IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rather Be Plumbing Ltd. v Kimber,*
2026 BCSC 1984

Date: 20261015
Docket: S212115
Registry: Victoria

Between:

Rather Be Plumbing Ltd.

Plaintiff

And:

Curtis Kimber and Carolyn Wotherspoon

Defendants

Before: The Honourable Justice K. Saunders

Reasons for Judgment

Counsel for the Plaintiff:	M. Martin
Defendant appearing on his own behalf	C. Kimber
No other appearances	
Place and Date of Trial:	Victoria, B.C. May 4-5, 2026 July 20, 2026
Place and Date of Judgment:	Victoria, B.C. October 15, 2026

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Introduction

[1] This action arises from a dispute concerning alleged unpaid plumbing services and a related claim under the *Builders Lien Act*, SBC 1997, c 45. The plaintiff, Rather Be Plumbing Inc., seeks judgment in the amount of $29,525.60 for breach of contract and to enforce a builder's lien. The defendant, Curtis Kimber, denies liability and advances a counterclaim for damages arising from alleged deficiencies in the plaintiff's work. He seeks judgment in the amount of $41,289.45.

[2] The other defendant, Carolyn Wotherspoon, did not enter a defence.

Procedural History and Preliminary Matters

[3] The plaintiff commenced this action by filing a notice of civil claim on July 16, 2021.

[4] Mr. Kimber filed a response to civil claim on August 24, 2021, denying liability on the basis that the plaintiff's work was incomplete, deficient, and outside the agreed scope.

[5] On the same date, Mr. Kimber filed a counterclaim seeking damages for the cost of remedial work said to be required to address alleged deficiencies in the plaintiff's plumbing work.

[6] The plaintiff maintains that its work was complete and complied with applicable standards. It denies responsibility for any loss or damage alleged by Mr. Kimber.

[7] Ms. Wotherspoon did not file a response to civil claim or a counterclaim.

[8] On May 4, 2026, at the commencement of trial, both defendants were present. The plaintiff objected to Ms. Wotherspoon's participation on the basis that she had not filed a response to civil claim or otherwise participated in the proceeding. For reasons delivered at trial, I ruled that Ms. Wotherspoon was not entitled to defend the claim.

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[9] The trial proceeded with Mr. Kimber as the sole participating defendant.

[10] During opening submissions, counsel for the plaintiff advised that the plaintiff sought judgment in the amount of $36,947.28, rather than the $29,525.60 claimed in the notice of civil claim. No application was made to amend the pleadings.

[11] The trial proceeded over two days. During that time, Mr. Kimber sought to introduce various documents that had not been disclosed in advance of trial. For reasons delivered at trial, I ruled those documents inadmissible, including because they had not been disclosed in accordance with Rule 7-1(1) of the *Supreme Court Civil Rules,* BC Reg 168/2009 (the "*Rules*").

[12] After the close of the evidence, and during closing submissions, counsel for the plaintiff advised the Court she had mistakenly failed to adduce the evidence necessary to establish a factual foundation for the remedies sought under the *Builders Lien Act*. The plaintiff requested leave to reopen its case.

[13] Mr. Kimber opposed the application. He submitted that permitting the plaintiff to reopen its case would be unfair, particularly given the Court's earlier ruling excluding his undisclosed documents. He argued that allowing the plaintiff to remedy deficiencies in its evidence at that stage would effectively create a double standard.

[14] In the interests of fairness, I granted leave to both parties to reopen their cases. The trial was adjourned. The adjournment was of sufficient length to permit Mr. Kimber to provide proper document disclosure and, if the plaintiff elected to do so, submit to an examination for discovery. Mr. Kimber was instructed that compliance with the discovery obligations imposed by the *Rules* was mandatory and would be expected before the trial resumed.

[15] During the adjournment, the plaintiff sought to arrange an examination for discovery of Mr. Kimber. Although the plaintiff requested available dates, Mr. Kimber did not respond. However, the plaintiff did not serve an appointment for examination and no non-attendance was recorded. In those circumstances, and despite his

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failure to submit to an examination for discovery, I permitted Mr. Kimber to testify when the trial resumed on July 20, 2026.

