

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
PAUL CATANIA and SUSAN CATANIA	)	
	)	
Plaintiffs	)	
	)	Adam Marchioni, for the Plaintiffs
<b>– and –</b>	)	
	)	
JAMESWAY CUSTOM HOMES LTD. and	)	
COLLIN JAMES	)	
	)	
Defendants	)	
	)	Defendants, Self-Represented
	)	
	)	
	)	<b>HEARD:</b> January 19 – 23, 2026

**HEALEY J.**

**Overview**

- [1] The plaintiffs, Paul and Susan Catania (the “Catantias”) are the owners of a waterfront cottage property located in McDougall, Ontario. The defendant, Jamesway Custom Homes Ltd. (“Jamesway”) is located in Magnetawan, Ontario, and carries on the business of providing general contracting and construction services. The defendant, Collin James is the President of Jamesway and its only officer, director, and shareholder. Leave was granted by the court for Mr. James to represent his corporation.
- [2] This action arises out of a contract between the Catantias and Jamesway for the cottage’s interior finishing work and preliminary exterior landscaping work.
- [3] Jamesway began this work in the late summer or fall of 2022. The Catantias fired Jamesway and terminated the contract effective June 14, 2023.
- [4] It is undisputed that the Catantias made payments to Jamesway totalling \$1,405,633.75 during the period of the contract. It is their position that the value of the labour and materials that they received from Jamesway is far less, totalling \$930,813.70. This

differential is largely comprised of amounts attributed to the purchase, transport, and initial handling of armour stone, together an amount of \$507,822 inclusive of HST.

- [5] The Catanias say that they were asked for a deposit of \$542,400 in September 2022 for the express purpose of procuring all materials, equipment, and trucking required to purchase the armour stone for the landscaping, transporting it to a location near the cottage, unloading it, and storing it.
- [6] It is an uncontroverted fact that Jamesway did not use any of that \$542,400 to buy, supply, transport or store armour stone. By June 2023, no armour stone had been acquired. When the Catanias learned that this was the case, they terminated the relationship.
- [7] The Catanias' position is that this failure constitutes both a breach of contract and breach of trust, as the money was impressed with a trust that required it to be used for the specific purpose of purchasing the stone and transporting it to the holding area in the vicinity of their cottage. This was the express purpose for which the sum was requested by Mr. James. Jamesway was not authorized to use the funds for any other purpose, and there has been no explanation of how the money was used. They plead that Mr. James is personally liable for this breach of trust.
- [8] They also plead breach of a duty of honest performance of the contract. Before they asked Mr. James directly whether the armour stone had been acquired, Mr. James never told them that it had not yet been purchased.
- [9] From the plaintiffs' perspective, this is not a case about delay or faulty workmanship. It is about the fact that their money was not used for the purpose that Mr. James represented to them it would be used, and he has not returned it.
- [10] The plaintiffs seek judgment against Jamesway and Mr. James personally in the amount of \$474,819.97, plus prejudgment interest.
- [11] The defendants' position is that the deposit of \$542,400 was not specifically allocated to the purchase and transport of armour stone. No breach of contract or breach of trust has occurred.
- [12] The defendants also state that this is not a case about fraud or deception, but is instead a construction sequencing dispute arising out of a complex project. In the estimate by which the 50% deposit was requested for the landscaping, the associated amount of \$542,400 was not allocated to any particular work or material. No fixed date of delivery of the armour stone had been agreed upon. The project was delayed primarily by Linwood Homes, the company which the Catanias had hired to erect the cottage and bring it to the point at which Jamesway's work could begin. It was also delayed by the subcontractor hired to install cabinets in the kitchen and bathrooms, and a warmer winter that did not allow the access road to be passable at certain times without heavy equipment causing damage.
- [13] The defendants state the parties had an amicable relationship and the Catanias did not object to any of the charges prior to June 2023. Their anticipated move-in date of late June

was unrealistic given the delays caused by issues that were beyond the defendants' control. The Catanias became upset in early June when they learned that the trim package could not be fully installed until October. They then became unreasonably upset when they learned that the armour stone had not been purchased. It is the defendants' position that the stone would have been purchased when conditions would allow for it to be delivered and the site was adequately prepared, but never had the opportunity because the contract was terminated before they could do so.

- [14] The defendants ask for the plaintiffs' claims to be dismissed in their entirety.
- [15] Although the defendants initially advanced a counterclaim seeking damages for breach of contract, breach of duty of good faith, breach of trust, unjust enrichment, intentional interference with economic relations, defamation, as well as claiming set-off for any amounts found owing to the plaintiffs, Mr. James confirmed that the counterclaim was abandoned.

### **Issues**

- [16] The issues to be determined are:
1. Whether the failure to purchase the armour stone was a breach going to the root of the contract that entitles the plaintiffs to end the contract and sue for damages.
  2. Whether the funds were impressed with a trust and whether Mr. James breached his fiduciary duty by failing to account for the funds.
  3. Whether Mr. James knowingly participated in breach of trust and is personally liable for any damages.
  4. Whether there has been a breach of the duty of honest contractual performance.
  5. Whether the plaintiffs' statutory rights under the *Consumer Protection Act*, S.O. 2002, c. 30, Schedule A, entitled them to end the contract and recover their funds.
  6. Whether the plaintiffs are entitled to damages, and if so, the quantum.

### **Evidence**

#### ***Background Facts***

- [17] There is significant agreement between the parties on the evidence in this case. It is uncontroverted that the substantive contact between the parties occurred over twelve months between July 2022 and June 2023, and accordingly, references to dates in these Reasons usually omit the year for sake of simplicity.

