IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Primex Industries Inc. v. Tatras Contracting Group Ltd.*, 2023 BCSC 818

Date: 20230512
Docket: S227036
Registry: Vancouver

Between:

Primex Industries Inc.

Appellant

And:

Tatras Contracting Group Ltd.

Respondent

Before: The Honourable Madam Justice Forth

On appeal from: A decision of the Provincial Court of British Columbia, dated August 3, 2022 (*Tatras Contracting Group Ltd. v. Primex Industries Inc.*, North Vancouver Registry No. C-2127130)

Reasons for Judgment

Appearing as representative for the Appellant in person:	G. Palamarz
Counsel for the Respondent:	N. Abrahams
Place and Dates of Hearing:	Vancouver, B.C. March 29, 2023
Place and Date of Judgment:	Vancouver, B.C. May 12, 2023

Table of Contents

Introduction

[1] The appellant, Primex Industries Inc. ("Primex"), appeals from the decision of Judge J.F. Galati of the BC Provincial Court's Small Claims Division made on August 3, 2022.

[2] The respondent, Tatras Contracting Group Ltd. ("Tatras"), commenced an action against Primex in the Provincial Court for failing to fully pay three invoices it rendered for work performed. Primex defended on the basis that the amounts claimed in the invoices were disputed.

[3] In his August 3, 2022 oral reasons (the "Reasons"), Galati J. found that the amount owing by Primex to Tatras on the three invoices was $14,782.51, plus pre-judgment interest of $138.05, service fees of $80, and filing fees of $156, for a total judgment of $15,156.56.

Relevant Background

[4] Primex operates a panel manufacturing and distribution business in BC.

[5] In or around 2018, Primex hired Beckra Contracting Ltd. ("Beckra") to provide panel installation services for a residential building in West Vancouver.

[6] In or around 2019, Beckra became a subsidiary of Tatras, a contracting business that provides, *inter alia*, panel installation services in BC, and Tatras continued to provide such services to Primex until approximately September 4, 2020.

[7] Tatras' chief executive officer and managing director, Michal Brondel, testified that the panel installation services were to be provided by two employees at a rate of $50 an hour.

[8] David Varga was one of the Tatras' employees that primarily performed the work of panel installation. He was also assisted on the job by up to three other Tatras' employees. At no time did Tatras receive any complaints about the quality of work performed by Mr. Varga or by any of the other employees.

[9] On July 13, 2020, Tatras issued invoice #1060 to Primex in the amount of $37,957.50 (“Original #1060”). This invoice included lunch breaks for the employees and overtime of 82 hours charged at a rate of $75 an hour.

[10] On approximately July 17, 2020, Primex made a partial payment of $20,000, but did not pay the outstanding amount of the Original #1060.

[11] On August 20, 2020, Tatras issued invoice #1074 to Primex in the amount of $9,016.88 (“Original #1074”). This invoice included lunch breaks for the employees and overtime of 18.50 hours charged at a rate of $75 an hour. Primex did not make any payment towards this invoice.

[12] Primex did not fully pay these two invoices since it disputed that Tatras did not deduct time for lunch breaks taken by its employees while performing the work. Tatras did not pay lunch breaks for their employees.

[13] On October 9, 2020, Daniel Franco, chief financial and operations officer of Tatras, emailed Gregory Palamarz, representative of Primex, advising:

> Our timesheets included lunch breaks and since we are not paying our guys’ lunch breaks, is not fair and right to be charging you these amounts. Therefore I deducted 0.5h from each entry, which decreased the OT hours significantly.

[14] Tatras provided revised invoices for the Original #1060 and Original #1074, which deducted 30 minutes for lunch breaks. The revised invoice for #1060 reduced the number of regular hours from 600 to 597 hours and overtime hours from 82 to 47.50 hours (“Revised #1060”). Revised #1060 was reduced to $35,083.13 and then further reduced by the $20,000 payment to $15,083.13.

[15] The revised invoice for #1074 reduced the number of overtime hours from 18.50 to 9.5 hours and did not reduce the regular hours (“Revised #1074”). Revised #1074 was reduced to $8,308.13.

[16] On October 9, 2020, Tatras issued invoice #1099 to Primex in the amount of $6,667.50. It included 10 hours of overtime at $75 an hour (“Original #1099”).

