

*Leonard Brotherston, Natasha Brotherston and Ralph Delaney*  
*v. James Shannahan and Michelle Clowe-Shannahan, 2015 NWTTC 14*

Date: 2015 07 30  
Files: T1-CV-2014-000049  
T1-CV-2014-000062

**IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

LEONARD BROTHERSTON AND NATASHA BROTHERSTON

Plaintiffs

- and -

JAMES SHANNAHAN AND MICHELLE CLOWE-SHANNAHAN

Defendants

**AND BETWEEN:**

RALPH DELANEY

Plaintiff

- and -

JAMES SHANNAHAN

Defendant

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**REASONS FOR DECISION**  
**of the**  
**HONOURABLE JUDGE GARTH MALAKOE**

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Heard at:	Yellowknife, Northwest Territories
Date of Decision:	July 30, 2015
Date of Trial:	February 27, 2015 and June 3, 2015
Appearances for Plaintiffs	Leonard Brotherston, Natasha Brotherston and Ralph Delaney
Appearances for Defendants:	James Shannahan and Michelle Clowe- Shannahan
Counsel for Defendants:	Jenna Bever (for June 3, 2015 appearance)

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**A. INTRODUCTION**

**A.1 Background**

[1] Leonard and Natasha Brotherston own a house in Yellowknife, Northwest Territories. They were friends with James Shannahan and Michelle Clowe-Shannahan. Their sons went to the same school and played soccer together. Leonard Brotherston had been doing his own renovations to the Brotherston residence but decided he would hire someone to do them. Mr. Shannahan owned his own construction company. The two men were talking at a birthday party. Mr. Shannahan said that he could help Mr. and Ms. Brotherston out.

[2] This case involves the renovations at the Brotherston residence during February of 2014. Leonard and Natasha Brotherston claim that James Shannahan provided general contracting services which resulted in damage to the residence and which required Mr. and Ms. Brotherston to spend over \$35,000 to repair (the

“Brotherston claim”). Another part of the Brotherston claim is that Michelle Clowe-Shannahan provided the windows and doors for the Brotherston residence and there are issues with respect to one window and the doors. Ralph Delaney provided plumbing services at the residence. He claims that he was hired by James Shannahan and has never been paid by Mr. Shannahan (the “Delaney claim”).

[3] Michelle Clowe-Shannahan says that she had nothing to do with the agreement that her husband had with the Brotherstons. Although she owned a window and door company, her company did not supply windows or doors to the Brotherston residence.

[4] James Shannahan says that he owes nothing to Mr. Delaney or to Mr. and Ms. Brotherston. All the work that he provided to the Brotherston residence was provided “as a friend”. He was not acting as general contractor and has no financial responsibility for the sub-trades including Ralph Delaney. Any decisions about how the renovations were carried out were made by Leonard and Natasha Brotherston. Finally, when Mr. Shannahan was asked to leave the site, the deficiencies and damage claimed by the Brotherstons were not present.

## **A.2 Conduct of the Trial**

[5] Ralph Delaney had filed his claim on May 15, 2014. Leonard and Natasha Brotherston filed their claim after. An unsuccessful mediation was conducted on the Brotherston claim and the February 27, 2015 trial date was scheduled. For some reason which was no fault of Mr. Delaney, his claim was not acted upon in the Court Registry and no mediation was scheduled or held. Mr. Delaney was invited to participate in the trial on February 27, 2015 and decided to do so.

[6] Essentially, these two claims were tried at the same time. All parties were present in the courtroom for the entire day. At the beginning of the trial, I encouraged the parties to consider settlement at all stages of the trial and then explained how the trial would be conducted. Mr. Brotherston produced a book of documents and a collection of photographs. Apparently, these had been present at the mediation, so that James Shannahan and Michelle Clowe-Shannahan were aware of them. They were not, however, served on the Defendants prior to trial. I offered the Defendants an adjournment to review the documents and photographs. Mr. Shannahan indicated that he was prepared to proceed.

[7] Following the presentation of evidence, there was an adjournment until May 3, 2015 and then to June 3, 2015. On June 3, 2015, the parties gave their submissions. By May 3, 2015, James Shannahan and Michelle Clowe-Shannahan

had retained Jenna Bever of the law firm, Ahlstrom Wright Oliver & Cooper to represent them.

[8] As a result of the evidence given at trial, I have amended the styles of cause in these two actions to be as shown in this Decision.

## **B. EVIDENCE AT TRIAL**

### **B.1 Introduction**

[9] During the trial, the order of witnesses was as follows: Leonard Brotherston, Natasha Brotherston, Ralph Delaney, James Shannahan and Michelle Clowe-Shannahan. Each of the parties who were adverse in interest was given the opportunity to cross-examine.

[10] The following is a brief summary of the evidence given by each witness.

