

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 134 of 2017

BETWEEN:

THOMAS WIERUM d.b.a. PRIME BUILDERS

Claimant

and

RON LEFEBVRE

Defendant

Appearances:

E. Andrew Marshalleck SC for the claimant
Leeroy Banner for the defendant

2023: July 13

September 6

2024: January 2

JUDGMENT

[1] **CHABOT, J.:** On 19th April 2009, the parties entered into a contract for the construction of a house at No. 8 Olde Mill, Cayo District, Belize. The house was built, but the final invoices were never paid. Mr. Wierum claims BZ\$79,481.50 (US\$39,740.75) as the balance due to him pursuant to the terms of the contract. Mr. Lefebvre denies owing Mr. Wierum these sums because he fired him in or about December 2010 as a result of his poor, sub-standard workmanship and uncompleted work. Mr. Lefebvre counterclaims

BZ\$103,196.75 in special damages for work done or to be done to remedy the sub-standard or uncompleted work.

- [2] For the reasons outlined in this judgment, I find in favour of Mr. Wierum and order Mr. Lefebvre to pay Mr. Wierum the sum of BZ\$79,481.50 (US\$39,740.75), minus BZ\$900.00, together with costs and interest.

Issues to be determined

[3] The following issues arise in the claim:

1. Did Mr. Lefebvre fire Mr. Wierum in or about December 2010?
2. Did Mr. Wierum deliver sub-standard and/or uncompleted work to Mr. Lefebvre?
 - a. The roof.
 - b. The roof line.
 - c. The soffits.
 - d. Vapour barriers.
 - e. The septic tank.
 - f. The tub in the girls' bathroom.
 - g. The tiles in the girls' bathroom.
 - h. Windows in the kitchen.
 - i. Drywall tape on the joints and corners.
 - j. Electrical wires.
3. Did Mr. Wierum charge Mr. Lefebvre for alterations done without Mr. Lefebvre's request or approval?
4. Is Mr. Lefebvre entitled to special damages on the counterclaim?

Analysis

Did Mr. Lefebvre fire Mr. Wierum in or about December 2010?

- [4] The evidence does not support that Mr. Wierum was fired by Mr. Lefebvre in or about December 2010. Mr. Lefebvre's evidence as to why he fired Mr. Wierum is inconsistent. In cross-examination, Mr. Lefebvre indicated that he fired Mr. Wierum because three workers fell through ceilings during the construction process and he had "had enough". In submissions, he made no mention of those workers falling through ceilings, but alleged that Mr. Wierum was fired because the roof was leaking and no septic tank had been installed. Despite stating in his witness statement that "Bob [Langlois] completed my house on February 13th, 2011 as I have pictures of the house being completed and they are dated February 13th, 2011", no pictures were attached to Mr. Lefebvre's witness statement.
- [5] I find that the house was delivered by Mr. Wierum to Mr. Lefebvre on 13th April 2011, 5 months after Mr. Wierum had allegedly been fired. Had Mr. Wierum been fired in December 2010, he would not have continued working on the house in 2011. Mr. Wierum provided evidence of invoices generated and paid for supplies ordered and work done between January and April 2011. He would also not have been at the house on 13th April 2011. Mr. Noel Henriquez testified that he was at the house on 13th April 2011 and witnessed Mr. Wierum giving Mr. Lefebvre the final invoice for the work.
- [6] Despite stating that Mr. Bob Langlois performed a lot of work on behalf of Mr. Lefebvre to finish the house, including constructing the septic tank and drain field, building steps off the patio, and purchasing and installing the attic access ladder, Mr. Lefebvre did not call Mr. Langlois as a witness in this matter. Similarly, Mr. Lefebvre did not call as a witness Mr. Sam Asencio, who redid the soffits, inspected the roof, and caulked the seams of the roof, or Mr. Al Langlois who Mr. Lefebvre asked to drive by the house every day to check on the progress. The only witness on behalf of the defence is Mr. Lefebvre himself. I draw an adverse inference from the fact that crucial witnesses to Mr. Lefebvre's counterclaim were not called as witnesses in this matter.

