

SUPREME COURT OF NOVA SCOTIA

Citation: *Saccary v. THI Construction Limited and Pettipas*, 2024 NSSC 210

Date: 20240716

Docket: 499114

Registry: Halifax

Between:

Donald Saccary, Theresa Saccary

Applicant

v.

THI Construction Limited and Terry Pettipas

Respondents

DECISION

Judge: The Honourable Justice Mona Lynch

Heard: March 4, 5, 6, 7, 11, 12, 13, 14, 28, 2024, in Halifax, Nova Scotia

Final Written: July 16, 2024

Counsel: Ronan Holland, for the Applicant
Noel Fellows, for the Defendants

By the Court

Background

[1] The Plaintiffs, Donald and Theresa Saccary (the Saccarys) owned a home in Halifax which was damaged in a hurricane and then a fire in 2019. This damage was covered by the Saccarys' homeowner insurance. On November 25, 2019 the Defendant THI Construction Limited (THI) entered into a construction contract with the Saccarys to rebuild their home. Terry Pettipas (Pettipas) is the President, Director and Recognized Agent of THI.

[2] The Saccarys allege that they also entered into a sub-contract with THI for Donald Saccary to carry out some of the excavation work on the Saccarys' property and Donald Saccary was to be paid for this work.

[3] The parties agreed to changes to the design and location of the house and construction of the new home commenced in late 2019 and continued until April of 2020. When the last draw or cheque from the insurance company arrived, Donald Saccary asked to be paid for his excavation work and Pettipas refused to pay him. Shortly thereafter the Saccarys signed the cheque and Pettipas never returned to the Saccary home to look after any deficiencies. The Saccarys moved into the home despite not having an occupancy permit from the Halifax Regional Municipality. The final inspection of the home by HRM failed and an occupancy permit has never been issued for the Saccarys' home.

[4] On June 30, 2020, counsel for the Saccarys sent THI and Pettipas a demand letter seeking payment for the excavation work done by Donald Saccary and calling on THI and Pettipas to remedy the defects and deficiencies within seven days of the date of the letter.

[5] The Saccarys started an Action on July 9, 2020 claiming damages against THI and Pettipas for breach of the construction contract and the sub-contract. The damages claimed include the cost of remedying the defects and deficiencies in the work performed by THI and Pettipas. They also claim damages on a quantum meruit basis for the work performed by Donald Saccary. The Saccarys claim general damages for the upset and anxiety caused to them by THI and Pettipas. The Saccarys also seek costs. The Notice of Action was amended on April 19, 2022.

[6] THI and Pettipas filed a Notice of Defence on August 10, 2020 and an amended Defence and Counterclaim on June 10, 2022. THI and Pettipas denied all claims in the Notice of Action and counterclaimed against the Saccarys alleging breach of the construction contract and breach of a subsequent verbal agreement. THI and Pettipas allege that the Saccarys verbally agreed that Donald Saccary would provide excavation services in the form of sweat equity to offset changes and extras to the construction contract. Changes alleged included an ICF foundation, a veranda, front door, cabinets, location of the residence, light fixtures, front stone wall, walk in closet, rear deck and in-floor heating. THI and Pettipas allege that the Saccarys then reneged on the verbal agreement and sought compensation for the excavation work and refused to pay for the changes and extras under the construction agreement. THI and Pettipas seek damages for breach of contract, judgment for the extras with interest, special damages, damages on a quantum meruit basis, costs, etc.

[7] On July 7, 2022 the Saccarys filed a Defence to Counterclaim denying all claims in the counterclaim and seeking its dismissal.

[8] THI sent the Saccarys an invoice dated June 13, 2023 for the extras they were claiming.

[9] The original pleadings also included claims in relation to the construction of a wall. All claims in relation to the wall were settled and did not play a part in the trial between the Saccarys, THI and Pettipas.

[10] The trial of this matter was heard on March 4, 5, 6, 7, 11, 12, 13, 14, 28, 2024.

Issues

[11]

1.	What are the terms of the contract or contracts between the parties?
2.	Was there an agreement that Donald Saccary would perform excavation work to offset the costs of extras and changes to the construction contract? If so, did the Saccarys breach that agreement?
3.	Are the Saccarys responsible for any extra work or expenses?

4.	Was there a breach of contract or was the contract terminated?
5.	Is there a valid claim against Pettipas personally?
6.	What were the damages suffered by the Saccarys as a result of the breach and termination of the contract by THI?
7.	Should there be an award of general damages to the Saccarys?
8.	Was there a failure to mitigate on the part of the Saccarys?

Position of the Parties

The Saccarys

[12] The Saccarys' position is that the written contract is contained in the accepted quote and the signed contract and these documents contain the essential terms which were varied by verbal agreements. They allege that THI and Pettipas breached the representations in the contract as to the quality of work.

[13] The Saccarys' position is that the representations made by Pettipas himself are sufficient to lift the corporate veil and bind him personally.

[14] There was a verbal contract for Donald Saccary to perform excavation work for the rebuilding of the house and a term of that contract was that Donald Saccary would be paid for the excavation work he performed.

[15] The Saccarys submit that before and after THI and Pettipas left the property, there were deficiencies discovered that THI and Pettipas did not remedy. These deficiencies included failures of workmanship and breach of the representation in the contract that the work would be carried out in a good workmanlike manner.

[16] Because of the deficiencies by THI and Pettipas an occupancy permit could not be obtained in 2020 and has still not been obtained. The contract provided that THI and Pettipas would obtain the occupancy permit.

[17] The deficiencies include breaches of the National and Nova Scotia Building Codes, as well as breaches of Halifax Regional Municipality by-laws.

[18] The Saccarys' position is that the counterclaim by THI and Pettipas for extras was filed belatedly and no account was ever provided. The counterclaim filed on June 10, 2022 is past the limitation period to file such a claim.

[19] The Saccarys should be awarded general damages for the breach of contract due to the emotional upset and stress caused by the breach.

THI and Pettipas

[20] THI and Pettipas do not dispute that some deficiencies exist and must be remedied, however their position is that the Saccarys terminated the construction contract and did not allow THI and Pettipas back on the property to correct the deficiencies.

[21] THI and Pettipas say that the written construction contract was to rebuild the original home as it existed prior to the fire in the amount of \$256,000 plus HST. The Saccarys decided to build a different home and the parties then entered a verbal agreement to off-set the increased costs of the new design in exchange for the excavation work to be completed by Donald Saccary.

