

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 47

Date: 2024 03 20  
Docket: QBG-SA-00760-2015  
Judicial Centre: Saskatoon

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BETWEEN:

NORWOOD DEVELOPMENTS LTD.

PLAINTIFF

- and -

MARC PAUL PAQUETTE and DIANA EMILY PAQUETTE

DEFENDANTS

**CORRECTED JUDGMENT:** The text of the original judgment has been changed *per* the corrigendum released April 26, 2024. (A copy of the corrigendum is appended to this corrected judgment.)

**Counsel:**

Ted F. Koskie and Coleman E. Owen  
Curtis J. Onishenko, K.C. and Cole J. N. Wilson

for the plaintiff  
for the defendants

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JUDGMENT  
March 20, 2024

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GOEBEL J.

## OVERVIEW

[1] This proceeding involves a dispute over a contract signed in July 2013 respecting the construction of a residence in the city of Warman, Saskatchewan.

[2] In June 2015, the builder, Norwood Developments Ltd. [Norwood], sued the homeowners, Marc Paquette and Diana Paquette, collectively the [Paquettes], for

the outstanding balance of the fee payable under a written contract. The homeowners defended that claim and countersued Norwood alleging that it breached numerous express and implied terms of the contract. The homeowners claim that these breaches alleviate their obligation to pay any remaining fee owing under the contract and entitle them to damages related to their time and the cost to remedy numerous deficiencies.

[3] Many years after these claims were advanced, the matter proceeded to a three-week trial involving nineteen witnesses and numerous exhibits.

[4] Having reviewed the evidence adduced within the framework of the applicable law and the contract between the parties, I find that the homeowners breached the contract by failing to pay the prescribed fee to the builder in May 2015. I also find that the builder breached the contract by failing to ensure that a number of deficiencies were remedied in a timely manner. Both parties are entitled to damages, set off one from the other.

### **POSITIONS ADVANCED AT TRIAL**

[5] There is no dispute that the Paquettes did not pay the last installment owing to Norwood under the written contract; however, they deny that any further amounts are owing. They claim that Norwood has been sufficiently compensated for the work done and owes damages to the Paquettes to compensate them for their efforts during the construction of the home, as well as the cost required to remediate deficiencies at the property – some of which have been addressed and others that remain outstanding.

[6] The Paquettes claim that they contracted with Norwood to assume responsibility for every detail of the construction of their dream home – from start to finish, “cradle to grave”. They say that they expected to have nominal direct involvement akin to picking out paint colours and light fixtures. They also expected

Norwood to communicate in a thorough and timely way, to demand high standards from every trade and supplier, to directly supervise all of the work being done and to remedy any and all deficiencies quickly and to high standards. They also claim that the residence was to be completed within a year or, at the outside, ready for possession by Christmas 2014. They further argue that Norwood repudiated the contract by refusing to complete the home and remedy numerous deficiencies in the spring of 2015. The homeowners say that they have suffered extensive damages arising from the builder's numerous contractual breaches and repudiation.

[7] Norwood sees the situation quite differently. It argues that the contract required it to manage the construction of the residence – not to build the home. In this way, Norwood distinguishes its contractual role from many of its other projects where it acted as a general contractor tasked with responsibility for all trades and their work until the project was complete and all deficiencies resolved.

[8] The principals of Norwood, Bruce and Svetlana Farbacher, collectively the [Farbachers], testified that they made a deliberate decision prior to the execution of the contract not to act as the general contractor. This was informed by: (a) the nature of the project (an elaborate, custom residence); (b) their experience working with the Paquettes during the pre-contract design process (clients who were demanding and detailed); and (c) the fact that the Paquettes intended to be directly involved in the project by approving all tradespersons and suppliers in advance (or choosing their own), negotiating and paying invoices directly, approving all supplies and fixtures and paying for same directly, and utilizing their own business, contacts and labour to minimize costs.

[9] With this context in mind, Norwood agreed to oversee the construction of the residence to ensure that it was consistent with the Paquettes' custom designs, but with the Paquettes retaining control over the project. In this regard, Norwood argues

that it had only a tangential role in hiring tradespersons and therefore no responsibility to supervise them or oversee their work. Following this thread of argument, counsel for Norwood argues that the Paquettes were ultimately responsible for the work done by the tradespersons, along with the responsibility to ensure that any deficiencies were remedied.

[10] Norwood is also adamant that it did not agree on a completion date when the contract was signed (or ever). Bruce testified that it is his practice to never agree on a completion date given numerous variables out of his control. In this instance, those variables included the custom design, the demands of the homeowners and the building boom that made it challenging to secure and schedule tradespersons. He testified that under these circumstances, there was no way they would have agreed to a specific completion date.

[11] To the extent there was any delay, it argues that the Paquettes are to blame by failing to make timely decisions, creating confusion by micromanaging the project, making numerous changes and hiring trades outside of Norwood's recommendations. Moreover, Norwood suggests that the Paquettes breached the contract when they unilaterally set a possession date before completion and thereafter failed to mitigate their losses by refusing to provide Norwood with access to the property for the purposes of identifying and rectifying deficiencies.

[12] Norwood claims that it met all of its obligations under the contract and is entitled to the final payment.

## **SUMMARY OF EVIDENCE**

[13] The Paquettes are hardworking entrepreneurs who have spent years building a successful metal fabrication company and accumulating wealth. In 2012, they turned their attention towards building their "dream home" – an opulent, 10,000

square foot open-concept residence with unique features including a curved staircase, a mosaic feature wall, crystal chandeliers, rounded windows, a walkout basement and an indoor swimming pool. They hired an architect in 2012 and began to cast about for a suitable builder. Cookie-cutter or “spec home” designs were of no interest to them.

[14] Norwood is a corporation that builds custom homes. It is owned and operated by the Farbachers. Svetlana, trained as a mechanical engineer and gifted in design, was primarily responsible for interior and exterior design, while Bruce, a self-taught handyman and builder, was primarily responsible for the construction work. They also had one fulltime employee, Ian MacArthur [Ian], who acted as their site superintendent.

[15] The Paquettes knew the Farbachers socially and were aware that they owned Norwood. In 2012, the two couples began to chat about the Paquettes’ vision for their dream home. By this point, Norwood had been building homes for approximately ten years and owned a cabinetry business. The Paquettes also toured a couple of homes built by Norwood and were impressed with the distinctive architectural features and high-end details that they observed.

[16] Over the next few months, Svetlana worked closely with the Paquettes and their architect on the drawings for the home, although she was not compensated for her time. She made a number of design suggestions that elevated the Paquettes’ basic ideas. Diana and Svetlana also discussed and visited a number of suppliers for options on stone, flooring, wall tile, lighting and kitchen cabinets. During this time, Bruce began to share the architectural drawings with a few tradespersons and companies that he worked with to obtain their input on the mechanical and structural viability of the plans, as well as an estimate on the cost of construction.

[17] Over time, the Paquettes grew confident that Norwood understood, and could provide, the type of home that they were looking for. In the spring of 2013, they

began to discuss how to move forward with the project. By this time, Bruce had gathered quotes relating to the costs of the foundation, drywall, insulation, electrical and mechanical work in an effort to estimate the total cost of the project.

[18] Due to the custom nature of the residence, its complexity and the anticipated involvement of the Paquettes, Bruce did not view this as a project that Norwood would act as a fixed price general contractor. Instead, he proposed to manage the construction of the home for a fixed fee, with the costs of all supplies and labour to be approved by, and paid directly by, the Paquettes.

[19] By email dated June 24, 2013, Marc asked Bruce to share his information on the estimated cost of the project. In response, Bruce provided Marc with a spreadsheet that estimated the total cost at \$2,048,849.46, including a proposed \$292,000 fee payable to Norwood.

[20] The parties met on June 25, 2013, for further discussions. It was understood at that time that the fee payable to Norwood would reflect a reasonable percentage of the total cost of the project. By email dated June 26, 2013, Marc advanced a counterproposal. Referring to the spreadsheet prepared by Bruce but recognizing that many of the line items were estimates, Marc proposed a lower fee that would be adjusted at the conclusion of the project to account for the actual costs of construction.

[21] By reply email dated June 27, 2013, Bruce opined that the total cost is likely to be \$2.3 million. In justifying a higher fixed fee, Bruce wrote “even though you are paying directly for the pool steel etc, ... I am still responsible for getting it done.” He also reminded them that they are getting Svetlana’s services included along with the labour of his employee. He invited the Paquettes to have another company price out the costs with “no hard feelings either way”.

[22] Ultimately, the parties agreed on a fixed price and on July 4, 2013, the

parties signed a written contract prepared by Bruce entitled “Agreement for Sale”. The contract is four pages in length and prescribes the fee payable to Norwood at \$292,600 plus applicable taxes. While the contract references appended documents and schedules, there is no clarity respecting what, if any, documents were appended when the contract was signed. The contract describes Norwood as the “Builder” and the Paquettes as the “Purchaser”, although there are no defined terms or roles. Among a number of standard clauses, the contract states that “time is of the essence”.

[23] On the same day that the contract was signed, Norwood applied for a development permit from the City of Warman, identifying itself as the applicant and the “contractor”.

[24] While the contract identified July 25, 2013, as the start date, they did not break ground on the project until August 13, 2013. The architectural drawings were finalized on August 20, 2013.

[25] In the meantime, by email dated July 17, 2013, Marc sought a quote on the pool package from a supply company and identified Norwood as the “house builder who will be coordinating the project”. Norwood was copied on the email.

[26] From that point on, the Paquettes were directly involved in arranging for supplies and labour for the project. For instance, rather than use Norwood’s preferred lumber supplier and business account, the Paquettes directed that the lumber package be ordered through an account held by their company at Warman Home Centre. In addition, Marc worked alongside the framer, an experienced trade recommended by Norwood, while the Paquettes’ company supplied, installed and levelled all of the steel beams on site. Communications between Marc and the framer were frequent, friendly, detailed and directive. He was fully engaged.

[27] Moreover, the Paquettes lived near the building site and had unfettered

access to it at all times. Marc visited the work site almost daily, observing the work being done and interacting with the site supervisor employed by Norwood, along with various tradespersons.

[28] This remained consistent throughout the project. Marc engaged in direct communications with tradespersons – providing directions, answering questions and demanding responses. He critiqued quotes, invoices and, at times, workmanship. He made arrangements to meet with various tradespersons on site and demanded accountability for errors and information. In none of the text exchanges did Marc defer to Bruce or ask the tradesperson to contact Ian or Bruce for directions.

[29] This arrangement did not always run smoothly. In December 2013, Bruce asked if Marc would like to “part ways”. He wrote:

If you would like to part ways let me know ..we can sit down and figure out what you ow us...we are on holidays for one week and u havr to text me to complain...this is not a normal house we need kitchen plan for electrical...weather has also been cold ...if u want us to continue ..u will have to stop micto managing

[30] About an hour later Bruce sent another text, writing:

So if I don't here back from you ..it will mean were continuing on ...prefer a phone call think we both have to clarify a few things  
Thanks

[31] It does not appear that this conversation realigned behaviour, or clarified expectations, on either side.

[32] By all accounts, the project was complicated, with many details and decisions that added time and complexity. Typically, Norwood would pass along quotes, estimates and design ideas to the Paquettes for approval and instructions, often leading to a request for further quotes and requests for approval. Diana testified that she made timely decisions respecting designs, quotes, fixtures and materials and, on

occasion, had to communicate the same information to Norwood repeatedly, only to be told that something she chose months before was now discontinued. At times, Svetlana and Bruce also directed them to deal directly with the trades or directed trades to speak directly to the Paquettes.

[33] In addition, Norwood’s communication “strategy” was dismal, with nothing formally tracked or confirmed in writing. At no time did Norwood provide the Paquettes with written work schedules, minutes of meetings or change orders. The communications initiated by Norwood were *ad hoc* and informal at best. Bruce candidly described his personal communication style as “old school”. It is curt, undetailed and, frankly, unprofessional.

[34] Similarly, invoices that were directed to Norwood from suppliers and trades were just forwarded to the Paquettes for direct payment – sometimes accompanied by invoices from a number of other projects that Norwood was involved in with the expectation that the Paquettes would sort it out and pay what was appropriate. On occasion the Paquettes raised issues with the bill or quote – almost always directly with the supplier/trade but sometimes with Norwood.

[35] The Paquettes’ frequent and direct communications with tradespersons and suppliers, sometimes to the exclusion of Norwood, also increased the potential for miscommunication, errors and confusion. For instance, the Paquettes alone pursued quotes for the construction and installation of the cabinetry in the home – a significant portion of the overall cost and work associated with the construction project.

[36] That said, the numerous emails and texts between the parties were mostly friendly and appeared to appreciate the many moving parts underway without complaint or criticism. By the date of trial, however, Marc and Diana saw it quite differently. They each testified that communication was a complete disaster, and they were constantly frustrated by being forced into a management role given Norwood’s absence and

ineptitude.

[37] In addition to problems with communication, there were a number of other problems with the construction project that were dissected at the trial with each party advancing their own narrative and theory of blame.

[38] The Paquettes testified that they were disappointed that Norwood did not exact high standards with the build – instead accepting second-rate workmanship. They testified that this was not what they contemplated when they hired Norwood, and it has tarnished their view of their dream home. Marc testified that Bruce repeatedly demonstrated a “good enough” attitude towards substandard work and deficiencies in the course of the construction of the home. For example, he says that Bruce did not handle numerous problems with Norwood’s recommended window and door supplier in a timely or effective way. They were told that windows ordered months before were no longer available, there were errors in the order forms, the supply arrived sporadically and, on many occasions, the products were the wrong size. According to Marc, what was to be a distinct design feature of the home turned into a “nightmare”.

[39] In addition, the installation of the tile floor in the walkout level proved to be a significant point of frustration. The floor was being installed incorrectly, creating a slope in the floor. Part way through the installation process, Bruce and Marc met at the house with the supplier and were told that it could be corrected without removing the floor. After some discussion, they agreed to continue. That decision proved to be incorrect. Eventually, everyone agreed that the floor had to be ripped out and redone, but by then the cabinets and stonework had been installed. To speed things up, the Paquettes’ brought in labourers from their own business, but there remained a one-inch differential in cabinet height from one cabinet to the next, along with uneven grout lines from one stone-covered column to the next. Marc described it as “unsightly”.

[40] In turn, Norwood says that the Paquettes created confusion, errors and

delay. For instance, on one occasion Marc provided inaccurate information to the trades about the ceiling design over the hot tub area, as well as the placement of pot lights in the library – problems that were noted by Norwood and rectified.

[41] Further, notwithstanding that Bruce was asking for kitchen plans as early as December 2013 (the email that precipitated the exchange set out above), the Paquettes did not pursue quotes from various suppliers until the spring of 2014 and did not retain Warman Cabinets until March 2014. Over the next many months, the Paquettes worked independently with Warman Cabinets to design the cabinets – exchanging numerous emails that were rarely copied to Norwood. While in April 2014, draft drawings were sent to Svetlana who proposed a number of design considerations for the space, it appears that amended drawings and revisions were sent to the Paquettes in late May 2014 but not shared with Norwood. From that point on, numerous emails between the cabinet company and the Paquettes were exchanged discussing decisions about colours, hardware, toe kicks, the location of electrical plugs, the size of appliances and lighting. The cabinet company was also in direct communication with the electrician. Much of these arrangements were made by the Paquettes directly with nominal reference to Norwood despite that the cabinetry in the kitchen, numerous bathrooms, laundry room, pool room and lower-level bar area constituted a significant portion of the interior work.