- [18] Their initial contact arose out of Jamesway being an approved distributor and installer of docks for NyDock. Through his initial contact with Mrs. Catania, Mr. James also introduced himself as a general contractor and builder of custom homes.
- [19] This was exciting news for the Catantias as they believed that the pricing offered by Linwood for the interior finishing work for their cottage was too expensive, and they were pleased to meet a contractor from the area.
- [20] Linwood's scope of work had been to erect the shell of the cottage and close it in with a completed roof, and exterior board and batten siding. Linwood also installed windows and a deck, and were to complete all heating, plumbing, and electrical. On the interior, they were to complete drywall to the point of readiness for painting.
- [21] At the first site meeting on June 24, 2022, the Catantias and Mr. James walked the property and discussed the Catantias' vision for the dock installation, the landscaping, and the remaining exterior and interior work.
- [22] The Catantias stressed that they wanted the outside completed in priority to the interior, and in particular wanted to be able to use a proposed tennis court by the late spring or early summer of 2023.
- [23] Over the course of the next weeks, through email and text, the parties discussed aspects of the proposed project. Mrs. Catania's evidence is that the timelines of the project were discussed many times. It was very important for them to enjoy the exterior, particularly a completed tennis court and dock, by the late spring of 2023, or at the latest, by early summer. Even if the interior was not completely finished by that time, they wanted the exterior work to be done.
- [24] At his examination for discovery, Mr. James acknowledged that the plaintiffs had told him that it was their intention to move into the cottage in the summer of 2023, and that he knew that it was important to them. At trial he denied this, stating that in their discussions they unrealistically told him that they intended to move in the fall of 2022. His explanation for the inconsistency was that he must have been confused about dates during his discovery. He also points to an email written in 2022 by Mr. Catania to a neighbour, in which Mr. Catania expressed a hope to be in the cottage by October 2022. However, Mr. James was not copied on this email and all of the other documentary evidence in this case does not support his contention that the Catantias expected to be in their cottage that fall.
- [25] It is undisputed that the dock work was satisfactorily completed, and the plaintiffs paid Jamesway the amount of \$92,175.93 for the installation of a dock on their property.

### ***The Scope of Work***

- [26] The scope of the work completed is relevant for determining how much value had been received by the Catantias by the time of the contract's termination.

- [27] In addition to the dock, Jamesway provided the Catanias with three estimates for the desired work, each of which had a different scope:
- (a) In July or August, Jamesway provided the Catanias with an estimate for the interior work dated July 12, 2022, for a total cost of \$380,484.56, including HST (the “interior estimate”);
  - (b) In September, Jamesway provided the Catanias with an estimate dated August 31, 2022, for exterior rough-in landscaping for a total of \$1,084,800.00, including HST (the “landscaping estimate”); and
  - (c) In June 2023, Jamesway provided the Catanias with an estimate dated June 2, 2023, for finishing landscaping, additional interior work, additional exterior work, and additional landscaping for a total value of \$444,681.56, including HST (the “additional estimate”).
- [28] Mr. James acknowledges that these estimates were treated by Jamesway as firm quotes, constituting an offer to do the described work for the amounts set out in the estimates.
- [29] With two exceptions (which will be discussed later), the parties have no disagreement about what aspects of these estimates were completed, in whole or part. This includes the percentage of the work or materials that Jamesway has estimated, during the course of this litigation, to have been completed or supplied. The parties also agree upon which work or materials in the estimates was not supplied nor started, subject to the two exceptions.

***Payments Made by the Catanias***

- [30] The Catanias were invoiced and made several payments toward the interior estimate. The parties all agree that the total amount of \$298,457.22 was paid over the course of the 12 months toward the interior estimate.
- [31] Further, the parties all agree that an additional amount of \$1,015,001.30 was paid toward the landscaping estimate.
- [32] The payments made by the Catanias to Jamesway for the dock, interior work, and landscaping work total \$1,405,633. Again, this is undisputed.

***Value of the Work and Materials Received***

- [33] As stated, the parties agree that the value of the material and services that were supplied and completed under the three invoices, in whole or part, plus the dock invoice, has a value of between \$930,813.70 and \$987,019.98, depending on whether the two disputed items are included or excluded.
- [34] The differential between the amount of money paid and the value received will be \$418,613.77 or \$474,819.97, depending on how the two disputed items are dealt with.

- [35] Accordingly, I will first determine these disputed issues. The first item is the supply and installation of a trim package, comprised of items such as interior doors, baseboards, window casings, and other typical trim features, plus stain and two coats of clear finish. On the interior estimate, the trim package was to cost \$185,875 plus HST.
- [36] The defendants submit that 16% of this work was completed, having a value of \$29,740. However, Mr. James concedes that none of the wood trim was ever taken to the job site and installed, and it was used elsewhere.
- [37] The plaintiffs' evidence is that they did not receive any of the trim. At a site meeting on June 12, Mr. Catania told Mr. James that if he brought the material to him the next day with a copy of the invoice for its purchase, he would pay that amount to Jamesway. The plaintiffs say that he did not bring the wood, and they never heard another word about it. The evidence shows that this was the second time that offer had been made by the plaintiffs; the first instance occurred on June 6. In his closing argument, Mr. James submitted that the timeline given to him to deliver the wood was unreasonably short, and so he could not follow through on the Catantias' offer.
- [38] I accept the evidence of Mary Thomson, an employee of and witness for Jamesway, that she was involved in sanding and staining some of this trim in March 2023 at Jamesway's place of business. I accept Mr. James' evidence that he had costs associated with the purchase and production of the trim package, as well as project costs for time spent measuring, planning, and sourcing.
- [39] The difficulty for the defendants is twofold: first, there is no evidence before the court by which the value of these services and materials can be assessed and, second, such a claim would need to be advanced within the parameters of the now-abandoned counterclaim.
- [40] The court is left with the undisputed evidence that the Catantias received no benefit and none of this material was supplied. Accordingly, no value may be ascribed.
- [41] The second disputed item is found on the additional estimate, described as "supply and install granite gravel driveway and parking areas". The defendants' position is that this item was completed and ascribe a value to it of \$20,000. The item was included in a series of additional proposed landscaping work that had a total estimated cost of \$243,500. No supporting documents were tendered by the defendants to prove the alleged value, including the supply of material or related labour. Again, the evidentiary burden of proving that the work was done and the associated cost or value rests on the defendants, and no such evidence was heard during the trial. Accordingly, no value may be ascribed.
- [42] The defendants also argue that they had project management costs associated with the work undertaken. However, there was no project management fee contained in any of the estimates as a separate line item. There is once again a lack of documentary support to establish a value.

- [43] Accordingly, the total value received by the Catanias from Jamesway amounts to \$930,813.70. The differential between the amount of money paid and the value received is \$474,819.97.
- [44] But Jamesway has not returned this sum to the Catanias, nor any part of it. The defendants say that they are not at fault for a breach of contract, it was the Catanias who abruptly terminated the contract without legal basis, and so they should not be required to repay any money. Mr. James submitted during closing argument that Jamesway was grossly inconvenienced by their actions and had to scramble to fill its schedule and keep its employees and subcontractors engaged, even on unprofitable projects so that they did not go elsewhere.
- [45] Again, these types of arguments were contained in the defendants' pleading in support of the counterclaim, and no evidence was provided during the course of the trial to support these submissions.

