

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reid Developments Ltd. v. Hopkins*,  
2025 BCSC 502

Date: 20250320  
Docket: S218746  
Registry: Vancouver

Between:

**Reid Developments Ltd.**

Plaintiff

And

**Eric Quay Hopkins and Kandace Dawn Hopkins**

Defendants

Before: The Honourable Madam Justice W.A. Baker

## Reasons for Judgment

Counsel for Plaintiff:

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Place and Date of Trial:

Vancouver, B.C.  
April 29-30, 2024  
May 1-3, 6-10, 2024

Place and Date of Judgment:

Vancouver, B.C.  
March 20, 2025

Table of Contents

**INTRODUCTION ..... 3**

**ISSUES..... 3**

    Credibility..... 4

    Was the LOA a cost-plus contract? ..... 7

    Did Reid Developments guarantee the project would be completed within the preliminary budget it provided? ..... 11

        Did the LOA contain a guarantee?..... 11

        Did the preliminary budget restrict the costs of the project? ..... 12

        Did the plaintiff orally guarantee the project would not exceed 15% of the budget?..... 14

    How was the LOA managed?..... 16

        Communication during project ..... 16

        Construction draws ..... 18

        Costs outside control of the plaintiff ..... 20

        Changes to the scope of work ..... 21

    Are the Hopkins in breach of contract and, if so, has the plaintiff suffered loss or damage as a result? ..... 24

    Did the plaintiff breach its contract with the Hopkins? ..... 26

        Did the plaintiff fail to financially manage the project as required under the LOA, including failing to seek bids or estimates in accordance with the LOA, performing and invoicing for unapproved work? ..... 26

        Did the plaintiff fail to achieve substantial completion in accord with the LOA? 27

**DISPOSITION..... 28**

**Introduction**

[1] The plaintiff in this action, Reid Developments Ltd. (“Reid Developments”), is a builder of custom homes which entered into a contract with the defendants, Mr. and Ms. Hopkins, for the construction of their new home in Vancouver, BC.

[2] Reid Developments supplied all labour, materials, and supervision to demolish the Hopkins’ old house and construct a new house with a laneway home. The Hopkins have refused to pay the final invoices in the total amount of \$650,209.55. The plaintiff claims against the Hopkins for breach of contract and damages.

[3] The Hopkins submit the plaintiff provided them with a preliminary budget and failed to advise them the budget had been exceeded. They further submit they are not required to pay the final invoices which exceed any amount they agreed to pay.

**Issues**

[4] The claim and counterclaim raise a number of issues regarding how the construction agreement was performed. In addition, the credibility of the witnesses is an important consideration in assessing the evidence in this case.

[5] The following legal issues arise in this case:

- a) Was the Letter of Agreement made between the plaintiff and defendants on or about December 2019 for construction of the project (the “LOA”) a cost-plus contract?
- b) Did Reid Developments guarantee the project would be completed within a budget it provided?
- c) How was the LOA managed?
- d) Are the Hopkins in breach of contract and, if so, has the plaintiff suffered loss or damage as a result?

e) Did the plaintiff breach its contract with the Hopkins?

**Credibility**

[6] In this case, credibility has a heightened importance, due to the fact that many of the discussions between the parties were not reduced to writing.

[7] I found Mr. Reid to be a credible witness. He was forthright in answering questions. He did not evade questions, even where the answers might be seen as detrimental to his case. He was not argumentative, and fairly answered the questions posed to him. His evidence was generally consistent with the documents and other credible witnesses.

[8] Similarly, Mrs. Reid was a credible and honest witness. She was candid, and forthright in her testimony.

[9] Mr. Eyford, Mr. McCormick and Mr. Yu were also all credible witnesses. These witnesses generally corroborated the evidence of Mr. Reid, and their evidence was not challenged in any substantive way under cross examination.

[10] Mr. Hopkins, on the other hand, was an argumentative and evasive witness. His evidence changed between direct examination and cross examination, and then he tried to explain away inconsistencies. His evidence at discovery was inconsistent with his evidence at trial.

[11] As an example, in direct testimony, Mr. Hopkins testified he and Mr. Reid had no discussions about the vehicular gate installed on the property. Under cross examination, he denied he asked the plaintiff to install the gate. In discovery, however, Mr. Hopkins said the opposite. He was asked if he chose to install a new aluminum power gate, and he agreed that he did.

[12] Mr. Hopkins misrepresented facts to different people in negotiations, in order to get what he wanted. For example, at the beginning of the project, when the Hopkins were meeting with different builders, Mr. Hopkins wrote to Mr. Eyford (one of the other potential builders) and told him, "There is also a significant delta

between the initial estimate that we received from you and the two builders that we are vetting who came in almost exactly the same as one another.” Mr. Eyford’s estimate was higher than the plaintiff’s, and Mr. Hopkins was attempting to negotiate a lower estimate from Mr. Eyford. However, Mr. Hopkins did not have an estimate from a third builder. He had only the estimate from the plaintiff and from Mr. Eyford. Mr. Hopkins was challenged about his misstatement made to Mr. Eyford, and was evasive and argumentative in response. He would not agree that the statement he made to Mr. Eyford was clearly untruthful, when his earlier evidence was clear he did not get a third estimate from another builder.

[13] In another instance, in July 2020, when the plaintiff asked the Hopkins to make payments bi-weekly, as agreed to in the construction contract, Mr. Hopkins became very upset, and told Mr. Reid that Covid had a negative impact on his salary, suggesting that it was difficult for them to make the payments on a schedule that was not tied to their construction loan draws. Following that meeting, Mr. Hopkins wrote to Mr. Reid stating:

If I am feeling the pain of making up for the lack of float that we agreed on and the harsh financial reality of COVID on my personal income, the sub trades and vendors can play a role as we are not going to ‘cheap out’ in the end on fixtures and finishings in order to overpay everyone before that... you need to push them very, very hard to come in under budget from here out.

