

CANADA / JUDGMENT

Ted Walton Excavating Ltd. v. Cameron

2015 BCSC 1862

COURT

Supreme Court of British Columbia

DECIDED

14 October 2015

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2015 BCSC 1862 Ted Walton Excavating Ltd. v. Cameron

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ted Walton Excavating Ltd. v. Cameron,

2015 BCSC 1862

Date: 20151014

Docket: S68704

Registry: Nanaimo

Between:

Ted Walton Excavating Ltd. and Ted Walton

Plaintiffs

And

Lorne Melrose Cameron and Regina Elizabeth Cameron

Defendants

And

Ted Walton, d.b.a. T & L Excavating

Defendant by way of counterclaim

Before: The Honourable Mr. Justice D.M. Masuhara

Reasons for Judgment

Counsel for Plaintiffs:

J.R. Jordan

P. Pelzer

Appearing for the Defendants:

R.E. Cameron (In Person)

Place and Date of Trial:

Port Alberni, B.C.

September 14-18, 2015

Place and Date of Judgment:

Vancouver, B.C.

October 14, 2015

I. Introduction

[1] Mr. Walton seeks \$281,658.92 from Mr. Cameron, an amount which Mr. Walton invoiced Mr. Cameron. The amount is largely related to the extension and upgrading of two roads in Port Alberni for Mr. Cameron; namely, Cameron Road and Welham Road (the "Road Work"). The two roads border the eastern and southern sides of Lot 116, lands owned by Mr. Cameron (the "Lands"). The amount claimed also includes an amount for the digging and installation of five wells as well as for clearing a lot on the Lands.

[2] Mr. Cameron acknowledges that the roads were built and the wells dug and installed in accordance with applicable standards. However, he says:

- that he contracted with T & L Excavating ("T&L"), a sole proprietorship owned by Louise Shepherd, and not the plaintiffs;
- that the Road Work was not completed within the 2 to 3 weeks as had been agreed;
- that despite repeated requests by the defendant Mr. Cameron, T&L never invoiced the defendant for the work until a year after the Road Work had been completed;
- that the invoiced amount was grossly inflated and was about double the estimate originally provided; and
- that a fair and reasonable price for the digging and installation of the wells is \$1,500 per well, not the \$2,568.50 charged by Mr. Walton.

[3] The defendant also counterclaims against Ted Walton doing business as T&L for:

- gravel removed and not paid for by Mr. Walton from gravel pits on the Lands in the amount of \$56,901;

- damages for the dumping of debris on the Lands by Mr. Walton d.b.a T&L and cleanup costs in the amount of \$68,000;
- damages for loss of opportunity in selling subdivided lots because of delays by Mr. Walton in completing the Road Work and wells; and
- damages for trespass by the unauthorized placing of a trailer on the Lands from January 2010 to February 2013.

- [4] At the start of the trial, Mr. Jordan, counsel for the plaintiffs, advised that Mrs. Cameron, Mr. Cameron's wife, who was named as a defendant, was no longer being pursued in this action.
- [5] The defendants had been represented by counsel in this litigation leading up to trial; however, at the trial they appeared without counsel and stated that the cost of representation was too high. They advised that they were ready to proceed without counsel and that Mrs. Cameron would act as Mr. Cameron's representative in the trial. She has no training or experience in litigation. After being given a short adjournment to consider whether they wished to reconsider, they stated they would proceed without counsel. She advised that she had been provided some preparation for the task by her former counsel. Mr. and Mrs. Cameron understood that by proceeding without counsel, Mr. Cameron would be at a significant disadvantage. At trial, Mrs. Cameron cross-examined the plaintiff, took Mr. Cameron through his direct examination, took another witness through direct examination, and made closing arguments. However, available witnesses who could assist their case were not called, witnesses called did not cover all of the areas which would assist Mr. Cameron's case, evidence for various claims was not elicited, documents which could support their case were not properly introduced or proven, and service and notice of expert evidence was not provided. As I mentioned at the close of the trial to Mr. Cameron, Mrs. Cameron did as well as she could for a layperson in her circumstances.
- [6] The witnesses appearing at trial were Mr. Walton, in his case, and Ms. Louise Shepherd and Mr. Cameron, in the defence case.