[42] It is also noteworthy that despite the Paquettes’ desire for possession by Christmas 2014, the cabinet installation was not complete until January 2015, with an email from the cabinet company to the Paquettes indicating they were “coming along beautifully” on January 27, 2015. Regular discussions continued between the Paquettes and the cabinet company well into February 2015 after the Paquettes assumed possession of the home, and even a year later (in February 2016) when the Paquettes contacted the cabinet company to order frames for their vanity mirrors.

[43] This is similar to what occurred with the technology and sound package in the home. The Paquettes contracted directly with a company to provide the materials and labour. While communications with their supplier started as early as May 2014, the installation work was done between December 2014 and October 2015. Norwood was not looped into this aspect of the build even though it intersected with the work of other trades.

[44] Many critical decisions were not made until late in 2014. For instance, a quote for the extensive railing package in the home was not confirmed by the Paquettes until November 2014, notwithstanding that the first quote was sent to them in March 2014. Decisions relating to bathroom hardware were not confirmed until February 2015. That said, there were rarely any urgent or demanding emails or texts from either side. Again, the communications were mostly friendly and did not contain demands for clarity of roles, expectations, decisions or timelines.

[45] Svetlana also testified that the Paquettes changed their minds on a number of features in the home, causing structural and design changes, delay and increased costs. For instance, the Paquettes changed their minds about the design of the ceiling over the indoor pool after it had been framed. While they originally wanted a rustic vaulted ceiling with open wood beams, they later asked that it be a barrel shape. The new design and rebuild took effort and time, including custom materials being provided by the homeowners' company. By all accounts, the end result was unique and beautiful.

[46] Moreover, in May 2014, the Paquettes changed their minds about the type of flooring they wanted on the main floor of the home. Initially, they wanted laminate flooring but later decided to have tile throughout the main floor as well as in-floor heating. This required subsurface changes as well.

[47] In addition, in April 2014, after the plumbing and drywall work had been completed, the Paquettes decided they wanted the shower in the second-floor master

ensuite to be a steam shower. Again, this request triggered a number of design changes and work by various trades.

[48] Neither Bruce nor Svetlana were critical of these changes, recognizing that the Paquettes had distinct tastes. That said, many construction witnesses testified that mid-project changes not only increase the cost of the project but can impact the time required to complete it. This is particularly the case when trades need to be called back in a busy construction market.

[49] The Paquettes deny that they were responsible for the delay in completion of the home and, by the date of trial, were incensed that the project took so long. In their statement of claim, they indicated that there was a contractual obligation to complete the home in one year, although that position was largely abandoned by the date of trial. Instead, they argued that there was a contractual obligation to complete the home by December 2014 – an expectation they say had been shared with Norwood from the start of the project.

[50] It is not disputed that shortly after the construction of the home was underway, the Paquettes began making plans to host an extended family Christmas celebration at the home in December 2014. Diana testified that they were so excited to reveal their beautiful new home to their family and were incredibly disappointed when it became apparent that was not possible. Moreover, it was particularly distressing for her to learn that Bruce and Svetlana were planning to be away on holidays from December 2 to 21, 2014 instead of completing their home. Diana testified it was like it did not seem to matter to them at all.

[51] This was one of numerous holidays taken by one or both of the Farbachers during the construction of the home. The Paquettes also learned that Norwood had several construction projects on the go in 2014 (including the construction of their own home). Marc and Diana say that they felt dragged into an active, and even primary, role

in managing the construction of their home due to Bruce and Svetlana being unavailable.

[52] Recognizing that they would not be able to take possession of a completed property before Christmas, the Paquettes asked Norwood to ensure that the lower two levels of the house were cleared out so that they could use the walkout area and pool room for their event. As directed, Norwood arranged for all tradespersons to clean up their tools and supplies and vacate the property over the Christmas holiday. Norwood also arranged for the lower two levels to be professionally cleaned at the Paquettes' expense.

[53] On January 3, 2015, Marc sent the following text message to Svetlana and Bruce:

Hey all, I hope everyone had a good Xmas and New Year. Di and I would like to meet with u guys (including Ian) at the house tomorrow or early Monday to go over the schedule for completion of our house. We have given the buyer of our existing house a possession date of January 31, 2015. That puts us with January 30, 2015 as our required possession date for 711 Rosewood Court. Let's us know what time works for all.

Thanks

[54] Svetlana replied with a proposed time to meet and indicating, "It should work." In the days following this exchange, the communications between the parties continued in the normal cadence – with a number of questions and updates going back and forth, along with arrangements to meet. There appeared to be no urgency, panic or complaints.

[55] That said, the tempo of the work increased. Bruce made efforts to arrange for numerous tradespersons to simultaneously complete work at the home, although this proved to be a challenge given a "building boom" and some reluctance to come back to tweak or change a few things when they were working long hours on other projects.

The Paquettes were in contact with suppliers for quotes (some of which were rejected in favour of others). They placed orders for flooring, hardware, tiles and garage cabinets. The cabinet company that the Paquettes had retained had not completed their installation of the cabinets. During this time period, most of the lighting fixtures for the home were ordered, delivered and installed. The finishing carpenter was working on the trim package and Marc indicated that he would hang the doors once the hardware arrived. Issues with flooring in the walkout were being remedied and installed, and appliances were being delivered.

[56] Despite everyone's efforts, some work was left unfinished when the Paquettes took possession of the home on February 6, 2015. The Paquettes were additionally disappointed that there was no formal walkthrough or information session scheduled by Norwood – feelings that were aggravated when they discovered that Bruce and Svetlana were on their way to Russia to visit family.

[57] A MuniCode periodic inspection report was completed on February 9, 2015. The building official noted that the construction project was “complete” except for the following items that required further attention:

**Action taken (It is the owners responsibility to comply with this report):**

**The following items are required to be completed:**

- 1) Cap and label the lower subfloor depressure rough in.
- 2) Cover the remaining foam insulation with a thermal barrier in the mechanical room
- 3) Seal the sump pump lids.
- 4) Install a handrail for interior stairs with more than 2 risers.
- 5) Deck doors are to be fixed in the closed position, until guards are installed.
- 6) Adjust the garage man door self-closing hinges to ensure a proper seal.
- 7) Install the garage guards/handrails as required.
- 8) 36” non climbable guards, with no space greater than 4”, are required to protect the stairs/landing in the garage.
- 9) Install remaining extensions.
- 10) The sump pump discharge must be directed towards the rear onto an impermeable surface 2 m from the foundation wall.

11) 36” non climbable guards, with no space greater than 4”, are required to protect the stairs/landing at the front entrance.

12) Non-climbable, guards are required for the deck & stairs with no space greater than 4” where the difference to adjacent surfaces is greater than 24”. **SEASONAL**

13) Reduce grate size over basement window wells to be more manageable. [Emphasis in original]

[58] A copy of this report was provided to the City of Warman and the Paquettes.

[59] Work continued on all sides, with Marc contacting his cabinet company to schedule a time for them to install doors and handles on the same day that he was scheduling other trades to be at the home. There was also add-on work that the Paquettes were attending to that was coordinated with the tradespersons attending to the main construction project (faucets in the garage, installation of speakers, etc.).

[60] That said, tempers began to flare. On February 12, Marc confronted Ian on failing to clean up his “stuff” and told him he was putting it outside. Ian apologized and texted, “Obviously I’m spread too thin. Don’t know what the fuck Bruce is going to do when I’m gone” (Exhibit D-3). In a text on February 19, 2015, Ian wrote, “Oh the things you should tell your only staff member before you go on vacation”.

[61] The Paquettes, Bruce, Svetlana and Ian arranged to meet on February 25, 2015, to discuss the “remainder of the project”. At that time, the unfinished work included the following:

- the exterior doors and door jams were not painted;
- mirrors had not been ordered or installed in any of the bathrooms;
- bathroom hardware had not been installed (towel bars);
- the barndoor track system and hardware was on order (although Marc

intended to install that himself);

- the garage cabinets had only recently been ordered (although this was a separate “add-on”, not part of the general construction project);
- some of the lighting had yet to be ordered;
- the backsplash for the main bathroom and laundry had not been installed.

[62] The Paquettes also provided Norwood with a list of questions, with a focus on the repair of some bulkheads necessitating the removal and reinstallation of speakers, drywall repair and painting, and a list of alleged deficiencies. In addition, by text on March 3, 2015, Bruce reminded the Paquettes that they needed to sign the New Home Warranty [NHW]. He asked again on March 5 if they could meet to sign the warranty the following week.

[63] Ultimately, arrangements were made to turn the house back to Norwood for 10 days in April 2015. There were a number of text messages exchanged between Marc and Bruce in April providing updates on the work that was being attended to (mainly drywall repair, painting, touch up on railings), as well as having the plumber at the home to address a mysterious ticking noise. On April 22, Marc asked if they were going through the house to make sure everything has been done, and Bruce confirmed that they were. Bruce further confirmed that he had vacated the house at 5:15 that day.

[64] The next text exchange was initiated by Marc on April 28 asking for information on the air conditioning.

[65] The text messages over the next few days suggest that ongoing efforts were being made to address a few remaining issues. In an email dated May 10, 2015, Bruce, attempting to address each of the remaining “outstanding issues”, wrote as

follows:

Hello Marc

outstanding issues, stucco: we be repaired after your back patio is completed as per our conversation with Olimpia stucco

Plygem: I have no further news on the glass in pool area

Railing: you are handling the installation of all rails on decks

Stone Tile: has to caulk around electrical plug outside pool wall and next to stucco on garage side

Hunter: need to clean up around ac, also waiting for one light master bed room deck

Paint: ASF has contacted you for a time that they can come out and paint exterior doors

Please advise of any outstanding issues

Thanks.

[66] In a response email dated May 14, 2015, Marc clarified his understanding of the outstanding issues as follows:

- Basement shower sliding glass still leaks bad
- Toilet in master bathroom still needs to be replaced (seems like you remembered this last night)
- Still waiting for cheque for mudroom door from plygem, I still haven't ordered one because of this!
- Main Floor fire place logs need to be adjusted (one of them is turned on its side and you can see the part #)
- ASF has a handful of touch ups they need to do from their last visit... on top of the exterior doors.
- weird thing happening with the master bathroom fire place...when power goes off in Warman and turns back on the fire place turns on even though it was off before the power failing. Can you have Hunter look into this?
- still missing 2 down spout extensions both near the front door
- threshold has come un-glued at double door leading into pool room.
- patch job on bulkheads at bar and library didn't hold both cracked again.
- vanity light to replace shower head fitting in garage where it was over tightened and cracked fitting (Ian knows about this)
- repairs to the shingles that I met Cactus Roofing about last fall is still not fixed.

[67] In an unusually formal email from Bruce to Marc dated May 21, 2015, and copied to a lawyer, Bruce attached Norwood's final bill and asked that the cheque

be made payable to Norwood's lawyer. He also advised that the lawyer would hold back \$1,000.00 for work that has not been finished. He wrote:

No further work will be done until final bill has been paid in full to my lawyer. Also New Home Warranty is not in effect until final invoice has been paid.

[68] Marc wrote back on May 22 stating "If this is the root you want to take instead of just completing the project we hired you to do that's fine with me, I will be forwarding all of our information and correspondence to our lawyer also".

[69] On May 25, Bruce responded as follows:

Marc

As per contract last payment due before you move in.  
Payment should have been made before you moved in, and a hold back done on any unfinished work.  
You also said you would not be paying the final Invoice from my drywaller or to End of the roll.  
Will gladly finish what is left and put new home warranty into effect as soon as you make the last installment as per the contract and pay out the 2 remaining trades.

Also you picked the move in date not myself.

If you have any questions you need answered please ask

thanks

Bruce Farbacher

[70] A standoff ensued. Within days, a demand letter from Norwood's lawyer was hand delivered to the Paquettes' home, and on June 11, 2015, Norwood caused a statement of claim to be issued. On June 25, 2015, the Paquettes filed a statement of defence and counterclaim disputing any further payment to Norwood and seeking damages to remedy deficiencies.

[71] No further *joint* efforts were made to address outstanding work or resolve deficiencies. The Paquettes continued to communicate with a few of the trades

respecting some ongoing work at the home (painting, stucco work, lighting...), but refused to contact Norwood (and other trades/suppliers) to provide them with an opportunity to complete work or remedy deficiencies. In addition, after the litigation commenced, neither party sought to clarify the status of the NHW registered by Norwood on behalf of the Paquettes. Their focus was purely on the litigation.

[72] MuniCode provided a final inspection report in November 2016 confirming that all deficiencies previously noted had been completed and the building permit was officially “closed”.

[73] In April 2019, the Paquettes received a letter advising them that their home had been registered for the NHW. By that date, much of the coverage had lapsed, including the one-year warranty on all labour and materials.

[74] Shortly thereafter, the Paquettes retained Strata Developments [Strata] to provide a quote for the cost to remedy what they perceived to be outstanding work and deficiencies. A report from Strata dated March 5, 2020, quantifies the cost to remedy outstanding work and deficiencies (\$241,175.93 plus applicable taxes), along with the value of work that the homeowners claimed to have addressed on their own (\$98,373 plus applicable taxes).

[75] In 2020, the Paquettes hired Strata to do some work at their home, including repairs to the exterior stucco and flashing, replacing the tile on the deck, repairing cracked drywall, repainting, and replacing the tile floor in the recreation room. The invoices relating to this work total \$77,595.85.

## **ISSUES**

[76] This is a purely contractual dispute governed by the common law respecting contract formation, interpretation, breach and damages. Both sides concede they had a contractual relationship and rely on their written contract to support their

respective claims. They each allege that the other breached the terms of the contract, entitling them to damages. The focus of their dispute turns on the interpretation of the contractual terms and the scope of recoverable damages.

[77] The issues raised by the pleadings and positions advanced at the trial are as follows:

1. What were the terms of the contract between the parties?
2. Did either party breach the terms of their contract?
3. What is the appropriate measure of damages?
4. How should I exercise my discretion respecting costs?

## **ANALYSIS**

### **1. What were the terms of the contract between the parties?**

#### **a. The legal framework**

[78] The governing authority on contractual interpretation is the decision of the Supreme Court of Canada in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, [2014] 2 SCR 633 [*Sattva*]. In *Ter Keurs Bros. Inc. v Last Mountain Valley (Rural Municipality)*, 2021 SKCA 55 [*Ter Keurs*], the Saskatchewan Court of Appeal helpfully summarized the legal analysis from *Sattva*, along with recent jurisprudence that has applied the principles in that case, as follows:

[23] The Supreme Court of Canada recently summarized the principles of contractual interpretation set forth in *Sattva* in *Resolute FP Canada Inc. v Ontario (Attorney General)*, 2019 SCC 60, 444 DLR (4th) 77:

[74] This Court has described the object of contractual interpretation as being to ascertain the objective intentions of the parties (*Sattva*, at para. 55). It has also described the object of contractual interpretation as discerning the parties' "reasonable expectations with respect to the

meaning of a contractual provision” ([*Ledcor Construction Ltd. v Northbridge Indemnity Insurance*, 2016 SCC 37, [2016] 2 SCR 23], at para. 65). In meeting these objects, the Court has signalled a shift away from an approach to contractual interpretation that is “dominated by technical rules of construction” to one that is instead rooted in “practical[ities and] common-sense” (*Sattva*, at para. 47). This requires courts to read a contract “as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract” (*ibid.*).

