

CITATION: Meredith et al v. Genuine Building Solutions Ltd. et al, 2026 ONSC 1237
COURT FILE NO.: CV-23-00692547-0000
DATE: 20260302

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Heather Meredith and Christian Lemassif) *E.A.F. Grigg and F. R. Lozon*, for H. Meredith
)
Applicants)
)
– and –)
)
Genuine Building Solutions Ltd., TFC) *R. Hammond*, for the Respondent, Genuine
Construction Inc., TFC Construction (2013)) Building Solutions and TFC Construction.
Inc., Sebastian Bianchi, Stephen Shessel, and)
Daniel Hernandez, and Giordano Bianchi) No one appearing for: *TFC Construction*
) *(2013) Inc., Sebastian Bianchi, Stephen*
Respondents) *Shessel, and Daniel Hernandez, and Giordano*
) *Bianchi*
)
) **HEARD:** January 19, 2026

E. IACOBUCCI, J.

REASONS FOR DECISION

OVERVIEW

[1] The plaintiffs/moving parties, Heather Meredith and Christian Lemassif, made a motion at the outset of what was to be a two-day trial seeking the following relief. First, they submitted that the defendant, TFC Construction (2013) Inc., (“TFC 2013”) should be noted in default owing to its failure to appoint counsel by a deadline imposed by Justice Chalmers in an Endorsement dated November 14, 2025. The consequence for failing to appoint counsel was set out by the Endorsement to be the striking of the party’s Statement of Defence. Second, the plaintiffs submitted that since all defendants have failed to respond to two different Requests to Admit in a timely way (or indeed, at all), they therefore are deemed to have made admissions pursuant to Requests to Admit, and that these admissions entitle the plaintiffs to judgment. Third, the defendants offered no defence at trial. The individual defendants did not appear, TFC 2013 did not appear, and the other corporate defendants instructed counsel not to oppose the plaintiffs’ action. For these reasons, the plaintiffs requested judgment against the defendants.

[2] I held that the plaintiffs are entitled to judgment on various grounds, including breach of contract, negligence, and negligent and fraudulent misrepresentation.

[3] I decided at the hearing to hear evidence on the question of damages, reserving my decision on the question of whether unanswered Requests to Admit are sufficient to prove damages in this case. The trial proceeded solely on the question of damages.

[4] In my view, deemed admissions are sufficient in this case to establish damages.

[5] In any event, in the hearing on damages, the plaintiffs provided persuasive, particularized evidence of damages in their *viva voce* testimony and extensive supporting documentation.

[6] The defendants are jointly and severally liable to pay the plaintiffs \$1,046,438.14 in damages.

PROCEDURAL MATTERS

[7] This matter concerns a dispute over construction work on a residential property. The plaintiffs hired Genuine Building Solutions, Inc. (“GBS”) to renovate their property. The work was not done well. The plaintiffs issued an original Statement of Claim on July 15, 2019, and an Amended Statement of Claim on March 5, 2020. The plaintiffs’ claim was for damages of \$1,300,000 for breach of contract on the part of GBS because of its inferior work, work that was not in conformity with specifications, that was not in conformity with the *Ontario Building Code*, that was not safe, and that was not done in a timely way under the contract.

[8] The plaintiffs also made a claim for negligent and fraudulent misrepresentation against the individual defendant, Sebastian Bianchi (“Sebastian”). According to the Statement of Claim, Sebastian was the plaintiffs’ point of contact in their interaction with GBS, and he misrepresented what GBS was capable of doing and what work had been done. The Statement of Claim alleges negligent representation on the part of another individual associated with GBS and related companies, Giordano Bianchi (“Giordano”).

[9] The Statement of Claim alleges negligence on the part of individual and corporate defendants, TFC 2013, and TFC Construction Inc. (“TFC”), in performing work at the property pursuant to the contract.

[10] The Statement of Claim also seeks an oppression remedy for misconduct, given the plaintiffs’ status as judgment creditors and therefore, they submit, “proper persons” pursuant to the oppression remedy.

[11] Critical facts relevant to the motion for judgment relate to Requests to Admit. The following facts set out in the affidavit of Felicia Lozon are uncontradicted. On December 13, 2024, the plaintiffs served a Request to Admit on the defendants. On May 9, 2025, the plaintiffs served a second Request to Admit on the defendants. The defendants did not respond within the 20-day deadline established by the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, Rule 51.03(1), nor have they responded to date.

[12] On May 16, 2025, Justice Chalmers ordered the defendants' then-lawyer removed as lawyer of record.. No Appointment of Lawyer or Notice to Self-Represent was delivered in the aftermath of that order. On November 14, 2025, Justice Chalmers ordered the corporate defendants to deliver a Notice of Appointment of Lawyer by November 18, 2025 at 5:00 pm and ordered the individual defendants to deliver an Appointment of Lawyer or a Notice of an Intention to Act in Person by November 18, 2025 at 5:00 pm. If the defendants did not do so, their Statement of Defence would be struck. GBS, TFC, Sebastian and Giordano filed a Notice of Change of Lawyer Appointing Counsel on November 18, 2025. TFC 2013 failed to file a Notice of Appointment of a Lawyer.