II. Background

- [7] Mr. Cameron is a retired faller. He is 75 years old and grew up in the Alberni Valley. He owns two large parcels of land which were passed down to him from his parents. He and his wife Mrs. Cameron have been married since the 1960s. In an earlier day, Mr. Cameron was an active and hardworking man who worked in the forestry industry up and down the coast. More recently, Mr. Cameron has developed health problems in addition to the failings that can come with age. He advised that he was being treated for multiple myelomas with chemotherapy and pain medications. He stated that because of this his thoughts were unclear and he had a poor memory. This was evident at trial, as he required considerable assistance and leading by his wife to get his evidence out. Though there is no question that he tried to testify truthfully, the inconsistencies between his testimony at trial and his answers from his examination for discovery, as well as his confusion at trial as to various

matters, brought into question the reliance that could be placed on his testimony.

- [8] Mr. Walton is an excavator. He is 49 years old and has lived in the Port Alberni area for 30 years. He has worked as an excavator for about 25 years. His projects have included road building, installing septic tanks, putting in culverts, and installing head walls. Mr. Walton's recall of events was not particularly strong and relied considerably on notes that he says he kept of his work.
- [9] While Mr. Walton produced notes that he says he wrote at the times gravel was taken from the pit and hours were spent on the projects, there were no independent documents produced, such as receipts for the purchase of materials from suppliers or written time records or payments to his workers for their time spent on the projects. Mr. Walton's testimony was that he just paid "cash". Mr. Walton in the past has had some difficulties in his life which I think affected his recall of things during the relevant period. His testimony regarding the notes was somewhat confused as to the dates of the various matters that he noted. I found myself asking him several detailed questions regarding the chronology of the notes and the entries and how he arrived at various subtotals and totals relating to his claim, as there appeared to be inconsistencies between his direct and cross-examination. There was also an inconsistency between Mr. Walton's testimony at trial and his examination for discovery regarding whether he provided a signed copy of his original contract to the Camerons or not.
- [10] In 2004, Mr. Walton began to conduct a good part of his excavation business through T&L. This business was registered on August 10, 2004 and was described as a sole proprietorship. Ms. Shepherd, who had been in a common law relationship with Mr. Walton for several years, was listed as the sole proprietor of T&L. Mr. Walton stated that the purpose behind creating T&L was to allow him to deal with difficulties he was encountering through his failure to pay child support. He was seriously in arrears and was also facing a requirement to pay an amount of lump sum child support in advance. He testified that he made good on all of his support obligations at some later point.
- [11] Ms. Shepherd's role in the business was to manage the paperwork and books for T&L. This was in addition to her full-time job. She testified that she was never compensated for her administrative work for T&L. Mr. Walton was the person who found the excavation work and performed it. The business decision responsibilities were Mr. Walton's. He arranged the finances, got the crews, supervised the workers, decided which equipment to use, and managed the business.
- [12] The relationship between Mr. Walton and Ms. Shepherd dissolved sometime in 2010. Ms. Shepherd retained ownership of T&L. The business has not had projects since; however, Ms. Shepherd has had to deal with the financial fallout for T&L, including the return of leased equipment and claims for employee remittances.

- [13] Mr. Cameron and Mr. Walton first met in 2006. Mr. Walton was in need of a gravel supply for his excavation business. His brother told him that Mr. Cameron had such a supply on the Lands. Mr. Walton met with Mr. Cameron and came to an agreement under which Mr. Walton would pay Mr. Cameron \$35 per truck load of gravel and that Mr. Walton would provide excavation services to Mr. Cameron for an hourly rate plus costs ("machine time"). In essence, the agreement was one of barter. Mr. Walton extracted gravel from the Lands and in exchange built a large pond at Mr. Cameron's residence, provided landscaping services, and cleared a logging spur road on the Lands. I note that Mr. Cameron disputes the clearing of a logging spur road.
- [14] In 2007, Mr. Cameron applied to subdivide a portion of the Lands. This portion was a strip of land bordering the east side of the Lands along Cameron Road. Five lots were proposed, the dimensions of each being approximately 139 metres into the property by 152 metres along Cameron Road. A preliminary approval required Mr. Cameron to upgrade and extend Cameron Road and Welham Road. Mr. Cameron approached Mr. Walton about doing the Road Work. Mr. Walton was interested. Some discussion of obtaining a lot in exchange for the Road Work was discussed, but nothing was settled. In 2008, Mr. Walton started "grubbing" the roads. He was proceeding on the basis of charging his work on a machine time basis. As noted, this had been the established method by which Mr. Walton had charged for his services in exchange for gravel.
- [15] At an early point in the Road Work, Mr. Cameron approached Mr. Walton and advised him that he did not wish the Road Work to proceed until a price based on dollars per metre was agreed upon and that he wanted a written contract. There is some evidence that Mr. Cameron understood that dollars per metre was a more cost effective way to compensate for the Road Work and that he had some idea of what the cost should be.
- [16] In March 2008, Mr. Walton provided in writing a price per metre for the Road Work. The document was entitled "Contract Between Lorne and Regina Cameron and Ted Walton". The prices set out were \$303 per metre for Cameron Road and \$218 per metre for Welham Road. The document also set out the parties, the work that was to be done, what costs were included, the process for determining the price by measuring the road on completion, and that 5% GST would be charged on the final price.
- [17] The prices set out were not acceptable to Mr. Cameron. Mr. Walton testified that in their discussion he said he would "sharpen his pencil" and get back to Mr. Cameron. Part of the discussion on price related to Mr. Walton having included gravel supply in his prices and to whether it should be excluded.
- [18] A few days later, Mr. Walton took the same document that he had originally provided, stroked out the prices, and wrote in prices of \$267 per metre for Cameron Road and \$180 for Welham Road. He initialled each of these changes and placed his signature in the spot he provided in the document for the parties' signatures. This document appears to have been received by Mr. Cameron, but the Camerons did not sign it. Mr. Walton says that Mr.

