

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1153765 B.C. Ltd. v. Dann*,  
2025 BCSC 1622

Date: 20250821  
Docket: S249515  
Registry: New Westminster

Between:

**1153765 B.C. Ltd.**

Plaintiff

And

**Jeanette Ty De Dann**

Defendant

Before: The Honourable Justice Elwood

## Reasons for Judgment

Counsel for the Plaintiff:

R.S. Atwal  
A. Mann, Articled Student

The Defendant, appearing in person:

J.T.D. Dann

Place and Dates of Trial:

New Westminster, B.C.  
June 9–12, 2025  
August 1, 7, 2025

Place and Date of Judgment:

New Westminster, B.C.  
August 21, 2025

**Table of Contents**

**I. INTRODUCTION ..... 3**

**II. FACTS..... 4**

**III. ANALYSIS ..... 8**

    A. What Were the Terms of the Agreement? ..... 9

    B. Is the Agreement Unenforceable Because it is Illegal? ..... 11

    C. Is 115 Entitled to Recovery Based on *Quantum Meruit*? ..... 14

    D. Is 115 Entitled to a Management Fee? ..... 18

**IV. CONCLUSION ..... 19**

## I. INTRODUCTION

[1] 1153765 B.C. Ltd. (“115”) brings this action against Jeannette Ty Dee Dann for construction costs and a management fee related to the construction of a new home.

[2] 115 is owned and operated by Abhishek Nayyar. He and Ms. Dann entered into an oral agreement for 115 to act as a construction manager to oversee the construction of Ms. Dann’s home, at a time when the home was about 40% complete and Ms. Dann was out of funds until she could access a further draw on a construction loan.

[3] Mr. Nayyar argues that the agreement was a “cost-plus” construction contract, meaning that Ms. Dann agreed to pay all the actual costs incurred by 115 and a fee for its services. He argues that Ms. Dann breached the contract by failing to pay all the invoices and the balance owing on the management fee.

[4] Ms. Dann argues that the contract was for a fixed price based on a budget of \$400,000 to complete the home. She also objects to paying for the cost to remove and reinstall siding on the home, as required by the City of Burnaby (the “City”), which she blames on Mr. Nayyar.

[5] More fundamentally, Ms. Dann argues that the contract with 115 is illegal and unenforceable because neither 115 nor Mr. Nayyar is a licenced builder.

[6] The *Homeowner Protection Act*, S.B.C. 1998, c. 31 [HPA], requires that residential builders be licensed, and that new homes be enrolled in third-party home warranty insurance before construction begins or any contract is signed. If a builder is not licensed, they are not legally permitted to enter a contract to build or manage the construction of all or substantially all of a new home. Builders who manage the construction of a new home without a licence commit an offence.

[7] Mr. Nayyar argues that the contract was not illegal because he never told Ms. Dann that 115 was a licenced builder. Rather, he told her that a company called

Stonewood Holdings Ltd. (“Stonewood”) would be the licenced builder on her project. Also, he obtained new home warranty insurance for Ms. Dann through Stonewood. In the circumstances, he argues, the contract was not contrary to the HPA. Alternatively, he argues that 115 is entitled to the full amount claimed on the basis of *quantum meruit* or unjust enrichment.

[8] I have concluded that the agreement is illegal and unenforceable, but 115 is entitled to recover based on *quantum meruit*, with two deductions: the cost of the new home warranty; and a portion of the management fee representing Mr. Nayyar’s anticipated profit on the project.

## II. FACTS

[9] Ms. Dann built a new home on a residential property in Burnaby. It was a long, difficult and expensive process.

[10] In September 2020, Ms. Dann signed a contract with Sash Prestige Homes and Renovations Inc. (“Sash”) to demolish the exiting home and build a new home for \$950,000.

[11] Ms. Dann encountered several issues with Sash and terminated the contract on April 18, 2022. As of that date, the home was approximately 40% complete. Of note for the issues in this dispute, the exterior siding was not yet installed, but the installers had begun work on the site.

