

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
COMCO CANADA LTD. )  
 )  
Plaintiff )  
 ) Ms. Lisa D. Belcourt, for the Plaintiff  
– and – )  
 )  
SAM PETERS INVESTMENTS LIMITED )  
 )  
Defendant )  
 )  
 ) Mr. Brett D. Moldaver, for the Defendant  
 )  
 )  
 ) **HEARD VIA ZOOM:** September 16, 17,  
 ) 18, 19, 23, 24, 2025

**REASONS FOR DECISION**

**Casullo J.**

**OVERVIEW**

- [1] In 2018, Sam Peters Investments Limited (“Sam Peters”) retained Comco Canada Ltd. (“Comco”) to remediate one of its properties. The total cost of the remediation was \$779,441.43. Sam Peters paid Comco \$621,500.
- [2] Comco commenced this action under the simplified procedure to recover the balance owing of \$157,941.43. Sam Peters defended the action and counterclaimed against Comco in the amount of \$650,000 for breach of contract and negligence. Sam Peters did not object to the action continuing under the simplified procedure.
- [3] The central thrust of Sam Peters’ position at trial was that Comco over-remediated the property to a standard higher than required.

## EVIDENCE AND TRIAL PROCESS

- [4] With one exception, the evidence of each witness was entered by way of affidavit, followed by cross-examination and re-direct. The exception was Jolene Organ, junior engineer for Comco, whose affidavit was entered as evidence, but did not testify at trial.
- [5] The expert reports were appended to an affidavit and entered as exhibits, following which the experts were cross-examined.
- [6] The trial took six days to complete, exceeding the five-day maximum mandated under the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. This is due in no fault to counsel, but entirely on the poor internet connection at the courthouse. This was a document-heavy trial. Not only did each document take time to load, thereafter it took an inordinate amount of time for each page within the bundle to populate. I estimate that more than a half-day was wasted waiting for documents to appear on the screen. This trial had me longing for the days of paper being handed up to the bench in real time.
- [7] On the first day of trial, Comco sought leave to late serve its expert report. After hearing submissions, I granted leave orally, with written reasons to follow. These were released on September 25, 2025: see *Comco Canada Ltd. v. Sam Peters Investments Limited*, 2025 ONSC 5461.

## BACKGROUND

- [8] Gordon Thompson is Comco's president. He has a Bachelor of Chemical Engineering and a Masters in Environmental Engineering. Mr. Thompson has 40 years of experience in consulting and environmental remediation, and has been qualified as an expert on three separate occasions.
- [9] Comco is a leader in petroleum management. It is unique in its field, offering both consultation and remediation services. Comco typically provides its services on a "time and materials" basis. As Mr. Thompson explained, the company never knows what it is getting into at the outset of a project, and it is difficult to estimate with accuracy the scope and complexity of a job. Unforeseen issues are the norm, not the exception.
- [10] Miltiadis Petropoulos, who goes by Mike Peters, is the president of Sam Peters. Sam Peters owns numerous properties across Ontario, including strip malls and residential complexes.
- [11] Comco and Sam Peters have a work history spanning decades. Their relationship was free from acrimony until 2019.
- [12] In 2018, one of the properties owned by Sam Peters was a one-storey commercial building located at 387 Ontario Street, St. Catharines, Ontario (the "Property"), in a mixed-use zone encompassing of commercial, industrial, and retail lots. The Property is bordered by Ontario Street to the east and Twelve Mile Creek to the west. Twelve Mile Creek is located within an urban River Valley Boundary and is a provincially significant wetland.

- [13] Four separate leaseholds operated out of the Property in the period leading up to 2018, three retail, one commercial.
- [14] The Property did not have a property manager providing oversight for Sam Peters, as it did for its residential complexes. Instead, Mr. Peters would attend the Property each spring to carry out exterior maintenance. He testified he did not feel the need to investigate the interior of the units on these visits.
- [15] The units of concern in the Property were The Frame Shop and Mr. Transmission. Mr. Transmission was located at the north end of the building. The unit had a small office space to the east, and the balance was used as a garage for servicing vehicles. The garage had four service bay garage doors which ran along the north wall of the building.
- [16] The Frame Shop was the unit beside Mr. Transmission, immediately to the south.

## **COMCO'S PRIOR INVOLVMENT AT THE PROPERTY**

### **2003**

- [17] Comco was involved with the Property when various environmental investigations were completed. Mr. Thompson recalled these were necessary for Sam Peters to obtain financing.

### **2007/2008**

- [18] In 2007, Comco was retained to address heavy oil contamination at the Property, caused by hydraulic oil losses and transmission oil spillages. Previous assessments in 1995 by a different company (The Environmental Management Group Ltd.) confirmed there was significant contamination in the soil due to a cracked grease interceptor and malfunctioning car hoist at the transmission business operating at the north end of the building. The hoists were decommissioned in 1995.
- [19] Comco determined that the oil identified back in 1995 had spread, and a large amount of soil under the transmission shop was heavily contaminated. Mr. Thompson was of the view that the culprit were the hydraulic hoists. Given that Mr. Transmission was operating at the time, Comco provided Mr. Peters with remediation options, including a staged approach using extraction and *in-situ* remediation.
- [20] The remediation took place in 2008, with Mr. Peters selecting the extraction method, colloquially known as "dig and dump" in the industry. Mr. Thompson found that the 1995 decommissioning of the hoists was not done effectively. He also determined that the owner of the transmission shop was carelessly handling waste oils by inadequately, or not at all, servicing an interceptor located directly in the shop, which was in dire need of repair. Interceptors work to separate the oils and solids from the water, thereby preventing contaminants from entering the sewer system.
- [21] The remedial work conducted in 2008 included:

