

## IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: England v. Saunders-Todd, 2015 NSSM 61

Claim No: SCCH No. 442999

### BETWEEN:

Name Troy England **Claimant**  
Address c/o David Dalrymple  
Atherton Nicholson  
52 King Street  
Dartmouth, NS B2Y 2R5  
Phone (902) 429-4104

Name Brenda Saunders-Todd and Jim Todd **Defendant**

Date of Hearing: November 5 and December 1, 2015;

Date of Decision: December 22, 2015;

Editorial Notice: Address and phone number has been removed from this electronic version of the judgment.

David Dalrymple appeared on behalf of the Claimant, Troy England;

Brenda Saunders-Todd and Jim Todd were self-represented;

### DECISION

The Defendants, Brenda Saunders-Todd and James (Jim) Todd hired the Claimant, Todd England, to perform renovations to their home at 5 Somerset Court, Fall River. The work involved renovating the bathroom and a closet in the master bedroom. The Claimant was to supply the labour while the Defendants were to pay for materials, either through direct purchasing or by reimbursing Mr. England. The parties' discussions were performed primarily through text messaging. The conversations began around June 1, 2015 with the work beginning in early July and ending in early August. The Claimants paid an initial deposit of \$5000. No initial quote, receipt or invoice was provided in writing. The work ended as a result of a disagreement over the initial contract price and the amount actually owed. This was followed by

threats on the part of the Claimant to destroy the work that had been completed and a demand by the Defendants that he not return to the premises. The Claimant is seeking \$4999.99, the upper limit for the first tier of claims under the regulations.

### **The Issues**

The issues are straightforward:

- What was the initial contract?
- How much has been completed?
- Are there any deficiencies such that an abatement is in order?

### **The Evidence**

Troy England operates a “handyman business” under the business name of “Amazing Renos”. He testified that he was contacted by Ms. Saunders-Todd to perform renovations to the bathroom and closet in the bedroom at 5 Somerset Court, Fall River. He testified that the terms of the job were for it to be \$13,000 + HST paid in cash. Gradually, the price was reduced to \$10,000 with HST and then, finally, \$10,000 all inclusive.

Mr. England testified that most of the details of the conversation were held by way of text messaging. He submitted hard copies of these text messages into evidence as proof of the contract. I shall have more to say on the content of these texts later in these reasons.

Mr. England had previously done work for the Todds in 2013 or 2014 and billed on an hourly rate. This time, Mr. England testified that he was to charge a flat rate for labour with the Defendants purchasing the supplies. Near the end of the contract, Ms. Saunders-Todd arranged a meeting with Mr. England where she advised him he was not getting paid anything beyond the \$5000 he was paid at the outset. This document was tendered into evidence as Exhibit 5. He was then advised by the police that they had received a complaint regarding threats he had made. They advised him it was a civil matter that should be settled in Court. He issued the Todds a bill for \$4999.99.

Mr. England described the renovations as removing and replacing the tub, shower, toilet and vanity, do all painting as well as renovate the master bedroom to put in a walk-in closet. He arranged for the hiring of a plumber and electrician. Ms. Saunders-Todd’s son-in-law did the tiling required. Mr. England and his worker also installed the bathroom door.

Brenda Lee-Starr Saunders-Todd testified that she had hired Mr. England previously to perform renovations in 2013 or 2014. He charged approximately \$20 per hour for his time and \$10 per hour for his worker. For this job, he estimated a total of 30-40 hours per week. She used that

figure to arrive at her own estimate. She tendered into evidence her letter she delivered to Mr. England. In it she expressed her disappointment with the cost of the job. Significantly, she estimated a range between \$7200 and \$9000 in costs for the time he had spent on-site.

James (Jim) Todd testified to various alleged deficiencies in the work performed by Mr. England. He testified that there were 18 days in which only Mr. England appeared for the job. He provided photographic evidence of several deficiencies including a towel bar posted into rough gyproc, lights were not lined up with each sink and drill holes not lined up properly in one of the fixtures. He received an estimate of \$150 from Bayside Electrical Supply to fix and replace the rough gyproc and plaster and further, that he paid \$150 for someone to repair the drill holes. Finally, he testified to overseeing the plumber and electrician on the last day.

Under cross-examination, he acknowledged several texts where he indicated that the work “looks fantastic”. The holes were only repaired a few days after the job had ended.

### **The Law and Findings**

It is a fundamental principle of contract law, to quote Professor G.H.L. Fridman, QC, in *The Law of Contract in Canada* (6<sup>th</sup> ed.) that:

“Agreement is the basis of any legally enforceable contract. There must be *consensus ad idem*. Without a meeting of the minds of the parties there can be no contract.”

While there is no doubt that a contract is in existence, the cases also require a meeting of the minds on the terms themselves. As Fridman states at pp. 15-16:

“Sometimes it is a simple matter to decide what the parties have manifested to each other, and consequently, whether they have agreed, and if so, upon what...”

“In each instance the courts seek proof of an agreement between the parties involving the necessary exchange of acts and promises, promises and promises or acts and acts.”

### Initial Contract

The question turns to what was agreed to between the parties in their correspondence.

Mr. Dalrymple for the Claimant, referred to several passages in the hard copies of the text messages. As is common in contractual cases before this court, the parties’ relationship began at a very friendly and cordial manner. However, as disagreements arose, the relationship became considerably more strained.

