

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cakwell Ergonomic Solutions Inc. v.  
Melnik*,  
2025 BCSC 1845

Date: 20250926  
Docket: S202714  
Registry: New Westminster

Between:

**Cakwell Ergonomic Solutions Inc.**

Plaintiff

And

**Andrew Melnik, Dr. A.K. Melnik Inc., and Jim Pattison Industries Ltd.**

Defendants

Before: The Honourable Justice Norell

## Reasons for Judgment

Counsel for the Plaintiff:

J. Scouten

Counsel for the Defendants Dr. Melnik and  
Dr. A.K. Melnik Inc.:

M. Stewart

Place and Date of Trial:

New Westminster, B.C.  
September 23-26, 2019  
November 6-7, 14-17, 27-30, 2023  
December 1, 4-8, 11-15, 2023  
February 13-15, 2024  
May 13-17, 2024  
October 28-30, 2024

Written Submissions:

January 8, 2025

Place and Date of Judgment:

New Westminster, B.C.  
September 26, 2025

**Overview**

[1] This action concerns claims arising from the renovation of leased premises, changing it from a former car dealership into an orthodontic office. Mr. Conrad Bewsky is the principal of the plaintiff construction company Cakwell Ergonomic Solutions Inc. (“Cakwell”). The defendant Dr. Andrew Melnik is an orthodontist and the principal of the defendant corporation, Dr. A.K. Melnik Inc. (“Melnik Inc.”), the lessee of the premises. Jim Pattison Industries Ltd. is the landlord and is a defendant because Cakwell filed a builder’s lien on the property. The action against the landlord is stayed pending the determination of the claims between the other parties.

[2] Mr. Bewsky and Dr. Melnik were formerly good friends. The renovation was the beginning of the end of their friendship. Their only relationship now is this litigation.

[3] Cakwell sues for amounts it claims are owing by Dr. Melnik and/or Melnik Inc. under a renovation contract, three written change orders, and 228 claimed extras for which there are no written change orders. In addition to breach of contract, Cakwell claims contractual *quantum meruit* and in the alternative, restitutionary *quantum meruit* for unjust enrichment of Dr. Melnik and/or Melnik Inc. Mr. Bewsky claims that at the time Cakwell ceased work on the premises in early 2018, Cakwell had completed 80% of the work. Cakwell claims \$503,499.

[4] Dr. Melnik and Melnik Inc. deny any amount owing. Dr. Melnik claims that the renovation was less than two thirds complete when Cakwell ceased work. Melnik Inc. has already paid over half a million dollars to Cakwell, and that is approximately the value of the work done. They dispute all the claimed extras. They counterclaim for losses caused by construction delays. Dr. Melnik claims that it was a term of the renovation contract that the work would be completed on the first floor of the premises three months after signing the contract in March 2015, and on the second floor three months after that. They could not move into the premises until December 2017, and then only into the first floor as the second floor was largely incomplete.

They claim over \$500,000 for business losses, rent, storage costs, credits, and lien bond costs. In general, there is no complaint regarding the quality of Cakwell's work.

[5] Cakwell disputes all the counterclaims. Mr. Bewsky asserts that the delays were caused by unforeseen circumstances, the extras, and Dr. Melnik.

[6] The number of disputes explains the length of this trial, but not its protracted course. This trial started before Justice Choi in September 2019. After three days, the parties thought they could settle the action at mediation. The trial was adjourned. The mediation was unsuccessful, and the parties decided that they needed to continue the trial. By then Justice Choi had retired from the bench, and I was assigned to continue the trial. Other delays were incurred by counsel retiring and disputes over expert reports. Eventually, the trial resumed in November 2023 and took another 33 days over the course of more than a year to complete until written submissions on each of the extras were received early this year.

[7] The overall issues to be determined are as follows:

- a) Issue 1 – Parties to the renovation contract: Is Dr. Melnik a party to the renovation contract?
- b) Issue 2 – Claims for Extras: Which if any of Cakwell's claimed extras should be allowed, and if so, in what amount?
- c) Issue 3 – Timing of Completion: What if any were the terms of the renovation contract with respect to completion time? Should there be an extension of the completion time, and if so, to what date?
- d) Issue 4 – Counterclaims: Which if any of Dr. Melnik's and Melnik Inc.'s counterclaims should be allowed?

[8] Given the number of extras in dispute, the specific evidence which relates to each individual item and the determination of whether it is an allowable extra, are in an Appendix to these reasons. The body of these reasons is divided as follows: (a) a

discussion of the credibility, reliability and admissibility of evidence; (b) a chronology to provide the general arc of events so that the more detailed evidence described later under the issues and in the Appendix can be put in context; and (c) a determination of the four overall issues.

[9] For the reasons below, I grant judgment to Cakwell against Dr. Melnik and Melnik Inc. in the amount of \$150,000 on its claim, and grant judgment to Dr. Melnik and Melnik Inc. against Cakwell in the amount of \$49,886 on their counterclaim. The two amounts are set off against each other, and the net judgment is for \$100,114 payable by Dr. Melnik and Melnik Inc. to Cakwell.

**Credibility, Reliability, and Admissibility of Evidence**

[10] In assessing the credibility and reliability of evidence, I am guided by the factors and approach in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186–187, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013). The court can accept all, some, or none of the evidence of a witness, or attach different weight to parts of their evidence. The court considers whether the evidence is in “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”: *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 at 357.

[11] Mr. Bewsky and Dr. Melnik were the two main witnesses at trial. Their evidence was often in conflict. Both appeared to be honest witnesses. Neither were impeached. I do not think that either of them was being intentionally untruthful. However, due to the passage of time, and what plainly was a difficult time for both and for which they continue to be very unhappy, I find that their evidence was not always reliable. There was a tendency to view events in a manner that favoured their positions. At times, neither would concede points that were warranted. Often, the individual disputes were not proportionate to the cost of litigating them, but the parties were entrenched in their positions.

[12] As for the original contract terms, Dr. Melnik claimed a detailed recollection on almost every issue. Mr. Bewsky has a vaguer recollection, often admitting that he could not remember details, but has specific recollections for certain events.

[13] I generally believe Mr. Bewsky when he says that he discussed claimed extras with Dr. Melnik. However, at times I find that Mr. Bewsky's interpretation of what is not included in the original scope of work, and therefore is an extra, is not objective. Further, while I have no hesitation in finding that Mr. Bewsky carried out the tasks that he said he did, and that he produced high quality work, I have significant concerns regarding the reliability of his evidence on how much time it took to complete those tasks.

[14] I generally believe Dr. Melnik with respect to the significant inconvenience he and his staff suffered while the renovation was ongoing. However, I do not find reliable much of his evidence that he did not know Mr. Bewsky was carrying out certain work, or that when he asked Mr. Bewsky to do certain work, he did not think it was an extra or he would be charged for it. At times his interpretation of what is included in the original scope of work, and therefore is not an extra, is not objective, and he minimized the work involved.

[15] The trial had many examples, but I will give two here which illustrate the above points. The first is extra claim #130 for \$75 for the placing of a piece of reflective tape to the underside of three stairs. The building inspector required this. Dr. Melnik sourced and bought the tape. Mr. Bewsky installed it. Both Mr. Bewsky and Dr. Melnik testified in direct and were cross-examined about this. The lawyers' fees for the testimony will have exceeded the amount in dispute. Cakwell claims this as an extra. I find that it is not. Mr. Bewsky claims just over an hour of time, including a discussion with the building inspector, which he would have had to do in any event. Common sense and experience indicate that it does not take one hour to cut and place three pieces of tape already provided to him, even including conversations. While that may be Mr. Bewsky's recollection of how long it took him, it is not reliable. On the other hand, Dr. Melnik complains that he had to source this

tape on the internet and pay for it because Mr. Bewsky told him he was too busy. Dr. Melnik states that it took him two to three hours to do this. Common sense and experience indicate that an internet search of this nature would not take that length of time. Again, while that may be Dr. Melnik's recollection of how long it took, it is not reliable.

[16] The second example which involves much larger amounts, are claims related to hidden cavities that were discovered during the renovation in the cement walls of the inner "round room" on the first floor. Dr. Melnik instructed Mr. Bewsky to investigate and expose them and then provided instructions to use them to gain space by framing and installing fixtures in them. I find that these are extras that Dr. Melnik authorized. Although Dr. Melnik ultimately admitted in closing submissions that these were extras, in his testimony, Dr. Melnik was resistant to acknowledging that these are extras. He also minimized the work, going so far as to suggest it was a benefit to Mr. Bewsky as it should have made his work easier. The photographs of Mr. Bewsky's work and his evidence, establish otherwise. On the other hand, I have concerns about the reliability of Mr. Bewsky's estimate of the time he took to do the work.

[17] In summary, for Mr. Bewsky and Dr. Melnik, there are mixed reliability findings. Overall, I do not prefer one gentleman's evidence over the other.

[18] Ms. Saleha Safi, who has been employed by Dr. Melnik for 16 years, also testified. She has been his office manager since 2012. I also find Ms. Safi to be an honest witness. While Dr. Melnik is her employer and she enjoys a good relationship with him, she is also friendly with Mr. Bewsky, respects him, and tried to smooth over and resolve the disputes between Mr. Bewsky and Dr. Melnik during the construction. While I accept that Ms. Safi recalls events, I have some concerns regarding the reliability of her evidence as she and Dr. Melnik have spoken very frequently about the different versions of events that each party has. She highlighted topics that Mr. Bewsky and Dr. Melnik discussed, which were similar to points that Dr. Melnik emphasized in his evidence.

[19] Mr. Jonathon Ross, an expert on construction costs and time, testified. I find Mr. Ross to be a knowledgeable and fair witness, and as will be discussed later, I accept his opinion based on the information that was provided to him. However, there are limits on the weight that can be placed on his opinion because I find that he did not have full information regarding the scope of work performed.

[20] Mr. Keith Hankins, the principal of the plumbing sub-contractor, and Ms. Charlene Henry, Melnik Inc.'s accountant, both testified. I generally accept their evidence.

[21] Finally, both parties referred in evidence to notes, some of which they made contemporaneously with events, and others which they made long after events. There were discussions and rulings regarding these during trial. In summary, the notes were admissible only for limited purposes; for example, as working papers to show the level of diligence of and how estimates of time were arrived at, or as a document present at a meeting which was used as the basis for discussion, or to demonstrate the nature, frequency of, and how issues were raised and discussed between Mr. Bewsky and Dr. Melnik, or to rebut an allegation of recent fabrication. Importantly, as prior consistent statements, they were not admissible for the truth, or to bolster the credibility of the maker, or to corroborate that maker's testimony.

### **Chronology of Events**

#### **Prior Relationship**

[22] Mr. Bewsky and Dr. Melnik met in the 1990's while Mr. Bewsky was employed by a construction firm working on Dr. Melnik's former office. They became close friends. Dr. Melnik hired Mr. Bewsky to do repairs and small projects in his former office, including fixing flooring deficiencies, repairing dental lights, and installing bullnose edging on walls. Those were positive experiences. Dr. Melnik was very satisfied with Mr. Bewsky's work. Because of their friendship and previous positive business experiences with each other, by the time the events of this lawsuit commenced 2014, they had a mutual trust and respect for each other.

**Lease of New Office**

[23] In 2014, Dr. Melnik's lease for his previous office premises (the "Old Office") was expiring and he needed to move. He viewed what was eventually to become his new office premises (the "New Office"). Before Dr. Melnik signed the offer to lease for the New Office, he and Mr. Bewsky met there and discussed where items from the Old Office might go in the New Office. Dr. Melnik testified that the New Office was in good condition and that Mr. Bewsky liked the space. Mr. Bewsky testified that he cautioned it was an old building and there could be potential hidden issues that no one would know about until the space was opened.

[24] Melnik Inc. made an offer to lease the New Office in May 2014, and it was accepted in June 2014. Occupancy was in November 2014.

[25] The New Office is a two-story space on the east end of a commercial building. There is also a storage area and mechanical room in the basement. Pre-renovation photographs of the New Office show it is an older building that has been seismically upgraded. Consistent with its former life as a car dealership, the New Office was a large open space with few internal walls. It has a round shape, that if it were a complete circle, would be a 12-sided polygon. The far west side of that circular shape is cut off straight in a north-south line and is contiguous with the rest of the building. On the first floor, the southwest quarter of the circle is squared off and rented to another tenant. The remaining three quarters of the first floor are part of the New Office. The north half of the New Office is vaulted up to the second-floor ceiling. There is a smaller perfectly round room at the centre of the space on each floor. From the top of the walls of these inner round rooms, there are beams which spread to the outer walls, through the vaulted space or ceiling of the first floor, and along the ceiling of the second floor. Those outer walls, at least on the first floor, are mostly glass. The main entrance is on the north side where there are stairs to the second floor. The second floor is the south half of the circle, one half of which is above the space leased to the other tenant. Photographs show that to the extent walls were in place at the time, they were finished with painted drywall, although the condition of them cannot be seen due to the quality of the photographs. The ceiling

in the vaulted space looks quite rough – possibly a textured finish – as do the beams which spread to the outer walls. Photographs show that water had entered at an outer wall on the second floor. Although not shown in the photographs, there was also moisture entering at places along the bottom perimeter of the first floor. The first floor is about 2,500 square feet. The second floor is about 2,000 square feet.

[26] Dr. Melnik’s general renovation plan was to have consultation and storage rooms, and “operatories” (treatment rooms) along the perimeter of the space on the first floor. The inner round room on the first floor was also to be an operatory, and an x-ray room and tracing room were to be created contiguous to a portion of the outside wall of that inner round room. Due to the round shapes, almost none of the rooms were square. Most had curved or angled walls. The second floor was to have a kitchen and further treatment and consultation rooms. There was also to be a storage ledge built from an existing smaller ledge along the perimeter wall of the vaulted portion of the second floor.

[27] Dr. Melnik had a plan for a massive artwork installation in a “Lord of the Rings” theme. The outside walls of the inner round room on each floor, the beams spreading to the outer walls from the top of the round room on each floor, the vaulted ceiling, and the upper perimeter walls down to the top of the first floor, would be painted or modified in some way by an artist to resemble a tree trunk and branches. I flag this as it is relevant to an alleged change in the scope of work when Dr. Melnik decided not to pursue that artwork during the renovation; and to a claim by Mr. Bewsky that this delayed the project.

### **Removal Contract**

[28] Dr. Melnik testified that he wanted to re-use as much as he could of fixtures and equipment from his Old Office as they had features that were important to him. He had outfitted the Old Office to be environmentally safe. He was concerned about off-gassing of volatile organic compounds. He wanted the millwork from the Old Office installed in the New Office because it had no formaldehyde. He wanted the lights from the Old Office installed in the New Office because they had low

electromotive force. Dr. Melnik carried forward his environmental concerns into the renovation contract. For example, he specified a type of drywall to be used that had low off-gassing, and a certain type of ceiling tiles.

[29] In furtherance of his plans, prior to the removal of any items from the Old Office, Dr. Melnik and an assistant took photos of all the items in the Old Office in each room and created the “Placemat Documents”, termed this way because information for each room was written on a paper dental tray placemat. With the set of photos for each room, Dr. Melnik wrote the dimensions of the millwork and other major items in the room, and where they were placed; for example a shelf was so many inches above counter height. He wanted the layout of the New Office to duplicate the layout in the Old Office.

[30] In June 2014, Dr. Melnik and Mr. Bewsky entered into a written contract for Cakwell to remove the fixtures and other materials from the Old Office and put them in storage pending installation in the New Office. There is no dispute regarding the removal contract, and it is not the subject of this lawsuit, but it plays a role in the terms of the renovation contract as Dr. Melnik alleges that Mr. Bewsky knew what was required to be installed in the New Office, and how it was to be installed.

[31] Dr. Melnik testified that he and Mr. Bewsky walked through the Old Office and he told Mr. Bewsky of his plan to take everything out and place it in the same position in the New Office. He asked Mr. Bewsky to label where each item came from. Ms. Safi testified that she was present for this conversation and gave similar evidence. Mr. Bewsky agreed that Dr. Melnik said he wanted the contents of the Old Office removed so they could be reinstalled in the New Office, but this was subject to the caveat of “where possible”.

[32] Between the end of June and September 2024, Mr. Bewsky removed all the items from the Old Office. The removal work was extensive. It included furniture, millwork, model boxes, shelving, countertops, mirrors, a wall covered in river rock, ceiling tiles, dental chairs, dental equipment such as vacuum and water lines,

compressors, x-ray machines, sinks, plumbing, and electrical components such as environmental controls, lights and light switches.

**Rental of Temporary Practice Space and Storage of Items Removed**

[33] Dr. Melnik moved his practice out of the Old Office in June 2014. He arranged to rent a dentist's office until he could move into the New Office. Dr. Melnik was only able to use the dentist's office on weekday evenings, Sundays, and alternate Saturdays. This arrangement proved to be unsatisfactory and after a year, Dr. Melnik arranged to rent another dentist's office on off-hours during the remainder of the renovation. Dr. Melnik testified that his referrals and revenue declined while in the temporary offices. The decline in revenue and the office rent paid during the alleged period of delay form part of the counterclaim.

[34] Mr. Bewsky placed the items removed from the Old Office into four storage containers that Dr. Melnik rented. The rental cost of these containers during the alleged period of delay also forms part of the counterclaim.

**Meetings and Bids**

[35] The first written record of documents forwarded to Mr. Bewsky for his consideration regarding a bid on the renovation is on February 5, 2015. Mr. Bewsky obtained quotes from subtrades, including flooring, electrical, plumbing, and HVAC, and assembled a bid. Dr. Melnik did not provide any written electrical, plumbing, or flooring plans for the New Office. Mr. Bewsky does not recall exactly what documents he received from Dr. Melnik but agrees that he received some of the documents described below by Dr. Melnik. Although Mr. Bewsky does not recall receiving photos of the Old Office, I find that he had them. Dr. Melnik testified he gave them to Mr. Bewsky, and they are referred to as being in the Dropbox linked to the February 5, 2015, email.

[36] Dr. Melnik testified that he had an architect create drawings and had a lighting designer create a lighting plan for the New Office. He did not hire anyone else to create plans. Dr. Melnik produced the electrical plans for the Old Office as a

“guideline” for the New Office. Dr. Melnik stated that he provided to Mr. Bewsky the following documents, which were also present at a March 14, 2015, meeting:

- a) Architectural drawings (the “Architectural Drawings”). These are distinct from the architectural drawings that Dr. Melnik produced months later, after the renovation contract was signed, and on which he wrote detailed notes (the “June and August Design Drawings”);
- b) Electrical plans for the Old Office;
- c) Millwork plans for the Old Office;
- d) Lighting plans for the Old Office;
- e) Lighting plans for the New Office dated February 1, 2015. Dr. Melnik had these revised in January 2016;
- f) Photographs of the Old Office and the Placemat Documents;
- g) A list of dental equipment at the Old Office;
- h) Construction notes dated February 1, 2015 (the “Construction Notes”) which are one and a quarter pages long. Item 20 of this document states that the contractor is to provide any additional drawings and schedules, such as mechanical and electrical, to the architect; and
- i) Notes of dimensions of kitchen equipment, doors, and windows in the Old Office.

[37] Mr. Bewsky and Dr. Melnik agree that they met a few times at the New Office before Cakwell made its first bid. Ms. Safi states that she was there and observed Dr. Melnik giving instructions to Mr. Bewsky about what he wanted done.

[38] During Mr. Bewsky’s inspections, he discovered two defects in the New Office that eventually led to remediation work paid for by the landlord (the “Remediation Work”). These were a water leak on a second-floor outer wall that was associated

with a sag in the floor in that area and deflection of the outer wall, and moisture entering the perimeter of the first floor. There are two invoices for the Remediation Work which are separate from the renovation contract.

[39] On March 6, 2015, Mr. Bewsky provided his first bid for the renovation. Dr. Melnik did not accept this bid and asked Mr. Bewsky to reduce his price.

[40] On March 14, 2015, Mr. Bewsky, Dr. Melnik, and Ms. Safi had a lengthy meeting at the New Office. Mr. Bewsky recalls little, but some specifics of their discussion. Dr. Melnik gave detailed evidence of their discussion. Dr. Melnik stated that this meeting took place primarily on the second floor round room of the New Office at a boardroom table. He knows the meeting lasted four hours because Ms. Safi billed him for those hours. They had Mr. Bewsky's March 6, 2015, bid at the meeting, and the other documents above. He and Mr. Bewsky went around to areas in the New Office, and Dr. Melnik pointed out what was to be done. Ms. Safi stated that she was present for much of the discussion, except when Dr. Melnik and Mr. Bewsky left the room to look at an area in the New Office. To her, it was a boring meeting. The plans were in front of them, and Dr. Melnik and Mr. Bewsky were discussing, room by room, the details of the Old Office to be moved to the New Office. Mr. Bewsky agreed that they discussed what was to be done but does not recall going through the set of photographs of the Old Office that are associated with the Placement Documents, and which Dr. Melnik stated were on his laptop.

[41] The specifics of Mr. Bewsky's, Dr. Melnik's, and Ms. Safi's evidence regarding what was discussed and agreed to in their meetings leading up to and on March 14, 2015, are addressed under Issue 2 and in the Appendix. However, I flag two factual issues which permeate all the extras claimed and the delay claim. These are the discussion regarding extras and whether Dr. Melnik had to approve any extras by a written change order; and the discussion regarding completion time.

**Renovation Contract**

[42] On the evening of March 14, 2015, Mr. Bewsky submitted another bid which was subsequently accepted and signed by Dr. Melnik (the “Main Contract Document”). The main change from the March 6, 2015, bid was that items were removed from the scope of work, and not that prices for tasks were reduced. The contract price was \$628,278.53 inclusive of GST. The Main Contract Document is not a standard form construction contract. It is a five-page, single spaced document that Mr. Bewsky drafted which describes in paragraph form, the scope of work under various headings. I will review specific clauses, or the absence of them, under Issues 2 and 3, and the Appendix.

**Demolition While Waiting for Building Permit**

[43] On March 31, 2015, Melnik Inc. paid Cakwell an \$80,000 deposit toward the renovation contract. The demolition permit was issued sometime after that. In April 2015, Mr. Bewsky started the demolition work. The building permit had not yet been issued so he was limited in the work he could do. He said that he could not work for about two months waiting for the building permit. On June 24, 2015, the building permit was issued.

**Unexpected Conditions**

[44] There were many unexpected conditions encountered by Mr. Bewsky. I pause to highlight three of the more significant conditions which are the basis of several of the larger extra claims. The first is that during the demolition phase, when he took up the first-floor flooring, there was no thinset but instead an adherent anti-fracture membrane that required significant work to remove. The second is that after the landlord produced the seismic upgrade plans and the first floor was x-rayed, a large plenum was discovered running inside the perimeter of the first floor. This caused a change in the trenching in the concrete that had been planned for utilities and dental lines. The third is the poor condition of the second-floor substrate after the carpet and linoleum were removed. This is separate from the Remediation Work on the

second floor near the leak in a wall. The evidence concerning these is discussed in the Appendix.

**Design Drawings**

[45] In June and August 2015, Dr. Melnik produced the June and August Design Drawings. These are the Architectural Drawings, but with extensive detailed notes added in Dr. Melnik’s handwriting concerning matters such as electrical and data outlets, plumbing, and millwork. There is an issue whether the June and August Design Drawings increased the scope of work.

**First Change Order – Electrical**

[46] Dr. Melnik’s notes on the June Design Drawings added over 100 electrical and data outlets compared to Powerpoint Electrical Contractors Ltd.’s (Cakwell’s subtrade) quote and electrical plans which were present at the March 14, 2015, meeting. This quote and plans are referred to in the March 6, 2015 bid, and in the Main Contract Document. In the absence of electrical plans from Dr. Melnik, Powerpoint had created its own electrical plan. As a result of the June Design Drawings, Mr. Bewsky decided to have the electrical work re-bid. He obtained new quotes. On September 9, 2015, Cakwell produced the first change order in the amount of \$52,558.85 for the increased scope of work for the electrical (the “First Change Order”). The First Change Order states:

Electrical Revision per Dr. Melnik’s Electrical Drawings and Specifications dated June 15, 2015 and Dr. Melnik’s Instructions to Relocate and Upgrade Existing Electrical Service.

[47] Dr. Melnik accepted the First Change Order so it is not necessary to review the conflicting evidence regarding it. Dr. Melnik was resistant to acknowledging that the First Change Order arose, at least in part, out of the June Design Drawings. I find that it did. There is a clear difference between Powerpoint’s plans and the June Design Drawings.

**Remediation Work Quotes**

[48] In the autumn of 2015, the landlord needed to hire someone to do the Remediation Work. Eventually, the landlord asked Mr. Bewsky to make a bid. In October and November 2015, Mr. Bewsky provided two quotes. The quote for the first floor was \$18,129.89 including GST, and the quote for the second floor was \$9,732.45 including GST. Mr. Bewsky testified that he did not like how the landlord was instructing him, and he therefore would only contract with Dr. Melnik to do the work. The landlord approved Cakwell’s quotes. Cakwell invoiced Dr. Melnik, who paid those invoices, and Dr. Melnik in turn was reimbursed by the landlord.

[49] The two invoices for the Remediation Work are outside the scope of work contemplated by the renovation contract, but there is an issue as to how much, if any, the Remediation Work should be taken into account in the time to complete the renovation contract. I discuss that evidence under Issue 3.

**Discussions and Instructions During Construction**

[50] I pause to provide an overview of the testimony of Mr. Bewsky and Dr. Melnik regarding their interactions during the renovations with respect to the scope of work and extras.

[51] Mr. Bewsky testified that after Dr. Melnik produced the June Design Drawings, he told Dr. Melnik that these were an increase in the scope of work. Further, throughout the project Dr. Melnik asked him to do other work which he also claims as extras. At one point during the renovation, Mr. Bewsky told Dr. Melnik that he had doubled and almost tripled the scope of work by his requests. For many requests that Dr. Melnik made, Mr. Bewsky agreed that he did not specifically say to Dr. Melnik that this was an extra and would cost more. This was because in his view it was obvious that when Dr. Melnik instructed him to do something outside the scope of the contract, it was an extra and would cost more. However, periodically he told Dr. Melnik that tasks he asked him to do were going to be an extra and Dr. Melnik would say “I know, I know, I know”. He said it was Dr. Melnik’s “favourite phrase”. Mr. Bewsky cannot associate that phrase with a discussion regarding any

specific extra that Cakwell is claiming, except one. That item relates to the replacement of the second-floor inner round room windows with different fire-rated glass, which was expensive. He recalls that after telling Dr. Melnik how much more it would cost, Dr. Melnik said “I know, I know, I know” in an increasingly loud and angry tone. For other claimed extras, Mr. Bewsky agreed that he did not discuss the work with Dr. Melnik at all, either because in his view the work was necessary as arising from an unseen condition or other work Dr. Melnik asked him to do, or because he knew Dr. Melnik and what he wanted and would accept. Despite Mr. Bewsky’s evidence of receiving instructions from Dr. Melnik, he also complained that Dr. Melnik was not responsive to questions to which he needed answers to proceed, and which caused delay. Dr. Melnik denied that allegation. Mr. Bewsky’s working notes during the renovation show frequent discussions between he and Dr. Melnik, sometimes in the form written questions by Mr. Bewsky to Dr. Melnik, and Dr. Melnik’s response on the notes.

[52] Dr. Melnik acknowledged in cross-examination that he may have asked Mr. Bewsky to do work that deviated from the contract. However, he maintained that the contract “allowed for credits” and other credits arose as construction proceeded that were owing to him. He said that he had a right to know if he was going to be charged, and it was Mr. Bewsky’s obligation to tell him how much before he incurred an obligation to pay that cost. He denied that he knew he would be invoiced for work he asked Mr. Bewsky to do. He said that never once did Mr. Bewsky say that something would be extra or present him with a dollar figure. Excerpts from Dr. Melnik’s examination for discovery were read in. In those, Dr. Melnik agreed that they had a positive working relationship in the past, they were friends, and he felt comfortable in addressing construction issues with Mr. Bewsky verbally unless it was a major issue or expense. He agreed there were many issues, and that for day-to-day matters, the two of them discussed the issue and moved on. He never considered these to be extras, or requiring a change order.

[53] At different points in the trial, Dr. Melnik testified regarding how often he was at the New Office during the renovation. When it was suggested to him that he was

actively involved in observing the renovation and discussing how the work was to be done, he said that he went to the New Office “periodically to see the progress of the work”. He disagreed that he was there a couple of times per week, saying “not necessarily”, and that some weeks he and Ms. Safi might not be there at all. When it was suggested that this was a project where he had frequent discussion with Mr. Bewsky and had specific requests for him as the project went along, Dr. Melnik stated that after months with no walls up, he had more contact. He said it was “impromptu” that he would show up, Mr. Bewsky would ask a question, and he would answer it. Later, when testifying regarding alleged delay, he said that either he or Ms. Safi were at the New Office daily, he was there regularly several times a week, and that periodically, year after year, there were times when Mr. Bewsky was not on site and there was no activity.

**First Invoice – Work to October 31, 2015**

[54] On November 1, 2015, Cakwell delivered its first invoice (the “First Invoice”) in the amount of \$164,850 including GST, against which the \$80,000 deposit was applied, for a net amount owing of \$84,850. The First Invoice stated:

Progress Draw Billing for work completed to October 31, 2015, including material, equipment, extras and expenses.

[Emphasis added.]

[55] Each of the subsequent invoices issued by Cakwell has the same clause except the date is different. Each invoice also has a description of the work done, in narrative form, including extras for which Mr. Bewsky claims. Neither this invoice, nor any other, shows what part of the invoice is attributable to work within the original contract as opposed to extras claimed. Mr. Bewsky testified that the amount invoiced was an estimation of the work that had been done to date and described in the invoice, including his time and expenses. There are two versions of the First Invoice, one which does not provide any detail of the work completed, and the other which has a few lines describing the work.

[56] Dr. Melnik stated that he thought the phrase “including ... extras” was “boilerplate” and only included the extras he had agreed to in writing in the First to Third Change Orders.

#### **Meeting November 17, 2015**

[57] On November 17, 2015, Dr. Melnik and Mr. Bewsky met at the New Office. Dr. Melnik stated that he told Mr. Bewsky that he had met with his bank manager, who had been on site, and who did not think there had been much progress. To obtain loan money, Dr. Melnik needed to show progress. He asked Mr. Bewsky to provide costs to date, a completion time, and a cash flow forecast for the bank manager. Mr. Bewsky told Dr. Melnik to tell his bank manager that he will be in the main floor by the end of January 2016, and he might be able to give him treatment rooms on the second floor by then. Mr. Bewsky did not provide the costs and time projections that were requested. Dr. Melnik stated that at this meeting he also told Mr. Bewsky that he was not proceeding with the artwork installation he had planned because he could not afford it.

#### **Second Invoice – Work to December 31, 2015**

[58] On January 13, 2016, Cakwell delivered its second invoice (the “Second Invoice”) dated January 1, 2016, in the amount of \$91,350 including GST.

[59] Mr. Bewsky testified that he calculated the amount from invoices received from subtrades, and an estimate of his time to do the extras and original contract work. It probably took him a couple of hours, and he assessed what he had done from “memory, basically”. He does not recall how he calculated his time. He said it probably would not have been based on an hourly rate, but it possibly could have been \$500 per day, which is an estimate of an eight or more-hour day, or whatever was required to get the work done. At times, he was working 10-, 12- and 14-hour days. He has no record of which days he worked on the project, or how much time he was spending. He likely used the same method for determining the other invoice amounts.

**Meeting January 19, 2016**

[60] On January 19, 2016, Dr. Melnik, Ms. Safi and Mr. Bewsky met at the New Office. Dr. Melnik testified that the purpose was to discuss the invoice and why he did not see any walls, lighting, or ceiling. The plumbing contractor had abandoned the site, and Mr. Bewsky was working on the plumbing himself. Dr. Melnik expressed that: they were dismayed regarding the lack of progress; Mr. Bewsky was working alone without a crew; they wondered why that was occurring; and they needed a commitment to a completion date. Dr. Melnik reminded Mr. Bewsky that he would not be responsible for extras without written authorization.

[61] Ms. Safi gave similar evidence. She testified that she started the meeting by expressing their frustration about the delays, and how difficult it was to work in temporary office space, that they were going to lose staff, and some patients were unhappy. Mr. Bewsky said he had extra work to do, but Dr. Melnik said he did not understand how that would slow him down. The main thing they asked was why Mr. Bewsky was working alone. Mr. Bewsky admitted that it was a big job for him to be working alone and said he was trying his best and would try to get help. At the meeting, the parties decided to meet every three weeks.

[62] Mr. Bewsky testified that he told Dr. Melnik that there were a number of items for which he needed answers to proceed, and if he did not have them, he could not finish. He referred to lighting and switching. Dr. Melnik did not recall any such discussion with Mr. Bewsky. However, on January 21, 2016, Mr. Bewsky wrote to Dr. Melnik with a list of 15 items of information he needed “to proceed”. This included the final lighting plans, the vacuum vent, paint colours, and details for drywall returns and corners. Dr. Melnik testified that this was the first time Mr. Bewsky asked him for instructions.

[63] On January 29, 2016, Dr. Melnik met with Mr. Bewsky on site and answered the questions, and on January 30, 2016, delivered answers to the questions in writing. A revised lighting plan was produced on January 31, 2016, and forwarded to Mr. Bewsky on February 17, 2016.

**Meeting February 17, 2016**

[64] Dr. Melnik, Ms. Safi, and Mr. Bewsky met again on February 17, 2016. Dr. Melnik testified that it was a very stressful meeting. He did not see any substantial progress occurring. They did not have occupancy at the end of January 2016, and Mr. Bewsky admitted it was his fault. Mr. Bewsky asked that he give him a couple more months. Dr. Melnik told him he wanted a completion date in writing. Dr. Melnik told Mr. Bewsky that he was under financial stress, he was paying “quadruple rent” and that he would be preparing an acknowledgement document for Mr. Bewsky to sign. Mr. Bewsky told him he would sign the document, and he promised to get a crew to get the job finished. Mr. Bewsky also said he needed some motivation. Mr. Bewsky expressed displeasure that he had to wait for his invoice to be paid.

[65] Ms. Safi testified that she was almost in tears at this meeting as the staff and patients were finding it difficult to cope with the temporary practice situation. Mr. Bewsky was not happy, and he was asking about a cheque. He said he needed motivation and some encouragement, and if Dr. Melnik paid, then he would hire a crew. Dr. Melnik said he would give Mr. Bewsky a cheque if he gave him a completion date.

[66] Following the meeting, on February 17, 2016, Dr. Melnik paid \$25,000 toward the Second Invoice.

[67] There is one email exchange in evidence between February 15 and 18, 2016, where Mr. Bewsky inquired of a person if he would be interested in working for him. Mr. Bewsky states that at this time it “looked like we might be moving forward” so he reached out to this person. This person had never worked for him before. Mr. Bewsky stated he was “still waiting for the switching and more delays, and it never worked.” Mr. Bewsky testified that there were no points in the project where he felt he needed extra help to complete the job in a timely manner other than a few “small occasions”, and then toward the end of 2017, but he could not find anyone to

give him a hand. In his view, he never needed someone full time. Occasionally he had his spouse, or her son help him.

**Meeting March 11, 2016**

[68] On March 11, 2016, Dr. Melnik, Ms. Safi and Mr. Bewsky met. Dr. Melnik presented an acknowledgement document which states that the project is significantly behind schedule and Mr. Bewsky and Cakwell bear the responsibility for this. The document also contains a commitment to obtain an occupancy permit for both floors no later than May 25, 2016, and that if this is not met, there will be a financial penalty. Mr. Bewsky became angry and refused to sign the document.

[69] Ms. Safi recalled that Mr. Bewsky was frustrated, standing, and angry. Mr. Bewsky said he was not going to sign the document, and he wanted a cheque. Dr. Melnik told Mr. Bewsky, that if he wanted a cheque, Dr. Melnik wanted his completion date. Mr. Bewsky said he would make his own acknowledgement and give it to them, but that never happened. She and Dr. Melnik told Mr. Bewsky that referring dentists were upset, and her staff was quitting. Mr. Bewsky acknowledged that Dr. Melnik was frustrated and said he was tired as well. Dr. Melnik told him he had to get a crew and to think of his health, and that he did not want to ruin their friendship over this project. Ms. Safi testified that Dr. Melnik decided not to have meetings with Mr. Bewsky after this.

[70] Mr. Bewsky testified that he vaguely recalls this meeting. He does not recall being aggressive or angry at the meeting. He agreed that Dr. Melnik presented him with the acknowledgement document and that he refused to sign it.

[71] On March 15, 2016, Dr. Melnik paid the remaining balance of \$66,350 in satisfaction of the Second Invoice.

**Inquiries by the Landlord and Assurance of Completion by December 2016**

[72] In April, August, and October 2016, and January 2017, Dr. Melnik received email inquiries from the landlord about when the renovation was going to be

completed. Ms. Safi forwarded the October 2016 email to Mr. Bewsky. In that email, Ms. Safi states that Mr. Bewsky had promised Dr. Melnik in August that they would have them open for business in the New Office by Christmas 2016. At trial, Mr. Bewsky agreed that he made that promise to Dr. Melnik.

### **Remediation Work Invoices**

[73] On June 19, 2016, Mr. Bewsky forwarded to Dr. Melnik an invoice dated May 12, 2016, in the amount of \$18,129.89 for Remediation Work on the first floor. On July 15, 2016, Dr. Melnik paid this invoice and was reimbursed by the landlord. On August 7, 2016, Dr. Melnik received an invoice dated July 25, 2016, in the amount was \$9,122.14 for the Remediation Work on the second floor. On September 9, 2016, Dr. Melnik paid this invoice and was reimbursed by the landlord.

### **Third Invoice – Work to July 14, 2016**

[74] On August 7, 2016, Dr. Melnik received a third invoice (the “Third Invoice”) dated July 25, 2016, in the amount of \$40,527.38 including GST for work competed to July 14, 2016. This was paid on September 21, 2016.

[75] Mr. Bewsky was asked why this was a smaller invoice. He said it depended on the work done. Mr. Bewsky stated that he does not know of the exact days, but he believes there was some stoppage of work in the period from January to July 2016 due to Dr. Melnik not paying his invoices on time, but he cannot be certain what that was. He testified that he had many conversations with Dr. Melnik about paying his invoices on time. He recalls one conversation where he told Dr. Melnik that if he pays on time like they agreed, he could concentrate on the work rather than fighting him for payment of an invoice. At that time Dr. Melnik said he could come up with a portion of the funds, and Mr. Bewsky told Dr. Melnik that he had to pay all the invoice, or he would stay off site.

[76] Mr. Bewsky also testified that between the end of 2015 and the middle of 2016, he completed a renovation of a mezzanine for a different client. The contract price for that work was \$103,000, including work by a flooring subtrade. He had

intended to do this other work after the renovation for Dr. Melnik, but because there were delays, he had to do this other work while the work for Dr. Melnik was not complete.

### **Meetings April to November 2016**

[77] Ms. Safi testified that after the March 2016 meeting, at Dr. Melnik's request she continued to stop by the New Office and speak with Mr. Bewsky. She had a good relationship with him. Mr. Bewsky told her that he could not finance this project, but she told Mr. Bewsky from what she knew Dr. Melnik was paying the invoices. She passed the message on to Dr. Melnik. Mr. Bewsky told her he was working on getting a crew. He acknowledged their frustration and said he was doing his best.

[78] Ms. Safi recalled that in a meeting in September 2016, before she went on holiday, she discussed with Mr. Bewsky how terrible it was having a temporary location, and they were losing a dental assistant because of it. Mr. Bewsky said he would probably get help for flooring, and he was working on getting a crew. Mr. Bewsky promised that they would have possession of at least the first floor by the end of December 2016. Ms. Safi returned from holidays at the end of October 2016 and continued to follow-up with Mr. Bewsky in November. They talked about the same things. The only thing that stands out is that Mr. Bewsky said he needed Dr. Melnik to approve something and Dr. Melnik was away in Ontario, and he was waiting for him to come back. Mr. Bewsky said he had tried to call him. Dr. Melnik returned two days later.

### **Fourth Invoice – Work to November 1, 2016**

[79] On January 17, 2017, Dr. Melnik received a fourth invoice (the "Fourth Invoice") dated December 15, 2016, in the amount of \$102,018.00 for work completed to November 1, 2016. This was paid on January 19, 2017.

**Second Change Order – Lighting, Cat 6A data, TV, Speaker and Security Additions**

[80] On January 15, 2017, Cakwell provided a second change order (the “Second Change Order”) in the amount of \$17,905.48 including GST for “Extra: Lighting, Cat 6A data, TV, Speaker and Security Addition as per discussion with Dr. Melnik and Electrical Contractor of approximately September 2016”.

[81] On February 1, 2017, Dr. Melnik approved the Second Change Order. Dr. Melnik stated that he had been speaking with the electrical contractor and wanted upgraded cabling from what he had in the Old Office, and the electrician told him this would be extra. He had all the discussions about this change order with the electrician and not with Mr. Bewsky. Mr. Bewsky agreed with this.

**Third Change Order - Flooring**

[82] Mr. Bewsky stated that he in part based the Main Contract Document on a quote he received from Chilliwack Floors, which in turn was based on his verbal instructions from Dr. Melnik when they had walked through the New Office prior to entering into the renovation contract. The details of that quote, although not the name of the subcontractor, is referred to in the March 6, 2015, bid and the Main Contract Document.

[83] In October 2015, Dr. Melnik first produced flooring plans to Mr. Bewsky. There was another version of the plans in January 2016. Mr. Bewsky testified that the second floor was the same, but the first floor had about twice the amount of tile, and the configuration and angle of the linoleum and tile was different. Based on the flooring plans, Chilliwack Floors provided a new quote in February 2016, and then further quotes in November and December 2016. However, two weeks before Chilliwack Floors was to start work, Dr. Melnik told him that he did not want them and instead wanted Tec Floorcoverings Ltd. (“Tec”). Dr. Melnik testified that Mr. Bewsky was aware that he had Mr. Bewsky correct deficiencies in the flooring installed by Chilliwack Floors in the Old Office. In early January 2017, Mr. Bewsky

communicated with Tec, and it ultimately provided multiple quotes for the first and second floors.

[84] On January 24, 2017, Cakwell provided Dr. Melnik with a quote for a third change order (the “Third Change Order”) dated January 20, 2017. This stated it was for “Main Floor Flooring Revision per Dr. Melnik’s Flooring Drawing with Specifications dated October 1, 2015”. The amount was \$64,554 including GST. On January 27, 2017, Dr. Melnik signed the Third Change Order. As Dr. Melnik accepted the Third Change Order, it is not necessary to review the conflicting evidence regarding it.

[85] Mr. Bewsky stated that he had many issues with Tec which he described as a “fiasco”. He had to correct its work. They ended up in Provincial Court. He blames Dr. Melnik for insisting on using Tec and for interfering. Dr. Melnik blames Mr. Bewsky for not getting along with sub-trades.

**Meeting January 27, 2017**

[86] Mr. Bewsky testified that he and Dr. Melnik had another meeting on January 27, 2017. This meeting concerned payment issues. He told Dr. Melnik that nobody wants to work on the site because Dr. Melnik is not paying him, and he cannot pay the subtrades. However, I note that at this time there was no outstanding invoice.

**Fifth Invoice – Work to February 1, 2017**

[87] On February 5, 2017, Dr. Melnik received a fifth invoice (the “Fifth Invoice”) dated February 1, 2017, in the amount of \$134,232 for work completed to February 1, 2017. This was paid on February 14, 2017. This was the last payment made.

[88] Dr. Melnik said he paid the invoice even though he did not think it corresponded to the percentage of work that had been done because he trusted Mr. Bewsky to finish the work. He denied that he paid it because he knew the work Cakwell had done included work outside the original scope of work.

**November 27, 2017 – Occupancy of First Floor**

[89] On November 27, 2017, the occupancy permit was issued for the first floor and on December 6, 2017, Dr. Melnik moved in and was able to practice out of the first floor of the New Office. The second floor was not complete. The extent of the completion on both floors is in issue.

**Sixth Invoice – Work to December 2017**

[90] On December 22, 2017, Dr. Melnik received a sixth invoice (the “Sixth Invoice”) dated September 1, 2017, for \$325,500 including GST stated to be for work completed to September 1, 2017, however Mr. Bewsky stated that it included work to about mid-December 2017. Mr. Bewsky testified that he started drafting the bill in July, but Dr. Melnik asked him not to invoice until he got into the New Office as the bank was not giving him more money. When he got occupancy, Dr. Melnik and Ms. Safi both said to invoice in full for everything up to date and Dr. Melnik would pay him in full.

**Meeting December 27, 2017**

[91] On December 27, 2017, Dr. Melnik, Ms. Safi, and Mr. Bewsky met to discuss the Sixth Invoice. Dr. Melnik told Mr. Bewsky that if he paid the Sixth Invoice, he would have paid for all the work in the renovation contract, the three change orders, and another \$100,000 on top of that, yet not a single room was completed. Dr. Melnik wanted an explanation. Mr. Bewsky said the difference was for extras. Dr. Melnik asked what extras there were other than the ones he had authorized. Mr. Bewsky asked if Dr. Melnik wanted a list. Dr. Melnik told him not to bother as he had not authorized any others.

[92] Ms. Safi gave similar evidence to Dr. Melnik. She recalled that Mr. Bewsky asked for time to finish the second floor. Dr. Melnik said he had waited so long, his business had suffered and asked why there were so many extras over the price they had agreed to. Mr. Bewsky said he worked for it and did the extra work. Dr. Melnik suggested that Mr. Bewsky work upstairs and then he would pay him. Mr. Bewsky

said that if Dr. Melnik paid the invoice he would get a crew and would finish the second floor by April 2018. Ms. Safi knew how much this friendship meant and she tried to have the parties work things out, but they could not agree.