Cameron told him to proceed on the basis of the revised rates. There is a dispute as to whether this discussion occurred.

- [19] In terms of the issue of the need for a properly written agreement, it appears that Mr. Cameron made such a request but that Mr. Walton was not prepared to incur the legal cost of doing so. There is some evidence that Mr. Cameron would have his daughter, a paralegal, draft such an agreement. The discovery evidence put to Mr. Cameron indicates that such an agreement was prepared and sent to Mr. Walton. It was entitled "Contractor Agreement", dated April 9, 2008, and signed by Mr. Cameron (the "Contractor Agreement"). It specified the parties as T&L Excavating and Mr. Cameron. However, Mr. Walton denies having received it and Ms. Shepherd did not recall having seen the document either. Mr. Cameron had no knowledge as to who had prepared the document and whether it had been mailed.
- [20] The Contractor Agreement specified that the Road Work was not to exceed the value of Lot 5, which was said to be \$250,000 on the date the Contractor Agreement was prepared. It specified prices of \$227/metre (minus gravel) for 580.153 metres of Cameron Road and \$113.50/metre (minus gravel) for 66 metres of Cameron Road, \$167/metre (minus gravel) for 108 metres of Welham Road, and \$83.50/metre (minus gravel) for 27 metres of Welham Road. Installation of wells was specified at an outside cost of \$1,500/well.
- [21] In any event, Mr. Walton carried on with the Road Work, which Mr. Cameron knew was occurring, and completed Cameron Road by August 2008 except for the "chip sealing". It is acknowledged that Mr. Walton did not have control over the chip sealing as it was a specialized activity which was to be done by Shade Tankers, who could only do it in September. The chip sealing was completed in September 2008. Mr. Cameron testified that during the Road Work, he would attend at the site from time to time when he came back from his own work as a faller. The evidence is that while the men spoke while the Road Work was underway, neither Mr. Walton nor Mr. Cameron discussed pricing matters for the Road Work. My view is that neither man raised the issue of pricing and it remained an outstanding issue to be worked out between friends at some point.
- [22] The extension and upgrading of Welham Road was completed in the fall of 2008. It appears that the work to this road had to be partly redone because it had not been constructed in the right location.
- [23] The roads were approved by the authorities in late 2008.
- [24] Mr. Walton also dug and installed five wells with cement casings, one for each lot, by October 2008. The subdivision permit required potable water wells on each lot. One well was 20 ft deep, three were 16 ft, and one was 12 ft. Mr. Walton had previously dug two dry wells at locations specified by Mr. Cameron. Though there were some issues related to debris entering the wells, the wells were later passed by the authorities.

