

Settlement: Attention to Details

Brian Sunohara
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The case of *Automodular Corporation v. General Motors of Canada Limited*, 2018 ONSC 1640 is a good example of the need for parties and their lawyers to pay close attention to the details of a settlement.

General Motors Canada was sued by an assembly company for breach of contract and unjust enrichment. Shortly prior to trial, a settlement agreement was reached wherein the defendant agreed to pay the plaintiff \$7 million, inclusive of interest and costs.

Approximately 10 days after the settlement agreement was reached, the plaintiff's lawyer indicated that HST needed to be added to the settlement amount. Due to the high quantum of the settlement, the HST was substantial: \$910,000.

The defendant refused to pay HST. The plaintiff brought a motion, asking the court to find that the HST payment was an implied term of the settlement.

The motion judge, Justice Dunphy, referred to a Court of Appeal decision, *Adamson v. Steed*, 2008 ONCA 375, wherein the Court stated that the standard for implying a term into a contract is very high. Courts will not re-write contracts to reflect changed circumstances or more equitable results.

The plaintiff's motion was dismissed. According to Justice Dunphy, the simple fact of the matter is that the plaintiff stipulated the sum it was prepared to accept and did not seek to allocate it in any way. It was implicitly an "all-in" negotiation.

Justice Dunphy noted that "all-in" settlements are common, everyday occurrences. He stated that these types of settlements offer a useful way for the parties to put aside disagreements about the value of particular issues in order to achieve a global settlement that each party is able to find acceptable for their own different reasons.

There was no reason for the defendant to go behind the plaintiff's offer to ask what matters the plaintiff had considered in the offer or how the plaintiff allocated it.

Justice Dunphy concluded by stating that finality and certainty of settlements require parties to consider all of the ramifications of an agreement before committing to it.