

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *G. Little Electric Ltd. v. 1239254 B.C. Ltd.*
dba Pure Fire Company,
2025 BCSC 2183

Date: 20251105
Docket: S47853
Registry: Penticton

Between:

G. Little Electric Ltd.

Plaintiff

And

1239254 B.C. Ltd. doing business as Pure Fire Company

Defendant

And

1239254 B.C. Ltd. doing business as Pure Fire Company, Cody Lewis and William Lewis

Plaintiffs by Counterclaim

And

Aaron Yazlovasky and G. Little Electric Ltd.

Defendants by Counterclaim

Before: The Honourable Justice Wilson

Reasons for Judgment

Appearing on behalf of the Plaintiff
and Defendants by Counterclaim:

A. Yazlovasky

Appearing on behalf of the Defendant
and Plaintiffs by Counterclaim:

C. Lewis
William Lewis

Place and Date of Trial:

Penticton, B.C.
September 9 – 12, 15 – 19, 2025

Place and Date of Judgment:

Penticton, B.C.
November 5, 2025

[1] This is a dispute between the plaintiff contractor and its client regarding work done at the latter's legal recreational cannabis facility in Penticton.

[2] The plaintiff is a contractor in the heating, ventilation and air conditioning business in Penticton, and also does electrical work. The defendant is in the cannabis business and has a license to grow cannabis for recreational use through Health Canada. The defendant was setting up a new operation in Penticton and entered into discussions with the plaintiff about doing the HVAC and electrical contracting work at the defendant's new facility.

[3] The parties both agree that they discussed an arrangement whereby the plaintiff would supply labour and materials in exchange for shares in the defendant business. The parties also agree that these discussions were between Aaron Yazlovasky as the principal of the plaintiff, and Bill Lewis on behalf of the defendant. The parties did not reduce their discussions to writing, and there is now a dispute as to whether they reached a deal and, if so, on what terms.

[4] Prior to the discussion between Mr. Yazlovasky and Bill Lewis which occurred at Bill Lewis's home on April 26, 2020, Mr. Yazlovasky, Bill Lewis and his son, Cody Lewis, who is the key operator of the facility, did a walk-through of the proposed premises in Penticton and also viewed the Lewis' medicinal cannabis operation located in the Glenmore area of Lake Country, just north of Kelowna.

[5] According to Mr. Yazlovasky, he had undertaken some preliminary sketches of the HVAC system prior to the meeting at Bill Lewis's home and estimated that the cost would be approximately \$150,000. All of the work, both HVAC and electrical, would be conducted on a time and materials basis, with reduced labour rates of \$85 per hour for journeyman and \$35 per hour for apprentices, and a materials markup at 32 percent. Mr. Yazlovasky's background was in HVAC but not in electrical and therefore he felt comfortable with an estimate for the HVAC work only. He says that any work above and beyond the \$150,000 that would be exchanged for shares, would be billed by the plaintiff and paid by the defendant.

[6] The defendant says there was never an agreement that the work would be billed on a time and materials basis, other than how the agreed upon labour rates and materials mark-up rates would be used to calculate the plaintiff's contribution for the purposes of the share conversion. The defendant says that the plaintiff provided an estimate of \$150,000 that covered both the HVAC and the electrical work and while there were a couple of agreed-upon extras as the project proceeded, the estimate served as a cap as to the amount the plaintiff was entitled to charge.

[7] As the project approached its conclusion, the plaintiff issued its first invoice in the amount of \$141,000. In the four or five weeks that followed, additional invoices were rendered bringing the total to \$278,973.01. Thereafter, the defendant sent a draft agreement to convert debt to shares in late August 2021, but the plaintiff did not sign it because it did not believe that the draft accorded with the parties' agreement.

[8] The plaintiff then sought payment for those amounts over and above the trade amount of \$150,000. The defendant sought clarification of the amounts billed, including backup receipts. Some receipts were provided in approximately November 2021. In the meantime, the plaintiff continued to follow-up for payment because he was receiving pressure from his suppliers. The plaintiff issued two more invoices in November 2021.

[9] On January 4, 2022, and while the plaintiff continued to request payment, the defendant sent another version of an agreement to convert debt into shares. In this later version, the number of shares was less but it would have seen the plaintiff receive \$100,000 in cash. Although the plaintiff was initially very angry because it was much less than what he believed he was owed, he reluctantly agreed to enter into that agreement. However, no final version of the agreement was ever provided to the plaintiff for signature and as a result, no such written agreement was ever signed.

[10] On January 17, 2022, Mr. Yazlovasky went to the defendant's premises and removed disconnect switches from all six of the exterior air conditioning units, causing those air conditioning units to cease to provide cooling. The defendant replaced the switches, but not for a period of three or four hours or so. The defendant claims that it

suffered a loss as a result of the loss of cooling to the facility, which forms the basis for the defendant's counterclaim.

[11] The defendant also seeks compensation by way of counterclaim for what it says was an under-designed or improperly designed electrical system, which has also resulted in reduced productivity or capacity at the defendant's cannabis grow facility.

[12] Shortly after Mr. Yazlovasky removed the disconnect switches from the air conditioning units, he commenced these proceedings. Thereafter, the plaintiff revised two of the earlier invoices.

[13] The plaintiff seeks payment of its invoices, which total \$365,816.13.

[14] The defendant says the plaintiff is entitled to \$150,000 in accordance with the agreed upon price and seeks damages resulting to a loss of cannabis product as a result of the tampering incident and also seeks compensation relating to what it describes as the inadequate electrical system.

[15] Given the obvious hostility and acrimony between the parties, neither seeks a remedy that would see the plaintiff receive shares in the defendant, even though both agree that it was the subject of discussion between them.

The issues

[16] The first issue to be decided is whether there was a contract between the parties and, if so, what were the terms of the contract. Second, if there is a contract, which party breached it.

[17] Even if the parties did not reach a consensus as to the terms of a contract, the plaintiff would nonetheless be entitled to compensation for the time spent and the materials supplied to the defendant's project.

[18] Third, the court must determine whether the defendant has proven its counterclaims. The defendant's first counterclaim is for a loss of product arising from the plaintiff's tampering with the air conditioning units. The second counterclaim is for a loss

of productivity from what the defendant argues is an improperly designed electrical system.

The trial

[19] Although both parties had counsel at various times previously, they represented themselves at the trial, which took place over nine days.

[20] The key witnesses were Mr. Aaron Yazlovasky for the plaintiff and Mr. Bill Lewis and Mr. Cody Lewis for the defendant. All three were also parties in their individual capacities arising out of the defendant's counterclaim. I was told the defendants were advised to include their personal names in the counterclaim because they were the named parties on the lease for the defendant's business premises where Mr. Yazlovasky removed the switches from the air conditioning units.

[21] The plaintiff called other lay witnesses to testify. Ms. Esther Kleineberg was the administrative assistant with the plaintiff when the subject job was ongoing, although she has since retired.

[22] Mr. Paul Forai is a journeyman electrician who worked with the plaintiff at the time and worked on this project. He has since relocated to Campbell River. Mr. Brian Forth is a journeyman sheet metal worker who worked on the HVAC system, and Mr. Tyler Croom is a red seal refrigeration and air-conditioning technician who also has a Class B gas ticket. He was in charge of the HVAC portion of this job for the plaintiff.

[23] The only witness for the defendant in addition to the defendant's principals, Cody Lewis and Bill Lewis, was Mr. Mathew Dettling. He was qualified as an expert witness in electrical work and electrical contracting for residential, commercial and industrial projects.

