

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tony Hayre Management Services Ltd. v.  
Brillion Homes Ltd.*,  
2024 BCSC 1926

Date: 20240917  
Docket: S235464  
Registry: New Westminster

Between:

**Tony Hayre Management Services Ltd.**

Plaintiff

And

**Brillion Homes Ltd. and Christa Vina Investment Ltd.**

Defendants

Before: The Honourable Justice Thomas

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Plaintiff:

S. Alimirzaee  
B. Shebib

Counsel for the Defendants:

D.T.H. Nguyen

Place and Dates of Hearing:

New Westminster, B.C.  
September 9–12, 2024

Place and Date of Judgment:

New Westminster, B.C.  
September 17, 2024

[1] **THE COURT:** This is an action brought by Tony Hayre Management Services Ltd. against the defendant companies operated by Mr. Nguyen for a breach of contract. The essential dispute is whether the contract was a 12-month service contract or a contract to complete construction of the Kinsey property.

**Facts**

[2] Mr. Nguyen owned the Kinsey property and hoped to develop it into a mixed commercial/residential building. After more than four years, it became apparent that he lacked the qualifications to develop the property and needed help in order to finish the project. There were numerous deficiencies caused by Mr. Nguyen's management of the property, his attempts to save money on materials, and through the employment of tradespeople who did not provide competent work.

[3] Mr. Nguyen was under financial pressure as he advised the bank that lent him money for the project that the project would be completed much earlier. The city placed a stop-work order on the property, and further work on the property was stopped subject to a properly qualified project management and supervisor being hired and on the property.

[4] Mr. Nguyen met with Mr. Hayre, who is a qualified project manager and supervisor. Mr. Hayre advised that he expected the project would be completed and occupancy permit obtained in 12 months. He would provide a qualified site supervisor who would be on the property at all times, and his rate was \$18,500 a month plus GST for these services, but since Mr. Nguyen was under financial pressure, he would accept \$15,000 per month, with the balance owed paid within 55 days of the issuance of the occupancy permit.

[5] Mr. Nguyen disputes the last point and says the contract was for \$180,000 plus GST to complete the project, with a bonus of \$40,000 plus GST if the project was completed within 12 months. After 12 months, the contract would terminate even if the project was not completed.

[6] Mr. Nguyen does not read or write in English very well, so he had his colleague draft the contract. He knew the gist of the contract but did not read the details. The contract was drafted and signed on the same day as the meeting between Mr. Hayre and Mr. Nguyen. The contract began on January 3, 2019. Mr. Hayre sent invoices to Mr. Nguyen each month for \$18,500 per month plus GST for services and was paid \$15,000 each month plus GST.

[7] Mr. Nguyen regularly attended at the project. He became concerned that the site supervisor, Mr. Bhambra, was not using tradespeople efficiently or properly. I find that Mr. Nguyen began interfering with how Mr. Bhambra was managing the tradespeople. There were problems with tradespeople that were under contract prior to January 3, 2019. There were problems with materials to be paid by Mr. Nguyen arriving on time, which caused delays. The project did not complete in 12 months.

[8] Mr. Hayre had a discussion with Mr. Nguyen about payment for services after December 31, 2019, in late December. They did not reach an agreement about how ongoing services would be provided or if they would be provided. Mr. Nguyen said that he told Mr. Hayre that he did not want to pay for ongoing services and did not want Mr. Hayre to continue working on the project.

[9] Mr. Hayre says he continued to work on the project after December 31, 2019. Although the expectation was the project would be completed prior to then, and no further work would be required; since the project was not completed, he continued to work to complete the project in good faith.

[10] Mr. Nguyen says that Mr. Hayre was not working on the project after December 31, 2019, but that work continued on the project after that date without a qualified project manager or site supervisor without interruption.

[11] Toward the end of February, Mr. Hayre had another meeting with Mr. Nguyen when Mr. Nguyen made it clear that Mr. Hayre would not be paid for work on the project past December 31, 2019. Mr. Hayre then advised all parties by email that he was no longer working on the project due to lack of payment.

[12] Mr. Nguyen then tried to hire a new qualified project manager, but that person refused to take on the project because it was partially completed. It is difficult to find qualified project managers for partially completed projects that have deficiencies. Mr. Nguyen hired the current architect as the new qualified project manager and supervisor and paid him an additional monthly fee for these services.

