

2013 ONSC 5288
Ontario Superior Court of Justice

S&R Flooring Concepts Inc. v. RLC Stratford LP

2013 CarswellOnt 12254, 2013 ONSC 5288, 232 A.C.W.S. (3d) 95, 31 C.L.R. (4th) 89

**S&R Flooring Concepts Inc., Plaintiff and RLC Stratford LP, Palstratford GP Inc.,
Edgecon Contracting Corp., Edgecon Construction Inc., 1809313 Ontario Ltd.,
Enzo Mizzi, Phil Mizzi, Ali Shaikh and Mary Campisi, Defendants**

A.J. O'Marra J.

Heard: July 12, 2013
Judgment: August 19, 2013
Docket: CV-12-452272

Counsel: Kevin Sherkin, Jeremy Sacks, for Plaintiff
Julian Binavince, for Defendants, Phil Mizzi, Ali Shaikh and Mary Campisi

Subject: Civil Practice and Procedure; Corporate and Commercial; Contracts; Estates and Trusts; Insolvency

Headnote

Civil practice and procedure --- Summary judgment — Sufficiency of claim as basis for judgment

Plaintiff contracted with corporate defendants to build rental apartment on property — Enzo Mizzi was officer and director of corporate defendants — Phil Mizzi and Ali Shaikh were only persons from contractor with whom plaintiff had dealings with respect to project work; plaintiff understood Phil Mizzi to be president and Ali Shaikh to his right hand man — Work was completed and plaintiff was not paid; plaintiff sought money owing to plaintiff as beneficiary of trust funds held in accordance with provisions of Construction Lien Act (Ont.) — Defendants were noted in default — Plaintiff brought motion for summary judgment — Motion granted — Individual defendants Phil Mizzi and Mary Campisi were jointly liable with corporate defendants and Enzo Mizzi under s. 13(1)(b) and (3) for breach of trust — There was evidence that general contractor received funds and plaintiff did not; trier of fact could reasonably infer that general contractor appropriated or converted funds to use inconsistent with trust — Individual defendants Phil Mizzi and Mary Campisi fell under terms of s. 13(1)(b) of Act — It was incredible that individual defendants working in same office were not aware of sub-trades being unpaid — Individual defendant Ali Ahikh was employee of corporate defendant and did not have effective control of corporation — There was some collusion to shield behind corporate defendant to deny plaintiff production of documentation.

Business associations --- Specific matters of corporate organization — Directors and officers — Liabilities — Breach of trust

Plaintiff contracted with corporate defendants to build rental apartment on property — Enzo Mizzi was officer and director of corporate defendants — Phil Mizzi and Ali Shaikh were only persons from contractor with whom plaintiff had dealings with respect to project work; plaintiff understood Phil Mizzi to be president and Ali Shaikh to his right hand man — Work was completed and plaintiff was not paid; plaintiff sought money owing to plaintiff as beneficiary of trust funds held in accordance with provisions of Construction Lien Act (Ont.) — Defendants were noted in default — Plaintiff brought motion for summary judgment — Motion granted — Individual defendants Phil Mizzi and Mary Campisi were jointly liable with corporate defendants and Enzo Mizzi under s. 13(1)(b) and (3) for breach of trust — There was evidence that general contractor received funds and plaintiff did not; trier of fact could reasonably infer that general contractor appropriated or converted funds to use inconsistent with trust — Individual defendants Phil Mizzi and Mary Campisi fell under terms of s.

13(1)(b) of Act — It was incredible that individual defendants working in same office were not aware of sub-trades being unpaid — Individual defendant Ali Ahikh was employee of corporate defendant and did not have effective control of corporation — There was some collusion to shield behind corporate defendant to deny plaintiff production of documentation.

