

There are consequences for backing out of a contract

By Paul Russell, [AdvocateDaily.com](#) Contributor



If a party breaches a contract they can potentially be held liable for damages even if they didn't benefit from the action, says Toronto civil litigator [Sarah O'Connor](#).

"I don't think some people realize that a purchase and sale agreement is a binding contract, and if either side backs out, there's liability and consequences," says O'Connor, principal of [O'Connor Richardson Professional Corporation](#).

To illustrate her point, she references a recent Ontario Court of Appeal [decision](#), which overturned a motion judge's ruling to not reward a loss of benefit to a purchaser for a breach of contract by the seller.

According to court documents, the buyer entered into a purchase and sale agreement with the owners of a property, not knowing that they had not made a mortgage payment in 20 years, with \$500,000 owing on the mortgage. When that was revealed, and the sellers were unable to deliver a clear title, the buyer purchased the property from the mortgagee for \$687,500 through a power of sale.

The buyer then filed a suit against the vendors for a loss of bargain of \$187,500 and the return of the \$25,000 deposit.

While agreeing the sellers had breached the contract, the motion judge stated, "The remedy of damages for a breach of contract causing a loss of bargain presupposes that there was a bargain to be had and that it was wrongfully withheld from the innocent party," the judgment reads. "For [the buyer], the economic consequences of this failed agreement of purchase and sale caused the illusion of a loss of bargain but no actual loss of bargain."

The motion judge then limited the damages to \$25,000 to cover the deposit, court documents state, since "The benefit that [the buyer] assumed it was denied was illusory and did not in fact exist."

In its ruling, the appeal court found "there was no 'illusion' of a bargain between the appellant and the respondents. There was a real bargain. There was an agreement to sell the property at an agreed-upon price. When the respondents did not close the transaction, despite several extensions, the appellant lost the benefit of that agreement."

In awarding the buyers \$187,500 in damages, the court ruled, "We do not agree with the motion judge that ... the appellant was required to show that the respondents 'appropriated the benefit' otherwise available to the appellant. The damages for the loss of benefit are measured by the higher price paid by the appellant for the property and are not dependent on any benefit that may have flowed to, or been bestowed upon, the respondent Vendors."

"I agree with the appeal court decision," O'Connor tells [AdvocateDaily.com](#). "There was a proper agreement, and the appellants had to purchase the property for \$187,500 more than the original bargain, so they are at a loss. To give that money back restores the status quo, which is what damages are supposed to do."

Even though she supports the appeal judgment, O'Connor says she can appreciate the reasoning of the motion judge, since the \$187,500 went to the mortgagee, and not the vendors.

"I can see why she ruled that way, believing that since the sellers didn't get that benefit, they shouldn't be liable for it," O'Connor says.

She says litigation involving real estate often arises when buyers try to back out of deals if they can't raise the financing, or when sellers try to back out, believing they can get a better price by relisting in a market that may have recently heated up.

"In both cases, people have to realize that a contract is a contract and must be honoured by both parties, or else damages could be awarded by the courts," O'Connor says.