



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Clarke v. Regal Realty Limited*, 2026 NLSC 73

Date: June 1, 2026

Docket: 201701G8473

BETWEEN: **WILLIAM CLARKE** **PLAINTIFF**

AND: **REGAL REALTY LIMITED** **DEFENDANT**

Before: Justice Alexander MacDonald

Place of Hearing: St. John's, Newfoundland and Labrador

Dates of Hearing: April 6-14, 2026

Summary:

William Clarke helped Regal Realty Limited obtain rezoning approval. He assembled a professional design team for a redevelopment project in St. John's, believing he would become a 50% revenue partner. Regal and Clarke did not agree on partnership or revenue-sharing. Regal eventually excluded Clarke and paid him nothing. The parties agreed Regal was unjustly enriched, limiting Clarke's claim to reasonable compensation on a *quantum meruit* basis.

The Court rejected Clarke's claim for profits and his asserted 2,100 hours of work. The Court applied unjust-enrichment principles and market evidence. It found Clarke's services were a mix of project management and facilitation. It awarded him \$37,500 (plus HST), prejudgment interest, and costs.

Appearances:

Geoffrey E. Budden, KC and Appearing on behalf of the Plaintiff
Scott Lynch

Sheri H. Wicks, Appearing on behalf of the Defendant
Morgan E. Chafe and
Hannah Loder

Authorities Cited:

CASES CONSIDERED: *Moore v. Sweet*, 2018 SCC 52; *Kerr v. Baranow*, 2011 SCC 10; *Malik Estate v. State Petroleum Corporation*, 2009 BCCA 505; *Craigdarlock Holdings Ltd. v. Syscon Justice Systems Canada Ltd.*, 2010 BCSC 1186; *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23; *Henley v. Henley*, 2021 NLCA 46; *Shute v. Paradise (Town)*, 2024 NLCA 19

RULES CONSIDERED: *Rules of the Supreme Court*, 1986, S.N.L. 1986, c. 42, Sch. D

TEXTS CONSIDERED: Mitchell McInnes, *Canadian Law of Unjust Enrichment and Restitution*, 2nd ed. (Toronto: LexisNexis, 2022)

REASONS FOR JUDGMENT

MACDONALD, J.:

INTRODUCTION

[1] William Clarke helped Regal Realty Limited obtain city approvals to redevelop its two-story apartment building on Newfoundland Drive, in St. John's, Newfoundland and Labrador. He wants Regal to pay him.

[2] Regal's redevelopment was contingent on the City of St. John's rezoning the property to allow the construction of a taller apartment building. Clarke told William Mahoney, Regal's principal, that he had expertise in these areas. Mahoney believed him.

[3] Clarke said he was confident he could shepherd the rezoning through the City without the need for public hearings. Clarke also introduced Regal to a group of design professionals who helped Regal realize the redevelopment.

[4] Clarke helped because he was interested in partnering with Regal on the redevelopment. Although Clarke and Mahoney discussed a partnership, they never agreed on how they would share the risk and benefits of the redevelopment.

[5] In February 2014, the City approved the rezoning. Clarke continued to help Regal until August 2014. Before then, Regal began to freeze Clarke out of the redevelopment. The parties fell out because Regal believed that the rezoning took too long.

[6] Both parties agree that Clarke had little role in the tendering phase of the redevelopment and none in the construction phase. Regal prepared the tender from November 2013 to March 2014, and tenders closed in April 2014. Regal awarded the construction contract at the end of April 2014.

[7] Regal sold the redevelopment in late winter 2026 for about \$36 million.¹

[8] Regal did not pay Clarke anything for his services. Mahoney said that he thought that Clarke provided the services gratuitously to maintain his option to invest in the redevelopment. However, Mahoney later said he would have paid Clarke if he had submitted an invoice for his services.

[9] Clarke said Regal induced him to provide the services by leading him to believe that he would be entitled to 50% of the net revenue from the redevelopment.

[10] Clarke and Regal filed a Consent Order in which they agreed that Clarke was entitled to damages for unjust enrichment. They agreed he would be entitled to fair and reasonable compensation for the services he provided to Regal on a *quantum meruit* basis.

¹ Mahoney's testimony. This was a gross figure and was subject to adjustment.

[11] The Consent Order provide that his damages would not be based on “an entitlement pursuant to the *existence* of a ‘verbal agreement’ or ‘revenue sharing agreement’ (as those terms are used in the Plaintiff Summary Trial Brief ...)” [emphasis added].

[12] In his Trial Brief, Clarke asked that I order Regal to pay him \$1,647,282.61, being 12.5% of his counsel’s estimate of the market value of the redevelopment of \$30 million. His counsel increased the claim in his oral argument to account for the actual sales price of about \$36 million.

ISSUE

[13] I am to decide Clarke’s fair and reasonable compensation for his efforts on a *quantum meruit* basis.

[14] I find that Clarke is entitled to \$37,500 (plus HST) together with pre-judgment interest calculated from April 29, 2014, the date that Regal awarded the construction contract for the redevelopment. I will now tell you why I decided this.

DISCUSSION

Law of Unjust Enrichment

[15] The parties agree that Clarke is entitled to damages for his unjust enrichment claim. The Supreme Court of Canada in *Moore v. Sweet*² reaffirmed the *Kerr v. Baranow*³ test.

