CITATION: Oldcastle BuildingEnvelope Canada, Inc**.** v. Antamex Industries ULC et al, 2025 ONSC 4751
COURT FILE NO.: CV-22-00676986-0000
DATE: 20250827

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: OLDCASTLE BUILDINGENVELOPE CANADA, INC., Plaintiff

AND:

ANTAMEX INDUSTRIES ULC and O3 INDUSTRIES LLC, Defendants

BEFORE: Parghi J.

COUNSEL: *Sara Rustomji*, for the Plaintiff

Evan Rankin, for the Defendant O3 Industries LLC

HEARD: June 2, 2025

ENDORSEMENT

[1] The Plaintiff, Oldcastle BuildingEnvelope Canada, Inc., now Oldcastle Building Products Canada, Inc. ("Oldcastle"), seeks summary judgment against the Defendant O3 Industries LLC ("O3"). O3 owns Antamex Industries Inc., which in turn owns the Defendant Antamex Industries ULC ("Antamex"). Antamex went into receivership in March 2024.

[2] In November 2018, Oldcastle and Antamex entered into an asset purchase agreement under which Oldcastle sold its curtain wall manufacturing business to Antamex (the "Agreement"). O3 provided a guarantee under the Agreement (the "Guarantee"). Antamex defaulted on a $3 million payment it owed to Oldcastle under the Agreement. Oldcastle now seeks summary judgment to enforce payment of that amount from O3, pursuant to the Guarantee.

[3] O3 states that summary judgment is not appropriate, for three reasons.

[4] First, under a proper reading of the Guarantee, which considers prior drafts of the Guarantee and other surrounding circumstances, O3 is not obligated to pay the purchase price if Antamex failed to do so.

[5] Second, the Guarantee is void, or alternatively O3 is entitled to a set-off, because Oldcastle breached its representations and obligations under the Agreement in respect of the condition of the equipment and facility it was transferring to Antamex, and in respect of certain required permits. I will refer to this defence as the "equipment defence".

[6] Third, says O3, the Guarantee is void, or alternatively O3 is entitled to a set-off, because Oldcastle, in breach of the Agreement, failed to transfer to Antamex a $5.9 million accounts receivable relating to a project at a property called One Dalton Place (the "Dalton Project"), or misrepresented that it owned the accounts receivable when it did not. I will refer to this defence as the "Dalton Project defence".

[7] O3 states in the alternative that Oldcastle must establish Antamex's liability via arbitration before O3 becomes liable on the Guarantee.

[8] Oldcastle submits that neither of O3's two defences raises any issue requiring a trial: the equipment defence was unsuccessfully advanced at an earlier arbitration and has thus already been tried and decided against O3, and the Dalton Project defence is not supported by the record.

[9] For the reasons below, I grant summary judgment in part. I find as follows:

a. There is no genuine issue requiring trial that, subject to the defences O3 has raised, it is bound by the Guarantee to pay the $3 million owed by Antamex to Oldcastle, and it has breached its obligation to pay that amount.

b. The equipment defence does not raise a genuine issue requiring trial.

c. The Dalton Project defence raises a genuine issue requiring trial as to whether the Guaranty is void, but not as to whether O3 is entitled to a set-off.

[10] Additionally, I reject O3's claim in the alternative that, if the Guarantee is not void, Oldcastle must first go to arbitration to establish Antamex's liability before O3 becomes liable on the Guarantee.

Factual Background

The Asset Purchase Agreement, Promissory Note, and Guarantee (October-December 2018)

[11] In October 2018, O3 delivered a letter of intent to Oldcastle proposing that Antamex acquire substantially all of the business assets owned by Oldcastle. That same month, Oldcastle signed the letter of intent.

[12] In November 2018, Oldcastle and Antamex entered into the Agreement, pursuant to which Oldcastle was to transfer its facility, machinery and equipment, various contracts and agreements, and certain accounts receivable to Antamex. In exchange, Antamex was to make two payments of $3 million each.

