CITATION: Cross v. Cooling Tower Maintenance Inc., 2025 ONSC 7203
COURT FILE NO.: CV-24-3042
DATE: 2025 12 23

2025 ONSC 7203 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
MITCHELL CROSS	Jean-Alexandre De Bousquet and Thomas Benstead, for the Plaintiff
Plaintiff	
- and -	
COOLING TOWER MAINTENANCE INC.	Carita Wong and Vibhu Gairola, for the Defendant
Defendant	
	HEARD: October 15, 2025

REASONS FOR JUDGMENT

Wilkinson J.

2025 ONSC 7203 (CanLII)

Overview

[1] The Plaintiff, Mitchell Cross, was terminated from his employment by the Defendant, Cooling Tower Maintenance Inc. ("Cooling Tower"), on August 22, 2023, after 26.5 years of service. Mr. Cross alleged he had been wrongfully dismissed.

[2] On October 3, 2023, Mr. Cross and Cooling Tower executed a Settlement Agreement, in which Cooling Tower agreed to pay Mr. Cross various sums, including a salary replacement for 24 months, which would cease if Mr. Cross obtained new employment. If that occurred, the Agreement required Mr. Cross to immediately advise Cooling Tower of same. Mr. Cross would then be entitled to a lump sum payment equivalent to fifty percent of the remaining amount owing to him under the Settlement Agreement.

[3] Mr. Cross started a new job on February 19, 2024, but he failed to advise Cooling Tower about it, contrary to the terms of the Settlement Agreement.

[4] Cooling Tower eventually made inquiries about Mr. Cross' employment status in June 2024, which resulted in Mr. Cross confirming that he had been working at another position since February 19, 2024. Cooling Tower then took the

position that Mr. Cross had repudiated the Settlement Agreement, and it ceased making the regular payments to him as of June 10, 2024.

2025 ONSC 7203 (CanLII)

[5] Mr. Cross issued a Statement of Claim against Cooling Tower seeking payment as per the terms of the Settlement Agreement. Mr. Cross acknowledges that Cooling Tower paid him $45,825.27 between February 19, 2024, and June 10, 2024. He proposes that this amount be deducted from the fifty percent lump sum payment that he says Cooling Tower owes to him as per the terms of the Settlement Agreement.

[6] Cooling Tower issued a Counterclaim against Mr. Cross, seeking $42,193.89, which it states is the amount that it paid to Mr. Cross in excess of his entitlements under the *Employment Standards Act, 2000*, S.O. 2000, c. 41. Alternatively, Cooling Tower claims that Mr. Cross has been unjustly enriched by the $45,808.20 advanced to him since February 19, 2024, and seeks repayment of same. Cooling Tower also seeks punitive and/or aggravated damages in the amount of $50,000 as against Mr. Cross.

[7] Mr. Cross brings a summary judgment motion to enforce the terms of the Settlement Agreement. Mr. Cross therefore also seeks a dismissal of the Counterclaim filed against him by Cooling Tower.

[8] Cooling Tower brings its own summary judgment motion seeking to dismiss Mr. Cross' action on the basis that he repudiated the Settlement Agreement, and to be repaid the sums it advanced to Mr. Cross after his new job began, as set out above.

[9] As Mr. Cross admits receiving $45,825.87 from Cooling Tower between February 19, 2024 and June 10, 2024, I find that this is the correct amount that Cooling Tower is seeking to be repaid on the basis of unjust enrichment.

[10] Both parties agree that Mr. Cross' entitlement under the *Employment Standards Act* totaled $148,067.48.

[11] Both parties also agree that the summary judgment motions brought by each party are the most appropriate mechanism to resolve the issues in dispute between the parties. Neither party has made submissions that there are material facts in dispute in this litigation.

[12] I find that I have sufficient evidence available on the paper record before me to make findings, apply the law, and draw the necessary conclusions to determine these summary judgment motions.

