COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Monette Farms Ltd. v. Dutcyvich*, 2026 BCCA 1

Date: 20260106
Docket: CA50625

Between:

Monette Farms Ltd., Darrel Monette and 102134752 Saskatchewan Ltd.

Appellants
(Defendants)

And

David Dutcyvich and 3L Developments Inc.

Respondents
(Plaintiffs)

Corrected Judgment: The text of the judgment was corrected at paragraph 3 on January 9, 2026.

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Fleming
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated March 25, 2025 (*Dutcyvich v. Monette Farms Ltd.*, 2025 BCSC 548, Vancouver Docket S223168).

Counsel for the Appellants:	M.A. Feder, K.C. C. Bildfell
Counsel for the Respondents:	R.A. Millar
Place and Date of Hearing:	Vancouver, British Columbia September 19, 2025
Place and Date of Judgment:	Vancouver, British Columbia January 6, 2026

Written Reasons by:
The Honourable Justice MacNaughton

Concurred in by:
The Honourable Madam Justice Fenlon
The Honourable Justice Fleming

Summary:

This appeal is from the trial judge's conclusion that the parties entered into an oral agreement, with certain terms, including a fee of $12 million, for the respondents' work in introducing and facilitating the appellants' purchase of shares in a substantial BC ranching operation. The appellants also appeal from the trial judge's alternate finding, that the respondents were entitled to restitutionary damages of $12 million, on the basis that there was no evidence of the value of the respondents' work (if any).

Held: The appeal is allowed. As it relates to the contractual claim, although there was certainty as to the parties and the services to be provided, the parties had not agreed on the fee. The respondents were entitled to a restitutionary award. An award of $2.7 million was substituted as appropriate for the services rendered.

Table of Contents

Reasons for Judgment of the Honourable Justice MacNaughton:

Overview

[1] The appellants appeal the trial judge's order that they pay the respondents $12 million pursuant to an oral agreement entered into in early March 2021, in return for which the respondents would:

1. introduce the appellants to Blue Goose Capital Company Ltd. ("BGCapital"), a subsidiary of Dundee Corporation ("Dundee"), which was selling its shares in Blue Goose Cattle Company Ltd. ("BGCattle" and the "Shares");

2. promote the appellants as viable purchasers of the Shares; and

3. provide whatever assistance the appellants requested in furtherance of the purchase of the Shares.

[2] The appellants also appeal the trial judge's alternative order that the appellants pay the respondents $12 million in *quantum meruit* damages.

[3] The appellants seek to set aside the trial judge's orders, and seek dismissal of the respondents' claims, with costs. Alternatively, the appellants seek a new trial. The trial judge's reasons are indexed at 2025 BCSC 548 ["*RFJ*"].

Background

[4] The background of this case is complex and forms the factual matrix on which the trial judge reached her conclusions. I will therefore flesh it out completely before turning to the issues on appeal.

LBJ Capital Inc.'s Contract with David Dutcyvich and 3L Developments Inc.

[5] The respondent, David Dutcyvich, is an entrepreneur and experienced cattle rancher with extensive knowledge and experience in assessing the value of cattle ranching operations and the potential for logging on ranch lands. He is the sole

shareholder of the respondent, 3L Developments Inc. (“3LD”), through which he carries out property acquisition and development, and business consulting, and of 3L Cattle, through which he carries out ranching and agricultural activities.

[6] In the spring of 2020, LBJ Capital Inc. (“LBJ”), retained Mr. Dutcyvich and 3LD, to assist in purchasing the BGCattle Shares that were being offered for sale by BGCapital at a price of slightly over $100 million. BGCattle owned and operated various ranch properties and interests in British Columbia. The asking price for the Shares was based on a December 2016 appraisal of its operations (the “Appraisal”).

[7] Mr. Dutcyvich’s background and experience in cattle ranching and logging made him uniquely qualified to assist LBJ. Pursuant to an oral agreement, the terms of which are not in dispute, LBJ agreed to pay 3LD a fee amounting to half of the difference between BGCapital’s $100 million asking price, and the price ultimately agreed upon for LBJ’s purchase of the Shares.

[8] Mr. Dutcyvich contacted BGCapital and dealt with Tochi Lewis-Asonye, BGCapital’s and Dundee’s representative for the sale. The two developed a good relationship.

[9] To facilitate the sale of the Shares, BGCapital established a secure electronic data room, containing extensive and detailed information relating to the Shares and BGCapital’s ranching interests. To access the data room, interested purchasers had to sign BGCapital’s nondisclosure agreement (“NDA”).

[10] Mr. Dutcyvich and 3LD signed the NDA, accessed the data room in mid-April 2020, and did hundreds of hours of work in assessing the nature and financial health of BGCattle’s operations.

[11] James MacIntyre, 3LD’s chief financial officer (CFO), and a forensic accountant by experience, was actively involved in the assessment. In his trial evidence, he described the project as “massive”. BGCattle was a $101 million company, operating 16 ranches on 45,000 acres of ranch land, in approximately 21 locations in the interior of British Columbia. There were 268 freehold titles.

BGCattle owned Lambert Creek Organic Meats Ltd., BGCattle's meat processing facility in North Vancouver ("Lambert"), and BGCattle's North Vancouver head office. Mr. MacIntyre estimated that he worked 450 hours from signing the NDA to the date of signing the term sheet signed by LBJ and BGCapital that is discussed below. He reviewed 6,000–6,500 pieces of paper, for accuracy and relevance.

[12] During his review, Mr. MacIntyre considered: 1) a list of BGCapital's equipment, and the values assigned to it in the Appraisal, as against Internet databases valuing similar equipment; and 2) land reports and leases, including the duration and expiration of the leases. He tallied the leased land and removed it from the value assigned to BGCattle's land in the Appraisal. He researched the BC property assessment values for each of the 268 titles. After his review, Mr. MacIntyre concluded that, although BGCattle was operating at a $25 million loss annually, future operations could make a difference as the assets were valuable.

[13] Once Mr. MacIntyre completed his review, Mr. Dutcyvich conducted a field inspection to ascertain the accuracy of the description of BGCattle's operations. He took at least two or three helicopter trips to and over the ranches. He visited each location, and checked and assessed the listed equipment, reviewed title documents and leases, checked the herds and, importantly, counted the cattle, particularly the cows. He assessed the health of the cows, and the consistency of their pregnancies, which were important determinants of the Share value because, he explained, cattle ranchers make money on calves born, as they are, in essence, the next year's crop. The cows were BGCattle's most valuable asset.

