Claim No: 325629

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Daley v. PF Renovators, 2010 NSSM 34

BETWEEN:

PHIL DALEY

Claimant

- and -

PF RENOVATORS LTD. and PHILIP HINES

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on May 4, 2010

Decision rendered on May 5, 2010

APPEARANCES

For the Claimant	self-represented
For the Defendants	Blair MacKinnon Counsel

BY THE COURT:

[1] The Claimant purchased a new home built by the Defendant PF Renovators Ltd., with a closing date of April 28, 2008. This case concerns some construction deficiencies.

[2] The principal of the Defendant PF Renovators Ltd. is the Defendant Philip Hines. It is common for people suing in this court to name as parties the individuals behind the companies with whom they were dealing. Sometimes that may be justified, but in most cases (as here) it is not. There is no basis to affix personal liability on Mr. Hines for any of the alleged liabilities of his company, and accordingly the case against Mr. Hines personally will be dismissed.

[3] Deficiencies are the norm in new construction, and while it may at times be a nuisance for builders to spend time rectifying them, it is clearly part of their obligation. Quite often this court is asked to determine whether deficiencies have been properly handled, and to assess the cost of rectifying them. My personal observation is that many such cases could have been avoided if either the homeowner were more patient, or the builder more attentive, or some combination of the two. Usually by the time these cases reach court, it is too late to expect the builder and homeowner to work together toward a sensible resolution of the deficiencies, as the relationship has become too polarized and, often, poisoned. In such cases a reasonable allowance must be found to allow the homeowner to have the work done by others.

[4] Here the remaining[1] issue is the laminate flooring which is not performing to expectation. Specifically, some of the pieces that are supposed to snap or click together to form a cohesive “floating” floor are coming apart, creating cracks or seams that ought not to be there and which detract from the overall appearance.

[5] The Claimant in his evidence went through a chronological account of the many times that he tried to get Mr. Hines and/or his people to come and have a look at his floor and explain how they proposed to fix it. I accept that evidence to the extent that it portrays the Defendants as somewhat less than diligent in attending to the matter. The explanation of Mr. Hines was that he was trying to get his flooring expert and possibly representatives of the manufacturer to attend, and that this was difficult to arrange and fell through several times after being arranged. Be that as it may, eventually Mr. Kenny Gallant, the installer, came and had a look at the floor. This was more than a year after closing. There was a dispute in the evidence as to whether Mr. Hines was with him on that visit. Nevertheless, there is no disputing that Mr. Gallant observed that the problem the Claimant was experiencing could be rectified by using glue to hold together the pieces that were coming apart. There is also no disputing that the Claimant was adamantly against the idea of gluing.

[6] Mr. Hines testified that the problem which was being experienced was likely the result of moisture differentials causing the flooring to expand and contract, and that he has used glue in other cases to resolve the problem. He believed that this would be the solution of choice for the Claimant.

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[1] I refer to the floor as the “remaining” issue because there were others which, by the time the matter came to court, had been rectified. As such there is no need to discuss those further.

[7] The Claimant obtained no fewer than four estimates from flooring companies, each of whom quoted on the complete removal of the floor and replacement with a slightly thicker type (10 mm as opposed to the original 8 mm). The estimates were all in the range of between $5,000 and $7,000.

[8] It does not appear that any of these companies was asked to give an opinion on whether gluing was an option. The Claimant only asked them to quote on replacement. I cannot accept the Claimant's suggestion that if they had thought gluing was an option, that they would have suggested it. Few people asked to quote on a job will come forward abd suggest a much less expensive option. Also since none of them was called to testify, we really do not know what they thought.

[9] There were other discrepancies in the evidence. The Claimant obtained quotes to replace approximately 1,070 ft^2 of flooring, while the Defendants produced evidence that suggests that only 740 ft^2 of laminate flooring was purchased and installed in the original construction.

[10] On this point I prefer the evidence of the Defendants. The invoices for product purchase and installation are clearly related to the Claimant's property, and are the best evidence of the size of the laminate floor. There was also evidence from Mr. Hines to the effect that the total floor area of the house was less than 1,000 ft^2 on each of the main and basement levels, and that there was other flooring in the home and a considerable area in the basement that was unfinished. This would be at odds with the Claimant's contention that the laminate area alone is as much as 1,070 ft^2.

[11] I do not accept the suggestion made by the Claimant that the invoices put in evidence by the Defendants may be fabrications. I fear that the Claimant's level of suspicion has simply run away from him.

[12] I am also not convinced that flooring which cost less than $3,000.00 to purchase and install two years ago, and which does not appear to be damaged, should simply be scrapped and replaced. There is no satisfying evidence to that effect.

[13] I accept the evidence of the Claimant that there may be some unevenness in the floor which causes the flooring to move slightly, which may partly explain why some of the pieces have come apart. One or more of the companies that came to give estimates suggested that some floor levelling compound should be used to remedy those low spots.

[14] All in all, I believe that the Claimant has a floor that is underperforming to a degree that requires some expert attention, and that this represents a breach of warranty. The Claimant has not, however, satisfied me that the floor is completely unusable and needs to be ripped up at great expense. I find that the Claimant has a duty to mitigate his damages by taking the least expensive route possible, which would be to bring in an expert flooring contractor to perform repairs. It is not for me to say whether that would include gluing, levelling, or partial replacement, but I expect that it would involve some or all of those things.

[15] Normally the builder would look after warranty repairs. Because the relationship is poisoned that is not a viable option. Moreover I do not have the authority to force the builder to perform work, nor the authority to dictate who the

Claimant must allow to work on his house. I only have authority to make an award of money.

[16] Assessing damages in this case is extremely difficult as there are no estimates for repair. It is little more than guesswork on my part to arrive at a number. The best I can do is make an allowance that appears to be proportionate to the issue. What the Claimant decides to do with that allowance is his business. He can decide to live with the floor and keep the money. Or he can augment it with his own money and have a more expensive job done.

[17] In the result, I assess the Claimant's damages at $1,250.00.

[18] The Claimant is also entitled to his costs of $89.68.

Eric K. Slone, Adjudicator