

CANADA / JUDGMENT

Bulkley Valley Restorations Ltd. v. Thurber

2017 BCSC 1127

COURT

Supreme Court of British Columbia

DECIDED

30 June 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 1127 Bulkley Valley Restorations Ltd. v. Thurber

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bulkley Valley Restorations Ltd. v. Thurber,

2017 BCSC 1127

Date: 20170630

Docket: S17223

Registry: Smithers

Between:

Bulkley Valley Restorations Ltd.

Plaintiff

And

Christopher Linden Thurber and Sherri Thurber

Defendants

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for Plaintiff:

M. Mazurek

Counsel for Defendant, Christopher Thurber:

I. Lawson

Counsel for the Defendant, Sherri Thurber:

W. DeWolf

Place and Date of Trial:

Smithers, B.C.

March 13 - 17, 2017

Place and Date of Judgment:

Smithers, B.C.

June 30, 2017

Introduction

- [1] The home of Mr. and Mrs. Thurber ("the defendants") located in a rural area approximately 22 kilometers south of Houston, B.C. burned to the ground in the late winter of 2015. Immediately thereafter Ms. Thurber and her insurance adjuster were in contact with the plaintiff to obtain services for the purpose of cleaning up the fire site, removing materials from "the Structure" (as defined below) into custom built sheds and disinfecting the Structure to allow for renovations to take place. The renovated structure was then to serve as a temporary home for the defendants.
- [2] When the defendants were first named in this action, they were in a family law conflict which was resolved before the trial. As a result, Mr. Lawson, who had been appearing for the defendant, Christopher Thurber, made a brief courtesy appearance to advise the Court that, as that conflict was resolved, the defendants no longer required separate representation. He was then excused from this action.
- [3] The parties in this action entered into an agreed statement of facts which reads as follows:
1. Sherri Thurber and Christopher Thurber (together the "Thurbers") are married. They live at 23471 Roses Road, approximately 30 km south of Houston, BC (the "Property").
 2. The Thurbers have owned the property since approximately September 2006.
 3. The Thurbers reside and operate a farm on the property. When the Thurbers purchased the property there was a main residence (the "Home"), and an older building that was used as a secondary residence prior to the Thurbers buying the property ("the Structure").
 4. Sherri Thurber converted the Structure into a workshop.
 5. On February 22, 2015 the Home was completely destroyed by fire.
 6. On February 22, 2015 Sherri Thurber posted on Facebook that the home of been destroyed.

7. On February 23, 2015 Darrell Hiebert of Bulkley Restorations Ltd. ("BRL") contacted Sherri Thurber via Facebook offering BRL's services immediately, informing her that BRL deals with insurance companies.
8. The home was insured by Aviva Insurance Company of Canada ["Aviva"].
9. Aviva had asked the Thurbers to look into the cost of renting an Atco trailer as a temporary residence while the Home was rebuilt.
10. Aviva agreed to provide the Thurber's with funds to renovate the Structure and the Thurbers could pay the contractors directly.
11. BRL had to deal with the Thurbers directly for requested work, invoicing and payment.
12. On February 24, 2015 Darrell Hiebert attended the Property.
13. Sherri Thurber had Christopher Thurber's authority to enter into contracts with BRL for work performed.
14. Sherri Thurber was responsible for organizing and hiring a contractor or contractors to renovate the Residence.
15. Sherri Thurber would discuss with Christopher Thurber any quotes, invoices and status of renovations of the Residence.
16. After February 22, 2015 Christopher Thurber was employed in the logging industry and the fishing industry, and as a result was often away from Houston, BC.
17. The Thurbers received insurance proceeds from Aviva to pay for the renovations to the Residence.
18. The Thurbers received insurance proceeds from Aviva for the contents of the Home that was destroyed by the fire.
19. BRL commenced work on approximately February 24, 2015.
20. On March 4, 2015 BRL informed Ms. Thurber by email that they would be finished all work by March 16, 2015.
21. March 27, 2015 was the last day BRL worked on the Property.
22. BRL provided Ms. Thurber with a written a quote on March 4, 2015.
23. BRL provided Ms. Thurber with Invoice #1481 on April 7, 2015.
24. BRL provided Ms. Thurber with Invoice #1483 on April 17, 2015.
25. BRL provided Ms. Thurber with Invoice #1485 on April 22, 2015.

