

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

BLAIR PORTER

Plaintiff(s)

- and -

(1) RODNEY R. BECK and (2) JANELLE D. BECK

Defendant(s)

Transcript of the Decision by The Honourable Justice
A. M. Mahar, sitting in Hay River, in the Northwest
Territories, on the 27th day of January, 2017.

APPEARANCES:

Mr. B. Porter: Appearing on behalf of the Plaintiff
Mr. R. Beck: Appearing on behalf of the Defendants
Ms. J. Beck: Appearing on behalf of the Defendants

Official Court Reporters

1 THE COURT: We held a trial this week
2 between Blair Porter, the plaintiff and defendant
3 on the counterclaim, and Rodney and Jenelle Beck,
4 defendants on the original claim and plaintiffs
5 on the counterclaim.

6 In October of 2012 the Becks entered into
7 a contract with Blair Porter for a complete
8 renovation of their basement. This included
9 a bathroom, a laundry room, two bedrooms,
10 and a total price of \$45,000 was agreed upon.
11 This \$45,000 included all materials, as well
12 as a \$6,300 value set aside for unforeseen
13 costs. Work began. Everything was going
14 well initially. Two progress payments of
15 \$11,000 each were made. The Becks also
16 supplied \$12,000 worth of materials.

17 Around Christmas, while the Becks were
18 having a child, Mr. Porter found himself in
19 fairly desperate circumstances and he asked
20 for a further progress payment; the Becks
21 provided a further \$5,000. Adding the \$12,000,
22 \$22,000 and \$5,000 together, there was \$6,000
23 remaining on the contract. The contract was
24 inclusive of tax.

25 In early February, while the work was
26 still incomplete, and I will get into that in
27 more detail soon, Mr. Porter asked, depending

1 on the evidence, either for full payment or
2 for a further \$5,000. Whichever it was, \$5,000
3 was close enough to the final amount remaining
4 that it could be considered essentially a final
5 payment. The Becks said no, that they wanted
6 to wait until the work was done or at least
7 more substantially complete.

8 Mere days later they were served with
9 a final bill, which included \$6,000 for the
10 remainder of the contract, \$971 for miscellaneous
11 work relating to the work on the contract, and
12 \$525 for the upstairs demolition. The upstairs
13 demolition was an interesting issue. It may
14 or may not have been agreed to by the parties.
15 In any event, I propose to deal with it by way
16 of an offset against the cost that was required
17 to at least clean up the upstairs and make it
18 habitable. The total value that was claimed by
19 Mr. Porter was \$7,656. The Becks counterclaimed,
20 claiming that there were substantial deficiencies
21 in the work that was done, as well as work that
22 was simply not done, and are asking for a total
23 of \$37,000.

24 During testimony Mr. Porter originally
25 suggested that the work was complete to the
26 state required under the contract. Over the
27 course of the trial he did agree that there

1 were deficiencies and that there were also
2 things that should have been done that were
3 not done.

4 I make the following findings: I find that
5 Mr. Porter has not met the burden with respect
6 to his claim and there will be no judgement in
7 his favour accordingly. There will be an offset,
8 which I will discuss again shortly. I find that
9 the Becks have succeeded in their claim on a
10 balance of probabilities, but not to the extent
11 of the originally claimed amount, and I will
12 now go into the details of that.

13 I find that the work was below the
14 minimum acceptable standard in a number of
15 ways, and again, Mr. Porter was candid about
16 this. He was going through a difficult time
17 towards the end of the contract, and work that
18 likely would have been done in a better way
19 by him simply was not. The staircase was 12
20 inches below code, a substantial amount below
21 code. It was 65 inches, the code mandated 77
22 inches. The Becks attempted to repair this
23 through another contractor afterwards at a
24 cost of \$5,000, but they were still four inches
25 out of code. So the staircase is going to have
26 to be replaced. The staircase itself was poorly
27 constructed. There were obvious cracks along

1 stress points basically along the entire length
2 of the staircase. I am not going to make a
3 judicial finding that these cracks were caused
4 only by stress on the staircase, but whether
5 it was caused by stress on the staircase or by
6 cracking due to the heat from the wood stove,
7 all of that was known to Mr. Porter when he
8 constructed the staircase and it should have
9 been better built. So for both of those reasons,
10 one because of the code, and two because of the
11 construction of the staircase, the staircase
12 is going to have to be completely rebuilt.

13 Mr. Beck was candid when he stated that
14 he could not recall whether or not a railing
15 was part of the original discussion. I gave
16 Mr. Porter the benefit of the doubt on that
17 and I accordingly deducted the cost of the
18 railing.