[24] In *Sattva*, Rothstein J. described the role that surrounding circumstances have in the exercise of contractual interpretation:

[58] The nature of the evidence that can be relied upon under the rubric of “surrounding circumstances” will necessarily vary from case to case. It does, however, have its limits. It should consist only of objective evidence of the background facts at the time of the execution of the contract ([*King v Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80, 270 Man R (2d) 63], at paras. 66 and 70), that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting. Subject to these requirements and the parol evidence rule discussed below, this includes, in the words of Lord Hoffmann, “absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man” ([*Investors Compensation Scheme Ltd. v West Bromwich Building Society*, [1998] 1 All ER 98 (H.L.)], at p. 114). Whether something was or reasonably ought to have been within the common knowledge of the parties at the time of execution of the contract is a question of fact.

(Emphasis added)

[25] However, the Ontario Court of Appeal in *Shewchuk v Blackmont Capital Inc.*, 2016 ONCA 912, 404 DLR (4th) 512, rejected the contention that conduct subsequent to the formation of the contract fell within the definition of surrounding circumstances:

[41] In my view, subsequent conduct must be distinguished from the factual matrix. In *Sattva*, the Supreme Court stated at para. 58 that the factual matrix “consist[s] only of objective evidence of the background facts *at the time of the execution of the contract*, that is, knowledge that was or reasonably ought to have been within the knowledge of both parties *at or before the date of contracting*” (citation omitted and emphasis added). Thus, the scope of the factual matrix is temporally limited to evidence of facts known to the contracting parties contemporaneously with the execution of the contract. It follows that subsequent conduct, or evidence of the behaviour of the parties after the execution of the contract, is not part of the factual matrix: see *Eco-Zone Engineering Ltd. v. Grand Falls – Windsor (Town)*, 2000 NFCA 21, 5 C.L.R. (3d) 55, at para. 11; and *King v. Operating Engineers Training Institute of Manitoba*, 2011 MBCA 80, 270 Man. R. (2d) 63, at para. 72.

...

[46] ... Evidence of subsequent conduct should be admitted only if the contract remains ambiguous after considering its text and its factual matrix.

(Italicized emphasis in original; underlined emphasis added)

[26] This approach has also been followed by this Court (see: *Mosten Investments LP v The Manufacturers Life Insurance Company (Manulife Financial)*, 2021 SKCA 36 at paras 134 and 180 [*Mosten*]; and *Jans Estate v Jans*, 2020 SKCA 61 at paras 47-48, 59 ETR (4th) 53).

[27] In relation to the meaning of particular words, the Court in *Sattva* said:

[48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see *Moore Realty Inc v. Manitoba Motor League*, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, per Hamilton J.A.; see also [Geoff R. Hall, *Canadian Contractual Interpretation Law*, 2d ed (Markham, Ont: LexisNexis, 2012)], at p. 22; and [John D. McCamus, *The Law of Contracts*, 2d ed (Toronto: Irwin Law, 2012)] at pp. 749-50). As stated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.):

The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]

...

[35] In *Mosten*, the Court explained the role of the court in contractual interpretation:

[71] Regardless of nomenclature, “the role of courts in interpreting contracts is to give effect to the bargain by which the parties intended to be bound”: Ruth Sullivan, *Contract Interpretation in Practice and Theory* (2000), 13 SCLR (2d) 369 (QL) at para 24. As such, when asked to interpret a contract, the court’s principal objectives are to determine whether there was *consensus ad idem* at the time the parties purportedly made their contract and, if so, *what* it entailed.

[72] In every case, contract interpretation begins with the words of the contract, whether reduced to writing or not. To give meaningful effect to *consensus ad idem*, the interpretive process must remain firmly grounded in the language chosen by the parties to govern their relationship. Contextual factors are used to assist with achieving an accurate interpretation of the contract. Contextual assistance is gleaned from the contract itself and from the circumstances surrounding its formation, i.e., the factual matrix (*Prenn v Simmonds*, [1971] 3 All ER 237 (HL) at 239-240 [*Prenn*]; and *Sattva*). ... (Emphasis in original)

[36] The use of extrinsic evidence in the interpretative process was also explained in *Mosten*:

[84] Aggregating this guidance in the most encompassing of terms, relevant extrinsic evidence will include anything that tends to establish the facts known, or facts that reasonably ought to have been known, to all parties at or before the date of contracting and that deepens the interpreting court's understanding of the mutual and objective intention of the parties as expressed by the words of the contract (*Sattva* at paras 57, 58 and 60). Broadly stated, the proper approach to contract interpretation involves the determination of *consensus ad idem* on the basis of the text of the contract as a whole together with a matrix of extrinsic evidence that objectively manifests what the parties understood the contested contract text to mean at the time of contract formation.

[Emphasis in original]

[79] The exercise of determining the parties' objective intentions at the time that the contract was made is also aided by considering the commercial purpose for the contract. In *Canadian Mortgage Servicing Corporation v Korf*, 2024 SKCA 1, the Court of Appeal described this consideration as follows at para 56:

[56] As with other types of contracts, the goal when interpreting a guarantee is to discover the parties' objective intention, i.e., the intention that would have been apparent to an objective third party, at the time the contract was made. This requires a court involved in the interpretative exercise to take into account not only the words of the agreement, but also "the commercial purpose of the contract as gleaned from its genesis, the background, the context, and the market in which the parties are operating" (Halsbury's Law of Canada, *Guarantee and Indemnity* at HGI-61 "Construing Terms of Contract" (2022 Reissue), citing *Reardon v Smith Line Ltd. v Yngvar Hasen Tingen*, [1976] 1 WLR 989 at 995–996, and *British American Oil Co. v Ferguson*, [1951] 2 DLR 37 (Alta CA); see also: *Conlin* [[1996] 3 SCR 415] at para 6). ...

[80] These principles were summarized, in a step-by-step format, by the Ontario Court of Appeal in *Weyerhaeuser Company Limited v Ontario (Attorney General)*, 2017 ONCA 1007 at para 65, 77 BLR (5th) 175, as follows:

[65] ... When interpreting a contract, an adjudicator should:

(i) determine the intention of the parties in accordance with the

language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;

- (ii) read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- (iii) read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- (iv) read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

**b. What does the written contract provide respecting the issues in dispute?**

[81] The parties signed a written contract on July 4, 2012. Neither party put any effort into ensuring that the written contract was exacting or that it clearly outlined their respective rights, responsibilities or expectations. The contract is poorly drafted, internally inconsistent, includes inapplicable provisions and references documents that were not appended. It is, with respect, a fragile foundation upon which to launch eight years of litigation and a three-week trial.

[82] The only matter the parties seem to agree on is that there is a binding contract. The Paquettes argue that pursuant to the contract, Norwood had sole responsibility for all aspects of the home’s construction including the oversight and inspection of all work to ensure it was completed without deficiency and in accordance with the high standards expected of a luxury home builder. The Paquettes further argue that Norwood was contractually obligated to construct the home in a timely manner and

ensure that the benefits of a NHW were available to them upon completion.

[83] Norwood disagrees with this interpretation of the contract. Norwood says that it was hired to manage the construction of the home, which included assisting with the design of the home and general oversight on its construction. Norwood further says that this arrangement provided the Paquettes with the freedom to hire and direct their trades of choice, along with assuming responsibility for their workmanship. Further, Norwood states that it never agreed to any timeline nor a completion date although it accepts that it was obligated to provide the NHW, an obligation that it says was met in full.

[84] The starting point in determining what, in fact, the parties agreed to, is the language used in their written contract – read as a whole and using its ordinary and grammatical meaning.

[85] The written contract is four pages in length and is curiously entitled “Agreement for Sale”, although the arrangement was not an agreement for sale in any sense of the word nor does either party suggest that it was. The contract randomly capitalizes words, for instance, “Manager”, “Land” and “House”, that are otherwise undefined. Some of the provisions are inconsistent and others appear to have no direct application to the arrangement between these parties.

[86] The contract refers to the Paquettes as the “Purchaser”. As the Paquettes already owned the property upon which the home was to be constructed, it is reasonable to find that their contractual intention was to purchase services. The contract refers to Norwood as the “Builder”. This is a fair descriptor as, according to the contract, Norwood was tasked to “build” the home.

[87] The contract includes provisions on responsibility for payments associated with the construction of the home. According to those terms, the Paquettes

were obligated to pay all invoices accrued for materials and labour at the end of each month.

[88] In addition, the Paquettes were obligated to pay a “Manager’s fee” to Norwood in the sum of \$292,000 plus applicable taxes in four equal installments of \$76,650. These amounts were payable at the completion of framing, drywall, finishing and finally “after completion, before move in”. While the contract is silent on particulars, the parties agree that at the time the contract was signed, the fee payable to Norwood included Svetlana’s architectural and design services and the onsite services provided by Norwood’s primary employee, Ian MacArthur.

[89] Then it gets a bit murky. The contract states that the fee is payable to build a residence “as per the attached specifications sheet”, however the parties could not agree on what documents, if any, were appended to the contract when it was signed. Marc testified that the spreadsheet prepared by Bruce was appended to the contract. Bruce agrees that he prepared the spreadsheet and shared it with Marc but says that it was prepared for a completely different purpose and was definitely not attached to the contract or referenced in the contract. No one testified to the architectural drawings being attached although the Paquettes allude to same in their trial brief. This seems unlikely as the drawings were not finalized until after the contract was signed. Having considered all the evidence, I find that no specification sheet was appended to the contract when it was signed despite the written contract providing for same.

[90] The contract includes a provision stating “New Home Warranty provided by Progressive Home Warranty” referencing Norwood’s member number with that entity. No further detail is provided.

[91] There is also a clause providing that “Time shall be of the essence in this Agreement” although no context is provided nor any contemplated completion date. That said, the contract identifies the start date as “on or before July 25, 2013”.

[92] The contract states that each party will be responsible for its own legal expenses associated with this transaction. There are also a few boilerplate provisions, including a waiver of statutes, and a provision governing the consequences of default by the builder, both of which appear to be inconsistent with the remaining provisions in the contract and its commercial purpose.

[93] Under the heading “Construction of residence on the land”, the contract provides “Proposals are per Schedule ‘A’ General Specifications sheet except as noted on addendum sheet”. This suggests that a second schedule to the contract was contemplated. The court did not hear evidence of any “proposals”, schedules or addendums appended other than as described above. Again, I find that it is more probable than not that there were no such documents appended to the contract when it was signed.

[94] This section of the contract also includes provisions that appear to have little relevance to the arrangement between these parties, including a provision governing the substitution of building materials and another prescribing responsibility for damage occasioned by grading and drainage problems.

[95] The written contract concludes by providing that “the proposal does not include any items not mentioned here or on the specifications sheets attached hereto”.

[96] Bruce testified that he prepared the document using a precedent and without legal assistance. After some back-and-forth negotiations on the quantum of the fee payable to Norwood, the contract was signed by all parties.

[97] Given this landscape, one might fairly ask if the parties ever had a meeting of the minds on terms that are capable of being reasonably divined by the court, also known as *consensus ad item*. Contract formation principles were summarized by G.H.L. Fridman in *The Law of Contract in Canada*, 6th ed (Toronto: Thomson Reuters

Canada, 2011) at 15-16 [Fridman] as follows:

Constantly reiterated in the judgments is the idea that the test of agreement for legal purposes is whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract. The law is concerned not with the parties' intentions but with their manifested intentions. It is not what an individual party believed or understood was the meaning of what the other party said or did that is the criterion of agreement; it is whether a reasonable man in the situation of that party would have believed and understood that the other party was consenting to the identical terms. As Fraser C.J.A. said in *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Co.* [2003 ABCA 221 at para 9, [2004] 1 WWR 628]:

the parties will be found to have reached a meeting of the minds, in other words be *ad idem*, where it is clear to the objective reasonable bystander, in light of all the material facts, that the parties intended to contract and the essential terms of that contract can be determined with a reasonable degree of certainty.

Sometimes it is a simple matter to decide what the parties have manifested to each other, and consequently, whether they have agreed, and if so, upon what. This is especially true where a document containing their agreement has been prepared and signed by the parties. If the plain wording of the document reveals a clear and unambiguous intent, it is not necessary to go further. Indeed, once that has been done, it may not be possible to have recourse outside such document, either to other written material or to parol evidence from the parties or anyone else, in order to explain, or otherwise clarify what is contained in the document. [Footnotes omitted.]

[98] In *Curry v Athabasca Resources Inc.*, 2024 SKCA 7 [Curry], a very recent decision of the Court of Appeal, the court summarized the criteria for a valid contract as follows:

[36] A valid contract is only formed when three criteria are met from the perspective of an objective bystander: (i) the parties intended to contract; (ii) the parties reached an agreement on all essential terms; and (iii) the essential terms are sufficiently certain (*Jans Estate v Jans*, 2020 SKCA 61 at para 34 [Jans]; citing *Matic v Waldner*, 2016 MBCA 60 at para 57, [2017] 1 WWR 504 (leave to appeal to SCC refused, 2017 CanLII 1341)). Determining whether a contract has been formed and, if it has, on what terms, calls for the application of an objective test. ...

[99] In *101034761 Saskatchewan Ltd. v Mossing*, 2022 SKQB 193, the court was asked not to enforce an agreement for the purchase of land on the basis that it was too uncertain. After a thorough review of the general principles of contract interpretation, the court turned its attention to the arguments respecting the flawed document and held:

[112] Generally, where the contract relates to real property, the rule is that, at a minimum, there must be sufficient clarity as to the essential terms of the agreement respecting the parties, the property, and the price. See: *Ko* [2012 ABCA 245, [2013] 2 WWR 52] at para 84, and *Hoban Construction Ltd. v Alexander*, 2012 BCCA 75 at para 41, [2012] 7 WWR 239 [*Hoban*].

[113] In *Hoban*, for example, the British Columbia Court of Appeal stated at para. 47 as follows:

[47] There is no question that the documents the parties signed were inelegantly and inartistically drafted. They contain typographical errors and substantive mistakes. There seems to be little doubt that the form of the contracts and the offers from which they arose did not strictly comply with the specifications in the USA [Unanimous Shareholders Agreement]. **However, the inquiry is not whether the contracts were competently drafted, but rather whether they disclose the parties' intentions as to the substance of their agreement...**

[Underlining in original; bolding emphasis added]

[114] (I pause to observe that the description of the documentation at issue in *Hoban* aptly encapsulates some of the complaints about the deficiencies found in the Third Offer made by counsel for the Mossings.)

[115] While it is true that courts will not, and should not, enforce an agreement where an essential term is too uncertain, every effort should be made to ascertain its meaning looking at the substance, and not mere form, of the term in question. This approach was underscored by our Court of Appeal in *101090442 Saskatchewan Ltd. v Harle*, 2014 SKCA 6, [2014] 4 WWR 783 [*Harle*] where Jackson J.A. wrote at para. 51:

[51] If we return again to the words of Prof. McCamus [John D. McCamus, *The Law of Contracts*, 2<sup>nd</sup> ed. (Toronto: Irwin Law Inc., 2012)] (at pp. 93-94):

Parties, especially those not advised by lawyers, may be unaware of the nature of all the essential terms to be stipulated in the particular context. Parties may assume that reasonable or “the usual” arrangements will apply to an undetermined matter. In all such cases, the parties may intend to enter into binding

contractual arrangements and believe that they have successfully done so. Rigid application of the doctrine of certainty, therefore, could produce much mischief, especially in cases where the parties detrimentally rely on the assumption that a valid and enforceable agreement has been created. Accordingly, courts will attempt to fill gaps and find meaning in agreements in circumstances where it appears the binding agreement was intended by the parties.

