

CITATION: Village Homes Inc. v. Connelly, 2025 ONSC 5846
COURT FILE NO.: CV-20-652315
DATE: 2025 10 15

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, RSO 1990, c. C.30, as amended

B E T W E E N :)
)
VILLAGE HOMES INC.) J. Binavince and S. Cullen,
) *for the plaintiff / defendant by counterclaim*
)
Plaintiff /)
Defendant by counterclaim)
)
- and -)
)
)
VALERIE CONNELLY) J. Frustaglio and J. Janmohamed,
) *for the defendant / plaintiff by counterclaim*
)
Defendant /)
Plaintiff by counterclaim)
)
) **HEARD:** February 11-14, 20, and
) March 27-28, 2025

2025 ONSC 5846 (CanLII)

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Robinson A.J.

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I. OVERVIEW

[1] This lien action concerns a residential construction project at 39 Craven Road, Toronto, which is a property owned by Valerie Connelly. The property has a west facing semi-detached house, joined with the neighbouring house on the south. Village Homes Inc. (“Village”) was initially contracted by Ms. Connelly to manage renovation work for the primary purpose of accommodating Ms. Connelly’s elderly mother living in the house. The project expanded well beyond its original scope, involving substantial demolition and reconstruction.

[2] Prior to Village commencing work, the parties agreed on a form of contract, but the nature of their actual contractual arrangement under that contract is squarely in dispute. The parties agree that Village ceased all work on site after a heated text exchange between Village’s principal, Michael Piperni, and Ms. Connelly. Village subsequently preserved and perfected a lien under the *Construction Act*, RSO 1990, c C.30 following the breakdown in the parties’ relationship. The lien remains on title.

[3] It is undisputed that the original renovation of the existing house expanded into a substantial demolition and reconstruction of the house. It is also undisputed that Village arranged subcontractors and suppliers to complete certain construction work. Although Village was provided with drawings for the original scope of work to be performed, the building permit and City-approved permit drawings were not issued until after Village left the job. There was no clear evidence at trial on if, when, and how often revised drawings were provided to Village.

[4] Village’s period of work on site is undisputed. It commenced work on April 16, 2020. The parties agree that work ceased on August 13, 2020, following a text exchange between Michael Piperni and Valerie Connelly about delaying the framing work scheduled for the next day to permit an inspection by Ms. Connelly’s structural engineer, Yu Ching Lai. Whether Village abandoned the job after that exchange or whether the contract was repudiated by the parties is another issue in dispute.

[5] Village seeks judgment for \$48,990, although its trial evidence quantifies a greater amount owing by Ms. Connelly. Village concedes that Ms. Connelly paid \$138,091.20 during the project. Ms. Connelly disputes that any additional amounts are owing to Village and further alleges numerous significant structural and non-structural deficiencies in the work performed under Village’s supervision. Ms. Connelly pursues a counterclaim for \$143,631.76 for breach of contract, negligence, unjust enrichment, and delay.

[6] I find that both parties have failed to meet their respective evidentiary onuses in support of their claim and counterclaim. In the result, I am dismissing both the claim and the counterclaim and discharging Village's lien.

II. ISSUES

[7] Several issues are in dispute in this action, namely:

- (a) whether the parties entered into a legally enforceable contract;
- (b) whether Village was a construction manager or a general contractor;
- (c) whether there was a fixed price contract change for the extra work performed by Village;
- (d) whether the contract was breached or repudiated;
- (e) whether Village has proved any earned and unpaid amount owing to it; and
- (f) whether Ms. Connelly has proven her set-off claim and counterclaim against Village.

III. ANALYSIS

[8] This was intended to be a summary trial, with all witnesses testifying in chief by affidavit. Most witnesses did. However, before trial, I granted Ms. Connelly leave to call four witnesses to testify in chief by *viva voce* evidence: *Village Homes Inc. v. Connelly*, 2025 ONSC 471. Only two of those *viva voce* witnesses were ultimately called.

[9] The trial affidavits tendered by both sides were rife with improper hearsay, opinion, and legal argument. They generally failed to meaningfully outline the witnesses' direct evidence on factual recollections and observations. Instead, they commonly provided nothing more than high-level statements with limited explanation or substantiation, else they deferred to appended documents for information rather than discuss the contents of those documents directly. Notably, the affidavits of the two key witnesses – Michael Piperni for Village and Valerie Connelly – often read more like a pleading or factum than witness testimony. Considering that credibility of each of Mr. Piperni and Ms. Connelly was challenged by the other side, respectively, on various issues, the way in which their affidavit evidence was drafted was less than ideal.

[10] I have previously commented that failing to provide direct witness evidence on the substantive contents of documents deprives the court of the assistance of having specific witness observations and recollections on surrounding factual circumstances, which are necessary to properly weigh the evidentiary value of documents: *Elembe (LMB) Mechanical Ltd. v. Two Hundred Inc.*, 2025 ONSC 1571 at para. 17. It is equally problematic when witness affidavit testimony simply glosses over important factual matters with generalities.

[11] At trial, each party has an obligation to tender or elicit evidence that supports the positions they are taking. Where a particular party bears an evidentiary onus, that party must tender or elicit

evidence that establishes all required elements to meet their onus. Whether an ordinary, summary, or hybrid trial, the obligation is the same. Evidentiary thresholds and onuses are not reduced when tendering evidence in chief by affidavit.

[12] In this case, there has been a failure by both parties to adequately address factual disputes through affidavit evidence in chief. Although additional relevant evidence did come out through cross-examination, there remain significant gaps and inconsistencies. That has been factor in my decision, particularly when assessing whether the parties have met their respective evidentiary onuses.

Issue 1: *Did the parties enter a legally enforceable contract?*

[13] The parties agree that they entered a “contract” (as described by each of Michael Piperni and Valerie Connelly in their trial affidavits). They also agree on the relevant documents making up that contract: a “Construction Management Agreement” (printed on a Village invoice), a preliminary budget, a preliminary timeline, and a document entitled, “Additional Notes and Acknowledgements”. Where the parties diverge is their understanding and interpretation of the contract document and on what they actually agreed that Village would be doing.

[14] Village takes the position that, properly interpreted in the surrounding circumstances at the time of contract formation, it was contracted by Ms. Connelly to act as a construction manager with no guarantee on the total project cost. Ms. Connelly disagrees, taking the position that Village was contracted as a general contractor with a fixed price contract.

[15] For a contract to exist, there must be a meeting of minds. However, the parties’ subjective intentions and understanding is not the standard by which the court assesses contract formation. Rather, it is assessed on an objective standard: whether an objective, reasonable bystander would conclude that, in all the circumstances, the parties intended to contract. In addition to intention, the essential terms of the agreement must also sufficiently certain: *UBS Securities Canada, Inc. v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328 at para. 47. The essential terms of a construction contract are generally viewed as price, scope of work, and schedule or completion date: *Goulimis Construction Ltd. v. Smith*, 2014 ONSC 1239 at para. 17.

[16] I have no hesitation finding that the parties entered a contract with sufficiently certain terms to ground a legally enforceable contract. As discussed in greater detail below, trial evidence from Michael Piperni and Valerie Connelly is aligned on the original scope of work that was to be performed, the anticipated schedule for that work, and the price that Ms. Connelly should expect to pay to complete it. In my view, whether Village was operationally a construction manager or general contractor, and how the preliminary budget operated under the contract, are matters of contractual interpretation, not contract formation.

[17] The written contract document is relevant. The contractual terms were printed on an invoice. That invoice includes three columns: quantity, description, and unit price. The quantity is listed as “1”. The description is listed as “Construction Management Agreement”, with various terms written below that heading. The unit price is listed as \$50,000.00. The terms in the description column define Village as the “Project Manager”. It sets out that Ms. Connelly “agrees

to pay project management fee of \$50,000 plus HST for the agreed upon scope of work” and further sets out that Village “will follow the drawings provided”. Importantly, the invoice total on this page of the agreement is \$56,500, namely \$50,000 (the noted project management fee), plus \$6,500 in HST. There is also reference to a “given timeline”.

[18] With respect to scope of work, the contract document itself does not set out a specific scope of work in any detail. There is reference to “drawings provided” that are to be followed by Village, but they are not specifically identified and no drawings are appended.

[19] At trial, only three sets of drawings were tendered into evidence, as follows:

- (a) A set of unstamped drawings dated August 21, 2019, tendered by Ms. Connelly, which appear to have been forwarded to a contractor in January 2021 to quote flooring. These drawings appear to be the same as those tendered in Mr. Piperni’s first affidavit as “showing the layout and certain measurements with respect to the House prior to the renovation”, which are stated to have been taken from Ms. Connelly’s productions in the litigation;
- (b) A set of drawings, which engineer-stamped on April 2, 2020, as tendered in Mr. Piperni’s first trial affidavit. He describe them as “drawings that may be the drawings I received while I was negotiating with Valerie regarding her planned renovation.” Mr. Piperni’s evidence is that he could not locate the drawings provided to him during the pre-contractual discussions, but that these drawings “are similar”; and
- (c) The permit drawings as stamped by the City of Toronto and provided with the building permit issued on September 1, 2020, which are tendered in both trial affidavits of Ms. Connelly and Yu Ching Lai.

[20] There was scant evidence at trial both on the drawings available to Village at the time of the contract being signed and on whether and when subsequent revisions were made available to Village. The above drawings were not discussed or addressed in any detail by witnesses at trial. Considering the extent of the parties’ dispute over the value of work performed, I am at a loss for why the drawings did not play a greater role at trial. However, between their affidavit evidence and *viva voce* testimony, Mr. Piperni and Ms. Connelly ultimately agreed on the original scope of work that was to be performed.

