

CITATION: Rebel Automated Systems Ltd. v. Ventra Group Co.,
2026 ONSC 5337
COURT FILE NO.: CV-24-00168
DATE: 20260921

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Rebel Automated Systems Ltd.

Plaintiff

- and -

Ventra Group Co. o/a Flex-N-Gate
Bradford

Defendant

) Sean McGarry and Abigail McGivney, for
) the Plaintiff
)
)
)

) Leah Kelley and Anthony Giannotti, for
) the Defendant
)
)
)

) **HEARD:** July 10, 2026

ENDORSEMENT

Associate Justice J. Kriwetz

The Motion

[1] The plaintiff, Rebel Automated Systems Ltd. (“**Rebel**”) moves for summary judgment for payment by the defendant, Ventra Group Co. o/a Flex-N-Gate Bradford (“**Flex**”) of the sum of \$385,470.25, plus interest, and for the dismissal of Flex’s

counterclaim. Alternatively, Rebel seeks an order for the return of the Product (defined below).

[2] Rebel's motion is based on an alleged settlement agreement with Flex, which it claims was breached by Flex.

[3] Flex opposes the motion. Its position is that there was no "settlement" agreement as alleged by Rebel. Instead, it alleges that the agreement was for the transfer of the Product to Flex, the terms of which were breached by Rebel. It claims that it suffered damages as a result of that breach, for which it counterclaims.

[4] For the reasons set out below, I find that summary judgment is not appropriate in this case because there are several material factual and credibility issues that must be decided at trial. Therefore, this summary judgment motion is dismissed.

Overview

[5] To provide some context, I will set out some of the background facts, which do not appear to be in dispute.

[6] Rebel is a relatively small company, which carries on business as a manufacturer, with an emphasis on automation. It has six employees.

[7] Flex is a large multinational company which manufactures products and systems for the automotive industry. It has approximately 20,000 employees worldwide.

[8] In 2022, Flex put out a request for quotation to design, build, and implement what can be generally described as an automation unit (the “**Product**”), which would be used to assist auto assembly line workers for Flex’s assembly line, which manufactures swing gate hinges for the F-150 Lighting motor vehicle, which is produced by the Ford Motor Company (“**Ford**”).

[9] On July 18, 2022, Rebel submitted a proposal for the Product to Flex, which included a total price for the completion of the Product in the amount of \$809,095.00, plus HST (the “**Proposal**”).

[10] On August 11, 2022, Flex provided Rebel with a letter of intent, which referenced the Proposal and authorised Rebel to proceed with the design portion *“that is not exceeding \$10,000.00 CAD until (it receives) the Purchase Orders.”*

[11] Flex subsequently issued Purchase Order No. 97871 dated August 31, 2022, to Rebel for the first stage (i.e. the building stage) of the project. Flex thereafter issued Purchase Order No. 64129 dated October 14, 2022, to Rebel for the second (i.e. the tooling stage) of the project.

[12] The project did not progress smoothly. There were several difficulties throughout. Each party blamed the other for the problems.

[13] By July 2023, the manufacture of the Product had not been completed. During a conversation which took place that month, between Jeff Cybulski, the principal of Rebel, and Andrew Hodgson, a manager of Flex, an agreement was reached which, in general

terms, contemplated a payment being made to Rebel and that Flex would complete the manufacturing of the Product. No one else was present during the conversation. As noted above, each party has a different view of what the precise terms of the agreement were. Brief summaries of the positions of the parties are set out below. I will refer to this agreement as the “**July 2023 agreement.**”

[14] On October 16, 2023, Mr. Cybulski sent an e-mail to Mr. Hodgson following up on the expected payment. Mr. Hodgson responded via e-mail that same day seeking a reduction of \$153,000.00 in the payment amount because Flex had found several issues with the Product.

[15] On October 19, 2023, Mr. Cybulski sent an e-mail to Mr. Hodgson rejecting the proposed reduction and reiterating Rebel’s position. In subsequent e-mail correspondence, Mr. Cybulski and Mr. Hodgson discussed a possible compromise, which was ultimately rejected by Flex’s board of directors. This was communicated to Mr. Cybulski by Mr. Hodgson via e-mail dated November 2, 2023.

[16] Rebel commenced litigation by issuing a statement of claim on January 25, 2024.

[17] Flex delivered a statement of defence and counterclaim dated March 24, 2024.

[18] Rebel delivered a defence to the counterclaim dated May 22, 2024.

[19] Flex filed a reply to the defence to counterclaim dated June 5, 2024.