[16] When the trial resumed, both parties presented further evidence. Mr. Kimber again sought to rely on documents that had not been disclosed in accordance with Rule 7-1(1). Although I was prepared to treat an unfiled affidavit served shortly before the continuation of trial as a list of documents, I found that the disclosure came too late to permit a fair response by the plaintiff. For reasons provided at trial, Mr. Kimber was not permitted to rely on the documents.

[17] The trial completed on July 20, 2026. During closing submissions, the plaintiff abandoned its claim for contractual interest against the defendants.

Factual Findings

Process for Resolving Evidence

[18] There is no dispute that the plaintiff performed work for Mr. Kimber. The central issues relate to the scope, quality, and value of that work, and whether any deficiencies exist.

[19] In resolving these issues, I must assess both the credibility and reliability of the witnesses. Credibility concerns whether a witness is testifying truthfully, while reliability relates to the witness' ability to accurately perceive, remember, and recount past events: *Wells v Pound,* 2025 BCSC 1295 at para 6.

[20] In assessing credibility, the Court does not rely solely on a witness' demeanour. Rather, the evidence must be considered in the context of whether it accords with the "preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna v Chorny*, 1951 CanLII 252 (BCCA), [1952] 2 DLR 354 at p 357.

[21] Relevant considerations in assessing credibility include a witness' opportunity to observe events, the strength and consistency of the witness' memory, the internal consistency of the evidence, the harmony of the witness' evidence with

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contemporaneous documents and independent evidence, and whether the witness has any motive to misstate or exaggerate: *Bradshaw v Stenner*, 2010 BCSC 1398 at para 186, aff'd 2012 BCCA 296, leave to appeal to SCC refused CanLII 11302 (SCC), [2012] SCCA No 392. The Court may accept all, some, or none of a witness' evidence and may assign different weight to different portions of it.

[22] The evidentiary record in this case is limited. It consists of the plaintiff's invoice for the work it alleges it completed, timesheets allegedly completed by the plaintiff's employees, supplier invoices for the parts and equipment supplied to the plaintiff for the project, the claim of lien, the title search for the property at issue, a letter from the plaintiff's former counsel advising a certificate of pending litigation was released from title, and the testimony of four witnesses:

a) Jarod Hughes, the owner of the plaintiff company,

b) Mr. Kimber, one of the defendants,

c) Katie Whiting, and

d) Edward McLean.

[23] In light of this constrained record, I have assessed the evidence with particular care. Where there is little or no independent corroboration, the reliability of the parties' recollections and the internal consistency of their evidence assume greater significance.

Findings of Fact

[24] In or around September 2020, the plaintiff company began providing plumbing and gas fitting services to Mr. Kimber on a time and materials basis at a property located at 3980 Goldstream Heights, Victoria, British Columbia (the "Property"). The Property was owned by the defendants.

[25] Jarod Hughes, an owner of the plaintiff company, described the Property as a rural property in the Shawnigan Lake area consisting of multiple structures, including a residence, outbuildings, and a pumphouse. Mr. Kimber indicated that the project

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involved the completion of an approximately 1,800 square foot new build rancher-style home. The plumbing work had been commenced by others but was incomplete at the time the plaintiff became involved.

[26] Although both defendants owned the Property, the parties agree that Mr. Kimber contracted the plaintiff to provide plumbing services.

[27] The scope of the work was not reduced to writing and was discussed primarily through verbal communications at the Property. The parties provided differing descriptions of the initial scope. Mr. Kimber testified that it included installation of an on-demand hot water heating system for the home. Mr. Hughes described a broader scope, including drainage, venting, waste systems, water line installation, fixture installation, and gas fitting. Despite these differences, it is common ground that the plaintiff performed various plumbing and gas fitting tasks, including installing or relocating fixtures, running water and gas lines, and attempting to install a boiler system and a jacuzzi tub.

