

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: 3031551 Nova Scotia Ltd. v. Northwind Holdings Ltd.,  
2007 NSSM 87

Between:

**3031551 NOVA SCOTIA LIMITED**

**CLAIMANT**

-and -

**NORTHWIND HOLDINGS LIMITED**

**DEFENDANT**

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**DECISION AND ORDER**

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Adjudicator: David T.R. Parker

Heard: December 5, 2006

Decision: January 22, 2007

Counsel: Tim Hill represented the Claimant

Sean Foreman represented the Defendant

The Claimant's pleadings state the claim is for \$12,500.00 being damages arising from the Defendant's breach of contract with the Claimant for cleaning services.

The Defendant stated in its defence response to the Claimant, "After months of unclean premises, constant staff turnover, building doors left open, unlocked, alarms not turned on, (the Claimant) was given 30 days notice that services no longer required."

## **FACTS**

- The Claimant secured a contract with the Defendant to provide cleaning services to the Defendant's building.
- The contract commenced May 1, 2003, at a cost of \$3,600.00 per month with payment of \$1,800.00 made on the 14th and 25th day of every month.
- The cleaning services and supplies for same were provided six days a week and included under the original contract Family Practice offices, Suite 303, common hallways, washrooms, entrances and blood lab.
- The contract for services stated, "This contract can be dissolved by a written six (6) months notice given by either party". The contract was signed by Gail Matthews, Property Manager for the Defendant Company.
- On August 25, 2005, the Defendant's Property Manager, Greg Hamilton, sent a letter to the Claimant wherein he said, "On behalf of Northwind Holdings Limited (the Defendant), I hereby give 30 days notice that we will no longer require your services after September 23, 2005.

## **ANALYSIS**

Ms. Matthews, Property Manger of the Defendant Company was called upon by the Claimant to give testimony of her experience with the Claimant Company. She said she was property manager for two years until March 2005 when she left and she experienced no difficulties with the services or people who worked for the Claimant Company.

Greg Hamilton became the replacement property manager for the Defendant and was hired on February 21, 2005. Mr. Hamilton said he was having concerns with security, doors left open, alarms not set and continual personnel change of the Claimant's employees. He said he told the Claimant's personnel about the doors and alarms by telephone and to rectify the problem. He said, "I should have used e-mail", and I assume he meant to document everything. He said that on August 24th he went to the owners of the Defendant Company and "they wanted to dismiss

the Claimant that day when I told them the problem". He said, "I said 'no', should give them reasonable notice".

Carla Hill, manager for the Claimant company and contact person with the Defendant Company, e-mailed her boss on August 25, 2005, and said in the e-mail; Greg Hamilton contacted her and informed her the doctors (controllers of Defendant company) agreed that it was time for a change for cleaning services.

Ms. Hill was a witness at the trial and I found her testimony to be very credible and thorough as evidenced in her continuous e-mails before and after the Defendant's notice of termination. In the e-mail of August 25, 2005, to her boss, she says that she told Mr. Hamilton that the contract with their company required a six-month termination notice. The e-mail said the following:

"Well here's the scoop on Gladestone. Greg said in the staff meeting yesterday he and the doctors agreed that it is time for a change in cleaning services. He said that there are small issues that come up often. I asked what these concerns were; he does not give specifics but did mention that they are not happy since our change over. He feels that the evening his door was unlocked that was enough reason for him to be concerned about the changes that we had made. Also, he said that he does not want to deal with these concerns and call about every little issue. I told him that Debbie and I do regular inspections and if we are not catching details that need to be dealt with then we are not given an opportunity to rectify these concerns. I told him that Debbie and I agreed that the 2nd floor and common areas have never been done as thoroughly as they are now. He also mentioned that he has someone that has been waiting about 4 mths to take over this contract. I asked if it was at a lower cost, he said no at the same cost. He hesitated. I asked if there were any changes that I could make to keep the contract, he said no and that the doctors have their minds made up. *I addressed all of the concerns that had recently come up and he agreed that there have been no more problems but I guess it is because they did come up in the first place. I mentioned to him that our contract states that we agreed to a six month termination notice, he said there will be no way they will be held to that.* [EMPHASIS ADDED] I told him you will want to speak with him when he returns and you will address these concerns and contract termination period. He said no problem; give him a call any time.

I am not sure what else I need to tell you but call me tomorrow if you

get a chance and also, are you still coming on the 28<sup>th</sup>?"

Greg Hamilton assumed it was 30 days notice of termination. He said he never knew about termination clause until he received a copy of the contract from the Claimant's Counsel, Mr. Hill.

From Darrin Spafford's the Claimant owner's perspective, there were no problems prior to Mr. Hamilton's arrival. When he received the termination notice it was August 30, 2005, and he tried to meet with one of the controlling officers of the Defendant Company, a Dr. Parsons. He admitted they had to release two staff members who cleaned the building due to issues and concerns they had with them. He said that people working in the building and not the Claimant's staff, often left doors open and there were issues with doors not opening and locking his staff in, which were brought to Mr. Hamilton's attention. After receiving the termination notice, he provided the Defendant with an offer to do additional cleaning work in the building. This was rejected or at least not accepted by the Defendant. He said he, "spoke to Greg Hamilton and Dr. Parsons multiple times that notice was six months but that Greg said 'we are not doing that'."

The e-mails and the testimony show that the Claimant paid attention to its business, dealt with issues that arose and requested feedback on any issues the Defendant was having with respect to cleaning services being provided.

The Defendant apparently had some problem with doors remaining unlocked or opened; however, it would appear that that may have been a problem caused by tenants in the building. The personnel changes made by the Claimant were necessary and from what I heard the cleaning still was being done and any problems that arose were dealt with by the Claimant's manager. The property manager for the Defendant Company did not have a copy of the contract; he decided on his own that thirty days notice was reasonable. Even after he was told it was six months notice he did not reconsider the notice period. The Defendant's owner, represented by Dr. Parsons, was, according to the Claimant, also advised that six months notice was required. There was no evidence to contradict this and the Defendant was told to leave the building five months prior to the date termination of their contract should have occurred.

Defendant's Counsel raised the issue of estoppel, that is, the Defendant is precluded from relying on the sixty day period when it entered into discussions for a renewal

agreement with the Claimant. Counsel suggested the Claimant did nothing for six months and they should have put it in writing that the notice period was six months. I disagree that the Claimant led the Defendant to believe it would not insist on the six months notice period by entering into discussions to try and have the contract continue. The Claimant was under the impression and, in fact, told the Defendant was going to get new cleaners. By trying to present a case for their continuation by offering additional services the Claimant did not waive their right to insist on six months termination notice.

Both the property manager and the Claimant's owner made it clear that six months notice was required. One of the Defendant's representatives and the property manager rejected this.

The Claimant provided a statement showing the average profit margins over the previous years' cleaning of the Defendant's premises. This was not challenged; however, October of 2004 involves extras and August has a large decrease in wages which I believe could skew the results. Therefore, I have removed those two months with the result that the average monthly profit would be \$2,098.86 rather than \$2,366.64. Therefore the loss over five months would be \$10,494.30 rather than the claim of \$11,833.21. The Claimant shall succeed in recovering its losses.

IT IS HEREBY ORDERED that the Defendant pay the Claimant the following sums:

\$10,494.30

\$ 160.00 Court Costs

\$10,654.30

Dated at Halifax, this 22nd day of January, A.D., 2007.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia