

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chung v. Klein Homes Ltd.* 0717233,
2026 BCSC 401

Date: 20260310
Docket: S64438
Registry: Kamloops

Between:

Milene Therese Chung and Wayne Chung

Appellants

And

Klein Homes Ltd. 0717233

Respondent

Before: The Honourable Justice L. Bennett

Reasons for Judgment

The Appellants, appearing in person:

M.T. Chung
W. Chung

Appearing on behalf of the Respondent:

D. Odian
B. Odian

Place and Date of Hearing:

Kamloops, B.C.
January 29–30
and February 26, 2026

Place and Date of Judgment:

Kamloops, B.C.
March 10, 2026

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Introduction

[1] The appellants, Milene and Wayne Chung, appeal the reasons for judgment following a trial in the Provincial Court of British Columbia made on June 6, 2025 (the “Reasons”) on Court file number 43307, Kamloops Registry.

[2] The appellants submit that the trial judge made numerous mistakes of fact and errors of law in this case, all of which they say materially affected the outcome. As well, they allege various procedural errors related to the trial judge’s admission of late disclosed evidence and with respect to the trial judge’s allowance of the respondent’s mid-trial amendment to the counterclaim.

[3] The respondent, Klein Homes Ltd. BC0717233, is opposed to the appeal.

Background

[4] The parties entered into a construction agreement for a new single-family home on March 9, 2021 (the “Agreement”). The relevant parts of the Agreement provide as follows:

1. **Construction of House:** The *Contractor* shall construct the *House* on the *Lot* in accordance with:
 - (a) the *Construction Specifications* attached hereto as Schedule “A”;
and
 - (b) building plans supplied by the *Owner*;and provide all materials required therefore. In the case of discrepancies between the building plans and *Construction Specifications*, the *Construction Specifications* shall govern.
2. **Contract Price:** The *Owner* shall pay to the *Contractor* the sum of **\$844,620.00** (subject to such additions and deductions made pursuant to this *Agreement* and being referred to as the “Contract Price”) plus applicable taxes including GST and/or applicable provincial tax for the *House*. The *Contract Price* shall be payable by the *Owner* at the intervals set out in Schedule “B” attached hereto.
3. **Commencement Date and Occupancy:** [...] Unless otherwise agreed, the *Owner* shall take occupancy of the *House* upon payment in full of the Contract Price less a builders' lien holdback and a seasonal holdback (if any). The *Contractor* does not guarantee the completion or possession of the *House* if delays occur which are caused by unfavourable weather, strikes, fires, shortages of material and/or labour, acts of God or any other causes beyond the reasonable control of the *Contractor*.

[...]

The *Owner* has no right to self-supply components or materials to the construction of the *House* unless it is specifically agreed to between the *Owner* and the *Contractor*. In the case that the *Owner* is supplying materials, then the *Contractor* is not responsible for ordering the materials, seeing to their delivery or installation and any delay caused to the construction of the *House* by the *Owner* supplying the materials or components will result in additional charges to the *Owner* as noted in the preceding paragraph.
4. **Pre-Occupancy Inspection:** When the *House* is ready for occupancy, the *Contractor* shall provide notice to the *Owner* advising that on a specified date, the *House* shall be ready for occupancy and further advising the *Owner* that an inspection shall take place on a specified date. The *Owner* shall make an inspection of the home on that specified date together with a representative of the *Contractor* at which time any omissions or defects shall be noted in writing. The *Contractor* shall promptly rectify the omissions and defects thereafter (unless they are seasonal deficiencies which cannot be completed at that time). The *Owner* will not move in to the *House* until the deficiencies are remedied and the home is free of omissions and defects.

[...]
6. **Obligations of Contractor:** The *Contractor* shall:

[...]

- (h) protect the *Lot* and the *House* while under construction and the property adjacent to the *Lot* from damage, and be responsible for and make good damage to the *Lot*, the *House* or property adjacent to the *Lot* which may arise as a result of performance of this *Agreement*, except damage which occurs as a result of:

[...]

- (ii) any act or omission of the *Owner*,

- (i) replace faulty materials and repair faulty workmanship which appears within one year of final completion of the work and also make good or pay for any damage to other work resulting there from provided that the *Contractor* shall not be responsible for:

[...]

