

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Element Restorations Ltd. v. Arruda*,
2026 BCSC 578

Date: 20260401
Docket: S15363
Registry: Campbell River

Between:

Element Restorations Ltd.

Plaintiff

And

Michaela Arruda and Alvin Teixeira Arruda

Defendants

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Plaintiff: J. Marrie

Counsel for the Defendants: Z. White

Place and Dates of Trial: Campbell River, B.C.
March 3-6, 2026

Place and Date of Judgment: Campbell River, B.C.
April 1, 2026

INTRODUCTION

[1] This is a dispute over a residential home renovation. The plaintiff, Element Restorations Ltd., seeks damages for breach of contract or compensation in *quantum meruit* for materials furnished and work performed on a 120 square foot addition to the defendants' house located at 316 Serenity Drive in Campbell River.

[2] Before any work began, the defendants paid the plaintiff a \$21,250 deposit which, given the way things turned out, is all they say the plaintiff deserves to be paid. The plaintiff, by contrast, claims to be owed around \$37,000 on top of the deposit plus contractual interest of over \$26,000 for a total of approximately \$84,250. Prior its engagement to do the work, the plaintiff estimated the job would cost the defendants only \$35,350.

[3] The defendants say that the plaintiff breached their contract by failing to competently and accurately estimate the cost of the work and materials for the project, and by failing promptly to advise them when they knew or ought to have known that the estimate would be substantially exceeded. They filed a counterclaim seeking damages for these alleged breaches, but at trial they moved only for dismissal of the plaintiff's claim plus costs.

BACKGROUND

[4] Element Restorations Ltd. is a Campbell River construction and renovation company. It has been in business for nine years. Its directing mind and 50 percent equity shareholder is Dwayne Oke, who testified that he has 25 years of experience in the construction business. Setting aside the details of the present dispute, the evidence taken at trial would seem to indicate that Element is a well-run company with many successful projects in its past, ranging from home and commercial renovations to new construction projects with budgets of \$1 million and more.

[5] The defendants Michaela and Alvin Arruda are a married couple in their early 40s. Michaela is the executive director of a Campbell River charitable organisation and Alvin works for a company that specialises in employee benefit plans. Michaela

won the competition for her present position in early 2022, when the foundation which she now leads could not offer her an office to work in. For this purpose, she and Alvin decided to research the possibility of building a small additional room off the back of their home.

[6] They looked around, made some inquiries, and decided to talk to Element about doing the job. They had friends who had hired the company with good results and had seen its service vehicles around town emblazoned with decals advertising its expertise in home renovations. They were favourably impressed by one of the firm's project managers, Jon Adamo, who responded to their inquiries over the internet and came to their house to evaluate the possibilities and give them advice about the best location for the addition.

[7] In March 2022, at the Arruda's invitation, Mr. Adamo provided them with a proposal to build a 120 square foot addition to the back of their home for a quoted price, as I have said, of \$35,350. This was a lot of money for the Arrudas. They advised Mr. Adamo that they would have to think about it, and that if they decided to proceed, they would have to go to a bank for financing. Eventually they decided to take the plunge and organised a \$60,000 secured line of credit. On June 2, 2022, Michaela signed Element's written proposal and notified Mr. Adamo that she and Alvin wished to proceed with the project.

[8] I find as a fact that the plaintiffs had no experience with building contracts. They relied on Mr. Adamo's expertise as a project manager and the professional accuracy of his estimate of costs. Looking at the evidence, much of it in the form of text messages, it is obvious that Mr. Adamo knew the Arrudas were borrowing money to finance the job and were apprehensive about the budget. The project under contemplation was not complicated. There is no admissible evidence tending to establish that there was any unexpected difficulty or expense that could account for an appreciable rise in the cost of construction.

THE CONTRACT

[9] The following “proposal” that Mr. Adamo pitched to the Arrudas on behalf of Element was a total cost estimate including the specified 20% mark-up but exclusive of taxes:

Element Restorations Ltd.

