

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** SUSAN BOLAN, Plaintiff

**AND:**

MICHAEL ALIVISATOS a.k.a. MICHAEL A. LEVIS operating as CAPITAL HOME SERVICES, RON GROULX, MATTHEW BEHAN, VICTOR SALAZAR and MARY RODRIQUES, Defendants

**BEFORE:** C. MacLeod RSJ

**COUNSEL:** Stéphane Émard-Chabot, for the Plaintiff

Joseph W.L. Griffiths, for the Defendants, Alivisatos, Groulx and Behan<sup>1</sup>

**HEARD:** August 11, 2025

**DECISION AND REASONS**

**Preliminary Matters**

[1] This matter came on for trial today pursuant to an order made by me on June 4, 2025. At the opening of trial, Mr. Griffiths appeared to advise he was without instructions and had been discharged as counsel. He further advised that he was instructed by his clients to advise the court that the defendants would not be appearing and had elected not to participate in the trial. I understand from Mr. Griffiths that he had advised his clients of the likely consequences.

[2] Mr. Griffiths discharged his duty to the court by appearing this morning but the failure of the defendants to appear or to participate is something else again. Given the procedural history of this matter and the prior indulgences granted to the defendants, the scheduling of this trial and the last minute decision to abandon their defence is tantamount to abuse of process.

[3] Rule 52.01 provides that where a matter is called for trial and the defendant fails to attend, the court may strike out any counterclaim and allow the plaintiff to prove the claim. The court may make such other order as appears just.

[4] As a consequence of the failure to appear, I made the following orders:

- a. An order removing Mr. Griffiths from the record and permitting him to withdraw.

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<sup>1</sup> Mr. Griffiths appeared at the opening of trial and then withdrew. The defendants did not attend.

- b. An order pursuant to Rule 52.01(a), (b) that the trial proceed in the absence of the defendants and permitting the plaintiff to prove her case.
- c. An order pursuant to Rule 52.01 (d) striking the Statement of Defence.

[5] Striking the defence is an available remedy and is amply justified in the present circumstances.<sup>2</sup> As I will discuss, the defendants have repeatedly breached the rules and then at the 11<sup>th</sup> hour on the eve of a summary judgment motion, they obtained orders adjourning the motion and scheduling a trial. Then, on the eve of that trial, they suddenly decided not to participate.

[6] Even without a defence, however, the plaintiff was still required to prove her case. The matter proceeded as an uncontested trial.

### **Nature of the Dispute**

[7] The litigation arises from a construction contract between the plaintiff and “Capital Home Services” who she hired to convert a car port on her property into an enclosed garage. The plaintiff paid \$62,000.00 but the structure that was constructed was built without a permit and was unfit for purpose. Ultimately it was demolished.

[8] This litigation was commenced on May 24, 2023. The plaintiff seeks a return of the money she paid the defendants, the cost of demolition, the cost of an engineer’s report, general damages for hardship and inconvenience and costs.

[9] Originally, when they defended the action, the defendants denied any responsibility for obtaining a building permit, denied there were defects in the structure and denied it was necessary to demolish it. They took the position that the plaintiff terminated the contract and acted as her own general contractor, denying the defendants the opportunity to remedy any construction defects.

### **Procedural History**

[10] When the litigation first started, the first three defendants were represented by counsel who accepted service on their behalf. It does not appear that the defendants, Salazar or Rodriques were ever served.

[11] A Statement of Defence was filed on August 30, 2023. When the defence was filed, the defendants had changed counsel and Roxie Graystone was shown as solicitor of record.

[12] While the defence denied most of the allegations in the Statement of Claim, there were no assertions in the defence that any of the named defendants are mere employees of any of the others or that they do not have a common interest. At all times, the three defendants, Alivisatos, Groulx and Behan have been represented by the same counsel or acted together as a group of defendants.

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<sup>2</sup> See *Arsalides v. Surovova*, 2025 ONSC 1225 at para. 7

[13] On June 14, 2024, the defendants failed to attend for examinations for discovery. On June 19, 2024, a case conference was scheduled but the defendants did not attend. Mr. Graystone advised the court that he no longer had instructions.

[14] A case conference was scheduled for August 28, 2024, and the defendants were ordered to attend. On June 24, 2024, the defendants filed a notice of intention to act in person signed by each of them. They did not attend the August 28 case conference.

[15] Another case conference was scheduled for September 12, 2024, and again none of the defendants attended. At the request of the plaintiff, Associate Justice Fortier made an order granting leave to the plaintiff to proceed by way of a summary judgment motion.

[16] The motion was returnable on January 29, 2025. It appeared it would be unopposed because none of the defendants had filed responding material but on the date in question, the defendant Mr. Behan appeared by videoconference. He requested additional time and advised the court the defendants were retaining Mr. Griffiths. On consent, the motion was adjourned on terms with a timetable for the filing of material. The motion was rescheduled for June 4, 2025.

