

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Find a Pro Inc. v. Byce, 2005 NSSM 35

Between:

**FIND A PRO INC.**

**CLAIMANT/DEFENDANT BY COUNTERCLAIM**

-and -

**NEIL BYCE AND MARILYN BYCE**

**DEFENDANTS/CLAIMANTS BY COUNTERCLAIM**

**Adjudicator**  
**David T.R. Parker**

Heard: August 4, 2005  
Decision: October 5, 2005

**REVISED DECISION:** This decision was issued previously under an incorrect neutral citation number - 2007 NSSM 73. This decision replaces the previously issued decision

**Counsel:**

**Philip Whitehead for the Claimant/Defendant by Counterclaim**  
**James D. MacNeil for the Defendants/Claimants by Counterclaim**

This matter came before the Small Claims Court at Dartmouth, Nova Scotia, on the 4th day of August, A.D., 2005.

The Claimant company acts as a general contractor in the sense that the company is approached by a customer to perform a job, it does an estimate and if accepted hires people to come in and complete the work that it oversees.

In this particular case, the Defendants were first introduced to the claimant at a trade show and subsequently the Defendants contacted the Claimant Company to have renovations done to their bathroom area of their home.

A contract was arrived at on November 22, 2004, which was broken down into three portions - (1) Plumbing, (2) Electrical, and (3) General Work in the Bathroom. The parties negotiated an up-front payment and contract price and the Defendants paid the up-front portion of \$2,224.38.

The work was completed and an invoice dated March 22, 2005, was submitted by the Claimant in the amount of \$8,026.15 plus HST of \$1,203.92, for a total of \$9,230.07. As the Defendants had paid \$2,224.38, the amount due under the invoice was \$7,005.69, which amount the Defendants refused to pay.

Counsel for the parties indicated from the outset that the electrical portion of the bill was not in issue in this hearing, but rather it was the carpentry portion (\$5,550.00 + HST) and carpentry extras (\$995.00 + HST) that were in issue. I would also note that the Claimant gave a credit of \$794.55 for work not completed for the Defendants.

The electrical and plumbing portion of the work came to \$2,315.70 + HST of \$347.35, or \$2,663.06, leaving the part of the claim in dispute (carpentry \$5,550.00

+ \$995.00 less work not completed \$794.55 + HST or \$6,613.14). The Claimants have paid \$2,224.38 and there is \$2,663.06 owing for the Plumbing and Electrical. Therefore, the Defendants owe \$438.68 on the electrical portion.

In summary, the claim of the Claimant is for the following:

|              |    |               |   |
|--------------|----|---------------|---|
|              | \$ | 5,550.00      | Carpentry                                   |
|              | \$ | 955.00        | Carpentry Extras                            |
| Less         | \$ | <u>794.55</u> | Credit for Incomplete Work                  |
| Sub-Total:   | \$ | 5,710.45      | Credit for Incomplete Work                  |
| Plus HST:    | \$ | <u>856.57</u> |   |
| Total:       | \$ | 6,567.02      |   |
| Plus         | \$ | <u>438.69</u> | Amount Remaining on Plumbing and Electrical |
| Total Claim: | \$ | 7,005.70      |   |

The Defendants have refused to pay the amount of the claim. The basic defence is that the Claimant company did such a poor job that they finally refused to let them complete the job, particularly on the terms the Claimant insisted upon.

I would note here that the Defendants were responsible for providing tiles for the bathroom and they refused to provide more tiles to replace those that were put in improperly according to the Defendants.

The Defendants then put in their own counterclaim for all the work that was

required to redo their bathroom.

The Claimant, in its pleadings, stated that its sub-contractors, "Mark and George Graham of D'Expert Renovations, received specific direction from the Defendant Marilyn Byce during the project which directly controlled [the] tile layout.

Specific constraints on work scope, placed on the project by the Defendant, had direct bearing on the end tile layout and included the following:

- (a) not wanting us to level existing floor
- (b) requesting specific border tile height
- (c) non-use of any schluter strips
- (d) non-furring of existing un-square walls and ceilings
- (e) quality and quantity of tile
- (f) not wanting us to wait for cabinets to arrive prior to tile install"

I accept that the Defendant Marilyn Byce accepted what was being done and gave the "go ahead", as it were, with respect to not putting in a sub floor as called for in the contract and that the Defendants were not concerned at the time about the "square ness" of the walls and floor. However, the Defendants did not direct the project and I am convinced based on the evidence of the Claimant, Andre Habib, the Defendants' tile installer and contractor, that there were a number of deficiencies to the extent that the entire job had to be redone.

The cost to redo the job was \$7,161.40, plus HST of \$1,074.21, plus the supply and installation of tile \$2,380.00.

With respect to the first bill, there were extras that were not part of the original

contract (i.e. the back of the vanity) and there was the green board that was not required to be replaced and that was put there by the Claimant.

With respect to the second bill, five tile and marble bill, the labour was \$1,480.00 and the remaining \$900.00 was for material that the Defendants were responsible for buying in the original contract. However, the \$900.00 should be a valid part of the counterclaim as the tiles had to be replaced due to poor workmanship on the bathroom and improper use of grout, and the Defendants should not have had to pay for tiles twice. Unfortunately, I do not know what the original cost of tiles was and I make the assumption they were the same.

In short, the carpentry for fixing the repairs as contained in Invoice #382 (Exhibit D 11) is very close to what the Claimant claimed for carpentry and extras and therefore I shall not award the Defendants any additional amount. I do this notwithstanding the original contract required the replacement of sub floor which was not done. The tile work, however, had to be all redone and I would award that amount to the Defendants, \$2,380.00 less \$438.68 owing on the electrical and plumbing which was not in issue.

The Defendants, under the provision of *The Consumer Protection Act*, should expect that the work would be done in a workmanlike manner. It was not and they should not have to pay for same. The Claimant should however not have to pay for a new renovation or deficiencies as the Defendants did not pay for the original work by withholding funds except for that part of the costs of the electrical in their down payment costs.

Therefore the Claimant shall not succeed *in toto* on its claim except for the costs of the Vanity which I gather was built properly although not to the liking of the Defendants and the costs of the green board which did not have to be removed as well as the amount of \$438.69 remaining on the Plumbing and Electrical bill. It is somewhat problematic of course as I do not have any heard evidence on the cost of the first two items. However as the parties have decided to put this in the Court's domain and there is some sense of those costs I would allow \$500.00 for the vanity and \$100.00 for the Board. As the Claimant has succeeded to some extent on its claim I would allow its costs. The counterclaim shall succeed to the extent that the tiles have to be repurchased. However the rest of the Defendants counterclaim to redo the bathroom is what the Claimant had to do in the first place and the defendants do not have to be reimbursed for the poor job the Claimant did for Carpentry and installation of the tiles as they never paid for it in the first place. The costs of the tiles inclusive of tax was \$900.00 and I shall allow the Defendants costs on their Counterclaim.

Dated at Halifax, this 5th day of October A.D., 2005.

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David T.R. Parker  
Adjudicator of the Small Claims  
Court of Nova Scotia