- Decommissioning and removal of three electrical hoists
- Removal of the transmission shop's concrete floor
- Removal of contaminated soil below grade, replaced with brand new, coarse grain soil.
- Treating the limits of the excavation, and the inaccessible areas, with oil degrading microbes
- Removal of the old interceptor system and drains
- Installation of a new, three-stage interceptor, trough, and associated piping to ensure that fuel and oil did not enter the municipal sewage system

[22] The Property was completely remediated. In its final report dated July 29, 2008, Comco confirmed that “no further contamination [was] expected to occur, provided that the interceptor [was] properly inspected and serviced” (emphasis added). This included ensuring that a tank was installed outside of the shop for waste oil disposal, and requiring annual reports from the company confirming they were taking away the oil from the site. Mr. Thompson testified that he gave these recommendations to Mr. Peters personally, encouraging him to ensure such protocols formed part of any future commercial leases.

[23] There was no written contract for the 2008 work carried out at the Property. Comco billed Sam Peters on a time and materials basis. Comco was paid in full.

### **2015**

[24] In 2015, Sam Peters retained Comco to investigate possible contamination at the Property, this time due to two above-ground tanks used to store transmission fluids. These storage tanks were located outside of Mr. Transmission, in the northwest corner of the building.

[25] As a result of fluid leakage, Comco excavated and disposed of 154 tonnes of contaminated soil.

[26] There was no written contract for the 2015 work carried out at the Property. Comco billed Sam Peters on a time and materials basis. Comco was paid in full.

### **2018/2019 REMEDIATION CONTEXT**

[27] It is important to frame this remediation within its proper context, as it was not borne out of an environmental event.

[28] In June or July of 2018, Mr. Peters received an offer to buy the property for \$2.5 million. Mr. Peters' real estate agent had appraised the Property at between \$2 million and \$2.2 million – on the assumption the property was clean.

- [29] In August 2018, Sam Peters locked the owner of Mr. Transmission out of the Property. Mr. Peters testified that not only that owner, but the previous owner from 2008, were unscrupulous. The other three units were already empty.
- [30] Mr. Peters wanted to retain Comco to carry out the remediation.
- [31] Mr. Peters also sought Mr. Thompson's opinion on a clause the buyers wanted to include in the agreement of purchase and sale, to the effect that the offer was conditional on the seller providing the Phase I and II environmental reports showing the Property was clean and satisfactory to the buyer's lenders, by February 28, 2019.
- [32] At that juncture, Mr. Thompson thought the reports could be provided to the buyer at a reasonable cost to Sam Peters, as there was nothing to suggest there would be major work involved in the remediation. He based this assumption on the work carried out by Comco at the Property previously, particularly the complete remediation in 2008, and his express instructions to Mr. Peters about maintenance of the 3-stage interceptor.
- [33] Time was of the essence on this project. Mr. Thompson recalls Mr. Peters wanting the job done as soon as possible. Mr. Peters confirmed this in cross-examination. As he said during his examination for discovery, he wanted the property cleaned up "yesterday." This only stands to reason – an empty strip mall is not generating rental income.
- [34] This particular agreement of purchase and sale (there were a few iterations with this particular buyer) ultimately fell through.
- [35] On December 13, 2018, Sam Peters entered into a new agreement of purchase and sale, with a purchase price of \$2 million. The completion date was to be "on the 10<sup>th</sup> business day following Sam Peters providing the buyer with a clean environmental report from Comco, confirming that the property had been remediated to the standards set out by the Ministry for the current commercial zoning." In other words, the transaction would not close until the remediation was complete and the environmental reports produced to the buyer.

## **ENVIRONMENTAL SITE ASSESSMENTS**

- [36] Before continuing, it is worth diverging slightly to provide an overview of environmental site assessments ("ESAs").
- [37] Phase I and II ESA reports serve different purposes. The objective in a Phase I ESA, which is non-intrusive, is to determine whether the property is subject to actual contamination, whether there are off-site sources of contamination, the location of any potential contaminants on the property, and whether a Phase II ESA is recommended or required. It is not uncommon for Phase I ESAs to be part of a due diligence process surrounding property sales and financing.
- [38] A Phase II ESA involves physical investigation (ie: boreholes and monitoring wells) and assessment of areas of potential contamination as identified in the Phase I ESA. The

objectives of a Phase II ESA include delineating the extent of any contamination, and determining whether the applicable site condition standards (“SCS”) for contaminants in or under the property have been met. The data collected will inform any proposed remediation.

[39] The SCS, set out in Tables 1 through 9 of O. Reg. 153/04, establish maximum concentration limits for soil, groundwater, and sediment at contaminated sites.

[40] Tables 1, 3, and 9 are germane to this action:

Table 1: Full Depth Background Site Condition Standards

Table 3: Full Depth Generic Site Condition Standards in a Non-Potable Groundwater Condition

Table 9: Generic Site Condition Standards for Use within 30 m of a Water Body in Non-Potable Groundwater Condition

[41] Table 1 applies to sensitive sites and is the most stringent standard. Table 9 SCS applies to sites within 30 m of a waterway, or an Area of Natural or Scientific Interest (“ANSI”).

[42] Without getting too deep into the woods, while Tables 1 and 9 apply to different sites, the standards for the identified contaminants of concern at the Property, petroleum hydrocarbons (“PHC”) F1 to F4 and benzene, toluene, ethylbenzene, and xylenes (“BTEX”), have the same allowable exceedances in both Tables 1 and 9. Thus, remediation of the Property to a Table 1 or Table 9 would produce the same result.