- [4] This agreed statement of facts refers to "the Structure" and later refers to "the Residence". The term "Residence" was not defined in the admissions. For the purposes of these reasons the two terms will be treated as though they are synonymous.
- [5] The defendants expressed dissatisfaction about the work performed by BRL. They refused to pay BRL any sum whatsoever for labour and materials claimed by BRL for the renovation of the Structure and other work performed on the Thurber's property.
- [6] This is a case that had a relatively small quantum and cried out for settlement. Unfortunately, despite encouragement from this Court, no accommodation could be reached between the parties.

The Plaintiff's Pleadings

- [7] The plaintiff's case is based on three invoices tendered by BRL to the defendants as noted in paras. 23, 24, and 25 of the admissions above, as follows:
- (a) Invoice #1481 for renovation work on the Structure in the amount of \$27,583.99, including PST and GST, but without an allowance for overhead or profit.
 - (b) Invoice #1483 for labour and materials to create heat by 12 foot sheds and the cleaning of the Structure as well as moving contents of the Structure into the sheds for \$18,272.48, including PST and GST, with an allowance of \$1,564.63 for overhead.
 - (d) Invoice #1485 for interior doors, handles, trim, and labour to remove snow and ice in the amount of \$2,489.46, including PST and GST, with an allowance of \$210.51 for overhead.
- [8] The plaintiff's claim totals \$48,345.93. No sum has been paid on account thereof by the defendants. BRL also claims interest of 2.5% per month on unpaid invoices in accordance with the written terms on the invoices. In the alternative, the plaintiff seeks interest pursuant to the Court Order Interest Act.

The Defendants' Case

- [9] The defendants pleaded that the plaintiff provided a written estimate for conversion of the building into a residence in the amount of \$26,570.21. This document was at Tab1 of Exhibit 1. The defendants claimed that they accepted this estimate. The defendants also pleaded that they requested the plaintiff to build two 8 x 12 sheds on skids but there was no estimate or price provided by the plaintiff.
- [10] The defendants pleaded that BRL provided a verbal quote for the installation of flooring. The defendants also pleaded the cost of completing unfinished or substandard work was \$20,000 and the defendants also claimed damages for breach of contract. The defence advanced, as noted above, was repeated in the counterclaim.

- [11] The quotation referred to above describes only the work necessary to convert the structure into a "habitable" space. The quotation does not by the words contained in the quotation refer to all work actually performed by the plaintiff, which work included in the removal of snow and ice from the Structure at the outset, the construction of the temporary sheds, the removal of the material and equipment from the Structure to the temporary sheds, and the disinfecting of the Structure in preparation for further work. Further the defendants asked to the addition of interior doors that were billed separately. This work will be referred to later in these reasons.

Issues

- [12] The primary issue in this case is whether the parties entered into a contract and the definition of the scope of work included in the contract, if any. The parties, price, and work to be performed would be fundamental terms of such a contract. If there is found not to be a contract, which can be ascertained from the evidence on a balance of probabilities, then the plaintiff's claim, having performed work in and around the Structure is in "quantum meruit".
- [13] The scope of work where a contract is made is fixed by the contract. The amount of work performed on a quantum meruit basis is that assessed according to the evidence.
- [14] Likewise, the alleged deficiencies or incomplete work in either contract or quantum meruit must be reviewed according to the evidence to determine whether the deficiency relates to work performed under the contract or to work which the plaintiff undertook to perform on a quantum meruit basis.
- [15] In the case at bar, the scope of work is a critical factor as it is apparent that longevity of the Structure, temporary or permanent, as a home, was a consideration of the parties from the outset of dealings between the plaintiff and the defendants' insurer, Aviva, and later between the plaintiff and the defendants. It was Ms. Thurber's evidence that the renovation was to be completed on an urgent basis, that is, within the month of March 2015, and in anticipation of the construction of new home in place of the home which had burned down. Further, her evidence was that the use of the Structure as a home was temporary, from a year to eighteen months depending on the length of time necessary to build a new residence for the Thurburs.
- [16] As the parties did not reduce their agreement to writing and they are in disagreement about at least one essential element of a contract, the price, the court will treat the claim of the plaintiff as a claim in quantum meruit.

