

Claim No: 335916

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Lee v. All Tech Ltd., 2010 NSSM 74

BETWEEN:

DAVID LEE and LINDA LEE

Claimants

- and -

ALL TECH LTD.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 26, 2010

Decision rendered on October 28, 2010

APPEARANCES

For the Claimants self-represented

For the Defendant Kevin Dunn
 Owner

BY THE COURT:

[1] The Defendant is in the business of refinishing hardwood floors.

[2] The Claimants hired the Defendant in July 2010 to strip and refinish the hardwood floors in their home. They are unhappy with the result and seek a refund of their money paid, namely \$1,088.19.

[3] The floors included some wood stairs that had never been finished, and other flooring that had not been refinished in about a decade. The Defendant and his worker provided the Claimants with an information sheet that explained the process they would be using. It included a caution that windows and doors should be closed during the refinishing process and that they would only clean the floors being refinished.

[4] The end result appears to have been that some areas of the floor are rough, and in some cases there may be some embedded dust or other material. There also appears to be dark spots where the wood has been damaged by water, which cannot in any way be blamed on the Defendant.

[5] The Defendant's witnesses testified that the work site was not exactly ideal, in that the Claimants were having some outside work being done which included cutting stone or brickwork, and it was impossible to contain all of the dust. Also, they say, the Claimants and members of their family did not entirely respect the fact that they needed to protect the floors. One incident they cited was the Claimants' daughter taking a shower at an inopportune time.

[6] The photographs in evidence are not all that informative. They do show some areas that are less than ideal, but they do not disclose what percentage of the floors are actually deficient. It is difficult to assess the scope of the problem.

[7] The Claimants initially paid the invoice rendered by the Defendant, but after a few days of living with the result, they stopped payment on the cheque and called the owner of the Defendant, Kevin Dunn, to so advise him.

[8] Mr. Dunn offered to come back and have a look at the job, and try to improve it to the satisfaction of the Claimants. The Claimants refused outright to allow him back. He then turned the account over to a collection agency. The Claimants paid the bill, rather than risk their credit rating, and commenced this claim.

[9] The Claimants are adamant that they wish to have the entire job redone. They say that they cannot live with the results of the Defendant's work.

[10] I was quite surprised to learn that the Claimants were unwilling to give the Defendant any opportunity to come back and inspect the job and attempt to improve it. There did not seem to have been any bad blood between them during the job. In many renovation or construction jobs there are deficiencies, and it is customary to give the contractor a chance to rectify those deficiencies. Sometimes that is not practical or advisable, but absent some good reason it is unfair to deny the contractor that opportunity.

[11] This is not just a matter of custom. It has its basis in the law of damages. A party that has suffered damages, such as in a breach of contract case, has a positive duty to mitigate those damages. That duty exists to protect the

potentially liable party. It denies an injured party a blank cheque to effectively spend the Defendant's money by taking the most expensive course available to it. Another way of expressing the duty is to say that a Claimant must act reasonably after having suffered a loss, to ensure that the loss is minimized. If the Claimant acts unreasonably, its damages will be limited to what they would have been had a more reasonable course been followed.

[12] The Claimants' refusal to allow the Defendant to return created another problem, which is that the Defendant could not have a close look at the work to be better prepared for the trial.

[13] I find that the failure to allow the Defendant to return, inspect the work and attempt a repair, was a total failure to mitigate. The evidence does not satisfy me that the entire job must be redone. The Defendant ought to have been permitted the chance to make good on the work. The Claimants have given no good reason why the Defendant ought to have been denied that right.

[14] Under the circumstances, I am dismissing the claim.

Eric K. Slone, Adjudicator