

CITATION: Morin Bros. Building Supplies Inc. v. Bond Group Ottawa 2018 Inc. et al, 2025
ONSC 5561
COURT FILE NO.: CV-23-92860
DATE: 2025/10/01

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
MORIN BROS. BUILDING SUPPLIES) Anthony Imbesi, for the Plaintiff/Moving
INC.) Party
)
Plaintiff/Moving Party)
)
- and -)
)
BOND GROUP OTTAWA 2018 INC,) Daniel J. Wright, for the
MARIA MARCANTONIO AND) Defendants/Responding Parties
ANTONIO MARCANTONIO A.K.A.)
TONY MARCANTONIO)

Defendants/Responding Parties

)
)
) **HEARD:** March 5, 2025 and supplementary
written submissions on September 15 and 22,
2025

REASONS FOR JUDGMENT

REES J.

Overview

[1] The plaintiff Morin Bros. Building Supplies Inc. (“Morin Supply”) brings this motion for summary judgment against the defendants.

[2] Morin Supply is a distributor of specialty construction project products and materials. Yanik Morin is the president of Morin Supply.

[3] The defendant Bond Group Ottawa 2018 Inc. (“Bond Group”) is a construction contractor. The defendants Maria Marcantonio and her brother Antonio (“Tony”) Marcantonio are the sole officers and directors of Bond Group. Maria is the president of Bond Group and Tony is the vice-president. It is a family enterprise.

[4] Morin Supply and Bond Group entered into a credit agreement. Some time later, Bond Group placed orders for supplies from Morin Supply on various construction projects. Bond Group then made full and partial payments on invoices for the two projects at issue in this action, the Wateridge Project and the Witherspoon Project. When it made its payments, Bond Group allocated those payments to specific invoices.

[5] Despite Bond Group’s allocation, Morin Supply re-allocated those payments and indicated that it would apply payments first to Morin Supply’s oldest outstanding invoices, including to invoices on an unrelated project – the Bloomington Project.

[6] I find that the action is suitable for summary judgment and grant summary judgment to Morin Supply. I find Bond Group liable for breach of contract and all the defendants liable for breach of trust. But I find that Morin Supply was not entitled to re-allocate payment contrary to Bond Group’s direction, and the amounts owing must be adjusted accordingly.

Facts

[7] In January 2019, Morin Supply and Bond Group entered into a Credit Application and Agreement (the “Credit Agreement”) for Morin Supply to supply construction materials to Bond Group in accordance with its terms and conditions. The Credit Agreement was executed by Maria and Tony Marcantonio as the authorized representatives of Bond Group and in their personal capacity as guarantors. I will return to the specific terms of the Credit Agreement below.

[8] I accept Morin Supply’s evidence that the Credit Agreement is a key aspect of how it engages in business with its customers. Before Morin Supply supplies materials to a customer on credit, it requires them to enter into such an agreement.

[9] At Bond Group’s request, Morin Supply supplied various construction materials and products to Bond Group for several construction projects. Morin Supply’s claim is for unpaid amounts on invoices for its supply to three projects: Wateridge¹ Flats Block 5; Wateridge Flats Block 3, and Witherspoon Building Units A/B. There is no dispute that Bond Group received the materials identified in the invoices. Nor is there any dispute about the quality of the materials supplied.

¹ There are different spellings with respect to this project. Tony Marcantonio’s evidence on cross-examination is that the correct spelling is Wateridge (rather than “Waterbridge”).

[10] Specifically, the relevant invoices from Morin Supply are as follows (collectively, the “Invoices”):

Invoice	Project	Invoice Date (dd/mm/yyyy)	Due Date (dd/mm/yyyy)	Amount (HST incl.)
48767	Wateridge Flats Block 5, Ottawa	29/10/2021	30/11/2021	\$92,257.92
55714	Wateridge Flats Block 5, Ottawa	18/02/2022	30/03/2022	\$81,356.72
60701	Wateridge Flats Block 5, Ottawa	02/05/2022	30/06/2022	\$264.08
63480	Wateridge Flats Block 3, Ottawa	13/06/2022	30/07/2022	\$4,407.00
63649	Wateridge Flats Block 3, Ottawa	15/06/2022	30/07/2022	\$1,077.74
53337	Witherspoon Building Units A/B, Ottawa	13/01/2022	30/02/2022	\$10,030.95
54598	Witherspoon Building Units A/B, Ottawa	02/02/2022	30/03/2022	\$508.91

[11] On February 28, 2022, Mr. Morin emailed Bond Group regarding its overdue accounts. By June 2022, Bond Group still had significant amounts owing.

[12] On June 8, 2022, Morin Supply emailed Bond Group to inquire about the status of several overdue invoices, including those Morin Supply is seeking to recover in this action.

[13] Two days later, Maria Marcantonio replied that Bond Group was waiting on over \$180,000 in receivables to pay Morin Supply for the Invoices. Ms. Marcantonio also advised that she was taking legal action to recover amounts owed for the Bloomington Project, a project for which Bond Group owed Morin Supply arrears but which is unrelated to the Wateridge and Witherspoon Projects. Morin Supply does not seek to recover amounts owing for the Bloomington Project in this action.

[14] On June 21, 2022, Mr. Morin wrote to Bond Group to advise that Morin Supply had revoked Bond Group's credit privilege due to inconsistent payments. Mr. Morin also sought payment of \$238,726 for all of the amounts owing (including amounts which are not the subject matter of this action).

[15] That same day, Mr. Marcantonio replied, acknowledged owing Bond Group a debt and asked for a statement. In reply, Mr. Morin sent a statement of accounts, including finance charges to the end of May 2022.

[16] On July 18, 2022, Ms. Marcantonio emailed Mr. Morin to advise him that Bond Group had received some payments from its Wateridge client and that she had processed a payment to Morin Supply for Invoices 63480 and 6349.

