

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Anderson Square Holdings Ltd. v. Zhang*,
2025 BCCA 288

Date: 20250818
Docket: CA49731

Between:

Anderson Square Holdings Ltd.

Appellant/
Respondent on Cross Appeal
(Defendant)

And

**Baoming Zhang, Lu Fei Sun, Charlotte Ga Ling Tong, Christopher James Bak
Kan Tong, Xiao Qi Lucy Meng, Chun John Chak, Jie Gao, Xinyu Ji,
Yong Song Zhao, Hua Wei Li, Yan Zhu, Li Min Ma, Wan Cao, Qing Wei Li, Lan
Guo, Chi Sing Ng, Tsang Angela Mun Yee, Ravinder Kaur Hayer,
Chun-Yao Wang, Jian Chung Zheng, Chei Yong Lee, Xue Yu Han,
Yong Jun Jiang, Han Yun Lu, Bo Zhang, Chun Xue Chen, Yuan Tao,
Mo Yeung, Tai Fung Chan, Bao Sen Han, Peng Fei Zhu, Yuan Dong
and Vivien Lan Xu**

Respondents/
Appellants on Cross Appeal
(Plaintiffs)

Before: The Honourable Mr. Justice Harris
The Honourable Justice Winteringham
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated
February 9, 2024 (*Zheng v. Anderson Square Holdings Ltd.*, 2024 BCSC 216,
Vancouver Docket S1912984).

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Cross Appeal:

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Cross Appeal:

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Place and Date of Hearing:

Vancouver, British Columbia
June 25, 2025

Place and Date of Judgment:

Vancouver, British Columbia
August 18, 2025

Written Reasons by:

The Honourable Mr. Justice Harris

Concurred in by:

The Honourable Justice Winteringham

The Honourable Justice Edelman

Summary:

This appeal concerns the interpretation of a termination clause in the contract between the appellant developer and the respondent presale purchasers. The appellant submits the judge erred in interpreting the clause as providing for the automatic extension of the contract beyond the Outside Completion Date in the event of delay beyond the reasonable control of the developer. In the alternative, it submits the judge erred in finding no duty on the respondents to mitigate and in assessing damages.

Held: Appeal allowed. The judge erred in his interpretation of the termination clause. The appellant was entitled to terminate the contract when construction could not complete by the Outside Completion Date. There was no breach of contract, and it is therefore unnecessary to consider the other grounds of appeal.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

[1] This appeal arises out of the interpretation of the termination provisions of certain presale contracts in a strata development in Richmond (the “Development”). The appellant, developer Anderson Square Holdings Ltd. (“Anderson Square”), purported to terminate the contracts relying on two clauses of the contracts. The presale contracts contained an “Outside Completion Date” of September 30, 2019. Failure to be able to meet the Outside Completion Date triggered the termination provisions in the contracts. It was common ground that the development could not complete by that date.

[2] A key issue at trial was whether the presale contracts terminated automatically, on notice being given, if the Outside Completion Date could not be met (unless that date was extended by agreement), or whether the Outside Completion Date was automatically extended for a time and the contract remained in effect.

[3] The judge concluded that the contract did not automatically terminate on notice. It remained in force and Anderson Square was in breach of contract (by anticipatorily repudiating the contract) when it purported to give notice of termination. He also concluded that Anderson Square had acted dishonestly in invoking a clause

of the contract in giving notice. The judge then assessed damages. He held that Anderson Square had repudiated the presale contracts when it issued the termination notices and that the respondents did not accept the repudiation until August 2021. As a result, the presale contracts continued in force until then. The judge concluded that there was no duty on the respondents to mitigate until August 2021, when they accepted the repudiation. The judge assessed damages of \$13,093,900, being the difference between the purchase price agreed to in each of the respondents' individual presale contracts and the stated values of those units in August 2021.

[4] Anderson Square alleges that the judge erred in his interpretation of the termination provisions by concluding that the Outside Completion Date could be extended under the relevant clauses without the written agreement of the parties. Properly understood, it contends, the presale contracts terminated automatically on notice being given when the Outside Completion Date could not be met. If it succeeds on that ground, the appeal must be allowed. Alternatively, the judge erred in his finding of dishonesty, departing from the rule that damages are assessed at the date of the asserted breach (i.e., July 2019), concluding that the plaintiffs had no obligation to mitigate their damages, and in relying on an unqualified expert for an opinion on value.