[43] Table 3 SCS applies to a site that is not located near sensitive areas or waterways. Table 3 SCS is understood to be a less stringent standard than either Table 1 or Table 9.

## **2018/2019 REMEDIATION**

[44] Pursuant to the applicable legislation, Mr. Thompson was the Qualified Person (“QP”) for the Property’s remediation, both from a consultation perspective, in terms of preparing the Phase I and II ESA reports, and ensuring the remediation was carried out by his staff at the site.

[45] Comco agreed to do the remediation on a time and materials basis, as it had numerous times in the past. As Mr. Thompson testified, the true extent of contamination is an unknown until excavation begins. Comco was provided with a \$50,000 retainer.

[46] There was no written contract setting out the agreement between the parties. Comco did not provide a cost estimate. Sam Peters did not give Comco a budget within which to work.

[47] The crew began working at the Property on September 11, 2018. Upon arrival, three of the Property’s units appeared to be well-kept. The “housekeeping” with the fourth, Mr. Transmission, was described as lacking in the Phase I ESA.

[48] The Phase I ESA identified the following areas of potential environmental concern (“APEC”):

- staining on the pavement on the north side of the Property, in front of the transmission shop;
- staining on the concrete and gravel pad on the northwest side of the property, from an above-ground storage tank that was not properly maintained;
- above-ground storage tanks and hydraulic lifts inside the transmission shop; and
- a commercial garage (Midas shop) across from the north side of the Property.

[49] These APECs were related to specific activities, including bulk gasoline and fuel storage that could be of concern for environmental contamination in the event of a spill. The Phase I ESA concluded that the Property presented significant environmental risk to a potential purchaser, and a Phase II ESA was recommended.

[50] In the Phase II ESA, specific invasive investigations were undertaken to identify impacted areas of PHCs on the Property, primarily by using boreholes and monitoring wells drilled in strategic locations, where soil and groundwater sampling was conducted. The assessment revealed evidence of environmental impact on the Property. Remediation was recommended. Sam Peters approved the work.

[51] Given the Property’s proximity to the Twelve Mile Creek property, it was Mr. Thompson’s professional opinion that the Property was environmentally sensitive and should be remediated to a Table 9 SCS.

[52] However, in 2018 it was well known that Twelve Mile Creek was significantly impacted given its proximity to the Welland Canal. Mr. Thompson thought it would be counterproductive to remediate to a Table 9 SCS when the waterway was less than pristine. In a bid to save Sam Peters the expense of remediating to a higher Table standard than necessary, Mr. Thompson instructed his intern, Ms. Organ, to seek permission from the Ministry of the Environment, Conservation and Parks (“MECP”) to remediate to a Table 3 SCS.

[53] MECP advised that Comco could only remediate to a Table 3 SCS if the property owner was prepared to complete either a Risk Assessment, or a Modified Generic Risk Assessment. In Mr. Thompson’s experience, both options could take months or years to complete. Considering Mr. Peters’ stated objective to get the work done quickly, the Risk Assessment and Modified Generic Risk Assessment options were rejected.

[54] As a result, Comco remediated the Property to a Table 9 SCS. Dig and dump was the chosen method.

### ***Exterior Remediation***

- [55] The remediation undertaken at the Property is important to my analysis, which compels me to set it out in some detail. As noted earlier, the contaminants of concern based on historic use of the Property, including the storage of fuel oil and use of the Property for vehicle repairs and maintenance, were PHC and BTEX.
- [56] The project began in September 2018 with the installation of seven exterior boreholes (“BH”). Before the sampling results from the BHs were received, staff began their cleanup and remediation in the northwest corner of the Property’s exterior, as this was where Mr. Thompson expected the greatest remedial work. The site was cleared of extensive debris left behind by the tenant, including a truck, a trailer, barrels, rubber totes, pails of liquid, wooden pallets, and a 200-gallon above-ground storage tank. Some impacted soil in the vicinity of the storage tank was also removed, following which the area was backfilled and graded.
- [57] The soil samples from BHs 1, 6, and 7, which were in the vicinity of the above-ground storage tank, came back as exceeding Table 9 SCS. Further excavation uncovered significant impact close to the Property’s footings. This troubled Mr. Thompson, who worried that there may be impact under the building. Accordingly, staff were instructed to install boreholes in the interior of The Frame Shop and Mr. Transmission.
- [58] Because BHs 1, 6, and 7 were located within 30 meters of the ANSI, they were remediated to a Table 9 SCS.
- [59] BH 2, located just outside the bay doors of Mr. Transmission, uncovered evidence of PHC impact under the footings at the north end of the building. This discovery added to Mr. Thompson’s concerns about contamination under the building itself. Excavation of BH 2 was remediated to a Table 9 SCS, despite being more than 30 m from the ANSI.
- [60] BH 4, located in the southwest corner of the back of the building, was remediated to a Table 9 SCS because it was located within 30 m of the ANSI. Mr. Thompson testified that this was a challenging area to excavate given the substantial volume of buried rubble. This was likely due to the Property’s history as a trucking company yard (as determined in the Phase I ESA).
- [61] BHs 3 and 5 met Table 9 SCS and were not remediated.

