

CITATION: Oxford Rollform Inc. v. 2490023 Ontario Inc., 2026 ONSC 3965

ONTARIO

BETWEEN:

REASONS ON SUMMARY JUDGMENT MOTION

- [4] Upon learning of Caterpillar's interest in the bulldozer, Daniel Milton, an officer and director of Oxford, contacted Mr. Thomas to determine if a lien existed. Ultimately, to avoid having the bulldozer repossessed, Oxford paid the outstanding balance of \$151,247.12 to Caterpillar.
- [5] Oxford brought the subject action against 249 Inc. and Mr. Thomas, jointly and severally, seeking damages in the sum of \$151,247.12 for breach of contract, fraudulent misrepresentation, and unjust enrichment. Oxford seeks to pierce the corporate veil on the basis that Mr. Thomas, as the sole director and shareholder of 249 Inc., personally directed the wrongful sale of the known encumbered bulldozer.
- [6] By this motion, Oxford seeks summary judgment in accordance with the relief claimed in the Statement of Claim. Oxford submits that it was an express or implied term of the contract that 249 Inc. sold the bulldozer free of any charge or encumbrance in favour of any third party. Oxford further submits that Mr. Thomas admitted on examination that 249 Inc. did not pay out its debt owing to Caterpillar. Oxford requests that an adverse inference be drawn on account of the defendants' failure to produce bank records and employment records, such that the court conclude that Mr. Thomas personally benefitted from the sale of the bulldozer and is personally liable to Oxford.
- [7] The defendants deny having made any representations or warranties regarding the bulldozer. Mr. Thomas' evidence is that he understood, at the time of the sale, that the Lease Agreement had been paid in full. He claims that 249 Inc. was defrauded by his former business partner, Franco Serratore.
- [8] The defendants submit that summary judgment is not appropriate because: (a) there are several triable issues, including determining the contracting parties, the representations made, and the legal entities who relied upon them; (b) the defendants' ability to put their best foot forward was prejudiced by the action falling within the simplified rules; and (c) partial summary judgment has potential to result in inconsistent findings. Trial is the most efficient way for the issues to be adjudicated.
- [9] For the reasons that follow, I grant partial summary judgment. There exists no genuine issue for trial regarding whether 249 Inc. breached its contract for the sale of the bulldozer or whether it was unjustly enriched by Oxford's payment to Caterpillar.
- [10] The circumstances of the contract are such that s. 13 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1 applies; it was an implied condition that 249 Inc. had a right to sell the bulldozer; Oxford would enjoy quiet possession of it; and it was free from any charge or encumbrance in favour of any third party. At the time of sale, Mr. Thomas understood all outstanding debts had been paid.
- [11] Given 249 Inc.'s Lease Agreement with Caterpillar, 249 Inc. breached its contract with Oxford. Further, 249 Inc. was unjustly enriched by Oxford's payout of the Lease Agreement to Caterpillar. 249 Inc. shall therefore pay damages to Oxford for breach of

contract and unjust enrichment in the sum of \$151,247.12, representing the amount Oxford paid to Caterpillar on account of 249 Inc.'s Lease Agreement.

- [12] With respect to the balance of Oxford's claims, I find that they are not appropriate for summary judgment. The issues of fraud raised by both parties, and Oxford's request to pierce the corporate veil, require credibility findings that are better addressed at trial with *viva voce* evidence. I find that there are genuine issues for trial regarding whether either or both defendants committed the intentional tort of fraudulent misrepresentation, whether Mr. Thomas was unjustly enriched by Oxford's payment to Caterpillar, and whether Mr. Thomas conducted himself in a manner that was oppressive and unfairly prejudicial such that he should be personally liable to Oxford.

