

Claim No: SCCH-451877

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Balcom v. RCA Custom Woodworking, 2016 NSSM 46

BETWEEN:

DAVID BALCOM and KRISTINA OJE

Claimants

- and -

ROBERT ARNOLD c.o.b. as RCA CUSTOM WOODWORKING

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on July 26, 2016

Decision rendered on August 29, 2016

APPEARANCES

For the Claimants self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimants reside in Musquodoboit Harbour where they own a house that is at the centre of this claim.

[2] The Defendant Robert Arnold is a carpenter/handyman who carries on business as RCA Custom Woodworking in East Jeddore, Nova Scotia.

[3] The claim arises out of a project to replace most of the windows in the subject house. The Claimants say that the Defendant ordered the wrong windows. They want the return of the deposit they paid, minus some salvage value that they received selling the windows on the buy-sell website kijiji. The amount claimed is \$3,988.21.

[4] The home in question is an older structure with a traditional look. The Claimants bought it as a rental property, at least for the time being. The windows had 4" brickmouldings, or outside framing. Many, but hardly all, modern windows have a narrower brickmoulding. The Claimants liked the look of the broader brickmoulding. They assumed that when window replacement was being discussed with the Defendant, that he would specify a similar product - or, at least, that they would have a discussion about the type of brickmoulding that would be specified, because it changes the appearance of the house quite dramatically.

[5] The Claimants gave the Defendant a total of \$9,100.00 in deposits to be applied toward the new windows as well as a deck replacement, the latter of which never went forward. In early 2015 he had done a temporary repair which consisted of putting up a few sheets of drywall to close up an area around a

living room window, where the drywall had been removed to expose the framing. There was no specific price agreed to for this job. It was after this that the parties discussed the window replacement project, as well as the eventual construction of a new deck.

[6] The Defendant did all of the measurements before ordering the windows. As any qualified carpenter would know, the window must fit inside the “rough opening” that is created by whoever framed the house. If the rough opening is a bit too large, the installer may be able to get away with it by using shims, but if the opening is too small by anything more than a trivial amount, which can be shaved away, there is a real problem because the framing includes structural elements.

[7] On or about October 27, 2015, months after the discussions took place, a load of windows was delivered to the subject property. Mr. Balcom examined them and was able to determine that at least some of them would never fit inside the rough openings. They also had a narrow brickmoulding, which was not what the Claimants wanted.

[8] It is conceded by the Defendant that some of his measurements were wrong. This appears to have been because the larger brickmouldings on the existing windows fooled him into thinking that the rough openings were larger than they were. The Defendant also did not remove any of the interior window trim, which would have revealed the precise opening sizes.

[9] Mr. Balcom looked into returning them to the manufacturer, but the manufacturer said it would not take them as they were custom sizes.

[10] Mr. Balcom concedes that some of the windows could be made to fit, but they would still be wrong because they did not have the wider brickmoulding that the Claimants want.

[11] The Defendant had no use for the windows and was not willing to take them away and give the Claimants a refund for the money that they had advanced. In the end, the Claimants put them up for sale on kijiji and were successful in salvaging a reasonable amount of money for them. Of course, they could not get full value as people expect a bargain, and in some cases the buyers only took them because they were a bargain and they could design their projects around the particular sizes.

[12] The Claimants seek \$3,988.21, based on the following calculation:

deposits advanced	\$9,100.00
less refunds voluntarily paid	(\$1,321.79)
Minus credit for a temporary repair made by Defendant	(\$200.00)
amounts windows sold for on kijiji	(\$3,590.00)
	\$3,988.21

[13] The Defendant has defended and counterclaimed. By his calculation, the Claimants actually owe him money. He says that he is entitled to \$8,194.97 for the windows, and \$439.88 for the temporary repair. His logic is that he paid approximately \$6,000.00 for the windows, but is entitled to sell them to the Claimants at a markup. He also says that the temporary repair took a lot more

time than the Claimants seem to think, in part because he was working alone. He bases his charge on 8 hrs X \$40.00 per hour, plus materials.

[14] Although he conceded in his evidence that he had made a mistake in his measurements, the Defendant does not credit this error in his calculation of his counterclaim. He complains that the Claimants did not get enough for the windows on kijiji, and does not think he should be responsible for them selling them so cheaply.

Findings

[15] I find that the Claimants' case has merit, while the counterclaim is entirely without merit. The counterclaim will be dismissed.

[16] The Defendant ordered the windows without checking that they were the type that the Claimants wanted, and at least six of the fourteen could not have been used because they would never fit the openings. I find that the Defendant breached the contract and is responsible for the damages that reasonably flow from that breach.

[17] I find that the Claimants' efforts to sell the windows on kijiji were diligent and more than reasonable. The onus to show that a party has failed to mitigate the loss falls on the party (here the Defendant) that alleges a failure to mitigate reasonably. The Defendant has not met that onus.

[18] As for the value of the repair, the work as described does not merit any more than the \$200 that the Claimants are prepared to credit. Putting up drywall

when there is no taping or patching with drywall compound simply should not take that long for someone experienced who has the proper tools. If the Defendant actually took eight hours, as he claimed, he is clearly not capable of doing that kind of work efficiently and not entitled to charge \$40 per hour to customers. In the absence of a clear agreement, I find \$200 to be the reasonable amount.

[19] One loose item which needs to be resolved is a door that the Defendant ordered, which the Claimants do not intend to use and which is sitting in the property. It will be my order that the Defendant give 48 hours notice that he plans to pick up the door, and the Claimants shall make it available. If the Defendant does nothing within 90 days of my order, he will be deemed to have abandoned it.

[20] The Claimants also seek interest and costs, as well as general damages. I am prepared to allow a flat \$300.00 for costs. I will award 4% interest on the judgment amount for one year. General damages are not appropriate in what was essentially a commercial contract.

[21] In the result the Claimants are entitled to:

deposits advanced	\$9,100.00
less refunds voluntarily paid	(\$1,321.79)
Minus credit for a temporary repair made by Defendant	(\$200.00)
costs	\$300.00
Interest on \$3,988.21 at 4%	\$159.53

amounts windows sold for on kijiji	(\$3,590.00)
TOTAL	\$4,447.74

[22] In the result the Claimants shall have judgment for \$4,447.74.

Eric K. Slone, Adjudicator