- (ii) any faulty materials and/or faulty workmanship installed or performed by the *Owner* or tradesman operating under the *Owner's* authority,

[...]

7. **Obligations of Owner:** The *Owner* shall:

[...]

- (b) pay the Contract Price at the intervals set out in Schedule "B";

[...]

12. **Failure to Perform:** If the *Contractor* neglects to perform the work properly or fails to perform any provision of this *Agreement* [...] then the *Owner* may terminate this *Agreement* and take possession of all materials supplied to the *Lot* and complete the work by whatever method the *Owner* deems expedient (but without undue delay or expense). In such case the *Contractor* shall not be entitled to receive any further payment until the work is completed and if the unpaid balance of the Contract Price exceeds the expense of the *Owner* completing the work (including all additional expenses to which the *Owner* may be put by reason of the failure of the *Contractor* to perform) such excess shall be paid to the *Contractor*, but if the *Owner's* expenses exceed the unpaid balance then the *Contractor* shall pay the difference to the *Owner*.

13. **Contractor Option to Cease Work:** In the event that payment of any amounts herein agreed to be paid to the *Contractor*, at the times and in the manner provided, are not so made, or in the event that the *Owner* should default in any of the covenants or agreements herein, the *Contractor* may at its option cease work and after a reasonable time may treat this *Agreement* as repudiated and the *Contractor* may recover payment for the work already completed proportionately to the Contract Price plus loss of profit. Any monies owed in default shall bear interest at the rate of 15% per annum from the date due.

[5] The Agreement references and includes Schedules "A" and "B". Schedule "A" is the construction specifications which breaks down the construction project into

various categories and identifies whether items and jobs are included (I), not included (NI), not applicable (NA), and/or whether the contract provides additional allowances for certain items.

[6] Schedule “B” is entitled, “Payment Procedure” and it identifies when the owner is required to make payment installments, and the amount owing at each payment interval. Payment intervals include payments due at deposit, foundation, lock up, drywall and at “Payment Event (as defined in the attached Buildings Lien Holdback Agreement which forms part of this Agreement)”. The attached Builders Lien Holdback Agreement defines “Payment Event” as the earliest of the following events:

- (a) the date of issuance of a temporary occupancy permit by the City or Regional District responsible for building inspections for the *House*;
- (b) the date of issuance of a final occupancy certificate by the City or Regional District responsible for building inspections for the *House*; or
- (c) the date which the *Owner* moves into or otherwise occupies the *House*.

[7] Towards the end of the construction, in early 2022, communication between the parties broke down as the respondent was getting ready to transfer occupancy of the property to the appellants. The appellants allege that problems arose as a result of certain issues with the quality of the workmanship. Problems included the respondent using Beauty Tone paint instead of Benjamin Moore as per the contract, the respondent failing to complete projects like interior soundproofing as per the Agreement, and the respondent’s damage to owner-supplied items such as a porcelain shower. Additionally, the appellants submit that the respondent had overcharged for various items that were to be included in the Agreement. They submit that this was done through deceit and by getting the appellant, Wayne Chung, to sign change orders on the understanding that the appellant, Milene Chung, had agreed to the changes. The appellants argue that there was no provision in the Agreement for builder-initiated changes, and that they were charged thousands of dollars in extra expenses in violation of the fixed price contract.

[8] The appellants allege that they tried to resolve these issues with the respondent through to May 2022 to no avail. They assert that they presented two cheques to the respondent on May 11, 2022 to bring the project to completion and that the respondent purposely only cashed one of the cheques so as to make it appear that the appellants had not paid in full. They allege that the respondent then, wrongfully, treated the Agreement as repudiated for the appellants' failure to make full payment.

[9] The appellants assert that they could not have repudiated the contract as they were still in ongoing negotiations with the respondent about the outstanding deficiencies, and further assert that it was the respondent who frustrated the contract by ultimately abandoning the project.

[10] The appellants submit that, as a result of the abandonment, they were put to further and unnecessary expense. For instance, they claim that they paid almost \$30,000 to hire a third party to complete a concrete driveway despite it being part of the initial Agreement.

[11] Ultimately, the appellants submit that they paid the respondent "the lion's share" of what was owing under the Agreement and submit that they were entitled to holdback any further payments until the project was complete and without deficiencies.

