

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Grande v. Angus*, 2023 NSSM 18

Claim: SCAR No. 516885

Registry: Annapolis Royal

Between:

Yvonne Felicia Grande

Claimant

– and –

KEONI ANGUS, MATTHEW ANDERSON and LMF EXCAVATION

Defendant

ADJUDICATOR: Andrew S. Nickerson, K.C.

HEARD: February 22, 2023

DECISION: April 11, 2023

The Claimant - self represented
Will Brien for the Defendants

DECISION

[1] I wish the parties to know that I have carefully reviewed all of the written material supplied and my notes of the oral evidence. If I do not mention a particular piece of evidence in this decision, it is not because I have not considered it, but because I have found it does not directly bear on my decision.

EVIDENCE

[2] The Claimant said that she wanted to do some upgrades on her house in Middleton Nova Scotia. The main focus of this work was to upgrade the upstairs bathroom. She contacted the Defendant Matthew Anderson, who according to her, said that he could help and agreed to send his foreman, Mr. Angus, do the work. She acknowledges that Mr. Angus contacted her. She says he asked for an advance of \$1000. She says that she was not informed that Mr. Angus was doing this work part time on his own time, although she acknowledges she has never met Mr. Anderson.

[3] She says that Mr. Angus arrived for two hours one day without any materials. She also says that he came back once more, and when he did, she had asked him to hook up a sink downstairs. She complained about the way that he had done some repairs by using duct tape instead of other material. She confirmed that Mr. Angus arrived on another day and went directly upstairs to where the bathroom was. She inquired of him and he said that he had come to work on the bathroom. She asked him to leave. She claims that on the next day she had a flood. As a result, she contacted Mr. Anderson. That resulted in a disagreement between the two of them particularly due to Mr. Anderson indicating that he was not involved in this project.

[4] In cross-examination, the Claimant acknowledged that she had, on at least two occasions, told Mr. Angus not to come at her request. She also stated that Mr. Angus had cancelled his attendance on several occasions. She acknowledged that she asked Mr. Angus not to return after the bathroom leak.

[5] Matthew Anderson gave evidence that he owns and operates LMF Excavation, specializing in excavation and foundation construction. He says that his wife referred the Claimant's message to him and he reached out to her. He indicated that he thought her proposed project was much bigger than it actually was. As a result, he was not interested, as it was much too small a job for his company. He says that he told her he could speak to his foreman, Mr. Angus, who may be able to do it part time when not working for Mr. Anderson's company.

[6] Mr. Angus testified that he indeed does work for Mr. Anderson's company full time. He says that he was contacted by the Claimant and they set up a time when they could eventually meet. The Claimant showed Mr. Angus what she wanted and he indicated that the work she was requesting would be at least a \$10,000 job. That was more than her budget and he advised her that he could do the basic work on the upstairs bathroom for about \$3000.

[7] He acknowledges that he received \$1000 as an advance against materials, fuel and labour. He says this was paid five days after he began work. He says that he began upstairs in the bathroom where he took apart the walls and flooring, as the room needed insulation and vapour barrier. He moved a large tub. He also says that the Claimant asked him to do additional work including fixing a sink downstairs, and various items of yard work. He estimates that he worked approximately 11 or 12 hours over four days. He said that his hourly rate was \$70 per hour. He also says that he had purchased various items including a mesh membrane and the

drain, along with plumbing supplies for the downstairs bathroom. He says he provided the Claimant with invoices for materials for the downstairs bathroom totaling \$298 and for materials for the upstairs project of \$486.

[8] Mr. Angus says that he was willing to come back and finish the work but that the Claimant declined to permit this.

[9] Mr. Angus says that when working on the upstairs bathroom he turned off the water supply to the bathroom off and never turned it back on. He says it is not possible for the Claimant to have had a flood arising from the upstairs bathroom as a result of anything that he did.

[10] Mr. Angus counterclaims for \$1200 in unpaid labour.

ANALYSIS

[11] As is frequently seen in this court, difficulties have arisen because the parties did not carefully document their agreement. The court is left to determine what the contract actually consisted of. I instruct myself that the burden of proof lies on the party asserting any proposition on the standard of the balance of probabilities. I must assess the evidence on the basis of what is most logically probable after considering the whole of the evidence. Having carefully considered the evidence given in the whole of the case, I prefer the evidence of Mr. Angus where it differs from that of the Claimant.

[12] I am satisfied that neither Mr. Anderson nor the corporate Defendant have any liability in this matter whatsoever. I accept that Mr. Angus agreed to do work for the Claimant, basically in his spare time. I believe that this was understood by the Claimant.

[13] I am satisfied that Mr. Angus was ready willing and able to return to the project and do the work, but the Claimant declined to offer the opportunity for him to do so.

[14] I am not satisfied on a balance of probabilities that any leak that the Claimant observed at her property can be attributed to Mr. Angus, and I will deny that portion of the claim.

[15] Equally, I accept that the Claimant terminated the contract and refused Mr. Angus the ability to complete the work. This being the case, I believe I must evaluate what is due to either party on the basis of equitable principles, and in particular unjust enrichment.

[16] I accept that Mr. Angus did in fact pay the sums of \$298 and \$486 for materials which were used on the Claimant's project. I also accept that Mr. Angus worked on the project for approximately 12 hours. If that is the case, and his hourly rate is \$70 he would have performed \$840 worth of labour. I am not satisfied that on the evidence that is before me, that he is owed \$1200 for unpaid labour. If we add together the two sums paid for materials, with the \$840 in labour, the total is \$1,624.00. Mr. Angus acknowledges that he was paid \$1,000 by the Claimant.

[17] I therefore dismiss the claim, and allow the counterclaim in the amount of \$624. I decline to award costs

Dated at Annapolis Royal this 11th day of April, 2023.

Andrew S. Nickerson K.C., Adjudicator