Did Mr. Wierum deliver sub-standard and/or uncompleted work to Mr. Lefebvre?

[7] Mr. Wierum filed this claim seeking payment for work done under the 19th April 2009 contract. In his defence and counterclaim, Mr. Lefebvre denies owing any money to Mr. Wierum, and claims special damages on the ground that a number of components of the house were not properly built or installed by Mr. Wierum. Mr. Lefebvre bears the evidentiary burden of proving the construction defects of which he complains.

The roof

[8] One of the main issues in this claim is whether the roof installed by Mr. Wierum on the house was leaking, and whether the leaks were caused by sub-standard workmanship on the part of Mr. Wierum.

[9] Mr. Lefebvre alleges that during construction, the roof was leaking to the point where he had to place buckets in the attic and empty them every six hours or so. As a result of these leaks, Mr. Wierum had to repaint the ceiling a second time due to water stains. After the house was completed, the leaks continued which resulted in the soffits becoming engorged with water and falling off the house. Mr. Lefebvre hired three separate contractors to inspect the roof. Two of these contractors recommended replacing the entire roof. Mr. Lefebvre hired Mr. Asencio to caulk each and every seam of the zinc with 100% silicone. This resulted in the leaks stopping but, according to Mr. Lefebvre, this is “not a fix or solution, it is a rubber patch for now”.

[10] Mr. Wierum alleges that all work was completed in a workmanlike manner according to standard practices. In cross-examination, he explained that during construction, there is a period of time between the installation of the roof and that of the drywall which gives the crew an opportunity to notice leaks. The crew would then fix the leaks before continuing on with the installation of the drywall. Mr. Wierum testified that he followed this process in this case. He further testified that between the time his crew fixed the few leaks they had observed and the delivery of the house, there were no more leaks. Mr. Wierum denied that the ceiling was repainted to hide water stains. According to Mr. Wierum, the ceiling

was repainted because a worker put his foot through the ceiling when he slipped and fell from a beam.

[11] A joint expert was appointed by the court to inspect the house and opine on the issues raised in this claim. The expert, Mr. Juan A. Polanco, an architect, inspected the property on 15th February 2019. It is notable that the inspection took place some 8 years after the completion of the house. Both Mr. Wierum and Mr. Lefebvre were present for the inspection.

[12] Generally, Mr. Polanco opined that “workmanship overall was to acceptable standards with exception of the roof sheeting installation”. In relation to the roof, Mr. Polanco noted as follows:

As per inspection date it was obvious that there have been several leaks on the roof. We could not ascertain at the time what remedy had been done to date or whether the problem has been solved. We noted several points where the glare of the outside would be visible through the seams of the roof sheeting.

[13] He also noted that “sheetrock ceiling shows several points of water damaged (*sic*)”. Mr. Polanco further stated that:

It is important to note that inspection was done on a structure over 8 years old and we cannot ascertain if any defects to this date are brought forward from construction date or because of lack of maintenance. I know however, that a roof of this nature would not be needing any maintenance at this age.

[14] Again, later in his report Mr. Polanco noted that a roof of this age should not be leaking, stating:

Roof sheeting installation: I do not know the specific installation requirements and specifications of this particular type of roofing as there are different manufacturers in the country. What I do know is that despite the anchoring details, there should not have been water leakages at such an early stage.

[15] Both parties had an opportunity to ask follow-up questions to Mr. Polanco. Mr. Polanco opined that it is possible that the leaks he observed could have happened several years after completion of the house. When asked where, on a standing seam metal roof with no roofing fasteners penetrating the surface, a leak likely occurred, Mr. Polanco responded as follows:

It is more likely the leaks would occur on the ridge caps, however it can also occur if the panel was not snapped properly into place. A ridge cap is easy to repair and replaceable.

Mr. Polanco could however not opine on the cost of replacing both the hip ridge and ridge caps of the roof.