19 A drop-down ceiling was placed throughout
20 by a subcontractor. It is an extensive piece
21 of work involving plaster work on an existing
22 ceiling. The ceiling apparently was attached
23 to strapping that was not dry. The strapping
24 appears to have shrunk and cracked along the
25 seams in the gyproc. I do not believe Mr. Porter
26 is objecting to that conclusion, it is simply a
27 question of what needs to be done to fix it. But

1 it needs to be fixed. As well, there are visible
2 deficiencies in the walls, there are deficiencies
3 in the trim and deficiencies in the electrical
4 outlets. It is all relatively minor work, but
5 it is all going to have to be done, and there
6 is going to have to be some substantial work
7 done. We have a quote on that, which I will
8 get to shortly, but that was another deficiency.

9 In the bathroom the toilet was placed
10 six inches too far from the wall, which is
11 not only unsightly, but is actually a bit of
12 a hazard because it can then crack. The floor
13 was not level, resulting in a one-inch gap at
14 one end, or probably a little greater than a
15 one-inch gap at the one end of the tub, which
16 is also not acceptable. The tile also did not
17 meet the vanity which was eventually put in.
18 As this vanity was supplied by the Becks I am
19 not proposing to give value for the original
20 custom vanity that was agreed upon, but the
21 tile work still needs to be redone. The tile
22 work needs to be redone, the floor needs to
23 be levelled, and the toilet needs to be moved.
24 There is also an open unfinished space that
25 should have been filled in the closet, which
26 needs to be addressed.

27 In the laundry room there is an open

1 unfinished space which needs to be at the
2 very least drywalled and taped and mudded.
3 There also needs to be a shelf in the closet
4 and a vent cover placed on an open heating
5 vent. Both bedrooms require shelves in the
6 closets. There also needs to be some work
7 done in terms of making safer hatches into
8 the plumbing access ports in the flooring.

9 Upstairs there appears to have been a
10 misunderstanding with respect to the demolition
11 of a wall. That said, the upstairs was left in
12 a totally unsatisfactory state for habitation.
13 There were protruding nails, exposed live wires,
14 which, while they were maretted off at least,
15 were not in any way left safe. Work had to
16 be done to correct that and we have a number
17 attached to that as well.

18 There was substantial garbage left outside
19 by way of waste. Now, this was not unexpected,
20 but given the way the relationship between the
21 parties went that waste was left at the end in
22 the wintertime and had to be dealt with when
23 the weather cleared.

24 There was an issue with respect to the
25 amount of finish that was done in the wood
26 room. It was not clear to me exactly what
27 had been agreed on between the parties in

1 the contract. Probably something more should
2 have been done, but I am not proposing to attach
3 any dollar figure to that, just because it was
4 unclear exactly what should have been done.

5 Given the nature of the work that was
6 done, it was entirely reasonable for the
7 Becks to withhold the final payment until a
8 more substantial completion had been reached.
9 Virtually all of the money that was required
10 had already been paid. They were simply left
11 with about 13 to 15 percent of the outstanding
12 bill remaining, and as I said, it was entirely
13 reasonable for them to withhold that final
14 payment until completion of the work.

15 I take Mr. Porter at his word when he
16 says he would have remedied everything, but
17 given the way the relationship between the
18 parties went after the filing of the lien
19 it would be completely unreasonable to expect
20 that the Becks would have been content with
21 him coming in to do the work. So we are going
22 to have to look at the costs to get other people
23 to remedy the deficiencies in the undone work.

24 In terms of Mr. Porter's claim, while
25 I have rejected the basis for the claim, there
26 was an agreed upon amount of \$45,000 for the
27 completion of the work. Since I am going to

1 be imposing judgement against Mr. Porter for
2 the completed work it is only fair that I deduct
3 the cost to completion that was contemplated by
4 the contract.

5 So there will be a \$6,000 credit against the
6 amount that I am going to award, which brings us
7 to the \$45,000. Because of the misunderstanding
8 with respect to the work upstairs there will be a
9 \$525 credit to Mr. Porter as against the roughly
10 \$1,250 that it cost to get the work upstairs put
11 in a condition where you could use the house.
12 The \$971 that was claimed for miscellaneous
13 work should have been included in the \$6,300
14 that was set aside in the contract. So I do
15 not credit the \$971, I simply reject it. So
16 the total amount of offset will be \$6,525.

