

CANADA / JUDGMENT

Nguyen v. Dang

2018 BCSC 382

COURT

Supreme Court of British Columbia

DECIDED

12 March 2018

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2018 BCSC 382 Nguyen v. Dang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nguyen v. Dang,

2018 BCSC 382

Date: 20180312

Docket: S143512

Registry: Vancouver

Between:

Hong Van Nguyen, Mo Thi Nguyen, Huy Quoc Nguyen, and Hai Van Nguyen

Plaintiffs

And:

Niem Dang, Quang Dang and Trusteam Construction Ltd.

Defendants

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

Counsel for the Plaintiffs:

G. Allen

Counsel for the Respondents:

T.H. Pettit

Place and Dates of Trial:

Vancouver, B.C.

September 25-26, 2017

Place and Date of Judgment:

Vancouver, B.C.

March 12, 2018

I. INTRODUCTION

- [1] The plaintiffs seek damages for breach of contract arising from a construction dispute with the defendants. The plaintiffs are the joint owners of a property located at 3322 Worthington Drive in Vancouver, B.C. ("Property"). In October 2011, the plaintiffs entered into a construction contract with the defendants as the builders ("Contract"). The trial proceeded unopposed on September 25, 2017.
- [2] The defendants' former counsel, Mr. Pettit, ceased to act for the defendants on September 19, 2017. The defendants did not retain new counsel and did not attend the trial of this matter; accordingly the defendants did not defend the plaintiffs' action and did not proceed with the advancement of their counterclaim (which is outlined below). Mr. Pettit confirmed that the defendants were aware of the trial date; he withdrew as counsel of record, with leave of the Court.
- [3] The plaintiffs entered into the Contract with the defendants to: (1) demolish an existing house on the Property; (2) build a new house and a laneway house on the Property; and (3) complete fencing and landscaping on the Property. The plaintiffs assert that the defendants did not finish the construction project as agreed, did not meet the timeline for completing the project as required under the Contract, and took no steps to terminate the Contract between the parties. The plaintiffs seek to be compensated for rent they were required to pay at three different locations during the delayed construction timeline. Further, the plaintiffs seek compensation for the cost of a new contractor they retained to finish the project after the defendants abandoned the job site. The plaintiffs also allege they suffered a variety of other damages arising out of the defendants' breach of the Contract. They seek: (1) a declaration that the defendants breached the Contract; (2) an order that the defendants pay damages to them for breach of contract; and (3) costs of this action.
- [4] In their pleadings, the defendants assert that the price stipulated in the Contract was not the complete price, as it did not account for applicable taxes. The defendants filed a counterclaim, claiming the plaintiffs breached the Contract by failing to make payments to the defendants as required under the Contract and, alternatively, by failing to pay the defendants' reasonable construction costs "based on an estimate under the Contract and altered subsequently by additions and improvements." As the defendants did not pursue

their counterclaim, it was dismissed by this Court at trial.

II. Facts

[5] The evidence before me establishes the following facts. The parties executed the Contract in October 2011. The Contract is between the plaintiffs as homeowners and the defendants as builders. Each of the plaintiffs is an owner of the Property and on title. The parties agreed that the defendants would demolish the existing house on the Property and build a new home as well as a laneway home. The written Contract was drafted by the defendants and expressly stipulated that the price for the project would be "\$137 per square foot with the total area of 4600 square feet home with the laneway house". The Contract was silent as to whether the total Contract price included tax. The plaintiffs testified that the parties agreed that the total Contract price was \$630,200; that is, \$137 per square foot multiplied by 4,600 square feet.

[6] In their undefended pleadings, the defendants assert, among other things, at paragraph 2(d) that:

The Contract in some cases addressed specific issues such as materials, brands and quantities and, at times, addressed maximum prices for certain specific items, generally on a tax excluded basis, but at times, on a tax inclusive basis;

[7] The Contract expressly stipulated that the Contract price would be payable in four draws as follows:

Initial Deposit:

25%

Roof Installed:

25%

Before Drywall:

25%

Ready to paint and final occupancy:

25%

[8] The Contract also provided for a holdback of 10% which was payable 30 days after the issuance of an occupancy permit. The parties agreed that this 10% holdback reduced the amount payable on the fourth and final installment payment from 25% down to 15%.

