

BY THE COURT:

[1] The Claimant is seeking \$25,000.00 in damages from the Defendant arising from a contract to replace six windows in the Claimant's home in Dartmouth.

[2] The basic theory of the Claimant is that the installation has been done incorrectly, and that not only will the windows have to be replaced, but also he believes that there has been structural damage done to the home and the home may require all new siding.

[3] The Defendant company is a well-known local supplier and installer of windows and other construction materials. The Defendant does not do installation work itself, but rather it supplies the items to be installed, and has a number of contractors on call to whom it subcontracts the installation.

[4] The contract here is dated October 12, 2011, and totals \$5,509.12 for all materials and labour.

[5] There is no question, and it is not denied, that there was an initial problem with the windows that were ordered. The Claimant's house, based upon pictures that I have seen, is a nice-looking modern but not new home with clapboard siding and in some cases outdated windows. The Claimant attended at the Defendant's store and picked out the type of window that he wanted. Because they were replacement windows, they had to be custom manufactured which also meant that someone from the Defendant had to come out and take very

careful measurements. Only then were the windows ordered and they took several weeks to be manufactured.

[6] When the installers came out to begin work on November 19, 2011, they began by removing two of the windows with the intention of sliding the new ones into the openings. What was discovered was that the new units were just slightly too large to fit into the openings. This was explained by witnesses for the Defendant. I accept their evidence that sometimes in the case of older homes, it is impossible to predict the exact size of the window openings while the old units are still in place because one cannot see the actual frame and how it was constructed. Only after the window units are removed can it be definitively established as to how much room there is.

[7] The installer initially believed that he could fit the new window units in by chipping away at the studs that framed the opening. This activity appeared to trouble the Claimant greatly, as he formed the belief that there was structural damage being done to his home. It might as well be said at the outset that there was no evidence whatsoever before me to the effect that the structural integrity of the home was ever compromised.

[8] The decision made by the installer was to call his contact person at Lumbermart and have the estimator come out to view the situation. It was decided to leave the two window units in on a temporary basis, and for more detailed measurements to be taken and new (i.e. slightly smaller) windows ordered for all of the six that were to be replaced. This created delay and contributed to the Claimant's growing dissatisfaction with the work.

[9] According to the Defendant's estimator Tammy Connors, whose evidence I accept, the new window units were actually received in the Defendant's warehouse in December 2011, but it was not possible to find a convenient time for the Claimant to have the installers attend at his property until some months had passed. As such, it was not until May 2012 that the work was actually done and the six new window units were installed. To the extent that the Claimant contends that the delay cost him money for extra heating costs, I find that he was responsible for most of the delay.

[10] The original installation crew that had started in November and had been expected to continue in December, who were highly regarded by the Defendant, refused to do the job in May because of bad experiences that they had in November. In particular, I heard the evidence of Gary Smith, who is a carpenter with 28 years of experience in the business. He testified that the Claimant was essentially hovering during the entire job, and that his constant interference made it impossible for him to do his work. I sensed that he was trying to be polite and diplomatic in his comments, but I infer that he must have regarded the interference to be pretty significant if he refused to work at this location again.

[11] In the result, a different installer, James Gillis, was dispatched to do the work in May 2012. In his testimony he explained how he removed the old window units and fitted the new ones in. He also testified that the Claimant was "bird dogging" him, which made it a very difficult environment in which to complete the work.

[12] The window units are now in place and functioning. There are certain aspects of the work that the Claimant is unhappy with. He produced

photographs showing that there are some gaps in the siding as well as a certain amount of splintering of the siding in the few inches closest to the window frames, or at least some of them, which creates a less-than-perfect appearance. It is not clear whether the installer for the Defendant caused these imperfections, or whether the removal of the old windows revealed them. I believe it is more the latter than the former. I also note that the photos were taken before the Defendant finished its work, which leaves me in some doubt as to how matters actually looked upon completion.

[13] In one case, in the interior the Claimant is unhappy with the drywall repair that had to be done to accommodate the new window unit. He is also unhappy with the trimming of the window. The position of the Defendant is that there is a certain amount of imperfection which is inevitable when old window units are removed, and new ones put in their place. As for the unfinished interior work, the Defendant says that its workers were not permitted to return to the home to finish their work, because the Claimant would not allow them access.