Rebel's Position

[20] Rebel submits that the aforesaid July 2023 conversation resulted in an agreement to the following terms: (a) Rebel would accept an immediate payment of the sum of \$385,470.25, reflecting the balance of the capital costs on the purchase order, (b) Rebel would forego payment for the balance of the project, including its tooling costs on the purchase order or any other expenses, (c) Flex would accept the Product on an “as is” basis and finish it as it sees fit, (d) Rebel would immediately release the Product to Flex, and (e) the parties would make no further claims against one another.

[21] Rebel further submits that the agreement was memorialised in e-mail correspondence between Mr. Cybulski and Mr. Hodgson dated July 12, 2023. Rebel concedes the said e-mail does not state that Flex would take the Product “as is”, nor does it describe any term that Flex would not sue Rebel for the future costs of completing the Product. However, Mr. Cybulski’s affidavit asserts that Mr. Hodgson agreed that there was to be a “*clean split*” between the parties, otherwise he would not have agreed to accept less than what was owed to Rebel and released the Product.

[22] Rebel also submits that the Court should infer that the “clean split” term must have been part of the agreement because it would be commercially unreasonable for Rebel to have agreed to abandon a substantial amount which it claims was owing and to have released the Product to Flex, which it claims that it contractually controls because its terms and conditions applied, and for it to have exposed itself to liability in having Flex

take over the completion of the project. Furthermore, Rebel states that even though it did not agree with Flex's assessment of the Product's deficiencies in July 2023, Flex was fully aware of its condition and agreed to accept it "as is".

[23] Rebel further submits that Mr. Cybulski's version of the July 2023 conversation is not contradicted. In this regard, it asserts that Flex did not file an affidavit from Mr. Hodgson. Instead, Flex filed a responding affidavit from Hussein Chaitou, who was Flex's primary contact on the project. Although Mr. Chaitou swears to a contradictory account of the based upon information obtained from Mr. Hodgson, Rebel asserts that he has no actual knowledge of the conversation. Rebel, therefore, submits that the Court should draw an adverse inference from Flex's failure to obtain and file an affidavit from Mr. Hodgson.

[24] Rebel also argues that the e-mail correspondence of October 19, 2023, from Mr. Hodgson is further evidence that there was a settlement agreement as it alleges. It also asserts that Mr. Hodgson's e-mail of November 2, 2023, is an admission that the agreement was breached, and that the only plausible explanation is Mr. Cybulski's version of the agreement.

[25] In conclusion, Rebel submits that Flex is in breach of the terms of the settlement agreement, there is no genuine issue requiring a trial, and it should be granted summary judgment for the amounts set out in its notice of motion. Furthermore, because the Product was released to Flex on an "as is" basis and the parties agreed to a "clean split",

Rebel argues that there is no basis for Flex's counterclaim, and it seeks an order for its dismissal.

[26] At the hearing, counsel for Rebel advised the Court that, if summary judgment is granted as requested, Rebel is abandoning all additional claims set out in the statement of claim.

[27] Alternatively, Rebel argues that, if the Court determines that there was no meeting of minds between the parties, the agreement must be unwound. This would require the Product to be returned to Rebel because Flex is unjustly using and profiting from it.

Flex's Position

[28] Flex submits that, in July 2023, Rebel admitted that it had "bitten off more than it could chew" and was unable to complete the project. It asserts that its standard terms and conditions governed the contract with Rebel, and as such, it was entitled to take possession of the Product and complete it using its own forces or other suppliers. Therefore, to mitigate any potential damages it might incur from a delay claim from Ford, Flex asked another supplier to review Rebel's work and provide an estimate of what it would cost to complete the partially completed Product. It, therefore, states that the July 2023 agreement, was that Rebel would transfer the partially completed Product to Flex so that it could make those mitigation efforts.

[29] Flex denies that the agreement included a term whereby it would accept the Product “as is” and states that its possession of the Product, and its agreement to pay Rebel the sum of \$385,470.25 was conditional on the truth of Rebel’s promises that (a) the Product and its components had been produced in a good and workmanlike manner, and in compliance with the purchase order and standard terms and conditions, (b) all that was required was to complete the incomplete elements of the Product, and (c) it was in a ready to “debug” state (i.e. simply put, that it would be ready for the tooling phase).

[30] Flex alleges that, when it received the Product from Rebel, it was far from ready for debugging, and that it could not have known about all its defects until after it took possession of the Product. Flex also alleges it was then put to significant expense to fix the alleged deficiencies to ready the Product for the tooling phase. Those expenses are the subject of Flex’s counterclaim.

[31] Flex disagrees with Rebel’s characterisation of the evidence and submits that the correspondence after the agreement must be viewed in the context of what Flex states its terms were.

[32] Flex also disputes that the agreement included a “clean split” term. It points out that there is no reference to a release in any of the correspondence and no release was ever drafted or signed.

