CITATION: Voutour v. MVG Investments Inc., 2024 ONSC5283
COURT FILE NO.: CV-21-673311
DATE: September 24, 2024

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE MATTER OF the *Construction Act,* R.S.O. 1990, c.C.30

B E T W E E N:	)	
	)	
	)	
JODY VOUTOUR	)	Adam J. Ezer for the plaintiff,
	)	Tel.: 416-926-1317,
Plaintiff	)	Email: adam@beacheslegal.com;
	)	
-and-	)	
	)	
	)	
MVG INVESTMENTS and	)	Constantine Alexiou for the defendants;
VASSO GEORGIOPOULOS	)	Tel.: 905-850-6116 (ext. 226),
	)	Email: calexiou@dakllp.com;
Defendants	)	
	)	
	)	
	)	
	)	**HEARD:** April 10 and 11, 2024

Associate Justice Wiebe

REASONS FOR JUDGMENT

I. INTRODUCTION

[1] The reference concerns only this action. The trial concerns the claim for lien and breach of contract claim of the plaintiff, Jody Voutour. The amount claimed is $30,142. The defendants deny this claim.

[2] The property in issue is the residential unit, Unit 4, on the second floor of the property located at 3472 Danforth Avenue, Toronto ("3472") owned at the relevant time by the defendant, Vasso Georgiopoulos ("Vasso"), and managed by her company, MVG Investments ("MVG"). Mr. Voutour rents Unit 4, a 360 square foot unit with a kitchen, bathroom, living room and bedroom.

The main floor is a coin laundry. There are four small rental units on the second floor, of which Unit 4 is one, and two small rental units in the basement.

II. BACKGROUND

[3] Based on the evidence, the following facts appear not to be in dispute.

[4] Vasso was married to Mike Georgiopoulos ("Mike"). The Georgiopouloses bought several real estate properties in Toronto. They purchased 3472 in 2001 and put it in Vasso's name. It is a rooming house with units rented to people with limited means. They used MVG to manage the properties including 3472. Mike was the principal of MVG. It is undisputed that Mike had authority to act on behalf of the owner.

[5] Mr. Voutour did small-scale construction work. He had injuries that prevented him from undertaking heavier construction work.

[6] Mr. Voutour had a relationship with Mike dating back to 2001. He rented a unit at 3472 for six months in 2001. He did small construction jobs for Mike on some of the Geogiopouloses' properties. This work was done under oral contracts where he was paid for his materials.

[7] In 2019 Mr. Voutour rented a unit at another property owned by the Geogiopouloses and managed by Mike through MVG, namely 3470 Danforth Avenue ("3470").

[8] On July 16, 2019 there was a fire at 3472. Unit 4 was damaged along with other parts of the building. The Georgiopouloses made a claim on their insurance policy. With the insurer involved, Redfern Construction Group ("Redfern") was hired to repair the damage. On October 17, 2019 Redfern provided a quote to the Georgiopouloses that included the refurbishment of Unit 4.

[9] Mr. Voutour asserts that Mike was dissatisfied with Redfern's work, and that he wanted Mr. Voutour to rent Unit 4 under terms whereby Mr. Voutour would do the improvements in that unit for the purpose of making the unit a showpiece in any future sale of the building.

[10] On January 1, 2020 Mr. Voutour and MVG entered into a written lease agreement whereby Mr. Voutour agreed to rent Unit 4 for $1,200 per month for a period of five years starting January 1, 2020. At the bottom Mike added this clause in his handwriting: "1 year notice for demolition claws [sic] (after lease term is up)." Mike and Mr. Voutour signed this document. It is undisputed that Mike allowed Mr. Voutour to store his truck, four trailers, hitch and storage unit in the parking area at the back of the building without further charge.

[11] Mr. Voutour alleges that there was in addition about this time a verbal agreement between Mike and Mr. Voutour whereby Mr. Voutour would do a high-end renovation in Unit 4 in return for a promise of payment of his labour and material costs from the eventual sale of the building. The defendants deny this contract.

[12] Concerning scope, Mr. Voutour said in his January 18, 2022 affidavit for the defendants' section 47 motion ("First Voutour Affidavit") and in his reply affidavit sworn January 10, 2024 ("the Voutour Reply Affidavit") that the scope of the alleged contract was what Mike wanted and approved. It is undisputed that the work included the following: a completely redone kitchen with stainless steel cabinetry, under-mounted sink, new high-quality fridge, new high-quality, glass-top

stove, dishwasher and quartz countertops; a completely redone bathroom with a jacuzzi, hanging vanity, rain-shower shower head, and high-quality exhaust fan; a new, remotely controlled skylight; and new, high-end tiles on the floor, which Mike helped pick up.