[17] Tatras provided substantially all of Mr. Vargas' pay stubs for his work from the period covered by the three invoices, being April 5, 2020 to September 2020. A two-week period from June 14, 2020 to June 27, 2020 was missing.

[18] On or about October 9, 2020, Primex made a further payment of $10,000.

[19] On October 28, 2020, Mr. Palamarz emailed Mr. Franco advising:

> […]
>
> I have reviewed all your invoices and for greater clarity I have removed all overtime from your invoices, consequently balances of invoices are:
>
> #1060 is $1342.51
>
> #1074 is $7560.01
>
> #1099 is 5880.00
>
> Total 14782.51 minus Statutory Lien Hold Back of $8520.85 make it payment due $6261.67 cheque ready for pick up.
>
> […]
>
> In regards to round it up to 15 minutes, the only time this is happening is in the event that the employ is late for work, time clock is set up to start counting from 8:15 if the employ punch at 8:01 in the event that shift starts at 8:00 and this is for benefit of employer not employ.
>
> I have never asked to deduct 30 minutes for lunch breaks, I have suggested that perhaps it is mistake in your accounting software that would account for suspicious quantum, this was before I have discovered that this overbilling was done on purpose in order to defraud from me money that was never [due].
>
> [There] is still question that has not been answer, who and why authorise invoicing for overtime, specially to the extend that it's happen, the time sheets clearly in red color specify the amount that the [*sic*] your employ was paid for, why I was billed for additional time regardless of the fact that you has never paid your employees for the time you have billed me.
>
> If you would like to claim for the time actually work please submit your employ time sheets and I will review it for accuracy focusing on how much you have actually payed your employs for the work perform on my job side.
>
> […]

(the "October Email")

[20] Tatras revised the Revised #1060, Revised #1074, and Original #1099 so the overtime rate was not charged and hours were recorded by exact "accounting-to-

the-minute", rather than rounding to the nearest quarter hour. The further revised invoices reflect:

- #1060 a sum of $35,309.40, reduced by the payments of $30,000 to $5,309.40 ("Final #1060);
- #1074 a sum of $8,578.50 ("Final #1074"); and
- #1099 a sum of $6,733.65 ("Final #1099").

(Collectively, the "Final Revised Invoices")

[21] The total outstanding after the further revisions was $20,621.55.

[22] It was for this amount that Tatras sued Primex for.

History of Provincial Court Proceedings

[23] On February 5, 2021, Tatras filed the notice of claim, claiming the amount of $20,621.55 owing on the Final Revised Invoices that Tatras had issued to Primex in October 2020.

[24] On February 19, 2021, Primex filed a reply and counterclaim in which it disputed the entire amount owed and claiming that the invoices are "wrongful deception intend[ed] to result in financial gain" and sought $5,000 plus filing fees.

[25] On March 5, 2021, the reply to counterclaim was filed by Tatras disputing the allegations made.

[26] On September 20, 2021, Primex brought an application for the production of pay records for the relevant employees of Tatras. The application was dismissed by Judge N. Adams on the basis that it was premature as the disclosing deadline was October 15, 2021.

[27] On January 31, 2022, the parties appeared before Judge L.P. Smith; however, the small claims trial that was scheduled to commence was adjourned due to lack of time. According to counsel for Tatras, at the hearing before Smith J.,

Primex made a request for the pay stubs and Smith J. refused to make a production order.

[28] Subsequently, the small claims trial proceeded before Galati J. on August 3, 2022 for one day. At the conclusion of the evidence and submissions, Galati J. gave his Reasons.

Trial Evidence

[29] During the trial, Mr. Brondel testified that the time tracking devices used by Tatras tracked the precise times the Tatras' employees arrived at and left the job site each day. As such, Primex was not charged for travelling time. He testified that at the request of Mr. Palamarz, 30 minutes were deducted from the invoices to account for a half an hour lunch.

[30] Mr. Brondel testified that the typical length of the lunch time break was up to an hour. He agreed that they would be between half-an-hour to an hour. Primex called an employee, Patrick Batycki, who also worked at the site when Tatras' employees were working. He confirmed that the lunch breaks were usually one hour.

[31] Mr. Palamarz testified that when the billing was done by Beckra, he was only ever charged eight hours a day and was never charged overtime.

