CITATION: Coreslab Structures v. Vitmont Holdings, [2025] ONSC 4544
NEWMARKET COURT FILE NO.: CV-23-00004661
DATE: 20250805

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
CORESLAB STRUCTURES (ONT) INC.	)	
	)	Derek A. Schmuck, for the Plaintiff/
Plaintiff/Defendant by Counterclaim	)	Defendant by Counterclaim
	)	
– and –	)	
	)	
VITMONT HOLDINGS (OAK RIDGES) INC.	)	
	)	Mark A. De Sanctis, for the Defendant/
Defendant/Plaintiff by Counterclaim	)	Plaintiff by Counterclaim
	)	
	)	
	)	**HEARD:** May 30, 2025

REASONS FOR DECISION

DE SA J.:

OVERVIEW

[1] This is a motion by the Plaintiff for Judgment pursuant to written Minutes of Settlement.

[2] The Defendant disputes the interest claimed by the Plaintiff on its outstanding invoices. The Defendant asserts, in the alternative, that if interest is owing, the parties were not ad idem on the essential terms of the Minutes of Settlement.

[3] I have considered the materials filed and submissions of counsel.

[4] My decision, and the reasons for my decision, are outlined below.

SUMMARY OF FACTS

[5] The Plaintiff commenced a lien action claiming $474,872.93 (including HST), plus interest and costs.

[6] The Defendant vacated the Plaintiff's lien by posting security equal to the usual 125% of the amount claimed.

[7] The parties executed Minutes of Settlement in January 25, 2024 which provided, inter alia:

a. Coreslab would return to perform further work and rectify claimed deficiencies;

b. Upon completion of this work, Coreslab would deliver new invoices to the Defendant;

c. Once a Certificate of Substantial Performance for the project was published, the Defendant would pay the Plaintiff what was due and owing to it on the earlier invoices referred to in the Statement of Claim and on the new invoices regarding work performed when Coreslab returned to site;

d. Prior to the payment being made, Coreslab was required to execute a consent to an Order discharging the Lien, delivering up the Security for cancellation, dismissing the Action and the Counterclaim, on consent, on a without costs basis, in a form prepared by counsel for Vitmont, the consent to be held in escrow until the payment was effected;

e. If the terms of the Minutes of Settlement were honoured, Coreslab was to dismiss its action without costs.

[8] When the Minutes of Settlement were executed, the parties also executed a Full and Final Mutual Release. The Full and Final Mutual Release indicated the following language:

> IN CONSIDERATION of the payment and terms set out in the Minutes of Settlement ("Minutes of Settlement") executed by the Plaintiff/Defendant by Counterclaim, Coreslab Structures (Ont) Inc. ("Coreslab") on January 25, 2024, and the Defendant/Plaintiff by Counterclaim, Vitmont Holdings (Oak Ridges) Inc. ("Vitmont") on January 26, 2024 (collectively referred to as the "Parties"), which is inclusive of all claims for damages, interest and costs by the Parties related to the action bearing Court File Number: CV-23- 00004661-0000, and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged…

[9] Coreslab performed the new work and rectified all deficiencies and submitted its invoices.

[10] The Certificate of Substantial Performance for the subject project (not including the extra added) was July 9, 2024.

[11] On July 29, 2024, counsel for Coreslab sent an email to counsel for Vitmont advising that the Certificate of Substantial Performance (CSP) had been published, and asked counsel to:

a. Pay the balance due;

b. Send a draft Consent and Order dismissing the action, etc.; and

c. Send a draft Full and Final Mutual Release.

[12] As per the terms of the Minutes, payment was due 62 days after the publishing of the CSP, delivery of all invoices, and all invoices being certified.

[13] On September 26, 2024, Coreslab reminded Vitmont that the amount owing was $593,522.93 and was due on September 30, 2024.

[14] On October 11, 2024, Counsel for Coreslab again sent a reminder that the amount of $593,522.93 was still owing and was required to be paid forthwith.

[15] On November 11, 2024, at 12:19 pm, counsel for Coreslab again confirmed that the amount outstanding to be paid was $593,522.93.

[16] Given Vitmont's ongoing failure to pay the amounts owing, on November 11, 2024, at 7:06 pm, Coreslab changed its position and took the position that "the balance owing now is $716,036.58". The interest calculations prepared by Coreslab now sought interest from 2023 on the outstanding invoices.

[17] Counsel for Vitmont advised counsel for Coreslab that:

a. there were two different amounts being sought by Coreslab;

b. the Minutes of Settlement do not reflect that there would be interest paid on any invoices; and, inter alia,

c. the Minutes of Settlement contain an acknowledgement that Coreslab's work required rectification.

[18] On December 12, 2024, counsel for Vitmont sought confirmation from Coreslab regarding the amount outstanding because two settlement figures were proposed.

[19] In response, counsel for Coreslab confirmed it would accept $593,522.93 provided that it was to be paid by noon within two (2) business days (*i.e.*, December 16, 2024).

[20] On December 16, 2024, while Vitmont disagreed with Coreslab's position as to the exact amount owing, counsel for Vitmont agreed to settle for that amount and advised that the settlement payment would be made following the holidays on January 6, 2025 when the requisite personnel would be available to facilitate payment.

[21] In response, via correspondence dated December 16, 2024, Coreslab took the position that Vitmont "will have to add per diem interest".

[22] In reply, on December 16, 2024, counsel for Vitmont advised of the following:

> We've been through this already. There is no provision set out in the Minutes of Settlement for interest and your client is not entitled to same.