[24] Although both parties were self-represented for trial, each did a good job of presenting their respective cases and were respectful both to the court and with each other while before the court, notwithstanding the obvious animosity between them.

Was there a contract, and if so, what were the terms?

Positions of the parties

[25] The plaintiff argues that the parties had an agreement whereby the plaintiff would provide labour and materials to the project at agreed upon rates, with the first \$150,000 to be paid by way of the issuance of 50 Class A voting shares that would provide the plaintiff with a 15 percent interest in the defendant, with all amounts in excess of \$150,000 to be paid by the defendant.

[26] The defendant says that the estimate of \$150,000 was for both the HVAC and the electrical work, and that the plaintiff ought to be held to his estimate. In support of its position, the defendant refers to some authorities, including *Sea-Bright Builders Inc. v. Graves*, 2016 BCSC 709, *Roberts & Muir v. Price* 1987 CanLII 2505 (B.C.C.A.) [*Sea-Bright*] and *Medallion Developments Inc. v. Close* 1988 CanLII 5263 (B.C.S.C.) which held that estimates may have contractual effect, even in a cost-plus or time and materials type of project.

[27] The Court must therefore decide whether there was ever a contract reached between the parties and, if so, what were the terms.

The evidence

[28] The defendant had a medical cannabis grow facility in Lake Country and with the legalization of recreational cannabis, looked to establish a new facility. The City of Penticton (the “City”) seemed receptive, and the defendant identified and leased premises for that purpose.

[29] The initial discussions between the parties occurred in February or March 2020 during which time the defendant gave Mr. Yazlovasky a walk-through tour of the defendant’s medical cannabis facility in Lake Country just north of Kelowna.

[30] Mr. Yazlovasky’s evidence was that he entered into an agreement on behalf of the plaintiff with Bill Lewis on behalf of the defendant company arising out of a conversation at Mr. Lewis's home at Predator Ridge on April 26, 2020. At that time, they discussed that the plaintiff would acquire an equity interest in the defendant company.

His estimate was that the HVAC component of the project would cost approximately \$150,000 and the discussion was that this would be for 15 percent or 15,000 Class A voting shares of the defendant.

[31] The parties also discussed reduced labour rates and equipment markups – \$85 per hour for journeymen and \$35 per hour for apprentices, with a 32 percent markup for all equipment. The 32 percent was 25 percent profit and to account for 7% PST which could not be collected. The markup rate for materials was later discounted to 25 percent.

[32] There was no set price for the contract because there were no clear plans for the electrical work which was a huge part of the job. There were no engineered electrical drawings, just a verbal discussion. As for the HVAC, Mr. Yazlovasky, whose background was in HVAC, had prepared preliminary drawings by the time they had the initial discussion, which was why he was able to estimate that it would cost approximately \$150,000. It was never intended to be an exact quote, but it was an approximation based upon what the drawings reflected.

[33] The City required engineered drawings for the proposed HVAC work as a condition of issuing a building permit. Mr. Yazlovasky sent his draft drawing to an engineer he had recommended to the defendant, Ecora Engineering (“Ecora”), and the defendant then retained Ecora directly. Cody Lewis testified that no engineered electrical drawings were ever prepared for the project because the City did not require them.

[34] When he gave the verbal estimate of \$150,000, one thing that was not known to Mr. Yazlovasky was the requirement for the dehumidifiers. These dehumidifiers, which were referred to as Anden dehumidifiers, cost \$4450 each. There were six of them, representing an additional approximately \$25,000 in equipment that he had not anticipated. He did not assume that any such dehumidifiers would be needed because he had been walked through one of Mr. Lewis’s other grow operations in Glenmore where he saw small residential dehumidifiers. He assumed that this grow operation had also been designed in conjunction with engineers and was expecting something similar.

[35] Mr. Yazlovasky has experience in residential, commercial and industrial work but had never done a cannabis grow-operation before. He relied on the expertise of the owners who said they needed someone to get permits and follow their instructions which is what the plaintiff did.

[36] Mr. Yazlovasky had put together his rudimentary drawing based upon what Mr. Lewis told him. The equipment was what Mr. Lewis had said he wanted – 10 tons of cooling in one room was way more than Mr. Yazlovasky would have ever thought to include, but he prepared his preliminary drawings based upon what Mr. Lewis wanted. This was the first time he had ever built a grow-operation, and he told Mr. Lewis from the beginning that he had never done one and as such was relying on Mr. Lewis's expertise.

[37] Bill Lewis's evidence was that there were many discussions, tours and talks, and Cody Lewis was always involved. Cody Lewis was sometimes not physically present, but Bill Lewis would always let Cody Lewis know what was going on. He said Cody Lewis was present at the walk-through at the Lake Country facility and was also present at the house.

[38] According to Bill Lewis, the verbal agreement of an exchange of labour and materials for shares was reached after the defendant had given the plaintiff all the information, done the walk-through and told him what equipment he would be using. Mr. Yazlovasky had done quite a good job of the HVAC drawing in that the Ecora drawing was very similar to Mr. Yazlovasky's drawing. Mr. Yazlovasky quoted the HVAC and electrical at \$100,000-\$120,000, which, according to Bill Lewis, would have resulted in the plaintiff receiving 10-12 percent of the shares of the defendant. Both parties agree that the plaintiff's percentage entitlement assumed a value of \$1,000,000 for the defendant.

[39] The evidence on behalf of the defendant was that the grow lights for the Penticton facility were going to be the same ones they were using in their other facility in Lake Country. HVAC drawings were completed by Ecora because the City required

engineered HVAC drawings. However, the City never asked for electrical engineered drawings, nor did anyone else.

[40] As for the dehumidifiers, Mr. Yazlovasky agreed that the Anden dehumidifiers were identified on the Ecora drawings from the beginning. Ecora would have sized the dehumidifier because Mr. Yazlovasky would have had no idea how to size it. His recollection is that he asked Mr. Lewis who did not know and so Ecora would have had to figure it out.

[41] On August 18, 2021, Mr. Yazlovasky received a three-page document emailed from the defendant’s lawyer entitled Agreement to Convert Debt to Shares. He did not sign it because from Mr. Yazlovasky’s perspective, it did not reflect their agreement.

[42] According to Mr. Yazlovasky, the invoices were held or delayed until they reached approximately \$150,000. The first invoice, dated July 1, 2021, was #7757 for \$102,409.86. There were three invoices issued in August and two more issued in November 2021, by which time the total amount billed was \$308,730.09.

[43] After the relationship between the parties had irretrievably fallen apart and Mr. Yazlovasky had disabled the air conditioning units and commenced this action in early 2022, the plaintiff issued two further invoices or, to be more precise, reissued two previous invoices in higher amounts. Below is a summary of all the invoices issued by the plaintiff:

<u>Invoice</u>	<u>Date</u>	<u>Description</u>	<u>Total</u>
7757	2021-07-01	Progress billing #1 HVAC work for new micro cultivation	\$102,409.86
7882	2021-08-04	Progress billing #1 Electrical work for Micro Cultivation	\$40,910.67
7896	2021-08-06	Electrical Progress billing #2 Electrical work for Micro Cultivation continued	\$87,806.85
7910	2021-08-11	Progress billing #2 – HVAC work for new micro cultivation	\$47,845.63

7757	2022-02-15	Progress billing #1 HVAC work for new micro cultivation MATERIALS – Revised excel spreadsheet for missed materials on original Progress Billing #1	\$112,158.53
7910	2022-02-15	Progress billing #2 – HVAC work for new micro cultivation Revised to include MATERIALS - Total of invoices from Feb 10, 2021 to August 6, 2021 after review Feb 15, 2022	\$95,183.00
8486	2021-11-19	Final billing – Electrical work for grow op	\$23,797.70
8353	2021-11-25	Final billing – HVAC work for new micro cultivation	\$5,959.38

[44] Mr. Yazlovasky was asked why he would delay so long in invoicing when they had long since gone past the \$150,000, given that in six weeks, \$278,973 of invoices were issued. His explanation was that they were so busy in the office trying to put them together that they just simply did not get done. He was trying to get the office administrator Ms. Kleineberg to work on it and get the invoices done, when she was finally able to do so, she simply kept going until all the invoices were brought up to date.

