

Court of King's Bench of Alberta

Citation: BSI Build Inc v Diep, 2025 ABKB 739

Date: 20251212
Docket: 2301 07434
Registry: Calgary

Between:

BSI Build Inc.

Appellant

- and -

**Luan Diep also known as Lou Diep operating as Megacad Design & Developments,
Canbert Building Services Ltd., and Daniel Huang also Known as Daniel Zhiwei Huang**

Respondents

**Reasons for Decision
of the
Honourable Justice D.A. Labrenz**

Appeal of the Judgment by
L. Mattis, The Honourable Application Judge

Dated the 15th day of May, 2024
(Docket: 2301 07434)

I. Introduction and Background

[1] The appellant, BSI Build Inc. (BSI), appeals the oral decision of the Application Judge granting the respondents, Canbert Building Services Ltd. (Canbert) and Daniel Huang, also known as Daniel Zhiwei Huang, their application for summary dismissal.

[2] BSI is a general commercial contractor and construction manager operating across Canada. In February 2022, BSI and Mary Brown's Inc. entered into a contract for the construction of a restaurant in Victoria (the "Victoria Project"). In May 2022, they entered into another contract for the construction of a restaurant in Chilliwack (the "Chilliwack Project").

[3] In March 2022, BSI entered into a subcontract with Mr. Diep, operating as Megacad Design and Developments, to perform leasehold improvement construction on the Victoria Project.

[4] Mr. Huang is the sole director and shareholder of Canbert. He is also the sole director and shareholder of 1362751 BC Ltd. ("136"). 136 is not a named defendant in either the Statement of Claim or the Amended Statement of Claim.

[5] On June 7, 2023, BSI filed a Statement of Claim against Luan Diep, also known as Lou Diep, operating as MegaCad Design & Developments, and against Canbert. In its Statement of Claim, BSI alleges that, to the best of its knowledge, Mr. Diep entered into a subcontract with Canbert to perform work on the Victoria Project, including electrical, HVAC, plumbing, and various other construction work.

[6] Mr. Diep did not respond to the claim. On September 13, 2023, he was noted in default, and on March 13, 2024, default judgment was granted against him in the sum of \$483,474.96, plus interest in the amount of \$22,432.22, and costs in accordance with Schedule "C".

[7] Canbert did not file a Statement of Defence but instead brought an application for summary dismissal on December 4, 2023. In its application, Canbert asserted that it was not a party to, nor liable for, the contracts, projects, or claims at issue in the Statement of Claim and sought dismissal of the claim against it. In support of the application, Canbert filed an affidavit sworn by Mr. Huang, in which he attested that the corporation that carried out the electrical, HVAC, and plumbing work on the Victoria Project was 136, and that 136 was hired by Megacad.

[8] On March 20, 2024, BSI filed a cross-application to amend its Statement of Claim and to add Mr. Huang personally as a defendant in response to the summary dismissal application. In its Amended Statement of Claim, BSI alleges that, to the best of its knowledge, Mr. Diep entered into a subcontract with Canbert and/or Mr. Huang to perform work on the Victoria Project, including electrical, HVAC, plumbing, and various other construction work. The Amended Statement of Claim asserts that, as subcontractors hired by Mr. Diep to work on the Victoria Project, Canbert and/or Mr. Huang owed BSI a common law duty of care with respect to the work performed, and that Mr. Huang personally owed a duty of care for the portions of work he performed himself or supervised. It further alleges negligence and deficient work that failed to comply with BC building, plumbing, electrical, and fire codes and fell below the standard of care expected of a competent subcontractor.

[9] Subsequently, following a fiat granted by the Application Judge on May 15, 2024 at the hearing, the application for summary dismissal was amended to seek a declaration that Mr. Huang, in addition to Canbert, was not a party to or liable for the contracts, projects, or claims at

issue in the Statement of Claim. It also sought dismissal of the Statement of Claim against them and dismissal of the application to amend the Statement of Claim to add Mr. Huang as a defendant.

