

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pacific Granite Manufacturing Ltd. v. Jacob Bros. Construction Inc.*,  
2023 BCSC 1014

Date: 20230613  
Docket: S1813431  
Registry: Vancouver

Between:

**Pacific Granite Manufacturing Ltd.**

Plaintiff

And

**Jacob Bros. Construction Inc.**

Defendant

And

**Pacific Granite Manufacturing Ltd.**

Defendant by way of Counterclaim

Before: The Honourable Justice Edlmann

## Reasons for Judgment

Counsel for the Plaintiff and  
Defendant by way of Counterclaim:

R.J. King

Counsel for the Defendant:

D.H. Coles  
H.K. Randhawa

Place and Date of Trial/Hearing:

Vancouver, B.C.  
February 13–17, 21–24, 2023  
March 6–10, 2023

Place and Date of Judgment:

Vancouver, B.C.  
June 13, 2023

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## **OVERVIEW**

[1] This action involves a dispute about who should be paid for the restoration of the exterior stairs and plinths on the south side of the Vancouver Art Gallery in the fall of 2016. Jacob Bros. Construction Inc. (“Jacob Bros”) was the general contractor on the project, and Pacific Granite Manufacturing Ltd. (“Pacific Granite”) was subcontracted to do the masonry and stone work. Both parties say there was a contract between them and they largely agree about who completed which portions of the work. They disagree about the terms of the contract at the relevant times and the scope of work for which they were each responsible.

[2] Pacific Granite says that it has invoiced for the scope of work it completed and ought to be paid. Jacob Bros submits that Pacific Granite breached a number of terms of the contract by not adhering to the schedule, failing to perform work, and having insufficient experience. Jacob Bros seeks damages for its costs mitigating and remedying the breaches.

[3] For the reasons below, I find that Pacific Granite did not breach the terms of the contract and Jacob Bros ought to have paid the invoices for the work completed. I will begin by setting out the initial agreement between the parties before turning to the alleged breaches and amounts owing.

## **INITIAL AGREEMENT**

[4] One of the primary reasons for the remediation project was water leaking into the building under the south stairs. The project involved demolishing the top concrete layer of the stairs and replacing it with a stair assembly that included waterproofing and insulation as well as new granite treads and risers. The historic granite cladding also had to be removed from two large plinths on either side of the staircase to allow the replacement of the waterproof membrane. The granite cladding was to be restored and reinstalled.

[5] At the beginning of May 2016, Jacob Bros solicited a quote from Pacific Granite to supply and install the new granite treads and risers as well as remove,

clean, and reinstall the cladding on the plinths. Pacific Granite was provided with a link to tender documents setting out the details of the project.

[6] On May 10, 2016, Pacific Granite sent a quote which referred to the sections in the tender document, setting out the following prices:

1. Restoration Project Procedures – The cleaning and repair of the Heritage Stone: \$28,850
2. a) Masonry Restoration: \$129,770  
b) New Granite Treads & Risers: \$158,480
3. Joint Sealant: \$5,380

[7] The letter also set out estimated durations for the various pieces of work as follows:

- a) Remove and Storage of Heritage Stone = 3-1/2 weeks
- b) Installation of Heritage Stone = 5 weeks
- c) Installation of New Granite treads and risers = 3 weeks

[8] On May 24, Jacob Bros advised Pacific Granite that it had been chosen as the subcontractor for the stairs and masonry and invited the principal, Nader Tabrizi, to a planning meeting.

[9] On June 17, Jacob Bros confirmed by way of email and a letter of intent that Pacific Granite had been chosen as the subcontractor on the terms set out in the quote of May 10. The communication directed Pacific Granite to begin purchasing materials. Although the letter of intent referred to a subcontract agreement that would follow, Jacob Bros did not send a formal subcontract document until October.

[10] I find the evidence is clear that at this point there was agreement on the basic terms of the subcontract. Pacific Granite, for the price set out in the May 10 quote, would be responsible for removal and reinstallation of the cladding as well as installation of new granite treads and risers. Jacob Bros would be responsible for the other aspects of the project, including site preparation, demolition of the existing stairs, installation of waterproofing, and the stair assembly under the treads. While there were later some minor disagreements about certain details, I find that the

fundamental terms of the contract were understood and agreed to by both parties when the letter of intent was sent on June 17.

