**CITATION:** Wessuc Inc. v. Todd Brothers Contracting Limited et al, 2024 ONSC 4368
**COURT FILE NO.:** CV-19-00000179-0000 (Guelph)
**DATE:** 20240809



**ONTARIO**
**SUPERIOR COURT OF JUSTICE**

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| **B E T W E E N:** | ) | |
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| WESSUC INC. | ) | D. Schmuck & R. Taylor, for the Plaintiff |
| | ) | |
| Plaintiff | ) | |
| | ) | |
| **- and -** | ) | |
| | ) | |
| TODD BROTHERS CONTRACTING LIMITED, ROSS CHRISTIE TODD, CINDY JANE TODD, BRAYDEN ALEXANDER TODD, and THE GUARANTEE COMPANY OF NORTH AMERICA | ) | J. Siemon & H. Wong, for the Defendants |
| | ) | |
| Defendants | ) | |
| | ) | |
| | ) | **HEARD:** April 10, 11, 12, 15, 16, 17, 18, 19, 22, 23 and 26, 2024 |

## REASONS FOR JUDGMENT

**JUSTICE G. D. LEMON**

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**The Issue**

[1] Wessuc Inc. has sued Todd Brothers Contracting Limited and The Guarantee Company of North America (GCNA) with respect to a contract to remove sludge from a water treatment lagoon operated by the Regional Municipality of Durham. The claims against the individual defendants were withdrawn at the outset of the trial.

[2] Wessuc was a subcontractor to Todd. Todd contracted with Durham. GCNA (now Intact Financial Corporation) was the supplier of a labour and material bond for the contract. Wessuc seeks $1,672,455.94 plus costs and interest from the defendants. Wessuc claims damages for breach of contract, unjust enrichment, and breach of trust against all but GCNA. Wessuc claims indemnification for any unpaid damages against GCNA pursuant to the bond.

[3] In response, Todd denies any liability to Wessuc and counter-claims against Wessuc for failing to complete the contract in a timely fashion.

[4] Given the sophistication of the parties, it is odd that this case turns on the terms of an unwritten contract for work that was never envisioned in the formal agreement between the parties before the work started. Despite a significant

change in the manner of the work to be done, no change orders were requested or given.

[5] For the following reasons, I find that Wessuc's claim is dismissed, Todd's counterclaim is allowed and GCNA has no obligations under the bond.



**The Background**

[6] Most of the facts are not in dispute. From the express admissions in the pleadings, I can start with the following.

[7] Early in the trial, I dealt with a motion for Wessuc to withdraw some of its admissions (*Wessuc v. Todd*, 2024 ONSC 2655). I allowed that motion; however, Wessuc left other significant admissions in its pleadings.

[8] On May 22, 2018, Durham issued a request for tender for the excavation and cleaning of an exfiltration lagoon at the Sunderland Water Pollution Control Plant in the Township of Brock. That work included the removal of sludge solids from the lagoon and the offsite disposal of those solids.

[9] The tender set out a methodology for the removal of the materials from the pond and the process to turn those materials into solids. It also required that the solids be disposed of at an approved landfill site. Waste materials such as those

in the lagoon could only contain a maximum amount of liquid and had to meet a prescribed "slump test" in order to be accepted at a registered landfill.

[10] Durham estimated the volume of solids in the lagoon to be approximately 6,095 $m^3$ and therefore set the maximum volume of solids for which it would pay at 6,100 $m^3$.

[11] Wessuc represents itself as an expert in the removal, handling and disposal of sewage. Todd asked Wessuc to provide an estimate for the completion of the work in accordance with the tender.

[12] Wessuc had a copy of the tender prior to preparing its cost estimate. Wessuc was also present at the pre-tender meeting along with other contractors that were bidding on the project.

[13] Wessuc submitted an estimate to Todd, dated June 19, 2018, for the pricing of the work. The estimate included the following terms:

(a) the unit price for "1.06.31 Exfiltration Removal" is $84.50 per $m^3$;

(b) the unit price for "1.06.32 Off Site disposal of sludge solids" is $67.32 per $m^3$;

(c) Wessuc will "[r]emove material from the lagoon and process through 4 portable dewatering units";

(d) Wessuc will "haul dewatered material to MOE approved disposal site and unload as directed"; and

(e) the lagoon dewatering and disposal is anticipated to take 20 days.



[14] The estimate included the costs of trucking the solids to a registered landfill and payment of any applicable dump fees to the landfill operator. Todd accepted that estimate.

[15] Prior to commencing the work, Wessuc sought a modification of the methodology set out in the tender such that, instead of trucking the solids to a designated landfill, it would disperse the solids by spraying them onto farmers' fields as fertilizer.

[16] Wessuc's modification allowed it to avoid the costs, effort and time involved in drying out or treating the sludge to pass an acceptable slump rate for the landfill sites. Wessuc would also avoid the costs of trucking the solids to a more distant designated landfill and the applicable dump fees.

[17] Wessuc assured Todd that it had, or would have, agreements with a sufficient number of farmers, with sufficient acreage of fields, to fully dispose of all of the estimated volume of solids in the lagoon; or, if it ran out of fields, that it could and would truck the solids to, and pay the dump fees at, one of the two available landfills, all at Wessuc's cost.

[18] Following the pre-construction meeting, Todd and Wessuc discussed the methodology by which the actual volume of solids would be calculated for the purpose of invoicing.

[19] After commencing the work, Wessuc questioned Todd's expectation that Wessuc would remove 6,100 dry tonnes of solids.

[20] Wessuc submitted to Todd one invoice dated August 31, 2018, for the work that Wessuc performed with the total amount payable being $457,798.79.

[21] A meeting took place on site with representatives in attendance from Wessuc and Todd on September 6, 2018. Todd provided Wessuc with a written summary of the meeting the following day.

[22] Wessuc demobilized from the site on or about September 29, 2018.

[23] In short, in accordance with Durham’s tender, Wessuc first contracted with Todd to remove material from the lagoon and process that material through four portable dewatering units. Wessuc was then to haul the dewatered material by truck load to an approved disposal site and unload it as directed. By that process, most of the water would remain on site or in the lagoon.

[24] However, after the contract was awarded, Wessuc, Durham and Todd agreed that Wessuc would remove both liquid and solids from the location and then spray that material on farmers' fields.

[25] GCNA was the surety for the construction project by way of a labour and material payment bond.



**The Roadmap**

[26] I will start with my assessment of credibility of the witnesses. I will then make my findings of fact necessary to resolve the issues. Finally, I will apply those facts to the issues to be determined. Those issues are:

1. Was there a contract between the parties? If so, what were its terms?
2. Did Wessuc abandon the project, or did Todd terminate Wessuc's contract?
3. What are the damages that flow from that abandonment or termination?
4. Does the doctrine of quantum meruit apply?
5. Did Wessuc comply with the terms of the labour and material bond with GCNA? If not, should I grant relief from a failure to comply with those terms?

**Personnel and Credibility**

[27] I heard from a total of nine witnesses. Those were:

(1) Lorne McCallum - Sales Rep for Wessuc;
(2) Richard Van Veen - Operations Manager for Wessuc;
(3) Hank Van Veen - Vice President for Wessuc;
(4) Phil Cron - Director of Sales and Business Development for Wessuc;
(5) Matt Jolley - Land Co-ordination Supervisor for Wessuc;
(6) Donald Hoekstra - Wessuc's Expert with respect to removing bio-solids;
(7) Bill Woolsey - Project Manager for Todd;
(8) Ross Todd - President of Todd;
(9) Luciana Polsoni - Senior Claims Adjuster for GCNA.

[28] Although both parties alleged what the contract terms were for the work carried out for Durham, neither party called any witnesses from Durham.

[29] An adverse inference may be drawn from the failure of a party to call a relevant witness or submit relevant evidence that would be expected to be called by a party. The adverse inference is that the evidence was not proffered due to fear it would not support that party's case. See: *Sundance Development Corporation v. Islington Chauncey Residences Corp*., 2023 ONSC 5239, at para. 213.

[30] In this case, I find it strange that neither Wessuc nor Todd thought that Durham had valuable evidence. In that situation, I have not drawn an adverse inference against either party.

[31] In my view, all of the witnesses who testified were doing their best to remember what had occurred six years before trial. Almost all of the witnesses had an obvious bias for the party that called them; however, an apparent bias does not mean that the witness is lying. Indeed, some witnesses gave evidence against the interests of the party who called them. While their memories varied in reliability, I am not prepared to say that any of the witnesses intentionally misled me in their evidence. For the significant issues between the parties, I need not determine some of the conflicting testimony.

[32] Fortunately, the trial exhibits included many documents, emails and other electronic communications between the parties and witnesses throughout the execution of the contract. All such documents were admitted as authentic. Where those documents differ from the memories or testimony of witnesses, I have relied on those documents. Although I will summarize the evidence of the witnesses in relation to the issues, I will more often refer to the documents and exhibits in my analysis. As one might expect, the emails and electronic communications had short forms, typographical errors and grammatical liberties. I have left them as they were without adding "*sic*" where otherwise appropriate.

**Was there a contract between the parties? If so, what were its terms?**

Positions of the Parties

[33] In brief, Wessuc takes the position that while the method of sludge removal changed, the price per unit did not. Whether the sludge was removed with more or less water, the $m^3$ unit cost was the same. In this case, there was almost twice as much material removed than envisioned and therefore the contract was more expensive than envisioned. Be that as it may, Todd should be held to the terms of Wessuc's estimate.

