COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Tru-Line Technologies Ltd. v Fraser Health Authority,* 2026 BCCA 408

Date: 20261015
Docket: CA50555

Between:

Tru-Line Technologies Ltd.

Appellant
(Defendant)

And

Fraser Health Authority

Respondent
(Plaintiff)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer
The Honourable Justice Brundrett

On appeal from: An order of the Supreme Court of British Columbia, dated February 28, 2025 (*Fraser Health Authority v Tru-Line Technologies Ltd.*, 2025 BCSC 334, Vancouver Docket S227725).

Counsel for the Appellant:	V. Reakes M.D. Williams
Counsel for the Respondent:	B.W. Driedger
Place and Date of Hearing:	Vancouver, British Columbia February 13, 2026
Place and Date of Judgment:	Vancouver, British Columbia October 15, 2026

Written Reasons of the Court

2026 BCCA 408 (CanLII)

2026 BCCA 408 (CanLII)

Summary:

The appellant appeals from the dismissal of its summary judgment application seeking the dismissal of the respondent's claim against it. The respondent entered into a contract with a design-builder for the construction of a facility. The design-builder hired a consultant who, in turn, hired the appellant. The appellant was not a party to the contract. The contract included a waiver of liability clause by the respondent in favour of "all other consultants." The respondent brought a negligence claim against the appellant. The appellant applied for summary judgment on the basis that it fell within the phrase "all other consultants" and was therefore a beneficiary of the waiver.

Held: Appeal dismissed. The appellant has not shown that the application judge erred by interpreting the waiver as excluding the appellant. Although the phrase "all other consultants" is ambiguous, once considered in the context of the contract as a whole, the general rules of contract construction support reading that phrase as limited to consultants directly engaged by the design-builder.

Reasons for Judgment of the Court:

Overview

[1] This is an appeal from an order dismissing an application for summary judgment pursuant to r 9-6 of the *Supreme Court Civil Rules*, BC Reg 168/2009 [*SC Rules*]: *Fraser Health Authority v Tru-Line Technologies Ltd*., 2025 BCSC 334 (the "Reasons"). The appellant, Tru-Line Technologies Ltd. ("Tru-Line"), applied to dismiss an action commenced against it by the respondent, Fraser Health Authority ("FHA"), on the basis that it was a beneficiary of a waiver clause in a design-build contract between FHA and a design-builder (the "Waiver").

[2] On June 20, 2012, FHA entered into a standard form contract (with some modified conditions) with a design-builder, VanMar Constructors 1043 Inc. ("VanMar"), for the design and construction of a long-term care home in Mission (the "Facility"). This contract (the "Contract") defines FHA as the "Owner" and VanMar as the "Design-Builder."

[3] VanMar subsequently entered into a contract with Trilar Fire Protection ("Trilar"), which then hired the appellant, Tru-Line Technologies Ltd. ("Tru-Line"), to provide fire suppression and engineering services for the Facility.

[4] On September 26, 2022, FHA commenced an action against Tru-Line alleging that Tru-Line's "negligence, breach of contract, and/or breach of duty" caused a sprinkler line in the Facility's attic to crack and damage the Facility.

[5] Tru-Line applied for summary judgment on the basis that it should benefit from the Waiver based on the Waiver's explicit reference to "all other consultants," even though Tru-Line was not a party to the Contract.

[6] In the Reasons at para 2, a chambers judge dismissed Tru-Line's application on February 28, 2025, finding that Tru-Line was not a beneficiary of the Waiver because it did not fall within the scope of the phrase "all other consultants." The only issue on appeal is whether the judge erred in interpreting the Waiver.

[7] Both parties argue that the phrase "all other consultants" is unambiguously in their favour when read in the context of the entire Contract and from the perspective of the reasonable businessperson. However, Tru-Line argues that the phrase includes consultants that did not have a direct contractual relationship with VanMar. FHA argues it does not.

[8] We would dismiss the appeal. In our view, the parties' modification to clauses of the standard form contract relevant to the interpretation of the Waiver on which Tru-Line relies means that a deferential standard of review applies to the judge's interpretation of those provisions. Applying that standard, we conclude the judge made no palpable and overriding error in interpreting the Waiver as excluding Tru-Line.

