

Court of King's Bench of Alberta

Citation: Alain and Quinn v QMS Ltd, 2024 ABKB 464

Date: 20240730
Docket: 1903 15753
Registry: Edmonton

Between:

Daniel Alain and Melissa Quinn

Appellants

- and -

QMS Ltd

Respondent

**Reasons for Decision
of the
Honourable Justice Donald Lee**

The Application

[1] Originally QMS brought an application for Summary Judgement against Daniel Alain and Melissa Quinn (“the Appellants”) which was granted by the Applications Judge on May 25, 2022. The Appellants did not appear to argue their position before the Applications Judge even though they were represented by Legal Counsel (not present counsel) at the time. The current Application is an Appeal from that Summary Judgement Order.

[2] The Standard of Review on appeal from a Master to a King's Bench Justice is correctness. Since no appearance was made by the Appellants when the matter was heard by the Applications Judge, this is essentially a hearing *de novo*.

Issue

[3] Did the Master err in granting QMS summary judgement in the sum of \$143,910?

The Law With Respect to Summary Judgement

[4] Rule 7.3 provides that a “party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

- a) There is no defence to a claim or part of it;
- b) There is no merit to a claim or part of it...

[5] The test for summary judgment or summary dismissal is whether there is a genuine issue for trial:

Hannam v Medicine Hat School District No. 76, 2020 ABCA 343 at paras 158-161. The Supreme Court of Canada in *Hryniak v Mauldin*, 2024 SCC 7 at para 49 explained:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits. This will be the case when the process:

1. Allows the judge to make the necessary findings of fact;
2. Allows the judge to apply the law to the facts; and
3. It is a proportionate, more expeditious and less expensive means to achieve a just result.

[6] Slatter JA, writing for a five-member panel of the Court of Appeal, in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 47 set out four key considerations for a court in a summary judgment application:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either “no merit” or “no defence” and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities, or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial direction to summarily resolve the dispute.

Analysis

[7] In this regard the Appellants argue that:

- a) QMS is unable to demonstrate that the Appellants have no defence to the allegations against them, as they have a full defence, as QMS failed to fulfill the terms of the agreement between the parties with respect to the construction of the Appellants home.
- b) QMS is unable to demonstrate that there are not genuine issues requiring a trial. The parties have taken irreconcilable positions with respect to the terms of the agreement between the parties, whether those terms were fulfilled by QMS, and whether or not QMS breaches cumulatively amount to a fundamental breach and repudiation of the agreement.
- c) It would be unfair to grant summary judgment based on the record before the Court, as there is ample evidence on the record to show that QMS has not fulfilled its obligations with respect to the performance of the work on the home.

The Contract

[8] QMS the builder commenced work on a bungalow Project on June 18, 2018 for the Appellants Daniel Alain and Melissa Quinn (“Daniel and Melissa”). The written contract was finalized and signed on September 18, 2018. The contract was not signed until September 2018 because the Appellants were making decisions about the completion of the project based on how much money they were expecting to get from their insurance company, which resulted in changes to the scope of work.

[9] With respect to the Project, QMS issued the following three invoices to the Appellants prior to the Appellants terminating the Contract:

1. Invoice #4954, dated September 21, 2018, with respect to the initial 20% payment of the Contract Price due upon signing of the Contract, totaling \$104,160;
2. Invoice #5051, dated October 1, 2018, with respect to the 10% payment of the Contract Price due upon completion of the foundation work, totaling \$52,080; and
3. Invoice #5052 dated October 19, 2018, with respect to the 25% payment of the Contract Price due upon completion of the framing, totaling \$130,200. (Collectively, the “Invoices”)

[10] On October 18, 2018, QMS emailed the Appellants a Statement of Account, totalling \$286,400 which reflected the outstanding indebtedness under the Invoices.

The Payment

[11] Despite the Appellants’ previously receiving the Insurance Payment of \$525,000, they only paid QMS \$200,000 on November 5, 2018 (the “Payment”). The Payment was applied against the Invoices in chronological order as follows:

- a) \$104,160 towards the entirety of Invoice #4954;
- b) \$52,080 towards the entirety of Invoice #5051; and
- c) \$43,760 partially towards Invoice #5052, which left a balance owing of \$86,440 (the “Balance”).