[14] After the review, Mr. Dutcyvich and Mr. MacIntyre identified a number of concerns, including that BGCattle:

1. had significantly overrepresented the number of its cows. Mr. Dutcyvich counted 5,000 cows instead of 14,000 as represented in the Appraisal;

2. was under-realizing on its logging operations;

3. was moving its equipment between ranches, making it difficult to assess the value;

4. had an excessive payroll for ranches of that size, and many employees appeared to be related to the ranch manager, causing concerns about the manager; and

5. might have difficulty renewing leases on some of its grazing lands as they were being returned to First Nations' owners.

[15] Taking these concerns into account, Mr. Dutcyvich valued the Shares at $76 million and advised LBJ not to pay more than that.

[16] On June 11, 2020, following Mr. Dutcyvich's advice, BGCapital agreed to sell the Shares to LBJ for $76 million and LBJ and BGCapital signed a term sheet to that effect, with a proposed closing date of July 15, 2020.

[17] Under Mr. Dutcyvich's fee agreement with LBJ, the $24 million reduction in the Share price entitled him or his nominee, 3LD, to a $12 million fee. On July 22, 2020, LBJ sent an unsigned solicitor's irrevocable direction to pay $12 million to 3LD as part of the transaction. Pursuant to the direction, if the deal between LBJ and BGCapital closed, 3LD would be paid its fee out of the sale proceeds. While Mr. Dutcyvich's company 3L Cattle had signed the NDA, for tax reasons, 3LD was to receive the fee. In my view, nothing turns on this as the companies were related and Mr. Dutcyvich was the sole owner of both.

[18] After the term sheet was signed, Mr. Dutcyvich and Mr. MacIntyre worked to close the deal. Mr. Dutcyvich continued his work to confirm that the assets indicated in the term sheet existed, including the cattle counts.

[19] Despite various promises, LBJ could not come up with the funds to complete, and, by the fall of 2020, BGCapital became frustrated. On January 4, 2021, Mr. Lewis-Asoyne said he would no longer deal with LBJ or its principals. He referred to them as "untrustworthy" and said it would be "discreditable" for 3LD and

Dundee to associate with such a “dodgy/discordant group”. Mr. MacIntyre responded on behalf of 3LD, expressing disappointment with LBJ, and advising that 3LD would continue to actively seek an alternate purchaser for the Shares.

[20] Mr. Dutcyvich had two alternate purchasers in mind—one was not interested—the second made a lowball offer that was rejected.

Monette Farms Ltd.

[21] Unbeknownst to Mr. Dutcyvich or 3LD, in the late summer and fall of 2020, Darrel Monette became involved with LBJ. Mr. Monette is the sole owner and shareholder of Monette Farms Ltd.’s (“MFL”), a large ranching and agricultural corporation with operations and land holdings in Saskatchewan and the USA. The trial judge found, despite Mr. Monette’s evidence to the contrary, that the evidence overall supported Mr. Monette’s and MFL’s involvement with LBJ.

[22] Mr. Monette testified that, in November 2020, he was contacted by a real estate broker he knew, and who advised that he had a purchaser who was interested in buying Mr. Monette’s whole operation. The broker introduced him to a group consisting of LBJ and Silver Stone Industries, a consultant to LBJ (the “LBJ Group”). They met on November 27, 2020, to discuss a transaction involving MFL’s lands, BG Cattle, and a ranch in Saskatchewan.

[23] After Mr. Monette signed an NDA with the broker, he was told that the LBJ Group was willing to pay $580 million for MFL’s lands, based on a price of $4,000/acre. While Mr. Monette said he was not then interested in selling, he explored the option because the offer was $1,000 more per acre than he had paid. The broker said that LBJ had a lot of money and recommended increasing the sale price to $600 million and the commission to 5%, for a total of $630 million.

[24] On December 2, 2020, Mr. Monette signed a brokerage contract for the sale of the shares of MFL on those terms. The broker then discussed the sale terms with Thomas Bunker and Mike Lessing, two principals of LBJ.

[25] On January 5, 2021, Mr. Bunker emailed Mr. Monette a structured proposal and a PowerPoint. His email referred to the general terms of an agreement between LBJ and MFL and outlined a number of other matters. The trial judge set out some of the content of the email in paras. 121–122 of her reasons:

> LBJ Capital is currently under contract with Dundee … to purchase all the outstanding share in Blue Goose. LBJ Capital will roll these shares into [MFL] at cost and upon merger of all companies the fair market value for Blue Goose is estimated to be at CDN $185,[000],000.00.
>
> …
>
> It is understood and agreed that you will be the managing partner of [MFL] and LBJ … will be the financial partner. Decisions to expand or do further acquisitions will be made jointly.

[26] On the same day, Mr. Monette emailed Mr. Bunker and advised him that he would direct his legal team to draft a letter of intent "with a deposit provision before we do the full share purchase agreement".

[27] In February 2021, Mr. Monette, his lawyer, and his tax accountant met with Mr. Bunker and Mr. Lessing. While Mr. Monette could not recall this meeting in detail, he said that, because of unsatisfactory answers to questions about LBJ's funding, MFL did not sign a deal with LBJ. However, during their discussions, LBJ indicated that it had a number of other opportunities, including a land acquisition opportunity with BGCattle, on which they were working with Mr. Dutcyvich, a cattle expert and a trusted consultant. Mr. Bunker told Mr. Monette that he should speak with Mr. Dutcyvich about BGCattle.

[28] Mr. Monette was interested in the BGCattle opportunity as a growth opportunity for MFL, and as a "legacy" opportunity for his family. Mr. Bunker introduced him to Mr. Dutcyvich at the end of February 2021.

[29] When asked whether he discussed an introduction to Dundee with Mr. Dutcyvich, Mr. Monette said, "I don't remember how that all went down". However, he said that they did not discuss any compensation or payment to Mr. Dutcyvich for acting as the purchaser's agent.

