

CITATION: Huck Glove Company Inc. v. 114-120
Victoria Street South Inc., 2025 ONSC 3287
COURT FILE NO.: CV-23-00000563-0000
DATE: 2025/06/03

SUPERIOR COURT OF JUSTICE-ONTARIO

RE: HUCK GLOVE COMPANY INC., Applicant

AND:

114-120 VICTORIA STREET SOUTH INC., GLOVEBOX (2019) INC., 120VIC
GP. INC., KINGSETT REAL ESTATE GROWTH GP NO.6 INC., 114 VICTORIA
STREET INC. and BRIAN PRUDHAM, Respondents

BEFORE: Gibson J.

COUNSEL: Mark Veneziano, Aoife Quinn and Sam Hargreaves, Counsel for Applicant

Matthew Gottlieb and Xin Lu (Crystal) Li, Counsel for Respondents

HEARD: January 21, 2025

ENDORSEMENT

Overview

[1] In this Application, the Applicant Huck Glove Company Inc. (“Huck Glove”) seeks payment of \$491,645 it says is owed to it as a Bonus Density Fee under an Agreement of Purchase and Sale dated January 26, 2017 (“the APS”) for the property at 120 Victoria Street South in the City of Kitchener (“the Property”).

[2] Huck Glove was a family-owned company that manufactured work gloves at a factory on the Property. Robert Huck is the owner and director of Huck Glove. Prior to the sale, the Property had been in Mr. Huck’s family since 1937. Robert Huck sold his glove-making business in 2015, following which he began to market the Property for sale. The Respondents, condominium developers in the Kitchener-Waterloo area, purchased the property pursuant to the APS.

[3] The APS gives Huck Glove a contractual right to a Bonus Density Fee when a certain level of development on the Property is achieved. The Applicant contends that the Respondents achieved and surpassed the stipulated level of development on the Property through their Garment Street District condominium development, and that a Bonus Density Fee is thus owing to Huck Glove.

[4] The Respondents deny this, insisting that the Applicant seeks payment from the Respondents under an agreement based on a flawed interpretation that is contrary to the words of the agreement and the intention of the parties as evidenced by the agreement. The Respondents say that the Applicant seeks to have the Bonus Density Fee calculated using a method that was not a methodology that the parties knew about when the agreement was entered into, rather than the relevant City of Kitchener By-law methodology that was the basis for the density calculation for the property development. On the proper calculation, they insist, the density threshold was not reached, and therefore no Bonus Density Fee is owed. Moreover, the Respondents submit, the Applicant's claim is statute barred, because the obligation to pay the Bonus Density Fee arose on site plan approval in 2019, and the Applicant did not issue the Application until 2023. The Applicant in turn resists this, contending that Huck Glove first became aware that the Respondents denied a Bonus Density Fee was owing on December 5, 2021, and that the Application was issued well within two years of that date.

Facts

[5] Huck Glove is a corporation incorporated pursuant to the laws of Ontario. Huck Glove is the former owner of the Property. Robert Huck is the owner and director of Huck Glove.

[6] The Respondents 114-120 Victoria Street South Inc., Glovebox (2019) Inc., 120VIC GP Inc., and 114 Victoria Street Inc. are corporations incorporated pursuant to the laws of Ontario. Kingsett Real Estate Growth GP No. 6 is a corporation incorporated pursuant to the laws of Canada. The Respondent Brian Prudham is a director of 114-120 Victoria Street South Inc., Glovebox (2019) and 120 VIC GP Inc. Mr. Prudham founded Momentum Developments ("Momentum"), one of the partners responsible for the development of the Garment Street District condominium development.

[7] The Property at issue in this Application was held in Mr. Huck's family for decades. The Property was purchased in 1937 by Mr. Huck's grandfather, who founded the glove production

company that would later become Huck Glove. The former Huck Glove factory is located on the Property. The Huck Glove factory is a three-storey brick building. Prior to the development of the Property by the Respondents, the Huck Glove factory building was at the front portion of the Property, with significant vacant space behind it.

[8] In 2014, Mr. Huck engaged a real estate agent, Denny Cybalski, to assist him with matters pertaining to the sale of the property. Mr. Cybalski and Mr. Cote, the real estate agent representing Momentum, engaged in discussions about the sale of the property throughout 2014 and 2017.