[13] For the reasons that follow, I find that the actions of Mr. Cross have not repudiated the terms of the Settlement Agreement. Accordingly, Cooling Tower

2025 ONSC 7203 (CanLII)

has breached the terms of the Agreement by failing to make payments to Mr. Cross in accordance with the terms of the Agreement. Cooling Tower is therefore required to pay Mr. Cross $161,212.87 in accordance with the terms of the Settlement Agreement.

[14] I further find that Mr. Cross breached the term of the Settlement Agreement by failing to inform Cooling Tower when he obtained a new job. According to the terms of the Settlement Agreement, he must now repay $45,825.27 to Cooling Tower.

The Issues

a) Did Mr. Cross repudiate the Settlement Agreement he entered into with Cooling Tower though his delay in advising Cooling Tower that he had obtained new employment?

b) If no repudiation, is Cooling Tower's cessation of payments to Mr. Cross a breach of the Settlement Agreement?

c) If no repudiation, is Mr. Cross entitled to summary judgment for the outstanding payments owed to him by Cooling Tower under the Settlement Agreement?

2025 ONSC 7203 (CanLII)

d) If no repudiation, should the Counterclaim filed by Cooling Tower be dismissed?

2025 ONSC 7203 (CanLII)

Background

[15] Mr. Cross was employed by Cooling Tower for approximately 26.5 years, from February 2, 1997 to August 22, 2023, when his employment was terminated without cause.

[16] Mr. Cross alleged that he held a senior role in the company and made significant contributions to its operations. He further alleged that he was not given adequate notice of his termination. Cooling Tower offered Mr. Cross a severance package. Mr. Cross hired a lawyer, and served Cooling Tower with a counter proposal regarding his severance package.

[17] The parties entered into a binding Settlement Agreement on October 3, 2023. The terms of the Settlement Agreement included the following payments, which were to continue until the earlier of twenty-four months, or until Mr. Cross' re-employment:

a) Base salary of $183,303.51 per annum;

b) Annual bonus of $40,000;

c) Deferred Profit Sharing Plan contributions in the amount of $4,000 per annum;

d) Pay in lieu of group benefits valued at $3,884.20 per annum; and

e) Pay in lieu of vehicle benefits valued at $3,586.32 per annum.

2025 ONSC 7203 (CanLII)

[18] The Agreement stipulated that Mr. Cross was to notify Cooling Tower immediately upon obtaining new employment or self-employment. If such employment was obtained, the Agreement required Cooling Tower to pay a lump sum to Mr. Tower representing fifty percent of the remaining settlement payments.

[19] The Agreement also contained the following clause on page three at para. 4 that addressed the next steps if Mr. Cross breached the Agreement:

> 4. Mr. Cross must immediately advise CTM if he obtains new employment or becomes self- employed during the Salary Continuation Period. Should he fail to notify CTM upon obtaining such new employment or self-employment or receiving an offer of employment during this period, CTM will be entitled to be reimbursed by Mr. Cross for any monies it has paid to Mr. Cross subsequent to his commencing such employment, or from the date of receipt of income from such self-employment.

[20] At some point prior to December 21, 2023, Mr. Cross received an offer of employment from Evaporative Tower Services. The contract specified that Mr.

Cross was to begin work on February 19, 2024, and was required to execute the employment contract by December 21, 2023.

2025 ONSC 7203 (CanLII)

[21] Mr. Cross provided affidavit evidence that he began working for Evaporative Tower Services on February 19, 2024. Mr. Cross also provided a copy of his employment contract that was executed on February 20, 2024. There is no evidence before me as to when Mr. Cross may have verbally accepted the offer of employment from Evaporative Tower Services prior to that date.

[22] Contrary to the terms of the Agreement, Mr. Cross did not immediately notify Cooling Tower about his new employment with Evaporative Tower Services.