[45] When the first two invoices came in, Cody Lewis said they accorded with what the defendant had expected to receive, something in the range of \$140,000 - \$150,000. The defendant was working with its lawyer on a share structure and it was written up at a full 15 percent to the plaintiff because by that time, the bills were at or near the \$150,000 that was expected. According to Cody Lewis, as subsequent invoices continued to come in the defendant started to become concerned. That said, they were still willing to issue the shares and sort out the extra amounts claimed later – by the time the first draft of a share transfer agreement was circulated, the invoices totalled \$278,973.01, substantially over the \$150,000 estimated.

[46] The defendant was concerned about the lack of transparency and the lack of backup documents. They received some data sticks in November 2021 containing

copies of some back up invoices, but they appeared to contain a number of discrepancies.

[47] Mr. Yazlovasky continued to request some payment on account of the amount over \$150,000. At one point, in December 2021, he suggested that he had found some discrepancies on the previously issued bills that would result in a credit to the defendant, although there is no evidence this happened.

[48] A second version of the shares for debt agreement was provided by the defendant to the plaintiff on January 4, 2022. The draft would have provided the plaintiff with 7500 Class A voting shares, plus a payment of \$100,000. According to Cody Lewis, the 7500 shares were worth more than the previous 15,000 shares but he agrees there is nothing in the document that would explain this. The second version of the share transfer agreement refers to \$200,000 in debt, but the plaintiff had already submitted closer to \$300,000 in invoices by the time the draft document was created.

Mr. Yazlovasky reacted angrily to the draft document but ultimately agreed that he would accept it. However, the defendant never provided a final version to the plaintiff for signature despite numerous attempts at follow up by Mr. Yazlovasky. Mr. Yazlovasky pulled the disconnect switches from the air conditioning units just under two weeks later, on January 17, 2022.

[49] However, by the date of the revision to the invoice, February 15, 2022, this is only very shortly after Mr. Yazlovasky received what he considered to have been a lowball offer and had pulled the disconnect switches from the air conditioning units. This renders the revised accounts somewhat suspicious. Moreover, some of the revised invoices were not provided at the time but only came out during the course of litigation. This further amplifies the concerns with the amounts.

[50] The evidence regarding the plaintiff's invoices is not as clear as it could or should be. The plaintiff put into evidence various spreadsheets that were compiled as backup evidence for the invoices, and it was agreed that rather than going through dozens and dozens of line items on spreadsheets, the spreadsheets would be admitted, and the defendant was free to challenge any particular entry or entries as it saw fit.

[51] In or about November 2021, the plaintiff provided the defendant with a couple of thumb drives that contained copies of various receipts. However, in December 2021, as the plaintiff was becoming increasingly desperate for money, he sent the following text to Bill Lewis:

I have gone through every invoice and did find that there were a few items billed that were not used on your job. I am going to make the adjustments to my invoices to you and show them as credit for unused materials. Also I have gone through all the hrs for electrical and HVAC. I am eliminating any hours that do not coincide with an associated tech report. I had another idea. How about renegotiating the set mark up rate and labour rate for the work over and above the original 150K? I am thinking \$68/hr and a 20% mark up on materials. A very reasonable offer in your favor.

[52] Ignoring the last portion which appears to be an offer that was not accepted, notwithstanding Mr. Yazlovasky's comments that he had found items in the bills that ought not to have been there, there is no evidence that he provided any credits or adjustments after that date. Moreover, his evidence is that after the parties' relationship had irretrievably broken down and around the time he issued his notice of civil claim, he issued two revised invoices that purported to cover certain additional materials that were not caught under the previous invoices.

Credibility of the key witnesses

[53] The credibility and reliability of the key witnesses is a central issue in determining whether the parties had an agreement and, if so, its terms.

[54] Justice Mayer, then of this Court, explained the assessment of credibility in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2019 BCSC 739, aff'd 2020 BCCA 130 [*Youyi*]:

[89] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the sincerity of a witness and the accuracy of the evidence that the witness provides. In some cases it becomes apparent that a witness has made a conscious decision not to tell the truth. In other cases, a witness may be sincere but their evidence may not be accurate for a number of reasons.

[90] Evaluating the accuracy of a witness' evidence involves consideration of factors including the witness' ability and opportunity to observe events, the firmness of their memory, their objectivity, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his pre-trial evidence by the time of trial or their testimony at

trial during direct and cross-examination, whether the witness' testimony seems implausible, and the demeanor of a witness generally.

[91] An acceptable methodology for assessing credibility is to first consider the testimony of a witness on its own followed by an analysis of whether the witness' story is inherently believable in the context of the facts of the entire case. Then, the testimony should be evaluated based upon the consistency of the evidence with that of other witnesses and with documentary evidence, with testimony of non-party, disinterested witnesses being particularly instructive. At the end, the court should determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[92] Some additional factors which may impact credibility include the following:

- a) A series of inconsistencies, considered in their totality, may become quite significant and cause the trier of fact to have a reasonable doubt about the reliability of the witness' testimony: see paras. 57-59, 86 of *F.H. v. McDougall*, 2008 SCC 53, adopting the comments of Rowles J.A. at paras. 28-29 in *R. v. R.W.B.* (1993), 24 B.C.A.C. 1.
- b) Where a witness is found to have lied under oath, their credibility may be wholly undermined: *Le v. Milburn*, 1987 CarswellBC 2936 (W.L.) at para. 1; *Jones v. Jones*, 2008 BCSC 1401 at paras. 31, 32 and 60; *Hardyчук v. Johnstone*, 2012 BCSC 1359 at para. 9.
- c) Collusion and deception between two or more witnesses in the course of a litigation may taint the entirety of a witness's evidence: *Bradshaw* at para. 190;
- d) Credibility will be undermined when a witness seeks to rely on false documents regarding the issues at trial: *Osayande v. Canada (Minister of Citizenship And Immigration)*, 2002 FCT 368 at paras. 19 and 21;
- e) Credibility will be undermined when a witness (or party) has failed to produce documents: *Bradshaw* at para. 188; *Pacific West Systems Supply Ltd. v. Vossenaar*, 2012 BCSC 1610 at paras. 84 to 86;
- f) Credibility will be in doubt when a witness's explanation defies business logic or common sense: *R. v. Storey*, 2010 NBQB 86 at para. 78; *Wang v. Wang*, 2017 BCSC 2395 at paras. 45-46 and 89-90; and
- g) Credibility may be impacted when a witness is evasive, longwinded and argumentative in their responses to questions: *Bradshaw* at paras. 191 to 192.

[Emphasis in original]

Aaron Yazlovasky

[55] Mr. Yazlovasky's testimony was generally clear and his answers to questions were, on the whole, responsive. His evidence was largely consistent with the

documents, and he was generally prepared to accept propositions that were put to him, even if they were not necessarily favourable to his case. He was willing to acknowledge when he could not remember something, such as a meeting, a discussion, or the receipt of a document.

