Claim No: 442440

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Progressive Cabinets & Millwork Ltd. v. Lopez, 2015 NSSM 59

BETWEEN:

PROGRESSIVE CABINETS & MILLWORK LIMITED

Claimant

- and -

LEO LOPEZ, GEOFF KEDDY and 3278216 NOVA SCOTIA LIMITED

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on October 5, 2015

Decision rendered on October 13, 2015

APPEARANCES

For the Claimant	Ross Casey, Chief Financial Officer
For the Defendant Leo Lopez	Self-represented
For the Defendant Geoff Keddy	Self-represented
For the Defendant 3278216 Nova Scotia Limited	Geoff Keddy, President

BY THE COURT:

[1] This claim asks the Defendants, or some of them, to pay for a kitchen which the Claimant designed and built at the request of the Defendants (or some of them). The amount claimed is $11,819.36, plus interest.

[2] None of the Defendants questions that the kitchen was designed and built appropriately, or argues that the charge is excessive. They simply disclaim financial responsibility and point the finger at each other.

[3] The Defendant Leo Lopez ("Lopez") is a contractor. The Defendant Geoff Keddy ("Keddy") is an architect. The Defendant 3278216 Nova Scotia Limited ("the numbered company") is a company owned and operated by Keddy.

[4] According to the evidence, Lopez and Keddy were at the relevant time partners in a development on Oxford Street in Halifax. The precise nature of that venture was not elaborated on at the trial. What is clear is that Lopez and Keddy ended up in some kind of dispute, as yet unresolved, about who owned what, and who owed whom money.

[5] The kitchen which is the subject of this claim was ordered at a time prior to the relationship between Lopez and Keddy turning sour. Lopez was renovating a property in Clayton Park, part of which included ripping out the old kitchen and installing a new one. Keddy had no direct involvement in that project.

[6] The Defendants Lopez and Keddy presented different versions of the events to explain how and why Keddy and the numbered company became involved in the purchase of the kitchen for the Clayton Park project.

[7] According to Keddy, Lopez did not have an account with a kitchen supplier, nor the credit to obtain one. The numbered company had an account with the Claimant, and Keddy offered to use his account to help Lopez obtain the kitchen that he needed for the Clayton Park project. Keddy says that he did this purely as a favour to Lopez.

[8] Lopez says that Keddy owed him approximately $15,000.00 for work on the Oxford Street project, but did not have the available cash. He says that he suggested that Keddy purchase the kitchen for him, in satisfaction of that debt, and that by so doing he would be able to pay it off at his own pace. He says that he was doing Keddy a favour, not the other way around.

[9] I do not propose to resolve which of these versions is the more likely, as it does not impact upon the Claimant's entitlement to be paid for its work. The Claimant knew little or nothing about the relationship between Lopez and Keddy nor about their internal logic in structuring the purchase the way they did.

[10] The liabilities must stand or fall on the contract document which was signed on or about June 2, 2014.

[11] This document, styled a "Purchase Agreement," is a standard type document used by the Claimant in its business. Unfortunately, it uses some loose terminology that is not well defined, and moreover the document was not fully executed as it might have been.

[12] At the top of the document, it refers to the “Client” which, in this instance is said to be: “Geoff Keddy 3278216"

[13] It then has a section which refers to the “ship to address” which has handwritten in “Leo Lopez (contractor)” with the Clayton Park address. Further down it lists the “Contractor/contact Name” as Leo Lopez.

[14] Near the bottom of the first page, it has a place for signatures for the “Purchaser” and the “Co-Purchaser” (as well as for a representative of the Claimant). In this instance, there is no signature where the Purchaser should sign, but Leo Lopez has signed as Co-Purchaser.

[15] At the bottom of the first page, and on all of the three following pages of attachments, there are boxes for “Purchaser initials” and “Co-Purchaser initials.” Keddy has initialled as Purchaser, and Lopez has initialled as Co-Purchaser.

[16] The last page of the document consists of printed terms and conditions. Paragraph 3 states: “if there are more than one Purchaser/Owner, the obligation shall be joint and several. Paragraph 13 specifies that a service charge of “18% prorated” will be charged to overdue accounts.

[17] One can be forgiven for not knowing precisely what is meant by, or expected of, a “client,” “purchaser,” “co-purchaser,” “owner” or a “contractor,” where those terms are not defined in the contract document. The use of multiple and probably overlapping terms without careful definition is a recipe for confusion.

[18] Keddy's position is that he is not personally liable, because he did not sign the area where it calls for the "Purchaser" to sign. He says he was never intended to be the Purchaser, although he concedes that the numbered company could be considered to be the Purchaser. Lopez says he is not responsible because he was only signing to indicate that he was approving the design. He did not have an explanation for why he signed as "Co-Purchaser." I do note that English is not a first language for Lopez.

