CITATION: Dani Building System Inc. v. Hossain, 2025 ONSC 6093
COURT FILE NO.: CV-21-664782
DATE: 2025 10 29

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SUPERIOR COURT OF JUSTICE - ONTARIO

IN THE MATTER OF the *Construction Act*, RSO 1990, c C.30, as amended

RE: DANI BUILDING SYSTEM INC., *Plaintiff*

- and -

SYED HOSSAIN, NASREEN HOSSAIN, ROYAL BANK OF CANADA, COMAT MORTGAGE CORPORATION, ALPINE CREDITS ONTARIO LIMITED and ASHLEY JOAN FLEISCHER, *Defendants*

BEFORE: Associate Justice Todd Robinson

APPEARING: T. Kuper, *for the plaintiff*

S. Hossain and N. Hossain, *in person*

HEARD: July 25, 2025 (by videoconference)

REASONS FOR DECISION
(Motion to Enforce Settlement)

[1] The plaintiff, Dani Building System Inc. ("DBS"), brings this motion seeking to enforce a settlement of this action with the defendant homeowners, Syed Hossain and Nasreen Hossain, and the mortgagees, Royal Bank of Canada, Comat Mortgage Corporation, and Ashley Joan Fleischer (collectively, the "Mortgagee Defendants"). The action was previously discontinued as against Alpine Credits Ontario Limited. DBS submits that all parties agreed to a settlement of this action and the counterclaim, but the Hossains have failed to perform the material terms of the settlement. DBS argues that it is entitled to judgment in accordance with the consent to judgment to which the Hossains agreed.

[2] The Hossains do not dispute that they agreed, at least in principle, to terms of settlement. They also do not dispute that they signed minutes of settlement. However, their position is that there is no binding settlement because the agreement was reached without voluntary and informed consent or proper legal advice. They submit that the purported settlement should not be enforced by reason of fundamental mistake and procedural unfairness, arguing that enforcing it would lead to serious injustice and deprive them of their right to a fair trial when DBS' lien is invalid.

[3] I have sympathy for the circumstances in which the Hossains have found themselves, which led them to feel that they should agree to a settlement and sign the settlement documents.

However, the Hossains were represented by counsel throughout settlement negotiations. There is no cogent evidence before me supporting that they did not have proper legal advice on the settlement agreement or that they did not understand either the settlement terms or the meaning of the minutes of settlement they signed. I am satisfied that a binding settlement was reached, and that there is no convincing reason not to enforce it. I am granting the motion.

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ANALYSIS

[4] The underlying action arises from a home renovation and construction project at the Hossains' property. DBS was contracted to complete construction of an extension to the Hossains' house as well as renovation work. DBS ultimately preserved and perfected a lien under the *Construction Act,* RSO 1990, c C.30 for $76,618.61, representing a claimed unpaid management fee and unpaid amounts for services and materials supplied to the Hossains. When perfecting its lien, DBS asserted priority over the registered charges of the Mortgagee Defendants. The Hossains dispute validity of the lien and quantum, and advanced a significant counterclaim against DBS alleging deficiencies and incomplete work.

[5] DBS moves under subrule 49.09(a) of the *Rules of Civil Procedure,* RRO 1990, Reg 194, which provides that a where a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may make a motion to a judge for judgment in the terms of the accepted offer and the judge may grant judgment accordingly. My jurisdiction to hear this motion is not in dispute. This motion has been brought before me in a reference of this lien action under s. 58 of the *Construction Act.* I thereby have jurisdiction to hear this motion since the *Construction Act* provides me with the same jurisdiction, power and authority as a judge within this reference: *R&V Construction Management Inc. v. Baradaran,* 2020 ONSC 3111 (Div Ct) at para. 41.

[6] I have been managing this lien action since October 2023. Peremptory trial dates were scheduled for earlier this year in July 2025. Ahead of trial, at the parties' request, a settlement conference took place before Wiebe A.J. in September 2024. At the settlement conference, DBS and the Hossains reached a settlement in principle on terms that were ultimately committed to minutes of settlement and signed by all parties.

[7] The parties' settlement negotiations and what occurred at the settlement conference hearing are all subject to settlement privilege. However, an exception to settlement privilege occurs where a party wishes to prove the existence or scope of a settlement: *Puri Consulting Limited v. Kim Orr Barristers PC,* 2015 ONSC 577 at para. 18. I am accordingly able to delve into the circumstances of the settlement conference and the subsequent negotiation of the settlement documentation to determine if the parties did enter a binding and enforceable settlement.