[13] Article 2.1 of the Agreement defines the assets to be transferred by Oldcastle to Antamex as including the following:

> (a) all contracts and agreements listed on Schedule 2.1(a) of the Disclosure Schedules ("*Contracts*");
> […]
> (d) all accounts receivable, notes receivable and other receivables due to Seller as of the Closing Date that arise primarily out of the operation of, or are otherwise material to, the Business (the "*Receivables*"), together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto but excluding those accounts receivable specified in Schedule 2.1(d) of the Disclosure Schedules.

[14] Article 3.4(b) provides:

> Except as set forth in Schedule 3.4(b) of the Disclosure Schedules, Seller owns all of the material Transferred Assets free and clear of all Encumbrances (other than Permitted Encumbrances). The Transferred Assets are in good operating condition and repair, ordinary wear and tear excluded, and except for any ordinary, routine maintenance and repair required that in sum are consistent with past practices.

[15] O3 guaranteed the obligations of Antamex through the Guarantee, which is set forth in article 10.22 of the Agreement. The parties dispute the scope of the Guarantee. It provides:

> In furtherance and without limitation to anything else contained in this Agreement, Buyer [Antamex] and Guarantor [O3] hereby irrevocably guarantees [sic] to Seller [Oldcastle] the due and punctual performance by Buyer of each and every obligation of Buyer arising under this Agreement and the Contracts, including without limitation, the due and punctual payment of the Purchase Price.

[16] The transaction closed on December 21, 2018. In accordance with the terms of the Agreement, Antamex provided a promissory note to Oldcastle for $6,000,000. The promissory note provided that the first payment of $3,000,000 was to be paid to Oldcastle on January 5, 2021, and the second payment by January 5, 2022.

The Arbitration, Antamex's Default, and the Action (December 2021-May 2022)

[17] On or about January 5, 2021, Antamex made the first $3,000,000 payment.

[18] In December 2021, O3 and Antamex initiated arbitration proceedings against Oldcastle, alleging that there were defects in the equipment transferred to Antamex under the Agreement (including certain cranes, a forklift, a shipping door heater, overhead door sensors, the fire panel, the traveling pane saw) and construction or engineering issues at the facility (including that the

facility's roof was not properly reinforced or engineered to support roof-mounted cranes, the shipping bay jibs required structural support, the concrete on the building had heaved, and the door heaters were broken). O3 and Antamex further asserted that Oldcastle had breached the Agreement by failing to renew various government permits. They alleged that Oldcastle had breached various provisions of the Agreement, including article 3.4(b), the "good operating condition and repair" warranty cited above.

[19] Antamex did not deliver the second payment of $3 million to Oldcastle. It was due by January 5, 2022.

[20] In February 2022, Oldcastle commenced this action, alleging that Antamex and O3 had failed to provide the second payment.

[21] Antamex and O3 delivered a Statement of Defence and Counterclaim dated May 2022. The Counterclaim was advanced by Antamex only. In its pleading, Antamex made many of the allegations it had advanced at the arbitration, including that there were defects in the transferred assets and that Oldcastle had failed to ensure that necessary government permits were renewed. Antamex further pleaded that the Agreement obligated Oldcastle to transfer the Dalton Project accounts receivable to Antamex, but Oldcastle failed to do so; as a result, Antamex suffered damages, which it was entitled to set off against anything it owed to Oldcastle. O3, in its Statement of Defence, alleged that Oldcastle had breached the Agreement and O3 was therefore not liable to it under the Guarantee, that Oldcastle's failure to comply with its warranty obligations in respect of the Dalton Project had negated the Guarantee, and that O3 was entitled to set-off for any amounts it owed to Oldcastle as a result.

[22] The Dalton Project-related allegations now made by Antamex and O3 were only advanced in this action and not at the arbitration.

The Arbitration Hearing and Decision (February-July 2023)

[23] In February 2023, the arbitration was conducted in the U.S.. Antamex and O3 had counsel. The parties agreed, before the arbitration, that the governing law of the Agreement was Ontario and relevant Canadian law.

[24] By decision released in July 2023, the arbitrator dismissed all the claims advanced by Antamex and O3 against Oldcastle. He held that O3 had not established that Oldcastle had breached the Agreement and awarded Oldcastle damages of $140,000 USD.