[28] Mr. Hughes testified that some of the plaintiff's work was inspected by representatives of the Capital Regional District and a gas inspector, and that it passed those inspections. The documentary evidence confirms that some inspections were conducted, and I accept Mr. Hughes' evidence in this regard. However, the evidence does not establish which work completed by the plaintiff was inspected.

[29] The plaintiff's work was performed on a near-daily basis between September 21 and December 10, 2020, with a further three days of work from January 11 to January 13, 2021. Mr. Hughes testified that the interruption between December 10, 2020 and January 11, 2021 was due to non-payment of invoices. No documentary evidence of interim invoices or payment demands was tendered.

[30] On or about January 13, 2021, the plaintiff issued an invoice in the amount of $36,947.28. Mr. Kimber testified that he was surprised by the amount and advised the plaintiff that he did not intend to pay it. Mr. Hughes testified that, following

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Mr. Kimber's reaction, the plaintiff voluntarily reduced its hourly labour rate from $85 to $65 for the work already performed, resulting in a revised invoice of $29,525.60 (the "Outstanding Invoice"). Prior to the plaintiff commencing this action, Mr. Kimber did not raise any concerns with the plaintiff regarding the accuracy of the Outstanding Invoice.

[31] Mr. Kimber made no payments toward either the original or revised invoice.

[32] During his initial testimony, Mr. Hughes stated that the plaintiff ceased work on January 13, 2021 because Mr. Kimber had not paid the Outstanding Invoice.

[33] However, at the continuation of the trial in July 2026, after the plaintiff had been granted leave to reopen its case to address deficiencies in its evidence concerning the *Builders Lien Act*, Mr. Hughes provided additional evidence regarding events said to have occurred after January 13, 2021. He testified that, near the end of February 2021, he instructed a plaintiff employee to attempt to access the Property to continue work but the employee was unable to gain entry because the access code had been changed. He also testified that, on March 29, 2021, he advised Mr. Kimber by text message that the plaintiff would return to complete the project. No copy of the alleged text message was tendered into evidence.

[34] I do not accept this later evidence. It was inconsistent with Mr. Hughes' earlier testimony that the plaintiff stopped work on January 13, 2021 because of non-payment. Mr. Hughes offered no explanation for why the plaintiff would seek to resume performing work in February 2021 despite having ceased attendance for non-payment. Nor did he provide any explanation for why these alleged events were not mentioned during his initial testimony and surfaced only after the plaintiff had been given an opportunity to address deficiencies in its lien claim. The evidence was unsupported by contemporaneous documents despite the alleged existence of such documents and appeared tailored to address a factual issue that had become apparent during the first two days of trial. Specifically, the timeline advanced by Mr. Hughes in his later evidence placed the plaintiff's last attempted attendance at

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the Property at the end of February 2021, a date that aligns almost precisely with the timeframe required under the *Builders Lien Act* for preserving a claim of lien. Taken in context, such convenient alignments further undermine Mr. Hughes' credibility.

[35] In addition, Mr. Hughes' evidence regarding the inability for the employee to gain access to the Property in March is hearsay and is not admissible.

[36] Therefore, I find that the plaintiff's work at the Property ended on January 13, 2021 and the plaintiff did not intend to return to the Property to complete the work until it received payment for the Outstanding Invoice.

[37] The plaintiff submits that it did not complete installation of the on-demand hot water heating system.

[38] Mr. Kimber did not request that the plaintiff return to complete any outstanding work or to address alleged deficiencies. However, at trial he asserted that portions of the work described in the Outstanding Invoice were not performed, that other aspects were defective, and that certain charges – such as those relating to the installation of a prefabricated shower unit – were excessive. In particular, he stated that $10,000 of the work noted in the Outstanding Invoice had not been performed at all.

[39] To establish the nature, extent, and value of the work performed, the plaintiff relied on the Outstanding Invoice, timesheets said to have been completed by its employees contemporaneously with the work, and supplier invoices for parts and equipment. There was no evidence that Mr. Hughes was present while the work was being performed or that he independently verified the work beyond confirming that his employees reported being on site for the hours recorded in the timesheets. Mr. Kimber's evidence concerning the value of the work that was not performed was neither challenged nor contradicted. Nor did the plaintiff identify any entries in the timesheets demonstrating that the specific work Mr. Kimber said was not completed had, in fact, been performed.

