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## Results can be costly if contract is not specific

An Ontario Superior Court decision released earlier this year provides a textbook example of how and how not to prepare a home renovation contract.

Maureen Chung and Geoffrey Jackson operate a renovation business in the Toronto area. In early 2004, they were hired to renovate the kitchen in the Thornhill home of Arik and Olga Idan.

Detailed discussions took place outlining the work the Idans wanted done in their home, and ultimately a contract was signed which outlined only the bare essentials of the work to be completed and the price of \$28,000.

What was intended to be a renovation of "about 8 weeks" dragged on through the summer of 2004 until the Idans ultimately called a halt to the job. By this time they had paid more than \$32,000 for the renovations, but Chung and Jackson wanted another \$19,200 for 35 extras they claimed were not included in the contract price.

Unfortunately, it seems that the brief renovation contract omitted more details than it included, and it wasn't long before both parties were suing each other. The renovators sued the Idans for the \$19,200 in extras, and the Idans counterclaimed for \$50,000 in damages to repair what they claimed was faulty work.

An eight-day trial of the action was held before Justice Paul Perell earlier this year. In his ruling, the judge wrote, "In my opinion, the events that took place between January and August 2004 at the Idans' home provide an illustration of many, if not all, of the major mistakes and misadventures that can occur during a home renovation and also they are an illustration of the causes of those mistakes and misadventures."

Much of the evidence at trial consisted of claims by both sides on what verbal agreements were, or were not, intended to be included in the contract price. All the conflicting testimony prompted Justice Perell in his decision to quote the film producer Samuel Goldwyn's famous quip, "An oral contract isn't worth the paper it's written on."

He added that the events described in the evidence indicated to him that a fixed-price renovation contract should be in writing and should at least:

- identify the parties;
- identify the location of the home to be renovated;
- detail precisely what is included and what is not included in the scope of the work;
- fix the price and break out the amounts to be paid, and where prices are only an estimate and not fixed, then this fact should be clearly disclosed along with an explanation of what are the homeowner's options should the renovator determine that the estimate is inaccurate;
- disclose that work and materials not covered by the scope of work are extras to be agreed to in writing before being undertaken by the renovator;
- specify the anticipated date of the start of the work and the anticipated time for completion, reserving the right to make reasonable adjustments if the scope of the work is changed;
- specify the payment schedule, including a holdback to protect against lien and warranty claims;
- provide a warranty with respect to the quality of the goods and workmanship;
- specify who will be responsible for obtaining all required permits and licences (permits should not be optional); and
- as an option, include provisions about the preparation and ownership of drawings, insurance, supervision, participation of the owners (working alongside the contractor), inspections, alternative dispute resolution (instead of a lawsuit), and arbitration.

In the end, Justice Perell ruled that "the money the Idans spent on this renovation project was wasted. ... I conclude that the goods and services provided by Ms. Chung and Mr. Jackson are worthless."

He denied their demand for \$19,200 and awarded the Idans the full \$50,000 they requested in damages to remove the work already done and "secure the structural integrity of the house."

In a subsequent ruling in March of this year, the judge awarded the Idans an additional \$1,650 in interest and \$41,731 in legal costs.

In the end, the renovators not only lost their court case, but wound up having to pay the Idans more than \$93,000 and their own lawyer's bill.

Before his appointment as a judge, Justice Perell was an accomplished real estate lawyer and author. He taught real estate law at Osgoode Hall Law School and the now-defunct Bar Admission Course, and was the recipient of many awards including the Law Society Medal.

His decision in the Chung and Idan litigation is a classic example of his superb skills as an author and teacher, since it provides a checklist of the minimum requirements necessary for a home renovation contract. In future, homeowners and renovators who ignore Justice Perell's lessons in this case do so at their own risk.

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## Chung v. Idan

Between  
Maureen Chung and Geoffrey Jackson, plaintiffs, and  
Arik Idan and Olga Idan, defendants

**Ontario Superior Court of Justice**  
**P.M. Perell J.**

Heard: January 16-20 and 22-24, 2006.  
Judgment: January 27, 2006.  
(62 paras.)

**Counsel:**

Jessica Dowling for the Plaintiffs

David J. McGhee for the Defendants

REASONS FOR JUDGMENT

**P.M. PERELL J.:**

Introduction

1 This action involves a claim for payment for goods and services by Ms. Maureen Chung and Mr. Geoffrey Jackson, who operate a renovation business. Their action is against Mr. Arik Idan and Mrs. Olga Idan. Ms. Chung and Mr. Jackson claim damages for unpaid services in the amount of \$19,200.00 arising from a written contract dated January 17, 2004.

2 Ms. Chung's and Mr. Jackson's version of the events is that under the contract, they agreed, amongst other things, to renovate the kitchen in the Idan home in Thornhill, Ontario. They say that Mrs. Idan orally requested additional goods and services that were extras to the written contract. Ms. Chung and Mr. Jackson say that they satisfactorily provided goods and services until July 23, 2004, when work was suspended because Mrs. Idan's brother was visiting from Israel. Arrangements were made to resume work on August 19, 2004, but on August 18, 2004, the Idans told Ms. Chung and Mr. Jackson not to return. Ms. Chung and Mr. Jackson say that they were willing and able to complete the renovation contract and supply the extras and that accordingly they are owed \$19,200 for unpaid goods and services, which they itemized in late August, 2004.