[16] Clarke must prove that his loss corresponds to Regal's gain in the sense that there is some causal connection between the two. He must show that his services enriched Regal and impoverished him so that Regal was enriched at Clarke's expense.

[17] The Supreme Court confirmed that “the Canadian conception of a ‘corresponding deprivation’ rightly emphasizes the crucial connection between the defendant’s gain and the plaintiff’s loss.”⁴

² 2018 SCC 52.

³ 2011 SCC 10, at para. 73.

⁴ Mitchell McInnes, *Canadian Law of Unjust Enrichment and Restitution*, 2nd ed. (Toronto: LexisNexis, 2022), at 149.

[18] The Supreme Court in *Kerr* recognized that a remedy for unjust enrichment should mirror the flexibility inherent in the unjust enrichment principle itself to allow me to respond to the substance of the problem. That means that as best I can, I must make my monetary remedy match Regal's unjust enrichment.⁵

Application of Malik Factors

[19] I will consider the factors established by *Malik Estate v. State Petroleum Corporation*,⁶ and described in *Craigdarlock Holdings Ltd. v. Syscon Justice Systems Canada Ltd.*⁷ These are:

- (a) Regal's and Clarke's prior dealings and negotiations as to fees;
- (b) Regal's expectations of Clarke and its perceived value of Clarke's services;⁸
- (c) the nature of the fee Regal and Clarke could have anticipated;
- (d) the value the opportunity realized;
- (e) what effort was required to realize the redevelopment;
- (f) the market value of the services Clarke provided;
- (g) the compensation Clarke's job deserves; and
- (h) applicable customs in the industry.

[20] I must assess this value at the time Clarke provided his services. I must "focus on the value of the service to the benefitting party rather than on the cost to the other party of providing the service. It is the value to the benefitting party at the time the fee is earned that is to be considered; later profits enjoyed or losses experienced are generally of no consequence."⁹

⁵ *Kerr*, at para. 73.

⁶ 2009 BCCA 505.

⁷ 2010 BCSC 1186, at paras. 176-177.

⁸ The Plaintiff wrongly argued that in subparagraph b), the Malik factors referred to Clarke's expectations because Counsel equated Clarke to the "vendor" referred to by the Judge in para. 176 (b) of *Craigdarlock Holding*. The "vendor" in that case was the person who was unjustly enriched, which in this case is Regal.

⁹ *Malik*, at para. 46.

[21] Consideration of the *Malik* factors is not the only approach I can take to assess Clarke's *quantum meruit* claim. I can consider what is appropriate on a case-by-case basis. However, I will consider some of the *Malik* factors to assist me in this decision.

[22] I will now turn to Regal's and Clarke's history with the original building before the redevelopment.

Regal's and Clarke's History With the Original Building

[23] Regal acquired the property in 1994. Beginning early in 2010, Regal started considering redeveloping or selling the property. The existing building was used for both retail space and professional offices. Regal started to phase out existing tenants to facilitate this review.

[24] In the fall of 2011, Clarke offered to buy the property from Regal for \$4.5 million provided Regal would take back a second mortgage. The offer was subject to rezoning and development approvals from the City.

[25] Regal rejected this offer and continued exploring its options. It hired a local consultant to provide information on the demand for apartments in St. John's. It hired a local architect to discuss the possibility of a smaller redevelopment, which would not require Regal rezoning the property.

Mahoney Wanted a Partner

[26] Mahoney wanted to find a partner because he invested much of his available capital to fund his 50% interest in the Holiday Inn Express at the St. John's International Airport.

[27] Mahoney and Regal believed that Clarke had financial partners who might be sources of equity financing. He said that Clarke had expertise in developing condominiums and had existing relationships with design professionals who could assist in the redevelopment.

Clarke Proposes a Condominium

[28] In early spring of 2012, Clarke met with Mahoney and suggested Regal consider redeveloping the property as residential condominiums. The parties

discussed including a commercial enterprise - likely a convenience store - on the first floor. Clarke followed up his interest by email on March 26, 2012.

[29] Clarke told him he had a positive relationship with the City. He was confident that he could manage the rezoning quickly without the need for public hearings.

[30] Clarke also wanted Regal to give him, his wife, and his son an exclusive listing for the sale of condominiums. All were real estate agents. They could earn commission of up to 6% of total condominium sales. As the redevelopment eventually cost around \$26 million,¹⁰ the Clarke family could theoretically earn as much as ~\$1.5 million.¹¹

The Proposed Revenue Sharing Agreement

[31] Regal's and Clarke's discussions on Clarke's role continued through the spring of 2012. Clarke provided Regal with at least two drafts of an RSA or a revenue sharing agreement. The draft RSA said that Regal and Clarke would share the net revenue from the redevelopment 50%-50%. This is the "revenue-sharing agreement" referred to in the Consent Order.

Clarke Expected 50% of Net Revenue Without Making an Equity Investment

[32] Clarke clearly expressed his expectations when he said on April 1, 2012, "Bill I am not involved in a deal where I have less than 50%, and I am prepared to enter into this Project on that basis, I am also prepared to work with you on financing." Importantly, Clarke thought "we can get this financed with little to no money in with building and land as security."