Expert Reports

- [17] Both parties filed expert reports but those filed by the defendants raise significant concerns:
- [18] The Supreme Court Civil Rules, BC Reg. 168/2009 provide in Rule 11-6 as follows:

Rule 11-6 -- Expert Reports

Requirements for report

- (1) An expert's report that is to be tendered as evidence at the trial must be signed by the expert, must include the certification required under Rule 11-2(2) and must set out the following:
 - (a) the expert's name, address and area of expertise;
 - (b) the expert's qualifications and employment and educational experience in his or her area of expertise;
 - (c) the instructions provided to the expert in relation to the proceeding;
 - (d) the nature of the opinion being sought and the issues in the proceeding to which the opinion relates;
 - (e) the expert's opinion respecting those issues;
 - (f) the expert's reasons for his or her opinion, including
 - (i) a description of the factual assumptions on which the opinion is based,
 - (ii) a description of any research conducted by the expert that led him or her to form the opinion, and
 - (iii) a list of every document, if any, relied on by the expert in forming the opinion.
- [19] Rule 11-6 stands for the principle that it is essential for the trier of fact to know the basis of an expert opinion so that the opinion can be evaluated (*Mazur v. Lucas*, 2010 BCCA 473 at para. 42). Compliance with this rule is not simply a matter of form (*Jones v. Ma*, 2010 BCSC 867 at para. 11). The expert's opinion is usually based on assumed facts and its value depends on the extent to which those facts are proved through other evidence (*Keefer Laundry Ltd. v. Pellerin Milnor Corporation*, 2007 BCSC 899 at para. 5).
- [20] Expert opinion evidence should not come to conclusions that are the sole purview of the trier of fact (*Peace River Greenhouses Ltd. v. Taylor (District)*, 2016 BCSC 1448 at para. 61). Experts take information accumulated from their own work and experience, combine it with evidence offered by other witnesses, and present an opinion as to a factual inference that should be drawn from that material. The trier of fact must then decide whether to accept or reject the expert's opinion as to the appropriate factual inference. Expert evidence has the real potential to swallow whole the fact-finding function of the court (*R. v. Abbey*, 2009 ONCA 624 at para. 71).

Expert Opinion Stephan Young - Net-Zero Structures Limited

- [21] A report authored by Stephan Young, acting through a company named Net-Zero Structures Limited, was presented by the defendants as an expert report without objection as to expert qualifications by the plaintiff's counsel. This report demonstrates a lack of understanding of

the respective roles of the expert and the Court. In particular, the report starts off with the submission that Mr. Young is "respected" and "well qualified to render an expert opinion on matters relating to the quality of workmanship and/or compliance with the requirements of the British Columbia Building Code".

- [22] These are submissions which are wholly inappropriate as noted above in the Rules (See Rules (11-6(1) (a) and (b)). The expert report should fully explain education, formal qualifications, and experience of the expert; it is for the Court, in its discretion, to decide if the expert, based on education and experience, is qualified to provide an expert opinion in the field of expertise.
- [23] An expert report is required to state the facts or assumptions that the expert relies upon for the purpose of forming an opinion. Under the heading, "Research Conducted", Mr. Young stated that he conducted an interview with the defendant, Sherri Thurber, "primarily to ascertain the scope of work that the plaintiff had undertaken". Mr. Young fails to indicate anything that Ms. Thurber said to him about the scope of work that the plaintiff had undertaken. In effect, Mr. Young fails to state, the factual information he heard from Ms. Thurber. Mr. Young does not define or describe "the scope of work" which was undertaken by the plaintiff.
- [24] The report also contains comments concerning the electrical code of British Columbia but nowhere in the statement of expertise is there any reference to expertise in relation to the electrical code. I cannot find that Mr. Young is an expert qualified to opine on electrical matters or on the applicable code.
- [25] An example of a difficulty raised by this report is that during the evidence given at trial the main electrical panel in the Structure was installed by a subcontractor for the plaintiff. Subsequently, after the work by the plaintiff and its subcontractors was finished, Ms. Thurber built or had someone build a closet which enclosed the electrical panel box. Mr. Young states "A new electrical panel in a closet, contrary to the provisions of the Electrical Code." (page 5, para. 9.4). Then Mr. Young opined that "The BC Electrical Code prohibits the installation of an electrical panel in a closet". Again, there is no suggestion in the qualifications of Mr. Young that he has any qualification or expertise in the field of electricity, electrical installation, or the BC Electrical Code.
- [26] Mr. Young, then, on page 6 of 10 of his report, under the title "Workmanship" states "the workmanship displayed with respect to the upgrades to the electrical system was poor, inconsistent with normal industry standards and in violation of various requirements of the BC Electrical Code". The only electrical workmanship described by Mr. Young involved the installation of the electrical panel "in a closet". As noted above, it was Ms. Thurber or someone acting on her instructions who enclosed the electrical panel in a closet. Mr. Young finds this enclosure of the electrical panel to be "poor" practice, contrary to normal industry standards, but that practice was not performed by the plaintiff or its subcontractor.