3 For their part, Mr. and Mrs. Idan deny liability and counterclaim for damages in the amount of \$50,000 on a variety of grounds, including the deficiencies in the workmanship performed and in the quality of the materials supplied. The Idans have a very different version of the events, which version amounts to what is colloquially known as "renovation hell."

4 With a few exceptions, I believe the Idans' version of the events, and I conclude that the Chung and Jackson claims should be dismissed and that the Idans' counterclaim should be allowed in the amount of \$50,000.00, plus pre-judgment and post-judgment interest. The claim should be dismissed and the counterclaim allowed because the goods and services supplied by Ms. Chung and Mr. Jackson were essentially worthless, and the Idans have incurred and will incur expenses to rectify the deficient work. Moreover, for usually more than one reason, Ms. Chung and Mr. Jackson are not entitled to be paid for the items they claimed as extras. The reasons for denying Chung and Jackson their entitlement to payment include the following:

- (a) They failed to supply the goods or services required by their contract with the Idans or they supplied items with deficiencies, including possible health hazards;
- (b) They supplied goods or services that caused damage or diminished the value of the real and personal property of the Idans;
- (c) They supplied goods or services that will have to be replaced;
- (d) They purported to charge for goods or services for which there was no agreement with the Idans;
- (e) They purported to charge for extras that were within the scope of the original contract and for which they were not entitled to extract any additional charge; and
- (f) They supplied goods or services illegally.

5 In my opinion, the events that took place between January and August 2004 at the Idans' home provide an illustration of many, if not all, of the major mistakes and misadventures that can occur during a home renovation and also they are an illustration of the causes of those mistakes and misadventures.

6 In this case, the homeowners, the Idans, were gullible, foolish, timid, and not adequately protected by the contract written up by Ms. Chung. The renovator, Mr. Jackson, although he has adequate training and experience, provided incomplete and unsatisfactory goods and services and he also provided construction, electrical, plumbing, heating, and gas fitting services that he ought not to have provided because he was not licensed to provide those services. The work proceeded without the building and other permits required by law, and this exposed and exposes the Idans to considerable risk that could have been avoided.

7 Mr. Jackson is now 67 years of age, and whatever his work standard may have been in the past, in this present case, he provided unacceptable work at the Idans' home, and he supplied it in an unprofessional and irresponsible manner.

8 Both the homeowner and the renovator in the case at bar relied on oral agreements about very important matters and both can be faulted for not "getting it in writing." In this case, the oral agreements – and not surprisingly, there was stark disagreements between the parties about those oral agreements – concerned such critically important matters as: what goods and services were to be included in the scope of work; when the work should commence; when the work should be completed, the identification and pricing of extras to the contract; whether drawings and plans should be prepared; and whether building and other work permits required by law should be obtained.

9 I will expand on these conclusions in the following sections of these Reasons for Judgment. In the next section, I will set out the background of the parties and the circumstances of the signing of the contract dated January 17, 2004. Then I will narrate the history of the events that took place after the signing of the contract until August 2004. After that history, I will provide a chart that summarizes my reasons for dismissing the various claims for payment made by Ms. Chung and Mr. Jackson. This chart also provides some explanation for why I allowed the counterclaim. Next, I will briefly explain my reasons for awarding the Idans \$50,000, and then I will conclude these Reasons for Judgment.

Background and the Events from January to August 2004

10 In this section of my Reasons for Judgment and in the following sections, where I will make findings of fact, I will not identify where the competing versions of the sequence of events are consistent and where the parties differ in their accounts. In most cases of conflict, I believe the Idans' version and not the version of Ms. Chung and Mr. Jackson.

In some instances, the Idans did exaggerate or were mistaken, but based on my review of the real evidence admitted as exhibits, my review of the photographs provided by both sides, my observation of all the witnesses, including Mr. David Hellyer, who gave expert's evidence, Mr. Damiano Calderai, who was an inspector for the Electrical Safety Authority, and Mr. Antoine Poirier, who is a home builder, and on the balance of probabilities, it is the Idans' version that I accept.

11 Mr. and Mrs. Idan are artists that design handmade jewellery. They own a small business in downtown Toronto, where they sell the jewellery that they craft. They work together in their store. Because of their work schedule, they were not home to oversee the renovation of their house in Thornhill.

12 Ms. Maureen Chung is a university graduate with a combined major in business administration and sociology. For many years, she has assisted Mr. Geoffrey Jackson, in a home renovation business that they operate out of their home in Cobourg. In the main, their business involved supplying new cabinetry for kitchens and bathrooms. Ms. Chung has no meaningful skills or qualifications in the construction trades, and Mr. Jackson is the tradesman. Her contribution seems to have been mainly on the management side of their business. Mr. Jackson probably should have hired a qualified assistant and other tradespersons to carry out the project at the Idans' home.