[14] At trial, Mr. Hopkins stated he expected the plaintiff to float the costs of his project until such time he obtained a construction draw.

[15] Mrs. Reid testified that Mr. Hopkins told them he was experiencing a difficult time, the office was empty, and he was taking a hit on his income. Mrs. Reid felt sorry for Mr. Hopkins. After their meeting and email exchange, the plaintiff agreed to do what they needed to do to bridge costs between draws. After this, Mr. Hopkins would tell Mr. Reid how much the bank would fund, and the plaintiff would issue an invoice to match the funds coming from the bank.

[16] At the same time Mr. Hopkins was obtaining concessions from Mr. Reid by suggesting Covid was impacting his income, Mr. Hopkins told his mortgage broker,

in an effort to obtain additional financing, that he and his wife had just received significant increases in their salaries. When questioned about this at trial, Mr. Hopkins refused to acknowledge the blatant inconsistencies between what he told Mr. Reid and what he told the mortgage broker. In fact, Mr. Hopkins had received a significant increase in his salary, and ultimately received an expected bonus at his work. I find that Mr. Hopkins deliberately manipulated the Reids and the plaintiff to ensure that he and his wife did not have to spend any of their personal funds to pay the plaintiff between construction draws, instead forcing the plaintiff to finance their project. I find that Mr. Hopkins was deceitful in his manipulation of the Reids.

[17] In the summer of 2021, the plaintiff delivered the final invoice to the Hopkins. The Hopkins refused to pay the invoice on the basis that it was over the budget. However, they also did not even pay the remainder of the budgeted amount. This, of course, is the basis for this lawsuit.

[18] Following receipt of the final invoice, Mr. Hopkins continued discussions with his bank to obtain additional financing. In June 2021, the Hopkins obtained a new appraisal of the property to support additional financing. When instructing the appraiser, Mr. Hopkins advised her that total costs for the project were \$2,420,716. Of this amount, \$2,185,352 was attributed to the plaintiff, an amount consistent with the plaintiff's final invoice, and not the lower amount they submit in this litigation they are required to pay. The appraiser valued the property at \$4,400,000.

[19] The Hopkins expected the final construction draw on the original loan to be released around July 17, 2021. By July 27, 2021, Mr. Hopkins was liaising with a lender to obtain additional financing. He advised the lender that "the project completed June 21<sup>st</sup>, there is some urgency to access the funds and get trades squared away." A few hours later, the same day, the Hopkins were advised their re-financing was approved, providing them with an additional \$500,000 over the original mortgage financing. The Hopkins instructed the bank, on previous draws, to make the draft out to the plaintiff. However, on the final draw, Mr. Hopkins instructed the bank to make the draw out to him personally, advising the bank that he would

distribute the funds. On July 29, 2021, Mr. Hopkins reiterated to the lender that his intention was to start dispersing the mortgage funds the following week.

[20] After receiving the final construction draw and the new financing, the Hopkins paid none of these funds to the plaintiff. After representing to the lender that the funds were needed urgently to pay the trades, and representing to the appraiser that the construction costs were \$2,420,716, the Hopkins refused to pay the trades with the funds provided to them for that purpose. Instead, the Hopkins used the construction financing to protect themselves from claims brought by the trades and the plaintiff.

[21] I find Mr. Hopkins was deceitful with the lender, and manipulated the lender to advance funds for a purpose which he did not intend to fulfil. Mr. Hopkins used the value provided to the property by the plaintiff, and all the trades, to obtain the financing he desired but did not, and has not, paid the plaintiff or the trades for that value they provided to him.

[22] Mr. Hopkins feigned a lack of knowledge about things clearly within his knowledge. He refused to accept simple propositions unless provided with his own email confirming facts he feigned a lack of knowledge of. He was equivocal, and often unable or unwilling to answer questions in a clear and straightforward way.

[23] Overall, I found Mr. Hopkins was not a reliable witness. I find he was inclined to say whatever he thought would get him what he wanted, both during the course of construction, and as a witness before me. Many of his answers strained credulity. Where Mr. Hopkin's evidence conflicts with Mr. Reid's evidence, I prefer the evidence of Mr. Reid.

**Was the LOA a cost-plus contract?**

[24] In 2018, the Hopkins retained Peter Rose as an architect to design a new house and laneway house on their existing residential property, located in Vancouver, BC. The build would require the demolition of their older, current home.

[25] In 2018, the Hopkins, through Mr. Rose's office, paid their first permit fees to the City of Vancouver.

[26] In February 2019, Mr. Rose prepared initial architectural plans for the project. The Hopkins chose three potential builders for the project: the plaintiff, Eyco Building Group Ltd., and Trasolini Construction. The Hopkins met with the three potential builders in April 2019.

[27] The Hopkins asked Mr. Reid to prepare a preliminary budget for the project, based off the February 2019 plans. Mr. Reid was not given plans which were issued for construction, nor was he given structural, mechanical, electrical, or interior design drawings or specifications.

[28] In 2017, the plaintiff had constructed a similar Craftsman style home in the same neighbourhood as the Hopkins. Mr. Reid used the final costs of that home to help him prepare the preliminary budget for the Hopkins. The finished cost of the 2017 home was approximately \$1,000,000, with no laneway home.

[29] Because he only had the preliminary drawings, Mr. Reid made allowances for interior finishes based on the finishes that had been installed in the 2017 home. Mr. Reid estimated that 40% of a project's costs were dictated by interior finishes.

[30] The preliminary budget prepared by Mr. Reid on behalf of the plaintiff was \$1,279,925, plus GST and a 10% management fee, for a total of \$1,471,193.75. The plaintiff gave this preliminary budget estimate to Hopkins on May 8, 2019. The document is clearly marked as a "preliminary budget estimate".

[31] The Hopkins also received a preliminary budget estimate from Eyco Building Group Ltd. Mr. Eyford, the principal of Eyco Building Group Ltd., testified at the trial. He confirmed that his initial estimate was \$1,741,859.91, inclusive of GST and management fee.

