

**CITATION:** Archaeological Research Associates LTD. v. 1854290 Ontario Inc. et al,  
2025 ONSC 7009  
**COURT FILE NO.:** CV-22-211  
**DATE:** 2025 12 15

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ARCHAEOLOGICAL RESEARCH  
ASSOCIATES LTD.

Plaintiff

)  
)  
) Trenton Johnson and Jamie  
) Cockburn, for the Plaintiff

- and -

1854290 ONTARIO INC.  
CHANDERKANT JAIN

Defendants

)  
)  
)  
) Self-Represented, for the Defendants

- AND -

1854290 ONTARIO INC.  
CHANDERKANT JAIN

Plaintiffs by Counterclaim

)  
)  
) Self-Represented, for the Plaintiffs by  
) Counterclaim

- and -

ARCHAEOLOGICAL RESEARCH  
ASSOCIATES LTD.

Defendant to the Counterclaim

)  
)  
) Trenton Johnson and Jamie  
) Cockburn, for the Defendant to the  
) Counterclaim

)  
)  
)  
)  
) **HEARD:** September 23, 2025

## REASONS FOR JUDGMENT

### Wilkinson J.

#### Overview:

[1] The Plaintiff/Defendant by Counterclaim, Archaeological Research Associates Ltd. (“ARA”), moves for summary judgment against the Defendants/Plaintiffs by Counterclaim, 1854290 Ontario Inc. (“185 Ontario”) and Chanderkant Jain a.k.a. Kant Jain (“Mr. Jain”), seeking to enforce a settlement of a debt collection action, that it says was reached between the parties on February 3, 2023. ARA also seeks an order dismissing the Counterclaim of the Defendants, because it submits that the Counterclaim was issued after a settlement had already been entered into by the parties.

[2] The Defendants dispute that there was a finalized settlement between the parties. They argue that this issue requires a trial to be resolved. In addition, Mr. Jain brings a cross-motion seeking an order that he is an improperly named party to the proceedings, and that he be removed as a Defendant in the Statement of Claim, and also removed as a Plaintiff by Counterclaim.

[3] For the reasons that follow, the Settlement Agreement between the parties is confirmed, and the Counterclaim of the Defendants is dismissed.

## **The Issues**

[4] There are four issues to be decided:

- 1) Has the Plaintiff established that the parties reached a binding Settlement Agreement on February 3, 2023?
- 2) If it is found that the parties reached a settlement, should the Court exercise its discretion to set it aside?
- 3) Should Mr. Jain be removed as a Defendant in the Statement of Claim, and also removed as a Plaintiff by Counterclaim?
- 4) Should the Counterclaim of the Defendants be dismissed?

## **Background**

[5] 185 Ontario owns a property located at 1260 Kane Road in Mississauga, Ontario. 185 Ontario wished to subdivide this property into two parcels (Lots "A" and "B") and then sell each of the lots, but required an easement to do so. To obtain a building permit from the City of Mississauga, 185 Ontario needed to meet six conditions, including approval from the City's Heritage Department, which was contingent upon an archaeological assessment.

[6] Mr. Jain is the General Manager of 185 Ontario. During his submissions, Mr. Jain stated that his wife is the owner of 185 Ontario.

[7] 185 Ontario secured financing for the property, and hired ARA to conduct the archaeological assessment. 185 Ontario submits that ARA was aware that the assessment was necessary to allow 185 Ontario to secure the building permit from the City. Mr. Jain provided affidavit evidence that the easement conditions could be satisfied by either submitting a final report from ARA, or a letter from ARA to the City, confirming that the easement area had been previously disturbed, and was not subject to archaeological oversight.

[8] In September 2021, ARA submitted a proposal to Mr. Jain and 185 Ontario for archaeological assessments of the property, which set out the scope of work. The project was broken down into four stages. The initial contract was intended to cover Stage Two (a property assessment) and Stage Three (a site-specific assessment).

[9] The Stage Two assessment involved ARA performing test pit surveys at regular intervals to determine if there were signs of cultural features in the land, and screening the soil for archaeological materials. If archaeological materials were encountered, their presence was to be documented, and all artifacts collected. The site was then to move on to a Stage Three analysis.

[10] The purpose of the Stage Three assessment was to:

- 1) determine the extent of the archaeological site, including impacts from recent construction activities, and the characteristics of the artifacts;
- 2) collect a representative sample of artifacts;
- 3) assess the cultural heritage, value or interest of the remainder of the archaeological site; and
- 4) determine the need for mitigation of development impacts and recommend appropriate strategies for mitigation and future conservation.

[11] Depending upon the nature of any artifacts recovered, the proposal stated that a Stage Four assessment may be necessary, which would involve mitigation of development impacts. The cost of the Stage Four assessment was not included in the Stage Two/Three contract.

[12] The contract stated in the last paragraph of section 7.0:

After the review of the draft report, a final report will be provided in electronic format and submitted to the MHSTCI [Ministry of Tourism Culture and Gaming] for Review and Entry into the Ontario Public Register of Archaeological Reports.

[13] Paragraphs 9 and 10 of section 9 of the contract stated:

9) ARA would be happy to facilitate engagement by notifying Indigenous stakeholders of the project as directed by the proponent (Indigenous monitor/report review fees would require direct payment by the proponent and have not been included in this estimate);

10) ARA has included costs for the coordination of fieldwork activities, submission of the archaeological report for review and comment to engaged First Nations communities and for the production of a Record of Indigenous Engagement to be submitted to the MHSTCI with the combined Stage 2 and 3 report.

