

CITATION: L.S.I. Engineering Limited v. Morales et al., 2026 ONSC 4472
COURT FILE NO.: CV-18-5222; CV-20-4121
DATE: July 31, 2026

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
L.S.I. ENGINEERING LIMITED	)	Jeremy Sacks, for the Plaintiff;
	)	Defendant by Counterclaim
	)	
Plaintiff; Defendant by Counterclaim	)	
	)	
- and -	)	
	)	
ELIZABETH MORALES	)	Samir Gebrael, for the Defendants;
MARIO HASBUM	)	Plaintiffs by Counterclaim and Third-
	)	Party Claim
	)	
Defendants; Plaintiffs by Counterclaim	)	
and Third-Party Claim	)	
	)	
- and -	)	
	)	
TARION HOME WARRANTY	)	Montgomery Shillington, for the
CORPORATION	)	Defendant by Third-Party Claim
	)	
	)	
Defendant by Third-Party Claim	)	
	)	
	)	Heard: May 25-28; June 1-5
	)	

REASONS FOR JUDGMENT

MANDHANE J.

I. INTRODUCTION

[1] The plaintiff, LSI Engineering (“LSI”), constructs custom luxury homes; it is owned and operated by brothers, Ramtin Sotoadeh and Ramsin Sotodeh.¹ LSI claims that homeowners Mario Hasbum and Elizabeth Morales’ (“the homeowners”) breached their construction contract by refusing to pay for a design fees, change orders, and extras (“the extras”) incurred during the construction of their home in Lorne Park, Mississauga (“the home”). LSI placed a lien on the home and asks me to award damages of \$86,000. The homeowners say they are not liable for the extras because they were contemplated within the original scope of work and/or because they did not approve the work in advance.

[2] The homeowners further counter that LSI breached the contract by unilaterally departed from the approved plans for the heating, ventilation and air conditioning (“HVAC”) system, installing a defective hydronic radiant floor heating system in the basement (“the hydronic system”), and failing to deliver vacant possession on time. Prior to trial, the homeowners settled their claim against the

¹ RSI Homes is a wholly owned subsidiary of LSI Engineering; Ramtin owns and operates LSI, while his brother, Ramsin, is responsible for RSI’s daily operations. For ease of reference, I will refer to LSI and RSI together as LSI.

architect, David Small Designs (“DSD”), and with the designer of the HVAC system, GTA Designs (“GTA”), by way of a Pierringer agreement.

[3] Tarion Home Warranty Corporation was added as a party because the homeowners claim that Tarion did not properly investigate and remediate their warranty claim. Tarion disagrees and crossclaims against LSI and its personal guarantors. LSI and the personal guarantors concede that they are required to indemnify Tarion if the latter is found liable on account of breach of the builder warranty.

[4] The parties appeared before me for a eight-day trial. LSI called Ramsin; Ramtin; LSI’s interior designer, Ebad Shalchi; GTA’s designer of the hydronic system, David DaCosta; and Tarion’s engineering consultant, Rob Thomson. The homeowners called Elizabeth Morales and two experts, Ben Desclouds and Robert Sparling. Tarion relied on evidence from staff, Marta Caelo and Danny Conte.

[5] To resolve this dispute, I must interpret the contract to decide the following issues:

- a) Did the homeowners breach the contract by refusing to pay for the extras? If so, what damages are owed to LSI?

- b)** Did LSI breach the contract either by departing from approved designs, installing a defective hydronic system, or delivering late possession? If so, what damages are owed to the homeowners? How should the settlement monies the homeowners received via the Pierringer Agreement be accounted for in any final order?
- c)** Did Tarion meet its statutory obligations in relation to the homeowner's warranty claim? If Tarion breached its statutory obligations, what is the proper remedy?

[6] After interpreting the contract and answering the relevant questions, I find that:

- a)** The homeowners breached the contract and are liable to pay LSI damages totaling \$57,189, plus interest at a per annum rate of prime plus 5%, compounded monthly.
- b)** LSI breached the contract and is liable to pay the homeowners \$45,106, plus applicable pre-judgement interest, minus the settlement monies received via to the Pierringer Agreement.
- c)** Tarion breached its statutory obligations and is jointly and severally liable for the damages that I awarded against LSI for the unauthorized

substitution. Tarion shall be indemnified by LSI and its personal guarantors, Ramtin and his wife.

