

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Derago v. Doctor, 2017 NSSM 58

BETWEEN:

MLADEN DERAGO

Claimant

- and -

FAUN DOCTOR

Defendant

REASONS FOR DECISION AND ORDER

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 24, 2017

Decision rendered on October 27, 2017

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant seeks \$950.00 plus costs for his work in partially building a wood fence in the Defendant's back yard.

[2] The Claimant advertises himself as an experienced fence builder. He advertised on the website kijiji, which was how the Claimant found him in July 2017.

[3] What resulted was a verbal agreement on or about July 31, 2017, that the Claimant would build two sections of fence, and do some minor repairs to an existing one. The agreed-upon price was \$1,330.00. The Defendant was to pay directly for all supplies.

[4] The Claimant was three days into his work when the Defendant pointed out that what was being built was not what she wanted. Specifically, she had asked for a 6 foot 6 inch stepped fence to match neighbours' fences that bordered on her property. A stepped fence is one appropriate type of fence where the land slopes, as it does here. She has also specified that the posts were to be sunk in concrete to a depth of four feet, which she doubted that the Claimant had done. The height was important because she intended to prevent her cats from leaving the yard.

[5] While it is unclear as to whether the Claimant was fired or quit a few days into the job, it is a fact that he left the job site, never to return. He now seeks payment for his approximately three days of work, which he values at \$950.00.

[6] What the Claimant had been constructing was a straight fence, which has a very different appearance to a stepped fence. He denied that the Defendant had specified anything different. As for the depth of the posts, he insisted that he based the necessary depth on his long experience and did not measure how deep he was digging. As for the height issue, he explained that because the land is uneven the fence would naturally be less than 6 foot 6 in some places.

[7] The problem with verbal contracts is that there is often no reliable touchstone to assist the court in assessing whose version of the contract is correct.

[8] Here, there was one document which assists me. The Claimant produced a handwritten sketch which was clearly drawn, with both parties' handwriting on it, before the work started. It clearly shows a drawing of a stepped fence, and has the word "stepped" clearly written on it.

[9] In the end, the Defendant was able to salvage very little of the Claimant's work. Some of the posts could be used, while others had to be dug out either because they were too short or not sunk deep enough. She did eventually get her stepped fence from another contractor, at a cost that far exceeded what she had agreed to pay the Claimant.

[10] I find the Defendant to have been a credible witness. I had less confidence in the Claimant's evidence. He was evasive about the sketch. He as much as acknowledged that the Claimant had specified four feet of concrete for the posts, but seemed to believe that he knew better.

[11] I believe that the Claimant had a fixed idea of what he wanted to build, and how he would do it. Unfortunately for him, that was not what he was contracted to do. The Defendant was very clear about what she wanted, and the Claimant did not comply with her wishes.

[12] In the end, I find that the work done by the Claimant was not in accordance with the contract and, furthermore, had no value to the Claimant. As such, the Claimant is not entitled to be paid anything and it is ordered that the claim be dismissed.

Eric K. Slone, Adjudicator