CITATION: 1995636 Ontario v. 5010729 Ontario 2026, ONSC 284
DIVISIONAL COURT FILE NO.: DC-24-00002893-0000
DATE: 20260115

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

S. Nakatsuru, S. O'Brien, I. Smith JJ.

BETWEEN:	
1995636 ONTARIO INC. C.O.B. 2B DEVELOPMENTS	*Marco Falco, Jonathan Goode, Harris Khan,* Counsel for the Appellant
Appellant	
- and -	
5010729 ONTARIO INC. C.O.B. AS ASTUTE CAPITAL CORP.	*Martin Z. Black,* Counsel for the Respondent
Respondent	
	HEARD by videoconference at Ottawa: November 18, 2025

REASONS FOR DECISION

S. Nakatsuru J.

[1] The appellant, 1995636 Ontario Inc. c.o.b. 2B Developments ("2B"), appeals the order of Justice H. McLean of the Ontario Superior Court, dated August 21, 2024.After a seven day trial, Justice McLean dismissed 2B's action against the respondent, 5010729 Ontario Inc. c.o.b. Astute Capital Corp. ("Astute"), granted the respondent's counterclaim and awarded damages of $325,375 against 2B for fraud relating to a development project, and discharged the lien of 2B.

[2] For the reasons that follow, I would dismiss the appeal.

A. FACTUAL BACKGROUND

[3] Lindsay Blair is a real estate developer. Ms. Blair was employed with 2B, which provided project management and development-design related services in Ontario. Ms. Blair's mother, Lisa Bailey, is the sole shareholder, director and officer of 2B.

[4] Ashley Shewchuk is a social media influencer. Ms. Shewchuck and Ms. Blair met in 2018 and socialized regularly. Astute is Ms. Shewchuck's corporation incorporated in November of 2019.

[5] The two women decided to become involved in two developments in the town of Smiths Falls. Believing that a great deal of money could be made from these developments, Ms. Blair looked for and found a property on Philip St, where one project commenced. This project was not a subject of the litigation.

[6] On February 12, 2021, 2B and Astute entered into two agreements related to the other project: a planning agreement and a project management agreement. Pursuant to the project management agreement, 2B would provide project management and site supervision services for the construction of the project. According to the two agreements, the work was to commence on June 1, 2021, and was to be completed by November 30, 2021. There were also terms that time was of the essence in the agreements. It was found by the trial judge that neither the deadline, nor the essential terms of the agreements were met.

[7] On June 23, 2021, Astute purchased the three lots on the corner of Lanark St. and Bolton St. It was understood that the purchase was for the development of two buildings containing 13 units. The Lanark St. development (the Project) became the subject matter of the litigation.

[8] Planning approval and a planning by-law amendment for the Lanark St. development had to be obtained by 2B. To do so, various requirements had to be met such as reconfiguring the lots to allow for servicing and rectifying a title problem. These were completed, and 2B made an application for planning approval from the town. At some point in these discussions between 2B and the town, the number of units was changed from 13 to 12 to 10. A proposal was brought to the town's Committee of Adjustment for 10 units in a two-building project.

[9] On November 10, 2021, a building permit was obtained to build only a duplex on the site. A foundation excavation was commenced on November 16, 2021, and was completed on November 21, 2021, under the duplex permit.

[10] In the fall of 2021, 2B sent various invoices to Astute for the Project, some of which were paid. The Project continued until February 2022, when Astute informed 2B that it would not continue with the Project. After this, Astute attempted to sell and market the Project based on 13 units.

[11] Astute took the position it believed, based upon 2B's representations, that 13 units had been approved. It is 2B's view that Astute was aware throughout that this was not the case.

[12] After 2B became aware of Astute's position, it placed a construction lien on the property in

the amount of approximately $450,000. This was later reduced by an order of Johnston A.J. to $195,204.41.

[13] At the summary trial before McLean J., 2B sued for breach of contract for Astute's failure to have the contract completed in addition to the lien. Astute counterclaimed for breach of contract, fraudulent misrepresentation, filing an inflated lien, and exemplary damages.

B. THE TRIAL DECISION

[14] The trial judge decided that a large part of his decision was based on "an analysis of the credibility of the various participants." He found Ms. Blair was not credible.

[15] The trial judge held that fraud entered the relationship between 2B and Astute when the construction commenced based on a building permit for a duplex, since Astute thought that there was a building permit for the multiple units as originally conceived. The trial judge rejected 2B's position that the duplex could be enlarged and found that their position, as conveyed to investors and mortgage holders, was "subterfuge".

