

Citation: *Wilson v. Mueller and Milne*, 2013 YKSM 3

Date: 20130430
Docket: 11-S0157
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Chief Judge Cozens

MIKE WILSON

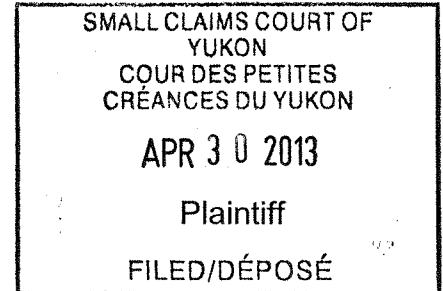
v.

BABETTE MUELLER and DAVID MILNE

Defendants

Appearances:
Mike Wilson
Babette Mueller
David Milne

Appearing on own behalf
Appearing on own behalf
Appearing on own behalf



REASONS FOR JUDGMENT

[1] The Plaintiff, Mike Wilson, claims against the Defendants, Babette Mueller and David Milne, for \$22,037.17 for damages he claims arise out of a contract between the parties for him to install the siding on their newly constructed residence at 54 Carpiquet in Whitehorse (the "Home").

[2] Mr. Wilson is the owner of Maverick Construction. He and the Defendants entered into two contracts related to the construction of the Home.

[3] The first contract was entered into on June 20 and 21, 2011. This contract, known as the Construction Contract, stipulated that the Defendants

would pay the Plaintiff \$102,690.00 (including \$4,890.00 GST) for labour to be provided by the Plaintiff for general construction of the Home.

[4] The second contract was entered into on August 28, 2011. This contract, known as the Exterior Contract, stipulated that the Defendants would pay the Plaintiff \$42,000.00 (including \$2,000.00 GST) for labour to complete the exterior finish for the Home. The Exterior Contract had handwriting annotations incorporated at the time that it was signed and it was subsequently amended by agreement of the parties, on or about January 9 or 10, 2012, to deal with the change order process and with the completion date for the work to be performed pursuant to the Construction Contract.

[5] The Defendants acted as the General Contractor throughout and were responsible for the purchase and supply of all materials. The Plaintiff was responsible to provide labour only.

[6] During the initial stages of the installation of the siding it was discovered that the siding that was provided to the site was not the siding specified in the Exterior Contract. The siding that had been provided was more labour intensive to install than that which the Defendants had ordered and that which the Plaintiff had based his quote upon. The Plaintiff continued installing the siding that had been delivered, using the more time-consuming method. There was no agreement between the parties as to whether the Plaintiff would be paid more than that specified in the Exterior Contract for the installation of the siding, as a result of the additional labour involved.

[7] Ultimately, the parties were unable to resolve the issue of additional compensation for the siding installation and the Defendants purported to terminate the Exterior Contract. The Plaintiff completed the work on the Construction Contract.

[8] The Plaintiff is suing the Defendants for breaching the Exterior Contract.

Issues

1. Was the Exterior Contract unlawfully terminated by the Defendants, and if so, what are the damages that flow as a result?
2. If the Exterior Contract was lawfully terminated by the Plaintiffs, what, if any, further compensation is the Plaintiff entitled to receive for services provided?

Evidence

[9] Attached as Appendices 1 and 2 are copies of the Construction Contract and the Exterior Contract.

[10] Both Contracts contain a clause that reads:

Variations to the agreement will be cost plus (\$65.00 per carpenter hour).

[11] Under the terms of both Contracts either party could terminate the Contract if the other party failed to comply with its obligations, and did not rectify the failure within a period of five working days. The Property Owners' (Defendants) right to terminate specifies that they can do so if the terms of this agreement are not followed.

[12] The Company (Plaintiff) can terminate the agreement if "not remedied in

five working days". I note that both Contracts are unclear as to what exactly is "not remedied". In order for this portion of the Contracts to make sense, I will treat the Company's right to terminate as arising from a failure of the Property Owners to follow the terms of the agreement.

[13] The Plaintiff testified in support of his Claim. Other witnesses called by the Plaintiff were independent contractor Blair MacDonald, and an employee (at the time of construction), Nathan Jardine.

[14] Both Defendants testified in defence against the Plaintiff's Claim. Other witnesses called by the Defendants were independent contractor John Anderson and Yukon Housing Corporation employee Roger Hanberg.

[15] Much of the evidence over the approximately four days of trial revolved around the work that was done pursuant to and more closely connected to the Construction Contract. This evidence was directed primarily at extra work that was billed to the Defendants by the Plaintiff, and the manner in which change orders for this work were dealt with. While the Plaintiff is not claiming for any monies owing under the Construction Contract, or for extra work outside of the Construction Contract or closely connected to it, and the Defendants are not seeking any monies to be returned to them or set off for monies paid to the Plaintiff for extra work done and billed to them, the evidence in this regard provided a context for the circumstances as they unfolded in relation to the problems associated with the Exterior Contract.

[16] As such, I will not go into the depth of analysis of the evidence as it relates

to the extra work done, billed and paid for to the same extent I would have, had there been a claim for damages arising from this work. For reference, I consider this extra work to both be work done under the Construction Contract, albeit beyond the scope originally required, and work that was never actually covered by the terms of the Construction Contract, and somewhat ancillary to the work performed under it. That is not to say that either of the parties were entirely satisfied with how the extra work, either within or without the Construction Contract, played out. There is simply no claim based upon the expectations and actions of the parties arising out of this extra work or the Construction Contract.

[17] This said, I will nonetheless address some of the evidence and issues that arose more than what may be strictly necessary to arrive at a decision on the actual issue before me. I feel that this is necessary in the particular circumstances of this case.

[18] I will also say at the outset that this case exemplifies the difficulties that are all too often associated with home construction and renovation projects. These difficulties are easily understandable and to be expected when parties operate under terms of oral contracts. Such oral contracts can result in the parties involved having very different views of what the agreement between them was, and, as there is nothing in writing to back up either position, to irreconcilable differences that can end up in litigation. This is especially true when there is a significant difference in the balance of power and/or experience between the parties.

[19] When reasonably sophisticated parties take the time to draw up written contracts, to add written amendments as needed, and to specify a process for changes in the scope of the work, it would be logical to expect that any disagreements would be few and would be fairly readily resolvable. That is not, unfortunately, what happened here.

[20] In this case, one event started the ball rolling downhill towards what ultimately became irreconcilable differences between the parties. This event was a supplier providing siding to the jobsite that was substantially different than that which had been ordered by the Defendants and that which the Plaintiff was intending to install, the knowledge of which did not become apparent until installation was already underway.

[21] This supplier was not a party to these proceedings or a witness within the trial, so the how and why's of this event remain unknown and, from a legal perspective, irrelevant. It was, however, the failure of the parties to immediately sit down and hammer out an agreement as to what, if any, additional costs would be associated with the installation of the siding provided, that ultimately resulted in the breakdown of the relationship between the parties and this matter being brought to trial.

[22] I recognize that there were issues regarding the extra work that was done and the amount the Plaintiff billed the Defendants for this extra work. These issues contributed significantly to the communication breakdown between the parties. These concerns led to each of the parties distrusting the other to some

extent and hindered any attempts to resolve the siding issue. This said, the parties were able to resolve the issues for extra work that was done and billed and, had the correct siding been supplied, I believe that the parties would not have ended up in litigation.

[23] An unfortunate aspect of this case is that the parties addressed the issue of extra work early on and, in writing, came up with a process that could have prevented the communication breakdown and distrust that ended up occurring, had they made responsibility for drafting the change orders clearer and had they followed the process they agreed to. They did not do so, other than on one occasion, and neither of the parties, by their actions, appears to have insisted that the process be adhered to. This conduct of the parties essentially rendered this contractual term meaningless and unenforceable.

