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GLAHOLT BOWLES
CONSTRUCTION LAWYERS

BUILDING INSIGHT

GLAHOLT BOWLES LLP
NEWSLETTER

IN THIS ISSUE

When Settlement Changes the Adversarial Landscape

Litigation is anything but simple, but its complexity increases exponentially as more and more parties are pulled into the dispute, creating a spiderweb of adverse interests. These multi-party actions are extremely difficult to settle, but there are instances where adverse parties manage to settle their differences, potentially changing the adversarial orientation of the dispute, which creates an obligation to the disclose the terms of such settlement.

The *locus classicus* on this principle is the Ontario Court of Appeal's decision in *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324 ("*Handley*") which sets out the key considerations for determining whether a failure to immediately disclose a partial party settlement alters the adversarial posture of the litigation:

i. The obligation of immediate disclosure of agreements that "change entirely the landscape of the litigation" is "clear and unequivocal" – they must be produced immediately upon their completion;

ii. The absence of prejudice does not excuse the late disclosure of such an agreement;

iii. "Any failure of compliance amounts to abuse of process and must result in consequences of the most serious nature for the defaulting party"; and

iv. The only remedy to redress the wrong of the abuse of process is to stay the claim asserted by the defaulting, non-disclosing party. Why? Because sound policy reasons support such an approach. Only by imposing consequences of the most serious nature on the defaulting party is the court able to enforce and control its own process and ensure that justice is done between and among the parties. To permit the litigation to proceed without disclosure of agreements such as the one in issue renders the process a sham and amounts to a failure of justice.

The consequence of failure to disclose such an agreement would be an automatic and permanent stay of the litigation.

In 2022, the Ontario Court of Appeal weighed in on the principles set out in *Handley*, and they are briefly discussed below:

***Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66**

Tallman Truck Centre Limited ("Tallman") appealed an order staying its action on the basis that it failed to immediately disclose the existence of a settlement to one defendant, whereby one defendant reversed its pleaded position and joined cause with Tallman. The agreement was not disclosed until three weeks after it was made.

Counsel for Tallman argued that the motions judge mischaracterized the nature of the dispute between the parties and the degree to which the parties were mutually antagonistic, and that the motion judge consequently erred in finding that the settlement agreement changed the "entire" litigation landscape between the parties.

The effect on the relationship between the parties required a factual determination and the motion judge determined that the settling defendant reversed its position and went from opposing the plaintiff to supporting the plaintiff's claim, which falls within the application of *Handley*. The lack of crossclaims between the defendants was not a necessary condition.

Counsel for Tallman submitted that it did make a "functional disclosure" by filing a notice of discontinuance, coupled with the content of the affidavits filed, it should have been clear that there was settlement that altered the litigation landscape. The Court rejected this argument. Even if steps were taken that would lead experienced litigants to infer the existence of a settlement of some kind, that did not constitute "disclosure" of an agreement that changes the litigation landscape as required by *Handley*.

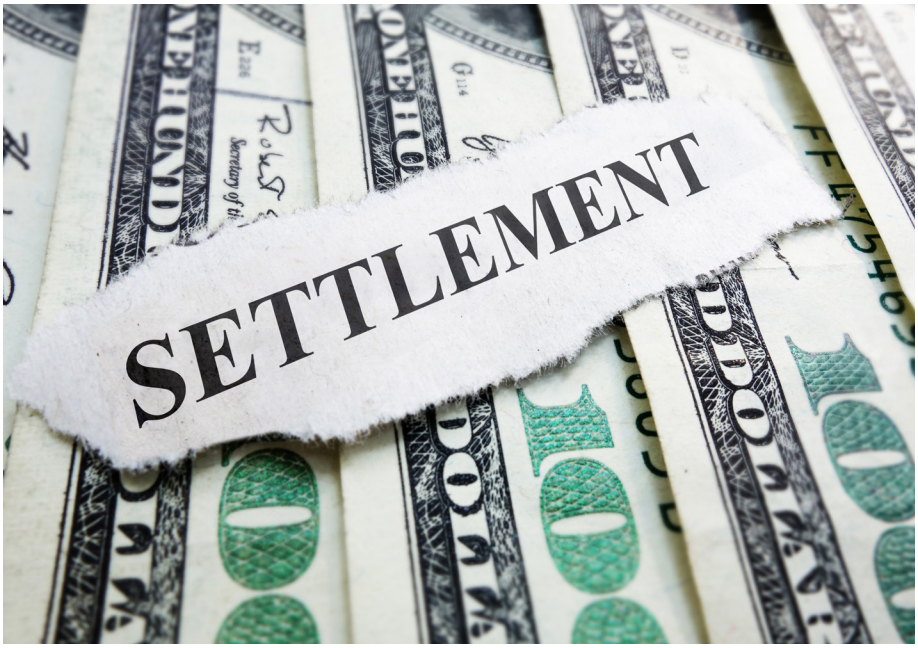
The Court also rejected the submission that the three-week period between reaching the agreement and its disclosure was negligible and ought not to be caught by the immediate disclosure rule. The Court said that the standard requires "immediate" disclosure; the standard is not "eventually" or "when it is convenient".

