

Citation: *Suzuki v. Bouzane*, 2009 YKSM 4

Date: 20090408
Docket: 07-DC002
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: Her Honour Chief Judge Ruddy

Troy Suzuki

Plaintiff

v.

Kim Bouzane

Defendant

Appearances:
Zeb Brown
André Roothman

Counsel for Plaintiff
Counsel for Defendant

REASONS FOR DECISION

Introduction

[1] Bombay Peggy's, a former Dawson City brothel turned boutique hotel, is at the center of the Plaintiff's claim against the Defendant for payment for carpentry and general contractor services. The conversion from Klondike era brothel to modern day hotel was the brainchild of former partners Wendy Cairns and Kim Bouzane, the Defendant. Troy Suzuki, the Plaintiff, became involved in the project as a result of his relationship with Ms. Cairns. He began by providing carpentry services, and later added design input and some general contractor duties to his contribution.

[2] At the time these services were provided, Mr. Suzuki received no remuneration, but he maintains that he had an expectation of future remuneration once the project was completed and the business became financially solvent. To date, he has received only partial payment for his services, and has filed this

claim against the Defendant seeking payment of the difference between his estimate of the value of his work and the actual remuneration received to date.

[3] It should be noted that Ms. Cairns, while in partnership with Ms. Bouzane, at the time the restoration and expansion of Bombay Peggy's was undertaken, has not been named as a defendant in these proceedings as it appears she has already provided to Mr. Suzuki what he considers to be her half of his outstanding claim.

[4] As is not uncommon with small claims matters, this dispute is complicated by the lack of any clear agreement governing the relationship between the parties. Mr. Suzuki concedes the lack of a binding contract, written or otherwise, and seeks an order for compensation based on the principles of *quantum meruit* and unjust enrichment.

General Overview of the Evidence:

[5] Mr. Suzuki testified in support of his claim and called two additional witnesses, Wendy Cairns, owner of Bombay Peggy's, and General Contractor, Ron Bramadat, who provided an opinion as to the value of Mr. Suzuki's contribution to the restoration and expansion of Bombay Peggy's. In addition, Mr. Suzuki filed a number of documents in support of his claim.

[6] For her case in reply, Ms. Bouzane provided evidence herself along with the testimony of Peter Maxwell, the original General Contractor on the Bombay Peggy's project.

[7] The evidence clearly establishes that the Bombay Peggy's project was a significant undertaking. The original building, which had fallen into disrepair, was actually moved several blocks to its present location. The building then

underwent a major restoration and renovation which included the construction of a large addition, doubling the size of the building.

[8] The Bombay Peggy's project formally began when Ms. Cairns and Ms. Bouzane entered into partnership in 1998. They purchased the old building in the summer of 1998 and the lot in September. Peter Maxwell, who was then living with Ms. Bouzane in a common law relationship, was hired to be the General Contractor for the project.

[9] Mr. Suzuki was, at the same time, involved in a common law relationship with Ms. Cairns which lasted until 2002. While not formally trained, Mr. Suzuki has worked as a carpenter since his late teens. He became involved in the Bombay Peggy's project in October of 1998 as a result of his relationship with Ms. Cairns. He began by doing carpentry work, specifically with respect to replacing the flooring and joists in the old building. He chose not to work for Mr. Maxwell in his capacity as General Contractor, preferring to remain independent with the freedom to come and go as he chose.

[10] Mr. Suzuki's contribution to the project expanded into his involvement in the design of the extensive addition in November and December of 1998. According to Mr. Suzuki, there were significant issues with respect to the design as the project evolved, and he became active and, by his own evidence, very vocal in pushing to develop a workable design. It should be noted that the extent of his design work and its relation to the value of the final project were alluded to in Mr. Suzuki's evidence, but not otherwise canvassed extensively in the evidence, as Mr. Suzuki elected early on not to seek compensation for any of his design contributions.

[11] As the project developed so did concerns about both timetable and finances, with the project falling significantly behind schedule and over budget. These concerns ultimately led to Mr. Maxwell being terminated from his role as

General Contractor on the project. There is a dispute on the evidence as to whether this termination occurred in March/April of 1999 or in June/July of 1999. Ms. Cairns and Mr. Suzuki both testified that it was the former, while Ms. Bouzane and Mr. Maxwell both testified it was during the latter time period. This conflict in the evidence does not impact materially on the general narrative of events, but may have some potential impact on the valuation of Mr. Suzuki's overall contribution to the Bombay Peggy's project.