[13] Concerning price, in the First Voutour Affidavit, Mr. Voutour stated that Mike promised to pay Mr. Voutour for his material and labour costs when 3472 was sold, which he expected to take place in 10 years. In his December 8, 2024 affidavit for this trial ("Second Voutour Affidavit"), Mr. Voutour provided other facts. He said that the "price for the work" was discussed two months after the lease, that Mike said he would pay Mr. Voutour $50,000 on the sale of 3472 in 2030, and that Mike would extend the lease at the same rent for another five years from 2025 to 2030 if he was pleased with the work. Mr. Voutour also said that Mike said at this time that he would work to have a developer buy Mr. Voutour out of his lease, mentioning another $50,000 in compensation if that happened. Mr. Voutour described this as talk "off the top of his [Mike's] head."

[14] As for schedule, in his affidavits, Mr. Voutour said that he and Mike agreed he would work at his own pace given his health issues. There was also the implication that the work would be done by the time of any sale of 3472.

[15] Mr. Voutour said in the Voutour Reply Affidavit that Vasso knew about the arrangement when it was made on January 1, 2020 as she was present. She denied this.

[16] Mr. Voutour started the renovation on February 1, 2020. Redfern completed its repair work on Unit 4 except the kitchen. Mr. Voutour and Mike instructed Redfern not to complete the kitchen. Mr. Voutour took over and worked at his own pace, given his physical limitations. He paid for materials himself, some in cash to save on the tax. He said Mike was aware of all this.

[17] On April 21, 2020 Mike signed a proof of loss document showing the total fire loss as being $186,947.96 and a payout distribution that included $87,761.60 to the Georgiopouloses and Redfern and $8,603 to only the Georgiopouloses.

[18] Mike died on June 8, 2020. At a wake about two weeks later, Mr. Voutour attended. He said in the First Voutour Affidavit that he retold Vasso at this time about his arrangement with Mike and the renovation work. In her affidavit, Vasso admitted she met Mr. Voutour at the wake but denied being told of or knowing about the lease, the arrangement and the improvement.

[19] Mr. Voutour also said that he had Vasso's daughter, Voula Boutakis ("Voula"), view Unit 4 on the day of the wake, that Voula began collecting the rent thereafter and that he showed Voula the renovation when she collected the rent. In her affidavit, Voula admitted Mr. Voutour told her about the lease and his work but denied knowing about the arrangement and seeing the work.

[20] In the fall of 2020 Vasso put 3472 and 3470 up for sale. A "For Sale" sign was posted at 3472 and potential buyers were brought in.

[21] In an April 18, 2021 text, Voula asked Mr. Voutour to show Unit 4 to a "buyer interested in the building" because "your unit is super nice to show." Vasso admitted Voula used Unit 4 as a showpiece to sell 3472.

[22] Mr. Voutour told attendees he expected a "big payout" on the sale. On October 15, 2021 Voula texted Mr. Voutour as follows: "please don't mention anything about a payout. These buyers don't know what's going on so it confuses them."

[23] Mr. Voutour completed his work on November 8, 2021. On November 28, 2021 he registered a claim for lien in the amount of $30,142. This amount covers what Mr Voutour says were his labour and material costs. Vasso stated in her affidavit that when Mr. Voutour's lawyer served the claim for lien, she learned about the improvement for the first time.

[24] Mr. Voutour commenced this action and registered a certificate of action on December 7, 2021. The defendants defended on December 22, 2021.

[25] In December, 2021 Vasso sold both properties to an unidentified buyer, with the closing being on April 6, 2022.

[26] The Voutour claim for lien interfered with the sale. On January 31, 2022 the defendant moved before me under section 47 of the *Construction Act,* R.S.O. 1990, c.C.30 (*"CA"*) for an order discharging the Voutour claim for lien for various reasons. On March 14, 2022 I released reasons denying the motion.

[27] On March 24, 2022 the defendants moved before me to vacate the Voutour claim for lien with cash security. I granted the order.

[28] The sale closed on April 6, 2022. Vasso obtained $1,100,000 for 3472. The buyer did not demolish the building. Mr. Voutour remained, and continues to remain, in Unit 4.

[29] The defendants then moved in writing before the Divisional Court for leave to appeal my ruling on the section 47 motion. On June 3, 2022 the Divisional Court denied leave.

[30] The fire insurance claim was closed in June, 2022. In total the insurer paid out $186,947.96 less a deductible of $1,000. Vasso admitted receiving $87,761.60. There was no disclosure as to extent to which these payments pertained to Unit 4.

[31] On August 18, 2022 Mr. Voutour obtained a judgment of reference from Justice Sanfilippo. I issued an order for trial on November 9, 2022.

[32] I became seized of the reference at the first trial management conference on January 9, 2023. I made no substantive orders as the defendants were getting a new lawyer. At the next trial management conference on March 20, 2023 Mr. Alexiou appeared for the defendants, and I made orders for requested and necessary interlocutory steps. At the trial management conference on September 18, 2023 I scheduled a two-day summary trial to take place on April 10 and 11, 2024.