### **B.2 Evidence of Leonard Brotherston**

[11] In addition to his testimony in court, Mr. Brotherston provided a six page summary of his evidence, which he adopted as part of his testimony. This six page summary is at the beginning of Exhibit 1 in this action.

[12] Mr. Brotherston testified that he hired James Shannahan to work on the house owned by him and his wife. He and Mr. Shannahan had been talking at his son's birthday party. Mr. Shannahan said that he was a general contractor and Mr. Brotherston said that he was looking to get work done on his house. Mr. Shannahan was going on vacation to Newfoundland but when he came back, he would be looking for work. Mr. Brotherston had been renovating the house himself but he was tired of doing the renovations himself. Mr. Shannahan said that he would give Mr. Brotherston a good deal.

[13] When Mr. Shannahan returned from Newfoundland, he sent texts to Mr. Brotherston inquiring as to whether he was still interested. Mr. Brotherston said that he was still interested.

[14] Mr. Shannahan came to the Brotherston residence and spoke to Mr. and Ms. Brotherston. He said that he could do all of the work in renovating the three bathrooms and kitchen for \$25,000 to \$30,000. According to Mr. Brotherston, this was a quote for everything and would be the total cost of the whole project: supplies, labour, doors and windows and plumbing. Mr. Shannahan said he had done work for friends in the past and had charged friends just his costs. The

Brotherstons would buy the material and supplies and Mr. Shannahan would charge labour at around \$30.00 / hour.

[15] The work was to include three finished bathrooms with two new windows in one of the bathrooms and one new window in the kitchen. The front and back doors were to be replaced. In addition, the kitchen counter top would be replaced and there would either be new kitchen cabinet doors or they would be refinished.

[16] In February, 2014, James Shannahan came to the Brotherston residence with two workers, Colin and Dean. They gutted three bathrooms in the house: the master bedroom ensuite, the second floor bathroom and the basement bathroom.

[17] Mr. Brotherston testified that Ralph Delaney became involved as a result of James Shannahan. In the ensuite, Mr. Brotherston, Mr. Delaney and Mr. Shannahan talked about moving the plumbing. James Shannahan said that the joists should be cut to allow passage of the plumbing pipes and the joists could be made solid after.

[18] Mr. Brotherston also asked if a wall in that bedroom was a supporting wall since they would be moving the door. James Shannahan told him that it was not a supporting wall and cut through one-half of the wall without putting in any supports.

[19] Mr. Brotherston says that Mr. Shannahan cut a floor beam consisting of two 2 x 10's joined together. The depth of the cuts was within 2" of the bottom of the beam. The cuts were made to accommodate the plumbing. In addition, the tops of the floor joists in the ensuite were cut when the plywood was removed. Later on, after Mr. Brotherston had fired Mr. Shannahan and when Mr. Brotherston had the City inspect the ensuite, he was told that the beam and the joists should not have been cut and that the wall was a load bearing wall. An engineer was hired who recommended the installation of an engineered steel beam and new floor joists. This was done.

[20] With respect to the windows and doors, Mr. Shannahan indicated the following in his texts of January 31, 2014: "14783.30 freight included for windows and doors let me know can have them in a week that's my cost no mark up you can pay directly by visa if ya want its up to you [sp.]" and "yes u will save on freight and your saving about 5 to 6 thousand causer im getting you this product at cost no mark up but don't ever tell anyone cause then everyone wants a deal which im not about to give everyone a deal im doing it for you cause our kids hang were friends thats y everyone else can pay regular price thats y its called business. [sp.]"

[21] Mr. Brotherston said they accepted the quote but reduced it by the cost of one door. In the end, Mr. Shannahan installed two doors and two windows. Mr. Shannahan had done the measuring for the windows and doors. The windows in the bathroom were properly installed. The back and front doors were not the right size and were too big for the space. They were not installed properly. The locks were not installed properly and the keys for the locks were lost. According to a report from Diamond Glass, because Mr. Shannahan used PL400, a plywood glue, to install the doors, the doors would have to be cut out to reinstall properly and this would damage the frames. In addition, Mr. Shannahan ordered the wrong doors. The Brotherstons had requested doors which were white and not off-white and which had a frosted glass in the front door and an opener for the back door window.

[22] Mr. Brotherston feels that he was not charged the cost price of the doors and windows. Mr. Brotherston had asked for the receipt for the windows and doors. He was never given a receipt but only a quote to M & L Windows, which is the company of Ms. Clowe-Shannahan. Mr. Brotherston asked a friend of his to get a quote from the same supplier in Edmonton and the received quote was considerably less. Mr. Brotherston paid for the windows and doors by giving a cheque to James Shannahan for \$12,283.20 made payable to him.

[23] Mr. Brotherston paid James Shannahan \$6,000 cash two weeks after the work began. He paid a further \$6,800 cash after he had let Mr. Shannahan go for poor workmanship and damage.