[5] While the respondents initially filed a cross appeal of the judge's order, this matter was not proceeded with on appeal.

[6] For the reasons that follow, I would allow the appeal.

Background and the critical contractual terms

[7] Between May 30, 2015, and January 31, 2016, Anderson Square entered into presale contracts with the respondents, among others, for residential strata units in the development. As noted, the presale contracts contained an Outside Completion Date of September 30, 2019.

[8] On January 12, 2017, Anderson Square signed a fixed-price construction contract with Scott Construction Ltd. (“Scott Construction”). Scott Construction agreed to construct the development for approximately \$37.8 million.

[9] On February 20, 2018, Scott Construction prepared and provided Anderson Square with a schedule showing a completion date of September or October 2019.

[10] In the fall of 2018, a dispute arose between Anderson Square and Scott Construction regarding delay costs.

[11] On July 12, 2019, Anderson Square terminated the presale contracts with the respondents, and other presale purchasers, by issuing termination notices. The termination notices cited both clauses 2 and 21 of the presale contracts, which provide as follows, in relevant part:

2. Payment of Purchase Price and Completion Date. ... If the Completion Date has not occurred by September 30, 2019 (the “Outside Completion Date”), this Agreement will be terminated unless all parties agree in writing to extend, provided that, if the Vendor is delayed from completing construction of the Development as a result of any event or circumstance whatsoever beyond the reasonable control of the Vendor, then the Outside Completion Date will be extended for a period equivalent to such period of delay. ...

...

21. Major Outside Event. The parties agree that if (a) any event or circumstance beyond the reasonable control of the Vendor, or (b) any condition discovered within the Development or in the vicinity of the Development, including, without limitation, any soil or environmental condition, or (c) any action or step taken by any applicable governmental or regulatory authority (any of the foregoing, a “Major Outside Event”), causes the Vendor to be delayed from time to time in doing anything that the Vendor is required to do hereunder, the time within which the Vendor must do that thing will be extended for a period equivalent to such period of delay, and the Outside Completion Date and the Presale Date will be extended by a period equivalent to such period of delay. If a Major Outside Event in the determination of the Vendor renders it impossible or not reasonably feasible or economical for the Vendor to perform its obligations under this Agreement, the Vendor may elect to terminate this Agreement by written notice to the Purchaser, in which case the Vendor will return to the Purchaser the Deposit and interest earned thereon.

[Emphasis added.]

[12] The termination notices stated, among other things:

Regarding the terms and conditions in Section 2 ... there have been unexpected serious delays in the construction works ... we regret to inform you that the completion date of the [Development] will not occur by September 30, 2019.

...

Regarding the terms and conditions in Section 21, we are also facing serious and significant circumstances beyond our reasonable control which makes it not economical for [Anderson Square] to perform its obligations under the agreement. These circumstances, including but not limited to, are reported as follows:

1. A Notice of Civil Claim has been filed by Scott Construction Ltd. against the developer on December 11, 2018 ... The quantum of the claim is \$4,656,468.38 plus costs as of December 11, 2018. This claim amount may increase if there is further delay in the construction of the development.
2. The directors of [Anderson Square] have taken due efforts to secure construction financing. However, this [Development] cannot be granted a satisfactory commitment in this uncertain business environment.

[13] On August 6, 2019, Scott Construction issued a notice of termination to Anderson Square.

[14] The respondents did not accept the return of their deposits. The respondents sued Anderson Square, Mr. Ho and Mr. Liang on November 15, 2019, claiming specific performance.

[15] On December 31, 2019, Anderson Square retained Valley West Construction Ltd. ("Valley West") to complete the Development.

[16] On June 17, 2021, the respondents filed an amended notice of civil claim, with leave, abandoning their claims for specific performance.

[17] In August 2021, the respondents' deposits were returned. The Development was largely completed in early 2021. Anderson Square sold the units to new purchasers and obtained a building occupancy permit in 2022.

Reasons for judgment

[18] The first issue addressed by the judge was whether the presale contracts terminated automatically if not completed by September 30, 2019, absent written agreement of the parties. That issue turned on the interpretation of the words “provided that” in the termination provision of clause 2 of the presale contracts.