13 Mr. Jackson's curriculum vitae reveals that both by his formal education in England and also by working in his late father's carpentry business and for several home builders in England and Canada, he is a well qualified and an experienced carpenter and joiner. He is capable of doing quality workmanship. He has acquired skills in other construction trades. He, however, is not licensed to provide electrical, plumbing, and gas fitting services. He and Ms. Chung are not licensed as renovators. He knows the importance of obtaining permits and licences and of the risks to homeowners associated with proceeding without required permits and licences.

14 In early 2004, having been advised by a former customer, who was also a friend of the Idan family, that the Idans were planning to renovate their kitchen in their home, Ms. Chung phoned Mrs. Idan and arranged to meet with the Idans at their home. There were two meetings in January, 2004, both at the Idans' home. One meeting occurred in the evening, and one meeting occurred on a Sunday morning. The first meeting lasted about one hour, at which time the Idans provided Ms. Chung and Mr. Jackson with a computer sketch, which had been part of a quotation the Idans' had obtained from Canac, a well-known kitchen cabinet manufacturer. The Idans described what they had in mind for the kitchen, which involved replacing the cabinets and installing a bay window in the kitchen. Mr. Jackson took some measurements and promised to return with an estimate. The second meeting was about three hours in length, and the parties discussed in more detail the Idans' renovation plans, Mr. Jackson's estimate, and the terms of the contract.

15 Ms. Chung, Mr. Jackson, Mr. and Mrs. Idan, their son-in-law, Anthony Duke, their daughter Latal Duke and Mrs. Idan's mother, Margarita Mamon were at the second meeting. At this meeting, which I believe took place on Sunday morning January 18, 2004, the parties signed a contract dated January 17, 2004. If I am wrong about the date of this second meeting, nothing turns on it.

16 At this meeting, or with respect to some matters at the meeting that took place perhaps a week or so earlier at the Idans' home, or with respect to some matters at both this meeting and the prior meeting, I find as a fact that the following occurred:

- (a) The Idans told Ms. Chung and Mr. Jackson that they wished to replace the cabinets in their kitchen with solid wood cabinets made out of maple and they wished to replace the cabinets in the nearby laundry room with similar cabinets. Mr. Idan made it clear that he wanted a hard wood and not composite material that would lose its grip on screws.
- (b) The Idans told Ms. Chung and Mr. Jackson that new appliances had been purchased for the kitchen including a stove, refrigerator, range hood, and dishwasher. Mr. Jackson was provided with the dimensions of the appliances by Mr. Duke, who obtained the information by an internet search.
- (c) The Idans told Ms. Chung and Mr. Jackson that they wished a granite countertop and a granite backsplash.
- (d) The Idans told Ms. Chung and Mr. Jackson that they wished the floor in the kitchen, which was covered in linoleum, and the floor in the laundry room to be covered in new wood flooring that matched the parquet flooring in the hall and other areas of the main floor of the house.
- (e) Mrs. Idan had a list of small home repair tasks that she wished to be completed during the renovation. These tasks included repairing the drywall in the front hall that had been damaged by a water leak from the upstairs washroom and moving a set of bookshelves into the basement. Ms. Chung said that these tasks would be done as part of the renovation contract.
- (f) The Idans said that they would be interested in having the entrances between the kitchen and the dining room and between the living room and the front hall enlarged. These entrances were through a wall that ran from the front of the house to the back of the house and that defined the hallway. The Idans stated, however, that they wanted the enlargements, if and only if, this wall was not a load-bearing wall.
- (g) Mr. Idan made it clear that expanding the openings was a low priority item and this work was not to be done if it involved a structural wall. Mr. Jackson tested the ceiling in the dining room with a screwdriver and said he believed the wall was not load bearing. Ms. Chung and Mr. Jackson said that they would open up the wall and investigate. (I will have more to say about the matter of the wall openings when I discuss the written contract below.)
- (h) The Idans told Ms. Chung and Mr. Jackson that they wished an "all inclusive" price, and the Idans were assured by Mr. Chung that there would be no extra charges.
- (i) The Idans told Ms. Chung and Mr. Jackson that it was very important to them that the work be completed before the end of June 2004, because Mrs. Idan's brother and his family was scheduled to arrive for a visit. Ms. Chung and or Mr. Jackson told the Idans that the work would take about 8 weeks to complete.
- (j) I find that Ms. Chung took the contract to her car in order to stamp it with the name and address of "Quali-craft Cabinetry." The Idans said that when the contract was signed, it read "All of the above work is to be completed in a workmanlike manner on or before 8 weeks." and they alleged that Ms. Chung changed the contract to read: "All of the above work is to be started in a workmanlike manner in approximately 8 weeks." I find that Ms. Chung was not so bold as to deceive the Idans in this way, and I find that she made this change before the contract was signed but that she did not point it out and it

went unnoticed by the Idans until later.