Mr. Dutcyvich's Evidence of the Arrangement

[30] Mr. Dutcyvich testified that, in late 2020, when 3LD was dealing with LBJ's purchase of the Shares, Mr. Monette participated on two or three conference calls with LBJ's principals and expressed considerable interest in Mr. Dutcyvich's prior cattle ranching experience and skill in assessing herd quality. Mr. Dutcyvich had the impression that Mr. Monette was in partnership with LBJ and was to be part of the LBJ purchase of the Shares.

[31] Mr. Dutcyvich testified that he first met Mr. Monette in early March 2021, after BGCapital said it would no longer deal with LBJ. According to Mr. Dutcyvich, Mr. Monette said that he was going to "leave those three buggers and do the deal on his own", and would like Mr. Dutcyvich's help in introducing him and MFL to BGCapital as prospective purchasers of the Shares.

[32] Mr. Dutcyvich asked Mr. Monette whether he understood and would live up to "the deal" and pay Mr. Dutcyvich. Mr. Dutcyvich said, "[Y]ou know the deal it's $12 million?", and Mr. Monette responded, "I know the deal…" and that he would pay the fee. Mr. Dutcyvich said that he would get his accountant to send a letter for Mr. Monette to sign, and Mr. Monette agreed to do so. Mr. Dutcyvich also clarified that Mr. Monette agreed to pay Mr. Dutcyvich's expenses and Mr. Monette said that was not a problem. Mr. Dutcyvich indicated that they had a deal.

[33] In light of what had happened with LBJ, Mr. MacIntyre said he told Mr. Dutcyvich that he did not want 3LD spending any more time on BGCattle if they were not going to be paid, and he asked Mr. Dutcyvich to get financial information from MFL about its ability to pay for the Shares.

[34] On March 5, 2021, MFL delivered a combined financial statement to Mr. MacIntyre for his review. Mr. MacIntyre concluded that MFL did not have an equity-based ability to purchase the Shares, but a Scotiabank letter confirmed MFL's access to credit such that it had sufficient liquidity to pay 3LD to work for it on the purchase of the Shares.

[35] Although Mr. Dutcyvich testified that the agreement was between him and Mr. Monette in their personal capacities, he instructed Mr. MacIntyre to send a direction to pay to MFL for 3LD. I conclude on the evidence that in light of the fact that Mr. Dutcyvich and Mr. Monette were the principals of their respective corporations, nothing turned on the direction. This did not change the essential nature of the contract found by the trial judge. Two men agreed to terms of a contractual arrangement and their two corporations, of which they were the sole shareholders, would pay for, and receive payment of, the fee.

[36] As with the arrangement with LBJ, nothing was put in writing. Things moved quickly thereafter.

[37] Mr. Dutcyvich introduced Mr. Monette to Mr. Lewis-Asoyne in a phone call, “on the basis that he was a realistic financially vetted buyer”. Mr. Lewis-Asoyne emailed Mr. Monette and Mr. Dutcyvich attaching an NDA for Mr. Monette to sign and thanking Mr. Dutcyvich for the introduction. On March 8, 2021, MFL signed the NDA to access the data room.

Mr. Monette’s Evidence about the Arrangement

[38] Mr. Monette said he was interested in BGCattle but, before he “flew it” he needed an idea of where he was going. As a result, a few days before March 10 or March 11, 2021, he had a phone call with Mr. Lewis-Asoyne who then sent an email to Mr. Monette and Mr. Dutcyvich attaching an NDA for Mr. Monette to sign and thanking Mr. Dutcyvich for introducing Mr. Monette to BGCattle.

[39] On March 14, 2021, after Mr. Monette did a March 12, 2021 flyover of BGCattle’s lands, Mr. Monette signed a term sheet on behalf of MFL “or nominee” to purchase the Shares and Lambert for $76 million.

[40] On March 16, 2021, and unbeknownst to Mr. Dutcyvich and 3LD, MFL and LBJ signed a term sheet under which LBJ agreed to purchase 75% of the shares of MFL for $630 million. Mr. Monette testified that despite red flags about LBJ, he was

willing to see if the sale would happen. He said that the term sheet was not a legally binding agreement, but he would take $4,000 an acre if he could get it.

[41] Mr. MacIntyre believed that LBJ had nothing to do with the offer from MFL. He said that if he had known of LBJ's involvement, he would have been put in an impossible position because Mr. Lewis-Asoyne had clearly expressed that he would not deal with LBJ.

[42] Unaware of the arrangements between LBJ and MFL, Mr. MacIntyre said that 3LD continued to work for MFL until May 2021, to ensure that $76 million was the right price for the Shares. While they had already done a significant amount of work for LBJ, the equipment inventory and the cattle count continued to be a problem and Mr. Dutcyvich continued his investigation of the logging part of the business. Mr. MacIntyre and Mr. Dutcyvich were involved in weekly conference calls with Mr. Monette to review issues such as the identification of assets, cattle counts, inventory, and human resource issues. Mr. Monette never referred to LBJ, and LBJ representatives were not included on the calls. Mr. Dutcyvich and Mr. MacIntyre testified that from March to May 2021, Mr. Monette never dissuaded 3LD from performing tasks for him at his request.

[43] Mr. Monette said that there was no contract as between the parties because there was no meeting of the minds. Accordingly, the only basis on which Mr. Dutcyvich and 3LD could seek compensation was through *quantum meruit*/unjust enrichment.

[44] At his examination for discovery, as read in at trial, Mr. Monette would not accept respondents' counsel's suggestion that Mr. Dutcyvich and 3LD had been instrumental in reducing the asking price for the Shares from over $100 million to $76 million. He responded: "That's your suggestions. That's not how I saw it". His view was that Mr. Dutcyvich and 3LD had already negotiated a $76 million price for the Shares for LBJ; Mr. Monette knew BGCapital would sell at that price, and he negotiated the price down further. Mr. Monette did not purchase Lambert thereby

reducing the price to $68 million, and he refused to close unless the price was reduced to $63 million, to which BGCapital agreed.

[45] Mr. Monette agreed that Mr. Dutcyvich joined weekly conference calls with him and representatives of Dundee, and they exchanged texts about lumber or cattle. He said that was the extent of Mr. Dutcyvich's work. He said that Mr. Dutcyvich was always in contact with Dundee and was the liaison for both sides. Mr. Monette acknowledges that Mr. Dutcyvich provided some value to MFL, but he felt Mr. Dutcyvich was working as much for BGCapital and Mr. Lewis-Asoyne as he was for him. He corrected his answer to say that Mr. Dutcyvich was not working for him.

