

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Kelco Assets v. Marchbank*, 2021 NSSM 24

Form 7(c)

Order
in the Small Claims Court of Nova Scotia

Claim No: SCT500629

BETWEEN:

Name: Kelco Assets

Claimant

Address:

c/o Keltic Collections
46 Inglis Place, Suite 3, P.O. Box 64
Truro, N.S. B2N 5B6

Phone: 902 895-1675

Name: Penelope "Penny" Marchbank

Defendant

Address: [address removed]

Phone: [phone number removed]

[1] On June 14th, 2021, this matter came on for a telephone hearing, and the following order is made:

[2] Colton Cox, the owner of the Claimant, gave evidence that he had been asked by the Defendant to quote on clearing 20 acres of land. He said that he told her that he would charge between \$45,000 and \$60,000, i.e. between \$2250 per acre and \$3000 per acre. She said that she wanted the work done by an excavator with the material excavated placed in piles. He told her that the piles would not burn because of the dirt present in the

piles along with the tree stumps. The conclusion reached was that his excavator would place the material in piles for \$900 per acre. Mr. Cox produced a "job contract" which stated that the job entailed "land clearing with 2018 volvo 160 excavator with thumb and root rake. Roots and cleared material to be put in piles with excavator". The cost was \$20,700 at \$900 per acre. He testified that the Defendant told him that she would get another contractor named Verboom to "grind up" the stumps, i.e. extract them from the piles of "cleared material" and burn them. In the e-mail trail submitted by the Claimant there is an exchange between Cox and the Defendant in which he says that he will start her job second week of July (2020); she replies "O.K. sounds good. I'll call Verboom. Just want to keep him in the loop".

[3] In the middle of the work the Defendant told Cox that there would be no "grinding" of the stumps and that she wanted piles that could be burned. Cox said that he could not do that for \$900 per acre and he ceased work. He reiterated that he told the Defendant that the piles would not be burnable and that the stumps would have to be dealt with later. To do what she wanted, which involved separating out the stumps from the associated top soil, he would have charged \$1600 per acre (I note that this is less than his original quoted estimate referred to above).

[4] The Defendant testified that no one could do anything with the stumps as they were left by the Claimant. She complained that the Claimant had stripped her land of its topsoil and left it in the piles with the stumps. She called as her witness Cecil Hill, who testified that he had been clearing land since 1973 and clearly knows the business well. He said that he would have picked the stumps and set them aside. The piles left by Cox were 80% top soil and 20% stumps. This is the point that the Defendant wanted him to make. However, on cross examination, he said that if he were doing the job, picking the stumps and leaving the top soil, he would have charged \$1875 per acre for his work.

[5] I have to decide this case on the balance of probabilities and I find that applying this standard produces a result favourable to the Claimant. He concluded that his job entailed piling up the material and leaving it to Verboom to extricate and burn the stumps. The top soil could then presumably have been spread out over the acreage. The key evidence here involves the cost estimates. The Defendant's own witness said that he would have charged \$1875 per acre to produce the results that the Defendant wanted. I therefore can only conclude that the Claimant's quote of \$900 per acre did not involve separating the roots from the top soil, a task that was being left to Verboom, a contractor to be retained by the Defendant with whom the Claimant had no dealings.

[6] I therefore award judgment in favour of the Claimant for \$7948.80, plus costs of \$505.25, for a total of \$8454.05.

Dated at Truro, Nova Scotia
on July 12th, 2021

Peter Lederman, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)

Form 7(c) added: O.1.C. 2000-169, N.S. Reg. S8/2000.