- [25] After the project was completed, the parties continued to operate as they had in the past. Mr. Walton recorded gravel removed from the Lands and the machine time for work performed for Mr. Cameron.
- [26] Walton Excavating Ltd. was incorporated on March 5, 2009. Mr. Walton is the sole director, president, and secretary of the company.
- [27] In September 2009, about one year after the Road Work and well installations had been completed, Mr. Walton delivered a handwritten invoice under the name of Walton Excavating Ltd. to the Camerons. The invoice totalled \$277,287.67 including GST. The items were as follows:
- Road Construction, 823 m at 267/m = \$219,741
 - Welham Road Construction, 135 m at 180/m = \$24,300
 - Move Welham Road, 40 m at 180/m = \$7,200
 - Install Wells, 5 at 2568.50/well = \$12,842.50
- [28] In terms of the distances he charged in his invoice, Mr. Walton testified that he obtained them by walking the roads with a measuring wheel. Given the plans adduced at trial, I find that they are reasonable.
- [29] There appears to have been a dispute between Mr. Cameron and Mr. Walton regarding the amount of gravel which had been removed from the Lands and other complaints by Mr. Cameron of Mr. Walton's activities on the Land, such as the dumping of debris, the destruction of timber, and the need for backfilling of the pits.
- [30] On or about February 3, 2010, Mr. Cameron sent a letter to Mr. Walton outlining his issues and enclosed a "Gravel Pit Agreement", signed by Mr. Cameron at the bottom. The agreement was stated to be between Lorne Cameron and Ted Walton. The agreement seems to acknowledge that as of January 26, 2010, Mr. Cameron owed Mr. Walton \$450 for work Mr. Walton had done netted against gravel Mr. Walton had removed. This amount appears to reflect the amount in Mr. Walton's notes. The agreement also specifies that all cement and construction materials were to be removed by March 31, 2010, that all finished pits were to be backfilled and levelled by June 30, 2010, and that Mr. Walton was to pay Mr. Cameron \$5,300 for destroyed timber by June 30, 2010. The agreement makes no reference to the September 30, 2009 invoice. There is little to no evidence of whether Mr. Walton and Mr. Cameron discussed this document and covering letter.
- [31] In April 2010, it appears that Mr. Walton on his own initiative decided to do some clearing work on Lot 1 of the Lands. No one had requested that he do this work. It seems that Mr. Walton thought that he would be able to trade some of the work he had billed in exchange for Lot 1 as he and Mr. Cameron had discussed such an arrangement early on when the Road Work was being discussed.

- [32] In any event, it is clear that Mr. Cameron and Mr. Walton were unable to resolve their differences and Mr. Cameron demanded that Mr. Walton vacate the Lands, including removing his machinery, within 24 hours. It appears this occurred in about early May 2010. From that point on there were no further discussions between the two men.
- [33] Subsequently, in May 2010, Mr. Walton sent two typed invoices to Mr. Cameron in the name of Walton Excavating Ltd. The first was a typed version of the handwritten invoice he had provided to Mr. Walton in September 2009. The second was an invoice for work clearing Lot 1 of the Lands, including time to demobilize and remove equipment from the Lands. The amount of the second invoice was \$4,371.25.

III. Discussion

- [34] I now turn to the issues raised in this proceeding.

A. Claims of the Plaintiff

- [35] The first question that I will address is who the proper parties to the subject dispute are. Mr. Cameron argues that he was not dealing with Mr. Walton personally or Walton Excavating Ltd. in respect of any of the work in question. Rather, he says that he believed that he was dealing with T&L. There was some assertion of a billboard and yellow page advertising for T&L, but no evidence substantiating this was produced.
- [36] I find that the entity that agreed to do the Road Work and related work for Mr. Cameron was Ted Walton and not T&L. It is apparent that Mr. Walton and Ms. Shepherd started T&L, that Ms. Shepherd was registered as its sole proprietor, that Mr. Walton had run work projects through T&L, that T&L held equipment for excavating, some of which was used for this project, and that Ms. Shepherd testified that from her perspective T&L held the project. However, the original written document provided by Mr. Walton to Mr. Cameron stated at the top: "CONTRACT BETWEEN LORNE AND REGINA CAMERON AND TED WALTON." Typed at the bottom of the document are the names "TED WALTON (contractor)" and "Lorne and Regina Cameron (owners)". Similarly, the second written document, which Mr. Walton provided to Mr. Cameron with revised pricing after being told that his original prices were too high, had the same heading and names for signatures at the bottom. These two documents are the only documents which were proven to have been exchanged between the parties.
- [37] Further, the Gravel Pit Agreement signed by Mr. Cameron states that it is an agreement between Mr. Cameron and Mr. Walton personally. Mr. Cameron had no explanation as to why this document did not list T&L. The listing of Mr. Walton as a party in the Gravel Pit Agreement also belies Mr. Cameron's strong assertion that he would never contract with an individual and that he would only do so through a business name because that was the only way a person could obtain workers' compensation coverage.