[24] There is a dispute between the parties as to who was responsible for drafting up the change orders for signature. The Plaintiff claims that the Defendants were responsible for doing so. The Defendants state that it was a shared responsibility. I see from the journal notes of the Plaintiff dated October 4, 2011 that he wrote down that on that date he advised Ms. Mueller that she and Mr. Milne would be responsible for drafting the change orders. Of course, the Plaintiff's notes may well reflect his understanding without necessarily reflecting the understanding of the Defendants.

[25] I consider that requiring the Defendants to be responsible for the drafting of the change orders is not inconsistent with Ms. Mueller's role as General

Contractor for the project. That said, I agree that it is logical and necessary for both parties to turn their attention to the matter to ensure that a change order is comprehensive and accurate. The written agreement wasn't entirely clear on this point. The Plaintiff was also aware that he was dealing with a relatively inexperienced homeowner in the General Contractor role, and not an experienced contractor. As such he could have been more pro-active in that regard as well, if for no other reason than to protect himself. The bottom line is that the anticipated process simply did not occur in this case.

[26] While it is ideal that change orders are discussed in advance, with the scope of work and the cost clearly set out, so that the parties can agree in writing on each occasion, it may not be so easy to actually do this on-site, as there is often work that needs to be done quickly in order to facilitate other trades and there may not be time to come to a pre-arranged agreement for the work to be done and the price. However, in such instances, efforts can and should be made to reach an agreement as soon as possible after the work has been done.

[27] Finally, before I deal with the evidence in more detail, I will say that I consider the Plaintiff and the Defendants to be honest, professional individuals who were attempting, to the best that they knew, to act fairly and reasonably throughout the work on the Home and in the proceedings before me. This is not a case where I am dealing with unscrupulous parties.

Evidence of the Plaintiff

Mike Wilson

[28] The Plaintiff presented as a very conscientious, detailed and capable contractor intent on providing a high quality product to his clients. He was very organized in his presentation of the evidence, consistent with the detailed notes he maintained throughout the course of the construction of the Home and that he had Mr. Jardine maintain as well in his absence. The Plaintiff testified that he made his notes either the day of or the day after he had been at the Home and that he noted anything of interest in these notes. Much of what the Plaintiff testified to was supported by the notes he made contemporaneous to the events occurring.

[29] It was clear to me that the Plaintiff paid considerable attention to detail when he prepared and revised the estimates he provided to the Defendants and on his work throughout the project.

[30] Despite some minor expressions of concern about a few portions of the work the Plaintiff provided, in particular after the relationship between them had deteriorated, I did not understand the Defendants to be of the position that the quality of the Plaintiff's work was anything less than that expected.

[31] The Plaintiff testified that right at the beginning of the work on the project, he provided the Defendants with in excess of 20 hours labour, plus equipment costs, without charge, to complete the excavation that had been started by another contractor and which was work outside of the contracts between the

Plaintiff and the Defendants. These labour and equipment costs that the Plaintiff absorbed and did not pass on to the Defendants were done in exchange for obtaining the Exterior Contract for the price of \$40,000.00 plus GST.

[32] The following is a breakdown of the extra work the Plaintiff states he provided for the Defendants without charging them:

- \$2,552.00 credit on Invoice 2011-71-8 (in order to obtain the Exterior Contract);
- \$1,950.00 for 30 hours labour for construction of the main staircase (provided in exchange for clearing up the balance of the outstanding amount on Invoice 2011-71-8);
- \$1,300.00 for 20 hours labour in construction of the larger stairwell roof (also provided in exchange for clearing up the balance of the outstanding amount on Invoice 2011-71-8);
- \$4,030.00 for 62 hours labour to redesign interior layouts;
- \$260.00 for four hours labour to redesign the front entrance closet;
- \$650.00 for 10 hours labour to dig up and set the sump;
- \$5,650.00 for 10 hours labour to rake the drainage rock;
- \$780.00 for 12 hours labour for work done at Defendants' request between November 26 to December 4 while the Plaintiff was away;
- \$1,950 for 30 hours labour to fix the 2nd floor package;
- \$352.00 for five hours labour to redesign the upper floor walls to accommodate the roof trusses; and
- \$2,925.00 for 45 hours labour to fix the roof package.

The Plaintiff testified that some of the additional labour he provided without cost was an actual loss to him, while other hours were not. In the circumstances of this case, I am not required to look at these hours and determine the accuracy of them. The Defendants did not challenge these hours in any meaningful way, although, again, the accuracy or inaccuracy of these hours is not an issue that needs to be resolved and, therefore, there was no need for them to do so.

[33] Overall, I am satisfied that the Plaintiff at times provided the Defendants

with labour at no cost or at a reduced cost in order to maintain a good working relationship between the parties and to facilitate work on the project. The documentation filed by the Plaintiff makes it clear that he did so and I am sufficiently satisfied with the reliability of these documents and with the Plaintiff's testimony to that effect.

[34] In addition to the above, the Plaintiff testified that a total of 219 hours was either requested or required for work over and above that contemplated by the Construction Contract. Four of these hours were pursuant to a change order and the rest were without written change orders being prepared. Forty-four and a half of these hours were requested and completed while the Plaintiff was away.

[35] The Plaintiff stated that the Defendants have paid all the monies outstanding for these extra hours of work, subject to the credit of \$2,552.00 provided in exchange for being granted the Exterior Contract. As the Plaintiff was not able to complete the Exterior Contract due to the actions of the Defendants, he states that this amount would in a manner of speaking, still be outstanding.

[36] The Plaintiff testified that the amendment on the Exterior Contract regarding the process required for change orders to take place applied to both the Construction Contract and the Exterior Contract. This evidence is not disputed by the Defendants.

[37] The Plaintiff testified that, with one exception, this process was not followed. It was his evidence that the majority of the change orders were

requested by the Defendants, including a significant number while he was out of town and had left Mr. Jardine on site to run the job. During this period, Mr. Jardine and another employee were to be working solely on the Exterior Contract. In fact, they ended up working to a large extent on changes or additional work not related to the Exterior Contract; with the majority of this work requested by the Defendants, or contractors retained by and working under the supervision of the Defendants.

[38] The Plaintiff stated that generally when he was involved in a discussion with the Defendants, primarily Ms. Mueller, regarding a change, she would state what she wanted, he would tell her what the approximate cost would be and, if she agreed, the work would be done without any further written change order.

[39] Work started on the siding in November 2011. Shortly after the work started, the Plaintiff had to remove some of the installed siding to allow for another contractor to complete some work. The Plaintiff noticed on or about November 22 that the back of the siding was "blowing out" which concerned him. He contacted Mr. Milne to point this out to him. Mr. Milne looked into it and, on November 25, advised the Plaintiff that the product which had been supplied was not CertainTeed Cement Plank Siding ("CertainTeed"), but MaxiPLANK.

[40] It was determined, through experimentation and in consultation with a MaxiPLANK representative, that the appropriate method for the installation of the Maxi-PLANK siding was to pre-drill the holes, and the use of screws and countersinking of the heads. Installation of the CertainTeed siding would have

required nailing only, for which a nail-gun could be used. The installation of the MaxiPLANK was a three-step process vs. a one-step process for CertainTeed.

[41] The Plaintiff testified that this was much more labour-intensive and that he advised Mr. Milne on November 25, 2011 of that, and that he would have to charge the Defendants more than the Exterior Contract called for as a result of the extra labour involved. He stated that he advised Mr. Milne that he would need to crunch the numbers to provide him a price.

