

# Court of King's Bench of Alberta

**Citation:** Falls v. 1791524 Alberta Ltd., 2026 ABKB 576

**Date:**  
**Docket:** 1903 10990  
**Registry:** Edmonton

2026 ABKB 576 (CanLII)

Between:

**Gregory Hugh Falls**

Plaintiff

- and -

**1791524 Alberta Ltd. formerly known as Dig Zach Earthworks Ltd.**

Defendant

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**Reasons for Decision  
of the  
Honourable Justice A.K. Akgungor**

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## **I. Introduction**

[1] This is a claim by the plaintiff (“Mr. Falls”) against the defendant (“Dig Zach”) for breach of contract and negligence arising from concrete, excavation, and landscaping services that Dig Zach was retained to perform on Mr. Falls’ property in 2017.

[2] For the reasons set out below, Dig Zach is liable to Mr. Falls for both breach of contract and negligence. Dig Zach is ordered to pay \$36,757.17 in damages to Mr. Falls.

## **II. Procedural History**

[3] The Statement of Claim in this matter was filed May 28, 2019. It was served on Dig Zach on May 6, 2020 through its registered office. A Statement of Defence was filed on June 17,

2020. On June 2, 2022, legal counsel for Dig Zach filed a Notice of Withdrawal of Lawyer of Record. Thereafter, Dig Zach did not retain new counsel.

[4] On November 7, 2022, an order was granted by Applications Judge Summers permitting Mr. Falls to serve Dig Zach with any future pleadings or correspondence in the matter by serving Bitar Bareha, Director of 1791524 Alberta Ltd., by way of recorded mail at a specified address.

[5] Questioning was completed by all parties in January 2022. Mr. Falls' answers to undertakings were served on Dig Zach in accordance with the substitutional service order on May 18, 2023.

[6] A Litigation Plan was approved by Order of Applications Judge Park dated March 19, 2024 (the "Park Order"). The Park Order also provided that Mr. Falls could substitutionally serve Dig Zach with any future pleadings or correspondence in the matter by serving Bitar Bareha, Director of 1791524 Alberta Ltd by way of recorded mail at a specified address or by way of recorded mail to the registered office of Dig Zach and such service was to be deemed good and sufficient after 7 days from the date of service.

[7] Dig Zach was served with the Litigation Plan on March 25, 2024 in accordance with the Park Order. The materials served on March 25, 2024 were returned with a notation that the defendant had moved. The Litigation Plan was then served by recorded mail to Dig Zach's registered office. These were returned on April 16, 2024 with a notation that the recorded mail was unclaimed.

[8] In accordance with the terms of the Litigation Plan, Mr. Falls served an expert report on Dig Zach on June 28, 2024. No expert report was provided by Dig Zach nor did Dig Zach provide its answers to undertakings in accordance with the timelines set out in the Litigation Plan. The materials served on June 28, 2024 were again returned with a notation that the defendant had moved, and when served on the registered office, the materials were again returned with a notation that the recorded mail was unclaimed.

[9] Dig Zach was served with the Form 39 - Confirmation of Trial Date on September 18, 2025 in accordance with the Park Order. The matter was set for trial on December 4 and 5, 2025.

[10] Since the withdrawal of its counsel in June 2022, Dig Zach has not attended any court applications or completed any steps in the litigation process.

[11] On November 27, 2025, the Civil Trial Coordinator's office advised that it had not had any communication with Dig Zach since the withdrawal of counsel in 2022 and that the Court had no active e-mail on file for Dig Zach. Dig Zach did not appear for trial on December 4 or December 5, 2025.

[12] Counsel further advised that Dig Zach had been struck from the corporate registry on June 2, 2023 as a result of its failure to file annual returns. However, section 227(2) of the *Business Corporations Act*, R.S.A. 2000, c. B-9, allows a civil action commenced against a corporation before its dissolution to continue as if the corporation had not been dissolved.

[13] Given that Dig Zach has been served with all relevant materials throughout these proceedings in accordance with the substitutional orders granted by this Court, that Mr. Falls took all the steps he was required to take in accordance with the Litigation Plan, that Dig Zach has not engaged in these proceedings in any way since 2022, that the Court had no contact information for Dig Zach, that Dig Zach did not appear for trial, and having regard to the

operation of section 227(2) of the *Business Corporations Act*, I directed that the trial would proceed in Dig Zach's absence.

### III. Evidence

[14] Mr. Falls testified on his own behalf. Mr. Milton Davies, a certified arborist and professional forester, testified as an expert witness for Mr. Falls.

#### (a) Mr. Falls

[15] Mr. Falls learned of Dig Zach through a neighbour. The owner/operator of Dig Zach, Ziad ("Zach") Elkadri, lived down the street from Mr. Falls.

[16] Initially, Mr. Falls and Mr. Elkadri agreed that Dig Zach would undertake the following work on Mr. Falls' property: demolition of his existing garage and the construction of a new garage pad, demolition of an existing concrete pad and existing sidewalks, construction of a new RV pad with 4" of road crush, construction of new sidewalks and landscaping. Mr. Elkadri quoted Mr. Falls \$21,000 all-inclusive for this work and Mr. Falls accepted that price.

[17] The agreement between the parties was verbal in nature. There was no written documentation setting out the terms of the agreement. Mr. Falls did not feel written documentation was necessary as Mr. Elkadri was a neighbour down the street. He felt comfortable proceeding on a handshake.

[18] Subsequent to entering into the agreement with Dig Zach, Mr. Falls obtained a demolition permit from the City of Edmonton for his garage, but he was not successful in obtaining a construction permit for the garage. This occurred in approximately April 2017. In light of the City's refusal to grant the construction permit, Mr. Falls no longer wished to proceed with the work to demolish the garage and garage pad and to construct a new garage pad could not proceed. The work that then remained to be conducted was demolition of the existing concrete pad and existing sidewalks, construction of a new RV pad with 4" of road crush, construction of new sidewalks and landscaping.

[19] Mr. Falls conveyed this change in the scope of work to Mr. Elkadri and as a result, he suggested reducing the price of the work to \$10,500. The garage-related work would be deferred to the following year. Mr. Falls testified that Mr. Elkadri was fine with the new suggested contract price of \$10,500. These changes to the scope of work were made verbally in April 2017 and were not documented in writing.

[20] Mr. Falls provided a text message between him and Mr. Elkadri which demonstrates that Mr. Falls shared the fact of the construction permit denial with Mr. Elkadri on April 5, 2017.

[21] Mr. Falls testified that work under the agreement was to commence in June 2017. A text message dated June 2, 2017 from Mr. Elkadri confirms that he planned to start work at Mr. Falls' property on June 5, 2017.

