

Citation: ☀



Date: ☀  
File No: 46103  
Registry: Penticton

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
SMALL CLAIMS DIVISION**

BETWEEN:

**0834866 B.C. LTD.**

CLAIMANT

AND:

**RORY O'LEARY**

DEFENDANT

**REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE S.K. KEYES**

Counsel for the Claimant:

J. Kidston; L. Richardson

Appearing on his own behalf:

R. O'Leary

Place of Hearing:

Penticton, B.C.

Dates of Hearing:

August 10, 11, 12, 2022

Date of Judgment:

December 6, 2022

## INTRODUCTION

[1] The claimant 0834866 B.C. Ltd., doing business as SWC General Contracting ("SWC" or the "claimant"), was initially hired by Mr O'Leary (or the "defendant") to excavate and install a foundation. SWC prepared a contract specifying the scope of the work, as well as payment terms and conditions, including provisions regarding charges for any additional work requested by Mr O'Leary (the "Contract"). Mr O'Leary asked SWC to do additional items of work not specified in the Contract, which SWC performed. Mr O'Leary made some payments as the project progressed, but has refused to pay the balance claimed by SWC. SWC seeks to recover the balance claimed, plus interest and costs. SWC seeks to recover on the basis of the contractual terms, or alternatively, with respect to the work items not expressly covered by the Contract on the basis of *quantum meruit* and unjust enrichment.

[2] Although he does not deny that SWC did all the work claimed, Mr O'Leary opposes paying the amounts claimed and counterclaims for the cost of some remedial work to the siding of the house, which he says resulted from SWC incorrectly sizing the foundation, and for some voids in the concrete around some basement windows. He opposes paying for the work because it is more than an original estimate provided by SWC several months prior to the commencement of the project, which was only for a portion of the work. Mr O'Leary did not accept that estimate, nor did he hire SWC at that time. Mr O'Leary also claimed he opposed paying for the work done because he did not understand the statements of account that SWC provided to him and because SWC had not provided him, at the time, with the backup documents to explain the expenses claimed.

## EVIDENCE

[3] The claimant called three witnesses. The first was Deborah Belden, who was the bookkeeper for SWC at the time in question, although she did not work for SWC at the time of trial. She testified that SWC used a bookkeeping system called "QuickBooks Online" for its invoicing. She testified that Mr Callaghan, the principal of SWC, meticulously kept all the expenses related to any given project in a folder. She testified

that Mr Callaghan prepared the invoices himself, but provided her with the folder of receipts periodically, after he had issued an invoice, whereupon she or another bookkeeper who worked for her would enter them into the bookkeeping system. She said there were no changes to the totals of the invoices as a result of entries made by herself or her assistant, but the allocation of the expense within the system might change when they were entered, for bookkeeping purposes.

[4] Ms Belden testified that the QuickBooks Online system allows the person preparing the invoices to add to or amend them and with the click of a button, QuickBooks can also email the invoice to the client. A difficulty is that the system does not keep the original invoices which have been later amended; it only keeps the most recent version. Thus, although a client may have obtained and printed the copies received by email, SWC's actual bookkeeping system did not keep copies of those invoices, only the newest one. Ms Belden also testified that she had prepared a spreadsheet called an "audit trail" of the dates the entries were made into the system and by whom. The audit trail also indicates when invoices were sent to the customer (whether deliberately or inadvertently), the dates on which the invoices were viewed online by the customer and how often.

[5] The audit trail in this case indicates that although Mr Callaghan sent invoices in September and October, the first invoice viewed online by Mr O'Leary was sent November 2, 2020 and viewed by Mr. O'Leary on November 5, 2020 at 1:56 pm. Mr O'Leary viewed another revised invoice online on November 8 and 9, 2020, which was sent November 5, 2020; and a further revised invoice sent November 12, 2020, viewed online by Mr O'Leary that evening and the following morning. It appears there was one additional revised invoice sent December 2, 2020, which was viewed online by Mr O'Leary on December 7, 2020.

[6] The next witness called by the claimant was Shawn Friesen, a construction labourer who worked for SWC for nearly six years, although he was not working there at the time of trial. He testified that he worked on Mr O'Leary's project for approximately two months, from the very beginning when the ground was undisturbed. He worked on

the excavation, forms, insulated concrete form ("ICF") block placement, framing-in windows and other openings in the foundation, placing rebar, adding and packing rock backfill, pouring concrete and vibrating concrete within the ICFs. He also stripped the wooden forms from the project. He was asked whether there were any voids in the concrete within the ICF forms. He confirmed that he saw one void under a window when he stripped the wood from that area, but testified that such voids are commonplace and easily fixed. He did not recall whether it was fixed before he left the site.