151C Dogwood Street, Campbell River, BC, V9W 6B9, Phone: 250-204-0999

Alvin + Michaela Arruda
Phone: 778.928.5570

316 Serenity Drive
Campbell River, BC V9W 0A7

Job Address:
316 Serenity Dr.
Campbell River, BC V9W 0A7

Print Date: 2023-03-13

Proposal for 316 Serenity Dr. – Addition

Hi Michaela,

Thanks for the opportunity to provide an estimate for your upcoming project. Please note that we can secure your position in our schedule once a deposit has been received. Should you have any questions or concerns please let us know at your earliest convenience and we will be happy to assist you.

The following is a budget based on our discussions. The project will be completed at cost plus 20%, including all sub trades and materials. In house crews are charged hourly and reconciled monthly or as major tasks are completed. Once final plans and drawings are complete the budget can be reviewed and adjusted.

Thank you,
Jon Adamo

Construction	
Items	Description
Planning, design and engineering	Initial meetings and project management Engineering design, drawings and drafting for planning
Construction Labour + Materials	Engineering inspections during course of construction Proposed design and drafting from Form Design Exterior Elevations 3-Dimensional digital “still shot” rendering, 2-Dimensional Elevations


	<p>Preliminary Building Location Plan – Verification of setback + Lot Coverage Foundation Plan, Ground Floor Plan, Upper Floor Plan 2 Building Cross Sections – Minimum of 1 Exposed Building face Calculations (Dependent on amount of glazing requested and location of structure to property line) Climate specifications (Prescriptive “R” values for building assemblies General services included Correspondences & consultations as required Review of zoning Bylaw (Conformance for proposed structure setbacks, lot coverage, maximum building height) Upon completion of the plan set, the following will be provided in Digital Files PDF drawing</p>
<p>Addition Construction Labour + Materials</p>	<p>Addition to home as discussed: - add approximately 120 Sq ft to home via rear extension - including foundation, framing, siding, heat, drywall, painting and finishing - budget based on 120 sqft at 230 per sq ft, an average price per square foot used. This is subject to change as material choices are confirmed</p>

Total Price: \$35,350.00

The estimated amount above does not include applicable tax. Please make cheques payable to Element Restorations; e-transfer payments can be sent to sales@elementrestorations.ca using the word construction for password. Credit card payments will have a 3.5% surcharge added. Invoices not paid in full on due date shall bear interest at 2% per month, 28.8% per annum after maturity of default payable monthly. Any surplus materials are the sole property of Element Restorations Ltd. WCB # 066483.

Approval Deadline: Jun 16, 2022

I confirm that my action here represents my electronic signature and is binding.

Signature: 

Date: Jun 2, 2022, 3:46 PM

Approved by: Michaela Arruda

[10] Mrs. Arruda signed the proposal on June 2, 2022, and Mr. Arruda confirmed that she was authorised to do so on his behalf. The payment of the \$21,250 deposit – roughly 60 percent of the total estimated cost – put the defendants “in the queue” (Mr. Adamo’s words) behind other customers awaiting the plaintiff’s services. The spring and summer months are a busy time for the building trades, and I was not surprised to hear that there was an approximately six-month delay until an Element crew arrived at 316 Serenity Drive to begin work on January 12, 2023. During the interval, \$3,591.22 of the deposit money was spent on drawings, engineering plans, building permits, and the like. The estimated budget for the job was never reviewed or adjusted.

[11] On February 2, 2023, Mr. Adamo emailed the defendants saying that he would give them an updated budget by February 5, 2023. By then, as it turned out, the entire deposit of \$21,250 had been spent. On February 11, 2023, Mr. Adamo emailed the defendants as follows:

My apologies for the delay in getting you an update on the budget, we were waiting [on] a few invoices to come in, and as you probably realize things are starting to move pretty quickly at your place. It does appear costs [have] raised over what we initially anticipated at the time we provided you the proposal. We are currently sitting at approximately \$44,000 costs to date (including our mark up) and still have a few more expenses to incur to get you completed. The excavation and backfill process took quite a bit more time than initially anticipated. I would like to meet you this week to go over the details and discuss a plan moving forward. We can make some decisions to help you keep your costs down and understand this may come as a big surprise. If you want us to put the brakes on things while we sort out a plan, please let me know and we will of course oblige.

