

Claim No: 406786

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Ashby v. L'Hereux, 2012 NSSM 61

BETWEEN:

D. RODNEY ASHBY

Claimant

- and -

ANDREA L'HEREUX

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 23, 2012

Decision rendered on October 25, 2012

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        self-represented

**BY THE COURT:**

[1] The Claimant is a homeowner who was undertaking a bathroom renovation in her home. She found the Defendant through his kijiji ad, in which he advertised that he was experienced in home renovation projects.

[2] Apparently the job had been started by another contractor, who never completed the work and who it appears did a very sloppy job, as far as it went.

[3] On August 7, 2011, the Defendant attended at the Claimant's home and looked at the job. Because he did not know the full extent of what would be involved, he quoted a price of \$25 per hour, plus HST, plus the cost of materials. The Claimant accepted this proposal.

[4] The Defendant began the work, which included undoing or repairing much of the work that had been done previously. From the sound of it, a number of mistakes had been made and this made it more difficult for the Claimant. One of the jobs that had to be done was to install a shower unit. This unit had apparently been bought secondhand, and as a result it did not come with installation instructions. As described by the Claimant, he had to spend some time speaking with the staff at Rona Hardware, and he also spent some time on the internet (on the Defendant's computer) researching this particular unit.

[5] The work went fairly well for the first week, and the Defendant gave the Claimant \$700 in cash for the 28 hours that he had put in that week. The Claimant explained that he planned eventually to produce an invoice, at which time he would have charged the required 15% HST.

[6] The following week proved to be more problematic. The Claimant began his work on Monday, August 13, but as he worked he came up with a number of questions which he wanted answered by the Defendant. Apparently, she was out much of the time and in fact was out of town for all of Wednesday and Thursday of that week. On Thursday, August 16, the Claimant decided to put his questions in writing and left them in a note that he expected the Defendant would see that evening.

[7] The note read as follows:

**Hi Andrea**

- I have to speak to you about the wall with the thermostat on it. What will happen there?**
- Where would we put the dryer vent?**
- Electrical for washer and dryer, I see the wire by the service and goes to behind bathroom, will we use that?**
- Shower, I spoke to the Rona people and they are not sure what should be done.**
- I won't be able to do more work until we have made decisions on these previous points. See you tomorrow.**

**Thanks  
Rod**

[8] The following morning when he arrived at the Defendant's home, he saw his tools and equipment sitting out on the driveway. He understood by this gesture that he was no longer welcome on the job. The Defendant confirms that this was the message she was communicating.

[9] The Claimant testified that there were perhaps only several more days of work left to be done, and that he was hoping for some guidance on the questions that he had posed in his note. He did testify that, had the Defendant merely deferred to his judgment, he would have done what he thought was best.

[10] The Defendant testified that she had no problem with the work that the Claimant had done, but that she interpreted his note as an indication that he lacked the knowledge and experience to complete her job. She decided, to use her precise words, "that's it, he's gone." She also expressed some dissatisfaction with the fact that the Claimant had sent her to make several purchases at local hardware stores, and she had concluded that he was not entirely clear on what he was doing because in some cases she had to return materials and buy other things.

[11] In my opinion, the Defendant grossly overreacted to the note. I accept what the Claimant has said, which was that he was trying to have a conversation with the Defendant to make sure that things were exactly as she wished them to be. Also, whoever had started the work previously had made certain decisions and he was not certain about some of these things and hoped that the Defendant could explain. I also accept his statement that had the Defendant been entirely unable to answer all of his questions, he could have completed the job making his own best assessment of what needed to be done.

[12] In the case of a contract for time and materials, the party who is paying may well have the right to stop at any point in time. However, he or she is obliged to pay for the work that has been done on the basis of this contract,

unless it can be shown that the work was either not done, or not done properly. In the case before me, there is no such evidence.

[13] As a result, the Claimant is entitled to be paid for the work he did, and to be reimbursed for the expenses that he incurred. The Claimant is entitled to the following, including his costs:

Payment for 41 Hours of Labour from August 11-17	\$1,025.00
Reimbursement for Materials	\$200.74
HST on the \$700 paid earlier	\$105.00
HST on the \$1,025 Labour Bill	\$183.86
Cost of Issuing the Claim	\$91.47
Cost of Serving the Claim	\$86.25
Total	\$1,692.32

[14] One other item must be mentioned. The Defendant testified that when she left the Claimant's tools outside, she put \$300 cash in one of the toolboxes. The Claimant appeared genuinely surprised, and said that he had not seen any such cash. He did allow, however, that he had not looked everywhere and it is possible that the money may be in a toolbox which he has not used since he completed his work. I do not believe I have sufficient evidence before me to credit the Defendant with a \$300 payment. However, should the Claimant discover this cash, as a matter of honour he should credit the Defendant when it comes time to settle up with her as a result of this judgment.

**Eric K. Slone, Adjudicator**