Court of King's Bench of Alberta

Citation: La Trace v Warkentin Building Movers, 2025 ABKB 412

Date: 20250707
Docket: 1703 09064, 1703 04023
Registry: Edmonton

Between:

Dean La Trace and Darlene La Trace

Plaintiffs

- and -

Warkentin Building Movers Virden Inc., operating as Warkentin Building Movers

Defendant

Warkentin Building Movers Virden Inc.

Plaintiff

- and –

Dean La Trace and Darlene La Trace

Defendants

Reasons for Decision
of the
Honourable Justice S.N. Mandziuk

I. Introduction

[1] Darlene La Trace (**Ms. La Trace**) and Dean La Trace (**Mr. La Trace**) are a married couple (collectively **La Traces**) who have a farm property in the Sherwood Park area of Strathcona County, Alberta (**La Trace Property**).

[2] Warkentin Building Movers Virden Inc. operating as Warkentin Building Movers (**WBM**) is a corporation engaged in the building moving business. WBM's principal is Wayne Warkentin (**Mr. Warkentin**).

[3] In the fall of 2015, the La Traces hired WBM to move a house, gazebo, and garage roof (collectively **Structures**, individually **House**, **Gazebo** and **Garage Roof**) from a rural property in the Nisku-Beaumont area of Leduc County (**Leduc Property**) to the La Trace Property. The La Traces purchased the Structures from a third party for $5,000.

[4] WBM moved the Structures from the Leduc Property to the La Trace Property in early 2016. The Structures were damaged during the process.

[5] The parties filed Statements of Claim against each other in two separate actions. The two actions were consolidated pursuant to a May 13, 2019 Order of this Court and heard together. The trial proceeded over 20 days, beginning in November 2021 and concluding in September 2022, with final arguments being heard in January 2024.

[6] The La Traces' Amended Statement of Claim, filed July 21, 2020, seeks judgment in the amount of $1,480,000 for negligence and breach of contract, and "plead[s] and rel[ies] on the *Fair Trading Act*, RSA 2000, c F-2" (as it then was) alleging various "unfair trading practices". This statute is now called the ***Consumer Protection Act***, RSA 2000, c 26.3 (***CPA***). The La Traces seek costs of their action as well as interest pursuant to the ***Judgment Interest Act***, RSA 2000, c J-1. In written argument, the claim is expanded to include the cost of rebuilding the House (several million dollars) and general and punitive damages ($1,500,000 for those two heads of damages).

[7] WBM's Amended Statement of Claim, filed January 19, 2018, seeks judgment in the amount of $42,500 for the balance of the contract price, damages for lost use of equipment in the amount of $109,800, and payment of a bill owed to CN Rail ($4,410), a third party engaged during the move. WBM also claims costs and interest at the contractual rate of 24% or interest pursuant to the *Judgment Interest Act*.

[8] WBM admits liability for the House striking a tree during the move and quantifies the damages in accordance with the findings of Robert Clarke, in his expert reports dated February 17, 2016, and October 17, 2021. The particulars of those reports and Mr. Clarke's evidence will be addressed later in these Reasons.

II. Burden and Standard of Proof

[9] This is a civil case. Accordingly, the onus is on a party who wishes to prove a fact to prove that fact on a balance of probabilities.

[10] The Supreme Court of Canada firmly established the standard of proof in civil cases in ***FH v McDougall***, 2008 SCC 53 [***FH***], holding (at para 40) that "... in Canada ... there is only one civil standard of proof at common law and that is proof on a balance of probabilities."

[11] This means that "the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred" (***FH*** at para 44, emphasis added).

[12] The Court in ***FH*** goes on to observe that:

> ...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.
>
> (para 46, emphasis added)

[13] This evidentiary rubric applies to the issues the parties raise in their respective claims.

III. Facts

[14] The evidence will be summarized in roughly chronological order. Where facts are disputed, I will provide my findings of fact within the chronology. Some of the facts that specifically relate to the causes of action will be dealt with at other appropriate places within these Reasons.

[15] The evidence consists of oral testimony from both lay and expert witnesses, expert reports, read-ins from Questioning, and a very large number of exhibits.

[16] The evidence also includes portions of an Affidavit sworn by Helmut Nickel on October 29, 2020 (**Nickel Affidavit**). Helmut Nickel died on December 21, 2020. The La Traces applied to have the Nickel Affidavit entered as an expert report concerning the construction of the House and its pre-move value. I allowed certain paragraphs of the Nickel Affidavit into evidence (see ***Warkentin Building Movers Virden Inc v La Trace***, 2022 ABQB 346).

A. The Structures

[17] The House was built in the mid-1990's by and under the supervision of Helmut Nickel. In the Nickel Affidavit, he describes himself as an experienced "master masonry contractor".

[18] Mr. Nickel describes the House as "[a] dream home ... of custom design incorporating a massive central fireplace/waterfall feature with soaring ceilings". He characterizes it as a very high-end home.

[19] The description of the Structures that follows comes from photographs and other pieces of evidence.

[20] The House was a single-story home with a 3-car garage attached. The main structure of the House was hexagonal, with a rundle-stone fireplace central feature and staircase to the basement in the middle. One side of the main structure was the living room while the other side housed a kitchen.

[21] The Solarium appears to have been built on the lower level, equipped with multiple skylights, protruding out of the main structure on the side of the living room. As the Solarium was on the basement level, its ceiling reached halfway up the walls of the House.

[22] All other areas of the House were connected to the main structure with their own sections. The master bedroom was attached to one side of the center hexagon past the kitchen, while the two other bedrooms and the connecting Garage were attached to the central structure on the other side of the kitchen.

[23] The House had bricks on its exterior finish. The Garage was built with cinderblock walls and also had an exterior finish of bricks.

[24] The Gazebo, built in a similar fashion to complement the House, was hexagonal in design, with steel poles as its main support between wall panels and a layer of bricks on the outside. There were windows built into most wall panels, with some walls having two windows. It was a separate Structure; that is, it was not connected to the House.

B. The La Traces Purchase the Structures

[25] On August 24, 2015, Ms. La Trace was driving in the vicinity of the Leduc Property. She saw the House. There was no signage indicating that it was for sale, but she observed that there was development in the vicinity and thought that it might be available for purchase.

[26] Ms. La Trace testified: “I thought I hit the lottery”. Ms. La Trace testified that the House was a “very unique house, custom built” with rundle stone, slate floors, granite in mouldings and shower walls, 2200 square feet in size. The La Traces describe the House in the Amended Statement of Claim as “a unique building of superior craftsmanship and quality”.

[27] After making some inquiries, Ms. La Trace met a “remediation contractor” named Tom Van Tetering.[1] He represented the landowner and told Ms. La Trace that the House was not being lived in. The House had sat vacant since August 2014, more than one year before Ms. La Trace saw it for the first time. Mr. Van Tetering informed Ms. La Trace that the Structures were available for sale as the landowner was trying to reduce costs. Ms. La Trace discussed the matter with Mr. La Trace. Negotiations ensued.

[28] The Nickel Affidavit asserts that the property was in “pristine” condition when it was vacated, but by late 2015 had suffered some damage. Ms. La Trace testified that when she first saw the House it had broken windows, and she answered affirmatively when asked “so a lot of windows in the house were broken”. Vandals had damaged the drywall and microwave. Electricity, water, and heat had not been supplied to the House since it was vacated.

[29] In her testimony, Ms. La Trace stated that at the time she purchased the House it only needed new windows, minor drywall repairs, a new garage, new appliances, stairs to the basement, a foundation for the House and the garage, and all utility hookups including water. A cabinet door needed to be replaced as well as some lights.

[1] Mr. Van Tetering was not called as a witness in the trial. Any statements made by him are hearsay and therefore of minimal, if any, weight.

[30] I find it to be more likely than not that the vacant House was in less than pristine condition when the La Traces purchased it. The La Traces did not have the Structures appraised or inspected during the purchase process.

[31] The La Traces intended to move the Structures to the La Trace Property, and to that end contacted a number of movers before purchasing the Structures. At some point during the purchase process, they contacted Mr. Cornelius, a "contractor that specializes in foundations" who said that the Structures were in moveable condition, but it would be difficult due to the House's footprint.

[32] On that basis, Ms. La Trace began the process of finding someone to move the Structures. She consulted three different companies and for various reasons did not retain any of them. She testified that one of the movers told her that the House "was structurally sound to move". Two of the three movers told Ms. La Trace that there would have to be one or more cuts to move the House.

[33] By late August 2015, Mr. Van Tetering informed the La Traces that they could no longer purchase the Structures. However, by mid-September, this position had changed. The negotiated price paid by the La Traces for the Structures was $5,000. Ms. La Trace testified that she "didn't really want to pay anything" originally but agreed that "$5,000 would be a steal" for the Structures. The price was for all of them. The purchase price was not broken down by individual Structure.

C. The La Traces Retain WBM

[34] Mr. Van Tetering referred the La Traces to WBM, a building moving company whose principal, as mentioned earlier, was (and is) Mr. Warkentin. Mr. Warkentin had allegedly told Mr. Van Tetering who told the La Traces that the House could be moved without any cuts. According to the La Traces, Mr. Warkentin met Mr. Van Tetering in early September 2015 at the Leduc Property to assess the move. This was relayed by the La Traces in their testimony; it is of minimal evidentiary value as it is double hearsay.

[35] Ms. La Trace researched WBM on the internet, noted some touting of expertise on WBM's website, WBM's membership in the International Association of Structural Movers and the representation that WBM is a third-generation business. Ms. La Trace arranged to meet Mr. Warkentin. They looked at the House and the Gazebo.

[36] There was an undocumented or "handshake" deal between the parties during the last week of September 2015. The La Traces and WBM agreed that WBM would move the Structures from the Leduc Property to the La Trace Property for $80,000 plus GST and $15,000 for "line lifts". In addition to pricing - according to Ms. La Trace - they discussed many aspects of the move, the route that could be taken and Mr. Warkentin "had to give me [Ms. La Trace] insurance and worker's comp certificate, those were our terms . . . he needed to give it to me [in] writing".

[37] On October 14, 2015, Mr. Warkentin advised the La Traces that the Solarium attached to the House would have to be removed. The following day, he cut the Solarium from the House.

[38] On October 17, 2015, Mr. Warkentin sent Ms. La Trace an email saying that he would "get a look at the brick work tomorrow and try and see how well it's attached to see if we can save you some money on prep time and get an agreement to you. Date to start will work after nov 7". He states that he would like to meet the next day and get a deposit.

[39] Ms. La Trace responded to Mr. Warkentin's email six minutes later indicating that she was getting on a plane, that Mr. La Trace would meet Mr. Warkentin on October 27, 2015, and said that she needed an agreement "ASAP".

[40] Within an hour, Mr. Warkentin sent a document that has the characteristics of an invoice or work order or quote (it lacks a specific title). I will refer to it as the **Quote** in these Reasons.

[41] The Quote is dated October 17, 2015, on WBM letterhead. The La Traces are named as the "Client", and their contact information is detailed. In the "Job Description" section of the Quote it states:

- Moving House Nisku/Beaumont area onto foundation (with pockets)
- Moving roof of garage onto blocking.
- Moving Gazebo and removing brick if needed.
- prep work on brickwork will be attempted but no guarantee on it being secured when moved.
- powerline lifts not included.

[42] Just below the Job Description section is the following:

> Moving of fixed structures, police escorts & hydro costs not included. *Not responsible for cracking of drywall, stucco, wiring, or water lines due to moving stress.

[43] The price quoted is consistent with the earlier "handshake" agreement: $80,000 plus $4,000 GST for a total of $84,000.

[44] Mr. La Trace responded with an email on October 18, 2015, stating, "thanks for sending the agreement". He said he could meet Mr. Warkentin on October 27, 2015, and sought confirmation about several matters:

- Whether two rows of bricks on the House will be removed and supported by angle iron.
- The nature of "pockets".
- Confirmation that the Gazebo could be placed on a foundation if it were ready but otherwise on blocks.
- Whether the fireplace would be welded in/secured.
- Clarification of the payment structure.
- Request copies of WCB and insurance coverage.

[45] Mr. Warkentin responded a few hours later, stating that he would give a more detailed answer and would book November 7, 2015, to start work (which he would normally not do before receiving a deposit) and indicated that he would be postponing other work. On October 26, 2015, Mr. Warkentin provided the following clarifications:

(a) He intended to remove two rows of brick "to accommodate angle/channel iron to support brick work". But he noted: "[t]here is no guarantee that brick work will stay on however we will attempt to move it" [*sic*].

(b) He clarified that pockets were to accommodate steel to put the House on the foundation and that the fireplace would be supported by a steel beam grid. The La Traces would be charged for the steel which WBM would supply.

(c) The Garage Roof would be set on blocking, and the Gazebo would be moved "without brickwork" and put on a foundation or blocking.

(d) The power line lift, land crossing fees, snow removal (all if necessary) "must be paid as bill comes in".

(e) The payment schedule would be $10,000 up front, $20,000 when House was loaded, $30,000 when moved and $20,000 when placed.[2]

[46] In response to Mr. Warkentin's October 26, 2015 email, Ms. La Trace: inquired about the cost of the steel; stated that she did not know they were pulling brick off the Gazebo; asked about using angle iron on the Gazebo; requested WCB and insurance confirmation; and said that the La Traces' insurance provider had wanted them to get that information before providing the deposit. She also said that "[t]he rest looks fair and reasonable and as discussed".

[47] Mr. Warkentin emailed less than an hour later stating that he thought the brick was coming off of the Gazebo, doubting that it would stay in place and did not think it was worth saving.

[48] There is a further document dated October 26, 2015, that confirms payment of the $10,000 deposit. Although it is remarkably similar if not identical to the Quote, it has the job description shortened to simply refer to the move and it says, "pd. deposit" and refers to the $10,000. This document can only reasonably be interpreted as a receipt for payment of the initial deposit.

D. The Move is Planned and the Structures are Prepared

[49] The parties began planning the move in October 2015. Ms. La Trace was out of the country for most of the period between the third week of October 2015 and February 2016, so Mr. La Trace took the lead role.

[50] On October 27, 2015, Mr. Warkentin met with Mr. La Trace and examined the Gazebo.

[51] The initial start date was set for November 7, 2015. The La Traces had removed the House's windows and the Garage door by this point. Between November 7 and 9, 2015, the La Traces reported to the police that the House had been further vandalized.

[52] On November 13, 2015, Mr. Warkentin emailed the La Traces asking if the Gazebo foundation was ready at the La Trace Property. Mr. La Trace replied that it had been poured the week before.

[2] During her testimony on November 4, 2021, Ms. La Trace responded "Yes" to the following question: "Okay. And he outlines the payment schedule, $10,000 deposit, $20,000 when the house is loaded, 30,000 when the house is moved, and 20,000 when the house is set down, right?".

[53] Ms. La Trace testified that she was responsible for preparing the Gazebo for the move by placing angle iron. In fact, she did not put angle iron on the Gazebo. Ms. La Trace explained this by saying that she was under the impression that the House was being prepared for the move.

[54] In conducting preparatory work, Mr. Warkentin discovered that the OSB on the base of the Gazebo was attached to the sill plate on the other side of the OSB on poles and then placed on the concrete foundation.

[55] Some pages from Mr. Warkentin's personal diary or calendar were entered into evidence. They are difficult to read and understand, so not all entries that are pertinent to this case are necessarily mentioned in these Reasons. However, the November 21 and 22, 2015 entries say, "started at La Trace rocks not moved . . . set gazebo La Trace" and Mr. Warkentin's calendar for the week of November 23-29, 2015, refers to the bricks being taken off of the Gazebo on November 26. Work was done on the Solarium during this time period.

[56] Mr. Warkentin testified that on or around November 27, 2015, while his team was loading the Garage Roof, they lifted the Bobcat bucket too high, and a part of the rafters broke. This incident was not reported to the La Traces.

[57] The plan was to move the Garage Roof and Ms. La Trace agreed that it could be cut off, but the walls could not be moved. Ms. La Trace said they would build the walls when they moved the Garage Roof. The Garage Roof was removed on November 27, 2015.

[58] Mr. Warkentin showed Mr. La Trace the brickwork on the Gazebo and said that it could not stay on and needed to be removed. Mr. La Trace agreed, and on November 28, Mr. Warkentin removed the bricks from the Gazebo. This was confirmed the same day in a text conversation between Mr. Warkentin and Mr. La Trace. Mr. Warkentin advised that the bricks were off the Gazebo and the Garage Roof had been prepared for the move.

[59] While attempting to brace the brick on the House Mr. Warkentin discovered that the

> … builder put insulation (styraphome) [*sic*] round outside the put brick on. The nail for the brick ties go they the Styrofoam then in wall… May be holding ½ inch or less onto wall . . . not much holding the brick work on [*sic*].

[60] On November 29, 2015, he confirmed his discovery in an email to the La Traces stating "[y]ou did not know that and neither did I". His intention was to brace the base of the brick, but he would have to use 2/6 and screws instead of angle iron "because there isn't enough 'structure' to bolt too" [*sic*]. In other words, Mr. Warkentin was of the view that he had to use 2 by 6 lumber and screws in place of angle iron because there was not enough structure to bolt on to. He said it would be more secure and that he was "confident this brick will stay intact for the move".

[61] On November 30, 2015, Mr. La Trace responded and said that "the original plan remains as agreed the brick comes". Mr. Warkentin emailed back shortly after and said, "we are still doing the original plan as far as the bracing".

[62] On December 3, 2015, Mr. La Trace sent an email to Mr. Warkentin asking about the timing of the move, noting that "it looks like lifting is coming along well". On the same day, the Garage was cut off of the House.

[63] Mr. La Trace was going to be away and asked about the December 26 to January 6 timeframe to move the Gazebo and the House. Mr. Warkentin said he was "sure" they could work around those dates.

[64] Mr. La Trace requested an update by email on December 29, 2015. Mr. Warkentin replied that the move was planned for January 14-15, 2016. There were some further emails exchanged about power and gas hookups.

[65] Mr. Warkentin's calendar entry for December 30, 2015, states "equipment to La Trace". At this point, work equipment owned by WBM required for the move was on the Leduc Property. The January 12, 2016 calendar entry refers to "working on cross beams under fireplace" but it is not directly clear that this relates to the La Traces.

[66] On January 6, 2016, Mr. Warkentin advised Ms. La Trace that due to the width of the House, the "hwys dpt." would not allow the move and the House had to be cut, which he would do at his expense and then move the House separately. Mr. Warkentin asked for consent to cut the House, separating the master bedroom from the rest of the House. A flurry of emails follows. Ms. La Trace questioned why the move was quoted as it was, to move in one piece, when it is WBM's "job to know how wide a house u can move" [*sic*]. She said that Mr. La Trace wanted to meet him.

