

Keith Barnes and Shipyard Farms Ltd., a body corporate v. Ralph Lawson and Family Farms Ltd. – 2025 NBKB 274

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF MONCTON

MC/447/2022

BETWEEN: **KEITH BARNES & SHIPYARD FARMS LTD., A BODY CORPORATE,**
– and –
RALPH LAWSON and FAMILY FARMS LTD.

DECISION

BEFORE: Justice Robert M. Dysart
AT: Moncton, New Brunswick
DATE OF HEARING: May 12 to 16, 2025
DATE FINAL POST-HEARING BRIEF SUBMITTED: June 2, 2025
DATE OF DECISION: November 21, 2025
APPEARANCES: Alexandre Robichaud & Brian F.P. Murphy, K.C., for the Plaintiffs
G. Robert Basque, K.C., for the Defendants

DYSART, J.

SYNOPSIS

- [1] In late 2021 and early 2022, the parties to this lawsuit came together to construct what was intended to be a new abattoir in Kent County, New Brunswick. The principals are beef farmers, and the abattoir was intended to serve their respective farms and those of other local farmers.
- [2] According to the Plaintiffs, their role was simply to act as a lender to the Defendant, Family Farms Ltd., so that it could build the new abattoir. The Plaintiffs say the oral agreement was that the abattoir would be built on lands owned by Keith Barnes, and that Shipyard would loan Family Farms \$300,000 to complete the construction. This, the Plaintiffs say, was based on assurances from the Defendants that the project could be completed for that sum and no more. The Plaintiffs say that when it became clear that the cost of construction would exceed that agreed-upon sum, they had no choice but to halt the project.
- [3] The Plaintiffs say they are owed approximately \$350,000.00, made up of their estimate of the cost to complete the unfinished building, as well as the return of certain monies paid to the Defendants, which they say are loans.

- [4] The Defendants tell a different story. They say the agreement was that Shipyard would become a shareholder of Family Farms, and that Keith Barnes would pay \$20,000 on behalf of Shipyard and convey land to Family Farms in exchange for Shipyard's equity, and that Shipyard would make a loan (to be secured by a mortgage on the land) for the construction costs. That is, the parties agreed to partner as shareholders in Family Farms for the construction of the abattoir, for their mutual benefit as cattle farmers. The Defendants say the project was proceeding as expected and on-budget when Keith Barnes became upset with Ralph Lawson over construction decisions, and he shut down construction without justification, thereby causing damages to the Defendants and frustrating any possibility of completing the abattoir.
- [5] The Defendants say Mr. Barnes failed to perform his end of the bargain by failing to convey the lands where the abattoir was constructed and has retained ownership of the land and the building. The Defendants say Mr. Barnes has therefore benefited from the project and has been unjustly enriched through the efforts of Ralph Lawson, who designed and oversaw construction of the abattoir.
- [6] The Defendants ask that the action as against them be dismissed, and they counterclaim for various damages, including for loss of anticipated revenues, damages for mental distress and for the value of Mr. Lawson's

time and skill in designing and building the abattoir based on an alleged unjust enrichment.

[7] For the reasons set out below, the Court accepts that there was an agreement for Shipyard to become a shareholder and for the construction of the new abattoir to be a partnership between the parties, as shareholders in Family Farms. In their rush to start the construction, the parties neglected to formalize parts of the deal and they delayed legal steps to give effect to their agreement, but the intent was clearly for the land to be conveyed from Keith Barnes to Family Farms in exchange for an equity stake in Family Farms, and that Shipyard would then extend an interest-free \$300,000 mortgage to Family Farms for the construction of the abattoir. Shipyard was not strictly a lender, as suggested by Keith Barnes.

[8] The Court accepts that Keith Barnes wrongfully terminated the agreement because Mr. Barnes was personally insulted over a disagreement regarding the construction. The Plaintiffs have failed to prove that the Defendants breached the terms of the agreement or that the agreement was terminated due to a fundamental or anticipatory breach by the Defendants. The Plaintiffs are thus not entitled to the damages claimed.

[9] Further, the Court is satisfied that Keith Barnes, as owner of the lands and the partially constructed building, has been unjustly enriched by the work

performed by Ralph Lawson in the design and construction of the abattoir. As a result, Ralph Lawson shall have judgment as against Keith Barnes in the sum of \$20,000.

[10] The Defendants are also entitled to costs.

INTRODUCTION/UNDISPUTED FACTS

[11] Keith Barnes lives in Bass River, Kent County, New Brunswick. He is a farmer and truck driver. He started as a dairy farmer in 1981 but later moved to beef cattle. He operates his farm through his company, Shipyard Farms Ltd.

[12] His son, Alex Barnes, worked with him on the farm, taking care of the butchering, packaging and sales of the meat. Alex Barnes also operated the company's Facebook site.

[13] Ralph Lawson is also a cattle farmer. He lives in Main River, Kent County, New Brunswick. His cattle operation is not a party to these proceedings.

[14] In addition to being a farmer, Ralph Lawson was also a shareholder and officer of an abattoir operating as Family Farms Ltd. Family Farms was started in 2006 by four shareholders: Mr. Lawson; his son, Grant Lawson; Edgar Lennox; and Aaron Girvan.

- [15] From 2006 until 2021, Family Farms operated its abattoir in Kent County on lands owned and leased initially from a woman named Marion Schorn. Ralph Lawson designed that abattoir and built it with the assistance of his son and Mr. Girvan. Mr. Lennox was solely an investor in the project. The abattoir was constructed inside an existing building on the property.
- [16] It is uncontested that the abattoir provided local cattle farmers with access to processing with minimal transportation costs, which is a significant factor in the viability of such farming. According to the evidence at trial, every cattle farmer in Kent County except two relied on the Family Farms abattoir.
- [17] Then, in or about early 2020, the property upon which the abattoir was located was purchased by Mr. Lennox – one of the investors. He advised Family Farms that the lease would be terminated in June 2020. They were asked to vacate by summer of 2020 – but that date was extended to October 2021, when the abattoir was closed.
- [18] In the knowledge that the abattoir would be closed, Ralph Lawson began discussions with Alex Barnes and others about the possibility of building a new abattoir to serve the local farming community, including both of their respective farms. Those discussions started in 2020 and continued into the summer of 2021.

[19] Initially, the discussions were around Alex Barnes becoming a shareholder in Family Farms and for him to assume day-to-day operation of the abattoir from Ralph Lawson. The intention was to allow Family Famers to build some equity for its shareholders such that the abattoir, which was never intended to be a profitable business, could continue providing low-cost meat processing services to the local farmers, and especially its owners.

[20] Ralph Lawson prepared plans for a larger-scale abattoir at a cost of around \$500,000. Eventually, however, after Keith Barnes became involved in the discussions – initially to assist his son to try and obtain an interest in Family Farms – it became clear that, without adequate collateral, Alex Barnes could not get the necessary financing to obtain an equity share.

[21] It is at that time that the parties came up with a new plan.

[22] Unfortunately, that plan was not reduced to writing. Hence, it is for this Court to determine the terms of that agreement.

DOCUMENTARY EVIDENCE

[23] The parties submitted over 1,000 pages of evidence in three bound volumes (Exhibit 1A, 1B and 1C), as well several other pages of evidence, all by consent. That evidence includes several hundred pages of text messages

passing between the parties and their associates. Those documents have all been reviewed by the Court and considered. For efficiency, they will not be referred to in these reasons unless they have particular relevance to the matters in issue.

- [24] In addition, the Court heard from three witnesses: Keith Barnes and his son, Alex Barnes, for the Plaintiffs; and Ralph Lawson for the Defendants.