[32] On May 9, 2019, Mr. Reid met with Mr. Hopkins to discuss his preliminary estimate. Mr. Reid testified, and I accept, that he told Mr. Hopkins the estimate was

solely an estimate. Mr. Reid told Mr. Hopkins they should budget a further 10-15% contingency for unknowns and advised Mr. Hopkins their final decisions on finishes would determine the final costs of the project.

[33] Following the May 9 meeting, the Hopkins and Mr. Reid visited the home the plaintiff constructed in 2017, which allowed the Hopkins to see the interior and exterior finishes used in that project.

[34] On August 19, 2019, the parties entered into a Pre-Construction Cost Planning Agreement (the “PCCPA”). The Hopkins paid the plaintiff a planning fee, which would be applied to any future construction agreement as a deposit. Mr. Reid explained that this fee compensated the plaintiff for any pre-work, in the event the Hopkins did not choose to enter into a construction agreement with the plaintiff.

[35] The PCCPA contemplated the plaintiff, during the predesign phase, creating a Class C Construction Cost Estimate, and advising the Hopkins if the Construction Cost Estimate may exceed the project budget. Similarly, the PCCPA contemplated, during the schematic design phase, that the plaintiff would prepare a Class B Construction Cost Estimate, and advise the Hopkins if the Construction Cost Estimate may exceed the project budget.

[36] Mr. Reid testified that typically during the period of a PCCPA, he would receive additional drawings and information from the client. However, on this project Mr. Reid received only one set of updated architectural drawings in October 2019, which he understood to be essentially the same as the February 2019 drawings. He did not receive any interior design, mechanical, plumbing, or other drawings or specifications during the currency of the PCCPA, notwithstanding the fact the Hopkins retained an interior designer in the fall of 2019. As a result, no further cost estimates were prepared under the PCCPA.

[37] At trial, Mr. Reid conceded the October 2019 drawings did include a new vehicular gate and a retaining wall, which he did not observe on the drawings when he received them. Other than these two items, Mr. Reid testified that the October

2019 drawings did not contain any changes which would have altered his initial estimate.

[38] In December 2019, the parties entered into the LOA. The LOA stated that the Hopkins wished to construct the project in accordance with the October 2019 drawings, and incorporated the Preliminary Budget Estimate dated May 8, 2019 as a reasonable estimate of the work. The LOA also incorporated by reference the standard form CCDC-3 1998 Cost Plus Contract. In the LOA, the parties agreed the LOA superseded all prior agreements.

[39] The LOA did not incorporate the PCCPA. Further, the LOA did not reference any drawings or specifications other than the October 2019 drawings. It did not include any interior design choices, or structural, electrical, mechanical or plumbing drawings, or specifications. As such, the plaintiff was not in a position to alter the preliminary budget estimate to reflect critical details which would ultimately drive the cost of the project.

[40] The LOA anticipated further changes to the work would be required to complete the project. The LOA provided that the Hopkins could make changes by altering, adding to or deleting from the work, and the contract price would be adjusted accordingly. Extras would be calculated at the labour and material cost, plus 10% payable on completion of the work. If the Hopkins made changes affecting the cost of the work, the plaintiff was required to provide the Hopkins with a verbal or written cost estimate for approval by the Hopkins.

[41] Under the LOA, the Hopkins agreed to pay the plaintiff a fee equal to 10% of the construction costs of the work, not including GST, earned as the gross cost of the work accrued. The Hopkins agreed to make bi-weekly payments to the plaintiff on account of the cost of the work performed and products and materials delivered to the site, and bi-weekly payments on the portion of the plaintiff's fee earned as the work was performed. Upon substantial performance of the work, the Hopkins agreed to pay the balance of the plaintiff's fee. Upon total performance of the work and the expiration of the holdback period (45 days), the Hopkins agreed to pay the balance

of all monies due and owing, except for monies retained for deficiencies or seasonal work to be performed.

[42] All parties agreed in their testimony that the LOA was a cost-plus contract. Mr. Reid testified he only works under cost-plus contracts. Further, Mr. Hopkins agreed under cross examination he entered a cost-plus contract and not a fixed price contract. The evidence of Mr. Hopkins on discovery also confirmed this:

- Q. Right. You never planned on entering into a fixed-price contract with Reid Developments; correct?
- A. I don't believe we planned to.
- Q. And you didn't; right?
- A. We did not.
- Q. You eventually entered into a cost-plus contract with Reid Developments; correct?
- A. Yes.

[43] I find the LOA was a cost-plus contract. Further, as the PCCPA was superseded by the LOA, it had no continuing effect after December 2019.

[44] Under a cost-plus contract, the owner pays the contractor the actual costs of construction, plus an agreed fee which is typically a percentage of the construction cost: Heintzman, West and Goldsmith, *Canadian Building Contracts*, 5<sup>th</sup> ed. (Toronto, Ont: Thomson Reuters Proview, 2016) §6:5.

[45] The fact that the Hopkins purported to be concerned about the cost of construction is not enough to convert the LOA into something it is not – namely a fixed price contract.

**Did Reid Developments guarantee the project would be completed within the preliminary budget it provided?**

***Did the LOA contain a guarantee?***

[46] As I have found the LOA was a cost-plus contract, it follows the plaintiff did not guarantee construction costs within a set budget. The LOA clearly contemplates that the budget would be adjusted during construction. The contract documents

referred to in the LOA include the October 2019 drawings. The LOA provides that the owner may make changes by altering, adding to or deducting from the work, and the contract and contract price would be adjusted accordingly.

[47] I find that when the Hopkins did provide the plaintiff with final interior design, structural, electrical, mechanical and plumbing drawings and specifications, these new documents represented owner authorized changes, and the original budget was no longer effective. The LOA contemplated the budget would be changed to accommodate such changes.

[48] I find the LOA did not guarantee the project would be completed within the original preliminary budget estimate, as submitted by the Hopkins.