[67] Also on January 6, 2016, Mr. Warkentin emailed the La Traces and stated that while he had moved wider homes during his career, the route taken is a factor and he cannot control how the authorities issue their approvals: "[e]ach move is treated different". He advised that while he could make the cut - and indicated where the cut should be made - and place the two pieces on the foundation, he could not connect the two pieces together.

[68] Further discussions concerning the logistics and costs of the move ensued.

[69] On January 11, 2016, Mr. Warkentin told the La Traces that the quote from Fortis for line lifts was $30,000. He was still waiting for other third-party quotes that would be required for the move, for example, Battle River, Shaw, Telus, Carillion, and CP Rail.

[70] On the same day, Mr. La Trace responded that the Fortis quote was surprisingly high and that it was possible that the move might be cancelled due to economic considerations. The quote from Fortis was "[w]ay higher than our last move. Perhaps we'd best wait until we get some of the other prices nailed down before we proceed. If the remaining ones come in at similar values, the house isn't worth moving".

[71] On January 12, 2016, Mr. Warkentin sent Mr. La Trace an email saying he had resubmitted applications for high load permits and suggested that lowering the top of the fireplace could make a difference. Work was continuing to prepare the House for the move. Mr. La Trace responded "[t]hanks for the update. Let me know when you get pricing back".

[72] On January 11, 2016, Mr. La Trace had several email exchanges with Mr. Warkentin asking to "nail down" the other prices before proceeding. Mr. La Trace asked if some of the prices can be lowered for the move. Mr. Warkentin emailed the La Traces and said that he would not be responsible for reconnecting the two portions of the House. Mr. Warkentin also said he wanted to cut the House that day and requested confirmation from the La Traces of their mutual

understanding that WBM would not reconnect the pieces of the House but would place them together on the foundation.

[73] Mr. Warkentin emailed on January 11, 2016, that he was waiting for information about the railway crossing cost and thought it would be “worst case 3500”. Carillion was expected to cost about $2,000 and Battle River $500. Mr. Warkentin indicated that this would be the extent of third-party costs. That evening, Mr. La Trace again emailed asking about a different route and whether the costs could be lowered. Mr. Warkentin replied that there were problems with the alternative route suggested by the La Traces. He forwarded information that he had received from third parties to that point.

[74] The master bedroom cut was made on January 11, 2016, and the House and Garage were tarped. Mr. La Trace emailed Mr. Warkentin with consent to this step on January 13, 2016, authorizing the “removal of the bedroom as required”. The work may have been done already. Mr. Warkentin testified that he had Mr. La Trace’s verbal agreement on January 11, 2016. Nothing turns on this; the fact is that the La Traces agreed to the master bedroom cut.

[75] On January 12, 2016, there were discussions about changing the route, which centered around Alberta Transportation and Fortis, according to WBM. Ms. La Trace admitted that she knew nothing about the discussions with third party authorities. When faced with additional costs for railway crossings Ms. La Trace asked Mr. Warkentin if another route could be followed but it was not possible.

[76] On January 16, 2016, Mr. Warkentin confirmed that the steel bracing to support the fireplace was in place. Four days later he confirmed a move date of January 26, 2016.

[77] There were some trees along the route, near the La Trace Property, that had to be trimmed away from the road. On January 20, 2016, Davey Tree (a third party engaged by WBM) arranged with WBM to facilitate the move.

[78] By January 21, Mr. Warkentin had advised the La Traces that trees had been removed along the route by Davey Tree. Mr. Warkentin requested a meeting and further payment and deposit.

[79] Mr. La Trace also advised Mr. Warkentin that he would not be available for the move on January 22, 2016, as he was going to be out of the country.

[80] A handwritten note dated January 22, 2016, prepared by Mr. Warkentin, is in evidence. It is difficult to follow but appears to document WBM’s dealings with third parties - Eastlink, Shaw, Telus, Fortis, Battle River, HWS, Carillion, CN Rail, Leduc County, Rig Mats, RCMP, Strathcona County, as well as Battle River and Davey Tree - showing various phone numbers, contact names, cost estimates, and related information. The January 22 note has building measurements and route maps written on it and there is an entry saying, “Debbie says no”.

[81] On January 23, 2016, Mr. La Trace drove the route and saw tree debris on the road. He said it was a “mess” and the neighbours were “upset”. Mr. Warkentin said he had arranged tree removal with the County authority in advance, and the County had suggested using Davey Tree. The cost estimate was $4,000 and this work was necessary to facilitate travel along the route without having the load hit trees.

[82] A further document in the same format as the Quote is in evidence, dated January 24, 2016 (**Quote 2)**. Mr. La Trace signed this document. It confirms: (a) Payment of a second deposit of $20,000; and (b) "[c]ustomer agrees to pay all Bills as agreed on as bills come in – utility, structures, trees".

E. The Move Takes Place

[83] Notwithstanding the La Traces' complaints after the fact about third party costs, the way that the Structures were prepared for the move, the route taken, and other matters, the La Traces did not delay or stop the move from taking place. They could have done so at several junctures. By this point, they fully intended to have WBM continue its work to completion.

[84] The move date for the House was set for January 26, 2016. This appears to be confirmed by Mr. Warkentin's calendar entry for that date: "moved big house".

[85] DBI – a third party contractor - was hired by WBM to haul the master bedroom during the move.

[86] The move of the House and master bedroom began early on January 26, 2016. The weather was "clear" and "dry". The convoy consisted of the Fortis vehicle, two pilot cars, an RCMP car, the House, DBI with the master bedroom, at least one more pilot car, and Mr. La Trace bringing up the rear.

[87] The convoy began driving south on a range road for three quarters of a mile before arriving at a Fortis lift. After clearing the Fortis lift the convoy continued to go south before turning onto Range Road 625 going east. On Range Road 625 the convoy stopped to check the status of the House and master bedroom before continuing to turn north onto Highway 21.

[88] On Highway 21, the convoy crossed the anticipated CN Rail crossing around noon and stopped at a service station. The original plan was to park the House and master bedroom overnight on a service road just before Highway 14; however, the convoy continued on after a short rest.

[89] The convoy proceeded onto Highway 14 heading west until it finally reached Range Road 233 heading south at around 4:00 p.m. to 4:30 p.m. Around this time it began raining, but the roads were not yet icy. As the move progressed through the evening, weather conditions continued to "worsen". The roads were "icing up" and it had begun to "sleet".

[90] During the move WBM determined that House rafters had to be cut. Mr. La Trace signed a document dated January 26, 2016, which states:

> Dean La Trace has agreed to have rafters cut by Warkentin building movers to move home on rr 233.
>
> At no cost to Warkentin building Movers agreement on price to move house.

[91] After the rafters were cut, the road conditions had become icy, and the convoy had to slow down.

[92] During the drive to the La Trace Property, the House hit a tree on the passenger side. The convoy continued despite the tree strike and arrived at the La Trace Property.

[93] The House and master bedroom were placed on blocking at the La Trace Property. The House was still hooked up to hydraulic lines and the truck was not removed. The master bedroom was removed from the DBI trailer and placed southwest of the House.

[94] WBM, at some point after the move, placed an additional support brace on the porch of the House.

[95] On January 27, 2016, Mr. Warkentin applied for the Gazebo moving permit.

[96] A third quote-like document dated January 28, 2016, was provided by WBM to the La Traces (**Quote 3**) and states that the third deposit referred to in the Quote was due in the sum of $30,000 plus GST of $1,500 and with GST owing from the first deposit in the amount of $500. The Carillion bill is referenced in the sum of $667.80 and the CN Rail bill at $4,410. The total amount owing under Quote 3 is $37,077.80.

[97] On January 28, 2016, Mr. Warkentin determined that the Gazebo had to be moved on beams and dollies instead of a trailer in order to minimize potential damage.

[98] On the evening of January 29, 2016, the Gazebo was moved. This appears to be corroborated by Mr. Warkentin's calendar entry: "[l]oaded gazebo moved at night". This was done overnight, and the Garage Roof was moved as well.

[99] The route taken to move the Gazebo and the Garage Roof was different than the route taken to move the House and master bedroom. This move was completed by January 30, 2016, early in the morning.

F. Placement of the Structures

[100] The master bedroom and the balance of the House had, of course, been separated from each other. Thus, they were placed separately.

[101] The Gazebo was placed north of the House on the La Trace Property. The Garage Roof was placed on WBM's beams and blocking, in the northwest part of the La Trace Property yard, close to where the foundation would be built. The Garage Roof had a broken rafter, which occurred when it was cut from the garage, and was tarped.

[102] The evidence at trial was that WBM tarped the master bedroom, the House, and parts of the Garage Roof. The House was tarped in the section where the master bedroom was removed.

[103] On January 30, 2016, the La Traces refused to pay WBM after the Structures were placed on the La Trace Property. A cheque for CN Rail was given to Mr. Warkentin.

[104] The February 1, 2016, entry in Mr. Warkentin's calendar says, "got wheels from La Trace Trucks home".

[105] On March 30, 2016, the La Traces told Mr. Warkentin to stay off of their property.

[106] On March 31, 2016, the police were contacted by the La Traces and allegedly said that they would respond if Mr. Warkentin tried to "steal the gazebo". There is no evidence that the police actually became involved.

[107] Mr. Warkentin's April 11, 2016 calendar entry states "got beams La Trace from roof fixed stuff". The La Traces allowed Mr. Warkentin to do this work.

G. Aftermath

[108] The parties reached an impasse. WBM wanted to get paid; the La Traces began dealing with WBM's insurer and preparing, it seems, to litigate.

[109] A number of pieces of WBM equipment remained at the La Trace Property until the House and master bedroom were placed onto the foundation and the Gazebo was placed onto its pad. Mr. Warkentin testified this included two hydraulic turn dollies with 100-ton jacks, one turn dolly, a crab steer dolly, one 84-foot beam, a 16-foot speciality bunk with rollers and a cable, seven main crossbeams (approximately 40-44 foot), six I-beams, approximately 50 blocks, and some cages.

[110] On July 4, 2016, there was some communication between Ms. La Trace and Mr. Warkentin about WBM finishing placing the buildings or else the La Traces would find another contractor.

[111] On November 26, 2016, the House and master bedroom were placed onto foundations and the Gazebo was placed onto the pad. This process took approximately nine days. The La Traces paid WBM $10,000 for the placement of the House and master bedroom.

[112] The House was placed onto the foundation first, then all of the equipment was pulled out of the House. The master bedroom, placed onto dollies, was driven up to the House for placement. The master bedroom was pushed "[w]ithin inches" of the House and WBM used the skid steer to push the master bedroom the last few inches. The skid steer pushed on the crossbeams underneath the fireplace of the House, which extruded out of the master bedroom. This resulted in the bricks on the chimney seeming to "fall apart".

[113] While the litigation process moved forward, there is evidence of very little being done to secure and protect the Structures.

[114] The La Traces, in attempts to mitigate damage, put up "tarps, OSB, shingles" from the time that the Structures were moved to their land up until the time of trial (at least), and had insured the home for three years before the insurance company apparently cancelled the policy. The La Traces built garage walls in anticipation of moving the Garage Roof onto the new garage however, the Garage Roof was never moved onto the walls. There is some evidentiary empty space regarding these steps.

[115] Quote 3 went unpaid. WBM reissued Quote 3 as a bill dated February 28, 2016, showing $30,000 owing plus $600 for the 2% overdue charge, plus GST for a total of $32,100.

[116] Further invoices or bills were issued on December 4, 2016. Bills were issued dated January 4, 2017, and January 25 (no year specified). These bills include interest charges and a rental charge for items left on the site by WBM.

[117] The La Traces continued to email WBM and its insurer Aviva, requesting help with mitigation. The La Traces reached out to MR Engineering for a valuation and Stantec to determine the structural damage to the home. WBM did not provide any other services to the La Traces and deferred back to its insurer, Aviva.

[118] As of 2022, during the trial, the foundation that was poured prior to the move has endured multiple seasons. Ms. La Trace deposed in a November 8, 2022 Affidavit that the County authorities will no longer issue a building permit to the La Traces. There are no engineers who

will certify the foundation and, according to Ms. La Trace, no builder who will work on it because, at least in part, they cannot guarantee their work. There are safety concerns.

IV. Breach of Contract

[119] In order to determine whether the evidence establishes a breach of contract by either or both parties, contractual terms must be established.

[120] I will begin by outlining the law and then turn to the evidence of contractual terms and breach.

The Law

[121] A contract requires parties to reach agreement on all essential terms – *consensus ad idem* - which the Alberta Court of Appeal discussed in ***Ron Ghitter Property Consultants Ltd v Beaver Lumber Co***, 2003 ABCA 221 [***Ghitter***]:

> 8 Regardless of the theories underlying the enforcement of contracts, mutuality of agreement lies at the root of any legally enforceable contract. The required degree of mutuality of agreement mandates that the parties reach a *consensus ad idem* on essential terms. **In determining whether the parties have reached agreement for legal purposes, the starting point must be the alleged contract itself** ... **If the wording of the contract is plain and unambiguous, that will ordinarily be an end of the matter. The accepted test is whether a reasonable observer would infer from the words or conduct of the parties that a contract had been concluded**... That is, on an objective basis, have the parties reached *consensus ad idem*?
>
> 9 The common thread running through the cases is that the parties will be found to have reached a meeting of the minds, in other words be *ad idem*, **where it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty**... This requires the court to decide whether "a sensible third party would take the agreement to mean what A understood it to mean or what B understood it to mean, or whether indeed any meaning can be attributed to it at all"... Otherwise, then, as stated by Lord Maugham in *Scammell*, *supra* at 255, "the *consensus ad idem* would be a matter of mere conjecture."
>
> (emphasis added; citations omitted)

[122] The terms of the contract must be of sufficient certainty: ***Schluessel v Margiotta***, 2018 ABQB 615 [***Schluessel***] at para 6 (per Burns J).

[123] In ***Henry Kendall & Sons v William Lillico & Sons Ltd***, [1969] 2 AC 31, 113 Lord Pearce said: “[t]he court’s task is to decide what each party to an alleged contract would reasonably conclude from the utterances, writings or conduct of the other”. This case was cited by Wakeling JA in ***McLennan Ross LLP v Wasylynuk***, 2019 ABCA 129 at para 14, footnote 7. Justice Wakeling also observed, at para 14:

Professor Waddams expressed the generally accepted principle that contract formation is assessed objectively:

> The principal function of the law of contracts is to protect reasonable expectations engendered by promises. It follows that the law is not so much concerned to carry out the will of the promisor as to protect the expectation of the promisee. … [T]he test of whether a promise is made, or of whether assent is manifested to a bargain, does not and should not depend on an enquiry into the actual state of mind of the promisor, but on how the promisor's conduct would strike a reasonable person in the position of the promisee (S Waddams, *The Law of Contracts* (7th ed. 2017)).

[124] A written contract is tangible evidence for the Court of contractual intention (formation, terms, and so forth) but the absence of a written contract is not fatal: ***Hailink Dent Removal Inc v Kindersley Mainline Motor Products Ltd***, 2018 SKQB 138 at para 23. Contracts can also be oral or inferred from conduct; however, a thorough written contract has substantial value from an evidentiary perspective.

[125] Contractual interpretation also involves analysis of the surrounding circumstances, or the factual matrix, to determine the entirety of the contractual arrangement: ***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53, ***Owners, Strata Plan LMS 3905 v Crystal Square Parking Corp***, 2020 SCC 29, ***ID Inc v Toronto Wholesale Produce Association***, 2025 ONCA 22.

[126] In ***Schluessel*** at para 11, Burns J outlined some of the principles that apply when considering oral contracts:

> **Credibility**: Witness credibility must be tested against those facts that are not seriously in dispute, and with the preponderance of the evidence and the probabilities surrounding the events.
>
> **Burden of Proof**: The person seeking to enforce a disputed oral contract carries both the legal and evidentiary burden of proving, on a balance of probabilities, that the alleged oral contract was made.
>
> **Basic Contractual Principles Apply**: There must be proof of offer, acceptance, and certainty of terms.
>
> ***Consensus ad idem***: Parties must agree on essential terms, and these terms must be capable of being determined with a reasonable degree of certainty.
>
> **Legal Test to Find Agreement**: The Court must assess whether the parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract. This is *not* about a party's subjective intention or belief; it is an objective test.

[127] In summary, to determine whether there is a contract and what the terms of that contract are, the starting point is the alleged contract itself. As the Court of Appeal notes in ***Ghitter***, this generally means looking at the wording of the contract, although the conduct of the parties may also assist in determining whether a contract has been created. It must be clear to an objective

bystander, in light of all the material facts, that the parties intended to create a contract, and the terms can be determined with reasonable certainty.

The Terms of the Contract

[128] Ms. La Trace, in her testimony, insisted that a contract was never provided. This is a misunderstanding of the law of contract, which does not confine contract terms to a single element of the parties' dealings with one another.

[129] In the case at bar there is no single contractual document; however, it is clear on the evidence that the La Traces and WBM reached a legally enforceable agreement, that is, a contract.

[130] The contract between the parties here is written, oral, and inferred from conduct. The terms are derived from the Quote and its successors. These documents were proffered by WBM and the La Traces authorized WBM's work based on those documents. It was understood that they represented an agreement, or at least part of the agreement, between the parties. In fact, Mr. La Trace characterized the Quote as an "agreement" in an email dated October 17, 2015.

[131] The Quote and its successors are not the only evidence of contractual terms. Terms are also derived from text messages and emails exchanged between the parties. These communications clarify the work and the parties' understanding of the commercial arrangement.

[132] The emails, conversations, text messages, and documents do not supersede each other unless it is clear from language and context that one form of communication dominates over another from an interpretive perspective. Together, all these modes of communication form part of the contractual matrix and define the terms of the arrangement between the parties.

[133] Based on the foregoing, and applying the civil standard of proof, I find that the contractual arrangement between WBM and the La Traces contained the following terms:

(a) WBM would move the Structures from the Leduc Property to the La Trace Property where they would be placed. It is a necessary and logical implication that the Structures would be moved undamaged.

(b) The House would be cut. The master bedroom would be moved separately. The Garage Roof was going to be moved as a separate item.

(c) The Gazebo required cutting in order to move it.

(d) The La Traces would pay WBM $80,000 plus GST, plus third-party costs for application and permitting costs, as well as the third-party work (except for subcontractor costs). WBM would pay them in the first instance.