[25] In respect of the alleged equipment defects and construction and engineering issues at the facility, the arbitrator made the following findings:

a. There was no evidence that Oldcastle concealed anything about the state of the facility during due diligence on the transaction or restricted the ability of Antamex and O3 to conduct due diligence;

b. O3 reviewed the facility and reviewed materials like the fixed asset list;

c. O3 represented to Oldcastle in the letter of intent that Antamex and O3 had conducted "intensive due diligence" before they offered to purchase the facility;

d. O3 and Antamex represented in the Agreement that Antamex had "conducted, to its satisfaction, its own independent investigation of" the business, and "relied on the results of its own independent investigation" in deciding to proceed with the transaction;

e. There was no evidence that the transferred assets were not in good operating condition and/or repair; and

f. There was no evidence that the facility or its equipment could not be used after the closing date.

[26] In respect of Oldcastle's alleged failure to maintain certifications and permits for its equipment, the arbitrator made the following findings:

a. O3 and Antamex never established the parameters of Oldcastle's obligation to maintain such documentation and never clearly established that Oldcastle had failed to provide any such documentation;

b. O3 never provided any particulars regarding the permits and certifications that were required or any specific Canadian laws requiring them; and

c. Based on the record, some reports and certifications had been provided.

[27] The arbitrator's award was not appealed, and the time for appealing it has passed.

O3's Proposed Amended Statement of Defence (March 2025)

[28] In March 2025, three years after issuing its original pleading, O3 proposed to amend its pleading to allege additional bases on which it says the Guarantee was void. These additional grounds included that Oldcastle had misrepresented to Antamex that it had title to the accounts receivable for the Dalton Project, that it owned all the transferred assets free and clear of encumbrances, that the transferred assets were in good operating condition and repair, and that the transferred assets were adequate to conduct the business. Certain of these new pleadings form the basis of O3's argument that there is a genuine issue requiring trial and that summary judgment is therefore not appropriate.

The Law on Summary Judgment

[29] On a motion for summary judgment, I must first determine, based only on the record before me, whether there is a genuine issue requiring a trial. If there appears to be a genuine issue requiring a trial, I am to determine if the need for a trial could be avoided by using my enhanced powers under either rule 20.04(2.1) or 20.04(2.2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Rule 20.04(2.1) empowers me to weigh evidence, evaluate a deponent's credibility, and

draw reasonable inferences from the evidence. The power set out in rule 20.04(2.2) allows me to order that oral evidence be presented by one or more parties. I may use these powers at my discretion, as long as their use is not contrary to the interests of justice – that is, as long as they will lead to a fair and just result, and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66).

[30] The responding party must set out, by affidavit or other evidence, specific facts that show there is a genuine issue requiring a trial (r. 20.02(2)). I am entitled to presume that the parties have put forth their best evidence on the motion and that if the case were to proceed to trial, no additional evidence would be presented (*TD Waterhouse Canada Inc. (TD Waterhouse Private Investment Advice) v. Little,* 2009 CanLII 43663 (ON SC), at para. 15, citing *Rogers Cable TV Ltd. v. 373041 Ontario Ltd*. (1994), 22 O.R. (3d) 25 (Gen. Div.)).

[31] Summary judgment is appropriate where (1) I can make the necessary findings of fact, based on the record and my enhanced powers under rules 20.04(2.1) and 20.04(2.2); (2) I can apply the law to the facts; and (3) the motion process is a proportionate, more expeditious, and less expensive means to achieve a just result than going to trial (*Hyrniak*, at para. 49).

Analysis

Whether the Guarantee binds O3 in respect of the payment of the purchase price to Oldcastle

[32] I find that, subject to O3's defences, there is no genuine issue requiring trial as to whether the Guarantee binds O3 and obligates it to pay the purchase price that Antamex failed to pay.

