

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Robarts v. Belshaw*, 2016 NSSM 63

Claim No: SCCH 439875

BETWEEN:

Trevor Stuart Robarts

Claimant

v.

Steve Belshaw

Defendant

Date of Hearing: August 16, 29 and 30, 2016;

Date of Decision: October 28, 2016;

Editorial Notice: Addresses and phone numbers have been removed from the electronic version of this judgment

DECISION

This is a claim for breach of contract. The Claimant, Trevor Robarts, runs a small business performing landscaping work outside of his regular employment. He was hired by the Defendant, Steve Belshaw, to perform various tasks at his home at [...] in Halifax. His bill for his services is unpaid. Mr. Belshaw alleges the work was done improperly and that his lawn was ruined.

This case is the second hearing at Small Claims Court. The matter was originally heard over two days last year, the second date being July 28, 2015 before Adjudicator J.W. Stephen Johnston. Adjudicator Johnston found in favour of the Claimant and ordered judgment against the Defendant. Mr. Belshaw appealed this decision to the Supreme Court of Nova Scotia. Justice LeBlanc found several procedural errors and ordered the matter sent back to this Court for rehearing before a different adjudicator.

The matter was scheduled for rehearing on August 16, 2016. Mr. Belshaw was scheduled to get married that week and requested an adjournment. Mr. Robarts objected to the adjournment. I granted the adjournment and rescheduled the matter for August 29, 2016 on condition that Mr. Belshaw provided proof on that date, which he did. The matter was heard in its entirety on August 29 and 30.

Procedural Matters

Evidence - Generally

As this is a new hearing of the matter, I informed the parties at the outset and several times during the hearing, that I will base my decision on the evidence and law as presented to me during this hearing. I am not able to consider the findings of Adjudicator Johnston or any of the evidence he heard. At least one witness called in that hearing did not testify before me. Further, Lynn Belshaw and Junior Barnes testified before me and did not testify before Adjudicator Johnston.

Lynn (Bonnar) Belshaw

A preliminary issue raised by both parties was if Lynn Belshaw ought to be added as a party. Mrs. Belshaw wanted to be added as a Defendant and Mr. Robarts objected to it. I explained to the parties that if I were to add Mrs. Belshaw as a Defendant, then she would be liable, jointly and severally, with her husband if I found in favour of the Claimant. The issue was deferred pending hearing of all of the evidence. I have discussed this further in the decision, however, I have found the contract was at all times between Steven Belshaw and Trevor Robarts. There are no grounds to add her as a party.

In his discussions with the Court, it became clear that Mr. Belshaw wanted Mrs. Belshaw to give evidence on her own. Further, she wanted to assist her husband with the advocacy, by questioning several witnesses and assisting with closing arguments. There is no reason why Mrs. Belshaw cannot testify to what she is able. Her evidence was direct and based on her observations. While the rules governing hearsay evidence are more relaxed, namely hearsay evidence may be admitted in Small Claims Court more readily, I did not permit her to testify to what her husband described to her. Mr. Belshaw testified to his own observations on those matters. I felt that no prejudice would result from acceding to his request to assist with the advocacy. Her advocacy was of assistance to her husband and did not provide her husband with any undue advantage. However, I was not prepared to allow her to make separate submissions or advance a case on her own.

Site Visit

The prospect of a site visit was discussed at the beginning and end of the hearing. Given that the work was performed in the spring of 2015 and the grass is mature and established, the parties and I all agreed that a site visit would not be necessary or helpful. All findings are based on the evidence presented in court.

The Issues

Did the Claimant, Trevor Robarts, fulfill his obligations under the contract?

Evidence

Evidence was heard over the course of the two evenings for the hearing. It consisted mostly of *viva voce* evidence from the parties, quotes and several photographs. I have reviewed the physical evidence in detail and considered the testimony of both parties and their witnesses. While I may not have referenced all of the evidence in these reasons, I have considered it all before making these findings with the exception of a hard copy from a website describing how topsoil is made. Unfortunately, no citation or authority was given for the information. I did not allow its admission.

