

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** 1188701 Ontario Inc. o/a Carroll's Service, Plaintiff  
v.  
Her Majesty the Queen, in Right of the Province of Ontario, Represented  
by the Minister of Transportation for the Province of Ontario, Defendant

**HEARD:** June 29, 2023

**BEFORE:** Nieckarz A/RSJ

**COUNSEL:** A. Colquhoun (as agent for Lori Kruse), for the Plaintiff  
Defendant not appearing

**Endorsement on Motion**

[1] This motion for default judgment in the amount of \$935,888.11 plus pre-judgment interest calculated from January 29, 2020 to June 29, 2023 (date of judgment), post-judgment interest and costs, was heard in motions court by Zoom.

[2] The action arises out of contract breaches alleged by the Defendant, against the Plaintiff.

[3] There are a number of concerns I have with this matter as follows:

- a. The Notice of Action and Statement of Claim was served on the provincial Crown in May and November (respectively) 2020. This was during the height of the covid-19 pandemic. Uncharacteristically, the Crown did not respond or defend. The Plaintiff did not follow-up after service of the Statement of Claim, but moved to note the Defendant in default, which they are entitled to do under the *Rules of Civil Procedure*. Having said this, I cannot help but wonder if there will be an eventual motion to set aside any default judgment. This has not impacted my decision. I merely note it.

- 
- b. The Plaintiff claims, on a default basis, approximately \$936,000 in damages. The statement of claim indicates that damages are “estimated” to be in the sum of \$500,000, in addition to aggravated damages in the amount of \$100,000. I appreciate this was an “estimate”, but it represents almost twice the amount claimed, without any notice to the Defendant as to the potential for increased exposure. I am not inclined to grant an amount that almost doubles the amount claimed without notice. The Plaintiff indicated that in the alternative it will limit its claim to the amount in the Statement of Claim. We proceeded on this basis.
- c. The Plaintiff’s claim lies in breach of contract. The damages sought are for lost opportunity to bid on extra work outside the scope of the contract. The Plaintiff was unable to point me to a specific provision of the contract that gave it the right to bid on the work claimed, and to actually perform the brushing/ditching/tree removal work. I also question the claim that the airport demolition work formed part of the contract in any manner.

Plaintiff’s counsel argues that on a motion for default judgment liability is not at issue, only damages. She points to Rule 19.02(1) of the *Rules of Civil Procedure*, which deems facts alleged in the Statement of Claim to have been admitted as true upon the noting in default.

While the Defendant may be deemed to have admitted the facts alleged in the Statement of Claim, Rule 19.06 provides that a plaintiff is not entitled to judgment on a motion for judgment merely because the facts alleged in the statement of claim are deemed to be admitted. The facts must still entitle the plaintiff to judgment. There is some doubt in my mind, based on the evidence before me, as to whether the facts do entitle the Plaintiff in this case to judgment.

- d. Regardless, I find that the Plaintiff has not proved its damages. The Plaintiff claims the amount it would have bid for certain projects. In my view, this does not represent the Plaintiff’s loss or damage arising out of the alleged breach by the Defendant. Had the Plaintiff been allowed to bid on the extra work, it would have had costs associated with performing the work in terms of equipment and labour. The Plaintiff is claiming the full amount of bids, without accounting for any of its costs. Absent caselaw or a factual basis to establish the correctness of the amounts claimed, these claims could grossly exceed the Plaintiff’s actual damages. Plaintiff’s counsel argues this is not the case given that the total of all lost bids was \$935,888, therefore \$500,000 (being the limit of the claim as drafted) is reasonable. This may be the case, but the evidence does not establish what is reasonable. The Plaintiff did perform some additional brush cutting work for the Defendant that was outside the scope of the contract and should have evidence to assist in determining its actual damages.

---

[4] For the foregoing reasons the motion is dismissed, without prejudice to the ability of the Plaintiff to bring it back before the court with further and better evidence. I am not seized, and the motion need not be brought before me.

\_\_\_\_\_  
“Original signed by”  
The Honourable Justice T.J. Nieckarz, Acting R.S.J.

**DATE:** July 6, 2023

**CITATION:** 1188701 Ontario Inc. v. Ontario (Transportation), 2023 ONSC 4033  
**COURT FILE NO.:** CV-20-0150-0000  
**DATE:** 2023-07-06

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** 1188701 Ontario Inc. o/a Carroll's  
Service, Plaintiff  
v.  
Her Majesty the Queen, in Right of  
the Province of Ontario, Represented  
by the Minister of Transportation for  
the Province of Ontario, Defendant

**HEARD:** June 29, 2023

**BEFORE:** Nieckarz A/RSJ

**COUNSEL:** A. Colquhoun (as agent for Lori  
Kruse), for the Plaintiff  
Defendant not appearing

---

**ENDORSEMENT ON MOTION**

---

Nieckarz A/RSJ

**DATE:** July 6, 2023

/lvp