[10] Based on a review of the record, it appears that the application and cross-application were originally before the Application Judge in morning chambers. However, due to what appears to be the length of the Chambers List, the matters were rescheduled to a one-hour time slot before the Application Judge the following week.

[11] The record before the Application Judge included the following:

- Canbert's Application for Summary Dismissal;
- Affidavit of Daniel Huang, filed December 4, 2023 in support of the Summary Dismissal application;
- Transcript of Cross-Examination of Daniel Huang and Exhibits, filed January 31, 2024;
- BSI's Cross-Application to Amend the Statement of Claim and to Add a Party;
- Affidavit of Jeremy Hiscock, filed March 5, 2024 in support of BSI's cross-application;
- Transcript of Cross-Examination of Jeremy Hiscock, filed April 23, 2024;
- Amended Application for Summary Dismissal of Canbert and Huang, granted by fiat May 15, 2024.

[12] The hearing before the Application Judge proceeded without written argument.

[13] At the end of the hearing on May 15, 2024, the Application Judge summarily dismissed BSI's action against Canbert and dismissed BSI's application to amend the Statement of Claim to add Mr. Huang as a defendant.

[14] On June 5, 2024, BSI filed its Notice of Appeal.

II. Decision of the Application Judge

[15] On May 15, 2024, in oral reasons, the Application Judge held that where there is an application for summary judgment that is met with a cross-application to amend pleadings, the Court should have pleadings settled before proceeding. On the record, counsel for Canbert and Huang confirmed their consent to the amendment being filed.

[16] Referring to Rule 7.3 of the *Alberta Rules of Court*, Alta Reg 124/2010 ("*Alberta Rules of Court*") and the test for summary judgment set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49, the Application Judge stated that the applicant in this case must demonstrate that the claim has no merit and that there is no genuine issue requiring a trial. If the applicant's burden is satisfied, the respondent must then put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial.

[17] The Application Judge determined that the applicant's original argument was that Canbert was not the appropriate party because the contract was with 136. She stated that while the Statement of Claim was amended to include allegations of negligence and to add Mr. Huang

personally on the basis that he performed and supervised the work, in her view, the allegations of negligence were always present. She concluded that the record did not contain any concrete evidence or assertion of how the work was negligently done.

[18] Ultimately, the Application Judge held that the primary ground for dismissing the claim against Canbert was that it was not a contracting party because the record established that the oral contract was with 136, not Canbert, and therefore Canbert was not properly named in the action. The Application Judge referred to the following in support of this determination: (i) the only evidence about who the contract was with came from Mr. Huang, who attested that the contract was with 136; (ii) 136 was not incorporated until after some of the work was done; and (iii) 136 was the entity that had the permits, the WCB coverage, and met the regulatory requirements. With respect to the fact that the invoices relating to the work on the Victoria Project referenced Canbert, the Application Judge relied on Mr. Huang's evidence that 136 was created solely for this small job, so he did not set up another accounting system, and later 136 invoiced Canbert for payment.

[19] The Application Judge further determined that there was no genuine issue for trial regarding the negligence claims against Mr. Huang because the record did not contain any concrete evidence or assertion of how the work was negligently done. Nor did Mr. Hiscock's affidavit provide any particulars of what Mr. Huang or his helper may have done wrong.

III. Standard of Review

[20] An appeal from an Application Judge's judgment or order is an appeal on the record of proceedings before the Application Judge and may also be based on additional evidence that is, in the opinion of the judge hearing the appeal, relevant and material: Rule 6.14(3) of the *Alberta Rules of Court*.

[21] The standard of review is correctness: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166 at para 30; *Lesenko v Wild Rose Ready Mix Ltd*, 2024 ABKB 333 at paras 14-15. Although it is an appeal on the record, it is considered de novo due to the ability of the appellant to expand on the factual record from the court below, in certain circumstances: *Kadco Construction Inc v Sterling Bridge Mortgage Corp*, 2021 ABCA 52 at para 11.