[17] Mr. Morin replied that her remittance slip would not be accepted, that Bond Group had older amounts due, and that the funds would be used to pay the older invoices on the specific job. I will return below to whether Morin Supply was permitted to allocate the funds contrary to Bond Group's direction.

[18] On August 4, 2022, Ms. Marcantonio emailed Morin Supply to advise that Bond Group had processed a payment to Morin Supply, but that Bond Group was limited in the dollar of its loan draws. She also advised that, where possible, Bond Group's lender asked that each payment correspond to an invoice. Ms. Marcantonio identified four invoices Bond Group had paid.

[19] Mr. Morin replied seeking the immediate payment of the Bloomington Project invoices and requesting the payment of Bond Group's other outstanding invoices from oldest to newest.

[20] On August 5, 2022, Ms. Marcantonio emailed Morin Supply to advise that Bond Group made a part payment, which included a part payment of Invoice 48767. Ms. Marcantonio also advised that Bond Group would process further payment to Morin Supply when it had its next available draw under its loan.

[21] On August 25, 2022, Morin Supply followed up. Mr. Marcantonio replied, apologizing for the delay and advising that Bond Group was waiting for its next draw and that it should not be much longer.

[22] By October 2022, Morin Supply had not received its next round of payments from Bond Group. On October 7, 2022, Mr. Morin emailed Ms. Marcantonio seeking payment. Having not received a response, Mr. Morin followed up twice on October 13, 2022.

[23] On October 14, 2022, Ms. Marcantonio emailed Mr. Morin to advise that Bond Group had processed a further payment to Morin Supply, and that \$25,000 had been made available to Bond Group from the trust funds on hold. She advised that further payments would be made the following week once the balance of the funds were made available to Bond Group.

[24] On October 19 and 21, 2022, Morin Supply followed up seeking further payments.

[25] On October 24, 2022, Ms. Marcantonio emailed Morin Supply to advise that Bond Group was working with the bank on the release of funds. She advised that Bond Group was making part payment of \$25,000 towards Invoice 55714. She also advised that in the coming days Bond Group aimed to have the balance owing resolved, except for the Bloomington Project invoices. (As discussed, the Bloomington Project invoices are not part of this action.)

[26] On February 14, 2023, Bond Group requested a breakdown of the amount owing to Morin Supply. Mr. Morin responded that \$132,043.97, including HST, was the principal amount owing.

[27] Antonio Marcantonio responded, “Ok perfect [thumb up emoji] Merci.”

[28] On July 6, 2023, Morin Supply wrote to Bond Group demanding payment of the outstanding amounts and requesting information under s. 39 of the *Construction Act*, including an accounting of the monies Bond Group received on the projects for which Morin Supply supplied materials.

[29] Bond Group responded that it would not make any payments to Morin Supply until the latter provided an accounting showing how Morin Supply applied all payments from Bond Group.

[30] Morin Supply commenced this action on August 1, 2023.

Issues

[31] The motion raises the following issues:

- a. Is it appropriate to grant summary judgment?
- b. Is Morin Supply entitled to judgment on the disputed invoices? If so, in what amount?
- c. Is the guarantee enforceable?
- d. Did Bond Group breach its statutory trust obligations?

Analysis

There is no genuine issue requiring a trial and it is appropriate to grant summary judgment

[32] The court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to the claim or the defence, or the parties agree to have all or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 20.04(2).

[33] There will be no genuine issue requiring a trial when the motion judge is able to reach a fair and just determination of the action on the motion. This is the case when summary judgment

allows the judge to make the necessary findings of fact; allows the judge to apply the law to the facts; and is a proportionate, more expeditious, and less expensive means to achieve a just result than a trial: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49.

[34] The motion judge must first determine whether there is a genuine issue requiring a trial based only on the evidence filed on the motion, without relying on the enhanced fact-finding powers under r. 20.04(2.1). If, however, the motion judge concludes that a genuine issue for trial exists, the motion judge must then consider whether the need for a trial may be avoided by resorting to the enhanced fact-finding powers set out in rr. 20.04(2.1) and (2.2). The motion judge may use those powers, in his or her discretion, unless doing so would be contrary to the interests of justice. Using the enhanced powers will not be against the interest of justice if 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*, at para. 66.

[35] On a motion for summary judgment, the moving party bears the evidentiary burden of showing that there is no genuine issue requiring a trial. If the moving party has discharged its evidentiary burden, the onus then shifts to the responding party to prove that its claim or defence has a real chance of success. See *Sanzone v. Schechter*, 2016 ONCA 566, 402 D.L.R. (4th) 135, at para. 30, leave to appeal refused, [2016] S.C.C.A. No. 443; *New Solutions Extrusion Corp. v. Gauthier*, 2010 ONSC 1037, at para. 12, aff'd 2010 ONCA 348. To successfully resist a summary judgment motion, a responding party must set out sufficient facts to show that there is a genuine issue requiring a trial.

[36] Each party must put its best foot forward to show whether there is an issue for trial. The court is entitled to assume that the record contains all the evidence the parties would present at trial: *Toronto-Dominion Bank v. Hylton*, 2012 ONCA 614, at para. 5. The responding party must “lead trump or risk losing”: *BNS v. Compas*, 2018 ONSC 3262, at para. 9. A responding party “may not rest solely on the allegations or denials in the party’s pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial”: r. 20.02(2). See *T. Hamilton and Son Roofing Inc. v. Markham (City)*, 2018 ONSC 2665, 91 C.L.R. (4th) 146, at para. 29.

[37] The principles governing the admissibility of evidence on a summary judgment motion are the same as those that apply at trial, save for the limited exception found in r. 20.02(1) permitting an affidavit made on information and belief: *Sanzone*, at para. 15.

