IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chitchot v. 0998823 B.C. Ltd.,* 2025 BCSC 742

Date: 20250423
Docket: S237416
Registry: New Westminster

2025 BCSC 742 (CanLII)

Between:

Manjit Chitchot

Plaintiffs

And

0998823 B.C. Ltd.

Defendant

\- and -

Docket: S237427
Registry: New Westminster

Between:

Sekha Construction Ltd.

Plaintiff

And

0998823 B.C. Ltd.

Defendant

\- and -

Docket: S237426
Registry: New Westminster

Between:

Gurdeep Chitchot

Plaintiff

And

0998823 B.C. Ltd.

Defendant

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

Counsel for the Plaintiffs Manjit Chitchot and Gurdeep Chitchot:	Jaspreet Gill
Counsel for the Defendant:	Rajdeep Deol
Place and Dates of Hearing:	Port Coquitlam, B.C. February 19-20, 2025
Place and Date of Judgment:	New Westminster, B.C. April 23, 2025

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INTRODUCTION

Parties and The Development

[1] This case concerns a dispute over whether a series of contracts of purchase and sale ("CPS") between a group of builders and a developer remained in force beyond December 30, 2018. Specifically, the issue is whether the parties agreed to extend the completion timeline through a subsequent addendum or whether the agreements expired.

[2] The Defendant 0998823 B.C. Ltd. ("099") owns and is developing a 32-lot subdivision ("Subdivision") in Abbotsford, BC, along with an anticipated 370-unit townhome project.

[3] The plaintiffs, Sekha Construction Ltd., Manjit Chitchot ("Manjit"), and Gurdeep Chitchot ("Gurdeep") entered into identical CPS in March 2016 to purchase individual lots within the proposed Subdivision (the "Lots").

[4] For ease of reference, and without intending any disrespect, I will refer to Manjit Chitchot and Gurdeep Chitchot by their first names.

[5] Sekha Construction Ltd., a residential building company, owned and operated by the Chitchot brothers, Manjit and Gurdeep, was to acquire two Lots, while the brothers each contracted to purchase an individual Lot in their personal capacities. The intended allocation of Lots was as follows:

a) Sekha Construction Ltd. – Lots 14 and 15;

b) Manjit Chitchot – Lot 26; and

c) Gurdeep Chitchot – Lot 25.

[6] The Parcel Identifier numbers (PIDs) for the disputed Lots were assigned in March 2019.

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BACKGROUND

Contract History and Development

[7] Each Lot was priced at $355,000, requiring a $35,000 deposit payable in trust.

[8] Mr. Raman Dhillon, a realtor and then-director of the defendant, acted as its representative and assured the plaintiffs of his development experience. Based on these assurances, the plaintiffs expected timely and professional completion of the Subdivision.

[9] The CPS set the completion date as the earlier of December 31, 2016, or 30 days after the seller notified that:

a) the Subdivision plan had been filed with the Land Title Office;

b) the City of Abbotsford ("City") had approved the servicing plan; and

c) the City would accept building permit applications.

[10] The CPS further states at clause 4 of the CPS that:

> The Seller may extend the Completion Date for a period of up to six (6) months by giving written notice to the Buyer of a new revised completion date (the "Revised Completion Date") which shall be the earlier of June 30, 2017, or the 30th day after Notice given by the Seller as contemplated in paragraph 4(b).

[11] In June 2017, the plaintiffs were approached to amend the CPS due to the defendant's funding shortfall. They were asked to:

a) Pay an additional deposit; and

b) Authorize release of existing trust funds for development costs.

[12] Relying on continued assurances from Mr. Dhillon, the plaintiffs executed a First Addendum on June 7, 2017, authorizing the release of their deposits to cover development fees.

[13] On July 5, 2017, the plaintiffs paid an additional $25,000 per lot directly to the defendant (“Second Deposit”), as contemplated in a second amendment to the CPS (“Second Addendum”) which:

a) Required an additional $25,000 deposit per lot; and

b) Tied completion to “30 days after the City accepts building permit applications”.

[14] The plaintiffs contend that communications from Mr. Dhillon continued until early 2021 although they later learned, during the course of these proceedings, that Mr. Dhillon ceased to be a director of the defendant in June 2020.

[15] In March 2024, the City confirmed, through email correspondence with the plaintiffs’ legal counsel, that it would begin accepting building permit applications for the Subdivision. It is the plaintiffs’ position that this confirmation satisfied the final condition precedent under the CPS.

The Disclosure Statements

[16] Under the *Real Estate Development Marketing Act,* S.B.C. 2004, c. 41 [*REDMA*], developers must provide Disclosure Statements disclosing all material facts about a development, including servicing status, projected timelines, and anticipated completion dates.

[17] On February 15, 2016, the defendant issued its initial Disclosure Statement, attaching a draft form purchase agreement that largely mirrored the eventual CPS entered into with the plaintiffs.

[18] On or about May 26, 2017, the defendant issued an amended disclosure statement under *REDMA*, which included an unsigned draft contract of purchase and sale (“Amended Disclosure Statement”). This draft introduced a new proposed fixed completion timeline, stating that the “Revised Completion Date” would be the earlier of December 30, 2018, or 30 days after notice of completion conditions. The Amended Disclosure Statement also revised the anticipated servicing timeline to

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between December 31, 2017, and March 31, 2018. The plaintiffs maintain that neither the amended statement nor the unsigned draft CPS were ever incorporated into the executed contracts.