[46] Mr. Monette was of the view that 3LD and Mr. Dutcyvich had not provided any services to MFL with respect to the purchase of the Shares. He acknowledged that Mr. Dutcyvich provided "insignificant" services with respect to possible lumber operations.

[47] On March 16, 2021, there was an exchange of relevant emails on the issue of the nature of the arrangement between Mr. Dutcyvich and 3LD and Mr. Monette and MFL.

March 16, 2021 Emails

[48] On March 16, 2021, Mr. MacIntyre emailed MFL, attaching a direction to pay $12 million. It said, "per your discussions with David [Dutcyvich], please see the attached and return via email once signed." The direction to pay ensured that 3LD would be paid out of the transaction funds on closing.

[49] Mr. Monette forwarded the email to LBJ, copying 3LD, asking "is this what you are paying David? Not sure why I got it".

[50] Mr. Bunker replied on behalf of LBJ, copying 3LD saying, "this email you received from [3LD] has nothing to do with you or [MFL] and should not have been sent to you. LBJ … will pay the fees to [3LD], not you. Please disregard this email".

[51] In response to the LBJ email, Mr. MacIntyre emailed Mr. Monette saying, "I just spoke to David [Dutcyvich] and he wanted me to send you a note to disregard the draft agreement that was sent earlier today. LBJ … has indicated that they will honour the previously signed agreement between 3L[D] and themselves."

The Witnesses' Evidence about the March 2021 Emails

[52] In cross-examination about the March 16 emails, Mr. Dutcyvich said that he paid no attention to them, as they meant nothing. From his perspective, LBJ had no money, and he had a face-to-face agreement with Mr. Monette to pay the $12 million. If Mr. Monette did not understand that he was to pay the $12 million to 3LD, he could have said so during the period in which they worked together on the Shares purchase. He said that he spoke to Mr. Monette after the email exchange, saying "you know the deal", and Mr. Monette was happy for Mr. Dutcyvich to continue his work.

[53] When asked why he took no further steps to confirm the payment owed by MFL, Mr. Dutcyvich said he took Mr. Monette at his word. He liked and trusted him and didn't feel the need to pursue him. Both Mr. Dutcyvich and Mr. MacIntyre said that Mr. Monette never disputed that he owed the $12 million.

[54] In his evidence, Mr. Monette acknowledged that 3LD sent the direction to pay $12 million to him. He never signed it. He said he "just left it" when LBJ said they would take care of it. He did not raise it with Mr. Dutcyvich or 3LD. He also said that, in his view, he received no value for the $12 million as, when he began negotiating with BGCapital, the price for the Shares had already been set at $76 million for some time.

[55] Mr. Monette said he did not discuss Mr. Dutcyvich doing an investigation into BGCattle's lands. He simply asked him to keep him informed with respect to cattle counts. As a condition of bank financing for the purchase of the Shares, he hired "Ritchie Brothers" to undertake the cattle counts.

[56] On this issue, the trial judge concluded:

> [204] There is therefore no doubt the figure of $12 million dollars loomed large in the plaintiff's negotiations with Mr. Monette. This was the number ultimately reached between the plaintiff and LBJ based on the price reduction that the plaintiff achieved on behalf of LBJ. As a result, this can be said to be the nature of the fee the parties anticipated, as the same price for BGCattle's shares was used for the purchase by Monette Farms. As a result, $12 million dollars was the plaintiff's fee for facilitating the purchase of the shares of BGCapital to the defendants, in particular, Mr. Monette.

May 2021 Helicopter Ride

[57] Mr. Dutcyvich said that his final conversation with Mr. Monette was on May 6, 2021. He described meeting him at the Kamloops Coast Hotel on May 5, and early the following day taking a helicopter flight with Mr. Monette and his counsel, Tyler McCuaig, and Mr. Sinclair (BGCattle's manager) to tour BGCattle's ranches. Other witnesses, however, indicated this helicopter tour took place on May 11, 2021. The trial judge concluded that the date of the flight was unimportant.

[58] Mr. Dutcyvich said that, before the flight, he had a brief conversation with Mr. Monette during which he advised that his work was essentially done, and he expected his $12 million when the deal closed.

[59] Mr. Monette denied that the conversation occurred and tried to minimize Mr. Dutcyvich's role in the Share purchase. He denied that he asked Mr. Dutcyvich to take any helicopter tours of the ranch lands.

[60] The trial judge found that the "duplicitous behaviour and statements" of Mr. Monette were not actionable, but they induced BGCapital to deal with MFL or its nominee. As the trial judge found, the contract was entered into on the understanding that MFL, or its nominee, would buy the Shares alone, without influence from LBJ, which did not happen. She agreed that this reflected directly and adversely on Mr. Monette's credibility and it led her to prefer Mr. Dutcyvich's and Mr. MacIntyre's evidence where it differed from Mr. Monette's. She accepted Mr. Dutcyvich's evidence about the existence of the oral agreement for services as part of the purchase of BGCattle.

The Sale of the Shares to MFL Closes

[61] On October 21, 2021, the deal between MFL and BGCapital closed, and Dundee issued a press release indicating it had sold BGCapital's shares in BGCattle to MFL, through the appellant 102134752 Saskatchewan Ltd. ("102 Ltd."), for $63 million. The shares of Lambert were sold to another purchaser.

[62] Mr. MacIntyre expected $12 million to be paid to 3LD once the deal closed. When it had not been paid by November 1, Mr. MacIntyre sent an email seeking payment and attaching an invoice for $12 million. When the invoice was not paid, the respondents sued, pleading that "LBJ and the [appellants] acted as a group and in a common enterprise", and that in May 2021—not March 2021—the appellants agreed to pay a $12 million "Introduction and Advisory Fee" plus another $1 million for "further work to be performed by the [respondents] after May 6, 2021".

Judgment Below

[63] As stated, the trial judge believed Mr. Dutcyvich's evidence and disbelieved Mr. Monette's. Mr. Monette's evidence lacked credibility, flowing, in part, from his "duplicitous behaviour and statements" in concealing his initial role as a "front" for LBJ, that the trial judge described as a "deceit by half-truth", because Mr. Monette knew that BGCapital had refused to deal with LBJ.

