

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Brillion Homes Ltd. v. Tony Hayre
Management Services Ltd.*,
2026 BCCA 303

Date: 20260717
Docket: CA50204

Between:

**Brillion Homes Ltd. and
Christa Vina Investment Ltd.**

Appellants
(Defendants)

And

Tony Hayre Management Services Ltd.

Respondent
(Plaintiff)

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Dickson
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated
September 17, 2024 (*Tony Hayre Management Services Ltd. v. Brillion Homes Ltd.*,
2024 BCSC 1926, New Westminster Docket S235464).

Counsel for the Appellants: G. Cameron
T.D.H. Paulson

Counsel for the Respondent: S. Alimirzaee
J.M. Jutras

Place and Date of Hearing: Vancouver, British Columbia
November 4, 2025

Place and Date of Judgment: Vancouver, British Columbia
July 17, 2026

Written Reasons by:
The Honourable Justice Dickson

Concurred in by:
The Honourable Madam Justice Fenlon
The Honourable Justice Iyer

Summary:

This appeal concerns the interpretation of a construction management agreement between one appellant company, Brillion Homes Ltd, and the respondent construction manager. The appellants argue the judge erred by finding both appellant companies liable for breach of contract when Christa Vina Investment Ltd., the other appellant company, was not a party to the contract. They also submit the judge erred by implying a term of the contract, misapprehending the evidence and applying the doctrine of unjust enrichment. Held: Appeal allowed. The judge erred by implying a term that conflicted with the contract's express terms. The order regarding Brillion Homes is varied accordingly. The judge also erred by imposing contractual liability on Christa Vina Investment Ltd., which was not a party to the contract, and that order is set aside.

Reasons for Judgment of the Honourable Justice Dickson:**Introduction**

[1] This appeal concerns the interpretation of a contract between the appellant, Brillion Homes Ltd. ("Brillion Homes"), and the respondent, Tony Hayre Management Services Ltd. ("Tony Hayre Management"), (the "Contract"). The parties disagreed on the meaning of the Contract's essential terms, including its duration and payment terms. Following a four-day trial, the judge resolved the dispute in favour of Tony Hayre Management. Based on his interpretation of the Contract, he ordered Brillion Homes and the other appellant, Christa Vina Investment Ltd. ("Christa Vina"), to pay Tony Hayre Management \$76,666, together with pre-judgment interest, for contractual breach.

[2] According to the appellants, the judge made several errors. Among others, they say, he erred by finding Christa Vina liable for breach of contract, implying a term of the Contract, and applying the doctrine of unjust enrichment. In consequence, they submit, we should set aside the trial order and dismiss Tony Hayre Management's claims.

[3] In my view, the judge erred in interpreting the Contract and by imposing contractual liability on Christa Vina. For the following reasons, I would allow the appeal, set aside the order regarding Christa Vina, and vary the order regarding Brillion Homes as outlined below.

Background

[4] Tony Nguyen owns and operates both appellant companies, Brillion Homes and Christa Vina. Tony Hayre owns and operates the respondent company, Tony Hayre Management. Like the judge below, I will refer only to Mr. Nguyen and Mr. Hayre in these reasons, except where the distinction between them and their companies is material for purposes of the appeal.

[5] Mr. Nguyen owned property in East Vancouver through Christa Vina and hoped to develop it into a mixed commercial/residential building (the “Project”). He retained Matthew Cheng as the architect for the Project and attempted to manage it himself. However, after four years it became clear that Mr. Nguyen lacked the skills to bring the Project to completion, and his mismanagement caused numerous deficiencies. Mr. Cheng eventually withdrew, the City of Vancouver (the “City”) issued a stop-work order, and both the City and new architect, Kenneth Kim, required Mr. Nguyen to retain a properly qualified project manager and on-site supervisor before construction could resume.

[6] The delay in completing the Project placed Mr. Nguyen under financial pressure. On December 12, 2018, he met with Mr. Hayre with a view to retaining him to provide the construction management services required. Mr. Hayre is a qualified project manager with over 40 years experience in the construction industry. At trial, he and Mr. Nguyen gave differing accounts of the agreement they reached and recorded in the Contract, which Mr. Nguyen’s assistant drafted and which they signed the same day.

The Contract

[7] According to Mr. Hayre, he and Mr. Nguyen agreed that he would manage the Project and provide a qualified day-to-day on-site supervisor, Ranjit Bhambra, to complete it. He stated that he agreed to attend at the site as required and expected Mr. Nguyen to provide his full cooperation, which included making necessary materials available and paying subcontractors and consultants on time. He testified that, assuming Mr. Nguyen cooperated, he expected the Project would be completed

and the City would issue an occupancy permit within a 12-month period. He also testified that “the payment basically was \$220,000 plus GST”, which “was supposed to be \$19,333” per month; however, because of Mr. Nguyen’s financial difficulties he agreed to take “\$15,000 plus GST for the 12-month duration, then collect the remaining amount at the end” (\$40,000). In other words, Mr. Hayre stated, when he signed the Contract, he “agreed for [Mr. Nguyen] to pay partial fee for the 12-month period, then the full amount at the end of the 12-month period”.

[8] In contrast, Mr. Nguyen claimed that he and Mr. Hayre agreed Mr. Hayre would manage the Project for \$15,000 per month and do the work required to complete it in a one-year period. He testified that he also agreed to pay Mr. Hayre a \$40,000 “bonus” if he completed the Project within the year, as promised, to reward and incentivize him because further delay would mean losing “much income”. According to Mr. Nguyen, the Contract they agreed upon and signed on December 12, 2018 ended on December 31, 2019.