### **ALLEGED BREACHES**

[11] Jacob Bros alleges a long list of breaches in its pleadings. I do not propose to address each one individually, as most of them were not pursued at trial, and many of them are either quite minor or did not lead to any damages. I will address the more general allegation that Pacific Granite did not have the requisite experience. I will then turn to what I consider the two main issues of contention between the parties. The first has to do with the cause of the delays in the installation of the treads and risers. The second relates to the problems with the cladding reinstallation and the decision by Jacob Bros to take over that aspect of the project. Although both took place concurrently, it will be helpful to focus first on the installation of the treads and risers before turning to the cladding issue.

#### **Experience**

[12] Jacob Bros essentially had no experience with stone work, and little if any experience in heritage restoration. They say they were relying on the expertise of Pacific Granite in this area. Jacob Bros says that Pacific Granite did not use installers with the qualifications required in the tender documents. The relevant section of the tender documents, under the heading “Quality Assurance”, sets out the following installer qualifications:

1. Minimum of three years experience in work of this section.
2. Successful completion of at least three projects of similar scope and complexity within the past five years.

[13] Jacob Bros seeks to frame the required experience and projects of a “similar scope and complexity” as referring to large-scale heritage stone restorations.

[14] Pacific Granite had extensive experience with masonry and stonework, and had worked on projects for Jacob Brothers before. As noted, Jacob Brothers had solicited a quote from Pacific Granite for the project at issue in this case. Pacific Granite as a company, as well as the individuals involved in the project, had

experience installing stone cladding on projects much larger and more extensive than the cladding at issue in this case. They also had many years of experience installing stone stairs. Nader Tabrizi admits that his company had limited experience on heritage projects. His uncontradicted evidence was that there were not stone installers in Vancouver who had extensive experience with historic stone, as the city has relatively few large-scale historical stone installations. I accept Mr. Tabrizi's testimony that specialized stone masonry is a relatively small industry and that he was familiar with the other established companies in Vancouver.

[15] Jacob Bros suggests that they had to take over the cladding installation due to Pacific Granite's inexperience. However, when seeking out another contractor to complete the project there is no indication that Jacob Brothers was concerned about the purported requirement in the tender documents for experience on heritage stone projects. Richard Nilson was the building operation manager overseeing the project for Jacob Bros. When he contacted other installers to complete the cladding work, he could not recall if he was given any information about heritage projects they had done, and was unable to say if he even asked. The site supervisor for Jacob Bros, Chris Watkins, says he did not have any information about the other masonry company when they arrived on site. When asked about any inquiries he made, he said he looked up the company name and probably had a conversation with the principal. There was no evidence before me as to whether the company that ultimately completed the cladding had the experience Jacob Bros argues was a fundamental requirement for the project. What was clear on the evidence, however, was that Jacob Bros did not seem to be particularly concerned about specific experience on large scale heritage projects when finding another subcontractor to replace Pacific Granite.

[16] I do not accept that the installer qualifications in the tender documents are to be read as narrowly as Jacob Bros suggests. In my view, Pacific Granite likely did have experience with most of the items set out in the relevant section of the tender documents. They also had experience with many projects of similar scope and complexity. In any event, even assuming that the tender documents are to be read

as suggested by Jacob Bros, I do not find that the problems with the project were a result of Pacific Granite's inexperience with a heritage project. As I will address below, the stairs were installed to everyone's satisfaction once Jacob Bros had finally completed the stair assembly for which they were responsible.

[17] Jacob Bros raises issues with the removal of the cladding, suggesting that there were cracks in the stone that could have been avoided had proper means and methods been used. The fundamental problem with this position is that Jacob Bros admits to having essentially no experience with stone, heritage or otherwise. I am not prepared on the evidence before me to find that the means and methods used by Pacific Granite were fundamentally problematic. In my view, it is plausible that some cracking and damage is an inevitable consequence of removing century-old stone cladding, in particular when using equipment to move pieces weighing hundreds of pounds. I find that the cladding was removed without major issues.