Construction law --- Construction and builders' liens — Practice on enforcement of lien — Entitlement to summary and default judgment — Miscellaneous

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Table of Authorities

Cases considered by *A.J. O'Marra J.*:

Combined Air Mechanical Services Inc. v. Flesch (2011), 13 R.P.R. (5th) 167, 14 C.P.C. (7th) 242, 2011 ONCA 764, 2011 CarswellOnt 13515, 10 C.L.R. (4th) 17, 344 D.L.R. (4th) 193, 108 O.R. (3d) 1, 286 O.A.C. 3, 97 C.C.E.L. (3d) 25, 93 B.L.R. (4th) 1 (Ont. C.A.) — referred to

Edgecon Construction Inc. v. All Saints Church Homes for Tomorrow Society (1995), Kirsh's C.L.C.F. 34.31, 1995 CarswellOnt 3501, 18 C.L.R. (3d) 254 (Ont. Master) — considered

965046 Ontario Inc. v. Edgecon Contracting Corp. (2011), 2011 ONSC 4722, 2011 CarswellOnt 9285, 13 C.L.R. (4th) 314 (Ont. S.C.J.) — considered

Statutes considered:

Construction Lien Act, R.S.O. 1990, c. C.30

Generally — referred to

s. 8 — considered

s. 8(1) — considered

s. 8(2) — considered

- s. 13(1) — considered
- s. 13(1)(b) — considered
- s. 13(2) — considered
- s. 13(3) — considered

Rules considered:

- Rules of Civil Procedure*, R.R.O. 1990, Reg. 194
 - R. 19.02(1) — considered
 - R. 20.04 — referred to
 - R. 20.04(2.1) [en. O. Reg. 438/08] — considered

MOTION by plaintiff for summary judgment.

A.J. O'Marra J.:

- 1 The motion before the Court is for summary judgment under Rule 20.04 in favour of the Plaintiff, S&R Flooring Concepts Inc. (S&R Flooring), against the individual Defendants, Phil Mizzi, Ali Shaikh and Mary Campisi, for money owing it as a beneficiary of trust funds held in accordance with the provisions of the *Construction Lien Act*, R.S.O. 1990, c. C-30.
- 2 On June 4, 2013, Master Peterson ordered that the statement of the Defendants, Edgecon Contracting Corp., Edgecon Construction Inc., 1809313 Ontario Ltd. and Enzo Mizzi, be struck and the Defendants noted in default.
- 3 On requisitioning default judgment the Registrar declined to sign default judgment for want of jurisdiction because Defendant Enzo Mizzi was not personally a party to the contract referred to in the Statement of Claim and judgment against the Defendants was the result of their breach of trust as stated in the Claim.

Background to the Claim

4 On May 22, 2008, RLC Stratford LP and Palstratford GP Inc. (Owners) contracted with the corporate Defendants, Edgecon Contracting Corp., Edgecon Construction Inc. and 1809313 Ontario Ltd. (Edgecon) to build a 123-unit senior rental apartment on property known municipally as 200 McCarthy Road, Stratford, Ontario. On October 12, 2010, S&R Flooring submitted a quote to Edgecon for the supply and installation of flooring for the project. It entered into a contract with Edgecon, wherein Edgecon would sub-contract the supply and installation of all flooring work for the project to S&R Flooring for a quoted price of \$365,000 plus H.S.T. Over the course of the project, Edgecon and Owners requested that S&R Flooring complete specified extras. By August 2011, S&R Flooring had completed all the work pursuant to the contract and requested extras. The total owing to S&R for work completed was \$422,959.00 inclusive of HST.

5 A progress billing statement prepared by Edgecon on August 17, 2011 included in the report prepared by the cost consultant of the project, Altus Group Cost Consulting and Project Management, indicated that as of July 31, 2011, the flooring on the project was 100% complete and approved by the cost consultant on the project.

6 S&R Flooring received payments from Edgecon in the amount of \$286,976.56. Notwithstanding a statutory declaration dated August 19, 2011 signed by Mary Campisi certifying that all sub-contractors who had provided work to the project had been fully paid for work completed, S&R had not been paid the outstanding balance of \$135,982.44. Despite repeated requests Edgecon failed to remit the remaining balance to S&R Flooring.