[19] The first question I will address is Keddy's personal liability. The evidence is clear that the numbered company had been the client on previous deals with the Claimant, and the reference to "Geoff Keddy 3278216" as the "Client" supports the position that the Claimant was referring to the numbered company. Had the Claimant wanted to ensure that Keddy was personally responsible for the numbered company's financial obligations, it would have had to do more than it did, such as by adding language that made Keddy a personal guarantor. Alternatively, it could have insisted that Keddy be the Purchaser and either eliminated the numbered company from the contract altogether, or given it a different identity - perhaps as another Co-Purchaser.

[20] I do not believe that Keddy's failure to sign the document as Purchaser was an accident. Mr. Keddy impressed me as an astute and careful individual. That is not to say that refusing to sign as "Purchaser" was necessarily the right way to make clear the distinction between the numbered company and himself, as he could have more accurately written in "3278216 per Geoff Keddy" and signed as a corporate officer. Keddy's personal initials where initials are called for muddies the waters, though only slightly.

[21] The view of the numbered company as purchaser is supported by the fact that the invoice dated July 8, 2014, is directed to “3278216 Nova Scotia Limited (Geoff Keddy).” The mention of Geoff Keddy in parentheses suggests that it was for identification purposes only, given how numbered companies are inherently nondescript.

[22] In the result, I find that the numbered company was the intended Purchaser, and Keddy was not made personally responsible.

[23] I also find that Lopez’s signature as Co-Purchaser is sufficient to fix him with joint liability as a Purchaser, as per paragraph 3 of the Terms and Conditions. He is presumed to have read and understood the contract he signed, whether or not he took care to do so.

[24] I accordingly find that the numbered company and Lopez are jointly responsible for the debt to the Claimant. Keddy is not. Whether that makes a difference as a practical matter, given that the numbered company is Keddy’s company, is not something that will be known until the Claimant attempts to collect on this judgment.

The claim for interest

[25] The contract language referring to a “service charge of 18% prorated” is, with due respect, imprecise and confusing. The Claimant says it is the equivalent of “18% annual interest.” If it means 18% interest per year, why not say that? Perhaps it is archaic language borrowed from some other place and time, which has simply not been revised over the years, though I do not recall a

time when it was fashionable to refer to interest as anything but interest. I find that the language is too unclear to support a claim for 18% annual interest.

[26] This language is also out of step with the wording on the Claimant's invoices which states that "interest of 2% will be charged on all invoices over 30 days." If the intention of that language was to charge a 24% annual interest rate, i.e. 2% per month, it also falls far short of what is required because it does not express an equivalent yearly rate of interest, as is required under the federal *Interest Act:*

> **When per annum rate not stipulated**
>
> 4. Except as to mortgages on real property or hypothecs on immovables, whenever any interest is, by the terms of any written or printed contract, whether under seal or not, made payable at a rate or percentage per day, week, month, or at any rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which the other rate or percentage is equivalent.

[27] Arguably the wording on the invoice could be read as simply applying a one-time 2% interest charge after 30 days. It does not appear to say anything about what would apply thereafter. Another, less favourable reading might even suggest that it is charging 2% per year, which I doubt would have been the intention, even in these days of low interest rates.

[28] In this instance, I might have been prepared to allow a 2% charge for the first month, but for the fact that there is nothing in the documentation that would indicate that the Defendants ever agreed to such a charge. It is not open to a vendor of goods or services simply to attempt to impose such a charge after the

fact, i.e. by placing it on an invoice where it was not specifically agreed to in the contract or otherwise, in writing.

[29] The law has always demanded a greater degree of precision for parties that propose to charge interest at what might be called premium rates. Where they fail to use precise and proper language, they are stuck with a legislated rate. In the case here, I find that the Claimant is entitled only to prejudgment interest at the rate prescribed by the *Small Claims Court Forms and Procedures Regulations*, namely:

> 16 An adjudicator may award prejudgment interest at a rate of four percent per annum in the same circumstances in which prejudgment interest may be awarded by the Supreme Court.

[30] As such, the interest awarded shall be 4% simple prejudgment interest from July 8, 2014 to October 13, 2015 (461 days) on $11,819.36, which I calculate as $597.12. The Claimant is also entitled to its filing fee of $199.55 and $92.00 for serving documents, totalling $291.55.

[31] The claim against Keddy is dismissed, and the Claimant shall accordingly have a judgment against the numbered company and Lopez for:

Debt	$11,819.36
Interest	$597.12
Costs	$291.55
Total	$12,708.03

Eric K. Slone, Adjudicator