[19] The defendant claims that the CPS expired on December 30, 2018, based on the timeline set out in the Amended Disclosure Statement, which was issued separately in May 2017, prior to the signing of the Second Addendum and included an unsigned draft agreement. It argues that this date was implied when the parties later signed the Second Addendum. The plaintiffs disagree, asserting that the Amended Disclosure Statement was neither signed nor referenced at the time the Second Addendum was executed, and that neither it nor the draft agreement it contained was ever incorporated into the CPS. They maintain that the Second Addendum is the operative agreement and displaced any fixed deadline by tying completion solely to the City's acceptance of building permit applications.

PROCEDURAL HISTORY

Initial Litigation (2021 - 2022)

[20] The plaintiffs assert that they continued to receive verbal assurances from the defendant, or its representative, as late as February 2021 that the project was proceeding. Inquiries made by the plaintiffs' counsel to the City of Abbotsford on or about February 18, 2021, confirmed that no Certificate of Substantial Completion had been issued and, as a result, building permit applications were not yet being accepted. Under the terms of the Second Addendum, the plaintiffs understood this to mean that the contractual trigger for completion had not yet occurred. However, following these inquiries, and based on the evidence before me, there appears to have been little to no further communication between the parties regarding the status of the CPS.

[21] In these circumstances, the plaintiffs commenced legal proceedings on April 1, 2021, filing a notice of civil claim asserting that the CPS remained valid, seeking specific performance (or damages in lieu), and concurrently applying for the registration of Certificates of Pending Litigation (CPL) against the lands.

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[22] In May, 2021, the defendant offered the plaintiffs the return of their deposit funds.

[23] On July 15, 2021, the defendant filed his response to the civil claim asserting that the CPS had expired. He asserted that despite the defendant's best efforts the Condition Precedent in the CPS was not satisfied by the December 30, 2018 deadline and the CPS were no longer valid.

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CPL Proceedings (2021 - 2023)

[24] On April 15, 2021, the plaintiffs registered CPLs against the subject Lots, thereby preventing their sale or transfer pending the resolution of the litigation.

[25] On February 9, 2022, the defendant applied to have the CPLs removed, arguing that the plaintiffs had no enforceable interest in the land. In reasons issued on November 3, 2022, Justice Caldwell upheld the Certificates of Pending Litigation (CPLs) on the basis that the plaintiff had established a *bona fide* triable issue respecting an interest in land. He noted that the Second Addendum, executed on July 5, 2017, introduced a new "Completion, Adjustment and Possession Date" tied to the date the City of Abbotsford began accepting building permit applications. As the Second Addendum did not include a fixed or "drop dead" date, he found that it could support a continuing right to complete the transaction upon satisfaction of that condition. This was sufficient, in his view, to establish a triable issue and justify the continued registration of the CPL pending a determination on the merits: *Chitchot v 0998823 B.C. Ltd.*, 2022 BCSC 1930 at paras 16–18.

[26] On February 16, 2023, the defendant brought a further application to discharge the CPLs, citing financial hardship and asserting that their continued registration was impeding the financing required to complete the Subdivision. Justice Blok granted the application, ordering that the CPLs be removed on the condition that the defendant post security to safeguard the plaintiffs' claims.

[27] Subsequently, on August 4, 2023, the plaintiffs sought to reinstate the CPLs, arguing that the defendant was continuing to sell lots despite the litigation and

stating that additional security was necessary. Justice Blok denied the reinstatement of the CPLs but found that additional security was warranted. In compliance with the Blok Orders, an email from legal counsel confirms that they are currently holding a total of $842,000 in trust in favour of the plaintiffs, allocated as follows:

a) $210,500 in relation to Gurdeep (Action No. 237426, one Lot);

b) $210,500 in relation to Manjit (Action No. 237427, one Lot); and

c) $421,000 in relation to Sekha Construction (Action No. 237427, two Lots).

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Current Summary Trial Application (2024 - 2025)

[28] On February 16, 2024, Associate Judge Nielsen ordered under Rule 22-5(8) of the *Supreme Court Civil Rules* that Action No. S237416, New Westminster Registry, be joined with Actions No. S237427 and S237426, also in the New Westminster Registry. All three actions arise from materially identical CPS relating to the same Subdivision and were therefore suitable for joint determination.

[29] On or about June 26, 2024, the plaintiffs filed an application for summary trial, abandoning their claim for specific performance and instead seeking damages for breach of CPS. They submitted expert appraisal reports prepared by John Volpe, estimating the value of the Lots at approximately $860,000 in June 2022, $900,000 in July 2023, and $840,000 in June 2024. The defendant provided lower estimates ranging from $629,000 to $649,000, though the plaintiffs contend these do not comply with the *Supreme Court Civil Rules* governing expert evidence.

[30] For clarity, the only issue before the Court at this stage is liability. Questions of valuation and damages will be addressed, if necessary, at a future hearing. Nonetheless, the appraisal evidence filed by the parties provides important context. While the original purchase price for each Lot was $355,000, subsequent appraisals suggest that the value of each Lot has increased substantially. This significant increase underscores the financial stakes in the litigation and informs the parties' respective positions. The plaintiffs allege that the defendant, having recognized the appreciation in value for the Lots, deliberately delayed completion and asserted the

expiry of the CPS in an effort to induce the plaintiffs to abandon their contractual rights, thereby enabling resale of their Lots to third parties at a substantially higher price.

[31] Between June and August 2024, the defendant reiterated its position that the CPS had expired on December 30, 2018, and that no damages were owed. It further contended that the plaintiffs failed to mitigate their losses by not pursuing alternative lot purchases and argued that the CPLs registered by the plaintiffs impaired its ability to obtain financing, thereby contributing to the Subdivision delays.

