Claim No: 316869

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Gallant v. Gerrard, 2009 NSSM 58

BETWEEN:

GREGORY ALLEN GALLANT

Claimant

- and -

BARRY CHESTER GERRARD

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 27, 2009

Decision rendered on October 28, 2009

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant seeks recovery of approximately $1,500.00 to repair some allegedly defective brickwork on his home.

[2] The Defendant was hired by the Claimant in mid-2004 to install what is called mortarless brick facing on his home. When the job was nearing completion, the Claimant was unhappy with the quality of the Defendant's work and fired him from the job. The Defendant had his lawyer register a Builder's Lien against the Claimant's home to recover the approximately $3,000.00 that he felt was owing on the job, which the Claimant had refused to pay because he was unhappy.

[3] The Defendant did not commence an action after filing the lien (which the *Builder's Lien Act* required him to do), but simply left the lien on title in the hope that he would eventually be paid. Sometime in 2005 the Claimant discovered that his title was encumbered, and through lawyers an arrangement was made to pay $1,500.00 to the Defendant in exchange for the removal of the lien.

[4] Clearly the only reason that the Claimant paid less than the amount claimed at that time was because of the perceived deficiency in workmanship.

[5] In my view, the matter between the Claimant and Defendant was settled for all purposes at that time. The Defendant accepted less and the Claimant paid less, all to reflect the fact that the work was arguably deficient.

[6] Nothing further occurred between mid-2005 and early 2009, when the brickwork was showing further signs of deterioration and the Claimant decided to have it repaired and attempt to collect the cost from the Defendant.

[7] The Claimant says that he spoke to his lawyer who advised him that there was “six year coverage” on the Defendant’s work, and that it was therefore important to deal with this in 2009.

[8] I actually doubt that this is precisely what the Claimant’s lawyer said. What he must have said is that there is a six-year limitation period (a statute of limitations) on claims for breach of contract or for negligent performance of work. The particular section of the *Limitations Act* reads:

> **Limitation period**
>
> 2 (1) The actions mentioned in this Section shall be commenced within and not after the times respectively mentioned in such Section, that is to say:
> .....
> (e) all actions grounded upon any lending, or contract, expressed or implied, without specialty, or upon any award where the submission is not by specialty, or for money levied by execution, all actions for direct injuries to real or personal property, actions for the taking away or conversion of property, goods and chattels, actions for libel, malicious prosecution and arrest, seduction and criminal conversation and actions for all other causes which would formerly have been brought in the form of action called trespass on the case, except as herein excepted, within six years after the cause of any such action arose;

[9] This section only means that an action of the kind mentioned would be absolutely barred after six years, no matter the merits. It does not mean

that there is, in effect, a six-year warranty on all work. The extent of a warranty will depend on the particular contract. In other words, the fact that there is a six-year limitation does not mean that claims which are barred for any one of a number of other reasons may nevertheless be brought within six years.

[10] In the case here, the Claimant and Defendant had a known dispute over the quality of workmanship, which they resolved by way of a compromise in 2005. That compromise settled forever the issue of faulty workmanship.

[11] As such, the claim that the Claimant now makes essentially seeks to reopen that settlement and renegotiate the terms. That is simply something that the Claimant is not permitted to do. The law places limits on how long disputes can go on, and on how many times a person can raise the same issues. The Defendant is essentially correct where he states that the Claimant should have raised the issue of faulty workmanship in 2005. In fact, he did raise that issue when he fired the Defendant and refused to pay him for his work.

[12] I acknowledge that the Claimant may not have known the extent to which the work would deteriorate over the years after 2005, but that is a risk that he implicitly accepted when he agreed to settle the bill for a discount.

[13] I also have my doubts that the work in question would have carried a warranty for five years or more. Had there been a written contract for the work, the terms of that contract would have governed. In the absence of a written warranty, we would have to look at implied terms, as established by

industry practice. There is no established practice, to my knowledge, in the building industry that such warranties extend that long. Many warranties in the building trade only last one year.

[14] In the result, the claim must be dismissed.

Eric K. Slone, Adjudicator