CITATION: Great Lakes Sewer Services Ltd. et al. v. 2414002 Ontario Limited et al., 2025 ONSC 3187
COURT FILE NO.: CV-22-00686321-0000
DATE: 20250530

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
GREAT LAKES SEWER SERVICES LTD. and FRANK HARTSHORNE Applicants	*Christine M. Krueger* and *Jennifer Philpott*, Counsel, for the Applicants
– and –	
2414002 ONTARIO LIMITED and JON WILLIAM MANNERS Respondents	*Thomas J. Gorsky* and *Jeremy A. Ambraska*, *Counsel*, for the Respondents
	HEARD: February 27 and April 8, 2025

REASONS FOR JUDGEMENT

Overview

[1] The Applicants Great Lakes Sewer Services Ltd. ("Great Lakes") and Frank Hartshorne ("Mr. Hartshorne") seek an order requiring the Respondents, 2414002 Ontario Limited ("Onsite") and William Manners ("Mr. Manners"), to indemnify them for legal costs they incurred from proceedings before the Ontario Labour Relations Board (the "OLRB").

Uncontradicted Facts

[2] Onsite is a full-service sewer rehabilitation company. Onsite has been unionized for many years. The union at Onsite is the Labourers' International Union of North America, Ontario Provincial District Council ("LIUNA"). Onsite is bound to several collective agreements (the "Collective Agreements"). Mr. Manners is Onsite's sole director.

[3] Mr. Hartshorne became employed with Onsite as a Vice President on June 16, 2019.

[4] Mr. Hartshorne purchased shares in Onsite through his holding company 2703562 Ontario Limited ("270")

[5] On September 30, 2019, Onsite and 270 entered into a shareholders' agreement (the "Shareholders' Agreement").

[6] On September 16, or 18 2020, Onsite terminated Mr. Hartshorne alleging cause. This triggered a right under the Shareholders' Agreement for Mr. Manners to exercise his right to repurchase Mr. Hartshorne's Onsite shares for $225,000.00, together with 50% of net profits from September 30, 2019, up to the date of the share transfer. Mr. Hartshorne disputed the termination and refused to forgo his shares in Onsite.

[7] By October 2020 both parties engaged counsel regarding their dispute.

[8] There is no dispute that Mr. Hartshorne then began organizing a competitive business in or around November 2020 and that Onsite was unaware of this.

[9] On November 2, 2020, 270 changed its name to Great Lakes Sewer Services Ltd., who is now the Applicant. Onsite was unaware of this name change.

[10] On December 3, 2020, 270 then registered a change of name from being a numbered company (being used as a holding company for Hartshorne's shares in Onsite) to "Great Lakes Sewer Services Ltd." Again, Onsite was unaware of this.

[11] The parties ultimately signed minutes of settlement as well as a release in respect of their dispute over Mr. Hartshorne's termination and their shareholders' dispute. The release also included an indemnity.

[12] In May 2021, after the minutes of settlement had been signed, Great Lakes put out advertisements to hire employees.

[13] On May 26, 2021, LIUNA served Mr. Hartshorne on behalf of Great Lakes, and filed with the OLRB an Application under sections 69 and 1(4) of the *Ontario Labour Relations Act*, 1995, S.O. 1995, c. 1, Sched. A ("OLRA") ("LIUNA's Application").

[14] LIUNA claimed that Great Lakes was bound to several collective agreements. It sought a declaration that Onsite and Great Lakes were carrying on associated or related activities or business under common direction and control pursuant to section 1(4) of the OLRA. In addition, or in the alternative, LIUNA also sought a declaration that there was a sale of all or part of a business from Onsite to Great Lakes within the meaning of section 69 of the OLRA. LIUNA's Application referenced a sale of shares between Onsite and Mr. Hartshorne as evidence of this sale. It also alleged that Mr. Hartshorne was a key individual who has been transferred from Onsite to Great Lakes and that after the sale, or transfer of the business or part of the business, Mr. Hartshorne and Great Lakes was providing the same work in the same markets for the same clientele as Onsite.

[15] LIUNA also alleged that Mr. Hartshorne had appropriated Onsite's goodwill to obtain a contract with the Town of Wasaga Beach. It based this on the fact that Mr. Hartshorne had given as references the names of three Onsite customers while soliciting business.

[16] Onsite filed a substantive response and actively participated in the proceedings in support of LIUNA's Application. Onsite's official position, as outlined in its response, was that part of its business was in fact transferred to Great Lakes within the meaning of section 69 of the OLRA. That is, that Mr. Hartshorne took experience, information, knowledge, and customer contacts when Onsite terminated him and then used these in his newly created competitive business which operated in the same field known as Great Lakes.