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Suitability for Summary Trial

[32] The parties agree that this matter is appropriate for determination by summary trial under Rule 9-7 of the *Supreme Court Civil Rules*. Based on the full evidentiary record, I am satisfied that I can make the necessary factual and legal determinations, and that it would not be unjust to resolve the issues through this process.

[33] The summary trial applications were heard together on February 19 and 20, 2025. Although the plaintiffs differ, the legal issues—contract interpretation, *REDMA* compliance, and alleged breach—are common to all three actions. The only distinction lies in the quantum of damages, which reflects potential differences in Lot value. By agreement, the applications proceeded on the issue of liability only, and these reasons address liability on a consolidated basis.

[34] I begin by identifying the issues in dispute, then outline the relevant legal framework. I then assess the evidence and apply the law to determine whether the plaintiffs have established liability on a balance of probabilities.

ISSUES

[35] A fundamental issue in this litigation is whether the CPS remained in force beyond December 30, 2018. The plaintiffs contend that the Second Addendum effectively extended the CPS indefinitely, linking completion solely to the City's acceptance of building permit applications, which did not occur until March 2024.

They assert that, having provided additional consideration for this extension, they retained the right to complete their purchases once the City began accepting permits.

[36] The defendant, however, argues that the CPS expired on December 30, 2018, based on the Amended Disclosure Statement issued on or about May 26, 2017. The defendant maintains that this document, provided to all purchasers in the Subdivision, established a firm termination date and that the Second Addendum did not override this deadline, as it explicitly stated that all other contractual terms remained the same.

[37] The parties have identified several key issues that the Court must resolve in determining the enforceability of the contracts, the rights and obligations of the parties, and the appropriate relief, if any.

[38] The key legal issues to be determined in this matter are as follows:

a) Did the CPS terminate on December 30, 2018, as the defendant contends, or did the Second Addendum extend the completion timeline until the City of Abbotsford accepted building permit applications?

b) If the CPS remained in force beyond December 2018, did the defendant subsequently breach its obligations under the agreement? If so, when did that breach occur?

ISSUE 1: CPS Termination – Did the CPS Expire on December 30, 2018?

Legal Framework

[39] Because this dispute arises from agreements governed by the *REDMA*, the analysis must begin with *REDMA*'s statutory requirements. *REDMA* establishes strict formalities for disclosing material facts, particularly those relating to servicing timelines and completion milestones. Before turning to common law principles such as entire agreement clauses, implied terms, and good faith performance, the Court must assess whether the amended disclosure documents relied on by the defendant meet the standards of *REDMA* and were validly incorporated into the agreements.

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Key Contractual Provisions – Completion Terms and Addenda

[40] The parties' contractual relationship is governed by a series of documents entered into between March 2016 and July 2017.

[41] Clause 4 of the CPS governs the completion of the transaction, requiring the buyer to complete on the earlier of December 31, 2016, or 30 days after notice that three conditions had been satisfied. The clause also allows for a unilateral extension by the seller and includes a termination-and-refund mechanism if those conditions are not met. It reads, in full:

> The Buyer shall complete the purchase of the Lot(s) on the earlier of:
>
> (a) December 31, 2016; or
>
> (b) the 30th day after the Seller delivers written notice to the Buyer, by way of electronic mail, facsimile or regular mail to the address of the Buyer as set out on page 1 of the Contract or personal delivery to the Buyer, notifying the Buyer:
>
> (i) that the Subdivision Plan has been filed with L.T.O.;
>
> (ii) that the Seller has successfully concluded its pre-construction meeting with the Engineering Department of the City in respect of the Subdivision servicing, hereinafter defined; and
>
> (iii) that the City will accept building permit applications for the Lot(s).
>
> provided that in the event that the L.T.O. is not open for business on such day, then the Completion Date shall be the next Business Day,
>
> (the "Completion Date").
>
> The Seller may extend the Completion Date for a period of up to six (6) months by giving written notice to the Buyer of a new revised completion date (the "Revised Completion Date") which shall be the earlier of June 30, 2017 or the 30th day after notice given by the Seller as contemplated in paragraph 4(b).
>
> It is a condition precedent of this Contract (the "Condition Precedent") that items 4 (b) (i), (ii) and (iii) above will be completed prior to the Completion Date or the Revised Completion Date. In the event that the Condition Precedent has not been met by the Completion Date or the Revised Completion Date, the Agreement shall come to an end, the Deposit shall be refunded to the Buyer and neither party will have any further obligation to the other.

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[42] On June 9, 2017, the parties signed an initial Addendum permitting the defendant to release the trust deposits to the City to cover development fees.

[43] On July 5, 2017—more than six months after the original Completion Date and five days beyond the final Revised Completion Date—the parties executed the Second Addendum, which stated:

> WHEREAS:
>
> A. The Seller is the beneficial owner of lands, legally defined as: Parcel Identifier: 025-666-134, 015-930-467 and 001-172-301
>
> B. The Buyer and the Seller wish to make an addendum to the terms of the Contract between the parties dated, 20 March, 2016 (the "Contract") for the purchase of Lot 25 ("Lot").
>
> IN CONSIDERATION of the sum of $1.00 and other good and valuable consideration now paid by each party, which Is acknowledged and received, the parties agree that:
>
> 1. The Buyer agrees to pay an additional deposit in the amount of $25,000.00 paid directly to the Seller upon signing this Addendum.
> 2. The Deposit will continue to be applied towards the Purchase Price of the Lot.
> 3. <u>The Completion, Adjustment and Possession Date will be 30 days from the date the City of Abbotsford accepts the building permit applications for the Property</u>.
> 4. All terms and conditions shall remain the same.
>
> [Emphasis added.]