Evidence of Keith Barnes

- [25] According to Mr. Barnes, he and Ralph Lawson had known each other for a number of years, as local farmers would. They were not close friends.
- [26] He acknowledged using Family Farms for Shipyard's butchering for a number of years. When he learned in 2020 that the Family Farms abattoir would close, he said this led to a number of discussions about their options, which would have meant transporting their cattle to another abattoir at considerable extra cost. His son, Alex, looked at trying to start an abattoir in Kent County, but by 2021 it was clear that Alex could not obtain the necessary financing. Alex had been in discussions with Ralph Lawson of Family Farms since 2020, and a number of potential arrangements had been discussed, but in the end those parties could not obtain the necessary financing for the project. He spoke with Alex about those plans and was kept abreast of Alex's efforts to find a way to start the new abattoir, but he

testified that he was never interested in investing in Family Farms or building the abattoir.

[27] Mr. Barnes testified that in August or September 2021, they were not sure what they would do with their cattle if the abattoir closed and there was no replacement. He intended for his son to continue farming, which would be difficult without a local abattoir. Alex then suggested that they meet with Mr. Lawson to discuss the options.

[28] According to Mr. Barnes, he met with Ralph Lawson sometime in September 2021. This meeting took place at the Barnes residence. Keith Barnes, Alex Barnes, Ralph Lawson and his wife Darlene Lawson were present. According to Keith Barnes, Ralph Lawson explained that Family Farms was looking for financing of \$500,000 from Mr. Barnes or Shipyard. Keith Barnes testified that he told Mr. Lawson that \$500,000 was too much, and that he should try to re-scope the project down to \$300,000. He told Ralph Lawson to come back if he could complete the project for that lower figure. He explained that he and Alex had done some calculations, and they believed that at \$300,000, the new abattoir would be cost-effective.

[29] According to Keith Barnes, there was a second meeting. Again, he, Alex, Ralph Lawson and Darlene Lawson were present at the Barnes residence. He thinks it was on September 20 or 22, 2020. According to Mr. Barnes'

testimony, Ralph Lawson had re-scoped the abattoir and reduced the cost to \$300,000 as they had previously discussed. He explained that he agreed to finance the abattoir. The financing would come from his personal savings, to be paid through Shipyard. It was not explained why the money would pass through Shipyard. The money would be paid back to Shipyard over 10 years, he testified. It would be an interest-free loan. In exchange, Shipyard would get a deep discount on its beef processing – though no specific discount was discussed. Again, nothing was reduced to writing.

[30] Mr. Barnes testified that he agreed to make three payments of \$100,000. He said he was aware that Mr. Lawson had operated the former abattoir but had not constructed the building. He was not aware whether Mr. Lawson had any other construction experience. He said Mr. Lawson assured him that he (Mr. Lawson) knew how to construct the abattoir using reinforced concrete forms.

[31] Keith Barnes also testified that, as part of the unwritten agreement, he agreed to loan some money to Ralph Lawson to pay out his other shareholders. He gave him \$20,000 for that, he said. That was on October 30, 2020. It was never his intention to become a shareholder, he testified repeatedly. He was merely a lender and Mr. Lawson needed to buy out his other partners in Family Farms in order for the new abattoir to be built.

- [32] He testified that, in addition to the \$20,000 paid to Ralph Lawson, he made the three instalments of \$100,000 each – one on November 2, 2020; another on November 29, 2020; and the final one on February 1, 2022.
- [33] In total, he said he loaned Family Farms \$320,000. That was for the construction of the building and to buy-out the shareholders, but not for the equipment that was needed inside the abattoir. He testified that was the responsibility of Family Farms.
- [34] As for the land that was to be used for the site of the new abattoir, Mr. Barnes testified it was land which he owned in his name – not Shipyard. It was part of a 40-acre parcel. His son, Alex, also lived on that 40-acre parcel. The land required for the abattoir was to be sub-divided out. Mr. Barnes said because of difficulties getting a surveyor, that parcel was not actually created until April 2022 – after the construction had been stopped by Mr. Barnes. It was never transferred to Family Farms, but that had been the intention of the parties as part of the agreement. Then, after testifying about the difficulties getting a surveyor to create the subdivision, he back tracked somewhat, saying it had not been discussed who would own the land. Of course, he previously testified that he was supposed to get a mortgage back, meaning he knew the land would be transferred to Family Farms, the company to whom he loaned the money. Mr. Barnes testified there was no discussion of the price Family Farms would pay for the land.

He suggested that perhaps it would have been based on an appraised value, but that was speculation.

[35] As well, Mr. Barnes testified that at some later time, after the construction had begun, he had another conversation with Ralph Lawson about the HST rebate that would be available to Family Farms in relation to the construction of the building. He testified that it was agreed that the rebate would be paid to Shipyard towards the repayment of the \$300,000 mortgage loan. This was never reduced to writing.

[36] Keith Barnes testified that, as lender, he was merely trying to facilitate the construction of a new abattoir. He did not intend to be involved in the operation of the abattoir – that was left to Ralph Lawson and Family Farms. And he stated repeatedly that he did not intend to become a shareholder in Family Farms.

[37] Mr. Barnes testified that the plan was to start the construction in October, 2021 in order to get the groundwork completed before the winter freeze-up. Ralph Lawson's role in the project, as the principal of Family Farms, was to oversee the construction, retain the subcontractors and get the project built on budget. Mr. Lawson was also required to get the necessary permits, both for the construction and for the operation of the abattoir. Because Mr.

Barnes was merely a lender to Family Farms, there was never any discussion about Ralph Lawson being paid for his work, he testified.

[38] Keith Barnes testified that, over the course of the construction during the months of November and December 2021 and into the early months of 2022, he received periodic updates from Ralph Lawson, including spreadsheets with building costs and estimates. He testified that he raised his concerns about the costs of construction on several occasions, but each time he was assured by Ralph Lawson that the expensive parts of the construction were incurred at the early stages and that things were on plan. Mr. Barnes testified that he told Mr. Lawson on several occasions that the total cost could not exceed the \$300,000 he was loaning Family Farms. Those concerns were never in writing either, despite that they were texting one another regularly.

[39] Mr. Barnes testified that he received a cost update on January 1, 2022, which showed they had spent \$147,000 on the project to date. The estimated cost to completion was apparently \$307,000 – slightly higher than what he had been assured, but he was alright with that modest overrun, he said. He testified that, as he was on the stand in court, that was the first time he ever noticed that there were items on the “to do” list which had not yet been costed by Mr. Lawson – implying the total cost would have been projected to be even higher than \$307,000.

[40] By January 2022, the project was at risk of being delayed due to difficulties securing roof trusses for the building. It was in the midst of the Covid-19 pandemic, and there were supply issues affecting their project, Mr. Barnes acknowledged. He suggested the name of a carpenter who could do the work and deliver the trusses quickly, a man named Joe Coggar (see Exhibit 1B, page 487). Mr. Barnes denied that he hired Mr. Coggar. He said he was simply the lender, and it was Family Farms that hired Mr. Coggar.

[41] It is evident from the record that Mr. Coggar and Ralph Lawson did not see eye-to-eye about the project. As the person who designed the abattoir, Ralph Lawson had specific ideas about how some of the work was to be completed. Because of the strain between them, Mr. Coggar often communicated with Mr. Barnes (see Exhibit 1A, page 150). In fact, Mr. Coggar wrote a text to Ralph Lawson in which he stated that it was Keith Barnes, and not Ralph Lawson, who had hired him (see Exhibit 1A, page 150).