7 Subsequently, Edgecon had delivered a without prejudice settlement offer to S&R Flooring offering to pay S&R Flooring the sum of \$120,982.44. The offer was accepted by S&R Flooring on February 24, 2012; however, Edgecon failed to pay S&R Flooring the negotiated settlement, despite repeated requests from S&R Flooring.

8 S&R claims that Edgecon received financing and/or funds in payment of the material and services supplied by S&R Flooring, which were trust funds held by Edgecon in accordance with s. 8 of the *Construction Lien Act*, for it as a sub-contractor, a beneficiary of those funds. In the alternative to claiming a breach of trust, S&R Flooring claims Edgecon breached the settlement agreement entered into with S&R in and around February 24, 2012.

Relationship between the Plaintiff and Individual Defendants

9 Michael Steiner is the owner and director of S&R Flooring and Robert Robertson, a previous owner, was a salesman and project manager. Mr Robertson submitted a quote for the project at the request of Phil Mizzi and Ali Shaikh. On October 26, 2010, Ali Shaikh sent back the quote with his signature and the words "Pls proceed" in handwriting. A formal agreement between Edgecon Contracting Corp. and S&R was signed by Mr. Robertson for S&R and the signature line was prepared in the name of "Phil Mizzi, President" for Edgecon Contracting Corp. unsigned. The agreement cited Phil Mizzi, President as the contact for the contractor at its offices at 145 Royal Crest Court, Unit #6, Markham, Ontario.

10 Phil Mizzi and Ali Shaikh were the only two persons from the contractor with whom S&R Flooring had dealings with respect to the project work and later requests for payment by Robertson and Steiner at their office. Based on discussion with Phil Mizzi and Ali Shaikh, Mr Robertson understood that Mr Phil Mizzi was the president and owner of Edgecon and Mr. Shaikh his right-hand man. Phil was more on-site during the project, and Ali in the office. During the project, Mr. Shaikh would sign the purchase orders (as agreed with Phil) and change notices. (Michael Steiner affidavit dated March 13, 2013, Ex. D)

11 Both Phil and Ali knew that Edgecon had not paid S&R for the services it provided. After the work had been completed and payment had not been received, Michael Steiner attended at the Edgecon offices numerous occasions, meeting with Phil Mizzi and Ali Shaikh. They told Mr. Steiner he was being rude for asking for payment. He felt disrespected and thereafter, he left it to Mr. Robertson to handle the account. In seeking payment, Robertson was told by Phil Mizzi that another project they were doing in Cobourg was not going well.

12 Later, Mr Robertson met with Phil and Ali in the Edgecon office to negotiate the settlement that S&R accepted by Michael Steiner, February 24, 2012. Edgecon failed to fulfill the settlement.

13 Mr Steiner and Mr. Robertson had no dealings with Mary Campisi. Mr Robertson knew that there were several Mizzi brothers involved with Edgecon and other than Phil, he saw another at the project site for about a week, but did not know if it was Enzo.

Deemed Admissions

14 Edgecon and Enzo Mizzi having been noted in default, the Plaintiff relies on rule 19.02(1) wherein a defendant who has been noted in default "is deemed to admit the truth of all allegations of fact made in the Statement of Claim." The Plaintiff relies on the following deemed admissions:

- (a) S&R Flooring and Edgecon entered into an agreement wherein Edgecon would sub-contract the supply and installation of flooring work for the project to S&R Flooring for the sum of \$365,000.00 plus HST;