[9] The Contract signed by Messrs. Hayre and Nguyen states that it is between Brillion Homes, defined as the “General Contractor”, and Tony Hayre Management, defined as the “Construction Manager”. It identifies the construction management team as Mr. Hayre, as Construction Manager, and Mr. Bhambra, as Superintendent, and provides that the agreement and conditions agreed to “[s]hall be in effect commencing 3[rd] day of Jan[uary], 2019”. It does not expressly identify a date upon which the agreement and conditions cease to be in effect.

[10] Under the heading “Scope of Work”, the Contract states that “[t]he Construction Manager has agreed to provide construction management services to the General Contractor for the completion of the construction of the [Project]”. Then it lists the responsibilities of the Construction Manager and the Superintendent, including Project scheduling. It also states that “[t]he General Contractor shall not to [sic] make any trade agreement prior to consultation with the Construction Manager and their Acting Agents”.

[11] Other relevant terms include the following:

Project Schedule

The General Contractor and the Construction Manager has agreed that project shall be completed within twelve (12) months. An agreement is made that the occupancy permit would be expected to be provided to the General Contractor on or before December 31, 2019.

Construction Management Fee

The total contract amount for the construction management services for the project site in accordance with this agreement shall be valued at two hundred and twenty thousand dollars (\$220,000.00) + GST.

The Construction Manager and the General Contractor has agreed that monthly fee of fifteen thousand dollars (\$15,000) + GST shall be invoiced by the 3rd week of each month, and payments made by the 1st of the following month, for a term of 12 months (ie: 12 mo. X \$15,000.00 per mo. equals \$180,000.00 + GST), and the remaining forty thousand dollars (\$40,000.00 + GST) shall be paid within 55 days of issuance of the occupancy permit for this project.

...

Work Schedule

The construction management team is expected to provide construction management services when construction activities are occurring at the project site. For the clarity purposes, the following schedule is outlined, and may be adapted in accordance with the work schedule.

The Construction Manager

Commencing immediately, the Construction Manager, shall provide adequate management services to advance the project schedule and minimize project delays that are within reasonable control of the construction manager (ie: management of the consultants, preparing schedules etc.)

...

The Superintendent

Commencing January 3, 2019, the Superintendent shall provide fulltime project supervisions 5 days a week (Monday through Friday), for a minimum of 8 hours a day between (7am-3pm) to adequately supervise the trades.

...

Termination

The General Contractor or the Construction Manager may terminate this agreement during its term, providing a reasonable cause. The termination shall be given in writing, a minimum of 30 calendar days written notice to the other party. Reasonable cause shall include, disruption of the project schedule due to the General Contractor's imposition, improper management services such as absences of the project site without sufficient notification to the General Contractor, project defects that induces a significant cost for remediation, and unreasonable missed deadlines of trades, and other causes that may poses a detrimental impact or delay on the project.

Work Safety & GST

According to B.C. construction bylaws, the construction manager and their personnel shall only be liable to themselves, while at the project site...

The Project

[12] From January to December 2019, Mr. Hayre submitted monthly invoices of \$18,500 plus GST to Mr. Nguyen for his construction management services. In response, Mr. Nguyen paid \$15,000 plus GST each month, for a total amount of \$189,000.

[13] As events unfolded, the Project did not complete within the expected one-year period. Mr. Hayre continued work at the site in January and February 2020, for which he also submitted monthly invoices to Mr. Nguyen. However, Mr. Nguyen did not pay those invoices, nor did he pay Mr. Hayre the \$40,000 plus GST described in the Contract as payable within 55 days after the occupancy permit was issued, which occurred in November 2020. As a result, Mr. Hayre filed a Notice of Civil Claim and Mr. Nguyen filed a Response and Counterclaim.

The Pleadings

[14] In the Notice of Civil Claim, Mr. Hayre defined Tony Hayre Management as “Tony Hayre”. He pleaded that Tony Hayre “entered into a written agreement with Brillion Homes (the “Contract”) whereby Tony Hayre agreed to provide supervision and management services (collectively, the “Work”) in relation to an improvement being constructed on the Lands (the “Improvement”) with a goal of completing the improvement within 12 months (the “Completion Date”)”. Among other things, he also pleaded that the Contract had express and implied terms, including: “Brillion Homes would pay Tony Hayre \$220,000 plus GST for the Work”; “Tony Hayre would invoice Brillion Homes a monthly fee of \$15,000 plus GST...” which Brillion Homes would pay monthly for 12 months; Brillion Homes would “pay Tony Hayre the remaining \$44,000 within 55 days of issuance of the occupancy permit for the Improvement”; and “if the Completion Date needed to be extended, then Brillion Homes would continue to pay Tony Hayre on a monthly basis until the issuance of

an occupancy permit”. He pleaded further that “[d]ue to unforeseen circumstances out of Tony Hayre’s control, the Improvement was not completed by the Completion Date” and “Tony Hayre and Brillion Homes agreed to extend the Contract from January, 2020 until March, 2020 (the “Extra Work”)”.

[15] Mr. Hayre went on to plead that Brillion Homes paid Tony Hayre a total of \$189,000; Brillion Homes was indebted to Tony Hayre for a total of \$102,000, which it had refused to pay; and Tony Hayre had filed a claim of builders lien in that amount against the lands owned by Christa Vina. In the alternative and under separate headings, he pleaded that “the Defendants have been unjustly enriched by the Labour, Work and Extra Work provided by Tony Hayre and Tony Hayre has suffered a corresponding deprivation, and there is no judicial reason for the said enrichment and corresponding deprivation” and claimed for benefits received based on *quantum meruit*. He pleaded further that due to Brillion Homes’ breach of contract, Tony Hayre had suffered damages, including lost profits and opportunity. He sought judgment against Brillion Homes “for \$102,000 for debt and/or breach of contract”, a declaration of lien against the defendants, and damages for lost profits and opportunity, together with costs.