Mahoney Expected Clarke to Take 50% of the Risk

[33] Mahoney testified that he was agreeable to such an arrangement, but only if Clarke shared the risk of the redevelopment. By this he meant sharing both equity contributions and financing risk. He referred to this as a "true partnership."

¹⁰ Mahoney's direct evidence, including apartment-specific extra costs, which means the maximum commission for sale of condominiums is slightly overstated.

¹¹ Agents charge commissions on the sale price, not the cost of the units, so the theoretical maximum total commissions could be higher. Clarke said that a negotiated commission would likely be at the low end of the range or less. The Clarkes would split this fee with any purchaser agent, so the fee would be lower in that scenario.

[34] On April 17, 2012, Mahoney said, “As for the split; I want to be fair and reasonable and if the risk and effort is evenly divided, then 50/50 is fair, but we haven’t talked about the purchase price¹² or carrying charges.”

[35] This email was consistent with Mahoney’s testimony that he was looking for an equity partner. It was inconsistent with Clarke’s contention that Regal would agree to a 50% - 50% split of revenue without Clarke bearing any risk.

Clarke Expected 100% Financing

[36] The genesis of Clarke’s belief that he would get 50% of the profits without investing capital could have been his belief that a lender would finance the redevelopment without any need for equity from anyone (other than the land that Regal, not Clarke, owned).

[37] Not surprisingly, this optimistic belief was wrong. The lending bank eventually required Mahoney to inject shareholder’s equity of about \$9 million into the project. The Bank accepted that the original building and land represented about \$2 million of this equity. Mahoney financed the rest of the equity by mortgaging some of his other real estate.

[38] Mahoney said he always expected that Clarke, either personally or with other investors, would assume 50% of the risk. He said he allowed him to stay involved in the redevelopment to facilitate that possibility. He said he was still looking to pass off some of the risk¹³ to others, and this wish continued even after he completed the redevelopment.

[39] Clarke asked me to believe that Regal would give him 50% of the redevelopment profits even when he did not invest equity. Clarke now seeks 50% of the equity in the redevelopment because Mahoney sold it.¹⁴ This suggests that if Clarke is right, he would have immediately earned 50% of Mahoney’s \$2 million equity¹⁵ in the existing property as soon as Regal approved the redevelopment.

¹² This is a reference to the value of the existing building and land.

¹³ Equity requirements.

¹⁴ See my discussion on the evolution of his damages in paras. [72] to [78].

¹⁵ The Bank thought it was worth \$2 million.

Mahoney's View of the Potential Partnership is Correct

[40] I accept Mahoney's characterization of the terms of Clarke's potential investment. I find Mahoney sought a partnership, one in which Clarke shared both the profits and the financial risks. This is consistent with Mahoney's testimony and the documents filed in this case. Furthermore, this characterization makes financial sense.

[41] I accept Mahoney's evidence when he said words to the effect, I only have one partner who takes 50% of the profits without taking risk and that is Revenue Canada. Clarke was not such a partner. He is not entitled to a share of Mahoney's equity. I now turn to the services Clarke provided Regal.

What Services Did Clarke Provide Regal

[42] Regal retained Clarke's suggested design professionals. Clarke originally hired some of them through one of his companies. The consultants billed Clarke or his company directly. When Mahoney realized this, Regal directly retained them.

[43] Thus, Regal eventually hired:

- (a) RJC Services, the architectural consultants, led by Richard Cook;
- (b) Hubert Alacoque, the electrical and mechanical consultants;
- (c) DBA Consultants, the structural consultants;
- (d) Dynamic Engineering, the civil consultants; and
- (e) environmental and marketing consultants.¹⁶

[44] These design professionals helped (not those in paragraph 42(e)):

- (a) prepare the conceptual plans;
- (b) prepare the necessary documentation the City required to support Regal's rezoning application; and

¹⁶ It appears Clarke did not introduce these consultants to Regal.

- (c) provide detailed design drawings required by the City and required for the tender and construction phase.

[45] Richard Cook, who described himself as the “prime consultant,” seems to have been the primary interface between Clarke, Regal, and the other consultants. His firm was primarily responsible for the architectural work. Clarke told him about his team of consultants who Regal eventually retained.¹⁷

[46] This team brought the redevelopment to City approval. Clarke introduced Regal to them all.¹⁸ Regal eventually hired the late Ian Tulk to lead the tendering of the redevelopment. His role is irrelevant to Clarke’s claim because he concedes he had almost no role in tendering after Regal hired him.

[47] Clarke testified and I agree that the relationship ended when Mahoney returned from vacation in early August 2014. In emails starting on July 7, 2014, and ending on July 22, 2014, it became apparent to both parties that Mahoney no longer was interested in Clarke’s input on the redevelopment.