[33] At the trial hearing on April 10 and 11, 2024, Mr. Voutour called two witnesses, namely himself and expert, Jeff Clarke, a home inspector who gave an opinion on the cost of Mr. Voutour's labour and material. The defendants' witnesses were Vasso, Voula and Joseph Emmons, a quantity surveyor who gave an estimate of Mr. Voutour's labour costs.

III. ISSUES

[34] Based on the evidence and submissions, I find that the following are the issues to be determined:

a) Was there a contract for the improvement as alleged?

b) If not, is Mr. Voutour entitled to *quantum meruit* recovery?

c) What is the remedy?

IV. WITNESSES

[35] Before I analyze the issues, I will comment on the credibility of the witnesses.

[36] One of the big challenges of this case was the fact that the person who made the alleged arrangement with Mr. Voutour on behalf of MVG and the owner, Mike, is dead. Mike was also not a man who conducted his affairs in writing. There was no correspondence from him in writing. But I did get an overall impression of the kind of man he was, particularly from his widow, Vasso. Mike appears to have been a person with some education but with a strong business sense, who, together with his wife, worked hard and obtained and managed several Toronto properties, making money by being very careful. Mr. Voutour and Vasso described Mike as "thrifty," which I accept.

[37] Mr. Voutour was the main witness for the plaintiff. I found him to be more credible than Vasso and Voula. His affidavits had more detail and substantiation. There were apparent contradictions in his evidence, particularly when it came to the issue of the price in the alleged contract. In the First Voutour Affidavit Mr. Voutour said that he was to be paid for his labour and material costs. Then in the Second Voutour Affidavit, Mr. Voutour stated that the "price for the work" was first discussed two months after the lease was signed and the oral renovation deal was done, at which later time Mike promised to extend the lease for five years and pay Mr. Voutour $50,000 when the building was sold in 2030 if Mike liked the work. In cross-examination, Mr. Voutour addressed this apparent confusion frankly and effectively. He confirmed there was no contradiction, as he said the deal was the payment of his labour and material costs from the eventual sale of the building. On another topic, he also candidly admitted not thinking about certain risks at the time of the arrangement, such as the risk that the building would never be sold. This all made sense to me as Mr. Voutour did not strike me as a sophisticated businessman. Generally, Mr. Voutour withstood cross-examination well. I found him credible.

[38] Mr. Voutour's other witness was the expert, Jeff Clarke. He is a home inspector who gave opinion evidence as to the value of the work done by Mr. Voutour. Mr. Alexiou challenged the admissibility of Mr. Clarke's evidence on the grounds that Mr. Clarke did not have the special knowledge needed to give such an opinion in court. I overruled the challenge on the grounds that Mr. Clarke established sufficient special knowledge to give his opinion based on his experience as a home inspector, his consulting work and his education. Mr. Clarke authored a report in January, 2022 wherein he indicated he attended at Unit 4 on January 12, 2022 to inspect the work that had been done. In his report he estimated that a general contractor would have charged between $46,652.05 and $56,294.34 for Mr. Voutour's work, and that what Mr. Voutour claims for his costs (ie. $15,142 for materials and $15,000 for labour) is reasonable. Mr. Clarke also authored a supplementary report in August, 2023 responding to the report of the expert witness for the defendants, Joseph Emmons. He said that Mr. Emmons use of a labour rate of $25/hour was well

below market rate and was unfair, and that a more reasonable, non-union rate for Mr. Voutour's labour in Toronto in 2020 was $40/hour.

[39] I found Mr. Clarke credible. He relied heavily on his experience as a home inspector in Toronto which was extensive. He has inspected over 15,000 homes. He showed that he examined the renovation work in detail, as he described it in detail in his report and attached many photographs he took at that time. He defended his criticism of Mr. Emmon's rates well by pointing out that his knowledge of labour rates came from his own experience with what tradespeople actually charge homeowners on time and material contracts. He also pointed out in cross-examination that almost all of his experience is in the Toronto home construction market.

[40] The witnesses for the defendants, on the other hand, were less credible. Vasso's evidence had a key contradiction that she did not explain. She stated in her affidavit that she was not aware of the Voutour improvement or his arrangement with Mike until the Voutour claim for lien was served on November 29, 2021. She insisted in her affidavit that Mike would never have agreed to the Voutour work, that she would not have agreed to the Voutour/Mike arrangement and that buyers would not care about the Unit 4 improvements. Yet, she admitted in cross-examination knowing that Voula used Unit 4 as a showpiece to facilitate the sale, a sale process that began as early as the fall of 2020. To get this knowledge, Vasso no doubt was told by Voula about the improvement and its usefulness for the sale. It is also inconceivable that Vasso, the owner and Voula's mother, would not have authorized the use of Unit 4 as a showpiece. This all undermined her credibility. Vasso was also not transparent. Her refusal to disclose the full details of the fire insurance payout as it pertained to Unit 4 left the impression that she was hiding evidence about whether the owner received insurance compensation for Mr. Voutour's work without paying him.