[22] Mr. Falls testified that Dig Zach attended at the property in June 2017 with a bobcat and started digging out the dirt, laid some forms for the concrete, and put some crush in for the sidewalks and maybe some rebar. Mr. Falls described the process in June 2017 as Mr. Elkadri showing up, doing some work and then disappearing for a while. He would want more money, do some work, and then disappear again.

[23] Mr. Falls testified that, ultimately, Dig Zach did not complete the work as agreed. He described the state of the work performed by Dig Zach as follows:

- Dig Zach poured the sidewalks down the side of the house but stopped right at the far end of the house. Photos taken by Mr. Falls show where the pouring of the sidewalks abruptly stops, rather than the sidewalks being completed throughout the property. Another photo demonstrates that no rebar was included in the sidewalks. Mr. Falls further testified that the elevation of the sidewalks was extremely variable. He stated that there was a probably a 3” difference in elevation over a 3-foot length.
- Dig Zach did not pour the “side wings” on the sidewalk leading to the road and did not pour the pad in front of the front stairs. A photo shows the side wings that were not poured by Dig Zach later being poured by Next Level, the company later hired by Mr. Falls to complete the work not done by Dig Zach. Similarly, a photo taken by Mr. Falls shows Next Level completing the pouring of the pad in front of the front stairs, work that was not completed by Dig Zach.
- Dig Zach did not complete the RV pad. Photos show the forms that were laid by Dig Zach to act as the outside enclosure for the pouring of the RV pad. It is apparent that the forms are crooked and uneven, when they should appear as straight and level.
- In terms of the landscaping, Dig Zach only removed some dirt in the front yard, right up to the trees, deck, and house. They did not bring in the proper dirt, spread it, or bring in sod. All they did was remove dirt. No landscaping was completed.

[24] Mr. Falls testified that he discussed the fact that the work was not complete with Mr. Elkadri. This conversation took place in his kitchen. Mr. Elkadri wanted \$5,000 more to complete the work but Mr. Falls did not want to pay him until the work was complete as he was concerned about Mr. Elkadri’s pattern of disappearing for a while after he was given money.

[25] During the course of this conversation with Mr. Elkadri about extra money, Mr. Falls heard a loud bang. When he went outside to see what had caused the bang, it appeared that the bobcat had been driven, by another worker, into Mr. Falls’ overhead garage door. Mr. Elkadri then informed Mr. Falls that the concrete work would be on hold until they could fix the garage door. A text message from Mr. Elkadri on June 26, 2017 confirmed that the concrete work would be postponed until the garage door was fixed.

[26] Mr. Falls was left having to barricade his garage door to prevent someone from breaking into the garage. In terms of damage to the garage door, Mr. Falls observed that the lower panel was “all messed up,” the rollers were bent and had popped out of the rails, the rails were also bent, the cable had snapped off, and the carriage was also snapped off. Photos taken by Mr. Falls depict the bottom panel of the garage door completely bowed in.

[27] Mr. Elkadri returned the next day with someone to look at the garage but all that could be done at that point was to place the rollers back in the rails. A photo taken by Mr. Falls shows the “repaired” garage door as still appearing very warped and uneven.

[28] Mr. Falls obtained a quote from Lock Surgeon to fix the garage door on August 3, 2017 in the amount of \$1,220.55. Mr. Falls has not yet proceeded with the work with Lock Surgeon as he does not currently have the funds. As of the date of trial, the garage door still remained in a damaged state and Mr. Falls is not able to park in the garage anymore. He is not able to open or close the garage door at this point. The garage now remains locked to the best of Mr. Falls' ability, and he simply does not use the garage.

[29] As of July 6, 2017, Mr. Elkadri had not returned to complete the concrete work, so Mr. Falls sent him a text on that date to inquire as to what was happening as it had been a long time. Mr. Elkadri replied as follows:

Yea, very long time. Nothing is happening the way ur dealing with me I don't like it. this project should have been done b4 the holidays and ur trailer could of been parked on ur pad. But nooooooooo u don't want to work with me.

[30] Mr. Falls then replied ok, and that he would see Mr. Elkadri in court.

[31] Subsequent to this exchange, as Dig Zach was a member of the Better Business Bureau, Mr. Falls contacted the Better Business Bureau to seek their assistance in getting Dig Zach to return and finish the work. Dig Zach would not engage with the Better Business Bureau and, as result, after three unsuccessful attempts to contact Dig Zach, the Better Business Bureau revoked Dig Zach's status with them. Mr. Falls' correspondence with the Better Business Bureau was in evidence before the Court.

[32] In order to get the work completed, Mr. Falls was required to hire another contractor, Next Level Concrete ("Next Level"). Next Level was required to re-do a lot of work that had been done by Dig Zach. Mr. Falls received a quote on July 9, 2017 from Next Level to complete the work for a cost of \$10,676.06. Mr. Falls paid that amount in full to Next Level on July 14, 2017.

[33] Next Level evaluated the work that had been completed by Dig Zach. Next Level informed Mr. Falls that the concrete was not more than 3 inches thick in many areas, as it should have been, and it appeared that the rebar was not chaired to mid slab height. Rather, it was lying on the ground where it failed to provide reinforcement. The forming of the site had to be redone as it was not straight or symmetrical and often in the wrong place. Rebar had to be taken out and retied properly. The RV pad excavation was not deep enough, and Next Level had to excavate by hand and with a skid steer to get it to the proper depth to accommodate sufficient road crush (4 inches) and concrete (5 inches).

[34] Photos taken by Mr. Falls depict Next Level using a skid steer to create a deeper excavation so that 4 inches of crush and a 5-inch RV pad could be accommodated. A trailer full of dirt was removed to get to the appropriate depth for the excavation. Mr. Falls provided a photo of the trailer full of dirt and testified that he believed that two full trailer loads of dirt were removed.

[35] In terms of the outstanding landscaping work, Mr. Falls decided to simply take this on by himself. He ordered three loads of dirt and some sod. He spread the dirt and had his friends and wife help him lay the sod. Receipts for the purchase of soil were entered into evidence that demonstrate that Mr. Falls spent \$210.00 on soil on all of August 3, 4 and 11, 2017. Mr. Falls' credit card statement further revealed that he spent \$204.75 at JRS Landscape Supply on August

5, 2017 for landscaping supplies to spread the dirt and lay the soil and \$1,223.25 for sod from Little Creek Landscaping on August 22, 2023.

[36] Mr. Falls testified that the stone skirting on his front deck was also damaged by the teeth of the bobcat. Accordingly, he obtained an estimate of \$3,503.85 to repair the stonework from Sustain Developments. As a result of sun fading, the individual damaged bricks could not simply be replaced. All the stonework needed to be replaced so that it would match in colour. A photo of the damaged brick shows discoloration in the areas where the bobcat made contact with the stone skirting. When Mr. Falls raised the damage to the stone skirting with Mr. Elkadri, Mr. Elkadri brushed it off as not a big deal and suggested that Mr. Falls use markers to cover up the damage. Mr. Falls has not yet undertaken the repairs to the stonework as he did not have the funds available to do so.