(e) Trees would be removed along the route to facilitate the move.

(f) The payment schedule was agreed to be a $10,000 up-front deposit, $20,000 when the House was loaded, $30,000 when the House was moved, and $20,000 when the House was set down, plus any applicable GST.

(g) WBM would provide proof of insurance and WCB coverage.

(h) There was no guarantee that the brick work would remain intact. The brick on the Gazebo needed to be supported during the move. Ms. La Trace agreed that putting

angle iron on the Gazebo was her responsibility. She did not investigate how the brickwork was attached to the Gazebo and never tried to pull any brick off. There is no evidence of the difference between angle iron and wood bracing. Thus, the bracing done by WBM met the contractual term requiring support for the Gazebo.

(i) WBM would not be responsible for cracked drywall, stucco, wiring, or water lines due to moving stress.

Matters that are not Terms of the Contract

[134] The following do not constitute terms of the Contract due to a failure of minds to meet, a lack of certainty, or some other reason. These include:

(a) The use of angle iron to brace the House was not a term of the contract. It was drawn to the La Traces' attention in November that the structural elements of the House would not support angle iron. There was no *consensus ad idem* on this point.

(b) A specific time frame for the move was never agreed to. The timing of the move was always dependent on WBM's progress with preparing the Structures for the move, weather, and on third party permitting and approvals and other arrangements. The La Traces were aware of this, and while Mr. Warkentin may have been slow in performance, and a sub-optimal communicator, and the La Traces did not like the delays, they acquiesced. As late as January 2016 Mr. La Trace was considering cancelling the move due to escalating third party costs. Thus, specific timing was not a term of the contract.

(c) Further on timing, specific start and completion dates were not established with any reasonable degree of certainty. Mr. Warkentin would do the move right away, changing his schedule to accommodate it: "he agreed to move his jobs, he was putting me to the front of the line" but "he kept pushing for money without even getting me the agreement". The expectation was that the move would start November 7. The La Traces asked the Court to draw an adverse inference against WBM because Mr. Warkentin did not produce full diaries of all his activities to show that he took on other work, travelled, and did other things between October and when the move started. I decline to do so, since there was no date agreed on in the contract. This was left fluid and was the subject of emails but never really finalized. WBM was working with third parties, had other commitments, and while at times Mr. Warkentin was loose with his promises, dates were not secured, therefore the diaries are not relevant.

(d) The House being moved in one piece. Although Mr. Warkentin may have thought initially that cutting would not be necessary, two of the three movers contacted by the La Traces before they engaged WBM said that cutting would be necessary. This was within the La Traces' reasonable contemplation. Mr. Warkentin could not obtain a permit to move the House in one piece given its girth. He advised the La Traces of this problem, and they had no involvement in any discussion with the highway authorities. I accept Mr. Warkentin's evidence (the best evidence before the Court on this issue) that he could not have found out earlier about size limitations as these move permits are granted only a few weeks prior to a move.

(e) The specific route to be taken. A sketch prepared by Mr. Warkentin, which is in evidence, is more likely than not a "thought experiment". It was drawn prior to the contract being entered into. I find this because of the document itself, which is casually done, has Ms. La Trace's phone number on it and the number "80ish" which matches the quote. The route that it purports to represent is clearly discretionary and subject to change, based on weather, road conditions, time of year, permitting, authorities, traffic, and many other factors. Furthermore, the route was ultimately determined in consultation with government officials. This determination, as between the La Traces and WBM, fell into the latter's sphere of responsibility.

(f) Any fixing of third party costs in advance. The initial representation was that the contract price would be $80,000 plus $15,000 for line lifts. The fact that fees to be charged by CN Rail were initially unexpected because of railway crossings was an inevitable result of the route changing, which was driven by governmental authority. Thus, it was not agreed that third party fees outside of WBM's control were fixed and unchangeable.

(g) A restriction on hiring DBI or any other third party. There was no prohibition on third party contracting and no requirement for WCB and insurance of another party. There was no contract between DBI and the La Traces.

(h) Tarping the House, or otherwise sealing it, after the move.

(i) Ms. La Trace argues that glass blocking was part of the contract, WBM disagrees. Ms. La Trace's testimony on this point is disjointed. She insisted she did not get the glass blocking but then later admitted WBM brought the glass blocks. WBM does not recall bringing the glass blockings. This is not sufficiently certain to form a contractual term.

(j) Finishing the Structures and sealing them were not terms of the contract. There is insufficient evidence to conclude, on a balance of probabilities, that there was *consensus ad idem* on this point.

[135] The La Traces argue that the evidence establishes additional, or substitute terms based on representations made by Mr. Warkentin, none of which form part of the contract.

(a) This was Mr. Warkentin's job, his whole life, that he would have no trouble with the House, that he had moved even bigger brick houses than this one and "he really talked up his abilities as an expert". However the La Traces took this, it was not a contractual term that was capable of being breached any more than it could be fulfilled. I have no evidence that this was untrue.

(b) He would save the fireplace rundle stone and glass blocks, with this "central feature" to be moved "using a grid of steel under it, and it would be welded". There is an email in which Mr. La Trace inquires about welding, but WBM never confirmed that this would occur. During his testimony on September 16, 2022, Mr. Warkentin stated that he never agreed to that term for the fireplace. The Gazebo was the only structure to have undergone welding in relation to bracing.

(c) The timing of the Gazebo and House foundations. The La Traces were to prepare the Gazebo foundation, which they did, knowing that the House foundation would have to wait until spring and the House would have to sit on beams in the yard once it was moved. It is unclear what the La Traces' specific grievance is on this point.

Breach of Contract?

[136] Importantly, the analysis of what constitutes the terms of the contract inevitably leads to the exclusion of particular terms that one or the other party advances as constituting contractual terms.

[137] The fact that conditions changed and facts were discovered that changed the way work could be accomplished does not amount to a breach of contract. Changes in route and the inability to move the House in one piece came up as the matter proceeded and were brought to the La Traces' attention. While the problems may have needed quick action to resolve, they were resolved, and the results are reflected in this Decision.

[138] WBM moved the Gazebo, the Garage Roof, and the House. It was implied that they would not be damaged. They were damaged. The fact that they were damaged during the move is a breach of contract.

V. Negligence

[139] The La Traces also sue WBM for the tort of negligence.

[140] Specifically, the La Traces allege in their pleadings that WBM was negligent by:

(a) Failing to prepare and secure the Structures for moving and to prevent damage;

(b) Failing to establish a proper transport route;

(c) Failing to inspect the Structures;

(d) Failing to adhere to or obtain permits for transportation;

(e) More specifically, failing to support the Fireplace Feature with a steel beam grid and failing to use angle iron to secure the exterior brick;

(f) "Punching holes and inserting beams into the Gazebo";

(g) Failing to place the Structures on foundations in a timely manner;

(h) Failing to seal the structures or otherwise protect them from the elements;

(i) Transporting the Structures in breach of the Agreement and legal requirements, and general failure "to comply with applicable legislative and regulatory requirements".

[141] WBM concedes that its negligence during transportation caused the House to strike the tree. It denies all other allegations.

The Law

[142] To establish negligence, a plaintiff must show each of the following:

- Some kind of relationship between the plaintiff and defendant whereby the defendant owed the plaintiff a duty of care.
- The defendant breached the standard of care owed.
- The plaintiff suffered an injury or loss.
- "But for" the defendant's breach of the duty of care, the injury or loss would not have occurred. The defendant's breach was *necessary* to cause the loss.

(Clements (Litigation Guardian of) v Clements, 2012 SCC 32 at paras 6-8)

[143] I will address each of these required elements of the tort in turn, but the issues in this case revolve around the nature of the loss caused by the Defendant and how that loss is to be quantified monetarily.

Application to this Case

Duty of Care

[144] A claim in negligence begins with a determination of whether one party owed the other party a duty of care. A duty of care is owed by an individual to others who are within the foreseeable risk being affected by their conduct. The duty of care was expanded in ***Donoghue v. Stevenson,*** [1932] UKHL 100, to recognize the neighbour principle. The neighbour principle requires an individual to take reasonable care when they engage in conduct that they can reasonably foresee as likely to injure their neighbour.

[145] Concurrent actions in tort and contract require the Plaintiff to establish there was a special relationship that existed to give rise to a common law duty of care which is independent of the contract. A duty of care requires both sufficient proximity between the parties and an absence of policy reasons preventing recognition of that duty. There are recognized categories where a duty of care has been pre-established between parties.

[146] Courts have observed that a "relational economic loss may give rise to a tort duty of care in certain situations, as where the claimant has a possessory...interest in the property": ***Cooper v Hobart***, 2001 SCC 79 at para 36. It is evident that the La Traces and WBM have such a relationship. WBM was hired to move Structures which the La Traces owned.

[147] I have no difficulty concluding that WBM owed the La Traces a duty of care.

Standard of Care

[148] The question of breach of the duty of care necessitates consideration of the standard of care.

[149] There is no expert evidence before the Court of the standard of care for a mover in these circumstances. Perceptions and feelings about what was done or not done are not sufficient to establish a standard of care, so, the general standard would apply. The general standard of care is described in ***Gaudreau v Belter,*** 2001 ABQB 101 at para 3: "the general trend in the more recent cases has been to require a bailee to exercise the care that is *reasonable in all the circumstances*". More recently, the Court in ***Tarpon Energy Services Ltd v Lal*** noted: "[t]he obligation of a bailee... is to take the same care of the goods received as a prudent owner, acting

reasonably, might be expected to take of his or her own chattels": 2020 ABQB 317 at para 42, citing ***Letourneau v Otto Mobiles Edmonton (1984) Ltd***, 2002 ABQB 609 at para 46.

[150] I do not have evidence of the standard of care in this case beyond the duty to take reasonable care. Thus, it is impossible to determine whether a standard of care beyond that was breached.

[151] WBM admits negligence when it struck the tree. This was a breach of the standard of care. It was reasonably foreseeable that a roadside obstruction could damage a Structure being moved. WBM knew that trees were on the route and had taken steps to avoid a tree strike by hiring Davey Tree. They did not take sufficient precautions to avoid the tree. As admitted, the standard of care was breached.

Did the La Traces suffer an injury or loss?

[152] There is no question that the La Traces suffered a loss. They had three intact Structures, the most valuable of which would, more likely than not, be the House. All were damaged. The two key questions in this case are:

(a) What damage to the Structures was caused by WBM's negligence?

(b) What damages did the La Traces suffer as a result of WBM's negligence?

Causation

[153] Causation is a highly significant issue that must be addressed in this case. The Structures were damaged. To what degree did WBM cause the damage? The resolution of this question is of undeniable importance to the quantification of damages – to which I will turn shortly - as the La Traces cannot in law be compensated for damages that were not caused by WBM.

[154] The legal principles that underpin causation have been stated many times in many different ways. From the jurisprudence and the academic analysis, a number of conclusions can be gleaned.

[155] While recognizing some limitations, the Supreme Court of Canada has retained the "but for" test as relevant and applicable in determining causation issues.[3] The Supreme Court of Canada in ***Clements v Clements***, 2012 SCC 32, noted the following on causation, at paras 6 and 8:

> On its own, proof by an injured plaintiff that a defendant was negligent does not make that defendant liable for the loss. The plaintiff must also establish that the defendant's negligence (breach of the standard of care) caused the injury. That link is causation.
>
> ...

[3] In *Remedies in Tort*, the authors note the following about the requirement for causation:

> Despite its obvious and acknowledged failings, the Supreme Court has stuck with the 'but for' test – but for the defendants' actions would the plaintiff have been harmed? While there are very limited exceptions to this general rule, this test is particularly negative towards plaintiff's claims because in situations of uncertainty and a lack of adequate information (i.e., it might or might not have been the 'but for' cause), the plaintiff will always lose (at para 16.6).

> ...The plaintiff must show on a balance of probabilities that “but for” the defendant’s negligent act, the injury would not have occurred. Inherent in the phrase “but for” is the requirement that the defendant’s negligence was necessary to bring about the injury – in other words that the injury would not have occurred without the defendant’s negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.

[156] And, in ***Nelson (City) v Marchi***, 2021 SCC 41, Karakatsanis and Martin, JJ writing for the Court, stated:

> 96 It is well established that a defendant is not liable in negligence unless their breach caused the plaintiff's loss. The causation analysis involves two distinct inquiries. First, the defendant's breach must be the factual cause of the plaintiff's loss. Factual causation is generally assessed using the "but for" test. The plaintiff must show on a balance of probabilities that the harm would not have occurred but for the defendant's negligent act.
>
> 97 Second, the breach must be the legal cause of the loss, meaning that the harm must not be too far remote. The remoteness inquiry asks whether the actual injury was the reasonably foreseeable result of the defendant's negligent conduct. Remoteness is distinct from the reasonable foreseeability analysis within duty of care because it focuses on the actual injury suffered by the plaintiff, whereas the duty of care analysis focuses on the type of injury.
>
> (Citations omitted)

[157] Romaine J of this Court noted: “[i]f the damage would have occurred with or without the negligent conduct, there will be no recovery.” (***Neelands v Kelly***, 2014 ABQB 617 at para 245). Further, the but for test should be applied with a robust common-sense approach; inferences from the facts are sufficient to ground causation (***Clements*** at para 9).[4]

[158] In ***KY v Bahler***, 2023 ABKB 280, Renke J stated that the trier of fact infers cause from the evidence. His astute analysis is worth quoting at length:

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[4] See also ***Donleavy v Ultramar Ltd***, 2019 ONCA 687 at paras 62, 72:

> The "but for" test is generally applied in establishing causation in the tort of negligence. It requires a plaintiff to prove, on a balance of probabilities, that without the negligence of one of more of the defendants, the injury would not have occurred. A defendant's negligence is thus a necessary factor to bring about the injury...
>
> ...
>
> …Causation is made out under the "but for" test if the negligence of a defendant caused the whole of the plaintiff's injury, or contributed, in some not insubstantial or immaterial way, to the injury that the plaintiff sustained. Causation requires a "substantial connection between the injury and the defendant's conduct"…

832 The inference of causation is for the trier of fact to make, for the judge in a trial by judge alone. As Professor Russell Brown, as he then was, pointed out, "An inference of cause-in-fact may be drawn (or not drawn) in all situations - that is, irrespective of whether there is expert evidence in only one direction, both directions, or no direction:" "Cause-in-Fact at the Supreme Court of Canada: Developments in Tort Law in 2012-2013" (2014), 64 SCLR (2d) 327-356 at paras 48, 49; *British Columbia (Workers' Compensation Appeal Tribunal) v Fraser Health Authority*, 2016 SCC 25, Brown J at para 38 ("causation can be inferred - even in the face of inconclusive or contrary expert evidence - from other evidence, including merely circumstantial evidence").

833 The determination of factual causation is an inference from all the evidence: *Snell v Farrell* at 331; *Skinner v Matheson* at para 75; *Ediger v Johnston* at para 29; *Ghiassi v Singh*, 2018 ONCA 764 at para 25. The evidence will concern the acts or omissions of the defendant and the injury of the plaintiff. The injury will typically follow the act or omission. What is not directly in evidence, what is not directly observed, is an additional thing or event that is a "cause." To judge causation is to draw a conclusion about act or omission and the injury. Attribution of causation is not another observation. In "Known Unknowns in Cause-in-Fact?" (2011), 39 *Advocates Quarterly* 37, Professor Brown wrote as follows, in a Humean register, at 54:

> Remember, evidence never speaks for itself. Where the evidence is being applied to determine cause-in-fact, this means that evidence never demonstrates causal linkage. Contrary to academic insistence upon "evidence of a probable connection between negligence and injury" (let alone "scientific evidence"), no such evidence ever exists in the sense of showing that X happened, and then X led to Y. All we can know is that X preceded Y. There is never evidence of cause-in-fact. All one can ever show is evidence of the defendant's risky behaviour (X) and the harm to the plaintiff (Y). To insist upon evidence of some sort of causal glue holding X and Y together-for example, causal glue tying Dr. Farrell's negligence to Mrs. Snell's blindness - is to insist upon something that does not exist, in that case or in any other.
>
> [emphasis in original; footnotes omitted]

834 When assessing cause-in-fact, the trier of fact is entitled to take into account what actually occurred: *KS v Willox* at para 349(QB).

835 The approach to the inference of factual causation is to be "robust and pragmatic," in the sense that the trier of fact may draw inferences from the evidence "even though medical and scientific expertise cannot arrive at a definitive conclusion:" *Aristorenas v Comcare Health Services*, 2006 CanLII 33850, 216 OAC 161; *Snell v Farrell* at 330; *Clements v Clements* at para 10; *Benhaim v St-Germain*, 2016 SCC 48, Wagner J, as he then was, at para 54. As Professor Brown put it in "Known Unknowns" at 66:

> Trial judges, therefore, ought not to be afraid to go where experts fear to tread ....
>
> Confronted by scientific uncertainty, the next step is not to move on to apply another test for cause-in-fact, or to find for the defendant without further consideration of the evidence. Their job is to consider the evidence, the circumstances of the case, and then to draw or not draw a causal inference.

The determination of causation is "essentially a practical question of fact which can best be answered by ordinary common sense:" *Snell v Farrell* at 328, quoting *Alphacell Ltd v Woodward*, [1972] AC 824, [1972] 2 All ER 475 at 490 (HL). Justice Sopinka stated in *Snell v Farrell* at 336 that "it is not essential to have a positive medical opinion to support a finding of causation. Furthermore, it is not speculation but the application of common sense to draw such an inference where, as here, the circumstances, other than a positive medical opinion, permit."

836 Nonetheless, the "robust and pragmatic" approach is not a license for speculation or to deploy common sense to determine issues that properly fall within the scope of expert knowledge: *Goodman v Viljoen*, 2012 ONCA 896 at para 76. The robust and pragmatic approach is an approach to evidence not a substitute for evidence: *Aristorenas v Comcare* at para 54.

… …

862 Even if a plaintiff establishes factual causation, the plaintiff must also establish that the injuries actually suffered were foreseeable or not too remote. This element of causation has been described as "legal causation" or "causation in law:" *Saadati v Moorhead*, 2017 SCC 28 at para 20; *Mustapha v Culligan* at para 11; *Meyers v Moscovitz* at paras 2-3; *McArdle v Cox* at para 24. According to Chief Justice McLachlin in *Mustapha v Culligan* at para 12,

> [12] The remoteness inquiry asks whether "the harm [is] too unrelated to the wrongful conduct to hold the defendant fairly liable" (Linden and Feldthusen, at p 360). Since The Wagon Mound (No. 1), the principle has been that "it is the foresight of the reasonable man which alone can determine responsibility" (*Overseas Tankship (U.K.) Ltd* v *Morts Dock & Engineering Co*, [1961] AC 388 (PC), at p 424).