[12] Aside from the Payment, the Appellants did not make any further payments to QMS under the Contract, and never explained in a meaningful manner how they decided on the \$200,000 amount to be paid.

[13] As it related to the Payment Plan, the Appellants failed to make the agreed-upon the Payment Plan. At the time of Termination (i.e. January 16, 2019), the Appellants should have already paid QMS 55% of the Contract Price, which would have totaled \$286,440. This number assumes that the Termination would not have occurred, and QMS would not have been required to reconcile all the work that was completed on the Project up to the date of Termination.

[14] Despite the Payment Plan being unambiguous and the parties executing the Contract, Daniel deposes in his Affidavit that he never agreed to the payment Plan. At para 55 of Daniel’s Affidavit, Daniel deposes the following:

I had a discussion with Dennis about the Contract attached as Exhibit “E” to the Vanleeuwen Affidavit at the time I signed it. I expressed to Dennis during that discussion that I did not agree with the Payment Plan in the Contract and that this would need to be changed before I would agree to sign the Contract. Dennis told me that this Contract was only temporary because my insurance company required a signed agreement from the Plaintiff for the work to begin on my property and that we would sign another contract later on that reflected the changes that I requested to the Payment Plan. My understanding from what Dennis had told me was that my insurance company needed the Contract signed so that the work could start on my property, therefore, I only signed the Contract because I didn’t want to delay the work and because Dennis assured me that we would enter into a subsequent contract at a later date that reflected the changes that I wanted made to the Payment Plan. Dennis understood at that time that I disagreed with the payment plan, and we agreed that I would not be making payments to the Plaintiff in accordance with the Payment Plan. In fact, Dennis makes reference to the subsequent contract that we were supposed to sign in his text message to me on December 10, 2018, in Exhibit “H” to my Affidavit where he asked me “could you email me your addendum agreement.”

[15] However, during the Questioning, Daniel states the following about the Contract: “its an agreement. It wasn’t supposed to be a contract.: He then confirms that:

- a) The appellants signed and initialed the Contract; and
- b) He read through the Contract and looked at it before he signed.

[16] Daniel’s position that the Appellants are not bound to the Payment Plan is unsupported by any evidence, and contrary to what Daniel testified under oath during the Questioning.

[17] Despite the parties regularly communicating over text message and email, there is no evidence provided by the Appellants that there were any discussions (or even any reference to any discussions) that the Appellants did not agree with the Payment Plan or that Daniel was not

willing to sign the Contract without changes to the Payment Plan. Daniel does not depose what the Payment Plan was supposed to be if it was not that clearly outlined in the Contract.

[18] On what is a summary judgement application where the parties are required to put their best foot forward, the Appellants are also not saying there is no contract at all. Instead, they ask this Court to deem certain terms in the written Contract unenforceable in substitution.

[19] The Appellants rely on the British Columbia Supreme Court decision of *Western Concord Manufacturing (New West) Ltd v Normerica Inc.*, 2007 BCSC 1485, for the proposition that unilaterally imposing conditions of a contract can amount to a repudiation. However, the Appellants have failed to explain what conditions were “unilaterally imposed” on them. The Payment Plan is directly in the signed Contract. The credits provided to the Appellants are based on the Contract Price outlined in the Contract. In order to accept that these are conditions improperly imposed on the Appellants, the Court would have to accept that the “discussions” Daniel refers to, that are not particularized, and not evidenced in the production, override the express written terms of the Contract.

[20] The Appellants are trying to introduce oral discussions/evidence, which QMS denies ever occurred, about the agreement between the parties that are contrary to the terms of the written Contract. That is the exact thing the *parol evidence rule* is meant to preclude. Although the Court is permitted to consider the “surrounding circumstances” or “factual matrix” of a contract, there is nothing here that shows any terms contrary to those expressly written. There is also no collateral agreement or evidence that the written Contract is part of a larger “umbrella contract”. The collateral agreement exception to the *parol evidence rule* mandates that there must be a “true collateral agreement, established by the evidence and not merely a unilateral oral representation in derogation from the express terms of the document”.