[16] In his Response and Counterclaim, Mr. Nguyen pleaded that the Contract between Tony Hayre and Brillion Homes was for a “fixed price” of \$220,000 plus GST “with a goal of completing the improvement within 12 months”. He also pleaded that:

- a) Tony Hayre “did not complete the Improvement by the Completion Date”;
- b) prior to the Completion Date, Tony Hayre did not provide the work agreed to and therefore breached the Contract; and
- c) Brillion Homes “paid Tony Hayre \$189,000 of the ‘fixed price’ \$220,000 plus GST”, and Tony Hayre abandoned the work prior to the Completion Date and did not provide any work from January 2020 until the occupancy permit was issued.

He pleaded further that due to Tony Hayre abandoning the work, Brillion Homes had to hire other labour to complete the Project, that Tony Hayre was overpaid for the work it completed, and that Christa Vina lost rental income, for which losses Brillion Homes and Christa Vina counterclaimed. He did not expressly respond to Tony Hayre's alternative unjust enrichment claim.

At Trial

[17] At trial, Messrs. Hayre and Nguyen provided their differing accounts of the agreement, as recorded in the Contract. They also provided differing accounts of what occurred after the Contract was signed.

[18] According to Mr. Hayre, Mr. Nguyen failed to cooperate with the construction management team, as promised. For example, he testified that there were problems with the late delivery of materials, with some subcontractors hired by Mr. Nguyen, and with Mr. Nguyen's ongoing interference with the Project, all of which affected the schedule. He stated that as a result, the Project did not complete by December 31, 2019 and, with Mr. Nguyen's knowledge, he continued in good faith to work in January and February 2020; however, Mr. Nguyen did not pay his invoices for those months and refused his request to "renew" or "extend" the Contract. In response, he stated that he instructed Mr. Bhambra to stop work "[t]owards the end of February". He stated further that the City eventually issued an occupancy permit in November 2020, but Mr. Nguyen did not make the final payment of \$40,000 plus GST.

[19] For his part, Mr. Nguyen denied interfering with Mr. Hayre's work on the Project. He testified that he made the final monthly payment of \$15,750 on December 20, 2019; but, the Contract ended in December 2019, the Project was not complete, and therefore he did not owe the \$40,000 "bonus" to Mr. Hayre. He also stated that he refused Mr. Hayre's request for a three-month extension of the Contract because he had learned Mr. Hayre was spending time on other work, which caused delays in completing the Project. He stated further that Mr. Hayre and

Mr. Bhambra were gone from the site in January and February 2020 and did not work on the Project during those months.

[20] Messrs. Bhambra, Cheng, and Kim also testified. Mr. Bhambra testified that Mr. Nguyen constantly interfered with his work, which caused delays, and that he worked on the Project from January 2019 until toward the end of February 2020, when he stopped because “[w]e didn’t get paid”. Mr. Cheng testified that when he was the architect for the Project, Mr. Nguyen interfered with his work so he eventually withdrew, and that when an architect withdraws from a project the building permit is no longer valid. Mr. Kim testified that both he and the City required Mr. Nguyen to hire a general contractor, and that the Project “wasn’t allowed to go on before [Mr. Hayre] was on board, so it was a [stop-work order]”.

[21] In closing submissions, counsel for Mr. Hayre argued that the Contract was for project management services for a 12-month period (January 3, 2019 to January 3, 2020), the expected date for obtaining the occupancy permit was not “a hard and fast deadline”, and the parties valued Mr. Hayre’s services for the expected 12-month period required to complete the Project at \$220,000 plus GST. She also argued that there were inconsistencies in the Contract, which failed to address what would happen if an occupancy permit was not issued by December 31, 2019. She argued further that, given the parties’ conduct, the Contract should be extended to January and February 2020 at a monthly rate of \$19,250 based on the value ascribed to Mr. Hayre’s services for the expected 12-month period, the absence of a termination date in the Contract, and the fact that neither party gave notice of termination before February 2020. She did not pursue Mr. Hayre’s claim for contract damages for lost profit and opportunity.

[22] Counsel for Mr. Nguyen argued that the Contract between “the plaintiff and one of the defendants” was for construction management services for fees of \$15,000 plus GST per month, which Mr. Nguyen paid, and the Contract ended 12 months after January 3, 2019. She also argued that Mr. Nguyen did not owe the \$40,000 plus GST “bonus” because an occupancy permit was not issued before

December 31, 2019. She argued further that the Contract did not contemplate non-completion of the Project within 12 months, Mr. Hayre did no work on the Project in January and February 2020, and, even if he did, there was no agreement regarding any work done in 2020, which defeated the alternative claim for unjust enrichment. In response to the judge's questions about the 55-day term in the Contract in relation to the \$40,000 payment, counsel stated that it "has to do with the builders' lien period". She stated further that by statute a builders' lien may be filed within 55 days of an occupancy permit being issued, and that "Mr. Nguyen didn't want to pay the \$42,000 and then be faced with a lien, and the lien comes from non-payment or anything arising from the construction of the improvement. And that's the reason why there's the 55 days there". She did not pursue Mr. Nguyen's counterclaim.

Reasons for Judgment: 2024 BCSC 1926

[23] The judge began by stating that the action was "brought by Tony Hayre Management Services Ltd. against the defendant companies operated by Mr. Nguyen for a breach of contract". He described the essential dispute as "whether the contract was a 12-month service contract or a contract to complete construction of the Kinsey property": at para. 1. Then he summarized the facts and the positions of the parties, whom he referred to throughout his reasons as either "Mr. Hayre" or "Mr. Nguyen".