[16] The trial judge determined that not only had 2B not proven the respondents had breached the contract, but it was 2B that had repudiated the contract. 2B's claim for damages was denied stating that any damages warranted ought to be limited to amounts already paid to 2B.

[17] The court accepted Astute's position on the counterclaim finding that 2B:

- did not perform its contractual obligations in an honest and reasonable manner,
- misled Astute into thinking that the approval for a multi-unit apartment complex had been approved when the construction commenced, and
- intentionally kept Astute in the dark with emails that contained only half-truths with the intent to have Astute act on those misrepresentations and continue with the Project.

The presence of fraud or fraudulent misrepresentation was also proven.

[18] The trial judge found 2B's claim that the counterclaim was barred by the statute of limitations to be without merit, as the essential elements of the counterclaim only became apparent within the limitation period.

[19] The court dismissed 2B's action, discharged its lien, granted Astute's counterclaim, and awarded damages of $325,375.

C. THE ISSUES ON APPEAL

[20] The grounds of appeal are the following:

- Did the trial judge err in allowing the amendment to add the counterclaim pleading fraud and ignoring the leave requirement?

- Did the trial judge err in his use of inadmissible propensity evidence in establishing liability for fraud?

- Did the trial judge err by misapprehending the evidence regarding fraud and finding the appellant liable?

- Did the trial judge err in his analysis in addressing the appellant's lien and breach of contract claim?

D. ANALYSIS

Issue 1: Whether the trial judge erred in allowing the amendments of the pleadings?

[21] The appellant submits that in construction lien matters, which are of a summary character, no interlocutory step, including pleading amendments, can be taken without leave of the court. In this case, it is submitted that the trial judge erred in allowing the respondent to amend its counterclaim to plead fraud against the appellant on March 21, 2024, during oral submissions at the commencement of the trial. Although the parties consented to the addition of the fraud counterclaim, it is argued that the trial judge erred by failing to consider the test for leave under s. 13 of O. Reg. 302/18: "*Procedures for Actions Under Part VIII*" of the *Construction Act*, R.S.O. 1990, c. C 30, contrary to the regulation's express requirements.

[22] After the appellant retained new counsel when the trial was nearly completed, they advanced a motion to strike the fraud amendments. This motion was not allowed. It is further submitted that the trial judge compounded his initial error violating s. 13, by allowing the amendments *nunc pro tunc*. The appellant also argues that the trial judge was procedurally unfair by denying the appellant their request to conduct further examinations for discovery on the fraud amendments and failed to consider whether the amendments were statute-barred.

[23] I would not give effect to this ground of appeal.

[24] In my opinion, the trial judge's decision with respect to s. 13 of the regulation gave effect to and did not ignore the summary nature of construction lien actions.[1] The trial judge considered whether the interlocutory step of amending the pleadings was necessary or would expedite the resolution of the issues in dispute in the action. Moreover, it is plain based upon the whole record that the trial judge addressed the issue of the leave requirement.

[25] Section 13 provides that interlocutory steps such as the amendment of pleadings, cannot be taken without leave of the court and only where such steps are necessary or would lead to an expedited resolution:

[1] Subsection 50 (3) of the *Act* states the procedure in an action shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.

> 13. Interlocutory steps, other than those provided for under the Act, shall not be taken without the consent of the court on proof that the steps are necessary or would expedite the resolution of the issues in dispute.

[26] The history of how this issue arose provides context to my reasoning.

[27] On June 13, 2023, previous counsel for the appellant issued and served their trial record confirming that the time for delivery of pleadings had expired and that pleadings were closed in the action. No discoveries were conducted. The trial was to commence on April 15, 2024, and the evidence-in-chief was to be by affidavit which were exchanged and delivered before the end of February 2024.

[28] On or about March 21, 2024, before the trial had commenced, the respondent served an amended statement of defence and counterclaim which deleted some causes of action and added additional ones, including fraudulent misrepresentation. Counsel for the respondent then communicated with appellant's counsel about bringing a motion for leave to make these amendments. Appellant's counsel was content with the amendments and proposed their own. Appellant's counsel agreed with the respondent's suggestion that they indicate to the trial judge that the parties have consented to the various proposed amendments to the statement of claim, statement of defence and counterclaim, and reply, and request that the court accept them without the need for a formal consent order or amended trial record.

[29] On April 14, 2024, the trial commenced with the appellant's counsel confirming on the record that both parties were submitting amended pleadings and supplemental affidavits on consent and the trial judge accepted all such filings.