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[40] Mr. Kimber was the person who observed the progress of the work throughout the project and received the invoices. In the absence of any contrary evidence from the plaintiff addressing the specific work said to be incomplete, I am satisfied his estimate provides the best available evidence of the value of the work that was not performed.

[41] In those circumstances, I accept Mr. Kimber's estimate that approximately $10,000 of the invoiced work was not performed.

[42] However, no admissible documentary or expert evidence was tendered to substantiate the alleged deficiencies in the work completed by the plaintiff or demonstrate that certain charges were excessive. As noted above, Mr. Kimber was not permitted to introduce documents that had not been disclosed before trial. He attempted to elicit opinion evidence from Ms. Whiting and Mr. McLean concerning alleged deficiencies in the plaintiff's work. Ms. Whiting's qualifications were not established in the evidence. Mr. McLean testified that he is a qualified plumber. However, there was no evidence that any work observed by either witness had, in fact, been performed by the plaintiff. In any event, their proposed opinions would have constituted inadmissible expert evidence. Although Mr. Kimber also appeared to rely on these witnesses to establish the nature and cost of any remedial work, he did not elicit any evidence on those issues.

[43] The plaintiff filed a claim of builder's lien against the Property on May 14, 2021. The claim of lien stated that $29,525.60 became due and owing on February 25, 2021. Mr. Hughes completed the claim of lien but did not explain the basis for identifying February 25, 2021 as the date the amount became due and owing. He testified that he filed the lien approximately 45 days after sending his final invoice to Mr. Kimber. However, the Outstanding Invoice was issued on January 13, 2021 and the lien was filed on May 14, 2021. To the extent there is any inconsistency between Mr. Hughes' recollection and the documentary record, I prefer the documentary evidence and find that the lien was filed on May 14, 2021.

[44] The plaintiff commenced this action on July 16, 2021.

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Position of the Plaintiff

[45] The plaintiff submits that this is a straightforward claim for unpaid services arising from a contract between the plaintiff and Mr. Kimber.

[46] It says Mr. Kimber retained the plaintiff to perform plumbing work on a time and materials basis, including work to repair previously completed plumbing. The plaintiff maintains that it performed the work for which it billed and invoiced Mr. Kimber based on timesheets completed by its employees. Following discussions with Mr. Kimber, the initial invoice in the amount of approximately $36,947.28 was reduced following discussions with Mr. Kimber by lowering the hourly rate, resulting in the amount claimed. Counsel for the plaintiff acknowledges the notice of civil claim seeks judgment against the defendant for $29,525.60, not the amount on the initial invoice.

[47] The plaintiff further submits that Mr. Kimber has failed to establish that any of the plaintiff's work was deficient, incomplete, or outside the agreed scope of work. It says there is no admissible evidence capable of supporting the allegations advanced in the counterclaim, including any evidence establishing the existence, cause, or repair costs of the alleged deficiencies.

[48] If successful, the plaintiff seeks judgment for $36,947.28 (despite its notice of civil claim seeking judgment for $29,525.60), a declaration that its lien was validly filed, payment of the funds held in trust in place of the lien, prejudgment interest under the *Court Order Interest Act,* RSBC 1996, c 79, and costs at Scale B.

Position of Mr. Kimber

[49] Mr. Kimber's position is that he is not liable for the amount claimed because the plaintiff's work was incomplete, deficient, and exceeded the agreed scope of work. He acknowledges responsibility for the cost of the parts and equipment supplied by the plaintiff, but disputes liability for the labour charges.

[50] He submits that the plaintiff performed limited work that differed from what had been contemplated and that it did not perform all the work for which it invoiced.

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He says the plaintiff ceased work for a period and ultimately issued an invoice that was disproportionate to the work completed. He further alleges that the plaintiff lacked the expertise to properly install the hot water boiler system, resulting in defective work that required removal and replacement. In addition, he claims that the plaintiff damaged in-floor hydronic heating pipes, performed inadequate and untested repairs, and concealed those issues beneath concrete. As a result, he says significant demolition and reconstruction are required.