[93] Mr. Bewsky testified that Dr. Melnik was not impressed with the invoice. He asked Dr. Melnik what he expected as it was almost a year's work. He does not recall if it was at this meeting, but at some point, Dr. Melnik said he was not going to pay until the project was finished, and then only up to the contract amount. Mr. Bewsky went home and began to prepare the list of extras.

### **Meeting January 20, 2018**

[94] Dr. Melnik, Ms. Safi and Mr. Bewsky met again on January 20, 2018. Dr. Melnik testified that he presented a document entitled "Completion Date Notification" stating that unless all the work was finished on all floors by April 30, 2018, he would find others to complete the job and will not pay any further money. He told Mr. Bewsky that he needed to have a completion date in writing and that Mr. Bewsky had to have a crew working with him.

### **2018 Extras Claim**

[95] On February 27, 2018, Mr. Bewsky faxed to Dr. Melnik a 15-page page list of 200 extras (the "2018 Extras"). The list values each extra and the total is \$330,515 plus GST. Of this amount, \$166,815 is shown as having been paid (i.e. included in progress draws that had been paid), and \$163,700 as having not been paid (i.e. included in the Sixth Invoice). Mr. Bewsky testified how he created the list, and I will describe this under Issue 2.

[96] Dr. Melnik testified that in the fax, Mr. Bewsky also advised that he had set up a crew to complete the project. Dr. Melnik said that none of the extras listed in the 2018 Extras were brought to his attention prior to this date.

[97] The 2018 Extras claim was the end of the relationship between the parties. Shortly thereafter, Cakwell retained counsel. Sometime after that Dr. Melnik changed the locks to the New Office.

**State of Completion of the New Office**

[98] The parties disagree on the state of completion of the renovation at the time that Cakwell was no longer working on the project. Both Mr. Bewsky and Dr. Melnik described the state of the first and second floors at the time the contract ended. In addition, Dr. Melnik tendered expert evidence from Mr. Ross, discussed below. Mr. Bewsky stated that as of March 2018, he had completed 80% of the work. Dr. Melnik disagreed and he described what was not done using 42 photographs he had taken of the New Office in March 2018.

[99] While I appreciate that some work will not be seen in these photographs such as the repair of the second-floor substrate, the photographs show the state. The first floor, while complete enough to get an occupancy permit, does not have some of the finishing work done. Two rooms on the first floor were not complete, one without flooring and millwork, and were being used for storage of construction materials. The second floor is not close to being finished. The pictures show a space taken apart, with no complete walls, some electrical and plumbing rough in, no millwork, no flooring, and an incomplete ceiling.

**Commencement of Proceedings**

[100] On April 24, 2018, Cakwell filed a claim of lien against the New Office property in the amount of \$408,031.53. It is not clear how Mr. Bewsky arrived at that amount. This action was commenced in May 2018 seeking that amount. The trial was originally set to commence on May 6, 2019, for 10 days.

[101] In March 2019, Dr. Melnik posted a lien bond to remove the lien on title. The cost to Dr. Melnik has been \$10,201 yearly since then. This forms part of the counterclaim.

**2019 Extras Claim**

[102] Dr. Melnik testified that in early April 2019 (a month before the then scheduled trial) Mr. Bewsky produced through his counsel another set of claims for extras dated March 6, 2019 (the “2019 Extras”). This claimed an additional 28 extras

and gave 13 credits for work not performed. The total extras claimed was \$75,045.81 plus GST and the total credits allowed for was \$144,347.81 plus GST, for a net credit of \$69,302 plus GST. However, in a calculation that is not clear, Mr. Bewsky calculated that there was an additional \$187,166.31 amount owing above the then existing lien claim of \$408,031.53.

[103] Mr. Bewsky states that he prepared the 2019 Extras document after he contacted subtrades to make sure they had “everything in” as he was doing a final list of extras. He denied he created the 2019 Extras because he was mad at Dr. Melnik. I will discuss Mr. Bewsky’s evidence as to how he created the 2019 Extras document under Issue 2.

**Seventh Invoice – Work Completed to February 23, 2018**

[104] Cakwell produced a seventh invoice dated March 6, 2019 (the “Seventh Invoice”) for work completed to February 23, 2018. The amount claimed was \$187,166.31 including GST.

[105] When Mr. Bewsky was asked why he waited so long to bill for this work, he said that he billed for extras on every invoice but the actual list of extras he waited on because he did not have time to do it. He agreed that part of the Seventh Invoice related to work done in 2015, 2016, and 2017. When asked again why he waited so long to bill that work, he said he was waiting to get into the New Office to see what work was left to do, and it never happened, and he was waiting for subtrades to give final invoicing. He agreed that some of the extras claimed in the Seventh Invoice do not relate to subtrade work. He agreed that he was on site between 2015 to 2018 but said that he needed to look at specific extra claims to answer further questions as to why they were not billed earlier. His earlier invoices were estimates only.

**Amendment to Pleadings and Subsequent Procedural Events**

[106] In March 2019, Cakwell applied for leave to file an amended notice of civil claim, which was granted, and in another application, obtained an adjournment of the trial. Cakwell now claimed the additional invoice forwarded to Dr. Melnik on April

5, 2019, for a total of \$595,197.84. The trial was subsequently reset for September 2019, and this is when it started before Justice Choi and then was adjourned.

[107] During closing submissions before me, by consent, both parties amended their pleadings. The amount claimed by Cakwell is now \$503,499. I will describe how that is calculated under Issue 2.

### Summary of Contract Amounts, Extras Claims, Invoices, and Payments

[108] For convenience, I summarize in table form the agreed renovation contract amounts:

Main Contract Document	\$628,278.53
First Change Order	\$52,558.85
Second Change Order	\$17,905.48
Third Change Order	\$64,554.00
Total	\$763,296.86

[109] Cakwell claims the following extras:

2018 Extras list	\$330,515.00 plus GST = \$347,040.75
2019 Extras list	\$75,045.81 plus GST = \$78,798.10
Total	\$425,838.85 including GST

[110] The invoices and payment dates are as follows:

Invoice	Date delivered	Date/Amount Paid	Amount
First Invoice	Nov. 1, 2015	Mar. 31, 2015 (\$80,000); Nov. 17, 2015 (\$84,850)	\$164,850.00
Second Invoice	Jan. 13, 2016	Feb. 17, 2016 (\$25,000); Mar. 15, 2016 (\$66,350)	\$91,350.00
Third Invoice	Aug. 7, 2016	Sept. 21, 2016	\$40,527.38
Fourth Invoice	Jan. 17, 2017	Jan. 19, 2017	\$102,018.00
Fifth Invoice	Feb. 5, 2017	Feb. 7, 2017	\$134,232.00
Sixth Invoice	Dec. 22, 2017		\$325,500.00
Seventh Invoice	Mar. 6, 2019		\$187,166.31
Total		\$532,977.14	\$1,045,643.69

[111] In addition, there were the two Remediation Work invoices. One delivered June 19, 2016, and paid on July 15, 2016. The other delivered on August 7, 2016, and paid on September 9, 2016.

**Mr. Ross' Opinion**

[112] Finally, although not part of the chronology, it is useful to summarize here Mr. Ross' opinion. Mr. Ross is an expert on construction costs and construction times. His report was objected to by Mr. Bewsky and after a *voir dire*, I ruled the report was admissible and that Mr. Ross could testify.

[113] Mr. Ross was asked to opine on what percentage of the work that was agreed upon in the "contract documents" was complete as of March 2018. Mr. Ross assumed that if work was reflected in those documents that it had been agreed upon by the parties, whether or not it is disputed as an extra. The "contract documents" he reviewed were: architectural base plans (i.e. the Architectural Drawings); renovation architectural plans with annotations (i.e. the June and August Design Drawings); computer, telephone and AV network plans; security system plans; sound system plans; the Main Contract Document; the renovation design documents including the furnishings and fixtures to be relocated from the Old Office, and consisting of electrical plans, millwork plans; and lighting plans; the three written Change Orders; Cakwell's invoices; Cakwell's invoices from subtrades and materials related to the work; and what he estimated were 1,500 to 1,800 photographs taken during the construction by both parties and which were all identified by date. Notably, Mr. Ross does not list the 2018 Extras and 2019 Extras documents.

[114] Mr. Ross' methodology was first to opine on the value of the work based on the "contract documents" as if the work had been completed (the "Work"). This included the extras as reflected in the "contract documents". Mr. Bewsky testified that the extras were included in his description of work on each invoice. Mr. Ross testified that there was also some work he saw in photographs that was not stated in the invoices or other documents, and he included that as part of the Work. Second Mr. Ross opined on the value of the Work completed as of March 2018. This

provided a second total. The second total divided by the first total provided the percentage of the Work completed.

[115] Mr. Ross opined that as of March 2018, the value of the Work, if it had been completed, was \$909,612.73 including GST. The value of the Work that was completed as of March 2018, was \$602,596.07 including GST. Cakwell therefore completed 66.2% of the scope of the Work. The appendices to Mr. Ross' opinion provide detailed costing for both valuations. Mr. Ross stated that the first floor was mostly complete, but on the second floor there was a significant amount of work yet to be done, including framing, completing the electrical rough in, the electrical distribution, the plumbing distribution (the plumbing rough in was mostly complete), the completion of the walls with drywall and paint, flooring, and installation of fixtures and millwork.

[116] Mr. Ross further opined that based on the assessed man hours to complete the Work, a timeline of eight to nine months from the issuance of the building permit should have been sufficient to perform the Work.

[117] Further, the delay to March 2018 caused a 5.7% cost increase. As a result, Mr. Ross provided another set of calculations, using the same methodology but costing as of February 2016. The corresponding figures using 2016 costing is a total value of \$864,288.41 for the completed Work, and \$570,169,79 for the value of the Work completed as of March 2018. The percentage completed is 66%.

[118] As noted previously, I am not persuaded that Mr. Ross was aware of the full extent of the work done by Cakwell. I will discuss this more fully under Issue 2. It is also important to remember that there is a difference between the market value of work, and the price at which the parties agreed that work would be done.

**Issue 1: Parties to the Renovation Contract**

[119] Mr. Bewsky pleads that Dr. Melnik or Melnik Inc. or both are parties to the renovation contract. Dr. Melnik and Melnik Inc. plead that only Melnik Inc. is a party.

Given the admission that Melnik Inc. is a party to the renovation contract, the only issue is whether Dr. Melnik is also a party.

[120] Mr. Bewsky knew that Dr. Melnik operated through a corporation. Mr. Bewsky agreed that at the time of entering into the renovation contract, he was aware that Melnik Inc. had previously, but not always, paid for his invoices. Dr. Melnik testified that he did not make anything of the fact that the Main Contract Document and invoices were addressed to him and not Melnik Inc.

[121] I find that Dr. Melnik was also a party to the renovation contract. The Main Contract Document is addressed to Dr. Melnik, and when he signed it, he did not indicate that he was doing so only in his capacity as the representative of Melnik Inc. This contrasts with Mr. Bewsky who signed in his capacity as principal of Cakwell. None of the other written renovation contract documents refer to Melnik Inc. There is no evidence that at any time during the negotiations Dr. Melnik stated that he was acting solely in his capacity as principal of Melnik Inc. There is no evidence that at any time during the renovations Dr. Melnik raised that the invoices, which were all addressed to him, were directed to someone who was not party to the contract.

## **Issue 2: Claim for Extras**

### **Legal Principles**

#### ***Contractual Interpretation***

[122] The parties agree that the renovation contract was both oral and written. In making findings as to whether there was a contractual term, the parties' subjective intentions are not relevant. The test is "whether 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": *Berthin v. Berthin*, 2016 BCCA 104 at para. 46, citing G.H.L. Fridman, *The Law of Contract in Canada* (6th ed, 2011) at 15. When an oral contractual term is alleged, the court must look "not only at the words used, but also at whether the parties' conduct is consistent with the oral agreement": *Voitchovsky v. Gibson*, 2022 BCCA 428 at paras. 32–34.

[123] To the extent there are written terms, the judge must “read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47. Similar principles apply to the interpretation of oral terms, but there is “greater flexibility in the nature of the evidence that is admissible to prove the contents of the contract and the meaning of the language used by the parties”: *Broer v. Multiguide GmbH*, 2023 BCCA 134 at para. 53, citing *Fridman* at 440. The court determines what words were said, the genesis and object of the transaction, and what the words, construed in their natural and ordinary sense against that factual background, mean: *Hammerton v. MGM Ford-Lincoln Sales Ltd.*, 2007 BCCA 188, citing *Lawson Graphics Pacific Ltd. v. Simpson* (1987), 1987 CanLII 2726 (BCSC). Regardless of whether a written or oral term is being considered, I must consider that term within the context of the written and oral terms of the contract as whole.

### ***Claims for Extras***

[124] The legal framework for assessing whether a claimed extra should be allowed was summarized in *Kei-Ron Holding Ltd. v. Coquihalla Motor Inn Ltd.*, [1996] BCJ NO. 1237 (SC) [*Kei-Ron*] at para. 41. Each of the applicable questions must be answered in the affirmative:

- a) First, was the work performed, in fact, extra work; that is, did it fall outside the scope of work originally contemplated by the contract?
- b) Second, if so, “did the owner give instructions, either express or implied, that the work be done or was the work otherwise authorized by the owner?”
- c) Third, “was the owner informed or necessarily aware that the extra work would increase the cost?”

- d) Fourth, if the contract has a term that a change be in writing, “did the owner waive the provision requiring changes to be made in writing or acquiesce in the ignoring of these provisions?”

[125] An extra is work that is “substantially different from, and wholly outside, the scope of the work contemplated by the contract”, determined by reference to: (a) the contract documents; (b) the nature of the work performed; and (c) the surrounding circumstances: *Sepco Estates Ltd. v. Dy*, 2007 BCSC 1159 at para. 72 [*Sepco*]. If an item of work is required to be performed by the contractor under the contract, it cannot be an extra notwithstanding that the contractor may have failed to realize at the outset of the contract that they would be required to perform such work: *Sepco* at para. 72. The contractor bears the burden of proving that any work claimed as extra is not included in the contract: *Sepco* at para. 76.

[126] An implied contract authorizing extra work may be inferred from the conduct of the parties, but “an essential element is that the owner at least knew that the work was going on and acquiesced in the contractor doing it. In some cases, it may be presumed that the owner consented to such extra work if so great that it must have been done with his knowledge or was necessary and not foreseen”: *Sargent Douglas & Co. Ltd. v. Kozic Holdings Ltd.* (1985), 17 C.L.R. 13 (B.C.S.C.) [*Sargent*] at para.18. What amounts to instructions is fact specific. If an owner, without giving specific instructions, knew the contractor was doing extra work and stood by and approved of what was being done, that may be an implied instruction: *Sargent* at para. 26.

[127] In this case, Cakwell advances its claims in contract, contractual *quantum meruit*, and in the alternative restitutionary *quantum meruit* based on unjust enrichment. In *RMS Industrial Maintenance Ltd. v. Agrisol Manufacturing Inc.*, 2021 BCSC 2415 [*RMS*], Justice Shergill succinctly summarized the differences:

[85] I turn now to the *quantum meruit* claim. Contractual *quantum meruit* is a contractual remedy where “the parties to a valid contract have agreed for the provision of goods or services, clearly intended to be paid for, but have failed to provide for the terms of remuneration...a contractual term to pay a reasonable price may be implied.” Restitutionary *quantum meruit* is an unjust

enrichment remedy where “no contract exists between the parties, or such contract as there is cannot be recognized or enforced”: *CH2M Hill Energy Canada Ltd. v. Consumers' Co-operative Refineries Ltd.*, 2010 SKCA 75 at paras. 23-24.

See also *Infinity Steel Inc. v. B & C Steel Erectors Inc.*, 2011 BCCA 215 [*Infinity Steel*], at para. 12, citing the reasons in *CH2M Hill Energy Canada Ltd. v. Consumers' Co-operative Refineries Ltd.*, 2010 SKCA 75 at paras. 23-27.

[128] To establish a claim for unjust enrichment, a plaintiff must prove: (a) an enrichment of the defendant; (b) a corresponding deprivation the plaintiff; and (c) the absence of a juristic reason for the enrichment: *Kerr v. Baranow*, 2011 SCC 10 at paras. 3, 36-40; *Moore v. Sweet*, 2018 SCC 52, para. 37. A recognized juristic reason includes a contract: *Kerr* at para. 41.

[129] The measure of an award for contractual *quantum meruit* is a reasonable price based on all the relevant circumstances: *Hugh's Contracting Ltd. v. Stevens* 2015 BCCA 491 at para. 26. Factors the court may consider are the cost of labour and materials plus a reasonable percentage for profit, what reasonable rates or prices involved for the work would be, and other contractual terms for guidance: *Sargent* at para. 20.

[130] In determining the award for restitutionary *quantum meruit*, the Court has a broad discretion to determine the appropriate measure. This will include “the course of dealings between the parties, any estimates obtained, the costs incurred, the scope of work, the actual work done, the market value of the services provided” and could include the value of the services to the recipient: *Hugh's Contracting* at para. 33-35; *Infinity Steel* at para. 20.

[131] A contractor has an obligation to keep proper accounts and records necessary to establish entitlement to payment for extras such that an owner understands what they are paying for: *Hugh's Contracting Ltd. v. Stevens*, 2014 BCSC 1904, paras. 117-121, rev'd in part on other grounds.

**What is the original scope of work?**

***The original renovation contract is comprised of written and oral terms***

[132] I find that the original renovation contract and agreed scope of work as of March 14, 2015, were contained in:

- a) the Main Contract Document plus the written documents listed by Dr. Melnik as having been given to Mr. Bewsky prior to or at the March 14, 2015, meeting. For convenience, these are the (a) Architectural Drawings; (b) electrical drawings for the Old Office; (c) millwork plans for the Old Office; (d) lighting plans for the Old Office; (e) original lighting plans; (f) photographs of the Old Office and the Placemat Documents; (g) a list of dental equipment at the Old Office; (h) the Construction Notes; and (i) notes of dimensions of kitchen equipment, doors, and windows in the Old Office.; and
- b) the oral terms agreed to by the parties in their discussions up to and including March 14, 2015.

[133] Dr. Melnik and Mr. Bewsky gave conflicting evidence regarding their oral discussions and what they each say was agreed upon both up to and including the March 14, 2015, meeting. Almost all of this is specific to an extra claimed. Therefore, the relevant written terms and the specific alleged oral terms, are discussed in the Appendix as they relate to each extra. I discuss more general findings below.

***The renovation contract excludes certain work and contemplates possible extras***

[134] The Main Contract Document begins by citing the general scope of work under a heading for Project Description as follows:

Proposed Interior Alterations for Orthodontist Office

Interior and Upper & Lower Floors and Exterior Renovations @ [address] as per Drawings dated December /14 and Lighting Drawings L1, L2, L3 dated February 1, 2015 and Construction Notes dated February 1, 2015.

[135] The Architectural Drawings attached to the February 5, 2015, email are dated January 2015. It is unclear why the Main Contract Document refers to a different date, but there was no suggestion that those were not the Architectural Drawings in evidence and referred to throughout the trial, or that if there was a previous version, there was any material difference between them.

[136] The Main Contract Document explicitly excludes some items. It states:

9. Specialty wall, floor and ceiling finishes or coatings, art work, window coverings, special hardware for millwork, any unseen issues such as: rot repairs including sub-floor and walls, any unseen structural, concrete floor, inner wall, plumbing or electrical issues, are not included.

...

TERMS AND CONDITIONS ...

Any additional costs or credits from sub trades which are not allowed for in their estimates, due to changes or any additional / extra work required, are not included.

[137] The Main Contract Document also explicitly removes, and therefore excludes certain other work, and contemplates the possibility that there may be extras. It states:

Items removed from estimate as discussed

Upstairs shower (under review), miscellaneous enclosures for art work, extra electrical fixtures, refacing of doors (under review), cost of electrical difference, extra mechanical, storage over records room (under review) totaling the credit of \$112,295.00 as discussed.

Items to remain

Roof penetrations up to \$2,000.00 as discussed.

[138] The removal of these items was the primary reason the price of the Main Contract Document was less than the March 6, 2015, bid. The March 6, 2015, bid had a section entitled "Allowances which are subject to Credit", which listed several items, to a total of \$170,895. These were:

Supply and installation of any new millwork, 2nd floor shower if possible, roof penetrations, storage ledge, enclosures for art work, redo main floor washroom, extra electrical fixtures, difference in electrical estimates, estimated mechanical difference, new doors rather than re-face existing doors (no warranty)

[139] The allowances clause in the March 6, 2015, bid was replaced with the following term in the Main Contract Document:

Allowances which are subject to Credit  
Supply and installation of new millwork up to \$50,000.00, upstairs shower under review.

***There is no contractual term that extras must be authorized in writing***

[140] Both Mr. Bewsky and Dr. Melnik testified that there was a discussion at the March 14, 2015, meeting that there would be “no surprises, and no extras”. Mr. Bewsky interprets this in relation to the scope of work. The dispute is whether following this, there was an agreement that there were to be no extras unless they were authorized in writing by Dr. Melnik. Dr. Melnik testified that this was a “very important” term for him but acknowledged that there is no such written term in the Main Contract Document. Mr. Bewsky denied any such agreement. Dr. Melnik maintained his position throughout his evidence. However, in closing submissions, Dr. Melnik acknowledged, properly in my view, that the evidence did not establish that there was such a term, and that even if there was, given the conduct of the parties, any such term was waived. Given Dr. Melnik’s acknowledgement, I do not need to discuss this issue further.

[141] It is common ground that there was no agreed upon price or pricing for extras claimed by Cakwell. Therefore, to the extent I find that an extra claimed is in fact an extra, the claim must be assessed in accordance with the principles of either contractual *quantum meruit* or restitutionary *quantum meruit* and unjust enrichment.

***There was a mutual understanding that the work would be done to a high quality***

[142] Although neither party argued that this was an explicit term of the contract, I find that when the parties entered into the renovation contract, they both intended and expected that the work would be done to a high quality. Both Mr. Bewsky and Dr. Melnik are particular and have a shared belief in high quality work. The work

Mr. Bewsky produced was of such quality. To the extent pictures of finished work are in evidence, they support that conclusion.

***There is a contractual term that fixtures from the Old Office would be installed in the New Office and refitted to a reasonable extent***

[143] Mr. Bewsky and Dr. Melnik both testified that in their discussions leading up to and including March 14, 2015, they agreed that the renovation contract included taking the items removed from the Old Office and installing them in the New Office. It is obvious that since the room sizes and shapes are not the same, that this could not be exactly the same. Where they part company is on the extent of refitting that was required. The parties referred to the phrase in the Main Contract Document that Cakwell was to “fit millwork from storage adding millwork as necessary”.

[144] In Mr. Bewsky’s interpretation, the phrase “fit millwork” means installing the millwork by placing it in a room and shifting it around until it is in the right place and then screwing it in place. The millwork in the Old Office would have fit against walls, but during renovations, Dr. Melnik wanted fixtures modified. Mr. Bewsky agreed that some of the millwork was shown on the Architectural Drawings, but not all of it. He did not know anything was “missing”. He asked Dr. Melnik to give him a list of what he wanted, and he based Cakwell’s bid on what he received.

[145] Dr. Melnik testified that at the March 14, 2015, meeting he had the photos of his Old Office on his laptop, and said he wanted his Old Office duplicated as nearly as possible in the New Office. Dr. Melnik’s position is that the phrase “fit millwork” means refitting everything to the New Office so that if, for example, a laminate counter, cabinetry, or built in furniture had to be shortened or lengthened to fit a space, that this would be included in the contract. In Dr. Melnik’s view, none of these modifications were extensive, describing them as a “foot or so extension, requiring a little cabinet or shelf underneath”, and that if Mr. Bewsky had to extend countertops, it was “not huge”. The “adding millwork” in the phrase referred to new millwork that he did not have at the time as there were more operatories in the New Office than in the Old Office.

[146] Interpreting the renovation contract as a whole, I do not accept either of these interpretations. In my view, a reasonable objective bystander would conclude that the parties agreed to refitting to a reasonable extent. In coming to this conclusion, I rely upon the discussion between Dr. Melnik and Mr. Bewsky which was to move the Old Office into the New Office, the photos of the Old Office and the Placemat Documents which show the dimensions of fixtures and how they looked in the Old Office, the knowledge that the size and shape of the rooms were not exactly the same, the Architectural Drawings which show only a little of the millwork, the mutual understanding of high quality of work, and the wording of this phrase in comparison to another phrase in the Main Contract Document. That other phrase concerns stainless steel countertops which were also coming from the Old Office. For those, the Main Contract Document states, “Refit and modify stainless steel countertops from storage and add extensions as necessary”. There is no mention of “refit and modify ... and add extensions as necessary” with respect to the millwork. I conclude that if extensive refitting had been agreed to, similar wording would have been used. It follows from the above, that some extras claimed for refitting have both a portion which is included within the original scope of work, and a portion which is extra.

**What if any of the claimed extras and credit are allowable extras?**

[147] Given the large number of extras claimed, at the close of evidence, I directed the parties to provide a table setting out their positions and arguments on each extra, even if in point form. This was not ready at the time the parties made closing submissions, and which addressed the evidence only generally, but it was produced by counsel a couple of months later. I have used this table as the basis of the Appendix to these reasons. For each item claimed, I summarised or replicated counsels’ submissions and added my summary of pertinent evidence that went beyond the description of the extra, and my findings. For some extras, I did not receive a specific position from counsel and for those I have put a question mark to indicate this, and proceeded on the basis that the extra was as claimed or contested in accordance with the evidence at trial. Finally, despite that all items were in dispute during the evidence and in the oral closing submissions, in the final table received

later, Cakwell abandoned some claims, and Dr. Melnik admitted some claims were an extra, but disputed the amount. In those cases, I have accepted those submissions, and do not find it necessary to review the evidence.

[148] For almost all items in the Appendix, I have made findings in accordance with the framework for assessing a claim for extras as discussed in *Kei-Ron*, that is: (1) whether it is in fact an extra; and if so, (2) whether it was expressly, impliedly, or otherwise authorized by Dr. Melnik; and (3) whether Dr. Melnik knew or reasonably ought to have known it would increase the cost. There are only a handful of extras where it was necessary to determine the claim under unjust enrichment principles.

[149] The 2019 Extras claim originally included 13 credits as well as further extras. However, because of the way that Cakwell ultimately presented its claim in its final amended pleadings and closing submissions (a percentage of the work completed as opposed to the full price less credit for work not done), it is not necessary to address those credits. I have therefore not included the 13 credits in the Appendix.

[150] Finally, although the amount Cakwell claims is set out in the Appendix, I do not address there what should be awarded for any specific extra that is established. This is because, as will become apparent, the evidence does not permit such assessment in this case. The amount to be awarded must be assessed more globally and I address that in the next section of these reasons concerning a reasonable cost or award.

[151] In the meantime, I summarize that in the Appendix I have disallowed \$95,311 plus GST in claimed extras = \$100,076.55, and Cakwell has abandoned \$25,846 plus GST in claimed extras = \$27,139.30. The total is \$127,215.85. This amount subtracted from the total claimed extras of \$425,838.85, leaves a claim of \$298,623 in extras, subject to assessment as to a reasonable amount. Many of these extras claims are also subject to a deduction or set off for work that would have been required in any event under the original scope of work.

[152] Below, I discuss more general findings so that they do not have to be repeated many times in the Appendix.

***There were several excluded unforeseen conditions which were necessary to address***

[153] As already noted, the Main Contract Document states:

... any unseen issues such as: rot repairs including sub-floor and walls, any unseen structural, concrete floor, inner wall, plumbing or electrical issues, are not included.

[154] I find that for the unseen conditions, Dr. Melnik either expressly or impliedly authorized the work. These were all conditions that were necessary to address to complete the original or otherwise authorized scope of work.

***The June and August Design Drawings increased the scope of work***

[155] Dr. Melnik testified that he did not write anything on the June and August Design Drawings that he did not already discuss with Mr. Bewsky in the meetings prior to and on March 14, 2015. Dr. Melnik submits that the June and August Design Drawings are merely translations of the information in the Placemat Documents. Mr. Bewsky disagrees. Mr. Bewsky testified that when he received the June Design Drawings, he told Dr. Melnik that these had increased the scope of work.

[156] I find that the June and August Design Drawing increased the scope of work. To give a few examples: (a) they added over 100 electrical and data outlets which in part resulted in the First Change Order; (b) they show work related to the newly discovered hidden cavities in the inner round room on the first floor; (c) the August Design Drawings show small arrows for a tracing room wall to be moved back to create more room; (d) they give details of plumbing work; and (e) they show and specify modifications to the millwork from the Old Office, as well as new millwork to be constructed by Cakwell, which I find goes beyond the reasonable refitting that was intended in the original scope of work. A comparison of the Architectural Drawings to the June and August Design Drawings demonstrates this. While some millwork is shown in the Architectural Drawings, most is not. Dr. Melnik stated that at

the March 14, 2015, meeting that he asked Mr. Bewsky to use the photos of the Old Office to remind himself of how items were to be installed and refit in the new office. He did not recall any further specifications. A reasonable objective bystander would not interpret the photos or that discussion as requiring the level of modifications reflected in the Design Drawings. I also do not accede to the position that these modifications were relatively minor. That conclusion underestimates the amount of work authorized by the notes.

[157] More generally, it was also clear from the evidence that because detailed plans and specifications were not produced prior to the parties signing the Main Contract Document, such as for plumbing, that there were many design and specifications decisions that had to be made as construction progressed. This has contributed to the disagreements about what is or is not an extra, or more often, the extent to which work was above and beyond the original scope of work .

***Dr. Melnik explicitly authorized many extras***

[158] Mr. Bewsky and Dr. Melnik gave conflicting evidence on every extra claimed. An overview of their evidence was provided in the section of these reasons entitled Discussions and Instructions During Construction. Apart from what was in the Design Drawings, if I find work is an extra, I generally accept Mr. Bewsky's evidence on the issue of whether Dr. Melnik authorized the work. There would be no reason for Mr. Bewsky to embark on this work if he had not received instruction from Dr. Melnik to do it. I find that Dr. Melnik was regularly at the site and providing instruction. He had to be, as it is clear from the lack of electrical, plumbing, mechanical, and flooring plans, the Change Orders, and the June and August Design Drawings, that many of the detailed specifications had not been worked out in advance of the parties signing the contract. They were being decided upon as the project progressed, and the conditions of the New Office revealed themselves. Further, even if Dr. Melnik did not explicitly instruct Mr. Bewsky, I find that Dr. Melnik knew the work was being done and he acquiesced in Cakwell doing it. He received invoices which stated that they included extras, which described the work although

not in the detail described by Mr. Bewsky at trial, and Dr. Melnik paid those invoices up the Sixth Invoice.

[159] I address one recurring theme of Dr. Melnik's evidence. Dr. Melnik denied ever hearing the word "extra" or ever being told by Mr. Bewsky that he would be charged any more for work. Mr. Bewsky agrees that for most of the extras claimed, each time Dr. Melnik instructed him, he did not explicitly say words to the effect that this is an extra and he will charge for it. Rather, from time to time he told Dr. Melnik that all the extra work he is asking him to do is an extra. Even when Dr. Melnik agreed that he had instructed Mr. Bewsky to do work, he was reluctant to admit that it was an extra or would result in a charge to him. In his view, he should not have to pay for it because Mr. Bewsky did not tell him that it would cost him more. He sometimes also said that he had "credit" which he expected any charge would be balanced against. While Dr. Melnik challenged every extra, naturally he was more concerned with the extras claimed which are large. For those, he suggested there may have been other ways of addressing the issue, although he did not tender evidence of what those other ways would be. Alternatively, he said he would not have instructed Mr. Bewsky to do the work at all. In closing submissions, Dr. Melnik argued that the evidence that there was a discussion about "no extras and no surprises," should inform the assessment of Cakwell's claims, and as informing his expectation that any extras for which he would be charged would be communicated to and agreed to by him both as to it being an extra, and the amount to be charged.

[160] An example of Dr. Melnik's evidence and his reasoning is the recessing of a wall that was behind the reception area to create some extra room. Whether or not Mr. Bewsky first raised this as an idea, I find that Dr. Melnik instructed Mr. Bewsky to do this work. I find that it is an extra. When it was put to Dr. Melnik that this involved extra work by Mr. Bewsky, he said that he "did not recognize that as an extra" but agreed that he benefitted from it. He said that Mr. Bewsky never said to him that if he recessed the wall, it would cost him any money. He reverted to his evidence that for all changes he had to authorize "dollar amounts as a change order". He referenced that Mr. Bewsky said there would be no surprises, suggesting that this

statement would cover this situation. He then said that if Mr. Bewsky did not tell him it was an extra, how was he to assume it was an extra, and he did not know this would be additional time, suggesting that this was a small amount of work.

[161] I cannot accede to all this reasoning. First, as already discussed, I find that the Main Contract Document contemplated the possibility of extras. I find that “no extras and no surprises” can only reasonably refer to the scope of work then agreed to. If Dr. Melnik authorized an extra, he cannot rely on a previous discussion of “no extras” to justify him not having to pay. Further, if he authorized an extra, it is not a “surprise” that he would be charged for it. Second, extras are assessed in accordance with the principles in *Kei-Ron*. If Dr. Melnik authorized extra work, then so long as he knew or reasonably ought to have known that he would be charged, under contractual *quantum meruit*, he is liable to pay a reasonable price for that work. Third, I do not accept as a general proposition that when he instructed Mr. Bewsky to do work that is an extra, that he did not incur an obligation to pay unless Mr. Bewsky specifically said to him words to the effect that this is an extra and provided him with a price. Fourth, nor do I accept as a general proposition that there were credits somewhere that automatically negated the obligation to pay. This conflates two separate issues. The Main Contract Document did not provide for any allowances except for new millwork.

[162] Having said all that, the heart of Dr. Melnik’s complaint, and for which in my view he has a valid point, is that he was badly surprised by the invoices he received. Some of the amounts claimed by Mr. Bewsky are very large. I understand Dr. Melnik’s frustration that he did not expect to get a large charge. As he said, he did not give Mr. Bewsky *carte blanche* to incur costs. Some extras claimed are so large, or so out of proportion to what would be reasonable in the circumstances (e.g. \$595 to fix a lock) that Dr. Melnik testified that if he had been told that the work would be that much, he would have chosen not to have the work done, thus raising the argument that the claim should be determined under restitutionary *quantum meruit* and unjust enrichment principles rather than assessed under contractual *quantum meruit* principles. Of course, Dr. Melnik could have easily protected himself

by simply asking what the price would be before he authorized the work. Regardless, whether assessed under principles of contractual *quantum meruit*, or restitutionary *quantum meruit* for unjust enrichment (assuming that is found), in my view, this is best addressed under the heading below concerning a reasonable fee or award. As already noted, the state of the evidence does not permit an individual assessment of the reasonable price or award for each extra that is found.

***Mr. Bewsky did not get explicit authorization for some extras claimed, but they were usually impliedly or otherwise authorized***

[163] For some claimed smaller extras, Mr. Bewsky did not have any discussion with Dr. Melnik. He said he did not do so because he knew Dr. Melnik and what he wanted. He said that Dr. Melnik is a particular person and wants things done a certain way. He thought it would save money to do it the way he knew Dr. Melnik would want it done the first time, rather than have Dr. Melnik later ask him why he did it that way.

[164] Most of these claimed extras I have allowed, because although itemized as a separate extra, I often find they are part of a larger extra that has been authorized. Further, the parties had a mutual expectation of high-quality work, and I find that when there was an unexpected condition and there were two ways of addressing it, one of which would produce high quality work, and the other not, that Mr. Bewsky could reasonably assume that Dr. Melnik wanted it done the former way. In other words, based on their long friendship, knowledge of each other, and trust, Mr. Bewsky had a small level of discretion.

[165] As an example, I find that Dr. Melnik instructed Mr. Bewsky to install the second floor T-bar ceiling as high as possible, which was higher than it had been previously. This exposed the elbow of a pipe coming out of a wall, that had previously been hidden by a lower ceiling. I find that Mr. Bewsky reasonably assumed that Dr. Melnik would want that elbow moved so that it was not sticking out below the ceiling. I am confident that Dr. Melnik would not have accepted anything less. Mr. Bewsky has claimed moving that elbow as a separate extra, but in my view,

it was part and parcel of the extra which I find Dr. Melnik authorized, which was raising the ceiling. Alternatively, if there were no such agreement, I find that Cakwell suffered a detriment by doing this work, Dr. Melnik and Melnik Inc. were enriched by it, and there was no juristic reason for the detriment or enrichment.

**What is a reasonable fee or award for the allowable extras?**

***Parties' Positions***

[166] As noted previously, Mr. Bewsky's former calculations of amounts he claimed were owing to Cakwell was not clear. However, by closing submissions, he had reduced his claim by about \$85,000 and put forward an understandable calculation and methodology. He now calculates the amounts owing to Cakwell as follows: (1) the Main Contract Document price (\$628,278.53 including GST), plus the three Change Orders (\$52,558.85, \$64,554.00, and \$17,905.48, including GST), for a total of \$763,296.86 x 80% of this work completed = \$610,637.48; (2) plus the 2018 Extras claim for \$330,515.00 plus GST and the 2019 Extras claim for \$75,045.81 plus GST = \$425,838.85, for a grand total of \$1,036,476.33; (3) less \$532,977.38 in payments made by Melnik Inc., to arrive at a net amount owing of \$503,499.

[167] Dr. Melnik submits that Mr. Ross opines that the value of the work completed by Cakwell using February 2016 pricing is \$570,169.79. Melnik Inc. has paid Cakwell \$532,977.38. These numbers are close enough that no award should be made, especially since Mr. Ross' report does not consider that the parties agreed to fixed price portions of the work (the Change Orders) which turned out to be less than market value. Dr. Melnik therefore submits that the court should not award anything to Cakwell for its claims for extra work. In the alternative, Dr. Melnik submits that if any of the extra claims are allowed, any amount should be reduced off the top as the hourly rate charged by Mr. Bewsky is excessive.

[168] I do not accede to either of these positions, but I have considered elements of each methodology in coming to the assessment of what I conclude is a reasonable price and award. I start by discussing Mr. Bewsky's estimates and Mr. Ross' opinion.

***Mr. Bewsky's estimates of time and value of work are not reliable and are exaggerated***

[169] Mr. Bewsky testified how he calculated the amounts claimed in the 2018 Extras and 2019 Extras documents. At the beginning of the project, he started making notes of what he did but found that he did not have time to do them, so in place of notes, almost every day he took pictures to remind him of what he did. Each picture has a date. The 2018 Extras document took him about a month to create. The list contains extras from the beginning of the project until he stopped working on the job. For each extra he looked at the pictures and figured out how long he thinks it took him to do the work, multiplied by an hourly rate of \$70, and if any materials or other costs were incurred, he then estimated those amounts. He added all these to arrive at the amount claimed. He produced his working papers to show he arrived at each figure. He referred to this list during the testimony to refresh his memory.

[170] Mr. Bewsky testified that his method for creating the 2019 Extras document was the same except he did not have as many or any photographs. Again, Mr. Bewsky had to rely on handwritten and sticky notes he made in 2019 to refresh his memory as to how he came to the various amounts claimed. Many of these extras are from subtrades.

[171] For the following reasons, while I have no doubt Mr. Bewsky did the tasks he said he did as they are supported by the hundreds of photographs in evidence, I have significant concerns regarding the reliability of his evidence regarding the number of hours he said it took to do those tasks. I find that the amounts claimed are exaggerated.

[172] First, Mr. Bewsky did not keep any contemporaneous time records or notes of what he did daily. All he took were photographs which show what was done, not how long it took. He agreed that he should have time records, but said that if he had recorded his time, it would have been "a lot more" than he charged. When asked how he knows that he said "I feel it, I know it. I have been down the road before". I do not accept that evidence for the reasons above and below.

[173] Second, Mr. Bewsky created the 2018 Extras and the 2019 Extras documents at a time when there was a dispute, both gentlemen were upset, and there was pending or actual litigation.

[174] Third, Mr. Bewsky created the 2018 Extras and the 2019 Extras documents, long after the events, sometimes years after. Memories of the time it took to do a specific task would fade over that period.

[175] Fourth, Mr. Bewsky's evidence concerning the Seventh Invoice which was produced a month before the then 2019 trial date, undermines the credibility of his claims. Mr. Bewsky was cross-examined that his Sixth Invoice included everything he had done up to about mid-December 2017. Mr. Bewsky agreed that most of the extras claimed in the 2019 Extras, pre-date December 2017. He also agreed that he did not do a lot of work between the end of December 2017 and the end of February 2018. He said that during that period he obtained quotes from subtrades and maybe put up some shelving in the reception and records room. When asked how to reconcile the Seventh Invoice with the 2018 Extras and the Sixth Invoice, Mr. Bewsky said a lot of it was related to subtrades and the earlier invoice did not have everything in it. He agreed he had some of those subtrade invoices long before 2019. Other subtrade invoices he did not receive until 2019. When then asked why his own work before mid-December 2017 was not included in the Sixth Invoice, Mr. Bewsky said "because I didn't get everything in there". In closing submissions, Mr. Bewsky argued that the invoices were ballpark at the time they were given. It is difficult to believe that Mr. Bewsky missed tens of thousands of dollars of work, particularly when he filed a builder's lien a year before.

[176] Fifth, Mr. Bewsky has billed all his time at \$70 per hour, yet when he gave credit for work that was not done, for example drywalling on the second floor, he credited it at \$40 an hour as that is the rate he said he could hire people to do the work. When Mr. Bewsky was challenged on this, he did not appear to have any difficulty with the inconsistency. If Mr. Bewsky could hire workers to do work at \$40 per hour, then I find that \$70 is not a reasonable hourly rate for all the tasks he

invoiced. It may be reasonable for some tasks, but Mr. Bewsky bears the onus of proof to establish that is so. There is also evidence in Mr. Ross' report that general labour rates are \$35, and project management rates about \$74,50 per hour. Much of Mr. Bewsky's work was doing trades work as opposed to project management. Further, Mr. Bewsky billed \$70 per hour for doing things such as picking up an item from a store, or bringing waste to the dump, which I find is not a reasonable rate when there are cheaper alternatives. He agreed he never told Dr. Melnik he was charging \$70 per hour.

[177] Sixth, on a purely mathematical basis, there are not enough reasonable working hours for Mr. Bewsky to have spent all the time he claims to have done. Cakwell's total invoices, even at \$70 per hour, far exceed what he could reasonably have worked full time or even more than full time. The invoices he has submitted total \$1,045,643.69, not including the two landlord invoices. From this, I subtract his out-of-pocket expenses. The two tabs in the joint books of documents which support his out-of-pocket expenses, including those from the subtrades, total \$303,372.56. However, there are a few other invoices amongst the joint books of documents which are not included in that total. As a result, I increased the out-of-pocket expenses to an estimated \$360,000. The resulting figure is \$685,643.69. I reduced that by GST to 652,993.99. This number should reflect Mr. Bewsky's work alone since he did not have any employees. At \$70 per hour, that is 9,328 hours. Mr. Bewsky worked at most, two years and nine months on the project. He stated that he did not work for a couple of months while waiting for the building permit. He stayed off the job at some point because he wasn't getting paid although I do not find that was a significant period. He completed the Remediation Work which is not included in the above figures. He also did a \$103,000 project for another client during this project. In other words, the assumption that he worked full time on this project for two years and 9 months is favourable to him. Mr. Bewsky stated that he worked 10 to 14 hours per day from the end of 2016 to the end of 2017. Even if I ignore all the above and assume that he worked 40 hours per week, 48 weeks per year, from April 2015 to December 2016, and 60 hours per week, throughout 2017,

the total is 6,240 hours, well below the 9,328 hours his total invoices imply. At \$70 per hour, this suggests that Mr. Bewsky has increased his hours by at least 149%. Even if I adjust these figures for the reduced figures presented by Cakwell in closing argument, the conclusion is the same.

[178] Seventh, apart from the charge per hours, some of the hours charged seem exaggerated. I acknowledge that for most items I have no expertise to determine, for example, how long it should take to do plumbing rough-in, and I am not referring to those items. However, there are some extras claimed, for example, placing a piece of tape under the three stair treads, or painting a railing, where common sense and experience gives some indication of what is reasonable.

[179] Eighth, Mr. Ross' opinion, although with its own caveat, suggests that Mr. Bewsky's estimates of time are exaggerated. I turn to that next.

***Mr. Ross' opinion did not capture all the work done by Cakwell***

[180] To review, based on the information that was provided to him, Mr. Ross opined that the value of the Work if it had been completed was \$909,612.73. The Work includes all extras he could see or determine from the "contract documents", regardless of whether they are contested extras. The invoices for the Main Contract Document plus the three Change Orders total \$732,768.99. If as Dr. Melnik contended during evidence, none of the Work was an extra, then either Cakwell seriously underbid the Work, or the Work included a lot of extras. As indicated in the Appendix, I generally find it is the latter.

[181] Mr. Ross also opined that the value of the Work completed by Cakwell as of March 2018 was \$602,596.07. Cakwell's seven invoices total \$1,045,643.69. Cakwell's revised claim in closing submissions was that it completed \$1,036,476.33 of Work. I will use the latter figure. I conclude from this that either Cakwell's invoices far exceed the value of the Work performed to March 2018 (i.e. they are exaggerated by a factor of about 172%), or the "contract documents" do not

adequately reflect all the Work that Mr. Bewsky states he did. I find that both are responsible for the large difference.