[30] The trial was conducted. On May 6, 2025, oral and written closing submissions were made and the appellant's counsel fully dealt with the respondent's allegation of deceit and fraudulent misrepresentation. The trial was then adjourned to June 4, 2024, for a further half day of submissions.

[31] On May 16, 2024, the appellant changed lawyers and appointed Torkin Manes LLP as new counsel.

[32] The appellant then brought an unsuccessful motion on June 4, 2024, for leave to bring the motion to: (i) strike portions of the respondent's amended pleading; (ii) adjourn the trial; (iii) declare a mistrial; and (iv) order a new trial later.

[33] On June 13, 2024, the trial judge denied the appellant leave to bring the motion to strike the amended pleadings, for an adjournment of the trial, to conduct examinations for discovery, and for a declaration of a mistrial. The trial judge also made an order granting leave for both parties to deliver their amended pleadings *nunc pro tunc*.

[34] Closing arguments were then concluded, and notwithstanding that the appellant did not raise any limitations defence in its original pleadings or in its amended pleadings, appellant's counsel was permitted to make submissions to the trial judge arguing that the allegations of fraud were statute-barred.

[35] This is the procedural context in which this ground of appeal must be assessed.

[36] I find that the record reveals that both trial counsel were aware of the requirements of s. 13. As well, the experienced trial judge was also aware of the requirement of leave under s. 13.[2] When the amended pleadings were placed before him, he was faced with counsel who had expressly agreed to the amendments. Implicitly by their joint position, they had indicated their agreement that the threshold of s. 13 had been met. By his action in allowing counsel to file the amended pleadings, it was obvious the trial judge was consenting to this interlocutory step though no formal motion had been brought.

[37] While the trial judge did not articulate his view that the test for leave had been met at the time the amended pleadings were accepted, from the totality of the record, there was a reasonable basis to establish that the amended pleadings were necessary in the circumstances (due to the unearthing of new facts by the litigants). The trial judge had the pleadings and the trial record available to him. In addition, the amended pleadings resulted in the removal of certain allegations and claims and could reasonably be expected to expedite the completion of the trial. Also, while admittedly not determinative, the consent of the parties in these circumstances, whereby both parties mutually amended their pleadings with full notice and informed consent weeks in advance of the trial commencement, is an important factor in assessing whether the requirements of s. 13 were met. At a minimum, their consent was a factor to consider in determining whether any formal proof was required. To hold otherwise would be artificial and a triumph of form over substance.

[38] In my opinion, the circumstances of this case are readily distinguishable from *Krypton Steel Inc. v. Maystar General Contractors Inc.*, 2018 ONSC 3836, 92 C.L.R. (4th) 88, at para. 11 relied upon by the appellant for the proposition that the parties cannot consent out of the requirements of the *Construction Act.* In that case, the court held that parties could not consent to any waiver of the requirement of the statutory limitation period in the *Construction Act*. Section 13 shares little similarity to such a provision.

[39] In terms of the law, unquestionably, s. 13 takes precedence over rule 26 of the *Rules of Civil Procedure*, which provides a general authorization for the court to amend pleadings. Thus, s. 13's requirements need to be addressed.

[40] It is well-recognized that parties to litigation develop a litigation strategy based on the allegations pleaded and their understanding of the strengths and weaknesses of their case. If the scope of the claim changes after trial evidence has been called, this could cause significant prejudice: *Dean's Standard Inc v. Siljub Toronto*, 2016 ONSC 5254, 71 C.L.R. (4th) 285, at paras. 44-45. However, unlike the authorities relied upon by the appellant, in the case at bar, the appellant had full awareness of the proposed scope of the amendments and general allegations of fraud levied against it in the original pleadings, was amply prepared to litigate its case based on the amendments, and expressly consented to this abridged procedure. No prejudice arose from it.

[41] Moreover, although the trial judge did not fully undertake the analysis at the time he accepted the amended pleadings, he was alive to the issue when the appellant brought and argued the

[2] See transcript of proceedings June 4, 2024, p. 7 ll. 22-32.

motion on June 24, 2025. As well, he had heard all the trial evidence and nearly all of the appellant's final submissions and was in a good position to accurately gauge whether the amended pleadings were necessary or would expedite the trial. I see no error in the trial judge's dismissal of the appellant's motion or his order to amend the pleadings *nunc pro tunc*. His reasons on the motion, though brief, are not tainted by any error.