[42] The Plaintiff left on a trip out of town the following day and Mr. Jardine and another employee were to continue work on the Exterior Contract in his absence. In fact, they ended up doing considerable work inside the Home, primarily at the request of Ms. Mueller or her contractors.

[43] The Plaintiff testified that he met with the Defendants on December 5, 2011 to discuss the extra work that had been done by Mr. Jardine and the other employee in his absence. He stated that he told the Defendants that he was not going to absorb the additional extra siding installation costs and that they should look to their supplier for compensation. No final resolution was reached, but, being comfortable that one would be reached, the Plaintiff continued work on the siding.

[44] The Plaintiff stated that he was unable to come up with a figure for additional costs right away as he had not had to install siding in this manner before. He stated that he informed the Defendants that he would get a cost breakdown to them.

[45] The Plaintiff provided the Defendants with Invoice #2011-71-16 on December 16, 2011 for extra work, as well as for some of the work completed on the Exterior Contract. The Defendants had concerns about this Invoice and met with the Plaintiff on January 9, 2012. The Defendants' concerns were in respect of why they should have had to pay extra for some of the work, why it took so many hours, and why they should have to pay the rate of \$65.00 per hour for the extra work. The Plaintiff agreed to reduce the Invoice amount by deducting 12 hours labour.

[46] The Defendants wanted assurance that there would be no further extra charges and the Plaintiff stated that he was willing to forego any extra work he had not yet started. In his mind, the only extra costs would be for the additional labour involved in installing the siding.

[47] The Plaintiff continued to work on the siding without the parties ever agreeing on a price. On January 24, 2012 the Plaintiff provided the Defendants, through a note he handed to Mr. Milne, with an estimate for the additional labour costs. This estimate was for \$5,500.00, which he noted was reduced from his actual estimate of \$10,000.00, and from what he considered to be a reasonable price of \$7,500.00. He stated that this estimate was reflective of purely the labour costs, with no additional profit built in.

[48] The breakdown provided by the Plaintiff set out that the actual installation of the siding comprised 25% of the Exterior Contract, or \$10,000.00. He estimated the installation work to be at least twice as long, therefore an additional

\$10,000.00. He was prepared to offer an estimated price of \$5,500.00 to do this extra work, contingent on the estimated hours being accurate.

[49] The Plaintiff testified that Mr. Milne seemed fine with the proposed additional costs but that Ms. Mueller phoned him later that evening and said that she was not prepared to pay any additional costs and that he had to complete the siding installation for the agreed upon price. The Plaintiff testified that Ms. Mueller specifically rejected the idea that he then continue by nailing on the MaxiPLANK siding, and that the Defendants wanted it screwed on as recommended. Work on the Exterior Contract was suspended at that time and the Plaintiff was advised on January 27, 2012 that work was suspended on the Construction Contract as well. He was advised by the Defendants that they intended to terminate both contracts.

[50] At this time the Plaintiff estimated that approximately 70% of the siding installation had been completed, the majority of which had been screwed on.

[51] Subsequently, on February 1, 2012 the Plaintiff was advised that the work on the Construction Contract only could continue. On February 10 he was advised by a letter dated February 8 that the Exterior Contract had been terminated. He was also provided a letter that purported to terminate the Construction Contract as of February 15 if work was not completed by that date. The Plaintiff testified that he had verbally agreed on February 1 to complete the work on the Construction Contract by February 15.

[52] At this time the Plaintiff testified that he had 324.5 hours invested in the

Exterior Contract and had already invested \$21,092.50 in labour costs which, with other factors such as CPP, EI, and office payroll costs, amounted to \$22,130.82.

[53] He stated that there were 86 pieces of siding remaining and that another 71 pieces were ordered to finish the job. At seven feet a piece (which, I note, is different from the MaxiPLANK Installation Guide's stated length of 12', but which is not, however, disputed by the Defendants), this meant that 1099 feet of siding had not been installed. Originally 3,300 feet of siding had been ordered. With the additional 497 feet, out of the total of 3,797 feet, 1,099 feet, and thus 29%, was the portion of the unfinished work. Therefore, approximately 71% of the siding installation had been completed. The Plaintiff testified that much of the most difficult siding work had already been done.

[54] The Plaintiff acknowledged that the installation of the siding involves measuring, cutting, lifting and spacing etc., not just screwing the siding on. He stated that the siding installation may be more than 25% of the job if all these other parts of the installation were to be factored in. He stated that it amounts to probably a total of 50% for siding installation. He was adamant that the cost for actually installing the siding, not including the other factors involved, is \$10,000.00 on its own.

[55] The Plaintiff testified that 99% of the soffit work had been completed, all of the energy shield and 99% of the Exterior Contract preparation work. With this having been done it made it much easier for someone else to come in and finish

the siding installation.

[56] He stated that the finished energy shield work was \$9,360.00; that the soffit backing and returns was \$1,560.00; and that the window and corner furring was \$4,680.00. There was \$195.00 left of work for a corner piece and front, thus reducing the \$6,240.00 of work to \$6,045.00. In addition to the siding, there was \$15,405.00 in work completed by him.

[57] The \$11,400.00 for the other contracts the Defendants entered into to complete the work, (calculated based upon the Defendants' prior offer to the Plaintiff of \$8,600.00 – plus GST - as being the difference between what the Defendants paid other contractors to complete the work and the original \$40,000.00 estimate (excluding GST)), would be less \$1,700.00 for shakes and \$1,000.00 for the truss. As a result, therefore, it was \$8,700.00 in labour to complete the work, equaling 28.94%.

[58] It is the Plaintiff's position therefore, that in the end, the actual cost of installing the siding was approximately \$30,062.20 of the overall Exterior Contract work. He bases this figure on his estimate that 28.94% of the siding work remained and it cost the Defendants \$8,700.00 to have it completed. (By these calculations, if 28.94% is worth \$8,700.00 then the 71.06% the Plaintiff completed would be worth \$21,362.20, for a total of \$30,062.20 for the siding installation alone).

[59] The Plaintiff then submits that when the non-siding portion of the Exterior Contract work of \$9,360.00; \$6,045.00; \$1,700.00; and \$1,000.00, is factored in,

the end result is \$48,607.00. He submits that this is more money that it would have cost the Defendants had they allowed the Plaintiff to complete the job with his increased cost estimate of \$5,500.00.

[60] To date, the Plaintiff has been paid \$21,000.00 for the work he completed on the Exterior Contract.

[61] He has submitted invoice #2011-71-17 on February 15, 2012 for the \$21,000.00 balance he claims is owing on the Exterior Contract and two further invoices with interest accruing at the Contract rate of 2% per month, with \$420.00 added on the February 29, 2012 invoice and another \$428.40 on the March 29, 2012 invoice.

[62] The Plaintiff testified that it was damaging to his company's reputation to have to walk away from an unfinished jobsite.

Blair MacDonald

[63] Blair MacDonald testified for the Plaintiff. He is a ticketed carpenter with approximately 13 years work experience in the construction field. He operates his own construction business. He had reviewed plans and submitted a bid for the construction of the Home but had not been awarded the job. He had also assisted the Plaintiff on some of the roof construction of the Home when the Plaintiff needed help.

[64] Mr. MacDonald dropped by the Home on February 9, 2012 and had a discussion with the Plaintiff. He specifically recalls the date as the discussion

was in regard to a friend who had suffered a heart attack.

[65] He recalls hearing a conversation between the Plaintiff and Ms. Mueller regarding a change in the soffit materials, but does not recall any details of this conversation. He was aware that the work on the installation of the siding had been put on hold.

