CITATION: *Fourth Amen Holdings Inc. et al. v. Environmental 360 Solutions (Ontario) Ltd. et al.*, 2026 ONSC 1551
COURT FILE NO.: CV-25-00736405-0000
DATE: 20260313

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: FOURTH AMEN HOLDINGS INC. O/A MANSOUR GROUP and 1916561 ONTARIO LIMITED, Applicants

AND:

ENVIRONMENTAL 360 SOLUTIONS (ONTARIO) LTD. and ENVIRONMENTAL 360 SOLUTIONS (ONTARIO) INC., Respondents

BEFORE: Schabas J.

COUNSEL: *Reuben Rothstein and Sezen Izer*, for the Applicants

Jeremy Sacks, for the Respondents

HEARD: March 3, 2026

REASONS FOR JUDGMENT

Overview

[1] This application concerns the interpretation of a holdback provision in an Asset Purchase Agreement (“APA”).

[2] In March 2022, the Applicants sold their industrial cleaning business ("BM") to the Respondents for approximately $37 million (the "Purchase Price"). The Purchase Price was based on BM's revenue between November 2020 and October 2021 ("TTM-Oct21"). Most of BM's revenue came from work performed for a mining company, Vale Canada Limited ("Vale"), through: (a) a fixed-fee services contract (the "Vale Contract"); and (b) recurring project work outside the scope of the Vale Contract ("Vale Extra Work"), including large cleaning and maintenance projects performed during Vale shutdowns ("Shutdown Work").

[3] There were two holdbacks to the Purchase Price:

(a) approximately $12.9 million to be released upon renewal of the Vale Contract (the "Vale Contract Holdback"); and

(b) approximately $2.4 million to be released if Vale Extra Work continued to generate at least $1.5M in annual revenue over the next three years (the "Vale Extras Holdback").

[4] The Vale Extras Holdback is in dispute. It is described in s. 2.7(h) of the APA as follows:

> The Vendors generate revenue for extra work provided to Vale Limited, outside of the Vale Contract, in conjunction with several general contractors. To the extent the level of work provided alongside general contractors to Vale continues to generate $1,500,000 in annual revenue, the Purchasers will on each of the next three year anniversaries of the Closing Date release one third (1/3) of the Vale Extra Holdback. Subject to the provisions of Section 2.7(i), (j) and (k), to the extent there is a shortfall in revenue, the annual release of the Vale Extras Holdback will be adjusted and released on a pro rata basis with $1,500,000 as the base.

[5] On the first anniversary of the closing of the APA, the Respondents added up revenue from Vale Extra Work (including Shutdown Work). It exceeded $1.5 million, and therefore the Respondents released one third of the Vale Extras Holdback (approximately $814,333.33) to the Applicants as required under the APA.

[6] However, on the second anniversary of the closing of the APA, the Respondents took the position that, when calculating revenue under s. 2.7(h), they only had to include revenue from work billed "through" general contractors ("GCs") and not work billed directly to Vale (like Shutdown Work). The Respondents asserted that the amount owing was only about $10,000. The Applicants objected and attempted to exercise their right under the APA to review the Respondents' books and records. The Respondents refused to provide full access to their records, although they later conceded that the amount owing, on the Respondents' interpretation, was about $102,000.

[7] The Respondents took the same position on the third anniversary of the closing date of the APA, that only work billed through contractors was to be used to calculate the amount pursuant to s. 2.7(h).

[8] The Applicants submit that the Vale Extras Holdback includes all extra work performed for Vale outside the Vale Contract, including work billed directly to Vale and work billed through intermediary general contractors. The Respondents submit that the holdback only deals with work billed through general contractors, not work billed directly to Vale.

[9] For the reasons that follow, I agree with the Applicants.

Legal Principles

[10] The principles governing the interpretation of contracts are well-settled. The task is to ascertain the objective meaning of the words chosen by the parties, read in their proper context and in light of the contract as a whole. The starting point is the language of the agreement: *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 at para. 47.

[11] The court "must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract". The surrounding circumstances, or factual matrix, include the genesis of the agreement, its commercial purpose, and contemporaneous communications, but not the parties' subjective intentions. However, the surrounding circumstances should not overwhelm the words of the agreement: *Sattva* at paras. 47 – 59.

[12] The court should only rely on "objective evidence of the background facts at the time of the execution of the contract", including "knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting": *Sattva* at para. 58.

[13] "Commercial reasonableness is a crucial consideration … courts seek to reach a commercially sensible interpretation, since doing so is more likely than not to give effect to the intention of the parties" and avoids constructions that are absurd or arbitrary: *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60 at para. 142.

[14] Finally, post-contract conduct is admissible only if the contract remains ambiguous after considering the text and factual matrix: *Prism Resources Inc. v. Detour Gold Corporation*, 2022 ONCA 326 at para. 18.

Analysis

[15] In my view, all aspects of the applicable legal principles support the Applicants' interpretation.

[16] First, the opening words of s. 2.7(h) refer to "revenue for extra work provided to Vale, outside the Vale contract." This identifies the relevant revenue that is being addressed, which is a broad category including Shutdown Work. Second, the words "in conjunction with several general contractors" is broad language, followed by a reference to the "the level of work provided alongside general contractors."

[17] This language does not limit the scope of the holdback to revenue earned "through" general contractors. The words "in conjunction with" mean "together with, in combination, or in association with." "Alongside" means "next to or together with, in the same context or setting." Merriam-Webster.com Dictionary. Neither phrase imposes a billing-channel, or "through", condition.

