

CITATION: GTA Fill Earthworks Inc v. Ulbrick, 2024 ONSC 6213
COURT FILE NO.: CV-20-00641532-0000
DATE: 20241108

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
GTA FILL EARTHWORKS INC.) *Zachary Silverberg and Cassandra Fafalios*
Plaintiff) for the Plaintiff
)
- and -)
)
ANTHONY ULBRICK and 2611635)
ONTARIO CORPORATION)
)
Defendants)
)
) **HEARD at Toronto:** November 4, 2024

REASONS FOR JUDGMENT

JANE DIETRICH J.

Introduction

[1] The plaintiff, GTA Fill Earthworks Inc. (“GTA”) seeks damages against the defendants relating to various breaches of verbal contracts entered into between GTA and the defendant, Anthony Ulbrick.

[2] The defendants failed to defend the proceeding and were noted in default on March 1, 2021.

[3] The plaintiff had brought a motion for default judgment pursuant to Rule 19.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194 (the “Rules”). That motion was heard in writing and by an endorsement dated December 13, 2023, Justice Papageorgiou ordered a half day undefended trial take place.

Background

[4] Pursuant to Rule 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in a statement of claim. Accordingly, I accept as true the facts alleged in the Amended Statement of Claim dated November 18, 2020, in this

proceeding. Peter Platis, the president and owner of GTA also provided two affidavits sworn on July 22, 2021, and March 20, 2023, and gave testimony at the trial.

[5] In summary, GTA is a brokerage company which provides services relating to hauling, trucking, filling and dumping loads of soil and fill from various work sites. GTA's claim relates to verbal agreements it entered into with Mr. Ulbrick as follows:

- a. Davan Group Project: On or about July 18, 2018, GTA was hired to locate an appropriate dumpsite for the Davan Group of Companies. GTA subcontracted with Mr. Ulbrick as Mr. Ulbrick obtained preferred pricing from 3G Trucking Ltd. (3G) who performed the services. GTA paid Mr. Ulbrick the amount of \$40,325.00, being the amount owing to 3G as well as Mr. Ulbrick's commission on the project. Mr. Ulbrick had agreed with GTA that he would then pay 3G the amounts it was owed (approximately \$35,000) for the services. Mr. Ulbrick failed to pay 3G and 3G commenced a claim against GTA for non-payment. GTA eventually settled the claim by 3G for a payment in the amount of \$40,000.
- b. Patricia Project: The Patricia Project was operated by ORIN/RONI Contractors (RONI). Mr. Ulbrick had a relationship with RONI in that at one time he was employed by them. GTA and Mr. Ulbrick agreed that Mr. Ulbrick would (i) recommend GTA to RONI; and (ii) hand deliver GTA's invoices to RONI's accounts payable group so that GTA would receive prompt payment. In exchange, Mr. Ulbrick was to receive a commission of between \$5 and \$10 a load on the material that GTA brokered services for. GTA however, did not receive payment from RONI for \$31,176.70 worth of invoices dated between June and September of 2019 that were issued by GTA to RONI in respect of the Patricia Project for services provided by GTA. Mr. Platis hand delivered these invoices to Mr. Ulbrick. Mr. Ulbrick advised Mr. Platis that he would hand deliver the invoices to RONI. However, as it later became clear, Mr. Ulbrick did not in fact do so. Rather, Mr. Ulbrick created invoices for the same services using 2611635 Ontario Corporation (the Defendant Corporation) as the payee. After repeated demands for payment by GTA to RONI, in February of 2020, RONI provided to GTA copies of the invoices it had received from the Defendant Corporation and copies of payments made by RONI to the Defendant Corporation.
- c. Additional Invoices: Similar to the Patricia Project, GTA entered into a verbal agreement with Mr. Ulbrick that he would hand deliver GTA invoices to RONI for prompt payment on certain other projects. These invoices were dated between October of 2017 and January of 2018 and totaled \$49,284.85. Mr. Platis provided these invoices to Mr. Ulbrick who advised Mr. Platis he had provided them to RONI. However, GTA was never paid on these invoices as well. Unlike the invoices related to the Patricia Project noted above, RONI has not provided any 'mirror' invoices or proof payment to the Defendant Corporation in respect of these additional invoices.

- d. McCowan Project: In or around October of 2019, Mr. Ulbrick agreed to source a dumping site for GTA for 150 loads of material. GTA paid Mr. Ulbrick a commission for the 150 loads, but prior to all loads being delivered, the dumping site closed. GTA was forced to find an alternative dumping site at the cost of \$3,480.

