

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
THERMO COUSTICS LIMITED	)	
	)	<i>Thomas Davis, for the Plaintiff</i>
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
WALTER PAREJA and RESILIENCE	)	
LIFESTYLE INC.	)	
	)	Self-represented
	)	
Defendants	)	
	)	
	)	
	)	<b>HEARD:</b> May 26, 2025

**REASONS FOR DECISION**

**ELLIES J.**

**OVERVIEW**

- [1] The plaintiff, Thermo Coustics Limited (“Thermo”), seeks damages under the *Construction Act*, R.S.O. 1990, Chap. c.30 the (“Act”), relating to work it performed on property owned by the defendant, Walter Pareja (“Walter”), and leased to the defendant, Resilience Lifestyle Inc. (“Resilience”), for which Thermo was not paid.
  
- [2] Thermo moved at trial under r. 51.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for summary judgment based on deemed admissions resulting from the defendants’ failure to respond to a request to admit (“RTA”) made on August 14, 2014. I reserved my decision on the motion. For reasons released on May 27, 2025, I granted the defendants leave to move under r. 51.05 to withdraw their deemed admissions: *Thermo Coustics Limited v. Pareja*, 2025 ONSC 3151. I held that, if the motion was not successful, I would render my decision on the summary judgment motion.

- [3] The defendants' motion to withdraw their admissions proceeded on December 12, 2025, before W. D. Newton R.S.J. For reasons released on January 26, 2026, Newton R.S.J. dismissed the motion: *Thermo v. Pareja et al.*, 2026 ONSC 508. Therefore, I am rendering my decision on Thermo's motion for summary judgment.
- [4] For the following reasons, the motion for summary judgment is allowed, in part. I find Thermo's lien under the Act to be valid as against both defendants. Judgment shall be entered in favour of Thermo against the defendants in the amount of \$20,353.35. Thermo's claim for interest at the rate of two percent per month is disallowed. Instead, prejudgment interest is allowed at the rate prescribed by s. 6.9 of the Act.

### **THERMO'S CLAIM**

- [5] Thermo alleges, and Walter admits, that Walter was the registered owner of a building located at 174 Main Street East (the "Pareja property") in North Bay at all material times. Walter's daughter, Paola Pareja-Garcia ("Paola"), admitted during the hearing that she is the sole shareholder of the other defendant, Resilience.
- [6] According to Walter's statement of defence, he leased the Pareja property to Resilience on January 17, 2020, for a term of five years. This fact has not been admitted. However, given the other admissions I will come to about Walter's involvement in the work in question, the existence of the lease is not material.
- [7] Thermo alleges that it was retained in or about the month of July 2020 to remove asbestos containing materials ("ACMs") from the Pareja property. Thermo alleges that the ACMs had been identified in a Designated Substances Survey ("DSS") report prepared on March 13, 2020, by a third party, Risk Check Inc. According to Thermo, the DSS expressly stated that ACMs might be present in areas of the building that were inaccessible at the time of the site visit upon which the report was based.
- [8] It is not alleged that any formal contract was entered into between Thermo and the defendants. Instead, Thermo alleges that it was retained based on a quote it provided to Resilience to remove the observable/accessible ACMs identified in the DSS for the sum of \$41,000 plus HST.
- [9] Thermo asserts that on September 21, 2020, it rendered an invoice to Resilience in the amount of \$27,798.00, inclusive of HST. Of this amount, Thermo alleges that the sum of \$5,330 remains unpaid. It is not clear from the pleadings, the admissions, or the evidence called on the motion as to how the amount of this invoice relates to the \$41,000 quote. However, with respect to that quote, the sum of \$5,330 is all that Thermo alleges is outstanding.
- [10] Thermo asserts that, after it commenced its work under the quote, additional ACMs not noted in the DSS and not included in the quote were discovered. Thermo alleges that it was instructed by both Walter and Paola to proceed with additional work to remove the discovered ACMs, even though the cost of the additional work could not be provided at the time.

- [11] Thermo asserts that it completed the additional work to remove the ACMs and rendered an invoice to Resilience for that work on or about November 6, 2020, in the amount of \$15,023.35. Thermo alleges that this invoice was never paid.
- [12] Thermo further alleges that it filed a valid construction lien on or about November 23, 2020, against the Pareja property.
- [13] The total principal allegedly owing on both outstanding invoices is \$20,353.35. In addition, Thermo seeks interest at the rate of two percent per month on the outstanding amounts. At the time of the trial on May 26, 2025, the amount of the interest sought was \$38,397.69. The total amount of both principal and interest allegedly owing at that time was \$58,751.04.

