

CITATION: 1546866 Ontario Inc. (Enertec Engineering) v. eNature Greenhouses Inc.,
2025 ONSC 7050

COURT FILE NO.: CV-21-00060278-0000

DATE: 2025-12-16

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1546866 Ontario Inc. carrying on business as Enertec Engineering, Plaintiff

AND:

eNature Greenhouses Inc., Defendant

Westbrook Greenhouse Systems Ltd., Non-Party Respondent

BEFORE: The Honourable Justice J. R. Henderson

COUNSEL: C. Zhang, counsel for the Plaintiff

O. Boverhof, counsel for the Defendant

P. Mahoney, for the Non-Party Respondent

HEARD: December 11, 2025, at St. Catharines

DECISION ON MOTION

- [1] This is a motion brought by the plaintiff, 1546866 Ontario Inc. carrying on business as Enertec Engineering (“Enertec”), pursuant to rule 30.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for production of documents from a non-party, Westbrook Greenhouse Systems Ltd. (“Westbrook”). The plaintiff asks for an order that Westbrook produce its complete file relating to the services that Westbrook provided for the defendant, eNature Greenhouses Inc. (“eNature”), relating to a greenhouse project in Carlisle, Ontario.
- [2] Westbrook opposed the plaintiff’s motion. The defendant appeared but did not take a position on the motion.
- [3] A preliminary issue arose. In 2022, the plaintiff brought a similar motion for a production order. Westbrook did not appear on that motion and the order was granted by Standryk J. for reasons set out in her endorsement dated July 4, 2022. However, Latimer J. set aside that order because a mistake had been made by Westbrook that resulted in Westbrook not putting its position before the court.
- [4] I disagree with the plaintiff’s submission that I am bound by the decision of Standryk J., or that deference is owed to that decision. In my view, if the previous decision was set aside

because of a procedural error, I cannot assume that the decision of the previous motions judge was not compromised by the error. Therefore, the present motion will be treated as a motion *de novo*.

- [5] A brief summary of the facts is appropriate. The defendant is a producer of hydroponically grown produce, and it uses greenhouses in the course of its business. The plaintiff and the defendant entered into a contract in November 2018 whereby the plaintiff agreed to provide engineering services, including the preparation of drawings and specifications, for a greenhouse heating system for the expansion of the defendant's operation in Carlisle.
- [6] There were changes to the 2018 contract, including the addition of more greenhouses. The changes resulted in negotiations between the plaintiff and the defendant for a new revised contract. I make no finding as to whether the plaintiff and the defendant entered into a new contract, or if any of the terms of the old contract had been vacated.
- [7] It is alleged that the plaintiff provided engineering services, including drawings and specifications, with respect to the defendant's greenhouse project between November 2018 and approximately December 2020.
- [8] In December 2020, the defendant severed its relationship with the plaintiff and entered into a contract with Westbrook. Thereafter, Westbrook provided the defendant with its services for the design and construction of the defendant's greenhouses and greenhouse heating system.
- [9] The plaintiff commenced this action against the defendant in July 2021. In a supporting affidavit filed in this motion, the plaintiff alleges that the defendant provided Westbrook with the plaintiff's work product, namely its drawings and specifications, and that Westbrook used the plaintiff's work product to design and construct the defendant's greenhouses.
- [10] The plaintiff submits that Westbrook's files for this greenhouse project are relevant to the material issues in this action because of its allegation that the defendant provided the plaintiff's work product to Westbrook. Prior to this motion, the plaintiff requested that the defendant produce Westbrook's files, but the defendant responded that it did not have a copy of Westbrook's work product in its possession. Therefore, the plaintiff submits that it is entitled to an order for production directly from Westbrook.
- [11] Westbrook submits that its files are not relevant to the issues between the plaintiff and defendant as pleaded in this action. Further, Westbrook submits that a rule 30.10 order is not necessary as any potentially relevant document has already been produced through another source.
- [12] In the alternative, if the plaintiff can prove relevance and necessity, Westbrook submits that Westbrook and the plaintiff are competitors, that Westbrook's files contain confidential proprietary information, and that Westbrook should not be compelled to provide trade secrets and other confidential information to the plaintiff.

