CITATION: Forrest Estates Homes Sales Inc. v. Verhoog Properties Inc., 2026 ONSC 44
COURT FILE NO.: CV-24-3885
DATE: 2026-01-05

SUPERIOR COURT OF JUSTICE - ONTARIO

RE:	Forrest Estates Home Sales Inc.	Applicant
	AND:	
	Verhoog Properties Inc.	Respondent

BEFORE: Moore J.

COUNSEL: Matthew Jantzi, Counsel for the Applicant

Qasim Kareemi, Counsel for the Respondent

HEARD: September 10, 2025

ENDORSEMENT

Overview

[1] This is an application under rule 14.05(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to determine whether the Respondent should pay the Applicant a contractual payment in the sum of $1,000,000. Specifically, this court must determine the scope of the remediation work that the Applicant was contractually required to complete before receiving the payment.

[2] On March 25, 2025, the parties entered into an agreement of purchase and sale ("APS") for a property located at 35791 Bayfield Road in Bayfield, Ontario (the "Property") in the amount of $4,600,000.00, which included a campground.

[3] As part of the sale, the Applicant loaned $3,375,000.00 to the Respondent in the form of a vendor-take-back charge ("VTB"). A term of the VTB required the Respondent to make a lump sum payment of $1,000,000 (the "Balloon Payment") by either April 1, 2023, or 30 days after remediating outstanding fees, fines or work orders issued by government authorities.

[4] The purchase closed on June 2, 2022. The VTB was registered on June 3, 2022.

[5] The central issue in dispute is whether the Applicant completed the work required to satisfy the condition and trigger the release of the Balloon Payment.

[6] The Applicant takes the position that it fulfilled the condition and that the Respondent is required to make the lump sum payment. The Respondent maintains that the condition requires the completion of ongoing and outstanding work orders by the Ausable Bayfield

Conservation Authority ("ABCA"). Until the Applicant completes that work, the condition has not been satisfied and the lump sum payment is not due.

The Disputed Remediation Term

[7] Clause 23(a) of the VTB contains the disputed remediation term, which reads as follows:

> **23(a) The Seller agrees to pay any outstanding Ministry of Environment and Climate Change, County, Municipal, Conservation Authority, Health Unit or any other party any fees or fines to make the property compliant with these above noted Agencies/Authorities. The Seller also agrees to complete any work orders or remedial work ordered by the above Authorities/Agencies at the Seller's expense. The Purchaser and Seller agree that in the event the Seller does not pay or remedy the above noted items within six months after closing, then the Purchaser will do so but at a deduction to the principal amount remaining in the Vendor Take Back mortgage.**
>
> 23(b) The Seller agrees to take back a first Charge/Mortgage in the approximate amount of Three Million Three Hundred Seventy Five Thousand ($3,375,000) bearing interest at the rate of three (3%) per cent per annum, amortized over 25 years, calculated semi-annually not in advance, repayable as follows:
>
> i) In blended monthly payments of principal and interest of Sixteen Thousand Four Dollars and Sixty-Three Cents ($16,004.63) with the first such payment to be due and owing one month following the completion of the transaction. The said Charge/mortgage will have a five year term. The Purchaser will grant additional security of a general assignment of rents to be registered over the Property and a personal and unlimited guarantee of Adam Verhoog. The charge shall be due in full upon the transfer of the lands in any form, subject to the claim for set off of the Purchaser as set out in paragraph 23(a).
>
> **ii) The Purchaser shall make a lump sum principal payment of one million dollars ($1,000,000) due on or before the later of April 1, 2023 or 30 days following the completion of the remediation work contemplated I (sic) paragraph 23(a) above.**
>
> …further clause about storage of Vendor equipment and use of shop for maintenance and repair of equipment. [Emphasis added.]

Background Facts

[8] The Applicant, Forrest Estate Home Sales Inc. ("Forrest"), is an Ontario corporation which carries on business primarily in Bayfield, Ontario. At the time of the APS and final amendment, Kenneth Hughes ("Hughes") was the principal and directing mind of Forrest. Ida Marie Hughes ("Marie") is presently the directing mind of Forrest. Cheryl Masson ("Masson") from Little Masson & Reid Professional Corporation acted as counsel for Forrest for the APS and VTB negotiations.

