

Claim No: 448082

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Me and the Boys Construction Ltd. V. Ward, 2016 NSSM 13

BETWEEN:

ME AND THE BOYS CONSTRUCTION LTD.

Claimant

- and -

CHERYL WARD

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 19, 2016

Decision rendered on April 20, 2016

APPEARANCES

For the Claimants

Melvin Tibert, owner

For the Defendant

self-represented

BY THE COURT:

[1] The Claimant sues for the cost of a construction project undertaken to prevent further water leaks into the Defendant's home. The amount of the invoice was \$4,500.00 plus HST, for a total of \$5,175.00.

[2] The Defendant does not dispute that the work was done properly and that some amount is owing. She simply contends that the price was not agreed to in advance, and that the Claimant has not justified the amount claimed. Since being presented with the invoice, she has requested a breakdown of the cost so she can assess whether (as she suspects) she is being overcharged.

[3] The facts are a bit more complicated than usual, as this project was connected to an insurance claim after the Claimant experienced ice-damming on her roof and significant water damage to the interior of her house in early 2015. The insurer had contracted with a restoration company, Belfor, to arrange for the repairs. Later Belfor commissioned an opinion from the Claimant as to the likely cause of some leaking that was occurring some months after the initial repairs were done, plus a new roof had been built. The Claimant was able to figure out what was wrong, and prepared a report for Belfor.

[4] Unfortunately for the Defendant, her insurance company denied any responsibility for this later repair. Belfor advised the Defendant that she might want to contract directly with the Claimant to fix the problem. That is what she did, and an agreement (of some kind) resulted. The work was started in late December 2015 and completed on January 12, 2016.

[5] The question for the court is: was there a firm quote for the cost of the work? If so, that would bind the Defendant to the price charged by the Claimant.

[6] The evidence discloses that there were some vague discussions in December 2015. The Defendant had asked Belfor whether it had received an estimate for the work, and the Defendant recalls being told that it would be "about \$4,000.00." Of course, this would not be binding on the Claimant as he was not a party to the conversation.

[7] It also appears that there were some direct discussions between the Claimant and Defendant. The best evidence of those discussions can be found in a series of text messages between the Claimant and Defendant on January 13, 2016- the day the invoice was presented, a day after the work was done.

[8] The following sequence of texts was exchanged:

Defendant (Cheryl)

Hi Mel. I had a discussion with Robb about payment options. He wants to see a breakdown of the costs... He thinks that \$4000 is really high. Also, was it \$4000 or \$4500? Thanks

Claimant (Mel)

I had told you was \$4500 Plus HST. If you only want to pay me 4000 that's fine but there's no warranty on my work.

Defendant (Cheryl)

I couldn't remember cause you said 4 and 4500 but the 4 might have been cash. So just send me a breakdown so I can show that to Robb [her husband]. You can email it to me at [gives email address]. Thanks!

Defendant (Cheryl)

I received your email and will forward it to Robb to have a look. I am not disputing that I agreed for you to do the work, I just didn't think you would charge me the same as what you quoted the insurance company cause contractors always over charge the insurance companies.

Defendant (Cheryl)

I think that he was looking for a breakdown on costs of the work and materials... The list you sent doesn't include prices.

Defendant (Cheryl)

Also, when we discussed your quote to Belfor, we didn't talk about how long the job would take... And I guess that's why we are questioning it. It's not the amount that was quoted.. That amount may have been reasonable knowing what time or materials were involved in the job. But knowing how long the job took and what material was used, the amount seems extremely high. That's why we asked for a breakdown of costs.

[9] From this exchange, it seems fairly clear that the figure of \$4,500.00 was mentioned, and the Defendant acknowledges such. So was the figure of \$4,000.00, which in all likelihood was an offer to accept less for payment of cash. Discounts for cash are not unheard of in the renovation business, although they are unlawful in the sense that they are designed to evade payment both of HST and income tax.

[10] Given that the cash option was never pursued, the figure on the table was \$4,500.00, plus HST.

[11] I conclude on all of the evidence that the Defendant agreed to this amount, although she later came to question whether it was fair - given her perception that less work was involved than she had originally anticipated. She also interpreted a statement by Mr. Tibert that he "would look after" her, to mean

that he would reduce the bill and charge less than he would have charged if the cost was being covered by insurance.

[12] Contracts for work typically come in two types:

- a. Fixed quotes, or
- b. Agreements to charge a "reasonable amount" which will typically be judged by time and materials.

[13] In the case of a fixed quote, the customer has agreed to the charge and, so long as the work is done properly, has no legal basis to seek any reduction. The contractor does not have to break down the cost or justify it.

[14] With fixed price contracts, the contractor takes on some uncertainty. The job may be simpler than originally thought, or it may be more complex. Had this job presented complications, the Claimant would have had no justification for increasing his bill, as he had agreed to do the work for a fixed amount.

[15] The second category mentioned above occurs when no price is agreed to, but the contractor is still entitled to be paid a reasonable amount. Where the amount cannot be agreed after the fact, it may be left to a court to determine on a "*quantum meruit*" (literally "amount deserved or merited") basis what amount is reasonable. It is in such cases that a breakdown of time and materials is necessary, to provide some objective basis to assess the value of the work.

[16] With respect, I believe the Defendant here is overreaching when she insists that the Claimant provide a breakdown of his cost. The Claimant may have chosen to do so as a courtesy, but he is not obliged by any principle of law to do so, because the contract was to do the work for a fixed price.

[17] In the result, I find that the Claimant is entitled to the amount of his invoice.

[18] The Claimant also seeks costs of \$199.35 to issue the claim and \$250.00 to serve it. Service was done by Mr. Tibert's son, who claims to be a professional process server. Based on the practice that I have observed from hundreds of other cases that I have adjudicated, the claimed \$250.00 is grossly excessive. The Claimant's place of business is in Dartmouth and the Defendant lives in Lake Echo. The distance between them is 18 kilometres. I believe that a reasonable amount for service would be \$60.00 plus mileage of \$18.00. No HST appears to be charged, so the amount is \$78.00.

[19] The Claimant also seeks prejudgment interest. At the statutory rate of 4%, interest on \$5,175.00 from January 13, 2016 to the date of the hearing (April 19, 2016) is \$54.86.

[20] The Claimant shall recover \$5,175.00 plus interest of \$54.86, and costs of \$277.35, for a total of \$5,507.21.

Eric K. Slone, Adjudicator