[16] According to Mr. Wierum, when he attended the inspection with Mr. Polanco, he could see evidence that someone had made modifications to the roof, including “prying the roof open”. Mr. Wierum admitted that the construction materials for the roof are expected to last at least 15 years.

[17] I find that Mr. Lefebvre has proven, on a balance of probabilities, that the roof installed by Mr. Wierum on the house leaked after completion of the construction on 13th April 2011. That the roof has leaked is supported by the testimony of Mr. Lefebvre, pictures entered into evidence showing water stains on the ceiling, and the report of Mr. Polanco. It is also admitted by Mr. Wierum in the Pre-Trial Memorandum. I find it is more likely than not that the leaks were caused by sub-standard workmanship in the installation of the roof sheeting and/or the ridge caps. The evidence is that a roof of the type installed on Mr. Lefebvre’s house should not leak and should not need any maintenance within 15 years of its installation. As for Mr. Wierum’s allegation that someone has made modifications to the roof by “prying it open”, I find this allegation to not be supported by any evidence, including not being mentioned in the expert report.

[18] I do not find, however, that Mr. Wierum had knowledge of the issue at the time of completion of the house. Mr. Wierum testified that as of 13th April 2011, when he and his crew left the house, the roof was not leaking. I am satisfied the evidence establishes that the ceiling had to be repainted because a worker’s foot fell through the ceiling. This was admitted by Mr. Wierum, and Mr. Lefebvre himself stated that he saw at least three workers falling through ceilings. While I do not need to opine on the number of workers who fell through ceilings during the construction of the house, I am satisfied that the ceiling in the living room was not repainted to hide water stains on the ceiling. There is no evidence that Mr. Wierum was aware of any leaks in the roof at the time of completion of the house. There is also no evidence as to when, between completion of the house on

12th April 2011 and the inspection on 15th February 2019, the rook started leaking, but that it was early on in the expected lifetime of a roof of this type has been established.

The roof line

[19] In his counterclaim, Mr. Lefebvre alleges that Mr. Wierum miscalculated the roof line on the front portion of the building. In cross-examination, Mr. Lefebvre admitted that he does not have a problem with the roof line. The roof line was found by Mr. Polanco to have been done as per the drawings. Mr. Lefebvre's counterclaim in relation to the roof line has not been substantiated.

The soffits

[20] Mr. Lefebvre alleges that the leaking roof resulted in the soffits becoming engorged with water and falling off the house. According to Mr. Lefebvre, the soffits were then made of sheetrock or gypsum (Mr. Wierum later indicated they were made of cement board as per the contract). Mr. Lefebvre hired Mr. Asencio to redo the soffits at a cost of BZ\$10,000.00. Aluminum soffits were installed on the house. In cross-examination, Mr. Lefebvre identified a picture showing one soffit that was released from the roof, but was still partially hanging. He stated that all of the soffits that were on a horizontal plane (i.e. not on the angular part of the roof) had to be replaced, but adduced no evidence in support of that allegation. He also alleged that it would actually cost more than BZ\$10,000.00 to make the repairs because the insulation inside the roof has also been saturated with water and the sheetrock became all moldy. Mr. Lefebvre produced an invoice from Mr. Asencio for the replacement of the soffits.

[21] On the issue of the soffits, Mr. Polanco opined as follows:

Replacement and installation of soffits: we have no documentation or pictures showing the type and condition of the soffits at time of completion of the structure, therefore we cannot ascertain if they were changed and the magnitude of the changing. We could consider however, that if there were roof leaks, the soffits could have suffered damage.

[22] The evidence in relation to the soffits is slim. While I accept that some soffits may have fallen off as a result of the leaks in the roof, there is no evidence to support how many

soffits fell and needed to be replaced, and why Mr. Lefebvre replaced all of them as opposed to only replacing those that fell. I also note that Mr. Lefebvre chose to replace cement board soffits with aluminum soffits, thus upgrading what had been agreed to in the contract. Mr. Lefebvre failed to prove the actual cost of replacing the soffits that fell with soffits made of concrete board as provided for in the contract. His counterclaim in relation to the soffits is therefore dismissed.

