

CITATION: 1753430 Ontario Inc. (Carniello Contracting) v. Muzzi, 2026 ONSC 3626
COURT FILE NO.: CV-22-10289
DATE: 2026-06-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1753430 Ontario Inc. o/a Carniello Contracting, Plaintiff

AND:

Aline Muzzi and Sam Muzzi, Defendants

BEFORE: The Honourable Madam Justice S.K. Stothart

COUNSEL: James M. Longstreet, Counsel, for the Plaintiff

Denis Michel, Counsel, for the Defendants

HEARD: May 21, 2026

DECISION ON MOTION FOR SUMMARY JUDGMENT

STOTHART J.

Overview

[1] In March, 2021, the plaintiff, 1753430 Ontario Inc c/o Carniello Contracting, entered into a contract with the defendants, Aline and Sam Muzzi to build a single-family home on a vacant lot at 2207 Grenoble Court, Sudbury, Ontario. By November 2021 the relationship between the parties had broken down. The Muzzis refused to pay certain invoices and Carniello Contracting stopped construction of the home. On December 21, 2021, Carniello Contracting registered a construction lien against the title of the property and on February 2, 2022, commenced this action.

[2] In the statement of claim, the plaintiff seeks judgment in the amount of \$279,752.38; pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c.C.43; costs on a substantial indemnity basis; and in default of payment of this amount that the property be sold and the proceeds applied towards payment of the plaintiff's claim and costs.

[3] The plaintiff brings this motion seeking an order granting the plaintiff summary judgment against the defendants on the basis that there is no genuine issue for trial.

[4] For the reasons that follow, I am not satisfied that this is an appropriate case for summary judgment. I am not satisfied that this is a case in which I can fairly and justly adjudicate the dispute on the record provided or in which I can make findings of fact on a fair and just basis in light of the litigation as a whole.

Background

[5] Some facts are not in dispute. On March 23, 2021, the parties executed a contract for the construction of a single-family dwelling on the property. The contract was a fixed price contract, and Carniello Construction agreed to build the home in accordance with blueprints provided by the Muzzi's at a price of \$499,900, subject to certain conditions. A copy of the contract has been filed as an exhibit on this motion.

[6] Blueprints for the home were prepared by a registered architect, Kimberly E. Zarichney, of Kez Cad. The Muzzis wanted the home to be constructed with the same floor plan as their existing home. As the home was being built, there were problems with building the home in accordance with the blueprints. What those problems were and how they were addressed are in dispute in this action.

[7] It is agreed that the Muzzis have paid Carniello Construction \$275,000, consisting of a downpayment and two further payments. It is agreed that the Muzzis have not paid the remaining amounts invoiced by Carniello Construction. It is agreed that Carniello Construction did not complete building the home. How the relationship broke down between the parties and who walked away is in dispute in this action.

[8] Carniello Construction blames the defendants for obtaining poorly prepared blueprints that had numerous deficiencies. They take the position that the Muzzis breached the terms of the contract by failing to pay them and by removing them from the construction.

[9] The Muzzis blame Carniello Construction for failing to adequately communicate with them about the problems with the build, making changes without their written approval as was required in the contract, charging them for unauthorized changes, and ultimately making changes that they believe have depreciated the value of the home. The Muzzis take the position that Carniello Construction has breached the terms of the contract by failing to complete the home that was contracted for.

Analysis

The issue of leave

[10] At the outset of the hearing, I raised the issue of whether leave had been granted to the plaintiff to bring a summary judgment motion in the context of a *Construction Act*, R.S.O. 1990, c.C.30. proceeding. Under s. 13 of the *Procedure for Actions Under Part VIII*, O.Reg.302/18, leave must be sought in order to bring an interlocutory motion such as a summary judgment motion, in the context of a construction lien action: *Concord Plumbing & Heating Ltd. v. Canadian Tire Real Estate Ltd.*, 2018 ONSC 6361 at para. 12.

[11] In order to obtain leave, or the consent of the court, the moving party must establish that the step is necessary or would expedite the resolution of the issues in dispute. Counsel for the plaintiff acknowledged that leave had not been sought in this case.

[12] It is unfortunate that leave was not sought. Had it been sought, I am not certain that it would have been granted. This action was commenced in February 2022. The statement of defence was filed in April 2022. The matter was pre-tried on June 27, 2023, and the parties advised that the action was ready for trial. The trial in this matter was scheduled on a running list in January 2024, but was not reached. Since then, nothing appears to have been done to reschedule a new trial date.

[13] Instead, the plaintiff filed this summary judgment motion on June 24, 2024. The summary judgment motion was scheduled to be heard on August 5, 2025, however the plaintiff then filed a motion to strike the defendant's statement of defence which took up the court time set aside that day. The summary judgment motion was then scheduled for May 21, 2026. It has been over four years since the statement of claim and statement of defence were filed.