[42] Mr. Barnes was asked by his counsel why he shut down the project on March 10, 2022. His counsel showed him a text message exchange between himself and Ralph Lawson, which reads (verbatim):

March 9, 2020, Ralph Lawson writes:

"[...] Very disappointed to see the cooler ceiling strapped with 2x6. Also he [i.e. Coggar] installed the vapour barrier on the strapping and not the trusses. The ceilings will have to be panelled now before we insulate. All

these things are slowing things down considerably. I think we need to meet sometime and discuss how we're going to get this back on track and schedule or it's going to be June before we get operational"

March 10, 2022, Keith Barnes writes:

"I want to inform you that No Lawson or anyone else is going to scold me for making my building better It's very obvious this partnership in (sic) not going to work so as of today I am shutting down my building site"

[43] On the stand, Keith Barnes testified that the reason he cancelled the project was that it was over budget. He said he made the decision to end the job when he got the most recent cost estimate, which he said was very high. He denied that it was because Mr. Lawson had insulted him, and he denied that they had entered a partnership over the abattoir, notwithstanding what was written in that text exchange.

[44] In fact, the last update Keith Barnes received from Ralph Lawson before stopping the construction had been received almost a month earlier, on February 13, 2022. According to the cost estimate at that time, the total anticipated cost to completion was only \$252,817 (see Exhibit 1C, page 893), well under the \$300,000. Again, though, it would seem there were items that had not been costed by Ralph Lawson.

[45] He testified that a few days before the shutdown, he had concluded that the project was going to be over budget, and he planned to shut it down. Yet, between March 8 and 10, 2022, Keith Barnes continued to text Ralph Lawson with respect to the job, even suggesting that he would attend the Gorge Road rock quarry to obtain crushed stone (Exhibit 1B, page 534),

and suggesting they obtain materials from Kent Building Supplies because they offered a farm discount (Exhibit 1B, pages 537-8).

[46] On cross-examination, Keith Barnes admitted that, in addition to the \$300,000 he loaned to Family Farms, there was also an HST credit that would be coming to the company, and they had also obtained a provincial grant. He admitted, therefore, that the total cost of the project was expected to be in the range of \$385,000. This contradicts his earlier testimony that the total cost was not to exceed \$300,000.

[47] Keith Barnes acknowledged there had been a dispute between Ralph Lawson and Joe Coggar over the manner of installing the ceiling. Mr. Lawson, who designed the abattoir, wanted a flat ceiling, whereas Mr. Coggar wanted the ceiling to be strapped. Because those two could not agree, Mr. Barnes admitted that he instructed Mr. Coggar to proceed with his preferred method, overruling Ralph Lawson. He agreed that was what led to his exchange of texts with Mr. Lawson and his decision to shut down the project. "It was on my land," he testified.

[48] When asked why, if in fact his decision was based on cost overruns, his text to Mr. Lawson did not reference cost concerns, Mr. Barnes said he did not need to state that because Ralph Lawson already knew the reason. He

then agreed that he had never had any discussions with Ralph Lawson about the cost overruns, seemingly undermining his own testimony.

[49] He asserted again on cross-examination that there was never an agreement that he or Shipyard would obtain shares in Family Farms. He was solely a lender.

[50] He agreed that there was a plan to subdivide a parcel of his land but said that was delayed because they could not find a surveyor. That land was never conveyed to Family Farms. He denied that it was ever part of the agreement that he would also have his lawyer draft a unanimous shareholder agreement between Shipyard and Ralph and Darlene Lawson – because he said there was never a deal to become a shareholder.

[51] He was asked why the total cost was an issue, if he was going to get a mortgage to secure his loan. He agreed that, if there were cost overruns, that would not risk his security.

[52] Keith Barnes confirmed that he continues to own the land and the partially completed abattoir building.

[53] The difficulty with much of Keith Barnes' evidence, which was at times self-contradictory, is that it is completely at odds with many of the written

exchanges between himself, his son Alex, and Ralph Lawson as contained in the evidence admitted by consent.

[54] While Keith Barnes says he was only a lender, the documentary evidence suggests otherwise. He was meeting with Ralph Lawson from the summer of 2021 and well into the autumn of that year and was sent copies of the floor plans and the costing estimates prepared by Ralph Lawson. He was actively involved in seeking out suppliers and he weighed-in on costing throughout the project. He oversaw much of the work, as is confirmed in the hundreds of pages of text messages passing between himself, Alex Barnes and Ralph Lawson. He recommended Mr. Coggar and Mr. Coggar believed that he had been hired by Keith Barnes. He decided which ceiling method to use.

[55] Perhaps the most compelling evidence in terms of undermining Keith Barnes' evidence is the document found at Exhibit 1C, page 956. It is a receipt, which he admits was handed to him by Ralph Lawson on November 1, 2021 – a couple of days after Keith Barnes advanced \$20,000 intended to pay off Mr. Lawson's other shareholders. At trial, Mr. Barnes denied that there was an agreement that Shipyard, through the payment of \$20,000 to Family Farms and the transfer of a parcel of land for the abattoir, would acquire a 50% interest in Family Farms. That receipt suggests otherwise.

- [56] Written on Family Farms letterhead and signed by Ralph Lawson as President, the receipt reads:

NOVEMBER 01, 2021

RECEIPT

RECEIVED FROM SHIPYARD FARMS THE SUM OF \$20,000 AND LAND TO BE SUBDIVIDED FROM PID#25034294 IN EXCHANGE FOR 50% OWNERSHIP IN FAMILY FARMS LTD.

FUNDS ARE FOR THE BUYOUT OF EXISTING SHAREHOLDERS MATHEW GRANT LAWSON AND AARON JAMES GIRVAN. SHAREHOLDER EDGAR H. LENNOX WILL RECEIVE FAMILY FARMS LTD LISTED EQUIPMENT* FOR HIS BUYOUT AND ALL REMAINING INTREST (sic) IN FAMILY FARMS LTD.

SHAREHOLDERS RALPH & DARLENE LAWSON WILL REMAIN IN A 50%/50% PARTNERSHIP WITH SHIPYARD FARMS.

*EQUIPMENT LIST

1 COMPLETE OPERATING COOLING UNIT (COMPRESSOR, EVAPERATOR, & ALL CONTROLS)

1 LARGE WALK-IN COOLER INCLUDING RAIL SYSTEM AND 4 STAINLESS STEEL TROLLEY HOOKS CUT ROOM, 2 STAINLESS SINKS, UPGRADED TROLLEY I BEAM.

- [57] Initially, Keith Barnes said he did not know whether he had read that receipt when he received it. But when pressed by counsel for the Defendants, he agreed he read it quickly. He said he did not really understand what it meant, and that he would never have agreed to become a shareholder of a company with so much debt, especially without having first seen the company's financial statements. He protested that he had not signed that receipt or accepted its terms in any way. He agreed, however, that he never contacted Ralph Lawson to express his concerns about the document. He then suggested that, as a farmer, he was not familiar with technical wording

in a document like that. The Court cannot rely on that testimony. It lacks credibility.

[58] Much of the other documentary evidence supports the content of the receipt, i.e. that in exchange for \$20,000 cash and the transfer of a parcel of land to Family Farms for the abattoir, Shipyard Farms would become a 50% shareholder in Family Farms. For example, just a couple of days earlier, Ralph Lawson texted Keith Barnes that: "I'll work on the sign off for Edgar, Aaron and Grant and get you a receipt for your buy in also." Mr. Barnes never objected to that text.

[59] His testimony is also contradicted by an exchange of text messages between Alex Barnes and Ralph Lawson on October 1, 2021, which is described later in these reasons.

[60] Alex Barnes, who was responsible for Shipyard Farms' Facebook page, posted the following announcement on November 22, 2021:

"As some of you know Family Farms Ltd, the farmer operated abattoir that has been serving the local area since 2007 and cutting and wrapping our beef since 2016, had to close its doors and stop operating in October. We have partnered with them to construct a new farmer owned and operated abattoir to process our own animals in Kent County."