[21] Mr. Piperni sets out the original scope of work in his first trial affidavit. That scope was confirmed by Ms. Connelly on cross-examination. It was to demolish the existing rear addition, excavate for and construct a new rear addition, construct a new bedroom and second floor bathroom, with plumbing, electrical, and HVAC work for that second floor construction, construct a new first floor powder room, renovate the existing kitchen, install new laminate flooring provided by Ms. Connelly, replace existing stairs from the basement to the ground floor, and paint the house. I accordingly find that the parties were *ad idem* on the scope of work to be performed while Village was on site.

[22] With respect to schedule, a preliminary timeline is included in the contract documents. The document sets out a timeline for the stages of work set out in the preliminary budget from demolition to painting. There is no dispute that this was the schedule proposed by Village for the original scope of work. However, there is an express notation stating, “This timeline is an approximation”, which dovetails with a timeline note on the last page of the contract documents titled, “Additional Notes and Acknowledgments”. That document outlines the potential impact on the project timeline of the COVID-19 pandemic and the lack of a building permit.

[23] With respect to price, the parties agree that Village would be paid \$50,000, plus HST, to manage the original scope of work. In my view, the evidence supports and I find that there was also sufficient certainty over the price of the work that Village was to manage, which is set out in the appended preliminary budget and subject to the various contingencies and variables discussed in that budget and the “Additional Notes and Acknowledgments” document.

[24] The appended preliminary budget is dated April 15, 2020. It sets out figures totalling \$228,353.79, including HST, with a noted contingency of 10-30% “for unforeseen expenses and upgrades”. This preliminary budget included amounts for demolition and excavation work, foundations and footings, concrete and drain work, framing, roofing, exterior siding, windows and doors, a deck, electrical, plumbing, HVAC, flooring, stairs and railings, drywall and insulation, kitchen and bathrooms, carpentry, painting, site safety, and cleaning. Those work categories generally align with the agreed scope of work. Notably, though, the figures are all in a column titled “Allowance”.

[25] The “Additional Notes and Acknowledgments” document deals with several matters driving the 10-30% contingency range. These are stated to include the lack of a building permit and risk of beginning work without one, increased framing budget, variable cost of lumber, pending steel pricing, limitations on the roofing estimate, that flooring is limited to installation, and “some unknowns”. The document notes that Village was targeting a 10-15% contingency.

[26] I agree with Village that there is some uncertainty with respect to price for the original scope of work, but that uncertainty was expressly addressed in the terms agreed by the parties through the various contingencies and notes. The trial evidence of Michael Piperni and Valerie Connelly supports that Village’s budgets were significant in Ms. Connelly’s decision to engage Village for the project. Notably, during cross-examination, Mr. Piperni testified that he had wanted a much higher contingency, but that he and Ms. Connelly agreed to 10-30%. Mr. Piperni also testified that any amounts over 30% were to have been discussed.

[27] The admitted contract documents themselves and the surrounding circumstances support that the project budget was a central part of the parties’ negotiation and ultimate agreement. The fact that unknowns, contingencies, and variables were raised does not change that. The threshold for assessing contract formation is not precise certainty of terms, but rather sufficient certainty.

[28] I accordingly find that, objectively, a reasonable bystander would understand that both Village and Ms. Connelly were contracting based on that pricing, albeit with the noted contingencies and variables.

Issue 2: Was Village a construction manager or a general contractor?

[29] The parties each interpret Village’s operational role on the project and the meaning of the agreed preliminary budget differently. Village argues that it was a construction manager with no guaranteed pricing. Ms. Connelly argues that Village was a general contractor with a fixed contract price drawn from the budget.

[30] In *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60, at paras. 74-80, the Supreme Court of Canada outlined relevant principles of contractual interpretation, which include the following:

- (a) courts are to read the 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;
- (b) a legitimate interpretation will be consistent with the language that the parties employed to express their agreement;
- (c) the meaning given to the words of a contract should be rooted in the actual language used by the parties, since a meaning that strays too far from the actual words fails to give effect to the way in which the parties chose to define their obligations;
- (d) although the words of a contract matter, they must still be read in light of the surrounding circumstances, provided that the factual matrix cannot overwhelm the words of the contract or support an interpretation that deviates from the text such that the court is effectively creating a new agreement;
- (e) the factual matrix assists only in discerning the meaning of the words that the parties chose, but cannot change the words of the contract in a manner that would modify the rights and obligations that the parties; and
- (f) the principle of commercial reasonableness and efficacy must also be considered, such that contracts are to be interpreted in accordance with sound commercial principles and good business sense.

[31] There is no dispute that Village was responsible for directly engaging and managing subcontractors and suppliers to complete the construction work. It did so. Village was thereby either a general contractor or a construction manager at risk. In this case, the distinction between them turns more on the role of the preliminary budget.

[32] I agree with Village that the words of the contract and the surrounding circumstances all support that it was not a general contractor with a fixed contract price, but rather was a construction manager. Without going through all of the evidence in detail, I note the following:

- (a) the contract documents describe Village as a “project manager”;
- (b) on the first page of the contract documents, the agreement is described as the “Construction Management Agreement”;

- (c) the only price listed on the first page of the contract is a fixed fee of \$50,000, plus HST, which is described as a “project management fee”;
- (d) most of the fee was to be paid over four monthly installments “provided the project is progressing in line with the given time-line [sic]”;
- (e) the pricing relied upon by Ms. Connelly as being the fixed price is titled “preliminary budget”, provides pricing as “allowance”, and includes a significant 10-30% contingency for “unforeseen expenses and upgrades”;
- (f) Ms. Connelly explained during her cross-examination that the preliminary budget was intended to be used as an allowance between line items, with savings from one line allocated to another line item;
- (g) the contract price is pleaded by Ms. Connelly at para. 5 of her statement of defence and counterclaim to have been “estimated”;
- (h) there were no City-approved drawings or building permit at the time of contracting and no specific drawings are referenced in the agreement; and
- (i) Ms. Connelly’s position, as set out in her trial affidavit (and as pleaded at para. 7(e) of her statement of defence and counterclaim), is that she had the authority to approve trades and the supply of materials.

[33] I find that the foregoing are inconsistent with a general contractor operating under a fixed price contract for a home construction project. However, that does not mean Village was operating as a construction manager without a guaranteed price. To accept Village’s argument would be to entirely disregard the preliminary budget and “Additional Notes and Acknowledgments” document, when both parties agree that they are contract documents. In my view, that would run afoul of contractual interpretation principles.

[34] Looking at the surrounding circumstances and the language used in the contract documents, I find that, properly interpreted, the parties’ agreement was that Village was responsible for managing completion of the original scope of work within the agreed budget, subject to the unknowns, contingencies, and variables expressly noted, in return for which it would be entitled to the agreed project management fee.

Issue 3: Was there a fixed price contract change for the extra work performed?

[35] Formally, the parties’ contract sets out that no alterations were to be made to the original plans without a signed change order. However, substantial changes were made to the scope of the project without any formal change order. In his first trial affidavit, Michael Piperni sets out that there were three main changes to the project scope of work that were managed by Village. These were characterized as the “delivered extras” at trial, namely:

- (a) removing the entire existing roof structure and demolishing the entire interior of the house, including all structural elements on the first and second floors;

- (b) demolishing the front vestibule, excavating that area and installing footings and block foundation for a new front addition; and
- (c) excavating for a front new walk out and installing footings and block foundation for it, but excluding stairs.

[36] When a contractor performs work or supplies materials not called for by the contract on the instructions, express or implied, of the owner, it is entitled to charge for additional work or materials as an “extra”. Where the contract requires a written change order as a condition precedent to be paid for extra work, that term may be waived by the owner’s conduct or acquiescence, such as where the owner requests extras which they must, as a reasonable person, have realized would involve extra expense: *2016637 Ontario Inc. o/a Balkan Construction v. Catan Canada Inc.*, 2013 ONSC 4727 at paras. 13-14.

[37] I have no hesitation finding that there was a change in the project scope that Village was expected to manage. However, I find that there was no agreement reached on the precise scope of work to be performed, the timing to complete the expanded scope, or the price for completing the work. I make that finding for several reasons.

[38] There is no question that the parties agreed to expand the overall scope of the project beyond the original rear addition scope of work. During her cross-examination, Ms. Connelly agreed that the “delivered extras” were added to that original scope of work. She also conceded during her cross-examination that the extra work was not included in the original scope of work and was completed, subject to her claims with respect to deficiencies. With respect to the interior demolition, though, trial evidence supports that the reconstruction would have included adding height to the first floor and second floor, with vaulted ceilings, which led to new drawings being prepared for approval by the City and a revised or new building permit. There is no dispute that work was not completed at the time that Village left the site. The photographs in evidence clearly support that it was not.

[39] Although the parties discussed project budgeting for the original contract work, in my view, the evidence does not support an agreement on a budget or price for the expanded scope of extra work. That includes whether Village would be entitled to any additional management fee. There was also no direct witness evidence and I was not directed to any other evidence supporting a finding on an agreed timeline to complete the project with the expanded scope of work.

[40] With respect to price, Village relies on a letter dated October 2, 2020, which was prepared by Ms. Connelly’s former lawyer. Ms. Connelly confirmed during her cross-examination that the letter was prepared from information that she provided to her lawyer. Ms. Connelly further confirmed that the information was accurate. That letter set out her position, as of October 2020, regarding the scope of work performed and the amount acknowledged for the work. Specifically, the letter identifies “three separate agreements” entered between the parties, namely:

- (a) one for demolition, excavation, pouring of a foundation and waterproofing of the foundation and the pouring of footings at the front of the property, stated to be for the price of “approximately \$59,000”;

- (b) a second for demolition, excavation and the pouring of footings at the back of the property, stated to be for the price of “approximately \$48,000”; and
- (c) a third for framing work at the property, stated to be for the price of “approximately \$40,000”.