### ***Interior Remediation – Below the Frame Shop and Mr. Transmission***

- [62] Interior boreholes were installed between November 29, 2018 and December 6, 2018, the majority placed in the area separating The Frame Shop and Mr. Transmission.
- [63] The BH logs confirmed impact was present below grade. A few examples include:
- BH 18 uncovered a visible black layer with an odour at 30”, and an odour of “varnish smell” at 54”, and a brown/grey clay layer at 57”

- BH 14 uncovered a dark brown colour with possible odour
- BH 17 had an odour present
- BH 15 had a high odour detected at 22” with a black layer visible between 39-49”
- BH 21 had a high odour present
- BH 22 showed very wet soil
- BH 25 showed wet material and black layer

[64] Bryce Longtin, environmental technologist at Comco, recalled that there was evidence of PHC impacts around BHs 8, 9, 10, 11, 14, 15, 17, 19, 20, 21, 22, 23, 24, and 25. This evidence was gathered through sight and smell, measurements and readings from the PID instrumentation, and laboratory analysis of soil samples.

[65] Based on these findings, staff were instructed to begin excavating the interior to investigate these impacts further.

[66] It was during this investigatory excavation that things went from “possibly bad” to “much worse”. A sanitary sewer pipe was discovered in The Frame Shop area. This pipe, which had a noticeable break, was connected to the 3-stage interceptor that had been replaced in 2008. The pipe was clearly broken, with black product underneath, and sheening evident in water pooled around it. The sewer pipe had oil in it, which the 3-stage interceptor was supposed to prevent.

[67] Mr. Lee, senior environmental technologist at Comco, confirmed the pipe was connected and operational by running water through the line from the Transmission Shop washroom and observing water running from the pipe. Ms. Longtin recalled the smell at the broken pipe break being quite noticeable.

[68] Mr. Thompson also observed the sanitary sewer pipe *in situ*. He noted that it was constructed of asbestos materials and appeared to lack coupling at the joints, allowing wastewater, raw sewage, and PHCs from the interceptor to escape into the surrounding soil.

[69] Mr. Thompson determined that the best approach to this unanticipated complication was to expose the pipe over its entire length, remove it, excavate the contaminated soil, replace the pipe and then backfill with clean product.

[70] On December 6, 2018, Mr. Thompson informed Mr. Peters that they had found a broken sewer pipe that had leaked oily water and oil into the ground, which had spread under the footing of the wall between The Frame Shop and Mr. Transmission. Comco would have

to underpin the wall between The Frame Shop and Mr. Transmission to facilitate the clean up<sup>1</sup>. He also advised that this solution was going to delay Comco's progress.

- [71] On December 7, 2018, Mr. Peters approved the plan via email, stating “[I]et’s get this done as soon as possible.”
- [72] Comco staff were instructed to begin excavating along the sanitary line, following the PHC impact.
- [73] Throughout the process, the team could see and smell PHC impacts under the pipe. Visually, there was dark discolouration (grays and dark black) of the soil, with some sections leaving behind a tar-like residue when removed. As the excavation advanced, it became apparent that the impact had migrated under the north wall separating The Frame Shop from Mr. Transmission.
- [74] The pipe travelled from the 3-stage interceptor in Mr. Transmission, to the washroom in Mr. Transmission, and then curved into The Frame Shop. It continued along the entirety of The Frame Shop’s wall, to the east termination of the building and beyond – to the property line on Ontario Street, and ultimately the municipal sewer system.
- [75] A number of soil sections were sampled, but given the glaring and widespread PHC impact, sending these samples out for laboratory testing was deemed unnecessary.
- [76] On December 12, 2018, Mr. Thompson advised Mr. Peters that the sewer line had been uncovered. The pipe was old asbestos and concrete, and was badly broken where the interceptor discharge pipe joined the sanitary sewer under The Frame Shop. Mr. Thompson believed it had been leaking for a long time.
- [77] He described how the leak had migrated down under The Frame Shop and under the load bearing wall between it and Mr. Transmission. However, despite what they uncovered, Comco could maintain its intended approach to this aspect of the remediation, which was to remove the broken pipe the entire length of the contamination, and replace it once the cleanup was complete. Comco would then move into Mr. Transmission to underpin the bearing wall, to avoid structural failure while removing the contaminated soil.<sup>2</sup>
- [78] Mr. Peters authorized Comco to proceed with the remediation.
- [79] On December 18 and 19, 2018, while excavating The Frame Shop, the crew uncovered an 18” steel culvert that was not connected to anything. Both Ms. Longtin and Mr. Lee saw evidence of heavy oil contamination around the pieces of culvert they excavated. There was also a visible sheen on the water in the culvert’s excavation cavity.

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<sup>1</sup> It turned out that there were already footings in place, so this work was not required.

<sup>2</sup> Again, this step was not required.

- [80] There was impacted soil along the east wall inside The Frame Shop, closest to Ontario Street, where the sanitary line exited the building. An exterior test pit revealed evidence of contamination similar to that of the interior. Mr. Thompson advised his team to excavate all PHC impacted material. This exterior excavation involved breaking through asphalt in the parking area, and digging impacted soil out of the ground. According to Mr. Lee, this was an area of significant impact. Photographs at Exhibit P to Mr. Lee's affidavit demonstrate just how deep Comco had to dig outside of the building to remove the PHC-impacted soil.
- [81] In January 2019, Mr. Lee discovered a 2" pipe in the interior of The Frame Shop unconnected to anything. The pipe was filled with oil, and had impacted the surrounding soil. The pipe was removed and the surrounding soil excavated.
- [82] In February 2019, while excavating the western impact limits of The Frame Shop, Mr. Lee came across significant water coming from the Mr. Transmission side. He uncovered a 2" steel pipe running horizontally through the wall, and the surrounding area was heavily contaminated.
- [83] In late February, while Mr. Lee was excavating under The Frame Shop's utility room, he saw and smelled heavy oil impact around the water service, where it came through the foundation wall.
- [84] On March 13, 2019, Mr. Thompson provided Mr. Peters with the following update:
- The area by Ontario Street was clean
  - The plumber had replaced the sewer line, and The Frame Shop was clean (floor still to be laid)
  - Mr. Transmission was 60% complete
  - The environmental report should be ready by the end of the month (Mr. Thompson hoped it wouldn't jeopardize the deal)
  - The project would be overbudget, even with Comco's cost cutting, due solely to the leaking sewer line
  - Total amount of contaminated soil removed was at 1600 tonnes and expected to grow to 1900 tonnes, way beyond original estimates