- [13] Rule 30.10(1) states that a court may order production of a document that is in the possession, control, or power of a non-party where the court is satisfied that, (a) the document is relevant to a material issue in the action; and (b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.
- [14] The authority of the motions judge under rule 30.10 is discretionary. In *Ontario (Attorney General) v. Stavro* (1995), 26 O.R. (3d) 39 (C.A.), the Ontario Court of Appeal, at para. 15, listed several factors to be considered by the motions judge in deciding whether to order production of documents from non-parties. Those factors include the importance of the documents in the litigation, whether production is necessary at the discovery stage or the trial stage, whether the discovery of the defendants with respect to the issues to which the documents are relevant is adequate, the availability of the documents or their informational equivalent from some other source, and the relationship of the non-parties from whom production is sought to the litigation and the parties to the litigation.
- [15] The first step in the analysis in a rule 30.10 motion is to determine whether the requested productions are relevant to a material issue in the action. Courts have consistently held that relevance is determined by reference to the pleadings. A document or item of evidence will not be relevant unless it is logically connected to and tending to prove or disprove a matter in issue as defined by the pleadings. See the cases of *Regional Municipality of Halton v. Alizadeh*, 2021 ONSC 6958, at paras. 34-36, and *Sycor Technology Incorporated v. Kiaer*, 2012 ONSC 5285, at para. 23.
- [16] In the statement of claim, the plaintiff has raised three causes of action against the defendant, namely breach of contract, unjust enrichment, and conversion.
- [17] Regarding breach of contract, the plaintiff does not plead that the contract was breached by the defendant improperly using the plaintiff's work product. Rather, the plaintiff simply pleads that the defendant breached the contract by refusing to comply with the terms of the contract. Thus, Westbrook's files are not relevant to the breach of contract allegation, as pleaded.
- [18] Regarding unjust enrichment, I find that the plaintiff has withdrawn the allegation of unjust enrichment. In providing a response to undertakings given on the plaintiff's examination for discovery, the plaintiff's lawyer wrote that the plaintiff would not answer certain undertakings because the plaintiff had withdrawn its unjust enrichment claim. Therefore, there is no unjust enrichment issue to which Westbrook's files could possibly be relevant.
- [19] The only remaining cause of action that may be relevant is the plaintiff's allegation of conversion. I accept that the tort of conversion relates to the improper use of property.
- [20] It is important to review the allegations of improper use of the plaintiff's work product that are set out in the statement of claim:
- a. Paragraph 12 reads, in part: "Enertec's lawyer wrote to eNature to advise that it... improperly made use of the Plaintiff's work and contract specifications for submission to the municipality."

- b. Paragraph 14 reads, in part: “Enertec requested that eNature sign an authorization to have copies of the Plans submitted to the City delivered to Enertec in order to determine the extent eNature had made use of the Plaintiff’s work and specifications for the approvals obtained from the Municipality.”
- c. Paragraph 18 is the allegation of conversion. It reads: “By using the Plaintiff’s work to apply for approval from the municipalities, eNature converted Enertec’s work product to its own use. As a consequence, eNature is liable to Enertec for the value of the Plaintiff’s work and specifications improperly converted by the Defendant to its own benefit.”

- [21] A careful reading of these pleadings shows that the plaintiff’s complaint is that its work was converted by the defendant for its own benefit for the submissions made by the defendant, or on the defendant’s behalf, to the municipality for approvals. It is not disputed that the municipality in question is the City of Hamilton.
- [22] Nowhere in the pleadings does the plaintiff allege that the plaintiff’s work product was improperly provided by the defendant to Westbrook, or that the plaintiff’s work product was converted for the benefit of Westbrook. The wrongful act targeted by the pleadings is the provision of the plaintiff’s work to the City of Hamilton, not to Westbrook. Thus, the relevance of Westbrook’s files is not apparent on a strict reading of the pleadings.
- [23] Although it is not clearly pleaded, I accept that the pleadings could be interpreted to be an allegation that the defendant provided the plaintiff’s work product to Westbrook, and that Westbrook used it to create its own work product that formed part of the submissions to the City. However, even on this broad interpretation of the pleadings, the requested order is not necessary.
- [24] After this action was commenced, the defendant made inquiries of the City of Hamilton and obtained the City’s complete file. Therefore, all submissions made to the City of Hamilton for approval of this project have already been produced. I find that all documents submitted by Westbrook to the City of Hamilton will be in the City’s file.
- [25] In summary, the pleadings do not disclose an allegation that the defendant acted improperly by providing the plaintiff’s work product to Westbrook. The only possible relevance of Westbrook’s files is with respect to the allegation of conversion as it relates to submissions made to the City of Hamilton. But, to the extent that Westbrook’s files may be relevant, those files are already available. There is no need to make a production order against Westbrook. The motion is hereby dismissed.
- [26] Given my decision with respect to relevance and necessity, it is not necessary to make any decision regarding the confidentiality issue.
- [27] If either party wishes to make submissions as to costs, I direct that the party seeking relief shall serve and file written submissions, no longer than five pages, on or before January 15, 2026, with responding submissions to be delivered within 10 days thereafter. If no submissions are received within this time frame, the parties will be deemed to have settled

all of the costs issues as between themselves. A copy of any such submissions, once filed with the court, shall also be emailed to the Judicial Assistants at: St.Catharines.SCJJA@ontario.ca.

J. R. Henderson, J.

Date Released: December 16, 2025