[12] Following Mr. Maxwell's departure, Ms. Cairns testified that she contacted a number of other General Contractors but was unable to secure a replacement. Furthermore, there were serious questions as to whether there were sufficient resources with which to hire a new General Contractor due to financial uncertainty. Much of the money set aside had already been exhausted and the partnership was awaiting word on a loan to address the ongoing financial demands of the project. Ms. Cairns then asked if Mr. Suzuki would agree to assume additional duties, including on-site coordination and supervision of the sub-trades and ensuring that all work was completed appropriately. Mr. Suzuki agreed to assume these additional responsibilities along with his ongoing carpentry work on the project, which included the construction of a distinctive bar for the planned pub.

[13] This arrangement continued until Bombay Peggy's officially opened for business in December of 1999, though some additional work was required for some months after to fully complete the project.

[14] Between October 1998 and February 2000, the time period for which Mr. Suzuki claims compensation, there were no clear discussions or agreements made with respect to how, if at all, Mr. Suzuki was to be compensated for his work on the project, an issue which became a significant bone of contention contributing to the ultimate dissolution of the business relationship between Ms. Cairns and Ms. Bouzane.

[15] As with Bombay Peggy's itself, the relationship between Ms. Cairns and Ms. Bouzane had evolved significantly over time. The 1998 partnership was dissolved on April 1, 2001 when Ms. Cairns and Ms. Bouzane incorporated, becoming the two sole shareholders of Madame Bouzane Enterprises Ltd. The Shareholders Agreement was not signed until July 12, 2006 due in large part to an ongoing disagreement about how to treat Mr. Suzuki's contribution to the project. The relationship between the two deteriorated to the point where they entered into an Agreement for Sale, dated November 4, 2006, in which Ms. Cairns purchased Ms. Bouzane's interest in the business, becoming the sole owner of Bombay Peggy's.

[16] The history of the discussions and disagreements regarding how to treat Mr. Suzuki's contribution to Bombay Peggy's began shortly after final completion. As both Mr. Suzuki and Ms. Cairns testified, prior to completion, all of their energies were focused on the demands of the project rather than on resolving the issue of compensation, much to the detriment of everyone involved.

[17] Following completion, it became clear that there were differing views as to the value of Mr. Suzuki's contribution and the issue of compensation. Mr. Suzuki felt that Ms. Bouzane did not fully recognize or appreciate his work on the project. As a result, he developed a handwritten document outlining the hours he spent on the project and the value of those hours at a rate of \$20 per hour, which he provided to Ms. Bouzane sometime between March and June of 2000. He was clear in his evidence that this was not intended as an invoice, but rather to make a point to Ms. Bouzane about the value of his contribution.

[18] This document evolved, firstly, into a more formal typewritten document wherein the hourly rate applied was \$25 per hour, and then into a more formal invoice dated October 23, 2007.

[19] The history of compensation to Mr. Suzuki for his contribution began with the partnership providing him with an unlimited tab in the bar and for room rentals. As of the date of the invoice, October 23, 2007, Mr. Suzuki had received a benefit equivalent to \$5,698.91 through use of the tab. Next on October 13, 2006, Mr. Suzuki received a payment of \$10,000 drawn on the account of Madame Bouzane Enterprises Ltd., leaving an outstanding balance of roughly \$49,800 on the amount of the invoice.

[20] Following the purchase of Ms. Bouzane's interest in the company, Ms. Cairns provided Mr. Suzuki with an additional tab to a maximum value of \$900 and a personal cheque for \$24,900 dated July 26, 2007, representing her half of the outstanding balance.

[21] Mr. Suzuki now seeks an order requiring Ms. Bouzane to pay the remaining balance of \$24,900.54.

Issues:

[22] Mr. Suzuki's claim gives rise to three distinct issues:

1. Is Mr. Suzuki's claim statute barred pursuant to s. 2(1)(f) of the *Limitation of Actions Act*, R.S.Y. 2002,c. 139?
2. If Mr. Suzuki's claim is not statute barred, is he entitled to be compensated by Ms. Bouzane for work performed on the basis of *quantum meruit* or unjust enrichment?
3. If Mr. Suzuki is entitled to compensation on a *quantum meruit* or unjust enrichment basis, what is the appropriate amount of compensation based on the facts of this case?

1. Is the Plaintiff's claim statute barred?

[23] The Defendant relies on s. 2(1)(f) of the *Limitation of Actions Act* which sets out the limitation period for claims of this type as follows:

2(1)(f) actions for the recovery of money, except in respect of a debt charged on land, whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant, or other specialty or on a simple contract, express or implied, and actions for an account or for not accounting, within six years after the cause of action arose.

[24] In the case at bar, Mr. Suzuki claims for work performed both as a General Contractor and as a carpenter between October 1998 and February 2000. His Claim was filed in the Small Claims Court of Yukon on November 6, 2007, well beyond the six year limitation period provided for in the Act.