[23] On June 10, 2024, counsel for Cooling Tower wrote to counsel for Mr. Cross, advising that Mr. Cross had breached the terms of the Settlement Agreement by not disclosing his new employment. The letter did not state that by failing to disclose his new employment that Mr. Cross had repudiated the Agreement.

[24] Cooling Tower immediately ceased making payments to Mr. Cross and demanded repayment of the funds advanced to Mr. Cross since February 19, 2024. Cooling Tower also accused Mr. Cross of breaching a fiduciary duty that it

claimed he held with respect to Cooling Tower by accepting employment with a direct competitor.

[25] On June 18, 2024, counsel for Mr. Cross sent counsel for Cooling Tower an unexecuted copy of Mr. Cross' new employment contract, Notice of Assessment for 2023, and other requested documentation. In the letter, it was communicated to Cooling Tower that Mr. Cross had overlooked his obligation in the Agreement to inform Cooling Tower of his new employment. Mr. Cross offered to deduct any overpayments made to him by Cooling Tower from the lump sum that he said was still owed to him under the Settlement Agreement.

[26] Mr. Cross filed a Statement of Claim against Cooling Tower on July 5, 2024, seeking damages of $115,387 for Cooling Tower's alleged breach of the Settlement Agreement, plus prejudgment interest, and costs. Mr. Cross calculated that as of February 19, 2024, the value of the fifty percent lump sum owed to him was $161,212.87. From that amount, Mr. Cross deducted the $45,825.87 already received from Cooling Tower, resulting in a net balance of $115,837 that Mr. Cross claimed was owed to him by Cooling Tower.

[27] On August 8, 2024, Cooling Tower filed a Statement of Defence and Counterclaim. Cooling Tower denied that it owed any money to Mr. Cross, as it

2025 ONSC 7203 (CanLII)

took the position that by not disclosing his new employment, Mr. Cross repudiated the entire Settlement Agreement.

2025 ONSC 7203 (CanLII)

[28] In its Counterclaim, Cooling Tower claimed repayment of all overpayments that were paid to Mr. Cross in excess of his entitlement to payment under the *Employment Standards Act.* In the alternative, it claimed Mr. Cross had been unjustly enriched by the funds paid to him since his re-employment. In addition, it alleged that Mr. Cross had breached his duty of good faith and fidelity by accepting employment with a direct competitor. Cooling Tower therefore claimed it was entitled to aggravated and punitive damages in the amount of $50,000, and costs on a substantial indemnity scale.

Position of Mr. Cross

[29] Mr. Cross submits that his failure to notify Cooling Tower of his new employment was not an essential term of the contract. He further argues that it was an honest and unintentional oversight that did not constitute repudiation or bad faith, and that it is unreasonable for Cooling Tower to characterize his error in his manner.

[30] Mr. Cross also submits that he promptly rectified the oversight once it was discovered, and that as a result, Cooling Tower suffered no loss resulting from the

delay in it being notified about the new job. He argues that it is reasonable for Cooling Tower to now pay him the same amount that it had already agreed to pay him, had he properly disclosed his new employment in a timely fashion.

[31] Mr. Cross further submits that his obligation to inform Cooling Tower about new employment obtained by him was the only obligation arising from the Agreement that he failed to perform. He states that he successfully performed the following terms of the Agreement:

a) He released Cooling Tower from any further claims on a full and final basis;

b) He maintained confidentiality over confidential information obtained by him during the course of his employment;

c) He did not denigrate Cooling Tower; and

d) He remained prepared to indemnify Cooling Tower as against claims relating to the following Acts and their respective regulations: the *Income Tax Act*, the *Canada Pension Plan*, and the *Employment Standards Act.*

2025 ONSC 7203 (CanLII)

2025 ONSC 7203 (CanLII)

[32] Mr. Cross acknowledges that he was in error in failing to advise Cooling Tower of his new employment. However, he submits that this failure does not constitute a repudiation of the entire contract, and that Cooling Tower should be required to pay him the remaining $115,837 that it owes to him pursuant to the terms of the Settlement Agreement.