[61] The day after he shut down the project, Keith Barnes texted his son, Alex, writing:

"If you want to Finnish (sic) butcher shop with Ralph Go ahead I give you me (sic) 50% shares. I want \$320,000 over 10 years And you get Ralph shares when he done"

[62] As well, on March 31, 2021, counsel for Keith Barnes and Shipyard Farms wrote to Ralph Lawson of Family Farms, stating:

“Pursuant to the agreement between my clients and Family Farms Ltd. and its shareholders, Shipyard Farms Ltd. is now a shareholder of Family Farms Ltd.”

[63] On May 5, 2022, Keith Barnes sent a text message to Ralph Lawson, proposing a settlement of their dispute. The proposal, which would be without prejudice, is immaterial to these proceedings. But in it, Mr. Barnes wrote:

“Remember that I bought and paid for Aaron and Grant’s shares so you cannot sell any part of Family Farms until I am paid.”

[64] When confronted with these clear acknowledgements of the share purchase deal, Keith Barnes’ testimony was evasive and nonsensical – suggesting that he was only asserting rights as a shareholder because Ralph Lawson had told him he was a shareholder. He then backtracked, saying that what he meant by that May 5th text was that he had fronted the money used to buy those shares. He was inconsistent in his testimony.

Alex Barnes

[65] Alex Barnes worked for his father’s farm, Shipyard Farms. He worked as a farm hand and was responsible for taking the cattle for processing, and for the packaging and sales of their meat products.

- [66] He was a full-time employee of Shipyard Farms in 2020, 2021 and 2022.
- [67] He first met Ralph Lawson in 2016, he thinks, because Shipyard brought their cattle to the Family Farms abattoir.
- [68] When he learned Family Farms would have to close that original abattoir, Alex Barnes said he started to discuss options with Ralph Lawson to find a way to start a new abattoir in the region. Without one, he testified, their transportation costs increased significantly, affecting their profitability and their long-term viability as a business. He said he had a good relationship with Ralph Lawson.
- [69] He explained that, initially, he was looking at ways to partner with Mr. Lawson personally, i.e. not through Shipyard Farms or his father, Keith Barnes. He explained that, in the end, they simply could not get financing for the project. He admitted on cross-examination that Family Farms could not get the financing, as opposed to Ralph Lawson personally, who was trying not to invest any of his own money in the abattoir.
- [70] According to Alex Barnes, it was in July of 2021 that he and Ralph Lawson first approached Keith Barnes to see if he was interested in becoming involved in a new abattoir. He believes the first meeting was at the Barnes' home. He testified that they discussed the future of their cattle businesses,

and Ralph asked Keith if he was interested in lending Family Farms the money required to build a new abattoir. He testified that Keith Barnes said he was prepared to lend up to \$300,000 and he asked Mr. Lawson if the project could be done for that amount. According to Alex, Mr. Lawson said he could reduce the size of the project and re-scope it to \$300,000. He said Keith offered some of his property for the project, but he did not recall anything else being discussed at that time. The money would be repaid over 10 years and Shipyard Farms would get a discount on its meat processing.

[71] He was asked about other aspects of the agreement between his father and Ralph Lawson. He said he “thinks” Ralph also asked for \$20,000 to buy out his other shareholders. Counsel for the Plaintiffs showed him a copy of the receipt dated November 1, 2021. He said he was not sure what that document was referring to. He was also shown his text messages with Ralph Lawson on October 30, 2021:

Ralph writes:

I'll get Edgar to sign off to (sic). Also will do a receipt for Shipyard Farms (\$20,000 plus the land) for 50%. Sound right?

Alex replies:

“That sounds right to me!”

[72] Alex testified that he was not really sure what that was about, either. He did not know. He said the details of the agreement were outside his knowledge and control and he testified that, as an employee of Shipyard

Farms, he was not authorized to bind the company – clearly in an attempt to reduce the impact of those text messages on the Plaintiffs.

[73] He testified that, once the deal was made between his father and Ralph Lawson, his role was limited to working as a labourer on the project. He said he did minor jobs. He testified that Ralph Lawson may have sought his input on small matters, but generally it was Mr. Lawson who was looking after the project. He said he was being sent the cost estimates from Ralph possibly because he was quicker to respond than his father.

[74] On cross-examination, however, he agreed that he was actively involved in securing equipment, and he was involved in discussions about the design, the layout and the construction of the abattoir. According to the text messages exchanged between Alex, Keith Barnes and Ralph Lawson, it is clear that Alex Barnes' role was much greater than he described on the stand.

[75] For example, he admitted that he submitted Family Farms' application to the Province for the abattoir's operating permit. He identified himself on that application as the "Manager" of the abattoir. He used his own address on the application. While Alex agreed he signed the document and sent it to the Province, he said it was an error to identify himself as the manager.

- [76] When shown evidence of his significant, almost daily involvement in the project, he answered that he was just trying to help, as an employee of Shipyard Farms. He said his father had loaned the money for the construction, so he wanted to help the project along.
- [77] When asked about the cost estimates that were sent to him and to Keith in late 2021 and early 2022, Alex had no recollection of those estimates or whether he looked at them. He did not recall whether he ever discussed them with his father, or whether he met with his father and Ralph Lawson to discuss the cost projections, as was suggested in some of the text messages.
- [78] When asked about the Facebook post, notifying their customers that they had “partnered” with Family Farms to build a new abattoir, Alex testified that it was not intended to be a legally binding document. Again, he appeared to be trying to limit the damage of that evidence to his father’s lawsuit.
- [79] As for the shutdown of the construction site on March 10, 2022, Alex testified that he did not have any discussions with his father beforehand.
- [80] He was asked about the text from his father on March 11, 2022 – the day following the closure of the site – where Keith said he would give Alex his 50% shares in Family Farms. Alex testified that this was because Ralph

Lawson had told Keith Barnes he was a shareholder. He admitted that, as far as he was aware, Keith Barnes knew on March 11, 2022 that he was a 50% shareholder in Family Farms.

[81] After the shutdown of the construction site, Alex approached Ralph Lawson to find a way to complete the abattoir. He admitted that in his text exchanges with his father and with Mr. Lawson, there was no mention of cost-overruns as the reason for the shutdown. He explained that there is nothing in writing, but he believes it was discussed in person. His evidence in this regard was vague.

[82] In written “minutes” that were apparently prepared by Alex Barnes’ wife, there are multiple references to Shipyard Farms possibly buying Family Farms. Alex testified that must have been an error by his wife, but he later acknowledged it had been discussed after the shutdown.

CREDIBILITY OF KEITH BARNES AND ALEX BARNES

[83] In their post-hearing brief, the Plaintiffs cite my colleague, Justice Grant, in ***Chestnut v Nortondale Farm Ltd.***, 2023 NBKB 36 (CanLII). On the issue of assessing credibility, Justice Grant wrote:

[29] In the case of *Faryna v. Chorney*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A) O’Halloran, J.A. stated at paragraph 357:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its

consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[84] Having considered his testimony as a whole, and in the context of the other evidence presented at trial – primarily written evidence admitted by consent – I simply do not accept Keith Barnes’ testimony regarding the nature of the agreement between himself and his farm, Shipyard Farms, and the Defendants. He is not credible. I do not believe him.

[85] Alex Barnes also has serious credibility problems. He testified under oath that his involvement with the new abattoir was minimal once his father became involved as a lender, yet the text messages and emails show that he was very much involved in the design, costing and construction of the project, from the beginning until the construction was stopped by his father in March 2022. He completed the application form for Family Farms’ operating permit and listed himself as the manager. He gave his address. His explanation that it was an error is simply not credible. He was very active in the project, which is consistent with Shipyard Farms, his father’s business and his employer, being a partner in the project.

