

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
<b>STARGROVE HOLDINGS INC.</b>	)	<i>Stephen Brunswick and Jennifer J. Lake for the Plaintiff</i>
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
<b>RENA AL NOUBANI</b>	)	<i>Howard F. Manis for the Defendant</i>
	)	
Defendant	)	
	)	
	)	<b>HEARD:</b> In writing

**PERELL, J.**

**REASONS FOR DECISION**

[1] This is a motion for:

- (a) An Order for Judgment pursuant to Rule 49.09(a) of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, enforcing the Minutes of Settlement entered into by the parties on September 12, 2022;
- (b) On Order amending the Statement of Claim to add Marco Fabiani as a co-defendant;
- (c) Interest on the principal sum \$874,072.00 at a rate of 12% per annum calculated and payable monthly from February 26, 2019, to the date of payment;
- (d) In the alternative to (c) prejudgment and post judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) The Plaintiff's costs of this motion on a substantial indemnity basis; and
- (f) Such further and other Relief as counsel may advise and to this Honourable Court may seem just.

[2] The factual and procedural background to this motion is as follows:

1. On June 30, 2020, the Plaintiff Stargrove Holdings Inc. sued the Defendant Rena Al Noubani for breach of a vendor takeback mortgage on the purchase of 3 Kirsten Road, Richmond Hill, Ontario. The claim was for \$874,072 plus interest at a rate of 12% per annum calculated from the date of breach, February 26, 2019 to the date of payment.

2. On July 27, 2020, in a related action, Bisenti Builders Group Inc. c.o.b. Treasure Hill Homes, a company related to Stargrove, sought a declaration that Al Noubani repudiated the Agreement of Purchase and Sale (APS) in connection with her purchase of the property known as Lot 11, 198 Carmichael Crescent, King, Ontario and damages in the sum of \$750,000 plus interest at a rate of 15% per annum in accordance with the APS.
3. In the immediate action, Stargrove moved for a summary judgment. The motion was originally scheduled for October 21, 2021.
4. In the light of an apparent settlement close to being reached, I adjourned the summary judgment motion and scheduled a case management conference.
5. The settlement discussions became protracted, and numerous case management conferences followed. At the conferences, I received reports on the state of the negotiations and the steps being taken to implement a settlement.
6. In the late summer of 2022, a settlement was finally reached. The settlement included Minutes of Settlement, an agreement that there be a Fresh as Amended Statement of Claim, and several consent Orders. The Fresh as Amended Statement of Claim in the Stargrove Action added Marco Fabiani, who is Ms. Al Noubani's father, as a co-defendant. Mr. Fabiani was also a party to the settlement agreements.
7. The settlement resolved both the Stargrove and Bisenti Actions. Stargrove reduced the amount of its claim against Al Noubani, without prejudice to its right to enforce the mortgage in favour of it on the Kirsten Road property if there was a breach of the settlement agreement.
8. On September 12, 2022, there was a case management conference. I was told that there was a settlement subject only to the signatures of Ms. Al Noubani and Mr. Fabiani. I directed the parties to deliver the settlement documents forthwith.
9. Subsequently, Stargrove's Counsel requested the finalized documents, but he was advised by Ms. Al Noubani and Mr. Fabiani's counsel that although there was a settlement, his clients were not responding to his requests for signatures on the settlement documents.
10. There was a case management conference on October 7, 2022, and I issued a File Direction permitting Stargrove to bring a motion pursuant to Rule 49.09 to enforce the settlement.
11. Stargrove delivered the motion material. No responding or opposing material was delivered by Ms. Al Noubani or Mr. Fabiani.

[3] Rule 49.09 of the *Rules of Civil Procedure*,<sup>1</sup> stipulates that where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly. Rule 49.09(a) codifies the common law jurisdiction to enforce agreements to settle

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<sup>1</sup> R.R.O. 1990, Reg. 194.

litigation.<sup>2</sup>

[4] A motion to enforce a settlement involves two elements. The first element is whether or not there is any genuine issue about the existence of an agreement to settle, and the second is to determine whether there is any reason not to enforce the settlement.<sup>3</sup>

[5] For there to be a binding settlement agreement, there must be a mutual intention to create a legally binding agreement and the essential terms of the agreement must have been agreed upon.<sup>4</sup> However, it is not necessary to have reached agreement on incidental matters, such as the method of payment or the exchange of releases.<sup>5</sup> The parties should attempt to settle the terms of a release consistent with their settlement, and the settlement will be enforceable unless one party insists upon terms or conditions that have not been agreed upon or are not reasonably implied in the circumstances.<sup>6</sup>

[6] The court has the discretion to refuse to enforce the settlement agreement summarily.<sup>7</sup> In exercising its discretion, the court may have regard to such factors as the presence of a mistake by a lawyer about his or her instructions to accept the settlement, the prejudice to the parties of enforcing or not enforcing the settlement; and the effect on third parties.<sup>8</sup> The discretionary decision not to enforce a concluded settlement, especially where the settlement has been partially or fully performed, is reserved for those rare cases where compelling circumstances establish that the enforcement of the settlement is not in the interests of justice.<sup>9</sup> Circumstances where the court might exercise its discretion not to enforce a settlement include: (a) where it considers the settlement to be unreasonable; (b) where the settlement would result in an injustice; or (c) where there is another good reason not to enforce the settlement.<sup>10</sup>

[7] In the immediate case, the parties were respectively represented by experienced counsel, and after lengthy and intensive settlement negotiations, including verification of the amount of the mortgage indebtedness, a settlement agreement was reached. There was a consensus about all of the essential terms of what was a typical settlement of a mortgage enforcement action.