[41] Voula's evidence had similar contradictions and lack of credibility. She stated in her affidavit that she did not know of the Voutour/Mike arrangement and never saw the Unit 4 improvements until the Voutour claim for lien was served. This contradicted the text message she sent to Mr. Voutour on April 18, 2021 wherein she asked Mr. Voutour to show Unit 4 to a potential buyer as "your unit is super nice to show." When asked about this contradiction in cross-examination, Voula had no explanation. Clearly, Voula saw the Unit 4 improvement well before the Voutour claim for lien was served. Not only did she see it, she used it for the very purpose Mr. Voutour said Mike contracted with Mr. Voutour, namely to enhance the sale value of the building. Then there was the October 15, 2021 text Voula sent to Mr. Voutour telling him not to tell potential buyers about a "payout" from the sale. She added this telling statement: "These buyers don't know what's going on so it confuses them." Voula tried to explain in her affidavit that this "payout" reference pertained to other work Mr. Voutour did for Vasso. But there was no evidence of any other Voutour claim for payout from the sale other than for the work on Unit 4. The October 15, 2021 text, therefore, shows Voula's awareness of the basis for Mr. Voutour's claim for a payout from the sale. This all strongly suggests that Voula, and no doubt Vasso (to whom Voula reported), were both not only aware of Mike's arrangement with Mr. Voutour but approved it and used it. The credibility of both of them was seriously undermined by these contradictions.

[42] The defendants' last witness was Mr. Emmons. He is a quantity surveyor who was hired by the defendants to give an opinion on the value of Mr. Voutour's labour concerning the Unit 4 improvements. The admissibility of his opinion was not challenged. Mr. Emmons authored a report dated August 14, 2023 wherein he provided his takeoff and estimate of the labour hours Mr.

Voutour spent on the project. He estimated 384 hours. To this he applied an hourly rate of $25 to come to his total estimate of the value of Mr. Voutour's labour, namely $9,600.

[43] The cross-examination of Mr. Emmons was effective. The issue was the proper rate to be applied to the labour hours. Mr. Emmons's $25/hour was below what Mr. Clarke said was the non-union market rate of $30/hour for general labour in Toronto in 2020 and well below what Mr. Clarke said was the appropriate Toronto non-union market rate for Mr. Voutour's work. Mr. Emmons did not explain his use of his low rate. He also did not see Unit 4 in person and, therefore, in my view, did not have the opportunity properly to assess Mr. Voutour's skill level. Based on the photographs in Mr. Clarke's report, Mr. Voutour's work struck me as being above that of a general labourer. Also, while Mr. Emmons insisted in cross-examination that most of his present work was in Toronto, this was not evident from his *curriculum vitae*. I had trouble accepting Mr. Emmon's evidence as a result.

[44] Therefore, in the end, I preferred the evidence of Mr Voutour over that of Vasso and Voula when the two conflicted, and the evidence of Mr Clarke over that of Mr. Emmons.

V. ANALYSIS

a) Was there a contract for the improvement as alleged?

[45] Mr. Voutour asserts that he verbally contracted with Mike on January 1, 2020 to do a high-end renovation of Unit 4 in accordance with Mike's verbal specifications in return for being paid for his time and material costs from the sale of the building. He has the onus to prove the contract. The defendants argue that Mr. Voutour has failed to prove such a contract.

[46] What makes an enforceable contract? As stated by Associate Justice Robinson in *Bellsam Contracting Limited v. Torgerson*, 2023 ONSC 468 (CanLII) para. 35, an enforceable contract has five elements: offer, acceptance, consideration, certainty of essential terms, and an intention to create a legal relationship. Determining whether a contract is formed is done through an objective assessment, namely a determination of how each party's conduct would appear to a reasonable person in the position of the other party; see *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga,* 2021 SCC 22 (CanLII), [2021] 1 SCR 868 para. 35. It does not matter whether a party does or does not subjectively intend to contract. It matters whether that party's conduct is such that a reasonable person in the position of the other party would conclude that the party intended to be bound by the contract; see *Ethiopian Orthodox, supra,* at paras. 37 – 38. The court must consider the factual matrix between the parties; see *Bellsom Contracting, supra,* at para. 36.

[47] What are the essential terms of a construction contract? It is well established law that an enforceable construction contract requires that there be a meeting of the minds between the parties on three elements: the scope of the work; the price; and the schedule. There must be a certain agreement on these elements; see *The Gatti Group Corp. v. Zuccarini*, 2020 ONSC 2830 (CanLII) at paragraph 71.