[41] Village submits that the scope of work outlined in the letter and the noted prices correlate to the same work it managed, namely:

- (a) demolition of the existing house interior, including the first and second floors, as well as the roof of the existing house and the vestibule, and excavation and installation of the footings and block foundation for the new front addition and walkout;
- (b) demolition of the existing rear addition, excavation and installation of the footings and foundation, and pouring of the slab for the new rear addition and underpinned basement; and
- (c) rough framing for the building envelope, including exterior walls and a standard roof for the rear addition and original house, with floor joists and subfloor for the first and second floor, but no interior rough framing.

[42] Mr. Piperni’s trial affidavit sets out that he agreed to the approximate prices allocated to the three categories set out in the letter, but that the letter does not address the construction management fee or disposal fees, site services (notably washroom and fencing), and disconnection of electrical, HVAC and plumbing services related to the renovations.

[43] In my view, the lawyer’s letter is a red herring. It appears to jumble the original scope with amended scope and has little utility in deciding either the scope of extra work to be performed or the price or budget discussed for that work. Moreover, and more importantly, it is inconsistent with Mr. Piperni’s own evidence.

[44] Mr. Piperni’s first trial affidavit states that he and Ms. Connelly “did not set any definite scope of work” for any categories of work and that the only fixed price was the management fee. Although Mr. Piperni does set out that he gave Ms. Connelly a price of \$55,000 to complete the new front addition and walkout, with subsequent adjustment of \$3,000 for clean up and \$1,000 for disposal bins, there is no clear evidence on the specific scope of work to be performed. Mr. Piperni’s overall evidence supports that he did not agree to any fixed price.

[45] Mr. Piperni’s trial affidavit similarly states that the price of framing was never agreed because the scope of work was never finalized. Both Mr. Piperni and Driton Konjuhi (the contractor retained to perform the framing work) gave evidence on the latter’s \$40,000 framing estimate for floor joists and subfloor for the first floor, floor joists and subfloor for the second floor, and a basic roof. However, email exchanges in evidence support that, as of August 10, 2020, interior framing design was still being coordinated and decided.

[46] In my view, there is insufficient objective evidence to find, on a balance of probabilities, that Village and Ms. Connelly agreed to any fixed price change to the contract for the “delivered

extras”. I am satisfied that, although an agreement was reached to expand the project scope of work under Village’s management, there was no agreement on the specific scope of extra work to be performed, the timeline to perform that work, or any budget or price for that work. That includes whether Village would be entitled to any further management fee.

[47] It follows from the above that any claim for compensation in respect of the “delivered extras” must be decided in *quantum meruit*.

Issue 4: Was the contract breached or repudiated?

[48] Village argues that there was a “double repudiation” in August 2020, bringing the parties contract to an end. Ms. Connelly argues that Village breached the contract by improperly abandoning the job. I am satisfied that Ms. Connelly did not repudiate the agreement and that Village did abandon the work. Village’s subsequently attempt to resile from that abandonment was not, in my view, genuine.

[49] Both parties agree that the breakdown event in their relationship occurred on August 13, 2020. It began with a text exchange between Ms. Connelly and Mr. Piperni in the early evening about rescheduling continued framing work for an inspection by Yu Ching Lai to take place. Given the importance of the exchange, I am setting out key parts of it below.

[50] Ms. Connelly’s initial text stated as follows:

Need to pause framing. Yu ching wants to see what has been done. He and joe are concerned about how it looks and want to see in person. Should the masons have built the wall up high enough to meet the floor? Specifically asking about the north wall. Some concern about there apparently

[Photograph of north concrete block wall under subfloor]

This spot they were asking about

[51] In response, Mr. Piperni insisted that Driton Konjuhi and his framing crew proceed as planned to continue framing work on August 14, 2020. Ms. Connelly asked that he not be there when Mr. Lai inspected to “give yu ching a chance to look without pressure”. Mr. Piperni insisted that the framing proceed and that it would be good for Mr. Konjuhi and Mr. Lai to be on site at the same time, but adding the caveat, “Unless we’re trying to play games with Driton? If we’re are let be upfront [sic]?”. Ms. Connelly’s response was as follows:

I find this really weird that ur insisting deiton [sic] come tomorrow. Why is that? You have cancelled him multiple times this week already. Why can you do it and not me?

And deiton [sic] said VERY clearly he won't do what the engineer says so mixing them is a horrible idea!

I need accurate assessment and that can't happen if the guy doing the work is there. Cancel him

[52] The text exchange continued with Mr. Piperni identifying a likely back charge for cancelling Mr. Konjuhi. Ms. Connelly became heated and disputed paying any back charge

considering that Mr. Piperni had cancelled him on August 13, 2020, and to tell Mr. Konjuhi that his work was being questioned. The exchange continued as follows:

Valerie Connelly:

To be clear – I'm not moving forward without to [sic] approval of my engineer. Do what you want with driton. I'm done being blackmailed and hijacked on MY property

Since you think I'm playing a 'a game' [sic] feel free to come to site tomorrow. This is my house and I have every right to take steps needed to make sure the work is safe

Michael Piperni:

VALERIE I know the game you're playing. And I'm not interested in playing it. I will figure out what's remaining on the project management fee and framing contract and I will send you an invoice.

Valerie Connelly:

Wtf? The game of me being safe and responsible?? Ok whatever mike

Michael Piperni:

I spoke to your engineer he has no issues of us working. Obviously he has to be satisfied with the work to sign off. I will be there tomorrow to pick up my tools and I'm done.

Valerie Connelly:

Well that's not what he said to me. You DO NOT have permission to be on my property unsupervised by me. Happy to meet you there to get tools but again NO PERMISSION to be on the property. I'll call raj right now and make sure he has his cameras rewording as they show my property as well. Let me know what time you wish to meet.

You liar - speaking to yu ching now and he did not say anything are claiming. You think others are playing games because YOU are. This is [----]ed up. All I asked was to let yu ching come and have time to see what ur guy has down and you freak out. Talk about guilty complex.

Michael Piperni:

Like I said not interested in playing games let me know when you're there I'll come grab my tools

I will cancel the Ministry of labour and NOP [Notice of Project] please open a new one up

[53] The next day, on August 14, 2020, Ms. Connelly sent an email that stated, in part, as follows:

Hi Mike - to follow up from your text last night, you quit my project effective 8:31pm Aug 13th based on wild and untrue accusations that games were being played because I wanted to have my engineer approve the framing work before continuing with the framing.

As stated last night, you DO NOT have permission to be on my property. We can arrange a time if you need access.

[54] There is no evidence of any response from Mr. Piperni. On August 18, 2020, though, apparently after obtaining legal advice, Mr. Piperni sent a text message stating:

I would like to come by tomorrow and pick up my tools?

Also my lawyer wanted me to text you for the record we have not met up and I have not collected the cash portion that was promised.

[55] The next communication from Mr. Piperni was not until August 27, 2020, when he sent an email to Ms. Connelly suggesting that the project was “on halt”. He further stated that they should discuss whether they would “continue working together or agree to mutually release?”

[56] Repudiation of a contract occurs when the words or conduct of a party show an intention not to be bound by the contract. A repudiatory breach does not automatically bring an end to a contract. It affords the innocent party an election. It may elect to treat the contract as remaining in full force and effect or may elect to accept the repudiation. In the former case, the contract remains and each party has a right to sue for damages for past or future breaches. In the latter case, the contract is terminated and each party is discharged from future obligations. The innocent party must communicate its election to the repudiating party within a reasonable time, but the innocent party’s conduct may be sufficient to communicate its intention: *Place Concorde East Limited Partnership v. Shelter Corporation of Canada* (2006), 270 DLR (4th) 181; 2006 CanLII 16346 (ON CA) at paras. 49-50.

[57] Village argues “double repudiation” from the text and email exchanges between Ms. Connelly and Mr. Piperni, relying on older case law holding that both parties may effectively agree to terminate their contract by mutual hostility, and by their inability, jointly, to restore their relationship to a working one. In the event of such a double, mutual repudiation, the contractor is entitled to be paid the contract price for the work performed to the last date worked, less a set-off for any incomplete work, and less the cost of repairs for any deficiencies or defects in the work performed to the last date worked: *Economark Renovations Ltd. v. Hecht-Kugelmass* [1993] OJ No 2986, 44 A.C.W.S. (3d) 483 (SCJ) at paras. 53-54; *Pelliccione v. John F. Hughes Contracting & Development Co.*, [2005] OJ No 4132, 47 CLR (3d) 104 (SCJ) at para. 51.

[58] I am not convinced that the facts of this case support “double repudiation” or even repudiation. In my view, neither Ms. Connelly’s request to pause framing work for Yu Ching Lai to conduct an inspection nor any of the subsequent text messages reasonably support an objective intention by Ms. Connelly to no longer be bound by the contract. During her cross-examination, there were inconsistencies raised about her communications with Mr. Lai that day, which tend to suggest that Ms. Connelly, and not Mr. Lai, raised concerns about Village’s work. I also found

her to be quite combative with examining counsel during her cross-examination, which impacted the weight of her testimony. However, I do not think any of that changes my analysis.

[59] Although the text exchange did become somewhat hostile, there is no cogent evidence of surrounding circumstances from which to find that a reasonable person in Mr. Piperni's position reading her text messages would have believed that she was "playing games". The texts did not ask for a cessation of work, but rather asked for framing to be deferred for an inspection by Mr. Lai. During the text exchange, it was Mr. Piperni who first stated, "I will be there tomorrow to pick up my tools and I'm done." After Ms. Connelly accused him of lying about what Mr. Lai had said, Mr. Piperni then also said that he intended to cancel the notice of project.

