SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Mullen v. MWGM Remodeling Inc.*, 2020 NSSM 15

Date: 2020-02-10
Docket: SCCH 493465
Registry: Halifax

Between:

Craig Wallace Mullen

Claimant

- and -

MWGM Remodeling Inc.

Defendant

Decision and Order

Adjudicator: Eric K. Slone

Heard: February 4, 2020 in Halifax, Nova Scotia

Appearances: For the Claimant, self-represented

For the Defendant, Maurice Meager, owner

BY THE COURT:

[1] The Defendant carries on a home renovation business in Halifax known to the public as Case Design/Remodeling, though that name appears to be unregistered. Their business model is to work with clients on a comprehensive design, with the expectation (though no binding obligation) that the client will also hire them to perform the renovation. The Defendant requires that they be paid for the design work, though the cost of the design stands as a credit toward the construction contract, if it goes ahead.

[2] In March of 2019, the Claimant and his spouse, Kate Howarth, began such a process with a view to having the Defendant do some fairly major repairs to their home in Bedford. They paid the Defendant a total of $17,830.25 in what were clearly

documented as non-refundable deposits. In the end, the project stalled (for reasons which I will elaborate upon) and the Claimant seeks a full refund of this money.

[3] Although the Claimant and Ms. Howarth appear to have both signed all documents, this claim is brought by Mr. Mullen alone. This is a technical irregularity, at most. When I refer to the "Claimant" it is implicitly recognizing that both Mr. Mullen and Ms. Howarth have an interest in the outcome.

[4] The question for the court is whether there was something fundamentally wrong with the design such as would entitled the Claimant to a refund. Though not articulated as such, I see and will consider two possible legal theories that might be advanced, namely fundamental breach of contract or unjust enrichment.

The facts

[5] The Claimant and Ms. Howarth own a single-family house in Bedford. They hoped to do some fairly major renovations, which would principally involve the kitchen (on the lower level) and a bedroom/bathroom renovation on the second level directly above the kitchen.

[6] They met the Defendant at a local Home Show (where the Defendant had a booth) and invited the Defendant to visit their home and make a proposal. They then met with the Defendant's project developer Dan MacDonald on March 12, 2019, where the project was discussed, and the Defendant set out the terms of the engagement. In a preliminary agreement signed that day the project was described as follows:

> Remove wall and extend kitchen into living room, new cabinets, island and flooring.
>
> Extend bathroom into current walk in and use walk in as entry into bedroom conversion to new walk in closet.
>
> Budget kitchen $75,000 - $90,000)
> Bathroom/closet $30,000 - $40,000) (plus HST)

[7] The Claimant paid a $3,300.00 development fee on that day, which was expressly stated to be non-refundable, though the amount would be credited toward a final construction contract, if one was eventually arrived at.

[8] With this deposit in hand, the Defendant set about developing a set of proposals. This involved taking accurate measurements and drawing up the existing floor plan, and

developing two proposals for each of the floors. The Claimant was asked to choose between each of the two fairly different designs. I accept the evidence of Mr. MacDonald that developing the proposals involved hundreds of hours of work by the primary designer as well as other specialists, estimators, and tradesmen, such as an electrician.

[9] On May 7, 2019, the Claimant paid a further deposit of $14,530.25, which was also non-refundable. Payment of this amount followed the presentation of the options and entitled the Claimant to proceed to make some selections and allowed the Defendant to proceed to a draft construction contract.

[10] The total paid to date accordingly became $17,830.25.

[11] By this time the suggested budget range for the project had grown to a range of $149,000 to $211,000 (plus HST). What the eventual cost would be, would depend on choices that the Claimant would make as to what would be included in the design. As anyone who has ever undertaken construction or renovation would know, there are many different grades of building materials, fixtures, and appliances available and there is almost no limit to how much one can spend if one opts for the most expensive choices.

[12] On July 2, 2019, with all of the choices made by the Claimant, a construction contract was drawn up and signed. No further money changed hands. It was expressly provided that the contract was conditional on the ability of the Claimant to obtain financing.

[13] The budget was now estimated to be $185,196.72, which was about the middle of the range set back in May.

[14] The Claimant was given (on loan, because they belonged to the Defendant) a set of plans so that he could approach his bank to arrange financing. After meeting with two banks, the Claimant was faced with the harsh assessment that the project, at that price, would not be financed. He was told that a project in the range of $100,000.00 would likely be financed. At this point, the Claimant asked the Defendant if the project could be reworked to fit within that budget.