[6] Mr. Platis spoke to Mr. Ulbrick late in March of 2020 about the unpaid amounts noted above. Mr. Platis' testimony is that Mr. Ulbrick told Mr. Platis that he would 'make things right'. Mr. Ulbrick, in an email dated March 26, 2020, offered to pay GTA four installments of \$5,000 each before July 3. Mr. Ulbrick also stated in that email that 'hopefully by then they can get together and come to an agreement going forward'. Although the promised payments were not received, on March 27, 2020, Mr. Platis sent an email to Mr. Ulbrick outlining all amounts owing by Mr. Ulbrick to Mr. Platis which totaled \$116,266.65. This equates to the amounts claimed by GTA as owing under the Davan Project, the Patrica Project, the Additional Invoices and the McCowan Project, less a payment having been made by Mr. Ulbrick of \$8,000. Mr. Platis testified that an additional amount of \$4,000 was later paid by Mr. Ulbrick, such that the total amount owing was reduced to approximately \$112,000.

[7] As stated in the Amended Statement of Claim, demand was made on the defendants on February 27, 2020.

The Issues

[8] The issues are whether the evidence provides a basis for:

- A finding of liability by Mr. Ulbrick for the amounts claimed in respect of the Davan Group Project, the Patricia Project, the Additional Invoices and the McCowan Project?
- A finding of liability by the Corporate Defendant for the amounts claimed in respect of the Davan Group Project, the Patricia Project, the Additional Invoices and the McCowan Project? and
- A finding of liability for punitive damages against the defendants and if so in what amount?

Analysis

Issue 1: Do the materials provide a basis for a finding of liability by Mr. Ulbrick for the amounts claimed in respect of the Davan Group Project, the Patricia Project, the Additional Invoices and the McCowan Project?

[9] As noted above, pursuant to Rule 19.02, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the statement of claim. However, pursuant to Rule 19.06 a plaintiff is not entitled to judgment merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[10] I am satisfied that GTA has established the liability of Mr. Ulbrick based upon the deemed admissions from the Amended Statement of Claim referred to above, together with the evidence of Mr. Platis.

[11] The evidence shows that for the Davan Project, Mr. Ulbrick promised to pay 3G for their services from the funds advanced to him by GTA and that Mr. Ulbrick failed to do so. Mr. Ulbrick's failure to do so resulted GTA suffering damages of \$40,000, being the amount ultimately paid by GTA to 3G.

[12] The evidence shows that for Patricia Project, Mr. Ulbrick failed to provide GTA's invoices to RONI as promised. Rather, Mr. Ulbrick created invoices in the name of the Defendant Corporation and provided those invoices to RONI. Accordingly, RONI paid the Defendant Corporation rather than GTA. Mr. Ulbrick's breach of his agreement with GTA in this regard caused GTA damages in the amount \$31,176.70.

[13] In respect of the Additional Invoices, the evidence is that Mr. Ulbrick also promised to provide those invoices to RONI and arrange for prompt payment to GTA. GTA was not paid on these invoices. The statements of amounts owing by Mr. Ulbrick to GTA from March 2020 included the amounts owing under these invoices and no objection was raised by Mr. Ulbrick. I also find Mr. Ulbrick liable for the amount of \$49,284.95 in respect of these Additional Invoices.

[14] The evidence also shows that Mr. Ulbrick was overpaid by \$3,480 on the McCowan Project and has not repaid that amount to GTA. I find Mr. Ulbrick liable for that amount as well.

Issue 2: Do the materials provide a basis for a finding of liability by the Defendant Corporation for the amounts claimed in respect of the Davan Group Project, the Patricia Project, the Additional Invoices and the McCowan Project?

[15] The only involvement, on the evidence before me, of the Defendant Corporation is in respect of the Patricia Project. The facts pled in the Amended Statement of Claim, which are deemed to be admitted as true, are that invoices in the name of the Defendant Corporation were provided to RONI for work actually done by GTA on that project and payments were made by RONI to the Defendant Corporation for that work in the amount of \$31,176.70. Further, the Defendant Corporation never remitted that amount to GTA.