[8] In deciding this motion, I must first consider whether an agreement to settle was reached. To do so, I am to consider if the parties had a mutual intention to create a legally binding contract and reached agreement on all essential terms of the settlement. That requires using an objective approach to the evidence. Specifically, I must determine "what a reasonable observer would have believed the parties intended, taking into consideration the evidence of all the parties as well as the surrounding documentary evidence": *Cook v. Joyce,* 2017 ONCA 49 at para. 65.

[9] DBS' evidence is that, at the settlement conference, DBS and the Hossains reached a settlement in principle on the following terms:

(a) the Hossains would pay to DBS the sum of $75,000 by March 31, 2025;

(b) in the event the Hossains did not make payment as agreed, they would consent to judgment of $85,000, all-inclusive;

(c) the Hossains' counterclaim would be dismissed, without costs; and

(d) DBS' claim against the Mortgagee Defendants would be dismissed or discontinued, without costs, to be coordinated with those defendants.

[10] It is undisputed that, following some back and forth on settlement terms and paperwork, the Hossains signed formal minutes of settlement twice: first on November 14, 2024, using an earlier iteration of the minutes (having substantively the same terms as the final version), and then again on December 31, 2024, using revised and final minutes that were ultimately also signed by DBS and the Mortgagee Defendants. Throughout the period of negotiating a settlement and preparing and signing the settlement documents, the Hossains were represented by counsel. Those lawyers had been acting for them since May 2024.

[11] The Hossains did not make the settlement payment by March 31, 2025, or any point since that time. By May 2025, the Hossains had opted to act in person and sought to bring a motion to schedule a motion to "remove the construction lien and reverse settlement agreement". A further hearing for directions took place before me and it was agreed and directed that this motion by DBS would be brought, with the Hossains arguments on why the settlement should not be enforced addressed in response.

[12] Whether a binding settlement was reached is a fact-driven exercise. I have little evidence on what transpired at the settlement conference, so the conduct of the parties and communications between the lawyers after that hearing are important in deciding the objective intentions of the parties. The salient post-settlement conference conduct is set out below.

[13] On December 2, 2024, the lawyers for DBS, the Hossains, and Comat Mortgage Corporation appeared before me. Wiebe A.J. had already reported to me that a settlement was reached, subject to approval of the Mortgagee Defendants and papering the settlement. At the hearing before me, I was told that the parties were still working on finalizing the settlement. As set out in my endorsement, the Hossains' lawyer expressed that he would be surprised if the settlement fell apart.

[14] On December 11, 2024, DBS' lawyer emailed a final version of minutes of settlement to the Hossains' lawyers. The covering email stated, in part, as follows:

> Attached is the proposed new version and the old version. Let me know if you have any issues. The point of the settlement is that your client pays $75k by the end of March 2025, failing which we have judgment for $85k and are free to take enforcement steps available under the rules or the lien. However now we won't be seeking priority over any of the mortgages.

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[15] A few hours later, the Hossains' lawyer responded, stating, "Acknowledged. We will seek instructions."

[16] On January 7, 2025, DBS' counsel sent a follow up email. On January 10, 2025, the Hossains' lawyer sent an email attaching the minutes of settlement as executed by the Hossains (which had been executed on December 31, 2024). The email stated, "Please see attached fully executed Minutes of Settlement." The signed minutes of settlement reflect the terms as agreed at the settlement conference.

[17] Subsequently, on January 20, 2025, the Hossains' lawyer requested a fully executed copy of the minutes of settlement to allow the Hossains "sufficient time to procure financing." In response, the next day, DBS' lawyer confirmed that a fully executed copy would be provided once the Mortgagee Defendants had signed. With that email, a revised draft consent to judgment and proposed draft order dismissing the claim against the Mortgagee Defendants was sent to the Hossains' lawyers.

[18] A few days later, on January 23, 2025, the lawyers for DBS and the Hossains again appeared before me. At that hearing, they reported that the settlement documents as between DBS and the Hossains had been finalized and that an agreement had been reached between DBS and the Mortgagee Defendants. No concerns about the settlement were raised.

[19] On February 12, 2025, after several follow-ups about the consent to judgment and dismissal order against the Mortgagee Defendants, the Hossains' lawyer wrote as follows:

> I confirm that we are agreeable with the form and content of the documentation you have provided, and will provide our client's signed documentation as soon as possible.

[20] On March 21, 2025, DBS's lawyer provided the Hossains' lawyers with the minutes of settlement as signed by DBS. Subsequently, on March 25, 2025, he also provided the minutes as executed by the Mortgagee Defendants. The Hossains did not execute the formal consent to judgment or the release.

