

CITATION: The Original Plumbing Co. Inc. v. Anacond Contracting Inc.,
2026 ONSC 1898

COURT FILE NO.: CV-19-00619002

MOTION HEARD: 20260225

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Original Plumbing Co. Inc., Plaintiff

AND:

Anacond Contracting Inc., Defendant

BEFORE: Associate Justice B. McAfee

COUNSEL: J. Hewlett and F. Warraich, Counsel, for the Plaintiff

S. Waraich, Counsel, for the Defendant

HEARD: February 25, 2026

ENDORSEMENT

The Motions

- [1] There are two motions before me. The plaintiff and the defendant have each brought a motion for various relief including answers to undertakings and refusals given on examinations for discovery.

The Parties

- [2] The plaintiff is a corporation carrying on business as a provider of plumbing and heating services. The defendant is a corporation carrying on business as a construction contractor and sub-contractor.

The Action

- [3] In the statement of claim the plaintiff alleges that in the fall of 2017 and winter of 2018, the plaintiff and defendant contracted for services regarding three separate projects at three different properties being the Kortright Visitor's Centre Renovation Project, the Cummer Community Centre Project and the Scarborough Animal Hospital Project. The plaintiff was retained by the defendant to perform plumbing, heating, ventilation, and air-conditioning work for each project.
- [4] Following the defendant's termination of the plaintiff in connection with the three projects, the plaintiff commenced this action on April 30, 2019, seeking damages in the amount of

\$235,358.88 for breach of contract and unjust enrichment, \$50,000.00 for punitive damages and alternative and other relief.

[5] On or about June 5, 2019, the defendant served a statement of defence and counterclaim seeking damages of \$1,350,000.00.

[6] The reply and defence to counterclaim is dated July 29, 2019.

Plaintiff's Motion

[7] The relief remaining at issue on the plaintiff's motion is an answer to one undertaking and one refusal. The plaintiff seeks answers to undertaking no. 27 and refusal no. 13 from the examination for discovery of the defendant representative A. Fallone held on July 16, 2021, as set out in the Form 37C chart.

Undertaking no. 27

[8] At undertaking no. 27 the defendant undertook to provide particulars of the \$300,000.00 damage claim at paragraph 67(i) of the statement of defence and counterclaim.

[9] On July 22, 2024, the defendant advised that the \$300,000.00 in damages are particularized as follows: damages in the sum of \$150,000.00 are attributed to breach of contract and damages in the amount of \$150,000.00 are attributed to negligent representation. The defendant submits that the undertaking has been answered.

[10] The defendant's response does not particularize the damages claim. Beyond allocating \$300,000.00 equally between breach of contract and negligent representation, the defendant has not provided particulars including what makes up these amounts, how the amounts are calculated and to which of the three contracts the amounts relate. The undertaking remains outstanding and shall be answered.

Refusal no. 13

[11] At refusal no. 13 the defendant refused to provide quantification particulars in relation to paragraph 67(i) and (ii) of the statement of defence and counterclaim.

[12] On June 10, 2024, the defendant provided an answer that the question is refused and that the particulars have already been pleaded.

[13] Questions pertaining to the issue of damages are relevant and a party is entitled to know the damages sought against it (*Lafontaine-Rish v. Global TV News*, 2004 CarswellOnt 657 (Ont. S.C.J.) at paras. 35, 42, 45, 50, 53, 59, 62-64; *Patchett v. 1582683 Ontario Limited*, 2014 ONSC 2013 (Ont. S.C.J.) at para. 19. As stated by Master Pope in *Delta Investments v. HSBC Securities*, 2015 ONSC 3938 (Ont. S.C.J.) at para. 41, if a party cannot ask these questions at the discovery stage, when can they ask?

- [14] Paragraph 67(i) of the statement of defence and counterclaim claims damages in the sum of \$300,000.00 “... for breach of contract and negligent representation”.
- [15] As noted above, attributing the \$300,000.00 equally between breach of contract and negligent representation is not sufficient particularization or quantification. In addition, at paragraphs 73, 75, 76 and 86 of the statement of defence and counterclaim, which are pleadings relating to the claims for breach of contract and negligent representation, the defendant has included a pleading that full particulars will be provided prior to trial.
- [16] Paragraph 67(ii) of the statement of defence and counterclaim claims a single damage figure of \$1,000,000.00 “...for negligent interference with economic relations, loss of profit, loss of opportunity, delay and other damages to be determined prior to or at Trial of the matter herein”.
- [17] The defendant has not identified how the \$1,000,000.00 is allocated between each of the listed causes of action at paragraph 67(ii) and has not identified which causes of action are being referred to with respect to “other damages”, has not identified which of the projects relate to each of these claims and what makes up each alleged loss. Where a cause of action is pleaded at paragraph 67(ii) and is subsequently referenced within the pleading, the pleading does not provide the particulars of quantification (see for example paragraphs 77, 85 and 89 of the statement of defence and counterclaim).
- [18] Asserting that the particulars have already been pleaded is inconsistent with the pleading that full particulars will be provided or other damages to be determined prior to or at trial.
- [19] Refusal no. 13 is a proper relevant question that has not been answered and shall be answered.

