In the Court of Appeal of Alberta

Citation: Chandos Construction Ltd v Associated Engineering Alberta Ltd, 2026 ABCA 376

Date: 20261123
Docket: 2403-0269AC;
2403-0271AC
Registry: Edmonton

Docket: 2403-0269AC

Between:

Chandos Construction Ltd.

Respondent

- and -

Associated Engineering Alberta Ltd.

Appellant

Docket: 2403-0271AC

And Between:

Chandos Construction Ltd.

Respondent

- and -

Municipal District of Greenview No. 16

Appellant

The Court:

The Honourable Justice Jolaine Antonio
The Honourable Justice Kevin Feth
The Honourable Justice Tamara Friesen

Memorandum of Judgment of the Honourable Justice Jolaine Antonio and the Honourable Justice Tamara Friesen

Dissenting Memorandum of Judgment of the Honourable Justice Kevin Feth

Appeal from the Order by
The Honourable Justice M. Hayes-Richards
Dated the 28th day of October, 2024
Filed on the 21st Day of December, 2024
(Docket: 2003 14717)

Memorandum of Judgment

The Majority:

I. Introduction

[1] The appellants, Municipal District of Greenview No. 16 and Associated Engineering Alberta Ltd, appeal a decision denying their application for partial summary dismissal of the claim by the respondent Chandos Construction Ltd relating to the construction of a water treatment plant. The appellants argue the chambers judge applied the wrong test for summary dismissal. On a proper assessment, they submit the respondent's claim is barred by operation of the *Limitations Act*, RSA 2000, c L-12 and by the terms of the construction agreement. We have concluded the chambers judge applied the wrong test for summary dismissal to the limitations issue and the respondent's claim is limitations barred.

[2] For the reasons that follow, the appeal is allowed and partial summary dismissal is granted.

II. Background

a) Facts

[3] In November 2015, the respondent entered into a fixed price agreement with the Municipal District for the construction of a new water treatment plant and upgrades to existing water infrastructure. Associated Engineering designed and administered the project on behalf of the Municipal District.

[4] In January 2016, the respondent began the work. The construction agreement contemplated completion by March 2017. However, the work did not go according to plan, and the respondent did not issue its final certificate of substantial performance until September 26, 2018.

[5] Between May 15, 2016 and June 12, 2018, the respondent issued a number of notice letters to the appellants.

[6] Fourteen of the notice letters purported to provide "notice of delay" or "potential impact", including in relation to site access, site changes, design issues, the condition of existing infrastructure, and lack of direction or response.

[7] In many of the notices, the respondent advised it was incurring costs. For example, on May 26, 2016, it wrote, "A lot of work has been done and money has been spent for which we have yet to be compensated". On October 11, 2016, it referred to "added costs for erecting the building". On August 14, 2017, it stated, "Chandos and its subtrades will continue to incur significant costs; re-work, mobilizing, and loss of production". On October 23, 2017, it reported it "has and will continue to track and assess all impacts and costs". On October 24, 2017, it wrote, "There are impact costs directly associated with both the lack of raw water supply to the New Water Treatment

Plant and the inoperable condition of the Raw Water Pumphouse Pump(s)". On December 4, 2017, it wrote, "Chandos experienced impacts from chemical issues including, but not limited, to loss in production, time delays, additional safety and mitigations, additional overheads and safety, supervision, travel, rework and repairs". On March 19, 2018, it identified specific "time and cost impacts associated with prolongation".

[8] While the foregoing notices were often clear the respondent was incurring or had incurred additional costs, they did not include any claim for payment.

[9] Two additional notice letters were captioned "Notice of Dispute". On September 7, 2017, the respondent communicated, "Associated Engineering and Chandos are in dispute" as to whether certain work directed by Associated Engineering constituted extra work not contemplated by the construction agreement. The respondent asserted its cost quotations were "valid and additional to the Contract". On November 11, 2017, the respondent identified other specific work directed by Associated Engineering that it asserted was also outside the scope of the agreement such that its "additional costs… must be considered".

[10] On December 24, 2018, almost three months after issuing its final certificate of substantial performance and more than six months after its last notice letter, the respondent submitted a letter to Associated Engineering requesting an extension of the contract time by 17 months and an increase in the contract price by $1,487,807 on account of delay. The claim related to "additional time for supervision and management, insurance, utilities, equipment rentals, site maintenance and cleaning, transportation and [subsistence] for site personal".

[11] On March 14, 2019, Associated Engineering responded. It acknowledged the respondent "experienced several delays during the project" but asserted that where the delays impacted the project's critical path, the respondent "was compensated for the time they requested – a total of 109 days" beyond the contemplated March 2017 completion date. It took the position that the remaining delays were not compensable. It suggested the respondent provide further detail and that a meeting be held "to review the specifics of the claim" once that had been provided.

[12] On August 21, 2020, Associated Engineering sent the respondent a letter purporting to terminate the construction agreement on behalf of the Municipal District.

[13] On September 24, 2020, the respondent filed a statement of claim against the appellants, claiming the $1,487,807 associated with delay and $1,200,000 attributable to "additional work", for a total damages claim of $2,687,807. The delay claim related to the matters addressed in the fourteen delay notice letters. The statement of claim specifically identified all fourteen letters by date. The additional work claim related to work performed in early 2016 "to bring the deteriorated state of existing Project Site infrastructure and facilities to a condition suitable to begin performance of the Work", certain 2017 flooding impacts referenced in two of the notice letters, and the specific additional work contemplated by the two "Notice of Dispute" letters that was

performed in 2017. The respondent asserted the Municipal District was liable in contract and tort, and Associated Engineering in tort, for design errors, failing to properly administer the construction agreement, failing to provide access to the project site, and forcing it to perform additional work without adequate compensation.

[14] On November 17, 2020, the respondent amended its statement of claim, in part, to add a claim for $311,044.91 for work performed and claimed under the construction agreement "for the period ending June 30, 2020".

[15] In April 2021, the appellants defended, asserting in part that the respondent's claims were barred by operation of the *Limitations Act*. The Municipal District also alleged the respondent "failed or neglected to properly make any claims for further or additional payment within a reasonable amount of time or in accordance with the requirements of the Contract".

[16] The appellants applied for summary dismissal under Rule 7.2(a) of the *Rules of Court*, Alta Reg 124/2010, initially in relation to the respondent's delay claim only. The appellants relied on the notice letter dates identified in the statement of claim to assert the respondent had knowledge of each of the delay claims between May 15, 2016 and June 12, 2018, at the time the letters were issued, which was more than two years and 75 days[1] before the statement of claim was filed, with the result that those claims were barred by operation of the *Limitations Act*.

[17] The respondent filed an affidavit from Todd Baker, a project director, in response. The affidavit exhibited the sixteen notice letters. Mr. Baker stated the respondent "did not demand compensation in any of the… Notice Letters", but merely provided notice of a potential claim. He asserted, "We would not have known the true scope and significance of the Notice Letter Events until achieving Substantial Performance". It was only after achieving substantial performance on September 26, 2018 that the respondent "would have then been in a position to undertake a review" to determine "the actual impacts arising from the Notice Letter Events". Moreover, "it would have been uneconomical and impractical for Chandos to have considered initiating 16 instances of court proceedings in relation to the Project (upon the issuance of each of our Notice Letters)".

[18] In July 2022, following receipt of the affidavit, the appellants amended their applications to rely on Mr. Baker's affidavit and to include the additional work – excluding the claim for $311,044.91 – in the scope of their request for summary dismissal. The amended applications added, as an additional basis for summary dismissal, the respondent's failure to comply with the requirements of the construction agreement for making claims.

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[1] The relevant period is two years and 75 days, and not the two years contemplated by the *Limitations Act*, because Ministerial Order 27/2020 issued during the COVID-19 pandemic suspended limitation periods that were already running under section 3(1)(a) as of March 17, 2020 for 75 days: *StraightVac Services Ltd v Sunshine Oilsands Ltd*, 2024 ABCA 8 at paras 1, 25-26.

[19] The construction agreement included provisions specifying:

(i) "no adjustment in the Contract Price shall be made for any delay except… if the Contractor provides Notice… of such a Claim to the Engineer within five (5) Business Days after the occurrence of the event which has caused the delay" (GC 47.2);

(ii) the "failure to provide separate express Notice in strict compliance with GC 47 shall be deemed to be prejudicial to the Owner and shall prohibit the Contractor from claiming, or being entitled to, any Claim for adjustment to the… Contract Price with respect to such delay" (GC 47.6); and

(iii) "If the Contractor intends to make a Claim for… an increase to the Contract Price… [it] shall give timely Notice in writing of intent to Claim" (GC 58.1).

[20] On August 17, 2022, the appellants questioned Mr. Baker on his affidavit. During that questioning, Mr. Baker admitted: the sixteen notice letters were issued "because the events in those letters… were causing something more than a trivial cost or impact upon Chandos"; as of the date of the last notice letter, June 12, 2018, "Chandos was aware of the costs that it had incurred to that point, having tracked them"; and he was not aware of any other notices provided by the respondent in relation to the claims at issue.

b) Decisions below

[21] On November 3, 2023, an applications judge denied the appellants' application for summary dismissal. Referring to sections 3(1)(a)(i) and 3(1)(a)(iii) of the *Limitations Act*, the applications judge stated that because the construction agreement involved "a lengthy and ongoing relationship between the parties and given that the events were continuing even post substantial completion" he found "it very difficult to fix a date when the injury occurred [, as] evidenced, for example, by a final refusal to pay or when it was evident to a reasonable person in the position of the plaintiff that a proceeding was warranted". The applications judge felt there was a "general reluctance on the part of the Court to decide limitations issues except in the clearest cases without a complete factual record". As a result, he was not satisfied the appellants had met the burden of demonstrating the respondent's claims were out of time.

[22] The appellants appealed to the chambers judge. They argued the respondent had the requisite knowledge to trigger the running of the limitation period for the delay and additional work claims more than two years and 75 days before the statement of claim was filed. The respondent replied that the extent of the claim "could only be known and crystallized upon the Plaintiff completing the work" and, in any event, "Chandos did not know that it had a claim or that the claim warranted bringing the proceedings until the defendants refused to pay for the damages suffered".

[23] The chambers judge dismissed the appeal. She found that although the appellants might ultimately be successful in arguing the respondent is out of time, "the admissions here do not make that finding plain, unambiguous, or unequivocal". She agreed with the applications judge that there is a general reluctance on the part of the court to decide limitations issues, "except in the clearest of cases", without a complete factual record. Due to the lengthy and ongoing relationship between the parties, it was difficult to determine "to the degree necessary" when the injuries occurred and when they warranted bringing a proceeding for the purpose of section 3(1)(a) of the *Limitations Act*. She noted that even after substantial performance had been achieved, the appellants were reviewing the respondent's claims, requesting additional information, and "negotiating the damages resulting therefrom". It seemed at least "arguable" the respondent did not know with certainty whether there would ultimately be an impact until the project was substantially complete in September 2018.