***Did the preliminary budget restrict the costs of the project?***

[49] The Hopkins argue that even in a cost-plus contract, the plaintiff is bound in some way to the preliminary budget.

[50] The Hopkins rely on *Bornhorst Welding Ltd. v. Zwingli*, 2007 SKQB 154 and *Medallion Developments Inc. v. Close*, [1998] B.C.J. No. 1129 (S.C.) to argue the budget continues to limit the amounts claimed under the LOA. They submit that any variance must be reasonable, with reference to the original budget. I disagree that those cases have application to the case before me.

[51] In *Bornhorst* and *Medallion*, there were no significant, if any, changes to the scope of work after the estimates were given. In the case before me, there were significant changes to the scope of work following the preparation of the initial budget. As I will discuss further, the changes to the scope of work requested and agreed to by the Hopkins render the original budget obsolete.

[52] The Hopkins also rely on *345 Builders Ltd. v. Su*, 2021 BCSC 2509, which provides a helpful summary of the law contained in *Strait Construction Ltd. v. Odar*, 2006 BCSC 690 [*Odar*], aff'd 2007 BCCA 437, a case relied on by the plaintiff. In *345 Builders*, the court confirmed that in some circumstances an estimate may form

the basis for a contractual term regarding price: para. 119. However, the court also confirmed that where the scope of work expanded or unforeseen circumstances arose, an estimate may not be binding: *345 Builders* at para. 120.

[53] The Hopkins rely on *Anway Construction Ltd. v. Hunte*, 2020 BCSC 601. In *Anway*, the court found a builder was obligated to advise the owners if the budget in a cost-plus contract was no longer achievable. For the reasons discussed herein, I find the plaintiff provided the Hopkins with ongoing feedback and advice on the cost of work, the exceedances of the budget, and the impact of the Hopkins' choices on the budget. The LOA permitted such advice be oral, and it often was provided orally during the course of construction. To the extent there is an obligation on a builder to inform the owners of the impact of changes on the original budget, I find the plaintiff more than met this obligation in the performance of the LOA.

[54] The plaintiff relies on *Highridge Homes Ltd. v. de Boer*, 2023 BCCA 74, a recent decision from our court of appeal on the contractual effect of a budget in a cost-plus contract. The court upheld the trial decision where the trial judge held that in a cost-plus construction contract, the risk of cost overages was assumed by the owners.

[55] In my view, the case before me is more aligned with the case of *Odar*, relied upon by the plaintiff. In *Odar*, the court held:

[24] The evidence of the negotiations between the parties discloses that cost was a concern to the Odars. The Odars rejected the first two budget estimates from Strait, informing Mr. Sowden that the estimates were too high. However, once construction was under way, the Odars decided they wanted the home to be a five-star bed and breakfast. Mr. Sowden deposes that he told the Odars that the higher level of finishes, trim and design features would bring the cost of the project over the November 25, 2002 estimate. His evidence is that the Odars understood the cost implications of their decision to change the scope of the project.

[25] Further, the evidence shows that from that point on, the Odars' actions and decision-making with regard to the project gave the impression that cost was not an overriding concern.

[26] Louise Page deposes that the Odars did not give her a budget for the interior design, nor did they request that she speak to Derek Sowden about budgets. The only guidelines from the Odars were that the B&B be five-star

and that they did not want to go into debt with the project. David Abley of Saltspring Island Electric deposes that the Odars did not ask him how much the additional electrical work they requested would cost. He states further that he felt that the Odars "wanted to do whatever was necessary to ensure they built a deluxe, five star B&B".

[56] I find the approach of the Hopkins to this project was very much like the Odars. While they were concerned about price on the one hand, their desire to have their dream house, and to not "cheap out" on finishes ultimately drove their decision making. They wanted the best finishes and custom construction, but they wanted the plaintiff or the trades to pay for them, raising as their justification a preliminary budget which they knew was no longer applicable once the true scope of their project became clear. I find the Hopkins bear the responsibility for all cost overruns and the LOA is not limited by the preliminary estimate provided by the plaintiff.

[57] In the case before me, I am satisfied the actual construction drawings and specifications, including the interior design drawings, represent an expanded scope of work from the original architectural drawings upon which the preliminary budget was based. In addition, the project suffered from several cost overruns outside the control of the plaintiff, and additions to the project at the request of the Hopkins, as will be discussed later in these reasons. These factors render the original estimate not binding upon the plaintiff.

***Did the plaintiff orally guarantee the project would not exceed 15% of the budget?***

[58] The Hopkins also argue that in March 2021 the plaintiff guaranteed the project cost would not exceed 15% of the budget.

[59] In March 2021, the parties met on site. They discussed the cost of a retaining wall that appeared on the October 2019 plans. Mr. Reid agreed he did not notice the retaining wall on the plans and did not include it in his preliminary budget estimate. Mr. Reid advised the Hopkins it would cost an additional amount of money to build the retaining wall. Mr. Reid testified he told them it would cost \$25,000 more. The Hopkins testified they were told it would cost \$30,000 more. The witnesses agreed the Hopkins told the plaintiff they would not proceed with the retaining wall.

[60] It is in the context of this conversation that the Hopkins submit the plaintiff guaranteed the project would not exceed 15% of the budget. Both Mr. and Ms. Hopkins testified that Mr. Reid told them that once they agreed they would proceed without the retaining wall, Mr. Reid promised them the project would not cost more than 15% over budget and, if it did, he would cover the cost himself. This promise was not reduced to writing by any party.

[61] Mr. Reid testified that at no time during the construction of the project, including in March 2021, did he guarantee the project would be completed within 15% of the original preliminary budget estimate.

[62] I cannot accept the evidence of the Hopkins on this point. The original budget, before overhead and management fee of 10%, was \$1,279,925. By February 12, 2021, the project had incurred costs of \$1,040,340.

