CITATION: Smith v. Oliphant, 2025 ONSC 4402
COURT FILE NO.: CV-18-00611121
DATE: 20250728

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
DONNA LEE SMITH	)	
Plaintiff	)	Plaintiff, in person
– and –	)	
MICHAEL OLIPHANT, LAUREN HOLLETT, UNIFUND ASSURANCE COMPANY and JOHNSON INC.	)	*D. Van Vroenhoven*, for the Defendants – Unifund Assurance Company and Johnson Inc.
Defendant	)	*M. Lippa*, for the Defendants – Michael Oliphant and Lauren Hollett
– and –	)	
DRI-LEC BUILDING SERVICES INC.	)	*Sarah Jones*, for the Third Party
Third Party	)	
– and –	)	
STALTARI MECHANICAL INC.	)	*David Elmaleh*, for the Fourth Party
Fourth Party	)	
	)	**HEARD:** July 21, 2025

REASONS FOR JUDGEMENT

PAPAGEORGIOU

Overview

[1] In this proceeding the plaintiff claimed damages from her insurers, Unifund Assurance Company and Johnson Inc. (together "Unifund"), and her neighbors Ms. Hollett and Mr. Oliphant. She alleged that renovations her neighbours did resulted in flooding at her property at 108 Morse

Street. There was also a third-party claim against Dri-Lec Building Service and then a fourth-party claim.

[2] The defendants and the third party move to enforce a settlement.

Background

[3] The plaintiff was self-represented from time to time in this proceeding. On July 19, 2021, she served a Notice of Intent to Act in Person.

[4] The trial was scheduled to proceed on November 14, 2024.

[5] In an August 27, 2024 endorsement, Glustein J. noted that the plaintiff had not complied with the timetable for the delivery of her expert report. She proposed in her pre-trial conference memo that she would reveal the names of the expert witnesses and legal counsel two weeks before trial. Justice Glustein advised that no reports could be filed given the breach of the earlier order. As well, the plaintiff had not yet delivered a sworn affidavit of documents and he ordered her to do so together with any and all evidence she intended to rely upon as well as her answers to undertaking by October 4, 2024.

[6] Before me the plaintiff explained that she had not received all of the defendants' and third-party pleadings and productions. At the August 2024 pre-trial Justice Glustein ordered that the defendants prepare a hard copy of their affidavit of documents and also place them on a USB stick. The plaintiff was to pick them up. The defendants, Mr. Oliphant and Ms. Hollett, were also to provide a list of the names and contact information for the engineer, architect and subcontractors who worked at their home.

[7] All of the dates were peremptory on the plaintiff.

[8] On November 5, 2024, the plaintiff wrote counsel for Unifund and invited settlement discussions:

> If you are interested in considering a settlement, I can have Mr. Lewis, my assistant initially speak to you on a brief phone call. …If we come to terms and an agreement is reached, **I can then have my lawyer draw up the paperwork.** [Emphasis added]

[9] An exit pre-trial conference was held on November 12, 2024 with Justice Glustein.

[10] Mr. Eli Karp, a lawyer, attended with the plaintiff and engaged in settlement negotiation including making offers to settle.

[11] Mr. Karp ultimately accepted the defendants' and third party's final offers to settle whereby the defendant Unifund would pay $195,000 to the plaintiff, Mr. Oliphant and Ms. Hollett would pay $12,000 and the third party would pay $12,000, all in exchange for an executed full and final release.

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[12] On November 12, 2024, counsel for the defendant Unifund sent the following email, which was copied to the plaintiff, the other parties as well as Justice Glustein:

> Confirming we're settled at $195,000 all-inclusive vis a vis Donna Lee Smith and the defendants Johnson Inc., and Unifund Assurance Company, in exchange for an executed full and final release, which is to be agreed upon by counsel acting reasonably.

[13] On the same day, Mr. Karp replied, "I confirm on behalf of Ms. Smith, plaintiff."