[60] It is true that Ms. Connelly advised Mr. Piperni that he did not have permission to attend the property unsupervised. However, the clarifying email sent the next day, in which Ms. Connelly confirmed that Village had "quit" the project, was not responded to or corrected by Mr. Piperni. Instead, on August 14, 2020, Mr. Piperni sent a text message to the City inspector, Giuseppe Forte, suggesting that he had permanently left the project. He stated as follows:

Hey Joe
I left the house solid and ready for the next General contractor. Let me know if you see anything I should've done and I will fix it before I completely leave?

Thank you.

[61] A few days later, on August 18, 2020, Mr. Piperni sent the text message discussed above reiterating his request to Ms. Connelly to pick up tools and noting what his lawyers had advised him to relay. There is no further communication from Mr. Piperni in evidence until August 27, 2020.

[62] The legal requirements for abandonment of a contract are well settled. Abandonment is a question of fact. It requires a finding that the contractor's cessation of work was permanent in the sense that the contractor did not intend to carry the project to completion. The contractor must know or believe that its contract work is incomplete and decline to go on and complete it: *Elembe (LMB) Mechanical Ltd. v. Two Hundred Inc.*, 2025 ONSC 1571 at para. 160.

[63] Mr. Piperni's evidence at trial was that he did not want to pause the work since he had arranged for Driton Konjuhi's crew of framers to work on August 14, 2020, and there would be a back charge to cancel them. He explained that the framers had been cancelled previously to accommodate site cleanup. That explanation for the position taken in his text messages is self-serving. It also does not line up with the other texts and emails at the time. Mr. Piperni did not meaningfully explain why he failed to correct Ms. Connelly's understanding that Village had "quit", why he advised Mr. Forte he was leaving the project, and why he did not seek to clarify any willingness to continue work for two weeks with no other efforts seeming made to continue Village's work.

[64] I am satisfied that the objective evidence supports that, on a balance of probabilities, a reasonable person would understand Mr. Piperni's texts to Ms. Connelly, multiple requests to pick up tools, failing to correct Ms. Connelly's email that Village had "quit" the job, and advising the

City inspector that Village would not be continuing was all conducting evincing an intention to permanently cease work with no intention to complete the contract.

[65] Mr. Piperni did send the email on August 27, 2020, in which he suggests a discussion about continuing work or mutually releasing one another. However, that email stands in isolation from Mr. Piperni's other texts, email, and conduct. No steps were taken to continue work between August 14 and 27, 2020, no further steps were taken to follow up after the email on August 27, 2020, and there is no other evidence supporting that Village had any genuine intention of continuing the contract. I find Mr. Piperni's testimony at trial that he did not subjectively intend to leave the job to be self-serving and inconsistent with all other contemporaneous objective evidence.

[66] For the foregoing reasons, I find that Village breached the contract and abandoned the job in the evening of August 13, 2020.

Issue 5: *Has Village proved an earned and unpaid amount owing to it?*

[67] There is case law before me supporting that, since I have found that Village breached and abandoned the contract, Ms. Connelly should be discharged from any obligation to pay Village any further amounts, including any obligation to pay on a *quantum meruit* or for work already performed: *D&M Steel Ltd. v. 51 Construction Ltd.*, 2018 ONSC 2171 at para. 53. Nevertheless, even if I am wrong in my determination on abandonment, I would still reach the same outcome.

[68] In my view, Village has failed to prove that any amounts are payable to it and, accordingly, Ms. Connelly is not liable to pay anything more.

[69] Village bears the onus of proving, on a balance of probabilities, that the claimed amounts have been earned and are unpaid, whether under the contract or on a *quantum meruit* basis. Since Village was paying trades and suppliers with funds paid by Ms. Connelly, proving its claim includes proving either the value of services and materials supplied to the project or at least that earned amounts exceed the amounts paid by Ms. Connelly by the claim amount.

[70] Village's claim is broken down in Michael Piperni's first affidavit. It quantifies the total earned and unpaid amount at \$63,890, including HST, which is comprised of the following: \$10,000 plus HST for earned and unpaid management fee (of which \$2,600 is HST); \$36,590 for reimbursement of amounts paid to trades and suppliers; a further \$10,000, plus HST, as an additional management fee for the delivered extras; and \$6,000 for framing expenses. Although the total amount exceeds the amount claimed as owing by Village in its lien and statement of claim, Village is only pursuing judgment for the claim amount of \$48,990.

[71] In my view, the significant expansion in the scope of work to be managed by Village has made it difficult to assess project expenses against the preliminary budget, which forms part of the original contract, and for the additional work performed. Village has not maintained, or at least did not tender at trial, clear accounting records for the duration of its time on the project. It also has not put forward evidence supporting an assessment of the value of work performed on a *quantum meruit* basis.

a. Earned management fee

[72] Village claims that it earned \$30,000 (plus HST) in management fees under the contract. The contract provides that Ms. Connelly was to pay \$5,000, plus HST, on signing the contract and a further \$5,000, plus HST, upon agreeing to a start date. Ms. Connelly conceded on cross-examination that those amounts were not paid at the outset of the project as required.

[73] During cross-examination, Ms. Connelly agreed that the balance of \$40,000 for the management fee was payable to Village in four equal installments of \$10,000 at four milestones in the contract. Ms. Connelly further conceded that two of those milestones had been reached, namely footings/foundations and beginning of framing.

[74] I find that Village had earned \$30,000, plus HST, of its project management fee under the contract at the time it ceased work on the project. The balance of the fee had not yet been earned.

b. Reimbursement of amounts paid to trades/suppliers

[75] Village claims that it is entitled to be reimbursed \$36,590 in amounts that it claims were paid to trades and suppliers on Ms. Connelly's behalf. That figure has not been meaningfully quantified anywhere in Michael Piperni's affidavits or elsewhere in the evidence tendered by Village. Mr. Piperni does not even explain to which trades the funds were paid or to what work the payments relate. There is similarly no proof of payment. During cross-examination, Mr. Piperni asserted that he took a loan from his father to pay the amounts, but that testimony is uncorroborated by any other evidence at trial.

[76] Village argues that receipts and invoices from trades were not and are not available because Ms. Connelly wanted transactions to be on a cash basis to reduce costs. It argues that trades are reluctant to admit receiving cash or provide cash receipts. There is undoubtedly some truth to that submission.

[77] Two witnesses for Ms. Connelly were specifically cross-examined on cash payments: Antonio Martins a.k.a. Tony Braga (a contractor arranged by Ms. Connelly to perform underpinning, waterproofing, and weeping for the rear addition and who also performed completion work claimed by Ms. Connelly) and Rui Simoes (the principal of a plumbing subcontractor to Tony Braga's company performing alleged remediation of Village's work). Both were dodgy about having been paid in cash, although agreed that were paid in cash, at least in part, at Ms. Connelly's request. When asked generally during cross-examination about why invoices would not be available for cash payments, Mr. Simoes candidly agreed that invoices without HST could lead to problems with the Canada Revenue Agency.

[78] However, the unwillingness of trades to admit cash payments does not excuse Village, as construction manager with a budget, from accounting for the funds spent on the project. Nothing stopped Village from tendering witnesses to corroborate the work performed and amounts paid. It did not. Michael Piperni did not even outline who performed the work, when and how payments were made, and in what amounts. Bernhard (Bernie) Pulst, who Mr. Piperni confirmed was Village's office manager, seemingly tracked the project costs and communicated with

Ms. Connelly about them in several emails. He not called as a witness and his absence at trial was not explained.

[79] The only contemporaneous accounting record tendered at trial with any meaningful detail on project expenditures is an interim spreadsheet from June 2020. That document indicates how Village allocated \$80,417.19 of funds received from Ms. Connelly. Village's amended Scott Schedule sets out its position on project accounting. However, other than framing (addressed separately below), neither document is supported by direct evidence at trial from Michael Piperni on how the amounts relied upon by Village for each line item were reached, including who performed the work, the prices negotiated and agreed with trades and suppliers to perform the work and supply the materials (whether or not in cash), and when and how much was paid to those trades and suppliers.

[80] Village bears the evidentiary onus of proving, on a balance of probabilities, the amount claimed as owing for reimbursing trades and suppliers. I have found that Village was a construction manager. It follows that, to meet its onus, Village must reasonably prove not only the \$36,590 claimed, but must also account for how funds paid by Ms. Connelly were used. Since Village was managing the work, is in the best position to do so.

[81] Village has failed to address what amounts were paid to which trades and suppliers and, further, what amounts remain owing for work performed by trades and suppliers engaged or arranged by Village. I accordingly find that Village has not met its evidentiary onus of establishing that \$36,590 is owing to Village for reimburse amounts paid by Village to trades and suppliers.

c. Additional management fee

[82] Michael Piperni's trial affidavit sets out his view that new categories of work beyond what was set out in the original contract documents would be an extra, for which Village would be entitled to an extra management fee. However, Village concedes that Ms. Connelly never formally agreed to pay any additional management fee for the extra work on the project. Village nevertheless claims compensation based on *quantum meruit* and unjust enrichment for \$10,000.

[83] Ms. Connelly did not expressly agree to pay Village any additional management fee for the extra work arranged and performed by Village. However, to decide a claim based on *quantum meruit*, an explicit mutual agreement to compensate for services rendered is not a prerequisite to recovery. Rather, it is sufficient for the services to be supplied at the request, or with the encouragement or acquiescence, of the opposing party in circumstances that render it unjust for the opposing party to retain the benefit of those services: *Consulate Ventures Inc. v. Amico Contracting & Engineering (1992) Inc.*, 2007 ONCA 324 at para. 99.

