne those amounts when they completed the purchase. Those amounts are therefore potentially recoverable.
- [41] However, the plaintiffs cannot recover GST. Clause 5.18 of the assignment agreement stated that the Assignment Amount is inclusive of any GST payable, and the assignor shall remit GST. The plaintiffs are not entitled to recoup that from the defendants as it was not an amount that the defendants had ever agreed to pay.
- [42] Nor is it clear to me that the defendants are obliged to reimburse the extension fees. The contractual terms about that need to be examined.
- [43] The first extension states that the extension is payable to the developer at closing to be reflected on the statement of adjustment, meaning they would have been borne by the defendants. However, the second page has hand-written clause stating that the \$400 per day "will be paid at closing to the assignors". This inconsistency is left unexplained.
- [44] However, that agreement was superseded by the second extension agreement. It has terms that are clearer. It contains the following handwritten addition, "This extension is approved at a cost of \$650 per day to the purchasers, payable to [the developer] to be made at closing +

will be reflected on the final statement of adjustments". There is also at the bottom, the following typed clause, "If the Assignees fail to complete on the said completion Date then the Assignor will have to prepare for completion of the contract which will occur within 5 business days of the completion date and will not be charged any extra fee for extending the contract and will only pay the original contract amount" (emphasis added).

- [45] One plausible interpretation is that the plaintiffs would not have to pay any fees in addition to the extension fees already set out. However, that is tempered by the statement that they would only pay the "original contract" amount, which was \$860,000.
- [46] However, Mr. Sidhu deposed that the plaintiffs did pay the extension fees, and an attached statement of adjustment reflects that. However, he also confirms that the plaintiffs entered into a new contract with the developer for the purchase. In other words, the contract that was assigned to the defendants was not the one under which the plaintiffs bought the Property. The contract under which the plaintiffs bought the Property explicitly states that the plaintiffs would pay the extension fees.
- [47] There was no explanation in the evidence as to why the developer required the plaintiffs to enter a new contract. It would have been at that time that it was settled the plaintiffs had to pay the extension fees. However, I accept that the plaintiffs did actually pay those fees, and overall, I find it reasonable that the developer would have insisted those must be borne by the plaintiffs. As such, they represent a potential loss because if the defendants had performed the assignment agreement, the defendants would have paid those fees to the developer.
- [48] Therefore, the potentially recoverable amount by the plaintiffs is the purchase tax (\$15,200), the closing fees when the plaintiffs purchased the Property (\$1,163.75) and the extension fees (\$23,677.50), totalling \$40,041.25.
- [49] The remaining question is whether the plaintiffs have established they suffered a loss of that amount. I find they did not. They sold the Property for \$945,000, which is \$85,000 more than they paid for it. That exceeds the amount of the potentially recoverable loss.
- [50] Also, the plaintiffs presented no evidence about mitigation. They confirmed they rented the property for a time before selling it. As noted, while Ms. Sidhu claimed the financing costs were less than the rental income generated, she does not explain why they made the decision to rent out the Property, and whether it was at that time, or even later, financially beneficial. Moreover, her evidence about the amount of financing costs and rental income is imprecise and unverified.
- [51] For all those reasons, I conclude the plaintiffs have failed to establish that they suffered a loss because of the defendants' failure to complete the assignment agreement. The application is dismissed.

"Sharma J."

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