[25] Section 6(1) of the *Limitation of Actions Act* provides for extensions of the limitation period in circumstances where there is an acknowledgement or a partial payment of a debt. It reads:

6(1) Whenever any person who is, or would have been but for the effluxion of time, liable to an action for the recovery of money as a debt, or the person's agent in that behalf

- (a) conditionally or unconditionally promises the person's creditor or the agent of the creditor in writing signed by the debtor or the debtor's agent to pay the debt;
- (b) gives a written acknowledgement of the debt signed by the debtor or the debtor's agent to the creditor or the agent of the creditor; or
- (c) makes a part payment on account of the principal debt or interest thereon, to the creditor or the agent of the creditor,

an action to recover any such debt may be brought within six years from the date of the promise, acknowledgement, or part payment, as the case may be, even though the action would otherwise be statute barred under this Act.

[26] Section 6(1)(a) is clearly not applicable on the facts before me; however, counsel for the Plaintiff argues that both s. 6(1)(b) and (c) operate to extend the limitation period.

[27] With respect to s. 6(1)(b), Plaintiff's counsel points to paragraph 4(5) of the Shareholders Agreement for Madame Bouzane Enterprises Ltd., dated July 12, 2006, which reads

The Shareholders acknowledge that the matter of Troy's contribution to construction and renovation of the building, particularly the bar, remains outstanding. Troy's initial estimate of hours worked, submitted in 1998, raises a number of questions that still need to be resolved. The Claim is assumed to be for approximately \$50,000 and Troy has not pursued payment since the work was completed in 1998. As at 31 March 2006, Troy has been paid \$5,544 by way of his bar tab.

[28] Similarly, Plaintiff's counsel relies on the following excerpt from the Agreement of Sale dated November 4, 2006 as another acknowledgement of debt sufficient to trigger the operation of s. 6(1)(b) of the *Limitation of Actions Act*:

The parties acknowledge that a debt is owed to Troy Suzuki for services he provided during construction of the building owned by the business. The amount of that debt is in dispute. The parties agree to offer to Mr. Suzuki an opportunity to enter into a process of binding arbitration for the purposes of settling the amount to be paid to him. Kim Bouzane will pay into trust on the date of sale the amount of \$24,000.00 (twenty-four thousand dollars) to be held in trust pending the outcome of the binding arbitration process. The parties agree that twenty-four thousand dollars is the maximum to be paid by Kim Bouzane in settlement of the debt owed to Troy Suzuki.

The parties agree to use their best efforts to promptly pursue a process of binding arbitration with Mr. Suzuki. If the best efforts of the parties fail to resolve the situation by 31 May 2006, the \$24,000.00 held in trust will be returned in full to Kim Bouzane.

[29] Both documents acknowledging a debt to Mr. Suzuki bear Ms. Bouzane's signature.

[30] With respect to the s. 6(1)(c) exception, Plaintiff's counsel asks that I consider both the running 'tab' and the \$10,000 payment in October of 2006,

drawn on the account of Madame Bouzane Enterprises Ltd., to be partial payments to Mr. Suzuki such that subsection (c) is engaged.

[31] Counsel for the Defendant maintains that none of the limitation period exceptions in section 6 apply in this case. Turning first to the written acknowledgements of debt contained in the Shareholders Agreement and the Agreement of Sale, counsel argues that the doctrine of privity of contract precludes Mr. Suzuki from relying on either of these documents as evidence of acknowledgements of debt given to Mr. Suzuki as required by the section.

[32] As to the issue of partial payment, Defendant's counsel characterizes the 'tab' provided to Mr. Suzuki as a gesture of appreciation rather than as partial payment of a debt owed to Mr. Suzuki. He further argues that Mr. Suzuki cannot rely on the \$10,000 payment as evidence of a partial payment under s. 6(1)(c) as the actual cheque was issued by the Madame Bouzane Enterprises Ltd. corporation, a separate entity in law; and, therefore, cannot be considered to be a partial payment to Mr. Suzuki by Ms. Bouzane.

[33] After much consideration, I am not satisfied that Mr. Suzuki has established on a balance of probabilities that the acknowledgements of debt contained in the Shareholders Agreement and the Agreement of Sale constitute acknowledgements of debt for the purposes of s. 6(1)(b).

[34] Neither document can be defined as acknowledgements of debt given to Mr. Suzuki by Ms. Bouzane. They are, rather, joint acknowledgements by Ms. Cairns and Ms. Bouzane to each other in documents governing their business relationship and its termination.