[9] Both parties had termination rights under the Contract which provided as follows:

TERMINATION

If the company fails to perform the work in accordance with the terms of this agreement, the property owner will have the right to terminate the agreement if the company does not remedy the default within 30 days.

If the property owner fails to pay such sums of money that become due the company will have the right to terminate the agreement if the property owner does not remedy within 30 days.

- [10] The plaintiffs assert that while the defendants had a right to terminate on 30 days' notice if payments were not made in accordance with the Contract, this right was never exercised. No evidence to the contrary was led.
- [11] The Contract expressly required the defendants to complete construction within 11 months of demolition. In the event that construction was not completed within this timeframe, other than for reasons out of the defendants' control, the defendants agreed to be "penalized by the owner's monthly rent until the unconditional occupancy permit is obtained for the new house".
- [12] The Contract also expressly required that prior to the completion date, the defendants were to conduct a walkthrough of the house to fix any deficiencies:

DEFICIENCIES WALK-THROUGH

____ day prior the "completion Date", the homeowner will be accompanied by the representative of the Builder walking through the house for the Builder walking through the house for deficiencies and will prepare a list of deficiencies discovered by the homeowner. The Builder, at his expense, will complete or repair the items specified on the deficiency list, which is to agree upon, by homeowner, the quality of workmanship and materials used will be equal to or better than that of the surrounding construction. If the builder fails to repair the deficiencies prior to the "Completion Date", the homeowner will withhold in his possessions an amount equivalent of the cost or repairing those deficiencies form the Cost of Construction, until all the deficiencies in the deficiencies list are completed by the Builder. If the homeowner satisfy with the completion/repairing of the deficiencies, there will not be any holdback for deficiencies upon "Completion Date".

- [13] The Contract also provided as follows:

VARIATION TO THE AGREEMENT

Any variations including, but not limited to, modifications, omissions or additions that are made to this agreement must be agreed to in writing by both parties detailing the price and specification such variations.

The parties must make a good faith attempt to agree on all necessary particulars. Such agreements are to be evidenced in writing, signed by the parties and added to this contract.

[14] Other aspects of the Contract relied upon by the plaintiffs include the following provisions:

12. KITCHEN

() Dishwasher machine will be supplied b the builders for the main kitchen and the value is between \$400-\$600 CAD.

18. LANDSCAPPING [SIC] AND FENCING

() Builders to install concrete sidewalk and the drive way for the main house and laneway house.

() Builder to install concrete for fence footing and concrete block fill with ready-mix.

() Vancouver City-by-law allows only 60% of the site area to be covered by concrete. The area including the house itself, garage, backyard open.

() Metal gate at the back with automatic control, Builder will be responsible for 50%.

Parking space and walkway (mostly concrete walkway on one side only if open parking space is placed with concrete). If house owner decides to have additional (more than 60% coverage permitted by the City), additional cost \$___) **** will apply and it can only be done after and it can only be done after Occupancy permit is issued.

COMPLETION DATE

It is a fundamental term of this Contract that the Builders must have finished all work, and delivered to the Home Owner be "Completion Date" and unconditional Municipality/City occupancy Certificate or other evidence satisfactory to the Home Owner that construction is completed.

The completion Date agreed to be 11 months after demolition of the old house/excavation of the subject site.

PENALTY CLAUSE

Except under those circumstances cause beyond the control of the Builder, for example, City workers strike, earthquake, fire, severe change in weather factors of similar nature, the builder agrees to be penalized by the owner's monthly rent until the unconditional occupancy permit is obtained for the new house.

