

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Davies v. Terry Ritchie's Construction*, 2019 NSSM 56

Claim: SCY No. 490202
Registry: Yarmouth

Between:

Katherine C. Davies

CLAIMANT

And

Terry Ritchie's Construction

DEFENDANT

Adjudicator: Andrew S. Nickerson, Q.C.

Heard: October 17, 2019

Decision: October 22, 2019

Appearances: The Claimant, self-represented
Matthew J. Fraser for the Defendant

DECISION

Facts

[1] I will not make an extensive review of the evidence but I wish the parties to know that I have considered all of the evidence and reviewed my notes of the testimony given. I will set out only those facts, as I have found them, which are essential to my decision.

[2] I will start by saying that I found all of the witnesses to be credible and making sincere efforts to be truthful in their responses. Where the evidence differs, I view it as a matter of the parties' respective perspectives and memory.

[3] The parties agreed that the defendant would construct a garage and some other items for a total sum of \$8000. That sum was in fact paid in two instalments of \$4000 each.

[4] The claimant had various concerns about work which was unfinished and in addition was concerned about the washing away of certain gravel in her driveway which caused some problems with the foundation of an old carport which had been removed. The claimant stated that she had spent approximately \$3000 to remedy problems left by the defendant. However, she did not list or explain precisely what these financial outlays were for.

[5] This dispute appears to have arisen when the defendant declined to return to the property to complete the building work because the party that he had arranged to do the excavation work had not been paid by the claimant for the last portion of that excavation work. The claimant responded that she wanted the defendant to pay that bill and she would reimburse him when he came back and the work was completed. Mr. Ritchie declined to do so.

[6] In his testimony the defendant agreed that there were some items of incomplete work and he set out item by item the value that he placed on these items which I will set out in my analysis of the case.

[7] The defendant initially testified that he had not agreed to provide the woodshed but when confronted in cross-examination that he did state in the text (Exhibit 2) that he would in fact provide the painting for the garage and construct the "woodshed", he acknowledged that he had in fact said that.

[8] The defendant produced an invoice from K. Anthony's Landscaping & Snow Removal which is in the court record as Exhibit 5. This invoice is undated. In the reference section it reads "Port Maitland". The body of the invoice says

"received from Terry Ritchie \$700 for excavating".

Analysis

[9] All parties agree as to the terms of the verbal contract. Essentially, I must decide three things:

1. what is the value of the unfinished work?
2. will I allow damages for the water damage to the driveway?
3. will I allow the counterclaim of \$700 (being the excavators final bill)?

[10] The defendant admittedly did not complete the work he contracted to perform and I will allow damages as follows:

Sealing Cracks in garage floor	\$ 150.00
Painting garage floor	\$ 160.00
Exterior paint	\$ 600.00
Garage door opener install	\$ 50.00
Woodshed/porch	\$ 600.00

	\$ 1,560.00

[11] I have used the values assigned by Mr. Ritchie which is the best evidence, indeed the only evidence, I have. I have found him to be a credible witness and I have no reason to believe he deliberately undervalued these items.

[12] Since I do not have detailed information of the payments made by Ms. Davis subsequent to the work being stopped, I am unable to analyze the monies that she spent or determine how they relate to her claim. Therefore, I am not able to award anything in regard to those expenditures.

[13] Although I do have some empathy for Ms. Davis' concern about the

problems with the driveway and would have thought that Mr. Ritchie could have provided more assistance to her than he did, I cannot conclude that he had a legal obligation to do so. This work was performed by the excavation contractor.

Although Mr. Ritchie had undertaken to find and arrange for the attendance of other contractors, I cannot find that he was in the position of a general contractor who would be responsible for their work. Therefore, despite my empathy for Ms. Davis, she has not established a legal claim for compensation in this regard.

[14] It is indeed a fundamental principle of our legal system, as Mr. Fraser noted in his submissions, that the party who alleges bears the burden of proof and must bring forward evidence to support their position. I have found the invoice supplied by Mr. Ritchie to be woefully inadequate to support his counterclaim. The claimant's address as stated in the claim's "Darlings Lake" and the address on the invoice is "Port Maitland". The body of the invoice simply says for excavating and the invoice is undated. This may well simply be sloppiness on the part of Mr. Ritchie or Mr. Anthony who issued the invoice, however it simply does not meet a reasonable standard of proof that the amount of \$700 was paid specifically in respect of Ms. Davies' project. Ms. Davies quite properly pointed this out in her submissions; she is correct in my view. I therefore disallow the counterclaim.

[15] The claimant will have judgement for \$1,560.00 and the court filing fee of \$99.70. The affidavit of service in the file indicates that Ms. Davis engaged a process server, but I do not have a copy of the process servers' invoice. I will allow Ms. Davis 10 days from the date of this decision to deliver the invoice for service to the court office. If the invoice is produced within that time, I will also allow the cost of service.

Dated at Yarmouth this 22nd day of October, 2019.

Andrew S. Nickerson Q.C., Adjudicator