Background

Contracts Relating to the Facility

[9] On June 20, 2012, FHA entered into the Contract with VanMar to design and build the Facility. The Contract is a standard form design-build stipulated-price contract created by the Canadian Contractors Association (Document 14-2000). The parties negotiated modifications, called "Supplementary Conditions," that replace certain standard form clauses.

2026 BCCA 408 (CanLII)

[10] VanMar entered into a separate contract with Trilar to design and construct a fire suppression system for the Facility. In turn, Trilar contracted with Tru-Line for fire suppression consultation services. Tru-Line was thus a lower-tier or outside consultant.

[11] Construction of the Facility was substantially completed in 2014.

[12] FHA alleges that in January 2020, a fire sprinkler line located in the attic of the Facility cracked and caused water damage to the Facility. FHA attributes the sprinkler line failure to improper installation and insulation by Tru-Line and Community Fire Prevention Ltd., which was responsible for inspecting and maintaining the fire protection and fire sprinkler systems.

[13] On September 26, 2022, FHA commenced an action against Tru-Line and Community Fire Prevention Ltd., alleging negligence and breach of contract.

The Contract

[14] The Contract includes general conditions ("GC") set out in the body of the agreement, as well as supplementary conditions in a Schedule A ("SC"). As stipulated in SC 7, if there is a conflict within the contract documents, the order of priority from highest to lowest is the agreement between the Owner and the Design-Builder, the SC, definitions within the Contract, and the GC.

[15] The Contract is structured to place singular, comprehensive responsibility for the work to be performed on the Design-Builder. Its first principle is that the Owner deals with one administrative entity, the Design-Builder, who provides the design services and construction in one contract package. Under Article A-1.1, the Contract states that "[t]he *Design-Builder* shall perform the *Work* required by the *Contract Documents*." Under GC 3.1.1, "[t]he *Design-Builder* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*." Pursuant to GC 3.1.4, "[t]he *Design-Builder* is solely responsible for the quality of the *Work*." The term "Work" is defined as the "*Design Services* and *Construction* required by the *Contract*" (underlining added).

2026 BCCA 408 (CanLII)

[16] The issue on appeal concerns the interpretation of the phrase “all other consultants” in the Waiver. The relevant part of the Waiver provides as follows:

> 12.2.1 Waiver of Claims by *Owner*
>
> As of the date of the final certificate for payment, the *Owner* expressly waives and releases the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, all *Suppliers*, and their agents and employees from all claims against them including without limitation those that might arise from the negligence or breach of contract by the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, and their agents and employees except one or more of the following: …
>
> [Underlining added.]

[17] GC 12.2.2 provides that the Design-Builder waives all claims against the Owner as of the date of the final certificate for payment, with narrow exceptions. It does not refer to “all other consultants.”

[18] The Contract identifies the “Owner” as FHA, the “Design-Builder” as VanMar, and the “Consultant” as KMBR Architects Planners Inc. and Farrow Partnership Architects Inc.

[19] The terms “Consultant,” “Subcontractor” and “Supplier” are all defined to include entities performing those functions who have direct contractual relationships with the Design-Builder. For example, “Consultant” is defined as follows:

> **5. Consultant**
>
> The *Consultant* is the person or entity identified as such in the [Contract]. The term *Consultant* means the Architect, the Engineer, or entity licensed to practice in the province or territory of the *Place of the Work* and engaged by the *Design-Builder* to provide the *Consultant’s Design Services* and to coordinate the provision of the *Design Services* of all other consultants employed by the *Design-Builder*. The term *Consultant* means the *Consultant* or the *Consultant’s* authorized representative as designated by the *Design-Builder* to the *Owner* in writing.
>
> [Underlining added.]

[20] “Subcontractor” is defined as follows:

2026 BCCA 408 (CanLII)

> **19. Subcontractor**
>
> A *Subcontractor* is a person or entity, other than the *Consultant* or other consultants, having a direct contract with the *Design-Builder* to perform a part or parts of the *Work*, or to supply *Products* worked to a special design for the *Work*.
>
> [Underlining added.]