[38] Here, the responding parties agree that the issues, with one exception, are amenable to summary judgment. If Morin Supply’s claim for breach of trust is not dismissed, the responding parties argue in the alternative that there is a triable issue regarding the breach of trust claim because Morin Supply’s own actions caused or contributed to the alleged damages it now seeks to recover.

[39] I am satisfied that there is no genuine issue requiring a trial on any of the issues and that it is appropriate to grant summary judgment.

Morin Supply is entitled to judgment on the disputed invoices

[40] Morin Supply seeks summary judgment in the amount of \$254,393.30, inclusive of principal and interest, for the supply of various building materials to Bond Group.

[41] Morin Supply argues that the following principal balances are owing:

Invoice	Project	Invoice Date (dd/mm/yyyy)	Due Date (dd/mm/yyyy)	Balance Owing (HST incl.)
48767	Wateridge Flats Block 5, Ottawa	29/10/2021	30/11/2021	\$59,398.57
55714	Wateridge Flats Block 5, Ottawa	18/02/2022	30/03/2022	\$56,356.72
60701	Wateridge Flats Block 5, Ottawa	02/05/2022	30/06/2022	\$264.08
63480	Wateridge Flats Block 3, Ottawa	13/06/2022	30/07/2022	\$4,407.00
63649	Wateridge Flats Block 3, Ottawa	15/06/2022	30/07/2022	\$1,077.74
53337	Witherspoon Building Units A/B, Ottawa	13/01/2022	30/02/2022	\$10,030.95
54598	Witherspoon Building Units A/B, Ottawa	02/02/2022	30/03/2022	\$508.91
Subtotal				\$132,043.97

[42] Morin Supply alleges that \$132,043.97 remains outstanding in principal payments. Bond Group disputes this.

[43] Bond Group argues that it has made full or partial payment of the invoices as follows:

Invoice	Project	Payments	Balance
48767	Wateridge Flats Block 5, Ottawa	\$10,000 – May 18, 2022 \$59,756.01 – August 9, 2022 \$26,501.91 – October 14, 2022	\$0.00
55714	Wateridge Flats Block 5, Ottawa	\$25,000 – October 24, 2022	\$56,356.72
60701	Wateridge Flats Block 5, Ottawa	Nil	\$264.08
63480	Wateridge Flats Block 5, Ottawa	\$4,407.00 – July 20, 2022	\$0.00
63649	Wateridge Flats Block 3, Ottawa	\$1,077.74 – July 20, 2022	\$0.00
53337	Witherspoon Building Units A/B, Ottawa	Nil	\$10,030.95
54598	Witherspoon Building Units A/B, Ottawa	Nil	\$508.91
Subtotal:			\$67,160.60

[44] From this unpaid principal amount of \$67,160.60, Bond Group argues that \$38,035.25 should be set off from the principal owing based on an agreement between the parties for Bond Group’s pre-fabrication and construction of a two-storey garage at Mr. Morin’s personal residence.

[45] Bond Group argues that only \$29,125.41 in principal is owing to Morin Supply.

(a) Morin Supply was required to apply payments as allocated by Bond Group

[46] It was not open to Morin Supply to apply payments made by Bond Group on specific invoices to amounts outstanding on other invoices. Bond Group was entitled to allocate its payments both at common law and to comply with s. 8 of the *Construction Act*.

[47] At common law, a debtor may generally allocate payment—that is, “appropriate” payment in the terminology of debtor-creditor law—in the manner it pleases, and the creditor must apply it accordingly: *Colautti Construction Ltd. v. Ashcroft Development Inc.*, 2011 ONCA 359, 1 C.L.R. (4th) 138, at para. 55. This principle is a long-standing one: *Cory Brothers & Co. v. Owners of the*

Turkish Steamship “Mecca”, [1897] A.C. 286, at p. 293 (per Lord Macnaghten), which was adopted by the Supreme Court of Canada in *Waisman (c.o.b. Waisman, Ross & Associates) v. Crown Trust Co.*, [1970] S.C.R. 553, at p. 560.

[48] A “plain and irrevocable expression of intention is required to effect an allocation”: *Colautti*, at para 56 (citations omitted). This is a question of fact.

[49] Here, Bond Group allocated payments to specific invoices. This is evident from each of Bond Group’s remittance slips and was admitted by Morin Supply on cross-examination. I am satisfied that Bond Group expressed a plain an irrevocable intention through its remittance slips to allocate its payments to specific invoices.

[50] Morin Supply was therefore required to apply the amounts as directed by Bond Group. It was not open to Morin Supply to disregard Bond Group’s allocation. Although Bond Group did not formally reject Morin Supply’s re-allocation of payments, Bond Group had already expressed its intention to allocate the payments and thus did not have to formally object. Morin Supply’s re-allocation of the payments was thus impermissible.

[51] Moreover, where, as here, monies are impressed with a trust under s. 8 of the *Construction Act*, trust monies paid on a particular project must generally be applied against the price of the goods or services rendered for that particular project, and the monies are not to be applied against the oldest outstanding accounts.

[52] In this regard, the rule in *Clayton’s Case (Devaynes v. Noble (1816) 35 E.R. 781)*—that in the absence of an agreement to the contrary, it is presumed a payment on current account is to be applied against the oldest account—does not apply to monies that are impressed with a trust under s. 8 of the *Construction Act*: see *J.W. Price Construction Ltd. v. Costco Wholesale Corporation et al.*, 2000 BCCA 22 [“*J.W. Price Construction*”], at para. 7 (which considered the *Builders Lien Act*, R.S.B.C. 1979, c. 40); *Trans Eastern Lumber Corp. (Receiver of) v. Kingston Municipal Non-Profit Housing Corp.* (1996), 27 O.R. (3d) 85, at p. 89. In the absence of an allocation by the debtor, there is an obligation on the creditor to make enquiries as to the source of funds: *J.W. Price Construction*, at para. 15.