[18] The reference to general contractors is explained by the factual matrix and the course of the negotiations. Extra work for Vale, outside the Vale contract, is done both directly and through general contractors. Examples of this were provided to the Respondents during the negotiations and on this application.

[19] Further, the words "in conjunction with" and "alongside" were added by the Applicants to replace the word "through", which had been proposed by the Respondents. This drafting history is compelling objective evidence that the Applicants did not accept that the Vale Extras Holdback was limited to work done "through" general contractors, and the change in wording was accepted by the Respondents. Even the Respondents' deponent, who negotiated the contract, agreed that the final wording was broader and left room for work billed directly to Vale.

[20] The contract also uses the word "continues" in respect to the $1.5 million in "annual revenue." This, too, supports the Applicants' definition and is consistent with the factual matrix.

[21] In the negotiations, the Vale Extras Holdback was initially proposed by the Respondents who suggested it be tied to $1.5 million in revenue earned in the year prior to the acquisition from a subcontractor named Commonwealth. This was not acceptable to the Applicants, as the Commonwealth revenue was regarded as a one-off and unlikely to recur. They said that this holdback had to be linked to other extra work performed for Vale, which included $2.8 to $3.5 million for Shutdown Work every 18 to 24 months when the mine would shut down for maintenance and cleaning - although in the year prior to the purchase the Shutdown Work did not materialize due to a strike at Vale.

[22] The holdback was then drafted to address "extra work provided to Vale" which historically had almost always exceeded $1.5 million, and which included the Shutdown Work which was expected to come back after the strike. The Respondents were well aware that extra work came both directly from Vale and through general contractors. The Respondents were also aware that the Shutdown Work was recurring work and worth in the range of $2.8 to $3.5 million, and that the right to all of this work was being acquired by the Respondents. The words "continues to generate $1,500,000 in annual revenue" are consistent with this evidence of the negotiations and objective intentions of the parties that the Vale extra work was expected to be at least $1.5 million annually which, excluding the non-recurring work from Commonwealth, would have to include work obtained directly from Vale.

[23] The Applicants' interpretation also makes commercial sense; the Respondents' interpretation does not.

[24] Limiting the extra work to that billed "through" contractors and excluding the lucrative Shutdown Work, as suggested by the Respondents, would make recovery of the $2.4 million holdback very unlikely. It would not have made commercial sense for the Applicants to have omitted that major source of revenue in the holdback; the Applicants would have given away a significant asset and they did not do so. The contemporaneous correspondence shows the clear intention of the Applicants to include both work directly billed to Vale and work billed through contractors. The Respondents knew this and did not challenge it. To the extent the deponent for the Respondents suggests otherwise, I find that evidence implausible. Further I can give little weight to such subjective, self-serving after-the-fact evidence that is unsupported by contemporaneous records.

[25] Finally, although it is not in my view necessary to address it, the post-contract conduct also supports the Applicants' interpretation. As noted, at the end of the first year following closing, the Respondents paid the full amount owing, based on extra work for Vale earned both directly and through contractors. It was only at the end of the second year that the Respondents' changed their position and asserted an interpretation that had never been advanced and was inconsistent with their own interpretation of the contract after the first year.

[26] Accordingly, I conclude that the Applicants' interpretation is the correct one and that s. 2.7(h) of the APA refers to all work performed for Vale outside the Vale Contract, whether billed directly to Vale or billed through general contractors.

Damages

[27] The Applicants also seek an order requiring the Respondents to pay what is properly owing to them based on the Applicants' interpretation of s. 2.7(h) of the APA.

[28] This dispute arose when the Respondents took the position that they owed only $10,000 relating to the Vale Extras Holdback for Year Two. The Applicants challenged this, and sought access to the Respondents' books and records as was their right under the APA. The Respondents eventually provided a subset of information, but still not full disclosure. Those records revealed numerous omissions and inaccuracies in the Respondents' Year Two calculation. The Respondents acknowledged "misclassifications" and revised the amount owing to about $102,000. However, the Applicants say the amount owing is much larger and must include work billed directly to Vale.

[29] As the Respondents have still not provided the Applicants with access to all their books and records, I infer that that the information withheld would confirm that the Respondents owe the Applicants far more than what they have asserted. To the extent that there may have been evidence that the Respondents did not earn $1.5 million in Year Two and therefore do not owe the full amount for Year Two, that ought to have been disclosed and addressed in this application. Accordingly, I conclude that the Respondents should pay the full amount of one-third of the Vale Extras Holdback for Year Two, in the amount of $814,333.33.

[30] For Year Three, the Respondents again took the position that the full amount was not owing and again refused to permit the Applicants to inspect their books and records. They now concede, however, that if the Applicants' interpretation of the APA is adopted, as I have found, they owe the Applicants the full amount of the installment for Year 3, $814,333.33.

[31] In their responding materials, the Respondents claim that they are entitled to a "credit" for their Year One payment, asserting that they overpaid. This was never raised before the litigation. The payment was made without reservation and I do not accept that the Respondents are entitled to such a credit. In addition, given the Respondents' conduct in failing to raise this earlier and to provide access to the books and records, I find they are estopped from asserting this claim now.

Conclusion and costs

[32] The Applicants shall have judgment in accordance with these Reasons.

[33] Counsel advised me that there have been offers to settle which might inform my disposition of costs. Accordingly, unless the parties are able to resolve the issue of costs, the Applicants shall provide me with submissions not exceeding three pages, double-spaced, not including attachments, within 21 days of the release of these Reasons, and the Respondents shall

provide submissions with the same restriction on length, within 14 days of receiving the Applicants' submissions.

Paul B. Schabas J.

Date: March 13, 2026