[182] It appears from Mr. Ross' report, and from his evidence that he was not given the 2018 Extras and 2019 Extras documents. These documents provide far more detail than is apparent from the descriptions of work in Cakwell's invoices. Whether or not he was given those documents, after careful review of the appendices to Mr. Ross' report, I have concluded that while Mr. Ross has captured most of the work and extras claimed, he did not capture all of it. I have considered this in assessing the weight I can give to his opinion. Some omissions appear clear even though Mr. Ross was not cross-examined on them. For example, the appendices to Mr. Ross' report do not appear to include the further extension of the stair landing on the second floor (although the original planned extension is noted in the drawings in his report), or the increased height of the glass and railing that was required in that area (the report allows for a 36" to 42" height); the modification of and installation of the built-in seating in the waiting room and some millwork; the uncovering of and framing of the hidden cavities in the inner round room on the first floor and all the modifications associated with those; the additional three counters at the back of the reception area or the modification of the shelving; the TV recess at the sheer wall at the stairwell second floor landing wall (although the art glass enclosure appears to be included), and the creation of and installation of false cedar beams. Those are the major items I noticed. Others are less clear. For example, I do not see anything specifically referencing the creation of the recessed junction boxes ("J-boxes") or the installation of the dental chairs and x-ray machines. Mr. Ross was not cross-examined on these items, and I have considered the possibility that they are already included in the plumbing and electrical charges, but I am concerned they are not. Another example is the remodelling of the formerly square light fixtures and the creation of false beams in the office. Again, it is possible this is included in supplementary lighting, but I am concerned it is not.

[183] Returning to calculations of the amount of inflation in Cakwell's invoices, by way of example only to demonstrate how missing work affects the inflation

calculation, if Mr. Ross was not aware of \$100,000 of extra work, and that was added to each Mr. Ross' opinion of the value of the Work completed (\$602,596.07), and Cakwell's revised claim of work completed (\$1,036,476.33), the resulting figure is that Cakwell has charged 162% of the value of the Work.

[184] Cakwell did not provide any expert evidence of the value of the work Mr. Bewsky says he performed, and the methodology in Mr. Ross' report does not allow me, except for a few items where there can be direct comparison, to determine what a reasonable amount would be for individual items claimed. I have considered Mr. Bewsky's evidence of how long it took him to do tasks, but for the reasons already discussed, I have significant concerns regarding the reliability of that evidence. Nevertheless, Cakwell did extra work, and should be compensated for it. A difficulty in assessment is not a bar to recovery: *Penvidic v. International Nickel*, 1975 CanLII 6 (SCC), [1976] 1 S.C.R. 267. I conclude that the assessment of a reasonable price and award must be made on a more global basis.

#### **Assessment of Amount**

[185] I do not accede to Cakwell's calculation of the amount owing because: first, I do not accept that the original scope of work and the three Change Orders were 80% complete; second, I have found that not all amounts claimed are extras; and third, I have found that the amounts claimed are exaggerated.

[186] I do not accede to Dr. Melnik's position because: first, it is based on Mr. Ross' opinion that the value of the Work completed was \$602,596.07 and I have found that Mr. Ross was not aware of the full amount of extra work done; and second, I find the 2018 costs should be used since the project did carry on until the end of 2017, with seemingly much of the work being done in 2017.

[187] As for the percentage of work completed, the pictures taken of the New Office in March 2018 are compelling and support that the renovation is not near complete. I accept Mr. Ross' opinion that based on the Work he assumed, that the project was about 66% complete. That may be a little low if both the value of Work as if

completed, and the value of the Work actually completed, were increased to account for extra work of which Mr. Ross was not aware, however, it would not change much, at most a few percent. Similarly, in that case, any calculation of the percentage difference between market value and what was charged would decrease a few percent.

[188] As for 2018 Extras and 2019 Extras in the Appendix, as summarized above, the total amount of claimed extras which I have found to be extras (subject to reasonable cost and any set off), is \$298,623. I have concluded I must reduce that figure, and it should be in the range of 165%. I have arrived at this figure by considering that on a mathematical hours approach in which I made favourable assumptions for Cakwell, the minimum inflation was 149%. I have also considered that Mr. Ross' opinion suggests that the inflation is in the range of 172% but that is before any downward adjustment that would have to be made as I find that he was not aware of the full extent of the extra work. I have also considered that for some extras there must be a set-off for work that would have been done in any event as often it was an issue of degree of the extra work that was really in dispute (for example the millwork). The resulting figure is \$180,984.

[189] Taking all these factors into account, and using the methodology of Cakwell which in my view is logical, one possible starting point calculation is: (1) the percentage completed of the original contract price plus the three Change Orders, at 66% ( $\$763,296.86 \times 66\% = \$503,775.93$ ); (2) plus the amount claimed for allowed extras reduced by inflation of 165% ( $\$298,623/165\% = \$180,984$ ); (3) less the amount paid by Melnik Inc. ( $\$532,977.14$ ); leaving the net amount of \$151,783.

[190] I have also considered taking a mathematical approach based only on hours worked, assuming 40 hours per week, 48 weeks per year, from April 2015 to December 2016, and 60 hours per week for 48 weeks in 2017. That is a total of 6,240 hours. However, I deduct five months (800 hours) for: the two months Mr. Bewsky said he did not work before the building permit, the time he took away to do the contract for the other client, the time for the Remediation Work, the days that

Ms. Safi and Dr. Melnik say they attended the site and no one was working, and the days Mr. Bewsky said he was not working because he had not been paid. That reduces the number of hours to \$5,440 hours. At \$60 dollars per hour (because many tasks should not have been billed at \$70 per hour and could have been billed at \$35 or \$40 per hour) that is \$326,400 plus \$360,000 in estimated out of pocket expenses, for a total of in \$686,400, less the amount paid by Dr. Melnik of \$532,977.14, leaving a total owing of \$153,423.

[191] Considering all the above, and doing the best I can on the evidence, I assess that the amount owing by Dr. Melnik and Melnik Inc. to Cakwell is \$150,000 for all work completed, and a builder's lien is declared for that amount.

**Issue 3: Timing of Completion**

**Legal Principles**

[192] Dr. Melnik alleges that there was a contractual term regarding completion time. However, even if the court finds that there was no such express contractual term, the law may imply a term that the work will be completed within a reasonable time: *Diamond 11 Excavating and Demolition Ltd. v. Dhunna*, 2018 BCSC 2230 at para. 50.

[193] Where delay is caused by the owner, he cannot insist on completion on the original completion date and refuse to extend the time for completion: *Kei-Ron* at para. 187, citing *Goldsmith* at p. 5-14.

**What if any are the terms of the renovation contract with respect to completion time?**

[194] None of the written contract documents have a term regarding the completion date. The parties agree that they had a discussion regarding the completion time, but disagree on some aspects of what was said, and whether it was a contractual term.

[195] Mr. Bewsky testified that prior to signing the contract, he told Dr. Melnik that he was a "small guy with not a lot of manpower" and that the only way he could

complete the renovation was one floor at a time, and that the main floor would take about six months, and the second floor would be about three months after that. When asked from when the time started to run, he said he should have been clearer that it was from when the building permit was issued. Despite Mr. Bewsky's testimony in cross-examination that he and Dr. Melnik agreed to this term, in closing submissions Mr. Bewsky argued that these were "projections" about how long the renovation would take, and not a contractual term.

[196] Dr. Melnik testified that at the March 14, 2015, meeting, Mr. Bewsky told him that he would get him occupancy of the first floor within three months of signing the renovation contract, and the second floor three months after that. Dr. Melnik testified that he was concerned that Mr. Bewsky did not have the subtrades necessary to do the work, as Mr. Bewsky had only done work for him alone at the Old Office. He said to Mr. Bewsky that this was complicated and a dental office, and Mr. Bewsky replied that he could build a hospital. Dr. Melnik testified that he selected Cakwell's bid because: (1) Mr. Bewsky had knowledge of the Old Office through previous work and the Removal Contract; and (2) Mr. Bewsky promised him an occupancy date that was sooner than the bids from other contractors. Dr. Melnik submits that Mr. Bewsky's statement was not simply a projection. It was a term of the contract, and it was important to him. Ms. Safi recalled that Mr. Bewsky said three months for the main floor and an additional three months for the upstairs. She recalls Dr. Melnik saying to Mr. Bewsky that he was giving the contract to him because Mr. Bewsky is the one who will get him in earlier than the other contractors.

[197] For the reasons below, I find that at the March 14, 2015, meeting, Mr. Bewsky stated that Cakwell would complete the work on the first floor within six months, and the second floor three months after that. I further find that it was implied that this period did not begin to run until the renovation work could actually start, which was when the building permit was issued. I find that these were contractual terms. As the building permit was issued at the end of June 2014, I find that the time began to run then, and that barring any extensions, Dr. Melnik would be able to practice out of the first floor by the end of December 2015.

[198] I do not accept Dr. Melnik's evidence that Mr. Bewsky told him that he would be able to move into the first floor within three months of signing the Main Contract Document because such a term makes no sense in the circumstances. As of March 14, 2015, Dr. Melnik did not have a building permit or even a demolition permit. There was no evidence that Dr. Melnik was assured he would be granted a building permit by a certain date, and until he had that, the renovation could not commence. Dr. Melnik did not have electrical, plumbing, mechanical, or flooring plans. Dr. Melnik agreed that he did not have the building plans finalized until June 2015 and he did not give the June Design Drawings to Mr. Bewsky until after June 15, 2015. He did not get the building permit until June 24, 2015. He agreed that he knew that completion within three months of March 2015 was not going to happen. I do not accept Ms. Safi's evidence for the same reasons.

[199] I have considered that this alleged term was not in the Main Contract Document, however, I still conclude that Mr. Bewsky's statement was not simply a projection. Mr. Bewsky testified that he and Dr. Melnik agreed to this completion time. There is no evidence that in any of the several meetings during the renovation, that Mr. Bewsky denied that they had an agreement regarding completion time. In fact, he continually promised completion times that he did not meet.

[200] Mr. Bewsky and Dr. Melnik both submit, and I agree, that the time to completion term is based on and only relates to the original scope of work that was contemplated by the parties at the time, and not to work necessitated by unforeseen conditions that would delay the work, or to increases in the scope of work, or other events beyond the control of Mr. Bewsky. For that, the law extends the time to complete for a reasonable time to do that other work, and I turn to that next.

**Should the time to complete the first floor be extended?**

[201] As Mr. Bewsky only got Dr. Melnik into the first floor, and the second floor was largely not complete when Cakwell's work ceased, it is the time to the former which is most relevant.

[202] Dr. Melnik refers to Mr. Ross' opinion that based on the assessed man hours to complete the Work, a timeline of eight to nine months from the issuance of the building permit should have been sufficient to perform the complete Work. Cakwell argues that Mr. Ross' opinion should be given limited weight. The assessed man hours is a small portion of the factors that affect time to completion, such as the availability of subtrades, the delivery of plans and specifications, and the extra work.

[203] In my view, Mr. Ross' opinion is only one factor to consider. Mr. Ross' opinion is based on the original scope of work plus the extras he assumed. As this was more than the original scope of work, I conclude that the parties agreed to a slower pace of work, being nine months for the original scope of work only. This is the starting point. Nonetheless, Mr. Ross' opinion is of assistance in considering what was originally a six-month timeline that ballooned into 29 months.

[204] Mr. Bewsky referred to the following as causing delays beyond his control, and which he submits justify an extension of the completion date:

- a) Increases in the scope of work. These were: (i) the Remediation Work; (ii) the three Change Orders; and (iii) the extras;
- b) Dr. Melnik not having plans and specifications done in a timely way;
- c) Dr. Melnik not responding to queries in a timely way; and
- d) Dr. Melnik not paying invoices in a timely way.

[205] Dr. Melnik had different submissions as to the cause of the delay, but as I have found a contractual term, the onus is on Cakwell to establish that there should be an extension. Dr. Melnik's arguments as to the cause of delay are only relevant to the extent that they rebut Mr. Bewsky's arguments, and I do not find they do as they are not related. As a result, I will only briefly reference Dr. Melnik's arguments at the end of this section.

***Increases in the Scope of Work***

[206] Mr. Bewsky testified that the Remediation Work caused delays. When entering into the Main Contract Document, he had no intention of doing the Remediation Work. I accept that evidence as it is consistent with the Main Contract Document which excludes that work. Dr. Melnik agreed that the Remediation Work on the first floor had to be addressed before the other renovation work could be done. He agreed to Mr. Bewsky doing the Remediation Work. Dr. Melnik stated that Mr. Bewsky did not tell him this was going to delay the renovation, and he expected Mr. Bewsky would have a crew. Mr. Bewsky agreed that he did not tell Dr. Melnik that the renovation would be delayed if he did the Remediation Work. Mr. Bewsky said it was “kind of obvious” that it would.

[207] I find that the Remediation Work increased the time to complete the renovation, and the time should be extended. I do not accept Dr. Melnik’s suggestion that the Remediation Work should not have resulted in delay. In my view, it would do so if Mr. Bewsky did the work, and Dr. Melnik agreed to this. Mr. Bewsky testified that the moisture mitigation work added about four weeks. The second-floor remediation invoice is about half the moisture mitigation invoice. In the absence of any other evidence, I increase Mr. Bewsky’s approximately four weeks estimate by one half. Accordingly, I find that the completion date must be extended by 1.5 months.

[208] Dr. Melnik agrees that the completion time ought to be extended by the fact that there were three agreed Change Orders which increased the scope of work. Dr. Melnik submits that the Change Orders were approximately 20% of the cost of the original contract price, and one way to assess this would be to increase the time by 20%. I agree with this approach, with some refinement of the calculation. The original price was for both floors with an estimate of six months for the first floor and three months for the second floor. I therefore assume that roughly two thirds of the base price was attributable to the first floor, and the appropriate denominator is therefore \$418,852.35. The first two Change Orders were for both floors, and making the same adjustment for them, and considering that the Third Change Order

was attributable to the first floor only, the resulting figure is about 25%. I find that the completion date must be extended by another 1.5 months.

[209] As for the 2018 Extras and the 2019 Extras, I have allowed \$150,000. This is roughly 35% of the base price which I have attributed to the first floor. I find the completion dates should be extended by another two months for this work.

***Dr. Melnik not having plans and specifications done in a timely way***

[210] Mr. Bewsky testified that before he bid on the project, Dr. Melnik should have provided him with all the specifications, designs, drawings, and plans so everything went smoothly. Instead, Dr. Melnik provided these as the project went along, and this caused delays. Mr. Bewsky referred to the events concerning the plumbing as being typical of how work on the project went. Dr. Melnik did not have mechanical drawings and the plumbing subtrade wanted some form of drawings. In June 2015, Mr. Bewsky sent the June Design Drawings to the plumbing subtrade. In August 2015, the plumbing subtrade asked for details of certain designs so they could continue to move forward with the rough-in designs. Eventually, Mr. Bewsky did the drawings. He sent his own drawings to Dr. Melnik and the plumber on August 22, 2015. He prepared another set dated September 19, 2015, at the request of Dr. Melnik, with changes. Dr. Melnik wanted to know the difference in cost between copper and Duratex. On October 20, 2015, Mr. Bewsky drew up a third set of plans, because copper was going to be too expensive, and Dr. Melnik was concerned regarding the volume of air in the lines. Mr. Bewsky suggested individual dedicated lines running from the compressor in the mechanical room to each chair for the compressed air, resulting in eight to 10 lines of various lengths. He received the go ahead from Dr. Melnik in late October or November 2015. By then, the plumbers had left the job to go somewhere else. While waiting, Mr. Bewsky and the plumber worked on the second floor to do what they could, but then the plumber had to leave because there was nothing for them to do. Once Mr. Bewsky got approval from Dr. Melnik, the plumber had to put the project back into their time slot. Mr. Bewsky estimates this was a 1.5 to two-month delay.

[211] Mr. Hankins, the principal of the plumbing subtrade testified. He said this was a design-build contract with his company. Usually, he would either receive drawings from a mechanical engineer, or they would create their own plans, but this was more complicated as it involved air, suction and water lines for dental equipment. He testified regarding the instructions they needed, and to which they could not get answers. He summed it up as “the whole thing was just pieced together”. He was waiting for information from Mr. Bewsky who appeared to him to be on top of matters. Mr. Bewsky could not give him answers. He understood Mr. Bewsky was waiting for instructions from Dr. Melnik. Mr. Hankins estimated that the work should have taken a few weeks. Eventually, the lack of instructions, and Cakwell’s failure to pay his company’s invoices, resulted in him leaving the job. I will return to this later. Mr. Hankins thought that the choice to use the plenum, once it was discovered, was that of Mr. Bewsky.

[212] Turning to other subtrades and specifications, Mr. Bewsky states that Dr. Melnik did not produce flooring plans until October 2015 and produced revised plans in January 2016. Dr. Melnik said that Mr. Bewsky did not have a single wall up at the time, so in his view, delivery of the flooring plans did not delay Mr. Bewsky; nor did Mr. Bewsky ever tell him he was being delayed because he didn’t have flooring plans. Dr. Melnik said if it had appeared to him that Mr. Bewsky was near to requiring the flooring plans, he would have given them to him earlier.

[213] Mr. Bewsky also testified that the electrical work was delayed because the switching plan was not produced. Many times, he and Dr. Melnik discussed switching. Mr. Bewsky testified that if he did not have the switching, he could not get the electrical permit and could not close the walls. Mr. Bewsky referred to the January 2016 email stating that he needed information to move forward. The electrical work took a long time to complete because they were waiting for the lighting and switching, and it went into 2017.

[214] Finally, Mr. Bewsky referred to the lack of HVAC services plans. In October 2015, Mr. Bewsky received rough drawings from the sheet metal subtrade,

Mr. Bashko. The subtrade was waiting for instructions from Dr. Melnik on exhaust fans, and on one of the roof-top units which was to be relocated. He asked Mr. Bashko to deal directly with Dr. Melnik and work it out because “it was taking too much time, and I was always getting involved in these little discussions”.

[215] Dr. Melnik argues that Mr. Bewsky did not provide specific evidence that established how the project was impacted and delayed. For example, Mr. Bewsky did not testify that because the plumbing could not be completed, and there was a period until the plumbers could return, that there was nothing else for him to do, or that he had to cancel some other work. Rather, Mr. Bewsky’s evidence was that he was working full time other than days he was working for the other client in early 2016, or away. He said that he had enough work to do every day.

[216] I find that Mr. Bewsky knew going into this contract that there were no detailed plans and specifications. He testified that he knew Dr. Melnik was not going to provide further drawings unless the subtrades provided them. That is also corroborated by item 20 of the Construction Notes which states “Provide any additional drawings and schedules, such as Mechanical and Electrical drawings, to the Architect.” Mr. Bewsky’s and Mr. Hankins’ evidence establishes that the plumbing work was complicated, and there was a period while specifications were being worked out, that the plumbers did not work. However, Cakwell has not established that this caused delay to the project itself, as opposed to the plumbing work. Mr. Bewsky stated that there was always work for him to do. I appreciate that construction generally must follow a sequence of tasks, but there was no evidence for example, that Mr. Bewsky had a trades schedule, and that a framing and drywall crew had to be cancelled because the plumbing rough-in was not completed. There was no evidence that the work had to stop on the renovations overall because he could not move forward on the plumbing. Mr. Bewsky’s most specific evidence was with respect to the plumbing. The evidence with respect to the other subtrades is much weaker. Mr. Bewsky’s evidence with respect to those was simply conclusory statements of delay without any evidence of how the project overall was impacted.

[217] In summary, I find that Cakwell has not established that the completion time should be extended because of alleged delay in providing specifications.

***Dr. Melnik not providing instructions in a timely way***

[218] Mr. Bewsky testified that he did not get timely responses from Dr. Melnik to his questions, and this resulted in delay. Mr. Bewsky referred to a few emails in evidence where he asked Dr. Melnik for instructions. Dr. Melnik argues that Mr. Bewsky's assertion that he did not get timely instructions is not supported by the documentary evidence. Further, at no point did Mr. Bewsky testify how he was impeded in doing work. Mr. Bewsky agreed there was always work to do. If he was waiting for instructions, he could have been doing other work, such as on the second floor. Dr. Melnik submits that the evidence does not establish that any such delay was caused by him.

[219] I am not persuaded that there was any delay in Dr. Melnik providing instructions when requested. For example, with respect to the January 19, 2016, email, Mr. Bewsky had all his answers within about a week. With respect to the November 6, 2015, email, Dr. Melnik responded the next day. Further, it is hard to envision for example, how questions about paint colours impacted the work when, at that point, no walls were completed. Mr. Bewsky's evidence was vague statements that the timing of Dr. Melnik's responses resulted in delay.

[220] Related to this, Mr. Bewsky alleged that there was a delay related to the timing of Dr. Melnik's decision about the artwork installation. Mr. Bewsky testified that he had asked Dr. Melnik a number of times what the artwork was going to be and when it was going to be installed. Believing that the artist would use a lift, Mr. Bewsky testified that he could not do the framing of walls until the artwork was done because it would have been easier for the artist to complete the artwork installation if no walls were installed. It was suggested to Mr. Bewsky that the artist could have used scaffolding on the beams, just as Mr. Bewsky had when he worked on the ceiling. Mr. Bewsky agreed that he did not know what the artist was going to use to access the ceiling. He also agreed that some walls had to be in place as the

artwork was going to come down over beams to those walls. Ultimately, Mr. Bewsky agreed that it was possible he could have framed the walls on the first and second floors, and the artist could have done their work after, but he thinks that framing the walls on the first floor would have delayed the artist.

[221] I am not persuaded by Mr. Bewsky's evidence that the timing of the decision on the artwork resulted in a delay to the renovation. By November 2015, Dr. Melnik had decided not to proceed with the artwork and advised Mr. Bewsky of this. By then, no walls were erected or the plumbing or electrical completed.

***Dr. Melnik not paying his invoices in a timely way***

[222] Mr. Bewsky testified that Dr. Melnik not paying the invoices in a timely way made it difficult for him to work and hire and pay subtrades. He and Dr. Melnik agreed that when he received an invoice, he was to pay promptly. He explained to Dr. Melnik that he had to pay subtrades, and by the time he has sent an invoice to Dr. Melnik some time has advanced, so payment that week would be good. Dr. Melnik submits that these assertions are not supported by the documentary evidence which show when he received and paid invoices. Sometimes he received invoices weeks after the date of the invoice.

[223] I am not persuaded that any delay in the payment of invoices had an impact on the project. The dates Dr. Melnik received and paid invoices are summarized in the Chronology of Events section of these reasons. There was some delay in payment of the second and third invoices. All other invoices were paid promptly. Again, Mr. Bewsky's evidence that the delay made it difficult for him to hire trades and that this resulted in delay is a conclusory statement, devoid of any specifics or corroborating evidence. The only possible exception is the plumbing work. Mr. Hankins testified that when he was not getting answers he needed for the specifications, and when he was not getting paid, he decided that his company would no longer work on the project. His only involvement after that was that Mr. Bewsky persuaded him to allow Mr. Bewsky to do the remaining plumbing work, and he would come in and look at it, and if he thought it was acceptable, he would

call in the plumbing inspector. However, again there was no evidence from Mr. Bewsky that he attempted to replace the plumbing subtrade, and could not, or how this impacted the project overall, or even that he had no funds to pay the plumbing subtrade. By this time, Cakwell had billed 40% of the base price, and I find that the work completed at that stage was not 40% of the scope of work, and the renovation was already significantly behind and past the promised completion date. Mr. Bewsky knew Dr. Melnik had to show progress on the project to obtain a loan draw.

[224] In summary, Cakwell has not met the burden of showing that a delay in payment caused a delay in the work.

**Conclusion**

[225] Based on delays I have found above, I find that the contractual term for completion of the first floor is extended another five months, from the end of December 2015 to the end of May 2016. The period of delay is therefore 18 months from the beginning of June 2016 to the end of November 2017.

[226] Dr. Melnik's arguments regarding the cause of the delay were:

- a) Mr. Bewsky working alone and not hiring any crews;
- b) Mr. Bewsky's lack of experience as a general contractor;
- c) Mr. Bewsky not working consistently on site;
- d) Mr. Bewsky's inability to get along with sub-trades; and
- e) Mr. Bewsky intentionally not prosecuting the work in a timely manner (or hiring the necessary subtrades) because of his erroneous belief that he was not being adequately compensated.

[227] In my view, none of these rebut Mr. Bewsky's arguments, so it is not necessary to address them further. However, of the above, I find that a) was a major factor in Cakwell not completing the renovation in time. This was not a one-person

job. Cakwell needed subtrades and a crew to do this work within the contractual timeline. I accept Dr. Melnik's and Ms. Safi's evidence that Mr. Bewsky admitted this was a big job for him to do alone, and that he promised on multiple occasions that he would hire a crew. For some reason he did not. I am not persuaded that it was impossible to hire people, nor did Mr. Bewsky rely on this. He felt he did not need a crew for most of the project. While Mr. Bewsky is a skilled tradesman who does quality work, in my view, Cakwell was simply not equipped to do a project of this scope in the timeline Mr. Bewsky promised to Dr. Melnik.

#### **Issue 4: Counterclaims**

[228] Dr. Melnik makes counterclaims arising from: delay; credits for work not done in accordance with the renovation contract; and Cakwell filing a lien.

#### **Legal Principles**

[229] The purpose and general measure of an award for damages for breach of contract is to put the injured party, so far as money can accomplish it, in the same position as if the contract had been performed. The injured party must establish that it has suffered a loss, and that it was caused by the breach. The damages which the injured party may receive are limited by the principle of remoteness to those that may fairly and reasonably be considered either to arise naturally from such breach, or which were within the reasonable contemplation of the parties when they entered into the contract. Damages include an assessment of reasonable possibilities: *Naylor-Group Inc. v. Ellis-Don Construction Ltd.*, [2001] 2 S.C.R. 943 at para. 85.

#### **Delay Claims**

[230] Dr. Melnik submits that because of Cakwell's delays, he and Melnik Inc. suffered three types of business losses: loss of revenue, extra rent, and storage fees.

#### **Loss of Revenue**

[231] Dr. Melnik testified that the biggest loss suffered was the loss of confidence of his referral sources, which include general dentists. He stated that dentists did not

want to refer to him when he was working out of another dentist's office. The reason why dentists did not refer to him is inadmissible hearsay. Dr. Melnik did not tender any admissible evidence from his referring dentists as to why their referrals to him have declined. However, I can address this claim by discussing the more fundamental proposition advanced by Dr. Melnik, not based on objectionable hearsay, which is that his referrals declined when he was in the temporary office space, and increased when he started practicing in the New Office. From this, Dr. Melnik asks the court to infer that the reason his revenue declined was because he was practicing out of a temporary office.

[232] After Dr. Melnik moved out of the Old Office in June of 2014, and until June 2015, he rented space from Dr. Wong which came with restrictive evening and weekend hours. Dr. Melnik stated that the experience was miserable: it affected his financial health, and relationships with referring dentists and his employees. He testified that his two best referring dentists stopped referring to him. In cross-examination, Dr. Melnik acknowledged that he did not have the building permit until June 2015, one year after he started using Dr. Wong's office, and he agreed that to the extent he lost patients during that year, that was not the responsibility of Cakwell. Dr. Melnik rented space from Dr. Yu commencing in July 2015. The conditions were better. He and his staff were able to work three days per week. However, space was limited, making his and his staff's work inefficient. He was unable to treat several patients concurrently. He agreed that he could meet patient demand, but it was challenging. He did not turn work away.

[233] Ms. Charlene Henry, the chartered accountant for Melnik Inc. testified. She identified financial statements she prepared. She has had about 500 dentists and 30 orthodontists as clients over her career and stated that orthodontic practices generate referrals from dentists and siblings of patients.

[234] Ms. Safi stated that starting in 2009 she evaluated her performance by preparing a summary of all the patient "starts" that Dr. Melnik had, based upon a review of her appointment books. She would report this information to Dr. Melnik

yearly. Dr. Melnik explained that an orthodontic “start” is the start of a series of procedures that, over time, pays a professional fee of \$6,400. It takes about a year to earn that fee. This fee was constant for the period from 2013 until 2018. The current fee is \$8,200 per start. It increased incrementally from \$6,400 in 2018 to the current amount in the intervening years starting in 2019.

[235] Dr. Melnik submits that the average number of starts from 2013 to 2018 was about 10 to 11 per month. Immediately after moving into Dr. Wong’s practice, the number of starts dropped off to 5-6 per month and remained that way through to the end of 2018. Dr. Melnik stated that his two best referral sources started referring to him again when he moved into the New Office. Ms. Safi testified that only one of the two best referral sources started referring again in 2018. No evidence of the number of starts after 2018 was in evidence. Dr. Melnik submits that his practice revenue correspondingly started to fall in 2014 and continued to 2019. It dropped further during the time of the COVID-19 pandemic in 2020 and 2021 and started to recover thereafter. It has not returned to the income he earned prior to moving out of the Old Office. He submits that there has been a substantial loss in practice revenue that is causally connected to the loss of patient referrals from referring dentists and the length of time which Dr. Melnik was working out of the dentist’s offices. Dr. Melnik submits that recognizing that this is “not a perfect equation” and that there could be loss of starts from other factors, the evidence is sufficient to establish that some loss of starts is attributable to the delay. Taking other possible causes of the loss into account, he claims one year of loss at five losses monthly, for a total of 60 lost starts, at \$6,400 per start, for a total claim of \$384,000.00 in lost revenue.

[236] Mr. Bewsky argues that a causal connection between Dr. Melnik’s decline in revenue, and any delay has not been proven. Dr. Melnik had already experienced a drop in referrals when he moved to Dr. Wong’s office and was there for a year. Dr. Melnik did not lead any evidence from those dentists as to why their referrals decreased, or why they later increased. Dr. Melnik could have called those dentists to give evidence. Mr. Bewsky argues that it is possible that the damage was irretrievably done by the time the building permit was obtained or when the

renovation should have been completed. There are other possible causes such as the location of the New Office compared to the previous location of the Old Office at Metrotown, and competition from elsewhere. In summary, Dr. Melnik's argument as to causation is speculation and he has not met the burden of proof.

[237] It is useful to set out the starts and revenue in table form, because in my view, while the number of starts decrease at the time of the move to the temporary office in 2014, contrary to Dr. Melnik's evidence, the starts have not increased. The table below summarizes the revenue and starts in evidence up to the end of 2018.

Dr. Melnik stated that the typical fee for each start from 2013 to 2018 was \$6,400. However, I calculate that based on the number of recorded starts during that period, the average fee per start was \$5,527, or about 86% of the full fee. I conclude that not all starts result in a full fee.

Year	Revenue	Starts	Typical Fee per start	Actual Fee per start
2012	\$546,155			
2013	\$549,535	123	\$6,400	\$4,468
2014	\$494,233	102	\$6,400	\$4,845
2015	\$402,191	62	\$6,400	\$6,498
2016	\$402,979	62	\$6,400	\$6,450
2017	\$324,110	63	\$6,400	\$5,145
2018	\$316,703	55	\$6,400	\$5,758

[238] The table above does show a decrease in the starts, and a monthly breakdown provided by Ms. Safi, indicates that the decline in 2014 started after the practice moved to its temporary location. However, the table below showing the revenue after 2019 does not support Dr. Melnik's argument that starts increased after he moved his practice to the New Office, which is one of the pillars of his causation argument. Dr. Melnik and Ms. Safi did not provide the number of starts for 2019 to 2023, but through the revenue for those years which is in evidence, and Dr. Melnik's evidence of the fee he charged for starts in those years, the number of starts can be calculated. I have done those calculations based on Dr. Melnik's evidence of the current fee which has incrementally increased since 2019 (I

assumed an equal increase each year to arrive at the current fee). I have also done the same calculation based on the conclusion that not all starts will result in a full fee. I have calculated those starts based on 86% of the full fee. The resulting number of starts are in the table below:

Year	Revenue	Typical Fee per Start	Starts Calculated Based on Typical Fee	Typical Fee at 86%	Starts Calculated Based on 86% Fee
2019	\$319,606	\$6,760	47	\$5,814	55
2020	\$217,424	\$7,120	31	\$6,123	36
2021	\$249,980	\$7,480	33	\$6,433	39
2022	\$369,533	\$7,840	47	\$6,742	55
2023	\$367,640	\$8,200	45	\$7,052	52

[239] This table shows that while Dr. Melnik's revenue has shown a gradual increase, it is not from an increase in starts, but from an increase in the fees he charges. His starts have remained relatively constant since 2014.

[240] I find that Dr. Melnik's has not proven that the decline in his revenue or starts is a result of the period of delay. First, a correlation for only one of the two propositions he advances to infer causation (a decline in starts commencing in June 2014) does not prove causation. Second, when Dr. Melnik moved out of the Old Office, that was a full year before the occupancy permit was granted, and two years before I have found that Cakwell should have had Dr. Melnik into the first floor of the New Office, in June 2016. By then the reduced number of starts had been in place for two years. Third, despite that Dr. Melnik stated that referrals picked up after he moved into the New Office, implying a causal connection between the two (the second of his two propositions to infer causation) in fact that is not what happened. Revenues continued to decline, up until the time of the Covid-19 pandemic during which time they remained low. Revenue has increased since then, but as the table above demonstrates, that is from an increase in fees. Dr. Melnik did not tender in evidence the actual starts from 2019 to 2023, but they can be reasonably determined. Fourth, Dr. Melnik's anecdotal evidence that on the first day he commenced practicing in his New Office, he had a referral from one of his referring

dentists, does not prove causation. Fifth, Dr. Melnik's causation argument implies that starts would have rebounded to 10 to 11 starts per month once he was in the New Office. That has not taken place. Sixth, even if there were a causal link between being in temporary office and referrals, there is nothing to suggest that the lasting decline has been from the additional 18 months in the temporary office space as opposed to the first two years for which Cakwell cannot be responsible. No evidence was called from any of the referring dentists as to why they were no longer referring to Dr. Melnik.

[241] In coming to this conclusion, I do not discount the significant inconvenience the delay caused Dr. Melnik and his staff. However, Dr. Melnik has not established causation on a balance of probabilities.

***Rent***

[242] Dr. Melnik claims rent he paid rent for the period of delay. I find that but for the delays caused by Cakwell, Dr. Melnik would not have had to pay rent for 18 months. Dr. Melnik testified that he paid approximately \$2,000 to 2,200 per month rent. I award 18 months at \$2,200 per month for a total of \$39,600.

***Storage Fees***

[243] Dr. Melnik claims the cost for the BigSteelBox rental to store his office equipment and furnishings until they were moved into the New Office. I find that but for the delays caused by Cakwell, Dr. Melnik would not have incurred this cost during the period of delay. The total amount paid by Dr. Melnik to BigSteelBox between June 2016 and the last payment on October 18, 2017, is \$10,286, and I award this amount.

***Credits Claims***

[244] In closing submissions, Dr. Melnik claimed for the remediation costs of Mr. Bewsky not installing Air Renew Drywall in some areas, and not installing non-ClimaPlus ceiling tiles, and for the replacement cost of windows that Dr. Melnik alleges fractured because Cakwell did not insulate between them and a wall built in

front of them. In total, Dr. Melnik claimed hundreds of thousands of dollars in remediation costs and expenses for these. However, I had already ruled during the evidence that these claims could not be advanced as they were not raised in the pleadings, nor had any discovery been given with respect to them. The claims that could be advanced were the difference in price between the Air Renew Drywall and regular drywall, and the difference in price between the non-ClimaPlus ceiling tiles and ClimaPlus tiles. I therefore address only these narrower permitted claims. There was no evidence of the difference between the price of these items, and therefore Dr. Melnik has failed to prove those losses.

[245] Dr. Melnik also claims a credit to resolve what he calls the “alternative solution”. This involved replacement of the windows on the southeast portion of the second floor with metal and plywood so kitchen cabinets could be attached, and the building inspector’s requirement that those walls be fire-rated. Dr. Melnik asked Mr. Bewsky to deal with this, and Mr. Bewsky did not, saying he had to take one step at a time, and he was not ready for that. Implicit in this argument is that Cakwell had an obligation under the renovation contract to do this work. Dr. Melnik testified that he made multiple trips to city hall over the years, including meeting with the fire chief. The city required a consultant to produce drawings. He estimated he spent two weeks of his time, full time, to address this. Dr. Melnik claims 80 hours at \$50 per hour for a total of \$4,000. Mr. Bewsky submits that there is no evidence that this was something that was required to be done under terms of contract.

[246] I dismiss this claim. There is nothing in the contract to suggest that it was Cakwell’s responsibility to deal with this issue. The renovation contract refers to fire separation work, but I interpret that as the construction work itself.

[247] Dr. Melnik testified regarding other smaller credits which he felt he deserved, but which he could not quantify, but they were not advanced in closing argument. As a result, I do not need to address them.

### Lien Bond Costs

[248] Dr. Melnik testified that the landlord required him to remove the lien filed by Cakwell in order to keep his lease. Dr. Melnik has paid \$10,201 per year for a lien bond since 2019 and claims \$61,201. Dr. Melnik submits if this court finds that the amounts paid to Cakwell by Dr. Melnik equal or exceed the value of the work performed, then Dr. Melnik ought to be awarded the full sum of \$61,201, as Cakwell had no entitlement to a lien. If the court finds that there is some amount owing to Cakwell, then an adjustment should be made to the award because if the lien had been less then Dr. Melnik would have had to pay less to secure its removal. Dr. Melnik characterizes this as being claimable as an “out-of-pocket expense”. He specifically submits that he does not frame this as a claim for damages for abuse of process for wrongfully filing a lien claim, as recently discussed in *601 Main Partnership v. Centura Building Systems (2013) Ltd.*, 2024 BCCA 76, nor does he advance a claim for damages under s. 19 of the *Builders Lien Act*, S.B.C. 1997, c. 45.

[249] Mr. Bewsky argues that Dr. Melnik has incurred this cost because of the long period of time to get the case before the court. It does not relate to delay. The only time this could be properly claimable is if the court finds that there was no proper basis for the lien. Dr. Melnik has not provided any authority to support such a claim as framed.

[250] Dr. Melnik has not pleaded abuse of process, nor s. 19 of the *Builders Lien Act*. Given his specific submissions that he is not advancing these, it is unclear on what basis these costs would be claimable. Dr. Melnik and Melnik Inc. have been found to be in breach of Cakwell’s debt claim which underlies the builder’s lien. I have found the amounts to be much less than what was advanced. Dr. Melnik argues that the lien should have been less, and he would have paid less, but there must a viable legal theory that permits such costs to be awarded. Simply characterizing these as out of pocket expenses does not provide that basis. Dr. Melnik did not provide any case law or analysis of how this is claimable. In the absence of any that, I do not see the path forward for such a claim, and I dismiss it.

**Orders**

[251] Cakwell has established a lien for \$150,000. Cakwell shall have judgment against Dr. Melnik and Melnik Inc. jointly and severally for \$150,000 on its claim. Dr. Melnik and Melnik Inc. shall have judgment against Cakwell for \$49,886 on its counterclaim. The two amounts are set off against each other. The net judgment amount of \$100,114 owing by Dr. Melnik and Melnik Inc. to Cakwell. I received no submissions on interest.

[252] If the parties cannot agree on costs, they may make arrangements to speak to the matter through Court Scheduling.

“Norell J.”

**Appendix**

**TABLE OF EXTRAS**

Plaintiff's Position	Defendants' Position
V = Work that Dr. Melnik verbally requested during construction, and which is not included in scope of work under the contract.	K = Work claimed that is included in the contract and therefore is not an extra and not payable.
Assumed Consent = Work or materials provided by Mr. Bewsky in the reasonably held assumption that Dr. Melnik would want it done, even if not strictly necessary.	CO = Work that was agreed to in one of the three signed change orders.
Unseen = Extra work needed to address "unseen conditions" within section 9 of the Main Construction Document, being "any unseen issues such as: rot repairs ... any unseen structural, concrete floor, inner wall, plumbing or electrical issues".	Setoff = An admission that the work is different from what the contract calls for, but the extra claim is setoff (or should be setoff) for the work that was called for that was avoided by doing the different work.
Necessary = Work not included in scope of work but that in Mr. Bewsky's reasonable judgment had to be done.	Unnecessary = Work for which there is no evidence establishing that it was necessary; none of it is payable as a result.
Abandoned = Cakwell abandons its claim for the item, acknowledging that the evidence at trial may be insufficient to support it.	Extra = Admission that the work was not called for in the contract, and a reasonable amount is due.

All references to clauses are to the Main Contract Document unless indicated otherwise.

