

CITATION: 1965788 Ontario Inc. v. 10654825 Canada Inc., 2024 ONSC 2607
COURT FILE NO.: CV-23-00704687-0000
DATE: 20240503

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
1965788 Ontario Inc. o/a Tech Tap) Daniel Fridmar, for the Plaintiff
Mechanical)
)
Plaintiff)
)
- and -)
)
10654825 Canada Inc. o/a A&H)
Construction, Beer Nails Spa Inc., and Bank)
of Montreal)
Defendants)
)
)
)
) **HEARD: May 3, 2024**

2024 ONSC 2607 (CanLII)

PAPAGEORGIOU J.

Overview

[1] The plaintiff is a subcontractor who supplied services including installation of plumbing, HVAC, and sprinklers to a construction project. The defendant Beer Nails Spa Inc. was the Owner and the defendant A& H Construction was the Contractor. The Bank of Montreal was a lender. The plaintiff provided a waiver of defence to the Bank of Montreal pending determination of issues as between the Owner and the Contractor.

[2] The plaintiff claimed unpaid invoiced amounts as against the Subcontractor and as against the holdback held by the Owner.

[3] The defendants failed to respond and a motion for default judgment in writing was scheduled. When the Owner was served with these materials it responded and a case conference before me was scheduled. The defendant Contractor has never responded although served, and also did not attend this case conference.

[4] Prior to the case conference the Owner and the plaintiff settled by way of the Owner's payment of \$13,000 from the holdback.

[5] The plaintiff asked that I address his motion for default judgment at the case conference which I have done.

Decision

[6] For the reasons that follow I am granting the judgment as sought in the amount of \$20,956.50 with costs in the amount of \$11,200 for fees and \$880.42 in disbursements.

The Issues

[7] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability?
- Issue 2: If so, what are the damages to which the plaintiff is entitled?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability?

Consequences of noting in default

[8] Pursuant to r. 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim.

[9] However, pursuant to r. 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[10] In particular, r. 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit.

The test on a motion for default judgment

[11] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[12] I am satisfied that the plaintiff has established liability based upon the following deemed admissions in the Statement of Claim and the evidence before me:

- The Contractor retained the plaintiff.

- The plaintiff did the work.
- The Contractor failed to pay the full invoiced amount such that \$33,956.50 was owing.

Issue 2: What are the damages to which the plaintiff is entitled?

[13] The plaintiff provided evidence as to the contract price, the payments made as well as the \$13,000 applied to the outstanding debt.

[14] The amount outstanding and for which the Contractor is liable is \$20,956.50.

Costs

[15] I award costs in the amount of \$11,200 for fees and \$880.42 in disbursements.

[16] I find such costs fair and reasonable. I also find that such costs were within the reasonable contemplation of the defendant.

Papageorgiou J.

Released: May 3, 2024