As a result, the Court confirmed the consequences of non-compliance as set out in *Handley*, "[45] …the only remedy to redress the wrong of the abuse of process is to stay the claim asserted by the defaulting, non-disclosing party…"

***Waxman v. Waxman*, 2022 ONCA 311**

This was an appeal from the order of the motion judge dismissing the appellants' motion for summary judgment, and instead granting summary judgment to the respondents dismissing the action as against them, as well as granting the respondents' motion for a permanent stay of the action as against them.

In considering the appeal, the Court firstly determined that the motion judge's finding with respect to the change to the litigation landscape was a question of mixed fact and law and therefore entitled to deference.



The appellants sought to distinguish their facts from those in *Handley* and contended that a contingent settlement agreement was very different from the "litigation agreement" at issue in *Handley*, as the result of the agreement was the removal of the settling parties from the action, as opposed to remaining in the action and cooperating with the plaintiffs. The appellants focused on the requirement in *Handley* that the settlement had to change the litigation landscape entirely before there was an obligation to disclose. The Court rejected this position as the settling parties agreed to provide evidence in private to the appellants, in circumstances where the settlement would only be operative if the appellants were satisfied with the evidence. These obligations were also tied to financial incentives, which reinforced the conclusion that there was a change in the adversarial landscape.

The appellants also attempted to hide behind the confidentiality provisions that were included in the relevant settlements. The Court also rejected this argument, stating that while the settling parties were free to agree to any terms they wished, including a private, parallel process to obtaining evidence from the settling defendants, such terms in no way derogate from the requirement of immediate disclosure confirmed in *Handley*.

The appellants finally argued that an automatic stay is a draconian remedy for abuse of process in a case such as this and that the motion judge should have exercised his discretion. Again, the Court rejected this position by citing *Handley* and the preceding cases on which it was based. The Court of Appeal described the obligation to disclose as clear and unequivocal and noted that its breach constituted an abuse of process. Only by imposing a stay is the court able to control and enforce its own process to ensure that justice is done.

***Poirier v. Logan*, 2022 ONCA 350**

While discoveries were underway, the plaintiff settled his claim against one of the defendants, but his lawyers did not disclose the settlement to the respondents for six months. The motion judge stayed the action against the respondents, finding that the failure to disclose the settlement immediately was an abuse of process requiring the dismissal of the proceedings.

Despite all the defendants having issued crossclaims against each other, they generally cooperated in their defence strategy, to the extent that they deferred their examinations of each other to avoid providing an advantage to the plaintiff.

The motion judge when considering the arguments recognized that whether a settlement agreement requires disclosure depends on the facts of the particular case.

The appellant seemingly attempted to include an additional prong to the test of whether there was a change in the adversarial landscape, and argued that before disclosure is required, an undisclosed settlement agreement would have to cause the litigation process to become a "sham" and that a thorough review of the respective pleadings would be required. The Court concluded that the obligation to disclose is not contingent on a finding that the settlement has rendered the litigation process a sham, and that the appellant's argument was simply a slightly more sophisticated version of the submission that this court rejected in *Handley*.

Lastly, the Court rejected the argument that the motion judge committed palpable and overriding errors. This question represents an invitation to have the court reconsider the motion on its merits and to come to and substitute a different decision from the one the motion judge made. The Court did not accept this invitation and determined that the record showed that the motion judge appreciated the substance of the issues in dispute and that these issues were thoroughly considered, and accordingly he was entitled to a certain amount of deference.

***CHU de Québec-Université Laval v. Tree of Knowledge International Corp.*, 2022 ONCA 467**

In contrast to the other decisions in this article, in this instance a stay of proceedings was rejected by the motion judge.

The existence of the settlement was disclosed the day after it was executed. Even though the respondents did not provide a copy of the settlement agreement, they disclosed to the non-settling defendants the "key features" of the settlement and indicated that it would be disclosed to the court as soon as possible. The Court determined that this initial disclosure served to convey that the litigation landscape had shifted, and that the agreement would be put before the court so that the court would not be misled about this change in the litigation. The motion judge determined that the immediacy requirement was therefore met, even though a copy of the settlement was not provided.

The Court confirmed that the question whether the respondent failed to immediately disclose the agreement, is a question of mixed fact and law and is entitled to deference, and that immediacy in any given case will be highly "fact-dependent".

From the outset, the respondent advised the non-settling defendants of the existence of the settlement and committed to put it before the court, and that this aspect distinguished this case from *Handley*.