[48] There were signs of this earlier. Clarke said that Regal started to freeze him out of the project in the last part of 2013. For example:

- (a) On March 21, 2013, in response to the City’s comments on the Land Use Assessment Report, which I will refer to later, Mahoney told Cook that he was going to get more involved in the process. This suggests he was less involved before then;
- (b) The City required public hearings on the rezoning despite the ward counsellor initially believing a hearing might not be necessary;
- (c) In September 2013, Clarke and Mahoney also disagreed about the extent of Regal’s public consultation. Mahoney favoured a more open book approach with the neighbours while Clarke did not;
- (d) In September 2013 Regal rejected Clarke’s recommendation that they continue to include a commercial space on the first floor of the redevelopment; and

¹⁷ Cook testified he knew all these professionals from other projects or by reputation.

¹⁸ Cook worked with some and knew others by reputation.

- (e) On September 17, 2013, Mahoney told Clarke that he should not attend a critical meeting at City Hall.

[49] Mahoney was unhappy with the time it took his team to obtain City approval of the Land Use Assessment Report the City required as part of its approval process. The City rejected the first draft¹⁹ and sent it back with comments. The City accepted the second draft²⁰ some months later.²¹ However, the prime consultant, Richard Cook, said it was not unusual for the City to reject an initial Land Use Assessment Report.

[50] It is not clear why Mahoney thought the delays were Clarke's fault. Mahoney's testimony minimized Clarke's role in the process. This seems inconsistent with his argument that Clarke somehow bore responsibility for the delays.

[51] Mahoney was also unhappy that when Clarke hired the consultants, he did not negotiate "project administration fees." He said this reduced his leverage with the consultants when Regal later hired them.

[52] I now turn to the prior dealings between Regal and Clarke, and negotiations as to fees.

Regal's and Clarke's Prior Dealings - the RSA

[53] Clarke said I should consider the draft RSA because this illustrates Regal's and Clarke's fee discussions. Regal says the Consent Order prohibits Clarke from referring to it.

[54] I find that the Consent Order does not prevent Clarke from raising this argument at trial. The Order said that Clarke's *quantum meruit* compensation would "not be based on the entitlement pursuant to the *existence* of a 'verbal agreement' or 'revenue sharing agreement'" (as those terms are used in the Plaintiff's Summary Trial Brief ...) [emphasis added]

[55] That Trial Brief said that Clarke and Mahoney agreed:

- (a) to a "verbal agreement" to pursue the redevelopment; and

¹⁹ Submitted late 2012 and rejected early 2013.

²⁰ Submitted March 13, 2013.

²¹ July 29, 2013.

- (b) that a corporate vehicle of Clarke’s choice was entitled to “50% of the net profit realized from” the redevelopment.

[56] It said that they agreed to formalize their “verbal agreement” in a “Revenue Sharing Agreement” and “[a]ll iterations of the Revenue Sharing Agreement included the agreed-upon terms of the partnership ... in particular ... set out the equal sharing of revenue.”

[57] However, if the parties wanted to exclude any discussion of the RSA, they could have said Clarke’s compensation would not be “based on *consideration of the terms of any proposed* verbal agreement or revenue sharing agreement”

[58] However, there is a fine line between saying that Clarke can refer to the terms of the RSA for context about how Regal would compensate him and saying that the parties agreed to compensating Clarke using the concepts in the RSA.

[59] I found that there was no such agreement. Thus, I cannot order *quantum meruit* compensation based on any variant of the argument that Regal owes Clarke a percentage of the redevelopment revenue²² because the RSA said so, or Regal and Clarke, verbally or by their conduct, agreed to revenue sharing.

[60] Both arguments suggest that Regal and Clarke agreed to the revenue sharing when they did not. Both propose compensation that the Consent Order does not permit.

[61] Even if that were not so, I find that the RSA does not help me. The parties did not agree to the RSA verbally or in writing nor did they act as if they agreed on revenue sharing. Therefore, I will not calculate Clarke’s compensation based on a split of revenue, nor a split of equity since Regal sold the redevelopment. I will not base Clarke’s compensation on an agreement that the parties never agreed to.

[62] This finding is consistent with the comments of the court of appeal in *Malik*²³ where is said, “Where ... no agreement for a fee for services rendered on request has been made, a fee may nonetheless be payable on a *quantum meruit* basis.”

[63] I now turn to the fee negotiations between Clarke and Mahoney.

²² Or the capital equivalent.

²³ *Malik*, at para. 32.

Regal's and Clarke's Prior Dealings - Negotiations As To Fees

[64] I find that there were no fee negotiations. This is consistent with Mahoney's view that Clarke provided services to Regal anticipating that he might become an equity investor. However, that does not mean that Regal did not expect to pay Clarke if the project failed to proceed. Mahoney admitted he would pay Clarke's fees if Clarke had invoiced Regal.

Regal's Expectations of Clarke and How It Valued His Services

[65] I find that Regal became involved with Clarke for two reasons. The first is to preserve the possibility that Clarke might invest as an equity partner. The second is he brought benefits to the redevelopment.

[66] These benefits were that Clarke:

- (a) successfully rezoned other residential condominium buildings in St. John's;
- (b) bundled a project team and offered it to Regal;
- (c) worked with a group of professionals who had the same expertise;
- (d) managed Regal's retention of the professionals;
- (e) offered strategic and tactical advice about the City approval process;
- (f) was involved up until the tendering phase in many of the discussions leading to the redevelopment including commenting on preliminary design, drafts of the Land Use Assessment Report,²⁴ and the rezoning application;
- (g) met with Cook and other consultants about the redevelopment, both in person and electronically;
- (h) lobbied the local ward councillor;
- (i) attended meetings at City Hall with various officials and committees;

²⁴ The City required Regal to file this report as part of its rezoning application.