[21] The Court of Appeal in *P & C Lawfirm Management Inc v Sabourin* 2020 ABCA at para 51 and 53, stated as much:

Parol evidence is any evidence extraneous to a document itself. It is generally inadmissible whether it consists of:

- 1) Oral testimony by the parties;
- 2) Their admissions, declarations of intent or conversations out of court;
- 3) Their statements against interest, etc. tendered after death;
or
- 4) Facts and events not in the nature of declarations whether happening before, at, or after the date of the instrument, e.g. their previous course of dealing tendered to supplement a complete, though *aliter* an incomplete, contract, or to contradict the instrument, so;
- 5) All documents and correspondence other than those constituting the transaction in issue, or incorporated therewith by reference, e.g. drafts, deleted clauses or prior informal agreements, are in general excluded, being

deemed to be merged in and superseded by the final agreement.

....

However, as this Court said in *IFP*, evidence of surrounding circumstances is not to be used to “add to, subtract from, vary or contradict a contract”. The factual matrix cannot be used to craft a new agreement but only to ensure that the written words of the contract are not looked at in isolation or divorced from the background context against which the words were chosen: *IFP*, para 81; *Sattva*, paras 59-61. Surrounding circumstances are intended to assist in the way “in which the language of the document would have been understood by a reasonable man”: *IFP*, para 83; *Sattva*, para 58. Additionally, although parol evidence is admissible to resolve ambiguity, evidence as to the party’s subjective intentions in entering into a contract is generally inadmissible: *IFP*, paras 86-87.

Termination of the Contract

[22] On January 15, 2019, QMS arranged for Josh Andriet, an assessor from the Progressive Home Warranty Program (“the Warranty Program”), to conduct a complete walkthrough of the building envelope (“Warranty Walkthrough”). On the same day, Dennis QMS’s subcontractor, Bennett QMS’s Project Manager, and the Appellant Daniel did another walkthrough.

[23] During the Walkthrough, Dennis made notes, which were subsequently typed-out (the “Walkthrough Notes”). The Walkthrough Notes noted any areas of concern including any raised by the Appellants, so that QMS could assess any issues and conduct any necessary remedial work or repairs. The Walkthrough Notes were sent to Bennett and the Appellants.

[24] On January 16, 2019 (i.e., the day after the Walkthrough), and with no prior notice. Melissa emailed Dennis (the “Termination Email”), which terminated the contract (the “Termination”) and gave QMS and its sub-contractors, 24-hours’ notice to vacate the Lands and remove all materials, tools, equipment, and bins. Melissa further stated in the Termination email that:

- a. “Next week a professional inspector would come to estimate” the work completed by QMS and any deficiencies with respect to the project and prepare a report regarding same (the “Proposed Report”);
- b. Once the Proposed Report was completed, the Appellants were going to contact QMS to discuss a “final agreement”, and
- c. QMS had put “constant pressure” on the Appellants to make payment for “work that is not completed sometime not even started”, without providing any particulars.

[25] The Appellants put locks on the doors and prevented any of QMS’ trades from entering the home after their January 2019 termination.

Status of the Project at the Termination

[26] At the time of the Termination January 16, 2019, the following steps had been completed on the Project:

- a. Demolition work;
- b. Foundation work;
- c. Framing work;
- d. Roof work;
- e. Heating and duct work;
- f. Plumbing rough-in work, including under the slab. However, Bennett had identified an issue with one of the plumbing pipes. The location of the pipe was too tight to the wall, which would have required the wall to be fitted-out prior to the drywalling stage. This is common practice with plumbing stacks, and QMS had this scheduled to be corrected within days after the Walkthroughs;
- g. Rough-in electrical and wiring work, including the inspection of same. The final installation of electrical figures was left to be done, which would have been scheduled for completion after the drywall was complete. This did not happen because the Appellants terminated the contract before the drywall was complete; and
- h. Insulation and vapour work.

[27] Additionally, at the time of the Termination:

- a. The project was at the drywall stage;
- b. None of the flooring, millwork, and cabinetry had been completed; and
- c. Any issues identified in the Walkthroughs were in the process of being repaired by QMS or had been scheduled to be repaired.