[14] Also on November 12, 2024, counsel for Mr. Oliphant and Ms. Hollett and the third party also confirmed as follows:

> This confirms as per today's Pre-Trial with Justice Glustein that the matter has resolved between the Plaintiff, Ms. Smith, and Defendants, Michael Oliphant and Lauren Hollett, as well as the Third and Fourth Parties for an all-inclusive amount of $24,000.00 to be paid in 30 days. The settlement amount will be allocated as follows: $12,000.00 will be paid by the Defendants, Michael Oliphant and Lauren Hollett. The remaining $12,000.00 will be paid by the Third Party, Dri-Lec Building Services. The Fourth Party, Stalteri Mechanical Inc ., has agreed to a dismissal of the Fourth Party claim without costs. All crossclaims in the action and the Third- and Fourth-Party Claims are dismissed without costs.
>
> Full and final releases will follow to be executed and returned. Electronic signatures are acceptable.
>
> Settlement funds to be paid as directed by Eli Karp. The Dismissal Order will be taken out by Justice Glustein.
>
> This constitutes Minutes of Settlement and is binding on the parties.

[15] Mr. Karp replied on the same day, "I confirm on behalf of Ms. Smith, plaintiff."

[16] Justice Glustein's endorsement dated November 12, 2024 stated as follows:

> At the pre-trial conference today, the parties reached a settlement. Order to go endorsing the settlement as set out in the attached emails. I will remain seized of any issues from the settlement.

[17] Justice Glustein attached the emails that set out the settlement to his endorsement which shows it was sent to the plaintiff's email address.

[18] Because of the settlement, the trial dates were vacated.

[19] From November 12, 2024 to November 19, 2024 counsel for the defendants and the third party corresponded with Mr. Karp to provide the full and final releases and to make minor revisions to the wording.

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[20] On November 20, 2024, following updated releases sent to Mr. Karp, the plaintiff advised the defendants directly that she disputed the “wording” of the settlement releases. She did not provide particulars of why. She said that she could draft them and if the parties did not agree, then they could get a new date for trial. She did not copy Mr. Karp on this email.

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[21] Counsel for Unifund responded and invited the plaintiff to send over any proposed changes.

[22] On November 21, 2023, the plaintiff advised “Yes can do that thank you.” However, she never sent any proposed amended wording.

[23] On November 25, 2024, the plaintiff requested a case conference to arrange a new trial date. She stated:

> I would like to book a case conference because the parties could not come to a settlement.
>
> I would like to rebook a new trial date…

[24] At the motion before me, the plaintiff appeared in person and filed a five-page affidavit as well as a factum. She read from a typed submission which she elaborated upon during her submission.

[25] She alleged that:

- There was no settlement because no written agreement was ever provided to her for her review and execution. She alleges that r. 49.09 requires a signed written agreement.
- Mr. Karp was only there as an observing lawyer and was not authorized to accept any settlement without written terms and her explicit approval.
- The material terms were not disclosed or understood and she was not given full disclosure of the legal consequences of the settlement.
- The release contained overbroad language that could waive unknown future claims.
- The settlement was obtained under duress.
- The defendants acted in bad faith and made misrepresentations.
- The settlement amount is grossly inadequate and does not account for lost rental, repair costs and punitive damages for bad faith litigation conduct.

[26] The plaintiff is an intelligent, well-spoken individual who clearly understood the test that the defendants needed to meet. Although self-represented, she was a relatively sophisticated litigant who prosecuted this case for many years on her own. This was her preference. She explained that she only uses lawyers as and when she needs them. As will be seen, she represented

herself before Koehnen J. when the defendants brought a motion to dismiss two weeks before trial and succeeded in obtaining an order dismissing the motion.

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Decision

[27] For the reasons that follow I grant an order enforcing the settlement.