[19] The plaintiffs submitted at trial that “provided that” is inherently ambiguous. For example, “provided that” may create an exception, a limitation, a condition, or be a mere addition.

[20] Recognizing that the language “provided that” in clause 2 was ambiguous, the judge resorted to general rules of construction to resolve the ambiguity.

[21] The judge dealt with an argument that the language of clause 2 in the case before him had been authoritatively interpreted by an essentially identical clause in *Jamshid Enterprises Inc. v. Century Point Residences Ltd.*, 2007 BCSC 1260. In *Jamshid*, the vendor purported to terminate presale contracts because the completion date had not occurred by the outside completion date. The vendor invoked a termination provision (also identified as clause 2) of the presale contracts at issue in that case, which provided as follows:

... If the Completion Date has not occurred by May 31, 2005 this Contract will be terminated unless the parties agree in writing to extend, provided that if the Vendor is delayed from completing construction of the Property as a result of any circumstance whatsoever beyond the reasonable control of the Vendor, then such outside date for completion will be extended for a period equivalent to such period of delay.

[Emphasis added.]

[22] This termination clause is substantially identical to the relevant portion of clause 2 of the contracts in issue in the case before us.

[23] The parties in *Jamshid* submitted several legal questions to the court for determination on the proper interpretation of the termination provision. Justice Gropper decided that the clause was a provision for the benefit of both the vendor and the purchaser that imposed temporal limits on the contractual relationship

between the parties. She ruled that the clause was “clear on its face”: at para. 21. Any extension to the completion date required the parties’ agreement, even where the vendor was delayed from completing construction due to circumstances beyond the vendor’s reasonable control. Justice Gropper reasoned that the termination clause:

[22] ... is for the benefit of both parties. I regard the underlined portion as a termination clause. It places temporal limits on the relationship between the parties: if the project is not completed by May 31, 2005, the contract is terminated and both parties are released from any further obligations, unless they agree in writing to extend the completion date. The *proviso* that immediately follows the underlined portion provides that if the parties agree in writing to extend the outside completion date, then the period of the extension must run as long as any period of delay that arises as a result of factors outside the control of the vendor.

...

[24] ... the agreement terminates unless the parties agree in writing to extend it. As I stated in my response to question one, the *proviso* following the underlined portion of the clause is relevant to the duration of the period of extension [sic], once such an extension is agreed to in writing by the parties. The *proviso* does not affect the requirement that an extension on May 31, 2005 must be agreed to in writing by the parties. ...

[24] The judge rejected the argument that Gropper J.’s analysis applied to the interpretation of the termination provision in clause 2 in this case. The judge did not follow *Jamshid* because “*Jamshid* does not contain any mention of a clause similar to Clause 21” and “the interpretation of a virtually identical Clause 2 in *Jamshid* cannot be reconciled with the first part of Clause 21”: at paras. 49–50.

[25] The judge concluded that both clauses 2 and 21 of the presale contracts are engaged where the vendor is delayed in completing construction by the Outside Completion Date due to events beyond the vendor’s reasonable control. The judge determined that, since clause 21 was not tied to any written consent of the parties, the “proviso” in clause 2 ought to be treated as a “restatement”, in part, of the first part of clause 21 (extending the Outside Completion Date after “any event or circumstance beyond the reasonable control of the Vendor”). The judge then concluded as follows:

[54] To summarize, the words after “provided that” are a carve-out from the general rule in Clause 2 that if the Competition Date [sic] has not occurred by September 30, 2019, the Agreement will be terminated unless all parties agree in writing to extend. I agree with the plaintiffs that Clause 2 and the first part of Clause 21 *require* the Outside Completion Date to be extended by the duration of any delay beyond the reasonable control of Anderson Square.

[55] It appears to be uncontested that the Project’s delay was not within the reasonable control of Anderson Square. ...

[56] Based on Clause 2 and the first part of Clause 21, it follows that the Contracts did not terminate on September 30, 2019. Accordingly, Anderson Square was not entitled to rely on Clause 2 to terminate the Contracts.