[84] There are three elements to unjust enrichment: (i) an enrichment to the defendant; (ii) a corresponding deprivation to the plaintiff; and (iii) an absence of juristic reason for the enrichment: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30.

[85] Ms. Connelly does not dispute, and trial evidence supports, that the “delivered extras” as described in Michael Piperni’s affidavit were performed, albeit that Ms. Connelly argues set-off for deficiencies in the work managed by Village.

[86] I have found that no fixed price had been agreed to complete the “delivered extras” or for Village’s management. I have also found that the “delivered extras” were beyond the scope of the original work to be managed by Village under the original contract. I find there to be an enrichment to Ms. Connelly from having Village coordinate and manage that work, a correlating deprivation to Village from performing the work without compensation, and no juristic reason for Ms. Connelly’s enrichment. Ms. Connelly was aware that the additional work was being performed and that Village was managing it. I find that it would be unfair for Ms. Connelly to retain the benefit of Village’s additional management services without compensation for them.

[87] The \$10,000 claim was rationally argued based on the agreed management fee for the original scope of work. I find it both reasonable and fair to award that amount to Village as an additional management fee for the extra work performed.

d. Framing costs

[88] Village claims \$6,000 in framing costs on a *quantum meruit* basis as the value of framing work completed by Driton Konjuhi. Based on Village’s amended Scott Schedule, which includes \$6,000 as the value of completed framing work, this is the same amount that Mr. Piperni says in his first trial affidavit was paid to Mr. Konjuhi.

[89] During cross-examination, Mr. Piperni conceded that he was not pursuing the \$6,000 framing amount. However, during re-examination, he was directed to inconsistencies in his evidence arising from that concession and testified that he was confused. I am satisfied that the claim was not withdrawn.

[90] There was a volume of evidence at trial about the scope of framing work to be performed and completed, as well as the revised \$40,000 framing estimate provided by Driton Konjuhi during the project. Mr. Piperni’s evidence is that the estimate was given because no firm plans had been reached on the exact framing work to be done. It encompassed framing in the original scope of work, framing for the “delivered extras”, and framing that had not yet been completed.

[91] Mr. Piperni estimates the value of the framing work performed in the range of \$12,000 to \$15,000. He provided a calculation based on an hourly rate for a journeyman framer at \$45 per hour, with a 10% markup for overhead and profit, an 8-hour working day, and a total of 20 working days. Mr. Piperni states that Mr. Konjuhi had a two framers on site for two days and 4-6 framers on site for 4 days. Mr. Piperni also includes compensation for disputed cancelled framing work scheduled for August 14, 2020. Using these figures, Mr. Piperni calculates a value for the framing work performed of at least \$8,000.

[92] The calculation relied on by Mr. Piperni is an unqualified opinion for which no foundation was provided for Mr. Piperni’s knowledge. Mr. Piperni was not demonstrated to have any experience in estimating or completing framing. To the contrary, on the evidence before me,

Mr. Piperni ultimately sought Mr. Konjuhi's estimate for framing. Mr. Piperni's assumptions on the applicable hourly rate, daily hours, and markup for overhead and profit are not explained. I give his estimated value for the framing no weight.

[93] Driton Konjuhi also provided an estimate for the framing work performed by his crews, but a more substantial one. In his trial affidavit, he states as follows:

I had a 2 person crew on site for two days and a 4-6 person crew on site for 4 days. A better part of 2 days was downtime because my crew was on site waiting for instructions from Valerie's engineer.

For estimating purposes, I calculate journeyman framer's cost (to the client) at \$75/hour and I value the work performed by my crews and myself at the Property at between \$14,000 to \$16,000.

[94] Like Mr. Piperni's evidence, Mr. Konjuhi's self-evaluation of the framing work performed is an unqualified opinion. He was not qualified as an expert in framing or framing estimation at trial. No cogent evidence was tendered on Mr. Konjuhi's experience as a framer, the source of the rate used is not identified, and the calculation is unclear. During his cross-examination, Mr. Konjuhi confirmed that he maintains timesheets with dates and hours worked for his framers, including start and stop times, as well as the rates paid to them. He also confirmed that he would have used timesheets on this job, but that they were not retained, although would have been available at least in 2020. However, he gave no evidence on the rates discussed with Mr. Piperni for this specific job. I find no basis to accept Mr. Konjuhi's estimation.

[95] Neither of the estimates put forward by Mr. Piperni and Mr. Konjuhi have a sufficient evidentiary basis to accept, so I cannot give them much weight. However, there is no doubt that framing work was completed and that there was a value associated with that framing. Ms. Connelly asserts it was deficient and required remedial work. In my view, it would be unfair to deny Village any amount for the completed framing, albeit that Village has tendered no convincing evidence on its value.

[96] Where quantification of damages is difficult, a trial judge is obliged "to do his or her best" to assess damages on available evidence: *TMS Lighting Ltd. v. KJS Transport Inc.*, 2014 ONCA 1 at para. 61. There is limited evidence on the scope of completed framing, but I am satisfied that, based on the available evidence from Mr. Piperni, Mr. Konjuhi, and Mr. Lai on the framing work completed, the value of completed work is reasonably \$5,000. I find accordingly.

e. Accounting of payments

[97] As already noted, Village concedes that a total of \$138,091.20 was paid by Ms. Connelly during the project. That amount exceeds the \$136,000 that Ms. Connelly's affidavit states was paid, so I need not address Ms. Connelly's evidence on payments.

[98] The total amount received from Ms. Connelly during the project exceeds Village's project management fee entitlement as I have found it, including the additional management fee for the "delivered extras". Village was also paying trades and material suppliers who were working on

the job on Ms. Connelly's behalf, with only some exceptions. It follows that, to prove entitlement to any judgment, Village must demonstrate that it is entitled to payment or reimbursement in an amount greater than the amount already paid by Ms. Connelly. Put another way, allocation and use of the payments must be addressed for Village to prove any entitlement to further payment.

[99] Ms. Connelly submits that Village has failed to substantiate and properly account for the \$138,091.20 in payments. I agree.

[100] Village relies on calculations in its amended Scott Schedule, which is expressly referenced and relied on by Michael Piperni in his first trial affidavit. That Scott Schedule sets out a total value of work of \$184,681.20, divided into two sections covering work completed under the original scope of work (including the earned portion of the project management fee) and the "delivered extras". For the original scope of work, the amounts are based on asserted final budget amounts, with the value of work calculated based on a percent that Village asserts was completed. The "delivered extras" are noted to have been fully completed, using the aggregate \$55,000 figure that Michael Piperni says was confirmed to Ms. Connelly via text, with an additional line item of \$4,000 in extras.

[101] Village has tendered limited evidence on specific work performed and amounts actually paid to trade and suppliers in support of its position on the value of work set out in the amended Scott Schedule. Village relies on Michael Piperni's evidence to make out its claim. However, his evidence was not helpful in quantifying the value of services and materials supplied to the project.

[102] Mr. Piperni's first affidavit discusses a total of \$42,010.61 in payments being made as follows:

- (a) cash payments totalling \$20,000 made to Tony Braga (denied by Mr. Braga during his cross-examination), which Mr. Piperni says were paid from \$10,000 received from Ms. Connelly and a further \$10,000 borrowed from Mr. Piperni's father;
- (b) \$6,516.99 paid to Big Ben's Junk Removal, supported by an account summary and invoices indicating the expense was for disposal bins, but no payment confirmation;
- (c) \$4,860.12 paid to Simplii Environmental Corp., also said to be regarding bins, which is supported only by an email from a representative of the company confirming the amount, but which says only that it "included the garbage as well as the dirt bins" without any specific details about the services or materials provided by that trade/supplier or the amount paid, and unsupported by any payment confirmation;
- (d) \$6,000 paid to Driton Konjuhi, said to have been paid from Mr. Piperni's personal funds, although uncorroborated by any evidence of payment;
- (e) \$2,000 paid to Antoni Palazzo for disconnection of electrical, an amount based on Mr. Piperni's recollection and seemingly paid from his personal bank account, although uncorroborated by any evidence of payment;

- (f) \$1,300 paid to Adrian Plesca for disconnection of plumbing, an amount based on Mr. Piperni's recollection and seemingly paid from his personal bank account, although uncorroborated by any evidence of payment;
- (g) \$825 paid to Marvin Rivet for disconnection of HVAC, an amount based on Mr. Piperni's recollection and seemingly paid from his personal bank account, although uncorroborated by any evidence of payment; and
- (h) \$508.50 paid to Kalos Engineering for a shoring review, supported by an invoice, but with no proof of payment and no evidence on why the shoring review was required.

[103] The problem with these figures is that they do not match Village's amended Scott Schedule calculations for the value of work performed. For example, Mr. Piperni's evidence is that a total of \$11,380.11 was paid "regarding bins", yet the total claimed value of work completed for "bin rentals, dumping fees, and site cleanup through project" is only \$10,000. Mr. Piperni's evidence also indicates payments of \$4,125 for disconnection services, but that is a line item for \$3,764.01 in the Scott Schedule. These kind of accounting discrepancies were not addressed by Village at trial.

[104] Village also relies on summary spreadsheet appended to Mr. Piperni's first trial affidavit (as well as to Ms. Connelly's affidavit), which I have already discussed above. It was sent to Ms. Connelly by Village's office manager, Bernie Pulst, on June 17, 2020. Mr. Piperni describes this summary as "the first and only" summary exchanged with Ms. Connelly regarding payments that he was able to find. He asserts that he and Ms. Connelly agreed to the payment allocation set out in the spreadsheet summary, but provides no particulars about how or when that agreement was reached. He says only that it was "either verbally or through text messages".