[33] In *Madison Joe Holdings Inc. v. Mill Street & Co. Inc.*, 2021 ONCA 205, at para. 32, the Court of Appeal for Ontario held that a guarantee is to be interpreted

> so as to give effect to the apparent intent of the parties, so as to afford fair protection to creditors in accordance with that apparent intent. This rule should be stated as the most basic principle of guarantee interpretation because it is clearly necessary to give a guarantee instrument an interpretation which is fully consistent with its apparent purpose.

[34] In my view, the language of the Guarantee clearly and unequivocally binds O3. The Guarantee provides expressly that Antamex and O3 "irrevocably guarantee[s]" to Oldcastle the performance by Antamex "of each and every obligation of" Antamex "arising under this Agreement […] including […] the due and punctual payment of the Purchase Price." There is no ambiguity that it applies to O3 and operates to make O3 responsible for Antamex's obligation under the Agreement to pay the entire purchase price to Oldcastle. This interpretation is consistent with the principle enunciated by the Court of Appeal in *Madison Joe Holdings* that the Guarantee

should be read in a way that effects its apparent purpose and affords real security to Oldcastle, as creditor.

[35] O3 submits that the Guarantee does not directly guarantee payment by O3 of the purchase price. It states that the previous draft language for the Guarantee did directly guarantee payment because it provided that O3 "guarantees to Seller the payment, performance and discharge at the Closing of the payment obligations of" Antamex. However, the draft language was modified because Oldcastle was concerned about the post-closing exposure it might have in respect of its bonding obligations on the projects it was transferring to Antamex. As such, the parties reached a compromise whereby the scope of the guarantee was narrowed, but the Guarantee extended beyond closing. The scope became narrower because the Guarantee now applied to "the due and punctual performance by Buyer of each and every obligation of Buyer," rather than applying to "the payment, performance and discharge […] of the payment obligations of Buyer".

[36] In O3's submission, the Guarantee was thus redrafted to become a "see to it" guarantee, which merely obligates O3 to "see to it" that Antamex performs its obligations to Oldcastle, and imposes only a "secondary" liability on O3 that is contingent on Antamex's continuing liability and default. O3 states that such continuing liability and default by Antamex has not been demonstrated. As such, O3's liability is not triggered under the "see to it" guarantee.

[37] I disagree.

[38] First, there is no basis on which I may properly rely on extrinsic evidence, such as prior drafts of the Guarantee, to interpret the Guarantee, as O3 urges me to do. The Agreement contains an entire agreement clause that expressly provides that prior drafts do not form part of the Agreement. It provides in relevant part:

> This Agreement (including the Exhibits and Schedules hereto), the Ancillary Documents and the Confidentiality Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings among the parties with respect to the subject matter of this Agreement.

[39] Entire agreement clauses are enforced consistently by the courts. The Court of Appeal for Ontario has recognized that the intent of these clauses is to "lift and distill the parties' bargain from the muck of the negotiations" and to attempt to "provide certainty and clarity" by "limiting the expression of the parties' intention to the written form" (*Soboczynski v. Beauchamp*, 2015 ONCA 282, 125 O.R. (3d) 241, at para. 43).

[40] Moreover, it is settled law that, in interpreting a contract, I am to determine the intention of the parties following the language they have used in the written agreement, based upon the "cardinal presumption" that they intended what they wrote (*Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, 77 B.L.R. (5th) 175, at para. 65, rev'd on other

grounds, 2019 SCC 60, [2019] 4 S.C.R. 394). I must read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of the agreement's terms and avoids an interpretation that would render one or more of its terms ineffective (*Weyerhaeuser*, at para. 65; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47). While I am to read the contractual text in the context of the surrounding circumstances known to the parties at the time the contract was entered into, those surrounding circumstances "must never be allowed to overwhelm the words of" the agreement and cannot be used "to deviate from the text such that the court effectively creates a new agreement" (*Sattva*, at para. 57).

[41] O3 asks me to rely on the surrounding circumstances to do just that. The ordinary and grammatical meaning of the Guarantee provides that O3 guaranteed Antamex's payment obligations to Oldcastle. It is neither silent nor ambiguous on this point. O3, in asking me to rely on external evidence about previous drafts of this provision, asks that I rely on "surrounding circumstances" and "context" to circumvent and "overwhelm" the clear contractual language, and indeed to rewrite it altogether so that it comes to mean that there is no applicable guarantee, when in fact there is one. This is precisely what the Supreme Court, in *Sattva*, admonished against.