[63] After February, in the spring of 2021, the Hopkins continued to make selections on items such as millwork, wainscoting, shower doors, hardware, wall paper, deck railings, mirrors, leaf guards, fencing, concrete, walk-in closets, appliances requiring a specialty installer, a pot filler, kitchen tiles, lighting, and more. Ms. Hopkins agreed that by February 10, 2021, prior to all these choices being made, 90% of the original budget had already been spent.

[64] I cannot accept that Mr. Reid, knowing that many critical items were still to be selected by the Hopkins, and knowing that many costs from the preliminary budget were obsolete once the actual structural, mechanic, electrical and interior design drawing and specifications were provided to him, would have agreed in March 2021 to cap the costs at 15% of the preliminary budget.

[65] The Hopkins were provided with detailed spreadsheets from the plaintiff outlining all the costs being incurred on the project. Ms. Hopkins agreed under cross examination they could review the spreadsheets, particularly in 2021, and determine they were over budget. She agreed the January and February spreadsheets

identified many significant items yet to be billed and, in fact, had not yet been selected by them.

[66] The position of the Hopkins suggests the plaintiff agreed to assume liability for all third-party costs over the alleged 15% guarantee. I do not accept the plaintiff made any such guarantee, and I prefer the evidence of Mr. Reid over the evidence of the Hopkins in this respect.

[67] While I have found the Hopkins have not proven that such a guarantee was made by the plaintiff, I also reject the alleged guarantee because it does not comply with the law of guarantees. The alleged guarantee was not in writing, was not under seal, and no consideration for it was proven by the Hopkins: *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 59(6); *Shen v Gou*, 2023 BCSC 1735.

**How was the LOA managed?**

[68] The initial budget was prepared based on certain assumptions provided by the Hopkins at the time, including the original architectural drawings, pre-Covid costs, and finishes consistent with the Craftsman house previously constructed by the plaintiff. Many of those assumptions were changed during the course of construction.

***Communication during project***

[69] During the project, Mr. Reid and the Hopkins were in constant communication. The critical design drawings and specifications were only provided after the LOA was signed, and Mr. Reid reviewed all specifications and finishes with the Hopkins throughout the project. Mr. Hopkins attended regular site meetings, and the Hopkins often stopped by the project to see how construction was progressing.

[70] The Hopkins submit they either did not know of the increased costs before they were incurred, or they did not approve them. I reject the evidence of the Hopkins on this point. The Hopkins rely primarily on the evidence of Mr. Hopkins in support of their position. However, I do not find Mr. Hopkins to be a credible witness

and, where his evidence conflicts with the evidence of Mr. Reid, I prefer the evidence of Mr. Reid.

[71] During the project, the plaintiff provided the Hopkins with detailed spreadsheets identifying the expenditures on the project. These were provided in April 2020 and January 2021, on February 10 and 12, 2021, and on June 24, 2021.

[72] Ms. Hopkins testified that Mr. Reid told them on a few occasions they were over budget, and two times went to showrooms with them to try to find alternatives for different items within their budget. Although she agreed Mr. Reid went to several showrooms with them, she testified she did not understand this was because they were over budget.

[73] I do not accept the evidence of Ms. Hopkins that Mr. Reid did not identify for the Hopkins their choices were over the budget and would impact the final cost. For example, Ms. Hopkins agreed their choices for appliances were \$70,000, and they knew the original budget was \$50,000. But she would not agree that Mr. Reid told them their choice was over budget. I do not accept this evidence. I accept the evidence of Mr. Reid and find the Hopkins knew full well their choices exceeded the budget.

[74] Eventually, under cross examination Ms. Hopkins did agree that Mr. Reid had many discussions with them to find ways to save money on the project, including making suggestions to reduce costs in some areas to offset increased costs in other areas. Ultimately, Ms. Hopkins agreed that throughout the project, including regarding the main house, the basement and the laneway house, Mr. Reid told the Hopkins they were over budget, and made suggestions to reduce costs.

[75] Ms. Hopkins agreed the plaintiff built what the Hopkins told him to build. She agreed that all fixtures and finishes were chosen by her and Mr. Hopkins, and there was nothing in the house or laneway home she did not want installed.

[76] I find the plaintiff provided costs estimates orally, as required by the LOA, in relation to all changes made to the project by the Hopkins, including as detailed on

all construction drawings and specifications provided after the LOA was signed, and in relation to all modifications and additions requested by the Hopkins throughout the project. I also find the Hopkins authorized all work done on the project, with full knowledge of the costs.

***Construction draws***

[77] The LOA required payment to the plaintiff on a bi-weekly basis. At the time the LOA was entered into, the Hopkins asked the plaintiff if the payment schedule would work with the draws they would receive under their construction mortgage. Mr. Reid reviewed the mortgage draw schedule and confirmed it would work for the plaintiff. Mr. Reid testified that construction draws typically are released at certain stages of completion. He expected the biweekly draws would provide for completion of the project roughly in line with the expected mortgage draws. Mr. Reid testified this is a common practice in funding construction, which he has used many times before this project. He testified he had never had a client not be able to pay on the draw schedule.

[78] Each invoice from the plaintiff set out details of all labour and materials billed to the project. Each was accompanied by back up documentation of all invoices received and paid by the plaintiff, and time sheets for all labour on the project broken down into categories such as site supervision, finishing carpentry, excavation labour, etc.

[79] The plaintiff invoiced on a roughly bi-weekly basis until July 2020. In July 2020, the Hopkins were not able to meet the bi-weekly invoices. Ms. Reid, who looked after invoicing, noticed that an invoice of \$113,000 billed in June 2020 was unpaid. This prompted a meeting with Mr. Hopkins to come up with a solution. It became clear the Hopkins would require a schedule directly tied to the Hopkins' construction financing, as they were not prepared to access any other sources of funds to pay the plaintiff's invoices.