[44] The Second Addendum did not reference any "Revised Completion Date" or "Termination Date." Instead, it introduced a new operative clause entitled "Completion, Adjustment, and Possession Date" which would be 30 days from the date the City accepts building permit applications for the property. It did not contain any express provision for termination if that event did not occur by a specific date.

[45] The Amended Disclosure Statement, issued on May 26, 2017, included an unsigned draft CPS that contained revised completion timelines. This draft CPS, which was not executed by either party, specified a fixed completion deadline of December 30, 2018, or 30 days after the seller provided notice that certain Subdivision conditions had been met. The Amended Disclosure Statement itself

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provided further details regarding the expected project timeline, stating that the anticipated date for full servicing of the Lots was between December 31, 2017, and March 31, 2018. It also indicated that the seller retained the right to extend the completion date by up to six months through written notice to the purchaser. No further disclosure statements were issued after this amendment. The disclosure statement and the attached unsigned draft CPS were circulated to purchasers, summarizing anticipated timelines, but was never executed.

[46] A critical legal milestone in any subdivision is the assignment of PIDs, issued by the Land Title and Survey Authority once the subdivision plan is registered. The process is largely administrative and, while site servicing and engineering may require technical work, the issuance of a PID signifies legal readiness for transfer. In this case, PIDs were not assigned until March 2019. Throughout this period, the plaintiffs attest that they continued receiving updates from the defendant and were not advised that the CPS had expired or that their deposits would be returned.

Principles of Contractual Interpretation

[47] The interpretation of contracts requires a practical, common-sense approach, considering the contract as a whole, giving the words used their ordinary and grammatical meaning, and taking into account the surrounding circumstances known to the parties at the time of formation: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47. Courts must seek to determine the true intent of the parties, rather than imposing obligations that were not expressly agreed upon: *Chudy v. Merchant Law Group,* 2008 BCCA 484 at para. 207.

[48] Where contractual wording is unambiguous, its express terms should govern, and extrinsic evidence should not be used to override or contradict them: *Ventas, Inc. v. Sunrise Senior Living Real Estate Investment Trust,* 2007 ONCA 205 at para. 24. Courts will also avoid reading in additional terms unless they are necessary to give effect to the parties’ agreement.

[49] The principle of *contra proferentem*—that ambiguous contractual language should be interpreted against the drafter—is well established. It becomes relevant

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where a party relies on vague or incomplete language to support its preferred interpretation. However, courts must first strive to give meaning to all terms of the agreement, reading the contract as a whole, even if certain operative clauses are not expressly cross-referenced. As Robins J.A. explained in *Scanlon v. Castlepoint Development Corp* (1992), 11 O.R. (3d) 744 at 750, 1992 CanLII 7745 (O.N.C.A.), the absence of cross-reference does not preclude the concurrent operation of two provisions where they are not contradictory. The principle of *contra proferentem* is properly invoked only when provisions are irreconcilable.

[50] Professor McCamus explains the principle in his treatise on *The Law of Contracts* as follows:

> The principle of construction contra proferentem holds that provisions in agreements and other written documents that suffer from ambiguity are to be construed against the interest of the person who drafted or proferred the ambiguous provision.
>
> (John D. McCamus, *The Law of Contracts*, Irwin Law Inc., 2005, at 722)

[51] Where an agreement includes multiple amendments, the latest executed addendum will generally govern the parties' obligations. If the amendment introduces a new completion date or condition without a specified deadline, courts must consider whether it was intended to replace earlier provisions or operate within the broader contractual structure. This interpretation must be guided by the language used and the overall intention of the parties at the time of amendment.

[52] In this case, the Second Addendum must be understood in the context of the parties' shared conduct and communications, and against the backdrop of a commercial transaction where the defendant had primary control over the Subdivision process and regulatory milestones.

Entire Agreement and Superseding Clauses

[53] Entire agreement clauses preclude reliance on external documents or prior negotiations, ensuring that only the written terms of the executed agreement govern the parties' obligations. To be part of the CPS, the Disclosure Statement must be

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explicitly incorporated: *413255 B.C. Ltd. v. Jesson et al*., 2006 BCSC 1070 at para. 30.

[54] A disclosure statement may serve a regulatory purpose but does not, on its own, modify contractual obligations unless it forms part of the contract's express terms.

Implied Terms and Business Efficacy

[55] Where a contract does not specify a definitive completion date, courts may imply a reasonable time for performance, based on the nature of the agreement and the surrounding circumstances: *Canadian Western Bank v. 702348 Alberta Ltd*., 2009 ABQB 271 at para. 50; *Brar v. Illihae Dairy Farms Ltd.,* 35 R.P.R. (2d) 191, 1993 CanLII 1474 (B.C.S.C.). However, implied terms cannot contradict express contractual language: *Kaban Resources Inc. v. Goldcorp Inc.,* 2020 BCSC 1307 [*Kaban*] at para. 86.

[56] Courts must determine whether an implied completion date is required to make the contract workable, or whether an express term—such as a completion date tied to an external event—provides sufficient certainty: *Kaban* at para. 110.

Good Faith Performance and Excusable Delay

[57] Contracting parties are required to perform their obligations honestly, in good faith, and in a manner consistent with the agreement's commercial purpose: *Bhasin v. Hrynew*, 2014 SCC 71 at para. 63. This duty applies throughout the life of the contract, including during the pursuit of approvals and compliance with development milestones.