[42] I therefore find that there is no basis on which to rely on any extrinsic evidence in considering whether the Guarantee binds O3 and requires them to pay the purchase price to Oldcastle if Antamex could not. I must rely on the terms of the Guarantee itself. Those terms make it clear that the Guarantee binds O3 to pay the unpaid purchase price.

[43] Second, even if I accepted that the prior drafts of the Guarantee were relevant to its interpretation, I would be unable to agree with O3's submission that the prior drafts obligated O3 to pay the purchase price if Antamex could not, but the Guarantee, as currently drafted, does not. In my view, the plain language of the Guarantee does not support this claim. The Guarantee expressly extends to "the due and punctual payment of" the purchase price under the Agreement. Thus must be taken to mean what it says: that O3 guarantees that payment of the purchase price, on time, when it is due.

[44] Third, I do not agree that the Guarantee is a "see to it" guarantee that does not impose liability on O3 because no continuing liability and default by Antamex is demonstrated. O3 is only able to provide me with older British authorities in support of this concept of a "see to it" guarantee. I am presented with no Canadian jurisprudence or academic commentary that would suggest that there is a distinct category under Canadian law for "see to it" guarantees, that they are to be interpreted differently from ordinary guarantees, or that the Guarantee is such a guarantee.

[45] Finally, O3 suggests that Antamex's liability must be established at an arbitration. I reject this argument. It appears to turn on O3's characterization of this as a "see to it" guarantee, which I do not accept. More generally, I reject the argument that Antamex's liability must be found by an arbitrator in order for O3 to then be found liable on the Guarantee in this action. It is clear on the record before me, and unchallenged by any party, that Antamex did not pay the balance of the purchase price. As discussed below, the equipment defence has already been arbitrated. Antamex and O3 were unsuccessful. The Dalton Project defence has not been arbitrated, and I have found

that it raises a genuine issue requiring trial. There is no reason why there should be both a trial and an arbitration on that defence in order to establish liability on the part of Antamex and/or O3. That would be duplicative and a waste of the parties' time and resources.

[46] I therefore find that there is no genuine issue requiring trial as to whether the Guarantee binds O3 and obligates it to pay the balance of the purchase price that Antamex failed to pay. It clearly does, subject to the defences O3 raises, which I discuss below.

Whether O3 breached its obligation under the Guarantee

[47] It is uncontested that neither O3 nor Antamex ever paid Oldcastle the balance of the purchase price. As such, given my finding that the Guarantee binds O3, there is no genuine issue requiring trial that, subject to the defences O3 has raised, it has breached its obligation under the Agreement to pay the balance of the purchase price.

Whether the Guarantee is void, or O3 is entitled to a set-off, because Oldcastle breached the Agreement

Breach of representations and warranties on the condition of the equipment and facility, and/or the required permits

[48] O3 says that its equipment defence – that Oldcastle breached its representations and warranties regarding the condition of the equipment and facility, and failed to obtain the required permits – raises a genuine issue requiring trial as to the enforceability of the Guarantee and O3's entitlement to a set-off.

[49] I do not agree. I find that the equipment defence does not raise a genuine issue requiring trial, because it was already adjudicated at the arbitration, without success. The doctrine of issue estoppel accordingly applies.

[50] The test for issue estoppel is well-established. For the doctrine to apply to estop a party from litigating an issue, it must be shown that the issue to be estopped is the same as the one decided in the prior proceeding, the prior decision was final, and the parties in both proceedings were the same or their privies (*Toronto (City) v. CUPE, Local 79*, 2003 SCC 63 (CanLII), [2003] 3 SCR 77, at para. 23).

[51] Issue estoppel applies to the equipment defence now raised by O3. First, the issues O3 raised in this defence were the same as those raised in the arbitration, as discussed above. All of O3's allegations regarding the equipment, facility, and permits were advanced at the arbitration. All of them failed. Second, the arbitration decision was final and binding upon the parties. Third, the parties to the arbitration were the same as the parties here.