[51] In his counterclaim, Mr. Kimber seeks damages totalling $41,289.45 for the cost of this remedial work. This includes amounts claimed for removing tile, mortar, and concrete to access hydronic piping, exposing and repairing that piping, reinstalling a walk-in shower, and reinstalling a hot water heater.

Analysis and Reasons

The Plaintiff's Claim

[52] The plaintiff advances two bases for its claim for relief against the defendants: (1) enforcement of a builder's lien pursuant to s 26 of the *Builders Lien Act* and (2) damages for breach of contract.

Builders Lien Claim

[53] The plaintiff has not established its entitlement to relief under the *Builders Lien Act*. A party seeking to enforce lien rights must prove, on a balance of probabilities, the existence of a claim of lien and compliance with the statutory requirements giving rise to and preserving such a lien.

[54] The plaintiff has established the existence of a claim of lien.

[55] However, the *Builders Lien Act* requires that the claim of lien be filed no later than 45 days after "the improvement has been completed or abandoned": s 20(2)(b). In this case, the plaintiff last performed work on January 13, 2021 and thereafter ceased work indefinitely, pending payment of the Outstanding Invoice.

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[56] Pursuant to s 1(5) of the *Act*:

> For the purposes of this Act, a contract or improvement is deemed to be abandoned on the expiry of a period of 30 days during which no work has been done in connection with the contract or improvement, unless the cause for the cessation of work was and continued to be a strike, lockout, sickness, weather conditions, holidays, a court order, shortage of material or other similar cause.

[57] However, the Legislature did not intend that provision to override proof of a clear intention of the parties not to abandon a project. Instead, the provision is a default position applicable where the parties' intentions are uncertain. It creates a presumption of abandonment rebuttable by proof of an intention not to abandon: *McManamna v Farley,* 2008 BCCA 471 at para 14.

[58] The plaintiff submits that the presumption of abandonment is rebutted in this case by evidence that the plaintiff did not intend to abandon the project. Specifically, it points to Mr. Hughes' evidence that the plaintiff attempted to return to the Property to complete the work at the end of February 2021 and, until March 29, 2021, intended to return to complete the project. For the reasons expressed above, I do not accept that evidence.

[59] The plaintiff further submits that Mr. Kimber acknowledged in his closing submissions that the work had not been abandoned. I do not accept that submission. Mr. Kimber's concession related to the overall state of construction at the Property and his own intended work on the project. It was not an admission that the plaintiff had not abandoned its contract or its work for the purposes of the *Builders Lien Act*.

[60] Therefore, by operation of s 1(5) of the *Builders Lien Act*, the plaintiff is deemed to have abandoned the work on February 12, 2021 – 30 days after January 13, 2021, which was the last day the plaintiff completed work on the Property.

[61] Pursuant to s 20(2) of the *Builders Lien Act,* a claim of lien may be filed no later than 45 days after the contract was abandoned. In this case, the deadline for

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the plaintiff to file the claim of lien was March 29, 2021. As it was filed on May 14, 2021, it was filed well outside of the time permitted in the *Builders Lien Act* and is therefore extinguished: *Builders Lien Act,* s 22.

[62] The plaintiff did not comply with the statutory requirements in respect of a claim of lien. Accordingly, its claim for relief under the *Builders Lien Act* cannot succeed and is dismissed.

Breach of Contract

[63] The plaintiff seeks payment for plumbing and gas fitting services provided to Mr. Kimber pursuant to an agreement between the parties. The existence of a contract between the plaintiff and Mr. Kimber is not in dispute.

[64] The central issues are whether the plaintiff performed the work it claims, whether it is entitled to payment for that work, and if so, the appropriate amount of compensation.

[65] The evidence establishes that the plaintiff performed plumbing and gas fitting services for Mr. Kimber over a period of months on a time and materials basis. While the precise scope of work was not reduced to writing and was the subject of differing recollections, it is common ground that the plaintiff undertook a range of plumbing and gas fitting tasks for Mr. Kimber.

