

Citation: *Bennett v. Behling*, 2026 YKSM 6

Date: 20260624
Docket: 24-S0050
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Christie

BRADEN BENNETT

Plaintiff

v.

JASON BEHLING AND
AMANDA CRAWFORD

Defendants

Appearances:
Braden Bennett
Kyle Carruthers

Appearing on his own behalf
Counsel for the Defendants

REASONS FOR JUDGMENT

[1] This Claim involves a contract of purchase and sale of a residence that included a holdback of funds pending completion of work to comply with inspection reports and to allow for a final occupancy permit to be obtained. The trial was held on March 31, 2026.

[2] The Plaintiff, Mr. Braden Bennett (the "Plaintiff"), agreed to the sale of his home at 246 Cowley Creek Road (the "Property") to the Defendants, Mr. Jason Behling and Ms. Amanda Crawford (the "Defendants"). The Defendants agreed to purchase the Property from the Plaintiff pursuant to the Purchase Agreement that was fully executed on September 7, 2021, and completed on October 5, 2021. The holdback was agreed

to on September 24, 2021, and updated November 11, 2021, in the amount of \$100,000, and it included terms of release of the money held upon the final occupancy permit being obtained (the “Holdback”).

[3] The following Holdback clause was included in the September 24, 2021 Contract of Purchase of Sale Addendum/Amendment:

Vendor agrees to obtain final occupancy approval for all structures on property including any necessary plumbing and electrical approvals with verification by way of paid invoices and final inspection reports from Yukon Government Building safety. If such permits are not obtained by the closing date the vendor agrees to a holdback in the amount of \$100,000 to be held by the purchasers lawyer until all permits have been obtained. The vendor shall have up to 40 days after the Closing date to obtain final approval at which time the Purchaser may use the holdback to obtain all necessary permits.

[4] The Holdback was further amended by an updated Contract of Purchase and Sale Amendment/Addendum dated November 11, 2021, which included the following terms:

To amend the contract such that:

- Vender agrees to repair deficiencies of the dishwasher and stove appliances as per described; stove burner plate and knob, dishwasher on/off function.
- Vender agrees to have outside railings from the BBQ deck installed as per YG permitting requirement. The Vendor agrees the railing to be of a welded metal post and wire construction reasonably similar to the existing railing on the BBQ deck using materials supplied from local sources within Whitehorse Yukon.
- Vender agrees to one final inside railing to be installed as per YG permitting requirements and with a reasonably similar wood color to existing interior design wood of railings. In addition, the Vendor agrees the Purchaser may choose wood from the contractor supplied choices of locally sourced railing supply within Whitehorse Yukon.

- Purchaser agrees to a 30-day extension to close building permit. This is to formally accommodate delays in finalizing permitting work/ inspections due to delays in the availability of materials and contractors due to COVID-19 circumstances because we are having trouble getting parts and people.
- Vender agrees to install any railing that is necessary to obtain final occupancy.

[5] On March 14, 2022, a final inspection was completed and that identified several deficiencies. The Defendants determined that the extensive delays and failure to address the identified deficiencies were unacceptable and that it would be unreasonable to agree to any further extensions. The Plaintiff contends that he worked diligently to fulfill his obligations under the Holdback but that the Defendants refused him access and refused to cooperate with him to complete the necessary work.

[6] On April 4, 2022, the Defendants advised the Plaintiff that they would take control of the remainder of the outstanding work, including the entirety of the back deck railing. On April 15, 2022, the Defendants advised the Plaintiff that they were using the remainder of the Holdback to compensate their efforts and expenses for the outstanding work and that they would not release that Holdback money to the Plaintiff.

[7] In April and May 2022, correspondence was exchanged between the lawyers for each of the parties. The lawyer for the Defendants asserted that the Plaintiff failed to complete the outstanding items from the March 14, 2022 inspection report and that the railings that the Plaintiff wanted to install were not “reasonably similar” to the existing railing, and not otherwise in accordance with the Holdback terms. The Plaintiff asserted, through his counsel at the time, that the railing was suitable and that the

Defendants were denying the Plaintiff access to the property to complete the work outstanding from the Holdback.

[8] The Defendants denied that they did anything to limit or prevent access to their property by the Plaintiff to complete the outstanding work as per the Holdback. They explained that they were accommodating of what they characterize as the scheduling irregularities of the Plaintiff. They further explained that they refused railings which the Plaintiff sought to install because they were not "reasonably similar" to the existing railings as required by the terms of the Holdback.

