

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *On Shore Construction Ltd. v. The Rendezvous Sports Bar & Lounge Entertainment, 2020 NSSM 1*

Claim: SCY No. 492268

Registry: Yarmouth

BETWEEN:

ON SHORE CONSTRUCTION LTD.

CLAIMANT

-and-

THE RENDEZVOUS SPORTS BAR & LOUNGE ENTERTAINMENT and
MICHELLE D. JACKLYN

DEFENDANT

Adjudicator: Andrew S. Nickerson, Q.C.

Heard: January 7, 2020

Decision: January 9, 2020

Appearances: The Claimant, self-represented
The Defendant, self-represented

DECISION

Facts

[1] At the outset, I state that I was very disappointed in both of these parties with respect to the manner in which they conducted themselves at trial. I had to repeatedly remind them not to talk over each other, to wait until the question was asked before answering, to wait and allow the answer to be given without interruption, to not interrupt and wait their turn before addressing the court, and generally to conduct themselves in an orderly manner. Although this behaviour was disrespectful and unhelpful, I will overlook it on this occasion and it has not affected the substance of my decision. I state this to bring home to the parties that this approach to a trial is not helpful to either themselves or the court. I hope that if they find themselves before a court on another occasion that they keep this in mind and realize that such behaviour could have much more negative consequences than

I have chosen to impose. Courts generally exercise a significant degree of patience but parties must understand that there is a limit which they can exceed at their peril.

[2] I wish to make it clear to the parties that I made careful notes of all of the evidence and have reviewed those all in making this decision. If I do not mention a specific piece of evidence it is because it is not particularly helpful or useful to the decision I must make and not because I have not considered it.

[3] Ms. Stephanie Knight testified on behalf of the Claimant. She stated that the Defendant called her on December 18, 2018 with respect to a project to relocate a restaurant and bar. She stated that there was no written contract and all that the Defendant was told was that if the company's whole crew was there for a period of one month that it would cost \$40,000 for labour, excluding materials. She stated that the Defendant had a general idea of what she wanted. Ms. Knight advised the Defendant that she was not a designer or architect but that she could do a simple floor plan suitable for the Defendant to submit to the Nova Scotia Liquor Commission and to the Nova Scotia Gaming Commission.

[4] The Claimant proceeded to remove equipment from the old location and pack up and store a significant number of items. This was not something that they normally did. Over the course of construction there was an initial drawing made and then it was modified on several occasions. The first modification was because the space where the buyer was originally intended turned out to be too small. It was then moved to another location but the Defendant did not like that location and wanted it moved again.

[5] The Claimant proceeded to obtain the necessary building permits and coordinate with the building inspector. There were modifications to the original drawing that were necessitated by changes required by the building inspector. The most significant of these appear to be the relocation of some stairs.

[6] Throughout the period that the Claimant worked on the Defendant's site the Defendant was provided weekly with invoices outlining the work that had been done and the cost of materials. The Defendant challenged in cross-examination that the invoices did not break down the specific amount of time spent on specific tasks by the workers. Ms. Knight testified that all time records were produced from timecards of the employees but those records do not break down by specific task. The total of these invoices was \$6,523. She also produced copies of cancelled cheques, one in the amount of \$16,000 and one in the amount of \$40,000, and

testified that these were the funds that had been paid by the Defendant.

[7] Chris Jacklyn testified on behalf of the Claimant. He stated that he was the Defendant's brother but he worked as an employee of the Claimant. He said that his sister had asked him to find a contractor and he arranged for her to be put in contact with the Claimant. He described the old bar as a "dump". He was sent to clean up the old bar site and when he did, he found there were several fridges with already spoiled food in them. He testified that at the new site there were certain wires removed and cut at the direction of the electrician and that he did roll up and remove some wire, again at the direction of the electrician. He further testified that the Defendant only attended the new site on three or four occasions during construction.

[8] Stephen Benham testified for the Claimant. He says that he worked for Onshore and that his work experience was as a roofer. He installed the outlet for the range hood on the roof and stated that it was to the satisfaction of the sheet-metal contractor who was installing the range hood. He stated that he did go on runs to get material and recalled that at one point the cost of the materials could not be charged to the Defendant's account because the store declined to do so. Therefore the materials were placed on the account of the Claimant.

[9] Joseph Hayden testified for the Claimant. He is a general labourer or an employee of the Claimant. He testified that he worked on the roof vent and worked packing and moving the materials from the old site. These were partially stored at the Claimant's premises and partially at the new location.