[105] The summary spreadsheet outlines \$80,417.19 in work completed, with total payments of \$80,608.55 (*i.e.*, a slight overpayment by Ms. Connelly). It does not track the preliminary budget in the contract, but does allocate payments to the same categories from the budget as follows:

- (a) \$32,467.19 to "Demo & Excavation" (exceeding the \$17,699 amount in the preliminary budget);
- (b) \$11,300.00 to "1st month management";
- (c) \$15,000.00 to "Foundation & footings" (exceeding the \$8,850 amount in the preliminary budget);
- (d) \$12,500.00 to "Underpinning" with a note about paying Tony Braga (not included in the preliminary budget);
- (e) \$8,500.00 to "Concrete & Drains" (below the \$8,850 amount in the preliminary budget);
- (f) \$300.00 for "Barry's drawings" noted to be an "Owner's request" (not included in the preliminary budget); and

- (g) \$350.00 for “Cleanup” with a note that it related to prep for framing (below the \$4,425 in the preliminary budget).

[106] The extent of overlap, if any, between the above amounts in the spreadsheet summary and the specific payment figures outlined in Mr. Piperni’s affidavit was not addressed at trial. At least the amount paid to Tony Braga would seem to be an overlapping figure.

[107] Although, as noted, Mr. Piperni took the position that the payment allocations in the summary spreadsheet were agreed by Ms. Connelly, no such agreement was demonstrated through evidence at trial.

[108] In her trial affidavit, Ms. Connelly did not specifically dispute Mr. Piperni’s assertion that she had agreed to the payment allocation. Rather, she only acknowledges receiving the email and spreadsheet summary. However, Ms. Connelly did respond to the email two days later stating, in part, “I need to go through this more thoroughly”. There is no written agreement to the amounts or allocations in evidence.

[109] The amounts incurred and payment allocations made by Village were also not conceded by Ms. Connelly during her cross-examination. For example, Ms. Connelly pointed out in cross-examination that the amount for demolition and excavation had doubled from the preliminary budget. Her affidavit includes an email where she specifically challenged the amount. Mr. Piperni agreed to discount \$1,000 from the amount and a further \$3,000 from the job, but Ms. Connelly still requested supporting documentation. In response to that request, all that appears to have been provided was a separate spreadsheet breaking down \$20,425 in labour costs by worker name and \$12,042.19 in material costs (including \$1,000 for “Beer, McDonalds, & food”, which was part of the discount). Although Ms. Connelly acknowledged that she had paid the amounts for demolition and excavation, Ms. Connelly did not concede that she agreed with them or that Village did not need to account for them.

[110] Village also argues that, if not agreeing to it, Ms. Connelly did not challenge the interim accounting spreadsheet and thereby effectively acquiesced to it. I disagree. The contemporaneous emails from Ms. Connelly support that she was unhappy with the costs, particularly for demolition and excavation, and wanted to see backup. She specifically requested receipts and invoices, stating, “I paid cash and I want verification for where my cash has been spent. I didn’t add or change anything in regards to the scope of the work.” Although that request preceded receiving the spreadsheet, there are ongoing requests for backup documentation for Village’s expenses in the record before me. I find that Ms. Connelly, although continuing to pay Village, did not accept its accounting or unilateral allocation of payments.

[111] Despite bearing the evidentiary onus of proving the work performed, Village has tendered no meaningful evidence to substantiate the numbers in its amended Scott Schedule. Notably, it includes several items that went beyond the 10-30% contingency in the parties’ contract. Apart from framing, which has already been discussed, there are four categories that exceed the amounts in the preliminary budget by more than 30% and one new category not included in the budget, as follows:

- (a) Demolition and excavation: \$32,467.19 (83.44% over preliminary budget)

- (b) Foundation and footing: \$15,000 (69.49% over preliminary budget)
- (c) Site safety: \$8,000 (301.32% over preliminary budget)
- (d) Cleaning: \$20,000 (451.98% over preliminary budget)
- (e) Disconnection of services: \$3,764.01 (not in preliminary budget)

[112] Michael Piperni's testimony during cross-examination was that he was to have discussed amounts exceeding 30% with Ms. Connelly. There is no evidence before me that the above overages were discussed with Ms. Connelly or agreed. In the case of demolition and excavation, the record supports that Village had already incurred those costs *before* discussing them with Ms. Connelly. However, having agreed to a contractual term that the budget would not exceed 10-30% and Mr. Piperni having conceded in cross-examination that he was to discuss overages above 30% with Ms. Connelly, Village could not, without prior approval, proceed with any work exceeding 10-30% of the budget amount.

[113] None of the foregoing deals with the paucity of evidence tendered on the work performed for the "delivered extras". On the one hand, Mr. Piperni's affidavit discusses his \$55,000 estimate for that work, which is the aggregate figure carried in the amended Scott Schedule before \$4,000 in unidentified extras. On the other hand, Mr. Piperni's unequivocal testimony in his first trial affidavit is as follows (emphasis added):

Valerie was unable to provide [her lawyer] with fixed prices and a definite scope of work because: she and I did not fix a price for any of the Categories set out in the preliminary budget attached to the Contract, save and except the management fee; **we did not negotiate any fixed price for any extras; and we did not set any definite scope of work for any of the Categories. I specifically told Valerie I would not fix prices for any of the Categories,** other than the management fee.

[114] Absent agreeing on any fixed price or definite scope of work for the "delivered extras", which I have found was not the case, it was incumbent on Village, as construction manager, to tender evidence on the work performed, the amounts incurred or billed for that work, and the amounts paid that support the alleged value of work performed for the "delivered extras" of \$59,000, including extras. Village did not do so for the \$15,000 claimed as completed for demolishing the balance of the house and performing excavation at the front, the \$25,000 claimed as completed for foundation and footing work for the front addition, or the \$15,000 claimed as completed for the front walkout. Based on the evidence before me, they were simply billed as a fixed price contract change despite Mr. Piperni's testimony that there were no fixed prices.

[115] Mr. Piperni does provide some evidence the \$4,000 line item for "extras", which are said to have been \$3,000 for "adjustment for clean-up" and \$1,000 "towards bins". Those amounts were confirmed in a text message exchange with Ms. Connelly and she confirmed partial payment. However, whether those amounts were actually incurred was not addressed at trial. Moreover, Ms. Connelly's text response falls short of being a sufficiently clear acceptance, approval, or acquiescence for those amounts to be charged and payable without support.

[116] During cross-examination, when challenged on the lack of substantiating documents for the work performed, Mr. Piperni conceded that Village had no supporting documents to substantiate the project costs besides its own summary. In response to a question that Mr. Piperni “to this day” did not know what was paid for the work, he responded only that he would have to go through Village’s file and that he knew the job cost close to \$200,000 for the work performed. However, nothing in his evidence supports those statements.

[117] Village’s position at trial is that it was a construction manager and did not agree to any fixed price, yet has also taken the position that it need not justify the amounts claimed to have been spent because Ms. Connelly agreed to or acquiesced in those amounts, despite ongoing requests for backup. In my view, absent an express agreement to the contrary, a construction manager who is operating without a guaranteed maximum price must account for the work performed and paid by an owner. To hold otherwise would be contrary to commercial business sense and established principles of good faith in contract dealings.

[118] Village criticizes Ms. Connelly’s lack of evidence on payment regarding the amounts she claims by way of set-off and counterclaim, yet Village has equally failed to meaningfully substantiate the claimed work performed under its management or to properly account for the amounts paid by Ms. Connelly.

[119] No clear and sufficiently detailed accounting has been put forward by Village to substantiate the amounts set out in its amended Scott Schedule for the value of completed work. I have spent considerable time trying to trace through Village’s evidence on actual project costs, but there are simply too many gaps, inconsistencies, and discrepancies. I am unable to find that the reasonable value of work completed under Village’s management, including the accrued management fees as I have found them, exceeds the significant amounts paid by Ms. Connelly, let alone to the extent of \$48,990.

[120] The alternative to an accounting for the work performed would be for Village to prove the value of services and materials in *quantum meruit*. An assessment of “value” for the purpose of a *quantum meruit* claim does not turn on what the work actually cost, but rather what the work would have cost to the party that benefitted from the supply under a competitively bid contract: *Goulimis Construction Ltd. v. Smith*, 2014 ONSC 1239 at para. 44; *Bruce Baird Construction Ltd. v. Guigues*, 1988 CarswellOnt 778, [1988] OJ No 2848 (Dist Ct), at para. 53. Village tendered no expert evidence on the value of work performed. The affidavits and testimony of Mr. Piperni and Driton Konjuhi fall well short of supporting a viable *quantum meruit* assessment of the value of work.

[121] I have found that Village earned \$30,000 of the contractual management fee and is entitled to an additional \$10,000 for managing the delivered extras, for a total of \$45,200, including HST. I accept that at least \$12,500 was paid to Tony Braga (the figure set out in the June 2020 . I have found the value of framing to be \$5,000. Significant demolition and foundation and footings work took place, with ongoing cleanup work. Although I am unable to find a value for that work on the evidence before me, I cannot say that it had no value. More importantly, though, I am unable to find that the value of that work exceeds the difference of approx. \$75,000 between what I have accepted as established on the evidence and what Ms. Connelly paid.

[122] For these reasons, I find that Village has failed to prove, on a balance of probabilities, that it is owed any further money. Having failed to prove any amounts owing in contract or in *quantum meruit*, it follows that Village does not have a valid lien and it must be discharged.

Issue 6: Has Ms. Connelly proven her set-off claim and counterclaim?