The Law

- [13] Rule 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or a defence. The burden is on the moving party to satisfy the court that there is no genuine issue requiring a trial. After the moving party satisfies that burden, the burden shifts to the other party to prove that their claim or defence has a real chance of success, and that there is a genuine issue requiring a trial.
- [14] In determining whether there is a genuine issue requiring a trial, r. 20.04(2.1) permits the motion judge to exercise any of the following powers, unless it is in the interest of justice for such powers to be exercised only at a trial:
- a. Weighing the evidence.
 - b. Evaluating the credibility of a deponent.
 - c. Drawing any reasonable inference from the evidence.
- [15] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87. Writing for the court, Karakatsanis J. laid out a two-part roadmap for summary judgment motions, at para. 66:

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair

and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole. [Emphasis in original.]

- [16] To defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. The responding party may not rest on mere allegations or denials of the party's pleadings but must set out – in affidavit material or other evidence – specific facts establishing a genuine issue requiring a trial.
- [17] The motion judge is entitled to assume that the record contains all the evidence that would be introduced by both parties at trial. A summary judgment motion cannot be defeated by vague references as to what may be adduced if the matter is allowed to proceed to trial.
- [18] Both parties on a summary judgment motion are required to put their best foot forward: see *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, [2016] O.J. No. 5364, at para. 9. Given the onus placed on the moving party to provide supporting affidavit or other evidence under r. 20.01, “it is not just the responding party who has an obligation to ‘lead trump or risk losing’”: *Ipex Inc. v. Lubrizol Advanced Materials Canada Inc.*, 2015 ONSC 6580, at para. 28.
- [19] Thus, if the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party's evidence, or risk summary judgment.
- [20] While r. 20.04 provides the court hearing a summary judgment motion with “enhanced forensic tools” to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to “a fair process and just adjudication”: *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44; *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6 (and cases cited therein).

Analysis

Breach of Contract & Unjust Enrichment Claims Against 249 Inc. are Appropriate for Summary Judgment

- [21] This action falls under the simplified rules. In *Combined Air Mechanical Services Inc. v. Felsch*, 2011 ONCA 764, 108 O.R. (3d) 1, rev'd on other grounds, 2014 SCC 7, a five-judge panel of the Court of Appeal held that, while a motion for summary judgment may be appropriate in some r. 76 proceedings, such cases will be rare. Often, motions for summary judgment will conflict with the efficiency that can be achieved by the r. 76 summary procedure: *Combined Air*, at para. 254.
- [22] In determining whether summary judgment is appropriate, the motion judge must assess the relative efficiencies of the summary judgment motion as opposed to trial and the impact summary judgment will have on the litigation as a whole: *Hryniak*, at paras. 58, 60. In simplified rules actions, this assessment includes considering whether the motion is

consistent with the efficiency rationale reflected in the r. 76 simplified procedures: *Combined Air*, at para. 255.

- [23] The defendants rely on *Manthadi v. ASCO Manufacturing*, 2020 ONCA 485, to argue that summary judgment should not be granted. They claim their ability to marshal and present evidence is prejudiced by the summary judgment procedure. They are facing allegations of fraud that would be better resolved at trial.
- [24] The defendants further submit that the issues on which judgment is being sought are not severable, such that partial summary judgment is not appropriate. There would be a risk of inconsistent findings.
- [25] While I agree with the defendants that the issues of fraud would be better addressed at trial, I do not agree that partial summary judgment is not appropriate or that it would potentially result in inconsistent findings.
- [26] Oxford's claims for breach of contract and unjust enrichment as against 249 Inc. can be readily bifurcated and given the motion has now been heard, can be dealt with expeditiously and in a cost-effective manner: *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, at para. 26 and 34; *Corchis v. KPMG Peat Marwick Thorne*, [2002] O.J. No. 1437 (C.A), at para. 3.
- [27] The breach of contract and unjust enrichment claims as against 249 Inc. do not involve piercing the corporate veil, or any allegations of fraud made by either party, or any allegations of personal benefit on the part of Mr. Thomas. These claims simply require an analysis of the terms of the contract, which I find can be fairly and justly made on the record before me and with reference to s. 13 of the *Sale of Goods Act*.
- [28] Further, the issue of whether Mr. Serratore defrauded 249 Inc. is not relevant to the terms of the contract. No evidence was produced that Mr. Serratore was in any way involved in the contract negotiations with Oxford and any fraud he may have committed as against 249 Inc. is an issue between him and 249 Inc. It does not involve Oxford, and it does not impact on Oxford's claims for breach of contract or unjust enrichment as against 249 Inc.
- [29] I also find that *Manthadi* is distinguishable. In *Manthadi*, summary judgment was found to be inappropriate, in part, because cross-examinations were necessary to resolve the competing evidence. Here, and despite r. 76.04 which prohibits cross-examinations, cross-examinations were conducted on the affidavits as part of the examinations for discovery.
- [30] Mr. Thomas, on behalf of the defendants, and Mr. Milton, on behalf of Oxford, were examined on April 17, 2025. At Question 3 of the transcript of Mr. Thomas' examination, counsel for Oxford indicates that Mr. Thomas was being examined "in respect of [his] affidavit dated March 4, 2025, with respect to the summary judgment motion." Mr. Thomas and counsel for the defendants agreed, with counsel indicating that "this is simplified procedure so this is also Discovery as well."