[34] In response, Todd says that the final agreement between the parties was a lump sum contract for the removal of the sludge in the lagoon regardless of the amount actually removed. Once the methodology for removal of the sludge was changed, the unit price was no longer applicable. Therefore, the parties and Durham agreed on a new price. That price was the total estimate provided by Wessuc for 6100 $m^3$ of sludge regardless of the actual amount – less or more – that was removed.

[35] On the basis of the evidence and emails between the parties, I accept Todd's position.

Evidence of the Plaintiff

*Evidence of Lorne McCallum*

[36] Mr. McCallum was Wessuc's sales representative for this project. In the late spring or early summer of 2018, Mr. McCallum met Todd's Mr. Woolsey at the site. He later spoke with Mr. Todd in late June. They reviewed the quote and he understood that Wessuc and Todd were proceeding to remove 6100 $m^3$ of biosolids from the lagoon.

[37] Mr. McCallum produced, created and provided the estimate that is at issue. Based on the tender documents, this was to be a per unit rate contract and any "additional volume" would be any material that was removed over 6100 $m^3$. No one at Todd asked for any changes or said that they did not like the estimate.

[38] The work then changed to be an application of the sludge to farmers' fields rather than taking the material to a landfill. He wrote to Mr. Woolsey at Todd that the new plan would save time and money on the project. He knew that any changes to the work required written approval between Todd and Durham. The new plan was discussed without approval or change in documentation. They did not discuss being paid for drained sludge only. The project was expected to be done in seven days.

[39] Mr. McCallum knew that Durham accepted the plan on the basis of a maximum of 6100 $m^3$ of dewatered sludge. He was not sure what they would have been paid with the modified plan.

*Evidence of Hank Van Veen*

[40] Mr. Van Veen was the Vice President for Wessuc. He testified that, besides this contract, Wessuc had completed similar contracts for the city of Brantford and the city of Barrie.

[41] The contract with Todd and Durham was that Wessuc was to remove biosolids from a lagoon and haul that material to an agricultural site to be spread on farmers' fields.

[42] The "biosolids", as he described it, were processed sewage sludge from wastewater plants. In the normal course, there would be a series of lagoons to digest the sludge. In this case, the Sunderland lagoon was to have 6100 $m^3$ of material removed and taken to farmers' fields.

[43] When the lagoon was first pumped and before the dewatering process began, there would be 2-5% solids within the removed liquid. However, at the end of the dewatering process, the material would be 20 to 40% solids or like a "mushy cake." In this case, at the time of Wessuc’s estimate, the dewatering process was

to be carried out by the "In The Round" method. That is to say, the water from the lagoon would be drained into a perforated tank. The water would go out through the perforations and the solids would be left behind to form a “cake” which could then be removed by the truckload.

[44] The tender had originally suggested a "Geotech" style of dewatering which was to push the water through, essentially, a large sock and the materials would be left behind as the water leaked out. It was that dewatered product that would be trucked from the area around the lagoon. The tender set out a "truck box measurement" for the agreed upon physical dimensions of the dump box to be used. In the end result, that term was not applicable here because Wessuc used water tankers to remove the sludge.

[45] Mr. Van Veen testified that Wessuc changed the methodology, and that change was approved by all parties.

[46] Mr. Van Veen agreed that, pursuant to the tender, there was a nine-week schedule for completion of Wessuc’s work. He also confirmed that the tender set out records of volumes of sewage consumed, densities of sludge, moisture content and other records that needed to be kept.

[47] In Mr. Van Veen’s view, although the methodology changed, the estimate did not. Accordingly, the unit costs per $m^3$ were applicable for both methodologies. Although he had proposed a method to measure the amount of solids removed by the new method, an initial survey of the pond was not done. Instead, the biosolids or sludge was measured by a flow meter as it was removed.

[48] The suggestion of dispersing the pumped material on farmer's fields would save costs for Wessuc. Namely, it would reduce the time and expense for dewatering as well as the costs of trucking to landfills and tipping costs. However, Mr. Van Veen said that dewatered material would have less volume and would require fewer truck loads to be removed. Mr. Van Veen produced the records that determined that a total of 12,755.65 $m^3$ of sludge was removed from the lagoon by the new method.

[49] Mr. Van Veen confirmed that he wrote to Todd on July 24, 2018, that the manner of payment would be by lump sum rather than unit price. Despite that, he denied that there was an agreement to be paid for 6100 $m^3$ regardless of less or more. In his view, the original unit price per $m^3$ remained in place.

[50] In August of 2018, Todd signed the estimate but attached other documents to it with which Wessuc did not agree. Despite that lack of agreement, no one from Wessuc responded to that record.

*Evidence of Richard Van Veen*

[51] Mr. Richard Van Veen was the operations support manager for the site. That involved getting equipment, pricing equipment, and guiding the team. He was on site from time to time. He has 30 years in the industry relating to biosolids and biosolids applications. He was responsible for getting the job done in a timely fashion. He was not on site after the liquid removal portion was done but was still overseeing the project.

[52] Mr. Van Veen acknowledged an email of July 23, 2018 from Mr. Woolsey that Durham agreed to the new plan so long as the bill "does not exceed the 6100 m3". This was after the methodology changed and before the work started. He understood that the region would not pay for more than 6100 $m^3$.

[53] He did not respond to this email but forwarded it to Mr. Hank Van Veen and Mr. Phil Cron at Wessuc. He understood that Wessuc needed to respond to it. He confirmed that Hank Van Veen responded that “we are willing to approach this as a lump sum project.” He took this to mean that Wessuc would be compensated on the contract whether they were more or less than 6100 $m^3$.

[54] He was aware of time constraints and deadlines to complete.

*Evidence of Phil Cron*

[55] Mr. Cron was Wessuc's director of sales and business development. He reviewed the tender documents and confirmed that the work was to remove 6100 $m^3$ of dewatered solids. He did not know who was to be satisfied with the cleanliness or the completion of the project. He agreed that Wessuc's scope of work was not completed on September 10, 2018.

[56] Mr. Cron confirmed by email to Mr. Woolsey on August 3, 2018, that "Wessuc accepts lump sum payment as per email dated July 24th." No one objected to that term, and it was sent around to all of the involved Wessuc people.

[57] In re-examination, he said that the project was a lump sum contract based on their initial estimate but the 6100 $m^3$ was based on liquid sludge.

*Evidence of Matt Jolley*

[58] Mr. Jolley worked for Wessuc as a land co-ordination supervisor. It was his job to find farmers' fields upon which to spray the removed material. He confirmed that a total of 12,756 $m^3$ (including water) was sprayed on the fields.

[59] Land applications can be more cost effective depending on the fields and their locations. Some landfills would not take biosolids. Dewatered materials can go to landfills but only if they pass a slump test for moisture content.

[60] In his examination for discovery, Mr. Jolley described the method of quantifying the amount of solids removed as sludge from the bottom of the lagoon.



Evidence of the Defendants

*Evidence of Bill Woolsey*

[61] In 2018, Mr. Woolsey was self employed as an estimator and project manager for Todd Brothers. He has worked with Todd Brothers for over 40 years. He was responsible for the day-to-day management of the project and had reviewed the tender documents. He prepared the bid from Todd to Durham. He was on site one day a week for two or three hours.

[62] Based on the tender documents and Wessuc's subcontract, Todd was to prepare the lay down area for the dewatering process and Wessuc was to pump the sludge into bags for dewatering and then truck the solids away to registered landfill sites. The project needed to be completed in 9 weeks because it was taking one of two ponds out of service and the other pond could not be allowed to overfill.

[63] Under the original method, the sludge was to be pumped out and then the dewatered material would be trucked away. That material would be "pretty close to totally dry." Durham would decide when the project was completed to its satisfaction.

[64] After the new method was proposed, the parties met for a meeting at the site on July 17, 2018. Durham wanted to study the plan and did not yet approve it. Wessuc still had to submit farm locations, test results and agreements where the materials were to be spread. By this point, Todd had the contract with Durham, but the method of removal had not been approved. The new plan presented problems since there were no longer truck measurements for the removed material and water was being moved.

[65] On July 23, 2018, Mr. Woolsey confirmed to Wessuc that Durham would pay for no more than the price for 6100$m^3$ as set out in the estimate. On July 24, 2018, Hank Van Veen confirmed that “this is a lump sum project”. Mr. Phil Cron confirmed the same on August 3, 2018. On August 14, Mr. Woolsey confirmed the payment method and that he did not agree to pay more. He agreed that there was no clear document like a purchase order to confirm those terms.

[66] Mr. Woolsey sent Wessuc’s signed estimate back to them on August 29, 2018 but did not amend the estimate to a lump sum contract since he had the other confirmatory emails.

[67] Mr. Woolsey agreed that Wessuc may have removed 12,000 $m^3$ of material but that was both water and solids.

*Evidence of Ross Todd*

[68] Mr. Todd is the president of Todd Brothers. This was Todd's third sewage lagoon contract but the first where the sludge was removed from the property. He made all of the decisions for Todd. He was on site every day as were representatives of Durham.

[69] With the Geotech method (the sock), land would have to be cleared and grubbed for the laydown area. A berm would be created to surround the water and the area would then be layered with a plastic liner covered in limestone. The sludge would then be pumped into the laydown area. After 4-6 months, the sludge would be trucked away. The "solids" to be removed were to be loaded onto a dump truck. That would be called cake. The region would then pay on a truckload basis. Todd was to then lay one foot of sand on the bottom of the lagoon and build an access ramp for maintenance. The project was urgent to be certain that the other sewage lagoon did not overflow.

[70] Wessuc proposed the change after the tender award and before the pre-construction meeting. Durham was aware of the proposal because it was discussed at the pre-con meeting. Wessuc made the presentation about the method at the meeting. Wessuc said that the new method would be cheaper and faster for Durham. It would take 7 or 9 days.