[13] I do not accept Mr. Nguyen's evidence that Mr. Hayre did not continue to work on the project after December 31, 2019, until the end of February 2020. I say this for the following reasons:

- 1) I accept the evidence of Mr. Bhambra, whom I found to be a reliable and credible witness, that he and Mr. Hayre continued to work on the project as before.
- 2) Work could not have continued on the project without a qualified project manager. This was a term imposed both by the architect managing the project, who was subsequently hired to perform these tasks, and also by the city.

[14] The occupancy permit was issued in November 2020 despite the fact that the project was close to completion by the end of February 2020.

### **Terms of the Contract**

[15] The following terms of the contract are germane to the dispute:

#### **Scope of Work**

The Construction Manager has agreed to provide construction management services to the General Contractor for the completion of the construction of the project mentioned-above. The Construction management team shall consist of two individuals the Construction Manager (Mr. Tony Hayre) and the Superintendent (Mr. Ranjit Bhambra). The following scope of work is expected to be as follows.

**The Construction Manager** shall be responsible of the overall project schedule, organization and consultation. The Construction Manager role shall include but is not limited to the following:

- Preparation of the project schedule (ie: overall project schedule overview);

- Review plans and specifications and comment on the building design, scheduling, possible cost savings measures and potential construction problems;
- Able effectively communicate with design team/consultants, stake holders etc.;
- Management of the shop drawing designs, schedule and approvals (with assistance from the Project Coordinator);
- Manage the project construction schedule on a weekly basis;
- Hold project site meetings weekly with the construction project team;
  - Schedule weekly on Tuesday mornings between 8am – 12pm (noon);
- Conduct minimum, bi-weekly meetings with trades (with assistance from the Project Coordinator);
- Meet with project consultants monthly to ensure expectations are met (with assistance from the Project Coordinator);
- Monitor the daily progress of the project site in accordance with the project schedule;
- Inspect quality of work of the trades, and identify areas that require improvements, and provide site instructions.

**The Superintendent** shall be responsible of the accuracy of the work, and ensure trades meet schedule deadlines. The Superintendent role shall include but is not limited to the following:

- Fulltime supervision and control all trades, labourers, material and equipment on site;
- Ensure the trades meet project schedule deadlines as required by the Construction Manager;
- Contact, schedule and coordinate all subcontractors and suppliers;
- Maintain a safe job site and ensure safety measures are enforced (... concerns in a timely manner);
- Raise and discuss relevant construction issues at the job site meetings;
  - Schedules weekly on Tuesday mornings between 8am – 12pm (noon);
- Maintain and enforce good construction practices and perform quality control inspection of the subcontractors work;
- Expedite project deficiency lists in an effective and timely manner.

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**Project Schedule**

The General Contractor and the Construction Manager has agreed that project shall be completed within twelve (12) months. An agreement is made

that the occupancy permit would be expected to be provided to the General Contractor on or before December 31, 2019.

**Construction Management Fee**

The total contract amount for the construction management services for the project site in accordance with this agreement shall be valued at two hundred and twenty thousand dollars (\$220,000.00) + GST.

The Construction Manager and the General Contractor has agreed that monthly fee of fifteen thousand dollars (\$15,000.00) + GST shall be involved by the 3<sup>rd</sup> week of each month, and payments made by the 1<sup>st</sup> of the following month, for a term of 12 months (ie: 12 mo. X \$15,000.00 per mo. equals \$180,000.00+GST), and the remaining forty thousand dollars (\$40,000.00+GST) shall be paid within 55 days of issuance of the occupancy permit for this project.

All payments will be made out to **Tony Hayre Management Services Ltd.** and disbursements shall be the responsibility of the construction management company.

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**The Construction Manager**

Commencing immediately, the Construction Manager, shall provide adequate management services to advance the project schedule and minimize project delays that are within reasonable control of the construction manger (ie: management of the consultants, preparing schedules etc.). The Construction Manager agrees to assist with the project schedule immediately, in order to remove the current stop work order that is in place.

The Construction Manager also agrees to attend the project site with a minimum two (2) hour notice during regular work hours, and is reserved for emergencies only. The construction manager shall schedule and make time available to attend schedule meetings with the project team, trades, consultants and inspections as necessary.

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**Termination**

The General Contractor or the Construction Manager may terminate this agreement during its term, providing a reasonable cause. The termination shall be given in writing, a minimum of 30 calendar days written notice to the other party. Reasonable cause shall include, disruption of the project schedule due to the General Contractor's imposition, improper management services such as absences of the project site without sufficient notification to the General Contractor, project defects that are induces a significant cost for remediation, and unreasonable missed deadlines of trades, and other causes that may poses a detrimental impact or delay on the project.