[24] The judge found that Mr. Nguyen was under financial pressure due to the delay in the completion of the Project. He stated that "[t]he city placed a stop-work order on the property, and further work on the property was stopped subject to a properly qualified project management and supervisor being hired and on the property": at para. 3. After describing the initial meeting between Messrs. Hayre and Nguyen and their differing accounts of their agreement, he turned to their accounts of what transpired after the Contract was signed.

[25] The judge found that Mr. Nguyen attended regularly at the Project, which did not complete within the expected 12-month period:

[7] Mr. Nguyen regularly attended at the project. He became concerned that the site supervisor, Mr. Bhambra, was not using tradespeople efficiently or properly. I find that Mr. Nguyen began interfering with how Mr. Bhambra was managing the tradespeople. There were problems with tradespeople that were under contract prior to January 3, 2019. There were problems with materials to be paid by Mr. Nguyen arriving on time, which caused delays. The project did not complete in 12 months.

[26] The judge went on to find that Mr. Hayre spoke to Mr. Nguyen in late December 2019 about payment for services after December 31, 2019, but “[t]hey did not reach an agreement about how ongoing services would be provided or if they would be provided”: at para. 8. He summarized Messrs. Hayre and Nguyen’s accounts of what occurred and stated that after a second discussion in late February 2020, Mr. Hayre “advised all parties by email that he was no longer working on the project due to lack of payment”: at paras. 9–11. He stated that “[i]t is difficult to find qualified project managers for partially completed projects” and Mr. Nguyen eventually hired the current architect as the new project manager: at para. 12. Then the judge rejected Mr. Nguyen’s evidence that Mr. Hayre did not continue to work on the Project after December 31, 2019:

[13] I do not accept Mr. Nguyen’s evidence that Mr. Hayre did not continue to work on the project after December 31, 2019, until the end of February 2020. I say this for the following reasons:

- 1) I accept the evidence of Mr. Bhambra, whom I found to be a reliable and credible witness, that he and Mr. Hayre continued to work on the project as before.
- 2) Work could not have continued on the project without a qualified project manager. This was a term imposed both by the architect managing the project, who was subsequently hired to perform these tasks, and also by the city.

[27] The judge also found that the occupancy permit was issued in November 2020 “despite the fact that the project was close to completion by the end of February 2020”: at para. 14.

[28] Next, the judge quoted the relevant terms from the Contract: at para. 15. After summarizing the principles of contract interpretation by quoting from *Crown Fortune International Investment Group Inc. v. Bonnefield Canada Farmland LP III*, 2023

BCCA 441 [*Crown Fortune*], he stated that the Contract had “conflicting and inconsistent terms”:

[17] The written contract has conflicting and inconsistent terms. In applying the principles set out above I note the following:

- a) There is a clear termination mechanism in the contract.
- b) There is a clear mutual expectation that the contract would be completed within one year.
- c) The contract does not specifically address what would happen if the project was not completed within the 12-month period.

[29] The judge listed some surrounding circumstances that he considered helpful in interpreting the Contract:

[18] In my view the following surrounding circumstances assist in interpreting the contract:

- 1) Mr. Nguyen was incompetent with respect to completing the project.
- 2) Mr. Nguyen was under financial pressure and needed to complete the project.
- 3) Further work on the project would not be allowed at any time without the presence of a qualified project manager.
- 4) It is very difficult to find a project manager to take over partially completed projects.

[30] The judge concluded that the parties contracted for Mr. Hayre to complete the Project as soon as possible with the expectation (which he interpreted as synonymous with “hope”) that it would complete within 12 months. He rejected Mr. Nguyen’s proposed interpretation that the Contract would expire after 12 months and stated “the clear intention of the parties was that Mr. Hayre would complete the contract and that the contract would not expire in 12 months if the project was not completed”: at paras. 19–20.

[31] Under the heading “Result”, the judge rejected Mr. Nguyen’s submission that the remaining \$40,000 was only payable if the Project completed by December 31, 2019:

[21] I reject Mr. Nguyen’s interpretation of the contract that \$40,000 plus GST was only required to be paid if the project was completed by

December 31, 2019. The clear wording of the contract says that “\$40,000 plus GST will be paid within 55 days of the issuance of the occupancy permit.”

[22] There is no clause which supports Mr. Nguyen contention. Therefore, the \$40,000 is owed to Mr. Hayre under the contract. In addition, Mr. Hayre is entitled to prejudgment interest commencing 55 days after the issuance of the operating permit for this amount.

[32] After repeating his rejection of Mr. Nguyen’s evidence that Mr. Hayre did not work on the Project after December 31, 2019, the judge found that “work was provided in accord with the service term of the contract up until the end of February 2020”. Then he found that “the contract required Mr. Hayre to continue working on the project until he was provided termination in accord with the termination clause in the contract” and “[t]he contract ended when Mr. Nguyen refused to provide payment to Mr. Hayre as stipulated in the contract”: at para. 23.

[33] As to the terms of payment under the Contract and the alternative claim for unjust enrichment, the judge said this:

[24] The payment terms stipulated in the contract are owed to Mr. Hayre, \$15,000 per month plus GST payable in the third week of the month plus \$40,000 plus GST divided by 12, payable 55 days after the issuance of the occupancy permit for each month of service. This leads to a total of \$30,000 plus \$6,666 with GST added to these amounts. He is entitled to prejudgment interest in accord with the contract on the third week of January and February for the \$15,000 monthly payments respectively, and 55 days after the issuance of the operating permit for the \$6,666. Again, GST will be added to those amounts.