[15] I want to observe a few things at this juncture. Right at the outset the budget was in the range of between $120,000 and $150,000 (including HST). The budget grew somewhat as the Claimant made choices about what to include in the project. I infer that the Claimant did not have a good handle on what he and his spouse could afford, and

either how solid their credit was, or how much their house was worth, or would be worth once renovated. There is nothing in the evidence to suggest that the Defendant pushed the Claimant into a more expensive project. Nor is there anything to suggest that the prices quoted by the Defendant were unreasonable. I think it is common experience that budgets grow as people get carried away by the excitement of what nice things they can have.

[16] As such, when the Claimant began to suggest (as he did) that he wanted the Defendant to complete the project for only slightly more than half of the current budget, there was an air of unreality about his position. I reject any suggestion that the Defendant's pricing was out of line with what was proposed, and that they simply needed to lower their price. Nevertheless, the Defendant was at all times agreeable to reworking the project to bring it within the Claimant's budget.

[17] The Claimant concedes that he would have no legitimate claim if the project had merely failed on the basis of his inability to obtain financing. However, he contends that there was a fundamental flaw in the Defendant's design, and as such he never received what he contracted for.

[18] The issue concerns the planned changes to the door to the second-floor master bedroom, and the width of the short hallway leading out of the bedroom.

[19] It is unclear to me precisely when the issue was first raised, but it seems most likely that it became a serious point of contention only after the Claimant learned about his inability to get financing.

[20] In an August 7, 2019 email from the Claimant to Mr. MacDonald, the Claimant expressed the issue this way:

> Finally, I had a chance to look through the plans that you gave us after our last meeting, and I am still concerned about the design for the entrance-way to the upstairs bedroom with regards to fitting furniture through the doorway. I understand we discussed this at our last meeting and you already reassured us that we would be able to fit any furniture through the entrance-way after construction is complete; however, I am still having difficulty picturing how the furniture is going to fit. If it will work, then we are happy to keep the design the way it is. But if the furniture won't beable to fit through the doorway with the current design, then we may have to look at changing the design to keep the bedroom door in its current location.

[21] As best as I can understand it, the concern was not the width of the door opening,

which would not change from the existing design, but rather that the doorway would open into a slightly narrower hallway. The Claimant and his spouse appear convinced that certain furniture, and in particular a large reclining chair, would not be able to make it through the hallway and into the bedroom. They also believe that a person carrying a standard laundry basket (width-wise) in or out of the bedroom would have trouble navigating the space without having to contort his or her body. They took pictures using green tape meant to illustrate where the new walls would be, and attempted with this visual aid to portray the problem as they see it.

[22] The Defendant's position is that there would be many ways to modify the design to ensure that the entranceway to the bedroom is sufficiently wide. They point out that some furniture can be a challenge to move through doorways at the best of times, but that there is almost always a way it can be done. They tried to demonstrate to the Claimant and Ms. Howarth how minor adjustments could be made, but the Claimant insists that these proposed changes turned the designs into something that was unacceptable to them.

[23] My impression from all of the evidence is that the much bigger problem was that the Claimant wanted the price of the project brought down close to $100,000, without fundamentally diminishing the scope of the work. The Defendant did create a revised proposal within the Claimant's budget, but it would have involved sacrificing some of the features of the prior proposals.

[24] In the end, the relationship ended, and the Claimant has found another contractor who has quoted somewhere between $125,000 and $130,000 for the renovation.

[25] It is impossible for me to compare this new quote with the Defendant's proposals, and such a comparison would not be relevant in any event. The Defendant insists that it has, at all times, been willing to work with the Claimant to complete the project within his budget.

Findings

[26] In order to excuse the Claimant from his contracted obligation to pay the deposits, I would have to conclude that the Defendant fundamentally breached its obligation to provide a feasible design, or that it was somehow unjust that the Defendant be allowed to retain the deposits.

[27] I do not doubt the sincerity of the Claimant or Ms. Howarth. However, I believe

that their concerns about the design are exaggerated, or misguided.

[28] I accept the evidence of the Defendant that all necessary adjustments to the design could have been made in order to assuage the Claimant's concern. I accept the Defendant's evidence that this was a minor issue, at most, and that they have the design and construction expertise to solve such a problem. I acknowledge that borrowing a small amount of space to widen the hallway might diminish the size of the walk-in closet or the bathroom, but this seems like a minimal concession to make.

[29] In short, I do not see this as a fundamental flaw in the design that might disqualify the Defendant from keeping the deposits that it was contractually entitled to keep. The Defendant did not fundamentally breach its contract.

[30] Nor is there anything unjust in allowing the Defendant to retain the deposits. I accept that it spent hundreds of hours, for which it is only receiving partial compensation. The doctrine of unjust enrichment does not apply on these facts, where the Defendant can justify retaining the money as compensation for work done in good faith.

[31] In short, the Claimant has not satisfied the court that there is any legal basis for him to have his money refunded.

Order

[32] In the result, the claim is dismissed.

Eric K. Slone, Adjudicator