Vapour barriers

[23] In his counterclaim, Mr. Lefebvre alleges that “no vapour barriers were installed resulting in moisture damage to the building”. In cross-examination, Mr. Lefebvre explained that because the issue with the roof is condensation, a vapour barrier would have been needed in the ceiling to prevent water from pouring down in the living room. Mr. Lefebvre acknowledged that the issue of the vapour barrier was not related to the leaking roof. Mr. Lefebvre further admitted that the contract does not specify that a vapour barrier was to be installed in the ceiling and that it was not part of the plans, but alleged that “it is just normal construction”.

[24] In his report, Mr. Polanco indicated that he did not see any moisture barrier, but noted that “there are no detailed drawings of the roof stating any vapour barriers or any construction detail of the roof”.

[25] I find that Mr. Wierum is not liable for the absence of a vapour barrier in the ceiling. The vapour barrier was not part of the contract or the building plans. Mr. Lefebvre did not lead any evidence to prove that a vapour barrier in the ceiling is “normal construction”. Mr. Lefebvre’s counterclaim in relation to the vapour barrier is denied.

The septic tank

[26] Mr. Lefebvre alleges that no septic tank or leach field was constructed by Mr. Wierum. As a result, Mr. Lefebvre hired Mr. Bob Langlois to install a septic tank. In cross-examination, Mr. Lefebvre alleged that Mr. Wierum only dug a 4’ square hole in the ground, placed a sewer pipe in it, and covered it with tile chips. Mr. Lefebvre provided an invoice from Mr. Langlois for an amount of BZ\$8,552.25. The invoice does not mention the building of a

septic tank, but only the provision of “material and labour for the installation and placement of 120 lin ft of soakaway with plumbing installations”. The invoice includes charges for work unrelated to the soakaway, including the “completion of tile on North patio”, “installation of concrete stairs North patio access”, and “attic ladder supply and installation”. It bears repeating that Mr. Langlois was not called as a witness in this matter, and we therefore do not benefit from his testimony in regards to the work he has actually done.

[27] Mr. Wierum alleges that he installed a septic tank with a soakaway as per the contract. He testified that Mr. Lefebvre was living in the house at the time of completion and was able to use and flush the toilet, which he could not have done had a septic system not been installed. According to Mr. Wierum, a soakaway is a “hole in the ground in which the waste water is piped and allowed to soak into the ground. It is usually a square or rectangular structure with concrete walls but with no concrete flooring so that the waste water soaks through the bottom of the structure into the ground”. Mr. Wierum argues that what the invoice from Mr. Langlois shows is the construction of a leach field. According to Mr. Wierum, a leach field “is a pattern of trenches in the earth in which perforated pipes connected to the septic tank are buried. It is a means of dissipating waste water over surface area to allow it to leach or be absorbed into the soil and/or to evaporate”. Mr. Wierum alleges that under the contract, he was not required to install both a soakaway and a leach field. He further notes that Mr. Lefebvre never made a request for the construction of a leach field in addition to the soakaway.

[28] As a follow-up question to Mr. Polanco’s report, Mr. Wierum asked: “If Mr. Langlois only built a soakaway (according to his invoice) how could someone reside in a home without a septic system for so long?”. In response, Mr. Polanco opined that “no one could reside in a home without a septic tank, especially after a year or two as the soakaway itself would be clogged up in no time”.

[29] I find that Mr. Wierum installed a functioning septic system in the house, including a septic tank and a soakaway. I accept that Mr. Lefebvre, who was living in the house prior to its full completion, could not have used the toilets had a septic system not been in place.

