

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Warsi v. Dorrington*, 2023 NSSM 87

Date: 20231110
Docket: 526228
Registry: Halifax

Between:

Karman Akbar Warsi

Claimant

v.

Iaaiah Dorrington cob as I.T. Renovations

Defendant

Adjudicator: Darrel Pink
Heard: October 30 and November 7, 2023, at Halifax, Nova Scotia
Decision November 10, 2023
Appearances Karman Warsi – self-represented
Isaiah Dorrington - self represented

By the Court:

[1] A contract is a legally recognized agreement made between two or more persons. Such agreement gives rise to obligations that may be enforced in the courts, failing to observe which creates a liability to pay compensation in the form of damages.¹

[2] There are three essential elements to a contract: offer, acceptance and consideration. Additionally, the parties must have the capacity to contract, an intention to create legal relations, and a legal purpose, and the terms of the contract must be sufficiently certain.

[3] For a contract to be binding, the law requires that the parties have a “meeting of the minds”. In other words, there must be an agreement by the parties on the same subject matter.

[4] The outward expression of the “meeting of the minds” is *offer* and *acceptance*. In *Wambolt v. Armstrong*, 2012 NSSC 363, Justice Moir stated the person claiming an agreement:

Bears the onus of establishing, on an objective standard (it would be clear to the “objective reasonable bystander”) that the parties manifested “their intention to contract and the terms of such contract: *Cormier v. Universal Property Management Ltd.*, 2011 NSSC 16 at para. 26.

¹ John A. Yogis QC, *Canadian Law Dictionary*, 2^ded., (Hauppauge, NY: Barron’s, 1990), p. 52

[5] This matter requires a determination by the Court of the nature and terms contractual relationship between these parties.

The Facts

[6] The Claimant owns one half of a two-unit duplex in Dartmouth, NS.

[7] In the summer of 2023, the Defendant maintained a Facebook page on which he advertised his availability to undertake home renovations. The Claimant responded to the ad saying ‘I need basic bathroom and kitchen in basement...’ The Defendant’s reply inquired if the Claimant lived in the house. The answer was affirmative. The Defendant asked about the expected timeframe for the work. The Claimant said, ‘within July month’.

[8] The Defendant viewed the Claimant’s property on Monday, July 3, 2023.

[9] Initial discussions lead the Defendant to believe the Claimant planned to also renovate the adjacent duplex, so that two units would become four.

[10] Communications between the parties was via this initial Facebook exchange, text messages, email and verbally.

[11] After viewing the bare space where the Claimant wished a kitchen and bathroom to be installed, the Defendant provided an ‘estimate’ through an invoice

generated by his accounting system. (Estimate #12). There are different versions of that estimate – one without an estimate for ‘electrical’ and ‘labour fees’, which totaled \$4345.00 and one version with those elements included, for a total of \$12629.60.

[12] The initial price estimate, provided by text message around noon, on July 3 stated:

I will add up the labour fees on the days worked and add them to the invoice as we go your total for bathroom and kitchen will be roughly 7.5 to 9k just loafing(sic) up the trailer and waiting on your transfer to go pick up material.

[13] The Claimant e-transferred \$1800 immediately.

[14] At about 2:30 p.m. a further text message was sent

Update to invoice as project you wanted bathroom done in 1 month so time allotted is 160 man hours for project for bathroom and kitchen build. Total invoice comes to 8600\$ for bathroom and kitchen.

[15] Some items were omitted from his initial calculations, so the Defendant requested an additional \$357.48 deposit which was sent immediately.

[16] On July 4, the Defendant indicated ‘we will start tomorrow morning 10am will work until 4:30 pm get majority of framing done’. At about 1:00 p.m. he noted \$2600 had been spent on materials and that the remaining amount for materials is \$4347.51.

[17] On July 5, he sent the Claimant an electronic link to an invoice and noted 'there is no labour on that invoice that's Strictly material'. This was 'Invoice #12'.

[18] The invoice/estimate incorrectly states the name of the Claimant customer as 'Syed Karman'.

[19] The parties produced different versions of the document linked to the text message.

[20] The version submitted by the Claimant as 'Estimate #12' totals \$4722.88 plus HST. A discount (\$944.58) was applied for a total of \$4345.00 for materials. It shows a deposit of \$1800 due.

[21] The version provided by the Defendant, with the same estimate number is for materials (\$6447.88) and labour (136 hrs - \$8372) for a total of \$14819.99. A discount was deducted and HST was added so the total estimate for the contract was \$12629.60.