[24] As to the argument that the respondent's failure to comply with the contractual notice requirements barred its claim, the chambers judge noted it seemed doubtful whether the respondent strictly complied with the requirements of the contract but concluded it would be inappropriate to decide that issue on the limited factual record.

III. Grounds of appeal and standard of review

[25] The appellants appeal to this Court. They argue the chambers judge erred by failing to identify and apply the proper test for summary dismissal, failing to find the claims were barred by section 3(1)(a) of the *Limitations Act*, and failing to find the claims were barred as a result of the respondent's failure to comply with the relevant notice provisions of the construction agreement.

[26] The statement of the test for summary dismissal and the interpretation of the *Limitations Act* are questions of law reviewed for correctness. Absent an error of law, the chambers judge's assessment of the facts, the application of the law to those facts, and the ultimate determination on whether summary resolution is appropriate are all entitled to deference: *Walczak v Canadian Imperial Bank of Commerce*, 2026 ABCA 38 at para 7; *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 10 [*Weir-Jones*]; *Hryniak v Mauldin*, 2014 SCC 7 at paras 81-84 [*Hryniak*].

[27] Where the decision of a chambers judge on a summary judgment application results from an error of law and must be set aside, and where the chambers judge did not make factual findings that are owed deference, this Court may be in a position to review the record and assess the application afresh: *Pittman Brothers Production Ltd v Evans*, 2024 ABCA 185 at paras 17-18, leave to appeal to SCC refused, 41409 (16 January 2025) [*Pittman Brothers*].

IV. Analysis

a) Summary dismissal

[28] The appellants applied for summary dismissal under Rule 7.2(a) of the *Rules of Court*, which provides, "On application, the Court may at any time in an action give judgment or an order to which an applicant is entitled when (a) admissions of fact are made in a pleading or otherwise".

[29] In *Weir-Jones*, this Court applied the general principles set out by the Supreme Court in *Hryniak* to applications for summary judgment under Rule 7.3. Unlike Rule 7.3, which requires the party applying for summary dismissal to support their application with an affidavit or other evidence, Rule 7.2(a) allows the applicant to rely on admissions of fact by the plaintiff made in a pleading or otherwise.

[30] Despite this difference, the general guidance set out in *Hryniak* applies equally to applications under Rule 7.2(a). Summary judgment is available where there is "no genuine issue for trial", which is when "the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result": *Hryniak* at paras 34, 49. Presuming summary disposition is only appropriate where the applicant "meets some high standard of irrefutability" is contrary to the "culture shift" mandated by *Hryniak*. Instead, the moving party must, at the threshold stage, prove the factual elements of its case on a balance of probabilities and establish there is no genuine issue requiring a trial. The resisting party then has an evidentiary burden of persuading the court there is a genuine issue requiring a trial, or in other words that the moving party has not met that aspect of its burden. The resistance to summary judgment must be grounded in the record, not mere speculation: *Weir-Jones* at paras 25, 32-35, 47.

[31] The appellants argue the chambers judge erred by applying too high a standard to assessing whether summary dismissal was appropriate. We agree, at least with respect to the limitations issue.

[32] On that issue, the chambers judge endorsed the view expressed by the applications judge that limitations defences should only be decided summarily "in the clearest of cases". She denied that aspect of the application on the basis that it was not "plain, unambiguous, or unequivocal" that the respondent's claim was out of time, stating it was at least "arguable" the respondent did not know with certainty it suffered a loss until the project was substantially complete. That was the wrong standard. Summary judgment is not restricted to only the "clearest of cases" and a disposition need not be "plain, unambiguous, or unequivocal" to be fair: *Weir-Jones* at paras 14, 33. As is apparent from this Court's decision in *Weir-Jones*, which upheld the summary dismissal of a claim on limitations grounds, applications for summary dismissal based on the expiry of a limitation period do not receive different treatment.

[33] The decision of the chambers judge to deny summary judgment on limitations grounds is based in an error of law. As the chambers judge did not make any factual findings related to that issue, this Court is in a position to review the record, including the admissions relied on by the appellants, and to assess this aspect of the application afresh: *Pittman Brothers* at paras 17-18.

[34] Given our conclusion below that the claims at issue are limitations barred, we decline to consider whether the chambers judge also erred in assessing whether the claims are barred by the terms of the construction agreement.

b) Limitations defence

[35] Section 3(1)(a) of the *Limitations Act* provides that a defendant is entitled to immunity from liability in respect of a claim if a claimant does not seek a remedial order within two years after the date on which the claimant first knew, or in the circumstances, ought to have known that the injury at issue:

(i) had occurred;

(ii) was attributable to conduct of the defendant; and

(iii) assuming liability on the part of the defendant, warrants bringing a proceeding.

"Injury" is defined to mean personal injury, property damage, economic loss, non-performance of an obligation, or in the absence of any of the foregoing, the breach of a duty: *Limitations Act*, s 1(e).

[36] In *Grant Thornton LLP v New Brunswick*, 2021 SCC 31 [*Grant Thornton*], the Supreme Court identified "the standard to be applied in determining whether and when a plaintiff has the requisite degree of knowledge" to trigger the discoverability-based limitation under the New Brunswick *Limitation of Actions Act*, SNB 2009, c L-8.5. The requisite knowledge arises "when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn", with the "material facts" being the requirements referenced in the legislation: *Grant Thornton* at paras 28, 42-43, 45. The New Brunswick provision specifies requirements equivalent to Alberta's sections 3(1)(a)(i) and 3(1)(a)(ii), such that the standard identified in *Grant Thornton* applies in Alberta to at least the assessment of when a plaintiff had actual or constructive knowledge that an injury "had occurred" and was "attributable to conduct of the defendant": *SR v Edmonton (Police Service)*, 2024 ABCA 340 at para 17; *Rick Balbi Architect Ltd v Condominium Corporation No 0824320*, 2024 ABCA 37 at para 9.

[37] *Grant Thornton* did not consider an equivalent to the section 3(1)(a)(iii) requirement, that the injury, assuming liability, "warrants bringing a proceeding": *Aseniwuche Winewak Nation of*

Canada v Ackroyd LLP, 2023 ABCA 60 at paras 13-14 [*Aseniwuche*]. This "added element can have the effect… of postponing the start date of the two-year limitation period beyond the date when a plaintiff knows it has incurred a loss because of the defendant's actions": *407 ETR Concession Company Limited v Day*, 2016 ONCA 709 at para 33 [*407 ETR Concession*]. It seeks to balance the traditional defendant-oriented rationales for the imposition of limitation periods – certainty, the risk that evidence will deteriorate, and ensuring plaintiff diligence – with the need to treat plaintiffs fairly: *Yugraneft Corp v Rexx Management Corp*, 2010 SCC 19 at paras 58-61, citing *Novak v Bond*, [1999] 1 SCR 808 at paras 64-66 [*Novak*]. It also strikes a balance between "not allowing a cause of action to linger and not requiring lawsuits to be commenced prematurely": *Aseniwuche* at para 11, citing *Points West Living Red Deer Inc v Rockliff Pierzchajlo Kroman Architects Ltd*, 2021 ABQB 589 at para 43.

[38] Ontario has an "equivalent" provision in its limitations legislation, requiring knowledge "that… a proceeding would be an appropriate means to seek to remedy" the injury: *Limitations Act, 2002,* SO 2002, s 5(1)(a)(iv); *Aseniwuche* at para 11. This Court has cited Ontario jurisprudence discussing the Ontario provision for the proposition that assessing Alberta's "warrants bringing a proceeding" requirement "is a fact specific exercise": *Aseniwuche* at para 11, citing *Fercan Developments Inc v Attorney General of Canada*, 2021 ONCA 251 at paras 14, 16, citing *407 ETR Concession* at para 34 and *Presidential MSH Corporation v Marr Foster & Co LLP*, 2017 ONCA 325 at para 27 [*Presidential MSH*]. A proceeding may not be warranted, for example, where the possible damages recoverable would be minimal or speculative at best: *HOOPP Realty Inc v Emery Jamieson LLP*, 2020 ABCA 159 at para 56, citing *N(J) v Kozens*, 2004 ABCA 394 at paras 14-15. The standard imposed by section 3(1)(a)(iii) is primarily objective; while the personal circumstances of a plaintiff may be considered, they should not be overemphasized: *Aseniwuche* at para 15.

[39] The appellants submit the allegations contained within the statement of claim in combination with the admissions provided on behalf of the respondent by its affiant Mr. Baker establish the respondent had the knowledge specified by section 3(1)(a) more than two years and 75 days before it filed its statement of claim on September 24, 2020 – i.e., before July 11, 2018 – in relation to each of the additional work and delay claims.

[40] The parties' disagreement focuses on the first and third section 3(1)(a) requirement: knowledge that an injury "had occurred", and that the injury "assuming liability on the part of the defendant, warrants bringing a proceeding".

[41] In relation to the second requirement, the "conduct of the defendant[s]" that the respondent alleges gives rise to liability is described in its statement of claim: "[p]roviding a Design containing significant errors and omissions, while misrepresenting that the Design did not contain significant errors and omissions"; "[f]ailing to reasonably, fairly and effectively administer the Contract and the construction of the Work"; "[f]ailing to provide the Project Site to Chandos"; "[f]orcing Chandos to perform Additional Work, at its cost, without adequate compensation"; "[f]ailing to

retain a suitable, qualified and competent consultant and agent to act on behalf and as a representative of the Town"; and the "provision of negligent Engineering Services".

[42] There is no genuine issue as to whether the respondent was aware of the foregoing conduct on the part of the appellants before July 11, 2018. The statement of claim alleges the respondent discovered the concealed, deteriorated condition of the existing facilities in January 2016. The causes of the remainder of the additional work and delay claims are referenced in the sixteen notice letters, which in turn are referenced in the statement of claim and in the affidavit of Mr. Baker. Mr. Baker admitted during cross-examination that the notice letters were issued because the respondent was of the view the events identified in the letters were attributable to the appellants. From all these sources, it is evident the respondent was aware of the conduct on the part of the appellants that it alleges resulted in its claims at the time the letters were sent; i.e., by May 15, 2016 in the case of the causes identified in the first letter, and by June 12, 2018 in the case of the causes identified in the last letter.