[9] Price was the main sticking point for the sale of the Property. Mr. Huck wanted \$9 million, but Momentum was not willing to pay this much as they believed the development potential for the Property was not as high. Mr. Huck instructed Mr. Cybalski to negotiate a Bonus Density Fee in the APS to bridge the gap between the parties' respective views regarding the price. The Bonus Density Fee would permit Mr. Huck to participate in some of the development upside of the Property, in lieu of a higher up-front purchase price. Mr. Cybalski also negotiated for Mr. Huck the first option to purchase a residential unit in any condominium to be developed on the Property.

[10] On January 26, 2017, Huck Glove entered into an APS with Brian Prudham in Trust for the purchase of the Property. Clause 11 of Schedule "A" of the APS provides for a payment of a Bonus Density Fee as follows:

In the event the Buyer or his assignees undertakes to obtain site plan approval for a development on the property that exceeds Eight (8) times coverage; i.e, a building or buildings with a total gross floor area in excess of eight times the lot area, the Buyer agrees to pay the Seller at the time of receipt of its site plan approval, a fee equivalent to \$7.00 per sq. ft. over and above Eight (8) times site coverage (\$7.00 per square foot) (the "Bonus Density Fee"). This provision shall survive completion of this Agreement of Purchase and Sale, and in accordance with the sellers specified terms and conditions.

[11] As part of the negotiations, Mr. Huck had specifically asked that the Bonus Density Fee be payable at the site plan approval stage, which was earlier than had originally been discussed between the parties.

[12] Following various subsequent transactions amongst the Respondents, Glovebox (2019) Inc. is the current registered owner of the Property.

[13] Since the sale of the Property, the Property along with the surrounding lands was incorporated into a development known as the Garment Street District. As part of this development, the Property was divided into three parcels of land (Parts 1, 3 and 9), and combined with other parcels of land to create two different parcels of land. Currently located on the Property are portions of two buildings: a building known as the “Glovebox” and a condominium tower known as “Tower 3.”

[14] The Glovebox is a building made up of two parts. The first part is the former Huck Glove factory, and the second is a glass addition. This glass addition adds three stories of height to the former Huck Glove factory, and spans over the Property line. The Glovebox has a total of six stories, with a penthouse and a lower level. Approximately one half of the Glovebox is located on the Property.

[15] Tower 3 is a 27-storey building, including a five-storey podium. Tower 3 has the municipal address 108 Garment Street. Tower 3 was constructed behind the former Huck Glove factory, on a formerly vacant portion of the Property. Approximately one half of the five-storey podium is on the Property. The additional 23-storey residential portion of the condominium tower and penthouse is located entirely on the Property.

[16] In February 2019, the first site plan approvals for the lands on which Tower 3 and the Glovebox sit were obtained. Separate site plan approvals were obtained for Glovebox and Tower 3. Stamp Plan B modification for Tower 3 and Glovebox site plan approvals were obtained in 2021 and 2022, respectively.

[17] At no time during the approvals or construction phases of the Garment Street condominiums did the Respondents contact Mr. Huck to notify him either that they had obtained site plan approval or that they had concluded no Bonus Density Fee was owing.

[18] Huck Glove purchased three residential units in Tower 3. On June 20, 2019, Mr. Huck received a Notice of Commencement of Construction for the Garment Street condominiums. The notice does not state anything about what regulatory approvals, including site plan approvals, had

been obtained in order for construction to commence.

[19] Mr. Huck says that in the summer of 2021, he became aware that the Tower 3 and Glovebox roof lines appeared to be complete, and that he considered that as no further levels would be added to these buildings, it was an appropriate time to inquire as to the Bonus Density Fee. Mr. Prudham subsequently sent Mr. Huck a letter indicating that calculations indicated a floor space ratio of 7.8 for Tower 3, and 5.3 for the Glovebox. Bonus Density Fees would not be payable on these ratios. Mr. Prudham's December 5, 2021 email indicated that the floor space ratio did not exceed 8 coverage, which constituted a denial that a Bonus Density Fee was owing to Huck Glove.

Issues

[20] The issues which arise for consideration on this Application are:

1. Is the Applicant's claim statute-barred?
2. If the claim is not statute-barred, do the Respondents owe the Applicant any Bonus Density Fee? This in turn will engage three questions:
 - a. Whether the property to be used to calculate density should be the Property or the assembled lands?
 - b. Whether the "total gross floor area" should be calculated using the BOMA standard or the City of Kitchener By-Laws?
 - c. Whether density should be calculated based on drawings available at the time of the site plan approval or the issued for construction drawings?