[22] Both versions had notes describing elements of the renovation and one that said 'deposit is strictly for material needed to do the job. We can take payment for labour after job is done.'

[23] The version submitted by the Claimant is signed electronically by 'Karman warsi'. The Claimant says he applied his signature electronically.

[24] The Defendant's signature does not appear on the document.

[25] The version submitted by the Defendant attaches a ‘construction contract’, dated July 4, 2023, that appears to have been downloaded from an on-line website of LawDepot.ca. The draft contract refers to a price for the work of 10,000\$ inclusive(sic) of sales tax for labour and 15000\$ for material. In the contract the Claimant is again incorrectly named as ‘Syed karmen’.

[26] On July 5, the Claimant sent \$842.52 to the Defendant and said \$1347.51 ‘will be transferred soon’. The Defendant reiterates there are no labour charges included to which the Claimant replies ‘Ya I know that hope we can make it possible’.

[27] At this point, when the Defendant says the materials will cost \$6504.99 of which \$2157 has been paid, the Claimant begins to question the anticipated total charges when he will transfer an additional \$3500 and adds ‘but try to make it possible within this amt remaining labor as u said it could go around 8 to 9k including labor I can go little more...’

[28] None of the communications and requests for payments included receipts.

[29] The Defendant’s immediate reply is that “I can save you money labor side for sure’.

[30] The Claimant sent \$1500 on July 7.

[31] On July 8, the Defendant asks about the amount to be paid so he can purchase the 'remainder of material'. The parties agree \$2000 is to be paid to 'complete everything besides the cabinets.' The Defendant says these are extra charges and the Claimant must choose what he wants.

[32] The Claimant says he will transfer \$1000 for a total of \$5500 paid on deposit. The Defendant replies.

Your material will be paid for in full and you can worry about paying for the cabinets to finish kitchen then labor so it's easier that way.

[33] The Claimant, expressing frustration with this process replies, 'How can I make payments like that when u change invoice every time it's hard for me'.

[34] The Claimant queries if his last payment of \$1500 has been credited, as it appears not to be reflected on the last 'invoice' (#22) he has received. The Defendant says this latest invoice includes electrical work 'my electrician gave me'. No estimate for electrical installation was included on invoice #12.

[35] On July 9, the Claimant sent \$2500 to the Defendant and asks for pictures of 'medium cabinets so I can pay for them too'.

[36] Over July 11-13 there are exchanges about kitchen cabinets the Defendant has purchased for \$3200. Two payments of \$1600 were to be made by the Claimant. The first was sent on July 13. The second was to follow in two weeks.

[37] On July 16, the Defendant says he will come the next day to tile the bathroom, get drywall up so plumbing installations can follow.

[38] On July 18, the Claimant sent the second \$1600 payment for the cabinets.

[39] On July 21, a frustrated Claimant writes to the Defendant.

Hello boss I did wait for u on Wednesday Thursday now today is Friday will u come today?

[40] The Defendant explains his truck has been unavailable and that this job should have taken 4 months not just a few weeks. He notes payments have been for materials and that he has not been paid. He is going on vacation in two days.

[41] On that Friday, July 21, the Claimant paid \$1320 to the Defendant. There are multiple exchanges between the parties. The Claimant is worried he is paying a lot to the Defendant and not seeing the renovation advancing. The Defendant reiterates no labour has been charged, says that he will now bill at the end of each day, but he does not trust that the Claimant will pay. There are several exchanges about the electrical work to be done and the need for proper permits before the

electrician can start. This is the first time permits have been addressed. The tone of the written exchanges became heated.

[42] There had been several exchanges about the cabinets to be purchased for \$3200. The Defendant selected and ordered them. He says he paid for them, though no proof of that is offered. He charged the Claimant the purchase price and received the Claimant's money via two \$1600 payments. The cabinets were never picked up.

[43] The Claimant apologizes for his tone and apparent frustration. He explains he has not been well, suffers from depression, and has not worked in three months. He asks the Defendant if 'u have labor job I can join and work for u too plz sorry abt everything'. (Sic)

[44] During this period, the Claimant went to the Defendant's home. There was an altercation with the Defendant's spouse, that resulted in a further deteriorating of the relationship.

[45] Over the next month there are hundreds of messages back and forth. The Claimant is distraught. Even though there has been minimal progress, he wants the renovation stopped, a refund of what he has paid, and materials returned for credit. On August 3, the Defendant writes;

‘And that’s fine my time spent at your house I will bill you for and I will issue a refund from my business account for remainder. I will take back cabinets today and deduct from your bill...

