

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

DIGBY WOODWORKERS LIMITED

PLAINTIFF

- and -

BASIN PLACE LIMITED

DEFENDANT

HEARD: At Digby, Nova Scotia, the 10th day of  
February, A.D. 1982 and the 16th day of  
February, A.D. 1982.

BEFORE: His Honour Judge Peter Nicholson, J.C.C.

DECISION: The 28th day of September, A.D. 1982

COUNSEL: W. Michael Cooke, Esq., for the Plaintiff  
Charles E. Haliburton, Q.C., for the Defendant

NICHOLSON, J.C.C.

The Plaintiff was in the business of a general contractor and at times material hereto Lawrence K. Banks of Digby was the President of the Company and supervised the contract work on a building known as Basin Place located on Water Street in the Town of Digby, Nova Scotia, and owned by the Defendant.

The work in question consisted of renovating a portion of the building to make it suitable for dental offices and a law office in that phase of the renovation that was material to this action.

The Defendant paid to the Plaintiff for work done and materials provided, the sum of \$70,000.00, plus \$2,147.66 for extras. The Plaintiff now claims the further sum of \$16,049.57 for the balance of the work it had performed. The Defendant counter-claimed against the Plaintiff for damages for defective materials and workmanship, as a result of which it denies that it owes the Plaintiff any money and claims general damages for the defects complained of, and delays sustained.

Mr. Lawrence Banks testified that he had

many years of experience as a carpenter and plumber and that he prepared the estimates that were tendered to the Defendant, which were produced as Exhibits 2, 3, 4 and 5 at the trial. Photocopies of these estimates are appended hereto as Appendix No. 1 and they total \$44,446.72 with certain reservations as detailed in the tender documents. It should be noted that plumbing and electrical work was not included in the tender prices nor was crackfilling in the offices. The estimates were accepted. Plans and specifications of the work had been provided to the Plaintiff by the Defendant.

Apparently the work commenced in the month of March, 1978, and before the job was finished Mr. Banks sold out his shares in the Plaintiff Company and Andrew Brooks became President of the Plaintiff Company and took Banks' place in charge of the work. He had 30 years experience as a carpenter.

The first complaint of the Defendant Company is that the plans given by the Defendant to the Plaintiff designating the work to be done specified that the ceilings in the dental offices were to be 9 feet high, save and excepting the waiting room which was to be 8 feet. Dr. Harold Boudreau who was to be a tenant of the dental offices stated that he visited the premises shortly after the workmen commenced

to put up the dropped ceiling and just assumed that it was 9 feet high. The next time Dr. Boudreau went to the premises, which he thought was probably the next day, he discovered that the office ceiling was in fact only 8 feet high. He felt that it would not be practical for him to bring down that ceiling one more foot as he wanted to do in the waiting room because that would mean it would only be 7 feet high there, which was unacceptable. In these circumstances Boudreau said he agreed to leave all the ceilings at 8 feet presumably because he was anxious to get into the premises and did not want further delay.

There can be no doubt but that the height of the ceiling was a departure from the plans and that the Defendant feels that it was deprived of some desirable ascetic feature because of this error. For this item I allow the Defendant a credit of \$1,000.00

With respect to the ceilings of the whole premises, the Defendant claimed that the dropped type of ceilings, consisting of suspension wires, T-bars and tiles, were unsatisfactory on two grounds. First of all, it was known by the Plaintiff's workmen that a sprinkler system was to be installed in the premises. A company from Halifax was to come to do the work and to install the necessary

plumbing and sprinkler heads. There can be no doubt from the evidence that the Defendant wanted to get the work done for its tenants as soon as possible. There was considerable pressure to get the ceilings up promptly; as a result of this the ceilings were erected by the time the sprinkler people came. Of course many of the tiles had to be removed to allow the workmen to install the system and as a result there was damage done to the T-bar system and some of the tiles were soiled and broken. Some of these were replaced at the request of Dr. Boudreau. It is my opinion that the Plaintiff company cannot be condemned for what happened to those ceilings as a result of the failure of the Defendant to phase in properly the work of the sprinkler people.