[14] Paragraph 13 of section 9 stated:

13) A single combined Stage 2 and 3 archaeological report will be prepared for the project.

[15] The contract between the parties did not specifically state that the final report from ARA would only be provided once ARA had been paid for its services, nor did it state that the Defendants only had to pay ARA's invoices once the final report was prepared.

[16] The cost estimate for the Stage Two and Three assessments was \$46,935 + HST. Mr. Jain and 185 Ontario accepted the Proposal.

[17] On November 4, 2021, ARA sent an email to Mr. Jain informing him that the work was going more slowly than had been anticipated when the proposal was sent to him, and as well, the area for the assessment had expanded, resulting in

ARA's request for a change work order. The proposed increased cost to 185 Ontario was an additional \$39,985.00 + H.S.T.

[18] On November 12, 2021, Mr. Jain agreed in an email to pay the increased fees for the additional work on behalf of 185 Ontario. In the same email he also asked if ARA could prepare a report stating that although Lot A required ongoing assessment, Lot B was approved for development. In the email Mr. Jain stated that the monthly mortgage payments for the property were heavy, and a satisfactory report for Lot B would help him out in securing permits to allow for the sale of Lot B.

[19] There was no evidence before me that ARA responded to this request from Mr. Jain.

[20] ARA sent its first invoice to 185 Ontario on December 2, 2021. This invoice was described as an "interim invoice for fees and expenses for the Stage 2 and 3 archaeological assessments of the property". ARA charged the Defendants \$81,936.25 for fees, plus HST totaling \$10,651.71, for a total invoiced amount of \$92,587.96. ARA noted on the invoice that the amounts billed were \$4,983.75 less than the amount budgeted for the project. The invoice did not list the specific tasks that were included in the invoice.

[21] On April 6, 2022, ARA provided the Defendants with a draft report setting out its conclusions following the completion of the Stage Two and Three assessments.

[22] On April 29, 2022, ARA sent the Defendants a second invoice described as “Final invoice for fees and expenses for the Stage 2 and 3 archaeological assessments of the property”. The invoice was for \$5,631.64, in addition to the amounts invoiced on December 2, 2021, for a total amount invoiced of \$98,219.60.

**History of the litigation and negotiations between the parties**

[23] When ARA did not receive payment for its services, issued a Statement of Claim against both 185 Ontario and Mr. Jain on August 16, 2022.

[24] On September 12, 2022, the Defendants served a Notice of Intent to Defend on ARA. Both Defendants were represented by the same lawyer, Yuvraj S. Chhina.

[25] Settlement discussions between counsel for all the parties ensued via email. On September 28, 2022, Mr. Chhina sent an email to ARA’s lawyer, Trenton Johnson, on behalf of both Defendants, offering to settle the matter for \$98,219.60, to be paid in twelve equal payments, starting sixty days from that date.

[26] On October 5, 2022, Mr. Johnson wrote the following to Mr. Chhina:

I have now had an opportunity to review the offer below with my client. My client is generally agreeable with this provided that the standard terms of such arrangement are documented in Minutes of Settlement (which we can prepare).

These will include that (1) post dated cheques be provided; (2) consent to judgment is obtained for the full amount claimed plus interest and legal costs; (3) that same Judgment held in escrow and not enforced upon if the Minutes are complied with (ie no default); and (4) If no default, a satisfaction piece to be provided for the Judgment. **Please advise if this is generally agreeable and then we can begin drafting the settlement documents** [emphasis added].

[27] On October 11, 2022, Mr. Chhina sent an email to Mr. Johnson which stated that the Defendants required ARA to start a discussion with the City regarding their findings as part of the settlement, as there was a likelihood that the City's requirements were not yet met to grant the easement. Mr. Chhina's email further stated "Let me know on the issue above and we can start working towards Minutes of Settlement".

[28] On October 13, 2022, Mr. Johnson sent an email to Mr. Chhina which stated that if the parties were able to reach a satisfactory settlement, ARA was willing to discuss their Stage Two and Three findings and recommendations with the City of Mississauga staff. The email also stated that it was up to 185 Ontario to review and approve the report before it was sent to the First Nations and the Ministry of Tourism, Culture and Gaming.

[29] The email also left open the option for ARA to be retained to provide ongoing assessments and reports for Stage Four of the assessment once the already completed work was paid for. Mr. Chhina was also asked to confirm that he wished the Minutes of Settlement to be prepared.

[30] On November 7, 2022, Mr. Chhina responded to Mr. Johnson that the Defendants “would be okay with discussing the stage 2 and 3 with ARA once the parties have entered into a settlement”. The Defendants offered to sign a consent to judgment if there was a default on payment as set out in the Minutes of Settlement, in lieu of a default judgment, with thirty days’ notice to cure the default. Mr. Chhina’s email also stated that the Defendants were prepared to pay \$10,000 to ARA by November 30, and then pay the remainder of the funds totaling \$88,219.60 in eleven equal instalments starting January 31, 2023.

[31] This email from Mr. Chhina did not address the comments made by Mr. Johnson in his October 13, 2022 email, that 185 Ontario still had to review and approve the report before it was sent to the First Nations and the Ministry. Further, this email from Mr. Chhina did not stipulate that ARA was required to prepare a final report as a condition of settlement.

[32] On January 9, 2023, Mr. Johnson sent draft settlement documents to Mr. Chhina, which included draft Minutes of Settlement, and a Consent to Judgment.