[64] As to whether Mr. Monette agreed to pay Mr. Dutcyvich $12 million, the trial judge concluded:

> [154] … Mr. Monette sought out Mr. Dutcyvich, as he wished to purchase the shares of BGCattle and needed an introduction to the seller of the shares. In addition, he sought to utilize Mr. Dutcyvich's knowledge and expertise. Mr. Dutcyvich required Mr. Monette to establish he had the money to fund this expensive purchase, and if he did, then Mr. Dutcyvich would assist him. Mr. Monette agreed to pay the $12 million if the deal closed. [MFL] then used Mr. Dutcyvich to make the important introduction.
>
> [155] … While Mr. Monette seems to have sought to minimize and denigrate Mr. Dutcyvich's work and contribution in this matter, he noted in his testimony that this was his first deal involving ranching operations. It is consistent with that reality that he would need the experience of someone like Mr. Dutcyvich, who had years of experience in this area. It is once again disingenuous and contradictory of Mr. Monette to indicate otherwise.

[65] The trial judge made a series of findings of fact, based on her assessment of the credibility of the witnesses' evidence about the parties' dealings. That evidence was, more often than not, conflicting. The trial judge generally preferred the evidence of the respondents' witnesses over that of the appellants. She found the two witnesses for the respondents, Mr. Dutcyvich and Mr. MacIntyre, both credible and reliable. She did not find the primary witness for the appellants, Mr. Monette, to be either credible or reliable, and did not find the other two witnesses to be helpful.

[66] The trial judge recognized that whether there was an enforceable oral contract involves a contextual analysis of all the material facts and circumstances. The trial judge accurately laid out the relevant principles she had to apply at paras. 99–102 of the judgment.

[67] The trial judge concluded that the helicopter tours were part of Mr. Dutcyvich's role in assisting MFL to purchase the Shares.

[68] The trial judge concluded that Mr. Dutcyvich referenced the $12 million fee to Mr. Monette before the flight. She found that Mr. Monette "had no answer" to explain why Mr. Dutcyvich was on the fly-over, and that Mr. Monette minimized and denigrated Mr. Dutcyvich's efforts in the Shares purchase. The trial judge did not find Mr. McCuaig's or Mr. Sinclair's evidence helpful. Neither provided evidence that was determinative of issues in dispute and Mr. Sinclair demonstrated an inexplicable antipathy to Mr. Dutcyvich. She concluded that as between Mr. Dutcyvich and Mr. Monette, Mr. Dutcyvich was more credible:

> [136] …Mr. Monette admitted that he knew, before he was introduced to 3L[D] and BGCattle, that [BGCattle] and [BGCapital] would not deal with LBJ, and that he was in effect a "front" for LBJ in its dealing … to buy the shares. To purport to deal with [BGCapital] the plaintiffs in the name of [MFL], without disclosing the nature of the transaction whereby LBJ, the people that [BGCapital] thought were untrustworthy and with whom [BGCapital] refused to deal, was a material non-disclosure. I agree that the failure to disclose that fact constituted deceit by half truth.

[69] On her review of the evidence, and after assessing the witnesses' credibility, the trial judge found that "in early March 2021", the parties entered into an oral contract under which, in exchange for a $12 million fee and out-of-pocket expenses to be paid upon closing of the Share purchase, the plaintiffs would: (1) "introduce the defendants BGCapital"; (2) "promote the defendants as viable purchasers to BGCapital"; and (3) "provide whatever assistance, information, and analysis requested by the defendants in settling the terms of their ultimate purchase" (*RFJ* at paras. 140, 145, and 166).

[70] The trial judge also accepted the respondents' alternative claim in *quantum meruit.* Applying a "fee-based approach" to the quantification of the claim, she concluded that respondents did $12 million worth of work and that the appellants should pay that amount.

[71] The trial judge did not accept Mr. Dutcyvich's and 3LD's claim for $40,000 for services provided under an oral contract for logging advisory services. She found that while the parties to the contract were clear, and the contract was clear with respect to the advice requested, the terms of the payment, which she found to be fundamental, were unclear (*RFJ* at para. 61).

Issues on Appeal

[72] The appellants raise three issues on this appeal. First, they contend that the trial judge erred in concluding, in the absence of supporting pleadings or evidence, that the parties reached certainty on all essential terms of an oral contract, including the parties to it, the services to be provided, and the payment terms.

[73] Second, they contend that the trial judge erred in misapprehending, or failing to consider, material evidence including the respondents' March 16, 2021 email to the appellants telling them to "disregard" the "draft agreement" for a $12 million fee.

[74] Third, the appellants submit that the trial judge erred in allowing the respondents' alternative *quantum meruit* claim, by using *quantum meruit* to impose a third-party contract on the appellants and by awarding restitutionary damages in the absence of evidence of the value of the work (if any) performed for the appellants.

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

Discussion

Standard of Review

[76] As this Court explained in *Oswald v. Start Up SRL*, 2021 BCCA 352 at paras. 31 and 32, a conclusion that the requirements for the formation of a contract have been met is a question of mixed fact and law, reviewable for palpable and overriding error. Similarly, the standard of review for the interpretation of a contract is palpable and overriding error, absent extricable legal error: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.,* 2024 SCC 20 at paras. 27–28. An appellate court will generally defer to a judge's interpretation of a contract.

[77] While extricable legal error is reviewable on a standard of correctness, appellate courts should approach with caution the question of whether an alleged error is truly extricable.

[78] A misapprehension of evidence is reviewable on the standard of palpable and overriding error: *Oswald* at paras. 51–52.

[79] The trial judge's credibility assessments are findings of fact: *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353 Wilson J. (concurring) at 388 and "[attract] a high degree of deference on appeal": *R. v. Li*, 2023 BCCA 47 at para. 81, citing *R. v. Vuradin*, 2013 SCC 38 at para. 11 and *R. v. G.F.*, 2021 SCC 20 at para. 81. I see no basis to intervene in the trial judge's assessment of the credibility of Mr. Dutcyvich and Mr. Monette. Her findings were amply justified on the record on appeal and on a review of the transcripts.

Analysis

[80] As the Supreme Court of Canada said in *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at para. 35 [*Ethiopian Orthodox*], a contract is formed where there is an offer by one party, accepted by the other, with the intention of creating a legal relationship, and supported by consideration. It is clear that an enforceable oral contract can be entered into. The terms of the contract must be sufficiently certain and agreed to by the parties: *Oswald* at para. 34.