Issues

- Issue 1: Did the parties enter into a binding settlement agreement?
  - Is a signed written agreement required for enforcement?
  - Did the settlement contain all essential terms?
  - Was finalization of the Releases required for there to be an enforceable settlement? Was their language overbroad?
  - Did Mr. Karp have actual or ostensible authority?
- Issue 2: Should the court exercise its discretion to not enforce the settlement?
  - Has the plaintiff shown that the settlement was reached under duress and pressure?
  - Was the settlement unreasonable?
  - Was there misrepresentation or bad faith?
  - Has the plaintiff demonstrated prejudice or any other reason why enforcement of the settlement would be unjust?

Analysis

The Legal Framework

[28] Rule 49.09 of the *Rules of Civil Procedure,* R.R.O. O-Reg 194*,* provides:

> 49.09 Where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may,
>
> (a) make a motion to a judge for judgment in the terms of the accepted offer, and the judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

[29] Enforcement of a settlement agreement is a two-step process: *Sentry Metrics v. Robert Ernewein et al*, 2013 ONSC 959 at para 12 (“*Sentry*”).

[30] First the court considers whether the parties entered into a binding settlement agreement using an approach similar to r. 20 where the court considers whether there are material issues of fact or genuine issues of credibility. Second, the court considers whether the agreement should be enforced taking into account broader evidence: *Sentry* at para 12. Even if the court concludes that the parties entered into a binding settlement, the court retains a discretion to refuse to enforce a settlement.

Issue 1: Did the parties enter into a binding settlement agreement?

[31] A settlement agreement is like any other contract. The parties’ expression of agreement must demonstrate a mutual intention to create a legally binding relationship. If there is agreement on all essential terms, the settlement is binding. The test as to whether the parties have reached agreement on all essential terms is objective: *Olivieri v. Sherman,* 2007 ONCA 491, 284 D.L.R. (4th) 516, at paras. 41-44 (“*Olivieri*”).

[32] Further, the policy of the court is to encourage settlement of litigation: *Catanzaro v. Kellogg’s Canada Inc*., 2015 ONCA 779 at para 9. Therefore, the courts should refrain from an overly restrictive consideration of the essential terms of the agreement: *Olivieri*, at para 50.

Is a signed written agreement required for enforcement?

[33] The plaintiff provided no caselaw to support her position that a signed written agreement is required for enforcement of a settlement.

[34] The plaintiff agreed when cross examined that at the end of the exit pre-trial the parties had entered into a verbal agreement. Then, the defendants made written offers in emails that were accepted by Mr. Karp also in emails.

[35] The emails that set out the settlement did not require any formal written agreement and so I reject this argument on this basis.

[36] In *Ferron v Avotus Corp*, [2005] O.J. No. 3511 at para 27 (“*Ferron*”), the Court was satisfied that a settlement had been reached after reviewing emails, transcriptions of voicemail, and affidavit evidence. The Court found that settlement was reached verbally and subsequently confirmed in writing. This is exactly what happened here.

Did the settlement contain all essential terms?

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[37] There are clear unambiguous emails dated November 12, 2024 that outline the terms of the settlement which involved payment to the plaintiff of specified amounts and the exchange of releases.

[38] The plaintiff did not articulate what essential terms, or any terms, were missing, apart from her complaint about the Releases which she felt were overbroad.

Was finalization of the Releases required for there to be an enforceable settlement? Was the language or the Releases overbroad?

[39] It is well established that a settlement implies the promise to furnish a release unless there is an agreement to the contrary: *Ferron* at para 26.

[40] The plaintiff provided no law to support her argument that finalization of the Releases was required for a binding settlement absent some specific agreement in that regard. It is clear from the record that the settlements were not conditional upon or subject to releases or agreement upon the wording.

[41] The emails that set out the settlement did not prescribe the form of the Releases. The settlement with Unifund specified that the wording of the Release would be "agreed upon by counsel acting reasonably." The settlement with the other parties indicated that the email itself constituted the Minutes of Settlement, was binding and that full and final releases would follow to be executed.