IV. Issues

[22] Pursuant to Rule 7.3(1)(b), a defendant may apply for summary judgment in respect of all or part of a claim where there is no merit to the claim or any part of it. The party moving for summary judgment must prove that there is no genuine issue requiring a trial: *Clearbakk Energy Services Inc v Sunshine Oilsands Ltd*, 2023 ABCA 96 at para 5.

[23] *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 47 ("*Weir-Jones*") sets out the proper approach to summary judgment. There is no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This occurs when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result: *Weir-Jones* at para 21, citing *Hryniak v Mauldin*, 2014 SCC 7 at para 49.

[24] *Weir-Jones* at para 47 identifies the proper approach and key considerations for summary dispositions as follows:

The proper approach to summary dispositions, based on the *Hryniak v Mauldin* test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be predictable, consistent, and fair to both parties. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:

- (a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- (b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- (c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- (d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

[25] In this case, BSI has brought forward new evidence on appeal. As such, I must first determine whether the new evidence submitted by BSI is admissible. Assuming that the new evidence is admissible, the case before me is different from that before the Application Judge, and I may substitute my views for those of the Application Judge: *Kaup v Landrex Hunter Ridge Inc*, 2023 ABKB 542 at para 31. I will then determine whether any of the claims made against Canbert and Mr. Huang should be summarily dismissed.

1. Is the New Evidence Admissible

[26] BSI has brought forward the following new evidence on appeal:

- (a) Affidavit of Mr. David Gibson, the superintendent with BSI and transcript of his cross examination;

- (b) Affidavit of Jesse Tremblay, a journeyman Sheet Metal Mechanic who performed an installation review and report on the Victoria Project and transcript of his cross-examination; and,
- (c) Affidavit of Mirek Demidow, a professional engineer who performed an installation inspect on the Victoria Project and prepared a report on the Victoria Project and transcript of his cross-examination.

[27] Mr. Tremblay and Mr. Demidow are presented as experts.

[28] BSI submits that the new evidence is relevant and material because “it speaks to the work done and the quality of the work done by Mr. Huang and Canbert.”

[29] Canbert and Mr. Huang argue that the new evidence is not relevant or material. They submit in their written argument that Mr. Gibson’s affidavit is inconsistent with other evidence on the record; that Mr. Tremblay, presented as an expert, lacks impartiality because he benefitted financially after submitting his report and fails to identify whose work he was reviewing and who was responsible for the deficiencies; and that Mr. Demidow, also presented as an expert, did not establish in his report any link between the alleged deficiencies and the work performed by 136.

[30] New evidence must be relevant and material: Rule 6.14(3). It is not a rigorous standard. The threshold for admitting new evidence on an appeal from an Applications Judge is low: see *Rudichuk v Genesis Land Development Corp*, 2019 ABQB 133 at paras 14-15, aff’d 2020 ABCA 42.

[31] In *Spady v Spady Estate*, 2022 ABQB 591 at paras 36–37, Justice Marion articulated that the test for whether additional evidence is relevant and material is whether the new evidence might reasonably be expected to significantly help determine one or more of the issues raised on the appeal.

[32] As stated by the Court of Appeal in *Terrigno v Butzner*, 2023 ABCA 124 at para 9, “[r]elevance is determined primarily by the pleadings, and materiality relates to whether the information can help, directly or indirectly, to prove a fact in issue. There is no fixed standard as to what is material, and an element of judgment is required.”

[33] I will address each new piece of evidence in turn.

A. Affidavit of David Gibson

[34] Mr. Gibson’s affidavit is two pages long and does not include any exhibits. Mr. Gibson identifies himself as a superintendent with BSI. He states that he was on site at the Victoria Project from time to time, particularly during the final month of the project when inspections and remediation were taking place. He attests that he both observed and was informed that Mr. Huang and his helper were the individuals on site who personally performed the electrical, HVAC, and plumbing work. He further attests that he was informed while on site that Mr. Huang signed off on the electrical, HVAC, gas, and plumbing work, and that inspectors advised him the work was deficient and required substantial remediation, such that Mr. Huang should not have approved it.