[53] This was endorsed by the Court of Appeal for Ontario in *Colautti*, at para. 59, where it held that “the general rule regarding the allocation of trust monies imposes a requirement on the contractor to make appropriate inquiries as to the source of the funds and, if possible, allocate the payment in question to the project linked to those funds”. In *Colautti*, the Court of Appeal applied this rule to trust monies paid by developers to a contractor. I see no principled reason to apply a different rule to trust moneys paid by a contractor to a supplier. In both cases, the monies are impressed with a statutory trust: *Construction Act*, ss. 7 and 8.

[54] Here, Morin Supply misallocated payments impressed with a trust from one project to another. Morin Supply admitted on cross-examination that it applied payments to specific invoices

to a completely different construction project. In at least one case, they applied payment to the unrelated Bloomington Project.

[55] Finally, nothing in the Credit Agreement between Morin Supply and Bond Group changes the common law right of Bond Group to direct payment as it sees fit. There is no term in the Credit Agreement between them regarding the allocation of payments.

(b) Bond Group's payments and allocations to invoices

[56] I find that Bond Group made the following payments and allocations:

Invoice	Project	Due date	Amount owing	Payments
48767	Wateridge Flats Block 5, Ottawa	November 30, 2021	\$92,257.92	\$10,000 on May 18, 2022 \$59,756.01 on August 9, 2022 \$26,501.91 on October 14, 2022
55714	Wateridge Flats Block 5, Ottawa	March 30, 2022	\$81,356.72	\$25,000 on October 24, 2022
60701	Wateridge Flats Block 5, Ottawa	June 30, 2022	\$264.08	Nil
63480	Wateridge Flats Block 5, Ottawa	July 30, 2022	\$4,407.00	\$4,407.00 on July 20, 2022
63649	Wateridge Flats Block 3, Ottawa	July 30, 2022	\$1,077.74	\$1,077.74 on July 20, 2022
53337	Witherspoon Building Units A/B, Ottawa	February 30, 2022	\$10,030.95	Nil
54598	Witherspoon Building Units A/B, Ottawa	March 30, 2022	\$508.91	Nil

[57] Given that Bond Group paid invoices 63480 and 63649 in full before payment was due, no interest is owing on those invoices.

[58] But there is interest owing on the other invoices where Bond Group made partial or full payment after payment was due. And there is interest owing on invoices 6070, 53337, and 54598, in respect of which Bond Group did not make any payments.

(c) Interest owing under the Credit Agreement

[59] Bond Group argues that Morin Supply is not entitled to interest on any of the invoices because the majority of the amounts owing on the invoices were paid. It argues that interest cannot accrue on debts that have been paid. Bond Group also argues that no interest rate was specified on the invoices under s. 6.1 of the *Construction Act* and cannot be claimed on the principal.

[60] I do not agree. I come to this conclusion for three reasons. First, Bond Group's payments were made after payment was due. So, while it is trite to say that interest cannot accrue on debts that have been fully paid before payment becomes due, interest can accrue on debts that remain fully or partially unpaid.

[61] Second, the interest charged on the unpaid amounts is governed by the Credit Agreement between Bond Group and Morin Supply. The Credit Agreement provides: "INTEREST: 2% per month (25.5% per year calculated and compounded monthly) service charge will be applied on overdue accounts. In cross-examination, Bond Group's representative agreed that the Credit Agreement provided for interest at a specific rate and that Morin Supply is entitled to charge that rate on its invoices.

[62] Third, I am not persuaded, on the facts of this case, that the requirements in s. 6.1 of the *Construction Act* regarding the contents of a proper invoice defeats Bond Group's contractual obligation to pay interest under the Credit Agreement. Bond Group cited no authority in support of this proposition, and I am not aware of any.

[63] It is a requirement of s. 6.1 of the *Construction Act* that, to constitute a "proper invoice" under Part I.1, a written bill or other request for payment for services and materials must contain "information identifying the authority, whether in contract or otherwise, under which the services or materials were supplied" together with the "amount payable for the services or materials that were supplied, and the payment terms". Morin Supply's invoices did not reference the Credit Agreement or the interest terms.

[64] But Morin Supply is not relying on any breach of the prompt payment provisions in Part I.1 of the *Construction Act* to support its claim. Therefore, s. 6.1 is not engaged.

[65] Rather, the invoices must be considered in their entire factual context. Here, the parties entered into the Credit Agreement in January 2019. I find that it was clearly understood that materials were being supplied under its terms. Bond Group impliedly acknowledged that interest was owing at one point in its communications with Morin Supply. Up until the action was commenced by Morin Supply, Bond Group did not dispute that interest was payable under the Credit Agreement.

[66] Accordingly, I find that interest of 25.5% per year calculated and compounded monthly was applicable to the past due invoices.

(d) The clean hands principle does not defeat Morin Supply's claim for the contractual rate of interest under the Credit Agreement

[67] Bond Group argues that the interest rate under the Credit Agreement should not be enforced because Morin Supply comes to court with unclean hands, having misallocated payments contrary to Bond Group's direction. Bond Group argues that Morin supply should be precluded from enforcing terms of an agreement it has violated.

[68] The clean hands principle is an equitable doctrine that may bar a plaintiff's claim for equitable relief where the plaintiff itself has acted inequitably.

[69] In support of its clean hands argument, Bond Group relies on *BMO Nesbitt Burns Inc. v. Wellington West Capital Inc.* (2005), 77 O.R. (3d) 161 (C.A.), at para. 27. But *BMO Nesbitt Burns* does not assist Bond Group.