[52] Accordingly, I find that O3's equipment defence does not raise any genuine issue requiring trial. This defence was adjudicated at an arbitration conducted by the same parties, with their legal counsel, before a duly qualified arbitrator who applied Ontario and relevant Canadian law and

arrived at a final and binding decision that was never appealed. O3 is therefore estopped from raising the same defence in this proceeding.

[53] O3 states that there is now new evidence that "conclusively impeaches" the result of the arbitrator's decision and renders it unfair to bind O3 to the decision (citing *Toronto (City) v. CUPE, Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 52). That evidence, O3 says, consists of Oldcastle's admission in this proceeding that some cranes would not visually appear to have had any issues.

[54] I reject this claim. As the arbitrator noted, O3 represented to Oldcastle in its October 2018 letter of intent that it had conducted "intensive due diligence" and its own investigation on matters such as "infrastructure," on its own and through "outside advisors," before offering to purchase Oldcastle's facility. The Agreement provides that Antamex had "conducted, to its satisfaction, its independent investigation of the Business and, in determining to proceed with the transactions contemplated hereby, […] relied on the results of its independent investigation." The arbitrator found that there was no evidence to suggest that Oldcastle in any way restricted O3 or Antamex's ability to conduct their due diligence.

[55] In these circumstances, I do not accept that Oldcastle's acknowledgement that some cranes would not visually appear to have had any issues is new evidence that "conclusively impeaches" the arbitrator's decision. Regardless of whether any alleged problems with cranes were self-evident visually, the facts remain that O3 represented, in its letter of intent and the Agreement, that it had conducted intensive due diligence and investigation, and that the arbitrator found that there were no Oldcastle-imposed barriers to that due diligence and investigation. It would be unreasonable and commercially absurd to find, as O3 urges me to, that the fact that the cranes could theoretically have had defects that were not visually apparent constitutes fresh evidence or impugns the arbitrator's findings.

[56] O3 further submits that the financial stakes are much higher in this proceeding than they were at the arbitration, and it would therefore be unfair to require O3 to be bound by the arbitrator's decision.

[57] I disagree. Antamex's obligations to Oldcastle were squarely at issue in the arbitration. In turn, O3's obligations, as guarantor to Antamex, were also at issue. The amount of money to be paid by Antamex to Oldcastle under the promissory note has never changed. The amount of money for which O3 is, according to Oldcastle, responsible as a consequence of Antamex's default has never changed. I am therefore unable to see how the financial stakes are any different now than they were at the arbitration, such that issue estoppel ought not to apply.

[58] I therefore find that this defence does not raise a genuine issue requiring trial as to whether the Guarantee is void or whether O3 is entitled to a set-off.

Breach of obligations and/or misrepresentations in respect of the Dalton Project

[59] The second defence advanced by O3 is the Dalton Project defence: Oldcastle breached either article 2.1(d) of the Agreement, by failing to transfer to Antamex the Dalton Project accounts receivable, or article 3.4(b), by misrepresenting that it owned the accounts receivable when it did not. O3 states that even if the Guarantee binds it, Oldcastle's breach renders the Guarantee void, or alternatively entitles O3 to a set-off. As such, summary judgment is inappropriate.

[60] I find that this defence raises a genuine issue requiring trial as to whether the Guarantee is void, but not as to whether O3 is entitled to a set-off.

[61] In 2015, an entity called "Oldcastle BuildingEnvelope" entered into an agreement with the primary contractor on the Dalton Project, Suffolk Construction Company Inc. ("Suffolk"). It is undisputed that initially, this agreement, to which I will refer as the "original Dalton Project contract," was included as a transferred asset under the Agreement.

[62] On December 31, 2018, Oldcastle BuildingEnvelope entered into a contract with Antamex regarding the Dalton Project. I will refer to this agreement as the "new Dalton Project contract". That same day, Oldcastle, Antamex, and O3 amended the Agreement to exclude the original Dalton Project contract from the list of transferred assets in Schedule 2.1(a).