Trevor Stuart Robarts

Trevor Robarts has been a landscaper for 21 years. He was contacted by Steve Belshaw on May 21, 2015 to attend to his home and provide a price for the job. The work consisted of removing boxwoods and stones and preparing the property for reseeding. He was contracted to haul away three loads of and to deliver, spread and seed the topsoil. The estimate was \$2800. He tendered into evidence a detailed estimate. Once he began the work, Mr. Belshaw asked him to perform additional duties, namely provide additional topsoil, spreading it, and removing stumps. The additional charge for this work was \$1070.00.

The work was started around May 25 and completed on May 30, 2015.

The matter “fell apart” after time had passed and he did not receive his money. He received a call from Mr. Belshaw alleging the work was of substandard quality. Mr. Robarts is of the view that the soil is typical of that which he previously purchased at Terra Nova Landscaping Ltd. (“Terra Nova”). He denies that garbage or other material was added to the topsoil or as alleged by Mr. Belshaw, the topsoil purchased at Terra Nova was delivered elsewhere.

Mr. Robarts tendered into evidence a letter from Reeves Matheson of Terra Nova stating that Mr. Robarts purchased topsoil from Terra Nova consistently. Further, the soil in Mr. Belshaw’s lawn is consistent with that used by Terra Nova.

Lenial (Lennie) Pinard

Lennie Pinard drives a truck for Mr. Robarts. He testified to hauling away boxwoods from the Belshaw residence. He hauled and delivered topsoil as well to the site. The topsoil came from Terra Nova and was delivered to the Belshaws’ residence. He testified that the topsoil was added in different amounts depending on the layout of the property, which he described as high in some spots and low in others.

Steve Belshaw

Frank Steven (“Steve”) Belshaw purchased the property from the estate of one or both of his parents and continues to occupy it. He testified to contacting Mr. Robarts in May 2015 on the recommendation of a contractor known by both he and Mr. Robarts. He described the work he wanted done as to remove stones and the boxwood hedge along with spreading a 1” layer of topsoil and seeding it. On the first day of work, he did not see Mr. Pinard on site and the soil was delivered by Mr. Robarts. He described the soil as having rocks and sticks along with plastic, glass and clay. He tendered into evidence two jars of soil, one containing sticks and rocks, the other has assorted debris.

Mr. Robarts advised him that peat moss would help to make the grass grow if the soil was poor.

He testified that he bought 38 bags of topsoil and two bags of seed to reseed it to make the lawn look better. He said the ground should be dark like topsoil and not reddish brown.

When he and Mrs. Belshaw raised the issue of poor soil with Mr. Robarts, his response was rude and belligerent. I have no difficulty believing him on that point. Mr. Robarts’ demonstrated much of the same attitude in court. There is no question his demeanour and attitude would not be conducive to even an attempt at understanding the case being made on defense, let alone settlement.

Lynn Belshaw

Veronica Lynn Belshaw is married to Steve Belshaw and was living with him when the work was done. She testified to observing only two loads of soil being delivered, one to the front yard and the other on the side of the house. In her opinion, she and her husband did the work. She only saw Robarts driving the truck, which included removing yard debris.

Junior Barnes

Junior Barnes is occasionally employed as a labourer by Mr. Robarts. He accompanied Mr. Robarts to Terra Nova where they purchased top soil and delivered it to 26 Hillside. He believes that more than one load was delivered that day. When asked by Mrs. Belshaw of her comments to him at the time, he recalls that she was not impressed with the soil. He testified that Mr. Robarts usually bought his soil from Terra Nova and it was “okay”.

The Law

In order to establish liability in breach of contract, the Claimant must prove the existence of a contract and that it was fulfilled according to its terms. Two possible defenses include that the contract was not performed or in the case of a contract for services, it was not performed in a good and workmanlike manner. The Claimant has the burden of proof to establish a breach.

