

Claim No: 286610

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

Cite as: Walker v. Williams, 2007 NSSM 79

BETWEEN:

DANIEL WALKER

Claimant

- and -

JERMAINE WILLIAMS, WESLEY HENRY WILLIAMS,  
ALESSANDRA B. LENCI and GIOVANNI LENCI

Defendants

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 4, 2007

Decision rendered on December 10, 2007

**APPEARANCES**

For the Claimant: self-represented

For the Defendants: self-represented

**BY THE COURT:**

- [1] This is an action by the Claimant for \$2,300 in consulting services that he claims to have rendered on behalf of the Defendants, in connection with a real estate transaction.

**The Parties**

- [2] It is important at the outset to list the role that each of the Defendants played in this matter, as they are not all the same.
- [3] Jermaine Williams ("Jermaine") owned a house at 683 Lucasville Rd., in Hammonds Plains. In about June of 2007 he was planning to sell this home to his brother, Wesley Henry Williams ("Wesley") and Wesley's partner Alessandra B. Lenci ("Alessandra"). Giovanni Lenci ("Giovanni") is Alessandra's father, and he only enters the picture much later and in a very minor way.

**The Facts**

- [4] While there was an agreement in principle to sell the home, Wesley and Alessandra were having difficulty arranging a mortgage, with the result that the deal was stalled. Wesley was not working enough hours to show a steady income, and Alessandra had unspecified credit problems.
- [5] The Claimant did not know any of the Defendants. In June of 2007, by chance he met Wesley at the home of a mutual acquaintance and heard about the problems that Wesley and Alessandra were having. The

Claimant was known to have worked in and around the real estate business for some ten years, and was asked if he had any advice. After hearing the facts he did have some suggestions to make, which he believed could help solve the problem.

- [6] The first thing that the Claimant observed was that by structuring the transaction as an arm's length sale, Wesley and Alessandra would pay 1.5% of the sale price (i.e. \$2,300) in deed transfer tax. He suggested that there was a better way to set up the transaction, namely as an inter-familial transfer essentially between brothers, which would not attract deed transfer tax. The owners could then raise the necessary money to buy out Jermaine through a mortgage, and eventually Jermaine's name could be dropped from the title. The Claimant referred to this as an "equity take out."
- [7] The Claimant proceeded to have a number of meetings and discussions with various parties, including Wesley and Alessandra's lawyer and several mortgage brokers. He was supplied by Alessandra with original documents including tax returns and an employer's letter supporting her income, which he was to use as required. In the final analysis, the plan was successful. Wesley and Alessandra got their house. A mortgage was acquired through T-D Canada Trust, through one of the Claimant's contacts. Jermaine got his money. In order to facilitate the mortgage, Giovanni was persuaded to add his name to the mortgage as a guarantor. Everyone was or ought to have been reasonably satisfied with the result.
- [8] Upon the transaction coming together, the Claimant presented a bill for \$2,300 for his services, which he says he based upon the deed transfer

tax that Wesley and Alessandra would have otherwise had to pay on an arm's length purchase.

- [9] The Defendants dispute the charge on a number of bases. They say that there was no agreement to pay the Claimant anything. And they dispute his right to charge on the basis that he is not a licenced real estate agent or mortgage broker.
- [10] To secure his claim, the Claimant placed a lien on the property under the *Builders' Lien Act* and eventually proceeded with this action. I was informed that the lien has been lifted in order to allow the mortgage to proceed, but sufficient funds are being held by a solicitor, in trust, pending the outcome of this case.

### **Findings and Discussion**

- [11] The first question to be answered is whether there was any agreement to pay the Claimant for his services, or on the contrary whether they were being provided gratuitously. On this point, I find it difficult to believe that Wesley and Alessandra, or Jermaine, could have believed that the Claimant was doing this freely. He was someone they barely knew. It was because of his experience, contacts and his sense of confidence that he was being asked to help. And despite the attempts of Wesley and Alessandra to minimize the amount of time that he put into this, I find that the Claimant did spend some considerable time and effort, travelling to meetings at various places, and making introductions via telephone.

- [12] If they had any doubt as to whether they were engaging a paid consultant, Wesley and Alessandra could have sought a clarification as they watched the Claimant go about their business with some gusto. I find that the Claimant received at least a tacit approval to proceed as he did and that he would be compensated for it.
- [13] The question of whether or not there was a fixed price agreed to between the parties is a bit more troubling. The Claimant was not entirely convincing on this point, while Wesley and Alessandra adamantly deny that it was even mentioned. Nevertheless, it does seem probable that the Claimant would have seized upon this amount at an early stage. He most likely reasoned to himself that by saving Wesley and Alessandra this amount of money and getting them the mortgage that they appeared unable to get through their own efforts, they would be in as good or better a position as a result of his efforts and would be happy to pay him what would otherwise go to the municipality. On that point - that they would be happy to pay him - he appears to have been mistaken.
- [14] The fact that there may not have been a fixed price agreed to does not end the matter. Even if there were no price agreed to, the law would imply a fair price. The legal principle of *quantum meruit* (literally the amount deserved) steps in to fill the void when there is an obligation to pay for a service but no exact price has been set.