[42] In terms of the requested alternative remedies on the appellant's motion, the trial judge was well-placed to address any unfairness or prejudice claimed by new counsel for the appellant. As noted, he had essentially heard the entire trial. His decision should be afforded considerable deference. There was no reversible error committed by the trial judge in proceeding with the trial as it had been conducted. Furthermore, as observed above, although the appellant requested further "limited" discovery questioning, no discoveries had been conducted in the case as none were requested by the parties. The appellant can ill-claim unfairness in these circumstances. Additionally, though no limitation period was pleaded as a defence, the trial judge allowed the appellant to make arguments on this. In the end, although the appellant wished to change the approach to his litigation when new counsel was retained, no injustice was done by the trial judge's decision to continue with the trial.

[43] Lastly, although the appellant now objects to it on appeal as being done without notice or input, the trial judge was within his rights to make the order *nunc pro tunc*: *McKenna Estate v. Marshall*, (2005) 37 R.P.R. (4th) 222 (ONSC), at paras. 12-20, 25-27. As noted above, the trial judge in making that order stated that his consent to the amended pleadings was given by implication on April 14, 2024. However, to clarify the record, after hearing submissions from appellant's new counsel on the issue of whether to make the proposed order, he made the *nunc pro tunc* order.[3] If it was not evident to everyone at the time of the initial filing of the amended pleadings that the trial judge was satisfied the requirements of s. 13 had been met and his consent to the interlocutory motion had been given, his later ruling, addressed any technical flaw and validated his initial intent.

[44] In the alternative, if the trial judge erred, I find that the error of law was inconsequential and did not result in a substantial wrong or a miscarriage of justice sufficient to justify appellate intervention: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 134(6); *Maple Leaf Acres Members' Association v. Ellig*, 2023 ONSC 3940, at para. 23. The trial judge would have granted the motion for leave and no prejudice or unfairness resulted from the procedure followed.

[45] In short, the appellant had a fair trial, suffered no prejudice, and is attempting to resile from a reasonable approach to litigation taken by its previous counsel for a tactical purpose. I observe no suggestion is made that the appellant's previous trial counsel was negligent or that his legal representation was ineffective in any way.

Issue 2: Whether the trial judge erred in his use of inadmissible propensity evidence in establishing liability for fraud?

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[3] See transcript of proceedings June 13, 2024, p. 6 l. 34 to p. 10 l. 14.

[46] The appellant submits that the trial judge erred by admitting historic and irrelevant propensity evidence, including dated allegations of "moral turpitude" that had no bearing on the action and wrongly gave effect to this propensity evidence in his reasoning.

[47] I would dismiss this ground of appeal.

[48] There was evidence that Ms. Bailey had lost her chartered accountant designation for misappropriation of funds from a client. In his reasons, the trial judge did little more than refer to this, cautioning himself it was far from determinative, in concluding he would give less weight to the appellant's expert who relied on the data provided by Ms. Bailey. This past misconduct along with other factors including the failure of the appellant to call Ms. Bailey as a witness led the trial judge to make this finding about the weight to be given to the witness

[49] Regarding Ms. Blair, the trial judge found that she had been convicted in the past of three counts of uttering a forged document and one count of perjury. He described these as crimes of "moral turpitude" which needed to be considered on the issue of the veracity or reliability of her testimony.

[50] I find no error in the trial judge's admission and use of the evidence. The evidence was not admitted nor used as propensity evidence: *R. v. Handy*, 2002 SCC 56, [2002] 2 S.C.R. 908, at para. 31. Rather, this evidence was relevant to the assessment of the credibility of Ms. Blair's evidence and the reliability of the underlying data provided by Ms. Bailey to the appellant's expert: *Jarvis v. Oliveira*, 2024 ONCA 200, 494 D.L.R. (4th) 152, at para. 56. It was properly admitted and utilized by the trial judge.

[51] I should point out that there were other factors that led the trial judge to reject Ms. Blair's evidence. These factors include that she had falsely testified about the very material issue of whether the building permit was for a multi-unit development while under oath in cross-examinations done on the affidavits presented at the trial.

Issue 3: Whether the trial judge erred by misapprehending the evidence regarding fraud and finding the appellant liable?

[52] The appellant submits that the trial judge misapprehended the evidence of the appellant's alleged fraud. It is argued that the evidence at trial was unmistakable that Ms. Blair did not knowingly or recklessly make false representations about the scope of the project to Ms. Shewchuk.