- (j) provided at least one Project checklist of project milestones; and
- (k) talked to at least one contractor to encourage it to bid on construction of the redevelopment.

[67] Clarke admitted he was not involved in:

- (a) financing discussions;
- (b) preparing tender documents. His role ended when Regal hired tender consultant Ian Tulk in February 2014;
- (c) tender opening and contractor selection;²⁵
- (d) the construction phase; and
- (e) marketing of the redevelopment units.

[68] I now turn to the value of the opportunity Regal realized.

Value of the Opportunity Regal Realized.

[69] The value to Regal is obvious. Mahoney did not have to do the things Clarke did. Regal did not pay Clarke. Regal, with the assistance of these same design professionals, rezoned the property. This directly led to the City issuing a building permit.

[70] Thus, Regal completed the redevelopment,²⁶ consistent with Clarke's original concept using design professionals Clarke sourced. Regal sold the redevelopment at a profit. I now turn to what Clarke's services were worth.

What Clarke's Services Were Worth.

[71] Clarke said he is entitled to compensation under one of two theories.

²⁵ He was involved in a discussion about a project breakdown from the successful bidder on April 30 to May 1, 2024, when Cook asked for his input.

²⁶ As apartments rather than condominiums.

First Theory - Based on Percentage of Revenue

[72] First, he said that he is entitled to a percentage of the revenue from the redevelopment. Because Mahoney had sold the redevelopment and therefore has no future stream of revenue, Clarke sought a percentage of the market value of the redevelopment. This approach ignores Regal's past profits or losses.

[73] In his Trial Brief filed on April 1, 2026, Clarke asked for \$1,647,282.61, calculated as follows:

- (a) He assumed there were 140 rental units in the redevelopment;
- (b) He assumed a "conservative rent" was \$1,500 monthly per unit so annual revenue was \$2.52 million. He reduced the rent by 30% to allow for "vacancies and expenses";
- (c) He capitalized the annual rent assuming a capitalization rate of 5.75% and concluded that the redevelopment was worth \$30,678,260.90; and
- (d) He deducted the original value of the building that he said was \$4.5 million, and construction costs of about \$13 million.

[74] Thus, he said that:

- (a) the net market value was then \$13,178,260.90 and his 50% share was \$6,589,130.43.;
- (b) I might "see fit" to reduce this by 50% because Clarke did not provide services during the tender and construction phase. This brings his claim to \$3,294,565.22; and
- (c) I may "see fit" to reduce the amount by another 50% because there is no "appropriate comparator available to provide an industry standard for typical fees on such a Project."

[75] This brings his claim to \$1,647,282.61.

[76] Between the time he filed his Trial Brief and the trial he discovered that Regal sold the redevelopment for about \$36 million. Mahoney testified that the construction cost was about \$17.5 million. He said his lender valued the original building and land at \$2 million and that he contributed additional equity of \$6.5 to \$7 million.

[77] Mahoney said there were other cash adjustments in favour of the purchaser. He says Regal had losses before amortization in the years before COVID when vacancy was as high as 40%. No one quantified these. Mahoney said he would expect a rate of return on his equity. No one quantified this.

[78] Clarke's counsel in oral argument then suggested I take this same approach by substituting the actual sales price and applying his three 50% reductions.

[79] I have rejected compensating him based on a percentage of the revenue from the redevelopment. But even if I did not, I would have rejected this claim because Clarke did not prove what his share of revenue would be and how this would translate into a share of the equity. He invited me to do the calculations. Counsel's argument is not proof.

Second Theory - Based on a Project Manager's Rates

[80] Second, Clarke said he provided a total of 2,100 hours of his time to the redevelopment. He said he worked 1,500 hours by November 25, 2013²⁷ and about 600 afterward. He did not present a single invoice or any evidence other than he said he worked these hours.

[81] In oral argument his counsel asked me to order that Regal pay Clarke for 2,000 hours at \$125 per hour, or \$250,000. He said I should multiply this amount by 200% because Clarke took the risk that Regal would only pay him if the project succeeded. He gave me no evidence of why 200% was appropriate.

[82] Clarke said he kept no records of his time because he believed he was going to receive 50% of the redevelopment revenue. I found this belief ill-founded. He entirely relied on his incorrect interpretation of the relationship between the parties.

Clarke's Lost Opportunities

[83] Clarke also said he lost other opportunities because of the time he worked on the redevelopment. He said that he was working on two or three other projects, but he could have taken on more work but for his role in the redevelopment.

²⁷ He said he worked this number of hours by the time Cook sent his invoice.

[84] Clarke must prove this. He must provide evidence of these lost opportunities and evidence of what these lost opportunities were worth. He did neither, and I disregard this claim.

[85] I now turn to the market value of Clarke's services.

Market Value of Clarke's Services

[86] Clarke did not give me any evidence of his hourly rate for his services. He did not give any evidence of what these types of services are worth. However, Regal did.