Key Takeaways

The Court in the *Tree of Knowledge* case helpfully summarized the principles that can be drawn from the recent string of cases that clarified the principles set out in *Handley*:

a. There is a "clear and unequivocal" obligation of immediate disclosure of agreements that "change entirely the landscape of the litigation".

b. The disclosure obligation is not limited to pure Mary Carter or Pierringer agreements. The obligation extends to any agreement between or amongst the parties "that has the effect of changing the adversarial position of the parties into a co-operative one" and thus changes the litigation landscape;

c. The obligation is to immediately disclose information about the agreement, not simply to provide notice of the agreement, or "functional disclosure";

d. Both the existence of the settlement and the terms of the settlement that change the adversarial orientation of the proceeding must be disclosed;

e. Confidentiality clauses in the agreements in no way derogate from the requirement of immediate disclosure;

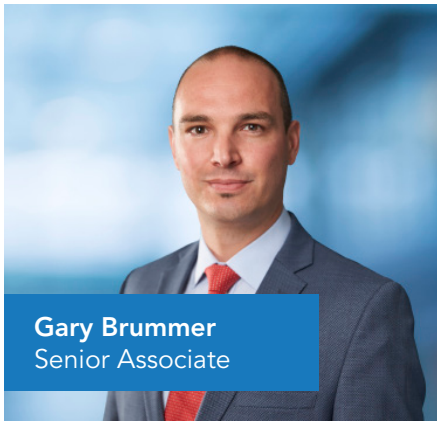
f. The standard is "immediate", not "eventually" or "when it is convenient";

g. The absence of prejudice does not excuse a breach of the obligation of immediate disclosure; and

h. Any failure to comply with the obligation of immediate disclosure amounts to an abuse of process and must result in serious consequences. The only remedy to redress the abuse of process is to stay the claim brought by the defaulting, non-disclosing party. This remedy is necessary to ensure the court is able to enforce and control its own processes and ensure justice is done between the parties.

It doesn't end here - Associate, Matthew DiBerardino concludes this analysis below by discussing the Ontario Court of Appeal's final decision of 2022 that grapples with the principles set out in *Handley*.

AUTHOR:



Disclosure of Partial Settlement Agreement Terms in Multi-Party Litigation

Duty to Disclose

When a plaintiff settles an action against some, but not all, of the defendants, the plaintiff must immediately disclose all the terms of such settlement agreement (save for the dollar amounts, if any) to the non-settling parties.[1] A failure to do so will result in a stay of the plaintiff's claim, even in the absence of prejudice from delay in disclosure.[2]

Practically, this duty to disclose will be satisfied by sending the non-settling parties copies of all the settlement documents, with any dollar amounts redacted, within one calendar day of the acceptance of an offer to settle. However, a shortened disclosure timeline may be required depending on urgency.

Unsuccessful attempts to avoid the mandatory stay

The duty to disclose the partial settlement of an action is as follows: "the obligation to disclose arises where the settlement agreement changes entirely the landscape of the litigation in a way that significantly alters the adversarial relationship among the parties to the litigation or the "dynamics of the litigation"."[3]

1. *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324, at para 39 ("*Handley*"); *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37, at paras 24–31.

2. *Handley*, at para 6; *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898, at paras 12–16 ("*Aecon*").

3. *Poirier v. Logan*, 2022 ONCA 350, at para 47 ("*Poirier*").

At the Ontario Court of Appeal, many unsuccessful attempts have been made to avoid the mandatory stay of a plaintiff's claim where immediate disclosure of the non-financial terms of a settlement agreement was not made. The basis of such arguments is that the delay in disclosure did not alter the landscape nor dynamics of the litigation. Among others, such unsuccessful positions include:

i. that the delay in disclosure did not prejudice the non-settling parties;[4]

ii. that the settlement agreement did not result in any party taking a different position than what was set out in the pleadings;[5]

iii. that there was an absence of deception or bad faith;[6] and

iv. that "functional disclosure" had been made through discontinuing the action against the settling defendants, such that disclosure of the specifics of the settlement to the non-settling defendants was unnecessary.[7]

The most recent attempt: *Crestwood Preparatory College Inc. v. Smith*, 2022 ONCA 743 ("*Crestwood*")

In the recent Court of Appeal decision, *Crestwood Preparatory College Inc. v. Smith*, the plaintiff unsuccessfully argued that the obligation to immediately disclose a partial settlement agreement did not arise since, at the time the settlement was executed, no defendant had yet delivered a Statement of Defence and, accordingly, it would be impossible to know whether the settlement agreement changed the dynamics of the litigation.

In rejecting this argument, Justice Feldman stated that "the court is not limited to an examination of the pleadings in order to discern whether the settlement agreement significantly altered the adversarial relationship among the parties".[8] Citing to *Handley* and *Poirier*, Justice Feldman opined that the relevant case law is clear that the duty to disclose arises where the "apparent relationships" between the parties are changed, including changes to the apparent relationships assumed from the pleadings or expected in the conduct of litigation.[9]

Notably, the plaintiff also sought to rely on the Superior Court decision of *Caroti v. Vuletic*, 2021 ONSC 2778 ("*Caroti*"), in which Justice Ricchetti held that "only where the settlement agreement "entirely changes" the adversarial relationship between the litigants (or adversarial landscape), […] the settlement agreement must be immediately disclosed." Specifically, the decision in *Caroti* was supported by a finding that the co-defendants had adverse interests in the action, as evinced by their pleadings, and that such "adversity did not change with the Settlement Agreement."[10] In distinguishing *Caroti*, Justice Feldman found no error in the motion judge's finding that, as a result of the settlement agreement at issue, "there was a change in the relationship between the plaintiffs and the settling defendants from an adversarial one to a co-operative one."[11]

Conclusion

The *Crestwood* decision adds to the line of decisions discussed by Gary Brummer above in which the Ontario Court of Appeal has declined to make an express exception to the requirement for immediate disclosure of the terms of a settlement agreement where a plaintiff settles an action against some, but not all, of the defendants. The fact that no statements of defence have been delivered in action does not preclude such duty from arising. To avoid the risk of a stay of the plaintiff's claim, immediate disclosure of the terms of any settlement agreement should be made to all non-settling parties, save for the disclosure of any monetary amounts.