- Mr. Thompson estimated a final number of \$325,000<sup>3</sup>

- [85] The Comco crew then turned their efforts to Mr. Transmission. In order to work in the space, they had to remove ceilings and walls so they could move around freely. They also removed an above-ground storage tank that should not have been inside the unit.
- [86] On March 19 and 20, 2019, in the vicinity of the old office, the crew encountered impacted soil in the northeast corner of the unit. Over the next few days, they followed the contamination along the exterior foundation wall toward the 3-stage interceptor tank, working from east to west. Mr. Lee described using his senses of sight and smell to guide his investigative efforts. Dark tar-like impact was visible, as was sheening on the water in the excavation cavity.
- [87] Again, relying on their visual and olfactory observations, the team determined that the entirety of Mr. Transmission shop was impacted, and it was excavated accordingly. The photograph attached as Exhibit T to Mr. Lee's affidavit shows the magnitude of this area of remediation – a cavernous unit was dug out approximately five feet below ground level.
- [88] In late March/early April 2019, Mr. Lee spent several days working around BH 4 at the rear of the building, where significant visible impact was present. Remediation in this area was extensive, as the contamination was widespread with limits that were difficult to delineate. During the excavation, catch basins with piping were discovered, the usage for which was unknown. Staff were directed to plug the basins with concrete, leave them in place and backfill to grade. Photographs of this are appended as Exhibits W and X to Mr. Lee's affidavit, and demonstrate the breadth of the work carried out by Comco.
- [89] On April 10, 2019, The Frame Shop's concrete floor was poured.
- [90] Comco delivered the Phase II ESA to Mr. Peters on April 10, 2019. Mr. Peters believed the wording did not reflect the buyer's requirement for a clean environmental report from Comco, stating that the Property had been remediated to MECP standards for commercial zoning. Mr. Thompson disagreed, pointing out to Mr. Peters that the report said exactly that. Mr. Peters remained dissatisfied. At the end of the day, Comco provided a letter of assurance to Atlantic Bridge Investments confirming it could rely on the report in evaluating the environmental condition of the Property.
- [91] In his cover letter attaching the letter of assurance, Mr. Thompson advised Mr. Peters that he had only ever seen one site worse than the Property in his long career.

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<sup>3</sup> Whether this meant \$325,000 in total for the project (Mr. Peter's evidence), or another \$325,000 (Mr. Thompson's evidence) was never clarified during the trial. What was clear is that Mr. Peters did not seek an explanation from Mr. Thompson. As he put it, "the bill was going to be whatever the bill was."

- [92] The sale of the building ultimately went through.
- [93] As noted, remediation continued after delivery of the Phase II ESA, with Comco incurring significant costs. The Phase II could be safely delivered before remediation was complete because the limits of contamination had been identified and sampled.
- [94] Given that the sale could not close without the site being in “hand over” condition, and Mr. Peters’ overriding message of urgency, Comco paid staff overtime to work the Easter holiday weekend (April 21 and 22, 2019) to ensure the work was complete. Comco did not pass this cost on to Mr. Peters.
- [95] In the normal course, Comco would have completed the Phase II ESA before remediating. Mr. Peters would have been told that the Property was contaminated and required remediation. However, and again given the need to get the job done quickly, Mr. Thompson characterized his process as more of an “after clean up Phase II.” In this case, it was clear the Property was contaminated based on early borehole sampling results. Obviously, the extent of the contamination was unknown.
- [96] Throughout the period of remediation, Mr. Peters thought he attended the Property twice. Once in the fall, where he not only saw the debris that the tenant had left behind on the exterior of Mr. Transmission, but could smell oil in that same area. He returned in the spring where he observed a big hole in the middle of a unit. He could not recall which unit.

## **INVOICING AND PAYMENT**

- [97] Comco submitted monthly invoices to Mr. Peters. Each invoice provided significant particulars regarding the charges. Mr. Thompson personally reviewed each invoice before it was sent to Sam Peters. In certain instances, he made reductions. For example, the November 30, 2018 invoice was discounted by 17% (\$17,121.42). At other times, Comco would not charge Sam Peters for hours his crew worked if, for example, there was duplication of staffing requirements. Instead, the hours were documented but marked as NC, or documented with a unit price of \$0.00.
- [98] In his December 6, 2018 email, Mr. Thompson updated Mr. Peters about the costs to date which, according to the invoices, was in the vicinity of \$81,000. He confirmed the 17% discount on the November invoice, and estimated the balance of the work to be another \$50,000. Recall that in early December, the team had not uncovered (a) that the sanitary pipe that was leaking the entire length of The Frame Shop wall; (b) the contamination under the Transmission Shop; or (c) the extent of contamination at BH 4 at the rear of the building.
- [99] During cross-examination, Mr. Peters stated that by this point, it would not have been in Sam Peters’ interests to stop the project. As he phrased it, “in for a penny, in for a pound.” He understood Comco could not switch horses mid-stream, it had to continue the remediation plan already in operation.

