CITATION: Girgis v. Fine Touch Painting Co., 2025 ONSC 6832
DIVISIONAL COURT FILE NO.: DC-24-00000714-0000
DC-24-00000715-0000
DATE: 20251205

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:

MAGED GIRGIS	)	*Self-Represented*
Appellant	)	
– **and** –	)	
FINE TOUCH PAINTING CO.	)	*Adam Lefler*, Counsel for the Respondent
Respondent	)	
	)	**HEARD via videoconference**:
	)	October 28, 2025

O'BRIEN J.

REASONS FOR DECISION

Overview

[1] This is an appeal from the order of Deputy Judge Harper dated October 17, 2025 in which she granted judgment to the plaintiff/respondent Fine Touch Painting in the amount of $11,740 and dismissed the appellant/defendant Maged Girgis' claim. She awarded costs of $3,515.

[2] The parties entered into agreements for Fine Touch to paint two houses, referred to in the judgment as House #1 and House #2. Mr. Girgis paid substantial sums to Fine Touch, but there was a dispute about whether additional amounts were owed.

[3] The deputy judge found the contract for House #1 required the work to be completed for $38,000 plus HST for a total of $42,940. Because Mr Girgis had paid Fine Touch $41,000, she concluded $1940 was owing. In addition, she found Mr. Girgis owed $7,910 for extra work outside the scope of the original House #1 contract.

[4] Regarding House #2, the deputy judge found Mr. Girgis owed Fine Touch $1,890. Fine Touch had claimed a higher amount, but the parties agreed Fine Touch did not complete all the work on House #2.

[5] The deputy judge dismissed Mr. Girgis' claim for rent and other damages caused by what he claimed was Fine Touch's delay in completing the work.

[6] Mr. Girgis has raised numerous grounds of appeal. I dismiss them for the following reasons.

Analysis

[7] Many of Mr. Girgis' submissions rely on the court interfering with the deputy judge's findings of fact. He repeatedly submitted that the deputy judge ignored his evidence and accepted only the evidence of the respondent. He feels strongly that an injustice was done to him.

[8] However, it is not the role of the court on appeal to re-weigh the evidence. The court will not interfere with the deputy judge's decision on appeal unless the deputy judge made an error of law or exercised his or her discretion on the wrong principles or misapprehended the evidence such that there is a palpable and overriding error: *Garcia v. 1162540 Ontario Inc.*, 2013 ONSC 6574, at para. 7.

[9] Although Mr. Girgis feels his evidence was ignored, it was open to the deputy judge to reject his evidence and accept the evidence of the appellant. Because the test for this court to intervene requires a finding of palpable and overriding error, if there was some evidence to support the deputy judge's conclusion, the court generally will not intervene, even if there was other evidence supporting the other position.

[10] It is also important to be aware that the Small Claims Court is intended to function in an efficient manner by way of a summary process. Under s. 25 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (CJA) the Small Claims Court is mandated "to hear and determine in a summary way all questions of law and fact…." Deputy judges are expected to provide oral reasons for judgment following the conclusion of trial in most cases. In *Maple Ridge Community Management Ltd. v. Peel Condominium Corporation No. 231*, 2015 ONCA 520, 389 D.L.R. (4th) 711 at para. 35, the Court of Appeal cautioned against assessing the adequacy of reasons without taking the Small Claims Court context into account, stating that "appellate consideration of Small Claims Court reasons must recognize the informal nature of that court, as well as the volume of cases it handles and its statutory mandate to deal with these cases efficiently."

[11] Mr. Girgis first submits the deputy judge was required to dismiss the claim for delay. I disagree. The question of whether to dismiss for delay is discretionary. Rule 11.1 of the *Small Claims Court Rules*, O. Reg. 258/98 authorizes the clerk to dismiss an action for delay if after two years, among other things, a trial date has not been requested. In this case, the action was set down for trial well within the two years so r. 11.1 does not apply.

[12] I nonetheless consider it within the discretion of a deputy judge to determine whether a matter should be dismissed for delay. Mr. Girgis submits there was a delay of over two years from

January 2022 to February 2024 when the plaintiff did not move the matter forward. This was because the parties agreed the matter should proceed in-person rather than virtually and there was a delay in scheduling in-person Small Claims Court trials. The deputy judge also noted that in the context of the period from filing the claim until trial, several adjournments "had nothing to do with the plaintiff." Overall, there was no fixed requirement for the trial to occur within two years after it was set down for trial and there is no basis to interfere with the deputy judge's exercise of discretion on this issue.