[56] Mr. Yazlovasky also admitted that he was responsible for the tampering, acknowledged that he did it out of anger, and conceded that he should not have done it.

Cody Lewis

[57] Cody Lewis is the president of the defendant company and is involved in and familiar with every aspect of the defendant's cannabis cultivation facility. I generally found that he testified in a clear and precise manner.

[58] I have no doubt that Cody Lewis is extremely knowledgeable in the cultivation of cannabis plants and of all the various regulatory schemes that govern the defendant's business operation. However, he was not qualified as an expert for this at trial, and I was therefore unable to accept as evidence his assertions that plants were lost as a result of the disconnection of the air conditioning units.

[59] While I fully accept that Cody Lewis was and continues to be involved in all aspects of the defendant's cannabis cultivation business, he was not involved in the discussions with Mr. Yazlovasky regarding the supply of the HVAC and electrical systems. Rather, that fell to Bill Lewis, and the majority of the information that Cody Lewis had on this topic was derived from conversations he had with his father.

Bill Lewis

[60] Bill Lewis is Cody Lewis's father and is also involved in the defendant's business.

[61] Overall, I found Bill Lewis's evidence to be self-serving and lacking in precision and detail, and I reject much of it. At times he was adamant, including asserting that he was '100% certain' that load calculations prepared by the defendant's electrician were a complete fabrication, even though that suggestion was never put to any of the plaintiff's witnesses and there was no evidence to support such an allegation. Indeed, the

evidence from more than one witness was that load calculations must be and were provided to Technical Safety BC prior to the commencement of work.

[62] Bill Lewis was reluctant to answer questions at times and was evasive. As an example, one of the issues that came up during the trial was whether the defendant ever told the plaintiff what type of grow lights they were intending to use in the new facility. Bill Lewis stated that the plaintiff knew what type of lights the defendant was going to use, namely double-sided 1000W Govida HPS lights, but when questioned, and after it was necessary to encourage him to respond to the question, his evidence went no further than that the defendants used the same lights from their Lake Country facility and that Mr. Yazlovasky never told Bill Lewis that he did *not* recognize them.

[63] As will be discussed below in greater detail, although Bill Lewis was adamant in his evidence at trial that the \$150,000 represented a maximum that the plaintiff would charge the defendant for the work done, contemporaneous communications between he and Mr. Yazlovasky reveal that he was aware that the costs were going to exceed that amount, and that he was also trying to obtain additional funds to pay at least some of the amount in excess of \$150,000.

[64] It follows that I do not accept Bill Lewis's evidence except where it is corroborated or supported by other evidence, whether from other witnesses or from the documents.

Discussion

[65] The primary differences between the parties' positions with regard to the terms of the contract is first whether Mr. Yazlovasky's estimate of \$150,000 was for the HVAC and electrical work or for the HVAC only; and second, if the estimate was for all of the work, does the estimate serve to cap the amount the plaintiff can claim.

[66] In this case, both parties clearly believed they had a contract, as evidenced by the fact that work was done and the subsequent discussions regarding payment in some amount and in some form.

[67] In circumstances where parties have differing versions of events, it can be of assistance to review the surrounding circumstances and, in particular, the documents that were created at the time. That said, even though a court will try to give effect to the parties' agreement, it must be careful not to create an agreement where one does not exist. This is the case even if the parties may have thought they had reached an agreement. In *Rafal v. Legaspi*, 2007 BCSC 1944, Justice Fisher (as she then was) wrote:

[24] It is not for this Court to complete the parties' contract for them, particularly where an essential term is missing and it cannot be said that the parties agreed to it. Even if the parties believed and acted as if they had made an enforceable contract, and the court's interpretation of the contract would be fair and calculated to do justice to both parties, the court must be careful not to create an agreement which the parties never had, nor intended: see *Kelly v. Watson* (1921), 61 S.C.R. 482 at ¶13; *First City Investments Ltd. v. Fraser Arms Hotel Ltd.* (1979), 13 B.C.L.R. 107 (C.A.).

[68] I will review the surrounding evidence in determining whether the parties reached an agreement and, if so, what the terms of that agreement were.

[69] First, I accept that Bill Lewis was in a position to bind the defendant, even though he was neither a director nor a shareholder at the time. Neither party suggests otherwise. Similarly, Mr. Yazlovasky was an authorized representative of the plaintiff.

[70] I accept that Mr. Yazlovasky was in a position to provide an estimate of the cost of the HVAC system given his experience as a journeyman HVAC technician and owner of a business. Although engineered drawings were required and were not available when he provided his estimate, the evidence of both he and Bill Lewis was that the engineered drawings prepared by Ecora were not very different from Mr. Yazlovasky's preliminary drawings.

[71] As for the electrical work, however, I accept that Mr. Yazlovasky was not trained as an electrician, and the electrical requirements for the defendant's facility were outside the scope of Mr. Yazlovasky's knowledge. Mr. Yazlovasky's evidence, which was not contradicted, was that he had never built a grow-operation before and therefore he was

not aware of the electrical requirements. As such, he relied on the defendant to provide him with the information needed for the electrical system.

[72] I conclude that the defendant made assumptions regarding the plaintiff's understanding of its needs and plans, including for the electrical system, based in large part on the defendant's own knowledge, but those requirements and plans were never communicated to the plaintiff.

[73] As an example, the type of lights the defendant intended to use in the new facility was a matter of contention at trial. The defendant says that it used 1000-watt double-sided Govida high-pressure sodium [HPS] lights at its facility in Lake Country, and that it intended to use the same lights at the new Penticton facility.

[74] Mr. Forai's load calculations assumed LED lights, but both Bill Lewis and Cody Lewis testified that they had never intended to use LED lights at the new facility. This may be so; however, I find that the defendant never relayed the information about the type of lights they were going to use to the plaintiff. Mr. Yazlovasky's evidence was that he would not have recognized a double-sided 1000-watt Govida HPS light when he was on site at the Lake Country facility.

[75] For his part, Bill Lewis, when questioned on the point and after having been asked the question on multiple occasions, only said that Mr. Yazlovasky never said that he did not recognize the lights. This evidence falls far short of advising the plaintiff of what the defendant was going to use for lighting.

[76] The fact that Mr. Yazlovasky did not likely have sufficient information to be able to provide an estimate for the cost of the electrical portion of the work is not necessarily determinative of the question of whether his estimate of \$150,000 pertained to HVAC alone or to the job as a whole, nor does it necessarily answer the question of whether the estimate would serve as some form of cap to the plaintiff's billings. However, there is additional evidence that would tend to support Mr. Yazlovasky's version of events.

[77] On February 11, 2021, Mr. Yazlovasky and Bill Lewis had a text exchange as follows:

Thu, Feb 11, 2:30 PM

Mr. Yazlovasky: Hey Bill, So right now we are at 156K for electrical and HVAC work.

Still a bit to do. Mostly HVAC equipment costs at this point going forward

Bill Lewis: Sounds good. Just out of curiosity do you have an approximate what you think I might end up at

Mr. Yazlovasky: Probably another 20K for HVAC and I will talk to stew about projected costs going forward with electrical

Bill Lewis: Sounds good bud. And looks even better

[78] When asked about these text messages, Bill Lewis said that he was disappointed that the cost was going to be over \$150,000 as per the estimate, but that he instructed his lawyer to prepare the first agreement to convert debt to shares and did so at 15 percent, since he knew that the cost had already hit the \$150,000 that the parties had discussed previously.