II. ANALYSIS

[7] To answer the questions raised in this case, I must interpret the construction contract signed by the homeowners and LSI on March 28, 2017 for the construction of custom home designed by DSD for the fixed price of \$2,258,000 plus HST. In doing so, I must eschew technical rules of construction in favour of a practical, common-sense approach: *Creston Moly Corp v. Sattva Capital Corp*, 2014 SCC 53, at para. 47. I must home in on the parties' intent and understanding based on the whole contract, the specific words they used, and the surrounding circumstances known to them at the time it was signed: *Sattva*, at para. 47. I can derive the meaning of the words that were used from contextual factors such as the purpose of the agreement, the nature of the relationship it creates, and what the parties knew or ought to have reasonably known at the time of its execution: *Sattva*, paras. 48, 58. That said, the surrounding circumstances cannot overwhelm the words of the agreement itself; my goal remains to understand the mutual and objective intention of the parties as expressed by the words of their contract: *Satta*, at para. 57.

[8] *Schedules*: As a preliminary matter, the parties disagree as to which schedules were incorporated into the contract. In its affidavits, LSI relied on a version of the contract where both parties initialled every page in every schedule, whereas the homeowners relied on a version that included additional schedules that were not initialed at all. Under cross-examination, the homeowner conceded that the uninitialed schedules were received *after* the original contract was signed, but maintained that they formed part of the original contract. I disagree with the homeowners on this point: the uninitialed schedules did not form part of the original contract. They post-date it and were not contemplated or mentioned in the original agreement. Moreover, they are fundamentally different in nature to the schedules that were included; they focused on contract administration rather than contractual terms. The schedules are also not properly considered “surrounding circumstances” because they post-date signing of the contract and were not within the common knowledge of the parties at the time of execution of the contract: *Sattva*, at para. 58.

[9] *Scope*: Schedule B included the main contractual terms. Under the heading “Construction Fees,” the scope of work was defined as “construction of a 5270-square foot two story structure, 3007 Sq. Ft. of finished basement, 545 sq. ft. of Garages, and 806 sq. ft. of (3) covered Porch including design work prepared by (David Small Designs) Architect dated March 02, 2017.”

[10] The contract also incorporated by reference the “structural and mechanical drawings (by others),” and required LSI to complete the work according to “approved plans,” and to supervise subcontractors to ensure that the work proceeded according to those plans.

[11] Construction fees were subject to adjustment based on “final size, finishing and features of the building as designed and constructed.” Under the heading “Mechanical and HVAC systems,” Schedule A states, “in accordance with mechanical engineering permit plans.”

[12] At issue here is whether the mechanical drawings were incorporated into the contract by reference. I find that they were. First, the plain language of the contract supports this interpretation. The contract specifically referred to mechanical drawings being prepared by others, and bound LSI to proceed according to the approved plans. There was only ever one set of approved mechanical drawings for this project, so there can be no ambiguity as to *which* mechanical drawings were being referred to within the contract. Moreover, I reject LSI’s position that it was free to pick and choose those aspects of the mechanical drawings to incorporate or eliminate; there is no language in the contract to support such an interpretation.

[13] The surrounding circumstances also strongly support interpreting the contract to have included the mechanical drawings for the entire HVAC system. Foremost, there is the issue of timing. Early in the design process—in January 2017—the homeowner and LSI met to discuss the homeowners “wish list” which included installation of a basement floor heating system with individual temperature control for six zones. Moreover, before signing the contract, LSI knew that the homeowners had retained DSD to prepare structural and mechanical drawings for the home, and that DSD had subcontracted with GTA to prepare the HVAC drawings. The mechanical drawings contemplated installation of a forced air natural gas furnace as the primary source of heating, with a secondary the hydronic system operating in the basement and consisting of three manifolds, three thermostats, six independent heating zones (one for each room), and 17 hearing circuits or loops (“the as-designed system”).

[14] One day before signing the contract, Ramtin specifically inquired with DSD and the homeowners about the HVAC design, but proceeded to sign the contract without ever receiving it. From this I infer that LSI was willing to take a calculated risk by signing the contract without having received the mechanical drawings. Having taken the risk and been solely responsible for drafting the contract, LSI cannot now claim any ambiguity with its terms.