[58] While delay does not constitute breach if it arises from unforeseen circumstances or legitimate regulatory hurdles, a party who retains discretion over a key aspect of performance—such as securing approvals or triggering completion—must exercise that discretion in good faith and for its intended purpose: *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage Distri*ct, 2021 SCC 7 at para. 83.

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[59] Courts have consistently held that this duty includes avoiding conduct that undermines the counterparty's interests. In *Roberge v. 1102940 Alberta Ltd.*, 2012 ABQB 717, the court upheld termination where the developer acted in good faith by seeking financing, giving timely notice, and refunding deposits. By contrast, failure to communicate delays, reinvest proceeds, or pursue approvals with reasonable effort may constitute a breach of the duty of honest performance.

[60] These obligations arise even where no fixed completion date exists. In such cases, courts may imply a requirement to perform within a "reasonable time" if necessary to give business efficacy to the agreement: *Scanlon*.

[61] A developer exercising exclusive control over the timeline is expected to act with diligence. Courts have found a breach where a developer:

a) fails to pursue approvals or servicing with reasonable effort;

b) prioritizes other business interests over contractual obligations; or

c) fails to allocate available resources toward project completion (*Roberge*, at paras. 49–61).

[62] These duties remain enforceable even where performance is impacted by external challenges. Delays arising from municipal approvals, geotechnical complications, or financing difficulties may, in some cases, justify postponement: *Morris v. Cam-Nest Developments Ltd.*, 1988 ONSC 4604 at para. 51. However, such circumstances do not excuse a failure to act in good faith, communicate transparently, or take reasonable steps to mitigate foreseeable delay. Financial hardship, in particular, does not justify inaction. Courts have rejected defences based on lack of resources where a party made no meaningful attempt to refinance or seek alternatives: *Roberge*; *Scanlon*.

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Positions of the Parties

Plaintiffs' Position

[63] The plaintiffs allege the defendant breached its obligations by deliberately delaying Subdivision completion—despite selling 19 of 30 Lots by early 2022 and receiving approximately $7 million in proceeds. They contend those funds were not reinvested into the project.

[64] They argue that completion should have occurred well before 2024 and that delays were the result of inaction—not regulatory hurdles. Since the Second Addendum tied completion to the City's permit acceptance, the defendant had exclusive control over fulfilling that condition.

[65] The plaintiffs further emphasize that the defendant continued selling Lots during this time but failed to apply proceeds toward construction or approvals—conduct they say reflects bad faith performance.

Defendant's Position

[66] The defendant argues delays were caused by a combination of:

a) unforeseen engineering requirements (e.g., expanded retaining walls);

b) covenant and servicing delays, allegedly worsened by the CPLs;

c) municipal backlog;

d) financial constraints following a $51 million mortgage registered in 2021; and

e) It also cites pandemic-related disruptions and lender-imposed limitations on reinvesting lot sale proceeds.

[67] The defendant further asserts that the CPLs impeded refinancing efforts. Once discharged in August 2023, it claims to have secured new financing and invested $1.5 to $2 million to complete the Subdivision.

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Application of Law to Facts

[68] Having set out the relevant background, contractual provisions, and legal principles, I now turn to the central question: whether the CPS expired on December 30, 2018, as the defendant contends.

[69] The resolution of this first issue turns on two key sub-questions:

a) Does the May 2017 Amended Disclosure Statement, including its unsigned draft CPS, have contractual force?

b) If not, did the Second Addendum supersede the original completion mechanism, creating a continuing obligation to complete once municipal approval was secured?

Issue 1: a) Does the May 2017 Amended Disclosure Statement Have Contractual Force?

[70] As previously discussed, the defendant relies on the unsigned Amended Disclosure Statement dated May 26, 2017, which included a draft agreement referencing a fixed completion date of December 30, 2018. It submits that this date governed expiry of the CPS and was not displaced by the Second Addendum.

[71] *REDMA* imposes formal regulatory requirements for disclosure amendments to be effective. Specifically, material changes—such as revised completion dates—must be:

a) filed with the Superintendent of Real Estate;

b) signed by the developer; and

c) delivered to each purchaser.

[72] The Amended Disclosure Statement was neither signed by the developer nor properly delivered to the plaintiffs. It included only a generic, unsigned draft CPS and was merely initialed in one version. These deficiencies fall short of *REDMA*’s enforceability requirements.

[73] At para. 30 of *413255 B.C. Ltd.*, Justice Gerow held that for a disclosure statement to form part of a CPS, it must be explicitly incorporated. There is no evidence that the Disclosure Statement in this case was ever incorporated into the CPS.

[74] Clause 27 of the CPS provides that the agreement "shall constitute the entire agreement between the Seller and the Buyer and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Lot(s) other than as expressed herein in writing." This language closely mirrors the clause in *413255 B.C. Ltd.*, where the Court clarified that only an expressly referenced disclosure statement was considered to be incorporated. Here, no such reference appears.

[75] Consistent with Justice Gerow's reasoning, I find that the Amended Disclosure Statement was not incorporated into the CPS and does not have contractual force. This conclusion is reinforced by clause 29, which provides that the CPS supersedes all other verbal or written arrangements, and by clause 33, which states that no amendment is binding unless in writing and signed by both parties.