[21] The definition of "Supplier" is similarly limited to persons or entities "having a direct contract with the *Design-Builder*."

[22] Importantly, the phrase "all other consultants" is not defined. However, this phrase and similar wording, including the terms "other consultants," "any other consultant," and "Sub-Consultants," appear throughout the Contract:

The Judgment Below

[23] On November 1, 2024, Tru-Line filed a notice of application for summary judgment pursuant to r 9-6 of the *SC Rules* to dismiss FHA's claim on the grounds that Tru-Line fell within the category of "all other consultants" and was therefore an intended beneficiary of the Waiver. FHA opposed the relief sought and argued Tru-Line was not a beneficiary of the Waiver. The application for summary judgment was heard on January 30, 2025.

[24] The only issue before the chambers judge was whether the phrase "all other consultants" in the Waiver extended to Tru-Line. The parties agreed that this issue was suitable for summary judgment. The judge agreed the question was suited to resolution under r 9-6: Reasons at paras 10-14.

[25] Tru-Line argued that the phrase "all other consultants" is broadly inclusive and applies to all consultants involved with the project, regardless of who engaged them. Tru-Line also argued that the principled exception to the privity doctrine set out in *Fraser River Pile & Dredge Ltd. v Can-Dive Services Ltd*., 1999 CanLII 654, [1999] 3 SCR 108 (SCC) [*Fraser River Pile*], should apply and allow Tru-Line to rely on the Waiver as a third-party beneficiary of the Contract.

2026 BCCA 408 (CanLII)

[26] Although the judge found the Contract was a standard form contract (Reasons at para 13), in interpreting the Waiver, she applied the approach to contractual interpretation set out in *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at paras 47-48 [*Sattva*]: Reasons at para 31.

[27] The judge agreed with Tru-Line that the phrase "all other consultants" in the Waiver is broad; however, she found that other provisions of the Contract necessarily limited its scope. She considered the use of the phrase "other consultants," particularly in GC 3.7 ("OTHER CONSULTANTS, SUBCONTRACTORS, AND SUPPLIERS"), to logically inform the scope of the phrase "all other consultants" in the Waiver: Reasons at para 34.

[28] GC 3.7 provides:

> 3.7.1 The *Design-Builder* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
>
> .1 enter into contracts or written agreements with the *Consultant*, and other consultants to require them to perform their design and other services as provided in the *Contract Documents*;
>
> .2 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work and related services as required by the *Contract Documents*;
>
> .3 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with the *Consultant*, other consultants, *Subcontractors*, and *Suppliers* insofar as they are applicable; and
>
> .4 be as fully responsible to the *Owner* for acts and omissions of the *Consultant*, other consultants, *Subcontractors*, *Suppliers*, and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Design-Builder*.
>
> [Underlining added.]

[29] The judge held that GC 3.7 treats "other consultants" as of a kind with "Subcontractors and Suppliers," who are defined in the Contract as those having a "direct contract" with the Design-Builder: Reasons at para 35. She found that GC 3.7 "effectively identifies" what the Contract intends in its use of the term "other

2026 BCCA 408 (CanLII)

consultants," and that this intended use assists in delineating the scope of the phrase "all other consultants" in the Waiver: Reasons at paras 34-35.

[30] The judge concluded as follows:

> [32] In review of the entire contract, and considering the term that is the subject of this application in its whole context, I conclude that the waiver provision in GC 12.2.1 applies to the benefit of those "other consultants" that have been engaged by the Design-Builder, and not to a broader undefined group.
>
> [Underlining added.]

[31] Because the judge determined that Tru-Line was not caught by the phrase "all other consultants," she also found that the parties to the Contract did not intend to extend the benefit of the Waiver to Tru-Line, such that the principled exception to privity of contract in *Fraser River Pile* did not apply: Reasons at para 42.

Legal Principles

[32] The basic principle of contractual interpretation requires the court to "read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract": *Sattva* at para 47. Parsing words or reading them in isolation to find ambiguity is not consistent with a practical, common-sense approach of reading the contract as a whole: *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64; *Egan v Harbour Air Seaplanes LLP*, 2024 BCCA 222 at paras 35-36, 47. In the interpretive process, commercial reasonableness is an important interpretive aid but is not determinative: *Spirit Bay Developments Limited Partnership v Scala Developments Consultants Ltd*., 2022 BCCA 407 at para 35.