BUILDER'S LIEN HOLD-BACK

The homeowner will hold back from the cost of construction as a Builder's Lien Holdback an amount equal to 10% of the value of the improvements for 30 days after date of issuance of unconditional Municipality/City Occupancy Permit. The homeowner will place the Holdback in an interest bearing trust account with the conveyance with interest accruing to the benefit of the Builders.

- [15] Substantial payments were made by the plaintiffs to the defendants under the Contract. Mr. Hong Van Nguyen testified that the plaintiffs paid \$568,600 to the defendants and that this amount represents 90% of the price stipulated in the Contract. He also confirmed that under the Contract, the plaintiffs were entitled to hold back the remaining 10% until 30 days after issuance of an occupancy permit.
- [16] The defendants admitted in their pleadings and on discovery that they received \$568,000 from the plaintiffs for their construction work; as such, there is only a \$600 difference in the amounts the parties allege was paid under the Contract. Further, at their examinations for discovery, the individual defendants, Mr. Niem Dang and Mr. Quang Dang ("Dang Parties") admitted as follows.
- [1] they were each parties to the Contract in their respective personal capacities;
 - [2] if the construction project was not completed within 11 months from the demolition date, it was understood the Nguyen family would have to rent other premises and the Dang Parties agreed to pay the costs of rental;
 - [3] demolition took place in April 2012, and accordingly completion was to take place under the terms of the Contract by March 2013;
 - [4] the Dang Parties were aware that the Nguyen family was a large family which included adult children such that if the construction project was not completed in time the Dang Parties would be responsible for paying the costs of rental accommodation for the Nguyen family;
 - [5] the construction project was not completed by March 2013 and the Dang Parties never completed a walkthrough to address deficiencies;
 - [6] the Dang Parties were aware that the Nguyen family was entitled to hold back 10% of the contract price until 30 days after an occupancy permit was issued;
 - [7] the Nguyen family paid \$568,000 to the Dang Parties by May 2013;
 - [8] the fourth draw under the Contract was not payable until the construction project had reached the stage of "ready to paint and final occupancy", which was never reached as between the parties.
 - [9] the contractual terms relating to the payment of draws were never altered by the parties;
 - [10] starting in May 2013, the amount of work being done by the Dang Parties on the construction project decreased, and no further work was done on the project by the Dang Parties after January 30, 2014;
 - [11] Niem Dang was instructed by Quang Dang to stop working on the construction project because of "problems, conflicts between [Quang Dang] and [Mr. Hong Van Nguyen's] son" which arose during a meeting at Starbucks; after the Starbucks meeting no further work was done on the construction project by the Dang Parties;

- [12] the Dang Parties did not provide any notice to the Nguyen family that they were terminating the Contract;
- [13] the Dang Parties never completed the construction project; and
- [14] as of June 2014, the laneway house was approximately 40-45% complete.
- [17] Mr. Hong Van Nguyen and Mr. Huy Quoc Nguyen testified that tax was discussed by the parties prior to the signing of the Contract, and that the defendants expressly agreed that the price stipulated in the Contract was inclusive of tax. In addition, in March 2014, the defendants acknowledged in conversations with the plaintiffs that in fact the plaintiffs had paid the full 90% of the Contract price. Although the defendants take the position in their pleadings that they abandoned the construction project because they were not paid what they were entitled to be paid under the Contract, Mr. Niem Dang also acknowledged on discovery that the defendants abandoned the job site due to a personality conflict with the plaintiffs.
- [18] There is no evidence before me that the defendants actually remitted any tax to the Canada Revenue Agency. Counsel for the plaintiffs submits that when this question was asked of the defendants on discovery, the outstanding discovery request for documents evidencing the remittance of tax (made in August 2016) was objected to, and did not receive a response.
- [19] Demolition of the existing house on the Property took place in April 2012. The defendants were therefore contractually obligated to complete the construction project by March 2013. They did not do so. The plaintiffs lived in rental accommodations from March 2013 to March 2014 as a result of the defendants' failure to complete the construction project on time.
- [20] The plaintiffs led evidence regarding the cost of their rental accommodations as follows:
- Mr. Hong Van Nguyen - \$1,000- \$1,200 per month;
- Mr. Hai Van Nguyen and family - \$1,000 per month; and
- Mr. Huy Quoc Nguyen - \$700 per month.
- [21] The evidence establishes that during the course of construction, the defendants failed to pay a concrete supplier, resulting in a builder's lien being filed against the Property. The plaintiff, Mr. Huy Quoc Nguyen, testified that the plaintiffs paid "four or five thousand dollars" to discharge this builder's lien and then sought reimbursement from the defendants. The plaintiffs were never reimbursed for the amount they paid to discharge the lien.
- [22] In addition, Mr. Hong Van Nguyen testified that the defendants were required under the Contract to purchase a dishwasher for the home but did not do so; instead, they asked the plaintiffs to do so. The plaintiffs purchased a dishwasher in the amount of \$604.74 and sought reimbursement from the defendants. They were not reimbursed.