[9] The Respondent, Verhoog Properties Inc. ("Verhoog"), is an Ontario corporation operating out of Lucan, Ontario. Adam Verhoog ("Adam") and Sarah Verhoog ("Sarah") are the directors and operating minds of Verhoog. Quinn Ross ("Ross") from the Ross Firm Professional Corporation acted for Verhoog for the APS and VTB negotiations.

[10] On or about March 25, 2022, Verhoog and Forrest entered into an APS for the Property.

[11] On March 31, 2022, Verhoog and Forrest executed an amendment to the APS (the "First Amendment"). Following the First Amendment, there was significant correspondence between the parties with regard to further amendments.

[12] The First Amendment read:

> 23. The Seller agrees to take back a first Charge/Mortgage in the approximate amount of Three Million-Three Hundred Seventy Five Thousand $3,375,000, bearing interest at the rate of 3% per annum, amortized over 25 years, calculated semi-annually not in advance, repayable in blended monthly payments of principal and interest of Sixteen Thousand Four Dollars ($16,004.63), and to run for a term of five (5) year from the date of completion of this transaction. The Buyer will have the option to renew this charge/mortgage on the same terms for one (1) additional one (1) year term.
>
> The Seller agrees to pay any outstanding Ministry of Environment and Climate Change, County, Municipal, Conservation Authority, Health Unit or any other party any fees or fines to make the property compliant with these above noted Agencies/Authorities. The Seller also agrees to complete any work orders or remedial work ordered by the above Authorities/Agencies at the Seller's expense. The Buyer and Seller agree that in the event the Seller does not pay or remedy the above noted items after closing, then the Buyer will do so but at a deduction to the principal amount remaining in the Seller-Take-Back Mortgage above.

[13] On May 31, 2022, Verhoog and Forrest executed the final draft of a final amendment (the "Final Amendment"). The Final Amendment included Clause 23, reproduced above.

[14] In correspondence between Ross and Masson on behalf of the parties, the following discussions took place:

i) May 18, 2022: Ross emailed Masson advising that the draft amendments must be properly prepared and delivered between counsel and the parties. Ross noted that his client, Verhoog, required language "reducing the amount due under the VTB based on payments made to remediate existing issues" to bring the Property into compliance with regulatory authorities.

ii) May 19, 2022: Ross emailed Masson further draft amendments and insisted on offset language (related to the offset for remediation work) in the APS.

iii) May 20, 2022: Ross advised Masson that if the parties did not reach any further agreement, Verhoog would proceed with the First Amendment. The parties had already executed the First Amendment, on which Verhoog was still willing to rely.

iv) May 25, 2022: Ross emailed Masson with further draft amendments and noted that Verhoog required the "scope of remediation to include any authority requiring remediation work to be maintained", and that the "remediation work required is significant". Verhoog would need to withhold the $1,000,000 Balloon Payment until the Applicant completed remediation to fund that work, and that once that work was completed, it would allow Verhoog to obtain financing and make the Balloon Payment.

v) May 25, 2022; Ross emailed Masson regarding Hughes' refusal to allow ABCA to attend the property for an inspection. Ross indicated that "the setoff and remediation must be for any and all things requiring remediation as at the date of closing whether currently subject an order or not."

vi) May 30-31, 2022: Ross explained in email correspondence regarding the final round of draft amendments that Hughes had removed the Balloon Payment language by hand, which was not agreeable to Verhoog. Masson confirmed that Hughes agreed with the Final Amendment.

[15] Forrest refused to allow the ABCA to attend the Property prior to closing, except for one day. On May 30, 2022, Adam met with ABCA representatives, but they refused to do an inspection of the property as Hughes was not present. The ABCA drove through the Property with Adam and identified issues. The ABCA did not reduce its concerns to a report.

[16] On or about June 2, 2022, the transaction for the sale closed.

[17] At the time of closing, Forrest submits that the following remediation work remained outstanding:

a. The Property needed to be brought into compliance with the Ministry of Environment, Conservations and Parks ("MECP") with respect to a sewage system on site;

b. Payment of a fine issued by the County of Huron with respect to unauthorized tree cutting; and

c. Fulfillment of an order issued by the County of Huron to have a cement pad removed behind a shop.