[12] The appellants filed a notice of claim on November 20, 2023 seeking payment of \$26,286.22, plus fees, broken down as follows:

- | | |
|--|-------------|
| a) Concrete driveway completion: | \$12,263.99 |
| b) Interior soundproofing (not installed) and incorrect paint: | \$7,800.00 |
| c) Builder initiated change orders: | \$2,317.83 |
| d) Plumbing fee (to complete shower install) – drain deposit: | \$1,205.00 |
| e) Quartz Shower surround damage/repairs & fireplace mantel: | \$2,700.00 |

Total Claim: \$26,286.82

[13] The respondent filed a reply to the notice of claim on November 27, 2023. It disagreed that it had not completed the build as per the Agreement and in defence alleged that the appellants repudiated the Agreement on March 11, 2022 by taking possession of the home without making final payment, less deficiency holdbacks.

[14] The respondent also filed a counterclaim for \$13,431.94 plus filing fees representing the difference (inclusive of interest) between the Agreement amount and the amount outstanding.

[15] The appellants filed a reply to counterclaim on December 8, 2023.

[16] The small claims trial of this matter was heard in the Provincial Court of British Columbia over four days in September 2024 and February 2025.

[17] At trial, the appellants took issue with over 300 pages of disclosure that they submit the respondent provided to them in a trial binder just before the trial commenced. Their objections were noted throughout the trial transcripts. The appellant, Ms. Chung, concedes that the appellants ultimately agreed that the documents could go in but their agreement was premised on their understanding that the trial judge agreed to reduce the evidentiary weight of the documents.

[18] The appellants also took issue with the respondent's attempts to amend its counterclaim mid-trial by including a lumber bill in the amount of \$4,077.63. The appellants submit that all lumber was paid for in the third lock up draw in August 2021.

Trial Decision

[19] In his reasons for judgment dated June 6, 2025, the trial judge made the following findings:

- a) the claimants did have time to review the defendant's document disclosure prior to the testimony of the defence witnesses, and further, most of these

- documents had been provided to the claimants during the running of the Agreement and the building of the home. As such, the trial judge did not reduce the weight of these documents because of any late disclosure that may have occurred;
- b) the parties agreed that the claimants would move into the home on March 11, 2022;
 - c) the agreement for the claimants to take occupancy of the home did not in any way change their obligation to pay the remainder of the contract price to the defendants on “the date which the Owner moves into or otherwise occupies the House”;
 - d) the claimants failed to meet that obligation of the contract and, as a result, the defendants exercised their option to treat the Agreement as repudiated;
 - e) the defendants proved the damages sought in the counterclaim on a balance of probabilities and, therefore, is entitled to damages in the amount claimed;
 - f) the claimants only proved damages in the amount of \$350; and
 - g) the set-off between the claim and amended counterclaim resulted in judgment against the claimants in the amount of \$21,155.64, including interest from March 11, 2022.

Position of the Parties

Appellants

[20] The appellants’ amended notice of appeal is detailed, lengthy and cumbersome. It attempts to particularize each disagreement with the facts as found by the trial judge.

[21] Based on my review of that document, together with their oral submissions, I understand the appellants to say that the trial judge either did not understand the legal issues and/or that he misapprehended the evidence. The appellants remain

convinced that the decision in the trial court constitutes fundamental unfairness and accordingly asks that the decision be set aside.

[22] At the outset, they allege that they did not receive a fair trial because of the trial judge's decision to permit the defendant's late disclosure and moreover because the trial judge assigned significant weight to the disclosed documents. The appellants submit that this error, alone, violated the rules of procedural fairness and significantly prejudiced their position.

[23] The appellants argue that the trial judge then erred by allowing the respondent to amend its counterclaim to include an additional \$4,077.63 for lumber. They assert that there was no additional lumber bill and that the respondent's claim for the additional lumber cost was unsupported by evidence. Moreover, the appellants allege that by allowing the mid-trial amendment the trial judge allowed the respondent to breach the "Supreme Court Guidelines" which they say state that "a notice of claim cannot be amended after the trial commences". Furthermore, they argue that the amendment "must be agreed to by both parties, underlined, signed and dated by both parties and this wasn't done".