[14] Despite my concerns, for oral reasons provided, I granted leave to the plaintiff to proceed with this motion. This was for pragmatic reasons. The entire day had been set aside, and the parties were ready to proceed. As noted by Perell J. in *Industrial Refrigerated Systems Inc. v. Quality Meat Packers Ltd*, 2015 ONSC 454, at para. 73, given that a date had been scheduled refusing to grant leave would be "to close the judicial barn door after the parties' horses have gone to run their race".

Is summary judgment appropriate

[15] On a summary judgment motion, the moving party has the onus of establishing that there is no genuine issue requiring a trial: Rule 20 - *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[16] Summary judgment is appropriate if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence. There will be no genuine issue requiring a trial if the summary judgment process:

- a. allows the judge to make the necessary findings of fact;
- b. allows the judge to apply the law to the facts;
- c. is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 49.

[17] A summary judgment motion judge must first determine if there is a genuine issue requiring a trial based only on the evidence before the court, without using the fact-finding powers in r. 20.04(2.1) and (2.2). If the court is satisfied that this evidence permits it to fairly and justly adjudicate the dispute and it is a timely, affordable and proportionate procedure, summary judgment may issue. *Hryniak v. Mauldin*, at para. 66.

[18] A summary judgment motion judge may also exercise his/her discretion and determine if the need for a trial can be avoided using the fact-finding powers in r. 20.04(2.1) and (2.), provided their use is not against the interests of justice, will lead to a fair and just result, and will serve the

goals of timeliness, affordability, and proportionality in light of the litigation as whole. *Hryniak v. Mauldin*, at para. 66.

[19] Parties are required to put their best foot forward on a summary judgment motion. The court is entitled to assume that the record on a motion for summary judgment contains all the evidence the parties would present at trial: *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200, at paras. 26-27, aff'd 2014 ONCA 878, leave to appeal refused, [2015] S.C.C.A. No. 97; *TD Waterhouse Canada Inc. v. Little* (2009), 76 C.C.E.L. (3d) 243 (Ont. S.C.), at para. 15, aff'd 2010 ONCA 145, 79 C.C.E.L. (3d) 216

[20] On a motion for summary judgment, the motion judge is to consider the evidence submitted by the parties, and may exercise the additional powers of weighing the evidence, evaluating credibility, and drawing reasonable inferences as set out in r. 20.04(2.1) of the *Rules of Civil Procedure* to determine whether there is a genuine issue, unless it is in the interest of justice for such powers to be exercised only at a trial: *Hryniak v. Mauldin*, at paras. 49-52.

[21] While summary judgment can operate as a timely, fair and cost-effective means of adjudicating a civil dispute, it has its limits. In certain cases, adjudication exclusively on a written record poses a risk of substantive unfairness. In cases where the resolution of important credibility disputes is required to determine key issues, the harder it will be to fairly adjudicate those issues solely on a paper record: *Cook v. Joyce*, 2017 ONCA 49, at para. 91-92.

The evidence on this motion

[22] In support of this motion, the plaintiff filed the affidavit of Mike Carniello, a director of the corporate plaintiff, sworn June 13, 2024: The affidavit sets out the following which is relevant to this motion:

- a. The trusses: the plaintiff pre-ordered the trusses for the home based on the plans provided by the defendants. In the end, the trusses were too long on one side because the building plans did not provide for a proper setback. The plaintiff adapted the trusses so that they would have the proper setback and charged this as an extra;
- b. The basement: the building plans provided for a basement that would be 9 feet. In order to make this comply with the *Ontario Building Code*, the plaintiff would have had to affix supporting abutments to the wall, which would have increased the costs. Therefore, the plaintiff constructed the basement 8 feet in height. The defendants instructed the plaintiff to leave the walls at the 8-foot height, and the plaintiff deducted \$2,500 from the contract price;
- c. The Tarion Certificate of Completion: the plaintiff has provided the defendants with a Tarion Certificate of Completion and Possession/Warranty dated November 17, 2021, as well as the Tarion Online Enrolment Submission Summary, paid on August 28, 2021;

