SUPREME COURT OF NOVA SCOTIA
Citation: *Dares v. LeBlanc*, 2026 NSSC 110

Date: 20260331
Docket: *Bwt* No. 531271
Registry: Bridgewater

Between:

Gary Raeburn Dares

Applicant

v.

William Edward LeBlanc

Respondent

Judge: The Honourable Justice Michelle Kelly

Heard: February 9, 10 and 11, 2026, in Bridgewater, Nova Scotia

Counsel: Matthew R. Fancey, for the Applicant
Jeffrey D. Waugh, for the Respondent

By the Court:

Introduction

[1] In this case, the Applicant is looking to recover damages for breach of contract and property damage relating to an agreement he had with the Respondent, his brother-in-law, to do work on a boat.

[2] In July 2019, the Respondent purchased a Baby Cape Islander boat (the "Boat") for $10,000. He enjoyed that Boat for three boating seasons before deciding to contract with the Applicant to have the Boat repaired and rebuilt.

[3] This dispute arises from the terms of that repair and rebuild. The Applicant says that price and timeline estimates were given and his work was ongoing toward completion of what he was supposed to do to repair and rebuild the Boat. He also says he had not been fully paid for his work when the Respondent took back the Boat, unfinished.

[4] The Respondent says that price and timing was agreed to – not estimated. And by November 2022, the Applicant was months behind with no end in sight as to when the Boat would be completed. As such, the Respondent took the Boat back and says he has fully paid the Applicant for the work that was completed.

[5] The question for this Court to determine is whether the Applicant is owed anything for the work he performed for the Respondent – either through breach of contract, unjust enrichment or on a *quantum meruit* basis. In addition, the Applicant asks for compensation for property damage that he says resulted from the Respondent's actions in taking back the Boat.

Facts

[6] The hearing of this Application took place over three days with 4 witnesses giving evidence. Constable Liam MacLellan gave viva voce evidence, though primarily it is his file, including the statements given by the parties to the RCMP, that were the pertinent pieces of evidence from Constable MacLellan. The Applicant submitted an Affidavit and a Reply Affidavit and was cross-examined on both; the Respondent submitted an Affidavit and a Rebuttal Affidavit and was cross-examined on both; and the Respondent's son, Devin LeBlanc submitted an Affidavit and was cross-examined.

[7] The following is a summary of the pertinent facts.

Contract Formation/Terms

[8] Gary Raeburn Dares is a self-professed boat builder. He has worked on various types of boats over the years but has never worked on a Baby Cape Islander boat.

[9] Mr. Dares is not only a boat builder. He has held various jobs over the years including working in construction, working at the Lunenburg Fish Company and working as a server. The Court was not given anything specific about how long Mr. Dares may have worked in the boat building industry, nor how proficient he may have become as a boat builder.

[10] Regardless, the Respondent, Mr. William ("Billy") LeBlanc, did recognize Mr. Dares as a boat builder. And as a boat owner, Mr. LeBlanc truster his brother-in-law, Mr. Dares, when it came to fixing and rebuilding boats.

[11] In the Summer of 2021, Mr. Dares and Mr. LeBlanc began discussing Mr. Dares working on Mr. LeBlanc's boat. In September, the parties were sitting out back around a fire at Mr. LeBlanc's home and agreed to various terms. Mr. LeBlanc's son, Devin, was also in attendance.

[12] Mr. Dares says the following in relation to the terms that were discussed and agreed to with respect to the work he would perform on the Boat:

a. In his Affidavit he indicated "The discussion became formal as we discussed price estimates, time estimates, and what he could expect when the work was completed."

b. In taking the stand and being presented with his Affidavit and Reply Affidavit, he indicated he would like to clarify that part of the payment he was to receive for his work was that he could use the Boat and his work on same as a marketing tool to showcase his skills and quality of work. None of this was contained in his Affidavit. In addition, in his recorded statement to the RCMP he confirmed this was part of what he ***thought*** he would get from doing the work. He specifically states this is what was "in my head."

c. He further stated in cross-examination that it would be $5,000 to $6,000 in materials and that he would not charge Mr. LeBlanc for some of the work (the labour). He indicated he would do it for "an extremely low price" and that at the end when the Boat was rebuilt, it would be worth far more than what Mr. LeBlanc would have to pay for the work.

d. He confirmed in cross-examination that he could not tell Mr. LeBlanc what it would cost but he was hoping to make at least $5,000 to $6,000

from the job. Mr. Dares could provide no specifics as to what exactly he told Mr. LeBlanc on price or the price estimates he agreed he did provide (see reference to statement is his Affidavit noted above.)

e. In terms of timing, Mr. Dares Affidavit states that in April 2022, Mr. LeBlanc approached him "demanding the boat be done no later than the end of May" at which point he indicated he would do his best but there was still "a substantial amount of work that needed to be done."

f. In the statement he gave to RCMP, Mr. Dares also recounted various occasions where Mr. LeBlanc provided him a new date for completion of the Boat, but Mr. Dares maintained he never agreed to any date, despite Mr. LeBlanc repeatedly requesting a date for completion.