[12] Michaela Arruda seemed to be unfazed by this. The same day she responded by email saying:

Hi! Looking forward to finishing up the job and we are always interested in knowing options that are cost saving :)

[13] Over the next few days Mr. Adamo and Mr. Arruda swapped emails about minor issues but then on February 17, 2023, Mr. Adamo emailed the defendants as follows:

Hi guys

My sincere apologies for not getting this to you sooner. As you may be aware I was getting a second number on the drywall and just trying to confirm the last items.

I understand you are going to look after the flooring yourselves and as such I am not including anything for that portion.

Further to my email [of February 11, 2023] the estimated additional costs and the outstanding items to address are below. We are working on an exact breakdown/invoice with everything up to today for you which will be sent out on Tuesday [February 21, 2023].

Labour and insulation that was completed this week: \$3,000 approximately.

Electrical was \$2,500 completed.

Drywall \$3,200.

Extending the HVAC ducting \$800-\$1,000 (no firm number provided as it's a small task but I planned ... it for next week, Tuesday or Wednesday)

Gutters \$1,100.

Painting \$756

Finishing \$1,200 + materials \$440 approximately

Total left [to complete the job] \$12,635

Please let me know if there is anything you want us to change or discuss, I would be happy to meet with you next week.

[14] The following morning, February 18, 2023, Michaela Arruda wrote back saying:

We have to say that it has been unsettling over the last couple of weeks to hear of the drastic overshoot on the initial quote that we were given. The more we think about and discuss it, the more upsetting and concerning it is. The lack of communication with us along the way on costs is a major error. The original quote provided says that it "is subject to change as material choices are confirmed", yet there were never any communications regarding confirming any material choices or quotes from subcontractors that were used.

When you came over on February 13 you said that you would provide a line-by-line invoice detailing costs and that it would be very transparent, however we have still yet to see this, despite being told many times that it would come "Monday" or "next week". It has been difficult to get cost information from you, despite our asking. We didn't realize that it would take so much effort on our part for this to be shared with us, as we were trusting you to do this as part of your role by default. We feel like you've pulled the wool over our eyes on this job.

We understand materials change prices, that we put in one extra small window, and that Darcy [from the excavation subcontractor] underquoted on the back yard excavation. However, the original quote was for \$35,500 to finish the job completely, and the new estimate to finish is now sitting at

\$60,000 and it is not clear if that even includes tax. This is a 71% over budget job.

This brings us to the 20% that is being charged for Element's services. While understanding that this is how you make your own living, the next step is for you to consider if this was a job that you feel like a good, honest contractor and business owner about charging 20% on because we certainly don't feel good about it.

The way this is ending is unfortunate, we wanted to support your business and be able to tell the story of how great it was to work with you, however, when asked about our project with Element, this will now be part of the story that is told.

[15] The next day, February 19, 2023, Mr. Adamo responded:

Hi guys,

My sincere apologies for the issues we have run into here at the end of the project. We will review this as a team on Tuesday and come up with a plan on how to make this better. We certainly didn't intend to pull anything over your eyes and will see what we can do to help out the situation.

[16] At this point Mr. Oke, the co-owner of Element, got involved in dealing with the defendants himself. I think it likely that this was because Mr. Adamo had reported to him that there was discontent brewing on Serenity Drive and something needed to be done to solve a clear and acknowledged case of significant under-budgeting. Mr. Adamo, I should mention, no longer works for Element, and he did not testify at trial. I was told that he continues to work in Campbell River as a project manager for another company. He was listed in the plaintiff's trial brief as a witness who would be called to give evidence, but only Mr. Oke and his office administrator, Kyrsten Kerr, ended up testifying for the plaintiff.