[12] On April 18, Ms. Dann signed a contract with Ishoni Group Builders and Developers Corp. (“Ishoni”) to complete the home, and paid Ishoni a \$10,000 deposit.

[13] On April 19, a City building inspector attended the construction site for the rainscreen mock-up inspection. The inspection report states that the work was not approved and a re-inspection was required. The issue was related to the metal siding. The inspector directed that a “CMCC letter and specs” be provided for the

metal panels. (CMCC stands for the Canadian Construction Materials Centre, which assesses compliance with Canadian building, energy and safety codes.)

[14] Ms. Dann terminated the contract with Ishoni on May 4 for reasons that are not relevant to this dispute.

[15] Ms. Dann first spoke with Mr. Nayyar on the phone in early May 2022. Mr. Nayyar is a practicing lawyer. When he first met Ms. Dann, he was acting for Exalt Earthworks Ltd. in a builders lien action against Ms. Dann and the original builder, Sash.

[16] Ms. Dann told Mr. Nayyar about the problems she had encountered with her previous builders. Mr. Nayyar told Ms. Dann that he was a builder himself, and that he could meet with her to discuss taking over the project after he obtained instructions from his client.

[17] Ms. Dann and Mr. Nayyar met in person on May 7, 2022. Ms. Dann said she had paid \$671,000 to Sash. Mr. Nayyar looked at photographs and told Ms. Dann he thought she had overpaid. Ms. Dann explained that she could not access further funds from the bank on her construction loan until the construction was 95% complete. She said she wanted to complete the project herself but appreciated that she needed someone to manage the construction and deal with the trades and the building inspections.

[18] Mr. Nayyar showed Ms. Dann a duplex he had recently built, which she liked. He showed her some invoices from that project because she wanted to have an idea of how much it would cost to complete her home with similar finishings.

[19] Ms. Dann agreed to hire Mr. Nayyar as a construction manager and agreed to pay him a management fee of \$50,000 through 115. She paid 115 a deposit of \$5,000 plus GST. The parties did not create a written contract.

[20] Ms. Dann went to Burnaby City Hall to cancel the existing trade permits and register Mr. Nayyar as her builder. She asked by text message under what name he

was registered. He responded: “Stonewood Holdings Ltd. is technically your builder.” Ms. Dann registered Stonewood as the builder.

[21] Ms. Dann also retained Mr. Nayyar to act as her lawyer in litigation concerning the home construction. Mr. Nayyar withdrew as her counsel of record about a month later to focus on being her builder. However, he continued to assist her with liens on the property and litigation with Sash.

[22] Mr. Nayyar first attended at the construction site on May 8. He noted that the roof was complete, and the exterior siding was nearly complete, but most if not all of the interior rough-in work was incomplete or poorly done.

[23] Mr. Nayyar returned to the site on May 10. He found some plywood and closed off several openings that had been left open by the trades. He noted in a construction log: “Framing incomplete. Inspections pending...Rough-in incomplete and not according to code”. He took photographs and sent them to Ms. Dann.

[24] By this time, the siding was about 90–95% complete. Mr. Nayyar told the installers, Five Star Siding Ltd. (“Five Star”), to finish one box window, the back-bottom half of the home and two sides of the garage. He also told Five Star to fix some deficiencies.

[25] Mr. Nayyar drew up a rough budget to complete the project. He told Ms. Dann that his goal was to finish her home within \$400,000, which would bring the total cost including what she had already paid Sash and his management fee to \$1,121,000.

[26] Mr. Nayyar replaced most of the trades with trades he had worked with on the duplex project. He paid their invoices through 115 and kept track of the payments and other construction expenses using two Excel spreadsheets, which he shared with Ms. Dann as Google Docs.

[27] One notable exception was Five Star. Ms. Dann told Mr. Nayyar early on that she would pay the “siding guy”. Mr. Nayyar cautioned her not to pay him until

Mr. Nayyar saw if he had finished everything. Mr. Nayyar also advised Ms. Dann that she was entitled to hold back 10% from every trade.