[76] Accordingly, the Amended Disclosure Statement dated May 26, 2017, has no contractual effect. It failed to comply with *REDMA* and was not incorporated into the CPS. The December 30, 2018, deadline contained in the unsigned draft has no legal significance.

b) Did the Second Addendum Supersede the Original Completion Provisions?

[77] With the May 2017 Amended Disclosure Statement found unenforceable, the next question is whether the Second Addendum, executed on July 5, 2017, superseded the original completion terms in the CPS and created a new, binding mechanism tied to municipal approval.

[78] The plaintiffs argue that the Second Addendum replaced the prior date-based completion mechanism with one triggered by a regulatory milestone: the City's

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acceptance of building permit applications. It did not include a fixed deadline or reference to a "Revised Completion Date."

[79] As discussed above, in *Chitchot*, Justice Caldwell interpreted this same Second Addendum in the context of a CPL application. In deciding on the issues before him, he commented how it appeared to establish new "Completion, Adjustment, and Possession Date" tied exclusively to the City's permit process. I find that the plain language of the Second Addendum supports this reading.

[80] The Second Addendum was negotiated, executed, and supported by additional consideration—$25,000 per lot—paid directly by each plaintiff. It meets the requirements of a binding contractual modification.

[81] As held in *Sattva Capital Corp*., contracts must be interpreted in light of their purpose and the parties' shared understanding at the time. Here, the language and structure of the Second Addendum reflect a mutual intention to adopt a flexible, milestone-based completion clause tied to regulatory approval.

[82] The defendant relies on *Gulati v. 0998823 B.C. Ltd*. (16 November 2021), New Westminster 237414 and 237415 (B.C.S.C.), where a similar CPS was interpreted. Although *Gulati* relates to the exact same Subdivision and defendant, it is materially distinguishable. In that case, the Second Addendum expressly included a clause extending the completion date to the earlier of December 31, 2017, or 30 days after Subdivision notice—language consistent with the original CPS.

[83] By contrast, the Second Addendum in this case introduced entirely new language, providing that the "Completion, Adjustment and Possession Date" would be 30 days from the City's acceptance of building permit applications. It also recites consideration, expressly references the CPS, and was executed by all parties. The introduction of the defined phrase "Completion, Adjustment and Possession Date"—which does not appear in the original CPS—signals a deliberate departure from the prior completion structure.

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[84] I do not accept the argument that the Second Addendum preserved the December 30, 2018, deadline. That date appears only in the unsigned draft CPS attached to the unenforceable Amended Disclosure Statement. It was not incorporated, adopted, or referenced in the executed agreement.

[85] I find it significant that in *Gulati*, the defendant explicitly included a new fixed Completion Date in the Second Addendum. By contrast, in this case, the Addendum sets out a condition precedent based on a future regulatory event. This interpretation aligns with Caldwell J.'s analysis, which recognized that the Second Addendum created a continuing right to complete the transaction upon the occurrence of that condition. This difference between *Gulati* and the case at bar underscores that, where the defendant intended to preserve or introduce a firm deadline, it did so expressly and within the four corners of the agreement.

[86] The defendant cannot now rely on ambiguity to imply a fixed expiry date where none was expressed. The Addendum was drafted—or at a minimum, procured—by the defendant. Applying the principle of *contra proferentem*, any residual ambiguity must be resolved against the drafter.

"Reasonable Time" Argument

[87] In the alternative, the defendant submits that, absent a fixed expiry date, the CPS must be interpreted to require completion within a "reasonable time," which he says expired on December 30, 2018. He relies on authorities such as *Canadian Western Bank*, *Brar*, *Justein v. 3900 Yonge Street Ltd.,* [1983] O.J. No. 1177 (Ont. H.C.J.) and *345 Builders Ltd. v. Su,* 2021 BCSC 2509 [*345 Builders*], which recognize that, in the absence of a specified deadline, the law may imply a requirement to perform within a reasonable time.

[88] However, those authorities establish a doctrine intended to protect buyers, not sellers, from open-ended uncertainty and undue delay. The purpose is to ensure that a seller or developer cannot indefinitely defer obligations where the buyer has no control over performance timelines.

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[89] In *Canadian Western Bank*, the Court held that where an agreement is otherwise certain but lacks a fixed performance date, a reasonable time limit may be implied to give the contract business efficacy. A seller cannot delay performance indefinitely when ongoing obligations are contemplated.

[90] In *Brar*, the Court found that where closing was contingent on a subdivision, a duty to complete within a reasonable time was implied. The buyer in that case was ultimately found to have failed in that obligation.

[91] In *Justein*, the Court enforced a contract despite the absence of a firm date, holding that the vendor was obligated to proceed with reasonable dispatch and complete within a reasonable time after the triggering event.

[92] Similarly, in *345 Builders*, the Court found that where a seller retains control over the project timeline, a reasonable time may be implied to protect the buyer from indefinite delay. The analysis focused on whether either party had proposed a new deadline and whether delay was mutual or one-sided.

[93] In this case, the defendant seeks to invert that doctrine—not to protect the plaintiffs from unreasonable delay, but to relieve itself of obligations under the CPS that the evidence suggests, it continued to treat as subsisting. That use is inconsistent with the purpose of the rule.

[94] Even if a reasonable time were to be implied, the evidence does not support December 30, 2018, as a reasonable deadline. The burden of proving expiry rests with the defendant. On the record, that burden is not met.

[95] Throughout 2018 and beyond, the defendant continued to collect deposits, market lots, and carry out development work. While some site work occurred between September 2017 and June 2018, there was a period of minimal activity until IFC drawings were approved in February 2019. Subdivision approval and the Servicing Agreement were not issued until March 2019.