[13] By failing to respond to the Requests to Admit within twenty days (or ever), the plaintiffs submit that the defendants are, for the purposes of the trial, deemed to admit the truth of the facts contained in the Requests to Admit pursuant to Rule 51.03(2) of the *Rules of Civil Procedure*. The plaintiffs submit that these admissions are sufficient for the court to find in favour of the plaintiffs.

[14] Moreover, given the failure of TFC 2013 to file a Notice of Appointment of Counsel on time, the plaintiffs ask TFC 2013 to be noted in default and its Statement of Defence struck. With its Statement of Defence struck, they submit that TFC 2013 is deemed to have admitted to the allegations found in the Statement of Claim pursuant to the order of Justice Chalmers. The plaintiffs consequently ask for default judgment against TFC 2013.

[15] Finally, on the morning of the trial on January 19, 2026, R. Hammond of Hammond Flesias appeared as counsel of record for the corporate defendants, TFC and GBS. He stated that while his firm had been retained to represent TFC, GBS, Sebastian and Giordano as per the Notice of Appointment filed November 18, 2025, the individual defendants, Sebastian and Giordano, filed Statements of Intention to Act in Person on January 12, 2026, and that as such, he was no longer representing them. In addition, he advised that he had been instructed by his corporate clients not to oppose any relief sought by the plaintiffs at trial. None of the defendants submitted materials for the trial or in response to the plaintiffs' motion to decide the case on the basis of the deemed admissions. Hammond advised the court, however, that there were no service issues, or issues around notice of the trial, because his firm forwarded the relevant materials to the defendants, including the individual defendants. Hammond also reported that the individual defendants had informed him that they did not intend to appear. The individual defendants did not appear at the hearing.

[16] Given that the individual defendants did not appear, and given that the corporate defendants instructed counsel not to oppose the plaintiffs' requests for relief, counsel for the plaintiffs requested that the trial be considered an unopposed trial, and that the Statement of Defence be struck relative to all defendants pursuant to Rule 52.01(2).

[17] I struck the Statement of Defence in this matter. As a review of the endorsements in this case indicates, the defendants have consistently been obstructive in moving this action along, including by failing to respect an order to appoint counsel until the very last minute. They have seemed determined not to take steps to advance the procedure, and at the same time have done little to defend themselves.

[18] In these circumstances it was not only appropriate to continue the hearing without the defendants, but it was appropriate to strike the Statement of Defence. The court's observations in *Arsalides v. Surovova*, 2025 ONSC 1225, are apt in the present case:

[7] Additionally, I ordered that the Statement of Defence of the Surovova Defendants be struck pursuant to rule 52.01(2)(d), which provides that where an action is called for trial and a party fails to attend, the trial judge may also "make such other order as is just". This court has held that the enumerated choices available to me as the trial judge in rule 52.01(2) "are not meant to be exhaustive," and that the court also has "the inherent authority to strike the statement of defence" of a defendant who does not attend trial, as such a pleading "is of no assistance to the court and, on principle, should be struck. It is illogical that the pleading stand in place of the defendant" (*Mignelli v. Scavo*, 2004 CanLII 14032 ONSC, at para. 5). To be sure, I am not required to strike Ms. Surovova's defence (see *Berky v. Cruz*, 2016 ONSC 4067, at paras. 3-10). However, in light of Ms. Surovova's blatant and intentional disregard of the court's processes, I am of the view that striking her defence is appropriate. In the circumstances, it would not be fair or appropriate for Ms. Surovova to be able to choose not to attend trial and still derive the benefit of having a pleading before the court.

[19] In the present case, it would not be fair or appropriate for the defendants not to appear, or to instruct counsel not to defend, and still derive the benefit of having a pleading before the court. I strike the Statement of Defence of GBS, TFC, TFC (2013), Sebastian Bianchi and Giordano Bianchi.

FACTS AND REQUESTS TO ADMIT

[20] The plaintiffs proved liability by relying on unanswered Requests to Admit. The deemed admissions are to a similar effect in this case as the striking of the Statement of Defence.

[21] The plaintiffs delivered Requests to Admit on December 13, 2024 and May 9, 2025 to which the defendants have not responded. Rule 51.03(1) provides that the failure to respond within twenty days to a Request to Admit results in deemed admissions of the truth of the facts mentioned in the Request to Admit. I therefore find that the facts mentioned in the first and second Requests to Admit are deemed to be true. The key deemed facts in this matter are the following.

[22] GBS is a general contractor performing residential renovation work. Giordano was the sole officer and director of GBS between February 10, 2017 and June 12, 2018. Sebastian was the sole officer and director of TFC 2013 over the same time period. Sebastian controlled GBS, TFC and TFC 2013 such that they were affiliated corporate bodies. Sebastian was the controlling mind of each of GBS, TFC and TFC 2013. Giordano acquiesced to Sebastian's control of GBS. Sebastian was the plaintiffs' primary point of contact with GBS.