[71] Durham wanted to know where the material was going and also needed to have the necessary approval documentation from the farmers. Wessuc said that it had tested the material and that it was of use to farmers. Durham wanted records of what was removed and how much was removed in order to estimate for future lagoons to be emptied. The tender set out the protocol if extra work was required. Durham was concerned about costs and agreed with the new method so long as there were no cost overruns. Durham would pay the full amount of the estimate regardless of what was removed. That made it a lump sum contract.

[72] Under the lump sum contract, there was no need to weigh anything removed so the fact that Wessuc failed to provide records of what was removed no longer mattered to Mr. Todd. Durham did not ask for surveys of the lagoon to be done when it turned into a lump sum contract.

[73] There was no change order because he had a verbal agreement. It was not usual for him to have change orders.

Authorities

[74] In *Grelowski v. Koehler*, 2022 ONSC 2902, Reid J. said (paras. 27 – 28):

> … In the absence of a written contract or an acknowledgement of the oral agreement, one must look to the conduct of the parties to determine objectively whether a binding agreement was made... for an enforceable building

> contract to exist, there must be certainty about the scope of the work to be done, the timeline for completion and the price. In the absence of agreement on any one of those essential terms, no enforceable contract exists. [Citations removed.]

[75] In *Gatti Group Corp v. Zuccarini*, 2020 ONSC 2830, Master Wiebe said (para. 71):

> It is well established law that for there to be a binding construction contract there must be an agreement, a meeting of the minds between the parties, on three elements: the scope of the work; the schedule; and the price. In *Rafal v. Legaspi*, Madame Justice Fisher stated the following in paragraph 23: "However, for building contracts, it is not sufficient for both parties to have agreed on the building of a house. For the contract to be enforceable, the parties must also agree on the exact type of house, the timeline for completion and the price…" [Citations removed.]

Analysis

[76] The emails and other electronic communication show that Wessuc's position that this was a per unit price contract is untenable. However, the most telling way to reject Wessuc's submission is that on that interpretation, the new method would be more expensive for Durham. Based on the tender, Durham would pay for the removal of dewatered material. On Wessuc's submission, Durham would pay for water to be trucked off site from beside its own pond. Indeed, water would be added to the mix to allow it to be pumped. And Todd and Durham would have to pay for that water to be removed from the site. That would obviously not be cheaper for Durham.

[77] All agreed that, in the tender, the material to be removed was to be “dewatered cake”, not fluid. The payment terms could not have remained the same when the water was also to be removed from the site. Without clear written confirmation of Wessuc’s interpretation, I find that it is wrong.

*The Testimony*

[78] Wessuc’s witnesses Mr. McCallum and Mr. Cron agreed that this was a lump sum contract. Although Mr. Cron attempted to resile from that and Hank Van Veen said that it was a per unit price, the balance of the oral evidence supports Todd’s submission.

*The Exhibits*

[79] Wessuc’s estimate according to the tender document was provided on June 19, 2018. However by June 29, 2018, Mr. McCallum wrote to Mr. Woolsey and said:

> The team is working on another plan that will save you money and energy. Once this awarded, we will meet to discuss further. Do not work on laydown area as this is an area that we feel we can avoid and save you money.

[80] However, on Wessuc's interpretation of the agreement, this new plan would increase the cost, as in fact it did. Adding water to what was moved would increase the per unit cost. No one but Wessuc believed their interpretation.

[81] On July 9, 2018, Mr. Jolley wrote to Mr. Shane Van Veen at Wessuc that testing had shown that the material could be taken "straight to field". I find that he meant that Wessuc's method would allow the water and sludge to be sent to the farmers' fields without worrying about contaminants in the sludge and that the material did not need to be dewatered.

[82] On July 11, 2018, Mr. McCallum wrote to Mr. Woolsey with the new plan to pump the lagoon and spread the fluid on the fields. On the same day, Mr. Woolsey forwarded the plan to Mr. MacDonald at Durham. Nothing in Wessuc's document referred to how the work was to be billed or paid other than to say that "from every load a 500ml sample will be taken. We will take a composite sample for the day and analyze for total solids." From that reference, it appears that Wessuc was aware that it needed to ensure a record of what solids were removed and separated out from the water that was to be removed.

[83] On Tuesday July 17, 2018, representatives of Durham, Wessuc, and Todd met at the site. Minutes were taken and no one objected to those minutes at trial or before. At that meeting, Mr. McCallum and Mr. Richard Van Veen presented

their new plan for removal of the sludge. Durham was to review the plan and confirm their approval.

[84] Even as early as July 18, 2018, Mr. McCallum wrote to Mr. Woolsey with his plan to analyze the water as it was removed so that “the client is not paying for water to be hauled, only the original agreed 40% dewatered costing method.”

[85] Wessuc’s internal communication of July 19, 2018, shows that Mr. McCallum was concerned about the difference between dewatered material as in the tender and the new plan with water being transported. Wessuc’s draft stated that they would only “charge you for the actual dry tonnes formula that was agreed to during the tender process.” That could only mean that Todd would not be billed for the amount of water removed in the new method. And yet, Wessuc’s position at trial is that Todd would have to pay for both water and sludge to be transported. Where the testimony of Wessuc’s witnesses contradicts the documents, I have rejected Wessuc’s evidence.

[86] On July 19, 2018, Mr. Hank Van Veen provided an internal email to the others at Wessuc. That set out a process to “maintain the volumetric basis for removal and disposal as outlined in the tender while eliminating any concern for added water...” That plan was sent to Todd later the same day along with other required documentation from the site meeting.

[87] It is clear from Wessuc's internal communication that it would have been difficult to ensure the correct recording and calculation of what materials were removed. It is safe to say that Durham would have had the same concerns. That is supported by what happened next.

[88] On July 23, 2018, Mr. Woolsey wrote to Mr. Richard Van Veen:

> In a nutshell, they [Durham] do not want to pay for any more than the 6100m3 of sludge removal... I think that they are more than willing to go with our method as long the items for pumping, removal, lagoon bottom cleanup, vegetation removal on slopes and disposal of all, does not exceed the 6100 m3... The region is waiting for some kind of confirmation on this matter so they can get the final couple of signatures and then things can move forward.

[89] Of significance, Mr. Hank Van Veen wrote back to Mr. Woolsey on the following day (copying Mr. Cron and Mr. Richard Van Veen):

> As mentioned we are willing to approach this as a lump sum project for the lagoon clean out.

[90] In my view, Mr. Van Veen's phrase "lump sum" can only mean that Wessuc would do the work for the total price of 6100$m^3$ as set out in its estimate whether the material was more or less than that amount. Indeed, that is what Mr. Hank Van Veen testified to. This would mean that the complicated calculations to separate water from solids were no longer necessary.

[91] On these emails, it is confirmed that this was a lump sum contract before the work commenced.

[92] Further, Mr. Cron wrote to Mr. Woolsey, Mr. Todd, Mr. Hank Van Veen and Mr. McCallum on August 14, 2018, saying:

> Someone was talking to our staff yesterday about dry tonnes and the expectation of removing 6100 dry tonnes... Unsure why anyone is talking dry tonnes…

[93] Mr. Woolsey responded the same morning:

> The region accepted this method but stated they would only pay up to the tender quantities for removal and disposal, 6100m3 and no more. The job would be completed for the cost of 6100 m3. Hoping Ross and Lorne will clarify this tomorrow.

[94] There are no emails in response from Wessuc. A lack of response from Wessuc is consistent with Wessuc's agreement with Mr. Woolsey's statement.

[95] On August 15, 2018, Mr. Todd expressed his concerns to Mr. Jolley about a number of issues relating to the work being done. He referred to this 6100 $m^3$ item. Mr. Jolley responded the same day; he did not disagree with Mr. Todd. Mr. Jolley also confirmed that "According to our volume estimate we have about 3,000m3 more to remove out of the lagoon after today. Which should leave us just about 7,000m3 land applied."

[96] On August 21, 2018, Mr. Cron wrote to the Wessuc "team":

> Based on previous discussions are we good to continue as this will take our total to approx. 9,100 to 10,100 cube.

[97] In response, Mr. Hank Van Veen instructed:

> Yes, carry on with removal of the additional volume.

[98] While I appreciate that this is consistent with both parties' arguments, it is further evidence in support of Todd's submission. Wessuc would not likely continue to go over the amount of its estimate if it knew that there was a dispute about what they were being paid.

[99] Wessuc's interpretation of the agreement would have the effect of increasing the cost by transporting water – which Durham expressly refused to do – while reducing Wessuc's costs of dewatering and trucking. There is nothing in this record that such was agreed upon. Instead, I find that the whole of the evidence supports the submissions that the agreement was that Wessuc was to be paid a lump sum to avoid any concerns about calculating the difference between dewatered sludge and watered material.

[100] In argument, Wessuc acknowledged that it failed to provide the records of what was removed from the lagoon. That lack of record production is consistent with a lump sum contract. Neither Todd nor Durham would need to know what was removed since the price would not change with the amount removed.

[101] Wessuc has the onus of proving the terms of the contract. On its evidence, the tender documents outlined a different removal method, disposal method and payment method for the work to be accomplished. Despite some of the oral testimony from Wessuc, other oral testimony and all of the written communication is contrary to its submission.

[102] On August 3, 2018, Mr. Cron wrote to Mr. Woolsey (copying all of the individuals who at trial were Wessuc witnesses) to set out a time line with an expected completion date of August 21, 2018.