The law of certainty of terms, then, reflects this tension between a requirement that the parties reach a complete and intelligible agreement and a reluctance to defeat the expectations of the parties that an enforceable agreement has been created.... As we shall see, the leading modern authorities tend to place particular emphasis on the need to give effect, where possible, to the expectations of the parties that they have entered into a valid and enforceable agreement.

[Emphasis in original]

[116] Almost half-a-century earlier, in *Marquest Industries Ltd. v Willows Poultry Farms Ltd.* (1968), 1 DLR (3d) 513 (BCCA) the British Columbia Court of Appeal at pp. 517-18 advocated for a similar interpretive role for a reviewing court as follows:

In the first place, consideration must be given to the duty of a Court and the rules it should apply, where a claim is made that a portion of a commercial agreement between two contracting parties is void for uncertainty or, to put it another way, is meaningless. The primary rule of construction has been expressed by the maxim, *ut res magis valeat quam pereat* or as paraphrased in English, “a deed shall never be void where the words may be applied to any extent to make it good”. The maxim has been basic to such authoritative decisions as *Scammell v. Ouston*, [1941] 1 All E.R. 14; *Wells v. Blain*, [1927] 1 D.L.R. 687, [1927] 1 W.W.R. 223; *Ottawa Electric Co. v. St. Jacques* (1902), 31 S.C.R. 636, as well as many others, which establish that **every effort should be made by a Court to find a meaning, looking at substance and not mere form, and that difficulties in interpretation do not make a clause bad as not being capable of interpretation, so long as a definite meaning can properly be extracted.** In other words, every clause in a contract must, if possible, be given effect to. Also, as stated as early as 1868 in *Gwyn v. Neath Canal Navigation Co.* (1868), L.R. 3 Ex. 209, that **if the real intentions of the parties can be collected from the language within the four corners of the instrument, the Court must give effect to such intentions by supplying anything necessarily to be inferred and rejecting whatever is repugnant to such real intentions so ascertained.**

[Emphasis added]

[Emphasis in original]

[100] Having considered these authorities, and despite the problematic and poor

drafting outlined above, I am prepared to proceed on the basis that the contract is valid and enforceable. Firstly, being cognizant of my duty to make every effort to extract the contractual intentions of the parties and give effect to same, there is no doubt that both parties clearly intended to form a contract, believed that they had done so, and presently take the position that they have a valid and enforceable contract. Moreover, since the contract was signed, many of its terms have been performed.

[101] Secondly, while some of the provisions in the written contract are inconsistent and legally meaningless, these provisions are not essential to the issues in dispute or to the interpretation of the contract as a whole. Thirdly, the issue of validity has not been directly raised with the parties for their consideration, and while it is possible for the court to invite further submissions on this issue, the parties clearly agree on this matter and neither presented evidence to the contrary.

[102] Fourthly, I am satisfied that it is possible to extract the contractual intentions of the parties from the language utilized in the contract, extrinsic evidence, contextual factors and the commercial purpose for the contract, with a reasonable degree of certainty.

[103] For instance, there is little doubt that the primary purpose of the contract was to prescribe a fee and payment structure for the work that Norwood was undertaking on behalf of the Paquettes and to clarify the Paquettes' obligation to pay the costs of all supplies, suppliers and trades directly. Unfortunately, the contract does not clearly define roles, standards or responsibilities relating to the construction project, including the responsibility to oversee tradespersons, ensure that their work is completed to a specific standard and/or arrange for deficiencies to be remedied – the primary point in dispute.

[104] Where an agreement is silent on an issue in debate, the court may refer to contextual factors and surrounding circumstances known to the parties, or reasonably

capable of being known by the parties, at the time that the contract was formed. This includes facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made but excludes evidence respecting the subjective intentions of the parties at the time that the contract was signed, as well as any post-contractual conduct.

[105] These principles were recently affirmed by the Court of Appeal in *Boutin v Boutin*, 2023 SKCA 41, where the court distinguished between evidence of pre-contract negotiations tendered to provide the subjective intentions of the parties (inadmissible) and objective evidence of the surrounding circumstances or factual matrix known or reasonably known at the time of the execution of the contract (admissible). Barrington-Foote J.A. spoke to the “correct approach to evidence of negotiations that precede contract formation” as follows:

[35] ... It has often been said that such evidence is not admissible for the purpose of construing the agreement. However, that overstates the matter; its admissibility depends on the purpose for which it is tendered. As I have emphasized, the subjective intentions of a party are not relevant for the purpose of determining the consensus recorded in the final agreement. For that reason, evidence of pre-contract negotiations that is tendered to prove those subjective intentions for that purpose is inadmissible. These principles are reflected in the following comment adopted by MacKinnon A.C.J.O. in *Craighampton Investments Ltd. v Ayerswood Developments Ltd.* (1984), 4 OAC 124 (WL) (CA):

...When equals negotiate at length and arrive at a written agreement which can be interpreted by itself or by reference to matters which must be taken to have been known to both of them and which show the sense or meaning that the words must be taken to have had when the agreement was made, it verges on idle activity for a court to rehash the negotiations, activities and conduct of the parties and hear their now professed expression of what their intentions were at an earlier time.

[36] However, evidence of negotiations may be of a different kind and may be tendered for a different purpose. It may be evidence of the surrounding circumstances or factual matrix that is properly taken into account when determining the meaning of the written agreement. Such evidence may, for example, demonstrate the commercial objectives of the parties in forming the agreement (*Langley Lo-Cost Builders Ltd. v 474835 B.C. Ltd.*, [2000] 7 WWR 46 (BCCA) at para 29, or may

“establish that a fact which may be relevant as background was known to the parties” (*Chartbrook Limited v Persimmon Homes Limited*, [2009] UKHL 38 at para 42. As Rothstein J. explained in *Sattva* [2014 SCC 53, [2014] 2 SCR 633], “[t]he goal of examining such evidence is to deepen a decision-maker’s understanding of the mutual and objective intentions of the parties as expressed in the words of the contract” (emphasis added, at para 57). This Court summarized what is permitted in *Mosten* [2021 SKCA 36, [2021] 9 WWR 1]:

[83] ...

(g) The nature of the evidence upon which an interpreting court may rely consists “only of objective evidence of the background facts at the time of the execution of the contract” (*Sattva* at para 58, citing *King v Operating Engineers Training Institute of Manitoba Inc.*, 2011 MBCA 80 at paras 66 and 70, 270 Man R (2d) 63), namely, “knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting” (*Sattva* at para 58). [Footnote omitted]

[84] Aggregating this guidance in the most encompassing of terms, relevant extrinsic evidence will include anything that tends to establish the facts known, or facts that reasonably ought to have been known, to all parties at or before the date of contracting and that deepens the interpreting court’s understanding of the mutual and objective intention of the parties as expressed by the words of the contract (*Sattva* at paras 57, 58 and 60). Broadly stated, the proper approach to contract interpretation involves the determination of *consensus ad idem* on the basis of the text of the contract as a whole together with a matrix of extrinsic evidence that objectively manifests what the parties understood the contested contract text to mean at the time of contract formation.

[106] As stated, the court must also consider whether the contract can be objectively read in a fashion that accords with sound commercial principles and good business sense in order to avoid a commercially absurd result.

[107] In *Ter Keurs*, the focus of the Court of Appeal was not so much about the interpretation of the existing clauses, but rather about the absence of specific terms to address the situation in which the parties later found themselves. Much of the interpretive analysis revolved around the meaning of the existing clauses and absence of certain clauses insofar as it shed light on the parties’ intentions on the issues in dispute (*Ter Keurs*, at para 40). While the court described the agreement as “neither

comprehensive nor sophisticated, and essential rights were not provided for in it”, the court found that “the essence of the transaction” could be distilled from considering the agreement as a whole and the surrounding circumstances.

[108] Here, the primary issue in dispute is what services Norwood was contractually obligated to provide. The Paquettes argue that Norwood was obligated to provide a completed, deficient-free luxury home within a year with little to no involvement on the part of the Paquettes. While Norwood’s position has proven to be more fluid, in the trial brief filed on its behalf at the conclusion of the trial, Norwood argues that it was a project manager under a lump sum fee arrangement, contracted to manage the construction of the home alongside the Paquettes, who retained sole autonomy for hiring trades and the related responsibility for ensuring their work was to the standard they desired.

[109] In support of their interpretation, the Paquettes called Michelle Simonar, B.Comm., PMP, as an expert witness. Ms. Simonar has been employed in construction and project management since 2005 and obtained her designation as a Project Management Professional from the Project Management Institute in 2012. Ms. Simonar is presently employed by Strata. After a qualification *voir dire*, Ms. Simonar was qualified to provide opinion evidence respecting the process for managing custom residential building projects, including fee structure, scope of work and estimated investment of time.

[110] She testified that a project manager typically takes a project from design to turn over – “cradle-to-grave”. She says that a project manager is responsible for costing, scheduling and dealing with issues that arise during construction, including reviewing and dealing with subtrades and quality of work problems. It is reasonable to expect a project manager to be at the worksite sporadically at the beginning – perhaps weekly. However, from the middle to the finish of the build, the project manager would

be at the worksite almost every day to identify deficiencies and follow up with trades.

[111] She further testified that each project would have a site superintendent assigned to be at the construction site on a daily basis to monitor progress, maintain quality and ensure that subtrades are meeting the design intent of the drawings. She testified that it is the shared responsibility of the project manager and site supervisor to inspect the work done by the subtrades. If they find anything deficient, it should be documented and communicated back to the subtrade so that the work can be rectified. She testified that trades are responsible to inspect the supplies and materials that they are installing although it is common for the site supervisor to double check materials and supplies.

[112] Ms. Simonar expects that a custom project like this one would involve approximately 1,000 hours of site supervision and project management given the many atypical details. The more custom the project, the more attention required.

[113] Ms. Simonar testified that her practice is to provide regular written updates to the owners – either weekly or at the completion of each phase of construction. She testified that these would be “high level summaries” while the subtrades would get more detailed updates. In addition, the site superintendent would meet with the subtrades daily and with her once a week, or as needed. After each meeting, minutes would be prepared and distributed. If it is an “owner meeting”, the minutes would be sent to the owner, the site supervisor and the project manager. If it is a meeting with trades, the minutes would be circulated to all subtrades to ensure that they all appreciate any changes to the schedule. She also testified that the type and frequency of meetings with owners depends on the engagement of the owners and is tailored to same. Any design changes are done by way of a formal change report. If the drawings are impacted, the designer would typically mark up the drawing, and it would go to the subtrade affected and out to the owner – particularly if there are cost

implications.

[114] Ms. Simonar also follows a regimented final walkthrough plan. Any work outstanding is documented, along with deficiencies. During this tour there would be a time for training owners on mechanical and other systems in the house. Written material would also be provided, including an owner's manual, cut sheets for all products, appliances and fixtures, a copy of the build drawings, and warranties. A new home warranty is provided as part of a turnover package.

[115] Relying on this evidence, the Paquettes argue that Norwood was contractually responsible to construct the home to high-end standards along with providing meeting minutes, schedules, change orders, inspection reports, deficiency lists and a formal walkthrough. They argue that as a result of Norwood's failure to meet this contractual obligation, they were required to devote many hours of their own time to the project that should be accounted for, along with damages to remedy any deficiencies.

[116] The written contract describes Norwood as "the Builder" and prescribes the fee that the Paquettes would pay to Norwood to "build" the residence. While the contract has some drafting issues, none of the other provisions contradict the understanding that Norwood was responsible to build the residence. Norwood was also contractually obligated to ensure that the NHW was in place – something they concede. Such warranties are put in place by builders, and Norwood was registered with Progressive New Home Warranty [Progressive] as a builder.

[117] The surrounding circumstances also support this conclusion. Beginning in 2012, the Paquettes and the principals of Norwood (Bruce and Svetlana) met to discuss the possibility of Norwood building the Paquettes' dream home. At all times, Norwood held itself out as a builder of high-end custom homes. For the next several months, without any contract in place, Svetlana worked with the Paquettes and the

architect they had previously retained to make a number of changes to the design of the home. Norwood also reached out to a number of tradespersons to confirm that the design was achievable and to provide quotes. It was with this factual matrix in mind that the parties engaged in discussions about the fee that Norwood would require to “build” the residence.

[118] Moreover, the genesis of the commercial arrangement was for Norwood to oversee the construction of the residence and ensure the construction was consistent with the architectural drawings and design expectations of the Paquettes. In this role, it is reasonable to conclude that Norwood was obligated to ensure that the home was constructed in accordance with the designs, to identify deficiencies and to arrange for their reasonable remediation in accordance with the Paquettes’ instructions and at the Paquettes’ cost.

[119] I reject Norwood’s argument that its management role was “tangential” – with little more than an obligation “to schedule the trades and tell them where to go”. It borders on a commercial absurdity to suggest that Norwood demanded a fee of almost \$300,000 to simply observe the home’s construction with no responsibility to ensure that the work was done correctly or completely. This argument is also inconsistent with Norwood’s position on damages where it argues that had the Paquettes paid the final installment, Norwood would have ensured that the tradespersons remedied any deficiencies. It is also inconsistent with the sworn evidence of Bruce who acknowledged that Norwood was the “general contractor” on the project and would review the subtrades’ work throughout to make sure it was at Norwood’s standards. Had Norwood intended to limit its role to one of consultant tasked with ensuring the home was constructed in accordance with specific plans, but not responsible for the particular result, the contract could have clarified same. It did not.

[120] Taking into account the wording of the contract, the factual matrix

surrounding its execution and the commercial purpose for the transaction, a reasonable person would objectively understand that the fee paid to Norwood was in consideration for Norwood's managing the construction of the home to completion, including the scheduling and oversight of tradespersons to ensure that their work was completed in accordance with the Paquettes' directions and design.

[121] Moreover, in all contracts for the performance of services there is an implied term that the work will be carried out in a "proper and workmanlike manner and the workmen employed on the work must be possessed of the ordinary amount of skill possessed by those exercising the particular trade": *Halsbury's Law of England*, vol 3, 3d ed (London: Butterworths, 1953) at 435, para 818; *Gilmore Masonry Heaters Inc. v Reed*, 2021 SKQB 29 [*Gilmore*]; *Lawson v McKay*, 2010 SKQB 464, 367 Sask R 143 [*Lawson*]; *Maisonneuve v Burley*, 2001 SKQB 407 at paras 26-27, [2002] 1 WWR 111; *Al Vogel Construction Ltd. v Forbes* (1998), 174 Sask R 236 (QB) [*Vogel Construction*], aff'd 2000 SKCA 10, 189 Sask R 269; and *Mack v Stuike* (1963), 43 DLR (2d) 763 at 771 (Sask QB). This requires that the work within the scope of Norwood's contractual responsibility be carried out in a good and workmanlike manner.

[122] On the other hand, I reject the Paquettes' argument that Norwood should be held to the high standard described by Ms. Simonar. With respect, I found her evidence of limited value in determining Norwood's contractual role or the services it was contractually obligated to provide. Not only did she focus on the procedures and practices of her current employer (as opposed to the general commercial context), but Ms. Simonar also testified that the impressive engagement she described would be detailed in a comprehensive written contract between her employer and the homeowners. In other words, the scope of work and clear expectations on construction standards, communications, the construction schedule, walkthrough materials (including all specifications and a recorded video) are clearly particularized in the

written contract with the homeowners. This was not the case in the contract between the Paquettes and Norwood.