Extra # and Amount Claimed	Description (reproduced from 2018 and 2019 Lists of Extras)	Parties' Positions / Evidence and Court's Decision
2018 Extra #1 \$385	V Re existing telephone box: Telus tech tested, determined not used; remove box and all conduits, patch holes and paint	V: Only determined after construction began that the box was unusable and needed to be removed, at which time Dr. Melnik told Mr. Bewsky to remove this. Estimated 5.5 hours. Didn't tell Dr. Melnik this was an extra because it was obvious.  K: See Demolition, clause 4 "Basement Mechanical Room – remove shelving and existing unused fixtures on walls", and New Construction, clause 7 – "patch and paint".  Decision: Denied. Not an extra. Included in clauses 4 and 7.
2018 Extra #2 \$940	V Re-house electrical panel and outbuilding supply line relocation: remove all unused rigid conduit from walls ceiling and floor, patch all holes and paint	V: The electrical panel and supply line were relocated at Dr. Melnik's request; as a result, patching and painting were required. Does not fall under Demolition, clause 4 "remove unused fixtures". This is in addition to work the electrical contractor did in the First Change Order. It was obvious there was extra work to do above the First Change Order. Estimate 6 hours, plus materials

		<p>K, CO: See above. Dr. Melnik does not recall if he discussed this work with Mr. Bewsky. Included in First Change Order.</p> <p>Decision: Denied. Not an extra. Cakwell has not established that this is not included in the First Change Order, item 2.</p>
<p>2018 Extra #3</p> <p>\$540</p>	<p>V Re save porcelain tile for mechanical room: pick through, save, clean and move to basement</p>	<p>V: Dr. Melnik asked Mr. Bewsky to use the tile for the mechanical room. Recycling the tile saved having to purchase new material and added to quality of mechanical room. Should have been obvious to Dr. Melnik he would charge for this. Estimate seven hours at \$60 per hour.</p> <p>Setoff: Different work but offset by work called for under contract at Demolition item 1. Unreasonable amount of time spent and hourly rate; Cakwell would have had to dispose of the tile in any event; saved dumping time and fees.</p> <p>Decision: Allowed subject to reasonable cost and set off as claimed. (1) Is an extra. (2) Dr. Melnik explicitly authorized. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 Extra #4</p> <p>\$2,240</p>	<p>U Re peel and stick anti-fracture membrane removal: rent floor scraper, pickup/return, and disposal, portion of</p>	<p>Unseen / Necessary: Presence of anti-fracture membrane under the existing main floor covering was not discovered until after work began. Required extensive work to remove. Estimate 27 hours plus rental. Contract based on one layer of tile and thinset. Did not discuss with Dr. Melnik, but it had to be removed. Does not know what other choice Dr. Melnik would have had. A self-leveller across the entire floor would not be workable. This was the proper way to address it.</p> <p>K: Contract under Demolition, item 1, states "removal of floor tile (one layer) and scrape clean (regular thinnest)" [sic thinset]. No indication that scraping off was not included; no rental receipt; excessive time spent, at excessive rate. Did not discuss with Dr. Melnik and deprived him of investigating and making a choice of what to do, given the expense. Might have been cheaper options.</p> <p>Decision: Allowed subject to reasonable cost less time and expense that would have been incurred for regular floor removal and thinset scraping. (1) Is an extra. There was no thinset, but an adherent anti-fracture membrane. Demolition, clause 1 provides for removal of one layer of floor tile and scrape regular thinset. Also comes within clause 9 re unseen conditions. (2) Dr. Melnik impliedly authorized as this was necessary to complete the scope of work. Accept Mr. Bewsky's evidence that this was the only option. Dr. Melnik's evidence of other options is speculation. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #5</p> <p>\$6,830</p>	<p>U Re anti-fracture membrane residue removal: rent scarifier and vacuum and provide 220 outlet, pickup/return and scarify twice in a diamond pattern; disposal</p>	<p>Unseen / Necessary: See above. Residual compound was embedded into the concrete requiring rental and use of a scarifier. Very difficult to remove and spent close to a week. Estimate 64 hours plus rental.</p> <p>K: See above.</p> <p>Decision: Allowed subject to reasonable cost less time and expense that would have been incurred for regular floor removal and thinset scraping. See extra #4.</p>

<p>2018 Extra #6 \$770</p>	<p>U Re removal of all loose concrete fill: rent jackhammer, hand grinder and vac, pickup/return, cleanup and disposal</p>	<p>Unseen / Necessary: This is loose or delaminated concrete in many areas that became evident once the scarifying was done. Had to be removed and repaired to get a sound substrate for the new flooring. Rental of a jack hammer, grinder and vacuum. Estimated 26 hours but billed 6 hours plus rental and disposal cost.</p> <p>K: Called for in contract – New Construction, item 3, “patch and prep concrete floor to accept new flooring”. No receipts. Did not discuss with Dr. Melnik.</p> <p>Decision: Allowed. (1) Is an extra. This goes beyond patch and prep concrete and falls within clause 9 re unseen conditions. (2) Dr. Melnik impliedly authorized as this was necessary to complete the scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #7 \$420</p>	<p>V Re fish tank cavity opening: mark, cut, discuss and start opening</p>	<p>V: During construction, it was discovered there were cavities in the first-floor inner round room beneath the windows, Dr. Melnik requested Mr. Bewsky to open and investigate these. Mr. Bewsky removed drywall and debris. Fish tank to go in space. Prior to the contract, never discussed where the fish tank would go or that it would be here. If any credit is to be allowed for the cost of work that would otherwise have been done, it should be not over \$100 because of the comparatively greater extent of the work done. Estimated 6 hours. Never told Dr. Melnik it would be an extra.</p> <p>K / Offset: Fish tank opening in wall was in previous office. Contract calls for new framing and drywall “per drawings”; drawings don’t include fish tank but instructions at time of contract was to move the fish tank into the wall.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Fish tank was to go in an existing window, but this is a new space to be created in a wall. (2) Dr. Melnik explicitly authorized. (3) Dr. Melnik knew or ought to have know this would increase cost.</p>
<p>2018 Extra #8 \$415</p>	<p>V Remove back wall at reception area and prep for new, disposal</p>	<p>V: Dr. Melnik requested during construction to increase usable area. When Mr. Bewsky had part of the wall behind reception opened for plumbing and gas lines, Dr. Melnik noticed there was a cavity, and wanted a narrow stud wall placed there to gain space. Never told Dr. Melnik that this would be extra work.</p> <p>Unnecessary: No benefit to the work. Mr. Bewsky created the indentation to run mechanical in the walls.</p> <p>Decision: Allowed subject to reasonable cost and set off for time Mr. Bewsky would have spent in any event opening the wall. (1) Is an extra. The extra is only the reframing and extra drywalling to create the extra space. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known that this would increase cost.</p>
<p>2018 Extra #9 \$365</p>	<p>V Re image room West wall: remove wall and beam, prep for new</p>	<p>V: After the trench was cut, it was revealed that there was a space for a pipe chase from the basement to the first floor. Pipes had to run either outside the wall and be furred in, or run behind the wall. Dr. Melnik wanted to make the room bigger, so Mr. Bewsky put the pipe put in wall. Estimate 4.5 hours and disposal. Never told Dr. Melnik this would be extra.</p> <p>K: Called for in the contract (new framing and drywall per drawings).</p>

		Decision: Denied. Not an extra. Contract necessarily required pipes for utilities, and they had to be inside or outside the wall. Mr. Bewsky has not proven that inside the wall is more expensive.
2018 Extra #10 \$245	V Re xray tech recess in wall: discuss, design, mark and cut	<p>V: This was another cavity in the inner round room wall, and Dr. Melnik asked Mr. Bewsky to move it back as far as possible so the x-ray tech can move back for more radiation protection. Estimated 3.5 hours. Never told Dr. Melnik this would be extra, but it is obvious and assumed he would know.</p> <p>K / Offset: Was in previous office; no credit for work avoided. After spaces in round wall discovered, Dr. Melnik thought it would be a great idea to build an opening. Mr. Bewsky did not tell him it was an extra.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. This is another space discovered during construction. Opening up and moving back this space is not within original scope of work. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
2018 Extra #11 \$275	V Re raise ceiling under landing in reception area: remove existing ceiling and bulkhead and disposal, prep for new	<p>V: This is the underside of the landing of the second floor. Dr. Melnik wanted the ceiling removed and raised up as high as possible. Estimate 3.5 hours and disposal. Did not tell Dr. Melnik it would be extra.</p> <p>K / Unnecessary: Contract called for work in this area. If raising it cost more than not raising it, then this work was unnecessary as there was no benefit to Dr. Melnik. At or before the March 14, 2015 meeting Dr. Melnik asked Mr. Bewsky to keep the ceiling as high as possible if he had to demolish tiles.</p> <p>Decision: Denied. Is not an extra. Clause 1 provides for removing the T-bar ceiling and removing or reducing bulkheads if deemed feasible.</p>
2018 Extra #12 \$1600	U Re block walls room 201 & 202 west walls and rooms 204 & 205 east walls: in removing drywall, Styrofoam and plaster falling off due to no mechanical fastening, remove all, disposal, cleanup	<p>Unseen / Necessary: Contract required patch and paint, but the drywall had been put on top of Styrofoam, and it and the drywall were delaminating from the concrete wall as it was not properly affixed. Had to remove all of it. Did not discuss with Dr. Melnik as it was necessary. Estimated 20 hours plus disposal fee.</p> <p>Unnecessary: Never discussed with Dr. Melnik; he took no issue with these walls. Acknowledges if it was something that had to be rectified, it is not within contract, but he should have been consulted.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not within scope of contract. Excluded by clause 9 re unseen conditions. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. Accept Mr. Bewsky's evidence that this work was necessary. (3) A reasonable person would conclude that it would increase cost.</p>
2018 Extra #13 \$95	U Remove 1 /2" of fill on sub floor plywood at lab entrance for proper elevation re opposite floor	<p>Unseen / Necessary: The landing inside this lab had a large amount of fill underneath to make the floor even. Floor outside lab now being redone, so that had to come out. Estimate one plus hour. Never spoke to Dr. Melnik about it.</p> <p>Unnecessary: Never discussed; issue not necessary to be resolved.</p>

		<p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not within scope of contract. Excluded by clause 9 re unseen conditions. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. Accept Mr. Bewsky's evidence this work was necessary. (3) A reasonable person would conclude that it would increase cost.</p>
<p>2018 Extra #14 \$960</p>	<p>V Re windows in lab: present frames and wire glass unacceptable - remove and prep for new, disposal</p>	<p>V: Dr. Melnik requested new, fire-rated, non-wire glass lab windows without mullions. This is not work that a contractor would undertake without instruction. Mr. Bewsky's evidence should be accepted over Dr. Melnik's on this point. Estimated 13 hours including three hours to discuss and design plus disposal. Never told Dr. Melnik how much it would cost.</p> <p>Unnecessary: Discussed at or before contract meeting. Dr. Melnik had heard reports of people being injured with this glass. Dr. Melnik asked Mr. Bewsky to look into these windows, and no more than that. Mr. Bewsky went ahead and replaced them at great expense without Dr. Melnik's approval. Never got a report back from Mr. Bewsky. Does not recall at what point he noticed the windows had been removed.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not within scope of contract. (2) I accept Mr. Bewsky's evidence that Dr. Melnik expressly authorized. (3) Dr. Melnik knew or ought to have known that it would increase cost.</p>
<p>2018 List – Extra #15 \$3,905</p>	<p>U Re flooring: Shiplap layer - remove one layer of Shiplap in room 201 &amp; 202, and two layers of Shiplap, strapping, and its backing in room 204, 205 and part of 206, for access and to level and flatten floor joists, disposal, after electrical panel plywood removal, necessary to remove existing plywood form work and patching debris from west wall (block wall) in room 201, remove multiple layers of plywood and lumber in room 205 floor space so floor joists can be repaired and added</p>	<p>Unseen / Necessary: The nature and extent of the work needed to level, flatten and stabilize the second-floor surface were not known until after the existing surface was removed. The Remediation Work paid for by the landlord is separate from this work. Estimated 51.5 hours. Did not discuss with Dr. Melnik. When Mr. Bewsky took up the carpet and linoleum on the second floor, there was shiplap and plywood layers. There were two by fours and various thickness of shims and strapping, attached to joists, where someone had previously tried to level the floor but had made "one heck of a mess". The floor was uneven and bouncy. Necessary unless Dr. Melnik was prepared to work in a space with a bouncy uneven floor.</p> <p>Unnecessary: Reasons for the work are not clear; if it was to repair the second floor, that was the landlord's obligation. Can't recall if he saw the floor removed during construction. Did not want a bouncy floor up there and that is why landlord paid for repair. If this was required, he should have been consulted so he could make an informed decision re cost versus benefit. Agrees there was a benefit to him. Dr. Melnik agreed that he wanted the premises to be in good, restored condition and if the second floor was seriously out of level and required work to make it functional and useable, he would have wished to have the work done.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not within scope of contract. Excluded by New Construction, clause 9 re unseen conditions. Construction Notes state only to "Tighten and secure the second-floor flooring substrate". This work is beyond that. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. Accept Mr. Bewsky's evidence this work was necessary. (3) Dr. Melnik knew or ought to have known would increase cost.</p>

<p>2018 Extra #16 \$1,700</p>	<p>V Re room 201 north block wall opening for window: create opening approximately 4ft x 7ft, dispose of brick, remove conduits and rebar re engineer's approval</p>	<p>V: This was to install a large glass artwork in wall. Sheer wall so engineering approval required. Estimated 20 hours plus disposal.  Extra:  Decision: Allowed as admitted extra, subject to reasonable cost.</p>
<p>2018 Extra #17 \$1,045</p>	<p>V &amp; U Re platforms for compressor and vac as per discussion: construct using two layers of 1" thick plywood laminated and add 18-gauge 3 ½' stud capped with 18-gauge track angled supports rather than posts, fix 16-gauge shelf angle to concrete wall with Hilti Quick bolts and bolt plywood to angle using 3/8" carriage bolts; cost difference</p>	<p>V / Necessary: Base contract called for one platform with legs for the compressor and vacuum. Dr. Melnik wanted two platforms at different heights. Mr. Bewsky asked if he wanted to eliminate any legs going down to floor and he could provide angle supports going back to the wall. This was more work. Estimated 13.5 hours plus materials. Never told Dr. Melnik that this would be extra work.  K: Called for in contract, New Construction, clause 1. At or before the contract meeting, Dr. Melnik said he wanted the same sort of platforms to be duplicated in the new office, but no recollection of 18-gauge angled supports.  Decision: Allowed subject to reasonable cost and set off for time and expense would have incurred in any event. (1) Is an extra, but only for the additional cost. Contract New Construction, clause 1 calls for a platform for compressor and vacuum. June Design Drawing indicate two different platforms with detailed specifications and to "keep open below". (2) Dr. Melnik explicitly authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #18 \$415</p>	<p>U Re additional electrical panel: fabricate plywood panel, paint and install panel on curved wall</p>	<p>Necessary: Creating the plywood mount for the new electrical panel was not included in the scope of work under the contract, but work made necessary by Dr. Melnik's instructions. This is the additional second electrical panel because Dr. Melnik had added so many circuits from his original estimate. The electrician installed the panel, and Mr. Bewsky claims extra for preparation of the wall for the panel because it is curved. Estimated 4.5 hours plus materials. Did not discuss with Dr. Melnik that extra claimed.  K: This was part of the First Change Order. Did not discuss this would be an extra outside the First Change Order.  Decision: Denied. (1) Not an extra. Cakwell has not established that it is not part of the First Change Order.</p>
<p>2018 Extra #19 \$1,270</p>	<p>V Re concrete walls and ceiling in mechanical room: patch major holes etc., lightly scrape concrete, clean, apply oil-base sealer (recommended by Kryton Tech) and paint one coat</p>	<p>V: Patching holes and scraping large bumps off concrete floor and painting it with sealer. Only painting in contract. Patching and painting walls and ceiling. He asked Dr. Melnik, and he wanted walls and ceiling patched and painted. Contract does not include mechanical room. Estimated 16 hours plus materials. Did not tell Dr. Melnik this was extra.  K: Included at General clause 7. Did not discuss before contract and does not recall discussing after.  Decision: Allowed subject to reasonable cost, and a set off for general patching and painting. (1) Is an extra for the work above regular painting. The mechanical room is not excluded from general painting, but this went beyond general painting in New Construction, clause 7. See detailed design notes in June Design Drawings for this room. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>

<p>2018 Extra #20 \$610</p>	<p>V Re vac sep trap: fabricate new panel, shape and finish saddles and straps, paint and install as high as possible above mech room door, make new deflector shield</p>	<p>V: The installation is included in the contract, but this is extra. The vacuum separator was already mounted on plywood that had to be changed for it to fit above the door. This is where Dr. Melnik wanted it to go because it had to be up high for drainage. This was discussed with Dr. Melnik and the plumber. Otherwise, a pump would be required. There was no choice where it was going. Didn't tell Dr. Melnik that it was extra work. It needed to be done. Estimated eight hours and \$50 material.</p> <p>K: Called for in contract, New Construction, item 1. After contract, Mr. Bewsky said this had to be installed above a sanitary line. This is how it was installed in Old Office. Dr. Melnik thought there would be an option to keep on the floor and have a pump instead. He told Mr. Bewsky that. The last he saw, Mr. Bewsky was putting the separator trap above the sanitary line. Did not say this would be an extra.</p> <p>Decision: Denied. Not an extra. Included in New Construction, clause 1, Basement Mechanical Room, "Mount ...plumbing fixtures/panels to wall".</p>
<p>2018 Extra #21 \$220</p>	<p>V Re plywood for RP's: extra cost to supply, paint and install to underside of concrete outside of mechanical room</p>	<p>V: These are back-flow preventer valves. They were to be installed as high as possible. Agreed plywood would be required to install this in any event, but the RP was mounted higher than expected because the inspector wanted it that way. Estimated three hours. Did not tell Dr. Melnik this was extra work.</p> <p>K: Called for in contract New Construction item 1. This is an example of where the contract was vague on detail – Cakwell had to install the items, but Mr. Bewsky alleges the way he did it was more expensive. No evidence was produced by Mr. Bewsky of why this is an extra or more expensive. Did not discuss with Dr. Melnik.</p> <p>Decision: Denied. Not an extra. Included in New Construction, clause 1, Basement Mechanical Room, "Mount ...plumbing fixtures/panels to wall".</p>
<p>2018 List – Extra #22 \$1,350</p>	<p>U Re compressor: Engineer recommends seismic restraint: cut template for tank saddle and cut saddle from double thick counter top material pre-finished with laminate, fabricate shelf angle for saddle and pin to concrete wall with quick bolts, attach saddle to shelf angle and strap tank to saddle using 18 gauge strapping: re top angle brace - fabricate from 18 gauge angle, bolt to wall and attach to steel channel of compressor tower</p>	<p>Necessary / Assumed Consent: This work was done as a result of a recommendation made by the building inspector during construction. It was reasonable for Mr. Bewsky to assume that this work should be done, and that Dr. Melnik would want it to be done without him having to ask. Estimate 19 hours plus \$20 materials.</p> <p>K: Construction ought to be done to code and good standards; unclear if recommendation amounted to a requirement; if so, it is covered by contract item 1 under new construction. If it is a recommendation and not a requirement, why was it performed without consultation from Dr. Melnik?</p> <p>Decision: Denied. Not an extra. Included in New Construction, item 1, Basement Mechanical Room, "Mount ...plumbing fixtures" and "provide platform for compressor". Implied that installation will be done to workmanlike quality which in my view includes safety restraints recommended by building inspector.</p>
<p>2018 Extra #23 \$1,260</p>	<p>U Re air line test water issue: pressurize 4-chair system and close valve after filters on line side, (following day air-line flooded with water) determined dental tool pieces are at fault, disconnect 1" duratec line at</p>	<p>Necessary: The need for this work to be done only became apparent after construction began. Dr. Melnik would be obligated to pay the cost of this work regardless of whether it was done by Mr. Bewsky or by the plumbing contractor. If done by the contractor, the cost would be payable under the Terms and Conditions, "Any additional costs or credits from subtrades...". Estimated 19 hours plus materials. Discussed with Dr. Melnik. No</p>

	<p>header and blow back lines from consult room and records room as much as possible, re-connect 1" duratec line and connect tank directly to output line to chairs, blow individual lines until clear; re: final drain - pull 1" plug off header and blow out lines until clear, re-connect and blow out lines to chairs one final time</p>	<p>choice but to fix and Dr. Melnik got new tool pieces. Dr. Melnik did not tell him the O rings had dried out in the tool pieces. Did not tell Dr. Melnik this was extra.</p> <p>K: Why did Mr. Bewsky perform this if he had a plumbing subtrade? Testing and commissioning of plumbing is plumber's scope. Mr. Bewsky should have had the plumbers do this work. Cakwell has not produced the quote from his plumbing subtrades. As soon as Dr. Melnik saw this, he knew what the problem was, as he had this in the Old Office. The O rings had dried out, allowing air to leak into the water lines. He recalls seeing water on the floor when he met with Mr. Bewsky on site. Takes 10 minutes to change the dental tool.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Fixing defective dental equipment is not in the original scope of work, nor the aftermath of it. (2) The work was necessary and authorized by Dr. Melnik to complete the original scope of work. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 Extra #24 \$2,180</p>	<p>V Fire up hot water tank - not working, unable to repair: discussion re type and location, pickup tank and supplies/flex connections, fabricate platform and shim to suit un-level floor, paint sides, apply lino to top and sheet foam to underside re moisture, remove old tank and re-locate seismic braces higher, install new tank and hook-up, add seismic straps modifying for larger diameter, supply and install electrical feed and breaker, fill and energize and adjust temperature setting</p>	<p>V / Unseen: The existing hot water tank was not working and not repairable and had to be replaced. This was unknown at the time the contract was made. Dr. Melnik asked for the hot water tank to be replaced. Mr. Bewsky bought, picked up, and installed it. Dr. Melnik wanted it on a platform which Mr. Bewsky fabricated. Estimated 19 hours plus cost of tank plus materials. Did not tell Dr. Melnik this would be extra.</p> <p>K: See above. Dr. Melnik testified that he suspected the subsequent plumbers hired by Mr. Bewsky damaged the hot water tank.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Replacing and installing the water tank is not within scope of contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known it would increase cost.</p>
<p>2018 Extra #25 \$245</p>	<p>V Re dental chair recessed floor boxes: discuss layout and confirm eight locations on main floor and four locations on second floor</p>	<p>V: Dr. Melnik requested that recessed junction boxes ("J-boxes") be installed below floor level. Dr. Melnik was not keen on having the boxes, which house the lines for the chairs, above floor as in the Old Office. Estimated 3.5 hours. Did not tell him it would be an extra. This was not discussed before the contract, but only during construction when Mr. Bewsky suggested this to Dr. Melnik.</p> <p>K: Called for in contract to provide for mechanical and electrical in floor "Cutting &amp; Coring". The boxes themselves are not described, which might be an extra, but we don't know what work is extra and what is base. Discussing and confirming layout had to have been included in this item. The locations of the chairs were fixed with cardboard cutouts which Mr. Bewsky saw, and the distances between the chairs and the boxes were on the Placemat Documents; Dr. Melnik testified that prior to the March 14, 2015 meeting he discussed with Mr. Bewsky that if he was going to have to cut and core lines anyway, to recess the boxes.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Nothing in written contract regarding recessed J-boxes. I find the instructions for this were given during construction and not before the contract was signed. The June Design Drawings state under Dental Chair Rear Units "Consult with Inspector and electrician to get 12' x 12' J-boxes below floor level". I do not see distances to boxes on the Placemat Documents. Cutting and Coring clause</p>

		refers to the trenching, not the J-boxes. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known that this would increase costs.
2018 Extra #26 \$890	U Re concrete duct chase plenum below slab, received images from landlord confirmed by drilling holes: re-layout and re-scan changes	<p>Unseen / Necessary: The presence of the plenum was discovered after construction began, and after the landlord produced seismic plans. Prior to the discovery of the plenum, Mr. Bewsky had created plans for where the lines would be cut and installed in the concrete. Mr. Bewsky discussed with the plumbing subtrade what was to be done. He had no reason to disagree with the recommendation of the plumbing subtrade to change the plans and use the plenum. Estimated seven hours and cost of scan. Did not tell Dr. Melnik this would be extra work. Mr. Bewsky denies that he told Dr. Melnik that the plenum would save money. Mr. Bewsky was cross-examined extensively on alternatives to using the plenum, suggesting that those were possible and cheaper. He disagreed. He agreed that he no longer had to cut all the trenches, but he still had to cut access holes to the plenum, which was three feet wide. The plenum meant some of the electrical work would be cheaper, but not the plumbing and drainage because those lines had to be hung within the plenum.</p> <p>K: Included in Cutting &amp; Coring clause which includes GPR scanning. Dr. Melnik agrees the plenum was discovered after the contract, but Mr. Bewsky said it was happy news because he would not have to do as much cutting and coring. Mr. Bewsky has failed to prove the concrete work went above and beyond what was contemplated in the contract.</p> <p>Decision: Allowed subject to reasonable cost, and a set-off for the cutting and coring work that would have been required in any event. (1) Is an extra. Is an excluded unforeseen condition within New Construction, clause 9. Mr. Bewsky reasonably followed the advice of the plumbing subtrade (although Mr. Hankins testified that he thought it was Mr. Bewsky's idea to use the plenum). Mr. Hankins testified the chase would save money for the concrete work but increase the cost for the plumbing and drainage lines as they had to be hung. (2) Dr. Melnik authorized the work. Further, it was necessary to address the plenum to complete the original scope of work. (3) Dr. Melnik knew or ought to have known that the cost would at least change.</p>
2018 Extra #27 \$2,010	U Re concrete cutting and extra jack hammering required due to thickness and trench accessibility, multiple locations	<p>Unseen / Necessary: The fact that the main floor slab was over 6" thick (as indicated in the "Cutting &amp; Coring" section on page 4 of the contract) was unknown at the time the contract was made. Jack hammering was required because of the extra thickness, especially around the perimeter where the concrete was close to a foot thick. Estimated 23 hours plus disposal and rental and concrete. Did not discuss with Dr. Melnik would be extra.</p> <p>K / Extra: See above; maybe there is some extra for concrete over 6" thick, but we don't know how much of this work related to thick concrete, and how much was in the contract.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra, but only for the concrete thicker than six inches. The Cutting and Coring clause limits the work to a slab not thicker than six inches. Further is an excluded unforeseen condition in New Construction, clause 9. (2) Dr. Melnik impliedly authorized as this was necessary to complete the original scope of work. (3) Dr. Melnik necessarily knew or ought to have known this would increase cost.</p>

<p>2018 Extra #28 \$2,820</p>	<p>V Re floor boxes: prep for electrical, compressed air and water, seal four with poly and four with caulking, install and fix in place with concrete four boxes in trenches and provide form work and supports and install four in plenum locations; determine and confirm proper elevations and fix in</p>	<p>V / Necessary: See item 25. Estimated 31 hours plus materials. Did not allow credit for the time to do above floor boxes because it was just stubs out of the floor with a plastic box that went over the stubs.  K: See Extra #25.  Decision: Allowed subject to reasonable cost. See Extra #25.</p>
<p>2018 Extra #29 \$640</p>	<p>U Re end wall in plenum at south end: provide form work, re-bar and pour concrete closing off plenum access to basement</p>	<p>Unseen / Necessary: Work made necessary by the plenum whose existence, when the contract was made, was unknown. The building inspector required that the plenum be closed off at the end. It was suggested to Mr. Bewsky that if the plenum had not been used, he would not have incurred the cost because the building inspector would not have known of it. He disagreed. The lines still had to go across the plenum. Did not tell Dr. Melnik this would be an extra.  K: See Extra # 26. See clause 7, "General ...concrete". Also see New Construction, clause 3, penultimate line "supply and install 3/8" re-bar pinning at concrete trench cutouts".  Decision: Allowed subject to reasonable cost. See Extra #26.</p>
<p>2018 Extra #30 \$870</p>	<p>U Core hole through plenum wall at south end 14" x 10" for plumbing and mechanical, core hole through basement wall at image room 16" x 10"</p>	<p>Unseen / Necessary: See above. Had to chip outside of plenum so could get plumbing in at correct angle. Estimated eleven hours plus tooling. Did not discuss with Dr. Melnik.  K: See Extra #26.  Decision: Allowed subject to reasonable cost. See Extra #26.</p>
<p>2018 Extra #31 \$990</p>	<p>U Re top of plenum walls at plumbing drain locations: extra jack hammering at four locations</p>	<p>Unseen / Necessary: See above. This is a trench from the plenum to the outside walls. Required jack hammering as concrete thick, especially where there had been seismic upgrading. Estimated 11 hours. Did not discuss with Dr. Melnik.  K: See Extra #26.  Decision: Allowed subject to reasonable cost. See Extra #26.</p>
<p>2018 Extra #32 \$420</p>	<p>U Plenum concrete form work for dental unit supply lines in consult &amp; records rooms</p>	<p>Unseen / Necessary: See above. The supply lines came up through the floor from the plenum and had to be supported until the floor was poured. This is the form work to support that. Did not discuss with Dr. Melnik. Estimated six hours.  K: See Extra #26.  Decision: Allowed subject to reasonable cost. See Extra #26.</p>
<p>2018 Extra #33 \$1,290</p>	<p>U Re end wall in plenum at west end under stairs: provide form work, re-bar and pour concrete closing off plenum access to basement, seal around plumbing, mechanical and electrical pipes and conduits</p>	<p>Unseen / Necessary: See above. The building inspector required that the plenum be blocked off because it was open into the basement. Difficult area to work in. Estimated 16 hours plus materials. Did not discuss with Dr. Melnik.  K: See Extra #26.  Decision: Allowed subject to reasonable cost. See Extra #26.</p>

<p>2018 Extra #34 \$210</p>	<p>V Locate cavities, mark and confirm sizes and locations in curved concrete wall in op 7/xray/ image, discuss and confirm uses</p>	<p>V: Amounts charged for this admitted extra are reasonable. Estimated three hours.</p> <p>Extra: Dispute amount of Mr. Bewsky's charge. Dr. Melnik could see the tops of these openings where there were existing openings.</p> <p>Decision: Allowed for this admitted extra, subject to reasonable cost.</p>
<p>2018 Extra #35 \$105</p>	<p>V Prep opening in curved wall op 7 side for recessed sink area, layout, mark and cut</p>	<p>V / Unseen: This work was requested by Dr. Melnik, after learning of the cavities inside the wall of the inner round room, and that the sink could be inset into it. Sink was included in contract but not working in a recessed area. Did not tell Dr. Melnik it was an extra.</p> <p>K / Offset: Had to install sink under contract; should be credit for install without recessing, on a curved wall.</p> <p>Decision: Allowed subject to reasonable cost and set off for amount that would have cost to install on a curved wall. (1) Is an extra. The cavities were not known at the time of the contract and this sink was not to be placed in a recessed area. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known cost would increase.</p>
<p>2018 Extra #36 \$780</p>	<p>U Re ledge extension: add extra bridging to existing joists and properly fasten existing bridging, add an extra row of bridging in all four locations</p>	<p>Unseen / Necessary: While construction of the ledge was contemplated under the contract, the state of the existing joists and the need for them to be reinforced with additional bridging was not known when the contract was made. This is a walkway size ledge around the front perimeter of the second floor in the vaulted area. When Mr. Bewsky opened the wall, there was insufficient bridging between joists for weight of storage. Joists had to be reinforced. Estimated nine hours plus material. Notes say four locations, but actually eight locations.</p> <p>K: Included in contract at item 3 of new construction. Mr. Bewsky did not discuss with him.</p> <p>Decision: Denied. Not an extra. New Construction, clause 3 states, "design and extend storage ledge at glazing to approximately four foot wide and above washroom (may require structural engineering)". It was contemplated that existing joists may need to be reinforced.</p>
<p>2018 Extra #37 \$1,700</p>	<p>U Re ledge extension above W.C., original spanning joists hacked off: fab and install three-ply beam spanning 17ft to existing structural beams at each end and fix existing ledge joists to new beam, repair fire rating at party wall end, construct two ledge sections which are split by the new beam (difference in cost from original ledge extension)</p>	<p>Unseen / Necessary: While construction of the ledge was contemplated under the contract, the need for this work was not known when the contract was made. When Mr. Bewsky opened the end of the water closet extension, he discovered that the original supporting beam was just hacked off. The window mullions were not designed to take any weight. They needed to be repaired, especially if he was going to use area above washroom for storage. Estimated 20 hours plus material. Did not discuss with Dr. Melnik.</p> <p>K: See above.</p> <p>Decision: Allowed subject to reasonable cost, less work that would have been done in any event. (1) Is an extra. This is distinct from Extra #36 as there was an unforeseen defect in the building that had to be repaired as opposed to reinforcing joists for new construction. Excluded by New Construction, clause 9, unforeseen conditions. (2) Dr. Melnik impliedly authorized as this was</p>

		necessary to complete the original scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.
2018 Extra #38 \$4,020	V Re possible storage area above records room: construct using 2" x 12' and 2" x 10" joists and 5/8" T & G plywood, two rows of cross-bridging	V: The amounts charged for this admitted extra are reasonable given the time spent and material costs incurred. Originally Mr. Bewsky allowed for certain strength construction to only hold up T-bar ceiling. After contract, Dr. Melnik wanted to use the area for storage of heavy objects. Estimated 40 hours plus materials.  Extra: Dispute time and rate.  Decision: Allowed as admitted extra, subject to reasonable cost.
2018 Extra #39 \$1,195	V Add ledge extension above entrance in line with extension above W.C. and pony wall above, along party wall	V: Mr. Bewsky states that that Dr. Melnik asked him to build this extension, which was beyond the scope of the ledge contemplated under the contract. Estimated 13.5 hours and \$250 in material. Did not tell Dr. Melnik it was extra work.  K: See Extra #36. Dr. Melnik states he did not discuss with Mr. Bewsky. He suggested this was part of the extension of the storage ledge over the W.C.  Decision: Allowed subject to reasonable cost. (1) Is an extra. Nothing in contract regarding extension of ledge above entrance. (2) Accept Mr. Bewsky's evidence that Dr. Melnik instructed him to do this. (3) Dr. Melnik knew or ought to have known this would increase cost.
2018 Extra #40 \$420	U Repair rotten drywall window ledge and wall in multiple locations of storage corridor due to leaking windows	Unseen / Necessary: Not apparent before contract because no access up there. Four locations. Estimate six hours. Did not discuss with Dr. Melnik.  K: Patch and paint of existing drywall is included at item 3 of new construction and item 7 general.  Decision: Allowed subject to reasonable cost. (1) Is an extra. "Patch and paint" does not include replacing rotten drywall. New Construction, clause 7 excludes "any unseen issues such as: rot repairs". (2) Dr. Melnik impliedly authorized as necessary to complete scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.
2018 Extra #41 \$900	U Remove all concrete from first two steps of main stairs due to necessary repairs to wall-side stringer and stair pan and dispose, re-pour both steps	Necessary: This work was made necessary by the need to repair the side-wall stringer, which wasn't known at the time the contract was made. Concrete had to be removed because it was all cracked up. Estimated 12 hours plus material. Did not discuss with Dr. Melnik.  K / Unnecessary: Concrete work included under clause 7.  Decision: Allowed subject to reasonable cost. (1) Is an extra. New Construction, clause 7 includes "General ...concrete", but clause 9 excludes "any unseen ... concrete ... issues". I conclude concrete in clause 7 is new concrete required by construction, not repair of existing concrete. (2) Dr. Melnik impliedly authorized as was necessary to address to complete the scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.
2018 Extra #42	V Re repairs to the first two steps of the main staircase stair tread pans at party wall stringer	Abandoned.

<p>\$460</p>	<p>side - landlord's. Crew unable to repair: clean and prep, adjust pan elevations, push back and weld</p>	
<p>2018 Extra #43 \$2,100</p>	<p>U Re multiple access holes to existing concrete plenum: provide forming, angle supports and center vertical supports, add additional re-bar and tie (used existing basement shelving for form work)</p>	<p>Unseen / Necessary: This work was made necessary by the presence of the plenum whose existence, when the contract was made, was unknown. Estimated 25 hours plus material. Fifteen holes done. Did not discuss with Dr. Melnik.</p> <p>K: See Extra #26 regarding concrete work.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #26.</p>
<p>2018 Extra #44 \$17,160</p>	<p>V &amp; U Re plumbing: added fixtures from original quote, extra labour to alter trenching to use heating chase found after initial layout, extra material to alter layout due to heating chase and extra material to sleeve water piping to chairs</p>	<p>Unseen / Necessary: This charge covers extra labour and material stemming from the presence of the plenum. This was extra charges from the plumbing contractor exceeding its quote. It is payable by Dr. Melnik under the "Terms and Conditions" of the contract pertaining to extra costs of subtrades. Mr. Bewsky added a mark-up of 20%. Mr. Bewsky discussed with Dr. Melnik the adding of fixtures from the original quote, which included two sinks and another dishwasher. Did not tell him it would be an extra. Did not discuss the remainder of the work with Dr. Melnik.</p> <p>K: See extra #26 regarding concrete work; regarding extra plumbing work, what fixtures were added? No evidence on any "new" fixtures were added from the previous office; Bewsky admitted that he knew all fixtures from previous office had to be installed in the new office (although he caveated "if possible"). Dr. Melnik denies adding any fixtures after contract. Never discussed extra work from use of plenum with Mr. Bewsky.</p> <p>Decision: Allowed subject to reasonable cost, and deduction of mark-up. (1) Is an extra. The clause under the heading "Items removed from estimate as discussed" states "cost of electrical difference, extra mechanical", and under "Terms and Conditions" states "Any additional costs ... from sub trades which are not allowed for in their estimates, due to changes or any additional / extra work required, are not included." Further, the plenum was an unseen condition excluded by New Construction, clause 9. Mr. Hankins, the subtrade plumber, described this work. Mark-up is not provided for in the contract. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. (3) Dr. Melnik new or ought to have know this would increase cost.</p>
<p>2018 Extra #45 \$2,570</p>	<p>V Re roof top unit relocation: discuss and design, provide structural framing for new roof top unit opening at room 206 curved wall area and cut hole; re: existing opening - fabricate ribs for slope, frame in opening to accept snow load, insulate, sheet and install sheet metal cap</p>	<p>V, Assumed Consent: Subcontractor suggested that this work be done (but for reasons going beyond any cost savings). It was reasonable for Mr. Bewsky to act on that suggestion. On the second floor where rooftop unit was relocated, Mr. Bewsky had to do the work so that subtrade could install the unit as recommended by him. Estimated 34 hours plus materials. Did not tell Dr. Melnik this was extra.</p> <p>Extra / Offset: This is likely extra work. Dr. Melnik admits it was not called for in the contract but rather was proposed by the subtrade who said it would save money from what was proposed under the contract. This claim should be offset by any savings produced on the HVAC subcontract. Dr. Melnik discussed this with the subtrade during construction. Does not recall discussions with Mr. Bewsky about this work.</p>

		Decision: Allowed for admitted extra, subject to reasonable cost and offset.
2018 Extra #46 \$230	U Add 4" clean-out flush mount grill under chair in op 5, prepare and finish	<p>Assumed Consent: The plumbing needed a clean-out and the plumbers gave him a grate where it would be installed in the floor. Mr. Bewsky stated that this needed to be fitted and a sleeve created so that when Gillian concrete was poured to install the linoleum, it would not go into the hole. Did not talk to Dr. Melnik about it. Estimated three hours plus \$20 materials.</p> <p>Unnecessary: Mr. Bewsky's only evidence was that he thought it would look better.</p> <p>Decision: Denied. Not an extra. Part of the installation of plumbing and flooring.</p>
2018 Extra #47 \$220	U Cap all eight floor boxes for concrete pour re trenching	<p>V: This work was needed in connection with the installation of the recessed dental floor boxes, which Dr Melnik requested. Positioned boxes and lids level and capped so that when the Gillian concrete was poured it came to the top surface of the lids and did not pour in. Did not talk to Dr. Melnik about it.</p> <p>K: See Extra #25.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #25.</p>
2018 Extra #48 \$1,090	V Re part of artwork high ceiling scaffolding: purchase beams, pickup, deliver and setup platform scaffold and supports, sheet platform with plywood (to be used for sheeting second floor)	<p>V / Necessary: Building a platform was needed because of the extensive ceiling work required by Dr. Melnik's decision, after the contract, to forgo artwork, and would not have been required otherwise. Contract originally was to "smoothen ceiling texture to aid in artwork". Mr. Bewsky never included scaffolding in his quote because he thought he could use scaffolding by others. Did not discuss with Dr. Melnik.</p> <p>K: Called for in item 1 of demolition – "smoothen ceiling texture to aid in artwork". Mr. Bewsky had to reach the ceiling to do this work. His infrastructure to reach the ceiling is not an extra.</p> <p>Decision: Denied. Not an extra. Had to access ceiling in any event to smooth ceiling as originally called for in contract.</p>
2018 Extra #49 \$18,020	V In place of artwork, high ceilings, beams, lower beams, top portion of surrounding walls and curved wall from line two east side to line two west side floor to ceiling to be finished for paint, primed and painted. re ceiling and upper beams: aggressively remove most of texture, sand with 80 grit paper, patch and fill gaps, bad joints and cracks, coat three bays from the east end with one-two coats of mud and the other three bays at the west end with two coats of mud, sand, seal stains, prime and paint one coat flat paint, clean off sprinkler lines and steel columns and paint (extra cost	<p>V: The work involved in preparing and painting the ceiling in the area where the artwork was originally planned was extensive and covered a large area. None of that work was contemplated under the original scope of work Estimated 78 hours per bay times three bays (234 hours) plus material. At the time Cakwell entered into the renovation contract, Dr. Melnik planned to have artwork in the open area. The ceiling and the beam had a very heavy thick texture on them, that he was instructed to knock off with a scraper so that it could be painted more easily by the artist. The original scope of work was not to bring the ceiling down to a smooth finish.</p> <p>K / Unnecessary / Extra: Some of this work is called for under the contract under Demolition, clause 1, and patching and painting is called for under clause 7 General. Some of this work is likely an extra, but the extent of work performed was unnecessary. Dr. Melnik said his instructions were to remove the stucco and apply a primer so that artwork could be applied. After the artwork was cancelled, he told Mr. Bewsky to paint the ceiling. Mr. Bewsky went too far with the work that he did, given that no one would see cracks or imperfections at such a height above the main floor. The</p>

	over the amount allowed for light texture removal)	<p>extra repairs and paint (as opposed to primer, which was included) are a benefit, but Dr. Melnik disputes the magnitude of the benefit. Mr. Bewsky did not tell him the change would result in extra work.</p> <p>Decision: Allowed subject to reasonable cost and deduction for work required in any event under the contract. (1) Is an extra. Demolition clause 1 states “smoothen ceiling texture to aid in artwork”. Contract did not include patching or painting of this ceiling beyond a primer because artwork was going to go there. Dr. Melnik would not have accepted anything less than a smooth clean finish. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
2018 Extra #50 \$450	U Fire rate exposed beams and any holes after bulkhead and duct removal above image and xray rooms	<p>Unseen / Necessary: The need for this work only became apparent after the bulkhead and ductwork above these rooms were removed. The fire rating on the bottom of the beams that supported the second floor did not carry through as required by the Building Code and required Mr. Bewsky to repair that. Estimated six hours plus material. Did not discuss with Dr. Melnik. Fire stopping is included in new work, not old work.</p> <p>K / Unnecessary: Included under clause 7 general – Fire Stopping; Also, how do we know this was necessary work?</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not included in contract. Fire stopping is for new work. This is an unforeseen existing defect, excluded by New Construction, clause 9. (2) Dr. Melnik impliedly authorized as necessary to complete work. Accept Mr. Bewsky’s evidence that required by Building Code. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
2018 Extra #51 \$1,550	V & U Re ceiling in image and xray rooms: install drywall ceilings and use space above ceiling for duct chase	<p>V: During construction Dr. Melnik wanted the ceiling in these rooms raised as far as possible. It was previously a T-bar ceiling. Estimated 20 hours plus materials. Mr. Bewsky and Dr. Melnik talked about using the space above for the duct chase, so he had to have drywall and not a T-bar ceiling. Did not tell Dr. Melnik this was going to be extra.</p> <p>K / Unnecessary: At the contract meeting Dr. Melnik said that whatever was in the Old Office was to be in the New Office, and he had T-bar in these rooms in the Old Office. The drawings called for new T-bar ceiling in these rooms. After the contract, Dr. Melnik recalls a short conversation with Mr. Bewsky where he said he wanted to put drywall in the x-ray room and he told him to go ahead. He does not recall if Mr. Bewsky told him why he wanted to do that.</p> <p>Decision: Allowed subject to reasonable cost, and less cost of T-bar ceiling. (1) Is an extra. This is a change from what was in the original scope of work. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
2018 Extra #52 \$940	V Construct new wall and bulkhead in imaging room gaining four inches in size, drywall, tape and coat, finish for paint is part of patch existing	<p>V: This was not included in the scope of work under the contract but work that Mr. Melnik requested during construction. Estimated 12 hours plus material. Did not tell him it would be extra.</p> <p>K: New walls in the imaging (tracing room) are called for on the drawings. Dr. Melnik does not recall discussing with Mr. Bewsky.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. This is rebuilding an existing wall by creating a cavity in it, pushing it</p>

		back about four inches, and a bulkhead on top to accommodate pipes. (2) Dr. Melnik authorized this. Arrows showing the pushing back of this existing wall are shown on the August Design Drawings and are not on the June Design Drawings. (3) Dr. Melnik knew or ought to have known this would increase cost.
2018 Extra #53 \$1,500	V Construct recess in curved wall at xray room entrance as tight as possible to the concrete opening and close off half of this cavity	V: Work that Dr. Melnik requested during construction. This was one of the discovered cavities in the round wall right outside the x-ray room. Previously the cavity would not have been exposed. The purpose was to keep the opening in x-ray room as large as possible, and to allow the x-ray tech to stand partly in there. Estimated 12 hours plus materials. Did not tell Dr. Melnik it would be extra.  Extra / Offset: Contract called for patching and painting this wall; the recess is an extra. Dr. Melnik disputes the amount.  Decision: Allowed as admitted extra, subject to reasonable cost. Also see Extra #10.
2018 Extra #54 \$520	V Add 1 5/8" – 20-gauge stud to 6" stud wall in op 3 of cross-brace area to align wall with bulkhead above	V: Not included in the scope of work under the contract but work that Dr. Melnik requested during construction. The purpose was to make the wall flat going from the first to the second floor. Mr. Bewsky added studs to make the wall 1 5/8" thicker. Estimated six hours plus materials. Did not tell Dr. Melnik this would be extra work.  K: Bulkhead and walls were all set out in the drawings. Insufficient explanation for why this is extra. Dr. Melnik does not recall having a discussion regarding this.  Decision: Allowed subject to reasonable cost. 1. Not included in the contract. This is moving a wall out. 2. Accept Mr. Bewsky's evidence that Dr. Melnik authorized. 3. Dr. Melnik knew or ought to have known would increase cost.
2018 Extra #55 \$610	U Re-build ramp at back door, form, prep and pour	Necessary: When the ramp tile was removed, there was a broken corner. Ramp not high or wide enough which became apparent when taking up tile and placing of wall and to level with the linoleum to put there. Mr. Bewsky re-formed and repoured concrete. Not included in original contract. Estimated eight hours plus material. Did not discuss with Dr. Melnik.  Unnecessary: Evidence does not establish the necessity of the work.  Decision: Allowed subject to reasonable cost, but only with respect to repair of ramp (1) Partially an extra. The widening of the ramp being required should have been evident from the Architectural Drawings. The repair of existing concrete is excluded by New Construction, clause 9, "unseen ... concrete" issues. (2) Repair is impliedly authorized as necessary to complete the scope of work. (3) Dr. Melnik knew or ought to have known that would increase cost.
2018 Extra #56 \$105	V Spray expanding foam around the outside perimeter of the store front to concrete to seal out water prior to the moisture barrier install	Abandoned.

