

**CITATION:** Systematix Technology Consultants Inc. v. Dye & Durham Corporation et al, 2026  
ONSC 1621

**COURT FILE NO.:** CV-23-00711625-0000

**DATE:** 20260331

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** SYSTEMATIX TECHNOLOGY CONSULTANTS INC., Plaintiff

**AND:**

DYE & DURHAM CORPORATION, DYE & DURHAM (UK) HOLDINGS  
LIMITED, DYE & DURHAM (UK) LIMITED et al, Defendants

**BEFORE:** Parghi J.

**COUNSEL:** *Young Park and Natalia Sidlar*, for the Plaintiff

*Michael Wilson and Mark Leonard*, for the Defendants

**HEARD:** January 20 and 21, 2026

**ENDORSEMENT**

- [1] Systematix Technology Consultants Inc. (“Systematix”), a provider of information technology solutions and resources, moves for summary judgment against the defendant Dye & Durham Corporation (“Dye & Durham”).<sup>1</sup> Systematix asserts that between April and November 2023, it provided \$6,596,431.51 in work and services to Dye & Durham, pursuant to a master services agreement and various statements of work, for which it has not been paid.
- [2] Dye & Durham says that Systematix incurred “unexplained and uncontrolled costs” on its projects “without agreement as to budget, scope, and schedule”. It says there is a genuine issue requiring trial as to whether it had a valid contract with Systematix because the parties had no meeting of the minds on the essential terms of the contract, including the scope of work to be done by Systematix and the compensation to be paid to it. As such, says Dye & Durham, summary judgment is not appropriate. Dye & Durham also advances a

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<sup>1</sup> The summary judgment motion is framed as being brought against all the defendants. During the hearing, Systematix acknowledged that the UK-based defendants, Dye & Durham (UK) Holdings Limited and Dye & Durham (UK) Limited (together, “the UK Defendants”), were not given proper notice of the summary judgment motion against them. Systematix initially sought to reserve its right to pursue summary judgment against the UK Defendants at a later time. However, in response to my concern that I was now being asked to grant partial summary judgment, Systematix undertook not to seek to re-institute any summary judgment proceedings against the UK Defendants. On this basis, the summary judgment motion proceeded against Dye & Durham alone.

counterclaim against Systematix, which Systematix seeks to have dismissed as part of its motion.

- [3] Additionally, the UK based defendants, Dye & Durham (UK) Holdings Limited and Dye & Durham (UK) Limited (together, “the UK Defendants”), assert that Ontario does not have jurisdiction over the claim against them, and that as a result, the action should be dismissed. Alternatively, the UK Defendants state that the breach of contract claim against them should be struck, without leave to amend.
- [4] For the reasons below, I dismiss the motion for summary judgment brought by Systematix and grant the UK Defendants’ motion on jurisdiction. I find that whether the parties have a valid contract is an issue that I cannot determine based on the record before me, even with the benefit of my enhanced fact-finding powers under rules 20.04(2.1) and 20.04(2.2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. It is a genuine issue requiring a trial. I further find that Systematix has not established any valid basis for the Ontario courts to assume jurisdiction over the claim against the UK defendants.

### **Background**

- [5] Systematix and Dye & Durham entered into a master services agreement effective July 13, 2022 (the “MSA”). The MSA set out a framework under which Dye & Durham could engage Systematix to provide IT consulting services. The MSA provided that the scope of services Systematix was to provide, the schedule for the performance of the work, and the compensation Systematix was to receive for the work, were to be agreed upon in statements of work (“SOWs”) for the various projects Systematix took on. The MSA provided:
- 1.1 Systematix’[s] services will consist of providing to Dye & Durham such services as outlined in the Statement of Work (“SOW”).
- ...
- 4.1 Compensation for the services to be rendered by Systematix to Dye & Durham for mutually agreed upon projects as set forth in the SOW.
- [6] The MSA contained representations and warranties from Systematix that it would perform its services in the most expeditious and economical manner, consistent with Dye & Durham’s best interests. It required Systematix’s invoices to be accompanied by monthly written project reports. It gave Dye & Durham “the right to withhold payment of invoice amounts where a dispute respecting the validity of such invoice amounts arises”. It contained an entire agreement provision.
- [7] Systematix worked on six different software development projects for Dye & Durham, of which four are at issue in this proceeding.
- [8] Of the six projects Systematix worked on, two had signed SOWs.