[22] Any amount paid to Donald Saccary for his excavation work will have to be off-set against the cost of extras and changes to the original contract.

Credibility and Reliability of the Witnesses

[23] THI and Pettipas ask that I find that the testimony of Donald Saccary was not credible. As in all cases, I have to assess the credibility of all of the witnesses. In *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100 at para. 16, Justice Forgeron reviewed the law, factors, and questions to ask when assessing credibility of witnesses. At paragraphs 18-20 she noted among other things:

- (a) an assessment of credibility is not a science which does not always lead to precise and complete verbalization;
- (b) there is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety;
- (c) Questions to address include:

1.	What were the inconsistencies and weaknesses in the witness's evidence?
2.	Did the witness have an interest in the outcome?;
3.	Did the witness have a motive to deceive?;
4.	Did the witness have the ability to observe the factual matters about which he/she testified?;
5.	Did the witness have a sufficient power of recollection to provide the court with an accurate account?;
6.	Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable?;
7.	Was there an internal consistency and logical flow to the evidence?;
8.	Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased?; and
9.	Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

Guided by Justice Forgeron's framework I will assess the witnesses in this trial.

[24] There were many witnesses called at the trial and I will not review the evidence of the witnesses or assess the credibility of all of the witnesses but there are a few material witnesses who I will assess.

[25] Donald Saccary testified and THI and Pettipas ask that I find he lacks credibility, was evasive, and was inconsistent in his evidence. Donald Saccary had to be directed numerous times to answer the questions that were asked and not make submissions and assertions that were not responsive to the questions. I did not find that he was trying to avoid answering questions, he was just trying to say his piece.

While his tendency to veer off topic from what was asked became frustrating, I do not find he was evasive.

[26] THI and Pettipas ask that the court find that Donald Saccary denied there was a verbal agreement and that in discovery he said that his excavation work was to cover changes and extras and now says that is not the case, he was to be paid for his excavation. The discovery excerpts, Exhibits 2 and 3, do not clearly say what THI and Pettipas suggests. Donald Saccary is talking about something being covered but it is not clear whether he is talking about the excavation being covered or the cost of any changes being covered. In his testimony Donald Saccary was clear that he expected to be paid for his excavation work and he did not do the work to off-set changes and extras. Overall, I found Donald Saccary's evidence to be credible and reliable. There were no glaring inconsistencies or weaknesses in his testimony. He appeared to be a man who was unaccustomed to testifying in a court and he wanted to tell his story of what had occurred.

[27] THI and Pettipas ask that I find the evidence of Theresa Saccary to be rehearsed or scripted. Theresa Saccary provided her evidence in a straightforward, clear, cogent, and convincing manner. She made admissions against interests when it was appropriate. She was not hostile to THI and Pettipas. Theresa Saccary had a clear recollection of the events of which she testified and said when she could not remember something. Her evidence was internally consistent and flowed logically. I found the evidence of Theresa Saccary to be totally credible and reliable.

[28] Phil Oakley was called as a witness by the Saccarys in relation to the costs to fix the deficiencies and make the necessary repairs to the Saccarys' house. Phil Oakley was not qualified as an expert witness and his estimates of repair and remediation costs were higher than the expert witnesses. Phil Oakley has been a building contractor for 47 years and he knows what it costs to repair and remediate. He used price per square foot or an hourly rate. I found that he gave his testimony in a candid and straightforward manner and with no weaknesses or inconsistencies. While he was not qualified as an expert in the trial, he is the witness who has the most experience in the construction trade. I found his evidence credible and convincing.

[29] Terry Pettipas testified and he suffered from the same problem as Donald Saccary in that he did not always provide answers that were responsive to the questions. Like Donald Saccary I was not concerned that he was being evasive, he

also wanted to tell his story. There were, however, other problems with Pettipas' testimony. Some of his testimony was clearly disproven by other evidence.

[30] Pettipas was very clear that the extras for light fixtures was because the Saccarys had four pot lights put in the kitchen and another four pot lights put in the living room. The video evidence provided by Ralph Corkum, the expert called by THI and Pettipas, clearly showed no pot lights in the living room or kitchen. I did not believe Pettipas' evidence that Donald Saccary made a threat to the insurance adjuster. The insurance adjuster did not testify to such a threat. Pettipas' evidence about the sequence of events surrounding the signing of the contract was at odds with both the insurance adjuster and the Saccarys. Pettipas testified that he was awarded the job by the insurance company before he ever met with the Saccarys which is contrary to the evidence of the insurance adjuster and the Saccarys that the Saccarys were the ones who chose the contractor, not the insurance company. Pettipas testified that the contract was signed before excavation was discussed with the Saccarys. Pettipas testified that there were no stairs, just a hatch, to the top floor of the Saccarys' house which burned, although the insurance adjuster and the Saccarys said there were stairs. Pettipas refused to agree that anywhere on the house the siding was inside and not outside the foundation, despite an abundance of evidence to the contrary.

[31] The experts and Phil Oakley priced the cost of a deck by the square feet and used a cost of between \$45 and \$50 a square foot to build a deck. Pettipas testified the price to build a deck was \$15 a square foot. Early in his testimony Pettipas made a disparaging comment about the mental health of Donald Saccary with no apparent ability to support that comment.

[32] The fatal blow to Pettipas' credibility came during his testimony regarding the underground plumbing report from HRM dated February 2020. Pettipas testified that there was a sewage cleanout in the utility room of the new house, although placing a sewage cleanout in that location would not comply with the Building Codes and would not pass inspection. There is a note on the report from HRM (Exhibit 1 page 110) "main c/o req". On cross-examination Pettipas first said that this note was in relation to radon and then he said it was in relation to carbon monoxide before eventually conceding it was a note that the main sewer cleanout was required. Overall, the evidence of Pettipas was internally inconsistent and inconsistent with the other evidence I accept. His evidence at some points did not have a logical flow and did not appear to be candid and straightforward.

[33] While the Saccarys and Pettipas all had an interest in the outcome of the case and perhaps a motive to deceive, it was Pettipas' evidence that was neither credible nor reliable. Where the evidence of Pettipas conflicts with the evidence of the Saccarys, I accept the evidence of the Saccarys.