g. Mr. Dares specifically stated to the RCMP that he had no idea how long it would take to complete the work on the Boat because he had never done anything like that before. However, in his Affidavit he indicated that "time estimates" were discussed.

h. In his Reply Affidavit, Mr. Dares indicated that in November of 2022, the Boat required significant additional work as "the Respondent took the boat from my care well before I was finished with my work."

i. In cross-examination he tried to back away from that statement, indicating that the Boat was about 90% complete. When asked if he wanted to change, clarify or correct anything in his Affidavits, he did not highlight this.

j. He also confirmed in cross-examination that by early November 2022, he was working full-time building a house as he needed to earn money. He said he would go to work in the dark and return home in the dark as he was working well into the evenings. He said this to justify why he did not put the wall back up on the boat shed – he simply had no spare time as he was working on the construction job exclusively.

k. Finally, in his recorded RCMP statement, Mr. Dares said "… I say there was no set contract or payment or distance of time" agreed to.

[13] Overall, Mr. Dares evidence was vague on the terms that were discussed and often he contradicted himself. With the RCMP, he said that terms were not agreed to, that he did not know how much it would cost or how long it would take because he had never done that type of work before. He could simply confirm what he hoped to get from the job - $5,000 to $6,000 and the ability to showcase his boat building skills. He could offer nothing concrete, despite his Affidavit evidence suggesting

that price estimates, time estimates and what the work would be were all formally discussed.

[14] I do not accept Mr. Dares' evidence as credible on what terms were agreed to in relation to the work to be done on the Boat. He offered too many contradictory statements. Moreover, his statement to the RCMP was that there were no agreed to contract terms. This is in direct contrast to the evidence contained in his sworn Affidavit.

[15] Mr. William LeBlanc gave evidence in relation to what he believed were the agreed to terms for the work to be done on the Boat. He said:

a. Mr. Dares offered to do the work as a "gesture of gratitude for everything I had done for him over the years."

b. Mr. Dares indicated the work would cost no more than $7,000 to $7,500, inclusive of materials.

c. Mr. LeBlanc further indicated that if he had been told that the work would cost $10,000 or more, he would not have proceeded.

d. It was agreed that Mr. LeBlanc would have Mr. Dares purchase the materials using his contractor accounts to allow for a 15% savings on materials.

e. Mr. Dares agreed, at one point, to have the Boat completed by the end of May 2022, but it was always understood that the Boat would be completed to allow it to be used for the 2022 boating season.

f. Mr. LeBlanc made periodic cash payments to Mr. Dares that he recorded on a sticky note. He stated in his Affidavit that he paid Mr. Dares $3,930 in cash between March of 2022 and August of 2022. This was for the labour Mr. Dares was putting into the Boat.

g. On cross-examination, Mr. LeBlanc was asked why he did not keep anything more official than this sticky note or have Mr. Dares initial any cash payments that were made to him. Mr. LeBlanc responded with "No, and why would you, it is family."

h. In addition, Mr. LeBlanc produced invoices in his Affidavits and those indicate he paid $1,119.62 and $1,542.99 for materials that were charged to his contractor accounts. In total, Mr. LeBlanc paid $2,662.61 in materials.

i. Mr. LeBlanc attended at Mr. Dares house on November 20, 2022, to discuss the Boat and when it would be completed. He brought $1,000 cash with him to give to Mr. Dares. In his Affidavit he said "I was prepared to pay this amount if I saw reasonable progress had been made on the Boat."

j. In cross-examination, Mr. LeBlanc agreed that he still owed money to Mr. Dares and believed that to be "maybe $1,000" but noted that he never received any type of bill from Mr. Dares. Later on, he was asked again whether he had taken any steps to compensate Mr. Dares further and he again stated Mr. Dares never asked for anything.

k. Mr. LeBlanc believed that very little progress had been made on the Boat. He was worried with that pace, that the Boat would not be ready for May 2023. He made a decision to take the Boat back from Mr. Dares and then proceeded to do so. He had the Boat back in his possession as of November 20, 2022.

[16] Mr. William LeBlanc did not directly contradict himself in cross-examination, but it was clear that he is quite angry at his brother-in-law. I find he exaggerated, added commentary to answers that was irrelevant, and made inappropriate comments about Mr. Dares. However, Mr. LeBlanc was a reliable and credible

witness in relation to the details of the arrangement relating to the Boat. He could accurately remember and recount conversations and the details of same. However, I will not be taking any of his comments about Mr. Dares and his behaviours outside of the agreement to work on the Boat and what transpired in the return of the Boat as relevant evidence.

[17] Mr. Devin Leblanc also produced an Affidavit and was cross-examined. He stated in his Affidavit that Mr. Dares agreed to complete the work on the Boat before the start of the boating season in 2022. He also heard Mr. Dares "agree that he would complete the work for $7,000 to $7,500 total, including the materials."

[18] Mr. Devin LeBlanc was challenged on cross-examination and confirmed that he recalls hearing Mr. Dares confirm those terms.