17 There was a dispute between the parties about whether certain events occurred at the meeting where the contract was signed, or with respect to some matters at the meeting that took place perhaps a week or so earlier at the Idan home, or with respect to some matters at both the contract signing meeting and the prior meeting. With respect to these factual disputes, I make the following findings of fact:

(a) The Idans were not shown the wood box that was marked as Exhibit 4 during the trial.

The Idans did not agree that building and other permits were not to be obtained for the renovation work. Rather, the Idans were incorrectly told by Mr. Jackson that a building permit was not necessary for the bay window because this was not a structural change. The Idans were told that a building permit was not required to enlarge entrances on a wall that was not load bearing, which may be correct advice.

(b)

(c) The Idans did not agree to assume the risk of having Mr. Jackson proceed with the renovation without required permits. The Idans would have been prepared to obtain a building permit, as they did when a conservatory was added to their home in 2002.

Contrary to the evidence of Ms. Chung, the Idans did not ask Mr. Jackson whether it was really necessary to obtain a building permit. (Since I find that this conversation did not occur, it is parenthetical for me to note that had Mr. Jackson advised them that they could proceed without a building permit, then he would have been negligent and irresponsible in doing so.)

(d)

The Idans were not told that Mr. Jackson was not licensed for electrical, plumbing, and gas fitting work. The Idans were told that Mr. Jackson would arrange for other trades as necessary to do the work. In particular, they anticipated that the window would be installed by a subcontractor. The Idans did not agree to assume the risk of having Mr. Jackson proceed without a licence.

(e)

18 At the second meeting in January, Ms. Chung and Mrs. Idan signed the following contract, which I set out in full:

#### CONTRACT

#### QUALICRAFT CABINETRY

[address, phone number]

DATE Jan 17, 04

OWNER'S NAME Mr. and Mrs. Arik Idan (Ollie)

JOB ADDRESS 15 Tarlton Ct. Thomhill

We offer to furnish all materials and labour necessary to complete the following: Supply and install new kitchen cabinets; granite top; crown moulding. Supply and install new cabinets in laundry room. Install and finish customer supplied herring bone floor. Remove walls between dining room and kitchen and living room and hall – make good. Install existing fridge in laundry room; install new freezer in laundry room; adapt door in laundry room to sliding door. Re-install laundry sink and taps. Supply and install new bay windows in kitchen.

Kitchen cabinet details: bevelled glass doors in cabinets over fridge and top of pantry and cabinet facing dining area. Allow for bread box; spice rack; tray dividers; lazy susans in corner cabinets (base); make wood paper holder (to match door colour). Install customer supplied sink, faucets, instant hot water tap; garborator and filter; install customer supplied dishwasher, compactor and fridge, range hood and range. Remove bulkhead in kitchen. Allow one door in base for air circulation for vegetables.

Door style, mitred door in maple.

Granite and door colour to be selected.

All of the above work is to be started in a workmanlike manner in approx 8 weeks for the sum of \$ 28,000.

Payment to be made \$9,000.00 with order; \$9,000.00 at start; balance on installation.

\$1,000 allowed for wall removal.

"Maureen Chung"

(signature of general contractor)

## ACCEPTANCE

I/We hereby accept the above offer and authorize you to proceed with the above work in accordance with the above terms.

"Olga Idan"

19 The provisions of this written contract have caused many problems for the parties. It was somewhat ironic to listen to them at the trial have at each other about this contract, because both sides relied on oral agreements that were not set out in the writing. The law, of course, allows written contracts, oral contracts, and contracts that are both written and oral, but the events in the immediate case give truth to the remark of film producer Samuel Goldwyn who said "An oral contract isn't worth the paper it's written on."

20 Ms. Chung and Mr. Jackson submitted that before the work even commenced, there were oral agreements that: (a) Mrs. Idan would pay a fair but unspecified price for fancier crown moulding; (b) Mrs. Idan would pay the fair but unspecified charge associated with designing the cabinetry to accommodate the large range hood; and (c) the Idans would pay for the fair but unspecified charges for completing the entrances, which charges would depend upon what Mr. Jackson discovered inside the wall.

21 The Idans relied on oral agreements not found in the writing that: (a) the bookcase installation was included in the price; (b) the ceiling repairs were included in the price; (c) the granite was for the counter and the backsplash; (d) it was not necessary for the Idans to move furniture or otherwise prepare the house for the renovation work; and (e) plans would be supplied.

22 There were also problems because the contract was silent about matters that arguable were included in the scope of the work but for which Ms. Chung and Mr. Jackson claimed as an extra cost. For example, the obvious fact that the old kitchen and laundry room cabinets and debris from the renovation work had to be removed was claimed as an extra.