- [9] One was for the so-called Spider Project, in which Systematix would provide development support in connection with an application used in the UK. The SOW for the Spider Project was agreed to on October 28, 2022. The project was completed in December 2022. Systematix does not assert that any money is owed to it in relation to the project (although, as discussed below, Systematix takes the position that some of the other projects were extensions of the Spider Project and governed by its SOW).
- [10] The second SOW was for the Global Billing Project, which involved the development of a consolidated billing platform in Toronto. This SOW was agreed to on December 5, 2022. The project was not completed, for reasons discussed below.
- [11] In each of the Spider Project and Global Billing Project SOWs, Systematix agreed to complete the project on a time and materials basis, subject to the rights and obligations set forth in the MSA. Each SOW described the services Systematix would provide to Dye & Durham for the project, under a heading entitled “project scope”. It described the estimated duration of the work on the project, listed the resources Systematix would provide for the project, and offered an estimate of the costs of the project, noting that the “project is on a time and materials basis and presents our best-effort estimates to delivery.” The estimate of the project costs identified the role of each team member, their hourly rate, their number of days of anticipated work over the duration of the project, and the associated anticipated costs, based on an 8-hour work day. Each SOW indicated that invoices “and correlating documentation” would be issued monthly, that “[a]ll efforts [will] be detailed in correlated work effort logs”, and that the “Systematix Resource/Project Manager will be responsible to ensure that billable hours are kept to a minimum.”
- [12] In addition, each SOW established a process for expanding the scope of the work Systematix was to do. The Spider Project SOW provided that “[a]ny further expansion of scope or extension of resources will be designated as an amendment to this SOW and/or a Systematix Change Control document.” The Global Billing Project SOW provided that “[a]ny further expansion of scope or extension of resources will be designated as an amendment to this SOW, as documented via the standard Systematix Change Control process and documentation.”
- [13] Dye & Durham paid Systematix over \$6 million on invoices totalling over \$12 million. The record reflects that, starting in April 2023, Dye & Durham began raising concerns about the budget, scope, schedule, and approvals of Systematix’s work on the various projects. Dye & Durham submits, for example, that Systematix’s estimate of the cost of the initial phase of the Global Billing Project, set forth in the SOW, was \$1,187,200, but by April 2023, Systematix had issued invoices on the project totalling \$3,077,412.62. Dye & Durham says it instructed Systematix to stop work on the project in light of its concerns. It raised concerns about Systematix’s work again in June, July, and October 2023. It claims Systematix ignored its concerns and continued to rack up cost overruns that ultimately exceeded \$9.5 million.

**The Systematix motion for summary judgment against Dye & Durham**

### **The law on summary judgment**

- [14] On a motion for summary judgment, I must first determine, based only on the record before me, whether there is a genuine issue requiring a trial. If there appears to be a genuine issue requiring a trial, I am to determine if the need for a trial could be avoided by using my enhanced powers under either rule 20.04(2.1) or 20.04(2.2). Rule 20.04(2.1) empowers me to weigh evidence, evaluate a deponent's credibility, and draw reasonable inferences from the evidence. The power set out in rule 20.04(2.2) allows me to order that oral evidence be presented by one or more parties. I may use these powers at my discretion, as long as their use is not contrary to the interests of justice – that is, as long as they will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66).
- [15] The responding party must set out, by affidavit or other evidence, specific facts that show there is a genuine issue requiring a trial (rule 20.02(2)). I am entitled to presume that the parties have put forth their best evidence on the motion and that if the case were to proceed to trial, no additional evidence would be presented (*TD Waterhouse Canada Inc. (TD Waterhouse Private Investment Advice) v. Little*, 2009 CanLII 43663 (Ont. S.C.), at para. 15, citing *Rogers Cable TV Ltd. v. 373041 Ontario Ltd.* (1994), 22 O.R. (3d) 25 (Gen. Div.)).
- [16] Summary judgment will be appropriate where (1) I am able to make the necessary findings of fact, based on the record and my enhanced powers under rules 20.04(2.1) and 20.04(2.2); (2) I am able to apply the law to the facts; and (3) the motion process is a proportionate, more expeditious, and less expensive means to achieve a just result than going to trial (*Hryniak*, at para. 49).