[123] In *Gilmore*, this court considered similar arguments in a construction context where the homeowner asked the court to imply terms relating to quality of work, method of record keeping and communication and reporting into an oral contract. The court declined to do so holding as follows:

[122] The notion of “freedom to contract” describes the legal reality that autonomous individuals like the parties to this action are always at liberty to stipulate with some precision the terms which will govern their contractual relationship. However, absent any express agreement relating to assurances or warranties provided by one party to the other, or to the manner in which the work is to be carried out, a contract to perform work typically includes implied terms such as: (1) “the work shall be done in a good and workmanlike manner”; (2) “the workmen employed be possessed of the ordinary amount of skill possessed by those exercising the particular trade”; and (3) “the materials to be used will be reasonably fit for their intended purpose”. See: *Fall (Advanced Roofing Ltd.) v Wollner*, 2019 SKPC 62 at para 34 [*Wollner*], citing *Mack v Stuike* (1963), 43 DLR (2d) 763 (Sask QB).

[123] At trial, no evidence was presented which persuades me that the oral agreement which Dr. Reed entered into with Mr. Gilmore included the miscellaneous terms he advocates. For example, there was no implied term that Mr. Gilmore’s work would meet the enhanced standard the work of a red seal mason might suggest, however that can be measured. Dr. Reed testified that he wanted Mr. Gilmore to construct the fireplace because he was a red seal mason; however, this desire does not form an implied term of the oral agreement.

[124] Nor was there any evidence presented which permits a finding that the oral agreement included a term that Mr. Gilmore would serve as an adviser to Dr. Reed throughout the project. Indeed, Mr. Gilmore testified that at least at the outset of the project, he was too busy with other construction projects to take time to advise Dr. Reed on the design of the fireplace and told him so.

[125] Finally, there plainly is no implied term in any oral agreement that the party who will be seeking payment for his or her work at the conclusion of the contract will keep complete and accurate records. Of course, it goes without saying that this is a prudent course for any independent contractor to follow. To be sure, the failure to follow this best practice may make proving a subsequent claim for the payment

of work performed more difficult, a matter which I discuss below. However, this does not transform it into an implied term of any contract – oral or written.

[124] Parties to an arm’s length commercial bargain are expected to clarify their contractual expectations in their contract. The Paquettes were free to demand that their expectations be included in the written contract before it was signed. They did not. They could have pursued legal advice at that time. They did not. They could have shopped around and determined what was being offered by other companies, builders and residential project managers. They did not. In the absence of written provisions providing for same, I am not prepared to import Ms. Simonar’s practices into the contractual relationship between the Paquettes and Norwood.

[125] Moreover, I find it disingenuous for the Paquettes to suggest that they expected to have little to no direct involvement in the project. This was an arrangement with blurred lines that deliberately provided the homeowners with flexibility, autonomy and oversight. The Paquettes were able to hire the trades and suppliers recommended by Norwood or hire their own tradespersons at lower rates. The Paquettes could utilize their own company to supply materials and labour. The Paquettes could rely on their own business accounts to secure materials or negotiate trades. All of those variables were wholly within the control of the homeowners – Norwood had no “skin in the game” or interest in managing the budget. With this in mind, any reasonable observer would expect the Paquettes to be actively involved in the construction of the residence.

## **2. Did either party breach the terms of their contract?**

### **a. Did the Paquettes breach the contract when they failed to pay the last installment of the management fee?**

[126] The Paquettes do not deny that they refused to pay the last installment of the management fee to Norwood but argue that they were not contractually obligated to do so for a number of reasons.

[127] Firstly, they argue that they never received what they bargained for, and that Norwood would be overcompensated if they were required to pay the last installment. In this regard, the Paquettes testified that they expected Norwood to take care of every detail of the construction project so that they could focus on their own business, an expectation that was dashed when they were forced to assume a more active role.

[128] With respect, and as previously held, this narrative is neither objectively reasonable nor an accurate reflection of the contract between the parties. The construction project was complex and required the homeowners to make numerous decisions along the way. From a review of the hundreds of written communications exchanged between the parties, none of this came as a surprise to the Paquettes.

[129] Moreover, the Paquettes never intended to relinquish absolute control of their dream home to the Farbachers. They are hands-on, particular and demanding consumers. From the beginning, Marc chose to directly insert himself in every aspect of the construction project. He was personally present at the construction site almost every day and had unfettered access to the trades working there. In fact, as early as December 2013, Bruce confronted Marc on micromanaging the project, something that Marc did not deny nor indicate was being forced upon him contrary to his contractual expectations.

[130] This does not mean that I do not sympathize with the Paquettes nor do I have any hesitation in finding Norwood's communication style sloppy, frustrating and unprofessional. But that, in itself, does not amount to a breach of the contract that was signed by these parties.

[131] I also have no doubt that the Paquettes are disappointed in the homebuilding experience – but, again, disappointment is not a legally recognized cause of action. To pursue a remedy at law, there needs to have been a breach of a contractual

obligation.

[132] Secondly, the Paquettes argue that Norwood waived its right to pursue the final payment when it agreed that the Paquettes could take possession of the home prior to completion. In support of this argument, they cite and rely on the Supreme Court of Canada decision in *Saskatchewan River Bungalows v Maritime Life Assurance Co.*, [1994] 2 SCR 490 at 499-500 [*River Bungalows*], where the Supreme Court outlined the essentials of waiver as follows:

Waiver occurs where one party to a contract or to proceedings takes steps which amount to foregoing reliance on some known right or defect in the performance of the other party: *Mitchell and Jewell Ltd. v. Canadian Pacific Express Co.*, [1974] 3 W.W.R. 259 (Alta. S.C.A.D.); *Marchischuk v. Dominion Industrial Supplies Ltd.*, [1991] 2 S.C.R. 61 (waiver of a limitation period). The elements of waiver were described in *Federal Business Development Bank v. Steinbock Development Corp.* (1983), 42 A.R. 231 (C.A.), cited by both parties to the present appeal (Laycraft J.A. for the court, at p. 236):

The essentials of waiver are thus full knowledge of the deficiency which might be relied upon and the unequivocal intention to relinquish the right to rely on it. That intention may be expressed in a formal legal document, it may be expressed in some informal fashion or it may be inferred from conduct. In whatever fashion the intention to relinquish the right is communicated, however, the conscious intention to do so is what must be ascertained.

Waiver will be found only where the evidence demonstrates that the party waiving had (1) a full knowledge of rights; and (2) an unequivocal and conscious intention to abandon them. The creation of such a stringent test is justified since no consideration moves from the party in whose favour a waiver operates. An overly broad interpretation of waiver would undermine the requirement of contractual consideration.

[133] The overriding consideration in determining if there was, in fact, a waiver of contractual rights, is whether one party communicated a clear intention to waive a right to the other party. Moreover, a waiver can be retracted if reasonable notice is given to the party in whose favour it operates.

[134] In this instance, the contract explicitly states that the final payment would

be made “after completion before move in”. The Paquettes argue that because they were required to move in prior to the home being completed, and did so with Norwood’s acquiescence, Norwood waived any right to demand the final payment.

[135] When the Paquettes advised Norwood on January 3, 2015, that they intended to take possession of the home on January 30, they were aware that a significant amount of work remained outstanding at the home. Norwood agreed to try to meet the imposed deadline, but some tasks were incomplete when the Paquettes took possession on February 6, 2015.

[136] I am unable to find that this reflects a clear intention on the part of Norwood to waive its right to demand the final installment of the contractual fee owing. If anything, the possible waiver in play was Paquettes’ clear intention to assume possession of the home before it was complete. Moreover, even if there was evidence of a clear intention to waive the final payment on the possession date, it does not necessarily follow that Norwood forever waived its right to demand payment, particularly given its clear and unequivocal demand for payment made in May 2015.

[137] Thirdly, the Paquettes argue that Norwood repudiated the contract when it advised the Paquettes on May 21, 2015, that no further work would be undertaken until the final invoice was paid.

[138] The test for repudiation is an objective one and asks whether a reasonable bystander would be satisfied that a party had repudiated the contract either expressly, by indicating through its words or conduct that it no longer intends to be bound by the contract, or indirectly, where a substantial breach amounts to repudiation. The burden of proof is on the party alleging that there was a repudiation of the contract. See: *Gettle Bros. Construction Co. Ltd. v Alwinal Potash of Canada Ltd.* (1969), 5 DLR (3d) 719 (Sask CA) at 725 [*Gettle Bros.*], aff’d [1971] SCR 320.

[139] In support of this argument, counsel for the Paquettes cite and rely on the decision of the British Columbia Supreme Court in *Constructum Developments Inc. v Hogaboam*, 2015 BCSC 1490. In that case, the court concluded that the contractor’s refusal to correct deficiencies unless paid in full amounted to repudiation and breach of contract, and entitled the homeowners to refuse to release further funds as an acceptance of the repudiation. On its face, this case appears to be similar to the case at hand, however, the court’s reasons do not clearly outline the basis upon which repudiation was found to exist.

[140] Repudiation is not to be lightly inferred and the conduct amounting to repudiation must be of a serious nature *vis-à-vis* the obligations and purposes of the contract: see Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Thomson Reuters, 2011) at 587-88, which provides as follows:

(ii) *What amounts to repudiation?*

The problem of what sort of conduct constitutes repudiation of a contract exercised English courts in several nineteenth century cases. ... What is important to point out at this juncture, however, is that the conduct which amounts to repudiation – with whatever consequences flow therefrom – must be of this serious nature, *vis-à-vis* the contents, obligations, and purposes of the contract. Repudiation is not lightly to be inferred from a party’s conduct, particularly where prior to the time for performance a party has repeated its intention to carry out the contract. The phrase preferred by Sachs L.J., for example, in *Decro-Wall International S.A. v. Practitioners in Marketing Ltd.* [[1971] 2 All ER 216 (CA)], a phrase which has a long and respectable ancestry, but has recently become revived in use, is a breach of contract which goes to “the root of that contract”. In the same case Buckley L.J. expressed the test differently:

... not every breach, even if its consequence is threatened throughout the contract or the remainder of its subsistence, will amount to a repudiation. To constitute repudiation, the threatened breach must be such as to deprive the injured party of a substantial part of the benefit to which he is entitled under the contract.

[141] Such was the finding of this court in *Saskatchewan v Capitol Steel Corporation*, 2021 SKQB 224, where Clackson J. held that the conduct or words of the

repudiating party must amount to a total and unjustified rejection of its contractual obligations and must deprive the innocent party of all or substantially all of the benefit under the contract. In this regard, he stated as follows:

[38] The law with respect to repudiation arising from anticipatory breach may be generally stated thus, where the conduct of a party, through words or actions, amounts to a total and unjustified rejection of its contractual obligations before those obligations fall due and the effect of the anticipatory breach would deprive the innocent party of all or substantially all of the benefit it would derive from the contract, then the innocent party may elect to accept the other party's repudiation and is thereafter relieved of any further obligations under the contract. (see G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Thomson Reuters, 2011) at 585 to 588). ...

[142] Moreover, for an innocent party to succeed in their claim to void a contract on the basis of repudiation, they must also prove, on a balance of probabilities, that they accepted the repudiation and communicated that acceptance to the other party: *Brown v Belleville (City)*, 2013 ONCA 148, 359 DLR (4th) 658 at paras 45 and 55 (Ont CA) [*Belleville*]. Where the non-repudiating party failed to clearly accept the repudiation, each party has a right to sue for damages for past or future breaches: *Belleville*, at para 42.

[143] In this instance, nothing in the May 21, 2015, email from Norwood indicated that it was treating the contract at an end or threatening to do so. If anything, the email presupposes the Paquettes' intention to breach their obligation to pay the last installment of the contractually prescribed fee and demands that the Paquettes pay the fee to ensure that the work can continue. The email also proposes a plan for holding back funds to address deficiencies, albeit a nominal sum, and offers to address same in accordance with their contractual obligations. Objectively, I find no intent to avoid contractual obligations in the communication.

[144] Similarly in *Budzak v Bene* (1963), 42 DLR (2d) 679 (Sask CA), the Court of Appeal held that a refusal to continue the contract unless the other made a

payment by a specified deadline did not amount to repudiation. The court stated:

[5] The only question to be determined on the appeal is whether or not the learned trial Judge erred in holding the appellants had repudiated the contract. The learned trial Judge, in his reasons for judgment after defining “repudiation”, went on to say:

I find that they did and that the defendants have acquiesced in such repudiation. It is quite evident that the plaintiffs did not intend to honour their obligations under the agreement and those imposed upon them by law. The plaintiff, Alex Budzak, told the defendants that they had to vacate the property immediately if the August 1st payment was not made. They took possession of the property, they rented the property and they did not credit the rent received on the contract.

[6] In *Canadian Doughnut Co. Ltd. v. Canada Egg Products Ltd.*, [1954] 2 D.L.R. 77, 11 W.W.R. (N.S.) 193 (affd [1955] 3 D.L.R. 1, [1955] S.C.R. 398), Martin, C.J.S., at p. 86 D.L.R., p. 202 W.W.R., said:

The authorities are to the effect that an express declaration by one party made either before or at the date fixed for performance that he refuses to recognize the contract as binding discharges the other party from further liability: the latter is freed from further performance and may sue for damages.

[7] Lamont, J.A., in *Smith v. Crawford*, 40 D.L.R. 224 at p. 228, [1918] 2 W.W.R. 298 at p. 304, defined “repudiation” as follows: “Repudiation is merely a notification by one party to a contract to the other that the party giving the notice is not going to perform the contract.”

[8] In general I think it can be said that in order to find repudiation, the Court must be satisfied that it is the intention of the party at fault to throw up the contract altogether and thereby to set the other party free. On the finding of fact as made by the learned trial Judge, which I have already quoted, I can find no such intention. What the appellant Budzak told the respondents was, “that they had to vacate the property immediately if the August 1st payment was not made”. While there may have been in law no such requirement by the respondents, such a statement indicates an acknowledgment rather than a repudiation of the contract. At any rate it falls far short of evidencing an intention by the appellants to be no longer bound by the contract and to free the respondents therefrom. With deference, therefore, I must conclude that the learned trial Judge was in error when he held that the appellants had repudiated the contract.

[145] The Paquettes’ argument also presupposes that the construction of the residence was substantially incomplete when Norwood requested the final payment in

May 2015. However, looking at the written contract as a whole, there is no wording that supports a finding that the use of the word “completion” intended that every detail be fully complete and every deficiency resolved. If anything, such an interpretation is internally inconsistent with other provisions in the contract. For example, the contract requires Norwood to ensure that a new home warranty is in place, ostensibly to resolve deficiencies that exist after the date of possession.

[146] In Thomas G. Heintzman, Bryan G. West & Immanuel Goldsmith, *Heintzman and Goldsmith on Canadian Building Contracts*, loose-leaf (2020-Rel 1), 5th ed, vol 1 (Toronto: Carswell, 2019), at 5§4 (pages 5-7 and 5-8) and 5§6 (page 5-14), the authors state the following with respect to when a construction project is “complete”:

Minor defects in completion will not prevent a contractor from establishing that it has in substance fulfilled the condition precedent, and what is generally known as “substantial completion” is sufficient compliance with the obligation to complete. Accordingly, an owner will not be able to resist payment because of some minor or inconsequential failure to complete, although the owner may have a counterclaim against the contractor for damages for non-completion, which will generally be the cost of finishing the non-completed items or remedying any defects.