Like verbal conversation, text messages are often replete with informalities, texting abbreviations (e.g. “LOL”) or emoticons and other similar social conventions. That is certainly the case here. Just as conversation can lead to the creation of an oral contract, text messages can be used to create contracts and establishing terms. Indeed, this concept finds support in

legislation, such as the *Electronic Commerce Act*, S.N.S. 2000, c. 26. It is necessary, therefore, to view the text messages to determine the nature of the contract:

Mr. England testified to the following exchange between him and Ms. Saunders-Todd on July 6, 2015:

“So just a ball park price you are looking at 3000 (dollars) for the plumber and 1000 for the electrician and my labor cost and another guy is 13000 plus gst”

There were negotiations back and forth on various terms for the work to be done. The work was described as follows by Ms. Saunders-Todd on July 9, 2015:

“All construction excluding cabinets in bathroom and closet. I am hoping to make arrangements today for cabinets where I can have time to pay until I can arrange additional financing. Does it make sense for you to start this Monday with these changes...or would it be better to wait a week? I don't want to hold you up.

....So does it make sense to proceed with starting on Monday for what you will still need to do? How much do you think your estimate will be reduced based on the change?”

Mr. England responded:

“I do there is a lot to do there lol. I will do it for \$10,000 plus gst so \$11,500, that will drop it by \$3500.”

Ms. Saunders-Todd:

“OK. That will make a bit of a difference, although I will still end up paying by way of having to pay whoever does the cabinets for the install. Is there any way we can do a cash deal to eliminate the GST.”

Mr. England:

“...If I take the gst of (*sic*) it has to be cash and cash only no checks or e-mail money transfer just cash.”

Ms. Saunders-Todd:

“OK”

Mr. England responded:

“So can we lock this down as a go?”

Ms. Saunders-Todd:

“Absolutely...”

The parties later discussed a payment of \$5000 to commence. It is clear from the evidence this was at all times intended to be a down payment.

Neither Ms. Saunders-Todd nor Mr. Todd disputed the accuracy of the exchange nor called the text messages into question. While at one point, Ms. Saunders-Todd asked for an “estimate”, it is clear from Mr. England’s use of the phrase, “I will do it for \$10,000 plus gst...”, the agreement was a fixed price. There was nothing in evidence of any subsequent conversation or other communication to suggest this is an estimate or a contract based on an hourly rate. I find as a fact that this was at all times a contract to supply labour to do the work described above for a total price of \$10,000, taxes included.

Obviously, this Court cannot order any sum as “tax free”. Notwithstanding that taxes were considered included in the contract price, Mr. England’s obligation to pay applicable taxes are not affected by the terms of the contract or any finding of this Court.

*Was the contract completed?*

The contract had a rather eventful ending, beginning with the Defendants’ refusing to pay anything further, despite the clear and unequivocal terms of the contract. This was followed by a threat on Mr. England’s part to come to the Todds’ house looking for his money:

“And if not what work I did will be destroyed and no I am not threatening you. I want what is owned to me.”

However, the conversation continues with Ms. Saunders-Todd asking “please tell me what YOU feel is a fair way to end this?” There is nothing in any of the subsequent conversation to suggest fear.

In looking at the evidence, I find the contract was ended before the work was completed. However, I find that at some point during the progress of the work, the Todds decided they were not going to pay Mr. England any more money. This was evident by the meeting at the Ramada when the letter was delivered. Perhaps due to lack of funds or “buyer’s remorse”, they decided they were not going to pay anything else for the work. Their response in the face of an apparently clear understanding would cause anger in anyone.

That said, I do not condone Mr. England’s response. No matter how disingenuous the Todds’ conduct, it should not be a surprise to him that the matter came to an abrupt end.

I find there was work to be completed. This work addressed the final matters including several touch ups and other finer matters to finish the job. I have addressed this as deficiencies below.

*Deficiencies*

The Defendants’ evidence was clear that certain aspects of the trim work were deficient and would require additional work. The Todds have provided very round figures without any written or verbal evidence from the third parties who provided quotes. I believe the deficiencies are only refinements in the form of finishing work. I am not prepared to find on the Todds’ evidence alone that the deficiencies have been proven. The counterclaim is not quantified. I find the best

way to address the deficiencies is as finished work and to simply reduce the amount awarded for the main claim.

To that end, I reduce the sum awarded by \$300.00.

**Damages**

As noted above, I have found that the contract was for \$10,000 taxes included. I am prepared to allow only a reduction of \$300. The Defendants shall receive credit for the \$5000 deposit.

**Costs**

I allow costs of \$99.70 for filing, plus costs for service of the documents. There were no receipts provided for the latter item, thus, I allow \$100. I disallow any costs on the counterclaim.

**Summary**

In summary, the Claim is allowed. Troy England shall have judgment against Brenda Saunders-Todd and James (Jim) Todd as follows:

Total contract:	\$10,000.00
Less: up-front cost	(\$5000.00)
Less: reduction	(\$300.00)
Costs	<u>\$ 199.70</u>
<b>Total Judgment</b>	<b>\$4899.70</b>

Order accordingly.

Dated at Halifax, NS,  
on December 22, 2015;

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**Gregg W. Knudsen, Adjudicator**

Original: Court File  
Copy: Claimant(s)  
Copy: Defendant(s)