[34] Ralph Corkum was a witness called by THI and Pettipas as an expert in building construction, etc. to give opinion evidence on building project estimation and construction quotes. Ralph Corkum's testimony suffered a major blow because of his inability to make admissions against the interests of THI and Pettipas. He would not admit that there was a defect in the painting in the Saccarys' house which resulted in him appearing to be minimizing defects and tailoring his evidence to favour THI and Pettipas.

[35] More troubling was Ralph Corkum's evidence on combustible clearance. In direct examination he testified that the pantry cupboard in the kitchen did not need to be moved because there was a one-inch gap between the range and the pantry cupboard. This would allow a non-combustible barrier to be placed between the range and the pantry cupboard. On cross-examination Ralph Corkum admitted that he had never actually measured whether there was any gap between the range and the pantry cupboard. He had testified to the one-inch gap by estimating the size of the gap from a photo of the range and pantry cupboard in Exhibit 6, the expert report of Peter Lewis. There is no apparent gap showing in the photo. Ralph Corkum's evidence on this point made the court doubt the rest of his evidence. On direct examination he told the court with assurance and confidence that there is a one-inch gap and his admission during cross-examination that he had never actually measured took away any confidence the court could place on his testimony. His evidence was clearly tailored to favour THI and Pettipas and was strategic, contained weaknesses, and was biased in favour of THI and Pettipas. His evidence was certainly not what the court would expect from an expert witness who had represented to the court that he would provide an unbiased opinion to assist the court. The evidence of Ralph Corkum lacked credibility and reliability.

[36] Any other comments on credibility and reliability will be left to weighing the evidence on specific points.

Analysis

1. What are the terms of the contract or contracts between the parties?

[37] THI provided a quote to reconstruct the house that had burned down. Originally it was thought that the house could be reconstructed as it had been on the old foundation. However, the old foundation was found not to be safe and it had to be demolished. This allowed for the possibility of building a different house than the old house and on a different location on the lot. It was after the original quote from THI was received that it was learned that the old foundation could not be used for the new house.

[38] THI provided the lowest bid to reconstruct the home at \$256,000 plus HST for a total of \$294,400. The insurance adjuster, the Saccarys and Pettipas of THI met on November 20, 2019 and agreed that THI would rebuild the Saccarys' house. The construction contract between THI and the Saccarys was signed on November 25, 2019. The rebuilding of the home started soon thereafter.

[39] After that things get a little less clear. Because the house could be moved and did not have to be built on the old foundation other options than a rebuild were available to the Saccarys. I accept the Saccarys' evidence that they showed a house plan to Pettipas and asked if it could be built. Pettipas told them that it would cost \$150,000 more than the contract price to rebuild their old house. There was a discussion at that point about Donald Saccary doing excavation work to off-set the increased cost of building this house, however no agreement was ever reached. The house being considered in these discussions was never built.

[40] The evidence as to what happened next differs in Pettipas' version and the Saccarys' version of events. Pettipas says, at that same in-person meeting, the Saccarys showed him a plan for a smaller home and they agreed that it could be built with excavation work being done by Donald Saccary to off-set the increased costs of this new home. The Saccarys' version is that after they were told of the increased costs of the bigger home, they went to see a woman in their neighbourhood who had just built a smaller house that they liked. They received the plans for the house and showed the plans to Pettipas to see if that house could be built for the quoted price and Pettipas said that "was doable". In the Saccarys' version, there was no discussion of any excavation work that was to be done by Donald Saccary to off-set any increased costs as there were no increased costs. The bigger home and the home that was eventually built were not discussed with Pettipas in the same meeting.

[41] The notes made by the insurance adjuster were entered into evidence in Exhibit 1 by consent. In a December 2, 2019 note, the insurance adjuster diarizes a call with Pettipas in which Pettipas is recorded as saying that the Saccarys wanted

to make changes but could not afford the cost quoted by Pettipas. The following day, December 3, 2019, a diarized update from Pettipas says that Pettipas spoke to the Saccarys and they agreed to resize the new home to fit the budget. The notes from the insurance adjuster are more consistent with the Saccarys' version of events. Considering the insurance adjuster's notes and my concern with Pettipas' credibility, I accept the Saccarys' version of the discussion regarding the new plan for their house. I do not accept that Donald Saccary agreed to do excavation work to off-set extra costs as there were no extra costs contemplated.

[42] The parties signed a construction contract as if the Saccarys' former house was being rebuilt. When they were aware that there was a new house being built on the property in a new location, no new contract was signed. The parties continued to act partly under the signed construction contract and partly verbally to accommodate the changes and the new plans. While THI had drafted the original contract, they did not draft a new contract. Pettipas' explanation for that was that Donald Saccary insisted that no new contract be signed and that everything would be done "old school" with a handshake. Pettipas' evidence as to what Donald Saccary was to do was vague. Pettipas testified that Donald Saccary simply said that he would "take care of excavation" once the house was moved.

[43] Pettipas testified that he has been in the construction industry for over 40 years. THI prepared the contract which was signed by the Saccarys and THI. I have to wonder why a person in business for so many years would not prepare a new contract to reflect a totally different house being built, and the excavation work that Pettipas says was to off-set some of the extras and changes. It was THI's responsibility to prepare a new contract to replace the one that they had originally prepared. The lack of a new contract has caused unnecessary confusion over the terms of the parties' new agreement. In some situations, the parties acted as if portions of the original signed contract were still in effect despite the changes.

[44] THI says that Donald Saccary is a businessperson as well and should have asked for a contract. I do not accept that Donald Saccary insisted that no new contract be signed.

2. Was there an agreement that Donald Saccary would perform excavation work to off-set the costs of extras and changes to the construction contract? If so, did the Saccarys breach that agreement?

[45] I accept the evidence of Donald Saccary that he was to do the excavation work but that he was to be paid for that work. I also accept that the work done by Donald Saccary was the demolition, digging for the new foundation, and laying new pipes for water and sewer. Pettipas had received quotes for this work and Donald Saccary, who runs an excavation company, agreed to do the work for the same amount that was quoted, although he found the quote a little light. I also accept that Donald Saccary genuinely expected to be paid from the final cheque as that had been his experience in the past.

[46] THI was paid \$256,000 to build the Saccarys' home which included a quote of \$18,500 for removal of the existing structure and foundation. The contract price included \$26,500 for the new foundation. THI was also paid \$11,586.25 above the \$256,000 for the grading plan, breaking rock for the water and sewer, and installing new water and sewer lines.

