

2006 CarswellOnt 7842
Ontario Court of Appeal

Pipeline Mechanical Services Ltd. v. Metro Capital Management Inc.

2006 CarswellOnt 7842, [2006] O.J. No. 4582

**Pipeline Mechanical Services Ltd., (Plaintiff (Respondent))
v. Metro Capital Management Inc., (Defendant (Appellant))**

Cronk J.A., Lang J.A., O'Connor A.C.J.O.

Heard: September 12, 2006

Judgment: September 12, 2006

Docket: CA C44937

Proceedings: reversing in part *Pipeline Mechanical Services Ltd. v. Metro Capital Management Inc.* (2005), 2005 CarswellOnt 6447 (Ont. S.C.J.); additional reasons at *Pipeline Mechanical Services Ltd. v. Metro Capital Management Inc.* (2006), 2006 CarswellOnt 7957 (Ont. S.C.J.); additional reasons at *Pipeline Mechanical Services Ltd. v. Metro Capital Management Inc.* (2006), 2006 CarswellOnt 7758 (Ont. C.A.)

Counsel: Berkley D. Sells, Karen A. La Caprara, for Appellant
Sean E. Cumming, for Respondent

Subject: Contracts; Civil Practice and Procedure

Headnote

Construction law --- Contracts — Breach of terms of contract — Breach by contractor — Defective workmanship
Plaintiff contractor rendered invoices to defendant apartment building manager for work performed from May 1997 to December 1998 totalling \$26,792.47 for first apartment building, and \$97,891.09 for other buildings — Manager resisted payment on basis of counterclaims for expenses and damages flowing from evacuation of tenants due to carbon monoxide leak following work performed at first apartment building — Contractor brought successful motion pursuant to R. 20.01 of Rules of Civil Procedure for partial summary judgment seeking payment of invoices — Contractor was entitled to judgment totalling \$124,683.56, of which \$43,690.18 was stayed pending trial — Contractor was entitled to judgment of \$26,792.47 in respect of first apartment building, but judgment was stayed in that amount pending trial of counterclaims — Manager's counterclaims for \$16,897.71 for inspection and alleged correction of contractor's work due to loss of confidence and \$48,030.99 in legal fees to confirm its insurance coverage for claims against owner arising out of incident were genuine issues for trial — Manager's counterclaims for \$8,121.30 for additional security guard services and for alleged damage to reputation following media coverage of incident were genuine issues for trial — Contractor was entitled to summary judgment dismissing manager's counterclaim for \$2,098.79 in legal fees incurred allegedly as result of carbon monoxide incident and related to advice on carbon monoxide detector installation by-laws — Manager appealed — Appeal allowed — There was triable issue whether those claims in counterclaim supported defence of equitable set-off in main action — Both nature of relationship between parties and proximity of connection of counterclaim to plaintiff's claims required factual determinations that could only be made at trial — Amounts of contractor's claims were not in dispute and issue left for trial was whether or not defence of equitable set-off applied to those amounts.

Construction law --- Contracts — Breach of terms of contract — Damages — Miscellaneous issues

Set-off — Plaintiff contractor rendered invoices to defendant apartment building manager for work performed from May 1997 to December 1998 totalling \$26,792.47 for first apartment building, and \$97,891.09 for other buildings — Manager resisted payment on basis of counterclaims for expenses and damages flowing from evacuation of tenants due to carbon monoxide leak following work performed at first apartment building — Contractor brought successful motion pursuant to R. 20.01 of Rules of Civil Procedure for partial summary judgment seeking payment of invoices — Contractor was entitled to judgment totalling \$124,683.56, of which \$43,690.18 was stayed pending trial — Contractor was entitled to judgment of \$26,792.47

in respect of first apartment building, but judgment was stayed in that amount pending trial of counterclaims — Manager's counterclaims for \$16,897.71 for inspection and alleged correction of contractor's work due to loss of confidence and \$48,030.99 in legal fees to confirm its insurance coverage for claims against owner arising out of incident were genuine issues for trial — Manager's counterclaims for \$8,121.30 for additional security guard services and for alleged damage to reputation following media coverage of incident were genuine issues for trial — Contractor was entitled to summary judgment dismissing manager's counterclaim for \$2,098.79 in legal fees incurred allegedly as result of carbon monoxide incident and related to advice on carbon monoxide detector installation by-laws — Manager appealed — Appeal allowed — There was triable issue whether those claims in counterclaim supported defence of equitable set-off in main action — Both nature of relationship between parties and proximity of connection of counterclaim to plaintiff's claims required factual determinations that could only be made at trial — Amounts of contractor's claims were not in dispute and issue left for trial was whether or not defence of equitable set-off applied to those amounts.

Civil practice and procedure --- Summary judgment — Requirement to show no triable issue

Plaintiff contractor rendered invoices to defendant apartment building manager for work performed from May 1997 to December 1998 totalling \$26,792.47 for first apartment building, and \$97,891.09 for other buildings — Manager resisted payment on basis of counterclaims for expenses and damages flowing from evacuation of tenants due to carbon monoxide leak following work performed at first apartment building — Contractor brought successful motion pursuant to R. 20.01 of Rules of Civil Procedure for partial summary judgment seeking payment of invoices — Contractor was entitled to judgment totalling \$124,683.56, of which \$43,690.18 was stayed pending trial — Contractor was entitled to judgment of \$26,792.47 in respect of first apartment building, but judgment was stayed in that amount pending trial of counterclaims — Manager's counterclaims for \$16,897.71 for inspection and alleged correction of contractor's work due to loss of confidence and \$48,030.99 in legal fees to confirm its insurance coverage for claims against owner arising out of incident were genuine issues for trial — Manager's counterclaims for \$8,121.30 for additional security guard services and for alleged damage to reputation following media coverage of incident were genuine issues for trial — Contractor was entitled to summary judgment dismissing manager's counterclaim for \$2,098.79 in legal fees incurred allegedly as result of carbon monoxide incident and related to advice on carbon monoxide detector installation by-laws — Manager appealed — Appeal allowed — There was triable issue whether those claims in counterclaim supported defence of equitable set-off in main action — Both nature of relationship between parties and proximity of connection of counterclaim to plaintiff's claims required factual determinations that could only be made at trial — Amounts of contractor's claims were not in dispute and issue left for trial was whether or not defence of equitable set-off applied to those amounts.

APPEAL by manager from judgment reported at *Pipeline Mechanical Services Ltd. v. Metro Capital Management Inc.* (2005), 2005 CarswellOnt 6447 (Ont. S.C.J.).

Per Curiam:

1 The motion judge found that virtually all the claims in the counterclaim gave rise to genuine issues for trial, thus precluding summary judgment dismissing these claims. In our view, there is a triable issue whether those same claims support a defence of equitable set-off in the main action. Both the nature of the relationship between the parties and the proximity of the connection of the counterclaim to the claims of the respondent require factual determinations that can only be made at trial.

2 Thus, the appeal is allowed and the judgment below, except for para. 3, is set aside.

3 For clarity, it is noted that the amounts of the respondent's claims as set out in para. 1 of the judgment are not in dispute and the issue that is left for trial is whether or not the defence of equitable set-off applies to those amounts.

4 The appellant is entitled to its costs of the appeal, fixed in the amount of \$5,000, inclusive of disbursements and GST.

Appeal allowed.