SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-17-122034-229

DATE : January 12, 2026

PRESENT: THE HONOURABLE SOPHIE PICARD, J.S.C.

THIV KUOCH

and

SEAM KICH SIR

Plaintiffs

v.

SIVATHARSINI YOGARAJAH

and

MENAKA YOGARAJAH

Defendants

JUDGMENT

CONTEXT

[1] Plaintiffs are claiming against Defendants a penalty of $200,000 and moral damages of $10,000, for failure to respect their obligations regarding a promise to purchase a building located at 5501-5507 Victoria Avenue, in Montreal (the "Building").

[2] This promise as well as a promise to purchase "Marché Kim Po", a grocery store operated in the Building by Plaintiffs' company (2848-7304 Québec Inc.) (the "Business"), were signed by Defendants (as buyers) on May 18, 2022 and were accepted by Plaintiffs (as sellers) on May 21, 2022. The purchase prices foreseen in these agreements (the "Promises to Purchase") were $4,000,000 for the Building and $2,000,000 for the Business.

[3] Pursuant to the Promises to Purchase, Defendants had to remit to their broker (Services Immobiliers Kokulathas Chandrasegeram), "with the promise to purchase", deposits of $200,000 (in the case of the Building)[1] and $100,000 (in the case of the Business)[2], made by cheque payable to the order of Plaintiffs' notary in trust.

[4] The deposits were to be applied against the purchase prices but had to be refunded to Defendants without interest should the Promises to Purchase become null and void.

[5] Defendants had a pre-purchase inspection of the Building performed by a professional, on May 30, 2022. They allege that the inspection revealed many problems with respect to the Building requiring various actions and corrections. This situation led Defendants to inform Plaintiffs on June 9, 2022 that they were not interested in going forward anymore. Defendants then sent to Plaintiffs formal notices (on June 11, 2022 and June 12, 2022) stating that they considered the Promises to Purchase null and void[3].

[6] According to Plaintiffs, Defendants' above-mentioned notices are not valid as:

- they were sent beyond the delay provided in the Promise to Purchase the Building;
- no inspection report was attached thereto; and
- the so-called defects or irregularities either did not exist or were not significant.

[7] Plaintiffs rely on Section 8.1 of the Promise to Purchase the Building which provides the following:

> **8.1** This promise to purchase is conditional upon the BUYER being permitted to have the IMMOVABLE inspected by a building inspector or a professional within a period of 10 days following acceptance of this promise to purchase, and, if applicable, the SELLER undertakes to cooperate to obtain all required authorizations from the syndicate of co-owners, the co-owners or manager of co-

---

1 Section 4.3 of Exhibit P-6 (Document PPG 08167).
2 Section 4.5 of Exhibit P-6 (Document PP14071).
3 Notice NF 48265 for the Building and Notice NF 48287 for the Business (Exhibit P-7).

> owners to achieve this. Should this inspection reveal the existence of a factor relating to the IMMOVABLE and liable to significantly reduce the value thereof, reduce the income generated thereby or increase the expense relating thereto, the BUYER shall notify the SELLER, in writing, and shall give him a copy of the inspection report within four (4) days following the expiry of the above-mentioned time period. This promise to purchase shall become null and void upon receipt, by the SELLER, of this notification together with a copy of the inspection report. Should the BUYER fail to notify the SELLER within the time period and in the manner specified above, he shall be deemed to have waived this condition.
>
> (Emphasis added)

[8] They allege that as Defendants had no right to consider the Promises to Purchase null and void, they are entitled to receive the amount of $200,000 which should have been paid by Defendants initially, as a deposit (in the case of the Building). Plaintiffs rely in this respect on Section 12.1(4) of the Promise to Purchase the Building:

> **12. OTHER DECLARATIONS AND CONDITIONS**
>
> **12.1**
>
> (...)
>
> 3. All the dates are the dates de Rigueur.
>
> 4. For any reasons whatsoever, the purchasers will not proceed with the signing of the deed of sale on that date de Rigueur after all the conditions will be fulfilled the said deposit will be forfeited immediately in favor of the vendors without any court judgments. The same clause applies to the vendor, in that, they will pay the same amount of $200,000 (two hundred thousand dollars) to the purchasers if they do not proceed with the sale of the business and the property for whatsoever reasons.
>
> 5. Buyer will provide proof of fund/Capacity letter within 10 days of ppg acceptance.
>
> (Emphasis added)

[9] For their part, Defendants consider that their notices were valid and that they were within their rights to consider the Promises to Purchase null and void.