[81] To establish the existence of a contract, the party asserting it must demonstrate two intertwined concepts: that an objective, reasonable bystander would conclude that: 1) the parties intended to create a binding contract, and 2) the parties achieved certainty of all of the contract's essential terms: *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144 at para. 47, citing *Berthin v. Berthin*, 2016 BCCA 104 at paras. 46–47; *Ethiopian Orthodox* at para. 36.

[82] More recently, this Court in *Fang v. Bob Landscaping Corp.,* 2025 BCCA 27 articulated factors relevant to determining the existence of an enforceable contract in a similar way (para. 26, citing *Oswald* at paras. 33–34):

1. Whether there was an intention to contract;
2. Whether the essential terms were agreed to by the parties;
3. Whether the essential terms were sufficiently certain; and
4. Whether the requirements of a binding contract were met, from the perspective of an objective reasonable bystander.

[83] Requiring certainty of terms serves a practical purpose: a court cannot police and enforce performance of uncertain terms. In the event of a breach, certainty in contractual terms ensures that a court may order damages, or specific performance: *Berthin* at para. 47.

[84] Where terms are unclear (i.e., vague, ambiguous, or incomplete), a court cannot enforce the parties' bargain, suggesting that the parties must not have reached a meeting of the minds: *Anchorage Management Services Ltd. v. 465404 B.C. Inc.*, 1999 BCCA 771 at para. 10.

[85] The overarching question about certainty of terms is whether the parties agreed on all matters that are essential, vital, or fundamental to the arrangement. On the other hand, where absent or unclear terms are ancillary or non-essential, an otherwise enforceable contract is not void: *Fang* at para. 28, citing *Apotex Inc. v. Allergan Inc*., 2016 FCA 155 at paras. 30–33*; Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc*., 2009 BCSC 1303 at para. 330.

[86] What terms are essential to a contractual arrangement is fact specific. The determination of what is essential is contextual and must account for all material facts, including communications between the parties and the parties conduct before and after the agreement is made: *Oswald* at para. 34(e); *Fang* at para. 26.

[87] In this case, the trial judge concluded that two experienced businessmen made an oral agreement "in early March 2021", under which the appellants would pay the respondents a $12 million fee in return for which the respondents would: (1) introduce the appellants to BGCapital; (2) promote the defendants as viable purchasers for BGCapital; and (3) provide whatever assistance, information, and analysis requested by the defendants in settling the terms of their ultimate purchase (*RFJ* at paras. 140, 145–146).

[88] I see no error in the trial judge's factual and credibility findings, or in her conclusion that the parties agreed on the scope of the work that Mr. Dutcyvich and 3LD were to perform for Mr. Monette and MFL. Mr. Dutcyvich made the introduction to Mr. Lewis-Asoyne as requested, and, on receiving MFL's financial information, he indicated that MFL was a financially viable purchaser.

[89] Mr. Dutcyvich continued to work on assessing the value of the Shares as reflected in emails in April and May 2021 from Mr. Lewis-Asoyne to Messrs. Dutcyvich and MacIntrye of 3LD, and Mr. Monette. The emails highlight due diligence and closing tasks with respect to the sale of the Shares. The work included the exchanged of texts between Mr. Dutcyvich and Mr. Monette in April 2021 and the last helicopter ride in May 2021.

[90] I also see no error in the trial judge's findings that the parties to the oral contract were Mr. Dutcyvich and Mr. Monette and included their respective selected corporate entities. Mr. Dutcyvich's chosen corporate entity for tax reasons was 3LD. Mr. Monette's chosen entity was MFL, and, for business reasons, it assigned the purchase of the BGCattle Shares to 102 Ltd.

[91] Objectively, these communications and steps confirmed that Mr. Dutcyvich was assisting MFL in its efforts to purchase the Shares. There is no evidence that Mr. Dutcyvich and 3LD were working for BGCapital. A fair price for the Shares was in both MFL's and BGCapital's interests.

[92] However, with all due respect to the trial judge, I am persuaded that the first and second issues are made out as it relates to her finding that the parties had agreed to a payment of $12 million. In my view, the evidence does not demonstrate a meeting of the minds on a fee of $12 million from the perspective of an objective reasonable bystander.

[93] While the trial judge accurately set out the test for finding a binding oral contract, she misapprehended the March 16, 2021 emails.

[94] The trial judge relied on the March 2021 emails as confirmatory of Mr. Monette's knowledge about a fee in the amount of $12 million. She wrote:

> [115] Mr. Monette denies that any such agreement had been discussed, let alone reached, involving the very specific fee of $12 million. While Mr. Monette admitted he did not recall any details from his discussion with Mr. Dutcyvich, he was adamant that he did not agree to pay $12 million to the plaintiffs. In his testimony, Mr. Monette said that this is a very large, specific number that he would have remembered.

[95] The trial judge also relied on the emails as casting doubt on Mr. Monette's evidence that no fee was discussed between him and Mr. Dutcyvich because he would have remembered an amount of $12 million. She said that the existence of the series of emails "illustrates that the parties did indeed discuss the terms of a deal and a fee in the amount of $12 million": *RFJ* at para. 119.

[96] In my respectful view, the trial judge drew inferences from the emails which were not open to her on the evidence. On a plain reading, and in their totality, the March 16, 2021 emails do not confirm that Mr. Monette (or MFL) agreed to pay Mr. Dutcyvich (or 3LD) $12 million for their services. In fact, they confirm that the obligation for making such a payment was LBJ's. When the four emails are read together, they show that Mr. Monette was surprised at what LBJ had agreed to pay Mr. Dutcyvich, and did nothing further about it when LBJ said it would be responsible for the payment.

[97] Mr. Dutcyvich's and Mr. MacIntyre's explanation about the last email in the chain, in which Mr. MacIntyre wrote that Mr. Monette was to "disregard the draft agreement that was sent earlier today", and that "LBJ … has indicated that they will honour the previously signed agreement between 3L[D] and themselves", was not considered by the trial judge. Neither party did anything further about the emails.

[98] Mr. Dutcyvich's evidence that he had a conversation before the May 11, 2021 helicopter flight regarding his expectation that he would be paid for his work was equivocal. On his evidence, however, he did not say to Mr. Monette that he expected him or MFL to pay him $12 million.