[66] He stated that he saw no tension or animosity between the Plaintiff and Ms. Mueller on the day he was at the Home and they seemed to treat each other respectfully.

[67] He testified that he had hired Maverick Construction on several occasions and would vouch for the quality of their work. He stated that it would be a lot faster to nail on the siding than to screw it on and, in his opinion knowing the complexity of the job, the Plaintiff's proposed \$5,500.00 in additional costs was fair and reasonable and less than what the actual charges could have been.

Nathan Jardine

[68] Nathan Jardine testified for the Plaintiff.

[69] Mr. Jardine had been involved in the construction sector for, as he put it, "all my life", stating that his father was a contractor for 35 years. Mr. Jardine took civil engineering and was working as a carpenter, at times in a supervisory position such as a foreman, when he worked for the Plaintiff on the Home. He was employed as a cost-coordinator and estimator for Ketz Construction at the time he testified in court.

[70] Mr. Jardine started work at the Home on or about October 1, 2011. He began work on the stairs on his first day and confirmed the evidence of the Plaintiff that modifications were required.

[71] He testified that he thought the homeowners were trying to do a fair job at taking on the building of their home. He states that being a General Contractor is a full-time job and in his opinion the Defendants made great efforts in trying their best to take on the role of General Contractor and to try to save money.

[72] He stated that there were numerous changes in the work that were requested by the Defendants, citing many which had been pointed out by the Plaintiff in his testimony. He stated that in his experience change orders and directives are common, particularly in custom built homes. He felt that the Defendants had some really good ideas and wanted to have a really good home.

[73] Mr. Jardine testified that the Plaintiff was "one in fifty" for being particular and in wanting everything done right. He stated that the Plaintiff, on this job, went above and beyond what other contractors would do. Changes in one area of work tended to have repercussions on other areas. He stated, from what he observed, that the Plaintiff ended up having to provide lots of free consultation and recommendations and, to that extent, ended up at times stepping up into the role normally occupied by the General Contractor, even to the extent of answering questions posed by other trades when the Defendants were not on site.

[74] He stated that while it is normal to have change orders priced and signed

off, in his experience many are done verbally. He stated that while the Plaintiff was away from the jobsite from November 26, 2011 to December 4, 2011 he and the other employee were requested by the Defendant to make many changes in the Home to accommodate the work of other trades. This prevented them from working on the siding installation, which was the task he was in charge of and that he and the other employee were supposed to be completing.

[75] There was a rush to most of this extra work and he stated that he told the Defendants that there would be extra charges for this work. He said that he was not provided any written change orders by the Defendants and he did not prepare any himself. The work needed to be done quickly so he did it. He stated that the Defendants had no objection to him proceeding in this fashion and never stopped him from doing the extra work that had been requested. Mr. Jardine testified that the entire project was pushed behind schedule due to the changes that were made.

[76] Mr. Jardine testified that he was aware the drywallers would be coming into the Home this week to work. He stated, however, that any work done to facilitate the work of the drywallers was an extra. While Mr. Jardine stated that the week the Plaintiff was away was a "critical" one, it only became critical as a result of the extra work that had to be done for the other trades. It was not a critical week outside of having to do this extra work.

[77] Mr. Jardine kept detailed notes during the time he was on-site and the Plaintiff was gone.

[78] He testified that the siding was a major issue. The Home was an expensive layout for the installation of siding. With the amount that the exterior would cost, it would make sense to install the siding properly and this meant pre-drilling, screwing and countersinking. He testified that he explained very clearly to the Defendants that there would be extra costs for fastening the siding, and he assumed that the Defendants understood the fact there would be extra costs.

[79] In his opinion the \$5,500.00 extra costs that the Plaintiff proposed to the Defendants was much less than it should have been. In his opinion it should have been more in the \$12,000.00 - \$15,000.00 range.

Evidence of the Defendants

David Milne

[80] Mr. Milne testified that he and Ms. Mueller received a quote to build the Home from the initial contractor they had on site. This quote was too high. As a result they re-grouped and, in order to save money, Ms. Mueller would take on the role of General Contractor. It was evident throughout his testimony that Ms. Mueller was more involved in the day-to-day work on the Home than he was and that she was in a better position to answer many of the questions posed to him by the Plaintiff in cross-examination.

[81] Mr. Milne stated that the Defendants interviewed five contractors and chose the Plaintiff. While his price was not the cheapest, he had been recommended and his work was said to be of high quality.

[82] He and Ms. Mueller wanted one contract for the Home construction and

one for the siding in order to keep their options open. As a result, the Defendants entered into the two separate Contracts with the Plaintiff.

[83] Mr. Milne testified that the Plaintiff was meticulous and his work was good quality.

[84] Mr. Milne stated that, while not disputing that the Plaintiff had done extra work from the beginning of the project, the Defendants were concerned about the higher costs than they anticipated when they were presented with the Plaintiff's first invoice that included charges for extra work. He did not feel that the Defendants had been as informed as they should have been about these costs in advance.

[85] As a result, the Defendants and the Plaintiff agreed that any extra work would be completed using change orders prepared in advance regarding the scope of work and the cost.

[86] One change order was completed in this way, but when the Defendants received the Plaintiff's invoice on November 6, 2011 they noticed that they were being billed for changes that did not have written change orders. The Defendants took this as an indication that the Plaintiff did not understand the change order process and they spoke to him several times to clarify matters. They asked him to advise them beforehand if he knew of a change rather than them simply receiving an invoice.

[87] The Defendants entered into the Exterior Contract with the Plaintiff,

although his price was not the lowest, in fact even two times higher than at least one bid.

[88] Mr. Milne stated that the siding problem was discovered around November 21, 2011. The Plaintiff phoned him at work and he attended at the Home to view the problem. The Plaintiff expressed concerns about compromising both the immediate and long-term integrity of the siding by nailing it on. Various options were explored by the Plaintiff and the Defendants and the parties agreed that the best option was to screw on the siding.

[89] Mr. Milne stated that the Plaintiff told him this was more work and that he should contact the company that supplied the siding. Mr. Milne stated that the company told him they would not pay and he advised the Plaintiff of this.

[90] Mr. Milne stated that when he told the Plaintiff this that it was his impression that the Plaintiff was not happy. However, Mr. Milne states that it was his understanding that the Plaintiff agreed to screw on the siding and further said that he would absorb the extra costs of doing so. He states that the Plaintiff specifically told him that he would absorb the extra costs. Mr. Milne felt that as the Defendants had been paying the Plaintiff well, there was room for the Plaintiff to absorb this cost within the \$40,000.00 of the Exterior Contract.

[91] Mr. Milne acknowledged that the topic of the siding came up subsequently in several conversations with the Plaintiff, and that the Plaintiff indicated in these discussions that he would be looking to receive some extra payment for the siding installation, including during the discussion on December 5, 2012. Mr.

Milne denies, however, ever agreeing to pay extra costs for the installation of the siding or ever saying so to the Plaintiff.

[92] Mr. Milne acknowledged in cross-examination that he understood at the time it was decided to do so, that it was going to be extra work to screw on the siding rather than to nail it on. He also acknowledged having a meeting with the Plaintiff prior to the Plaintiff leaving in November 2011 in which the Plaintiff told him that screwing on the siding would be extra work. He did not recall, however, the Plaintiff telling him that he would work out the numbers on the extra cost.