[16] The plaintiff pleads unjust enrichment in their Amended Statement of Claim. I find that the Defendant Corporation received the benefit of the amounts paid on the Patricia Project to the detriment of GTA and that no juristic reason exists for just enrichment. Accordingly, I find the Defendant Corporation jointly liable with Mr. Ulbrick for the amount of \$31,176.70.

[17] The evidence does not support findings of liability for the Defendant Corporation on the Davan Project, the Additional Invoices or the McCowan Project. This is no evidence that the Defendant Corporation was involved in those projects.

Issue 3: Do the materials provide a basis for a finding of liability for punitive damages against the defendants and if so in what amount?

[18] GTA seeks \$50,000 in punitive damages.

[19] Punitive damages are awarded in exceptional cases for “malicious, oppressive and high-handed” misconduct that “offends the court’s sense of decency.” Awards of punitive damages are limited to misconduct that represents a marked departure from ordinary standards of decent behaviour. Because their objective is to punish the defendant, rather than compensate a plaintiff, punitive damages straddle the frontier between civil law (compensation) and criminal law (punishment): *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595 [*Whiten*], at para. 36.

[20] The court in *Whiten* particularized the following factors that the court is to consider when granting an award for punitive damages:

[112] The more reprehensible the conduct, the higher the *rational* limits to the potential award. The need for denunciation is aggravated where, as in this case, the conduct is persisted in over a lengthy period of time (two years to trial) without any rational justification, and despite the defendant’s awareness of the hardship it knew it was inflicting (indeed, the respondent anticipated that the greater the hardship to the appellant, the lower the settlement she would ultimately be forced to accept).

[113] The level of blameworthiness may be influenced by many factors, but some of the factors noted in a selection of Canadian cases include:

- (1) whether the misconduct was planned and deliberate;
- (2) the intent and motive of the defendant;
- (3) whether the defendant persisted in the outrageous conduct over a lengthy period of time;
- (4) whether the defendant concealed or attempted to cover up its misconduct;
- (5) the defendant’s awareness that what he or she was doing was wrong;
- (6) whether the defendant profited from its misconduct;
- (7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff (e.g., professional reputation (*Hill, supra*)) or a thing that was irreplaceable (e.g., the mature trees cut down by the real estate developer in *Horseshoe Bay Retirement Society v. S.I.F. Development Corp.* (1990), 1990 CanLII 8047 (BC SC), 66 D.L.R. (4th) 42 (B.C.S.C.)).

[21] Here, the defendants’ conduct, especially in respect of the Patricia Project, was planned and deliberate. The creation of ‘mirror invoices’ in the name of the Defendant Corporation by Mr. Ulbrick, his provision of those invoices to RONI on multiple occasions, his attempt to conceal

such behaviour from GTA and the defendants' receipt of funds from RONI as a result of that scheme amount to conduct of the nature contemplated in *Whiten*.

[22] Punitive damages are to be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant. Other fines or penalties suffered by the defendant for the same misconduct should be considered. Punitive damages are awarded in an amount that is no greater than necessary to rationally accomplish their purpose. Moderate awards, which inevitably carry a stigma in the broader community, are generally sufficient: *Whiten*, at para. 94.

[23] Considering the above factors, I find that an award of \$25,000 in punitive damages is appropriate.

Disposition

[24] For the reasons expressed above, I grant the plaintiff judgment against Mr. Ulbrick in the amount of 111,941.65 in respect of general damages and \$25,000 in punitive damages. As well, the Defendant Corporation is jointly and severally liable for the amount of \$31,176.70 in respect of general damages and \$25,000 in punitive damages.

[25] Costs are in the discretion of the court. The factors relevant to the exercise of discretion are set out in Rule 57.01 of the Rules. They include the result and relative success of each party, the complexity of the proceeding, the importance of the issues and the conduct of any party that impacted the duration of the proceeding. The court must consider the purposes of costs, which include both the indemnification of successful litigants for costs of the litigation and the facilitation of access to justice: *Boucher v. Public Accountants Council (Ontario)* (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.), at paras. 35-37.

[26] I have reviewed the costs outline submitted by the plaintiff. Taking into account the factors referred to above, including the amount of the judgment obtained, the costs expended by the plaintiff, the additional difficulty in obtaining evidence faced by the plaintiff as a result of the lack of response from the defendants and the defendants' attempt to conceal their actions, I find that amount of \$30,000 in costs is appropriate. The defendants are also ordered to pay the plaintiff \$30,000 in costs, inclusive of disbursements.

Jane Dietrich J.

Released: November 8, 2024

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