[17] In obedience to the timetable, the defendants had filed a responding record consisting of a brief affidavit from Mr. Behan. Mr. Griffiths had also cross examined the plaintiff and the plaintiff's engineer witness on their affidavits. Mr. Behan was also cross examined. Factums were exchanged and the documents were uploaded to Case Center.

[18] Despite these preparations, when counsel appeared before the court on June 4, 2025, Mr. Griffiths requested a further adjournment. This was because in his view, changes in the position of the plaintiff made the motion more complex.

[19] On behalf of the defendants, Mr. Griffiths advised the court that he expected the summary judgment motion to take three days. As set out in my endorsement of the time, it was agreed that rather than adjourning for a three day summary judgment motion, the matter should proceed to a four day summary trial. That order was made on consent and, as indicated above, the trial was scheduled to commence on Monday, August 11<sup>th</sup>, 2025.

[20] On Friday, August 8<sup>th</sup>, 2025, the court received the following communication from Mr. Griffiths:

“I have advised my friend that my clients have instructed me to not attend and not defend this claim any further on their behalf. As a result, unfortunately, I am without instructions for Monday. My clients have also conveyed to me that they do not intend on appearing on Monday either. Nor have they instructed me to seek an adjournment of the trial.”

[21] As noted above, this is consistent with what actually occurred at the opening of trial.

### **The Evidence**

[22] The evidence before the court consists of the affidavit evidence of Susan Bolan (the plaintiff) and of Damien Letendre, P.Eng (the engineer who advised the structure had to be demolished), the affidavit of Matthew Behan (one of the defendants) and the transcript of the cross

examination of Mr. Behan and Mr. Letendre. I also heard brief oral evidence from the plaintiff and from Graham Ross (an official from the City of Ottawa building department).

[23] Mr. Ross dealt with the application for a building permit in relation to the property in question. That permit was eventually applied for by the defendants in November of 2022. Mr. Ross had his file with him and consulted it in order to refresh his memory.

[24] The point of that evidence was to confirm that a building permit had always been required for this conversion of a car port to a garage and secondly that the drawings submitted for the application were deficient. A permit was refused and was never issued.

[25] The point of the plaintiff's own oral evidence was to prove the particulars of her damages and to address the identity of Michael Alivisatos and Michael Levis as one and the same person.

[26] The latter was a potential issue because at the time of the events in question, the plaintiff was led to believe that the "Mike" involved with Capital Home Services was someone called Michael Levis. When this litigation was commenced, counsel obtained a business name registration for Capital Home Services showing Michale A. Levis as the sole proprietor and Mr. Behan also testified that he understood Capital Home Services to be owned by Michael Levis.

[27] The plaintiff's evidence on this point consisted of her evidence about her investigation into the issue and why she believed Mr. Levis was an alias for Mr. Alivisatos. Her evidence included reference to two CBC articles naming Mr. Alivisatos and various aliases as well as reporting he had previously been convicted of fraud. The plaintiff also referred to an anonymous redacted letter. These documents are obviously hearsay and cannot be used to prove the truth of their contents but as I will describe, the identity of the defendant as Michael Alivisatos is not in issue. It was not necessary to rely on these documents and I have not done so.

## **Findings**

[28] On March 30, 2022 the plaintiff accepted a quote from "Capital Home Services" to extend a car port and convert it to a garage. The contract was signed by the defendant Groulx on behalf of the contractor. As is now apparent, "Capital Home Services", is actually a business name registered to the defendant Alivisatos as a "sole proprietorship".

[29] The plaintiff was assured by the defendants that the project did not require a building permit and that the work would be done in a good and workmanlike manner in accordance with all applicable codes. The representation that no permit was required was repeated by Mr. Groulx and by Mr. Alivisatos.

[30] The plaintiff paid \$62,000.00. She had negotiated some minor reductions in the scope of ancillary landscaping work (and a reduction in the contract price) with Mr. Alivisatos. The work proceeded primarily under the direct supervision of the defendant Behan and the defendant

Salazar.<sup>3</sup> The plaintiff contracted directly with an electrician for electrical work which did not form part of this contract.

[31] On August 30, 2022 when the structure was largely completed, a building inspector advised the plaintiff that a permit was required. All work ceased at that point.

[32] An application for a permit was supposed to be filed by September 20, 2022 but it was not filed by the defendants until November. On December 2<sup>nd</sup>, 2022 the City advised that the drawings submitted by the defendants contained various code infractions and would not be approved. The plaintiff then retained an engineer.

