

Claim No: SCCH-453184

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Me and the Boys Construction Inc. v. APM Construction
Services Inc., 2016 NSSM 53

BETWEEN:

ME AND THE BOYS CONSTRUCTION INC.

Claimant

- and -

APM CONSTRUCTION SERVICES INC.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 23, 2016

Decision rendered on August 29, 2016

APPEARANCES

For the Claimant

Melvin Tibert, Sr., owner
Melvin Tibert, Jr.

For the Defendant

Dennis Wadden, General Manager
Evan Boutilier, project manager

BY THE COURT:

[1] The Defendant was acting as a general contractor on a project to create an addition to the Fire Hall in Mt. Uniacke. The project involved creating an addition that is best described as filling in the opening of an L-shaped structure and turning it into a square.

[2] The Claimant was hired as a subcontractor to perform certain work, including (most significantly) excavation and roofing.

[3] The Claimant says that there is a balance owing on some of its invoices, totalling \$828.00. (The Claim form sought more, but a partial payment was already in the mail at the time).

[4] The Defendant denies the amounts owing and has counterclaimed for two deficiency items that total \$1,736.50.

[5] The Claimant seeks payment of invoices for two things:

- a. One is described as a “roof inspection” at a cost of \$287.50.
- b. The other concerns 10 hours of extra work at a rate of \$47.00 per hour, plus HST, during the excavation phase.

[6] Both of these items were in invoices sent to the Defendant in January and February 2016. The Defendant did not explain its refusal to honour these invoices until recently, long after the court claim was filed in July 2016. Nor was any mention made of the deficiency claims until the counterclaim was filed in August 2016.

[7] The excavation was taking place in the winter, which created its own challenges. Also, the area to be excavated contained a number of water lines which (initially, at least) were not to be severed. The Defendant was told that this would lead to extra hours, and verbally agreed. The total extra hours charged by the Claimant was 44 hours. The Defendant did not explain itself at the time, but now says that the work should not have taken more than 34 hours. It attempts to rely on a recently obtained email report of a quantum surveyor, who casts doubt on the hours claimed.

[8] I do not find the evidence of the quantum surveyor to be convincing. Little weight is given to expert reports by people who do not come to court to testify. Even on its face, there is no way an expert who was not present at the time can judge the precise amount of time something will take. Mr. Tibert (Jr.) actually did the work and clocked his hours. I find that it was implicit that the Claimant would be paid for those hours, absent any evidence that the work was not done or that the hours were overstated or unreasonable.

[9] As for the "roof inspection," this arose out of a reported roof leak. Mr. Tibert (Sr.) was called because of a reported leak. This occurred during a windstorm, when shingles were being blown off. Mr. Tibert got the call because he had done the roofing on the addition, and that roof was tied into the roof on the existing parts of the building. Mr. Tibert concluded that the leaks were not as a result of the new roof leaking, but that it was coming from the older part of the roof. His understanding was that there was a plan to replace the old roof sometime soon. He did not do anything to remedy the roof.

[10] I do not find that there was any agreement that the Claimant could charge \$250.00 plus HST just to go out and conclude that his own work was not improper. Doubtless, it was an expenditure of time, but it was not unreasonable for him to be called and, at least, be expected to have a look. I find that this bill is not justified.

[11] Proceeding to the counterclaim items, one concerns roof repairs. The Defendant says that it was forced to add an extra layer of shingles in the area where the new and old roofs met, to address the issue of leaks. It says it paid \$360.00 to do this.

[12] I am not convinced that this is a valid backcharge. The leaking occurred several months after the Claimant did his work, and the old part of the roof was in poor condition and had been subject to bad weather. There is no satisfactory evidence that the Claimant did anything wrong that justified extra work being backcharged to it. Nor was he given an opportunity to do that work, which might have been done at a lesser cost.

[13] The other counterclaim item is an allegation that the Claimant failed adequately to compress the material in the excavated trench where the new sewer line was to go. This is contained in two invoices. On April 9, 2016, a company called Cornell Video Inspection and Pipelining was dispatched by the Defendant to look at the sewer line because of a reported blockage. That company did a video inspection and used a "jettier" to clear the blockage. The total of that invoice was \$650.00 plus HST.

[14] There is no evidence that anything the Claimant did, or failed to do, caused this blockage.

[15] Then about three weeks later, on May 3, someone named Adam Powell replaced the sewer line at a cost of \$500.00 plus HST. The allegation by the Defendant is that this was necessary because the pipe was sagging, due to inadequate compacting of the material supporting it.

[16] The explanation for why the pipe sagged - inadequate compaction by the Claimant - is plausible but is not the only possible explanation. The excavation was done during winter months. It was the responsibility of the Defendant to provide heat. Mr. Tibert (Jr.) said that he did the best he could, in terms of compaction, but had no control over how much frost may have gotten into the ground. Also, the Claimant was not on the job when the sewer pipe was installed, and a number of things could have happened at that time that had nothing to do with the compaction. I simply find this counterclaim unproved to my satisfaction.

[17] In the end the Claimant is entitled to \$470.00 plus HST (70.50) for a total of \$540.50. I also allow \$99.70 for issuing the claim plus \$100.00 for the cost of service. I allow no interest. The counterclaim is dismissed.

[18] The Claimant shall therefor receive a total of \$740.20.

Eric K. Slone, Adjudicator