Findings

In reviewing the evidence, I have difficulty accepting either party's testimony of the events in their entirety. Mr. Belshaw's testimony does not correspond with the photographs and other evidence. His explanations are not consistent with what was presented. For his part, Mr. Robarts is very prone to exaggeration. In court, he conducts himself in a manner that anyone would find disruptive and inappropriate. It is difficult to take any witness seriously who among other things, uses insults to describe his opponent, repeatedly interrupts the witnesses and ignores the directions of the court. Indeed, were it not for the corroborating evidence in his favour, I would not have believed him at all.

Having considered all of the evidence presented, I make the following findings of fact:

- Mr. Belshaw hired Mr. Robarts to perform several jobs, including the removal of stones and boxwoods from the premises at 26 Hillside and lay topsoil and seed the lawn for restoration. The total price was agreed at \$2800 cash only as stipulated in the quote provided by Mr. Robarts. It was a fixed price contract rather than an hourly rate. This was not disputed by either party. There was additional work requested by Belshaw requiring additional topsoil and sods, for which Mr. Robarts charged \$1070.
- Mr. Robarts was hired by Mr. Belshaw and dealt with him regarding the work that he wanted done and agreed upon a price. Mr. and Mrs. Belshaw were not married at the time, so she did not have any legal interest in their home. I find Mrs. Belshaw was not a party to the contract.
- Mr. Pinard and Mr. Barnes testified that Mr. Robarts purchased soil from Terra Nova which was delivered to the site. Mr. Belshaw submits that the soil was rerouted to another location and replaced with lower quality soil. He offers no evidence in support of this position. His only argument was that since some of the soil was delivered by Mr. Robarts alone, he could have rerouted it. Where much of the soil was used to level the lawn, it would not be problematic if there were naturally occurring debris such as rocks or sticks. As for the other items, I am not certain how these came to be in the soil. I have only Mr. and Mrs. Belshaw's evidence that the garbage was present in the soil at the time it was delivered and spread. Neither Barnes nor Pinard testified to debris. Indeed, they denied seeing it. The Defendants called no evidence to corroborate these assertions. I find as a fact all loads of top soil, peat moss and other materials came from Terra Nova and did not contain debris sufficient to make it unsuitable.

There is conflicting evidence as to how much top soil was delivered by Robarts. Mrs. Belshaw testified to seeing two loads. Mr. Robarts testified to 28 yards. He has provided receipts for 9½ cubic yards. He describes a "yard of topsoil" as the same as a chord of wood, 8' x 8' x 4'. I disagree. The invoices clearly refer to "cubic yards" which converts to 27 cubic feet or 728L. The dimensions of a chord of wood translate into 128 cubic feet.

I find at least 9.5 cubic yards were delivered.

- The work was performed and the soil spread as contracted. While “patchy” in places, the work was finished by Mr. Robarts and his crew and the grass established itself reasonably by the time the photographs were taken. The hearing before Adjudicator Johnston was held in late July. The bags of topsoil were purchased by the Belshaws on July 7 and 14, 2015. According to Mrs. Belshaw, the soil came in 20L bags. It was not purchased after the hearing as submitted by Mr. Robarts. Nevertheless, it is not reasonable to assume that the growth and work shown in the photographs which were taken just before the hearing in July 2015, could be attributable to the new soil.

In short, I find the evidence overwhelmingly supports Mr. Robarts’ position that Mr. Belshaw received what he was promised in the contract. I find the agreement was fulfilled. There is no evidence that it was performed negligently or not in a good and workmanlike manner. Further, there is no evidence in support of the counterclaim.

Conclusion

Having found the work was performed according to the contract, I find the Defendant, Frank Steven (“Steve”) Belshaw liable to the Claimant, Trevor Robarts, in the amount of \$3870.00 plus interest and costs. The counterclaim is dismissed. Given Mr. Belshaw’s successful appeal before the Supreme Court, it is not reasonable to assess him interest to the date of this judgment. I fix prejudgment interest at \$70.

Thus, Mr. Robarts shall have judgment as follows:

Claim	\$3870.00
Interest	\$ 70.00
Costs	<u>\$ 99.70</u>
Total	\$4039.70

An order shall issue accordingly.

Dated at Halifax, NS,
on October 28, 2016;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)