[46] On August 4, email in an email exchange, the Defendant says a refund will be sent. He tells the Claimant:

You must be patient as large amounts don’t come out of my account they have to be charged through the right channels of my banking system as well that’s why I said it will take a couple of business days and I will return what I can and send you the difference.

[47] The Defendant, appearing to rely on an unsigned contract, tells the Claimant there is a penalty for cancelling the contract.’

[48] On August 9, the Defendant asks ‘for the last time’ if the Claimant wants him to finish the job. The Claimant, exasperated, says he has no more money.

[49] Some communications suggested the Defendant would return to finish the project. He did not.

[50] There were exchanges about a discount the Defendant was to offer the Claimant. The Defendant said his wife, after the altercation with her, refused to provide it.

[51] The Claimant wanted the work completed. There were exchanges about returning materials. The Claimant would not allow the Defendant to enter his home to gather materials to be returned or the Defendant would not enter the Claimant’s home to retrieve them. Some materials are left outside in the rain and thus could

not be returned. The Defendant says the Claimant could have returned materials himself as he was on the 'account', but it was not clear how that would be done.

[52] On August 23, the Defendant messaged the Claimant via an on-line banking application, requesting \$3000 for your 'pulling out of the contract.'

[53] The relationship had completely deteriorated. The Claimant threatens to sue the Defendant. This Claim resulted.

[54] The Defendant estimated the work would take 140 hours. Included in Invoice #29 is a charge of \$8736.00 for 136 hours. That results in an hourly rate of \$64.24/hour. There were never discussions between the parties on labour rates.

[55] The Defendant provided no evidence of the amount of time spent on the project and produced no records of hours worked via time sheets or otherwise. Though he stated this job should have taken three or four months, he provided no evidence to substantiate that.

[56] The planned work to install a bathroom and kitchen remains incomplete. In answer to a question from the Court, the Defendant estimated the cost to complete the project would be \$3000, if done by him, and \$7000, if another contractor was employed. He provided no back-up for either estimate.

[57] The Claimant seeks return of all funds he has expended. He also seeks damages relating to a stove allegedly harmed by the Defendant. There was no evidence relating to that.

Findings

[58] The Defendant's advertisement on Facebook caused the Claimant to initiate contact with the Defendant. The Claimant **offered** to hire the Defendant to install a 'basic bathroom and kitchen in basement'. After visiting the Claimant's home on July 3, 2023, the Defendant accepted the Defendant's offer and agreed to perform the work. His acceptance was provided through his 'estimate' (#12) of \$4345 that outlined the materials to be purchased, some installation costs but not an overall construction cost. The Claimant applied an electronic signature to the version of Estimate #12.

[59] The Defendant did not initially include an estimate for other labour or for electrical work. The number included on estimate #12 was consistent with the text message of the same day that suggested the total cost for the project would be between \$7500 - \$9000. That range was reiterated later that day. Based on this total cost, and the Defendant's estimate of 136 hours of labour, the expected costs of labour would have been \$4655 (on a \$9000 job) or about \$35/hour, what seems to be a reasonable sum.

[60] The version of Estimate #12 that includes a number for labour was not provided to the Claimant when the initial arrangements were made. It is these initial communications that lead to the contract. As of July 4, the Claimant's promise to pay for the materials and labour, as they were outlined in the Estimate #12 version he had and the Defendant's estimate of a total cost of \$9000 was the **consideration** for the contract they had made.

[61] Because there was an offer, acceptance and consideration a contract existed between the parties. The contract required the Defendant to install a bathroom and kitchen in the Claimant's basement at a cost that would not exceed \$9000 for labour and materials. A term of the contract was that initial materials prices were based on estimates and the labour was an approximation with a cap. Exceeding the total of \$9000 required an amendment to the contract agreed to by the parties. Changes could not be unilaterally imposed by the Defendant.

[62] The Claimant authorized the Defendant to proceed with the project. The parties agreed the initial work was to purchase materials and then the Defendant would install them.

[63] It was the Defendant who had all the information to inform the Claimant what would be involved in the work. In his evidence, the Defendant identifies many issues which he says affected the project. Most did not become part of the

contractual arrangement, though they could have been had the Defendant chosen to make them part of the contract.

[64] Though the Defendant sent a draft written contract, or perhaps two, to the Claimant, it was never executed by both parties. Had it been signed, it would have supplanted the contract evidenced by the oral and text message agreement. The Defendant never stipulated a time for completion. The initial expectation of the Claimant, clearly communicated to the Defendant, was the work would be done in about one month. Given the Defendant's projection of 136 hours of work, that was a proper expectation. On that basis the Defendant agreed to do the project. He subsequently said the project should take three months. Had he intended that timeframe, he could have included those terms.