[47] THI is to pay the Saccarys \$18,500 for the demolition and \$6,000 for laying the sewer and water for a total of \$24,500 plus HST as per the submissions of counsel for the Saccarys.

3. Are the Saccarys responsible for any extra work or expenses?

[48] Changes to the design plan for the house that was built are not reflected anywhere. THI and Pettipas counterclaimed for extras in June 2022 and then sent an invoice to the Saccarys dated June 13, 2023 for \$58,822.50 in extras. The extras included an ICF foundation, a veranda, a front door, cabinets, light fixtures, a stone wall on the front of the house, a walk-in closet, a rear deck and in-floor heating. According to THI and Pettipas all of these were extras over and above the original contract price. The original contract (page 90 of Exhibit 1) provided for extras. While a different house was being built, the parties continued to use the terms in the signed contract to determine the allowances and other terms. According to the signed contract, all extra work was to be agreed upon before the commencement of the extra work and paid in full upon completion of the extra work.

[49] Pettipas' evidence is that he discussed the extras with the Saccarys and they agreed to all of them. The Saccarys' evidence was that while they agreed to some of the items like the in-floor heating and the ICF foundation, these items were raised by Pettipas as things that would be good to have without any indication that there would be an extra cost for them. The Saccarys' view of the in-floor heating and the ICF foundation was that they had a full basement in their old house, along with a

ducted heating system, an oil tank and a furnace which in their view would have offset the costs of the new items. They were not told differently by Pettipas. I accept the Saccarys' evidence on this point and find that the ICF foundation and in-floor heating were not extras that the Saccarys are responsible to pay for.

[50] In relation to the veranda on the front of the house, the Saccarys clearly approved the plan showing a front veranda measuring 32 feet x 5 feet. The Saccarys asked that it be six feet wide rather than the five feet wide depicted in the plans. While the Saccarys' old house did not have a front veranda, it did have a back deck which measured 16 x16 which included rails and benches around the perimeter of the deck. Without even dealing with the repairs necessary to the front deck because of the building defect and deficiencies, I do not find the front deck was an extra. Nor do I find that the back deck was an extra that the Saccarys should pay for. While no back deck is depicted in the plans approved by the Saccarys, what was built was a very small platform at the back of the house which has defects that must be remedied.

[51] I accept without reservation the evidence of Theresa Saccary in relation to the allowances in the contract. Prior to purchasing anything Theresa Saccary checked with Pettipas to find out how much she could spend. She repeatedly asked Pettipas what the allowances were for items such as cupboards, lights, flooring and each time Pettipas did not tell her the allowance. The allowances in the signed contract were for the old house which was no longer being built. The only time that Pettipas told her that there was an extra was for the kitchen backsplash and the Saccarys paid \$1,600 extra to get the backsplash that Theresa Saccary wanted. I accept that there were no other requests for extras nor should any be paid by the Saccarys.

[52] In relation to the front door, the Saccarys requested a black door. Pettipas arrived with the front door with a side window, not black, and installed it. No extra is owing for the front door. In relation to cabinets, I accept that Theresa Saccary was very careful about price and was not told the cabinets were extra. The light fixtures that THI and Pettipas claimed in their extras invoice were for pot lights in the living room and kitchen which do not exist. There are no extras for light fixtures. I accept Theresa Saccary's evidence that the front stone wall was installed by THI and Pettipas without any agreement or request from the Saccarys. It is not an extra. For the walk-in closet, I accept Theresa Saccary's evidence that there was a walk-in closet in the old house that was bigger than the one in the new house and the Saccarys were not told, nor did they agree, to pay for it as an extra.

[53] THI and Pettipas say that the new house is larger than the old house so there must be extra costs to build it. This does not take into account that the new house did not require a full basement to be constructed nor did it require the construction, drywall, etc. for a second storey which the old house had.

[54] The Saccarys do not owe THI anything for extras. There was nothing that they were told was going to be an extra cost and they did not expressly or implicitly agree to anything over and above the amount in the contract. Except for the backsplash, there were no extras ever agreed to by the Saccarys.

[55] The Counterclaim filed by THI and Pettipas was not outside the limitation period. The demand letter from the Saccarys was dated June 30, 2020 and their action was filed on July 10, 2020. The counterclaim was filed by THI and Pettipas on June 10, 2022.

4. Was there a breach of contract or was the contract terminated?

[56] THI and Pettipas assert that the Saccarys terminated the contract and did not let them back into the house to fix the deficiencies. The parties met at the new house for a final inspection around April 15 or 16 of 2020. At that time, the Saccarys refused to sign the final cheque and Pettipas refused to provide them with the keys to the house. The insurance adjuster, for some reason, had accepted Pettipas' word that the house was finished and released the final cheque to Pettipas without checking with his clients, the Saccarys. Donald Saccary asked to be paid for his excavation work and the Saccarys had concerns about some of the work that needed to be completed or repaired. This was at the beginning of Covid and the Saccarys were staying in a condo which was paid for by the insurance company. I accept that Pettipas told the Saccarys that the insurance company would not pay for them to stay in the condo for another month and he would not give them the keys to the house unless they signed the cheque. I accept that the Saccarys were very concerned where they could live if not in the condo or in the new house. When asked by Theresa Saccary what would happen next, Pettipas told her "now it gets nasty". Pettipas left with the keys and the Saccarys went to a friend's home to call their insurance broker.

[57] The insurance broker tried to arrange a meeting between the Saccarys, the insurance adjuster and Pettipas to see if things could be worked out. Both the insurance adjuster and Pettipas refused to have a meeting. The Saccarys signed the cheque on or about April 20, 2024. Pettipas never returned to do the repairs or to fix the deficiencies and an occupancy permit was never issued for the home. I do not

accept that Pettipas called Donald Saccary to say that he would call for the final inspection by HRM as soon as Saccary did the backfilling on the property. That does not make sense as there were numerous deficiencies that needed to be fixed before the property would pass final inspection. On June 11, 2020 the property failed final inspection for a variety of reasons set out in the final building inspection report, including: confirmation of the deck footing depth and size, confirmation of the U-values of the windows and doors, lack of a ventilation report, problems with the front and rear decks, clearance to combustibles, verification of insulation, problems with parging, and flashing being required where the foundation wall extended beyond the siding. Things such as the deck footings and lack of a main sewer cleanout had been flagged in previous HRM inspection reports.

