

Claim No: SCCH - 475720

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation: *Mitchell v. Hindon Construction Ltd.*, 2018 NSSM 54**

BETWEEN:

BRIAN MITCHELL

Claimant

- and -

HINDON CONSTRUCTION LTD.

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on July 24, 2018

Decision rendered on July 30, 2018

**APPEARANCES**

For the Claimant

Derek Brett  
Counsel

For the Defendant

Stephen O'Leary  
Owner

**BY THE COURT:**

[1] The Claimant is a tile setter. The Defendant is a company that does renovations, and which uses the Claimant from time to time as a subcontractor for its tile work.

[2] This claim involves a dispute over the price which the Claimant charged to the Defendant for his tile setting work in a renovation project on Liverpool Avenue in Halifax in July 2017.

[3] On July 13, 2017, the Claimant provided a quote on the job, including both labour and materials, totalling \$2,362.74. There is no dispute that Mr. O'Leary, the owner of the Defendant company, had some difficulty with this quote. On July 19, 2017, he emailed the Claimant advising that he had allowed only \$1,770.00 (plus an additional amount for the Schluter strips) and expressed the hope that the Claimant could make this work.

[4] That email was responded to on July 20, in which the Claimant stated that he could not do the job for the price that the Defendant wanted and that he was willing to walk away if the Defendant decided to go with someone else.

[5] The next written communication of any significance was on July 24, when the Claimant asked if the Defendant still wanted him to do this job. This was responded to by Mr. O'Leary the same day, wherein he said, "yes Dave was supposed to have called you." Dave refers to the Defendant's site foreman.

[6] Based on this, the Claimant gained entry to the job and did the work on July 25 and 26. As he was doing the work, he found that the tile which had been

supplied was much thicker than standard tile, and charged an extra day labour at \$300.00 for the additional saw cutting work. This final invoice for the job was dated July 26.

[7] The Claimant testified that the extra charge of \$300.00 was authorized by Dave. It is to be noted that Dave was not called to testify.

[8] The final bill, giving credit for the deposit and including the extra \$300.00, came in at \$1,907.07.

[9] The Defendant has refused to pay this bill. Mr. O'Leary testified that he believed the price was still under negotiation at the time the work was done, and that the Claimant knew or ought to have known that the quotation was not acceptable. He also claims not to have authorized the extra cost of \$300.00. The amount charged by the Claimant was considerably more than the Defendant was charging to its own client.

[10] Mr. O'Leary appeared to be sincere. He was candid that he had had a good relationship with Claimant and had used his services many times over the past seven or eight years. He appeared to be contesting this matter as much on principle as on the money.

[11] The difficulty that the Defendant faces is that the written record, such as it is, does not really support his position. The email trail is relatively straightforward. There was admittedly a debate about the price, but there is nothing in writing that ultimately stopped the Claimant from going forward on the basis of his estimate. The parties were clearly in the habit of exchanging quick

emails, and had the Defendant, i.e. Mr. O'Leary, wished to negotiate the price downward, or cancel the work, there ought to have been something in writing advising the Claimant that he was not to go ahead. In fact, reading the email chain, the message appears to have been otherwise.

[12] On the question of the \$300.00 extra, the Claimant's evidence stands unchallenged. The Defendant could have but did not call Dave to question whether or not this additional work had been authorized.

[13] In the end, the written record is the most reliable evidence of the agreement. I find on the balance of probabilities that the Claimant is entitled to the amount of his invoice, namely \$1,907.07.

[14] In my discretion I decline to award interest. The Claimant is also entitled to his costs of \$99.70 to issue the claim, and \$12.00 for the registered mail which was used to serve the claim.

**Eric K. Slone, Adjudicator**