[65] The Defendant never stipulated hourly rates he intended to apply to the work. The contract contained an estimate for labour within the scope of a \$9000 project. That total reflecting 136 hours, resulted in an hourly rate of slightly above \$34/hr. The Defendant could have stipulated what he wanted to regarding labour costs and included them in the contract. He did not do so.

[66] The Defendant's contract price was based on his estimate for the costs of materials plus labour. The Claimant agreed with that and paid the materials costs, which only varied slightly from what the Defendant had said they would be.

[67] The contract had no detailed provision regarding a discount, though one was shown on the initial Estimate #12 and was used to calculate contract costs. There was no requirement for the Defendant to provide a discount nor should the Claimant have expected one. There was no contractual requirement for one.

[68] Though the project was only weeks old, the Defendant abandoned it. He stopped construction when he noted his truck was not working. After that he did nothing of substance to advance the job. He abandoned the Claimant while demanding money, far more than he was entitled to. Though he had purchased goods and delivered them to the Claimant's home, because they were not installed, and no plan existed to do so within the timeframe expected by the contract (about one month) they were of no value to the Claimant. The cabinets were never picked up.

[69] The Defendant's approach to business was unorthodox. He provided no plan to the Claimant. He expected payment, reimbursement for his purchases, without providing any receipts or proof of purchase. He provided the Claimant with estimates via an electronic platform that were dated July 3, 2023, regardless of when they were provided. The language used by the Defendant in both his messages and in his oral testimony suggested a larger and more sophisticated operation than he had. He and his spouse described her as the 'designer' but no

designs were ever provided to the Claimant. She was said to have responsibility for finances, or that is what he told the Claimant, but she had none and disavowed any knowledge of the financial arrangements or details. He talked as if he was a large and sophisticated operator, which is what he wanted the Claimant to believe, when he was a small operator.

[70] The aggregate of the sums paid by the Claimant to the Defendant is \$14227.50. The value of the materials installed was not part of the evidence. Based on the value of goods in Estimate #12, I find the installed value of the work installed by the Defendant in the Claimant's home to be **\$3134.55** made up as follows: lumber (\$63.20), dump fee and truck (\$345.00), grout (\$0.40), vanity (\$575), subway tile (\$575), tile install (\$287.50), drywall ($1/4 \times \$565.28 = \141.32), drywall install ($1/4 \times \$287.50 = \71.88), plumbing ($1/2 \times \$1437.50 = \718.75), grout (\$155.25), mortar (\$201.25), trim (\$0).

[71] My assessment of the per centage to be used for the amount installed is based on the descriptions by the parties of the situation today and the photos provided by them. Those pictures show a very incomplete installation.

[72] The Defendant provided no reliable evidence of the time spent on the project. Based on my assessment, the job is somewhere between one-quarter and one-half completed. I will set the percentage at one-third. Given the estimated cost

for labour provided on July 4 was \$4655, I set the value of the labour provided by the Defendant at his initial estimate of \$4655 times 1/3 (the percentage complete) for a value of **\$1551.50**.

[73] The total value of the work by the Defendant under the contract is materials plus labour, namely $\$3145.55 + \$1551.50 = \$4697.06$

[74] As noted in the review of the facts, the Defendant demanded, and the Claimant paid sum after sum. The Claimant felt he had no choice, even though he saw no demonstrable progress on the bath and kitchen installation. As soon as the Claimant started to question the extent of the progress and questioned the costs he was incurring, the Defendant effectively stopped working. By doing so he breached his contract with the Claimant. His obligation was to install a bathroom and kitchen in accord with the estimate he had provided. He failed to do so.

[75] The Claimant is entitled to damages for breach of contract. The objective of contract damages is to ensure the injured party receives what she or he contracted for in the bargain.

[76] Here the Claimant received a partially installed bath and kitchen renovation. The value of what he received has been set at \$4697.06. For this partial and incomplete work he has paid \$14227.50. He is entitled to recover, as damages for breach of contract, the difference between what he paid and the value he received.

[77] It is ordered the Defendant pay the Claimant damages for breach of contract in the amount of $\$14227.50 - \$4696.06 = \$9531.44$ plus the costs for filing of $\$199.35$ for a total of $\$9730.79$.

Darrel Pink, Adjudicator, Small Claims Court