... [T]he courts lean against an interpretation of the contract which would deprive the contractor of any payment at all simply because there are some defects or omissions. For this reason, the promise to complete the work is construed as a term of the contract, but not as a condition the breach of which would entitle the owner to terminate the contract. Rather, a breach of the undertaking to complete the work only absolves the owner of the obligation to pay the contractor if the actual breach goes to the root of, and thereby amounts to a repudiation of, the contract.

...

... If the work is done negligently or with bad workmanship and that negligence results in some small items or portion not being supplied, that still amounts to substantial completion, especially if the contractor believes and intends that it has finished the work. The contractor will, however, be obliged to remedy the defects and the owner may set-off or counterclaim for the costs of having them remedied after allowing for the value of the contractor’s work.

[147] Citing these paragraphs in *1314058 Alberta Ltd. v Albers*, 2018 ABQB 9 at para 9, the court held that there had not been a fundamental breach or repudiation of the contract when a builder demanded payment in full despite the fact that there was outstanding work to perform. The court further held that for defective workmanship to constitute a fundamental breach of the contract, the homeowner would have to be deprived of substantially all of the benefit of the work contracted for. The court held that the homeowners remained liable to pay the contract price while the builder remained liable to remedy the deficiencies. See also: *1469753 Alberta Ltd. (Royal Services) v Luxen*, 2015 ABQB 282, and *Anthony M. McWilliam Designs Ltd. v Fowler*, 2004 ABQB 374 at para 31.

[148] Here, I find that the term “completion” used in the contract between the parties, when taking into account the contract as a whole, means substantially complete and habitable. Further, I find that the home was substantially complete and habitable by the date that the Paquettes resumed possession on April 22, 2015. The fact that there were a few items outstanding does not render the home incomplete, nor does the fact that there were deficiencies to be addressed. Were it otherwise, the home would not be deemed complete until well after every deficiency was resolved which would render the need for a new home warranty meaningless.

[149] Further, I do not accept that the contract allowed the Paquettes to withhold payment until all deficiencies were remedied. There was no such provision in the contract and, as stated, it would be inconsistent with the purpose for which the warranty program exists.

[150] Moreover, defective workmanship alone does not amount to repudiation of a contract unless it is of such a degree as to amount to a failure or refusal to perform the work required under the contract. See: *First City Development Corporation v Bekei* (1986), 3 BCLR (2d) 175 (BCSC); *Sunnyside Nursing Home v Builders Contract*

*Management Ltd.* (1985), 40 Sask R 1 (QB) at p 70; *Zam Homes Ltd. v Sheppard* (1980), 7 Sask R 1 (QB); and *A.C.V. Construction Ltd. v Przy* (1985), 61 AR 390 (Alta QB) at 394.

[151] Finally, the Paquettes argue that they are not required to pay the final installment to Norwood because of a subsequent agreement that the final installment would be used as a holdback to ensure that all deficiencies were remedied by the tradespersons.

[152] It is not disputed that in late September 2014, Marc and Bruce exchanged text messages about whether it was appropriate for Marc to hold back 10 percent on the cost of a fireplace that had been installed at the house. Bruce was adamant that the holdback was not appropriate. In response, Marc proposed to pay the outstanding amount if Bruce agreed that “any items missing, damaged or not functioning properly will need to be rectified before we release Norwood’s final payment”. Bruce did not directly respond to this proposal but did instruct Marc to release the holdback. The text exchange is as follows:

Marc Paquette (MP)	Bruce Farbacher (BF)	Content	Date & Time
	BF	You don't hold 10 percent on fireplce and every time u do he asks me why ... He carried the whole cost till the end no in term payment ...it's an item it's installed ...they can't take it out ...I also paid remples 5 weeks ago ...my name is on the invoice..not going to make them wait a year	2014/09/26 20:18:18
		Wasn't our decision for LL to Carry invoices/payments till the end, that was theirs. We understand the fireplaces r installed and can't b removed. We will release holdback payments under the agreement that this holdbacks and any other that we release before move in date will b carried by Norwood.  so any items missing,damaged or not functioning properly will need to be rectified before we release Norwood's payment. Sounds fair?	

MP		As far as Rempel’s holdback, do we make the cheque to Norwood then? The only reason we held back this payment is because of the basement windows issue  and the down spout that was damaged. That took over a year to fix... That wasn’t our decision either! I know you’re a business man like me so please try to look at both sides here. Love. Marc.	2014/09/27 14:14:41
	BF	Love u too....if u can get Oakland paid....was AR your house today ...ian will start cleaning lower level ...tile guys called now starting we’d ...going to need the extra day to clean Thanks	2014/09/28 16:28:41
	BF	Yes pay Norwood for Remples	2014/09/28 16:29:02
MP		Yes Oakland tomorrow... Stonetile and another ones we need to pay... Di and I r going through everything right now	2014/09/28 16:52:26
	BF	Thanks	2014/09/28 17:38:52

[153] The Paquettes argue that this formed a new contract between the parties, while Norwood denies there was any subsequent, enforceable agreement entitling the Paquettes to hold back the last installment.

[154] In *Curry*, a very recent decision of the Court of Appeal, the court summarized the criteria for a valid oral contract as follows:

[36] A valid contract is only formed when three criteria are met from the perspective of an objective bystander: (i) the parties intended to contract; (ii) the parties reached an agreement on all essential terms; and (iii) the essential terms are sufficiently certain (*Jans Estate v Jans*, 2020 SKCA 61 at para 34 [*Jans*]; citing *Matic v Waldner*, 2016 MBCA 60 at para 57, [2017] 1 WWR 504 (leave to appeal to SCC refused, 2017 CanLII 1341)). Determining whether a contract has been formed and, if it has, on what terms, calls for the application of an objective test. In the absence of a written agreement, or some other clear and unequivocal communication respecting contractual terms, a court must determine whether a reasonable person in the position of one party would consider that the other party’s conduct constituted an offer and, conversely, whether a reasonable person in the position of the latter would consider the former’s conduct to have constituted an acceptance (*Owners, Strata Plan LMS 3905 v Crystal Square Parking Corp.*, 2020 SCC 29 at para 33, [2020] 3 SCR 247). Where it is alleged that a party has agreed to a proposed contractual term through conduct – including through silence or acquiescence – rather than through

express acceptance, such conduct must be sufficiently clear, unambiguous, or absolute to objectively demonstrate an intention to create binding legal relations on those terms (*AlumaSafway Inc. v The International Association of Heat & Frost Insulators and Asbestos Workers Local 119*, 2022 SKCA 99 at para 49, [2023] 6 WWR 74).

[155] Again, the question is what a reasonable observer would conclude about whether Norwood’s non-response is sufficient to signify the acceptance of terms amounting to a new contract when they already had a contractual relationship respecting the obligation for the Paquettes to pay Norwood.

[156] As was the finding in *Curry*, I am unable to infer consensus from Bruce’s response. The “offer” from Marc was imprecise and did not reference the contract. Bruce did not respond in kind to Marc’s text. He simply demanded that the money be released. Moreover, the conduct of both parties is inconsistent with such an agreement having been reached. The arrangement was not mentioned in any of the post-possession discussions nor in response to Norwood’s demand for payment and proposal to hold back \$1,000 made in May 2015. In short, I am unable to find any *consensus ad idem* with respect to the holdback arrangement proposed by Marc.

[157] In conclusion, I find that the Paquettes breached the contract by failing to pay the final installment to Norwood when the demand for payment was made in May 2015. By that date the Paquettes had taken possession of the property, which was substantially complete, habitable and, by all accounts, a stunning home.

**b. Did the Paquettes breach the contract by failing to pay the additional sums demanded by Norwood on behalf of non-parties?**

[158] When Norwood sent its final invoice to the Paquettes in May 2015, it also included a demand for three additional sums:

- \$981.51 representing miscellaneous labour and material costs;
- \$6,500 owing to a flooring supplier; and

- \$7,000 owing to a drywall installer.

[159] When Norwood commenced its statement of claim, these amounts were included as an alleged breach of contract on the part of the Paquettes.

[160] At trial, Norwood chose to vacate the \$6,500 flooring claim on the basis that the person to whom the monies were allegedly owed was now deceased. Privity of contract aside, it is notable that this concession was made subsequent to the court hearing evidence that did not advance the legitimacy of any such claim.

[161] With respect to the drywall expenses, Diana testified that when they disputed a drywall invoice for \$22,000 with the installer (Robert Krakowski) in October 2014, Bruce intervened and told them to pay \$15,000 and he would take care of the rest. This was supported by a text exchange between the parties. There is no dispute that the Paquettes paid the installer \$15,000. There is no dispute that subsequent invoices did not suggest there was any amount outstanding.

[162] At trial, Bruce conceded that he agreed to reduce the bill but, given the opportunity, would prefer to force the Paquettes to pay for the work they received. The installer also testified at the trial. He said that he recalls there being a discrepancy between the amount he invoiced and the amount he was paid but he was unaware that Norwood had agreed to any compromise. He further testified that Norwood never paid him the difference nor advised him that they were maintaining any claim on his behalf.

[163] Finally, no evidence was advanced to support the miscellaneous labour and materials claim. Instead, the Paquettes provided uncontroverted and detailed evidence that all invoices received from suppliers and tradespersons, whether tendered through Norwood or directly, have been paid in full.

[164] In all respects, Norwood has failed to establish any contractual basis to maintain these claims.

**c. Did Norwood breach the contract by failing to ensure that the residence was completed in one year?**

[165] In their statement of defence and counterclaim, the Paquettes allege that there was a contractual obligation to have the home completed in one year (July 2014). By the date of trial, they had modified their position by arguing that there was a contractual obligation to have the home completed by Christmas 2014.

[166] As a starting point, there is no contractual obligation to complete the construction of the home within a year (as pled in the counterclaim) or by Christmas 2014 (as argued at trial). I accept Bruce's evidence that Norwood does not agree to completion dates on any of its projects and was particularly unwilling to set a completion date in this instance given the complexity and size of the project and the Paquettes' personalities and demands. Moreover, Marc acknowledged under oath that there was never a set date and that it was a large project further complicated by some changes that they requested during construction. In short, other than the "time is of the essence" provision, there are no contractual provisions that provide for a completion date.

[167] The issue to be resolved is whether Norwood breached the "time is of the essence" provision in the contract. Both parties agree that the construction of the home took longer than they would have hoped and both sides testified to a number of variables that contributed to that delay – some of which intersect and others that do not. That said, Norwood denies that there was any undue delay or breach of this provision.

[168] Counsel for Norwood cites and relies on this court's decision in *Krug v Dakine Home Builders Inc.*, 2021 SKQB 241, which sets out the criteria upon which a party must meet before seeking to rely upon such a provision:

[36] The plaintiffs emphasize clause 26 of the contract, which is a "time is of the essence" clause. The authorities and the common law have seemingly relegated such boiler plate clauses to a less decisive

role than advanced here by the plaintiffs. I note the qualifying language in *Webster v BCR Construction*, 2012 ONSC 2217, 16 CLR (4th) 288 [*Webster*], where Justice Ferguson stated:

**48** Even where a time of essence provision is found to exist, a party can only rely on it if they meet a number of common law conditions. First, they must demonstrate that they themselves were “ready, desirous, prompt and eager” to carry out the agreement: see *Domicile Developments Inc. v. MacTavish* (1999), 88 A.C.W.S. (3d) 1096 (Ont. C.A.) at para. 10. Second, they cannot be the cause of the default they seek to take advantage of: see *Brickles v. Snell* (1916), 30 D.L.R. 31 (P.C.); *Campbell v. Sovereign Securities & Holdings Co.* (1958), 13 D.L.R. (2d) 195 (Ont. H.C.) at para. 4, affirmed (1958), 16 D.L.R. (2d) 606 (Ont. C.A.). Finally, they cannot rely on a time of essence provision where they have waived the provision or otherwise acquiesced to the delay: see *Union Eagle Ltd. v. Golden Achievement Ltd.*, [1997] J.C.J. No. 5, [1997] 2 All E.R. 215 (P.C.).

[169] The Paquettes allege that Norwood breached the “time is of the essence” provision by taking on more work than it could handle and by its principals taking numerous holidays. Marc testified that before the contract was signed Bruce and Svetlana advised him that they only build two or three houses at a time, but adduced evidence at trial that Norwood was involved in several building projects in 2014, including the construction of a home for Bruce and Svetlana. There was also evidence that Bruce and Svetlana, together and apart, took numerous holidays in 2014 leaving Ian responsible to manage things in their absence. Marc testified that while he was at the worksite almost daily, he rarely observed Ian, Bruce or Svetlana at the property unless a site visit had been scheduled in advance. At one point, Ian advised Marc that he was “spread too thin”.

[170] On the other hand, Bruce and Svetlana deny that their work or personal affairs delayed the completion of the home. Svetlana testified that when they were away, they always ensured that Ian and all tradespersons were informed of the next steps. In addition, she and Bruce were available at all times by email, text and phone. For example, while Bruce and Svetlana were on holidays for much of December 2014, there seems to be no lapse in direct communications between the parties during this time period with numerous texts going back and forth.

[171] Bruce and Svetlana both testified that the construction of such an elaborate home was bound to take time. If there was an undue delay, they argue that it arose from mid-construction changes made by the Paquettes along with the Paquettes' delay in making and communicating design-related decisions.

[172] Having considered all of the evidence adduced on this point, I do not find that Norwood breached the "time is of the essence" provision of the contract. I am unable to find that their work obligations or holidays *unduly* contributed to a delay in the completion of the residence any more than the communication problems and mid-construction changes initiated by the Paquettes may have done so. The Paquettes were also managing trades and suppliers that they were dealing with long past the one-year time frame.

[173] By all accounts, this was a complicated project between parties who had differing expectations and a contract that provided no certainty respecting communications, reporting, mid-construction changes or responsibility for directing trades and suppliers.

**d. Did Norwood breach the implied term of the contract?**

[174] As previously stated, there is an implied term in the contract that Norwood will provide its services in a good and workmanlike manner and without deficiency. In *Gilmore*, Mitchell J. summarized the principles and jurisprudence associated with this implied term as follows:

[119] In determining what were implied terms in oral agreements for the performance of services, Wilson J. identified the relevant legal principles as follows at para. 17:

[17] There is an implied term in the contract for the performance of services that the work will be carried out in a "proper and workmanlike manner". This legal principle is summarized by Dawson J. in *Maisonneuve v. Burley* 2001 SKQB 407, [2002] 1 W.W.R. 111, where she states as follows in paras. 26 and 27:

26 The contract between the plaintiffs and the defendant was a contract to do work and supply materials. The governing law is set forth in *Mack v Stuike* (1963), 43 D.L.R. (2d) 763 (Sask QB). At p. 771 of *Mack, supra*, Balfour J. quotes from *Halsbury's Law of England*, vol. 3, 3<sup>d</sup> ed. (London: Butterworths, 1953) at 435, para. 818 as follows:

... A contract to perform any work, in the absence of any stipulation as to the manner in which it is to be carried out, implies a condition that the work shall be done in a good and workmanlike manner, and the workmen employed on the work must be possessed of the ordinary amount of skill possessed by those exercising the particular trade. ...

27 As stated in Goldsmith on *Canadian Building Contracts* (looseleaf; (Rel. 2) 1998) (Toronto: Carswell, 1988) at pp. 5-11 through 5-12:

Work which does not meet the requirements of the specifications contained in the contract, or which, in the absence of such specifications, is not of a reasonable workmanlike quality, is not proper compliance with the contract and constitutes a breach. Furthermore, compliance by the contractor with the specifications will not be sufficient performance if the specifications were prepared by him and are deficient, even if they were approved by the owner. Whether work, or material supplied, is defective or not is, in each case, a question of fact, depending on the construction of the particular specifications where there are any, and on expert evidence as to what is reasonable where there are none.