[42] As such, the terms of the Releases are to be implied on an objective basis consistent with the settlement made by the parties. The court will imply that the parties agreed to sign a standard form release consistent with the settlement and that the court should only imply such terms as are standard or usual as it is well established that a party is not required to sign a release that is unusual.

[43] Here, the parties bargained for "full and final releases" in the emails whereby the settlement was reached. They agreed to settle this proceeding which means the whole action. Therefore, all matters between the parties arising from the pleaded claims were to be released.

[44] The plaintiff did not articulate anything particular that was wrong or overbroad about the Releases apart from her belief that they would cover unknown future claims.

[45] Although the plaintiff did not refer me to anything in the Releases in that regard, I have reviewed the Releases in question that she has set out in her materials and in my view, she has misapprehended what the Releases accomplish.

[46] The Release proposed by Mr. Oliphant, Ms. Hollett, and the third-party reference "not only all now known losses and damages but any future losses and damages not now known or anticipated but which may later develop or be discovered, including the consequences thereof." However, the Release is specifically limited to the matters set out in the pleadings because it references the court file number and the matters set out therein.

[47] The Release provided by Unifund similarly releases “all claims, whether known or unknown, made or which reasonably ought to have been made in legal proceedings commenced by the Releasor against the Releasee, in the Action.” It also references the court file number and claims related thereto.

[48] There is nothing overbroad or unreasonable about the Releases provided. Had the matter proceeded to trial and had there been an award, it would have been an abuse of process for the plaintiff to raise any additional claims in the future related to any losses caused by the matters pleaded, that were not addressed at trial. The Releases do no more than the outcome at trial would have been in that regard.

[49] The Releases provided were consistent on an objective basis with the settlement made by the parties. They were standard and all they did was release all claims related to the proceeding in question.

[50] In any event, the settlement was not contingent on the execution of the Releases as noted above.

[51] If there were disputes about the wording of the Releases, the plaintiff could have brought this issue to Justice Glustein who remained seized of the settlement.

[52] As well, although she complained about the Releases at the relevant time and said she would provide a revised Release she never did.

[53] Therefore, I reject this argument.

Did Mr. Karp have actual or ostensible authority?

[54] Where a party holds out a solicitor as their agent and gives the agent general authority to conduct business on her behalf, she is bound by the acts done by the agent incidental to the ordinary course of such business, or that falls within the apparent scope of authority: *Scherer v. Paletta*, 1966 CanLII 286 (ON CA). Where the lawyer has ostensible authority, any dispute between the client and the lawyer regarding the lawyer’s authority should be resolved between them: *Eouanzoui v. Lycee Francaise de Toronto*, 2014 ONSC 7508, at para 11.

[55] In *Chytros v Standard Life Assurance Co*., [2006] 83 O.R. (3d) 237 at paras 3, 5, 7, 8 and 10 (“*Chytros*”), the parties engaged in settlement discussions on the morning before trial. Both counsel subsequently appeared before the trial judge and advised the matter had settled. When counsel for the defendant prepared a release, counsel for the plaintiff advised that his client was not prepared to settle for the agreed upon number. The plaintiff filed an affidavit in response to the defendant's motion and deposed that she did not give her lawyer authority to settle her file and if he [her lawyer] thought he had authority, he was mistaken. The Court found that when a party alleges it has not been fully advised of the proceedings by its counsel and that counsel did not have authority to settle, such is an issue only between that party and its counsel.

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[56] The Court in *Chytros* further held that if the settlement was contingent upon the plaintiff providing instructions, that limitation on the ostensible authority of counsel should have been made clear to the other party: para 11.

[57] Further in *Eouanzani v Lycée Française de Toronto*, at para 12, the court confirmed the finding in *Scherer* above that a settlement made without instructions can be undone only if the solicitors for the opposing party had knowledge that the settlement was made without authority.