[37] Mr. Falls described his concerns with the work performed by Dig Zach as follows: his bur oak tree was damaged, his garage door was damaged, his stonework was damaged, the concrete poured out front was up an inch lower than it should have been with the result that it did not meet up with the height of an abutting pad. Mr. Fall's mailman reported this height difference to him as a trip hazard. The tripping hazard is visible in a photo taken by Mr. Falls.

[38] Another concern is that there were no "hats" placed under the rebar so that the rebar would rest at the mid-concrete level. Without hats, the rebar would lie at the bottom of the forms, and the concrete would be poured on top of the rebar. With respect to the sidewalks that Dig Zach poured, Mr. Falls now has cracks in the concrete because of the misplacement of the rebar. Photos taken by Mr. Falls depict Next Level redoing the form and rebar work for the RV pad and using hats to complete the work. Another photo showed how the rebar placed by Dig Zach in the sidewalk did sink down to the bottom of the concrete. Mr. Falls testified that this means that the rebar is effectively doing nothing to support the concrete.

[39] For the concrete that was poured, Mr. Falls noted that it was poured well below the 3.5" that was agreed to. Originally, Mr. Falls wanted the concrete poured at 4" but he and Mr. Elkadri agreed to a lower height of 3.5" so that 2x4s could be used. During his questioning on January 7<sup>th</sup>, 2022, Mr. Elkadri acknowledged that the original agreement was that the height of the concrete would be 4".

[40] Mr. Falls measured the height of the concrete pour at various points in order to determine that the height of the pad was less than the agreed on 3.5." When this was pointed out to Mr. Elkadri, he brushed it off and didn't care. Photos taken by Mr. Falls depict a measuring tape held against the concrete and the photos demonstrate heights of 2 1/4", and 2 1/2".

[41] Further concerns described by Mr. Falls included the fact that Dig Zach left debris strewn through his yard and in some cases the debris included nails which protruded from the wood creating safety hazards for anyone walking in his yard.

[42] With respect to the bur oak tree on his property, Mr. Falls observed a big chunk of the tree (approximately a foot in diameter) resting against the bottom of the tree. He also noted that the exposed roots of the bur oak tree had been sheared off at various points and marks from the teeth of the bobcat appeared in the trunk of the tree. Mr. Falls did not recall when he specifically viewed the damage to the tree, but it was around the same time as the work was being done on his property by Dig Zach. Photos taken by Mr. Falls depict scrapes on the trunk of the bur oak,

the large chunk missing from the bottom of the tree and the tops of exposed roots being sheared off.

[43] Mr. Falls described the bur oak tree as being quite rare and beautiful. It is a very large and tall tree which extends well past the height of Mr. Falls' house. In Mr. Falls' view, the tree added a lot of character to his property. When he brought up the damage to the bur oak tree with Mr. Elkadri, Mr. Elkadri brushed it off and said it would not hurt the tree.

[44] This led to Mr. Falls contacting Mr. Davies to inspect the bur oak tree. Mr. Davies prepared a report and gave Mr. Falls advice on how to care for the tree in light of the damage. Mr. Davies advised Mr. Falls to water and fertilize the tree quite a bit and to water it even more before winter. Mr. Davies also advised Mr. Falls to cut the dead branches from the trees. Mr. Falls followed this advice. Mr. Davies was present when Davey Tree company attended to cut the branches from the bur oak so that he could advise as to which branches should be cut.

[45] Mr. Falls testified that the bur oak has continued to degrade since June 2017. The tree still has green leaves but there are more sections where the leaves turn yellow and there are more and more dead branches. Recently, he has observed spiral cracks on the trunk of the tree and one of the cracks is coming right from where the bark was taken off the tree by the bobcat. Mr. Falls described it more and more as looking like a "skeleton tree" compared to what it was. Invoices from Davey dated September 14, 2018 in the amount of \$126.00 and October 12, 2018 in the amount of \$574.35 were paid by Mr. Falls.

[46] In addition to the damage to Mr. Falls' bur oak tree, Mr. Falls observed damage to two trees on the meridian, these trees belonged to the City. He stated that one tree suffered a large scrape and that a big chunk of bark was removed by the bobcat. The tree also had a large crack down the side. Photos of the tree taken by Mr. Falls show a large missing piece of bark, at least two feet in length and almost a foot wide, as well as deep gashes and scrapes in the tree. Mr. Falls testified that some of the marks or scrapes in the tree were caused by the bobcat teeth. He formed that conclusion as the shape of the scrape was the same size and shape of a bobcat tooth. As Mr. Falls put it, "if you took the tooth of the bobcat, it would fit right in the hole in the tree."

[47] The other tree did not have visible damage. However, the dirt was dug right up to the tree by Dig Zach, which was not supposed to happen. Mr. Falls stated that "the City didn't like that." While Mr. Falls did not directly observe the damage being caused to the trees by Dig Zach, he stated that there was no other likely cause of that damage.

[48] As a result of the damage to the City trees, Mr. Falls received and paid an invoice from the City of Edmonton for \$698.36 for "one year of watering for 2 damaged boulevard trees".

(b) Mr. Milton Davies

[49] Mr. Davies was qualified as an expert witness in the areas of urban forestry, arboriculture, the study of landscape plant material, including tree and shrubs and tree asset valuation. He prepared four reports related to Mr. Falls' bur oak tree. Mr. Davies described the bur oak as a very valuable tree as it is a very rare tree and hard to grow in Edmonton.

(i) October 31, 2017 Report

[50] The first report was prepared on October 31, 2017 after an in-person inspection of the bur oak tree on September 18, 2017, which was about 6 weeks after Dig Zach's construction work.

The tree was measured at 48.5 cm dbh (“diameter at breast height” - approximately 4 feet from the ground).

[51] Similar to Mr. Falls, Mr. Davies observed a puncture in the tree that was the same size and shape of a bobcat tooth. Mr. Davies also observed significant damage to the tree’s structural roots.

[52] Mr. Davies’ explained that the structural root plate is the part of the tree’s root-system which holds it in an upright position. The structural stability of a tree is dependent on it maintaining its root plate integrity, which functions to literally hold the tree upright. The structural root plate can be as much as 5 to 9 times the tree’s diameter (dbh). The structural root plate of this bur oak tree was approximately 2.7 m or about 9.0-feet. In these circumstances, landscapers should know that within the diameter of the structural root plate, bobcats should not be used to excavate. Shovels should be used instead, taking care not to damage the tree’s roots.