- [38] Further, the Contractor Agreement was not established as having been provided to Mr. Walton. Mr. Cameron testified that he could not say if the document had been mailed. Ms. Shepherd's testimony supported Mr. Walton's evidence, as she did not recall seeing this document at the time it was said to have been written and mailed to Mr. Walton. It was conceded by Ms. Shepherd that Mr. Walton was the person who made the business decisions for the proprietorship. Mr. Cameron also did not know who Ms. Shepherd was or that she was the sole owner of T&L. I also note that Mr. Cameron's counterclaim states that it is against Mr. Walton doing business as T&L.
- [39] I note that Mr. Walton agreed that some of the equipment he used for the Road Work and related work was in the name of T&L; however, monies owing for the use of that equipment by Mr. Walton is a matter between Mr. Walton and T&L (Ms. Shepherd).
- [40] I now turn to the question of whether a contract had been established. In my view, no contract was concluded. It is apparent that Mr. Cameron wanted to have a written agreement and to have the Road Work priced on a \$/metre basis. Mr. Walton provided a document which purported to be a contract with signature lines. Mr. Walton signed a copy which he gave to Mr. Cameron for his signature. He never received a signed contract back. Despite this, Mr. Walton continued to do the Road Work. Mr. Cameron knew that Mr. Walton was continuing to perform the Road Work and took no steps to stop him.
- [41] In my view, the evidence of the parties' differing views on pricing and the documents indicates that a final binding agreement had not been concluded. It appears that the parties left the matter of pricing to be worked out at some later point. Mr. Walton was content to go forward with the Road Work without any agreement on price, just as he did when he cleared Lot 1 on his own initiative. Mr. Cameron, fully aware that the Road Work was being done, allowed it to proceed. Unfortunately, the two men were unable to resolve the critical matter of price for the Road Work. However, this does not in any way mean that Mr. Walton was not to be compensated for the work that he performed for Mr. Cameron.
- [42] This leads then to a consideration of Mr. Walton's claim for his work under the principle of quantum meruit. There is no question that Mr. Cameron expected to compensate Mr. Walton for the Road Work and the installation of the wells. However, Mr. Cameron was of the view that the gravel Mr. Walton removed would offset the cost.
- [43] In terms of the Road Work, Mr. Walton introduced an expert report written by Mr. Nimmo. Mr. Nimmo used a project he had worked on as a comparable. On that basis, Mr. Nimmo opined that a reasonable unit price for the Road Work was \$295.48/metre for Cameron Road and \$204.53/metre for Welham Road. However, these figures include the cost of supplying gravel for the project, whereas Mr. Walton and Mr. Cameron had agreed to exclude that cost. Accordingly, Mr. Nimmo's figures must be adjusted.

- [44] In final submissions, Mr. Jordan and I discussed how to make the adjustment. In that discussion, some estimate as to the amount of gravel used for the Road Work was discussed, as Mr. Walton had not kept a record of the amount of gravel that he used. That approach led to a price within the range of Mr. Walton's figures.
- [45] Having considered the matter further and recognizing that Mr. Nimmo had opined on an appropriate unit price, I conclude that a more appropriate adjustment to Mr. Nimmo's unit price is to deduct the unit value for gravel material that he used in his calculation to come to a net unit value for the Road Work. This entails extracting the amounts for gravel used in his methodology and then calculating a net unit price.
- [46] Mr. Nimmo's gravel supply figures for the comparable project total \$95,059 (\$34,653 and \$60,406 for road subbase gravel and road base gravel, respectively). Dividing this total by the number of metres in Mr. Nimmo's project (1,100) gives a gravel supply unit price of \$86.42/metre. Subtracting this value from Mr. Nimmo's unit prices for the Road Work yields adjusted unit prices of \$209.06/metre for Cameron Road and \$118.11/metre for Welham Road. Multiplying these unit prices by the number of metres of work done by Mr. Walton on each road gives the net amounts of \$172,056.38 for Cameron Road (823 m at \$209.06/m) and \$20,669.25 for Welham Road (175 m at \$118.11/m). The total for the Road Work then amounts to \$192,725.63. Mr. Walton's invoice for this work was \$251,241.
- [47] There is a material difference between the amount charged by Mr. Walton and the amount that would fall out as reasonable under Mr. Nimmo's method after making the adjustment for gravel. I note again that Mr. Walton did not provide any details as to the figures that he used or would have used in coming up with the per distance amounts that he put into the pricing documents he provided to Mr. Cameron.
- [48] The approach taken when applying the principle of quantum meruit is that a person who requests work from and accepts it from another must pay for the reasonable value of those services. This is normally market value or what a willing supplier and buyer would have agreed upon.
- [49] In my view, taking into consideration that there are differences between the comparable project selected by Mr. Nimmo and the Road Work, I find the reasonable amount for the Road Work to be \$220,000 before GST.
- [50] With respect to the installation of the wells, Mr. Walton seeks \$12,842.50 (\$2,568.50 per well). Mr. Cameron testified that \$1,500/well was reasonable. He testified that Mr. Walton had at one point quoted him the price of \$1,500/well. He also says that this figure sounded reasonable because Mr. Walton had dug a well which was 14 ft deep and 8 ft x 8 ft and had charged him \$790 without cement casing. On the other hand, Mr. Walton testified that when Mr. Cameron asked him to install the wells, he told Mr. Cameron that he would charge based on machine time.