[24] When Mr. Shannahan was let go, the work was at the following stage. The upstairs bathroom was gutted and the plumbing was in through all the joists. The second floor bathroom had concrete board on the floor and concrete board and drywall in the shower and above. It was mudded and taped but this was poorly done. The concrete board was bowed and there was cardboard on the studs to get the wall over the top of the bathtub lip. The bathroom downstairs had been gutted and the rock upon which it sat was broken out. Concrete was poured. The bathroom was dry walled and the tub surround was put in. There was no support behind the tub surround. The taping and mudding were poorly done.

[25] Mr. Brotherston gave the \$6,800 cash payment to Ms. Clowe-Shannahan. At the time he gave her the money, she said to him that she would not have given her mother a better deal on windows and doors. I took this to mean that Ms. Clowe-Shannahan thought that the price charged to the Brotherstons was a very low price.

[26] Mr. Brotherston testified that supplies and materials were ordered by James Shannahan and that Mr. Brotherston would go and pay the account directly. This was the case with all suppliers except Ron's Auto. There was a bill there for the rental of the rock drill. At some point, Mr. Brotherston went to pay it but was told that James Shannahan would have to pay it directly.

[27] Mr. Brotherston testified that he did not know that any permits were required to do the renovations. After Mr. Brotherston had paid the second payment of \$6,800 to Mr. Shannahan, Mr. Shannahan stopped responding to Mr. Brotherston's texts. Mr. Brotherston was suspicious that Mr. Shannahan had broken the kitchen window that was laying outside and which had not been installed. Mr. Brotherston called the police, who in turn, contacted the City of Yellowknife. The City told the RCMP that there were no permits taken out for the renovations and the City contacted Mr. Brotherston. The City came to the Brotherston residence to do an inspection and they required Mr. Brotherston to go and obtain permits.

[28] Mr. Brotherston never had a discussion with Ralph Delaney about costs for the work Mr. Delaney was doing. Mr. Shannahan had informed Mr. Brotherston that the cost of plumbing would be around \$5,000. Mr. Brotherston felt that if he was responsible directly for Mr. Delaney's costs, Mr. Shannahan would not have simply hired Mr. Delaney and Mr. Brotherston would have known the cost.

### **B.3 Evidence of Natasha Brotherston**

[29] Natasha Brotherston testified that after the discussion with James Shannahan at the birthday party, Mr. Shannahan came to their house and did a walk through with her and Mr. Brotherston. They discussed the renovations to the three bathrooms, the refinishing of the kitchen cupboards and the replacement of the kitchen counters. Initially, they were going to replace the front door, the back door and the living room doors on the front balcony as well as new windows in the kitchen. Mr. Shannahan gave a quote for \$25,000 to \$30,000 for labour and materials. Mr. and Ms. Brotherston gave Mr. Shannahan sketches of the washrooms.

[30] Ms. Brotherston understood that they were hiring Mr. Shannahan's company as the general contractor and that he would pull the necessary permits.

[31] One of the windows arrived and was unloaded on the front deck. It was never installed. The front door was installed improperly. It has two doors. Ms. Brotherston can unlock the inner lock on the inner door from the inside. She cannot lock the inner door. She cannot lock the outer door from the inside. They had asked for a side window to the back door which opened. When the door

arrived, Ms. Brotherston asked James Shannahan where the window opener was. He said that it was on the truck. It turned out that there was no window opener and the side window did not open.

[32] Ms. Brotherston was aware that Ms. Clowe-Shannahan operated a window and door company and assumed that the windows and doors were being ordered through that company. Mr. and Ms. Brotherston did not have any direct contact with Ms. Clowe-Shannahan regarding the estimate for or the ordering of the doors and windows.

[33] After Mr. and Ms. Brotherston let James Shannahan go and Mr. Brotherston was dealing with the City of Yellowknife, the City did an inspection and would not let them get permits to do the work until an engineer did the inspection. After the engineer did the inspection, plans were made and Konge Construction was hired to build a temporary support wall in the dining room under the master bathroom to hold up the ceiling while the structural beams were fixed upstairs.

#### **B.4 Evidence of Ralph Delaney**

[34] Ralph Delaney testified that he was called to 36 Calder Crescent by James Shannahan regarding some work that he was doing there. Mr. Shannahan explained to Mr. Delaney what was to be done in each of the bathrooms. Mr. Delaney was to supply the rough in materials and labour to do the work. They proceeded to gut the ensuite. There were two drawings. Mr. Delaney pointed out to Mr. Shannahan that if they followed the layout in one of the drawings, it would mean the joists would have to be cut in order to accommodate the pipes. Mr. Shannahan responded that “we have to get it done” and “we have to do what the owner wants.” Mr. Shannahan said that he would fix it up after the fact.