[10] Furthermore, Defendants state that they communicated with Plaintiffs on July 11, 2022, putting them in default and asking that they remedy the defects and irregularities

revealed by the pre-purchase inspection report within 21 days[4]. As Plaintiffs did not answer these demands within said delay, Defendants believed that they were also entitled to consider the Promise to Purchase the Building null and void, pursuant to Section 10.8 thereof:

> **10.8 DEFECT OR IRREGULARITY** – Should the BUYER or the SELLER be notified, before the signing of the deed of sale, of any defect or irregularity whatsoever affecting the declarations and obligations of the SELLER contained herein, the SELLER shall, within twenty-one (21) days following receipt of a written notice to that effect, notify the BUYER, in writing, that he has remedied that defect of irregularity at his expense or that he will not to remedy it.
>
> The BUYER may, within a period of five (5) days following receipt of a notice from the SELLER that the latter will not remedy the defect or irregularity, or following the expiry of the twenty-one (21) day period in the absence of any notice, notify the SELLER, in writing:
>
> a) that he is purchasing with the alleged defects or irregularities. Consequently, the SELLER's declarations and obligations shall be reduced accordingly;
>
> OR
>
> b) that he renders this promise to purchase null and void. Consequently, the fees, expenses and costs reasonably incurred until that time by the BUYER and the SELLER shall be borne only by the SELLER.
>
> Where the BUYER has not availed himself of the provisions of paragraphs a) or b) above within the time period stipulated, this promise to purchase shall become null and void. Consequently, the BUYER and the SELLER shall each bear the fees, expenses and costs incurred by them respectively.
>
> (Emphasis added)

[11] In July 2022, discussions took place between the parties' respective brokers regarding the purchase price of the Building, and emails were exchanged between the lawyers, on July 15 and 26, 2022[5], without any success. Plaintiffs therefore took action against Defendants on August 12, 2022, for payment of the $200,000 penalty and moral damages of $10,000.

[12] During the last two years, Defendants made, through their lawyer, new purchase offers to Plaintiffs regarding the Building and the Business (for the amounts of $5,000,000 (Building) and $1,000,000 (Business) in 2024 and for the amounts of

---

4 Exhibit P-9.
5 Exhibits P-11 and P-14.

$5,500,000 (Building) and $500,000 (Business) in 2025)[6]. These two offers were refused by Plaintiffs.

[13] Finally, Plaintiffs have on many occasions listed the Building and the Business for sale through various brokers after the institution of their procedure[7] but they still have not sold them[8]. In fact, Plaintiffs no longer wish to sell the Building as they intend that their daughter, Kathy Kuoch, eventually take over the Building and the operation of the Business.

ISSUES

[14] The Court must determine:

- Whether Defendants' notices dated June 11, 2022 and June 12, 2022 enabled them to consider that the Promises to Purchase had become null and void?
- Whether Defendants' notice dated July 11, 2022, asking that Plaintiffs remedy the defects and irregularities revealed by the pre-purchase inspection report within 21 days, is valid?
- Whether Plaintiffs are entitled to obtain payment by Defendants of $200,000 pursuant to Section 12.1(4) of the Promise to Purchase the Building?
- Whether Plaintiffs' $10,000 claim for moral damages is well founded?

ANALYSIS

1) Did Defendants' notices of default dated June 11, 2022 and June 12, 2022 enable them to consider that the Promises to Purchase had become null and void?

Delay to provide the notices and the inspection report

[15] Insofar as the Promise to Purchase the Building was accepted by Plaintiffs on May 21, 2022, the inspection by a building inspector or professional, was to be done by May 31, 2022 (end of the 10-day delay provided at Section 8.1). However, considering Plaintiffs' requirement that the inspection take place solely Mondays, Tuesdays or Wednesdays, Defendants were only able to have an inspector (Mr Zhen Pang) visit the Building on the 9th day (May 30, 2022). They received the inspection report on June 2,

---

6 Exhibits D-8 and D-9.
7 For example, Exhibits D-11 and D-13.
8 Subject to the sale of the Building, on March 23, 2023, by Plaintiffs to their company (11738917 Canada Inc.), for $2,250,000 (Exhibit D-22).