[18] There is no question that there were delays with the stairs and the reinstallation of the cladding. I do not find, however, that the delays were a result of inexperience on heritage projects. In my view, virtually all of the delays on the project would have occurred in the same way if the stone being removed and reinstalled had been freshly installed rather than 100 years old.

[19] In summary, I do not find that the alleged divergence of Pacific Granite's experience with the tender documents was a fundamental breach of the terms of the contract. Even if it was, I do not find that any damages resulted from that divergence.

### **Stair Installation**

[20] The installation of the stairs was to proceed in three stages:

- i. First, Jacob Bros was to demolish the existing concrete stairs, exposing the concrete substrate on which the new stairs were to be installed.
- ii. Second, Jacob Bros was to install waterproofing, drain mat and insulation.

- iii. Finally, Pacific Granite was to install the treads and risers on a layer of mortar.

[21] The parties and all the witnesses before me agreed that Pacific Granite was only responsible for the tread and mortar layers on the stairs. Jacob Bros was responsible for the stair assembly below the mortar layer. There were a number of issues that arose in the course of the stair remediation, although I find that an issue with the substrate ultimately became decisive.

[22] In order to install the treads and risers, the other layers of the assembly had to be in place and installed at the right level. There was some allowance for variation which could be accommodated by altering the thickness of the mortar. However, it is common ground that the mortar specifications did not allow a thickness of more than 3", or perhaps 3.5". Mortar that was any thicker would not cure properly and was susceptible to cracking and other problems.

[23] The original schedule that was part of the tender documents had Jacob Bros completing demolition of the concrete stairs by around July 7. In part, as a result of noise complaints from the tenants below the stairs, the demolition exposing the substrate was not completed until August.

[24] On August 24, 2016, Pacific Granite did the measurements for a stair layout and identified problems with the substrate. Essentially, their measurements showed that the substrate would not accommodate the layers of the stair assembly in the architect's drawings, and that the available depth for the steps varied significantly between the top and the bottom of the staircase. According to the measurements, part of the substrate was also 1.5" further south than what was foreseen on the drawings. Pacific Granite immediately informed Jacob Bros of the problem and suggested that one possible remedy was to build up the stair assembly with additional insulation or concrete. It was clear to Pacific Granite that the stair assembly foreseen in the drawings could not be installed on the substrate as it existed at that time as the resulting issues could not be resolved by adjusting the mortar.

[25] It was unclear to me from the testimony of the various witnesses for Jacob Bros how seriously they took the issue with the substrate at that time. The site superintendent, Mr. Watkins, said he understood what Pacific Granite was saying but he questioned the validity of the measurements. It was clear that his superiors at Jacob Bros had a much more limited understanding of the problem. It was evident during the testimony of the building operation manager, Mr. Nilson, that he still did not understand the issue with the substrate at the time of trial, much less at the time of the project. His understanding in the fall of 2016 was that the issue raised by Pacific Granite was “not a big deal”. The project manager Greg Van Vliet had only a slightly better understanding than Mr. Nilson of the substrate issue. Both deferred to Mr. Watkins’ understanding.

[26] On September 26, the granite stair risers were delivered on site. It was immediately evident to the parties that the risers were only 1.5” thick rather than 2” as required in the drawings.

[27] A good deal of time was spent on this issue during the trial. I heard testimony from both Mr. Tabrizi and Dave Raymond, one of the owners of Bedrock Granite Sales who supplied the granite treads. The source of the misunderstanding was that Bedrock relied on a cut list that had been the basis for an initial quote for the granite, while Pacific Granite assumed that Bedrock would cut the treads based on the drawings that had been sent. Mr. Raymond suggested that he was aware the drawings required 2” risers, but that Bedrock only had machines to make 1.5” risers with the required specifications. He said he discussed this issue with Mr. Tabrizi who approved the 1.5” risers. Mr. Tabrizi says he did not approve any such variation, and that Pacific Granite itself had the machines necessary to cut and finish the treads at 2”. He says he found out about the 1.5” risers on September 26 and immediately called Bedrock, and that was the first time he learned about the limitations with Bedrock’s equipment.