[35] I reject Canbert and Mr. Huang’s argument that Mr. Gibson’s affidavit is not relevant and material because it is inconsistent with other evidence on the record. Inconsistency with other evidence does not mean the affidavit lacks relevance or materiality. I find that Mr. Gibson’s

affidavit provides information that may assist in proving a fact in issue. It meets the threshold for admitting new evidence on an appeal from an Application Judge.

B. Affidavit of Jesse Tremblay

[36] Mr. Tremblay's affidavit is two pages long and includes as exhibits his CV, qualifications, and the report he prepared after reviewing the installation on the Victoria Project. Mr. Tremblay is a journeyman Sheet Metal Mechanic and the Foreman and Estimator for Custom Fabrication at Playsted Sheet Metal Ltd. He is presented as an individual with expertise regarding the installation of various components within the HVAC scope of work on the Victoria Project.

[37] Mr. Tremblay attests that, in his opinion, the work reviewed was deficient and that the remaining sheet metal installation may not comply with NFPA 96 or BC seismic requirements.

[38] Mr. Tremblay's evidence satisfies the *R. v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9 ("*Mohan*") criteria that were refined in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. Whether the HVAC work performed on the Victoria Project was properly completed requires knowledge that is outside the ordinary knowledge of an individual.

[39] An expert must also be impartial. I reject Canbert and Mr. Huang's argument that Mr. Tremblay lacks impartiality and that his evidence is therefore inadmissible and should be given no weight. In my view, based on the record before me, the evidence does not support a finding of partiality. While Mr. Tremblay acknowledged under cross-examination that his company was hired by BSI after he completed the installation review and report, this fact alone does not lead to the conclusion that he lacks impartiality.

[40] I find that Mr. Tremblay's affidavit provides information that may assist in proving a fact in issue and meets the threshold for admitting new evidence on an appeal from an Application Judge.

C. Affidavit of Mirek Demidow

[41] Mr. Demidow's affidavit is two pages long and includes as exhibits his CV, qualifications, and the report he prepared. Mr. Demidow is a professional engineer with Avalon Mechanical Consultants and works as a mechanical consultant and inspector. He conducted an installation inspection at the Victoria Project. He attests that the work reviewed was deficient, and his report identifies 16 items that require corrective action.

[42] Whether Mr. Demidow's report establishes a link between alleged deficiencies and the work performed by 136 is not conclusive as to whether this evidence is relevant and material. His affidavit and report speak to the mechanical installation work done on the Victoria Project. Similar to Mr. Tremblay's evidence, it satisfies the *Mohan* criteria, and I find that it is admissible.

[43] I find that Mr. Demidow's affidavit provides information that may assist in proving a fact in issue and meets the threshold for admitting new evidence on an appeal from an Application Judge.

[44] The new evidence is admissible. As stated earlier, the overarching test is whether the new evidence might reasonably be expected to significantly assist in determining one or more of the issues raised on the appeal. I find that it does. Therefore, in deciding this appeal, I consider the new evidence together with the record that was before the Application Judge.

2. Should any of the Claims Against Canbert and Mr. Huang be Summarily Dismissed?

[45] The moving party for summary disposition must prove the factual elements of its case on a balance of probabilities and establish that there is no genuine issue requiring a trial. In this case, Canbert and Mr. Huang must prove there is no merit to the claims against them. As the resisting party, BSI only needs to demonstrate that the record, the facts, or the law preclude a fair disposition and that the moving party has failed to establish there is no genuine issue requiring a trial: *Weir-Jones* at para 32. Ultimately, the presiding judge must be satisfied that the state of the record permits a fair summary disposition: see *Eberle v Terroco Drilling Ltd*, 2022 ABCA 8 at para 10, citing *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2021 ABCA 16 at para 69, leave to appeal to SCC ref'd [2021] SCCA No 79. Conflicting evidence does not preclude summary disposition: *Weir-Jones* at paras 25, 36.