- [27] Mr. Young also stated on page 6 of 10 that "There is no evidence that the required electrical permits were obtained from the BC Safety Authority for any electrical work undertaken by Bulkley Restorations". The report does not contain any reference to facts supportive of this conclusion. If Mr. Young conducted a search of the records of the BC Safety Authority, he has not included that information in his report. Further, the evidence at trial was that the electrical panel was installed by a named subcontractor. A search of records from the BC Safety Authority might not provide any information in the name of BRL because the plaintiff hired another electrical contractor to work on the Structure.
- [28] Mr. Young noted at page 3 of 10 in para. 9 that he could not detect tar paper or any approved membrane under any part of the metal roofing, and this was a deficiency. He also noted a number of holes in the metal roofing with 8 holes in a 5 foot by 5 foot area "that light could be observed through the roofing materials. This is contributing to the roof leaking". The evidence before this Court was that there was no tar paper installed under the metal roofing originally installed on the Structure and that BRL was instructed by Ms. Thurber not to install tar paper under the metal roofing installed by BRL. Mr. Young cited Section 9.27.2.3 as authority for this proposition but agreed in cross-examination that the cited section refers to building requirements for walls and that section does not apply to roofs.
- [29] Mr. Hiebert noted in his evidence that he observed holes in the previously existing metal roof and applied tar to prevent water ingress.
- [30] A more fundamental flaw in the report of Mr. Young was that he initially states that he was asked to review the work that had been completed by the plaintiff. In cross-examination at trial, Mr. Young repeatedly said he was not aware of the scope of work conducted by the plaintiff. Mr. Young then provides an approximate estimate of the cost of correcting what he says are deficiencies with a global figure of "\$50,000 Canadian or possibly more". No breakdown of that approximate amount is provided, making an analysis of that figure to determine its reasonableness on the basis of material and labour costs impossible. If there was a reasoned opinion which gave rise to the \$50,000 figure, the reasoning is not contained in the report placed before the Court. As a result of the lack of supporting evidence or assumptions made by Mr. Young, the \$50,000 figure is of no use to this Court or to the defendants. The defendants relied upon this figure as a basis for a claim for general damages. Given that the figure contained in Mr. Young's report has no evidentiary basis in this case, it is of no assistance to this Court in determining a claim for general damages and provides no support for the defendant's submissions whatsoever.
- [31] Finally, when Mr. Young was presented with the actual invoices for materials and costs for labour used by BRL in performing the work it did, he refused in his report to conduct any analysis for those actual expenditures (page 10 of 10, para. 11). The lack of any opinion does not provide any assistance to the Court whatsoever.
- [32] While Mr. Young may have considerable experience in the building trades, this report has minimal value as evidence and will be given very little weight in the decision of this Court.