[18] The Applicant removed the cement pad around June 20, 2022. The Applicant also paid the fine for cutting trees in the amount of $3,250.00 on July 6, 2022.

[19] In June of 2023, the Applicant brought the Property into compliance with the order issued by MECP around September 6, 2018. MECP issued a confirmation of compliance on June

27, 2023. In total, Forrest incurred approximately $119,194.56 in monetary losses bringing the Property into compliance with the MECP.

[20] On October 5, 2022, about four months after closing, ABCA attended at the Property and completed an inspection. It identified several issues requiring remediation. These issues included a bridge over a waterway, the placement and removal of fill to create watercourses, and the construction of drainage systems and roadways, none of which were authorized by the ABCA.

[21] The ABCA advised Verhoog that it does not generally issue work orders but works with owners directly regarding required remediation.

[22] By letter dated February 21, 2023, sent from the ABCA to Verhoog, the ABCA detailed the Property's required remediation work. Verhoog created a restoration plan to address the remediation work. ABCA delayed its approval of the restoration plan. The restoration plan is extensive and requires significant sums of money.

[23] In July 2023, Marie, now the directing mind of Forrest, called ABCA inquiring about any outstanding work orders.

[24] On August 30, 2023, Forrest sent a demand letter for payment of the Balloon Payment.

Legal Framework

[25] The parties generally agree on the proper legal framework governing contract interpretation, so I will set it out only briefly. As per *1871335 Ontario Limited v. ACCE International Ltd*, 2015 ONSC 4700, at para. 11, the following principles apply to contractual interpretation:

a. A court should give effect to the intentions of the parties as expressed in their written agreement;

b. Where the parties' intention is plainly expressed in the language of the agreement, the court should not stray beyond the four corners of the agreement. The court should not give the contract a meaning different from that which is expressed by its clear terms, unless the contract is unreasonable or has an effect contrary to the intentions of the parties;

c. A contract must be construed as a whole in a manner that gives meaning to all of its terms;

d. A court may have regard to objective evidence of the factual matrix underlying the negotiation of the contract, but without reference to the subjective intentions of the parties;

e. A court should interpret a contractual provision in a fashion that accords with sound commercial principles and good business sense. A court should avoid an interpretation which would result in a commercial absurdity.

[26] Contractual interpretation has evolved towards a practical, common-sense approach. It is not dominated by the technical rules of contractual construction. The primary objective is to determine "the intent of the parties and the scope of their understanding": *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] 1 S.C.R. 744, at para. 27.

[27] The decision maker must read the contract as a whole, giving its words their ordinary grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of contract formation. The surrounding circumstances will include the commercial purpose behind the contract, the genesis of the transaction, the background, the context and the market in which the parties are operating. The factual matrix consists only of objective facts known to the parties at or before the date of contracting and is helpful in contextualizing the contract but must not overwhelm the actual words in the contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at paras. 47, 57-58; *Jakab v. Clean Harbors Canada, Inc.*, 2023 ONCA 377, at para. 11; and *Hayes Forest Services Limited v. Weyerhaeuser Company Limited*, 2008 BCCA 31, at para. 14.

[28] In other words, the goal of examining surrounding circumstances is to deepen the decision maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. However, the interpretation of a written contract must always be grounded in the text and read considering the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement: *Sattva*, at para. 57.

[29] The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has wholly been reduced to writing. The purpose of the parol evidence rule is primarily to achieve finality and certainty in contractual obligations, and secondarily to hamper a party's ability to use fabricated or unreliable evidence to attack a written contract: *Sattva*, at paras. 58-59. The rule has many exceptions but is often enforced where the evidence either goes to the subjective intentions of a party, or where the evidence would contradict the express terms of a written agreement: Geoff R. Hall, *Canadian Contractual Interpretation Law*, 4th ed. (Toronto: LexisNexis Canada Inc., 2020), at ch. 3.1.1.