[87] Regal called an expert, Robert Tancock, proprietor of R.J. Tancock Professional Services. He provided opinions on project manager and consultant roles and scopes of work and cost standards in Atlantic Canada.

Expert Witness Handcock - Qualification and Scope

[88] After a *voir dire*, I qualified Tancock as an expert in the field of engineering and project management, and he was entitled to give opinion evidence of project manager and consultant roles, scopes of work, and cost standards in Atlantic Canada.

[89] Clarke agreed:

- (a) that Tancock was a properly qualified expert;
- (b) on the scope of his expertise
- (c) that Tancock could give impartial, unbiased, and independent evidence; and
- (d) that Tancock's evidence was necessary because it is beyond the knowledge of an average person.

[90] I found that there was no exclusionary rule that would cause me to disqualify him.

[91] I applied the guidance given to me by the Supreme Court of Canada in *White Burgess Langille Inman v. Abbott and Haliburton Co.*²⁸ I am satisfied that he was

²⁸ 2015 SCC 23.

impartial, independent, and nonbiased. He was not testifying about novel or contested science. I find he is qualified under the first step of the *White Burgess* framework. Both parties' counsel agreed that this was so.

My Gatekeeper Role

[92] I told counsel, as part of my gatekeeper role in the second step of the *White Burgess* framework, I was satisfied that his testimony must be relevant, necessary, reliable, and showed an absence of bias.

[93] I found that his evidence would not increase the time needed for the trial. I found the evidence was not unnecessary or prejudicial to Clarke. I maintained my discretionary gatekeeper role throughout the proceedings.

Project Roles- Project Manager and Project Facilitator

[94] Tancock described roles that Clarke may have fulfilled. He said these are a project manager (also known as a development consultant) and a project facilitator (also known as a project liaison).

[95] He said a project manager plays a "central role" in the planning, coordination, and delivery of real estate development projects. In the initial stages, the project manager's responsibilities typically include:

- (a) assembling the contracting architects, engineers, and planners;
- (b) engaging with municipal authorities' rezoning and/or development approvals;
- (c) establishing the project budget and schedule, and
- (d) leading the design and preconstruction process to serve as the primary liaison between the owner and all third-party professionals and bodies.

[96] He said the project facilitator serves a limited, informal capacity to assist with early-stage coordination. The project facilitator's role may involve:

- (a) initiating contact between a project owner and external consultants (such as architects or engineers); and
- (b) attending introductory meetings with municipal staff and offering general guidance or feedback during conceptual discussions.

[97] Unlike a project manager, a project facilitator is not typically responsible for managing consultants, coordinating schedules and budgets, or delivering technical documents. He said that a project facilitator's involvement is short-term and diminishes as the owner assigns formal project roles.

Qualifications for These Managers

[98] Tancock said project managers typically hold postsecondary degrees and diplomas in engineering, architecture, construction management, or related technical fields. However, on cross-examination, he conceded that some project managers do not have this training but gained their expertise through project experience.

[99] He said that project facilitators have a more varied occasional background depending on the nature of their role. They can hold diplomas and degrees in business, real estate, communications, or technical disciplines.

[100] He said that many do not have management training as their function is often limited to stakeholder coordination, relationship management, and assistance with early-stage approvals. He said their experience and networks are more valuable than formal credentials.

Typical Hours and Compensation for these Roles 2014

[101] Tancock then gave the estimated hours and hourly rates that both types of consultants would spend on a midsize residential development project. I ignored his observations on the typical hours required for the tender and construction phases since Clarke had little involvement with either.

Table 1 Man-Hour Cost comparisons of Project Phases: Project Manager/Project Facilitator

Project Phase	Role	Responsibilities	Est hours	Rate/Hr.
Pre Construction	Project Manager	○ Feasibility ○ Municipal liaison, Consultation and coordination ○ Budgets ○ Planning Approvals	200-300	\$85-125
	Project Facilitator	○ Introductions ○ Early municipal meetings ○ General advisory presence	40-75	\$75-100

[102] Thus a ‘typical’ project manager would have worked between 200 and 300 hours on the pre-construction phase and a typical project facilitator would have worked between 40 and 75 hours. This contrasts with Clarke’s testimony that he worked up to 2,100 hours on the redevelopment.

[103] Tancock believed that Clarke was a project facilitator. He concluded his “contributions appear limited to discreet low-effort coordination tasks (e.g. forwarding documents, requesting updates, attending meetings), rather than continuous or directive involvement.”

[104] He then said, “it is reasonable to estimate Mr. Clarke's total time investment at 40 to 85 hours.” Applying a billing rate of \$75 to \$100 an hour, he estimates his time was worth between \$3,750 and \$8,500.

Where Does Clarke Fit in These Roles?

[105] I find that Clarke does not neatly fit into either of these categories. I disagree with Tancock and find that Clarke’s initial role with other consultants was more extensive than that of a project facilitator.

[106] He initially hired most of the consultants. This role typically would be Regal’s. Regal sometimes gave him authority to act as its agent in communicating with the City and others. Therefore, in some important respects, Clarke’s initial involvement in functional, but not financial matters, was more like an owner.

