

SCCH 272682
Date: 20070803

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Cierra Contracting Ltd. v. Wyse Buys Trading Inc., 2007 NSSM 76

Between:

CIERRA CONTRACTING LIMITED

CLAIMANT

-and -

**WYSE BUYS TRADING INC. and
3024336 NOVA SCOTIA LIMITED**

DEFENDANT(S)

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: June 5, 2007

Decision: August 3, 2007

Counsel: The Claimant was represented by Counsel Jeff Aucoin.

The Defendant was represented by Counsel James D. MacNeil.

PLEADINGS

(a) The Claim

The Claimant stated in its pleadings that it entered into a contract with the Defendant either together or in the alternative to perform work...including but not limited to construction work on the trim, stairs, underlay and the installation of medallion. This work was, according to the pleadings, completed between March 3, 2005, and June 10, 2005, and the Defendant was invoiced. There remains outstanding \$6,220.03.

(b) The Defence

There is a general denial and further the Defendant stated that 3024336 Nova Scotia Limited is the owner of property in Halifax where the alleged work was completed and further there is no relationship between the Defendant Wyse Buys Trading Inc. and the Claimant. The Defendant numbered company stated it had contracted with the Claimant to complete renovations on the Halifax property. The Defendant numbered company stated that in June, 2005 it received an invoice from the Claimant which it said was excessive and unjustified for the amount of work completed and undertaken by the Claimant, and the parties agreed to a reduction of the invoice and the Claimant received payment. The numbered company stated after it made payment it discovered deficiencies including:

- (1) Negligent installation of the outside front steps.
- (2) Failure to replace rotten window sills as originally agreed
- (3) Negligent installation of steel doors

(4) Failure to repair and install reinforcements under hardwood floor

(c) *Counterclaim of 3024336 Nova Scotia Limited*

The numbered company claims special damages for deficiencies.

The Claimant reviewed the work that was completed as reflected in its invoice dated June 20, 2005.

With respect to deficiencies complained of by the Defendant, I accept the Claimant's evidence that the front steps were to be temporary to allow access to the home of various items for the home. The Claimant had completed stairs on other property of the Defendant in the past that were not temporary and he was aware of the difference. The railing referred to in the Pillar to Post letter, objected to by Counsel, is minor defect and the other problems mentioned fit in with the fact that they were temporary stairs.

The Defendant was only charged for the rotten window sill that was replaced. Even though there were other sills found by another contractor to be replaced, the Defendant was not charged for it by the Claimant.

The steel doors should have had longer screws; however, this was a minor repair.

With respect to the hardwood floor, the Claimant only worked on a small portion of that floor and did not work on the entire floor.

Mr. MacNeil, Counsel for the Defendant, raised an interesting point, in having the Claimant justify his hours and it would have made the case for the Claimant much easier if he had provided the Court with his actual hours worked and being claimed by the Claimant. However, even though Mr. MacNeil's cross-examination was thorough on the particulars of the work performed by the Claimant, his estimate of hours if taken on the high side is in excess of the hours noted on his invoice.

The Claimant is an experienced contractor and I have accepted for all those reasons given, that he billed for the work done. I shall not award the Claimant interest, however, as that was not part of the agreement. As well, no prejudgment interest was requested and I shall not be awarding same. The contract is also with the numbered company, not Wyse Buys Trading Inc.

IT IS THEREBY ORDERED that the Defendant 3024336 Nova Scotia Limited shall pay the Claimant Cierra Contracting Limited the following sums:

\$6,218.99	Debt
\$ 160.00	Court Costs
\$6,378.99	Total

AND IT IS FURTHER ORDERED that the claim against Wyse Buys Trading Inc. is dismissed **AND IT IS FURTHER ORDERED** that the counterclaim against Cierra Contracting Limited is dismissed.

Dated at Halifax, Nova Scotia, this 3rd day of August, A.D., 2007.

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