[35] The section does provide for acknowledgements of debt to be given instead to an agent of the creditor; however, the evidence before me simply does not support the finding that Ms. Cairns was acting as agent for Mr. Suzuki in

relation to the production of the two documents. Neither Mr. Suzuki nor Ms. Cairns suggested this was the case in their evidence. Nor can it be said that acknowledgement of the debt was the primary focus or intention of either document, such that one could conclude that Ms. Cairns could well have been acting as agent on Mr. Suzuki's behalf.

[36] This is not to say that the acknowledgements of debt contained in the two documents are not of relevance to the proceedings before me. Indeed, they have significant bearing, in my view, on the assessment of Ms. Bouzane's credibility, particularly as it relates to her insistence that Mr. Suzuki was acting in a volunteer capacity, but the documents do not represent acknowledgements of debt within the meaning of the section.

[37] Turning to whether Mr. Suzuki is entitled to the benefit of the exception contained in s. 6(1)(c) of the *Limitation of Actions Act*, I am satisfied that Mr. Suzuki has established, on a balance of probabilities, that partial payments were made to him by Ms. Bouzane such that his claim is not statute barred.

[38] Ms. Bouzane and Ms. Cairns provided conflicting evidence with respect to the characterization of the 'tab' provided to Mr. Suzuki. Ms. Bouzane maintained that the 'tab' was merely an expression of gratitude and not intended in any way to be a payment to Mr. Suzuki for services rendered. Ms. Cairns testified that she and Ms. Bouzane agreed early on to extend the 'tab' to Mr. Suzuki as partial payment and as an acknowledgement of the debt owed to him until such time as the partnership would be in a position to settle the debt.

[39] In resolving this conflict in the evidence, I accept the evidence of Ms. Cairns over that of Ms. Bouzane. Of all of the witnesses who testified with respect to their involvement in the Bombay Peggy's project, Ms. Cairns was by far the most credible. She testified in a clear and straightforward manner, and her evidence was fair and balanced with good recall.

[40] In contrast, I had serious concerns with respect to Ms. Bouzane's testimony. It was clear from her evidence that she simply does not wish to pay Mr. Suzuki, and her evidence was full of excuses as to why Mr. Suzuki was not entitled to payment, excuses which at times were somewhat contradictory. For example, she would go from maintaining that Mr. Suzuki was a volunteer and therefore not entitled to payment, to maintaining that he had already been compensated for his efforts by way of 'stipend' cheques, to suggesting that her concern was that he had inflated the amount of hours and increased his hourly rate.

[41] Furthermore, as noted, I have concerns about her credibility in light of her willingness to sign formal documents acknowledging her indebtedness to Mr. Suzuki where it met her interests in resolving business issues with Ms. Cairns, but then to testify under oath before this court and deny that any such debt ever existed.

[42] Lastly, I note that Ms. Bouzane on more than one occasion first testified to general amounts of a cheque or the cost of shipping, and then later in her evidence would purport to recall the exact amount of the cheques or invoice down to the penny even though she was unable to produce the documents and indeed would not have seen them in several years. I find such amazing recall which seems to have come to her during the course of her evidence to be extremely suspect.

[43] Where the evidence of Ms. Cairns and Ms. Bouzane conflicts, I accept that of Ms. Cairns. Accordingly, based on the evidence of Ms. Cairns, I am satisfied that the 'tab' constituted a partial payment by both Ms. Cairns and Ms. Bouzane, a partial payment which, on the evidence, continued at least into October of 2006.

[44] Furthermore, the cheque for \$10,000 in October of 2006 was clearly a partial payment within the meaning of s. 6(1)(c). Though made through the corporate account, Ms. Cairns testified that the payment was one that she and Ms. Bouzane discussed making as a goodwill gesture to Mr. Suzuki to demonstrate their intention to settle the debt in full. Furthermore, I accept her evidence that the payment was made through the vehicle of the corporate account as it was the easiest way to make the payment.

[45] In such circumstances, I conclude that the corporation was clearly making the payment on behalf of Ms. Cairns and Ms. Bouzane, such that the only logical conclusion is that the corporation was acting as their agent within the meaning of s. 6(1)(c).

[46] After applying s. 6(1)(c), I am satisfied that the six-year limitation period would then run from October 2006 rather than February of 2000. Accordingly, Mr. Suzuki's Claim was filed well within the necessary time frame and is not barred by statute.

2. Is the Plaintiff entitled to compensation on the basis of *quantum meruit* or unjust enrichment?

[47] The doctrine of *quantum meruit* operates to allow a party to recover reasonable remuneration for services rendered in the absence of an express contract.

