

Claim no. 303009

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bedford Painting & Maintenance Ltd. v. Dube, 2008 NSSM 83
BETWEEN:

BEDFORD PAINTING & MAINTENANCE LIMITED

Claimant

- and -

BRIAN DUBE and SANDRA DUBE

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 9, 2008

Decision rendered on December 22, 2008

APPEARANCES

For the Claimant Dan Monk, Project Manager
 Alan Avis, owner

For the Defendants self-represented

BY THE COURT:

- [1] This is a claim by the Claimant company for \$2,796.75 for painting and related services rendered at the home of the Defendants.
- [2] The Defendants have disputed the claim on the basis of alleged deficiencies in the work performed and for some minor damage done in the form of paint getting onto areas that were not properly protected. The defence was actually framed as a Counterclaim for the entire amount of the claim, although technically the Defendants were not looking for anything other than a reduction to zero of the price charged for the work.
- [3] The job was supposed to last for about five days in June of 2008. The Claimant company had been hired on something of a rush basis after other painters had failed to show up to do the work for the Defendants. The deal was that the Defendants would pay for and supply the paint, so the contract was for labour only.
- [4] There was a written quote dated May 25, 2008, which listed all of the areas to be painted and also promised to perform *“any necessary wall and ceiling repairs, including a water damage repair in the upstairs bathroom.”* Also to be supplied was a crew to do clean up after the job was finished.
- [5] The Claimant’s work crew started on Monday the 2nd of June 2008 and was on the job for pretty much the entire week. When the Claimant first looked for payment the following week, this was met with the first of several complaints by the Defendants to the effect that the job was deficient in many respects.

- [6] The evidence is very clear that the job done by that first crew was seriously substandard. Even the owner of the Claimant company, Mr. Avis, conceded that his *“guys had been a little sloppy.”* He tried to deal fairly with the Defendants and was even heard to comment that he *“would not pay for it either,”* if it were his home.
- [7] Part of the problem, from which I doubt the job ever recovered, was that the initial crew had been less than thorough in the surface repairs and preparation. It is elementary that if you just paint over areas that have not been adequately prepared, it will look sloppy and unsightly, no matter how much paint you apply. Lines that are not straight because of inadequate spackle or sanding will not magically get straighter.
- [8] When the owner of the Claimant company inspected the work the week after it was done, one of the things he did was to send in a specialized taper to try to bring the surface repairs up to a better standard. It is by no means clear that this work, while it led to improvement, ever fully met the expectations of the Defendants.
- [9] Over the next few weeks further efforts were made to correct deficiencies, with the result that the Claimant’s man-hours on the job became seriously disproportionate to the value of the contract. However, I am not being critical of the Defendants. I am satisfied that their grievances were for the most part justified, and despite best efforts of the Claimant, measures taken to correct the job that had been poorly done by the first crew were not always fully successful.

- [10] The Defendants point to a number of areas of the house that they say are still not up to par. Many of the complaints are minor, such as the failure to remove an electrical wall plate before painting (i.e. just painting around it). They complain that a number of cracks and other repaired areas were never properly sanded and can be seen through the paint. There is paint spatter on a wood floor as a result of inadequate use of drop-cloths, and a smear of paint on a leather couch. There are other imperfections which I need not detail. Many of these complaints are substantiated by photographs that the Defendants placed in evidence.
- [11] The Defendants produced an estimate from another contractor, W.C. Kline of Fyen Contracting, who promises to perform four days of work repairing walls and repainting, for the sum of \$1,275.00 plus HST. It should be noted that the estimate is not from someone who is entirely at arms length to the Defendants, as Mr. Kline is a subcontractor who sometimes works with Mr. Dube in his landscape contracting and snow removal business. It is also not clear how much experience he has as a painter.
- [12] Apart from the final result, which is not satisfactory to the Defendants, they complain also of a number of things that left a bitter taste in their mouths, so to speak. They testified that the first crew showed up unprepared, and did not even bring their own ladder or dropcloths. The Defendants supplied their own ladder and various cloths to try to protect their furniture and floors. They testified that the crew appeared to be openly disgruntled and did not appear to make much of an effort.

[13] Overall, the work took so much longer than it ought to have taken, with the result that they had to live in a construction site for weeks, rather than days.

Conclusion

[14] Although this Claimant is a fairly large and reputable painting contractor, something went seriously wrong on this job. The first crew, who were not long-time employees and most of whom left the employ of the Claimant after or during this job, appear to have done a great deal of damage by doing such a substandard job that it was going to take as much work to repair it as it ought to have taken to do it in the first place. They also engendered a great deal of ill will and dissatisfaction in the Defendants, which the best efforts of Mr. Avis were not entirely able to neutralize.

[15] On the other hand, I also believe that the Defendants likely became ultra sensitive to the job, in the sense that after their earliest unhappy experience they probably started to look too closely and began noticing even the most trivial deficiency. This is typical human nature in these kinds of cases. People lose sight of the fact that many minor imperfections will fade into the background once the full light of one's attention is taken off them, as it ought to be in ordinary times.

[16] Nevertheless, this paint job was a bit of a fiasco, and the experience has embittered the Defendants.

[17] I find that there are still some minor deficiencies that the Defendants are entitled to have repaired, and that they are not obliged to work with the

Claimant to correct these deficiencies. That working relationship is too soured.

- [18] The only estimate I have to do repairs is from Mr. Kline, the individual who sometimes works with Mr. Dube. That individual was not called as a witness to outline his expertise as a painter, nor to speak to what he sees as requiring repainting. I am uneasy relying solely on this estimate. It seems high to me, on all of the evidence. It does not appear on its face to contemplate repairing existing areas, but rather entirely repainting them. I am not satisfied that this is all necessary.
- [19] This is not a precise science. Mr. Dube was asked on cross-examination what he thought the Claimant was properly owed, and he candidly admitted that he does owe some money, though he thought it should be less than half the bill. Based upon all of the evidence, and given all of the work that was done by the Claimant to rectify the job, I believe that the Defendants should pay the bill, subject to a discount which will give them a modest budget to undertake repairs. This may involve getting further estimates, or negotiating to have less work done than they currently contemplate.
- [20] The bill from the Claimant was \$2,475.00 plus HST for a total of \$2,796.75. I allow a discount of \$575.00 and accordingly find that the value of the work done by the Claimant is \$1,900.00 plus HST, for a total of \$2,147.00. The Claimant is also entitled to its filing cost of \$87.06, for a total judgment of \$2,234.06.

Eric K. Slone, Adjudicator