[33] Mr. Cross also disputes that his acceptance of employment with Evaporative Tower Services breached a duty of good faith, loyalty or confidentiality, as he asserts that his new employment posed no conflict with Cooling Tower's interests.

[34] Mr. Cross submits that the Counterclaim filed by Cooling Tower ought to be dismissed. He argues that it is frivolous and vexatious, and is an attempt to avoid paying its contractual obligations under the Settlement Agreement.

Position of Cooling Tower

[35] Cooling Tower takes the position that Mr. Cross repudiated the Settlement Agreement by failing to advise when he accepted a new job, which he was required to do under the terms of the Agreement. Cooling Tower therefore seeks repayment of all funds that it advanced to Mr. Cross from February 19, 2024 onwards. It also takes the position that as the Settlement Agreement has been repudiated, that it

no longer owes Mr. Cross a lump sum payment equal to fifty percent of the remaining payments under the Agreement.

2025 ONSC 7203 (CanLII)

[36] Cooling Tower suggests that as Mr. Cross has not produced a copy of his executed contract of employment with Evaporative Tower Services, an adverse inference should be drawn that he executed the contract prior to December 21, 2023, as was required in the offer of employment.

[37] Cooling Tower submits that Mr. Cross' repeated failure to advise Cooling Tower about his new job for several months constitutes a series of acts that establish an intention by Mr. Cross to no longer abide by the terms of the Settlement Agreement.

[38] Cooling Tower submits that there is no genuine issue for trial regarding its position that Mr. Cross repudiated the Settlement Agreement by his failure to advise Cooling Tower about his new employment. Cooling Tower therefore submits that Mr. Cross' Statement of Claim should be dismissed.

[39] Cooling Tower further submits that because the Settlement Agreement was repudiated, it was only required to pay Mr. Cross the $148,067.48 that owed to him under the *Employment Standards Act.* Since Cooling Tower actually paid Mr. Cross $190,261.35, it argues that it overpaid Mr. Cross by $42,193.87.

2025 ONSC 7203 (CanLII)

The Law

[40] It will be rare for conduct subsequent to a settlement agreement to amount to repudiation: *Remedy Drug Store Co. Inc. v. Farnham*, 2015 ONCA 576, at para. 66.

[41] A breach that allows the non-repudiating party to elect to put an end to all unperformed obligations of the parties is an exceptional remedy that is available only in circumstances where the entire foundation of the contract has been undermined, that is, where the very thing bargained for has not been provided: *Place Concorde East Limited Partnership v. Shelter Corporation of Canada*, 2006 CanLII 16346 (ON CA), at para. 51.

[42] The onus rests on the party claiming repudiation: *Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.*, (1995) O.J. No. 721 23, at p. 16.

[43] In determining if a repudiatory breach has occurred, the Court will consider whether one party acts in a way that evinces an intention to no longer be bound by the contract: *Jedfro Investments (U.S.A.) Ltd. v. Jacyk*, 2007 SCC 55, [2007] 3 S.C.R. 679, at para. 20.

[44] Simply ignoring the terms of an agreement does not equate to repudiation of an agreement. More is required to establish repudiation: *Jedfro,* at para. 21.

2025 ONSC 7203 (CanLII)

[45] A breach which has material consequences does not necessarily rise to the level of one that has deprived the innocent party of substantially the whole benefit of the contract: *Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, at para. 38.

[46] Repudiation is not to be lightly inferred from a party's conduct, especially when that party repeats their intention to carry out the contract: *Bates v. Island Cove Development Ltd.*, 2003 CanLII 28795 (ON SC), at para. 30.