[14] Another area of complaint vigorously advanced by the Claimant is that he appears to believe that the flashing used in the windows is either the wrong material or improperly installed.

[15] As mentioned earlier, the house is faced with a medium brown stained clapboard. The photographs placed in evidence show some slight splintering at the edge where the clapboard material meets the structural wood holding the window units in place. The Claimant has become convinced that this problem cannot be rectified with anything short of replacing all of the clapboard on his house at a cost of potentially tens of thousands of dollars.

[16] The Claimant also blames the Defendant for having done some damage to his property; specifically, he says that some of his lawn and plants were damaged, that carpets were left unclean and will have to be professionally cleaned. There are several other minor items that he seeks. None of these were backed up with any photos or written estimates, with the exception of one photo of a shed door sill which the Claimant somewhat improbably contends was damaged by the workers dragging some machinery over it.

[17] Having listened to all of the evidence at the trial, it became abundantly clear to me that the Claimant, while intelligent, has no qualifications in the area of carpentry or construction. For a claim of this magnitude, I would have expected him to engage an expert of some type to offer an opinion as to whether or not the work done by the Defendant is deficient. The Claimant appears to believe that it is sufficient for him to speculate on what has been done and what may need to be done, if anything. On the other hand, all of the witnesses called by the Defendant impressed me as knowledgeable and credible. Their explanations made sense, and I did not get the impression that they were merely floating alibis.

[18] I acknowledge the Claimant's evidence that he cannot afford to hire experts, but that is not a sufficient reason for me to be satisfied with mere speculation by someone who has no demonstrated knowledge or credentials in the area of concern. Furthermore, had the Claimant retained an expert and been successful, that is a cost he could have recovered from the Defendant. The Claimant testified that he did speak to other contractors, and he attempted to pass on some of their comments, but that kind of hearsay carries no weight

and is no substitute for an opinion letter backed up by the attendance of the individual in court to be cross-examined on his or her evidence.

[19] On all of the available evidence, I find that there was no structural damage to the Claimant's home. The chipping of the stud, which appeared to have concerned him greatly, was done within allowable limits. Moreover, those studs were later replaced when the new window units were installed in May. As for the less than perfect appearance of the clapboard, I find that these are extremely minor issues that can be rectified at little or no cost. For the so-called splintering, I would expect that a little touch-up with the same colour wood stain would do the trick, but as I am no expert in these matters it might make sense for the Claimant to consult a professional.

[20] As for other minor deficiencies which may exist, my finding is that the Defendant has been prevented from completing its work. It is regrettable that the Claimant has become so convinced that the Defendant has done poor work and damaged his property, that he has been uncooperative in allowing them to finish up. Even if he might be entitled to have these rectified, he cannot expect the court to award money for these minor matters when he has prevented the Defendant from fixing them, and where he has produced no evidence whatsoever of what it would cost to have someone else do the work.

[21] The Claimant's belief that the flashing has been improperly applied is not substantiated in any way. The Defendant explained to my complete satisfaction how the new plastic flashing differs from the metal flashing used originally, and I find that there is not a shred of evidence that the flashing was not installed properly.

[22] As for alleged damage to his property, such as the shed door sill and alleged broken shrubbery, this is not proven to my satisfaction. The same goes for allegations that the Defendant's workers left the work area dirty and in need of professional cleaning.

[23] I will remind the parties that whatever warranties the Defendant extends on its work would still apply, so if the windows should leak in the future, the Defendant may have an obligation to respond.

[24] In the final result, I find that the Claimant has failed to prove that the Defendant has breached the contract in any way. Moreover, there is no proof of any damages having been suffered. As such the claim must be dismissed.

[25] I have been made aware that there is a dispute between these parties and the credit card company that processed payment for part of the invoice. I have no jurisdiction to make any order binding on a third party, and I also note that the Defendant did not file a counterclaim in this matter. Nevertheless, I am hopeful that my order will make clear to all concerned parties the view of the court as to the merits of the parties' positions.

Eric K. Slone, Adjudicator