- [100] On April 11, 2019, Mr. Thompson advised Mr. Peters that the project was going to approach \$500,000. At that point over 3000 tonnes of contaminated soil had been hauled out. That equates to over 150 tri-axle dump trucks of waste.
- [101] In his April 23, 2019 email to Mr. Peters, Mr. Thompson advised that once the above-ground plumbing inspection was completed in two days, his crew would be off-site. Mr. Thompson asked Mr. Peters when he would be able to release funds, as Comco had been carrying the receivables for quite some time. Up to this point Sam Peters had only paid \$81,860.47, and outstanding balance was in the vicinity of \$400,000.
- [102] On May 4, 2018, Sam Peters paid \$539,639.53 of Comco's outstanding account, leaving the \$157,941.43 at issue in this litigation.
- [103] On June 11, 2019, June 27, 2019, and July 9, 2019, Mr. Thompson and/or Comco sent Mr. Peters emails seeking an update on payment.
- [104] On July 11, 2019, Mr. Peters advised that he had been away and then ill, but would reach out the following week to provide his concerns with the account.
- [105] On August 19, 2019, Mr. Thompson followed up again, looking to resolve the account.
- [106] On August 23, 2019, Mr. Thompson asked that the account be resolved before the end of the month.
- [107] On August 27, 2019, Mr. Peters advised Mr. Thompson that aside from his surprise at the final bill, he had other questions about previous work carried out by Comco at the Property over the years, though he was not then ready to address them.
- [108] On September 3, 2019, Mr. Thompson wrote to Mr. Peters, apparently after a phone call between them. Mr. Thompson accepted that the two were now adversaries, and he lamented discounting the invoices over the course of the project based on their longstanding relationship. Mr. Thompson explained that Comco had carried the receivables owing on the understanding that the account would be satisfied once the sale of the Property was complete, and the interest on that alone was significant. Mr. Thompson queried whether Mr. Peters fully understood the scope of the work necessary to bring the Property up to code to allow it to be sold. In closing, Mr. Thompson offered his thoughts on litigation, to the effect that once that route is taken, it was expensive and took a long time.
- [109] Mr. Peters replied on September 18, 2019, that the funds Comco had already received were fair and adequate compensation for the remediation of the Property. He went on to accuse Mr. Thompson of costing him \$100,000 by recommending a Record of Site Condition without informing Mr. Peters that this would cause a one-year delay. Mr. Peters was of the view that this \$100,000 should be deducted from Comco's final bill, and Mr. Peters offered to settle on this basis.

[110] Should Mr. Thompson not accept his offer, Mr. Peters was prepared to litigate. He provided a personal example concerning his nephew and his late sister's share in their (Mr. Peters and his sister's) company, seemingly in answer to Mr. Thompson's comment on litigation:

After spending almost \$360K in legal fees (before HST), I managed to ensure that that kid had to spend the next five years paying dearly to fight me, only to accept a cash settlement that was not only a fraction of his original claim, but also a fraction of what those values are probably worth now, almost seven years after it all began.

[111] Mr. Thompson flat out denied ever recommending a Record of Site Condition, particularly because the Property's land use designation was not changing.

### **THE LITIGATION**

[112] Comco advanced a claim for its outstanding account.

[113] Mr. Peters defended the claim, counterclaiming that Comco breached its contract with Sam Peters by remediating to a Table 9 SCS when this was not required and indeed excessive, resulting in approximately \$600,000 worth of unnecessary work.

[114] In support of its position that the Property had been over-remediated, Sam Peters retained Donald Cavan and Theresa Phillips of Pinchin Ltd. to evaluate the environmental work completed by Comco at the Property. Pinchin served a total of four reports dated October 4, 2021, September 28, 2022, November 11, 2022, and March 3, 2023.

[115] This in turn caused Comco to retain its own expert, Victoria Rochon, of Roar Engineering, to respond to Pinchin's expert reports. Roar served a total of three reports dated June 24, 2022, October 21, 2022, and April 25, 2023.

[116] For reasons set out in detail in my decision of September 25, 2025, Ms. Rochon could not testify at trial because she was on maternity leave: see *Comco Canada Ltd. v. Sam Peters Investments Limited*, 2025 ONSC 5461. Comco retained Kerry-Anne Pumphrey of BlueFrog Environmental Consulting Inc., on an extremely short turn-around, who delivered a report dated July 24, 2025. As noted at the outset, the plaintiff's motion for leave to extend the time for service was granted.

[117] A total of eight reports, plus an affidavit from Pinchin's engineer commenting on Ms. Pumphrey's report, were delivered.

[118] The reports are highly technical, but days of evidence can be distilled to the following propositions:

- Both experts agreed that the property required remediation.
- Both experts agreed with the remediation methods applied by Comco.

- Both experts agreed that the lands to the east of the Property's 30 m line should be remediated to a Table 1 SCS.
- Both experts agreed that the lands to the west of the Property's 30 m line should be remediated to a Table 3 SCS.
- Both experts agreed that Table 1 SCS, not Table 9 SCS, was the appropriate standard.

[119] Pinchin was critical of Comco's methods of determining what level the site was contaminated to. Comco's decision to send only limited samples for laboratory testing led it to erroneously conclude the Property was to be remediated to Table 9 SCS versus Table 3. Pinchin submitted that interim soil sample testing was necessary to confirm whether elevated concentrations of the contaminants warranted further remedial efforts.

