CITATION: Wiedehopf v. Yeboah, 2025 ONSC 5101
DIVISIONAL COURT FILE NO.: 628/24
DATE: 20250908

SUPERIOR COURT OF JUSTICE – ONTARIO DIVISIONAL COURT

RE: Wiedehopf Modern Façade Systems, Appellant

AND:

Alexander Anokye Yeboah, Respondent

BEFORE: Justice S. Nakatsuru

COUNSEL: *Babak Vosooghi Zadeh*, for the Appellant

Lucas Savini, for the Respondent

HEARD: In Toronto, July 23, 2025

ENDORSEMENT

[1] Alexander Yeboah hired Wiedehopf Modern Façade Systems ("Wiedehopf") to put cladding panels on his house in Mississauga. It was not done right. The parties had entered into a contract based on an initial quote Wiedehopf generated after a site visit. Wiedehopf later discovered that much more material was required than they had assumed in their initial estimate. A dispute arose as to payment.

[2] This dispute revolves around who bears the cost for the increased amount of materials and work performed. Mr. Yeboah has paid only the original contract price. Wiedehopf sued Mr. Yeboah in Small Claims Court, seeking to recover from him the additional cost of the work performed. The Small Claims Court found that Mr. Yeboah was not obliged to pay the increased price, beyond 15% as permitted under an adjustment clause in the contract. It also found that Wiedehopf's employees trespassed on Mr. Yeboah's property when they removed some of the previously installed cladding panels.

[3] On appeal, Wiedehopf alleges that the Deputy Judge made various errors in the Small Claims Decision. It asks that its original claim against Mr. Yeboah be allowed in full. It also asks that Mr. Yeboah's counterclaim be dismissed and that the finding of trespass by Wiedehopf be set aside.

[4] Mr. Yeboah submits that the Small Claims Decision contains no reviewable errors. He asks that this appeal be dismissed.

[5] For the following reasons, the appeal is dismissed.

[6] In a judicial appeal, appellate standards of review apply. Questions of law are reviewable on a correctness standard. Questions of fact and questions of mixed fact and law are reviewable on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, at para. 37.

[7] The appellant raises several grounds of appeal:

1. Did the Deputy Judge err in finding that Mr. Yeboah did not consent to the additional work and cost?

2. Did the Deputy Judge err in interpreting the clause permitting quantity adjustments?

3. Did the Deputy Judge err in rejecting Wiedehopf's *quantum meruit* claim?

4. Did the Deputy Judge err in finding that Wiedehopf trespassed?

5. Did the Deputy Judge err in assessing damages?

[8] Some grounds of appeal can be dispensed with briefly. The Deputy Judge made factual findings that were reasonably available to her based on the evidence. Some findings were grounded in credibility assessments to which deference must be afforded. Finally, no palpable or overriding error of fact or mixed fact and law has been identified that would warrant overturning the decision.

[9] For instance, the finding that Mr. Yeboah did not consent to the additional work for nearly double the cost of the original estimate, was anchored in the whole of the evidence including Wiedehopf's mistaken reliance on an architectural drawing to determine the amount of cladding required despite one of their employees doing a site inspection. A privacy wall and a larger fascia not accounted for in the drawings were clearly visible on inspection. The appellant's submissions on appeal are essentially a re-argument on this issue that the Deputy Judge found wanting without there being a palpable or overriding error made.

[10] The same can be said about the grounds dealing with the finding of trespass and the assessment of damages. These hinged on credibility findings that were within the Deputy Judge's purview to make.

[11] Regarding the second ground of appeal, Wiedehopf submits that the Deputy Judge misinterpreted the adjustment clause in the contract. It argues that the clause expressly permitted adjustments to the price based on the actual square footage of cladding installed. In other words, it is submitted that the additional work performed by Wiedehopf, was authorized by the contract and the Deputy Judge erred in finding that only minor adjustments were captured by the adjustment clause.

[12] I would not give effect to this ground of appeal. This issue of the interpretation of the contract is a question of mixed fact and law. The Deputy Judge interpreted the clause in the factual matrix existing at the time the agreement was made, as intending to cover minor changes based on

varying measurements but not to cover for significant adjustments caused by Wiedehopf's own negligence. I see no reversible error made by the Deputy Judge in coming to this conclusion.

[13] Finally, Wiedehopf submits that the Deputy Judge erred in rejecting Wiedehopf's *quantum meruit* claim. Mr. Yeboah knowingly accepted additional materials and labour beyond the scope of the contract and retained the benefits.

[14] The Deputy Judge rejected the *quantum meruit* claim and found that Mr. Yeboah was entitled to rely on Wiedehopf's quote.

[15] In my view, this finding answers the appellant's claim. The appellant's argument rests under the umbrella doctrine of unjust enrichment. By finding a valid contract which precluded the nature of an adjustment clause Wiedehopf claimed to have relied upon, although the respondent may have been enriched and the appellant suffered a corresponding deprivation, a juristic reason, a valid contract, existed for it: *Moore v. Sweet*, 2018 SCC 52, at para. 37. It was not for the court to relieve Wiedehopf of a bad bargain.

[16] The appeal is dismissed. The parties are encouraged to come to an agreement as to costs. In the absence of an agreement, the respondent will have 15 days from the date of this decision to make costs submissions no greater than five pages in length. The appellant will have 7 days to respond with submissions of a similar length.

Justice S. Nakatsuru

Released: September 8, 2025