[103] In my view, the exhibits confirm the work to be done, the manner in which it was to be done, the timelines to be followed and the payment method. The scope of the work did not change; only how it was to be done and how it was to be charged to Todd and Durham. And that agreement is clear on this evidence.

*The Admissions*

[104] Wessuc admitted paragraph 11 of Todd's Statement of Defence and did not ask to withdraw that admission in its motion to amend its pleading at the outset of the trial. That paragraph reads:

> Durham estimated the volume of Solids in the Lagoon to be approximately 6,095m3 and <u>therefore set the maximum volume of Solids that it would pay for at 6,100 m3.</u> [Emphasis mine.]

[105] In *Champoux v. Jefremova*, 2021 ONCA 92, Hourigan J.A. said (para. 34):

> A trial judge has the freedom to interpret what an admission means. But that interpretive exercise cannot morph into an analysis of the veracity of the admission. A formal admission is not like other pieces of evidence led at trial that a judge can weigh at their discretion. A formal admission is conclusive of the matter admitted. The court is bound to act on formal admissions before it, even if other evidence contradicts the admission… [Citations removed.]

[106] In my view, by this admission, Wessuc is acknowledging Todd's evidence that Durham was not going to pay for more than a lump sum contract. If so, there was no evidence that Todd accepted the loss that it would incur by paying Wessuc more than Todd would be paid by Durham.

[107] Further, at paragraph 20 of Wessuc's Amended Amended Statement of Claim, it pleads:

> Pursuant to Appendix "A" to the Estimate, authored by Todd Brothers, the method of sludge removal and disposal of sludge solids was changed from what was reflected in the Prime Contract. The method to be used by Wessuc would be changed from that which was first contemplated, namely dewatering of the liquid sludge removed from the Sunderland Lagoon prior to loading of the solids onto a truck for offsite disposal, to pumping of liquid sludge (water with solid content) into tankers to be hauled to offsite fields for disposal.

[108] As will be discussed below, Wessuc made a claim to GCNA with respect to the bond. When GCNA requested documents relating to the claim, Wessuc provided Appendix A to GCNA as part of the contract documents.

[109] The Appendix A referred to above was one of the documents that Todd forwarded to Wessuc with Todd's signed copy of the estimate. This set of documents was prepared and forwarded by Mr. Woolsey. Both he and Mr. Van Veen denied that this group of documents formed the contract between the parties. However, it is of some significance that Wessuc plead that this document was supportive of their position in their pleadings and provided it to GCNA as a contract document.

[110] Appendix A is a set of notes from an August 29, 2018 site meeting. It confirmed:

> The Region of Durham (owner) accepted Wessuc's proposal and the supporting documentation and allowed the different method but stated that the project would be completed and the max. volume to be paid was 6100m3. This volume includes clean-up of lagoon bottom and vegetation on the slopes. [Emphasis mine.]

[111] This document adds further evidence to Todd's position.

[112] Finally, with respect to the pleadings, Wessuc pleaded:

> 34. Wessuc's original Estimate was based on a quantity of 6100 cubic meters of sludge and, by the end of the project, the extracted volume was roughly double the estimated figure. Despite this, Wessuc is only seeking payment for the total of the original Estimate and not the pre-unit price. [Emphasis mine]

[113] Wessuc did not seek to withdraw this admission in its motion to amend its pleadings and should be held to it. That is to say, it is seeking only payment for the total of the original estimate and not a further amount for cost overruns.

Result

[114] On that basis, I find that the contract between the parties was that Wessuc was to remove the sludge from the lagoon in the manner agreed upon to spray on farmers' fields. From the admissions set out above, there is no dispute about what was to be done - instead of trucking the solids to a designated landfill, Wessuc would disperse the solids by spraying onto farmers' fields as fertilizer.

[115] Wessuc was to be paid on the basis of a "lump sum" fixed price for 6100 $m^3$ at the price set out in the estimate or $1,046,495.26 if Wessuc had completed the work.

[116] The entire contract was to be done in nine weeks and Wessuc estimated seven days for its work. All other terms of the estimate remained in place. I agree with Todd that the method of completing and paying for Wessuc's work was the

only thing that changed. From that amount, the evidence is that Wessuc has been paid $457,798.79.



**Expert Evidence**

[117] Wessuc called Mr. Donald Hoekstra to give opinion evidence on the calculation of biosolids removed from a lagoon in the biosolids industry, the calculation of volumes and dry tonnage of biosolids and the typical concentrations of solids and organics of biosolids.

[118] Given my finding that this was a lump sum contract, Mr. Hoekstra's evidence becomes irrelevant to my determinations. How solids and volumes and tonnage are calculated would make no difference to this lump sum contract for services to be delivered regardless of what was removed.

**Did Wessuc abandon the project, or did Todd terminate Wessuc's contract?**

Positions of the Parties

[119] Wessuc submits that it was wrongfully terminated by Todd. In return, Todd says that Wessuc abandoned the contract and left Todd to complete it on its own.

[120] Wessuc also submits that it completed its contract with Todd. Further, it says that the extent of what was still required to be completed and the reasons for

that are very much in dispute. However, that relates more to the damage claim dealt with below. Here, I focus on how Wessuc finally came to leave the project.

[121] From the admissions, there is no dispute that Wessuc submitted to Todd an invoice in the amount of $457,798.79 dated August 31, 2018, for the work that Wessuc performed. There is a dispute as to whether Wessuc issued other invoices, but nothing turns on that. In any event, in response to Todd's Request to Admit, Wessuc admitted that it sent "one invoice dated August 31, 2018, for the work that Wessuc performed..."

[122] On Friday, September 6, 2018, a meeting took place on site with representatives from Wessuc and Todd. Todd provided Wessuc with a written summary of the meeting the following day. Wessuc demobilized from the site on or about September 29, 2018.

[123] With respect to the September 6, 2018 minutes prepared by Mr. Woolsey, no one disputed the accuracy of those minutes although Mr. Cron wrote a response on Tuesday, September 10, 2018.

[124] Those notes confirm that the parties believed that about 60% of the lagoon had been totally cleaned and was ready to have a sand covering. However, about 25% of the area had a layer of sludge that was too dry to pump. The balance was

being pumped by adding more water to it. The parties were disputing the manner of payment and that led to this litigation. Wessuc had run out of fields to dispose of the sludge; the balance needed to be trucked. Todd was pushing the material to the edges of the lagoon to allow it to drain. Of significance, Mr. Woolsey wrote:

> Wessuc is apparently stopping their operations and moving off-site as of Thursday evening (Sept. 6th). There is still approx. 1000 m3 of sludge to be removed from site. If Wessuc makes no effort to complete this work, then whatever costs plus HST, that Todd Brothers incurs to complete this removal and disposal will be deducted from the total amount of Wessuc's quotation date June 19, 2018. The Region have stated that they will give the OK when the sludge clean-out is acceptable. They have only accepted approx. 50% of the bottom to this point.

[125] The parties agreed to take samples of the material to determine its content. That would assist to determine the amount of sewage remaining and to determine if a landfill would accept it for disposal.

[126] In his response, Mr. Cron said that approximately 60% of the lagoon had been completely cleaned but otherwise did not dispute the minutes' content. He raised other arguments about payment but not the observations and the plan.

Evidence of the Plaintiff

*Evidence of Richard Van Veen*

[127] Mr. Van Veen agreed that it took several more days than planned to drain the water cap to start removing the sludge as contracted. Wessuc needed permission from Todd and Durham to pump on Saturday. In the result, it took Wessuc about eight days to remove the water before it could start pumping the sludge. There was more sand in the lagoon than expected and therefore Wessuc needed more water to keep the sand suspended to pump it.

[128] Both Wessuc and Todd took samples in September to determine if there were biosolids left in the lagoon and to see what could be put in landfills. By that time, Wessuc had run out of farmers' fields to spray and needed to truck the material to landfills. Wessuc had a third-party sample the biosolids in the lagoon, but Wessuc did not provide evidence of the results of that test.

[129] Wessuc fixed mechanical repairs as quickly as possible.

[130] Mr. Van Veen testified that the lagoon was "clean enough" in that they removed the biosolids although there may have been some water ponding left on the bottom of the lagoon. He agreed that Wessuc used Todd's bulldozer to keep the water in check from the cleaned area.

*Evidence of Hank Van Veen*

[131] Mr. Van Veen agreed that Wessuc did not have the farmers sign releases because Wessuc was told to leave the site. As a result, that documentation was not completed. Wessuc could have obtained the farmers' waiver but did not. He does not know if Todd got a sign off. He said that there were no more land applications after September 6. The last day for Wessuc's claim is September 6, 2018 and there was no sludge removed after that date.

[132] In his view, as of September 6, 2018, the lagoon was dry; however, he was not on site at any time or at any of the construction meetings. He had a minimal role, simply to be updated and provide advice. He was not the primary contact for this contract; it was Mr. Richard Van Veen or Mr. Phil Cron. He did not communicate with Durham.

*Evidence of Phil Cron*

[133] Mr. Cron testified that after the September 6, 2108, meeting, he wrote to Mr. Woolsey on September 10, 2018 to say how he wanted to be paid based on Mr. Woolsey's notes. He wanted to be paid for at least what Todd agreed that Wessuc had done. In his response to the minutes prepared by Mr. Woolsey, Mr. Cron testified that he did not object that Todd was pushing the material to dry it, that Wessuc had run out of fields, that the contract was based on drained materials

or that the lagoon was to be cleaned for the amount of the estimate. He did not dispute that Durham was satisfied with only 50% completion.

[134] At that point, both parties took samples to see if the work was completed or how it could be disposed of - fields or landfills. In his view, the parties had a plan to proceed but Mr. Todd did not want to wait for the samples to be taken.