[33] Because contractual interpretation usually involves determining the meaning of the words used by the parties in light of the surrounding factual matrix, the standard of review on appeal in a contract case is presumptively deferential. This reflects the fact that what the parties objectively intended by their contract is a

2026 BCCA 408 (CanLII)

question of fact or mixed fact and law: *Anderson Square Holdings Ltd. v Zhang*, 2025 BCCA 288 at para 33 [*Anderson*].

[34] However, where the appeal involves the interpretation of a standard form contract, the interpretation is of precedential value, and there is no meaningful factual matrix specific to the parties to assist in the interpretative process, contractual interpretation is a question of law subject to correctness review: *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co*., 2016 SCC 37 at paras 4, 46 [*Ledcor*].

[35] As noted in *Sabean v Portage La Prairie Mutual Insurance Co.*, 2017 SCC 7 at para 12, the approach to the interpretation of a standard form contract differs from the general approach to contractual interpretation in that, if the language is clear, there is no need to resort to general principles of contractual interpretation. However, if there is ambiguity, the court must invoke those general principles and, if necessary, the principle of *contra proferentem*.

[36] This Court has applied the *Sabean* analytical approach to interpreting standard form contracts in non-insurance contexts: see, for example, *Trenchard v Westsea Construction Ltd.*, 2020 BCCA 152 [*Trenchard*].

[37] When parties modify provisions of a standard form contract, the applicable standard of review depends on whether the modifications are relevant to the interpretation of the disputed provisions. If they are not, the court applies a correctness standard of review: *601 Main Partnership v Centura Building Systems (2013) Ltd.*, 2024 BCCA 76 at para 147 [*Centura*]. Where the modifications are relevant to the interpretive issue, a deferential standard of review applies because the interpretation of the modified provisions is unique to the parties: *Ledcor* at para 48.

[38] While the parties jointly submitted that a correctness standard applies to the interpretation of the Contract, the applicable standard of review is a question of law for this Court to consider. In the circumstances of this case, we conclude that certain

2026 BCCA 408 (CanLII)

modifications have interpretative significance to the Waiver, making its interpretation a question of mixed fact and law. As a result, we are bound to apply a deferential standard of review to the judge's consideration of the Waiver and her assessment of its scope: *Centura* at para 147; *Trenchard* at para 7.

2026 BCCA 408 (CanLII)

Issue on Appeal

[39] The sole issue on appeal is whether the judge made a reversible error in holding that the phrase "all other consultants" in the Waiver includes only consultants that have been directly engaged by the Design-Builder, to the exclusion of Tru-Line.

Discussion

The Parties' Positions

[40] Tru-Line submits the judge erred by holding that the phrase "all other consultants" means only "other consultants" directly engaged by the Design-Builder. Tru-Line says the plain wording of the phrase is clear, not ambiguous, and extends to all consultants other than the primary Consultant that worked on the project without distinction as to who retained them or where they fit in the hierarchy of entities involved in designing and building the Facility.

[41] Tru-Line submits that to read the additional words "engaged by the Design-Builder" into the Waiver runs afoul of the general rules of contract construction, renders other terms in the Contract unnecessary or meaningless, and neither aligns with commercial reality nor promotes a sensible commercial result. From its perspective, when the parties intended to limit a particular group or category of project participants in the Contract, they explicitly did so (i.e., in the definitions of Subcontractor and Supplier). Tru-Line asks that the ordinary and grammatical meaning of the phrase "all other consultants" be given effect, citing *Ledcor* at para 49.

[42] FHA disagrees with Tru-Line's interpretation of the Waiver. It submits that, read as a whole, the Contract limits the phrase "all other consultants" to those

directly engaged by the Design-Builder. FHA submits that the Contract, as modified, shows a clear and unambiguous intent to restrict any exclusion clauses, such as the Waiver, to consultants in a direct contractual relationship with the Design-Builder. It submits that nothing in the other sections of the Contract contradicts this interpretation.