- d. The work overall: the plaintiff has provided the defendants with all invoices, showing the outstanding amounts. There are no issues with at least 90% of the work involved;
- e. The amount outstanding: the affidavit states the amounts outstanding are \$281,651.04;
- f. The defendants will not pay for the uncontested items;
- g. The contract: the plaintiff believes that the contract required the defendants to obtain a building mortgage. The defendants failed to do so, breaching the terms of the contract;
- h. The deficiencies: the plaintiff considers the deficiencies complained of by the defendants “small potatoes” that could be resolved in Small Claims Court. While there may be small amounts in dispute, this should not allow the defendants to “string the plaintiff out, at no cost to them and on an interest free basis”;
- i. Delays: the defendant attended the job site and would often keep the trades persons from doing their jobs by questioning everything they were doing. This cost time and money;
- j. How things ended: on November 17 or 18, 2021, the defendants broke into the home and took possession and put the plaintiff’s workers off the job. Mike Carniello received a phone call from his brother Stefano, advising him that Stefano had received a phone call from Aline Muzzi telling him to get off the property or she would call the police; and
- k. That “one of the reasons that the defendants kicked Carniello Contracting off the job was that they refused to pay the amounts owing on an invoice rendered to them dated November 16, 2021”. The defendants then wanted Carniello to go back and work yet would not pay the accounts due. At this point, the plaintiffs took the position that the defendants had put it off the job and breached the contract.

[23] The affidavit also refers to other extraneous issues that are not relevant to this motion and make assertions related to the defendants’ credibility. The affidavit also sets out opinions and conclusions with respect to the law, which are not of assistance.

[24] In response to the motion, the defendants have filed the affidavit of Aline Muzzi sworn August 30, 2024. It sets out the following which is relevant to this motion:

- a. The contract: pursuant to the contract, the plaintiff had to construct the entire home, and provide credits for cabinetry, flooring, air conditioning, and other allowances, which it has failed to provide. The plans were prepared by an

architect recommended by the plaintiff who was aware that they wanted the house constructed on the vacant lot with the same floor plan as their existing home;

- b. Once the foundation was installed, the plaintiff noticed that the home could not be placed where they originally wanted it to be placed. This required a reduction in the size of the home, which then changed the entire makeup of the home. The plaintiff never advised them of the implications of changing the size of the home, including the impact it would have on the construction, roof, or otherwise;
- c. The trusses: the plaintiff ordered trusses that were too large for the home and refused to return them and replace them with proper roof trusses. This created a problem with the *Ontario Building Code*. The plaintiff applied box fittings to the exterior walls to support the excessive overhang which has left the home with an obvious deficiency. Despite this being the plaintiff's mistake, they were charged an additional fee for this work.
- d. The basement: the basement was supposed to be open concept with 9-foot ceilings. The plaintiff built 8-foot ceilings and installed an interior wall. The plaintiff indicated that if they had to create an opening to achieve the open concept, it would cost another \$2,500 to put a beam in place of the wall. The plaintiff only agreed to install the beam after the defendants paid an additional \$2,500;
- e. The Tarion Certificate: the certificate provided in Carniello's affidavit is fraudulent. The home was left unfinished and not in compliance with the contract. The defendants still have open permits on the house as all the work is not completed. They are missing the final survey, lot grading, a letter of general conformance for HVAC, completed exterior finishes, installed permanent cold cell door, front door window, a permanent handrail for the front stairs, as well as a separate building permit for the deck;
- f. The deficiencies: there are numerous deficiencies with the work. The plaintiff failed to follow the plans provided by architect and failed to complete the home contracted for affiant;
- g. How things ended: the plaintiff abandoned the property in question, leaving them to complete the construction in order to protect the partially constructed home; and
- h. The amount outstanding: the invoices provided by the plaintiff are not accurate or in compliance with the contract. When the plaintiff left the home, it was not 90% complete.

[25] The affidavit also refers to extraneous issues that are not relevant to this motion and make assertions about Carniello's credibility. It also sets out opinions and conclusions with respect to the law, which are not of assistance.

[26] I am not satisfied that this is a case that can be properly and fairly determined on a motion for summary judgment. There is a wide divergence in the facts provided by each party. The parties dispute the material facts in issue. Specifically, they dispute: (a) whether the defendants agreed in advance to the changes made by the plaintiff during construction; (b) whether the defendants "kicked" the plaintiff off the job, or whether the plaintiff left the job when the defendants would not pay the issued invoices; (c) whether the construction was completed in accordance with the terms of the contract; and (d) whether the plaintiff has accurately billed the defendants for the work completed.

[27] These issues cannot be resolved based on the written record provided. The matter requires a trial, where the trial judge can observe the witnesses and make findings of credibility on these key issues.

Conclusion

[28] For these reasons, the plaintiff's motion for summary judgment is dismissed.

Costs

[29] If the parties are unable to reach an agreement on the issue of costs, the defendants shall have 15 days from the release of this decision to provide written submission on the issue of costs. Those submissions shall be no more than two pages, exclusive of a bill of costs.

[30] Thereafter the plaintiff shall have 15 days from the date of receipt of the defendants' written submissions to file and provide written submission on the issue of costs. Those submissions shall be no more than 2 pages in length, exclusive of a bill of costs.

[31] If I do not receive written submissions within 45 days of the release of this decision, the issue of costs will be deemed to have been addressed by way of agreement between the parties.

The Honourable Madam Justice S.K. Stothart

Date: June 22, 2026