The alleged error in contractual interpretation

[26] Anderson Square argues that the judge ought to have followed the interpretation in *Jamshid*. It says that Gropper J.’s interpretation was correct, clause 21 does not affect the interpretation of clause 2, and that there is, at least, persuasive value in a previous interpretation of a substantially identical clause. Anderson Square points out that it is undesirable for courts to interpret identical or similar standard form provisions inconsistently, without good reason. Anderson Square argues that:

37. *Jamshid* has provided commercial certainty over the proper interpretation of clause 2 for over 17 years. As Wagner J. (as he then was) cautioned in *Ledcor*, it is “undesirable for courts to interpret identical or very similar standard form provisions inconsistently, without good reason” (para. 39). Gropper J.’s interpretation of clause 2 is analytically sound, commercially sensible and supported by a textual analysis. It was the settled meaning of the contractual term when these parties agreed to it. There is no good reason to depart from *Jamshid*.

[27] Anderson Square argues that the judge erred in concluding that both clauses 2 and 21 of the presale contracts are engaged where the vendor is delayed in completing construction by the Outside Completion Date due to events beyond the vendor’s reasonable control. It says the proviso in clause 2 is not a restatement of the first part of clause 21 but rather each provision is addressed to different circumstances.

[28] In making this argument, Anderson Square argues that the judge's interpretation falls foul of the principle that no provision of a contract should be interpreted in a way that renders it mere surplusage. Its argument is succinctly put in its factum:

42. The proviso in clause 2 of the Presale Contracts deals with the duration of any extension to the Outside Completion Date where "the vendor is delayed from completing construction of the Development as a result of any event or circumstance whatsoever beyond the reasonable control of the Vendor" (emphasis added). Contrary to the judge's analysis, clause 21 is not similarly concerned with delays to the overall completion of construction (the ultimate issue in this case). Rather, clause 21 is limited to situations in which the vendor is delayed in meeting specific temporal obligations under the Presale Contracts due to a "Major Outside Event". In those circumstances, and only in those circumstances, the time for the vendor to complete the specific temporal obligation is extended for a period equal to the delay, and the Outside Completion Date also is extended for the same period.

43. In this case, there was no specific temporal contractual obligation that the vendor (Anderson Square) could not meet such that the extension provisions of clause 21 became engaged. The only delay was to the overall completion of construction and the inability to complete by the Outside Completion Date. But completing the Presale Contracts by the Outside Completion Date was not an obligation of the vendor. The Outside Completion Date was simply a drop-dead date, for the mutual benefit of the parties, after which the Presale Contracts would terminate.

[29] To support this argument, Anderson Square focuses on the following operative language in clause 21:

44. ...
... if (a) any event or circumstance beyond the reasonable control of the Vendor ... (any of the foregoing, a "Major Outside Event"), causes the Vendor to be delayed from time to time in doing anything that the Vendor is required to do hereunder, the time within which the Vendor must do that thing will be extended for a period equivalent to such period of delay, and the Outside Completion Date and the Presale Date will be extended by a period equivalent to such period of delay. If a Major Outside Event in the determination of the Vendor renders it impossible or not reasonably feasible or economical for the Vendor to perform its obligations under this Agreement, the Vendor may elect to terminate this Agreement by written notice to the Purchaser, in which case the Vendor will return to the Purchaser the Deposit and interest earned thereon.

[Emphasis in original.]

[30] The nub of the contention is that clause 21 draws a distinction between the contractual obligation that is being delayed (“anything that the Vendor is required to do hereunder” and subsequently referred to as “that thing”) and the Outside Completion Date. The extension to the Outside Completion Date in clause 21 is dependent on there first being another temporal obligation of the vendor that has been delayed due to a Major Outside Event. Anderson Square was not delayed by a Major Outside Event in meeting any temporal obligation under the presale contracts. Accordingly, the extension provisions in clause 21 were not engaged and the only applicable contractual provision was clause 2, which occupied the field. The judge’s reasons for departing from Gropper J.’s settled interpretation of clause 2 in *Jamshid* misconstrued, it is contended, the scope of clause 21. Properly interpreted, there is no inconsistency between clause 21 and the interpretation of clause 2 in *Jamshid*.

[31] In advancing this argument, Anderson Square invites us to apply a correctness standard of review, rather than a deferential standard, because the presale contracts were standard form contracts and their interpretation has precedential value.