[13] There is no merit to Mr. Girgis' second submission, that Fine Touch was not entitled to bring the action. There are two aspects to this argument. Mr. Girgis first says there was no contract with Fine Touch because the contract was made with the principal of Fine Touch, Paul Batistakis. He also submits Fine Touch is an inactive company. He says Mr. Batistakis should not be permitted to sue him in a company name because he would not be able to recover from the same company were he to be successful.

[14] On the first argument, there was evidence before the deputy judge that the contract was with Fine Touch. The deputy judge found that at least one email between the parties included the company name. Contrary to Mr. Girgis' submissions, there is also at least one invoice dated December 2018 from Fine Touch to Mr. Girgis. There is no palpable and overriding error in the deputy judge's determination that the action could be brought in Fine Touch's name.

[15] Mr. Girgis is not entitled to raise the second argument on appeal because it was not raised before the deputy judge. He emphasizes that he testified at trial that he "knew nothing about" Fine Touch. But this evidence is relevant to the argument that the contract was not with Fine Touch. Mr. Girgis did not submit at trial that Fine Touch was an inactive company. There was therefore no evidence before the deputy judge about this.

[16] Mr. Girgis now seeks to introduce this evidence on appeal. The material does not meet the test in *R. v. Palmer*, [1980] 1 SCR 759 because Mr. Girgis has not demonstrated he could not have obtained the information earlier. His explanation that he is self-represented is not sufficient. As the respondent pointed out, he was able to find the information for the appeal. I also do not find the corporate search would be conclusive of an issue on appeal because, had it been brought to the attention of the deputy judge, the claim could have been amended. Having not raise the issue and given the deputy judge and the respondent the opportunity to address and possibly cure the problem, the information would not be a basis to quash the appeal. In any event, there is no substantive difference because Fine Touch is a sole proprietorship and there is therefore no separate legal status between Fine Touch and Mr. Batistakis.

[17] Regarding the argument that the co-owner for House #1 and property owners for House #2 needed to be named as parties, Mr. Girgis has not shown why the court cannot adjudicate effectively and completely without those parties being named. There was evidence of a contract specifically with Mr. Girgis and not with any other parties. Although the contract with respect to House #2 was an oral contract, the evidence was that Mr. Girgis spoke with Mr. Batistakis. He has not pointed the court to any evidence that his wife was involved in the discussions to form the contract. The respondent's privity of contract with Mr. Grigis is sufficient to justify naming only Mr. Girgis as the defendant.

[18] Next, Mr. Girgis submits the deputy judge erred by failing to recognize that Fine Touch did not complete the work at both houses and that it therefore was Fine Touch who breached the contracts. The question of whether the work was completed is a finding of fact. The deputy judge acknowledged Fine Touch did not complete the work at House #2 and accounted for this fact in the amount she ordered as due. She deducted the $6,500 paid to the external painter who completed the work on the house after Fine Touch stopped working because of the parties' dispute. This left only $1,190 owing.

[19] There was also available evidence that the work was completed at House #1 because it was at the "touch up" phase, meaning the primary work was done. Mr. Batistakis' evidence was that the work on House #1 was 98% completed with only touchups remaining. He said he was not prepared to finish the touch ups because Mr. Girgis had not paid him the full amount owed.

[20] Mr. Girgis has pointed to other evidence, including photographs and his wife's evidence, that he says support his position that significant work remained incomplete. His wife's evidence was brief; the bulk of the testimony was provided by Mr. Girgis. Also, although Mr. Girgis provided a collection of pictures, these were not reviewed with the deputy judge.

[21] I have only found one part of the transcript where they were mentioned in passing and they were not marked as a separate exhibit. Particularly considering the summary process in Small Claims Court, the deputy judge was not required to address all the evidence in her reasons. There was evidence before her supporting the position that House #1 was at the touch up phase and there was therefore no palpable and overriding error in her conclusion that Mr. Girgis breached the contract.

[22] Mr. Girgis also submits the deputy judge erred by finding he agreed to pay $7,000 for extras on House #1. He emphasizes that he never agreed that the $7,000 was for extra work. Instead, he says he agreed to pay it as an incentive for Fine Touch to finish the job on House #1. He also submits he paid $3,000 of the $7,000 and the deputy judge erred by failing to deduct this amount in her award.

