

CITATION: Thermo Coustics Limited v. Pareja, 2025 ONSC 3151
COURT FILE NO.: CV-20-214
DATE: 2025/05/27

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
THERMO COUSTICS LIMITED)
) *Thomas Davis, for the Plaintiff*
Plaintiff)
)
– and –)
)
WALTER PAREJA and RESILIENCE) *Self-represented*
LIFESTYLE INC.)
)
Defendants)
)
)
)
) **HEARD:** May 26, 2025

2025 ONSC 3151 (CanLII)

REASONS FOR DECISION

ELLIES J.

BACKGROUND

- [1] The trial in this action under the *Construction Act*, R.S.O. 1990, Chap. C.30, was scheduled to begin on May 26, 2025. It was listed as being peremptory because it had not been reached when first scheduled to be heard during the sittings in September 2024.
- [2] May 26 was a Monday. In the afternoon on the Friday before, being May 23, the plaintiff served a motion for judgment under r. 51.06 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194. The motion was based on the failure of the defendants to respond to two requests to admit made under r. 51.02. The first request to admit was made on August 14, 2024. The second was made on May 2, 2025.
- [3] A few hours after the plaintiff filed its motion, Paola Pareja-Garcia, the sole shareholder and principal of the defendant, Resilience Lifestyle Inc. (“Resilience”), filed what purported to be proof that the second request to admit had been responded to on May 21, 2025, just one day before the 20-day period for doing so expired.

- [4] Although there was an issue about whether the May 21 response had been sent to and received by Mr. Davis, he abandoned his client's reliance on that request to admit and relied, instead, only on the failure to respond to the August 2024 request and the deemed admissions that resulted from that failure under r. 51.03. In addition, he called *viva voce* evidence relating to the issue of prejudgment interest.
- [5] At the outset of the motion, Ms. Pareja-Garcia sought leave to represent the corporate defendant, Resilience Lifestyle Inc. (“Resilience”). Mr. Davis did not object to that request and I granted leave. The defendants also sought leave under r. 51.05 to withdraw the deemed admissions that resulted under r. 51.03 from their failure to respond to the August 2024 request to admit. With respect to that request, I refused leave at the time. The motion for judgment proceeded.
- [6] I reserved my decision on the motion overnight and undertook a thorough review of the jurisprudence decided under r. 51.05 and of the court file. Based on that review, for reasons I will explain, I have decided to provide the defendants with a tightly timetabled opportunity to prepare and present a proper motion to withdraw their August 2024 admissions. While that opportunity is outstanding, my decision on the judgment motion will remain under reserve.
- [7] If the defendants’ motion to withdraw their admissions fails, I will render my decision on the judgment motion, including the issue of costs. If the defendants’ motion succeeds, I will call for submissions with respect to the costs thrown away for the May 26 proceedings.
- [8] In the meanwhile, prejudgment interest, if awarded, will continue to run.
- [9] As I will also explain, I have decided not to allow Resilience to be represented any further by anyone other than a lawyer.
- [10] I will begin with the request to withdraw the deemed admissions.

THE REQUEST FOR LEAVE TO WITHDRAW THE DEEMED ADMISSIONS

Procedural History

- [11] This action relates to monies allegedly owing to the plaintiff for services it rendered in the latter half of 2020 in removing asbestos-containing material (“ACM”) from a building owned by the defendant, Walter Pareja. At least a part of the building, if not the entire building, was leased to Resilience, his daughter's company. The plaintiff alleges that the defendants owe the sum of \$20,353.35 resulting from two invoices rendered in September and November of that year.
- [12] The action was commenced on December 15, 2020. Mr. Pareja delivered a statement of defence dated January 20, 2021. At the time, he was not represented by counsel. Resilience delivered a statement of defence dated January 24, 2021. At the time, it was represented by Zaheed Moral, of the law firm “OSW Law”.

- [13] On January 14, 2022, Taher Haque, also referred to in various documents in the file as “Taheratul Haque”, of the same firm, began to represent both defendants. He participated in a judicial pre-trial conference on January 17, 2022, on behalf of both defendants. He also appeared or had an agent appear at numerous assignment courts throughout the time that he was on record. He remained counsel of record until May 22, 2025, when the defendants served and filed a notice of intent to act in person dated April 24, 2025.