[120] Contrary to Pinchin's position, Ms. Pumphrey explained there are other ways to check for contamination apart from accepted industry standards of visual and olfactory observations:

- The pebble test for standing water with sheen: a pebble is thrown into the water. If the sheen separates and comes back together, the sheen is petroleum.
- The jar test for soil: place suspected soil in a clean jar, add water and shake. If a petroleum sheen comes off of it, the soil is contaminated.

[121] In respect of the Property, which had a known source for free phase (PHC) in the broken interceptor, along with obvious heavy black staining and an accompanying odour, there was no question that contaminant was present. As Ms. Pumphrey explained, the extensive laboratory testing posited by Pinchin in such cases is unnecessary: "if it walks like a duck, talks like a duck, and looks like a duck, it is a duck."

[122] BlueFrog concluded the Property was not over-remediated despite Comco's application of the more stringent Table 9 SCS across the entire Property. This was attributable to the presence of PHC within the soil which, when present, exceeds any Table standard.

## **POSITIONS OF THE PARTIES**

### ***Mr. Thompson***

[123] Mr. Thompson submits that Comco completed the contract as required. While the remediation was on a scale greater than either he or Mr. Peters envisioned, this was not due to over-remediation. When Comco was retained, neither party was aware of the extent of the site's contamination vis-à-vis the actions of Mr. Transmission's tenant.

[124] Mr. Thompson testified that he would never have agreed to remediate the property to two different Table standards. First, over his long career he had never done so when no Record of Site Condition was being sought. Second, his overarching concern was the potential for the contamination to migrate. Because the regional groundwater generally flowed west

toward Twelve Mile Creek, the poorly remediated portion (Table 3 SCS) could migrate onto the cleaner portion (Table 1 SCS), recontaminating it. Third, remediating to two different standards risked exposing Comco to future claims – from Sam Peters, or future owners of the Property, who might question whether the remediation was adequate.

[125] As he testified, “one site, one table.” He was unshaken in cross-examination on this position. However, even *if* Mr. Thompson had decided to remediate to two different Table standards, the remediation that was ultimately carried out would have been required in any event, given the pure product found in the envelope of the building once renovation began.

**Mr. Peters**

[126] Mr. Peters believes that the high cost of this project was due to over-remediation. Mr. Peters took no issue with the quality of the work performed, testifying that Comco did a “great job.” Comco simply did more remediation than was legally required, “back ending” their invoices by submitting two enormous final bills.

[127] It is Mr. Peters’ belief that had the site not been over-remediated, he would have saved himself hundreds of thousands of dollars. As he testified:

I knew something was wrong. There were too many loose ends. It was back-end loaded and when I got Pinchin to look into it, I was right. I’ve always gone with my gut. And my gut’s always right.

[128] While nothing turns on this, over-remediation was not Mr. Peters’ initial quarrel with Comco. In his email to Mr. Thompson dated September 18, 2019, he does not raise the issue of over-remediation. Instead, he claims that Mr. Thompson cost him \$100,000 by recommending a Record of Site Condition.

**ANALYSIS**

[129] I find that the evidence overwhelmingly supports the conclusion that Comco did not over-remediate the Property. Comco carried out the work it was retained to do pursuant to the terms of its contract with Mike Peters. It provided a Phase I and Phase II ESA as soon as was reasonably practicable.

[130] The property was highly contaminated. The cost to remediate it was entirely of Mr. Peters’ own doing, and had nothing to do with Comco over-remediating.

[131] Mr. Peters admitted he only attended the Property once a year, generally to do exterior maintenance. He testified that he had no need to go inside the units on these visits to inspect his tenants. Mr. Peters chose not to hire a property manager to oversee his tenants at the Property, although he did so for his residential properties.

[132] What came to pass was predicted by Mr. Thompson in 2008. He specifically cautioned Mr. Peters that the interceptor required maintenance.

- [133] Mr. Peters testified that he followed Mr. Thompson’s advice with the new tenant who took over Mr. Transmission following the 2008 remediation. He hired a third party company to monitor and maintain the interceptor at Mr. Transmission. Mr. Peters could not remember the name of the company, but he said that the company’s invoices would be Sam Peters’ office.
- [134] Mr. Peters also testified that he installed an exterior tank to dispose of waste oil, and required the tenant to produce annual reports confirming the oil was being removed from the site.
- [135] However, on this crucial aspect of the case – maintenance of the interceptor – no documentation was provided to the court to substantiate that it in fact occurred. Not the invoices from the third party company. Not the annual reports of oil being removed from the site. All of which leads me to believe that Mr. Peters was an absentee landlord with no “eyes” on a tenant whom he described as unscrupulous.
- [136] With no evidence of maintenance, the build up of PHCs in the interceptor’s chambers compromised its functionality, leading it to fail to separate PHCs from the wastewater. This build up caused PHCs to enter the sanitary line that travelled from the interceptor, leak throughout the foundation of the Property from the broken sewer line, culminating in contaminants being discharged to the municipal system. The lack of interceptor maintenance also caused a PHC-mixed sludge to clog the pipe, leading to a backflow which caused product to overflow the chamber covers and seep below the concrete.
- [137] I agree with Mr. Thompson. Mr. Peters had allowed the tenant to “destroy” the Property by turning a blind eye to his continued pollution.
- [138] This was not an instance of an unscrupulous company taking advantage of another. The parties had a long-standing, positive history. Both agreed that the remediation took longer and cost much more than anticipated.
- [139] Mr. Peters testified that it was implicitly understood between he and Mr. Thompson that the cost of the remediation should be as low as possible. However, there was no evidence to show that such a discussion ever took place.
- [140] Mr. Peters agreed that at some point during the project, Mr. Thompson advised him that the remediation would be incredibly significant and could not be estimated. Further, Mr. Peters understood that any estimates provided by Comco were only that, and were based solely on the information available to Mr. Thompson at the time.
- [141] Mr. Thompson provided Mr. Peters with updates whenever a new or unexpected development arose. He also provided detailed monthly invoices. Despite receiving such information, Mr. Peters never once questioned Comco’s findings or methods, or asked Mr. Thompson to clarify the invoices.
- [142] During a *voir dire* on September 18, 2025, Mr. Moldaver made a comment that struck me. He said that “this case is an expert’s case.” With the utmost of respect, I could not agree