Assessment

[21] I agree with the Respondents that the Applicant's claim is statute-barred because the APS expressly provides that any Bonus Density Fee would have been payable at the time of site plan approval, which was issued and became public record in February 2019, more than two years before the Applicant commenced this Application. Mr. Huck had specifically requested this milestone (site plan approval) so that he might be paid earlier. Site plan approval predates the issuance of a building permit. I find that the Applicant discovered or ought to have discovered the claim at the time of site

plan approval in February 2019. If not then, the Applicant discovered or ought to have discovered the claim when Mr. Huck received the Notice of Commencement of Construction in June 2019. At the latest, the Applicant discovered or ought to have discovered the claim in 2020, when Mr. Huck was “well aware” that “the construction was underway”. The Application was commenced in April 2023, more than two years after the latest date when the evidence indicates that the Applicant discovered or ought to have discovered the claim, and thus outside the limitation period prescribed at s.4 of the *Limitations Act, 2002*. Subsections 5(1)(a) and (b) of this Act establish a default limitation period that bars plaintiffs from commencing claims more than two years after they discover them. As subsections 5(1)(a)-(iv) of the Act provide, discovery requires three elements: (1) knowing that damage has occurred; (2) knowing that the defendant’s act or omission caused or contributed to it; and (3) knowing that a legal proceeding would be an appropriate means to remedy it.

[22] The site plan approval for both the Glovebox and Tower 3 were issued in February 2019. These were available to the public from the City of Kitchener as of February 2019.

[23] Construction of Tower 3 started in June 2019. Mr. Huck received the Notice of Commencement of Construction in June 2019. Mr. Huck thus would have been aware as of June 2019 that construction for Tower 3 had commenced and that the site plan approval had been issued. He acknowledged this on cross-examination. However, despite this, Mr. Huck did not contact Mr. Prudham to discuss the Bonus Density Fee until August 26, 2021.

[24] Construction of the Glovebox began in August 2019. This was highly publicized in the local news and on social media.

[25] The Application is statute-barred because the Applicant discovered or reasonably ought to have discovered the claim more than two years before commencing the Application. Pursuant to the *Limitations Act*, the claim is discovered on the earlier of the day on which the Applicant first knew it had a claim and the day on which a reasonable person with the abilities and in the circumstances of the Applicant ought to have known they had a claim. The Applicant is presumed to have known it had the claim regarding the Bonus Density Fee when it became payable and outstanding.

[26] Pursuant to the APS, Bonus Density Fee, if any, was payable by the Respondents “at the time of receipt of [the Respondents’] site plan approval”. The City of Kitchener issued the site plan

approval in February 2019. It is undisputed that the site plan approvals and the associated architectural drawings were publicly available. Therefore, the Applicant discovered or reasonably ought to have discovered the claim in February 2019.

[27] Mr. Huck acknowledged that he received the Notice of Commencement of Construction in June 2019 and was aware that construction had begun. He had agreed to purchase three units in Tower 3. He also acknowledged that he knew that site plan approval was required before construction could commence. Therefore, he knew or reasonably ought to have known as of June 2019 that the Respondents had obtained site plan approval, which was the trigger for payment of the Bonus Density Fee.

[28] At the latest, Mr. Huck knew or reasonably ought to have known in 2020 that site plan approvals had been issued. He admits to driving by the development site “from time to time” and was “well aware” in early 2020 that “the construction was underway”. The Applicant did not commence this Application until April 2023, more than two years after the latest of when it discovered or reasonably ought to have discovered the claim.

[29] The Applicant’s assertion that its discovery of the claim was postponed because Mr. Huck was “dependent on the Respondents’ expertise, including access and ability to use particular software, to determine whether a Bonus Density Fee was owing” is untenable. The Applicant and the Respondents were arms’ length parties to a contract. There is no evidence in the record that the Respondents had an obligation, contractual or otherwise, to perform the calculations for Mr. Huck or that he was entitled to depend on the Respondents for calculating the Bonus Density Fee. Rather, the Respondents performed the calculations to support their position that no Bonus Density Fee was owing. There is no evidence in the record that the Respondents ever undertook to act in Mr. Huck’s interest. If Mr. Huck was unable to perform the calculations himself, it was his responsibility to retain a professional to do it, like he subsequently did in this proceeding.

