CITATION: Radan v. Urban View Contracting Inc., 2025 ONSC 6181
COURT FILE NO.: DC-24-00000101
DATE: 20251103

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:	)	
	)	
JUDY RADAN	)	
	)	Adam Jarvis, for the Appellant
	)	
	)	
Appellant	)	
	)	
- and -	)	
	)	
	)	
URBAN VIEW CONTRACTING INC.	)	
	)	Mikesh Patel, for the Respondent
	)	
	)	
Respondent	)	
	)	
	)	
	)	**HEARD:** April 25, 2025

REASONS FOR JUDGMENT

D.E. Harris J.

[1] The respondent/plaintiff, Urban View Contracting Inc. ("Urban"), agreed to put in new floors for the appellant/defendant, Ms. Judy Radan ("Ms. Radan"), in her condominium. There had been a leak, and a significant amount of damage was caused. The

total amount of Urban's invoice for the work performed was $27,346. Ms. Radan paid an installment of $13,673 as requested, and the rest was to be paid upon completion of the work. Ms. Radan, however, was displeased with the quality of the flooring and Urban's service. Urban did some remedial work but Ms. Radan was still not satisfied. She refused to pay Urban but hired another contractor to remedy the problems. The other contractor charged $12,228.36. Ms. Radan soon after sold the apartment.

[2] The deputy judge ruled in favour of the plaintiff, Urban, in the amount of $18,813.37. She gave both oral reasons and, some time later, written reasons. Ms. Radan appeals against the decision below.

THE EVIDENCE

[3] At trial, both of the parties were self-represented. The witness for Urban was one of the principals of the company, Joe D'Annunzio. Ms. Radan testified on her own behalf. The deputy judge found that both witnesses were credible witnesses. There was an oral contract. The work was to be paid for by the defendant's insurance company to compensate her for damage that had resulted from an HVAC leak. The plaintiff performed the work but admitted at the trial that some of it was defective. Specifically, it was admitted that the underlay installed was thinner than contracted for, excess glue and dust was not cleaned up, the caulking was not properly applied, and the sub-trade Doctor Demo was not paid.

THE GROUNDS OF APPEAL

[4] The main grounds of appeal encapsulated from the appellant's written and oral argument are:

i. The deputy judge decided the case on the basis of unjust enrichment, which had not been pleaded or argued by the parties.

ii. The deputy judge intervened unduly in the trial and "entered the arena."

[5] It is only necessary to deal with the first issue.

I. THE UNJUST ENRICHMENT ISSUE

[6] The appellant argues that the deputy judge erred in finding for the plaintiff based on the law of unjust enrichment, a legal doctrine not pled or argued by the parties. The deputy judge held in her oral reasons:

> The test that is to be applied to this case is a balance of probabilities, or whether there is more evidence than not that there was a breach, or that the plaintiff breached the terms, or the defendant, of agreement. *In addition to this test, the Court on its own is going to apply the law of unjust enrichment. That is the law that is going to be applied today.*
> …
> The defendant then refused to pay the remaining payment, and then the defendant listed the property for sale, *sold the home for a significant profit, and relied on the negligent work that she alleges that the plaintiff did in order to sell that property. That is called unjust enrichment. Using the labour of*

> *someone else to have a monetary benefit. And, the second part of unjust enrichment is that the person, they lose, or they are missing something, or they did not get paid. So in my submission, unjust enrichment is made out in this situation.*
> (Emphasis added)

[7] After referring to the defendant's opinions about the poor quality of the work in her testimony, the deputy judge said in her oral reasons:

> *But the bottom line is, even if you take away all of that, the defendant prospered on the plaintiff's negligent work. So that is called unjust enrichment.* …Judgment is granted in favour of the plaintiff and against the defendant in the amount of $18,813.37. (Emphasis added)

[8] The deputy judge's written reasons deviated substantially from her oral reasons. In her written reasons, this is what she said in total with respect to the issue of unjust enrichment:

> 9. The test that is applied to this case is a balance of probabilities or whether there is more evidence than not that there was a breach of the terms of the agreement between the Plaintiff and Defendant. *In addition to this test, the law of Unjust Enrichment or "Quantum meruit" shall also be considered.*
> (Emphasis added)

[9] After noting the lack of an expert witness or the insurance adjuster to testify with respect to the deficiencies in the work, the deputy judge concluded:

> 11 … There is then not satisfactory evidence that would tilt the balance to find in the favour of the Defendant/Plaintiff in Defendant's Claim. There is simply no evidence presented, that is corroborated by either the author of the invoice or report and we are left with the personal opinions of the Defendant/Plaintiff in Defendant's Claim as to what may or may not have happened.