[25] If I am wrong that this work is claimable under the contract, I find that Mr. Hayre is entitled to the money under the doctrine of unjust enrichment. I found that Mr. Nguyen was aware that the work was being performed by Mr. Hayre, knew that Mr. Hayre expected to be paid for the work, and received the benefit of the work provided by Mr. Hayre. The amount charged for the work is reasonable and in accord with the contract that existed for the work provided.

[34] The judge concluded his reasons by dismissing Mr. Hayre’s claim for an additional \$2,250.04 for labour performed in 2019 because he was not satisfied that Mr. Nguyen knew the services were performed or that they were claimable under the Contract: at para. 26. After hearing further submissions, he gave the parties 30 days

to set down a hearing if they could not reach an agreement on the issue of costs: at para. 27.

[35] The trial order was entered on December 16, 2024. It provides that “the Defendants shall pay to the Plaintiff \$40,000 plus GST, payable 55 days after issuance of the occupancy permit issued on November 13, 2020” and “the Defendants shall pay to the Plaintiff \$15,000, representing work completed in January and \$15,000 representing work completed in February 2020, plus \$6,666 with GST added to these amounts”, together with pre-judgment interest [emphasis added].

On Appeal

[36] In Mr. Nguyen’s submission, the judge erred by finding both Brillion Homes and Christa Vina liable for breach of contract when only Brillion Homes was a party to the Contract. In addition, he says, the judge erred by failing to interpret the Contract in light of relevant surrounding circumstances related to its commercial purpose, implying a term that conflicts with its express provisions, and misapprehending the evidence regarding the impact of the stop-work order. Moreover, he says, the judge wrongly concluded that the Contract had conflicting terms and erroneously awarded compensation for unjust enrichment when the Contract provides a juristic reason for the alleged deprivation. According to Mr. Nguyen, given these errors and the express provisions of the Contract, this Court should allow the appeal, set aside the trial order, and dismiss Mr. Hayre’s claims.

[37] Mr. Hayre responds that the question of Christa Vina’s liability under the Contract is a new issue not raised at the trial and therefore this Court should not entertain it. The same is true, he says, of whether the Contract provides a juristic reason for the alleged deprivation for purposes of the unjust enrichment claim. He also says that we should not permit Mr. Nguyen to argue the Contract was for a fixed price because that position is fundamentally inconsistent with the position he took at the trial, as is his new position on unjust enrichment. Moreover, he says, the judge

did not err by failing to consider relevant surrounding circumstances, implying a term that conflicted with the Contract's express terms, or misapprehending the evidence, nor did he err in his interpretation of the Contract or alternative finding of unjust enrichment. In the result, he submits the appeal should be dismissed.

[38] The issues that emerge from the reasons, the record, the factums, and the oral arguments are:

- a) Which arguments should we permit Mr. Nguyen to advance on appeal and why?
- b) Did the judge err in interpreting the Contract, and, if so, how?
- c) If the judge erred, what order should we make on appeal?

[39] After summarizing the applicable standards of review, I will discuss each issue in turn.

Discussion

Standard of Review

[40] The standards of review that apply to the various grounds of appeal are well-established.

[41] Findings of fact, including factual inferences, are reviewable on the standard of palpable (obvious) and overriding (material) error. Questions of law are reviewable on the standard of correctness: *Housen v. Nikolaisen*, 2002 SCC 33 [*Housen*] at paras. 5–10; *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 21 [*AM Gold*] at paras. 51–52.

[42] Interpreting a contract is an exercise in applying the principles of contractual interpretation to the words of a contract, considered in light of the factual matrix. Accordingly, contractual interpretation involves issues of mixed fact and law and is reviewable on the standard of palpable and overriding error. However, legal errors made in interpreting a contract, including the application of an incorrect principle,

failure to consider a required element of a legal test, or failure to consider a relevant factor, are extricable questions of law reviewable on the standard of correctness: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at paras. 50–53; *Housen* at para. 37; *AM Gold* at para. 53.

[43] Appellate courts should be cautious in identifying extricable errors of law in contractual interpretation and should only do so rarely: *Sattva* at paras. 54–55; *AM Gold* at para. 54.

[44] A misapprehension of evidence that goes to the core of the outcome is an extricable error of law, reviewable on the standard of correctness: *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2022 BCCA 294 at para. 43.

Which arguments should we permit Mr. Nguyen to advance on appeal and why?

[45] First, Mr. Hayre contends that Mr. Nguyen should not be permitted to argue the judge erred in finding Christa Vina liable for breach of contract because that issue is legally and factually distinct from the issues argued at trial by the parties. In support, he relies on *Warner v. British Columbia (Provincial Health Officer)*, 2025 BCCA 21 [*Warner*] and *Mills v. O'Connor*, 2025 BCCA 34 [*Mills*], where this Court affirmed the general rule that leave to address new issues on appeal should be granted only in exceptional circumstances, namely, where the issue is truly new, the evidentiary record is sufficient to decide the issue, and making an exception to the general rule serves the interests of justice: *Warner* at para. 71; *Mills* at paras. 71–72.

[46] According to Mr. Hayre, the circumstances of this case do not justify consideration of Christa Vina’s liability for breach of contract, which is a truly new issue. He submits that the interests of justice do not support making an exception to the general rule given that Mr. Nguyen could have raised the issue below but did not, likely because doing so would have undermined Christa Vina’s Counterclaim. In addition, he submits, this Court does not have the evidentiary record necessary to decide the issue because, as stated in *Aviva Insurance Company v. Wawanesa*

Mutual Insurance Company, 2019 ONCA 704 [Aviva], the parties to a contract are not always the signatories and therefore the issue cannot be decided based on the written Contract alone.