[19] Mr. Devin Leblanc was also challenged on cross-examination as to whether he witnessed his father paying any money to Mr. Dares. He indicated he was present at times where he saw money changing hands between his father and Mr. Dares, but he had no idea of how much. He was also asked about the sticky note that Mr. William LeBlanc kept that he says shows the payments made to Mr. Dares and he again confirmed that this was a note that was on the fridge as his parents' home. Mr. Devin LeBlanc stated in cross-examination "those are payment to Bub…when Bub

asked for money and when payment was given to Bub." Bub is Mr. Dares' nickname.

[20] Mr. Devin Leblanc did not exaggerate or opine on matters he was unaware of. He gave forthright evidence and when pressed on cross-examination provided specifics as to why and how he could recall or was aware of certain things. I found him to be a credible witness.

[21] As a result of the above, I make the following findings of fact:

1. Mr. Dares offered to work on Mr. LeBlanc's Boat to help his brother-in-law out and deliver him a newly repaired/rebuilt Boat.
2. Mr. Dares made this offer because he saw an opportunity to do some work that may result in him getting more opportunities to work on boats in the future. However, this was not something he vocalized to Mr. LeBlanc, nor was the ability to market his skills a term of the agreement between the parties.
3. Mr. LeBlanc agreed to pay $7,000 to $7,500, inclusive of materials, for the entirety of the work to be done on the Boat.

4. All parties agreed that the Boat would be worked on in 2022 with the intention of having the Boat sea-ready by May/June 2022.

5. Delays occurred and throughout Mr. LeBlanc continued to ask Mr. Dares about completion of the Boat and was getting annoyed at the fact that timelines were not being met.

6. By November 2022, Mr. Dares was not working on the Boat as a result of taking on a new construction project that was taking all of his time.

7. On November 20, 2022, Mr. LeBlanc took the Boat back into his possession. The work had not yet been fully completed at this time.

8. Prior to taking back the Boat, Mr. LeBlanc paid $2,662.61 in materials and made payments of approximately $3,930 for labour done by Mr. Dares. In total, Mr. LeBlanc paid approximately $6,592.61 in relation to the Boat.

9. On November 20, 2022, Mr. LeBlanc was prepared to make a further payment of $1,000 to Mr. Dares for labour on the Boat, had he seen that further work had been done on the Boat. He did not see further work had been done and did not pay the further $1,000.

Contract Termination

[22] A significant amount of evidence was led in relation to the events that transpired on November 20, 2022. I will summarize as follows:

1. Earlier in November, the parties disagreed over painting the Boat. Specifically, Mr. LeBlanc said he would paint the Boat himself but Mr. Dares went ahead and did some paint work that Mr. LeBlanc disagreed with.

2. On November 18, 2022, Mr. Dares sent Mr. LeBlanc a text message expressing his anger at how Mr. LeBlanc was treating him.

3. On November 20, 2022, just after midnight, Mr. LeBlanc responded to this text message simply saying "I am coming over tomorrow."

4. Mr. LeBlanc proceeded to go over at 9am on November 20, 2022, with $1,000 in his pocket to pay to Mr. Dares, if further work had been done to complete the Boat.

5. The parties disagree over what exactly happened next. The events of November 20, 2022, did result in an investigation by the RCMP. At the conclusion of the investigation, the RCMP closed the file and laid no charges. I will say that each side conducted themselves poorly on

November 20, 2022. Tempers clearly flared and nobody acted with each others best interests in mind.

6. For purposes of this matter, what is relevant is that Mr. LeBlanc decided on the morning of November 20, 2022, to take back his Boat and end the working arrangement with Mr. Dares.

7. He returned to Mr. Dares home twice following his initial 9am visit on November 20, 2022 – once with a trailer to haul the Boat away and secondly to obtain the motor for the Boat.

8. Mr. Dares specifically asked that Mr. LeBlanc not reattend at his property, but despite this, Mr. LeBlanc returned twice.

9. By the afternoon of November 20, 2022, the Boat and motor were in Mr. LeBlanc's possession.

10. Mr. LeBlanc proceeded to do further work to the Boat and then exchanged the Boat in a deal where he provided the Boat, the trailer and the motor in exchange for a John Deere tractor.

11. Following the November 20, 2022, exchange, Mr. Dares did not issue any invoice or request any payment from Mr. LeBlanc, prior to

commencing this litigation. Mr. LeBlanc never paid anything further to Mr. Dares.

[23] There is nothing in the evidence that suggests that Mr. Dares wanted Mr. LeBlanc to repossess the Boat. Instead, Mr. Dares specifically requested that Mr. LeBlanc not reattend to his property.

[24] Mr. LeBlanc says that he took back the Boat because he was upset at how long it was taking Mr. Dares to complete the agreed to work on the Boat, that Mr. Dares had not listened to him in relation to painting the Boat, and he was concerned Mr. Dares had no intention of ever returning his Boat.

Property Damage Claim

[25] Mr. Dares also seeks damages for property damage he says he sustained as a result of the actions of Mr. LeBlanc on November 20, 2022.