[53] It is submitted that the trial judge reconfigured routine commercial conduct regarding the planning and development of a construction project into the serious finding of fraudulent misrepresentations on the part of the appellant. There was simply no evidentiary basis for making such serious findings. In particular, it is contended that the trial judge erroneously took judicial notice that a building permit cannot be amended once it was issued.

[54] I do not agree.

[55] In my opinion, the appellant is essentially re-arguing his case on appeal. This is not a basis to overturn factual findings made below: *Narwhal International Ltd. v. Teda International Realty*

Inc., 2021 ONCA 659, at para. 14.

[56] The trial judge articulated and applied the correct test for civil fraud: *Paulus v. Fleury*, 2018 ONCA 1072, 144 O.R. (3d) 791, at para. 9, leave to appeal denied [2019] S.C.C.A. No. 57. The trial judge made the findings of fraud based in part on "half-truths and out-right lies" committed by the appellant, largely by Ms. Blair, whose evidence he rejected. As well, he made specific factual findings that the appellant had the required intent for civil fraud based upon reasonable inferences available from the trial evidence. This was fairly open to him: *Midland Resources Holding Ltd. v. Shtaif*, 2017 ONCA 320, 135 O.R. (3d) 481, at paras. 163-64, leave to appeal denied [2017] S.C.C.A No. 246.

[57] The appellant argues that it is "clear" that the evidence does not prove intent and criticizes the trial judge for relying on circumstantial evidence. However, given the findings made by the trial judge, including his findings of credibility, such criticisms are misplaced. The trial judge did not take judicial notice that the building permit could not be amended. The impugned comment pointed to by the appellant was merely the trial judge assessing the evidence regarding the strategy in the procedure to develop the Project. No expert evidence was required for him to do that. Nor did the trial judge fail to take into account the evidence or make any palpable and overriding errors relating to the relevant evidence on the proof of intent for fraud.

[58] For example, the appellant's submission that the trial judge misapprehended or failed to consider Ms. Schewchuk's testimony that she accepted that Ms. Blair at least originally believed she was going to develop a 12 or 13-unit project, is not accurate. The trial judge was aware of this evidence and alluded to it in his reasons. The essence of the appellant's argument, like the one made at trial, is that this evidence should have led the trial judge to find that proof of intent was lacking. However, in my view, the trial judge committed no error in not relying on that evidence elicited in cross-examination. Aside from its tenuous admissibility as speculative opinion, it was not deserving of much weight. Even more importantly, it did not detract from the proof of the fraud committed. While Ms. Blair may have wanted the original project to succeed, she nevertheless disclosed what she knew to be misleading partial, and half-truths to the respondent with the intention that they be acted upon to further her financial motive in collecting ongoing fees under the contracts. Therefore, there was no error in finding she had the intention for civil fraud.

[59] Additionally, the trial judge rejected the appellant's evidence that the Project was intended to proceed initially as a duplex and after all approvals received later was to be converted to a multi-unit project. While the appellant points to the evidence that it says supports that position, it has not demonstrated that the trial judge committed any palpable and overriding error in coming to the opposite view in finding that Ms. Schewchuk was misled by the appellant as to the true status of the Project.

[60] Given this, I afford deference to the findings made: *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621, at paras. 19-24.

Issue 4: Whether the trial judge conducted a meaningful analysis of the appellant's breach of contract and lien claim?

[61] It is submitted that the trial judge erred by failing to meaningfully assess and consider the

appellant's breach of contract and lien claim.

[62] First, in their factum, the appellant argues that the trial judge erred by considering the doctrine of fundamental breach raised by the respondent in defence because the doctrine no longer exists in the jurisprudence. Alternatively, regardless of the law's application, the appellant submits the trial judge misapplied the doctrine to this case since at no point did the appellant's conduct deprive the respondent of substantially the whole benefit of the contract.

[63] In oral submissions, the appellant's emphasis was less on fundamental breach than on the fact that the respondent unilaterally terminated the contract, and the trial judge failed to deal with the consequences of that breach, including the failure to mitigate damages.

[64] Second, the appellant submits that the trial judge erred by ignoring the evidence and failed to address some of the key elements of breach and the lien. As a result, his reasons for his conclusions were inadequate.

[65] I do not accept the appellant's submissions.

[66] The appellant submits that *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, [2010] 1 S.C.R. 69, at para. 106-121 "laid to rest" the doctrine of fundamental breach, particularly as applied to exclusion of liability clauses. The appellant submits the trial judge erred by failing to resolve the question of whether the doctrine applies in the case at bar, before giving weight to the respondent's defence of fundamental breach.