[23] On March 16, 2017, Meredith entered into a contract with GBS as general contractor to renovate a property that she owns at 125 Lee Avenue in Toronto. She testified that Lemassif is her common-law spouse and has a beneficial interest in the property. Sebastian signed the contract on

behalf of GBS. The contract incorporated various e-mails by reference. The contract provided that any change in the contract price associated with a change to the scope of work would be in writing. No formal change orders were issued, though there was an agreement to vary the scope of work resulting in a revised contract price of \$734,269.72 inclusive of HST. The scheduled date of completion following the revision was February 28, 2018. Architectural plans and structural element designs (together, the “specifications”) were delivered to GBS, whose work was required by contract to conform to the specifications.

[24] On June 26, 2017, Lemassif e-mailed Sebastian to advise that there were puddles in the kitchen. Sebastian replied that the puddles will dry by the time the flooring was installed and that the puddles were not a real concern because the conditions were not suitable for mould to grow. On July 28, 2017, Meredith e-mailed Sebastian to say that the framing of upstairs bedrooms conformed to an old design. On October 5, 2017, Meredith e-mailed Sebastian to advise that one of GBS’ subcontractors had informed her that it had not been paid by GBS. On December 5, 2017, Will Hudson e-mailed Meredith, Sebastian and Giordano to notify them that the southern brick support post had collapsed as a result of excavation, and recommended bracing and the installation of construction hoarding.

[25] In December 2017, Sebastian represented that GBS would complete the work by April 3, 2018, but knew that GBS would not complete the work by that date. He made the representation with the intention of ensuring that the plaintiffs would not terminate the contract and would continue to pay GBS. Sebastian represented in March 2018 that the work would be completed by May 31, 2018, which he intended for the plaintiffs to rely upon, but knew this to be false and was reckless as to its truth. He made the representation with the intention of ensuring that the plaintiffs would not terminate the contract and would continue to pay GBS.

[26] The work was not completed by February 28, 2018. It was not completed by June 12, 2018. Meredith terminated the contract by letter dated June 12, 2018 which was delivered to GBS.

[27] The work was required to conform to the specifications and the *Ontario Building Code*. The work was required to be constructed in a good and workmanlike manner. Both Sebastian and Giordano knew of these requirements. The work performed by Sebastian, Giordano, GBS, TFC and TFC 2013 did not conform to the *Ontario Building Code* or the specifications. It deviated from the specifications without explicit approval from the plaintiffs. The work by all the defendants was negligently performed, was not performed in a good and workmanlike manner, and left the project in an unsafe and dangerous condition.

[28] Sebastian and the plaintiffs had a special relationship that gave rise to a duty of care. Sebastian represented to the plaintiffs by supplying quotes that GBS was capable of performing the work, which was untrue, inaccurate, and misleading. Sebastian acted negligently in representing that GBS was capable of performing the work, the plaintiffs reasonably relied on Sebastian’s representations and suffered damages from relying on Sebastian’s representations.

[29] Sebastian made untrue, inaccurate and misleading representations that the work would be complete within 236 days. In a later representation, he, knowingly or recklessly, falsely

represented that the work would be complete by February 28, 2018. Sebastian knowingly or recklessly made false representations, which he intended the plaintiffs to rely on, that the work would be complete by June 12, 2018. The plaintiffs reasonably relied on these representations about timing and suffered damages from the failure to complete the work in a timely way.

[30] Sebastian represented that the water on the wood in the kitchen was not a real concern, but this was false, as rot in the pantry area was subsequently identified. Sebastian knew that this representation was false, or was reckless in making this representation, and intended for the plaintiffs to rely on the representation.

[31] Sebastian represented that the structural elements of the work were complete, which he knew to be false or was reckless as to its truth. Sebastian caused GBS to cover structural elements of the work with drywall to conceal the fact that structural elements were not complete. Sebastian caused GBS to invoice the plaintiffs for payment for structural elements that were not complete. Sebastian intended for the plaintiffs to rely on these representations that the structural work was complete.

[32] Sebastian represented in a false or reckless manner that the plumbing in the walls was complete when it was not. Sebastian caused GBS to cover the plumbing with drywall to conceal that the work was not complete and caused GBS to invoice the plaintiffs for the plumbing work.

[33] The deemed admissions relating to damages are as follows. The plaintiffs have suffered damages of \$1,046,438.14 as a result of the breach of contract by GBS. The plaintiffs have suffered damages of \$1,046,438.14 as a result of the negligence of each of GBS, TFC 2013, TFC, Sebastian and Giordano. The plaintiffs have suffered damages of \$1,046,438.14 as a result of the fraudulent and negligent misrepresentations by Sebastian. The plaintiffs have suffered damages of \$1,046,438.14 as a result of the negligent misrepresentations of Giordano.