less. In my view the experts' findings were largely unnecessary, and a significant amount of court time was wasted getting bogged down in the weeds with issues such as the terminology used – PHC vs free phase, and whether the experts could actually see the staining in the photographic evidence.

[143] Allow me to elucidate. Mr. Peters needed the Property to be remediated. Each expert agreed that the Property required remediation. Each expert also agreed on the applicable SCS.

[144] As the saying goes, however, the devil is in the details. None of the trial experts were on site during the remediation. They did not have a first-hand opportunity to observe the quality of the soil under the Property, make observations of smell, or the extent of the work carried out by Comco. In other words, no boots on the ground.

[145] But Mr. Peters had an expert with boots on the ground during the remediation. Mr. Thompson. He remained unshaken during a thorough cross-examination, and held his ground that he could say with 100% certainty whether soil was contaminated based on his faculties of sight and smell alone. Extensive laboratory testing was not going to tell him what he already knew – the Property was highly contaminated in the area along the broken sewer pipe, and below Mr. Transmission.

[146] Mr. Thompson had me at “I was standing in the stuff.”

[147] Neither was this case a test of credibility. Mr. Peters was clearly an astute businessman, knowledgeable about properties and tenancies, the requirements for environmental reports for lenders and buyers of property, etc. At times he was evasive and could not remember details, while at other times he had a great facility for recall. I would not say he attempted to mislead the court, but he was careful about the information he gave, and seemed to want to give the impression that he was rather naive.

[148] Mr. Thompson, on the other hand, was straightforward, concise, and direct in his answers. He conceded where he needed to. He was clearly knowledgeable in his field. I feel we are all the better for having experts like Mr. Thompson take his work seriously.

[149] When the evidence of the two diverged, I preferred Mr. Thompson's evidence over Mr. Peters'.

## **INTEREST**

[150] Should Comco be successful, it seeks interest at 2% per month, or 26.7% per annum, on Sam Peters' overdue accounts.

[151] While there was no explicit discussion or agreement concerning interest, each invoice Mr. Peters received from Comco contained a section in bottom stating that 26.7% per annum would be charged on overdue invoicing. Not only for this project, but over their entire history together.

- [152] While in the past Sam Peters was often late paying its account, Comco had never invoked its right to charge interest. In this instance, given the significant interest Comco has incurred while carrying Sam Peters' accounts receivable, Comco seeks interest at the full, prescribed rate.
- [153] Mr. Peters submits that interest rates were never agreed to by the parties. As there was no express agreement as to interest, interest should be limited to simple prejudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43.
- [154] Section 4 of the *Interest Act*, R.S.C. 1985, c. I-15 provides as follows:
4. Except as to mortgages on real property or hypothecs or immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.
- [155] In the absence of a contractual agreement on interest, interest cannot legally be imposed by simply adding interest charges to an invoice: *Gilbert Steel Ltd. v. University Construction Ltd.* (1976), 12 O.R. (2d) 19 (C.A.).
- [156] However, I do not agree that I am limited to awarding interest at the *CJA* rate. The court retains discretion to depart from the prescribed *CJA* interest rate by accounting for, *inter alia*, the circumstances of the case.
- [157] Sam Peters had received a similar form of invoice for virtually every project it completed for Comco. These invoices clearly stated interest would be charged on overdue accounts, and included the rate. While interest was not specifically discussed by the parties when the contract was entered into, or ever charged in the past, I find that through their consistent course of dealing, Sam Peters had actual notice of the terms of interest it would be subject to on overdue accounts.

## CONCLUSION

- [158] Comco is granted judgment in the amount of \$157,941.43 for the unpaid invoicing.
- [159] Judgment is subject to prejudgment and post-judgment interest at the rate of 2% per month, or 26.7% per annum, without set off.
- [160] Sam Peters' counterclaim is dismissed in its entirety.

**COSTS**

[161] As the successful party, Comco is presumptively entitled to its costs.

[162] In the event the parties are unable to agree on costs, the plaintiff shall provide written submissions (no longer than five pages, exclusive of a bill of costs) within twenty days. Sam Peters' written submissions (no longer than five pages, exclusive of a bill of costs) are to be made within twenty days thereafter. Reply submissions (no longer than two pages) shall be made within ten days.

[163] All costs submissions shall be delivered via email through my assistant at [BarrieSCJJudAssistants@ontario.ca](mailto:BarrieSCJJudAssistants@ontario.ca). If no submissions are received within 14 days from the above date, the issue of costs will be deemed to have been settled between the parties, and costs will not be determined by me.

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CASULLO J.

**Released: March 23, 2026**