Given the time that has elapsed, the fact that Mr. Wierum could not pinpoint the exact location of the septic tank on the property is not evidence that it was not built at all. Mr. Lefebvre admitted that Mr. Wierum dug a square hole in the ground, placed a sewer pipe in it, and covered it with tile chips, which is consistent with the installation of a soakaway. The invoice from Mr. Langlois provides for the installation of a soakaway, but I agree with Mr. Wierum that the installation of “perforated 4” tubing” is more consistent with the installation of a leach field.

- [30] Under the contract, Mr. Wierum was to provide a “new septic tank with soak away and or leach field installed”. The contract does not indicate how it would be determined that both a soakaway and a leach field would be necessary. There is no evidence that Mr. Lefebvre requested Mr. Wierum build both. Since the contract provided that either a soakaway or a leach field would be installed, I find that Mr. Lefebvre has not proven on a balance of probabilities that Mr. Wierum failed to perform his obligations under the contract. Mr. Lefebvre’s counterclaim in relation to the septic tank is dismissed.

The tub in the girls’ bathroom

- [31] According to Mr. Lefebvre, the tub in the girls’ bathroom was not properly installed. The drain line and the taps were installed on the wrong end for the orientation of the tub. Mr. Wierum’s crew had to “jackhammer out” the flooring beneath the tub. However, no concrete was put back in, resulting in the tub settling improperly. In cross-examination, Mr. Lefebvre admitted that he never complained about the improper installation of the tub to Mr. Wierum.
- [32] In his report, Mr. Polanco simply states that “there is seldom a construction site where some oversights would not happen and it would have had to be redone. This could be due to erroneous communication or workmen oversight”.
- [33] I find that Mr. Lefebvre has not proven on a balance of probabilities that the work performed by Mr. Wierum in relation to the tub in the girls’ bathroom was sub-standard.

The tiles in the girls' bathroom

[34] Mr. Lefebvre alleges that the tiles in the girls' bathroom are mismatched. The evidence does not support that sub-standard work on the part of Mr. Wierum is the cause of the mismatch. In his report, Mr. Polanco explains as follows:

When there is a mismatch in tiles there are three suppositions I could take at this time. The first is that on running out of tiles and purchasing, the same shade could not be found again. The second is that many times when tiles are purchased, even if they are the same model and brand, when the date of manufacture is different or when tiles are from different production batches, there is a trend for the shade to be slightly different. A third case scenario could be that the tile layers would select tile shades that match and leave those with different shade to the last (which in this case are behind the door). In my opinion as an architect, this mismatch is not a significant item.

[35] Mr. Lefebvre's counterclaim in relation to mismatched tiles is denied.

Windows in the kitchen

[36] Mr. Lefebvre alleges that the windows in the kitchen had to be replaced three times. In his witness statement, he states that he noticed a window in the dining room that had a big piece of glass either missing or broken out in the middle. The window was replaced by another window that was also broken. That window had to be replaced again. In cross-examination, Mr. Lefebvre added that the current window is a single-paned window while it was supposed to be a double-paned window. He, however, admitted to not having raised the issue of the single-pane window in his counterclaim.

[37] Mr. Wierum testified that all windows in the house are double-pane, except for one window in a corner of the kitchen which could not be double-pane.

[38] I dismiss Mr. Lefebvre's counterclaim in relation to the windows. The defects observed in the windows were remedied by Mr. Wierum. There is no evidence that Mr. Lefebvre was charged three times for the same window. As for the issue of the single-pane window, I note that the contract specifies that "fixed mitered glass windows in the plan will be single pane". It was therefore contemplated that some windows would be single-pane, which is

consistent with Mr. Wierum's testimony. In any event, Mr. Lefebvre did not raise the issue in the counterclaim.

Drywall tape on the joints and corners

[39] Mr. Lefebvre alleges that Mr. Wierum omitted to install drywall tape on the joints and the corners of the building.

[40] In his witness statement, Mr. Henriquez states that he was one of the workers that installed the drywall and that they did indeed use drywall tape and corner beads. Mr. Henriquez was not cross-examined on this issue, and therefore his evidence stands.