The documentation also included a Full and Final Release setting out mutual releases that included an estoppel agreement, in relation to claims that had been made, or could have been made, with respect to the work performed by ARA.

[33] The settlement documentation did not include a provision that ARA was required to prepare and submit a final report as a term of the settlement. However, the Minutes of Settlement stated at para. 11 that ARA was required to attend a meeting with the City:

11. Upon the Parties' execution of these Minutes, ARA agrees to send one of their representatives to attend one (1) meeting with the Defendants and the City of Mississauga to discuss the results and recommendations of ARA's Stage 2 and 3 archaeological assessments of the property located at 1250 Kane Road, Mississauga at a mutually agreeable time and date.

[34] The Settlement Agreement did not specify that ARA's invoices were required to be paid prior to ARA attending the meeting with the City. The only requirement was that Minutes of Settlement had to be executed by the parties before the meeting was to take place.

[35] The settlement documents also included a provision that the Defendants agreed to pay ARA's costs on a substantial indemnity basis, plus post-judgment interest, in the case of default which required the Consent to Judgment to be enforced. However, the draft Judgment itself limits the costs payable by the

Defendants to ARA to \$5,000. No explanation was provided by ARA as to this discrepancy in the settlement documents.

[36] On February 3, 2023, Mr. Chhina sent the following communication to counsel for ARA:

I had the opportunity to review your assistant's email below. The draft documents provided are acceptable with my client, please provide clean copies for the execution. In the Minutes of Settlement para 2(a) payment needs to be February 10, 2023 and 2(b) the payment date will start from March 15, 2023 onwards [emphasis added].

[37] The settlement documents included both 185 Ontario and Mr. Jain as the Defendants participating in the settlement.

[38] As requested, Mr. Johnson sent clean copies of the Minutes of Settlement and Consent to Judgment to Mr. Chhina. On February 16, 2023, Mr. Chhina then sent an email to Mr. Johnson, which included the following:

- a) Confirmation that a \$5,000 wire payment had been sent to ARA's lawyers behalf of his clients (representing 50% of the \$10,000 that had been due on February 10, 2023 pursuant to the Minutes of Settlement);
- b) Confirmation that the second \$5,000 wire would be provided the following week; and

- c) Confirmation that arrangements would be made to deliver postdated cheques for the outstanding \$88,219.60 upon Jain's imminent return from an overseas trip.

[39] ARA provided an email from Mr. Jain dated April 3, 2023, in which he stated that he had "taken the liberty to send wire confirmation for the \$5k". ARA also provided an email sent by Mr. Jain to Mr. Johnson on April 4, 2023, requesting ARA's banking information so that he could send the first \$8,019.96 payment under the Settlement Agreement (1/11 of \$88,219.60), which had been due on March 15, 2023.

[40] On April 5, 2023, Mr. Chhina sent an email to Mr. Johnson in which he confirmed that the matter had been settled, even though the settlement documents had not yet been executed:

Since the matter had been settled, I had closed my file, but I am nonetheless involved in the matter for my clients.

I was away for the weekend and did not get an opportunity to respond to your email. In my absence, Mr. Jain had wired the balance of the \$5,000.00 to your firm, attached is the proof of the same. I believe in his email of April 3 to you he had asked how and where he can he deliver the March payment that unfortunately went NSF. Please advise if we can wire the same to your trust account or would you prefer to have them delivered to your client directly. In the latter case, please provide your client's banking details [emphasis added].

[41] 185 Ontario paid a single payment of \$8,079.96 on May 26, 2023. This payment had been due on March 15, 2023. 185 Ontario and Mr. Jain have made no further payments to ARA since that date.

[42] On July 14, 2023, Mr. Jain and 185 Ontario provided ARA executed copies of the settlement documents although the word “draft” still appeared on the documents. The settlement documents confirmed that the Defendants agreed to pay ARA \$80,139.64 in settlement funds, which was comprised of the \$98,219.60 originally owing pursuant to the settlement, minus the \$18,079.96 in payments received from the Defendants in the spring of 2023.

[43] The content of these settlement documents was substantively the same as the February 2023 documents, with the exception that the payment timeline had been updated given the fact that the Defendants had missed some payments.

[44] In his July 14, 2023 email, Mr. Jain requested that the settlement documents be held in escrow until July 28, 2023, as he was anticipating receiving funds from a mortgage closing on July 27, 2023 to pay the settlement.

[45] ARA did not agree to delay the settlement or hold the settlement documents in escrow, as they took the position that the Settlement Agreement

reached in February 2023 contained no terms that the settlement was contingent upon the Defendants receiving financing.

[46] On August 17, 2023, Mr. Jain advised ARA by email that the lender from whom he was expecting to receive financing had requested an opinion letter from his architect regarding the severance and easement registration for the property, as he had not yet received archeological approval on the easement. Mr. Jain stated that this letter was required before the mortgage could close. However, he also stated that inquiries were being made to see if the lender was willing to forward the funds to allow the mortgage to close prior to receiving the letter regarding the easement.

[47] On August 22, 25, and 30, 2023, Mr. Jain sent further emails to Mr. Johnson stating that he required a letter confirming that the easement area of the driveway of the mortgaged property was not subject to archeological concerns. Mr. Jain asked ARA if it was able to prepare the requested letter.

[48] On August 28, 2023, Mr. Jain sent a very blunt and candid email to Mr. Johnson which stated that his ability to pay the agreed upon amounts was contingent upon receiving financing for the property:

Sorry for not addressing the payment. The issue is without your client assistance on the clearance of the easement area. I'm unable to secure

financing on the property and have funds to pay any past commitment I may have made.