[33] The engineer retained by the plaintiff (Mr. Letendre) first identified structural issues with the building as constructed and eventually when it was possible to inspect the foundation in the spring, he found that the work done by the defendants was completely inadequate to support the structure. It was his advice the building be demolished and that it be rebuilt to code with proper permits and inspection.

[34] Mr. Letendre swore an affidavit and was cross examined. He was not called as an independent expert but as a “participant expert”. He was hired by the plaintiff to inspect the structure and make recommendations. The defendants did not tender any expert evidence or any evidence other than the opinion of Mr. Behan that it should not have been necessary to demolish the structure.

[35] I accept the evidence of Mr. Letendre that the foundations and the construction were so deficient that the only practical solution was to demolish the structure and to start again.

[36] I find that the work done by the defendants was so defective and deficient as to be effectively useless. This constitutes a fundamental breach of the construction contract which entitled the plaintiff to repudiate the contract and relieved her of any obligation to permit the defendants to attempt remedial work.<sup>4</sup> On the evidence, she was also justified in refusing to deal any further with contractors in whose honesty and integrity she had completely lost faith.<sup>5</sup>

[37] The plaintiff is entitled to a full refund of the contract price and for the cost of demolishing and disposing of the structure as built. She is not seeking the cost of the replacement structure which she retained another contractor to construct. It was necessary to demolish the structure to put her back in the position to build a properly constructed and legally authorized garage.

[38] The amount paid to the defendants pursuant to the contract was \$62,000.00. The cost of demolition was \$3,300.00. The plaintiff is also entitled to recover the cost of hiring Mr. Letendre in the amount of \$3,341.98.

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<sup>3</sup> As noted, Mr. Salazar was not served with the statement of claim. According to Mr. Behan’s evidence, Mr. Salazar is now in Texas

<sup>4</sup> *C.S. Bachly Builders Ltd. v. Lajlo*, 2008 CanLII 57444, [2008] O.J. No. 4444 (SCJ)

<sup>5</sup> See *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92 for the consequences of fundamental breach and the requirements for such a finding.

[39] The construction commenced in 2022 and proceeded until August of that year when the work was halted. The recommendation for demolition was received after the foundations could be inspected the following year. The demolition took place in July of 2024. I find that the plaintiff is entitled to damages for inconvenience and interference with the use of her property during that time. It was an entirely foreseeable consequence of deficient and defective performance of the construction contract. Taking into account some delay in mitigation and the fact that the plaintiff was not prevented from most ordinary day to day uses of the property, those damages are relatively nominal. I award her \$10,000.00.

[40] The plaintiff abandoned her claim for punitive damages. She also abandoned her claim for fraudulent and negligent misrepresentation, and fraud.<sup>6</sup>

[41] In summary, the plaintiff is entitled to damages of \$78,641.98. I also award pre-judgment interest pursuant to the *Courts of Justice Act* (4.8% per annum) fixed at \$8,179.00.

[42] The plaintiff seeks judgment against the defendants jointly and severally. When I refer to the defendants, I do not include the defendants Salazar and Rodriques who were never served.

[43] Dealing firstly with Mr. Alivisatos or Mr. Levis, as discussed above, there are business registrations in both names. The plaintiff believed she was dealing with Michael Levis and it is apparent from Mr. Behan's cross examination that is also the name he believed attached to "Michael".

[44] The defendant was sued as "Michael Alivisatos a.k.a. Michael A. Levis operating as Capital Home Services". The Statement of Defence was filed on behalf of the defendant "Alivisatos" and it is under that name that he has participated in the litigation to date. It is under the name Michael Alivisatos that he signed the notice of intention to act in person. At no time has Michael Alivisatos taken the position that he is not a proper party or did not carry on business as Capital Home Services. I need not rely on the hearsay evidence of the plaintiff to determine that Michael Alivisatos is one and the same as Michael Levis or that he is the proper person to be sued. There will be judgment against "Michael Alivisatos a.k.a. Michael A. Levis operating as Capital Home Services".

[45] The plaintiff also seeks judgment against Mr. Groulx and Mr. Behan. Counsel for the plaintiff argues that this is justified because all of Mr. Alivisatos, Mr. Behan and Mr. Groulx held themselves out as Capital Home Services and it is reasonable to infer they were involved in a joint venture or a partnership pursuant to s. 2 & 3 of the *Partnerships Act*.<sup>7</sup> Each of those defendants purported to be able to make agreements and representations on behalf of Capital Home Services or to accept payments. All of them benefitted from the contract.

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<sup>6</sup> In the confirmation form of May 28, 2025 in respect of the summary judgment motion, counsel advised that "All other claims and remedies set out in the Statement of Claim issued on May 24, 2023 are hereby abandoned including claims for breach of the duty to act in good faith, fraudulent and negligent misrepresentation, and fraud."