[17] On August 8, 2023, following 14 days of hearing, the OLRB found that there was a sale of business from Onsite to Great Lakes within the meaning of section 69 of the OLRA, and that Great Lakes was bound by the Collective Agreements:

> 208 Ultimately, however, the Board is satisfied that the transfer of a significant component of Onsite's economic organization to Great Lakes, and the transfer of managerial skills from Onsite to Great Lakes amount to more than "slight" evidence of a transfer of a business from the former to the latter. It is the Board's view that these components comprised essential elements of Onsite "as a going concern", and that their transfer to Great Lakes was integral to Great Lake's ability to (in very short order) provide the services previously provided by Onsite. They - in conjunction with the corporate nexus that existed between Onsite and Great Lakes - lead the Board to conclude that there was a transfer of a coherent and severable part of Onsite's business to Great Lakes.

[18] The Board also indicated that it would have also found that Mr. Hartshorne was a "key person" at Onsite.

[19] The proceeding was dismissed as against Onsite. The OLRB also dismissed Great Lakes' request for reconsideration, by decision dated October 6, 2023.

[20] As Great Lakes was unsuccessful in LIUNA's Application, it was subject to a grievance from LIUNA, which grievance alleged that Great Lakes had violated provisions of one of the applicable collective agreements. The grievance was a separate proceeding under the OLRA. LIUNA relied on its submissions in LIUNA's Application for this grievance. The grievance was settled in October 2023.

[21] Great Lakes and Mr. Hartshorne argue that LIUNA's Application arose due to Onsite's and Mr. Manners' breach of confidentiality provisions concerning the Shareholders' dispute, their explicit disclosure of the Shareholders' Agreement to LIUNA, and their disclosure to LIUNA of Great Lakes' successful bid on work for the Town of Wasaga Beach.

[22] They argue that the terms of the indemnity within the release is triggered by this conduct and/or that this indemnity covers the legal costs incurred by them associated with the LIUNA Application.

[23] They move pursuant to Rule 14.05(3)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for a determination of their rights under the release. There is no issue that this is

appropriately brought as an application in respect of the interpretation of the indemnity provision contained in the release.

Decision

[24] For the reasons that follow, I dismiss the Application.

Issues

- Issue 1: What is the date of the settlement?
- Issue 2: Did Onsite breach the confidentiality provisions in the settlement agreement by providing a copy of the Shareholders' Agreement to LIUNA?
- Issue 3: Are the Applicants' costs associated with the OLRA proceeding costs that the Respondents agreed to indemnify the Applicants for?
- Issue 4: What are the Applicants' damages if they are entitled to indemnification?

Analysis

Issue 1: What is the date of the settlement?

[25] There is no document called a settlement agreement. There are communications where the parties discuss and agree upon terms. Then they signed minutes of settlement which append documents as well as a signed release.

[26] Each party asserts a different date as the date they arrived at the settlement, because they feel it helps them in the interpretation of the release. The Respondents assert it was a binding agreement as of February 16, 2021. The Applicants assert it was binding as of March 22, 2021, when the wording in the release was agreed upon. The reason they each make this argument is because they feel it impacts the relevant surrounding circumstances based upon when the settlement was arrived at.

[27] In my view, nothing turns on the date of the settlement in this regard because Onsite did not know that Great Lakes was competing on February 16, 2021, or March 22, 2021. Great Lakes had not taken public steps to compete until afterwards.

[28] In the event I am wrong, I address this issue.

[29] I conclude that the settlement agreement was effective on February 16, 2021.

[30] On February 16, 2021, Onsite's lawyer sent Mr. Hartshorne's lawyer an offer to settle.

[31] The offer contained the following provisions:

1. Onsite would pay the sum of $225,000 to 270 for its 50 common shares in Onsite.

2. Onsite would pay 270 and Mr. Hartshorne $12,500 for the calculation of profits to September 30, 2020.

3. Onsite would transfer certain assets to 270 and Mr. Hartshorne.

4. Onsite would repay the $150,000 loan to Mr. Hartshorne's father.

5. Completion of the settlement, including the payment of funds, transfer of property, transfer of shares, exchange of releases, etc. will be completed within thirty (30) days from acceptance.

6. The parties will execute and exchange mutual releases in a form reasonably agreed upon by counsel.

7. Your client's father will release your clients and mine and discontinue his action without costs and the parties will execute and exchange mutual releases in a form reasonably agreed upon by Counsel.

8. This offer is open for acceptance until 5 pm on Friday, February 19, 2021.

[32] On February 16, 2021, Mr. Hartshorne's counsel wrote and indicated that he "accepts your client's offer as proposed" and "we look forward to closing documents."

[33] On March 1, 2021, Onsite's counsel sent draft documents to complete the settlement. The wording in the indemnity portion of the proposed release was as follows:

> 2414002 ONTARIO LIMITED and JON WILLIAM MANNERS hereby indemnify and hold harmless 2703562 ONTARIO LIMITED and FRANK HARTSHORNE from any and all claims arising from the bonding activities/contracts arising out of the operations of 2414002 Ontario Limited.