Foreseeability is assessed in the circumstances of a defendant: *Gemoto* at para 509. See also *Brough v Yipp* at paras 604-609.

863 The injury or loss must not simply have been "possible" (occurrence proved possibility). Rather the injury must have been a real risk which "would occur to the mind of a reasonable man in the position of the defendant.... and which he would not brush aside as far-fetched:" *Mustapha v Culligan* at para 13; *Phillip v Bablitz*, 2011 ABCA 383, leave app refd [2012] SCCA No 85; *Skinner v Matheson* at para 69.

> 864 The issue is whether the class, type, or kind of injury was foreseeable, not the extent of the actual injury or the precise manner of its occurrence…

[159] I also consider Burns J's comments in ***Malton v Attia***, 2021 ABQB 503 at para 102:

> A finding of a breach of the standard of care does not necessarily mean that the Plaintiff is entitled to damages: *Snell v Farrell*, [1990] 2 SCR 311; *St. Jean v Mercier*, 2002 SCC 15 at para 116, [2002] 1 SCR 491. The Plaintiff must establish on the balance of probabilities that the defendant's action caused foreseeable damages. Causation can generally be established only if the plaintiff's injury would not have occurred but for the contribution of the negligent act: *Clements (Litigation Guardian of) v Clements*, 2012 SCC 32 at para 46, [2012] 2 SCR 181. Nonetheless, the causation test is not to be applied too rigidly: *Clements* at para 46.

[160] And in ***Hanson-Tasker v Ewart***, 2023 BCCA 463 the Court noted:

> 80 It will be helpful, at the outset, to restate, in a non-exhaustive way, some of the foundational principles respecting proof of causation in negligence actions that are of particular relevance to this appeal:
>
> > • The "but for" test is the generally applicable test for proof of causation. The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred: *Clements* at para 8;
> >
> > • In all cases, the plaintiff assumes the burden of proving causation on a balance of probabilities: *Ediger* at para 36. Causation need not, however, be proven with scientific precision: *Snell* at 328. This is because the law requires proof of causation only on a balance of probabilities. Courts should take a "robust and pragmatic" approach to the facts and may draw inferences of causation based on common sense": *Benhaim* at para 54;
> >
> > • In medical malpractice cases, the defendant is often in a better position than the plaintiff to determine the cause of the injury: *Snell* at 322. In weighing the evidence, the trier of fact may, therefore, consider the relative ability of each party to present evidence on a fact in issue. To borrow the words of Lord Mansfield in *Blatch v Archer* (1774), 1 Cowp 63, 98 ER 969 at p 970, "evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted";
> >
> > • In some cases, it may be that very little affirmative evidence on the part of the plaintiff will justify the drawing of a common-sense inference of causation in the absence of "sufficient evidence to the contrary": *Snell* at 328–29; *Benhaim* at para 54. As the Court put it in *Ediger* at para 36, "[t]he trier of fact may, upon weighing the

> evidence, draw an inference against a defendant who does not introduce sufficient evidence contrary to that which supports the plaintiff's theory of causation";
>
> • Put differently, in cases of negligently-created causal uncertainty where a plaintiff adduces some evidence of causation, it is open to a trial judge to draw a causal inference unfavourable to the defendant that serves to discharge the plaintiff's burden of proof: *Benhaim* at para 42. The inference operates as something of a counterweight, offsetting the imbalance and consequent unfairness that may arise, particularly when a defendant seeks shelter in the evidentiary vacuum created by their own negligence and relies on the burden of proof shouldered by the plaintiff to defeat the claim. The underlying policy goal seeks to balance two considerations: (1) ensuring that defendants are held liable for injuries only where there is a substantial connection between the injuries and their fault; and (2) preventing defendants from benefiting from the uncertainty created by their own negligence: *Benhaim* at para 66;
>
> • The available inference is permissive, not mandatory. It is simply a component of the fact-finding process, and one that is not unique to this context: *Benhaim* at paras 54-55. Whether to draw a causal inference unfavourable to the defendant is a matter best left to the discretion of the trial judge: *Benhaim* at para 52;
>
> • Further, whether to draw the inference must be based on an evaluation of all of the evidence, including the weaknesses in the plaintiff's expert evidence relating to causation: *Benhaim* at paras 44, 52. As noted in Allan M. Linden et al, *Canadian Tort Law*, 12th ed (Toronto: LexisNexis Canada Inc, 2022), at s. 4.03:
>
> > An inference of causation can always be rebutted by other, more probative evidence; therefore, the inference approach to causation can have the effect of flushing out causal evidence in circumstances where it otherwise might be tactically withheld.

[161] The Structures were damaged while they were in WBM's care and control. But for WBM's negligent conduct, the damage would not have occurred. The admitted conduct is the tree strike.

[162] WBM was negligent in moving the House. There was a duty of care, and the standard of care – to take reasonable care to not damage the Structures while WBM had them in its possession – was not met.

[163] The loss claimed by the La Traces must now be considered. Did WBM's conduct lead to the claim that is now being advanced? Are there damages being claimed that would have occurred without WBM's involvement? The damages must follow the act or omission of the Defendant.

[164] The burden of proof rests on the La Traces. I will now turn to the question of damages, which is intertwined with causation. WBM can only be liable in law for damages that are the fault of WBM.

VI. Damages

Contract and Tort

[165] From the pleadings, arguments, and trial evidence, one can reasonably conclude that the La Traces seek damages concurrently in tort and breach of contract.

[166] Where there has been a breach of contract, damages serve to place the plaintiff "in the same position as he would have been in if the contract had been performed": ***Wertheim v Chicoutimi Pulp Co,*** [1911] AC 301 at 307 (PC). Therefore, the purpose of any award of damages in contract seeks to place the innocent party in the position they would have been in had all parties performed the contract: Harvin Pitch, Ronald Snyder, *Damages for Breach of Contract*, 2nd Ed (Toronto: Carswell, 2024) at 1:1 (*Damages*). Assessing damages for breach of contract considers both the benefit lost from the breach of contract and the costs incurred by the party seeking damages as a result of the breach: *Damages* at 1:1.

[167] Damages in the tort context are retrospective or backward looking. The goal of tort damages is to place the innocent party in the position they were in before the wrongful act was committed as far as it is possible to do so. Monetary damages are awarded in an attempt to "put the plaintiff who has been injured, or who has suffered, in the same position he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.": ***Andrews v Grand & Toy Alta Ltd*** (1978), 83 DLR (3d) 452 at 462 (SCC), citing *Livingstone v Rawyards Coal Co* (1880), 5 App Cas 25 at 39 (HL).

[168] Concurrent liability in tort and breach of contract will usually result in the same award of damages as "it would be anomalous to award a different level of damages for what is essentially the same wrong": ***British Columbia Hydro and Power Authority v BG Checo International Ltd***, [1993] 1 SCR 12 at para 47 [***BG Checo***]. However, in some circumstances, the case facts will result in different damages in tort versus contract law: See ***BG Checo***; ***Simkin v Osburn*** (1998), 40 CLR (2d) 119 (BCSC); ***Barber v Vrozos,*** 2010 ONCA 570 CA).

Damages: the Law

[169] When a plaintiff's property is lost or damaged, the principle of *restitution in integrum* generally applies, which grounds the plaintiff's entitlement to the amount required to place them in the position they would have been in had the property not been lost or damaged (Leith J and Hutchinson, A, eds, *Remedies in Tort* (Thomson Reuters Canada, looseleaf at 30:94) [*Remedies in Tort*].

[170] Generally, when property is *lost*, damages are calculated based on the value of the lost property. When property is *damaged*, the calculation of damages is based on the reasonable cost of repair or replacement. If, despite repair, the property's market value remains lower than before, the plaintiff may also be entitled to damages for the decrease in value. (*Remedies in Tort* at 30:94).

[171] In ***Nan v Black Pine Manufacturing Ltd***, [1991] 80 DLR (4th) 153 (BCCA) [***Nan***], the plaintiffs' house was destroyed by fire due to the defendant's negligence. The trial judge

awarded full replacement costs of the home, which was upheld on appeal. The house was 13 years old at the time of the fire. The defendant argued that the damages should be reduced to reflect betterment – that is, the plaintiffs got a brand-new home, not a 13-year-old home. The trial judge determined that the defendant failed to establish betterment. Even if the trial judge accepted the defendant's (problematic) appraisal report, which gave the home and land a pre-fire value that was less than the replacement cost, there was no evidence to show that the new replacement home had greater market value. The Court of Appeal found no error.

[172] I underscore that ***Nan*** does not necessarily stand for the proposition that replacement value is the measure of damages in all cases or is some sort of default position. For example, in ***Taylor v King***, [1993] 32 BCAC 56 (BCCA) a cottage was destroyed due to the defendant's negligence. The British Columbia Court of Appeal held that diminution in value was the appropriate approach to assess damages in the circumstances and, at para 62, relied on the following passage from *McGregor on Damages*, 15 ed (1988):

> The difficulty in deciding between diminution in value and cost of reinstatement arises from the fact that the plaintiff may want his property in the same state as before the commission of the tort but **the amount required to effect this may be substantially greater than the amount by which the value of the property has been diminished**. The test which appears to be the appropriate one is the reasonableness of the plaintiff's desire to reinstate the property; this will be judged in part by the advantages to him of reinstatement in relation to the extra cost to the defendant in having to pay damages for reinstatement rather than damages calculated by the diminution in the value of the land.
>
> (emphasis added)

[173] When the replacement of a destroyed or damaged item results in an improvement that benefits the plaintiff, this is known as betterment. In ***Vermilion & District Housing Foundation v Binder Construction Ltd***, 2017 ABQB 365, Nielsen J (as he then was) discussed the concept of betterment (and references ***Nan***), at paras 189-195:

> 189 SM Waddams, in *The Law of Damages* at 1.2730, noted that a plaintiff often will not be able to restore herself to her pre-loss position in making good damage to property without improving it. Waddams provided the following illustration:
>
> > If the plaintiff's 10 year old roof is damaged, she will not be able to purchase a replacement 10 year old roof. The only reasonable course will be to replace with a new roof. If roofs have a life of 20 years, and the defendant is compelled to pay the full cost of the replacement, the plaintiff will be in a better position after satisfaction of the judgment than if the damage had not occurred in the first place. **It would seem, therefore, that the damages should be reduced by the value of the improvement of the plaintiff's position**. . .. [citations omitted]
>
> 190 Waddams at 1.2760 notes that Canadian case law supports the view that the proper measure of damages is the **reasonable cost of repair less any**

enhancement if the replaced article is more valuable than before the accident.

191 In *James Street Hardware & Furniture Co v Spizziri* (1987), 62 OR (2d) 385, [1987] OJ No 1022 (Ont CA) the Court espoused the general principle that the amount by which the plaintiff's property is improved should be deducted from the award, but the plaintiff should also be compensated to the extent the plaintiff has had to put out money prematurely to obtain that betterment. The Court held that the process should not be unnecessarily complicated or rule-ridden, and should be responsive to the particular facts of the case, noting that the mere substituting of new for old may well not involve any increase in the value of the property as a whole in many cases.

192 Macklin J, in *Lamont Health Care Centre v Delnor Construction Ltd*, 2003 ABQB 998, [2003] AJ No 1511 (Alta QB), cited *Nan v Black Pine Manufacturing Ltd* (1991), 80 DLR (4th) 153, [1991] BCJ No 910 (BC CA) for the proposition that there is no requirement that damages be adjusted automatically to reflect betterment; it is merely a factor to be considered. *Nan* was more recently cited with approval on this point in *Laichkwiltach Enterprises Ltd v "Pacific Faith" (The)*, 2009 BCCA 157, [2009] BCJ No 689 (BC CA) at para 36 and *Jarbeau v McLean*, 2017 ONCA 115, [2017] OJ No 717 (Ont CA) at para 56.

193 In *Nan*, the owners rebuilt their residence which had been destroyed by fire resulting from negligent installation of a heater. The Court held that the plaintiff was not required to finance any "betterment" that was a necessary result of rebuilding. In considering whether any adjustment should be made to reflect depreciation or betterment, Wood J.A. emphasized that **every case will turn on its particular facts.**

194 In *Lamont Health Care Centre*, Macklin J considered this principle in determining that the replacement cost was not an appropriate starting point where a new facility was built to replace an old facility that would have been demolished and replaced regardless of the fire which had destroyed it.

195 Finally, it is well established that the onus is on the party asserting betterment to prove it: *James Street Hardware and Furniture Co*; *Nan*.

(emphasis added)

[174] ***Gendron v Doug C Thompson Ltd (Thompson Fuels)***, 2019 ONCA 293 involved oil leak contamination that led to the demolition of the plaintiff's house. At the time of demolition, the house was in poor condition and had a market value of $175,000. The plaintiff sought the estimated replacement cost of $545,244.25 to rebuild the home. This amount included $476,594.25 to rebuild the home as close as possible to the existing home, plus $68,650 of adjustments to account for certain finishes such as wood cabinets and a stone fireplace, which were in the demolished home but not included in the replacement estimate.

[175] The trial judge, relying on ***Nan***, held that the principle of betterment does not strictly apply to dwellings. The Court found that the estimated replacement cost to rebuild the residence was $476,594.25 and ordered this amount in damages. No contrary evidence was tendered with respect to the replacement cost and the estimate appeared reasonable.

[176] The Court of Appeal upheld the assessment of damages in relation to the replacement value of the residence, varying the damages slightly because, as part of the estimate of replacement cost, a figure was included to pay out an existing line of credit. The Court of Appeal held that this was not an appropriate component of rebuilding and constituted betterment to the plaintiff – he was placed in a better position than before the negligence – and ordered the line of credit payment be deducted from the damages award. Leave to appeal to the Supreme Court of Canada was refused ([2019] SCCA No 228).

[177] Damages for breach of contract are based on the same general idea: a damages award should put the Plaintiffs back in the position they were in prior to the breach of contract by the Defendant.

[178] Finally, the Court must determine the date from which damages ought to be assessed.

[179] Canadian jurisprudence has accepted the breach date rule found in the UK case of ***Re United Ry Of Havana and Regla Warehouses,*** [1961] AC 1007 [***Ry Havana***]: See also ***Custodian v Blucher***, [1927] SCR 420 and ***Gatineau Power Co v Crown Life Insurance Co,*** [1945] SCR 655. The breach date rule calculates the damages on the date of the breach, with the assumption that this value is best used to calculate the cost of mitigation by the innocent party.

[180] However, as the Supreme Court of Canada found in ***Semelhago v Paramadevan***, [1996] 2 SCR 415, though damages are typically assessed on the date of breach there is flexibility in the assessment when there are unique circumstances. Ultimately, a "'fair' date for assessment of damages will typically be the date on which the innocent party first had a reasonable opportunity to mitigate his or her loss": *Damages* at 13:4.

Damages: the Evidence

Lay Evidence

[181] I would like to make a few brief comments on witness credibility and reliability, particularly as it relates to the damages claimed.

[182] Although a criminal case, the principles outlined by Green J in ***R v Taylor***, 2010 ONCJ 396 at para 58 usefully summarize credibility and reliability and the differences between those concepts:

> "Credibility" is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called "credibility") and reliability. The first, honesty, speaks to a witness' sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness' perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

[183] A broad view of the entirety of the evidence must be taken. It is not just about demeanour or testimonial performance. In ***Faryna v Chorny***, 1951 CanLII 252 (BCCA) at 357 the Court held:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an **examination of its consistency with the probabilities that surround the currently existing conditions**. In short, the real test of the truth of the story of the witness in such a case must be **its harmony with the preponderance of the probabilities** which a practical and informed person would readily recognize as reasonable in that place and in those conditions. Only thus can a Court satisfactorily appraise the testimony of quick-minded, experienced and confident witnesses, and of those shrewd persons adept in the half-lie and of long and successful experience in combining skillful exaggeration with partial suppression of the truth.
>
> (emphasis added)

[184] While demeanour is only one factor in the credibility assessment process, the animus expressed by the La Traces towards Mr. Warkentin, in my view, made it more likely than not that they lacked objective recall of what happened in their dealings with him. The facts were clouded by their personal judgment. While I appreciate the importance of this litigation and the sense of grievance and the difficulties the La Traces experienced – and not without reason – their lack of perspective at times undermined the credibility of their testimony.

[185] For example, in her testimony, Ms. La Trace refers to Mr. Warkentin as a "shyster", stating that he "snuck in" to do work on their property, that he "threatened to steal the gazebo for money" when he was not paid, asserting that "he could never be trusted with what he was telling us", "he misled us", and referring to Mr. Warkentin's communications at different times as a "complete lie", "lie, an outright lie", "there was deception", that he committed "cheque fraud" and engaged in "frightening" behaviour. Mr. La Trace referred to Mr. Warkentin as an "idiot" and testified that this situation "destroyed our lives for six years and I regret the day I ever met Wayne Warkentin".

[186] Rather than seeing WBM's efforts to mitigate structural conditions which were beyond everyone's control, WBM was blamed for the problem. For example, Ms. La Trace's response to Mr. Warkentin's assessment that the bricks on the House had to be removed was that he wanted to "cheap out".

[187] These emotions came through in cross-examination, particularly with Ms. La Trace who was, at times, combative and entrenched herself in views that were clearly wrong. For example, in response to the simple proposition that she paid $5000 for the House, Garage Roof and Gazebo, she took the nonsensical position that "you can't buy a house that belongs to someone else's property" and would not waver.

[188] Feelings of personal animosity are not evidence that is relevant to the issues in this case. Certainly, there were mistakes made and statements that turned out to be inaccurate, but that does not justify the harsh labelling of Mr. Warkentin's motives and actions in which the La Traces engaged.

[189] Mr. Warkentin testified professionally, calmly, and without vitriol. He was fair minded in his assessment of what happened and had reasonable recollection. In the face of deeply personal

attacks, which he personally sat through, he remained issue focused. He made admissions against his own apparent interest, for example:

(a) He admitted that during the tree strike he was preoccupied with the back wheels of the truck and despite having spotters, the team's focus was on the truck wheels to ensure the house did not tip. He stated he believed they could navigate around the trees with their dollies but were not able to do so on the day of the move. He acknowledged it was his responsibility to move the House to the La Trace Property without hitting trees and he failed in this.