[41] Mr. Polanco could not opine on whether the drywall had been taped on joints and corners because making that determination would have entailed a forensic search implying taking samples at different points.

[42] I find that Mr. Lefebvre has not proven on a balance of probabilities that no tape was installed on the joints and the corners of the building.

Electrical wires

[43] According to Mr. Lefebvre, no electrical ground wires were installed in the building, some switches in the house do not function, and some wall plugs have no electrical wires connected to them.

[44] Mr. Wierum alleges that the electrical work had been completed by a certified electrician, Mr. Jose Galvez (now deceased) by the time the house was delivered to Mr. Lefebvre. The electrical work was done in accordance with Belize's electrical code, with some of the work being done in accordance with the United States' electrical code for more safety. Mr. Wierum explained that the perimeter walls of the building are made of concrete, and the inside walls are steel-studded. The electrician used a combination of techniques to wire the house. For the steel studded walls, he used a VX cable system. This system is listed in the Belize electrical code as being suited for steel structures. All of the outlets are wired and grounded using this system.

[45] In his report, Mr. Polanco indicated the following in respect of the alleged electrical issues:

After 7 or 8 years since the construction was finalized it is difficult to ascertain whether electrical installations were done to standards. The only thing we can ascertain is that the electrician utilized by the claimant is a known respected electrician in the community. Otherwise I have no opinion to make to this respect.

[46] I find that Mr. Lefebvre has not discharged his burden of proving, on a balance of probabilities, that the electrical work performed by Mr. Wierum was sub-standard and I dismiss Mr. Lefebvre's counterclaim in that regard.

Did Mr. Wierum charge Mr. Lefebvre for alterations done without Mr. Lefebvre's request or approval?

[47] The contract the parties entered into for the construction of the house at No. 8 Olde Mill, Cayo District, stipulates that "any alteration and deviation from above specifications or plan provided involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate". Mr. Lefebvre argues that Mr. Wierum is not entitled to BZ\$79,481.50 (US\$39,740.75) as he claims because Mr. Wierum did not receive any permission in writing from Mr. Lefebvre to make certain alterations that are the subject matter of this claim.

[48] I dismiss Mr. Lefebvre's submission, for three reasons. First, that Mr. Wierum is not entitled to payment for the work done because of unauthorized alterations, additions, or deviations from the contract was not pleaded either in the defence or the counterclaim. The only alterations to the contract mentioned in Mr. Lefebvre's defence relate to the garage, the in-law suite, and the fireplaces. Mr. Wierum does not claim any sums in relation to these alterations, which in any event appear to have been made upon written orders and are not disputed by Mr. Lefebvre. Other than those alterations, the defence and the counterclaim make no mention of any alteration, addition, or deviation being disputed by Mr. Lefebvre.

[49] Second, there is no evidence that Mr. Lefebvre refused any of the work done in alteration, addition, or deviation from the contract. For reasons unclear to me, as I was only assigned

to this matter after it was ready for trial, despite the issue not being pleaded, Mr. Polanco was asked to opine on “whether there were alterations, additions, deviations, from the original plan and/or the contract for the construction of Mr. Lefebvre’s home”. Mr. Polanco’s opinion is that the following alterations, additions, or deviations from the contract were done:

1. Extension of the retaining wall for better access to the garage;
2. The cost of tiles purchased, including imported travertine stone and tiles for the patios, exceeded the contracted cost per square foot;
3. The granite countertops exceeded the contracted rate per square foot;
4. Additional general works, additional plumbing fixtures costs, additional costs of light fixture purchasing; additional stones and railings.

[50] Mr. Polanco was unable to opine on the alleged alteration in relation to mahogany paneling, but found it was likely that additional cabinets for the laundry room, bull nosing of the baseboard, the concrete exterior staircase with tile on the back veranda, and the custom tile design by the front door were done. Mr. Polanco was “skeptical” about the crown moulding, but noted that in a project of this nature, crown moulding is very likely to be part of the project. He was unable to assert if the 2x8 cabinet with a rear door access for upstairs was done.