[15] The fact that the design for the hydronic system was secondary to the gas system, was labeled on the drawings as “for comfort only,” and therefore did not require city approval is a red herring as far as contract interpretation is concerned. Neither the homeowner nor LSI were aware of these facts when the contract was signed because they had not yet received the approved mechanical drawings. The simple fact is that the mechanical drawings provided and approved by the city contemplated inclusion of the hydronic system—nothing about the city approval process gave LSI the authority to unilaterally depart of the mechanical drawings that were submitted for it.

[16] To the extent there remains any ambiguity, my interpretation of the contract and the parties intentions when they signed it is further supported by LSI's actions *after* receiving the mechanical drawings in May: see, *Shewchuk v. Blackmount Capital Inc.*, 2016 ONCA 912, at paras. 39-50. Despite claiming to be surprised and shocked by the as-designed system, Ramsin never contacted the homeowner to discuss the same or clarify the terms of the contract, and never produced an alternative set of mechanical drawings, even though the principal of GTA testified that unilateral changes to the as-designed system should have triggered a design review.

[17] *Extras:* Schedule B stated that the homeowners were liable for “additional charges” where the work undertaken varied from the scope of work detailed in the contract and drawings. However, any changes to the scope of work and associated charges had to be approved by both parties by way of written Change Order (CO) prior to the work commencing. While “change order” was not defined in the contract, I find that it required at minimum: a description of scope of the change, a dollar value for the increase or decrease in cost, and any anticipated change to the schedule.

[18] The homeowner could also request additional work at the contractor’s standard rates, which had to be approved by both parties in writing prior to commencement; LSI’s standard rate for interior design services was set at \$200 per hour.

[19] *Completion:* Schedule B to the contract did not set out a target completion date. However, it defined “substantial completion” as “not less than 97% complete,” but also stated that substantial completion would not be postponed if the delay in completion was due to changes made by the homeowner or items being on back order.

[20] *Custom Features and Finishes:* Schedule A titled “Custom Features and Finishes” required changes to be approved in writing in advance. LSI had the right

to substitute any feature with one of equal or better quality “with the written approval of the homeowner.”

[21] *Cash Allowances*: Schedule C set out cash allowances, *i.e.* an amount of money put into the project budget as a placeholder for custom items that were not yet fully priced when the contract was signed. If the homeowner selected upgraded materials, there could be “addition fees...as per contract.” Here, I agree with LSI that the contract specifically contemplated that the total price could increase if the homeowner chose custom finishes whose price exceeded the allotted “cash allowance” that LSI set for that item.

[22] Schedule C includes a further subheading, “Additional items.” The contract defines these “additional items” as those that were included in the fixed price contract, but for which the homeowner would not receive a credit if they were subsequently omitted from the scope of work. These “additional items” included the stone finishing at rear, additional basement space, basement heated floor, and the basement ceramic floor. Reading the whole contract, I find that LSI agreed to construct these “additional items” for the fixed price, but that the homeowners would not receive a credit if they later omitted them. The alternative interpretation offered—that LSI was free to omit the items without any credit to the homeowner—makes no sense in light of the bargain being struck and the fact that there was

another schedule devoted to extras that fell outside the scope of the contract (Schedule E): see, *Atlos IT Solutions v. Sapient Canada Inc.*, 2018 ONCA 374, at para. 60.

[23] *Extras:* Schedule E titled “Extras” included items that fell outside the scope of the contract. Schedule E stated that electrical heated flooring was charged at \$15.00 per square foot, and that “hydraulic heating” in the basement was “not applicable.” From this, I take that hydraulic heating was not contemplated as an extra, but rather an included within scope. Schedule E stated that the basement addition was priced at \$39,000, and that the rear covered porch was “included.” From this, I take that the parties agreed on a fixed price of \$39,000 for the additional square footage in the basement, but that the rear covered porch would be included within scope.

[24] *Payment:* Schedule P was the payment schedule. It required the homeowners to pay a deposit of 5% upon signing the contract, and to make regular payments as the project progressed towards completion.

[25] *Warranty:* Schedule T set out the terms of the Tarion New Homeowner Warranty Program. It stated that the one-year warranty required homes be constructed “in a workman-like manner and free from defects in materials; and protects against unauthorized substitutions...,” while the two-year warranty

covered “defects in the work or materials in the electrical, plumbing and heating delivery and distribution systems.” The seven-year warranty covered major structural defects.

a) Did the homeowners breach the contract? If so, what damages are owed?