2022 and asked their broker, Mr Chandrasegeram, on June 6, 2022[9], to seek an extension until June 9, 2022 to decide whether, on the basis of said inspection report, they would go ahead with the purchase or not. Mr Imtiaz Khan (Plaintiffs' broker) agreed verbally to such an extension until June 9, 2022[10].

[16] When Defendants informed their broker, on June 9, 2022 that they did not wish to go forward with the purchase, he immediately sent a text message to Mr Khan stating that Defendants did not "want to move forward with the deal" and that he was going to call him shortly[11].

[17] Mr Chandrasegeram then sent Defendants' formal notice to Mr Khan on June 11, 2022[12] regarding the annulment of the Promise to Purchase the Building. This notice states that Defendants have had the Building inspected by a building inspector, that they have read the inspection report and that they are making the Promise to Purchase null and void. The notice also refers to the fact that the inspection report is attached thereto.

[18] However, the inspection report was not attached to the notice and Plaintiffs received it only on June 23, 2022. Mr Chandrasegeram indicated during his testimony that he committed an error by forgetting to attach the inspection report to the notice and by failing to seek an extension to be able to send the written notice to Mr Khan beyond June 9, 2022.

[19] He did not try to give explanations and bluntly admitted his oversight.

[20] Besides he knew that the delays provided in the Promise to Purchase were "firm" (his understanding of the expression "de rigueur" used at Sections 12.1(3) and 12.1(4)). Nonetheless, he never told Defendants that the notices of June 11 and 12, 2022 were sent to Mr Khan beyond the delay set out at Section 8.1 nor that he had forgotten to send the inspection report with the notices.

[21] According to Mr Khan who was present during the inspection (which lasted 2 hours), the inspector made some comments (throughout the visit) regarding some repairs which were required. Moreover, according to Mr Chandrasegeram, Plaintiffs' son-in-law who is a general contractor (Mr Michael Stavrou) said during the inspection, that the repairs which were suggested by the inspector were not "major to fix".

---

9 Exhibit D-30.
10 Mr Chandrasegeram's testimony in this respect was not opposed by Mr Khan.
11 Exhibit P-20.
12 Exhibit P-7 (the corresponding notice regarding the Business was sent on June 12, 2022).

[22] Hence, some comments seem to have been made by the inspector during the inspection, regarding the state of the Building but obviously not to the extent and with the details, shown in the report.

[23] In any event, Section 8.1 is very precise stating that both the notice and the inspection report must be provided to Plaintiffs within a specific delay failing which Defendants "are deemed to have waived this condition". The two brokers were experienced and understood that the delays were serious and had to be respected.

[24] Clearly, the June 9, 2022 text message which can be considered within the delay (if we accept the extension to which the brokers had agreed verbally) did not refer to a factor revealed by the inspection and liable to significantly reduce the value of the Building, reduce the income generated thereby or increase the expense relating thereto, nor included a copy of the inspection report. As to the notice of June 11, 2022 (for the Building), it did not respect the delay agreed by the parties as was admitted by Mr Chandrasegeram during his testimony. Furthermore, the inspection report was not attached thereto.

[25] In view of these circumstances, Plaintiffs have succeeded to demonstrate that Defendants had failed to notify them of the problems revealed by the inspection "within the time period and in the manner specified" in Section 8.1 of the Promise to Purchase the Building. The consequences provided at that Section are unequivocal:

> Should the BUYER fail to notify the SELLER within the time period and in the manner specified above, he shall be deemed to have waived this condition.

[26] Therefore, the only reasonable conclusion that can be drawn is that Defendants are considered to have waived[13] the condition regarding the inspection report which they could have used to annul the Promises to Purchase.

Existence and nature of the alleged defects

[27] Considering the above-mentioned conclusion, it is not necessary to address this second issue but it will nevertheless be briefly discussed.

[28] Pursuant to Section 8.1, the factor revealed by the inspection which could entail the annulment by Defendants of the Promise to Purchase, had to relate to the Building and be "liable to significantly reduce the value thereof, reduce the income generated thereby or increase the expense relating thereto".