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[96] The defendant did not advise the plaintiffs that December 30, 2018, or any other date, would be treated as final. The plaintiffs attest that communications from Mr. Dhillon continued into 2021, with no mention of expiry or termination.

[97] The defendant's conduct remained inconsistent with an intent to treat the CPS as expired. It did not issue termination notices, refund deposits, or cease updates. Instead, it advanced infrastructure work and continued selling lots. These were observable acts of performance.

[98] The expiry theory appears to have been advanced only after litigation commenced. There is no contemporaneous evidence that the defendant ever treated the CPS as lapsed prior to that.

[99] If the defendant faced genuine financial or regulatory delays, it had a duty to communicate and propose alternative arrangements. Its silence during the relevant period contradicts that duty: *Scanlon*, at para. 104.

[100] The defendant's failure to act diligently or reinvest project proceeds deprived the plaintiffs of a meaningful opportunity to assess their rights or negotiate alternatives. Relying on continued assurances, the plaintiffs reasonably believed the CPS remained in effect.

[101] The delay appears to have been one of commercial convenience, not necessity. Unlike in *345 Builders*, there was no impasse or mutual frustration. The plaintiffs were consistently ready to complete.

[102] Even if external constraints were present, they do not excuse a failure to:

a) act in good faith,

b) communicate transparently, or

c) take reasonable steps to mitigate or resolve delays: *Justein*, at paras. 2–3.

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[103] Financial hardship does not relieve a developer from these obligations. Courts have rejected justifications for delay where no meaningful effort was made to secure financing or adapt development strategy.

[104] The defendant's cited difficulties—including geotechnical conditions, COVID-related impacts, and financing constraints—occurred after 2019. However, based on their evidence, they have not justified inaction between mid-2017 and the end of 2018, which remains central to the defendant's expiry theory.

[105] Taken together, the defendant's conduct reflects a sustained failure to act with diligence or transparency. In light of the contract's structure and the existence of a true condition precedent, the final question becomes when that failure became legally actionable. That analysis follows under Issue 2.

Conclusion on Issue 1

[106] The May 26, 2017, Amended Disclosure Statement has no contractual effect. It was neither executed nor delivered in accordance with *REDMA* and was never incorporated into the CPS. The December 30, 2018, reference in that draft has no legal significance.

[107] In contrast, the July 2017 Second Addendum is valid and binding. It replaced the original completion date with an event-based trigger: completion was to occur 30 days after the City accepted building permit applications. There is no basis to imply a term requiring completion within a "reasonable time." The parties expressly agreed to a completion mechanism tied to a regulatory event, leaving no contractual gap to fill. The CPS remained in force beyond December 30, 2018.

[108] The Second Addendum clearly tied completion to the City's acceptance of permit applications. It contained no fixed expiry date. Moreover, between 2017 and 2019, the defendant made little progress and failed to communicate transparently, further undermining its position that the CPS had expired.

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[109] While the plaintiffs were entitled to expect diligence and good faith, whether the defendant breached the CPS depends on whether the condition precedent was fulfilled and what followed. I turn to that issue next.

ISSUE 2: When Did the Breach Occur?

Legal Framework

[110] As determined in Issue 1, the CPS remained in force beyond December 30, 2018. The remaining question is whether, and if so, when, the defendant breached its obligations under the agreement.

Anticipatory Breach and Repudiation

[111] The concepts of "anticipatory breach" and "anticipatory repudiation" are often used interchangeably. In this context, anticipatory breach refers to conduct that may give rise to repudiation—that is, conduct which entitles the innocent party to treat the contract as terminated.

[112] Repudiation arises where one party, by words or conduct, clearly indicates an intention not to fulfill its future obligations. As summarized in *Spirent Communications of Ottawa Ltd. v. Quake Technologies (Canada) Inc.*, 2008 ONCA 92, 88 O.R. (3d) 721 at para. 37, the test is whether a reasonable person would conclude that the breaching party no longer intends to be bound. Repudiation may justify termination where it deprives the innocent party of substantially the whole benefit of the contract.

[113] Repudiation may be established by an express refusal to perform, or by conduct that demonstrates an inability or unwillingness to perform an essential term. Importantly, repudiation does not itself terminate a contract. It gives rise to an election: the innocent party may accept the repudiation and treat the contract as at an end or affirm the contract and insist on performance. Once made, the election is binding: *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423 at 440–41.

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[114] For repudiation to be effective, the conduct relied on must be clear, absolute, and unequivocal: *Kalis v. Pepper*, 2015 ONSC 453 at para. 12.

[115] As reaffirmed in *Dosanjh v. Liang*, 2015 BCCA 18 at para. 33, the innocent party may treat repudiation as terminating the contract and seek damages without needing to perform further.

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Interaction with a True Condition Precedent

[116] Where a contract is subject to a true condition precedent—such as municipal or regulatory approval—the obligation to complete is suspended until that condition is satisfied. As confirmed in *Keltic (Brighouse) Development Ltd. v. Yi Teng Investment Inc.*, 2023 BCCA 375 at paras. 24–26, such a condition delays the formation of any enforceable obligation to complete. Until that event occurs, there is no obligation to perform, and therefore no basis to repudiate.

[117] Accordingly, conduct alleged to constitute repudiation prior to fulfillment of a true condition precedent generally has no legal effect. Assertions that a contract has expired, or premature refusals to perform, are ineffective where performance is not yet due. However, the legal analysis shifts where a party acts to prevent, obstruct, or render fulfillment of the condition impossible.