[67] The respondent disputes the appellant's claim that *Tercon* laid the concept of fundamental breach to rest and argues that the doctrine is alive and well and cites in support cases such as *Convocation Flowers Incorporated v. Anisa Holdings Ltd*., 2025 ONSC 401, 65 R.P.R. (6th) 258, at paras. 86-93.

[68] Leaving aside whether the trial judge should have provided greater reasons on the application of the doctrine of fundamental breach to the facts of the case, in my opinion what was significant was his factual findings. The trial judge found that the original contract was for a multi-unit dwelling but a building permit and excavation was only started for a duplex. Further, the appellant convinced the respondent to continue with the project under this false impression through "subterfuge". Even the zoning amendment application put forward by the appellant to the town was for fewer units than the respondent was advised about, carried no guarantee of success, and even if it was approved, the Project could not be completed in the timeframe indicated. The conclusion reached by the trial judge was that it was reasonable to conclude the contract was "breached to such extent that the subject matter of the contract could not be accomplished" and thus, "it was not necessary for [Astute] to do anything other than what it did (provide no notice and terminate the contract)." Given this factual matrix of the breach of contract by the appellant where the respondent received no benefit, it was unnecessary for the trial judge to go on and determine whether the respondent had a duty to mitigate their damages: *C.S. Bachly Builders Ltd. v. Lajlo*, 2008 CanLII 57444 (Sup. Ct.), at paras. 86-87.

[69] The appellant further argues that whether the doctrine of fundamental breach applies or not,

the evidence at trial did not establish that the appellant's conduct deprived the respondent of substantially the whole benefit of the contract. The appellant points to such evidence as the appellant's performance of some aspects of the contract, including the planning process conducted.

[70] Again, this argument suffers from the same frailty as the appellant's submissions directed against the findings of fraud made by the trial judge. It is not an appeal court's function to rehear and reweigh the evidence. No error of law or palpable and overriding error has been demonstrated in the conclusion made by the trial judge set out above. A trial judge is not required to deal with every piece of evidence or every argument made by the parties.

[71] In that vein, the appellant further argues that the reasons of the trial judge for dismissing the appellant's claim for breach of contract and lien damages are so terse that he committed an error of law.

[72] I do not accept the appellant's argument.

[73] Reasons for decision have several purposes, including to: (i) justify and explain the result; (ii) tell the losing party why he or she lost; (iii) provide for informed consideration of the grounds of appeal; and (iv) satisfy the public that justice has been done. On appeal, the overarching principle is whether the underlying reasons for decision permit meaningful and effective appellate review: *Manos v. Riotrin Properties (Flamborough) Inc.,* 2020 ONCA 211, at para. 11, leave to appeal denied [2020] S.C.C.A. No. 133.

[74] First, the trial judge made findings with respect to the damages arising from the appellant's failure to adhere to the contract. Specifically, regarding the appellant's significant breach of the project management agreement, the trial judge determined that the appellant was not to receive anything beyond what it had already received since whatever services were provided to the respondent *"*were without value".

[75] Second, the trial judge may not have referred to each of the specific invoices that the appellant alleged had not been paid to it, but his reasons demonstrate why he discharged the lien: he was not satisfied with the proof proffered. He concluded that the accounting and other evidence presented at trial by Ms. Blair was deficient and unreliable. Work orders were unsupported by documentary evidence or testimony. Ms. Blair was not believed. There was a reasonable basis in the evidence for these factual determinations regarding the lack of accounting by the appellant on the Project as well as the trial judge's concerns about whether the respondent had approved of various third-party work and contracting on the Project site as contractually required.

[76] Third, along with his credibility findings and his determination of fraud having been committed, these reasons provided the losing party with the required explanation and permits meaningful and effective appellate review. Said differently, when the whole of the decision is considered, the reasons given were adequate.

E. DISPOSITION

[77] In its factum, the appellant raised arguments regarding the trial judge's assessment of damages. Some of the arguments are repetitive of the ones already dismissed above. The others were not pursued at the appeal hearing. None have any merit. I find that the trial judge made no error in the assessment of damages.

[78] For these reasons, the appeal is dismissed. As per agreement of the parties, the appellant is to pay the respondent $35,000 all-inclusive in fixed costs.

Nakatsuru J.

I agree:

O'Brien J.

I agree:

Smith J.

Released: January 15, 2026

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REASONS FOR JUDGMENT

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