[43] With respect to the first section 3(1)(a) requirement – knowledge that an injury had occurred – the appellants rely on the fact that for each claim, the respondent performed the additional work or incurred the associated delay prior to July 11, 2018. It is apparent from the statement of claim and affidavit of Mr. Baker that the alleged additional work was performed well in advance of July 11, 2018: the work to address deteriorated existing facilities was performed in early 2016; the work related to flooding was performed in June and October 2017; and the work associated with the two "Notice of Dispute" letters was performed in August and November 2017. It is also apparent from the statement of claim and affidavit that most of the alleged delay was incurred well before July 11, 2018, and for the few instances of delay that extended after July 11, 2018, the delay began well before that date. Since the additional work was performed and delays were incurred or underway prior to July 11, 2018, the appellants submit the respondent was aware it had sustained economic loss, and therefore an "injury" for the purposes of the *Limitations Act*, before that date.

[44] With respect to the third section 3(1)(a) requirement, the appellants argue the respondent was aware before July 11, 2018 that its injuries, assuming liability on the part of the appellants, warranted bringing a proceeding. They rely on the admissions of Mr. Baker that the respondent was tracking costs and delay during the course of the construction work and that the notice letters were issued "because the events in those letters… were causing something more than a trivial cost or impact upon Chandos".

[45] The respondent advances essentially three arguments in response.

[46] First, before the chambers judge, the respondent argued it did not know an injury had occurred or that it warranted bringing a proceeding because it did not know the magnitude of the costs attributable to the additional work and delay claims until the end of the project. Counsel for the respondent argued, "Until the end, you can't quantify the actual costs that you have [incurred]

as a result of the delay usually". She highlighted Mr. Baker's evidence that, "After achieving Substantial Performance on September 26, 2018, we would have then been in a position to undertake a review of the potential delays, delays, and other events referenced in our Notice Letters... to determine the actual impacts arising from the Notice Letter Events".

[47] The respondent's submission is unconvincing. A plaintiff does not need to know the exact extent or type of harm it has suffered, or the precise cause of its injury, in order for a limitation period to run. The quantum of the claim need not be crystallized: *Grant Thornton* at para 46; *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2024 ABCA 403 at para 16 [*Chandos 2024*]. "To hold otherwise would inject too much uncertainty into cases where the full scope of the damages may not be ascertained for an extended time": *Peixeiro v Haberman*, [1997] 3 SCR 549 at para 18 [*Peixeiro*]; *Hamilton (City) v Metcalfe & Mansfield Capital Corporation*, 2012 ONCA 156 at para 61.

[48] The respondent admitted through Mr. Baker that it was aware at the time of each notice letter that "something more than a trivial cost or impact" had been incurred. When the respondent's allegations and admissions are taken together, it is apparent the respondent was aware it had suffered much more than just a non-trivial loss. As outlined above, the additional work at issue, which allegedly cost the respondent $1,200,000, was fully performed in 2016 and 2017. The respondent tracked its costs during the course of the construction work. As for the delay claims, July 2018 was a full sixteen months after the March 2017 completion date contemplated by the construction agreement, and work was still ongoing at that time. The respondent tracked its delays during the course of the work. The respondent knew long before July 2018 that it had been significantly delayed. Many of the notice letters were clear the respondent was incurring costs. The quest for precise quantification did not remove the respondent's existing awareness that it had sustained a significant cost impact in respect of the additional work and delay claims prior to July 11, 2018, and does not give rise to a genuine issue requiring a trial.

[49] Second, before the chambers judge, the respondent relied on the argument set out in the affidavit of Mr. Baker that "it would have been uneconomical and impractical for Chandos to have considered initiating 16 instances of court proceedings in relation to the Project (upon the issuance of each of our Notice Letters)". Counsel for the respondent asserted, "it would have meant pretty much starting 16 different lawsuits". It is suggested that contractors should not be required to commence litigation at the first sign of delay.

[50] This submission is without merit. The discoverability-based limitation begins to run when a claimant has actual or constructive knowledge it has sustained an injury attributable to the conduct of the defendant that warrants bringing a proceeding. It does not require the claimant to seek a remedial order at that time. It allows the claimant two years to do that. In this case, all of the respondent's additional work claims and most of its delay claims could have been captured in a single statement of claim filed within two years of the respondent's first injury in early 2016, so by early 2018. The *Rules of Court* provide a further one year for service of a statement of claim.

Prior to service, the statement of claim may be amended any number of times without the court's permission: *Rules of Court*, Rules 3.26(1), 3.62(1)(a). In this case, a single amendment filed prior to the deadline for service in early 2019 could have added the remaining few delay claims that arose in 2018. Seeking a remedial order within the time specified in section 3(1)(a) of the *Limitations Act* would not have "meant pretty much starting 16 different lawsuits" or commencing litigation at the first sign of delay.

[51] Moreover, as with any other contract, parties to a construction contract are free to agree to extend the section 3(1)(a) limitation period at the time of contracting or during the course of performance: *Limitations Act*, s 7(1). In this case, the parties did not do that. To the contrary, they expressly provided at GC 59.3 that the mandatory dispute resolution provisions contained in their agreement did not prevent them from commencing legal action where that was "necessary to... preserve a right... that would otherwise be barred by statute".

[52] On appeal, the respondent focuses on a third argument. It contends it was not aware that an injury had occurred or that it warranted bringing a proceeding until the appellants refused to pay. It reasons, "If the Defendants agreed to pay for the additional costs or compensate Chandos for the delay, there is no economic loss". On that basis, it submits the limitation period did not start to run until March 2019 when Associated Engineering responded to the claim letter it submitted in December 2018. Until then, the parties were still "[n]egotiating the damages".

[53] The appellants have consistently argued the law of limitations does not allow a plaintiff to unilaterally delay the running of a limitation period by not asking for payment. They note the respondent never asked for payment with respect to the majority of its $1,200,000 additional work claim until it filed its statement of claim in 2020. Before the chambers judge, they argued:

> It cannot be true and certainly we cannot find any case law to suggest that simply by not making a party aware of their claim, for instance, not submitting an invoice for the $1.2 million dollars [of additional work], that a party receives a benefit of that by obtaining... an infinite limitation period. Nobody said no because they didn't know about it, but certainly they didn't say no, therefore the limitation period didn't start.

Even if the law did allow a plaintiff to unilaterally delay the running of a limitation period in this way, the appellants note that for the additional work claims addressed in the two "Notice of Dispute" letters, the respondent has acknowledged the appellants "refused to compensate Chandos" in 2017 for that work, well before July 2018: appellants' factum at paras 52-53.

[54] We share the appellants' concern that, if a claimant could wait as long as it wishes to ask for payment and then wait again for a refusal, the claimant could both delay and control the running of a limitation period. To illustrate, the respondent identified a "lengthy list of [design] issues" in May 2016 and asserted they were "plaguing this project". It stated, "[a] lot of work has been done

and money has been spent for which we have yet to be compensated" and "delays are mounting on this project". Yet it did not communicate a request for payment in relation to those issues until December 2018. It then waited until March 2019 for the appellants to review and respond to that request. According to the respondent, it could only have known at that time – almost three years after it had knowledge of the design issues, delays and cost impacts – that an injury had occurred and that a proceeding was warranted. This position is untenable. It would fundamentally undermine the traditional certainty, evidentiary, and diligence rationales that underpin limitations legislation: *M(K) v M(H)*, [1992] 3 SCR 6 at 29-30; *Peixeiro* at para 34; *Novak* at paras 64-67; *Grant Thornton* at para 29; *Kosicki v Toronto (City)*, 2025 SCC 28 at para 68.

[55] In fairness, there are circumstances in which a refusal to pay will be the trigger that starts a limitation period running. A typical example arises when a contractor or other service provider performs work contemplated by an agreement and the counter party fails or refuses to pay. In such a case, the service provider does not sustain an "injury" simply by performing the work as agreed. The failure to pay is the wrongful conduct. However, even in those cases, "a service provider cannot suspend the limitation period by delaying the issuance of an invoice": *Twinn v Sawridge Band*, 2017 ABQB 366 at para 89, per Pentelechuk J, as she then was. In such cases, courts have found the limitation period begins to run after the agreed upon time for issuance and payment of an invoice, or absent an agreement on timing, after a reasonable time to issue an invoice plus a reasonable time for payment: *1352194 Ontario Inc v Vince*, 2021 ONSC 8192 at para 24; *1402496 Alberta Ltd v Neustaeter*, 2020 ABQB 179 at paras 61-66; *Royal Well Servicing Ltd v Murphy Oil Company Ltd*, 2018 ABQB 514 at paras 23-26, 30-32; *Collins Barrow Toronto LLP v Augusta Industries Inc*, 2017 ONCA 883 at para 5; *Royal Well Servicing Ltd v Murphy Oil Company Ltd*, 2016 ABQB 418 at para 14; *Hugh Munro Construction Ltd v Moschuk*, 2012 ONCA 109 at para 1; *GJ White Construction Ltd v Palermo*, 7 CLR (3d) 13, [1999] OJ No 5563 (ONSC) (QL) at paras 19-22.

[56] In any event, non-performance of an agreed obligation to pay is not the conduct alleged in this case. As detailed above, the conduct alleged by the respondent in its statement of claim and raised in the notice letters is improper design, improper administration, inadequate site access, and forced additional work outside the scope of the agreement. In all cases, the alleged wrongful conduct occurred before the associated costs were incurred. The respondent was aware of the conduct, that it was incurring significant expenses as a result of the conduct, and that it had no agreement in place for reimbursement at or near the time it performed the work or incurred the delay.

[57] The respondent further argues that because the parties were "[n]egotiating the damages" after its December 2018 claim letter, proceedings were not yet warranted. However, the law is clear that ongoing settlement communications, investigations or negotiations do not, on their own, postpone the commencement of a limitation period: *Weir-Jones* at paras 57, 62; *Presley v Van Dusen*, 2019 ONCA 66 at para 25. The potential for settlement is always an option for any claim,

but it does not have the effect of delaying the start of or extending the limitation period: *Chandos 2024* at para 17.

[58] Courts in Ontario and Saskatchewan, applying equivalent requirements to Alberta's "warrants bringing a proceeding" section 3(1)(a)(iii) requirement (*The Limitations Act*, SS 2004, c L-16.1, s 6(1)(d); *Limitations Act*, 2002, SO 2002, c 24, Sch B, s 5(1)(a)(iv); *Aseniwuche* at para 11), have held that the existence of alternative claims processes may in certain circumstances operate to delay the running of a limitation period. For example, the Ontario Court of Appeal has held that proceedings may not be appropriate where a statutory claims process exists, is "usually effective", is underway, and has not yet been completed: *407 ETR Concession* at paras 39, 47. In *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc*, 2020 SKCA 39 [*Venture*], a case referenced and addressed by the parties throughout these proceedings, the Saskatchewan Court of Appeal endorsed the Ontario authorities and accepted that a mechanism for submitting and processing contractor claims under a construction agreement could also delay the running of a limitation period in the appropriate case. However, it held, for such a process to delay the running of a limitation period, the contractor had to at minimum invoke the process and satisfy its requirements, including regarding notice: *Venture* at paras 78-83. Both the Saskatchewan and Ontario courts have held that, to the extent it is open to a plaintiff to rely on the invocation of an alternative process as suspending discovery, the date on which that alternative process has run its course or is exhausted must be reasonably certain or ascertainable: *Presidential MSH Corporation* at para 48; *Venture* at para 71.

