

Claim No: 373580

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: 3066108 Nova Scotia Ltd. v. United Cleaning Services Ltd.,
2012 NSSM 17

BETWEEN:

ABRAHAM VELASCO RAMOS (3066108 Nova Scotia Limited)
Claimant

- and -

UNITED CLEANING SERVICES LIMITED, HOME DEPOT
STORE NO. 7257 and SAVE EASY STORE NO. 1810
Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on February 28, 2012

Decision rendered on March 1, 2012

APPEARANCES

For the Claimant Edis Flewwelling, agent
Abraham Velasco Ramos, personally

For the Defendant Randy Garcha, counsel (by phone)
David Godfrey, supervisor
Gerry Turnbull, Regional Manager

BY THE COURT:

[1] This is a claim for moneys allegedly owing under a contract which, though it is styled as a “contractor agreement,” resembles and operated much like an employment contract. The Claimant, Mr. Ramos, is the principal of the numbered company 3066108 Nova Scotia Limited, which is the signatory to the agreement with the Defendant United Cleaning Services Limited (“United”). The evidence was that the Defendant will only deal with companies, and therefore Mr. Ramos had to incorporate a company for the purpose.

[2] Technically, it is therefore the numbered company that is the party entitled to make this claim, and not the Claimant personally. However, for purposes of the narrative I will refer to Mr. Ramos as the Claimant.

[3] The Defendant is an Ontario-based company that provides cleaning services to commercial clients, including ones in Atlantic Canada, and uses subcontractors (such as the Claimant) to perform the work. The Defendant has its own employees who, among other things, supervise the cleaners on contract. The Claimant’s direct supervisor was David Godfrey.

[4] Until the contract was terminated on November 17, 2011, Mr. Ramos had the responsibility to clean two stores, namely the Dartmouth Home Depot and (what was then) a Save-Easy store on Wyse Road. Although these stores were initially named as Defendants in the claim, those claims were discontinued and the case proceeded only against the Defendant United.

[5] There is no dispute that the Claimant was a good worker and there were no complaints about his work. However, his services were terminated as a result of an incident which called into question his continued suitability.

[6] The Save-Easy store was in the midst of extensive renovations, with the result that certain areas were inaccessible to a cleaner. On the day in question, the Claimant received a phone call from Mr. Godfrey which set in motion what was clearly a major misunderstanding.

[7] As the Claimant recalled it, Mr. Godfrey called to accuse him of not cleaning the Safe-Easy store (i.e. not even going down there) and ordered him to meet him down there. The Claimant says that he felt as if he were being accused of lying about having cleaned the store. He was upset, went down to the store and confronted Mr. Godfrey, saying words to the effect "do not accuse me of lying." He admits that he was upset and waving his finger at Mr. Godfrey, but denies making any contact. Mr. Godfrey accused him of assaulting him, and fired him on the spot.

[8] Mr. Godfrey's version is different in several material respects. He says that he called the Claimant to ask if he had experienced difficulty in accessing certain areas to clean, because it looked like some areas where the construction was going on had not been done. He asked the Claimant to meet him down at the store, so they could figure out how to work around the situation. He was not calling the Claimant a liar; he was just trying to sort out the situation. He said that the Claimant came in and was "in his face," waving his arms and shouting "do not call me a liar." He says that the Claimant poked him in the chest not once, but twice, the second time after he directly asked the Claimant not to touch him. When he was poked the second time, he felt that the Claimant had gone

too far and was engaging in harassment. He was concerned not only for his own safety, but for how this looked as there were store staff and others around, and this created a bad impression.

[9] Mr. Godfrey says that he was concerned about the situation possibly escalating, and he basically said to the Claimant “you’re through” and asked him to leave.

[10] The Claimant’s friend, Mr. Flewwelling (who acted as his spokesman during the hearing), was present on the day in question and witnessed some of this altercation. He says that he did not see the Claimant make physical contact, but he admits that he was pretty worked up.

[11] Both Mr. Godfrey and Mr. Flewwelling confirmed that immediately after the incident, and after the Claimant had left, Mr. Flewwelling tried to intercede. Mr. Godfrey asked Mr. Flewwelling to convey to the Claimant that, if he apologized for his behaviour, the incident would be forgotten and things could go on as before. Mr. Flewwelling said words to the effect “he’s a Latino; he’ll never apologize.”

[12] Mr. Flewwelling says that he conveyed this offer to the Claimant, who did not wish to apologize.