- [31] At Question 4-5 of the transcript of Mr. Milton's examination, counsel for the defendants noted that Mr. Milton observed the prior examination of Mr. Thomas and confirmed that he understood he was being examined with respect to the subject bulldozer. Mr. Milton agreed.
- [32] In these circumstances, I do not accept that the defendants' ability to marshal and present evidence in support of their position on the breach of contract and unjust enrichment claims against 249 Inc. was in any way prejudiced by the fact that this action falls within the simplified rules or by the summary judgment procedure. The defendants have not provided any evidence or basis to support their bald assertion of prejudice, nor are they entitled to sit back and rely on the possibility that more favourable facts may develop at trial.
- [33] Finally, and while I find that this motion is not consistent with the efficiency rationale reflected in the r. 76 simplified procedures, as will be further detailed below, I am satisfied that partial summary judgment is now the most expeditious and cost-effective way for the court to resolve these issues.
- [34] The parties have spent the past approximately two and a half years adjudicating this motion. They filed affidavits, conducted cross-examinations and examinations for discovery, brought and responded to undertakings motions, filed factums, and spent four hours arguing this motion. In circumstances where the parties have incurred this time and expense and there exists no genuine issue for trial on two issues that can be readily bifurcated, it would not, in my view, be cost-effective or expeditious to order all issues to trial.
- [35] The most expeditious and cost-effective way to now deal with the issues before the court is to grant partial summary judgment. By determining the bulk of the issues as against 249 Inc., the trial will be simplified and shortened. The focus of the trial will no longer be on the terms of the contract but will instead be on whether Mr. Thomas ought to be personally liable.
- [36] I therefore exercise my discretion per r. 1.04 of the *Rules* to find that partial summary judgment with respect to Oxford's claims for breach of contract and unjust enrichment as against 249 Inc. is appropriate in the circumstances of this case.
- [37] The contract for the sale of the bulldozer was a verbal contract. Oxford's evidence is that it included a term that the bulldozer was being sold free and clear of all liens and encumbrances. Mr. Thomas represented that he was the owner of the bulldozer and no contrary intention was evidenced in the circumstances of the contract.
- [38] Oxford relies on s. 13 of the *Sale of Goods Act*, which provides:

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is, (a) an implied condition on the part of the seller that in the case of a sale the seller has a right to sell the goods, and that in the case of an agreement to sell the seller will have a right to sell the goods at the time when the property is to pass; (b) an implied warranty that the buyer will have and enjoy quiet possession of the goods; and (c) an

implied warranty that the goods will be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

[39] The defendants submit that the alleged representation that the bulldozer was free of all charges, liens and encumbrances is such a specific representation that it could not have been implied. I disagree.

[40] Having considered the evidence and submissions of counsel, I find as follows:

a. 249 Inc. sold the bulldozer to Oxford.