[93] Mr. Milne states that the week at the end of November 2011 when the Plaintiff was away from the project and had left Mr. Jardine in charge was the worst possible week for the Plaintiff to be away. He stated that there was a lot going on and there was a big push to get the electrical and plumbing work done before the drywalling and HRV work. He described it as a mad panic. He agrees that the Defendants asked the Plaintiff's employees to do a number of extras and said that they were prepared to pay for these.

[94] Mr. Milne stated that upon the Plaintiff's return he was unhappy with what had taken place while he was away. There subsequently appeared to be a change in the working relationship between the parties. When the Defendants received the December 16, 2011 invoice for the extra work, they had issues with some of the charges. Their concerns were with respect to both the specific work that had been done and the hours required for this work. The Plaintiff provided an altered invoice in the amount of \$6,961.00 which they reluctantly paid on

January 10, 2012. From this point on the working relationship was not a good one. Mr. Milne testified that the Defendants thought that this was the final extra cost and that there would be no more extra costs, including for siding.

[95] Mr. Milne states that the Plaintiff provided him with the estimate of \$5,500.00 for additional siding costs on January 24, 2012. He states that the Plaintiff told him that if they agreed on this payment, that he would be able to start work again in the morning. The Defendants discussed the matter that night and Ms. Mueller advised the Plaintiff that evening that they were not prepared to pay any more for the siding. The Plaintiff subsequently left a message stating that he would nail on the siding, and Ms. Mueller called him back. He understood that the Plaintiff was going to remove himself from the project entirely which was fine with them as they had decided that they could not work with him anymore.

[96] To the Defendants' surprise, the Plaintiff was at the jobsite the next morning. Ms. Mueller had a discussion with the Plaintiff the following day in which the Plaintiff stated that he wanted to continue working on the Home. The parties took a break in which the Defendants consulted a lawyer. Based upon the legal advice they had received, the Defendants advised the Plaintiff that he could continue working on the Construction Contract, but they terminated the Exterior Contract, believing that they had grounds to do so.

Babette Mueller

[97] Ms. Mueller had been involved in a previous home renovation project in 1996. She decided to take on the role of General Contractor for the construction

of the Home based upon her prior experience, her knowledge of and acquaintance with numerous trades' people and the building course she had taken at Yukon College. She stated that, in retrospect, she may have been a little "blue-eyed" going into this project.

[98] Ms. Mueller began maintaining notes from January 4, 2012.

[99] Ms. Mueller testified that the Defendants chose the Plaintiff to do the work on the Home as his price was in the middle of the five estimates they received and they had heard positive reports from references, including a comment that while he charged a lot he didn't charge for all the little extras he did.

[100] The Defendants' relationship with the Plaintiff was very positive at first. He demonstrated to Ms. Mueller that he had good concepts and that he was willing and able to work. This contributed to the Defendants entering into the Exterior Contract with him. The Defendants felt that it was good to go with a builder they trusted.

[101] Ms. Mueller, as did Mr. Milne, expressed some confusion at the wording in Exhibit #5:

Credits Pending: Exception of \$40,000.00 Siding Price,

interpreting it as being "exceptions" and not "acceptance". Although this seemed to be a significant point to the Defendants, it is clear that the Plaintiff meant to use the word "acception" (albeit not an actual word), meaning that if the Defendants accepted the siding estimate of \$40,000.00 plus GST, the Plaintiff

would credit them for some additional work he had done. Note also the wording in the Plaintiff's notes on Exhibit #2:

If the siding price of \$40,000.00 is excepted...

[102] I find that the Defendants' interpretation does not give the phrase any logical meaning, whereas the Plaintiff's does. In any event, I fail to see that anything turns on this wording in any event. It is clear that the Plaintiff was providing the Defendants with a credit in exchange for being awarded the Exterior Contract. Whether they fully appreciated this at the time is not relevant, although if they did not understand the Plaintiff to be giving them a credit, it would seem that the Plaintiff was not receiving anything in exchange.

[103] Handwritten annotations were made to the Exterior Contract when signed August 31, 2011. Ms. Mueller disagrees with the Plaintiff's position that it was the Defendants' responsibility to draw up the change orders for signature, stating they needed input from the Plaintiff.

[104] Ms. Mueller was concerned about the delays in the project affecting the other sub-trades.

[105] Ms. Mueller testified that the issue regarding the installation of the siding was left to Mr. Milne to resolve with the Plaintiff. She states that she heard the Plaintiff state that he would eat the costs of the extra labour involved in installing the siding. In cross-examination she stated that the first time she heard of there being any extra charges for installing the siding was after the Plaintiff returned from holidays in early December 2011, and the first time she learned of an actual

amount was on January 24, 2012 when the Plaintiff handed Mr. Milne his notes with the \$5,500.00 estimated cost. She acknowledged that she may have heard about extra costs for siding installation from Mr. Milne or Mr. Jardine prior to that, but doesn't specifically recall this.

[106] She stated that if the Plaintiff had provided the Defendants with the written estimate of \$5,500.00 in November, when the problem arose, they would have had the ability to consider other options.

[107] She stated that when they supplied the wrong siding the Plaintiff had the option to terminate the Exterior Contract.

[108] Ms. Mueller was concerned that the extra costs for the siding never came up in the January 9, 2012 meeting. She acknowledged that she never specifically asked the Plaintiff about additional costs for siding installation, stating that she left the door wide open for him to do so.

[109] She testified that when the Plaintiff was away from the Home at the end of November 2011, Mr. Jardine completed a lot of work that needed to be done to facilitate the work of other trades and he was falling behind on the siding installation as a result. She stated that Mr. Jardine had advised her that there were going to be extra costs for the work he completed in the Plaintiff's absence.

[110] Ms. Mueller testified that she thought much of the work that was done, and for which the Defendants were billed extra, in particular that akin to what Mr. Jardine was doing when the Plaintiff was away, was part of the work

contemplated under the Construction Contract. It was her understanding that the Construction Contract meant that the Plaintiff was responsible for finishing everything to the point where the other trades could do their work. She testified that she was of the opinion that anything involving wood was the responsibility of the Plaintiff. Other than Ms. Mueller's stated belief, there is no evidence to contradict the evidence of the Plaintiff that what he billed as an extra was in fact that.

[111] During the meeting between the Plaintiff and the Defendants, after delivery of the December 16, 2011 invoice, Ms. Mueller states four topics were discussed: first, the fact that there had not been the necessary agreement between the parties regarding the change orders; second, the completion time for the work, third, adjusting the December 16, 2011 invoice, and fourth, foreseeability of change orders.

[112] Amendment #'s 1 and 2 to the Exterior Contract were added during the meeting and initialed the next day by the Plaintiff with an addition regarding weather.

[113] Ms. Mueller left the meeting believing that there would be no more extra invoices.

[114] The only written change order was prepared by her. She stated, however, that she had advised the Plaintiff that any piece of paper would do and that she asked the Plaintiff to do these up. She stated that it was difficult to get the Plaintiff to provide her sufficient information regarding how much work would be

involved in the various changes throughout the project and the costs of such work.

[115] She stated that when she reviewed the Plaintiff's January 24, 2012 note regarding the extra costs for the completion of the siding installation she was alarmed. To her, the actual costs seemed unclear. She advised the Plaintiff that night that the Defendants were not prepared to pay the extra costs and she states that the Plaintiff then left a message stating that he would proceed to nail on the siding. She called back the following morning and advised him that was not acceptable and the Plaintiff replied that he would be pulling out of the job. Ms. Mueller testified that nailing on the siding could give rise to warranty issues.

[116] Ms. Mueller considered the relationship between the parties to have been ended and she did not expect the Plaintiff to do any more work on the Home on either Contract. She was surprised to see him there the morning of January 26, 2012. They had a brief conversation about some minor issues. She subsequently asked him to meet with her the next day, January 27, 2012 and at that time she told him the Defendants wanted to terminate the working relationship.