[34] There were deemed admissions that relate to the oppression remedy. In particular, there were deemed admissions that, upon termination of the contract, the plaintiffs were creditors of each of GBS, TFC and TFC 2013. Sebastian and Giordano Bianchi caused GBS, TFC, and TFC 2013 to misappropriate, transfer, or divert the assets of GBS such that it would be unable to pay its liabilities, including those to the plaintiffs, as they became due. The business affairs of GBS, TFC and TFC 2013 were conducted in a manner that was oppressive to, unfairly prejudicial to, and unfairly disregarding of the interests of the plaintiffs.

LIABILITY

[35] Requests to Admit are intended to narrow the issues in contention at trial. Admissions may be conclusive: *Serra v. Serra*, 2009 ONCA 105, 307 D.L.R. (4th) 1. The deemed admissions in the present case concern questions of fact, of mixed fact and law, and of law. For example, there are deemed admissions that the work was negligently performed, which is a question of mixed law and fact. *Serra* sets out that admissions of fact, mixed law and fact, and law may be conclusive, stating:

[106] There is ample authority for the proposition that a "formal admission is conclusive as to the matter admitted, and cannot be withdrawn except by leave of the court or the consent of the party in whose favour it was made": *Marchand (Litigation Guardian of) v. Public General Hospital Society of Chatham* (2000), 51 O.R. (3d) 97 (Ont. C.A.), at para. 77, citing Sopinka, Lederman and Bryant, *The Law of Evidence in Canada*, 3rd ed. (Toronto: Butterworths, 1999). In that text, the authors state, at p. 1051:

A formal admission in civil proceedings is a concession made by a party to the proceedings that a certain fact or issue is not in dispute. Formal admissions made for the purpose of dispensing with proof at trial are conclusive as to the matters admitted. As to these matters, other evidence is precluded as being irrelevant but, if such evidence is adduced, the court is bound to act on the admission even if the evidence contradicts it. [Citations omitted.]

[36] *Serra* also clarifies that the trial judge need not accept admissions of mixed law and fact or admissions of law, stating at para. 115:

[A]lthough the fact of the admission and the circumstances surrounding it may influence the court's determination of what effect to give to it, the court is not bound to give effect to an admission of law, or of mixed fact and law, if in all the circumstances the interests of justice dictate that the issue should be determined at a trial rather than by way of admission.

[37] In the present case, with the exception of the oppression remedy admissions that I address below, I accept the deemed admissions of liability even where they raise legal issues or mixed questions of law and fact. The admitted facts are consistent with the admissions of law and mixed law and fact in relation to liability for the claims.

[38] I consider liability on the various legal claims first and turn to damages below. Damages raise different issues.

Breach of Contract

[39] The defendant, GBS contracted with the plaintiff, Meredith. GBS' work was by deemed admission not in conformity with the terms of the contract. Its work failed to conform to the *Code* and the contract's specifications, it was unsafe, and it was not done in a good and workmanlike manner, an implied term in construction contracts: *G Ford Homes Ltd v Draft Masonry (York) Co* (1983), 43 O.R. (2d) 401 (C.A.). GBS breached the contract.

Negligence

[40] The case of *Wilhelm Concrete v. Shackelton*, 2025 ONSC 3071, held that:

[25] Claims against contractors may be framed in tort or in contract, or in both. In this case, College Grain’s counterclaims in contract and tort were made concurrently. There is no disagreement that should I find deficiencies in construction, liability will attach to Wilhelm Concrete. [Citation omitted.]

[41] In the present case, all the defendants are deemed to admit that they owed a duty of care to the defendants. They also admit that their work was negligently performed. The deemed facts that the work was unsafe and not done in a good and workmanlike manner are sufficient to conclude that the work was negligently performed and caused damage by requiring the reconstruction of the work; I quantify damages below. The defendants have admitted joint and several liability for the negligent work. The defendants are jointly and severally liable in negligence.

Negligent Misrepresentation

[42] The deemed admissions indicate that Sebastian and Giordano made representations without taking reasonable care, which they intended for the plaintiffs to rely upon, that the work could be completed in a satisfactory manner. The work was not done in a satisfactory manner.

[43] The Court of Appeal for Ontario set out the relevant test in *Mahendran v. 9660143 Canada Inc.*, 2022 ONCA 676, leave to appeal to S.C.C. refused, 40508 (May 11, 2023):

[9] The motion judge also identified the correct legal test for negligent misrepresentation, which requires a plaintiff to show that (1) there is a “special relationship” between the person making the statement and the person hearing it; (2) it is reasonable for the person hearing the statement to rely on it; (3) the statement is untrue; (4) the person was careless in making the statement; and (5) the person who reasonably relied on the statement suffered damages: *Queen v Cognos Inc.*, [1993] 1 S.C.R. 87, at para. 34.