Expert Opinion of Stephen Davis

- [33] The second report filed by the defendants was produced by Stephen Davis. Mr. Davis has no formal training but has extensive experience as a home inspector. He received a two year diploma in cabinet making and worked for twelve years, as a carpenter and contractor, building houses. He has received "on the job" training from "Red Seal" carpenters but does not hold that qualification himself. Mr. Davis trained as a certified Eco-Energy Advisor and has participated in 800 home inspections on eco-energy retrofit renovations. He also took home inspection training in 2010.
- [34] The instructions given to Mr. Davis "from the homeowner" were to identify problems with the Structure "as renovations were undertaken by BRL that were not acceptable to the homeowner." Mr. Davis described the scope of investigation as follows: "The homeowner wanted to document the quality and perceived deficiencies of some renovation work that had been done to the home." I will treat the reference to "the home" as a reference to "the Structure".
- [35] Mr. Davis was not given any documents to assist with his inspection. His inspection took place on September 14, 2016. The work performed and materials supplied by the plaintiff occurred between February 24, 2015 to March 27, 2015. Based on the content of the report of Mr. Davis, it is a fair assumption that Mr. Davis was not given access to and did not review the documents contained in Exhibit 1, a collection of documents which included a quotation, invoices, time sheets for employees of the plaintiff, and summaries presented by the plaintiff. Some of the comments made by Mr. Davis would have been better informed by reading these documents.
- [36] Mr. Davis stated he was not qualified to provide any comment or opinion about the work done by the plaintiff being, or not being, compliant with the Building Code.
- [37] Mr. Davis opined that exterior doors and windows were installed without proper sealants or flashings. This opinion has been in part accepted by the plaintiff.
- [38] The difficulty which is not addressed by this report is that (1) the plaintiff was never engaged to provide exterior finishings such as exterior membrane, cladding, siding, flashing, painting, staining and sealing. These were not within any scope of work that the plaintiff was requested to perform by the defendants or which the plaintiff agreed to undertake on the Structure; and (2) the work performed was on an urgent basis on a temporary structure.
- [39] Mr. Davis did not provide any estimated costs to remedy the deficiencies which he described in his report. He made no comment on the value of work or materials billed by the plaintiff to the defendants. This report, with the exception noted above, is of little assistance in deciding this case.

Expert witness for the Plaintiff

- [40] The plaintiff tendered the report of John Van Veen, dated November 30, 2016. Mr. Van Veen's education and experience is laid out in para. 2.1 of his report which experience includes three years at St. Clair College of Arts and Technology to obtain an Architectural Technologist Diploma followed by decades of experience in architectural and engineering offices providing building design, construction supervision, supervising the calling and acceptance of tenders on behalf of owners and providing certificates of work performed or completed for payments to contractors from owners. Mr. Van Veen has been for 20 years a member of the Applied Science Technologists and Technicians of B.C. as a registered technician and has acted as an interim building inspector for the Village of Hazelton, Town of Smithers and District of Houston. He is familiar with applying the B.C. Building Code to residential and commercial buildings.
- [41] In preparation of his report, Mr. Van Veen reviewed the quotation prepared by the plaintiff dated March 1, 2015, and the plaintiff's invoices numbered 1481, 1483, and 1485. He also reviewed the reports of Mr. Young and Mr. Davis.
- [42] Mr. Van Veen opined, having reviewed the quote together with the other invoices rendered by BRL, that the supply and installation of sheeting membrane or exterior cladding/siding was not included in the work to be performed by BRL. He also opined that because of the lack of exterior membrane or cladding, sill flashing, jam and head flashings which ought to have been applied around windows were not used and that lack was a deficiency.

The case for the Plaintiff

- [43] The plaintiff and the defendants came together after the defendants' home burned down. The defendants operated a ranch and needed to be present there, particularly Ms. Thurber, to look after domestic animals on the ranch.
- [44] The plaintiff agreed to commence work immediately and did so within two or three days of the house fire. The initial work required included removal of snow and ice from the Structure, building of two sheds on skids, clearing out the contents from the Structure into the two sheds and disinfecting the interior of the structure. This work began around the 24th of February and was complete on or about the 5th of March, 2016. (See emails in Exhibit 2, Tab 1, pages 1 to 12)
- [45] Originally, the plaintiff's general manager, Darry Hiebert, dealt with a representative of Aviva, the defendant's insurer, Mr. D. Dorey, a major loss adjuster, who made inquiries of Mr. Hiebert. Mr. Dorey requested that the plaintiff perform clean-up work. Aviva also asked the plaintiff to obtain a quotation for a temporary residence for the defendants with composting toilet and off-grid solar power system. The first proposal was for a two bedroom ATCO trailer. The road leading to the defendants' ranch is steep, sharply winding, and engulfed by a heavy snow load. These conditions caused the idea of moving the trailer to the defendants' property was rejected. Initially, the use of one or more shipping containers was

considered for storage of the contents of the structure but that idea was also rejected before the temporary shelters were decided upon by the defendants