[70] That case involved employees who transferred from the plaintiff to a corporate defendant. It was alleged that the corporate defendant and its officers induced the transferring employees to breach their contracts of employment and their fiduciary duties, wrongfully interfered with the plaintiff's economic and contractual interests, and unlawfully used confidential information. The plaintiff also claimed that the transferring employees breached their obligations to the plaintiff, including removing confidential information belonging to plaintiff and using that information to solicit the plaintiff's clients.

[71] The plaintiff in *BMO Nesbitt Burns* sought, among other things, an interlocutory and permanent injunction against certain defendants prohibiting them from wrongfully interfering with its economic and contractual interests. In relation to this claim for equitable relief, the Court of Appeal considered whether the defendants were entitled to plead and prove properly particularized recruiting policies, practices and directives of the plaintiff as a defence.

[72] The Court of Appeal held that there must be a direct connection between the plaintiff's conduct and the contract to be enforced for the clean hands doctrine to apply. There was no such direct connection pleaded. Accordingly, the Court of Appeal held that this defence must be struck out.

[73] *BMO Nesbitt Burns* does not stand for the proposition that Bond Group is advancing. In it, the Court of Appeal did not recognize a principle that unclean hands could defeat a claim for damages for breach of contract. As I read it, the principles it considered were limited to unclean hands acting as a bar to equitable relief.

[74] Bond Group has not identified any authority in which the unclean hands principle has been applied as a bar to recover damages for breach of contract. I am not aware of any.

[75] Here, Morin Supply's claim for pre- and post-judgment interest under the Credit Agreement is not equitable relief. Therefore, the unclean hands principle does not apply to it.

(e) Bond Group's payments must be applied to interest then principal

[76] Bond Group argues that there is no outstanding principal balance for Invoice 48767 once its payments are totaled. It arrives at this conclusion by applying its payments to principal without taking into account the interest owing under the Credit Agreement.

[77] I reject Bond Group's position for two reasons. First, as discussed, interest of 25.5% per year calculated and compounded monthly was applicable to Invoice 48767.

[78] Second, absent an agreement to the contrary, the common law rule is that the creditor must apply the sums paid to the discharge of the interest in the first place, and any surplus that may remain to the principal.

[79] This rule is a longstanding one. It was stated in *Re Barrie* (1930), 38 O.W.N. 106 (H.C.), as follows:

The proper method is to calculate the interest upon the debt up to the time of each payment, then to apply the sums paid to the discharge of the interest in the first place, and any surplus that may remain to the discharge of so much of that principal, and to proceed in like manner throughout the account, reckoning interest on the unpaid balances of principal: *McGregor v. Gaulin* (1848), 4 U.C.R. 378, 384; *McDonald v. McMurchy* (1924), 26 O.W.N. 210.

[80] See also *Atlas Acceptance Corp. v. Lamm* (1991), 5 Man. R. (2d) 25, at p. 33; *Guaranty Co. v. Regina (City) (No. 2)* (1961), 35 W.W.R. 529, (sub nom. *Preload Co. of Regina of Canada Ltd. v. Regina*) 29 D.L.R. (2d) 183 (Sask. C.A.), affirmed (sub nom. *Guaranty Co. v. Regina (City) (No. 2)*) [1962] S.C.R. 186.

[81] The rationale for the rule was explained by Rigby L.J. in *Parr's Banking Co. v. Yates*, [1898] 2 Q.B. 460, [1895-9] All E.R Rep. Ext. 1592 (C.A.):

The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract, and would be most unreasonable as against him.

[82] Here, there was no agreement to the contrary on the payment of the invoices. (I will address the issue of set-off separately below.) Thus, the usual rule applies on Bond Group's payment of invoices. Morin Supply has a right to apply the sums paid to the discharge of the interest in the first place, and any surplus that may remain to the principal.

[83] This means that Invoice 48767 is only partially paid.

[84] The same principles apply to Invoice 55714.

[85] \$81,356.72 was due on Invoice 55714 on March 30, 2022. Bond Group only paid \$25,000 on October 24, 2022. By that time, \$94,257.93 was owing (\$81,356.72 in principal and \$12,901.21 in interest). After the sum paid on Invoice 55714 is applied first to interest, the balance is applied to the principal. Thus, \$69,257.93 in principal remained owing as at that date.

(f) The set off for the Garage Project should be applied against interest first, then principal amounts owing by Bond Group

[86] Bond Group asserts a set-off due to work performed on a two-storey garage at Mr. Morin's personal residence. Specifically, Bond Group argues that the parties agreed that its invoices totalling \$38,035.25 from the Garage Project should be applied against the principal owing.

[87] I find that Bond Group pre-fabricated and constructed a two-storey garage at Mr. Morin's personal residence. I further find that Morin Supply requested that Bond Group issue the invoices for the garage project to Morin Supply.

[88] Bond Group says that Morin Supply agreed that the invoices for the garage project would be credited against the unpaid project invoices owing to Morin Supply. Morin Supply does not dispute the amount of \$38,035.25 for the garage project but argues that the agreement was to credit solely the interest owing on the invoices in issue but not the principal amount.

[89] I find that the parties did not come to an agreement specifically about whether the Garage Project invoices would be set off against principal *versus* interest. Consistent with his affidavit, Mr. Marcantonio testified on cross-examination that they agreed that Bond Group would send the Garage Project invoices to Morin Supply and the latter would credit them against the balance owing by Bond Group. They did not specifically discuss principal *versus* interest. I find that Mr. Marcantonio's evidence is more persuasive than Mr. Morin's on this issue. Despite documentary evidence of Bond Group initially sending a Garage Project invoice to Mr. Morin and Mr. Morin requesting that they instead be issued to Morin Supply, there no documentary evidence that they agreed to set off interest only.

