

**Claim No. 285338**

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

Cite as: Millennium Sheet Metal Ltd. v. Monster Pizza Inc., 2008 NSSM 55

Between:

**MILLENNIUM SHEET METAL LIMITED**

**CLAIMANT**

- and -

**MONSTER PIZZA INCORPORATED**

**DEFENDANT**

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**DECISION AND ORDER**

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Adjudicator: David T.R. Parker

Heard: January 23, 2008

Decision: March 14, 2008

Counsel: Brian P. Casey represented the Claimant

Glen Jones represented the Defendant

**THE CLAIM**

This claim involves work relating to the conversion of two vehicles, in this case trucks into mobile chip wagons. The Defendant purchased the trucks and the Claimant worked on converting the trucks for which the Claimant is now seeking payment.

## **PLEADINGS**

This matter was commenced in the Supreme Court of Nova Scotia then transferred to the Small Claims Court of Nova Scotia.

### **(a) *The Claim***

**The Claimant stated that in July of 2006 it was hired by the Defendant to convert a motor vehicle into a chip wagon at a total cost of \$15,806.10. The Claimant stated that on August 14, 2006, the Defendant paid the Claimant \$12,000.00 leaving \$3,806.10 remaining due and payable.**

On September 9, 2006, the Claimant supplied and installed a stainless steel shelf and frame for the Defendant at a cost of \$826.50. The Claimant is claiming payment of this amount.

In March of 2007, the Claimant was again hired by the Defendant to convert a second vehicle into a chip wagon at a cost of \$11,987.10 and the Claimant wants that amount to be paid.

### **(b) *The Defence***

**The Defendant stated that the Claimant failed to complete the contract properly which constituted a fundamental breach of contract relieving the Defendant of any liability to the Claimant.**

### **(c) *Counterclaim and Set Off***

**In terms of set off, the Defendant stated that the Claimant's failure to complete the contract promptly has resulted in significant loss of income for the Defendant which amount exceeds the amount being claimed by the Claimant. The Defendant therefore claims a set off of the amount, if any, owing to the Claimant.**

The Defendant and Claimant by counterclaim stated that the Claimant/Defendant by counterclaim was contracted to carry out repairs to convert the vehicle into a chip wagon. The Defendant states that the work was to be completed promptly and the Claimant was to complete the work at a price

less than the first vehicle that the Defendant had converted by the Claimant. The Defendant stated that it provided the vehicle to the Claimant in July of 2006 and it was agreed that the vehicle would be converted into a chip wagon by September 2006.

The Defendant and Claimant by counterclaim intended to use the fish and chip wagon in September of 2006 for a concert being held in Halifax. Further, it wished to place the fish and chip wagon at a location in Dartmouth which the Defendant stated by all accounts was a highly profitable area. The Defendant/Claimant by counterclaim requested and then demanded that the Claimant/Defendant by counterclaim complete the work on the second vehicle. The Defendant/Claimant by counterclaim said that by March of 2007 the work had still not been completed and the Claimant/Defendant by counterclaim refused to complete the work. The Defendant/Claimant by counterclaim stated that the Claimant/Defendant by counterclaim failed to complete the conversion of the vehicle into a fish and chip wagon within a prompt period of time thereby constituting a breach of contract for which the Claimant/Defendant by counterclaim is liable.

## **ANALYSIS**

Upon hearing the testimony of the parties involved, I was most impressed by the accountant who worked at least part-time for the Claimant. The Defendant's position was that he made a deal with the Claimant to pay \$12,000.00 for the conversion of the first vehicle. This is contrary to what the Claimant said and it is contrary to what the accountant who works for the Claimant said. The accountant was very clear that the Defendant told him he felt the price was very high for the conversion of the chip wagon and that he then passed that on to the owner of the Claimant company and that he was advised by the owner to accept the \$12,000.00 payment with the remainder to be collected on completion of the second truck. He also advised the Defendant that they would not be releasing the second truck until payment was made. The truck was secured in the parking lot of the Claimant; however, during the nighttime when the Claimant's employees were not present, the Defendant came and took his truck out of the Claimant's yard. The cost of converting the first chip truck exceeded the estimate that the Defendant was given by the person who did the conversion. He thought that the truck would cost about \$7,000.00 – 8,000.00 to convert whereas it turned out to be in excess of \$15,000.00. The Defendant was told at the beginning that he did not know how much it would cost and that this was only a guess by the

Claimant.

In my view there was no agreement between the parties that the Claimant would accept \$12,000.00 in full payment of the first truck. The Defendant also admitted that he owes the extra amount of \$826.50.

There is also enough evidence to allow me to include the second conversion. The second truck, although not completed as it was removed from the yard, did cost \$11,987.10 as invoiced by the Claimant. The Claimant shall succeed in this claim. The Defendant has brought forward no credible evidence to support its counterclaim.

**IT IS THEREBY ORDERED** that the Defendant pay the Claimant the following sums:

\$ 3,806.10	
\$11,987.10	
<u>\$ 826.50</u>	
\$16,619.70	Total

Dated at Halifax, Nova Scotia, this 14<sup>th</sup> day of March, A.D, 2008.