[117] Both parties then took some time to discuss matters with legal counsel and Ms. Mueller met with the Plaintiff on February 1, 2012. Mr. Milne was out of town at the time. The parties agreed that the Plaintiff would continue work on the Construction Contract. Ms. Mueller stressed the importance of communication. Ms. Mueller reiterated her position that the Defendants would not pay any

additional money for the siding installation.

[118] The Plaintiff was not prepared to continue work on the siding for no additional compensation and stated that he would see a lawyer if he had to. Ms. Mueller told him that she and Mr. Milne would further discuss the matter. The Plaintiff refused to sign a draft termination agreement the Defendants had prepared and provided to him in early February 2012. Subsequently, the Defendants provided the Plaintiff the letter terminating the Exterior Contract.

[119] The Plaintiff completed the work on the Construction Contract by February 15, 2012 as promised.

[120] Ms. Mueller provided a quote the Defendants had received for the exterior work on the house of \$17,325.00. The Defendants had decided not to accept that quote and accepted the Plaintiff's quote instead.

[121] The Defendants received a quote from John Anderson of Anderson Renovations for completion of the siding installation work. This quote was for \$6,200.00. The Defendants proceeded to have Mr. Anderson complete this work. The documents filed appear to show that the Defendants paid Mr. Anderson the total of \$6,200.00.

[122] In addition, Ms. Mueller filed a document showing payment to George Saure in the amount of \$5,477.36 (inclusive of GST in amount of \$260.83). Mr. Saure was not a witness in these proceedings. One hundred sixteen dollars and fifty three cents (\$116.53) of this amount was material, however with an

additional \$5.83 GST, leaving a labour amount of \$5,355.00. As such, the total amount of \$6,200.00 paid to Mr. Anderson when added to the \$5,355.00 equals \$11,555.00.

John Anderson

[123] Mr. Anderson testified that he has been a self-employed contractor for the past 25 years. He is a certified roofer and had been doing siding on a full-time basis for the past five or six years. He estimated that the exterior of the Home was only 50% completed when he came on site. He screwed on and countersank the siding, but he did not pre-drill the holes. He stated, when asked by the Plaintiff in cross-examination, that he did not notice any small fractures caused by not pre-drilling the holes. He agreed that screwing the siding on provided a superior hold and it worked so well that he is recommending this be done for all his work now.

[124] He stated that it is all basically the same, whether it is CertainTeed or MaxiPLANK, with respect to how it is to be applied.

[125] Mr. Anderson agreed that screwing on the siding definitely took more time than nailing it.

[126] Mr. Anderson concluded that he would have done the entire exterior job for the same price of \$17,325.00 that another individual had contracted to do it for.

Roger Hanberg

[127] Roger Hanberg testified. He is currently the Technical Officer for Yukon Housing Corporation. He had been a journeyman carpenter since 1975. He met Ms. Mueller when she attended a self-help builder's course he was teaching at Yukon College. She came to him for advice throughout the building of the Home and he agreed that he was a resource for her.

[128] He had not recently been involved in the installation of siding but used to install wooden siding. He stated that the \$2.00 per sq. ft. installation price he used to charge had likely changed since he was installing wooden siding.

[129] He stated that 99% of the time when he was involved in change orders he would give a solid price and a note would be made of this.

[130] Mr. Hanberg agreed that a number of factors were involved in pricing and installing siding that would cause the costs to vary from project to project.

[131] Mr. Hanberg agreed that screwing on the siding was more labour intensive than nailing it on, stating that the actual fastening would easily take at least twice as long, although there would be no change to the other aspects of installing siding such as measuring and cutting, etc.

[132] In Mr. Hanberg's opinion the \$5,500.00 that the Plaintiff sought as compensation for the extra work was unreasonable, and an appropriate price should have been in the range of \$1,000.00, even in light of the \$40,000.00 contract price.

Analysis

[133] I find the following.

[134] The Exterior Contract was breached by the Defendants when they provided the wrong siding. Rather than take the opportunity to terminate the contract when the Defendants did not rectify the breach by providing appropriate siding, the Plaintiff continued to work on the project, without a contract or an amendment to the existing Contract, in hopes that an agreement could be reached for the payment of extra costs.

[135] There was no bad faith in the Plaintiff doing so, in fact, this could potentially have been to the benefit of the Defendants as it meant that work could continue with minimal interruption and with the same standard of quality the Defendants expected the Plaintiff to provide when they contracted with him. The delay in finding another available contractor to come over, provide an estimate and then to commence work was avoided. Delay was a concern for the Defendants.

[136] The Plaintiff had the option of treating the breach as not amounting to a breach of the contract, but this would have required him to forego any claim for additional compensation. By not foregoing such a claim, it is clear that the original contract was no longer in force, and any work done afterwards would have to be included in the terms of a new contract or an amendment to the existing contract. If not, then it can only be compensated on a *quantum meruit* basis.

[137] Unfortunately, for all concerned, such an agreement was never reached. I find it to be obvious that complicating the matter was the inability of either of the parties to follow the procedure for change orders. Each of the parties bears some responsibility for this failure, although I ascribe much of the problem to the role of Ms. Mueller as General Contractor. She did not have much experience in this role, and therefore there were issues that arose within the project, the resolution of which would have been better served with an experienced General Contractor. I say this with all due respect to Ms. Mueller and her considerable efforts to conscientiously fulfill her obligations as General Contractor.

[138] The unfortunate result was that this led to a communication breakdown which contributed significantly to the inability of the parties to resolve the issue of additional compensation for the siding installation.

[139] I find that in applying the principles of contract law the Plaintiff is not entitled to be paid the full price of the Exterior Contract. The Plaintiff took a risk when he continued to work on the siding installation without an agreement setting out what extra compensation he would receive, instead of treating the Exterior Contract as having been breached and renegotiating a new Contract or an amendment to the existing one. While I consider his decision to do so a decision made in good faith, unfortunately the risk taken did not pay off.

[140] I find, however, that he is entitled to be paid a value for the extra labour he was required to do to install the MaxiPLANK on a *quantum meruit* basis. The Defendants were contractually obliged to provide one siding product, but they

provided another. The product provided was significantly more labour extensive and time consuming to install. It would be unreasonable and unfair to expect the Plaintiff to have to absorb this extra cost that arose from a failure of the Defendants to comply with their obligations under the Exterior Contract.

[141] I am aware of the testimony of the Defendants that the Plaintiff initially told them that he would absorb these extra costs and of the testimony of the Plaintiff that he did not. This is one of the few actual contradictions in the evidence of the parties. I consider the Plaintiff and the Defendants to be credible and honest witnesses throughout their testimony. I find, however, that there was no clear meeting of the minds and agreement on this issue. To the extent that the Plaintiff may have discussed and wondered aloud about absorbing the costs, and to the extent that the Defendants may have interpreted this as being indicative of the Plaintiff that he would do so, it is clear that the Plaintiff made it known at least shortly after his return from holidays on December 4, 2011 that he wanted additional compensation.

[142] I accept the evidence of the Plaintiff that there was approximately 30% of the siding work remaining and that the vast majority of the approximately 70% that was done was with the more labour-intensive screwing installation process. I accept the evidence of the Plaintiff as being reliable, that the additional labour for pre-drilling, screwing and counter-sinking was at least double that originally contemplated. I further find that his estimate that this comprised 25% of the overall Exterior Contract to be within an appropriate range.