[32] For their part, the respondents say that the presale contracts are not standard form contracts and the judge’s conclusions should be reviewed on a deferential standard. His interpretation, they contend, was open to him on the contractual language and the judge properly applied the relevant principles of interpretation to determine what the parties objectively intended when entering the presale contracts. He did not err in departing from the interpretation of clause 2 endorsed by Gropper J. It was open to the judge to interpret clause 2 in light of clause 21 and he did not err as alleged by Anderson Square.

Discussion

Standard of review

[33] Presumptively, the standard of review in a contract case is deferential, reflecting the fact that what the parties objectively intended by their contract is a question of fact or mixed fact and law: *Sattva Capital Corp. v. Creston Moly Corp.*,

2014 SCC 53. There is, however, an exception to the general rule in *Sattva* that applies where an appeal involves the interpretation of a standard form contract, the interpretation at issue is of precedential value, and there is no meaningful factual matrix that is specific to the parties: *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*, 2016 SCC 37 at para. 46.

[34] Anderson Square says this principle applies to this contract. It says the contract is standard form in that it was entered into by all purchasers in the development. Moreover, there is no particular factual matrix bearing on the interpretation of the contract, as all purchasers were presented with a presale contract containing identical termination provisions. Finally, it says the interpretation of the relevant clauses has precedential value for the parties and the industry. The conflict in the interpretation of clause 2 between this case and *Jamshid* should be resolved on a correctness standard to ensure consistency and predictability now and in the future.

[35] I accept that the standard of review that applies to the judge's interpretation of clause 2 is correctness. Respectfully, I reject the respondents' suggestion that there is an insufficient basis to conclude that the precedential value of the case is supported by wide usage. I think that the use in this case of a clause substantially identical to the clause in *Jamshid* is some evidence of industry usage. I agree that, where the meaning of a specific clause has been judicially decided, certainty in the law and consistency in its application are central objectives for every subsequent interpreting court: *Ledcor* at paras. 43–45. In my view, it is incumbent on this Court to determine whether the interpretation of clause 2 by the judge in this case or by Gropper J. in *Jamshid* is correct. The issue has the precedential value sufficient to justify a correctness standard of review to resolve or prevent unpredictability and uncertainty in a significant commercial setting.

[36] The respondents submit that, even if clause 2 itself is a standard clause, there is no evidence that clause 21 is standard beyond the contracts at issue here. They say the judge's interpretation of clause 21, as it informed how he read clause

2, is subject to deferential review. However, Anderson Square points to the recent decision of the Ontario Court of Appeal in *J.P. Thomson Architects Ltd. v. Greater Essex County District School Board*, 2025 ONCA 378, where the Court applied a correctness review to the interpretation of a standard form clause within a contract, notwithstanding that the interpretation of that clause depended on other non-standard provisions of the contract: at paras. 17–18, 24. Moreover, this case involves multiple contracts entered into by purchasers for whom the contract was effectively a contract of adhesion, at least in respect of the termination provisions.

[37] Accordingly, I do not accept that we are bound to apply deferential review to the judge’s interpretation of clause 2, even to the extent that it depends on his interpretation of clause 21. The interplay between clauses 2 and 21 is part of the exercise of contractual interpretation in which this Court must engage to determine if the judge’s interpretation of clause 2 was correct.

Did the judge err in his interpretation of clause 2?

[38] The plain language of clause 2, taken in isolation, is, in my view, inherently unclear and ambiguous. It is poorly worded. Respectfully, I do not think its meaning is as clear as the court found it to be in *Jamshid*. The interpretation offered by the respondents has some plausibility, even if, as I conclude, their proffered interpretation is incorrect. It may be that the clause remains in use, to the extent that it does, because of the interpretation established by *Jamshid*. The interpretation offered in that case could readily be accomplished by clearer drafting, which would prevent the kind of issue that has arisen in this case from occurring again. It would be wise and in the interests of all parties to contracts of this kind to adopt clearer language in future. That said, the interpretation in *Jamshid* more accurately captures the objective intention of the parties than that offered by the respondents in this case, as I shall explain.

[39] The first reason given by the judge in support of his analysis was that the introductory words of the proviso, the words “provided that”, are “often used in contracts to create exceptions or carve-outs to a more general term”: at para. 48. He

concluded that they were used in that sense here, because they were “a carve-out from the general rule” that if construction had not completed by September 30, 2019, the agreement would terminate unless the parties agreed in writing to extend: at para. 54.