[48] According to Goldsmith and Heinzman, *Canadian Building Contracts*, (Toronto: Carswell, looseleaf), 4th ed., "In order to render a person liable to pay on a *quantum meruit* basis, the work must either be done at his request, express or implied, or he must accept the benefit of the work"(p. 4-23).

[49] Similarly, in *Rafal v. Legaspi*, 2007 BCSC 1944, Fisher J. noted:

Quantum meruit will be available if the services in question were furnished at the request or with the encouragement or acquiescence of the opposing party in circumstances that render it unjust for the opposing party to retain the benefit conferred by the provision of services: Fridman, *Restitution*, 2d ed. (Toronto: Carswell, 1992) at 290-92; *Nicholson v. St. Denis* (1975), 57 DLR (3d) 699 (Ont. C.A.), leave to appeal to S.C.C. refused, [1975] 1 S.C.R. x. (paragraph 30)

[50] The Defendant's counsel argues that Mr. Suzuki has not proven on a balance of probabilities that he did the work at the request of Ms. Bouzane, either express or implied, or that the partners accepted the benefit of his work, and asks me to consider the expectations and beliefs of the parties. In this regard, counsel for the Defendant points to a number of factors he suggests indicate there was no expectation Mr. Suzuki was to be paid for his services. These can be summarized into two categories:

1. Mr. Suzuki either volunteered his time on the project or intended for his time on the project to be a gift to Ms. Cairns, with no expectation of remuneration;
2. Mr. Suzuki had no direct discussions with Ms. Bouzane regarding the work to be performed or any compensation to be paid for his services.

[51] In assessing these factors and the expectations of the parties, the issue of credibility must be addressed. As noted above, I found Ms. Cairns to be the most persuasive and credible of the witnesses directly involved in the Bombay Peggy's project, and I prefer her evidence over that of Ms. Bouzane where the two conflict.

[52] With respect to Mr. Suzuki's evidence, I had some initial concerns about his credibility as it appeared at first glance that he had a somewhat exaggerated opinion of his own work; however, the evidence of both Ms. Cairns and Mr. Bramadat largely corroborated his evidence with respect to both the nature and quality of the work he performed. Furthermore, I would note that much of the cross-examination of Mr. Suzuki concerned his failure to disclose both his work

on the project and some of the remuneration received to various governmental authorities including E.I., Revenue Canada and Yukon Housing. Mr. Suzuki did not hesitate to provide answers contrary to his interests in this area and, ironically, I found that his frank answers enhanced his overall credibility.

[53] As a result, where Mr. Suzuki's evidence conflicts with that of Ms. Bouzane, I prefer the evidence of Mr. Suzuki.

[54] With respect to the first of the Defendant's arguments, the evidence that I accept does not, in my view, support a finding that Mr. Suzuki volunteered his services on the project or, in the alternative, that he intended his services to be a gift to Ms. Cairns. Both Mr. Suzuki and Ms. Cairns testified that there was always an expectation that Mr. Suzuki would be paid for his services, but that the desperate financial circumstances of the partnership at the time the work was being performed precluded immediate payment. Mr. Suzuki's willingness to wait an extended period of time for the business to become profitable does not make him a volunteer.

[55] Ms. Bouzane went on to indicate that Mr. Suzuki made comments to her suggesting he was seeking recognition rather than compensation. Ms. Bouzane noted that when Mr. Suzuki provided his first list of hours performed he was trying to make a point about the value of his work rather than seeking compensation. Over the years, she says that he went on to make additional comments to suggest that the dispute was not about the money. Such comments, if made, do not, in my view, turn Mr. Suzuki into a volunteer. Most legal disputes are about more than money. Indeed, it is not unusual for individuals in legal actions to maintain that their position is about the principle rather than the money involved. This does not mean they are foregoing compensation they are entitled to.

[56] Indeed, I am of the view that characterizing Mr. Suzuki as a volunteer on the project is entirely ludicrous. No reasonable person would conclude that an individual would be prepared to work more than full time hours for a period in excess of fourteen months with absolutely no expectation of compensation.

[57] Nor am I satisfied that Mr. Suzuki intended his services to be a gift to Ms. Cairns. Ms. Bouzane makes much of the fact that during discussions with a business consultant on how to address various business issues, including the debt owed to Mr. Suzuki, Ms. Cairns suggested that Mr. Suzuki's work on the project be considered as part of her contribution to the business. I am satisfied on Ms. Cairns' evidence that this was simply one of several possible scenarios for dealing with the debt to Mr. Suzuki that were discussed but which were ultimately rejected, with Ms. Cairns and Ms. Bouzane deciding, on the advice of the consultant, to treat Mr. Suzuki's contribution as a debt to the business for which both were liable.

