

CITATION: Vestacon Limited v. Huszti Investments (Canada) Ltd., 2025 ONSC 6241
COURT FILE NO.: CV-18-00594670-0000
DATE: 20251107

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Vestacon Limited)
) Josh Minster, for the plaintiff
Plaintiff)
)
– and –)
) No one appearing for the defendants
Huszti Investments (Canada) Ltd. o/a)
Eyewatch, 2603553 Ontario Inc., Nikhil)
Chhelavda, Veronica Huszti and Leslie)
Alexander Huszti also known as Leslie)
Huszti also known as Leslie A. Huszti)
Defendants)
)
)
) **HEARD:** November 3, 2025

2025 ONSC 6241 (CanLII)

ROBERT CENTA J.

[1] In 2018, Vestacon Limited commenced this action against the defendants in respect of unpaid invoices for labour and materials for the renovation of three units of a commercial condominium project. This matter came before me for an undefended trial on November 3, 2025.

[2] For the reasons that follow, I grant judgment in favour of Vestacon against Huszti Investments (Canada) Ltd. in the amount of \$449,819.31. I dismiss Vestacon’s request for an order declaring that Veronica Huszti or Leslie Huszti breached the trust provisions of the *Construction Lien Act*, R.S.O. 1990, c. C-30.

A. *Procedural history and trial process*

[3] In its original statement of claim, Vestacon sued two additional parties who are no longer before the court. First, on July 9, 2019, Vestacon discontinued its action against Nikhil Chhelavda. Second, on April 7, 2022, Akbarali J. dismissed the action against 2603553 Ontario Inc.: *Vestacon Limited v. Huszti Investments (Canada) Ltd. o/a Eyewatch, et al.*, 2022 ONSC 2104.

- [4] On June 25, 2024, Associate Justice Brown struck out the statement of defence filed on behalf of Huszti Co., Ms. Huszti, and Mr. Huszti, noted them in default, and dismissed their counterclaim against Vestacon: *Vestacon v. Huszti Investments Canada Ltd.*, 2024 ONSC 5379. Because the Huszti defendants have been noted in default, they are deemed to admit all the allegations in the statement of claim: rule 19.02(1)(a), *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.
- [5] Vestacon called two witnesses to testify at trial:
- a. Dennis Welfle, Vice-President of Business Development at Vestacon. Mr. Welfle testified about his involvement as project manager for the renovation project at issue.
 - b. Mr. Chhelavda, the former Chief Financial Officer of Huszti Co. Mr. Chhelavda testified about his role at Huszti Co and the payment of the invoices at issue.
- [6] Counsel for the plaintiff indicated that Vestacon intended to call a third witness, but that witness declined to respond to a summons. Counsel indicated that Vestacon was prepared to proceed without the evidence of the third witness and did not ask for an adjournment or for any assistance to enforce the summons.

B. *Huszti Co. is liable for the unpaid invoices*

- [7] Based on the deemed admissions in the statement of claim, and the evidence led at trial, I find the following facts that are relevant to Huszti Co.'s liability to Vestacon.
- [8] On April 30, 2017, Huszti Co. retained Vestacon to demolish and renovate three units of a commercial condominium. On April 30, 2017, Vestacon delivered its first invoice in the amount of \$120,034.15. Huszti Co. paid that invoice in full.
- [9] Between May 31 and August 31, 2017, Vestacon delivered four additional invoices that totalled \$449,819.31. Huszti Co. did not pay any of those invoices.
- [10] On August 28, 2017, the payment certifier on the project signed a certificate of substantial performance of the contract, which certified that substantial performance was achieved on July 11, 2017. On July 25, 2017, Summit Engineering Inc., signed off on the electrical engineering work. On August 22, 2017, Madonna Engineering Inc. signed a letter of substantial completion for the mechanical engineering work on the project.
- [11] Vestacon did not register a lien on the property. Instead, it commenced this action.
- [12] I am satisfied that Huszti Co. breached its contract with Vestacon by failing to pay the invoices when rendered. There is no evidence to suggest that the work was not performed or that it was substandard in any way.
- [13] Damages for breach of contract should, as far as money can do, place the plaintiff in the same position as if the contract had been performed. These damages must be those that

may fairly and reasonably be considered either arising naturally from the breach of contract or that may reasonably have been in the contemplation of both parties: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3, at para. 27; *Kramer v. Ballantyne-Gaska*, 2025 ONCA 1, 56 B.L.R. (6th) 1, at para. 34; *Hadley v. Baxendale* (1854), 9 Ex. 341, 156 E.R. 145 (Ex. Ct.), at p. 151.