[28] I prefer the evidence of Mr. Tabrizi on this issue. I do not find it likely that he would have ordered a large number of 1.5” risers without a change order, and

therefore not knowing whether they would ultimately be approved. On October 4, there was a site meeting with the architect at which Mr. Tabrizi proposed adding a half inch granite strip to the front portion of the risers. The solution was ultimately accepted by all parties. Pacific Granite cut strips and secured them to the treads, work for which they would not be compensated and would not have been required had 2" treads been delivered. I do not find the actions of Mr. Tabrizi following the arrival of the risers to be indicative of someone who had confirmed an order for 1.5" risers.

[29] In the end, while Pacific Granite could have been more careful in reviewing the cut list that was sent at the time of the initial quote, I do not find it unreasonable to have expected Bedrock to cut the treads to the specifications in the drawings.

[30] In any event, by October the substrate issue had still not been resolved and the treads could not have been installed even if they were the right thickness. In an email on September 27, the architect discussed possible solutions for the concern that the substrate had shifted 1.5" south. In mid-October, Jacob Bros finally brought in surveyors to do their own measurements of the stairs.

[31] On October 25, the architect issued a supplemental instruction which confirmed the solution for the riser thickness. The instruction also addressed changes to the top landing stone to address the shifting of the substrate and provided directions for pouring up to 5" of concrete in the stair assembly under the mortar. At that time, Mr. Nilson appears to have still been of the view that the concrete would not be needed.

[32] The issue with the substrate was ultimately addressed when Jacob Bros poured around 3" of concrete onto the stair assembly on November 5. At trial, Mr. Watkins suggested that the concrete was replacing the mortar that was part of Pacific Granite's scope of work, and that Pacific Granite was therefore responsible for the delay in installing the stairs. I do not accept this position.

[33] I find there is compelling evidence that supports Pacific Granite's view that the concrete was poured to resolve an issue in the substrate and stair assembly that could not have been remedied with mortar. Both Mr. Watkins and the witnesses from Pacific Granite agreed that around 3" of concrete was poured. The witnesses from Pacific Granite testified that between 1" and 3" of mortar was then used on top of the concrete. Mr. Watkins appeared to suggest that less mortar was used, although he was not specific about how thick the mortar layer was. In any event, it is clear that if the mortar layer was thicker than half an inch on top of the 3" of concrete, the substrate issue could not have been resolved by using mortar alone as the thickness would have exceeded 3.5".

[34] I prefer the evidence of Pacific Granite, and in particular their site supervisor Greg Skoropada to that of Mr. Watkins. Mr. Skoropada was clearly an experienced and knowledgeable stone installer who had a sophisticated understanding of the stair layout. He ultimately was successful in installing the treads and risers to the satisfaction of all concerned. I find that Mr. Skoropada's evidence about the thickness of the mortar layer on top of the concrete was confirmed by other evidence, including photographs that show a layer of mortar greater than half an inch thick.

[35] Of particular note, the architectural drawings required the installation of at least two 2.5" pins into the underside of each riser. One end of the pin was inserted half an inch into the stone and the remaining 2" of the pin would extend into the mortar base. I accept Mr. Skoropada's evidence that they had to drill into the concrete under the mortar layer to accommodate some of the pins. However, he estimated that only about half the pins required drilling into the concrete as the pin went all the way through the mortar. The thickness of the mortar in the places where the pins did not meet the concrete would therefore have been at least 2". This is consistent with Mr. Skoropada's description that the concrete pour was uneven and that between 1" and 3" of mortar was used in different areas. In the context of all the evidence before me, I accept his evidence on this point.

[36] I therefore conclude that it was not possible for Pacific Granite to begin the installation of the treads and risers until Jacob Bros had addressed the substrate issue on November 5. I therefore find that Jacob Bros were responsible for the delays up to that point. Pacific Granite began installing the treads and risers on November 7 and completed the installation by November 25, well within the three-week time estimate that had initially been provided for that part of the work. Once the work was completed, Mr. Nilson shook Mr. Skoropada's hand and congratulated him on having done a good job on the installation of the treads and risers. Jacob Bros have not raised any issues with deficiencies in the installation of the treads and risers.