### **Whether there was a valid contract**

#### *Introduction*

- [17] In my view, there is a genuine issue requiring trial as to whether there was a valid contract between Systematix and Dye & Durham regarding the various projects in dispute.
- [18] For there to be a valid contract, the parties must have formed a mutual intention to enter into an agreement with one another for the provision of services by Systematix to Dye & Durham, and there must have been an agreement between them as to the essential terms of that bargain (John McCamus, *The Law of Contracts*, 3rd ed. (Toronto: Irwin Law Inc., 2020), at p. 31). The Court of Appeal for Ontario, in *UBS Securities Canada, Inc. v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, described the test as follows:

For a contract to exist, there must be a meeting of minds.... The test as to whether there has been a meeting of the minds is an objective one -- would an objective, reasonable bystander conclude that, in all the circumstances, the parties intended to contract? As intention

alone is insufficient to create an enforceable agreement, it is necessary that the essential terms of the agreement are also sufficiently certain.

- [19] The agreements between Systematix and Dye & Durham can only be considered to constitute a binding contract if they express a *consensus ad item* on their essential terms.
- [20] I pause to comment on the ways in which the parties have characterized the agreements at issue, because those characterizations shape their respective positions on what Systematix must prove to obtain summary judgment.
- [21] Systematix frames this action as a simple debt collection matter. It says the action raises no serious material factual issues and can be determined summarily based on the paper record.
- [22] In my view, this is an oversimplification. This is a contractual dispute. To frame it as a mere debt collection proceeding glosses over all the contract law considerations that are pertinent to the action and this motion.
- [23] Dye & Durham, for its part, calls this a time and material construction contract dispute, in which Systematix was to “construct” an IT platform for Dye & Durham. It submits that, as a consequence, Systematix is subject to the fairly prescriptive requirements in the case law for seeking payment pursuant to a construction contract, which it has not satisfied. Moreover, Dye & Durham says, because this is a time and material construction contract, its essential terms, on which the parties must have had a meeting of the minds, are the construction price, scope of work, and schedule or completion date (citing *Sjostrom Sheet Metal Ltd. v. Geo A. Kelson Company Limited*, 2023 ONSC 4959, at para. 11; and *Bellsam Contracting Limited v. Torgerson*, 2023 ONSC 468, at para. 38).
- [24] I accept Dye & Durham’s submissions in part. The contract before me cannot realistically be called a construction contract. It is a professional services contract. Because the contract contemplates compensation being paid based on time spent, it may bear some substantive similarities to “time and material” construction contracts, but they are not one and the same. In my view, as a professional services contract in which the scope of work and compensation was to be agreed to on a per-project basis, and compensation was to be paid on an hourly basis, the essential terms of this contract included, at a minimum, the work to be done by Systematix and the compensation to be paid to Systematix in consideration for that work.
- [25] In my assessment, as detailed below, there are several material points of disagreement between the parties on those essential terms. I therefore conclude that whether there was a binding contract between them is not an issue that I can determine based on the record before me or even if I exercise my enhanced powers under rules 20.04(2.1) and 20.04(2.2). It is a genuine issue requiring trial.