[63] Oldcastle says it is not a party to the original Dalton Project contract or the new Dalton Project contract. Rather, both contracts were entered into by a separate and distinct entity, Oldcastle BuildingEnvelope, to which Oldcastle refers as Oldcastle USA. Oldcastle says that Antamex and O3 know that Oldcastle is not a party to the Dalton Project contracts. It observes that neither Antamex nor O3 raised the Dalton Project during the arbitration they initiated against Oldcastle. Nor did Antamex name Oldcastle as a defendant to a lawsuit it commenced in June 2021 in Massachusetts against an entity called Oldcastle BuildingEnvelope, Inc. to recover damages it says it sustained in relation to the Dalton Project. Oldcastle says that the decision by Antamex and O3 not to pursue it for damages arising from the Dalton Project until this proceeding demonstrates that they have understood all along that the Dalton Project involves Oldcastle USA, and not Oldcastle.

[64] Oldcastle states that because it is not a party to either of the Dalton Project contracts, and because the Agreement was amended to exclude the original Dalton Project contract from the transferred assets, Oldcastle was not obligated to transfer the original Dalton Project contract or its associated accounts receivable to Antamex. In other words, because the original Dalton Project contract was no longer a transferred asset, the accounts receivable associated with the Dalton Project were likewise not a transferred asset. As such, Oldcastle says, O3's defence that Oldcastle breached its obligation to transfer the accounts receivable to Antamex does not raise a genuine issue requiring trial.

[65] I do not agree.

[66] In my view, the record is ambiguous as to whether it is Oldcastle or Oldcastle USA that is party to the Dalton Project contracts. I note in particular that the new Dalton Project contract provides that it "is issued in connection with the terms of that certain Asset Purchase Agreement

between Contractor and Subcontractor dated as of November 20, 2018." This is a clear reference to the Agreement. This language would only make sense if the "Contractor" in the new Dalton Project contract, Oldcastle BuildingEnvelope, were the same Oldcastle entity as the one that is party to the Agreement.

[67] Additionally, O3 has provided evidence on the provenance of the new Dalton Project contract that suggests that it was entered into by Oldcastle, not Oldcastle USA. O3's evidence is that the Agreement contemplated that Oldcastle would transfer the original Dalton Project contract to Antamex. However, Suffolk did not permit Oldcastle to assign the original Dalton Project contract to Antamex. O3 says that this is why Oldcastle and Antamex entered into the new Dalton Project contract, which O3 describes as a sub-subcontract. Under the new Dalton Project contract, Antamex was required to perform all the duties and obligations of Oldcastle under the original Dalton Project contract. Put simply, because Antamex could not take over the original Dalton Project contract via assignment, Antamex instead stepped into Oldcastle's shoes via the new Dalton Project contract. Oldcastle has not contested O3's evidence on how the new Dalton Project contract came to be. In my view, this evidence creates further ambiguity as to whether Oldcastle is in fact a party to one or both of the Dalton Project contracts.

[68] Further, Oldcastle, when characterizing its obligations under the Agreement, fails to differentiate between the original Dalton Project contract and the Dalton Project accounts receivable. Oldcastle states that the fact that the original Dalton Project contract was not to be transferred to Antamex necessarily means that the Dalton Project accounts receivable were not to be transferred either. In my view, it is not so simple. A contract is a separate asset from the accounts receivable generated under the contract. This is made clear by articles 2.1(a) and (d) of the Agreement, which include Oldcastle's contracts and accounts receivable as separate categories of transferred assets, each with their own exclusions. Under article 2.1(d), the "transferred assets" include "all accounts receivable […] due to [Oldcastle] as of the Closing Date that arise primarily out of the operation of, or are otherwise material to, the Business," except those specified in Schedule 2.1(d). Importantly, Schedule 2.1(d) does not identify the Dalton Project accounts receivable as an excluded asset, even though the Agreement was amended to identify the original Dalton Project contract itself as an excluded asset. Reading article 2.1(d) and Schedule 2.1(d) together, it would appear that the Dalton Project accounts receivable were presumptively included in the transferred assets, and were never excluded. On this reading, Oldcastle should have transferred the Dalton Project accounts receivable to Antamex upon the closing of the transaction.