23 I will address these problems associated with the oral agreements alleged by both parties as aspects of my findings of fact that follow, but before moving on to describe the events that followed the signing of the contract, for what it is worth, those events revealed to me that a fixed-price renovation contract should be in writing and should at least:

- (a) identify the parties;
- (b) identify the location of the home to be renovated;
- (c) detail precisely what is included and what is not included in the scope of the work;
- (d) fix the price and break out the amounts to be paid, and where prices are only an estimate and not fixed, then this fact should be clearly disclosed along with an explanation of what are the homeowner's options should the renovator determine that the estimate is inaccurate;
- (e) disclose that work and materials not covered by the scope of work are extras to be agreed to in writing before being undertaken by the renovator;
- (f) specify the anticipated date of the commencement of the work and the anticipated time for completion, reserving the right to make reasonable adjustments, if the scope of the work is changed;
- (g) specify the payment schedule, including a holdback to protect against lien and warranty claims;
- (h) provide a warranty with respect to the quality of the goods and workmanship; and
- (i) specify who will be responsible for obtaining all required permits and licenses (permits should not be optional).

24 These requirements are the minimum, and provisions about the preparation and ownership of drawings, insurance, supervision, participation (working alongside the contractor), inspections, alternative dispute resolution, and arbitration, might usefully be added.

### The Events After January 17, 2004, to the End of August 2004

25 Mr. Jackson started the renovation work on April 13, 2004. For the purposes of these Reasons for Judgment, I will comment only briefly about some of the major phases of his work. It is not necessary to detail the progress of the work or to comment about several relatively petty issues such as when Ms. Chung and Mr. Jackson arrived or left each day to return to Cobourg or how many hours a day Mr. Jackson worked.

26 I will, however, discuss the quality of his work, and I have a few general comments that I can conveniently make before I discuss the events that led to the work stoppage.

27 I do not accept Ms. Chung's and Mr. Jackson's evidence that the Idans were manifestly pleased by the progress and quality of the work and that there was no indication of dissatisfaction and no complaints. Ms. Chung said that the Idans were "thrilled," which I find implausible having regard to what I saw in the pictures, what I heard from the witnesses who inspected the work, and what I physically examined in the court room. I find that the Idans were very unhappy and that they expressed their concerns to Ms. Chung and to Mr. Jackson during the course of the work, but the Idans were continually assured that everything would be fine by the end of the project.

28 I find that the Idans did not understand what was happened with respect to the expansion in the entrances along the hall wall and were perplexed why it was taking so long. I believe their evidence and the photographs confirm that the main floor, the garage, and the exterior of their house were filled with debris and the house was in unacceptable disarray, even for a renovation project. I find, however, that the Idans foolishly did not appreciate the magnitude of the problems or the deficiencies with their renovation until the prefabricated kitchen cabinets started to arrive near the end of June 2004.

29 I believe that Ms. Chung and Mr. Jackson misconceived the Idans' hospitality and meekness as acceptance. In my opinion, the Idans were foolish and perhaps cowardly in not being more assertive. However, to excuse Ms. Chung and Mr. Jackson for failing to perform their contractual obligations in a professional way because of the weakness of the Idans is to blame the victim.

30 I accept Ms. Chung's and Mr. Jackson's evidence that they did not specify a price for the work and the materials that comprise their claim for extras in this action before August 2004. I accept the Idans' evidence that during the course of the work, Ms. Chung and Mr. Jackson did not expressly state that Mr. Jackson was engaged in work for which additional charges would be made.

31 I find, however, that Mrs. Idan did expect to pay for a genuine extra to the contract; the granite for the bay window was not a part of the original contract. I also find that the repairs for a small table and the installation of mirrors in the dining room were genuine extras.

32 As for the phases of the work, the first phase was the opening up of the walls to enlarge the two entrances in the wall along the hallway. This part of the project was a source of a major dispute between the parties and it is the root of the largest claim for an extra charge.

33 The January 17, 2004, contract says that the renovators will "furnish all materials and labour necessary to complete ... Remove walls between dining room and kitchen and living room and hall— make good ... \$1,000 allowed for wall removal." Ms. Chung and Mr. Jackson interpret these words and the oral agreement between the parties to mean that they were to receive \$1,000 for opening up the wall in order to discover what was hidden in the wall and then the enlargements of the entrance ways would proceed at a reasonable price having regard to what was discovered by opening the wall. Contrastingly, the Idans would interpret these words and the oral agreement between the parties to mean that Ms. Chung and Mr. Jackson were to receive \$1,000 for: (a) opening up the wall and inspecting what was there; and (b) restoring the wall if it was load bearing; or (c) enlarging the entrance ways if the wall was not load bearing.

34 I conclude that the Idans' interpretation was the meaning intended by the parties. If I am wrong, it is, in any event, my opinion that Mr. Jackson cannot charge for the wall repair work because the Idans should have been told in advance about what was going to be charged and he ought not to have allowed the work to proceed without insisting that a building permit be obtained. Mr. Jackson argued that the work he provided was beyond the standard required by the Building Code, but this cannot be determined without the inspection that is required to ensure that there has been compliance with the Code. This is not a trivial matter because tampering with a bearing wall may affect the structural integrity of the house.

35 The next major phase of the work was the flooring and this left the house in a state of disarray and was the source of much distress for the Idans. Their distress was exacerbated by an incident that does deserve the label "renovation hell." After the flooring had been installed, Mr. Jackson re-installed the washing machine in the laundry room. Unfortunately, he failed to reattach a clasp on the hose, and a flood occurred that damaged the newly installed flooring, the ceiling in the basement, and the personal property of the Idans, including books, a carpet, and an expensive reclining chair in the basement. Mr. Jackson made some repairs, but Ms. Chung and Mr. Jackson did not pay for the damage to the Idans' personal property.