[28] Although there was no exact deadline under the contract as to when QMS had to fully complete the project, QMS was initially on schedule to have the project completed by March 2019.

Were credits promised by QMS that were not provided?

[29] Part of the claim being advanced by the Appellants is that the credits contained in the Reconciliation Statement provided by QMS are not accurate, and that work not completed by QMS should have been deducted from the contract price. In this regard, Daniel's evidence is vague, and not particularized.

[30] The Appellants are not permitted to claim any credits for the alleged deficiencies since QMS properly invoiced the Appellants under the Payment Plan. When the Termination occurred, 55% of the Contract Price was due and payable by the Appellants, 25% of which was due because the "framing (was) ready for shingles." The Appellants specifically declined to pay this 25% amount, now claiming that all of the framing needed to be completed, which is contrary to the express wording of the Contract. At the time of Termination, the roof was complete. This is evidenced by the pictures in the Warranty Program report as well as Daniel's own evidence. Electrical, plumbing, insulation, and plywood were complete (95% according to Daniel's own evidence). The windows were on the home and drywall was being placed throughout.

[31] During Questioning, Daniel deposed that at the time he sent the Termination Email, he already had other people lined up to complete the remaining construction on the home. After the Termination, the Appellants cut off lines of communication with QMS.

[32] Subsequently, all Daniel provided was a one-page application form for coverage, dated September 29, 2019, with the New Home Buyer Protection Office. He did not provide any inspections performed by his new home warranty provider, and he also did not provide a copy of any new home warranty policy he obtained.

[33] Daniel was asked if he ever made any warranty claims for any of the alleged deficiencies that he states were caused by QMS and he said “no.” He also deposed that he did not even contact the Warranty Program that QMS had in place to see if coverage was available for work that had been completed up to the Termination that he was claiming was deficient.

[34] I conclude that the lack of any warranty claims by the Appellants is quite damaging to their appeal since it evidences there was little, if any “essential” work to be remediated.

Are there any Alleged “Deficiencies” as claimed by the Appellants?

[35] The Appellants allege that there were “major deficiencies” at the time of Termination. I conclude that the alleged major deficiencies were not outside of the normal course of construction given the stage of construction at the time of the termination by the Appellants; or that were otherwise going to be addressed or in the process of already being addressed.

[36] Instead of providing expert reports or evidence to prove QMS’ alleged deficiencies, the Appellants generally rely on:

- a) Photographs and receipts contained in Daniel’s affidavit, which Daniel deposes proves the alleged deficiencies based on his layperson opinions;
- b) Daniel’s handwritten notes.

[37] I conclude that the foregoing “evidence” is improper because they ultimately rely on Daniel’s layperson opinions about QMS’ work. Daniel has no expertise in the residential construction matters, as was confirmed during the Questioning. Daniel acknowledged that he is not in the business of constructing residential homes, and he has no trade certificates or certifications relating to the construction of residential homes. Instead, he has been in the trucking business for 15 years, and he owns or works for Jami Oilfield Services, which hauls gravel and heavy equipment.

[38] Our Court of Appeal in 2015ABCA 249 *Kon Construction Ltd v Terranova Developments Ltd* at para 35 lists the permissible categories of “witnesses with expertise” as follows:

Thus, there would appear to be at least three categories of “witnesses with expertise”, who in some respects are witnesses of fact, and in other respects opinion witnesses;

- a) Independent experts who are retained to provide opinions about issues in the litigation but were not otherwise involved in the underlying events. This is the category of

expert witness contemplated by *White Burgess* and *Mohan*.

- b) Witnesses with expertise who were involved in the events underlying the litigation but are not themselves litigants. An example is the family physician in a personal injury case who is called upon to testify about his or her observations of the plaintiff, and the treatment provided.
- c) Litigants (including the officers and employees of corporate litigants) who have expertise, and who were actually involved in the events underlying in litigation, Marinus Scheffer and Klaver fall into this category.

The rules of evidence and civil procedure relating to expert witnesses are primarily designed to deal with the first category of expert witnesses.