[66] I accept that the plaintiff is entitled to be paid for work performed pursuant to the contract. Mr. Kimber's allegation that the work was broadly deficient is not made out on the evidence. No admissible expert evidence was tendered and no independent documentation, photographs, or third-party reports were admitted into evidence to substantiate the alleged deficiencies or the cost of remediation.

[67] The plaintiff's evidence that some of its work passed inspection by representatives of the Capital Regional District and a gas inspector was uncontroverted and supports the conclusion that such work was generally performed

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to an acceptable standard. While not determinative of contractual entitlement, it is consistent with at least some work being performed to an appropriate standard.

[68] I also note that Mr. Kimber made no payments toward the Outstanding Invoice and did not request that the plaintiff return to complete or correct any alleged deficiencies at the time. Although he later advanced allegations of deficient work, those allegations were ultimately unsupported by admissible evidence. His primary concern at the time appeared to be the amount invoiced.

[69] The evidentiary record is limited. While the Outstanding Invoice and employee timesheets do not, by themselves, establish the reasonableness of every charge, it provides some evidence of the work performed and the basis of the plaintiff's claim for payment.

[70] On the totality of the evidence, I find that the plaintiff has established, on a balance of probabilities, that Mr. Kimber breached the contract by failing to pay for work performed.

[71] However, as noted above, I also accept Mr. Kimber's evidence that $10,000 of the invoiced work was not performed. That work should not be included in the amount recoverable by the plaintiff.

[72] Accordingly, I assess the plaintiff's damages at $19,525.60, reflecting the amount claimed in the Outstanding Invoice less $10,000 for the incomplete work.

Mr. Kimber's Counterclaim

[73] Mr. Kimber seeks damages for the cost of repairing alleged defects in the hydronic heating system, replacing portions of the concrete, tile, and shower construction, and reinstalling the hot water heater. He estimates the cost of the required remedial work to be $41,289.45.

[74] The burden rests with Mr. Kimber to prove, on a balance of probabilities, that the plaintiff's work was defective, that the alleged defects were attributable to the plaintiff, and that he suffered the losses claimed.

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[75] Mr. Kimber has not met that burden. As discussed above, no admissible expert evidence was tendered to establish that the plaintiff's work was deficient or failed to meet any applicable standard. Nor was there admissible evidence establishing that any alleged defects were caused by the plaintiff rather than by another contractor or some other cause.

[76] In addition, Mr. Kimber tendered no admissible evidence substantiating the costs of the remedial work claimed in the counterclaim. The estimated amounts set out in Mr. Kimber's counterclaim are not evidence. No quotations, invoices, expert reports, or other evidence was admitted establishing that the proposed repairs were necessary or that the amounts claimed reasonably reflected the cost of performing such repairs.

[77] In the absence of evidence establishing either liability or damages, Mr. Kimber has failed to prove his counterclaim. It is therefore dismissed.

Ms. Wotherspoon's Liability

[78] Although Ms. Wotherspoon was named as a defendant and was a registered owner of the property, there is no evidence that she contracted with the plaintiff for the provision of plumbing services or otherwise assumed any personal obligation in relation to the debt claimed. The evidence establishes that the agreement was between the plaintiff and Mr. Kimber alone. As the plaintiff has not established any basis upon which Ms. Wotherspoon could be held liable in contract, the claim against her is dismissed.

Plaintiff's Claim for Interest

[79] During trial, the plaintiff abandoned its claim for contractual interest but continued to seek prejudgment interest pursuant to the *Court Order Interest Act*. The notice of civil claim seeks judgment in the amount of $29,525.60, being the amount of the Outstanding Invoice, "including" interest.

[80] During closing submissions, counsel for the plaintiff submitted that the use of the word "including" was a drafting error and argued that the Court retains

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jurisdiction to award an additional amount above the $29,525.60 for pre-judgment interest pursuant to the plaintiff's general claim for "such further or other relief as the nature of this case may require and this Honourable Court may deem proper."

