

**The Small Claims Court of Nova Scotia**

Cite as: Tambala v. Norwood, 2012 NSSM 41

Between

Smartex Tambala

Claimant

And

Rebecca Norwood and Jonathan Norwood

Defendant

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**DECISION**

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**Adjudicator: David T.R. Parker**

Heard: October 17, 2011, November 16, 2011

Decision: January 25, 2012

Parker:-this was a claim for breach of contract in the amount of \$3500.00.

The pleadings of the claimant were succinct and that he claimed in February of 2011 he was hired by the defendants to design a high-end family home in the South end of Halifax. He stated that the agreed price for the design work was \$6500 of which he was paid \$3000 leaving a balance outstanding of \$3500.00. The claimant also asked for court costs and \$500.00 in damages.

The defendants' pleadings outlines a number of defenses including misrepresentation of qualifications by the claimant and failure to deliver within a reasonable time. The defendants also indicated that they estimated that the claimant's negligence cost the defendants and additional \$12,150.00 and out-of-pocket, unanticipated expenses however because the defendants stated they were not litigious people they would not be filing a counterclaim.

In their defense the defendant stated that they "hired the claimant design their new home in early February of 2011. We are both hard-working, honest people; we have flawless credit histories, and have never had a dispute with anyone regarding payment for their services rendered. We certainly value and respect other people's time and efforts (and instill these values in our three children), and certainly have no problem paying someone for their services.

We will prove to the court that Mr. Tambala misrepresented his credentials, capabilities and knowledge on city bylaws to our family; and he failed to provide us with a set of satisfactory house plans for HRM approval (and accurate builder pricing) within a reasonable time period. This resulted in a series of costly delays, additional expenditures to us, and ultimately a breach of contract. Yet we still compensated Mr. Tamballa in full for the design part of the project as outlined in our original agreement which we will present to the court." This was a preamble to the defense of life to the court."

The claimant offered exhibit C1 as the basis of the contract which was a group of e-mails between the parties.

On Friday, 28 January 2011 the claimant e-mails the defendant Jonathan Northwood and the e-mail stated the following:

**"Jonathan,  
thanks I did get the test. Thanks again for the time yesterday though it's  
unfortunate that my fee sounds a very high. Having said this I perfectly understand.**

**I can try to lower a little to let's say \$7000 although I know that this is a lot of work as I said. My role and responsibility would remain the same high quality work and done efficiently so that the work is done on time. Let there be no question I would provide exceptional design solutions and space that you will be very happy with for the rest of your time in this house. I can guarantee you that you would come back to me in the future or refer me to someone who needed my services. I resolve complex design solutions. I am very honest and will tell you what I know is possible and what can be done Pacific time frame.**

**Another way of lowering the price could be that I could just provide design services and we will can try to find a good drafting person to do the working drawings-The design development and construction drawings. I would do the design services for \$3000 and the rest I cannot speculate. But I think you might get the whole thing done somewhere around \$5000-\$6000 or else you can do as you said, find few other quotes."**

On Saturday, January 29, 2011 at 8:11 AM the defendant e-mailed the claimant and said:

**"Thanks for this Smartex. Ironically I spoke to my brother Neil yesterday and he was in your class in high school. Small world.**

**Listen, \$7000 sounds reasonable to us. We understand your time is valuable however we would like to meet with some other designers and architects. A big part of**

**the issue here is that we have never seen a house that you have designed, that has actually been built. You also do not have an established profile with the local homebuilders sewer level of comfort is not high that they would be able to work with you and implement your designs at a reasonable costs. You have to understand**

**that her life savings is going into this house, so it is a huge investment for us and we have to be diligent.**

**If you could come to us with the design we loved, that we could get built at a reasonable cost we would happily pay for it. We are reasonable, honest people. But you're asking us to engage your services up front that (to us) are an unknown quality, costly, and may be impractical from an implementation (construction) perspective. We just don't know. And that is not an acceptable risk to us despite the fact that you may be exceptional at what you do. I hope you understand. JN"**

On Saturday, January 29, 2011 at 12:08 PM the defendant e-mailed the following to the claimant:

**"Why don't we do this: you design a house for me. If I like it, and my draftsman can work with it I will pay you \$3000 cash. If I don't like it, or he can't work with it, I don't pay but you will have another design for your portfolio?"**

**Analysis:**

Qualifications and credentials of the claimant:

I shall first deal with this issue. The claimant was disturbed that the defendants raised this issue about the claimant's qualifications. In his testimony the claimant said "there were no discussions on my credentials." I have no doubt after hearing from the claimant and reviewing the documentation related to his academic endeavors as well as the designs he proposed that the claimant was certainly qualified in doing design work for the defendants.