- [23] Mr. Huy Quoc Nguyen testified that although the parties had agreed that the cost of hydro and gas expenses would be paid by the defendants during the course of construction, the defendants did not do so. Instead, the plaintiffs had to pay these hydro and gas expenses themselves.
- [24] Both Mr. Hong Van Nguyen and Mr. Huy Quoc Nguyen also testified that the defendants' work on the Property was slow and inconsistent throughout the construction phase, slowing significantly during 2013. The Nguyen family sought to directly address their concerns in this regard by speaking to the defendants but were unable to resolve matters. Eventually, work on the Property ceased entirely in January 2014.
- [25] The plaintiffs, Mr. Hong Van Nguyen and Mr. Hai Quoc Nguyen, both testified that in the spring of 2014, the parties met at Starbucks. At this meeting, the Dang Parties acknowledged that: (1) 90% of the payment under the Contract had been received, and (2) the Nguyen family was required to hold back the remaining 10% of the Contract price. Mr. Hong Van Nguyen and Mr. Hai Quoc Nguyen further testified that the Dang Parties did not assert at the Starbucks meeting that anything remained owing under the Contract. In particular, there was no discussion of the Nguyen family owing more than \$630,200 because tax was excluded from the Contract price. No suggestion was made at the time of this meeting that the full 90% owed under the Contract had not been paid.
- [26] Mr. Huy Quoc Nguyen and Mr. Hai Van Nguyen testified that in March 2014, the plaintiffs moved into the main home at the Property, despite the fact that they had not yet obtained an occupancy permit. They explained they had no choice but to do so as they could no longer afford the cost of living in three separate rental units, while also paying for the cost of constructing the main home and laneway house on the Property.
- [27] After the plaintiffs moved into the main home on the Property, the Nguyen family took over the task of obtaining an occupancy permit for their main home, despite the fact that the Contract stated that the defendants were responsible for obtaining the occupancy permits. This required the Nguyen family to engage a topographic surveyor and a landscape designer in regard to a retaining wall that had been constructed by the defendants; the family was also required to incur expenses relating to procuring plans from the City of Vancouver. They seek reimbursement for these expenses in the amount of \$1,310.10.
- [28] The occupancy permit for the laneway house was eventually obtained by a second builder, Pacific Gate Development ("PGD"). Mr. Huy Quoc Nguyen testified that his family was required to retain PGD in order to complete the construction project, after it was abandoned by the defendants.
- [29] PGD agreed to complete the construction project for the all-inclusive price of \$135,000. Mr. Hong Van Nguyen and Mr. Huy Quoc Nguyen testified that the plaintiffs have since paid this amount. PDG began its work in June 2014 and completed it within two months.