[39] I conclude that neither Appellant falls into any of the three categories cited by the Court of Appeal, and they have failed to produce any proper opinion evidence with respect to the alleged deficiencies.

QMS should have been given an opportunity to correct any alleged deficiencies

[40] Even if QMS' work on the project was deficient, I conclude that the claimed deficiencies did not rise to the level of fundamental breach that entitled the Appellants to immediately terminate the Contract. A fundamental breach was described as follows at para 49 and 50 of *Perfect Fit Canada Ltd v Mihalicz*, 2017ABPC197:

The plaintiff also cited the case of *Hunder Engineering Co.*, (supra). At paragraph 148, Justice Wilson quoted from *Photo Production Ltd v Securicor Transport Ltd.*, (1980) AC 827:

A fundamental breach occurs “Where the event resulting from the failure by one party to perform a primary obligation has the effect of depriving the other party of substantially the whole benefit which it was the intention of the parties that he should obtain from the contract” (emphasis added).

Justice Wilson wrote “that exceptional remedy should be available only in circumstances where the foundation of the contract has been undermined, where the very thing bargained for has not been provided”.

In *RIC New Brunswick Inc v Telecommunications Research Laboratories*, in 2010ABCA 227, at para 17, the Court of Appeal affirmed five factors to assess whether a breach is fundamental, which are:

1. The ratio of the party's obligations not performed to that party's obligations as a whole;
2. The seriousness of the breach to the innocent party;
3. The likelihood of repetition of such breach;
4. The seriousness of the consequences of the breach; and

5. The relationship of the part of the obligation performed to the whole obligation.

[41] I conclude that the Appellants were obligated to provide QMS a reasonable opportunity to rectify the alleged deficiencies before terminating the Contract. Based on the record before me, it is more likely than not that QMS' work on the project was not deficient. QMS was in the middle of identifying areas that needed work, and taking steps to complete same, at the time of the Termination. Everything that was occurring was in the ordinary course of construction. Many of the deficiencies that are being claimed are not actually deficiencies. The Appellants are given the level of construction completion, seeking set-off for work they completed after the Termination on the project, not for work it did to correct anything QMS had completed, which are two very different concepts.

[42] In addition, Daniel's evidence on these alleged deficiencies is inconsistent and unreliable. The Appellants made representations that professional reports outlining deficiencies was forthcoming, when in reality all Daniel did was take pictures and advance his own personal evidence about what he believed was done wrong. He also admits to having no certificates or qualification that the Court can rely on to give credence to his word.

Consumer Protection Legislation

[43] Finally, the Appellants intimate that there is available consumer protection legislation that is applicable in this case.

[44] Firstly, there is no indication that the Appellants were taken advantage of as consumers, or were unable to understand the language, nature, or effect of the building contract herein.

[45] Secondly, the Appellants claims of alleged deficiencies deal with the "quality" of QMS' work. In *Condominium Corporation No. 0522151 (Somerset Condominium) v JV Somerset Development Inc* 2022 ABCA 193 at para 38 our Court of Appeal noted that the *Consumer Protection Act* RSA 2000 c. C-26.3 does not impose obligation on developers with respect to the "quality" of construction, nor are there any applicable "fair dealing" requirements:

As previously noted, (*supra*, paras 15-16) the *Condominium Property Act* does not deal with the quality of construction. The obligation of "fair dealing" found in s 11 related to the contract between the parties. It does not appear to create non-contractual duties, nor does it clearly impose any duty with respect to the quality of the construction. Describing it as a generic "consumer protection" provision that can be applied to any perceived delict or loss would inject too much uncertainty into condominium property sales. As noted in *Fraser-Reid* at p 731 (*supra*, para 22) implied warranties with respect to the quality of construction are too complex to be extracted from general wording like "fair dealing", especially where these issues are likely to be expressly dealt with in the contract. The enactment of the complex *New Home Buyer Protection Act* was the legislative solution adopted.

While it was not pleaded, the appellant also refers in its factum to the *Consumer Protection Act*, RSA 2000, c. C-26.3, formerly the *Fair-Trading Act*, RSA 2000, c. F-2. New residential dwellings are included in the definition of "goods" that could be the subject of a "consumer transaction". This statute protects against

unfair practices in consumer transactions, but none of the prohibited practices appear to relate to the quality of the product. This statute also does not impose any obligations on developers like the respondent with respect to the quality of construction.

