

Claim No: 404963

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Chisholm v. Brown, 2012 NSSM 50

BETWEEN:

MARY M. CHISHOLM and KEVIN CHISHOLM

Claimants

- and -

JOHN BROWN and CANTERBURY WOODWORKS

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 4, 2012.

Decision rendered on September 20, 2012.

APPEARANCES

For the Claimants self-represented

For the Defendants self-represented

BY THE COURT:

[1] The Claimants are a husband and wife who reside in Dartmouth, Nova Scotia.

[2] The Defendant Canterbury Woodworks is a trade name of Canterbury Kitchens Ltd., a limited company that, that, as its name suggests, constructs and renovates kitchens. The principal of the company is the Defendant, John Brown.

[3] The Claimants had a kitchen in their home which they regarded as slightly dated, and they sought the advice of the Defendants about a new kitchen. The options, as presented to them, were either complete replacement of the cabinets or having them “re-faced”. They chose the latter.

[4] The process involved replacing the cabinet doors and drawers, and applying a laminate material to the cabinet boxes to match the new doors. To make a long story short, the Claimants are very unhappy with the result and are suing for a refund, which is less than the full replacement cost. The claim is for \$7,400.00, which was the portion of the contract referable to the kitchen. There was some further work done in the bathroom under the same contract, but there is no complaint about this work.

[5] The problem is that in many areas the laminate is becoming unstuck from the kitchen cabinets. Based on the photographs placed in evidence, it is difficult to accept this as a quality job. Mr. Brown defends his company primarily on the basis that, he says, the problem is not as noticeable as the photos may suggest. I did not hear him to say that this was a good result, nor did he dispute that

some form of remedial action would be appropriate. It appears from the correspondence between the parties that Mr. Brown acknowledged the problem early on, and there were negotiations about a possible solution. However, the record of communication bears out the contention of the Claimants that Mr. Brown and/or his company became unresponsive and appeared to lose interest in resolving the problem in a timely fashion.

[6] The real issue for me is whether or not the Claimants should be refunded their money in full, giving them a significant fund with which to undertake something new, or whether some lesser sum of money should be refunded to perform a repair that attempts to salvage the work that the Defendants did.

[7] I am inclined to the view that the Defendants have forfeited any right to try to fix the problem. They had more than ample opportunities to do so. The Claimants testified, and I accept, that other companies are uninterested in attempting to repair the problem and salvage the work that was clearly substandard. It is easy to understand why other companies would not want to do that, as they would be forced to warrant work that they did not perform in the first place, and potentially have their reputation suffer if the repair job did not look after the problem in a satisfactory way.

[8] Based on the evidence before me, it appears that the laminate material did not properly adhere to the cabinet boxes. There was some speculation on the part of the Claimants to the effect that the Defendants used auto body filler to smooth out the cabinets before applying the laminate, and that the adhesive used simply does not adhere to auto body filler. It is not necessary for me to decide why the process failed; I merely conclude that it did.

[9] Another problem that shows up in the photographs is that there were rough edges which result in uneven joints at the corners of the cabinets. The Claimants believe that this was caused by using a dull router or other tool. Although this is plausible, again it is not necessary for me to determine why the laminate edges have an unattractive appearance. It is sufficient for me to find that they do.

[10] The Defendants were supposed to be the experts who advised the Claimants of their options. It was up to the Defendants to determine whether or not the re-facing option could produce a result that gave the Claimants the new kitchen look that they were seeking. It is clear that the Claimants were quite willing to consider a totally new kitchen, but were persuaded to pursue this re-facing option. I have no hesitation in finding that the result produced by the Defendants fails to meet a reasonable standard, and this constitutes a breach of contract.

[11] Mr. Brown emphasized that the new doors and drawers provided were of the highest quality. Whether or not this is true, it does not answer the problem. Had the Defendants been responsive in a timely manner, they might have been given the opportunity to attempt a repair that would have salvaged these new materials and ultimately cost them less money. However, as already indicated, their lack of responsiveness to the problem and the passage of an inordinate amount of time have caused the Claimants to lose all confidence in the Defendants. I find that this lack of confidence is reasonable under the circumstances.

[12] The Defendants are not entitled to be paid for a job that provides no value for the money. In the result, given that it will almost certainly cost the Claimants more than \$7,400.00 to get a new kitchen and achieve the benefit of their original contract, I find that a full refund is the appropriate order. Since it was the Defendant Canterbury that did the work and received the money, it is that Defendant that should be responsible. I find no basis for personal liability to attach to Mr. Brown.

[13] There will be a judgment for the Claimants against the Defendant Canterbury Woodworks in the amount of \$7,400.00, plus costs in the amount of \$182.94 to issue the claim, \$155.25 to serve the claim and a further \$153.59 for copying charges, being mostly for the large number of colour photographs provided for the benefit of the court.

Eric K. Slone, Adjudicator