[80] As discussed above, Mr. Hopkins told the Reids the Hopkins' income was negatively affected by Covid, and they needed help from the plaintiff to bridge the

period between mortgage draws. To accommodate the Hopkins' financial straits, as they believed Mr. Hopkins' untruthful statements as to his income, the plaintiff agreed to tie invoicing to the release of draws under the construction mortgage.

[81] Mr. Reid would ask Mr. Hopkins at site meetings when the next construction draw would be provided by the lender. Mr. Hopkins would then tell the plaintiff what the mortgage draw amount would be and when it would be released. Ms. Reid would then put together an invoice matching as close as possible to the mortgage funding, and issue it in relation to the release of the mortgage funding.

[82] As a result of the change in invoicing requested by Hopkins, the Hopkins did not receive feedback on costs on a biweekly basis, as they had during the period of biweekly invoicing. Further, because Hopkins asked the plaintiff to invoice against the construction mortgage draws, rather than against the actual expenditures to date, the plaintiff began carrying large amounts of unbilled expenses.

[83] The amounts invoiced by the plaintiff in this fashion ranged from approximately \$50,000 to \$200,000, all done in response to the amount Mr. Hopkins advised would be coming on the next mortgage draw.

[84] In January 2021, the plaintiff began sending spreadsheets to the Hopkins to show them where they were in the project, given that the billing was no longer keeping pace with actual work on the project. The plaintiff provided detailed spreadsheets on January 15, 2021, February 10, 2021, February 12, 2021, and June 24, 2021. After the final invoice, the plaintiff provided three more spreadsheets to Hopkins to explain where the costs on the project were allocated. These were prepared on July 28 and 29, 2021, and December 9, 2021.

[85] On May 18, 2021, the plaintiff issued Invoice #1207 in the amount of \$159,099.55. The Hopkins paid all but \$586.79 of this invoice.

[86] The penultimate invoice was issued in the amount of \$645,152 on June 24, 2021. This invoice contained almost all the costs held back due to the Hopkins' restrictions in construction financing. On July 20, 2021, the plaintiff delivered the final

invoice in the amount of \$4,469.77. Had the Hopkins not requested a variation of the LOA to accommodate their perceived financing needs, these costs would have been billed as they arose during the course of construction.

***Costs outside control of the plaintiff***

[87] The original budget was prepared before the Covid pandemic. In early 2020, the world experienced the pandemic, significantly impacting the project, including delaying commencement. Trades were also impacted because of restrictions on how they worked. For example, the first trade on site was the excavator, but they experienced delays because the operators were not allowed to use each other's equipment. Another trade on the project had gone abroad for Christmas, and because of travel restrictions, he could not return to Vancouver for over a month, impacting his availability to commence work on the project. There were restrictions on how many people could be on site at a time, and many subtrades simply declined to work due to Covid. All these issues created delays and additional costs.

[88] Material costs were also impacted during Covid. Lumber costs, in particular, sky rocketed during the course of construction.

[89] While the LOA stated it was the plaintiff's responsibility to obtain all permits, in practice this was not complied with. The plaintiff had nothing to do with submitting documents to the City for permits or paying permit fees. That work was all handled by the architect, who took on responsibility for obtaining all permits, and billing the Hopkins directly for the costs associated with the permits.

[90] The house had to be demolished. Once the building was ready to be demolished, a hazmat investigation and report was prepared and provided to the City, along with a remediation quotation. The actual costs could not be ascertained until the hazmat assessment was done. The testing could not be done while people occupied the building, so it had to wait until the Hopkins moved out of the house. Once the house was tested, significantly higher levels of lead and asbestos were found in the house than expected by Mr. Reid. The costs of remediation were approximately \$17,000 higher than originally expected.

[91] Ms. Hopkins agreed there was more asbestos in the house than originally expected, and the delays associated with the hazmat removal were delays outside the plaintiff's control. She also agreed the requirements of the City respecting deconstruction of the house were outside the control of Reid Developments and resulted in delays, and agreed that Covid and associated delays were also outside the plaintiff's control.

[92] Ms. Hopkins agreed their design choices at times caused delays, such as delays in the delivery of wallpaper from Belgium, which the Hopkins did not order until the spring of 2021. She agreed that delays associated with the Hopkins' design choices were outside the control of the plaintiff.

***Changes to the scope of work***

[93] The Hopkins made changes and additions to the work, that were not part of the original budget. Some additions were not included in the original budget at all. Other changes were made to the original drawings, which impacted the costs that formed part of the original budget. Still other additions to the costs came from structural requirements and other drawings, which were not provided to the plaintiff at the time the budget was prepared.

[94] All final construction drawings and specifications were provided to the plaintiff after the LOA was signed. These represented significant changes to the plaintiff's original budget assumptions, which were based solely on the architectural drawings. The changes included changes to the trusses as required by the structural drawings, changes to the interior finishes in the house and laneway house, changes to the millwork, as well as numerous other changes.

[95] Ms. Hopkins agreed the interior design package was not given to the plaintiff until July 2020, almost one year after the preliminary budget was created. She also agreed they did not involve the plaintiff in any design meetings for interior finishes, the kitchen or the bathrooms. Those design meetings took place with the Hopkins, their architect, and their interior design team.

[96] Mr. Reid testified that, while the Hopkins stated they were budget conscious, they consistently made premium design choices. In particular, the design choices made by the interior designer were significantly higher than originally budgeted for, based in part on the finishes in the home the plaintiff built in 2017.

[97] Mr. Reid advised the Hopkins that many of their design choices exceeded the original budget. At times the Hopkins simply instructed the plaintiff to proceed with the designs even though they increased the costs. At other times, Mr. Reid worked with the Hopkins and the designer to find solutions at a lower cost than originally specified by the designer, but still higher in cost than the original budget.

[98] Mr. Reid also suggested the Hopkins deal directly with certain suppliers, such as for home automation, A/V, and security, so these purchases would be outside the LOA and not subject to his 10% fee. The costs of installation continued to be within the LOA, however, as the plaintiff provided the labour for the installation or subcontracted with specialty installers where necessary.