Where a contract, either expressly or by implication, contains a particular standard for the work to be done, an owner is not entitled to insist on work of a higher quality. For example, an owner who contracts for the construction of a bush road is not entitled to insist on a standard of construction applicable to a provincial highway.

[120] Greater clarity about what is meant by the implied term of a “proper and workmanlike manner” may be obtained from an earlier case: *Al Vogel Construction Ltd. v Forbes* (1998), 174 Sask R 236 (Sask QB) [*Vogel Construction*], aff’d., 2000 SKCA 10, 189 Sask R 269. This case involved an action seeking payment of the plaintiff’s invoice for the construction of a driveway. The defendant resisted the plaintiff’s claim by arguing that the plaintiff’s work was so deficient it necessitated replacing the top one-third of the asphalt surface.

[121] The court agreed with the defendant about serious deficiencies in the plaintiff’s work product and awarded him the full cost for having the driveway resurfaced by another paving company. In coming to this result, Scheibel J. had this to say about what was connoted by the term “reasonable workman like manner” at para. 9:

[8] Whether work is defective or not is a question of fact in each case. In order for the plaintiff to meet the terms of the contract, its work must be of a reasonable workmanlike quality. **Perfection is not the test to be applied.** That is, “work and material may be reasonably fit for the intended purpose despite minor deviations from the contractual specifications ....” *Poirier v. Clermont Rosa Concrete Foundation Ltd.* (March 30, 1992) Doc. CA 43/90 (Ont. C.A.) and C.E.D. (Western) 3d d. Vol. 5, pp. 77 and 78, '39.

[Emphasis added]

[122] The notion of “freedom to contract” describes the legal reality that autonomous individuals like the parties to this action are always at liberty to stipulate with some precision the terms which will govern their contractual relationship. However, absent any express agreement relating to assurances or warranties provided by one party to the other, or to the manner in which the work is to be carried out, a contract to perform work typically includes implied terms such as: (1) “the work shall be done in a good and workmanlike manner”; (2) “the workmen employed be possessed of the ordinary amount of skill possessed by those exercising the particular trade”; and (3) “the materials to be used will be reasonably fit for their intended purpose”. See: *Fall (Advanced Roofing Ltd.) v Wollner*, at para 34 [*Wollner*], citing *Mack v Stuike* (1963), 43 DLR (2d) 763 (Sask QB).

...

### 3. Were the Terms of the Oral Agreement Fulfilled?

[126] I have determined that in addition to the express term relating to hourly rates identified earlier, the implied terms of the oral agreement at issue here are that the fireplace would be constructed in a proper and workmanlike manner, and Mr. Gilmore possessed the requisite skill to construct the fireplace. See: *Lawson; Vogel Construction*; and *Wollner*.

[127] The determination of whether these requirements have been achieved in a particular case is a fact-based inquiry conducted on a reasonable person standard. And it is not an overly exacting one. As the court stated in *Vogel Construction*: “Perfection is not the test to be applied”.

[175] The question at hand is whether Norwood breached the implied term of the contract by failing to provide its services in a proper and workmanlike manner. The onus to prove same lies on the Paquettes.

[176] Marc testified to a number of deficiencies in the home which, in his view,

broadly include any work that he and Diana attended to on their own during the construction of the home and afterwards. In support of same, the Paquettes created a number of lists that were tendered into evidence. The first is entitled “Items for discussion for work to be undertaken April 8, 2015 thru to April 18, 2015”. This document was prepared by the Paquettes after they took possession of the home in February 2015 but before the home was turned back to Norwood in April 2015 for further work to be completed.

[177] Another list, sent by Marc to Bruce on May 12, 2015, outlined eleven items that remained outstanding, including fireplace logs that required adjustment, painting touch-ups, a loose vanity light and a cracked shower head.

[178] These lists differ markedly from the lists of alleged deficiencies prepared by the Paquettes after the claim was commenced. For instance, in September 2015 counsel for the Paquettes provided a Reply to Request for Particulars to counsel opposite which itemizes many additional alleged defects in the home. A further document entitled “House Deficiency List”, prepared in response to an undertaking given at Marc Paquette’s questioning in December 2016 reiterates same.

[179] Next, in advance of Ms. Simonar attending at the home in 2019, counsel for the Paquettes provided her with a “Deficiency/Repair List”, information that was substantially reproduced in the tables appended to Ms. Simonar’s March 2020 report and described as “Scope of Work: Items to be addressed” and “Scope of Work: Items addressed by owners”.

[180] Finally, appended to the Paquettes’ trial brief are three lists consolidating what they allege to be deficiencies entitled “Items addressed by the Paquettes”, “Items addressed by Strata” and “Items that Remain Incomplete or Deficient to Date”.

[181] Ms. Simonar first attended at the home in October 2019 tasked with

providing a quote on the cost to attend to repairs at the home. The lists of deficiencies and repairs were generated by the Paquettes – not by Ms. Simonar. Between the first visit and March 2020 when she completed her report, Ms. Simonar attended at the home approximately five times. On the first occasion, she was accompanied by the owners and her employer. On latter occasions, she was accompanied by various trades to assist her with providing a quote/estimate for the work.

[182] There was no suggestion that she completed her own assessment of deficiencies following a thorough, and independent, inspection of the home, and nowhere in her report does she identify which of the “items” identified by the Paquettes constitutes a deficiency. At the trial, Ms. Simonar defined “deficiency” as completed work that is either done incorrectly or does not reflect the appropriate standard. When asked, she also testified that based on the type of contract that Strata executes with its clients, the items listed by the Paquettes would constitute “deficiencies” within the scope of responsibility of the builder.

[183] As a starting point, and for the reasons already outlined above, I do not find that the efforts made by the Paquettes, either during construction or after they assumed possession of the home, constitute a breach of the implied term of the contract. As previously found, the fact that the Paquettes were more involved in their residential construction project than most homeowners, does not amount to a breach of contract. Not only is the contract void of any detail respecting each party’s role and responsibility, but the Paquettes wanted the opportunity to provide their own labour and materials, and to choose their own trades and suppliers, with a view to managing the cost of the project.

[184] Moreover, it is not disputed that after the Paquettes took possession of the home on February 6, 2015, work continued on the property by a number of trades (*i.e.*, cabinetry, roofing, stucco, painting, plumbing), both at the direction of Norwood and

the Paquettes. Marc, who was then residing at the property, chose to attend to some of the work himself – behaviour that was not inconsistent with his involvement in the project prior to the possession date.

[185] On the other hand, I have also found that Norwood was responsible to ensure that the construction was consistent with the architectural designs, that the supplies purchased through them were of good quality and that any work completed by the tradespersons under their scope of responsibility was completed to the implied standard. With this in mind, I find that the Paquettes have proven, on a balance of probabilities, that a number of specific issues at the home which fall within Norwood's scope of contractual responsibility, do not meet the implied term of proper and workmanlike manner.

**i. The uneven floor on the second level**

[186] Marc testified that early in the build, he and Diana had come to the house to shovel snow off of the second level and noticed that the floor was uneven. He mentioned it to Bruce who told him that it would be resolved when the foundation settled. Marc testified that the issue arose again when the finisher was installing trim and closet doors. Marc says he raised it again with Bruce, who said he would not notice once everything was installed and told him he was being too picky.

[187] While Bruce denies being made aware of a problem with the floor at any time during construction, Ian, Norwood's sole employee tasked with attending at the home each day to monitor progress and report back to Bruce, acknowledged at the trial that he was made aware of the uneven floor on the second level during construction and before the Paquettes took possession of the home.

[188] This remains an issue. Ms. Simonar testified that she could see and feel a hump in the master bedroom floor and noted that the adjacent pocket door would not

stay closed (kept rolling open). Utilizing a 4-foot long level, the floor was uneven by over three quarters of an inch. The hump in the floor goes into the master closet, through the laundry and through to the hallway by the other bedrooms in one long line.

[189] Ms. Simonar opined that the hump is likely due to a 2 inch x 6 inch demising wall located between the garage and the kitchen that was built slightly higher than the adjoining walls. She believes that wall is pushing up on the floor joists causing the hump. She reviewed the architectural drawings and identified there are no teleposts in the vicinity to create the issue and believes that it is caused by the wood columns.

[190] By way of remediation, she proposes that they remove all baseboards and casings in the affected area, remove all flooring in the affected area, try to grind down the sheeting and feather out the remaining floor in order to create a flush transition and make it as flat as possible before reinstalling flooring and millwork. If that does not resolve the pocket door issue, the drywall would have to be removed in order to adjust the door.

**ii. The ticking sound emanating from the venting in the master bedroom**

[191] Marc testified that after they took possession of the home, they noticed a loud ticking noise emanating from behind the curved fireplace wall. He testified that it is loud enough to wake them at times and seems to coincide with the boiler starting up and the pipes expanding.

[192] Marc testified that he hired the same plumbing company that installed the mechanical at the home to provide maintenance at the home after they took possession. He testified that the plumber tried a number of methods to deal with the ticking sound, including strapping the pipes to take weight off, but to date the ticking noise has not been eliminated.

[193] Ms. Simonar arranged for a mechanical tradesperson to investigate and

opined that something was wrong with the venting when the heat comes on. She expects that the issue could be resolved by strapping the duct work. If that does not work, then the venting for the boiler in that section of the home would need to be redone.

### **iii. The bowed wall in the kitchen**

[194] Marc testified that there is a visible warp in the wall behind the stove in the kitchen which creates a distortion in the glossy backsplash tiles and is “visually unappealing”. Marc raised concerns with Bruce that the mechanical was too tight in that area before the drywall was completed and appeared to be protruding past the studs. Bruce assured him that the drywall would hold it in once installed.

[195] Ian testified that they were aware of this bow in the wall before the Paquettes took possession of the home.

[196] Ms. Simonar testified that the wall curves out substantially behind the oven – leaving gaps on either side of the appliance. After cutting a hole in the drywall to investigate, she believes that the mechanical ductwork is pushing out against the drywall. In order to remedy the issue, the backsplash would be removed, the mechanical ductwork strapped tightly and the backsplash reinstalled. She testified that the countertop would also be impacted once the wall was straightened. To resolve same, the countertop would have to be removed so that the back can be trimmed to align with the straightened wall and reinstalled.

### **iv. Tile floor in walk-out level**

[197] Bruce conceded that the installation of the tile on the walk-out floor was poor workmanship. The repair that was attended to during construction did not resolve the issue and remained a deficiency. The island was not level with the other cabinetry and additional grout was used on the stone pillars to disguise a gap caused by the repair. Moreover, some tiles were visibly not level with the adjacent tiles.

[198] Ms. Simonar testified that a proper repair required that the island be removed along with extra mortar on the stone columns used to disguise the gap between the tile and the stone. Once the new tile was installed, the island was put back in place and the stone columns properly finished.

[199] This work was completed by the Paquettes before the trial. During that repair, over 75 percent of the tile and thin-set was removed and the floor ground down to the slab. The new tile was laser-leveled and reinstalled. Stone around the columns was removed and reinstalled. The island was disassembled, the floor underneath repaired, and the island reinstalled after the tile was completed.

**v. Stucco and flashing**

[200] Ms. Simonar testified that in 2020 when her company attended to work at the home, the stucco on the rear walls of the home (exterior) was cracking off the building due to moisture penetration that was undermining the integrity of the product. White and black mould were found forming on the surface under the stucco.

[201] She testified that the damage appeared to have resulted from improperly installed flashing that allowed water to get behind the stucco. In addition, she noted that there was no flashing installed at the base of the columns resulting in the accumulation of water, staining and stucco failure. Problems with the flashing and stucco were recognized, in part, by Norwood after the Paquettes took possession of the home but were never resolved.

[202] Each of the above fall below the implied standard and represent a breach of contract.

[203] I am unable to find that the Paquettes have proved that the remaining alleged deficiencies constitute a breach of the contract on a balance of probabilities. A number of the items listed in the 2020 Strata report (prepared five years after the

Paquettes took possession of the property) appear to reflect commonplace wear-and-tear. For instance, Ms. Simonar testified that adjustments to doors and door strikes are typical and that it is also common for drywall cracks to appear over time. In addition, a number of the trades who testified at the trial indicated that they would have been willing to return to attend to any incomplete work at the Paquettes' expense, and on some occasions did so.

[204] Moreover, many of these alleged deficiencies reflect work that the Paquettes attended to during the construction process to minimize their own costs of construction and others appear to reflect tasks that the Paquettes assumed responsibility for after the possession date (*i.e.*, ordering frames from Warman Cabinets and hiring a company to build a custom door). They also include tasks that the Paquettes never truly expected Norwood to attend to (*i.e.*, provide house numbers when the Paquettes had arranged for their own metal fabrication company to create numbers from reclaimed metal pieces of the Victoria Bridge). Given my findings with respect to the contractual arrangement between these parties, and the blurred lines of responsibility, I am not prepared to find Norwood liable for alleged deficiencies relating to tasks that the Paquettes attended to, whether these were done to save costs or for other reasons.

### **3. What is the appropriate measure of damages?**

[205] Having found that the Paquettes breached their contractual obligation to pay the contract price, Norwood is entitled to judgment for damages. The damages in this regard are simple to ascertain.

[206] By way of set-off, the Paquettes are entitled to damages reflecting the reasonable costs to remedy the deficiencies that fall within Norwood's responsibility under the contractual arrangement.

[207] The basic common law principles that govern the determination of

damages in a construction claim were summarized in *Viper Concrete 2000 Inc. v Agon Developments Ltd.*, 2009 ABQB 91 at paras 50-56, [2009] 5 WWR 504:

[50] The principle behind damages for breach of contract was set out by Laskin, J. in *Red Deer College v. Michaels*, [1976] 2 S.C.R. 324 at p. 330:

The primary rule in breach of contract cases [is] that a wronged plaintiff is entitled to be put in as good a position as he would have been in if there had been proper performance by the defendant...

[51] Thus, *prima facie*, Agon is entitled to have Concrete Work which enhances the aesthetics of the Property by its having been done in a good and workmanlike manner.

[52] The measure of damages to be awarded is a question of fact in every case. See: G.H.L. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Carswell, 2006) at p. 759.

[53] The onus is on the plaintiff to prove its damages on a reasonable preponderance of credible evidence. (See: *100 Main Street East Ltd. v. W.B. Sullivan Construction Ltd.* (1978), 20 O.R. (2d) 401 (C.A.) at p. 422). The damages need not, however, be proven with mathematical accuracy. The Supreme Court of Canada emphasized this point in *Penvidic Contracting Co. Limited v. International Nickel Co. of Canada Limited*, [1976] 1 S.C.R. 267 at p. 279-280, citing its earlier pronouncement of the same principle:

When *Wood v. Grand Valley Railway Company* [(1913), 30 OLR 44 (Ont CA)], reached the Supreme Court of Canada, judgment was given by Davies J. and was reported in 51 S.C.R. 283, where the learned justice said at p. 289:

It was clearly impossible under the facts of that case to estimate with anything approaching to mathematical accuracy the damages sustained by the plaintiffs, but it seems to me to be clearly laid down there by the learned judges that such an impossibility cannot “relieve the wrongdoer of the necessity of paying damages for his breach of contract” and that on the other hand the tribunal to estimate them whether jury or judge must under such circumstances do “the best it can” and its conclusion will not be set aside even if *the amount of the verdict is a matter of guess work.*  
[emphasis in original]

[54] In *Penvidic*, the Supreme Court was considering a contract for laying a railway track. The owner breached the contract by failing to provide road beds that were properly graded and subballasted and did not provide for hydro and railway crossings. Although the Court noted that the trial judge found “the evidence was not as helpful as one would have expected and more records giving more particulars of when and

where different types of work were being done would have been very useful” (at p. 277), the Court nonetheless upheld the trial judge’s assessment of the damages based on the evidence that was before him, even though they were “fragmentary and probably mere estimations” (at p. 280).