[21] DBS correctly points out that, based on the record before me, at no time did the Hossains' lawyers raise any concerns about the settlement documentation or the terms of settlement. They further did not take the position that there was no binding settlement or that the settlement was being impeded by DBS. No concerns were raised at the hearings before me in December 2024 and January 2025. The Hossains' position as advanced on this motion was not taken until after the Hossains elected to self-represent, which was after the payment deadline set out in the signed minutes of settlement.

[22] Based on the foregoing, I have no hesitation finding that, objectively, a settlement was reached. All terms necessary to fully and finally dispose of this action and the counterclaim were agreed. DBS prepared and sent minutes of settlement. The Hossains' lawyer confirmed that he would seek instructions and subsequently sent back signed minutes. Quite apart from any prior discussion or agreement at the settlement conference, there was an objective offer made and objective acceptance of that offer. The terms of settlement were set out in clearly worded minutes of settlement that were executed by the Hossains and, ultimately, all other parties. No ambiguity

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in the wording has been argued. The signed minutes were emailed to DBS' counsel with no reservations or concerns. Subsequently, the form of consent to judgment and dismissal order were also confirmed by the Hossains' lawyer.

[23] The Hossains argue that they did not have voluntary and informed consent to the settlement. They argue that they never agreed to final terms and were not properly advised of the legal implications of the settlement. I reject these arguments.

[24] It is significant that the Hossains were represented by lawyers at all material times and do not dispute signing the minutes of settlement. A lawyer of record has the ostensible authority to bind their client. Opposing lawyers are entitled to rely on that authority in the absence of some indication to the contrary: *Oliveira v. Tarjay Investments Inc.,* 2006 CanLII 8870 (ON CA) at para. 2. A lawyer retained in a proceeding may bind their client in a settlement unless there is a limitation in the lawyer's authority and it is known to the other side. Although lack of authority may be brought to the court's attention, the court should not be embarking on an inquiry into a limitation of authority if the party is not under disability and there is no dispute that a retainer exists: *Scherer v. Paletta,* [1996] OJ No 1017, 1996 CanLII (CA) at para. 11.

[25] The Hossains have tendered no evidence supporting that their lawyers had any limitation in their authority in negotiating the settlement, let alone that such a limitation was known or reasonably known to DBS or its lawyers.

[26] During oral argument, Mr. Hossain conceded that the Hossains did agree to pay $75,000 and withdraw their counterclaim if DBS' lien was withdrawn, provided that the settlement was fast. The Hossains submit that they needed a signed statement of settlement to obtain necessary financing, which did not occur until March 25, 2025. That delay appears to have been significant in the Hossains' willingness to proceed with a settlement. Nevertheless, the concession about agreeing to terms of payment, discharging DBS' lien, and withdrawing the counterclaim is at odds with the Hossains' position that they lacked voluntary and informed consent to the settlement.

[27] Regardless, they have tendered no cogent evidence to support their position on lack of informed consent or insufficient legal advice on the settlement. They have not explained what they were told about the settlement, have given no evidence that they did not understand the minutes of settlement when signing them, and have not explained why they signed the minutes if they did not understand them. There is also no evidence supporting or even suggesting that the Hossains' lawyers were acting without instructions.

[28] Ultimately, though, the Hossains' subjective intentions and understanding does not drive the analysis. Determining whether a concluded agreement exists does not depend on an inquiry into the actual state of mind of one of the parties or on the parole evidence of one party's subjective intention: *Olivieri v. Sherman,* 2007 ONCA 491 at para. 44. I must look at the objective evidence. There is nothing before me supporting that, objectively, the Hossains did not voluntarily agree to the terms of the settlement with the benefit of legal advice.

[29] Having found a settlement agreement exists, I must now consider whether, on all the evidence, the agreement should be enforced: *Capital Gains Income Streams Corporation v.*

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Merrill Lynch Canada Inc. (2007), 87 OR (3d) 464, 2007 CanLII 39604 (Div Ct) at para. 10. Whether to enforce a settlement is a discretionary decision. Circumstances where the court might exercise its discretion not to enforce a settlement include (a) where it considers the settlement to be unreasonable, (b) where the settlement would result in an injustice, or (c) where there is another good reason not to enforce the settlement: *Wilson v. Johnston*, 2015 ONSC 3016 at para. 72.

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[30] Nevertheless, although the court retains discretion on whether to enforce a settlement, the Court of Appeal has directed that a discretionary decision not to enforce a settlement "should be reserved for those rare cases where compelling circumstances establish that the enforcement of the settlement is not in the interests of justice" and, more specifically, would lead to clear injustice: *Srebot v. Srebot Farms Ltd.,* 2013 ONCA 84 at paras. 6 and 10.