[123] Ms. Connelly submits that the starting point for any discussion of damages for breach of contract is that a successful litigant is entitled to recover the full value of the loss, in order to place the injured party, so far as reasonably possible, in the monetary position he or she would have been in, if the contract had been fulfilled: *Safe Step Building Treatments Inc. v. 1382680 Ontario Inc.*, 2004 CanLII 35054 (ON SC), at para. 58. I do not disagree, but before there is any discussion of damages there must first be a finding of liability for causing or contributing to the loss or damage that is the subject matter of a damages claim.

[124] Ms. Connelly relies on her Scott Schedule for her damages claim. It outlines damages for the following items:

- (a) improper construction of the north concrete block foundation wall, namely significant cracking and failure to install full-length rebar and fill hollow concrete block cores with concrete;
- (b) non-compliance with the *Building Code* in construction of the foundation walls;
- (c) improper construction of the landing and steps for the new front walkout structure, which did not comply with the *Building Code*;
- (d) improper framing, namely failing to install required joists, improper supports for joists, and failing to complete the framing;
- (e) incomplete roofing, siding, HVAC, drywall, insulation, painting, window and door installation, stairs and railing installation, caulking, electrical work, plumbing work, flooring, and other miscellaneous completion work;
- (f) failing to clean the site and remove garbage and debris; and
- (g) delay-related expenses.

[125] I need not go through each of them in any detail. Ms. Connelly has the evidentiary onus of proving the alleged deficiencies, completion costs, and delay-related expenses. She has not met that onus.

[126] At trial, Ms. Connelly tendered very limited evidence in chief on her claims. Only five witnesses were called: Ms. Connelly herself, Giuseppe Forte (the City's inspector), Tony Braga (as already noted, a contractor involved in the project who performed much of the remedial work claimed), Rui Simoes (a remedial plumber subcontractor), and Yu Ching Lai (Ms. Connelly's structural engineer). The evidence tendered by these witnesses was insufficiently organized and explained to meet Ms. Connelly's onus. Broadly speaking, their evidence discusses the alleged deficiencies and costs incurred, but does not explain why work was deficient or viewed as

incomplete with reference to the plans and drawings available to Village, specific relevant governing legislation, or otherwise.

[127] With respect to Ms. Connelly's own evidence, her trial affidavit relies on reports and invoices for work performed to support the existence of alleged deficiencies. The affidavit then goes on to discuss the cost of remedial and completion work. It does not, however, specifically correlate much of that remedial and completion work to Village's required scope of work or the drawings.

[128] For example, an invoice and quotation from Fairview Homes Inc. are appended as part of the cost to rectify allegedly defective framing and to complete outstanding framing work. The line items in the invoice and quotation are general and do not refer to any drawings that would permit me to find that it is in respect of the same work that Village was responsible for managing. Similarly, roofing and siding costs are provided without any indication about the specific scope of work performed, materials used, or drawings, specifications, or instructions provided to those trades. Ms. Connelly would have me infer that all remedial and completion work performed was precisely the same scope of work that Village was to have managed, even though many items of work were not part of the contractual budget, which was prepared contemplating only the rear addition.

[129] Objective evidence of alleged deficiencies is required at trial, commonly involving evidence such as photographs of the deficiencies and the trades who completed rectification work being called as witnesses: *Wo-Built Inc. v. Sangster*, 2011 ONSC 3121 at para. 81. Ms. Connelly herself tendered a series of photographs as "miscellaneous photos and videos of the defective and deficient Work performed by Village Homes". However, she provided no information on when and by whom the photographs and videos were taken, what deficiencies they allegedly depict, and how she knows the work depicted was managed by Village.

[130] During cross-examination, Ms. Connelly acknowledged finding technical matters "complicated" and not understanding them. Effective cross-examination demonstrated that she lacked sufficient technical knowledge to give meaningful specific evidence on deficiencies, which undermined the confidence in her affidavit when describing "deficiencies" and issues with the work. She also specifically conceded that those statements made in her affidavit were based on what others told her, including Yu Ching Lai, Giuseppe Forte, and Tony Braga.

[131] Given her own cross-examination testimony, I find that Ms. Connelly's evidence on "deficient" or non-compliant work is not based on any personal knowledge, but rather is based entirely on information and belief drawn from other sources. I have accordingly given her evidence on technical or construction matters little weight, including her views that the photographs and videos referenced in her affidavit do, in fact, depict deficiencies.

[132] Given my finding above that Ms. Connelly's evidence on what work was deficient should be given little weight, Ms. Connelly must establish the existence of deficiencies through her other witnesses. As discussed below, though, the evidence and testimony from those witnesses falls short of establishing the existence of deficient or non-compliant work on a balance of probabilities.

[133] During his testimony, Michael Piperni was not asked to confirm and did not concede that work outlined in the various trade invoices and quotations appended to Ms. Connelly's affidavit and Tony Braga's affidavit were within Village's scope. Other than Tony Braga and Rui Simoes, representatives from the trades who performed the work were not called at trial.

[134] Testimony from Giuseppe Forte, the City's inspector, does not assist Ms. Connelly in meeting her onus. Mr. Forte was honest and forthright in his testimony. However, his examination in chief was fairly general and did not explore in any detail the construction issues he identified during his site visits beyond confirming that he had noted them in an email sent to Ms. Connelly after Village had ceased work. He testified quite candidly that he had discussed the construction issues with Michael Piperni, but Mr. Forte also confirmed that he only did preliminary visual reviews of the site and did not go in depth in checking all details because there was no building permit at the time. He testified that, technically, he was not supposed to be doing any inspections until after the building permit was issued and that some work could not be inspected because the work was already completed. Mr. Forte testified that, for that reason, he had instructed Mr. Piperni to get a structural engineer to review the work and provide a report. He also confirmed that his attendances on site were brief (much less than an hour).

[135] Although Ms. Connelly relies heavily on Mr. Forte's testimony in proving the alleged deficiencies and non-compliance with the *Building Code*, I find that his testimony has limited evidentiary value. Mr. Forte's site visits were admittedly short and high level. There is no evidence supporting that he had or reviewed the drawings available to Village when attending the site. During his testimony, he identified numerous limitations in his own site observations. He also repeatedly stated that, because he was unable to do formal inspections without a permit being issued, he had told both Michael Piperni and Valerie Connelly to have a structural engineer review the work.

[136] Tony Braga's evidence also does not assist Ms. Connelly in meeting her evidentiary onus. Mr. Braga was directly involved in underpinning work on the project while Village was on site and with investigating Village's work after it had left (notably demolition of the disputed north concrete block foundation wall). However, despite that direct knowledge and involvement, Mr. Braga gave no direct evidence on his personal observations. Instead, his trial affidavit focuses entirely on remedial work performed without discussing how or why the work was necessary. He states only that Ms. Connelly "informed me that there were extensive deficiencies and numerous violations of the *Ontario Building Code* arising out of the work performed by Village Homes at the Project." Despite that evidence, though, during cross-examination, Mr. Braga dodged questions on whether Ms. Connelly had directed that the remedial work be done, although did concede that she asked him to quote rebuilding the front walkout and further directed other waterproofing work.

[137] I am satisfied from the evidence and find that, based on his trial affidavit and cross-examination testimony, Ms. Connelly directed Mr. Braga on most of the work said to be deficient and incomplete. I have given his cross-examination evidence on deficiencies reduced weight given my findings on Ms. Connelly's lack of personal knowledge.

[138] Rui Simoes' evidence was narrow. Mr. Simoes testified on deficient drain work, which he felt was done incorrectly. Mr. Simoes provided oral testimony on the deficiencies he observed. However, he was not qualified as an expert, was not directed to any drawings that would have been available to Village, and neither he nor any other witness gave testimony on how or why the plumbing work did not comply with the drawings or relevant law. He also confirmed during cross-examination that none of the work he performed was directed by any building inspector or engineer, but could not recall if he was called in to do it by Mr. Braga or Ms. Connelly. Based on his testimony, I have also given Mr. Simoes' evidence limited weight in proving the deficiencies.

[139] Yu Ching Lai is the primary source of Ms. Connelly's evidence on deficiencies. Although Mr. Lau was qualified as a participant expert at trial, Ms. Connelly elected not to tender any other independent expert evidence in support of her set-off defences and counterclaim. I have determined that Mr. Lai's evidence on deficiencies is unreliable.

[140] Mr. Lai's trial affidavit is short. It essentially adopts his two reports from September and October 2020. Those reports contain no drawings, specifications, or even pictures of the alleged problems, except for one photograph in the October report. That photograph is supposed to depict that the foundation walls did not meet a 150 mm required threshold, but there is no visible measurement in the photograph. The foundation for Mr. Lai's "observations" and opinions as set out in his two reports are not set out in his trial affidavit or in either of the two reports.

[141] Both Mr. Lai's affidavit and his reports seems to rely on the permit drawings for the project. They are the only drawings appended to his affidavit. The same drawings are also tendered by Ms. Connelly in her own trial affidavit. However, as noted earlier in these reasons, those City-stamped drawings were not approved until after Village left the site.

[142] I agree with Village that the City-approved drawings have no bearing on assessing the work performed while Village was on site. The permit drawings contain significant changes from the drawings that Michael Piperni says were similar to those provided to him (albeit that Village admits to having managed certain additional work that is reflected in the permit drawings, such as the front addition renovations). The approval of the permit drawings post-dates Village's involvement and there is no cogent evidence before me that those drawings were provided to Village or that Village was instructed to follow and rely on them pending City approval. Ms. Connelly did express her belief in cross-examination that they were given to Village. However, that belief was not expressed in her evidence in chief and is not corroborated by any other evidence at trial. Notably, neither Mr. Piperni nor Mr. Lai were asked to confirm if and when the drawings submitted to the City, and ultimately approved, were provided to Village.