[48] As stated earlier, the absence of the person with whom Mr. Voutour alleges he contracted, namely Mike, presents a challenge. Due to his death, Mike was obviously not available to speak to the existence of a contract and its terms. This means that I must assess whether Mike indeed

contracted with Mr. Voutour as alleged based on circumstantial evidence. In this regard, I must review and assess the totality of the evidence presented.

[49] I am also mindful of section 13 of the *Evidence Act,* R.S.O. 1990, c E.23 which states that any action against the "the heirs, next of kin, executors, administrators or assigns of a deceased person," a party cannot obtain judgment with respect to a matter that occurred before the death of the deceased person on the party's own evidence "unless such evidence is corroborated by some other material evidence." The defendants appear to fall within the class of persons protected by section 13. That means that I cannot find the existence of a contract based solely on the statements made by Mr. Voutour, despite my finding of his superior credibility.

[50] Having assessed the totality of the evidence, I find that Mr. Voutour has established sufficient corroboration of the contract he alleges. Here are my reasons.

a.1) Offer, acceptance, consideration and intention to create legal relationship

[51] These are the four essential elements for a finding that a contract exists. Mr. Voutour has the onus to prove these elements as he is asserting the existence of a contract. I will deal first with the issues of offer, acceptance and intention to create a legal relationship.

[52] Firstly, it is important to remember the history between Mr. Voutour and Mike. It is undisputed that Mr. Voutour did several construction jobs for Mike under oral contracts where Mr. Voutour was paid for his materials. Indeed, he continued to work for Voula on certain jobs under the same arrangement. Also, Mr. Voutour struck me as a person who is not comfortable with writing. I was also given no evidence that Mike was any different. Therefore, it makes sense that there would be no evidence in writing of an offer and acceptance.

[53] Secondly, the facts surrounding the genesis of the work lend credence to Mr. Voutour's position of an agreement. Most of Mr. Voutour's work was on the freehold interest of the landlord, namely the skylight, the countertops, the zacuzzi, the flooring, the walls, etc. It is inconceivable that this work would have been done without the knowledge, approval and agreement of the landlord, Mike. This is particularly the case since Mr. Voutour and Mike had a longstanding relationship that Mr. Voutour valued.

[54] Thirdly, Mr. Voutour began working on Unit 4 one month after signing the lease agreement by interrupting Redfern in its repair work on the unit. That interruption could only have been done at the direction of and through an agreement with the insured, the landlord, Mike. Indeed, Voula's affidavit contains unchallenged hearsay evidence that "Chris" at Redfern confirmed to Voula that both Mr. Voutour and Mike stopped Redfern's work on the kitchen. I accept that hearsay evidence as it is against the interest of the defendants. This joint interruption of Redfern's work indicates an agreement between Mr. Voutour and Mike whereby the two of them were working together to facilitate Mr. Voutour's renovation of Unit 4.

[55] Fifthly, it is also inconceivable that Mr. Voutour would have started working so soon after leasing Unit 4 without an agreement with Mike about this work. Mr. Voutour leased units from Mike before without doing any improvements on them. Also, the work that Mr. Voutour undertook on Unit 4 was, in my view, much more extensive than the small jobs Mr. Voutour did for Mike in the past. Mr. Voutour undertook almost an entire renovation of Unit 4. Certainly, an entire renovation

of the kitchen and bathroom. That Mr. Voutour would suddenly undertake all this work on the freehold interest of this newly leased unit on his own initiative, largely at his own expense and without an agreement with the landlord's representative with whom he had a long and valued relationship, Mike, as the defendants maintain, makes no sense.

[56] Sixthly, there was the undisputed evidence that Mike helped pick up the high-end floor tiles for the project. The First Voutour Affidavit contains an undated text from Mr. Voutour to Mike saying that Mr. Voutour was not doing more work until the tiles were delivered. The affidavit says that Mike then helped pick up the tiles. In cross-examination, Mr. Voutour stated that Mike in fact paid for the tiles. In short, there is evidence that Mike was directly involved in the renovation work.

[57] This circumstantial evidence was sufficient to convince me that Mr. Voutour and Mike had a "meeting of the minds," an agreement, concerning the renovation, namely an offer, acceptance and intention to create a legal relationship.

[58] I move to the issue of consideration. Clearly, Mike gave Mr. Voutour consideration in the alleged agreement. Mr. Voutour received the benefit of living in the improved Unit 4 for a rental period of five years without a rent increase; he received the benefit of using the parking space without charge; he received the benefit of getting paid for his labour and materials when the building was sold. He admitted not thinking about the risk to him if the building was not sold, but again this oversight was in character for Mr. Voutour as he is not a sophisticated businessman.