[26] To work on the Boat, Mr. Dares, with the help of Mr. LeBlanc and his son, Devin, constructed a boat shed of sorts. Mr. Dares and Mr. LeBlanc gave evidence that there were materials (owned by Mr. Dares) that were being stored at Mr. LeBlanc's home. These materials were used to build this boat shed which was built from wood, plywood and plastic.

[27] On November 20, 2022, Mr. William LeBlanc and Mr. Devin LeBlanc needed to take down an end wall in order to the get the Boat out of the shed. They gave evidence that they did so carefully so as to make sure not to damage anything, including their own tires as they backed in and out of the area.

[28] Mr. Dares says that about 10 days after the end wall was removed, the boat shed came down because of strong winds. When asked why he had not put the back wall back on, he said he did not have time given he was working all hours on the construction project he had recently taken on.

[29] However, he says that because the wall was removed, the wind was able to get into the boat shed and tore down the remaining pieces of the structure.

[30] In constructing the boat shed, Mr. Devin Leblanc gave evidence that when they originally put up the boat shed, this back wall was not put on the structure for "several weeks." This is because the structure went up in late 2021 and the Boat was only brought over in January or February of 2022. The back wall could only go up after the Boat was in the shed.

[31] Overall, there is no evidence available to this Court as to how exactly this boat shed came down (other than Mr. Dares' speculations) and what if any value there was to the boat shed. The materials that were used to construct the boat shed were

already in Mr. Dares' possession and were still in Mr. Dares' possession when the shed came down.

Law and Analysis

[32] The Applicants requests the following relief:

1. A declaration that the Respondent is in breach of his contractual obligations in relation to the Applicant's work on the Boat;
2. Damages for breach of contract, unjust enrichment or *quantum meruit*;
3. A declaration that the Respondent engaged in intentionally malicious or negligent activity which has resulted in property damage to the Applicant, specifically destruction of the Applicant's boat shed; and
4. Damages for the Applicant's property damage.

Issue #1 – Breach of Contract

[33] The first issue for this Court to assess is whether a contract existed and if so, if the Respondent breached that contract.

[34] In *Cherubini Metal Works Ltd. v. M & J Total Transport & Rigging Inc.,* 2024 NSSC 227, Justice Bodurtha succinctly outlined the legal principles applicable to the formation of contracts and agreement on specific terms. He stated:

[26] In *BC Rail Partnership v. Standard Car Truck Co*, 2009 NSSC 240, the Court reviewed the principles of contract formation:

> [20] While the theory of contract creation is sometimes debated, the principles are not complicated. A contract consists of a promise or promises given by a person in exchange for the promise or promises made by the other person. Its existence is a voluntary legally-recognized bargain that gives rise to express and implied enforceable obligations. There must exist, on an objective analysis, a meeting of the minds or consensus *ad item*.

[27] Further explanation of what creates a binding agreement comes from Warner J. in *Alva Construction Ltd v. DW Matheson & Sons Contracting Ltd*, 2013 NSSC 352:

> [61] The process of interpretation focuses almost exclusively on what a reasonable person in the position of the offeree would understand by what the offeror said, even though that understanding might be quite different from what the offeror actually meant.
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> [62] Said differently, words mean what a reasonable person would take them to mean, and the parties' subjective intentions are not considered.
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> …
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> [65] The fifth of Geoff R. Hall's nine precepts for the interpretation of contracts is particularly relevant to this dispute. Commercial contracts must be interpreted in accordance with sound commercial principles and good business sense. Hall calls it the principle of commercial efficacy. The principle is grounded in the intentions of the parties. It is not determined from the prospective [*sic*] of only one contracting party. It is applied with reference to the entire context - the language of the contract as a whole and the factual matrix.
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> [66] Hall's sixth precept recognizes that substantive contract law holds that if an agreement's essential terms lack sufficient certainty, because they are too vague or incomplete, there is no binding contract. He observes that the application of this principle can sometimes defeat the intention of the parties and therefore requires the application of the interpretative principle that directs courts to make every effort to find a meaning for a contract, and to avoid, if possible, finding a contract to be void for uncertainty.

…

[29] The court in *Mitsui* held that when interpreting an agreement, a judge must "take account of the document as a whole as well as of the 'genesis and aim of the transaction" (para. 67). In doing so, the court considered the history of the parties' relationship to help interpret the provisions of a contract. When determining if the

words of the agreement were sufficiently certain and complete to establish an agreement. Cromwell JA reiterated the following principles:

> [81] Where parties reach agreement, courts are reluctant to find that it cannot be given meaning. From early times, the common law has accepted the principle that, where possible, words should be understood so as to give effect to the agreement rather than to destroy it: *verba ita sunt intelligenda ut res magis valeat quam pereat*. This principle was stated by Lord Wright in *Scammell v. Ouston*, *supra* at 268:
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> > ... the court will do its best, if satisfied that there was an ascertainable and determinate intention to contract, to give effect to that intention looking at substance and not mere form. It will not be deterred by mere difficulties of interpretation.
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> [82] The question of certainty does not relate to the correct meaning of the words, but rather to whether the words are capable of being given a reasonably certain meaning by the court…