[53] Here, the integrity of the bur oak’s structural root plate was damaged during the construction or landscaping of Mr. Falls front yard. While most of the damage occurred on the northwest side of the tree, there was also structural root plate damage on the west side of the bur oak.

[54] The structural root plate damage was augmented by the bark damage that occurred at the base of the tree. Mr. Davies opined that any significant intrusion or severing of the structural roots could possibly cause the tree to fail. The direction of failure is most often associated with the severing of the structural roots on the opposite side of the tree. Should the bur oak fail, it is likely that it could fail towards Mr. Falls’ house on the southeast side of the tree.

[55] Where structural roots are impacted, then critical roots may also be impacted which would prevent the tree from getting the proper water and minerals required to sustain its life. One of the photos taken by Mr. Davies shows that one of the major roots of the tree was cut right off. The severing of this structural root plate system could cause the catastrophic failure of the tree. Mr. Davies was worried that the tree might fail during a normal weather event.

[56] A tree requires enough of its feeder root system to remain intact to allow it to survive. The feeder root system is responsible for the collection and transport of water and nutrients. Furthermore, these roots produce the amino acids and proteins used by the tree. In this case, the excavation of the front yard was deeper near the tree than it should have been thereby compromising the tree’s critical feeder root system.

[57] As a result of these concerns, Mr. Davies evaluated the tree at that time as “somewhat less than healthy.” Using photos of the tree taken before the construction work by Dig Zach was done, Mr. Davies opined that, pre-construction, the tree would have been rated from very good to excellent (80%-90%). As of September 18, 2017, Mr. Davies rated the bur oak’s condition at average to very good (70%-80%).

[58] A standard arboricultural methodology called the Trunk Formula Method (“TFM”), endorsed by the International Society of Arboriculture in its most recent edition of the Guide for Plant Appraisal, authored by the Council of Tree and Landscape Appraisers, was used to appraise the monetary asset value of this tree. This methodology is used to calculate the value of ornamental trees that are too big to be replaced with nursery or field-grown stock. In conjunction with the TFM, the asset value of the bur oak was calculated using the City of Edmonton’s Tree

Evaluation Guidelines. Mr. Davies was involved with the updating of these Guidelines when he was employed with the City of Edmonton. The Guidelines are updated to account for inflation.

[59] Prior to the damage to its root system, Mr. Davies used the TFM to set the asset value of the tree at \$18,200 to \$20,400, an average of \$19,300. As of September 18, 2017, the tree's value had declined, however, because of the construction impacts. Mr. Davies set the value at \$15,900 to \$18,200 or an average of \$17,050. Therefore, at this point, the average loss in asset value amounted to a decrease of approximately \$2,250.

[60] Mr. Davies confirmed that he had evaluated the tree for other possible sources of deterioration beyond the construction impacts, but he found no evidence of insects or fungal pathogens.

[61] Mr. Davies gave Mr. Falls a number of recommendations to “pull back the mortality spiral” for the tree. These recommendations included watering and fertilizing. The fertilization required was of commercial grade and needed to be applied by a fertilization company. Mr. Davies also attended to advise on the removal of deadwood from the tree. At this time, the tree had about 4-5% deadwood, which was normal. It is important to remove deadwood as it can attract insects, especially bark beetles. Mr. Davies also advised that 5-8% of the live wood should also be removed from the tree because he was concerned that the damage to the root system would not sustain the existing canopy.

(ii) January 25, 2019 Report

[62] Mr. Davies attended at Mr. Falls’ residence again on September 4, 2018 to assess the bur oak after the second growing season.

[63] At this point, Mr. Davies observed that the deadwood in lower canopy had increased to about 10% and in the upper canopy to about 15%. Mr. Davies also observed premature senescence in about 10-15% of the tree, which is the cutting off of the leaves by the tree such that they turn yellow or brown.

[64] Mr. Davies contacted Davey Tree to address these concerns. All deadwood was removed from the tree under Mr. Davies’ direction. Mr. Davies recommended that Mr. Falls continue to implement the same mitigation measures as he had recommended in his October 2017 report.

[65] By this point, the tree’s diameter had grown to 50 cm dbh, which Mr. Davies attributed to some of the mitigation measures taken. However, the condition of the tree had to be downgraded as a result of the increased presence of deadwood.

[66] Using the TFM, Mr. Davies valued the bur oak at between \$13,600 and \$15,900, or an average of \$14,750. This was a decrease in asset value of \$4,550 from the 2017 pre-construction assessment.

(iii) June 27, 2024 Report

[67] This report was completed after a site visit on June 13, 2024 where Mr. Davies performed a Level 2 assessment of the bur oak using observations and measurements.

[68] By this point, the diameter was 55.0 cm dbh. The tree had only grown by 5 cm since 2019 which Mr. Davies described as “not great news”. He would have expected a tree of this nature to put on 2-4 cm in dbh per year. Mr. Davies also noted the presence of “adventitious

buds” which develop along stems or roots. This was a sign of the tree “gasping for more sugar” by creating more leaf surface to produce the sugar.

[69] Mr. Davies opined that the bur oak was suffering from both acute and chronic stress. The acute stress arose when the roots were cut and sheared at the time of the construction and the chronic stress was the result of the long-term loss of the tree’s feeder root system and the resulting re-direction of carbohydrate resources to re-build the loss.

[70] As of June 13, 2024, the bur oak had increased in diameter by 6.5 cm over 7 years. This was considered a very minor increase in diameter for such a large previously healthy tree. Again using the TFM, Mr. Davies assessed the bur oak’s value at \$16,100. The average value of this tree, when healthy was around \$30,500. This amounted to a net loss in asset value for the bur oak tree of \$14,400.00. The increase in overall valuation of the tree as compared to the initial value determined by Mr. Davies in 2017 was the result of certain of the valuation metrics being updated for inflation.

[71] Mr. Davies also noted that while the bur oak’s structural root plate was damaged during the re-landscaping of Mr. Fall’s front yard, it also appeared that the tree was able to withstand the weather events of the last two growing seasons. Mr. Davies attributed this to Mr. Falls following the mitigation measures he had recommended for the bur oak.

[72] Mr. Davies also opined that given the asset value of the bur oak and its overall contribution to not only Mr. Falls’ property but to the neighbourhood community at large, it was well worth the effort to attempt to reverse the symptoms of tree decline that were associated with the damage to the structural and critical root systems of the tree.

#### (iv) December 3, 2025 Report

[73] Mr. Davies attended again to inspect the tree on November 29, 2025. At this time, he observed a significant amount of canopy deadwood, lack of regrowth and a lack of symmetry in the canopy. On this occasion, Mr. Davies observed a large spiral crack on the trunk. He had never seen this type of crack in the field, so he was required to do research to learn more about the spiral crack. The crack is connected to the wound where the big chunk of bark was removed in 2017. Mr. Davies opined that the spiral crack arose in part from the damage caused by the bobcat.