[58] While the plaintiff baldly alleges that Mr. Karp did not have authority to enter into any settlement I am satisfied that Mr. Karp not only had ostensible authority but that he also had actual authority based upon the following:

- As noted above, it was the plaintiff who raised the issue of wanting further settlement talks in her email of November 4, 2024. At the time she did this, she was approaching trial without the ability to call an expert because she had not complied with the timetable. Her situation was thus precarious. She specifically referenced "her lawyer" who would be able to draw up the settlement documentation in that email.

- Mr. Cumming, counsel for Unifund gave evidence that the defendants were informed that Mr. Karp had been retained as agent for the plaintiff.

- Although she denied Mr. Karp was acting as her agent, the plaintiff admitted on cross examination that she agreed to pay Mr. Karp for his attendance.

- When asked whether she advised any of the parties that Mr. Karp's authority was limited in any way, or that he was acting outside his authority she indicated that she did not. She also admitted that at no point during the exit pre-trial did she indicate or represent that Mr. Karp did not have her authority to consent. This is consistent with Mr. Cumming's affidavit evidence as well.

- When she was cross examined, although she began suggesting that Mr. Karp announced at the beginning of the pretrial that he was only an observer, she ultimately said she did not recall the words he spoke. Then, before me she said that she definitively announced that he was attending as an observer only, which is inconsistent with what she said at an earlier time when cross examined. She did not correct her answer from her cross examination or explain why she could remember it at the time of the hearing when she did not recall it when she was cross examined.

- Although she denied he was acting as her agent, she also admitted that Mr. Karp engaged in settlement negotiations on her behalf, that he communicated with the parties and Justice Glustein about the settlement of the lawsuit and made offers on her behalf. This contradicts her evidence that he was there as an observer only. Although she argued that she only ever hires lawyers to assist her on a limited scope basis, there would be no way for the other parties to know that this is her practice unless she advised them.

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- The plaintiff would have seen that Mr. Karp was engaging in these activities and could have stopped him if he was exceeding his authority or advised this was the case.

- When asked during oral argument whether she ever advised Mr. Karp to stop communicating on her behalf, the plaintiff said she did not recall.

- She admitted that at the end of the pretrial when the parties were in the same virtual room, she did not advise Justice Glustein at that point that Mr. Karp was acting outside his authority.

- She also admitted that a verbal settlement agreement was reached between her and the defendants and third party at the end of the exit pre-trial. This is also inconsistent with her assertion that Mr. Karp was acting as an observer only.

- As noted above, Mr. Karp accepted the defendant's and the third party's final offers to settle which were set out in an email. Although the plaintiff was evasive during the cross examination about whether she was copied with these emails and denied having been copied with any emails before me during her submissions, she was clearly copied with at least the email in respect of the settlement that Mr. Karp accepted from Mr. Oliphant, Ms. Hollett and the third party. She did not reply saying that he did not have authority to enter into that settlement. As well, all of the November 12, 2024 emails setting out the settlement were attached to Justice Glustein's endorsement which as noted shows that it was sent directly to the plaintiff as well as Mr. Karp. The plaintiff did not send Justice Glustein any communication advising that there was no settlement, which she could have done.

- When asked questions about the emails sent by Mr. Karp on November 12, 2024, and whether he acted without authority from her she said, "I'm not able to answer that." She was evasive and repeated "Let the proper judge decide" when asked questions about whether she jumped in to reply that Mr. Karp had no authority to send the November 12, 2024 email that she was copied on. She also said that she was not able to answer that because "That's my answer. The proper judge will decide."

- As noted, the defendants and the third party corresponded with Mr. Karp from November 12, 2024 to November 19, 2024 regarding the settlement documentation finalization.

- At no time did Mr. Karp indicate that he did not have authority to act on the plaintiff's behalf.

- One would have thought that if Mr. Karp knew he did not have authority he would not have done any of these things.