[28] Ms. Dann paid some other expenses directly, including the cost to purchase lighting, plumbing fixtures, and appliances. However, the bulk of the construction costs were paid by 115 or Mr. Nayyar and recorded by Mr. Nayyar or his assistant in the spreadsheets.

[29] On June 16, a building inspector named Manny attended at the site for a framing inspection. Manny told Mr. Nayyar that the previous builder had failed or skipped the previous rainscreen inspection, and that the siding should not have been installed without that approval. Mr. Nayyar immediately emailed Ms. Dann with this information. He also obtained approval from the City to continue construction on the interior of the home while they dealt with the siding issue.

[30] On June 20, a different inspector named Will attended for a re-inspection and asked to see the required documentation for the siding. Mr. Nayyar attempted to address the issue by obtaining letters from the manufacturer and the supplier of the metal siding. The documents did not satisfy the inspector that the metal siding complied with BC Building Code requirements.

[31] On August 3, the Chief Building Inspector confirmed that the City required Ms. Dann to remove and replace the metal siding.

[32] Mr. Nayyar arranged for the siding to be removed and replaced by a new installer. He included the cost in the spreadsheet. He also submitted a “risk management claim” against the City, which the City denied.

[33] On August 30, the City approved the new siding.

[34] On September 30, Pacific Home Warranty issued a final assessment report to Stonewood, confirming that the new home was complete.

[35] On October 27, the City issued an occupancy permit for the home.

[36] Mr. Nayyar provided Ms. Dann with cheques representing the final 10% of the payments to the trades and recommended that she not release the funds until she was satisfied the trades had addressed any deficiencies. Mr. Nayyar also attended the site and personally fixed some deficiencies.

[37] On November 14, Mr. Nayyar provided Ms. Dann with a draft of a written contract, backdated to May 12, 2022. Mr. Nayyar drafted the written contract for the purpose of Ms. Dann's litigation with Sash, to help Ms. Dann demonstrate the cost to complete the home. Both parties signed the document.

[38] The written contract purports to be a construction management agreement between Ms. Dann and Stonewood. Both parties acknowledge that this is incorrect. The agreement on which this action is based is between Ms. Dann and 115.

[39] 115 incurred construction costs totaling \$655,331.32.

[40] Ms. Dann paid 115 a total of \$520,000, including the \$5,000 deposit on the management fee. She made two installment payments of \$45,000 and \$20,000 on August 22 and September 8, and a lump sum payment of \$300,000 on October 28, after her bank released the final draw on the construction loan. She made two further payments of \$50,000 and \$100,000 after the home was completed.

[41] On February 28, 2023, Ms. Dann informed Mr. Nayyar by email that she could not pay anything further until she got money out of Sash.

[42] 115 claims an amount owing of \$182,831.32 inclusive of GST and interest which includes the construction costs and \$47,500 remaining for the management fee.

### III. ANALYSIS

[43] I would frame the issues in this case as follows:

- a) What were the terms of the agreement between the parties?
- b) Is the agreement unenforceable because it is illegal?

- c) If the agreement is unenforceable, is 115 entitled to recovery based on *quantum meruit* or unjust enrichment?
- d) Is 115 entitled to the management fee?

[44] I will address each of these issues in turn.

#### **A. What Were the Terms of the Agreement?**

[45] The evidence is clear that the agreement between Ms. Dann and 115 was not a fixed price contract. The \$400,000 budget that Mr. Nayyar provided to Ms. Dann in May of 2022 was a rough estimate and not a term of the agreement.

[46] The party alleging a certain term of a contract (such as a fixed price) must satisfy the court that the existence of that term is more probable than not: *Anani v. Malaspina Coach Lines Ltd.*, 2003 BCSC 700 at para. 6.

[47] An oral agreement arises from the outward manifestation of the parties' intentions—from their words and their actions—and not from their unspoken expectations or understandings (such as Ms. Dann's understanding that Mr. Nayyar would complete the house for \$400,000). The meaning of an oral agreement is not what one party believed or understood the other party to have said or done. Instead, the court examines how the parties' words and conduct would appear to a reasonable person in the position of the other party: *Lacroix v. Loewen*, 2010 BCCA 224 at paras. 35–36.

