

# LETTER OF INTENT



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When does a letter of intent become a binding contract? The answer according to the decision of *Mason Homes Ltd. v. Oshawa Group Ltd.* is it can be before the contact document is signed and before the final draft is issued.

In this case the Plaintiff planned to build a 95,000 square foot shopping plaza and located the Defendant supermarket as anchor tenant. Throughout a series of negotiations a letter of intent was signed. The substance of the letter was to build and lease a 36,000 square foot store. The letter of intent contained a provision that if the lease was not settled within 45 days after execution of the letter, the agreement was null and void. The deadline was not met and was extended on two separate occasions. After the last deadline passed the parties did not mention a further extension of the deadline but continued to deal with each other regarding the proposed lease. The Defendant had agreed to a revised plan for the complex, contents of the main lease and schedules except for negotiations with respect to the second phase. The Defendant subsequently informed the Plaintiff that it wanted to reduce the size of the store, the Plaintiff refused and sued.

In coming to the decision that the letter of intent was an enforceable contract, the Court reviewed the course of the negotiations between the parties. The Defendant argued that the letter of intent was not enforceable because it required the negotiations of the lease terms. This, according to the Defendant, made the letter of intent unenforceable because it was an "agreement to agree". The Defendant relied on the common law rule that "contracts to negotiate are inherently uncertain and therefore incapable of creating binding and legal obligations". The Court while accepting the common law rule found in this case that the letter of intent contained sufficient detail so that the parties could perform the contract. The Court ruled that where a document contains all the material terms -where there is nothing significant to negotiate there is an enforceable contract. Furthermore the Court found an implied obligation on the parties who have agreed on the material terms "to agree to a reasonable determination of the unsettled point in order that the main promise may be enforced."

The Court viewed the Defendant's decision to reduce the size of the store, and hence the amount of rent it wished to pay, as a breach of its contractual obligations and not as a continued negotiation. The Court awarded damages to the Plaintiff equal to lost profit for the 20 year lease term.

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