- (b) Over the course of the project extras were requested and completed;
- (c) On or about August 20, 2011, S&R Flooring completed all work under the contract and the requested extras and was owed a total amount for the work completed, \$422,959.00 inclusive of HST;
- (d) S&R Flooring submitted invoices for the completed work but had received only \$286,976.56 — the remaining balance of \$135,982.44 has been unpaid by Edgecon;
- (e) Edgecon received financing and/or funds in payment of the material and services supplied by S&R Flooring with respect to the project, which funds were and are trust funds in accordance with the provisions of the *Construction Lien Act*;
- (f) Enzo Mizzi is an officer and director of Edgecon Contracting Corp., Edgecon Construction Inc. and 1809313 Ontario Limited.
- (g) Edgecon and Enzo Mizzi in breach of the *Construction Lien Act* misappropriated or converted to their own use or a use not authorized by the trust, the funds that remain unpaid to S&R Flooring, the beneficiary of the funds;

15 The individual Defendants do not dispute there is evidence that supports the deemed admissions, other than (g), evidence that there was a breach of trust.

Additional Admissions on the Motion

16 In addition, Phil Mizzi, also known as Phillip/Filippo, in the absence of Enzo Mizzi, exercised effective control over the corporate Defendants and, although he was sub-ordinate to Enzo Mizzi, exercised authority over the affairs of the corporate Defendants at the material times.

17 Enzo Mizzi, Philip Mizzi and Mary Campisi are brothers and sister.

Issues

18 The issues are a) whether there is evidence of a breach of trust contrary to s. 8 (2) of the *Construction Lien Act*, and if so, b) whether Phil Mizzi, Ali Shaikh and Mary (Mizzi) Campisi are directors or officers of the Corporation or persons with effective control of the Corporation or its relevant activities who assented to or acquiesced in, conduct that he or she knew or reasonably ought to have known amounted to breach of trust by the corporation and liable for a breach of trust contrary to s. 13(1) of the *Act*.

19 In considering whether summary judgment should be granted where there is no genuine issue requiring a trial, the motions court judge must assess whether a full appreciation of the evidence and issues required to make dispositive findings can be achieved using the powers cited under Rule 20.04(2.1), or are the “attributes and advantages of the trial process necessary to enable a full appreciation of the evidence and issues of the case.” (See *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 (Ont. C.A.) p. 51-54.). The motion judge shall consider the evidence submitted by the parties and the judge may weigh the evidence, evaluate the credibility of deponents and draw any reasonable inference from the evidence.

20 In this instance, based on the affidavit material and the examinations for discovery transcripts of the principals of the Plaintiff and the individual Defendants, Philip Mizzi, Ali Shaikh, Mary Campisi, witness Debra Fiore and the documentation submitted, I am satisfied that I am in a position to be able to assess the weight of their evidence, evaluate the credibility of the deponents as well as draw reasonable inferences to make dispositive findings relative to the material issues.

The Construction Lien Act

21 Section 8(2) states the contractor or sub-contractor is the trustee of the trust fund created by subsection (1) and the contractor or sub-contractor shall not appropriate or convert any part of the fund to the contractor's or sub-contractor's own use or to any use inconsistent with the trust until all contractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor.

22 Section 13, with respect to liability for breach of trust, states as follows:

13(1) in addition to the persons, who are otherwise liable in an action for breach of trust under this Part,

(a) every director or officer of a corporation; and

(b) any person, including an employee or agent of the corporation, who has effective control of a corporation or its relevant activities,

who assents to, or acquiesces in, conduct that he or she knows or reasonably ought to know amounts to breach of trust by the corporation is liable for the breach of trust.

13(2) The question of whether a person has effective control of a corporation or its relevant activities is one of fact and in determining this the court may disregard the form of any transaction and the separate corporate existence of any participant.

13(3) Where more than one person is found liable or has admitted liability for a particular breach of trust under this Part, those persons are jointly and severally liable.

23 Under Section 13(1) of the *Construction Lien Act* an individual can be held liable for breach of trust by a corporate defendant where:

(a) the individual is a director or officer of the corporate defendant or in effective control of the corporate defendant, or its relevant activities;

(b) there is conduct by the corporate defendant that amounts to a breach of trust;

(c) the person knew or ought to reasonably have known that the conduct amounted to a breach of trust; and

(d) the person assented to or acquiesced in the conduct.