[10] Colin Ringer is a red seal journeyman carpenter who was the foreman on the job. He did all of the carpentry work including building in the bar. He built in the bar twice. The first installed location was unacceptable to the Defendant and it was removed to another location. He stated that there was no actual drawing but he took direction from the rough floor plan made available to him. He noted that the stair direction had to be altered due to building code and fire code concerns. He had to rebuild all the cabinetry for the bar in both locations and confirm that it was more than a day's work to disassemble and reinstall the bar. He stated that there were posts in the lower level which had to be removed in order to fit in several pool tables and that a beam had to be installed. He testified that there were concerns that the Defendant wanted to leave the old boards in the original dance floor area because this would allow liquid to seep through the floor and potentially damage the ceiling below. The Defendant in her cross-examination acknowledged that Mr. Ringer's work was competent and high quality.

[11] Krista Kean testified for the Defendant. She presented a list of concerns and complaints raised by the Defendant. It became quite apparent in cross-examination that she did not actually see a great deal of the items and really didn't know a great deal about what happened or who did what. She confirmed she was not there when the construction was done. As a result, I am unable to place much weight on her evidence.

[12] Darren Wylie is the Defendant's son. He testified that he was there when the cleanup took place. He stated that he had been there a few days before the Claimant arrived to do the cleanup and all the fridges were plugged in and working. He stated that the Claimant must have unplugged the fridge and allowed all the food to spoil. He also stated that the electrician told him to be careful because the wires had been cut and the electrician was not happy about it. He made numerous complaints about the paint job and how unprofessional it was. He claimed that they had to hire other people to redo the work. He claimed he was present and heard the Claimant state that the cost would be a maximum of \$40,000 including material. When challenged in cross-examination that this couldn't have been possible because that conversation took place on the telephone, he was unable to provide a reasonable explanation. I observed that during Mr. Wylie's evidence he was particularly aggressive in interrupting and not being responsive to the question. At one point I had speak to him quite sternly. I reminded myself that demeanour is not a sufficient basis to reject a witness, however, his evidence did not seem logically probable and I do not accept any of his evidence as reliable.

[13] At the end of the evidence the Claimant presented me with a file folder of documents she said supported her claim and counterclaim. These were not presented in evidence and properly cannot be relied on but I did review them and found nothing there helpful to my decision in any event.

Analysis

[14] I must determine what the agreement between the parties was and whether the agreement was fulfilled. I accept Ms. Knight's evidence as to the arrangement between the parties. I find that there was a discussion whereby the Claimant agreed to proceed and conduct the work and provide weekly invoices. I find her evidence to be accurate that the only thing the Defendant was told was that if the company's staff was there for a month it would cost \$40,000. I do not accept the assertion of the Defendant or the evidence of Mr. Wylie to the contrary. I find that there was a verbal contract that the Claimant would perform work on the Defendant's new

premises and the Defendant would pay on the basis of weekly invoices. I am satisfied that that is precisely what the Claimant did.

[15] I have carefully reviewed the Claimant's invoices provided in evidence and am satisfied that they represent a reasonably accurate description of the work performed and are supported by the invoices from the material supplier as to that aspect. I do not find it unreasonable or unusual that the timecards of the labourers would not be broken down as to specific tasks. I do not consider that to be a factor in determining what is owed.

[16] I am satisfied that the Claimant did their best to satisfy the needs of the Defendant and provided acceptable quality workmanship. The Defendant was provided with invoices weekly and I have no evidence that she objected to them at the time or had any difficulty with the services provided. I find as a fact that the Defendant rarely attended the jobsite and therefore had little or no input into directing the job. Failure to coordinate with the contractor and work together to provide direction as to the job she wanted cannot be attributed to the contractor; that can only be attributed to the Defendant.

[17] I am satisfied that the total value of the invoices was \$65,523 and that the sum of \$56,000 had been paid by the Defendant. The difference is \$9,523. I do not find support for the remainder of the \$10,699.14 claim. It may well be that it is interest, however, without a clear breakdown of that and an agreed interest rate between the parties, I decline to award interest.

[18] I will allow the cost of filing fee in the amount of \$199.35. The file reveals that Ms. Knight served the claim herself and therefore has no bailiffs cost as to service. The total award that I will make is \$9,722.35.

[19] Dated at Yarmouth, Nova Scotia this 9th day of January, 2020.

Andrew S. Nickerson Q.C., Adjudicator