[34] On March 8, Mr. Hartshorne's counsel proposed the following amended language:

> Notwithstanding the release provided in section 2(a) herein 2414002 ONTARIO LIMITED and JON WILLIAM MANNERS hereby joint and severally indemnify and hold harmless 2703562 ONTARIO LIMITED and FRANK HARTSHORNE from any and all actions, cause of actions, debts, accounts, claims, penalties, demands and all expenses arising from activities and operations of 2414002 Ontario Limited, including but not limited to the bonding activities/contracts, the leasing contracts, any contracts with its suppliers, creditors, banks, arising out of the operations of 2414002 Ontario Limited. The indemnity provided herein shall continue and survive indefinitely.

[35] On March 8, 2021, Onsite indicated that it was happy with the changes and looked forward to receipt of confirmation and that "assuming that there are no other issues with the documentation, we can organize to get the closing completed."

[36] Signing of minutes of settlement was delayed because Mr. Hartshorne wanted to obtain releases from two specific leases related to Meridian Onecap. He felt that the indemnity did not sufficiently protect him from this liability. Mr. Hartshorne then sought direct removal from these leases.

[37] On March 22, 2021, Onsite's counsel wrote acknowledging issues related to Meridian Onecap and indicating that a PPSA search indicated that there was no security registered by Meridian Onecap against the Applicants and that they agreed to indemnify the Applicants in respect of Meridian Onecap.

[38] The parties signed the minutes of settlement on April 30, 2021. The minutes of settlement stated:

> IN CONSIDERATION OF Settling the outstanding matters between the above Parties, the Parties hereby agree to the terms and conditions of settlement as set out on the attached correspondence as Schedule 1.
>
> WE THE UNDERSIGNED, Counsel for the Parties hereby agree to the settlement as set out on Schedule 1.
>
> Dated this 30th day of 30th April, 2021

[39] Schedule 1 contained the following:

- An unsigned copy of a letter dated February 12, 2021. Oddly, the letter contained in Schedule 1 is almost identical to the February 16, 2021 letter in the Applicants' materials but shows a different date of February 12, 2021. It also shows the wording "ND. AND indemnity and undertaking." As well, the dates for acceptance of the two letters is different with the February 16, 2021 letter being by February 19, 2021 and the February 12, 2021 letter indicating that it had to be accepted by February 16, 2021. The parties indicated that they do not know why the dates are different and that in their view the difference in the dates is immaterial because the offer that was accepted was the offer in the February 16, 2021 letter and all the material terms are the same in both letters. They submitted that there were last-minute additions to the indemnity and undertaking to ensure that the Applicants were indemnified with respect to the Meridian Onecap leases and they believe that this is why the wording "ND. AND indemnity and undertaking" had been added. In my view, what must have happened is that the Respondents had drafted two copies of the same letter, one dated February 12, and one dated February 16. Then, they sent the one dated February 16 which was accepted. But when they sought to attach the accepted offer, they mistakenly attached the February 12 letter which was almost identical. And then they amended that

one to add the wording "ND. AND indemnity and undertaking" to reflect the addition of the Meridian Onecap leases. I agree nothing turns on this.

- An Instrument of Transfer.
- Mr. Hartshorne's resignation.
- Resolutions of the Sole Director authorizing the transfer of shares.
- Resolution of the Sole Director accepting Mr. Hartshorne's resignation as Vice President and appointing Mr. Jon Manners as President and Secretary Treasurer.
- Bill of Sale in respect of the assets to be kept by Mr. Hartshorne.
- The Release.
- Notice of Discontinuance of Mr. Hartshorne's claim.
- An indemnity and undertaking related to the Meridian Onecap leases holding Mr. Hartshorne harmless in respect of the equipment leases with Meridian Onecap.
- The date March 30, 2021, was crossed out and the date April 30, 2021, written in on all of these documents.

[40] For a concluded contract to exist, the parties must have agreed on all essential terms: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd*. (1991), 79 D.L.R. (4th) 97 (Ont. C.A.), at p. 12. Where they agree on all essential provisions to be incorporated in a formal document with the intention that their agreement is binding, they will have fulfilled the requisites. The fact that a formal written document to the same effect is thereafter prepared and signed does not alter the binding validity of the original contract. It is only when the original alleged contract is incomplete because it lacks essential terms or it is too uncertain does the validity depend upon the making of a formal executed contract: *Bawitko*, at p. 13.

[41] Judicial authority also overwhelmingly holds that where parties agree to a settlement stated to be subject to minutes or releases, even absent agreement on the details of the release, the parties' offer and acceptance constitutes a legally binding and enforceable settlement agreement: *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*(1995), 23 O.R. (3d) 766; aff'd [1995] O.J. No. 3773 (C.A.). See also *Haider v. Rizvi*, 2023 ONCA 354, at para. 28.

[42] The parties here agreed on all essential terms when the Applicants accepted the Respondents' offer which was on February 16, 2021. Even Mr. Hartshorne swears in his affidavit that he accepted Onsite's February 16, 2021 offer to settle. The terms in the February 16, 2021 letter were clear and unambiguous and contained. The letter and the response from the Applicants that they accepted it demonstrates a mutual intention to create a legally binding agreement. The

reference to documentation, and in particular the release, represented the manner in which the settlement, already agreed upon, would be formalized.