[30] The parol evidence rule does not preclude the surrounding circumstances when interpreting the words of a contract as such evidence is consistent with the objectives of finality and certainty because they are used as an interpretive aid for determining the meaning of the written words chosen by the parties and not to change or overrule the meaning of those words. Evidence of the surrounding circumstances will vary from case to case but should consist only of objective evidence of the background fact at the time of execution of the contract. These are facts that are known or facts that reasonably ought to have been known to both parties at or before the date of contracting. Whether something ought to have been within the common knowledge of the parties at the time of contracting is a question of fact: *Sattva*, at paras. 58-61.

[31] Evidence of prior negotiations and communications between the parties to a contract may be admissible for some purposes. If there are circumstances which the parties must be taken to have had in view when entering the contract, the court which construes the contract should have these circumstances before it. Such extrinsic evidence is admissible, not to contradict or vary the contract, but to apply to the facts which the parties had in their minds and were negotiating about: *Re Broughton Collieries Ltd.*, 1944 1 D.L.R. 530 (N.S. C.A.), at pp. 538-539.

[32] Subsequent conduct may be admissible and helpful in interpreting a written contract in showing what meaning the parties attached to the document after its execution and be suggestive of the view that they took at the time of contracting: *Montreal Trust Co. of Canada v. Birmingham Lodge Ltd.* (1995), 24 O.R. (3d) 97, at paras. 24-25.

Forrest's Position

[33] Forrest's position is that, when read as a whole, the remediation clause is clear and unambiguous on two key points: (i) the scope of the remediation work consists of paying fines and complying with orders; and (ii) the remediation work is limited to fines and orders that were known and existing at the time of the sale.

[34] Forrest submits that the remediation clause begins by qualifying the required remedial work with the word "outstanding" and ends by granting the Applicant six months to complete that work. Forrest submits that this six-month period contradicts the Respondent's position that the duty to remediate is open-ended and without time limits. Forrest further asserts that it was not privy to the remediation work now raised and therefore could not have addressed it. The Respondent's interpretation of the clause could capture unknown compliance issues arising long after the sale, making the Balloon Payment vulnerable to indefinite setoffs of non-payment. This outcome would not be commercially reasonable.

[35] Forrest submits that the surrounding circumstances support its interpretation. Both parties knew of the outstanding work orders and fines affecting the Property at the time of sale. They agree that the Applicant rectified those issues. Therefore, the Balloon Payment should be made.

[36] Forrest further submits that the alleged unrectified compliance work is ambiguous, that its scope and cost are unclear, and that its existence before the sale is not supported by admissible evidence.

Verhoog's Position

[37] Verhoog submits that this application is premature. The remediation work to bring the Property into compliance with the ABCA is ongoing. The Balloon Payment is therefore not yet payable. This position is supported by the plain language of the entire agreement, which constitutes the APS and the Final Amendment. The agreement expressly contemplates a deduction from the principal debt under the VTB owed to Forrest, equal to the costs Verhoog incurs to bring the Property into compliance with the relevant authorities and agencies.

[38] Verhoog submits that the remedial clause is divided into two parts: (i) the seller agrees to pay any outstanding Ministry of Environment and Climate Change, County, Municipal, Conservation Authority, Health Unit or any other party any fees or fines to make the property compliant with these above noted Agencies/Authorities; and (ii) the Seller also agrees to complete any work orders or remedial work ordered by the above Authorities/Agencies at the Seller's expense. It submits that the word "also" is important and connotes that the second sentence is a separate and additional burden placed on Forrest.

[39] Forrest is required to complete the remediation within six months of closing. If it fails to do so, the obligation shifts to Verhoog with a corresponding deduction from the principal owed under the VTB. Verhoog argues that the Final Amendment does not impose any time frame for completing the remediation.

[40] Verhoog submits that both parties understood Clause 23 was amended to expressly reference fees and work required to bring the Property into compliance with the authorities and agencies, based on its condition before closing.

[41] The court should look at the factual matrix that give rise to the contract and Verhoog's attempts to bring the Property into compliance with the ABCA. The surrounding circumstances in this case include communications between the parties. This evidence does not offend the parol evidence rule.

[42] The parties' post-closing conduct demonstrates a mutual understanding that the Final Amendment captured remediation to bring the Property into compliance with the ABCA. It points to a letter that Marie sent to the ABCA in August 2023. It contends that the letter demonstrates that Marie knew about the ongoing remediation work and understood its relevance to Forrest's interests, particularly regarding the VTB's value and the timing of the Balloon Payment.