[47] In *Stayside Corporation Inc. v. Cyndric Group Inc.*, 2024 ONCA 708, at para. 9, the Court of Appeal provided five factors that the Court must consider in determining if the actions of one of the parties created a fundamental breach of the agreement:

a) The ratio of the party's obligations not performed to their obligations as a whole;

b) The seriousness of the breach to the innocent party;

c) The likelihood of the repetition of such a breach;

d) The seriousness of the consequences of the breach; and

e) The relationship of the part of the obligation performed to the whole obligation.

2025 ONSC 7203 (CanLII)

[48] Rule 49.09(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, 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.

[49] 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.

[50] 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.

2025 ONSC 7203 (CanLII)

[51] 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.

[52] 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.

[53] 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: *Virc v. Blair*, 2012 ONSC 7104, para. 15; *Sweda Farms Ltd. et al. v. L.H. Gray & Son Limited et al.*, 2013 ONSC 4195, at para. 28.

Analysis

Did Mr. Cross repudiate the Settlement Agreement he entered into with Cooling Tower though his delay in advising Cooling Tower that he had obtained new employment?

[54] The Settlement Agreement was reached as a negotiated compromise when both parties were uncertain as to when Mr. Cross would be able to obtain new employment.

2025 ONSC 7203 (CanLII)

[55] The requirement in the Agreement that Mr. Cross was to advise Cooling Tower if he obtained a new job is clear. Mr. Cross admits that he breached the terms of the Settlement Agreement by failing to immediately advise Cooling Tower when he obtained the job with Evaporative Tower Services.

[56] I cannot accept that Mr. Cross unintentionally forgot to inform Cooling Tower about his new job. It would have been obvious to Mr. Cross that he was receiving an income from his new job, plus ongoing payments from Cooling Tower, particularly when this situation was ongoing for four months. In his affidavit, Mr. Cross attributes the failure to inform Cooling Tower about the new job in part due to “procrastination”. Given Mr. Cross’ seniority and familiarity with the business, it defies logic and common sense that he could forget to disclose his new job to Cooling Tower.

[57] I therefore rely upon my expanded powers under Rule 20.04(2.1) of the *Rules of Civil Procedure* to find that Mr. Cross’ failure to disclose his new employment to Cooling Tower was intentional. I do not, however, find that this behaviour on the part of Mr. Cross was sufficiently malicious, oppressive and high-

handed to justify an award of punitive damages, although this factor may well be relevant when costs for this action are determined.

2025 ONSC 7203 (CanLII)

[58] Neither party directed me to a case that had a fact scenario where an employee failed to advise a former employer about obtaining new employment. However, I have considered the analysis of the British Columbia Supreme Court in *UFCW International v. Finnamore et al.*, 2005 BCSC 1454, at paras. 71-72, in which a union member breached his continuing obligations under a settlement with his employer by publishing articles about the union's activities. Justice Gray found that these actions by the employee did not amount to repudiation.

[59] Although the employee had displayed an intention not to be bound by the agreement with respect to his ongoing obligations, Justice Gray also found that the employer was not deprived of "substantially the whole benefit" of the contract, which was the resolution of the employee's grievance. Justice Gray therefore found that the employee had not repudiated the contract.

[60] In the case before me, I similarly find that Mr. Cross' intentional failure to inform Cooling Tower about his new job does not establish that he repudiated the Settlement Agreement. It cannot be said that Cooling Tower was deprived of substantially the whole benefit from the Agreement by Mr. Cross' failure to

disclose, as Cooling Tower has remained protected from further litigation under the terms of the Agreement.

2025 ONSC 7203 (CanLII)

[61] I do not accept the submission of Cooling Tower that the litigation before me breached the term of the Settlement Agreement which prevented Mr. Cross from engaging in further litigation with Cooling Tower. This current lawsuit brought by Mr. Cross seeks to enforce a Settlement Agreement, which is a completely different piece of litigation than the wrongful dismissal claim, which was addressed in the Settlement Agreement. In the Statement of Claim, Mr. Cross does not seek any payments beyond what was initially agreed to by the parties in the Settlement Agreement.

