COURT OF APPEAL FOR ONTARIO

CITATION: Aylmer Meat Packers Inc. v. Harrison Pensa LLP, 2026 ONCA 156
DATE: 20260304
DOCKET: COA-25-CV-0848

Huscroft, Trotter and Favreau JJ.A.

BETWEEN

Aylmer Meat Packers Inc. and Richard Walter Clare

Applicants (Respondents)

and

Harrison Pensa LLP

Respondent (Appellant)

Thomas J. Curry and Derek Knoke, for the appellant

Milton A. Davis, Ronald D. Davis and Yael Kogan, for the respondents

Heard: February 13, 2026

On appeal from the order of Justice Jacqueline A. Horvat of the Superior Court of Justice, dated June 6, 2025, with reasons reported at 2025 ONSC 3383.

REASONS FOR DECISION

[1] In 2004, the respondent Aylmer Meat Packers Inc. brought an action against the Province of Ontario and the Attorney General of Canada seeking damages in negligence, trespass, and conversion. The respondent was represented initially by a different firm, but in 2013, retained the appellant law firm to act on a contingency-

fee basis. The retainer agreement provided that the appellant would be paid up to 40 percent of the respondent's recovery.

[2] Just before trial, Canada settled for $120,000, which was held by the appellant. The respondent lost at trial and received nothing from Ontario. The respondent then retained new counsel and appealed the loss to this court. There was no retainer agreement between the respondent and the appellant relating to the appeal. The respondent paid the new counsel $312,000 for the appeal.

[3] The respondent succeeded on the appeal and was awarded $3.52 million in damages, along with $1.1 million in costs and interest: *Aylmer Meat Packers Inc. v. Ontario*, 2022 ONCA 579, 473 D.L.R. (4th) 279, leave to appeal refused, [2022] S.C.C.A. No. 357; *Aylmer Meat Packers Inc. v. Ontario*, 2022 ONCA 629, 85 C.C.L.T. (4th) 64. The appellant holds $1.72 million of the damage award, which it claims as fees owing to it under the retainer.

[4] The respondent brought an application seeking the return of the money. The appellant brought a cross-application claiming that it was entitled to the money under the terms of the retainer, or in the alternative on a *quantum meruit* basis. The application judge held that the appellant was entitled to fees under the retainer only if it recovered damages before or at trial, and in addition was not entitled to a *quantum meruit* award. She ordered that the appellant was entitled to a

contingency fee on the $120,000 settlement with Canada before trial but otherwise ordered the return of the money held by the appellant.

[5] The appellant argues that the application judge made legal errors as well as palpable and overriding errors of fact in interpreting the retainer and that it should be awarded a share of the damages awarded to the respondent on appeal, whether pursuant to the retainer or on a *quantum meruit* basis.

[6] We do not agree. The appeal is dismissed for the reasons that follow.

The application judge made no errors in interpreting the contract

[7] The standard of review is not in dispute. The retainer agreement is a contract and the application judge's interpretation of it is governed by the principles set out by the Supreme Court in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, and reiterated by this court in *Royal Bank of Canada v. Peace Bridge Duty Free Inc*., 2025 ONCA 54, 175 O.R. (3d) 371, at para. 25. In the absence of an error in principle or a palpable and overriding error, the application judge's interpretation of the contract is entitled to deference.

[8] The appellant has not established any such error.

[9] The appellant argues that the application judge failed to consider several provisions of the contract and failed to read the contract as a whole. The appellant focuses on terms in the contract tying its fee entitlement to money received on the claim. The difficulty with this argument is that the contract specifically states that

the appellant was entitled to fees upon the recovery of damages "whether by settlement award obtained through negotiation, mediation, settlement meetings or judgment at trial." Damages awarded on appeal are not mentioned.

[10] The appellant argues that the list simply sets out examples of the circumstances in which it was to be paid and insists that these circumstances are subordinate to the overarching duty to pay if the claim succeeded. But it was open to the application judge to conclude otherwise, and her decision is entitled to deference. We are not persuaded that the application judge failed to have regard to the contract as a whole. The appellant's arguments are in essence an invitation for this court to interpret the retainer agreement afresh. There is no basis for this court to do so.

The appellant is not entitled to a *quantum meruit* award

[11] The appellant states that the application judge conflated contractual and restitutionary *quantum meruit* and erred in saying that contractual *quantum meruit* was not available. In addition, the appellant asserts that the application judge made palpable and overriding errors in her factual analysis.

[12] We do not accept these submissions. The parties specified the circumstances in which the appellant would be paid. They chose not to agree on an entitlement to fees in the event the respondent was successful only on appeal. That has proven to be an improvident bargain for the appellant, but it is the bargain

the appellant chose to make. The application judge made no palpable and overriding error in so concluding. There is no room for *quantum meruit* to operate in these circumstances.

Disposition

[13] The appeal is dismissed.

[14] The respondent is entitled to costs in the agreed amount of $35,000, all inclusive.

"Grant Huscroft J.A."
"Gary Trotter J.A."
"L. Favreau J.A."