Secondly, Mr. Brooks testified that the material used to put up the ceiling was supplied by Weldwood Manufacturing Company being 2 feet by 4 feet rectangular ceiling tiles. Mr. Martin Giddy was the architect that produced the plans of the work to be done. He testified that the plans called for the installation of Cellotex tiles. Mr. Robert Purdy, a general contractor and President of Baycrest Limited, testified that only Guildfords Limited of Halifax could supply the Cellotex tiles and in his view they should also have installed them because the specifications spelled it out that "the tiles are to be installed by the supplier".

As it is apparent that the Defendant had knowledge of the fact that the Plaintiff was installing the tiles, and did nothing to stop the installation I find that there was tacit approval that the Plaintiff should put up the ceilings although there was no approval that the quality of the tile should be other than that specified. I find that the difference in the price of the tiles specified and that which was installed was \$1,155.90.

The next complaint of a major nature was that the door casings and some window casings, moldings and baseboards were of rough spruce finish. Mr. Brooks described this wood as "paint grade pine". Having viewed the premises I am satisfied that the material was not of an acceptable standard and certainly was not what the witness Purdy described as finish pine. He pointed out that the plans called for adherence to the National Building Code and the use of good construction standards for material. Purdy said the National Building Code has no grade such as "paint grade pine" and calls for a 12% moisture limit in lumber. This condition is achieved by kiln drying and in his opinion the finish supplied was not kiln dried. He estimated that to tear out the wood trim complained of, and to replace it with proper material would cost \$2,900.00 and I am allowing that item on the Defendant's counter-claim.

Notwithstanding that the original tender made by the Plaintiff excluded electrical work, it does appear that at some stage the Defendant requested the Plaintiff to put up light fixtures. Mr. Banks testified that he engaged a qualified electrician to put up these lights which were described as "pot lamps". These consisted of dome shaped shades that were inserted in the ceiling to produce a flood light effect. Apparently the pot lights installed, which were 21 in number, were indentified in the specifications as number 9660. What was installed was lamp number 9655. The specified lamp was more expensive according to the evidence of Martin Giddy and incorporated a small coil underneath the lamp. The Defendant complained that not only were the lamps supplied not the specified ones, but that difficulty was expressed with their operation in that two of the lights fell down, and they were generally difficult to service. In the Plaintiff's rebuttal evidence Mr. Ted Rice the electrician on the job frankly said, "I would like to see a better type of light." It appeared that all that was holding the light up to the ceiling was the lip on the base of the lamp overlapping the base of the T-bar in the dropped ceiling. If the T-bar spread, the lamp would naturally fall down, and that is what happened to two of them. Other complaints of the electrical system related to poor workmanship in installing the 60 and 100 amp panels, in particular they were not mounted flush with

the wall. There is no doubt that the lamps did not meet the specifications but there was no evidence presented to the Court as to the cost of rectifying the departure from the specifications. There is no way that I can make a satisfactory assessment of what the Defendant suffered, if anything, by this failure on the part of the Plaintiff. The best I can do is to allow a nominal amount only in respect of it. Giving the matter my best consideration and giving consideration to the amounts claimed for extras relating to the ceiling lighting, I fix the sum as \$500.00 as being due to the Defendant as a credit.

The Defendant claims that in the dental operating room the Plaintiff was to run cement on the floor to bury the plumbing pipes. Apparently the job turned out to be a very rough one and at the request of Dr. Boudreau, Mr. Banks took a grinding machine and smoothed it down to a considerable extent. However it became necessary to cut a trench in the concrete floor to lay a pipe in it. After this, the floor was not built up again, but a carpet was laid on it with the result that Dr. Boudreau complained that the carpet was giving way over the small trench making it very difficult for him to move about on a dental stool around his operating equipment. Having viewed the situation myself I consider that an expenditure of \$100.00 would correct this particular defect but of course one would have to take into



account that the dental operating room could not be used for the period of repairs and for this I would allow a further sum of \$100.00.

