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<p><b>HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS</b> Thomas G. Heintzman, Bryan G. West, and Immanuel Goldsmith Release No. 1, February 2024</p>
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Heintzman, West and Goldsmith on Canadian Building Contracts provides a systematic analysis of the law of contracts as it applies to building contracts in Canada. The work includes all relevant court decisions dealing with the formation, material provisions, breach and remedies for breach of construction contracts. Separate chapters deal with construction lien legislation, subcontractors, architects and engineers, bonds and arbitration.

This release includes updates to Appendix A. Quantum Table — Construction Law.

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## Highlights

**Quantum Table — Construction Law — Deficiencies** — The defendants itemized their claim for correcting the deficiencies in updated versions of the Scott Schedules. The updated Scott Schedules showed that the defendants claimed \$105,599.74 for correcting deficiencies concerning 699 and 701, \$129,524.36 for correcting deficiencies concerning 703, and \$82,330.56 for correcting deficiencies concerning 705. The total of those three figures was \$317,454.66. There was no evidence from Save On challenging the reasonableness of the defendants' efforts at mitigating their deficiency correction costs. The Associate Justice observed that Courts generally give the innocent owner considerable latitude in completing the work of a defaulting contractor, given the exigent circumstances the owner is typically put in. The project was substantially delayed, and the defendants were under significant financial pressure to complete the work quickly. The Associate Justice concluded that the fact that the owners did not hire a general completion contractor or obtain competing bids should not, therefore, detract from their claim. The costs were reasonably incurred by the defendants. Save On was liable to pay the defendants \$317,454.66 to correct its deficiencies: *1917196 Ontario Ltd. v. Kazmi*, 2023 ONSC 384, 2023 CarswellOnt 529 (Ont. S.C.J.), additional reasons 2023 ONSC 7284, 2023 CarswellOnt 20398 (Ont. S.C.J.).

**Quantum Table — Construction Law — Payment** — 140 and Twister agreed to explore the construction of two buildings. Construction commenced, progress was made, and invoices were paid until July 6, 2016, when 140 notified Twister, before the buildings were completed, that it was terminating the relationship. The issue was whether Twister had been completely paid for its work on the project or whether 140 overpaid Twister such that Twister must reimburse 140 any overpayment, and/or damages for lost rental revenue or to rectify deficiencies. Justice Burns concluded that the parties' relationship was governed by their conduct. They agreed to a budget to construct the two buildings and subsequently agreed to the payment of invoices. The fixed price agreement was meant to fulfil the requirements of the Bank to obtain financing, it did not reflect the relationship of the parties and how they agreed to build the project. The parties both changed the agreement by their conduct. While the contract did contemplate progress payments based on the percentage of work actually completed, that was not the arrangement 140 proposed or the parties accepted post signing of the fixed price agreements. T&T was never asked by 140 to confirm the percentage completed before invoices were paid. T&T only certified that what was claimed was reflective of the work completed by Twister. Twister submitted invoices for work done on a monthly basis and they were provided to T&T. All the invoices submitted were included in the T&T Reports and approved by T&T. All invoices had been paid except the last ones. Justice Burns concluded that Twister should be paid for all of the work that T&T certified, specifically the \$173,012.08 which Twister submitted was due and outstanding: *Twister Developments Ltd v. 1406676 Alberta Ltd*, 2023 ABKB 535, 2023 CarswellAlta 2452 (Alta. K.B.).

## ProView Developments

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