[7] Mr Friesen confirmed that everything on the list of items included in Schedule "A" to the Contract was work that was performed at the project, in addition to running the electrical and water lines and pouring a concrete basement floor.

[8] Mr Callaghan testified. He is the principal of SWC. He is a general contractor who has been in operation since 2011. He has also been a supplier of ICF blocks for six or seven years. He said he received a call from Mr O'Leary in the spring of 2020. Mr O'Leary wanted to have a foundation constructed on a lot he owned in Penticton and to have the upper floor of a house moved onto it from Summerland. Mr O'Leary told Mr Callaghan the size of the house and Mr Callaghan provided an estimate, dated April 21, 2020, for excavating, ground compaction, ICF blocks, radon pipe and rock, sealing, concrete for the footings, ICF foundation and slab, and a pumper truck. The total was \$29,672.66. It notes that there would be extra charges for site delays and permits.

[9] Mr Callaghan explained that he gave that estimate based on his general knowledge of such a project, on the basis of the prices current at that time. The size was provided by Mr O'Leary – he did not do any measurements. He provided this estimate to Mr O'Leary just to help him out with an approximate cost. He did not know whether Mr O'Leary had obtained the appropriate permits for the project. Mr Callaghan testified that the prices for concrete and other materials significantly increased after that estimate was done, due to increasing demand during the summer building season.

[10] Mr O'Leary did not proceed further on the project at that time. Mr Callaghan first met Mr O'Leary and his spouse on June 14, 2020 to discuss the project. Mr Callaghan went with Mr O'Leary to the house in Summerland that he was hoping to move onto a

foundation. Mr Callaghan measured the house as best he could. He said it was difficult to get exact measurements because there was a protruding fireplace on one side of the house and a garage on the other side.

[11] Mr Callaghan said that he and Mr O'Leary discussed the project. He said Mr O'Leary was in a real crunch for time and was from out of province, which made things more difficult for him. Mr Callaghan said there were too many unknowns about the project for Mr Callaghan to give him a fixed price. For example, Mr O'Leary did not have any permits or engineers' reports which would determine site requirements.

[12] Because of the unknowns about the project, the parties decided it was best to do a "time and materials contract". Mr Callaghan prepared the Contract. According to Mr Callaghan, he also prepared a Schedule "A" to detail the scope of work that was included and a Schedule "B" to deal with things that were not included. Schedule "A" and "B" provide the following:

Schedule "A"

Included in the scope of work.

Removal and storage of all foundation soil dug out, on site.

Supply and installation of all materials for perimeter and strip footing 18" by 8".

Installation of tubes under footing for service install at a later date.

Installation of our Superform ICF blocks and rebar as required for 8' foundation wall.

Supply and install wood block outs for window and door opening.

Supply and install concrete for footing and icf wall.

Strip all wood forms and remove from site.

Schedule "B"

Not included in scope of work and/or estimate.

Pump or line trucks for concrete placement if required.

Engineering or other professional services.

All extras to be charged as per contract

[13] Other pertinent provisions of the Contract are the following:

1 **THE CONTRACT DOCUMENT CONSISTS OF THE FOLLOWING:**

...

Discrepancies and omissions in the contract documents, site conditions, etc., and any work requested in variance of the contract documents are considered an extra to the Contract and are not included in the Contract Price. Any additional work required due to site conditions not disclosed to the Contractor, or which could not be reasonably anticipated, are not included in the Contract Price and shall be an extra to the Contract Price.

...

4. **TERMS OF PAYMENT**

(a) The Contract Price shall be a standard Time and Material plus 10% and GST/PST. (GST/PST is not included in the Contract Price and shall be paid on each payment extra to the Contract Price). Payments shall be due and payable as follows:

i) Upon signing the Contract DEPOSIT	\$8,000.00
ii) Upon completion of excavation, compaction and footing.	\$8,000.00
iii) Upon completion of ICF and radon.	\$8,000.00
iv) Upon completion of floor slab and foundation framing.	\$ final invoice
<b>TOTAL ESTIMATED CONTRACT PRICE</b>	<b>\$26,500.00</b>

(b) All payments are subject to applicable legislation and shall be made in accordance with provisions of this Contract and the provision of any applicable legislation. All payments are to be made to the Contractor and not to sub-contractors. Any payment made to a subcontractor shall not be deemed payment to the Contractor.