[43] The February 16, 2021 letter did not even say that the settlement was "subject" to formal documentation or to a release. Rather, what it said was that the parties "**will** execute and exchange mutual releases in a form reasonably agreed upon by counsel" [Emphasis added].

[44] While the Applicants argued that the negotiations in respect of the wording of the release were significant and demonstrate there could have been no settlement absent agreement on this wording, there was a mere exchange of a draft release proposed by Onsite's counsel and then proposed changes to the wording by the Respondents which was immediately agreed to by Onsite. Even the issues with respect to Meridian Onecap were not contentious but rather agreed. The wording of the release was not a significant issue as to whether the parties had concluded their settlement. Their discussions in respect of the release, were amicable and agreeable, and fall well within the agreement that the parties will exchange releases "in a form reasonably agreed upon by counsel."

[45] Therefore, I find that the parties' binding agreement was formed on February 16, 2021 (the "Settlement Agreement") and that it was later formalized through the minutes of settlement and the release and other closing documents.

Issue 2: Did Onsite breach the confidentiality provisions in the settlement agreement by providing a copy of the Shareholders Agreement and minutes of settlement to LIUNA?

[46] Section 6 of the release contains the following confidentiality provision relied upon by the Applicants:

> 6. THE UNDERSIGNED acknowledge and agree to keep confidential the terms of this settlement and to only disclose same as may be required by law or by a Court that has jurisdiction to require disclosure.

Principles of Contractual Interpretation

- Contractual interpretation begins with the words used.

- It is a search for the parties' "objective intention" and their "reasonable expectations with respect to the meaning of a contractual provision": *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60, [2019] 4 S.C.R. 394, at para. 74. The parties' subjective intentions are not relevant: *Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 S.C.R. 540, at para. 25

- The court must give words their ordinary and grammatical meaning and "read the contract as a whole" in a practical, common-sense manner, not dominated by technical rules of construction: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53, [2014] SCC 53, at para. 47; *Corner Brook*, at para. 20.

- Contracts should be interpreted "in accordance with sound commercial purposes and good business sense": *Resolute*, at para. 79, citing *Scanlon v. Castlepoint Development Corp*. (1992), 11 O.R. (3d) 744 (C.A.); *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, [2010] 1 S.C.R. 69, at para. 64. Commercial reasonableness must be assessed from "the perspective of both parties": *Resolute*, at para. 148.

- As set out in *Corner Brook*, a release can cover unknown claims with sufficient language and does not necessarily need to particularize with precision the exact claims that fall within its scope. It is the usual principles of contractual interpretation, which is a fact specific exercise, that determines what claims a release covers. However, "difficulty can arise in deciding what wording is sufficient to encompass the unknown claim at issue in a given case": at para. 27.

- Surrounding circumstances also matter, as I will discuss below, but there are none alleged to be or which relate to this issue or which would impact interpretation of the confidentiality provision.

The Minutes of Settlement

[47] There is no evidence that the Respondents provided the minutes of settlement to LIUNA at any time. Therefore, irrespective of the proper interpretation of s. 6 of the release, this claim fails on the facts.

The Shareholders' Agreement

[48] Onsite admits it provided a copy of the Shareholders' Agreement to LIUNA on April 19, 2021. Onsite's Director, Mr. Manners, says that LIUNA asked for a copy, and he emailed it. The Applicants raise arguments about why this is not believable, such as the fact that there was no record of any communication from LIUNA to Onsite requesting the Shareholders' Agreement. The Applicants could have contradicted Onsite's evidence that LIUNA asked for the Shareholders Agreement by examining someone from LIUNA or obtaining evidence from them. Having failed to do so, the Director Mr. Manners' evidence is uncontradicted, and I accept it.

[49] I also disagree that the Settlement Agreement required any confidentiality in respect of the Shareholders' Agreement. This is plain from the words used and from reading the release as a whole.

[50] Section 6 makes no mention of the Shareholders' Agreement which was entered into 18 months before the Settlement Agreement. It does not expressly provide any confidentiality for that agreement; nor is the Shareholders' Agreement attached as part of the closing documents in Schedule 1.

[51] Further, sections 1 and 2 (a) of the release provides a release in respect of any issues arising out of the Shareholders' Agreement and the public proceeding that the parties had in respect of their dispute over Mr. Hartshorne's employment.

[52] Had the parties objectively agreed to attach confidentiality to the Shareholders' Agreement in s. 6, they could have specifically mentioned the Shareholders' Agreement in s. 6 (the confidentiality provision) as they did in ss. 1 and 2(a). Having mentioned the Shareholders' Agreement in ss. 1 and 2(a), but not in the confidentiality provision in s. 6, no confidentiality attaches to the Shareholders' Agreement; to do so would be to read something into the release and the Settlement Agreement that the parties did not include.

