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HEINTZMAN, WEST AND GOLDSMITH ON CANADIAN BUILDING CONTRACTS

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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 releases features updates to Appendix A Quantum Table—Construction Law. This release also includes updates to Appendix B Legislation, including updates to Alberta's *Prompt Payment and Construction Lien Act*—amended by 2024, c. 20, s. 2, updates to Alta. Reg. 51/2002 *Prompt Payment and Construction Lien Forms Regulation*—amended by Alta. Reg. 101/2025, the addition of Can. Reg. 2023-271—*Federal Prompt Payment for Construction Work Regulations (Dispute Resolution)*, and the addition of Can. Reg. 2023-270—*Order Designating Provinces Under Subsection 6(1) of the Federal Prompt Payment for Construction Work Act*. This release also includes updates to Appendix WP Words and Phrases.

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Highlights

Quantum Table—Construction Law—Wrongful Termination of Contract—The Court concluded that LTS was owed the following by 407E: Contract work – $67,451,41; Holdback – $44,407.34; 3. Inv. 287 – $7,860.69; 4. Inv. 284 – $5,548.69; 5. Inv. 288 – $5,779.92; 6. Inv. 294 and 295 – $614.64; and 7. Acceleration – $45,775.84 for a total of $177,437.53. The Court was satisfied that 407E had a claim for set off and damages for failure to complete the Subcontract against LTS based on the terms of the Subcontract 1 and at law for failing to complete the terms of work in the Subcontract. The Court was also satisfied that 407E suffered damages for the payment of replacement workers. The Court was of the view that 407E could not charge LTS for work it alleged it paid for before 407E complied with the Subcontract where LTS was given notice of Default and LTS was provided with 5 days to cure any default or provide a plan to do so. 407E did not provide Notice of Default until September 20, 2013, and did not terminate the Subcontract until October 2, 2013. The consequence was that any charges or set off claims 407E was claiming against LTS before October 2, 2013 would not be considered. The Court explained that it is not the Court's onus to glean through all the invoices and decipher the claims of 407E especially when there are gaps in the evidence for the Court to do so. The onus is on 407E to prove their damages. The Court was aware of its obligation to do its best in assessing damages, but the assessment cannot be fanciful with a figure that is not supported by the evidence. The Court has discretion in awarding damages that is based on the evidence provided. The Court was satisfied that LTS did not complete the work it was contracted to do. The Court was satisfied that 407E incurred costs to complete the work of LTS. The issue was what is a reasonable amount that LTS was responsible for in damages. Given the failure of 407E to provide the necessary evidence to specify costs directly attributable to LTS but acknowledging that there were costs involved for which LTS was responsible for failing to cut and clean within the ROW and to clear all vegetation and chip all within the ROW, the Court fixed the quantum at 20% of the amount sought by 407E, $411,244.81: *Lumberjacks Tree Service v. 407 East Construction General Partnership*, 2026 ONSC 1321, 2026 CarswellOnt 6339 (Ont. S.C.J.).

Quantum Table—Construction Law—Failure to Complete—There was no credible reason provided by at trial to explain why he did not purchase the stone immediately after the deposit was paid in September, and have it moved, or move it himself, to the rental area as planned in the fall or early winter, particularly after learning that the quarry had sufficient supply in stock. After providing him with the deposit, the plaintiffs never heard another word from about the armour stone until they asked him about it directly on June 12. Nothing that was occurring at the cottage, including delays to the exterior or interior, had any effect on whether the armour stone could have been purchased, delivered, and stored as planned. There was no evidence to support the defendants' position that they would have been in a position to order the stone as of June 12 and still meet the timeline. The Court concluded that the defendants entirely failed to perform their obligation to purchase and transport the stone. They were bound by their representation that the substantial deposit was required to purchase materials which included the stone. The breach was serious for three reasons. The defendants' failure to inform the plaintiffs of the

true facts eroded all trust that they had in their contractor. Second, it deprived the plaintiffs of having the armour stone transported to the building site in smaller loads as the road permitted, so that they could be enjoying the exterior of their cottage, particularly the tennis court, in the summer of 2023. Third, the plaintiffs had to borrow the money. The Court concluded that the defendants fundamentally breached the landscaping contract. The plaintiffs were deprived of the whole benefit of it. Even though parts of the landscaping estimate were performed, those aspects were all done with a goal of readying the site for the armour stone in the spring of 2023. The primary and fundamental object of the landscaping contract was having the landscaping done by the summer. The primary purpose of the deposit was to ensure that the stone was procured, transported, and ready for use. The plaintiffs were entirely deprived of the whole agreement related to the armour stone, as the entire purpose behind advancing such a large deposit and initial installment, together totaling $813,600, was not met: *Catania v. Jamesway Custom Homes Ltd.*, 2026 ONSC 689, 2026 CarswellOnt 1503 (Ont. S.C.J.).