24 In this instance, the Defendants argue that the Plaintiff has not produced evidence of a breach of trust under s. 8 (2) of the *Act* such that the contractor (Edgecon) "appropriated or converted any part of the trust fund to the contractor's own use or to any use inconsistent with the trust until all sub-contractors and other persons who supply services and materials to the improvement are paid all amounts related to the improvement owed to them by the contractor."

25 It should be noted that since the action was commenced, April 26, 2012, the Defendants have failed to produce any documents relevant to the proceedings. The individual Defendants failed to produce any documentation on attendance to the examinations for discovery. The individual Defendants and in-house bookkeeper all attended the examination for discoveries without any documentation, notwithstanding continued access at their workplace. All continued to work from the Edgecon office in Markham. The position taken was that the documentation belonged to the Edgecon group of companies. Undertakings were provided to make requests for documentation; however, no response or documentation was produced by the date of the motion.

26 In assessing whether there was a breach of trust, I consider the statutory declaration, signed by Mary Campisi swearing on behalf of Edgecon that all sub-contractors that had provided work to the project had been fully paid up to June 30, 2011.

The statutory declaration was provided in order to obtain the release of funds to Edgecon. Further, the Progress Billing Statement prepared by Edgecon, dated August 17, 2011, stating that all flooring finishes had been completed for the project and approved by the cost consultant for the project, Altus Group, indicates Edgecon was paid by the Owners for the flooring portion of the project.

27 Further, counsel submitted even if funds were received, the Plaintiff has failed to show the corporate Defendant paid the trust funds to a person who did not supply labour or material to the project. No authority was cited in support.

28 I find no merit in counsel's submission. Section 8 (2) indicates that a breach of trust occurs if any part of the trust fund is converted or appropriated to the contractor's own use "or to any use inconsistent with the trust until all sub-contractors and other persons who supply service and materials to the improvement are paid all amounts related to the improvement owed to them by the contractor." In this instance, there is evidence that the general contractor, Edgecon, received the funds and the Plaintiff did not. In my view, a trier of fact could reasonably infer that the general contractor appropriated or converted those funds to a use "inconsistent with the trust."

29 The position of the individual Defendants is even where the court is satisfied a breach of trust occurred, they were not officers or directors and that they did not have effective control over the corporation. The only person with effective control over the activities of the corporation was Enzo Mizzi. All swore in their affidavits that they were not and never had been an officer, director or shareholder of any of the Edgecon companies. Further, they argue the Plaintiff has not demonstrated they knew or ought to have known of the breach of trust and acquiesced or assented to the breach of trust.

30 Phil Mizzi maintained in his affidavit, dated July 2, 2013, that he was only a sub-contractor who managed the construction at the Stratford project. He co-ordinated the sub-trades at the site and "reported to the owner's representatives, Ali and Enzo, with respect to the work completed and the quality of the work." He had no control over whether sub-trades were paid or how progress draws received by Edgecon with respect to the project would be disbursed. He denied ever telling Robert Robertson that he was the president or owner of Edgecon. He signed all the sub-trade contracts but did not sign the one with S&R or recall whether the other contracts referred to him as "president." Edgecon used standard contracts prepared by Ali Shaikh. He reported to Ali, who in turn reported to Enzo. Enzo was the president of Edgecon. Any cheques he signed, he did so at the direction of Enzo. He had no knowledge of the bank accounts or financial affairs of the corporation. On discovery, when asked if he received a wage from Edgecon, he replied he received "my expenses, but I'm still owed money."

31 Ali Shaikh's evidence was that as an employee of the corporate Defendant earning approximately \$40,000.00 annually, he managed administrative matters from the office related to its construction projects. He did not manage the affairs of the corporation or have power to issue or sign cheques to pay sub-trades for work completed. He prepared the contract for S&R, as he did with respect to the other sub-trades. It was Enzo who directed him to put Phil Mizzi as president. While he was the main contact with the sub-trades, it was Enzo who controlled all of the financial affairs of the corporation. Although he provided the settlement offer to S&R, it was on Enzo's direction.