[58] On June 30, 2020, counsel for the Saccarys sent the demand letter to THI in demanding payment of the sub-contract for excavation and remediation of the defect and deficiencies within seven days. THI and Pettipas did not respond to that letter, nor were any of the defects and deficiencies remedied. I do not accept THI's assertion that they had to both pay and fix the deficiencies within seven days so they did not respond. If they had offered to fix the deficiencies but not pay for the excavation services that would make sense. Instead, THI and Pettipas did not respond or offer to fix any of the defects and deficiencies.

[59] I do not accept that the Saccarys repudiated the contract by getting quotes to see how much it would be to make repairs to their home. If they actually got work done before giving THI the opportunity to repair the defects and deficiencies that could be a repudiation. That is not what happened, the Saccarys simply got quotes to see how much the repairs would be.

[60] THI asks me to find that the Saccarys terminated the contract because they did not want THI and Pettipas back on their property. While the Saccarys were understandably reluctant to have THI and Pettipas back on their property, the letter sent to THI on June 30, 2020 provided THI the opportunity to remedy the defects and deficiencies. He chose not to take that opportunity. I do not accept that Pettipas did not receive the letter, nor do I accept that Pettipas thought he had to pay Donald Saccary for the excavation work so he did nothing. THI and Pettipas simply ignored the letter. THI and Pettipas never offered to fix the defects and deficiencies.

[61] I find that the contract between the Saccarys and THI came to an end when THI repudiated the contract and that repudiation was accepted by the Saccarys. THI never returned to the Saccarys' to remedy the defects and deficiencies. THI never

got an occupancy permit as they were required to do. THI did not take the opportunity provided to them in the demand letter to fix the deficiencies. THI made it clear beyond any doubt that they were no longer intending to perform their side of the contract. THI's obligation was to build the house in accordance with laws and bylaws which they failed to do. The Saccarys' obligation was to ensure payment and they fulfilled their end of the contract. THI's repudiation of the contract was accepted by the Saccarys after the period provided in the demand letter had passed without any response from THI. On July 9, 2020 the Saccarys commenced their action for breach of contract. Once THI repudiated the contract and that repudiation was accepted by the Saccarys, future further performance of the contract is terminated (*E.B.F. Manufacturing Ltd. v. White*, 2005 NSCA 167, para. 74 and 91 and *Think Kitchen Cabinets Ltd. v. Harbourvista Apartments Ltd.*, 2014 NSSC 28, para 40).

5. Is there a valid claim against Pettipas personally?

[62] The Saccarys are asking that the corporate veil be lifted so that Terry Pettipas is personally liable. The Saccarys assert that Pettipas totally controlled THI and he used the company for an improper purpose, akin to fraud. The Saccarys allege that Pettipas made negligent misrepresentations about the quality of THI's work. The Saccarys testified that at their first meeting with Pettipas they were told that they would have peace of mind with THI and he spoke about the quality of their work.

[63] I accept that the Saccarys, for the most part, dealt only with Pettipas. There was a short period time when Pettipas was away on vacation but, other than that, Pettipas was the person who the Saccarys dealt with. Pettipas was the person who told the Saccarys that they would have peace of mind and no regrets.

[64] The bar to lift a corporate veil is high. A corporation is a separate legal entity from its officers, directors and shareholders. The veil may be lifted when the company is an agent or the mere alter-ego of the controlling shareholder (*E.B.F. Manufacturing Ltd. v. White, supra*, para. 52). Jamieson J. recently reviewed the law in relation to piercing the corporate veil in a situation similar to this one in *Interlen v. 4325842 Nova Scotia Limited*, 2023 NSSC 337:

[83] The cases illustrate that there are limited circumstances where the courts will disregard the corporate veil and find individuals responsible for corporate actions. The cases indicate that such an equitable remedy should be used "sparingly" (See *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, at para. 70, leave to appeal dismissed [2018] S.C.C.A. No. 255; and *Holmes v Jastek*, 2019 SKCA 132, at para. 121).

[84] Typically a corporate veil will be pierced or lifted when a corporation is a sham set up for an illegal, fraudulent or improper purpose. The Ontario Court of Appeal in *Chevron, supra*, rejected the position that the court can ignore the corporate separateness principle “when the interests of justice demand it.” In other words, they rejected an independent or stand alone just and equitable ground for piercing the corporate veil. ...

...

[92] Does the evidence in this case support the conclusion that failing to pierce the corporate veil would lead to a result that is flagrantly opposed to justice, or that the incorporation of 842 NSL was undertaken for a fraudulent or otherwise objectionable, illegal or improper purpose? I am of the view that it does not. There is no evidence that 842 NSL was incorporated for an improper purpose or to misappropriate Interlen’s funds. The facts do not lead to a conclusion that Mr. Sibley acted independently from 842 NSL, or committed any tortious action of a separate identity or interest from that taken on behalf of 842 NSL. While there is no question that Mr. Sibley misstated the status of the promised shipments in 2022, this is not sufficient in the present circumstances to ignore the legal persona of the corporation.

[93] There is no evidence to support piercing the corporate veil and finding of personal liability on the part of Mr. Sibley. There is simply insufficient evidence that 842 NSL was being used by Mr. Sibley as a shield for fraudulent or improper conduct (see *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, [1996] O.J. No. 1568 (Ont. Gen. Div.), at paras 21-22, aff’d [1997] O.J. No. 3754 (Ont. C.A.)). No principled basis to lift the corporate veil has been shown.

[94] Lifting the corporate veil does not extend to circumstances where declining to do so would simply be unfair (*B.G. Preeco I (Pacific Coast) Ltd. v. Bon Street Holdings Ltd.* 1989 CarswellBC 104 (C.A.)). I do not agree that *White, supra*, supports a principle of disregarding the corporate persona when it would be unfair not to do so. The decision refers to a situation where failure to lift the veil would be “unfair and lead to a result flagrantly opposed to justice.” A finding that actions are “flagrantly opposed to justice” is still a high bar to reach. In *Chevron, supra*, the Court said that courts do not have the equitable ability to pierce the corporate veil simply because it appears just to do so. Much more is needed. While it is unfair when an entity like Interlen loses its prepayment and also the benefit of resale of the products in circumstances where it did nothing wrong, and where it was promised time and time again that the lumber would be supplied, this is not a sufficient reason to lift the corporate veil and ignore the separate personality of the company. As was said in *Canadian Business Corporations Law, supra*:

It is settled law that the separate personality of a company and its shareholders will not be ignored merely because it might be said on some basis to be fair in the circumstances for this to be done.