[44] These elements are met: there was a relationship between the parties such that it was reasonable for the plaintiffs to rely on the statements, the statements were untrue, the individual defendants acknowledge that they were careless, and the plaintiffs suffered damage as a consequence. Moreover, individual representatives of corporations are generally liable for torts that they personally commit (other than the specific tort of inducing their own corporation to breach a contract): *ADGA Systems International Ltd. v. Valcom Ltd.*, (1999) 43 O.R. (3d) 101 (C.A.), leave to appeal refused, [1999] S.C.C.A. No. 124. Sebastian and Giordano are liable for negligent misrepresentation.

Fraudulent Misrepresentation

[45] Sebastian is deemed to have admitted that he made representations about the satisfactory nature of the work that he knew were false and that he intended for the plaintiffs to rely upon. These fraudulent misrepresentations caused damage to the plaintiffs because they relied on them, including by retaining GBS and its associated companies and workers. The elements of a fraudulent misrepresentation claim are present: there was knowledge of falsity; the false representations induced the plaintiffs to retain the defendants; and the retention of the defendants

caused damage: see, e.g., *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87. Sebastian is liable for fraudulent misrepresentation.

Oppression Remedy

[46] The plaintiffs asked that the defendants admit that the business and affairs of the corporate defendants were carried on in a manner that was oppressive to, unfairly prejudicial to, and unfairly disregarding of the interests of the plaintiffs, which is language lifted from the oppression remedy found in s. 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16. The deemed admissions establish that there were diversions, misappropriation, and transfers of corporate assets.

[47] A preliminary question is whether the plaintiffs have standing to bring an oppression remedy claim. A “complainant” pursuant to s. 245 of the *Act* includes any “proper person,” a characterization that is left to the court. The plaintiffs submit that they became creditors of GBS upon its breach of contract, and that as creditors, they ought to be considered to be proper persons pursuant to s. 245.

[48] Creditors may be considered proper persons pursuant to s. 245, though it depends on the circumstances: see, e.g., *Royal Trust Corporation of Canada v Hordo*, (1993) 10 B.L.R. (2d) 86 (Ont. Gen Div). A judgment creditor may qualify as a proper person and thus as a complainant: see, e.g., *Schreiber Foods Inc. v. Wepackit Inc.*, 2013 ONSC 338, 11 B.L.R. (5th) 157.

[49] The plaintiffs were not formally creditors upon the breaches by the defendants, but had a claim against them. The question is whether a person with a claim for damages may be considered a “proper person” and obtain a remedy for oppression. This is far from certain: see, e.g., *Paragon Protection Ltd. v. Tamstu-Harjon Holdings of Canada*, 2026 ONSC 575 (Div. Ct.).

[50] In the present case, I do not decide whether the plaintiffs are “proper persons” and thus complainants. The relief sought for oppression is the joint and several liability of the individual and corporate defendants for their misconduct. In particular, the plaintiffs submit that the oppression remedy would effectively allow the plaintiffs to claim joint and several liability against all the defendants for the breach of contract claim against GBS. The damages sought in the oppression claim are identical to the damages sought in the other claims, and there are other successful claims that also give rise to joint and several liability.

[51] The plaintiffs submit that a higher pre- and post-judgment interest rate is payable on the breach of contract claim than on the other claims. If oppression allows all defendants to be treated in effect as breaching the contract, then the higher interest rates would apply to the damages payable by all defendants. As I explain below, however, I do not accept that there are differential interest rates payable on the contract claim as opposed to, for example, the negligence claim. It is therefore unnecessary to decide standing under the oppression remedy: it makes no difference to the damages or interest payable to the plaintiffs.

Summary

[52] I find that GBS is liable for breach of contract. All individual and corporate defendants are liable for negligence. Moreover, while I consider quantum below, all defendants admit to having caused the same amount of damage because of their negligence – each implicitly acknowledges that their negligence was a but for cause of the total damage whatever its quantum. As a consequence, the defendants are jointly and severally liable for the damages caused by their negligence. Sebastian and Giordano are liable for negligent misrepresentation, and Sebastian is liable for fraudulent misrepresentation.

DAMAGES

[53] The parties each admit to having caused \$1,046,438.14 in damages to the plaintiffs.

[54] There is a question whether these admissions without more are sufficient to establish the damages of the plaintiffs. There is some ambiguity in the case law.

[55] The plaintiffs cite the following cases in connection with a Request to Admit and proving damages. *All Canada Aerials Limited v. Minatel*, 2008 CanLII 2597 (ON SC) considered Requests to Admit in respect of damages in the following way:

I turn to the Request to Admit and note that, in view of the defendants' failure to respond, all assertions are now deemed to have been admitted. The failure to respond effectively proves both the plaintiffs' damages and establishes liability against the corporate and individual defendants (those issues also having been being [*sic*] proven as a result of the statement of defence having been struck). See paragraphs 23 and 24; 33-36 of the Request.

I am satisfied on the materials that the amount sought, \$13,579.79, accurately represents the balance owing on these accounts and I grant judgment in that amount, with post-judgment interest at the applicable rate.