- [46] The interior of the Structure was damp or wet apparently from water ingress and marked heavily by rodent feces. A variety of goods and tools were stored in the Structure. The contents of the Structure had to be moved to a temporary location. Then, the interior cleaned of animal feces and disinfected to allow an assessment of the work necessary to make the Structure habitable as a temporary residence.
- [47] The two temporary sheds were created by the plaintiff and stored goods, equipment, and materials moved from the Structure. The retained ice and snow were also removed from the Structure by the plaintiff's staff. The plaintiff's staff then cleaned and disinfected the Structure so that further work could be done to create a temporary living space in the Structure.
- [48] The only evidence before this Court is that the state of the Structure was as described by Mr. Hiebert and that the work described in the foregoing paragraphs was performed by the plaintiff's staff. The materials used to create the temporary sheds were provided by the plaintiff and the equipment and materials taken from the Structure were stored in the temporary sheds. Because the initial plan by Aviva was to use one or more shipping containers to store the contents of Structure during renovations, I find that the temporary sheds were also not part of the initial conversations between Ms. Thurber and Mr. Hiebert.
- [49] Ms. Thurber told the Court that she had agreed to have BRL make the Structure habitable as a temporary structure as soon as possible. After work had commenced on the Structure, Ms. Thurber also testified that she requested the plaintiff to construct two 8 foot by 12 foot sheds on skids to store materials and equipment removed from the Structure. Ms. Thurber had a complaint about some difficulty in moving the sheds at some unspecified later date but it was not clear if that was a problem with construction about sheds or a problem caused by the method used to move the sheds. Neither of the expert opinion writers tendered by the defendants commented on the temporary sheds.
- [50] There is no doubt that the construction of the temporary sheds and the clean-up of the Structure, including the removal of material and equipment from the Structure to the sheds, took place by dint of the work of employees of the plaintiff.
- [51] The plaintiff is therefore entitled, on a quantum meruit basis to payment for that labour and materials used in the process of the removal of snow and ice from the Structure, the construction of the temporary sheds, the removal of the material and equipment from the Structure to the temporary sheds, and the disinfecting of the Structure in preparation for further work ("the preliminary work"). There was no evidence called by the defendants which would suggest that the preliminary work was not performed as claimed by the plaintiff.

Case for the Defence

- [52] The case for the defence can be divided into two parts: First, Ms. Thurber testified that the plaintiff, through Mr. Hiebert, agreed to do all of the work required from cleaning the site and the Structure to prepare for renovation, including the building of the two movable storage sheds as well as the renovation of the Structure all for a quoted price of \$25,000 (the "verbal quote"). She testified that quote was given to her on the very first meeting with Mr. Hiebert. Mr. Hiebert denied he gave any such quote on that date due to, among other things, the fact that the Structure was crowded with stored materials and marked with rodent feces to the extent it could not be properly inspected. Mr. Hiebert's evidence was not shaken on cross-examination.
- [53] Given this conflict, a review of surrounding circumstances is necessary. At the outset the insurer was providing instructions to BRL and a trailer with composting toiler and solar power system was being considered. BRL was asked to provide quotations and would likely have anticipated a role as contractor in preparing a site for the trailer and related equipment. Ms. Thurber and Mr. Hiebert agreed that the Quote provided by BRL was dated March 4, 2015 and that was provided to Aviva, as well as the defendants. Further during the evidence given in chief by Ms. Thurber, she confirmed that a number of items including light fixtures, inclusion of an additional sliding door and window, flooring, a new wood stove and base were not discussed at the outset with Mr. Hiebert. Therefore these items could not have been included in any original estimate as alleged by the defendants given by BRL.
- [54] Given the circumstances of the work actually performed by the plaintiff and its employees and the timing thereof, I cannot accept the submission that the plaintiff agreed to do all of the work in this case for a global sum of \$25,000. I reject the evidence of Ms. Thurber in that regard. I accept the evidence given by Mr. Hiebert as it is rational and reasonable based on the work actually performed together with the materials provided.
- [55] In final submissions, counsel for the defendants referred to a list of deficiencies located on page 5 of the report of Mr. Van Veen. These were deficiencies, according to Mr. Van Veen, were identified in the two expert reports filed by the defendants. Those reports are referred to above. The difficulty with reliance upon this list is that it included alleged deficiencies that were not agreed to by the parties to be within the work performed by BRL.
- [56] In general terms BRL did not agree with the defendants to provide any exterior finishing's during the renovation process or do any work on the foundations or footings of the Structure. While the defendants' experts referred to the lack of exterior finishing and inadequate weatherproofing as deficiencies, no provision for exterior sheathing, membrane, cladding or siding was included in the Quote or addressed as extra work. Mr. Van Veen opined that this work was not included in the scope of work based on his review of Quote.