36 The completion of the flooring was followed by the installation of the kitchen cabinets. The kitchen cabinets began to arrive at the end of the month of June 2004. The evidence of the Idans, which I accept, is that they were very disappointed with what they saw, but they did not reject the goods because they felt they were trapped and they felt that they should make do and make the best they could of a bad situation, which they now very much wished just to be over.

37 It is a mystery of human nature why the Idans continued to put up with all this, but they did, and Mr. Jackson proceeded to attach the new kitchen cabinets and do work in the kitchen. There were, however, several minor protests about painting the interiors of the units and about putting formica lining in the drawers. I accept as true the evidence of the Idans, including their daughter, about the quality of the workmanship and the goods supplied, but do not find it necessary to set out their evidence in these Reasons for Judgment.

38 For the purposes of this judgment, I also do not find it necessary to say much about the closing stages of the contract. Once again, I accept the Idans' evidence.

39 I find that having been asked a few days earlier to stop interior work because of the imminent arrival of Mrs. Idan's brother and his family from Israel, Mr. Jackson continued work until July 23rd, 2004. The parties had an arrangement that interior work should resume around August 19th, 2004, after the brother's departure.

40 On July 21, 2004, Ms. Chung asked for a further payment of \$10,000 for the renovation work, and she was given a cheque for \$7,000. I once again accept the Idans' version of this event and of what occurred the following day when Ms. Chung returned with Mr. Jackson and they demanded and received a further payment of \$3,000 from a distraught Mrs. Idan.

41 I find that the Idans were told on July 21 or 22nd, 2004, that there were to be extra charges for the renovation work but that Mrs. Idan understood these charges to be related mainly to the cost of the granite for the bay window and that the cost of the extras would be in the range of \$750. It is useful to note here that the invoice from the granite supplier indicates that the cost of the granite for the window was \$540 before GST.

42 The Idans asked for the extras to be itemized in writing and that in yielding to the demand for payments before the completion of the contract, the Idans had no idea that Ms. Chung and Mr. Jackson would seek to be paid around \$19,000 for extras.

43 After July 23, 2004, no further work was done by Mr. Jackson at the Idans' home.

44 On August 18, 2004, Ms. Chung phoned Mr. and Mrs. Idan to tell them that Mr. Jackson would not be returning to work the next day because they were fatigued from a car trip to the United States and needed a day to recover. This news was finally too much for Mr. Idan to bear and he spontaneously erupted and told Ms. Chung and Mr. Jackson not to bother to come back at all.

45 A few days later, Ms. Chung attended to pick up some tools and to deliver a three page list of extras. Subsequently, a fourth page of extras was presented to the Idans. These lists were found at tab 3 of Exhibit 1 and are set out in the next section of these Reasons for Judgment.

46 By this time in August 2004, the Idans either directly or with the assistance of Mrs. Idan's mother had paid \$32,355.00 to Ms. Chung and Mr. Jackson as described below:

January 18, 2004	\$ 9,000	Payment due on acceptance of contract for renovations
April 16, 2004	\$ 9,000	Payment due on commencement of renovation work
June 12, 2004	\$ 1,500	Deposit for contract to install new stairs to upstairs
July 3, 2004	\$ 2,855	Reimbursement for payment on behalf of the Idans to

Pasternak to re-sand the

floors.

July 22 and 23, 2004	\$10,000	Payment demanded by Ms. Chung and Mr. Jackson, as described above
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47 The Idans refused to pay any more, and Ms. Chung and Mr. Jackson had a statement of claim issued on November 9, 2004.

#### The Chung and Jackson Claim for Extras

48 As I have noted above, Ms. Chung and Mr. Jackson delivered two lists of extras, which they described as "add-on and changes to contract." These two lists are set out in the first two columns of the chart set out several paragraphs below. In the third column, I set out my findings about the claim for extras, using the following symbols:

- (a) "E" – a proper extra.
- (b) "N" – not a proper extra because the item was either expressly or impliedly within the scope of the original contract or because the item should have been authorized. A homeowner should have the opportunity to decide whether or not to accept the extra to the contract or forgo it or make other arrangements.
- (c) "I" – illegal – not a proper charge because the particular work was provided without a required licence or the work was part of a work that required a building permit;
- (d) "D" – not a proper charge because the work was incomplete, deficient, or not in accord with the specifications of the contract; and
- (e) "W" – not a proper charge because the work ultimately was wasted because the renovation work must be redone.

49 In determining what is the scope of the contract, I note that the contract is "to furnish all materials and labour necessary to complete the following ..." [emphasis added]

50 It is a matter of contract interpretation in every particular case whether or not an item of work or materials is within the scope of the contract or whether the item of work and materials is a new matter for which the supplier, builder, or manufacturer may be able to claim that he or she is entitled to an additional payment. The interpretation of the contract, however, does not end the analysis because there may be other relevant factors to be considered in determining whether there is an entitlement for payment. In the immediate case, as I have already noted at the outset of these Reasons for Judgment, apart from the issue of the scope of the contract, there are other reasons for denying the claims of Ms. Chung and Mr. Jackson.