[23] The finding that $7,000 was owed for extras was again a factual finding. The deputy judge weighed the evidence on this issue and concluded Fine Touch was not entitled to the full amount it claimed for extras, which was more than $16,000. She reasoned that Fine Touch should have asked for more money at the outset, rather than providing a low quote and adding extras at the end. At the same time, there was evidence to support the conclusion Mr. Girgis agreed to pay $7,000 for extras, even if other evidence described the $7,000 as an incentive. The deputy judge's conclusion that Mr. Girgis owed $7,000 for extras on House #1 was available on the evidence.

[24] I also disagree that the deputy judge erred in her calculation of the $7,000. Contrary to Mr. Girgis' submission, the deputy judge took into account the $3,000 he had paid toward the $7,000 she found he owed for extras. She did this by giving Mr. Girgis credit for having paid $41,000 for House #1, when the contract amount was $38,000 (not including HST). In other words, to arrive at the amount owed for House 1, the deputy judge added together $38,000 (the contract amount) $7,000 (extras), HST on both numbers and then deducted $41,000. I do not see any error in this calculation.

[25] Mr. Girgis' next argument is that the deputy judge contradicted herself in her findings for House #2 because she said no extras would be paid but then added $3,000 for extra work. I disagree. The deputy judge's reasons addressing "low quoting" and therefore not giving full credit to the claimed extras applied to House #1. She completed that discussion before moving on to her conclusion about House #2. She was entitled to include the $3,000 of extras in her calculation of the amount owed for House #2 considering Mr. Girgis had already paid this additional amount to Fine Touch for House #2.

[26] Mr. Girgis submits the deputy judge erred in dismissing his defendant's claim for damages caused by delay. It is implicit in the deputy judge's reasons that she did not accept the argument that Fine Touch caused delay. Instead, she found Mr. Girgis to have breached the contracts by refusing to pay the amounts owed. To the extent there was delay in completing the last 15% of House #2, the deputy judge gave credit to Mr. Girgis for the cost of hiring another painter to complete the job. The deputy judge also noted that Mr. Girgis did not have any documentation to support the claim for additional accommodation costs. I do not find a basis to interfere in the deputy judge's conclusion on this issue.

[27] On the cross-appeal, Mr. Girgis also claims unjust enrichment. This argument was not raised at trial and cannot be raised for the first time on appeal. In any event, the breach of contract constitutes a juristic reason for the damages award: *Garland v. Consumers' Gas Co*., 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 30.

[28] With respect to costs, Mr. Girgis submits the deputy judge erred in her award of costs because her award exceeded 15% of the claim. Section 29 of the CJA states that "an award of costs in the Small Claims Court, other than disbursements, shall not exceed 15 per cent of the amount claimed or the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party or a party's representative for unreasonable behaviour in the proceeding." (emphasis added)

[29] The deputy judge stated she intended to award costs totaling 15% of the main claim (which was for $19,843.50) and $200 for the defendant's claim, for a total of $3,150. She then added disbursements of $465. She arrived at a total of $3,515. Whether or not these calculations were precisely correct, they do not exceed the requirements of s. 129 of the CJA because the deputy judge did not award more than 15% of the amount claimed in either claim. She added disbursements to her total, as permitted by s. 29 of the CJA. This was a three-day trial that justified the award granted. There is no basis to interfere with the deputy judge's exercise of discretion in the costs award.

[30] As a final note, at the appellant's request, I permitted the parties to provide further submissions after the hearing of the appeal. The appellant asked to be permitted to answer a question he had not been able to answer during the hearing. I allowed him to provide additional submissions of no more than one page double spaced, with the responding party to be permitted responding submissions of the same length. Mr. Girgis then submitted a three-page document with additional arguments on the evidence. On my direction, he re-submitted a one-page document.

[31] I agree with the respondent that the additional submissions were not a focused answer to a particular question but an attempt to re-argue factual issues, particularly related to whether the work had been completed for House #1. The additional submissions point to some evidence that favours Mr. Girgis' position. But, as I said above, that is not determinative. The deputy judge was entitled to rely on other evidence to reach her conclusions.

Disposition

[32] The appeal is dismissed. Mr. Girgis shall pay costs of $7,500 to Fine Touch. This is well below the amount of costs he himself claimed and I consider it to be a reasonable award of costs for the appeal and cross-appeal.

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O'Brien, J.

Released: December 5, 2025

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