[30] In *Capital Market Technologies Inc v. Prince Edward Island*, 2019 PESC 40, the court provided an overview of other relevant principles on agreements to agree:

> …
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> [166] After commenting on the *Bawitko* decision, Hall, in his text *Canadian Contractual Interpretation Law*, 3rd ed. (Markham, Ont.: LexisNexis. 2016) noted at p. 207:
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> > **In other words, there are three separate sub-propositions contained within the basic notion that an agreement to agree is unenforceable. First**, there is no enforceable contract where essential terms have not been agreed but instead have been left by the parties for future agreement. **Second**, there is no enforceable contract where the provisions of what has been agreed are insufficiently certain. **Third**, there is no enforceable contract where the parties intend that a preliminary agreement is not to create binding contractual relations until a subsequent formal document is executed.
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> [Emphasis added in original]

[35] In this case, the Applicant and the Respondent both gave evidence that an agreement was reached, whereby the Applicant would do work on the Respondent's

Boat. That work would be done at the Applicant's house and would result in the Boat being "seaworthy."

[36] It is clear the parties entered into an agreement as the Respondent delivered the Boat to the Applicant and the Applicant began work on the Boat in early 2022. There was a meeting of the minds and the parties decided no further agreement or formal documentation was necessary. The parties were family and the delivery of the Boat and the work that ensued were enough to establish the parties' intent to be bound by this agreement. However, the question remains as to what were the agreed upon terms of the agreement.

[37] In the case of *Logikor Inc v. Bessey Tools Inc*, 2013 ONSC 5052, the court stated:

> "In any commercial contract, there must be a consensus ad idem on three 'p's': the parties, the period and the price."

[38] Here we know the parties, but the question is what was the agreed to time period and price.

[39] As outlined above, the Applicant's evidence is vague. He says in his Affidavit that time estimates and price estimates were discussed but he could give no particulars. To the RCMP he indicated that no terms were set.

[40] The Respondent was specific, as was his son. I prefer their evidence as a result. For price, Mr. Dares would do the work for $7,000 to $7,500, including the cost of materials. For timing, the work would be done in time for the Boat to be in the water for the 2022 boating season (hopefully May/June 2022.)

[41] In *Logikor*, the court found at para. 34 that the price in a commercial contract "must be ascertained or ascertainable."

[42] Given the specific evidence given by both Mr. William LeBlanc and his son, the Court finds that an agreement was made with the price being ascertainable – the price was $7,000 to $7,500. In relation to the timing, the exact time frame was not fully specified but the parties agreed the Boat would be ready for the 2022 boating season.

[43] In *Flynn v. Halifax Regional Municipality*, 2005 NSCA 81, at para 34, citing 2003 NSSC 253 at para 102, (varied on other grounds), the court stated:

> Certain terms are implied in every building contract: materials must be of proper quality, the work must be performed in a good and workmanlike manner, the materials and work, when completed, must be fit for their intended purposes, and the work must be completed without undue delay (*Markland Associated Ltd. v. Lohnes* (1973), 1973 CanLII 1251 (NS SC), 11 N.S.R. (2d) 181 (S.C.T.D.); *Girroir v. Cameron* (1999), 1999 CanLII 2401 (NS SC), 176 N.S.R. (2d) 275 (S.C.)).

[44] In addition, in *Pavestone v Kuentzel*, 2013 NSSC 199, the court stated at para 65:

> Mr. Kuentzel also complains of delay in Pavestone's work. This was one of the issues referred to in the termination letter. According to the *Manual of Construction Law*, at §3.5(b)(iii), where a construction contract contains a date for full or substantial completion,
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> > [f]ailure to complete by the stipulated date, due to actions which are the responsibility of the contractor, will be a breach of the contract by the contractor. Where the contract contains no specified date for the completion of the contractor's work, the courts may infer that the contract contains an implied term that the work be completed within a reasonable period of time.
> >
> > What is reasonable in any given situation will depend on the nature of the work being undertaken and the conditions under which work is being performed…

[45] Here the timing was not expressed as a date certain. It was agreed that the Boat would be ready for the 2022 boating season. What can be reasonably taken from that is that the Respondent understood his newly redone Boat would be in the water sometime in 2022.

[46] No evidence was led that Mr. Dares encountered issues with the Boat that prevented him from ensuring the Boat was completed "within a reasonable period of time." No evidence was led that the work was so significant that it could not be completed in time for the 2022 boating season. No evidence was led that completing the Boat in time for the 2022 boating season was not "a reasonable period of time."

[47] Instead, evidence was led that Mr. LeBlanc made continuous inquiries into when the Boat would be ready and provided dates to Mr. Dares, asking that he comply with same. He specifically says that Mr. LeBlanc asked him to have the Boat completed by end of May 2022, but says he never agreed to do that.

[48] Finally, by early November 2022, the Applicant had accepted a new job that prevented him from doing much work, if any, on the Boat. It was also confirmed by both parties, that when the Boat was repossessed by Mr. LeBlanc on November 20, 2022, the work had not yet been completed.