[24] The appellants allege that the trial judge failed to properly consider that the respondent purposely failed to cash two cheques for payment to make it appear that the appellants had not made payment in full. The appellants allege this oversight was critical as it demonstrates that the appellants paid the respondent as required in Schedule B of the Agreement, less the agreed to deficiencies.

[25] The appellants submit that the trial judge failed to consider that the respondent used deceit to get the appellants to sign some of the change orders. The appellants allege this to be another critical judicial oversight given their understanding that the trial judge had already agreed that there was no provision in the Agreement for the change orders.

[26] The appellants allege that the trial judge provided them with insufficient credit for the driveway costs. They submit that the evidence clearly demonstrated a cost of

almost \$30,000 for the work required to complete the driveway, yet they were only credited for \$12,000 leaving them with a demonstrated loss of over \$17,700.

[27] The appellants take the position that the trial judge failed to properly consider the evidence in support of their contention that the respondent caused damage to the home and did not complete the work to their specifications.

[28] The appellants argue that the trial judge failed to appreciate that they had a “fixed price contract” through which the respondent was obligated to perform *and complete* all of the stipulated projects, including those in dispute and prior to the appellants paying the respondent in full. The appellants contend that they were repeatedly charged extra for items that were to be included in the original build as per the construction specifications.

[29] Moreover, the appellants submit that the trial judge erroneously relied on certain definitions not contained in the Agreement, such as “substantial completion” and “interim occupancy” in concluding that the appellants had repudiated the contract. The appellants submit that, through his reliance on terms that the appellants say were outside of the Agreement, the trial judge made incorrect findings of fact by concluding that the appellants repudiated the contract through their non-payment of invoices.

Respondent

[30] Concerning the disclosure issue, the respondent submits that about 90% of the documents it tendered at trial had previously been disclosed. It submits that exhibit 8 at trial (exhibit 5 on this appeal) only appeared different because, at trial, the documents were not single-sided, they were tabbed and they were presented with header pages.

[31] With regard to the substance of the appeal, the respondent submits that the trial judge did not err when he found that there were mechanisms within the Agreement to allow the respondent to charge for certain additions and/or to make subtractions from the contract price. The respondent argues that the appellants

failed to understand this during the build and still fail to understand it now. The respondent noted the appellants' failure to understand and comply with a Provincial Court payment order (discussed at the outset of the hearing of the appeal), as another example of their failure to comprehend certain simple concepts.

[32] The respondent submits that the evidence at trial properly established that the appellants took occupancy of the home without making the final payment less deficiency holdback. Consequently, they argue that the trial judge correctly concluded that the appellants had repudiated the Agreement.

[33] The respondent argues that through this appeal the appellants are trying to re-argue their case.

[34] Finally, the respondent submits that the appellants received a fair trial and that the trial judge did not make a palpable and overriding error in any of his findings. They ask that the appeal be dismissed with costs.

Jurisdiction to Hear Appeals from Small Claims Act Judgments

[35] The availability and jurisdiction to hear an appeal of a small claims judgment is set out in ss. 5 and 12 the *Small Claims Act*, R.S.B.C 1996, c. 430 [Act]:

Right of appeal

- 5 (1) Any party to a proceeding under this Act may appeal to the Supreme Court an order to allow or dismiss a claim if that order was made by a Provincial Court judge after a trial.
- (2) No appeal lies from any order of the Provincial Court made in a proceeding under this Act other than an order referred to in subsection (1). No orders have been made directing that this matter proceed as a new trial. As such, my review is limited to reviewing any questions of fact and questions of law raised by the appellants.

[...]

Hearing of appeal

- 12 An appeal to the Supreme Court under this Act
 - (a) may be brought to review the order under appeal on questions of fact and on questions of law, and
 - (b) must not be heard as a new trial unless the Supreme Court orders that the appeal be heard in that court as a new trial.

Standard of Review

[36] The parties agree that the standard of appellate review of the trial judge's finding of fact and his application of those facts to the law is that of palpable and overriding error. That said, neither party has provided any authority demonstrating the application of the appropriate standard of review on a British Columbia small claims appeal. As such, I begin by reference to Justice Fleming's decision in *Reotech Construction Ltd. v Snider*, 2022 BCSC 317:

[31] As Justice Affleck observed in *Wang v. Chandi*, 2019 BCSC 205, a small claims appeal is not a rehearing of the Provincial Court trial, nor is it an opportunity to reargue the result of the trial in an effort to achieve a different outcome (para. 5).