[32] The following exchange took place between Galati J. and Mr. Palamarz in respect to the October Email:

> Q So what you're really saying in this email is that by your calculation, the amount owing was just under 15,000 -- fourteen --
>
> A Yes.
>
> Q -- seven-eighty-two. Is that right?
>
> A When we remove – when we remove the overtimes owing.
>
> Q Yes, but you've told me you'd already removed it.
>
> A Just overtime. There was still the dispute of the straight time.
>
> Q Okay. I'm just asking you about this email for the time being.
>
> A Yes. For the time being, it's clearly say that I have reviewed and removed the overtime.

> Q Okay. Well, what I read there is that a total owing -- and you've broken it down by invoice --
>
> A Yes.
>
> Q -- is fourteen-seven-eighty-two.
>
> A Yes
>
> Q Okay. So the amount owing by you, if we don't take into account the lien holdback, according to your calculations, is $14,782.
>
> A It's correct.
>
> […]
>
> Q So just so that I'm totally clear here because that email that we've referred to, what's Exhibit 7 here, in there, the way I read it is you're essentially agreeing that the amount you calculated as owing was just under $15,000 -- excuse me -- and that you would have been willing to pay that as long as you got satisfactory evidence of the hours actually worked, subject to the lien holdback period?
>
> A It's, in large, correct.

[33] During the cross-examination of Mr. Palamarz, he referred to the Original #1060 invoice and as a result it was marked as Exhibit 8 at the trial. The Original #1074 and Original #1099 invoices were not entered as exhibits.

[34] Mr. Palamarz agreed that according to the timesheets, the Tatras employees were working eight hours a day. Mr. Palamarz speculated that the start time for the job may have been at the Tatras' shop, rather than at the job site.

The Reasons of the Trial Judge

[35] The salient portions of the Reasons provide:

- There was a contract for the provision of labour, at fifty dollars an hour, and there is no dispute that labour was provided: para. 3;
- Mr. Palamarz' primary concern is that the claimant has not proven the actual hours that its workers worked: para. 4;
- The original invoices should have been part of the claimant's documents, not the revised invoices, but largely those documents are accurate: para. 5;
- Primex agreed to pay for time working, and not for time not spent working: para. 6;

- In the October Email Mr. Palamarz set out, in essence, what he thinks he owes, although he now claims he needs some other proof of the hours worked: para. 9

- The claim presented at $20,600 has not been proven: para 10;

- While there is evidence that billing for half hour lunch breaks has been removed from the invoices, according to Mr. Batycki, lunches were generally an hour. The court found: “it is not consistent to arbitrarily remove a half hour from the amount charged and leave that other half hour buried in there.”: para. 11; and

- Mr. Palamarz acknowledged that the amount owing by his calculations, not the claimant’s calculations, was $14,782.51: para. 13.

[36] As noted, the trial judge granted judgment in the amount of $14,782.51 with pre-judgment interest, filing fees of $150,56 and $80 service fee: Reasons at paras. 14 and 20.

The Appeal

Overview

[37] Primex appeals on three issues:

a) Did the trial judge commit an overriding error in weighing the evidence at trial?

b) Did the trial judge commit an error in law by making his judgment against Primex on the basis of a non-binding and rejected offer to settle?

c) Is the trial judge allowed to ignore evidence he is clearly aware of?

Position of Primex

[38] Primex submits that allowing the trial to proceed without the original invoices is an “overriding” error since there was no evidence of the amount of the suggested revisions and no basis to establish the accuracy of the invoices by any standard.

[39] It argues that Primex was billed for lunch breaks, but without the original invoices, it is not possible to establish if the half hour for lunch was taken out of the revised invoices.

[40] Mr. Palamarz submits that the trial judge should not have considered the offer contained in the October Email, since it was a settlement offer that was not accepted.

[41] Mr. Palamarz suggests that Mr. Brondel, by his testimony, agreed that Tatras' time-tracking app starts the work day at the Tatras shop, rather than at the Primex job site, resulting in further overbilling. He further claims that the rounding up to 15 minutes results in additional overbilling.