[58] I would also note that Ms. Cairns ultimately paid Mr. Suzuki for her half of the outstanding debt, clearly demonstrating that she did not view his services as a gift to her. Counsel for the Defendant suggests that I view this payment as nothing more than former common law partners resolving the contributions of one partner made to the benefit of the other within the context of family law. With the greatest of respect, there was absolutely no evidence before me to support such a finding. Ms. Cairns was clear throughout her evidence that she felt the business was indebted to Mr. Suzuki for his services and he was entitled to payment from the business. The fact that payment of her half came in the form of a personal cheque was explained by her evidence that she did so on the advice of the business consultant in light of the ongoing dispute with Ms. Bouzane regarding the debt to Mr. Suzuki.

[59] Turning to the second of the Defendant's arguments, Ms. Bouzane maintains that she is not indebted to Mr. Suzuki because she did not personally

ask Mr. Suzuki to do any work on the project nor did she have any discussions with him regarding compensation.

[60] While there was certainly no evidence to suggest that any of the work performed was done at Ms. Bouzane's request, there was clear evidence to suggest that the work was performed by Mr. Suzuki at Ms. Cairns' express request. Furthermore, the evidence made it very clear that Ms. Bouzane, while working full time elsewhere, nonetheless maintained involvement in the project and had ongoing discussions with Ms. Cairns, if not with Mr. Suzuki.

[61] I find as a fact that Ms. Bouzane knew full well that Mr. Suzuki was working extensively on the project and that Ms. Cairns, on behalf of their partnership, had asked Mr. Suzuki to assume additional responsibilities when the partnership was unable to secure a new General Contractor.

[62] Mr. Suzuki's services were engaged with Ms. Bouzane's full knowledge or, at the very least, her acquiescence. Furthermore, Ms. Bouzane clearly benefited from Mr. Suzuki's contribution. The evidence of Ms. Cairns was clear that Mr. Suzuki's contribution was instrumental in the completion of the Bombay Peggy's project, which, in turn, resulted in considerable profit to Ms. Bouzane upon selling her share of the business to Ms. Cairns. I have absolutely no difficulty in concluding that it would be grossly unfair to allow Ms. Bouzane to retain the full profit of the sale without compensating Mr. Suzuki for his significant contribution to that profit.

[63] In all of the circumstances, I am satisfied that Mr. Suzuki is entitled to compensation based on the doctrine of *quantum meruit*.

[64] If I am wrong on this point, I am equally satisfied that Mr. Suzuki is entitled to compensation based on unjust enrichment. In *Hearn v. Ungaro*, 2005 ABPC 208, LeGrandeur J. notes:

[65] The cause of action for unjust enrichment has three elements:

- a) an enrichment of the Defendant;
- b) a corresponding deprivation of the Plaintiff;
- c) an absence of juristic reason for this enrichment. (paragraph 13)

[66] The case goes on to quote from the Supreme Court of Canada in listing those categories that can constitute juristic reasons as including a contract, a disposition of law, a donative intent, or other valid common law, equitable or statutory obligations.

[67] In the case at bar, Ms. Bouzane was clearly enriched as noted above; Mr. Suzuki was clearly deprived of reasonable remuneration for services rendered, and none of the categories of juristic reasons operate to deny Mr. Suzuki his entitlement to reasonable remuneration for the services which enriched Ms. Bouzane.

[68] Accordingly, I find that Mr. Suzuki is entitled to compensation based on both *quantum meruit* and unjust enrichment.

3. Calculation of Compensation Entitlement:

[69] This leaves the remaining issue of the amount of compensation Mr. Suzuki is entitled to receive for his services. In the 'invoice' dated October 23, 2007, Mr. Suzuki estimates the value of his contribution at \$65,500. After deducting the 'tab', the \$10,000 payment, and the payment of \$24,000 along with the additional bar tab of \$900 from Ms. Cairns, Mr. Suzuki is seeking payment of the remaining \$24,900.54 from Ms. Bouzane.

[70] Ms. Bouzane challenges the estimate of the hours included in the invoice and the hourly rate claimed by Mr. Suzuki, and she asserts that Mr. Suzuki has already received additional remuneration in relation to the project.

[71] With respect to the estimate of hours, Ms. Bouzane raised as an issue the fact that Mr. Suzuki did not keep accurate track of his hours at the time the work was being performed. In addition, she suggests that I question the accuracy of Mr. Suzuki's assessment based on the fact that he took a river trip in July of 1999 and was stranded in West Dawson during freeze up at one point during construction.

