

Claim No: 313868

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Taylor Flooring Ltd. v. Valhalla Construction Ltd., 2009 NSSM 50

BETWEEN:

TAYLOR FLOORING LIMITED

Claimant

- and -

VALHALLA CONSTRUCTION LIMITED

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 21, 2009

Decision rendered on October 22, 2009

APPEARANCES

For the Claimant

Charlie Digout, Project Manager
Trish MacFarlane, Credit Manager
Philip Burgess, installer

For the Defendant

Bernie Einarson, owner

BY THE COURT:

- [1] The Claimant seeks payment of an invoice rendered to the Defendant in the amount of \$2,412.75 plus HST. The invoice has different components. All but \$755.00 relates to the supply and installation of ceramic tile in a Sobeys store, which is the source of the controversy here. The \$755.00 balance relates to the unrelated supply of some materials, which amount is not in itself contested.
- [2] The Defendant is a contractor that does a lot of work for Sobeys, and as such is very protective of that relationship. The project in question concerns the bakery in the Sobeys store in Clayton Park. That area contains a large piece of equipment called a proofer, which provides a warm and damp environment in which bread dough rises prior to being baked. While in operation the proofer gives off a fair amount of water, which must be contained and disposed of via a floor drain.
- [3] The area around the proofer was in a poor state and the Defendant was charged with arranging a repair. A large part of the problem identified was that the water was not draining properly, giving rise to mould growth and deterioration of the floor. There were constraints. Sobeys was not willing to have its bakery out of commission for too long, and this (as well as perhaps the cost) ruled out replacement of the entire floor.
- [4] Bernie Einarson of the Defendant brought in Charlie Digout of Taylor to have a look. He told Digout that he wanted to replace a ten foot square section of the floor and have it levelled appropriately to direct the run off of water toward the floor drain. They both agreed that this was not the ideal

solution, but Einarson asked Digout if he could make it work. Digout said he could.

- [5] The work was eventually done by one of Taylor's installers. When the old tile was taken up, there was more deterioration than initially expected and some extra work had to be done.
- [6] I find that the Defendant relied entirely on Taylor to level the floor properly. The Taylor installer, Mr. Burgess, testified that he tested the floor by spraying water on it, and it drained properly.
- [7] When the job was done and the proofer reinstalled over the new section of floor, there were recurring problems. Not all of the water was draining where it should have. A large amount of water was leaking out one side, under some pressure, and that water was creating a hazard elsewhere in the store. Water was also pooling inside the proofer.
- [8] Taylor was called back initially, and the measure tried was to create some saw cuts in the tile to try to expedite the flow of water. This may have helped a bit, but did not solve the problem. Mr. Einarson was under pressure from Sobey's and was embarrassed by his inability to solve the problem. Over the ensuing months he was called in repeatedly to deal with the problem, and using a variety of makeshift solutions has the problem more or less under control, though it is by no means perfect.
- [9] Mr. Einarson has refused to pay Taylor's bill for this work because he believes that Taylor did not do the work properly. In particular, the floor does not have a consistent grade that would direct water toward the drain.

Using a laser level he took elevations and determined that there is a problematic dip where the level goes down too far before coming back up, with the result that water will pool there and is subject to being forced out in the wrong direction.

[10] The Defendant resists paying Taylor for the work because of all of the extra costs that it has incurred to deal with the problem since, which costs are said to exceed the amount of the Taylor bill. The argument of the Defendant is that if the levels had been done properly, the solution should have worked.

[11] On a balance of probabilities, I find that Taylor did not do the work to the required specification. It knew, or ought to have known, that the tolerances were critical in order to create a reliable slope for drainage, and the end result was unsatisfactory. In light of all of the extra costs incurred, I find that the Claimant's work lacked value and it is not entitled to be paid for this work.

[12] As for the other \$755.00, there is no reason why this amount should not be paid. Had the Defendant counterclaimed for the costs of repairing the Sobey's work, I would have had to consider whether the extra costs exceeded the account. However, the Defendant has not counterclaimed. I therefore find that the amount of \$755.00 should be paid.

[13] On the matter of costs, the Claimant incurred the cost of filing and serving the claim. The evidence before me was that the Defendant had actually initiated payment of the \$755.00, but stopped payment on that cheque

once the claim was received. The payment and the claim figuratively crossed in the mail.

[14] Costs are in my discretion. I believe that the Claimant should receive its costs, which are \$89.68 for filing and \$79.10 to serve the claim.

[15] The Claimant will accordingly have judgment for \$923.78.

Eric K. Slone, Adjudicator