[8] The terms of the Settlement Documents, particularly the Minutes of Settlement, are clear and unambiguous:

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<sup>2</sup> *Atkinson v. Whaley Estate Litigation*, 2019 ONSC 3708; *Jimenex v. Markel Insurance Co. of Canada* (2000), 49 O.R. (3d) 402 (S.C.J.); *Marlin-Watson Home Corp. v. Taylor*, [1991] O.J. No. 1888 (Gen. Div.).

<sup>3</sup> *Exponents Canada Inc. v. Sharma*, 2015 ONSC 2940; *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc.* (2007), 87 O.R. (3d) 464 (Div. Ct.); *Bayerische Landesbank Girozentrale v. R.S.W.H. Vegetable Farmers Inc.*, (2001), 53 O.R. (3d) 374 (S.C.J.).

<sup>4</sup> *Wilson v. BKK Enterprises Inc.*, 2015 ONSC 4394; *Hodaie v. RBC Dominion Securities*, 2011 ONSC 6881, affd [2012] O.J. No. 5428 (C.A.); *Ferron v. Avotus Corp.*, [2005] O.J. No. 3511 (S.C.J.); *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No. 721 (Gen. Div.), affd [1995] O.J. No. 3773 (C.A.).

<sup>5</sup> *H. (J.) v. Smith*, [2007] O.J. No. 269 (S.C.J.); *Perri v. Concordian Chesterfield Co.*, [2003] O.J. No. 5852 (S.C.J.).

<sup>6</sup> *Hodaie v. RBC Dominion Securities*, 2011 ONSC 6881, affd [2012] O.J. No. 5428 (C.A.).

<sup>7</sup> *Richard (Litigation Guardian of) v. Worth*, (2004), 73 O.R. (3d) 154 (S.C.J.); *Fox Estate v. Stelmaszyk* (2003), 65 O.R. (3d) 846 (C.A.); *Milios v. Zagras* (1998), 38 O.R. (3d) 218 (C.A.); *Smith v. Robinson* (1992), 7 O.R. (3d) 550 (Gen. Div.).

<sup>8</sup> *Milios v. Zagras* (1998), 38 O.R. (3d) 218 (C.A.); *C.I.B.C. v. Weinman*, [1992] O.J. No. 302 (Gen. Div.); *Draper v. Sisson*, [1991] O.J. No. 1207 (Gen. Div.).

<sup>9</sup> *Magnotta v. Yu*, 2021 ONCA 185; *Srebot v. Srebot Farms Ltd.*, 2013 ONCA 84.

<sup>10</sup> *Atkinson v. Whaley Estate Litigation*, 2019 ONSC 3708; *Wilson v. Northwest Value Partners Inc.*, 2015 ONSC 4726 aff'd in 2016 ONCA 253; *Wilson v. Johnston*, 2015 ONSC 3016 (Master); *Sentry Metrics Inc. v. Ernewein*, 2013 ONSC 959.

- a. Ms. Al Noubani pays Stargrove the sum of \$725,000.00 in full and final settlement of the Stargrove Action and the Bisenti Action pursuant to a payment schedule.
- b. The mortgage on the Kirsten Road property remains on title pending payment of the settlement funds.
- c. In the event of default, Ms. Al Noubani and Mr. Fabiani shall consent to Judgment in the Stargrove Action for the full amount of indebtedness owed less all payments received to date.
- d. Upon payment of the indebtedness, the Stargrove and the Bisenti actions shall be dismissed.

[9] The motion pursuant to Rule 49 is unopposed. There is no evidence that the settlement agreement is unfair or an unconscionable agreement. There are no reasons for not enforcing the settlement.

[10] Accordingly, Stargrove's motion is granted with costs on a partial indemnity basis of \$29,394.94, all inclusive.

[11] Stargrove may send me the various Orders for signature.

A handwritten signature in black ink, appearing to read "Perell, J.", with a stylized flourish at the end.

Perell, J.

**CITATION:** Stargrove Holdings Inc. v. Al Noubani, 2022 ONSC 6006  
**COURT FILE NO.:** CV-20-00643278-0000  
**DATE:** 20221024

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**STARGROVE HOLDINGS INC.**

Plaintiff

- and -

**RENA AL NOUBANI**

Defendant

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**REASONS FOR DECISION**

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PERELL J.

**Released:** October 24, 2022