[118] Although the obligation to complete remains suspended pending fulfillment of the condition precedent, the common law imposes an implied obligation on both parties to take reasonable steps to facilitate that fulfillment. This duty is rooted in the principle of good faith performance, as recognized in *Bhasin* at para. 63 and *Wastech Services Ltd.* at para. 83.

[119] In *Barnett v. Harrison*, [1976] 2 S.C.R. 531, the Supreme Court of Canada confirmed that a true condition precedent—particularly one dependent on the actions of a third party—cannot be waived unilaterally by either contracting party. However, more recent jurisprudence, including *Bhasin* and *Wastech*, affirms that this suspension of obligations does not relieve either party of the implied duty to cooperate in the fulfillment of the condition. That duty includes refraining from

conduct that would frustrate, delay, or undermine the occurrence of the triggering event.

[120] A party that fails to take such steps—or acts affirmatively to obstruct the condition's occurrence—may be found to have repudiated the contract. In such cases, repudiation is not based on refusal to complete, but on breach of the implied obligation to enable the condition's fulfillment.

[121] These principles must be understood together. A true condition precedent suspends the primary performance obligations under the contract, and cannot be waived or ignored by either party. However, during that period of suspension, both parties remain bound by an implied duty to act in good faith and to support the condition's fulfillment. Where that duty is breached, repudiation may arise even before the condition is technically met. In the absence of such obstructive conduct, premature expiry assertions do not amount to legal repudiation. The doctrine of anticipatory breach becomes fully engaged only once the condition is fulfilled and performance is due.

Application of Law to Facts

A. Repudiation and Breach

[122] The first question is whether the defendant's conduct prior to March 2024 constituted a repudiation or anticipatory breach. As discussed above, where a contract is subject to a true condition precedent, no enforceable obligation to complete arises until the condition is satisfied.

[123] In this case, the Second Addendum made completion conditional on the City of Abbotsford's acceptance of building permit applications. That condition was not fulfilled until March 2024. Accordingly, the defendant's earlier statements asserting that the CPS had expired—although incorrect—did not constitute a repudiation. At that time, no performance was yet due, and no obligations had crystallized.

[124] There is also no evidence that the defendant obstructed or frustrated the fulfillment of the condition precedent. The plaintiffs did not allege that the defendant

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actively prevented the City's acceptance of building permit applications, nor did they treat the contract as repudiated at any earlier stage. To the contrary, they consistently affirmed the CPS, sought specific performance, and treated the agreement as continuing in force.

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[125] It was only in March 2024, when the City confirmed it would accept building permit applications, that the condition precedent was fulfilled and the defendant's obligation to complete arose. The defendant's failure to complete within 30 days thereafter constituted the operative breach. In June 2024, the plaintiffs amended their pleadings to seek damages—thereby electing to treat the contract as at an end.

[126] I therefore find that the breach of contract occurred in or about April 2024. That was the first point at which the defendant's failure to act engaged its enforceable obligations under the Second Addendum. The plaintiffs were entitled to terminate and seek damages at that point.

Conclusion on when the breach occurred

[127] The defendant's failure to complete the transaction following satisfaction of the condition precedent in March 2024 constitutes a breach of the CPS. Although the defendant had earlier taken the position that the agreement had expired, that assertion did not engage any enforceable obligation, as the condition precedent had not yet been fulfilled. The plaintiffs, for their part, did not treat those assertions as repudiation. Instead, they affirmed the CPS, sought specific performance, and continued to treat the agreement as valid and subsisting. As confirmed in *Dosanjh* at para. 33, where one party mistakenly believes a contract is no longer binding, the contract remains enforceable if the innocent party affirms it. A subsequent failure to perform once the obligation crystallizes gives rise to an actionable breach.

[128] I therefore conclude that the breach did not occur when the defendant first asserted that the CPS had expired. The legal breach arose only upon the defendant's failure to complete in the weeks following the City's confirmation in March 2024. That inaction—following the plaintiffs' continued affirmation of the

contract and the fulfillment of the condition precedent—constitutes the actionable breach.

DISPOSITION AND ORDERS

[129] I conclude that the CPS remained valid and enforceable until March 2024, when the City confirmed it would accept building permit applications—fulfilling the operative condition in the Second Addendum.

[130] The defendant had, by February 2022, adopted the position that the CPS had expired. However, because the operative condition in the Second Addendum had not yet been fulfilled, the defendant was not yet under a legal obligation to complete the transaction. It was not until April 2024—30 days after the City confirmed it would accept building permit applications—that the defendant's contractual obligation to complete crystallized. His failure to perform at that time constitutes the breach of contract.

[131] The defendant raises mitigation as a potential defence. However, this argument is best reserved for the damages phase.

[132] This decision addresses liability only. The assessment of damages will proceed at a later hearing, following further submissions by the parties.

[133] Accordingly, I grant judgment in favour of the plaintiffs on the issue of liability and make the following orders:

a) The CPS between the parties remained valid and enforceable until March 2024;

b) The defendant breached its contractual obligations in or about April 2024, 30 days following the satisfaction of the condition precedent;

c) Judgment is granted in favour of the plaintiffs on the issue of liability;

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d) The assessment of damages is reserved to a subsequent hearing, the date of which shall be scheduled by the parties in consultation with the Court; and

e) The issue of costs is also reserved to the judge presiding at the damages hearing, unless otherwise agreed by the parties.

[134] Unless otherwise agreed, the parties shall consult with Supreme Court Scheduling and propose a date for the hearing on damages.

"Sukstorf J."

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