[10] The deputy judge then wrote that she was finding for the plaintiff.

II. DID THE DEPUTY JUDGE ERR IN RELYING ON UNJUST ENRICHMENT?

[11] In her oral reasons, it is evident that the trial judge decided the case on the basis of unjust enrichment. She said it was the bottom line that the defendant had prospered on the plaintiff's negligent work. This constituted unjust enrichment. At paragraph 9 of her written reasons, she mentioned unjust enrichment, saying "In addition to this test, the law of Unjust Enrichment or "Quantum meruit" shall also be considered." But her written reasons indicate that, unlike her oral reasons, she did not decide the case based on unjust enrichment.

[12] The question arises as to whether for the purposes of this appeal, the oral reasons or the written reasons were the basis for the decision or whether both should be considered.. In giving her oral reasons, the deputy judge said:

> Okay, so I just want to say that I reserve the right to make grammatical errors, which could be substantive sometimes, depending on whether the sentence is a complete sentence, but I reserve the right to make changes to this. So this is my oral decision, which will be given to you in writing.

[13] She reiterated at the end of her reasons that she reserved the right to fix grammatical errors. She expected that her written decision would be released in a week. It is not clear from the record when the written reasons were actually released.

[14] In my view, based on the law and what the deputy judge said, the oral reasons cannot just be swept away and not considered. There is a considerable body of authority holding that a trial judge is limited in adding, deleting or altering his or her original reasons. For example, the Court of Appeal has said:

> 11 In *Wang*, at para. 9, this court observed that "it is inappropriate to modify, change or add to a transcript of oral reasons rendered in court." At a minimum, where oral reasons are given and written reasons issued sometime later, changes that represent "something substantially different from what in fact occurred in the courtroom" are not permitted: *Wang* , at para. 10.
>
> *R. v. R.C.*, 2021 ONCA 419, at para. 11, leave to appeal refused, 2022 CanLII 14377 (S.C.C.), citing *R. v. Wang*, 2010 ONCA 435, 263 O.A.C. 194, at paras. 9-10. Also see *R. v. Thyagarajah*, 2016 ONSC 633, at para. 42.

[15] The deputy judge's written reasons did not simply fix grammatical errors as she said they would. Rather, the written reasons were quite different in content and substance. The unjust enrichment theme which was the crux of the oral decision was relegated to a side comment in the written reasons. This was a fundamental difference. The authorities referred to above require that the initial reasons take precedence over the subsequent reasons unless the trial judge makes it clear that the decision will be based on the later reasons. The appearance of justice and the presumption of judicial integrity would be compromised if initial reasons were ignored, substantially altered or minimized without the trial judge clearly stipulating this at the time the oral reasons were given: *R. v. Arnaout*, 2015 ONCA 655, 127 O.R. (3d) 241, at paras. 31-53, leave to appeal refused, 2016 CanLII 33995 (S.C.C.).

[16] Nothing the deputy judge said at the time she gave her oral reasons indicated that they were provisional or that she would decide the case based on her later written reasons. Quite to the contrary, when she said that she would fix the grammatical errors in the written reasons, it was implicit that the oral reasons were her true reasons, and the written reasons would be the same in substance. The changes would be cosmetic only. I conclude that the oral reasons must be considered the primary reasons. I need not finally conclude whether the written reasons should also be considered.

[17] The oral reasons, in my view, demonstrate an error of law. The reliance on unjust enrichment as a salient theme was entirely tangential to the true issue at trial. Unjust enrichment was irrelevant to whether the plaintiff had fulfilled his end of the installation contract, the central issue in the trial. The deputy judge fixated on the defendant profiting from the plaintiff's work for the new floors when the condominium was sold. But this issue had no real connection to the quality of the work performed as the contractor's end of the contract. The quality of the work was the focal point of the contractual dispute and could not be sidestepped. In the end, the trial judge failed to engage with the real issue between the parties in the case.

[18] This is sufficient to dispose of this appeal. It should be added that the appellant in her notice of appeal argued that the deputy judge erred in dismissing her evidence as "personal opinion" with respect to her testimonial observations about the quality of the

flooring. It was held that some corroboration was required: see para. 9 above. I tend to agree that this was an additional legal error but, because it was not fully argued, I find it unnecessary to finally resolve the issue.

[19] The appeal is allowed, the decision is set aside, and a new trial is ordered. The parties are urged to resolve this matter without another trial. Costs of $4,000 all inclusive are awarded to the appellant.

D.E. Harris J.

Released: November 3, 2025

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Judy RADAN

Appellant

- and -

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