4. *Aecon*, at paras 12–16.

5. *Poirier*, at para 47.

6. *Waxman v. Waxman*, 2022 ONCA 311, at paras 43–44; *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66, at paras 27–28 ("*Tallman*").

7. *Tallman*, at paras 18–22.

8. *Crestwood*, at para 45.

9. *Crestwood*, at para 46.

10. *Caroti*, at para 92.

11. *Crestwood*, at para 54.

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Must One Satisfy an Adjudication in the Face of a Perfected Lien?

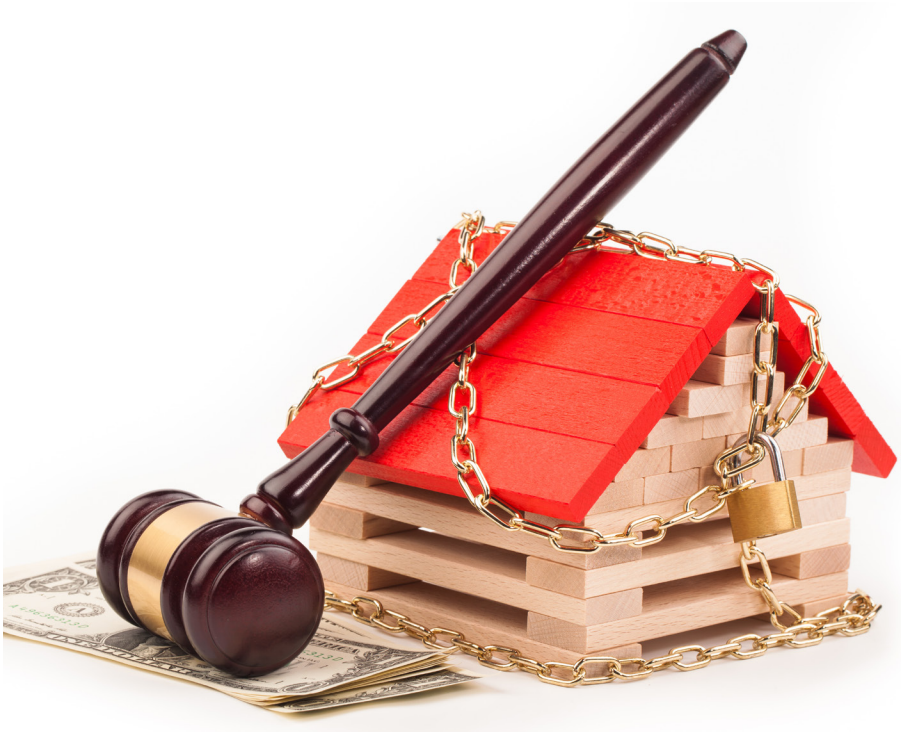
On October 1, 2019, the prompt payment and adjudication provisions under the *Construction Act* came into force in Ontario. As the Divisional Court in *SOTA Dental Studio Inc. v. Andrid Group Ltd.*, 2022 ONSC 2254 and P*asqualino v. MGW-Homes Design Inc.*, 2022 ONSC 5632 stated, one of the fundamental objectives of these provisions is to allow funds to flow down the contractual pyramid.

The Court in *Okkin Construction Inc. v. Apostolopoulos*, 2022 ONSC 6367 considered the impact of holdback provisions on an owner's obligation to satisfy an adjudication order pending determination of outstanding lien claims. The Court found that it had no jurisdiction to interfere with the Adjudicator's Order and released the funds presently held in trust to the lien claimant.

Background

A homeowner hired the Bond Group to make improvements on his family home. After experiencing project delays, the Bond Group hired Okkin Construction Inc. to assist. The Bond Group issued invoices as the project progressed, and the homeowner paid the invoices in full. The invoices did not include the statutory holdback. When the project went over budget, the homeowner refused to pay and terminated the contract. The Bond Group commenced a claim against the homeowner.

The Bond Group filed a Notice of Adjudication under the *Construction Act*. Okkin and the Bond Group each registered a construction lien against title. The Adjudicator ordered that the homeowner pay the Bond Group a portion of the its invoices, amounting to $207,668.91 (the "Adjudication Order").