[107] I find that he also provided some services that a project manager would have performed. Mahoney and the consultants included Clarke in most emails that the parties jointly submitted as evidence.²⁹ There may have been other emails, but no one told me about them.

[108] I find that Clarke at various times provided services consistent with the role of a project manager and facilitator. Occasionally he acted like an owner. Furthermore, Clarke delivered a ready-made project team to Regal. This role does not easily fit into either that of a project manager or facilitator.

²⁹ He was a party to more than 250 of more than 330 emails in evidence. Team members sent him about 20 he was not a party to. He was not a recipient of about 40 emails. I may have double-counted emails because of the way the parties presented the emails. I use the number only thematically to illustrate that the evidence shows Clarke was involved in most of the presented redevelopment correspondence.

No One Person Acted as Project Manager

[109] Cook is someone who could have been acting as project manager even though he did not claim this title. He also coordinated some of the other consultants' work. He was also an interface between the owner and these consultants.

[110] However, I have no evidence that he had a significant role in feasibility or budgets. Therefore, Cook is not performing all the roles of a project manager in the initial phases of the redevelopment.

[111] Mahoney also performed some project manager roles. However, he admits that on March 2, 2013, he felt the need to get "more involved." Therefore, he did not act as the project manager before then. He did not act as the only project manager after then.

[112] This means that there was not a single project manager during the pre-construction phase. I find that Regal split this between Clarke, Mahoney, and Cook.

[113] I find that Clarke and Cook fulfilled more of the role at the beginning of the redevelopment, and Mahoney gradually assumed more, but not all, of this role until Regal effectively removed Clarke from the redevelopment by early August 2014.

Clarke's Worth to Regal

[114] I find that Clarke performed some of the roles of the owner, the project manager, and the project facilitator. I know that for pre-construction work:

- (a) RJC Services, and Cook as principal, led the architectural team. They charged \$66,000 + HST (\$60,000 fixed fee and \$6,000 in approved extras);
- (b) Clarke said that he worked 15 to 20 hours a week when he was "actually pursuing" the redevelopment. He later said he worked 1,500 hours by November 25, 2013,³⁰ and about 600 afterward (or about 20 hours a week for 104 weeks); and
- (c) Tancock said a project manager would have charged up to \$37,500 + HST and a project facilitator would have charged up to \$7,500 + HST.

³⁰ He said he worked this number of hours by the time Cook sent his invoice.

[115] I therefore find that the value to Regal is what it would have paid a project facilitator and a project manager who performed similar roles that Clarke had.

[116] I will adjust these amounts to account for differences in Clarke's role from these typical hypothetical consultants. By doing this, I can ensure that Regal's gain is causally connected to Clarke's loss.

[117] Therefore, Regal shall compensate Clarke \$37,500 + HST on the basis that:

- (a) he fulfilled many of the duties of a project manager during the pre-construction phase. He was qualified to fulfil these roles because of his experience in residential condominium developments;
- (b) the project manager's role for the preconstruction phase required the high-end range of 300 hours of a typical project manager;
- (c) I will allocate 150 of these hours for March 2012 until March 2013 (about 13 months), and Cook and Clarke shared the project manager role 50% - 50% and thus Clarke is entitled to 75 hours;
- (d) I will allocate 150 hours from March until late April 2014 (about 13 months), and Clarke performed 20% of the role, and Cook and Mahoney, 80% and thus Clarke is entitled to 30 hours;
- (e) Clarke is entitled to an additional 20 hours from the end of April 2014 to the first week of August 2014 because Cook and Mahoney consulted him during the tendering and construction phase until their relationship ended in August 2014;
- (f) Regal shall compensate him at the project manager's rate of \$125 per hour for this service. I find that this is a fair and reasonable rate given Clarke's loss³¹ and Regal's gain;
- (g) I will add 75 hours to Clarke's hours because he also performed some of the owner's duties when he hired some of the project consultants and acted as agent for the owner on some matters.

³¹ His loss relates to his hourly rate based on his role and experience on projects of this type. Mahoney recognised his experience.

- (h) I have no evidence of a rate for these services. I thus consider the number of hours at a project manager rate of \$125 per hour as a proxy to approximate the value of these services to Regal. I find that this is a fair and reasonable rate given Clarke's loss and Regal's gain;
- (i) Clarke is thus entitled to \$25,000 + HST for 200 hours, being 50% of 150 hours plus 20% of 150 hours plus 75 owner-role hours plus 20 hours post-tendering all at \$125 per hour;
- (j) Clarke also performed all the duties of the project facilitator;
- (k) the project facilitator's role for the preconstruction phase required the high-end range of 75 hours of a typical project facilitator. I will add 50 hours to recognize Clarke's critical role in assembling the project team (in addition to his role I referenced above);
- (l) Regal shall compensate him at the project facilitator's rate of \$100 per hour. I find that this is a fair and reasonable rate given Clarke's loss and Regal's gain; and
- (m) Clarke is thus entitled to an additional \$12,500 + HST being 125 hours at \$100 per hour.

[118] I will not compensate him for the risk he says he took because Regal would not pay him if the City did not rezone the site. Mahoney said he would pay him if he had provided him with an invoice. He did not qualify this by saying he would only pay him if the redevelopment proceeded.