[43] Verhoog argues that its interpretation is the most commercially reasonable. The parties included language that effectively reduced Verhoog's purchase price for the Property by an amount equal to the cost of bringing the Property into compliance with the relevant authorities and agencies. It is common for a purchaser to require language in an APS that compensates for costs incurred to achieve compliance.

[44] Verhoog's evidence is admissible, unambiguous and demonstrates that Adam, acting for Verhoog, repeatedly invited the ABCA to the Property before and after closing to identify remediation issues. On May 30, 2022, prior to closing, ABCA representatives orally advised Adam of issues with the Property. Four months after closing, Adam met with them again to facilitate inspection and compliance. ABCA identified several remediation issues, including a bridge over a waterway, the placement and removal of fill to create watercourses, drainage and roadways. Adam attests that Verhoog has not undertaken any work in the conservation area, which falls under ABCA's regulatory authority.

Analysis

[45] For the reasons that follow, I do not find that Clause 23 is open to the Respondent's interpretation. Instead, I find that the Applicant's suggested interpretation is the proper approach.

(a) The First Part of the Clause

[46] I will start with the first part of Clause 23.

[47] This part of the clause reads: "[t]he seller agrees to pay any outstanding Ministry of Environment and Climate Change, County, Municipal, Conservation Authority, Health Unit or any other party any fees or fines to make the property compliant with these above noted Agencies/Authorities". On a plain reading, the word "outstanding" modifies "any fees or fines" by the named agencies and authorities. The plain meaning of this is that the "fees" or "fines" to be paid are those "outstanding" at the time of closing.

[48] I do not find that any of the remediation work the ABCA advised of after closing would fall under outstanding fees or fines.

(b) The Second Part of the Clause

[49] I now turn to the second part of the clause. It requires a closer look. It reads: "[t]he Seller **also** agrees to complete any work orders or remedial work ordered by the above Authorities/Agencies at the Seller's expense" (emphasis added).

[50] In interpreting this clause, I considered the APS and VTB as a whole. I paid particular attention to the remainder of Clause 23(a), which states:

> The Purchaser and Seller agree that in the event the Seller does not pay or remedy the above noted items within six months after closing, then the Purchaser will do so but at a deduction to the principal amount remaining in the Vendor Take Back mortgage, referenced in the following paragraph 23(b)(ii).

[51] Clause 23(b)(ii) further reads: "[t]he Purchaser shall make a lump sum principal payment of one million dollars ($1,000,000) due on or before the later of April 1, 2023 or 30 days following the completion of the remediation work contemplated in paragraph 23(a) above."

[52] I also considered the objective evidence of the parties' mutual intention, as reflected in their negotiations, emails and post-closing conduct.

[53] I reviewed the transcript of Marie's examination for discovery. Marie testified that Hughes resigned in 2023. She then took over as director. Before that, she served as director and secretary treasurer from Forrest's purchase of the Property in 1984 until she ceased being a director in 2020. She and Hughes separated in 2017. She left the marital home located on part of the Property.

[54] When she resumed as director in 2023, she discovered after five or six months that numerous invoices and orders had been issued to Forrest Estates. She had no involvement in the original negotiations but requested and received documentation from Masson. She

saw orders from MEPC, the Municipality of Central Huron, and the County of Huron. She did not see anything from the ABCA, so she called and spoke to someone about existing orders about Forrest Estates. The employee told her that he was not "aware of" any orders against Forest Estates. Marie stated that, to her knowledge, Forrest had not been advised of any work required by the ABCA before these proceedings.

[55] Verhoog relies on a July 2023 email from Danial King of ABCA to Verhoog. In the email, King asks about the status of the restoration plan for the Property and notes that some areas would require extensive work. He wrote: "I was hoping you could pass along that we received an inquiry about this matter from Marie Hughes, who is the current president of Forrest Estate." Verhoog argues that this email shows Marie knew about the restoration plan and the need for remediation, which explains why she made the inquiry.