[86] When the evidence was detrimental to the Plaintiffs’ case, Alex Barnes’ testimony was either evasive or his memory was poor. He was aware, in my view, that there was an agreement whereby Shipyard was purchasing a

share interest in Family Farms, hence his agreement on October 30, 2021 to Ralphs Lawson's text message about the receipt. His suggestion that he did not know what that was about is not believable.

[87] Ultimately, I assign little weight to the testimony of either Keith Barnes or Alex Barnes.

Ralph Lawson

[88] Ralph Lawson is 77 years old. He is a cattle farmer in Main River, New Brunswick.

[89] His background includes attending Community College in 1960s as a machinist; he then worked as a machinist and as a "Senior Methods Specialist" working under an engineer in what sounds like a Engineering Technician position. He worked with computers, blueprints and equipment lists. He also had experience drafting and designing houses. He also oversaw some construction work on his farm, including the building of his home and some barns.

[90] Ralph Lawson also oversaw the renovation of the building which housed the former abattoir operated by Family Farms, a company he owned along with his son, Matthew, Grant Girvan and Edgar Lennox.

- [91] He started as a dairy farmer in 1981, then switched to beef farming in 1998.
- [92] Mr. Lawson testified that in 2006, he and his partners decided to start the Family Farms abattoir. That abattoir was built inside a building that was already on the lands of the former landlord. Ralph Lawson acted as the lead designer and contractor on that renovation.
- [93] Once it was built, the day-to-day operations of the abattoir were taken over by Grant and Aaron. Unfortunately, by 2011, both Grant and Aaron had left the operation, and so Ralph took over. He continued to operate his own cattle farm as well.
- [94] Mr. Lawson testified that in June 2020, the new landlord of the property (one of the shareholders of Family Farms) gave notice that the lease would be terminated. This started the discussions about building a new abattoir from scratch. He said they were able to extend the lease to October 2021, but they started to look at alternatives right away in 2020.
- [95] Mr. Lawson testified that he came up with a plan for a new plant. He designed the new abattoir and wanted to restructure Family Farms to create equity for the shareholders, and he wanted a succession plan for himself, so he could eventually step away from Family Farms. The goal was to ensure there was a local, low-cost way for farmers to process their meat.

- [96] He said the goal was to obtain financing for Family Farms itself, rather than through the shareholders. Again, he wanted the business to be stable. The difficulty was that the company did not have many assets, as it did not own the land where it had operated the original abattoir. Mr. Lawson testified that he personally could have obtained the necessary financing for the construction, but that would not have achieved the goal of creating equity for shareholders and a plan for succession.
- [97] He testified that, eventually, he started to discuss partnering with Keith and Alex Barnes. His discussions, though, were always with Alex. Then, sometime in October 2021, he believes, he met with Keith Barnes who indicated that he wanted to be a partner through his company, Shipyard. Mr. Lawson said he knew and liked Alex and thought he would be a good manager for the new abattoir.
- [98] Mr. Lawson testified that the oral agreement he reached with Keith Barnes was that Shipyard would acquire a 50% shareholder interest in Family Farms in exchange for: 1) \$20,000 cash; and 2) the conveyance of a lot of land for the construction of the abattoir. Keith Barnes owned the land. Keith Barnes agreed to loan \$300,000 (through Shipyard) to Family Farms for the construction of the abattoir, which Mr. Lawson would design and the

construction of which he would oversee. Shipyard would then receive a mortgage on the abattoir property.

[99] He explained that the \$300,000 advance would cover most of the construction costs and the arrangement would allow Family Farms to obtain assets which would build equity for its shareholders. Mr. Lawson denied that he ever told Keith Barnes that the abattoir could be completely built and equipped for \$300,000. He said that, with a \$300,000 loan, the project could be completed.

[100] As for the \$20,000 cash payment, Mr. Lawson testified that the money was used to buy-out two of the remaining shareholders in Family Farms, so that Shipyard could become a 50% owner. The other consideration for the 50% interest was the land that Keith Barnes agreed to transfer to Family Farms.

[101] Mr. Lawson was asked about the receipt he prepared and gave to Keith Barnes, which is dated November 1, 2021. He testified that he delivered that receipt to Keith Barnes at Mr. Barnes' house. He said it was inside an envelope along with the receipts for the payments to the former shareholders. That was all intended to confirm that he had performed his end of the bargain, towards giving Shipyard its 50% share interest. He said Keith Barnes never expressed any disagreement with the content of that

receipt until the lawsuit was started. Keith Barnes still had to transfer the land in order to obtain his 50% share interest.

[102] Mr. Lawson testified that they started construction in October 2021, to try and get the building erected before winter. They started before some of the formalities of the agreement could be completed - including the issuance of shares to Shipyard and the creation of the parcel of land and the conveyance to Family Farms. He testified that Keith Barnes had agreed to take care of the subdivision and deed, as well as a shareholders agreement. He said they were proceeding on trust because they all wanted the same thing – a new abattoir for their cattle. There were delays getting a surveyor to create the parcel, apparently, which held up the transfer of the land.

[103] Mr. Lawson testified that he designed the building, which was to be constructed using Insulated Concrete Forms, or “ICF.” This was preferable to lumber because of the use of water in the abattoir and the risk of mold.

[104] Mr. Lawson testified that the construction went quite smoothly and quickly, especially considering it was during Covid-19. He said the one big delay was finding roof trusses for the project. He said there as a long backlog and getting trusses became a big problem for them in January 2022. He explained that Keith Barnes identified Joe Coggar as a carpenter who could get trusses for them within two weeks, so they agreed to hire him. Mr.

Lawson said he and Mr. Coggar did not get along well on the construction site, as Mr. Coggar had his own ideas about how the construction should be done and often ignored the designs. One example was an allegation about the building not being square. Mr. Lawson explained that, during the pouring of the concrete there was a windstorm which moved the ICF blocks somewhat, such that one wall was slightly off. According to Mr. Lawson, it was not a structural issue, and it had no impact on the building, but Mr. Coggar made an issue of it.

[105] Another area where there was disagreement was the type of siding on the building. Mr. Coggar insisted on using steel, whereas the plan called for vinyl. This added cost to the project, according to Mr. Lawson.

[106] The biggest disagreement was over the ceiling. Mr. Coggar wanted to use strapping with a vapour barrier, whereas the design called for plywood and spray foam. This disagreement, and the method preferred by Mr. Coggar, resulted in further delays and expense, said Mr. Lawson. And the additional strapping effectively lowered the ceiling which had been precisely measured to ensure that all meat hung a minimum height off the ground, to comply with health requirements. When Mr. Lawson raised his concerns with Mr. Coggar, he replied that Keith Barnes had hired him, and not Mr. Lawson. This led Ralph Lawson to send a text message to Keith Barnes, asking to discuss the problem.

[107] Mr. Lawson testified that he then received a text from Mr. Barnes the following day, i.e. the text of March 10, 2022, which said that “no Lawson” would set foot on Mr. Barnes’ property again, and that Mr. Barnes would not be scolded about how he built his building. Mr. Lawson testified that it was never his intention to insult Keith Barnes, and he tried to apologize, to no avail. Mr. Lawson testified that he was devastated over the closure of the work site by Keith Barnes.

[108] Mr. Lawson testified that the project was “dead in the water.” Family Farms did not own the land and could not access the property without trespassing. As a result, he started to wind down the project. He had to stop deliveries and cancel orders. He continued to report that work to Keith Barnes and he continued to report on costs. He prepared a report which outlined what was left to be done on the project, along with cost estimates.