[74] The only way to correct the spiral cracking is to have the symmetry returned to the canopy. However, in a maturing tree, only about 20% of live wood can be removed in a year, otherwise too much of the productive leaf surface is removed. Mr. Davies advised that the pruning required to return the tree to its original symmetrical crown would require at least two or three pruning cycles. This pruning would have to occur over the next five years at a cost of \$1,500 to \$2,500 per session and the pruning would need to be conducted with the supervision of an experienced arborist.

[75] At this point, Mr. Davies downgraded the condition of the tree to “average” in light of the spiral cracking. Mr. Davies valued the loss in asset value of the tree at between \$13,500 and \$16,000.

[76] Mr. Davies testified that the majority of the mitigation measures that he recommended were above “standard” tree care and were required as a result of the construction damage. Mr. Davies described the measures more as “medicine” for this particular tree. He further testified

that about 5% of deadwood in a tree would be normal but that 10% would be concerning and 15% of deadwood would be a source of significant concern.

#### IV. Issues

[77] The issues to be determined in this trial are as follows:

- (a) Was there a verbal agreement between Mr. Falls and Dig Zach?
- (b) Is Dig Zach liable to Mr. Falls for breach of the Amended Agreement and/or negligence in performing the services set out in the Amended Agreement?
- (c) If yes, what are the losses and damages owing to Mr. Falls?

#### V. Analysis

(a) Was there a verbal agreement between Mr. Falls and Dig Zach?

[78] Contracts need not generally be in writing to be enforceable. Oral contracts are ordinarily enforceable if the essential contractual elements are proven. Writing is required only where imposed by statute or by the Statute of Frauds, most notably in relation to interests in land, guarantees, certain trusts, and statutory family property agreements. I am satisfied that this case does not deal with a circumstance where any enforceable contract between Mr. Falls and Dig Zach was required to be in writing.

[79] In order to enforce a verbal agreement, there must be proof of offer, acceptance, and certainty of terms. Parties must agree on essential terms and these terms must be capable of being determined with a reasonable degree of certainty. The intention to contract and the terms of a contract are determined on an objective basis. The assessment is not about a party's subjective intention or belief: *Schluessel v Margiotta*, 2018 ABQB 615 at para 11.

[80] With respect to construction contracts, there is an implied condition that the work will be carried out carefully and skillfully or, as it is sometimes expressed, in a good and workmanlike manner: *Viper Concrete 2000 Inc. v Agon Developments Ltd*, 2009 ABQB 91 at paras 30 and 31; *Terrelonge v Evans and Rio Renovations Inc.*, 2025 ABCJ 186 at para 36.

[81] The uncontested evidence of Mr. Falls was that, in or around March 2017, he and Mr. Elkadri discussed certain work that Mr. Fall wanted done on his property. The initial scope of work discussed was the demolition of his existing garage and the construction of a new garage pad, demolition of the existing concrete pad and existing sidewalks, construction of a new RV pad with 4" of road crush, construction of new sidewalks and landscaping. Mr. Falls testified that Mr. Elkadri quoted Mr. Falls \$21,000 all-inclusive for this work and Mr. Falls accepted the price.

[82] When Mr. Falls was unable to get a permit from the City to construct a new garage, the scope of the work changed in that the demolition of the existing garage and the construction of a new garage pad were taken off the table. Mr. Falls testified that Mr. Elkadri accepted a price of \$10,500 for the revised scope of work.

[83] In terms of credibility, I find that Mr. Falls was an entirely credible witness. He testified in a straightforward and factual manner and his account of the work that was to be performed was supported by numerous photographs he had taken of his property. For example, the photographs depict work being undertaken to pour sidewalks, to construct and pour a new RV

pad and the removal of dirt. The photographs corroborate the scope of services described by Mr. Falls in his testimony.

[84] Mr. Falls' evidence was also corroborated at certain points by text messages. For example, a text message in evidence confirms that Mr. Falls conveyed to Mr. Elkadri that he was unable to secure the garage permit. Similarly, a text message from Mr. Elkadri to Mr. Falls indicated that Dig Zach was going to start work on Mr. Falls' property on or about June 5, 2017. To this extent, Mr. Falls' evidence is externally consistent with that depicted in photographs and text messages.

[85] In addition, while Dig Zach did not participate in the trial, the Statement of Defence filed on June 17, 2020 provides that, on or about March 22, 2017, Mr. Falls and Dig Zach entered into an expressed or implied agreement for Dig Zach to remove and replace a concrete pad and sidewalk; to haul away old materials such as soil and concrete; and to complete rough grading on the property. The Statement of Defence indicates that the parties agreed on a total of \$16,000 for the work.

[86] While the facts as set out in the Statement of Defence differ somewhat from the evidence provided by Mr. Falls, they nonetheless support the existence of an agreement between the parties that was entered into on or about March 22, 2017 and that the parties agreed that the concrete pad and sidewalk would be removed and replaced. The facts as pled in the Statement of Defence are largely consistent with the description of the scope of work provided by Mr. Falls: demolition of the existing concrete pad and existing sidewalks, construction of a new RV pad with 4" of road crush, and construction of new sidewalks.

[87] The facts pled in the Statement of Defence are not evidence in the strict sense, but, in my view, they amount to an admission that there was an agreement between Mr. Falls and Dig Zach for at least the removal and replacement of the concrete pad and sidewalks, hauling away of old materials and the completion of rough grading. Where the facts in the Statement of Defence and Mr. Falls' evidence differ, I accept Mr. Falls' evidence. It is the primary evidence of the agreement that I have before me in this trial and I am satisfied that it is credible evidence that I can rely on.

[88] Further, during questioning on January 7, 2022, Mr. Elkadri agreed that the agreement included the construction of a new RV pad.

[89] Accordingly, I find that a verbal agreement was entered into between Mr. Falls and Dig Zach in or around early April 2017 and the following comprised the key terms of that agreement:

- Dig Zach was to demolish the existing concrete pad and sidewalks around Mr. Fall's property;
- Dig Zach was to construct a new 5" thick concrete RV pad using 4" of crush;
- Dig Zach was to construct new sidewalks on Mr. Fall's property including sidewings where the sidewalk met the street;
- The height of the poured concrete sidewalks was to be no less than 3.5;"
- Dig Zach was to remove debris and materials such as old concrete and soil from Mr. Fall's property;

- Dig Zach was to restore the landscaping on the property after the completion of the concrete work; and
- Mr. Falls was to pay \$10,500 to Dig Zach to carry out the work.

(the “Amended Agreement”).