[51] I find that some of the alterations, additions, and deviations from the contract would have been visible to Mr. Lefebvre and/or to Mr. Al Langlois, who Mr. Lefebvre hired to supervise the progression of the construction while Mr. Lefebvre was away. The extension of the retaining wall, the addition of cabinets, the crown moulding, mahogany paneling, the exterior staircase, and the custom tile design by the front door would have been easily observed as they were installed. There is no evidence that Mr. Lefebvre raised any issue in respect of those alterations, additions, or deviations until after he filed his pleadings in this claim, some 7 years after the house was completed. This suggests that the argument was raised not from a genuine belief that Mr. Wierum did anything wrong, but from Mr. Lefebvre’s desire to free himself from his liability to pay for the work done by Mr. Wierum.

[52] Third, I find that by his conduct, Mr. Lefebvre waived the requirement for all alteration, addition, or deviation to be executed only upon written orders. Mr. Wierum testified that, in his view, the stipulation in the contract does not require all changes to be in writing. It depends on the magnitude of the change. According to Mr. Wierum, if a client requests to add on to something already in the contract, he would listen to the client and make the change. Mr. Wierum provided evidence of emails and notes from conversations he has had with Mr. Lefebvre on the job site where Mr. Lefebvre verbally asked him to make some changes. I find it is highly unlikely that Mr. Wierum would have incurred the additional time and costs of making the above-noted alterations, additions, or deviations on his own without instructions from Mr. Lefebvre and without guarantee of payment.

[53] I further note that, in relation to costs in excess of the contracted rate for tiles, the granite countertop, and light and plumbing fixtures, Mr. Wierum testified that those items were selected by Mr. Lefebvre himself, with knowledge of the cost overrun. Mr. Lefebvre did not contradict this allegation.

[54] In addition to not raising any concern as the work was being done, the evidence shows that Mr. Lefebvre paid invoices for some of those alterations, additions, or deviations that had not been ordered in writing. For example, on 22nd October 2020 Mr. Lefebvre made a payment of US\$14,156.59 for the extension of the retaining wall and the travertine tiles. On 18th January 2011, he made a payment of US\$10,000.00 for the granite countertop overrun. Mr. Lefebvre also made a partial payment of US\$7,941.32 on the 17th January 2011 invoice, which contains some of the work he says he should not been charged for, such as the price difference between mahogany paneling and sheetrock, 5½' linear feet of mahogany crown molding, and some cabinets. That Mr. Lefebvre made those payments is further evidence of his acceptance of these alterations, additions, or deviations.

[55] I do not give any weight to Mr. Lefebvre's submission that he is not liable to pay invoices from "Belize Building Ltd." totaling BZ\$43,276.06 because of a lack of privity of contract. In re-examination, Mr. Wierum testified that he owns Belize Building Ltd., which is the name of a company registered in the United States for the import of building materials.

The owner of both Belize Building Ltd. and Prime Builders is the same. In addition, Mr. Lefebvre accepted materials delivered by Belize Building Ltd. and is estopped from denying he is liable to pay the materials received through that company.

[56] For these reasons, Mr. Weirum is entitled to payment of the balance of BZ\$79,481.50 (US\$39,740.75) for the construction of Mr. Lefebvre's house.

Is Mr. Lefebvre entitled to special damages on the counterclaim?

[57] As noted above, Mr. Lefebvre's counterclaim has not been substantiated, except for the issue of the leaking roof. The issue is whether he is entitled to the amount of BZ\$84,696.75 in special damages he seeks to replace the entire roof. For the reasons below, I find that he is not entitled to any special damages.