[35] Mr. and Ms. Brotherston were not aware of Mr. Delaney’s cost for his plumbing work. They never talked to him or asked him about the costs. It was only James Shannahan that approached him and said, “How much do you figure?” Then Mr. Shannahan suggested \$5,000. Mr. Shannahan did not explicitly say that he would be paying Mr. Delaney but he did state that he would be receiving cash.

[36] Mr. Delaney testified that it was not unusual that smaller contractors do not sign contracts with householders for renovations. It is not unusual that the contractors would not get permits for minor renovations. It is only when the work gets into structural changes that they should have permits.

[37] As far as Mr. Delaney was concerned, James Shannahan was controlling and coordinating the whole job. Mr. Delaney said that cardboard should never have

been put behind the drywall and that the doors should never have been installed in the way that they were. He felt that James Shanahan did not properly supervise his employees. For example, the two people who were downstairs breaking concrete would take 15 minutes of rest every half hour.

## **B.5 Evidence of James Shannahan**

[38] Mr. Shannahan testified that he was at the birthday party of one of Mr. Brotherston's kids when Mr. Brotherston said that he wanted to get work done on his house. Mr. Shannahan came back from Newfoundland and was at the swimming pool when he started speaking to Mr. Brotherston again. Mr. Shannahan told Mr. Brotherston that his wife had just had a major operation, that he could not go far from home and that he could "come and give him a hand with his renovations."

[39] Mr. Shannahan did a walkthrough with Mr. and Ms. Brotherston. He told them that it would be roughly around \$55,000 to do the three washrooms, the kitchen, windows and doors. Mr. Shannahan said he would not be there all the time; that he knew a few guys that would go there and do the work; that Mr. Shannahan would supervise them a bit; and that he would be there to help them out.

[40] Mr. Shannahan gave Mr. Brotherston a list for the materials that were needed and Mr. Brotherston ordered the materials.

[41] Mr. Shannahan said that it was made clear to Mr. Delaney that Mr. Brotherston was paying for the mechanical and plumbing work. Mr. Shannahan never asked Mr. Brotherston about permits on the building because it was not his responsibility.

[42] Mr. Brotherston came home one day and told Mr. Shannahan that someone at Mr. Brotherston's place of employment, the North Slave Correctional Centre, said that Mr. Shannahan should not be working for him. Later, Mr. Brotherston came home during lunchtime and said that he had been talking to all these people from work; that he did not want Mr. Shannahan at his house anymore; that he was not satisfied with his work; and to take his tools and leave. As a result, Mr. Shannahan finished his lunch, went over with his truck and took his tools and left.

[43] Mr. Shannahan said that he never charged Mr. Brotherston for his time. He told Mr. Brotherston that as long as he paid the guys that were there working, he would go there as a friend.

[44] Mr. Shannahan says he received one cash payment of \$6,000 from Mr. Brotherston, which he used to pay the four workers. The second payment from Mr. Brotherston, which was brought to Mr. Shannahan by Ms. Clowe-Shannahan, turned out to be an envelope full of blank paper.

[45] Mr. Shannahan says that the damage done to the upstairs master washroom was done by Mr. Delaney.

[46] Mr. Shannahan, Dean Jennings, James Carlson and Collin Barber installed the doors.

## **B.6 Evidence of Michelle Clowe-Shannahan**

[47] Ms. Clowe-Shannahan spoke to her husband during the first week of January, 2014 and reminded him that she was going into hospital for a major operation on January 23, 2014. As a result, he agreed that he would not work or have anything take his time afterwards because she would be bedridden. He would have to look after their seven year old son and daughter.

[48] She was upset that Mr. Shannahan was going to do work for the Brotherstons and he assured her that he was just going to help Mr. Brotherston out and that Mr. Shannahan would not be spending a lot of time over there.

[49] She remembers the Tuesday when her husband came home and said that he had been told by Mr. Brotherston to come and get all his tools and get out of the Brotherston residence.

[50] Ms. Clowe-Shannahan testified that she had nothing to do with the ordering of the doors and windows for the Brotherstons. When Mr. Brotherston complained that one of the windows had been broken, she tried to deal with Alberta Vinyl Windows and Doors on his behalf. At some point, because Mr. Brotherston was causing grief for her son at school, she decided that he could deal with the company himself.

[51] Ms. Clowe-Shannahan obtained a quote for Mr. Brotherston from Alberta Vinyl Windows and Doors to show how much her company would have been charged.

## **C. ISSUES**

### **C.1 Introduction**

[52] In coming to a decision with respect to these two actions, I have considered the following issues:

- (a) What was the relationship of James Shannahan to Leonard and Natasha Brotherston?
- (b) Was James Shannahan responsible for the work that he and the men that he hired performed on the Brotherston residence?
- (c) What was the involvement of Michelle Clowe-Shannahan in the work on the Brotherston residence?
- (d) Who hired Ralph Delaney and who is responsible to pay him?
- (e) Should Ralph Delaney get paid, given that he cut the beam?
- (f) What is the effect of the missing \$6,800?
- (g) Were the doors and windows properly installed?