The Defendant claims that the Plaintiff in constructing a hallway in the premises put the walls of the same up out of square. Mr. Purdy estimated that it would cost at least \$1,000.00 to level out the walls. Mr. Banks evidence was that when they set about to put up the new walls as provided in the plans they found a steel carrying post in such a position that it was impossible to lay the hall out in a straight line. He said that he made this fact known to the Defendant. I can only conclude that it must have been decided to avoid the expense and structural hazard of removing the carrying post and to proceed to build the wall as I saw it in the view I took of the premises. I do not believe it would be fair to condemn the Plaintiff for the estimated cost of straightening out that wall nor do I think that it detracts in a material way from the general appearance of the premises.

The Counter-claim of the Defendant sets out certain other defects which were very minor in nature and relate to such things as proper fittings and rings not being placed on plumbing pipes; shelves omitted in the storage room and hallway as provided in the plans; some very minor defects in connection with the cedar lamination on the front

of the building; a damaged countertop and some shut off valves missing in the plumbing. Again no evidence was adduced before me as to what it would cost to remedy these small defects and again having viewed the premises I can only make my best estimates that \$400.00 would cover all of these items.

The Defendant also complained that the crack-filling on the gyprock paneling was poorly done and with that I would agree. It had been provided for as an extra, having been excluded from the original tenders. For this I would allow the sum of \$400.00. In fixing this amount I am taking into account that Mr. Banks testified that they had taken on only the rough crackfilling job and had nothing to do with the finish crackfilling. He took the position that that was the province of the painters who were employed separate and apart from his firm.

The evidence of Robert Purdy was that the plans and specifications for the job specifically provided for solid birch doors. The doors supplied were mahogany and Purdy estimated that it would take \$2,000.00 to replace the doors as specified and I allow that credit to the Defendant. He also testified that the normal practise was for the contractor who has undertaken to supply and install doors to also supply the door jams, hinges and lock sets. The Plaintiff

had billed the Defendant for this hardware and door jams in the amount of \$1,915.91 as an extra. In my view the charges for that material were of necessity part and parcel of the tender price and that latter amount is allowed as a credit to the Defendant.

It is fair to say that through out there were some deviations of the original arrangements made between the Defendant and Plaintiff. The original tender excluded crackfilling, plumbing and electrical work but the Plaintiff wound up doing some of this work and as was laid down in Felch vs. Ritchie (1882) 15 N.S.R. 407 (C.A.), a decision of the Nova Scotia Court of Appeal, where there are deviations to the extent that are apparent in this case,

"The Plaintiff was not entitled to recover on the contract but was compelled to rely on a quantum meruit".

Giving the claim of the Plaintiff the best consideration I can and being considerably hampered by the lack of specific evidence as to the cost of bringing the work up to a satisfactory condition, I have come to the following conclusions as to what portion of the Plaintiff's claim ought to be allowed:

- |   |             |
|---|-------------|
| (a) Amount owed to the Plaintiff per Statement of Claim | \$16,049.57 |
| (b) Less Credits or offsets due to the Defendant:       |             |

(1)	Deviation in ceiling height	\$ 1,000.00	
(2)	Difference in price of ceiling tile specified and that which was installed	\$ 1,155.90	
(3)	Replacement of wood trim	\$ 2,900.00	
(4)	Deficiency in ceiling lighting	\$ 500.00	
(5)	Deficiency in dental operating room	\$ 200.00	
(6)	Minor deficiencies as set out in page 9 hereof	\$ 400.00	
(7)	Poor quality crackfilling	\$ 400.00	
(8)	Replacement of doors	\$ 2,000.00	
(9)	Cost of hardware for doors and door jams	\$ 1,915.91	
		<hr/>	
		\$10,471.81	\$10,471.81
			<hr/>
	BALANCE		\$ 5,577.76
			<hr/>

The Plaintiff shall have judgment for the sum of \$5,577.76 together with 75% of its costs to be taxed. The Defendant shall have 50% of its costs of the Counter-claim.

DATED at Annapolis Royal, Nova Scotia, this 28th day of September, A.D. 1982.