[49] On September 11, 2023, Mr. Johnson advised Mr. Jain that ARA was not able to provide him with the requested letter. Following receipt of this correspondence, Mr. Jain sent an email to Mr. Johnson on the same day, advising that he and 185 Ontario were no longer going to follow through with the settlement.

[50] Mr. Jain and 185 Ontario delivered a Statement of Defence and Counterclaim on October 18, 2023, alleging negligence and deficiencies in the work provided by ARA. The Defendants also sought damages against ARA resulting from ARA's refusal to provide the requested letter pertaining to the easement.

[51] On October 31, 2023, Mr. Johnson provided a more detailed explanation to the new lawyer representing Mr. Jain and 185 Ontario, Nadia Chami, as to why ARA was not able to provide the requested letter that would allow the easement from the City. In particular, he stated that the area in question overlapped with an area where Indigenous pottery had been discovered, which would require a Stage 4 excavation.

[52] Mr. Jain and 185 Ontario have not made any additional payments to ARA since this litigation was commenced.

**Position of ARA, the Plaintiff/Defendant by Counterclaim**

[53] ARA relies upon Rule 49.09 of the *Rules of Civil Procedure* to receive Judgment in accordance with the terms agreed to by the parties. Alternatively, it relies upon Rule 20 to obtain Judgment.

[54] ARA takes the position that the parties, both represented by counsel, reached a binding agreement on February 3, 2023, in which the Defendants agreed to pay ARA \$80,139.64 plus interest (\$88,219.60 - \$8,079.96 payment received on May 26, 2023) to fulfil its payment obligations to ARA. ARA also seeks an order dismissing the Defendants' Counterclaim, and costs for this motion on a substantial indemnity basis as per the terms of the settlement agreement between the parties.

[55] ARA provided a copy of the Minutes of Settlement (although marked "draft") signed by Mr. Jain on July 14, 2023 in his own capacity, and on behalf of 185 Ontario. The same day, Mr. Jain also signed a Consent to Judgment and a Mutual Release. All the settlement documents were then forwarded to Mr. Johnson that same day.

[56] ARA takes the position that the Settlement Agreement agreed to by Mr. Chhina on behalf of both Defendants replaced the original contract, and created

new legal liability for the Defendants based on the terms of the settlement. It therefore argues that the motion before me is a motion for Judgment on the settlement; not a motion for Judgment on the underlying contract.

[57] ARA further submits that the fact that the payments that were made by the Defendants were the same as the amounts agreed to in the settlement supports its position that:

- 1) The parties entered into a settlement agreement as reflected in the draft Minutes of Settlement signed by the Defendants; and
- 2) The funds advanced by the Defendants to ARA were attributable to the terms of the settlement agreement, as opposed to payments made in accordance with the underlying contract.

[58] ARA also takes the position that the request for the letter indicating that there were no archeological concerns was made after the parties had already reached a settlement in February 2023, and accordingly, it was under no obligation to prepare the letter.

[59] ARA further submits that there is no evidence before me from Mr. Chhina detailing any issues with his ability to bind either of his clients to the terms of the Settlement Agreement.

[60] ARA has not attended a meeting with the City as provided for in para. 11 of the Minutes of Settlement. It takes the position that its obligation to attend such a meeting only arises once Mr. Jain signed the final settlement documents, as the language of para. 11 stated that ARA would only be required to engage in a meeting with the City “Upon the Parties’ execution of these Minutes”. To date, Mr. Jain has only signed “draft” Minutes of Settlement.

[61] ARA takes the position that there is no genuine issue before me requiring a trial, and that it is appropriate to grant it Judgment in accordance with the terms of the Settlement Agreement, under either Rule 49.09(a) or Rule 20 of the *Rules of Civil Procedure*.

[62] ARA also submits that Mr. Jain’s cross-motion to have the action dismissed against him cannot be considered until after a determination has been made on ARA’s motion to enforce what it claims is a binding settlement. ARA argues that whether Mr. Jain could have successfully brought a motion dismissing the action against him is irrelevant if the settlement between the parties is upheld. ARA submits that if it is found that the parties have a binding settlement, the Counterclaim must be dismissed.

[63] In the event that I do not dismiss the Defendants' Counterclaim, ARA argues in the alternative that Mr. Jain is an appropriately named Defendant in the main action because:

- a) He issued a Counterclaim against ARA, and has therefore already conceded that he is a proper Defendant to the litigation;
- b) His lawyer, Mr. Chhina, negotiated the settlement agreement on behalf of both Mr. Jain and 185 Ontario; and
- c) He signed all the settlement documentation on behalf of himself and also on behalf of 185 Ontario.

[64] ARA further submits in the alternative that the Counterclaim filed by the Defendants is vexatious and an abuse of process, and ought to be dismissed pursuant to Rule 21.01(3)(d) and/or Rule 25.11 of the *Rules of Civil Procedure*, on the basis that the Counterclaim is estopped by the settlement between the parties.

[65] ARA also submits that the Counterclaim was delivered with the sole intent of interfering with and prolonging the enforcement of the settlement, and is therefore an abuse of process.

[66] ARA also argues in the alternative that it is inappropriate for Mr. Jain to rely upon Rule 21.01(1)(b) in seeking to dismiss the action against him, as no evidence is permitted on such a motion. To consider a motion brought under this rule, the court must assume that all pleaded facts are true. The court may only strike out a

claim if it is plain and obvious on the face of the pleading that the claim cannot succeed. ARA submits that it is not plain and obvious that its action will fail.