[143] I see nothing in the evidence that contradicts the Plaintiff's evidence with any degree of reliability or specificity. The Plaintiff provided detailed information to back up his estimates, something lacking in the evidence called by the Defendants. I accept that the original value of the Exterior Contract was that agreed to by the parties and am not prepared to base my decision on a much lower assigned value in the \$17,000.00 range. The Defendants were prudent and careful in their approach to this project. I find the Plaintiff's evidence in this regard to be the best evidence and accept it. Where the Plaintiff's evidence is contradicted by the evidence of the contractor witnesses called by the Defendants, I prefer the evidence of the Plaintiff and his witnesses.

[144] The siding portion of the contract was \$20,000.00, and I find that approximately \$10,000.00 of this was for installation. I find the amount of \$7,500.00 put forward by the Plaintiff in the note he provided to the defendants on January 24, 2012 to be reasonable for 100% of the project. At 70% complete this means that the Plaintiff should receive \$5,250.00 for the extra work he provided for installation of the siding. I will reduce this to \$5,000.00 as some of the siding had already been installed with nailing. Offsetting this, however, is the time lost to the Plaintiff after discovering the problem in diligently attempting to find a suitable resolution.

[145] The siding installation process comprised 50% of the Exterior Contract, or \$20,000.00. 70% of this is \$14,000.00. Therefore, when added to this \$14,000.00, the Plaintiff is entitled to a total of \$19,000.00 for the siding portion of the Exterior Contract.

[146] For the non-siding portion of the Exterior Contract, the evidence is not particularly clear. The Plaintiff's evidence, to the best that I can understand it, is that \$15,405.00 work had been completed on the non-siding portion of the Exterior Contract. The Defendants' evidence appears to be that they paid \$5,100.00 (without GST) for the non-siding portion of the Exterior Contract. This figure does not differ substantially from what I conclude from the Plaintiff's evidence. Therefore, in addition to the \$19,000.00, I add the amount of \$15,405.00 for a total of \$34,405.00.

[147] I accept the evidence of the Plaintiff that he credited the Defendants the amount of \$2,552.00 on extra work he had completed which he did not bill the Defendants for in exchange for receiving the Exterior Contract. He did not get to complete the Exterior Contract due to the breach of contract by the Defendants and therefore I consider it to be fair to award him a portion of this amount back. Recognizing that the Plaintiff was able to complete a significant portion of the work on the Exterior Contract, I will award him 30% of this amount, or \$765.60.

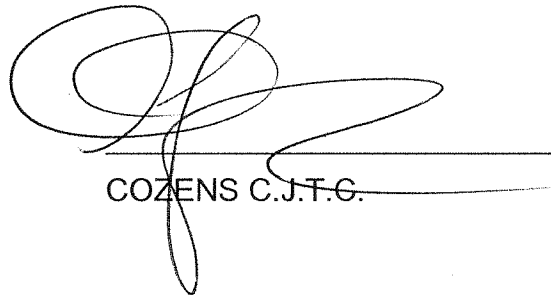
[148] Therefore the total amount the Defendants are obliged to pay the Plaintiff on the Exterior Contract is \$35,170.60, plus GST in the amount of \$1,758.53, for a total of \$36,929.13. They have paid the Plaintiff the amount of \$21,000.00, thus leaving \$15,929.13 outstanding.

[149] I am also going to award interest. The contractual amount is 2% per month on unpaid invoices. As this was not straightforward, and the first invoice was for the full \$21,000.00 on February 15, 2012, I will award 2% per month on

three-quarters of the amount of the award (thus \$11,946.85) from March 1, 2012 until the end of trial October 31, 2012. This amounts to \$1,911.50 (not compounded). Pursuant to the *Judicature Act*, RSY 2002, c. 128, I award pre-judgment interest on the full amount from November 1, 2012 to the date of Judgment, and post-judgment interest after that date.

[150] I will also award the Plaintiff costs in the amount of \$150.00 for the filing of the Claim and the Notice of Trial.

[151] Therefore the Plaintiff shall have judgment in the amount of \$17,990.63, plus pre-judgment and post-judgment interest.



COZENS C.J.T.G.



Contractor and Client Agreement

This is a contract between Mike Wilson of Maverick Construction herein referred to as "The Company" and Babette Mueller and David Milne, 7 Vimy Place, herein referred to as "The Property Owner."

As the Sub Contractor, Maverick Construction is insured with liability coverage of two million dollars. (Arctic Insurance Brokers LTD)

Whitehorse Yukon 14 Arkell Place Y1A 5T3 867-334-4316

License # 2008-2864

BN: 80870 7293

Description of work

The Company will furnish all labour to complete the described work on lot 356 Takhini North.

Stage One

Construction of footings, basement floor and walls, first floor walls and first and second floors.

-7x18 inch concrete footing, 2x8, 2x10 pwf basement wall construction, ½ - ¾ inch pwf plywood sheathing, 2x8 spf first floor wall construction, ½ inch spf plywood sheathing, 2x10 spf basement floor joists on 2x12 pwf trimmer, 2x10 pwf floor joists with ¾ inch pwf plywood sheathing in basement stairwell, engineered floor joists on first and second floors with ¾ inch t&g sheathing.

Stage Two

Second floor walls and roof construction.

-2x8 spf wall construction with ½ inch spf plywood sheathing, engineered roof trusses with ½ inch plywood sheathing.

Stage Three

Vapor Barrier, interior strapping and interior framing.

-poly vapor barrier installation, 2x3 spf strapping on exterior walls, 1x4 spf strapping on the ceiling, 2x4, 2x6 spf interior wall construction, 2x12 spf stair construction with engineered treads.

Stage Four

Exterior door and window installation, deck construction, basement tarring and backfill.

Installation onto unclad building, 2x10 pwf deck construction with acq decking, foundation patch and top coating.

Variations to the agreement will be cost plus. (\$65.00 per carpenter hour)

Contract Price

The Property Owner will pay The Company the fixed sum of (\$ 97, 800.00) Ninety-Seven Thousand, Eight Hundred Dollars. Plus (\$ 4, 890.00) Four Thousand, Eight Hundred, Ninety Dollars (GST) goods and service tax. For a total cost of (\$ 102, 690.00) One Hundred and Two Thousand, Six Hundred, Ninety Dollars for work performed under this agreement, subject to such other sums that may become payable as a result of any variations determined in accordance with this agreement

Terms of Payment

Stage One

It is agreed that The Property Owner will pay a draw payment on completion of the Stage One contract. The amount of (\$ 34, 230.00) Thirty-Four Thousand, Two Hundred and Thirty Dollars will be paid to The Company. The payment must be made before Stage Two will start. The Property Owner may hold back 10% of Stage One for 30 days.

Stage Two

It is agreed that The Property Owner will pay a draw payment on completion of the Stage Two contract. The amount of (\$ 23, 961.00) Twenty-Three Thousand, Nine Hundred, Sixty-One Dollars will be paid to The Company. The payment must be made before Stage Three will start. The Property Owner may hold back 10% of Stage Two for 30 days.

Stage Three

It is agreed that The Property Owner will pay a draw payment on completion of the Stage Three contract. The amount of (\$ 24, 572.50) Twenty-Four Thousand, Five Hundred, Seventy-Two Dollars and Fifty Cents will be paid to The Company. The payment must be made before Stage Four will start. The Property Owner may hold back 10% of stage Three for 30 days.

Stage Four

It is agreed that The Property Owner will pay the final draw payment on completion of the Stage Four contract. The amount of (\$18, 826.50) Eighteen Thousand, Eight Hundred, Twenty-Six Dollars and Fifty Cents will be paid to The Company. The Property Owner may hold back 10% of Stage Four for 30 days.