[59] In responding to the summary judgment application, the respondent did not rely on the satisfaction of any alternative contractual claims process. On the contrary, in his affidavit Mr. Baker acknowledged the respondent "did not make a request for an extension of Contract Time or an adjustment to the Contract Price" in the notice letters and "did not submit a request for compensation" in relation to the notice letters until achieving substantial performance. There is no suggestion the respondent provided any notice, let alone notice of a claim, in relation to the early 2016 additional work. Thus, the respondent cannot be taken to argue that it complied with the contractual provisions requiring that notice of delay claims be given "within five (5) Business Days after the occurrence of the event which has caused the delay" (GC 47.2) and that "timely Notice in writing" be given respecting the additional work claims (GC 58.1). To the extent the existence of an alternative contractual claims process could operate to delay the running of a limitation period, there is no basis on which to find that was the case here.

[60] Ultimately, for each relevant claim, the respondent was aware of the allegedly wrongful conduct on the part of the appellants and that it had suffered a significant cost impact as a result of that conduct before July 11, 2018. For each claim the respondent had knowledge of the material facts upon which a plausible inference of the appellants' liability could be drawn; therefore, it had "the requisite degree of knowledge" that an injury "had occurred" and "was attributable to conduct" of the appellants for purposes of sections 3(1)(a)(i) and 3(1)(a)(ii) of the *Limitations Act* before that date: *Grant Thornton* at paras 3, 28, 42-43, 45; see, similarly, *Venture* at paras 40, 42,

52-54. With or without precise quantification, the respondent knew before July 11, 2018 that the cost impact, and the potentially recoverable damages, far exceeded any trivial, minimal or speculative amount, meaning it was aware its injuries were sufficiently serious to warrant bringing a proceeding for the purposes of section 3(1)(a)(iii) of the *Limitations Act*.

[61] While knowledge of the magnitude of the loss may not always constitute knowledge "that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding", it is enough in the circumstances of this case. Resistance to summary judgment must be "grounded in the record, not mere speculation" (*Weir-Jones* at para 35), and the respondent has not identified any legitimate reason why it may not have known proceedings were warranted. As the Supreme Court cautioned in *Canada (AG) v Lameman*, 2008 SCC 14 at para 19 [*Lameman*]:

> A summary judgment motion cannot be defeated by vague references to what may be adduced in the future, if the matter is allowed to proceed. To accept that proposition would be to undermine the rationale of the rule. A motion for summary judgment must be judged on the basis of the pleadings and materials actually before the judge, not on suppositions about what might be pleaded or proved in the future.

The suggestion that policy arguments specific to the construction context might later be made, or that evidence related to such considerations might later be adduced, is not enough to resist summary dismissal. The parties to a summary disposition application must "put their best foot forward": *Lameman* at para 11; *Weir-Jones* at para 37.

[62] By operation of section 3(1)(a) of the *Limitations Act*, the appellants are entitled to "immunity from liability in respect of" the respondent's claims. There is no genuine issue requiring a trial.

V. Conclusion

[63] The appeal is allowed and the respondent's additional work and delay claims, excluding its $311,044.91 claim in relation to work performed during "the period ending June 30, 2020", are summarily dismissed.

Appeal heard on October 6, 2025

Memorandum filed at Edmonton, Alberta
this 23rd day of November, 2026

Antonio J.A.

Friesen J.A.

Feth, J.A. (dissenting):

I. Introduction

[64] I have read the thoughtful majority decision of my colleagues. While I agree that the chambers judge applied the wrong test for summary dismissal, I respectfully disagree with their conclusion that most of the action can be summarily dismissed because of the limitation period in the *Limitations Act*, RSA 2000, c L-12. The majority applies principles, particularly governing when a proceeding is warranted, that are not the law in this province. Moreover, the parties' minimal arguments in this appeal are not an adequate platform for developing the law in Alberta.

[65] This Court recently confirmed that determining when a claimant first knew or ought to have known an injury "warrants bringing an action" as required by s 3(1)(a)(iii) of the *Limitations Act*, "is a fact specific exercise turning on the facts of each case": *Aseniwuche Winewak Nation of Canada v Ackroyd LLP*, 2023 ABCA 60 at para 11. In my view, under the existing jurisprudence, a proceeding is not warranted *merely* because a claimant has suffered a non-trivial expense. Such a principle risks offending the public policy underpinning s 3(1)(a)(iii) that "parties should be discouraged from rushing into litigation" and seems unnecessary because the existing jurisprudence already recognizes that "delay for tactical reasons would not suspend the running of the limitation period": *Aseniwuche* at para 11. Revisiting the policy debate requires a better record and full engagement from the affected parties, which did not occur here.

[66] With respect to s 3(1)(a)(iii), the appellants grounded their appeal on the singular proposition that a proceeding was warranted when the plaintiff knew it had incurred non-trivial expenses. They alluded to an exception where the parties have access to an alternative dispute resolution process through their contract but did not argue or negate that exception. The appellants carried the burden of showing "no merit" to the claim and no genuine issue for trial. Only if they met that initial burden was the plaintiff required to put its best foot forward to demonstrate from the record that a genuine issue for trial remained. In my view, Chandos was not required to rebut arguments and adduce evidence about issues that were not argued by the appellants.

[67] Based on the legislation, Alberta cases and this evidentiary record, the appellants have failed to show no genuine issue remains for trial about whether the respondent's action is time-barred, except for one claim discussed below involving work to commission the new plant.

[68] The appellants also argued that most of the action should be summarily dismissed because the respondent failed to comply with contractual terms governing claims for adjustments to the contract price. The majority decision does not address this argument because of its conclusion on the limitation period. I agree with the appellants that the chambers judge also applied the wrong test to this part of the summary dismissal application. However, in determining that part of the application afresh, I conclude a genuine issue for trial remains about the contractual defences raised by the appellants.

[69] I would allow the appeal in part and summarily dismiss the portion of the claim involving work to commission the new plant. In all other respects, I would deny the appellants' summary dismissal application and dismiss the appeal.

II. Factual background

[70] Chandos Construction Ltd, as a general contractor, entered a construction contract with the Municipal District of Greenview No 16 to build a water treatment plant and upgrade related infrastructure in Grande Cache, Alberta. Associated Engineering Alberta Ltd was the Municipal District's project engineer. The contract was for a fixed price and had a completion date of March 4, 2017. Chandos was required to provide written notice to the Municipal District and Associated Engineering if it wanted an extension of time or a price adjustment (referred to in the contract as "Claims"). Chandos was also required to mitigate any delay, expenses or loss underlying such requests.

[71] Chandos commenced work in January 2016. Problems and delays arose during the construction allegedly causing Chandos to incur unexpected expenses and to perform additional work outside the scope of the contract to mitigate the delays and complete the project. Chandos asserted the Municipal District and Associated Engineering were responsible for those delays and the additional work, including through changes to the scope of the work, problems with commissioning the new plant due to undisclosed faulty waterlines and membranes, chemical-storage problems, and hazardous lead paint in the existing plant.

[72] The contract contained General Conditions (GCs) addressing delay, extensions of the contract time, adjustments to the contract price, and the authorization of work outside the scope of the contract. GC 14.5 required Chandos to provide prompt written notice if "any delay is foreseen for any reason."

[73] While performing the contract, Chandos issued 16 letter notices to Associated Engineering and the Municipal District between May 15, 2016, and June 12, 2018, about various concerns (the Notices).

[74] Fourteen of the Notices described events, allegedly caused by the appellants, that had delayed, or could delay, completion of the work (the Delay Notices). The Delay Notices indicated Chandos had incurred, or might incur, increased expenses as a result. Several stated Chandos could not yet determine the extent of any resulting delay or added expenses. The Delay Notices addressed the requirement in GC 14.5 that any such notice be issued promptly. None requested an adjustment of the contract time or the contract price.

[75] The other two Notices dated September 7, 2017, and November 11, 2017, addressed a dispute between Associated Engineering and Chandos about whether certain work fell within the scope of the contract or constituted additional work outside the contract. Those Notices recorded

the dispute and Associated Engineering's instruction for Chandos to proceed with the work to mitigate delay.

[76] Substantial completion occurred on September 26, 2018. Based on the record, as of substantial completion, Chandos had not yet made a formal claim for additional compensation and neither the Municipal District nor Associated Engineering had communicated that such a claim would be rejected.

[77] On December 24, 2018, Chandos issued a formal Notice of Claim seeking an adjustment of the contract time and the contract price due to delay caused by the appellants. That claim was based on the events described in the earlier Delay Notices. Chandos quantified the delay at 17 months, and the expenses caused by the delay at $1,487,807 and sought corresponding adjustments. The Notice of Claim did not seek compensation for any additional work.

[78] On March 14, 2019, Associated Engineering rejected the claim, stating the delay appeared to arise from events within Chandos' control; however, Chandos was invited to provide further particulars.

[79] In September 2020, the Municipal District terminated the contract, citing Chandos' delay in completing work identified during a warranty inspection.

[80] On September 24, 2020, Chandos issued a statement of claim alleging the delays described in the Delay Notices caused damages of $1,487,807 and the additional work outside the scope of the contract caused damages of approximately $1,200,000. The parties refer to these claims as the Delay Claims and the Additional Work Claim, respectively. Chandos also advanced an alternative claim in restitution.

III. Applications for summary dismissal

[81] The Municipal District and Associated Engineering applied for summary dismissal of the Delay Claims and the Additional Work Claim under rule 7.2(a) of the *Alberta Rules of Court,* Alta Reg 124/2020:

> 7.2 On application, the Court may at any time in an action give judgment or an order to which an applicant is entitled when
>
> (a) admissions of fact are made in a pleading or otherwise … .

[82] The application was advanced on two grounds. First, the Delay Claims and the Additional Work Claim were time-barred. Second, Chandos failed to comply with contractual provisions governing notice and claims, so the contract barred recovery for losses caused by delays and additional work.

[83] An applications judge denied summary dismissal. The appellants appealed to a chambers judge where the record was augmented by Chandos to include an affidavit of Todd Baker, who was a Chandos project manager, and a transcript of questioning on Mr Baker's affidavit. Chandos raised no concern about the contents of the affidavit, the oral testimony during the questioning, or the pleadings in the Statement of Claim being treated as admissions under rule 7.2(a).