[90] As discussed, absent an agreement to the contrary, the common law rule is that the creditor apply the sums paid to the discharge of the interest in the first place, and any surplus that may remain to the principal.

[91] Accordingly, each of the Garage Project invoices (totalling \$38,035.25) from the Garage Project should be set off against the total interest as it stood when the Garage Project invoice was sent to Morin Supply, then any surplus that may remain should be set off against the total principal owing at that time.

The guarantee is enforceable against Maria Marcantonio

[92] Bond Group argues that the guarantee provided by Maria Marcantonio is unenforceable because the Credit Agreement does not apply to the invoices at issue, and Ms. Marcantonio was not a party to those invoices.

[93] There is no merit to this argument. As discussed, I have found that the Credit Agreement applies to the invoices at issue. I am satisfied that the Credit Agreement was entered into for the purpose of Bond Group ordering supplies from Morin Supply on credit.

[94] I am also satisfied that the guarantee is enforceable against Ms. Marcantonio. Both she and Mr. Marcantonio signed the Credit Agreement. This included the following guarantee from them, immediately above the signature line:

The undersigned agrees to guarantee (both in a personal capacity and as a corporate officer) payment of all amounts due plus 1.5% per month or 18.0% per annum (calculated and compounded monthly) interest and all collection costs including legal fees on a full indemnity basis should the account become delinquent. It is agreed that this guarantee shall be valid notwithstanding any change or changes in the name of the firm, by retirement of one or more of its partners, or by the introduction of onre [sic] or more new partners.

[95] There is no evidence from Ms. Marcantonio about her understanding of her guarantee obligations or the circumstances surrounding its execution. She did not file an affidavit. Nevertheless, I find that as an officer and director of Bond Group, Ms. Marcantonio understood the purpose of the Credit Agreement and that it would apply to future invoices.

[96] The guarantee is enforceable and judgment for any outstanding amounts owing may be had against Maria Marcantonio.

[97] There is an ambiguity as to the rate of interest payable by the guarantor. In oral submissions, Morin Supply clarified that it was not seeking interest of 25 percent per annum (calculated and compounded monthly) plus 18 percent per annum (calculated and compounded monthly). Rather, it was one or the other, and the guarantor should have the benefit of the lesser rate.

[98] I agree. Properly interpreted, the guarantors are liable for interest of 18 percent per annum (calculated and compounded monthly) on unpaid amounts due under the Invoices.

Bond Group breached its statutory trust obligations to Morin Supply

[99] Morin Supply argues that Bond Group breached the trust provisions under the *Construction Act*. Bond Group denies this and argues that Morin Supply’s breach of trust claim is manufactured. It also argues that Morin Supply’s misallocation of project-specific funds is a basis to deny the trust claim. Finally, Bond Group argues in the alternative that there is a triable issue with respect to the breach of trust claim.

[100] I will address the last point raised by Bond Group first. Morin Supply’s breach of trust claim raises no genuine issue requiring a trial. Bond Group has not persuaded me, with specific evidence, that its defence has a real chance of success. Here, summary judgment allows me to make the necessary findings of fact; allows me to apply the law to the facts; and is a proportionate, more expeditious, and less expensive means to achieve a just result on the trust claim than a trial.

The law

[101] Section 8(1) of the *Construction Act* imposes a trust on all amounts owing to or received by a contractor or subcontractor on account of the contract or subcontract price of an improvement for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. That section provides:

8 (1) All amounts,

(a) owing to a contractor or subcontractor, whether or not due or payable; or

(b) received by a contractor or subcontractor,

on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor.

[102] The trust provisions of the *Construction Act* “requires that a contractor or subcontractor who receives money on account of its contract on a project must use those moneys first to pay those who provided services or materials on the project”: *St. Mary’s Cement Corp. v. Construc Ltd.* (1997), 32 O.R. (3d) 595, at pp. 3, 4. Failing to do so amounts to a breach of trust.

[103] Subsection 8(2) of the *Construction Act* sets out the obligations of the contractor—here, Bond Group—as trustee:

(2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor’s or subcontractor’s own use or to any use inconsistent with the trust

until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor.

[104] Moreover, s. 8.1 imposes an obligation on trustees to maintain a trust account and to keep written records regarding trust funds:

Contractor's, subcontractor's duties re trust funds

8.1 (1) Every person who is a trustee under section 8 shall comply with the following requirements respecting the trust funds of which he or she is trustee:

1. The trust funds shall be deposited into a bank account in the trustee's name. If there is more than one trustee of the trust funds, the funds shall be deposited into a bank account in all of the trustees' names.
2. The trustee shall maintain written records respecting the trust funds, detailing the amounts that are received into and paid out of the funds, any transfers made for the purposes of the trust, and any other prescribed information.
3. If the person is a trustee of more than one trust under section 8, the trust funds may be deposited together into a single bank account, as long as the trustee maintains the records required under paragraph 2 separately in respect of each trust.

Multiple trust funds in single account

(2) Trust funds from separate trusts that are deposited together into a single bank account in accordance with subsection (1) are deemed to be traceable, and the depositing of trust funds in accordance with that subsection does not constitute a breach of trust.

[105] In an action for breach of trust, the plaintiff must show that:

- a. The general contractor received money from the owner of the project;
- b. The subcontractor supplied services or materials; and
- c. The subcontractor was not paid.

See *St. Mary's Cement*, at p. 6; *Clearwater Structures v. 614128 Ontario Ltd. o/a Trisan Construction*, 2021 ONSC 5601, at para. 26.

[106] The onus then shifts to the contractor to show that it applied the money according to its statutory trust obligations: *St. Mary's Cement*, at p. 6; *Clearwater Structures*, at para. 27.