- (b) Is Dig Zach liable to Mr. Falls for breach of the Amended Agreement and/or negligence in performing the services set out in the Amended Agreement?

[90] At the outset, it bears noting that no expert evidence was led in this case regarding the standard of care and whether the work carried out by Dig Zach was deficient. In that regard, Mr. Falls referred me to *Turano’s Home Improvement Ltd v Stern*, 2018 ONSC 201 at para 54:

Concerning expert evidence, there was none from Ms. Zittell. However, I was given no authority for the proposition that expert evidence is a condition precedent to proving deficiencies. It is an implied term of a construction contract that the work is to be done in a good and workmanlike manner. Expert evidence is important on technical matters, where the court needs unbiased, third party, professional assistance as to industry and statutory baseline standards of construction. But there are instances where the deficiencies are so obvious that court can reach a conclusion without expert assistance.

[91] Similarly, in *Thorburn v McDiarmid Homes Ltd.*, 2009 ABPC 259 at para 32, the Court noted as follows:

The Defendant resists this claim on the basis that: (1) expert opinion evidence is required in order to determine whether it was necessary to replace the flooring; (2) the original flooring was installed in a proper and workmanlike fashion; and/or (3) the Plaintiffs ought to have repaired the flooring rather than replace it. While expert opinion evidence may be helpful in some cases, one need not be a butcher to recognize a side of beef. It was readily apparent that the adura flooring in this case was not installed in a workmanlike manner. With respect, I do not agree that expert opinion evidence was required to demonstrate that deficiency.

[92] I agree that expert evidence is not required in this case for Mr. Falls to prove his claim. As will be discussed further below, the testimony of Mr. Falls and Mr. Davies, along with the significant number of photographs which depict the concerns with the work, provide sufficient evidence to enable the Court to assess whether the claims of breach of contract and negligence are made out.

(i) Breach of contract claims

[93] I turn first to the breach of contract claims. I find that the following terms of the Amended Agreement were breached by Dig Zach:

- (A) Failure to construct a new 5” thick concrete RV pad using 4” of crush

[94] Mr. Falls testified that Dig Zach laid forms and rebar for a new RV concrete pad, but they did not pour the concrete pad. This is evident from photographs taken by Mr. Falls. The rebar can be seen laying on the ground. In questioning for discovery which took place on January 7, 2022, Mr. Elkadri acknowledged that he did not use “hats” (which he called “chairs”) in his installation of the rebar.

[95] I accept Mr. Falls’ explanation that hats or chairs are required to lift rebar off the ground so that when concrete is poured, the rebar will sit in the middle of the concrete when the concrete is set. This makes good sense in terms of fortifying the concrete and ensuring that it does not crack. I further accept Mr. Falls’ explanation that if the rebar is left sitting on the ground, then it does little to fortify the concrete and leaves the concrete at greater risk of cracking.

[96] Mr. Elkadri acknowledged during questioning that the height of the RV pad was to be 5-6”. However, Dig Zach did not dig the concrete pad to this depth. Next Level advised Mr. Falls that the RV pad was not at the appropriate depth and photos taken by Mr. Falls depict Next Level using a skid steer (bobcat) to create a deeper excavation so that 4 inches of crush and a 5-inch RV pad could be accommodated. Mr. Falls testified that he believed that two full trailer loads of dirt were removed to accommodate the greater depth for the RV pad.

[97] Further, photos of the forms that were installed by Dig Zach for the RV pad show that the forms are crooked and uneven.

[98] I am satisfied that Dig Zach did not perform the work with respect to the RV pad in a good and workmanlike manner in that it did not dig the pad to the specified depth, it failed to use hats or chairs to ensure the rebar would sit properly in the concrete and it installed forms that were crooked and uneven.

(B) Failure to pour the sidewalks correctly

[99] Dig Zach did take steps to pour the sidewalks in front and to the sides of the house. However, the sidewalks stop abruptly at the back edge of the house and do not continue throughout the property as was contemplated by the Amended Agreement. This is demonstrated in photos taken by Mr. Falls.

[100] Another photo demonstrates that no rebar was included in the sidewalks. One photo shows part of the sidewalk with rebar installed but the rebar is sitting at the bottom of the concrete rather than in the middle which is where it would have sat had the hats been used.

[101] Mr. Falls further testified that the elevation of the sidewalks that were poured is extremely variable. He stated that there is a probably a 3” difference in elevation over a 3-foot length.

[102] Further, Dig Zach did not pour the “side wings” on the sidewalk leading to the road, and did not pour the pad in front of the front stairs. A photo shows the side wings that were not poured by Dig Zach later being poured by Next Level. Similarly, a photo taken by Mr. Falls shows Next Level completing the pouring of the pad in front of the front stairs, work that was not completed by Dig Zach.

[103] Finally, Dig Zach did not pour the sidewalks at a uniform height of 3.5.” Mr. Falls measured the height of the concrete pour at various points in order to determine that the height of the pad was less than the agreed on 3.5.” Photos taken by Mr. Falls depict a measuring tape held

against the concrete and the photos demonstrate heights of 2 1/4", and 2 1/2". The uneven sidewalks also created a tripping hazard as reported by Mr. Falls' mailman.

[104] I am satisfied that Dig Zach breached this term of the Amended Agreement by failing to complete the pouring of the sidewalks, including the side wings and the front pad. For the sidewalks that were poured, Dig Zach did not carry out this work in a good and workmanlike manner as rebar was either not placed in the sidewalks or placed incorrectly, the sidewalks were not poured to the agreed height of 3.5," and the sidewalks had considerable variation in height where they should have been a uniform, standardized height.

(C) Dig Zach failed to remove debris and old materials

[105] During questioning on January 7, 2022, Mr. Elkadri acknowledged that the Amended Agreement included hauling away old materials such as soil and concrete. Mr. Elkadri further admitted during questioning that everything that he excavated or that his machines touched was his responsibility to haul away in order to make room for the new material going in.

[106] Mr. Falls testified that Dig Zach routinely left the work site in a mess and that materials were often left strewn about his property. Photographs taken by Mr. Falls depict pieces of plywood, branches, chunks of concrete, and a piece of tubing-like material left in his yard. In one photograph a nail can be seen sticking upright from a piece of plywood. This was a safety concern in that if someone had stepped on that piece of plywood, the nail would have gone right up into their foot.

[107] I am satisfied that Dig Zach failed to remove debris and old materials from Mr. Falls' property and in so doing, breached the terms of the Amended Agreement.

(D) Dig Zach failed to complete the landscaping

[108] Mr. Falls testified that Dig Zach removed soil but did not complete the landscaping work. Mr. Falls testified that he was required to complete the landscaping work himself with the assistance of family and friends. He spread the soil and laid the sod on his own.