[33] Flex submits that there are genuine issues requiring a trial, including: (a) which contract governed the relationship between the parties, (b) what were the terms of the

July 2023 agreement, (c) whether Flex was aware of the defects in the Product, and (d) whether the July 2023 agreement was breached.

[34] It also submits that no adverse inference should be drawn from the fact that it did not file an affidavit from Mr. Hodgson. Although it is not in evidence, in submissions, counsel for Flex stated that Mr. Hodgson is no longer employed with Flex and that Rebel first raised this issue in its factum. Flex further submits that the substance of Mr. Hodgson's evidence is captured in Mr. Chaitou's affidavit, that the authorities relied on by Rebel are distinguishable, and that the threshold for drawing an adverse inference under rule 20.02 has not been met.

Test for Summary Judgment

[35] Rule 20.04(2)(a) 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 defence.

[36] Rule 20.02 states,

“(1) An affidavit for use on a motion for summary judgment may be made on information and belief as provided in subrule 39.01 (4), but, on the hearing of the motion, the court may, if appropriate, draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts.

(2) In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest solely on the allegations or denials in the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.”

[37] The principles on a summary judgment motion are set out in *Hryniak v. Mauldin*, 2014 SCC 7. At paragraph 49, the Court stated:

“There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.”

[38] In a ruling subsequent to *Hryniak*, the Court of Appeal for Ontario cautioned that summary judgment motions were not intended to replace trials, noting that they are “*only appropriate where it leads to a fair process and just adjudication*”: *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44.

[39] On a summary judgment motion, both parties are required to put their best foot forward and the Court is entitled to assume that all the necessary evidence has been tendered: *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438, at para. 7.

Analysis

Genuine Issues Requiring a Trial

[40] I find that genuine issues require a trial include the following.

(i) Terms and Conditions Governing the Contract

[41] Although Rebel moves for summary judgment to enforce an alleged settlement agreement, a key foundational issue to be determined is which terms governed the contract for the manufacture of the Product. The determination of that issue has a direct bearing on the analysis relating to the terms of the July 2023 agreement, as well as the consequences which flow therefrom.

[42] As noted above, Rebel and Flex have completely different views as to what terms and conditions governed the contract. Rebel states that its terms and conditions govern the contract and, therefore, it was entitled to maintain possession of the Product. On the other hand, Flex states that its terms and conditions govern and, therefore, it exercised its right to take possession of the Product and complete it. This is a material issue in dispute between the parties which cannot be resolved without a trial.

(ii) The Terms of the July 2023 Agreement

[43] Also, as previously stated, the parties have completely different versions of what they believe the terms of the July 2023 agreement were. Rebel is of the view that it was a settlement agreement, which included certain terms, whereas Flex is of the view that it was an agreement to transfer the Product, which contained certain terms. In either case, the terms were never clearly documented.

[44] In order to grant Rebel's motion, this Court must accept that the terms of that agreement included ones whereby Flex agreed to accept the Product "as is" and that the parties agreed to a "clean break" (i.e. a mutual release) from one another. The difficulty

is that there is nothing in the documentary record which references those terms. Instead, Rebel asks the Court to infer those terms from certain documents. On the other hand, Flex asks the Court to draw other inferences from the documents, which support its position.

[45] I cannot, at this stage, determine whether it is appropriate to draw any inferences without determining whose version of the July 2023 agreement is correct. The determination of the terms of the July 2023 agreement turns on credibility.

[46] The Courts have consistently stated that it is not appropriate to grant summary judgment where there are serious issues of credibility and reliability of witnesses and/or conflicts with respect to material facts: *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450, at para. 44; *Jermark Plumbing & Mechanical Services Limited v. Metropolitan Toronto Condominium Corporation No. 1371*, 2019 ONSC 1810, at para. 21.

[47] I cannot determine credibility issues based on the written record before me. *Viva voce* evidence at a trial is required: *Lesenko v. Guerette*, 2017 ONCA 522, at para. 19. It is also not appropriate for me to simply prefer one party's evidence over the other's: *Gordashevskiy v. Aharon*, 2019 ONCA 297, at para. 6.

[48] Rebel argues that Mr. Cybulski's account of the agreement is uncontradicted because, although Mr. Chaitou's deposes that he was told by Mr. Hodgson that Mr. Cybulski's version is incorrect, it is hearsay. It also submits that I should draw an adverse

inference from the fact that there is no evidence in the record directly from Mr. Hodgson on this point, or that I should give it little or no weight.