[32] The standard of review on pure questions of law is one of correctness. The standard of review for findings of fact requires a palpable and overriding error. A palpable error is one that is obvious or plainly seen: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 5. An overriding error is an error that affects the outcome of the case.

[33] On questions of mixed fact and law, the standard of review exists along a spectrum. Where there is an extricable question of law, the standard of review is correctness. However, with respect to the application of the correct legal principles to the evidence, the standard is palpable and overriding error: *Housen* at paras. 26-36.

Disclosure

[37] In this case, the appellants begin by challenging the trial judge's admission of certain documents. They allege that the disclosure came right before trial and included, among other things, documentation containing terms that were not part of the original Agreement. They characterise the Provincial Court trial as a "trial by ambush". Specifically, they allege that the trial judge erroneously assumed that they had access to the material during the home build, but they did not. They allege that the trial judge then admitted, and subsequently relied on, the late disclosure. They say that was problematic because the disclosure contained terms such as "interim occupancy" and "substantial completion" neither of which were defined terms in the original Agreement.

[38] The appellants allege that they were not required to pay any further monies to the respondent until the contract was "complete", and not when the contract was

rather than “substantially complete”. They argue that payment was not due on March 11, 2022, the date of the certificate of “interim occupancy”, but rather when they took “occupancy”, meaning full occupancy.

[39] The appellants allege that the trial judge relied on hearsay and glossary definitions provided by the respondent through its late disclosure and not on the terms defined in the Agreement. The appellants submit that had the trial judge relied on the correct terms (“complete” and “occupancy”), he would have found that the appellants did not repudiate the contract as they were still in ongoing negotiations with the respondent to finish the Agreement.

[40] The appellants argue that these issues of late disclosure and the trial judge’s subsequent reliance on terms outside of the Agreement resulted in overriding and palpable errors that are central to their appeal. The appellants concede that the house was “substantially complete” when they moved in, but say the Agreement did not require them to pay when the house was “substantially complete”. It required them to pay when the house was “complete” or “completely finished”. The latter are the terms that the appellants relied on, and they submit the only terms that the trial judge should have given deference to.

[41] They argue that had the trial judge not permitted the disclosure, or alternatively had he assigned no weight to it (as he led them to believe he would do), then he would have been left to decide the case using only the terms set out in the Agreement. In that case he would have had to conclude that the appellants did not repudiate the contract through their alleged non-payment of invoices. Instead, they submit that the trial judge would have found that it was the respondent who frustrated the contract on at least three occasions.

[42] These are mixed questions of fact and law and therefore reviewable on the palpable and overriding error standard: *Reotech* at para. 43.

[43] During the trial, the trial judge heard arguments from both parties regarding document disclosure. He heard the appellant’s objections to the disclosure and

heard their arguments regarding any alleged failures by the respondent to comply with pre-trial disclosure. He also heard from the respondent in regard to these issues. The respondent's position was that the appellants had already seen the majority of the documentation that it sought to introduce. On this point, and by virtue of the nature of the documents themselves, the trial judge agreed.

[44] Small Claims trials are meant to be an expedient cost-efficient way for parties to resolve their disputes. The fundamental purpose of the *Act*, per s. 2(1), is to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner.

[45] In addition, s. 16(1) of the *Act* and *Small Claims Rules*, B.C. Reg 261/93, Rule 10(1) [*Rules*], provides a trial judge conducting a small claims trial with considerable latitude with regard to procedures.

[46] Section 16(1) of the reads:

Evidence

16 (1)The Provincial Court may admit as evidence in a proceeding under this Act or the rules any oral or written testimony, record or other thing that the court considers is credible or trustworthy and is relevant to the matter being heard, even though the testimony, record or other thing is not admissible as evidence in any other court under the laws of evidence.

[47] Rule 10(1) of the *Rules* reads:

Rule 10 — The Trial

[...]

How evidence will be heard at a trial

(1) A judge may conduct a trial without complying with the formal rules of procedure and evidence, and in doing so may

(a) ask the parties to explain their cases, to respond to each other and to call witnesses (see Rules 7 (15) (b) and 7.5 (15) (b)), or

(b) receive evidence in any other way the judge thinks is appropriate (see Rules 7 (15) (b) and 7.5 (15) (b)).