[109] I am satisfied that Dig Zach did not complete the landscaping work that it agreed to carry out under the Amended Agreement.

(E) Additional considerations related to breach of contract

[110] Next Level provided a written evaluation of the work completed by Dig Zach for Mr. Falls. Next Level determined that the concrete was not more than 3 inches thick in many areas, as it should have been, and that the rebar was not chaired to mid slab height. Rather, it was lying on the ground where it failed to provide reinforcement. Next Level advised that the forming of the RV site had to be redone as it was not straight or symmetrical and often in the wrong place. Rebar had to be taken out and retied properly. The excavation was not deep enough, and Next Level had to excavate by hand and with a skid steer to get it to the proper depth to accommodate sufficient road crush (4 inches) and concrete (5 inches).

[111] This letter from Next Level was entered into evidence. I have considered that Next Level did not testify in court and to this extent their letter is hearsay and would not generally be accepted for proof of the truth of its contents. However, photographs taken by Mr. Falls depict Next Level undertaking the remedial work described in its letter. In my view, the photographs add additional weight to Next Level's description of the deficiencies in Dig Zach's work and accordingly I find that I can also rely on Next Level's report of its remedial work to support the

conclusion that Dig Zach failed to carry out the terms of the Amended Agreement in a good and workmanlike manner.

[112] Similarly, Mr. Falls made a contemporaneous complaint to the Better Business Bureau regarding Dig Zach's failure to complete the work. The records from the Better Business Bureau confirm Mr. Falls' description of the outstanding work and that the Better Business Bureau revoked Dig Zach's membership. I accept the Better Business Bureau report as a business record and as further evidence which supports the finding that Dig Zach did not complete the work pursuant to the Amended Agreement.

(ii) Negligence

[113] I turn now to the claims based in negligence. To make out a claim in negligence, Mr. Falls must establish that Dig Zach owed him a duty of care, that Dig Zach breached the duty of care, that Mr. Falls suffered compensable damage and that the damage was caused by Dig Zach's breach.

[114] I am satisfied in the present case that Dig Zach owed a duty of care to Mr. Falls in that Dig Zach had a duty not to damage Mr. Falls' property when carrying out the work under the Amended Agreement. I am satisfied that that duty was breached in the following circumstances:

(A) Damage to garage door

[115] I accept that Mr. Falls' garage door was damaged by Dig Zach. First, in his questioning on January 7, 2022, Mr. Elkadri admitted that his piece of machinery caused the damage to Mr. Falls' garage door.

[116] Second, while Mr. Falls did not directly witness the bobcat driving into his garage door, he heard a loud bang from his kitchen. When he went outside after hearing the bang, the bobcat was a few feet away from his garage door and the bottom panel of his garage door was bowed in. Mr. Falls then observed Mr. Elkadri speak angrily to the bobcat operator as a result of what occurred.

[117] Third, the damage to the garage door is also visible in photographs taken by Mr. Falls. In addition, a text message from Mr. Elkadri to Mr. Falls on June 26, 2017 confirmed that the concrete work would be postponed until the garage door was fixed. This text message corroborates Mr. Falls' evidence that damage had occurred to the garage door.

(B) Damage to the bur oak tree

[118] I am further satisfied that the damage to the bur oak tree was caused by Dig Zach and in particular by the operation of the bobcat. While Mr. Falls did not directly observe the bobcat coming into contact with the bur oak tree, Mr. Elkadri acknowledged during questioning in this matter that the bucket of the bobcat "by accident touched the bottom of the tree and it broke off some bark."

[119] Further, both Mr. Falls and Mr. Davies testified to observing "wounds" in the tree that were the exact size and shape of the bobcat teeth. The pictures of the damage to the bur oak depict deep gashes in the tree, a big chunk of the tree which had been sheared off as well as roots that were sheared off or scraped where they were visible through the soil. In my view, the type of damage visible in the photographs is damage which is most likely to have been caused by heavy machinery such as the bobcat. It is not the type of damage which would result from incidental contact or from a shovel, for example. The evidence supports that a bobcat was in operation

around the bur oak at the relevant time. The damage to the bur oak tree was similarly supported by photographic evidence. Accordingly, I am satisfied that the damage to the trunk and root system of the bur oak tree was caused by the bobcat operated by Dig Zach.

[120] I further accept the expert evidence of Mr. Davies and find that the long-term impacts to the health of the bur oak, such as increased deadwood, premature senescence, reduced trunk growth, spiral cracking and adventitious budding, are the result of the damage done to the bur oak by Dig Zach.

(C) Damage to the City trees on the boulevard

[121] I am likewise satisfied that the damage to the City trees on the boulevard was caused by the bobcat operated by Dig Zach. First, during questioning, Mr. Elkadri acknowledged that his bobcat struck one of the trees in the area where damage to the tree occurred. The photographs of this tree again depict deep gashes in, and a big chunk of bark removed from the tree. This type of damage is most likely to be caused by some form of heavy machinery. I find that it is more probable than not that the damage to the trees on the meridian was caused by Dig Zach hitting the tree with the bobcat and excavating the soil right up to the other tree. There is no other plausible explanation for what would have caused this damage other than Dig Zach's bobcat.

(D) Damage to the stone skirting on Mr. Falls' house

[122] Finally, I accept that the damage to the stone skirting on Mr. Fall's house was caused by Dig Zach. The scrapes on the stonework that are visible in the photographs are consistent with damage being caused by the teeth of the bobcat. No other explanation as to what might have otherwise caused this damage has been offered.

[123] As submitted by Mr. Falls, at the relevant time, the only heavy machinery being operated was machinery belonging to Dig Zach and Dig Zach was the only party present at that time operating equipment in the area with a bucket and teeth. In these circumstances, I agree that it is appropriate to draw an inference and conclude that it is more likely than not that the bobcat caused the damage to the stone skirting.

[124] Having concluded that Dig Zach breached the Amended Agreement and was negligent in damaging Mr. Falls' property, I turn now to the damages owing to Mr. Falls.

(c) What are the damages owing to Mr. Falls?

(i) Breach of contract

[125] In a breach of contract case, the plaintiff is entitled to be put back in as good a position as the plaintiff would have been had there been proper performance of the contract by the defendant: *Terrelonge* at para 118.

[126] Here, Mr. Falls paid \$8,000 to Dig Zach. Bank drafts were in evidence confirming the following payments made by Mr. Falls to Dig Zach: \$5,000 on June 3, 2017, and \$2,000 on June 5, 2017. A receipt on June 6, 2017 was also provided to Mr. Falls from Dig Zach for \$1,000.00, with a reference "pour of sidewalk". This receipt was for a \$1,000 cash payment made by Mr. Falls to Dig Zach.