[84] The appellants argued both claims were barred by s 3(1)(a) of the *Limitations Act*, which states the limitation period begins when the claimant first knew, or in the circumstances ought to have known:

> i. the injury for which the claimant seeks a remedial order had occurred;
>
> ii. the injury was attributable to conduct of the defendant; and
>
> iii. the injury, assuming liability on the part of the defendant, warrants bringing a proceeding.

The parties' dispute focused on s 3(1)(a)(i) – when an injury had occurred – and s 3(1)(a)(iii) - when the injury warranted bringing a proceeding.

[85] In this case, the ordinary two-year limitation period was extended by 75 days because of Ministerial Order 27/2020 issued in response to the COVID-19 pandemic.

[86] The parties agreed the relevant injury was economic loss. The appellants argued Chandos suffered that loss when it incurred delay-related expenses and when it performed the additional work. Relying on admissions in the statement of claim and evidence given by Mr Baker, they submitted Chandos knew economic loss attributable to the appellants had been suffered and the loss warranted bringing a proceeding more than 2 years and 75 days before Chandos commenced the action.

[87] The appellants also argued both claims were barred by Chandos' failure to comply with contractual provisions, again relying primarily on evidence from Mr Baker.

IV. Decision under appeal to this Court

[88] The chambers judge dismissed the appeal, with reasons provided in an unpublished endorsement (the Decision).

[89] The chambers judge held that to grant summary dismissal under rule 7.2(a), the admissions must be "plain, unambiguous and unequivocal" and lead to the conclusion the claim has no merit. She concluded the principles governing summary judgment under rule 7.3, as set out in *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49, applied to summary dismissal under rule 7.2(a).

[90] The chambers judge stated that summary dismissal on limitations grounds should be granted only in "the clearest of cases" and found this was not such a case. In her view, it was unclear when the limitation periods began. Chandos might not have known the extent of its losses until substantial completion of the project. Further, the appellants continued to consider Chandos' claims for an increase in the Contract Price after substantial completion, and it was unclear when a reasonable person in Chandos' position would have commenced an action.

[91] As for the contractual non-compliance ground, the chambers judge found "it seems doubtful" that Chandos complied with the contractual requirements but could not determine whether that failure barred the Delay Claims and the Additional Work Claim because insufficient evidence was presented about whether the parties insisted on strict compliance with contractual requirements.

V. Issues on appeal and standard of review

[92] The appellants raise three grounds of appeal: (a) failure to apply the correct test for summary judgment, (b) failure to apply the correct law on limitations, and (c) errors of fact.

[93] The first alleged error is determinative, as discussed below, so the other grounds need not be considered. When a chambers judge has made an error of law, no deference is owed to the decision on summary judgment: *Arndt v Banerji*, 2018 ABCA 176 at paras 44, 48; *Pittman Brothers Production Ltd v Evans*, 2024 ABCA 185 at paras 17-18. If possible, this Court should then review the record and determine whether the appellants have established that no genuine issue requiring a trial remains: *Pittman* at para 18.

[94] Accordingly, the issues on this appeal are:

a. Did the chambers judge fail to correctly apply the law on summary judgment?

b. If so, have the appellants established there is no genuine issue requiring a trial about the Delay Claims and the Additional Work Claim being barred under the *Limitations Act*?

c. If not, have the appellants established there is no genuine issue requiring a trial about Chandos not complying with the contract provisions for making claims, such that the contract bars the Delay Claims and the Additional Work Claim?

The first issue raises a question of law and is reviewed for correctness. No standard of review applies to the remaining issues.

VI. Analysis

a) The trial judge failed to apply the correct law on summary judgment

i. Test for summary judgment

[95] In keeping with "the core principles relating to summary dispositions, the standard of proof, the record and fairness", the basic test for summary disposition is whether a genuine issue requiring a trial exists. The key considerations are whether:

a. The record enables the court to fairly resolve the dispute summarily.

b. The moving party has met its initial burden of showing no genuine issue requiring a trial.

c. If the moving party has met its initial burden, the resisting party has nevertheless demonstrated a genuine issue requiring a trial.

Weir-Jones at para 47.

[96] The moving party's burden has factual and legal aspects. The factual basis for a summary disposition must be established on a balance of probabilities: *Weir-Jones* at para 30. The moving party must also show the application of the law to the facts does not require a trial. A trial may be necessary where the law is unsettled or very complex or the factual issues are highly technical. However, the moving party need not show the state of the law, or its application to the facts, is "beyond doubt": *Weir-Jones* at para 45.

[97] In this case, the appellants applied for summary dismissal under rule 7.2(a), not rule 7.3. A line of trial level cases holds that in an application for summary judgment under rule 7.2(a), the admissions of fact must be "clear" or "plain, unambiguous and unequivocal": *Manson Insulation Products Ltd v Crossroads C & I Distributors*, 2011 ABQB 51 at para 32; *OW v WP*, 2012 ABQB 252 at para 26; *Levesque v Edmonton Regional Airports Authority*, 2022 ABQB 411 at paras 25, 29. The clarity requirement responds to the concern that admissions might be ambiguous if lacking sufficient factual context and specificity. However, the necessary clarity does not change the moving party's factual burden under rule 7.2(a). The admissions, including inferences drawn from them, must satisfy the factual burden on a balance of probabilities.

ii. Errors in the chambers judge's approach to summary judgment

[98] I agree with the appellants that the Decision applied an overly demanding test for summary dismissal and failed to address whether the appellants had met their burden as the moving parties. Further, while I concur with the reasoning in the majority decision about the overly rigorous

standard used to assess whether summary dismissal was appropriate for the limitations issue, I also find the wrong standard was applied to the contractual compliance issues.

[99] *Weir-Jones* established that summary judgment is not limited to cases in which the outcome is "beyond doubt," "plain and obvious" or "unassailable": *Weir-Jones* at paras 14, 27-28. Summary judgment may be available even where the facts, the law, and the application of the law to the facts are not obvious or straightforward.

[100] At several points in the Decision, the absence of a clear or obvious outcome or "finding" was treated as a basis on which to deny summary dismissal. That was an error of principle. The following parts of the Decision illustrate the error:

- Para 6: "[T]here is a general reluctance on the part of the Court to decide limitations issues, except in the clearest of cases, without a complete factual record."

- Para 11: "In my view, the Appellants may ultimately be successful in their argument that Chandos' claims are out of time, but the admissions here do not make that *finding* plain, unambiguous, or unequivocal" (emphasis added).

- Para 12: "As Mr. Baker stated in his affidavit, delay does not always have a continuing effect and, given that Chandos was trying to mitigate any delay experienced on the project, *it seems arguable* that it did not know with certainty whether there would ultimately be an impact until the project was substantially complete. That argument may or may not be successful on a full record, but *it is not clear in my view that it will fail*" (emphasis added).

- Para 14: "I agree with the Applications Judge who acknowledged … that it *seems doubtful* whether Chandos strictly complied with the requirements of the contract, but also found that this *appears to be a case* where neither side adhered to the strict contractual requirements" (emphasis added).

[101] The Decision also failed to address whether the appellants met their burden of establishing entitlement to summary dismissal through admissions in the statement of claim and the questioning of Mr Baker. The Decision did not identify the specific admissions relied on by the appellants, what facts the admissions were said to establish, or make any findings based on them. This was not a case where the chambers judge found the admissions ambiguous or that the facts they established were unclear. The Decision simply did not engage with the admissions relied on by the appellants.

[102] In an application under rule 7.2(a), the admissions relied on by the moving party form a necessary part of the analysis. Where admissions are the basis of the application, failure to consider them is an error of law.

[103] Given my conclusion that the Decision contains errors in law, the remainder of these reasons conducts a fresh analysis of whether the appellants are entitled to summary dismissal of the Delay Claims and the Additional Work Claim.

b) The appellants are not entitled to summary dismissal of the Delay Claims and most of the Additional Work Claims on limitation grounds

[104] I will address the Delay Claims and the Additional Work Claims separately. However, the starting point for both is to determine when the limitation period began. The appellants argue the limitation periods for both claims began more than 2 years and 75 days before Chandos commenced the action on September 24, 2020. If so, the appellants are entitled to immunity from liability under s 3(1)(a) of the *Limitations Act*.

The Delay Claims

[105] The Delay Claims seek compensation for additional expenses incurred by Chandos due to delays attributed to the appellants. The alleged causes of those delays are described in the Delay Notices issued between May 15, 2016, and June 12, 2018.

[106] Chandos formally requested an increase in the contract price to reimburse its delay-related expenses in the Notice of Claim dated December 24, 2018. Associated Engineering responded on March 14, 2019, as the Municipal District's representative, declining the claim on the ground that Chandos was responsible for the delays. However, Chandos was invited to provide further information. The implication of that invitation is that the appellants did not necessarily view Chandos' claims at the time as wholly meritless.

[107] The start of the limitation period for the Delay Claims turns on when Chandos knew, or ought to have known, an injury had been suffered and when it knew, or ought to have known, the injury warranted bringing a proceeding: s 3(1)(a)(i) and (iii) of the *Limitations Act*. The parties have no separate dispute about s 3(1)(a)(ii), which concerns when Chandos knew, or ought to have known, the injury was attributable to the appellants' conduct.

[108] The appellants submit the limitation period began, at the latest, when Chandos issued the final Delay Notice on June 12, 2018. Chandos argues the limitation period did not begin until Associated Engineering's response to the Notice of Claim in March 2019.

i. When Chandos suffered the injury

[109] Chandos could not know that it suffered an injury - specifically, economic loss - or that a proceeding was warranted, until the injury in fact occurred. The date of the injury is the earliest possible date on which the limitation period could begin.

[110] The question of when Chandos suffered the economic loss for which it seeks compensation in the Delay Claims has legal and factual aspects. The parties frame the legal aspect as whether the loss occurred when Chandos incurred the delay-related expenses or when the appellants refused to reimburse Chandos for those expenses. The appellants advance the former position; Chandos advances the latter. The possibility of a third option (such as when Chandos made a demand for payment or reasonably should have made a demand) was not raised.

[111] Both parties' positions are reasonable and coherent. Incurring expenses due to delay is distinct from suffering economic loss because, if the owner reimburses those expenses, the contractor suffers no loss. Conversely, when the contractor incurs the expenses, reimbursement is not assured, even if the owner is contractually obliged to provide it. The parties identified no Alberta authorities addressing this disagreement about the application of the law.

[112] The appellants rely on *Saskatchewan (Highways and Infrastructure) v Venture Construction Inc*, 2020 SKCA 39, where the Saskatchewan Court of Appeal held, in a similar context, that a contractor which incurred expenses in redoing construction work on a highway, due to the government's fault, suffered loss when it incurred the expenses, not when the government declined to reimburse them.

