

Claim No: SCCH - 462309

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Warren v. Ultimate Countertop Solutions*, 2017 NSSM 26

BETWEEN:

RAYMOND F. WARREN and DAPHNE L. BEELER

Claimants,
Defendants by Counterclaim

- and -

ULTIMATE COUNTERTOP SOLUTIONS

Defendant,
Claimant by Counterclaim

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 23, 2017

Decision rendered on May 25, 2017

APPEARANCES

For the Claimants

self-represented

For the Defendant

Jonathan Ryan, owner

BY THE COURT:

1. This is a claim and counterclaim arising from a partial kitchen remodelling. The Claimants believe the contract with the Defendant was breached, and seek \$600.00 for work that they believe necessary to have the job completed by someone else. The Defendant counterclaims for \$1,225.30 for the balance owing on the original contract.
2. The main part of the job was replacing the moulded counter tops. One of the Defendant's workers came out to do a precise measurement. When the counter tops were later put on, it became evident that the backsplash was slightly shorter than the one being replaced, with the result that there was a strip (less than an inch) of unpainted wallboard and old caulking showing the whole length of the counter tops above the backsplash. This is unsightly and requires a solution.
3. The Defendant tried to raise the counter tops slightly off the cabinets, but this did not work with these particular cabinets. The decision was made to use a crown moulding to be placed atop the backsplash. The Defendant agreed to supply the material at cost, with nothing added for labour.
4. For reasons that are quite unclear to me, the relationship broke down, and each party accuses the other of rudeness and vulgarity. It is clear that the Defendant will not be permitted to complete the job, and likely would not want anything to do with the Claimants.
5. The final issue concerned the crown moulding. The Claimant, Mr. Warren, says that he was promised PVC moulding. PVC is essentially plastic, and

is totally waterproof. The Defendant says that the agreement was that the moulding was to be wood, specifically maple.

6. Mr. Warren says that the moulding which was brought to the jobsite was neither wood nor PVC - he says it was actually MDF, which he says would have been unsuitable because it is not waterproof. The Defendant denies bringing MDF and says that the maple moulding was specially ordered, cut and painted to suit the purpose, and is otherwise useless. It is sitting in the Defendant's shop. This maple moulding cost \$200.00 plus HST, for a total of \$230.00.
7. There is no question that the sum of \$995.71 would be owing, as the balance of the contract. The Claimants held it back because of their unhappiness with the moulding.
8. My findings of fact are these:
 - a. The Defendant is responsible for the fact that the backsplash does not cover the same area as the old one. The Defendant should have noted that and advised the Claimants accordingly. I find that the Defendant recognized its error and offered an acceptable solution, namely the moulding supplied at cost.
 - b. The moulding delivered to fix the problem was maple, not MDF. I accept the evidence of the Defendant. As such, the Claimants had no basis to reject it.
 - c. There is no basis in fact or law to award the Claimants anything for the stress or inconvenience they allegedly have suffered. I find that the Defendant made a minor error which would have been corrected, had the Claimants not jumped to a wrong conclusion and rejected the moulding when the Defendant's worker came to install it. I find

that they overreacted to the situation, and the actual convenience was no more than one would expect with any renovation project.

9. As such, the Claimants owe \$995.71 for the balance of the contract, as well as the agreed upon \$230.00 for the moulding. That moulding belongs to them. I direct the Defendant to turn it over to the Claimants, upon payment of the balance of the contract. The Claimants will be responsible for having it installed themselves.
10. If the moulding is not delivered or made available by the Defendant, the \$230.00 need not be paid. If there are any issues surrounding the delivery of the moulding, either party may ask that the matter be placed on my list at a future court date, with notice given to the other party.
11. In light of all the facts, I decline to allow any costs.

Eric K. Slone, Adjudicator