### ***Relationship Between the Parties***

- [46] There are additional facts that the parties agree upon, which are supported by the evidence. They agree that they had a very good working relationship throughout; as Mrs. Catania testified "it was good until it wasn't."
- [47] From the plaintiffs' perspective, the evidence shows that they began to feel disgruntled with the pace of Jamesway's work by around June 2, when it became clear that they would be challenged to move into their cottage by the end of June and began to doubt that the landscaping would be done. However, the evidence is absolutely clear that the fracture of their relationship occurred on June 12, when Mr. James told them that he had not purchased any armour stone. From their perspective, they understood that it had been purchased the previous fall and stored in a nearby location in accordance with representations made to them the previous September. On June 14, Mr. James was told not to do any further work on the property and the next day, that cameras had been installed.

### ***Delays***

- [48] The evidence also establishes, as Mr. James argues, that Linwood's delays impacted the ability of Jamesway to start the interior work.
- [49] None of the evidence supporting this proposition is disputed by the Catanias. Mrs. Catania agreed that Linwood had initially indicated that they would be done the interior by September, and they were finally finished the drywall in early March. By March 6, however, Mr. James had access; he informed Mrs. Catania by text that the basement had been primed by Jamesway and was ready for paint. On March 21, he advised that the drywallers were completely done. There was also delay on the delivery of kitchen and bathroom cabinetry, which was not installed until the third week in April.
- [50] Unquestionably, this was a large project, complicated by the fact that Jamesway was taking over the project from Linwood partway through it. There were the schedules of other

subcontractors to contend with – tilers, cabinet fabricators, stonemasons – and production delays.

- [51] The concerns of the Catantias began to be expressed to Mr. James during the first week of June, when the trim work was not being installed, and items such as the glass for showers had not been ordered. As they had repeatedly expressed, the Catantias wanted to use their cottage that summer, and had arranged a truck to bring some furniture at the end of June. They had been told and understood that after Linwood’s interior work was completed, Jamesway would engage a “full court press” with all employees/contractors engaged, and they would be given priority to Jamesway’s other clients.
- [52] At a site meeting on June 2, Mr. James told the plaintiffs that the interior work would not be completed until October at the earliest. On June 6, Mr. Catania expressed his frustration to Mr. James in a text message:

I couldn’t sleep last night, I was so frustrated. You sold us on the idea that as you said “my crew will be up there and working all summer. We might have to put a trailer up there”. So I paid whatever was asked because I trusted in that. We made plans accordingly. [...] This is the beginning of June, house is wide open, blaming Linwood is not a factor. I trusted you. When you finally admitted that you have your crews working elsewhere the whole game changed for me. I will revert back with any questions or if we are able to find anybody to carry on my interior work. I’m a man of my word, so if I can find someone to finish the trim work, I will pay you for whatever trim you purchased, with a receipt.

- [53] Mr. James testified that the Catantias were not the only customer scheduled for work in 2023, and he was attempting to manage workflow that had been disrupted by Linwood’s and other’s delays.
- [54] Despite this difference of opinion, the evidence shows that as of June 9, the plaintiffs were still planning to move forward with Jamesway in some capacity, at least to complete the landscaping work. In an email to Mr. James dated June 9, Mr. Catania wrote: “Yes we agreed that you would now just focus on the landscaping, and you will work on the interior in the fall. We agreed because we had no choice...”. Mr. Catania then proposed a meeting on June 12, and posed several topics for discussion, including “a new program of payment, and how to apply it backing out interior money and applying it to landscaping”.
- [55] This statement, I infer, is a reference to the fact that during the site meeting on June 2, Mrs. Catania provided Jamesway with a cheque in the amount of \$126,401.30. The cheque was provided in response to an invoice dated May 30, 2023, that was presented to the Catantias at that meeting. The defendants’ evidence establishes that this was not meant to be a true invoice for work that had been fully completed. Rather, as Mr. James testified, it should have been called a “progress invoice” for work that the Catantias had requested, only some of which had been started, and the associated cost that was “coming down the pipe”. The

parties agree that Mr. James did not request payment. Mrs. Catania testified that she provided the cheque because she did not want non-payment to be seen as a reason for the project not progressing quickly. It is undisputed that she later contacted Ms. Thomson and asked that the payment be applied to a balance owing under the additional estimate for exterior work, and Jamesway agreed to do so.

- [56] Accordingly, the evidence establishes that by the time of the site meeting on June 12, all parties anticipated Jamesway’s continued participation on the project, although the scope of its work was up for discussion.
- [57] The defendants also argue that Linwood’s delays on the exterior delayed its ability to complete the work under the landscaping estimate. However, Mr. James’ own evidence establishes that all of the work set out in the landscaping estimate had been completed by the time of the site meeting on June 12, other than additional rolling of the tennis court area that was carried out on June 12 or 13. All of the work that is, except of the purchase and delivery of the armour stone.
- [58] Despite road conditions, half-load restrictions, and Linwood’s presence to complete the exterior siding and deck, all of that other work had been able to be accomplished. This included delivery of 600 loads of clean fill, clearing trees and stumps, leveling the site, excavating and filling the tennis court area with specialized material and compacting it, and grading around the cottage, including loading heavy equipment in and out of the site. In order to provide for the safe passage of heavy trucks, Jamesway supplied a plow and sander truck to maintain the road at a cost of \$6,300, which was included in the landscaping estimate.
- [59] Mr. James also points to a delay in receiving drawings from a landscape architect, who did not deliver drawings until late in 2022. However, he confirmed that this delay did not affect the amount of armour stone that he assessed was required for the project.

***Purchase and Transport of Armour Stone***

- [60] Accordingly, I find that the crux of this dispute centers on the two items contained in the landscaping estimate:

Supply & transport trucking complete with flat deck trailers to deliver 2,640 ton of Armour Stone	
Supply man power and machinery to load and unload Armour Stone	
Material is located 3hrs each direction from building site	185,000.00
2,640 ton of Armour Stone	264,400.00

- [61] As earlier stated, these amounts total \$507,822 inclusive of HST. Underneath the total landscaping estimate of \$1,084,800 was the following draw schedule:

**DRAW SCHEDULE**

<b>DEPOSIT</b>	<b>50%</b>	<b>\$ 542,400.00</b>
<b>START OF PROJECT</b>	<b>25%</b>	<b>271,200.00</b>
<b>FINISH OF PROJECT</b>	<b>25%</b>	<b>271,200.00</b>

[62] Additionally, the landscaping estimate contained the following terms:

Both Client and Contractor agree to the following:

Jamesway Custom Homes Ltd. Agrees to complete the estimate as stated above.

Any additional or extras shall be discussed between client & contractor prior to proceeding.