A. Has Canbert or Mr. Huang met the burden of demonstrating no merit to some or all of the claims such that there is no genuine issue requiring a trial?

i. The Contract Claims

[46] Canbert and Mr. Huang submit that they are not properly named parties. They argue that they had no contractual relationship concerning the Victoria Project. They rely on Mr. Huang's affidavit, in which he attests that Megacad contracted with 136 and that 136 obtained the necessary permits to complete the work for Megacad on the Victoria Project. Canbert's position is that because it was not an involved party, it did not owe any duty of care to BSI and therefore cannot have breached the standard of care. In essence, Canbert argues that no subcontractor liability can be imposed because it was not a subcontractor. The argument regarding Mr. Huang is that he is improperly named personally because 136 entered into the contract with Mr. Diep to perform the work.

[47] BSI argues that the evidence strongly suggests Canbert was a contracting party with Mr. Diep and that 136 was created later and became a contracting party with Canbert to complete the work on the Victoria Project. BSI submits that Canbert was on site, issued invoices to Mr. Diep, and later sent an invoice to BSI seeking payment. BSI also argues that the only parties representing they were doing the work were Canbert and Mr. Huang.

[48] After reviewing the record and the evidence before the Court, I find that it remains unclear whether Canbert was involved as a subcontracting party.

[49] Mr. Huang's evidence is that Megacad entered into an oral contract with 136 to perform the work on the Victoria Project, not Canbert. He attests that 136 was incorporated to obtain the necessary regulatory permits, WCB coverage and approvals to work for Megacad in BC, as BC does not issue trade permits to Alberta corporations.

[50] Attached as Exhibit A to Mr. Huang's affidavit is the BC Registry Services incorporation application, which states: "Recognition Date and Time: Incorporated on May 13, 2022, at 02:40 PM Pacific Time."

[51] Regarding the timing of when the oral contract was entered into with Megacad and when work began at the Victoria Project, Mr. Huang testified that in April 2022 Megacad hired 136 and that he believed his first day on site was in early May. Mr. Huang's evidence is that Megacad performed the underground plumbing work and that he and his helpers completed the

above-ground plumbing work. Exhibit B to Mr. Hiscock's affidavit is the daily site report dated May 6, 2022. This site report does not reference Mr. Huang, Canbert, or 136. The report lists Megacad as a subtrade on site and under work in progress states: "Rough in plumbing 80% complete."

[52] On cross-examination, the May 6, 2022 site report was put to Mr. Huang, who acknowledged that one of the photos shows his helper and a pipe going through the framing. Mr. Huang stated that he believed "it was installed by us." This evidence suggests that some work was performed prior to the incorporation of 136, which raises the question of who performed the work visible in the May 6, 2022 site report and what the nature of the contracting relationships was at that time.

[53] Attached as Exhibit C to Mr. Huang's affidavit is Invoice 1769 dated June 27, 2022, with the biller listed as "Canbert Building Services Ltd," the biller email address from @canbert.ca, and the customer as "MEGA CAD Design." The description of work refers to the Victoria Project. In July 2022, Mr. Huang forwarded this same invoice to BSI seeking payment. The surrounding correspondence from BSI suggests that Mr. Huang was never fully paid by Megacad. Invoice 1769 was sent from the @canbert.ca email, and beneath Mr. Huang's name appeared "Canbert Building Services Ltd."

[54] Mr. Huang's evidence in his affidavit and under cross-examination was that he did not create a specific email address for 136, as this BC corporation was created only for this small job. Instead, he used his Canbert email address to communicate on 136 business. He used Canbert software to create the invoices, which explains why the Canbert logo appears on the invoice. Mr. Huang testified that this was an accounting error. He stated that in October 2022, he realized that Canbert received the cheque related to the June 27, 2022 invoice, but the money was actually earned by 136. He corrected this by issuing an invoice from 136 to Canbert, attached as Exhibits D and E to his affidavit. This invoicing issue also raises questions about the nature of the contracting relationships concerning the work on the Victoria Project.