[13] Having heard all of the witnesses, I find that the version put forward by Mr. Godfrey is the more probable one. I found Mr. Godfrey to be totally credible. He had no reason to precipitate an incident, nor any reason to try and get rid of the Claimant. He personally liked the Claimant and believed he was a good worker. I believe the most probable explanation is that there was a misunderstanding,

likely as a result of the Claimant's poor command of English, and that he overreacted to this imagined insult and inappropriately confronted Mr. Godfrey.

[14] Mr. Flewwelling's evidence does not really contradict that of Mr. Godfrey, except that he denied seeing any physical contact. I believe he is mistaken on that important detail.

[15] Mr. Godfrey was the Claimant's direct superior. In an employment situation, which this resembles, you simply do not accost your supervisor, (perhaps) poke him in the chest and shout at him in front of third parties. This is gross insubordination and usually grounds for termination.

[16] To make matters worse for the Claimant, he was immediately offered a way out, and he chose to ignore it. I gather that his pride was hurt, but in this instance a simple gesture of apology (even just for getting too worked up) would have saved his job.

[17] The Defendant terminated the contract the next day, and sent out a written letter to that effect.

[18] To the extent that the Claimant's case seeks pay in lieu of notice, I do not allow anything as I find that the contract was terminated for just cause. Looked at another way, the Claimant repudiated the relationship by acting inappropriately, and the Defendant does not have to provide any notice.

[19] This does not end the matter, as there were invoices outstanding and some discrepancies in the account that need to be resolved, dating back to the beginning of 2011. The Defendant admits that it owes the Claimant \$6,396.69.

The amount sought by the Claimant is a fair bit higher, in part because he has sought interest at a rate that is higher than I have any authority to allow.

[20] One of the discrepancies can be explained by the fact that the Claimant believes he was not responsible, after November 1, 2011, to pay for his own cleaning supplies or for any equipment maintenance. This is because a new contract came into effect at that time (indeed it was only signed the day before the Claimant was terminated, though effective November 1) which discontinued a previous practice of charging the Claimant for a preventative maintenance fee. However, as I read the contract, there is still a responsibility to pay for supplies and for necessary repairs at the end of the contract. This latter is payable because the equipment used by the Claimant has to be handed over to a new contractor in good working condition.

[21] The Claimant made a point that he had no ability to negotiate the contract; that it was a “take it or leave it” type of deal. Even if this is the case, it is still binding upon him. The fact that he had no input into the wording would only be relevant if there were some ambiguity, which (as far as this claim is concerned) there is not.

[22] According to my reckoning, the following amounts are owing to the Claimant:

February through August 2011 “holdbacks”	\$7,200.00
HST billings not immediately paid	\$5,252.40
Less HST payments made in May 2011	(\$2,523.00)
Less bulk payment August 2011	(\$10,551.50)

October 2011 invoice (Home Depot) - inv. 097	\$172.50
October 2011 invoice (Wyse Rd.) - inv. 098	\$2,875.00
October 2011 invoice (Home Depot) - inv. 099	\$3,493.70
Less October preventative maintenance	(\$276.71)
Less October supplies (inv. X019662)	(\$31.85)
November 2011 invoice (Wyse Rd.)	\$1,076.40
November 2011 invoice (Home Depot)	\$1,490.40
Less November 2011 supplies (inv. X020333)	(\$155.84)
Less November 2011 machine repair (inv. 119876)	(\$336.97)
Less November 2011 machine repair (inv. 119877)	(\$560.68)
Less November 2011 machine repair (inv. 1198768)	(\$565.97)
Less November 2011 machine repair (inv. 119879)	(\$37.38)
	\$6,520.50

[23] This is only slightly higher than the amount conceded by the Defendant. I have not been able to reconcile the difference.

[24] It is unfortunate that the Claimant has been owed this considerable sum of money for some time. As such, I have no hesitation in awarding some prejudgment interest. In my view the interest should run from the 1st of December 2011, at which time the Defendant ought to have been able to reconcile the account. There shall accordingly be interest at the Small Claims rate of 4% for 3 months from December 1, 2011 to March 1, 2012, for a total of \$65.20. He shall also have his costs in the amount of \$182.94, for total judgment of \$6,768.64. The judgment will be in favour of the numbered company, 3066108 Nova Scotia Limited.

Eric K. Slone, Adjudicator