(c) Remaining portions of the alterations will be made at the same contract rate and will be over seen by SWC General Contracting. Requests made by the owner were; supply and install windows in foundation, rebuilding front porch area by design, repairs to exterior and finishing of basement area.

...

(e) Interest of 2.5% per month shall be charged on overdue payments.

...

12. **DEFAULT BY OWNER**

If payment of any of the amounts to be paid to the Contractor are not made at the time specified, or if the Owner defaults in any of the other covenants or agreements, the Contractor may, at its option, cease work and treat the contract as repudiated forthwith on the occurrence of such default, and the Contractor may recover payment for the work already

completed plus damages, including loss of profit together with interest thereon at the same rate of interest as on overdue payments.

...

#### 15. DISPUTE RESOLUTION

The parties agree that in the event that there is a dispute as to the interpretation of this Contract, or as to the extent and makeup of the Work, then the parties shall submit the issues to binding arbitration by one arbitrator to be chosen by the parties to this Contract. The Arbitration shall be carried out in such manner as the parties may agree.

...

[14] Mr Callaghan said his practice is to prepare a contract and send it by email to the customer and that he followed that practice in this case. The Contract was dated June 26, 2020, but signed by the parties on July 2, 2020. After Mr O'Leary had time to review it, they met at the Trout Creek site (where the house to be moved was located) and signed the Contract. However, it is clear from Mr Callaghan's timesheets prepared contemporaneously, he had already begun work on Mr O'Leary's project prior to the Contract being signed.

[15] Mr Callaghan testified that here were a lot of extras with this project, because it became apparent that Mr O'Leary had not obtained any permits from the City of Penticton and he had not done drawings or plans or obtained the engineering certifications required to obtain the permits. Mr Callaghan said that Mr O'Leary asked him to attend to all of these things because Mr O'Leary was from out of province and did not have a lot of time to dedicate to this project. Additionally, Mr O'Leary had a hard date for the move of the Trout Creek house to the Penticton property, so there was a severe time shortage.

[16] Mr Callaghan acted as agent for Mr O'Leary with respect to the permit process. He drafted up drawings, acquired a soil engineer and a structural engineer as required by the city, paid deposits to those professionals, acquired a surveyor to survey the walls of the house and to certify that the placement of the house was true and accurate as per the building permit. Another change was that Mr O'Leary decided he wanted the basement walls to be 9' high instead of 8' high, which required that the foundation

footings had to be 24" wide instead of 18" wide. The taller walls meant additional rebar and concrete and an additional tier of ICF blocks were required.

[17] Mr O'Leary also requested that Mr Callaghan excavate (and backfill) a new water line from city property to the furnace room, prepare the electrical and water and sewer rough-in for the basement bathroom and furnace room and place and finish a new concrete floor for the basement. The engineers also required that a footing drainage system be installed and a rock pit be created on site for drainage.

[18] Mr O'Leary increased the number of windows, which meant additional work to frame each of them. Mr Callaghan testified that the structural engineers also required changes to the roof trusses and gables on the house, as required by the city. Mr Callaghan provided to the court invoices and timesheets to verify all of the time and materials he spent on this project.

[19] Mr Callaghan acknowledged that there were some deficiencies in the project, specifically some voids under two or three of the windows. The voids were easily fixable. He explained that he had planned to fill those voids a short time later when he was having cement delivered to another project he had nearby. That way, he reasoned, he could save Mr O'Leary the cost of a separate delivery of concrete just for the window voids. He also said that the rock pits required by the geotechnical engineers had not yet been constructed by the time he left the job site.

[20] Mr Callaghan testified he did not feel comfortable doing more work on the site after mid- September because Mr O'Leary had not paid him. He testified that Mr O'Leary asked him to hold off for another month, but then refused him access to the site. Before the relationship between Mr Callaghan and Mr O'Leary had completely broken down, Mr Callaghan was continuing to meet with sub-trades to obtain estimates for doing additional parts of the project that Mr O'Leary wanted. It was only when he drove by the project and saw other tradesmen working there that he realized he was no longer engaged on the project.



[21] Mr Callaghan believes the voids under the windows were fixed because he knows that the property was sold, which would have required that his work was inspected for the permits to be closed.