### **Cladding**

[37] The original schedule in the tender documents foresaw the initial demolition beginning on July 1 for five days and the project completing by September 15. The project essentially started almost a month behind schedule, with demolition of the stairs not complete until August 5. Throughout the project there were regular project meetings at which the architect, heritage consultant, representatives of the building owner, the main contractor and Jacob Bros discussed progress, issues and updates to the schedule. No one from Pacific Granite was invited to participate in the project meetings, and they were not provided with the minutes or updated project schedules.

[38] Pacific Granite completed removal of the cladding in the latter part of July, within their time estimate of three-and-a-half weeks. The granite cladding was stored on site, some of it in empty planters near the plinths. Jacob Bros was then in a position to arrange the installation of the waterproof membrane. At one point, Jacob Bros attempted to move some of the granite cladding and one large piece was dropped, breaking into three separate pieces. As there was no way to fix the piece without visible cracks, Pacific Granite ordered a replacement piece at a cost of \$2,000. As I will note later, Jacob Bros was never billed for this piece.

[39] After the initial waterproofing was done on the plinths, it became evident that there were still leaks into the building below the stairs. It appeared that the leaks were coming from inside the planters at the base of the plinths, and that further waterproofing would be required. The witnesses largely agreed that the membrane in the planters would have to overlap with the membrane under the cladding on the plinths. A change order was issued by the architect on September 27, directing waterproofing in the planters. Both Mr. Nilson and Mr. Watkins agreed that the work was likely completed around that time.

[40] Pacific Granite says they were not able to begin the reinstallation of the cladding until after the waterproofing was complete. Although there was some suggestion that certain pieces or portions could perhaps have been installed, I did not find Jacob Bros to have seriously contested that assertion. In my review of the communications around that time, the main concern in September by Jacob Bros was about Pacific Granite not getting the stair treads installed on schedule. Although some undefined portion could perhaps have been done in late September, I accept that it was reasonable for Pacific Granite not to start the cladding installation until the beginning of October.

[41] Pacific Granite had contracted with Mike Shafai, a structural engineer, to provide a design for the reinstallation of the cladding. Mr. Shafai sent an original set of drawings in August, and in the ensuing weeks there were discussions with Jacob Bros and modifications to the drawings. They were ultimately approved and the necessary hardware was ordered by Pacific Granite. Pacific Granite began the installation according to Mr. Shafai's drawings on October 3.

[42] On October 6, Mr. Shafai attended to inspect the initial work. It became evident at that time that his drawings were based on the understanding that the bottom row the cladding would remain in place and did not take into consideration the reinstallation of the bottom row of cladding. As a result, Mr. Shafai directed that pins be installed on the underside of the first row of cladding. After some discussion with Pacific Granite, another solution with additional brackets was approved that

would not involve removing the row of cladding that had already been installed. Pacific Granite ordered the additional brackets and had to wait for them to arrive before continuing with the installation.

[43] On October 12, Mr. Watkins sent an email to Mr. Nilson setting out a number of perceived problems with Pacific Granite and the delays. In relation to the cladding, he said the following:

By Thursday of that week, 4 pieces of granite were installed, incorrectly, with bracket locations deviating from the engineered layout, and pins installed and fabricated incorrectly. [Mr. Shafai] did an inspection of their work and rejected the installation based on incorrect layout, pins, stone that was not suitable for re-install with his design, and an angle bracket that should have been in his design that was installed, but never mentioned to him.