---

[13] "To be deemed to" can be translated by the expression "être réputé", in French.

[29] Mr Stavrou indicated during his testimony that both before and after the notices were received by Plaintiffs, discussions took place between the brokers as Defendants would have wished to obtain a reduction of the purchase price of $200,000 considering the work that had to be done according to the inspection report. Plaintiffs totally disagreed to diminish the price which had been negotiated.

[30] As to Defendant Menaka Yogarajah, she stated, during her testimony, that the broker (Mr Chandrasegeram) had told her that it was impossible to ask for a price reduction given Plaintiffs had already mentioned that they would not, in any circumstances, agree thereto. This is why she did not bother to ask a price reduction.

[31] According to Mr Stavrou, the repairs for the problems revealed by the inspection could be done for approximately $11,000 ("cracked mortar joints and fragmented bricks which needed to be sealed and/or repaired immediately, following the consultation of a masonry expert, in order to avoid future damages to the structure", "deterioration of most of the windows, presenting a risk of water, air, and/or dirt infiltration, which require restoration or replacement", "presence of water on the basement floor which requires immediate expert assessment") .

[32] In fact, the work was mostly done the next year (in April 2023), by Mr Stavrou, for the total amount of $11,238 (taxes included)[14]. However, as Mr Chandrasegeram declared during his testimony (when cross-examined), it was reasonable (at the time the inspection report was obtained) to anticipate that the work involved could represent costs of approximately $75,000 if done in an optimal manner (by replacing the windows).

[33] Moreover, Defendants did not know at the time of the inspection whether the possibility of asbestos in the Building had been excluded.

[34] Furthermore, the Promise to Purchase provided that the sale would be "without legal warranty of quality, at the buyer's risk and peril". As was explained by Defendant Menaka Yogarajah, these circumstances led her to feel insecure since the expenses associated with the repairs and work required to be done to the Building were significant and hard to quantify within a very short delay.

[35] The Court therefore concludes that the repairs and verifications to be done according to the inspection report could represent for Defendants, expenses that were not insignificant. As such, they could have qualified under Section 8.1, should the notices have been sent with the inspection report, within the delay provided.

---

[14] Exhibit D-2 (second page).

2) Is Defendants' notice dated July 11, 2022, asking that Plaintiffs remedy the defects and irregularities revealed by the pre-purchase inspection report within 21 days, valid?

[36] According to Defendants, they were entitled, pursuant to Section 10.8 of the Promise to Purchase the Building to send a notice to Plaintiffs giving the latter 21 days to correct the problems set out in the inspection report (at their cost) or inform that they would not. Defendants allege that they had 5 days following said delay (if Plaintiffs failed to respond), to notify that they either wished to annul the Promise to Purchase or wanted to go forward with the purchase notwithstanding the alleged defects or irregularities.

[37] According to Plaintiffs, the problems set out in the inspection report had to be dealt with pursuant to Section 8.1 of the Promise to Purchase the Building (entitled "Inspection by a person chosen by the Buyer") which provided a condition in favour of Defendants enabling them to cancel the agreement in specific circumstances, on the basis of an inspection. Section 10.8 was not meant to give a second chance to a buyer who would not have satisfied the criteria of Section 8.1.

[38] The Court agrees with Plaintiffs that if Section 10.8 was to be interpreted as including the situation described at Section 8.1, the result could be illogical, and Section 8.1 would not necessarily serve much purpose. However, it must be kept in mind that in the case of Section 8.1, the notice given by the buyer to the seller on the basis of the inspection report, is meant to annul the Promise to Purchase whereas in the case of Section 10.8, the notice given by the buyer to the seller can either lead to the repair of the defects by the seller, to the purchase by the buyer with the alleged defects or to the annulment of the Promise to Purchase by the buyer. Each clause therefore has a specific and distinct purpose.

[39] Besides, the words "should the BUYER or the SELLER be notified before the signing of the deed of sale, of <u>any defect or irregularity whatsoever affecting the declarations and obligations of the SELLER contained herein</u>" used in Section 10.8, must obviously be interpreted in relation with "declarations and obligations of the Seller" provided in the Promise to Purchase the Building.