17 In terms of damages, for the cleanup we
18 heard from Chris Betts from Arcan, which is
19 perhaps the premier contracting firm in town.
20 They typically do commercial work, but they
21 also do some residential work. The original
22 quote was quite high, but it involved the use
23 of a dumpster and also the need to remove the
24 materials during the wintertime. Mr. Betts
25 agreed that a reasonable amount or the minimum
26 amount to remove those materials was a thousand
27 dollars. I will impose judgement for a thousand

1 dollars with respect to the cleanup.

2 With respect to the bathroom, we received
3 a very reasonable quote from Mr. Betts in terms
4 of levelling the floor, moving the plumbing and
5 fixing the tile work around the vanity that is
6 currently in place of \$2,500. I see no reason
7 to deviate from that \$2,500 and that amount is
8 imposed as well.

9 With respect to the staircase the quote
10 was \$8,740. There was a 25 percent acknowledged
11 reduction for that work to be done by a more
12 standard contractor here in town. I take that
13 into account, that the contract with Mr. Porter
14 contemplated someone like Mr. Porter doing the
15 work, and it would not be fair to Mr. Porter
16 to impose the cost of having the highest priced
17 contractor in town doing the work. There is
18 also a 25 percent reduction, which I take from
19 that amount, from the 25 percent already reduced
20 amount for the railing, which leaves an amount
21 just shy of \$5,000. I will raise that to \$5,000
22 simply in fairness. There is going to be some
23 additional work that needs to be done and it
24 is only a matter of about \$70, which is the
25 difference between \$5,000 and the amount
26 I came to. So \$5,000 for the staircase.

27 To fix the sealing and do the necessary

1 painting and patch-up, we heard from Andrey
2 Dziewa. To completely redo the paint work
3 and plaster work in the basement up to the
4 standard that Mr. Dziewa, a professional painter,
5 would have done it, and it was quoted at \$5,040.
6 Mr. Dziewa agreed that if he was only going to do
7 what was necessary to bring it up to a reasonable
8 standard that the amount would be roughly half of
9 that at \$2,500. Therefore, there will be \$2,500.
10 He said between \$2,000 and \$2,500. There is an
11 extensive amount that needs to be done, so we
12 will make it \$2,500.

13 Moving onto the cabinets in the bathroom,
14 we heard from Mr. Lafferty. A cabinet is going
15 to be \$475. That seems like a fair amount, I
16 will impose that. Shelves in the two bedrooms
17 and the one shelf in the laundry room came to
18 a further \$400, for a total of \$875.

19 With respect to the open space in the
20 laundry room, I used my own discretion in
21 terms of coming to a number on that, with
22 respect to gyproc and a vent cover, of \$200.
23 So I add \$200 to the amount for that piece
24 of work.

25 Upstairs, a total of \$1,250 was spent,
26 which seems quite reasonable to bring the
27 upstairs to a state that was safe and usable.

1 I will apply the \$1,250 as well, for a total
2 of \$13,325. I take \$13,325 and subtract \$6,525.
3 I am left with an amount of \$6,800. So there
4 is judgement against Mr. Porter in the amount
5 of \$6,800 even.

6 I make the following orders: The lien
7 against 5 Mackie Place, Hay River, Northwest
8 Territories, legal description lot 905, plan
9 380, Hay River, taken out by Mr. Porter, is
10 to be removed. The Becks will have judgement
11 against Mr. Porter in the amount of \$6,800.
12 I will impose costs in favour of the Becks
13 on a party and party basis.

14 Madam Clerk, is there anything I have
15 neglected that you can think of?

16 THE CLERK: I don't believe so, Your
17 Honour.

18 THE COURT: Is there anything from
19 either one of the parties in terms of anything
20 I have forgotten?

21 MR. BECK: The window wells you never
22 spoke about, but I don't know if you just threw
23 that out.

24 THE COURT: With respect to the window
25 wells, my understanding was that the work on
26 the exterior of the house was to be completed
27 as part of another contract, and that was not

1 substantially deviated from in the testimony.
2 It was sloppy leaving the cracks in them, but
3 I do not see any reason to impose anything
4 further for that.

5 MR. BECK: Okay.

6 THE COURT: I did think about it.
7 Again, I want to thank you all the way this
8 went this week.

9 MR. BECK: Thank you.

10 THE COURT: And hopefully you can all
11 put it behind you. I wish you all the best.
12 Close court.

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15 Certified to be a true and
16 accurate transcript, pursuant
17 to Rules 723 and 724 of the
18 Supreme Court Rules.

19 _____
20 Joel Bowker
21 Court Reporter
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