[26] After the homeowners took possession of the home, LSI demanded that they pay an additional \$280,000 for various extras. When the homeowners refused, LSI registered a lien for \$240,000 on the home. After the lien was registered, the homeowners paid LSI an additional \$175,000. As of January 10, 2019, the homeowners had paid LSI a total of \$267,426 for extras. LSI says that the homeowners still owe them an additional \$65,000 in extras pursuant to the contract. The homeowners say that they never approved the disputed extras in writing such that they are not liable to pay for them according to the contract.

[27] First, LSI says that the homeowners breached the contract by failing to pay \$39,000 for the basement addition as an extra. I agree. The proper interpretation of Schedule C to the contract required the homeowners to pay an additional \$39,000 for the extra square footage in the basement because that was a finished space that was not contemplated in DSD’s original designs. The contemporaneous email correspondence between the parties dated May 7, 2018 supports my finding

that the homeowners were aware and agreed to pay the additional cost if they proceeded to finish the extra square footage in the basement.

[28] Second, LSI says that the homeowners owe \$23,800 in design fees. I disagree. The contract was clear that design fees needed to be approved in writing in advance. While the homeowner approved some designs created by the designer, they were never provided with an estimated cost for his design services before they were undertaken, and never signed any change orders in relation to the design fees. In fact, the homeowner declined using LSI's design services in various correspondence. In the absence of signed approval for design fees, LSI cannot succeed on this aspect of the claim.

[29] Third, LSI says that the homeowners approved certain change orders for which they later refused to pay. Despite admitting to signing the change orders, the homeowners now take the position that they constituted "double billing" because they did not include a corresponding credit for the associated "cash allowance" in Schedule E. That ship has sailed. Having signed the change orders, the homeowners must pay them; any credits should have been negotiated before signing. The homeowners are required to pay for the following change orders: 1, 3, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

The homeowners are not liable for Change Order 11 because they did not approve it in writing.

[30] The homeowners are also not liable to pay for the following extras, which fell outside the scope of the original design but for which there is no signed change order: the gym mirror (\$3,220), the additional BBQ stone surround (\$3,450), and the rear porch landing and stairs (\$27,845). It would also not be fair to award damages for these items based on the principle of quantum meruit because it was LSI itself that decided to proceed with this work without the homeowners' prior approval, despite the unambiguous language of the contract requiring the same. Ramsin testified that they did so as a matter of customer service. Having proceeded with the work in the absence of signed approval, LSI cannot now ask to be compensated for it.

[31] Overall, the homeowners owed LSI a total of \$227,444 in extras for the basement addition and approved change orders. They made an unspecified payment to LSI of \$170,255 paid after the lien was placed on the property, which leaves a total outstanding of \$57,189. The homeowners are liable to pay LSI damages totaling \$57,189, plus the contractual per annum interest rate of prime plus 5%, compounded monthly.

b) Did LSI breach the contract? If so, what damages are owed?

1) Did LSI breach the contract by departing from approved designs?

[32] The contract required LSI to follow GTA's mechanical designs, which provided for a hydronic system with three manifolds, six independent heating zones, and 17 heating circuits or loops ("as-designed system"). Instead of installing the as-designed system, LSI installed a system that had two manifolds, two zones, and ten circuits ("as-built system"). LSI's departure from the mechanical drawings without the homeowners' prior approval was a material breach of the construction contract, especially since LSI and all the experts agreed that the as-built system was less expensive to install, less functional, and more expensive to operate in the long-run.

[33] Having established a breach of the construction contract, I now turn to the issue of damages. The claimant bears the burden of proving both the existence of damages and the quantum: *The North West Company LP v. Classic Furs Company Ltd.*, 2025 ONCA 295, at paras. 62. Where the absence of evidence makes it impossible to assess damages, the claimant is entitled to only nominal damages: *North West*, at paras. 62. That said, nominal damages are neither appropriate nor just where the claimant suffered some real loss: *North West*, para. 66, 72. Where the damages are not *impossible* to assess and the interests of justice favour making an award, I can exercise my discretion to award

compensatory damages while discounting to account for uncertainty and frailties in the evidence: *North West*, para. 65; see also, *TMS Lighting Ltd. v. KJS Transport Inc.*, 2014 ONCA 1.