[17] On Tuesday, February 21, 2023, Michaela Arruda and Mr. Oke exchanged text messages in which Mrs. Arruda asked when she could expect an itemised current invoice for work and materials. Mr. Oke responded that the document had been prepared – he was “reviewing it right now”, he said, and confirmed by text that he had sent it by email at 8:22 a.m. The document delivered via email was Element Invoice 2963, the first ever issued on the Arruda's job. It purported to cover all planning, labour, subcontractor costs and materials to date, and totaled \$54,682.88

inclusive of GST. The deposit of \$21,210 (\$40 less than was actually paid) was subtracted for a total outstanding payment balance due of \$33,472.88.

[18] On receipt of this invoice, Michaela Arruda texted Mr. Oke as follows:

So now we have paid \$21,250, still owe \$33,000 for what has been done to date, and another \$12,000 is estimated to finish it?

[19] Mr. Oke responded:

Hi, I will double check the remaining and get you an answer in 30 minutes.

[20] He then sent Mrs. Arruda a copy of Jon Adamo's February 11, 2023, email to which I have already referred, confirming the updated estimate of \$12,635 to complete the job, and he followed up with the following text:

Here is the remaining budget.

I do want to work with you and Alvin on all of this as we acknowledge we failed to get ahead of the budget for you, as we discussed yesterday.

Please let me know if you would be willing to sit down and discuss this with me in person, as I am willing to help get this job completed at a reduced budget.

[Emphasis added]

[21] From Mr. Oke's perspective, this was followed by a "negotiation" during which he offered to waive the 20 percent markup, not only on the work done so far, but also for the rest of the job, with a total quoted finishing price of \$56,584.92. This offer was confirmed in a February 27, 2023 email, in which Mr. Oke said "If you choose not to proceed with the remaining work, the total owing to date is \$28,504.10 (referencing Invoice 2963 and a new one, Invoice 2981, also sent on February 27, 2013) "with no 20 percent [markup] applied and your \$21,000 deposit accounted for." I think what he meant by this was that, for the work done and materials provided to that point, he was offering to charge the Arrudas their deposit money of \$21,250 plus \$28,504.10 for a total of \$49,754.10 inclusive of GST

[22] In an e-mail dated Saturday, March 4, 2023, Mr. Arruda rejected this offer. He wrote:

Based on your calculations the approximate \$56,500 as a bottom line for Element to finish this project plus the flooring brings this project to a \$60,000

finish. If this number already has the 20 percent removed, and we add it back in for calculation's sake, then this project would have been \$72,000. \$60,000 is outrageous never mind \$72,000.

A couple of days later the Arrudas notified Element that they were terminating the contract. Since then, as I have said, Element has kept the defendants' deposit, and the defendants have paid no more. I accept Michaela Arruda's undisputed evidence that she was obliged to pay the sum of \$9,046.76 to a replacement contractor to finish the job. To this sum I would add the amounts of \$750 for a permit deposit that Mr. Oke agreed should have been returned, and \$522.75 for the cost of repairing a sprinkler head damaged during excavation of the site, for a combined total of \$10,319.51.

DISCUSSION

[23] This very modest building contract was priced on a cost plus 20% basis including all sub trades and materials. The total cost was based on initial estimates subject to review and adjustment once final plans and drawings were complete. Mr. Oke testified in cross-examination that in the construction business, such a review was duty owed to every client – mandatory, not optional – and there was no onus on the defendants to ask for it. He said that he did not know if Mr. Adamo performed such a review, and I find as a fact based on the undisputed evidence of both defendants that he did not.

[24] The first "review" that the defendants received came in the form of the plaintiff's Invoice 2963 showing that the cost of the project had already gone more than 47 percent over budget. A few days later they were told that it would cost a further \$12,635 to complete the job, which would have brought the total to more than 80 percent over budget. It is obvious that Mr. Oke recognised a serious problem and offered to cut Element's 20 percent markup on all invoices from start to finish, which would have eliminated any profit margin for his company. There can be no better evidence than this that Mr. Adamo's estimate was way off the mark.

[25] I conclude, following *Wolski v. Puckett*, 2006 BCSC 977 at paras. 55-56, that the plaintiff's contract with the defendants contained an implied term that Mr.

Adamo possessed sufficient knowledge and skill to be able to accurately estimate the cost of building the small and rudimentary 120 square foot extension to the defendants' house. I find that Element breached the contract by failing to do this.

