

Claim No: 328761

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Duralex Bath Systems v. Korun, 2010 NSSM 51

BETWEEN:

CHRIS BOWIE (Duralex Bath Systems)

Claimant

- and -

LYNELLE KORUN (also known as Lynelle Vetsch)

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on June 29, 2010

Decision rendered on July 22, 2010

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented, and
Wayne Chapdelaine (co-owner of property)

BY THE COURT:

[1] The Claimant was hired to do a bathroom renovation for the Defendant and her spouse, Wayne Chapdelaine. The work was not completed as the Defendant was unhappy with the quality of the work, and had it completed by another contractor. The Claimant received a \$4,000.00 deposit and claims the balance of approximately \$5,000.00 as the balance of the price, interest and costs.

[2] Although the Claimant only named the Defendant and not Mr. Chapdelaine, it was clear that the contract was with both and for sake of the narrative I will refer to Ms. Korun (who now uses the surname Vetsch) and Mr. Chapdelaine collectively as “the Defendants.”

[3] The contract is actually several pages of product descriptions and pictures, followed by a set of notes that says, among other things, that “all prices quoted include materials, labour, clean-up and removal of debris ..” It also states that the contractor is “not responsible for additional work caused by hidden damage or unforeseen plumbing problems unless specifically quoted” and that the quotation “states entire extent of work to be completed.”

[4] Clearly the agreement between the parties extends beyond this document, as it is very vague on the scope of work being undertaken. There is no question that the parties had discussions in advance of signing the contract, in which the scope of the project was discussed.

[5] In general terms, one bathroom was being divided and turned into two separate rooms, with a wall to be constructed as the divider. A new shower was

being installed on one side, nominally 32" square, and a vanity was also being installed.

[6] The work was started on January 11, 2010. In the written contract it was written that (at the request of the Defendants) the work would preferably be completed before January 20th.

[7] The issue that appears to have created most of the problems was electrical. The renovation required a light fixture to be moved from its position on the wall near the vanity mirror. The Defendants understood from their initial meeting with Mr. Bowie of the Claimant that his company would supply all of the necessary services to complete the renovation. There was no discussion of electrical, because the Defendants (at least) had not anticipated that the electrical would have to be moved in order to situate a new wall that was being built. The original estimate prepared by the Claimant made no mention of electrical and it is far from clear that the Claimant appreciated that there would be an electrical aspect of the job.

[8] When the Claimant's workers started work and discovered that the electrical fixture would have to be moved, they stated to Ms. Vetsch that they were not electricians and they left the Defendants with the understanding that they would have to make their own arrangements for electricians. They refused to proceed with that aspect of the work. Mr. Bowie testified that he soon offered to arrange for an electrician and coordinate the work, but that he was not prepared to include the cost in his estimate.

[9] There were some discussions between the Mr. Bowie and the Defendants, who were peeved with this development and the prospect that they might have to

incur an extra expense so early in the project. It also shook their faith in the Claimant and the implied promise that everything would be looked after.

[10] There was some discussion about the fact that the Defendants knew an electrician, but I do not think it was ever really made clear whose responsibility it would be to see to any electrical issues.

[11] Because the fixture was only being moved a short distance, Mr. Bowie believed that no electrician would be needed if there was enough slack in the wiring and the box could just be pulled over to its new location. In fact, this is what the Claimant's workers eventually did. They testified that there was just enough slack to move the box to its new location.

[12] The Defendants testified that they believed all along that the work would be performed, or at least, inspected by a qualified electrician.

[13] Although the sufficiency and timeliness of the work in other respects became an issue, the most significant complaint concerns the electrical. The Defendants contend that the wires were stretched beyond their capacity, creating a situation of some danger.

[14] The Defendants hired an electrical engineer to give an opinion about the wiring in the bathroom. A letter dated June 29, 2010 (the date of trial) was filed under the signature of Grant Rhyno of Contrast Engineering Limited. In that letter Mr. Rhyno states:

In regards to the electrical wiring that was routed through the wall cavity of your recently renovated main level bathroom that were associated with the bathroom wall light and other distribution circuits, I offer the following:

The distribution wiring terminated in the wall-mounted electrical junction box was improperly terminated, as the wire's protective sheathing was not continuous into the junction box. Thus, as terminated the wire's conductors were directly compressed in the junction's wire clamp. In addition, the wires were pulled tight, which would put additional strain on the conductors at the wire clamp and in other areas.