Issue 3: Are the Applicants' costs associated with the OLRA proceeding costs that the Respondents agreed to indemnify the Applicants for?

The wording of the Indemnity Provision in the Release

[53] For ease of reference I set out again the relevant wording of the indemnity contained in the Release:

> (b) Notwithstanding the release provided in section 2(a) herein 2414002 ONTARIO LIMITED and JON WILLIAM MANNERS hereby joint and severally indemnify and hold harmless 2703562 ONTARIO LIMITED and FRANK HARTSHORNE **from any and all actions, cause of actions, debts, accounts, claims, penalties, demands and all expenses arising from activities and operations of 2414002 Ontario Limited, including but not limited to the bonding activities/contracts, the leasing contracts, any contracts with its suppliers, creditors, banks, arising out of the operations of 2414002 Ontario Limited.** The indemnity provided herein shall continue and survive indefinitely. [Emphasis added]

Great Lakes and Mr. Hartshorne's Arguments

[54] Great Lakes and Mr. Hartshorne make the following arguments:

- LIUNA's Application pursuant to ss. 1(4) and 69 of the OLRA was based upon the activities and operations of Onsite because it involved a detailed consideration of whether Mr. Hartshorne had been a "key person" at Onsite: *United Brotherhood of Carpenters and Joiners of America, Local 18 v. Stewart & Hinan Contractors Limited*, 1994 CanLII 9824 (ON LRB); *Millwright District Council of Ontario v. Tri-Corps Industrial Contractors*, 1994 CanLII 10006 (ON LRB).

- The word "claims" is defined in Black's Law Dictionary as "a demand for money, property or legal remedy to which one asserts a right". LIUNA's Application was a form of a "claim". LIUNA also sought remedies in that Application. Further, Black's Law Dictionary defines "expense" as "expenditure of money, time, labour, or resources to accomplish a

result." Legal costs in defending the proceeding brought by LIUNA squarely falls within this meaning.

- Black's Law Dictionary defines "activity" as "something that a person or group does". It defines "operation" in part as "one or more acts designed to further a purpose or achieve an effect."

- The indemnity is broadly drafted. The language "including but not limited to" are words of enlargement: *Belpark Construction Ltd. v. Di Poce Management Ltd*. (1995), 22 O.R. (3d) 181 (Div. Ct.).

- The indemnity, "shall continue and survive indefinitely" and therefore covers claims that the parties may not have known about and/or future claims.

- The wording in the indemnity was broadened because of revisions that Mr. Hartshorne requested, and his lawyer told him that it would cover absolutely everything. They also reference a March 22, 2021 letter from Onsite's counsel where he stated that "we agreed upon wording in the release which you revised, clearly indicating that my clients shall indemnify yours for any claims, including leasing contracts." They argue that these communications show that everything was included, including the type of claim made to the OLRB.

- LIUNA's Application arose in part because Onsite provided a copy of the Shareholders' Agreement.

[55] For the following reasons, I disagree that the above arguments mean that the indemnity provision in the release applies to legal costs incurred by Great Lakes and Mr. Hartshorne in defending LIUNA's claim.

The Surrounding Circumstances

[56] Critical to the understanding of the indemnity is the interpretation of the words "activities" and "operations."

[57] In *Sattva Capital Corp. v. Creston Moly Corp.*, the Supreme Court directed that courts interpreting contracts must take into account the surrounding circumstances which are known to the parties or which reasonably ought to have been known at or before the time of contract formation: at para. 58. This is because "[t]he meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement.": para 48. This includes "absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable [person]": at para. 58. The surrounding circumstances cannot be used "to deviate from the text such that the court effectively creates a new agreement", nor can the surrounding circumstances be used to "overwhelm the words" used: at para. 57. Rather, this evidence is supposed to "deepen

a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract": at para. 57.

[58] It is implicit that the surrounding circumstances are something that both parties ought reasonably to have known about, not simply one of them.

[59] The surrounding circumstances as at February 16, 2021, that would have informed the parties understanding of the words "activities" and "operations" were as follows:

- Mr. Hartshorne was still a party to the Shareholders' Agreement at that time. It provided that he would assist in the management of Onsite and be a shareholder of Onsite. The Shareholders' Agreement did not contemplate him competing with or any transfer of Onsite's business to him or 270.

- Article 2.4 of the Shareholders' Agreement further provided that Onsite could not engage in a number of activities without the consent of all shareholders. These included the following: the sale, lease, exchange or disposition of the entire undertaking or property or assets of Onsite or a substantial part thereof, or any material change in Onsite's business. Therefore, at the time of the Settlement Agreement and release, the parties' understanding was that there had not been any material change to Onsite's business or any disposition of a substantial part of Onsite's business because the parties would have had to consent to this. A transfer of part of Onsite's business to 270 (or Great Lakes) that would trigger an OLRB proceeding would have been a material change to Onsite's business.