### **C.2 Relationship of James Shannahan to Leonard and Natasha Brotherston**

[53] It is clear that there was no written agreement between James Shannahan and Leonard and Natasha Brotherston. Nonetheless, each party had certain expectations. At the beginning of the project, there was no thought given by either party to what would happen if the relationship between the parties was terminated.

[54] It was understood that Mr. Shannahan would order the windows and doors and charge the Brotherstons approximately what Mr. Shannahan would pay his supplier. Mr. Shannahan would provide the labour for the work including his own labour and that of other individuals who Mr. Shannahan would hire. Mr. Shannahan would supervise these workers. Mr. Shannahan would hire the plumber. Mr. Shannahan would provide tools for the work except where tools had to be rented. In that case, he would rent the tools and the Brotherstons would pay the account. Mr. Shannahan would provide a list of all materials required. These materials could be bought on the account of Nu-Image Construction (James Shannahan's company) or by cash. They would be paid for by the Brotherstons.

[55] The Brotherstons would pay for all materials. Except for the windows and doors, the Brotherstons would pay the suppliers of materials directly. The

Brotherstons would pay Mr. Shannahan for the labour of his workers on the job. The labour would be around \$30 / hour.

[56] Essentially the agreement was that the Brotherstons would pay for all materials and supplies directly; they would pay James Shannahan for the labour costs; and Mr. Shannahan would supply tools and labour and would direct the work until it was finished.

[57] In his text of February 21, 2014, Mr. Shannahan states: “Hey my labour as of end of yesterday totals 16822.45 I will change out back door today and finish front door wait for plumber to finish rough in I know you said your out of money but I will need to know we’re you stand with this I don’t wants to be fighting with u in the end over a job when im done let me know cause I have to pay these guys they need some money@ [sp.]”

[58] This text is instructive for a number of reasons. Mr. Shannahan refers to his labour as being \$16,822.45. Mr. Shannahan refers to finishing “a job” and when Mr. Shannahan is done, Mr. Shannahan refers to himself as having to pay his workers. Finally, Mr. Shannahan is referring to himself changing out the back door.

[59] In my view, there is a contract between James Shannahan and the Brotherstons. That Mr. Shannahan is doing the work “as a friend” means simply that he is given the Brotherstons “a deal” with respect to not charging a mark-up on materials and giving them a “direct from the supplier” price on the windows and doors.

[60] Mr. Shannahan asserts that by doing the work “as a friend”, he was providing his own labour to this job at no cost to the Brotherstons. I do not accept his testimony on this point; as well as on several other points which I will discuss later. Even if I am incorrect on this issue, Mr. Shannahan was benefiting from this agreement because his workers are being paid.

[61] Prior to the involvement of Mr. Shannahan, Leonard Brotherston was doing his own work. The agreement with Mr. Shannahan was to provide the labour and access to better pricing for materials. This was not a fixed price contract where Mr. Shannahan was acting as general contractor and he would perform certain work of a certain quality for a fixed price. It is correct that he gave an estimate but this was not a binding fixed price.

[62] In coming to my conclusion, I put some weight on the testimony of Ms. Clowe-Shannahan who testified that she was recovering from major surgery during

the times relevant to the Brotherston claim. Mr. Shannahan was not supposed to be involved in a major project so that he could assist Ms. Clowe-Shannahan at home. This adds support to his description that he was providing labour through his workers and his own participation and supervision.

[63] There is one other aspect to the agreement that is troublesome. The Brotherstons were paying cash to James Shannahan, who, in turn, was paying his workers in cash. Presumably, this was to avoid payment of government taxes and deductions such as GST, payroll deductions, etc. Regardless of the other legal issues that this type of arrangement might raise, the payment of cash by the Brotherstons and the disbursement of cash by James Shannahan is a strong indication that Mr. Shannahan's construction company, a limited corporation, was not involved.

### **C.3 Responsibility for the Work**

[64] It was a part of the agreement between the Brotherstons and Mr. Shannahan that Mr. Shannahan would supervise the workers. Mr. Shannahan was hired because he ran his own construction company and because Mr. Brotherston had grown tired of trying to do the work himself. The Brotherstons relied, in part, upon Mr. Shannahan to use his expertise in making choices with respect to how the work was to be done.

[65] The decision to cut into the beam for the plumbing and to remove the load bearing wall were decisions made by Mr. Shannahan as a result of the drawings and instructions provided by the Brotherstons. With respect to the cutting of the beam, I accept Mr. Delaney's testimony that he specifically directed Mr. Shannahan's attention to the issue, but was advised that he should do what the customer wanted and that Mr. Shannahan would fix the problem later.