*No statements of work reflecting agreement on scope of work or compensation*

- [26] As discussed above, the MSA provided that each project was to have an SOW that would articulate the scope of Systematix's services on the project and the compensation it would receive. These essential contractual terms – scope of work and payment – were to be set forth in the SOW, which, in conjunction with the MSA, would form the contractual framework between the parties.
- [27] Systematix worked on six different software development projects for Dye & Durham, of which only two, the Spider Project and the Global Billing Project, had signed SOWs. The remaining four projects did not have signed SOWs. One of the remaining four had a “draft SOW” that was never signed. One seems to have had a draft SOW that was prepared by Systematix but never sent to Dye & Durham. The other two had no SOWs at all.
- [28] Systematix says that the four projects without SOWs were extensions of the Spider Project, such that the SOW for the Spider Project governed them. In support of this position, it offers affidavit evidence that in these four projects, it billed out its team members at the rates established in the Spider Project SOW.
- [29] The evidence on actual billing shows that Systematix billed out its team members for the four projects at significantly higher rates than those applied in the Spider Project. The record does not suggest that Dye & Durham ever agreed to those higher rates.
- [30] Faced with this evidence, Systematix suggests that the rates in the SOWs were estimates and not binding. But the Spider Project SOW, on which Systematix relies, does not refer to the rates as estimates. Systematix's own affiant does not characterize the rates in the SOWs as mere estimates. Nor does the Statement of Claim plead that they were just estimates.
- [31] Systematix also suggests that the Spider Project SOW rates were incorrect and Dye & Durham in fact approved higher rates. This claim cannot coexist along with Systematix's other purported explanations. In any event, I am provided with no evidence of any such approval of higher rates by Dye & Durham.
- [32] In the result, I cannot accept Systematix's characterization of the four projects as extensions of the Spider Project. The record before me indicates that in fact the four projects were carried out without any SOWs at all.
- [33] Systematix also asserts that the projects did not require executed SOWs; that there was no requirement in the MSA that an SOW be signed before, during, or after the provision of its services; and that SOWs exist for all the projects. I do not read the MSA this way: it in fact expressly refers to the need for SOWs to spell out such things as scope of work and compensation. Further, the Project Spider and Global Billing Project SOWs were signed by both parties and the template SOW contemplated signatures by both parties, all of which undermines Systematix's claim that signatures were not in fact necessary.
- [34] I accordingly conclude that three of the four projects in dispute (that is, all the projects in dispute except the Global Billing Project) did not have signed SOWs reflecting a meeting of the minds as to scope of work and compensation on those projects.

*No independent agreements as to scope of work*

- [35] Nor did the parties have any agreement outside of the SOWs as to the scope of work. To the contrary, the record makes clear that there is a genuine issue requiring trial as to what the scope of work truly was in several of the projects.
- [36] Systematix maintains that the work it did on each of the projects was approved, was within the agreed upon scope of work, and was properly billed. Importantly, however, Systematix has not produced evidence that the work for which it claims payment was approved. This includes evidence of any approvals by Dye & Durham to changes in the scope of work. As such, the record does not bear out Systematix's claim.
- [37] Systematix does not provide a consistent and persuasive account of how or where its work approvals are documented. Its evolving evidence on this issue underscores that there is a genuine issue requiring trial as to whether the parties agreed upon the scope of work Systematix carried out.
- [38] For example, in the Statement of Claim, Systematix pleads that any change in the scope of work Systematix was to complete was to be approved by Dye & Durham via project change request forms following Systematix's "standard project change control process". However, the evidence is that any such change control process was internal to Systematix, such that Dye & Durham had no access to it. I have difficulty seeing how changes to the contractual payment terms and scope of work could be effected via documents that are internal to one party and unavailable to the other.
- [39] In the Reply, Systematix asserts that the work approvals were located in Jira, a project management application; Confluence, a document repository; or "signed change requests". However, Systematix's own evidence on cross examination was that Jira would not house approvals of change requests and that Dye & Durham did not have access to Confluence. Nor are any "signed change requests" offered up by Systematix in this motion as evidence of approved changes to its scope of work on the projects.
- [40] Finally, in this motion, Systematix asserts that change approvals could be found in emails and Microsoft Teams messages. If indeed such approvals were contained in emails, one would expect those emails to be in the possession of both parties. Yet Systematix has not produced any. In any event, the record indicates that Dye & Durham found only one email approving a change request. That change request had a total projected cost of \$5,000. This is a small amount compared to the overall cost overruns claimed by Dye & Durham.
- [41] Systematix's suggestion that approvals were granted via Teams messages appears to have been made somewhat late in the day, only after Dye & Durham's representative gave evidence on cross-examination that they do not retain Teams instant messages in the ordinary course. Systematix now states that the evidence of approvals of its work is contained in Teams messages that are exclusively in Dye & Durham's possession. It faults Dye & Durham for not producing those approvals, suggesting Dye & Durham has engaged in the spoliation of evidence. It invites me to draw an adverse inference.