[99] The additional costs to the budget were fully explained by Mr. Reid, and I accept his evidence. Examples of such costs include:

- a) Additional hazmat fees of \$17,200.
- b) New City requirements on demolition of \$8,000.
- c) New City requirement for electrical of \$3,250.
- d) Stone on exterior of house. The Hopkins requested a stone which increased the cost from the original budget by approximately \$25,000.
- e) Fencing. The Hopkins requested wood fencing on three sides, versus one side as per the original quote. This increased the cost by approximately \$9,000

- f) Countertops. The Hopkins requested stone in all areas, instead of laminate in the laneway house as per the original budget, resulting in an increase of approximately \$9,000.
- g) Finish carpentry. The Hopkins requested extra wainscoting, coffered ceilings, custom built-ins, cabinetry, and a walk-in closet, all additional to the original budget, which increased material and labour costs by approximately \$40,000.
- h) Interior doors. The Hopkins selected solid doors, at an increased cost of \$9,400.
- i) Side light. The Hopkins requested an extra side light to the front door outside the original specifications, at a cost of \$2,861.
- j) Extra drywall and insulation, the new drawings added on detailed specifications for vaults and drops, in the amount of \$8,400.
- k) Structural steel changes, as included on final structural drawings, in the amount of \$9,800.
- l) Trusses. The original budget, done prior to receiving any structural drawings, was based on pre-fabricated trusses. Once the structural drawings were received, the drawings required hand-built trusses. The Hopkins were advised of this change and the increased cost, prior to the trusses being constructed. The cost increased by approximately \$20,000.
- m) Windows. The original budget included vinyl windows. The Hopkins requested premium windows which increased the cost by \$12,500.
- n) Tiles. The updated drawings, received after the contract was signed, included more tiles, increasing both material and labour costs by approximately \$17,000.

- o) Soundproofing. The Hopkins requested soundproofing not included in original drawings, which increased the cost by \$5,500.
- p) Security systems wiring. The Hopkins requested security wiring which was not part of the additional plans, and increased the cost by approximately \$5,600.
- q) HVAC. HVAC was not included in the original budget. The Hopkins requested this, increasing the cost by \$25,000.

[100] In total, the costs arising from the expanded scope of work set out in approved plans and specifications, along with non-budgeted items, totalled \$272,795. The plaintiff applied a 15% contingency to all costs, for a final balance of \$1,785,629.08 before management fees of 10% and GST. The plaintiff's management fee was then calculated at \$182,772.28, and GST was charged in the amount of \$98,420.07.

**Are the Hopkins in breach of contract and, if so, has the plaintiff suffered loss or damage as a result?**

[101] I find the Hopkins are in clear breach of the LOA in failing to pay the balance of the outstanding invoices for work completed by the plaintiff on this project. The Hopkins authorized and approved all aspects of the work on their home, including all cost overages at the time they were incurred. The Hopkins simply refused to pay the costs of what they had requested and approved, at the time the final invoices were rendered.

[102] The Hopkins have received the full benefit of all goods and services supplied under the LOA, and have failed to provide payment to the plaintiff for such goods and services, as they agreed under the LOA. The final invoices on the project, issued by the plaintiff in May, June and July 2021, represent costs and fees properly incurred within the scope of the LOA, for which the Hopkins are liable.

[103] The plaintiff is entitled to damages for breach of contract in the amount of \$650,209.55, which represents the amounts outstanding from the following invoices:

- a) May 18, 2021 - \$586.79
- b) June 24, 2021 - \$645,152.99
- c) July 20, 2021 - \$4,469.77

[104] The plaintiff has suffered loss arising from the failure of the Hopkins to make payment in a timely way. In addition, the plaintiff has suffered loss arising from its payment of subtrades, whose work was the subject of the outstanding invoices.

[105] At trial I allowed an amendment to the notice of civil claim, permitting the plaintiff to claim the cost of financing shareholders' loans used to pay some of the subcontractors and suppliers who worked on the project.

[106] The Hopkins dispute this claim, arguing the amendment was made late in the day, after the witnesses had testified, and they were prevented from cross examining on the issue. I reject this argument of the Hopkins. While the amendment was only made at the end of trial, the issue was explored with the Reids in testimony at trial, and the relevant documents were produced to the defendants before trial.

[107] Ms. Reid testified the plaintiff paid approximately \$240,000 to the trades in September 2021. They financed these payments by placing a second mortgage on their home. Ms. Reid testified the mortgage was for \$300,000, which they put back into the business as a shareholder loan, and paid the trades so they could continue the business of the plaintiff. The mortgage statements were all put to Ms. Reid in evidence. She testified the Reids have been paying about \$3,000 monthly towards this debt.

[108] I am satisfied that the sole reason for the Reids obtaining this loan was to make payments the plaintiff was obliged to make relating to the project, and which would have been paid with the receipt of funds from the Hopkins in payment of the final invoices. The failure of the Hopkins to make the payments they were required to

make under the LOA directly resulted in the Reids obtaining the second mortgage on their home, and loaning the funds to the plaintiff, to allow the plaintiff to address its third-party obligations relating to the project. I find that the fees, expenses and interest relating to this loan are properly recoverable against the Hopkins.

[109] In 2022, the Reids realized this lawsuit was not getting resolved quickly, and they needed to find some additional funds to assist the company's cash flow, pay legal fees, and keep themselves afloat. The Reids purchased a sailboat in 2017, which they used for family recreation. In 2022 they sold the boat, and put the funds into the company through a shareholders' loan. From the sale of the boat, they obtained \$282,757.50. I am satisfied the sale of the boat was a direct consequence of the Hopkins' breach of contract, and all interest payable in relation to the shareholders' loan the Reids made to the plaintiff is recoverable in this action.

**Did the plaintiff breach its contract with the Hopkins?**

[110] In their response and counterclaim, the Hopkins allege a number of breaches of contract and sought a variety of relief. At trial they abandoned their claims in relation to deficiencies and to rectification of the contract.