<p>2018 Extra #57 \$3,100</p>	<p>V &amp; U Re revised floor tile/lino installation: layout, mark and confirm locations of dental units in op 4, 5 &amp; 6, and all other transition lines and angles including in front of op 3, install plywood border stops shimmed to level, seal off with foam, add extra moisture barrier system to approx 1/3 of op 6, image room and xray room</p>	<p>V / Necessary: Mr. Bewsky's evidence is that some of this work was not contemplated in the contract and was extra because of the change of the locations of the linoleum and tile in the original contract, and the moisture mitigation. He and Dr. Melnik laid out where he wanted the tiles to stop and start at dental chairs and transition lines to other rooms for aesthetics. Part of this had to do with additional moisture mitigation inside from the perimeter walls in Op 6 and other rooms as otherwise the floor would be different levels. Does not recall discussing this would be an extra with Dr. Melnik. Remediation Work for landlord only included part of Op 6. Estimated 32 hours plus materials.</p> <p>K: Layout of chairs is part of installation of the chairs, which was part of the contract. The extra floor work is part of Third Change Order. Dr. Melnik states that prior to the contract meeting, he had templates of the dental chairs on the floor plans. He does not recall meeting with Mr. Bewsky on site to do what Mr. Bewsky described.</p> <p>Decision: Partially allowed subject to reasonable cost and partially denied. Denied portion: Cakwell has not established that aesthetic laying out of tile not included in Third Change Order and is an extra. Allowed portion: moisture mitigation inside the perimeter which was not covered by the Remediation Work. (1) This part is an extra. Not included in the contract, and excluded by New Construction, clause 9, and clause 3. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #58 \$700</p>	<p>V Design and fabricate six self aligning floor box lids using 1" plywood and fix in place, spaced to level elevation</p>	<p>V / Necessary: Part of the work for installing the recessed J-boxes which were not included in the scope of work. These are lids Mr. Bewsky fabricated to place on top the J boxes, painted and sanded and had lino on top and on bottom. Estimated 10 hours plus material. Did not tell Dr. Melnik this was extra.</p> <p>K / Offset: Implicit in the contract that something would have to cover the holes in the floor created from cutting and coring. Contract wording most likely supports that it would be flooring that covers the holes in the floor. Maybe the plywood is extra? But flooring would have needed to be considered here anyway, so there should be a credit for work avoided.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #25.</p>
<p>2018 Extra #59 \$7,610</p>	<p>V Re partial height exterior walls in front of glazing from washroom wall through to storage room: discuss heights and options, level, mark and mask off glass, paint off windows [two coats] to specified heights, frame, apply 5/8" drywall, tape and finish, prime and paint. Areas where there is no wood ledge - fill gap between wall and glazing with finished material (\$8,410 - \$800 for balance of original cedar install - cedar will be used in op 3)</p>	<p>V: Dr. Melnik requested during construction. These were walls created in the operatories in front of the windows. The backside framing of the walls (visible through the glass from the outside) had to be covered. Originally: (a) Dr. Melnik wanted to use cedar that came from the Old Office, but there was not enough (b) painting windows was not planned because of the cedar; and (c) there was no electrical work planned behind the cedar. Drywall required because not enough cedar, there was millwork to be attached, and now electrical in that area. Mr. Bewsky discussed with Dr. Melnik that he would paint the windows. Dr. Melnik wanted a ledge to go on top of the drywall. Estimated 106 hours plus material. Gave a credit of \$800 for the time he would have spent putting cedar in front of the windows. Did not tell Dr. Melnik it would be an extra.</p> <p>K: Dr. Melnik had cedar covering his exterior glazing at the Old Office. It was removed and placed in storage to be reinstalled in the New Office. This work is called for under New Construction, clause 3. Unclear why any of this work is an extra. Dr. Melnik states that after the contract, "for some reason" Mr. Bewsky wanted</p>

		<p>to use drywall, and not the cedar. He said it was “something about putting in electrical boxes all along the perimeter wall. Dr. Melnik wanted a ledge he had at the Old Office on top of the drywall.</p> <p>Decision: Allowed subject to reasonable cost, and deduction for reasonable time and cost that would have been spent for installing cedar as originally planned. (1) Is an extra. New Construction, clause 3 “apply wood flooring and cedar boards from storage to cover exterior windows”. These are walls with drywall required because there was not enough cedar and because of electrical and millwork to be installed there. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #60 \$175</p>	<p>U Locate dental unit supply lines in records room millwork in front of column</p>	<p>Necessary: The plumbing contract did not cover this aspect of the work. The dental supply lines were already placed and then had to be relocated because Dr. Melnik added a foot to the left end of the counter. Did not discuss with Dr. Melnik.</p> <p>K: Presumptively called for in the plumbing and HVAC work; and if Mr. Bewsky did the work personally, no evidence given as to why he did not hold the plumbers to do the work. Does not recall speaking to Mr. Bewsky about this.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. This was a change after work had been done. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #61 \$795</p>	<p>U Re main staircase stringer and kick repair, party wall side: jack up stringer and place 3/8" thick steel plate under stringer post to level stairs, and add block under end of stair stringer, attach 2 x 4 to inside of kick plate, add angle pieces and fix kick to floor</p>	<p>Necessary / Assumed Consent: This is both a safety and a cosmetic issue. He placed metal to support the stringer as the treads were not level, and a 2 x 4 to prevent the riser from flapping if it was kicked as it was not properly supported. Before all the tile and concrete came out, the plate was probably rigid, but once removed, the plate could move. Not apparent at the time of the contract. Noticed it when levelling the floor in front of the stair to put the tile down. Estimated 11 hours plus materials. He and Dr. Melnik discussed this.</p> <p>Unnecessary: Dr. Melnik did not notice any issue with the stairs. Dr. Melnik recalls there being a problem with the last step on the stair, and Mr. Bewsky having to do some work with the landlord to sort it out. Dr. Melnik recalls Mr. Bewsky saying the last stair was mobile and not properly secured and flopping around, and stated “if it had to be fixed, it had to be fixed.”. Mr. Bewsky did not tell him it would be an extra.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not included in contract, and excluded by New Construction, clause 9, unseen issues. (2) Dr. Melnik authorized. Necessary to complete the scope of work. (3) Dr. Melnik knew or ought to have known it would increase cost.</p>
<p>2018 Extra #62 \$3,120</p>	<p>V Re reception back wall (step wall): build three sections of wall; section next to op 7, heavily insulate and soundproof using multiple layers of scrap drywall, all walls - drywall, tape and coat, (finish for paint is part of patch existing)</p>	<p>V: Work that Dr. Melnik requested during construction. This item reflects the construction work associated with the demo work in Extra #8. The wall had three levels of wall. Estimated 36 hours, plus materials. Can't recall if he told Dr. Melnik this was extra.</p> <p>?: Dr. Melnik does not recall there being an issue in this area that they talked about.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #8. Pushing back and creating three stepped walls for extra space not included in contract. Not shown on any plans.</p>

<p>2018 Extra #63 \$3,980</p>	<p>V Re added strip lighting on top of storage ledge wall and lowering of bulkhead below for sprinkler and exhaust duct pipe chase: trim cap and extend drywall to cover strip lighting and finish top edge of drywall - re bulkhead below: cut back existing 2 x 6 wood flush to window mullions, fabricate painted drywall covered 6" studs and attach to window frames with shims, provide suitable framing for ceilings eliminating the need for dual sprinkler heads</p>	<p>V: Work that Dr. Melnik requested during construction. This involved more than simply installing one type of lighting in place of another and included modifications to accommodate the strip lighting and lowering the bulkhead below. Dr. Melnik wanted strip lighting and to have the exhaust for the records and bathroom concealed rather than on the ledge because that would take up space for storage. He wanted them below the ledge, so Mr. Bewsky created a bulkhead to conceal those. Dr. Melnik also did not want sprinkler lines coming down from the second-floor area because it was an eye sore. Estimated total time 56 hours, plus materials. Did not tell Dr. Melnik it was extra work.</p> <p>K / Offset: Lighting on storage ledge wall is called for in the contract. Powerpoint drawings show eight surface mounted lights on "upper shelf". All work necessary to provide for lighting should be included. Strip lighting is different, but no evidence to say the work to do strip lighting is different from the proposed eight lights. Dr. Melnik agreed to put in strip lighting. Dr. Melnik agreed this was over and above the original contract, but said he had credits owing to him. Mr. Bewsky said he would paint the valance so there would be no glare from the windows. Dr. Melnik has no memory of the bulkhead issue.</p> <p>Decision: Allowed subject to reasonable cost and deduction for lighting work that was required in this area under the original scope of work. (1) Is an extra. Strip lighting, valance, and this bulkhead work was not included in contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #64 \$2,040</p>	<p>V Install steel stud framing, 5/8" drywall, flex L-edge, tape, finish and paint bulkhead in op 7 due to very irregular curved walls</p>	<p>V: Work that Dr. Melnik requested during construction to create the bulkhead structure in Op 7 (the inner round room on the first floor). The purpose was aesthetics. Mr. Bewsky told Dr. Melnik what it would look like without it, and he didn't think he would like it. The curved walls were irregular, and this was to create a narrow even circular bulkhead inside the wall on top of which would be the T-bar ceiling. Dr. Melnik told him to do this. Estimated 27 hours plus materials. Didn't tell him it would be extra.</p> <p>K: Plans called for new drywall ceiling in Op 7 (round room). Dr. Melnik recalls a discussion about putting a little socket extension so the ceiling would not go to the wall but would end at the soffit. This was Mr. Bewsky's suggestion, and he told him to go ahead (see written questions in January 2016). Mr. Bewsky thought it would be easier to put in the T bar and suggested it would simplify his work. He did not tell him it would cost him anything.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not in contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #65 \$900</p>	<p>V Add clear anodized aluminum flashing angle and 2-3/4" around wood perimeter of T-bar ceiling at back area to cover poor installation of wall mold and unfinished wood</p>	<p>Assumed Consent: Mr. Bewsky states this existing area (perimeter between line 2 and Line B on drawings) looked awful. There was existing 1 x 4 wood against the window frames that could be seen at the top that had T-bar attached to it. This was done for aesthetics. He got anodized aluminum flashing, the same as the window frames and installed it over the wood so it would not be seen. Estimated 10 hours plus material. Did not discuss with Dr. Melnik. He stated he knows Dr. Melnik would have wanted something done. It was easier to do it when things were apart.</p>

		<p>Unnecessary: No value to this work. Dr. Melnik does not know what work this refers to.</p> <p>Decision: Allowed subject to reasonable award under unjust enrichment principles. (1) Is an extra. Mr. Bewsky reasonably assumed Dr. Melnik would want this. This work was a detriment to Cakwell and the photos show this was an enrichment to Dr. Melnik and Melnik Inc. No juristic reason.</p>
<p>2018 Extra #66 \$145</p>	<p>U Re location for xray machine backing on curved wall: difficult to provide multiple layers of backing suitable to support the xray machine as it is located where there is partial concrete and the opening for the pipe chase</p>	<p>Unseen / Necessary: This work was made necessary by the presence of one of the cavities in the round wall which was unknown at the time the contract was made. Part of where the x-ray machine was to be installed was over the cavity, and part was not, and there were pipes in the cavity. If the cavity had not been there, he could have just attached it to the wall. Did not discuss with Dr. Melnik.</p> <p>K: All equipment from storage is to be installed; and plywood backing is included under contract item 7 General.</p> <p>Decision: Allowed in part subject to reasonable cost and deduction for backing required in any event. (1) Part is an extra as excluded by New Construction clause 9, unseen condition, but some backing had to be provided in any event. (2) Dr. Melnik impliedly authorized as necessary to complete the original scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #67 \$3,495</p>	<p>V According to lead specifications provided from radiation tech, supply and install lead in discussed areas in xray room</p>	<p>V: Mr. Bewsky denies that the contract called for him to remove and reuse the lead from the Old Office. The [Removal] contract makes no provision for this significant cost. Mr. Bewsky's evidence that Dr. Melnik asked him to purchase and install the lead, should be accepted over Dr. Melnik's evidence to the contrary. Estimated 28.5 hours plus \$1,500 materials. Mr. Bewsky recalls Dr. Melnik told him that lead might not be required in the walls. Did not tell Dr. Melnik it would be extra.</p> <p>K: Dr. Melnik told Mr. Bewsky to remove and reinstall his old lead. He says he had no idea Mr. Bewsky had bought new lead. If it is an extra, he disputes the charge. There is no receipt for the new lead.</p> <p>Decision: Allowed subject to reasonable cost of lead only, but not installation. (1) Purchase of lead is an extra. Removal of lead is not in the Removal Contract. Do not accept Dr. Melnik's evidence he told Mr. Bewsky to remove lead from the Old Office. Dr. Melnik would have seen if removed from Old Office as walls would have been dismantled. No evidence that Dr. Melnik raised at any time that Mr. Bewsky had not removed the lead. Installation of the lead is not an extra. Installation of equipment from storage (the Removal Contract crossed out removal of x-ray machines, but in fact Mr. Bewsky was persuaded to remove them) was part of the verbal terms. Lead in walls was required. Do not accept Mr. Bewsky's evidence that Dr. Melnik told him it might not be required. (2) Dr. Melnik impliedly authorized as it is necessary to complete the original scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #68 \$140</p>	<p>U Provide clearance above and raise and support duct at xray room entrance re ceiling clearance</p>	<p>Necessary: Mr. Bewsky testified that Dr. Melnik kept wanting to move the ceiling up. The HVAC subtrade had put in a duct close to the bottom of a beam, and Mr. Bewsky needed more space to get the ceiling tile grid into the space. He had to push it up. Estimated two hours.</p>

		<p>K?: The contract calls for new ceilings in this area. This is part of the new ceiling work.</p> <p>Decision: Denied. Not an extra. This is part of installing the ceiling. This was simply that it was more difficult to carry out and he had to push up the duct because it was a tight space.</p>
<p>2018 Extra #69</p> <p>\$125</p>	<p>V Cut off bottom brace flange of cross brace re engineer okay, gaining 2 inches in opening</p>	<p>Necessary: Mr. Bewsky states that the cross bracing that was part of the previous seismic upgrading had a flange at the bottom of it sticking out and Dr. Melnik wanted it cut off. Mr. Bewsky said he would not do it without an engineer's okay, so when the engineer came out to the site, he obtained that approval and cut it off and notched the drywall a bit so not all of it had to be cut out. Estimated 1.5 hours plus tooling. Did not tell Dr. Melnik it was an extra.</p> <p>Unnecessary: Dr. Melnik states he does not know what this refers to.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known it would cost extra.</p>
<p>2018 Extra #70</p> <p>\$1,465</p>	<p>V Re hemlock door and window jambs: use over-size jambs and cut down to 4 9/16 as per discussed wood to drywall profile trim detail</p>	<p>V: Mr. Bewsky testified that during construction Dr. Melnik gave him the detail of how he wanted the doorways. The standard way is to use casings and Dr. Melnik did not want that. Did not tell him it would be extra. It is submitted that Mr. Bewsky' evidence on this point should be accepted. If Dr. Melnik had previously asked him to install the doors and windows this way, there would have been no need for him to ask him again to do it while construction was underway</p> <p>K: This is how the doors and windows were installed at the Old Office. Dr. Melnik told Mr. Bewsky at and before the contract signing meeting that he wanted the doors and windows installed this way. If the court finds otherwise, there should be a credit granted from Mr. Bewsky for whatever door jambs and window jambs that were provided for in his estimate. He does not recall discussing it again.</p> <p>Decision: Allowed subject to reasonable cost and deduction for work that would have been required in any event with standard door jambs. (1) Is an extra. Nothing in written contract documents regarding this. New Construction, clause 3 states "install 10 new wood doors and wood frames finished with water-based clear finish". I do not accept this was agreed to prior to the contract. If there had been such an agreement, there would be no need for Mr. Bewsky to ask about this detail in the January 21, 2016 email, item 5, where he states that he needs detail for the drywall returns at the doorways and window frames. Dr. Melnik's notes states that he discussed with Mr. Bewsky that casings are not wanted, and provides further instructions. He does not state this had already been agreed to, or query why he was asking since it had already been agreed to. (2) Dr. Melnik authorized. (3) Dr. Melnik necessarily knew this would increase cost.</p>
<p>2018 Extra #71</p> <p>\$2,165</p>	<p>U Re window frame stops for doors: removed to finish doors - not suitable for re-use, too much damage and too small to cover the many imperfections in the lamiglass and openings in doors</p>	<p>Abandoned.</p>

	- fabricate new hemlock stops, mill and shape and cut profile suitable to the thickness of the glass and doors, sand, apply three coats of varathane, cut new frame pieces and assemble	
2018 List – Extra #72  \$7,340	V Re wood plank/posts: discuss and confirm locations on main floor and second floor landing, source (kiln dried unavailable), pick to match for posts, sort and purchase cedar boards, climatize, design and fabricate posts, prep planks, prepare for finish, apply two coats of Watco finish, provide suitable openings and backing in all locations, pre-install to apply drywall trim (very difficult due to density of drywall), fill and finish trim, prep and apply finish coat of Watco, and install using glue and propping in place	V: Mr. Bewsky submits the amounts charged for this admitted extra are reasonable given the time spent, material costs incurred and cosmetic importance of this item. These are to simulate beams and are false cedar posts. The planks Dr. Melnik sourced were green and not kiln dried as Mr. Bewsky instructed. There were three posts set into corners, and some inserted as corner posts, one at an odd angle because the walls were angled. Estimated 92 hours plus materials and tooling.  Extra: This is an extra, however the charge is extremely excessive. Dr. Melnik sourced the boards. There were 5 planks. Mr. Bewsky said they were wet. Dr. Melnik did not ask for the fancy joinery that Mr. Bewsky did which apparently took so long and cost so much. He says if he knew the wood would have cost him so much he would have put up laminate instead.  Decision: Allowed for this admitted extra, subject to reasonable cost.
2018 List – Extra #73  \$980	V Re manager’s room light support: discuss options re types of material and fabricate using timber from scaffolding - two pieces - cut down to cleanup, notch ends, shape, round-over all edges, sand for finishing and remove stains (no material - only tooling and finishing)	V: Mr. Melnik requested during construction. In the manager’s room on the first floor there is no ceiling, but the revised lighting specifications called for a 2’x2’ light. Can’t support from ceiling above because that is 30 feet in the air. Dr. Melnik wanted beams to be put in place so that the light could be attached to that and the electrical wires threaded in the beam. This was not in the original lighting plan. Mr. Bewsky used beams from what he used for the scaffolding and notched it in the wall so it looked like a beam sticking through the wall. The electrical was bored through the beam. Estimated 14 hours. Did not tell Dr. Melnik it was extra.  K: This is the same light from the same room in the previous office. Construction Notes, item 18 states to clean and re-lamp all luminaries. Denies having a conversation with Mr. Bewsky about this.  Decision: Allowed subject to reasonable cost. (1) Is an extra. This is a charge for beams which are extra and not installing a lamp. (2) Accept Mr. Bewsky’s evidence that Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.
2018 Extra #74  \$125	U Fabricate and install rubber bumpers in both pocket door frames and supply new door bumpers for others	Assumed Consent: This work was not included under the contract. Mr. Bewsky assumed reasonably that Dr. Melnik would want him to do this work. Mr. Bewsky said the two pocket doors he purchased came with hard bumpers. In the Old Office, Dr. Melnik had him put in soft bumpers instead. He fabricated these. He did not discuss with Dr. Melnik.  K: Dr. Melnik does not recall discussing this with Mr. Bewsky but said there were rubber bumpers in pocket doors in the Old Office, and he does not know why they could not be reused.  Decision: Allowed subject to reasonable amount under unjust enrichment principles. Is an extra. No evidence that Removal Contract included removing these to be reused. Dr. Melnik impliedly was content to have these. Cakwell suffered a detriment,

		and Dr. Melnik and Melnik Inc. received a benefit. No juristic reason.
2018 Extra #75 \$1,640	V Re x-ray view glass (2) one with lead overlap and relocate the other as discussed: discuss and confirm locations, frame, drywall, trim, bullnose bead, tape to finish, prime and paint, fabricate, prep and paint stops for each window, install glass, stops, caulk and paint	Abandoned.
2018 Extra #76 \$875	V Re possible future AC to mech room: core hole through floor in wall cavity of storage room, install 3 x 10 oval duct, plugged at floor end with fire rated material and capped off in ceiling space above, grout in to seal at floor	<p>V: During construction, Dr. Melnik asked him to do this. Mr. Bewsky's evidence on this point should be accepted. Estimated 11.5 hours plus materials. Did not tell Dr. Melnik this was extra.</p> <p>Unnecessary: Dr. Melnik did not instruct Mr. Bewsky to do this, and in this case, this work was unnecessary. The excessive heat issue was fixed when he fixed the missing insulation in the exterior southeast wall. The only discussion he recalls is that he knew there was a major problem with air conditioning in the south wall because of lack of insulation in the perimeter drywall walls in front of the glass. Mr. Bewsky said there was something wrong with the AC and he would have to talk to the HVAC subtrade about it.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not in contract. (2) Accept Dr. Bewsky's evidence that Dr. Melnik instructed him to do this. The issue regarding the insulation of the perimeter wall in front of the glass came up much later, after Cakwell left the job site. (3) Dr. Melnik knew or ought to have known this would cost more.</p>
2018 Extra #77 \$450	V Re rooftop unit existing hole in ceiling: frame, board, tape, finish and paint	<p>V: This is the rooftop unit that was moved per mechanical subtrade, and the work to close the hole in the roof. Estimated six hours.</p> <p>Extra / Offset: See Extra #45</p> <p>Decision: Allowed for admitted extra, subject to reasonable cost and offset as in Extra #45.</p>
2018 Extra #78 \$455	V Existing column in op 4/5 - remove square comer bead, prep for bullnose bead, apply bead, tape and finish for paint	<p>V: During the course of construction, Dr. Melnik asked Mr. Bewsky to install bullnose, as opposed to ordinary, corner beading. Mr. Bewsky's evidence on this point should be accepted. If Dr. Melnik had previously asked him to install bullnose beading, there would have been no need for him to specifically ask him again to do the same thing while construction was underway. The written contract says nothing about bullnose beading. Did not tell Dr. Melnik this was extra. Estimated six hours plus material.</p> <p>K: Dr. Melnik told Mr. Bewsky at or before the March 14, 2015, meeting that all drywall corners should be bullnose bead corners. Ms. Safi gave similar evidence.</p> <p>Decision: Denied. I find prior to signing the contact, the parties agreed to bullnose corners on all new drywall, not on existing. Mr. Bewsky knew the Old Office had bullnose because he changed all the corners in the Old Office. This is consistent with Mr. Bewsky's written question to Dr. Melnik on January 21, 2016, item 10, where he asks whether Dr. Melnik wants bullnose bead –</p>

		on new corners or all, and Dr. Melnik responds on all new corners "as planned". Given Dr. Melnik specifically instructed Mr. Bewsky not to install bull nose on existing corners, neither contractual <i>quantum meruit</i> nor unjust enrichment has been established.
2018 Extra #79 \$3,290 less credit of \$1,645	V Re door and window return drywall trims: pre-prime with metal primer, paint two coats, install, fill and finish for paint (allowed additional time for installation due to dense drywall)	V: During construction, Dr. Melnik and Mr. Bewsky had discussions several times about these casings which were not standard. Mr. Bewsky acknowledges that some credit would be appropriate and suggests \$1,645 (half of the total). Mr. Bewsky assumed standard casing in the contract. Nine doors and one window frame. Does not recall if he told Dr. Melnik this would be extra work.  K / Extra / Offset: Nothing should be allowed for his extra since we don't know that this work was any more work than under the contract.  Decision: Allowed subject to reasonable cost for this partially admitted extra, with a deduction for work that would have been required in any event. See Extra #70.
2018 Extra #80 \$1,520	V Additional- cost in using bullnose bead rather than square on all outside vertical comers where practical (other than the extras listed)	V: See extra #78. This is extra cost above regular square corners.  K: See extra #78.  Decision: Denied. Not an extra. These are new corners, and I have found it was part of contract. See Extra #78.
2018 Extra #81 \$1,015	V Re recessed storage in cavity of curved wall in imaging room: confirm, cut, frame, drywall, tape to finish, prime and paint	V: The credit (if any) to allow for this admitted extra should be no more than \$250, given the extent of the additional work involved. This work is opening and installing a storage area in one of the hidden cavities discovered in the wall of the round room (Op 7) to which the imaging room is contiguous. Estimated 14 hours plus material.  Extra / Offset: Extra work but should be a credit for work in this area that was required under the contract (patching and painting).  Decision: Allowed for this admitted extra, subject to reasonable cost and patching and painting incurred in any event.
2018 Extra #82 \$840	V Re confirmed very thin profile base - tile must pass under drywall: mark elevations and cut bottom off of installed drywall, on remaining walls, block and elevate drywall to suitable elevation slightly above tile finish	Necessary: This is additional construction work stems from the additional flooring work under the Third Change Order and not included in that change order. Dr. Melnik wanted to use vinyl floor tile that was about 1/8 of an inch thick for the baseboard, and for it to be cut down with a routed edge, instead of cove base, and this would be glued on the drywall. Cove PVC was contemplated by the original contract. Because the edge was so thin, when it would be applied, there would be a gap between the tile flooring on the centre round wall. Tile cannot get that close to the wall, so Mr. Bewsky had to cut under the drywall so the tilers could put tile under the drywall. The tilers maybe could get that close on a straight wall, but it would be harder on a curved wall. The coved base in the original contract would have covered a gap. At the time of the change order, he did not know what Dr. Melnik was going to use as the base. Estimated 12 hours. Did not tell Dr. Melnik this would be extra. He did not think about this when Dr. Melnik brought him the vinyl he wanted cut down.  CO: This work is anticipated by the flooring change order. All flooring specs were known at the time change order was signed.

		<p>Dr. Melnik states he showed him the grey vinyl tile to use, and Mr. Bewsky did not tell him there would be an issue using it.</p> <p>Decision: Allowed, subject to reasonable cost. (1) Is an extra. The Third Change order does not refer to this. It refers to flash cove base and “a separate stripe of the same material” as flat base on curved walls” where there is lino. The tile section of the quote does not include any cove or wall baseboard where tile is. The linoleum Dr. Melnik wanted cut down for cove around the tile is cut from vinyl tiles. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #83 \$1,850</p>	<p>U Additional cost in applying drywall and laminate to walls due to many extra electrical and data outlets</p>	<p>Necessary: This is additional work stemming from the additional work under the First and Second Change Orders and not included within those scopes of work. There were over 100 new outlets. Any laminate attached to the wall and drywall had to be cut to accommodate them. Estimate 25 hours plus tooling. Did not discuss his extra work specifically with Dr. Melnik other than when Dr. Melnik gave him the Design Drawings he told him there was a lot of extra work in the drawings.</p> <p>CO: Change orders two and three cover this. Dr. Melnik does not recall a discussion about this.</p> <p>Decision: Denied. Cakwell has not established that this is not part of the scope of work in the First and Second Change Orders.</p>
<p>2018 Extra #84 \$370</p>	<p>U Layout, frame and cut for four added pot lights in waiting room bulkhead</p>	<p>Assumed Consent: It is submitted that Mr. Bewsky was correct in assuming that Dr. Melnik would want this work to be done, and that he acted reasonably in doing it. Mr. Bewsky states there was no lighting plan, and four pot lights were added in the bulkhead in the waiting room to accommodate the sprinkler line that ran along the perimeter. This was framing to put in the pot lights between studs. Did not discuss with Dr. Melnik.</p> <p>Extra / Unnecessary: These lights were installed purely at Mr. Bewsky’s initiative. There was no reason given for their installation, but presumably they are a benefit to Dr. Melnik. Dr. Melnik states he does not recall discussing the addition of four pot lights in the waiting room with Mr. Bewsky.</p> <p>Decision: Allowed. 1. Is an extra. The February 15, 2015, lighting plan does not contain any pot lights in the waiting room (only shows the lighting for the ledge above). The January 31, 2016, revised lighting plans show the four (marked as “new”) pot lights. 2. Dr. Melnik authorized. 3. Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #85 \$1,160</p>	<p>V In place of artwork - Re bottom of beams at curved wall location: demo square bottom, frame and board at an angle, apply trim, tape to finish</p>	<p>V / Necessary: The need for this work arose as a result of Dr. Melnik’s decision to forgo the artwork making finishing of the beams necessary. This is placing an angled piece for aesthetics at the bottom of the beams where they meet the top of the centre round room. Dr. Melnik requested this. Estimated 16 hours plus material. Did not tell Dr. Melnik this was extra.</p> <p>Unnecessary: Work was never requested. Beams appear to be painted (as shown in pre-renovation condition photos. This work is of no value to Dr. Melnik. Dr. Melnik says he does not recall any discussion of this and was not aware the work was done</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not in contract. (2) I find that Dr. Melnik requested this. Pictures of the</p>

		<p>New Office prior to the contract show a square piece under the beams. It is aesthetic work. The only reason to replace this would be if Dr. Melnik instructed Mr. Bewsky to do it. The work is obvious as it is plainly visible. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 Extra #86 \$1,500</p>	<p>U Extend face of walls and beams around water closet/entrance and records room top landing areas with drywall or plywood and trims to accept the buildup of flooring and in place of art work, build up the top of three beams directly affected by this build to match elevations, fill and finish all areas for paint</p>	<p>V / Necessary: The need for this work also arose from Dr. Melnik's decision to forgo artwork on the main floor, making finishing of the beams necessary. Mr. Bewsky stated that at the top of the washroom area and record room area where floors were built, lino was going to be used for flooring. He asked Dr. Melnik what he wanted as finish on the edge. Mr. Bewsky suggested aluminum L shaped angles to go the top of the wall and the edge of the floor. Dr. Melnik did not want that because he did not want to see the L angles from below. Mr. Bewsky placed the L edge, but mudded it over so it was not seen, and made it slightly proud of the flooring so the lino and backing would fit underneath. Estimate 20 hours plus material. Because the lino made the flooring higher, he also built up the top edge of the beams about 5/8 of an inch so they would be level with the finished floor. Did not discussing building up beams with Dr. Melnik. Agreed there were other ways to do this, such as finishing with wood.</p> <p>Unnecessary: No evidence this work was called for nor of the benefit of the work. Dr. Melnik stated he does not know what the extra refers to and he was not aware this work was done.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. (2) Dr. Melnik authorized. Accept Mr. Bewsky's evidence he and Dr. Melnik discussed. (3) Dr. Melnik or ought to have know would increase cost.</p>
<p>2018 Extra #87 \$1,950</p>	<p>U In place of artwork - Re beams spanning the main floor open area: repair bead and trims, scrap and sand rough textured tops of beams and fill, finish all faces for paint, prime and paint two coats</p>	<p>V / Necessary: The need for this work also arose from Dr. Melnik's decision to forgo artwork, making finishing of the beams necessary. All the beams at the top of the main floor had texture on them and multiple coats of paint which had to be scraped off, and they were damaged in some areas. The beams were finished properly. In the original contract, these beams could be left as is because the artists were going to use them as trunks of trees. Estimated 25 hours plus materials. Did not discuss with Dr. Melnik.</p> <p>K / Unnecessary: Contract called for scraping of textured finish and priming; Contract did not call for the other work, but it is of no value to Dr. Melnik. He only cared that there was no stucco on the bottoms of the beams as he was concerned about particles falling on his patients. Dr. Melnik stated he did not understand why removing artwork would affect beams. Suggested Mr. Bewsky might have damaged the beams when he had scaffolding on them.</p> <p>Decision: Allowed, subject to reasonable cost, less work that would have been required in any event under the contract (scraping off to some extent). (1) Is an extra. (2) Pictures of New Office prior to renovation show the beams are in rough shape. I am confident Dr. Melnik would not have accepted this, and I find it is part of the admitted extra required as a result of cancellation of the artwork. However, even if I am in error in that conclusion, and there was no express or implied authorization for this work, Dr. Melnik was enriched, Cakwell suffered a deprivation and there is no juristic reason for this, so would be allowable on unjust enrichment principles. (3) Dr. Melnik knew or ought to have know would increase cost. No evidence Mr. Bewsky damaged the beams.</p>

<p>2018 Extra #88 \$3,740</p>	<p>V &amp; U Cut to suit new location, recessed ceiling tile from storage and supply and install balance needed of new tile in quick consult, storage, records, op 4, 5, 6, 7, washroom and second floor office</p>	<p>V / Necessary: Mr. Bewsky stated that when he was performing the Removal Contract, he took the ceiling tiles to use in the New Space as they are recessed tiles (as opposed to standard drop in tiles) and not cheap. They cost four to five times standard tiles which he allowed for in the renovation contract. He asked Dr. Melnik if he wanted to use those tiles and he said yes, and Dr. Melnik gave him specs for new tiles. He cut them to size and used them up and purchased new tiles. Estimated 32 hours plus new materials. Did not tell Dr. Melnik it would be extra. This is the additional cost for labour and new tiles. Mr. Bewsky said the credit for ceiling tile he would have had to buy in any event was already included, but he could not identify this.</p> <p>K / Extra?: The drawings call for ceiling tile in all these rooms. However, the contract says that the ceiling will be an open ceiling where all the existing bars would be removed. It is unclear what the agreement of the parties was. Dr. Melnik said that the tile from his Old Office was beautiful, and Mr. Bewsky did not have enough so he bought extra to match, but complains it was not "non-ClimaPlus". Mr. Bewsky installed "ClimaPlus". Mr. Bewsky did not tell him it would be extra.</p> <p>Decision: Allowed subject to reasonable cost and what Cakwell would have had to pay for ceiling tile in any event. (1) Is an extra. Demolition, clause 1 calls for removal of T-bar ceiling, and New Construction, clause 3, line 4 states that ceiling is to be installed according to plans, which indicate T-bar ceiling. I conclude the old was replaced with new. There is nothing to suggest special recessed ceiling tiles were required. (2) Accept Mr. Bewsky's evidence that Dr. Melnik authorized this as this is how he got the specs to buy more tile. (3) Dr. Melnik knew this would increase cost. (4) Contract does call for non-ClimaPlus tiles and this is addressed in the counterclaim.</p>
<p>2018 Extra #89 \$1,880</p>	<p>V Re reception area ceiling under landing: frame and drywall at new higher height in line with bottom of new landing structure, re drywall beam, and furr in and drywall sprinkler line re-located against backwall, apply beads, tape and finish for paint</p>	<p>V The credit (if any) appropriate to allow for this item should be no more than \$500, given the comparatively greater extent of the additional work involved. Mr. Bewsky said this was because Dr. Melnik wanted the original ceiling that was taken out to be higher to the bottom of the beams. The sprinkler had to be relocated because of that. Moved pipe to wall so bulkhead was required. Estimated 24 hours plus material.</p> <p>Extra: Likely an extra, but there should be a credit for work that was called for under the contract. Dr. Melnik states that during March 14, 2015, meeting he told Mr. Bewsky to keep a high open concept as in the Old Office but does not recall saying then to raise the ceiling. Acknowledged it is possible this came about because of the modified second floor landing, and he said to Mr. Bewsky that while he was at it, to drywall and keep the ceiling as high as he can.</p> <p>Decision: Allowed as an admitted extra, subject to reasonable amount and any deduction for any work required under the original contract in this area.</p>
<p>2018 Extra #90 \$11,070</p>	<p>V re &amp; re 3 window openings in curved wall of op 7 pushing glazing into room providing model box storage on two openings and close one off at xray area for computer station, repair large bulge in wall at one</p>	<p>V: This is work arising from the existing windows and hidden cavities discovered during renovation. Mr. Bewsky submits the amounts charged for this admitted extra are reasonable given the time spent and material costs incurred. Originally there were four windows in the round room on the main floor. He closed off one flat on the inside, and on the outside, he created a computer station. Dr. Melnik instructed him to push back the glass as far out as</p>

	<p>opening; re storage boxes inside of op 7 in curved wall: mark elevations/locations and cut openings with "sawzall" re lumber framing, add four (pre-fabricated from angle and drywall) recessed storage boxes, add angle around openings, blocking and backing for support, fixing boxes in place - two below windows, in line with windows and two in other cavities; re three window openings: use templates to cut drywall for each opening, shim and fasten drywall to openings true, square and plumb to accept new glazing, trim openings with angle inside and out and fix in place on both windows, return drywall for glazing stops and apply L-edge, apply bullnose, square and flex beads inside and out of openings and boxes, tape, finish, prime and paint au; re computer station recess: frame back of opening, board both sides and insulate</p>	<p>possible on the two or three of the other windows so he could use the inside ledge. He also made boxes fit into curved walls. Contract provided only for patch and paint for these areas. Estimated 146 hours plus materials. Did not tell Dr. Melnik how much this would cost extra.</p> <p>Extra: While this work was not under the contract and is an extra, Dr. Melnik submits this is an excessive charge. Dr. Melnik said he would not have authorized this charge had he known of the cost. The benefit was marginal: it was to get a little more ledge in the round room windows to place items on. It was not worth \$11,000 to Dr. Melnik. Agreed it improved the usability of Op 7. Anticipated Mr. Bewsky would charge, but not this much.</p> <p>Decision: Allowed for this admitted extra, subject to reasonable cost, and patching and painting that would have otherwise been required under the contract. This was more than simply creating a ledge.</p>
<p>2018 Extra #91 \$630</p>	<p>U re-build door opening to op 7 - existing opening detached from floor and concrete opening, out of plumb and out of square</p>	<p>Unseen / Necessary: This work was necessary to address a condition that only became apparent during construction. The door frame in Op. 7 was broken away from the concrete. It had to be pushed back and replumbed and re-squared. Angle iron screwed into the bottom on both sides and the floor. The top of the door opening in drywall cut to properly support the frame. Possibly the old tile had been holding it previously. Estimated 12 hours reduced to nine.</p> <p>K: Door installation and walls are included in the contract; dealing with existing conditions in a renovation should have been expected by the contractor. No evidence to suggest these conditions were unexpected. Dr. Melnik does not recall this.</p> <p>Decision: Allowed subject to reasonable cost and any cost that would have been incurred in any event. (1) Is an extra. Is excluded by written contract New Construction, clause 9, as unseen issue that required repair. (2) Dr. Melnik impliedly authorized as necessary to complete scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #92 \$2,630</p>	<p>V Re fish tank opening: layout and design to suit existing millwork, cut curved ribs and frame outside of opening true and plumb for glass and millwork creating view opening for tank, build bottom platform for millwork to sit on in place of its base, remove concrete and steel at sides and both top corners of opening for millwork</p>	<p>V: Work that Dr. Melnik requested during construction. The amount charged for this work is reasonable given the amount of work and cosmetic importance of this feature. The credit (if any) appropriate to allow for this item should be no more than \$600. Mr. Bewsky discussed this with Dr. Melnik after the cavities in the round wall were discovered as a location for the fish tank. He opened and enlarged the previously hidden cavity by chipping out cement, to accommodate the existing millwork, and then framed it for that millwork. This was not part of the original contract. The fish tank could have sat on a cabinet anywhere. It is a lot of work because</p>

	<p>clearance; final size of view opening - furr out, cut opening, drywall inside and back of opening, apply bullnose, flex and square beads, tape, finish, prime and paint opening</p>	<p>the walls are round. Estimated 37 hours plus materials. Does not know if he told Dr. Melnik this was extra.</p> <p>?: Fish tank opening was in previous office; contract calls for new framing and drywall "per drawings"; drawings don't include fish tank; oral agreement (prior to contract) may have further specified this, but in any event, there should be a credit for the work that Mr. Bewsky had to do even if there was no opening. An opening should be cheaper than a wall. Dr. Melnik states that prior to the contract they discussed there would be a fish tank opening. He asked Mr. Bewsky to put the fish tank in the round wall and when the cavities were discovered to open up the space below to fit the cabinetry in. Suggested no reason to remove drywall on outside of cavity. If Mr. Bewsky had told him it would cost \$2,630, he would have left it out.</p> <p>Decision: Allowed subject to reasonable cost, and deduction for cost that would have been incurred in any event to install the fish tank. (1) Is an extra. Fish tank included in contract, but not placement in this round wall with unknown cavity being used and enlarged. (2) Dr. Melnik instructed Mr. Bewsky to do this work. (3) Dr. Melnik knew or ought to have known it would increase cost. This opening was not cheaper than a wall.</p>
<p>2018 Extra #93 \$2,940</p>	<p>U In place of artwork - Drywall outside of op 7 curved wall from line 2 east side to line 2 west side, shim drywall to maintain smooth curve, apply beads and trim, tape, finish, prime and paint one coat</p>	<p>V / Necessary / Assumed Consent: This work stemmed partly from Dr. Melnik's decision to forgo the artwork (making the contrast between the walls and the newly finished ceiling starker), and partly from the poor condition of the walls which Mr. Bewsky assumed Dr. Melnik would want fixed to meet his quality expectations. Mr. Bewsky stated that as a result of all the other work from the unseen cavities, it was more feasible to re-drywall and improve the roundness of the wall, rather than patch and paint, once all the cavities had been created (xray technician cavity, computer station cavity, move windows back, fix doorway, fish tank cavity, other window). Plus, this had already been started with the finishing work on the top level. No drywall work had been contemplated here under the original contract because the outside round room wall was going to be the trunk of a tree. Did not discuss with Dr. Melnik. Estimated 37 hours plus materials.</p> <p>K / Unnecessary: Contract calls for patching and painting the existing drywall. Maybe there was too much to patch and paint? But that would be on the contractor, not Dr. Melnik. Dr. Melnik stated that there was nothing wrong with the existing drywall</p> <p>Decision: Allowed subject to reasonable cost. (1) This is an extra. While patch and paint is in the contract, this is far beyond that. This was a result of all the other extra work in connection with the unseen cavities which Dr. Melnik instructed Mr. Bewsky to use in different ways. The pictures show the multiple cuts and holes in the wall. To a lesser extent, this also partly stems from the decision to forego artwork. (2) Dr. Melnik impliedly authorized because it was necessary as arising from other extra work he authorized. (3) Dr. Melnik knew or ought to have known it would increase cost.</p>
<p>2018 Extra #94 \$445</p>	<p>U Re wall section behind sink in op 7: build out and re-frame to suit electrical and plumbing rough-in and make flat for millwork and back splash</p>	<p>Necessary / Assumed Consent: This is a stainless-steel sink and backsplash to the right of the entrance to Op. 7. The wall needed to be flattened to accept the back splash. Mr. Bewsky said he did not recall if there was originally a plan to have a sink in that area. However, I note that earlier in his testimony he said that Dr. Melnik had told him the location of all the sinks at or before March 14, 2015 and he marked them on his copy of the Architectural</p>

		<p>Drawings. Estimated six hours plus materials. Did not discuss with Dr. Melnik would be extra.</p> <p>?: Dr. Melnik said he did not talk to Mr. Bewsky about doing framing for sinks to go into Op 7.</p> <p>Decision: Denied. Installations of sinks, the location of which Mr. Bewsky stated he knew about, was part of oral discussions and the terms of the contract.</p>
<p>2018 List – Extra #95</p> <p>\$1,700</p>	<p>U Re multiple modifications in op 7: apply drywall to inside walls, shim to improve curve, tape in and apply one coat of mud only (other coats and finish are offset by patch existing)</p>	<p>Necessary / Assumed Consent: This work was not called for under the contract, however Mr. Bewsky assumed (reasonably, it is submitted) that Dr. Melnik would want him to do this work to meet his quality expectations. See evidence and position for Extra #93. After all the cavities, more feasible and would improve roundness to re-drywall the entire inside. Estimated 20 hours plus material. Did not discuss with Dr. Melnik.</p> <p>K / Unnecessary: There was already drywall inside Op .7 Contract calls for patching and painting and existing drywall. Maybe there was too much to patch and paint? But that would be on the contractor, not Dr. Melnik.</p> <p>Decision: Allowed, subject to reasonable cost, and work that would have been required in any event to patch. See Extra #93.</p>
<p>2018 Extra #96</p> <p>\$1,990</p>	<p>V Re recess for second sink in op 7: use for pipe chase, create recess as deep as possible, mark and cut opening, frame, insulate, drywall, apply beads, tape to finish, prime and paint</p>	<p>V: The amount of the credit (if any) that should be allowed for this admitted extra should be no more than \$500. This sink was put in one of the previously unseen cavities. Estimated 28 hours plus materials. Did not tell Dr. Melnik this would cost more money.</p> <p>Extra: However, sink had to be installed in this area anyway, so there should be a credit. Does not recall discussing this with Mr. Bewsky.</p> <p>Decision: Allowed for this admitted extra, subject to reasonable cost and cost that would have been incurred in any event to install.</p>
<p>2018 Extra #97</p> <p>\$1,630</p>	<p>U Patch, sand, spot prime and apply finish coat of paint to beams and entire curved wall (outside of Op 7 and lab) - floor to bulkhead - line 2 to 2, in place of artwork</p>	<p>Necessary: The amount of the credit (if any) that should be allowed for this item should be no more than \$400. This is the finish painting on the outside of the inner round rooms from the ground to the top of the ceiling on the second floor and beams that span the main floor. Estimated 19 hours plus materials. Did not talk to Dr. Melnik about this. Did this because there was no longer going to be artwork in this area.</p> <p>Extra / Unnecessary: As noted elsewhere, likely unnecessary work. But in addition, there should be a credit for the work that was to be done to prepare for the artwork.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #93.</p>
<p>2018 Extra #98</p> <p>\$1,400</p>	<p>V Re dental floor boxes complete 5; patch and clean concrete, paint grey, trim and sand floor covering to suit opening, glue to lid and apply same material to underside of lid</p>	<p>V / Necessary: This work stemmed from Dr. Melnik’s request to install the recessed J-boxes. Mr. Bewsky stated this is different from fabrication of lids. This is finishing the lids, patching and cleaning the concrete in the hole and the beveled area in the hole. It is rough when the concrete is poured. Fitting is still required. Linoleum is put on the bottom because otherwise the lid warps because there is more moisture on one side that can penetrate. Estimated 20 hours. Did not tell Dr. Melnik about this specific aspect of this extra work.</p>

		<p>K: Contract called for all the mechanical trenching and piping to allow connections to chairs. While some of this might be an extra related to the box lids perhaps, the remainder of this claim is included. Dr. Melnik does not recall any discussion regarding the recessed J-box lids. Questions why lino under lids required. Mr. Bewsky did not tell him the J boxes were going to cost extra.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #25. (1) Is an extra. The recessed J boxes are not in contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 Extra #99 \$490</p>	<p>U Re lino/tile border wood: remove wood and foam and remove foam on outside of building around perimeter glazing used to stop water from coming in</p>	<p>Necessary: Mr. Bewsky says this is the removal of the one-inch boards and foam that he and Dr. Melnik laid out for new flooring plan. They were removed after the Gillian cement was poured (this went under lino) to bring the lino to the height of the tile. Mr. Bewsky also removed the foam he had place on the outside of the building to prevent water from coming in while he was working on the floor. That is part of the moisture mitigation problem. Estimated six hours inside and one hour outside. Dr. Melnik told him to remove the foam on the outside of the building. Did not discuss the other work with him.</p> <p>?: Dr. Melnik does not recall discussions regarding this.</p> <p>Decision: Denied subject to one hour for removal of outside foam. Denied portion: See Extra #57. Removing foam and boards for perimeters of tile and lino is in my view necessarily included in the Third Change Order and is not an extra. Allowed portion: Removal of foam to prevent water from coming in is extra as it is part of the moisture mitigation problem, which was excluded in the contract, and not part of the Remediation Work.</p>
<p>2018 Extra #100 \$420</p>	<p>U Discuss, design and layout floor tile and pattern from front to back</p>	<p>Necessary: The need for Mr. Bewsky to spend additional time related to the layout of the flooring arose from of Dr. Melnik's decision during construction to change his flooring plan. It does not fall within the scope of work under the contract. These were discussions with JR Horst (electrician), the flooring subtrade, and some with Dr. Melnik. These discussions took place after the laying of wood strips where Dr. Melnik wanted the lino and dental units to be. Dr. Melnik did not want large grout lines or small pieces of tile which can happen if tile is not laid out before hand. Estimated six hours. Did not tell Dr. Melnik this would be extra. When it was put to Mr. Bewsky this was the flooring sub-contractor's work, he said he didn't really trust them.</p> <p>K / CO: Included in CO for flooring. Excessive charge. Cannot charge for discussions and management of work. Dr. Melnik does recall Mr. Bewsky asking him about vertical or horizontal orientation of grout lines. It was a brief conversation of about one minute. Did not tell him he was charging him for having that conversation.</p> <p>Decision: Denied. Not an extra. Included in Third Change Order. Layout is part of flooring, and this is part of Cakwell's job as a general contractor. See Extra #57.</p>
<p>2018 Extra #101 \$140</p>	<p>U Cut and prep two floor box lids for op 7 and fix in place with mild adhesive in preparation for floor leveler pour</p>	<p>Abandoned.</p>

