

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Hill v. Harding Medical, A Division of IMP Group, 2017 NSSM 102*

Date: 2017-12-13

Docket: Sydney, No. 466912

Registry: Halifax

Between:

Cyril and Deborah Hill

Claimants

-and-

Harding Medical

Defendant

Adjudicator: Patricia Fricker-Bates

Heard: October 18, 2017

Decision: December 13, 2017

Appearances: Cyril and Deborah Hill, Claimants, self-represented;
Harding Medical, Defendant, represented by Les Mollon,
Branch Manager.

Reasons for Decision

[1] The Claimants, Cyril and Deborah Hill, filed a Notice of Claim against the Defendant, Harding Medical, on August 16, 2017, alleging the following:

Damaged hardwood floor while moving two multi-position beds with a trolley.

The Claimants are seeking from the Defendant \$4,995.00 plus costs.

[2] In response, the Defendant Harding Medical filed a Defence and Counterclaim on September 1st, 2017, stating:

The Defendant disputes any liability of damage; and alternatively disputes the quantum (\$) claimed.

[3] Harding Medical was represented at the hearing by Les Mollon, Branch Manager. Donovan Alexander Stapleton also was present as a witness for Harding Medical.

[4] The Claimants engaged Harding Medical to move and reposition two Rotec Multi Position beds--designed to assist the claimants with their health issues—from one end of their home to the other. Donovan Alexander Stapleton was one of the movers. He and a colleague attended at 194 Centreville St., Reserve Mines, NS, on March 28, 2017, to complete the task of moving the beds with a dolly. The move was completed, and the Claimant, Cyril Hill, paid them \$60 on the \$90 balance owed (see Ex. No. 4). The bill subsequently was paid in full.

[5] Shortly after the move was completed, Deborah Hill noticed markings on the hardwood floor. At first she attributed it to dust. However, the next day, upon further examination, it became obvious that there were markings on the floor left, it is alleged, by the creeper mechanism in the dolly used to move the beds from end-to-end of the house (see Exhibits No. 9 and 11). Upon receiving the report of damage to the hardwood floors of the Claimants' residence, Harding Medical sent out company representatives, including Manager Les Mollon, to view the situation.

[6] Manager Les Mollon did not contest that the marks on the hardwood floors of the Claimants' residence went through the kitchen, living-room and dining-room. Nor did Mr. Mollon contest the medical issues suffered by the Claimants—bad back for Cyril Hill and hip replacements for Deborah Hill—and the utility of the multi-position beds in alleviating those medical conditions. He agreed that the beds were heavier than a regular bed. Mr. Mollon thought that the marks could be buffed out. However, Mike MacIntyre of Island Floor Sanding recommended that the floors be sanded in total (see Ex. No. 2).

[7] Island Floor Sanding (Ex. No. 2) provided a quote to Harding Medical for the refinishing of the floors in the living-room, dining-room and kitchen of the claimants' home. The total quoted was \$1760.00 plus HST.

[8] The Claimants maintain that they, too, received a quote from Island Floor Sanding of \$2024.00 (tax included) to sand three rooms and varnish them (see Ex. No. 1). This would necessitate that the Claimants leave their home for a week. The Claimants did a breakdown of the associated costs (see Ex. No. 1) and the total, including putting their furniture in storage, hiring movers to move the furniture in and out of the home, accommodations for a week, meals for a week, and cleaning after sanding, equalled \$2346.69. Those expenses (\$2346.69) plus the total cost of sanding and refinishing the floors (\$2024) came to a total of \$4370.69 (see Ex. No. 1).

[9] The alternative to sanding and refinishing the hardwood floors would be to replace them. This would cost in the vicinity of \$6831.00 (see quote from McKinnon Bros. Flooring, Ex. No. 6). The Claimants maintained that the

replacement option would be less intrusive and not as difficult for them given their health issues.

[10] The Defendant maintains that replacing the flooring would unjustly enrich the claimants. Referring to Exhibit No. 10, Les Mollon testified that Harding Medical, A Division of I.M.P. Group, offered to settle the matter by paying to the claimants the sum of \$2024.00. The Claimants declined the offer to settle maintaining that they should not be out-of-pocket for related expenses, such as hotel, meals, furniture moving and storage—expenses arising from the need to leave their home while the sanding and refinishing is completed.

[11] While the Defendant is denying liability, there is no doubt, based on the evidence before me, that there is damage to the hardwood floors of the Claimants' residence that was not there prior to the movement of the beds by Harding Medical representatives on March 28, 2017.

Decision of the Court

[12] Having reviewed the evidence and exhibits before me, I find that the damage to the hardwood floors of the Claimants' residence was caused by the moving and repositioning of the multi-purpose beds by representatives from Harding Medical with the use of a dolly/trolley.

[13] I find, as well, based on the evidence and exhibits before me, that the matter can be remedied by sanding and refinishing the hardwood floors. It is not necessary for the purposes of this decision for me to adjudicate upon the issue of unjust enrichment. Accordingly, I am ordering that Harding Medical, A Division

of I.M.P. Group, pay to the claimants the amount of \$4370.69 which represents the estimated cost of the sanding and refinishing plus the costs of related expenses including storage of furniture, movement of the furniture in and out of the residence, accommodations for one week, meals, and cleaning after sanding (see Exhibits 1, 2, 3, and 5).

[14] In addition, the Claimants will be awarded court costs in the amount of \$99.70.

[15] In total, the Defendant shall pay to the claimants the amount of \$4470.39.

Patricia Fricker-Bates
Adjudicator
December 13, 2017