[31] I find no injustice from enforcing the settlement, let alone clear injustice.

[32] The Hossains allege that they had ineffective representation by their lawyers, arguing that enforcing that settlement would "entrench the effects of poor legal representation" and deny them an opportunity to defend the case on its merits. They have tendered some evidence on merits, which they argue ought to have been put forward by their lawyer at the settlement conference and in this litigation. The Hossains specifically submit that the lawyer attending the settlement conference on their behalf (who was not their primary lawyer) lacked familiarity with the case and submitted no evidence or documentation to support their position. However, these allegations are not sufficiently addressed in the evidence tendered on this motion to permit me to make any fair or proper findings regarding alleged ineffective or poor legal representation by the Hossains' lawyers.

[33] The Hossains also submit that Wiebe A.J. conducted the settlement conference under conditions that were procedurally unfair and that they perceived to be pressuring them into settling. The specific affidavit evidence from Mr. Hossain is as follows:

> We have a strong belief that at the settlement conference, the Honourable Associate Justice Mr. Wiebe treated them unfairly. We were not given any opportunity to fully express our conditions, terms, or views regarding the lien claim settlement. On one occasion, Justice Wiebe even threatened to impose further sanctions on us.
>
> Under these circumstances, we felt frustrated, nervous, and pressured, and were manipulated during the proceedings. At that time, we did not have sufficient mental capacity to understand the draft settlement agreement.

[34] I cannot meaningfully comment on how the Hossains felt at the settlement conference. I was not there. I do not doubt Mr. Hossain's evidence that they felt frustrated, nervous, and pressured in the process, and am sorry for it. However, they have tendered no specific evidence on what Wiebe A.J. is said to have done that created a procedurally unfair environment or put undue pressure on them. There is no context for their comment of purportedly threatened "sanctions". It is undisputed that, at the settlement conference, the Hossains did not put forward any documents supporting their counterclaim. That is discussed in the paragraphs preceding the above extract in Mr. Hossain's affidavit. The Hossains allege that was the fault of their lawyers. Based on submissions at this motion hearing, it seems that the Hossains' lack of evidence was

specifically raised and challenged by Wiebe A.J. at the settlement conference. Regardless of who was at fault for that evidence not being tendered, any comments made by Wiebe A.J. about the absence of evidence appear to have been founded.

[35] Importantly, though, I am unconvinced that Wiebe A.J. unfairly "pressured" the parties into a settlement. Notably, Mr. Hossain has included with his affidavit an email sent to the Hossains' lawyers the day prior to the settlement conference. In that email, Mr. Hossain sets out a proposal to settle the action on payment to DBS of up to $50,000. Although Mr. Hossain submits that he and his spouse did not agree to dismiss their counterclaim, the record contains no corroborating emails or other documents for that position. It is inconsistent with the settlement proposal outlined in the email sent to the Hossain's lawyers the day before the settlement conference. Moreover, any "pressure" applied by Wiebe A.J. had a cooling off period. The final terms of settlement and related documents at issue on this motion were negotiated and prepared over the course of several months following the settlement conference.

[36] There is similarly no cogent evidence before me supporting that the Hossains "did not have sufficient mental capacity to understand the draft settlement agreement", as stated by Mr. Hossain in his affidavit. The Hossains submit that they were not properly advised of the consequences of the settlement, but have put forward no evidence supporting that assertion or that they did not understand the terms set out in the minutes of settlement, namely that they were to pay DBS and not pursue their counterclaim.

[37] Mr. Hossain submitted at the hearing that he saw only the signature page in DocuSign and signed the minutes of settlement (with assistance of his children) without reading them. That is not outlined in his affidavit on this motion, nor is any basis on which to find that it was reasonable for the Hossains not to have read or asked questions about the minutes before signing them. They did so twice: first in November 2024 and then again in December 2024.

[38] I must also consider prejudice to the parties. I find prejudice to DBS from not enforcing the settlement. There is evidence before me that, as of June 2025, DBS had incurred $58,049.72, including HST, in legal fees and disbursements during this action, which includes defending against the Hossains' significant counterclaim. That counterclaim was reported to me at an earlier hearing as being quantified during discoveries at $474,324.12. Although the precise reasons for DBS settling are not before me, I accept DBS' submission that the settlement figure reflects a compromise by DBS on principal, interest, and costs, while mitigating risks and costs of a trial, and affording the Hossains with six months to arrange payment. The peremptory trial dates in July 2025 were vacated when the settlement was reached. But for the settlement, this action would already have been tried earlier this year. If the settlement is not enforced, then a trial cannot now proceed until sometime in at least 2026, with significant greater expense to all parties.