[9] As a result, the Defendants advised the Plaintiff that they intended to complete the outstanding work themselves and that they would retain the remainder of the Holdback funds to cover those costs. The Defendants explained that their reasons for doing so were as follows:

- i. [The Plaintiff] failed to obtain a final occupancy permit with respect to the dwelling despite such permit being issued by the Yukon Government on October 18, 2004;
- ii. [The Plaintiff] negligently listed the property for sale without having obtained an occupancy permit for the property;
- iii. [The Plaintiff] failed to obtain an occupancy permit within the 40 days deadline to do so after the Closing Date as agreed;
- iv. [The Plaintiff] failed to obtain an occupancy permit within 30 days of the extended deadline as agreed;
- v. [The Plaintiff] failed to obtain a final occupancy permit when the Yukon Government Building Inspector performed an inspection on March 14, 2022;

[10] On November 28, 2022, \$70,000 of the Holdback was released to the Plaintiff, leaving \$30,000 remaining. The Defendants obtained final occupancy approval for the Property on September 20, 2023.

[11] The Plaintiff filed a Petition in Yukon Supreme Court on December 13, 2023, seeking release of \$30,000 that was remaining on a holdback on a sale of the Property from the Defendants, or in the alternative, damages against the Defendants for breach of contract.

[12] A Supreme Court Consent Order was made March 15, 2024. This Order confirmed the parties' agreement that the Defendants would pay \$11,000 of the Holdback to the Plaintiff and that this Petition be transferred to the Small Claims Court to be held in trust pending hearing.

Positions of the Parties

[13] The Plaintiff is claiming that the remainder of the Holdback should be released and paid to him. He claims that he worked diligently to fulfill his obligations under the Holdback but that the Defendants denied him access to the Property to do the necessary work. He explains that he told the Defendants that they could only use some of the Holdback money to replace three feet of the back deck and not the entirety of the back deck railing.

[14] The Defendants assert in the Counterclaim that the Plaintiff failed and, at times, refused to perform the work necessary to obtain final occupancy as obliged under the Contract and in so doing was in breach of contract causing damages to the Defendants.

[15] The Defendants counterclaim breach of contract by the Plaintiff, and that, as a result, they suffered out of pocket expenses to obtain final occupancy. They summarize those expenses as follows:

- a. To install railings on the interior in the dwelling: \$2,415.87;
- b. To install railings on the side and back deck reasonably similar to the existing railings: \$15,260.60;
- c. To repair leaks to the boiler system: \$6,599.25;
- d. To fill holes beside stairs of rounded deck, side of stairs that went under deck: \$242.35;
- e. To secure wire mesh to railings: \$517.66;
- f. To place dirt in the planters: \$74.42;
- g. To make repairs to the poly vapour barrier: \$39.89.

For a total of \$25,150.04

[16] The Defendants also counterclaim the following labour expenses that they assert were required in order to obtain final occupancy which they value as follows based on a rate of \$75.00 per hour:

- a. Construction of planter boxes in lieu of railings for a staircase: \$2,800;
and
- b. Carpentry work: \$3,000.

For a total of \$5,800

[17] The grand total for expenses and labour for the Counterclaim is \$30,950.04. However, the Defendants have counterclaimed for the maximum allowable under the *Small Claims Act*, RSY 2002, c. 204 of \$25,000.

Issues

[18] There are two issues that I must consider:

1. Should the remainder of the Holdback, \$19,000, which is to be held in trust by the Court, be paid to the Plaintiff; and
2. Should the remainder of the Holdback, \$19,000 and an additional \$6,000, for a total of \$25,000 as set out in the Counterclaim, be paid to the Defendants?

Evidence

[19] The Plaintiff, two Defendants, and a Building Inspector each testified and were available for cross-examination.

[20] Exhibits were introduced by both parties, and they testified about the meaning and context of each. The exhibits included screenshots of text messages, photographs of the property and work done, invoices, and inspection reports.

[21] Based on the evidence, I found each of the witnesses to be credible. The Plaintiff candidly admitted to his mistakes with failing to have a building permit at the time of sale, for delays in remedying the concerns set out in the inspection reports, and for failing to meet the deadlines, as he had contractually agreed to.

[22] The Defendants granted several extensions and were quite accommodating with the Plaintiff. However, ultimately, they lost confidence in his ability to complete the final steps necessary to obtain occupancy and so they took matters into their own hands.

[23] The Defendants granted the Plaintiff three extensions to do the work necessary to obtain final occupancy approval, specifically with the extensions agreed to on September 24, 2021, November 11, 2021, and March 14, 2022. The rationale for these extensions was corroborated by inspection reports which identified the deficiencies.

[24] After the last discussions held in May 2022, the Defendants determined that they could no longer rely on the Plaintiff to address the remainder of the work required by the Holdback and so they take control of the remainder of the outstanding work, including the entirety of the back deck railing, which they did. There was significant delay, but final occupancy approval was finally obtained on September 20, 2023.