- [14] In my view, Vestacon is entitled to damages equal to the amount of the unpaid invoices that it delivered to Huszti Co. I grant judgment in favour of Vestacon and order Huszti Co. to pay \$449,819.31 to Vestacon. Vestacon is also entitled to prejudgment interest on this amount running from September 30, 2017, to the date of judgment.

C. *The individual defendants are not liable for breach of trust.*

- [15] Vestacon also seeks a declaration that Mr. Huszti and Ms. Huszti are in breach of the trust provisions found in section 7 of the *Construction Lien Act*. Based on the deemed admissions to facts pleaded in the statement of claim and the evidence at trial, I find the following facts.

- [16] Mr. Huszti was President, Chief Executive Officer and a director of Huszti Co. His mother, Ms. Huszti, was also a director of Huszti Co. She was the “silent partner” who “held all of the financial strings.” If Mr. Huszti needed funds, he would get the money from Ms. Huszti, who could say yes or no to financing requests.

- [17] Mr. Chhelavda did not begin to work at Huszti Co. until the construction project was substantially complete. He testified that Huszti Co. had a single bank account at TD Bank. Although Mr. Chhelavda was shown a bank statement that he identified as being from the Huszti Co. bank account, counsel did not ask to mark that statement as an exhibit and did not ask any questions about any individual transactions appearing on that account statement. Mr. Chhelavda testified that he worked at Huszti Co. until November 17, 2017.

- [18] Section 7 of the *Construction Lien Act* provides as follows:

7. (1) All amounts received by an owner¹...that are to be used in the financing of the improvement, including any amount that is to be used in the payment of the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

...

¹ For the purpose of the *Construction Lien Act*, under s. 1(1): “owner” means any person, including the Crown, having an interest in a premises at whose request and, (a) upon whose credit, or (b) on whose behalf, or (c) with whose privity or consent, or (d) for whose direct benefit, an improvement is made to the premises but does not include a home buyer;

(4) The owner is the trustee of the trust fund created by subsection (1), (2) or (3), and the owner shall not appropriate or convert any part of a fund to the owner's own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to the contractor by the owner.

- [19] Vestacon submits that Huszti Co. held funds that constituted trust funds for the benefit of unpaid contractors: *Colautti Construction Ltd. v. Ashcroft Development Inc.*, 2011 ONCA 359, 281 O.A.C. 201, at para. 81. To prove a breach of trust under s. 7 of the Act, Vestacon must prove that Huszti Co. received funds that were to be used in the financing of the improvement project, and I find that Vestacon did not meet its burden.
- [20] There was very little evidence led at trial that was relevant to the issue of the existence of the trust fund. Mr. Welfle gave no evidence relevant to the question of whether Huszti Co. received funds that were to be used in the financing of the improvement. Mr. Chhelavda, the former CEO of Huszti Co., testified that he did not start work at the company until the renovation was substantially complete. He gave no evidence about the source of any specific funds to be used on the renovation. He did not testify that Mr. Huszti asked Ms. Huszti to provide funds specifically for the renovation project.
- [21] Counsel for Vestacon pointed to paragraph 19 of the statement of claim, which pleaded that after Huszti Co. sold the renovated property in December 2017, \$1.5 million in mortgages registered against the property were discharged. This fact does not assist the plaintiff. There is no evidence regarding when those mortgages were placed on the property, the purpose for those mortgages, or the use to which Huszti Co. put any funds obtained. I decline to draw the inference that the mortgages related to funds falling within the meaning of s. 7. In my view, that would be speculation and impermissible inference drawing: *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.), at p. 530.
- [22] In short, there was no evidence before the court regarding the source of any funds to be used on the renovation project. I find that Vestacon has not proved that Huszti Co. received any "amounts...that are to be used in the financing of the improvement." I find that Vestacon has not proved that Huszti Co. held any trust funds for the benefit of the contractor. Vestacon has not proved, therefore, that Huszti Co. appropriated or converted any such trust funds.
- [23] Because I find that Huszti Co. did not breach the trust provisions in s. 7 of the *Construction Lien Act*, I need not consider whether Mr. Huszti or Ms. Huszti are liable for breach of trust. Section 13 of the *Construction Lien Act* provides for, in certain circumstances, extended liability for directors and officers of corporations that breach their trust obligations:
- [24] As there was no breach of trust by Huszti Co., neither Mr. Huszti nor Ms. Huszti could be found liable under s. 13 of the *Construction Lien Act*. I dismiss Vestacon's request for a declaration that Mr. Huszti and Ms. Huszti are liable for breach of trust. I also dismiss

Vestacon's request for an order granting judgment against Mr. Huszti and Ms. Huszti for the amount of the unpaid invoices.