[127] As a result of the breach of the Amended Agreement by Dig Zach, I accept that Mr. Falls was required to incur the following expenses:

- \$10,676.06 to Next Level to complete the concrete work (invoice to Mr. Falls in that amount dated July 14, 2017 including a notation that the invoice was paid in full);
- \$630.00 for replacement soil (three paid invoices of \$210.00 each from Got Soil dated August 3, 4 and 11, 2017);
- \$1,223.25 for the cost of sod (credit card statement showing purchase from Little Creek Landscaping on August 22, 2017); and
- \$204.75 for landscaping supplies (credit card statement showing purchase at JRS Landscape Supply on August 5, 2017).

[128] The amounts set out above total \$12,734.06. In addition to these amounts, Mr. Falls paid \$8,000.00 to Dig Zach. Had there been proper performance of the contract, Mr. Falls would have paid \$10,500 to Dig Zach. However, as there was not proper performance of the contract by Dig Zach, Mr. Falls is now out-of-pocket \$20,734.06. In order to put Mr. Falls back in as good as a position as he would have been had the contract been properly performed, Dig Zach is liable to Mr. Falls for \$10,234.06 (\$20,734.06 less \$10,500.00).

(ii) Negligence

[129] The objective of damages in negligence is to place the plaintiff, so far as money can do so, in the position he or she would have occupied had the negligence not occurred.

[130] As a result of Dig Zach's negligence, I accept that Mr. Falls was required to incur the following expenses:

- \$574.35 for removal of the deadwood from the burr oak (invoice from Davey Tree dated October 29, 2018);
- \$698.36 invoice from City of Edmonton for one year of watering for two damages boulevard trees; and
- \$126.00 for the application of fertilizer to the bur oak tree (invoice from Davey Tree dated October 1, 2018).

[131] I find that the Davey Tree expenses were properly incurred in order to mitigate the damage done to the bur oak. These steps were taken on the advice of Mr. Davies, an experienced expert arborist. Mr. Davies testified that these measures were not simply routine tree care, but rather prescribed "medicine" specifically required to address the harm done to the bur oak. Mr. Falls was also required to pay the City of Edmonton invoice as the boulevard trees damaged by Dig Zach needed additional watering. Had the negligence not occurred, then Mr. Falls would not have needed to incur these amounts. Accordingly, I direct that Dig Zach pay \$1,398.71 to Mr. Falls in relation to the above expenses.

[132] With respect to the bur oak tree, I accept that had the negligence not occurred, the bur oak tree would not likely have experienced increased deadwood, spiral cracking, reduced trunk growth, premature senescence, or adventitious budding. I further accept the evidence of Mr. Davies that as a result of these issues, the health and therefore value of the tree has declined. I agree that the loss in value of the tree is a compensable loss.

[133] The decline in the condition of the tree has resulted in compensable loss for Mr. Falls in the sense that he no longer has the same degree of enjoyment of the tree as he did prior to the damage caused by Dig Zach. The tree shows much more deadwood now as opposed to leafy foliage. It has also lost its symmetrical canopy, at least for the time being. Similarly, the tree may no longer be as much of an asset to Mr. Falls' property value in its deteriorating state.

[134] Mr. Falls seeks \$14,400 for the loss in value of the bur oak. This is approximately the midpoint of the range provided by Mr. Davies in his most recent valuation of the loss of asset value of the bur oak (\$13,500-\$16,000). I accept that this is an appropriate amount at which to set the loss in value of the bur oak.

[135] There are several additional losses suffered by Mr. Davies as the result of Dig Zach's negligence. First, he does not have a functioning garage door. Second, the stone skirting on his home was damaged. Third, he will incur additional expenses over the coming years to mitigate the damage to the bur oak. Accordingly, the following damages are also appropriate in order to place Mr. Falls in the position he would have been had the negligence not occurred.

- \$1,220.55 for replacement of the garage door (quote received from Lock Sturgeon on August 3, 2017)
- \$3,503.85 for replacement of the stone skirting (quote received from Sustain Developments on February 13, 2018); and
- \$6,000 for future pruning and care of the bur oak. (Mr. Davies estimated 2-3 pruning cycles at a cost of \$1,500 to \$2,500. I have taken the midpoint of \$2,000 for 3 pruning cycles to set these damages at \$6,000.00.)

[136] In total, Dig Zach is liable to Mr. Fall for damages in negligence in the amount of \$26,523.11.

[137] In determining damages in this case, I have also considered the question of mitigation. In my view, Mr. Falls took all reasonable steps to mitigate his damages. A new contractor was required in Next Level to correct and complete the work when Dig Zach would not return to complete the terms of the Amended Agreement. Similarly, it was necessary for Mr. Falls to retain Mr. Davies to get expert advice on how to care for the bur oak and mitigate the damage done to the tree. Mr. Falls carefully followed all of Mr. Davies' recommendations and as a result, the net loss in value of the bur oak is likely less than it otherwise would have been had Mr. Falls not had the benefit of Mr. Davies' advice and direction on how to care for the tree.

## **VI. Costs**

[138] Mr. Falls claims costs of this action. He has provided a Bill of Costs in the total amount of \$18,177.37. All fees are claimed in accordance with Column 1 of Schedule 1. The fees claimed total \$2,710.00. There are fee claims for several Court applications, but I accept that, in the absence of Dig Zach's engagement in this matter, Mr. Falls had no choice but to go to court to obtain orders for substitutional service, a litigation plan and the waiver of ADR.

[139] The disbursements claimed are reasonable and reflect expenses for courier, postage, registered mail, process servers, searches, conduct money, scanning, copying, and printing. The costs of Mr. Davies' expert services in this matter are also claimed as disbursements in the amount of \$9,491.41. Again, I accept these costs as reasonable given the need for expert advice

to care for and mitigate the damage to the bur oak and in order to assess the loss in value of the bur oak for trial.

[140] I award costs to Mr. Falls in the amount of \$18,177.37.

## **VII. Conclusion**

[141] Dig Zach is liable to Mr. Falls for breach of contract and negligence.

[142] Dig Zach shall pay total damages to Mr. Falls of \$36,757.17.

[143] Interest is payable on the damages pursuant to the *Judgment Interest Act*.

[144] Dig Zach shall pay costs to Mr. Falls in the amount of \$18,177.37.

[145] I thank Mr. Yiu and Mr. Kema for their organized and helpful presentation of this case.

Heard on the 4<sup>th</sup> and 5<sup>th</sup> of December, 2025.

**Dated** at the City of Edmonton, Alberta this 18<sup>th</sup> day of August 2026.

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**A.K. Akgungor**  
**J.C.K.B.A.**

## **Appearances:**

Mr. Alexander Yiu and Mr. Chinedu Kema  
Ackroyd LLP  
For the Plaintiff, Mr. Falls

No one appearing for the Defendant