[43] Like the judge, we agree with Tru-Line's plain reading of the phrase "all other consultants." On its face and standing alone, the phrase is broad, unqualified, and inclusive. However, the words "all other consultants" and the encompassing Waiver are not to be read in isolation. Rather, as correctly noted by the judge, "all other consultants" as used in the Waiver must be read in the context of the Contract as a whole: Reasons at para 33.

[44] We therefore turn to that task, respecting the priority of the Contract's various constituent parts and its modifications.

The Meaning of "All Other Consultants"

[45] Although the Contract does not define "all other consultants," it uses the phrase more than once.

[46] For example, the Contract's indemnification clauses (GC 12.1) delineate the scope of the Design-Builder's indemnification of the Owner, the Owner's agents, and its employees from certain claims by third parties that arise out of the Design-Builder's performance.

[47] Originally, one of these indemnification clauses provided that the Design-Builder would indemnify the Owner against third-party claims that, among other things, were caused by the negligence of "the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors* or anyone for whose acts the *Design-Builder* may be liable": GC 12.1.1.2 (underlining added). A second indemnification clause provided that the Owner would indemnify these same entities (plus "all *Suppliers*"), as well as their agents and employees for claims attributable to a lack of or defect in title or negligent acts or omissions by the Owner: GC 12.1.3.

2026 BCCA 408 (CanLII)

[48] The Supplementary Conditions deleted the first of these two indemnification clauses and replaced it with a new clause that uses the term “Sub-Consultants” in place of “all other consultants.” The term “Sub-Consultants” is capitalized but is not defined in the definitions section of the Supplementary Conditions. The Supplementary Conditions did not change the phrase “all other consultants” in the second indemnification clause regarding a defect in title; nor did it change the use of this phrase in the Waiver.

[49] Consequently, when read together, the two indemnification clauses and the Waiver provide as follows:

> 12.1.1 The Design-Builder will indemnify and save harmless the Owner, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses (including actual legal and other professional fees and disbursements) that the Owner may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Contract, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act, error, omission or negligence of the Design-Builder or of any Subcontractors, Consultants, Sub-Consultants, agents, employees, officers, directors of the Design-Builder pursuant to this Contract, excepting always liability arising out of the independent negligent acts of the Owner.
>
> …
>
> 12.1.3 The *Owner* shall indemnify and hold harmless the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, all *Suppliers*, their agents and employees from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Design-Builder's* performance of the *Design Services* and *Construction*, which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work* or a negligent act or omission or wilful default of the *Owner*, its agents and employees or any other person in respect of those acts the *Owner* may be liable.
>
> …
>
> 12.2.1 As of the date of the final certificate for payment, the *Owner* expressly waives and releases the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, all *Suppliers*, and their agents and employees from all claims against them including without limitation those that might arise from the negligence or breach of contract by the *Design-Builder*, the *Consultant*, all other consultants, all *Subcontractors*, and their agents and employees except one or more of the following:

2026 BCCA 408 (CanLII)

[Underlining added.]

[50] On a plain reading, the term “Sub-Consultants” in the replaced GC 12.1.1 is broad enough to include entities who were not directly engaged by the Design-Builder. Similarly, on a plain reading of GC 12.1.3, Tru-Line’s position that the Waiver includes consultants such as itself has some merit. However, the fact that the Supplementary Conditions replace “all other consultants” with “Sub-Consultants” in only the first indemnification clause (the Design-Builder’s obligation to indemnify) but not in the second (the Owner’s obligation to indemnify) or in the Waiver also suggests that “Sub-Consultants” means something different than “all other consultants.”

[51] The judge did not address the replacement of “all other consultants” with “Sub-Consultants” in one of the indemnity clauses (GC 12.1.1) or its interpretive impact on the Waiver. Rather, her analysis of the Waiver was predominantly focused on the Contract’s overall use of the term “other consultants,” the meaning of that term, and its impact in ultimately defining the scope of the Waiver: Reasons at paras 34-36, 39.

[52] The Contract frequently uses the term “other consultants.” We agree with the judge that this term is relevant to the interpretation of “all other consultants”: Reasons at paras 22, 23, 28(a)-28(b), 33, 37-38. However, we need to read the Contract as a whole to understand the meaning of that term better as it applies to the Waiver.