[40] As Anderson Square points out, however, the *Jamshid* interpretation also treats the words “provided that” as a carve-out or an exception to a more general term. Under that interpretation, the proviso creates an exception to the provision that the parties can agree in writing to extend, by specifying that *if* they agree to extend, the extension will be for no less than the period of blameless delay. The judge’s observation that the words “provided that” generally introduce an exception or limitation on a general term do not assist in choosing between the two offered interpretations of the proviso.

[41] In my view, support for Anderson Square’s analysis of the way that “provided that” operates in the final part of clause 2 can be found in the use of that phrase elsewhere in clause 2. As Anderson Square points out, that phrase is used three times in the clause, in contexts that render its use clearer. There is value in interpreting the use of “provided that” consistently within the clause.

[42] In the first two uses of the phrase “provided that”, the condition described after the use of the phrase is engaged only when the circumstances described before the use of the phrase exist. Hence, in the first instance of the phrase, the purchaser is required to pay the balance of the purchase price on a date established by written notice... provided that not less than 14 days’ notice of that date will be given. The second use of “provided that” deals with circumstances in which notice of a completion date may be delayed... provided that at least 24 hours’ notice of the extension of the completion date must be given. In both cases, the obligation or entitlement following the use of the phrase constrains the operation of the obligation or entitlement preceding the phrase. The obligations or entitlements before and after the phrase are not alternative means to the same result. In short, the phrase

“provided that” is used in the clause in the following way: if x, then (provided that) y, where y constrains, limits or modifies x.

[43] I see merit in Anderson Square’s argument that internal consistency requires taking a similar approach to the contractual function of the words “provided that” when they occur a third time in the clause. To be consistent, a circumstance has to arise (namely, an agreement in writing to extend), and, if it has occurred, then the scope of that agreement is constrained by the requirement that the extension of the Outside Completion Date be equivalent to the period of delay caused by events beyond the reasonable control of the vendor. This is to treat the contractual function of the phrase in this instance as alike to the other uses in the clause.

[44] In my view, reading the clause in this way treats it as operating for the benefit of both parties. On this reading, the termination clause allocates risk in the mutual interests of the parties, while providing a pre-determined default term of extension for the parties to agree to in the event of blameless delay. Its commercial object is to permit agreement to extend the Outside Completion Date, if the parties agree to do so, while providing predictability and certainty about the term of an extension and avoiding the need for expensive and time-consuming individual negotiations beyond securing agreement to an extension.

[45] In my opinion, this reading protects the objectively determined intentions of the parties, in part because they agreed to this clause in a context where it had been judicially interpreted to have this meaning. Furthermore, this interpretation is commercially reasonable. It holds out the prospect of achieving the purpose just described: namely, where the parties agree to an extension it will be at least for the length of the period of blameless delay.

[46] In my opinion, the respondents’ proposed interpretation, by contrast, has commercially absurd results. That interpretation would mean that if there were blameless delay, the contract would remain on foot for the duration of the delay, unless the parties agreed otherwise. The parties would be automatically locked in for the full extent of the period of blameless delay in construction. Such delay could be

indefinite, leaving the purchasers' investments trapped in the project as the vendor works to complete construction. Furthermore, by operation of the second half of clause 21, the vendor would have the right to terminate such an indefinite project unilaterally, if it determined that it was "impossible or not reasonably feasible or economical" to complete construction, but on the respondents' interpretation of clause 2, no such escape would be possible for the purchasers.

[47] As an aside, I would note that the legal effectiveness of the Anderson Square interpretation may be open to question. The parties could in principle, in any event, agree in writing to amend clause 2 and extend the Outside Completion Date for a period *less* than or different to the period of blameless delay. It is not clear whether the proviso itself will give rise to legally enforceable rights unless there is an agreement to extend but no meeting of minds on the length of an extension. This is not an issue we need to confront because it does not arise on the facts of this case.

[48] It seems to me that the precise operation of the proviso in any specific context does not affect the contractual interpretation of whether, in the absence of an agreement to extend, the contract will terminate on notice. The commercial objective of the proviso is reasonably clear. The objective and commercial intention that the contract will terminate unless there is agreement to extend is clear. Any uncertainty about how the default time extension will be enforceable does not undermine that objective intention. Parties may contractually commit themselves to an agreement that may prove to be legally frail in practice. The legal efficacy of their bargain does not, at least in these circumstances, determine the correct interpretation of the parties' objective intentions as manifested in the language of their contract.