### **PROCEDURAL BACKGROUND**

- [14] Before I get to the issues I must decide, some procedural background is necessary to understand the delay in rendering judgment and the basis upon which I have arrived at my factual findings.
- [15] This action was set for trial on two occasions. The first was on September 8, 2024. The defendants were both represented by on lawyer at that time. On August 14, 2024, counsel for Thermo, Mr. Davis, served counsel for the defendants with the first of two RTAs. No response was ever received to the August 14 RTA. As far as I can tell, no motion for summary judgment under r. 51.06 was brought ahead of the September 2024 trial date.
- [16] This action could not be reached on the original date set for trial. Therefore, it was adjourned and eventually scheduled for trial on May 26, 2025. On May 2, 2025, Mr. Davis served another RTA on the defendants. This RTA was considerably less detailed than the August RTA. It also overlapped somewhat with the earlier RTA. The two main requests in the May RTA related to the amount alleged to be owing (\$20,353.35 plus interest) and to the validity of the construction lien.
- [17] Just prior to the May 26, 2025, trial date, Mr. Davis served his client's r. 51.06 motion for summary judgment. In it, Thermo sought to rely on what it believed were deemed admissions resulting from the defendants' failure to respond to *both* RTAs.
- [18] By the time of the 2025 trial, the defendants were no longer represented by counsel. I granted Paola permission to represent Resilience as its sole shareholder. At the outset of Thermo's motion for summary judgment, the defendants asserted that they had no knowledge of the August RTA and that, as his last act as their lawyer, counsel for the defendants had responded to the May RTA on May 21, 2025, one day before the 20-day response period expired.
- [19] Although Mr. Davis's office had no record of having received the May 21 response, on behalf of Thermo, he forewent any reliance on the May RTA and sought to rely only on the deemed admissions resulting from the defendants' failure to respond to the August RTA, coupled with *viva voce* evidence from Thompson Kline, the president of Thermo.

The defendants, however, sought to withdraw the August admissions. I reserved on the motion and heard Mr. Kline's evidence, including his cross-examination by the defendants.

- [20] The next day, after reviewing the case law under r. 51.06, I decided to grant the defendants an opportunity to move to withdraw the August admissions. I cautioned them at that time that it would likely be necessary to have the lawyer who represented them give evidence. They disregarded that caution and, instead, relied on the "information and belief" of someone other than the lawyer. This was the main reason Newton R.S.J. dismissed the defendants' motion.
- [21] The decision that follows, therefore, is based on the admissions in the pleadings, the deemed admissions resulting from the failure to respond to the August RTA, the admissions made by the defendants at the hearing of the motion, and the evidence of Mr. Kline.

## ISSUES

- [22] There are two main issues in this case, namely: (1) the value of Thermo's claim, and (2) whether Thermo's lien against the Pareja property is valid. The first issue centers around whether Thermo is entitled to charge for removing the additional ACMs. The second centers around whether Thermo is entitled to a lien under the Act against Walter's interest in the Pareja property.
- [23] Resolving these two issues involves answering the following questions:
- (1) What amount is owing under the original quote?
  - (2) Is Thermo entitled to charge for the additional work?
  - (3) If so, what amount is owed for the additional work?
  - (4) Is Thermo entitled to charge interest at the rate sought?
  - (5) Is Walter liable as an "owner" under the Act?

## ANALYSIS

### **What amount is owing on the original quote?**

- [24] As I mentioned earlier, Thermo has alleged that it rendered an invoice in the amount of \$27,798.00 on September 21, 2020, with respect to which the sum of \$5,333.00 remains unpaid. This allegation was denied by the defendants in their statement of defence. The August RTA does not deal specifically with the amount owed on this or the later invoice. It requested only that the defendants admit that they paid for some, but not all, of the renovations on the Pareja property.
- [25] The August RTA did request that the defendants admit the authenticity of both of the invoices that are the subject of the claim. However, admitting the authenticity of an invoice does not amount to an admission that the contents of the invoice are true. Only the May

RTA sought an admission about the amounts owing on both invoices and Thermo is not relying on that RTA.

- [26] Nonetheless, based upon the evidence of Mr. Kline, I am satisfied that the sum of \$5,330.00 remains outstanding on the original invoice. He testified that the invoice (#16287) was rendered for work performed at the Pareja property for “the” asbestos abatement, which I understand to mean the work undertaken in connection with the original quote. He said that there was a payment made on that invoice and that there was a balance owing of \$5,330. This was not challenged during his cross-examination, which focused, instead, on the issue of interest payable on outstanding accounts.