[59] Clearly, Mr. Voutour gave Mike consideration as well. Mr. Voutour agreed not to get paid upon completion of the work as usual, and instead in the future and out of the sale proceeds of the building sale, if and when that happened. This agreement would have been valuable to Mike. With the fire insurer paying him for the fire damage repair and without having to pay any money out of his own pocket (except for the tiles), Mike got the benefit of a high-end renovation of Unit 4 that he could then use as a showpiece to enhance the sale value of the building. Mike also got the benefit of a construction project without the charges of a general contractor. Mr. Clarke's opinion was that a general contractor would have charged considerably more, between $46,652.05 and $56,294.34. Mike also got the benefit of collecting rent on Unit 4 throughout the entire renovation.

[60] The defendants assert that Mike, being a thrifty man, would never have agreed to the high-end quality of the Voutour renovation. But I believe that Mike was also a shrewd businessman, who, I believe, was thinking about selling 3472 and wanted to get the most sale value out of the building at the least, up-front cost. The arrangement Mr. Voutour says he had with Mike met that objective. Vasso admitted in her affidavit that she and Mike were thinking of selling 3470 in the spring of 2020, and that she decided to sell both 3472 and 3470 in the fall of 2020 after Mike's death. Mike's involvement in the Voutour renovation indicates to me that he was already also thinking of selling 3472 as early as January, 2020.

[61] The defendants assert that Mike, being a good businessman, would never have agreed to an extravagant renovation of a single unit in a rooming house full of basic quality units, as buyers would not be affected by it. The credibility of that position was undermined by Voula's text message to Mr. Voutour of April 18, 2021 wherein she asked Mr. Voutour to show his unit to a potential buyer as "your unit is super nice to show." I find that the defendants believed, like Mike, that the Voutour renovation enhanced the sale value of the building.

[62] Voula and Vasso assert that they were left entirely in the dark about the renovation until the Voutour claim for lien was served on them in November, 2021. The argument was that such is not the conduct of a tenant looking to the landlord for eventual payment. Firstly, if Vasso and Voula were indeed in the dark as they allege, that would not have been inconsistent with the contract Mr. Voutour alleges. He said that Mike wanted to surprise his wife. Secondly, the evidence indicates that Mr. Voutour obtained most of the materials before Mike died. Voula stated this in her affidavit. That means that the involvement of Mike and the landlord in the design and procurement of materials was largely at an end by the time Mike died, and there was no need to involve the landlord further. Thirdly, and most importantly, Voula's text messages to Mr. Voutour on April 18, 2021 and October 15, 2021, as discussed earlier in my discussion about credibility, satisfy me that Voula and Vasso were in fact not in the dark about the renovation and the arrangement between Mr. Voutour and Mike. They knew and approved of both well before the Voutour claim for lien was served. I do not accept this argument.

a.2) The essential terms of a construction contract

[63] As stated earlier, an enforceable construction contract requires proof that the parties to the contract reached a clear agreement on these three elements: scope, price and schedule. Mr. Voutour has the onus to prove this "meeting of the minds."

[64] Was there a clear agreement on scope? I find that there was. Mr. Voutour's evidence was that the scope of the project was whatever Mike wanted in design and materials. That makes sense as Mike was the landlord's representative and as most of the improvement was on the freehold interest. Also, as stated above, there was clear evidence that Mike was involved in the project, and that most, if not all, of the materials and equipment were purchased before he died. The fact that there were no drawings or specifications in writing does not concern me, as these men preferred to communicate verbally. As a result, I find that Mr. Voutour has established certainty of scope.

[65] Was there a clear agreement on price? Here the evidence was more complicated. I discussed this complication somewhat earlier in my discussion about Mr. Voutour's credibility. In the First Voutour Affidavit, Mr. Voutour stated that he and Mike agreed that he, Mr. Voutour, would be paid for his labour and material costs out of the sale of the building. In the Second Voutour Affidavit, Mr. Voutour stated that this was the oral deal at the time the lease was signed on January 1, 2020. He then added that about two months later was "the only time any price for the work was mentioned." He stated that Mike told Mr. Voutour on that later date that, if Mike liked the work, the lease would be extended at the same rate for five years to 2030 and Mr. Voutour would be paid $50,000 from the sale price of the building in 2030. Mr. Voutour also stated that Mike told Mr. Voutour on that later date that he, Mike, would try to get a developer to buy Mr. Voutour out of his lease for an additional $50,000. Mr. Voutour then stated this: "I believed at the time that Mike was being generous and talking off the top of his head." In cross-examination, Mr. Voutour described this later conversation as "just talking." In re-examination, he reiterated that the base deal required that he be paid for his labour and material costs from the sale proceeds.