[53] Sometimes the term is qualified by the words “employed” or “retained” by the Design-Builder. For example, this qualification appears in the definition of “Consultant” in GC 2.1.5 (as amended by SC 13) and in GC 6.3.4. Other times, the term “other consultants” is not qualified. For example, GCs 1.1, 3.10, and 9.3 lack such qualifying language.

[54] A set of “Basic Principles” is contained at the start of the Contract and provides that “[t]he *Owner* deals with one single administrative entity, the

2026 BCCA 408 (CanLII)

Design-Builder, who provides *Design Services* and *Construction* of the project under one contract package": Basic Principle 1. In this way, the Contract allows the Owner to deal with a single entity, the Design-Builder, which in turn hires a primary Consultant (Basic Principle 5, GC 2.1.1), "other consultants" (Basic Principle 7), Subcontractors, and Suppliers. This structure presumably benefits the Owner by eliminating the need for the Owner to manage individual contractors doing design and construction work.

[55] The Contract charges the Design-Builder with singular and comprehensive responsibility for the work to be performed, including design services. For example, under Article A-1.1, the Contract states that "[t]he *Design-Builder* shall perform the *Work* required by the *Contract Documents*." Under GC 3.1.1, "[t]he *Design-Builder* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*." Pursuant to GC 3.1.4, "[t]he *Design-Builder* is solely responsible for the quality of the *Work*." The term "Work" is defined as the "*Design Services* and *Construction* required by the Contract" (underlining added).

[56] The Contract defines "Design Services" as the "professional services for the design and construction administration performed by the Consultant or other consultants under the *Contract*" (underlining added). According to the definition of "Consultant," it is the Consultant's responsibility to provide its own Design Services and to coordinate the provision of "*Design Services* by all other consultants employed by the *Design-Builder*" (underlining added).

[57] As we read these sections, informed by the modifications achieved through the Supplementary Conditions, the Contract effectively contemplates two types of "consultants" under the Contract: the primary Consultant and "other consultants" retained by the Design-Builder. An entity retained by the Design-Builder, such as Trilar, can apparently also retain an outside consultant, such as Tru-Line, because nothing in the Contract prohibits it.

2026 BCCA 408 (CanLII)

[58] The Contract contemplates the Design-Builder retaining subcontractors. The definition of Subcontractor makes that clear. Moreover, GC 3.8.1 stipulates that the Design-Builder shall provide and pay for labour and services, including any design services, necessary to perform the work in accordance with the Contract. GC 3.8.4 (introduced by SC 23) requires the Design-Builder to ensure that "all of its employees and subcontractors" comply with the Owner's workplace conduct policies.

[59] However, while allowing for subcontractors, the Contract also explicitly limits the benefits of the Contract to "Subcontractors" of a certain type, namely, ones directly retained by the Design-Builder. The term "Supplier" is limited in the same way. We are similarly satisfied that the term "other consultants" must also have been intended in this particular Contract to include only people or entities that have a direct contractual relationship with the Design-Builder.

[60] This interpretation is consistent with each of the following: Basic Principle 7, which contemplates the Design-Builder having more than one "consultant"; the Design-Builder's defined responsibilities under the Contract; the scope of its supervisory role; and the Consultant's stipulated role. Importantly, this interpretation also makes the language of the Waiver internally consistent, as all entities listed there are of a like kind in their relationship with the Design-Builder.

[61] The clauses related to the Owner's and Design-Builder's obligations to carry insurance in GC 11.1.1 are modified. GC 11.1.1 previously referenced only the Design-Builder's obligation to carry general liability insurance covering the joint names of the Owner, the Design-Builder, the Consultant and other consultants. The modified conditions repeat the Design-Builder's insurance obligation but also add an obligation for the Owner.

