

Claim No: 344761

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Coghlin Enterprises Ltd. v. Schellerman, 2011 NSSM 22

BETWEEN:

COGHLIN ENTERPRISES LTD.

Claimant

- and -

CHERIE SCHELLERMAN and DEREK HOUNSELL

Defendants

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on April 19, 2011

Decision rendered on April 21, 2011

APPEARANCES

For the Claimant Robert Coghlin, President

For the Defendants self-represented

BY THE COURT:

[1] The Claimant is a business that services boats. The Defendants are the owners of a 32-foot Cruiser powerboat.

[2] The Claimant is seeking payment for a pump valued at \$821.79. The Defendants have counterclaimed for approximately \$6,500.00 which was the cost to repair their boat after it developed several problems over the winter of 2009-2010.

[3] The Defendants kept their boat for many years at the Dartmouth Yacht Club. During that time the Claimant serviced the Defendants' boat, including winterizing it to prevent damage from freezing during the winter. Most of the service work was done by the Claimant's employee, Roland Cudmore.

[4] In 2009, for unspecified reasons, the Defendants moved their boat to the Armdale Yacht Club. A central question in this case is whether or not the Claimant agreed to continue providing ongoing service to the boat. The Defendant Hounsell claims that the Claimant did so promise, and that he relied on that promise to his detriment. The President and owner of the Claimant company, Robert Coghlin, insists that he never made such a promise because he does not (as a rule) service boats at the Armdale Yacht Club.

[5] The Defendants do not dispute that they purchased the pump and would be expected to pay for it. As such, the only conflicting evidence centred around the counterclaim.

The Claimant's evidence

[6] Mr. Coghlin testified that he very rarely services any boats elsewhere than at the Dartmouth club, because his business is concentrated there, he is very busy and would prefer not to travel elsewhere, and because he is not permitted to conduct service work at any club where he has not posted his liability insurance policy at the beginning of the year.

[7] He does admit that he has gone over to Armdale a few times, but only for minor matters as a favour to someone, or where it was related to some previous service work that he had done. One such time was for the Defendants who, immediately after moving their boat to Armdale discovered that there was some incompatibility which prevented them from getting electric power from the club onto their boat. Mr. Coghlin supplied and installed an inverter which solved the problem.

[8] Mr. Coghlin testified that Mr. Hounsell called him sometime in the fall of 2009 and asked him whether he would continue to winterize his boat. Mr. Coghlin was very definite in his evidence that he said he would not do so because he does not do work at Armdale. He did say that Mr. Hounsell could call his employee, Roland Cudmore, directly and see if he would be willing to do it for him on the side.

[9] Mr. Cudmore testified that he was called by Mr. Hounsell and asked if he would winterize the boat, to which he replied that he was too busy but he would supply Mr. Hounsell with a couple of names of other people who might do so.

Mr. Hounsell's evidence

[10] Mr. Hounsell agreed that he called Mr. Coghlin, but says that Coghlin promised him that he would winterize the boat and that he should call Mr. Cudmore directly to arrange for a time. He believed that Mr. Cudmore agreed to do it, and disputed the statement that Mr. Cudmore supplied him with names of some other marine mechanics.

[11] He testified that he assumed the winterization had been done, until approximately May or June of 2010 when his boat would not start and he discovered that there was freezing damage to the manifolds and other components of the engine, which brought him a repair bill of \$6,502.46 from another marine mechanic.

My findings on this issue

[12] There is clearly a direct conflict in the evidence. None of the witness seemed to be obviously lying, while no one either had the purest ring of truth sounding from their mouths. I believe that each of the parties had a belief in what he was saying, but allowed for some uncertainty.

[13] My task is to make a finding on a balance of probabilities. On all of the evidence, I am more inclined to the view that neither Mr. Coghlin nor Mr. Cudmore ever committed to winterize the Defendants' boat. I allow for the possibility that Mr. Hounsell had a belief that they would, but if so I do not believe it was a reasonable belief. He ought to have known that he had no commitment, and certainly did nothing to follow up and find out if it had been done. He never received a bill from the Claimant company, nor a phone call indicating that it was all looked after. Nor did he follow up to ask when or if it had been done.

[14] The Defendants' counterclaim rests upon a theory that the Claimant contractually undertook to protect his boat from the elements, and failed to do so, thereby causing harm. The evidence is far from sufficient to satisfy me that there was ever such a contract, and as such the Claimant cannot be held responsible for what may have occurred to the Defendants' boat.

[15] There are some other circumstances which fortify me in my belief that Mr. Hounsell did not honestly believe that the Claimant had undertaken to winterize the boat. When the boat would not start in the spring, he actually had Mr. Cudmore out to help him, at which point it became clear that there was a significant problem. There was no discussion at that time about whether or not the boat had been winterized.

[16] Mr. Hounsell had the repairs done on or about June 10, 2010. On June 27, 2010 he showed up at the Claimant's trailer and asked to purchase the water pump that is the subject of the claim. He dealt mostly with Mr. Cudmore. At no time during that conversation did he indicate that he blamed the Claimant for the damage to his boat which had cost him more than \$6,500.00 two weeks earlier. I find this peculiar, in the sense that he must have known that the damage to his boat was because of it not being winterized and this would have been the logical occasion to raise his concern with the Claimant. Instead, he remained silent although he simply refused to pay the bill for the pump. He did concede at the trial that he came to the Claimant's trailer with every intention of paying for the pump.

[17] I do not accept his explanation that it was only after June 27 that the mechanic who had fixed his boat made him fully aware that lack of winterization

was the source of his problem. This is highly improbable, and there was no evidence other than the word of Mr. Hounsell to substantiate this point.

Result

[18] In the result, the Claimant is entitled to be paid \$821.79 for the pump which the Defendants ordered, and the counterclaim is dismissed.

[19] The Claimant has also proved and is entitled to costs of \$89.68 to issue the claim plus \$125.00 for service, for a total of \$214.68.

Eric K. Slone, Adjudicator