[72] With respect to the number of hours put into the project by Mr. Suzuki, while it would certainly have been preferable to have an accurate accounting of the time spent, I am satisfied, nonetheless, that Mr. Suzuki has established on a balance of probabilities that he spent at least the number of hours estimated. Indeed, the evidence of both Ms. Cairns and Mr. Bramadat suggests that Mr. Suzuki very likely underestimated the number of hours he contributed.

[73] It should be remembered that Ms. Bouzane was continuing her full time employment with the First Nation during construction while Ms. Cairns was on site on a day to day basis. As a result, I conclude that Ms. Cairns was in the best position to assess the amount of time Mr. Suzuki spent on the project. She testified that the estimate of hours provided by Mr. Suzuki is at least consistent with her recollection of the time he spent on the project, if not underestimated.

[74] Similarly, general contractor, Ron Bramadat, reviewed the estimate of hours provided by Mr. Suzuki and toured Bombay Peggy's with Mr. Suzuki to assess the work completed. Based on his considerable experience as a contractor and his assessment of what would have been required to complete the Bombay Peggy's project, Mr. Bramadat felt that Mr. Suzuki had underestimated his hours.

[75] With respect to the July river trip and freeze up, I am satisfied that the hours as estimated by Mr. Suzuki in the October 23, 2007 invoice already reflect the river trip, as the number of days claimed for the month of July are half that of

the other summer months. In addition, I accept the evidence of Mr. Suzuki that while he was stranded for a few days in West Dawson during freeze up, he spent his time working on the hand carving work required for the intricate bar. Neither issue causes me concern about Mr. Suzuki's estimated hours.

[76] With respect to hourly rate, Mr. Suzuki has calculated the value of all of his work based on an hourly rate of \$25 per hour. Mr. Maxwell was apparently paid the same rate during his tenure as General Contractor on the project. Mr. Bramadat provided evidence as to the rates he charges and pays for services as follows:

- carpenter: \$20 per hour
- carpentry with finishing work: \$22 per hour
- general contractor looking after a crew: \$30 per hour
- general contractor not looking after a crew: \$25 per hour

[77] Using these rates, Mr. Bramadat conservatively estimated the total value of Mr. Suzuki's work at \$80,472.00, well above the amount claimed by Mr. Suzuki. Mr. Bramadat's estimate of the value of Mr. Suzuki's work was unchallenged on cross-examination.

[78] Ms. Bouzane disputes the hourly rate used on the basis that Mr. Suzuki was not the General Contractor and on the basis that Mr. Maxwell was not terminated until June/July of 1999.

[79] The evidence before me indicates that Mr. Suzuki did not assume responsibility for all of the duties generally performed by a General Contractor. Ms. Cairns ordered materials and paid the sub-trades, for instance. However, Mr. Suzuki did assume responsibility for on-site coordination of the work and supervision of the workers. Bearing in mind Mr. Bramadat's evidence that his general contractor hourly rate increases by \$5 per hour when it involves supervising a crew, I am satisfied that Mr. Suzuki's assumption of coordination

and supervision responsibilities certainly entitles him to compensation at a greater hourly rate than the \$20 to \$22 he would be entitled to receive for his carpentry services. A rate of \$25 per hour is a more than fair compromise in my view.

[80] The issue of when Mr. Maxwell was terminated, as noted earlier, may have some bearing on the issue of appropriate hourly rate. Ms. Bouzane maintains that Mr. Maxwell was not terminated until July of 1999. Mr. Maxwell also believed it to be July of 1999 though agreed it could have been June. He bases this on his recollection that it was warm at the time he was terminated. Overall, Mr. Maxwell was an unsatisfactory witness. His recollection was both unclear and unreliable.

[81] Neither the evidence of Ms. Bouzane nor of Mr. Maxwell is sufficient to persuade me that the termination occurred in July of 1999, contrary to the evidence of Ms. Cairns who indicated that it was March or April of 1999. Ms. Bouzane did, however, file a printout of a photograph posted on the internet which does raise some questions as to the date. The photo appears to show Bombay Peggy's mid-construction with leaves on the surrounding trees and what Ms. Bouzane identified as Mr. Maxwell's trailer alongside the building. As Mr. Maxwell testified by telephone, there was no evidence from him identifying the trailer as his.

[82] Of concern to me is that the photograph filed as an exhibit is in the form of a black and white printout from the internet. As a result, it can hardly be described as a clear image, nonetheless I must find that the photo does raise some doubt in my mind as to whether Mr. Maxwell's termination may have been a couple of months after March or April.

[83] What then is the effect of this uncertainty on the value of Mr. Suzuki's work? At the end of the day, I am satisfied that it makes no material difference.