[109] As for Keith Barnes’ suggestion that he stopped the project due to his concerns that the cost would exceed \$300,000, Mr. Lawson testified that Keith Barnes had never expressed any concerns over cost. When he gave Mr. Lawson the third cheque for \$100,000, Keith Barnes said that was the last one, which Mr. Lawson understood. He had access to other money to complete the project, including a \$50,000 grant from the Province of New Brunswick, CERB grants for payroll (during Covid-19), HST rebates, as well

as a personal line of credit that Mr. Lawson had, if needed. He was not at all worried about being able to fund the construction.

[110] As for the equipment, Mr. Lawson said that most of the equipment from the former abattoir was in his barn and was going to be used in the new abattoir. Any new equipment was listed in the cost estimates.

[111] As for his own efforts in designing and overseeing construction of the new abattoir, Mr. Lawson testified that that was intended to be his contribution towards the project, to the benefit of Family Farms. However, when Keith Barnes shut down the project and kept the land along with the building that Mr. Lawson had designed and helped to build, that did not seem fair to him. That is why he later included a claim for his design and effort in overseeing the construction, as an amount payable to him. He was willing to give those services for free to benefit Family Farms, but not to benefit Keith Barnes.

[112] Mr. Lawson testified that, in the weeks following the closure of the work site, there were numerous discussions between himself, his son Grant and Alex Barnes about ways to revive the project. Mr. Lawson testified that his main concern was finishing the abattoir and getting it operational for the benefit of the local farmers – himself included. None of those discussions were successful.

[113] Throughout the whole construction process, from October 2021 to March 2022, Mr. Lawson said that he and Keith Barnes had very few face-to-face meetings to discuss the project. They saw each other at the work site from time to time, but Covid-19 made indoor meetings difficult. Most of their discussions were by text message.

[114] Mr. Lawson was asked about the grant from the province in the amount of \$40,000. He testified that, had the construction been completed, Family Farms would have qualified for the full \$50,000. He said that when the cheque for \$40,000 was received, payable to Family Farms, he did not want to cash it, since Family Farms was not the owner of the building and would not be completing the abattoir. He testified that, to the best of his knowledge, it was re-issued to Shipyard Farms. It was never cashed by Family Farms.

[115] Regarding the cost estimates that were sent to Keith and Alex Barnes on November 28, 2020, on January 1, 2022, and on February 13, 2022, Mr. Lawson testified that neither Keith nor Alex Barnes ever expressed any concerns about the cost estimates. Not in writing, and not verbally.

[116] Mr. Lawson was asked about the application that was sent to the Province by Alex Barnes, where Alex identified himself as he manager of the Family Farms abattoir. Mr. Lawson testified that it was the intention of all parties

that Alex would be the manager of the meat plant. Mr. Lawson testified the whole arrangement was intended to allow for a succession plan, so Mr. Lawson could pass control of Family Farms to someone else.

[117] Mr. Lawson was asked about Keith Barnes' suggestion that it was also agreed that he or Shipyard would be entitled to receive the HST rebate and the Provincial grant monies. He agreed that Keith Barnes said he wanted the HST rebate, but Mr. Lawson explained that the result would be to effectively reduce the loan from Shipyard to a level that was insufficient to complete the construction. Mr. Barnes raised that sometime after they had reached their agreement, and after the construction had started. Mr. Lawson testified that he never agreed to that, however.

[118] As for Mr. Lawson's claims against the Plaintiffs, he explained that he was seeking compensation for the design of the abattoir and for obtaining the operating permit – in the sum of \$51,490.64. He also seeks \$36,167.67, representing compensation for acting as the general contractor on the project. Finally, he seeks an amount for storage fees, for the storage of equipment owned by Family Farms which was intended to be used in the new abattoir. It is not entirely clear how Mr. Lawson arrived at these figures. It was not explained during his testimony.

[119] As for Family Farms, Mr. Lawson testified the company is still active, but it is effectively insolvent.

[120] As noted by the Plaintiffs in their post-hearing brief, this case depends upon the Court's assessment of the witnesses' credibility. As noted above, the Court found serious credibility concerns with the testimony of both Keith Barnes and Alex Barnes.

[121] No such concerns arise from the testimony of Ralph Lawson. While his recollection of dates and precise details was imperfect at times, the gist of his testimony was entirely consistent with the contemporaneous documentary evidence that was prepared and exchanged between the parties. His testimony as to the agreement between himself, his wife, Keith Barnes and Shipyard Farms is logical and consistent with the various text messages and emails. I have no hesitation in accepting Mr. Lawson's testimony where it conflicted with the evidence of either Keith or Alex Barnes.

FINDINGS OF FACT

[122] Based on the entirety of the evidence, including the testimony of the three witnesses, the emails, text message and other communications as between the parties in this matter, I make the following findings of fact:

- Family Farms was operating its abattoir at or near break-even for several years and was intended as a resource for local cattle farmers in the Kent County area and was not intended to be a profit centre.
- Ralph Lawson's farm and Shipyard Farms both relied on the Family Farms abattoir to operate.
- In 2020, when Family Farms was advised that its lease would be terminated, Ralph Lawson began planning for the construction of a new abattoir.
- After many discussions with Alex Barnes and others, it became clear that Family Farms could not build the new abattoir without another partner.
- In or about September or early October 2021, Ralph Lawson and his wife entered into a verbal agreement with Keith Barnes and his business, Shipyard Farms, to form a partnership towards the construction and operation of a new abattoir.
- The terms of that agreement were as follows:
 - Shipyard would obtain a 50% shareholder interest in Family Farms in exchange for: 1) the payment to Family

Farms of \$20,000 and 2) the conveyance of a parcel of land (to be subdivided from lands owned by Keith Barnes) for the location of the abattoir.

- The existing shareholders of Family Farms – Matthew Grant Lawson, Aaron James Girvan and Edgar Lennox – would be bought-out. The \$20,000 would be used to buy-out Matthew Grant Lawson and Aaron James Girvan, and Mr. Lennox would receive equipment as consideration for his shares.
- That would leave Ralph and Darlene Lawson with a 50% share interest; and Shipyard Farms with a 50% share interest in Family Farms.
- Shipyard agreed to loan \$300,000 to Family Farms, to be secured by a mortgage on the lands that were to be conveyed to Family Farms. Those funds were to be used for the construction of the abattoir.
- There was no agreement that the abattoir would be built for \$300,000 and no more; but it was agreed that Shipyard would lend no more than \$300,000.
- Ralph Lawson would act as the designer and general contractor for the project.
- Alex Barnes would become the manager of the abattoir.

- The agreement relating to Shipyard acquiring a 50% share interest in Family Farms was confirmed in writing by the Receipt dated November 1, 2021.
- Construction of the abattoir commenced in late October/early November in order to have the building up before the winter freeze-up.
- Shipyard paid its \$20,000 towards its 50% share interest on or about October 30, 2021; and Shipyard paid three instalments of \$100,000 each on November 2, 2020, on November 29, 2020, and on February 1, 2022.
- Keith Barnes retained a surveyor to subdivide the lot for the abattoir from his lands, but the transfer was not made to Family Farms.
- Ralph Lawson's designs for the abattoir were shared with Keith Barnes, and there was an agreement between them that engineered plans were not required.
- Ralph Lawson prepared periodic reports containing the construction costs incurred to date, and outlining the anticipated cost of some, but not all, of the remaining portions of the project.
- After the agreement was made in late September or early October 2021, Keith Barnes unilaterally indicated that he wanted the HST rebate for the project, but that was never agreed to by Ralph Lawson or Family Farms. That was never part of the deal.