[67] ARA also submits that it is not appropriate for Mr. Jain to move under Rule 5.04 and 26.02(c) to dismiss the action against him, as these rules are not suited for obtaining dispositive relief dismissing a claim against a defendant in place of the summary procedures provided by Rules 20 and 21.

**Position of Mr. Jain and 185 Ontario, the Defendants/Plaintiffs by Counterclaim**

[68] Mr. Jain provided a copy of a resolution passed on August 10, 2025 by the Board of Directors of 185 Ontario, authorizing Mr. Jain to represent the interests of the company on these motions. The authorization is signed by Sonya Jain, and confirms that she is the sole director of the corporation. Having reviewed this document, I satisfied myself that it was appropriate to allow Mr. Jain to make submissions on his own behalf as a self-represented litigant, and on behalf of 185 Ontario.

[69] Mr. Jain argues that this matter is not appropriate to be determined by way of summary judgment, as the issue as to whether there was a settlement reached between the parties is a genuine issue requiring a trial.

[70] Mr. Jain takes the position that although he had signed draft Minutes of Settlement on behalf of himself and the company, the parties were engaging in ongoing settlement discussions, and therefore the settlement was not finalized. Specifically, Mr. Jain alleges that the submission of a final report from ARA was a condition of settlement, and that until the final report was prepared, the draft Minutes were to be held in escrow.

[71] Mr. Jain further argues that enforcing a settlement when there was not a meeting of the minds would undermine the principle of fairness, as the Defendants relied on the understanding that the draft documents were not binding. Mr. Jain argues that if the settlement agreement had been finalized, the Minutes of Settlement would not have been identified as “draft” Minutes.

[72] Mr. Jain also argues that the settlement between the parties should not be enforced because he was no longer represented by counsel at the time that he signed the settlement documents on July 14, 2023.

[73] Mr. Jain also submits that the fact that 185 Ontario paid some funds to ARA following the February 3, 2023 communication does not confirm that a settlement had been reached between the parties. Mr. Jain states that by advancing the funds to ARA, the Defendants expected ARA to complete the final report which they allege was a term of the settlement.

[74] Mr. Jain also submits that despite Mr. Chhina's emails dated February 3, 2023 and April 5, 2023, which stated that a settlement had been reached, it ought to have been clear to both parties that a settlement had not yet been reached, as Mr. Jain continued to negotiate the terms of the settlement with ARA even after Mr. Chhina was no longer representing the Defendants.

[75] Mr. Jain stated in his affidavit that Mr. Chhina made a mistake by confirming that a settlement had been reached if the requirement that ARA provide a final report is found to be not included in the settlement terms.

[76] Mr. Jain argues in the alternative that there is no settlement between the parties because ARA never attended the meeting with the City that it agreed to attend according to para. 11 of the Settlement Agreement.

[77] Mr. Jain also submits that the Settlement Agreement was silent as to what portion of the payments had to be made before ARA would set up a meeting with

the City, and that the Settlement Agreement did not contain a clause specifying that the meeting would not happen if the invoices were not paid in full.

[78] Mr. Jain also argues that at all material times he was a corporate agent acting within the scope of his authority for 185 Ontario. He therefore takes the position that he should not be named as a Defendant to the litigation as he did not enter into any contract with ARA in his personal capacity, nor does the Statement of Claim allege that he did so.

[79] Mr. Jain further submits that the proposal dated September 20, 2021, in which ARA was engaged by 185 Ontario, and the November 12, 2021 Change Order, were both addressed to 185 Ontario and not Mr. Jain personally. He also argues that all invoices related to the project were addressed to 185 Ontario, and were paid for by 185 Ontario.

[80] Mr. Jain acknowledges that the draft settlement documents were signed by him both in his personal capacity, and on behalf of 185 Ontario. However, he points out that he did not provide a personal guarantee for any fees owed to ARA.

[81] Mr. Jain submits that there are no exceptional grounds present in the facts before me that would permit ARA to pierce the corporate veil and find Mr. Jain personally liable for contracts signed by 185 Ontario. In particular, there is no

evidence of fraud on the part of Mr. Jain or 185 Ontario, nor is there evidence of Mr. Jain using 185 Ontario as an alter ego.

[82] Mr. Jain takes the position that he should not be punished with a finding of liability for taking the advice of his lawyer and attempting to engage in a speedy resolution of the situation, instead of bringing a motion to remove himself as a party to the litigation.

[83] Mr. Jain also submits that as there was no Settlement Agreement in place, it was open to the Defendants to file a Statement of Defence and Counterclaim in response to the Statement of Claim filed by ARA.

### **The Law**

[84] Rule 49.09(a) of the *Rules of Civil Procedure* provides that where a party has accepted an offer to settle and 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.

[85] Motions under Rule 49 are analytically similar to Rule 20 summary judgment motions. It does not matter if the moving party moves under Rule 49 or Rule 20: *Riehl v. Perth East (Municipality of)*, 2025 ONSC 3239, at para. 31.

[86] Rule 20.04(2.1) sets out the powers of the judge hearing a summary judgment motion:

**Powers**

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[87] Summary judgment is available to the parties when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49.

[88] The moving party seeking summary judgment has the burden of proof to establish that there is no genuine issue requiring a trial: *Botnick et al. v. The Samuel and Bessie Orfus Family Foundation et al.*, 2011 ONSC 3043, at para. 10.