[66] After the Brotherstons told Mr. Shannahan to leave and then contacted the police regarding the broken window, the City of Yellowknife required an inspection. This resulted in the requirement for an engineer's report. The engineer identified the cutting into the beam and the removal of the load bearing wall as having caused structural deficiencies.

[67] The plaintiffs submit that Mr. Shannahan should be totally responsible for the damages that flow from the decision to cut into the beam and to remove the load bearing wall. The only possible sources of evidence that I have about whether or not "a reasonable carpenter" should know not to do this is the evidence of Mr. Delaney and the engineer's report. Mr. Delaney said that he identified the issue to Mr. Shannahan but accepted Mr. Shannahan's reassurance that it could be fixed.

The engineer's report makes no statements about what a reasonable carpenter would have done.

[68] The Brotherstons had designed their renovations. They had two drawings for the master bedroom ensuite. With respect to the removal of the load bearing wall and the cutting into the beam in the master bedroom ensuite, the Brotherstons should have had their design checked by an engineer. There is no indication in the evidence that they relied upon Mr. Shannahan with respect to the design.

[69] At the point in time when Mr. Delaney cut into the beam, he recognized that there was a structural issue. Mr. Delaney is an experienced professional plumber. Mr. Shannahan claims to be an experienced carpenter although clearly he has no formal training. Both Mr. Delaney and Mr. Shannahan should have identified the need for structural expertise to the Brotherstons.

[70] With respect to the removal of the load bearing wall, I have no evidence whatsoever as to whether or not Mr. Shannahan should have known, as a reasonable carpenter, not to have removed it.

[71] I allocate the responsibility for the damages flowing from the cutting into the beam to be as follows: the plaintiffs (50%), Mr. Shannahan (25%) and Mr. Delaney (25%). With respect to the removal of the load bearing wall, the plaintiffs have not established Mr. Shannahan to be responsible since I have no evidence as to whether or not Mr. Shannahan, as a carpenter, should have been aware of the implications of removing that wall.

[72] I will deal with the remaining items as I go through them later. In doing so, it must be remembered that Mr. Shannahan was providing materials and labour. The design decisions were the responsibility of the Brotherstons.

#### **C.4 Involvement of Michelle Clowe-Shannahan**

[73] Ms. Clowe-Shannahan testified that she operated a window and door company; however, she had no involvement in the work at the Brotherston residence except trying to intervene with the window and door supplier to get the broken window replaced. She also testified that she obtained a quote from Alberta Vinyl Window Designs Ltd. to establish to Mr. Brotherston what her company would have charged versus what Mr. Brotherston paid to Mr. Shannahan.

[74] Ms. Clowe-Shannahan testified that her company had been inactive for at least six months prior to Mr. Shannahan's interactions with the plaintiffs.

[75] The plaintiffs provided no evidence to contradict Ms. Clowe-Shannahan's testimony on this point. As part of the plaintiffs' evidence, there was a quote dated January 31, 2014 in the amount of \$15,947.13 from Alberta Vinyl Window Designs Ltd. "estimated for" M & L Windows & Doors and "ship to" Leonard Brotherson [sp.]" and two delivery notices, one dated January 31, 2014 (Delivery No. 23501) and another dated February 24, 2014 (Delivery No. 3011398) .

[76] Ms. Clowe-Shannahan testified that it may simply be that Alberta Vinyl Window Designs Ltd. had inadvertently left the company name, M & L Windows & Doors, on the delivery notices because of the involvement of Mr. Shannahan.

### **C.5 Who hired Ralph Delaney?**

[77] It is clear that Mr. Delaney was brought onto the job at the Brotherston residence as a result of Mr. Shannahan's connection with Mr. Delaney. I accept that there was no explicit agreement as to who would pay Mr. Delaney. Mr. Delaney knew that he would be paid in cash and that Mr. Shannahan said that he would get paid \$5,000. Mr. Delaney did not speak directly to the plaintiffs about how much he would be paid.

[78] The plaintiffs' agreement with Mr. Shannahan had them paying Mr. Shannahan directly for his labour and that of his men. They paid directly for all materials and costs for rental. The Brotherstons would pay third party costs except for the men hired by Mr. Shannahan.

[79] Mr. Delaney testified that he first approached the Brotherstons and said, "I had a bill, and they said, 'Well, no. You were hired by Mr. Shannahan.'" By his own testimony, Mr. Delaney's first impression was that the home owners should pay his bill.

[80] The onus is on Mr. Delaney to establish that there was an agreement between himself and Mr. Shannahan. In my view, this has not been established. It is equally as likely that Mr. Shannahan was acting as agent for Mr. and Ms. Brotherston and that Mr. Delaney was hired by them and would be paid by them.

### **C.6 Should Ralph Delaney be paid given that he cut into the beam?**

[81] As I indicated above, Mr. Delaney is partially responsible for the decision to cut into the beam and the resulting damage. In that regard, he is liable to the Brotherstons. The responsibility to pay Mr. Delaney is that of the Brotherstons.