[42] Mr. Palamarz prepared a calculation setting out that the total differences, before taxes, between the original invoices and the Final Revised Invoices amounts to only $2,876.50. He claims that the actual amount of the overbilling based on 216 work man-days is:

Overtime	110.5 hours x $75/ hours	$8,287.50
Lunch time breaks	216 work man-days at one hour per day = $216 x $50/hour	$10,800.00
Travelling time	216 work man-days x 10 minutes = 2160 minutes = 36 hours x $50/hour	$1,800.00
Travelling time	15 minutes "round-of" 216 work man-days x 10 minutes = 36 hours x $50/hour	$1,800.00
		$22,687.50

Position of Tatras

[43] Tatras submits that since the claim was for breach of contract in which Primex did not dispute that a contract existed and only disputed the amount, which is a matter of fact, there was no error in law made by Galati J.

[44] Tatras argues that the amount awarded of $14,782.51 was equal to the amount Tatras claimed, minus a further deduction for the length of the lunch breaks. If two employees took one hour of lunch for each day, that would amount to $5,320.

[45] The Final Revised Invoices, which were the basis for the claim, covered only 57 work days, and not 216 work days.

[46] Tatras disputes that Mr. Brondel gave evidence that the workers charged from the time they left the shop. This was not the evidence provided by Mr. Brondel at trial. Mr. Brondel testified that the timesheets represent times when Tatras' employees arrived at and left the job site.

[47] Tatras submits that Galati J. had a considerable amount of evidence on which to make his decision and there was no palpable and overriding error made in his findings of facts, nor any indication that any additional evidence would have altered his decision.

Discussion

Standard of Review

[48] The standard of review in appeals from the small claims division of the Provincial Court was stated in *Zhang v. Zhou*, 2021 BCSC 1897 at paras. 43, quoting *Wang v. Chandi*, 2019 BCSC 205, as follows:

> [5] An appeal from a judgment of the small claims division of the Provincial Court is narrowly confined. The 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. A Judge of this Court is not entitled to substitute his or her opinion for that of the Provincial Court Judge unless the latter made an error of law or a serious error in making findings of fact. The constraints on a Judge of this Court when hearing an appeal from the small claims division were described by Mr. Justice Voith in *Berg v. Harbour City Diesel and Offroad Ltd.*, 2012 BCSC 710 at paras. 56 through 58 which read:
>
> > [56] In *Smithers Parts Ltd. v. Hudson*, 2009 BCSC 1645 at paras. 26-27, A. MacKenzie J., as she then was, explained the standard of review applicable to decisions made under the *Small Claims Act*:
> >
> > > [26] The standard of review on pure questions of law is one of correctness, but the standard of review for findings of fact is they cannot be reversed unless the trial judge has made a palpable and overriding error. A palpable error is one that is plainly seen: *Housen v. Nikolaisen*, 2002 SCC 33. An appeal court should only intervene when there is a material error, a serious misapprehension of the evidence, or an error in law: *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at paras. 11-12; *R. v. Clark*, 2005 SCC 2. This court will only intervene in an appeal from Small Claims Court where the trial judge was clearly wrong in his apprehension of the law or the facts: *Priority Buildings Services Ltd. v. Ali*, [1999] B.C.J. No. 2820 at para. 10, and *Stewart v. Strutt*, [1998] B.C.J. No. 636 at para. 10, both being Provincial Court decisions.

> [27] Apart from the ground that the judge based his error on an issue not before the court, I must find palpable and overriding error in order to reverse findings of fact or that the trial judge was clearly wrong in his apprehension of the facts; thus, the rules are the same as in the British Columbia Court of Appeal on a review from a judgment of this court.
>
> [57] The reason that such deference is paid to the decision of the trial judge is because the 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 is a judge sitting on appeal: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.
>
> [58] This standard of review is particularly important as it pertains to the appeal advanced by Mr. Berg. In his various appeal materials and in his supplemental submissions, Mr. Berg has consistently sought to reargue the issues which were before the trial judge. This was not and is not open to him. The onus lies on Mr. Berg to establish either an error of law or that there was no reasonable evidential foundation for the factual findings which the trial judge made.

Analysis

[49] I will address the issues that Primex raised respecting the trial.

Reliance on the October Email

[50] Primex argues that the trial judge should not have made any reference to the October Email since it was a without-prejudice settlement communication. Primex includes in the appeal record a copy of Rule 9-1 of the *Supreme Court Civil Rules* on Offers to Settle.