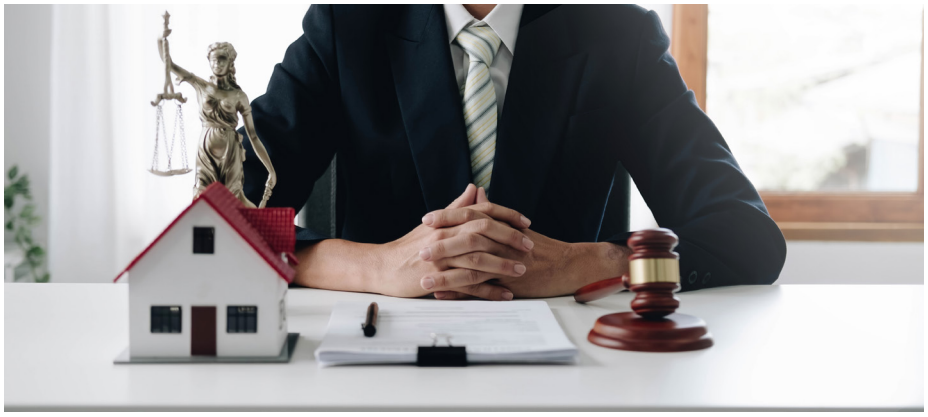
The homeowner did not satisfy, nor did he seek leave to appeal the Adjudication Order. Instead, he commenced a motion for direction in the Ontario Superior Court of Justice and paid $207,668.91 into an interest-bearing trust account. Afterwards, the Bond Group filed the Adjudication Order with the Court, which pursuant to the *Act* is enforceable as an Order of the Court.

The homeowner was concerned that the Adjudication Order did not address the 10% statutory holdback or notice holdback relating to the subtrade lien. A notice holdback arises when a payer receives written notice of a lien before payment. When a payor receives such notice, it must retain sufficient funds to pay out the lien. The homeowner was concerned that he might have to pay twice. The homeowner and Okkin asked the Court to direct the balance of the amount ordered by the Adjudicator be paid into Court.

The Bond Group argued that the homeowner had an opportunity to raise the issue of holdback in its submissions before the Adjudicator and did not. Further, that the route of appeal from the Adjudication Order was to the Divisional Court with leave, and that the time for seeking leave had expired.

Analysis

The Court examined whether it had jurisdiction to consider this matter and, if so, whether it should direct that the funds presently held in trust should be released to the Bond Group.



Justice Fraser concluded that the Court did not have jurisdiction. An application for judicial review of an adjudicator's order may only be brought with leave and will only be granted in the limited circumstances specified in s. 13.18(5) of the *Act*, none of which appears to apply here. At the time that the motion was brought, the Adjudication Order had not been filed with the Court.

In *SOTA Dental Studio Inc. v. Andrid Group Ltd.*, 2022 ONSC 2254, the Divisional Court stated that there is no automatic stay of an adjudicator's order upon filing an application. The Divisional Court in P*asqualino v. MGW-Homes Design Inc.*, 2022 ONSC 5632 addressed the purpose of the Adjudication provisions:

> "[30] The Adjudication provisions were introduced into the Construction legislation to provide a quick, efficient, interim determination allowing funds to flow down the contractual "pyramid". I stress that adjudication determinations are interim, allowing the parties to continue litigating the issues, including those the subject of the Adjudication determination to a final and binding determination in the courts or by arbitration. See s. 13.15(1) of the *Construction Act*.
>
> One of the fundamental objectives sought to be overcome by the Adjudication and requirement that any payment occurs forthwith after determination."

Upon reviewing the above noted case law, Justice Fraser concluded that absent a stay, which was not sought here, an Adjudication Order had to be paid even if it meant that someone might have pay twice in the short term. This allows the contractor to ensure that funds flow. It is possible under the *Act* to seek a reduction in the amount of security posted.

The court found that the homeowner's concerns of paying twice ignored the trust provisions of the *Act*. When the homeowner makes payment, the Bond Group has to respect the trust provisions of the *Act*, including s. 8, which sets out that all amounts received by a contractor on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor. When the homeowner pays the Bond Group in accordance with the Order, the Bond Group is a trustee for Okkin and may not appropriate or convert for its own use any part of the trust until all the subcontractors and other persons who supply services or materials have been paid. The homeowner will get credit for this payment and money can flow from the contractor to the subcontractor. The Court stated that directing that the proceeds of the Adjudicator's Order continue to be held in trust would defeat the purpose of the prompt payment provisions of the *Act* and create a path for delay.

The Court found that it had no jurisdiction to interfere with the Adjudicator's Order. The funds presently held in trust were ordered to be released to the Bond Group.

Key Takeaway

This case further emphasizes the intention of the prompt payment and adjudication schemes in allowing funds to flow down the contractual pyramid. The Court has limited abilities to interfere with an adjudicator's order, particularly if the party seeking to vary the order had not previously sought leave to bring an application for judicial review of the order.

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Court of Appeal Clarifies Priorities in Insolvency Disputes

Background

The decision in *Scott, Pichelli & Easter Limited v. Dupont Developments Ltd.*, 2022 ONCA 757, delves into the proper interpretation of s. 78(3) of the *Construction Act*.