- [42] I reject these assertions and invitations. The onus lies on Systematix to persuade me that there is no genuine issue requiring trial as to whether it had an agreement on its scope of work with Dye & Durham. It must provide me with evidence to discharge that onus. It has not done so. It would be perverse to draw an adverse inference against Dye & Durham from its failure to adduce evidence that it has no obligation to adduce.
- [43] In any event, the claim of spoliation is entirely without merit. Nothing in the Statement of Claim adverts to even a possibility that Teams holds relevant information on the work done by Systematix. No litigation hold letters or discovery plan ever instructed Dye & Durham to retain Teams messages. Against this backdrop, Dye & Durham did not retain any Teams messages. The record indicates that it did so in keeping with its usual business practice and because it has not enabled the setting in Teams that would have preserved any messages. In all these circumstances, the fact that Dye & Durham has not retained any Teams messages is not surprising. Nor is it spoliation.
- [44] The result of all this is that Systematix claims to have received approval for a broader scope of work, and/or overtime work, adding up to \$9.5 million in extra costs, but there is no documentation evidencing any approvals of this broader scope of work and/or overtime, apart from a single email expressing approval of \$5,000 in overtime.
- [45] In light of the conflicting evidentiary record and Systematix's evolving arguments, it is unclear whether there was an agreement between the parties as to the scope of work Systematix was to perform. That was an essential term of the contract, and the lack of consensus between the parties on this issue points to a genuine issue requiring trial.

***No independent agreements as to compensation***

- [46] Similarly, it is unclear that there was a *consensus ad idem* between the parties on the compensation to be paid to Systematix.
- [47] As discussed above, the SOWs identify the per-project compensation Dye & Durham was to pay. There was no SOW for four of the six projects in dispute before me. Even if I were to accept Systematix's claim that the Spider Project SOW applies to all of the four non-SOW projects – and I do not accept that claim – the fact remains, as discussed above, that the rates at which Systematix billed out team members' work in the four projects is significantly higher than the rates used in the Spider Project, and there is no evidence to suggest that Dye & Durham ever agreed to those higher rates. This merely underscores my view that there was likely no meeting of the minds as to compensation.
- [48] Nor did the parties have any agreement on compensation independent of the SOWs. To the contrary, there is a genuine issue requiring trial as to compensation for several of the projects. For example, Systematix provided weekly timesheet summaries. Many of them are blank. Many are approved by other Systematix personnel. Some of them contain narratives describing work that is out of scope, such as attending internal meetings. Systematix was evidently of the view that this work was properly compensable under the agreement. Dye & Durham states that it was not. Again, this underscores that there was no

meeting of the minds between the parties as to what work was actually done, what work was actually required, and what work is properly compensable as a result.

- [49] I pause to observe that the existence of an SOW is not dispositive of whether there was a meeting of the minds on the essential contractual terms. The Global Billing Platform project had a signed SOW – it is the only one of the four projects in dispute to have had one – but even on that project, despite the existence of an SOW, there seems to have been no agreement on scope of work or price. Systematix’s estimate of the cost of the initial phase of the Global Billing Project, set forth in the SOW, was \$1,187,200, but by April 2023, Systematix had issued invoices on the project totalling \$3,077,412.62, and Dye & Durham instructed Systematix to stop work on the project. The project was never completed.

***Conclusion on whether there was a valid contract***

- [50] For the reasons above, I find that the record discloses a genuine issue requiring trial as to whether Systematix and Dye & Durham had a valid contract. I am not persuaded, based on the record, that they had a meeting of the minds on the essential contractual terms of scope of service or price, either in the form of signed SOWs or otherwise. Nor am I able to make this determination by using my enhanced powers under rules 20.04(2.1) and 20.04(2.2). The issue requires a trial, where the trier of fact may hear from all the appropriate witnesses and assess their credibility as required.
- [51] In these circumstances, I am unable to make the necessary findings of fact. Since Systematix has not satisfied the first branch of the *Hryniak* summary judgement analysis, I am not required to consider the second and third branches of the test.