[47] I am not persuaded by these submissions.

[48] I do not agree that the question of whether Christa Vina was liable for breach of contract is truly a new issue. While the judge and the parties often referred to Messrs. Hayre and Nguyen rather than their respective companies at the trial, both parties clearly pleaded that Tony Hayre Management and Brillion Homes were the contracting parties and distinguished in their pleadings between Brillion Homes' alleged liability in debt and the liability of Christa Vina as registered owner of the Project lands. In addition, at the outset of her closing submissions, counsel for Mr. Nguyen clearly stated that the Contract was between "the plaintiff and one of the defendants". In the circumstances, it is unsurprising that she said nothing further on the issue; no one had suggested both defendants might be liable for breaching the Contract. That the judge failed to distinguish between them and ordered both to pay the alleged debt does not make the nature of Christa Vina's liability, if any, a truly new issue on appeal.

[49] In any event, if leave to address the issue was required, I would grant it. I do not agree that the evidentiary record is insufficient for this Court to decide whether the judge erred in finding Christa Vina liable for breach of contract. This is not a case like *Aviva*, which involved the application of agency principles where one person signs a rental contract on behalf of another person. In contrast, in this case there is nothing in the pleadings, the evidence, or the arguments that suggests the real identities of the contracting parties might be other than those who appear on the face of the written Contract, namely, Tony Hayre Management and Brillion Homes.

[50] In my view, it is in the interests of justice to permit Mr. Nguyen to argue that the judge erred in finding Christa Vina liable for breach of contract. Given the nature of the pleadings and live issues at trial, Mr. Nguyen could not reasonably be expected to have perceived a need to raise the issue below or foreseen that the

judge might order both defendants to pay a debt allegedly owed by Brillion Homes alone. In addition, Mr. Nguyen has a legitimate interest in being subject to a judgment free of legal error, which is a relevant, though not determinative, consideration: See *Deissner v. Boorsma*, 2023 BCCA 476 at paras. 28–29.

[51] The judge plainly erred in law in finding Christa Vina liable for breach of the Contract in the absence of any evidence that Christa Vina was a contracting party. It is a complete defence to a claim for breach of contract if a natural or legal person is not a party to the contract in question: *Malik v. Eagle Mountain Farms (A Partnership)*, 2021 BCCA 379 at para. 18.

[52] Second, Mr. Hayre contends that Mr. Nguyen should not be permitted to argue that the judge erred in awarding compensation for unjust enrichment when the Contract provides a juristic reason for the alleged deprivation. He says this is another new issue and this argument is inconsistent with Mr. Nguyen’s position that the Contract “ended” or “expired” on January 3, 2020 if the Project was not yet complete. According to Mr. Hayre, it would not serve the interests of justice for us to permit Mr. Nguyen to advance this new and internally inconsistent argument. Moreover, he says, we should not permit Mr. Nguyen to argue that the Contract was for a fixed price, which was not his position at trial and is also inconsistent with his position on appeal.

[53] I am also not persuaded by these submissions.

[54] The positions of both parties evolved considerably in the Court below and, respectfully, neither was a model of clarity. However, Mr. Nguyen pleaded that the Contract was for a fixed price and, in substance, that was his position at trial and, albeit expressed differently, on appeal. In other words, Mr. Nguyen pleaded and argued in both Courts that the Contract, properly interpreted, was for a fixed fee paid out by progress payments, with the final \$40,000 payment (or so-called “bonus”) contingent on completion of the Project within 12 months. Although, as I will explain, I do not accept that the Contract bears the latter element of this interpretation, in my view it is not unjust to permit Mr. Nguyen to make the argument.

[55] As to Mr. Nguyen's argument on the unjust enrichment claim, I do not consider it necessary to address Mr. Hayre's submission because the appeal can and should be resolved on contractual principles.

Did the judge err in interpreting the Contract, and, if so, how?

Positions of the Parties

Mr. Nguyen

[56] According to Mr. Nguyen, the judge erred in fact and law in interpreting the Contract. In particular, he says, the judge failed to ground his interpretation in the express terms of the Contract and the surrounding circumstances, found conflicting terms and ambiguity where they did not exist, and implied a term that conflicted with the Contract's express terms. In Mr. Nguyen's submission, in doing so the judge failed to apply the modern approach to contractual interpretation. However, he says, when the modern approach is applied, he is clearly not liable to Mr. Hayre for any contractual breach.

[57] More specifically, Mr. Nguyen submits the judge erred by failing to interpret the Contract in light of two relevant surrounding circumstances related to its commercial purpose, namely, the payment methods commonly used in construction management agreements for project delivery and how the *Builders Lien Act*, S.B.C. 1997, c. 45 [BLA] informs that payment structure. As to the former, he says the judge failed to consider that a fixed fee with progress payments is one of the common methods for compensating construction managers for project delivery, the structure contemplated by the Contract generally adheres to that method, and the failure to consider this relevant surrounding circumstance contributed to the judge's erroneous conclusion that the Contract had "conflicting and inconsistent terms" when it does not. As to the latter, he says the judge failed to appreciate how construction contracts account for holdbacks under the BLA, which unfortunately his trial counsel misdescribed, and which led the judge to misinterpret the 55-day term in the Contract as relevant to the conditions for payment when it simply reflected liability for builders liens.