[113] *Venture* has not been adopted as the law in Alberta and the parties only briefly addressed its reasoning. Choosing between the parties' conflicting positions involves a complicated balancing of competing policy objectives underlying limitations legislation. Statutory time limits address important concerns about repose, the deterioration and reliability of evidence, the efficient administration of justice, diligence and promptness, and finality. However, those concerns must be balanced against preserving a claimant's substantive rights, access to justice, economic stability in commercial settings, and avoidance of premature lawsuits. The parties did not address whether a premature lawsuit, in the construction context, might encourage subtrades to cease work or file lien claims, disrupt financing of the construction project, avoid alternative dispute resolution mechanisms contemplated by the construction contract, or upset the working relationship between a general contractor and an owner by unnecessarily raising the temperature of their dispute.

[114] Another reservation about deciding the question through this appeal is that the parties only argued it as a binary choice. They say the injury occurred either when Chandos incurred the expenses or the appellants refused to pay them. Other options were not addressed, such as the possibility the economic injury was suffered when Chandos made a demand for payment or reasonably should have made that demand, or on substantial completion of the project.

[115] The parties addressed the legal aspect of when the economic loss occurred very briefly. The issue is difficult and the arguments are underdeveloped. In any event, I have found it unnecessary to decide the question because of my conclusion that under s 3(1)(a)(iii), a proceeding was not warranted before the start of the limitation window.

[116] The majority decision relies on comments in *Grant Thornton LLP v New Brunswick*, 2021 SCC 31 at paragraph 42 that an injury is known to the claimant "when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn". As the majority correctly notes, that standard applies in Alberta to determine when a plaintiff had actual or constructive knowledge that an injury occurred or was "attributable to the conduct of the defendant": *SR v Edmonton (Police Service)*, 2024 ABCA 340 at paras 17-18; *Rick Balbi Architect Ltd v Condominium Corporation No 0824320*, 2024 ABCA 37 at para 9. However, *Grant Thornton* does not address whether economic loss occurs when a contractor incurs an expense with an expectation of reimbursement, rather than at some later point in time, such as when a demand for payment is made or the demand is refused.

[117] The majority decision suggests Chandos suffered an injury when it incurred expenses arising from the delays and those expenses were caused by the appellants' wrongful conduct – a breach of contract or a duty of care in tort. However, the parties did not argue that the timing of when a plaintiff suffers injury for the purpose of s 3(1)(a)(i) turns on whether the defendant's wrongful conduct caused the injury. Neither party drew any connection between when Chandos suffered the injury and the breaches of contract or tortious duties pleaded in the statement of claim.

[118] In my view, the appeal of a summary dismissal decision should be decided on the arguments made by the parties. I decline to decide when Chandos suffered injury based on law that was not sufficiently argued by them. I am not satisfied with the proposition that a plaintiff invariably suffers an injury under s 3(1)(a)(i) when expenses are incurred and those expenses were caused by the defendant's wrongful conduct. As *Aseniwuche* supports, the law might be more nuanced, especially where the parties' relationship suggests the expenses will be reimbursed.

[119] Turning to the factual aspect of when Chandos suffered an injury, the appellants submit that admissions in the record establish Chandos *had incurred* delay-related expenses when each Delay Notice was sent. On their own, those Notices are not determinative; only a few expressly state Chandos has incurred expenses associated with the delays. However, Mr Baker resolved that uncertainty during questioning on his affidavit:

> Q. And Chandos issued the letters to the MD and to AE because the events in those letters, as described in Exhibits D through S, were causing something more than a trivial cost or impact upon Chandos; correct?
>
> A. Yes.

[120] Based on that admission, I find Chandos had incurred *expenses* resulting from delays when it issued the Delay Notices. At the latest, that was June 12, 2018. If a *loss* was suffered when the expenses were incurred, that is also the latest date on which Chandos suffered an injury (specifically, economic loss) for the purposes of the *Limitations Act*.

ii. When Chandos knew, or ought to have known, that it had suffered the injury

[121] In light of Mr Baker's evidence, no real dispute remains that Chandos knew expenses had been incurred due to delays caused by the appellants when the Delay Notices issued, the last date being June 12, 2018. If incurring the expenses constituted an economic loss and therefore an "injury", the injury was known by the dates of the Delay Notices.

iii. When Chandos knew, or ought to have known, that the injury warranted bringing a proceeding

[122] The appellants argue Chandos ought to have known the expenses incurred due to the delays (which they characterize as an injury) warranted bringing a proceeding once Chandos knew those expenses were more than trivial. In contrast, Chandos argues proceedings were not warranted until it knew, or ought to have known, the appellants would refuse to reimburse it for the expenses incurred.

[123] Alberta's s 3(1)(a)(iii) has no equivalent in the limitations legislation of many Canadian jurisdictions and was not discussed by the Supreme Court in *Grant Thornton* because New Brunswick's *Limitations of Actions Act*, SNB 2009, c L-8.5 did not contain a similar provision; see *Aseniwuche* at para 14.

[124] A claimant does not know an injury warrants bringing a proceeding until it knows the injury is sufficiently serious or, as some cases state, "relatively serious": *Community Futures Lesser Slave Lake Region v Alberta Indian Investment Corporation*, 2014 ABCA 232 at paras 24-25; *Weir-Jones* at para 54; Alberta Law Reform Institute Report, Limitations, Report No. 55 December 1989 at 33 (ALRI Report). Knowledge that the injury is sufficiently serious does not require knowledge of its full extent: *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2024 ABCA 403 at para 16 [*Deloitte*]; *Peixeiro v Haberman*, 1997 CanLII 325 (SCC) at para 18, [1997] 3 SCR 549.

[125] In this case, the admissions provided through Mr Baker during questioning established Chandos knew by June 12, 2018, that non-trivial expenses had been incurred due to delays attributed to the appellants. Based on those admissions, the appellants argue there is no genuine issue requiring a trial that Chandos knew or ought to have known a proceeding was warranted by June 12, 2018.

[126] I disagree. In my view, the appellants' position rests on an overly simplistic view of when a proceeding is warranted.

[127] Knowledge that a claimant has suffered a sufficiently (or "relatively") serious injury attributable to the defendant is necessary for a proceeding to be warranted, but that knowledge alone is not always enough. The question under s 3(1)(a)(iii) of the *Limitations Act* is when,

objectively speaking, a person in the claimant's circumstances has *sufficient ground or reason* to commence a proceeding: *N(J) v Kozens*, 2004 ABCA 394 at para 11.

[128] Those grounds or reasons are not confined to whether the claimant has suffered a non-trivial expense. For example, the economic expenses and benefits of bringing an action may be another factor in determining whether a proceeding is warranted: *Boyd v Cook*, 2013 ABCA 27 at paras 13-14; ALRI Report at 33. As a further example, in the case of historical sexual assaults, the "personal circumstances of the claimant" may bear on when an action is warranted. However, the "personal attributes of the claimant should not be overemphasized" because the *Limitations Act* contemplates "a primarily objective standard": *Aseniwuche* at para 15. Consequently, the suggestion that incurring non-trivial expenses alone is enough to warrant bringing a proceeding is contrary to existing authority in this province and wrong in law. Moreover, that approach risks extinguishing the contextual analysis contemplated under s 3(1)(a)(iii). "Determining when a claimant becomes aware of an injury that 'warrants bringing an action' is a fact specific exercise turning on the facts of each case": *Aseniwuche* at para 11.

[129] One purpose of the requirement that a proceeding be warranted before the limitation period starts is to protect claimants from having to commence premature or unnecessary legal actions: ALRI Report at 33. In *Aseniwuche* at paragraph 37*,* this Court held that s 3(1)(a)(iii) does not require claimants to commence "placeholder actions" to preserve a limitation period. Premature litigation might have unintended detrimental consequences, especially where the parties are in a continuing relationship. The determination of when a proceeding is warranted involves a balance between "not allowing a cause of action to linger and not requiring lawsuits to be commenced prematurely": *Aseniwuche* at para 11 referring to *Points West Living Red Deer Inc v Rockliff Pierzchajlo Kroman Architects Ltd*, 2021 ABQB 589 at para 43. A rigid rule that non-trivial expense or loss triggers the start of the limitation period might undercut this balancing exercise.

[130] Chandos argues that commencing a proceeding was not warranted when it issued the Delay Notices because doing so was unnecessary. By issuing the Delay Notices, Chandos informed the appellants that delays attributable to them were causing it to incur non-trivial additional expenses. After receipt, the appellants neither denied responsibility for the delays nor indicated they would refuse compensation for the resulting expenses.

[131] In my view, a real question remains about whether a reasonable person in Chandos' position would consider commencing an action as a necessary step when the Delay Notices were issued. It might be a problematic starting point to require a contractor in a long-term and continuing contractual relationship to contemplate and commence litigation at the first sign of delay causing non-trivial expenses. That approach might encourage, rather than dissuade, litigation based on assumptions that other parties will not meet their contractual obligations, potentially complicating both construction and contract law and opening the floodgates in our courts. As this Court has maintained, a reasonable person in the claimant's circumstances must have a reason to commence litigation that is independent of stopping the limitations clock: "What must be 'warranted' to start

the limitation period running is an action for a remedial order, not an action in anticipation that at some future point in time an action for a remedial order may be warranted": *Aseniwuche* at para 37.

[132] The appellants' factum acknowledges that *Venture* recognizes a limited exception when the parties are engaged in an alternative dispute resolution process which has not been completed. Here, the construction contract included a dispute resolution process for disputed claims where an increase to the contract price was sought, although the process had not been engaged when the Municipal District purportedly terminated the contract.

[133] The limitations law of Alberta is not necessarily the same as the law of other provinces where different legislation applies. Alberta law does not currently contain the rule advanced by the appellants about bringing a proceeding upon incurring a non-trivial expense. *Venture* is based on the language of Saskatchewan's *The Limitations Act*, SS 2004, c L-16.1, which states:

> **Basic limitation period**
>
> **5** Unless otherwise provided in this Act, no proceedings shall be commenced with respect to a claim after two years from the day on which the claim is discovered.
>
> **Discovery of claim**
>
> **6**(1) Unless otherwise provided in this Act and subject to subsection (2), a claim is discovered on the day on which the claimant first knew or in the circumstances ought to have known:
>
> > (a) that the injury, loss or damage had occurred;
> >
> > (b) that the injury, loss or damage appeared to have been caused by or contributed to by an act or omission that is the subject of the claim;
> >
> > (c) that the act or omission that is the subject of the claim appeared to be that of the person against whom the claim is made; and
> >
> > (d) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.
>
> (2) A claimant is presumed to have known of the matters mentioned in clauses (1)(a) to (d) on the day on which the act or omission on which the claim is based took place, unless the contrary is proved.