[135] On September 11, 2018, Mr. Todd sent an email to Mr. Cron expressing his frustration and requesting a plan from Wessuc on how to complete the project. In Mr. Cron's view, they had a plan, but Mr. Todd was not agreeable to waiting for the samples to be obtained. By then, Wessuc had demobilized and was waiting for the analysis. Wessuc removed nothing from the lagoon after September 6, 2018 but did supply trucks to haul materials at a later date.

[136] On September 12, 2018, Mr. Cron wrote:

> Ross, I'm confused... We all agreed to wait on the samples, we expect to have them today. Upon review we will get together and agree on plan. If we need to remove material we will do so.

[137] On September 13, 2018, Mr. Woolsey responded with Todd's test results and said: "Please review and get back to us with your plan for disposal."

[138] Mr. Cron did not agree with Todd's proposed disposal plans because Todd's proposed trucking company was too expensive and a competitor to

Wessuc. Mr. Cron believed that his disposal site was a better option. Mr. Cron and Mr. Jolley had investigated other landfills where the materials could be placed. However, there was a delay in the testing so nothing could be placed until that was done and he had no control over that.

[139] Although Mr. Todd demanded that they complete their work in seven days, given the amount of material to be removed, Wessuc could not have moved all of it in seven days.

[140] On Friday, September 14, 2018, at 11:47 am, Mr. Woolsey wrote to Mr. Cron, among other things: “Time is up.”

[141] It appears, however, that the two then spoke directly and by 2:35 pm, Mr. Cron confirmed that Wessuc would commence the last of the removal on the following Monday but were still awaiting land approval. In any event, they would meet on site at 9:00 on the Monday. Mr. Cron testified that he was not sure if Wessuc appeared for work on the following Monday.

[142] On September 23, 2018, Mr. Todd wrote to Mr. Cron:

> This is a follow up note from our Friday afternoon conversation. Your right there will be no pushing around, when I take over you will have no say whatsoever.
> Like I said on Friday, I will be loading trucks on Wednesday morning, yours or mine but for sure there will be trucks

> removing material. We've given you more than enough chances to perform but this will be your last.

[143] On Tuesday, September 25, 2018, Mr. Todd wrote to Mr. Cron:

> As I stated in past emails, I will be taking full control and will no longer require your services on this project.

[144] On September 26, 2018, Mr. Woolsey wrote to Mr. Cron:

> We have started trucking sludge as of this morning as we stated. If you get your favourable sample results today and can start trucking to your disposal site tomorrow, then we are ready to load your trucks.

[145] Mr. Cron replied: "Many thanks. I agree with =our email. Matt please advise when we hear from the lab."

[146] Mr. Cron agreed that Wessuc's proposed timelines were not met. He agreed that Wessuc's scope of work was not completed on September 10, 2018.

*Evidence of Matt Jolley*

[147] Mr. Jolley testified that the material in the lagoon was tested in September to analyze its nutrient content to determine whether it could be delivered to fields or landfill.

[148] He was asked to assist with the closing of the lagoon because of urgency and to help Mr. Cron to find other locations to deliver the material. The testing delayed the process.

[149] He called Mr. Woolsey to update him on the project and timelines for disposal. He also called Mr. Todd to co-ordinate haulage and trucks.

[150] In his experience, dewatered materials can go to landfills if they pass the slump test. After the site meeting in September, he knew there was a dispute about the amount of material left and its composition. From his own observations, he saw sludge with dark spots indicating organics. Wessuc needed more water to remove it and needed more analysis of it to know where to dispose of it.

[151] Wessuc was responsible for finding the landfill locations. One site allowed material but on only one day because it was too wet. Todd’s suggested site was too expensive.

[152] After September 6, Wessuc removed their equipment and cleaned up the site. Todd loaded Wessuc's trucks.

[153] In his examination for discovery, Mr. Jolley confirmed the various landfill sites that Wessuc contacted in September without success. He confirmed that Wessuc did not want to use the landfill sites that were located by Todd.

Evidence of the Defendants

*Evidence of Bill Woolsey*

[154] Mr. Woolsey agreed that he prepared the minutes from the September 6, 2018 meeting but he had no recollection outside of his memo. He could not get across to Wessuc that it was a lump sum contract based on solids and not liquid and solids.

[155] Both parties took samples of the materials in the lagoon to see where it could be accepted for landfill, but the material had to be removed no matter what it was. Todd was planning to take over the trucking since nothing was happening on site and they "were under the gun" from Durham to complete the project.

[156] On September 13, 2018, he sent his test results to Mr. Cron to assist him in finding a dump site.

[157] Mr. Woolsey had no recollection of a meeting or anyone from Wessuc showing up at the site on Monday September 17, 2018. By then, Todd added sawdust to the material to dry it out. He agreed that the amount of solids in the truck loads would be increased by this addition.

[158] By September 21, 2018, Mr. Woolsey was worried about the fact that nothing had happened at the site since September the 6th and they needed to

move ahead with the project. By then, Wessuc supplied trucks, but Todd was doing the loading. Todd allowed Wessuc's trucks to be loaded because this would let Wessuc reduce their expenses from Todd's work. Todd was removing materials from the lagoon as of the last week of September and completed the work on October 3 or 4, 2018. They then had to replace sand in the lagoon after it was cleaned. In all, the project went a little beyond 9 weeks.

[159] He often spoke with representatives of Durham, and they were concerned about the capacity of the other lagoon if the project took too long. The plan was to complete the project in August before the rainy season in September. He does not recall any emails from the region to that effect.

[160] He agreed that Mr. Todd's email of September 25, 2018 appears to remove Wessuc from the site but by the following day they allowed Wessuc to truck from the lagoon. It appeared that "cooler heads prevailed" and the firing on the 25th was in the heat of the moment. Although Todd gave notice at that time, it was then withdrawn.

[161] On September 21 and 24, 2018, Wessuc had still not removed any material and did not do so until the 27th.

[162] Even though they estimated that 6100 $m^3$ of water and solids had been removed by mid August, they still did not have records from Wessuc at that point.

*Evidence of Ross Todd*

[163] Mr. Todd understood from Mr. Cron that the work would be finished by August 21, 2018. Work commenced August 1, 2018, and Wessuc set up its pump on August 3, 2018. However, Wessuc had only one pump.

[164] The region allowed pumping on Saturdays so long as someone was there to monitor any emergencies. By August, he was worried about overflows from the sewage lagoon.

[165] Wessuc said that September 6, 2018 was the last day of land applications, and they planned on leaving. However, the lagoon was only 60% cleared and Durham had only approved 50% of the work. At this point, Todd had no records of lab analysis or documentation of what had been removed.

[166] Wessuc left the site that evening but left a tractor at the site for squeegeeing the bottom of the lagoon. After that date, all material from the lagoon was removed by Todd with an excavator and loader.

[167] There was 1000 $m^3$ left by Mr. Woolsey's estimate but Mr. Todd did not agree with that estimate at the time. Todd's records show that more than that was

removed but Todd added sawdust and sand to what was left to dry it out and allow it to be trucked.

[168] He and Mr. Woolsey were planning ahead for a dump site in case Wessuc did not come up with a plan. They asked for trucks to arrive a week later because they were waiting for the analysis, the sludge to dry and Wessuc to come up with a plan. They also needed to clean the last 40%. He did that with his bulldozer. They also loaded sand onto the cleaned area.

[169] As of September 6, 2018, Mr. Todd wanted a written plan from Wessuc of what was to happen, but he did not get one. He did not know when or if Wessuc was going to return. Although Wessuc had ideas, there was no “plan a, b or c” if the first ideas did not play out.

[170] On September 11, 2018, Mr. Todd wrote to Mr. Cron and Mr. Hank and Richard Van Veen:

> I don’t have time to waste so I would like Wessuc to submit a plan of attack with dates for completion before Wednesday night September 12/18.

[171] Mr. Todd did not get a “plan of attack” as requested but Todd did receive their own certificate of analysis on September 13, 2018. Although Mr. Todd expected to find trucks within a day, Todd only started to truck September 26,

2018. That gave more time to Wessuc to do it themselves because Todd did not want to do the trucking. It also took a day or a day and a half to mix in the sand and sawdust to allow the material to be trucked. Mr. Todd co-ordinated the trucks from both parties. The materials were taken to a dumpsite in Ottawa.

[172] Mr. Todd said that he gave his last notice on September 25, 2018, because he had not received a plan and had run out of time for a confirmed plan. With respect to his "termination" emails, Mr. Todd testified that he was frustrated and concerned about getting the work done but allowed Wessuc back on the site. However, in evidence, he eventually agreed that he was terminating Wessuc in that email. So on September 25, 2018, Mr. Todd wrote to Mr. Cron and said:

> We feel that we have given you several deadlines to continue and complete the sludge removal at the above site and you have met none of these. Your delays have now put us into a stretch of bad weather (which we warned about) so we don't have faith in Wessuc to finish. As I stated in past emails, I will be taking full control and will no longer require your services on this project. Todd Brothers will finish the removals and environmental cleanup of fuel spills.

[173] Todd had trucks to load on September 26 and 27, 2018 and Wessuc provided trucks a day later. Mr. Todd said that he was in a hurry because there had been rain and it was also forecast for the coming days. As well, it would have been harder to lay sand on the bottom of the lagoon in the rain.

[174] The region had approved 50% of the job in August but by September 6, 2018, Mr. Todd was already assisting Wessuc to remove the sludge. After September 6, it was only Todd doing the work. Mr. Todd had started in mid August with a bulldozer to push the sludge to the pump area to finish. There was also a truck and loader on the lagoon that he was operating.