[69] In my view, this evidence is sufficient to give rise to a genuine issue requiring trial as to whether Oldcastle breached the Agreement by not transferring the Dalton Project accounts receivable to Antamex.

[70] As for the alleged misrepresentation, it is common ground between the parties that the original Dalton Project contract was going to be a transferred asset before the Agreement was amended. O3 calls this a representation by Oldcastle that it owned the original Dalton Project contract and the Dalton Project accounts receivable. O3 states that this representation was confirmed by the fact that the Dalton Project accounts receivable were not excluded from the transferred accounts receivable under Schedule 2.1(d) of the Agreement. It was further confirmed

by the fact that, before closing, Oldcastle provided Antamex with an accounts receivable projection as at the transaction closing date of December 31, 2018. That projection, prepared by Antamex's controller and reviewed and adjusted by Oldcastle's chief financial officer, expressly included the Dalton Project accounts receivable. It indicated that they were the single largest accounts receivable.

[71] It is not necessary for me to make a finding as to whether the prior version of the Agreement is admissible evidence of a representation that Oldcastle owned the Dalton Project contracts and accounts receivable. In my view, it is sufficient that accounts receivable formed a separate asset category under the Agreement, that the Dalton Project accounts receivable were presumptively included as a transferred asset and were never excluded, and that Oldcastle provided Antamex with an accounts receivable projection that included the Dalton Project accounts receivable. This evidence gives rise to a genuine issue requiring trial as to whether Oldcastle represented that it owned the accounts receivable.

[72] Finally, O3 claims that it decided to guarantee Antamex's obligations under the Agreement based on its understandings that Oldcastle, not Oldcastle USA, owned the Dalton Project contracts, and that the Dalton Project accounts receivable were being transferred to Antamex under the Agreement. It says it would not have extended the Guarantee had it understood differently. O3's evidence, uncontroverted on this point, is, "[i]f O3 had known that Oldcastle USA (rather than Oldcastle) was the [Dalton Project] contract holder, and given the size of the accounts receivable in relation to the Dalton Project, O3 would not have given the Guarantee."

[73] In my view, this supports O3's claim that, if Oldcastle misrepresented that it owned the Dalton Project accounts receivable, O3 relied on the misrepresentation to its detriment. It supports O3's position that the Guarantee should be voided as a consequence.

[74] I am therefore of the view that the Dalton Project defence raises a genuine issue requiring trial as to whether the Guaranty is void. This issue cannot be determined based on the record before me, or with the benefit of my augmented summary judgment powers. It may only be determined with the benefit of testimony from the parties to the relevant agreements, potentially including evidence from representatives of Suffolk, a non-party, and with the benefit of cross-examination before the trier of fact.

[75] I reject O3's alternative submission that the Dalton Project defence raises a genuine issue requiring trial as to whether O3 is entitled to a set-off. Any damages that Antamex claims to have suffered as a consequence of Oldcastle's alleged breaches are properly recovered by Antamex, or, now that Antamex has gone into receivership, its receiver. O3 has not persuaded me that there is a basis in law for me to grant such damages to O3 in place of Antamex by way of set-off. The fact that O3 is Antamex's guarantor does not change the analysis. The claim never belonged to O3.

Conclusion

[76] I accordingly grant summary judgment in part.

[77] I find that there is a genuine issue requiring trial in respect of the enforceability of the Guarantee, arising from Oldcastle's alleged failure to transfer the Dalton Project accounts receivable to Antamex, or, alternatively, from its alleged representation that it owned the Dalton Project accounts receivable when it did not.

[78] The other issues before me on this motion are not genuine issues requiring trial, and I grant summary judgment on them. In my view, it is appropriate to do so. I am able to make the necessary findings of fact on these issues, based on the record, and to apply the law to the facts. I am further of the view that this motion is a proportionate, more expeditious, and less expensive means to achieve a just result on these issues than going to trial.

[79] As success in this motion was split, each party shall be responsible for its own costs.

Date: August 27, 2025

Parghi J.