[34] Here, I accept that the homeowners suffered damages because of LSI's unauthorized substitution of the hydronic system. All the experts agreed that the system is less functional and more expensive to operate. That said, the homeowners did not adduce cogent evidence to prove the quantum of damages they claim, which is some \$400,000. For oral reasons given at trial, I ruled that the homeowners' evidence about damages was inadmissible because it took the form of quotes that the homeowner received from third-party contractors, without the homeowner filing affidavits from the contractors themselves. Given that the quotes were hearsay opinion evidence, I ruled that they were not sufficiently reliable in the absence of any meaningful opportunity to cross-examine the authors: *Sanwalka v. Regional Municipality of Peel et al.*, 2019 ONSC 6414, at paras. 30-31. I further found that their admission was not necessary because the quoting contractors could have been called as witnesses. While I allowed the homeowners' litigation expert, Robert Sparling, to give evidence about the quotations that he reviewed, I cannot give his evidence any weight because he did not procure the quotes (the homeowner did), he did not speak to the quoting contractors, and he did not know the exact scope of work being quoted.

[35] Despite the frailties in the homeowners' evidence on damages, the interests of justice favour awarding damages beyond a nominal amount because LSI flagrantly and knowingly breached the contract that it drafted and signed. It would be unfair to require the homeowners to pay LSI for the extras, without setting them off against damages for the unauthorized substitution. There is also some admissible evidence from which I can calculate minimal damages because the contract itself provides for in-floor electrical heating at \$15 per square foot. Given that it would cost more than \$15 per square foot to install a hydronic system, using the \$15 per square foot number to ground my calculations provides me with a conservative estimate of the damages suffered. Taking to total square footage of the basement specified in the contract (3007 square feet) and multiplying that by \$15 per square foot, I calculate the minimal damages owing to be \$45,105, plus applicable pre-judgement interest at rates set out in the *Court of Justice Act*, R.S.O. 1990, c. C. 43, s. 128(1).

[36] The homeowners settled their claim with DSD and GTA prior to trial by way of a Pierringer agreement, though I do not know for what sum (that aspect of the agreement was redacted on consent of the parties). The Pierringer agreement states that the homeowners will "not seek to recover...any portion of the losses claimed which a court or tribunal may attribute to the fault of the settling defendants [DSD and GTA]." In effect, the Pierringer agreement severs the defendants' joint

liability, and converts the homeowners' claim into one of several or proportionate liability against LSI alone.

[37] As a matter of law, the principle of double recovery prevents the claimant from recovering twice, such that the amount of the settlement is generally deducted from the ultimate verdict on damages: *Laudon v. Roberts*, 2009 ONCA 383, at paras. 27-55. While *Laudon* was a tort case that involved a Mary Carter rather than a Pierringer agreement, the principle of double recovery is applicable to the matter before me. Therefore, when determining the amount owed by LSI, the parties must deduct the settlement monies already received from DSD and GTA.

2) Did LSI breach the contract by installing a defective hydronic system?

[38] The homeowners claim that the as-built hydronic system is defective because there is a six-foot long "heating gap" in the recreation room, meaning that one area of the floor does not heat to the same degree as the other areas of the floor. The homeowners relied on expert evidence to support their claim; while LSI relied on Tarion's expert to counter it. Both experts agreed on the basic mechanics of a hydronic system, which uses warm water flowing through tubes under the floor to heat both the floor and ambient room temperature. A manifold sends water into

separate tubing loops, with each loop heating a specific room or area. The cooler water then returns through the manifold to the boiler to be reheated. Thermostats tell the system when an area needs heat.

[39] After the homeowner complained about the hydronic system being deficient, Tarion sent an engineer to assess the situation. Tarion's engineering expert agreed that half of the system was not heating properly at first, but opined that it performed effectively after one of the thermostats was relocated to outside the furnace room. In contrast, the homeowners' expert opined that, even after the thermostat was relocated, the heating gap in the recreation room remained and never reached the temperature set on the thermostat. Tarion's expert admitted that he never checked whether the basement floor was heating evenly, let alone whether it was heating to the thermostat set point; he was solely focused on whether the system turned on at all. As such, Tarion's expert opinion is not particularly helpful in assessing whether the system was defective because it solely dealt with whether the system turned on and not whether it heated uniformly. Overall, on the issue of deficiency, I prefer the homeowners' expert to Tarion's.