[49] That said, the considerations above, in my view, support Anderson Square's interpretation of clause 2, which, as the court determined in *Jamshid*, is potentially for the benefit of either party. A proper construction of clause 2, read together with clause 21, understands the termination clause as providing an allocation of risk in the mutual interests of the parties, while providing a pre-determined default term of extension for the parties to agree to in the event of blameless delay.

[50] The judge's second reason for adopting the respondents' proposed interpretation concerned the interplay between the first part of clause 21 and the proviso in clause 2. He was of the view that the first part of clause 21 was simply a restatement of the proviso in clause 2, and that because clause 21 made no mention of any requirement that the parties agree in writing, this supported the respondents' interpretation of the proviso in clause 2.

[51] As noted above, Anderson Square submits that this was a misinterpretation of clause 21. It says the first part of clause 21, which deals with situations in which, by reason of a Major Outside Event the vendor is delayed in "doing anything that the Vendor is required to do hereunder" does not address the situation contemplated in clause 2, where construction drags on past the Outside Completion Date because of delays outside the reasonable control of the vendor.

[52] I agree with Anderson Square that the judge misinterpreted clause 21, because there was no contractual obligation on the vendor to complete construction before the Outside Completion Date; there was no "time within which the Vendor must do that thing" with respect to completing construction. The termination provision provides what Anderson Square calls a "drop-dead date" beyond which, if the development had not been completed, the contracts would not extend without the parties' written agreement. That is not to say, however, that the vendor was contractually obligated to have completed the project before that date. Indeed, the "completion date", defined in clause 2 as "a date on which the Strata Lot will be ready to be occupied and separate title for the Strata Lot will have been issued" was to be set by the vendor or its solicitors, and the vendor was entitled to delay that date even after notice of an estimated completion date had been delivered by the vendor. There is nothing in clause 2, which defines both the "completion date" and the "Outside Completion Date", that supports the view that the vendor was contractually obligated to complete construction before September 30, 2019. The purpose of the "Outside Completion Date" was, rather, to set an outer time limit on the contractual relationship between the parties, subject to their subsequent agreement in writing to extend it.

[53] I am also persuaded by Anderson Square’s submission that, on the judge’s interpretation of clause 21, the portion of clause 2 at issue would be made redundant, and this would not accord with the legal principle of contractual interpretation that no provision should be interpreted so as to render it “mere surplusage”: *Sutter Hill Management Corporation v. Mpire Capital Corporation*, 2022 BCCA 13 at para. 34, leave to appeal to SCC ref’d, 40112 (1 September 2022). The judge took the view that the contract contained two different provisions which governed the same set of circumstances using different language. If we accept as correct the interpretations of clause 2 and clause 21 urged by Anderson Square, then the two provisions govern different sets of circumstances, and this better explains their existence in the contract and the differences in their phrasing.

[54] In short, I do not accept that the judge’s interpretation of clause 2 was correct considering either the plain meaning of the words used in their context, or in light of the interplay between clause 21 and clause 2. I am persuaded by the interpretation of clause 2 urged by Anderson Square. The termination provision in clause 2 ensures that the parties will not be locked into their contractual obligations to one another past the agreed Outside Completion Date, unless they agree in writing to extend the contract. The proviso addresses situations where the delay beyond the Outside Completion Date is not the fault of the vendor, and provides that any agreed-to extension of the contract will be for a period at least equal to that delay.

[55] As respondent counsel conceded in oral argument, the conclusion that the judge erred in his interpretation of clause 2 means that it is unnecessary to consider the other grounds of appeal raised. As I accept Anderson Square’s interpretation of clause 2, I must conclude that there was no breach of contract when Anderson Square unilaterally terminated the contract in accordance with the termination provision contained in clause 2. This is dispositive of both the appeal and the underlying action; the appeal must be allowed, and the respondents’ action dismissed.

Disposition

[56] For these reasons, I would allow the appeal and dismiss the underlying action.

“The Honourable Mr. Justice Harris”

I AGREE:

“The Honourable Justice Winteringham”

I AGREE:

“The Honourable Justice Edelman”