Interest will be charged two weeks after delivery of any unpaid bill, at a rate of two percent monthly.

Time For Completion

The work to be performed under this agreement will commence on Monday, the 20th day of June and will be completed on Wednesday, the 31st day of August. The Company will be responsible for the timely completion of the work consistent with the time limits set out, subject to any variations made as set out in this agreement, where the date for completion may be varied accordingly.

Company Obligations

The Company will carry out the works with professional skill, care and diligence pursuant to all applicable standards and industry practice and in compliance to all relevant building regulations and statutory requirements. The Company is responsible for supplying a crane, bobcat and packer. In addition the following specific obligations, which by this reference are incorporated in and made part of this agreement: For all new construction, the standard one year warranty will apply. If the terms of this agreement are not followed, The Property Owner will have the right to terminate the agreement if not remedied in five working days.

Owner Obligations

The Property Owner must pay such sums of money that become due to The Company for the work performed. The property Owner will be responsible to cooperate in good faith with The Company and must not interfere with progress of work. It is understood that timely communication and cooperation are necessary for completion of the work. The Property Owner will furnish all materials and supplies (concrete with pump truck, lumber, fasteners, etc, supply water for ground work and job site power (no generators) The Property Owner is responsible for organizing a signing authority on accounts, so The Company can order materials when needed. The Company will have the right to terminate the agreement if not remedied in five working days.

Approvals

Unless otherwise agreed to in writing, it is The Property Owners sole responsibility to obtain all necessary approvals and permits prior to commencement of the works to be done. If determined that The Company should obtain approvals and permits, The Property Owner will pay the balance to The Company on delivery.

All agreements between The Property Owner and The Company related to the specified work are included in this contract.
I agree to the acceptance of this contract and agree to keep to its terms.

The Property Owner

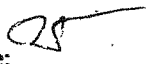
Name: DAVID MILNE

Signature: 

Date: June 21 / 11

The Property Owner


Name: Barbara Anello

Signature: 

Date: Jun 21, 11

The Contractor

Name: Mike Wilson

Signature: 

Date: June 20, 2011



Contractor and Client Agreement

This is a contract between Mike Wilson of Maverick Construction herein referred to as "The Company" and Babette Mueller and David Milne, 7 Vimy Place, herein referred to as "The Property Owner."

As the Sub Contractor, Maverick Construction is insured with liability coverage of two million dollars. (Arctic Insurance Brokers LTD)

Whitehorse Yukon 14 Arkell Place Y1A 5T3 867-334-4316

License # 2008-2864

BN: 80870 7293

Description of work

The Company will furnish all labour to complete the described work on ^{54 MW} 54 Carpiquet Rd.

Stage One-Four

MW Contract is to complete the exterior finish of 54 Carpiquet.

DM Installation of 3300 sq. ft. CertainTeed Cement Plank Siding, aluminum soffits and cedar trim. The face gable will be finished in cedar shakes with a custom timbered truss.

MW Changes to the original scope of work will be agreed upon by the parties ahead of time through a written change order detailing the work and costs involved.

Variations to the agreement will be cost plus. (\$65.00 per carpenter hour) This applies for extra work required by the ~~contractor~~ client for the contractor to complete. It also applies for work completed by the client or other contractor.

Contract Price

MW The Property Owner will pay The Company the fixed sum of (\$ 40, 000.00) Forty Thousand Dollars. Plus (\$ 2, 000.00) Two Thousand Dollars (GST) goods and service tax. For a total cost of (\$ 42, 000.00) Forty-Two Thousand Dollars for work performed under this agreement, subject to such other sums that may become payable as a result of any variations determined in accordance with this agreement.

Terms of Payment

It is agreed that The Property Owner will pay a draw payment at half completion of the contract. The amount of (\$ 21, 000.00) Twenty-One Thousand Dollars will be paid to The Company. The Property Owner may hold back 10% for 30 days.

Interest will be charged two weeks after delivery of any unpaid bill, at a rate of two percent monthly.

Time For Completion

The work to be performed under this agreement will commence after completion of the construction contract and take a month to complete. The Company will be responsible for the timely completion of the work consistent with the time limits set out, subject to any variations made as set out in this agreement, where the date for completion may be varied accordingly.

Company Obligations

The Company will carry out the works with professional skill, care and diligence pursuant to all applicable standards and industry practice and in compliance to all relevant building regulations and statutory requirements. The Company is responsible for supplying a crane, bobcat and packer. In addition the following specific obligations, which by this reference are incorporated in and made part of this agreement: For all new construction, the standard one year warranty will apply. If the terms of this agreement are not followed, The Property Owner will have the right to terminate the agreement if not remedied in five working days.

Owner Obligations

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Approvals

Unless otherwise agreed to in writing, it is The Property Owners sole responsibility to obtain all necessary approvals and permits prior to commencement of the works to be done. If determined that The Company should obtain approvals and permits, The Property Owner will pay the balance to The Company on delivery.

All agreements between The Property Owner and The Company related to the specified work are included in this contract. I agree to the acceptance of this contract and agree to keep to its terms.

The Property Owner

Name: DAVID MILNE
Signature: [Signature]
Date: Aug 31 / 11

The Property Owner

Name: Roberta Tucker
Signature: [Signature]
Date: Sept 23, 11

The Contractor

Name: _____
Signature: _____
Date: _____

Time For Completion

The work to be performed under this agreement will commence after completion of the construction contract and take a month to complete. The Company will be responsible for the timely completion of the work consistent with the time limits set out, subject to any variations made as set out in this agreement, where the date for completion may be varied accordingly.

Company Obligations

The Company will carry out the works with professional skill, care and diligence pursuant to all applicable standards and industry practice and in compliance to all relevant building regulations and statutory requirements. The Company is responsible for supplying a crane, bobcat and packer. In addition the following specific obligations, which by this reference are incorporated in and made part of this agreement: For all new construction, the standard one year warranty will apply. If the terms of this agreement are not followed, The Property Owner will have the right to terminate the agreement if not remedied in five working days.

Owner Obligations

The Property Owner must pay such sums of money that become due to The Company for the work performed. The property Owner will be responsible to cooperate in good faith with The Company and must not interfere with progress of work. It is understood that timely communication and cooperation are necessary for completion of the work. The Property Owner will furnish all materials and supplies (concrete with pump truck, lumber, fasteners, etc, supply water for ground work and job site power (no generators) The Property Owner is responsible for organizing a signing authority on accounts, so The Company can order materials when needed. The Company will have the right to terminate the agreement if not remedied in five working days.

Approvals

Unless otherwise agreed to in writing, it is The Property Owners sole responsibility to obtain all necessary approvals and permits prior to commencement of the works to be done. If determined that The Company should obtain approvals and permits, The Property Owner will pay the balance to The Company on delivery.

All agreements between The Property Owner and The Company related to the specified work are included in this contract. I agree to the acceptance of this contract and agree to keep to its terms.

The Property Owner

Name: David Mene
Signature: [Signature]
Date: Aug 31, 2011

The Property Owner

Name: Subetha Stuelken
Signature: [Signature]
Date: Sept 23, 11

The Contractor

Name: Mike Wilson
Signature: [Signature]
Date: August 29, 2011

AMENDMENT # 1:

Unless a change order explaining work and estimated costs exists signed by both parties exists there will be no invoicing by the builder and/or payment by the client.

AMENDMENT # 2:

The contractor completed by Feb 29, 2012. The exception is for the driveway. MW

Will ensure that the work is completed for non-availability of materials