[79] However, the timing of the text exchange is such that Mr. Lewis's explanation cannot be accepted. The text exchange was in February, some six months or so before the plaintiff's work at the project was completed. Mr. Yazlovasky was telling Bill Lewis that the cost was already at \$156,000, with \$20,000 or so in HVAC plus the cost to complete the electrical work, which Mr. Yazlovasky was going to have one of his employees determine. In other words, the cost was already going to be in excess of \$176,000 with six months more work to complete.

[80] As may be seen in the above text exchange, Bill Lewis's response to Mr. Yazlovasky's advice about the approximate cost to date was to inquire about how much more the cost might be, as opposed to either questioning the costs or pointing out what he testified to at trial, namely that \$150,000 represented some form of cap in the amount to be charged.

[81] Next, and consistent with the prior example, when the plaintiff was following up for payment on the amounts over \$150,000, Bill Lewis, in addition to seeking copies of invoices for the first \$150,000, which was a reasonable request, indicated that he had a

potential investor, and advised the plaintiff of this. These communications were in late December 2021. Mr. Lewis's text messages included the following:

Friday, December 17, 2021

...

Bill Lewis: I've been waiting for a call all afternoon from an associate. So I could give you some info and still hasn't called. I'm going to try him again

Mr. Yazlovasky: Well let me know. Are you going to be down here tomorrow?

Saturday, December 18, 2021

...

Bill Lewis: I still haven't heard from him. It would certainly help if you could send us the invoice for the first 150

Mr. Yazlovasky: Hi Bill. I have all of them printed out at my office. Was hoping to sit down with you and discuss things and go over them.

Monday, December 20, 2021

Mr. Yazlovasky: Good morning Bill. Any word on a payment? I know you are wanting to see all the invoices for the first 150K and you can. I really need a payment on the rest of the money owing. And need it now. My Lennox dealership is going to be revoked if I can make a payment this week. Your project is the direct reason for my huge shortage of cash. Please help me out man.

Thursday, December 23, 2021

Bill Lewis: Hey Aaron we can't find a lawyer its Christmas break. It looks like the earliest we can get this drawn up is the first week or so of January

Mr. Yazlovasky: That not good [for] me

Bill Lewis: This guy won't release funds until we have something in writing from a lawyer and we just can't find one right now

If we can find a notary before the end of the year we think we can get this done. We'll just keep trying to find one

Tuesday, December 28, 2021

Mr. Yazlovasky: Hi Bill. Any luck with a notary or lawyer?

Bill Lewis: There's a notary open in the 29th in lake country, we're going to try and get an appointment

Mr. Yazlovasky: Ok. Thanks Bill. Let me know how that pans out.

Wednesday, December 29, 2021

Mr. Yazlovasky: Any luck today Bill?

??

Bill Lewis: Could not get an appointment today hopefully tomorrow if not Friday. As soon as we get this signed I can get the funds.

Mr. Yazlovasky: Ok. Thanks for the update.

[82] I find these communications to be more consistent with the plaintiff's version of the agreement than the defendant's because:

- a) by this time, the aggregate total of the invoices far exceeded \$150,000;
- b) the plaintiff was continuing to seek payment of the amount over the trade amount of \$150,000;
- c) the defendant, while questioning the lack of backup documentation to support the invoices, does not dispute that more money is owing;
- d) the defendant on its own evidence was attempting to obtain cash from another investor to pay to the plaintiff (at trial, the evidence was that the proposed investor was to put in \$100,000 in cash); and
- e) the second version of the debt for shares agreement contemplated \$100,000 in cash in addition to 7500 Class A voting shares.

[83] At no time during these communications did the defendant take the position that the plaintiff was not entitled to payment. The defendant, quite rightly, was concerned about receiving the backup documentation to justify the invoices, but at no point during this time period did the defendant assert that the estimate of \$150,000 applied to the entirety of the plaintiff's work, nor did the defendant suggest that the plaintiff's recovery was capped. Rather, the defendant was seeking the justification for the invoices, in addition to seeking a source of third party funds to pay the amounts over and above the trade amount.

[84] As I stated earlier, I find Mr. Yazlovasky's evidence to more reliable than the evidence of Bill Lewis, who I found to be evasive, and whose evidence does not accord with the contemporaneous documentary evidence. I accept that the defendant was

concerned about the cost of the work, and in particular in the absence of back-up documents to support the invoices. I find that the plaintiff never provided an estimate that pertained to both the HVAC and electrical aspects of the project.

[85] I do not find the authorities cited by the defendant regarding the capping of accounts based upon an estimate to be useful here. While the summary of the law in the *Sea-Bright* case is undoubtedly correct, the factual circumstances are different. In *Sea-Bright*, there were specific discussions about budgets and estimates for the work as a whole. In this case, the parties agreed on the maximum amount of time and materials that would be converted into shares, but had no agreement as to the overall cost of the plaintiff's services.

[86] In all of the circumstances, I conclude that the parties had an agreement consistent with the plaintiff's evidence. That is, the plaintiff was to do the HVAC and electrical work at the defendant's new facility in Penticton on a "time and materials" basis, utilizing reduced or adjusted labour rates and markup on materials. I accept that Mr. Yazlovasky provided an estimate of \$150,000 for the HVAC system only, that up to \$150,000 of labour and materials would be converted to shares, based upon an assumed value of the defendant of \$1 million, and that other amounts over and above the trade amount would be paid by the defendant to the plaintiff.

[87] It follows that the defendant breached the contract by failing to pay the plaintiff.

Damages

[88] The plaintiff's work was completed in approximately early August of 2021, and by the middle of August, the plaintiff had issued four invoices totalling \$278,973.01. What were referred to as final invoices were issued in November, bringing the total to \$308,730.09. In terms of a breakdown between the two aspects of the job, the three invoices that referenced the HVAC work totalled \$156,214.87, with the remainder of \$152,515.22 for the electrical work.

[89] Various spreadsheets were entered which are the backup for the equipment portions of the various invoices. It was agreed that rather than going through hundreds

of line items of small invoices, Mr. Yazlovasky would provide the evidence that all of the invoices relate to equipment supplied to the job, and the defendant could cross-examine on those matters if it saw fit.

[90] Ms. Kleineberg said there was nothing unusual about the delays between the work or materials and the invoice dates, particularly on bigger jobs. She took her directions from Mr. Yazlovasky who would determine when bills were done. She conceded, not unreasonably, that sometimes mistakes occur in invoicing, and she agreed also that invoices need to be updated when it is discovered that something was missed. Something might be missed when suppliers send invoices to the plaintiff later than expected.

[91] I accept that the invoices that had been issued by November 2021, totaling \$308,730.09, represented the plaintiff's honest belief as to what the appropriate billing for the job ought to have been, based on the agreement of the parties for both labour and materials, recognizing that the invoices might have been imperfect and that errors may have been made. The defendant referred in general terms to inconsistencies, but there were no specific examples in the evidence at trial.

[92] I therefore find that the sum of \$308,730.09 represents a reasonable starting point in terms of the value of the plaintiff's work.

[93] Subsequent to what the defendant refers to as the tampering incident of January 17, 2022, the plaintiff issued a revised invoice #7757 for \$112,158.53 and a revised version of invoice #7910 for a total of \$95,183. Both invoices indicate the increased amounts are on account of previously unbilled materials.