[58] First, I find that Mr. Wierum was never made aware of the issue with the roof after completion of the house, and was never given an opportunity to remedy the issue. There is no evidence of any contact between the parties between 13th April 2011, the date Mr. Wierum delivered the house to Mr. Lefebvre, and 22nd May 2013, when Mr. Wierum's attorneys sent Mr. Lefebvre a letter demanding payment of the last invoice. Mr. Lefebvre alleges that, after receiving the letter from Mr. Wierum's attorneys, he hired an attorney in Belmopan to reply to the letter and list all the deficiencies he complains about. This letter was not provided to the court and is therefore not in evidence.

[59] According to the expert, Mr. Polanco:

It is common practice on contracts that there is a liability period after a construction is submitted. If there would be any defects within a certain time frame after substantial completion of a project, the client should inform the contractor to address the issue. Should the contractor not respond then the client can repair same at contractor's cost. If the client does not advise the contractor then it is taken for granted the works are acceptable and the contractor is relieved of any responsibility.

[60] There is no evidence that Mr. Lefebvre advised Mr. Wierum and gave him an opportunity to fix the roof. In accordance with Mr. Polanco's opinion as to common practice, Mr.

Lefebvre is to be taken as having accepted the work done by Mr. Wierum and Mr. Wierum to be relieved of any responsibility.

[61] Second, according to Mr. Polanco's opinion, "it is most likely that the leaks would occur on the ridge caps [...] A ridge cap is easy to repair and replaceable". While Mr. Polanco did not exclude the possibility that the leaks could "occur if the panel was not snapped properly into place", he did not offer a definitive opinion as to the cause of the leaks in the roof.

[62] Mr. Lefebvre is seeking special damages for the replacement of the entire roof. He did not provide any evidence as to why the entire roof must be replaced, as opposed to repairing the ridge caps only. Mr. Lefebvre did not call as witnesses the two contractors who offered quotes for the replacement of the entire roof to explain why they came to the conclusion that the entire roof has to be replaced. The evidence does not support that replacing the entire roof is necessary to remedy the leaks in the roof.

[63] The only proven expenses Mr. Lefebvre has incurred so far in relation to the leaking roof is BZ\$900.00 paid to Sam's construction to "caulk all seams on roof with 100% silicone (patch leaking roof)". This expense was incurred to remedy, on a temporary basis, the leaks in the roof. This amount will be deducted from the amount due to Mr. Wierum.

[64] Because Mr. Lefebvre has failed to prove his entitlement to any special damages, the counterclaim is dismissed save for the reimbursement of BZ\$900.00 for the caulking of the seams of the roof, which will be offset from the amounts due to Mr. Wierum.

Costs and interest

[65] Costs are awarded to Mr. Wierum on a prescribed basis.

[66] Mr. Wierum claims interest at the rate of 6% from the date of his final invoice and delivery of the completed house until payment of this judgment. While Mr. Wierum acknowledges that an award of interest is discretionary, he also submits that Mr. Lefebvre has had full use and enjoyment of the house as delivered for all these years while he kept Mr. Wierum

out of pocket of the final instalment due under the contract, and the costs of the deviations and alterations and cost overruns born by him.

[67] Mr. Lefebvre made no submissions in relation to interest.

[68] Pursuant to sections 175 and 176 of the Senior Courts Act, 2022, I award Mr. Wierum interest at the rate of 6% from the date of his final invoice and delivery of the completed house until payment of this judgment, but exercise my discretion to subtract 2 years from that time period to account for the fact that the matter sat dormant from 2021 to 2023 while awaiting to be assigned to a judge. I find it would be unfair to order Mr. Lefebvre to pay interest for the additional delay in resolving this matter caused by the court office.

IT IS HEREBY ORDERED THAT

- (1) The claim is granted;
- (2) The counterclaim is dismissed;
- (3) Mr. Lefebvre shall pay Mr. Wierum the sum of BZ\$79,481.50 (US\$39,740.75), minus BZ\$900.00;
- (4) Mr. Lefebvre shall pay interest at a rate of 6% per annum on the amount due, from the date of the final invoice until payment of this judgment, minus 2 years;
- (5) Costs are awarded to Mr. Wierum on a prescribed basis.

Geneviève Chabot
High Court Judge