[62] I also note that the language in the Agreement on page three at paragraph four requires funds to be reimbursed to Cooling Tower if Mr. Cross failed to disclose new employment. This paragraph does not state that the Agreement would be repudiated if Mr. Cross failed to disclose.

[63] Given the absence in the Agreement of a clear intention by both parties that the contract would be repudiated if there was a lack of disclosure, I find that the primary purpose of the repayment paragraph is to prevent Mr. Cross from being paid twice during the same period by both Cooling Tower, *and* a new employer.

2025 ONSC 7203 (CanLII)

[64] I find that Mr. Cross' failure to advise Cooling Tower about his new employment was a material breach of the Settlement Agreement. However, considering the factors in *Stayside Corporation Inc.*, I find that a reasonable person would not find that Mr. Cross' material breach of the Agreement caused the entire foundation of the Agreement to be undermined, for the following reasons:

a) Mr. Cross' failure to advise Cooling Tower about his new employment was the only term of the Agreement that was breached. Importantly, he followed another material term of the Agreement which was to forego starting a lawsuit in exchange for the agreed-upon payments. Mr. Cross also maintained confidentiality and did not denigrate Cooling Tower, as required by the Agreement.

b) Cooling Tower has not lost a significant benefit that it expected to receive from the Agreement, as it is not facing a wrongful dismissal lawsuit brought by Mr. Cross.

c) Mr. Cross' failure to advise Cooling Tower with respect to his new employment is not a breach that will be repeated. Cooling Tower is now aware of his new job and efforts to mitigate, and will have the benefit of having its payments to Mr. Cross under the Settlement Agreement reduced as per the terms of the Agreement.

d) Had Mr. Cross informed Cooling Tower about his new job, Cooling Tower would have owed him $161,212.87 as per the terms of the Settlement Agreement. This amount far exceeds the $45,825.27 advanced to Mr. Cross by Cooling Tower before it was informed about his new job.

e) Mr. Cross disclosed his new job after four months, and confirmed his desire to continue with the terms of the Settlement Agreement.

f) There is insufficient evidence before me to conclude that Mr. Cross would have indefinitely refused to disclose his new job to Cooling Tower. This factor therefore does not weigh heavily in favour of finding that Mr. Cross repudiated the Agreement.

g) The Settlement Agreement did not state that the entire agreement would be repudiated if Mr. Cross failed to inform Cooling Tower about his re-employment.

[65] Having considered all the circumstances of the parties' Agreement and Mr. Cross' subsequent breach, I find that Cooling Tower has failed to discharge its onus to establish that the entire foundation of the contract was undermined by Mr.

2025 ONSC 7203 (CanLII)

Cross' actions. It has therefore failed to establish that it is entitled to the exceptional remedy of repudiation of the Agreement.

2025 ONSC 7203 (CanLII)

Is Cooling Tower's cessation of payments to Mr. Cross a breach of the Settlement Agreement?

[66] As I have found that the actions of Mr. Cross did not repudiate the Settlement Agreement, the terms of the Agreement remain valid and binding on the parties.

[67] I do not find that Cooling Tower's cessation of regular payments is a breach of the Agreement, as the Agreement states that such payments would stop in the event of Mr. Cross' re-employment. However, Cooling Tower's refusal to pay Mr. Cross the lump sum agreed to in the Agreement is not supported by the language of the Settlement Agreement.

[68] I do not find that the language in paragraph four of page three of the Settlement Agreement is sufficiently clear to permit Cooling Tower to now deny Mr. Cross the fifty percent lump sum payment that he would otherwise be entitled to upon obtaining a new job. The language in paragraph four speaks of reimbursement in the event of a failure to disclose a new job, but does not state that the lump sum would no longer be payable.

[69] I therefore find that the failure of Cooling Tower to make the lump sum payment to Mr. Cross that it agreed to make in the Settlement Agreement is a breach of the Settlement Agreement.