...It is always unfair when someone with a meritorious claim goes unpaid. However, if limited liability is to have any meaning such a result is the obvious consequence. If one were to lift limited liability in one case in

which a particular creditor went unpaid, then why not lift it in all of them? To do so, of course, would be to disregard the clear meaning of the statute. An overly flexible regime is one on which no one can ever rely. (pages 495 and 502)

THI is an incorporated company with up to five employees. Terry Pettipas has been the principle and president of THI since 1990. As in *Interlen*, supra, I cannot lift the corporate veil because it could be said to be fair. I have no evidence that THI was being used by Pettipas as a shield for fraudulent or improper conduct. Pettipas may have misstated the quality of THI's work that is not sufficient, in the present circumstances to ignore the legal persona of the corporation (*Interlen*, supra).

[65] Terry Pettipas is not personally liable to the Saccarys. Their contract was with THI Construction Ltd.

6. What were the damages suffered by the Saccarys as a result of the breach and termination of the contract by THI?

[66] In order to determine the damages suffered by the Saccarys, I must determine the deficiencies and defects in the building of their home and determine the costs to repair those. A number of witnesses testified in relation to the defects and deficiencies. An expert witness, Peter Lewis, called by the Saccarys, provided two reports, an expert report, a rebuttal report, and testified. An expert witness, Ralph Corkum, called by THI provided an expert report and testified. Phil Oakley was not an expert witness but testified as to the cost of fixing the defects and deficiencies based on how he has priced work for his 47 years in the construction industry. Dawson Patterson, is now a Project Manager with HRM. At the time of the construction of the Saccarys' house Dawson Patterson was a Building Inspector with HRM and he inspected the Saccarys' house. He performed the final inspection to determine whether an occupancy permit should be issued. It was not issued because the house did not pass inspection due to defects and deficiencies. One former employee and one current employee of THI also testified about the building of the Saccary home.

[67] The damages in a contract case are designed to put the party who did not breach the contract, here the Saccarys, in the position they would have been if the contract had been performed. To do that they must be compensated for the cost of repairing the defects and deficiencies that THI caused or left undone in their home. It is difficult to determine the cost of repairing the defects and deficiencies in the Saccarys' home with any certainty as construction and material costs change daily.

[68] In comparing the estimated costs to repair it must be kept in mind that the prices quoted by Peter Lewis and Ralph Corkum do not include overhead or profit but the prices of Phil Oakley do include both of those. Where I accept the prices quoted by Peter Lewis and Ralph Corkum they will be marked up to include 15% overhead and profit. Where I accept the quote of Phil Oakley, I accept his profit calculations. Where I find that the cost of the repairs is somewhere between the quote of the expert and the quote of Phil Oakley, the overhead and profit is included in the cost.

[69] There are a number of defects and deficiencies complained of. I will list each one and determine if it is a deficiency or defect and the cost to repair.

Front Deck Deficiencies

[70] The depth of the footings for the deck could not be confirmed at the time of the inspection by HRM as they had been backfilled and could not be viewed. They need to be viewed to obtain an occupancy permit. The final inspection report by HRM also noted a lack of joist hangers on the front deck joists. The deficiencies noted by HRM were not the only deficiencies in relation to the front deck. Ralph Corkum testified that the deck could be repaired without removing the entire deck. Peter Lewis testified that Ralph Corkum's suggested solution was not the best approach as it included the use of a sealant which can fail and the best practice to ensure compliance with Building Codes was to remove and replace the entire deck. Phil Oakley also quoted the work necessary to replace the whole front deck. I accept the evidence that the front deck needs to be replaced.

[71] The cost of replacing the front deck varied among the witnesses. Both Ralph Corkum and Peter Lewis had the repairs costs at between \$3,000 to \$4,000. Phil Oakley costed the removal and rebuild of the deck at \$14,800. There are a number of reasons for the difference in the pricing. Phil Oakley's cost is how much he would charge to replace the deck by using a square foot amount. Ralph Corkum used software to price the replacement of the deck and Peter Lewis used a book to price the replacement. There was evidence provided from a number of witnesses as to the shortage of contractors and skilled trades in the construction industry. Phil Oakley estimated that it would take six days of work to remove the old deck and to properly install the new deck. New material would be required. I find the estimates of Ralph Corkum and Peter Lewis to be low to remove and rebuild a deck. I accept the evidence of Ralph Oakley on this issue and award the Saccarys \$14,800 to repair the front deck.

Foundation Parging

[72] It is clear from the expert reports, the HRM inspection reports and the evidence of Phil Oakley that the parging on the house was not applied or installed correctly. I do not accept Pettipas' evidence that a special type of parging was used that did not require the skin coat, screening or netting and a finish coat. It is clear that the parging was falling off of the house and needs to be repaired. The experts testified that the amount to repair the parging were between \$2,100 and \$2,800. The Saccarys are awarded \$2,450 to repair the parging plus overhead and profit of 15% or \$2,818.

Main Sewer Cleanout

[73] There was no main sewer cleanout installed in the house and it is a requirement of the Building Codes. Peter Lewis estimated the cost to install a main sewer cleanout at \$2,343.36. Ralph Corkum's estimate was \$1,714.77. Phil Oakley estimated the installation of a back water valve and a main sewer cleanout at \$8,500. This is work that can be done while the deck is removed as the cleanout has to be installed under the front deck where the main sewer pipe goes into the house. Phil Oakley's initial estimate was higher as it was priced with the necessity to get under the deck. If the deck was off, his estimate was \$1,800 to \$2,000. The Saccarys are awarded \$2,000 to install a main sewer cleanout.

Lot Grading

[74] HRM requires the lot to be graded. I do not accept that this was something that Don Saccary said he would do. Peter Lewis estimated the cost for grading at \$6,826.12. Phil Oakley estimated the cost at \$7,200. I will award the Saccarys \$7,200 to grade the lot.

Flashing for Siding and Foundation

[75] Some parts of the house have the foundation out past the siding, which causes issues with regard to keeping water away from the house. The siding should be out further than the foundation. This is a deficiency that must be repaired. Ralph Corkum suggested a solution which did not require the removal of the siding. Peter Lewis considered Ralph Corkum's solution to be a band aid solution which relied on sealants that would fail. I accept that the solution proposed by Ralph Corkum is not an acceptable solution to the problem.