> There will be no per diem interest added as your clients have subsequently requested today after your client confirmed the amount it was seeking.

[23] On December 16, 2024, Coreslab served a motion record claiming $716,036.58 plus $153.67 in per diem interest after December 13, 2024. (which identified interest owing to be $122,513.65).

[24] In Mr. Arbury's Reply Affidavit on the motion, Coreslab has since acknowledged that the actual interest owing would be $74,824.05 rather than the amount sought initially in the motion materials. Accordingly, the amount sought by Coreslab is $668,346.98 plus per diem interest at $153.67.

ISSUES TO BE DETERMINED

a. Should the Minutes of Settlement be enforced?

b. Should the Plaintiff recover interest owing under the Contract?

ANALYSIS

[25] Rule 49.09 provides that where a party to an accepted Offer to Settle fails to comply with the terms of the Offer, the other party may make a motion to a Judge for judgment in the terms of the accepted Offer. Alternatively, the Court may order the proceeding to continue as if there had been no accepted offer to settle.

[26] In *B.O.T. International v. CS Capital et al.*, 2013 ONSC 5329 ("BOT"), Justice Darla Wilson (as she then was) summarized the case law related to motions pursuant to Rule 49.09 as follows:

> [19] The law is clear that in considering a motion pursuant to Rule 49.09, the court must first determine whether there was an agreement between the parties on the material terms. If this question is answered in the affirmative, then the court will consider whether the settlement ought to be enforced: Milios v. Zagas (1998), 1998 CanLII 7119 (ON CA), 38 O.R. (3d) 218 (C.A.).
>
> …
>
> [24] On motions brought pursuant to Rule 49.09, the threshold is high on the moving party; it is similar to the burden that must be proven on a motion for summary judgment. I am guided by the comments of the Divisional Court in *Capital Gains Income Streams Corp. v. Merrill Lynch Canada Inc*. 2007 CanLII 39604 (ON SCDC), 2007 CarswellOnt 6003, (Divisional Court), which involved an appeal of a dismissal of a motion pursuant to Rule 49.09. In that case, Carnwath J stated, "The first step is to consider whether an agreement to settle was reached. In doing so, the proper approach is to treat the motion like a rule 20 motion for summary judgment.

> If there are material issues of fact or genuine issues of credibility in dispute regarding whether (i) the parties intended to create a legally-binding relation or (ii) there was an agreement on all essential terms, a court must refuse to grant judgment. The second step, once an agreement has been found to exist, is to consider whether, on all the evidence, the agreement should be enforced. In this second step, a rule 20 approach is not applied, but rather a broader approach, taking into account evidence not relevant to a rule 20 inquiry..."
>
> (emphasis added, not in original)
>
> *B.O.T. International v. CS Capital et al.*, 2013 ONSC 5329 at paras. 19 and 24.

[27] Accordingly, the two-part test to be applied is to determine whether a settlement was reached and if so, to determine whether the agreement should be enforced.

[28] If a settlement was reached, the agreement should be enforced unless the judge is satisfied that, in all the circumstances, enforcement would create a real risk of a clear injustice: *Brzozowski v. O'Leary*, 2004 CanLII 4805 (ON SC) at para. 44.

[29] The parties here agree that Coreslab is owed $593,522.93 for work performed. The Defendant disputes the Plaintiff's claim for interest on that amount.

[30] Vitmont's position is that Coreslab has failed to comply with the terms of settlement by unilaterally seeking to increase the quantum of the settlement by adding interest.

[31] Vitmont's position is that this Court should confirm the quantum of the settlement, being the amount of $593,522.93, which would permit the parties to fulfill the settlement and enter the Consent Dismissal Order.

[32] In the alternative, *B.O.T International*, supra, confirms that a Court "must refuse to grant judgment" if there are material issues regarding whether there was agreement on all essential terms, and therefore Vitmont submits that the motion must be dismissed and the proceeding continue in accordance with Rule 49.09(b).

[33] I am satisfied that the parties had reached an agreement as set out in the terms of the executed Minutes of Settlement.

[34] As per the terms of the Minutes of Settlement, Coreslab rectified all deficiencies and submitted its invoices.

[35] The Certificate of Substantial Performance for the subject project (not including the extra added) was July 9, 2024.

[36] As per the terms of the Minutes, and confirmed in the correspondence outlined above, payment was due 62 days after the publishing of the CSP, delivery of all invoices, and all invoices being certified (September 30, 2024).

[37] On September 26, 2024, Coreslab reminded Vitmont that the amount owing was $593,522.93 and was due on September 30, 2024. It is only after Vitmont delayed payment that on November 11, 2024, at 7:06 pm, Coreslab changed its position and took the position that interest would be charged.

[38] I agree that Coreslab executed a Full and Final Mutual Release confirming that the payment and terms set out in the Minutes of Settlement is "inclusive of all claims for damage, interest and costs". However, I disagree that this meant that Vitmont could delay payment of the amounts owed indefinitely without accruing interest.

[39] The amounts owed by Vitmont under the Minutes were due on September 30, 2024. I will grant judgment for the outstanding amount of $593,522.93. I will also grant Coreslab interest on the outstanding balance at the contractual rate from September 30, 2024.

[40] I will receive costs submissions from the Plaintiff within three (3) weeks of the release of this decision. The Defendant will have two (2) weeks thereafter to provide responding costs submissions.

Justice C.F. de Sa

Released: August 5, 2025

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