Is Mr. Cross entitled to summary judgment for the outstanding payments owed to him by Cooling Tower under the Settlement Agreement?

[70] The terms of the Settlement Agreement were clear and straight forward with respect to the fifty percent lump sum payment that would be owed by Cooling Tower to Mr. Cross once Mr. Cross obtained new employment.

[71] Cooling Tower did not provide any written or oral submissions challenging the quantum that Mr. Cross says remains owing to him as per the terms of the Settlement Agreement.

[72] Cooling Tower therefore owes Mr. Cross $161,212.87 plus prejudgment interest pursuant to the *Courts of Justice Act*.

Should the Counterclaim filed by Cooling Tower be Dismissed?

[73] I have already found that Mr. Cross did not repudiate the Settlement Agreement. Accordingly, Mr. Cross is required to repay Cooling Tower the $45,825.87 advanced to him, plus prejudgment interest pursuant to the *Courts of Justice Act*, as per the terms of the Agreement.

2025 ONSC 7203 (CanLII)

2025 ONSC 7203 (CanLII)

[74] In its Counterclaim, Cooling Tower also takes the position that by accepting employment with a competitor, Mr. Cross has failed to deal with it in good faith, as it alleged that Mr. Cross owed Cooing Tower a heightened duty of loyalty, fidelity, and confidentiality.

[75] Cooling Tower has not produced any evidence to establish that Mr. Cross owed it heightened duties of loyalty, fidelity, and confidentiality, nor has Cooling Tower produced any evidence to establish that these duties, if proven, were breached by Mr. Cross.

[76] It is well established law that each party must put their best foot forward on a summary judgment motion, and not lay back and wait for better evidence to be established at a trial.

[77] As Cooling Tower has produced no evidence to support these allegations made in its Counterclaim, Mr. Cross has established that there is no genuine issuing requiring a trial regarding the $50,000 aggravated and/or punitive damages claimed in its Counterclaim. This claim made by Cooling Tower is therefore dismissed.

Conclusion

2025 ONSC 7203 (CanLII)

[78] As I have determined that Mr. Cross did not repudiate the Settlement Agreement, there is no genuine issue requiring a trial regarding the amount that Cooling Tower is required to pay Mr. Cross pursuant to the Agreement. Accordingly, Cooling Tower shall pay Mr. Cross $161,212.87 plus prejudgment interest in accordance with the *Courts of Justice Act*, payable within 30 days.

[79] There is also no genuine issue requiring a trial regarding the amount of money that Mr. Cross must repay to Cooling Tower under the terms of the Settlement Agreement. Mr. Cross therefore must repay Cooling Tower $45,825.27 plus prejudgment interest in accordance with the *Courts of Justice Act*, payable within 30 days.

Costs

[80] Both parties were successful on portions of their motions. Although Mr. Cross was overall more successful than Cooling Tower in terms of the quantum of the Judgment he will receive, it is my inclination not to award costs to either party, given my finding of Mr. Cross' intentional choice to fail to disclose his new employment to Cooling Tower.

[81] If there are further factors that the parties wish me to consider regarding the payment of costs, either party may serve and file a cost submission by January

5, 2026. All cost submissions are to be no longer than three pages, double-spaced, not including any Offers to Settle or Bills of Costs. All cost submissions shall be sent to my attention at scj.csj.general.brampton@ontario.ca.

2025 ONSC 7203 (CanLII)

____
Wilkinson J.

Released: December 23, 2025

CITATION: Cross v. Cooling Tower Maintenance Inc., 2025 ONSC 7203
COURT FILE NO.: CV-24-3042
DATE: 2025 12 23

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MITCHELL CROSS

Plaintiff

- and -

COOLING TOWER MAINTENANCE INC.

Defendant

REASONS FOR JUDGMENT

Wilkinson J.

Released: December 23, 2025

2025 ONSC 7203 (CanLII)