

CITATION: Bellsam Contracting Ltd. v. 2567714 Ontario Inc., 2025 ONSC 2887
COURT FILE NO.: CV-19-628829-0000
DATE: 20250514

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
BELLSAM CONTRACTING LTD.)
) *Michael Simaan, for the Moving Party*
Plaintiff/Defendant by Counterclaim)
(Moving Party))
)
- and -)
)
2567714 ONTARIO INC., CORY)
TORGERSON and CAISSE POPULAIRE) *Jeremy Rankin, for the Responding Parties*
VOYAGEURS INC.)
)
Defendants/Plaintiffs by Counterclaim)
(Responding Parties))
)
)
)
) **HEARD:** May 13, 2025

2025 ONSC 2887 (CanLII)

ENDORSEMENT

LEIPER J.

[1] The plaintiff, Bellsam Contracting Ltd., moved to oppose confirmation of Associate Justice Robinson’s interim report following the trial of an issue.¹ Following the argument on the motion, I dismissed the motion and confirmed the interim report, with reasons to follow. These are those reasons.

¹ Reasons for decision reported at *Bellsam Contracting Limited v. Torgerson*, 2023 ONSC 468.

- [2] This construction lien litigation arises from a build-out of a cosmetic surgery clinic located in the Yorkville neighbourhood in Toronto. The clinic is run by the defendants, Nadine and Dr. Cory Torgerson (“Nadine” and “Cory”). Nadine was the project lead for the clinic construction project at the heart of this dispute.
- [3] Bellsam is a family-owned and operated general contractor with a speciality in the construction of dental and medical offices. Bellsam’s lead representative on the clinic construction project was Frank Bellantonio (“Frank”).
- [4] Bellsam worked on the project between December 2018 and July 2019 and received more than \$2.4M for its work. In August of 2019, with the project not yet completed, Bellsam ceased work and commenced an action under the *Construction Act*, R.S.O. 1990, c C.30.
- [5] The issue before Associate Justice Robinson was which of two documents was the governing contract for the project: was it the one-page budget document of December 17, 2018 quoting \$2.3M or was it the four-page pricing document, delivered on January 15, 2019, for a higher price of \$2,699,340?
- [6] Associate Justice Robinson heard from 7 witnesses on behalf of the defendants, and one witness on behalf of Bellsam, an office manager who was not present at many of the critical meetings. Much of evidence tendered through the office manager was hearsay and was removed from the trial record on consent. The Associate Judge made findings of credibility, and drew adverse inferences against Bellsam for failing to call witnesses with first-hand knowledge of the relevant events relevant. Bellsam did not challenge those findings on this motion.
- [7] Associate Justice Robinson issued detailed, careful reasons for his decision. He found that the December 17, 2018 document was the governing construction contract. He also concluded that the January 15, 2019 document was a quote for a higher estimated cost of construction which was never accepted by the defendants.
- [8] In doing so, Associate Justice Robinson applied the relevant principles of contract law. He made detailed findings of fact based on the evidence. He considered the words of the contract as well as the surrounding factual matrix, as discussed by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53.
- [9] Bellsam argued at trial that the December 17, 2018 budget estimate was not an offer capable of being accepted. Associate Justice Robinson disagreed, setting out his findings of fact, including adverse inferences drawn against Bellsam for failing to tender evidence from Sam Bellantonio and Carmine Turco, both of whom had knowledge of the December budget estimate. He cited and applied the relevant law on drawing adverse inferences: *Canadian National Railway Company v. Holmes*, 2022 ONSC 1682 at paras. 215 and 218.

- [10] Associate Justice Robinson went on to consider whether the January 14, 2019 document, which increased the estimated price of the work, amended the contract of December 17, 2018. He found that it did not because the quote did not clearly outline any scope of work, it was never accepted by Nadine or Cory, and there was no consideration. His findings were supported by a thoughtful and detailed review of the evidence.
- [11] On a review under r. 45.09 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, a judge may confirm the report in whole or in part, or make such other order as is just. On review, the Associate Judge is owed deference, particularly where there has been a hearing with oral evidence before the Associate Judge: *Sjostrom Sheet Metal Ltd. v. Geo A. Kelson Company Limited*, 2025 ONSC 2610 at paras. 11-12.
- [12] It is not the role of this court on review to interfere with conclusions based on inferences drawn from the evidence to, interfere with findings of credibility, or to reweigh the facts presented at trial: *Conrad v. Feldbar Construction Co.* (2004), 70 O.R. (3d) 298 (S.C.J.); *Parma General Contractors Inc. v. Aloe et al.*, 2015 ONSC 6229, 55 C.L.R. (4th) 316, at paras. 10-19, applying *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Sjostrom Sheet Metal* at para. 13.
- [13] The standard of review is an appellate standard, which requires correctness on questions of law and no palpable and overriding error on questions of fact: *Luxterior Design Corp. v. Gelfand*, 2020 ONSC 446, 10 C.L.R. (5th) 310 (Div. Ct.).
- [14] Bellsam advances a new legal argument from that at trial: that the text message from Nadine to Frank implied that this was only a “conditional acceptance” of the December 17, 2018 Bellsam offer which was subject to approval from the lender, Desjardins. This argument was not raised in submissions made before the Associate Justice. Bellsam did not tender evidence from any witness on behalf of Desjardins on this subject at trial. There is no evidence, and Bellsam acknowledges, that Desjardins was not a party to any contract involving the construction project. I conclude that there is no basis to find an error on the part of the Associate Justice in his treatment of the acceptance of the offer nor in failing to analyze an argument that was not before him: *Kaiman v. Graham*, 2009 ONCA 77 at paras. 18-21.
- [15] The balance of the submissions from Bellsam amount to an invitation to revisit the Associate Justice’s findings of fact and arrive at a different conclusion. I decline to do so. There is no palpable and overriding error in the Associate Judge’s analysis of the evidence. The reasons are cogent and thorough. There is no error of law. The Associate Judge applied the principles of contractual interpretation correctly to the facts as he found them, and explained his reasons for decision in a logical, clear manner. In such circumstances there is no basis to overturn the decision: *Narwhal International Limited v. Teda International Realty Inc.*, 2021 ONCA 659.

[16] The motion is dismissed, and the report is confirmed. If the parties are unable to agree as to costs, they may deliver written submissions to my attention, maximum three pages, on or before May 28, 2025.

Leiper, J.

Released: May 14, 2025