

COURT OF APPEAL FOR ONTARIO

CITATION: Eastwood Home Inc. v. Procopio, 2025 ONCA 11

DATE: 20250109

DOCKET: COA-23-CV-1160

Roberts, Miller and Pomerance JJ.A.

BETWEEN

Eastwood Home Inc.

Plaintiff (Respondent)

and

Elaine Procopio\*, Federico Procopio\*  
and David Issonborg

Defendants (Appellants\*)

Marshall Reinhart, for the appellants

Matthew J. Armstrong, for the respondent

Heard: January 6, 2025

On appeal from the judgment of Justice Markus Koehnen of the Superior Court of Justice, dated October 3, 2023.

REASONS FOR DECISION

[1] The appellants appeal the judgment requiring them to pay the respondent the amount of \$95,840, plus prejudgment interest.

[2] As the trial judge stated, this is an unfortunate case that required the court to determine which of the innocent parties should bear the risk of loss caused by a third, apparently fraudulent, party.

[3] The appellants had contracted with the respondent corporation to repair fire damage to their Toronto property. They were introduced to Tony Lin, the principal of the respondent, by Dave Issonborg. According to the parties' agreed statement of fact, the appellants met with Mr. Lin and awarded the contract to Eastwood on the basis of a verbal agreement on the material terms of the project. Mr. Issonborg prepared and signed the renovation contract on behalf of the respondent and oversaw the project. At no time did he or Mr. Lin represent that Mr. Issonborg was an officer or a director of the respondent.

[4] The appellants made payments for materials and services to the respondent. They also made cash and cheque payments to Mr. Issonborg personally at his request. Elaine Procopio questioned why the payments should not be made to the respondent. Mr. Issonborg claimed that Mr. Lin was away, he had no access to the corporate bank accounts and needed the money to pay the workers on site. At Mrs. Procopio's request, Mr. Issonborg gave her handwritten receipts purportedly from the respondent. He fraudulently retained the monies paid by the appellants and did not remit those funds to the respondent. His fraud came to light when the appellants noticed the work was slowing down. Mrs. Procopio called Mr. Lin who advised that the respondent had not received payment for outstanding accounts.

[5] The trial judge concluded that the appellants should bear the loss of Mr. Issonborg's fraud and granted judgment in favour of the respondent. He also

granted judgment to the appellants and the respondent against Mr. Issonborg who was noted in default.

[6] The appellants submit that the trial judge erred because it was reasonable for the appellants to believe that Mr. Issonborg was a principal of the respondent who was authorized to accept their payments, and the respondent did nothing to dispel that belief. They argue that these were the only reasonable conclusions to be drawn on the correct application of the governing principles to the evidence at trial.

[7] We are not persuaded that the trial judge made any reversible error.

[8] At trial, the parties agreed that the governing legal principles set out in *C.P. Ships v. Les Industries Lyon Corduroys Ltée*, [1983] 1 FC 736, applied. Applying these principles, correctly in our view, the trial judge found that the respondent had not actually authorized Mr. Issonborg to receive payments to him personally rather than to the respondent, nor had the respondent cloaked Mr. Issonborg with ostensible authority by holding out Mr. Issonborg as being so authorized. He concluded:

Here, [the appellants] knew that the contract was with [the respondent]. It was therefore [the respondent] that had to be paid. The question then is whether [the respondent] somehow led [the appellants] to conclude that they could pay [Mr. Issonborg] personally. The evidence at trial does not make that out. [Mr. Lin] never told [the appellants] that they could pay [Mr. Issonborg] personally instead of [the respondent]. The only request

to pay [Mr. Issonborg] came from him. [Mrs. Procopio] admitted that [Mr. Issonborg] told her he had no access to [the respondent's] bank accounts. As a result, whatever [Mrs. Procopio] may have thought about [Mr. Issonborg's] authority vis-à-vis [the respondent], she knew he had no financial authority over it.

[9] As the trial judge found, there was nothing in the contract that authorized the appellants to pay Mr. Issonborg personally nor was there any other evidence that the respondent had authorized personal payments to Mr. Issonborg. Although initially questioning making cash and personal cheque payments directly to Mr. Issonborg and aware of the limitations of his authority with respect to the respondent's bank accounts, the appellants made no inquiries of the respondent as to Mr. Issonborg authority to receive personal payments. In these circumstances, the principles set out in *C.P. Ships* required the appellants to receive authority from the respondent to pay Mr. Issonborg directly or assume the risk entailed with paying Mr. Issonborg. We also agree with the trial judge's finding that there was no evidence of a trade custom that the respondent and the appellants expected that payments would be made personally or in cash to Mr. Issonborg.

[10] The trial judge's findings were grounded in the record and open to him to make. There is no basis to interfere with them.

[11] In the alternative, the appellants submit that the judgment against them should be reduced to \$86,256, with a corresponding reduction of prejudgment

interest, to reflect the 10% of the total project amount due to Mr. Issonborg by the respondent for his work on the project. This issue was not raised before the trial judge. Aside from the prejudice to the respondent in not having the opportunity to address this issue at trial, we are not persuaded that we have the necessary evidentiary record to determine it. Aside from the fact that the respondent was entitled to damages for the full contract price, there was no evidence, for example, as to whether Mr. Issonborg had already been paid. We therefore decline to address it as a new issue on appeal: *Kaiman v. Graham*, 2009 ONCA 77, 245 O.A.C. 130, at para. 18.

[12] The appeal is therefore dismissed.

[13] The respondent is entitled to its appeal costs from the appellants in the all-inclusive amount of \$12,000.

“L.B. Roberts J.A.”  
“B.W. Miller J.A.”  
“R. Pomerance J.A.”