[134] Ontario's *Limitations Act*, 2002, SO 2002, c 24, Sch B at section 5 contains similar provisions including the presumption that a claimant knows "a proceeding would be an appropriate means to seek to remedy" an injury, loss or damage "on the day the act or omission on which the claim is based took place" (s 5(2)).

[135] The parties did not address whether the wording of Saskatchewan's s 6(1)(d) – "a proceeding would be an appropriate means to seek to remedy" an injury – is substantively equivalent to Alberta's s 3(1)(a)(iii) – "warrants bringing a proceeding" given the effect of the presumption in s 6(2) in the Saskatchewan statute. The brief reference to the Ontario "equivalent" in *Aseniwuche* at paragraph 11 does not satisfy me that the analysis under Alberta's s 3(1)(a)(iii) is identical to the approach elsewhere.

[136] The parties made no submissions about the scope of the exception for claims subject to an alternative dispute resolution process and whether that exception would apply in this case to delay when a proceeding was warranted. Moreover, they did not address the possibility that other exceptions might apply. They identified no Alberta or relevant Supreme Court of Canada decision holding that a plaintiff who suffers non-trivial expense is warranted in bringing a proceeding unless certain limited exceptions are engaged.

[137] The appellants' initial burden was to show "no merit" to the claim and no genuine issue for trial. If they met that burden, Chandos was then required to "put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial": *Weir-Jones* at para 47. In my view, Chandos was not required to adduce evidence and rebut arguments about issues that were not argued by the appellants.

[138] The majority decision refers to additional authorities about exceptions recognized in Ontario, which have not been endorsed by any court in Alberta, and were not raised by the parties. The Ontario Court of Appeal has recognized at least two exceptions under its limitations legislation – the first when a plaintiff relied on a defendant's "superior knowledge and expertise" and the second when an alternative dispute resolution process "offers an adequate alternative remedy and that process has not fully run its course" - but has also remarked that the list of exceptions is not necessarily closed: *Nasr Hospitality Services Inc v Intact Insurance*, 2018 ONCA 725 at paras 50-51; *Sosnowski v MacEwen Petroleum Inc*, 2019 ONCA 1005 at para 17; *Presidential MSH Corp v Marr Foster & Co LLP*, 2017 ONCA 325 at paras 20-29. The parties made no submissions about the legal and policy merits of developing the law of Alberta to emulate the approach in Ontario, nor the consequences of doing so. These issues were also not raised before the chambers judge and the applications judge. In my view, this appeal is not the appropriate vehicle for deciding these questions.

[139] The appellants argue that ongoing discussions or negotiations between the parties have no impact on when the limitation period commenced because settlement discussions alone do not suspend a limitation period: *Deloitte* at para 17; *Weir-Jones* at paras 57, 62. However, Chandos'

position is more fundamental: the limitation period was not suspended because of settlement discussions; the limitation period did not commence until payment was refused, which was within the limitation window of 2 years and 75 days before the statement of claim was filed.

[140] The majority decision raises the concern that if incurring non-trivial expenses does not constitute an injury and does not warrant bringing a proceeding, a claimant can delay the running of the limitation by waiting as long as it wishes to ask for payment and then wait again for a refusal. However, both practical and legal factors mitigate this concern. First, a claimant will not be reimbursed for the expenses until a demand is made. An economic incentive exists to promptly make the claim. Second, some Alberta authorities have found that a service provider cannot unilaterally suspend a limitation period by delaying the issuance of an invoice. A reasonable time for invoicing may be an implied term of a commercial agreement: *Royal Well Servicing Ltd v Murphy Oil Company Ltd*, 2016 ABQB 418 at paras 14-15; *Twinn v Sawridge Band*, 2017 ABQB 366 at para 89.

[141] To be clear, I have not found that a proceeding was not warranted when the Delay Notices were issued. I conclude only that the appellants have not established there is no genuine issue requiring a trial on that question. Their submissions focussed on the fact Chandos had suffered non-negligible expenses by June 12, 2018, and, for the reasons already given, that fact alone does not determine when a proceeding became warranted under s 3(1)(a)(iii).

iv. Conclusion

[142] Assuming, without deciding, that Chandos suffered economic loss when it incurred delay-related expenses, I find Chandos knew it had suffered an injury attributable to the appellants by the dates on which it issued the Delay Notices and, in any event, no later than June 12, 2018. However, the appellants have not established that no genuine issue requiring a trial remains with respect to when Chandos knew, or ought to have known, a proceeding was warranted.

The Additional Work Claim

[143] The Additional Work Claim seeks at least $1,200,000 for work allegedly performed outside the scope of the contract. Three categories of such work are pleaded in the amended statement of claim:

- Work to prepare the site: paras 21-22, 69(d)(i). The amended statement of claim states that the site condition was “concealed” and was only discovered when Chandos attended at the site to start the contract work.

- Work to address flooding issues: paras 35-38; 69(d)(ii).

- Work to commission the water treatment plant, including installation of water treatment equipment and exhaust fan heaters: paras 39-42; 69(d)(iii)-(vii).

[144] The record indicates Chandos performed the additional work: (a) between February and March 2016 (to prepare the site), (b) between June and October 2017 (to address flooding), and (c) between September and November 2017 (to commission the treatment plant).

[145] For the work to commission the plant, paragraphs 40 and 42 of the amended statement of claim plead that Chandos sought compensation from the appellants and the appellants refused to provide that compensation in or around September and November 2017:

> 40. However, the Town, through its agent, AE, claimed that this aforementioned Additional Work was within the Contract scope and *refused to compensate Chandos through corresponding Change Orders or otherwise*. In response, Chandos provided Notice of intent to Claim to the Town and to AE via letter dated September 7, 2017 with respect to same.
>
> …
>
> 42. However, the Town, through its agent, AE, claimed that this aforementioned Additional Work was within the Contract scope and *refused to compensate Chandos through corresponding Change Orders or otherwise*. In response, Chandos provided Notice of intent to Claim to the Town and to AE via letter dated November 11, 2017 with respect to same. [Emphasis added]

[146] The record does not indicate Chandos made a formal claim for reimbursement of the expenses incurred in doing the additional work. The December 24, 2018 Notice of Claim dealt only with delay-related expenses, not additional work.

[147] As with the Delay Claims, determining when the limitation period began turns on when Chandos knew, or ought to have known, it had suffered an injury and when it knew, or ought to have known, the injury warranted bringing a proceeding.

i. When Chandos suffered the economic loss

[148] The parties agree the relevant injury is economic loss but disagree about whether Chandos suffered that loss when Chandos incurred the expenses of performing the additional work or when the appellants refused to reimburse Chandos for those expenses.

[149] Both approaches are arguable, but deciding the point is unnecessary here. Even if Chandos suffered economic loss when it incurred the expenses of performing the additional work, the parties agree that a proceeding became warranted when the appellants refused to reimburse those

expenses: appellants' factum at para 52 and the ensuing argument; Chandos' factum at paras 58, 62.

[150] On this record, Chandos incurred the expenses of the additional work between February and March 2016 (for the site preparation work), between June 2017 and October 2017 (for the flood-remediation work), and between September and November 2017 (for the plant commissioning work). If Chandos suffered a loss when it incurred the expenses, I would find that an economic loss occurred during those timeframes.

ii. When Chandos knew or ought to have known that it had suffered economic loss

[151] Chandos knew that it was expending resources to perform the additional work when it did that work. If Chandos suffered a loss when it incurred the expenses, Chandos knew that it had suffered economic loss on the dates the work was performed.

iii. When Chandos knew, or ought to have known, the economic loss warranted bringing a proceeding

[152] The statement of claim estimates the expenses of performing the additional work at $1,200,000, and Chandos does not dispute knowing significant expenses were being incurred when it did the work.

[153] The appellants submit a proceeding became warranted when they refused to reimburse Chandos for the expenses of performing the additional work: appellants' factum at paras 52-53. Unlike the Delay Claims, they do not argue a proceeding became warranted simply because Chandos knew it was incurring significant expenses.

[154] As discussed earlier, a real issue remains whether a reasonable person in Chandos' position would consider it necessary to commence legal action upon incurring expenses from the additional work or delay, without any indication the appellants would refuse to reimburse those expenses. No submissions were provided on that point, and I have reached no conclusion about it. However, for the plant commissioning work, the appellants informed Chandos they would not reimburse those expenses.

[155] The amended statement of claim, at paragraphs 40 and 42, contains admissions that Chandos asked the appellants to compensate it for additional work in commissioning the plant and the appellants refused in or around September and November 2017. Chandos followed up by issuing two Notices dated September 7, 2017, and November 11, 2017, which summarized the parties' positions and confirmed the dispute.

[156] Based on the admissions in paragraphs 40 and 42, I find that by November 11, 2017 at the latest, Chandos ought to have known the loss incurred in performing the commissioning work warranted bringing a proceeding.

[157] Chandos submits a proceeding was not warranted until March 14, 2019, at the earliest, apparently because that was when the appellants refused to compensate it for the additional work: Chandos' factum at paras 62-63. It also states the appellants were reviewing the additional work claims until that date. However, those submissions rest on a misreading of the parties' correspondence.

[158] The appellants' March 14, 2019 letter did not refuse to compensate Chandos for additional work. The Additional Work Claim was not addressed at all. Rather, the letter responded to Chandos' December 24, 2018 Notice of Claim, which sought reimbursement of Chandos' delay-related expenses. The Notice of Claim did not seek reimbursement of Chandos' expenses for performing the additional work.

[159] For clarity, I conclude only that by November 11, 2017, Chandos knew it had suffered economic loss and ought to have known that a proceeding was warranted *with respect to the commissioning work* described in paragraphs 39-42 of the amended statement of claim.

[160] The appellants' factum did not address when a proceeding was warranted for the other categories of additional work, namely the site preparation work and the flood-remediation work described in paragraphs 21-22, and paragraphs 36-38, of the amended statement of claim. They have not established the limitation period for these parts of the claim expired before Chandos commenced the action.

iv. Conclusion

[161] The limitation period for the commissioning work component of the Additional Work Claim, as described in paragraphs 39-42 and 69(d)(iii)-(vii) of the amended statement of claim, started no later than November 11, 2017. That was more than 2 years and 75 days before Chandos commenced the action. The appellants are therefore entitled to summary dismissal of that part of the Additional Work Claim.

[162] With respect to the other components of the Additional Work Claim, the appellants have not established there is no genuine issue requiring a trial concerning when the limitation period started and expired.

c) The appellants are not entitled to summary dismissal of the Delay Claims and the Additional Work Claim based on Chandos' failure to comply with contract provisions for making claims

[163] The other ground for summary dismissal is that Chandos failed to comply with contract provisions governing claims for adjustments to the contract price and authorization to perform work outside the scope of the contract.