The claimant provided the defendants with his thoughts of designs that he could envisage as a possibility. The claimant provided drawings to the defendant. In his testimony the claimant said "they only wanted my design." The claimant said that they had enough drawings to talk to builders about their home and the exact house that the defendants are building now are like the claimant's design. On cross examination the claimant said he designed the defendants the home to be built.

The defendant complained that the plans lack the detail and the set of plans and images were not in conformity with the lot size. In addition a builder cannot give us a price based on the plans provided. They also did not conform with the bylaws according to the defendants and that was problematic. The defendant said they had taken plans to an engineer in order to make the house buildable.

There is no question in my mind that the claimant did a considerable amount of work on this project in terms of designing the home numerous consultations with the defendants. The initial agreement before the party started was for \$3000.00 for the claimant to design

the home. There were some changes as indicated in e-mails between the parties on February 8, 2011 and March 7, 2011. On February 8, 2011 the claimant sent the defendant an e-mail which said in part:

"because I really want to do this project as mentioned, \$6500 for the entire project is final and will include printing, this is over \$300 expenses just in printing. Otherwise we can do the design services only for the \$3000 as described. That is designed the project for authority approvals and project costing with the builders. We have to be satisfied with the design before we submitted for approval until we are happy with the design and the preliminary costing with your builders. It only makes sense the can not try to get the approval with the city until you are happy with the design. This is the process and that is how it is done. I will allocate about 10 extra hours for clarifications etc. for the design and with the drafter for others and anything beyond this I require a fee of \$65 per hour that is \$20 per hour less than what my company charge to clients of my fees."

Then on March 7, 2011 the defendant sends an e-mail to the claimant where the defendant stated the following:

"I think we're okay to meet the builder this Saturday by ourselves, and then we will have him follow-up you directly regarding any technical questions that he may have. We are also okay with it staggered fee payment schedule, and were actually talking about this today. We know you have out of pocket expenses to cover. We were planning to pay you \$2000 upon acceptance of designed by HRM. Then another 2000 upon delivery of the complete construction drawings to the builder (including interior elevations etc.) signed off by an engineer. In the final amount near to the project completion."

A further e-mail in May 30, 2011 from the claimant stated in part:

"Normally, I should have been paid 30% before I started the project, and then we docked all the hours spent if you decide to bailout or changed your mind to build, which happens a lot. I know I did this to myself in a way. I would appreciate it if you could give me \$3000 at the moment and then after the city approval and the builder selection and fixing and working on the final package for construction (issue for construction drawings are completed) I get \$2000. I would like you to hold the balance of the \$1500 until we are in the construction phase. Or towards the end of the architectural part. The standard payment is overdue but as I said it may be my fault as well."

Then a further e-mail of July 18, 2011 from the claimant to the defendants stated in part:

"Your fee for architect for this project normally is 10% of construction costs it should be over \$50,000. I am prepared to do anything to get my full payment of \$6500... \$6500 total is my final price your total \$3500 being suggested is flatly denied will not entertain further negotiations for my fees I am sorry."

These two parties never fully had a meeting of the minds on what was to be provided and what the costs were to the for services provided. In addition to that time lines were beyond what was expected and it would appear that this can be contributed to the

defendant not getting appropriate information to the claimant as well as the claimant not being aware of what was required for HRM that is the municipality. There is no information about the time spent on this project and there is no expert evidence from an independent source such as an architect to determine the reasonableness of what the claimant provided. Up until the time the defendants broke off their dealings with the claimant, the defendants were prepared to pay the claimant \$4000.00 upon HRM approval and having sufficient information for a builder to start construction. This eventually did happen. I would therefore allow \$4000.00 for the design documentation prepared and provided to the defendants. The defendants at this stage have \$3000.00 therefore I would allow a further \$1000.00 to be paid to the claimant plus court costs.

It Is Therefore Ordered that the defendants pay the claimant the following sums:

\$1000.00

\$ 75.00 service costs

\$ 91.47 court costs

\$1166.47

Dated at Halifax this 25th day of January 2012