<p>2018 Extra #102 \$130</p>	<p>V Discuss and resolve crooked staircase, entrance line and party wall re tile patterns</p>	<p>Abandoned.</p>
<p>2018 Extra #103 \$1,225</p>	<p>U Re narrower new tile: cut back lino approx. 2" at reception area [sic sterilization area] to eliminate a 1/2" to 5/8" wide grout line, must remove concrete down to original substrate, the same substrate the tile floor system is sitting on, use dust control hoarding, remove wire and poly under concrete, fill to leveler height with suitable material</p>	<p>Necessary: This work is additional construction work stemming from the additional flooring work under the Third Change Order. Not included in the scope of the work and materials provided for under the change order. Mr. Bewsky stated that because the project had dragged on for so long, the floor tile Dr. Melnik had originally chosen was no longer available. The new tile chosen was narrower than the original tile. If the tile perimeter had been kept near the sterilization area, there would have been a wide grout line, so the linoleum was cut back two inches so a larger part of tile could be placed there. This was purely aesthetic. He did not discuss with Dr. Melnik because he knew he was very particular about grout lines being 3/16 of an inch. Estimated 17 hours plus tools and material.</p> <p>K: This is called for in the Third Change Order. If Mr. Bewsky did this work, there should be a credit in the change order. Dr. Melnik stated this was not discussed with him and he doesn't know anything about it.</p> <p>Decision: Denied. Not an extra. This is part of the Third Change Order which specified the tile. Layout is included in flooring.</p>
<p>2018 Extra #104 \$260</p>	<p>U Re short stringer and landing drywall along stairs and landing: no backing in place - use suitable material to provide solid backing and use same material to fill between party wall and landing, and main stair stringer</p>	<p>Unseen / Necessary: The need for this reinforcing work to be done was not apparent until after construction began. On the part of the staircase after the landing, there was no stringer. This was installed so it would not be damaged when hit, for example, with a broom. After the carpet was removed, the drywall was not solid – it was moving back and forth. A sticky type of drywall mud was used to squish in behind the drywall to add strength. Also did this on the first part of stair stringer. Estimated 3.5 hours plus materials. Did not discuss with Dr. Melnik. He agreed the contract included backing, but backing is for installing things like millwork.</p> <p>K: Backing included in the contract.</p> <p>Decision: Allowed subject to reasonable cost. This is not backing arising from new construction. This is repairing an unseen defect, and is excluded under New Construction, clause 9.</p>
<p>2018 Extra #105 \$330</p>	<p>U Supply and install flashing in washroom at window mullion, seal and fasten to concrete floor</p>	<p>Abandoned.</p>
<p>2018 Extra #106 \$1,595</p>	<p>V Re 4 granite tile locations and threshold: discuss layout and confirm, order and pickup tile and threshold granite, remove concrete necessary for tiles and threshold, cut and set blocks at each location, seal at threshold, and remove blocks after pour prior to installation of granite</p>	<p>V: The Third Change Order did not include the construction work needed to prepare the location for the granite tiles to be installed. This was in the main floor entranceway. Discussed the location of the four tiles with Dr. Melnik after the drawings were received. These four tiles were added in the revised floor plan. The granite tiles were thicker than the other tiles. As a result, the tile areas had to be jack hammered do to the correct level. Blocks of wood were place so when the leveling concrete was poured, they would not be filled in. Estimated 16.5 hours plus granite of \$400 plus materials and tooling. Did not tell Dr. Melnik this would be extra. Agreed the Third Change Order required installation of the granite tiles, but states this was not included because the tiles were thicker than the other floor tile. Dr. Melnik just said there would be granite tile at this threshold, and he didn't know it would be thicker.</p>

		<p>K / CO: This is called for in the Third Change Order. If Mr. Bewsky did this work, there should be a credit. Did not tell Dr. Melnik this would be extra. Before the contract, he and Mr. Bewsky discussed that they would have granite tiles at the New Office in the same position as in the Old Office.</p> <p>Decision: Denied except cost of granite tiles (\$400). Is not an extra. The labour to install these tiles is specifically included in the Third Change Order, but the price of the tiles is excluded so the \$400 is allowed.</p>
<p>2018 Extra #107 \$1,560</p>	<p>V Re x-ray machine: discuss and confirm location, offload from container, uncrate, reshape wall bracket to suit curve, stand in place plumb to level, bolt to wall, attach arm for install re clearance from wall, supply paint and install bolts, re &amp; re arm for painting., install head and connect to base, adjust arm to level</p>	<p>V: This is the x-ray machine in the main x-ray room. This was not included in the contract. He did not want to move it as it was a sensitive machine. He told Dr. Melnik to hire someone else, and after the contract Dr. Melnik talked him into it. The x-ray machine went on a curved wall. Backing was required because this is where a pipe chase was in the wall. Estimated 22 hours. Did not tell Dr. Melnik this would be extra.</p> <p>?: Dr. Melnik stated that at or before March 14, 2015, he and Mr. Bewsky discussed that Mr. Bewsky was to install all equipment from the Old Office, into the new location, in the similar rooms in the New Office,</p> <p>Decision: Denied. Is not an extra. There is nothing in the Main Contract Document specifically concerning the x-ray machine (just like there is nothing specifically about installing the dental chairs) however, Dr. Melnik also provided a separate document entitled "Dr. Melnik's Orthodontic Office Equipment List" which is included in the contract documents, and the x-ray machine is included in the list. The parties agree that the purpose of putting things in storage, was to have them installed in the New Office. I accept Dr. Melnik's evidence that the parties agreed that all equipment was to be installed in the New Office.</p>
<p>2018 Extra #108 \$210</p>	<p>U Re upper stair stringer. extend stringer end to line up with main stringer, weld and finish</p>	<p>Necessary: The upper stringer did not align with the one coming down from the landing and had to be extended about ¾ of an inch. The flooring on the stairs would not finish off properly because that was missing. Not apparent when entered into contract. Estimated three hours. Did not discuss with Dr. Melnik. Had subtrade weld on metal to provide him with backing, and he finished off the corner.</p> <p>?: Dr. Melnik state he did not have any discussion regarding this.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. This is an unseen condition excluded by New Construction clause 9. (2) Dr. Melnik impliedly authorized as necessary to complete scope of work that is included in the contract. (3) Dr. Melnik knew or ought to have known it would increase cost.</p>
<p>2018 Extra #109 \$595</p>	<p>U Frame ceiling under entrance ledge, drywall, tape, finish, prime and paint</p>	<p>Necessary: This is the ceiling that is above the four granite tiles of the entranceway. Mr. Bewsky gave uncertain evidence regarding why this was extra. Ultimately said there was no ceiling above the entranceway before. Estimated eight hours plus materials.</p> <p>?: Mr. Bewsky did not discuss with him.</p> <p>Decision: Denied: Not an extra. Mr. Bewsky's evidence did not establish why this was an extra.</p>

<p>2018 Extra #110 \$370</p>	<p>V Frame, drywall, tape and finish wall under stairs closing off end of stairs</p>	<p>Necessary: Mr. Bewsky states underneath the main stairs, there is a void that was being used as a data and electrical chase and Dr. Melnik wanted that closed in. During construction, he wanted a small wall about 2 feet high and wide installed. Estimated five hours plus material. Did not tell Dr. Melnik would be extra.</p> <p>? : Mr. Bewsky did not discuss this with him.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not in any written contract document. (2) Dr. Melnik authorized. (3). Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 List – Extra #111 \$1,115</p>	<p>V Re washroom exterior windows: typical as others - paint glazing, frame, fill space between drywall and glass, drywall, tape, finish and paint</p>	<p>V: This aspect of the work related to “redo[ing] the washroom” was not included in the scope of work under the contract but work that Mr. Melnik requested during construction. Estimated 14.5 hours. Did not tell Dr. Melnik this would be extra.</p> <p>K: Contract Notes called for redo of washroom. Previous office had cedar covering the windows, including in the bathroom. Contract called for using cedar boards to cover windows. At or before contract meeting, Dr. Melnik asked Mr. Bewsky to put the cedar panelling in the Old Office in the New Office. There was cedar panelling in the Old Office in the bathroom. Dr. Melnik stated he did not have any discussion with Mr. Bewsky about this and stated that Mr. Bewsky “decided not to use cedar for some reason and put in privacy wall”.</p> <p>Decision: Partially allowed subject to reasonable cost, and deduction for cost that would have been incurred installing cedar as originally planned, and deduction for framing that would otherwise have been required to install the bathroom. See Extra #59. Contract Notes state “Plan for Redo of the main-floor Washroom as discussed.” (1) Partially an extra. The Main Contract Document, New Construction, clause 3 states “apply wood flooring and cedar boards from storage to cover exterior windows”. The drywall in place of cedar along the windows was not included in contract. (2) Accept Mr. Bewsky’s evidence that Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 Extra #112 \$1,840</p>	<p>V Additional cost to provide framework in storefront at waiting area for Eagle glass and installation of glass, includes layout and discussions. Mark clip locations, use template to drill holes, attach clips, clean glass thoroughly and install glass</p>	<p>V: Dr. Melnik asked Mr. Bewsky to do this during construction. The Eagle glass was from the Old Office, but Dr. Melnik initially did not know where it could be installed. Dr. Melnik decided to install it near the entrance where double doors previously were. The centre mullion was removed, but a horizontal mullion had to be placed to accommodate the Eagle glass. Regular glass was put on top the mullion. The original plan was to take out the double doors and put in a centre mullion with two plain glass panels. Estimated 12 hours plus cost of glazier. Originally, he would only have paid glazier to do the work of removing the doors and putting in plain glass. Agrees there should be some credit for that. Did not tell Dr. Melnik would be extra. Mr. Bewsky stated that in the discussions prior to signing the contract, the possibility of having to make modification to fit the eagle glass did not arise.</p> <p>K: Construction notes called for installation of art glass. Dr. Melnik recalled that during construction Mr. Bewsky asked him to confirm the location of the glass.</p> <p>Decision: Allowed subject to reasonable cost and credit for work that would have been done to remove the double doors and put in plain glass. (1) Is an extra. Installation of Eagle Glass not included</p>

		<p>in contract. Construction notes state “Allow for relocation/removal of several existing glass doors and panels”, which does not necessarily mean artwork glass. However, the Main Contract Document, New Construction, clause 9 specifically states the “artwork” is not included. Further under the heading “Items removed from estimate as discussed” is “miscellaneous enclosures for artwork”. The construction notes referred to by Dr. Melnik are notes on the August 2015 Design Drawings and are not present until after the contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #113 \$2,310</p>	<p>U Re light fixture end caps in consult room: pick and sort hemlock, design, cut and match two boards per each cap, mark and router channel on inside of two halves for wire chase, laminate halves together for each cap, shape using template, cut and router each end of each cap to finish, round-over all edges, use template to drill holes, sand and finish with three coats of varathane and install</p>	<p>Necessary / Assumed Consent: The luminaries removed from the Old Office lacked end caps because they were previously joined in a square shape. They were now divided up between the consult room, Op 3 and reception area. The electrician quoted a cost of \$2,600 so Mr. Bewsky talked to Dr. Melnik, and they decided to put hemlock ends to match the doors that Mr. Bewsky would fabricate. Otherwise, the ends of the lights were open, and wires could be seen. This was aesthetic and required by the Building Code. Could have been done other ways, e.g. plastic. Estimated 31 hours plus materials and tooling. Did not tell Dr. Melnik was extra.</p> <p>K: Contract called for refitting luminaries from previous office. The idea for wood end caps was devised by Mr. Bewsky; Dr. Melnik says it would have been much cheaper to cut a piece of metal instead and he was fine with that. Never any consultation with Dr. Melnik about the hemlock. If there is any extra allowed, which there should not be because installing the lights implies some amount of refitting, then the extra should be the basic work for putting a metal cap, which would have cost less. Maybe a few hundred dollars. Dr. Melnik only recalls a conversation that he told Mr. Bewsky to cover off the exposed ends. He thought Mr. Bewsky would use metal. Denies he asked him to use hemlock. Mr. Bewsky did not tell him it would be extra. Agreed covering ends was not work specifically included in the contract, and he wanted the appearance of the light to be attractive. He says Mr. Bewsky went overboard in creating this. Agreed the lights are attractive and he is pleased with the result. This lighting from his Old Office was expensive.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Construction Notes state “Clean all electrical devices from storage, including duplexes, luminaries, etc. Re-lamp all luminaries.” Does not include dividing up an existing light into four new lights. (2) Dr. Melnik authorized end caps. Accept Mr. Bewsky’s evidence that he discussed and Dr. Melnik agreed to hemlock. (3) Dr. Melnik knew or ought to have known would increase cost. I note that Mr. Bewsky’s submissions and “U” category, does not match his evidence at trial.</p>
<p>2018 Extra #114 \$250</p>	<p>V Pick up and deliver artwork glass for consult room and fabricate and finish deep glazing stops (re sealed unit profile) with three coats of varathane</p>	<p>Assumed Consent: This is new art glass that Dr. Melnik had made. Art glass that he previously had and wanted installed would not fit. Dr. Melnik asked him to pick it up because the artist was charging too much. Estimated three hours plus gas and materials for fabrication. Did not tell Dr. Melnik it would be extra.</p> <p>?: Dr. Melnik stated that Mr. Bewsky did not tell him he was picking it up, and if he did, he would have asked the artist to drop it off, however, later gave conflicting evidence that Mr. Bewsky volunteered to pick it up since he drives by the area. Told Mr. Bewsky he was having new art glass made.</p>

		Decision: Allowed subject to reasonable cost.
2018 Extra #115 \$4,105	V Re stainless steel counter top at sterilization: many discussions and meetings (more modifications than anticipated due to changes and revised dimensions and locations) make template and provide drawings, cut off 2" at west end and fabricate new apron, cut off wing at same end and fabricate new apron, at east end cut off approx. 19" and fabricate 86" x 25" top with back splash, patch one hole and add hole at new end - due to gauge of metal the weld joint is very uneven, very difficult to laminate to plywood substrate, clamps were removed, top was placed and area had to be re-glued and re-clamped (had allowed \$1,200)	<p>V: The work charged for here went well beyond that of fitting the stainless-steel countertop removed from the Old Office to the New Office. It involved customized additions and modifications which Dr. Melnik requested during construction. Mr. Bewsky agreed that he did not tell Dr. Melnik the quote he got prior to the contract was for \$1,200. He has already credited this in his claim. \$2,250 charge for welder (Belair); \$1,150 charge from KSM for more countertop. Mr. Bewsky added a 20% markup on the \$3,400 (\$680) less the \$1,200 plus another estimated 17.5 hours of his own time. Had not added markup originally on expenses, because Dr. Melnik was a friend, but he was spending so much time, he thought he deserved it. This is in addition to his 17.5 hours. Does not recall if he told Dr. Melnik this would be extra. He agrees the Main Contract Document includes supervision of trades and suppliers. Mr. Bewsky agreed that it was always contemplated that there would be some work required to refit the stainless-steel countertops. Dr. Melnik changed the plans in the June Design Drawings to one end of the counter being cut off.</p> <p>K: Contract called for refitting and modifying the stainless-steel countertops. Dr. Melnik asked Mr. Bewsky to reuse the stainless-steel countertops from the Old Office before the contract. During construction, there were multiple people who came in and Mr. Bewsky did not agree with them. He does not recall the exact issue, but one fabricator said they could be reused, and one said they couldn't. Mr. Bewsky did not tell him this was extra.</p> <p>Decision: Partially allowed, subject to reasonable cost and credit for refitting that was already required by the original scope of work, less the markup which was not contemplated by the original scope of work. (1) Most of this is not an extra. Some is, as going beyond the extent of refitting contemplated by the original scope of work. The size and location of the sterilization countertop is shown in the Architectural Drawings. However, the June 2015 and August 2015 Design Drawings add notes regarding refitting that are not shown on the Architectural Drawings and I find go beyond what was original contemplated, for example "remove 16" x 19" "soldering station" projection (existing) from W end of countertop Main Contract Document, New Construction, clause 3 states "refit and modify stainless steel countertops from storage and add extensions as necessary". New Construction, clause 8 states: "Included: project management, supervision". Cost-plus not part of contract, and supervision included.</p>
2018 Extra #116 \$4,130	V Re stainless steel counter top in records room: many discussions and meetings (many more modifications than anticipated due to changes such as) add to left end, move tool piece notch, add piece to left of sink, open corner to follow angle and add counter to south wall. Make template, provide drawings and order new top, cut sink out of old top to re-use and deliver to manufacturer - deemed unusable; pickup new countertop and prep corner for installation (weak due to sink	V: The work charged for here went well beyond that of fitting the stainless-steel countertop removed from the Old Office to the New Office. It involved customized additions and modifications which Dr. Melnik requested during construction. Mr. Bewsky states they eventually got a new stainless-steel countertop because all costs for the modifications were not feasible, plus the gauge was not sufficient and it was 20 years old. In the end Dr. Melnik instructed to get a new countertop. Cost of new countertop was \$3,000 plus Mr. Bewsky marked up 20%, less the \$900 he had allowed, plus estimated 18 hours of his time, plus \$120 to pick it up and \$50 tooling. Did not tell Dr. Melnik extra work. Did not tell Dr. Melnik there was a \$900 allowance. Mr. Bewsky states that in the records room, there was originally one length of countertop from one end to the other, and in the June Design Drawings this was changed to an angled piece coming to the door.

	location - install plywood backing supports - removed after installation) - had allowed \$900	<p>K: Contract called for refitting and modifying the stainless-steel countertops. He does not recall if Mr. Bewsky told him there were allowances for stainless steel countertops.</p> <p>Decision: Allowed subject to reasonable cost and deduction for costs that would have incurred in any event, and deduction for mark-up. (1) Is an extra. See Extra #115. For example, the addition to the south wall of the countertop is not part of the original scope of work. It is not shown on Architectural Drawings, and is only shown on the June and August 2015 Drawings. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known that would increase cost. Cost-plus not part of contract and supervision included.</p>
2018 Extra #117 \$105	V. Re fire alarm at entrance on party wall: add temporary panel behind alarm for spacing of future wood on wall	<p>V: Mr. Bewsky stated that the wall to the right of the entrance had a fire alarm. Dr. Melnik said he had decided to add some wood in the future to the wall. He had the electrician mount the fire alarm box further out on the wall, and he added a temporary panel behind to accommodate the future wood. Necessary because the fire alarm must be flush mounted to wall. Discussed with Dr. Melnik that something had to be done but didn't tell him it would be extra.</p> <p>?: Dr. Melnik stated he did not discuss this with Mr. Bewsky.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not in contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have know it would increase cost.</p>
2018 Extra #118 \$210	U Re washroom sink and toilet prep for installation: polish stainless steel and thoroughly clean toilet	Abandoned.
2018 Extra #119 \$9,205	V Re wall base at tile floors and in x-ray room: discuss many options of thin profile samples, chose a 1' x 2' vinyl floor tile, cut sample pieces re height and finish profile, supply, cut to 4 1/2" wide, round over top edge with router, cut, heat-shape and prop to cool prior to installation around many outside corners, apply pressure sensitive adhesive and install base, re-do three comers - heat, shape and prop to cool; re column in op 4, 5, cut base, heat, shape, prop to cool, glue and install	<p>V: This work was not included in the Third Change Order but was work done in keeping with directions given by Dr. Melnik to Mr. Bewsky during construction regarding the base to be installed in tiled areas. This is the thin vinyl floor tile that Dr. Melnik wanted cut down to 4.5" for baseboard anywhere the floor tile met walls, including the round room. Estimated 119.5 hours plus materials and tooling. Lots of work because had to heat, shape and hold in place around corners. Did not tell Dr. Melnik this was extra.</p> <p>CO: This work was covered by the agreed upon flooring change order. Mr. Bewsky did not say this would be extra work and cost and he would never have authorized this cost. He would have said put in original tile baseboard that he was originally going to put in.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. The Main Contract Document under Flooring, called for tiles cut for baseboards in areas that were tiled. The Third Change Order does not refer to this. It refers to flash cove base and "a separate stripe of the same material as flat base in areas such as on curved walls in the area on the main floor as per drawing". As this is in a separate paragraph for linoleum as opposed to the paragraph on tiles, I conclude this refers to the linoleum areas only. The tile section of the Third Change Order does not refer to any baseboard where there is tile. I conclude that portion of the Main Contract Document was not included in the Third Change Order. (2) Dr. Melnik verbally authorized the change. (3) Dr. Melnik knew or ought to have known would increase cost.</p>

<p>2018 Extra #120 \$3,400</p>	<p>V Re hemlock window ledges in waiting, records and consult rooms: use 3/4" x 5 1/2" hemlock, pick, sort and purchase, dado groove to suit top of wall, cut, miter, shape ends, notch for mullions, sand, round over all edges, finish with three coats of varathane, shim, glue and prop in place, patch and paint drywall</p>	<p>V: The contract does not provide for installation of window ledges in these areas, or the extensive work involved in installing them. Mr. Bewsky stated that during construction, Dr. Melnik asked him to make ledges out of hemlock and put them at the top of the drywall walls at the windows, which were not finished. Estimated 45 hours plus materials and tooling. Did not tell Dr. Melnik this was extra.</p> <p>K: Mr. Bewsky removed the window ledges from the previous office. Contract includes fitting misc. items from storage. Oral term of "reinstall everything" covers this work. Dr. Melnik stated that he did not ask Mr. Bewsky to do this. He told him to take the existing 1.5 inch cedar ledge that had been in the Old Office and install it in the New Office. During construction, Mr. Bewsky said he wasn't going to use that ledge and was going to use this 3/4 inch hemlock ledge. Dr. Melnik told Mr. Bewsky that he didn't want this thinner ledge. He only saw it once it was installed, and he told Mr. Bewsky he did not approve, but did not ask him to remove it. Mr. Bewsky never told him it would cost more money. Denies he told Mr. Bewsky to install hemlock.</p> <p>Decision: Denied. Is not an extra. Contract included installing a ledge as this was part of the applying "cedar boards from storage to cover exterior windows". The ledges were part of the cedar walls in the Old Office (now where drywall is along windows). I accept Dr. Melnik's evidence that he did not tell Mr. Bewsky to install hemlock but told him to install the existing cedar ledges from the Old Office. This is consistent with his desire to use the cedar from the Old Office.</p>
<p>2018 Extra #121 \$1,900</p>	<p>U Re lift all second-floor items including unrelated construction items to second floor using lift: rent lift, fit with platform, move items</p>	<p>Abandoned.</p>
<p>2018 Extra #122 \$4,850</p>	<p>V &amp; U Re reception counter, curved wall and granite ledge extra cost: unable to use existing wall sections due to too much damage in handling; remove stone for reuse and dispose of existing panels. Difference in cost to build new and reface with stone opposed to installing old, finishing the inside and repairing the stone face. Finish each end of curved wall and bottom of one end to stringer and wall portion below stringer, end of counter and around post. Re granite ledge: multiple discussions in confirming height, locations, depths of granite and stone and type and size of apron. Provide template for fabricator's, drawings were necessary due to their unacceptable dimensions. Cut 5/8" plywood backing using router guide and install for</p>	<p>V: The work described in this item does not fall within the contract related to construction of the reception counter. The work that was ultimately done was dictated, in part, by conditions that emerged or became apparent during construction and, in part, by instructions given by Dr. Melnik. Mr. Bewsky stated that initially parts of the reception desk from the Old Office were to be recycled, and a stone wall that was in the Old Office would be installed in the front of the New Office reception desk. However, stones from the panels fell off in transport and the panels were damaged, and the configuration of the new reception desk was different. It was decided it was better to build a new reception counter from scratch. He thinks he discussed this with Dr. Melnik and discussed certain specifications with him. He did not tell him it would be an extra cost. Estimated 54 hours, plus materials after credit for time and materials he would have spent in any event. Stone was not put on the outside of the new reception desk as required in the contract.</p> <p>K: None of this is extra work. The contract called for reusing the existing stone (which he had a special affection for) which was on a straight wall in the Old Office, by removing it from its panel, and installing it on the curved wall of the new reception desk in the New Office. The New Office reception desk was to be built with recycled parts of the reception desk from the Old Office which had curved and straight portions and was much bigger. The reception desk and its curved nature was shown on the Architectural Drawings. Mr. Bewsky did not tell him it was extra. He did not have a</p>

	proper support of top (\$2,200 was allowed for granite)	<p>conversation with Mr. Bewsky about rebuilding the reception desk from scratch.</p> <p>Decision: Denied. Not an extra. For the Removal Contract, Mr. Bewsky removed the old reception desk and the stone facing of it, for re-use in the New Office. The Main Contract Document, New Construction, clause 3 states, "rebuild reception desk, supply and install granite ledge on reception desk (approximate cost \$2,200.00 included in estimate) (unable to get firm cost) and repair stone face, apply stone to round wall up to approximately three feet high." The reception desk, and its curved shape and size, is shown on the Architectural Drawings. This is all included in the contract.</p>
2018 Extra #123 \$490	V Re reception curved wall above counter: apply laminate on wall from counter to underside of granite	<p>V: This was not included in the scope of work under the contract but work that Mr. Melnik requested during construction. Mr. Bewsky states this is not part of Extra #122. Estimate seven hours.</p> <p>? : Dr. Melnik states he did not have any discussion with Mr. Bewsky about this.</p> <p>Decision: Denied. Mr. Bewsky has not established that putting laminate on the inside wall of the counter between the desk and granite top is an extra. In my view, it is part of constructing the reception desk which was required under the contract.</p>
2018 List – Extra #124 \$280	U Polish and repair door hardware prior to installation	Abandoned.
2018 Extra #125 \$860	V Re bench seating: modify bench seating for corner unit finishing top and ends, modify long unit securing back to seat at west end, finish off top and end, and add a finished plywood kick	<p>V: The work done here went well beyond placing and fitting the existing bench seating, as specified in the contract, and included physical modifications to the seating units. During construction, Dr. Melnik asked Mr. Bewsky to make those modifications. In the Old Office, there was one straight piece, and then another smaller area that was U-shaped. Estimated 12 hours plus material. Did not tell Dr. Melnik this was extra. Agreed he received the Placemat Documents which gives the dimensions of the seating and pictures of it. He could have installed one component of the seating without modifying it.</p> <p>K: Called for under New Construction, clause 3, "install bench seating from storage". Mr. Bewsky did not talk to Dr. Melnik during construction about modification, other than a general discussion that he would have to modify the seating. Mr. Bewsky did not tell him it would be extra.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. The Architectural Drawings do not show any built-in bench seating in the waiting room. New Construction, Item 3, states, "install waiting room bench seating from storage". The June and August Design Drawings, show installed contiguous seating in the waiting room on three walls, one of which is angled in two sections. This is beyond "installing" and is an extensive modification. No refitting of seating mentioned in the Main Contract Document. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would cost more</p>
2018 Extra #126	V Re reception area three additional counters: discuss size, depth and locations, supply	V: The work done here went well beyond placing and fitting the existing counters in the reception area (which is all the contract required), and included custom modifications and additions to them

<p>\$11,925</p>	<p>and install custom counter-tops, laminate on walls below tops, cut and pre-paint edges of laminate back splashes and install, cut and install gables; under stairs - fill in with laminate at end of stair</p>	<p>requested by Dr. Melnik during construction. The Design Drawings added countertops in the reception area. When Mr. Bewsky received the Design Drawings, he told Dr. Melnik that he had increased the scope of work but did not specifically mention the countertops in this area. He could use some millwork from the Old Office and put new laminate on, and some were modified from the Old Office. Estimated 105.5 hours plus materials.</p> <p>K: Contract calls for rebuild of reception desk under clause 3 of New Construction; also, these three counters were from the previous office, and so their installation would be covered by "fit millwork from storage". Dr. Melnik stated that re-lamination was not discussed apart from the Construction Notes, item 19, instructing the repairing of damaged millwork.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. The Architectural Drawings do not show counters in the reception area except the reception desk. The Main Contract Document, New Construction Item 3 states, "fit millwork from storage adding new millwork as necessary. The June and August Design Drawings have extensive notes and show three additional counters or shelving to be built into the reception area (see notes re M1, M2, M3, and M5), which is well beyond "fit millwork" and is an extensive modification. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #127 \$610</p>	<p>V Quick consult room: supply custom laminate back-splash, paint edges and install (Consult room - no charge for back-splash in place of tile)</p>	<p>Abandoned.</p>
<p>2018 Extra #128 \$620</p>	<p>U Caulk all laminate to laminate, laminate to wall under counters and back-splashes to tops</p>	<p>Abandoned.</p>
<p>2018 Extra #129 \$210</p>	<p>U Polish stainless steel grab bars, toilet paper holder and taps prior to installation</p>	<p>Abandoned.</p>
<p>2018 Extra #130 \$75</p>	<p>V &amp; U Discuss with Building Inspector and Owner to supply tape: apply reflective tape to back of stairs</p>	<p>Necessary: This was applying reflective tape to the underneath of the back of the stairs because there was a counter there, and so people would not bump their heads. The building inspector required this. Dr. Melnik sourced and bought this and he installed it. He did not tell Dr. Melnik it was extra. Estimate just over an hour.</p> <p>K: One can assume Code compliance of the contractor's construction. This should be included. Mr. Bewsky told Dr. Melnik he was too busy and asked him to source the tape. Dr. Melnik sourced and ordered it online and paid for it.</p> <p>Decision. Denied. Not an extra. Work in compliance with the Building Code is an implied term of the contract.</p>
<p>2018 Extra #131 \$560</p>	<p>V Re T-bar ceiling in Op 4, 5 &amp; 6: use acoustic panels above tile for added sound proofing</p>	<p>V: Mr. Bewsky submits the amounts charged for this admitted extra are reasonable given the time spent and material costs incurred. The sound panels from the Old Office were removed and he used them in these areas for extra soundproofing. They sit on top of the ceiling tiles. This was not included in the contract. About 60 tiles. Some cutting required. Estimated eight hours.</p>

		<p>Extra: Dr. Melnik told him to install these on top of the ceiling tiles, just as they were in the Old Office. (Dr. Melnik testified this was prior to the contract meeting, but has admitted this is an extra.)</p> <p>Decision: Allowed for this admitted extra subject to reasonable cost.</p>
<p>2018 Extra #132</p> <p>\$590</p>	<p>U Re washroom: Building Inspector requires grab bar above toilet tank or replace toilet with bolt-down lid and 36 inch grab bar - open wall and install backing, patch and paint, install existing 30" bar and supply 36" long grab bar to left of toilet</p>	<p>Necessary: Mr. Bewsky stated that in the main washroom the toilet from the Old Office was used. The building inspector said either that the tank had to be replaced or bolted down, or a grab bar mounted to the wall. Dr. Melnik did not want to bolt the lid down, so Mr. Bewsky installed a grab bar. Required opening wall and backing. Estimated seven hours plus \$100 in material. Did not tell Dr. Melnik this was an extra.</p> <p>K: One can assume Building Code compliance for the contractor's construction. This should be included. Dr. Melnik stated he did not have a discussion with Mr. Bewsky about the tank.</p> <p>Decision: Denied. Not an extra. I infer this was required by the building inspector to comply with the Building Code. Work in compliance with the Building Code is an implied term of the contract. It is possible this could have been an extra if it stemmed from Dr. Melnik wanting to re-use an old toilet, but Mr. Bewsky has not proven that.</p>
<p>2018 Extra #133</p> <p>\$370</p>	<p>U Cut cavities in door jambs for brass door-latch boxes behind striker plates</p>	<p>Assumed Consent: Mr. Bewsky stated that he asked Dr. Melnik if he wanted to use the brass box that goes into the door jamb before the strike plate goes on so wood cannot be seen through the striker plate. These were installed in his doors in the Old Office, and the hardware was removed from those doors and used in the New Office. Seven or eight doors involved. Requires chiselling out area for plate. Estimated five hours plus in tooling. Did not tell Dr. Melnik this was extra.</p> <p>?: Dr. Melnik does not recall a discussion regarding this. The Old Office had these. Some were installed in the New office.</p> <p>Decision: Denied. Is included in contract. The Construction Notes Item 12 states: "...Refurbish all other doors. Stainless-steel, ball-bearing hinges, escutcheon plates, etc. as per schedule...". The schedule is a description of all the doors at the Old Office, although it does not specifically refer to the hardware. Further, the Main Contract Document, New Construction, clauses 3 and 5 state, "install 10 new wood doors and wood frames finished with water-based clear finish to be determined (use existing hardware)". In my view, it was a term of the contract that the doors from the Old Office and new doors, were to be installed as they were in the New Office with hardware as they had been installed in the Old office. This included brass door-latch boxes.</p>
<p>2018 Extra #134</p> <p>\$95</p>	<p>U Re washroom door spring: Cut cavity in door jamb, shim and reshape spring to suit function</p>	<p>Abandoned.</p>
<p>2018 Extra #135</p> <p>\$2,445</p>	<p>V Place, operate and position (4) dental chairs and discuss hole locations in floor box lids, place supply lines, gauges and electrical in boxes, position and</p>	<p>V / Necessary: This work is in the nature of additional construction work stemming from the work contemplated under the contract. This aspect of the work, although connected to the plumbing work, is not included within the scope of the work and materials provided for under the change order itself (I note it is not clear what is being</p>

	<p>tie-off lines, make jig for holes, bore holes in lids, file and sand to finish</p>	<p>referred to here as there is no change order for plumbing.). Mr. Bewsky stated that the contract did not include installing the dental machines, but only the placement of the chairs and no hook ups. He told Dr. Melnik to get the manufacturer of the chair to install the chairs. Dr. Melnik talked him into doing the work. Did not tell Dr. Melnik he would charge for this. Estimated 34.5 hours plus materials.</p> <p>K: Placing and installing the dental chairs was the plumber's scope. If Mr. Bewsky did it himself, then there should be a credit. Dr. Melnik stated that placement of the dental chairs was an important discussion on March 14, 2015. Dr. Melnik had a template on the floor for each chair. Mr. Bewsky disconnected the dental chairs in the Old Office and put them in storage, and he was responsible for re-installing them. The J-boxes are the same, but smaller and recessed. Does not recall a discussion about positioning chairs and boxes after March 14, 2015. If they had one, it did not change anything.</p> <p>Decision: Denied. Included in contract. The body of the Main Contract Document does not refer to hook-up of dental chairs, but under "Plumbing, HVAC, Fire Protection", it states "See attached quote from Pine Mechanical, waiting for quote from Tri-City Plumbing and Heating. The Pine Mechanical quote refers to hookup of air, water and vacuum lines in each operator. I conclude that hook-up is included in the contract. The subsequent Tri-City quotes also refers to these hook-ups. This is not an extra. It is an issue between Mr. Bewsky and his sub-trade. The placement of the dental chairs is shown on the Architectural Drawings and supported by at least one photograph which shows a cardboard template on the floor of the New Office prior to construction.</p>
<p>2018 Extra #136 \$175</p>	<p>V Install xray machine in records room</p>	<p>Abandoned.</p>
<p>2018 Extra #137 \$385</p>	<p>U Polish existing areas of sterilization stainless steel counter, baskets, and sinks prior to install</p>	<p>Abandoned.</p>
<p>2018 Extra #138 \$485</p>	<p>V Modify 4 PVC vac lines to 1/2" copper and install</p>	<p>V: Mr. Bewsky stated that in the Old Office, copper lines were used. In the New Office, PVC was used. Dr. Melnik wanted 1/2 inch copper stubs placed on the PVC, and then his corrugated hose slips over the copper stubs. Mr. Bewsky thinks that probably would not have worked with PVC as the wall is too thick. Mr. Bewsky soldered a male thread on the copper stub and that was screwed into the PVC, and the corrugated hose fits over the copper stub. This had to be done, otherwise the lines had to be copper. The plumbing sub-contract did not include the copper stub. The plumbers would have had no knowledge of it. During construction Dr. Melnik told him he wanted copper. Estimated 6.5 hours plus \$30 materials. Four copper stubs done. Did not tell Dr. Melnik it was extra work.</p> <p>?: Dr. Melnik stated that he did not instruct Mr. Bewsky to change the PVC to copper. He has no idea what function the copper stubs serve, but assumes it is to connect to the dental suction line. He does not recall what was in the Old Office, but he does not recall stops such as this. It made no difference to him if copper or PVC was used.</p>

		Decision: Denied. Not an extra. This is part of the contract which includes hooking up the dental chairs. It appears an adaptation was required to the size of the line to accommodate the corrugated dental line, and this was done with the copper stub. This was not Dr. Melnik insisting on copper for no reason.
2018 Extra #139 \$805	U Sterilization counter was previously installed incorrectly with the millwork at sink area and gable at ultrasound, cut and trim much of the plywood backing of cabinet tops and carve off gable, provide metal clips and glue and prop supports to position and hold top down in multiple locations	<p>Necessary: Mr. Bewsky stated that the existing sterilization counter was never installed properly and had to be repaired. The countertop was not sitting properly on the cabinet, and gables were cut back and brackets used to hold the counter down in multiple spots. It was "really butchered". Estimated 11.5 hours. Did not discuss with Dr. Melnik but he recalls Dr. Melnik long before this contract telling him that the counter was "hacked up" inside.</p> <p>K: Contract calls for installation of countertops under New Construction, clause 3. Dr. Melnik stated he had no knowledge of any sterilization counter being installed incorrectly.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. This is different from Extra #115. The Main Contract Document, New Construction, clause 3 states "refit and modify stainless steel countertops from storage and add extensions as necessary". However, this is repair of existing countertop and cabinet that was not properly built to begin with. The photographs show a cabinet in poor condition and the repair work done by Mr. Bewsky. (2) Dr. Melnik impliedly authorized as this is necessary to complete the scope of work. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
2018 Extra #140 \$120	U Thoroughly clean straighten and prep ultrasound opening area and ledge and supply new wall bumper	Abandoned.
2018 Extra #141 \$285	U Add temporary cove base to waiting area (3 locations), at entrance party wall and curved wall outside of Op 7	<p>Necessary: Mr. Bewsky stated this is the temporary installation of cove base in a tiled area. There was no point in putting the fabricated vinyl tile base on until the area was finished. One wall is to the right of the entrance where Dr. Melnik stated he was going to place wood. The other was the front of the reception where stone would go, and the third was until the seating in the waiting area was finished. Estimated 3.5 hours plus materials. Did not discuss with Dr. Melnik. Mr. Bewsky denied this was a temporary measure because he was delayed in his work. He said it was just to clean things up until these other finishings were in place.</p> <p>Unnecessary: This work only became necessary due to the delays. If the court finds that the contractor delayed the work, then this charge ought to be dismissed.</p> <p>Decision: Denied. Not an extra. This was only needed because of the delays in construction.</p>
2018 Extra #142 \$420	U Replace/apply laminate to kicks on two dental chair units Op 4, 5 and cut laminate covers for previous holes in unit floors	Necessary / Assumed Consent: Mr. Bewsky stated that in the millwork for the two dental chairs in Ops 4 and 5, there were multiple areas of damage on the toe kicks, and he had to reapply laminate covers for the kicks and laminate on the inside floor to cover previous holes for lines. Previously a larger hole had been cut for all lines which Dr. Melnik did not like, and he cut individual small holes for each line. Estimated six hours. Did not discuss with Dr. Melnik.

		<p>K: Construction Notes, item 19 calls for repairing and cleaning millwork from storage,</p> <p>Decision: Denied. Not an extra. Included in contract. Construction Notes, Item 19, states, "Repair and clean any damaged millwork from storage". In my view, this falls on the "in the contract" side of the refitting and repair required by the contract and does not go beyond it.</p>
<p>2018 Extra #143 \$1,410</p>	<p>U Re dental tool piece hook-ups in millwork (4 chairs): locate, position and fix in place all lines, flush 8 water lines and test tools, repair leaks and mark RP's and floor boxes</p>	<p>Necessary / Assumed Consent: This aspect of the work, although connected to the plumbing work, is not included within the scope of the work and materials to be provided by the plumbing contractor. It is in the nature of specialized work that might have been done by a dental equipment technician, but which was left to Mr. Bewsky to perform instead. The work had to be done but is nowhere provided for in the contract so, it is submitted, constitutes an "extra".</p> <p>Mr. Bewsky stated this was not part of the contract. He stated it was for the person Dr. Melnik would hire to hook up what was in the J-boxes. During construction and close to occupancy, Dr. Melnik wanted him to do this work, and he told him he didn't have time. Estimated 12 hours plus material. Did not tell Dr. Melnik this was extra. Agrees a plumber would have done this faster than him.</p> <p>K: Seems like this is part of the plumber's scope of work. If not, then there should be a credit given. Dr. Melnik stated that at the March 14, 2015, meeting, he told Mr. Bewsky he was to hook up the tool pieces at the New Office.</p> <p>Decision: Denied. See Extra #135.</p>
<p>2018 Extra #144 \$65</p>	<p>U Remove adhesive and foam tape off Art Glass for top of stairs</p>	<p>Abandoned.</p>
<p>2018 Extra #145 \$105</p>	<p>U Re upper cabinet at Op 5 next to back door and at Op 4: scrape off previous tight-bond from entire back of cabinets re previous installation</p>	<p>Abandoned.</p>
<p>2018 Extra #146 \$750</p>	<p>U Re dishwasher cavity: prep and install lino, apply finished panels to both sides of opening, finish back wall, cut and apply laminate base and caulk base to floor</p>	<p>Necessary: This work is not provided for under the contract. During construction, Dr. Melnik decided he wanted a dishwasher in the sterilization area. This is to create a space for that. The original contract did not provide for preparing a space for this. Estimate 10 hours plus materials.</p> <p>Extra: Possibly extra. Dr. Melnik stated he had a discussion with Mr. Bewsky about the location of a dishwasher, but he does not recall if he had it after the contract was signed.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. The dishwasher space is not shown in the Architectural Drawings. It is shown on the June and August Design Drawings. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>

<p>2018 Extra #147</p> <p>\$80</p>	<p>V &amp; U Supply and apply black anti-slip tape at bottom of back door ramp</p>	<p>Necessary: Mr. Bewsky was directed to do this by the building inspector, and it does not fall within the contract. The purpose was to indicate the flooring changes from the slope to the flat floor. Mr. Bewsky obtained and applied anti-skid tape. Estimated one hour plus material. Includes discussions, sourcing, purchasing, cleaning and applying three feet of tape.</p> <p>K or Extra: If the building inspector required it, it is presumably a Code item, and it is reasonable to assume that the contractor's work would meet Code. But in the event its an extra, then the charge is unreasonable for applying tape.</p> <p>Decision: Denied. Not an extra. I infer that if the building inspector required this, it was required by the Building Code or to get an occupancy permit. Work in compliance with the Building Code is an implied term of the contract.</p>
<p>2018 Extra #148</p> <p>\$350</p>	<p>V Change supplied tool pieces re 'water in air' issue</p>	<p>V: Mr. Bewsky stated that after the incident with air in the lines, Dr. Melnik and he discussed that the tool pieces needed to be replaced. Dr. Melnik asked him to install the new pieces. Estimated five hours. Up to eight tool pieces.</p> <p>?: Dr. Melnik stated that Mr. Bewsky had installed the old pieces, and when there was a problem with them, he supplied new pieces and asked Mr. Bewsky to install them. Mr. Bewsky did not tell him it was extra.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not included in contract. This is replacement of tool pieces from the Old Office, already installed under the contract, which turned out to be faulty. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #149</p> <p>\$510</p>	<p>U Re small shelf above bar sink unit on curved wall at Op 6: modify back to follow curve using template guide and router from both sides, chiseling out the rest, open wall and adjust backing and install shelf</p>	<p>Necessary / Assumed Consent: This work was made necessary by the curve of the wall. Mr. Bewsky stated that modification of the shelf to fit the curved wall was not part of the contract. Dr. Melnik asked him to install this shelf above the bar sink. He knows that it would not have met Dr. Melnik's quality expectations to not fit the shelf to the curved wall. Did not discuss with Dr. Melnik. Estimated seven hours plus tooling.</p> <p>K: Contract calls for installation of "install miscellaneous items from storage" under new construction item 3 and "install fixtures such as mirrors, bars etc from storage" under item 5.</p> <p>Decision: Denied. This is part of contract which includes installation of shelves removed from the Old Office. While I agree with Mr. Bewsky that Dr. Melnik would not have accepted a flat shelf screwed onto a curved wall, leaving gaps at each end, Mr. Bewsky was aware some of the walls were curved. The Architectural Drawings do not show this sink, but Mr. Bewsky stated that Dr. Melnik advised him of, and he had marked on his copy of the drawings the location of the sinks prior to the March 14, 2015, meeting. The sinks had shelves above them in the Old Office.</p>
<p>2018 Extra #150</p> <p>\$210</p>	<p>U Apply laminate to kicks in sterilization area</p>	<p>Necessary / Assumed Consent: Neither the contract nor the construction notes required Mr. Bewsky to install laminate "kicks" to cabinets in the sterilization room. Mr. Bewsky assumed (rightly, it is submitted), however, that this was something that needed to be done to meet Dr. Melnik's quality expectations. Did not discuss with Dr. Melnik.</p>

		<p>K: Contract calls for fitting millwork from storage, and Construction Notes, item 19, requires repairing and cleaning millwork.</p> <p>Decision: Denied. Not an extra. See Extra #142.</p>
<p>2018 Extra #151 \$455</p>	<p>U Extra cost to cut millwork base and millwork into flash cove in records, consult, op 4,5 and sterilization rooms</p>	<p>Necessary: The work done was made necessary by Dr. Melnik's decision during construction to install flash cove base, making it necessary to do work that would not be required with regular strip vinyl base. This is the cutting of the flash cove. If he didn't cut it, the millwork base would not sit tight against the wall. Originally there was going to be regular cove base used, and it would have been put in after the cabinets were installed. This sequence cannot be followed with flash cove. The flooring specifications changed after the contract was signed. Had to create a jig to cut out. Did not discuss with Dr. Melnik.</p> <p>K: Contract calls for fitting millwork from storage. Mr. Bewsky never talked to him about this.</p> <p>Decision: Allowed subject to reasonable cost, and deduction for work that would have been required in any event to cut cove base for millwork. (1) Is an extra. The Main Contract Document was based on the quote from Chilliwack Floors which provided for cove base and not flash cove base. The Third Change Order provided for flash cove base. (2) Dr. Melnik impliedly authorized as it is necessary to carry out other authorized work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #152 \$365</p>	<p>U Apply spray foam to seal air and water lines coming into floor boxes, prop straight and trim off excess</p>	<p>Necessary: The work had to be done to address a condition that emerged or became known during the course of construction which was not in the scope of work under the contract. This is in the recessed J-boxes. Foam was applied to each line coming in to seal it off. Mr. Bewsky noticed air coming in from the plenum area. He also did not want gasses coming up from the dirt. Did this in four areas/rooms. Estimated five hours plus material. Did not discuss with Dr. Melnik.</p> <p>?: Dr. Melnik stated that Mr. Bewsky did not talk to him about this, and he thought it would be part of common sense.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra, as it is part of the recessed J-boxes, which I have found are an extra. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #153 \$475</p>	<p>V Re consult room maple model box: cut and trim maple veneer and apply to end of unit, sand to blend edge and finish with three coats of varathane</p>	<p>V: Dr. Melnik asked him to do this during construction. The work went well beyond just reattaching the existing "maple box" to the new wall and included millwork to recondition and improve the quality of the box. In the Old Office, this existing model box was against a wall. As the side that was previously against a wall was now exposed in the New Office, that end had to be finished with new veneer and sanded so the veneer would not sit proud of the bull nose of the box. Did not discuss with Dr. Melnik as it had to be done. Mr. Bewsky agreed the contract included installing this model box, but this is an extra modification. Mr. Bewsky stated that the contract only required him to screw the box into the wall. Estimated 6.5 hours plus material.</p> <p>K: New Construction, clause 3 states, "install miscellaneous items from storage", and calls for fit millwork from storage. This may be a miscellaneous item or millwork. Prior to the contract Dr. Melnik discussed with Mr. Bewsky that the millwork and items were to be</p>