[48] Terms of an agreement must be given a meaning that is consistent with the surrounding circumstances known to both parties at the time they made the contract. The overriding concern is to determine “the intent of the parties and the scope of their understanding”: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47.

[49] In *Solaris Custom Home Inc. v. Trovao*, 2024 BCSC 1831, Justice Greenwood found that a budget relied on by the defendants was not a term of the oral contract with the plaintiff. In reaching this conclusion, Greenwood J. found there

was no agreement with respect to budget, the plaintiff did not provide a fixed price, the defendants did not seek assurances about the cost of the project and, when the project exceeded their budget, they instructed the plaintiff to continue with the project, knowing they were subject to a cost plus 12% agreement.

[50] In this case, Mr. Nayyar told Ms. Dann that he hoped to finish her house within \$400,000. He shared with her a rough budget that he had prepared for the insurance company. He understood that the cost of the project was a concern for Ms. Dann, and that it was important to her to keep the total cost below \$1.0 million. However, he never described the rough budget as a fixed price to complete the construction.

[51] The parties entered into the agreement at a time when the home was 40% complete and already over budget. Ms. Dann required a builder who was willing to carry the cost of the construction until the home was 95% complete and she could access the final draw on her construction loan. Ms. Dann did not want to use higher cost financing. Also, she told Mr. Nayyar about the problems she had encountered with her previous builders. Both parties understood that this was a challenging project.

[52] It is improbable in these circumstances that Mr. Nayyar would assume the risk the home could not be completed for a fixed amount of \$400,000. Reasonable people in the position of the parties would understand that Mr. Nayyar would pay the construction costs up front and Ms. Dann would repay him when she could access the final draw on her construction loan.

[53] The conduct of the parties was consistent with a cost-plus contract. Mr. Nayyar kept Ms. Dann informed of the cost of labour and materials as they were incurred, by providing her access to the spreadsheet through the Google Doc. Ms. Dann did not object when the total cost exceeded \$400,000. She paid more than \$400,000. When she stopped paying, her reason was that she ran out of funds, not that the parties had agreed on a fixed price.

[54] The terms of the contract are illustrated by how the parties handled the siding issue. The cost of removing and replacing the siding was not in their contemplation when they discussed the rough budget. When the problem arose, Mr. Nayyar arranged for the siding to be removed and replaced, paid for the cost and added it to the spreadsheet. The new siding was a significant expense, but neither party suggested that they needed to revisit the budget.

[55] While 115 was not a party to the back-dated written contract, the document, which Ms. Dann reviewed and approved, provides further evidence of the parties' understanding on the nature of their agreement. The contract states: "The Construction Manager will bear no costs" and "All costs in relation to the construction of the House are to be paid by the Owner". These terms reflect a cost-plus agreement.

[56] For these reasons, I find that the oral agreement between Ms. Dann and 115 was a cost-plus construction management contract.

### **B. Is the Agreement Unenforceable Because it is Illegal?**

[57] The *HPA* establishes that general contractors and construction managers require a residential builder licence before they enter a contract to build a new home. Neither Mr. Nayyar nor 115 is a licenced builder.

[58] Section 14(1) of the *HPA* states: "A person must not carry on the business of a residential builder unless licensed under this Part." Section 1 defines a "residential builder" as "a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a developer and a general contractor."

[59] In my view, this definition and the statutory prohibition against carrying on business apply to Mr. Nayyar, 115, and the agreement with Ms. Dann. That agreement was an agreement to manage "all or substantially all of the construction of a new home". Mr. Nayyar would not have required a licence to act as a trade or to manage the construction of one or two components of the home (such as the

framing or the siding); but he required a licence to manage all aspects of the completion of her new home.

[60] Mr. Nayyar testified that he is the “CPD nominee” for Stonewood, and that he used Stonewood as the licenced builder for this project. Stonewood is owned and controlled by Mr. Nayyar’s aunt and uncle. Being the CPD nominee for Stonewood did not make Mr. Nayyar a licenced builder. A CPD nominee is simply an individual designated by a licensed builder to fulfill the Continuing Professional Development requirements for that company.

