

COURT OF APPEAL FOR ONTARIO

CITATION: Vertical Horizons Contracting Inc. v. Markham (City), 2024 ONCA
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DATE: 20240503

DOCKET: COA-23-CV-0187

Brown, Paciocco and Nordheimer JJ.A.

BETWEEN

Vertical Horizons Contracting Inc.

Plaintiff (Appellant)

and

The Corporation of the City of Markham

Defendant (Respondent)

Leo Klug, for the appellant

Vito Scalisi and Rauf Azimov, for the respondent

Heard: May 2, 2024

On appeal from the judgment of Justice Phillip Sutherland of the Superior Court of Justice, dated January 5, 2023, with reasons reported at 2023 ONSC 113.

REASONS FOR DECISION

[1] Vertical Horizons Contracting Inc. appeals from the judgment granted after a trial in which it was ordered to pay the respondent \$22,291.25 after a set-off of amounts owing by each party to the other. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. We now provide our reasons.

[2] The dispute arose out of a contract that the appellant had with the respondent to replace a sanitary sewer system comprising some 165 metres of

pipe. When the work began, issues arose involving the presence of water and the nature of the soil in which the pipe was to be laid. These issues caused the appellant to incur additional expense in installing the pipe.

[3] Ultimately, the respondent was not satisfied with the work that was done and terminated the contract. It hired another company to complete the work. The appellant commenced this proceeding claiming damages. The respondent counterclaimed for damages it incurred to have the work completed by another company.

[4] The trial judge reviewed the evidence that was called regarding the problems that arose with the work contracted for. He also reviewed the expert evidence that was presented. In the end result, the trial judge concluded that the appellant had breached the contract that it had with the respondent. Notwithstanding the breach, the trial judge found that there were amounts that were due to the appellant for the work it had done. He also found that the appellant owed the respondent for certain costs that the respondent had incurred as a result of the breach. After setting off the various amounts due, the trial judge concluded that the appellant owed the respondent \$22,291.25.

[5] The appellant challenges the trial judge's conclusion regarding the contractual breach. That conclusion, however, is based on the evidence that the trial judge heard and the terms of the written contract, including his conclusion that

the contract made the appellant responsible for the methodology used to do the required work. The appellant has failed to establish any palpable and overriding error in the trial judge's factual findings nor has it demonstrated any reversible error in his interpretation of the contract. The trial judge did excuse the appellant regarding the first 30 metres of pipe installation that revealed the water and soil issues, but he held that the appellant was responsible for the impacts that those issues had for the balance of the work to be done under the contract.

[6] The appellant has failed to demonstrate any proper basis upon which this court could interfere with the trial judge's decision which, we repeat, was almost entirely based on the evidence that he heard and the facts as he found them.

[7] The appeal is dismissed. The respondent is entitled to its costs of the appeal fixed in the agreed amount of \$20,000 inclusive of disbursements and HST.

"David Brown J.A."
"David M. Paciocco J.A."
"I.V.B. Nordheimer J.A."