[89] On a motion for summary judgment, “a responding party may not rest on mere allegations or denials of 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”: *Sweda Farms Ltd. et al. v. L.H. Gray & Son Limited et al.*, 2013 ONSC 4195, at para. 27.

[90] The responding party on a motion for summary judgment must "lead trump or risk losing." A party opposing a motion for summary judgment must show a "real chance of success" against the party seeking summary judgment. A party must put their best foot forward when resisting an Order for summary judgment: *Virco v. Blair*, 2012 ONSC 7104, para. 15; *Sweda Farms*, at para. 28.

[91] Because a settlement agreement is governed by contract law regarding offer and acceptance, a motion judge must first determine if there was a mutual intention to create a binding contract, and second, whether all the essential terms were agreed upon: *Olivieri v. Sherman*, 2007 ONCA 491, at para. 41.

[92] Where the agreement is documented in writing, it is to be measured by an objective reading of the language selected by the parties to reflect their agreement: *Olivieri*, at para. 44.

[93] If the parties have agreed upon all essential terms, the reference to settlement documentation represents a mere expression as to the manner in which the settlement, already agreed to, will be formalized: *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, [1995] O.J. No. 721 (Gen. Div.), aff'd [1995] O.J. No. 3773 (C.A.).

[94] In determining if a settlement was reached, the Court must consider if there are material issues of fact or genuine issues of credibility in dispute as to whether the parties intended to create a legally binding contract, or if there was an agreement on all essential terms of the contract: *Riehl*, at para. 31.

[95] Forbearance from bringing even a doubtful claim will constitute good consideration provided that the party with the claim believes the claim to be a valid one or, if it is understood to be doubtful, believes the claim has a fair chance of success: *Benzie v. Hania*, 2012 ONCA 766, at para. 58.

[96] Settlement agreements are not conditional upon the execution of minutes of settlement and a release, provided that there was a meeting of minds between the parties regarding the terms of the settlement: *Ferron v. Avolus Corp.*, 2005 CanLII 29655, at para. 28, aff'd 2007 ONCA 73.

[97] What terms will be considered essential in a contract depends on the nature of the transaction, the context in which the agreement is made, and the parties' interests: *North York Excavating & Contracting Limited v. D'Urzo*, 2023 ONSC 473, at para. 46.

[98] Part performance of certain terms of a settlement agreement are indicia of the intention the parties had to form a binding settlement agreement: *North York Excavating & Contracting Limited*, at para. 61.

[99] Where a settlement agreement has been negotiated through counsel, the settlement agreement generally ought to be enforced, even where settlement counsel acted without authorization, or misunderstood their authorization: *Thompson v. Broeze*, 2018 ONSC 4268, at para. 66. Justice Petersen further elaborated:

The public policy reasons for this rule are obvious. In the absence of an express limitation on a lawyer's authorization to settle issues on behalf of their client, litigants and their lawyers need to be able to rely on the representations of counsel who are retained to conduct litigation on behalf of opposing parties, without questioning the lawyer's instructions.

[100] A settlement agreement is a new contract between the parties signing the agreement: *Deman Construction Corp. v. 1429036 Ontario Inc.*, 2007 CanLII 26603 (ON SC), at para. 32.

[101] The Court should only refuse to enforce settlement agreements in rare and exceptional circumstances: *Thompson*, at para. 67(d).

### **Analysis**

#### ***Has the Plaintiff established that the parties reached a binding settlement agreement on February 3, 2023?***

[102] On the paper record before me, ARA has established that there is no genuine issue in dispute between the parties that requires a trial. Both parties made their submissions based on the content of the documents exchanged between the parties. There are no key facts that are in dispute, nor are there any credibility issues in dispute between the parties that require me to hear *viva voce* evidence in order to make findings and draw conclusions.

[103] The documentation is clear that the parties reached a settlement on February 3, 2023. This settlement did not include a term that ARA was required to write a letter or final report on behalf of 185 Ontario.

[104] Despite the numerous email communications exchanged between Mr. Johnson and Mr. Chhina, there has been no email produced that confirms ARA agreed to provide a letter or a final report for 185 Ontario as part of the settlement.

[105] Mr. Jain suggests that it was his expectation based upon representations from his lawyer that the requirement of ARA preparing a final report was included as a term of the settlement. However, this provision was not included in the settlement. ARA had no knowledge of the content of the conversations that took place between Mr. Jain and Mr. Chhina. It was reasonable and appropriate for ARA to rely upon Mr. Chhina's written confirmation that the parties had reached a settlement.

[106] It makes sense that the Settlement Agreement between the parties did not reference a final report being prepared by ARA at that time. Mr. Johnson's October 11, 2022 email to Mr. Chhina was clear that the draft report was required to be circulated to the First Nations and the Ministry of Tourism, Culture and Gaming for input and commentary before a final report could be prepared for the City. The contract specifically stated that an extra fee would be required for facilitating engagement by Indigenous stakeholders.

[107] ARA has established that the terms of the settlement did not require it to provide a letter or other documentation to the City of Mississauga regarding its findings. The settlement did, however, require ARA to send one of their representatives to attend one meeting with the Defendants and the City of Mississauga to discuss the results and recommendations of ARA's Stage 2 and 3

archaeological assessments of the subject property once the Minutes of Settlement were executed.