[61] Moreover, Stonewood was not the builder. There is no evidence that Mr. Nayyar’s aunt and uncle had any involvement in this project. There is no evidence that Mr. Nayyar managed the project as their employee.

[62] Instead, the evidence is that 115 acted as the general contractor and construction manager. The contract between 115 and Ms. Dann was therefore prohibited by s. 14(1) of the *HPA*.

[63] Mr. Nayyar argues that the contract was also a financing agreement, for which he did not require a builder’s licence. I disagree. The contract was a construction management agreement. Mr. Nayyar may have agreed to defer payment until the project was 95% complete, but that does not mean the contract was a loan to Ms. Dann.

[64] Mr. Nayyar argues that he did not breach the *HPA* because he did not hold 115 out to Ms. Dann as a licenced builder; rather, he told her that the licenced builder would be Stonewood. Again, I disagree. Section 14(5) provides that:

**14 (5)** Unless a person is a licensed residential builder referred to in subsection (4), the person must not

- (a) use or display the designation "Licensed Residential Builder", or
- (b) imply, suggest or hold out in any manner that the person is a residential builder who is licensed under this Part.

[Emphasis added.]

[65] Mr. Nayyar implied or suggested to Ms. Dann that he or 115 was a licenced builder. He may have informed her that Stonewood was “technically” her builder; however, the entity through whom he contracted with Ms. Dann was 115. He dealt with her on construction matters through 115, not Stonewood. He is now suing her in the name of 115, not Stonewood.

[66] In any event, Mr. Nayyar breached s. 14(1) of the *HPA* by carrying on the business of a residential builder, regardless of whether he also breached s. 14(5) by holding himself or 115 out as a residential builder.

[67] The doctrine of illegality as expressed in the Latin phrase *ex turpi causa non oritur actio* was developed to ensure that the judicial process not be used for abusive, illegal purposes. It is a doctrine founded in public policy that may be raised as a defence to the enforcement of illegal contracts: *Kim v. Choi*, 2020 BCCA 98 at para. 33.

[68] The courts draw a distinction between an agreement which is contrary to statute but otherwise enforceable, and circumstances where the enforcement of the contract is expressly prohibited by statute. For example, the *Real Estate Services Act*, S.B.C. 2004, c. 42, expressly prohibits an individual from bringing an action for remuneration in relation to real estate services unless the person claiming the remuneration is licensed to provide real estate services or exempted from the requirement to be licensed

[69] Apart from situations where the enforcement of the contract is expressly barred, there is no general rule that a claim for unjust enrichment will fail if it is based on an illegal contract: *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2020 BCCA 130 at paras. 43–49. Such a claim will be barred by illegality only when restitution will defeat or frustrate the policy underlying the illegality: *Kim* at para. 63.

[70] Whether restitution will defeat or frustrate the underlying policy requires consideration of the legal policy at issue, conduct of the plaintiff, and proportionality of the result in the light of the illegality: *Kim* at para. 64.

[71] Accordingly, I find that the oral agreement between 115 and Ms. Dann is unenforceable because it is illegal under the *HPA*, but 115 may be entitled to recovery based on *quantum meruit*, depending on whether restitution will defeat or frustrate the policy underlying the illegality.

**C. Is 115 Entitled to Recovery Based on *Quantum Meruit*?**

[72] The public policy underling the illegality in this case is consumer protection. The purposes of the *HPA* are set out in s. 2 of the *Act*. They may be described as follows:

- a) Strengthening Consumer Protection: The *HPA* ensures that homeowners are protected through mandatory third-party home warranty insurance. This coverage helps homeowners deal with deficiencies in materials, labour, and structural components.
- b) Improving Construction Quality: By requiring residential builders to be licensed and monitored, the *HPA* promotes higher standards in home construction. Builders must meet specific qualifications and adhere to professional development requirements.
- c) Supporting research and education respecting residential construction in British Columbia.

