

NOVA SCOTIA COURT OF APPEAL

Cite as: Vermette v. Brian Harris Construction, 1997 NSCA 68

Clarke, C.J.N.S.; Matthews and Flinn, JJ.A.

BETWEEN:

DENIS VERMETTE and DEBBIE VERMETTE)

Appellants)

- and -)

BRIAN HARRIS, doing business under the)
name and style of Brian Harris Construction)

Respondent)

Randall P. H. Balcome
for the Appellants

Greg J. Turner
for the Respondent

Appeal Heard:
April 3, 1997

Judgment Delivered:
April 3, 1997

THE COURT: Appeal dismissed per oral reasons for judgment of Clarke,
C.J.N.S.; Matthews and Flinn, JJ.A. concurring.

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REASONS FOR
JUDGMENT BY:

Clarke, C.J.N.S.
(Orally)

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

Mr. Harris, the respondent, built a house for Mr. and Mrs. Vermette, the appellants.

Being unable to agree upon the final settlement of accounts, Mr. Harris took action against Mr. and Mrs. Vermette for \$38,410.54 for materials, wages, GST and, in addition, prejudgment interest and costs. Mr. and Mrs. Vermette counterclaimed for damages for inconvenience, expenses and mental anguish which they alleged they suffered by the delay of Mr. Harris in completing the construction of their house.

After a trial of the issues before Justice Carver, he took time to consider. In his written reasons dated June 4, 1996, he concluded and found on the evidence that,

1. the parties had agreed upon an initial contract price to build what he described as a "basic state" house;
2. the builder provided extras to the owners for their benefit, and many at their request, and further that the owners knew the extras would result in additional charges beyond the initial basic construction price;
3. again on the evidence, the delays which occurred were insufficient to cause a breach of the contract, and
4. Mr. Harris, the builder, was entitled to be paid for some, but not all, of the extras he claimed.

In the result, Justice Carver dismissed the counterclaim of Mr. and Mrs. Vermette, without costs. By his order dated July 14, 1996, he awarded Mr. Harris \$25,998.24 together with prejudgment interest and costs for a judgment of \$33,701.88.

Mr. and Mrs. Vermette now appeal from the decision and order of Justice Carver. They allege he made errors of law. We have carefully reviewed and considered the record in this proceeding together with the written and oral submissions on behalf of the parties.

Justice Carver made findings of fact upon which there was ample evidence in support. It is our unanimous opinion that he made no errors in fact or in law which are reversible on appeal. Accordingly the appeal is dismissed with costs to the respondent of \$1,200.00, plus disbursements.

C.J.N.S.

Concurred in:

Matthews, J.A.

Flinn, J. A.