[48] From my review of the record, it is clear to me that the appellants wanted to proceed with the trial notwithstanding the disclosure issue. They did not ask for an adjournment to allow for them to further consider any materials that they felt had just been disclosed.

[49] Moreover, I find that it was open to the trial judge to conduct the Small Claims trial as he did, and there was nothing unfair with how he did that. He was within his statutorily prescribed discretion, in furtherance of the purpose of the *Rules*, to accept the documents tendered by the respondent regardless of whether or not they were hearsay, or late, or deficient in any manner that the appellants allege. The trial judge did not make any palpable or overriding errors in the manner that he received evidence or in the weight that he assigned it.

Mid-Trial Amendment to Counterclaim

[50] In small claims trials, it is the *Act* and *Rules* that generally apply, and not the *Supreme Court Civil Rules* or *Supreme Court Family Rules*, both of which the appellants relied on in the course of their submissions. An exception is made in certain instances in *Rule 17(18)*, but none of those scenarios apply here.

[51] The provisions of the *Rules* which pertain to amendments of pleadings include *Rule 8(1)(b)* which reads:

Any filed document may be changed

(1) Subject to subrule (1.1), anything in a notice of claim, reply or other document that has been filed by a party may be changed by that party

(a) without any permission,

(i) at any time before the settlement conference begins, or

(ii) if a settlement conference will not be held, at any time before the earliest of the following:

(A) Repealed. [B.C. Reg. 267/2018, s. 9.]

(B) a trial conference under *Rule 7.5*;

(C) a trial under *Rule 9.1* or *9.2*, and

(b) with the permission of a judge (see *Rule 16 (7)*), at any time after that.

[52] In this case, the respondent was not asserting a new cause of action against the appellants. It instead sought to correct the amount owing to them as a result of a lumber allowance that they alleged had not been properly accounted for. The respondent provided the trial judge with their evidence and calculations on this issue, and the appellants had the opportunity to respond and to cross-examine a representative of the respondent on this issue. In the circumstances, the trial judge had considerable latitude in deciding whether or not to allow the respondent to amend its counterclaim.

Interpretation of Contract

[53] Turning next to the Agreement. I do not accept the appellants' assertion that the terms of the Agreement must be viewed in a vacuum. The words "substantial completion" and "interim occupancy" are part of a much larger factual and legal lexicon particularly in disputes involving construction contracts, and the trial judge's consideration of these terms reflects that. As noted by the British Columbia Court of Appeal in *AM Gold Inc. v Kaizen Discovery Inc.*, 2022 BCCA 21 at para. 54.

[54] As the interpretation of a contract involves the interpretation of the written word in the context of the factual matrix in order to determine the objective intentions of the parties, the standard of review is the same as the one to be applied to a question of mixed fact and law: *Sattva* at paras. 50 and 55. Appellate courts should be cautious in identifying extricable errors in the interpretation of contracts, and it should only occur rarely: *Sattva* at paras. 54–55.

[54] As an example, the concept of "substantial completion" exists independent of any specific contractual term. Justice Burke canvassed the concept in *Belfor (Canada) Inc. v Drescher*, 2021 BCSC 2403 at para. 16:

[16] First, as noted in *London Eco-Roof Manufacturing Inc. v. Syson*, 2020 ONSC 1338 ("London Eco-Roof"), a contractor is entitled to payment upon substantial completion of the work. As stated at para. 16:

[...]

c. A contractor is not, in the absence of some express provision in the contract, entitled to payment until substantial completion of the work. However, on completion, the owner must pay the agreed price. In the case of defects in the work, the owner may have the right to set up a counterclaim for damages to remedy defective work, but he or she cannot escape liability for payment of the price agreed upon.

[Emphasis added.]

[55] The record reflects that the appellants reviewed all relevant documents prior to signing them. They signed a job completion certificate in which they agreed that the project was “substantially complete” and that they would take possession as of March 11, 2022. The builder’s lien holdback agreement which is part of the signed Agreement clearly stipulates that a “Payment Event” is defined as “... the date which the Owner moves into *or otherwise occupies* the House”.