**Whether, if there was a valid contract, Systematix complied with it**

- [52] Alternatively, even if there was a legally binding agreement between Systematix and Dye & Durham regarding the essential terms of the projects, there is a genuine issue requiring trial as to whether Systematix carried out its work in accordance with those essential terms.
- [53] For example, the record before me discloses a genuine issue requiring trial as to whether Systematix did the work it says it did. The MSA required that written monthly project reports accompany each invoice that Systematix issued to Dye & Durham. Systematix provided no such reports. The two signed SOWs required that “all” Systematix “efforts ... be detailed in correlated work effort logs.” As I noted above, Systematix provided weekly timesheet summaries. Many of them are blank. Many are approved by other Systematix personnel. Some of them contain narratives describing work that is out of scope, such as attending internal meetings or paying severance for Systematix employees or sub-contractors. Many contain narratives that simply refer to “D&D [Dye & Durham] planning” or “D&D admin” or “attendance for the day”. Systematix asserts that it had regular meetings with Dye & Durham personnel at which it kept Dye & Durham “fully informed of the scope, work conducted, services performed, and costs” of the projects.

However, I am not satisfied, based on the record, that particulars on the work being done were relayed to Dye & Durham.

- [54] There is also a genuine issue requiring trial as to whether Systematix obtained approval for its work outside of the initial scope of work and for its overtime hours. There is almost no documentary evidence of any approved overtime (except for the one email approving \$5,000 in overtime). There is no documentary evidence of any approvals of change requests. Nor is there persuasive evidence of any verbal and/or implied approval of some of the expansions to its scope of work on the projects.
- [55] I therefore find that there is a genuine issue requiring trial as to whether Systematix performed its work in accordance with the contract, if indeed there was a valid contract.

### **Conclusion on summary judgment motion**

- [56] For the reasons above, I find that there are genuine issues requiring trial as to whether there was a valid agreement and whether, if there was a valid agreement, Systematix carried out its obligations under that agreement. I therefore dismiss the motion for summary judgment.

### **The UK Defendants' motion on jurisdiction**

#### **Introduction**

- [57] The UK Defendants, Dye & Durham (UK) Holdings Limited and Dye & Durham (UK) Limited, bring a motion to dismiss the action against them on the basis that they are not subject to the jurisdiction of the Ontario courts.
- [58] Both of the UK Defendants are United Kingdom-based subsidiaries of Dye & Durham. Their head offices were located in the UK at the time of the events at issue. Dye & Durham (UK) Holdings Limited is a holding company with no operations. Its sole shareholder is Dye & Durham. Its only asset is the shares of Dye & Durham (UK) Limited, the UK operating company.
- [59] The Supreme Court of Canada held, in *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17, [2012] 1 S.C.R. 572, at para. 90, that there are four presumptive connecting factors that entitle a court to assume jurisdiction over a dispute: the defendant is domiciled or resident in the province, the defendant carries on business in the province, the tort was committed in the province, and a contract connected with the dispute was made in the province. It is the plaintiff's burden to establish that a presumptive connecting factor applies in a particular case, after which the burden shifts to the defendant who challenges jurisdiction to rebut the presumption of jurisdiction. They are to do so by establishing that the presumptive connecting factor does not point to any real relationship, or points only to a weak relationship, between the subject matter of the litigation and the forum (at para. 95).
- [60] Based on *Van Breda*, Systematix offers various purported bases for Ontario courts to have jurisdiction over the claims, none of which I am able to accept.