[66] Having sifted through this evidence, I have decided to accept Mr. Voutour's position in his cross-examination and re-examination. The oral deal on January 1, 2020 had as the price the requirement that Mr. Voutour be paid for his labour and material from the sale of the building. What transpired on this later date were, in my view, representations from Mike about a future contract at the end of the lease to give Mr. Voutour incentive to continue working, representations

that Mr. Voutour did not rely upon as he called them "just talking." In short, I find that Mr. Voutour has established an agreement on price, namely that Mr. Voutour would be paid for his labour and material costs out the sale of the building.

[67] Here are some collateral comments. Mike no doubt felt bad as Mr. Voutour's compensation was entirely contingent on the landlord selling the building, an event that Mr. Voutour had no control over. Mike probably thought that a sale could take some time, namely well beyond the term of the existing five-year Voutour lease. He probably thought that, if he liked the Unit 4 renovation, he might extend the sale process for as long as ten years to get the best price, extending the Voutour lease accordingly to take advantage of the "showpiece" unit. But this would be unfair to Mr. Voutour without additional compensation. Hence, the representations. Mr. Voutour's choice of the words, "price for the work," was unfortunate and inaccurate for what, in my view, transpired - talk. On the other hand, Mike probably thought that, if he did not like the renovation and decided to redevelop the building instead of sell it, he would want to get out of the Voutour lease without paying anything to Mr. Voutour. Hence, Mike's handwritten clause in the lease allowing the landlord to demolish the building after a one-year notice at the end of the lease term.

[68] Was there a clear agreement on schedule? I find that there was. In the Second Voutour affidavit, Mr. Voutour stated that he has significant medical issues, that Mike knew this, and that, as a result, the two agreed that Mr. Voutour would work at his own pace to complete this renovation. There was an implied proviso, namely that Mr. Voutour would do his best to finish his work prior any sale of the building. I find this position credible. That Mr. Voutour has significant health issues was not challenged. I also note again that Mike employed Mr. Voutour on numerous previous jobs and obviously knew how he worked. I also note that Mr. Voutour had incentive to finish the work as soon as possible, as he lived within the upheaval of the renovation work while paying full rent and knew that his work had to be finished to facilitate a building sale as his compensation depended on such a sale. I find that Mr. Voutour has established a certain agreement on schedule.

[69] For all these reasons, I find that Mr. Voutour has proven an enforceable construction contract with the landlord as he alleges, namely one where he was to do the renovation of Unit 4 in the way Mike wanted in return for being paid for his labour and material costs out of the eventual sale of the building.

b) Is Mr. Voutour entitled to quantum meruit recovery?

[70] Having found that Mr. Voutour is entitled to contract damages from the defendants, I do not have deal with the issue of *quantum meruit* recovery, and, therefore, do not.

c) What is the remedy?

[71] Mr. Voutour sues for his labour and material costs as damages for breach of contract by the landlord, the defendants, because of their refusal to pay him from the building sale proceeds.

[72] The evidence is clear that Mr. Voutour did the work in accordance with the contract. There was no evidence of a complaint as to the quality of his work. Indeed, Mr. Voutour's photographs of his work showed an impressive result. A building sale took place on April 6, 2022. Mr. Voutour is, therefore, entitled now to be paid as agreed.

[73] Concerning his material costs, Mr. Voutour claims $15,142. His affidavits contained the invoices for some of the materials he purchased. He said he gave the invoices to Mike. Mr. Voutour said he had at one point the receipt for the new fridge, but that he misplaced it. There were items that Mr. Voutour said he purchased with cash to save money, a practice Mr. Voutour said Mike approved. He produced a handwritten list of items for which he had no receipts, items which included the quartz kitchen countertop, the skylight and wiring harness, the stainless-steel kitchen valance, the stainless-steel fridge and the plywood for the kitchen cupboards and doors.

[74] Jeff Clarke, the plaintiff's building inspector expert, said in his report that he attended at the site on January 12, 2022 to examine the work, and that he examined Mr. Voutour's invoices and other documentation. Mr. Clarke said he found material invoices totaling $10,228.70, but that these did not include the bathroom plumbing fixtures, vanities, kitchen fridge, dishwasher and other finishes. It was Mr. Clarke's opinion that $15,142 was a "reasonably accurate cost of materials to complete the scope of work as evidenced by our site visit." This finding was not disputed, and I accept it.

[75] Concerning labour costs, Mr. Voutour claims $15,000. There was a dispute as to whether this was reasonable. Mr. Voutour said in cross-examination that he did not keep track of his hours but that he estimated his labour costs as being equivalent to what the materials cost. He said in cross-examination that this was consistent with what he and Mike agreed would be done, namely that the two would negotiate a reasonable amount at the time of payment. I accept that explanation as in my view the two men were used to dealing with each other on only a verbal level.