[175] Todd finished the removal of sludge on October 3, 2018, and completed the whole project a couple of weeks after that. The certificate of substantial completion was dated November 3, 2018.

[176] Although Wessuc did not meet its deadline, the pond did not overflow, and Durham made no delay claims against Todd.

Authorities

[177] Both parties rely upon *D & M Steel Ltd. v. 51 Construction Ltd.*, 2018 ONSC 2171. There, Perell J. said (paras. 49 – 56):

> Owner breach: if the owner without justification ceases to make required payments under the contract, cancels it, or through some act without cause makes it impossible for the contractor to complete its work, then the owner has breached the contract and it has no claim for damages, and the contractor is justified in abandoning the work and the contractor is entitled to enforce its claim for lien to the extent of the actual value of the work performed and materials supplied up until that time, and the court may award the innocent contractor damages for breach

of contract or damages on a quantum meruit basis in lieu of or in addition to damages for breach of contract.

...

Contractor breach: mere bad or defective work or insignificant non-completion will not, in general, entitle an owner to terminate a contract, but the owner will have an obligation to pay for the work and make a claim for damages for the defective work. An owner will not be able to terminate the contract because of some minor or inconsequential failure to complete, although the owner may have a claim against the contractor for damages for non-completion or for defective workmanship, which will generally be the cost of completing the non-completed items or remedying any defects. If the contractor breaches the contract, an owner who alleges that the work performed or the materials supplied are defective must provide proper evidence on the basis of which his or her damages can be assessed.

If there are defects in a contractor's workmanship, but not enough to amount to a fundamental breach entitling the owner to terminate the contract, the contractor should be permitted to remedy the defects and failure by the owner to permit such corrections will disentitle or reduce the amount of damages the owner can claim to remedy the defects as a result of its failure to mitigate.

Contractor breach: if a contractor abandons the contract, repudiates the contract, fundamentally breaches the contract, or performs the contract in a way that it is so defective as to amount, in substance, to a failure or refusal to carry out the contract work, the owner is entitled to terminate the contract, to claim damages for breach of contract, and to be discharged from its obligations to pay including any obligation to pay on a *quantum meruit* or for work already performed.

...

Contractor breach: unless the breach is a repudiation, fundamental breach, or abandonment of a contract, if a

> contractor breaches what is called a "severable," "divisible" or "non-entire" construction contract or if the contractor breaches an "entire contract" that it has substantially performed, then subject to the owner's claim for damages for defective, delayed, or incomplete performance, the breaching contractor is entitled to be paid for its performed work or to a *quantum meruit* for the substantially completed work.
>
> If there is a fresh implied promise to pay on a *quantum meruit* basis, where a contractor, by reason of its failure to perform, has lost his right to payment under the contract, it may nevertheless be entitled to recover something for the work actually done and accepted by the owner.
>
> [Citations and footnotes removed.]

Analysis

[178] In my view, Wessuc had abandoned the contract by its lack of action between September 6, 2018, and September 25, 2018, when Todd elected to take over the contract. Despite threats to take over the project, Todd provided Wessuc with ample time to move ahead without success.

[179] It must be remembered that Wessuc proposed a completion date of August 21, 2018. As found above, the contract was to pump the sludge and water onto farmers' fields, but Wessuc admits that, as of September 6, 2018, there were no more field locations to be used. The material needed to be trucked away. And Wessuc failed to truck material away in a timely fashion.

[180] While I agree with Mr. Cron that Wessuc's plan may have been stalled until it had test results, it had those by September 13, 2018, and yet it did not commence trucking until September 26, 2018, under pressure from Todd. No one from Wessuc put their minds to a plan as requested by Mr. Todd despite an urgency at the site. All parties agreed that there was an apparent urgency to complete the project before the other lagoon overfilled. And that lagoon was immediately beside the lagoon to be cleaned. It does not surprise me that September was the rainy season. Todd was reasonable in asking for a written plan but received nothing from Wessuc.

[181] Wessuc's witnesses and documents confirm that Wessuc had left the site on September 6, 2018. In Wessuc's internal communications with respect to the project, on September 6, 2018, Mr. Richard Van Veen said:

> Dispatch Matt Adrian Wade gents today is last day of haulage from lagoon. Tomorrow will be clean up Craig just want to confirm fuel is cancelled for Sunderland site. Tank will be empty tonight and do not need refill

[182] Todd provided their sample results to Wessuc on September 13, 2018. Mr. Woolsey wrote "Please review and get back to us with your plan for disposal." Wessuc did not provide evidence of their sample results but on Friday September 14, 2018, Mr Cron wrote to confirm that Wessuc would be on site on Monday the 17th "to finalize the removal of the last 1000m3 material."

[183] While the testimony is uncertain as to whether Wessuc returned to the site on September 17, 2018, the records maintained by Wessuc indicate that no materials were removed from the site between September 6, 2018, and September 20, 2018.

[184] On September 21, 2018, Mr. Cron advised that Wessuc would start to truck the material “either Tuesday or Wednesday...” Wessuc was still waiting to determine where they could unload the material. Todd had had a location for a week, but Wessuc did not agree to it as it was too expensive. The emails show that Wessuc did not attend to truck the material on the Tuesday or Wednesday. Objectively, Wessuc had ceased work on this time sensitive project. That was a fundamental breach of the contract. In those circumstances, Todd was reasonable in terminating Wessuc for abandoning the project.

[185] While the evidence dealt with a lengthy dispute about what the remaining sludge was made up of, all agree that other material needed to be removed. Whether it was more or less than 1000$m^3$ makes no difference to this analysis since all agreed on September the 6$^{th}$, that Wessuc had not completed its work under the contract. The only reasonable inference to be drawn is that Wessuc abandoned the contract on or after the 13$^{th}$ and returned later to do some trucking to reduce its damages.

Result

[186] Accordingly, in the face of Wessuc's abandonment, Todd was entitled to terminate the contract.

**What are the damages that flow from that abandonment or termination? Does the doctrine of quantum meruit apply?**

Positions of the Parties

[187] Wessuc submits that regardless of those findings, it is still owed for the work it completed to September 6, 2018. It only claims for the sludge removed and sprayed on farmers' fields; it does not claim for the material that it trucked from the site.

[188] Todd submits that it owes nothing further to Wessuc under the contract.

Authorities

[189] In *Grelowski v. Koehler*, 2022 ONSC 2902, Reid J. said (paras. 42 – 43):

> As a matter of fairness, where a party receives a benefit in circumstances where the receipt of the benefit would be unjust without compensation, the court may grant recovery. As a prerequisite, the supply of services and materials must have occurred as a result of the request, encouragement or acquiescence of the receiving party and there must be a resulting deprivation to the party supplying the benefit.
>
> It is possible for there to be recovery on the basis of quantum meruit under the *Construction Act*, R.S.O. 1990, c. C.30 (the

> "Act"). The *Act* specifies, at s.14(1), that "a person who supplies services or materials to an improvement for an owner, contractor or subcontractor, has a lien upon the interest of the owner in the premises improved for the price of those services or materials." In s.1 of the *Act*, in the absence of an agreement, "price" is the actual market value of the services or materials that have been supplied to the improvement *under the contract or subcontract*.
>
> [Emphasis in original.]

[190] In *Fairview Home Improvements Inc. v. Antonopoulos*, 2015 ONSC 7668, Master Wiebe said (paras. 22 – 32):

> ... in the absence of an express provision to the contrary, the contractor on a fixed price contract is not entitled to payment until "substantial completion" of the work.
>
> ...
>
> What does "completion" in the Contract mean concretely? Requiring absolute 100% completion before payment would, in my view, be unreasonable. There are often minor deficiency issues that should not stand in the way of payment, particularly when the owner is using the project. A useful guide to the definition of "completion" in the Contract can be found in the definition the *Construction Lien Act*, R.S.O. 1990, c. C.30 (the "*CLA*") section 2(3) gives to "completion" for the purpose of that statute. The *CLA* defines "contracts" to be contracts between owners and contractors, such as the Contract is question here. *CLA* section 2(3) goes on to deem a contract "complete" when the price of completion, correction of a known defect or last supply is not greater than the lesser of 1% of the contract price or $1,000. There was no evidence as to what the parties meant by the word "completion" in the Contract. However, as Fairview is a contractor by business and since this was a standard form Fairview contract form, it is not unreasonable to apply the *CLA* definition of "completion" to the Contract. I so do.

1% of the Contract price is $222.61 (tax inclusive). Since this is less than $1,000, I find that Fairview would be entitled to be paid its $20,000 if the price of the completion of its work or correction of a known defect was not greater than $222.61 (tax inclusive).

If I am wrong in my interpretation of the Contract in this regard and if the standard to be applied is one of "substantial completion," I note that the *CLA*'s definition of "substantial performance" for the purposes of that statute would amount to a high hurdle for Fairview in any event. *CLA* section 2(1) states that substantial performance is reached where the cost of the completion of the work or correction of a known defect is not greater than 3% of the contract price. 3% of the Contract price is $667.83 (tax inclusive).

…

In *Homewood Developments Inc. v. 2010999 Ontario Inc.* Master Albert stated in paragraphs 73, 74 and 76 that we must go one step further. We must determine whether there was abandonment or repudiation of the Contract in order to determine whether Fairview is disentitled to any compensation, even on a quantum meruit basis.

...