[76] Because the siding on the Saccarys' home is aluminum siding and not vinyl siding, it is not possible to just remove a portion of the siding to effect the repair. All of the siding has to be removed from the house. Peter Lewis estimated the cost to remove the siding, make repairs and reinstall the siding at \$7,532.23. Phil Oakley testified that the siding had to be removed a make any repairs and strapping installed to ensure that the siding was out past the foundation. Phil Oakley's estimate of \$47,385.00 included replacement of all of the siding. When asked about his estimate, Phil Oakley said that he warrantied his work and his estimate included replacement of all of the siding in case of damage or if the colour was no longer available. He noted that extra siding was necessary as the siding now had to extend out further than the existing siding. Phil Oakley estimated materials of \$11,000 to \$12,000 for materials and labour of three workers for twelve days. I accept that extra siding would need to be purchased in case of damage and I accept Phil Oakley's evidence that removal of the aluminum siding can cause denting and damage to the siding. I do not accept that all of the siding would need to be replaced. Peter Lewis did not allow any allowance for damaged siding. I award the Saccarys \$22,000 to remove and install the siding to ensure that the siding extends past the foundation.

Combustible Clearance

[77] The kitchen range is too close to the pantry cupboard and does not have the clearance required by the Building Codes. Ralph Corkum suggested that a non-combustible material could be installed on the side of the pantry cupboard. I do not accept his evidence that this could be done without impeding the use of the range. I accept Peter Lewis' evidence that the pantry cupboard would need to be moved and likely replaced. I accept the cost to repair is \$1,091.25 plus 15% overhead and profit. The Saccarys are awarded \$1,255.

Interior Wall and Ceiling Repairs

[78] I do not accept the evidence of Ralph Corkum that only minor repairs are required to limited areas of the house to fix the painting and cracks in the walls and ceilings. Peter Lewis estimated the cost to repair the deficiencies to be \$2,014.92. Phil Oakley estimated the painting and repairs to be \$13,500 and would take 4 days. The Saccarys are awarded \$5,000 for the painting and repairing.

Rear Deck

[79] There is no rear deck showing on the plans that were approved by the Saccarys. That was the plan that was being used to build the house. A rear deck was installed but it was much smaller than the one that the Saccarys had with their old house. However, in their old home the Saccarys did not have a front deck and their new house has a large front deck. I will not award the Saccarys the cost of building a 16 x 16 rear deck as they agreed to the plans that did not include a rear deck. A much smaller rear deck was built by THI and it does not comply with the Building Code as shown in the final inspection report of HRM. The rear deck must comply with the Building Code.

[80] Currently it is not possible to see if the deck is attached to the house or not. If it is attached to the house it must be frost protected with footings or detached from the house with two beams with joist hangers. Ralph Corkum estimated the cost to repair the back deck would be \$1,410.82 and Peter Lewis estimated the cost to repair the back deck would be \$1,733.44. Phil Oakley costed replacing the deck with the 16 x 16 deck that was in the Saccarys' old house. The Saccarys are awarded \$1,550.00 plus overhead and profit or \$1,783.00 for repairs to the back deck.

Front Window Sills

[81] The windows at the front of the house do not have window sills which would keep water away from the house. That is a deficiency. Peter Lewis estimated the cost to install the window sills at \$730.00 and Phil Oakley estimated the cost at \$1,145.00. The Saccarys are awarded \$950.00 for front window sills.

Caulking of Front Windows

[82] The front windows needs to be caulked and the experts agree on the amount of \$37.56 to caulk the windows. The Saccarys are awarded \$37.56 with overhead and profit \$43.00.

Soffit Repair

[83] There is a bowing in the soffit in the front of the house. No one has taken the soffit off to see what is causing the bowing. Phil Oakley's repair would include removing the soffit to put strapping in and reinstalling the soffit. Phil Oakley's estimate included an allowance for damage to the soffit. The two experts based their estimates on being able to put the soffit back in place. Phil Oakley's estimate is

\$4,100.00 while the two experts price it at \$375.00. The Saccarys are awarded \$375.00 to repair soffit plus overhead and profit \$431.00.

Motion Light Repair

[84] The motion light must be repaired. Ralph Corkum estimated \$125.99 while Peter Lewis estimated \$150.61 and Phil Oakley estimated \$360.00. The Saccarys are awarded \$200.00 to fix the motion light.

Ventilation Report and Grease Filter

[85] No ventilation report was submitted by THI. A ventilation report has been provided. There was also a need to ensure that the HRV exhaust fan in the kitchen has a grease fan. Phil Oakley estimates that the cost to get a new report prepared is \$525.00 while the two experts agree that the cost would be \$50.00. The Saccarys are awarded \$50.00 with overhead and profit \$58.00.

Interior Door Adjustments

[86] Some of the interior doors were not hung correctly and do not open and close properly. They need to be adjusted. Peter Lewis estimated the cost at \$1,306.29 and Phil Oakley at \$1,375.00. The Saccarys are awarded \$1,375.00 to adjust the doors.

Crown Mouldings

[87] I accept the evidence of the Saccarys that crown mouldings were to be installed and were only in the kitchen because they came with the cabinets. Peter Lewis estimates the cost of installing crown mouldings to be \$1,180.03 while Phil Oakley estimates the installation to be \$7,000.00 and to take two days. Phil Oakley's estimate includes caulking as well as painting, purchasing and installing the crown moulding. Peter Lewis's estimate includes paint, material and labour. The Saccarys are awarded \$3,500 for crown mouldings.

Electrical Outlets and Backsplash in Kitchen

[88] The electrical outlets in the kitchen were not installed correctly around the backsplash. Phil Oakley estimated \$1,800 to fix the backsplash and outlets. Ralph Oakley estimated \$435.19 and Peter Lewis \$348.87. The Saccarys are awarded \$850.00 to fix the outlets and backsplash.

Blue Skin

[89] The blue skin around the foundation is damaged, ripped and peeling off. Ralph Corkum estimated the cost to repair at \$3,308.42. Peter Lewis estimated the cost at \$2,978.89. Ralph Oakley estimated the cost to repair at \$12,000.00 but seemed to include the parging as well. The Saccarys are awarded \$5,000 to repair the blue skin.