**Principles of Interpretation**

[16] The principles of contract interpretation were recently summarized by our Court of Appeal in *Crown Fortune International Investment Group Inc. v. Bonnefield Canada Farmland LP III*, 2023 BCCA 441 at paras. 48–49. They were not seriously at issue in this trial.

[48] In *Sattva*, the Supreme Court of Canada affirmed the modern approach to contractual interpretation:

[47] ...the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine “the intent of the parties and the scope of their understanding” ...To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning...

[49] The Court went on to discuss the role of surrounding circumstances, noting that while such circumstances help to “deepen a decision-maker’s understanding of the mutual and objective intentions of the parties”, the interpretation must be grounded in the actual text of the contract and the surrounding circumstances cannot be used to overwhelm or deviate from the words used (at para. 57). The Court emphasized that evidence of the surrounding circumstances should consist only of objective evidence of facts known to the parties at the time the contract was executed (at para. 58).

[17] The written contract has conflicting and inconsistent terms. In applying the principles set out above I note the following:

- a) There is a clear termination mechanism in the contract.
- b) There is a clear mutual expectation that the contract would be completed within one year.
- c) The contract does not specifically address what would happen if the project was not completed within the 12-month period.

[18] In my view the following surrounding circumstances assist in interpreting the contract:

- 1) Mr. Nguyen was incompetent with respect to completing the project.
- 2) Mr. Nguyen was under financial pressure and needed to complete the project.
- 3) Further work on the project would not be allowed at any time without the presence of a qualified project manager.
- 4) It is very difficult to find a project manager to take over partially completed projects.

[19] In my view, it is clear that the parties contracted for Mr. Hayre to complete the project as soon as possible, with the expectation, which I interpreted in these circumstances as synonymous with hope, that the project would complete within 12 months. I reject Mr. Nguyen's interpretation that the contract would expire after 12 months.

[20] Considering the contract as a whole, and these factors, in my view the clear intention of the parties was that Mr. Hayre would complete the contract and that the contract would not expire in 12 months if the project was not completed.

### **Result**

[21] I reject Mr. Nguyen's interpretation of the contract that \$40,000 plus GST was only required to be paid if the project was completed by December 31, 2019. The clear wording of the contract says that "\$40,000 plus GST will be paid within 55 days of the issuance of the occupancy permit."

[22] There is no clause which supports Mr. Nguyen contention. Therefore, the \$40,000 is owed to Mr. Hayre under the contract. In addition, Mr. Hayre is entitled to prejudgment interest commencing 55 days after the issuance of the operating permit for this amount.

[23] I have rejected Mr. Nguyen's evidence that no work was provided by Mr. Hayre on the project after December 31, 2019. I found that work was provided in



accord with the service term of the contract up until the end of February 2020. I find that the contract required Mr. Hayre to continue working on the project until he was provided termination in accord with the termination clause in the contract. The contract ended when Mr. Nguyen refused to provide payment to Mr. Hayre as stipulated in the contract.

[24] The payment terms stipulated in the contract are owed to Mr. Hayre, \$15,000 per month plus GST payable in the third week of the month plus \$40,000 plus GST divided by 12, payable 55 days after the issuance of the occupancy permit for each month of service. This leads to a total of \$30,000 plus \$6,666 with GST added to these amounts. He is entitled to prejudgment interest in accord with the contract on the third week of January and February for the \$15,000 monthly payments respectively, and 55 days after the issuance of the operating permit for the \$6,666. Again, GST will be added to those amounts.

[25] If I am wrong that this work is claimable under the contract, I find that Mr. Hayre is entitled to the money under the doctrine of unjust enrichment. I found that Mr. Nguyen was aware that the work was being performed by Mr. Hayre, knew that Mr. Hayre expected to be paid for the work, and received the benefit of the work provided by Mr. Hayre. The amount charged for the work is reasonable and in accord with the contract that existed for the work provided.

[26] Mr. Hayre claims for additional \$2,250.04 for labour provided at an unspecified time in 2019. Mr. Nguyen was not provided a copy of this invoice prior to the litigation. I am not satisfied that Mr. Nguyen was aware that these services were performed. Nor am I satisfied that it is claimable under the contract. Therefore, this aspect of the claim is dismissed.

(SUBMISSIONS ON COSTS)

[27] The parties have 30 days to set down a hearing before me if they cannot come to an agreement on costs.

“Thomas J.”