[94] The plaintiff's invoices are confusing because changes were made after the initial issuance to update or correct them, as opposed to issuing new or separate invoices. The increase in invoice #7910 is particularly stark.

[95] On November 19, 2021, the plaintiff had issued invoice #8486 for \$23,797.70 for electrical work. The notation indicates that was the final billing for the electrical work. Six

days later, invoice #8353 was issued, for \$5959.38, with a note that it was the final billing for the HVAC work.

[96] Mr. Yazlovasky's explanation for the revised invoices in February 2022, was that he went through in greater detail and confirmed with suppliers the materials associated with the work orders for the defendant's job.

[97] However, Mr. Yazlovasky had earlier said that he had done a detailed review of all the invoicing in the late fall of 2021. In November 2021, the plaintiff had provided the defendant with a couple of thumb drives that contained copies of various receipts. Of note, in December 2021, as the plaintiff was becoming increasingly desperate for money, he sent the following text to Bill Lewis:

I have gone through every invoice and did find that there were a few items billed that were not used on your job. I am going to make the adjustments to my invoices to you and show them as credit for unused materials. Also I have gone through all the hrs for electrical and HVAC. I am eliminating any hours that do not coincide with an associated tech report. I had another idea. How about renegotiating the set mark up rate and labour rate for the work over and above the original 150K? I am thinking \$68/hr and a 20% mark up on materials. A very reasonable offer in your favor. [emphasis added]

[98] Ignoring the last portion which appears to be an offer that was not accepted, Mr. Yazlovasky was advising the defendant that he had found items in the plaintiff's invoices that ought not to have been billed to the defendant. Notwithstanding the acknowledged invoicing errors, there is no evidence that the plaintiff provided any credits or adjustments after that text message.

[99] It is common ground that no work had been done for several months by this point. The job had long since been completed. Mr. Yazlovasky's explanation for the increased amounts is that invoices continued to arrive from different suppliers that were late. However, at the time he made the downward revisions based upon his detailed review, he was still acting in the belief that he was going to be paid and therefore was presumably interested in making sure that everything worked out and the client was happy, hence the proposal at the end of the message.

[100] The only changes to invoices were to increase the amounts of two of the earlier invoices. This was done on February 15, 2022, shortly after the plaintiff had received what he considered to have been a lowball offer and had pulled the disconnect switches from the air conditioning units. These circumstances render the revised invoices somewhat suspicious. Moreover, some of the revised invoices were not provided to the defendant at the time but only came out during the course of litigation. This further amplifies the concerns with the revised invoices.

[101] Given Mr. Yazlovasky's evidence that he had gone through the invoices in detail in late 2021, it is difficult to see how he could have failed to notice that over \$40,000 in materials had been supplied but not invoiced. I therefore disregard the revised invoices.

[102] In assessing the plaintiff's claim under its invoices, I therefore start with the total of \$308,730.09, being the total of the invoices up to the end of November, which must be adjusted downwards based on Mr. Yazlovasky's acknowledgement in his text message of December 16.

[103] Unfortunately, neither party adduced any evidence that would assist the Court with determining an appropriate magnitude of any adjustment. The defendant's focus was on the effect of what it said was a cap based on the original discussion of \$150,000 but I have already rejected the defendant's submission in this regard.

[104] In the absence of evidence of the need for any significant corrections, I assume that the adjustments are likely modest. I will therefore make a downward adjustment of five percent to the invoices issued by the plaintiff up to and including the end of November 2021.

[105] I find that the plaintiff is therefore entitled to the sum of \$293,293.59.

The Defendant's counterclaims

A. Tampering by the Plaintiff

[106] As time dragged on and the expenses over \$150,000 were not paid, the plaintiff started to get into financial difficulty with its suppliers. It had no cash flow because all its

money was tied up in this project and it was not getting paid. Mr. Yazlovasky was becoming increasingly anxious about receiving payment and the text messages from Bill Lewis led Mr. Yazlovasky to believe that he was perhaps being strung along by the defendant.

[107] When the second draft of an agreement to convert debt to shares finally arrived on January 4, 2022, Mr. Yazlovasky was not happy. The document provided for 7500 Class A voting shares as opposed to 15,000 shares, and it provided for payment of \$100,000 when the debt was substantially more. Even though the plaintiff ultimately decided that he would accept the defendant's offer, neither a final version of the agreement nor the cash was ever provided.

[108] On January 17, 2022, Mr. Yazlovasky went to the facility and removed the air conditioning disconnect switches from the air conditioning units. He pulled the switches out of the ground floor units which caused the AC units to switch off. He says he went back the next day to put them back in, but the facility was locked, and the AC units were running again.

[109] Cody Lewis was at the facility when the switches were pulled. He realized what had happened and was able to find and install replacement switches. The air conditioners did not function for approximately three to four hours.

[110] Mr. Yazlovasky admitted that he removed the AC disconnect switches, and that he did so because he was upset. He agreed that what he did was wrong, that he let his emotions get the better of him, and that he should not have done it.

[111] Mr. Yazlovasky, by entering the defendant's property without permission, was trespassing. In *Fitzpatrick v. Orwin*, 2012 ONSC 3492, the Court said the following at para. 135:

[135] The tort of trespass to land occurs when a person directly and unlawfully applies force to the land of another. The requirements for this tort are simple and solely require that a person enters another person's land without permission: see the seminal English case of *Entick v. Carrington* (1765), 19 State Tr. 1029. Moreover, this tort does not require proof of damage in order to be actionable, but does require that the intrusion on land be intentional or negligent.

[112] In *City of Burnaby v. Thandi et al*, 2005 BCSC 1478, the Court adopted the definition from Professor Fridman's text as follows at para. 113:

[113] Trespass to land is defined in G.H.L. Fridman, *The Law of Torts in Canada*, 2d ed., (Toronto: Carswell, 2002), at p 37-38:

Trespass to land consists of entering upon the land of another without lawful justification, or placing, throwing or erecting some material object thereon without the legal right to do so. Such interference must be direct rather than consequential. To constitute trespass the defendant must in some direct way interfere with the land possessed by the plaintiff. The requirement of directness differentiates trespass from nuisance, which is committed when the defendant makes a use of his land indirectly affects the land of the plaintiff.

[113] Cody Lewis testified as to what resulted from the Mr. Yazlovasky's trespass and tampering. When Mr. Yazlovasky pulled the AC disconnect switches, it caused a sudden and significant increase in both temperature and humidity. The temperature increased from the ideal temperature of 80°F and ultimately reached in excess of 110°F. The humidity increased from the intended 60% to 100% humidity and it was raining in the building.

[114] The HPS lights generate significant heat. According to Cody Lewis, they have the advantage of increasing the leaf temperature without increasing the room temperature to the same degree. Excess heat dries out the air slowly. Cody Lewis did not shut off the lights when he realized that the temperatures in the grow rooms were rising because one change to the light cycle can significantly impact a cannabis plant, and that even three minutes can make a massive different to each plant's life cycle.

[115] Cody Lewis said the damage caused by the lack of air conditioning became more apparent over time. The defendant claims to have lost well over \$100,000 worth cannabis plants as a result of the shutdown of the air conditioning units.

Lack of evidence on causation

[116] The defendants have not proved that Mr. Yazlovasky's trespass caused the loss of any marijuana plants.

[117] In *Snell v. Farrell*, [1990] 2 SCR 311 at p. 326, the Supreme Court of Canada states:

Causation is an expression of the relationship that must be found to exist between the tortious act of the wrongdoer and the injury to the victim in order to justify compensation of the latter out of the pocket of the former.