[55] Considering the record and the evidence before me, I find that Canbert and Mr. Huang have not met their burden. The record and the evidence raise a genuine issue for trial regarding the contracting relationships and who was performing the work on the Victoria Project, particularly during the period before 136 was incorporated

ii. The Negligence Claims

[56] The crux of Canbert and Mr. Huang's arguments regarding the negligence claims is that they were improperly named as parties. Canbert and Mr. Huang contend that the question of negligence would only arise if BSI can connect them to the work, and they assert there is no evidence on the record linking them to the work. They argue that the evidence presented by BSI does not identify who performed the alleged deficient work and does not connect the deficiencies to Canbert and Mr. Huang. They further argue that the record shows that 136 was on site completing the work.

[57] BSI argues that Mr. Huang is personally liable for any deficient work he performed because, as a subcontractor, he owed a duty of care. They submit that Mr. Huang's involvement in the work on the Victoria Project makes him liable, citing paragraph 77 of *Hogarth v Rocky Mountain Slate Inc*, 2013 ABCA 57 (. I also understand BSI to argue that Mr. Huang, in his personal capacity, would be concurrently liable for the alleged corporate tort pursuant to the

factors set out in *Hall v Stewart*, 2019 ABCA 98. In addition, BSI contends that there is evidence suggesting negligence causing dangerous defects, which raises a genuine issue for trial and precludes summary dismissal.

[58] In support of the allegations of personal liability against Mr. Huang, BSI relies on the affidavit evidence of Mr. Demidow and Mr. Tremblay, which identifies various deficiencies in the HVAC, electrical, and plumbing work at the Victoria Project. They also rely on Mr. Huang's testimony under cross-examination where he stated it was "mainly me" performing the work. BSI argues that Mr. Huang has not sworn that he did not perform the deficient work, nor has he provided any evidence to show that the work was neither deficient nor dangerous.

[59] Recovering for negligently caused loss requires the plaintiff to prove all elements of negligence: (1) the defendant owed the plaintiff a duty of care; (2) the defendant's conduct breached the standard of care; (3) the plaintiff sustained damage; and (4) the damage was caused in fact and in law by the defendant's breach: *1688782 Ontario Inc v Maple Leaf Foods Inc*, 2020 SCC 35 at para 18.

[60] The conduct of a contractor may constitute not only a breach of contract but also negligence: *Vermillion & District Housing Foundation v Binder Construction Limited*, 2017 ABQB 365 at para 123. Concurrent liability may arise where a party is liable in both tort and contract for the same action: *Driving Force Inc v I Spy-Eagle Eyes Safety Inc*, 2022 ABCA 25 at para 22.

[61] Corporations are separate legal persons, and shareholders and directors are not personally liable for the corporation's obligations. However, because corporations can only act through human agents, a corporate tort generally involves concurrent human actions. When an individual is found concurrently liable for a tort committed in the name of a corporation, the individual's liability is based on their breach of an individual duty owed in tort: *Driving Force* at paras 48–49. "Control" of the corporation does not necessarily mean there was personal involvement in the tort: *Driving Force* at para 64. Concurrent liability is often found in cases involving intentional torts or those with an element of deceit or dishonesty: *Driving Force* at para 66.

[62] While BSI appears to argue that the mere fact Mr. Huang performed the work would make him personally liable for any negligence, in my view, this is not what the Court of Appeal held in *Hogarth* at para 13, where it upheld *Blacklaws v 470433 Alberta Ltd*, 2000 ABCA 175 (also referred to as *Morrow*):

[t]here may be situations where the actions of a shareholder, officer, director or employee of a corporation may give rise to personal liability in tort despite the fact that the impugned acts were ones performed during the course of their duties to the corporation...where those actions are themselves tortious or exhibit a separate identity or interest from that of the corporation so as to make the act or conduct complained of their own...

[63] BSI also stated in its brief that "there is no policy reason for the Court to protect the actual negligent worker from liability." However, in my view, this is precisely the point that Justice Marion summarized at paragraph 28 in *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd.*, 2024 ABKB 423. He noted the competing policy objectives between the principle that tort law seeks to compensate parties injured by negligent conduct and the principle that corporate law provides corporations are separate legal entities and

that corporate shareholders are not personally liable for corporate obligations. There is a generalized concern that imposing personal liability too readily in the context of corporate business will negatively impact the viability and efficacy of corporate structures, including because parties may use it to leverage the litigation process and corporate agents may be reluctant to take on corporate roles: *Hogarth* at paras 63, 110; *Hall* at paras 11–14; *ADGA Systems International Ltd v Valcom Ltd*, 1999 CanLII 1527 (ON CA) at paras 9, 43, leave to appeal to SCC refused, [2000] 1 SCR xv; *H2* at para 28.