[108] The Minutes of Settlement were not executed by Mr. Jain until July 14, 2023, but at that time, he asked that the Minutes be held in escrow until July 28, 2023. When ARA refused to agree to this request, Mr. Jain sent several emails asking ARA to send a letter on his behalf. When ARA refused to send the letter, Mr. Jain attempted to cancel the settlement in September 2023.

[109] Mr. Jain's focus seemed to be on ARA sending a letter confirming that his application for an easement was not subject to archaeological concerns. However, ARA was, of course, unable to send the requested letter without a Stage Four excavation being conducted due to the discovery of Indigenous pottery, which was explained by Mr. Johnson to Ms. Chami in his email of October 31, 2023.

[110] The evidence suggests that after the February 3, 2023 agreement was made, it became clear to Mr. Jain through his communications with the City that he was going to need more assistance from ARA to provide a final report and/or letter before the City would allow him to clear up the easement and sell the property. It is unfortunate that Mr. Jain was not aware of this requirement at the time that the February 3, 2023 agreement was reached.

[111] The fact that Mr. Jain and Mr. Chhina specifically stated months after the February 3, 2023 agreement was reached that they required a letter from ARA as part of the settlement does not change the terms of the settlement. The settlement documents which were signed by Mr. Jain on July 14, 2023 accurately reflect the agreement made between the parties, although they were inexplicably marked as “draft”.

[112] The fact that the settlement documents were described as “draft” does not negate the agreement clearly reached by the parties on February 3, 2023, when Mr. Chhina sent an email to Mr. Johnson which confirmed that ARA’s settlement terms were acceptable to his clients.

[113] Further, the fact that Mr. Jain later asked ARA to hold the settlement documents “in escrow” does not invalidate or postpone the agreement made between the parties. The fact that Mr. Jain was apparently not aware that he required additional documentation from ARA to present to the City when he and 185 Ontario made the deal with ARA on February 3, 2023 does not invalidate the terms of the agreement. I note that the October 13, 2022 email from Mr. Johnson to Mr. Chhina confirmed ARA’s willingness to prepare a Stage Four report once the outstanding payments owing to ARA had been made.

***Should the Court exercise its discretion to set aside the settlement agreement?***

[114] The facts before me do not present a situation where it would be appropriate for me to refuse to enforce the settlement reached by the parties. Both parties were represented by counsel during the negotiations; there was no imbalance of bargaining power. The parties engaged in good faith negotiations that involved some compromise, and a deal was reached. There was no evidence of fraud, misrepresentation, duress, mistake of fact, lack of capacity, or unconscionability. The fact that the Defendants may have learned additional information after the deal was reached that may have made the deal less attractive does not invalidate the terms of the agreement.

[115] The original contract between the parties did not require ARA to provide a final report or a letter to the City of Mississauga. The fact that the Defendants are now being asked by the City to produce a letter or a report is no doubt frustrating and stressful for the Defendants. However, the inability of the Defendants to sell the property without approval from the City is not a situation caused or created by ARA.

[116] The original agreement between the parties did not include the requirement for ARA to write a report to the City as part of its Stage Two and Stage

Three work for the Defendants. The original contract required ARA to prepare a draft report. ARA completed this step as required by the contract.

[117] Although the Defendants may find themselves in a challenging financial situation as a result of the finding of Indigenous pottery on the property, and the resulting need for a Stage Four assessment, that situation was not caused or created by ARA.

[118] There is no evidence before me that Mr. Jain asked ARA to attend a meeting with the City to discuss the results of its Stage Two and Three assessments, as ARA was required to do as a term of the Settlement Agreement. However, even if that meeting had taken place, the evidence before me suggests that it would not have changed the need for a Stage Four assessment given the discovery of the Indigenous pottery on the property. Mr. Jain produced no evidence on this motion to establish that had the meeting with the City taken place, it would have altered the present unfortunate circumstances in which the Defendants find themselves.

[119] It therefore cannot be found that the fact that ARA did not attend a meeting with the City establishes that the Defendants will suffer prejudice as a result of the Settlement Agreement being enforced. Alternatively, ARA will clearly

suffer prejudice if it is not paid for the work that the Defendants contracted it to perform.

[120] ARA is therefore entitled to payment from the Defendants as per the terms of the Settlement Agreement.

***Should the action be dismissed against Mr. Jain personally?***

[121] Mr. Jain moves under Rules 5.04 and 26.01 of the *Rules of Civil Procedure* to remove him as a party Defendant in this litigation. In particular, he argues that he did not retain ARA in his personal capacity, nor did he provide a personal guarantee for any fees owed by 185 Ontario to ARA.

[122] ARA argues that Mr. Jain's cross-motion to have the Statement of Claim dismissed as against him personally can only be considered once it is determined if there is a binding settlement between the parties.

[123] I agree with the position of ARA. The issue as to whether Mr. Jain ought to have been a Defendant in this litigation is now irrelevant, as an agreement was reached by all parties, with both Defendants represented by counsel, to resolve the issues in dispute.

[124] The question to be determined is not whether the Defendants have liability to pay ARA according to the terms of the original contract, but rather, if the

Defendants have a contractual liability to pay ARA as a result of the terms of the Settlement Agreement.

[125] Having determined that there is indeed a binding settlement between the parties, and having consequently granted ARA summary judgment as against Mr. Jain and 185 Ontario, it is unnecessary for me to determine if Mr. Jain ought to have originally been a named Defendant in the litigation. Mr. Jain could have brought a summary judgment motion seeking to have ARA's action against him dismissed prior to entering into an agreement with ARA, but he did not make that choice.