32 Ms. Campisi asserted that she while she worked in the same Edgecon office, she managed the affairs of an unrelated business called ALS, a building maintenance company. However, she would provide some administrative support to Edgecon's personnel as needed, such as receiving incoming mail and making phone calls, but she received no remuneration from Edgecon. Ms. Campisi testified that she had signed a number of statutory declarations, including the one sworn August 19, 2011 at the request of her brother Enzo. He told her to go to the lawyer's office and sign it. She understood that it was required to obtain the release of funds because the sub-trades had been paid.

33 The corporate profile for 1809313 shows Enzo Mizzi as its director; for Edgecon Construction Inc. its president, secretary and treasurer; for Edgecon Contracting Corp. the administrator.

34 Let me deal first with the credibility of the individual Defendants. Ms. Campisi swore in the statutory declaration, as well as her affidavit on this motion that she was the office manager of the Edgecon group of companies. Yet, during her examination for discovery she denied holding that position. Further, Ms. Campisi swore in her affidavit that she was never an officer, director or shareholder of Edgecon Corporation Inc. Yet, in *Edgecon Construction Inc. v. All Saints Church Homes for Tomorrow Society* (1995), 18 C.L.R. (3d) 254 (Ont. Master) on a motion brought by an owner of land on which Edgecon had registered a lien under the *Construction Lien Act*, as cited in the decision, Ms. Campisi swore under oath in an

examination for discovery, and as stipulated by her counsel that:

- (1) Mary Campisi started Edgecon Construction Incorporated herself and is the President and has always been the sole director and the sole shareholder of the corporation;
- (2) Mary Campisi started Edgecon Construction Incorporated with her own monies. The money she put into the company was between \$350,000.00 and \$500,000.00;
- (3) While she has employee(s) from time to time, all final decisions concerning the corporation are made by her.

35 During cross examination in the examination for discovery on this matter Ms. Campisi, when confronted with the admissions and stipulations from the earlier proceeding that she was the president, owner and sole shareholder of Edgecon Construction Incorporated, (also referred to as Edgecon Construction Inc. in the decision), simply stated, "I don't remember."

36 I find on the glaring inconsistencies as between her affidavit as to her role in the operation of Edgecon and examination for discovery testimony that Ms. Campisi is not a credible deponent. She appears prepared to assume under oath any role required of her, president, office manager, and occasional unpaid office help.

37 Mr. Phil Mizzi was noted as being the President of Edgecon Contracting Corporation in the contract with S&R Flooring. According to Ali Shaikh, the document was prepared on the direction of Enzo Mizzi. Mr. Phil Mizzi denied that he held the position of president, or represented himself as such. However, Robert Robertson, a former principal of S&R Flooring, testified he dealt with Phil and Ali over the late and eventually non-payment of their account. In terms of who had the power of ensuring S&R was paid he testified, "Phil was the guy, and he was president/owner of the company. Ali was his right hand man, I was told." I accept Mr. Robertson's evidence that Phil Mizzi represented himself to him as the president of Edgecon. I note as well, in a concurrent Edgecon project that resulted in litigation under the *Construction Lien Act, 965046 Ontario Inc. v. Edgecon Contracting Corp.*, 2011 ONSC 4722 (Ont. S.C.J.), Edwards J. noted that the evidence before the court in that matter confirmed that the individual defendants, including Philip Mizzi, occupied positions within the corporate structure of the corporate defendants such that they would fall within the definition of s. 13(1) (b) of the *Act*. In that instance, Edwards J. had evidence that Philip Mizzi signed the contract related to a project in Cobourg, Ontario.