[62] The Owner's obligation in modified GC 11.1.1(a)(ii) to carry insurance extends to "the Owner, Design-Builder & Sub-contractors, … Consultants and anyone employed by them to perform a part or parts of the Work": SC 61. By comparison, the Design-Builder's obligation to carry insurance in modified

2026 BCCA 408 (CanLII)

GC 11.1.1(b)(i) refers to "Sub-Consultant(s) and their respective servant(s), agent(s) or employee(s)": SC 61. The Design-Builder's insurance obligation appears to be broader than the Owner's in that it refers to Sub-Consultants and their servants, agents or employees. This appears to support the Design-Builder having wider responsibility in this Contract than the Owner for lower-tier consultants.

[63] GC 6.5.2 (delays) and GC 7.2.2 (Design-Builder's right to suspend work) refer to "any person employed or engaged by the *Design-Builder* directly or indirectly" and "anyone directly or indirectly employed or engaged by the *Design-Builder*." GC 3.7.1, which was referred to by the judge below, makes the Design-Builder responsible to the Owner "for acts and omissions of … other consultants … and of persons directly or indirectly employed by them…." The fact that the drafters found it appropriate to add this expansive language (including indirectly employed entities) in certain conditions related to the Design-Builder, but not in the Owner's Waiver, tends to support the inference that the term "all other consultants" in the latter condition has a more limited scope.

[64] GC 6.3 addresses changes in direction by the Owner. When a change incurs an added expense, the Owner is responsible for the expense. In calculating the added expense, the Design-Builder is to maintain an itemized accounting of the costs of the work attributable to the change, including "all fees and disbursements of the *Consultant* or other consultants engaged or employed to provide such services": GC 6.3.4.6 (underlining added). Logically, the Design-Builder could meaningfully account only for "other consultants" with whom it has a direct relationship.

[65] In our view, these features of the Contract, considered cumulatively and, critically, informed by the modifications referred to earlier, evince the contracting parties' mutual intention to allocate risk onto the Design-Builder to manage the entities that it retains or employs, including "consultants," in a manner consistent with the Owner's expectations. In exchange, the Design-Builder, and the entities it directly retains or employs, benefit from the Waiver.

2026 BCCA 408 (CanLII)

[66] We accept that, standing alone, the Design-Builder's ability to subcontract does not mean consultants not directly engaged by the Design-Builder would be automatically excluded from the ambit of "all other consultants." Rather, GC 3.7 is focused on making the Design-Builder responsible for the acts and omissions of entities directly retained or employed by the Design-Builder.

[67] As the judge referenced, GC 3.7.1 has definitional significance, in that it requires the Design-Builder to "enter into contracts or written agreements with the Consultant, and other consultants to require them to perform their design and other services as provided in the Contract Documents": Reasons at paras 36-37. In addition, GC 3.7.1.4 makes the Design-Builder "fully responsible to the *Owner* for acts and omissions of … other consultants … and of persons directly or indirectly employed by them…" (underlining added). The judge reasoned that, for the intention of the parties articulated in GC 3.7 to be given effect, the definition of "all other consultants" in GC 12.2.1 must be informed by GC 3.7, which ensures that contractual agreements control those working in a subordinate role to the Design-Builder: Reasons at para 37.

[68] To be sure, GC 3.7 uses the term "other consultants" and not "all other consultants," which is the precise term in dispute. GC 3.7 does not provide a comprehensive definition of "other consultants" or fully identify what the Contract intends by the term "other consultants," other than using it as a catch-all phrase for consultants different than the primary Consultant. Consequently, we accept that GC 3.7 is not determinative of the meaning of the phrase "all other consultants" as it appears in the Waiver.

[69] However, like the judge, we find GC 3.7 informative. The Owner enforces the Contract by imposing obligations on the Design-Builder and, in turn, by the Design-Builder imposing obligations directly through its contracts with the Consultant, Subcontractors, Suppliers, and other consultants it retains or employs. The Design-Builder's contractual supervision and control are necessarily limited by privity to the terms and conditions of the agreements it executes with others. If a

2026 BCCA 408 (CanLII)

directly retained consultant subsequently engages an outside consultant, the Owner's and the Design-Builder's ability to supervise and control the work of the outside consultant and, more specifically, to protect and preserve the rights of the parties in accordance with the terms of the Contract, is undermined.

[70] Finally, we turn to commercial reasonableness.