[107] The contractor has a duty to account for the monies it has received and its failure to do so gives rise to liability for breach of trust. The contractor must justify any expenditure of trust funds: *Clearwater Structures*, at para. 27.

[108] A contractor may also be found to have breached its duty as a statutory trustee by failing to pay the subcontractor in a timely way and by failing to provide an accounting of trust funds received when requested to do so: *Clearwater Structures*, at para. 28.

[109] Beneficiaries of a trust under s. 8 of the *Construction Act* have a right to information from the contractor under s. 39(1)2. This right to information includes a state of accounts for a contract.

Analysis

[110] On cross-examination, Bond Group acknowledged receiving monies—although not in full—from the owners of the Wateridge Flats and Witherspoon projects. Further, although the Invoices referenced Wateridge Flats Block 3 and Block 5, Mr. Marcantonio testified on cross-examination that the Wateridge Flats project was in fact one project dealing with six blocks, and there was one contract between the owner and Bond Group. The building was done in phases.

[111] Thus, I find that Bond Group received monies from the owner of the Wateridge Flats and Witherspoon projects. Further, there is no dispute that Morin Supply supplied materials for these projects. Finally, as I found above, Bond Group has not paid Morin Supply in full for the Wateridge Flats and Witherspoon projects.

[112] The onus thus shifts to Bond Group to show that it applied the monies in accordance with its statutory trust obligations.

[113] Bond Group has failed to discharge its onus. Despite asserting during cross-examination that it keeps records of the receipt and distribution of trust funds for each project, Bond Group has not provided any records to substantiate this. What's more, the company has not offered any evidence showing that the funds received for the Wateridge Flats and Witherspoon projects were used in keeping with its trust obligations.

[114] Moreover, Bond Group admitted on cross-examination that it failed to maintain a separate trust account for trust funds, as required under s. 8.1 of the *Construction Act*. Rather, it commingles monies received in trust on projects with other monies in its general chequing account. Although Bond Group keeps an accounting ledger on a project-by-project basis, the trust funds are deposited in its general chequing account from which it makes payments to subtrades and suppliers, company business expenses, and Bond Group's overhead expenses.

[115] I find that Bond Group's failure to maintain a trust account is a breach of its trust obligations under s. 8.1 of the *Construction Act*.

[116] It was unclear from the evidence whether Bond Group deducted overhead expenses from the funds held in trust, which would also be contrary to its trust obligations: *Rudco Insulation Ltd. v. Toronto Sanitary Inc.* (1998), 42 O.R. (3d) 292 (C.A.).

[117] Finally, Morin Supply requested an accounting of the trust funds and made a request for information under s. 39 of the *Construction Act*, which went unanswered.

[118] Given its failure to provide any records of the receipt and distribution of trust funds for each project and its failure to respond to the s. 39 request, I draw an adverse inference from Bond Group's failure to lead evidence to demonstrate that the monies it received for the Wateridge Flats and Witherspoon projects were applied in keeping with its trust obligations: *Ambassador Electric Inc. v. Fernwood Builders (London) Ltd.*, 2014 ONSC 3738, 37 C.L.R. (4th) 106, at paras. 91-96.

[119] Moreover, Bond Group's failure to pay Morin Supply the monies owed on these projects in a timely way and its failure to provide an accounting of the trust funds when requested by Morin Supply amount to breaches of trust: *Clearwater Structures*, at paras. 27-28, and para. 36.

[120] In sum, Bond Group has breached its trust obligations to Morin Supply regarding the Wateridge Flats and Witherspoon projects.

[121] Bond Group argues that Morin Supply's misallocation, discussed above, of project-specific payments is a basis to deny the latter relief. It argues that it halted payments after confirming that Morin Supply was misallocating its trust fund payments to the Bloomington Project. It argues that Morin Supply breached its obligations under s. 8.1 of the *Construction Act*.

[122] As discussed, I have found that Morin Supply had no right to reallocate payments to invoices contrary to Bond Group's direction. But I disagree, as a finding of fact, that Bond Group stopped payments because Morin Supply was misallocating its trust fund payments to the Bloomington Project. The record does not support this. Rather, the evidence is clear that Bond Group was unable to meet its payment obligations to Morin Supply regardless of the latter's misallocation. This went on for several months, and Bond Group repeatedly acknowledged the amounts owing. Instead, it was only after Morin Supply's lawyer made a formal demand for payment that Bond Group raised the issue of misallocation under the statutory trust provisions of the *Construction Act*.

[123] Further, Morin Supply's misallocation of project-specific payments is not a basis to deny the latter relief. The issue is whether Bond Group complied with its obligations as a trustee under s. 8(2) of the *Construction Act*. How Morin Supply allocated payments made to it by Bond Group, and what Morin Supply did with those payments, does not bear on whether Bond Group itself properly used and paid out the trust funds that it received on the Wateridge Flats and Witherspoon projects.

[124] Thus, I reject Bond's argument. Morin Supply did not "manufacture" a trust claim nor does Morin Supply's misallocation of payments defeat its trust claim.

[125] Morin Supply seeks damages in the amount of \$132,043.97 for the breach of trust. Above, I have reached the conclusion that Morin Supply was required to apply the payments to the invoices as directed by Bond Group. The correct allocation of funds to project-specific invoices must be accounted for in the damages award on the trust claim.

Maria and Tony Marcantonio are personally liable as directors for the breach of trust

[126] Section 13 of the *Construction Act* provides that in addition to the corporate trustee who is found liable for a breach of trust, a director or officer of the corporation or any person who has effective control of the corporation who assents to, or acquiesces in, conduct that they know or reasonably ought to know amounts to breach of trust by the corporation is personally liable for breach of trust on a joint and several basis: *Toro Aluminum Ltd. v. Revah* (1999), 3 C.L.R. (3d) 1 (Ont. S.C.), at para. 8.