- [25] Although counsel did not raise this issue in oral argument, I also dismiss Vestacon's request for a declaration that "in the event that the Defendants, Ms. Huszti and Mr. Huszti are, or become, bankrupt, the judgment obtained against them shall not be released by the discharge of the bankrupts from bankruptcy." Even if I had made a finding of fraud or breach of trust, the court has no jurisdiction to make such a hypothetical declaration before the issue arises: *Royal Bank of Canada v. Elsioufi*, 2016 ONSC 5257, 40 C.B.R. (6th) 334, at paras. 7, 10-12.

D. Costs

- [26] Vestacon seeks its costs of the action on a partial indemnity scale, fixed in the amount of \$27,275.41, inclusive of fees, disbursements, and taxes.
- [27] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at paras. 59-66, leave to appeal refused, [2022] S.C.C.A. No. 387, the Court of Appeal for Ontario restated the general principles to be applied in the court's exercise of its discretion to award costs. Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the factors listed in rule. 57.01. These factors include the result achieved, the amounts claimed and recovered, the complexity of and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, as well as any other matter relevant to costs.
- [28] A proper costs assessment requires the court to undertake a critical examination of the relevant factors as applied to the costs claimed and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable": *Apotex*, at para. 60. The overarching objective is to fix an amount of costs that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case, rather than to fix an amount based on the actual costs incurred by the successful litigant: *Apotex*, at para. 61; *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26.
- [29] While the reasonable expectation of the parties concerning the amount of a costs award is a relevant factor that informs the determination of what is fair and reasonable, it is not the only, determinative factor and cannot be allowed to overwhelm the analysis of what is objectively reasonable in the circumstances of the case. To hold otherwise would result in the means of the parties artificially inflating costs with the concomitant chilling effect on access to justice for less wealthy parties: *Apotex*, at para. 62.
- [30] Costs that are reasonable, fair, and proportionate for a party to pay in the circumstances of the case should reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend: *Apotex*, at para. 65. The party required to pay the successful party's costs "must not be faced with an award that does not reasonably reflect

the amount of time and effort that was warranted by the proceedings”: *Gratton-Masuy Environmental Technologies Inc. v. Building Materials Evaluation Commission*, 2003 ONSC 8279, 170 O.A.C. 388 (Div. Ct.), at para. 17.

- [31] The party seeking costs bears the burden of proving them to be reasonable, fair, and proportionate. The absence of dockets is not an automatic bar to proving or receiving an award of costs: *Apotex*, at para. 66; *Leonard v. Zychowicz*, 2022 ONCA 212, 75 E.T.R. (4th) 21, at para. 33. However, absent dockets, a description of the activities for which fees and disbursements are claimed must be sufficient to permit for the kind of scrutiny that the court is required to undertake. The material provided for the assessment must allow the court to come to a conclusion as to the amount of time reasonably required by the party seeking costs to deal with all aspects of the proceedings for which costs are claimed, including whether there was over-lawyering or unnecessary duplication of legal work: *Apotex*, at para. 66; *Restoule*, at para. 355.
- [32] I am satisfied that Vestacon should receive its costs of the proceeding on a partial indemnity scale. Vestacon was the successful party in this proceeding, even if it did not obtain all the relief it sought. I was not presented with any offers to settle or any evidence of defendant misconduct that might have entitled Vestacon to costs on an elevated scale.
- [33] In exercising my discretion to fix costs, I must consider what is fair and reasonable for Huszti Co. to pay in this proceeding and balance the compensation of Vestacon with the goal of fostering access to justice: *Boucher*, at paras. 26, 37.
- [34] The number of hours claimed, and the hourly rates charged by Vestacon’s counsel, are very reasonable. I find that Huszti Co. would reasonably have expected to face a claim for costs of this size or more. Vestacon seeks costs that reasonably reflects the amount of time and effort warranted by the proceeding. Vestacon seeks an award of costs that is objectively reasonable, fair, and proportionate for Huszti Co. to pay in the circumstances of the case.
- [35] For these reasons, I fix the costs of the proceeding at \$27,275.41, inclusive of disbursements and Harmonized Sales Tax, and order Huszti Co. to pay that amount to the Vestacon.
- [36] Counsel for Vestacon may send a formal order reflecting my reasons for decision to my judicial assistant for my review and signature without the need to obtain the consent of any defendants as to its form and content.

Robert Centa J.

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SUPERIOR COURT OF JUSTICE

BETWEEN:

Vestacon Limited

Plaintiff

– and –

Huszti Investments (Canada) Ltd. o/a Eyewatch,
2603553 Ontario Inc., Nikhil Chhelavda, Veronica
Huszti and Leslie Alexander Huszti also known as
Leslie Huszti also known as Leslie A. Huszti

Defendants

REASONS FOR JUDGMENT

R. Centa J.

Released: November 7, 2025