[58] Mr. Nguyen also submits the judge erred by implying a term that conflicted with express provisions of the Contract, namely, an implied term that required Mr. Hayre to continue working if the Project was not complete when the Contract ended on January 2, 2020. He says this implied term created a payment structure that conflicts with the Fee Clause by requiring him to pay more than the express total value of all work required under the Contract and with the Contract's express 12-month duration. Moreover, he says, the implied term is a "service term", which suggests that Mr. Hayre is an employee, when it is clear from express terms such as the Work Safety term that he is an independent contractor.

[59] Mr. Nguyen submits further that the judge erred in concluding that the Contract was ambiguous. In particular, he says, the judge erred in finding the Contract has "conflicting and inconsistent terms" because it has "a clear termination mechanism", "[t]here is a clear mutual expectation that the contract would be completed within one year", and it "does not specifically address what would happen if the project was not completed within the 12-month period": at para. 17. According to Mr. Nguyen, contrary to the third enumerated factor upon which the judge based his finding of inconsistency, the Contract does address what would happen if the Project was not complete within a 12-month period: it would expire.

[60] Finally, Mr. Nguyen submits the judge misapprehended the evidence in finding that he was required to have a qualified project manager for work on the Project to continue, apparently based on Mr. Kim's testimony regarding the stop-work order. However, he says, the evidence was simply that hiring Mr. Hayre was required to lift the stop-work order, and no evidence was adduced regarding any independent or ongoing requirement to employ a construction manager. In Mr. Nguyen's submission, the judge's misapprehension is both palpable and overriding because the ongoing requirement for qualified project management was one of only two reasons he gave for finding that Mr. Hayre continued working after the Contract ended, as well as one of the four surrounding circumstances he considered when interpreting the Contract.

[61] According to Mr. Nguyen, properly interpreted, the Contract required Mr. Hayre to complete construction of the Project for a fixed fee paid out by progress payments, with the final \$40,000 payment contingent on completion of the entire Project within a 12-month period. Importantly, he says, timeliness was a key component of the Contract, read as a whole and interpreted in the light of the surrounding circumstances. In other words, Mr. Nguyen submits, by the clear and express terms of the Contract: Mr. Hayre agreed to provide construction management services for completion of the Project within 12 months; if Mr. Nguyen caused delays impacting Mr. Hayre's ability to complete the Project within 12 months, Mr. Hayre would have reasonable grounds to terminate the Contract; if construction was complete by January 2, 2020, Mr. Hayre would be entitled to the \$40,000 final payment within 55 days of the issue of the occupancy permit; and, if construction was not complete by January 2, 2020 and Mr. Hayre had not terminated the Contract, Mr. Hayre would be in breach of the Contract.

Mr. Hayre

[62] Mr. Hayre responds that the judge made no errors in interpreting the Contract. On the contrary, he says, the judge grounded his interpretation in the terms of the Contract and the surrounding circumstances revealed by the evidence, which did not include any evidence regarding payment methods commonly used in construction management agreements for project delivery. In any event, he says, while Mr. Nguyen did not argue that common payment methods were a surrounding circumstance to be accounted for or adduce any related evidence, the judge considered whether the Contract was for a fixed price and how the *BLA* was relevant for interpretative purposes. Moreover, he submits, even if the judge erred as alleged, it did not affect the result.

[63] Mr. Hayre also submits the judge did not find the Contract included an implied term requiring Mr. Hayre to continue working if the Project was not complete when the Contract ended on January 2, 2020. Rather, he says, based on the termination clause and his findings that the parties intended Mr. Hayre would complete the Project and the Contract would not expire in 12 months if the Project was not yet

complete, the judge inferred that Mr. Hayre was required to continue working in 2020 until the Contract was terminated. In addition, he says, even if the judge erroneously implied the term alleged, the error did not affect the result because the implied term related only to the 2020 work, which was compensable based on the alternative finding of unjust enrichment.

[64] Furthermore, Mr. Hayre argues, the judge did not err in finding that the Contract had “conflicting and inconsistent terms” and therefore it was ambiguous. In particular, he submits, the Contract did not clearly provide that it expired on January 3, 2020 or identify a specific end-date. Rather, as the judge found, he says, the Contract required Mr. Hayre to complete the Project as soon as possible with the hope that it would be completed in 12 months, which is inconsistent with the fee clause arguably creating a fixed-price contract. In any event, he says, even if the Contract was not ambiguous and it did end on January 3, 2020, the error made no difference to the outcome given the alternative finding of unjust enrichment for the 2020 work.

[65] As to the judge’s alleged misapprehension of evidence, Mr. Hayre submits that Mr. Nguyen misapprehends the nature of the judge’s impugned finding. Contrary to Mr. Nguyen’s assertion, he says the judge found that the City and Mr. Kim both required him to hire a professional contractor to build the rest of the Project, not that this condition was imposed via the stop-work order. In Mr. Hayre’s submission, the judge’s finding in this regard is fully supported by the evidence of both Messrs. Kim and Chang.

Analysis

[66] In deciding whether the judge erred in interpreting the Contract and, if so, how, it is helpful to review the foundational principles of contractual interpretation.

[67] The overriding concern when interpreting a contract is to determine the parties’ intent and the scope of their understanding. To make that determination, “a decision-maker must 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”: *Sattva* at para. 47.

[68] Evidence of the surrounding circumstances of a contract, including its commercial purpose, is admissible to assist the decision-maker in determining the meaning of the words as they would be understood by an objective reasonable bystander in the circumstances of the parties. Ambiguity is not a pre-condition to admissibility, but the scope of such evidence must not overwhelm the inquiry into the parties’ objective contractual intention, and the interpretation must be grounded in the actual text of the contract: *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 at para. 46; *Sattva* at para. 47; *Crown Fortune* at para. 49.