[76] Mr. Clarke's opinion was that this figure of $15,000 was reasonable. The defendants' expert, quantity surveyor Joseph Emmons, estimated the labour hours for the work and concluded that it was 384 manhours. He then applied the rate of $25/hour to those hours and concluded that the value of Mr. Voutour's work was only $9,600. Mr. Clarke objected to the rate, not the estimated hours. He stated in his reply report that the rate of $25/hour was "extremely low in the Greater Toronto Area marketplace." He stated that Mr. Voutour's work merited a rate of $40/hour, the rate Mr. Clarke stated applied to non-union apprentices, carpenters and trades in Toronto. 384 manhours at $40/hour produces a total of $15,360, namely an amount in excess of what Mr. Voutour claims.

[77] As discussed earlier in my discussion about credibility, I preferred the evidence of Mr. Clarke to that of Mr. Emmons on this point. I reiterate my earlier discussion. Mr. Emmons did not explain his use of the $25/hour low rate. He also did not see Unit 4 in person and, therefore, in my view, did not have the opportunity properly to assess Mr. Voutour's skill level. Mr. Clarke demonstrated his experience in the Toronto home construction market and said that Mr. Emmons' $25/hour rate was below the going rate for a non-union general labourer in Toronto. Based on the photographs in Mr. Clarke's report, Mr. Voutour's work struck me as being above that of a general labourer. Also, while Mr. Emmons insisted in cross-examination that most of his present work was in Toronto, this was not evident from his *curriculum vitae*. I had trouble accepting Mr. Emmon's evidence as a result. I, therefore, accept Mr. Clarke's view and find that the value of Mr. Voutour's labour was $15,000.

[78] What this all means is that Mr. Voutour is entitled to be paid the entirety of his $30,142 claim for breach of contract damages. That is what I find.

[79] Mr. Voutour also claims a lien in the amount of this $30,142. In closing argument, Mr. Alexiou raised the issue of the lienability of Mr. Voutour's supply of the appliances. These items are

included in the Voutour lien claim. I agree that they are not lienable as they are not fixtures. There was no issue as to the lienability of the remainder of Mr. Voutour's supply.

[80] Concerning the appliances, Mr. Voutour provided a receipt for the stove in the amount of $1,282.85. He lost the receipt for the fridge, but in a handwritten list he prepared he put down $1,000 as the cost for the fridge, which seems reasonable. There was no receipt for the dishwasher. Therefore, I find against Mr. Voutour's interest that the dishwasher was high-end and comparable in cost to the fridge, $1,000. These three items total $3,282.85. Therefore, I find that Mr. Voutour has a lien in the amount of $30,142 - $3,282.85 = $26,859.15.

[81] Nevertheless, the entire $30,142 damage amount should be paid from the defendants' monies in court. The agreement was that Mr. Voutour was to be paid out of the building sale proceeds. That was not done. Therefore, I view the defendants' money in court (posted to facilitate the sale) as being in the nature of a trust, namely as standing in for the sale proceeds that the defendants should have set aside to pay the entirety of the Voutour claim regardless of the lien issue.

VI. CONCLUSION

[82] In conclusion, I find that Mr. Voutour has a personal judgment against the defendants for breach of contract damages in the amount of $30,142 and that this should be paid from the monies the defendants posted in court for the Voutour claim for lien. I also find that of this $30,142, Mr. Voutour has a lien in the amount of $26,859.15.

[83] Concerning costs, I directed that the parties file costs outlines at the end of the argument. They did. The Voutour costs outline shows partial indemnity costs of $31,361.61. The defendants' costs outline shows partial indemnity costs of $46,482.35.

[84] Given the result, it appears that Mr. Voutour is the successful party and should be entitled to costs. I encourage the parties to confer and come to an agreement on costs and prejudgment interest.

[85] If they cannot agree, written submissions on costs and prejudgment interest must be served, filed and uploaded in accordance with the following schedule:

- Mr. Voutour must serve, file and upload written submissions on costs and prejudgment interest of no more than three (3) pages on or before October 4, 2024;

- the defendants must on or before October 16, 2024 serve, file and upload responding written submissions on costs and prejudgment interest of no more than three (3) pages;

- Mr. Voutour must serve, file and upload reply written submissions on costs and prejudgment interest of no more than one (1) page on or before October 21, 2024;

- the parties are reminded that these submissions must also address the prejudgment interest rate to be charged and its calculation.

Released: September 24, 2024

ASSOCIATE JUSTICE C. WIEBE

CITATION: Voutour v. MVG Investments Inc., 2024 ONSC5283
COURT FILE NO.: CV-21-673311

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the *Construction Act, R.S.O. 1990, c. C.30*

B E T W E E N:

Jody Voutour
.

Plaintiff

- and -

MVG Investments and Vasso Georgiopoulos

Defendants

REASONS FOR JUDGMENT

Associate Justice C. Wiebe

Released: September 24, 2024