[119] Furthermore, even if I had thought a risk premium appropriate, Clarke did not give me any evidence on what this premium would be.

[120] I also reject Clarke's claim for compensation for 2,100 hours because:

- (a) Clarke presented no evidence to support these hours;
- (b) The hours far exceed the number of hours typically required for services of these types, even after I have adjusted the hours for the factors I referred to in paragraphs [117](e), [117](g) and [117](k); and
- (c) Clarke's alleged hours are more than Regal could have anticipated incurring. Thus, Regal had no gain that corresponds to Clarke's loss even if he had proved these hours.

[121] Therefore, Regal shall compensate Clarke for \$125 per hour for 200 hours, and \$100 per hour for 125 hours, or \$37,500 (plus HST).

[122] Regal shall pay Clarke prejudgment interest on this amount from April 29, 2014, the date Regal decided to proceed with the redevelopment when it awarded the construction contract.³²

Irrelevant Factors - Conversion from Condominiums to Apartments

[123] Regal decided after Clarke's involvement ended to change the redevelopment from condominiums to apartments. It did so because Mahoney believed the St. John's condominium market had collapsed. This is his business decision and has no bearing on my decision.

[124] Although irrelevant to Clarke's claim, the Clarke family's loss of potential real estate commissions because of this conversion may have contributed to Clarke's decision to pursue compensation.

Irrelevant Factors – Clarke's Corporations

[125] Many of Clarke's and Mahoney's interactions were through corporate e-mail accounts. However, I find that Clarke personally provided his services to Regal notwithstanding the fact that emails and the drafts of the RSA referred to companies in which Clarke had an association.

COSTS

[126] Clarke won his case. Regal shall pay Clark his costs on a Column 3 basis (*Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D).

[127] Regal asked that I award it its costs on a solicitor and client or Column 5 basis because of the "errant way" Clarke prosecuted his claim. It said Clarke often modified his theory of damages, and this made it impossible for Regal to settle the matter.

[128] I will first deal with whether I will award solicitor and client costs. I will not. The Court of Appeal in *Henley v. Henley*³³ confirmed that I should award solicitor-

³² I do so for simplicity even though I found that Mahoney owed Clarke 20 of the hours after that date.

³³ 2021 NLCA 46.

client costs only where Clarke's conduct was reprehensible, scandalous, or outrageous.

[129] In this case, as in *Henley*, Clarke raising unsuccessful arguments is not conduct deserving of rebuke. I now turn to whether I should award Column 5 costs. I will not.

[130] I may consider the factors set out in *Rule* 55.04. I consider the following factors relevant:

- (a) the importance of the issues;³⁴
- (b) the way the parties conducted the proceeding, including any conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding;³⁵ and
- (c) the failure by a party to admit anything that should have been admitted.³⁶

[131] In *Shute v. Paradise (Town)*,³⁷ the Court of Appeal found that:

- (a) Shute shifted his claim for consequential damages. It also found that the Statement of Facts in his Factum “went well beyond stating facts and included significant argument and multiple references to case law and other authorities”;
- (b) “the Statement of Facts also did not make any reference to the sources of the facts in the record, and included some assertions that did not have any evidentiary basis in the record.”

[132] Because of this, the Court of Appeal awarded the Town Column 5 costs. I distinguish *Shute*. I will not give Regal costs or reduce Clarke's because:

- (a) Unlike *Shute*, Clarke won his case;
- (b) The parties agreed that I was to compensate Clarke on a *quantum meruit* basis. The parties presented evidence so I could understand what services

³⁴ Subpara. (b).

³⁵ Subpara. (d).

³⁶ Subpara. (e).

³⁷ 2024 NLCA 19, at para. 112.

he provided, the value of these services to Regal, and the context in which these services arose;

- (c) The Trial would not have been shorter if Clarke conducted it the way Regal preferred;
- (d) Although Clarke did not try to quantify the actual amount until trial, he never shifted his theory of damages. He always claimed a percentage of the revenue from the redevelopment;³⁸ and
- (e) Clarke was entitled to raise the arguments he made on the Consent Order even if I reject them.

[133] Finally, Regal said Clarke:

- (a) took one and one half years to file his list of documents;
- (b) failed to pay on time the ordered security for costs;
- (c) failed to agree on the Consent Order until he was “on the courthouse steps”;
- (d) failed to complete the discovery on the ordered schedule; and
- (e) disclosed his expert report three weeks late in the spring of 2025.³⁹

[134] Regal’s remedy was to take an action to dismiss for want of prosecution or to seek costs, or a postponement if it was prejudiced by Clarke’s actions.

[135] Clarke sued Regal. Clarke’s own actions delayed recovery of his loss. Regal cannot dictate how Clarke advances his case. I ordered that Clarke is entitled to only a fraction of what he requested. That is to Regal’s benefit. It had options to protect itself under *Rule 20A*.

³⁸ Or an equivalent capitalized amount.

³⁹ Clarke did not enter the report as evidence.

DISPOSITION

[136] I hereby order that Regal pay Clarke:

- (a) \$37,500 plus HST;
- (b) prejudgment interest on this amount from April 29, 2014, to the date of payment; and
- (c) costs on a Column 3 basis.

ALEXANDER MACDONALD
Justice