- As admitted by Mr. Hartshorne during the OLRB proceeding and as reflected in paragraph 111 of the OLRA decision, during the period of 270's relationship with Onsite, 270 was only a holding company.

- Mr. Hartshorne had been terminated and was selling his shares back as required under the Shareholders' Agreement. While Mr. Hartshorne knew that he had changed the name of his holding company to Great Lakes, Onsite did not know this. Onsite also had no actual knowledge that Mr. Hartshorne was planning to compete with Onsite using Great Lakes and the possible consequences that could arise from a labour relations perspective as a result. Mr. Hartshorne had concealed this, and he knew that when Onsite agreed to the above wording in the indemnity, it did not know about anything that could trigger an OLRB concern. As a result, there were no concerns about an OLRB issue at the time of the acceptance of the offer on February 16, 2021, the time when the wording of the release was agreed upon on March 22, 2021, or even when the minutes of settlement and release were signed on April 30, 2021.

[60] I reject Great Lakes and Mr. Hartshorne's argument that one of the surrounding circumstances that could assist with the way the parties understood the wording in the release was that the parties were engaged in an acrimonious dispute. While this is certainly true, it is unclear why their acrimonious dispute would have made the parties understand the words "activities" and

"operations" to include a claim of this nature. In fact, that there was so much concern by Mr. Hartshorne about what the indemnity covered would have underscored the need for him to have clearly negotiated the indemnity that was being sought and given. If Mr. Hartshorne intended to compete and was concerned about claims related to that, he should have made that plain and negotiated a clear indemnity for that as he did with the Meridian Onecap leases about which he expressed specific concern.

The purpose of the indemnity

[61] The parties were separating their partnership and business dealings. The purpose of the indemnity was to protect Mr. Hartshorne and 270 from claims that could be made against them arising either out of 270's shareholdings or the work that Mr. Hartshorne did **while an officer of Onsite, when bound by the provisions of the Shareholders' Agreement and all the legal restrictions that came with that role and the Shareholders' Agreement.** The purpose was not to protect Mr. Hartshorne from the consequences of beginning a competing business without recognizing LIUNA's bargaining rights that would have been completely outside his role at Onsite and the Shareholders Agreement.

The words "activities" and "operations"

[62] In the context of the surrounding circumstances, and the purpose of the indemnity, the words "activities" and "operations" would not have been understood by the parties to relate to anything arising out of the competing business that Mr. Hartshorne was preparing to commence, because Onsite did not know what he was doing and as I have said, Mr. Hartshorne concealed this.

[63] This is not an issue of a claim that Onsite and Mr. Manners were unaware of. The issue is that this claim is a type of claim that is outside the scope of the indemnity altogether.

[64] The release was specified to be given to the numbered company, 270, which was known to Onsite and Mr. Manners (and the Respondents as well) as being only a holding company, not a competitor. The release should be interpreted based upon the parties' understanding that 270 was still a holding company for Mr. Hartshorne's shares, not that it would become a new competitor in the field where there could be issues with the OLRB as a result. It was Mr. Hartshorne's choice to conceal this and to use wording in the release that implicitly meant that 270 was still only a holding company holding his shares.

[65] I also disagree that the dictionary definitions proposed by Mr. Hartshorne and Great Lakes are particularly relevant in this case or that the broad wording in the indemnity supports their interpretation. These definitions are general, and, in this case, the "activities" and "operations" relate to a particular business that was doing business in the ordinary course.

[66] The plain and ordinary and grammatical meaning of "operations" in this context was what Onsite did in the ordinary or usual course of business on a day-to-day basis. It was a sewer rehabilitation company so this would include whatever it did to provide these services such as it entering into contracts to provide these services, conducting this work, paying employees who did

the work, and all other things it did in order to provide this service to its customers in the ordinary course of business.

[67] The word "activities" is less clear, but it still would have been understood by the parties to relate to matters involving Onsite's business in the ordinary course. I add that the examples set out in this provision are the following: "bonding activities/contracts, the leasing contracts, any contracts with its suppliers, creditors, banks." These are things that support Onsite's operations on a day-to-day basis and are not remotely close to the kind of proceeding that LIUNA commenced.

[68] Even though the OLRB considered Mr. Hartshorne's role at Onsite to determine whether he was a key person, the OLRB proceeding and/or LIUNA's claim did not arise out of anything that Onsite either did in the ordinary course of its operations or that supported what it did in the ordinary course of its operations. That is, the OLRB proceeding and LIUNA's claim arose out of and was decided on the basis that there had been "a transfer of a coherent and severable part of Onsite's business to Great Lakes." To put it another way, divestment of a part of its business would not be something arising out of its "activities" or "operations". Onsite, to the knowledge of the parties at the time, was not in the process of divesting parts of its business.

[69] Further, had the Applicants not decided to operate a competing business, there would have been no basis for a proceeding against them. It arose only because the Applicants did so and then refused to acknowledge LIUNA's existing bargaining rights with respect to Great Lakes. The Respondents were not involved in the Applicants' decision to start a competing business that was the same or similar to Onsite's business.