[22] Mr Callaghan testified that in August 2020, he gave Mr O'Leary copies of the invoices and expenses he had incurred to that date. There were other invoices that came in after he was no longer on the job. Mr Callaghan said he provided copies of those to Mr O'Leary as well. He said Mr O'Leary became very aggressive with him when he provided the folder of invoices and felt he could not deal with him in person after that. However, Mr O'Leary was not satisfied with receiving copies of expenditures; instead, he wanted a tabulation of all the expenditures in a spreadsheet format. Mr Callaghan testified that he considered asking his bookkeeper to do that, but he thought Mr O'Leary could pay his own bookkeeper to do that instead.

[23] Mr O'Leary asked in November 2020 if they could have their dispute mediated. Mr Callaghan believed this was simply a delay tactic in an effort to get beyond the 45-day limit for the placement of a builder's lien. It is clear from the text messages between the parties that their relationship had completely broken down by early November 2020. Mr Callaghan further explained that by the time he had filed a builder's lien and commenced this litigation, things had gone well beyond mediation. He further explained that paragraph 15, the "dispute resolution" provision of the Contract, refers to situations where specific products expected cannot be, or are not, supplied to a project. It is not intended to deal with non-payment of invoices.

[24] Mr Callaghan testified that he has received \$26,450 from Mr O'Leary for this project. A handwritten document produced in court, which Mr Callaghan agrees he wrote, shows several items described as payments/deposits made by Mr O'Leary, in the amounts of \$5,000, \$4,000 and \$10,000. There are also notations of "\$7,450" and "\$3,650 Mike" and "\$11,100". Mr Callaghan agreed that Mr O'Leary had brought him an envelope filled with \$11,100 in cash. Mr Callaghan did not recall whether Mr O'Leary paid "Mike" directly, or whether he did it himself, but he agrees that \$3,650 went to Mike and the balance of \$7,450 he put into his bank account. The amounts of \$5,000,

\$4,000, \$7,450, and \$10,000 shown on the handwritten document that were deposited to SWC's bank account, total the amount credited to Mr O'Leary as payments on the SWC invoices, in the amount of \$26,450.

[25] Mr Callaghan testified the total amount owing for all the work done, shown on his invoice to Mr O'Leary dated September 20, 2020, was \$57,472.90, plus an additional amount of \$2,181 in plumbing invoices that came in after that invoice was issued. The total therefore outstanding according to Mr Callaghan is \$33,203.90, plus contractual interest owing thereon to the date of payment.

[26] Mr O'Leary was the sole witness for the defence. He testified that he could not understand why the final bill was so much higher than the "estimate" Mr Callaghan had given him in April 2020, although he acknowledged that the scope of the work had changed since that initial estimate was given and that the "estimate" did not include nine- foot walls, additional windows, obtaining permits nor all the engineering and other work that was required to get permits.

[27] Mr O'Leary acknowledged that he asked Mr Callaghan to do extra work and changes on the project, including taking over the permitting of the project, which involved getting engineers and geotechnical reports and all the other items described by Mr Callaghan. Mr O'Leary agreed that Mr Callaghan had in fact done all the extra things he described, at his request. He also said he had no problem with Mr Callaghan's work, aside from the items mentioned in the counterclaim. He admitted that he knew there was a provision for interest on unpaid bills in the Contract.

[28] Mr O'Leary testified that after all the expenses he paid for the project, when he sold the home, he made about \$250,000 to \$300,000 profit on the project.

[29] Mr O'Leary said there is a discrepancy in Mr Callaghan's accounting regarding the amounts Mr O'Leary paid towards this project. The amount in question is \$3,650 that Mr O'Leary says he paid directly to an excavating contractor, rather than giving the funds to Mr Callaghan to pay the excavator. Mr O'Leary suggested that Mr Callaghan had not taken that direct payment into account when he calculated the amounts paid by

Mr O'Leary, to be credited to his account, but Mr Callaghan stated that he did take it into account, as I mentioned earlier.

[30] Mr O'Leary asserted repeatedly that he wanted to make use of the dispute resolution provisions in paragraph 15 of the Contract to work out his concerns with respect to the cost of the project and he faulted Mr Callaghan for not engaging in dispute resolution as provided in that paragraph. He denied being offered any opportunity to pursue arbitration. He claimed not to have understood that at the Settlement Conference held September 16, 2021, the court specifically granted him the opportunity to seek a stay of this litigation so that he could pursue arbitration. In any event, he chose to proceed with this litigation instead.

[31] Mr O'Leary claimed in his counterclaim that he paid \$5,000 to repair the deficiencies. In his testimony, he said labour and materials worked out to about \$5,000, but then said he got a very good deal on it – and did not have any receipts. He said he was not sure how he came up with that amount.