[49] One of the cases Rebel referred in support of its argument is *Pomata Investment Corp. v. Yang*, 2021 ONSC 6786, affirmed 2023 ONCA 747, where the motions judge drew an adverse inference on a summary judgment motion where the defendants failed to put forward evidence from individuals who were present at a meeting at which they alleged a verbal agreement was reached.

[50] Rebel also referred to *Mitusev v. General Motors Corporation*, 2014 ONSC 2342, where, at paragraph 20, the Court stated,

“While hearsay evidence may be admissible on a summary judgment motion, the weight to be attached to the evidence will ultimately be in the hands of the court. If the hearsay evidence is on a fundamental aspect of the motion, it is unlikely that the motion judge will decide the motion favourably to the party adducing the hearsay evidence.”

[51] In my view, both cases are distinguishable from this case.

[52] In *Pomata*, the plaintiff moved for summary judgment for forfeiture of a deposit and general damages based on a breach by the defendants of the terms of a written agreement of purchase and sale of a parcel of real property. The defendants counterclaimed alleging a breach of an oral agreement, which they alleged was entered into at the same time the agreement of purchase and sale was signed. The plaintiff also sought the dismissal of the counterclaim. On the issue of the alleged oral agreement, it appeared that real estate agents involved in the transaction may have had relevant

information, but the Court noted that the defendants did not tender an affidavit from their real estate agent, nor did they avail themselves of the opportunity to examine the other agent as a witness on a pending motion under rule 39.03. The Court drew an adverse inference from the defendants' failure to put forward such evidence. The Court noted that the evidence of the defendants with respect to the alleged oral agreement was based on statements made by them that they attended at the plaintiff's sales office and repeatedly asked questions of both real estate agents, who did not respond with any answers. The defendants construed the agents' silence as acceptance. The Court, however, noted that the defendants did not speak English and the plaintiff's agent did not speak Cantonese or Mandarin.

[53] In *Mitusev*, one of the defendants moved for summary judgment. Among the evidence filed was an affidavit from the plaintiff's lawyer, which appended various expert reports, and a reply affidavit from the moving party's lawyer attaching the examination for discovery evidence of the moving party's representative. The judge ruled that such evidence was inadmissible. The summary judgment motion was dismissed.

[54] In this case, Flex's responding affidavit is sworn by Mr. Chaitou, who was closely involved in the project. He swears that he spoke to Mr. Hodgson and he sets out the substance of Mr. Hodgson's evidence regarding his discussions with Mr. Cybulski in July 2023. This is a much different situation than situations which were before the Court in *Pomata* and *Mitusev*.

[55] As noted above, rule 20.02(1) permits affidavits made on information and belief. It does not require the Court to draw an adverse inference from the failure of a party to provide the evidence of any person having personal knowledge of contested facts, but that it may do so *if appropriate*.

[56] In my view, it is not appropriate to do so in this case.

(iii) The Condition of the Product in July 2023

[57] Additional important underlying factual issues, which bear directly on the question of what the terms of the July 2023 agreement were, include the condition of the Product at the time and whether and to what extent Flex had knowledge of its condition.

[58] If it is determined Flex was aware of the alleged defects in the Product, as alleged by Rebel, it may support Rebel's version of the July 2023 agreement. If, however, it is determined that Flex was not aware, as it alleges, then such a finding may support its version of events, including its counterclaim.

[59] I am unable to determine this issue based on the record before me. Therefore, these issues require a trial.

(iv) Issues Relating to the Counterclaim

[60] If it is determined that the terms of the July 2023 agreement are those as alleged by Flex, other important issues which must be determined include, whether Rebel breached the agreement, and if so, whether Flex incurred damages as a result of the breach, the extent of the damages, and whether Rebel is liable for such damages.

[61] Once again, having decided that the issue of the terms of the July 2023 agreement must be determined at trial, these factual issues can only be resolved at trial.

Disposition

[62] Having found that there are genuine issues requiring a trial, rule 20.04(2.1) provides a judge with expanded fact-finding powers, the resort to which is in the judge's discretion: *Hryniak*, at para. 68. However, I, as an Associate Judge, cannot resort to the expanded fact-finding powers specified under rule 20.04(2.1) to determine if the need for a trial can be avoided.

[63] Even if the expanded fact-finding powers were available to me, I would, nevertheless, decline to use them. Given the issues in this action, a trial is the appropriate forum for their determination.

[64] Rebel's motion is, therefore, dismissed.

Costs

[65] If the parties are unable to agree upon the costs of this motion, they may make written submissions of no more than 5 double-spaced pages in length, not including costs outlines and relevant authorities. The written submissions are to be sent via e-mail to HamiltonSopinka.SCJJA@ontario.ca within 20 days of the date of the release of this endorsement.

Associate Justice J. Kriwetz

Released: September 21, 2026

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