[40] Having accepted the homeowners' expert evidence, I find that the system was defective because of LSI's unilateral decision to reduce the manifolds and heating loops as compared to the as-designed system. I accept the homeowners'

expert's evidence that there is heating gap, and that it was caused by the heating loops being too long and there being one less manifold. The homeowners' expert opinion was corroborated by GTA's evidence that eliminating a manifold could create a heating gap if the heating loops became too long such that the water returning to the manifold was significantly colder than the water leaving it.

[41] From LSI's own evidence, I find that the deficiency was the result of LSI's failure to professionally design the hydronic system, which was negligent. Throughout his cross-examination, Ramsin admitted that there were no formal designs prepared for the as-built system because it was common knowledge that you needed one thermostat and manifold per 1200 square feet. He testified that, since the homeowners basement was "less than 2400 square feet," the as-built system was sufficient. However, these calculations do not make sense because the contract states that the basement was over 3000 square feet, not 2400 square feet. Based on Ramsin's own calculations, then, LSI did not install enough manifolds or thermostats to properly heat the basement floor.

[42] Having established a deficiency, I now turn to the issue of damages. Again, the homeowners have not adduced any admissible evidence from which to assess damages. Even on the homeowners own evidence, damages for this deficiency would be minimal because the hydronic system was a secondary heating system

within the basement, because it was designed “for comfort only,” because the system still heats the floor within the area of the “heating gap,” and because the difference in temperature between the “heating gap” and surrounding floor is a matter of a few degrees. On this aspect of their claim, I am only prepared to award nominal damages of \$1.

3) *Did LSI breach the contract by delivering possession of the home late?*

[43] The short answer is no. The parties agree that, as a factual matter, LSI started construction on June 28, 2017, that the pre-delivery inspection was completed on October 30, 2018, and that the homeowners took possession on November 6, 2018. LSI registered the construction lien on the home ten days later.

[44] The homeowners have failed to establish that there was any contractual term requiring LSI to complete the construction and allow access to the home by a particular date. To the extent that the payment and work schedules included a projected completion date of mid-October, these schedules did not form part of the contract because they were created afterwards. In any event, the homeowner signed multiple change orders that expanded the scope of the work and specifically contemplated the occupancy being delayed by an additional 2-3 weeks. The homeowner is not entitled to any damages for alleged delay.

c) Did Tarion meet its statutory obligations in relation to the warranted deficiencies in LSI's construction?

[45] LSI has been a registered builder with Tarion since 2003, this home was enrolled in July 2017, and the home was subject to a mandatory new home warranty. Ontario law requires eligible newly built homes to carry a statutory warranty: *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31. The *Warranties Act* is consumer protection legislation and I must interpret it broadly and liberally: *Markey v. Tarion*, [2006] O.J. No. 2929 (Div. Ct.), at para. 5.

[46] The statutory warranty covers both defects and unauthorized substitutions of items referred to in the purchase agreement, to a maximum of \$300,000: *Warranties Act*, s. 13(1)(a)(c); *Administration of the Plan*, R.R.O. 1990, Reg. 892, ss. 19, 6(3)(c). The builder is the primary warrantor and must investigate and correct covered defects; Tarion acts as the backstop, assessing claims and arranging repairs or compensation when the builder does not meet its obligations. Where it pays monies out of its guarantee fund, Tarion has a right of subrogation vis-à-vis the builder: *Administration Regulation*, s. 13(1).

[47] Under the statutory scheme in place at the time the home was registered, owners were required to record defects on Tarion's "initial claim form": *Administration Regulation*, s. 4.2. Submitting the form protected the owner's ability

to seek Tarion's assistance, but the builder remained responsible for correcting the defects, usually within 120 days. If the builder failed to correct the defect, the homeowner could make a conciliation request to Tarion; after the conciliation request, the builder had another 30 days to make the repairs, and after that, Tarion would complete an inspection and conciliation report: *Administration Regulation*, s. 5. If Tarion determined that an item was warranted, the builder normally received a final 30 days to complete the work. If it still failed to do so, Tarion could arrange the repair or compensate the homeowner directly, while seeking indemnification from the builder.