- [30] Mr. Hong Van Nguyen and Mr. Huy Quoc Nguyen testified that the defendants never conducted a walkthrough at the Property, and the plaintiffs were forced to fix deficiencies themselves on their own time. Mr. Hong Van Nguyen testified that he spent approximately 10-12 hours fixing deficiencies, which included damaged flooring, problems with doors, problems with molding, leaking plumbing, wet drywall and mold growth. He estimated that he spent approximately \$1,000 on supplies to fix these issues. He did not keep receipts as he did not expect to be engaged in litigation. Mr. Huy Quoc Nguyen testified that he assisted his father and spent approximately 10 hours fixing deficiencies.
- [31] The provision of goods and services under the Contract straddled the repeal of the 12% HST in British Columbia, which was repealed as of April 1, 2013. Thereafter, a 5% GST applied to the provision of construction services. The evidence before me established that, for a fixed term contract for services entered into prior to April 1, 2013, HST applied to payments made prior to April 1, 2013, and GST applied to payments made after April 1, 2013.
- [32] According to Mr. Huy Quoc Nguyen, the plaintiffs paid a total of \$518,600 to the defendants prior to April 1, 2013, and a total of \$50,000 to the defendants after April 1, 2013. Assuming the defendants are correct in their position that the Contract price excluded tax, the plaintiffs calculate that the tax owing would be as follows:

Payments made prior to April 1, 2013:

\$62,232

Payments made following April 1, 2013:

\$2,500

Total:

\$64,732

III. III. Analysis and Discussion

A. Liability

- [33] As noted above, the Contract states that the plaintiffs are responsible for paying \$137 per square foot on the 4,600 square foot construction project. This amounts to a total contract price of \$630,200. All parties agreed that the plaintiffs paid \$568,000 by May 2013, which comprises 90% of \$630,200. Further, all parties also agreed that the plaintiffs were obligated to hold back the remaining 10% until 30 days after an occupancy permit was issued.
- [34] In this light, the plaintiffs argue this is a straightforward, simple case. They submit as follows:

the parties were at all material times *ad idem* that the plaintiffs had paid all that was required under the Contract, and the defendants subsequently abandoned the job site based, per their own evidence, on an apparent personality conflict. This was a clear breach of their contractual

obligations. The plaintiffs took reasonable steps to mitigate their loss by hiring another contractor to finish the job after the defendants abandoned the job site. The plaintiffs are therefore entitled to all damages flowing from the defendants' breach that were in the reasonable contemplation of the parties at the time the Contract was formed.

- [35] The evidence before me supports the plaintiffs' assertions that the defendants breached their contractual obligation by not completing the construction project. Further, the plaintiffs took reasonable steps to mitigate their loss by hiring another contractor to finish the job after the defendants abandoned the job site. The plaintiffs are, therefore, entitled to all damages flowing from the defendants' breach: *Mackenzie v. Dougherty*, 2017 BCSC 931 at para. 38, citing *Michaels v. Red Deer College*, [1976] 2 S.C.R. 324 at 330-31.
- [36] Furthermore, on the defendants' own theory of the case (as reflected in their pleadings) that the Contract price excluded tax, I find that the plaintiffs in any event had paid 90 % of the Contract price even if tax was required to be paid by the Contract, in addition to the \$137 per square foot. That is, assuming the plaintiffs were responsible for paying HST (and later GST) in addition to the \$630,200 Contract price, the plaintiffs still made all the required installment payments or draws contemplated under the Contract and were, therefore, contractually entitled to the completion of the construction project by the defendants.
- [37] The defendants admitted on discovery that the precondition for the fourth draw was not met. This precondition was that both the main house and laneway house had to reach the "ready to paint and final occupancy" stage before the final installment payment or draw was paid by the plaintiffs. As such, the plaintiffs' obligation under the Contract to pay the fourth installment payment or draw was never triggered, and the plaintiffs were only ever obligated to pay 75% of the full Contract price, which they did.
- [38] If the defendants were correct that the true contract price was \$630,200 plus HST/GST of \$64,732 (for a total of \$694,932), the plaintiffs would have been obligated to pay 75% of \$694,932, which is \$521,199. As the plaintiffs point out, the defendants have admitted that the plaintiffs paid \$568,000, which is more than the 75% they were obligated to pay under the Contract. On either party's theory of the Contract price, the plaintiffs met their payment obligations under the Contract and the defendants had no contractual right to cease their obligatory work under the Contract.
- [39] The plaintiffs also assert that the defendants seek to obtain a windfall by maintaining that the Contract price was exclusive of tax. Further, they argue that the defendants have attempted to improve their position in this lawsuit by reducing the potential scope of damages owed to the plaintiffs, without, in fact, remitting any tax to the government as required under the Excise Tax Act, R.S.C. 1985, c E-15.
- [40] I have carefully reviewed the Contract and have concluded that the Contract is ambiguous on the question of whether tax is included in the Contract price. Accordingly, it is appropriate that I consider the evidence of Mr. Hong Van Nguyen and Mr. Huy Quoc Nguyen on this issue. I accept their evidence that the issue of tax was specifically raised with the