[32] With respect to the counterclaim, Mr O'Leary complained of two problems. The first was that there were some voids under the windows that had to be filled. He admitted that he would not allow SWC onto his property in order to fix them. He said he fixed them himself “much cheaper” than SWC would have done it. He did not recall when he fixed the voids and he provided no receipts or invoices from anyone with respect to fixing them.

[33] The other item Mr O'Leary complained of was that when the house was placed on the foundation walls in October 2020, the concrete walls extended about 1.5 inches beyond the actual front wall of the house, so it was necessary to add some strips to the front of the house wall to which the siding was to be attached, in order to have the siding fit with the basement wall. After questions from the court about that, he eventually testified that maybe \$1,500 was a more accurate number for “two days of work, scaffolding and foam application four hours”. However, Mr O'Leary acknowledged he was re-siding the whole house. He later said he was at the court's discretion regarding damages in the counterclaim.

## DISCUSSION

[34] Mr O'Leary says that he should not be obliged to pay Mr Callaghan any more than the amount stated in the initial estimate from April 2021. The estimate in question did not contemplate getting permits, engineering reports and surveys, or indeed, the changes to the project itself – such as nine-foot walls, roughing in plumbing and electrical, drainage channels, etc. The estimate from April 2021 was not incorporated into the Contract that Mr O'Leary actually signed.

[35] Thus, the difficulty with Mr O'Leary's position is that it ignores the fact that he entered into a different contract with SWC for the work and that the scope of work was not the same as the April estimate. Practically and legally speaking, the April estimate is completely irrelevant.

[36] What is more to the point is that Mr O'Leary has paid \$26,450, which is very close to the \$26,500 required for the completion of the Schedule "A" amount in the Contract between the parties. He argues he should not have to pay any more than that, despite all the extra work performed was not included in Schedule "A", which included nine-foot walls, 24" footings, additional windows, roughing in plumbing and electrical, installing drainage channels and the pouring and finishing of the basement floor, etc.

[37] With respect to paragraph 15 of the Contract, the "dispute resolution" provision, I agree with Mr Callaghan that this provision does not apply to this situation. Mr O'Leary does not dispute how to interpret the Contract nor the extent and makeup of the work, which are the two situations to which this provision applies. Mr O'Leary cannot rely on this provision to force arbitration of his refusal to pay the amount owed under the Contract or as extras to the Contract.

[38] With respect to the payment to "Mike" of \$3,450, I have reviewed all of the invoices and receipts presented by SWC which were included in the expenses charged to Mr O'Leary's project, which collectively represent the out-of-pocket expenses of SWC on this project. There are no invoices from "Mike" totalling \$3,450, nor invoices showing that amount as a deposit. The only invoices I found relating to excavating were from Grizzly Excavating, for significantly smaller amounts. I conclude that the excavating

work by "Mike", paid in cash by Mr O'Leary, was not billed to Mr O'Leary by SWC. (Possibly, having received a cash deposit, "Mike" did not bill for the work comprising that amount.)

[39] I also note that Paragraph 4(b) of the Contract between the parties specifically provides that any amount paid to sub-trades directly by the owner will not be credited as payments to SWC. I find that the payment made by Mr O'Leary to Mike was *not* also charged to him by SWC. It was simply an expense Mr O'Leary chose to deal with personally. I find the payment to "Mike" by Mr O'Leary cannot be credited to Mr O'Leary against what he owes to SWC.

[40] While I accept that the QuickBooks invoicing system used by SWC was rather confusing, Mr Callaghan provided all the invoices in his possession to Mr O'Leary early on. Mr O'Leary could have looked at them and picked out whatever ones he disagreed with, but nothing in his evidence indicates he did so. He could have added them up and disputed the total, but he did not do that. He could have picked out the ones that he absolutely knew were extras – that is, that he knew were not included in the Contract, such as all the survey and engineering invoices, and paid those, but he did not do that either. If he were genuinely willing to pay for the extras he asked for, he would have done that, but he did not. He simply did not pay.

[41] I find Mr O'Leary's position is entirely untenable. He admitted that he asked SWC to do lots of extra work for him that was not in the Contract and that SWC did as he asked. He cannot both admit he requested and received many thousands of dollars of extra work but at the same time insist he should not have to pay for it. I find his requests to have the expenses "explained" to him and "listed" for him were not based on any genuine desire to be enlightened; he could have just looked at them if he wanted to be enlightened. I find his request for a listing of the expenses was just a tactic to put off paying what he knew he owed.

