

1968
*May 8

RONALD VICTOR MARKHAM (*Plaintiff*) .. APPELLANT;

AND

CONTINENTAL MARBLE & GRAN-
ITE LTD. and BORDIGNON MA-
SONRY LTD. (*Defendants*). } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR
BRITISH COLUMBIA

Contracts—Interpretation—Contract for facing of building with pre-cast granite awarded to defendants—Prior agreement whereby first defendant agreed to pay plaintiff percentage of total value of “the granite contract”—Basis upon which remuneration payable to plaintiff.

The action herein concerned the remuneration to be paid to the plaintiff by the defendants under an agreement in writing between the parties whereby the first defendant agreed to pay to the plaintiff 4 per cent of the total value of “the granite contract” relating to the Bank of

*PRESENT: Cartwright C.J. and Martland, Ritchie, Hall and Spence JJ.

Canada Building in Vancouver, British Columbia. The agreement defined the total value of the granite contract as follows: "the value of the contract being based upon the total cost of the granite delivered to the job, and including all costs except the actual cost of installing the granite on the building". The trial judge held that the plaintiff was entitled to 4 per cent of the cladding contract (that is, for the facing of the building) less the cost of installation of the cladding. The remuneration payable to the plaintiff upon this basis was \$22,570.46. The Court of Appeal held that the plaintiff was entitled to 4 per cent of the granite (in the form of granite chip or granite slab) delivered to the job, less the cost of installation of the granite. The remuneration payable to the plaintiff on this basis was \$574.80. From the judgment of the Court of Appeal the plaintiff appealed to this Court.

1968
MARKHAM
v.
CONTI-
NENTAL
MARBLE
& GRANITE
LTD.
et al.

Held: The appeal should be allowed and the judgment at trial restored.

APPEAL from a judgment of the Court of Appeal for British Columbia, allowing an appeal from a judgment of Dryer J. Appeal allowed.

B. W. F. McLoughlin, for the plaintiff, appellant.

Philip d'A. Collings, for the defendants, respondents.

At the conclusion of the argument of counsel for the respondents the Court retired and on returning the following judgment was delivered by

THE CHIEF JUSTICE (orally for the Court):—Mr. McLoughlin, we do not find it necessary to hear you in reply. We are all of opinion that the appeal succeeds and that the judgment of the learned trial judge should be restored. We agree with the construction placed upon the contract, ex. 8, by the learned trial judge and we are in substantial agreement with his reasons.

The appeal is allowed with costs in this Court and in the Court of Appeal for British Columbia and the judgment at trial is restored.

Appeal allowed and judgment at trial restored.

Solicitors for the plaintiff, appellant: Lawrence, Shaw, Stewart & McLoughlin, Vancouver.

Solicitors for the defendants, respondents: Comparelli & Collings, Vancouver.