[82] Mr. Delaney has not made a claim against Mr. and Ms. Brotherston for the \$5,000; nor, have Mr. and Ms. Brotherston made a claim against Mr. Delaney for

any damages. In addition, Mr. Delaney has not provided evidence that he has completed the work that was agreed to.

### **C.7 What is the effect of the missing \$6,800**

[83] When Mr. Brotherston told Mr. Shannahan to pack up his tools and leave the site, there was an agreement that Mr. Brotherston would pay Mr. Shannahan an additional \$6,800 as complete payment of what was owing to Mr. Shannahan. In return, Mr. Shannahan would come and fix the deficiencies and damage. According to Mr. Brotherston, he put \$6,800 cash in an envelope and this was given to Ms. Clowe-Shannahan at the Correctional Centre. According to Mr. Shannahan, the envelope that was brought to him by his wife, contained blank paper.

[84] I do not accept Mr. Shannahan's or Ms. Clowe-Shannahan's testimony about finding blank paper in the envelope. Mr. Shannahan was not a reticent witness. He was quick to state his point of view and to question the testimony of others. Yet, on the issue of the failure to be paid \$6,800, he waited until it was his turn to testify to make this claim. Neither he, nor his wife, questioned Mr. Brotherston about the missing money when Mr. Brotherston was testifying. Further, despite Mr. Shannahan's apparent directness in stating his position and protecting his workers, Mr. Shannahan never contacted Leonard Brotherston and asked him for the missing \$6,800. When asked why, Mr. Shannahan's explanation at trial made little sense.

[85] Further, the envelope appears to have been picked up on February 28<sup>th</sup>; whereas, Ms. Clowe-Shannahan was still willing to assist the Brotherstons with getting the broken window fixed after February 28<sup>th</sup>. This would have been after they had provided Mr. Shannahan with an envelope of blank paper rather than \$6,800. Ms. Clowe-Shannahan's testimony that she was able to convince Mr. Shannahan not to confront Mr. Brotherston is difficult to accept. I have described how Mr. Shannahan presented himself during his testimony. I doubt very much if his wife could convince him not to act if he felt that he had been deprived of \$6,800 that was owing to him. I also doubt if Ms. Clowe-Shannahan would try and get the window fixed for the Brotherstons if she knew that Mr. Shannahan had not been paid.

### **C.8 Installation of doors and windows**

[86] Mr. Brotherston testified that the two doors were installed crooked and that they were damaged when pieces were cut when the locks were installed. There was a giant gap under the back door. The windows in the bathroom were installed

correctly. Mr. Brotherston contacted Diamond Glass who stated that the doors were glued in with PL400, a plywood adhesive and to remove them, they would have to be cut out, causing damage to the door frames as well. Diamond Glass also said that the doors were the wrong size for the space.

[87] Mr. Brotherston testified that the wrong doors were ordered. They were supposed to be white and not off-white and finished. The front door was supposed to have fancy opaque glass and not clear glass. The Brotherstons wanted a side window that opened on the back door. When the doors arrived, they were given the option to change the insert, but it would cost more money and they declined.

[88] The plaintiffs seek to have the doors removed and replaced with new doors which would be professionally installed. The plaintiffs assert that the costs associated with this replacement should be the responsibility of the defendants.

[89] The plaintiffs did not contract with James Shannahan to select and install the doors and windows. The plaintiffs used Mr. Shannahan's association with Alberta Vinyl Window Designs Ltd. to obtain doors and windows at a "direct from the supplier" price. The plaintiffs contracted with Mr. Shannahan to have him and his men provide labour to install the windows and doors using materials paid for by the plaintiffs.

[90] The plaintiffs have provided e-mail correspondence with Diamond Glass, a Yellowknife company which sells and installs doors and windows. It appears that Diamond Glass was provided with photographs of the installed doors. Mr. Rendell of Diamond Glass states "There's not way to repair these doors or frames, there's way too much damage. The only we would be interested in doing is replacing them completely Budget price is approx.. \$5000.00 for both [sp.]". In a subsequent e-mail, Mr. Rendell makes further comments about the use of PL400 adhesive.

[91] Based on the evidence, I am unable to accept that James Shannahan is responsible for replacing the doors. The evidence shows that there are issues with how the doors were installed, yet at the time that Mr. Shannahan was told to leave the job, Mr. Brotherston had pointed out deficiencies in the installation and Mr. Shannahan was prepared to fix them. It appears that Mr. Brotherston accepted this.

[92] Mr. Brotherston did not contract for a finished job of a certain quality. The Brotherstons ordered the doors and windows, albeit with the assistance of James Shannahan. They hired Mr. Shannahan and his men to install the doors and windows. When the doors and windows arrived, the Brotherstons made the

decision to have them installed, even though they were not exactly what they wanted.