[71] FHA submits a contract will only ever be commercially reasonable if there is "mirror reciprocity" between its indemnification clauses and any waiver, and that this factor supports a narrow interpretation of the Waiver specific to "consultants." The judge rejected that broad proposition and so do we. We accept that parties to a contract can agree to "different releases of liability depending upon the specific relationship in question": Reasons at para 41.

[72] However, having considered the Contract as a whole, we find the modified indemnification clauses in this case informative on the scope of the Waiver. Given the structure of the Contract and the sections and clauses we have highlighted, we find it logically coherent that the Owner's waiver would mirror in scope its indemnity and insurance obligations, which appear to be more limited than those of the Design-Builder: GC 11.1.1(a)(ii), (b)(ii) and (c)(i), 12.1.1, 12.1.3, and 12.1.4.

[73] Moreover, in our view, it would not be logical or commercially sensible in the context of this particular arrangement for the Owner to agree to waive any claims against the broader entities, since the Owner has no contractual relationship with a lower-tier consultant and no meaningful ability to supervise and direct their work in accordance with the terms of the Contract. Commercial reasonableness is assessed from the standpoint of each party to a contract, not just one of them: *Resolute FP Canada v Ontario (Attorney General)*, 2019 SCC 60 at paras 148, 155.

[74] Accordingly, we are satisfied that in the context of this Contract, it was open to the judge to interpret the phrase "all other consultants" in the Waiver as extending only to consultants (other than the Consultant) directly engaged by the Design-Builder. The word "all" can reasonably be read as simply capturing all the directly

2026 BCCA 408 (CanLII)

engaged consultants, the same way the Waiver refers to "all *Subcontractors*" and "all *Suppliers*": GC 12.2.1 (underlining added). The appellant has not persuaded us of palpable and overriding error.

Privity of Contract

[75] The doctrine of privity of contract prevents a person who is not a party to the contract from enforcing the contract to benefit from it: *Holmes v United Furniture Warehouse Limited Partnership*, 2012 BCCA 227 at para 10. However, there are exceptions to the doctrine based upon the "principled approach" outlined in *London Drugs Ltd. v Kuehne & Nagel International Ltd.*, 1992 CanLII 41, [1992] 3 SCR 299 (SCC), and *Fraser River Pile* at p 126.

[76] *Fraser River Pile* at p 126 established that the determination of whether the principled exception applies should be made on the basis of the following factors:

a) Did the parties to the contract intend to extend the benefit in question to the third party seeking to rely on the contractual provision?

b) Are the activities performed by the third party seeking to rely on the contractual provision the very activities contemplated as coming within the scope of the contract in general, or the provision in particular, again as determined by reference to the intentions of the parties?

[77] The application judge found that Tru-Line was not entitled to rely on the principled exception. The judge reasoned as follows:

> [42] Given my conclusion that Tru-Line is not an "other [consultant]" under GC 12.2.1, the question of whether Tru-Line is privy to the Design-Build Contract does not need to be answered. In any event, I would find that Tru-Line is not entitled to rely on the waiver as the principled extension of privity does not extend to it. Privity may be extended where 1) the parties intended to extend the benefit in question to the third party; and 2) the activities of the third party were the activities contemplated by the parties in making the contract: *Fraser River Pile & Dredge*, para 32. For substantially the same reasons expressed above, it is my conclusion that the parties did not intend to extend the benefit of the waiver in GC 12.2.1 to Tru-Line, and accordingly Tru-Line is not in a position to rely upon it.
>
> [Underlining added.]

2026 BCCA 408 (CanLII)

[78] In our view, the judge correctly determined this issue. Since the phrase “all other consultants” in the Waiver must be interpreted to include only consultants engaged by the Design-Builder, it cannot reasonably be said that the parties to the Contract intended to extend the benefit of the Waiver to the third party seeking to rely on it. Accordingly, Tru-Line’s submission fails to satisfy the first branch of *Fraser River Pile*.

Disposition

[79] For these reasons, the appeal is dismissed.

“The Honourable Madam Justice DeWitt-Van Oosten”

“The Honourable Justice Iyer”

“The Honourable Justice Brundrett”

2026 BCCA 408 (CanLII)