51 Of these additional factors, one that requires some comment is the matter of the illegality of Mr. Jackson proceeding without being licensed as an electrician, plumber, and gas fitter and without insisting that a building permit be obtained when he knew that a structural change was being made to the Idans' house. (He was also not licensed as a renovator but it was not made clear to me whether this was required for work in Thornhill).

52 In the context of construction and renovation contracts, older authorities hold that a building contract that is contrary to a statutory provision are illegal and unenforceable as a matter of public policy. See: *Kocotis v. D'Angelo*, [1958] O.R. 104 (C.A.); *Calax Construction Inc. v. Lepofsky* (1975), 5 O.R. (2d) 259 (H.C.J.). Recent authorities, however, adopt a less categorical approach, and a renovation contract may be unenforceable notwithstanding a violation of a statutory provision. See *Agasi v. Wai* (2000), 4 C.L.R. (3d) 101 (Ont. S.C.J.) and *Morrell (c.o.b. Bill's Carpentry and Painting) v. Czerzy* (2002), 14 C.L.R. (3d) 94 (Ont. S.C.J.).

53 Following the lead of appellate and other courts, the recent cases adopt a sophisticated approach to illegality that considers such factors as: (a) the purpose of the statute; (b) the enforcement mechanisms within the statute; (c) whether the statute makes the contract inherently illegal or only illegal if performed without compliance with the provisions of the statute; (d) whether the violation of the statute was only a technical non-compliance because the party intended to comply with the statute and could have done so; and (e) whether the illegality can be severed from the balance of the contract. See: *Beer v. Townsgate I Ltd.* (1997), 36 O.R. (3d) 136 (C.A.); *Johnson v. Lazzarino* (1999), 43 O.R. (3d) 253 (C.A.); *Still v. Minister of National Revenue* (1997), 154 D.L.R. (4th) 229 (Fed. C.A.); *C. Battison and Sons Inc. v. Mauti* (1986), 58 O.R. (2d) 82 (Div. Ct.); *Sidmay Ltd. v. Wehtam Investments Ltd.*, [1968] S.C.R. 828; *All Can Plumbing and Heating Co. Ltd. v. Gottlieb* (1981), 18 R.P.R. 109 (H.C.J.).

54 In the immediate case, there was no effort by Mr. Jackson to comply with the licencing and permit requirements. The violations were more than technical; they were advertent. I believe that the Idans would have obtained a building permit if they had been properly informed. Therefore, in my opinion, Ms. Chung and Mr. Jackson cannot charge for those items, which are tainted by illegality.

55 With this background, I come to the plaintiffs' claim for extras and my findings as set out in the following chart:

1. Wall reconstruction (living room) Opening wall - build temporary supports for upper floor (steel posts and beams); move electrical wiring; relocate outlet and	\$6,700.00 Credit for removal and inspection — as in contract \$1,000.00 Amount due on wall	NIDW
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switches. Install reconstruction

laminated beams together \$5,700.00

with supports at ends;

groove for wiring. Make

good herring bone parquet

floor; make good wall

board - tape and compound

etc. install pipe lining

and colonial trim moulding.

Dining room: Support upper

floor as living room; all

work as living room with

addition off; custom made

steel bridge around heating

duct; custom column to hide

duct and become feature to

kitchen and dining room;

install steel post in

basement to support floor

above.

2. Granite backsplash and 2,600.00 E (base for  
granite base in bay window window) NIW

3. Remove, rewire and 325.00 NIW

relocate 2 pot lights in

kitchen ceiling to

accommodate changes in

range hood cabinet.

4. Install 220 wiring for 200.00 NIW

range; install 220 outlet



for range; install 220 plug

on range; just a box with

wire was in place with no

power to it (labour only)

5. Wire upper glass

400.00

NIW

cabinets for lighting and put

switch under cabinet,

install and connect lights;

wire to glass display

cabinet and install light;

wire to light under cab. to

left of window; wire for 2

lights under cab. to right

of range and install

lights; wire for light in

bay window; wire and install

extra outlet by micro;

labour only

6. Supply plywood and repair

225.00

N

rotting section of floor

under sink cab. (water

damage from chronic leak);

replace section of floor in

front of fridge (hole in

floor)

7. Install new valves under

120.00

NI

kitchen and laundry sinks

(labour only)

8. Alter sink cabinet (make

500.00

NW

deeper) to accommodate

large sink; extra cost

incurred for granite top

9. Supply and install water

675.00

N

resistant drywall on entry

ceiling; tape and finish;

repair wall in family room

10. Install customer's

150.00

NW

custom glass artwork over

range - cutting out drywall

etc.

