

Claim No. SCCH 225605
Date: 20050116

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Tremblay v. Brown, 2005 NSSM 29

BETWEEN:

MICHEL TREMBLAY

Claimant

- and -

ROBERT BROWN, operating as "BROWNSTONE CONSTRUCTION"

Defendant

DECISION

This matter came before the Small Claims Court of Halifax and Province of Nova Scotia on the 15th day of November, A.D. 2004.

The Claimant appeared and was a self-represented litigant. The Defendant appeared and was represented by Counsel Cameron MacKeen.

Service of the Pleadings was in accordance with the Rules and Regulations of the *Small Claims Court Act*.

The pleadings of the Claimant are for "reimbursement of \$8,000.00 for non-performance of contractual obligations, failure to complete work by (the) due date of June 15, 2004... 'Substandard work' and failing to clean up the work site."

There was an original "work agreement" between the parties dated May 15, 2004.

The work to be completed in the contract was enumerated as follows:

- Level existing fill
- Put in drainage system
- Block in windows
- Dig out and pour footing for wall; build stone wall
- Build concrete blocks around sub pump
- Design a pattern using lock-n-block
- Put in top soil and lay sods
- Excavate driveway
- Dig out and pour footing for wall on each side of driveway
- Put in asphalt driveway

The contract price was fixed at \$12,000 and included in this price was an agreement for the Defendant do to "all necessary clean-ups needed during and after all construction is completed." An amendment to this work agreement was made and dated May 17, 2004 to do the following, by the Defendant.\

- Extend asphalt driveway
- Tear down garage
- Pour garage pad

The amended work agreement provides a price of \$3,000.00

The Claimant paid the Defendant \$7,500.00 on May 18, 2004 and a further \$5,000.00 on June 4, 2004, for a total of \$12,500. The total contract price was \$15,000.

One of the issues put before this Court by the Defendant was the non-performance of the contract by the Claimant. Based on the evidence before me the Defendant

did in fact attempt to complete all the work that he was hired to complete however, weather and actions of the Claimant caused this not to happen. While the Claimant in his testimony said throughout that the Defendant was not showing up in a timely manner, the Claimant near the end of his testimony said "Delay was never an issue, it was a question of communication." The Claimant on cross-examination also stated he refused to allow the Defendant to deliver the sod. And finally at the end of his testimony the Claimant said "I fired Mr. Brown because there was a breakdown in communication and Mr. Brown refused to deal with me."

The Defendant's testimony was that there was a communication problem and he suggested the reason for that was because the Claimant was continually coming up with changes or telling the Defendant how to do the work. From the Defendant's perspective it came to a point where he believed the Claimant was threatening him.

There seems to be little doubt that communications broke down and it appeared to be over how the Defendant was performing the work. The Claimant admits he questioned the way the Defendant was doing the work as a result of his neighbours' reactions, what he had read, and what contractors told him. The Claimant has little support that the Defendant was doing the job incorrectly and his support is built at best on hearsay.

The pictures, a brochure and what neighbours and contractors have told the Claimant do not substantiate the claim that the Defendant was doing substandard work against the testimony of an experienced contractor and his witness Mr. Simmons.

It is also clear that the Claimant was the one who stopped the contract from being completed.

While some parts of the initial agreement were not completed yet paid for by the Claimant there are also some parts of the second work agreement, which were completed by the Defendant and not paid for by the Claimant.

The Claimant said pavers were not done; slab was not done and the defendant only put part of the sod down, as required under the first agreement, however part of the second agreement was done. I am unable on the evidence I have before me to determine the costs of what parts were done and not paid for and what parts of the agreement were not done and paid for by the Claimant. There is no cogent evidence before me on any aspect of deficiencies. Further any unilateral

termination of the contract was a result of the Claimant's actions and it was the Claimant who decided to proceed with the clean up and completion of the job and not allow the Defendant onto his property.

The Claimant against the Defendant will not succeed.

Dated at Truro, on the 16 day of January 2005.

David T.R. Parker
Small Claims Court Adjudicator