- [57] The defendants' experts agreed that they did not know the scope of work undertaken by BRL but that if BRL had not undertaken to do the work BRL would not be responsible for the lack of exterior finishing.
- [58] One of the items noted as a deficiency required the removal and replacement of the metal roofing on the Structure to allow for installation of the #5 felt underlayment". This was likewise not a responsibility of BRL because no underlayment had been installed in the original installation of the metal roof which was leaking well before of BRL commenced any work on the additional portion of the Structure.
- [59] The items in the list of deficiencies referred to "remove and install windows and doors with perimeter flashing and parameter spray foam insulation" for \$1,200; "cut off exposed ends of roof strapping" for \$150; and "cut back existing vinyl siding to allow proper seal at junction" for \$500, for a total of \$1,850. This amount was agreed by the plaintiff as deficiencies.
- [60] With respect to the list of deficiencies referred to above, I allow a set-off against the claim of the plaintiff in favour of the defendants in the amount of \$1,850. The balance of the claim for deficiencies made by the defendants from that list is rejected as unproven.
- [61] Ms. Thurber also gave evidence about alleged deficiencies such as a leaking roof which she hired a group of persons to work on in October 2015. She testified that she spent a couple of days weeding out good workers from others and that she paid good workers \$20 per hour and one younger employee was paid \$10 per hour. The difficulty with this evidence was three-fold: 1) the Court was never told what the experience or qualifications of the "good workers" that Ms. Thurber hired; 2) Ms. Thurber did not tell the Court what caused the roof to leak and how it was repaired; 3) Ms. Thurber did not relate the costs of any particular deficiency related repair to work performed by BRL. The evidence of Ms. Thurber was that she hired a bunch of people to work on what she described as deficiencies but there is no linkage of the work alleged to have been performed by the people hired and any proven expense. In short compass, the defendants have failed to prove on a balance of probabilities that any particular alleged deficiency was required to be repaired. Some evidence called by the defendants such as Mr. Young's observations of holes in the metal roofing are contrary to the positions advanced by the defendants. It is not appropriate for the Court to speculate about what work the hired workers did and why they did that work.
- [62] As an example, Mr. Van Veen described certain deficiencies for work actually undertaken by BRL and the cost to remedy the same. These deficiencies included removal and reinstallation of windows and doors with required flashing and perimeter spray foam insulation at a cost of \$1,200, cutting off exposed ends of roof strapping at a cost of \$150 and cut back existing vinyl siding to allow proper seal at junction at a cost of \$500; for a total of \$1,850. These deficiencies and the respective costs to remedy were accepted by the plaintiff and the Court was invited to deduct the values provided by Mr. Van Veen from the plaintiff's claim. But what was not made clear by the defendants was whether those same deficiencies were corrected by the workers hired by Ms. Thurber. It would not only be speculation but

also double counting if the deficiencies accepted by the plaintiff were deducted from the plaintiff's claim and then the value of the same deficiencies were included in damages claimed by the defendants.

- [63] There was no agreement between the parties concerning interest payable on unpaid accounts.

Conclusion

- [64] As described above, the plaintiff's claim was originally pleaded in the amount of \$48,345.93. As aforesaid, there will be deducted from that sum the amount of \$1,850 for the cost of repairing deficiencies. The defendants have failed to prove any deficiencies beyond those referred to above or any claim for general damages. As a result the plaintiff is entitled to judgment against the defendants for \$46,495.93. The counterclaim of the defendants is dismissed.
- [65] The plaintiff is also awarded interest pursuant to the Court Order Interest Act on the full amount of the judgment from April 23, 2015, being the day following the date of the final invoice rendered by the plaintiff to the defendants until the date of this judgment. The rate of pre-judgment interest is set at two per cent below the prime lending rate. The usual practice is to apply the rates fixed by the Registrar, from time to time, from April 23, 2015 to the date of these reasons and I so order.
- [66] The costs of the trial will follow the event and are payable by the defendants to the plaintiff forthwith after assessment pursuant to Appendix B, Scale B.

"Ball J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/11/2017BCSC1127.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bulkley-valley-restorations-ltd-v-thurber-2017>

Prepared on 29 October 2026 · Esheria