(b) When Mr. La Trace refused to pay after the Structures were moved to the La Trace Property, Mr. Warkentin admitted he said he "will come get that gazebo, how's that sound for payment".

(c) He admitted that taking deposits was a business practice he had engaged in, but he was not aware that WBM "needed a license to take a deposit". Mr. Warkentin stated he no longer took deposits from customers.

(d) He admitted he attempted to cash the cheque made for CN Rail from the La Traces, though by mistake. The money was subsequently removed from the WBM account.

(e) He admitted that his team broke the Garage Roof rafter with the bucket of the bob cat, but he did not inform the La Traces or his insurers of this accident.

[190] In short, where there is a discrepancy in the evidence between the La Traces and Mr. Warkentin that is not corroborated or otherwise supported by the whole of the evidence (documentary or otherwise), I accept the evidence of Mr. Warkentin.

[191] The La Traces contend, essentially, that every loss they experienced as a result of buying the Structures and moving them is WBM's fault. In its essence, they want a new house built, out of pocket expenses, and other damages. In their Written Submissions, the La Traces sought damages for the following:

- House rebuild
- Disgorged profits
- Line lifts and extra billings
- Special damages including thrown away insurance, thrown away expired permits, contractors to mitigate central feature, maintenance, mitigation, backfill, engineer reports, road ban charges-delay, lost rent
- General damages
- Punitive damages

[192] WBM takes the position that it caused the tree strike, and the damages from the tree strike are limited to repair, not replacement.

[193] The real issue is whether or not the Structures could have been repaired or needed to be rebuilt at the time that the damage was incurred; i.e. during and immediately after the move (***Ry Havana***).

[194] Ms. La Trace's evidence is that she did not give money to the owner for the Structures. She paid Mr. Van Tetering. There is no evidence from Mr. Van Tetering. The evidence establishes that Mr. Van Tetering was directed to give the Structures away. Thus, the Structures were of little to (most likely) no value to the owner. In fact, they represented an obstacle. This is supported by an email to Mr. Van Tetering from an individual named Andrew Lytovchenko saying that Goldman "provided authorization to salvage the house (give it away). This extends to other buildings. Whatever lowers the cost of cleanup to the owners, give/take it away".

[195] Thus, it is reasonable to conclude that the Structures had no value to the owners.

[196] So, a starting point is the pecuniary loss suffered by the La Traces based on what they paid for assets that had no market value: $5,000.

[197] This is related to Ms. La Trace's odd assertion that she was "buying the opportunity to take the house and [Van Tetering] was going to reduce the remediation contractor's price". She insisted that "[a person] can't buy someone else's home on real property". This is simply wrong.[5]

[198] As evidenced by the interactions between Ms. La Trace and the remediation contractor, the sale of the Structures was an attempt by the owners to reduce costs. The Structures would be demolished if they could not be removed from the Leduc Property. After the sale of the Structures, Ms. La Trace intended to remove the Structures from the Leduc Property to the La Trace Property. The Structures could no longer be considered as fixtures as neither the owner nor the La Traces objectively intended for them to enhance the land. They can no longer be considered fixtures on the land.

[199] No appraisal was done of the House value, therefore there is no objective evidence of what the House was worth. Ms. La Trace obtained an insurance appraisal over the phone, but she questions its accuracy due to inaccurate information that she supplied about measurements.

[200] The only evidence the Court has of the House value prior to the move and prior to the developer formulating the plan to dispose of it comes from Helmut Nickel. The Nickel Affidavit is not an expert opinion but forms part of the factual matrix. He states that the House "… was a very difficult and labor-intensive work of love that I told La Traces I valued at $80,000 when I built it, and some $100,000 in 2016". However, Mr. Nickel also states the following at paragraph 6 of the Nickel Affidavit:

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[5] In consideration of whether the Structures were chattels or fixtures, according to Professor Bruce Ziff in *Principles of Property Law*, 7th ed (Toronto: Thomson Reuters Canada, 2018):

> the determination of whether a chattel has been transformed into a fixture is a matter of intention, objectively determined … The test is whether the purpose of the attachment was: (a) to enhance the land (which leads to the conclusion that a fixture exists); or (b) for the better use of the chattel as a chattel.

See also: ***ABS Trucking Ltd v Edmonton (City)***, 2011 ABCA 353 and ***Cavendish Farms Corporation v Lethbridge (City)***, 2024 ABKB 768.

6. My son's brick house was less than 20 years old when a developer offered to buy my land and buildings, which would also have to include the brick bungalow I built for my son. It was simply an offer to good to refuse.

a) Realtor Linda Lyons Boucher of Royal LePage had appraised my son's brick house without land at $850,000.

b) When I decided to accept Qualico's offer to purchase my property, my son received $850,000 of the sale proceeds to compensate him for the house based on Ms. Lyons Boucher's appraisal.

[201] This assertion is not helpful in determining the value of the Structures in that it refers to a purchase and sale without particulars, without documentation, and stands in sharp contrast to the clear evidence that the owner of the Leduc Property valued the Structures at $5,000.

[202] I note parenthetically that Mr. Nickel specifically states that the La Traces interviewed him and Ms. La Trace typed the Affidavit for him. Mr. Nickel's evidence cannot be tested. The Nickel Affidavit is not convincing.

Expert Evidence

[203] I will now turn to the expert evidence.

[204] The La Traces called five experts: Eldon Schechtel, Robert Bourdages, Chris Holden, Arlin Cornelius, and Alan Cahoon. The La Traces also entered the MR Engineering as an administrative exhibit.

[205] WBM called three experts: Gregory Bowker, Rob Clarke, and Verlin Koch.

[206] The expert evidence relates to the key issues in this trial: the value of the Structures, the cost of repair, the cost of rebuild, and thus, the determination of the La Traces' claim for damages.

La Traces' Expert Evidence

Eldon Schechtel

[207] Mr. Schechtel attended at the property on August 17, 2020. His first report is dated August 24, 2020. Mr. Schechtel was qualified as an expert in the field of residential foundation framing, general construction, and the structural integrity of residential homes, with the ability to assess and opine on damages and cause of damages and with the further ability to provide assessments with respect to residential construction and repairs, including costing. He was also qualified to speak to the effect on building components of home moving and requirements on how to move a home without damage.

[208] Mr. Schechtel noted that the House hit something during the move and places responsibility for the damage to the House on WBM. He states: "I am convinced that this building sustained all of the damage while being moved and placed onto the foundation, excepting minor drywall damage and broken windows caused by vandalism."

[209] In terms of specifics, Mr. Schechtel opines that:

a) the floor joists were not supported or protected adequately during the move;

b) the wracking of the roof and walls resulted from inadequate support; and

c) due to the severity of the problems, the building could not have been placed on its foundation.

[210] Mr. Schechtel concludes:

> I am firmly convinced that due to the amount of damage to the super structure, brick veneer and interior finish, it's unrealistic to undertake repairs as I know of no practical way to restore this building to its original or near original state, the only part of it that can be salvaged is the centrally located stone fireplace and the foundation.

[211] Mr. Schechtel conducted a second inspection on October 19, 2021, and issued a second report dated October 23, 2021.

[212] In this second report, Mr. Schechtel states that the structure has been through two more winters since his first inspection. He expressed concern about the structural integrity of the foundation and the fireplace and urged remediation of health risks posed by mould and bird dung, and the dung odor, which he does not believe could be eliminated. He states:

> My initial report states that the entire house (roof, wall and floor) are racking due to inadequate support when moving causing extensive drywall, flooring, and overall damage. After a closer review of the overall damage I have come to the conclusion that a large portion of the racking, perhaps 2/3 of it, resulted from striking something while being moved.

[213] I also note that Mr. Schechtel believes that movers are responsible for structural integrity and for covering a structure, and if they do not, the homeowners can hire someone, and the mover should pay the bill.

[214] He also stated that damage occurred due to the lack of compression reinforcing and absence of squash blocking. The majority of the damage to the House is racking, which, in his view, cannot be caused by exposure to the elements.

[215] An engineer should have been consulted with respect to the floor joists in his opinion. The cut in the House was done poorly and professional help would be needed to piece the parts back together.

[216] Mr. Schechtel conducted an inspection but also received information from the La Traces. A significant amount of time passed between the move date and his investigations: four years. He also opines on matters (squash blocking, cut quality) that are not his area of expertise.

[217] In my view, less weight is to be placed on Mr. Schechtel's opinion given these temporal limitations, particularly in relation to the repair or replacement determination. While Mr. Schechtel remains firmly of the view that the House and Garage are not salvageable, the passage of time between the move and Mr. Schechtel's inspections diminish the weight of his opinion. After the passage of four years, it becomes difficult to differentiate between causes of damage, a conclusion that is not weakened by Mr. Schechtel's opinion.

[218] His statement that the mover is responsible for covering the House to prevent exposure to the elements is contrary to the arrangement made between the La Traces and WBM.

[219] Mr. Schechtel also conceded that the elements can destroy houses, but it depends on the weather conditions.

[220] Further, it is noteworthy that his second report goes some distance towards supporting WBM's contention that the damage to the building was caused by the tree strike and that weather and exposure to the elements can damage buildings.

Robert Bourdages

[221] Stantec's Robert Bourdages was commissioned to complete a visual condition assessment of the House, which is divided into two parts: the rectangular area and the hexagonal area. Stantec's scope did not include the master bedroom or the Garage Roof. He provided three reports in evidence, dated September 29, 2016, November 18, 2016, and December 8, 2016, respectively.

[222] Mr. Bourdages was qualified as an expert in the areas of structural engineering and timber framing, causation of structural engineering failures, general repair and rebuild costs on a qualitative, not quantitative, basis, general repair opinions on design and retrofitting, and water infiltration and mold.

[223] Stantec's field review occurred closer in time to the move than that of Mr. Schechtel. Someone from Stantec was on site on September 9, 2016, just over eight months after the move.

[224] In the November 18, 2016, structural assessment, Mr. Bourdages identified significant damage to the interior and exterior finishes, but states that it is difficult to distinguish between damage caused by transport or damage due to exposure to the elements that had occurred since January 2016. Mr. Bourdages specifically discussed six structural concerns related to the rectangular area and hexagonal area: unsupported covered deck roof; unsupported floor beams; buckling floor joists near master bedroom; rotated edge beam, separated brick, sloped interior floor; unsupported edge beam and crushed interior joist; impacted damaged exterior and separated brick and gypsum board.

[225] The House was described as being in an unsafe structural condition. He stated that the structural damage resulted from inadequate support while off the trailer or impact during transportation.

[226] Mr. Bourdages testified that roof joint separation was likely caused by the impact. Water or snow could have damaged the wood elements during the move.

[227] Further, Mr. Bourdages stated that all damaged structural members need to be replaced prior to anyone occupying the House.

[228] Subsequently, Mr. Bourdages issued a letter dated August 21, 2020, stating that the December 8, 2016, report can no longer be signed and sealed by Stantec due to the passage of time between the date the report was written and a recent request from the La Traces for signature. However, the 2017 report is nevertheless deemed to be accurate.

[229] Stantec concluded that its observations of damage to the House, made in its Field Review Draft Report, would require significant cost expenditure to remediate and repair: "[i]t is our belief that such costs, in the aggregate, may exceed the cost of demolition and reconstruction of the superstructure. Final determination of cost would require a detailed estimate prepared by a registered Quantity Surveyor."

[230] The Stantec report is equivocal on cause (support off trailer or impact), refers to replacement of damaged structural elements and defers determination of the efficacy of repair versus demolition and reconstruction to a quantity surveyor.

[231] Therefore, I place only moderate weight on this report on the issue of whether or not repair or replacement would be the correct measure of damages suffered by the La Traces and on questions of causation. It is clear that even by November 2016, the distinction between damage caused by the move and damage caused by exposure to the elements had at least begun to blur.

[232] Further, Mr. Bourdages' conclusions support, to some degree, the argument that replacement would result in betterment by the time Stantec became involved months after the move.

Chris Holden

[233] Chris Holden is a quantity surveyor whose mandate was to provide an independent opinion on the cost to rebuild the Home. He did not visit the La Trace Property to inspect the House until January 27, 2020, four years after the move.

[234] Mr. Holden's report – entitled Assessment of Replacement Cost of House - was issued in July 2020 and posits that the approximate cost of rebuilding the House - a single-story house with attached garage on unfinished basement - was between $886,403 and $904,536 excluding GST.

[235] In reaching this conclusion Mr. Holden reviewed floor plans, elevations, quotations provided by subtrades, and examined photographs. His considerations included measurements, current pricing from a construction pricing database, and quotations provided by the La Traces. Mr. Holden concluded that the cost to build the House, at the time of his report in 2020, ranged from $399.64 per square foot to $424.05 per square foot.

[236] Mr. Holden noted that the Construction Cost Guide 2020 as published by Cuthbert Smith Group shows a typical cost for high end house construction as $294 per square foot. However, "the central feature is driving the cost of the house up beyond the typical high-end house range."

[237] He did not recommend repair, which he says would cost $1,200,453 excluding GST.

[238] Mr. Holden assumed that the foundations needed to be replaced (kept separate from main estimate), framing needed to be replaced throughout – drywall, exterior cladding, roof finishes, wall, floor, and ceiling finishes needed to be completely replaced.

[239] Mr. Holden provided a rebuttal to the ParioQuantify Surveyor [**Pario**] report in October 2021. That report will be discussed later in these Reasons. Mr. Holden concluded that the price of a tear down and rebuild of a new House, with basement and garage, would be $1,116,415 excluding GST based on a cost of the house at $336.36 per square foot. This is calculated by dividing the total cost by the gross floor area of the main floor only (House and Garage). Mr. Holden cited changed market conditions, and that the "central feature and demolition of existing house is driving the cost of the house up beyond the typical high-end house range."

[240] Mr. Holden also noted that Pario assumed the wood structure of the house was salvageable and did not consider water damage to wood framing and sheathing; bird and small animal feces throughout the house; and made no allowance for work on the foundations, which had been left largely exposed since the move. Pario made an allowance for straightening the structure, which Mr. Holden did not think adequately addressed the seriousness of the twisting and racking mentioned in the experts' reports.

[241] The Court has several concerns about Mr. Holden's report that diminish the weight of his opinion, particularly in light of the Pario Report. These include:

a) The Pario Report pricing appears to be from 2016, which is closer in time to the date that WBM performed the move and placement. It is not clear why Mr. Holden could not provide pricing as of the date that WBM was involved with the Structures.

b) Mr. Holden's premise was rebuild, not repair. He cited emails from subtrades stating that parts of the house are not salvageable. Their site visit "indicated that in numerous areas work would have to be demolished completely and rebuilt completely. One of the main items is the main floor frame which is buckled and twisted. We believe that it would be more economic to demolish and rebuild the house". However, Mr. Holden did not visit the site until four years after the move, during which time period the Structures were exposed to the elements. Mr. Holden's opinion on causation and on rebuild or repair options is largely theoretical and cannot be grounded in fact.

c) He priced the building of a new garage, which was not actually part of the move.

d) The cost of building a foundation is included; this was obviously not part of the move.

[242] I do not place weight on this report; its use is confined to acting as a gloss on the Pario Report.

Arlin Cornelius

[243] Arlin Cornelius spent his career working as a residential foundation and framing contractor. He worked for the La Traces on various projects for over 30 years.

[244] Mr. Cornelius was qualified to give opinion evidence on residential foundations, construction and repair, as well as framing, general construction, and insofar as possible, the structural integrity of residential homes.

[245] Mr. Cornelius provided two letters to the Court: one dated August 16, 2016 and the other dated August 8, 2020.

[246] Mr. Cornelius visited the House in September 2015, prior to the move. At that time, he noted no structural problems. Mr. Cornelius also saw the House after the move and noted, in his view, that it had suffered severe structural damage.

[247] The main part of the House had some structural damage to the floor system and drywall had come off the ceiling in two bedrooms. He also noted: "how the exterior brick had been supported using wood lagged in some fashion to the existing OSB rim board, certainly in my experience not capable of holding brick for any length of time in a stationary situation let alone the stress of flexing and movement due to being moved for several miles." He also noted damage to the roof overhang area above the entryway – "it appeared to have hit something and had caused the exterior entry way wall to pull away from the main structure".

[248] Although an engineer cleared the building as fixable, Mr. Cornelius thought starting from scratch would be a better option than repairing the building. He completed the Gazebo foundation in late October 2015 and the House foundation in April 2016.

[249] In his view, major deconstruction would be needed to repair the damage to the separated roof, walls, and floors. He noted the House should be set on the new foundation quickly to prevent further damage.

[250] In August 2020, Mr. Cornelius updated his earlier comments. He was present in November and December 2016 when WBM moved the House and master bedroom onto the House foundation.

[251] Mr. Cornelius noted further damage caused by WBM when placing the buildings on the foundations. After being placed the House remained severely twisted because of, in his view, improper blocking and unconventional moving methods.

[252] Mr. Cornelius was of the opinion the House was a write off when first moved and was further convinced of that position when he witnessed the move onto the foundation.

[253] I place little weight on Mr. Cornelius' opinion evidence. His expertise rests in foundations and certain areas of construction, and not on the question of repair or rebuild.

MR Engineering

[254] The La Traces tendered a Structural Assessment by MR Engineering as an administrative exhibit at trial. Mizanur Rahman visited the La Trace Property on March 28, 2016, within 60 days of the move. Mr. Rahman's purpose for the visit was to evaluate the overall structural condition of the House superstructure and to assess the current condition of its structural elements, including joists, roof trusses and framing.

[255] Mr. Rahman observed some damage to truss extensions outside of the exterior wall supporting the eavestroughs. There was no damage to the top chord, bottom chord and diagonals including the connections. The existing roof trusses were found to be structurally sound and acceptable.

[256] Mr. Rahman observed no damage to existing TJI joists and found that the TJI supports were acceptable, as were all the floor joists save for two, which were damaged.

[257] Significant cracks were found in exterior/interior drywall due to uneven support. Cracks and dislocations were found in masonry walls due to inadequate support. Ceiling drywall was dislocated.

[258] Mr. Rahman concludes that the overall condition of the structural components of the house could be rendered acceptable provided that the following work was completed:

(a) Provision of proper support of the structure on its new foundation;

(b) Repair of the damaged portion of the truss exteriors;

(c) Repair and/or replacement of the damaged floor joists;

(d) Provision of lateral support for the damaged floor joists;

(e) Removal of dry wall to open up the wall studs and TJI roof joists;

(f) Repair of the existing wall studs and TJI roof joists where required;

(g) Provision of proper and adequate support for the masonry wall;

(h) Provision of proper support beneath the fireplace;

(i) Removal of separated roof sheeting and realignment of roof trusses where required; and

(j) Removal of slate/tile flooring and subfloor to realign floor joists where necessary.