[126] In coming to this conclusion, I rely upon the guidance from the Ontario Court of Appeal in *Benzie* that forbearance from bringing a claim is good consideration in reaching a contractual agreement. It follows that ARA gave good consideration to the Defendants in the settlement through their agreement to forbear from litigating the claim further. Accordingly, it was not improper or inappropriate for Mr. Jain to be a party to the Settlement Agreement, even if he was not a party to the underlying contract between ARA and 185 Ontario.

***Should the Counterclaim of 185 Ontario and Mr. Jain be dismissed?***

[127] ARA moves under Rule 21.01(3)(d) to dismiss the Defendants' Counterclaim as it alleges the Counterclaim is an abuse of process. It argues that the Settlement Agreement reached between the parties included a mutual release in all parties agreed to release the other from any further claims:

[WE] HEREBY RELEASE, remise, quit claim and forever discharge each other of, from and against any and all manner of actions, causes of actions, suits, proceedings, breaches of fiduciary duties, liabilities, debts, sums of money, obligations, duties, dues, accounts, interest, bonds, covenants, improper competition or solicitation, contracts, claims, damages and demands which each other ever had, now has, can, shall or may hereafter have against each other by reason or by act, cause, matter or thing whatsoever and how so ever arising, but which relate solely to:

1. Those matters that were raised and/or which could have been raised in the Action commenced in the Superior Court of Justice, at Guelph, Ontario bearing Court file no. CV-22-000000211-0000;

...

**AND IT IS UNDERSTOOD AND AGREED** that in the event that any party should hereafter make any claims or demands or commence or threaten to commence any actions against the parties for or by reason of any cause, matter or thing, this document may be raised as an estoppel and pleaded as a complete defence and reply to any claim, demand or action commenced in regard to the aforesaid;

[bold emphasis in original; underlined emphasis added].

[128] Having found that a Settlement Agreement was reached between the parties, it follows that the mutual release signed by all parties is binding. The release provided that neither party will bring a claim against the other for the matters in issue in this litigation.

[129] It would be an abuse of the court's process to permit the Counterclaim to proceed when I have already found that the parties have reached a binding agreement, that was subject to mutual releases. Given this finding, it is plain and obvious that the Counterclaim of 185 Ontario and Mr. Jain cannot succeed. The Counterclaim is therefore dismissed.

### **Conclusion**

[130] The Defendants have not paid for a significant portion of the work that ARA completed on their behalf. An agreement was reached between the parties as to the amounts owed by the Defendants for the work completed by ARA.

[131] It is unreasonable for the Defendants to have not paid the amounts owed to ARA, and expect ARA to perform even more work by writing a letter for them without additional payment being made by the Defendants. Given the Defendants' history of non-payment, it was reasonable for ARA to insist that all outstanding payments owed to it by the Defendants be paid before it would agree to take any additional steps.

[132] Although the Settlement Agreement did not require ARA's invoices to be paid in full before the meeting with the City took place, it did require that the Minutes of Settlement be executed prior to the meeting taking place. There is no

evidence before me that Mr. Jain requested that ARA attend a meeting with the City after he signed the Minutes of Settlement in July 2023. The fact that a meeting with the City did not occur therefore does not invalidate the terms of the Settlement Agreement reached on February 3, 2023.

[133] ARA is granted judgment against the Defendants jointly and severally in the amount of \$80,139.64, plus prejudgment as set out in the *Courts of Justice Act*, payable within 45 days.

### **Costs**

[134] ARA was wholly successful on the motions before me.

[135] Although the Settlement Agreement stipulates that the Defendants will owe ARA costs on a substantial indemnity basis in the event of a default in payment under the Agreement, the draft Judgment that formed part of the Settlement Agreement appears to limit the costs owed by the Defendants to \$5,000 in the even of a default.

[136] It should also be noted that the Defendants' Counterclaim had not been served at the time that the parties dealt with the costs component of the Settlement Agreement.

[137] In making a cost determination I will therefore require submissions as to the impact of the cost component of the draft Judgment attached to the Settlement Agreement, given the subsequent history of the litigation.

[138] The parties are encouraged to agree upon the payment of costs owed by the Defendants to ARA. In the event that the parties are unable to agree upon costs, ARA may file and serve a cost submission by December 22, 2025. The Defendants may file and serve a responding cost submission by January 2, 2026. All cost submissions shall also be uploaded to Case Center, and shall be no longer than three pages double-spaced, not including any Bills of Costs or Offers to Settle. Cost submissions shall be sent to my attention at [scj.csj.brampton.general@ontario.ca](mailto:scj.csj.brampton.general@ontario.ca).

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Wilkinson J.

**Released:** December 15, 2025

**CITATION:** Archaeological Research Associates LTD. v. 1854290 Ontario Inc. et al,  
2025 ONSC 7009  
**COURT FILE NO.:** CV-22-211  
**DATE:** 2025 12 15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ARCHAEOLOGICAL RESEARCH  
ASSOCIATES LTD.

**Plaintiff**

- and -

1854290 ONTARIO INC.  
JAIN CHANDERKANT

**Defendants**

- AND -

1854290 ONTARIO INC.  
JAIN CHANDERKANT

**Plaintiffs by Counterclaim**

- and -

ARCHAEOLOGICAL RESEARCH  
ASSOCIATES LTD.

**Defendant to the Counterclaim**

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**REASONS FOR JUDGMENT**

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Wilkinson J.

**Released:** December 15, 2025