<sup>7</sup> R.S.O. 1990, c. P.5

[46] I note that the joint liability of the parties is pleaded. The three defendants have acted in concert throughout the litigation and at no time has there been an assertion that any particular defendant was the only defendant who was appropriately sued.

[47] As discussed above, when the plaintiff signed a contract, it was with Mr. Groulx on behalf of Capital Home Services. The status of Capital Home Services is not noted on the quote or the contract or any other document. Apart from filing a defence, Mr. Groulx has never taken any active step in this litigation. He has never filed any evidence and he has not submitted to discovery. I am entitled to draw a negative inference from this fact. I find that judgment should also go against Mr. Groulx.

[48] Mr. Behan is in a slightly different position because he did file an affidavit, was cross examined and on at least one occasion it was Mr. Behan who attended court on behalf of all of the defendants.

[49] In his affidavit, Mr. Behan describes himself as an “employee” of Capital Home Services. His affidavit does not further address the ownership structure and he does not produce payroll records, T4 slips or other documentation to support this assertion. To be fair however, this is not the primary focus of the affidavit, which is largely concerned with why Capital Home Services was not at fault and the plaintiff should not be entitled to compensation.

[50] Under cross examination, the issue of his employment status was not pursued. No questions were directed to Mr. Behan designed to elicit whether he was a partner or otherwise shared in profits. Mr. Behan described his role in the construction as “the material handler and the delivery guy” although acknowledging that he had since been promoted to “construction manager”. He denied making any decisions with respect to the plaintiff’s construction project, attesting that those decisions were made by “Victor and Kevin”. This evidence was not truly impeached by the cross examination but it is contradicted by the evidence of the plaintiff who described him as one of the individuals who attended regularly and oversaw the work. I find that Mr. Behan downplayed his involvement, and he was one of the individuals responsible for the quality of the work.

[51] Mr. Behan is still very much involved with Capital Home Services and to some extent he has been the face of the defendants in this litigation. All three defendants provided the same address for service when they filed their notice of intention to act in person (which they each signed personally). Mr. Behan, in his evidence and in his original statement of defence disputed any wrongdoing or liability for Capital Home Services. He has never sought to demonstrate that his interest in this matter was distinct from that of Capital Home Services or his co-defendants. The defendants put forward Mr. Behan as their witness and they jointly retained Mr. Griffiths.

[52] Capital Home Services is not an incorporated entity and the fact that the defendants were acting in concert as a partnership or joint venture was pleaded. While it is important to remember that the plaintiff is bound by her pleadings<sup>8</sup> and has the onus of proof, on the basis of the statement of claim, the plaintiff’s evidence and any negative inferences I am entitled to draw from the failure to attend at trial, I accept the argument that all three defendants held themselves out as Capital

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<sup>8</sup> The plaintiff did not sue Mr. Behan in negligence, for example.

Home Services. The parties were “carrying on business in common with a view to profit” within the meaning of the *Partnerships Act*.<sup>9</sup>

[53] Accordingly, judgment will be granted jointly and severally against Michael Alivisatos a.k.a. Michael A. Levis operating as Capital Home Services, Ron Groulx and Matthew Behan.

### Costs

[54] The plaintiff seeks costs. Her actual costs in pursuing this matter have been \$43,923.85 for fees inclusive of HST and \$5,231.27 for disbursements also inclusive of HST – as set out in the Bill of Costs.

[55] The ordinary measure of costs is partial indemnity costs unless there has been conduct that would justify costs on a higher scale. In this case the defendants had effectively abandoned the litigation by failing to attend court, attend discoveries or appear at a case conference when ordered to do so. No sanction was ordered or requested at that time because the plaintiff elected to proceed to what appeared to be an uncontested summary judgment motion.

[56] It was at that point, after the motion had been scheduled and the material served, that Mr. Behan appeared and asked for another opportunity to appoint new counsel and file responding material. As described above, that eventually resulted in the scheduling of a trial. All steps subsequent to Mr. Behan’s request to adjourn the motion had the effect of increasing costs and delaying the proceeding. By compelling the plaintiff to prepare for a trial and then refusing to participate in the trial, the defendants abused the indulgence they were granted and the process of the court. All of the steps subsequent to January of this year should have been unnecessary.

[57] I consider the total costs award requested by the plaintiff to be reasonable and I fix those costs at \$34,954.06 (inclusive of HST). The defendants will also be responsible for the disbursements of \$5,231.27 so the total costs award is \$48,923.85.

[58] The defendants Alivisatos, Groulx and Behan shall be jointly and severally liable for the costs.

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Mr. Justice C. MacLeod

**Date:** August 14, 2025

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<sup>9</sup> *Partners in Psychiatry v. Canadian Psychiatric Association*, 2011 ONCA 109