[259] The overall condition of the House was found to be satisfactory by this expert. The MR Engineering Structural Assessment, overall, can be reasonably characterized as a list of repairs that would restore the structural integrity and appearance of the House. The assessment was made close in time to the move and supports the conclusion that, on a balance of probabilities, the House could have been repaired at the time that it was damaged.

Defendant's Expert Evidence

Gregory Bowker

[260] Gregory Bowker testified as an expert in residential market value appraisals, post-loss market value appraisals of residential properties, retrospective market value appraisals of residential properties, and valuation of residential use structures not affixed to land and in a position to be moved. He provided an appraisal of the House based on retrospective market value as at the day before the move (January 25, 2016) in a report dated October 18, 2021.

[261] Mr. Bowker physically inspected the House, inside and out on February 3, 2020, four years after the move. He took photographs and compared them with pre-move photographs.

[262] In reaching his opinion, Mr. Bowker assumed that the House was available to be moved from its foundation at the Leduc Property and that a buyer would acquire the structure in its "as is" condition and be responsible for moving costs.

[263] Mr. Bowker testified that the "highest and best use" appraisal method is not employed when a chattel is to be moved, such as a ready to move home or mobile home. The definition of highest and best use does not include chattels. Chattel appraisals take into account the intended purpose of the chattel.

[264] Mr. Bowker characterized the House as "a good quality custom built home with some unique characteristics including a central stone fireplace with water feature, and full brick exterior." He described its condition prior to the move as "well below average": 'fair' for the purposes of comparison to comparable properties due to the level of damage apparent in the photos. Most of the windows had been shattered, exterior doors and interior walls were damaged and other general excessive cosmetic wear were observed.

[265] Mr. Bowker concluded that the House, as a chattel to be moved, assuming at least average condition, would likely have been worth between $25,000 and $50,000: "[o]ur research also indicated that good quality homes are offered for sale and often either end up getting demolished or sold for $0 (plus moving charge)". He went on to say:

> After considering the condition of the dwelling prior to its move, and the cost to repair and restore to a reasonable condition, it is our opinion that the value of the subject dwelling would have been $0. The market data available supports the conclusion that despite the age, size and features of the dwelling, the value 'pre-move' was negligible.

[266] Mr. Bowker noted the La Traces paid $5,000 to a demolition company for the House. In his view, the final value was predicated on the "Direct Comparison Approach" to valuing the House, which was considered adequately supported by the sales presented in his report and others that he reviewed.

[267] Notably, Mr. Bowker did not apply the "Cost Approach" to valuation because residential dwellings not designed to be moved typically sell well below replacement cost new values, despite physical depreciation factors. This is an important point, as the La Traces were permitted to call an expert to rebut Mr. Bowker's conclusions.

[268] Mr. Bowker's report is consistent with the conclusion that the House's value was negligible or even nothing prior to the move.

Rob Clarke

[269] Mr. Clarke is a property appraiser at Pario with over two decades of experience in appraisals. He was qualified as an expert in the evaluation appraisal of residential property, the evaluation appraisal of property damages, construction project estimation of cost control, construction engineering technology, the use and application of the Xactimate program, wood frame structure design, and evaluation of the cost to repair residential property with emphasis on damage to residential properties. Mr. Clarke first visited the Structures on February 17, 2016, and prepared a report, including a repair estimate, that same day.

[270] Mr. Clarke was on site close in time to the move (a few weeks). His evidence is that the House sustained substantial exterior and interior damage from impact to the large octagon section. He stated:

a) "[i]t is my opinion this is not 'typical' damage that occurs when moving a home. When looking at the section of home that did not hit a tree the ceiling and walls have no cracks or separations at the corners."

b) the House must be placed on level foundation before repairs take place: "[i]t is the opinion of the writer the building be repaired as per the scope of work provided here-in."

[271] Mr. Clarke completed a further repair estimate dated October 17, 2021, which accounts for inflation since the original report.

[272] Mr. Clarke inspected the House on three occasions. He maintains that the House is reparable:

> Following my three site inspections completed in 2016, 2017, and 2021 I was able to collect the required information to complete this repair estimate. I have reviewed the report prepared by KTA Structural Engineering and considered their structural concerns in this report.

[273] Applying a depreciation of 50% to all building materials, Mr. Clarke sets a Replacement Cost Value of $245,635.32, less non-recoverable depreciation ($33,986.30) which results in Actual Cash Value of $211,457.43.

[274] Mr. Clarke revised his repair estimate in a report dated September 12, 2022. The revised Replacement Cost Value is $338,206.37; depreciation is not included but this takes inflation into account.

[275] Mr. Clarke concluded that the House was reparable in the time period following the move. The part of the House that hit the tree was damaged by external force. The ceiling and walls of the part of the House that did not hit the tree "have no cracks or separations at the corners".

Verlin Koch

[276] Mr. Koch is a structural engineer with KTA Structural Engineers Ltd. He was qualified as an expert in structural engineering, in particular on wood frame houses, causation of structural failure to a structure, repair of restoration of structural damage to a structure, reviewing and providing opinions on engineering reports or work, rot and water infiltration (including causation and avoidance). He is also qualified in building envelopes, including cladding; structural integrity of foundations and in particular, pouring of the concrete foundations for residential homes.

[277] Mr. Koch visited the site on October 6, 2021. He outlined his analysis and conclusions in a report dated October 13, 2021, entitled "House Inspection and Opinion on Cause and Extent of Damage".

[278] Mr. Koch's conclusions include the following:

a) the House was unoccupied and unheated for several years before the move;

b) photographs taken prior to the move do not show significant cracking in drywall or other interior finishes and the fireplace appears to be in good condition;

c) the front door was removed, and other doors were left open;

d) prior to the move the House had a number of broken or boarded up windows;

e) there was some deterioration of and damage to drywall;

f) bird excrement was visible on the floor in some areas.

[279] Mr. Koch did not observe significant cracking in the brick veneer prior to the move. He states:

> The support of the brick veneer on a single storey house is usually done by the brick bearing on a support such as a steel angle or concrete. The brick ties from the brick to the house wall are used for lateral support of the brick and are not intended to provide support in the vertical direction. In the original configuration, the brick extended below the main floor and was supported on the foundation at or below the exterior grade. In order to move the house, the upper section of the brick, above the main floor require new support to be added.

[280] Mr. Koch also noted that there would normally be rim board or dimensional lumber or structural composite lumber. He understands there was no rim board other than a 3/8-inch OSB board (similar to plywood) attached to the end of the floor joists. This type of construction is not strong enough to have a steel angle iron attached to the rim board. WBM nailed or screwed a 2x6 piece of dimensional lumber, to the ends of the floor joists to support the brick. Mr. Koch did not have enough information to calculate the exact requirements for the attachment but properly

done this provides as much support as possible under the circumstances. Based on the photographs after placement on the moving beams, but prior to transport, this element of move preparation was adequately completed.

[281] Mr. Koch noted the House struck a tree during the move at a speed of 2-3 km per hour. He states: "[i]n my opinion, this is when most of the damage occurred" and:

> The impact with the tree caused the house to rack, cracking the drywall in numerous locations. It enlarged the gaps in the reveals in the central living room and cracked the countertop in one location. A small crack occurred in the fireplace. There was some damage at the base of the fireplace at the floor opening where angles had been attached to support the stone. This was limited to a small area of about one foot by four feet.

[282] Mr. Koch indicated that:

> (a) some roof damage was caused by the tree impact, with observed separation of roof sheathing at the ridge of the trusses and damage to outriggers on the roof at point of contact;
>
> (b) the tree impact was the major cause of the brick damage; however, he notes that brick veneer results in very stiff construction and small movements can cause cracking. Vibration during the move could also cause some cracking from the movement and the attachment of the 2 x 6;
>
> (c) The chimney damage was not caused by transport. The chimney appeared to have been adequately supported during the move. The damage occurred when a Bobcat Loader pushed the two sections of the house together; and
>
> (d) The main floor framing was in good condition after the move with the exception of six floor joists. The drywall softening and general deterioration of drywall was caused by the house being unoccupied and unheated. Additional remedial work to the interior is mainly required due to having been unoccupied and unheated for an extended period of time.

[283] Mr. Koch's report states:

> The drywall on the main floor has been excessively damaged. Rather than repair the drywall, it is more cost effective to remove the drywall and insulation and replace the drywall and insulation. When this work is being done, note should be made of the quality of the insulation originally installed. With the drywall removed, the window openings that had been racked could be easily shifted back into their previous shape.

[284] He further noted that the brick can be patched to restore continuity. There were few cracks in the brick prior to the move. Some damage to the brick is to be expected, given the inherent rigidity of the brick versus wood frame. To repair brick in an aesthetically pleasing way, entire sections would have to be removed and reinstalled, possibly 30 percent of the surface area.

[285] The stonework on the fireplace along the opening needs repair and new supports are required to finish that area of the House. Adjustable steel columns under the fireplace were adequate to support it and the concrete block walls placed under the fireplace were not required for structural reasons.

[286] He stated:

(a) To repair the trusses and outriggers at the location where the tree strike occurred requires removing the damaged outriggers and replacing them with new outriggers.

(b) Joint repairs could be performed by a single carpenter as repairs are not very involved.

(c) The major cause of damage to the floor joists was placement on the moving beams. This would have occurred when the beams were placed, and the house was lifted and transported.

(d) Estimated time for repairs on the home (brick, drywall and insulation repair, frame straightening, refinishing to the floors, and roof repairs) to be 3 to 6 months (depending on material availability and manpower).

(e) There are differences in the building code requirements which were set out for stationary houses and not for houses in transport which are less stringent.

(f) Structural soundness is recognized as being able to withstand environmental, use and occupancy loads. Damages to structures that can be fixed does not mean there are structural integrity issues.

[287] Mr. Koch concluded: "[a]t this time, the house is structurally sound, but extensive remedial work is required. The damaged floor joists should be reinforced by adding another joist beside the existing damaged joist. This repair is relatively nominal."

[288] Mr. Koch also visited the La Trace Property on September 14, 2022.

[289] Mr. Koch's view is that the House was damaged during the move, mostly by the impact with the tree. That impact caused the house to rack, damaging the drywall and brick. The House is structurally sound. It requires extensive repairs to drywall and interior finishes. Drywall and insulation should be removed and replaced. Brick cracks should be patched with grout or removed and reinstalled.

[290] The House, in short, was reparable at the times that Mr. Koch inspected it.

La Traces' Rebuttal Expert Evidence

Alan Cahoon

[291] Alan Cahoon was called by the La Traces to rebut Mr. Bowker's conclusion that the House had no or negligible value. Mr. Cahoon was qualified as an expert in appraising residential-commercial properties with a specific emphasis on unique properties and circumstances, the analysis of appraisal reporting methodology, assessment and validity of those reports, and the technical review of appraisal reports completed by others.

[292] Mr. Cahoon conducted a personal site visit to the La Trace Property on October 29, 2021. He reviewed photographs in the Bowker Report, as well as additional photos provided by the La Traces.

[293] He critiqued Mr. Bowker on the following grounds:

(a) Mr. Bowker did not indicate the remaining economic life of the property, noting that a 60 year lifespan is typically estimated for residential properties; this can be

longer for higher quality structures. There was reasonably 40 years of remaining economic life in the House.

(b) The Bowker Report references four different sizes of the House, and the conversion between m2 and ft2 is incorrect.

(c) Mr. Bowker committed a fundamental flaw by not completing a highest and best use analysis. This contributed to an unsupported opinion of value because the House could not remain at the Leduc Property: it was in a transitional state and its highest and best use was to be moved onto an alternate land base to allow it to function as a single family residence.

(d) It is common practice, when appraising properties, to employ multiple approaches to value but Bowker only used the direct comparison approach. Mr. Bowker noted the cost approach was not considered applicable and that residential dwellings not designed to be moved typically sell well below replacement cost new figures: "[a]lthough this reasoning is not inaccurate, it is the opinion of the writer that this reasoning alone is not sufficient to exclude the Cost Approach valuation technique."

(e) Mr. Cahoon states: "…the writer is astounded that no consideration was given to completing the cost approach which, in the opinion of the writer, significantly lowers the reliability of the final value conclusions…. Excluding a valid valuation approach without an appropriate reason represents another fundamental flaw in the Bowker Report."

(f) Mr. Cahoon doubts the relevance of the $5000 sale price in determining the true market value of the House. He notes that the price paid by the La Traces does not necessarily represent the value of the House. No weight should be placed on the price paid in his view.

(g) Mr. Cahoon took issue with finding comparable sales information. From his discussions with others who work in this industry, the price of residential dwellings has gone up since the start of the Covid-19 Pandemic because of rising construction costs. He says these rising costs would mean it is logical to assume purchasers of used houses would be willing to pay a higher price. This contradicts the Bowker Report which says values have been in a decline and were higher in 2016.

(h) Mr. Cahoon criticized the fact that adjustments were not made in the comparable sales section of the Bowker Report to recognize size, dates of construction, design, and so forth: "[t]he conclusions of the appraiser appear to be that due to the cost to repair and restore to a reasonable condition, the value of the subject dwelling of the structure 'pre-move' is $0."

(i) He goes on to say that "[t]he writer is perplexed as to why there were no adjustments made to any of the comparable sales to recognize many of the notable superior aspects of the subject." He was surprised that the value of the House remained unchanged, even after the square footage was corrected, since building size is one of the most commonly made adjustments when appraising a residential building.

[294] Mr. Cahoon concluded:

> The writer is of the opinion that the Bowker Report involved two significant breaches of CUSPAP (Canadian Uniform Standards of Professional Appraisal Practice), by way of not completing a Highest and Best Use analysis and not completing a valid Cost Approach, which contributed to unsubstantiated valuation conclusions. In addition, there were no market supported adjustments to the comparable sales and no reference was made to any other research and/or discussions with other informed market participants which are knowledgeable in the unique market. Due to the way the report was completed, in conjunction with the number of errors and omissions noted throughout this report, it is the opinion of the writer that no reliance should be placed on the valuation conclusions of this report.

[295] While Mr. Cahoon's opinion is useful in that it represents a different approach to valuation of the House while it was on the Leduc Property, he does not offer a value himself. His mandate – which he discharged – was to criticize Mr. Bowker's report. He did that.

[296] Ultimately however, evidence concerning the value of the House prior to the move contributes to the replacement calculus, if replacement is the proper measure of damages in law.

Spoliation and Mitigation

[297] It is impossible on the evidence to conclude that all the damages suffered by the La Traces arose from WBM's acts or omissions. To what degree were damages incurred without WBM's contribution?

[298] Given the passage of time and how the Structures were cared for and maintained after the move, questions of spoliation and mitigation arise. I will turn to that issue now.

The Law: Spoliation

[299] Parties in civil litigation have a common law duty to take reasonable steps to preserve relevant evidence: Gideon Christian, "A 'Century' Overdue: Revisiting the Doctrine of Spoliation in the Age of Electronic Documents" (2022) 59:4 Alta L Rev 901 [**Christian**]. Spoliation refers to a situation "where a party has intentionally destroyed evidence relevant to ongoing or contemplated litigation in circumstances where a reasonable inference can be drawn that the evidence was destroyed to affect the litigation": ***McDougall v Black & Decker Canada Inc***, 2008 ABCA 353 at para 18 [***McDougall***]. The destruction of relevant evidence impacts the truth finding function of the Canadian justice system and the fair administration of justice

[300] The Supreme Court of Canada developed the doctrine of spoliation in ***St Louis v The Queen***, [1896] 25 SCR 649 [***St Louis***]. The concept of keeping evidence stems from the maxim *omnia praesumuntur contra spoliatorem* (all things are presumed against the wrongdoer) from Roman times: ***St Louis*** at 667. The SCC held that where spoliation can be established, there is a rebuttable presumption that "the evidence destroyed would have been unfavourable to the party who destroyed it": ***St Louis*** at 652-653, See also: ***McDougall*** at para 18; ***Trillium Power Wind Corporation v Ontario,*** 2023 ONCA 412. The spoliator can rebut the presumption through evidence that they did not intend to destroy the evidence with the aim of affecting the pending or contemplated litigation, or by other evidence to prove or defeat the argument: ***McDougall*** at paras 18, 29.

[301] Subsequent cases explored other aspects of spoliation to expand its scope:[6]

1. ***Endean v Canadian Red Cross Society***, 1998 CanLII 6489 (BCCA) at para 32: the remedy aspect of spoliation is flexible and able to compensate for "any loss [the plaintiff] may have suffered **by reason** of the destruction of any evidence" [emphasis in original].

2. ***Doust v Schatz***, 2002 SKCA 129 at para 29: found that the trial judge can consider spoliation "when considering matters of reliability, credibility and costs".

These cases have not been widely adopted by other provinces.

[302] The intentional destruction of evidence does not found an intentional tort, nor is there a duty to preserve evidence in the tort of negligence: ***McDougall*** at para 29. The "unintentional destruction of evidence" may also give rise to a remedy but cannot be founded on the principle of spoliation: ***McDougall*** at para 25. The *Alberta Rules of Court*, Alta Reg 124/2010 and the Court's "inherent ability to prevent abuse of process[es]" serve to provide remedies for such situations: ***McDougall*** at para 29.

[303] The doctrine of spoliation is an evidentiary rule. The party alleging the spoliation must establish the elements of spoliation on a balance of probabilities. As the Alberta Court of Appeal found in ***McDougall*** at paras 18 and 29, the party seeking to prove spoliation must prove:

i. Legal proceedings existed, were pending or were reasonably anticipated when the evidence was destroyed;

ii. The evidence destroyed was relevant to the litigation; and

iii. The evidence was intentionally destroyed by the party.

See also: ***Stamatopoulos v The Regional Municipality of Durham,*** 2019 ONSC 603 at para 606.

[304] Other Canadian Courts have interpreted the doctrine to have four elements:

(1) the missing evidence is relevant;

(2) missing evidence was destroyed intentionally;

(3) at the time of destruction, litigation was on-going or contemplated; and

(4) it must be reasonable to infer that evidence was destroyed in order to affect the outcome of the litigation.

[6] As there has been a shift towards individuals predominately using electronic documents, the destruction of electronic documents has equal weight in the consideration of spoliation: ***Commonwealth Marketing Group v Manitoba Securities Commission,*** 2009 MBQB 319.