### **Legal Defences**

- [15] The Defendants place a great deal of weight on their view that the Claimant lacks the legal standing to charge for his service.

[16] The Claimant took pains to argue that he was not acting in the capacity of a real estate agent (which he had been in the past) or as a mortgage broker. If his efforts had been directly along either of those lines, he might have fallen afoul of legislation, in which case the law would preclude him for collecting on essentially an illegal contract.

[17] There are two possible statutes that might apply, namely the *Real Estate Trading Act* and the *Mortgage Brokers and Lenders Registration Act*.

[18] The *Real Estate Trading Act* defines a “trade in real estate” as

2 (y) "trade" or "trading" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

[19] That Act further goes on to provide that it is illegal for anyone to trade in real estate unless licenced to do so:

4 (1) No person shall trade in real estate or hold out as being available to trade in real estate unless that person is licensed to do so, but only to the extent that the person is permitted to do so by the licence and subject to any restrictions, terms and conditions contained in the licence or under which the licence was issued.

[20] The *Mortgage Brokers and Lenders Registration Act* does much the same thing in that field. It first defines a mortgage broker and then states that one must have a licence to act as such:

2 (c) "mortgage broker" means a person who

(i) directly or indirectly, carries on the business of lending money on the security of real estate, whether the money is his own or that of another person,

(ii) carries on the business of dealing in mortgages, or

(iii) holds himself out as or, by an advertisement, notice or sign, indicates that he is a mortgage broker or a person who carries on the business of dealing in mortgages;

27 (1) No person shall

(a) carry on business as a mortgage broker unless the person holds a valid permit under this Act;

(b) carry on business as a mortgage broker otherwise than in the name of the permit holder or elsewhere than at or from the address of the permit holder; or

(c) advertise or in any other way indicate that the person is a mortgage broker

[21] I am not satisfied that anything that the Claimant did would fall within the definitions of trading in real estate or acting as a mortgage broker. Outside of those definitions lies a vast grey area of other services that are unregulated. I find that the services that the Claimant provided and the charges he makes were in the nature of consulting fees and finders fees. I am not aware of any legislation or legal principle that prevents someone from charging for those services without a licence; indeed, there are no licences offered which one might acquire to become a consultant or a finder.

## **Conclusions**

- [22] The Claimant has succeeded in persuading me that he had a contract to assist Wesley and Alessandra and that, if he could succeed in helping them achieve what they wanted, he would be compensated for his effort. He is entitled to be paid a fair amount.
- [23] To deny the Claimant compensation would unjustly enrich Wesley and Alessandra at the expense of the Claimant. This is a result that is within my power to rectify.
- [24] Under all of the circumstances, \$2,300 is an entirely fair measure of the value of what the Claimant did. I do not accept the position put forward by Alessandra, in particular, that she would have gotten the mortgage even without the intervention of the Claimant, since her credit was on the way to improving. There was no evidence to support that position.
- [25] It is accordingly my finding that the Claimant is entitled to be paid \$2,300 as a *quantum meruit* for the services he provided to Wesley and Alessandra. I cannot say that either of Jermaine or Giovanni were a party to this contract and I would not allow any recovery against them. They were only added because the Claimant first placed a lien against the property, and felt obligated to name the three registered owners as well as the guarantor of the mortgage. I actually doubt that he had to name anyone other than Wesley and Alessandra to this action, but the decision was apparently made by his lawyer out of an abundance of caution, and in the end it matters little.
- [26] I would observe for what it is worth that the Claimant's use of the lien procedure to enforce his claim was rather dubious. The *Builders' Lien Act*

is designed to protect the interests of persons who physically work on property or otherwise add value to it through design or construction work.

Those lien rights are found at s.6:

6 (1) Unless he signs an express agreement to the contrary and in that case subject to Section 4, any person who performs any work or service upon or in respect of, or places or furnishes any material to be used in the making, constructing, erecting, fitting, altering, improving, or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, pavement, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, or the appurtenances to any of them, for any owner, contractor, or subcontractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees and appurtenances, and the land occupied thereby or enjoyed therewith or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner.

[27] It stretches the intent of this legislation beyond all recognition to fit within it the services provided by the Claimant. I gathered from the evidence that the placing of the lien itself created some ill will and may well have made the Defendants that much less inclined to recognize the Claimant's legitimate right to be paid. In allowing the claim, as I do, I do not wish to be taken as approving or endorsing in any way the tactic used by the Claimant in liening the property. I have observed before in other cases that the lien procedure is misunderstood and sometimes abused by people who simply help themselves to a lever to help them get paid. The builders' lien is a very powerful tool that ought to be restricted to those who can legitimately fit within the Act.

[28] In the result, the Claimant is entitled to a judgment in the amount of \$2,300.00 plus his filing fee of \$85.44, for a total of \$2,385.44. No other costs were claimed or proved, and in the exercise of my discretion I would not allow any prejudgment interest.

**Eric K. Slone, Adjudicator**