[44] Mr. Shafai testified under subpoena at the request of Jacob Bros. To say he was a difficult witness would be an understatement. He acknowledged that he had received architectural drawings from Mr. Tabrizi for the project. However, when he was shown the architectural drawings for the project, he said he did not recall ever seeing them and that they were new to him. It was clear that he was unwilling to make any attempt to review the drawings, refresh his memory or assist the court in any meaningful way. As confirmed by several other witnesses, it was evident that no professional could have looked at the architectural drawings without understanding that the bottom row of granite was being removed, and Mr. Shafai acknowledged as much in his brief evidence. There is only one set of architectural drawings in evidence. It is difficult to understand why there would be another set of such drawings for the project or why they would not show all the cladding being removed given that the primary purpose of the project was to replace the waterproof membrane under the cladding. On the evidence as a whole, I find that Mr. Shafai was given the architectural drawings and, for reasons he has chosen not to explain, erroneously understood that the bottom row of granite was remaining in place.

[45] In cross-examination, both Mr. Watkins and Mr. Nilson conceded that on their own review of the architectural drawings it was obvious the bottom row of cladding would have to be removed and they would expect it to be obvious to a professional

engineer. Mr. Watkins says he likely had a conversation with Mr. Shafai about this issue. Given his evidence before me, I find it quite plausible that Mr. Shafai may have tried to deflect the blame and attribute the error to Pacific Granite. It is more difficult to understand why Mr. Watkins would have accepted such an explanation.

[46] Jacob Bros was under significant pressure at this point as the project was well behind schedule. When Mr. Nilson received the email from Mr. Watkins on October 12, he accepted the information set out in it. Mr. Watkins' email attributed a number of the problems on the project to Pacific Granite, including the issue with the bottom row of cladding, the error with the thickness of the treads and the more general delay in installing the stairs. Mr. Nilson decided that Jacob Bros would take over the cladding work from Pacific Granite.

[47] Mr. Nilson met with Mr. Tabrizi later the same day. While their versions of what was discussed at the meeting largely converge, they left the meeting with rather different understandings of the agreement between them. Mr. Nilson sent an email the same day with a summary of what had been agreed to:

Moving forward Pacific Granite will complete the following;

- provide the cladding clip angles and stair tread mesh (Jacob Bros will pick up if necessary),
- pick up the stair treads from the project site, complete the stair tread correction (lamination to the bottom of the tread) and return the corrected stair treads to the project site, at no additional cost,
- provide a custom sized (+/-18" deep) top stair tread complete with risers, at no additional cost and,
- provide your crane with operator for 1 week for the installation of the first row of cladding by others.

Jacob Bros will compete and or provide the following;

- alternative resources (stone contractor) to complete the installation of the cladding,
- the forming and placing of a concrete "sub tread" surface for the installation of granite treads and risers
- formal contract documentation, complete with change order deducting the cladding installation.

[48] Mr. Tabrizi understood that Jacob Bros was taking over the cladding because they felt they could do it more efficiently and cost-effectively. Mr. Tabrizi says he agreed to have them take over the work if they wanted to and would only charge for the work Pacific Granite actually completed.

[49] Mr. Nilson's evidence was much more difficult to understand. There were variations in his evidence between his examination for discovery, direct and cross-examination, some of which I accept may have been the result of unclear questions. Even accounting for those challenges, it remained unclear to me what Mr. Nilson says his understanding was at the time of the October 12 meeting and what views he came to at some later point. Jacob Bros argues that at the time of the October 12 meeting Pacific Granite had been given an opportunity to fulfill their obligations under the contract, that Jacob Bros was undertaking the work necessary to mitigate their damages, and that Pacific Granite would be responsible whatever it cost to complete the work. It is not clear to me that was Mr. Nilson's intention at the time, and I find it more likely he came to that view at some later point.

[50] In any event, it is clear on Mr. Nilson's own evidence that he most certainly did not communicate to Mr. Tabrizi his view that Pacific Granite would be responsible for any costs incurred by Jacob Bros in completing the cladding work. Mr. Nilson conceded on cross-examination that there was no such agreement on October 12. Moreover, Mr. Nilson's conduct following the meeting was not consistent with an understanding that Pacific Granite would be responsible for the costs incurred. Mr. Nilson asked Mr. Tabrizi for an accounting of Pacific Granite's actual costs to date. I find it difficult to understand how Pacific Granite's actual costs would be relevant if Mr. Nilson had agreed with Mr. Tabrizi that Jacob Bros would simply spend what was necessary to complete the work and charge that to Pacific Granite. I accept Mr. Tabrizi's evidence that he would not have agreed to such an arrangement.