[164] The details of the arguments differ with respect to the Delay Claims and the Additional Work Claim, but the arguments for both have a common structure: (a) interpretation of the relevant General Condition (GC), (b) evidence that Chandos did not comply with the relevant GC, and (c) an argument that non-compliance bars Chandos from commencing legal proceedings.

The Delay Claims

[165] The appellants argue the Delay Claims are barred because Chandos failed to comply with GC 47.2. That provision establishes a precondition to the contractor being entitled to an increase in the contract price due to delay:

> 47.2 No extension of the Contract Time shall be made and no adjustment in the Contract Price shall be made for any delay except a delay described in GC 47.1 and then only if the Contractor provides Notice, in accordance with GC 47.4, of such a Claim to the Engineer within five (5) Business Days after the occurrence of the event which has caused the delay.

GC 47.4 prescribes the content of the Notice and requires a separate Notice for each event of delay.

i. Interpretation of GC 47.2

[166] On the appellants' interpretation, a notice complies with GC 47.2 only if it (a) claims an increase in the contract price and (b) issues within five business days of the occurrence of the event that *in fact* causes delay. GC 47.2, so interpreted, requires the contractor to provide the notice within five business days of an event's occurrence, even if the event has not yet caused delay and the contractor does not know whether it will ultimately cause delay or additional expenses.

ii. Evidence regarding compliance with GC 47.2

[167] The appellants argue Mr Baker's admissions in his affidavit and during questioning establish Chandos did not comply with GC 47.2. To succeed, they must establish both that the Notices Chandos issued did not comply with GC 47.2 and that Chandos issued no other notices relating to delay.

[168] The relevant evidence from Mr Baker is summarized as follows.

- Chandos issued 16 Notices under the contract between May 15, 2016 and June 12, 2018.

- The 14 Delay Notices were issued pursuant to GC 14.5, which requires the contractor to give prompt notice of foreseen delays.

- None of the Delay Notices requested an increase in the contract price or an extension of the contract time.

- Other than the 16 Notices, Mr Baker was "not aware" of any other notices that Chandos provided regarding the Delay Claims.

[169] The appellants submit these admissions establish that none of the Delay Notices complied with GC 47.2 because no Delay Notice made a claim for an increase in the contract price, and no Delay Notice was issued within five business days of the underlying delay event. The appellants also contend Mr Baker's testimony during questioning that he was "not aware" of Chandos issuing any other notices about the Delay Claims establishes no other notices were issued.

iii. Consequences of non-compliance

[170] GC 47.2 governs the contractor's entitlement to an increase in the contract price based on delay. One consequence of non-compliance is that the contractor is not entitled to an increase in the contract price. That consequence is made clear by GC 47.6:

> 47.6 The failure to provide separate express Notice in strict compliance with GC 47 shall be deemed to be prejudicial to the Owner and shall prohibit the Contractor from claiming, or being entitled to, any Claim for adjustment to the Contract Time or the Contract Price with respect to such delay or any impact of such delay.

[171] The appellants also submit, albeit without explicit argument, that Chandos' non-compliance with GC 47.2 has the further consequence of preventing Chandos from taking legal action seeking damages for delay-related losses.

iv. Genuine issue for trial

[172] I find the appellants have not established there is no genuine issue requiring a trial on whether Chandos' alleged non-compliance with GC 47.2 bars the Delay Claims.

[173] I need not determine whether Chandos failed to comply with GC 47.2 because the appellants have not established that noncompliance bars the Delay Claims. On its face, GC 47.2 makes compliance a condition precedent to the contractor being entitled to an increase in the contract price based on delay. It does not provide that non-compliance bars an action for damages

arising from delay. As pleaded, the Delay Claims are not claims for an increase in the contract price under GC 47.2. Rather, they allege the appellants breached contractual duties and duties of care in tort, which caused Chandos to suffer delay-related loss.

[174] The appellants did not identify any contractual provision expressly stating that failure to comply with GC 47.2, or any other notice provision, prevents Chandos from commencing legal action for damages arising from delay. Their position may be that GC 47.2 alone, or with other provisions, impliedly bars such legal action. However, they made no argument to that effect apart from a very brief reference to *ANC Developments Inc v Dilcon Constructors Ltd*, 2000 ABCA 223.

[175] In *Dilcon,* this Court held that provisions in a construction contract governing the right of the contractor to reimbursement of its delay-related expenses, and imposing notice and timing requirements, impliedly barred the contractor from bringing an action for damages arising from delay: *Dilcon* at para 55. However, that conclusion cannot simply be transplanted to this case, without analysis. The contractual language in *Dilcon* was materially different from that before me, and the Court's conclusion rested in part on principles concerning the interpretation of exclusion clauses. I received no submissions on either point and remain unpersuaded there is no genuine issue requiring a trial.

The Additional Work Claim

[176] The appellants also argue the Additional Work Claim should be summarily dismissed because Chandos failed to comply with GC 53.2, GC 57.5 and GC 58.1.

[177] GC 53.2 prohibits the contractor from performing work outside the scope of the contract without the requisite authorization.

> 53.2 The Contractor shall not perform a Change without a written Change Order or Change Directive signed by the Owner and issued by the Engineer.

A "Change" includes an increase in the contract work that results in a change to the contract price: GC 1.

[178] GC 57.5 governs claims for an increase in the contract price for work done to address concealed or unknown site conditions.

> 57.5 If either Party wishes to make a Claim that the Contract Time or Contract Price should be adjusted because of concealed or unknown conditions then such Party shall give the other Party and the Engineer Notice of such Claim immediately after that Party first becomes aware of the concealed or unknown condition. No adjustment of Contract Price or Contract Time shall be allowed for any Work undertaken prior to the delivery of such Notice.

[179] As noted, one component of the Additional Work Claim is site preparation work done before the contract work began. The amended statement of claim pleads the site condition was "concealed", which brings that aspect of the claim within GC 57.5.

[180] GC 58.1 prescribes part of the process for making a claim for an increase in the contract price, including for work done outside the scope of the contract.

> 58.1 If the Contractor intends to make a claim for an extension of Contract Time or for an increase to the Contract Price, or if the Owner intends to make a claim against the Contractor for a credit to the Contract Price, the Party that intends to make the Claim shall give timely Notice in writing of intent to Claim to the other Party and to the Engineer.

i. Interpretation of GC 53.2, GC 57.5 and GC 58.1

[181] The appellants' position is that GC 53.2, GC 57.5 and GC 58.1 establish preconditions to Chandos being entitled to an increase in the contract price for additional work. In all cases, the contractor must obtain the requisite authorization for the work and provide timely notice of its intention to claim an increase in the contract price. Where the work relates to concealed site conditions, GC 57.5 requires notice immediately upon discovery of the condition.

ii. Evidence regarding compliance with GC 53.2, GC 57.5 and GC 58.1

[182] Again, the appellants rely on the evidence of Mr Baker in his affidavit and during questioning on his affidavit. In summary, he acknowledged Chandos issued two Notices dated September 7, 2017, and November 11, 2017, relating to additional work, neither of which claimed an increase in the contract price, and he was "not aware" of any further notices relating to the Additional Work Claim.

[183] The appellants argue this evidence constitutes admissions by Chandos establishing that the two Notices did not comply with GC 58.1 (because neither gave notice of an intention to claim an increase in the contract price) or with GC 57.5 (because neither claimed an increase in the contract price arising from concealed site conditions): appellants' factum at paras 14-15, 64. They also argue the evidence establishes Chandos issued no other notices regarding additional work.

[184] The evidence relied on by the appellants does not address whether Chandos obtained change orders or change directives before performing the additional work, as required by GC 53.2. During questioning, Mr Baker stated Chandos obtained various change orders, although he did not identify the work to which they related.

iii. Consequences of non-compliance

[185] As before, the appellants submit Chandos' alleged non-compliance with GC 53.2, GC 57.5 and GC 58.1 has two legal consequences. First, non-compliance extinguishes any entitlement Chandos otherwise had under the contract to an increase in the contract price for the additional work. Second, again not explicitly argued, non-compliance barred Chandos from taking legal action for damages arising from the expenses of performing the additional work or restitution of the benefits that work conferred on the appellants.

iv. Genuine issue for trial

[186] I find the appellants have not established that no genuine issue requiring a trial remains about whether Chandos' alleged non-compliance with GC 53.2, GC 57.5 and GC 58.1 bars the Additional Work Claim. That is for substantially the same reasons discussed in relation to the Delay Claims.

[187] The appellants have not established that non-compliance with GC 53.2, GC 57.5 or GC 58.1 bars Chandos from bringing the Additional Work Claim. Those provisions establish conditions precedent to entitlement under the contract to an increase in the contract price for additional work. They do not state Chandos is barred from taking legal action to recover expenses incurred, or obtain restitution of benefits conferred, through doing additional work because it did not comply with those provisions. The appellants identified no provision expressly barring legal proceedings and made no argument, apart from the brief reference to *Dilcon*, that GC 53.2, GC 57.5 or GC 58.1 impliedly does so.

VII. Conclusion

[188] In summary, I conclude the chambers judge applied the incorrect legal test for summary judgment, and this error affected her decision to deny summary dismissal of the Delay Claims and the Additional Work Claim.

[189] Deciding the summary dismissal application afresh, I conclude the appellants have not established there is no genuine issue requiring a trial about whether the Delay Claims and the Additional Work Claim are barred by the *Limitations Act* or by Chandos' alleged non-compliance with the contractual requirements. The sole exception is the portion of the Additional Work Claim pleaded in paragraphs 39-42 and 69(d)(iii)-(vii) of the amended statement of claim, which is time-barred. I conclude Chandos knew it had suffered economic loss from performance of the plant commissioning work and ought to have known that loss warranted bringing a proceeding by November 11, 2017. The limitation period had expired by the time Chandos advanced that claim on September 24, 2020.

[190] To be clear, I have not decided whether the Delay Claims or the remaining components of the Additional Work Claim are barred by the *Limitations Act* or by Chandos' alleged non-compliance with the contract. I have determined only that the appellants have not established entitlement to summary dismissal on those grounds. The appellants would be permitted to advance their arguments relating to those grounds at trial and to seek a ruling on the merits from the trial judge.

[191] I would allow the appeal in part. I would summarily dismiss the portion of the Additional Work Claim pleaded in paragraphs 39-42 and 69(d)(iii)-(vii) of the amended statement of claim. In all other respects, I would deny the appellants' summary dismissal application and dismiss the appeal.

Appeal heard on October 6, 2025

Memorandum filed at Edmonton, Alberta
this 23rd day of November, 2026

Feth J.A.

Appearances:

M. Dussault
for the Respondent

M.J. Arnston
J.M Chamberlain
for the Appellant, Municipal District of Greenview No. 16

B.G. Kapusianyk, KC (no appearance)
T.C. Burnett, KC
for the Appellant, Associated Engineering Alberta Ltd.