- [51] The use of machine time was an approach which had been in place over the course of the relationship between Mr. Cameron and Mr. Walton. The price/metre approach used for the Road Work was a departure from past practice. Given that the installation of the wells is not connected to the Road Work, my view is that the past practice of machine time and costs is the approach that is the most reasonable. Again, though no objective evidence of the costs of the casings was presented, Mr. Cameron did not adduce any evidence to counter Mr. Walton's amount apart from stating that \$1,500/well was a reasonable figure. While there are some notations by Mr. Walton as to the well installation work, some of the entries do not appear to clearly relate to the installations of the wells given the uncertainty as to the dates when Mr. Walton installed the wells, and I reiterate my concern with the accuracy of Mr. Walton's notes. Again, applying what a reasonable price would be for the work in the circumstances, I conclude that the amount is \$10,000 before GST.
- [52] In terms of Mr. Walton's claim for clearing work on Lot 1, this work was clearly not authorized or even discussed with Mr. Cameron. I do not see how Mr. Walton can claim for this work. Accordingly, the claim is dismissed.

B. Counterclaim of Mr. Cameron

- [53] In terms of the counterclaim of Mr. Walton for lost property sales, I find that there was insufficient evidence to support the loss of lot sales because of a delay in the completion of the road extension. There was no specific date agreed to for the completion of the Road Work, the timing of the "chip sealing" was not within the control of Mr. Walton, and there was no objective evidence provided establishing a loss of sales.
- [54] With respect to the dumping of debris on the Lands, there was little evidence establishing that the materials brought onto the Lands by Mr. Walton could not be used as fill for the gravel pits. Mr. Walton said that they could be so used. Accordingly, this claim has not been made out. Also, the claim for clean- up has not been proven.
- [55] With respect to the claim for gravel removed from the Lands by Mr. Walton and not accounted for, again, the evidence was simply not sufficient to establish the claim. Accordingly, this claim has not been made out.
- [56] In regard to trespass, the parties dispute whether Mr. Walton placed his trailer on the Lands. Mr. Walton testified that his trailer was on the land of a friend which was across the road from the Lands. There was no independent evidence adduced to prove the trespass. I note as well that Mr. Cameron did not ask Mr. Walton to remove the trailer and stated that Mr. Walton moved the trailer of his own volition. Mr. Cameron also testified that he did not suffer any damages as a result of the alleged trespass. To the extent that Mr. Cameron would be entitled to any damages, I think that the benefit Mr. Cameron received from Mr. Walton's unauthorized clearing of Lot 1 serves as a reasonable offset.

IV. Conclusion

[57] Mr. Walton is entitled to judgment for the following:

- (a) \$220,000 plus GST for the road work on Cameron Road and Welham Road.
- (b) \$10,000 plus GST for the installation of the wells on the lots.
- (c) the claim for clearing work and equipment removal is dismissed.
- (d) court order interest from January 9, 2011 to the date of judgment.

[58] The counterclaim of the Camerons is dismissed.

[59] If the parties wish to speak to costs they may do so. Otherwise, the usual rule applies; namely, Mr. Walton having been successful is entitled to costs at Scale B.

"The Honourable Mr. Justice Masuhara"

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