[49] Given the agreement that the Boat would be completed for the 2022 boating season and given that it was reasonable for the Respondent to expect the Boat to be completed by the 2022 boating season and given that the Boat was not completed by November 2022 and the Applicant could provide no explanation or date certain whereby the Boat would be completed, I find the Applicant in breach of the agreement he entered into with the Respondent to complete work on the Respondent's Boat.

[50] With the Applicant in breach of the agreement, it now must be assessed whether the Respondent had the right to repossess the Boat and treat the contract to be at an end.

[51] In *Cherubini*, Justice Bodurtha also reviewed the law of repudiation and fundamental breach. At paras 84 to 86 he found:

> [84] Often the phrase that will be used to describe the type of breach that will give rise to the right of repudiation, is a "fundamental breach". The starting point to understanding what constitutes a fundamental breach comes from *Hunter Engineering Co v. Syncrude Canada Ltd*, 1989 CanLII 129 (SCC), [1989] S.C.J. No. 23, [1989] 1 SCR 426, where Wilson J, writing for the majority on this point, held:
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> > [147] Fundamental breach has been the subject of many judicial definitions. It has been described as "a breach going to the root of the contract" …

> [148] The formulation that I prefer is that given by Lord Diplock in *Photo Production Ltd. v. Securicor Transport Ltd.*, [1980] A.C. 827 (H.L.), at p. 849. A fundamental breach occurs "Where the event resulting from the failure by one party to perform a primary obligation has the effect of depriving the other party of substantially the whole benefit which it was the intention of the parties that he should obtain from the contract" This is a restrictive definition and rightly so, I believe. As Lord Diplock points out, the usual remedy for breach of a "primary" contractual obligation (the thing bargained for) is a concomitant "secondary" obligation to pay damages. The other primary obligations of both parties yet unperformed remain in place. Fundamental breach represents an exception to this rule for it gives to the innocent party an additional remedy, an election to "put an end to all primary obligations of both parties remaining unperformed" (p. 849). It seems to me that this exceptional remedy should be available only in circumstances where the foundation of the contract has been undermined, where the very thing bargained for has not been provided.
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> [Emphasis added]

[85] Further explanation of what conduct amounts to repudiation is discussed in *New Light Construction Ltd v. Smith*, 2020 NSSC 42, where Justice Robertson adopted the definition by G.H.L. Fridman, in *The Law of Contract in Canada*, 6th ed. (Toronto: Carswell, 2011):

> [85] Fridman, describes anticipatory breach at 585 and 586:
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> > Anticipatory breach occurs when a party, by express language or conduct, or as a matter of implication from what he has said or done, repudiates his contractual obligations before they fall due . . .
> >
> > The authorities reveal that, for this type of breach to occur the following must be established: (1) conduct which amounts to a total rejection of the obligations of the contract; (2) lack of justification for such conduct. If, to these, is added the acceptance by the innocent party of the repudiation, then the effect will be to terminate the contract. This does not mean that the repudiating party may be freed from his obligations. It simply means that the innocent party may be freed from his obligations, and may pursue such remedies as would be available to him if the breach had taken place at the time when performance was due.
>
> [Emphasis added]

[86] It should be noted that the justification Fridman refers to above, is a legal justification, not moral one. In *Doucette v. Giannoulis*, 2006 NSSC 166, there was a dispute about the purchase of a condominium unit. The defendants refused to close the transaction after the plaintiff assaulted them and threatened to burn down the property and kill them. The defendants claimed that this was a such an egregious breach of the plaintiff's good faith obligations that it amounted to a "fundamental breach" allowing them to repudiate the contract. In determining where the fault lay for the contract termination Justice Boudreau held:

> [33] Therefore, the remaining question is whether the actions of Mr. Doucette on March 29, 2005 constituted a fundamental breach of contract so as to provide legal justification for the immediate repudiation of the contract by the defendants. When I look at the formulation of the criteria for fundamental breach provided by Wilson J. In *Syncrude et al. v. Hunter et al.*, *supra*, as quoted from Lord Diplock, I am not satisfied that the event in question had "the effect of depriving the other party of substantially the whole benefit which it was the intention of the parties that he should obtain from the contract". As Wilson J. stated, "... this exceptional remedy should be available only in circumstances where the foundation of the contract has been undermined, where the very thing bargained for has not been provided."
>
> [34] In the present case the selling party is the corporate defendant and not the Giannoulis brothers personally, although they are in effect the corporate entity. The assault on Stavros Giannoulis, while reprehensible, can be addressed in litigation separately, as it has been in the present counter-claim. The corporate defendant would have received the benefit to which it was entitled upon closing of the sale, namely the purchase price. The result is that while the Giannoulis brothers may have been personally, morally and ethically able to justify refusing to deal further with Mr. Doucette, the corporate defendants were not in the same position, and for the reasons stated, they were not legally entitled to repudiate the Agreement of Purchase and Sale with Mr. Doucette. Therefore, the repudiation also constituted a breach of contract, this one by the defendants. What remedy should flow from this breach by the defendants?
>
> [Emphasis added]

[52] As can be gleaned from these cases quoted, repudiation arises out of a breach of a fundamental term of the contract such that this breach deprives the non-breaching party of "the very thing bargained for."