[48] Here, the homeowners submitted the initial claim form to Tarion on November 28, 2019, stating: "Basement - Radiant Heated floors missing one of three manifolds so floors don't heat in 1/3 of the basement." The homeowner's initial claim makes it clear that the homeowners concerns were two-fold: the unauthorized substitution of the as-designed system with the as-built system, and alleged deficiency with the as-built system. Tarion's conciliation inspector admitted that that both unauthorized substitutions and poor workmanship could "hypothetically" result in warrantable claims.

[49] After LSI commenced this litigation, the homeowner refused to allow LSI access to the home and applied to Tarion for conciliation. Tarion conducted a

conciliation inspection in March 2019 and retained a third-party engineer to investigate the claim. Tarion's engineering expert testified that his sole focus during the conciliation assessment was on determining whether the system turned on. He freely admitted that he did not investigate whether the as-built system matched the as-designed system, or whether the system heated the floor uniformly.

[50] As a result of the conciliation process, Tarion recommended that LSI relocate one of the basement thermostats; and the homeowner allowed LSI to return to complete this task. Tarion's engineer returned afterwards and confirmed that the system was turning on. Again, he did not consider whether the system was heating uniformly or whether it constituted an unauthorized substitution.

[51] Overall, the homeowners have proven on a balance of probabilities that Tarion did not meet its statutory obligations based on the scope of their initial claim. While Tarion appropriately and adequately investigated the homeowners claim that the system was "not turning on," they did not investigate at all whether the floor was missing one of three manifolds and whether the missing manifold constituted an unauthorized substitution based on the wording of the contract. (That said, Tarion was not under any obligation to investigate the homeowner's claim at trial that the floor was not heating uniformly, because that was not within

the original scope of the homeowners' initial complaint: *McKee v. Tarion*, 2026 ONSC 205 (Div. Ct.), at para. 70.)

[52] The situation before me is distinguishable from the cases relied upon by Tarion because those cases involved claims for unauthorized substitution of features that were not referred to within the construction contract or attached schedules, or were not within the control of the builder at all: see, *7006 & 7275 v. Tarion*, 2012 CanLII 80371 (ON LAT); *7963 v. Tarion*, 2013 CanLII 58469 (ON LAT); *C.H., Q.H., and A.W. v. Tarion*, 2018 CanLII 59156 (ON LAT); *Wang v. Tarion*, 2022 CanLII 8678 (ON LAT); *Murray v. Tarion*, 2025 CanLII 47339 (ON LAT); *Caschetto v. Tarion*, 2025 CanLII 61671 (ON LAT); *Gulati v. Tarion*, 2025 CanLII 119978 (ON LAT); *5297 v. Tarion*, 2010 CanLII 100817 (ON LAT).

[53] Having found that Tarion breached its statutory obligations, I now turn to the proper remedy. Again, the homeowners have only established minimal damages for the unauthorized substitution. Therefore, Tarion is jointly and severally liable for the damages that I awarded against LSI for the unauthorized substitution. Tarion shall be indemnified by LSI and its personal guarantors.

FINAL ORDER AND COSTS

[54] The parties shall endeavour to agree on the terms of the final order, including in relation to costs without further resort to the courts.

[55] On the issue of costs, LSI and the homeowner were both partially successful, though I do not know how much will be deducted from the homeowners' award on account of the Pierringer Agreement. Tarion was unsuccessful and, in the usual course, would be liable to pay a portion of the homeowners' costs. That said, I understand that offers were exchanged which may impact the ultimate costs awarded. Given the complexity of the costs issue, the resources the parties have already expended on this litigation, and their relatively modest recoveries, I would highly encourage them to agree on the matter of costs as between themselves.

[56] If the parties cannot agree on the terms of the final order or costs, on or before August 24, 2026, each party shall serve, file and upload to Case Centre the following:

- a)** Their draft final order, and associated interest calculations;
- b)** Their bill of costs, any offers to settle, and written submissions on costs (maximum 5 pages, double-spaced, 12-point font).

[57] I remain seized of this matter pending issuance of the final order.

Mandhane J.

Released: July 31, 2026

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

L.S.I. ENGINEERING LIMITED

Plaintiff; Defendant by Counterclaim

- and -

ELIZABETH MORALES
MARIO HASBUM

Defendants; Plaintiffs by Counterclaim and
Third-Party Claim

-and-

TARION HOME WARRANTY
CORPORATION

Defendant by Third-Party Claim

REASONS FOR JUDGMENT

Mandhane J.

Released: July 31, 2026