[64] There is no universal and categorical rule that individual human agents of corporations are invariably concurrently liable for corporate torts: *Driving Force* at para 65. For Mr. Huang to be concurrently liable for a corporate tort, his actions would have to exhibit a separate identity or interest from the corporation such that the action or conduct was his own. This determination would require a consideration and determination pursuant to the *Hall* factors and would depend on the factual circumstances.

[65] An issue that arises in this matter is that determining the negligence claims depends on identifying who performed the work. As noted above, the record and evidence are unclear regarding the nature of the contractual relationships and who was performing work on the Victoria Project, particularly before 136 was incorporated. While Mr. Huang's affidavit states that 136 was the contracting party and completed the work, there is also evidence suggesting that work was performed before 136 was incorporated. Additionally, Mr. Huang testified under cross-examination that it was mainly him who completed the work, yet it remains unclear whether he performed the work under Canbert, under 136, or in his personal capacity at some point before 136 was incorporated.

[66] As noted in *Kudzin v APM Construction Services Inc*, 2023 ABKB 425 at para 157, unresolved contractual and policy issues can make summary judgment of negligence claims inappropriate (various authorities cited). Whether Canbert or Mr. Huang owed a duty of care, the nature of such duty, and whether there was a breach of any standard of care, in my view, depends on determining the contracting relationships and identifying who was performing the work at specific points in time. In my view, this raises a genuine issue for trial.

[67] A further issue that arises is the uncontested evidence from BSI that work performed on the Victoria Project was deficient and did not meet the applicable codes. Mr. Tremblay's report references BC seismic codes that prescribe a particular method for installing HVAC systems and hood vents. He also notes potential fire hazards due to improper vent hood installation. Mr. Demidow inspected the installation, and his report identifies various incorrect and improper installation issues, suggesting possible deficiencies.

[68] Canbert and Mr. Huang have not provided any evidence to the contrary regarding the negligence claims. Their argument appears to rest on the position that the evidence does not link Canbert or Mr. Huang to the work and that all work was performed by 136. They rely in part on inspection reports that reference approved work done by 136 and do not mention Canbert or Mr. Huang. They also rely on the fact that, when cross-examined, Mr. Demidow and Mr. Tremblay could not say and did not have firsthand knowledge of who performed the work they opine is deficient. However, experts typically do not have such firsthand knowledge, nor is this required. Their role is often to inspect the work and respond to reasonable hypotheticals.

[69] Based on the law and the record before me, I find that Canbert and Mr. Huang have not met their burden to show that there is no merit to the negligence claims against them. They have

not provided any evidence regarding the negligence claims. In my view, the unresolved contractual issues make summary judgment of the negligence claims inappropriate.

V. Conclusion and Costs

[70] For the reasons outlined above, I find that Canbert and Mr. Huang have not met their burden to show that there is no merit to the claims against them and that there is no genuine issue requiring a trial. BSI has demonstrated that there is a genuine issue requiring a trial. The state of the record does not allow me to reach a fair and just determination on the merits.

[71] I therefore grant BSI's appeal and dismiss Canbert and Mr. Huang's summary dismissal application.

[72] The parties shall make every effort to resolve the question of costs between themselves. If they are unable to agree on costs, I grant leave to provide written submissions not exceeding five pages each within 60 days of the date of this decision.

Heard on the 15th day of August, 2025.

Dated at the City of Calgary, Alberta this 12th day of December, 2025.

D.A. Labrenz
J.C.K.B.A.

Appearances:

John Gilbert
for the Appellant

Vikramjot Singh
for the Respondents Canbert Building Services Ltd. And Daniel Huang