The client agrees to the above draw schedule with the 50% deposit due upon receipt of this estimate.

**SIGNATURES**



Collin James

Date:

9/20/22

Paul or Susan Catania

Date:

[63] As can be seen, the estimate was signed by Mr. James on September 20, 2022. On September 27, 2022, the Catantias obtained a bank draft in the amount of \$542,400, recorded by Jamesway a few days later as payment received. Mrs. Catania testified that they had to borrow the money, using their line of credit.

[64] At his examination for discovery, Mr. James was asked these questions and gave these answers:

Q: Okay. And at the beginning of the project my understanding is that you indicated to the Catantias that given the volume of armour stone that was going to be utilized, that you needed to pre-purchase the armour stone to ensure that it was going to be ready?

A: Yes.

Q: Okay. And my understanding is that that's why you asked for the significant deposit to be paid when they accepted the estimate that you gave to them?

A: Not all in relation to the armour stone.

Q: No...

A: The deposit was not all in relation to armour stone.

Q: Part of it was?

A: A portion of it was.

Q: Okay. And I expect that if your intention was to pre-purchase the armour stone and you were asking for such a significant deposit, the intention was to utilize the deposit to, to actually purchase the armour stone, not to expend your own money?

A: Correct.

[...]

Q: Okay, so when you're talking about phase 1, you're talking about the entirety of the original landscaping estimate?

A: Correct.

Q: Okay. And that included setting up the rental area?

A: Correct.

Q: That included purchasing, pre-purchasing the armour stone?

A: Correct.

Q: It included transporting the armour stone to site?

A: Yeah, correct, exactly what the estimate says, yeah.

Q: Right, and it included storing the armour stone at the rental area?

A: Correct.

Q: And your intention was to have the phase 1 portion of the landscaping completed by the spring of 2023, right, at least originally?

A: By the summer of 2023.

Q: The summer of 2023, okay. Okay, and then based on that plan to have your work completed by the summer 2023 you gave the Catanias an estimate of what you believe the cost of that work would be, right?

A: Right.

Q: And that's the amount that you included in your estimate?

A: Right.

[65] Mrs. Catania testified that they did not question the need for such a large deposit. Mr. James had told them that it was a very large order of stone and needed to be pre-purchased so that when the weather permitted in the spring, Jamesway would be ready to proceed without delay. They agreed to give the deposit on the understanding that he had to purchase the stone.

[66] Mr. Catania testified likewise. He understood that the large deposit was being requested to acquire the armour stone in the fall and have it delivered to the rental area. The money was required because Mr. James needed to order it as soon as possible. If they did not purchase it in the fall and have it ready for the spring, the consequence would be that they would then not be able to use the tennis court until the following fall.

[67] The Catanias' understanding is supported by the documentary record. Before accepting the landscaping estimate, further communications occurred between the parties relating to the landscaping work, and specifically, the armour stone.

[68] On September 9, Mr. James sent a text message requesting to set up a phone call with the Catanias. He stated:

“I would like to discuss what I am calling phase 1 of the landscaping that would include the following...

- Setting up the rental area in the farm field
- purchasing the armour stone for the landscaping
- transporting in the armour stone required for the job and storing it at our rental area and unloading it
- cutting trees and removing stumps etc., preparing the lot
- removing the wood piles
- supply the sand and trucking to fill the lot (about 600 loads) this would include, over maintaining and sanding the road to allow trucks to come in over the winter
- machines and labour on site to start placing and filling the lot with the supplied sand.

[69] The email exchange reveals that the phone call could not occur because of Mr. Catania's travel schedule, so on September 11, Mr. James texted that he would send an email so that they could view it at their convenience.

[70] The email that Mr. James sent is dated September 12 and provides, in part:

With regards to the landscaping, the plan that I am putting together is like I said very aggressive and is like pulling a rabbit out of a hat, but one that I'm confident I can pull off. I believe this plan is the only way that we can get you on a tennis court and landscaped next summer, while not destroying the road or piss of your neighbour's.

That being said there are a lot of moving parts and a lot of pre planning and commitment to certain vendors to ensure this can happen.

The work listed below is what I call Phase 1 and what I want to accomplish prior to the spring.

- Setting up the rental area in the farm field
  - Purchasing the Armour stone for the landscaping, we need to pre purchase so they can start producing it as this is a big order.
  - Transporting in the Armour stone required for the job and storing at our rental area and unloading it.
- Cutting trees and removing stumps etc, preparing the lot
- Excavating and laying out the area for the tennis court
  - Filling and compacting the tennis court area, ready for final grade in the spring
  - removing the wood piles
  - Supply the sand and trucking to fill the lot ( about 600 loads) this would include, over-maintaining and sanding the road to allow trucks to come in over the winter
  - Machines and labour on site to start placing and filling the lot with the supplied sand. 6

The goal is to accomplish this by the spring time, so that we can hit the ground running when the snow clears. If we wait until next year which is absolutely fine and your call all the way, we wont be able to start this work until mid June (because of the half load season) and it probably wont be complete until late fall ish.

I have put a lot of work and research into this to make sure this is even feasible and I have put the numbers together, but keep in mind it is only numbers and there is no commitment to me or anyone at the moment.

I never want you guy's to feel pressured or that you have to use me, I just know how important this is to you and how fast time is flying.

[71] The email also contains the price associated with these steps (not reproduced here because it is covered by the court's exhibit stamp). It reads:

\$960,000 + Hst  
First \$542,400, to procure all the materials, equipment and truckers.  
Second \$271,200 when we get started.  
Third \$271,200 when we finish.

[72] This draw schedule requires that 75% of the total estimate was to be paid before the work started. Mr. James explained that this draw schedule was often used for landscaping projects, in order to acquire material and secure labor and equipment at the front of the project. He agreed that the deposit was needed to purchase the armour stone as well as the other material in the landscaping estimate.

[73] At his examination for discovery, Mr. James confirmed that this email stated what Jamesway's plan would be if it was hired for the landscaping job. He confirmed that pre-purchasing the armour stone and storing it at the neighboring property was one of the things that Jamesway said it was going to do. During this exchange at the discovery, however, Mr. James also vacillated and stated that it was "a" plan and not "the" plan, that it was just a discussion, and it was a "hope" to pre-purchase the armour stone and store it as indicated.

[74] At trial, he agreed that he told the Catanias that was Jamesway's plan, but telling them so was "different than the planning itself." He also testified that the purchase of the armour stone depended on access and timing. The phrase "pre-purchase" in the email was referring to planning and availability in the context of construction sequencing, not to an actual purchase. His testimony was that in construction, contractors often discuss "pre-purchasing" as a way of discussing planning logistics and lead times.