[55] The current state of the law was summarized by S.M. Waddams in *The Law of Damages*, looseleaf (Toronto: Canada Law Book, 2008) at para. 13.30:

In Anglo-Canadian law... the courts have consistently held that if the plaintiff establishes that a loss has probably been suffered, the difficulty of determining the amount of it can never excuse the wrongdoer from paying damages. If the amount is difficult to estimate, the tribunal must simply do its best on the material available, though of course if the plaintiff has not adduced evidence that might have been expected to be adduced if the claim were sound, the omission will tell against the plaintiff.

[citations omitted]

See also: *Krug v Dakine Home Builders Inc.*, 2021 SKQB 241; *Ivan’s Renovations Ltd. v Arabsky*, 2014 ABQB 700, 40 CLR (4th) 65; and *Abstract Construction Ltd. v Wagman*, 2016 SKPC 77.

[208] Where work is not completed in a good and workmanlike manner, a homeowner is entitled to retain another contractor to remedy the deficiency, even where the costs of doing so might exceed the amount that would have been charged by the original builder. That said, a limiting factor on recoverability of damages is the obligation on the part of the aggrieved party to mitigate their loss: *Red Deer College v Michaels*, [1976] 2 SCR 324 at 330.

[209] The Paquettes hold the burden to prove their damages and to satisfy the court that they have met their duty to mitigate any losses.

[210] In quantifying their damages, the Paquettes rely wholly on the evidence of Ms. Simonar and the reports that she authored. Her report acknowledges that there have been many assumptions made with respect to the deficiencies, but for budgeting and planning purposes, the tables reflect a “realistic construction budget for this scope

of work”. Her calculations for “items to be completed” estimate the total cost of labour and materials for all alleged deficiencies, and includes allowances for estimated project management fees, construction management fees *and* a 10 percent general contractor profit gross-up. The total cost is estimated to be \$241,175.93, plus applicable taxes.

[211] In addition, the Paquettes asked Ms. Simonar to quantify the value of the efforts they expended attending to work and/or management of work at their home prior to the possession date and since. Using the same formula (*i.e.*, including project management fees, construction management fees and a 10 percent general contractor profit gross-up), she estimated the value of the Paquettes’ efforts at \$98,373, plus applicable taxes.

[212] With respect to quantifying the value of the efforts expended to the Paquettes, I am not prepared to include same in their award of damages. As held, this was not a contract for a completed house at a specific price, but a fee-plus arrangement that not only required the homeowners to pay for all labour and supplies directly, but also provided them with significant flexibility to make changes, add extras, retain their own trades, provide their own supplies and arrange for their own labour. They had unfettered access to the construction site and to all trades and suppliers. I have already found that the responsibility for specific work under the contract between these parties was undefined and that Norwood was not responsible for the Paquettes’ efforts either during the construction project or after possession.

[213] Moreover, the costs of ongoing and unfinished work (as opposed to repairs) were solely the responsibility of the Paquettes under the contract. These costs would have been incurred by the Paquettes whether Norwood had arranged for the work to be completed or not. Either way, the homeowners were out-of-pocket for the labour and materials.

[214] Another consideration in assessing damages is whether the Paquettes met

their duty to mitigate these losses. Norwood argues that the Paquettes could have eliminated any damages if they had paid the outstanding management fee as required by the contract. According to Norwood, had the Paquettes paid the outstanding fee, Norwood and the various tradespersons and suppliers would have either addressed their concerns or they would have been able to pursue redress under the New Home Warranty.

[215] In this regard, Norwood argues that given its longstanding and positive relationship with many of the tradespersons who worked on the project, it would have been able to persuade them to return to the project to complete any outstanding work and remedy any deficiencies. Alternatively, Norwood submits that those deficiencies that were not remedied by individual tradespersons and suppliers would have been covered by the New Home Warranty.

[216] Andrew Mann from Progressive Home Warranty testified at the trial. Mr. Mann confirmed that Norwood is one of their clients and has always been in good standing. He also confirmed that Norwood registered the Paquette home with their company before construction commenced.

[217] The NHW provides ten years of coverage and is in place to protect homeowners where a builder is unwilling or unable to fulfill obligations that fall within the limits of coverage. The first year is fulsome and typically covers anything that fails, including labour and materials. After the first year, the coverage drops to specific warranties and so forth.

[218] There are also exceptions, exclusions and caps associated with the coverage. For instance, as the NHW is in place to protect homeowners – only work done by the builder is warranted. If a homeowner does or directs any of the construction work on their own, it would not be covered. In this regard, Mr. Mann testified that they are not concerned with who hires or pays for a specific tradesperson but rather who is

responsible to oversee the work of that person. Similarly, a homeowner cannot seek reimbursement under the warranty for the costs of repairs made on their own without the insurer's consent. If there is an issue, the homeowner would have to make a claim with the warranty holder before attending to repairs.

[219] Further, Mr. Mann confirmed that the NHW coverage is conditional on the homeowner having fulfilled all their contractual obligations, including full payment to the builder of any outstanding fees. If there is money owing by a homeowner to the builder, they are excluded from coverage. That said, if the insurer receives notification of payment, the homeowner would have the benefit of any remaining years available under the policy.

[220] According to Mr. Mann, when a claim is made by a homeowner, the builder is immediately notified by the insurer and asked to provide an update. This is generally when they would find out if money is owed. If there are any disagreements between the owner and the builder, the insurer will encourage the builder and owner to work together. If the dispute persists, a claim can be made by the homeowner. The insurer will speak to both sides and then make a decision as to whether it is warrantable. If so, they will attempt to hold the builder responsible to address the issue and, if the builder will not do it, the insurer will retain a third party to address the issues.

[221] In this instance, the parties presented the court with a “chicken and egg” type of argument – each blaming the other for the failure to utilize the coverage under the NHW or for holding various tradespersons and suppliers to account.

[222] Norwood argues that the Paquettes failed to mitigate their damages by deliberately forfeiting the benefit of the NHW because they refused to pay Norwood “or put the money into trust with counsel for Norwood”. Instead, the Paquettes chose to pay for the deficiency repairs, costs that would have been heavily mitigated had the Paquettes paid the final amount owing to Norwood and engaged the NHW.

[223] In turn, the Paquettes argue that Norwood is to blame for any underutilization of the NHW because Norwood failed to advise the Paquettes that the home was, in fact, registered with the warranty provider, and failed to advise them about the terms and conditions of coverage. Not only do they argue that this absolves them of their duty to mitigate their loss through the NHW program, but it also constitutes a breach of contract that rendered them unable to benefit from the conciliation process available to have the deficiencies rectified by Norwood, or the warranty provider, at no cost to the Paquettes.

[224] There is no doubt that in June 2015, the parties were focused on litigation and not resolution. The result is that any benefits available from the NHW, or from tradespersons who would have been prepared to remedy the deficiencies and reduce damages, were not utilized. The question is who is responsible for this failure to utilize the benefits that were available – was it a contractual breach on the part of Norwood or a failure to mitigate on the part of the Paquettes?

[225] Most of the tradespersons who testified at the trial said that they believed their workmanship had been acceptable to the homeowners and were unaware of any residual problems or concerns. In the same vein, when asked whether they would have returned to the project if they had been advised of a deficiency in a timely way, they consistently agreed that they would have tried to work with the homeowners to resolve any issues with their work or materials.

[226] The court heard from only one tradesperson who became caught in the middle of the dispute and refused to continue to work with the Paquettes. He was the principal of the company who did most of the exterior and pool room stucco work at the home. He testified that he returned to the home at Marc's request after the possession date to do some additional work in the pool room and to attend to some rectification work to the exterior stucco on the back of the home. He says that he did

the rectification work without complaint or additional charge to the Paquettes notwithstanding that his company had not done the original work. He also testified that he was unaware of a dispute between the Paquettes and Norwood at that time but later learned that Marc had been secretly recording their conversations to share with his lawyers. He became upset and spoke to Bruce, who confirmed that they were in a legal dispute and suggested he not return to the home. He told Marc he would not come back to do any additional work.

[227] Similarly, the court heard evidence that the retailer of the window package was willing to try to remedy any issues with the glass and had returned to the home on a number of occasions to respond to concerns raised by the Paquettes. Notwithstanding same, Marc testified that he had lost any confidence in the company and would no longer work with them or allow them access to his home.

[228] I find that some of the issues claimed as deficiencies would have been addressed had the Paquettes raised same with the supplier/tradesperson. This includes issues like the cracked or scratched window and the chipped logs in the fireplace. They either made no effort to have the original supplier return to resolve the issue or unreasonably refused to do so. In this regard, they failed to mitigate their damages.

[229] The issue with the non-utilization of the NHW is less clear. Norwood registered the home with Progressive Home Warranty at the time that the contract was signed as it was contractually obligated to do. In fact, Progressive attended at the home on May 8, 2014, with a technical assessment team to inspect the home. They raised no issues with quality or potential issues at that time. It is unclear whether the Paquettes were aware that this inspection took place.

[230] In early March 2015, a few weeks after the Paquettes took possession of the home, Bruce asked Marc to meet with him to sign the NHW on at least two occasions. It is unclear what, if any, information had been exchanged by the parties

about the warranty coverage at that time. Thereafter the parties continued to work to resolve issues in the home, culminating in the Paquettes surrendering possession of the home for ten days in April 2015. The Paquettes were not satisfied, and in an email from Bruce to Marc dated May 21, 2015, and copied to his lawyer, Bruce advised Marc that “[n]o further work will be done until final bill has been paid in full to my lawyer. Also New Home Warranty is not in effect until final invoice has been paid.” While the language is neutral and could be interpreted as informational in nature, Marc says that they believed that this was a threat to withhold the warranty. In all of the circumstances, I find this to be a reasonable interpretation.

[231] Surprisingly, there is no evidence that the Paquettes, or their legal counsel, ever sought clarification. There is no evidence as to when, or how, Norwood informed Progressive that the home was completed, triggering the commencement of coverage under the NHW. There is no evidence that Norwood ever informed the Paquettes that the NHW was in place or provided them with a copy of the warranty or contact information for the warranty holder.

[232] Marc testified that they were first notified that a warranty was in place by letter from Progressive dated April 22, 2019. Oddly, the Declaration Page indicated that the possession date was May 20, 2014 (the date that Progressive was at the construction site to complete a foundation assessment), not February 6, 2015 (the date that the Paquettes took possession of the home). Marc testified that this was the first time they were provided with a copy of the warranty. He says he contacted the author of the letter and notified him that the possession date was February 6, 2015. On September 3, 2019, an updated Declaration Page was provided but still confirmed that much of the coverage had already expired.

[233] At no time prior to receiving the letter from Progressive were the Paquettes aware that a condition precedent to coverage under the warranty was

confirmation that the full contract price had been paid to the builder, or alternatively into trust. The Paquettes were not informed that Norwood had registered their home under the NHW until April 2019, more than four years after they assumed possession of the home, by which date much of the potential coverage had expired.

[234] Norwood was contractually responsible to ensure that the NHW was in place. This requires Norwood to provide accurate information to the insurer and the homeowners. In balance, I do not view this as a failure of the Paquettes in their duty to mitigate but rather a breach of contract by Norwood that increased the quantum of damages. Moreover, the NHW is there to protect a homeowner against a delinquent or insolvent builder – not to save the builder harmless as against losses that it was responsible to attend to.

[235] In conclusion, the Paquettes are entitled to damages reflecting the reasonable cost to remediate the uneven floor in the lower level of the home, the uneven floor in the upper level of the home, the ticking sound in the ductwork, the flashing and stucco and the bowed wall in the kitchen. Unfortunately, the tables and invoices provided by Strata do not provide a breakdown of each alleged deficiency but rather have them grouped with other work for which Norwood is not contractually liable. While this makes the quantification of damages incapable of mathematical certainty, it remains possible to assess same with reasonable accuracy.

[236] Prior to the trial, the Paquettes had already paid \$77,595.85 to Strata to attend to a number of repairs in the home, including exterior stucco repair and installation of flashing, removing and replacing the uneven tile floor on the lower level along with the cabinetry and stonework, replacing the tile on the exterior deck, drywall repair and repainting. Having reviewed the invoices provided, I estimate that the total cost expended to address the deficiencies for which Norwood is liable to be \$60,000, inclusive of management fees and taxes.

[237] Further, I find that a reasonable estimate to remedy the remaining deficiencies for which Norwood is liable is \$35,000. To this sum it is reasonable to add an additional \$5,000, reflecting the costs of moving and storing furnishings from the upper level and kitchen, as well as the reasonable cost of alternate accommodations for the Paquettes while the upper floor issues are being addressed.

[238] I am not prepared to grant damages for the remaining amounts estimated by Ms. Simonar, some of which were not proved, some of which fall outside of the scope of contractual responsibility of Norwood, some of which would have been resolved by tradespersons if given the opportunity to do so and some of which reflect expenses that the Paquettes would have been required to pay under the contract in any event.

[239] Having considered all the evidence presented, general damages are payable by Norwood to the Paquettes in the sum of \$100,000.00, to be set off as against the outstanding management fee payable to Norwood.

[240] As I have not found any breach relating to a contractual obligation with respect to timing or delay, there is no basis to consider the Paquettes' claim for damages arising from a reduced sale price of their former residence caused by the builder's failure to construct the property in the agreed-upon time period. Moreover, the evidence on this point was insufficient to create a legal obligation. The Paquettes were in charge of the timing of that sale. They alone decided to reduce the purchase price of their former residence to preserve the sale to their employee without any contractual obligation to do so or testing the market.

#### **4. How should I exercise my discretion respecting costs?**

[241] Given the mixed success on the numerous arguments advanced at the trial, I am not inclined to make any award of costs. That said, in the event that either

party wishes to speak to an award of costs being granted, they have leave to advance a written request to the Local Registrar within 30 days of the date of this judgment, at which time a costs hearing will be scheduled.

\_\_\_\_\_  
J.  
G.V. GOEBEL

# KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 47

Date: 2024 03 20  
Docket: QBG-SA-00760-2015  
Judicial Centre: Saskatoon

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BETWEEN:

NORWOOD DEVELOPMENTS LTD.

PLAINTIFF

- and -

MARC PAUL PAQUETTE and DIANA EMILY PAQUETTE

DEFENDANTS

**Counsel:**

Ted F. Koskie and Coleman E. Owen  
Curtis J. Onishenko, K.C. and Cole J. N. Wilson

for the plaintiff  
for the defendants

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CORRIGENDUM TO JUDGMENT DATED MARCH 20, 2024 (2024 SKKB 47)

APRIL 26, 2024

GOEBEL J.

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[1] The date of February 6, 2023 that is referred to in paragraph 135 of this judgment has been changed to read February 6, 2015. Paragraph 135 now reads:

[135] When the Paquettes advised Norwood on January 3, 2015, that they intended to take possession of the home on January 30, they were aware that a significant amount of work remained outstanding at the home. Norwood agreed to try to meet the imposed deadline, but some tasks were incomplete when the Paquettes took possession on February 6, 2015.

\_\_\_\_\_  
J.  
G.V. GOEBEL