

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Ross v. Mabley, 2016 NSSM 59

BETWEEN:

DANIEL F. ROSS

Claimant

- and -

PHIL MABLEY

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on November 30, 2016

Decision rendered on December 1, 2016.

APPEARANCES

For the Claimant self-represented

For the Defendant self-represented

BY THE COURT:

[1] The Claimant is a building contractor seeking to collect the balance owing on his bill for renovation work done for the Defendant at his Halifax home.

[2] The Defendant resist paying this bill, and counterclaims for damages based on a theory that the Claimant did not complete the work in a timely manner. He also says that the Claimant performed, and is purporting to charge for, some electrical work that he was not qualified nor instructed to do.

[3] The contract is partly verbal and partly written. There is a one-page agreement that outlines the work to be performed, which includes removing some interior walls, adding support to the second floor with engineered beams and steel jack posts, and the installation of a new kitchen. It is a labour only contract, with a quoted labour rate of \$45 per hour. It notes a “tentative start date” of August 7, 2016.

[4] There is nothing in the document that establishes a total budget for the project. Nor is there a time frame for the work set out. Both parties agreed that there was a verbal understanding that the work would take an estimated number of weeks. The Claimant says it was 4 to 5. The Defendant says it was 3 to 4.

[5] The work did not actually start until August 16, 2016. There was no explanation for why there was a delay. I do not propose to blame either party for this late start.

[6] The Claimant testified that there were unforeseen problems that made the work take longer than initially estimated. This is not uncommon when older buildings are renovated, and walls are opened up.

[7] An important fact is that the Defendant was scheduled to go on a European trip starting September 21. The initial expectation was that the work would have been finished by then, but (as noted) there were delays. The Defendant had been quite involved in observing or overseeing the progress of the work. As September 21 approached, the Claimant had a concern that the Defendant might not be comfortable with the work being completed while he was away. He says that he asked the Defendant if he was OK with that happening. He says that the Defendant delayed in giving him an answer, with the result that he booked a few small jobs to occupy his time in the event that he could not continue with this job after September 21. The Defendant testified that he did not delay in giving his approval. They both agree that the Defendant did eventually agree that the Claimant could continue in his absence, as he had a friend nearby who would keep tabs on what was going on.

[8] In the end, the Claimant did work on the project after September 21, but took some days off to do the other small jobs that he had arranged.

[9] I note that there is nothing in the written contract that obliged the Claimant to devote all of his time to the Defendant's project, although I believe it was implied that it would be done expeditiously.

[10] One of the reasons that the Defendant was anxious to get the project completed was that he had a rent-paying roommate who was obliged to move out

while the renovation was proceeding. The roommate's absence was costing him \$600 per month.

[11] Another reason was that he had ordered a granite counter-top for the kitchen, and the lower cabinets had to be in place when the granite was delivered.

[12] Things went off the rails while the Defendant was in Europe, despite the fact that the parties were in frequent email contact.

[13] From the perspective of the Defendant, the Claimant had not made sufficient progress. He was worried that the granite installers would arrive and find the kitchen cabinets not ready, in which case there would be a significant financial penalty. The granite installation was scheduled for October 7.

[14] In email exchanges between October 3 and 6, there were pictures sent and heated discussion. The Claimant insisted that the kitchen would be ready, as it would only take a few hours to have everything in place for the granite installers. The Defendant was unwilling to accept that promise, and cancelled the granite installation a day before it was scheduled. The Defendant also terminated the Claimant's contract, although promising to settle up with him for the work that had been done in the meantime. The Claimant understood that the Defendant had funds available, namely \$2,200.00, which he had left with his friend to cover renovation costs while he was gone.

[15] When the Defendant returned from his vacation, he took the position that the Claimant was not owed any money. He questioned whether the Claimant had actually done the 34 hours of work that he claimed. He also took issue with the

fact that the Claimant had done some electrical work, which he was not licenced to do. He hired another contractor to finish the kitchen. His position is that the Claimant should reimburse him for that cost (\$650.00) and also cover the two months of lost rent (\$1,200.00) because the tenant did not pay for September or October.

[16] The Claimant testified in reply that the electrical work he did was not of the type that required a licenced electrician, and that it came about because the electrician was unavailable and some wiring had to be done to keep the project moving. He said that he was in touch with, and being directed by, the Claimant's electrician.

Findings and conclusions

[17] The Defendant admitted that he had \$2,200.00 left in his kitchen budget when he left for Europe. Even if I credit him with \$650.00 for the other contractor who finished the kitchen, this still leaves \$1,550.00 unspent. The Claimant is asking for \$1,530.00, which is still within the budget. There is nothing in the facts that would entitle the Defendant to have his project completed with the \$2,200.00, or \$1,550.00 of budgeted money still in his hands. I find his counterclaim quite misconceived.

[18] I am not satisfied on the evidence that the electrical work was unauthorized, or unsafe. I accept the Claimant's evidence that he was forced to undertake this work to advance the overall project. I also accept his evidence that he did not do anything that needed to be connected to the electrical panel, which he admitted was work that only a certified electrician could do.

[19] *Prima facie*, the Claimant is entitled to be paid for his work in accordance with the terms of the contract. The only live question in my mind is whether or not the Claimant is responsible for any of the lost rent.

[20] Surely the Claimant had to have known that there was a cost to the Defendant if the project was delayed. However, on even the most optimistic of assumptions, the work could not have been concluded in time for the tenant to move back in September.

[21] As for October, arguably the project might have been ready by then, but the Defendant never made it clear - and there was plenty of communication between the parties - that September 30 was a deadline because of the need to get the tenant back in the house. The deadlines discussed had all to do with the granite installation, which the Defendant himself had scheduled for October 7.

[22] In my opinion, the Claimant was not on any clear notice that he might be responsible for the rent that the Defendant was losing for October. I am not prepared to allow it as an item of contractual damages.

[23] I do not wish to be taken as endorsing the delay that occurred. I find that the Claimant has some responsibility for it, but not enough to be considered a breach of the contract.

[24] In the result, I find that the Claimant is entitled to \$1,530.00 plus his costs of \$99.70. I find that the counterclaim has no merit and is dismissed.

Eric K. Slone, Adjudicator