[93] I am not surprised that Diamond Glass is not “interested” in removing the old doors and re-installing them. It is much easier for the company to remove the old doors and to install new doors. The Brotherstons did not contract for the same standard that would be expected if a door and window company agreed to supply a finished product. The Brotherstons are entitled to have the door installation remedied to a standard that is functional.

[94] Aside from Diamond Glass saying that they were not interested in removing and replacing the doors, I have no evidence as to what it would cost to remedy the deficiencies in the door installation. In my view, \$2,500 is a reasonable sum.

[95] With respect to the broken window, there is no evidence before me that establishes that the defendants are responsible for the broken window. Ms. Clowe-Shannahan offered to help the Brotherstons in getting the window replaced; however, that was an offer based on her desire to maintain their friendship.

[96] With respect to the missing keys, I accept that these keys were lost by Mr. Shannahan or his men.

#### **D. SUMMARY OF CLAIM AND JUDGMENT**

[97] The following is a breakdown of the Plaintiffs’ claim:

<b>Description</b>	<b>Amount</b>
1. Damaged doors / wrong size – return and get money back	\$11,865.14
2. Return broken window (large window with 95 x 30) and get money back	\$1,847.34
3. Repair damaged wall and support beams; replace floor joists; remove and re-install plumbing	\$12,301.67
4. Repair / reinstall bathtub surround and fix drywall damaged by contractor	\$6,500.00
5. Recover costs for lost keys	\$147.00
6. Removal of doors and re-installation of new doors	\$2,500.00
Total:	\$35,161.16

[98] For the reasons that I have provided above and below, the following is a summary of the judgment in favour of the Brotherstons against James Shannahan:

<b>Description</b>		<b>Amount</b>
1. Repair deficiencies in doors		\$2,500.00
2. Portion attributable to James Shannahan for repair of support beams; replace floor joists; remove and re-install plumbing (1/4 x \$12,301.67)		\$3,075.42
3. Repair / reinstall bathtub surround and fix drywall in downstairs bathroom		\$3,000.00
4. Portion attributable to James Shannahan to fix drywall with respect to replacing support beam (1/4 x \$3,500)		\$875.00
5. Recover costs for lost keys		\$147.00
Total:		\$9,597.42

[99] The reasons for my decision in regard to the doors, the broken window and the structural damage have already been given. I accept the claim in respect of the repair of the bathtub surround and the repair of the drywall.

[100] With respect to the claim by Ralph Delaney against James Shannahan, I dismiss the claim for the reasons already given. Ralph Delaney was to have been paid by the Brotherstons. He did not make a claim against the Brotherstons. He is not entitled to judgment against Mr. Shannahan. Similarly, the Brotherstons did not make a claim against Mr. Delaney with respect to him cutting into the beam and therefore they are not entitled to judgment against Mr. Delaney.

[101] With respect to the claim against Ms. Clowe-Shannahan by the Brotherstons, the claim is dismissed. I do not find, on a balance of probabilities, that Ms. Clowe-Shannahan supplied the windows and doors, as alleged.

## **E. CONCLUSION**

[102] With respect to action number T1-CV-2014-000062, Leonard Brotherston and Natasha Brotherston shall have judgment against James Shannahan in the amount of \$9,597.42 plus their disbursements in filing the claim and serving it. The claim against Michelle Clowe (also known as Michelle Clowe-Shannahan) is dismissed.

[103] With respect to action number T1-CV-2014-000049, the claim by Ralph Delaney against James Shannahan is dismissed.

[104] The style of cause for each action will be amended as indicated in this Decision.

[105] There will be no interest awarded. The Clerk will prepare the Judgment. In the absence of any offer to settle made pursuant to the *Territorial Court Civil Claims Rules*, there will be no costs awarded. If such an offer was made by either party and that party is seeking costs, then that party has 15 days from the date of this Decision to notify the Court.

Garth Malakoe  
T.C.J.

Dated at Yellowknife, Northwest  
Territories, this 30<sup>th</sup> day of July,  
2015.

*Leonard Brotherston, Natasha Brotherston and Ralph Delaney  
v. James Shannahan and Michelle Clowe-Shannahan, 2015  
NWTC 14*

Date: 2015 07 30  
Files: T1-CV-2014-000049  
T1-CV-2014-000062

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**IN THE TERRITORIAL COURT OF THE  
NORTHWEST TERRITORIES**

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**BETWEEN:**

LEONARD BROTHERSTON AND NATASHA  
BROTHERSTON

Plaintiffs

- and -

JAMES SHANNAHAN AND MICHELLE CLOWE-  
SHANNAHAN

Defendants

**AND BETWEEN:**

RALPH DELANEY

Plaintiff

- and -

JAMES SHANNAHAN

Defendant

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**REASONS FOR DECISION  
of the  
HONOURABLE JUDGE GARTH MALAKOE**

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