I do not accept Mr. Thomas' evidence that he did not know about Oxford's involvement, nor do I find his evidence to be credible. The invoice, which was written up by Mr. Thomas, was written in the name of Oxford. Further, it was Oxford who paid the purchase price. It matters not how Oxford chose to use the bulldozer after it was purchased. Mr. Thomas, in writing up the invoice, knew or ought to have known that the purchaser was Oxford.

b. Oxford paid \$216,960 to 249 Inc. to purchase the bulldozer.

The amount and payment of the purchase price is not disputed. On examination, Mr. Thomas admitted that he received the full amount and deposited it into 249 Inc.'s bank account.

c. There was an implied condition that 249 Inc. had a right to sell the bulldozer, that Oxford would have and enjoy quiet possession of the bulldozer, and that the goods would be free from any charge or encumbrance in favour of a third party.

While I accept the defendants' submission that Oxford's evidence regarding the alleged misrepresentation made by Mr. Thomas somewhat changed, I am satisfied that the *Sale of Goods Act* applies such that the above-noted conditions were implied.

On his examination, Mr. Milton acknowledged that Mr. Thomas did not specifically inform him that the bulldozer was free and clear of all encumbrances. Rather, Mr. Thomas said that he "owned" the bulldozer. Mr. Milton understood this to mean that either Mr. Thomas personally owned it, or that he owned the company that owned it.

I accept that Mr. Milton had no knowledge before or at the time the contract was made that the bulldozer was encumbered. Mr. Milton was forthright in his answers on examination regarding what was and was not said by Mr. Thomas. Further, Mr. Milton's evidence that Mr. Thomas informed him he owned the bulldozer was unshaken on examination.

Mr. Milton's evidence is consistent with his text message to Mr. Thomas after the bailiff contacted his office. In his text, he referred to the information received from the bailiff as "weird" and asked Mr. Thomas, "do you know if there is possibly an outstanding lein [sic] left on [the bulldozer] for some reason." I accept that Mr. Milton was surprised to learn that there may be a lien.

Mr. Milton's evidence is also consistent with the \$216,960 purchase price paid by Oxford. It is almost identical to the \$214,928.26 price noted on Caterpillar's Purchase Agreement, Contract Number 104-50015941, which indicates the bulldozer was purchased by Caterpillar and then leased to 249 Inc. Had the parties expected Oxford to purchase the bulldozer "as is" which involved an outstanding debt of at least \$129,017.66, I would not have expected Oxford's purchase price to be nearly identical to Caterpillar's price.

I do not accept the defendants' submission that the bulldozer was sold "as is." Other than Mr. Thomas' bald assertion that it was sold "as is", the defendants have not provided any evidence that Mr. Milton or Oxford were advised that the bulldozer may be encumbered, or that they would be responsible for any encumbrances. Rather, Mr. Thomas' evidence is that he understood any outstanding debts that might have been owed to Caterpillar had been paid off.

Neither party intended for Oxford to assume the debts owing to Caterpillar. Accordingly, and per s. 13 of the *Sale of Goods Act*, I find that there was an implied condition on the part of 249 Inc. that it had a right to sell the bulldozer, that Oxford would have and enjoy quiet possession of the bulldozer, and that the bulldozer would be free from any charge or encumbrance in favour of a third party. The circumstances of the contract do not evidence any contrary intention.

While it would have been prudent for Oxford to have done a PPSA search, I do not accept that Oxford is the author of its own misfortune, or that its failure to do a search should somehow alleviate 249 Inc. from liability. Oxford, having innocently purchased the bulldozer from 249 Inc., is protected by s. 13 of the *Sale of Goods Act*.

d. 249 Inc. did not pay its outstanding debt owed to Caterpillar which, as of October 6, 2023, totalled \$151,247.12.

