

Claim No: 418247

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Water Shed v. Parnell, 2013 NSSM 53

BETWEEN:

THE WATER SHED

Claimant

- and -

JAMES PARNELL

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on September 17, 2013

Decision rendered on October 5, 2013

APPEARANCES

For the Claimant Stephen Burke, owner

For the Defendant Kent Noseworthy, counsel

BY THE COURT:

[1] This is a dispute over a bill for the cost of drilling a new well at a home site on Orchard Drive in Middle Sackville, where the Defendant was constructing a new home. The Claimant was retained without the benefit of a written contract or even so much as a quote. As such, it is really a *quantum meruit* claim, or a contract with an implied term that a reasonable rate will be charged for the work done, which (in the absence of some valid objection) would be based on the Claimant's usual rates or prevailing rates in the business.

[2] The Defendant does not dispute that he hired the Claimant and that he is liable for some amount. The Defendant contends that he instructed the Claimant to stop drilling at 220 feet, which would have resulted in a smaller bill. In fact, the well was drilled to a depth of 300 feet, resulting in a bill for \$7,314.00.

[3] Although the defence as filed contended that the instruction to stop drilling occurred at 220 feet, the e-mail communication between the parties appears to indicate that the Defendant's earlier contention was that such an instruction was given at 240 feet. There could be some confusion in the sense that it is the 220 foot pipe that is actually in the ground when the 240 foot mark is reached.

[4] The owner of the Claimant company, Stephen Burke, contends that when they reached the 240 foot mark, the testing indicated a slightly inadequate water supply, and he says that the Defendant told him to go to 300 feet but no further, in order to try to boost the capacity of the well. Mr. Burke's evidence is corroborated by his employee, Steve Baker.

[5] It is fair to say that this project created more conflict than one would expect from a routine job such as this. Perhaps it has something to do with the very strong personalities on both sides, and the fact that well drilling can create a great deal of mess. The Defendant made a number of statements quite derogatory of the service that he received. In the end, this is irrelevant because he appears to have received a reasonably adequate and professionally drilled 300-foot well.

[6] Based on all of the evidence, I am satisfied that the Claimant had clear authority to go to 240 feet, but thereafter there was some ambiguity. The Defendant may well have believed that the Claimant would not continue drilling at that point, until he had the chance to think about whether he wanted further drilling. Such a course of action would have required the Claimant to leave his equipment on site for the weekend, to return the following Monday and possibly lose some time while he extricated his equipment without doing any further work. There is some question about whether the Claimant would have been prepared to do that, as it would have cost him money while his equipment was in place and idle. I am also satisfied that the Claimant legitimately wanted to produce a good well, and that he believed that further drilling was justified. It is unclear whether the additional depth produced more water, but (at least) it produced a larger reservoir which can be helpful in times of water shortage.

[7] I do not believe that the Claimant should be forced to donate 60 feet of drilling at no expense to the Defendant, since the Defendant benefits - one way or another - from this drilling. In my view, the appropriate result is to split the difference and allow the Claimant to be paid for one half of the additional 60 feet.

[8] In the result, the total of 30 feet X \$16.00 per foot results in a reduction of \$480.00, together with \$72.00 in HST, for a total reduction of \$552.00 from the bill as rendered.

[9] The Claimant will accordingly have judgment for \$6,762.00 plus his cost of issuing the claim in the amount of \$190.92, for a total of \$6,952.92.

Eric K. Slone, Adjudicator