[56] *Minatel* thus held that a Request to Admit is sufficient to establish damages.

[57] The plaintiffs also cite *8150184 Canada Corporation v. Rotisseries*, 2014 ONSC 815, 27 B.L.R. (5th) 141, aff'd 2016 ONCA 115. This case is more ambiguous about the relationship between unanswered Requests to Admit and the establishment of damages. The court observed:

[15] In my judgment, the plaintiff is clearly entitled to the amounts which have been quantified in the request to admit and which are corroborated by appropriate documentation. [...] [Emphasis in original.]

[16] I cannot, however, be similarly confident that the plaintiff is clearly entitled to the other amounts claimed and addressed by the request to admit.

[17] The claims for salaries of the plaintiff's principals, meal and car expenses are not "hard" expenses. The defendants should not be deprived of the opportunity to challenge the recoverability or the reasonableness of the amounts claimed.

[18] To similar effect, the claim for loss of profits is arrived at by a methodology and is based on data which might well be open to challenge. I cannot be confident that the claim is unassailable and, hence, that it would be appropriate to take away the defendants' right to have the plaintiff's claim for loss of profits proved.

[58] The court accepted the proof of damages on some claims in connection with unanswered Requests to Admit if they were corroborated, but not other, potentially contestable damages claims.

[59] It is important to observe, however, that in *Rotisseries*, the defendant sought to challenge the damages claim. The court was reluctant to deprive them of that opportunity based on a failure to respond to Requests to Admit. In the present case, the individual defendants failed to appear at the hearing, one corporate defendant was noted in default for failing to retain legal representation, and the other corporate defendants instructed counsel to appear and not to oppose any relief sought by the plaintiffs. The defendants have had representation at different points in this litigation but have never responded to the Requests to Admit, nor did they attempt to challenge them in the hearing. In these circumstances, there is a strong basis for relying on the deemed admissions alone to establish the quantum of damages.

[60] I return to the *Serra* case, in which the Court of Appeal held that a court may accept admissions in connection with questions of fact, law and/or mixed law and fact, though noted that a court may exercise its discretion not to accept questions of mixed law and fact or law. In the present case, damages raise questions of mixed law and fact, and I accept that the deemed admissions of damages were sufficient to establish damages.

[61] A Request to Admit is intended to narrow the issues for trial, as *Serra* identified. If a party does not respond to a Request to Admit in respect of damages, and does not challenge deemed admissions about damages, that ought to narrow the issues for trial to exclude dispute about damages. The deemed admissions in the circumstances of this case proved damages.

[62] I decided in the hearing to reserve my decision on the question of whether the deemed admissions proved damages in the present case. I requested that the plaintiffs provide evidence in a trial on damages, and they did. Both Meredith and Lemassif testified, and dozens of exhibits were entered into the record. Their *viva voce* evidence and documentary support was clear and cogent.

[63] I accept their evidence on damages as follows.

[64] Their damages for breach of contract and negligence include \$797,151.44 paid to a contractor that was hired to do the work that GBS did not do or did negligently such that it needed to be done again. The plaintiffs were required to incur additional insurance costs of \$27,486.00 because of delay. Moreover, the delay required the plaintiffs to live in a condominium that

Lemassif owned, and thus to forego rent. When they did re-rent the condominium, they suffered damages because market rent had fallen. I am satisfied on Lemassif's evidence that the plaintiffs suffered damages of \$141,300 from lost rent caused by the defendants.

[65] The plaintiffs were forced to pay an extra \$10,226.50 for hardwood floors, as well as \$6,808.25 for wiring for media that had to be done twice following the defendants' breaches and negligence. Other damages that they suffered included incurring costs of \$3,678.57 for lifting a construction lien imposed by an unpaid sub-contractor, \$9,605 for a payment to a sub-contractor that was not paid, \$10,000 for an insurance deductible for water damage, and \$1,582 to an engineering consultant.

[66] Given that the work needed to be redone, the plaintiffs seek damages of \$449,784.35 for invoices paid to GBS prior to termination. I note that there is a relatively small discrepancy of about \$7,000 between the total of the invoices and the damages claimed, but I also note that GBS' invoicing practices were erratic with retracted and reissued invoices. I accept the testimony of Meredith that the claimed amount was the amount that the plaintiffs actually paid.

[67] While the plaintiffs seek damages for all the payments to GBS given that the work had to be redone, they acknowledge that not all of the invoices paid to the second contractor involved redone work and take the difference between the sums paid to the new contractor (\$797,151.44) and GBS (\$449,784.35) as a credit to damages. Put differently, the damages in respect of contractor costs alone are calculated by doubling \$449,784.35 because the plaintiffs had to pay this amount twice for the same work. The total damages for breach of contract were \$1,164,136.74.

[68] The plaintiffs request damages for negligence and breach of contract in the amount of the deemed admission to damages: \$1,046,438.14. Based on the deemed admissions, and in any event on proven damages, I find the defendants jointly and severally liable in negligence for damages in the amount of \$1,046,438.14. GBS is liable for the same amount for breach of contract.