[127] For a finding of personal liability under s. 13(1), the claimant need not establish dishonesty, personal benefit, or a subjective awareness of the Act's trust provisions: *Nieltech v. Wasero*, 2022 ONSC 1724, 38 C.L.R. (5th) 452, at para. 28. Rather, it requires that the claimant establish that the director, officer or person having effective control of the corporation (a) assented to or acquiesced in conduct and (b) knew or reasonably ought to know amounted to breach of trust by the corporation.

[128] Bond Group is a family enterprise run by its sole directors, Maria and Tony Marcantonio. Maria was president and Tony was vice-president. Both communicated regularly with Morin Supply regarding the outstanding invoices for the Wateridge Flats and Witherspoon projects. They made all management decisions for Bond Group. They shared decision making and accounting responsibilities. Bond Group did not receive or disburse any monies without both their knowledge.

[129] Mr. Marcantonio acknowledged that Bond Group received trust funds on the Wateridge Flats and Witherspoon projects. Given their shared decision making and accounting responsibilities, I am satisfied that Maria and Tony Marcantonio knew that Bond Group received funds on these projects and that it had not paid Morin Supply in full for them.

[130] I therefore find that Maria and Tony Marcantonio, as officers and directors of Bond Group, assented to or acquiesced in Bond Group's breaches of its trust obligations to Morin Supply regarding the Wateridge Flats and Witherspoon projects.

[131] Thus, I find them jointly and severally liable under s. 13(3) of the *Construction Act* for Bond Group's breaches of trust, detailed above.

The rate of interest under the Credit Agreement applies to the breach of trust claims

[132] The parties had not made submissions on whether the contractual rate of interest applied to Morin Supply's breach of trust claim. In preparing these reasons, *Pylon Paving (1996) Inc. v. Beaucon Building Services Inc.*, 2022 ONSC 3282, 35 C.L.R. (5th) 273, came to my attention. *Pylon Paving* declined to apply a contractual rate of interest to a breach of trust claim. The court

held that the breach was statutory rather than contractual and applied the interest rates under the *Courts of Justice Act*, R.S.O. 1990, c. C.43. I therefore invited the parties to provide me with further submissions on this issue.

[133] Morin Supply argues that the contractual interest rate in the Credit Agreement forms part of the statutory trust. It relies on *Great Northern Insulation Services Ltd. v. King Road Paving and Landscaping Inc.*, 2021 ONCA 367. In that case, the Court of Appeal for Ontario held that contractual “interest reasonably falls within the scope of s. 8(2) [of the *Construction Lien Act*] as an amount owing to a subcontractor relating to the improvement. Interest owing is therefore part of the trust fund created by s. 8(1) and falls directly within the restrictions on the permissible use of those trust funds stipulated by s. 8(2)”: at para. 18.²

[134] It is evident that *Great Northern* was not brought to the court’s attention in *Pylon Paving*.

[135] Bond Group argues that *Great Northern* does not stand for the broad proposition that contractual interest always applies to statutory trust claims. Rather, it argues that the Court of Appeal held that contractual interest could form part of the statutory trust where it was demonstrably part of the amounts owed under section 8(2).

[136] Bond Group also argues that even if the contractual rate of interest were to apply, interest on a trust claim cannot accrue from the date of invoice or contractual due date, but only from the date trust funds were received and misapplied because a s. 8 trust claim arises upon breach. Here, Bond Group argues that where breach cannot be tied to a determinable date, the interest rate under the *Courts of Justice Act* applies.

[137] I disagree.

[138] *Great Northern* governs. The interest due under the Credit Agreement falls within the scope of s. 8(2) of the *Construction Act* as an amount owing to Morin Supply and the interest is part of the trust fund created by s. 8(1).

[139] Further, although s. 8 creates a statutory trust and liability arises upon its breach, the interest on what is owed to the subcontractor or supplier accrues according to the contract. Bond Group’s argument confuses the timing of the breach of trust with the amount owing to the subcontractor or supplier under s. 8(2).

² *Construction Lien Amendment Act, 2017*, S.O. 2017, c. 24 made several changes to the *Construction Lien Act*, including changing the name of the statute to the *Construction Act*. Nothing in these changes affects the Court of Appeal’s conclusion under s. 8.

[140] Therefore, the rate of interest under the Credit Agreement applies to the breach of trust claims against the defendants.

Disposition

[141] For these reasons, I grant summary judgment to Morin Supply.

[142] I direct the parties to provide me with damages calculated in accordance with these reasons for inclusion in the formal judgment. If they cannot agree, they may request a case conference before me.

[143] Morin Supply requested declarations that the defendants have breached the trust provisions under ss. 8 and 13 of the *Construction Act* and that they are constructive trustees of the funds received by or owing to Bond Group, but the need for declaratory relief was not argued. It is not clear to me what purpose declarations would serve since I have made the necessary findings and granted judgment on the statutory trust claims. Given this, it is unnecessary to grant declaratory relief.

Costs

[144] Morin Supply seeks full indemnity costs in the amount of \$36,529.51, inclusive of HST, plus \$1,707, inclusive of any HST, in disbursements. The Credit Agreement provides that Bond Group will reimburse Morin Supply “for all costs, charges and expenses, including, without limitation,... legal costs on a full indemnity basis.” A similar provision applies to the guarantee.

[145] In accordance with the Credit Agreement, Morin Supply is entitled to full indemnity costs: *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779, at para. 54. That said, Morin Supply’s success was more limited than the claim it advanced on the motion for summary judgment given its improper reallocation of Bond Group’s payments. I therefore fix the overall amount of costs and disbursements at \$30,000, inclusive of HST.

Justice Owen Rees

Released: October 1, 2025