**Jurisdiction on the basis that a contract connected with the dispute was made in Ontario**

- [61] The first purported basis of jurisdiction advanced by Systematix is that a contract connected with the dispute was made in Ontario. In assessing this claim, I must first identify the dispute, and then determine whether the dispute is connected to a contract “made” in Ontario (*Van Breda*, at para. 90).
- [62] The thrust of the claim against the UK Defendants is that they breached the agreements with Systematix by failing to pay Systematix’s invoices. The unjust enrichment and *quantum meruit* claims appear to flow from the same underlying facts. Systematix pleads that the UK Defendants were parties to all applicable SOWs and the MSA for all UK projects. But in my assessment, no contract connected to this dispute was made with either of the UK Defendants, whether in Ontario at all.
- [63] First, the MSA was entered into between Systematix and Dye & Durham and not any other entity. Neither UK Defendant was a party to the MSA. On cross-examination, Systematix’s representative acknowledged that the UK Defendants did not sign any MSA with Systematix or prepare any draft MSA to which either of them was a party.
- [64] Second, the MSA addressed the provision of services by Systematix to Dye & Durham and not to any other entity.
- [65] Third, the MSA contemplated that invoices would be issued by Systematix to Dye & Durham and not any other entity. It contemplated that invoices would be payable by Dye & Durham and not any other entity.
- [66] Fourth, Systematix in fact issued its invoices to Dye & Durham and sent them to the Toronto offices of Dye & Durham for payment. There is no suggestion in the pleadings and no evidence in the record that it ever issued invoices to either of the UK Defendants. Before the litigation began, Systematix demanded payment from Dye & Durham and not either of the UK Defendants. The evidence thus indicates that the UK Defendants had no obligation to pay for Systematix’s work.
- [67] Fifth, the SOWs were entered into between Systematix and Dye & Durham. Neither UK Defendant was a party to any SOW or to the standard form SOW attached to the MSA. On cross-examination, Systematix’s representative acknowledged that the UK Defendants did not sign any SOWs with Systematix and Systematix did not prepare any draft SOWs to which the UK Defendants were parties.
- [68] Finally, while the Spider Project involved Systematix working on an application that Dye & Durham (UK) Limited used, neither UK Defendant was a party to the MSA or the SOW for the Spider Project, neither UK Defendant was issued or paid invoices for the Spider Project, and, in any event, Systematix does not claim any damages in respect of the Spider Project.

- [69] Because there was no contract between Systematix and the UK Defendants, Systematix can only show Ontario is a proper jurisdiction if it establishes that there is a contract that contemplates and requires the involvement of the UK Defendants.
- [70] It cannot do so.
- [71] The only contract relevant to the dispute with the UK Defendants is the MSA. But the MSA does not contemplate or require the UK Defendants' involvement: they were not parties to it, they were not the recipients of services from Systematix under it, and they had no obligation to pay for Systematix's work under it.
- [72] The other two contracts before me do not assist Systematix. The Global Billing Project was performed in Ontario and its SOW does not contemplate or require the involvement of the UK Defendants. The Spider Project SOW concluded before the events at issue and is not at issue in this proceeding. It accordingly has no connection to the dispute. As discussed above, Systematix argues that subsequent projects were in fact extensions of the Spider Project; I have rejected that claim.
- [73] In the result, this basis of jurisdiction is not established on the record before me.

**Jurisdiction on the basis that a tort was committed in Ontario**

- [74] The second purported basis for jurisdiction is that a tort was committed in Ontario. However, no torts are alleged to have been committed in this action, in Ontario or at all. The action asserts breach of contract, breach of the contractual duties of honest performance and exercise of discretionary powers in good faith, and the related equitable doctrines of unjust enrichment and quantum meruit. It does not plead any tort.
- [75] This basis of jurisdiction is therefore not established.

**Jurisdiction on the basis of the unjust enrichment claim**

- [76] Finally, Systematix asserts that Ontario has jurisdiction as a consequence of the unjust enrichment claim it advances against the UK Defendants. Systematix notes, rightly, that the four factors listed above are not an exhaustive list. Rather, in identifying new factors, a court may consider the similarity of the connecting factor with the recognized presumptive connecting factors; treatment of the connecting factor in the case law; treatment of the connecting factor in statute law; and treatment of the connecting factor in the private international law of other legal systems with a shared commitment to order, fairness and comity (*Van Breda*, at para. 91).
- [77] Systematix submits that unjust enrichment is similar to the third and fourth presumptive connecting factors – namely, that a tort was committed in the province and a contract connected with the dispute was made in the province. One of the necessary elements of a claim of unjust enrichment is corresponding deprivation, which is similar to the “wrong” that lies at the heart of a tort claim. Just as the forum in which a plaintiff suffers tort damages can claim jurisdiction, says Systematix, “in unjust enrichment claims, the forum

in which a plaintiff suffered the deprivation” – in this case, Ontario, where Systematix’s head office is located – “ought to be the forum that assumes jurisdiction.”