This method of installation is unacceptable because damage can occur on the unprotected distribution wire conductors, which can lead to arc tracking, which can also cause a fire.

Arc tracking, as defined by The Ignition Handbook (Barbrauskas, 2003) is a progressive creation by electrical means of a carbonized path along the surface of an insulator that separates two current-carrying conductors. If a carbonized path is created where current may potentially flow, arcing may then occur along this path, possibly leading to ignition either of the combustible insulator itself, or some other nearby fuel.

In my opinion, the effected distribution wires and junctions boxes must be replaced and the new wiring and junction boxes must be installed in accordance with the Canadian Electrical Code by a qualified electrician.

[15] As I understand it, there are two identified problems:

- a. "the wire's protective sheathing was not continuous into the junction box," and
- b. "the wires were pulled tight, which would put additional strain on the conductors at the wire clamp and in other areas"

[16] Based on the evidence, it is difficult to see how the Claimant's workers could have caused the first problem. If all they did was pull the box, taking up the

slack in the wire, they certainly could have caused the identified problem of putting additional strain on the wiring and associated elements.

[17] This leads me to conclude that there was probably a deficiency in the way the wiring was terminated in the junction box in the first place. If that is true, any qualified electrician who might have been brought in to move the box would have noticed that there was a problem with the wiring (sheathing not continuous into the box) and could have rectified the problem before the wall was boarded up. As it now stands, in order to rewire the bathroom some damage will have to be done to expose the wiring.

[18] There was no estimate provided as to the cost of the electrical work that might have to be done. Mr. Chapdelaine speculated that it might be in the thousands of dollars. One of the complicating factors is that the home is for sale, and the Defendants anticipate that they will have to make disclosure to any prospective purchaser that there is a potential problem, and this will likely lead to a requirement that the work be done, or perhaps an abatement in price.

[19] The other issues concern the dimensions of the shower stall, which ended up as somewhat smaller than the Defendants anticipated, plus issues concerning the quality of the finish work.

[20] There was also a timeliness issue. When the work dragged on and never seemed to be complete, the Defendants eventually lost patience and hired another contractor to correct the work at a cost of \$1,400.00. They also paid \$350 for an electrician and were anticipating a bill from the electrical engineer who, they understand, charges \$150.00 per hour plus expenses.

[21] The photos in evidence bear out the Defendants' contention that the work was far from perfect. The witnesses for the Claimant explained that with retrofitting into existing homes there are always imperfections in the way the home was constructed, that have to be worked with, resulting sometimes in an imperfect result. My view is that there is some truth to this contention, but the work here resulted in a substandard appearance that was at odds with what the Claimant had promised, both implicitly and explicitly.

[22] I accept that the Defendants had cause to hire other contractors to complete the work, and the money spent to have (mostly) the drywall work brought to a satisfactory paint-ready level is a legitimate deduction from the Claimant's claim under the contract. The Defendants stated that the contractor who was paid this \$1,400.00 also did a few unrelated things for the cost, so there should be a deduction from the \$1,400.00 before applying it as a credit. I will deduct \$200.00, leaving \$1,200.00 as the applicable credit.

[23] The complaint about the size of the shower stall does not appear to me to be legitimate, although I believe the Defendants were not fully informed. The 32" dimension was the size of the base, but by its nature the shower would be smaller as the walls extend over the lip of the base. In the end, the size of the shower was limited by the space available.

[24] The electrical problem appears legitimate, but the actual cost is pure speculation because the Defendants did not make an effort to get estimates of what it would cost to fix. Under the circumstances, the best that I can do is make a rough estimate for an allowance, which I fix at \$1,200.00 to cover all aspects of the electrical problem, including the cost of the electrical engineer and whatever the Defendants have already paid for electrical work.

[25] In the result, the Defendants are entitled to a credit of \$2,400.00 off the contract price. The amount owing to the Claimant would therefore be \$2,295.62. Under the circumstances, it is not appropriate that the Claimant be allowed to charge any interest on the unpaid amount. The Claimant is entitled to its costs in the amount of \$89.68.¹

[26] In the result the Claimant shall have judgment for \$2,295.62 plus \$89.68, for a total of \$2,385.30.

Eric K. Slone, Adjudicator

¹It appears that the Claimant may have been charged \$179.35 to issue the claim, which claim was pegged at \$5,000.00 precisely. It seems to me that the responsible and prudent thing for the Claimant to have done would have been to reduce the claim to \$4,999.99, which would have kept the filing fee at \$89.68. I do not propose to penalize the Defendants for that decision by the Claimant.