**Is Thermo entitled to charge for the additional work?**

- [27] Unlike the amounts owing on the invoices, the August RTA did deal with Thermo’s entitlement to be paid for the extra work involved in removing additional ACMs. Because of the failure to respond to the August RTA, the defendants are deemed to admit:
- (a) that the DDS dated March 13, 2020, expressly stated that ACM may potentially be present on the Pareja property that were inaccessible at the time of the site visit or inaccessible to sample;
  - (b) that only observable/accessible ACMs were noted in the DDS;
  - (c) that the \$41,000.00 quote was based on the observable/accessible ACMs;
  - (d) that Thermo was instructed to proceed with the additional work notwithstanding that the additional costs could not be provided;
  - (e) that the defendants agreed to pay the cost of the additional work; and
  - (f) that the defendants never instructed Thermo to stop the additional work but, rather, encouraged Thermo to complete it.
- [28] I am satisfied based on these admissions that Thermo was entitled to charge for the additional work.

**What amount is owed for the additional work?**

- [29] Thermo alleges that it is owed \$15,023.35 for the additional work. As indicated earlier, in their pleadings, the defendants denied that Thermo was owed any money. As also indicated, the August RTA did not address the amounts owed and the deemed admissions of the authenticity of the invoices for the additional work do not amount to an admission that the contents are true.
- [30] Nonetheless, based again on the evidence of Mr. Kline, I am satisfied that Thermo is owed the sum alleged. He testified that the invoice in question (#16440) was rendered and was owing “for ... the extra abatement work”. Again, the amount owing on the invoice was not

challenged during cross-examination, during which only the issues of entitlement to payment and to charge interest were explored.

**Is Thermo entitled to charge interest at the rate sought?**

[31] Thermo seeks prejudgment interest on the outstanding principal owing under both invoices at the rate of two percent per month. Thermo asserts that it is entitled to charge interest at this rate because this is the rate set out on the invoices, at the bottom of each of which is written:

Due upon receipt, 2% per month, 24% per annum on overdue accounts.

[32] Thermo produced a statement using the interest rate of two percent per month which shows that, as of April 30, 2025, the amount of interest owing on the principal amount of \$20,353.35 was \$38,397.56.

[33] In my view, Thermo has not proven it is entitled to interest at the rate sought.

[34] There are no admissions relating to the issue of interest. Nor is there any evidence supporting Thermo's claim for interest at the rate of two percent per month, apart from the evidence of Mr. Kline, who simply testified that it had accrued based on the wording of the invoices. This is not enough.

[35] A supplier is not entitled to unilaterally impose an interest rate obligation on a customer. There must be an agreement on the issue, although it may be express or implied: *Mount Royal Painting Inc. v. Unifor Canada Inc.*, 2022 ONSC 6316; *Royal Group Inc. v. Core Precision Technologies Ltd.*, 2011 ONSC 5019. As I have indicated, there was no formal contract in this case. Instead, Thermo was instructed to proceed based on the terms of the July 2020 quote. That quote said nothing about interest.<sup>1</sup>

[36] Paragraph 6.9 of the Act deals with the question of interest payable on accounts. It provides:

Interest begins to accrue on an amount that is not paid when it is due to be paid under this part, at the prejudgment interest rate determined under subsection 127(2) of the *Courts of Justice Act* or, if the contract or subcontract specifies a different interest rate for that purpose, the greater of the prejudgment interest rate and the interest rate specified in the contract or subcontract.

[37] Because Thermo has failed to prove any agreement regarding the interest rate, it is only entitled to charge interest at the rate prescribed under the Act. Therefore, prejudgment

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<sup>1</sup> I would also note that, even if it could be said that there was an agreement, Thermo has charged more for interest than the agreement would allow. Thermo has charged interest at the rate of two percent per month *compounded monthly*. This is an effective interest rate of 26.82 percent *per annum*, not 24 percent *per annum*, as indicated on the invoices.

interest on Thermo's outstanding accounts shall be allowed at the rate prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, calculated from the day after each invoice was delivered.

**Is Walter liable as an “owner” under the Act?**

[38] Thermo requests a declaration that the lien it filed under the Act against the Pareja property is a valid lien. Although the May RTA sought such an admission, the August RTA did not. Nonetheless, by virtue of a number of deemed admissions arising from the August RTA, I find that Thermo has proven it has a valid lien.

[39] Section 14 of the Act provides for the creation of a lien. The relevant portions of this section read as follows:

(1) A person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials.

(2) No person is entitled to a lien for any interest on the amount owed to the person in respect of the services or materials that have been supplied by the person, but nothing in this subsection affects any right that the person may otherwise have to recover that interest.

[40] Thermo asserts that both Walter and Resilience are owners within the meaning of the Act. The term “owner” is defined in subsection 1(1) of the Act to mean:

any person ... having an interest in a premises at whose request and,

- (a) upon whose credit, or
- (b) on whose behalf, or
- (c) with whose privity or consent, or
- (d) for whose direct benefit,

an improvement is made to the premises ...