Oxford produced a Payoff Quote from Caterpillar with a Good Through Date of October 10, 2023. The Payoff Quote bears the same contract number as 249 Inc.'s Lease Agreement with Caterpillar, being 104-50015941. The amounts 249 Inc. owed are stated to be as followed:

Balance:	\$129,017.66
GST/HST:	\$ 16,772.30
Late Charges:	\$ 177.16
Miscellaneous Chrages:	\$ 4,150.00

Processing Fee:	\$ 1,130.00
PAYOFF TOTAL:	\$151,247.12 CAD

Mr. Thomas acknowledged the outstanding debt on his examination. At Question 350, counsel for Oxford asked Mr. Thomas if he disputes the 129 balance owing to Caterpillar. Mr. Thomas responded “no, I don’t – I’m not disputing that.” Then, on re-examination at Questions 387-391, counsel for the defendants asked Mr. Thomas if the amount of \$151,247.12 was an accurate number and Mr. Thomas responded “well, apparently it is now... Because after speaking with the lady at – Caterpillar, that’s what was left owing.”

I do not accept Mr. Thomas’ affidavit evidence wherein he questions whether 249 Inc. paid its debt to Caterpillar. It is not sufficient for the defendants to rely on Mr. Thomas’ bald assertion that *he thought it was paid*. The defendants have not provided any evidence to support the debt having been paid. They must lead trump or risk losing.

I am satisfied on a balance of probabilities, based on the evidence tendered, that 249 Inc. did not pay its outstanding debt to Caterpillar and that as of October 6, 2023, when Oxford paid the debt to Caterpillar, the debt totalled \$151,247.12.

- [41] The record before me is sufficient to find the necessary facts and apply the relevant legal principles to determine the breach of contract and unjust enrichment claims against 249 Inc. The legal issues are not complex, and both parties put forward the best available evidence. It is not in the interests of justice for any question of fact or law to wait for disposition at trial.
- [42] I therefore find that 249 Inc. breached its contract with Oxford. At the time the contract was made, 249 Inc. was bound by its Lease Agreement with Caterpillar and per para. 7(f), did not have the right to sell the bulldozer. There exists no evidence that 249 Inc. exercised the purchase option in the Lease Agreement and as previously noted, Mr. Thomas acknowledged on examination that \$151,247.12 was left owing. Accordingly, Oxford was prevented from enjoying quiet possession of the bulldozer. It was encumbered to Caterpillar.
- [43] Further, I find that 249 Inc. was unjustly enriched by Oxford having paid out its debt to Caterpillar. 249 Inc. was enriched by Oxford’s payment of the debt; Oxford suffered a corresponding deprivation as its payment to Caterpillar was made in addition to its payment of the full purchase price to 249 Inc.; and there exists no juristic reason for 249 Inc.’s enrichment at the expense of Oxford: *Marcinkiewicz v General Motors of Canada Co.*, 2022 ONSC 2180, at para. 160. It was an implied condition of the contract that the bulldozer was to be sold to Oxford free from any charge or encumbrance in favour of any third party.
- [44] With respect to Oxford’s damages, Mr. Milton attested at para. 12 of his affidavit sworn December 27, 2024, that Oxford paid the balance of the outstanding amounts owing to

Caterpillar on October 6, 2023. He produced a TD Bank receipt of the same date evidencing Oxford's transfer of \$151,247.12 to 2430-52***25, CR2. I accept Mr. Milton's evidence in this respect. The amount paid is not disputed by the defendants.

- [45] Given that Mr. Thomas acknowledged the outstanding debt owing on examination, I do not accept the defendants' submission that Oxford somehow paid more than it ought to have paid to Caterpillar to obtain free and clear title. No evidence has been tendered to support this contention.
- [46] I therefore order that the defendant, 249 Inc., shall pay to Oxford damages for breach of contract and unjust enrichment in the sum of \$151,247.12, plus pre-judgment interest.