The August 14, 2024, Request to Admit

- [14] The August 14, 2024, request to admit was served while Mr. Haque was counsel of record. The affidavit of service indicates that it was served via email addressed to “taher@owslaw.ca”. This is the same email address to which the May 2, 2025, request to admit was sent. According to Ms. Pareja-Garcia, even though he was no longer acting for the defendants, it was Mr. Haque who emailed their last-minute response to the May request to admit. Therefore, there is every reason to believe that Mr. Haque also received the August 2024 request to admit.
- [15] The August request to admit was very detailed. In it, the defendants were asked to admit what Mr. Davis submits are all of the facts necessary for his client to succeed at establishing the amount alleged to be owing and the validity of the lien claim against both defendants. Clearly, it would have been contrary to the defendants’ legal interests not to respond to the request to admit. And yet, no response to the request was ever received.
- [16] Instead, first one trial date, and then another, was set. Notwithstanding the fact that the defendants were deemed under r. 51.03 to have admitted the truth of the facts and the authenticity of the documents referred to in the August 14 request to admit before the date the *first* trial was set to begin in September 2024, no motion under r. 51.06 was served until the day before the *second* trial began, when it was served directly on the defendants.
- [17] In these circumstances, I believe it would be unfair not to provide the defendants with an opportunity to move, with a proper motion record under r. 51.05, to withdraw their deemed admissions. The plaintiff will not suffer any prejudice that cannot be remedied in costs. Its ability to collect on any judgment issued in its favour, including a judgment for costs, has been preserved by the lien that remains registered against the subject property.
- [18] However, I agree that there has already been far too much delay in this case. For that reason, I am imposing not only a tight timeline, but also certain other restrictions. I will start with the issue of the representation of the corporate defendant, Resilience.

THE REQUEST TO REPRESENT RESILIENCE

- [19] As I have written before, there are several good reasons for r. 15.01(2), which requires that a corporation be represented by a lawyer. One of them is the concern that the separate existence of a corporation as a legal entity may permit the shareholder(s) of a closely-held corporation to run up an opposing party's costs with no exposure to paying those costs personally: *Leisure Farm Construction Limited v. Dalew Farms Inc.*, 2021 ONSC 105, at para. 14; *GlycoBioSciences Inc. v. L’Oreal Canada Inc.*, 2024 ONCA 760, at para. 4.

- [20] However, with respect to the proceedings on May 26, that risk was minimal. Until May 22, 2025, as I have explained, the defendants were represented by counsel. Ms. Pareja-Garcia sought only to represent Resilience at the hearing on May 26. Given the attenuated risk of increased costs, the risk of a further adjournment if the request was not granted, and the consent of the plaintiff, I granted leave to allow Ms. Pareja-Garcia to represent the corporation that day.
- [21] However, with my decision today to allow the defendants an opportunity to move to withdraw their admissions, the risk of unnecessary, increased costs has reappeared. The foreseeable legal and practical issues that can arise in a motion that likely turns on privileged solicitor and client information is not something that most lay people would be expected to navigate efficiently. For that reason, I am refusing leave to have a non-lawyer represent the corporate defendant any further in these proceedings.

THE MOTION FOR LEAVE

- [22] I turn now to the substance of the motion to be brought by the defendants.
- [23] I want the defendants to understand very clearly that it will likely be necessary for their former lawyer, Mr. Haque, to give affidavit evidence in support of their request to withdraw their deemed admissions. For that reason, they should consult with another lawyer. I will not look favourably on any future request to adjourn the motion to allow the defendants to retain a new lawyer if it becomes apparent that the lawyer they retain must be removed in order to give evidence.
- [24] To ensure that the motion proceeds as expeditiously as possible, I am imposing the following time limits, subject to further discussion, if necessary:
- (1) The defendants will serve and file their motion record before 4:30 p.m. on Friday, June 20, 2025, failing which I will render my decision on the motion for judgment.
 - (2) The plaintiff will serve and file its responding motion record, if any, before 4:30 p.m. on July 11, 2025.
 - (3) Cross-examinations, if any, on affidavits filed in connection with the motion shall take place on or before September 8, 2025.
 - (4) The motion will be addressed at the civil assignment court on September 26, 2025, at which time a date for the hearing of the motion will be set.

CONCLUSION

[25] While I am certain that my decision to permit the defendants to move under r. 51.05 comes as a disappointment to the plaintiff, in light of the late service of the motion for judgment under r. 51.06 and the lack of non-compensable prejudice to the plaintiff, I believe that the interests of justice require that the defendants be given that opportunity.

M.G. Ellies J.

Released: May 27, 2025

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Defendants

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