[56] The evidence before the court does not support this inference. There is nothing before me to suggest that Marie inquired into anything other than outstanding orders, as she indicated at her examination for discovery.

[57] I reviewed the emails exchanged between counsel from May 17 to May 31, 2022, when the parties signed the Final Amendment. In these emails, counsel negotiated amendments to Clause 23. The changes between the First Amendment and Final Amendment are set out above. The disputed portion of Clause 23(a), regarding the scope of remediation, remained unchanged between the original and final clauses. Although, I do note that the Final Amendment added a balloon payment and timelines for the seller to complete remediation.

[58] The $1,000,000 Balloon Payment was not part of the original agreement or the VTB. The seller agreed to include it but insisted that the scope of the remediation cover any authority requiring remedial work. In one email, Ross wrote: "[a]s discussed with Cheryl, the remediation work required is significant. In the event our client has to undertake the remediation, they will have to cashflow that work. Our client needs to withhold the $1,000,000 until the remediation is done in order to fund that work."

[59] In his affidavit, Adam refers to emails between himself and his own counsel Ross. In a May 25, 2022, email, Adam indicated in part that "the new amendment removed the conservation authority from the remediation work. They are the ones that are the biggest concern… he seems pretty stuck on the conservation authority being removed but that just cannot happen." While these emails may show Adam's intentions, they do not assist in evidencing the mutual intentions between the parties.

[60] The following excerpts shed light on the parties' differing positions during negotiations. On May 17, 2022, Masson sent a draft with the following language:

> The Seller agrees to pay any outstanding fees or fines imposed by the Ministry of Environment and Climate Change, County, Municipality, Ministry of Natural Resources or Health Unit **during the Seller's period of ownership and existing on closing**, which encumber the property, in order to make the property compliant with these above noted Agencies/Authorities. The Seller also agrees to complete any work orders or remedial **work ordered during the Seller's period of**

> **ownership and existing on closing, ordered by** the Municipality of Central Huron, the Court of Huron or the Ministry of Environment and climate Change, at his own expense within six months of the date of closing the transaction…. [Emphasis added.]

[61] In an email dated May 25, 2022, regarding ABCA not being permitted to attend the Property, Ross wrote: "[o]ur client is dealing with a property with as yet unknown qualification of liability – but liability certainly exists. The set off and remediation must be for any and all things requiring remediation as at the date of closing whether currently subject to an order or not."

[62] As I already indicated, the negotiations between counsel are of limited assistance in my task. The relevant part of Clause 23 did not change from the First Amendment to the Final Amendment.

[63] Verhoog also relies on correspondence with Forrest's accountant as evidence of a mutual understanding that the work included the ABCA remediation. In November 2022, Glen Hayter emailed Verhoog stating his understanding that the remedial work done to "remove any charges" against the Property would be deducted from the $1,000,000 payment, affect the net selling price and impact tax calculations. Hayter asked about any obligations the vendor had not removed and whether Verhoog had spent money to remove them and, if so, how much. Adam replied on November 18, 2022: "[a]t this point the 6 months Forrest Estates has to complete the work has not expired yet so I don't have any expense yet." Later that day, Hayter emailed again asking what remained outstanding. Adam responded, "[a]s far as I know Ken has not made any attempts to fix anything other that the MOE stuff. There is the ABCA issue. But I think that's it."

[64] I do not find that the emails between Hayter and Adam assist me in interpreting Clause 23. Mr. Hayter was trying to ascertain was if any costs per the agreement had been paid by Verhoog.

[65] Verhoog advises that ABCA does not issue formal work orders but communicates with property owners directly. Verhoog provided me with little correspondence in this matter, aside from the email noting Marie's inquiry to the ABCA. The only other piece of correspondence that I have is a letter from Daniel King of the ABCA addressed to "Mr. Verhoog" dated February 21, 2023. In this letter, King states that the ABCA became aware of unauthorized work on the Property. He writes that the letter is being sent to Mr. Verhoog as the Property's owner. The letter continues: **"[a]s you are aware, during a site visit on October 5, 2022, ABCA staff observed significant activities taking place.** Specifically, the construction, or the placing and removal of fill from areas of the property that are regulated to create roads, drainage and watercourse crossings." The letter states that these works occurred in a regulated area and thus required prior written permission. Therefore, the work violated ABCA's regulations. It continues, "[a]s per our conversation, it is ABCA's staff's understanding that you plan on submitting a restoration plan for review by the ABCA." The letter concludes with "[p]lease be aware that no further work should take place within the Authority's regulation limit unless prior written permission has been received from the Authority."