- As noted, the plaintiff's first communication to the defendants and the third party raising any issues was on November 20, 2024 when she disputed the wording of the settlement

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release, not that there was a settlement. She did not challenge the quantum of the settlement in that communication. One would have thought that if the problem was the quantum, or that Mr. Karp did not have authority, or that there was no settlement, she would have said that expressly in her first direct communication on the matter.

- The plaintiff did not obtain any evidence from Mr. Karp in respect of her assertions that he acted outside the scope of his authority.

- The plaintiff has not brought any proceedings against Mr. Karp or made any complaint against him to the Law Society of Ontario. She was evasive about why that was and ultimately repeated "I'm not able to answer that."

- Her failure to obtain any evidence from Mr. Karp is fatal to this claim. When I asked her why she did not obtain any evidence from Mr. Karp, she did not answer the question. She said, "He was hired that—he was asked that day just to do what I already mentioned he was to do, and that was it."

- Her admission that an oral agreement was reached on November 12, 2024 is an admission that Mr. Karp had actual authority. Otherwise, how could he have entered into an oral agreement on her behalf?

- The plaintiff's November 4, 2024 email referencing "her lawyer", who would prepare settlement documentation, her attendance at the exit pre-trial with Mr. Karp, permitting him to make communications and offers on her behalf without advising of any limitations on his authority together constitute an implicit, if not express, representation from her to the defendants, third party and Justice Glustein that he had authority.

- Additionally, she would have known that the trial dates were vacated which further supports her understanding that a settlement had been entered into. Otherwise, why were the trial dates vacated? When I asked her what she thought was happening when the trial dates were vacated, she did not have an answer.

[59] Therefore, subject to the arguments below, I am satisfied on an objective basis that there was a mutual intention to create legal relations, that the parties entered into a settlement agreement with all essential terms agreed upon and that Mr. Karp had actual or at least ostensible authority. I conclude that the plaintiff has not raised any genuine issues that require a trial.

Issue 2: Should the court exercise its discretion to not enforce the settlement?

[60] As noted, the court has the discretion to refuse to enforce a settlement that it considers unreasonable, that would result in injustice, or where there is good reason not to enforce it. The court must take a broad approach and consider all of the evidence: *Sentry* at para 16.

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[61] The discretion to refuse to enforce a settlement should rarely be exercised: *Catanzaro* at para 9. The principle of finality requires that settlements entered into with the assistance of counsel should be upheld except in the clearest of cases: *Sentry* at para 19.

Has the plaintiff shown that the settlement agreement was reached under duress and pressure?

[62] The plaintiff alleges that the settlement was reached under duress and pressure by Justice Glustein.

[63] I reject these submission for the following reasons:

- The plaintiff admitted that she never advised Justice Glustein that she felt rushed or pressured.

- The plaintiff did not immediately respond on November 12, 2024 after Justice Glustein released an endorsement which attached emails documenting the settlement and which was copied to her.

- The plaintiff did not set out any concerns about duress and pressure in her November 20, 2024 email; the only issue she raised was the wording of the Releases.

- The plaintiff did not set these allegations out in her email to the court on November 25, 2024 seeking to book a case conference to schedule a trial. All she said is that "the parties could not come to a settlement."

- One would have thought that if the kinds of extreme allegations that she made before me were true, they would have been made immediately. Instead, all the contemporaneous communications reference only the wording of the Releases and the fact that the parties did not arrive at a settlement, which is frankly inconsistent with her admission that an oral agreement was arrived at on November 12, 2024. On the record before me, the first time allegations of this nature were made was in her materials filed in opposition to this motion in her affidavit dated March 30, 2025.

- Additionally, since she admitted during her cross examination that Mr. Karp was conducting negotiations on her behalf, it is unclear how anyone could have successfully pressured her since she had counsel there who would have had the responsibility to protect her interests. One would have thought that had there been such pressure or the variety of other extreme allegations that she makes, Mr. Karp would not have entered into the settlement on her behalf in such circumstances.

