



Tendering

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Abstract

Tendering is the delivery and presentation of all required documentation and funds upon the other party to the agreement of purchase and sale at the closing date. Tendering on the other party is proof that you are ready, willing and able to perform your obligations under an agreement of purchase and sale. A buyer or seller that has entered into an agreement of purchase and sale must tender at closing despite a disagreement as to what the buyer owes the seller at closing (as detailed in the statement of adjustments). A buyer or seller that refuses to tender because of a disagreement concerning the statement of adjustments will be liable to the other party for any damages incurred due to the deal not closing.

Full Article

In the case of *2068895 Ontario Inc. v. Snyder*, a buyer entered into an agreement of purchase and sale with a seller for a 1.5 acre property. The property was priced at \$850,000 per acre but the agreement stipulated that the final purchase price would be dependent on the results of a geotechnical survey prepared by the buyer to determine the precise site acreage. The parties interpreted the results of the geotechnical survey differently and therefore the seller believed that he was entitled to \$30,000 more than what the buyer calculated as the adjusted purchase price.

On the closing date, the seller tendered at the higher adjusted purchase price and the buyer refused to close and delivered no funds, not even the lower amount based on the buyer's calculations.

During the months after the closing date had passed, the seller received multiple offers to purchase the property for more than what they had demanded from the buyer, but could not sell because the buyer had obtained a the certificate of pending litigation.

The seller conceded in court that he had unintentionally miscalculated the purchase price, but the court said that even though the seller's tender contained an error in the Statements of Adjustments, such an error was not significant enough to warrant the buyer's refusal to close.

The buyer was ordered to pay costs and damages.