The question of whether Fairview abandoned and repudiated the Contract turns, in my view, primarily on the question of whether the remaining deficiencies as itemized by Anna were minor, as Fairview claims. If they were, I am not prepared to find that Fairview is disentitled to quantum meruit recovery, even if the monetary standard for "completion" that I described earlier was not met. In that event, the blame will fall on the owners for not allowing Fairview to complete its work. On the other hand, if the deficiencies were significant, as the defendants maintain, Fairview can be found to have abandoned and repudiated the Contract by refusing to do the necessary

> work to complete and demanding payment. [Citations partly removed.]

Analysis

[191] Based on that law, I do not see that Wessuc can claim any amount on the basis of quantum meruit. Strictly speaking, Wessuc claimed for unjust enrichment, but nothing turns on the title of the claim.

[192] First, Wessuc did not substantially complete the project on any assessment of the evidence. All parties agreed at the September 6, 2018 meeting that about 1000 $m^3$ were left to be removed. The photos in evidence make it clear that the lagoon still needed to be cleaned. Durham had only approved the work to the extent of 50%. As set out below, Todd continued on the contract and spent considerable time and money on what should have been Wessuc's work.

[193] Regardless of the precise accuracy of the 1000 $m^3$ left, the parties were prepared to use that as a rough guide. When I use that figure, about 16% of the contract was still to be completed for the dredging alone. Wessuc had also agreed to do other aspects of the contract as set out below. On that basis, Wessuc had not substantially completed its contract when it abandoned the site. It is not entitled to a claim for quantum meruit.

[194] In Mr. Todd's examination for discovery, he confirmed that Todd removed 940 $m^3$ of sludge from the lagoon but that included sand and sawdust to absorb

the water and allow it to be trucked. Even with that greater accuracy, the project was not substantially completed.

[195] Further, without accurate evidence of the value of what was to be completed, I have no way to assess the quantum of the claim.

[196] The *Construction Lien Act*, R.S.O. 1990, c. C.30 provides that a contract is substantially performed when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended. Alternatively, the contract is substantially completed when the improvement is capable of completion and where there is a known defect, correction, at a cost of not more than 3 per cent of the first $500,000 of the contract price, 2 per cent of the next $500,000 of the contract price, and 1 per cent of the balance of the contract price.

[197] In this case, there is no doubt that when Wessuc left the site, the project was not ready for use. Assuming a $1,000,000 contract, the correction to be completed had to be less than $25,000.00. While I have no evidence to determine what amount was necessary to complete the project, given what the parties and Durham had agreed to as to what was completed, I can safely assume that the costs to complete would be far more than as set out in this section.

[198] In any event, in *London Eco-Roof Manufacturing Inc. v. Syson*, 2020 ONSC 1338, Leach J. said (para. 16(f)):

> Whether or not there has been "substantial performance" or "substantial completion" of a contract, entitling a contractor to payment, is in each case a question of fact which must be determined in light of the terms of the contract. One must look to the nature of the work involved, and make a reasonable appraisal of the work already carried out. It is virtually impossible to lay down any general principles for determining whether or not a particular contract has been substantially completed, and each case must be determined on its own facts. [Citations omitted.]

[199] On the facts of this case, Wessuc has not substantially completed its work. On the evidence, the lagoon could not be filled and was at risk of overflowing in the rainy season when Wessuc left the site.

[200] Finally, Wessuc has provided no evidence of the value of its quantum meruit claim. Although it pleaded that it has labour and equipment costs, material expense, "miscellaneous costs", overhead, etc., none of those expenses were proved at trial. Instead, Wessuc submitted that this claim should be estimated using the units of volume removed from the lagoon multiplied by the rates set out in the contract. But that includes the submission that Todd should pay for the removal of water, and I have rejected that submission above.

[201] Further, Wessuc also claims for the full amount of the contract despite already being paid $457,798.79. That would, of course, reduce this claim.

[202] On the evidence, it may be that Wessuc has been paid for some parts of the contract that it did not complete; however, Todd does not claim for a return of funds paid to Wessuc. Todd only seeks a set-off if it is found to owe money to Wessuc along with its counterclaim for expenses incurred as a result of Wessuc's abandonment of the contract.



Result

[203] For those reasons, Wessuc's damages claim is dismissed.

## Todd's Counterclaim

Positions of the Parties

[204] Todd submits that Wessuc owes Todd for the completion of the project when Wessuc left the site. As set out above, Wessuc took the position that Todd ended the contract. For the reasons set out above, I have not accepted Wessuc's position.

[205] Accordingly, Todd claims for its losses to complete Wessuc's work. It is difficult to determine that claim given the state of the pleadings. First, Todd claims

$58,801.37 in its counterclaim. But it also claims a right of set-off as against any amounts that may be found to be due and owing to Wessuc. At yet another point in its pleading, Todd submits that Wessuc, in accordance with the unit prices as agreed, is owed $408,984.86 and has only been paid $405,131.76. At a later pleading, Todd submits that Wessuc has been overcompensated. However, in its last pleading in February of 2022, Todd pleaded:

> All of the costs claimed by TBC in its counterclaim were conservative, fair and properly payable by Wessuc to TBC. TBC claims an entitlement at common law for all amounts claimed by way of set-off and counterclaim.

[206] In the end, Todd argued for a counterclaim in the amount of $53,000. I am prepared to allow Todd to put forward this counterclaim as argued and proved in evidence. Wessuc made no objection to those claims based on any prejudice or lack of notice.

[207] Todd claims for:

1. Removal of cattails and vegetation around the pond that was part of Wessuc's sub-contract.

2. Equipment and services provided at the site including clean up of a fuel spill.

3. Sand and sawdust to dry the sludge to allow trucking.



Evidence of the Defendant

*Evidence of Bill Woolsey*

[208] On July 24, 2018, Mr. Cron confirmed by email that “Wessuc agrees to cover the cost to dispose of the bullrushes... and will agree to provide Todd Brothers with $12,000 to assist...”

[209] As set out above, Wessuc supplied some trucks for hauling the sludge, but Todd was doing the loading as of the last week of September.

*Evidence of Ross Todd*

[210] Wessuc commenced work August 1, 2018, and set up its pump on the third. Wessuc had only one pump and Todd dug the sump for it.

[211] Wessuc left on September 6, 2018, but left a tractor at the site for squeegeeing the site. All material after that date was removed by Todd with an excavator and loader. Todd added sawdust and sand to what was left to dry it out and allow it to be trucked. Mr. Todd co-ordinated the trucks from both parties. The materials were taken to a dumpsite in Ottawa at Todd’s cost.

[212] Mr. Todd described the various photos of the scene in the latter stages of Wessuc's involvement to describe what the site looked like just before Todd took over the project.

[213] Todd had trucks available for removing the materials on September 26 and 27, 2018 and Wessuc had trucks a day later.

[214] The region had approved 50% of the job in August but by September 6, Mr. Todd was already assisting Wessuc to remove the sludge. After September 6, it was only Todd doing the work. He had started in mid August with a bulldozer to push the sludge to the pump area to finish. There was also a truck and loader on the lagoon that he was operating.

[215] Mr. Todd identified the invoices for the sand and sawdust expense. He charged Wessuc with 23% of this based on the amount of material they removed from the lagoon.

[216] At trial, Todd filed its time sheets with respect to the work completed and equipment used. That included floating the equipment to the site.

[217] Todd seeks $40,731.11 for equipment supplied by it for Wessuc's work. The hourly rates were taken from the Provincial Standard Rates for those items of equipment.

[218] Wessuc asked Mr. Todd to dig two sump holes and make one of them deeper. Mr. Todd used a local contractor and provided his invoices. He was trying to help Wessuc out, but they did not discuss the price.

[219] In evidence are the invoices for samples so that Todd could arrange a dump site. Invoices for trucking and dumping fees were also adduced.

[220] Wessuc agreed to pay $12,000 for the bullrushes which took two to three days with an excavator, dozer and trucks. This was to be paid in the final accounting and has not been paid.

[221] Mr. Todd identified pictures of Wessuc’s fuel spill at the site. That area is approximately 15' x 30'. Wessuc arrived later to remediate the fuel spill. Wessuc intended to dig out the fuel but did not complete the job and a pile of material was left behind. Mr. Todd cleaned it up and is charging Wessuc $2,000 for limestone, excavator and truck use, along with two to three hours of time.

[222] Mr. Todd identified Todd's water pump that Wessuc used and damaged. He is charging them $2,000 for rental and repair.

[223] Todd needed to get the farmers' sign offs before the region would pay him his last $100,000.

Evidence of the Plaintiff

*Evidence of Richard Van Veen*

[224] Mr. Van Veen agreed that Todd dug a sump hole for Wessuc at the outset of the work to pump off the watercap.

[225] There was a gas leak on one occasion, but Wessuc followed its spill policy.

[226] Mr. Van Veen acknowledged that Wessuc was to compensate Todd for the removal of the bullrushes in the amount of $12,000. He did not know if it was paid.

[227] Wessuc did not bring an excavator to the site and Todd Brothers dug two sump holes.

*Evidence of Phil Cron*

[228] Mr. Cron testified that Wessuc agreed to pay $12,000 for the removal of the bullrushes and related plants. It was to be paid by cheque or balancing at the end. He does not know if it was paid.

[229] He acknowledged that there was a fuel leak from some piece of Wessuc equipment on the property.

*Evidence of Matt Jolley*

[230] Mr. Jolley agreed that Todd loaded Wessuc's trucks. After September 6, 2018, Wessuc removed their equipment and cleaned up the site. He agreed that there was fuel spill caused by a leaking hose. Mr. Todd said that it was not cleaned up well enough and he would take care of it.

[231] In his examination for discovery, Mr. Jolley confirmed that Todd put the other sump in the lagoon so that Wessuc could continue to pump. He also agreed that Wessuc did not own an excavator. Accordingly, Todd supplied both an excavator and a bulldozer for work on the site.