[70] Therefore, the type of liability in the OLRB proceeding did not arise out of Onsite's "activities" and "operations", but out of the activities and operations of Great Lakes.

The Release as a Whole

[71] Furthermore, the Applicants have narrowly focused on the wording in the indemnity provision instead of reading the release as a whole. The two provisions directly above the indemnity provision are release provisions, and the wording of those provisions is of assistance in interpreting the indemnity provision.

[72] The release provisions specifically released the parties from any and all actions "arising from or relating in any manner whatsoever to the claims that arose out of the operations and shareholdings in 2414002 Ontario Limited, the Shareholder's Agreement dated September 30, 2019". This is important because the LIUNA Application at the OLRB related in part to the transfer of shares made to Mr. Hartshorne pursuant to the Shareholders' Agreement. The fact that similar wording is not used in the indemnity provision means that claims related to matters arising out of Mr. Hartshorne's shareholdings or the Shareholders' Agreement are not included in the indemnity provisions. Otherwise, they would have used the same language.

[73] Additionally, one of the closing documents was a bill of sale in respect of certain assets that Mr. Hartshorne and 270 were permitted to keep. These included three sewer cleaning nozzles,

three external hard drives, one company owned laptop, and one printer. Therefore, at the time of the Settlement Agreement, the parties had contemplated what parts of Onsite's business Mr. Hartshorne and 270 were permitted to keep, and this did not include anything other than these assets.

[74] Finally, as noted, the closing documents also included a specific indemnity agreement in respect of the Meridian Onecap leases. Great Lakes and Mr. Hartshorne argue that the need to negotiate a separate indemnity for this is a surrounding circumstance that demonstrates acrimony and lack of trust. In my view, the need to negotiate a separate indemnity for the Meridian Onecap leases runs counter to the argument that the indemnity in the release would cover the LIUNA claim. The indemnity wording even includes the words "leasing contracts" and there was concern that it would not cover the Meridian Onecap leases. If the wording of the indemnity in the release in question was understood by the parties to be as broad as Great Lakes and Mr. Hartshorne now argue, they would not have needed a separate indemnity for the Meridian Onecap leases.

[75] To put it another way, the Meridian Onecap leases, which the parties agreed required a separate indemnity, are much closer to being part of Onsite's "activities" and "operations" and yet the parties objectively did not consider that the indemnity covered these and that they required a separate indemnity.

Evidence of Negotiations

[76] With respect to the evidence of the negotiations for the release, in *Goodlife Fitness Centres Inc. v. Rock Developments Inc*., 2019 ONCA 58, at para. 15, the Court of Appeal observed that it has "repeatedly cautioned against looking to negotiations to interpret a contract." Quoting, at para. 16, its decision in *The Canada Trust Company v. Browne*, 2012 ONCA 862, 115 O.R. (3d) 287, the Court of Appeal in *Goodlife Fitness* affirmed that "[w]hile the scope of the factual matrix is broad, it excludes evidence of negotiations, except perhaps in the most general terms". In *Goodlife Fitness*, it determined that the application judge's use of email exchanges during negotiations to make findings of fact about the meaning of a commercial contract was an error.

[77] Therefore, the parties' prior negotiations cannot be used to interpret the release.

Comments by his Lawyer and Mr. Hartshorne's Subjective Intentions

[78] Comments Mr. Hartshorne's lawyer made to him about the scope of the indemnity provisions (that were not shared with the Respondents) and his own subjective intentions are not admissible as an aid to interpreting the release: *Sattva*, at para. 59.

[79] The comment by the Respondents' lawyer in the March 22, 2021 letter similarly cannot be used to interpret the release. In *Sattva*, the Supreme Court affirmed the parol evidence rule which "precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary or contradict a contract that has been wholly reduced to writing": at para. 59. This prevents parties from admitting the subjective intention of the parties, supports the goal of finality, and hampers a party's ability to use fabricated evidence to interpret a contract: at para. 59.

[80] In any event, this letter does not assist the Applicants because all the Respondents' lawyers said was that it would cover all claims, which then leads back to the issue of what claims meant in the context of the Settlement Agreement and release. This then refers back to claims arising out of Onsite's "operations" and "activities".

The Parties' Reasonable Expectations

[81] Since the Applicants had not disclosed that they were going to use 270 to start a competing business, or the name change in that respect, it was not within Onsite's reasonable expectations that there could be a claim against Great Lakes related to a possible future proceeding pursuant to the OLRA at the time of the Settlement Agreement and release. Onsite did not even know about Great Lakes.

Commercial Efficacy

[82] The Applicants' interpretation is also a commercially unreasonable interpretation in the circumstances, which as noted, must be assessed from the perspective of both parties. From Onsite's perspective, it was indemnifying Mr. Hartshorne from liabilities that he could have because of his role at Onsite as Vice President. It would not have been commercially reasonable for Onsite to agree to indemnify the numbered company and Mr. Hartshorne, from commencing a competing business, and its decision not to recognize LIUNA, without the Applicants having raised this with the Respondents as they did with the Meridian Onecap leases.