Firstly, I am satisfied that Mr. Suzuki underestimated the actual hours he spent on the project; secondly, his valuation of his work was considerably lower than what he might be entitled to given Mr. Bramadat's estimate of value; and thirdly, he did not include the 250 hours spent on design work in his calculation of the overall value of his work. At the end of the day, when I consider these three factors, I am satisfied that Mr. Suzuki's claim is entirely reasonable in all of the circumstances.

[84] A final point which needs to be addressed relates to Ms. Bouzane's assertion that Mr. Suzuki received additional remuneration for his services. She alleges that he received payments from Mr. Maxwell. Mr. Maxwell seemed to recall that there might have been a couple of cheques from him to Mr. Suzuki each around \$500. No such cheques were produced. I am not satisfied on the evidence that Mr. Suzuki ever received any payments from Mr. Maxwell.

[85] Ms. Bouzane also asserts that Mr. Suzuki received regular stipend cheques as compensation for his work. She was able to produce only one such cheque in the amount of \$340. The cheque was marked exhibit 'A' for identification though never formally made an exhibit. On the 're' line, the cheque has the notation "17 days stipend". Ms. Bouzane suggests this cheque was payment for services rendered. Ms. Cairns testified that it was compensation to Mr. Suzuki for meals given the amount of time he was spending on site and away from home. As this makes much more sense than it does to compensate someone at a rate of \$20 per day for carpentry and contracting services, I accept Ms. Cairns explanation of the purpose of the cheque and conclude that it does not represent payment for work completed.

[86] Lastly, Ms. Bouzane indicates that there was a specific agreement for Mr. Suzuki to produce the bar for an amount not to exceed \$6,000, inclusive of materials. The \$6,000 figure comes from an estimate received from Han Construction in relation to the production of the bar. This evidence is

contradicted by both Mr. Suzuki and by Ms. Cairns. Given that the evidence overall indicates a clear failure of all parties to define their expectations in relation to the renovation by way of contracts and agreements, I find it difficult to accept that they took such steps in relation to the bar and only in relation to the bar. I prefer the evidence of Mr. Suzuki and Ms. Cairns over that of Ms. Bouzane on this point.

[87] Ms. Bouzane also alleged that she viewed a cheque to Mr. Suzuki with a 're' line notation of 'bar honorarium' which she says represented Mr. Suzuki's compensation for all work on the bar. Ms. Bouzane suggested the cheque was around \$1,000. She later indicated that it was for exactly \$1,044.37. She was unable to produce the cheque, but said she had seen it in 1999; had asked about it in 2000; and had seen it again during the dissolution of the business, but that the business consultant had inadvertently taken it with him and had mailed it back. I find Ms. Bouzane's evidence on this point to be patently incredible.

[88] On the whole, I am satisfied that Mr. Suzuki did not receive additional remuneration for services rendered on the project from October 1998 to February 2000 beyond those amounts he has already acknowledged and deducted. I am also satisfied that Mr. Suzuki's estimate of the value of the work he performed is more than fair on all of the evidence before me.

[89] Accordingly, I order Ms. Bouzane to pay to Mr. Suzuki the sum of \$24,900, which equals the sum already provided by Ms. Cairns.

[90] Mr. Suzuki also seeks pre-judgment interest dating back to March of 2000. In my view, Mr. Suzuki is entitled to some pre-judgment interest, but it would be unfair to extend his entitlement all the way back to March of 2000. With respect to the extensive delay in resolving this matter, Mr. Suzuki's own actions were significant contributing factors to that delay disentitling him to the full amount of pre-judgment interest. I will, however, grant him pre-judgment interest calculated

pursuant to the *Judicature Act*, R.S.Y. 2002, c. 128 as of October 13, 2006. This represents the date of the \$10,000 payment which demonstrated that the business had reached some degree of financial stability. As Ms. Bouzane made no effort beyond that date to fairly resolve the issue of Mr. Suzuki's contribution and indeed clearly had no intention of doing so, I am satisfied that Mr. Suzuki is entitled to pre-judgment interest from that point on. He is, in addition, entitled to post-judgment interest as per the *Judicature Act*.

[91] Lastly, I am satisfied that Mr. Suzuki is entitled to recover the counsel fee of \$150 and any costs he has incurred in these proceedings.

[92] In conclusion, judgment in favour of the Plaintiff is as follows:

1. \$24,900 as payment for work done;
2. Pre-judgment interest calculated pursuant to the *Judicature Act* as of October 13, 2006;
3. Post-judgment interest calculated pursuant to the *Judicature Act*;
4. Counsel fee of \$150; and
5. Costs as calculated by the Small Claims Clerk.

Ruddy C.J.T.C.