

Therefore, the trial judge awarded the Sheppards \$15,000 in general damages.

The Court of Appeal was divided on this issue. The dissenting judge, Madam Justice Welsh, held that the trial judge was wrong in awarding general damages for mental distress in these circumstances. Justice Welsh argued that regardless of the Sheppards' special circumstances with respect to wheelchair accessibility, the contract to build their house did not engage the "peace of mind" component. While it was true that the hardwood flooring was not properly installed and that Hickey's chose to comply with the *Building Code* standards rather than the agreement in using transition strips, these deficiencies could be corrected, and damages could compensate for the required remediation. Since this was not a situation in which the house was rendered uninhabitable, Her Honour would have allowed the appeal on this point.

CASE SUMMARY



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WHEN DOES A PROPOSAL TURN INTO A CONTRACT?

Cleanol Integrated Services Ltd. v. Johnstone

A recent case before an Ontario Master turned on the issue of whether a project proposal signed by both parties contained all elements necessary to amount to a contract.

In *Cleanol Integrated Services Ltd. v. Johnstone*, Master Albert considered whether a meeting of the minds had been achieved in a home renovation case, based on key terms such as price and scope of the renovation project. The plaintiff, Cleanol, provided general renovation services on a condominium unit to the defendant, Johnstone, who had purchased a two-story condominium unit in

downtown Toronto and contracted with Cleanol to renovate it for his own use.

Ms. Yueh was the president of Cleanol and also the principal of 360 Restoration, a company engaged in providing emergency management and business continuity planning services to businesses devastated by fire and flood.

Cleanol sued when Johnstone refused to pay \$68,017.51 for services and materials supplied as part of the renovation. Cleanol registered a construction lien and subsequently commenced an action for this amount. Upon receiving Johnstone's counterclaim in the amount of \$240,000, the plaintiff increased its claim to \$175,656.97.

At trial, a key issue was whether the parties had entered into a contract.

A *Project Proposal* containing the following terms had been signed by both parties:

Project Objective

- design and renovate at 39 Jarvis Street, Suite 806
- client to supply appliances of choice
- final scope of work to be signed off by December 1, 2010
- your signature, name, and date constitute approval on revisions, changes, and adjustments

Estimated Value

- \$100,000–\$125,000 plus applicable taxes

Projected Completion Date

- December 1, 2010

Payment Schedule

(to be finalized on November 20, 2010)

- \$40,000 deposit—payment received on November 17, 2010
- \$20,000.00 interim payment—December 15, 2010

- balance due ten days after project completion

There were no other documents attached to the Proposal, such as drawings or plans.

Price Uncertainty

Johnstone argued that the parties entered into a contract for the fixed price of \$125,000, regardless of the scope of work or the materials used. Master Albert rejected this argument, as it failed to ascribe meaning to the term “\$100,000”—in the proposal. Master Albert also held that even if she accepted the owner's assertion that the contract price was capped at \$125,000, the proposal was void for uncertainty, since there were no terms in the proposal on what services and materials Cleanol was required to supply for this price. Cleanol's argument that the parties had entered into a *quid pro quo* agreement whereby the parties would provide services to each other at cost was dismissed due to lack of evidence.

Scope of Work Uncertainty

Master Albert also found the Proposal void for uncertainty, as no scope of work was ever agreed upon. The Proposal stated that the parties needed to finalize a scope of work by December 1, 2010. The Master took issue with the fact that the date to determine a final scope of work was the same date as the projected completion date, holding that it would have been impossible for Cleanol to complete the job without knowing the scope of work sufficiently ahead of time. Although Cleanol prepared and submitted a total of seven scope of work statements—accounting statements that set out itemized details of the cost of the renovation—Mr. Johnstone never signed off on any of the scope of work statements. Master Albert found the scope of work to be a moving target.

In the absence of a meeting of minds on the scope of work or the price of the renovation, there was no valid contract.

Quantum Meruit

In such circumstances, the court assessed the claim on a *quantum meruit* basis, which it explained as follows:

[75] A quantum meruit claim is not dependent on the existence of a valid contract but is a discrete cause of action which contemplates a remedy for unjust enrichment or unjust benefit. The Court indicated that there will be two requisites to a successful quantum meruit claim: (1) That the services in question were furnished at the request, or with the encouragement or acquiescence of the opposing party; and (2) That such services have been furnished in circumstances that render it unjust for the opposing party to retain the benefit conferred by the provision of the services.

The evidence showed that Johnstone requested the work. After the initial site meetings, where the overall project was discussed, Johnstone attended at Cleanol's premises weekly and the site frequently to discuss design concepts and ideas for the unit. Cleanol staff made suggestions, and Johnstone gave instructions. Cleanol proceeded with changes as instructed. As the project progressed, the scope of the renovation expanded, and Johnstone approved the changes.

While Johnstone argued at trial that he did not expect that the many upgrades, changes, and additions to the scope of work would increase the cost of the renovation and, on that basis, he should not have to pay for them, the court found that position to be unreasonable. Johnstone was a sophisticated real estate professional and therefore knew or ought to have known that upgrading materials and expanding the scope of work would increase the cost of the renovation.

Since Johnstone requested the services and materials supplied by Cleanol and accepted and received the benefit of Cleanol's supply of services and materials, it would have been unjust to allow him to retain that benefit without paying reasonable compensation to Cleanol.

Master Albert assessed the amount owing to Cleanol at \$60,369.31.

Ontario Superior Court of Justice

Master C. Albert
February 2, 2015