

Claim No: 434865

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Ubhi v. Wisen, 2015 NSSM 22

BETWEEN:

RAVINDER UBHI and GURCHARAN UBHI

Claimants

- and -

ZACH WISEN and WISEQUEST

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on February 10, 2015

Decision rendered on February 26, 2015

APPEARANCES

For the Claimants self-represented

For the Defendants self-represented

BY THE COURT:

1[] The Claimants are homeowners in Dartmouth, Nova Scotia. The Defendant Zach Wisen is a contractor, who uses the name Wisequest as a business name. As such, Zach Wisen and Wisequest are one and the same person, and they will be referred to collectively as the Defendant.

2[] This case concerns a contract to renovate two bathrooms.

3[] The Claimants have asked for damages in the amount of \$4,500.00 for what they regard as unsatisfactory and unfinished work.

4[] The Defendant has counterclaimed for \$1,825.00 for extras that he invoiced but which have not been paid, and for the balance owing on the contract.

5[] The uncontested facts are these. The Claimants have a home with two bathrooms - a "main" bathroom and an ensuite, both of which needed upgrading. In October 2014 the Defendant provided separate quotes for the two bathrooms. I will refer to the basic terms below.

6[] These quotes were generated by a computer program, and as it later became evident, there was a problem with how that program operated. For one thing, the column of numbers was not added correctly on one of the invoices, with the result that the Defendant quoted an artificially low amount (by several hundred dollars). The other problem was that it failed to add HST, with the result that both quotes were presented with 0% tax added.

7[] In the result, the Claimants were presented with two quotes with bottom line prices, that they believed represented the amounts that they would be liable to pay. Once those quotes were accepted, the Defendant lost the ability to correct the math error or to add HST to the prices that he had quoted. This disposes of most of what is contained in the counterclaim. I will return to the counterclaim later.

8[] The quote for the main bathroom listed the following items which would be done for a total of \$1,950.00:

- a. Installation of shower tile and doors [supplied by Claimants]
- b. Shower waterproofing kit supplied and installed
- c. Installation of counter top
- d. Removal of old flooring and construction debris
- e. Installation of shower doors and plumbing fixtures

9[] The quote for the ensuite totalled \$2,350.00 (wrongly calculated by \$550.00 - it should have been \$2,900.00) for:

- a. Installation of shower tile and doors [supplied by Claimants]
- b. Shower waterproofing kit supplied and installed
- c. Installation of counter top
- d. Removal of old flooring, tiles on walls and shower
- e. Installation of shower doors and plumbing fixtures
- f. Installation of drywall on walls and shower walls (drywall supplied)
- g. Changing plumbing to other wall and adding half glass wall.

10[] There were also some agreed upon extras which totalled \$650.00 (again without HST added.)

11[] The bulk of the work was done in the last days of November and the first days of December.

12[] Although the Claimants had some concerns, they paid the bill, as presented, less \$500.00 for deficiencies which they expected would be dealt with in the New Year.

13[] The deficiencies that they identified at the time included grout and caulking that needed to be cleaned up. They soon thereafter experienced some problems including a leak from one of the showers that came through the ceiling into their kitchen, causing some damage to walls, cabinets and floors. They contend that neither shower was operable, and the Defendant was unresponsive to their requests that he return to remedy things.

14[] According to the Claimants, they were left without running water in either shower. They have since gotten one going, at least temporarily, with the help of a friend.

15[] The Claimants have had several other contractors attend to look at the work, and they report that no one seems to want to try to rectify someone else's work.

16[] In their Claim the Claimants seek damages of \$4,500.00, which was their estimate of what it might cost to have the work rectified. Mr. Ubhi stated that he believes it would cost between \$500.00 and \$1,000.00 just to rectify the caulking and clean up a few other deficiencies.

17[] The Defendant testified that his work was professionally done, and he disputes the contention that the showers were, or are, not operational. That included custom tile work, which was performed by his father who is an experienced tiler. He concedes that a plumbing mistake was made that resulted in the leak, which he contends was rectified by him at no cost to the Claimants.

18[] He maintains that he was prepared to rectify any deficiencies, had they been pointed out to him. He says that he refused to return because the Claimants told him that they would not be paying the balance of what was owed under the contract (namely \$500.00.) He estimated that this \$500.00 would be about the amount necessary to have any remaining deficiencies rectified.

19[] I have reviewed the photos placed into evidence, but have not found them particularly informative as they are mostly either out of focus, or are close ups that do not provide any context.

20[] I accept that there were some deficiencies, involving messy grouting and/or caulking. I am less clear about functional deficiencies. The evidence of the Claimants was thin on substance. It would have been helpful to have someone knowledgeable inspect the work and offer an opinion as to what may need to be done to bring it up to par.

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21[] I do not question that the Claimants may have been told by other contractors that they do not like to rectify others' work. Many contractors take that view because they prefer larger or other types of jobs. However, there are companies that specialize in repairs, and it would have been better had the Claimants spoken to someone like that.

22[] In the end, the onus of proof is on the Claimants to establish that the Defendant breached his contract, and to prove the amount of damages claimed. I am far from satisfied that they have proved damages anywhere near the \$4,500.00 claimed.

23[] They are still in possession of the \$500.00 unpaid on the Defendant's bill, so the question is: how much more than \$500.00 would it cost them to get the benefit of the bargain that they made with the Defendant? With the evidence being as thin as it is, I must do the best I can and I assess a further \$500.00 in damages.

24[] The Claimants have also had the benefit of the Defendant's failure to add up his bill correctly, and to add HST to it. This is a bit of a windfall to the Claimants. As indicated, the Defendant cannot later try to rectify these errors and claim more from the Claimants. Nor can he collect what is owing on the bill, namely \$500.00, because this is more than offset by the deficiencies.

25[] In the result, the Claimants shall have a judgment for \$500.00 plus their costs of \$171.80. The counterclaim is dismissed, without costs.

Eric K. Slone, Adjudicator