38 Notwithstanding the controlling role of Enzo Mizzi as an officer and director in the operation of Edgecon, with respect to Phil Mizzi I accept the following as evidence that he falls under s. 13(1) (b) of the *Construction Lien Act*:

- (a) in the S&R Flooring contract with Edgecon, Phil Mizzi is cited as president;
- (b) during the course of the project Phil Mizzi approved all of the extras requested of the Plaintiff to perform;
- (c) he told Robert Robertson of S&R Flooring that he was the president/owner;
- (d) he was the onsite project manager for the project and he selected and coordinated the sub-trades;
- (e) Phil Mizzi had signing authority with respect to the bank account of the corporate Defendant out of which the sub-trades were paid;
- (f) the in-house bookkeeper for Edgecon, Debra Fiore, in examination for discovery testified that Phil Mizzi would approve payment to the trades;
- (g) Phil Mizzi approved the percentage of work completed by the sub-trades;
- (h) Robert Robertson and Michael Steiner, the principals of S&R Flooring, both had contact with Phil Mizzi with respect to the project and requests for payment of invoices for work completed;
- (i) Phil Mizzi as a result of his direct involvement knew S&R Flooring had not been paid for work completed;

(j) In a concurrent project and resulting litigation, Phil Mizzi as a result of signing contracts with sub-trades in that instance, was found to have a position “within the corporate structure of the corporate defendants” (Edgecon) such that he fell within the definition of s. 13(1)(b) of the *Act*.

39 With respect to Mary Campisi, I find that she falls under the terms of s. 13(1) (b) as well, because she has previously testified that she owned Edgecon Construction Inc., that all final decisions concerning the corporation were made by her, and in this instance, she was involved in the operation having sworn a statutory declaration that all sub-trades had been paid, when S&R had not.

40 I find it incredible that the individual Defendants, all working in the confines of the same office, were not aware of sub-trades being unpaid. I do not accept Ms. Campisi’s evidence that she simply signed the statutory declaration on the direction of Enzo Mizzi and her assumption that the sub-trades had been paid. Ms Campisi is a stranger to the truth when it comes to swearing affidavits and testifying under oath. She has had a lengthy involvement in the construction business and Edgecon. I find that she knowingly and fraudulently swore a false statutory declaration thereby assenting to, or acquiescing in, conduct that she knew or reasonably ought to have known amounted to breach of trust by the corporation.

41 With respect to Ali Shaikh, I accept that he, as an employee of the corporate Defendant and project administrative manager, did not have effective control of the corporation. Even though he was Phil Mizzi’s “right hand man,” as referred to by Robert Robertson, he was a functionary acting on the direction of the Mizzi brothers. Although there is evidence he interacted directly with S&R Flooring in terms of its requests for payments and he proffered the settlement document to S&R Flooring February 24, 2012, I accept his evidence that it was at the direction of Enzo Mizzi.

42 In the conduct of this action, there appears to have been some sibling collusion to shield behind the corporate Defendant to deny the Plaintiff production of documentation. In addition to finding Phil Mizzi and Mary Campisi jointly liable with the corporate Defendants and Enzo Mizzi under s. 13(1) (b) and (3) for breach of trust, I make an order, as requested by the Plaintiff to assist in further steps, for the Defendants having failed to produce any documents relevant to the proceedings and answering undertakings:

- a. to produce all bank records, cheques, corporate records, invoices, job requests, statutory declarations and payroll stubs relevant to the project at issue; and
- b. all bank statements of Edgecon Contracting Corp., Edgecon Construction Inc. and 1809313 Ont. Ltd. relevant to the time period in issue; and
- c. all trial balances and general ledgers relating to the relevant project.

43 In the result, summary judgment is granted in favour of the Plaintiff.

44 Judgment is granted in accordance with the Statement of Claim as against the Defendants Edgecon Contracting Corp., Edgecon Construction Inc., 1809313 Ont. Ltd. and Enzo Mizzi, Phil Mizzi and Mary Campisi in the amount of \$135,982.44, together with pre and post judgment interest.

45 Costs are awarded to the Plaintiff on a substantial indemnity basis.

Motion granted.