[53] In this case, the Respondent was waiting for the return of his Boat so he could enjoy it for part of the 2022 boating season. That did not occur and by November 2022, the Respondent was getting concerned as to when he would ever get his Boat

back in the water. The Applicant was working on a different project by then and appears to have put his work on the Boat on hold.

[54] The Applicant fundamentally breached the agreement he had with the Respondent. He did not repair/rebuild the Boat in time for the 2022 boating season, and he could provide no assurance to the Respondent as to when the Boat would be completed by. The very thing the Respondent bargained for, the return of a repaired/rebuilt Boat, was not provided.

[55] In *Capital Placement of Canada (CPC) Ltd. v. Wilson*, 1988 CarswellNS 270, the Nova Scotia Court of Appeal quoted from a Lord Denning case:

> 28 In *Harbutt's Plasticine Ltd. v. Wayne Tank and Pump Co. Ltd*., [1970] 1 All E.R. 225, Lord Denning described the remedies available to an aggrieved party at p 233 in these words,
>
> > In cases where the contract is still opened to be performed, the effect of a fundamental breach is this: it gives the innocent party, when he gets to know of it, an option to either *affirm* the contract or to disaffirm it. If he elects to *affirm* it, then it remains in being *for the future* on both sides. Each has a right to sue for damages for *past or future* breaches. If he elects to disaffirm it (ie he accepts the fundamental breach as determining the contract), then it is at an end from that moment. It does not continue in the future. All that is left is the right to sue for past breaches or for the fundamental breach, but there is no right to sue for *future* breaches.

[56] Given the actions of the Respondent is repossessing his Boat as of November 20, 2022, the Respondent disaffirmed the contract as of that date and the contract was therefore at an end by November 20, 2022.

[57] I find the Respondent did not breach the contract he had with the Applicant. Instead, the Applicant committed a fundamental breach of the contract and the Respondent chose to repossess the Boat and treat the contract at an end as of November 20, 2022.

[58] Given there was no breach of contract by the Respondent, the Applicant is not entitled to damages for breach of contract.

Issue #2 – Unjust Enrichment and *Quantum Meruit*

[59] By consent, the Applicant amended his Notice of Application to include a claim for unjust enrichment and *quantum meruit*, just before the hearing of this Application. The specifics of the claim for both were simply a request for damages – i.e. the only amendment was to the relief requested. The original requested relief said, "Awarding damages for breach of contract" and the amendment read "Awarding damages for breach of contract/unjust enrichment and *quantum meruit*."

[60] It is well-established that a claim for unjust enrichment requires the applicant to establish three things – that the defendant/respondent has been enriched, that the applicant/plaintiff has suffered a corresponding deprivation and that the benefit and corresponding detriment must have occurred without a juristic reason.

[61] It is further well-established that a juristic reason can be the existence of a contract, such that unjust enrichment is not available when the claim relates to a breach of contract. Specifically, in *The Canadian law of Unjust Enrichment and Restitution*, (Toronto: LexisNexis, 2014) Professor McInnes outlined at p. 645:

> Contract trumps unjust enrichment in several respects. Most obviously, restitutionary relief is not available if the claimant possesses a right to contractual relief.

[62] Similarly, many cases have recognized the need to plead alternate facts if unjust enrichment is pled as an alternate cause of action. In *Organigram Holdings Inc. v. Downton*, 2020 NSCA 38, Bryson, J.A. stated:

> [48] One may plead facts and related legal consequences that are inconsistent, in the alternative (*Mahoney v. National Bank Financial Ltd*., 2005 NSCA 139 at ¶15). But one cannot plead inconsistent causes of action from common facts. One needs to plead the facts material to the causes of action claimed (*Canada (Attorney General) v. MacQueen*, 2013 NSCA 143 at ¶55).
>
> [49] Here Ms. Downton has pleaded facts material to a breach of contract. Those facts cannot simultaneously sustain an unjust enrichment claim. Where Ms. Downton explicitly refers to unjust enrichment, she fails to plead facts material to that claim.

[63] The Applicant provided the Court with the decision of *Kerr v. Baranow, 2011* SCC 10 in their Book of Authorities. That case specifically referenced that the existence of a contract could be the juristic reason an unjust enrichment claim would fail as there is deference given to "the right of parties to order their affairs by contract" (see para 41.)

[64] In this case, a contract existed between the parties. The facts as pled and provided for in the evidence all relate to the existence of and the particulars of that

contract. No alternate facts were pled. The claim for unjust enrichment is not established and the claim for damages relating to unjust enrichment is dismissed.