[56] Moreover, paragraph 4 of the signed Agreement notes that nothing in the agreement shall be construed to prejudice or limit the rights or obligations of either party as they may be established in the *Builder’s Lien Act*, S.B.C. 1997, c. 45. That act defines “completed” which, in reference to a contract or subcontract, means substantially completed or performed, not necessarily totally completed or performed.

[57] As such, I find no indication that the trial judge erred in finding that the appellants were aware of the relevant terms, or in finding that the project was “substantially complete”, or in finding that the appellants took occupancy following the issuance of an “interim occupancy certificate” on March 3, 2022 by the City of Kamloops. Further, I find no indication that the trial judge erred in finding that final payment, less deficiency holdbacks, was due and owing as of the date that the appellants took over occupancy of the home on March 11, 2022.

[58] The trial record confirms that the respondent requested final payment in writing on multiple occasions from the appellants, and on multiple occasions the appellants confirmed in writing that the respondent would receive “no money”.

[59] Consequently, I find that the trial judge made no palpable or overriding error when he found that the appellants repudiated the contract.

Deficiencies

[60] The remaining issues on appeal relate to the trial judge's finding regarding the alleged deficiencies and whether the appellants successfully proved their claim for damages on a balance of probabilities.

[61] Throughout the appeal, Ms. Chung referenced various portions of the transcripts which, she argues, reflect that the evidence at trial was different from what the trial judge found it to be. Alternatively, she argues that the trial judge relied on evidence that was otherwise inadmissible as hearsay, or that he disregarded critical evidence led by the appellants.

[62] I am not, as part of the appeal process, mandated to undertake a complete reassessment of the four days of evidence led in this case. This is what, in essence, Ms. Chung is asking me to do in the appeal. In numerous instances, Ms. Chung submits that the appellants disagree with the facts as they were determined by the trial judge. She took me through the transcripts where the Chungs described the various deficiencies and damages that she says are still outstanding. Ms. Chung took me to various portions of the transcripts where she submits the respondent lacked credibility and/or admitted to certain deficiencies or losses. The trial judge had this information and it was open to him to determine how to use this evidence. It was also open to him to find that the appellants had not proven damages with respect to such items as the driveway, interior soundproofing, paint, plumbing fixtures, or shower.

[63] As I alluded to earlier, the trial judge has considerable latitude in determining how to use the evidence he receives and/or hears at trial. He is entitled to considerable deference, because a trial judge benefits from hearing the testimony in person, has much greater exposure to the evidence and, as a result, is more familiar with the case as a whole, and is better able to assess the credibility of witnesses than a judge sitting on appeal: *Housen v Nikolaisen*, 2002 SCC 33 at para. 18.

[64] Even if I were to set aside the pages of Exhibit 5 that Ms. Chung takes issue with on this appeal (and I find no need to do so), the balance of the trial record still supports the factual determinations of the trial judge.

[65] At the end of the day, it is clear to me that the trial judge properly understood the circumstances of the case, and that he identified and applied the correct principles of law in his adjudication of the claim. Furthermore, I do not find palpable and overriding error in the trial judge's application of the law to the facts.

Summary and Conclusion

[66] In summary, I find no basis to disturb the trial judge's decision as it relates to the notice of claim.

[67] With regard to the trial judge's acceptance of the amended counterclaim, as I already stated I am not (as an appeal judge) mandated to re-assess the evidence in this case. Nonetheless, it is clear to me from the trial record that it includes documentation to explain the difference in the lumber allowance, and why a difference of \$4,077 was still owing to the respondent. Again, the appellants are attempting to re-argue the factual findings of the trial judge and the factual findings pertaining to this matter.

[68] While there is no doubt that the appellants were frustrated with the respondent over the construction of their new home, I conclude there is no material error, serious misapprehension of the evidence, or error in law in this case.

[69] The appeal is dismissed.

[70] The respondent is entitled to an order that the funds paid into court pursuant to the Provincial Court order of Judicial Justice Adair on January 14, 2026 be paid out forthwith to the respondent.

[71] The respondent is entitled to costs, but as the respondent was self-represented, the costs will be limited to those fees paid to the court registry and to any reasonable photocopying costs.

“L. Bennett J.”

L. BENNETT J.