		<p>installed exactly where they were in the Old Office. Dr. Melnik denies that Mr. Bewsky had to finish one side of the box with veneer. If Mr. Bewsky he did that, he did on his own motion. Because the wall was curved, he had originally contemplated putting a new box there, but he eventually told Mr. Bewsky to put in the old maple box, and he did not care if it did not extend all the way to the wall.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Architectural Drawings do not include this box, and this work goes beyond "fitting". (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #154 \$715</p>	<p>V Discuss x-ray room items on inner and outer walls: inner wall shelf - modify same as small shelf above bar sink on curved wall at Op 6; outer wall - cut and paint edges of laminate and install prior to apron bar and cassette box installation</p>	<p>V: This work went beyond just reattaching the apron rod, cassette box and shelf to the wall, which is the most the contract required. It also included installing laminate behind the rod and cassette box and modifying the shelf to fit flush with the curved wall to complete the work as Dr. Melnik requested. Did not tell Dr. Melnik was extra. Dr. Bewsky said he knew these had to be installed as they were in the Old Office, but the two shelves required modifications to them because the walls were curved. The contract did not call for laminate to be installed on the wall below the apron bar.</p> <p>K: Contract New Construction, clause 3 states "install miscellaneous items from storage". At or before the March 14, 2015, meeting, Dr. Melnik gave instructions to Mr. Bewsky to modify the shelves and asked Mr. Bewsky to put them in the x-ray room in the New Office.</p> <p>Decision: Partially allowed subject to reasonable cost, and partially denied. Partial allowed: laminate. (1) Is an extra. Neither Main Contract Document nor Architectural Drawings require laminate below the apron bar. The Construction Notes, item 8, require laminate on walls where there is a countertop which has not fixed millwork below it. The laminate below the apron bar was in the June and August Design Drawings. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have know would increase cost. Partial not allowed: shelves. Not an extra. Mr. Bewsky knew the shelves would go against a curved wall. See Extra #149.</p>
<p>2018 Extra #155 \$210</p>	<p>U Re back door ramp: Building Inspector requires curb along ramp: prep curb only - no finish, may eliminate with cabinet on wall</p>	<p>Necessary: This work was also done in response to a directive from the building inspector where the work did not fall within the scope of work in the contract. The building inspector wanted a curb alongside the ramp so a wheelchair would not come off the ramp, but Mr. Bewsky explained to him that a cabinet was going to go there and would be mounted to the wall. Mr. Bewsky suggested he make a temporary curb, and once the wall was there, it may not be needed. Ultimately, the building inspector agreed. Put in wood to act as a curb. Estimated three hours including discussions with building inspector. Mr. Bewsky claimed he should not have to know every detail of the Building Code.</p> <p>K: If the building inspector required it, it is presumably required by the Building Code, and it is reasonable to assume that the contractor's work would meet code</p> <p>Decision. Denied. Is not an extra. I infer this was required by the Building Code, and work in accordance with the Code is an implied term of the contract.</p>
<p>2018 Extra #156</p>	<p>V Xray control panel at records room: re and re panel to get</p>	<p>Abandoned.</p>

<p>\$285</p>	<p>cable in wall and fab and install plugs using plastic sheet</p>	<p>.</p>
<p>2018 Extra #157 \$595</p>	<p>V Entrance door Abloy lock: re and re to immobilize thumb turn lock and cover key access thumb tum side and send images to building inspector</p>	<p>Necessary: This work was also done in response to a directive from the building inspector where the work did not fall within the contract. The building inspector required that the thumb screw be immobilized, and a cover put over the key access for safety. Mr. Bewsky had to take apart the lock and fabricate some parts for it. Estimated 8.5 hours. Did not tell Dr. Melnik it was extra. Dr. Melnik told him it was a very expensive lock.</p> <p>K: If the building inspector required it, it is presumably a Code item, and it is reasonable to assume that the contractor's work would meet Code. Dr. Melnik states that Mr. Bewsky did not tell him about this until after he had immobilized the lock. If he had told him, he would have simply replaced it rather than pay \$600. Further, he had spare locks from his Old Office.</p> <p>Decision: Denied. I find that Mr. Bewsky did not discuss this with Dr. Melnik. It was unreasonable for Mr. Bewsky to incur \$595 in time to disassemble and modify an existing lock without seeking instructions from Dr. Melnik. Unjust enrichment not established as no benefit to Dr. Melnik. A new lock could have been purchased much more cheaply, or Dr. Melnik had other spare locks to use.</p>
<p>2018 Extra #158 \$1,145</p>	<p>U Re vinyl floor tile base: all base has shrunk showing very noticeable cracks at all joints: mix caulk to a light grey color, apply to joints throughout and clean, repair one corner of base in x-ray room and caulk all base, woodwork and door jambs to floor</p>	<p>Necessary: This work was required to address a condition that arose during the course of construction (unexpected shrinkage of the tile base chosen by Dr. Melnik after initial installation). The work did not fall within the scope of work under the contract but had to be done to rectify the issue. Mr. Bewsky stated that over the course of a month, the base shrunk lengthwise. He considers this a product defect. Estimated 16 hours plus materials. Mr. Bewsky did not approach the supplier about the shrinkage issue. He thinks the supplier would say this was not the intended use of the tiles. The cracks were noticeable. Part of this claimed extra was also re-gluing a corner of the base that had popped off. Mr. Bewsky does not consider this a deficiency in his work because Dr. Melnik chose the tile and the use of it. Part of this claimed extra was caulking woodwork and door jambs to the floor.</p> <p>K / Unnecessary: Either the spaces between the tiles are acceptable or unacceptable. If the spaces were unacceptable, the contract (and Third Change Order) called upon the contractor to install the tile base properly (such that it would not contract and leave gaps) and the contractor was bound to fix it free of charge as a deficiency. If the spaces were not so big as to be deficiencies, then Mr. Bewsky's work was unnecessary and of limited or no benefit to Dr. Melnik and should not be charged. Dr. Melnik stated that he never saw any gaps, and Mr. Bewsky never discussed this issue with him.</p> <p>Decision: Partially allowed subject to reasonable cost, and partially denied. Partial allowed: Fixing the cracks in the baseboard from shrinkage, and the popped off tile. Dr. Melnik chose to use this vinyl tile, and to have it cut down to use as baseboard. See Extra #119. Partial denied: caulking all base woodwork and door jambs to floor. In my view, this is part of regular construction.</p>
<p>2018 Extra #159 \$285</p>	<p>U After water filter installation for RP's: re and re tool piece lines and flush the supply lines for all</p>	<p>Abandoned.</p>

	four chairs, much debris and flux smell	
2018 Extra #160 \$145	V Re light lens under cabinet in sterilization: able to reshape one lens - the other is un-repairable	<p>V / Necessary: Dr. Melnik wanted lighting from the Old Office installed under the cabinet in the sterilization area. That was part of the contract, but one of the lenses had opened and would not sit on the fixture. Toward the end of construction, Dr. Melnik asked him to correct his. One he was able to fix and the other he could not because it was too badly deformed. He had to heat them up and try to reshape them. In the Old Office, they were held up by silicone. Ultimately Dr. Melnik told him that he had a new lens, and he left it with him. Estimated two hours. Did not tell Dr. Melnik this would be extra.</p> <p>?: Dr. Melnik stated he knew about the cracked or twisted lens. He does not recall a discussion with Mr. Bewsky about it. He has a box of the lenses in storage from the Old Office. He stated he does not understand why Mr. Bewsky did this.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. I accept Mr. Bewsky's evidence that Dr. Melnik asked him during construction to try to repair this. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
2018 Extra #161 \$435	V Re entry door: discuss the need for protective sheet on inside of door, supply and rough cut	<p>V / Necessary: This is distinct from the lexan on the outside of the door which protects the eagle carving on the door. This is polycarbonate on the inside of the door. In the Old Office, this door swung in, but in the New Office it swung out. Dr. Melnik was concerned the inside could be damaged. Toward the end of construction, he asked Mr. Bewsky to get material to protect it. Estimated 4.5 hours to pick up the polycarbonate, and cut it to fit, plus materials. It was not installed. He left it on the second floor when he left the project, and took the remainder home. Did not tell Dr. Melnik it was extra.</p> <p>?: Dr. Melnik states that before the contract was signed, it is possible, but he does not recall if he told Mr. Bewsky he wanted the inside of the door protected so that it didn't get damaged during construction. During construction he asked Mr. Bewsky why it was not protected. He doesn't recall what Mr. Bewsky said. He believes Mr. Bewsky took the polycarbonate to his home.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Accept Mr. Bewsky's evidence that Dr. Melnik requested this during construction. Only protection of the outside of the door with lexan is provided for in the contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost. Accept Mr. Bewsky's evidence that he left the cut polycarbonate on site.</p>
2018 Extra #162 \$185	U Re steel shelving in records room: cut down one gable to match the other, cut pads from lino and attach with foam tape, sand, clean and seal bottom of wood end panel with two coats of varathane re previous water damage	<p>Necessary / Assumed Consent: This work had to be done so the "gables" in the records room aligned. He assumed (reasonably) that Dr. Melnik wanted and expected this work to be done. In the Old Office, the floor was not level, so one of the gables was longer than the other. As a result, he had to cut one down for the New Office, and attached pads. Also, one had a maple plywood panel end but the bottom of the panel had been water damaged in the Old Office. He repaired that and sealed it with varathane. The contract required him to install the shelving and not modify it. Estimated 2.5 hours plus material and tooling. Did not discuss with Dr. Melnik.</p>

		<p>?: Dr. Melnik stated that he never discussed this work with Mr. Bewsky.</p> <p>Decision: Allowed subject to reasonable cost. 1. Is an extra. New Construction, clause 3 calls for installation of shelving from storage, not refitting or modifying them because they are damaged or uneven. This is repairing damaged steel shelving. (2) To the extent this was required to complete the installation of shelving which was within the scope of work, Dr. Melnik impliedly authorized it. (3) Dr. Melnik knew or ought to have known it would increase cost. In the alternative, to the extent this was not necessary so there was no implied authorization (for repairing and refinishing the wood), I find that Mr. Bewsky reasonably concluded that Dr. Melnik wanted this done because of the quality of work he expected, that Cakwell suffered a detriment, that Dr. Melnik was enriched, and there was no juristic reason for the enrichment.</p>
2018 Extra #163  \$40	U Remove blocking and clamps at sterilization counter seam	Abandoned.
2018 Extra #164  \$1,015	V Re dental chair floor boxes pre-prepped for electrical and supply lines: discuss and confirm locations, open floor, block, support and fix in place, modify joist for clearance for one installation	<p>V / Necessary: These are four J-boxes on the second floor. This formed part of the work involved in the installation of the recessed J- boxes, which Dr. Melnik requested. Mr. Bewsky and Dr. Melnik planned out where to put the boxes, and then the floor was opened up. Some joists had to be modified and braced near the kitchen area to accommodate the boxes. The discussion of the recessed boxes took place at the same time as that for the main floor recessed boxes. Estimated 13.5 hours plus material. Did not tell Dr. Melnik this was extra.</p> <p>K: Contract called for installation of mechanical and electrical, whether it was in a box or not. No evidence to say this is extra and not called for by the terms of the contract. When asked whether J-boxes were marked out on the second floor prior to the contract, Dr. Melnik stated he had some dental chair templates upstairs.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #25.</p>
2018 Extra #165  \$450	V Move RWL [rain water leader] at block wall in room 205 in line with steel stud wall, relocate wall and RWL opening in block wall to accommodate depth of dishwasher	<p>V / Necessary: Dr. Melnik told Mr. Bewsky during construction that he wanted a dishwasher installed, and the work covered by this item had to be done in order for the dishwasher to fit into the space available for it. Mr. Bewsky stated that in one of the original rooms, an RWL was running outside the block wall, but had been enclosed in a wall that had been removed. If the RWL was not moved, it would have to be covered over as a column that jutted out of the wall, and the countertop in that area modified for the column. The pipe was moved over about 10 inches and put into the wall. The pipe had to be moved a second time because Dr. Melnik decided to put a dishwasher in the room that was on the other side of this wall, and the dishwasher was too deep with the pipe, so the pipe was moved again a little to accommodate the dishwasher. Six hours plus tool (jack hammer). No discussion with Dr. Melnik. It was obvious the RWL had to be moved. Did not tell Dr. Melnik it was extra. Did not give Dr. Melnik credit for the work he avoided.</p> <p>Extra?: This may be an extra. Dr. Melnik had a location for a dishwasher in his previous practice, but no dishwasher. He wanted a location for a dishwasher in the new practice. That desire may not be enough to say that Mr. Bewsky knew he had to provide for it. Dr. Melnik stated he did not recall anything about the RWL.</p>

		<p>Decision: Allowed subject to reasonable cost. (1) Is an extra, both as a hidden RWL that had to be moved the first time to avoid it sticking out of a wall and having to be furred in and the countertop modified, and as the RWL that had to be moved a second time to accommodate the future dishwasher. The dishwasher is not in the contract documents. It is shown on the June and August Design Drawings and is extra work. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #166 \$220</p>	<p>U Shim floor joists of newer floor structure in room 206 to level aligning with older floor structure in room 206 at end of block wall and fix in place</p>	<p>Necessary: This formed part of the work needed to fix the problems associated with the upstairs floor substrate. The contract did not contain any blanket requirement to “fix the flooring and subfloor on the second floor”. This is the area in the block wall going from room 206 (Op. 4) to the office area. The floor levels were different. One floor had to be shimmed up. Estimated three hours plus materials. Did not discuss with Dr. Melnik.</p> <p>?: Contract called for fixing the flooring and subfloor on the second floor. There is no evidence to show that this work goes beyond what was called for, or why this work was necessary. Mr. Bewsky did not discuss with him.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. See Extra #15. Construction Notes, item 5 states “tighten and secure the second-floor flooring substrate”. Main Contract Document states “rescrew any subfloor plywood which remains and replace subfloor plywood where removed”. This work is not merely re-screwing loose floorboards or replacing subfloor that had been removed. It was repairing a defect, being two different levels of floor, and is excluded by New Construction, clause 9 “any unseen issues ... including sub-floors”. (2) Dr. Melnik impliedly authorized this was necessary to complete the original scope of work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #167 \$265</p>	<p>U. Re bouncy floor joists in rooms 204, 205 &amp; west end of 206: shim between bottom of floor joists and top of I-beam 2 x 6 plate and fix in place, approximately 12 joists</p>	<p>Necessary: See above. When the seismic upgrade had been done years earlier, a beam was put in to support the second floor, but no shims were put in between the top of the beam and the second floor, with the result that the floor went up and down, so Mr. Bewsky shimmed nearly every joist. This is securing the joists not the plywood. Estimated 3.5 hours plus material. Did not discuss with Dr. Melnik.</p> <p>?: Contract called for fixing the flooring and subfloor on the second floor. There is no evidence to show that this work goes beyond what was called for, or why this work was necessary. Dr. Melnik recalls that there were sagging floor joists for the landlord’s remedial work but does not recall anything about bouncing and shimming. He is not aware of this work.</p> <p>Decision: Allowed subject to reasonable cost. See Extras #15 and #166.</p>
<p>2018 Extra #168 \$195</p>	<p>U Core hole through block wall from room 204 to 206 re pipe chase for vac line</p>	<p>Necessary: This is a hole Mr. Bewsky said he had to jack hammer in the wall between rooms 204 and 206 because the suction line came up on one side of wall, and it had to be run through the wall to the chair at the other side of the room. He said this was different from the contract because there was a vacuum line going up from the mechanical room to the pipe chase and it went to service the three chairs in 201 and 202, and this line was run in the main floor in a different direction to the dental chair in 206. He did this rather than cut lines in floor joists. There is a dog grooming business</p>

		<p>beneath that room. Estimated 2.5 hours. Did not discuss with Dr. Melnik.</p> <p>?: Dr. Melnik stated that Mr. Bewsky never discussed this with him.</p> <p>Decision: Denied. This is not an extra. Placing vacuum lines is part of the contract. Coring holes in walls is provided for in the Main Contract Document under "Cutting and Coring". Mr. Bewsky has not established this is above the amount allowed in that clause.</p>
<p>2018 Extra #169 \$2,570</p>	<p>U Glue and screw 3/4" strapping to top of all joists where top layer of shiplap has been removed in rooms 201, 202, 204, 205 &amp; west end of 206, glue and screw 2 x 4's to sides of joists to level and flatten floor in rooms 204, 205 &amp; west end of 206</p>	<p>Necessary: See Extra #166. This concerned levelling the joists in the old floor area on the second floor so the floor could be flat. The contract required him to screw the plywood down to tighten against the joists and prevent squeaking. This is different. This is to level the floor by levelling the joists. Where there was shiplap, it involved placing strapping to bring it level, and where there were joists, by attaching 2x4s to joists above the height of the joists to level the floor. Plywood was then attached and screwed down. Estimated 31 hours plus material. Did not discuss with Dr. Melnik.</p> <p>K / Unnecessary: Contract called for fixing the flooring and subfloor on the second floor. There is no evidence to show that this work goes beyond what was called for, or why this work was necessary. Dr. Melnik stated was not aware that Mr. Bewsky did this work. Mr. Bewsky did not tell him that other than the Remediation Work paid for by the landlord, any of the flooring related work would be extra.</p> <p>Decision: Partially allowed subject to reasonable cost, and partially denied. Partial allowed: The levelling of the joists and shiplap to have a level floor. See Extras #15, #166 and #167. Partial denied: that portion of the work that falls within New Construction, clause 5, "rescrew any subfloor which remains and replace subfloor plywood where removed".</p>
<p>2018 Extra #170 \$590</p>	<p>U Repair fire rating in second floor joist space at back stairwell east wall area</p>	<p>Unseen / Necessary: The contract did not include any blanket requirement to assure fire rating, and the need to do so in this location only emerged or became known during construction. This was repair work and only became visible when the floor in room 204 was opened up along the stairwell wall. The original first-floor stairwell wall does not align with the second-floor stairwell wall, and there needs to be fire separation from floor to floor. Estimated eight hours and \$30 materials. Did not discuss with Dr. Melnik. Requires framing, applying fire rated drywall, and taping.</p> <p>K: Fire rating is included in the contract. Mr. Bewsky never talked to Dr. Melnik about this work.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. New Construction, clause 7, states "General - ... fire stopping...". However, this is under the heading New Construction. It does not include repairing an existing unseen defect. It falls within clause 9 re unseen issues. (2) Dr. Melnik impliedly authorized as necessary to complete the scope of work. Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 Extra #171 \$195</p>	<p>V &amp; U Core hole in room 201 west block wall in floor space for electrical and telephone relocation, form and fill with</p>	<p>Necessary: The need for this work in this location only emerged or became known during construction, and it does not fall within the contract. Mr. Bewsky cored to bring in the electrical feed for the upgraded 400-amp services and for telephone. This is different from the original contract because the electrical was upgraded in</p>

	<p>concrete re fire rating and patch existing penetration</p>	<p>the First Change Order. The hole went through a fire wall, so he also had to patch and apply concrete after this. Estimated 2.5 hours plus material. Never discussed this work with Dr. Melnik.</p> <p>?: Dr. Melnik stated that Mr. Bewsky did not discuss this work with him and he was not aware it was done.</p> <p>Decision: Denied. Is not an extra. Mr. Bewsky has not established that this is not part of the First and Second Charge Orders, or Main Contract Document "Cutting and Coring". Main Contract Document, New Construction, item 7, states "General - ... fire stopping..." which refers to fire stopping for new construction which this is.</p>
<p>2018 Extra #172 \$5,730</p>	<p>V Re lab windows: repair curved wall at one opening pinning drywall and furring to concrete prior to fabricating frames, make templates for curves inside and out, mark and cut 3/4 inch plywood frame pieces, assemble frames and install in the four openings, trim with angle inside and out fixing frames in place level, square and plumb, fur in one opening on outside creating a recessed cavity for a mirror, fire rate with two layers of drywall, drywall the inside of each window frame and add a second layer true and plumb at the glazing stop width keeping glazing close to the outside of opening creating a suitable ledge on the inside, trim glazing stop with L-edge, in place of artwork - sheet outside of curved wall at the second floor elevation from east side of line 2 to west side of line 2 shimming drywall to maintain a smooth curve, apply bullnose, square edge and flex beads to the outside of all three openings, tape and fill to finish, prime and paint one coat from line 2 to 2</p>	<p>V / Necessary / Assumed Consent: This concerns the lab (inner round room) on the second floor. This work included the framing and finishing work involved in installing the new windows in the room. Mr. Bewsky agreed there may have been a discussion pre-contract about replacing the windows and Dr. Melnik was going to look into it. After demolition, Dr. Melnik said he wanted the old windows with existing frames with wire and centre mullions out, so Mr. Bewsky replaced these. To the extent that the work involved improvements to the wall apart from the apertures for the windows, Mr. Bewsky assumed (reasonably) that Dr. Melnik wanted and expected this work to be done. None of this work was included in the original contract and was necessary because the planned artwork was eliminated. This drywall was originally going to be the trunk of a tree. Estimated 70 hours plus material. Does not know if he told Dr. Melnik this is extra. Mr. Bewsky agreed the round wall was already drywalled but denied this was not necessary. The openings were all redone, but he agreed that he did not have to replace all the drywall.</p> <p>K / Unnecessary: The contract called for patching and painting. Dr. Melnik observed these walls and noticed nothing wrong with them. Mr. Bewsky went ahead and replaced the drywall. There is no discernable advantage gained from this work. Mr. Bewsky eventually admitted on cross that the work was not absolutely necessary. Dr. Melnik states that he does not recall a discussion with Mr. Bewsky concerning this and would not have authorized \$6,000 for this work. There was existing drywall on the round room walls. Prior to the Main Contract Document, they discussed that one of the openings would be for a mirror. As for the windows, there was existing wired glass, and he asked Mr. Bewsky to investigate if he could replace the wired glass with fire rated glass. He does not recall if he discussed the windows and fire rated glass with Mr. Bewsky during construction, and if he had said anything like that, he would have asked for a written estimate. Dr. Melnik agreed that at some point during construction he noticed that the old windows had been taken out and new put in.</p> <p>Decision: Allowed subject to reasonable cost less deduction for patching and painting that would have been required in any event. See Extra #14 re replacement with new fire-rated glass. Contract does not call for the replacement of these windows or any of this work. The Architectural Drawings do not show this work. The June and August Design Drawings show at least the moving out of the window and give instructions regarding the mirror, bull nose, and ledge. (1) Is an extra. (2) Accept Dr. Melnik authorized the replacement of the glass, and other changes. (3) Dr. Melnik knew or ought to have know it would cost more. The drywall work was required as part of this extra work and the cancellation of the artwork.</p>

<p>2018 Extra #173 \$3,855</p>	<p>V Re second floor landing: increase size substantially coming square off of landing stringer rather than square off of beam, add three-ply beam spanning from structural beam to structural beam, apply load of landing stringer to beam, add full length joists, blocking and bridging and add blocking and bridging to existing landing; build floor section above as per original Re installation of future four fir panels: straighten and level perimeter edge of landing using floor leveling compound and plywood building up to finished floor height, apply trim, fill and finish for paint, re elevation difference of sub floor ply on landing to sub floor ply of second floor, fill to flatten, remove existing fill off existing sub floor ply at concrete landing to aid in flush up of U-lay plywood to concrete after U-lay is installed on landing, fill concrete landing to flush up with U-lay</p>	<p>V / Necessary: Mr. Bewsky agreed that an expansion of the second-floor landing was included in the contract, but this was a further extension that Dr. Melnik instructed him to do toward the end of 2016. Dr. Melnik wanted the landing extended by a further three feet and to orient it in different way. Did not tell Dr. Melnik it would be an extra. He had to build support for the expansion. Estimated 30 hours plus materials.</p> <p>K: The Main Contract Document and the Construction Notes, item 4, call for an extension of the second-floor landing. Unclear why there is an additional charge for this work. Mr. Bewsky gave lots of evidence about the way in which he constructed the landing (the joists changed orientation). There was no evidence of any benefit of this change. There was no evidence that all of the work claimed here is not work that is called for by the work of “extending the second-floor landing”. If there was additional work, then there should be a credit given for the base scope of “extend second floor landing”. Dr. Melnik agreed that he talked to Mr. Bewsky about extending the landing and but not about reorienting the joists. Agreed they discussed substituting fir panels installed instead of railing. Dr. Melnik denies any recollection of a discussion post-contract where he asked Mr. Bewsky to change the orientation to come off square of the railing.</p> <p>Decision: Allowed subject to reasonable cost and deduction for the work required for the smaller extension that was required by the contract. The Construction Notes, item 4 state “Extend the second-floor staircase landing”, and the New Construction, clause 4, specifies this further with “extend top stair landing approximately 15 square feet”. The pictures show that there is a further extension (1) Is an extra. (2) Accept Dr. Melnik instructed Mr. Bewsky to further extend the landing beyond what was contemplated in the contract. (3) Dr. Melnik knew or ought to have known it would increase cost.</p>
<p>2018 List – Extra #174 \$525</p>	<p>U Build temporary access platform from lab window to records room landing and over storage ledge wall, protect finished lab window opening (for trade access)</p>	<p>Necessary: Mr. Bewsky said that throughout the renovation he was waiting for approval from an engineer. He had asked Dr. Melnik to obtain that approval, so that he could cut a hole in the sheer wall for access to the second floor perimeter storage walkway. He had not received the approval, so he had to build a temporary access platform through a window and over the storage ledge and to protect it. Estimate 7.5 hours. He and the trades needed access to do the work in the walkway and storage ledge. Did not discuss with Dr. Melnik. Agreed that the contract required turning that area into a storage ledge and that he would need access, but there was to be a doorway on one end. The doorway was within his scope of work. Agreed he had scaffolding and a lift at the site, but said it was not appropriate for this.</p> <p>K: There is no explanation for why this work was an extra. The contract is generally for a fixed price, which would imply that accessing areas for the contractor to do work is included in the price. Mr. Bewsky never talked to Dr. Melnik about this, although he saw the temporary platform.</p> <p>Decision: Denied. Is not an extra. Access to do work is part of the scope of work.</p>
<p>2018 List – Extra #175 \$1,115</p>	<p>U Do test for glare on windows re storage ledge wall strip lighting, mark paint line, mask off and paint anti-glare black</p>	<p>Necessary: This work needed to be done to address an issue that arose during construction (i.e. excessive glare on windows from the strip lighting that Dr. Melnik asked him to install). Dr. Melnik’s assertion that the work stemmed from a “misunderstanding” by</p>

	<p>strip on storage ledge side and supply and install white metal flashing angle glare shield</p>	<p>Mr. Bewsky does not address Mr. Bewsky's evidence that the glare problem, which made the work necessary, stemmed from the lighting on the inside of the windows. This was strip lighting that was added to top of the ledge wall at Dr. Melnik's request during construction. Mr. Bewsky discussed the white metal flashing with Dr. Melnik but not painting it black or the glare test. Estimated 14.5 hours plus materials. Did not tell Dr. Melnik it was extra.</p> <p>Unnecessary: This work stemmed from Mr. Bewsky's misunderstanding of Dr. Melnik's instructions. Dr. Melnik says he wished for blinds to be installed to prevent the glare from the parking lot streetlamp. This was his main concern. The value of this work is questionable. Dr. Melnik recalls Mr. Bewsky saying there was glare, and he was going to paint to reduce it. Mr. Bewsky did not tell him it would be extra.</p> <p>Decision: Allowed subject to reasonable cost. See Extra #63. (1) Is an extra. The strip lighting was not part of the original scope of work. 2. Dr. Melnik authorized this as it is part of installation of the strip lighting. 3. Dr. Melnik knew or ought to have known this would cost more.</p>
<p>2018 List – Extra #176  \$1,240</p>	<p>V Insulate as much of second floor floor-space above dog groomer as possible, insulated approximately 70% with two layers plus of R12</p>	<p>V: Mr. Bewsky submits the amount charged for this admitted extra is reasonable given the time spent and material costs incurred. Mr. Bewsky insulated wherever the floor had been opened. Could hear the dogs barking and Dr. Melnik instructed him to insulate as much as possible. Estimated 12 hours plus materials. Did not tell Dr. Melnik this was an extra.</p> <p>Extra: Dr. Melnik agrees they had the conversation but testified that he does not see how insulating partially was of any use.</p> <p>Decision: Allowed subject to reasonable cost for this admitted extra.</p>
<p>2018 List – Extra #177  \$1,980</p>	<p>V Re closing in of duct work along storage ledge floor - strong enough to hold files and models: vacuum off duct work and area prior to, supply and install wood framing and sheet with G1S 1/2" plywood at three different elevations to maximize storage, round over outer edge of plywood top</p>	<p>V: In 2016 Dr. Melnik asked Mr. Bewsky to close in the duct work along the storage ledge floor with a surface strong enough to support files and models. This is outside the scope of the work. The duct comes down from the ceiling of the second floor and runs along the ledge to the bathroom. Estimate 24 hours plus material. Did not tell Dr. Melnik it would be an extra. The ductwork could have gone in the ceiling, but Dr. Melnik did not want to see it, and this is why it went on the floor. Denies Dr. Melnik expressed displeasure with the placement of the duct.</p> <p>K / Unnecessary: The contract called for a storage ledge to be provided where this duct is. He did not see the duct until it was installed. He remarked to Mr. Bewsky that he was surprised that the duct did not go along the ceiling. In cross, he admitted that he did not know if he gave instructions to Mr. Bewsky to close it in. He recalls being upset that the duct was on the floor because it was a narrow space and this impeded access. If it had been installed on the ceiling, this closing in work would have been unnecessary. He submits this seems to be an oversight in Mr. Bewsky's management of the HVAC contractor. Dr. Melnik agrees he did not write an email to Mr. Bewsky expressing displeasure regarding this. He said there was no point, they had already met and were already severely stressed for time.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. (2) Accept that Dr. Melnik authorized closing in this duct work along</p>

		the ledge so storage could be placed on top of it. (3) Dr. Melnik knew or ought to have known this would cost more.
2018 List – Extra #178  \$590	U Extra cost to screw down 5/8" T&G sub-floor plywood through loose shiplap layer using threadless shank 3" screws	<p>Necessary: Mr. Bewsky stated that extra screw work was required because of the presence of the loose shiplap layer, only discovered after construction began. Screws had to be driven through to the joists beneath it to secure the subfloor plywood. This is where shiplap was not removed, but plywood put on top. Estimated eight hours plus material. This is the extra amount of time to use the longer screws. When ¾ inch screws are used, it can be done rapidly. Longer screws require him to “babysit” the screw until it is halfway down the screw portion. Did not discuss with Dr. Melnik.</p> <p>K: New Construction, clause 5 states, “rescrew any subfloor plywood which remains and replace subfloor plywood where removed”. This is not an extra. Did not have a discussion with Mr. Bewsky regarding this.</p> <p>Decision: Denied. Not an extra as contract calls for re-screwing the subfloor.</p>
2018 List – Extra #179  \$4,590	V Unable to use frame-less stair railing system, (gauge of stringer metal is too light): extra cost of railing associated with bench seating, revised size of landing, double height of railing, two extra posts re future wood panels: discuss and design, re height and spacing of posts re wood panels regarding weight of, cut and provide templates, add two additional posts, and additional glass	<p>V Necessary: Changes to the type and configuration of the railing system had to be made. Replacing the existing railing was in the original scope of work. The amount charged represents the increased cost stemming from this change and constitutes an additional subtrade cost within the Terms and Conditions clause of the contract. Because the stair stringers were an abnormally thin gauge of metal, they were unable to use the frameless stair railing system. As a result, Mr. Bewsky had to weld posts of railing on top of the stringer. Because of the bench seating which Dr. Melnik decided to have installed on the second-floor landing (which is not on the Design Drawings), there must be 42 inches from the highest point to the top of the glass. He discussed this with Dr. Melnik, and they agreed to extend the posts to 80 inches from the floor and put wood panels on the bottom, and above that glazing. Installation of the railing was included in the scope of work, but it had to be extended much higher because of the bench seating. Railco did the fabrication and installation of the glass. Railco charged an extra \$3,300 and he added a 20% markup for a total of \$3,960. Estimated nine hours of his time. Did not tell Dr. Melnik it was extra. Never showed the Railco quote to Dr. Melnik.</p> <p>K: New Construction, clause 4, calls for “add new railing with glass panels”. The contract does not specify that the system was to be a frame-less system. There is no evidence that the contract called for a frameless system, or that the frameless system would have been cheaper. Dr. Melnik does not recall specifying frameless railing. He recalls instructing Mr. Bewsky to replace the wire mesh system with glass. He does not recall any discussion during construction regarding parts of the frameless system no longer being feasible. Mr. Bewsky recommended installation of a higher railing for safety because of bench seating going in that area. He thought it was a good idea. Mr. Bewsky did not tell him it would be extra to extend the glass. He was to put in wood panels at the bottom, but this was not completed. Agreed that it was extra work, but said he was entitled to know the cost beforehand.</p> <p>Decision: Allowed subject to reasonable cost, and deduction for stair railing installation that was required under the contract, less the mark-up. (1) Is an extra. This is beyond the work contemplated by the contract. The bench seating is not shown in the Architectural Drawings or the June or August Design Drawings, and I find</p>

		Dr. Melnik decided to plan for this seating during construction. As a result, the height of the glass and railings had to be extended. The extra work from the subtrade is excluded under Terms and Conditions, "Any additional costs ... from subtrades which are not allowed for in their estimates, due to changes or any additional / extra work required, are not included". (2) Accept that Dr. Melnik authorized this work. 3. Dr. Melnik knew or ought to have known this would cost more.
2018 List – Extra #180 \$720	U Frame-less stair railing system requires no painting. Cost to paint stair railing	Necessary: Resulting from not being able to use frameless system and having to go to weld on posts. Estimated 10 hours plus materials. Did not discuss with Dr. Melnik. Agreed that the scope of work called for painting of the existing railing that was on the other side of the stair, but this is new railing.  K: See Extra #179. In Main Contract Document, painting is included under item 7 general. Nowhere in the contract does it say that railing system would not require paint. Mr. Bewsky never talked to Dr. Melnik about this.  Decision: Allowed subject to reasonable cost. See Extra # 179.
2018 List – Extra #181 \$1,480	V Re wall recess at landing for TV; discuss location, layout and size, mark and cut opening in wall, frame, add plywood for backing and apply drywall, apply bullnose and square edge bead, tape, finish, prime and paint; re prep comer on landing for wood plank post: provide suitable opening and backing, pre-install to apply drywall trim and finish for paint	V: The amounts charged for this admitted extra are reasonable given the time spent and material costs incurred. In 2017, Dr. Melnik asked him to frame in a spot for a TV at the second-floor landing. He also did the preparation for a wood plank post to be put in that area, which was also not included in the scope of work. Estimated 20.5 hours plus material. Did not tell Dr. Melnik it was an extra. Is shown on the June Design Drawings.  Extra: However, credit should be given for work that was called for here for patching and painting of existing walls.  Decision: Allowed for this admitted extra, subject to reasonable cost and credit for patching and painting of existing wall that would have been required in any event. The TV recess is not in the contract documents but is added to the June and August Design Drawings.
2018 List – Extra #182 \$4,325	V Re window into room 201 at stair wall (north block): discuss, design and layout to suit existing art glass - opening must be fire-rated: re and re drywall for relocation of RWL on stair side of block wall; assess, layout and relocate, provide proper support to RWL and test (includes material and tool rental): re opening - frame stair side of opening oversized, brace to block wall, apply plywood to bottom of opening and apply multiple layers of drywall for fire rating from face of drywall to face of block wall, apply drywall to opening from face of drywall to inside steel stud framing, apply drywall return/glazing; stop at outside of opening creating a ledge on the inside of room 201, apply L-edge,	V: The amount charged represents the additional cost of cutting the large opening in the concrete block sheer wall and completing the framing and finishing work for the art glass in the manner that Dr. Melnik instructed after construction began. The contract does not call for work of this extensive and costly nature to be done in installing this decorative feature. Engineering approval was required as this was in a sheer block wall. Estimated 36 hours plus materials. Mr. Bewsky is not sure if he told Dr. Melnik this was extra.  K: Installation of art glass called for under construction notes item 2. In the pre-contract meeting Dr. Melnik told Mr. Bewsky he wanted Op1 to mimic his consultation room in the Old Office, with art glass in the same position. He agreed to do it. Does not recall a discussion with Mr. Bewsky after the contract. Dr. Melnik was not aware he did further work re the RWL.  Decision: Allowed subject to reasonable cost. See Extra #16. (1). Is an extra. Construction notes referred to by Dr. Melnik state "Allow for relocation/removal of several existing glass doors and panels", which does not necessarily mean artwork glass. However, the Main Contract Document, New Construction, clause 9 specifically states the "artwork" is not included. Further under the heading "Items

	<p>bullnose and bead to stair side of opening, tape and finish for paint</p>	<p>removed from estimate as discussed” is “miscellaneous enclosures for artwork”. Further, the Architectural Drawings do not show this, but the June and August Design Drawings do add this. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2018 List – Extra #183  \$10,070</p>	<p>V T-bar ceiling throughout except in Lab: discuss check and confirm maximum height, layout and install grid and seismic restraints, provide credit for drywall to underside of roof and painting of structure (credit \$4,000) T-bar, tile and labor = \$14,070</p>	<p>V: This is work that Dr. Melnik requested during construction. The credit of \$4,000 that Mr. Bewsky allowed for work avoided is reasonable. The original scope of work did not include T-bar ceiling on the second floor. In 2016 Dr. Melnik and he agreed to put in a T-bar ceiling. Mr. Bewsky was cross-examined extensively on the credit he allocated to Dr. Melnik for the work he avoided.</p> <p>Extra: This is likely an extra, however insufficient credit is given for the work avoided that was called for in the drawings, and the estimate of time spent is excessive. There was a T-bar before he moved into space.</p> <p>Decision: Allowed for this admitted extra subject to reasonable cost and set off for work avoided. In my view, Mr. Bewsky was effectively cross-examined that he did not give credit in the same manner he billed work. The parties gave conflicting and confusing evidence about what was agreed regarding the ceiling on the second floor. Based on their evidence or oral discussions and the Main Contract Document, I conclude that it was originally to have the existing T-bar ceiling removed (Demolition, clause 3) and an open ceiling except in the kitchen area. New Construction clause 5 concerning the second floor does not mention a ceiling and requires finishing new walls up to joists and undersides of roof deck. This would only be required if there was no ceiling. In contrast, New Construction clause 3 concerning the first floor requires building the ceiling as per drawings. During construction, the open concept was changed to drywall and then a new T-bar ceiling throughout, and to be placed as high as possible.</p>
<p>2018 List – Extra #184  \$2,540</p>	<p>U Re drywall bulkheads at exterior perimeter of room 206 and 207: apply drywall to exterior wall above windows and install bulkheads from underside of ceiling to top of window</p>	<p>Necessary / Assumed Consent: This was work that had to be done because of the increased height of the T-bar ceiling which Dr. Melnik had requested. Mr. Bewsky assumed (reasonably) that Dr. Melnik wanted and expected this work to be done. When the original ceiling was removed there was no drywall on the insulation vapour barrier above the windows. That portion of the wall had to at least be drywalled to cover the vapour barrier. With the increased height of the ceiling the main sprinkler line to feed the sprinklers along the windows was interfering with the height of the ceiling, so a bulkhead had to be dropped from the ceiling and returned to the windows. In addition, the sprinklers along the windows were special sprinkler heads that could not be changed without special permission and had to be flush with a ceiling because of another building being too close to this building along that area of the building. Previously those sprinklers were flush with the old T-bar ceiling. Now they were flush with the bulkhead. This was related to the “alternative solution” discussed in the reasons for judgment. This is different than the other sprinkler heads on the second floor, which did not need to be flush with a ceiling. Estimate 36 hours plus material. Did not discuss with Dr. Melnik.</p> <p>K: Finishing ceiling included in contract (called for on Drawings; also New Construction, item 5 second floor “finish and paint as per drawings... to be finished both sides of wall to joints and underside of roof deck”)</p>

		Decision: Denied. Not an extra. The original scope of work was to remove the old T-bar ceiling and have an open ceiling except in kitchen area. This is work that would have been required in any event as part of that work.
2018 Extra #185 \$265	U Frame and drywall ceiling at north end of kitchen area	Abandoned.
2018 List – Extra #186 \$505	U Remove paint and stains, sand to finish and apply three coats of Watco finish to exposed lower portion of beams in room 206	<p>Necessary / Assumed Consent: The reason this beam was exposed, and needed to be refinished, was because of the increased ceiling height resulting from changing to the T-bar ceiling. He assumed (reasonably) that Dr. Melnik wanted and expected this work to be done. The bottom three inches of these beams were now exposed. They were in bad shape and needed to be cleaned up. Did not discuss with Dr. Melnik because he knows him and what he wants and likes. This was for aesthetics. It was easier to do this before the new T-bar was put in. The beams were not visible when he entered into the contract because the old T-bar was below the beams. Estimate seven hours and materials.</p> <p>K: Finishing open ceiling included in contract (called for on Drawings; also new construction item 5 second floor “finish and paint as per drawings... to be finished both sides of wall to joints and underside of roof deck”). Does not recall discussion with Mr. Bewsky about this.</p> <p>Decision: Allowed subject to reasonable cost and set off for any difference between cleaning and spray painting he would have had to do on these with an open ceiling, as opposed to this finish which was sanding and staining. (1) Is an extra. (2) Dr. Melnik authorized T-bar ceiling and requested it to be raised. Reasonably part of that work. (3) Dr. Melnik knew or should have known this would cost more.</p>
2018 List – Extra #187 \$2,620	U & V Re access opening to second floor at main stair landing: re and re [remove and replace] wall and bulkhead as instructed for finishing option around door - fire rate opening prior to building new wall and use portion of opening as pipe chase from basement to second floor and provide sufficient fire rating, re-frame end of curved wall at lab opening, build new wall, insulate, drywall and modify end of bulkhead, tape and two coats of mud (finish for paint is part of patch existing) - re steel doorframe: straighten, remove caulk and epoxy grout and prime bare metal	<p>Necessary: Dr. Melnik instructed Mr. Bewsky to move the door at the top of the second-floor landing to the right to be more centred and not so close to the entrance to the inner round room. He also instructed Mr. Bewsky to extend the existing bulkhead, to have it meet the wall of the door for aesthetics. Further, the existing wall had not been properly fire rated, and Mr. Bewsky corrected that. He agreed the original scope of work included fire rating, but this was “totally different” as the existing wall was never constructed properly and did not have fire rating. The original scope of work involved installing the door and frame from the Old Office into the existing door opening but not work to this extent. Did not tell Dr. Melnik it was extra work.</p> <p>K: Fire stopping is called for under the contract under item 7 General “Fire Stopping”. Additionally, part of this work was making a pipe chase. This would have been included either by the plumber’s scope of work, or Mr. Bewsky’s. The remaining bits of work about finishing around the door seem to be included under New Construction, clause 5.</p> <p>Decision: Allowed subject to reasonable cost less work that would have been required for pipe chase. (1) Is an extra except for pipe chase which is required as part of utilities work. Original contract did not call for this doorway to be moved over or bulkhead extension. None of the Architectural Drawings or June and August Design Drawings show this. The absence of fire rating is a hidden defect that is excluded by the Main Contract Document. Fire rating</p>

		in the contract document refers to fire rating of work that Cakwell was required to do, not pre-existing unknown defects. (2) Accept that Dr. Melnik instructed to move the door over and extend the bulkhead, and the remainder of the work was necessary. (3) Dr. Melnik knew or ought to have known that this would increase the cost.
2018 List – Extra #188  \$210	U Raise RWL in 206 at west (block) wall and the plumbing vent line along beam at kitchen area to gain ceiling height	<p>Necessary / Assumed Consent: This RWL had to raised about ½ inch, and the plumbing vent about three inches because the Dr. Melnik wanted the T-bar ceiling raised as high as possible. Estimated three hours. None of this work would have been required if the ceiling had been left unfinished. Did not discuss with Dr. Melnik. Disagrees that Dr. Melnik would have been okay with the plumbing below the T-bar ceiling.</p> <p>K / Unnecessary: Mr. Bewsky could not explain why this work was necessary. He just says that Dr. Melnik would have wanted it. We don't know why Mr. Bewsky thinks Dr. Melnik would have wanted it. It is equally plausible that in order for Mr. Bewsky to do the work he had to do under the contract, he had to move the rainwater leader.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. Not included in contract. Dr. Melnik instructed to raise the T-bar ceiling as high as possible. This was a necessary consequence of that work. Dr. Melnik did not testify that he would have been satisfied with plumbing sticking out below the ceiling. (2) Dr. Melnik authorized raising the T-bar ceiling as high as possible and this is part of that work. (3) Dr. Melnik knew or ought to have known this would increase the cost.</p>
2018 Extra #189  \$280	U Layout of lighting, diffusers and sprinklers (second floor)	Abandoned.
2018 List – Extra #190  \$295	U Room 207 and 208 north wall: remove fire rated caulk to make clean for tape and finish prior to installing T-bar, and repair fire rating of same wall	<p>Necessary: Along the north wall in these rooms, when the seismic upgrading was done, the previous drywall had only gone up to the existing ceiling height, and above that, rather than cutting and fitting drywall on top of the existing drywall (to go to the roof) the previous person put the drywall on top of the existing drywall so that it was built it out, and then caulked the bottom edge of that drywall with fire rated caulking. This was now exposed by the increased height of the ceiling. Mr. Bewsky cleaned the area by removing the fire rated caulking and taped and mudded the wall ready for paint. This condition was not revealed until the T-bar ceiling was removed and necessitated by the increased height. Did not discuss with Dr. Melnik. Agreed some of this work would have had to be done with the originally planned open ceiling, but not to this degree. He said he didn't know what was there until he removed the T-bar ceiling. He poked his head in the ceiling before the contract, but this was in the far corner.</p> <p>K: Contract included finishing with paint the open ceiling on the second floor. Dr. Melnik not aware of this work.</p> <p>Decision: Denied. Not an extra. New Construction, clause 5 states for the second floor the "drywall to be finished both sides of wall to joists and underside of roof deck, patch and finish existing drywall". New Construction, clause 9 excludes "any unseen issues". In my view, the extent of this work falls within the patch and paint clause</p>

		and is not so significant that it is the type of an unseen condition that is excluded.
2018 List – Extra #191 \$280	U Remove temporary access platform from lab window and ledge wall	Necessary: See Extra #174. Mr. Bewsky stated that this was deconstructing temporary platform in Extra #174. Estimate four hours. Did not discuss with Dr. Melnik.  K: Access to do required work must be included by implication in the contract. Mr. Bewsky did not discuss with Dr. Melnik.  Decision: Not an extra. See Extra #174.
2018 Extra #192 \$175	U Remove all platform, scaffolding and timbers from site	Abandoned.
2018 List – Extra #193 \$13,755	V Source, size, order, purchase, receive and uncrate fire-rated glass for second floor, clean and install glass for three lab openings and opening at room 201, apply PVC tape to stops, install and shim, prop in place and apply a continuous bead of silicone around all glass	V: Mr. Bewsky stated that Dr. Melnik asked him to replace the windows in the lab on the second floor with fire-rated glass. The amount charged is mostly the cost of the glass together with some minor installation-related costs. See Extra #14. Dr. Melnik decided to replace the glass and Mr. Bewsky took the frames out. Throughout the project told Dr. Melnik that he had to order the glass because it would take time to arrive. He told Dr. Melnik that the glass will be about \$10,000, a number of times, and once Dr. Melnik said “I know, I know, I know” and he was getting louder like he was mad at Mr. Bewsky. The glass for Room 201 is the glass that was installed where the large artwork was installed [in the sheer block wall]. In the end, there are two pieces of glass there – this glass plus the art glass. Estimated 52.5 hours plus materials, however, he ultimately decided to charge what the glass supplier was going to charge for the glass and labour. Estimate seven hours to unload four pieces of glass and get them to the second floor which required assistance from his spouse’s adult son. Some of this is his helper’s time.  Extra / Unnecessary: Likely an extra, however dispute as to quantum and necessity. Dr. Melnik asked Mr. Bewsky to look into whether the existing windows would be allowed. Mr. Bewsky went ahead on his own accord and removed the existing windows without Dr. Melnik’s consent. There is no evidence that this work was necessary. What is the benefit of having replaced the windows? We don’t know. Also, we don’t know the actual cost of the windows. No receipts were pointed to evidencing Mr. Bewsky’s alleged expenses. Dr. Melnik said Mr. Bewsky never showed him an invoice for the fire-rated glass. He states that if he had been told it would cost \$13,755, he would never have approved that.  Decision: Allowed subject to reasonable amount. See Extras #14 and #172. (1) Is an extra. (2) Accept Mr. Bewsky’s evidence that Dr. Melnik told him to put in this glass and the approximate cost. (3) Dr. Melnik knew this would increase the cost.
2018 List – Extra #194 \$450	U Set up a temporary barricade re openings below railing glass where future wood panels go, secure and fix in place - including material	Necessary: This was work on the second-floor landing. Dr. Bewsky had to provide a temporary barricade because there was going to be wood panels there in the future. All of this was attached to the railing. The wall had to be there to get an occupancy permit because there cannot be an open area in the railing. This was where the bench seating was going to go. It was drywalled because Dr. Melnik did not want the back of the seating showing.