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- Although the recording was not before the court, she could have obtained corroborating evidence from Mr. Karp which she failed to do.
- Again, her failure to obtain any evidence from Mr. Karp is fatal to any such claims.
- In all the circumstances, her extreme allegations are not believable and I reject them.

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[64] In *Cantanzaro* the plaintiff alleged that she agreed to a settlement in "haste" and was under "stress" and the court concluded that these were insufficient to result in the court refusing to enforce the settlement.

Was the settlement unreasonable?

[65] The plaintiff argues that the overall settlement in the amount of $219,000 was grossly inadequate. She argues that the settlement should have been around $850,000. In this regard, she alleges that the defendants took advantage of her as a self-represented litigant without acknowledging that she had counsel with her at the exit pre-trial who conducted the negotiations.

[66] She did not provide sufficient evidence to support this claim.

[67] She did provide an unsworn document called "Plaintiff Property Damage Cost" which she uploaded to Caselines.

[68] This document provides her summary of her quantifiable damages:

Renovation costs:	$600,000
COVID-Delay Surcharges:	$80,000
Extended Construction Interest at 12 % compounded:	$403,200
Permit & Professional Fees:	$45,000
Total:	$1,128,200

[69] She calculated the insurer's share to be 45% or $507,690.

[70] To this she added loss of rental income in the amount of $217,251 and litigation costs of $125,000 for a total of $849,941.

[71] The only attachments to substantiate her summary (and unsworn at that) were:

- A letter from Unifund indicating that it had estimated the repair to be $25,846 plus taxes for a total of $34,464.
- A statement from Matador Construction showing an invoiced amount of $330,508.
- An email from someone at Matador Construction that said that the City of Toronto had temporarily halted non-essential services.
- A City of Toronto building deficiency report.
- A City of Toronto Permit Closure Notice.
- An invoice in respect of the plaintiff's home insurance policy that shows that the annual premium is $1,704.
- There was an invoice that was stated to be provided prior to the motion but nothing additional was provided to me.

[72] The reasonableness of the settlement must be considered within the context of the fact that the defendants and third party were defending the claim and had asserted defences. Unifund's valuation was only for approximately $25,000 and during her submissions she admitted that Unifund had paid her this amount. Therefore, the amount paid plus the settlement totaled $244,000. The defendants and third party had expert reports and she did not. She had not complied with the court ordered timetable and was not permitted to file any expert report at trial or call an expert and in such circumstances, her chances at trial were somewhat precarious.

[73] Within this context and without any evidence linking the costs incurred by the plaintiff set out in her brief to the issues pleaded, which only total $350,000 at the maximum, I do not accept that the settlement was unreasonable or that any of this constitutes a basis to not enforce the settlement.

Was the settlement procured by fraud, bad faith or misrepresentation?

[74] The plaintiff provided no credible evidence of misrepresentation. Indeed, although she says that defence counsel made misrepresentations to Justice Glustein she does not even say what they were.

[75] Again, her failure to obtain evidence from Mr. Karp on this issue is fatal.

[76] The plaintiff's bad faith and fraud allegations largely relate to litigation conduct throughout the litigation that do not relate to the settlement:

- Withholding the pleadings and relevant documents from her for years. During the hearing she had difficulty articulating what she meant by this or providing proof for this. There was an order for the defendants to provide her with documents in Justice Glustein's August

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endorsement. There is no evidence before me that this was not done. There are no contemporaneous emails complaining this was not done.

- Treating her with dismissing and condescending behaviour. There is no evidence of this other than her bald allegations. If this relates to the exit pre-trial conference, again, her failure to obtain corroborating evidence from Mr. Karp is fatal.