[69] Where the meaning of a contract’s words remains ambiguous following a contextual inquiry, extrinsic evidence of what the parties said, did, or knew when the contract was made is admissible for the purpose of determining their common intention. However, as Justice D. Smith explained in *Athwal*, there is a presumption against implying an unexpressed term and any term that is implied must not conflict with an express term:

[48] There is a presumption against adding an unexpressed term to a contract by implication unless: (i) it is necessary to do so in order to give the contract business efficacy (this does not include a test of reasonableness for the contract); (ii) to correct an obvious oversight for which there is “no dispute” that the parties intended to include such a term in the contract (i.e. the implied term “goes without saying”); (iii) the term can be clearly and precisely formulated; and (iv) the term will not conflict or be inconsistent with an express term of the contract. However, a term of a contract may only be implied where it is necessary to give legal effect to the parties’ presumed intention, as expressed in the contract, and to give business efficacy to the contract. The onus is on the party seeking to establish an implied term of a contract. See *Perin v. Shortreed Joint Venture Ltd.*, 2009 BCCA 478 at para. 27.

[70] With these principles in mind, I turn now to the parties’ submissions regarding the exercise in contractual interpretation undertaken by the judge.

[71] I do not agree with Mr. Nguyen’s submission that the judge failed to interpret the Contract in the light of relevant surrounding circumstances related to its

commercial purpose. In my view, he plainly considered the surrounding circumstances revealed by the evidence adduced and he accounted for that evidence which he accepted in reaching his interpretation. Nor do I agree that the judge misapprehended the evidence with respect to the stop-work order or the ongoing need to employ a construction manager. When his reasons are read as a whole, as Mr. Hayre submits, it is clear he found that hiring a construction manager was required to lift the stop-work order, and that both Mr. Kim and the City required Mr. Nguyen to employ a construction manager on an ongoing basis. These findings were available to him based on the testimony of Messrs. Chang and Kim.

[72] However, in my view, the judge erred by implying a term that required Mr. Nguyen to pay Mr. Hayre “\$15,000 per month plus GST payable in the third week of the month plus \$40,000 plus GST divided by 12, payable 55 days after the issuance of the occupancy permit for each month of service”, leading to a total of “\$30,000 plus \$6,666 with GST” due and owing in monthly payments for January and February 2020: at para. 24. In other words, he erred by implying a term that the Contract was for the provision of construction management services at an ongoing rate of \$18,333 per month plus GST until the Project was complete or the parties terminated the Contract, which conflicted with the express term in the Contract stipulating the total contract amount as \$220,000 plus GST.

[73] In reaching this conclusion, I do not accept Mr. Nguyen’s submission that by its express terms the Contract ended on January 2, 2020 regardless of whether the Project was completed. As noted, the Contract expressly provides for the date upon which it came into effect, but not for an express end date. It also expressly provides that the Scope of Work is for “construction management services ... for the completion of the construction of the [Project]” and contemplates possible adaptations to the schedule and delays in the expected date for issuance of the occupancy permit. Nor do I accept Mr. Nguyen’s submission that the judge erred by finding the Contract was ambiguous or by not finding the final payment of \$40,000 plus GST was contingent on completion of the Project within the expected 12-month period. Given that the Contract does not specifically address what would happen if

the Project was not completed within 12 months, his conclusions on these points were available to the judge.

[74] Nevertheless, I am satisfied that, as Mr. Nguyen submits, the ongoing “service fee” term implied by the judge conflicts with the Contract’s express terms regarding the Scope of Work agreed upon (“construction management services ... for the completion ... of the [Project]”) and the Construction Management Fee for that work (“total contract amount for the construction management services for the project site ... valued at two hundred and twenty thousand dollars (\$220,000.00) + GST”). It follows that the implied term required Mr. Nguyen to pay a total amount that differed from, and exceeded, the total fixed fee agreed upon for the work encompassed by the Contract, namely, a fixed fee of \$220,000 plus GST for the work required to complete the Project. In other words, I am satisfied that the judge erred in law by implying a term that conflicted with the express terms of the Contract.

What order should we make?

[75] In my view, it is both possible and desirable to resolve the appeal based on basic principles of contractual interpretation and the findings made by the judge that are untainted by error. The record is complete, the amounts in issue are modest, and the interests of justice are served by bringing the litigation to an end.

[76] The judge found that Mr. Hayre was obliged to continue working on the Project until he was provided with notice of termination in accord with the termination clause in the Contract. He also found that the Contract came to an end in February 2020, when Mr. Nguyen refused to pay anything further to Mr. Hayre. Moreover, the judge accepted the evidence of Mr. Bhambra that he and Mr. Hayre worked on the Project until the end of February 2020 and found the Project was close to completion by then, which aligned with Mr. Hayre’s evidence that he needed a three-month “extension” to complete the required work. These findings were all available and untainted by error.

[77] As noted, the Contract provides for a total fixed fee of \$220,000 + GST for the construction management services required to complete the Project. By the time the

Contract was terminated at the end of February 2020, Mr. Hayre had delivered approximately 14 of the 15 months' work required and encompassed by the fixed fee, thus entitling Tony Hayre Management to a total of \$205,333.33 plus GST in construction managements fees. Accordingly, I would vary the order to provide that Brillion Homes shall pay Tony Hayre Management the difference between \$205,333.33 plus GST and the \$189,000 already paid by Brillion Homes, together with pre-judgement interest calculated in accordance with the final \$40,000 payment plus GST being payable 55 days after November 13, 2020.

Conclusion

[78] For the foregoing reasons, I would allow the appeal, set aside the order regarding Christa Vina, and vary the order regarding Brillion Homes as outlined above.

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Madam Justice Fenlon"

I AGREE:

"The Honourable Justice Iyer"