Balance of Oxford Claims are Not Appropriate for Summary Judgment

- [47] I find that the balance of Oxford's claims are not appropriate for summary judgment. The overarching consideration is whether summary judgment will provide a fair and just adjudication. The standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles to resolve the dispute: *Hryniak*, at para. 50.
- [48] The evidentiary record before me does not allow me to make the necessary findings of fact. The remaining claims largely turn on what Mr. Thomas knew, or ought to have known, regarding the Lease Agreement with Caterpillar, and whether he intended to deceive Oxford or personally benefitted from the sale to Oxford.
- [49] For example, the constituent elements of the intentional tort of fraudulent misrepresentation require a finding that Mr. Thomas, in his personal capacity and/or on behalf of 249 Inc., knew his statement that he owned the bulldozer was false and/or was indifferent to its truth or falsity, when he made the statement, and that he intended to deceive the plaintiff: *Marcinkiewicz*, at para. 131.
- [50] Similarly, to pierce the corporate veil, the court must find that the corporation was completely dominated and controlled by Mr. Thomas and being used as a shield for fraudulent or improper conduct.
- [51] On the record before me, I cannot determine what specific statements, if any, Mr. Thomas made, and whether he knew his statements were false, or was indifferent to their truth or falsity, or whether he intended to deceive the plaintiff.
- [52] There exists competing evidence that cannot be reconciled on a paper record. Mr. Thomas denies making any representations or warranties regarding the bulldozer. He also denies any knowledge that 249 Inc. had outstanding debt with Caterpillar at the time the sale was made. He understood that there were no liens or amounts owing on any equipment.

- [53] Mr. Thomas makes allegations that 249 Inc. was defrauded by his former business partner, Mr. Serratore. In 2024, Mr. Thomas filed a Citizen Fraud Report with the Halton Regional Police Service in which he alleged that Mr. Serratore took monies obtained through Canada Emergency Business Account (CEBA) loans. On examination, Mr. Thomas provided evidence that Mr. Serratore had control of 249 Inc.'s bank account and withdrew over \$300,000 for his own personal use.
- [54] A full assessment of Mr. Thomas' credibility and the evidence is required to fairly and justly determine the balance of Oxford's claims. This requires *viva voce* evidence and opportunity for the parties to summon witnesses, including witnesses regarding Mr. Serratore's alleged fraud or lack thereof.
- [55] Oxford requests that I draw an adverse inference against the defendants for their failure to produce 249 Inc.'s records and Mr. Serratore's final pay stub and Record of Employment. I decline to do so.
- [56] Oxford's undertakings motion for production of the records was unsuccessful. Per Garson J.'s Endorsement dated November 14, 2025, the defendants answered their outstanding undertakings. With respect to the bank records, Garson J. found that the records were held by Bank of Montreal and that the defendants "repeatedly sought this information without success. They have answered these questions to the best of their knowledge and belief and taken reasonable and diligent steps to try to obtain the information sought."
- [57] With respect to the final pay stub and Record of Employment for Mr. Serratore, Garson J. found that the defendants are not in possession of any such documents and have no knowledge of their existence. The fact that no such records exist is not determinative of the allegations of fraud against Mr. Serratore.
- [58] Mr. Thomas' evidence is that Mr. Serratore was his business partner. In his police report regarding Mr. Serratore's alleged fraud, Mr. Thomas also alleged that Mr. Serratore used his personal information and changed his address and email. He was added back to the corporation without his knowledge. Further, Mr. Thomas claims he does not have access to the Bank of Montreal accounts, which are now closed.
- [59] Again, the determination as to whether to draw an adverse inference for the defendants' failure or inability to produce the records and whether Mr. Thomas personally benefitted from the sale of the bulldozer and subsequent failure to remit funds to Caterpillar will depend largely on credibility findings which are better made at trial with *viva voce* evidence.
- [60] The balance of Oxford's motion is therefore dismissed. This action shall proceed to trial on the following issues:
- a. Whether the defendants are jointly or severally liable for the intentional tort of fraudulent misrepresentation;