Defendant’s Motion

- [20] The relief remaining at issue on the defendant’s motion is an answer to five undertakings. The defendant seeks answers to undertaking nos. 8, 9, 23, 26 and 35 from the examination for discovery of a representative of the plaintiff A. Lipiec held on July 15, 2021, as set out in the Form 37C chart.

Undertaking nos. 8 and 9

- [21] Undertaking no. 8 is to make best efforts to provide proof of payment of duct cleaning completed with respect to the animal hospital project.
- [22] The plaintiff has provided the invoice marked as paid by the company that issued the invoice for duct cleaning, DDK. The plaintiff has also provided an email from DDK attaching two screenshots evidencing payment and showing a zero balance owing (see Form 37C chart and Lipiec affidavit at paras. 34, 35). The undertaking has been answered.

- [23] Undertaking no. 9 is to make best efforts to provide proof of payments to Mits Air Conditioning and DDK with respect to materials and services supplied to the animal hospital project.
- [24] With respect to DDK, the undertaking has been answered as set out at undertaking no. 8. With respect to Mits Air Conditioning, the plaintiff has provided a copy of the invoice which is marked by the company that issued the invoice, Mits Air Conditioning, as paid by certified cheque (see Form 37C chart and Lipiec affidavit at paras. 34-35).
- [25] Unlike the circumstances in *Namena Corp. v. Ameri-Can Pharma Inc.*, 2024 ONSC 306 (Ont. S.C.J.) at paras. 17, 20, 23 and 26 relied upon by the defendant, in the case before me no specific undertaking was requested or given for the production of bank statements.
- [26] Undertaking nos. 8 and 9 have been answered. The defendant may have questions arising from the answers given; however, the undertakings asked have been answered.

Undertaking nos. 23, 26 and 35

- [27] It is the defendant's position that these undertakings remain outstanding. It is the plaintiff's position that best efforts have been made to answer these undertakings.
- [28] In *Linamar Transportation Ltd. v. Johnson*, 2014 ONSC 4415 (Ont. Div.Ct.) the meaning of "best efforts" is addressed at paras. 14-16. A "genuine and substantial search" must be conducted.
- [29] Undertaking no. 23 is to provide all supporting documents with respect to the time and value that the plaintiff places with respect to installing the AC and moving the condenser at the animal hospital.
- [30] As set out in the affidavit of Mr. Lipiec, the only two individuals with access to electronic and physical records within the possession, power or control of the plaintiff are himself and Faina Konarzhevskaya. They have searched relevant physical records located at the office of the plaintiff, Mr. Lipiec's home and any files in storage of the plaintiff as well as electronic records in Mr. Lipiec's email account and the plaintiff's general email account. In searching for relevant physical and electronic records, neither Mr. Lipiec nor Ms. Konarzhevskaya were able to locate any additional supporting documentation with respect to the work completed by the plaintiff at the animal hospital (see Form 37C chart and Lipiec affidavit at paras. 20-22 and 44). I am satisfied that best efforts to answer this undertaking have been made.
- [31] Undertaking no. 26 is to provide copies of any and all documents indicating that there were replacement parts supplied with respect to the damaged equipment referenced in the email located at Tab 36 of the plaintiff's affidavit of documents.
- [32] The plaintiff provided a similar answer to the answer given to undertaking no. 23 (see Form 37C chart and Lipiec affidavit at para. 39). I am satisfied that best efforts to answer this undertaking have been made.

- [33] Undertaking no. 35 is to review records and provide an updated bill of sale reflecting the non-delivery of six fans to the animal hospital site.
- [34] The plaintiff provided a similar answer to the answer given to undertaking no. 23 (see Form 37C chart and Lipiec affidavit at para. 45). I am satisfied that best efforts to answer this undertaking have been made.

Costs

- [35] The plaintiff requisitioned a long motion for answers to undertakings and refusals and a status hearing/extension of the set down date. Thereafter the defendant confirmed that it intended to bring a cross-motion for answers to undertakings and refusals.
- [36] At the request and agreement of the parties, a number of case conferences took place before me while counsel made efforts to narrow the issues. An order extending the set down date was eventually agreed to (see endorsement dated June 6, 2025). The parties shall bear their own costs of the case conferences in the circumstances.
- [37] The plaintiff was successful in obtaining the relief sought with respect to the remaining questions at issue on the plaintiff's motion and was successful in opposing the relief remaining at issue on the defendant's motion. Having regard to all of the circumstances of the motions, I fix total costs of the motions in the all inclusive amount of \$5,000.00, payable by the defendant to the plaintiff within 30 days.

Associate Justice B. McAfee

Date: March 30, 2026