[111] As to the remaining defences and claims, to the extent these are not addressed elsewhere in my decision, they can be summarized as:

- a) Did the plaintiff fail to financially manage the project as required under the LOA, including failing to seek bids or estimates in accordance with the LOA, performing and invoicing for unapproved work?
- b) Did the plaintiff fail to achieve substantial completion in accord with the LOA?

***Did the plaintiff fail to financially manage the project as required under the LOA, including failing to seek bids or estimates in accordance with the LOA, performing and invoicing for unapproved work?***

[112] For the reasons I have already expressed, I find the plaintiff properly performed the work under the LOA, including working with the Hopkins to obtain

lower pricing where possible, and communicating with the Hopkins on a consistent and ongoing basis as to the construction requirements and cost implications on the project. I find that to the extent the final amounts invoiced on this project exceeded the original preliminary budget, these amounts were properly authorized through discussions between the parties, arose from circumstances outside the control of the plaintiff, or arose through changes requested and approved by the Hopkins.

[113] I find all work performed on the project was approved by the Hopkins and is properly reflected in the invoices issued by the plaintiff. I find the plaintiff did not invoice for any work not requested and approved by the Hopkins, through the final construction drawings and specifications, or through direct instructions by the Hopkins to the plaintiff.

[114] The Hopkins have established no breach of contract on the part of the plaintiff.

***Did the plaintiff fail to achieve substantial completion in accord with the LOA?***

[115] The LOA stated work would commence on January 2, 2020, and substantial completion would be obtained on or about February 5, 2021. While time was stated to be of the essence, the LOA also provided that delays in substantial completion were excusable if they occurred as a result of a number of things, including: unavailability of materials, delays in obtaining a permit, unfavourable weather conditions, delays by any subtrades, delays by the owner in processing proposed changes, and delays resulting from inaccuracies in information provided by the owner.

[116] While the LOA stated construction would commence on January 2, 2020, the Hopkins did not move out of the house until the end of the first week in January. The Hopkins took on the responsibility of obtaining building permits through the architect. The plaintiff made no submissions for the building permits. In fact, the building permit was not issued by the City until March 23, 2020.

[117] Further, and as discussed above, the Hopkins did not provide many of their interior finishing choices to the plaintiff until well past the original completion date in the LOA.

[118] I find that any delay in substantial completion was excusable in accordance with the terms of the LOA.

[119] Further, at no time prior to this litigation did the Hopkins raise any issue with the completion date. I find the Hopkins through their actions waived specific compliance with the completion date under the LOA.

[120] The Hopkins claim \$15,000 in rent and \$2,543 in utility expenses due to the fact they had to stay in a rental property between February 2021 and May 15, 2021. For the reasons expressed above, I reject this claim.

**Disposition**

[121] The plaintiff is awarded damages for breach of contract in the amount of \$650,209.55.

[122] The plaintiff also seeks pre-judgment interest at the interest rate set by the Royal Bank of Canada or, in the alternative, pre-judgment interest set by the court. The LOA incorporates the CCDC agreement, which itself includes the following term:

7.3.1 Should either party fail to make payments as they become due under the terms of the Contract or in an award by arbitration or court, interest at \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum above the prime rate on such unpaid amounts shall also become due and payable until payment. Such interest shall be compounded on a monthly basis. The prime rate shall be the lowest rate of interest quoted by the Royal Bank of Canada for prime business loans.

[123] The plaintiff applied to amend the notice of civil claim at trial to include reliance on this term. While the application was opposed, I allowed the amendment.

[124] I am not satisfied it would be fair to allow the plaintiff to rely on the RBC interest rate. , There was no evidence the CCDC agreement was provided to the Hopkins for their review at the time the LOA was entered, or that they agreed on the

precise interest rate applicable to unpaid amounts. I am not satisfied the parties reached agreement on the appropriate interest rate. The plaintiff produced a standard form agreement, but that agreement was not executed or initialed by the parties, nor was it actually scheduled to the LOA. In the standard form agreement produced by the plaintiff, the specific rate over prime was left blank. While the plaintiff submits that I should, at a minimum, order interest at the RBC prime rate, I do not agree. While the LOA is stated to incorporate the CCDC standard form agreement, I am not satisfied that the Hopkins were provided with such agreement or agreed to the specific interest terms set out in the standard form of agreement. I find it would be unfair to impose contractual interest at the RBC prime rate during the pre-judgment period.

[125] I find the plaintiff is entitled to court order pre-judgment interest on all unpaid balances from its invoices rendered May 18, 2021, June 24, 2021, and July 20, 2021, from the date each invoice was issued.

[126] The Hopkins shall pay to the plaintiff all fees, expenses and interest paid and owing under the two shareholder loans the plaintiff obtained from the Reids, which funds were obtained through mortgaging the Reids' home and the sale of their sailboat. For clarity, these amounts include all fees, financing and interest charges borne by the Reids with respect to the Home Trust line of credit they opened on or about August 30, 2021.

[127] The plaintiff is entitled to a builder's lien for the principal sum of \$650,209.55 and costs upon the Hopkins' property at 3450 West 22<sup>nd</sup> Avenue, Vancouver, BC, including on the improvement on the property and the Hopkins' interest in the said improvement.

[128] I declare that the lien is a first charge, lien or encumbrance against the lands and premises in preference or priority to all of the rights, titles and interests of the Hopkins.

[129] The counterclaim of the Hopkins is dismissed.

[130] The parties may provide me with submissions on costs, through the registry, on the following schedule: the plaintiff's submissions within 45 days of this judgment, the Hopkins' submissions within 45 days of receipt of the plaintiff's submissions, and the plaintiff's reply submissions within 7 days of receipt of the Hopkins' submissions. If the parties are unable to meet this schedule, they may provide a request for a revised schedule to me, through the registry.

“W.A. Baker J.”