[143] The weight of Mr. Lai's evidence and opinions on deficiencies is reduced by his reliance on drawings that have not been proven, on a balance of probabilities, to have been available and relied upon by Village.

[144] Both Mr. Lai's affidavit and his reports are also quite general. They do not identify how or why the allegedly deficient work did not comply with the drawings or which specific provisions of the *Building Code* were not met. The provisions of the *Building Code* on which Ms. Connelly relied at trial were not discussed by Mr. Lai in either his report or in his trial evidence. Mr. Lai

did not address which provisions of the *Building Code* applied and how they were not complied with. There is only one *Building Code* reference in Mr. Lai's second report, but it is only noted in response to Village raising it and it was not cited in closing submissions.

[145] Village does not dispute that it was required to comply with the *Building Code*, albeit subject to an express instructions by either Ms. Connelly or Mr. Lai to the contrary. Mr. Piperni's reply affidavit outlines that Mr. Lai and his colleague "Shady" reviewed each of the foundations and footings, concrete and drains, and exterior damp proofing and waterproofing prior to the next phase of construction being undertaken.

[146] Mr. Lai further confirmed that he drafted "comfort letters" to the City confirming general conformity with the *Building Code* for the excavation and poured concrete footings for the rear addition and construction of the foundation walls. Per the letters, they were based on site visits occurring in May and July 2020, before Village left the site. Mr. Lai could not confirm if the letters were sent to the City or whether they were only drafted in anticipation of work being completed to make it compliant. The fact that they exist in Mr. Lai's file, were not produced until the eve of trial, and support general conformity with the *Building Code* are problematic both for Mr. Lai's evidence and Ms. Connelly meeting her evidentiary onus. Mr. Forte could not recall whether he had received them, but acknowledged that he would rely on such comfort letters.

[147] Mr. Lai's cross-examination testimony further supports that his trial evidence was influenced by Ms. Connelly. In my view, by allowing his testimony to be influenced, Mr. Lai has demonstrated a degree of bias that I cannot ignore. There are several examples, but two serve to make the point.

[148] The first example deals with cracking in the north concrete block foundation wall. There is no dispute that Village managed construction of the north side concrete block foundation wall and that it ultimately suffered visible cracking. There is witness testimony, photographs, and videos confirming a continuous crack throughout the wall. However, the cause of the cracking is disputed.

[149] The only witness who provided direct testimony on the cracking was Mr. Lai. Neither Ms. Connelly nor Mr. Braga gave any evidence in chief on the cracking, despite both evidently having seen it based on other evidence at trial. During cross-examination, Ms. Connelly testified that she and Mr. Lai looked at the cracking on August 14, 2020, but explained that no photographs were taken because Mr. Lai felt it was not safe to stand in front of the wall and they immediately left because of the risk.

[150] Ms. Connelly's testimony is consistent with Mr. Lai's affidavit evidence. In his trial affidavit, Mr. Lai states that he saw the cracks "on or about August 14, 2020". On cross-examination, though, Ms. Connelly's evidence was put to Mr. Lai and he was asked about the attendance on that date. Mr. Lai denied expressing fears about collapse. He also admitted that the date he saw the cracking was proposed by Ms. Connelly. He testified that he could not confirm that it was on August 14, 2020. He testified to having argued with Ms. Connelly since he could not say that specific date in his affidavit, but was agreeable to saying, "on or about August 14, 2020". He ultimately testified that it would be more accurate to say that he did not notice the

cracking until his attendance on site on September 1, 2020. However, that was after the subfloor had already been removed, which was sometime after August 21, 2020.

[151] The second example deals with Mr. Lai's evidence on the north concrete block foundation wall lacking proper rebar and concrete. Mr. Lai's trial affidavit states that he "personally witnessed" the deficiencies during site visits. However, that was proven to be inaccurate.

[152] During a mid-trial motion to strike portions of Mr. Lai's evidence, his cross-examination testimony confirmed that, despite what his affidavit said, he was not present during demolition of the foundation wall, had no firsthand knowledge or observations of the alleged lacking rebar and concrete, and based his observations entirely on hearsay from the video and information provided to him by Ms. Connelly. As a result, I found that Mr. Lai was not a competent witness to comment on the presence or absence of proper rebar and concrete in the north foundation wall: *Village Homes Inc. v. Connelly*, 2025 ONSC 1946. Mr. Lai was not able to confirm the presence or lack of rebar and concrete in the wall and, accordingly, whether the means and methods used to build the wall did or did not comply with the *Building Code* and good construction practice.

[153] In my view, clear expert evidence was required to support Ms. Connelly's set-off defences and counterclaim. Technical challenges have been advanced to the work performed under Village's supervision based primarily on alleged breaches of the *Building Code* and poor construction practices. Her allegations are not matters on which an ordinary person could likely form a correct judgment without the assistance of a person with special knowledge.

[154] I acknowledge that I am not an "ordinary person" in context of this trial. Unlike many judges and associate judges, I have a construction law background and my position is primarily focussed on construction cases. Despite that specialty, I lack sufficient knowledge of what constitutes good residential construction practices and the highly technical *Building Code* to understand, without assistance, how and why alleged construction means and methods used on Ms. Connelly's project were non-compliant with the *Building Code* and, further, not an acceptable alternative to what is specifically prescribed in it.

[155] Ms. Connelly alleges that work was performed negligently, but has tendered no cogent evidence to establish the standard for either a reasonable residential contractor or construction manager and how Village breached that standard. Village's impugned conduct during construction is not clearly so egregious that it obviously fell below the standard of care, whatever it may be. To find liability, I need to make a finding on what the standard ought to be, but lack any cogent basis on which to do so.

[156] There being no other witnesses with cogent or reliable evidence on the alleged deficiencies, I am unable to find, on a balance of probabilities, that any of the problems alleged by Ms. Connelly are deficiencies.

[157] With respect to completion costs, there is no dispute that construction of the home was incomplete when Village left the site. Photographs of the state of the house make that quite clear. There was, essentially, two walls with no roof when Village left. However, I have found that Village was a construction manager with no fixed contract price agreed for the work to be

performed. There was a preliminary budget, but no agreement on a binding budget for completing the project when the scope increased. Absent a binding guaranteed maximum price for the work, I find no basis to hold Village liable for any costs of completing the expanded project.

[158] In any event, the claimed completion costs suffer from the same evidentiary deficiencies as the evidence on remedial work. Other than Tony Braga, none of the trades performing the completion work were called to testify at trial and there is no cogent evidence correlating the completion work performed to the work that Village was required to manage when it ceased work. Ms. Connelly is not entitled to any betterment.

[159] With respect to delay-related losses, Ms. Connelly claims for rental accommodation and storage fees from August to December 2020 and increased insurance costs. However, I am unable to find on the evidence before me that, on a balance of probabilities, the parties agreed to have the expanded scope of construction completed by August 2020, or that it was reasonable for Ms. Connelly to believe that it would have been completed by then. The only clearly agreed schedule was the timeline in the parties' contract, which addressed only the timing to complete the rear addition work. That timeline was rendered moot when the scope of managed work increased. In my view, there is an insufficient evidentiary foundation to find that there was compensable project delay by reason of Village's work or ultimate abandonment.

[108] The above-discussed gaps in Ms. Connelly's evidence are fatal. Ms. Connelly has failed to meet her evidentiary onus of proving causation and Village's liability for her alleged damages. I accordingly dismiss her set-off claim and counterclaim on that basis. I accordingly need not consider if damages have been made out or whether Ms. Connelly has properly mitigated those damages.

IV. CONCLUSION

[160] For the foregoing reasons, I dismiss both this action and the counterclaim. Village's lien is hereby discharged and the registrations of its claim for lien and certificate of action are hereby vacated.

V. COSTS & REPORT

[161] This is an unusual case in which both parties have failed to make out their claims. Given the result, I am inclined to award no costs to either party. However, I am prepared to entertain costs submissions from the parties since I do not know what offers to settle have been exchanged and there may be good reasons to award costs to one or the other of them.

[162] The parties should make earnest efforts to resolve costs of the action themselves. If they cannot, then written submissions shall be exchanged and filed. Submissions shall not exceed five pages, excluding any attachments such as offers to settle, case law, and any documents required to support each party's cost claims/positions.

[163] Subject to my approval of a varied timetable, Village shall serve its costs submissions by November 7, 2025. Ms. Connelly shall serve her responding submissions, including their own

claim for costs (if any), by November 21, 2025. Village shall be entitled to brief reply, if any, not exceeding two pages to be served by December 3, 2025. All written submissions shall be submitted by email to my Assistant Trial Coordinator (ATC), Christine Meditskos, with proof of service.

[164] Both the *Construction Act* and the *Rules of Civil Procedure*, RRO 1990, Reg 194 require that the results of this trial be embodied in a report. I encourage the parties to discuss an appropriate form of draft report, using language from the prescribed form, which shall be filed with my ATC, in Word format, by the deadline for reply costs submissions. If the parties cannot agree on a form of report, then my ATC should be so advised, and each side shall submit the version of the report that they propose. I will then settle the form of report following my decision on costs or convene a hearing for submissions on settling the report.

ASSOCIATE JUSTICE TODD ROBINSON

Released: October 15, 2025

CITATION: Village Homes Inc. v. Connelly, 2025 ONSC 5846
COURT FILE NO.: CV-20-652315
DATE: 2025 10 15

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, RSO 1990,
c. C.30, as amended

B E T W E E N :

VILLAGE HOMES INC.

Plaintiff /
Defendant by counterclaim

- and -

VALERIE CONNELLY

Defendant /
Plaintiff by counterclaim

REASONS FOR JUDGMENT

Associate Justice Todd Robinson

Released: October 15, 2025