This ruling comes approximately 10 years after a dispute arose pertaining to a property containing a contaminated dry-cleaning business. The tenant-operator closed up shop in 2011 and the owners decided to sell the property. The sale was complete in 2012 and the new owner, a corporation, financed the purchase through a vendor take back ("VTB") mortgage. At that time, the new owner set about cleaning up the contaminated premises and solicited the services of an environmental services company and a moulding/plastering company.

These trades were later forced to register liens when their services to the property went unpaid. Importantly, due to fraudulent activity by the new owners, the property was eventually placed into receivership and sold under power of sale with the proceeds paid into court. The issue of priorities became central in determining which parties (secured lenders and lien claimants) would be entitled to the sale proceeds.

The respondents on the appeal were the mortgagees who claimed entitlement to the mortgage principal payments, interest, and related enforcement charges. The appellant were the trades with liens on the property who claimed entitlement to the proceeds and further argued that if the mortgagees were entitled to money, it was only to the principal amount and not interest or other related enforcement charges.

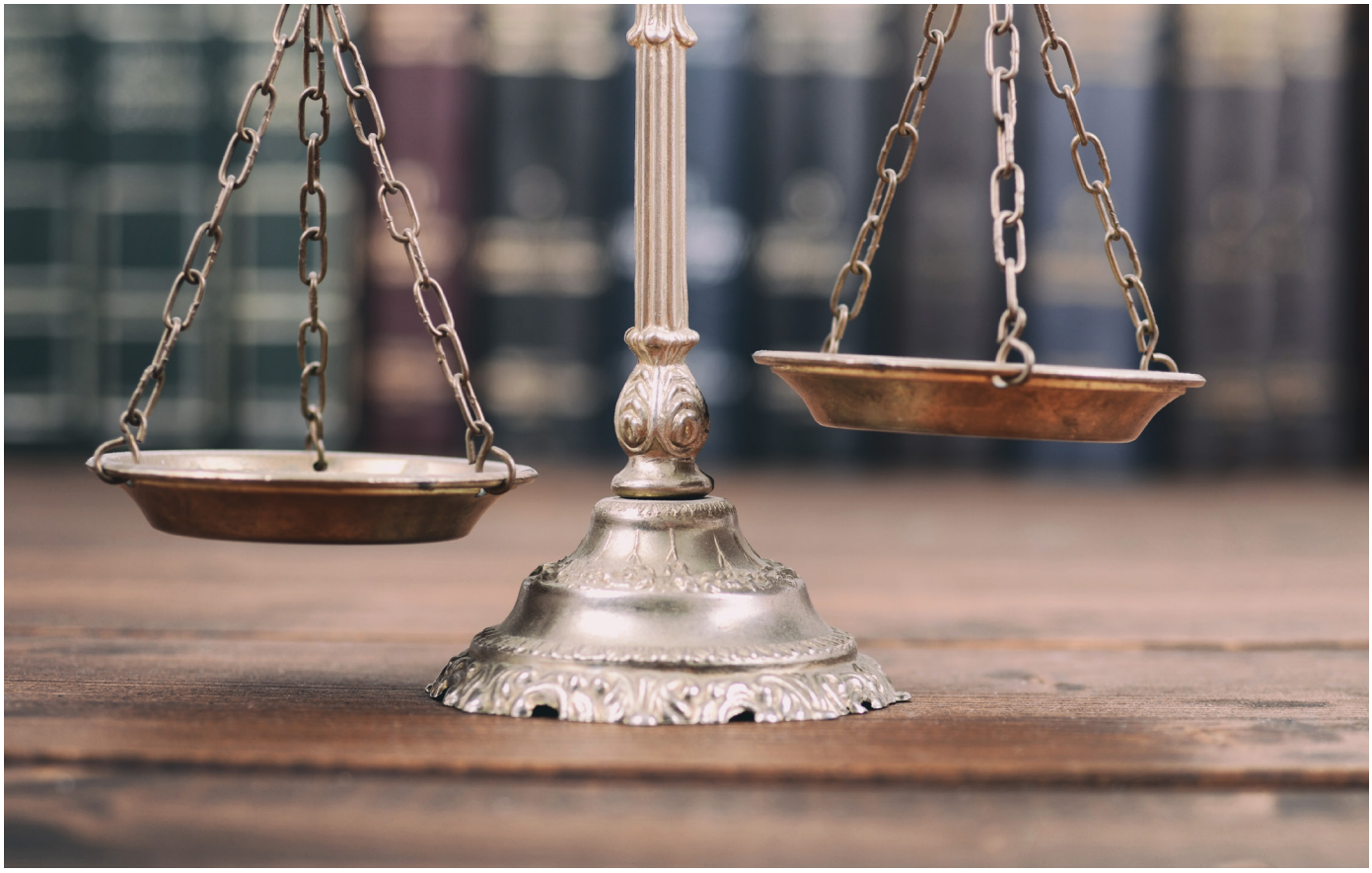
At stake was the dwindling amount of proceeds paid into court. The amount held in court was $412,223.16. If the court accepted the lienholders arguments, those parties could receive the full amount of their lien ($329,135.43) with the balance going to the mortgagees. However, if the mortgagees were successful with their claim (over $1 million for just interest and enforcement fees alone) then all the sale proceeds paid into court would go to them and nothing would be left for the lien holders.