- [78] Systematix states that the courts have taken this approach to determining jurisdiction in unjust enrichment claims in *Thompson v. Our lady of the Missions*, 2011 ONSC 382; *Knowles v. Lindstrom*, 2014 ONCA 116, 118 O.R. (3d) 763; and *Postans v. Davidson*, 2021 ABQB 30.
- [79] In my view, these cases do not stand for the proposition cited by Systematix.
- [80] Systematix asserts that the court in *Thompson* found that the location of the plaintiff’s deprivation was on its own sufficient to ground Ontario jurisdiction. I do not read the case that way. In *Thompson*, the fact that the plaintiff experienced deprivation in Ontario was only one of several factors on which the court relied in assessing jurisdiction: the court also factored in that the defendant had a connection to Ontario and that considerations of fairness between the parties urged in favour of granting the Ontario courts jurisdiction (at paras. 11, 13, 15).
- [81] Notably, the additional factors considered by the court in *Thompson* would not assist Systematix here. Unlike the defendant in *Thompson*, the UK Defendants do not have a connection to Ontario, except insofar as their parent company is an Ontario company. The UK Defendants are themselves United Kingdom-based with their head offices in the UK at the material time. And, unlike in *Thompson*, considerations of fairness do not urge in favour of Systematix. *Thompson* involved an elderly plaintiff of “modest” income litigating against a defendant that the court concluded had “substantial” income and assets (paras. 6, 14). Systematix’s financial resources raise no such concerns.
- [82] In any event, *Thompson* pre-dates *Van Breda* and the subsequent jurisprudence has not interpreted *Thompson* in the manner Systematix asks me to. The four factors outlined in *Van Breda* continue to form the core of the analysis of jurisdiction under Ontario law. I am not aware of any Ontario cases in the 15 years since *Thompson* was handed down that have held that the location of a plaintiff’s deprivation is on its own a presumptive connecting factor in an unjust enrichment claim.
- [83] Systematix also relies on the decision of the Court of Appeal for Ontario in *Knowles*, in which the Court upheld the lower court’s finding that the Ontario courts had jurisdiction over an unjust enrichment claim. But in *Knowles*, the Court anchored its finding of jurisdiction on the fact that the property in dispute was located in Ontario (at para. 21). It did not, as Systematix appears to suggest, base its finding on the location of the unjust enrichment and corresponding deprivation. To the contrary, it declined to consider that issue (at para. 24).
- [84] Likewise, in *Postans*, which is an Alberta case, the court, in making its finding on jurisdiction, did consider the geographic location of the unjust enrichments and corresponding deprivations, but considered other factors as well, including the location of the property in dispute (at para. 8).

- [85] For the reasons above, I am not persuaded that the case law supports finding jurisdiction based on the location of a plaintiff's corresponding deprivation in an unjust enrichment claim. To the contrary, there is no post-*Van Breda* case in Ontario that articulates such an approach, and the Court of Appeal expressly declined to rule on that approach in *Knowles*.
- [86] Furthermore, the approach advocated by Systematix would create absurd results. On Systematix's argument, an unjust enrichment claim advanced by an Ontario-based plaintiff would result in virtually automatic jurisdiction for the Ontario courts, as long as the plaintiff could show it suffered some form of deprivation or harm in Ontario. The result would be that unjust enrichment claims would offer a jurisdictional "back door" to plaintiffs seeking to litigate claims in tort where the tort was not committed in Ontario, or claims in contract where no contract connected with the dispute was made in Ontario. The existing principles governing jurisdiction, established by the Supreme Court in *Van Breda*, would be significantly undermined.
- [87] I am therefore unable to accept Systematix's submission that the location of any deprivation experienced by Systematix is enough to ground the jurisdiction of the Ontario courts over the claim against the UK Defendants.

#### **Conclusion on jurisdiction motion**

- [88] For the reasons above, I grant the UK Defendants' motion on jurisdiction.
- [89] As a result, I need not consider the UK Defendants' alternative request to strike the breach of contract claims against them.

#### **Conclusion**

- [90] Systematix's motion for summary judgment against Dye & Durham is denied. The UK Defendants' motion on jurisdiction is granted.
- [91] The parties are strongly encouraged to work together to resolve costs. If they are unable to do so within 30 days, they may advise my judicial assistant, and I will set a timetable for the exchange of brief submissions.

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Parghi J.

**Date:** March 31, 2026