[73] Mr. Nayyar argues that he fulfilled these purposes because he obtained new home warranty coverage through Stonewood and he provided Ms. Dann with good quality work and service.

[74] I accept Mr. Nayyar's evidence that he worked hard to meet Ms. Dann's expectations and sought to protect her interests with third parties. However, I do not agree that his efforts aligned with the consumer protection purposes of the *HPA*.

[75] A new home warranty—commonly referred to as the 2-5-10 Warranty—is an insurance policy placed by the builder of a new home. It is regulated under the *HPA* and administered by BC Housing, even though the coverage is provided by a private insurance company. Under this scheme, both the homeowner and the third-party insurer receive an assurance that the home was built by a licenced and qualified builder.

[76] At a minimum, Mr. Nayyar put Ms. Dann at risk that a claim under the 2-5-10 Warranty may be denied by the insurer because Stonewood was not the builder, and the real builder, 115, was not licenced. As a lawyer and former real estate agent, Mr. Nayyar would have known or ought to have known the importance of properly placed home warranty insurance.

[77] That said, Ms. Dann undeniably received the benefit of the work done on her home and the construction costs paid by Mr. Nayyar. If she does not repay the costs he incurred on her behalf, she will be unjustly enriched. These equities are the basis for a claim in *quantum meruit*.

[78] The Court of Appeal considered a *quantum meruit* claim by an unlicensed builder in *Zhang v. Cute-Go Novelty Inc.*, 2016 BCCA 451. In that case, the builder had applied for the appropriate license but at some point, was refused a license for reasons which were not disclosed in the reasons for judgment. The trial judge allowed a claim by the builder for the final payment under a contract to build a laneway home, without reference to the doctrine of *ex turpi causa*. On an appeal by the homeowners, the Court of Appeal found that the builder had contravened s. 14 of the *HPA*, but *ex turpi causa* should not bar him from recovering the final payment for work of good quality admittedly done:

[19] There are several findings that the trial judge made that are relevant at the proportionality stage of the analysis here: (1) the laneway home was well-constructed and free of defects; (2) the appellants did not rely on the respondents' licensed status when entering the contract, but relied instead on their low cost; (3) the appellants received the insurance that would come with a new home under the Act; (4) the appellants had been making all required payments to the respondents, except the final payment; and (5) the appellants themselves relied on the contract.

[79] In this case, Mr. Nayyar completed a difficult project in challenging circumstances. He arranged for the trades, paid their invoices and ensured that they completed their work properly and on time. He addressed various deficiencies at Ms. Dann's request. By all indications at the time, his work fully satisfied Ms. Dann.

[80] Ms. Dann did not object to registering Stonewood as the licenced builder. She accepted the new home warranty listing Stonewood as the builder. She did not object to any of the construction costs when they were incurred by Mr. Nayyar. She thanked Mr. Nayyar for the successful completion of her home. She made payments under the agreement until she said she had run out of funds.

[81] Although Ms. Dann remains unhappy with the overall cost of her home, she cannot identify any defects in the work that Mr. Nayyar oversaw. When pressed by the Court, she identified just two objections to the costs claimed by 115: the siding issue; and payments to a company called Bluestone Construction Ltd. ("Bluestone").

[82] The siding issue was not Mr. Nayyar's fault. The decision to use metal siding was made by the original builder or Five Star, long before Mr. Nayyar became involved. The inspection at which the inspector determined that a re-inspection would be required occurred on April 19, while Ishoni was the builder. When Mr. Nayyar first attended at the construction site, 90–95% of the metal siding had already been installed.

[83] Mr. Nayyar instructed Five Star to complete the metal siding. However, I accept his evidence that, when he gave these instructions, he did not know that the City required a CMCC letter for the metal panels before the siding was installed. Also, Mr. Nayyar's *quantum meruit* claim does not include any payments to Five Star to complete the siding. Those payments were made by Ms. Dann directly.

[84] I do not accept Ms. Dann's evidence that she told Mr. Nayyar about the previous inspection or showed him the inspection report. Her evidence on this point was equivocal and internally inconsistent. She may have told Mr. Nayyar that she "did not trust the siding guy", but it is improbable that she told him that the siding had

failed an inspection. She was not present for the previous inspection. She testified that she relied on Ishoni and assumed from communications with him that the project had passed inspection.