[99] Though I accept that Mr. Dutcyvich understood that Mr. Monette had agreed to the $12 million, that does not mean that there was a meeting of the minds in respect of that term. Evidence about the actual state of mind or subjective intention of the parties is irrelevant to the existence of a valid contract and its terms: *Apotex Inc. v. Allergan Inc.*, 2016 FCA 155 at paras. 48–49.

[100] I am of the view that there was no true agreement on the amount to be paid under the contract. The required certainty for an enforceable oral contract was not present in this case. As a result, I would accede to the appellants' argument that the trial judge made a palpable and overriding error in concluding that Mr. Monette and MFL were liable to pay Mr. Dutcyvich $12 million in contractual damages. The trial judge's conclusion in that regard must be set aside.

[101] The analysis does not end there, as the trial judge alternatively found that Mr. Monette and MFL were liable to Mr. Dutcyvich and 3LD on the basis of unjust enrichment.

Unjust Enrichment

[102] A monetary remedy for unjust enrichment is a restitutionary *quantum meruit* claim. Such a claim allows a deserving party to recover something on a *quantum meruit* basis, which is not the same as what might have been recovered if there had been a valid, enforceable contract between the parties: *Infinity Steel Inc. v. B&C Steel Erectors Inc.,* 2011 BCCA 215 at para. 12 [*Infinity*]; G.H.L. Fridman, *The Law of Contract in Canada,* 5th ed. (Toronto: Carswell, 2006) at 10.

[103] A decision to impose a monetary remedy for unjust enrichment is entitled to the same level of deference as is a regular award for damages—that is, "considerable" deference: *Noh v. Plaza 88 Developments Ltd.,* 2011 BCCA 461 at para. 82.

[104] In this case, the trial judge was considering Mr. Dutcyvich's and 3LD's claim for a monetary award as a remedy for unjust enrichment as an alternative and as if the contractual claim had been dismissed. As set out in the leading case of *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30, the test for unjust enrichment is well-established and has three elements: (1) an enrichment of the defendant; (2) a corresponding deprivation of the plaintiff; and (3) an absence of juristic reason for the enrichment.

[105] The appellants submitted to the trial judge that there was a juristic reason for the enrichment, but that the enrichment was derived by LBJ. They argued that all of Mr. Dutcyvich's and 3LD's work was done pursuant to an agreement with LBJ, and that agreement was not assigned to Mr. Monette or MFL. The appellants also argued that Mr. Dutcyvich and 3LD had a relationship with Dundee, pursuant to which they attempted to find a buyer for the Shares, and that they continued to work in that relationship. Finally, the appellants argued that Mr. Dutcyvich and 3LD did not substantially reduce the price of the Shares, as the price became $76 million for LBJ pursuant to a contract and, as a result, they did not receive a genuine benefit.

[106] In the alternative, the appellants argued that, on a *quantum meruit* basis, Mr. Dutcyvich and 3LD would only be entitled to payment for the small amount of work that they completed for Mr. Monette and MFL in reviewing cattle counts and logging opportunities but that they were not owed anything for introducing Mr. Monette and MFL to BGCapital.

[107] The trial judge did not agree. She concluded that Mr. Monette and MFL accrued an enrichment, and that there was a corresponding deprivation: at paras. 179, 192, 196. She found no juristic reason to deny recovery: at para. 209. In reaching this conclusion, she considered the fundamental benefit to Mr. Monette and MFL to be the introduction by Mr. Dutcyvich and 3LD to BGCapital/BGCattle, and his knowledge of the BGCattle operations. She found that this was particularly beneficial at the time because, given its experience with LBJ, BGCapital was skittish about buyers.

[108] She also held that Mr. Monette and MFL relied on the good will and trust that Mr. Dutcyvich and 3LD had built with BGCapital and leveraged that to get the introduction that was instrumental in moving the deal forward. Without that, given his undisclosed ties with LBJ, the trial judge concluded that there was no doubt that Mr. Monette would have faced obstacles in securing a deal for the Shares and may not have been a successful purchaser.

[109] I see no error in her conclusions in that regard.

[110] The trial judge then turned to determining the quantum of the award. She relied primarily on *Malik (Estate of) v. State Petroleum Corporation*, 2009 BCCA 505, a case that she determined was similar to this.

[111] In *Malik*, Justice Lowry, citing earlier cases, said that Canadian law recognizes the concept of an intermediary, who brings parties together for the purpose of furthering a business arrangement, and that intermediaries are entitled to a fee for doing so. He cited as examples of that recognition: a real estate context, the introduction of a prospective investment, or a merger and acquisition: at paras. 36–38.

[112] Justice Lowry identified certain factors to be considered in setting the fee at paras. 42–46. They include:

1. the effect of the service rendered and whether it was made possible by the expertise, reputation, or connections of the party providing the service;
2. the same or similar contributing services performed by others;
3. all of what was required for the business opportunity to be realized;
4. prior dealings between the parties and negotiations with respect to fees;
5. the expectations of the vendor and the value perceived by the vendor for the service;
6. the whole of what was required to realize the business opportunity;
7. the market value of the service provided;
8. what amount the job “deserves”; and
9. applicable “custom” with respect to the value of the service in the industry”.

[113] Justice Lowry concluded that it was the "value to the benefitting party at the time the fee is earned that is to be considered"; not later profits earned or losses experienced.

[114] Relying on that decision, the trial judge found that Mr. Dutcyvich and 3LD provided services to Mr. Monette and MFL, citing *Malik* at para. 37: they "put the purchaser and the vendor in touch and laid the groundwork for the transaction": at para. 192.

[115] To this point, the trial judge also cited a BC Supreme Court decision relied on in *Malik*: *Craigdarloch Holdings Ltd. v. Syscon Justice Systems Canada Ltd,* 2010 BCSC 1186 [*Craigdarloch*]. In *Craigdarloch,* a plaintiff was awarded *quantum meruit* damages despite there not being an enforceable contract, after the Court found that its activities were effective and material to the success of a sale, emphasizing that the plaintiff had introduced the buyer and seller, and provided services that induced the buyer to complete the sale. The trial judge found that the case at bar was similar: at para. 191.