Conclusion

[46] Even if there is some conflicting evidence, *Weir-Jones* makes it clear that the mere presence of conflicting evidence does not automatically negate summary disposition. The Appellants argued that they may obtain further evidence to create genuine issues for this Court to consider, including further reports that verify QMS' alleged deficient work. At this time, the Appellants argument is mere speculation, and this Court can only consider the current record in making its decision to grant summary judgment or not.

[47] Where possible findings of fact can and should be made on a summary disposition application, the law is clear that the mere presence of some conflicting evidence on the record does not preclude summary disposition. As pointed out in *Hryniak v Mauldin* at para. 48, summary judgement is not limited to cases based on documentary evidence, or where the facts are essentially admitted. It observed at para. 57: "On a summary judgement motion, the evidence need not be equivalent to that at trial but must be such that the judge is confident that she can "fairly resolve the dispute" (emphasis added). The sufficiency of the record will depend on the issues, the source and continuity of the evidence, and other relevant considerations.

[48] Even before *Hryniak v Mauldin* it was established that the parties to a summary disposition application must "put their best foot forward": *Canada (A.G.) v Lameman*, 2008 SCC 14 at para. 11 (2008) 1 SCR 372. One could not resist summary disposition or create a "genuine issue requiring a trial" by speculation about what might turn up in the future.

[49] Whether it is possible for "the judge to make the necessary findings of fact" is tested based on the actual record, and not on speculation about what type of record might be available at trial. In those cases where there is a "genuine issue requiring a trial", it will be because there is a realistic prospect that a trial will create a better record, but that conclusion must be reached based on the evidence before the summary disposition judge, not "speculation". In this respect, the traditional test of whether there is a "genuine issue requiring a trial" still has utility.

[50] The mere presence of conflicting evidence does not automatically negate summary disposition. A party in opposition to summary disposition cannot argue that there are genuine issues for trial merely based on speculation. The Appellants were required to put their best foot forward on appeal.

[51] I conclude that summary judgement is appropriate in the circumstances because the current state of the record is sufficient to establish that the Appellants have fundamentally breached the contract, and they have failed to establish any defences to the claim of QMS; or establish there are any genuine issues requiring trial.

[52] Furthermore, this Action has been going on since August 1, 2019, and the Appellants have had almost 5 years to compile all of their evidence. If they do not have all of their evidence now, it is highly unlikely that they will obtain or find further evidence leading up to trial that will materially alter the current record.

[53] The result of the delay is that too much time has passed particularly given that the house has long been completed and has been lived in since June 2019. No independent experts can now examine the project at the time of Termination and provide a reliable opinion to this Court. This is the further result of the Appellants removing the contractors off-site with 24 hours-notice and then failing to obtain proper reports following that. QMS was willing to work with the Appellants or, in the alternative, requested to re-attend the site in response to the Termination to assess the current state of all steps taken on the project. However, the Appellants essentially refused to have anything more to do with QMS, when they should have given QMS a reasonable opportunity to complete their work.

[54] The Court finds that QMS should have been given a reasonable opportunity to rectify any deficiencies if they existed, as QMS was not in fundamental breach of the contract. Therefore, the Appellants claim for set off for deficiencies is of no merit (see para 35-42 herein).

[55] Further the Court finds that the Appellants claim for credits is also of no merit as discussed in para 11-34 herein.

[56] Based on the foregoing and having regard to the state of the extensive record, it is possible for this Court to grant QMS summary judgement for \$143,910.10 for breach of contract and/or unjust enrichment. This sum is based on the contract price after applying the credits outlined in the Reconciliation Statement: See paragraphs 9-17.

[57] The appeal is dismissed with costs.

Heard on the 17th day of May, 2024.

Dated at the City of Edmonton, Alberta this 30^h day of July, 2024.

Donald Lee
J.C.K.B.A.

Appearances:

George Samia
for the Applicants

Grayson Bateyko
for the Respondents