

SUPREME COURT OF NOVA SCOTIA

Citation: *Eastern Canadian Structures Limited v. MasTec Canada Inc.*,
2025 NSSC 88

Date: 20250304

Docket: Hfx No. 460890

Registry: Halifax

IN THE MATTER OF: The Builders' Lien Act, being Chapter 277, S.N.S.2004, as amended

Between:

Eastern Canadian Structures Limited

Plaintiff

and

MasTec Canada Inc.

Defendant

and

Structural Panels Inc., Central Erectors Inc., Allsteel Builders (2) Limited and
Crane-Tec Service Inc.

Third Parties

ADDENDUM

Supplementary reasons to *Eastern Canadian Structures Limited v. MasTec Canada Inc.*, 2025 NSSC 68

Judge: The Honourable Justice Scott C. Norton

Heard: January 31, 2025, in Halifax, Nova Scotia

Decision: March 4, 2025

Counsel: Christopher W. Madill and Calvin DeWolfe, for the Applicant, Allsteel Builders (2) Limited
Nathan Sutherland and Dakota Bernard, for the Respondent, Eastern Canadian Structures Limited
Michael Brenton, KC, for the Respondent, Structural Panels Inc.
Susan Fader, for MasTec Canada Inc.
Michael Brooker, KC, for Crane-Tec Services Inc.

By the Court:

[1] This is an Addendum to *Eastern Canadian Structures Limited v. MasTec Canada Inc.*, 2025 NSSC 68, released February 20, 2025. The following paragraphs are added to the decision after para. 48.

[2] Allsteel advanced a separate ground for summary judgment to dismiss the claim for contribution by SPI. Allsteel says that there is no contractual agreement between the two and so the claim for contribution is rooted entirely in negligence. Allsteel asserts that the claim is one for pure economic loss and therefore unsustainable.

[3] For the reasons that follow, I dismiss the motion on this ground as well.

[4] The Supreme Court of Canada has defined pure economic loss as “loss unconnected to a physical or mental injury to the plaintiff’s person or physical damage to property.” *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, at para. 17.

[5] Allsteel argues that *Maple Leaf* outlines three categories of pure economic loss that can be incurred between private parties: negligent misrepresentation or performance of a service; negligent supply of shoddy goods or structures; and relational economic loss (para. 21).

[6] Allsteel relies upon *Maple Leaf* commentary on the category of “negligent supply of shoddy goods or structures” indicating that pure economic loss can only be recovered in respect of defective products or structures when the nature of the defect presents an “imminent threat” (some citations omitted):

[45] ...Where a design or construction defect poses a real and substantial danger — that is, what Fraser C.J.A. and Côté J.A. described in *Blacklaws v. 470433 Alberta Ltd.*, 2000 ABCA 175, 261 A.R. 28, at para.62, as “imminent risk” of “physical harm to the plaintiffs or their chattels” or property — and the danger “would unquestionably have caused serious injury or damage” if realized, given the “reasonable likelihood that a defect ... will cause injury to its inhabitants”, it makes little difference whether the plaintiff recovers for an injury actually suffered or for expenditures incurred in preventing the injury from occurring...

...

[47] ... But merely shoddy products, as opposed to *dangerous* products, raise different questions pertaining to issues such as implied conditions and warranties as to quality and fitness for purpose, and not of real and substantial threats to person or property (*Winnipeg Condominium*, at para. 42). In our view, those claims are

better channelled through the law of contract, which is the typical vehicle for allocating risks where the only complaint is of defective quality (*Hasegawa & Co. v. Pepsi Bottling Group (Canada) Co.*, 2002 BCCA 324, 169 B.C.A.C. 261, at paras. 57-61). Further, and even more fundamentally, such concerns do not implicate a right protected under tort law. As Laskin J.A. explained in *Hughes v. Sunbeam Corp. (Canada) Ltd.* (2002), 61 O.R. (3d) 433 (C.A.), at para. 26 in identifying the limits of the duty, “compensation to repair a defective but not dangerous product will improve the product’s quality but not its safety.” Again, we observe that, absent a contractual or statutory entitlement, there is no right to the quality of a bargain.

[7] This argument by Allsteel is based on the premise that there is no genuine issue of fact that the deformities in the panels are purely aesthetic. I have found that there is conflicting evidence as to whether the deformities are aesthetic or structural and a genuine issue of material fact as to whether, if structural, they posed a danger or imminent risk. The pleadings dispute this material fact and the evidence on the motion fails to negate its existence.