[75] He also testified that he does not believe that he informed the Catanias that there was no firm commitment to the plan set out in the email and text message.

[76] While the Catanias' initial assumption was that the landscaping estimate also included placing the stone on site, Mr. James denied this to be the case. That would have been an additional cost, set out in the additional estimate. Whether the scope of the landscaping estimate included placement or not, however, is not the subject matter of this action.

[77] Mr. James' initial plan to pre-purchase and store the stone nearby is confirmed through email communications with the owners of the neighboring land. The road on which the cottage is located is called Vowels Farm Road. Jean and Wilbert Vowels, according to their email, own acreage on both sides of Vowels Farm Road, described by Mrs. Catania as being hundreds of acres.

[78] On August 30, Mr. James sent his first communication to the Vowels:

My Name is Collin James, I got your email address from the Catania's. I will be taking care of the landscaping at Paul and Susan's new cottage.

We are planning on starting the majority of the work in the spring/summer. I can appreciate the delicacy of the road and would like to minimize or eliminate any damage to the road. That being said I would like to bring in the majority of the Armour stone required to complete the project hopefully this fall or winter while the road is at its best. As you know the spring is when damage may occur as its soft and wet.

Would yourself or anyone on the road that owns any of the fields of the road be willing to rent us some space to unload and store the Armour stone? Then we would transport it to the job site with a very light forklift that would be easy on the road.

[79] At trial, Mr. James suggested that he was not referring to the phase 1 landscaping work in this email, but that he was referring to bringing in the stone if he got the contract to do the second phase of the landscaping work.

[80] Wilbert Vowels responded on September 5:

I would be in agreement to rent you a space to store your materials and equipment for a period of time to facilitate your needs. I would like to have an idea of what and how much materials/equipment we're talking about before negotiating a price.

You mention delivering stone in the winter. We get a lot of snow most winters, so a place would need to be plowed to unload and store your materials. Will the stone be coming on pallets or loose?

My wife Jean and I live in the brick house, 10 Vowels Farm Road. Looking forward to hearing from you, setting out your expectations.

[81] After the Catantias had paid their deposit, Mr. James met with the Vowels in what he described as a brief meeting. Following that meeting, he sent another email to the Vowels dated November 19, 2022:

Good morning Mrs Vowels,

We are getting ready to start moving materials into the Catania site and with your permission this is what our plan would look like...

- We would like to keep a section of the field open this winter to store our boom truck and the Armour stone that we are shipping in
- We are going to unload the stone and store it in the field
- We then are going to transport the armour stone to site with the use of our smaller truck
- The ideal location would be just past your wood piles (towards the Catania's) if possible

Please let me know if this is possible and how much you would like for the rental, also if you are interested, we have a large amount of firewood logs stacked neatly at the site, we have the equipment to move and stack them neatly at your wood area, maybe we could do a trade?

If you have any questions or concerns, please do not hesitate to contact me.

Thank you and I hope your keeping warm with this nasty weather.

[82] The Vowels agreed to the exchange of wood for the rental.

[83] The Catantias were not copied on any of these emails. They testified, and I accept their evidence, that they were never told the location of the intended storage area for the stone, and this area of Vowels Farm Road was new to them. They were aware that the Vowels owned hundreds of surrounding acres. Although they passed the site on their way to the cottage that, unbeknownst to them, had been negotiated with the Vowels, they were

unconcerned that they saw nothing there except logs and some of Jamesway's equipment. Once they paid the deposit, they trusted that the stone had been purchased and stored at a location somewhere on the Vowels' acreage. They did not give it any further consideration until their relationship with Mr. James began to sour.

***Payment of the Second Draw***

[84] The plaintiffs were invoiced on January 2, 2023, for the draw due to be paid at the start of the project in the amount of \$271,200. They paid it in two tranches: \$250,000 on January 2 and the balance of \$21,200 on January 23.

***Logistics and Sequencing***

[85] In addition to the delays by others, Mr. James has provided a stream of differing explanations for why his plan changed and the stone was not purchased, transported, and stored.

[86] One is that he contacted the quarry and learned that they had sufficient quantity such that he would not have to pre-purchase it. Why this led him to the conclusion that he should not buy it and store it as planned remained unexplained.

[87] Another is that the stone purchase depended on timing, and there were various moving parts to the project. Another is that the rented area on the Vowels property was not large enough to store all of the 2,640 tonnes of armour stone, and that it would have to be brought into that site in stages, as well as transported to the cottage site in stages. This is notwithstanding that the communication with the Vowels indicates that the site was on a field. He could not say how many times the rental area would have to be cleared out in order to move in another load of stone. This evidence also stands in contrast to the contents of his August 30 email to the Vowels, in which he stated that he intended to bring in the majority of the armour stone.

[88] He said that bringing in the stone could not occur because of the road conditions over the winter of 2022/23, where his evidence is that the road did not freeze, and then the half-load restrictions were imposed earlier than normal. He could not recall when the road restriction was lifted in the spring of 2023. He said that tractor-trailers would be necessary for hauling the stone to the rental area, and hauling heavy stone would have damaged it. This also stands in contrast to the information contained in his August 30 email to the Vowels, when he advised that, from the rental area, the armour stone would be transported to the job site "with a very light forklift that would be easy on the road." As he expressed in the September 12 email, the landscaping plan that he set out was "the only way that we can get you on a tennis court and landscaped next summer, while not destroying the road...".

[89] Another is that Linwood remained on site with their equipment and trucks "all over" the cottage property and there was no place to bring the stone. Other than Mr. James' evidence of this, the only documentary evidence of Linwood's involvement into June 2023 is a text message regarding the presence of a plumber to stub out the septic on or about June 1.