Law

[25] If a contractor abandons the contract, repudiates the contract, fundamentally breaches the contract, or performs the contract in a way that it is so defective as to amount, in substance, to a failure or refusal to carry out the contract work, the owner is entitled to terminate the contract, to claim damages for breach of contract, and to be discharged from its obligations to pay including any obligation to pay on a *quantum meruit* or for work already performed (see *Bradley v. Horner* (1957), 10 D.L.R. (2d) 446 (Ont. C.A.); *Cornelis Grey Construction Inc. v. Folz*, 2018 ONSC 647 at para. 42; *Kaplun v. Mihhailenko*, [2005] 43 D.L.R. (3d) 223 (Ont. Sup. Ct.); *Heyday Homes Ltd. v. Gunraj*, [2004] 31 C.L.R. (3d) 66 (Ont. Sup. Ct.); *3027539 N.S. Ltd. v. Mogon*, 2002 NSSC 96; *Corazzin v. Dunovan* (1994), 9 C.L.R. (2d) 277 (B.C. S.C.); *Greystone Construction Ltd. v. MacLean* (1994), 15 C.L.R. (2d) 86 (N.S. S.C.); *Angus v. Pinalski* (1990), 41 C.L.R. 284 (B.C. S.C.)).

[26] As a matter of general principle, the purpose of a damages award in a breach of contract case is to try to place the innocent party in the position they would have occupied had the contract been carried out by both parties (see: *Wertheim v. Chicoutimi Pulp Co.*, [1911] A.C. 301 (J.C.P.C.) at p. 307; *Ticketnet Corp. v. Air Canada*, [1997] 154 D.L.R. (4th) 271 (ON CA) at para. 155; *McCormick Delisle & Thompson Inc. v. Ballantyne* (2001), 145 O.A.C. 379 at para. 25; *Agricultural Research Institute of Ontario v. Campbell-High*, [2002] 58 O.R. (3d) 321 (C.A.) at para. 26).

Analysis

[27] The Defendants acted in good faith. They were patient and generous with the Plaintiff as evidenced by the extensions granted to allow more time for the Plaintiff to complete the requisite work to be in compliance with the inspections and to obtain final occupancy approval. The Contract of Purchase and Sale with the Sale Amendment / Addendum documents made September 24, 2021, and November 11, 2021, were clear and signed by the parties.

[28] Most of the work was done and the Plaintiff was ultimately paid \$81,000 of the \$100,000 Holdback. However, there was some remaining unfinished work that the Plaintiff was contractually obligated to perform to allow for the final occupancy permit, namely installation of railings on the interior in the dwelling, installation of railings on the side and back deck reasonably similar to the existing railings, repair of leaks to the boiler system, and filling of several holes beside the deck stairs.

[29] I do not find that the Defendants refused access to the Plaintiff or otherwise barred him from fulfilling his remaining obligations. The history of this matter does not

support that contention. On the contrary, I believe the Defendants' testimony, as corroborated by the communications between the parties, that they extended courtesy and flexibility with the Plaintiff to complete the work. The proposed railings provided by the Plaintiff were unsuitable and not reasonably similar to the previous railing; nor were they appropriate given the inspection reports and expectations of the Defendants.

Likewise, I find that it was necessary for the Defendants to undertake additional work to satisfy the requirements of the inspections and occupancy permit, including the interior and exterior railings, leaks in the boiler system, and remedying of safety issues related to the stairs, decking, and planter boxes.

[30] The Plaintiff failed to fulfill the terms and obligations stipulated in the contract, which included the addendums, by not adhering to the specified project requirements and failing to meet agreed-upon deadlines, including extended deadlines. As a result, the Plaintiff breached the contract, and the Defendants are entitled to damages.

Decision

[31] Should the remainder of the Holdback, \$19,000, which is to be held in trust by the Court, be paid to the Plaintiff?

No. The Claim filed by the Plaintiff, which was originally a Petition in Supreme Court, for the \$19,000 remaining from the Holdback, shall fail.

[32] Should the remainder of the Holdback, \$19,000 and an additional \$6,000, for a total of \$25,000 as set out in the Counterclaim, be paid to the Defendants?

Yes. The Defendant's Counterclaim for \$25,000 shall succeed. That is, the \$25,000 shall come from the \$19,000 remainder of the Holdback held in trust with the Court and an additional \$6,000 payable from the Plaintiff to the Defendant.

[33] The Defendants shall also be awarded \$250 for preparation fees pursuant to s. 57 of the *Small Claims Court Regulations*, O.I.C. 1995/152 ("*Regulations*") and pursuant to s. 74 of the *Regulations*, their filing fees, and any fees they expended on service.

[34] Pursuant to s. 60 of the *Regulations*, the Defendants are also entitled to pre-judgment interest from the date of filing their Counterclaim on October 29, 2024. They are also entitled to post-judgment interest.

CHRISTIE T.C.J.