The question for the court was whether the language of s. 78(3) of the *Construction Act* gave the mortgagees entitlement to the sale proceeds in priority to the lienholders, and if so, whether it was limited to the principal amounts of the mortgage or if it extended to interest and enforcement payments.

Ruling

At first instance, Master Carol Albert ruled in favour of the mortgagees, finding that the mortgage principal together with the interest and related enforcement charges had priority over the lien claims. The motions judge agreed with the Master concerning the mortgage principal but determined the interest and other charges did not have priority over the liens. on appeal, the Divisional Court reversed the motion judge's decision and restored the Master's ruling. The parties then appealed to the Court of Appeal for Ontario.

In sum, the Court of Appeal agreed with the Master's ruling and found that the priority created by s. 78(3) for prior mortgages extended also to the arrears in interest and enforcement costs.



The court noted that while the *Construction Act* is meant to protect lien claimants, there are clear exceptions, and in certain circumstances, a mortgage and related costs is one such exception.

The appellants focused on the language at s.78(3)(b)(i) "advanced in the case of a mortgage" in making two central arguments, both of which were rejected by the court. The first argument was that a VTB was not a true mortgage because no money had been advanced and secondly that even if a VTB were a true mortgage, interest and enforcement costs should not be considered advances of funds and therefore not given the same protections as the principal mortgage amount.

The appellants further argued that the Supreme Court of Canada decision in *M. Sullivan & Son Ltd. v. Rideau Carleton Raceway Holdings Ltd.*, [1971] S.C.R. 2, only gave interest and enforcement costs the same priority as principal amounts in cases of building/construction mortgages and not conventional mortgages.

The Court of Appeal rejected both arguments. The court determined that the SCC decision in *Sullivan* did not stand for the proposition advanced by the appellants, that there was no precedent supporting the appellants interpretation, and that if such an interpretation were adopted, it would create uncertainty and impracticality in lending along within undue risk. In effect, mortgagees would constantly have to monitor owners' improvements to ensure the costs would not deplete their entitlement to payments for interest and possible enforcement in the event of an insolvency.

The Court of Appeal therefore concluded that the priority did extend to interest and enforcements costs.

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Notable Case Law

***BCIMC Construction Fund Corporation v. 33 Yorkville Residences Inc.*, 2023 ONCA 1**

Where there was more than one building mortgage on an improvement, the lien claimants' priority under s. 78 of the *Construction Act* was limited to the extent of the deficiency in the owner's holdback over all building mortgages combined. The liens did not have priority to extent of any deficiency in holdback required to be retained by the owner over each building mortgage.

***Learmont Roofing Ltd. v. Learmont Construction Ltd.*, 2022 ONCA 894**

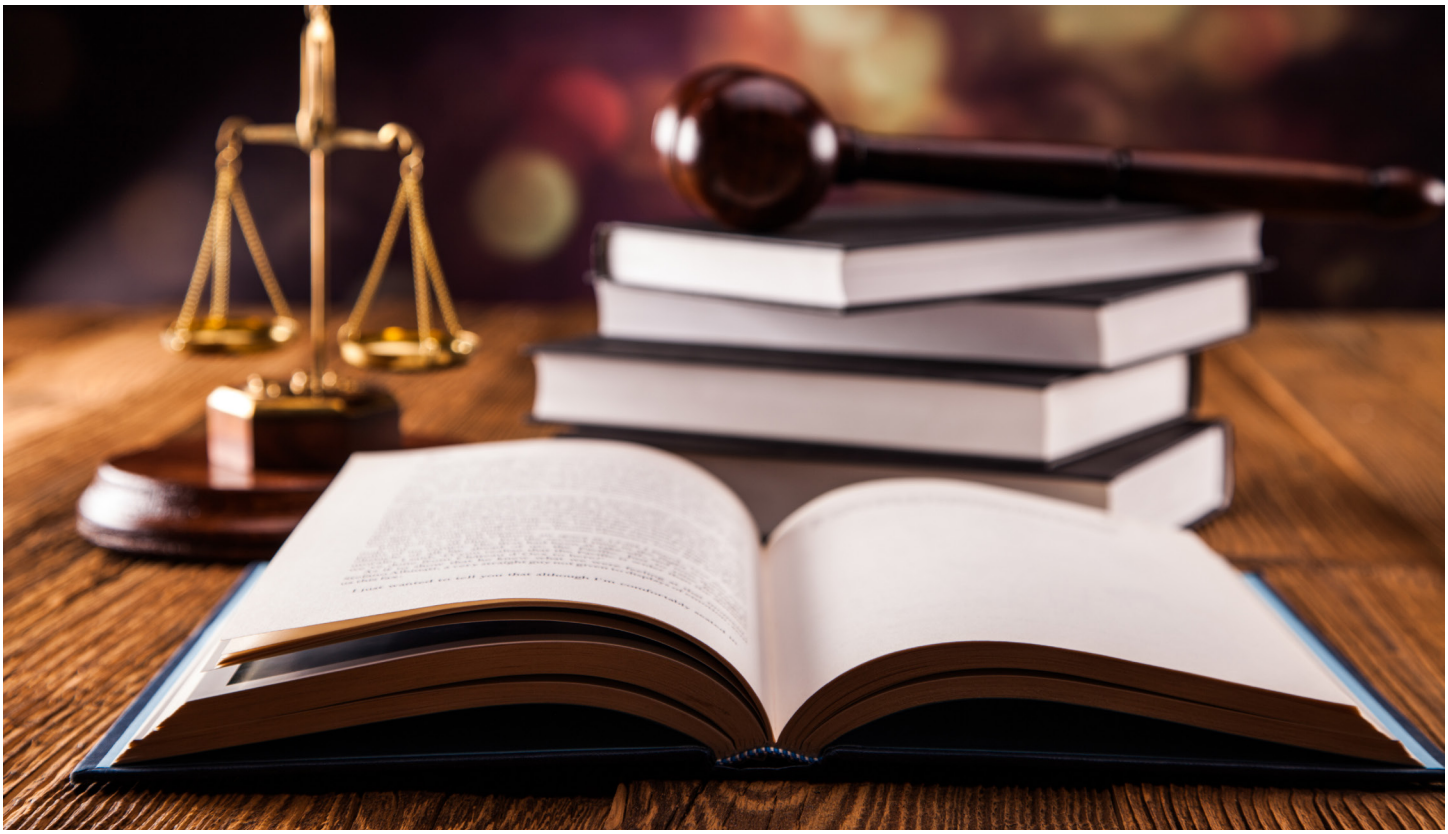
Partial summary judgment is a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost-effective manner. The more important credibility disputes are to determining key issues, the harder it will be to fairly adjudicate those issues solely on a partial summary judgment basis. This was one of those rare cases in which partial summary judgment should be granted, since there were no genuine issues requiring a trial regarding a straightforward breach of trust claim, nor were the counterclaims intertwined with the trust claim in a manner which would lead to factual inconsistencies.