[40] These declarations and obligations are found at Section 10 and Section 11. For example, Plaintiffs declared that the Building was not the subject of a pre-emptive right in favour of a third party (Section 10.1(4)), that to their knowledge, an insurance company has not refused to insure the Building in whole or in part (Section 10.2(9)) and that they will supply Defendants with a valid title of ownership (Section 10.6).

[41] The only declaration that could be relevant here is that Plaintiffs are "not aware" of any factor relating to the Building "that is liable to significantly reduce the value

thereof, reduce the income generated thereto or increase the expenses related thereto" (Section 10.2(1)).

[42] Clearly, Defendants have not shown that Plaintiffs and their daughter Kathy who was appointed to represent them, were in any way aware of problems with the Building.

[43] Mrs Kathy Kuoch's testimony did not suggest that she was aware of any problem affecting the Building. Moreover, Mr Stavrou, who has been involved in the maintenance of the Building for several years, testified that the repairs were done regularly and seriously, that there was no oil tank under the ground and that the plumbing and electricity had been verified (for insurance purposes).

[44] Furthermore, Mr Stavrou obtained from a structural engineer (Mr Michael Litchung Lee), in March 2023, a report stating that the general maintenance and condition of the Building appeared to be good but that the following repairs could improve the structure thereof:

> 1) Add additional HSS supports to reinforce the structural lintels on the front façade.
>
> 2) Stabilize the bricks by installing plates on second floor.
>
> 3) Repaint or replace the craked and loose bricks.
>
> 4) Repair the surface of the foundation wall in basement.
>
> 5) Concrete surface (bottom of slab) repair[15].

[45] Therefore, when their declaration was made in May 2022 (Section 10.2(1) of the Promise to Purchase), it is fair to conclude that Plaintiffs had no knowledge of important problems to the Building. Their declaration was not false.

[46] Yet, the word "affecting" used at Section 10.2(1) is so general in scope that the problems set out in the inspection report might be considered as some kind of defect or irregularity with respect to Plaintiffs' declaration that they are not aware of any factor regarding the Building that is likely to significantly increase the expenses related thereto.

[47] Also, in their letter P-9 dated July 11, 2022, Defendants were requesting through their lawyer, in addition to the repair of the defects by Plaintiffs (at their costs), within 21 days, the financial statements of the Business, for 2020 and 2021.

---

[15] Exhibit D-4.

[48] It was reasonable that such a demand be made to Plaintiffs as Defendants declared in Section 8.1 of the Promise to Purchase the Business, that they had examined the financial statements and a notice of assessment thereof for the last three years and that they were satisfied therewith. It was normal and implicit from that clause that Plaintiffs had to provide these financial statements (for 2019, 2020 and 2021) to Defendants[16].

[49] Mr Chandrasegeram explained that these financial statements were required by the BDC to determine the amount of the loan which could be granted to Defendants to finance the purchase of the Business.

[50] It can certainly be argued that these financial statements should have been provided by Plaintiffs before the acceptance of the Promise to Purchase the Business, hence, even before the deposits to Plaintiffs' notary (in trust) should have been made by Defendants.

[51] In view of these circumstances, the Court considers that at least, for the failure to provide the financial statements of 2020 and 2021, it was not appropriate for Plaintiffs to require that the deposits be paid beforehand. Defendants were entitled to invoke Section 9.6 of the Promise to Purchase the Business (the equivalent of Section 10.8 of the Promise to Purchase the Building) to obtain these financial statements within 21 days failing which they could decide to annul the Promise to Purchase the Business which would automatically have cancelled the Promise to Purchase the Building as both agreements were indissociable.

[52] The Court therefore concludes that this "second" annulment by Defendants of the Promises to Purchase was valid.

3) Are Plaintiffs entitled to obtain payment by Defendants of $200,000 pursuant to Section 12.1(4) of the Promise to Purchase the Building?

[53] Both brokers confirmed during their testimonies that according to the Promises to Purchase[17], Defendants had to pay a deposit ($200,000 in the case of the Building and $100,000 in the case of the Business) by remitting to their broker (Mr Chandrasegeram), "with (each) promise", a check payable to Plaintiffs' notary in trust. This check had to be given to Plaintiffs' notary "following the acceptance of (each)

---

16 Even though Mr Chandrasegeram acknowledged during his testimony that he should have explicitly provided so in the Promise to Purchase the Business.