> ***Catalyst Capital Group Inc v Moyse***, 2016 ONSC 5271 at para 136. See also: ***Ayangma v FLSB & ELSB***, 2021 PECA 13 at para 25, ***CMT v Government of PEI***, 2020 PECA 12 at paras 37 and 44.

However, tests used throughout Canada all encompass the definition of spoliation as found by the SCC in ***St Louis***.

[305] The trial judge determines if spoliation has occurred and, if so, what remedy should be awarded: ***McDougall*** at para 29. The trial judge hears the entirety of the evidence and is accordingly best positioned to determine whether a party intentionally destroyed or altered evidence for the purposes of affecting pending litigation.

[306] Remedies for spoliation can include: (1) an adverse inference (though in Canadian law the rebuttable presumption exists as an adverse inference); (2) striking out a statement of claim or defense; (3) exclusion of evidence; or (4) a costs or monetary award: Christian at 913 referencing ***Western Tank & Lining Ltd v Skrobutan***, 2006 MBQB 205 at paras 21–23; ***Dreco Energy Services Ltd v Wenzel***, 2006 ABQB 356 at para 52. The nature of the remedy will depend on the context of the spoliation, such as if the spoliation was done in bad faith, and how egregious the behavior of the spoliator was: ***iTrade Finance Inc v Webworx Inc***, 2005 CanLII 9196 (ONSC).

The Law: Duty to Mitigate

[307] Generally, a plaintiff cannot recover losses that could have been reasonably avoided: ***Asamera Oil Corp v Sea Oil & General Corp***, [1979] 1 SCR 633 at 660. The Plaintiff in a civil proceeding has the onus to show they suffered a loss and quantify the amount of that loss. Mitigation serves to reduce the quantum of damages in contract and tort actions.

[308] Mitigation seeks to ensure that the wrongdoer is "not abused" when compensating the victim for their loss: ***Southcott Estates Inc v Toronto Catholic District School Board***, 2012 SCC 51 at para 25 [***Southcott***], citing *Redpath Industries Ltd v Cisco (The)*, [1994] 2 FC 279 at 302. See also ***Janiak v Ippolito***, [1985] 1 SCR 146 at 163-164 [***Janiak***]. As the SCC found in ***Janiak***, the Plaintiff is not required to take extraordinary measures to mitigate, however if any part of the damages is caused by the Plaintiff's own negligence, they cannot seek to recoup those damages from the wrongdoer. See also ***Costello v Calgary (City)***, 1997 ABCA 281 at para 42.

[309] Mitigation is based on "fairness and common sense": ***Southcott*** at para 25. Plaintiffs need only to take reasonable steps to mitigate: ***Janiak*** at 163-164; ***Armbruster v Nutting***, 2024 ABKB 36 at para 225; ***Pfob v Bakalik***, 2004 ABCA 278 at para 17 [***Pfob***]. In the process of mitigation, all costs and expenses the plaintiff incurs in taking reasonable steps are recoverable: ***Southcott*** at para 25. Therefore, if a plaintiff does not take reasonable steps to mitigate, which later results in additional damages, the plaintiff may not be able to recover the full amount of damages suffered.

[310] If the situation requires, the plaintiff may need to retain professionals for purposes of mitigation: ***Mason v Thompson***, 2020 ABQB 76 at para 68 [***Mason***]; ***Warner v Calgary Regional Health Authority (Rockyview General Hospital)***, 2020 ABQB 172 at para 101; ***Williams v Rosenstock***, 2020 ABQB 303 at para 565. The requirement for professionals in the process of mitigation does not relieve the plaintiff from needing to take steps to mitigate.

[311] The burden is on the defendant to show, on a balance of probabilities, how the plaintiff could have reasonably mitigated their losses: ***Mason*** at para 64, citing ***Janiak***. The common law doctrine of mitigation requires the defendant to prove that the plaintiff: (1) did not make reasonable efforts to mitigate their damages; and (2) the mitigation was possible: ***Southcott*** at para 24, citing ***Red Deer College v Michaels***, [1976] 2 SCR 324. However, mitigation steps only need to be reasonable and therefore the plaintiff does not need to "incur great expense or inconvenience" in the attempt to reduce losses: ***Malton v Attia***, 2021 ABQB 503 at para 49 citing ***Costello v Calgary (City)***, 1997 ABCA 281 at paras 70, 72. Attempts to mitigate are taken into consideration as the Court should consider any "substantial possibility of failure" of mitigation: ***Pfob*** at para 18, citing ***Janiak*** at para 39. The plaintiff does not need to follow all professional advice in mitigation. As long as their actions are demonstrably reasonable, it can satisfy the duty to mitigate: ***Southcott*** at para 25.

[312] Canadian jurisprudence suggests that an insured still has a duty to mitigate losses, and while it was not the plaintiff's insurance policy, there is still an overarching duty on plaintiffs to mitigate: ***Hartford Fire Insurance Co v Benson & Hedges (Canada) Inc***, [1978] 2 SCR 1088.

Analysis

Spoliation

[313] I cannot find that there has been spoliation by the La Traces on the evidence here. The Structures are presently in dismal condition, but the evidence does not establish, on a balance of probabilities, that there was any intention to allow their deterioration in order to affect the litigation.

[314] The La Traces allege Mr. Warkentin failed to produce, destroyed, or altered his own notes with respect to the pending litigation. I cannot find sufficient evidence to support this proposition.

[315] It is reasonable to conclude that the parties were aware of the contentious circumstances post-move. However, there is insufficient evidence to persuade me, on a balance of probabilities, that any of the material allegedly altered or destroyed would have any relevance to the central issue in this case.

Duty To Mitigate

[316] WBM had the obligation to move the Structures onto the La Trace Property intact and undamaged (with exception to the pre-agreed alterations to the House). Mr. Warkentin testified that once insurance became involved, he was no longer actively involved in the La Trace matter.

[317] There are two accounts for the events that occurred after the move. Ms. La Trace alleges she asked Mr. Warkentin and WBM's insurer, Aviva, to cover up the house – to seal it and protect it from the elements - but received no response. The La Traces chose to tarp up the roof themselves but did not appear to take any other steps to mitigate. The La Traces testified that they were hesitant to do more due to insurance involvement.

[318] The evidence shows that Mr. La Trace made half-hearted attempts to place tarping on the House. That is the extent of the mitigation efforts in evidence.

[319] The Structures were left exposed to the elements after the move. From Mr. Warkentin's testimony, the La Traces did not initially accept tarping assistance but later, through email, contacted WBM and Aviva seeking mitigation help.

[320] Ms. La Trace testified they spent countless hours over the last few years to "clean, cut grass, cleaned off snow, thrown out the dead birds, [and] cleaned out the feces and the blood." There is no evidence of attempting – in a meaningful way - to seal the Structures off to prevent water damage or prevent animal access. In fact, it is clear from Ms. La Trace's testimony there was further damage to the Structures, from the elements, after the move.

[321] There is no evidence that utilities were ever supplied to any of the Structures. There is no evidence of any attempts to reattach fully the master bedroom to the House, to fully seal the cut.

[322] The La Traces installed windows and new roof shingles to the Gazebo after the move but did not put in installation, drywall, or reattach the bricks. Ms. La Trace stated that they did the "repairs that [they] intended on doing but not what [WBM] did to the walls.".

[323] The La Trace House remains on the La Trace Property where Ms. La Trace has testified it is a "write-off" and an "eyesore".

[324] It is an accepted fact that the La Trace House, prior to the move, had broken windows and vandalism. It is also undisputed that after the move, the La Trace House needed repairs, had to be placed on its foundation, reconnected due to cuts, as well as other repairs.

[325] The La Traces had a duty to mitigate once the La Trace House was moved onto their property.

[326] The onus here is on the Defendant to show on a balance of probabilities that the La Traces did not take reasonable steps to mitigate their damages.

[327] I find on a balance of probabilities that the La Traces failed to take adequate steps to protect the Structures from the elements after the move, contributing to their condition and rendering repair more difficult. This failure to correct an obvious problem may have been deliberate (to bolster a case for the building of a new house) or simply careless. Either way, significantly more could have been done to protect the Structures than what is found in the evidence. Of course, this also affects the Court's ability to determine what damages were incurred when.

Lost Rental Income

[328] The La Traces' claim includes loss of rental income. They testified they intended to rent out the House for a period of time before moving into it themselves for retirement.

[329] The La Traces submit that the claim for lost rent is for the period of August 2016 until December 2023 and rent for one year lost for rebuilding of the Structures.

[330] Ms. La Trace provided Kijiji listings of homes located on acreages for rent as a reference for rental prices. Ms. La Trace created a Kijiji listing of the property to gauge potential interest and provided emails of individuals responding to her ad.

[331] WBM argued there is no loss of rental income. No evidence of a lease or tenant was produced.

[332] The claim for lost rental income is based on speculation. Even if the House had not struck a tree during the move, there were numerous repairs needed before the House would have been suitable for tenants. The rental plans are not, on the evidence, sufficiently clear and convincing to meet the onus on the Plaintiffs.

Conclusion on Damages

[333] I am not satisfied, on a balance of probabilities, that replacement – building a new house to replace the House – is the appropriate remedy.

[334] In the immediate aftermath of the move, the evidence shows, on a balance of probabilities, that the House – the costliest of the three Structures – could be repaired.

[335] I have earlier identified my impressions of the expert testimony and reports. In sum, I accept and rely on those experts who viewed the Structures close in time to the move.

[336] The evidence establishes, to the civil standard, that the damages suffered by the La Traces are most appropriately rooted in repair cost. Just prior to the House being damaged, it was a functional albeit imperfect dwelling place. The House hit the tree. It was damaged. In the immediate aftermath of the damage, the House was repairable. This is supported by the evidence, for example, Mr. Clarke's assessment: "[w]hen looking at the section of home that did not hit a tree the ceiling and walls have no cracks or separations at the corners."

[337] Mr. Clarke differentiated between the part of the House that hit the tree and the part that did not. Thus, the tree strike more likely than not caused the damage. The damage was exacerbated by the lack of action to repair or even to secure the House against the natural environment, responsibility for which rests more with the La Traces than any other party.

[338] The damages award must be based on what it would have cost to restore the Structures to their pre-move condition.

[339] The value of the Structures prior to the move is relevant if replacement, that is, the building of new Structures to replace the ones that were moved by WBM, is the appropriate measure of damages. I cannot accept that the House had no value. A finding that the Structures were only worth $5,000 (or $0 per the Bowker Report) is not legally plausible. Whatever the La Traces paid for the Structures, the Structures were damaged and thus *put into a different condition* as a result of WBM's breach of contract or negligence. Therefore, the goal is to put the House into its pre-breach condition, and this could be accomplished by repairing it.

[340] A claim for a new House is not tenable. The House was not new. It was not demolished. It was capable of being repaired and this was the finding in the immediate aftermath of the move by Mr. Clarke, who examined the House shortly after the move. The earliest inspections were conducted by Mr. Rahman with MR Engineering and Mr. Clarke with Pario. Mr. Rahman and Mr. Clarke both reached conclusions that repair was feasible. Mr. Clarke visited the site three times. Following his site review October 12, 2021, he noted: "it remains my opinion the home is repairable." In his report, Mr. Rahman listed a number of recommended repairs and supports for the House, and noted that, provided those occurred, "[t]he overall condition of the structural

components of the house is acceptable." Even by the time employees of Stantec visited the site in November and December 2016, which was still earlier than many other experts, the distinction between damage caused by the move, and damage caused by exposure to the elements, were difficult to untangle. Had the repairs commenced immediately, the La Traces would have been put back in their pre-move position.

[341] To conclude on damages, I find that it is more likely than not that the House could have been repaired when it arrived, damaged, at the La Trace Property. The best evidence – that is, the evidence of reparability closest in time to when the damage was incurred – comes from the MR Engineering report and Mr. Clarke's reports. Mr. Clarke's first report was initially completed February 17, 2016, just a few weeks after the move.

[342] In terms of quantum, I accept the repair costs set out in Mr. Clarke's report as the proper measure of damages suffered by the La Traces: $211,457.43.

X. Adverse Inferences

Background

[343] The La Traces ask the Court to draw adverse inferences arising from WBM's failure to produce documents it had undertaken to provide and in relation to refused undertakings, all from the Questioning of Mr. Warkentin.

[344] Counsel for WBM insisted during the trial that not all undertakings were accepted, and all relevant materials were produced to the La Traces (Trial Transcript September 15, 2022, at pages 85 – 88).

[345] By way of background, Justice Lema, the Case Management Justice, advised the La Traces, via email, that the trial judge would determine and draw any adverse inferences in relation to non-production – alleged or established - of any documents. Justice Lema further stated that the consequences of any failure to answer undertakings given at Questioning would be determined at Trial.

[346] This resulted in a multi-day hearing after the Trial, in which I considered the La Traces' request for a number of adverse inferences to be drawn against WBM, in relation to WBM's alleged unanswered or inadequate undertaking responses.

Adverse Inferences Generally

[347] Adverse inferences arise in cases where the essential litigation characteristic of candour, usually exemplified by disclosure of relevant information such as documents, has been compromised, ignored, or otherwise unobserved.

[348] Courts have numerous tools to deal with non-disclosure, including but not limited to exercising a discretion to draw an adverse inference against non-disclosing parties: ***Esfahani v Samimi***, 2022 ABKB 795 at para 137 [***Esfahani***]; ***Heuft v Bramwell***, 2021 ABQB 642 at paras 48 and 52; ***Poursadeghian v Hashemi-Dahaj***, 2010 BCCA 453 at paras 22-25; ***Blatherwick v Blatherwick***, 2015 ONSC 2606; ***Wolf v Wolf***, 2019 ABQB 200 at para 52; ***Stockall v Stockall***, 2020 ABQB 229 at para 53.

[349] The Court's discretionary power to draw an adverse inference against a party who has failed to produce derives from the case of ***Blatch v Archer*** (1774), 1 Cowp 63, 98 ER 969 (KB) [***Blatch***]. Lord Mansfield in ***Blatch*** stated "[i]t is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted". This principle has been repeatedly adopted by the Supreme Court of Canada: ***Snell v Farrell***, [1990] 2 SCR 311 [***Snell***]***, R v Jolivet***, 2000 SCC 29 [***Jolivet***]***, Clements***, and ***Benhaim v St-Germain***, 2016 SCC 48 [***Benhaim***]**.**

[350] Whether an inference should be drawn in a particular case falls within the discretion of the trier of fact, to be determined with reference to all of the evidence: ***Esfahani*** at para 145. As Sopinka J stated in ***Snell*** at page 330 "[w]hether an inference is or is not drawn is a matter of weighing evidence."

[351] Following the approach in ***Snell***, the Court in ***Benhaim*** at para 44, found that the decision to draw "an adverse inference must be based on an evaluation of all the evidence." As well, the Court should look to the whole of a party's conduct throughout the matter before determining whether or not to draw an adverse inference: ***Pfeifer v Westfair Foods Ltd***, 2004 ABCA 422 [***Pfeifer***].

[352] When evidence is not produced, there is a risk to the party not producing the evidence that the trier of fact may draw a negative conclusion from the failure.

[353] The discretion to draw an adverse inference is a question of fact and owed deference on appeal: ***Benhaim***; ***Baker v Weyerhaeuser Company Limited***, 2022 ABCA 83 at para 36.

[354] Whether or not the documentation requested is relevant and material to the issues being litigated is an important factor in considering whether to draw an adverse inference: ***Esfahani*** at para 148.

[355] When relevant and material evidence is not produced the absence of an explanation for the non-production is a basis for the Court to draw an adverse inference. The Court must be precise about the "exact nature" of the adverse inference to be drawn: ***Jolivet*** at para 28.

[356] The party requesting an adverse inference against another party must present some evidence to support the inference sought: ***Alavinejad v Farimani***, [1991] BCJ No 3936. See also: ***Dandeneau v Dandeneau,*** 2000 ABQB 959 at para 11; ***656621 BC Ltd v David Moerman Painting Ltd***, 2022 BCSC 1683. An adverse inference can only be drawn if a "*prima facie* case has been established by the party bearing the burden of proof": Sopinka, Lederman & Bryant - *The Law of Evidence in Canada*, 6th ed (Toronto: LexisNexis Canada, 2022) at §6.511.

[357] If a party alleges the documents requested do not exist, this alone does not give reason to draw an adverse inference. The "whole of the [party's] conduct" should be considered when a party alleges the evidence requested does not exist: ***Pfeifer*** at para 46. Tribunals have considered the absence of evidence and subsequent obtainment of the non-existent evidence to be a basis for an adverse inference to be drawn: ***Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America v Inex Painting & Flooring Inc***, 2023 CanLII 95898 (ON LRB).

Adverse Inferences in Relation to Questioning and Undertakings

[358] As mentioned, adverse inferences can also be drawn when a party fails to answer undertakings given at Questioning. Adverse inferences can be made when documents promised on undertakings are not produced; however, only when the entirety of the context is considered.

[359] In ***Alberta (Minister of Justice and Solicitor General) v Temori***, 2018 ABQB 125, the Court declined to draw an adverse inference when financial statements were not provided as the adverse inference would not have been relevant to the issue nor were the financial statements in question highly probative.

[360] Courts have found that not all failures to answer an undertaking will "support an adverse inference or costs at trial": ***Abt Estate v Ryan***, 2020 ABCA 133 at para 42 [***Abt***]. After accepting an undertaking, there are a variety of scenarios that could arise that obviate the need for an answer. The Court in ***Abt*** recognized, at para 42, that the answer could be in other provided documents, or the requested evidence could be irrelevant and immaterial. If the evidence is relevant and material, the party requesting the undertaking may obtain an order for production of the documents requested.

[361] As the Court found in ***Abt***, the party requesting an undertaking can seek to enforce that undertaking but failure to seek enforcement is an acknowledgment that the answer was not needed.

[362] An adverse inference for failure to comply with an undertaking may not be necessary if the case can be decided without the evidence at trial: ***Nolt-Leverton v Leverton***, 2023 ABKB 318 [***Nolt-Leverton***]. In that case, the Court found that the "case may be decided on the record, on the evidence and the absence of evidence, in light of the burdens of proof": at para 119. In considering whether to draw an adverse inference, the Court should do so with regard to the entirety of the case to determine whether an adverse inference is necessary.

Adverse Inferences in this Case

[363] From the La Traces' perspective, WBM's failure to produce "sketchbooks, notebooks, work diaries/calendars" with information about dates, times, and so forth is highly relevant. I did not order production of this material during the trial.