[39] Apart from the Hossains being unable to proceed to trial on the merits of their defences and counterclaim, they allege prejudice from having incurred $40,000 in interest charges in the period since September due to high mortgage rates. Mr. Hossain conceded during oral argument that he would have carried out the settlement if it had been concluded quickly so they could save money, which I understand to have been referring to the mortgage costs. However, I do not see this as prejudice relevant to whether I should enforce the settlement. DBS rightly points out that

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there is no evidence supporting that the Hossains took any steps to arrange the settlement funds. They similarly took no steps to confirm that they felt there was no binding settlement and seek to advance their counterclaim until well after the payment deadline set out in the signed minutes of settlement.

[40] For the foregoing reasons, I am satisfied that a settlement was reached and am unconvinced that, in all the circumstances, this is one of the "rare cases" discussed by the Court of Appeal in which the settlement should not be enforced. No compelling circumstances have been identified supporting that enforcing the settlement would be contrary to the interests of justice. If the Hossains have concerns or complaints about the quality of legal representation that they received from their lawyers, and decisions that they may have made in reliance on that advice, then they have a potential remedy against their lawyers. That does not change that they entered a binding and enforceable settlement.

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DISPOSITION

[41] For the foregoing reasons, DBS' motion is granted. DBS is entitled to judgment in accordance with the parties' settlement as set out in the signed minutes of settlement. Since the Hossains failed to make payment by the agreed deadline, that includes judgment for the higher amount on the terms as set out in the agreed consent to judgment.

COSTS

[42] DBS has been successful in the motion and is entitled to its costs. DBS seeks its partial indemnity costs in the amount of $4,564.64, including HST and disbursements, which is supported by a costs outline. That figure includes a motion filing fee, which ought not to have been charged or paid because this is a lien action. Motion filing fees are included in the fee exceptions for an action under the *Construction Act* in s. 3(2) of O Reg 293/92 under the *Administration of Justice Act,* RSO 1990, c A.6. Accordingly, that disbursement claim is not recoverable.

[43] In my view, the costs claim is reasonable and well within expectations for a motion of this nature. The issues were important to DBS (and to the Hossains) and the rates and hours claimed are proportionate to the importance of those issues. Although I appreciate that the Hossains have already incurred, and continue to incur, costs arising from the lien, that is not a basis to deny DBS its costs of this successful motion. I am accordingly fixing costs of the motion in the amount of $4,000.00, including HST, payable within forty-five (45) days.

ORDER

[44] I accordingly order as follows:

(a) DBS shall have judgment against the Hossains, jointly and severally, for the sum of $85,000.00.

(b) DBS may take any steps, including appearing before the court for directions or further order, to enforce and/or realize upon the DBS's lien, preserved by

registering a claim for lien on March 31, 2021, as instrument no. AT5693881, in the Land Titles Division of the Land Registry Office of Toronto (No. 80).

(c) The Hossains' counterclaim is hereby dismissed, with prejudice.

(d) The Hossains shall forthwith execute and provide to DBS a copy of the final release attached as Schedule "B" to the minutes of settlement executed by them on December 31, 2024.

(e) Upon payment in full of the amount set out in subparagraph (a) above, including funds clearing (if necessary), DBS will provide any and all necessary consents, signatures, and other cooperation required to immediately discharge its lien, for which the Hossains shall be responsible for drafting any and all documents and shall bear the costs of registering/filing same.

(f) The action as against the defendants, Royal Bank of Canada, Comat Mortgage Corporation, and Ashley Joan Fleischer, together with any and all crossclaims, are hereby dismissed, without costs.

(g) The Hossains shall pay to DBS its costs of this motion fixed in the amount of $4,000.00, including HST, payable within forty-five (45) days.

[45] A draft order was submitted, but a report is required: see *Prasher Steel Ltd. v. Maystar General Contractors Ltd.*, 2020 ONSC 6598 (Div Ct). Report to issue in a form amended from the draft order submitted, as amended electronically prior to signing.

ASSOCIATE JUSTICE TODD ROBINSON

DATE: October 29, 2025

ERRATUM: Following release of these reasons for decision, an inadvertent reference to "DSP" instead of "DBS" in para. 44 was brought to the court's attention. On October 30, 2025, the inadvertent error was corrected and the decision re-released to the parties.

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