[42] With respect to the deficiencies claimed by Mr O'Leary, I note that Mr O'Leary pleaded in his reply that he had paid \$5,000 to remedy the deficiencies, but in his evidence he provided no support of that whatsoever and eventually gave an estimate

that the cost to him of remedying the deficiencies might have been \$1,500. I find Mr O'Leary grossly exaggerated the cost of the deficiencies. With respect to filling the voids under the windows, if Mr O'Leary filled them when he was doing other concrete work as he indicated he did (and as Mr Callaghan suggested he had intended to do), then Mr O'Leary would have paid almost nothing to fill those voids.

[43] With respect to the "furring out" of the wall, I do not accept Mr O'Leary's estimate that it would have taken 2-2.5 days. I note that Mr O'Leary was re-siding his house in any event, so the scaffolding and foam would have been necessary expenditures for that process. The application of furring strips alone would, in my view, take very little time. The claimant estimates that deficiency would be worth approximately \$200. I accept that estimate as reasonable.

[44] I have considered the evidence presented by SWC with respect to the work performed, the hours of labour expended by SWC employees and the expenses paid by SWC with respect to this project. Mr O'Leary has not disputed a single invoice nor does he dispute the hours of labour billed by SWC. I find that the labour was properly expended and expenses were properly attributed to this project, all at the request of Mr O'Leary.

[45] I find that Mr O'Leary was enriched by the time and material put into the project by SWC. He admitted that he made a profit of \$250,000 to \$300,000 on the project, after all the expenses he paid (except obviously what he owed SWC). The only question remaining is whether the claimant should be compensated on the basis of *quantum meruit* (reasonable value of the work done) and unjust enrichment, or pursuant to the provisions of the Contract between the parties.

[46] The Contract made by the parties specifically refers to the method by which additional work is to be paid. Paragraph 4(c) provides that "Remaining portions of the alterations will be at the same contract rate and will be over seen by SWC General Contracting". As if this was not clear enough, Schedule "B" states: "All extras to be charged per contract".

[47] I find Mr O'Leary fully understood that for any extras, he would be charged as stated in the Contract for time and materials plus 10% and GST/PST, in addition to interest on unpaid amounts. Mr O'Leary admitted as much.

[48] As I mentioned before, there was no suggestion that any of the work performed or expenditures made by SWC on the project were done unnecessarily or without authorization by Mr O'Leary. There is no reason to depart from the agreement of the parties, which was to treat Schedule "B" "extras" in the same fashion as work performed under Schedule "A". I find the provisions of the Contract with respect to extras govern the payments to be made for the extra work done in this case; in other words, treat them all the same.

[49] I find that the following calculations indicate the amounts due, as follows:

Total invoiced amount:	\$57,472.90
Plus additional plumbing invoices:	+ \$2,181
Less cost to remedy deficiencies:	- \$200
Less total paid on SWC accounts by O'Leary:	- <u>\$26,450</u>
<b>Total:</b>	<b>\$33,003.90</b>

[50] According to paragraph 4(e) of the Contract, interest is payable on unpaid amounts at 2.5% per month. The invoice seeking \$57,472.90 (less amounts paid) was sent to Mr O'Leary on September 24, 2020. It provided interest was payable on outstanding amounts from 30 days after the invoice date. I find interest is therefore payable by Mr O'Leary to SWC from October 24, 2020 to today's date at 2.5% per month, on the sum of \$33,003.90, to be calculated by the Registrar.

## DECISION

[51] The defendant Mr O'Leary must pay \$33,003.90 plus interest at 2.5% per month calculated from October 24, 2020 to the present, to the claimant. The defendant may address the court under Rule 11(2) within 30 days of the date of this order regarding whether he requires time to pay; otherwise, he must pay the claimant forthwith.

[52] The claimant acknowledged that their calculations of the interest owing, to the date of submissions, amounted to \$16,476.95. The total of the interest to that date plus the claim as allowed would be in excess of the Small Claims Court jurisdiction. The claimant waives any such portion of the claim.

[53] The claimant is entitled to reasonable costs to be calculated by the Registrar.

[54] The counterclaim by the defendant is dismissed.

[55] I was informed by the claimant after closing submissions were made that the claimant wished to address me after my decision was rendered with respect to the application of Rule 10.1 of the *Small Claims Rules* to this case. I grant the claimant leave to do so and direct the Judicial Case Manager to fix a date for the parties to appear before me, should the claimant seek to do so.

  
The Honourable Judge S.K. Keyes  
Provincial Court of British Columbia