Claim No: 338466

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: MacKay v. Forgeron Engineering Ltd., 2010 NSSM 70

BETWEEN:

JONATHAN DRYDEN MacKAY

Claimant

- and -

FORGERON ENGINEERING LTD. and EARL FORGERON

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 21, 2010

Decision rendered on December 22, 2010

APPEARANCES

For the Claimant Dan Ross, agent

For the Defendant Dan Clarke, agent

BY THE COURT:

[1] The Claimant wished to build a garage on his property with the assistance of his contractor Dan Ross. They proposed to use a 16 X 40 foot concrete slab, and applied for a building permit from the municipality. They received word from the building inspection office that a slab of this size would require a certificate from a professional engineer.

[2] The Claimant contacted the Defendant engineering firm and was put in contact with an apprentice engineer, Brian Hines. Hines met with the Claimant on or about October 4, 2010[1], and they discussed his situation.

[3] Hines took the information back to his office, and came up with three alternatives. The basic problem was that a concrete slab of this size could shift or crack, unless supported by footings, or heated. The three options that he presented were to put in a foundation, supply a heat source under the slab, or construct a frost wall. The latter was the least expensive option and the Claimant agreed to that.

[4] Hines spent several hours the next day and drew up a plan, to which was attached Mr. Forgeron's P. Eng. stamp. An invoice for $920.00 was presented and paid when the plan was picked up on October 7, 2010.

[5] The Claimant eventually came to learn that he would not have needed an engineering stamp had he presented the plan to the municipality with the frost

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[1]There was some conflict in the evidence as to whether or not there was an initial contact made back in September. I consider this irrelevant and do not propose to address this difference.

wall design. Nor would he have needed it if the square footage of the slab were less than 600 square feet. The Claimant believes that the Defendants ought to have informed him of these facts, and possibly saved him some money. He seeks a refund in this action.

[6] Mr. Ross testified to a conversation with Mr. Forgeron, concerning the municipal bylaws that dictated when an engineer's stamp was needed. Mr. Forgeron is reported to have said words to the effect that he could not be expected to know every bylaw, as they change so often.

[7] Mr. Ross also testified to the fact that once he and the Claimant understood the bylaw requirements, they changed the dimensions of the slab to 24 X 24, keeping it under 600 square feet. The plans drawn up by Hines were never used.

Findings and decision

[8] In my view, the Claimant retained the Defendants to design a concrete pad of a particular size, with a view to it being stable and meeting all of the requirements of the Building Code. There was no evidence that the Claimant was open to a different size pad, or that he was seeking advice from an engineer on how to avoid the use of an engineer. Mr. Hines took the problem in hand and found the appropriate solutions. He took the instructions of his client and drew up plans for what he thought the client wanted. The amount charged seems entirely reasonable for what was provided.

[9] The claim seeks a refund, or at least a reduction, on the theory that the Defendant(s) ought to have gone beyond the instructions of the client and given

the further advice that might have made their own services unnecessary. Essentially, the Claimant asserts that Mr. Hines should have said: “if you put in a frost wall or foundation, you do not need us to design it and you do not need Mr. Forgeron’s stamp on the drawing.”

[10] I do not think that someone in the position of Mr. Hines, or even his employer, can be expected to have made such a statement. He had no way of knowing if the Claimant had the independent capacity to design a foundation or frost wall. Moreover, he would have understood that the design was the primary thing for which his services were being retained.

[11] I do not find that the Defendants breached the contract or fell below the standard of care of a reasonable engineering firm. Their job was to design a proper concrete pad, not to find ways around municipal bylaws.

[12] The fact that their work was not used is unfortunate, but not the fault of the Defendants. There was nothing wrong with the plans that were provided, and whatever reasons the Claimant had for changing the design have no bearing on the responsibility of the engineer or the engineering firm.

[13] In the result, I find no merit to the Claim and same is dismissed.

Eric K. Slone, Adjudicator