

Claim No: 304310

Date: 20090313

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

**Cite as: Crooks v. K & B Electrical & Building Construction Ltd., 2009 NSSM 40**

**BETWEEN:**

Name Gerald Keith Crooks Claimant

Name K & B Electrical & Building Construction Limited and Defendant  
Ken Brown - Director / President

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**DECISION**

**BASIS OF THE CLAIM**

- (1) The Claimant, Gerald Keith Crooks, claims the sum of \$2,250.00 plus costs against the Defendants, K & B Electrical & Building Construction Limited and Ken Brown. Ken Brown was the President of the corporate Defendant at all times material to this action.
- (2) The claim arises from work performed for the Claimant in connection with the construction of a home in Lake Echo, Nova Scotia, in 1997, over 11 years ago.
- (3) The amount being claimed is the cost of converting the existing 100 amp electrical service to a 200 amp electrical service as the Claimant alleges that the Defendant should have installed a 200 amp electrical service as he was contracted to do so.
- (4) The Defendants deny any liability.

## **LIABILITY OF THE CORPORATE DEFENDANT**

### **Position of the Claimant**

- (5) The position of the Claimant is that a quote was made on August 12, 1997, for the wiring of the home, including "200 amp main service and permit". The quoted price was \$2,285.00 plus HST with \$1,285.00 plus HST to be payable at the rough-in stage and the balance of \$1,000.00 plus HST on completion.
- (6) On October 23, 1997, the Defendant invoiced the Claimant for \$1,285.00 plus HST for "rough-in wiring complete October 9, 1997" and on December 2, 1997, a second invoice was rendered for "finish wiring complete as per quote". The second invoice showed the total amount of \$2,285.00 less the amount billed at the rough-in stage of \$1,285.00, for a net amount due of \$1,000.00 plus HST. Also included in the second invoice, however, were the cost of various extras, including supplying a bathroom fan, two smoke detectors, 11 single pole switches and covers, four 3 way switches and covers, material and labor necessary to wire the hot water furnace, the cost of whirlpool, an extra charge since the service was 10 feet longer than normal, and one trip to rearrange the switching of lights in the basement.
- (7) The invoice was paid in full.
- (8) The Claimant stated that he wanted 200 amp service since, although it was not required at the time, it might be necessary if they renovated or expanded their home or changed the heating system at some point in the future.
- (9) In June 2008, when the Claimant looked into an alternative heating system which required a 200 amp service, he discovered that they had a 100 amp service.
- (10) The Claimant seeks the cost of upgrading to a 200 amp service.

### **Position of the Defendant**

- (11) The Defendant states that the quote referred to by the Claimant was actually a proposal not a quote. It provides that it must be signed within 30 days and the document provided by the Claimant is not signed.

- (12) The Defendant's evidence was that verbal arrangements were made between the Claimant and the Defendant after the proposal was provided. There were discussions about electric heat versus oil heat. Alterations were made from the original plan.
- (13) According to the Defendant, the Claimant agreed to have installed a fixed hot water heating system which was a better system than electric heating at the time. Extra outlets were installed and other extra work performed as reflected in the invoices.
- (14) The Defendant stated that it was his practice to discuss the customer's needs and to explain everything to the customer before installing the system. According to the Defendant in this case, the Claimant fully understood and agreed with the changes, including a 100 amp electrical service not a 200 amp electrical service.

### **Findings**

- (15) According to the Claimant, the terms of the contract are reflected in the quote which was provided to him by the Defendant (which the Defendant refers to as a proposal). According to the Defendant, the terms of the quote/proposal were never accepted by the Claimant and the parties subsequently entered into a verbal contract which was different than the terms that had been originally discussed and set out within that document.
- (16) The reconciling of the factual differences is made more difficult by the fact that the circumstances surrounding the creation of the contract occurred over 11 years ago.
- (17) The burden of proof rests on the Claimant to prove the terms of the contract on a balance of probabilities.
- (18) The Claimant does not deny that there were conversations between him and the Defendant concerning the installation of an oil heating system versus an electrical system, although he does not recall too many specifics. The Defendant was very clear in his evidence that these discussions occurred. There are some discrepancies between the original quote/proposal versus the final billing, for example, the quote/proposal states "All wiring materials and labor except for light fixtures, door bells, vent fans, and smoke detectors" and "wire hot water furnace and pump" were included in the work whereas in the final invoice, the material and labor to wire a hot water furnace were billed as extras. Other extras were invoiced yet the overall cost remained the same as the amount in the quote/proposal.

- (19) The Claimant relies mainly upon the actual wording of the invoice which, if one considered this in isolation, clearly weighs in the Claimant's favor since the wording of the second invoice states that services are rendered to "finish wiring complete as per quote" (emphasis added).
- (20) However, it is necessary to examine all the facts and circumstances.
- (21) The Claimant did not produce a signed copy of the quote/proposal, although its absence does not in and of itself determine the issue based on the passage of time.
- (22) The Defendant submits that the wording in the second invoice was unfortunate but that there was no intention to incorporate the terms of the quote/proposal into the final contract terms, which he says is supported by the fact that the quote/proposal was not signed. I must also consider that there were extras included in the second invoice, including, as noted above, items which were part of the original quote/proposal. Presumably, the Claimant would have complained upon receiving an invoice containing a separate charge for the material and labor required for wiring a hot water furnace if it was part of the original terms of the quote/proposal which had been agreed to between the parties.
- (23) I accept the Claimant's evidence that he did not discover that the heating system was a 100 amp service until June 2008, however, by that time, 11 years had passed, and it is certainly within the realm of possibility that he is simply mistaken in his recollection that a 200 amp service was agreed to. He does rely to a great extent on the written documents.
- (24) I have also reviewed additional documentation submitted by the Defendant, including running notes taken at the time in which there is a written reference to "100 amp" which tends to corroborate the Defendant's position.
- (25) In order to find in favor of the Claimant in this case, I would have to conclude either that the Defendant purposely or mistakenly installed a 100 amp service despite agreeing to the contrary and, having heard the evidence of the parties, I am not prepared to conclude that either of these scenarios is likely to have occurred at all.
- (26) For the reasons stated, where there is a difference between the evidence of the Claimant and the Defendant, I accept the Defendant's recollection as more accurate, and I find that although the original quote/proposal made reference to installation of a 200 amp electrical service, these terms were not in fact agreed to by the parties and did not form the basis of their contract but there were subsequent discussions whereby the terms of the original

quote/proposal were changed by agreement, and I accept the Defendant's evidence that those discussions included the Defendant advising the Claimant that this would include a 100 amp electrical service and not a 200 amp electrical service.

(27) For all these reasons, I accept the Defendant's position and dismiss the claim.

**LIMITATION PERIOD**

(28) The Defendant has raised a limitation period defence, that is to say, that this action is statute-barred due to the passage of time.

(29) In light of the findings which I have made in this case, it is unnecessary for me to decide this issue.

**SUMMARY**

(30) For the reasons stated, the claim is dismissed.

Dated at Dartmouth, Nova Scotia,  
on March 13, 2009.

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Patrick L. Casey, Q.C., Adjudicator