- [90] Mr. James denied that the armour stone had to be placed around the tennis court in order to prevent the compacted material from washing away, as he is not a tennis court installer. This stands in contrast to the intention expressed in the email of September 12, which was that the construction timeline in relation to the armour stone had the goal of providing a functioning tennis court by the following summer.
- [91] Last, he said that the project was stopped before the armour stone could be acquired, although it remained Jamesway's intention to purchase it.
- [92] Mr. James' other answer to the plaintiffs' claim is that the landscaping estimate does not include a completion date or delivery date for the armour stone, so flexibility was to be inferred. He also asked numerous questions to establish, and testified himself, that no specific amount of the deposit was allocated to the purchase and transport of armour stone on the landscaping estimate. Finally, the list of items presented in the landscaping estimate was intended to be a list of the general scope of the project rather than a step-by-step schedule or exact sequencing of the work that would be performed.
- [93] The plaintiffs' evidence is that Mr. James said nothing about the stone until asked about it directly on June 12. He never communicated to them that his plan had changed, nor suggested any reason why the stone could not have been transported to the rental area as planned.
- [94] Mr. James testified that he distinctly recalled a conversation with the Catanias that took place in a specific location of the cottage, in which he spoke with them about the road conditions to explain why they were having difficulty completing the backfilling. He was certain that he talked to them at that time about the difficulty with transporting the stone.
- [95] This is inconsistent with what he testified to at his examination for discovery. He was asked whether he specifically told the plaintiffs that he was unable to transport any of the armour stone because of the difficult road conditions created that winter. His response was "I doubt that I said that because our intention was still to transport the armour stone."
- [96] At his examination for discovery, Mr. James confirmed that Jamesway was never intending to supply its own stone, and needed to acquire it from elsewhere. At trial, he testified that Jamesway has a quarry, although different stone landscape features might have to come from elsewhere. When confronted with the inconsistency, his explanation was not cogent. He explained that sometimes Jamesway does bring in stone, but at his discovery he was not thinking about the material that Jamesway itself could supply.

### *Termination of the Contract*

- [97] On June 5, Mr. Catania sent a text message to Mr. James posing multiple questions about various aspects of the project and the timing for their completion. Included in that list was the question "Will you be putting in armour stone?" The next day Mr. James responded by text message to answer all of the queries but was silent on the question of the armour stone.

- [98] On June 9, in the email sent by Mr. Catania to Mr. James expressing his dissatisfaction and desire to have another meeting on June 12 to review all aspects of the project, he wrote: “I want to know where my armour stone is, and I want the count, I prefer to see the dealer invoice, you can block out the price, I agreed to it”. There is no evidence that Mr. James responded to address the fact that the stone had not yet been purchased.
- [99] As Mrs. Catania testified, they were beginning to be suspicious. On June 9, and again on June 10, a text message was sent to Mr. James asking: “what was the name of that quarry again?” Mr. James testified that by this time the tone of communication had changed, and he suspected that legal issues were developing. In this environment, he said that he became cautious about sharing supplier information.
- [100] At his examination for discovery, he was asked whether, as of June 11, he had told the Catantias that the armour stone had not been purchased. His response was that he could not remember. He gave evidence at trial that he frequently does not update his clients, even if something was going to alter the schedule or change the scope of a landscaping project, in order to protect them from stress.
- [101] Mrs. Catania’s evidence about the meeting on June 12 was that they confronted Mr. James about where the stone was that they had paid for. Mr. Catania asked the question and Mr. James said that it was at the quarry. She then put to Mr. James “you didn’t purchase any stone, did you?” She stated that he paused for a few seconds and then said “no, I didn’t.” Her response was to tell him that the matter was then very simple, that they had paid him to purchase stone, he did not purchase it, and they wanted their money back. They asked him to leave the property. According to her, Mr. James’ response was to say that he needed time to “wrap his head around this”, and that he had never been fired before. Mrs. Catania suggested in return “that there was nothing to wrap his head around”, that he needed to give their money back and “they would all go on their own way.”
- [102] Mr. Catania’s evidence about that meeting is similar. He said that at first it was just he and Mr. James speaking in the garage, and he was asking where the stone was. He was not getting a satisfactory answer. During their discussion, Mr. James said that he had put a hefty deposit down. Mrs. Catania then came out and confronted him about whether he had purchased the stone, and it was then that he stated that he had not.
- [103] During his examination for discovery, Mr. James testified that his perception of their reaction to learning that he had not purchased the armour stone was blown out of proportion. His view was that “they were not only angry about the armour stone, they were angry that they weren’t getting into their cottage and that they wouldn’t be playing tennis.” To this day, he is perplexed as to why the Catantias felt the need to terminate the contract.
- [104] Mr. James confirmed that Jamesway never paid a deposit for the armour stone, never purchased any for this project, and never delivered any to the rental area. In his view, the Catantias should have been aware of this because they passed the rental area to get to their cottage. However, it was not until expressing dissatisfaction with the pace of completion

of the project, which was beyond Jamesway's control, that they raised any issue about its absence.

- [105] The Catanias testified that they never authorized Jamesway to use the money for anything other than purchasing and transporting the stone, and would never have borrowed the money and incurred financing charges had they known that it was not necessary.
- [106] Their evidence is that the specific reason they told Mr. James to stop working is because they had borrowed the money to give to Jamesway on his specific representation that the armour stone had to be pre-purchased and stored nearby so that the timeline of having their tennis court ready to use by late spring or early summer could be met. They were not informed by Mr. James that these steps had not been taken even though they gave him every payment that he requested in a timely way, and their trust was broken.

### ***Accounting***

- [107] The defendants have not accounted for how the \$542,400 was used. At his examination for discovery, Mr. James testified that the money stayed in Jamesway's account. During trial, Mr. James said something different. He testified that Jamesway purchased a tractor-trailer truck and heavy trailer attachment to manage staging and hauling of the armour stone internally. The cost difference of that purchase, compared to hiring third-party trucking, was not significant.
- [108] When asked at trial whether that truck was purchased using the money given for the deposit, his answer was that he is not sure as Jamesway's bank account is all business funds. He testified that the truck was purchased specifically for this project, so that Jamesway could control the logistics of bringing in the armour stone. Jamesway still has both of these objects, although Mr. James stated that the truck is no longer roadworthy.
- [109] No evidence was presented by the defendants about the cost of the truck and trailer versus the cost of hiring a third-party trucking company.

### ***Analysis***

- [110] On the above evidence, I find the following key facts:
- A contract was created on September 27 when the plaintiffs signalled their intention to accept the landscaping estimate by payment of the 50% deposit requested by Jamesway.
  - That contract was for an initial phase of landscaping that included all of the items listed in the landscaping estimate, for the associated price set out on that document.
  - The purpose of the 50% advance was clearly set out in the email of September 12 and on the estimate itself, which was to purchase the armour stone and to pay to have it transported to the rental area, unloaded and stored so that it would be readily available for use in the spring of 2023.