- On March 10, 2022, Keith Barnes terminated the contract because he was insulted by Ralph Lawson's repeated concerns over the manner in which the ceiling was being installed by Mr. Coggar, which had been approved by Mr. Barnes.
- Keith Barnes instructed Ralph Lawson and Family Farms not to trespass on his property, effectively frustrating any ability on the part of Family Farms to complete the construction.
- The reason for the termination of the contract was not because of cost overruns, as alleged by Keith Barnes. Rather, it was because Mr. Barnes was insulted.
- Keith Barnes and his company, Shipyard Farms, breached the terms of the agreement.
- Neither Ralph Lawson nor Family Farms was in breach under the terms of the agreement.

ANALYSIS

[123] Based on my findings of fact in this case, the Plaintiff's claims cannot succeed. I do not accept that Keith Barnes and/or Shipyard was solely a lender to Family Farms for the construction of the abattoir. They agreed to partner by becoming shareholders. And I do not accept that Family Farms or Ralph Lawson breached the agreement between the parties or did anything that contributed to the failure of the project.

[124] In my view, the receipt dated November 1, 2021, which was prepared by Ralph Lawson and handed to Keith Barnes, is the best evidence of what was agreed to by the parties. It is compelling evidence.

[125] I am satisfied that all monies spent by Family Farms or Ralph Lawson were in furtherance of the shared plan to construct the new abattoir and were entirely consistent with the agreement between the parties.

[126] The Plaintiffs have failed to establish any breach by either Ralph Lawson or Family Farms. The Plaintiffs' claims must therefore fail.

PROVISIONAL ASSESSMENT OF DAMAGES

[127] I will nonetheless provisionally assess the Plaintiffs' damages, assuming the Defendants breached the agreement.

[128] Keith Barnes and Shipyard are claiming the following damages:

- a) \$267,241.28 as the amount required to complete the construction of the building;
- b) \$37,949 for an outstanding invoice payable to the carpenter, Mr. Coggar;
- c) \$8,051 for the installation of two overhead doors which had not yet been installed on the building when the project was shut down by Keith Barnes on March 10, 2022; and

- d) The return of the \$20,000 paid to Family Farms for the buy-out of the former shareholders.

[129] While there is no doubt that Shipyard extended a loan of \$300,000, which was intended to be secured by a mortgage, the property as never conveyed to Family Farms as agreed. Keith Barnes remains the owner of those lands, and those lands have now been improved to the tune of some \$300,000 by the construction of the building – albeit an unfinished building.

[130] Of course, the entire notion that the Plaintiff would be entitled to damages for the completion of the building flies in the face of the legal principles underlying compensatory damages for breach of contract. In their brief, the Plaintiffs' write:

“Generally speaking, the purpose of damages is to restore the Plaintiff to the position they would be in but for the Defendant's breach.” (page 24)

[131] I agree. That is the manner of calculating damages for breach of contract.

[132] The Plaintiffs also write in their post-trial brief (at page 32), “(...) *a party claiming damages has a legal obligation to take reasonable steps to reduce their loss*” (citing **Carr v. Killam**, 2005 NBQB 260). Again, the Court agrees.

[133] Let us, then, presume that Keith Barnes and Shipyard were nothing more than secured lenders/mortgagees. That, according to Keith Barnes, was

the deal, even though they failed to hold up their end of the bargain in that the land was never transferred to Family Farms.

[134] If that were the case and had there been a breach of contract by the Defendants, the Plaintiffs would have had options, including suing for the return of the \$300,000 (without interest) or exercising their power of sale and, if appropriate, a suit for any deficiencies.

[135] But Mr. Barnes never conveyed the property. That part of the agreement was not performed. Therefore, he remains the owner of the land and the building. He has not sold that land in order to mitigate his loss. He believes he should be entitled to keep the land, and the building, and that he should be paid to complete the abattoir. He seeks a windfall, in my view.

[136] The Plaintiffs' claim for what they say is required to complete the building is therefore nonsensical and at odds with the legal principles outlined in their own post-trial brief.

[137] In my view, the additional amounts paid – for the outstanding invoice for Mr. Coggar's work and for the installation of the overhead doors – would have been part of the construction costs in the normal course, had the contract not been terminated. In paying for those amounts, Keith Barnes had added to the value of the property he continues to own.

[138] Assuming the termination by Keith Barnes was justified, he again was required to mitigate his losses. He elected to keep the land and the building. In so doing, I am of the view that Mr. Barnes (and Shipyard) has waived his right to claim any additional amounts from the Defendants. This is similar, in my view, to the right of a secured party under the ***Personal Property Security Act***, who may retain the collateral in satisfaction of the debt owed by the borrower.

[139] Therefore, the Plaintiffs have failed to prove their entitlement to damages, even had there been a breach of the agreement by the Defendants.

[140] The Plaintiffs also claim \$20,000, arguing that money was loaned to Family Farms to buy-out the other shareholders. The Court has already found that it was, in fact, partial payment towards the share purchase. If the Court is wrong in that regard, then the loan would be recoverable against Family Farms, without interest.

COUNTER-CLAIM

[141] The Defendants have counter-claimed against the Plaintiffs under several heads of damages. These are based on the allegation that it was Keith Barnes who breached the terms of the agreement, which is consistent with this Court's finding.

[142] Family Farms claims damages equivalent to the drop in its bank balance from October 2021, when the construction started, to the end of 2024. Family Farms says the evidence establishes that it had approximately \$35,000 in the bank when the project started. In fact, that is not what the evidence says. The evidence referred to by the Defendants is a memorandum found at page 626 of the Joint Book of Exhibits, which was prepared by Ralph Lawson in April 2022, a month after the project was shut down. He writes in that memorandum:

“Family Farms Ltd. suspended normal business operations October 15, 2021 to construct the new Meat Plant with a cash reserve of approx. \$35k for fixed and operating costs during the construction.”

[143] Recall that Family Farms was shutting down regardless of whether the new abattoir was built. It had to shut down because its lease had been terminated. This memorandum merely states, in hindsight, what Family Farms had available to cover the fixed and operating expenses during the construction phase of the new abattoir.

[144] Further, while Family Farms insinuates that its reduced cash holdings are in fact damages caused by the wrongful termination of the construction, Family Farms' Balance Sheet ending December 31, 2022 (See page 787 of the Record) suggests the company had cash in the amount of \$61,219 at the end of that year. It is acknowledged that some of those monies may have been due to CERB loans, but the evidence that Family Farms suffered

a loss due to the Plaintiffs' breach is lacking. Merely comparing the company's bank balance as a "before and after" is not evidence of recoverable losses. Family Farms has not proven its loss on the balance of probabilities.

[145] Family Farms' claim is dismissed.

[146] As for Ralph Lawson, he claims under several heads of damages:

- a) Amounts he was owed by Family Farms for cattle he allowed to be processed without payment, to increase Family Farms' cashflow in the years prior to 2021;
- b) Personal losses sustained to his cattle farming operations – presumably because the new abattoir was not completed and opened, as contemplated by the agreement;
- c) Damages to reflect his contribution to the construction of the new abattoir on the lands owned by Keith Barnes, both in the design of the building and in overseeing the construction, pursuant to the doctrine of unjust enrichment; and
- d) Damages for the storage of equipment at his farm, which equipment was owned by Family Farms and was intended to be used in the new abattoir.

[147] Firstly, with respect to the claim arising from the deferred payment by Family Farms for cattle supplied by Ralph Lawson's farm, the Court cannot allow those damages. Firstly, they were not pleaded in the Statement of Defence and Counterclaim. Secondly, those would be debts owed by Family Farms to Ralph Lawson. There is no legal basis for suggesting that the Plaintiffs are liable for the failure of Family Farms to pay those amounts. Perhaps Ralph Lawson believed that, with the construction of the new abattoir, Family Farms would be in a position to repay those amounts. That was his choice to make. But privity of contract prevents this Court from allowing that claim as against the Plaintiffs. The claim is dismissed.