Analysis

[232] The evidence put forward for these claims is reasonable and Wessuc led no contrary evidence. In argument, Wessuc acknowledged liability with respect to the $12,000 cattail claim. Todd had to repair Wessuc’s damage to equipment and the site. Todd provided equipment to Wessuc to complete Wessuc’s contracted work. I am satisfied that Todd has made out its counterclaim for $53,000.00.

**Did Wessuc comply with the terms of the labour and material bond with GCNA? If not, should I grant relief from a failure to comply with those terms?**

[233] Because I have dismissed Wessuc’s claim against Todd, there is no real need to deal with this issue. Since Wessuc suffered no losses, it has nothing to

claim on the bond. However, out of respect to counsel's efforts, I will consider this issue.



Positions of the Parties

[234] GCNA denies coverage for Wessuc under the bond because of Wessuc's failure to provide timely and adequate notice under the terms of the bond. It submits that Wessuc failed to comply with its contractual commitments with respect to notice.

[235] In return, Wessuc submits that it has provided such notice or, if not, it should be granted relief for having failed to give notice. Wessuc therefore claims $1,672,455.94 against GCNA.

[236] Briefly, the bond sets out that no action can be commenced unless Wessuc gave written notice of the claim (with substantial accuracy) within 120 days of when it should have been paid in full or of the date of the last performed work.

[237] If I had granted judgment for Wessuc, for reasons set out below, I would likely have ruled that Wessuc's claim against GCNA is dismissed for failure to provide proper notice under the bond.

Authorities

[238] Pursuant to s. 98 of the Courts *of Justice Act*, R.S.O. 1990, c C.43, a court may grant relief against penalties and forfeitures, on such terms as are considered just. Further, according to the *Insurance Act*, R.S.O. 1990, c I.8, where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured, and that results in a forfeiture or avoidance of the insurance, the court may relieve against the forfeiture on such terms as it considers just.

[239] In the recent case of *Monk v. Farmers'* Mutual *Insurance Company (Lindsay),* 2019 ONCA 616, 92 B.L.R. (5th) 1, at para. 79, leave to appeal refused, [2019] S.C.C.A. No. 384, the Ontario Court of Appeal summarized the principles regarding relief from forfeiture.

[240] Relief from forfeiture under s. 129 of the *Insurance Act* is restricted to instances of imperfect compliance with terms of a policy after a loss and relief from forfeiture, pursuant to s. 98 of the *Courts of Justice Act*, is available to contracts regulated by the *Insurance Act*. However, s. 98 generally operates where the breach of the policy occurred before the loss took place.

[241] Although relief under both provisions are not available where the breach consists of non-compliance with a condition precedent to coverage, a court should

find that an insured's breach constitutes noncompliance with a condition precedent only in rare cases where the breach is substantial and prejudices the insurer. In all other instances, the breach will be deemed imperfect compliance, and relief against forfeiture will be available.

[242] Where relief from forfeiture is available, an insured must still make three showings in order to prevail. The insured must show that their conduct was reasonable, that the breach was not grave, and that there is a disparity between the value of the property forfeited and the damage caused by the breach.

[243] Wessuc relies upon *312630 British Columbia Ltd. v. Alta Surety Co.* (1995), 61 B.C.A.C. 208 (B.C.C.A.), at paras. 13 – 14:

> Counsel for the appellant said that four factors must be considered in deciding whether to exercise the discretion to grant relief against forfeiture and he set them out as:
>
> i) prejudice to the surety;
>
> ii) claimant's knowledge and awareness of the bond;
>
> iii) experience and knowledge of the claimant; and
>
> iv) claimant's length of delay in giving notice;
>
> I agree that those are all relevant factors in relation to the discretion but by far the most important factor is the factor of whether the surety has suffered prejudice. The other factors indicate circumstances in which the claimant could be said to be disqualified from equitable relief from not having clean

> hands, but the real question is whether the equitable relief is appropriate at all.



Evidence of Luciana Polsoni

[244] Ms. Polsoni was employed by GCNA as a senior claims adjuster when this file came to her attention. The bond was in the amount of $844,975.23.

[245] She first received notice of the claim from Wessuc's counsel on February 12, 2019. At that time, Wessuc claimed $566,563.87 against the bond. Although that amount was not set out in that letter, Wessuc's counsel had attached his letter to Durham (dated January 23, 2019) that set out that amount.

[246] She commenced her investigation and wrote to Wessuc's counsel on February 15, 2019. This was a standard form letter asking for information including a complete copy of Wessuc's contract, all invoices submitted to Todd, a summary of all payments to Wessuc by Todd and other relevant records. It ended with: "Upon receipt of the above material, we will proceed to investigate your client's claim."

[247] To that point, while Ms. Polsoni agreed that GCNA had an obligation to reasonably investigate the claim, she had no documents from Wessuc and could not investigate further.

[248] She then contacted Todd Brothers by sending them a letter. She asked for all relevant documents from both parties. She did not initially ask for documents from Todd because she did not know what to ask for until she had Wessuc's claim.

[249] About a year and a half later, on August 14, 2020, Ms. Polsoni received a reply from Wessuc's counsel. He said that he would respond "forthwith". She then received some of the requested information on December 21, 2020.

[250] When she looked at the invoices provided by Wessuc, she could not reconcile the invoices with the claim. The records did not substantiate the last work completed. She received a chart but did not understand it. She did not receive enough information to investigate, and by then this litigation was underway. The statement of claim had been issued May 10, 2019, for $520,970.33 plus HST.

[251] Ms. Polsoni testified that she needed change orders, the mechanics of measurements alleged, quantities and records to confirm them, daily work tickets and time sheets; and minutes of meetings. She received only some of these two years later. She presumed that this was a lump sum contract because that was what was set out in the documents sent from Wessuc.

[252] She received nothing outside the litigation process.

[253] She did not grant any extensions to the 120-day limitation set out in the bond.



Evidence of Hank Van Veen

[254] With respect to the package that was sent to GCNA in December of 2020, Mr. Hank Van Veen testified that to the extent the package included Todd's meeting minutes that confirmed a lump sum contract, it was incorrect. He also testified that, although invoices were attached, they were not the correct ones and other parts of the package were not accurate to this claim.

Analysis

[255] In this action, Wessuc claims for its work to September 6, 2018, but at the time that it claimed on the bond, it alleged that it's last work was September 28, 2018. Its notice was sent to GCNA on February 12, 2019. In response, GCNA submits that the last work claimed in this action was September 6, 2018. On any count of 120 days, the notice was late. I agree with GCNA that the time would commence September 6, 2018, and accordingly, Wessuc was out of time when it gave notice.

[256] Taking Wessuc's case at its highest, I cannot determine if leave should be granted.

[257] Even if the notice had been in time, it was inadequate; the information that allowed GCNA to even start on the investigation only arrived in December of 2020. And that information is disputed by Wessuc in this action. Wessuc says that the contract and invoice that was provided to GCNA were both in error. The notice was for a claim of roughly half of what is now claimed and is now more than the bond amount. The notice was therefore not substantially accurate.

[258] Wessuc has provided no explanation for the delay in providing accurate and timely notice to GCNA despite being an experienced contractor in this area.

[259] If I were required to make this determination, on this evidence, I would not likely have granted relief from forfeiture. While I have no evidence of prejudice to GCNA, I find that Wessuc's conduct was so unreasonable, and that the breach was sufficiently grave that Wessuc essentially comes to court with unclean hands.

[260] However, in the end result, I cannot be sure one way or the other about the disparity between the value of the property forfeited and the damage caused by the breach. I cannot determine that factor in the necessary analysis. On the findings above, Wessuc has not had to forfeit any rights or benefits by its conduct because GCNA has not been called to pay on its bond.

Result

[261] Accordingly, Wessuc's claim under the bond with GCNA is dismissed because Wessuc's claim against Todd has been dismissed.



## Decision

[262] For those reasons, I find that Wessuc's claim is dismissed against all defendants. Todd's counterclaim is allowed in the amount of $53,000.00.

## Costs

[263] If costs cannot be agreed upon, Todd and GCNA shall provide their costs submissions within the next 15 days. Wessuc shall provide its response within 15 days thereafter. If those dates conflict with counsel's summer vacation, they shall confer within the next 10 days and advise me of the timelines not exceeding 30 days for each party.

[264] Each submission shall be no more than five pages, not including any Bills of Costs or Offers to Settle. No reply submission will be accepted unless I request it. If I have not received any submissions within the time frames set out above, I will assume that the parties have resolved the issue and I make no order as to costs.

[265] Neither party need include the authorities upon which they rely so long as they are found in CanLII and the relevant paragraph references are included.

[266] Any costs submissions shall be forwarded to my office in Guelph by electronic transfer to teresa.pearson@ontario.ca or by mail to Guelph Superior Courthouse, 74 Woolwich Street, Unit B, Guelph, ON N1H 3T9.

Justice G. D. Lemon

**Released:** August 09, 2024

**CITATION:** Wessuc Inc. v. Todd Brothers Contracting Limited et al, 2024 ONSC 4368
**COURT FILE NO.:** CV-19-00000179-0000 (Guelph)
**DATE:** 20240809



**ONTARIO SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

WESSUC INC.

Plaintiff

**– and –**

TODD BROTHERS CONTRACTING LIMITED, ROSS CHRISTIE TODD, CINDY JANE TODD, BRAYDEN ALEXANDER TODD, and THE GUARANTEE COMPANY OF NORTH AMERICA

Defendants

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**REASONS FOR JUDGMENT**

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Justice G. D. Lemon

**Released:** August 09, 2024