JUDGE OF THE COUNTY COURT OF  
DISTRICT NUMBER THREE

TO: The Clerk of the Court,  
The Court House,  
Digby, Nova Scotia

Charles E. Haliburton, Q.C.,  
Barrister and Solicitor,  
P. O. Box 577,  
Digby, Nova Scotia  
BOV 1A0

W. Michael Cooke, Esq.,  
Barrister and Solicitor,  
6464 Chebucto Road,  
Halifax, Nova Scotia  
B3L 1L4

1979

C. D. No. 1009

IN THE COUNTY COURT OF DISTRICT NUMBER THREE

BETWEEN:

DIGBY WOODWORKERS LIMITED

PLAINTIFF

- and -

BASIN PLACE LIMITED

DEFENDANT

APPENDIX NO. 1

DIGBY WOODWORKERS LTD.

SMITH'S COVE, N. S.

BOS 150

March 6, 1978

Basin Place Ltd.  
Digby, N.S.

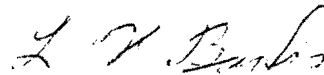
Dear Sir:

We estimate the cost of renovations to be as follows:

Renovations for Basin Place Ltd.

Material	\$12217.40
Labour	8654.80
Tax on material	<u>977.39</u>
Total estimate	\$21849.59

Yours very truly  
Digby Woodworkers Ltd.



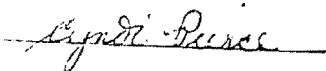
Lawrence K. Banks  
President

Please note: Cost of door jambs not included in above price  
Price does not include plumbing & electrical work.

Crackfilling for above renovations will be \$1175.68

EXHIBIT NO. #2  
DIGBY BASIN  
WOODWORKERS VS. PLACE  
CASE NO. Q 1009  
10 DAY OF FEB., 1982

CLERK OF THE COURT



DIGBY WOODWORKERS LTD.

SMITH'S COVE, N. S.

BOS 150

March 6, 1978

Basin Place Ltd.  
Digby, N.S.

Dear Sir:

We estimate the cost of dental office for Dr. Boudreau to be as follows:

Material	\$8982.82
Labour	2156.00
Tax.	718.63
Total estimate	\$11857.45

Yours very truly  
Digby Woodworkers Ltd.

*L. K. Banks*

Lawrence K. Banks  
President

Please Note: Price does not include plumbing & electrical work

Crackfilling for Dr. Boudreau's office will be \$334.40.

EXHIBIT NO. #3  
Woodworkers VS. Basin Place  
CASE NO. CP1009  
10 DAY OF FEB., 19 82  
CLERK OF THE COURT  
Cyndi Preece



DIGBY WOODWORKERS LTD.

SMITH'S COVE, N. S.

BOS 150

March 6, 1978

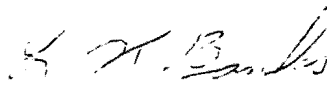
Basin Place Ltd.  
Digby, N.S.

Dear Sir:

We estimate the cost of the Dental Technicians office to be as follows:

Material	\$4718.82
Labour	904.00
Tax	<u>377.51</u>
Total estimate	\$6000.33

Yours very truly  
Digby Woodworkers Ltd

  
Lawrence K. Banks  
President

Please note: Price does not include plumbing and electrical work

EXHIBIT NO. #4  
Woodworkers vs. Basin Place  
CASE NO. CD 1009  
10 DAY OF FEB., 19 82

CLERK OF THE COURT

Cyndi Prence

**DIGBY WOODWORKERS LTD.**

SMITH'S COVE, N. S.

BOS 150

March 6, 1978

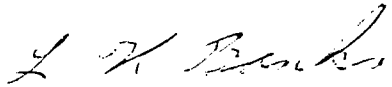
Basin Place Ltd.  
Digby, N.S.

Dear Sir:

We estimate the cost of the Lawyers office to be as follows:

Material	\$2363.29
Labour	2187.00
Tax	<u>189.06</u>
Total estimate	\$4739.35

Yours very truly  
Digby Woodworkers Ltd.

  
Lawrence K. Banks  
President

Please note: Price does not include plumbing and electrical work.

Crackfilling for above office \$281.60.

EXHIBIT NO. #5  
Woodworkers vs Basin Place  
CASE NO. CD 1009  
10 DAY OF Feb, 19 82

CLERK OF THE COURT