- Making misleading statements to the court including false statements to Justice McGraw and Justice Glustein that improperly influenced proceedings. Again, she could not articulate with proof what she meant by this. She admits that she issued a subpoena for Justice McGraw and was threatened by the Attorney General to withdraw the subpoena. Again, if this relates to misleading statements made to Justice Glustein during the exit pre-trial, she did not even articulate what the misleading statement was.

- Providing her with virus-infected files to sabotage her ability to prepare for trial. She provided no proof of this, not even a contemporaneous communication that shows that she alleged that this happened at the relevant time. It is unclear how this would relate to the settlement in any event.

- Failing to engage in good faith settlement discussions. Parties are not required to engage in negotiations apart from required mediation. The allegation that any discussions were not in good faith is bald and not proven. The quantum of the settlement, given the plaintiff's failure to have any expert report at the time, supports the conclusion that the settlement discussions were in good faith. These were not low-ball offers given all of the evidence before me.

- Bringing motions against her including a motion to dismiss two weeks before the trial. This does not demonstrate bad faith. Parties are allowed to bring motions and represent their own clients to the best of their ability. In any event, it is unclear how this relates to the settlement agreement which occurred two weeks later.

- Demonstrating a pattern of incompetent litigation conduct including losing motions, appearing at motions without supporting documentation, and refusing to pay court-ordered costs for unsuccessful motions. There were insufficient particulars of this. I note that when I asked her about when these costs orders in her favour were made, she did not have any proof and it appeared to me that there were not actual court orders but only expectations that there would or should have been. As well, the alleged incompetence of the defendants' lawyers does not show bad faith and is not actionable by her. Furthermore, it is unclear how any of this impacts the settlement.

- Failing to permit her to cross examine certain individuals. This is not accurate. She sought to cross examine Ms. Hollett and Mr. Oliphant but they did not swear affidavits. They were examined for discovery years ago. The plaintiff could not articulate how their evidence would be relevant to this motion as they were not even present at the exit pre-trial where

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the settlement was reached. The only affidavit was from Mr. Cumming and there was no request to cross examine him.

Has the plaintiff demonstrated prejudice or any other reason why enforcement of the settlement would be unjust?

[77] The plaintiff has not demonstrated that she will be prejudiced by the settlement other than having to abide by an agreement that she made. If there are issues as to Mr. Karp's authority, she is able to pursue these.

[78] On the other hand, there is a real risk of prejudice to the defendants and the third party because this matter relates to events that occurred eight years ago. The likelihood is that it would take a number of years to re-schedule this trial and this delay constitutes real prejudice. As set out in Mr. Cumming's affidavit, memories of witnesses have faded, and professional witnesses including insurance adjusters have since been released based upon the defendants' reliance on the settlement agreements.

[79] The plaintiff has also not set out any other basis that would make enforcement of this settlement unjust.

Conclusion

[80] The plaintiff changed her mind and did not want to complete a settlement that she entered into knowingly or that she gave Mr. Karp authority to enter into or that he had ostensible authority to enter into. She has not raised any persuasive reasons why the court should exercise its discretion to not enforce the settlement.

[81] Therefore, I make an order enforcing the settlement agreement dated November 12, 2024.

[82] The parties may make cost submissions as follows: the defendants within 7 days and the plaintiff within a further 7 days thereafter.

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Papageorgiou J.

Released: July 28, 2025

2025 ONSC 4402 (CanLII)

CITATION: Smith v. Oliphant, 2025 ONSC 4402
COURT FILE NO.: CV-18-00611121
DATE: 20250728

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DONNA LEE SMITH

Plaintiff

– and –

MICHAEL OLIPHANT, LAUREN HOLLETT, UNIFUND ASSURANCE COMPANY and JOHNSON INC.

Defendant

– and –

DRI-LEC BUILDING SERVICES INC.

Third Party

– and –

STALTARI MECHANICAL INC.

Fourth Party

REASONS FOR JUDGEMENT

PAPAGEORGIOU J.

Released: July 28, 2025

2025 ONSC 4402 (CanLII)