

Claim No: 357334

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Clarity Accounting & Business Solutions Inc. v. LHPM Industrial Poly Liner Inc.,
2012 NSSM 8

BETWEEN:

CLARITY ACCOUNTING & BUSINESS SOLUTIONS INC.

Claimant

- and -

LHPM INDUSTRIAL POLY LINER INC.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on November 29, 2011

Decision rendered on January 3, 2012

APPEARANCES

For the Claimant Tony Harnish, Owner

For the Defendant Kelly Powell, Counsel

By the Court:

Introduction:

[1] This is a dispute over an accounting bill. More particularly, the Claimant prepared a set of financial projections for the Defendant's business, for which it has not been paid. The defence contends that the price exceeded an original estimate, that the work was not well done, and that it was not done in a timely manner which created difficulties for the Defendant. There is, in fact, a counterclaim upon which I will comment in due course.

[2] The principal of the Claimant is Tony Harnish, who is a Certified Management Accountant (CMA). For sake of the narrative I will refer to Mr. Harnish and to his company interchangeably as the Claimant.

[3] The principal of the Defendant is Jean-Martin Lemaire. Also for sake of the narrative I may refer to him and his company interchangeably as the Defendant.

The Facts

[4] I must observe at the outset that neither party did a particularly good job supplying me with evidence as to the value of the work. This can be important because, in the absence of a fixed price or other acceptable measure, the court must look at the value of the work on some objective basis and assess what the law quaintly refers to as a *quantum meruit*, which is Latin for "what it is worth or deserves."

[5] In this case, each party implicitly values the work differently, with nothing much other than his own word supporting the position. The Claimant says that the proof of value can be found in the fact that the work was used for its intended purpose, which was to assist the Defendant in applying for some financing. The Defendant says that the (lack of) value of the work can be found in the fact that the work was not used for its intended purpose and had to be redone by another accountant.

[6] There does appear to be some evidence that at least one version of the projections was or could have been used, but there is also some evidence that the Defendant went to the trouble of having the work redone, at least in part. The evidence suggests that the parties did not have a good working relationship and

that the Defendant was frustrated by what he saw as the Claimant's inability to grasp certain key points and correct mistakes when they were pointed out to him.

[7] I draw some inferences from what I perceived to be the personality types. The Claimant is confident and outgoing, perhaps brash, and at times overbearing. The Defendant is quiet, soft spoken and perhaps a bit passive. The result may well be that the Defendant failed to assert himself with the Claimant, and instead allowed the Claimant to continue working and spending time in the belief that he would be paid for it.

[8] There is no need to recite in great detail the evidence before me, much of which consists of email trails that are difficult to follow, supplemented with some documents and the not-always-cogent testimony of the principals. Both parties attempted to submit letters from individuals who might have been, but were not, called as witnesses. As I observed at the hearing, very little (if any) weight can be placed on written statements from potential witnesses who do not attend to have their statements tested by cross-examination - especially when their purported evidence bears on contested facts.

[9] It is my finding that the Defendant was slightly desperate to find a new accountant in early 2011, both to finish up his routine accounting (which was behind) and also to create the projections that would allow his applications for funding to go forward. He was already at risk of not meeting the deadlines for tax and T4 returns, and he was looking to find an accountant during so-called tax season when accountants are busiest. Although the Defendant initially suggested to the Claimant a \$500.00 figure for the projections, I find that this was virtually laughed off by the Claimant, who indicated not only that this was too low, but also that he could not quote a fixed price because he did not know how much work was involved. I find that the Claimant mentioned that he billed his time at \$55.00 per hour, and he likely indicated that the Defendant could expect the job to cost several thousand dollars.

[10] The Defendant at no time stipulated a ceiling on billing. Nor did he ever secure a fixed quote, because the Claimant would not supply one.

[11] The Claimant dealt at least as much with Kevin Mullen, the broker trying to secure financing, as he did with the Defendant himself. Emails between the Claimant and Mr. Mullen suggest that work product was reviewed and requests

were made for amendments. In none of the emails was it suggested that the projections being generated were unacceptable, in form or content.

[12] The impression that the Claimant received from Mr. Mullen was that the last set of projections was submitted as part of a package to a potential lender. The Defendant says it was never used, although he did not appear to be confident that he knew precisely what Mr. Mullen did with the projections created by the Claimant.

[13] I am satisfied that the work was done, and that the Defendant agreed in advance to pay for the work. I am also satisfied that the Defendant actively encouraged the Claimant to continue working, such as by making changes to the projections. It is important to note that while there is a basic level of accounting science involved, much of the task is more of an art and ultimately the projections reflect the business owner's vision and the degree of optimism that he is willing to present to potential backers. There is nothing before me to suggest that the Claimant did not know how to prepare projections, or that the work product was technically insufficient.

[14] It is more likely than not that the parties had a falling out arising from the Claimant's desire to see some payment for his efforts. The Defendant at some late point decided to change accountants and appears to have been unwilling to make any partial payment, until or unless he received financing. I find that there was never any agreement that payment was contingent on financing being received. The Defendant is an operating business and the Claimant had every right to assume that it could and would pay its legitimate bills.

[15] The Claimant seeks \$4,000.00 plus HST, for a total of \$4,600.00. He testified, and I accept, that he actually discounted his time which would have exceeded this amount. I am prepared to allow the claim in full, as there is no evidence that I am willing to accept that the work was deficient or that time was spent needlessly. I find that in this case, the Claimant's time multiplied by a quoted hourly rate is the only reasonable measure for the value of the work.

[16] The Defendant counterclaimed for a number of items, some of which were not actively pursued at trial. I will review these items in turn:

- a. There is a claim for a \$1,000.00 penalty assessed by Canada Revenue Agency resulting from an alleged late filing of employee tax remittances (the T4 return). The Defendant's evidence on this point was utterly unsatisfactory. He was unable to prove that such a penalty had actually been assessed, or that there was any culpable conduct on the part of the Claimant leading to such a penalty.

- b. There is a claim for \$548.51 in interest and penalties resulting from late filing of HST returns. There was no evidence offered in support of this claim.

- c. There is a claim for \$4,000.00 plus HST for work that the Defendant says is required to have the projections remedied or redone by another accountant or bookkeeper. In the absence of any compelling evidence that the work done by the Claimant was improperly done, there is no foundation for this claim.

- d. There is a claim for legal expenses, which is not within the jurisdiction of this court given s.15(2) of the Small Claims Court Forms and Procedures Regulations.

[17] In the final analysis, I find that the counterclaim has not been established and the Claimant is entitled to \$4,600.00 plus costs in the amount of \$91.47.

Eric K. Slone, Adjudicator