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## Mitigation is Important: SCC

A plaintiff's claim for damages was reduced to \$1 (one dollar), from \$1.9 million because they failed to mitigate.

**For plaintiffs**, this Supreme Court decision means that decisions around when and how to mitigate become very important.

**For defendants**, this means that attacking the plaintiff's efforts to mitigate has a greater potential for success at trial.

### An Overview of the Case

The Toronto Catholic District School Board ("TCDSB") agreed to sell a property to Southcott Estates Inc. ("Southcott"). Southcott is part of the Ballantray Group, real estate developers. Southcott intended the property for residential development. TCDSB failed to close. Southcott sued for specific performance, and in the alternative, damages. Southcott admitted that they had not attempted to mitigate. TCDSB presented evidence on: a) 81 similar development properties that sold in Toronto, and b) seven development properties purchased by the Ballantray Group, from the date of breach to the date of trial.

At trial Southcott won on liability, lost its bid for specific performance, and was awarded damages of \$1.9 million. The trial judge found that TCDSB had not demonstrated that Southcott could have mitigated.

The Court of Appeal overturned this decision, and found that Southcott could have mitigated.

The Supreme Court upheld the Court of Appeal's decision, with McLachlin C.J. dissenting.

### Food for Thought

This decision gives rise to the potential for a situation where the plaintiff mitigates and ultimately succeeds in an action for specific performance. If pursuing these two courses of action causes the plaintiff to suffer a loss, is this damages?

*To get my help with your case involving damages, please contact me.*

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