17 Section 4.3 of the Promise to Purchase the Building and Section 4.5 of the Promise to Purchase the Business.

promise"; the notary had to immediately deposit these sums in his trust account until the signing of the deeds of sale.

[54] Even though both brokers acknowledged that this was the only interpretation that could be given to the relevant provisions of the Promises to Purchase (i.e. obligation by Defendants to pay the deposits to Plaintiffs' notary once the Promises to Purchase were accepted (May 21, 2022)), Defendants were told otherwise by their broker.

[55] In fact, Defendant Menaka Yogarajah, was informed by Mr Chandrasegeram on May 16, 2022[18], that the deposits only had to be given to Plaintiffs' notary once the conditions relating to the inspection of the Building and the "mortgage approval" (relevant undertaking by a lender as to the grant of the hypothecary loan) were met.

[56] Hence, when Mr Khan asked Mr Chandrasegeram, for example on June 2, 2022[19], when Defendants would provide the deposits, the latter did not feel compelled to act quickly, as the delays regarding the inspection and mortgage approval were not expired yet.

[57] In any event, the parties agreed at trial that Defendants were to provide the deposits to Plaintiffs' notary immediately after the acceptance of the Promises to Purchase, which occurred on May 21, 2022.

[58] Their dispute deals with the consequences of Defendants having failed 1) to provide these deposits, 2) to fulfill their other obligations/conditions (for example, the provision of "proof of fund/capacity letter" within 10 days of the acceptance of the Promises to Purchase[20]) and 3) to go forward with the deeds of sale.

[59] According to Plaintiffs, they are entitled under the circumstances, to claim from Defendants the amount of $200,000 pursuant to the penal clause provided at Section 12.1(4) of the Promise to Purchase the Building, without having to show any damages. On their part, Defendants deny that the penal clause applies to the facts of this case and are of the opinion that the only recourse of Plaintiffs would have been to annul the Promises to Purchase or to take an action in passing of title, and to claim damages, if any.

[60] For the reasons set forth below, the Court agrees with Defendants' position and is of the opinion that the penal clause does not apply to the present situation.

---

18 By text message (Exhibit D-20, p. 2, screenshots 3 and 4).

19 Exhibit P-17.

20 Section 11.1(1) of the Promise to Purchase the Business and Section 12.1(5) of the Promise to Purchase the Building.

[61] The purpose of the deposit was to show that the buyer was serious in his/her approach. It was to be applied to the purchase price at the time of the deed of sale. However, it was to be immediately refunded to the buyer if the Promise to Purchase became null. Otherwise, the deposit could only be used in accordance "with (the) Promise to Purchase or with the law"[21].

[62] Obviously, there were various reasons pursuant to the Promise to Purchase the Building which could lead to its annulment, without involving a fault by the parties.

[63] For example, in the case of failure by the buyer to provide the "mortgage approval" within 45 days following the acceptance of the Promise to Purchase the Building (here, by July 5, 2022), the agreement would become null should the seller not notify the buyer within five days, that he agreed to extend the delay[22].

[64] The Court is of the opinion that the context of these various reasons was not contemplated by the penal clause which was included in the Promise to Purchase the Building[23]:

> 12.1 (...)
>
> 4. For any reasons whatsoever, the purchasers will not proceed with the signing of the deed of sale on that date de Rigeur after all the conditions will be fulfilled the said deposit will be forfeited immediately in favor of the vendors without any court judgments. The same clause applies to the vendor, in that, they will pay the same amount of $200,000 (Two hundred thousand dollars) to the purchasers if they do not proceed with the sale of the business and the property for whatsoever reasons. (*sic*)

[65] The parties agreed in the Promises to Purchase to sign the deeds of sale "on or before July 27, 2022"[24] and they considered that date as being "de rigueur"[25]. Hence, when at Section 12.1(4) of the Promise to Purchase the Building, they referred to Defendants not proceeding "with the signing of the deed of sale on the date de rigueur after all the conditions will be fulfilled", they wished in all likelihood to foresee the situation where once all conditions were satisfied (payment of the deposit, proof of fund/capacity letter, mortgage approval, positive inspection, etc.), Defendants would not sign the deed of sale by July 27, 2022.

