

# COURT OF APPEAL FOR ONTARIO

CITATION: Ekum-Sekum Incorporated (Brantco Construction) v. Lanca  
Contracting Limited, 2024 ONCA 189

DATE: 20240313

DOCKET: COA-23-CV-0730

Rouleau, Lauwers and Monahan JJ.A.

BETWEEN

Ekum-Sekum Incorporated carrying on business as  
Brantco Construction

Plaintiff (Appellant)

and

Lanca Contracting Limited, Keith Oliver Lancaster,  
Linda Margaret Lancaster and Nathan Keith Lancaster

Defendants (Respondents)

Anthony J. Gabriele and Andrew M. Beney, for the appellant

Dennis Touesnard, for the respondents

Heard and released orally: March 12, 2024

On appeal from the amended judgment of Justice Ian Smith of the Superior Court  
of Justice, dated July 4, 2023.

## REASONS FOR DECISION

[1] The appellant appeals the trial judge's finding that equitable set-off was available because, in its view, the respondents did not come to court with clean hands.

[2] The two construction contracts in issue were related as apparent from the conduct of the appellant, making equitable set-off available. The trial judge adverted to the clean hands doctrine of the law of equity. He exercised his discretion to award equitable set-off, fully recognizing that both parties had breached their contracts. Those breaches of contract did not, in his view, give rise to a finding of unclean hands. He found that the claimed breach of trust under the *Construction Lien Act*, R.S.O. 1990, c. C.30, was not made out on the evidence because the funds in issue were adequately accounted for as provided by the applicable case law.

[3] The appellant has not established that the trial judge made a palpable and overriding error of fact or an extricable error of law. We defer to the trial judge's exercise of discretion in allowing equitable set-off.

[4] The appeal is dismissed with costs to the respondents in the agreed amount of \$15,000, all-inclusive, in respect of this appeal and the Divisional Court proceeding.

“Paul Rouleau J.A.”  
“P. Lauwers J.A.”  
“P.J. Monahan J.A.”