11. Changes to range hood

950.00

NDW

cabinet and crown mould

12. Alter opening for range

135.00

NIDW

hood and install new parts

(labour only)

13. Extra for fancier crown

300.00

NDW

moulding

14. Supply and install crown

900.00

NDW

mould in dining area of

kitchen

15. Supply and install

90.00

NDW

formica on drawer bottom and

under sink cabinet

16. Special drilling

30.00

NW

required to install

customer's pulls on drawer

fronts

17. Supply and install glass

75.00

NIW

shelf in bay window

18. Remove crown mould;

390.00

E (mirror)

supply and install long

NW

mirror on dining room wall

19. Reinforce small wood

50.00

E

table and make higher for

glass table top

20. Dismantle bookcases in

275.00

ND

family room; move to

basement, reassemble and

install

21. Take down closet walls

750.00

N

in laundry room (to make

more space for freezer);

install new drywall and

repair walls and ceiling

22. Remove toilet and

125.00

N

pedestal sink and taps in

powder room (for floor

refinishing); reinstall same

23. First day - move

450.00

NW

furniture, artwork, lamps,

plants etc. move furniture

etc. from dining to living 7

family rooms; move from

living and family rooms to

kitchen and dining rooms;

move back to family and

living rooms (for floor

finishing)

24. Rent cart and remove 350.00 NDW

fridge from basement and

dispose of same; dispose of

old appliances from kitchen;

remove and dispose of

heaving table and chairs

from kitchen; dispose of

debris -3 loads.

25. Prime and paint: 890.00 NDW

Interior of kitchen

cabinets (originally

lacquered); kitchen ceiling

and walls; bay window frame

and trim; walls in hall,

dining room and living room

(twice); hall ceiling; walls

and ceiling in laundry room

(paint supplied except paint

for kitchen and dining walls)

26. Supply and install new 250.00 ND

top in laundry room (old top

rotten around taps);

reinstall sink and taps

27. Install customer supplied toilet paper holder and tower rings in powder room	25.00	N
28. Glass shelves in display cabinet	30.00	NW
29. Supply cutlery trays	24.00	NW
30. Parts needed and picked up (plumbing, electrical, gas, range hood	731.05	NIW
Taking down kitchen cabinets and moving to garage	500.00	NDW
Laundry Room: remove washer and dryer; take up old floor; install herring bone parquet; reinstall appliances	450.00	NDW
Screw down kitchen floor (to stop squeaks)	120.00	N
Supply glue for parquet	117.00	N
Supply and install finished oak quarter round in living, family and laundry rooms and kitchen and hall	240.00	NDW

#### The Quantum of the Counterclaim

56 I turn now to the quantum of the counterclaim. As to the quality of the work and materials provided by Ms. Chung and Mr. Jackson, once again, I rely on the real evidence and the photographs. I accept the evidence of Messrs. Hellyer, Calderai, and Poirier, particularly Hellyer and Poirier about the need to redo the renovation.

57 Mr. Idan testified that they could not yet afford to repair or replace the defective work and materials provided by Ms. Chung and Mr. Jackson. I find that to the date of the trial, the Idans did spend \$2,215.22 to repair, replace, restore, or remediate the work and material provided by Ms. Chung and Mr. Jackson as set out below:

July 28, 2004	LVS Security	For security	\$177.67
	Systems	system on	
	Service Order	kitchen window	
		and kitchen door	
August 11, 2004	E & T	Install Dish	\$161.00
	Appliances	Washer	
September 9, 2004		Stucco repair	\$523.00
October 1, 2004	The Tin Man	For Bay Window	\$374.50
		Repair	
October 22, 2004	Pasternak	Quarter round	\$481.50
	Hardwood	and floor	
	Flooring	staining	
December 14, 2004	Hervia's	Remove garbage	\$331.70
	Landscaping	and construction	
	Inc.	debris	
October 21, 2005	Electrical	Electrical	\$165.85
	Safety	inspection	
	Authority		

58 The money the Idans spent on this renovation project was wasted. The monies they have thrown away for the renovation project, \$32,555.00, and in their attempt to repair the damage, \$2,215.22, total \$34,570.22.

59 Based on the evidence that I heard, saw, and touched, I conclude that the goods and services provided by Ms. Chung and Mr. Jackson are worthless. To the extent that they received anything of value, there was no windfall because of the need to redo the renovation and investigate and secure the structural integrity of the house and because of the damages they suffered from the incomplete work and the flood and because of the need to restore their property.

60 Based on the evidence that I heard, I am satisfied that in order to repair their home, it would cost them in excess of \$50,000, which is the amount they claimed in this action brought under Rule 76 (the simplified procedure). Having regard to the wasted expenditures and the anticipated cost of restoring their property, I conclude that they are entitled to a judgment in that amount.

#### Conclusion

61 In the result, I dismiss the action and allow the counterclaim with damages calculated at \$50,000. I award the Idans pre-judgment and post-judgment interest.

62 Subject to hearing from the parties, I would be inclined to award the Idans their costs on a partial indemnity scale for the action and counterclaim. If the parties disagree or if they cannot agree as to the amount of the costs, they may contact me by letter within three weeks after the release of this judgment, and I will then give directions about making further submissions in writing about the costs.

P.M. PERELL J.