- b. Whether Mr. Thomas, in his personal capacity, was unjustly enriched by Oxford's payment to Caterpillar;
- c. Whether Mr. Thomas completely dominated and controlled 249 Inc. and used it as a shield for fraudulent or improper conduct such that the corporate veil should be pierced; and
- d. Whether an order should be made granting leave to prosecute a derivative action against Mr. Thomas on behalf of 249 Inc. pursuant to s. 246 of the *Business Corporations Act*, R.S.O. 1990, c. B.16. While Oxford did not seek such an order on this motion, I accept that they reserved the right to advance this claim in the event they were unsuccessful in obtaining full summary judgment on this motion.

[61] The damages claimed by Oxford are limited to the \$151,24712 paid to Caterpillar, which I have found shall be paid by 249 Inc. Given that 249 Inc. has been ordered to pay these damages, the only damages issue for trial shall be whether Mr. Thomas is jointly or severally liable for all or any part of these damages.

Costs

[62] I am presumptively of the view that costs should be determined in the cause after trial is concluded. Success was divided and this motion conflicts with the efficiency that could have been achieved by the r. 76 summary procedure.

[63] The unresolved issues before the court involve competing evidence and credibility findings. This is the very type of motion that is discouraged in r. 76 proceedings. It would have been much more cost-effective and expeditious to have had all issues determined at a summary trial: *Combined Air*, at paras. 255-256.

[64] The court expects parties and their counsel to adopt appropriate litigation strategies. This includes ensuring that summary judgment motions are not prematurely or inappropriately brought. Parties considering such motions, particularly in r. 76 proceedings, are well-advised to consider whether they are likely to be successful on all issues and if not, whether it would be more cost-effective and expeditious to have all issues resolved at trial.

[65] This motion was not cost-effective or expeditious. It resulted in an approximate two-and-a-half-year delay of this proceeding, with the end result being that the parties now have to proceed to trial. Had the parties simply proceeded to a summary trial, the trial would have likely been heard by now and all issues would have been resolved, or at least judgment would have been reserved.

[66] The court also expects parties faced with responding to inappropriate or premature summary judgment motions to ensure they do not unnecessarily respond to them. Parties faced with such a motion are well-advised to bring a motion for directions to stay or dismiss the motion on the basis that it would be more appropriate or efficient to proceed to trial: *Combined Air*, at para. 57; *Rules* 1.04(1), (1.1), (2) and 1.05.

- [67] The defendants unnecessarily responded to this motion. They did not make any efforts to have the motion dismissed. Per the Endorsement of Nicholson, J. dated December 13, 2024, the motion was set for a special appointment on consent.
- [68] I granted partial summary judgment herein in part because substantial time and expense was spent on this motion and it has now been heard. Had a motion for directions or case conference been convened early on, I would have dismissed the summary judgment motion in its entirety; it does not comply with r. 1.04.
- [69] For these reasons, it is my presumptive view that costs should be determined in the cause at the end of trial. Both parties bear responsibility for the delay and costs incurred on the motion.
- [70] If, however, settlement offers were exchanged that may alter my presumptive view, the parties may provide the offer(s), along with cost submissions (not to exceed 5 pages, double spaced, 12 pt font) for consideration as follows:
- a. Oxford shall provide its submissions by July 31, 2026;
 - b. The defendants shall provide their submissions by August 21, 2026; and
 - c. Oxford may provide brief reply submissions (not to exceed 2 pages, double spaced, 12 pt font), if necessary, by September 4, 2026.

Jennifer E. Bezaire
Justice

Released: July 7, 2026

CITATION: Oxford Rollform Inc. v. 2490023 Ontario Inc., 2026 ONSC 3965
COURT FILE NO.: CV-24-116 (Woodstock)
DATE: 20260707

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Oxford Rollform Inc.

Plaintiff

– and –

2490023 Ontario Inc. and Shoane Thomas

Defendants

REASONS ON SUMMARY JUDGMENT MOTION

Bezaire J.

Released: July 7, 2026