Public Policy

[83] The OLRB decision established that the Applicants willfully breached their obligations under the OLRA to recognize LIUNA.

[84] It is against public policy to interpret the release in a manner that indemnifies the Applicants for acting contrary to the express statutory purposes of the OLRA that promotes the collective bargaining process: OLRA, s. 2.

Complaints about the Position that Onsite took with respect to the LIUNA Application

[85] I also reject the argument that Onsite's support of LIUNA's application could be considered an "activity" within the meaning of the indemnity provision.

[86] Sections 1(5) and 69(13) of the OLRA require a responding party to an application to "adduce at the hearing all facts within their knowledge that are material to the allegation." These sections require active participation from the Respondents: see also *Bricklayers, Masons Independent Union of Canada, Local 1 v. Metric Masonry Amalgamated Ltd.*, 2015 CanLII 2634 (ON LRB), at para. 19, regarding the active participation required which is not met by simply producing documents or a statement of material facts.

[87] Onsite was required to respond and respond honestly even if this was to Great Lakes' disadvantage. Onsite was not required to act to its own detriment either. These parties were arm's length commercial parties and Onsite was entitled to act in its own interests.

[88] Further, even if Onsite gave the Shareholders Agreement to LIUNA, and told it about the successful bid on the work for the Town of Wasaga (which has not been proven) once Great Lakes entered the market and began competing, there were numerous reasons why LIUNA would have eventually learned of a basis to bring its Application:

- There is an industry-related website that is a publicly searchable repository of bids and tenders for public work projects: "bidsandtenders.com".

- It is common industry practice for unionized sewer companies bound to a collective agreement to alert LIUNA about non-unionized competitors.

- Upon LIUNA learning of Great Lakes' bid, they could have obtained publicly available information about Great Lakes and seen Mr. Hartshorne's name listed as president and as a director and then learned that he had previously been at Onsite. Indeed, LIUNA attached a corporate profile report for Great Lakes to its Application.

[89] Furthermore, in *Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America v. Sheldoon Associates Ltd*., 1992 CanLII 6305 (ON LRB), the OLRB concluded that the OLRA's sale of business provisions operate automatically and are not dependent on the commencement of a legal proceeding:

> In *John Lester Drugs Ltd* ., [1982] OLRB Rep. June 886; *Yesteryear Grocers Inc* ., [1982] OLRB Rep. Dec. 1975 and *G.A.C. Industries Ltd* ., [1981] OLRB Rep. June 658, the Board concluded that section 64 does not contain a general discretion to decide whether there is a flow-through of bargaining rights from a predecessor employer to a successor employer. The Board found that the provisions of section 64 (2) and (3) are declaratory only. Where a sale of a business has taken place, existing bargaining rights automatically flow through […].

[90] In the *Carpenters and Allied Workers* case, the OLRB granted a declaration for a sale that had occurred 11 years prior.

[91] As a result, it was not even the proceeding or claim that LIUNA brought that resulted in the outcome; once Mr. Hartshorne began actively competing through Great Lakes, the bargaining rights flowed automatically in the circumstances. Irrespective of anything that Onsite did or did not do, LIUNA could have brought the proceeding many years later. It was Great Lakes failure to recognize the bargaining rights, that accrued automatically, that caused Great Lakes and Mr. Hartshorne to incur legal expenses in response to LIUNA's application.

Issue 4: What are the Applicants' damages if they are entitled to indemnification?

[92] Mr. Hartshorne and Great Lakes spent $276,200.63 in defending the LIUNA application before the OLRB. It spent $53,234.50 in respect of the Request for Reconsideration and Grievance.

[93] It is these costs, less adjustments, discounts and write offs, in the total amount of $321,935.21, that Mr. Hartshorne and Great Lakes seek to be indemnified from and which I would award if I am wrong in the analysis above.

Conclusion

[94] The Application is dismissed.

[95] The parties are encouraged to settle costs. If they cannot agree then they may make submissions as follows: The Respondents within 5 days no longer than 5 pages; The Applicants within 5 days thereafter no longer than 5 pages.

[96] As a final matter I wish to commend both sets of counsel for their thorough and excellent written materials and presentations.

Papageorgiou J.

Released: May 30, 2025

CITATION: Great Lakes Sewer Services Ltd. et al. v. 2414002 Ontario Limited et al., 2025 ONSC 3187
COURT FILE NO.: CV-22-00686321-0000
DATE: 20250530

ONTARIO

SUPERIOR COURT OF JUSTICE

GREAT LAKES SEWER SERVICES LTD. and FRANK HARTSHORNE

Applicants

– and –

2414002 ONTARIO LIMITED and JON WILLIAM MANNERS

Respondents

REASONS FOR JUDGEMENT

PAPAGEORGIOU J.

Released: May 30, 2025