[116] The trial judge concluded:

> [192] … Simply put, without Mr. Dutcyvich and [3LD], Mr. Monette would not have been viewed as a viable purchaser at a critical time in the sale and purchase process.
>
> …
>
> [196] …the plaintiff is entitled to a *quantum meruit* fee based upon the principles in *Malik*, as set out above, as well as the cases set out therein. To find otherwise would be to permit the defendants to enjoy an unjust enrichment where there would be a corresponding detriment to the plaintiff with the absence of any juristic reason for the enrichment and detriment: *Garland*.

[117] To arrive at $12 million, the trial judge referred to *Craigdarloch* in concluding that the history of the parties' dealings and negotiations as to fees can be considered in assessing the fee based on *quantum meruit*: at para. 203. She said that "throughout the dealings between Mr. Dutcyvich and Mr. Monette, a fee of $12 million was referenced and discussed". She found Mr. Monette's evidence that

$12 million was never discussed was not credible and relied on the "paper trail" (referring to the four emails exchanged on March 16, 2021).

[118] She concluded:

> [204] There is … no doubt the figure of $12 million dollars loomed large in the plaintiff's negotiations with Mr. Monette. This was the number ultimately reached between the plaintiff and LBJ based on the price reduction that the plaintiff achieved on behalf of LBJ. As a result, this can be said to be the nature of the fee the parties anticipated, as the same price for BGCattle's shares was used for the purchase by Monette Farms. As a result, $12 million dollars was the plaintiff's fee for facilitating the purchase of the shares of BGCapital to the defendants, in particular, Mr. Monette.
>
> [205] This is in conjunction with the value of the opportunity realized, especially to Mr. Monette, who saw BGCattle as a legacy for his family. In assessing what was required to realize the business opportunity and the market value of the services provided—essentially evaluating a company appraised at $100 million—$12 million dollars is a fair and reasonable fee in the circumstances.

Analysis

[119] The trial judge correctly summarized the applicable principles set out in *Malik,* a decision comprehensively discussing the factors to be considered in determining the appropriate measure for restitutionary *quantum meruit* awards for a buyer's agent involved in facilitating a contract.

[120] While a monetary award in unjust enrichment is entitled to the same deference as other damage awards, in my view, the trial judge made a palpable and overriding error in assessing the respondents' claim in *quantum meruit* at $12 million.

[121] As pointed out above*,* in a *quantum meruit* assessment of this sort, "the court must ultimately focus on the value of the service to the benefitting party rather than on the cost to the other party of providing the service": *Malik* at para. 46; *Infinity* at para. 23.

[122] The trial judge erred in this respect. She arrived at $12 million because it was the value that was "looming large" over the parties, and by considering the market value of the services that 3LD and Mr. Dutcyvich provided to LBJ involving

evaluating a company appraised at $100 million: at paras. 204–205. While it is true that a fee of $12 million was referred to in the March 16, 2021 exchange of emails, it was referred to in the context of the acknowledged agreement that LBJ was to pay that fee. The LBJ contractual amount did not reflect custom with respect to the value of the services provided to Mr. Monette or MFL.

[123] On the record, while Mr. Monette and MFL benefitted from the work that Mr. Dutcyvich and 3LD had done for LBJ, it was clear that the additional work done for Mr. Monette and MFL was less onerous and could not be valued on the same basis. It occurred over about a three-month period between March and May 2021 and involved: an introduction of Mr. Monette and MFL as viable purchasers to BGCapital and Mr. Lewis-Asoyne, weekly conference calls, reviewing cattle counts and advising on logging potential. It also involved a flyover and visits to various BGCattle operations.

[124] I accept and agree with the trial judge's conclusion that the introduction of Mr. Monette and MFL was valuable, particularly in light of BGCapital's experience with LBJ, but Mr. Dutcyvich and 3LD's prior work had already reduced the price for BGCattle to $76 million by the time MFL came into the picture. This is why MFL's offer at that price was readily accepted after it was verified as a viable purchaser.

[125] In the usual course, this Court would refer the reassessment of *quantum meruit* damages to the trial judge. However, at the hearing of the appeal, both parties sought to avoid a further trial, and asked the Court to assess damages if the appeal were to be allowed.

[126] In these circumstances, I would award Mr. Dutcyvich and 3LD the alternate claim set out in para. 52 of the March 28, 2023 amended notice of civil claim. The alternate claim consists of an industry standard introduction fee, plus $1 million for work performed, for a total of $2.7 million. Although the appellants deny that any fee is owing to the respondents, they did not challenge the basis for, or amount of, the alternate claim.

Fresh Evidence Application

[127] On appeal, the respondents apply to adduce fresh evidence consisting of a 2023 appraisal of the assets purchased by the appellants from BGCapital and a letter from Mr. Dutcyvich's treating physician as to the current state of Mr. Dutcyvich's health and his inability to participate in another trial of this matter.

[128] The admission of fresh evidence on appeal is governed by the test set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 which requires that the fresh evidence:

1. could not, by the exercise of due diligence, have been obtained prior to trial;

2. is relevant in that it bears upon a decisive or potentially decisive issue;

3. is credible in the sense that it is reasonably capable of belief; and

4. is such that, if believed, it could have affected the result at trial.

[129] The overarching consideration in determining whether fresh evidence should be admitted is whether it is in the interests of justice to do so. That question requires consideration of the principles of finality in litigation, efficiency in the administration of justice, and respect for the role of the trial court: *Jiang v. Shi*, 2017 BCCA 232 at para. 8.

[130] In this case, in my view, the application to introduce fresh evidence turns on the second factor—its relevance, in that it bears upon a decisive or potentially decisive issue. Evidence about the value of the assets purchased by the appellants, two years after the purchase closed, is not relevant to assessing the contractual terms entered into between the appellants and the respondents. Whether the assets purchased increased or decreased in value is not a measure of either contractual or *quantum meruit* damages. Both are assessed at the time of the alleged breach, or on the quantification of the restitutionary damages. Restitutionary *quantum meruit* damages are measured by value of the respondents' services to the appellants,

when those services were rendered and again are not tied to the current value of the assets.

[131] The fresh evidence about Mr. Dutcyvich's current health is irrelevant in light of my conclusion that this matter should not be sent back to trial.

Conclusion

[132] I would allow the appeal, set aside the award for breach of contract, and order a payment of $2.7 million in *quantum meruit* to the appellants.

"The Honourable Justice MacNaughton"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice Fleming"