---

21 Section 4.3 of the Promise to Purchase the Building and Section 4.5 of the Promise to Purchase the Business.

22 Section 6.3 of the Promise to Purchase the Building.

23 No such clause exists in the case of the Promise to Purchase the Business.

24 Section 11.1 of the Promise to Purchase the Building and Section 10.1 of the Promise to Purchase the Business.

25 Section 12.1(3) of the Promise to Purchase the Building.

[66] As a penalty, Defendants would then lose their deposit which would be "forfeited in favor" of Plaintiffs "without any court judgment". The reciprocal penalty would apply to Plaintiffs if they failed to sign the deed of sale by July 27, 2022, in the same circumstances.

[67] In all likelihood, the parties wished to avoid one party withdrawing from the process at the very end, once all the conditions were met. The other party would then have invested significant time and energy into the matter and would be entitled to expect that the deed of sale be signed at the agreed upon date.

[68] The wording of Section 12.1(4) is not ambiguous, and the facts of the present matter obviously differ from the situation described in the penal clause, as many conditions were still not met, and Defendants had annulled the Promises to Purchase after not receiving the missing financial statements regarding the Business.

[69] Should there have been an ambiguity in Section 12.1(4), when read with the rest of the Promise to Purchase the Building, the Court would have come to the same conclusion considering that "in case of doubt, a contract is interpreted in favour of the person who contracted the obligation and against the person who stipulated it"[26]. As the relevant obligation in this case (contained in the first sentence of the penal clause) was contracted by Defendants, the Court would have had to interpret any doubt in favour of the latter.

[70] Finally, having found that the penal clause at issue does not apply to the present situation, the Court will not have to determine whether it is abusive and whether the amount of the penalty ($200,000) should be reduced[27].

4) Is Plaintiffs' $10,000 claim for moral damages well founded?

[71] Plaintiffs did not establish having suffered any damages as a result of a contractual fault by Defendants.

[72] Both parties were disappointed and frustrated by the turn of events. Kathy Kuoch did not understand why Defendants were not providing the deposits and Defendants were worried about the expenses and verifications which were required regarding the Building according to the inspection report.

[73] Defendant Menaka Yogarajah indicated she found out during trial that her broker, Mr Chandrasegeram, had not given her appropriate advice regarding the Promises to Purchase; she said she would no longer retain his services. However, she does not

---

26 Article 1432 C.C.Q.
27 Article 1623 C.C.Q.

understand why Plaintiffs are suing her (and her sister)[28] as Plaintiffs have not suffered any damages and were told very early in the process (on June 9, 2022) that Defendants would not go forward.

[74] It is striking that Plaintiff Seam Kich Sir said she no longer wished to sell the Building and Business as she wanted her daughter Kathy to take over the Business. As to Kathy, she confirmed that she was not in a hurry to sell and that she was waiting to obtain a "good price".

[75] Furthermore, she has received and refused numerous promises to purchase the Building and/or Business since the action was taken against Defendants, and has not suggested that it would be difficult to receive from third parties offers similar to the Promises to Purchase.

[76] Considering Plaintiffs have not proved any damages, their Originating Application will be dismissed.

[77] The parties will each pay their legal costs as Defendants waited at trial to file the text messages showing that they had not received the appropriate information from their broker regarding the payment of the deposits. Should Plaintiffs have obtained these documents before, the parties might have come to a solution without the necessity of a trial.

FOR THESE REASONS, THE COURT:

[78] **DISMISSES** Plaintiffs' Originating Application;

[79] **The parties will each pay their LEGAL COSTS**.

SOPHIE PICARD, J.S.C.

Me Daniel Brook
Me Miranda Renda
Lawyers for Plaintiffs

---

[28] Mr Khan (Plaintiffs' broker) is also suing Defendants in File No. 500-17-133491-251 for $206,955 (lost remuneration regarding the Promises to Purchase) (Exhibit D-27).

Me Sylvan Schneider
Madam Megean Albert (intern)
Lawyers for Defendants

Dates of hearing: November 25 to 28, 2025