[51] First, the Rule 9-1 does not apply to proceedings under Rule 17(18) of the *Small Claims Act: Small Claims Rules,* B.C. Reg. 261/93. Even so, the October Email is not an “offer to settle” as the term is defined under Rule 9-1, which provides:

> (1) In this rule, “offer to settle” means
>
> (a) an offer to settle made and delivered before July 2, 2008 under Rule 37 of the former Supreme Court Rules, as that rule read on the date of the offer to settle, and in relation to which no order was made under that rule,
>
> (b) an offer of settlement made and delivered before July 2, 2008 under Rule 37A of the former Supreme Court Rules, as that rule read on the date of the offer of settlement, and in relation to which no order was made under that rule, or

> (c) an offer to settle made after July 1, 2008 under Rule 37B of the former Supreme Court Rules, as that rule read on the date of the offer to settle, or made under this rule, that
>
> (i) is made in writing by a party to a proceeding,
>
> (ii) has been served on all parties of record, and
>
> (iii) contains the following sentence: "The .....[party(ies)]....., ...[name(s) of party(ies)]....., reserve(s) the right to bring this offer to the attention of the court for consideration in relation to costs after the court has pronounced judgment on all other issues in this proceeding."

[52] The October Email was sent prior to the commencement of this litigation, and Rule 9-1 does not extend to pre-litigation offers: *Bomford v. Wayden Transportation Systems Inc.,* 2010 BCSC 1721 at para. 17. Further, the October Email did not contain the words set out in Rule 9-1(c)(iii) that an offer to settle is required to contain, nor is there any indication on it that it was a without prejudice offer.

[53] Settlement privilege does exist as a common law rule of evidence that protects communications exchanged by parties as they try to settle a dispute: *Union Carbide Canada Inc. v. Bombardier Inc.,* 2014 SCC 35. The purpose of the rule is to encourage parties to resolve their disputes without resorting to litigation: *Sable Offshore Energy v. Ameron International Corp.,* 2013 SCC 37 at para. 13. In *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.,* 2008 BCSC 442 at para. 70, the court adopted the following test to determine if a document is protected under settlement privilege:

> [70] […]
>
> a) A litigious dispute must be in existence or within contemplation;
>
> b) The communication must be made with the express or implied intention that it would not be disclosed to the court in the event negotiations failed; and
>
> c) The purpose of the communication must be to attempt to effect a settlement.

[54] Regardless of whether the October Email can be considered a settlement communication under this test, and I am doubtful that it could, Primex included the October Email in its book of documents that it submitted as evidence for the trial.

Further, in his evidence at trial, Mr. Palamarz took Galati J. to the October Email and read out portions of its contents. Any settlement privilege that could have existed over the October Email has been waived.

[55] Given these circumstances, there is no merit in Primex's submission that the October Email should not have been referenced during the trial.

Reliance on the amount in the October Email

[56] Primex argues that the trial judge should not have relied on the amount that was calculated as owing in the October Email since it did not include all the deductions that needed to be made.

[57] The transcript supports that the trial judge specifically asked Mr. Palamarz whether the amount in the October Email was the amount that he calculated as owing and Mr. Palamarz stated that was correct. The trial judge was entitled to rely on the sworn evidence of Mr. Palamarz and his agreement that the amount was his calculation on how much was owed.

[58] I reject the argument of Mr. Palamarz, made on behalf of Primex, that he made that statement in error or by mistake when testifying.

Failure to reference the original invoices

[59] Primex argues that it was essential that the trial judge have the original invoices so that he could understand the deductions made. He argues that the trial judge refused to allow the original invoices as exhibits at the trial since he would not entertain looking at the book of documents prepared by Primex. This is not accurate.

[60] The original invoices were not contained in Tatras's book of documents as noted by the trial judge. However, it is clear that there was nothing prohibiting Primex from referencing the original invoices at trial. When Mr. Palamarz was being cross-examined at trial, he referenced the Original #1060 and the court requested a copy of it. It was then marked as an exhibit at trial.

[61] I am unable to conclude that the trial judge made any error in this regard. Primex could have referred to all of the original invoices either during the cross-examination of Mr. Brondel or during Mr. Palamarz's testimony. It is not the responsibility of the trial judge, when dealing with a self-represented litigant, to advised them on how they should defend the action. As noted by the Court of Appeal in *Sull v. Pengelly,* 2019 BCSC 575:

> [94] A number of the cases that I have referred to confirm that courts should be lenient in instances, for example, where a self represented litigant has not complied with some procedural requirement. The obligation to prepare a case, however, particularly in relation to the assembly and production of documents and the presentation of relevant evidence, lies with the litigant. This includes self represented litigants. The obligation to produce relevant documents is central to the litigation process and to the fact-finding exercise that courts engage in.