- The entire purpose of the exercise was to ensure that the landscaping could be completed in the late spring or early summer, allowing the Catanias the use of their tennis court.
- The plaintiffs relied on the representations made by Mr. James regarding the purpose of the deposit, and incurred debt in order to provide him with the money as requested.
- The plaintiffs would not have provided the deposit when they did if they knew that it was not required at that time for purchasing and transporting the stone.
- The plaintiffs did not authorize Jamesway to use the money for any other purpose.
- There was no credible reason provided by Mr. James at trial to explain why he did not purchase the stone immediately after the deposit was paid in September, and have it moved, or move it himself, to the rental area as planned in the fall or early winter, particularly after learning that the quarry had sufficient supply in stock.
- After providing him with the deposit, the plaintiffs never heard another word from Mr. James about the armour stone until they asked him about it directly on June 12.
- There is no reason for them to have known where he had intended to store the stone on the Vowels' land.
- Nothing that was occurring at the cottage, including delays to the exterior or interior, had any effect on whether the armour stone could have been purchased, delivered, and stored as planned.
- No credible evidence was provided by Mr. James to establish that road conditions had any effect on whether the armour stone could have been purchased, delivered, and stored as planned.
- There was no evidence to support the defendants' position that they would have been in a position to order the stone as of June 12 and still meet the timeline.
- Mr. James' evidence at trial in relation to the plan for the armour stone and in relation to the deposit is entirely inconsistent with his discovery evidence and lacking in persuasiveness overall. It is inconsistent with the documentary record, and a fatal blow to his credibility occurs by reason of the many inconsistencies in his evidence on the crucial aspects of this dispute.
- In contrast, the evidence of both the Catanias on the key points at issue was entirely consistent with the documentary evidence. Where their evidence differs from that of Mr. James', their evidence is preferred.
- The differential between the amount of money paid by the plaintiffs and the value received is \$474,819.97.

**Issue 1: A fundamental breach has occurred.**

[111] As acknowledged by Mr. James in his closing submissions, breach of contract requires a specific contractual obligation and failure to perform it.

- [112] A fundamental breach has been defined by the Supreme Court of Canada in *Guarantee Co. of North America v. Gordon Capital Corp.*<sup>1</sup> as “a failure in the breaching party’s performance of its obligations under the contract that deprives the non-breaching party of substantially the whole benefit of the agreement.” Where the entire foundation of the contract has been undermined, the breaching party has repudiated the contract and permits the non-breaching party to elect to put an end to all remaining performance obligations between the parties.
- [113] There are five factors that have been suggested as considerations when determining whether a fundamental breach has occurred<sup>2</sup>:
1. The ratio of the party’s obligations not performed to that party’s obligations as a whole;
  2. The seriousness of the breach to the innocent party;
  3. The likelihood of repetition of such breach;
  4. The seriousness of the consequences of such breach; and
  5. The relationship of the part of the obligation performed to the whole obligation.
- [114] Taking these factors into account, the defendants entirely failed to perform their obligation to purchase and transport the stone. They were bound by their representation that the substantial deposit was required to purchase materials which, among other things, included the stone.
- [115] The breach was serious for three reasons. The defendants’ failure to inform the plaintiffs of the true facts eroded all trust that they had in their contractor. Second, it deprived the plaintiffs of having the armour stone transported to the building site in smaller loads as the road permitted, so that they could be enjoying the exterior of their cottage, particularly the tennis court, in the summer of 2023. Third, the plaintiffs had to borrow the money.
- [116] The defendants have submitted that there can be no fundamental breach because the landscaping estimate contains no delivery or purchase date, nor allocation of the required payments to the armour stone. Without a defined obligation or performance date, there can be no breach of the contractual terms.
- [117] There is authority for the proposition that the lack of a completion date in a contract is not necessarily fatal to a finding of a valid and enforceable agreement.<sup>3</sup> However, in this case, I find that there was a contemplated completion date for the purchase and delivery of the

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<sup>1</sup> [1999] 3 S.C.R. 423, at paras. 48, 50, cited in *Aylward v. Rebuild Response Group*, 2018 ONSC 4800, 92 C.L.R. (4th) 291, at para. 60.

<sup>2</sup> *Spirent Communications of Ottawa Ltd. v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, 88 O.R. (3d) 721, at para. 36.

<sup>3</sup> *Aylward*, at para. 33.

stone, as well as a contemplated completion date for the phase 1 landscaping covered by the landscaping estimate, both of which were fundamental terms of the contract. Those dates were, respectively, after the provision of the deposit in the fall or winter, and the early summer of 2023.

- [118] In the result, I find that the defendants fundamentally breached the landscaping contract. The plaintiffs were deprived of the whole benefit of it. Even though parts of the landscaping estimate were performed, those aspects were all done with a goal of readying the site for the armour stone in the spring of 2023. The primary and fundamental object of the landscaping contract was having the landscaping done by the summer. The primary purpose of the deposit was to ensure that the stone was procured, transported, and ready for use. The plaintiffs were entirely deprived of the whole agreement related to the armour stone, as the entire purpose behind advancing such a large deposit and initial installment, together totalling \$813,600, was not met.

**Issue 2: The funds were impressed with a trust and Mr. James breached his fiduciary duty by failing to account for the funds.**

- [119] I also find that the sum of \$542,400 was impressed with a trust in favour of the plaintiffs because it was paid for a specific purpose as previously outlined.<sup>4</sup> The plaintiffs did not authorize the use of these funds for any other purpose. This type of trust was described in *Bonnie Cummings v. Peopledge HR Services Inc.* as a “Quistclose trust”<sup>5</sup>:

Mr. Hall submits that the proper legal framework for this case is that of a Quistclose trust. Funds were advanced to Peopledge for a specific purpose and a trust should be imposed in equity impressed to ensure that the funds are solely used for that purpose or returned to the parties who advanced the funds. This principle is based on the case of *Barclays Bank Ltd. v. Quistclose Investments Ltd.*, [1970] AC 567 (HL).

- [120] Some of this money may have been used for providing work or material outlined in any of the three estimates, but as the calculations at the outset of these Reasons show, there has been an overpayment by the plaintiffs of \$474,819.97 in comparison to value received.
- [121] The defendants have not accounted for how the funds were used, either the landscaping deposit or the \$474,819.97. While it is true that as the business owner Mr. James was free to allocate the money paid to him under the landscaping invoice as he saw fit, that freedom was constrained by his contractual obligations to purchase, deliver, and store the armour stone for the purposes outlined in his email of September 12. The bottom line is that the funds were not used for the purpose for which it was agreed that they would be paid. A breach of trust has been committed.

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<sup>4</sup> *Shinkarev et al. v. Surovova*, 2025 ONSC 243, at para. 5.

<sup>5</sup> 2013 ONSC 2781, at para. 14.