[26] I draw this conclusion, first of all, from the fact that Mr. Adamo based his estimate on a cost per square foot basis, which Mr. Oke confirmed is never the correct metric to use on a small job. Secondly, he failed to review or adjust the budget with the defendants after the plans and drawings were done, as Mr. Oke agreed that he was duty-bound to do. Thirdly, he failed promptly to notify the defendants of the significant cost overruns to his budget estimate that he knew or ought to have known had accrued prior this February 11, 2023, email and the delivery of Invoice 2963 ten days later: see *Anway Construction Ltd. v. Hunte*, 2020 BCSC 601 at para. 189.

[27] As this Court observed in *Golder Associates Ltd. v. Mill Creek Developments Ltd.*, 2004 BCSC 665 at paras. 20-22, while an estimate for the cost of services to be provided may not be a guarantee or warranty at law, it nevertheless has contractual effect, especially, I would say, if the estimate is provided by someone like Mr. Adamo who, on behalf of Element, represented himself as an expert at making such estimates and doing so accurately, and the estimate is given to people who, like the present defendants, have no experience at all with building contracts and are paying for the proposed work with borrowed funds. Such persons are in a vulnerable position vis-à-vis building contractors, and the law cures the imbalance by requiring, absent exceptional circumstances, that the final cost of a building contract should fall somewhere in reasonable proximity to the estimated cost: see *Infinity Construction Inc. v. Skyline Executive Acquisitions Inc.*, 2020 ONSC 77.

[28] In this case, at the risk of repetition, the estimated cost of construction was \$35,350. The plaintiff's combined Invoices 2963 and 2981 came in at \$56,819.82 including the 20 percent markup. The estimate given by Mr. Adamo to finish the job was \$12,365, which I will assume included the markup, for a total price of \$69,184.82, close to twice the cost estimated in Mr. Adamo's proposal. This is not a

reasonable margin of error in budgeting. It would appear that Mr. Adamo's estimate was based on faulty methodology, and that he underestimated the cost of construction so badly that in order to limit the reputational damage to his company that would be caused by it, Mr. Oke took the unusual step of offering to dispense with his company's profit margin of 20 percent – in effect, to manage and complete the project without any fee.

[29] Mr. Oke was not able to explain the significant variance between his company's estimate of costs and the amounts charged or proposed to be charged in the invoices and correspondence to which I have referred. He took some time taking me through a number of post-pandemic price increase notices published by certain of his suppliers, but these were dated well before any dealings with the defendants, and it turned out that none of the suppliers named actually provided service or materials on the defendants' project. The evidence fails to establish that input price increases were responsible for any cost overruns, and in any case, if there were such increases, the defendants should have been notified immediately and given the option of backing out of the contract or exploring other options.

[30] The defendants put their faith and trust in the plaintiff. In my view, the plaintiff let them down badly and thereby caused them a good deal of undeserved stress and aggravation. One way or the other, the problem was faulty estimating and budgeting. I find that it was likely a matter of Mr. Adamo under-quoting an accurate price, combined with a failure to do all that was reasonably necessary to ensure that the actual costs were kept in reasonable proximity to the estimate, aggravated by a failure to notify the defendants in a timely manner of adjustments to the budget. Each of these failures, in my view, constituted a breach by the plaintiff of the subject contract entitling the defendants to terminate the work.

[31] To their credit, the defendants promptly mitigated their losses by hiring someone else to finish the job for a more reasonable sum than that offered by the plaintiff. As it turned out, the combined total of their deposit paid to the plaintiff and the cost that they incurred for completion of the work by someone else was slightly

less than the \$35,500 quoted by Mr. Adamo. Accordingly, as I said earlier, the defendants have not pursued any aspect of their counterclaim and have simply asked for the plaintiff's action to be dismissed. In my view, in all the circumstances, this is the best outcome that the plaintiff is reasonably entitled to expect.

CONCLUSION

[32] For all of these reasons, the plaintiff's action is dismissed with legal costs awarded to the defendants on Scale B. The counterclaim is dismissed without costs.

“Baird J.”