[62] It is not the responsibility of a trial judge to request available evidence. It is the obligation of the parties to present relevant evidence.

[63] I am not persuaded that any error was made by the trial judge respecting the use to be made of the original invoices.

Failure to weigh the evidence correctly

[64] Primex argues that the judge failed to weigh the evidence and submits that there was evidence to support that the Tatras' employees began recording their time when they left the shop, not upon their arrival at the job site. This submission is contrary to the evidence at trial that the time-tracking device used by the Tatras' employees represented the time that the employees arrived at and left the job site each day.

[65] Primex speculates that this might not be true, but that was the evidence before the trial judge and he was obliged to consider the evidence that was presented and not speculations made by Mr. Palamarz.

[66] Primex says that he has done the calculation of how much he was overbilled and it amounts to a total of $22,687.50. I note the following in respect to his calculations:

Overtime billing

[67] Primex's calculations take off 110.5 hours of overtime at $75 an hour, yet, there is no evidence that supports that those 110.5 hours were not worked, only that the hours should have only been billed at the agreed regular rate of $50 an hour. The evidence from Mr. Brondel was that the invoices were revised to charge only the regular rate. The factual finding made by the trial judge was that the hours claimed were the hours worked. I see no palpable and overriding error in that factual finding.

Lunch breaks

[68] Primex uses 216 work man-days and one-hour lunch break per day at the regular hourly rate of $50 to come up with a sum of $10,800 overbilled for lunch breaks. The use of 216 work man-days is an issue. The Final Revised Invoices that were sued on consisted of only 57 days, out of which 55 days having two workers and two days having only one worker. In total, that means the Final Revised Invoices covered 112 work man-days.

[69] It appears that Primex wants to take issue with invoices that were rendered and paid prior to the Final Revised Invoices. There was no counterclaim advanced that put in issue the prior invoices. There is no basis on the pleadings to raise the issue. The role of pleadings is to prevent the expansion of the issues, give notice of the case required to be met, and provide certainty of the issues for the purposes of the appeal: *Canadian Bar Assn. v. British Columbia,* 2008 BCCA 92 at para. 60, leave to appeal to SCC ref'd, 32600 (31 July 2008). It is not open to Primex now to put in issue the prior invoices when it was not part of the pleadings nor part of the evidence before the trial judge.

[70] In respect to the lunch breaks, it is clear that recognition was made on the costs relating to the lunch breaks. Tatras presented a number of $20,621.55 as outstanding. It is my understanding that this number reflected a reduction of 30 minutes for lunch. Even if it did not, that if one hour was taken off for each of the 112 days of work billed in the Final Revised Invoices, this would amount to $5,600. If this

amount is deducted from the amount claimed, this leaves the sum of $15,021.55, which is more than the judgment granted by Galati J.

Traveling Time

[71] This issue has been addressed above. The evidence supported that no traveling time was charged. It was incumbent on Primex at trial to present evidence to refute this. It did not do so.

Rounding off the time

[72] Primex seeks to “round-off” the time for 216 days. The same issue arises as with lunch breaks, in that the pleadings do not raise any issue respecting any invoices except for the Final Revised Invoices sued on. In addition, the evidence at trial was that the Final Revised Invoices all accounted for the actual hours worked and did not include any rounding up. This is reflected in the Final Revised Invoices which show the hours worked to the minute, and not rounded up.

[73] I see no factual error made by the trial judge in his failure to consider prior invoices that were not sued upon and not referenced in the pleadings.

Conclusion

[74] Primex was not able to direct me to any error of law that it argues the trial judge made. It has failed to establish any palpable or overriding error made by the trial judge. The appeal is dismissed with costs at scale B to Tatras.

[75] There is a further order that the $15,156.56 deposited with the registrar of the BC Supreme Court by Primex be released by the registrar and paid to Tatras Contracting Group Ltd., pursuant to s. 8(2) of the *Small Claims Act*, R.S.B.C. 1996, c. 430.

“Forth J.”