[118] Cody Lewis described the operations at the facility, including the life cycle of the various cannabis plants. The plants included what Cody Lewis referred to as mother plants, which are between four and eight months old and are kept in a vegetative state to be used for future plants. Those plants are clipped and allowed to root in order to grow additional plants. These are also referred to as clones because they come from the same plant. A clone takes two to three weeks to grow a root system. The growth stage or vegetation stage is three to eight weeks in length. During this time, they are exposed to 18 hours a day of light in order to maximize growth. Thereafter, they are transferred to the flowering stage, which is another two to three months, during which time they are exposed to 12 hours or less of light.

[119] Cody Lewis testified that the hours of light are extremely important. Grow facilities are extremely dark because any extraneous light can revert a plant back in its intended cycle. Different plants at different stages are located in different rooms within the facility as this allows them to be exposed to different amounts of light.

[120] I have no doubt that Cody Lewis is extremely knowledgeable in the cultivation of cannabis plants. However, he was not qualified as an expert witness for the purposes of this trial, and I am therefore unable to accept as evidence his assertions that plants were lost as a result of the disconnection of the air conditioning units. Receipts show that replacement disconnect switches were purchased and would have been installed within a matter of three or four hours and I cannot simply assume that plants that were, by the defendant's self-report, not suitable for market some weeks or months later were rendered to such a condition because of a lack of air conditioning.

[121] I have no particular reason to disbelieve that Mr. Lewis genuinely believes that the loss of plants and the disconnection of the air conditioning units are related but I cannot infer that one is causative of the other.

[122] The defendant said the reason why they did not have an expert witness with regard to the counterclaim is that legalized growing of cannabis is such a new industry and from what they have been able to ascertain, nobody would know any more about it than they do. This may be true. However, the test for whether an expert is required is whether the matter opined on is outside the ordinary knowledge of the trier of fact: *Bergen v. Guliker*, 2015 BCCA 283, at para. 130; *Kiden Used Furniture v. Pearson*, 2014 ONSC 4625 at para. 41.

[123] An expert could be a competitor, or someone else in the same industry. The difficulty I have here is that I have no evidence that the shutdown of the air conditioning units for some finite period of time would cause the source of losses that the defendant asserts, including the timing of when these various losses were realized. The absence of any expert evidence regarding the vulnerability or sensitivity of the various marijuana plants to this kind of event, I can draw no conclusions or inferences as it relates to causation.

[124] While it is hypothetically possible that a loss of cooling could result in damage to plants, there is no evidence here that the loss of air conditioning for three to four hours resulted in any damage, nor is there any opinion evidence that would lead to the inference that a loss of air conditioning for a period of three or four hours could result in such damage. A claim for damages requires proof of causation and there is no evidence here that the loss of the air conditioning was causative of any loss.

Damages

[125] Even though I have concluded that the defendant has failed to prove a pecuniary loss arising out of the tampering due to the lack of evidence on causation, the defendant is nonetheless entitled to compensation. The plaintiff has admitted to trespassing, and this gives rise to a claim for damages.

[126] The Court in *Volovsek v. Boisvenu Alter-Ego Trust #1*, 2021 BCCA 179 discussed damages in trespass at para. 62:

[62] In the absence of extenuating circumstances giving rise to claims of exemplary and aggravated damages, the types of damages available for a trespass are the following:

- (a) nominal damages if the owner has not proven any actual loss;
- (b) actual damages suffered by the owner; or
- (c) damages equal to a sum that should reasonably be paid by the trespasser for the use of the land.

[Emphasis Added]

[127] The only actual pecuniary loss I find has been proved by the defendant is the cost of acquiring replacement disconnect switches. There were six of them, at a cost of \$160.34 each, totaling \$962.04. I also accept that the defendant had to spend time finding and installing the replacement switches. I set the defendant's damages at \$2000.

[128] In addition, I conclude that extenuating circumstances are present in this case and an award of punitive damages is appropriate.

[129] In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, the BC Court of Appeal summarized the governing principles of punitive damages citing *Whiten v. Pilot Insurance Co.*, 2002 SCC 18:

[77] The three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages awards should be approached with caution and restraint and resorted to only in exceptional circumstances: *Whiten* at para. 69. Punitive damages awards are rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence, and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.

[78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;

- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and
- f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[130] *Vigh v. Coles*, 2022 BCSC 767, at paras. 86-91, is a recent decision where punitive damages were ordered in trespass. In *Vigh*, the Court found that the trespasser's actions in destroying a walkway without notice were high-handed and culpable and ordered punitive damages of \$3,000 against the trespasser.

[131] In *Gibson v. Sun*, 2018 BCSC 1277, Abrioux J. (as he then was) awarded \$5,000 for what was described as high-handed conduct in exercising a self-help remedy by removing a fence that had been in place for years.

[132] In *Laponder v. Birkich*, 2017 BCSC 1890 at para. 58, Hyslop J. awarded \$20,000 in punitive damages for trespass when a trespasser knowingly intruded on his neighbours' land and destroyed fences and trees. In this case, the trespasser had the report of a land surveyor but disregarded the report and illegally moved property line stakes. The trespasser's behavior was a "marked departure from the ordinary standards of decency." I find that Mr. Yazlovasky's conduct was similarly a marked departure from the ordinary standards of decency. He entered the defendant's property in a high handed and culpable manner with a vindictive intent. Had Cody Lewis not been present at the time, he would not have been in a position to replace the switches so quickly.

Mr. Yazlovasky attempted to interfere with and cause significant harm to the defendant's business out of anger. A punitive damages award should be tailored to condemn and disincentivize this kind of behaviour.

[133] I find that a punitive damages award of \$20,000 is appropriate given the circumstances of this case.

[134] I therefore assess damages on the defendant's counterclaim as follows:

Pecuniary damages:	\$2,000
Punitive damages:	<u>\$20,000</u>
TOTAL:	\$22,000

B. Design of the electrical system

Positions of the parties

[135] The defendant argues that the plaintiff's design work for the electrical system was inadequate and as a result of the plaintiff's poor work, the defendant must operate below capacity. From the defendant's perspective, the problems with the overall electrical system became apparent as more of the grow rooms became operational. It seeks damages as a result of the loss of production.

[136] The plaintiff says it took direction from the defendant with regard to its electrical requirements and that the work was done in accordance with the electrical code and in a good and workmanlike manner.

The evidence

[137] The defendant called an expert witness, Mr. Mathew Dettling who was qualified as an expert in electrical work and electrical contracting for residential, commercial and industrial projects.

[138] Mr. Dettling summarized the electrical system at the defendant's facility. The service that was brought in was by way of two parallel runs of 400 amps but there were

only 300-amp fuses. Each 400-amp parallel run was then split into two 200-amp service, one for each of the grow rooms.

[139] From Mr. Dettling's review, the design of the electrical system met the building code requirements. In his opinion, it would be better had it been done on three-phase rather than single-phase.

[140] Mr. Paul Forai is a journeyman electrician and a former employee of the plaintiff who worked on the defendant's project. Mr. Forai did the load calculations, along with Mr. Stewart Smyrski who was the senior electrician on the job at the beginning and left a few months after the job had started. His understanding was that there would be 600-watt LED lights at 208 volts, and his load calculations assumed this information. The load calculations would have been submitted to Technical Safety BC. Mr. Forai denied that he was ever told that the defendants would be using HID, or high intensity discharge lights, as opposed to LED lights.