Hot Water Line Insulation

[90] The hot water line was not insulated and it should have been. Phil Oakley estimated the cost to insulate the hot water line at \$125.00, Peter Lewis \$141.24 and Ralph Corkum at \$118.96. The Saccarys are awarded \$125.00 to insulate the hot water line.

Radon Cap

[91] A radon cap was not installed and it should have been. Phil Oakley estimates \$125.00 to purchase and install the cap, Ralph Corkum \$78.94 and Peter Lewis \$80.22. The Saccarys are awarded \$100.00 for a radon cap.

Stickers for Doors and Windows

[92] When HRM went to inspect the Saccarys' home there were no stickers on the windows and doors to provide the U-value. Pettipas' testimony was that these stickers were placed on the doors and windows twice and twice they disappeared. He seemed to imply that the Saccarys had taken them off of the windows and doors. I do not believe that the Saccarys took the stickers off of the windows and the doors. These stickers have to be provided and matched to each door and window before the house can pass inspection. THI has provided stickers but there is a concern that they do not all match the doors and windows in the Saccarys' home. I accept that the cost to remedy this deficiency is \$100.00 plus overhead and profit or \$115.00.

Bathroom Plumbing --Drain

[93] The repair necessary to the bathroom plumbing is \$700.16 by Ralph Corkum and \$787.50 by Peter Lewis. The Saccarys are awarded \$744.00 or \$855 including overhead and profit.

Phone and Cable Jacks

[94] I am not satisfied that there was an agreement that the house would be wired with phone and cable jacks. I will not award an amount for them.

Door Painting

[95] The front door needs to be painted. Ralph Corkum estimated \$523.32. Peter Lewis estimated \$563.00. Ralph Oakley estimated \$900.00. The Saccarys are awarded \$650.00 to have the front door painted.

Skylights

[96] The plans that the Saccarys agreed to in the new house did not show any skylights and there will be no award for skylights.

7. Should there be an award of general damages to the Saccarys?

[97] The Saccarys claim general damages for mental distress and disappointment. I heard evidence of Theresa Saccary's health decline after the construction of house. I accept that the defects and deficiencies that the Saccarys have been living with would be stressful. General damages can be awarded in contract cases. In *Sproule v. Nichols*, 2024 NSSC 26 general damages were awarded for interference with the enjoyment of the Plaintiffs' home and stress in the amount of \$2,000. I do not find that this is one of the cases where general damages should be awarded for stress and emotional upset. While I accept that Theresa Saccary's health declined around the time of the termination of the contract, I must consider the other things that were happening or had recently happened at that time. The last day THI and Pettipas were working at the Saccarys' home was mid April of 2020. The Covid pandemic had just started and people were very stressed. In the Fall of 2019 the Saccarys had suffered damage to their roof from a hurricane and then the house was completely damaged in a fire. All of the events were very stressful but most were not caused by THI and Pettipas. I will not award general damages for mental distress.

8. Was there a failure to mitigate on the part of the Saccarys?

[98] The contract was terminated in the spring of 2020. It is now four years later and the Saccarys have not made any of the repairs necessary to remedy the deficiencies or to obtain an occupancy permit. They testified that they do not have the funds to make those repairs.

[99] The onus is on THI to prove a failure to mitigate (*Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51, para. 24 and 25). THI must prove both that the Saccarys have failed to make reasonable efforts to mitigate and that mitigation was possible (*Southcott*, supra, para. 24). In *Southcott* the court notes that:

... Mitigation is a doctrine based on fairness and common sense which seeks to do justice between the parties in the particular circumstances of the case (para 25).

[100] The costs to repair the extensive deficiencies and defects which resulted from the work of THI was high. Coughlan J. in *Sproule v. Nichols*, supra recently reviewed mitigation in construction cases. In that case, as here, the Defendants alleged that the Plaintiff should have made the repairs to the home before the trial and any award of damages should be reduced for failure to mitigate. Coughlan, J. did not accept the Defendants' position. He accepted that the Plaintiffs did not have the funds to pay for the necessary repairs. He also found that it was not unreasonable for the Plaintiffs to establish the Defendants' liability before carrying out the extensive repairs required (para. 76). In this case, some of the work to mitigate would have covered up the defects and deficiencies, for example, backfilling which would have covered up the torn blue skin and defective parging. I don't find it unreasonable for the Saccarys to have waited to establish THI's liability before carrying out the extensive repairs necessary to their home. I will not reduce the award of damages for failure to mitigate on the part of the Saccarys.

Conclusion

[101] THI repudiated the contract and that was accepted by the Saccarys. The contract was at an end on July 9, 2020 when the Saccarys filed their Statement of Claim.

[102] Donald Saccary is awarded \$24,500p plus HST for demolition work and the laying of sewer and water pipes that THI agreed to pay him but did not.

[103] There were no extras agreed to by the Saccarys except a backsplash which they have already paid for. The Saccarys did not breach a contract regarding the excavation work done by Donald Saccary. That contract was breached by THI.

[104] Terry Pettipas is not personally liable for any damages as the contract was between the Saccarys and THI Construction Ltd. and not with him personally. The corporate veil is not lifted.

[105] THI must pay the following to repair the defects and deficiencies in the building of the Saccarys' house:

Front Desk Repairs	\$	14,800
Foundation Parging	\$	2,818
Main Sewer Cleanout	\$	2,000
Lot Grading	\$	7,200
Flashing for Siding and Foundation	\$	22,000
Combustible Clearance	\$	1,255
Interior Wall and Ceiling Repairs	\$	5,000
Rear Deck Repairs	\$	1,783
Front Window Sills	\$	950
Caulking Front Windows	\$	43
Soffit Repair	\$	431
Motion Light Repair	\$	200
Ventilation Report and Grease Filter	\$	58
Interior Door Adjustments	\$	1,375
Crown Mouldings	\$	3,500
Electrical Outlets and Backsplash	\$	850
Blue Skin	\$	5,000
Hot Water Line Insulation	\$	125
Radon Cap	\$	100
Stickers for Doors and Windows	\$	115
Bathroom Plumbing – Drain	\$	855
Front Door Painting	\$	650

[106] Total award of damages to the Saccarys is \$95,608.00 to which HST of 15% and prejudgment interest of 5% must be added.

[107] If the parties cannot agree on costs, the Plaintiffs shall file their brief and the Defendants will file their brief two weeks later.

Lynch, J.