		<p>Estimated five hours plus materials. He discussed this with Dr. Melnik. Did not tell him it would be extra.</p> <p>K: Temporary work impliedly in contract. Mr. Bewsky did not talk to him about this work.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. While I agree temporary safety work is impliedly included in the original scope of work, this work was a result of extra work that Dr. Melnik authorized when he decided to put seating in the extended landing area. This was not included in the contract. If Dr. Melnik had not requested the seating, an ordinary height glass and railing would have been required and installed along with the rest of the landing railing system (just as it was for the other panels. (2) Dr. Melnik authorized the extra seating and hence the required change in height and finish of railing in the area. (3) Dr. Melnik knew or should have know that this would increase the cost.</p>
<p>2018 List – Extra #195 \$1,440</p>	<p>V &amp; U Consult room [on first floor] at north end to left of sink: fabricate base and install, apply laminate to kick and seal to floor and cove base [sic flash cove], extend counter-top approximately 1ft., reface top with new laminate, add panel to sink cabinet to cover previous plumbing cutouts; relocate electrical in millwork, add laminate patch to cover previous supply line cutouts</p>	<p>V / Necessary: The work went beyond placing and fitting the existing cabinets into the New Office (which is all the contract required), and included custom modifications and additions requested by Dr. Melnik during construction. Well into the project, Dr. Melnik wanted one foot added to the counter and millwork, and to move them over so he had more space near the exterior wall near where he sits. Mr. Bewsky recall being annoyed that Dr. Melnik did not tell him earlier because lines (the electrical) had already been installed and had to be moved. He had to add cabinet base to the floor and add new millwork in the extended space. He had to reface the entire length of the laminate to the extend the length because a joint is not recommended at a sink location. He patched the inside of the existing millwork to cover the old holes so there are only holes for the new lines. Estimate 15 hours. Did not tell Dr. Melnik that extending the countertop and counter would be an extra. Mr. Bewsky said that “fit and install” millwork in the Main Contract Document does not mean modifying. Were it not for Dr. Melnik’s instructions, the existing counter would have been placed flush with the corner. The countertop did fit within the room and did not require modifications to do so.</p> <p>K: Included in contract “fit millwork from storage, adding new millwork as necessary” as a fixed price item under New Construction, clause 3; repairing millwork from storage included as item 19 on Construction Notes. States that he did not ask Mr. Bewsky to reface the top with new laminate or cover the previous holes in the cabinets.</p> <p>Decision: Allowed subject to reasonable cost and deduction for a reasonable amount of refitting required under the original scope of work. (1) Is partially an extra. See reasons for judgment re June and August Design Drawings Increased Scope of Work. In my view, this work exceeded what was reasonably contemplated by the contract. The Architectural Drawings do not show all this work. The modification is only shown in the June and August Design Drawings. (2) Dr. Melnik authorized this work. (3) Dr. Melnik knew or ought to have known it would increase the cost.</p>
<p>2018 List – Extra #196 \$2,670</p>	<p>V Quick Consult room: add cabinet and base with sink at east end and add approximately 9 ft. of counter top along south wall, cut flash cove to suit cab base and cabinet, apply</p>	<p>V / Necessary: The work done went beyond placing and fitting the existing cabinets into the new space (which is all the contract required), and included custom modifications and additions requested by Dr. Melnik during construction. Part of the contract required the countertop on the right, and Dr. Melnik added the counter and millwork to the left on the adjoining wall, which</p>

	<p>laminate to kick and seal to floor and cove base, cut and trim counter-top and install, add angled supports at two locations, install new laminate, cut out for sink, polish sink and install, seal to top; re cabinet: apply new panel to back to cover previous cutouts and laminate panel to left side to cover previous cutouts</p>	<p>included an additional bar sink which Mr. Bewsky stated was not in the contract. Mr. Bewsky used an existing bar sink, millwork, and countertop unit from the Old Office which he modified. He refurbished the inside of the old cabinet with patches. Estimated 37 hours. Did not tell Dr. Melnik this was extra. This is a different configuration from what Dr. Melnik told him he wanted to have prior to the contract being signed.</p> <p>K: Included in Main Contract Document which states “fit millwork from storage, adding new millwork as necessary” as a fixed price item under new construction item. Dr. Melnik said that he instructed Mr. Bewsky to move everything from the Old Office quick consult room into the New Office quick consult room and to allow for an extension of the countertop. It is open countertop. There is no millwork below it. Dr. Melnik denies speaking to Mr. Bewsky about this room after the contract was signed.</p> <p>Decision: Decision: Allowed subject to reasonable cost and deduction for a reasonable amount of refitting required under the original scope of work. (1) Is partially an extra. See reasons for judgment re June and August Design Drawings Increased Scope of Work. In my view, this work exceeded what was reasonably contemplated by the contract. The Architectural Drawings do not show all this work. They show only a counter across a short wall, and no sink. The Placement Documents and photos show a very short wall with a sink, and an adjoining counter extending along another wall. The June and August Design Drawings add work. I find that the extent of this work was not specified by Dr. Melnik prior to signing the renovation contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or should have known it would increase cost.</p>
<p>2018 List – Extra #197  \$3,730</p>	<p>V Records room at north end: fabricate base and install, apply laminate to kick and seal to floor and cove base, counter-top to be extended by approximately 1ft., relocate sink back to corner, relocate drain and cold water supply to corner cabinet, patch drywall and paint, add base and finish kick with laminate to left of sink, add millwork with base along south wall, modify under-sink cabinet and cab base to suit angled corner, finish kicks with laminate and seal to floor, relocate electrical at dental unit location in millwork re column interference, cut new location in millwork and patch with laminate, cut air passage in millwork for plumbing auto-vent, add laminate patch to cover cutouts from previous supply lines, relocate electrical duplex on south wall to suit millwork, patch and paint, add two panels to sink cabinet to cover previous plumbing and electrical cutouts</p>	<p>V / Necessary: The work done went beyond placing and fitting the existing cabinets into the New Office (which is all the contract required) and included custom modifications and additions to them requested by Dr. Melnik during construction. This included an extension of one foot to the north end of the counter and cabinets, similar to in the quick consult room, and additional work on the other end. Dr. Melnik originally moved the sink to the middle of the countertop and then he relocated the sink back to the corner. Dr. Melnik also added a corner coming at an angle because the wall is at an angle. Estimated 52 hours plus materials. He did not tell Dr. Melnik this was extra. He installed the stainless-steel countertop that was re-manufactured.</p> <p>K: Included in contract “fit millwork from storage, adding new millwork as necessary” as a fixed price item under New Construction, clause 3. Dr. Melnik stated that he discussed adding the extra counter on the north end at the contract meeting. He did not discuss the records room millwork with Mr. Bewsky other than at the contract meeting.</p> <p>Decision: Allowed subject to reasonable cost and deduction for a reasonable amount of refitting required under the original scope of work. (1) Is partially an extra. See reasons for judgment re June and August Design Drawings Increased Scope of Work. In my view, this work exceeded what was reasonably contemplated by the contract. The Architectural Drawings do not show all this work. The June and August Design Drawings add work. I find that the extent of this work was not specified by Dr. Melnik prior to signing the renovation contract. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or should have known it would increase cost.</p>

<p>2018 List – Extra #198 \$1,090</p>	<p>V Modify upper cabinet in records room and consult room on exterior walls: re and re [remove and replace] standards and gables, cut new cleat, glue and screw to cabinet, pre-hang to mark ledge, attach gables and standards, cut laminate, install, trim flush and sand</p>	<p>V / Necessary: The work done went beyond placing and fitting the existing cabinets into the new space (which is all the contract required) and included custom modifications and additions to them requested by Dr. Melnik during construction. This concerned two upper cabinets that were to go into the consult and records rooms, one each. There was never any indication of where in the room they would go until the Design Drawings. Dr. Melnik wanted them to go on the exterior walls, but because those exterior walls which were glass were covered over part-way up with drywall, the cabinets when hung at a proper height would extend above that drywall. The backs of the cabinets were not finished and were hung with a bevelled cleat. The exposed unfinished backs of the cabinets would be seen from the outside of the building. He suggested to Dr. Melnik that they be hung on different walls, but Dr. Melnik wanted them on the exterior walls. This work involved disassembling the cabinets to an extent and moving the bevelled cleat and finishing the top of the back with laminate and then reassembling the cabinets. If the units had been installed on another wall, all that had to be done was screw them to the wall. Estimated 15 hours plus materials. Did not tell Dr. Melnik this was extra work but did ask him if the cabinets could not go on another wall so so he did not have to do work to the back of the cabinet. In discussions prior to signing the contract, Dr. Melnik did not tell him where these particular units had to be installed in the room. That came during construction.</p> <p>K: Included in contract “fit millwork from storage, adding new millwork as necessary” as a fixed price item under new construction item 3. In the March 14, 2015, meeting before the contract was signed, Mr. Bewsky asked where the cabinets should be located, and he told him in the same place as the Old Office. During construction Mr. Bewsky asked if he still wanted the cabinets installed on those walls, and he said yes. However, they later discussed that in the records room it should be installed on the opposite wall to where it was in the Old Office (i.e. it should now be put on the exterior wall) because they were putting steel shelving in the records room where it would have otherwise gone. If he knew it was an issue, he would have left it. Mr. Bewsky did not tell him it would be a problem.</p> <p>Decision: Allowed subject to reasonable cost and deduction for a reasonable amount of refitting required under the original scope of work. (1) Is partially an extra. See reasons for judgment re June and August Design Drawings Increased Scope of Work. In my view, this work exceeded what was reasonably contemplated by the contract. The Architectural Drawings do not show these cabinets. The June and August Design Drawings add these cabinets on the outside walls. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or should have known it would increase cost to place them on the outside walls.</p>
<p>2018 List – Extra #199 \$2,545</p>	<p>V Sterilization: many discussions re placement of millwork, relocate compressed airline west approximately 2 3/4 inches to suit revised millwork location and patch, repair sink cabinet re poor construction, glue, screw, and align, modify cabinet to right of sink, remove small end piece and leave base for cabinet to mount from other.</p>	<p>V / Necessary: The work done went beyond placing and fitting the existing cabinets into the new space (which is all the contract required) and included custom modifications and additions to them requested by Dr. Melnik during construction. This is in the sterilization area. Part of this was relocating plumbing work. When Mr. Bewsky and Dr. Melnik were discussing where the plumbing lines were to go, prior to installation of the cabinet, Dr. Melnik said he had measured it, and it went a certain place. Mr. Bewsky did not think that was correct, and he questioned Dr. Melnik about it, and he assured him it was correct. It turned out not to be. It was out by 2 3/4 inches. He had to redo and move the compressed air line and</p>

	<p>side of wall, repair end cabinet west of ultrasound due to poor construction, glue, screw, and align, same to cabinet along east wall, build up blocking behind cabinet on east wall, add deeper gable to right side of same cabinet and a half gable to the dishwasher side, add new back panel to back of sink cabinet to cover previous cutouts, glue panels in place and caulk, re-attach and reinforce divider post in sink cabinet due to poor construction, add laminate panel to both sides of ultrasound gable re previous holes, add gable to west end for safety, add cabinet base and cover kicks with laminate, modify end cabinet for new millwork and add panel to same cabinet</p>	<p>notch a 2x4 stud. As for the cabinets, they were in “awful shape”. The whole area was a “big butcher job” when it was installed in the Old Office. Mr. Bewsky described in detail the extensive amount of work he did to recondition the cabinets and the modifications he had to make, plus the additions. Estimate 35.5 hours plus materials. Did not tell Dr. Melnik this was extra.</p> <p>K: Included in contract “fit millwork from storage, adding new millwork as necessary” as a fixed price item under New Construction, clause 3; repairing millwork from storage included as item 19 on Construction Notes. Dr. Melnik does not recall any discussions. They discussed the placement of the millwork in the sterilization room before the contract was signed. He has no knowledge of anything in the description and never discussed any of the work claimed here with Mr. Bewsky.</p> <p>Decision: Allowed subject to reasonable cost and deduction for a reasonable amount of refitting required under the original scope of work. (1) Is partially an extra. See Reasons for Judgment re June and August Design Drawings Increased Scope of Work. In my view, this work described by Mr. Bewsky, which is supported by the pictures, goes well beyond what was reasonably contemplated by the contract. (2) Dr. Melnik authorized as this work was necessary to carry out the scope of work as shown in the June and August Design Drawings. (3) Dr. Melnik knew or ought to have known this would increase cost.</p>
<p>2018 List – Extra #200  \$1,745</p>	<p>U Re bar sink units: re and re [remove and replace] top of one unit to flush up to back of cabinet and shape back-splash to suit curved wall and trim off plywood substrate, trim plywood substrate off of second unit so unit sits flush to wall, add new panels to the back wall of the three units to cover previous plumbing cutouts, modify kick on unit in Op 5 - shift to one side and add to the other side widening base to accommodate plumbing and electrical; unit on curved wall - remove curved drywall behind cabinet to suit installation, re-work backing and add to top comers, polish the three stainless steel tops prior to install</p>	<p>Necessary: This involves three bars sinks outside operatories, 4,5, and next to operatory 6 on the curved wall. The one outside operatory 6 is a complete unit stainless steel sink and backsplash in one unit. Because it was going on a curved wall, it had to be reshaped to fit that wall. The sinks at operatories 4 and 5 went on straight walls. The sink at Op. 6 was added to the Design Drawings. The extra work was refitting it to a curved wall. The sinks at Op 4 and 5 involved the remediation of them as they had rough plywood that was sticking out the back as the sinks were not properly installed. They would not sit flush with the walls. The tops of the unit had to be taken off so the plywood could be removed. All of the sinks were polished because they were tarnished. Estimate 24.5 hours. Did not discuss with Dr. Melnik.</p> <p>K: Installing all sinks and backsplashes, all backing and modifying millwork from storage was all included in the contract. Dr. Melnik stated he had no discussion with Mr. Bewsky about fitting the sink to the curved wall and minimized the curve, saying the sink unit is only about 24 to 14 inches wide. He never instructed Mr. Bewsky to polish the tops.</p> <p>Decision: Denied. Is not an extra. Mr. Bewsky agreed that prior to the contract being signed, Dr. Melnik told him where the sinks would go and he marked them on his copy of the Architectural Drawings, so he knew one sink would go on a curved wall. In my view, the extent of the work described here for repairing and fitting the millwork is within the reasonable refitting and repair contemplated by the original scope of the contract.</p>
<p>2019 List – Extra #1  \$1,570</p>	<p>U &amp; V 45 degree angled holes for electrical and gas from reception to mech room, holes through reception area floor (in wall space), into existing duct chase and again out of chase</p>	<p>Necessary: This was for the extra coring of holes in concrete as a result of the added work in the Design Drawings, the location of equipment, and the extra electrical work. For example, extra coring at the reception in connection with the 400-amp service that was added. Estimated 24 hours plus tooling.</p>

	<p>into washroom wall for electrical, deep electrical boxes in concrete wall at reception area and in Op 7, reception exhaust duct through concrete wall from sterilization area into ceiling space in Op 7, through concrete walls of mechanical room to basement area re RPBA's (backflow preventers) relocation, relocation of electrical services and vacuum separator trap</p>	<p>K: All of the electrical and gas work was called for under the contract. Dr. Melnik does not recall any discussion of this coring with Mr. Bewsky. He never saw the cored holes. He denied any knowledge of these.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. The Main Contract Document under "Cutting and Coring" calls for coring, but this is additional coring as result of other authorized extra work. (2) Dr. Melnik impliedly authorized as this is necessary work arising from other authorized extra work. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
<p>2019 List – Extra #2  \$9,732</p>	<p>V &amp; U repair toilet and replace toilet seat, records room: add hot water line to a separate sprayer with shut off, sterilization area: add hot water line with shut off to a separate sprayer and a future fixture, the drain includes a double sink hookup with a connection for the ultrasound, the future fixture and dishwasher, per owners request: redo drain removing the adapters for the ultrasound and the future fixture (but allow space for them) to be added later, many discussions re RPBA's in basement, add compressed air line to main floor sterilization area and test, terminate end connections and cap for future including vac line, do final connections of compressor (including check valve, shut-offs and gauges) and vacuum pump (including approximately 12 feet of 2" copper and 40 feet of 2-1/2" PVC), alter piping to water heater, discuss location of water filter and install for RPBA's at revised high location to accommodate drainage outside mechanical room, re and re water supply to vacuum separator trap and supply and install 1/2" RPBA and revised drainage, and supply and install two trap primers serving three p-traps, remove two auto vents and p-traps and cap</p>	<p>Necessary: Mr. Bewsky discussed nearly the entirely list of these extras with Dr. Melnik. He does not know but does not think he told Dr. Melnik they were extra. From time to time he told him tasks would cost extra. Mr. Bewsky described in detail the discussions he had with Dr. Melnik regarding the specifics of these alleged extra, and the work he did. He described his calculations from notes that were spread over several pages. It was difficult to follow. It appears to have be between 50 and 60 hours of his time plus materials for a total of \$6,870, plus an invoice of \$2289.42 plus a 25% markup = \$2861.78.</p> <p>K: Much of this is plumbing work. If any extras are allowed under this category, there should be credits allowed for the amounts which were covered by the work proposed by Pine Mechanical (or performed by Tri-Cities Plumbing). It is not clear that any of this work is extra to the contract. It may have been work assigned originally to the plumbing subtrade, but if that is the case, then credits should be accounted for work not performed by the plumbers. Dr. Melnik also provided a lot of detail regarding work that is claimed in the extra.</p> <p>Decision: Denied. Cakwell has not met the burden to prove that these are extras and not included in the original scope of work. Much of this is plumbing work, and I cannot conclude that it was not already included in the plumbing work required by the renovation contract. It may be that Mr. Bewsky had not planned on doing this work and ended up doing some of it after the plumbers left the job, but if that is the situation, it does not make it an extra.</p>
<p>2019 List – Extra #3  \$230</p>	<p>U repair leaking owners taps</p>	<p>V: Mr. Bewsky submits the amounts charged for this admitted extra are reasonable given the time spent and material costs incurred. The existing taps that came from the Old Office were stored for quite a while and the O rings had dried out. He replaced these. Six or seven taps. Estimated three hours plus materials.</p>

		<p>Extra: Dr. Melnik stated that Mr. Bewsky did not tell him, but the taps were in storage for so long he is not surprised the O rings dried out.</p> <p>Decision: Allowed subject to reasonable amount for this admitted extra.</p>
<p>2019 List – Extra #4</p> <p>\$1,720</p>	<p>U test 14 newly installed plumbing RPBA's, check, missing one, correct and confirm all serial numbers with city for occupancy</p>	<p>Necessary: Most of this work was done by someone else. The City required Cakwell to record all the serial numbers of the RP's, and for a licensed person to test and record when they were tested. Mr. Bewsky stated that this was not part of the scope of work. He does not recall if he discussed this with Dr. Melnik. Cost of \$945 plus markup, plus his time for confirming serial numbers and sourcing the person. Estimated five to six hours of Mr. Bewsky's time.</p> <p>K: This work ought to have been completed by the plumbers and Cakwell ought to have held the plumbers to do it. Dr. Melnik stated that the RP's (back flow preventers) have to be tested annually by a certified tradesman. He never discussed with Mr. Bewsky.</p> <p>Decision: Denied. Not an extra. This is reasonably part of the scope of work of installing plumbing and dental equipment. It may be that Mr. Bewsky had not planned on doing this work and ended up doing some of it because the plumber left the job, but if that is the situation, it does not make it an extra.</p>
<p>2019 List – Extra #5</p> <p>\$20,249</p>	<p>V Extras not previously listed: re Antioch Construction Ltd. Invoice No's.: #1028 - \$370.00, portion of #1031 - \$150.00, #1032 - \$3,624.40, #1033 - \$3,006.58, portion of #1034 - \$1,370.00, #1035 - \$1,549.40, portion of #1036 - \$1,426.40, portion of #1040 - \$8,752.50 Invoices #1025, #1029, portion of #1040 are part of Cakwell quote dated January 15, 2017 in LOD's 1.54</p>	<p>V / Necessary: The amounts charged here consist of amounts invoiced by the electrical contractor to Mr. Bewsky (which were not included in his initial calculation of "extras") for work and materials provided over and above the work covered by the original quote and change orders. The invoices themselves, which provide details of the work done, show that the work involved was additional. The additional cost (which Mr. Bewsky is obligated to pay) constitutes an additional subtrade cost within the meaning of the Terms and Conditions of the contract</p> <p>K / CO: Unclear how this is arrived at as Mr. Bewsky's evidence was not clear. However, electrical work was covered by the contract and two change orders. No evidence that this was extra beyond those three agreements. Dr. Melnik stated that he was not aware of any extra work that was not part of the change orders he signed off on. Neither Mr. Bewsky nor any electrical sub-trade ever told him there would be any further charges for electrical beyond what he signed off on.</p> <p>Decision: Denied. I have spent a lot of time trying to reconcile invoices and payments, and I cannot reconcile all numbers with invoices, payments and quotes that are in various tab and exhibits. I accept that ultimately there was extra work above the First and Second Change Order. Even if I accept Mr. Bewsky's calculations here, in Credit #10 and #11 in the 2019 Extras, Mr. Bewsky credits more than this for work that Antioch did not do, effectively negating this extra.</p>
<p>2019 Extra #6</p> <p>\$5,062</p>	<p>Mark up on extras not previously listed</p>	<p>Abandoned.</p>

<p>2019 List – Extra #7 \$5,205</p>	<p>U &amp; V run washroom and records room exhaust in bulkhead below storage corridor to conserve storage space, change basement exhaust/fresh air from passive air to forced air, upgrade main floor exhaust and lab exhaust design systems, relocate roof top unit</p>	<p>Necessary: This is the exhaust fan that sits on the roof and penetrates the roof and comes down into a space about the second-floor elevation. The ductwork was run in a bulkhead just below the storage perimeter ledge to conserve space on the ledge. Also, originally the basement was to have fresh air on a passive (no fan assisted) intake and either Dr. Melnik or the subtrade suggested to Dr. Melnik, that it be changed to in-line duct work. Dr. Melnik wanted to upgrade the fan in the washroom, plus he wanted to put in high-speed control. He also instructed the relocation of the roof-top unit. The HVAC subtrades did the work. None of this is Mr. Bewsky's time except discussion with the HVAC subtrade and Dr. Melnik. Unclear evidence of how he arrived at the amount, but it came from the HVAC subtrade invoices and he charged a 25% mark-up on that. Mr. Bewsky stated this was not included in the original scope of work and it was done at Dr. Melnik's request. Did not tell Dr. Melnik it would be extra work.</p> <p>K: This item is covered by plumbing and HVAC under the contract. Mr. Bewsky did not explain why this is an extra. Mr. Bewsky never connected or finished the fresh air to forced air work. The fans were left dangling in the basement. The ductwork was hanging from the ceiling and not connected. He does not recall discussions with Mr. Bewsky about the conversation regarding the conversion, but there was one. Did not have a discussion with the subtrade about it. The system in the mechanical room now is passive. Mr. Bewsky never told him it would be extra.</p> <p>Decision: Denied. Mr. Bewsky has not persuaded me on a balance of probabilities how much of this, if any, is an extra. Mark-up is not included in the original contract, and on his evidence this appears to be primarily mark-up.</p>
<p>2019 List – Extra #8 \$1,415</p>	<p>V &amp; U extra cost for railing due to 2nd floor landing revisions and safety requirements re possible seating area, extra cost to glazing re repairing one vent window on the main floor and three on the 2nd floor, re and re glazing panel in Op 3 adding a horizontal mullion, add two horizontal mullions and kick panels at waiting area, add mail slot in glazing at main entry. Extra cost \$6,375.00 less \$1,000.00 previously charged in #112 and less \$3,960.00 previously charged in #179 in the List of documents No. 1.64</p>	<p>Necessary: This related to the Railco work for the increase for the extension of the railing to a higher height and installation of extra glass, and extra posts. Also included is the work from BT Glass in relation to the eagle etched window (near the front door). There were extra mullions required. This was over and above what Mr. Bewsky originally expected the railings to be. The extra cost was \$6,375 less \$1,000 previously charged in Extra #112, less \$3,960 in Extra #179. Mr. Bewsky was unable from his notes to explain how he came to these figures.</p> <p>K: This extra appears to relate to two things: the stair railing, and secondly, windows. Regarding the repair of windows, this work is indicated in the Construction Notes, clause 2, as well as under the New Construction, clause 3, "replace vinyl seal on outside of windows" and item 5 "reseal exterior windows". Mr. Bewsky could not explain his notes (he said they were a mess) and how he came his figures. Dr. Melnik stated he had no knowledge of repairing vent window issues. He also stated that Op. 3 was not completed when Cakwell left the job and had temporary hoarding across it and construction debris in it. The double doors were still in place, so he does not understand how mullions could have gone in. Dr. Melnik stated that before they signed the contract, he told Mr. Bewsky that he was to remove the double doors in that room. Dr. Melnik had no knowledge of a kicks or mullions in the waiting area and thought there was a mail slot already existing.</p> <p>Decision: Denied. Mr. Bewsky has not persuaded me on a balance of probabilities how much of this is an extra. If there is an extra Railco cost I would permit it, but it is not clear what that is.</p>

<p>2019 List – Extra #9 \$2,511</p>	<p>V natural gas solenoid: advised Dr. Melnik the necessity to run a separate gas line for the fireplace so pilot light remains on when gas is turned off, extend gas line on roof to relocated roof top unit, add solenoid by-pass in mechanical room</p>	<p>V: Dr. Melnik asked Mr. Bewsky to do this task sometime in 2016. The natural gas solenoid shut off the gas to the entire practice, and then the pilot on the fireplace would go out. Mr. Bewsky suggested if he was going to use the fireplace, to put in a separate line. The other part was extending the line because of relocating the roof unit. The solenoid is a safety feature. Cakwell was charged or quoted \$6,509 by Remco to do the work but Mr. Bewsky said \$940 was not complete. Mr. Bewsky had originally allocated \$4,500 for this work. He marked up the work by 25%. He was unsure how he came to the numbers.</p> <p>K: Called for in contract under heading Natural Gas. Dr. Melnik does not recall Mr. Bewsky telling him that he had to run a separate gas line, so the pilot light stays on. He said that he distinctly recalls that prior to the contract, he told Mr. Bewsky that he wanted the fireplace installed exactly the way it was in the old office and that he wanted a shut off the way it was in the old office.</p> <p>Decision: Denied. This appears to be entirely a mark-up of the cost of a subtrade (25% of \$6,509, which on Mr. Bewsky's evidence possibly was not completed), and mark-up is not provided for under the contract</p>
<p>2019 List – Extra #10 \$11,186</p>	<p>V &amp; U re and re sprinkler line and heads at reception area re new ceiling height and under stairs, remove existing (maze of pipe) sprinkler system on second floor and re install tight to underside of joists to accommodate installing T-bar ceiling as high as possible, add multiple heads in lab re no ceiling</p>	<p>?: This was to remove and replace the sprinkler line at the reception area due to the increased height of the ceiling. On the second floor, he removed all the old sprinkler pipe “basically starting from new” and added multiple heads in the lab because no ceiling was going in there. The \$11,186.25 was invoices from Westech.</p> <p>K: Quote from Pine Mechanical covered sprinkler work for a total price of \$10,000; If this amount is allowed, there should be a credit for the \$10,000 that was not paid to the plumber which was accounted for on the contract. Dr. Melnik does not recall any discussion with Mr. Bewsky regarding this work.</p> <p>Decision: Denied. I only see \$10,487 of invoices from Westech, but regardless, Cakwell has failed to establish that this is an extra, and not included in the \$129,500 allocated to plumbing, HVAC and Fire Protection in the Main Contract Document.</p>
<p>2019 Extra #11 \$540</p>	<p>V discussions re raise dental units off floor onto blocks to add continuous felt strip to underside of kicks on two units in Op 4 &amp; 5 to allow for moving around??? Cut strips from owner supplied floor mat and glue on (repositioning blocks)</p>	<p>Abandoned.</p>
<p>2019 List – Extra #12 \$390</p>	<p>V asked to cut hole into sheer wall in room 207 re possibility of access door on two occasions due to improper instructions from Dr. Melnik</p>	<p>V: Dr. Melnik asked Mr. Bewsky to perform this task, which is not included in the scope of work under the contract. This is a planned access door to the second-floor perimeter storage ledge. Over a lot of time, Mr. Bewsky tried to get Dr. Melnik to get an engineer's approval and toward the end of the project he had contacted someone, and they wanted to know if there was any blocking in the wall (2 x 4 construction that goes between studs to give it extra strength). Mr. Bewsky cut a round hole with a saw and determined there was blocking. Dr. Melnik asked him a second time and then he cut out a door size opening, where the framing would go. Estimated four to five hours. Did not tell Dr. Melnik this was extra.</p>

		<p>Unnecessary?: Unclear why this work was performed at all. Dr. Melnik asked Mr. Bewsky to consult with the structural engineer to see if this work could be done. Mr. Bewsky did not tell him he was going to charge him for this.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. An access door to the storage ledge through this wall is not in any contract documents. It is not shown on the Architectural Drawings. It is shown on the June and August Design Drawings. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have known would increase cost.</p>
2019 Extra #13 \$325	U seal around extra penetrations from mechanical room to basement area	Abandoned.
2019 Extra #14 \$180	U to maintain code for accessible washroom: prepare template for a deep countertop and cut angled countertop in main floor washroom due to the relocation of the washroom wall for a roomier main entrance and a possible future open closet	Abandoned.
2019 Extra #15 \$3,216	U up-charge for increase in material costs (fraction of)	Abandoned.
2019 List – Extra #16 \$550	V deemed beneficial to remove and dispose of bulkhead and all existing duct work and use this space above the image and x-ray rooms as a new duct chase	<p>V: Dr. Melnik specifically asked him to perform this task, which is not included in the scope of work under the contract. This is the bulkhead above the x-ray room and image room on main floor. Dr. Melnik instructed that if it was feasible, to remove it. It was feasible and it was removed, and the space used as a duct chase.</p> <p>K: Mr. Bewsky’s evidence was that he discussed this at the time he entered into the contract with Dr. Melnik. This is one of the rare items which Mr. Bewsky remembers specific oral instructions from the contract signing meeting or before it. He says he deemed it beneficial to do this work, so he did it. If the parties discussed it at the time of the contract signing, he should do it free of charge. Dr. Melnik did not discuss this work with Mr. Bewsky.</p> <p>Decision: Denied. Not an extra. Included in the Main Contract Document, Demolition, clause 1, which states, “remove or reduce bulkheads if deemed feasible”.</p>
2019 List – Extra #17 \$120	V discuss and relocate door closure on entry door to increase opening	<p>V: Dr. Melnik specifically asked him to perform this task, which is not included in the scope of work under the contract. This concerns the big wooden entry door. Dr. Melnik wanted it to open more than it was as he was worried that couriers would damage it. Mr. Bewsky moved the closure slightly (mechanism that causes the door to close by itself) and then the door opened sufficiently. Estimated 1.5 hours. Had to remove and reposition the closure and fill some holes in the wood.</p> <p>K: Mr. Bewsky was responsible for installing the entry door, and presumably also the door closer. If the closer was installed such that the opening was less than the maximum, then that fix should</p>

		<p>be on Mr. Bewsky and should not be charged as an extra. Dr. Melnik did not discuss the relocation of the door closure with Mr. Bewsky.</p> <p>Decision: Denied. Not an extra. This is part of installation of the door.</p>
<p>2019 List – Extra #18</p> <p>\$275</p>	<p>V &amp; U assemble, set up, and determine fridge is not working, was asked to look at it quickly, re microwave: remove an excessive amount of grime and dust from cooling vent/grill</p>	<p>V: Mr. Bewsky was asked to check these appliances quickly and he took time to do so. The fridge was an old bar fridge. Excluding the cost of cleaning the microwave, it is submitted that \$150 would be a reasonable charge for this work. Mr. Bewsky testified that it sounded like Dr. Melnik didn't want him to spend a lot of time with it. He is not sure why, possibly the cost. Estimate 3.5 hours. Did not tell Dr. Melnik this would be extra.</p> <p>Extra / Unnecessary: Dr. Melnik did ask Mr. Bewsky to look at the fridge and microwave quickly. This is not construction work. Dr. Melnik's expectation was this would be gratuitous, and also that it would be done quickly. \$275 for looking at these items is unreasonable. There was no request to clean the microwave. Dr. Melnik never heard from Mr. Bewsky after his request, and Dr. Melnik eventually ordered a part and repaired it himself. Never asked Mr. Bewsky to clean these appliances.</p> <p>Decision: Allowed subject to reasonable cost for this admitted extra. However, I would not allow more than \$50 for looking at the fridge.</p>
<p>2019 Extra #19</p> <p>\$1,120</p>	<p>U move compressor and vacuum into mechanical room in basement un-crate, discuss location of both, place both onto platforms, confirm locations</p>	<p>Abandoned.</p>
<p>2019 List – Extra #20</p> <p>\$970</p>	<p>V many discussions with Dr. Melnik, Bash Sheet Metal and Cakwell re various possibilities for exchanging air of main floor back area, from controlled dampers to in line fan options, performed various tests, will use air circulation unit between main floor Op 4, 5 and 6 area and second floor, prep second floor space</p>	<p>V / Necessary: Mr. Bewsky's evidence is that an inordinate amount of his time was taken up in discussions with Dr. Melnik and Mr. Bashko over the work to be done by this contractor while construction was underway, due largely to Mr. Melnik choosing to actively involve himself in those discussions. The time Mr. Bewsky spent differs in kind from, and far exceeds, time reasonably spent "managing and supervising" this subcontractor's work.</p> <p>K: Management and supervision are included under the contract. Dr. Melnik states that Mr. Bewsky and Mr. Bashko "misdiagnosed" the source of the problem, which was the lack of insulation between the perimeter walls and the perimeter glass.</p> <p>Decision: Denied. Not an extra. New Construction, clause 8 states that project management and supervision is included in the scope of work.</p>

<p>2019 List – Extra #21  \$620</p>	<p>V per Dr. Melnik and Ms. Safi's request move temporary office from Kingsway and Marlborough to Royal Oak and again from Royal Oak to present location (too difficult with their small vehicles) provide labor, van and dollies</p>	<p>V: Mr. Bewsky was asked by Ms. Safi to assist in these moves and he took the time and provided the use of his vehicle. In doing so, Mr. Bewsky had a reasonable expectation of being compensated for his time and expenses. Certainly, the first move, and most likely the second move as well, occurred within the period in which Cakwell had any obligation under the contract to complete the project. No record of time, but he thinks that is a reasonable amount. Did not tell Dr. Melnik this was extra.</p> <p>Extra: This is seemingly extra work; however, it would not have been required if Mr. Bewsky's work was not so delayed. Also, there is a question whether Mr. Bewsky was offering these services gratuitously. It took Dr. Melnik by surprise that there was a charge for this. He would have done it himself if he had known he would be charged. This is not construction work. He just thought it would be more convenient to do the move with Mr. Bewsky's van rather than multiple car trips. If it is an extra, the time charge is disputed.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. (2) Dr. Melnik/Ms. Safi authorized. (3) Dr. Melnik knew or ought to have know would increase cost.</p>
<p>2019 List – Extra #22  \$965</p>	<p>V per Dr. Melnik's request: search for patient model boxes; go through one storage container at Big Steel Box facility on two separate occasions and two containers on one other occasion (buried too deep), (provided plywood to cover gravel at facility to protect items), was asked to search again once the model boxes were off loaded at [address]</p>	<p>V: Mr. Bewsky was specifically asked to do this, and it was reasonable for him to expect to be compensated for his time and expenses in doing so. Mr. Bewsky was asked to go to Big Steel Box in Port Coquitlam to look for a model box Dr. Melnik needed. He was asked to go a second time for other model boxes. He does not recall if he found those boxes. Based on time spent and gas.</p> <p>Extra?: This is seemingly extra work; however, it would not have been required if Mr. Bewsky's work was not so delayed. Also, there is a question whether Mr. Bewsky was offering these services gratuitously. If it is an extra, the time charge is disputed. Those containers were located on his way into work from Port Coquitlam. Dr. Melnik said that there were other jobs he took on that he thought were within Cakwell's scope of work, that he did not ask Cakwell to credit him with, for example going to City Hall to resolve issues. He agrees Mr. Bewsky could charge him, but he also understood it could be balanced with what he owed him.</p> <p>Decision: Allowed subject to reasonable cost. (1) Is an extra. (2) Dr. Melnik requested. (3) Dr. Melnik knew or ought to have known he would be charged.</p>
<p>2019 List – Extra #23  \$775</p>	<p>U went to Big Steel Box facility to pickup all interior doors and the main entry door and to record the dimensions of the x-ray machines (all needed for sizing and placement) and some boxes of construction items (all prior to the delivery of the containers)</p>	<p>Necessary: The trips to the Big Steel Box facility for these purposes had to be taken because the containers had not yet been delivered to the site. Mr. Bewsky stated that he needed to have the entry doors on site to be able to work on the door jambs. He can't recall why the container could not be brought to the site. The time Mr. Bewsky spent falls outside the scope of work under the contract. Not sure he discussed with Dr. Melnik. Did not tell him it was extra. He knew he had to get the items out of the storage at some point, but the flooring was not done so he could not unload items into the site.</p> <p>K: Included in the contract. Mr. Bewsky never told Dr. Melnik he was going to charge for retrieving items from storage containers.</p> <p>Decision: Denied. Not an extra. Mr. Bewsky knew items would be in storage during construction. This is part of the cost of doing the work.</p>

<p>2019 Extra #24 \$410</p>	<p>U shift and sort off-loaded items on two occasions to accommodate construction</p>	<p>Abandoned.</p>
<p>2019 List – Extra #25 \$488</p>	<p>U cost to fabricate revised granite ledge \$2,688.00, allowed \$2,200.00</p>	<p>Abandoned.</p>
<p>2019 List – Extra #26 \$428</p>	<p>U cost for roof penetrations \$2,428.00, allowed \$2000.00</p>	<p>Necessary: This extra cost was incurred and fell outside the scope of work under the contract. He had allowed \$2,000 for the roof penetrations. The subtrade charge was \$2,428. Originally there were two roof-top units and at some point during construction, a decision was made to relocate one of them. He, Dr. Melnik, the subtrade, and the landlord were all involved in the discussions. Mr. Bewsky’s extra work as a result of this decision is not included here. This is just the subtrade increase in cost.</p> <p>Extra: This is an extra, if the cost was incurred. Mr. Bewsky said these might have related to the relocation of the rooftop unit, which he already charged for in other extras. Unclear if this overlaps. Also, Mr. Bewsky’s evidence was that he did not know how many penetrations he allowed for in his estimate allowance of \$2,000. We don’t know whether his estimate was reasonably accurate or not. Dr. Melnik agreed that he communicated directly with the subtrade. The subtrade told him that the work would require two extra penetrations. Knew when entering into the renovation contract that if there were additional subtrade costs not provided for in estimates due to changes they were instructed to implement, that was not included in base contract.</p> <p>Decision: Allowed. (1) Is an extra. This charge was a result of the extra roof penetrations from extra work not included in the contract. The extra charge is excluded. The Main Contract Document, Terms and Conditions, states “Any additional costs ... from sub trades which are not allowed for in their estimates, due to changes or any additional / extra work, required, are not included”. Further, under Items removed from estimate as discussed”, extra mechanical work is excluded. Further, under “Items to remain” the contract states “Roof penetrations up to \$2,000 as discussed. (2) Dr. Melnik authorized. (3) Dr. Melnik knew or ought to have know would increase cost.</p>
<p>2019 List – Extra #27 \$3,430</p>	<p>At Dr. Melnik’s request Cakwell awarded the flooring contract on his behalf to Tec Floor Coverings Ltd. Cost to document Tec re the many unusual circumstances, many hours of supervision and discussions and to prepare and provide a letter of explanation dated August 30, 2018, to Tec Floor Coverings Ltd.</p>	<p>Abandoned.</p>
<p>2019 List – Extra #28 \$1,363</p>	<p>Tec floor coverings (main floor) original cost \$51,651.00 less cost to complete \$11,500.00 = \$40,151.00. Costs to date:</p>	<p>Necessary: While the calculation is admittedly rough, it is reasonable for Mr. Bewsky to charge a modest additional amount in respect of the work performed by TEC by reason of the many factors listed. Original cost was about \$51,000. Mr. Bewsky got an estimate from another contractor to complete what he was not able</p>

	<p>paid Tec \$20,688.92; cost to do stairs - prep and install lino \$5,700.00; cost to prep and install lino in reception and waiting room, install u-lay sub-floor on floor above washroom/ entrance, some prep work at the entrance of Op7 &amp; 3 and repairs to the flash cove in the records and consult rooms \$4,700.00; cost to correct many Tec floor deficiencies such as: major cleaning of concrete dust, remove lino adhesive, thin set, epoxy grout (residue, smears, foot and pail prints and blobs) off entire floor tile area and much of the lino area, cut and grind back concrete on three occasions due to improper lino install and grinding damage, many repairs to flooring and walls, provide electrical supply for concrete grinding, clean membrane and primer off of walls, clean tile edges prior to caulking, caulk tile to tile and tile to line \$10,425.00                  Total costs to date \$41,513.92 - allowed amount less cost to complete \$40,151.00</p>	<p>to finish of the work Tec was to do. That estimate was \$11,500. He paid TEC about \$20,000. His estimate of his total costs to do the floor was another \$5,700 + \$4,700 + \$10,000. Total costs were 41,151. The difference between this plus the \$11,500 to complete and the original cost of \$51,651 is \$1,362.</p> <p>K / CO: Many issues with this claim; Dr. Melnik should not bear the cost of Mr. Bewsky's dispute with the subtrade. Mr. Bewsky ought to have held TEC floors to their quote, and should not have done work himself, or if he did, should have claimed it against Tec, not Dr. Melnik. Do not know how to reconcile the amounts claimed with all of the other flooring extra charges, the change order, and the base contract.</p> <p>Decision: Denied. Mr. Bewsky has not persuaded me on a balance of probabilities of the accuracies of any of these amounts that are credits and debits to the Third Charge Order, and that these are in fact extra.</p>
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