[85] Turning to Bluestone, Mr. Nayyar made four payments to Bluestone of \$5,250 each. Unlike the other construction expenses, however, Mr. Nayyar did not provide Ms. Dann with any invoices from Bluestone. Ms. Dann argues that she should not be responsible for these payments because she did approve any work by Bluestone and still does not know why they were paid \$21,000.

[86] Mr. Nayar testified that Bluestone is owned by Pardeep Dhillon. He testified that he hired Mr. Dhillon to work with the trades and help ensure that the project was completed on time. He testified that he paid Mr. Dhillon \$5,000 per month plus GST for these services. He acknowledged that Mr. Dhillon is a friend, and that Mr. Dhillon was a shareholder of 115 when it was first incorporated, although not when he worked on this project.

[87] Ms. Dann acknowledged seeing Mr. Dhillon regularly on the construction site; however, she testified that she did not know what he was doing.

[88] It would be preferable if Mr. Nayyar could produce an invoice from Bluestone. However, I accept his evidence that Mr. Dhillon provided a benefit to the project, and therefore a benefit to Ms. Dann. It was important to Ms. Dann that the home be completed as soon as possible. Mr. Dhillon helped Mr. Nayyar to accomplish that objective for her. The oral agreement with Ms. Dann did not require Mr. Nayyar to obtain her approval before hiring trades or subcontractors. Instead, Ms. Dann trusted Mr. Nayyar to do what was needed to complete the project. In my view, that trust was well-placed.

[89] With one exception, I am satisfied that restitution in this case would not defeat or frustrate the policy of the *HPA*. With one exception, the illegality of the agreement with Ms. Dann is not a barrier to Mr. Nayyar's recovery of the construction costs he incurred to complete Ms. Dann's home.

[90] That one exception is the cost of the new home warranty. As discussed, the scheme of the *HPA* requires new home warranty insurance to be placed by the actual builder of the home. Enrolling Stonewood as the builder of this home was contrary to the scheme of the *HPA*. Compensating Mr. Nayyar for the cost of enrolling Stonewood would therefore frustrate one of the purposes of the *HPA*. Accordingly, I would deduct \$1,527.25, representing his payments for the new home warranty, from the *quantum meruit* award to 115.

**D. Is 115 Entitled to a Management Fee?**

[91] A restitutionary order based on unjust enrichment does not permit a plaintiff to profit from an unlawful act, but rather to unwind the transaction that was tainted by the illegality: *Kim* at para. 47.

[92] Mr. Nayyar's anticipated profit on this project was included in the \$50,000 management fee. Mr. Nayyar should not be entitled to profit from the illegal contract.

[93] That said, Mr. Nayyar provided valuable services to Ms. Dann over and above arranging and paying for the trades. He assisted Ms. Dann with removing liens on her property. He attempted to resolve the siding issue with the City. He obtained letters from various engineers. He assisted Ms. Dann with the litigation against her previous builder. He addressed various deficiencies.

[94] In my view, Mr. Nayyar should receive some compensation for his time based on the principles of *quantum meruit*. It is difficult to assess the value of his time, as distinct from his anticipated profit. In my view, fair and reasonable compensation to Mr. Nayyar would be 50% of the management fee, or \$25,000.

[95] The remaining 50% of the management fee will be disallowed as profit on an illegal contract. In my view, this overall result is a proportionate response to Mr. Nayyar's failure to adhere to the requirements of the *HPA*.

**IV. CONCLUSION**

[96] 115 is entitled to judgment against Ms. Dann in the amount of \$156,304.07. This sum represents the full amount claimed, less (a) \$1,527.25 paid for the new home warranty; and (b) \$25,000 profit on an illegal contract.

[97] 115 was substantially successful at the trial. Accordingly, it is entitled to costs of the action against Ms. Dann to be paid following an agreement between the parties on a bill of costs or assessment by the registrar.

“Elwood J.”