(1) Thus, to fit within the definition of owner under the Act, four prerequisites must be met: (1) the person has an interest in the premises; (2) an improvement is made to the premises; (3) the improvement is made at the person’s request; and (4) the improvement is made either: (a) on the person’s credit, or (b) on the person’s behalf, or (c) on the person’s privity or consent, or (d) for the person’s direct benefit: *Industrial Refrigerated Systems Inc. v. Quality Meat Packers Ltd.*, 2015 ONSC 4545, at para. 9.

[41] The scope of the statutory definition is broad and is not limited to the legal or registered owner of the property. Moreover, several persons may fall within the definition in respect of the same property: *Parkland Plumbing & Heating Ltd. v. Minaki Lodge Resort 2002 Inc.*, 2009 ONCA 256, at para. 32.

- [42] An estate or interest of *any* nature satisfies this part of the definition: *Parkland*, at para. 64. Therefore, Resilience’s leasehold interest can be the subject of a lien. However, Walter’s legal ownership does not automatically make him an owner under the Act. Instead, to bring both Resilience and Walter within the definition, Thermo must prove the other three prerequisites. In determining whether this onus has been met, all of the circumstances relating to the alleged owner, including its interest in the lands, its role before, during and after the improvement is made, and its interest in the financial aspects of the improvement, are factors in determining whether the person is an owner under the Act: *Industrial Refrigerated Systems*, at para. 13; *Roni Excavating Ltd. v. Sedona Development Group (Lorne Park) Inc.*, 2015 ONSC 389, at para. 53.
- [43] By failing to respond to the August 14 RTA, the defendants are deemed to have admitted all of the remaining prerequisites necessary to conclude that they are owners. In particular, they have admitted:
- (1) that both Paola and Walter met with Thermo on site and that Walter advised that he, along with another individual, would be overseeing the renovations on the Pareja property;
  - (2) that both defendants instructed Thermo to commence work on the properties;
  - (3) that the defendants met with Thermo and Risk Check Inc. at the property to discuss the additional discovered ACMs;
  - (4) that the defendants instructed Thermo to proceed with the additional work and agreed to pay the additional costs for the additional work;
  - (5) that all work performed by Thermo was an improvement on the property;
  - (6) that the improvement was made on behalf of both defendants; and
  - (7) that all defendants benefited from the improvements to the property provided by Thermo.
- [44] I recognize that it could be argued that the request to admit that Thermo’s work resulted in an improvement might amount to a legal, and not a factual admission. However, there are enough other, factual, admissions to allow me to reach that conclusion on my own. The term “improvement” is defined in s. 1(1) of the Act as including “the complete or partial demolition or removal of any building, structure or works on the land”. The admission that Thermo removed ACMs constitutes an admission that there was a partial demolition of the building.
- [45] On the basis of the admissions set out above, I am satisfied that both defendants fit within the definition of owner and that the lien, therefore, attaches to the interest of both defendants in the Pareja property.

## CONCLUSION

[46] For the reasons set out above, I am satisfied that the defendants owe Thermo the sum of \$20,353.35 and that, provided only this sum is referred to in the lien registered against the property, the lien is valid. However, Thermo is only owed interest on the principal amounts at the rate prescribed by the *Courts of Justice Act*, calculated from the day after each invoice was delivered.

## COSTS

[47] In my endorsement of May 27, 2025, at para. 7, I indicated that I would deal not only with the merits of Thermo's summary judgment motion if the defendants' motion to withdraw their deemed admission failed, but also with the issue of costs. Accordingly, Mr. Davis filed his costs outline.

[48] However, in preparing these reasons, I have come to realize that I did not ask either party for their submissions on costs. Therefore, I will entertain written submissions on the issue of costs, limited to five type-written pages, exclusive of attachments, as follows:

- (1) on behalf of Thermo, if it wishes to make additional submissions beyond those contained in the costs outline, within 10 days of the release of these reasons; and
- (2) on behalf of the defendants, within 20 days of the release of these reasons.

[49] Submissions received beyond these deadlines will not be considered.

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M.G. Ellies J.

**Released:** April 21, 2026

**CITATION:** Thermo Coustics Limited v. Pareja, 2026 ONSC 2325  
**COURT FILE NO.:** CV-20-214  
**DATE:** 2026/04/21

2026 ONSC 2325 (CanLII)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

THERMO COUSTICS LIMITED

Plaintiff

– and –

WALTER PAREJA and RESILIENCE LIFESTYLE  
INC.

Defendants

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**REASONS FOR DECISION**

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M.G. Ellies J.

Released: April 21, 2026