[364] The issue in this trial is how to calculate damages for breach of contract and negligence. WBM admitted that it caused damage when the tree strike occurred. This damage sounds in contact and in tort. The information that the La Traces request is not in fact directly relevant to (a) the fact that the House hit a tree; and (b) whether the House should be repaired or replaced. On the whole of the evidence, it is unlikely that this information would have probative value with respect to the issues at trial.

[365] Whether or not an adverse inference should be drawn from Mr. Warkentin's failure to produce documents he had undertaken to provide is at the discretion of the trial judge and largely turns on whether or not the documents requested are relevant and material, and on Mr. Warkentin's explanation for failing to produce those documents.

[366] The La Traces bear the onus here. The standard of proof is balance of probabilities. They seek adverse inferences in relation to:

(a) Photos provided to Davey Tree, with metadata;

(b) Portions of Mr. Warkentin's diary that the La Traces argue would show that Mr. Warkentin was out of the country at key times, that other work was not postponed in favour of their job and that WBM was doing other work between November 2015 and November 2016;

(c) Some information about road use permits, failure to ask the authorities for permission to move the House in one piece, lack of permit to remove trees;

(d) WBM financial information, related to other jobs;

(e) Dates that Mr. Warkentin was outside of Alberta in 2015 through 2017.

[367] While some of this information might have served the La Traces as proof (to them) of Mr. Warkentin's attitude, or his bad dealings with them, or his negative intentions, the decision in this case can be made without this evidence. I also note that for refused undertakings, or those that are not answered to the La Traces' satisfaction, no application was brought to enforce answers before trial.

[368] Specifically, I find that the undertakings that concerned the La Traces were either (a) irrelevant; (b) impossible to answer; or (c) rightfully refused.

[369] On the whole of the evidence, given the actual issues and the entirety of the evidence, it is more likely than not that the absence of this material has no material effect on the determination of the issues at trial.

[370] Therefore, I exercise my discretion to reject the La Traces' application to have adverse inferences drawn against WBM

XI. *CPA* Claim

[371] The La Traces argue that WBM, through Mr. Warkentin, engaged in unfair business practises.

[372] Section 13 of the *CPA* sets out the range of remedies available to the Court where a consumer has "suffered damage or loss due to an unfair practice" (*CPA*, s 13(1)(b)) and gives a right of action against, *inter alia*, the principal of a supplier. The *CPA*'s purpose is outlined, in broad terms, in its preamble, which reads:

> WHEREAS all consumers have the right to be safe from unfair business practices, the right to be properly informed about products and transactions, and the right to reasonable access to redress when they have been harmed;
>
> WHEREAS businesses thrive when a balanced marketplace is promoted and when consumers have confidence that they will be treated fairly and ethically by members of an industry;
>
> WHEREAS businesses that comply with legal rules should not be disadvantaged by competing against those that do not; and
>
> WHEREAS the Government of Alberta is committed to protecting consumers and businesses from unfair practices to support a prosperous and vibrant economy...

[373] The question of substantive application of the *CPA* to the commercial relationship between the La Traces and WBM has already been litigated.

[374] Justice Lema of this Court held in ***La Trace v Warkentin Building Movers Virden Inc***, 2021 ABQB 297 that the *CPA* applied to WBM; "residential-house moving" falls into the definition of "services" as defined in the *CPA.* WBM had argued that the La Traces had not intended to use the House for residential purposes but instead for revenue generating purposes. The Court found that the intention was not relevant to the application of the *CPA*.

[375] WBM appealed Justice Lema's decision, arguing that a breach of procedural fairness had occurred, and that the *CPA* had been misinterpreted. The appeal was dismissed in ***Warkentin Building Movers Virden Inc v La Trace***, 2021 ABCA 333. The Court of Appeal held that the *CPA* applies to the transaction between the La Traces and WBM. The Court held that a residential home is primarily used for personal purposes. Even if they were to consider the La Traces' intention, which was to rent out the home until they retired, this does not create a commercial purpose for the home as the La Traces ultimately would live in the home after retirement.

[376] The *CPA* applies to the transaction *qua* transaction. Therefore, this aspect of the La Traces' claim – an action by a consumer under s 13 of the Act - must be addressed.

[377] The *CPA* mandates that the Director of Fair Trading must be served with a copy of the Statement of Claim in a section 13 action. No steps can be taken in the action until service has been effected. The Director can then apply to the Court to be added as a party to the action. (*CPA*, s 18)

[378] Service of the Statement of Claim on the Director is mandatory. The word "must" is used in that section. When the word "must" is used in connection with a statutory obligation, a mandatory requirement is indicated, similar to the use of "shall" by legislation drafters. It has been held that the use of "must" in fact "entails a more mandatory obligation admitting of less discretion in the court" than "shall". In ***UAW, Local 458 v Massey-Ferguson Industries Ltd,*** 1979 CanLII 1802, the Ontario Division Court held (at paras 11, 16):

> The word "must" is a common imperative. It is hard to think of a commoner. There is no dictionary of stature of which I am aware that accords to the word any other connotation. In its present or future tense it expresses command, obligation, duty, necessity and inevitability...
>
> ... .
>
> Since "must" bears only one meaning, an imperative one, it is inappropriate and unnecessary to search in the context for something that strengthens it.

[379] If the Legislature, in passing the *CPA*¸ had wanted to *encourage* service on the Director, or make it a *matter of choice,* another word or phrase would have been used, such as "should" or "may". The Legislature chose the word "must".

[380] The La Traces have asked that the notice requirement be waived, and that the *CPA* be read as a whole, purposively and contextually, in the interests of justice.

[381] There is no evidence that the Director was ever served. Ms. La Trace testified that she did not provide the Director with the Statement of Claim. She testified that she spoke with an

individual named Scott Hood, the Director of Fair Trading, just before November 20, 2020, when Ms. La Trace found out about the rules concerning deposits. However, this does not constitute service on the Director.

[382] Accordingly, steps taken in the *CPA* action absent such service must fail, including the *CPA* claim at trial. When the Court of Appeal held that the *CPA* applies to this transactional arrangement, that *ipso facto* means that the section 18 notice requirement also applies.

[383] The *CPA* claim is dismissed.

XII. WBM's Claim

[384] WBM claims the unpaid balance of the contract price ($39,000), damages for lost use of equipment ($109,800), and payment of a bill owed to CN Rail that was incurred as part of the move ($4,410). WBM also seeks interest at 24% or interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1 and costs.

[385] For the reasons that follow, WBM is granted judgment against the La Traces in the sum of $39,000 plus GST and $4,410, plus interest under the *Judgment Interest Act*, and costs as specified below.

A. Unpaid Balance of the Contract Price

[386] The contract price is not in dispute. The La Traces agreed to pay WBM $80,000 to move the Structures. The Structures were moved.

[387] At trial, Ms. La Trace testified that the La Traces paid WBM $42,000. Looking at the evidence, it appears the amount paid was $41,000. There is a balance owing of $39,000. The La Traces stated they "would not pay [WBM]" any additional amounts.

[388] The La Traces owe WBM $39,000 plus GST under the contract, and judgment in WBM's favour will follow in that amount.

B. Lost Use of Equipment & Opportunity

[389] WBM claims the cost of renting equipment that the La Traces would not allow WBM to remove from the La Trace Property, such as an equipment rental fee. At Questioning, Mr. Warkentin quantified this as $450 per day. Tied into the rental claim is a damages claim based on lost opportunity to bid on jobs because the equipment was unavailable to WBM.

[390] There is a lack of evidence to establish damages based on lost jobs, inability to bid on jobs, and other economic losses of this sort.

[391] Loss of opportunity is a legal principle that allows parties to claim damages arising from a breach of contract or a wrongful act. In ***Folland v Reardon***, 2005 CanLII 1403 (ONCA) the Ontario Court of Appeal set out criteria a plaintiff must establish to receive damages for a lost opportunity. At para 73:

> ...First, the plaintiff must establish on the balance of probabilities that but for the defendant's wrongful conduct, the plaintiff had a chance to obtain a benefit or avoid a loss. Second, the plaintiff must show that the chance lost was sufficiently real and significant to rise above mere speculation. Third, the plaintiff must demonstrate that the outcome, that is, whether the plaintiff would have avoided the loss or made the gain depended on someone or something other than the

> plaintiff himself or herself. Fourth, the plaintiff must show that the lost chance had some practical value… [Citations omitted.]

[392] The Court stated in ***Pacific Destination Properties Inc v Granville West Capital Corp***, 1999 BCCA 115 at para 54:

> In assessing damages for loss of opportunity the court must reach a conclusion as to what would have taken place had there been no breach. If it is shown with some degree of certainty that a specific contract was lost as a result of the defendant's breach, some damages should be awarded. Even though the plaintiff may not be able to prove with certainty that it would have obtained specific results but for the breach, it may be able to establish that the defendant's breach deprived it of the opportunity to obtain such business. See: *Houweling Nurseries Ltd v Fisons Western Corporation* (1988), 1988 CanLII 186 (BC CA), 37 BCLR (2d) 2 (CA).

[393] In ***CM Callow Inc v Zollinger***, 2020 SCC 45, the Supreme Court of Canada found that where a party breaches the duty of honesty, they may be responsible for damages for loss of opportunity. In that case, the plaintiff provided evidence of opportunities to bid on other job offers which he did not pursue due to the defendant's dishonesty.

[394] Similarly, in ***Four Top Hospitality Group Ltd v Olde Towne Developments Ltd***, 2024 BCSC 2279, the Plaintiff provided an expert appraisal report as evidence for loss of opportunity to sublease their premises.

[395] WBM must prove that it suffered these damages on a balance of probabilities. There is no evidence establishing that the La Traces were aware they would be charged a rental fee or otherwise agreed to it. There is no documentation to support the claim except WBM invoices sent to the La Traces for equipment rental. Mr. Warkentin admitted at Questioning that WBM did not rent alternative equipment when it was unable to access its equipment that was on the La Trace Property.

[396] This claim is not made out on the evidence. WBM's claim for lost use of equipment is dismissed.

C. The CN Rail Bill

[397] WBM paid CN Rail $4,410. This amount was directly related to the move and is a third party cost that had to be paid. WBM paid this amount on behalf of the La Traces. The La Traces have not reimbursed WBM for this amount.

[398] Thus, $4,410 is owing to WBM by the La Traces.

[399] The La Traces made a very significant issue out of WBM depositing a cheque made out to CN Rail.

[400] This has no impact on my finding that WBM is out of pocket the sum of $4,410, paid to CN Rail, for the benefit of the La Traces.

[401] This claim is allowed and WBM will have judgment against the La Traces in the amount of $4,410.

D. Other Third Party Costs

[402] It was a term of the contract between the parties that the La Traces would pay third party costs incidental to the move. WBM paid these costs in the first instance.

[403] These costs include Fortis (high load escort), Davey Tree (tree removal on the route), CN Rail (line lift), and Carillion (Shaw, Telus).

[404] The La Traces' claim seems to be that these costs were hidden from them, were excessive, and do not form part of the contract price. At Questioning, Mr. Warkentin admitted that "[w]e didn't specifically talk about a numerous number of things" in the context of trees and other costs.

[405] The January 11, 2016 email exchange represents a clear indication that these incidental costs were still accruing. There would have been no surprise. In fact, as early as January 11, 2016, Mr. La Trace was weighing his options. The Fortis quote, which is specifically mentioned in the invoice, was higher than expected, and he stated that "[i]f the remaining ones come in at similar values, the house isn't worth moving". It is clear that further third-party costs were contemplated. The move proceeded. The costs were incurred by WBM solely to benefit the La Traces.

[406] The Quote referred to third party costs. These were discussed early in the relationship between WBM and the La Traces. While Ms. La Trace denied that this email exchange was an indication of possible cancellation, the La Traces were – quite sensibly – engaged in some sort of cost/benefit analysis as the expenses emerged.

[407] It is also noteworthy that Mr. La Trace signed the January 24, 2016, quote-type document which states "[c]ustomer agrees to pay all Bills as agreed on as bills come in – utility, structures, trees". This is evidence of his knowledge and acceptance of these costs.

[408] Therefore, WBM has proven, on a balance of probabilities, that these third-party costs are part of the contract and thus the La Traces are responsible for them.

[409] With the exception of the amount paid by WBM to CN Rail, mentioned above, all other third party costs were paid by the La Traces.

D. Contractual Interest Claim

[410] The Quote and subsequent documents in the same form provide that interest will accrue on all amounts owing at a rate of 24%.

[411] This Court found in ***Precision Drilling Canada Limited Partnership v Yangarra Resources Ltd***, 2015 ABQB 649 [***Precision Drilling***] at paras 23-24, that an 18% contractual interest rate was valid:

> My observation is this: an agreed upon interest rate for payments in arrears saves both litigants' time and the courts' time. Otherwise, it would be necessary for an unpaid goods or services supplier, when suing for non-payment, to adduce evidence as to things such as its average return on capital and its blended average cost of borrowing. These figures would be constantly changing.
>
> While there is no doubt that an agreed upon interest rate of 18% contains an element of 'incentive' in addition to an element of compensation, I find nothing

> extravagant or unconscionable about a goods or service provider charging 18% interest if they are not paid on time for goods or services provided...

[412] The Alberta Court of Appeal in ***Bidell Equipment LP v Caliber Midstream GP LLC***, 2020 ABCA 478, aff'g 2019 ABQB 296 [***Bidell***], affirmed the approach in ***Precision Drilling***. In ***Bidell***, the contractual interest rate for unpaid invoices was 24%. The Court found that to be enforceable, and noted the following at paras 48-49:

> The parties contracted to an interest rate of 24% per annum. Caliber could have elected to make a payment towards invoices rendered at any time. It was neither vulnerable nor a victim of oppression. It has made no payments at all. Caliber's claim that Bidell got an undeserved windfall through the accumulation of the interest since cancellation of the contract falls away when one notes that had Caliber paid the indisputable charges under the contract, the interest buildup would have been a fraction of what it was. As a result, Bidell has effectively financed the entirety of its outlays since termination of the contract on January 23, 2015. Even a contractually agreed upon high interest rate is enforceable and a creditor is entitled to judgment in accordance with the terms of the contract: *Industrial Acceptance Corp v Beaupre*, 1956 CanLII 603 (AB CA), [1956] CanLII 603, 18 WWR (ns) 685, 686-687 (ABCA). This is particularly so with sophisticated commercial actors.
>
> We do not find the interest rate as stated to be a penalty nor contractually unenforceable as punitive, exorbitant or unconscionable. We do not interfere with the considered and reasonable decision of the trial judge on this point.

[413] The Quote documents, which contain significant contractual terms related to cost, have the interest rate specified on them. However, these were not sophisticated commercial actors. The La Traces never signed one of the Quotes. The parties put the Court in a position where it had to determine contractual terms from various sources rather than a written document or documents. This affair, from a contract law and commercial perspective, was managed with sloppiness and a lack of attention by all parties. I do not have sufficient evidence of *consensus ad idem* on interest on overdue amounts.

[414] Therefore, I decline to grant WBM interest on amounts owing at what it proffers as the contractual rate.

[415] WBM will have interest on unpaid amounts pursuant to the *Judgment Interest Act* from March 1, 2015, to the date of this Decision.

XIII. Judgment

A. Damages: Contract and Tort

[416] The La Traces will have judgment against WBM in the sum of $211,457.43, based on Mr. Clarke's evidence at trial. This represents the repair costs required as a result of the tree strike, which is, on a balance of probabilities, the appropriate basis for damages given that in the immediate aftermath of the move, the Structures were reparable. That figure is based on repair contemporaneous with the damages being incurred and includes depreciation. I have included the depreciation amount as, I find, based on the age and condition of the House, I must account for betterment the La Traces would have enjoyed if repairs had been undertaken. I have accepted

WBM's argument that the date of loss is the appropriate time to calculate damages; pre-judgment interest will account for the passage of time.

[417] In other words, the Structures could have been restored to their pre-move state had the La Traces chosen to do so. They did not. This applies to contract damages and tort damages. The measure of damages under either prong is the same: restore the La Traces to the position that they were in prior to the move.

[418] I am not making a reduction for failure to mitigate given the date on which Mr. Clarke's figure is based.

[419] The La Traces will have interest on the amount of their judgment calculated pursuant to the *Judgment Interest Act* from March 1, 2015, to the date of this Decision.

[420] WBM will have judgment against the La Traces of $39,000 plus GST for the move balance owing under the contract and $4,410 for third party costs. WBM will have interest on this judgment pursuant to the *Judgment Interest Act* from March 1, 2015, to the date of this Decision.

B. Costs

[421] The following costs awards were made during the course of the trial:

a) $500 is owed to WBM by the La Traces in any event of the cause due to the La Traces' unsuccessful application during trial regarding the attendance of WBM's expert, Verlin Koch, at the La Trace Property to conduct an updated inspection of the Structures.

b) $2,500 in costs is owed to the La Traces by WBM due to late disclosure of Greg Bowker's expert report.

c) $3,000 in costs is owed to WBM by the La Traces resulting from their dismissed application to call rebuttal evidence on the issue of foundation and demolition and sequencing and their application to recall Mr. Clarke as an expert and have him provide an earlier report which either does not exist or is privileged.

[422] Thus, the net amount of costs owing prior to any assessment of the costs of the action is $1000, which is due and owing to WBM.

[423] In terms of the outcome of this action, and subject to the paragraph immediately following this one, the parties will each have their costs of their respective claims based on the column reflected in their initiating pleadings (as amended), both under Schedule "C" to the *Alberta Rules of Court*.

[424] The La Traces will only receive Schedule "C" costs for those steps that were taken with a lawyer actually present, in the Courtroom, at Questioning or other steps actually performed by a lawyer. They will not have costs for any other steps taken where a lawyer was not actually present.

[425] If the parties are unable to agree on costs, they may submit a letter to me by no later than August 15, 2025 through my Judicial Assistant, no more than 5 pages long, single-sided paper, 12 point font, double spaced, plus case authorities or relevant pleadings.

Heard on November 1, 2, 3, 4, 5, 8, 9 and 10, 2021; September 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23, 2022; January 23, 2023;
Argument concerning read-ins heard February 9, 2023.
Written Argument filed October 18, November 25 and December 18, 2023
Final Argument heard January 24th through 26th, 2024.
Dated at the City of Edmonton, Alberta this 7th day of July, 2025.

S.N. Mandziuk
J.C.K.B.A.

Appearances:

Dean La Trace and Darlene La Trace
Self-Represented Litigants with limited retainer of Gary Zimmerman, McLennan Ross, LLP.

Ted Lawson and Megan Riddell
Parlee McLaws
for WBM