[69] The plaintiffs submit that damages in respect of negligent and fraudulent misrepresentation were greater. They submit that the representations induced them to continue paying GBS and not to terminate earlier. As a consequence, they submit that they are entitled in damages to all of the costs of the second contractor, as well as any costs paid to the defendants. They do not seek damages for foregone rent. The net effect of these two changes relative to the negligence and breach of contract claim is to increase damages to \$1,316,332.11.

[70] It is not clear why there is a difference between the damages for the fraudulent and negligent misrepresentations claims, and those for the contract and negligence claims. But for the misrepresentations, I accept that the plaintiffs would have terminated earlier. That would have reduced payments to the defendants, but it is not clear why *all* the costs of the second contractor are damages from negligent or fraudulent misrepresentation.

[71] In any event, the plaintiffs seek only the damages for negligent and fraudulent misrepresentation of \$1,046,438.14 consistent with their Requests to Admit. This is the same amount that they claim for breach of contract and negligence. I am satisfied that they have proven

those damages for negligent misrepresentations by Giordano and Sebastian, and also fraudulent misrepresentations by Sebastian.

[72] The defendants are jointly and severally liable to the plaintiffs for proven damages in the negligence and breach of contract claims of \$1,046,438.14. Sebastian is liable for the same amount for fraudulent and negligent misrepresentation. Giordano is liable for the same amount for negligent misrepresentation.

INTEREST

[73] The crux of the plaintiffs' interest submission is the following. The contract between the plaintiffs and GBS provided for an interest rate of 12% on any amounts owing pursuant to the contract. Because the plaintiffs submit that the damages for breach of contract are amounts owing pursuant to the contract, the plaintiffs request pre- and post-judgment interest of 12% for damages on the breach of contract claim. *Great Northern Insulation Services Ltd. v. King Road Paving and Landscaping Inc*, 2021 ONCA 367, 156 O.R. (3d) 1, confirms that pre- and post-judgment interest on judgments for payment of amounts unpaid in contracts may reflect the interest rate set out in the contract. The plaintiffs submit that that amount is 12%.

[74] The plaintiffs' motivation for seeking the oppression remedy against the defendants is, as I understand it, to treat all the defendants as jointly and severally liable for breach of contract, and therefore subject to 12% pre- and post-judgment interest compounded daily.

[75] I do not accept this submission. The contract in this case contemplated payments by the plaintiffs to the defendant contractor in exchange for materials and labour provided by the contractor. The contract did not contemplate payments from the contractor to the plaintiffs. The interest rates on amounts owing pursuant to the contract therefore related to interest on payments from the plaintiffs to the contractor.

[76] Damages for breach of contract arose in this case because GBS did not respect its contractual obligations. Damages payable were not contemplated pursuant to the contract but rather arise as a consequence of GBS's breach of contract. The obligation on the defendants to pay damages is not the same as an obligation on the plaintiffs to pay an amount contemplated by performance of the contract, such as paying an invoice. The contract specifies an interest rate of 12% compound interest for late payments. This does not imply that the parties agreed that any damages payable by GBS for negligent performance would be subject to 12% compound interest.

[77] I accept that the purpose of judgment interest is compensatory: *Bank of America Canada v Mutual Trust Co*, 2002 SCC 43, [2002] 2 S.C.R. 601 and I accept that this principle establishes a basis for the conclusion that interest rates set out in a contract for late payments ought to inform the pre- and post-judgment interest rates on failures to make specified payments pursuant to the contract. But it is a *non sequitur* to conclude that the interest rates on late payments payable by the purchasers of a contractor's services to the *contractor* ought to determine the *purchaser's* pre- and post-judgment interest for damages for wrongs committed by the seller. The interest rate payable to the seller in a contract gives rise to an inference about the agreed-upon time value of money to the seller. There is no particular reason to suppose that the time value of money to the seller

contemplated by the contract is or ought to be considered to be identical to that of the purchaser: some purchasers may have higher discount rates than their contractors; others lower. It would depend on a number of considerations, including appetites for risk (which would be predictably smaller for individuals than for corporations).

[78] That the plaintiffs in this case contractually committed to 12% interest on late payments does not imply a reciprocal commitment on the part of GBS to pay 12% pre- and post-judgment interest in an action for damages.

[79] The plaintiffs cite *FSC (Annex) Limited Partnership v ADI 64 Prince Arthur LP*, 2021 ONSC 2039 in support of their submission. But that case is distinguishable. In *Prince Arthur*, each party to a limited partnership agreement agreed that if party A failed to make a capital contribution as required by the agreement, party B could make the payment on A's behalf and charge 12% interest to A. The clause was reciprocal and applied equally to a payment by A on behalf of B.