[30] The cases the Applicant relies on in this regard do not assist it. The defendants in both *DeZwirek v. Swadron*, 2019 ONSC 1709, and *Presidential MSH Corp v. Marr, Foster & Co. LLP*, 2017 ONCA 325, were professionals hired by the plaintiffs. The defendants in *DeZwirek* were architects and builders the plaintiff hired to build their home. The defendants performed defective

work and misled the plaintiff about it. The defendants in *Presidential MSH Corp.* were the plaintiff's accountant and failed to file the plaintiff's tax return on time. It was in that context that the courts held that the plaintiffs were entitled to rely on the superior knowledge and expertise of the defendants, "especially where the defendant undertook efforts to ameliorate the loss". There is no professional relationship between the Respondents and the Applicant. The Applicant did not hire the Respondents as experts to calculate the Bonus Density Fee. Rather, the parties are arms' length counterparties to a commercial contract. Mr. Huck is not entitled to rely on the Respondents to perform the Bonus Density Fee calculations, nor to use that misplaced reliance as a basis to postpone the discovery of the claim for limitations period purposes.

[31] The Court of Appeal for Ontario has recently discussed the approach to a limitations period defence in *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, 2024 ONCA 675, and in *Essex Condominium Corporation No. 125 v. Heritage Park Villas Inc.*, 2024 ONCA 889. Discovery of a claim requires three elements: knowing the damage has occurred; knowing that the defendant's act or omission caused or contributed to it; and knowing that a legal proceeding would be an appropriate means to remedy it. A plaintiff discovers a claim when either the plaintiff or a reasonable person with its abilities and in its circumstances becomes aware of these three elements. The Applicant is presumed to have discovered the claim on the date the act or omission on which the claim is based took place. Determining the plaintiff's knowledge is a subjective test, while determining the reasonable person's knowledge is a modified objective test, as it is based on a person in the circumstances and abilities of the plaintiff.

[32] The expiry of a limitation period is an affirmative defence that the responding party must prove: *SS&C Technologies*, at para. 56. In *Essex Condominiums*, Dawe J.A. found that the motions judge erred by reversing the burden of proof on the issue of discoverability. As stated by the Court of Appeal in *Essex Condominiums*, it is the Respondents' burden in this case to prove that the claim was reasonably discoverable before the expiry of the limitation period. I am satisfied that it has done so.

[33] Huck Glove's claim is for payment of a Bonus Density Fee owing. Under the APS, the Bonus Density Fee became owing at the time of the receipt of the site plan approval. Mr. Huck says that he waited to first attempt to obtain information about the Bonus Density Fee until the summer of

2021. I find that a reasonable person with his abilities and in his circumstances, who is party to a commercial contract, should have sought out this information with more urgency, as the relevant time at which the entitlement accrued was explicitly spelled out in the contract between the parties. The Applicant suggests that, even if this were so, Mr. Huck himself did not possess the requisite ability to perform the appropriate calculations, and that he did not know that one could obtain architectural drawings from the City of Kitchener. Again, I do not accept this proposition. Glovebox was a party to a large commercial contract. If Mr. Huck personally lacked the requisite expertise, he could and should have retained a consultant with the requisite expertise. To hold otherwise would mean that the interpretation of large commercial contracts would turn solely on the particular abilities of the principals of the parties to it, their claimed individual lack of sophistication, or their lack of due diligence, without regard to the ‘reasonable’ criterion. Delay due to inattention and lack of diligence cannot be excused on this basis. The parties in many contracts may have an asymmetry of knowledge and individual abilities, but in the context of commercial agreements, courts must strive to apply a commercially reasonable assessment of the intention and actions of the parties, when assessing the attributes of the “reasonable person.”

[34] The additional elements, knowing that the defendant’s act or omission caused or contributed to it, and knowing that a legal proceeding would be an appropriate means to remedy it, are patent and follow in this context.

[35] In these circumstances, having found that the claim is statute barred due to the expiry of a limitation period, it is not necessary to make findings and determinations regarding the second set of issues concerning the actual calculation of a Bonus Density Fee.

Order

[36] The Application is dismissed.

Costs

[37] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to

Kitchener.SCJJA@ontario.ca. The respondents may have 14 days from the release of this decision to provide their submissions, with a copy to the applicant; the applicant a further 14 days to respond, with a copy to the respondents; and the respondents a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the respondents' initial submissions, I will consider that the parties do not wish to make any further submissions and will decide on the basis of the material that I have received.

M. Gibson J.

Date: June 3, 2025