[141] The work, although indoor work, was completed as if the job were a wet location as opposed to a damp location, meaning that the plaintiff used weatherproofed covers, PVC pipes, etc. This was based on the expected humidity and moisture in the building. The result is that the job cost more than if these features had not been included.

[142] Both Mr. Yazlovasky and Mr. Forai testified that the plaintiff's work did not include installing the grow lights but rather preparing the electrical outlets such they were live and ready to use in order that the lights could be installed. None of the electricians from the plaintiff were on site after the lights had been installed.

[143] Mr. Dettling agreed that LED lights are lower wattage than HID lights and therefore less power would be required to supply them. It is not uncommon, albeit undesirable, for this type of work to be done without engineering drawings. On occasion he will ask for engineered drawings to be done. Mr. Dettling, who also owns his own electrical contracting company, testified that he would not give a price to a job of this type until he had electrical drawings. A person can do a design-build and work with the

customer for information in which case the electrician relies on a third-party, usually the customer, to provide the necessary information to the calculations.

[144] Mr. Dettling agreed that the plaintiff's work was completed in a good and workmanlike manner and was done to electrical code requirements. Mr. Dettling reviewed the plaintiff's load calculations and did not find fault with them with one relatively minor exception which was based on the length of a run of wire.

[145] In summary, Mr. Dettling's evidence went no further than suggesting that it would have been better to use three-phase rather than single-phase electrical supply and, to that extent, he may have done things differently. He confirmed that where the lights or appliances are going to be supplied by someone other than the contractor, the contractor must necessarily rely on information provided by the clients. In this case, Mr. Dettling had not been aware that the lights were not supplied by the plaintiff and that the plaintiff was retained only to provide the electrical connections.

[146] Bill Lewis testified that the load calculations that Paul Forai testified were sent to Technical Safety BC before the work was commenced, and include reference to LED lights, contain no date and no time; Bill Lewis testified that he is "100% certain" that the document is a complete fabrication. However, the suggestion that the load calculations were fabricated was never put to either Mr. Forai or to Mr. Yazlovasky during cross-examination, and I reject the suggestion that the load calculation document was not created by an employee of the plaintiff at the outset of the job and sent to Technical Safety BC.

Discussion

[147] I find that the plaintiff took its direction with regard to the electrical system from the defendant as the project evolved. That is, there were no engineered drawings for the plaintiff to follow, and the defendant therefore would and did answer questions as they came up as the project progressed. There were therefore no predetermined requirements for the electrical system, and the defendant provided instructions as needed.

[148] In the absence of express terms, certain terms can be implied in a contract. *G. Ford Homes Ltd. v. Draft Masonry (York) Co. Ltd.*, 1983 CarswellOnt 732 (O.N.C.A.) at para. 10 states what some of these implied terms are regarding contractors:

10 For almost a century it has been recognized that a term will be implied in a contract in order to give it business efficacy: see *The Moorcock* (1889), 14 P.D. 64. The basis upon which a term of a contract will be implied has been extended by decisions of the English Court of Appeal and the House of Lords. Hudson's *Building and Engineering Contracts* (10th ed., 1979), pp. 274-5, gives us a useful summary of the law pertaining to when terms will be implied in a contract:

It is submitted that a contractor undertaking to do work and supply materials impliedly undertakes:

(a) to do the work undertaken with care and skill or, as sometimes expressed, in a workmanlike manner;

(b) to use materials of good quality. In the case of materials described expressly this will mean good of their expressed kind. (In the case of goods not described, or not described in sufficient detail, it is submitted that there will be reliance on the contractor to that extent, and the warranty in (c) below will apply);

(c) that both the work and materials will be reasonably fit for the purpose for which they are required, unless the circumstances of the contract are such as to exclude any such obligation (this obligation is additional to that in (a) and (b), and only becomes relevant, for practical purposes, if the contractor has fulfilled his obligations under (a) and (b)).

[Emphasis added]

[149] In all of the circumstances, I am satisfied that although the plaintiff's work could possibly have been done differently, it was undertaken with care and skill and in a workmanlike manner.

[150] I am also satisfied that, considering all the circumstances, the work and materials were reasonably fit for the purpose they were required for. Moreover, even if the work was not reasonably fit for the defendant's purpose, I find that the plaintiff provided the system in accordance with the directions from the defendant, and in the absence of engineered drawings.

[151] The absence of engineered drawings is important because if there are such drawings the electrical contractor's obligation is to install the electrical system in compliance with those drawings. If engineered drawings are not supplied, I accept that

the electrical contractor cannot be expected to anticipate with precision the needs of the client and must therefore rely on the client.

[152] Moreover, it is surprising that if the plants were so delicate such that the electrical system needed to be of a particular type or standard, that the defendant would not have incurred the cost of obtaining an electrical engineer's services to design the electrical system, regardless of the fact that none were required for municipal or provincial permitting purposes.

[153] I find that the defendant made assumptions that were not reasonable in the circumstances. For example, Bill Lewis stated that the plaintiff knew what type of lights the defendant was going to use, namely double-sided 1000W Govida HPS lights but, when questioned on the point, his evidence went no further than they used the same lights from the Lake Country facility and that Mr. Yazlovasky never said he did not recognize them. This falls well short of proving that the plaintiff was aware of what the defendant wanted, and I find that the defendant failed to make its requirements and expectations clear to the plaintiff.

[154] I will refer to another example of an assumption made by the defendant, and for which Bill Lewis sought to blame the plaintiff. Mr. Dettling's evidence was that the building does not have sufficient power for the defendant's intended purpose. Mr. Dettling testified that the building has 600 amps of service, and that the service is also utilized by the other two commercial units that are in the same building. As such, the building itself likely does not have enough power for everything the defendant wants to do there, regardless of the design of the electrical system. Mr. Dettling's opinion is that the defendant should have two 400-amp services.

[155] Curiously, Bill Lewis claimed that he was surprised to have heard Mr. Dettling testify at the trial that the defendant does not have enough power in the building to run the facility as the defendant would choose. Bill Lewis questioned why someone, presumably with the intention of blaming Mr. Yazlovasky, did not say something about needing to upgrade the building's power supply and says that the plaintiff just went ahead and did the job.

[156] However, the defendant had already leased the building several months before it retained the plaintiff. One might have expected that if the defendant had specific and significant requirements for its electrical supply, it would have taken steps to ensure its adequacy before entering into the lease.

[157] In the circumstances, I find that the defendant has failed to prove that the electrical work performed by the plaintiff was not done with care and skill or in a workmanlike manner. Further, I find that the defendant has failed to prove that the electrical work was not reasonably fit for the circumstances and I am not satisfied that the circumstances of the agreement resulted in an obligation on the plaintiff to ensure that his electrical work was reasonably suitable for the purposes of this particular marijuana grow operation.

Disposition

[158] The plaintiff is entitled to judgment on its claim in the amount of \$293,293.59. The defendant is entitled to damages in the amount of \$22,000 on the counterclaim. I conclude it is fairer for both parties if the amount due on counterclaim is set off against the plaintiff's judgment, notwithstanding the individual parties were all included in the counterclaim. When these amounts are off set, the plaintiff is entitled to judgment in the amount of \$271,293.59. The plaintiff is entitled to pre-judgment interest pursuant to the *Court Order Interest Act*, effective January 1, 2022.

[159] The plaintiff has been substantially successful and, absent anything of which I am not aware, the plaintiff is also entitled to its costs at Scale B. If either party wishes to address the issue of costs, they may contact Supreme Court Scheduling within 21 days of these reasons to make those arrangements.

“Wilson J.”