defendants before the Contract was signed, and that the parties agreed that tax was included in the Contract price. I raise the plaintiffs' evidence in this regard notwithstanding the clause in the Contract, set out above, which provides that: "The parties must make a good faith attempt to agree on all necessary particulars. Such agreements are to be evidenced in writing, signed by the parties and added to this contract." This clause is consistent with the principle that extrinsic evidence ought not be admitted to explain the meaning of unambiguous contractual provisions. However, such a provision does not preclude me from considering extrinsic evidence when the contractual language is ambiguous, as is the situation in this case.

- [41] Previous cases have underscored that courts are usually concerned "not with the parties' actual intentions but, rather, with their manifested intention" as expressed in the language of the contract: see D. Smith J.A. in *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107, at para. 43. I am mindful that extrinsic evidence is only to be considered as a last resort, when the parties' intentions cannot be objectively or clearly determined from the words they have chosen in the Contract. However, because the Contract is ambiguous on the question of whether tax is included in the \$137 per square foot price, I find the evidence of the plaintiffs is admissible and may be properly considered: see *Athwal* at paras. 42-43; *Paddon Hughes Development v. Pancontinental Oil*, 1998 ABCA 333 at para. 45.
- [42] I also note that the principle of *contra proferentem* is of assistance in this case. Ambiguous language in a contract is construed against the party responsible for its inclusion in the Contract. Accordingly, since the defendants drafted the Contract, any ambiguity ought to be construed in the plaintiffs' favour: see *Horne Coupar v. Velletta & Co.*, 2010 BCSC 483 at para. 10.
- [43] The plaintiffs have rightly drawn the Court's attention to a line of authority which suggests that contracts that are silent as to tax are to be read as being exclusive of tax: see *Wilson v. Hrytsak*, 2002 BCSC 849; *Fast Trac Bobcat v. KWH Constructors Ltd.*, 2001 BCSC 1185; *Leong v. Princess Investments Ltd.*, [1999] 19 B.C.T.C. 310 (S.C.). However, these cases arise in entirely different contexts and are not binding in light of the particular circumstances of this case.
- [44] As plaintiffs' counsel points out, these cases arise in one of two contexts: (1) either a supplier is pursuing the recipient for reimbursement of taxes paid to the Canada Revenue Agency under the Excise Tax Act, (as in *Fast Trac Bobcat* and *Leong*); or (2) the parties to a contract reached an agreement that tax is payable (as in *Wilson*). The instant case is clearly distinguishable. The defendants are not pursuing the plaintiffs for reimbursement of funds paid to the Canada Revenue Agency. Further, there is no evidence that the parties in this case agreed that tax was payable by the plaintiffs in addition to the Contract price. Conversely, the evidence proves otherwise.

B. Damages

[45] The plaintiffs submit that the assessment of damages in this case is also simple. That is, they are entitled to recover what they paid to PGD to complete the construction project, less any remaining funds they would have paid to the defendants had the defendants completed the construction project. In addition, the plaintiffs submit they are entitled to recover all other damages arising out of the defendants' breach of the Contract which were in the reasonable contemplation of the parties at the time the Contract was formed.