[8] Further, the Supreme Court was careful to caution that focusing on how the loss occurred can put a strain on the analysis by obfuscating both fundamental differences and similarities among cases of pure economic loss (para. 21).

[9] The Supreme Court explained at paras. 21-23 that such an approach:

... obscures the starting point in a principled analysis of an action in negligence, which is to identify what rights are at stake and whether a reciprocal duty of care exists (*Livent*, at para. 30). It is proximity, and not a template of how a loss factually occurred, that remains a “controlling concept” and a “foundation of the modern law of negligence” (*Norsk*, at p. 1152; *Design Services Ltd. v. Canada*, 2008 SCC 22, [2008] 1 S.C.R. 737, at para. 25).

[22] Properly understood, then, these categories are simply “analytical tools” that “provide greater structure to a diverse range of factual situations . . . that raise similar . . . concerns” (*Martel*, at para. 45; *Design Services*, at para. 31). Organizing cases in this way was and is therefore done for ease of analysis in ensuring that courts treat like cases alike. The fact that a claim arises from a particular kind of pure economic loss does not necessarily signify that such loss is recoverable. Where the loss is recoverable, however, this Court has clarified that the decided cases within these categories should be regarded as reflecting particular kinds of proximate relationships (*Cooper*, at para. 36; *Livent*, at paras. 26-27). But to be clear, the invocation of a category, *by itself*, offers no substitute for the necessary examination that must take place “of the particular relationship at issue in each case” between the plaintiff and the defendant (*Livent*, at para. 28; see also *Dorset Yacht Co. v. Home Office*, [1970] A.C. 1004 (H.L.), at p. 1038). In other words, what matters is whether the requirements for imposing a duty of care are satisfied — and, in particular, whether the parties were at the time of the loss in a sufficiently

proximate relationship. Where they are, it may be because the relationship falls within a previously established category of relationship in which the requisite qualities of closeness and directness were found, or is analogous thereto (*Livent*, at para. 26; see also *Childs v. Desormeaux*, 2006 SCC 18, [2006] 1 S.C.R. 643, at para. 15; *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 5). Or, a plaintiff may seek to establish a “novel” duty of care after undertaking a full *Anns/Cooper* analysis.

[23] With respect, the appellant’s submissions reflect a misunderstanding of the significance of the categories of pure economic loss. The appellant argues that a duty of care in this case “is established through the application of two well-established categories of recovery for pure economic loss [of] negligent misrepresentation or negligent performance of a service, and negligent supply of dangerous goods” (A.F., at para. 50). Again, a duty of care cannot be established by showing that a claim fits within a category of *pure economic loss*. It is necessary to determine whether the appellant’s alleged loss represents an injury to a right that can be the subject of recovery in tort law and possesses the requisite factors to support a finding of *proximity* under that category. We repeat: the manner in which pure economic loss is said to have occurred or how that loss has been catalogued within the categories of pure economic loss does not signify that the defendant whose negligence caused that loss owes the plaintiff a duty of care. The relevant “category” for the purpose of supporting a duty of care is that of *proximity of relationship*. Meaning, what is necessary to support a duty of care is that the relationship between a plaintiff and a defendant bear the requisite closeness and directness, such that it falls within a previously established category of *proximity* or is analogous to one (*Livent*, at para. 26; see also *Childs*, at para. 15; *Mustapha*, at para. 5).

[emphasis added]

[10] *Maple Leaf* instructs that determining proximity requires asking whether, in light of the nature of the relationship at issue, the parties are in such a “close and direct” relationship that it would be “just and fair having regard to that relationship to impose a duty of care in law. This assessment proceeds in two steps (para. 63).

[11] The first step requires the court to ask whether proximity can be made out by reference to an established or analogous category of proximate relationship. Second, if the court determines that proximity cannot be based on an established or analogous category of proximate relationship, then it must conduct a full proximity analysis:

[66] ... In making this assessment, courts must examine all relevant factors present in the relationship between the plaintiff and the defendant — which, while “diverse and depend[ent] on the circumstances of each case” (*Livent*, at para. 29), include “expectations, representations, reliance, and the property or other interests involved” (*Cooper*, at para. 34).

[12] Here, Allsteel was not a supplier of goods or structures. They supplied labour and equipment. No authorities were provided to me establishing such a relationship as within a recognized category of proximity. The burden was on Allsteel to establish by evidence that there was no genuine issue of material fact with respect to this issue. They have not done so.

[13] The motion is dismissed.

Norton, J.