[80] The court in that case ordered 12% pre- and post-judgment interest on a judgment against one party for failing to make a payment to the other party to close the transaction following the invocation of a buy-sell term. The 12% interest rate was not strictly required by the agreement, but Justice Koehnen inferred from the agreement that the time value of money to *both* parties was 12%.

[81] In the present case, the contract contemplated payment from the plaintiffs to GBS in exchange for the construction work, and the 12% interest rate does not allow an inference about the agreed-upon time value of money to the plaintiffs.

[82] The plaintiffs also submit that equity supports something other than the simple rates of pre- and post-judgment interest found in the *Courts of Justice Act*, R.S.O. 1990, c. C.43. They cite *Enbridge Gas Distribution Inc v. Marinaccio*, 2012 ONCA 650, 355 D.L.R. (4th) 333, leave to appeal refused, [2012] S.C.C.A. No. 514, for example, in which the court accepted that damages from a fraudulent billing scheme could result in compound interest on pre- and post-judgment interest. Moreover, in *Nubury Properties Ltd v. Gunraj*, 2004 CanLII 20443 (ON SC), the court stated:

[6] With respect to pre-judgment interest on the amounts paid out on the unauthorized cheques, I am satisfied, however, that, on general equitable principles, the plaintiff is entitled to interest calculated in the manner of the plaintiff. The issue of compound interest in cases of fraud has been addressed in *Brock v. Cole* (1983), 142 D.L.R. (3d) 461 (Ont. C.A.) which, at pages 467-9, cites with approval the decision of the English Court of Appeal in *Wallersteiner v. Moir (No. 2)*, [1975] 1 All E.R. 849.

[7] I also believe that general principles of restitution in cases of breach of fiduciary duty, which is established in the present matter, provide a sufficient basis for an order that pre-judgment interest shall commence, in respect of the amount related to each fraudulent cheque, on the date such cheque was negotiated at the plaintiff's bank. Restitution requires that the defendant reimburse the plaintiff

compound interest on the stolen monies calculated from the date on which the monies were actually taken from the plaintiff, as the defendant had the benefit of the monies from the time of misappropriation. There is also support in the case law for an award of damages for breach of fiduciary duty on the same basis as in an action for deceit: see the majority decision in *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 S.C.R. 534. On the basis of the approach set out in that decision to consequential damages arising in cases of deceit, interest would also be calculated from the date monies were taken by the plaintiff.

[83] There is a critical distinction between the wrongs in *Nubury* and *Marinaccio* and the wrongs in the present case. Unlike the fraudulent misappropriations of money in those cases which the fraudsters could then invest and realize compound interest, in the present case GBS was paid for work it performed at the property. The work was badly done, to be sure, and its co-defendants owe damages, but one cannot infer that the defendants realized pecuniary gains from their shoddy work that are the same as the damages now payable to the plaintiffs. The defendants paid for materials, sub-contractors, etc. such that the funds they received from the plaintiffs were not profit from their work. Moreover, several heads of damage such as foregone rent are not gains to the defendants. This is not the same as a case involving the misappropriation of an amount equal to the damages claimed.

[84] If the damages were gains to the defendant(s) from an equitable breach, then there is a case for requiring the defendant(s) to pay restitution including compound interest given the opportunity for the defendant(s) to invest the ill-gotten gains. But that is not so here. Given the absence of a restitutionary motivation for doing so, I do not exercise my discretion to award compound interest or interest that otherwise deviates from *Courts of Justice Act* rates.

[85] The plaintiffs submitted that it would be appropriate in the circumstances of this case to compensate them for the time value of money that they lost owing to the defendants' actions, and that compensation ought to include compound interest. I understand the force of this argument: compound interest is not an exotic concept, but a natural element of the time value of money. The *Courts of Justice Act*, however, sets out simple interest for pre-judgment interest, and simple interest for post-judgment interest. Given the absence of a contractual agreement to the contrary, a restitutionary motivation, or some other special circumstance, acceptance of the plaintiff's submission in the present case would create an exception that swallows the *Courts of Justice Act* rule.

Conclusion

[86] The defendants are jointly and severally liable to pay the plaintiffs \$1,046,438.14 in damages. Pre-judgment interest under the *Courts of Justice Act* is payable from the date of the termination of the contract, June 12, 2018.

[87] If the parties can not agree on costs, I invite submissions of no more than three double-spaced pages to be submitted to annamaria.tiberio@ontario.ca no more than twenty days from today.

E. Iacobucci, J

Released: March 2, 2026

CITATION: Meredith et al v. Genuine Building Solutions Ltd. et al, 2026 ONSC 1237
COURT FILE NO.: CV-23-00692547-0000
DATE: 20260302

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Heather Meredith and Christian Lemassif

Applicants

– and –

Genuine Building Solutions Ltd., TFC Construction Inc.,
TFC Construction (2013) Inc., Sebastian Bianchi,
Stephen Shessel, and Daniel Hernandez, and Giordano
Bianchi

Respondents

REASONS FOR JUDGMENT

E. Iacobucci J.

Released: March 2, 2026