[122] The defendants would be unjustly enriched should they be permitted to retain this money. On the facts of this case, there is no juristic reason in law or equity for them to do so. The imposition of a trust ensures that funds not used for the specific purpose for which they were advanced must be returned.

**Issue 3: Mr. James knowingly participated in breach of trust and is personally liable for damages.**

[123] Jamesway’s directing mind is Mr. James. His evidence is that he is the sole officer, director, and shareholder and he is responsible for making all business decisions.

[124] Mr. James requested the deposit, directed how the money be used, decided not to purchase the armour stone as represented, and decided not to tell the plaintiffs that it had not been secured. The evidence bears out that Mr. James deliberately avoided the topic even when asked directly about the armour stone or the quarry from which he intended to procure it. I find that he was not forthright with the plaintiffs until confronted directly on June 12.

[125] Where a personal representative of a closely held corporation knowingly assists in the breach of trust, they may be held personally liable as a constructive trustee.<sup>6</sup> Mr. James had actual knowledge of the omissions giving rise to the breach of trust, as he was actively involved. Therefore, he knowingly and directly participated in the breach of trust, and is personally liable to the plaintiffs for that breach.

**Issue 4: There has been a breach of the duty of honest contractual performance.**

[126] The common law duty of honest performance in contract applies to all contracts and “requires the parties to be honest with each other in relation to the performance of their contractual obligations”.<sup>7</sup> To constitute a breach of the duty of honest performance, the dishonest or misleading conduct must be directly linked to performance.<sup>8</sup>

[127] Here there was no outright lie by Mr. James, but certainly a concealment of material facts going to the heart of the contract. Mr. James remained silent about his decision to not purchase and store the stone. Even when asked about the stone by Mr. Catania at the beginning of June, he failed to correct the misapprehension, created by him, that the stone had been purchased. This is enough to constitute a breach of the duty of honest performance.<sup>9</sup> Although he testified that he does not always tell clients when plans change in order to protect them from stress, in this case his decision to not reveal the true nature of the circumstances was more than that. He knew that he had not done what he promised under the contract. Although I accept that he did not foresee that it would result in the

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<sup>6</sup> *Air Canada v. M & L Travel Ltd.*, [1993] 3 S.C.R. 787, at paras. 38-39 and 49.

<sup>7</sup> *Bhasin v. Hrynew*, 2014 SCC 71, [2014] 3 S.C.R. 494, at para. 93.

<sup>8</sup> *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, [2020] 3 S.C.R. 908, at para. 49.

<sup>9</sup> *Zollinger*, at para. 89.

Catania ending the contract, he obviously recognized that they would view the matter negatively if the truth came out. And so, he concealed it from them.

[128] As the Catania testified, their trust was gone. Such a breach of the duty of honest performance entitles the plaintiffs to terminate the contract and pursue their remedy of damages.

**Issue 5: The plaintiffs' statutory rights under the *Consumer Protection Act* entitled them to end the contract and recover their funds.**

[129] Even if I am wrong in concluding that the plaintiffs were entitled to terminate the contract for any of the preceding reasons, I find that they were entitled to pursuant to either ss. 26(1)(b) or (2) of the *Consumer Protection Act* (“CPA”). These subsections provide:

26(1) A consumer may cancel a future performance agreement at any time before delivery under the agreement or the commencement of performance under the agreement if the supplier,

(a) does not make delivery within 30 days after the delivery date specified in the agreement or an amended delivery date agreed to by the consumer in writing; or

(b) does not begin performance of his, her or its obligations within 30 days after the commencement date specified in the agreement or an amended commencement date agreed to by the consumer in writing.

(2) If the delivery date or commencement date is not specified in the future performance agreement, a consumer may cancel the agreement at any time before delivery or commencement if the supplier does not deliver or commence performance within 30 days after the date the agreement is entered into.

[130] Subsection 26(2) is likely the more applicable provision, as there was no specific date for the delivery of the stone. However, the contract was formed when accepted by the Catania on September 27. Thirty days later, the defendants had not started performance. They had not ordered the stone, put down a deposit, or secured its delivery to the rental area.

[131] This was a future performance agreement, which is defined in s. 1 of the *CPA* as a “consumer agreement in respect of which delivery, performance or payment in full is not made when the parties enter the agreement.”

[132] The defendants submit that the plaintiff should not be permitted to rely on the *CPA* because it was not pled. I accept Mr. Marchioni’s submission that Mr. James was not surprised by the plaintiffs’ reliance on the *CPA*, as the failure to plead was raised by Mr. James during

his opening submissions. Additionally, the law allows for the *CPA* to be relied on even where not pleaded.<sup>10</sup>

**Issue 6: The plaintiffs are entitled to damages.**

[133] Due to the defendants' breaches, I have found the plaintiffs are entitled to damages in the sum of \$474,819.97, plus prejudgment interest.

***Prejudgment Interest***

[134] The plaintiffs seek prejudgment interest from the date that they paid the deposit, or alternatively the date that they demanded that their money be returned.

[135] Pursuant to s. 128(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, a person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest calculated from the date the cause of action arose.

[136] The cause of action arose when the defendants failed to purchase, deliver, and store the stone during the fall or early winter of 2022. Since then, they have had the use of the plaintiffs' money. Taking these facts into consideration, I find that it is fair for prejudgment interest to commence running on January 1, 2023.

**Order**

[137] For the foregoing reasons, this court orders that the plaintiffs shall have judgment against the defendants, jointly and severally, for payment in the amount of \$474,819.97, plus prejudgment interest calculated from January 1, 2023 to the release of this judgment.

**Costs**

[138] The plaintiffs are presumptively entitled to their costs of this action. If the parties are unable to agree upon costs within 10 days from the date of release of these Reasons, they may make brief written submissions, limited to 3 double-spaced pages, plus a Bill of Costs and, if necessary, legal authorities.

[139] All material relied on is to be hyperlinked in the document or uploaded to Case Center with a tabbed (i.e., hyperlinked) index. The submissions are to be filed with the court, with a copy emailed to my judicial assistant at [BarrieSCJJudAssistants@ontario.ca](mailto:BarrieSCJJudAssistants@ontario.ca), in addition to being uploaded to Case Center.

[140] The plaintiffs' submissions are due on February 13, 2026 and the defendants' on February 20, 2026.

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<sup>10</sup> *Taurus Auto v. Zhou*, 2020 ONSC 7127 (Div Ct.), at paras. 15 and 26; *Reid v. R.L. Johnston Masonry Inc.* (2009), 80 C.L.R. (3d) 164 (Ont. Div. Ct.), at para. 15.

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HEALEY J.

**Released:** February 4, 2026