[81] In my view, it would not be appropriate to award pre-judgment interest solely based on a general prayer for further and other relief. To do so would effectively permit the plaintiff to advance a new claim for relief for which the defendant did not have proper notice.

[82] Nevertheless, that is not what arises in this case. The plaintiff pleaded a claim for judgment in the amount of $29,525.60, inclusive of interest. Having found that the plaintiff is entitled to recover only $19,525.60 because approximately $10,000 of the invoiced work was not performed, the amount awarded is substantially less than the amount claimed in the notice of civil claim.

[83] In those circumstances, an award of prejudgment interest does not increase the plaintiff's recovery beyond the amount pleaded. Rather, it forms part of a total award that remains well below the amount sought in the notice of civil claim. Mr. Kimber therefore cannot be said to have lacked notice of the extent of the plaintiff's monetary claim or to suffer any prejudice as a result of such an award.

[84] I am satisfied that prejudgment interest should be awarded pursuant to the *Court Order Interest Act* on the judgment amount of $19,525.60, calculated in accordance with the *Act* from February 25, 2021, the date relied upon by the plaintiff as the date the Outstanding Invoice became due and owing, to the date of judgment.

Conclusion

[85] For the foregoing reasons, all claims for relief by the plaintiff under the *Builders Lien Act,* including the plaintiff's claim for declarations respecting the validity and priority of the lien and any remedy against the Property, are dismissed.

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[86] The plaintiff succeeds on its claim for breach of contract against Mr. Kimber. Judgment is granted in favour of the plaintiff and against Mr. Kimber in the amount of $19,525.60.

[87] The plaintiff is also entitled to pre-judgment interest on that amount pursuant to the *Court Order Interest Act*, calculated in accordance with the *Court Order Interest Act* from February 25, 2021, to the date of this judgment.

[88] Mr. Kimber's counterclaim is dismissed.

[89] The claim against Ms. Wotherspoon is dismissed.

[90] The parties did not make detailed submissions regarding the disposition of the funds presently held in trust in place of the lien. If the parties are unable to agree on the release of the funds, they may apply for directions from the Court.

Costs

[91] Rule 14-1(10) provides that a plaintiff who recovers a sum within the jurisdiction of the Provincial Court is not entitled to costs, other than disbursements, unless there was sufficient reason for bringing the proceeding in the Supreme Court.

[92] Although the plaintiff ultimately recovered an amount within the jurisdiction of the Provincial Court, the action was commenced as both a debt claim and a claim to enforce a builder's lien. Relief under the *Builders Lien Act* can only be obtained in this Court. At the time the action was commenced, the plaintiff pleaded the material facts necessary to support its builder's lien claim and sought remedies that were unavailable in the Provincial Court.

[93] The question of whether there was "sufficient reason" is assessed objectively and turns on whether, when the proceeding was commenced, there was a reasonable basis for concluding that the remedies sought could only be obtained in the Supreme Court: *Grenier v Williams*, 2020 BCSC 1827 at paras 12-19.

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[94] In my view, that test is met. Although the plaintiff was ultimately unsuccessful on its builder's lien claim, it was not unreasonable for it to commence the action in this Court in order to pursue remedies under the *Builders Lien Act*. I therefore find that there was sufficient reason for bringing this proceeding in the Supreme Court.

[95] The general rule is that costs follow the event: *Rules,* R 14-1(9). The plaintiff was substantially successful. It succeeded in establishing contractual liability and obtained judgment against Mr. Kimber. However, it was unsuccessful on its builder's lien claim, and the re-opening of its case and continuation of the trial on July 20, 2026 was required solely because the plaintiff failed to adduce evidence necessary to establish the factual foundation for the builder's lien claim during its case in chief.

[96] In the circumstances, the plaintiff is entitled to its costs of the action at Scale B, except that it is not entitled to recover its costs associated with the continuation of the trial on July 20, 2026. The need to reopen the plaintiff's case arose entirely from its failure to adduce evidence necessary to establish a factual foundation for its lien claim during its case in chief. It would be unfair to require Mr. Kimber to bear the costs associated with that additional hearing day.

"K. Saunders, J."
The Honourable Justice K. Saunders

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