[66] I note that this letter suggests that ABCA staff actually observed non-compliant activities taking place on the Property. The letter is written in the present tense and does not say that staff observed that activities had taken place at some point in the past. Nonetheless, I cannot make any finding in this regard. Verhoog argues that no activity occurred on the conservation land after he took ownership. While the letter seems to indicate otherwise, the parties did not argue this point in front of me. I cannot decide on this point without other evidence.

[67] Verhoog maintains that Forrest should bear the expense for all required remediation work, either initially or by way of a setoff required by the ABCA. However, I heard no evidence that Verhoog advised Forrest of ABCA's October site inspection of the Property, which occurred within six months of closing or the results of that inspection. I also heard no evidence that Verhoog disclosed the February 2023 letter or its remediation plan and cost before Forrest demanded the Balloon Payment.

[68] Unfortunately, the ABCA refused to complete a report on its May 30, 2022, site visit to the Property. Hughes authorized that visit as a "site inspection". It might be expected that any issues of non-compliance would have been identified at that time. That way, they could clearly be set out in the agreement. However, Adam attests that he did learn of some specific issues when he drove around with the representatives, but he never reduced them to writing or communicated them to Forrest.

[69] I accept that Verhoog intended Clause 23 to cover both outstanding and known issues, as well as issues that became known after closing. If that was the intention, then the provision's actual wording falls short. I do not interpret Clause 23 to provide indemnification for all future remediation expenses. This would include expenses that were unknown to both parties that the time of closing.

[70] Nor do I find that the language in Clause 23 or the surrounding circumstances demonstrate a "mutual intention" that this indemnification clause would encompass all future remediation expenses not known at the time of closing and without a time limit. I do not find that would be a commercially reasonable interpretation.

[71] Further, I find that the language in Clause 23 requires the Applicant/Seller to pay any outstanding fees or fines and complete any work orders or remedial work ordered by agencies and authorities at the Applicant/Seller's expense within six months. If the Seller fails to do so within that period, the Respondent/Purchaser may complete the work and deduct the cost from the VTB. A plain reading of this clause indicates that the parties anticipated completing the relevant work orders, remedial work, fines and fees within that timeframe. I do not agree that this clause creates an open-ended obligation requiring the Respondent to pay for expenses that were unknown during the first six months and simply shifts any unknown expenses to the purchaser to pay and claim set-off after that date.

[72] I want to expressly note that nothing in these reasons shall be interpreted as a comment on any other causes of action that the Respondent may have. These reasons stand strictly for the decision that the language in Clause 23 does not provide for the scope of remediation in which the Respondent seeks.

Conclusion

[73] For the above reasons, this court orders that the Respondent pay the Applicant the sum of $1,000,000 in satisfaction of the Balloon Payment set out in in the VTB.

[74] This court also orders the Respondent to pay pre-judgement interest commencing on August 27, 2023, and post-judgment interest at 3% from the date of this order.

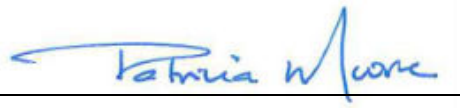
Costs

[75] I heard argument in relation to costs at the end of the motion. Counsel for Forrest sought $16,000 on a partial indemnity basis if it was successful and counsel for Verhoog sought $27,000 on a partial indemnity basis if it was successful.

[76] This issue was of significant importance to the parties and of moderate legal complexity.

[77] In determining quantum, I have considered the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure* and s. 131 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43 Two of the most important principles are the principal of indemnification and the amount of costs the parties could reasonable expect to pay if they were unsuccessful.

[78] I find that the costs sought by Forrest are reasonable, appropriate and proportionate and make an order that the Respondent shall pay costs to the Applicant of $16,000 inclusive of disbursements and H.S.T.



Justice Patricia J. Moore

Date: January 5, 2026