[51] Following the meeting on October 12, Mr. Nilson sent a formal subcontract document to Mr. Tabrizi. It was dated for reference in June and set out detailed

terms, including a completion date for the project of September 15 and did not include any change order. Pacific Granite did not sign the agreement and did not return it. I do not find this document to be of any assistance in establishing the contractual terms between the parties in June, much less at the time it was sent. The document was clearly not the documentation “complete with change order deducting the cladding” referred to in Mr. Nilson’s email to Mr. Tabrizi.

[52] In my view, the basic terms of the agreement between the parties were set out in the quote from Pacific Granite of May 10. Timelines for the various pieces of work were also set out in that document. While I accept that there was some discussion about timelines and schedule, I do not find that the project schedule with a completion date of September 15 formed an immutable part of the contract between Jacob Bros and Pacific Granite. In any event, even if it had formed part of the contract, Jacob Bros had modified the schedule before Pacific Granite could even begin their work on the stairs.

[53] It is common ground that Jacob Bros removed the cladding with the 3.5 weeks set out in the May 10 quote. The installation of the stairs, once Jacob Bros had completed their portion of the stair assembly, took approximately 3 weeks. I find that Pacific Granite completed the work they contracted to do within the timelines agreed to.

[54] With respect to the cladding reinstallation, I find that Mr. Nilson and Mr. Tabrizi agreed that Jacob Bros would take over responsibility for completing that work. I find this to be a modification of the initial contract, and I do not find there was an agreement for Pacific Granite to pay the costs. I also do not accept that Jacob Bros was justified in taking over the cladding installation to mitigate damages from an alleged breach of the initial agreement. Not only should such an intention have been made clear to Pacific Granite, but, as noted above, I do not accept that Pacific Granite was in breach of their obligations under the contract on October 12. They had estimated 5 weeks to reinstall the cladding and were not able to start until the beginning of October. They were most certainly not in breach of their promised

timeline by October 12. I therefore do not accept that Pacific Granite is liable for the work done by Jacob Bros on the cladding installation.

[55] In conclusion, I find that there was a contract for Pacific Granite to complete the work and be paid the amounts set out in the May 10 quote. I find that the cladding removal and the stair installation were completed within the times estimated once Pacific Granite were able to start their work. I find that Jacob Bros had a contractual to pay for the work completed.

### **PAYMENTS AND INVOICES**

[56] By December 15, 2016, Pacific Granite had invoiced \$331,403.83, almost the entirety of the work quoted. Following discussions with Jacob Bros, Pacific Granite issued a credit reducing the amounts invoiced by \$72,775.50, leaving a total of \$258,628.33 for work done.

[57] Jacob Bros made payments totaling \$134,103.06 to Pacific Granite:

\$26,250.00 (July 18, 2016)

\$49,053.06 (September 13, 2016)

\$21,000.00 (October 24, 2016)

\$37,800.00 (November 18, 2016)

[58] The outstanding amount on the Pacific Granite invoices is therefore \$124,525.27.

[59] I accept the submission of Jacob Bros that Pacific Granite was not in a position to invoice for the full amount of the initial scope of work in December 2016. However, I find that the adjustments made in February 2017 were eminently reasonable in the circumstances. Not only did Pacific Granite make reasonable deductions on the quoted costs for cleaning and repair of the stone, they completely discounted the reinstallation despite having worked on a portion of it and did not charge for a number of other extras including caulking and replacing the large piece of cladding broken by Jacob Bros. I find that in the circumstances Jacob Bros ought to have paid the resulting invoice.

**CONCLUSION**

[60] For the reasons above, I find Jacob Bros liable in debt under their contract with Pacific Granite in the amount of \$124,525.27. The counterclaim is dismissed. If the parties are unable to agree on the appropriate order relating to interest and costs, they may arrange to make submissions before me within 30 days of the issuance of these reasons.

“Edelmann J.”