[148] Next, with respect to the claim arising from Ralph Lawson's alleged lost farming revenue, which appears to have been arbitrarily assessed at \$50,000, again, that claim was not pleaded by the Defendants. Further, that would seem to be an entirely indirect or consequential loss to Ralph Lawson, separate and distinct from any damages that might have been contemplated by the parties to the agreement. The theory here is that Ralph Lawson had to sell off his cattle and reduce the size of his farming business because the new abattoir was not completed.

[149] Regarding damages which flow from a breach of contract, the Supreme Court held in *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 (CanLII) that:

27 Damages for breach of contract should, as far as money can do it, place the plaintiff in the same position as if the contract had been performed. However, at least since the 1854 decision of the Court of Exchequer Chamber in *Hadley v. Baxendale* (1854), 9 Ex. 341, 156 E.R. 145, at p. 151, it has been the law that these damages must be “such as may fairly and reasonably be considered either arising naturally . . . from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties”.

[150] While Ralph Lawson, and many other farmers in the Kent County region (including Keith Barnes), was likely depending on the construction of the new abattoir for the long-term viability of his farm, it cannot be said that such losses were within the reasonable contemplation of the parties in relation to the deal for the construction of the abattoir. Those damages are in my view indirect and consequential. They are not recoverable. That claim is therefore denied.

[151] Next, Ralph Lawson claims damages for the unjust enrichment of the Plaintiff, Keith Barnes. The basis of his claims is that he designed the building which was erected (though not completed) on the lands owned by Keith Barnes. He argues that his efforts have resulted in an enrichment or benefit to Keith Barnes and that there is no juristic reason for Keith Barnes to enjoy that benefit without compensating Mr. Lawson.

[152] Ralph Lawson claims \$51,490.64 for the design of the building and for obtaining the necessary approvals. He also claims a further \$36,167.67 for the construction management services he provided between October 2021 and March 2022.

[153] These amounts turned up on the cost reports prepared by Mr. Lawson after the shut down of the work site by Keith Barnes on March 10, 2022. Based on those cost reports, Mr. Lawson appears to have arrived at those figures using a percentage, but no explanation was provided by Ralph Lawson at trial. He did not explain what they represent or how they might be appropriate in the circumstances.

[154] In my view, there is no doubt that the building which was partially constructed on the lands owned by Keith Barnes has improved the land and created value for Keith Barnes. Part of that value comes from the efforts of Ralph Lawson in the design of the abattoir and in taking the lead in overseeing the work. The Plaintiffs argue that there is no appraisal report or similar expert evidence to quantify the alleged value of the building to Keith Barnes. That is correct – such evidence was not led.

[155] That said, the Court can apply common sense and make reasonable inferences that the land is more valuable with the building than it would have been without the building, and that some of that value comes from the labours of Ralph Lawson.

[156] In the circumstances, the Court is satisfied that Ralph Lawson's efforts have resulted in a benefit to Keith Barnes, and that there has therefore been an

unjust enrichment. I am of the view that \$20,000 would be a conservative estimate of the unjust enrichment, and damages are therefore awarded to Ralph Lawson in that amount.

[157] As for the claim for storing Family Farms' equipment in his barns, Ralph Lawson seeks \$4,140, inclusive of HST. This is, according to the cost estimates he prepared after the termination of the agreement, for a period of 9 months at \$400 per month. This claim was not included in the pleadings and there was no evidence presented at trial to justify or explain that claim. If there is any debt owed to Ralph Lawson for the storage of this equipment, it would be Family Farms that is responsible, as owner of the equipment. That claim is dismissed.

MENTAL DISTRESS

[158] In their post-trial brief, the Defendants set out their claim for damages due to mental distress to Ralph Lawson and his wife, Darlene:

To paraphrase *Wharton v. Tom Harris Chevrolet Oldsmobile Cadillac Ltd.*, 2002 BCCA 78 (CanLII), at p. 57, a major and important part of the agreement between Ralph and Keith was to give pleasure, relaxation or peace of mind, to Ralph and Darlene. The contrary result has occurred.

[159] In *Wharton*, the case involved a products liability claim against the seller of a "luxury" vehicle. The issue was: "A buzzing noise emanating from the automobile's sound system eluded the appellant's attempts at repair for more than two-and-a-half years."

[160] This is the pertinent *ratio decidendi* from the **Wharton** decision:

[57] The reasons for judgment in *Farley* provide a summary and survey of the law as it has developed, in England, to date. They are helpful in analyzing and summarizing the principles derived from *Watts*, which are, in my view, applicable to the case at bar. In summary they are (borrowing the language from both *Watts* and *Farley*):

(a) A contract-breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension, or aggravation which the breach of contract may cause to the innocent party.

(b) The rule is not absolute. Where a major or important part of the contract is to give pleasure, relaxation or peace of mind, damages will be awarded if the fruit of the contract is not provided or if the contrary result is instead procured.

(c) In cases not falling within the “peace of mind” category, damages are recoverable for inconvenience and discomfort caused by the breach and the mental suffering directly related to that inconvenience and discomfort. However, the cause of the inconvenience or discomfort must be a sensory experience as opposed to mere disappointment that the contract has been broken. If those effects are foreseeably suffered during a period when defects are repaired, they sound in damages even though the cost of repairs is not recoverable as such.

[161] The Defendants allege this was a “peace of mind” contract – that is, that Family Farms had partnered with Keith Barnes and Shipyard Farms to build a new abattoir which would resolve the Lawsons’ problem – and the problem of all cattle farmers in the region – of having a local abattoir that would allow them to process their meat at a cost that made their businesses viable.

[162] In my view, that does not fall within the exception articulated by the Court of Appeal for British Columbia in **Wharton**. And in any event, there is no “sensory experience” triggered in the present case. There is nothing

exceptional about this case that would justify such an award. That claim is dismissed.

COSTS

[163] The Defendants shall be entitled to costs. They argue that costs should be at Scale 5 of Tariff A, Rule 59 of the Rules of Court. They argue that aggravated costs are warranted because: 1) the Defendants allege this lawsuit was intended by Keith Barnes to harm Ralph and Dalene Lawson and was without merit from the outset; 2) that the action against Darlene Lawson was only withdrawn on the eve of trial; and 3) Keith Barnes acted in bad faith.

[164] Of course, it must not be forgotten that the Defendants have advanced several claims which were either not pleaded or which were not proven. That is a factor in assessing costs, which is at the discretion of the Court.

[165] In all the circumstances of this case, I am of the view that costs should be awarded on the basis of Scale 4. The Court is concerned by the lack of candour shown by Keith Barnes. As well, no justification has been provided for the very late withdrawal of the claim against Darlene Lawson. Using an amount involved of \$350,000, which is the amount the Plaintiffs have claimed, the Defendants shall be entitled to costs in the sum of \$18,850 plus HST (if applicable) and recoverable disbursements.

DISPOSITION

[166] The Plaintiff's claims are dismissed.

[167] The Defendants' counterclaim for unjust enrichment for the efforts of Ralph Lawson in the design and construction of the abattoir is granted in the sum of \$20,000. All other counterclaims are dismissed.

[168] The Defendants shall be entitled to one set of costs in the amount of \$18,850 plus any applicable HST and recoverable disbursements.

DATED at Moncton, New Brunswick this 21st day of November 2025.

Robert M. Dysart,
Judge of the Court of King's Bench
of New Brunswick