[65] The issue of *quantum meruit* is somewhat different. In *Thorne v. Pointon,* 2021 NSSC 293, the Court stated:

> [29] *Quantum meruit* is an equitable doctrine meaning "the amount one has earned". It is based on the notion that, where one party receives a benefit from the work or services of the other that was not performed gratuitously, the benefiting party ought to compensate the other party for the work done. There are two streams of *quantum meruit* cases – cases based on contract, and cases based on a quasi-contractual promise, also known as restitutionary or unjust enrichment. The Northwest Territories' Court of Appeal in *McElheran (cob Gord-Mar Enterprises) v. Great Northwest Insulation Ltd*, [1994] NWTJ No 66, explained the distinction as follows:
>
> > 6 There is a distinction between a quantum meruit claim based on purely restitutionary or unjust enrichment grounds and a claim based on a contract but where some aspect of it is not provided for in the agreement between the parties. The first type of claim is said to be quasi-contractual, since no contract exists. The second is truly contractual in nature as its foundation is the agreement between the parties.
> >
> > 7 ***In most contract litigation, in the event of repudiation the innocent party may sue for damages or claim quantum meruit for the value of the services rendered prior to repudiation.*** This may result, in the case of an unprofitable bargain, in higher recovery under a quantum meruit basis for part performance than what would have been paid for complete performance. In this case, however, the respondents put forth a claim on the basis of the full contract price plus extra work on a quantum meruit basis. The trial judge held that the claim for extra work was not recoverable since the respondents could have left the job site earlier and since they should not be able to seek payment for partial completion which would result in receiving more than the total fixed price they had agreed to in the contract.
> >
> > 8 We agree with the trial judge that a true quantum meruit claim (based on restitutionary principles) is incompatible with a contractual damage claim. They are in essence alternative claims. Quantum meruit claims of a contractual nature are, however, in a different category. They are, to use other terminology, claims for "extras" flowing from the contract but not specifically provided for in the contract. The trial judge found as a fact that the various breaches of its obligations by GNI resulted in delays and

> additional work for the respondents. These breaches therefore led to damages. One does not need to put it in quasi-contractual terms.
>
> [Empasis Added]

[66] In this case, the contract was repudiated but by the Respondent. The Applicant is not the innocent party in this matter as he committed the fundamental breach.

[67] Having said that, the Applicant could still advance a claim on the basis of restitutionary principles. However, he would need to establish that either (1) he performed work outside of the terms of the contract or (2) he was not compensated within the terms of the contract for the work performed prior to his fundamental breach.

[68] There is no evidence before me that Mr. Dares did any work outside of the terms of the contract. In this case, I found as a fact that the contract terms relating to price was that Mr. LeBlanc would pay $7,000 to $7,500, inclusive of materials. Mr. LeBlanc, as of November 20, 2022, had paid $6,592.61 to Mr. Dares for labour and materials. This is approximately 90% of what the total set price. Mr. Dares' own evidence was that the Boat was approximately 90% complete when Mr. LeBlanc took the Boat back and proceeded to complete the work himself.

[69] Given it appears on the evidence that Mr. Dares was appropriately compensated for the work he performed on the Boat, in keeping with the terms of the contract, I see no basis to make any award for damages based on *quantum meruit.* The claim for damages for *quantum meruit* is dismissed.

Issues 3 & 4 – Liability for damage to property and compensation, if liability established

[70] The Applicant claims for damages incurred to the boat shed as a result of the Respondent and his son removing the back wall to extract the Boat. The claim requests relief "declaring that the Respondent has engaged in intentionally malicious or negligent activity which has resulted in property damage to the Applicant…"

[71] The Applicant had led nothing by way of evidence to establish what happened with the boat shed. There were no photos and no evidence of damage to the actual materials used to erect the boat shed. Instead, there was evidence that these materials were already in the possession of the Applicant and remain in the possession of the Applicant with no evidence of damage.

[72] There was also no evidence that the Respondent and his son acted maliciously or negligently in removing this back wall and leaving the materials beside the boat shed. Again, the evidence led was that some of the materials had to be removed to

allow the Respondent to extract his Boat. He and his son indicated they removed the materials carefully and placed them beside the boat shed.

[73] Given the lack of evidence to establish any malicious or negligent act that caused any type of damage, the claim for a declaration and damages for property damage is dismissed.

Conclusion

[74] Doing business with family can be difficult. As such, clearly agreeing in advance to the terms of any business arrangement is imperative.

[75] Here the parties agreed to a business arrangement whereby the Applicant would repair/rebuild the Respondent's Boat. He would do so for $7,000 to $7,500, inclusive of materials, and would work toward completing the work in time for the Boat to be ready for the 2022 boating season.

[76] On November 20, 2022, when the work on the Boat was still not completed and the Respondent had paid $6,592.61 for such work, the Respondent took back his Boat, thereby declaring the contract to be at an end. Given the work was not done within the time contemplated and with no assurance the work would be done in a reasonable time, the Respondent was well within his right to repudiate the contract. Given the Applicant had received approximately 90% of the total agreed to price and

given the Boat was approximately 90% complete, the Applicant is owed nothing further from the Respondent.

[77] The Applicant's claims are dismissed in their entirety with costs payable to the Respondent. Should the parties not be able to agree on costs, written submissions can be forwarded as follows: Respondent submissions within 4 weeks of the date of this decision; Applicant submissions within 5 weeks of this decision and any reply from the Respondent within 6 weeks of this decision.

Kelly, J.