

Lessons Learned: Why Proper Record Keeping and Contractual Compliance Matter in Construction Disputes

Key Takeaways

- **Prepare your documentation before taking legal action:** Contractors must have clear and organized records to support claims for unpaid invoices. Relying on inadequate field reports, timesheets, photographs, or uncredible oral testimony may undermine your case.
- **Meet your contractual obligations:** Failing to fulfill your contractual duties could result in your claim being dismissed and expose you to counterclaims brought by an owner.

The Ontario Superior Court of Justice case of *Nikom v. The Block Inc.*, serves as a caution to contractors; when faced with an owner that is denying payment, proceeding with a legal action without adequate preparation may backfire.¹

Background

In 2018, The Block Inc. (“**The Block**”), was constructing five six-storey residential apartment buildings on land located in Waterloo, Ontario, where it was the registered owner. The Block contracted with Nikom Construction Inc. (“**Nikom**”) to supply and install materials for two of the five buildings.

Nikom commenced work on the project in November 2018. During execution of the work, issues surfaced, and The Block failed to pay Nikom’s invoices for June, July and August 2019. In August 2019, Nikom stopped work on the project and commenced a lien action.

Nikom took the position that it performed its work in accordance with the contract and it was The Block who repudiated the contract by failing to pay Nikom’s invoices.

The Block resisted the claims and asserted that it was Nikom who repeatedly breached the contract, and abandoned the project, which caused a domino effect of delays, deficiencies, and resulted in significant costs incurred by The Block to complete the project. The Block counterclaimed.

The Court’s Decision

Nikom’s Failure to Prove the Value of the Services and Materials Supplied

Nikom relied on the oral testimony of its principal, internal field reports, and photographs to prove the value of the services and materials that it supplied. However, the court found this to be insufficient as the principal was rarely on site, the field reports/notes produced during the material time period were cryptic, sporadic, neglected to detail who was onsite and the work performed, and were prepared by a worker who did not give evidence at trial. Furthermore, the photographs failed to show the value of Nikom’s work and instead, supported The Block’s position that Nikom’s work was deficient.

¹ *Nikom v. The Block Inc.*, 2024 ONSC 4349.

To prove the value of services and materials provided, contractors invoices should include the relevant contemporaneous support proving supply to site and/or timesheets that reflect the work completed. Nikom failed to produce such invoices. Nikom's timesheets, however, were found to be insufficient because they did not support the work completed during the period that is the subject of the disputed invoices.

The court also noted that there was no evidence put forward by Nikom with respect to any independent valuation of the services and materials supplied.

Nikom Repudiated the Contract

The court was not persuaded by Nikom's assertion that The Block had repudiated the contract; instead, the court determined that Nikom was the party that was guilty of repudiation for several reasons, including:

1. Nikom demanded payments that were not yet due under the contract;
2. The Block's nonpayment of the first two invoices did not make it impossible for Nikom to complete its work;
3. Nikom received payment for several invoices and did not complete its work;
4. Nikom failed to have adequate manpower on site; and,
5. There were several deficiencies in Nikom's work that Nikom did not correct.

Conclusion

Nikom failed to prepare the documentary evidence required to prove the value of the services and materials supplied and meet their contractual obligations. As a result, they were disentitled to damages and ordered to pay The Block's damages associated with the costs to complete Nikom's scope of work and correct deficiencies.

Nikom v. The Block Inc. is a clear reminder to contractors about the importance of maintaining proper documentation and fulfilling all contractual obligations. Failing to provide sufficient evidence with respect to the value of work can result in a claim being dismissed.



[Daniel Iaboni](#)

Associate

T. 289-815-5504

diaboni@margiestrub.com