

CITATION: Nortex Roofing Ltd., v. Abdool, 2024 ONSC 3321
COURT FILE NO.: CV-15-00529893-0000
DATE: 20240612

SUPERIOR COURT OF JUSTICE – ONTARIO

B E T W E E N:

RE: NORTEX ROOFING LTD. and JOSE DOVALE, Plaintiffs

AND:

RICK ABDOOL, TRICAN HOMES INC., TRICAN CONSTRUCTION
MANAGEMENT CORP. and 1675232 ONTARIO INC., Defendants

HEARD: In Writing

COUNSEL: *William Ribeiro*, Lawyer for the Plaintiffs
Defendants, unrepresented and noted in default

ENDORSEMENT

G. DOW, J.

[1] This in writing motion for default judgment was referred to me on June 5, 2024 to review. The plaintiffs were directed by Justice Chalmers on May 3, 2024 to proceed with service of the motion record including the form of judgment sought and his endorsement in a manner that the “affidavit of service should provide particulars of a basis for a judge to find that the Defendant received the Statement of Claim and motion record or otherwise knows about the lawsuit”.

[2] The affidavit of service provided deposed the motion record was sent “via email and regular mail” to addresses set out in a previous order dated November 6, 2023 wherein Associate Justice Frank provided for such service of that order. That order removed counsel for the defendants as solicitors of record.

[3] This action was also the subject of an unopposed motion striking the defendants’ Statement of Defence. It was heard by Associate Justice Frank January 18, 2024 and was successful. Those Reasons detailed repeated non-compliance of procedural steps by the defendants.

[4] While I would not ordinarily accept this manner of service as compliant with the directions of Justice Chalmers, I am prepared to make an exception and do so given the history of non-compliance.

[5] The motion record sets out the basis for the plaintiffs' request for judgment in the amount of \$267,790.10 and will not be repeated here. The action arises from a breach of a development agreement and construction services agreement and relies on the doctrine of unjust enrichment.

[6] I am satisfied the plaintiffs are entitled to judgment against the defendants and I award same in the amount of \$267,790.10.

[7] I also agree with the plaintiffs' claim for pre-judgment interest from June 15, 2015 at the *Courts of Justice Act*, R.S.O. 1990, c.C.43 at the prescribed rate of 1% per year. For clarity, I calculate this to be and award the additional sum of \$24,084.61 from that date to this date of judgment.

[8] I agree and award post-judgment interest at the rate prescribed by the *Courts of Justice Act*, *supra* at the rate of 7% per year.

[9] Regarding costs, I was provided with the Bill of Costs which claimed incurred fees of \$37,950. This was reduced to 85% for substantial indemnity and 60% for partial indemnity. I was not provided with any basis to award other than partial indemnity. (In this regard, no factum was provided which, for future reference counsel is encouraged to do).

[10] I also noted costs were fixed by the Associate Justice with regard to matters heard on January 31, 2022 and January 18, 2024 in the amounts of \$500 and \$4,000 respectively. Thus they are excluded from the balance of the costs claimed for this action. As a result, I award partial indemnity fees of \$17,364 plus HST of \$2,257.32 as well as disbursements, inclusive of HST of \$2,727.86 for a total amount awarded of \$22,349.18.

[11] Counsel shall forward to me a revised draft judgment for signature reflecting the above to the email address (my assistant) from which they received this endorsement at their earliest convenience.

Mr. Justice G. Dow

Released: June 12, 2024