1. Damages Flowing from the Contract Price

[46] In regard to the question of what the plaintiffs would have paid to the defendants had they completed construction as contemplated under the Contract, the plaintiffs submit that this Court does not need to resolve the tax issue in order to assess damages. Counsel submits that the evidence clearly establishes that the parties had discussed and agreed to a stipulated Contract price that was inclusive of tax, and the defendants stated on multiple occasions at the Starbucks meeting that the plaintiffs had paid 90% of what they were obligated to pay under the Contract. As such, the plaintiffs argue that it is beyond controversy that if the defendants had completed the construction project, the plaintiffs would have only paid the defendants an additional \$61,600; that is, the difference between the \$568,600 that was paid and the \$630,200 price in the Contract.

[47] I find that in paying PGD a total of \$135,000 to complete the construction project, the plaintiffs paid \$73,400 more than they would have in fact paid had the defendants not breached the Contract. In summary, on the evidence before me, I accept the plaintiffs' submission that the Contract price of \$630,200 included tax, and I also accept that due to the defendants' breach of the Contract, the plaintiffs were required to pay an additional sum of \$73,400 to complete the work under the Contract.

2. Other Damages arising from the Defendants' Breach of Contract

[48] I am satisfied that the defendants owed the plaintiffs a contractual obligation to complete the construction project within 11 months of the demolition and that they failed to do so. I am also satisfied that under the terms of the Contract the defendants are required to compensate the plaintiffs for the rental costs they incurred as a result.

[49] The plaintiffs moved into three separate rental units during the course of construction, and remained in those rental units during the period of delay in construction. On the evidence before me, I find that the collective cost of these rental units was \$2,700 per month and that these costs were reasonably incurred. Accordingly, the plaintiffs should be compensated for this monthly rental expense. Further, there is no evidence before me to suggest that had all eight members of the family lived in one rental accommodation, the price of that rental accommodation would have been less than \$2,700 per month.

[50] There was a 12 month period of delay between March 2013, when the construction project was supposed to be completed, and March 2014 when the plaintiffs moved into the main house at the Property. At \$2,700 per month for 12 months, the plaintiffs are entitled to be compensated \$32,400.

[51] I also accept the plaintiffs' submission that they are entitled to recover expenses relating to: the occupancy permit; hydro and gas expenses during the course of construction; the cost of the dishwasher; the costs of fixing deficiencies; and the amount paid to discharge a builder's lien filed against the Property by a concrete supplier.

IV. Disposition

[52] As previously addressed, I find that the defendants breached the Contract by abandoning the job site before the completion of the work they agreed to do under the Contract. As a result, the plaintiffs have incurred the following damages, each of which were within the reasonable contemplation of the parties at the time the parties entered into the Contract:

(a)

fees paid to PGD to complete the construction project:

\$135,000.00

(b)

rental expenses during the 12 months of delay:

\$32,400.00

(c)

Hydro and gas expenses during the 12 months of delay:

\$2,120.51

(d)

reimbursement of expenses paid to the City of Vancouver:

\$115.98

(e)

reimbursement of the dishwasher purchased for the home:

\$604.74

(f)

reimbursement of expenses incurred for fixing deficiencies, (including labour and materials as previously summarized)

\$1,400.00

(g)

reimbursement of expenses to obtain occupancy permit:

\$1,310.10

(h)

reimbursement of funds paid to discharge the builder's lien:

\$4,000.00

Subtotal:

\$176,951.33

Less holdback funds:

\$61,600.00

TOTAL:

\$115,351.30

[53] Accordingly, I conclude that the plaintiffs are entitled to an award of damages in the amount of \$115,351.30. The plaintiffs are also entitled to the costs of these proceedings, including those related to the defendants' counterclaim, at Scale B.

"MORELLATO J."

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