***Spot Coffee Park Place Inc. v. Concord Adex Investments Limited*, 2023 ONCA 15**

In a non-construction case concerning a commercial lease, the Court of Appeal held that an entire agreement provision in the lease did not preclude the respondent's claim for damages based on a pre-contractual negligent misrepresentation. The court held that the respondent tenant reasonably relied on the appellant's negligent misrepresentation on free, accessible and convenient customer parking to its detriment. Since customer parking was not addressed in the lease, it was not "the subject matter" of the lease as stated in the entire agreement provision, and as a result the entire agreement clause did not apply.

***Cruickshank Construction Ltd. v. The Corporation of the City of Kingston*, 2022 ONSC 5704**

A question of a limitation period should not be allowed to morph into a question of the arbitrator's jurisdiction. There was no question that an arbitrator would be entitled to decide a limitation period defence if one was pleaded in response to the claims. The court dismissed an application to declare a notice of arbitration time-barred under the *Limitations Act* based on the competence-competence principle.



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Building Insight Podcasts

Episode 31: A Lawyer's Duty to the Court (Part 2): Updates on *Blake v. Blake*
October 2021

Katherine Thornton and Jackie van Leeuwen, associates, discuss a lawyer's duty to the court, particularly when it comes to bringing relevant case law to the court's attention, and cost consequences. This podcast provides updates on Blake v. Blake and lessons learned from this decision.

glaholt.com/linktopodcast31

Episode 32: Bidding and Tendering: Recent Developments in the Law
December 2021

Neal Altman and Brandon Keshen, associates, discuss recent developments in the law of bidding and tendering. This podcast discusses the terms of tender calls, including discretion and reprisal clauses.

glaholt.com/linktopodcast32

Episode 33: Sustainable Construction
January 2022

Michael Valo, partner, and Markus Rotterdam, Director of Research, discuss sustainability in construction and legal issues related to green building standards.

glaholt.com/linktopodcast33

Episode 34: Considerations and Best Practices when Entering into a Building Contract
March 2022

Associates, Patricia Joseph, Jackie van Leeuwen and Myles Rosenthal, reflect on construction contracts, including a discussion of some pragmatic considerations that are relevant before and during contract performance.

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Episode 35: Construction Prompt Payment and Adjudication in Canada
May 2022

John Paul Ventrella, Partner, and Matthew DiBerardino, Articling Student, discuss some key considerations regarding the conduct of a construction adjudication in Ontario and the status of prompt payment and adjudication legislation in other Canadian jurisdictions.

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Episode 36: 2022 Annotated Construction Act and Conduct of Lien, Trust and Adjudication Proceedings
June 2022

Partners, Brendan Bowles and Lena Wang, and Director of Research, Markus Rotterdam, discuss the 2022 Annotated Construction Act and Conduct of Lien, Trust and Adjudication Proceedings texts available from Thomson Reuters Canada Limited. Key updates to the books are discussed and commentary on their development is given.

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